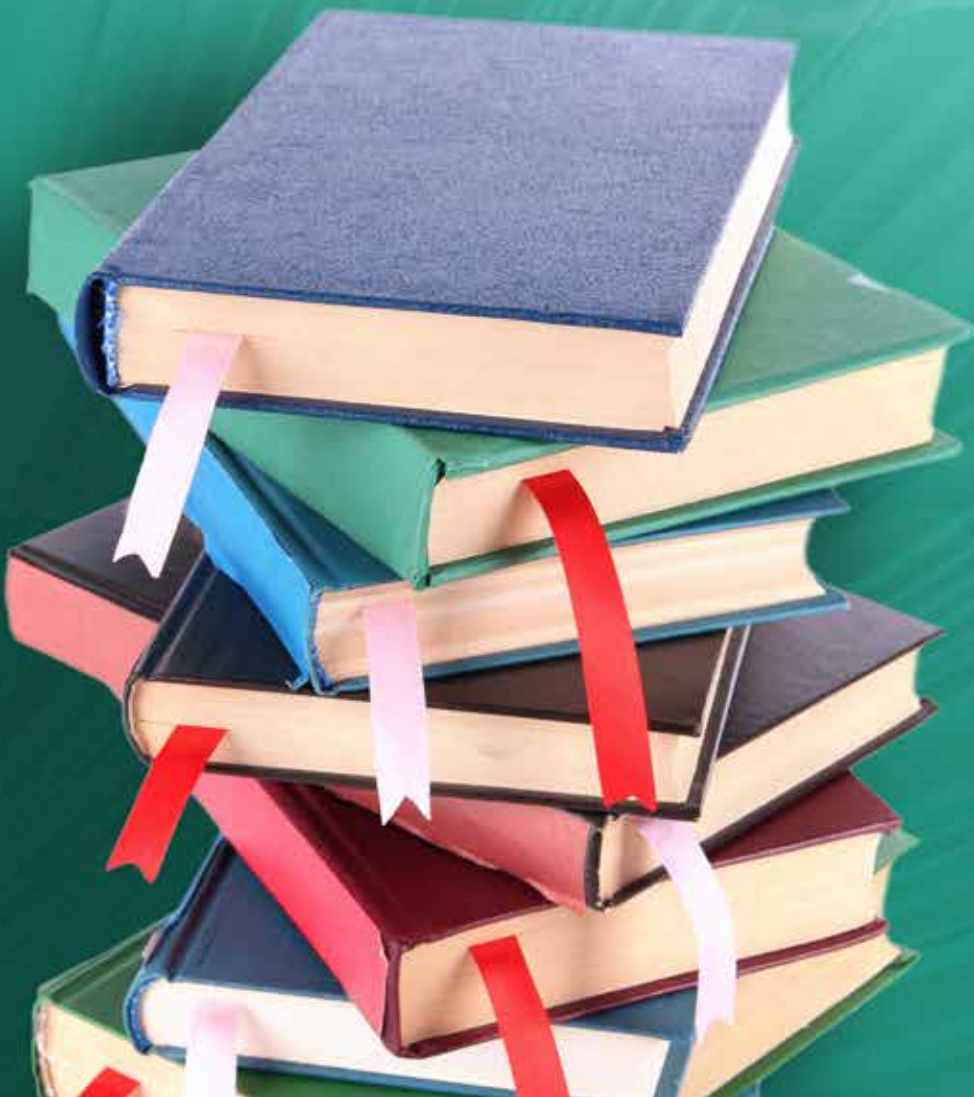




The Role of Legal Instruments to Support Green Low-Emission and Climate-Resilient Development

A Guidebook on Assessing, Selecting and Implementing Legal Instruments



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Foreword

Climate change is one of the most significant challenges of our time. Its impacts affect all countries and threaten to reverse hard-earned development gains in many parts of the world. Many countries are responding to this challenge by adopting—or planning to adopt—policies and strategies aimed at low-emission and climate-resilient growth. These ‘green growth’ or ‘sustainable development’ strategies have emerged in various forms and have been afforded definitions that differ according to their scope of ambition and focus. A common thread is that these strategies seek to enable countries to effectively integrate low-emission and climate-resilient policies into national economic and social priorities and objectives (including the achievement of critical national development goals).

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Legal frameworks will either help or hinder green, low-emission and climate-resilient development; the best policies will be largely ineffective without support from well-designed, clear, coherent, flexible and enforced legislation.

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Green, Low-Emission and Climate-Resilient Development Strategies (Green LECRDS) are one such approach being adopted by governments at various levels in pursuit of these objectives. Developed at the national and/or sub-national levels, Green LECRDS are cross-sectoral policy frameworks that provide a vision for inclusive and green low-emission and climate-resilient development. Preparing Green LECRDS involves coordinated planning, assessments of on-the-ground vulnerability scenarios and identification and prioritization of strategic options in order to arrive at a low-emission and climate-resilient development roadmap. Together with key financing partners (such as the Global Environment Facility), the United Nations Development Programme and the United Nations Environment Programme are working with a number of countries on projects and programmes that contribute to the development of Green LECRDS.

Legal frameworks will either help or hinder green, low-emission and climate-resilient development; the best policies will be largely ineffective without support from well-designed, clear, coherent, flexible and enforced legislation. Effective and enforced legal frameworks are also crucial to securing domestic and international private investment.

In order to assist government decision makers and their advisers address this issue, the United Nations Development Programme and the United Nations Environment Programme (together with the Centre for Environmental Research, Training and Information and the International Development Law Organization), drew on the organizations’ collective experience in assessing, selecting and implementing legal instrument to support the implementation of Green LECRDs. The Guidebook aims to empower decision makers to undertake legal reforms by providing a generic process and an accessible toolkit of various options adaptable to country-specific contexts. It also provides select case studies that ground the material in current reality and illustrate possible approaches.

It is our hope that this guidebook will contribute to countries’ initiatives to develop and implement green, low-emission and climate-resilient development strategies in their efforts to address urgent climate change challenges.

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Introduction

Context and purpose of the Guidebook

The need for countries to transition rapidly to low-emission and climate-resilient development pathways is clear. To facilitate this transition, many countries have adopted (or are planning to adopt), relevant policies and strategies while also seeking to ensure that other development priorities (e.g. health, education, infrastructure, social services) are protected or advanced. Green, Low-Emission and Climate-Resilient Development Strategies (Green LECRDS) are one such approach being adopted by governments in pursuit of these objectives.¹ Developed at the national and/or sub-national levels, Green LECRDS are cross-sectoral policy frameworks that provide a vision for inclusive and green low-emission and climate-resilient development.²

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The lack of an adequate legal framework is repeatedly identified as one of the key barriers to private investment in developing countries.

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In any country, legal frameworks will either help or hinder green, low-emission and climate-resilient development. For example, though a government may have a well-designed policy to introduce a feed-in-tariff to address renewable energy investment risks, the policy will not succeed if it is not implemented and supported by legislation (or other appropriate legal instrument) that is clear, coherent, flexible and enforced. Similarly, a government's policies on requiring climate-resilient infrastructure will be materially facilitated if pre-existing legal instruments require infrastructure risk assessments—thus allowing climate change risk assessments to be included in the existing framework.

The lack of an adequate legal framework is repeatedly identified as one of the key barriers to private investment in developing countries. For example, recent private-sector consultations conducted in China and India under the Energy+ Initiative identified regulatory uncertainty as a key barrier to investing in renewable energy and energy efficiency projects across Asia.³ Ensuring an adequate legal framework is critical—green, low-emission and climate-resilient development can only occur at scale in a country if it is financed predominately by the private sector. The challenge for policy makers, therefore, is to use scarce public resources to catalyse much greater amounts of private capital towards green, low-emission and climate resilient-development investments.

Policy makers can do this by creating the necessary enabling environments for investment risk reduction, utilizing a combination of ‘policy de-risking instruments’ and ‘financial de-risking instruments’. Policy de-risking instruments remove the underlying barriers that are the root causes of risks. Such instruments include policy design, institutional capacity building, and information campaigns. Financial de-risking instruments are those that do not seek to directly address the underlying barriers, but instead

1 Further guidance on Green LECRDS is contained in Annex 1. A number of guidebooks on Green LECRDS are available from the United Nations Development Programme (UNDP) at: http://www.undp.org/content/undp/en/home/ourwork/environmentandenergy/focus_areas/climate_strategies/green_lecrds_guidancemanualsandtoolkits/.

2 United Nations Environment Programme (UNEP), ‘Guidebook on National Legislation for Adaptation to Climate Change’, 2011, pp. 169-178, available at: <http://www.unep.org/delc/Portals/119/GUIDEBOOKONNATIONALLEGISLATIONFORADAPTATIONTOCLIMATECHANGE.pdf>.

3 Consultations conducted in Guangzhou and New Delhi in 2012. UN Secretary-General Ban Ki-moon and Norwegian Prime Minister Jens Stoltenberg launched the Energy+ initiative in October 2011. It has over 40 international partners, including UNDP and UNEP.

THREE STEPS OF LEGAL ASSESSMENT AND REFORM

1 ASSESS

the legal frameworks and instruments required for successful implementation of Green LECRDS

2 SELECT

appropriate legal instruments for Green LECRDS to undertake a legal reform process

3 IMPLEMENT

monitor and adapt legal instruments

transfer the risks that investors face to public actors (e.g. development banks). These instruments include loan guarantees, political risk insurance and public co-investments.⁴

Ensuring an adequate legal framework and supporting regulation/legal instruments (e.g. legislation, statutory instruments and by-laws, codes of conduct, voluntary regulation regimes) will be critical to the success of any policy de-risking instrument designed to achieve green, low-emission and climate-resilient development. This will be the case for both existing and planned policy instruments, and it will also be relevant to successfully implementing financial de-risking instruments.

The purpose of this Guidebook is to provide guidance to government decision makers and their advisers on best practices in designing or modifying legal frameworks and specific legal instruments aimed at effectively supporting green, low-emission and climate-resilient development. In doing so, it provides guidance on how to: **assess** the legal frameworks and instruments required for successful implementation of Green LECRDS; **select** appropriate legal instruments for implementing Green LECRDS; and **implement** the legal instruments that have been selected.

Methodology and structure

The Guidebook adopts a three-step methodology for assessing, selecting and implementing legal frameworks and instruments to best support Green LECRDS. The three steps are:

- Step 1: **Assess** the legal frameworks and instruments required for successful implementation of Green LECRDS.
- Step 2: **Select** appropriate legal instruments for Green LECRDS to undertake a legal reform process.
- Step 3: **Implement**, monitor and adapt legal instruments.

Legal assessment and reform can be a complex and time-consuming exercise. To assist decision makers and their advisers, the guidance is supported by examples from the international community of relevant legal instruments to implement overarching Green LECRDS and/or specific green, low-emission and climate-resilient development policies. In doing so, the Guidebook is structured as follows:

4 UNDP and Global Environment Facility (GEF), 'Transforming On-Grid Renewable Energy Markets – a Review of UNDP-GEF Support for Feed-in Tariffs and Related Price and Market-Access Instruments', November 2012, available at: http://www.undp.org/content/undp/en/home/librarypage/environment-energy/low_emission_climate_resilient_development/transforming-on-grid-renewable-energy-markets/.

Chapter 1 sets out a methodology to guide readers through Step 1 on how to assess a country's current legal framework by developing a compendium of existing laws and regulations relating to a Green LECRDS or particular policy, and by identifying gaps, challenges, barriers and risks, as well as benefits and opportunities to implementing a Green LECRDS legal framework.

Chapter 2 draws from domestic and international best practices to select a suite of legal instruments that address gaps, challenges, barriers and risks inherent to Step 2. The chapter also provides guidance on successfully navigating legal reform processes.

Chapter 3 provides a range of methods for implementing legal reform and integrating appropriate monitoring systems in order to ensure the continued effectiveness of legal instruments to support Green LECRDS in Step 3.

Finally, the Guidebook provides detailed **Annexes**, which outline some overarching Green LECRDS policies and contemporary national legal instruments that countries have adopted to implement Green LECRDS policies.

The Guidebook aims to empower decision makers to undertake legal reforms by providing a generic process and an accessible toolkit of generic options to introduce legal reform in a country-specific manner. It also provides select case studies to ground the material in current reality and to illustrate possible approaches. The Guidebook proposes that decision makers may wish to produce document(s) at the completion of each step that reflect and communicate the outcomes. Draft tables of contents for each document are presented at the end of each chapter; an overview of the three documents that will be (optionally) produced at the end of the process is reflected in Figure A below.

Figure A: Optional outcomes of the three steps of legal assessment and reform



Target audience

The Guidebook is written primarily to address government decision makers (and their advisers) at the national, sub-national and local levels that are involved in the design and implementation of Green LECRDS. The Guidebook is particularly targeted towards legal drafters and other experts engaged in legal sectors.

The guidance is relevant to both macro-level assessments and reforms (e.g. a country's national legal framework relevant to a multi-sector and national Green LECRDS), and to micro-level assessments and reforms with respect to specific policies. For example, the guidance can be used to assess, select and implement specific legal instruments needed to realize a specific energy efficiency policy adopted by a local government.

Key cross-cutting principles

There are three key principles that cut across all steps of legal reform. These principles are continuously highlighted throughout the Guidebook.

Fostering collaboration among regional, national, sub-national, sectoral and project levels

This Guidebook can be applied to national-, sub-national- and local-level legal planning and implementation. Regardless of the level of implementation, strong coordination and collaboration will be needed at all levels of government in charge of key sectors due to the cross-sectoral and multi-jurisdictional nature of Green LECRDS. Only a well-planned, multilevel legal framework will promote a streamlined and systematic approach to a country's greenhouse gas emissions and climate vulnerabilities, with all levels of government's legal instruments complementing one another.

Regardless of the level of implementation, strong coordination and collaboration will be needed at all levels of government in charge of key sectors due to the cross-sectoral and multi-jurisdictional nature of Green LECRDS.

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3 IMPLEMENT, monitor and adapt legal instruments

Promoting stakeholder engagement, particularly of local and vulnerable communities, indigenous peoples and women

Climate change risks and impacts are transversal—they affect all levels and sectors of society and are deeply enmeshed with present and future development planning horizons. Green LECRDS require an approach that appropriately and fairly addresses the needs of those most affected by climate change impacts. The scale and quality of stakeholder involvement in legal reform will determine the legitimacy of the resulting framework and the effectiveness of its implementation. Stakeholder engagement will also enhance the reliability of information fed into the process and improve the reach of effective implementation and monitoring. UNDP has a separate Green LECRDS Guidebook, ‘Multi-Stakeholder Decision-Making’, that readers may wish to reference for more information.⁵

Accessing international support for legal reform processes

International support is available to help with various aspects of legal and regulatory reform. Such help is available in a variety of forms, including loans, technological support, skills development and capacity-building, grants, project funding, transfer of expertise and international certification regimes. In addition to bilateral development support, global environmental vertical funds such as the Adaptation Fund, Global Environment Facility, Least Developed Countries Fund and the Special Climate Change Fund may be sources of funding support through broader grants provided to assist eligible recipient countries meet their obligations under multilateral environmental conventions.

“

Green LECRDS require an approach that appropriately and fairly addresses the needs of those most affected by climate change impacts.

”

⁵ UNDP, ‘Multi-Stakeholder Decision-Making’, October 2012, available at: http://www.undp.org/content/undp/en/home/librarypage/environment-energy/low_emission_climateresilientdevelopment/MultiStakeholder.html.

Chapter 1: Conducting a Legal Assessment Report

STEP 1

In Step 1, decision makers compile, evaluate and select current laws and regulations in support of Green LECRDS implementation and investigate current rates of compliance and enforcement. The following are the recommended sub-steps:

- 1) Adopt assessment criteria for existing legal instruments in support of Green LECRDS;
- 3) Compile data on current legal and regulatory instruments, including rates of implementation, compliance and enforcement; and
- 4) Draft a Legal Assessment Report validated through expert and stakeholder engagement;

These steps feed into the production of a Legal Assessment Report and lay the groundwork for the Legal Action Plan described in Chapter 2.

1.1 Adopt assessment criteria for existing legal instruments in support of Green LECRDS

Stakeholders' active engagement and participation is one of the most important components in evaluating the need for legal reform. A cross-cutting team of experts and stakeholders effectively combines many areas of expertise and builds early, collective buy-in to the resultant legal reform process. In particular, during the process of developing assessment criteria it may be useful to expand sectoral representation using a variety of fora, such as sector-specific structured dialogues and consultations.

Developing assessment criteria

Assessment criteria are often developed prior to the actual compilation of current laws and regulations. Well-developed criteria will facilitate an accurate assessment of current legal frameworks and allow meaningful comparison between potential areas for legal reform. Overall, criteria should reflect those areas pertinent to Green LECRDS implementation. Therefore, it will be helpful to rely on regulatory and legal scans as described in the UNDP Guidebook 'Multi-Stakeholder Decision-Making'. If these scans are not available, document the Green LECRDS to which the country is committed and then create an analytical synthesis of all such Green LECRDS policies across sectors.

A rich picture of success motivates any evaluative project. Therefore, the following list of broad principles attempts to describe the perfect legal framework in support of Green LECRDS and can be usefully applied in greater specificity to the sectoral slices of a country's Green LECRDS.

THREE STEPS OF LEGAL ASSESSMENT AND REFORM

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IMPLEMENT

monitor and adapt legal instruments

Box 1.1: Legal foundations—key questions

VALUES: What values do we choose to protect in the basic legal framework of our nation? How does this particular law reflect our values?

RIGHTS: How does our recognition of rights (e.g. of women, children or other vulnerable groups) in the basic legal framework of our nation enable or hinder a low-emission carbon-resilient future?

PROPERTY: How does our current regime of property ownership enable or hinder a low-emission carbon-resilient future? How does this particular land use law enable or hinder the implementation of Green LECRDS?

MARKET ECONOMY: How does the regulation (or non-regulation) of transactions between private parties enable or hinder a low-emission carbon-resilient future?

OBLIGATIONS: How do civil obligations between parties enable or hinder a low-emission carbon-resilient future?

CRIMINAL SANCTION: What outcomes (against a low-emission carbon-resilient future) do we wish to deter through criminal sanction?

- Moving in the right direction towards a low-emission, carbon-resilient future;
- Facilitating rapid implementation of Green LECRDS;
- Offering a flexible and responsive platform in consideration of the precautionary principle;
- Maintaining an acceptable balance of trade-offs;
- Providing a return on investment (i.e. social, ecological or financial benefits);
- Leading to stable and predictable outcomes;
- Furthering enforceability; and
- Exhibiting clarity and coherence.

For example, consider drawing on this list to create assessment criteria for the energy sector, such as, “Is this law flexible enough to meet its stated objectives given what we know about the range of future climate scenarios?” or, “Does this law on toxic pollutants adequately incorporate provisions related to enforceability?” Both of these sectoral examples illustrate specific applications of the broad principles. Decision makers should expect to formulate a detailed list of many assessment criteria for each sector.

In addition to the broad principles listed above, the questions in Box 1.1 provide a useful high-level reflection for the purposes of creating the assessment criteria. A useful tool in this context is taking the time to return to the basic question: “If we want to fully implement Green LECRDS tomorrow, what legal reforms must be undertaken today?”

RECAP: WHAT SHOULD BE DONE?

- Bring together the necessary expertise including legal experts;
- Review existing regulatory and legal scans, or if these are not available, document country-specific Green LECRDS and provide an analytical synthesis of all such directions;
- Review broad principles of a perfect legal framework and reflection questions related to the foundations of legal systems;
- Brainstorm cross-sectoral and sector-specific assessment criteria; and
- Create a detailed list of assessment criteria for each sector.

1.2 Compile data on current legal and regulatory instruments, including rates of implementation, compliance and enforcement

This sub-step involves compiling all legal and regulatory instruments related to a green, low-emission climate-resilient future. Some areas of law to be included in the scan may not be obvious (e.g. procedural law or specialized areas such as taxation regimes).

Identifying assets

At the outset, it will be helpful to canvass current laws, policies and regulations already supporting Green LECRDS implementation. In particular, decision makers may look at the following national commitments as applicable, including:

- National Capacity Self-Assessments;
- Poverty Reduction Strategy Papers;
- National Sustainable Development Strategies;
- National Communications under the United Nations Framework Convention on Climate Change (UNFCCC);
- National Adaptation Programme of Action—UNFCCC (for Least Developed Countries);
- Nationally Appropriate Mitigation Actions—UNFCCC;
- National Action Plan—United Nations Convention to Combat Desertification;
- National Implementation Plan—Stockholm Convention on Persistent Organic Pollutants;
- National Biodiversity Strategy and Action Plan—Convention on Biological Diversity;
- National or sub-national budget documents;
- National or sub-national development planning and policy documents (e.g. five year plans);
- National or sub-national sectoral plans and proposals (e.g. agriculture, industry, mining, forestry, energy, water, urban development, transport and infrastructure, employment);
- National or sub-national economic analyses;
- National or sub-national demographic assessments and prognoses;
- National or sub-national natural resource use assessments and prognoses;
- Laws, regulations, and fiscal instruments related to sectors or initiatives with potential for reducing emissions and increasing resiliency;
- United Nations Development Assistance Framework; and
- World Bank Country Assistance Strategy.

These sources may provide information on current assets in terms of legal frameworks in support of Green LECRDS.

RECAP: WHAT SHOULD BE DONE?

- Develop a list of key areas of law to research;
- With assistance from legal experts, as necessary, compile a compendium of all relevant legal and regulatory frameworks (along with detailed descriptions);
- Highlight within the compendium obvious assets and barriers to implementing Green LECRDS;
- Conduct interviews with key contacts to evaluate the extent of implementation, compliance and enforcement of most significant legal and regulatory instruments (i.e. those that substantially support or impede Green LECRDS implementation; and
- Document results of all such interviews within the compendium.

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monitor and adapt legal instruments

1.3 Assess existing legal and regulatory frameworks using assessment criteria, noting gaps, barriers, challenges and opportunities

This sub-step uses the assessment criteria developed above to conduct a gap analysis on the compendium of laws and regulations. The overarching question to be asked of each law and regulation is “To what extent does this law or regulation meet the assessment criteria we’ve established?”

The gap analysis will reveal current assets, gaps, barriers and challenges to implementing Green LECRDS in a country’s current legal framework. In light of the information provided through interviews on rates of compliance and enforcement, the gap analysis also provides wider contextual information about current legal frameworks. This will be helpful in later steps, as decision makers plan for the positive introduction of new legal frameworks to fill gaps and amend existing legal frameworks.

Common legal and regulatory gaps and challenges

Many countries experience the following challenges in their current legal and regulatory frameworks:

- **Lack of legal and institutional or administrative capacity** to plan, budget, implement, enforce or monitor climate change efforts, including laws and regulations, often due to a lack ability and availability of legislative drafters or parliamentarians, ministries and other officials on the national and

Box 1.2: Legal reforms that used firm, fair and transparent enforcement in order to address the non-compliance challenge

The Republic of Korea installed an Enforcement Decree to reinforce the implementation of its Framework Act on Low Carbon, Green Growth (2010). The Decree established a National Strategy, a Presidential Committee and local action plans to manage national targets and instituted financial assistance for green industries. In addition, the Enforcement Decree amended other acts and subordinate statutes and introduced penalties (e.g. fines for negligence).

Tuvalu’s Environment Act of 2008 includes wide-reaching provisions for enforcement by enabling Environment Officers to monitor and investigate “any activity, matter or thing” that may be impacting upon the environment and to issue a precautionary notice or a notice to cease activity. The notices carry penalties for non-compliance.

Similarly, Kenya’s Agriculture (Farm Forestry) Rules of 2009, which require farmers to establish and maintain farm forestry on at least 10 percent of all agricultural land, contain provisions on enforcement measures and inspection.

Through a 2008 Administrative Order of the Philippine Department of Environment and Natural Resources the Philippines introduced Implementing Rules and Regulations for their National Integrated Protected Areas System Act of 1992. The Administrative Order sets out the processes by which the Department and other concerned institutions will establish, administer and manage protected areas. The Order also establishes acts prohibited within protected areas, provides guidelines for penalties and instates a Protected Area Superintendent to enforce rules.

Box 1.3: An example of regulatory low-hanging fruit

The scope of the Vietnamese Law on Biodiversity has been extended to cover climate change by the simple expedient of adding the words “taking into account the impacts of climate change,” so that the article on objectives reads: “the objective of this law shall be to ensure the management and conservation of biodiversity, and the sustainable use of natural resources, in protected areas, taking into account the impacts of climate change.”

sub-national level. Other related challenges include inadequate or unreliable data to support necessary decision-making, lack of mechanisms for information-sharing and knowledge management across sectors, lack of monitoring and evaluation mechanisms and requirements and insufficient accountability and reporting systems.

- **Multiple and conflicting interests among stakeholders** in the implementation of mitigation and adaptation measures, which require bridging efforts to resolve disagreements among ministries and stakeholders. Efforts are often hindered by rapid turnover in ministries and directorates and by local communities' limited awareness and access to information, which is frequently the result of the lack of a regulatory framework to encourage information sharing and public participation (including vulnerable groups most impacted by climate change).
- **Fragmentation and duplication of authority or governance** for legislation and administration among government ministries, planning agencies and other stakeholders impede or delay cross-sectoral goal achievement. Weak public management can be addressed by determining which institutions are responsible for implementing actions and by clarifying respective responsibilities across government agencies to contribute to effective implementation.
- **Duplication of efforts and contradictory actions**, as well as overlap of responsibilities between implementing agencies, leads to inefficient and ineffective implementation of measures. Such gaps can be bridged by harmonizing laws and regulations across sectors, enhancing cooperation between government agencies (at all levels) and the business sector, and by establishing inter-ministerial committees or councils on climate change.
- **Lack of supportive regulatory frameworks** to describe and enable implementation on a detailed level or to provide guidance for the specific and localized application of legislative purposes. Legislation lacking adequate and timely regulatory support is often highly ineffective.
- **Lack of enforceability** of beneficial laws and regulations, often due to a lack of resources and/or fragmentation of authority and sometimes due to or lack of capacity, buy-in and/or a valuation of enforcement in general among those responsible for law enforcement. This leads to an overall weakening of the law in force and a loss of credibility and effectiveness of the particular legal framework.

Once legal and regulatory gaps, barriers, challenges and risks have been documented, it can be useful to identify those barriers that can be most easily addressed or with least cost. These barriers are often referred to as the 'low hanging fruit'. For example, to counter the barrier of how to ensure that existing laws consider climate change effects, include the phrase "taking into account the requirements of mitigation of climate change and adaptation to the adverse impacts of climate change" in laws' key provisions. Including climate change concerns in an objects or principles clause provides a legal basis for interpreting the law in the context of climate change and puts to rest any doubts about the purport of a provision in the law relating to climate change.⁶

6 UNEP, 'Guidebook on National Legislation for Adaptation to Climate Change', 2011, available at: <http://www.unep.org/delc/Portals/119/GUIDEBOOKONNATIONALLEGISLATIONFORADAPTATIONTOCLIMATECHANGE.pdf>.

THREE STEPS OF LEGAL ASSESSMENT AND REFORM

1 ASSESS

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2 SELECT

appropriate legal instruments for Green LECRDS to undertake a legal reform process

3 IMPLEMENT

monitor and adapt legal instruments

RECAP: WHAT SHOULD BE DONE?

- By sector, measure compiled laws and regulations against assessment criteria;
- Document major gaps, barriers, challenges and risks with particular attention to the information gathered on implementation, compliance and enforcement;
- By comparing sector-by-sector, review any gaps, barriers, challenges and risks persistent across sectors. For example, there may be cross-sectoral issues from the list of common gaps and challenges provided above;
- Note any obvious low-hanging fruit, including recommendations for more effective frameworks;
- Review international best practices in legal reform; and
- Brainstorm legal reform options responsive to filling gaps, addressing challenges and building on current assets.

1.4 Draft a Legal Assessment Report validated through expert and stakeholder engagement

The Legal Assessment Report, an important tool in the process of legal reform, comprehensively documents gaps in current legal and regulatory frameworks, identifies key obstacles and opportunities for reform and begins to map out a way forward for legal reform. Ideally, the Legal Assessment Report will be understood as a 'living document', incorporating updates on a continual basis and responding to changing circumstances.

The resolute participation of high-level government officials and relevant stakeholders across multiple sectors is central to successful legal reform. With this in mind, the Legal Assessment Report should be presented **at draft stage** to high-level officials for their feedback and advice. Political support is maintained through continual communications and involvement of the appropriate officials throughout the process.

The following sample table of contents is included as an indicative reference, as needed. Chapter headings are not intended to be prescriptive or exhaustive. Decision makers may feel it is necessary to come up with additional sections.

Box 1.4: Sample table of contents for a Legal Assessment Report

- I. Introduction and Rationale
- II. Legal and Regulatory Scans
- III. Analytical Synthesis of Green LECRDS Policies
- IV. List of Assessment Criteria for Legal Frameworks
- V. Summary of Current Legal and Regulatory Frameworks
- VI. Results of Gap Analysis
 - a. Gaps, Barriers and Challenges
 - b. Assets and Opportunities
- VII. Initial Recommendations for Legal Reform

“

The resolute participation of high-level government officials and relevant stakeholders across multiple sectors is central to successful legal reform.

”

Examples of Legal Assessment Reports

Decision makers may look to the United Nations Environment Programme (UNEP) 'Guidebook on National Legislation for Adaption to Climate Change' (2011) as an example of a legal assessment process in three countries: Cambodia, Lao PDR and Vietnam. National teams (in collaboration with their colleagues from relevant ministries, departments and agencies), analysed applicable national laws and regulations against new requirements for adaptation to climate change and recommended changes to legal regimes to support adaption measures. The results of their work, in the form of Legal Assessment Reports, were placed before inter-ministerial review meetings in their respective countries to obtain feedback on the viability of the proposed legal developments. The Legal Assessment Reports also provided a platform on which to build future programmes of national action, supported by UNEP and other agencies.

Another useful example of a Legal Assessment Report is the 'Legal Preparedness for Climate Change Assessment Report' prepared for Mexico with the International Development Law Organization (IDLO). Mexico has made programmatic and institutional advances to meet its international obligations related to climate change. In 1996, Mexico prepared its first Country Study as an initial assessment of the country's vulnerability to climate change. In 1997, 2001, 2006 and 2009, Mexico submitted consecutive climate assessments through their National Communications to the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC). In 2005, Mexico created the Inter-Ministerial Committee on Climate Change to coordinate climate change efforts across Ministries. The 2007–2012 National Development Plan explicitly incorporated climate change and set foundations for the design of a National Climate Change Strategy and Special Program for Climate Change. However, despite this progress towards climate change goals, further legal reform was still necessary to fully account for climate change effects and to capture opportunities for the development of rural Mexican communities. The 'Legal Preparedness for Climate Change Assessment Report' was therefore initiated to study the situation and make recommendations for legal reform in Mexico. The resulting report is a useful resource for readers.⁷

Conclusion

This chapter provided decision makers with the opportunity to evaluate country-specific needs for legal reform in consideration of the full implementation of Green LECRDS and a low-emission climate-resilient future. The process described is fully adaptable to meet country-specific needs, priorities and understandings. The resultant Legal Assessment Report provides critical information about major gaps, opportunities and assets in current legal and regulatory frameworks, and also serves as an impetus for strategic action.

The next stage, described in Chapter 2, supports decision makers' work to create a list of prioritized legal reforms and draft a Legal Action Plan to guide implementation of reforms.

⁷ Liliana Fernanda Del Villar Arias, 'Preparación jurídica para el cambio climático y el fomento al desarrollo rural en México', available at: <http://www.idlo.int/Publications/MEXICOClimatechange.pdf>; Liliana Fernanda Del Villar Arias, Juan Carlos Carrillo and Gustavo Alanis, 'Preparación jurídica para el cambio climático y el fomento al desarrollo rural en México: Documento de divulgación', available at: <http://www.idlo.int/Publications/MEXICOClimateChangeDivulgacion.pdf>.

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Chapter 2: Developing a Legal Action Plan

STEP 2

THREE STEPS OF LEGAL ASSESSMENT AND REFORM

Chapter 2 guides policy makers in the process of selecting legal instruments to implement Green LECRDS. This chapter aims to develop a comprehensive legal reform path (a Legal Action Plan), which will detail the legal instruments to be implemented.

In Step 2, decision makers navigate the domestic legal reform process in order to implement country-specific Green LECRDS policies. The sub-steps that will be explained in this chapter are as follows:

- 1) Assess the capacity to undertake legal reform;
- 2) Determine the procedural requirements of domestic legal reform processes;
- 3) Analyse a variety of formal legal reform instruments for best fit;
- 4) Strategic sequencing and clustering of legal reforms;
- 5) Validate options for legal and regulatory reform instruments through expert and stakeholder engagement;
- 6) Identify and train persons to fine-tune drafting for clarity, coherence, enforceability and flexibility; and
- 7) Draft a Legal Action Plan to submit to decision-making bodies for approval

2.1 Assess the capacity to undertake legal reform

There are three areas that are central to a successful programme of reforms and should therefore be considered before beginning such processes: sufficient capacity, realistic goals and timelines, and access to financial resources. These three areas are analyzed in more detail below. It is important to recall that a cutting-edge legal reform process may nonetheless fail if it is too ambitious.

Capacity requirements and available resources

Legal reforms require appropriate institutional, technological, financial and human capacities. Capacity-building refers to strengthening skills, competencies and abilities of people, as well as improving technological support to the reform process. These measures are often complementary instruments to legal reform and often attract international financing support.

Capacity-building on an institutional level involves support for sound policies, organizational structures and effective methods of management and revenue control to support legal reforms. Capacity-building on an individual level requires the development of conditions for people to build on and enhance their existing knowledge and skills in the area of low-emission climate-resilient strategies. For example, the availability of legal drafters will be a key consideration in the implementation process (see Chapter 3).

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Realistic goals and timelines

Establishing clear and realistic timelines for undertaking legal reform will minimize inefficient use of resources. In this respect, a graduated or phased process of legal reform is recommended (see section 2.3). Close attention should be paid to the length of time for each step presented in the next two chapters, keeping in mind normal delays (e.g. due to legislative schedules and pauses during election periods). Contingencies should also be built in for unanticipated delays. Benchmarking the length of time required for each suite of reforms against similar programmes in the past is helpful. Consultation with those who will be involved in implementation is also recommended.

International financial support

International support is available to help with various aspects of the legal reform process (see Annex 3 for a list of international support mechanisms). Support is available in a variety of forms, including through investments, loans, technological support, skills development, capacity-building, grants, project funding, transfer of expertise and international certification regimes. In particular, many international organizations will fund institutional capacity-building. Private-sector support may also be sought in the form of technological expertise, loans and particular investments.

A number of measures can be taken by developing countries to secure funding for Green LECRDS implementation. These include concluding relevant international agreements and elaborating national Green LECRDS. A further measure is the establishment of a national Climate Change Fund or multi-donor trust fund, supported by appropriate policy frameworks that ensure that funds are allocated transparently

Box 2.1: Capacity-building for Green LECRDS, national examples

INDIA's Ministry of Environment and Forests' 2006 National Environment Policy calls for a review of institutional capacities for enforcement of environmental laws and regulations at the central and state levels with a view towards implementing capacity-building programmes. The Policy also calls for incorporating a capacity development component (supported by sufficient earmarked funds) in all environmental programmes, including increasing the knowledge and skills of the scientific and technical personnel involved in environmental management in all levels of public institutions. India's subsequent National Action Plan on Climate Change highlights the creation of knowledge and capacity at each government level to facilitate implementation of legal, fiscal and regulatory measures. One example on the national level is the Capacity Building for Industrial Pollution Management project, established

by the Government of India with support from the World Bank, with the objectives of building human and technical capacity in selected state agencies and to support the development of a policy, institutional and methodological framework for a National Program for Rehabilitation of Polluted Sites.

With UNDP support, the **MALDIVES** established a Green LECRDS Programme for 2012–2015. The Programme supports policies and institutional capacities at the national and sub-national levels. Focusing on sub-national government in the Laamu Atoll area, efforts will be made to develop sufficient technical and administrative capacity at the local level in order to facilitate planning in energy efficiency, climate resilience and disaster preparedness and for the enforcement of guidelines on resource usage to implement appropriate adaptation measures such as coastal protection against exposure to sea level rise.

The Climate Change Act of the **PHILIPPINES** requires the development of local climate change responses mainstreamed in urban planning, with capacity development to be provided by the Local Government Academy. To support this mandate, the Philippines recently initiated projects relevant to Green LECRDS (Climate Change Capacity Building Project in the Framework of the Low-Emission Capacity Building Program and Enabling the Cities of Cagayan de Oro and Iligan to Cope with Climate Change). The projects focus on building local government units' capacities to prepare for natural disasters and to lower greenhouse gas emissions. A pilot project was implemented in Sorsogon City to strengthen local capacities and initiate concrete adaptation action, including enhancing risk management systems and improving housing structures for the poor.

Source: One UN Training Service Platform on Climate Change (UN CC:Learn), Success Stories on UN Capacity Building to Address Climate Change, available at: <http://www.uncclearn.org/success-stories> (last accessed 25 June 2013).

and effectively. For example, in 2009 the Government of Bangladesh, with support from development partners (including technical assistance from the World Bank), created a Climate Change Trust Fund and the Bangladesh Climate Change Resilience Fund. The Government of Bangladesh is also working on setting up a Multi-Donor Trust Fund to receive and disburse adaptation funds.

RECAP: WHAT SHOULD BE DONE?

- Clearly detail the budget and resources available for the legal reform, including a desired time-frame; and
- Research available assistance and determine proposed steps to gain international climate finance.

2.2 Determine the procedural requirements of domestic legal reform processes

Once the political appetite, budget, time-frame and resources available to a country for Green LECRDS legal reforms are determined, the legal reform process itself can begin. One of the most important planning tools in the process of transforming Green LECRDS policies into concrete legal reforms is to understand the procedural requirements of the domestic legal reform process. These requirements will differ from country to country, but there will generally be a certain process that must be followed.

Who should be involved?

Many countries have law reform commissions (bodies specifically set up to facilitate and provide expert advice on law reform). If such an organization does not exist, other government agencies that have recently been through similar legal reform processes (e.g. an Attorney General's Department), may be able to provide information or useful contacts. The legislature of the jurisdiction in which the legal reforms are to take place should be able to provide information on the process that any statutory legal reforms must follow.

Some standard process requirements include review by parliamentary committees, consultation with the public, including through green and white paper consultations, and the requirements of tabling legal reforms with parliament. Once the procedural requirements of domestic legal reform have been identified, decision makers may wish to compile the information in a manual, which can be used for future Green LECRDS legal reforms.

Alongside a clear understanding of domestic legal reform processes, informal facilitators of reform should also be considered when planning time-frames and legal reform strategies. Community leaders, influential industries and political leaders should be kept informed throughout the process so that any queries of—or opposition to—proposed legal reforms can be identified and addressed early. The greater the acknowledgement and engagement with all significant parties, the more likely the long-term transformation to a green low-carbon, climate-resilient society will be successful.⁸ Formal stakeholder engagement methods are detailed in section 2.5.

⁸ For more information, see Governance and Social Development Resource Centre, 'Tools for Political Economy Analysis', available at: <http://www.gsdrc.org/go/topic-guides/political-economy-analysis/tools-for-political-economy-analysis> (last accessed 25 June 2013).

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RECAP: WHAT SHOULD BE DONE?

- Identify legal reform experts who will be able to provide information on the domestic processes involved in implementing legal reforms;
- Develop a solid understanding of the procedural requirements of domestic law reform; and
- Document the procedural requirements in a manual for Green LECRDS law reform, which can be used by future decision makers.

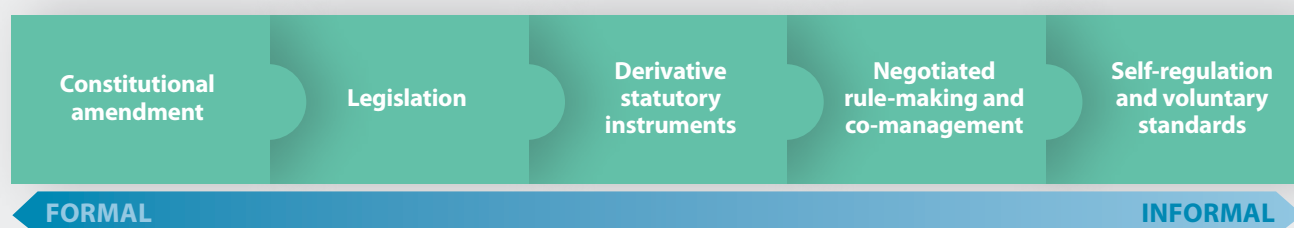
2.3 Analyse a variety of formal legal reform instruments for best fit

There are various legal reform instruments available to translate Green LECRDS policies into concrete outcomes. It can be useful to think of these options across a spectrum of formality (see Figure 2.1), ranging from traditional command-and-control instruments that are prescriptive and rigid, to much more flexible instruments such as voluntary standards, where entities that are the subject of regulation have considerable say in developing and complying with regulatory requirements. Flexibility also refers to the ability of an instrument to address the uncertain and changing risks of climate change, as well as changing societal priorities. This section outlines the range of legal reform instruments available and discusses their benefits and drawbacks.

When analysing legal reform instruments, a first step is to clearly articulate the purpose that the legal reform instrument should achieve. Often, this purpose is to promote, prevent or change behaviour. For example, a Green LECRDS policy to improve fish stocks may have as its purpose to change the overfishing behaviours of fishermen. In order to develop the most effective legal reform instrument, research should be undertaken to identify the reasons or motivations for the behaviours and to evaluate the likely impact of legal instruments on target groups.

A second step in analysing legal reform instruments is to compare their ease of implementation, compliance and enforcement. Formal instruments that require government implementation may be

Figure 2.1: Spectrum of legal reform instruments



ineffective if, for example, there are insufficient officers to implement the laws or if officers do not fully understand the laws' purpose. Capacity-building options may improve this situation. Compliance with legal instruments will necessarily entail administration costs for both the government and the entities that are subject to them. Compliance with new legal instruments should be made as relatively easy and affordable as possible, while still ensuring that the outcome is reached. Finally, the enforcement mechanisms available to each legal reform instrument should be considered. Enforcement of legal reform instruments requires both human and financial resources. However, by choosing flexible instruments the burden of enforcement may be spread across different entities, including between the regulator and the regulated entity.

By keeping the purpose, implementation, compliance and enforcement of different legal reform instruments in mind, the range of legal reform instruments can be distinguished. This should permit a Green LECRDS policy to be matched to the best fit legal instrument.

Legal reform instruments

CONSTITUTIONAL AMENDMENTS

Aspects of Green LECRDS that require the fundamental restructuring of domestic legal and political structures and societal values may require constitutional amendments. Depending on the domestic process in place, amendments to a constitution are likely to be time-consuming and their acceptance uncertain. For example, some countries require a referendum before a substantive amendment to the constitution can be made.

LEGISLATION

It is likely that the implementation of Green LECRDS will require review of existing sectoral legislation and amendments of these as appropriate. Legislation is suitable where government believes that, if left unregulated, certain areas of society would not behave appropriately. In particular, legislation is often enacted in cases where it is in the public interest, when market failures occur and when unmanageable risks exist. Through legislation, the government can impose a desired behavioural outcome on society, be it ensuring that market externalities are properly accounted for, or that a particular high-level risk is appropriately mitigated.

A distinction between **primary and secondary legislation** (which is sometimes also referred to as **delegated** or **subordinate** legislation) exists in many countries. A minister or other official is granted the power to enact secondary legislation in order to ensure the effective implementation and administration of the requirements of primary legislation. Consequently, secondary legislation sits beneath primary legislation and usually provides more specific information, rules, regulations and procedures on how the broad primary legislative objectives will be met.

The process of enacting primary legislation can be lengthy, typically including a detailed drafting process and debate in parliament before it is adopted. Once adopted, legislation requires formal amendment (following the same process), to be changed. This can be beneficial where certainty and longevity is desired. Alternately, this process can be a drawback if the content is required to be updated frequently. Secondary legislation can generally be more easily amended than primary legislation and can be updated on a regular basis without requiring parliamentary approval.

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Box 2.3: Environmental impact assessment

Several countries have, by policy guidelines, law or regulation, included in their environmental impact assessment procedures assessment of the adverse impacts of climate change on proposed policies and actions,^a as well as the impact of a proposed development or activity on climate change in their environmental impact assessment procedures. For example, Article 16 of the 2009 Indonesian *Environmental Protection and Management Law* requires Strategic Environmental Impact Assessments to contain assessment of, among others, vulnerability and capacity of adaptation to climate change.^b

Similarly, the **Sustainable Planning Act 2009** of Queensland, Australia requires decision-making processes to “take account of short and long-term environmental effects of development at local, regional, State and wider levels, including, for example, the effects of development on climate change.”^c

Notes: a. Christina Chen Wen-Wei, ‘Constructing EIA Mechanism in Response of Climate Change in Asia: A Driving Force Analysis’, 2012, available at: <http://icaps.nsysu.edu.tw/ezfiles/122/1122/img/1421/8.pdf>.

b. Available at: http://www.fao.org/fishery/shared/faolextrans.jsp?xp_FAOLEX=LEXFAOC013056&xp_faoLexLang=E&xp_lang=en.

c. Available at: <http://www.legislation.qld.gov.au/legisln/acts/2009/09ac036.pdf>.

There are different types of legislative legal reform instruments that could promote implementation of Green LECRDS, which are grouped below. It will depend on each country’s particular situation as to whether the legal instrument is considered to be primary or secondary legislation.

Command and Control legislation imposes environmental standards that prescribe which polluting activities can be undertaken and/or how those activities must be performed.⁹ Command and control instruments ensure compliance with an environmental standard and are beneficial where there is certainty about the risks or outcomes of an environmentally damaging practice, as it can be directly limited or prevented. However, entities impacted by command and control legislation may oppose the inflexibility of this legal instrument, as regulated entities are restricted in their ability to determine the most appropriate means to reach a desired environmental goal themselves. Command and control legislation can also be costly to administer, as ensuring compliance and enforcement can be time-consuming and often requires many government officers.

Performance-, process- or principle-based legislation specifies desired outcomes but, in contrast to command and control legislation, does not direct how this outcome is to be achieved. By setting a performance standard, a process to follow or a principle to comply with, these types of legislation are most beneficial where a clear objective is known, but the methods by which to reach the objective are known to be varied. Compliance and enforcement costs can be lower than command and control instruments, as it is only an outcome that is required to be monitored, rather than individual activities. However, some companies (smaller companies in particular) may find performance-, process- or principle-based regulations difficult to comply with, as it can be hard to ascertain how best to achieve the outcome.

ENVIRONMENTAL IMPACT ASSESSMENTS

Aimed at preventing or mitigating serious or irreversible environmental damage, environmental impact assessments are one of the most effective legislative instruments for aligning development projects with the requirements of Green LECRDS. Environmental impact assessments are comprehensive assessments of the environmental, social and economic impacts of development policies or projects, undertaken before the policy or projects commence.¹⁰ Assessments can be required for policies, plans or programmes (generally referred to as ‘strategic environmental assessments’) or for specific development projects. Article 4(f) of the UNFCCC specifically references environmental impact assessments, requiring

all parties to take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, *for example impact assessments*, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change.

9 Steven C. Hackett, *Environmental and Natural Resources Economics: Theory, Policy, and the Sustainable Society*, 4th edition, M.E. Sharpe: New York, 2011, p. 225.

10 For more information on environmental impact assessments, see UNEP, ‘Guidebook on National Legislation for Adaptation to Climate Change’, 2011, p. 177, available at: <http://www.unep.org/delc/Portals/119/GUIDEBOOKONNATIONALLEGISLATIONFORADAPTATIONTOCLIMATECHANGE.pdf>.

MARKET-BASED INSTRUMENTS

Market-based instruments use cost incentives to discourage environmentally harmful activities or encourage environmentally conscious activities, by using price signals and limited access to resources to create a market on which scarce rights to an environmentally harmful activity can be bought or sold.¹¹ For example, emissions trading schemes turn carbon emissions into a commodity and compel entities to take the price of carbon into account in their business decisions. Market-based instruments are designed to result in the most cost-effective achievement of set environmental goals and provide greater incentives for polluters to innovate lower-emission processes, as these will benefit their bottom line by requiring them to purchase less polluting rights. However, there is uncertainty about whether the environmental outcome will be achieved, because modifying behaviour requires determining and setting the appropriate price of the environmentally harmful activity. This is not always the case, and it can be very hard for the government to strike a balance between regulatory intervention in the market and the attainment of an outcome if the market had been left alone.

Box 2.4: Market-based instruments and Green LECRDS

The European Union (EU) and its Member States have been strong advocates of the use of market-based instruments, which are a cornerstone of the EU's 6th Environment Action Programme, the renewed EU Sustainable Development Strategy and the renewed Lisbon Strategy for Growth and Jobs.^a

In developing countries, many of the barriers to Green LECRDS are the same as those generally inhibiting growth and investment, such as a poor investment climate, lack of public infrastructure and uncompetitive markets. At the same time, policies designed to promote market-based instruments and incentives supporting Green LECRDS implementation,

especially related to low-emission development, have the potential to increase growth. For example, revenues raised from permit sales in carbon cap-and-trade schemes could be used to finance mitigation or adaptation in developing countries.^b

Market-based instruments and financial incentives currently in place include:^c

- The Kyoto Protocol's emissions trading scheme and the Clean Development Mechanism;
- Cap-and-trade programmes such as the EU Emission Trading Scheme;
- Other tradable permits such as water supply and nutrient pollution (Australia);
- Low-interest loans for clean energy installations (India and Germany);
- Feed-in tariffs for renewable energy (e.g. Spain and Germany);
- Capital subsidies, sales incentives, and reimbursement of fees for renewable energy projects, and automatic approval for foreign direct investments (India);
- Taxes (road tax, Germany and UK), reduced taxes for public transport (Germany), tax differentiation based on engine size to promote the use of smaller cars (Ethiopia); and
- Fund to promote private sector investments into renewable energy production (India).

Notes: a. Commission of the European Communities, 'Green Paper on Market-Based Instruments for Environment and Related Policy Purposes', 2007, available at: http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0140en01.pdf. b. Compare to Karen Ellis, Bryn Baker and Alberto Lemma, 'Policies for Low Carbon Growth', November 2009, Overseas Development Institute. c. Ibid.

Source: One UN Training Service Platform on Climate Change (UN CC:Learn), Success Stories on UN Capacity Building to Address Climate Change, available at: <http://www.unccllearn.org/success-stories> (last accessed 25 June 2013).

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11 Steven C. Hackett, *Environmental and Natural Resources Economics: Theory, Policy, and the Sustainable Society*, 4th edition, M.E. Sharpe: New York, 2011, p. 225.

Box 2.5: Negotiated rule-making in the Netherlands

The Dutch packaging waste reduction policy was formulated with the active involvement of 'target groups', including the Ministry of the Environment, Ministry of Economic Affairs and Ministry of Agriculture; representatives of provincial and local governments; the packaging industry; consumer and environmental groups; and the National Institute for Public Health and the Environment. These groups engaged in discussions over two years about proposed packaging waste reduction targets and the best methods to achieve them, which resulted in national regulations.

Source: Ida Koppen, 'Ecological Covenants: Regulatory Informality in Dutch Waste Reduction Policy', in Gunter Teubner, Lindsay Farmer and Declan Murphy, *Environmental Law and Ecological Responsibility: The Concept and Practice of Ecological Self-Organisation*, John Wiley & Sons: Chichester, UK, 1994.

Box 2.6: Co-management of fisheries in Canada

Under the Canadian Fisheries Act, there is reference to negotiated fishery management agreements between the Minister and "any organisation that is representative of a class of persons or holders." Although this has been only partially implemented in practice, in theory fisheries management, including harvest limits and other conservation and management measures, would be in the hands of the third party organization (e.g. fishermen).

Sources: *Fisheries Act*, R.S.C., 1985, c. F-14; Rebecca Reid, 'Fisheries Co-Management Discussion Paper', available at: http://www.bcseafoodalliance.com/BCSA/BCSA_REID.html.

LICENSES AND PERMITS

Licenses and permits, generally granted following approval processes, and can be made conditional on adequate management of identified risks or compliance with predetermined standards. Licenses and permits for individual components of an activity may provide relief from blanket command and control prohibitions on that entire activity. For example, rather than completely banning the use of a chemical substance, permits may be granted when an entity can prove that its workspace meets specified standards. Licenses and permits leave discretion to the decision maker to grant the licenses and permits and enforce compliance therewith. While discretion can be beneficial, as it provides the flexibility to deal with individual cases, it also leaves the decision maker open to lobbying by affected groups.

MANDATORY REPORTING

Mandatory disclosure about industry performance and environmental measures can motivate entities to address climate change risks and to follow predetermined standards and requirements more closely. Mandatory reporting to the government is often made public, providing information to consumers about the environmental performance of a particular industry or entity. However, mandatory disclosure can place a high administrative burden on individual entities. Nevertheless, it can complement the use of voluntary standards by providing greater accountability and a means of verification.

NEGOTIATED RULE-MAKING

Negotiated rule-making is the collaborative and active participation by many different stakeholders (including government, industry, civil society and indigenous groups), in the formulation of legislation and regulations.¹² The aim is to develop rules based on consensus (which have been negotiated with trade-offs), in order to heighten the legitimacy and acceptability of environmental regulations. The benefits of negotiated rule-making include limited resistance from affected members of society, as their time and effort has also gone into the development of rules. Who to include in the negotiations becomes a critical question, as parties not involved may feel disadvantaged. Moreover, with many different arguments and points of view to take into account, it can be harder to ensure that the purpose of the legal reform is met.

CO-MANAGEMENT

Co-management involves members of society collaborating with the government and taking an active role in the management or enforcement of environmental rules. For example, the adaptation of the forestry sector to climate change impacts may be cooperatively managed by an organization of forestry stakeholders, chosen by the government, who undertake the day-to-day administration of the adaptation plan. This legal instrument gives affected members of society a stake in the reform of a sector, with the aim that they become responsible for a positive outcome. Like negotiated rule-making, however, the choice of who to make responsible becomes a critical question, and parties not involved may feel disadvantaged.

12 Ida Koppen, 'Ecological Covenants: Regulatory Informality in Dutch Waste Reduction Policy', in Gunter Teubner, Lindsay Farmer and Declan Murphy, *Environmental Law and Ecological Responsibility: The Concept and Practice of Ecological Self-Organisation*, John Wiley & Sons: Chichester, UK, 1994, p. 186.

SELF-REGULATION AND VOLUNTARY STANDARDS

A country may choose to ask an industry sector to regulate its own greenhouse gas emissions in lieu of directly regulating the sector through legislative means. In many countries, industry sectors or individual countries are creating voluntary standards that go above and beyond the formal legal requirements of government legislation and regulations. The main benefit of self-regulation and voluntary standards is that they may engender higher industry cooperation, as industry is directly involved in the standard-setting. In addition, they can be less costly to government, as the implementation, compliance and enforcement burden is shared. However, it is important to monitor and verify the claims of self-regulated industries and to be wary of 'green washing', as voluntary standards are open to industry capture.

Matching legal reform instruments to Green LECRDS policies for 'best fit'

In deciding which legal reform instrument would be most effective for individual Green LECRDS policies, a 'matching' method may be applied (see Table 2.1). These criteria are indicative only and can be supplemented or changed, based on need. The criteria focus on the target of the legal reform, the means of changing behaviour (is there a set method that must be followed?), and the monitoring, compliance

Table 2.1: Criteria to determine 'best fit' legal reform instruments

	Country-wide behaviour change	Individual sector behaviour change	There is a single, commonly agreed means of acting	Targets have the capacity to assess risks and develop appropriate action	There are strong incentives for the target entities to comply	Monitoring performance and compliance is manageable	Costs of enforcing compliance are reasonable
Constitutional amendment	✗						
Command and control legislation	✗		✗				
Performance-, process- or principle-based legislation		✗		✗		✗	✗
Environmental impact assessment		✗		✗			✗
Market-based instruments	✗			✗	✗		
Licenses and permits		✗	✗				✗
Mandatory reporting		✗		✗		✗	✗
Negotiated rule-making		✗			✗	✗	
Co-management		✗		✗	✗	✗	✗
Self-regulation and voluntary standards		✗		✗	✗	✗	✗

Source: Adapted from Maddocks, 'The Role Of Regulation In Facilitating Or Constraining Adaptation To Climate Change For Australian Infrastructure: A report for the Department of Climate Change and Energy Efficiency', 2011, available at: http://www.climatechange.gov.au/sites/climatechange/files/documents/03_2013/maddocks-report.pdf.

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and enforcement options. Policy makers may also wish to include the flexibility and ease of adapting the legal instrument and different purposes of the legal reform, for example to compel adherence to a standard or to provide incentives to change. In addition, it should be noted that the effectiveness of each legal reform instrument may ultimately depend upon whether the instrument's approach is compatible with the pre-existing legal and regulatory framework of a country or individual sector.

Prioritize and sequence legal instruments in a phased approach

Designing a regulatory framework that effectively facilitates the achievement of Green LECRDS policy outcomes, while acting within a country's political, financial and human resource constraints is a complex and challenging exercise. Policy makers should give significant thought to whether formal legal instruments are the most effective form of regulation and should actively consider the alternatives to legislation and regulation.¹³ As highlighted in the preceding discussion, informal legal reform instruments can provide greater flexibility and be more cost effective. For example, administering and enforcing legislation, regulations, licenses and permits takes time and workforce resources. Co-management, self-regulation and voluntary standards may result in the same green development outcome, with minimum government spending. However, formal instruments carry greater democratic accountability, which are important to guarantee transparency and fair decision-making.

“Designing a regulatory framework that effectively facilitates the achievement of Green LECRDS policy outcomes, while acting within a country's political, financial and human resource constraints is a complex and challenging exercise.”

Box 2.7: Prioritizing legal reform instruments

One of decision makers' key goals is to prioritize those reforms that quickly move the country towards a low-emission, climate-resilient future within the boundaries of country-specific objectives and capacity, while optimizing flexibility and maximizing social, ecological and economic returns. This is a skilful balance to promote innovation while providing enough stability to also give investors certainty, all without creating unintended consequences, including for taxpayers. Decision makers may evaluate the list of legal reform instruments according to key questions, including:

- Does this legal reform option adequately fill a gap in our sectoral legislative frameworks? Does it fill a cross-sectoral gap?
- Does the legal reform option eliminate a framework or provisions that represent barriers to Green LECRDS implementation or otherwise address a barrier to Green LECRDS?
- Does the legal reform appear to address a challenge identified in existing legal frameworks?
- Does the legal reform option appear to more adequately support compliance and enforcement than existing legal frameworks?
- Does the legal reform option appear to maximize the benefits and opportunities available?
- Does the legal instrument have strong political and social acceptance?
- What is the level of certainty or likelihood that the measure will effectively manage climate risk?
- What is the level of certainty or likelihood that the measure will effectively confront the effects of climate change?
- What is the level of intervention required?
- What is the scale of required investment or cost?
- What resources are available to support this reform?
- What is the level of certainty or likelihood that the measure will effectively address broad drivers of climate change vulnerability (e.g. non-climate factors such as poverty or disease)?
- What is the level of certainty or likelihood that the measure will effectively build response capacity (anticipatory and wide-scale, e.g. in reforestation strategies)?
- Is the measure consistent with the country's other development goals?

¹³ David C. Elliott, 'Assessing the Need for Regulation', 1997.

A graduated legal reform framework is a selection process based on the result of policy makers actively considering which Green LECRDS policies require formal instruments to implement and which may be better realized through informal instruments. Overarching, country-wide policies, such as introducing a carbon price, will require legislation to implement and a new administrative body and structure will need to be created to oversee this new carbon market. However, a policy with the goal of regulating a single industry sector, such as fishing, may be best implementing through instruments of co-management or self-regulation.

Risk assessments are another method by which to determine whether formal or informal instruments are appropriate: if an activity or a potential event is high risk, then more formal and prescriptive intervention may be warranted. If there is low risk, a less interventionist instrument may be more appropriate, particularly in a situation of limited human and financial resource capacity.

A graduated legal reform framework should also take prioritization of legal instruments into account. Prioritization ensures that country-specific objectives and needs, as articulated through consultation with stakeholders and key decision makers, guide the selection of the most important legal reforms to be implemented and delivered at initial stages. The prioritization process includes relative weighting measures to help negotiate trade-offs.

A scorecard tool is presented below to assist decision makers in this fine balance. Because decision makers are asked to consider many variables and interactions at once in selecting and prioritizing legal reforms, a scorecard tool is a useful framework for systematizing the discussion and summarizing various quantitative assessments of legal reform options. The scorecard is not intended to provide definitive answers, but simply provide a useful mechanism with which to value, record and consolidate the opinions of various contributors.

The structure of a typical five-point evaluation is presented in Table 2.2. The selection criteria used in the scorecard tool are discussed in more detail below, and are drawn from the UNDP Guidebook on 'Catalyzing Climate Finance'. To some extent, the selection criteria repeat and consolidate the key questions listed above.

Table 2.2: Example five-point scorecard for evaluating reform options using the criteria of environmental effectiveness

Reform		A	B	C	D	Ranking system
Taxpayers' criteria	Environmental effectiveness	1	2	5	4	1 - The reform exhibits a low or negative degree of environmental effectiveness
	Cost effectiveness	4	1	2	4	2 - The reform exhibits a moderately low degree of environmental effectiveness
	Political feasibility	3	2	3	4	3 - Neutral or unclear degree of environmental effectiveness
	Institutional feasibility	3	2	3	3	4 - The reform exhibits a moderate degree of environmental effectiveness
	Environmental risk	1	2	5	4	5 - The reform exhibits a high degree of environmental effectiveness
Investors' criteria	Loud	2	2	1	5	
	Long	3	3	2	3	
	Legal	3	4	1	2	
	Light	2	1	1	4	

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TAXPAYER'S CRITERIA

- **Environmental effectiveness:** This legal reform maximizes environmental gains per unit of resource expended. It meets its stated objectives within a full range of future climate scenarios.
- **Cost effectiveness:** This legal reform produces benefits that outweigh costs (e.g. financial, physical, human). It is generally more efficient to raise the cost of unsustainable activities through regulation or fiscal instruments that help price them at their true cost, making sustainable alternatives relatively more attractive.
- **Political feasibility:** This legal reform introduces a new subsidy or otherwise minimally impacts vested interests, or if not, takes into account its own distributional effects, including dimensions of international support and alignment, acknowledging a gradual process necessary to build political buy-in over time.
- **Institutional feasibility:** This legal reform fits with country-specific resources and systems already in place, or is accompanied by supporting measures contributing to the enabling conditions for success within national institutions.
- **Environmental risk:** This legal reform avoids a reliably predicted urgent climate risk, and/or risk with future impacts potentially catastrophic or irreversible, and/or risk requiring long lead time for implementation.

INVESTOR'S CRITERIA

- **Loud:** This legal reform substantially affects climate investment risk-reward profiles by substantially lowering risks or making a significant difference to bottom line results for climate investments.
- **Long:** This legal reform is associated with low political risk; it exhibits a high degree of stability and duration allowing long-term investments to be made with confidence.
- **Legal:** This legal reform has addressed the key challenges of non-compliance in its particular sector, through firm, fair and transparent enforcement.
- **Light:** This legal reform and its associated regulatory framework minimize complexities and streamline processes from the point of view of climate investment.

It is important to note that there may be additional country-specific criteria necessary to each country-specific evaluation process.

Country-specific legal reform

It is very important to understand that legal reform is specific to the country in which it is taking place. When deciding which legal reform instruments to choose to implement the Green LECRDS, policy makers must pay close attention to the characteristics of the domestic legal system and choose the most appropriate instruments for it. Therefore, while the international examples presented in Box 2.8 should be investigated and analysed, they must be tailored to the domestic situation.

“When deciding which legal reform instruments to choose to implement the Green LECRDS, policy makers must pay close attention to the characteristics of the domestic legal system and choose the most appropriate instruments for it.”

Box 2.8: Example of country-specific legal reform and effective legislative reform

In accordance with its National Development Plan 2007–2012 and its 2007 National Climate Change Strategy and Special Programme on Climate Change, **MEXICO** enacted a number of Climate Change State Action Plans and Programmes at the sub-national level. For example, Mexico City's 2008 Climate Change Action Program and 2010 Mitigation and Adaptation Law to Respond to Climate Change and Sustainable Development are key cases of implementation of Green LECRDS at the sub-national level in an industrialized capital in Latin America through appropriate policies and legal reform. Mexico City's efforts have highlighted the importance of mitigation projects to attract investments for economic development through the creation of the Climate Change Environmental Fund and the Commerce System of Carbon Emissions.

Rural Mexican states, such as Chiapas, Veracruz, and the Yucatan Peninsula, appropriate to their specific needs, have focused their Climate Change State Action Plans and Programmes on forest and coastal conservation and promoting the sustainable development of indigenous and rural communities inhabiting forests and coastal territories with significant human settlements. For example, as a joint response to shared vulnerabilities, Yucatan Peninsula (comprised of the states Campeche, Quintana Roo, and Yucatan), signed the 2010 Joint Declaration of Action to Respond Climate Change in the Yucatan Peninsula followed by the legally binding 2010 Yucatan Peninsula General Coordination Accord, which established a Regional Environmental Fund as its financial mechanism and a Regional Adaptation Strategy. The

Mexican state of Veracruz installed a climate change programme in 2009, followed by the 2010 Mitigation and Adaptation State Law to Respond to the Effects of Climate Change, which promotes sustainable development through mitigation and adaptation policies at the state and municipal level.^a

BRAZIL's National Environmental Policy was passed in 1981, followed by the 1988 Constitution, which contains a chapter on protection of the environment. However, many of its provisions have yet to be adequately regulated by specific laws (for example, the decentralization of environmental regulations at the State and municipal level). The National Environmental Policy is regulated by a various National Environmental Council resolutions, such as introducing environmental licenses for polluting or environmentally damaging activities to be implemented on the state level.^b

The Brazilian National Plan on Climate Change of 2008, based on the work of the Inter-ministerial Committee on Climate Change in accordance with the National Climate Change Policy, is a step towards integration and harmonization of public policies related to Green LECRDS.

Moreover, Brazil has joined other major economies such as China, Germany, Japan, and South Korea in focusing its efforts on renewable energy and investments in new technologies. The national 10-year plan from Brazil indicates that the country will triple its use of renewable energy by 2020 (10 percent of total electricity by 2029), as supported by the National Energy Policy and Plan (PNE 2030, Law 9478/97). This resulted in a series of supporting legislation, as listed below, such

as the 2002 National Program of Incentives for Alternative Electricity Sources (PROINFA, Programa de Incentivo a Fontes Alternativas de Energia Elétrica), which implemented measures to reach the target of 10 percent of power to be produced from wind, small-scale hydro and biomass. Broadly, PROINFA is based on Germany's feed-in tariff model, although with some modifications to address Brazil's specific challenges. Due to large interest rates and inflation in Brazil, which would devalue a fixed renewable energy price and have a significant impact on long-term investments, there is considerable alteration in the 20-year compensation period provided to renewable energy companies. The Banco Nacional de Desenvolvimento Econômico e Social, the Brazilian National Development Bank, has made special financing programmes available for renewable energy projects under PROINFA: it offers loans with much smaller interest rates than those available on the free market in Brazil, and it will cover up to 80 percent of investment costs.

Brazil also introduced the National Energy Efficiency Policy with the goal of reducing electricity consumption by 10 percent by 2030. However, Brazil's energy policy relies heavily on renewables, biofuels in particular. The effects of biofuel production have led to new land acquisition restrictions nationwide as well as stricter zoning laws and increased enforcement of labour and environmental regulations in some regions. For example, in 2007 the Government commissioned an agro-ecological zoning of sugarcane and will soon impose fees and bills against non-compliance, as per the Environmental Crime Law of 2011–2012, Decree 6680/08/.

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Notes: a. *Official Gazette of the state of Veracruz*, Ley Número 878, Estatal de Mitigación y Adaptación ante los Efectos del Cambio Climático, November 3, 2010, Veracruz Climate Law, Art. 1. b. See FAOLEX (the legislative database of the Food and Agriculture Organization of the United Nations' Legal Office), 'Brazil: Environmental Policy Act No. 6.938', available at: http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=009049&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL (last accessed 25 June 2013).

Sources: **Mexico** – Government of Mexico, Instituto Nacional de Ecología y Cambio Climático, 'Avances de los Programas Estatales de Acción ante el Cambio Climático', available at: <http://www2.ine.gob.mx/sistemas/peacc/>; International Development Law Organization and Centre for International Sustainable Development Law, *IDLO-CISDL Compendium of Legal Best Practices on Climate Change Policy*, May 2011, available at: <http://www.idlo.int/Publications/ClimateChangeCISLMay2011.pdf>. **Brazil** – Renata Marson Teixeira de Andrade and Andrew Miccolis, 'Policies and Institutional and Legal Frameworks in the Expansion of Brazilian Biofuels' Working Paper 71, Center for International Forestry Research, Bogor, Indonesia, 2011, available at: http://www.cifor.org/publications/pdf_files/WPapers/WP71CIFOR.pdf; Judith A. Cherni, J. A. 'Promotion of Renewable Energy in Latin America: Policy and Lessons', in James Haselip, Ivan Nygaard, Ulrich Hansen and Emmanuel Ackom (Eds.), *Diffusion of Renewable Energy Technologies: Case Studies of Enabling Frameworks in Developing Countries*, Technology Transfer Perspectives Series, UNEP Risø Centre on Energy, Climate and Sustainable Development, Denmark, 2011, pp. 113–126, available at: <http://tech-action.org/Perspectives/PolicyLessonsRenewablesLatinAmerica.pdf>; Government of Brazil, 'National Plan on Climate Change – Brazil: Executive Summary', Brasília, December 2008, available at: http://www.project-catalyst.info/images/publications/brazil_national.pdf.

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In addition to consistency with existing domestic goals, legal instruments must adhere to a country's international legal obligations. International treaties include substantive requirements, such as developed countries adhering to their emission reduction targets in the Kyoto Protocol.

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International legal requirements and domestic development goals

If Green LECRDS are to achieve their maximum potential in addressing climate change mitigation and adaptation concerns, the level of integration into broader development planning should be a key objective. Governments implementing Green LECRDS legal reform must ensure consistency between the desired legal reforms and other domestic legal instruments, sustainable development aims and development goals, including human rights, gender equality and economic development. Countries may also have existing development plans in place outlining their economic growth strategy and a future vision for financial and social development (see section 1.2). To the extent possible, extensive consideration should be given to integrating Green LECRDS reforms into these existing development planning processes and strategies.

In addition to consistency with existing domestic goals, legal instruments must adhere to a country's international legal obligations. International treaties include substantive requirements, such as developed countries adhering to their emission reduction targets in the Kyoto Protocol. Many World Trade Organization (WTO) agreements set detailed obligations to ensure that all parties to the agreement are treated in a fair and non-discriminatory way.¹⁴ An example of how the design of legal climate instruments can be challenged through the WTO is the EU-Canada WTO dispute on feed-in-tariffs (see Box 2.9). In addition, there are also many procedural rules of international law to which countries must adhere,

Box 2.9: World Trade Organization dispute on feed-in-tariffs

The Canadian province of Ontario established a renewable electricity feed-in-tariff program under the *Green Energy and Green Economy Act 2009*, which offers guaranteed prices under long-term contracts for energy generated from renewable sources. Ontario's program requires that wind and solar projects greater than 10 kW include a minimum amount of local goods and services (between 25 and 60 percent), depending on technology and the year in which commercial operation began. The EU and Japan challenged this local content requirement before

the WTO, claiming that it was a violation of the “national treatment” principle under the General Agreement on Tariffs and Trade, which states that imported and locally-produced goods should be treated equally. The basis of the dispute was not the feed-in-tariff legislation, per se, but the specific local content requirement. The EU and Japan claimed that Ontario's feed-in-tariff program's local content requirement accords “less favourable treatment” to imported equipment than that accorded to like products originating in Ontario. In December 2012, the

WTO dispute panel issued a report that accepted the key arguments of the EU and Japan. The panel found that the minimum local content requirement outlined in the feed-in-tariff program was in violation of Ontario's obligations under the General Agreement on Tariffs and Trade and Agreement on Trade Related Investment Measures Agreements and recommended Ontario make revisions to come into conformity with the agreements. Careful design of legal climate change instruments may avoid WTO proceedings altogether.

Source: WTO, ‘Dispute Settlement: Dispute DS426, Canada – Measures Relating to the Feed-In-Tariff Program’, available at: http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds426_e.htm.

14 WTO, ‘Understanding the WTO: Basics, Principles of the Trading System’, available at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm. See e.g. the “most-favoured-nation” principle, which states that countries cannot normally discriminate between their trading partners: General Agreement on Trade and Tariffs, Article 1; and Trade Related Aspects of Intellectual Property Rights, Article 4. See also “national treatment” principle, which states that imported and locally-produced goods should be treated equally, General Agreement on Trade and Tariffs, Article 3; Technical Barriers to Trade Agreement, Article 2.1 and Trade Related Aspects of Intellectual Property Rights, Article 3.

such as the WTO's notice and comment requirements.¹⁵ WTO rules and bilateral trade agreements must be particularly kept in mind for regulatory policies such as standards, labels, voluntary agreements and domestic emissions trading programmes. Specifically, these types of laws are generally required to use the least trade-restrictive means possible.¹⁶

To ensure that all international legal considerations are taken into account, policy makers may wish to compile a document that lists subject matter-specific treaties that the country has ratified (as well as those that it may ratify). The areas of international law related to a low-emission, climate-resilient future may not be obvious and a broad search should be undertaken. Once each of the international treaties are listed, relevant legal provisions may be extracted, as demonstrated for the UNFCCC in Box 2.10. Relevant international treaties include:

- United Nations Framework Convention on Climate Change, Kyoto Protocol, Cancún Adaptation Framework¹⁷ (see Box 2.10 for UNFCCC legal provisions);
- Convention on Biological Diversity;
- United Nations Convention to Combat Desertification;
- United Nations Declaration on the Rights of Indigenous People;
- International Labour Organization Convention 169 on Indigenous and Tribal Peoples;
- Universal Declaration on Human Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- Convention on the Safeguarding of Intangible Cultural Heritage;
- Convention on the Rights of the Child;
- Convention on the Elimination of All Forms of Discrimination against Women;
- United Nations Convention on the Law of the Sea;
- Agreements on Agriculture, Sanitary and Phytosanitary Measures;
- Trade Related Aspects of Intellectual Property Rights;
- Doha Development Agenda;
- The Stockholm Declaration on the Human Environment;
- The Rio Declaration on Environment and Development;
- Montreal Guidelines for the Protection of the Marine Environment Against Pollution from Land-based Sources; and
- Agenda 21.

15 For example, there are requirements specifying the level of scientific evidence necessary for a country to justify a measure which may be particularly problematic in the context of climate change given the range of uncertainty about the scope and timing of its effects and the effectiveness of various measures to address them. See Andrew Green, 'Climate Change, Regulatory Policy and the WTO', 8:1 *Journal of International Economic Law* 141, at 147.

16 See General Agreement on Trade and Tariffs, article XX; and Technical Barriers to Trade, article 2.2.

17 Which advocates for a country-driven approach "with a view to integrating adaptation into relevant social, economic and environmental policies."

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Box 2.10: Examples of relevant legal provisions of the UNFCCC

The UNFCCC and its submissions and protocols (e.g. the Kyoto Protocol), list mandatory mitigation actions that represent a legally binding obligation under international law. Parties to a Convention are expected to implement the terms into domestic law. For example, Parties to the UNFCCC have agreed that:

Recognizing that **States should enact effective environmental legislation**, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries (UNFCCC, preambular clause)

[All Parties... shall...] Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic **emissions of greenhouse gases** not controlled by the

Montreal Protocol in all relevant sectors, including the **energy, transport, industry, agriculture, forestry and waste management sectors**; (UNFCCC, Art. 3, para. 1c)

[All Parties... shall...] **Take climate change considerations into account**, to the extent feasible, **in their relevant social, economic and environmental policies and actions**, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change; (UNFCCC, Art. 3, para. 1f)

The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects (UNFCCC, Art. 3, para. 3)

...policies and measures should take into account different socio-economic contexts,

be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties (UNFCCC, Art. 3, para. 3)

The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programs, taking into account that economic development is essential for adopting measures to address climate change (UNFCCC, Art. 3, para. 4)

In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information: (b) A general description of steps taken or envisaged by the Party to implement the Convention (UNFCCC, Art. 12, para. 1)

RECAP: WHAT SHOULD BE DONE?

- Ensure that the aims and purpose of the legal reform is well stated (e.g. ask questions such as: What behaviour should the legal reform instrument change? Whose behaviour needs to be changed? How might the legal reform instrument achieve that change?);
- Investigate effective methods of implementation, compliance and enforcement;
- Understand the characteristics and appropriate use of different legal instruments;
- Match the characteristics and objectives of the desired legal reform with a legal reform instrument that will best suit, using a method similar to Table 2.1;
- Reflect on the characteristics of the domestic legal and political systems, including the regulatory structure and sets of skills available to administer and enforce laws;
- Prioritize legal reform instruments based on country-specific criteria; and
- Ensure that new legal instruments take a country's existing international and domestic legal requirements into consideration.

2.4 Strategic sequencing and clustering of legal reforms

Once all relevant considerations have been taken into account to result in a selection of legal reform instruments, a final selection and sequencing of appropriate reforms should be undertaken. This can prove to be one of the most challenging steps of a legal reform process. The best approach is to move systematically by investing first in those reforms that will provide benefits in the short term, while also retaining a long-term perspective.

Prioritize low-cost options

Decision makers will likely identify a greater number of legal reform options than can reasonably be implemented in the short term. It is helpful, therefore, to take the time to identify any low-regret or no-regret options (i.e. reforms that enable net benefits across sectors in addition to reducing climate change risks). Such interventions deliver benefits greater than costs. These reforms are pursued early to build support for the legal reform process. Again, as a general rule, every reform that can be done at negative, no or low cost—such as simplifying and shortening administrative processes, improving staff capacities, increasing circulation of information and addressing regulatory uncertainty or intellectual property concerns—should also be a first-order priority, ahead of more expensive legal reforms such as subsidies or loan guarantees.

Sequence more costly reforms

If expected policy outcomes are not achieved with lower cost legal reforms, decision makers may elect for a prioritization of more costly legal measures. Sequencing is a strategy supporting coherent order in the list of selected reforms. Reforms are first sequenced to avoid working against each other. Second, sequencing acknowledges that some reforms will not be possible to undertake until others have begun (i.e. some reforms rely on each other).

“Decision makers will likely identify a greater number of legal reform options than can reasonably be implemented in the short term. It is helpful, therefore, to take the time to identify any low-regret or no-regret options.”

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The focus of Germany's Energy Concept is to establish climate and energy targets, with the aim of fundamentally restructuring the country's energy system by 2050 through renewable energy sources, green mobility and energy efficiency, innovation and advanced technologies, cost-efficient measures and the generation of strong economic opportunities.”

Box 2.11: Examples of a legal framework in support of Green LECRDS

BANGLADESH (a least developed country that is highly vulnerable to climate change), has focused many of its efforts towards improving its climate resilience through adaptation efforts. Bangladesh submitted to the UNFCCC an initial National Communication in November 2002 and a National Adaptation Programme of Action in November 2005.^a Subsequently, Bangladesh established an inter-ministerial National Steering Committee on Climate Change and a National Environment Committee chaired by the Prime Minister with representation comprised of Members of Parliament. A Climate Change Unit was also formed under the Department of Environment of the Ministry of Environment and Forests, which, together with the National Environment Committee, published the Bangladesh Climate Change Strategy and Action Plan in 2008 (further revised in 2009 to expand upon Bangladesh's National Adaptation Programme of Action.^b The Climate Change Strategy and Action Plan lists 44 programmes across six key sectors. Such sectoral adaptation strategies and programmes, however, must be incorporated into overarching Green LECRDS development trajectories to be effective.

GERMANY has been an important player in international climate change negotiations and very influential in shaping Europe's approach to climate change, including the commitments assumed by the EU under the Kyoto Protocol. Central to Germany's mitigation and low emissions efforts is its Energy Concept of September 2010, which

established long-term strategic targets for Germany's energy and climate policy. The focus of the Energy Concept is to establish climate and energy targets, with the aim of fundamentally restructuring Germany's energy system by 2050 through renewable energy sources, green mobility and energy efficiency, innovation and advanced technologies, cost-efficient measures and the generation of strong economic opportunities.^c

The measures outlined in Germany's Energy Concept are implemented through the Renewable Energy Sources Act of 2012,^d the Energy Industry Act, the Grid Expansion Acceleration Act, and an amended act for establishing an Energy and Climate Fund in December 2010. Legal instruments that are already in place in Germany, yet are affected by the new measures, include the Combined Heat and Power Act and other energy-industry laws (e.g. Heat Act - EEWärmeG)^e that were amended to improve the conditions for use of micro-combined heat and power systems as well as amendments to construction laws (e.g. Offshore Installations Ordinance) to provide greater legal certainty for wind-energy sites. The Market Incentive Programme is the Federal Government's main instrument for promoting renewable energies in the heat sector. Funding is secured through the Energy and Climate Change Fund Act of December 2010, as well as the International Climate Initiative, supported in part from revenues from auctioning EU Emissions trading allowances on a regional basis.

Further economic incentives for national climate protection projects are provided through Germany's National Climate Initiative.^f The German Federal Act on Nature Conservation and Landscape Management went into force in March 2010 in an effort to harmonize law on nature conservation, landscape management and water legislation (Federal Nature Conservation Act).^g The German Strategy for Adaptation to Climate Change was adopted in December 2008 and created a medium-term, step-by-step process for assessing the risks of climate change, identifying possible needs for action, defining appropriate goals and developing and implementing options for adaptation measures to ensure climate resilience.^h The German Strategy for Adaptation to Climate Change was followed by an Adaptation Action Plan adopted in August 2011, which develops options for adaptation measures and actions with specific activities to be carried out by the German Federal Government while drawing links with other national strategies (including the High-Tech Strategy 2020, the National Strategy on Biological Diversity and the National Forest Strategy) in cooperation with German Federal State Governments.ⁱ

The Inter-ministerial Working Group, created by the Strategy, will evaluate the German Adaptation Strategy, the Action Plan and related future proposals by the end of 2014.

Notes: a. Respectively available at: <http://unfccc.int/resource/docs/natc/bgdnc1.pdf> and <http://www.moef.gov.bd/bangladesh%20napa%20unfccc%20version.pdf>. b. Available at: http://www.moef.gov.bd/climate_change_strategy2009.pdf. c. For more information, see: http://www.bmu.de/english/energy_efficiency/doc/46516.php; compare to Karsten Sach, 'Germany's Energy Strategy and the Energy and Climate Fund', Government of Germany, Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, October 2011. d. Available at: http://www.bmu.de/files/english/pdf/application/pdf/eeg_2012_en_bf.pdf. e. For more information, see: http://www.bmu.de/english/renewable_energy/downloads/doc/42351.php. f. For more information, see: http://www.bmu.de/english/economy_products/downloads/doc/3265.php. g. For more information, see http://www.bmu.de/files/english/pdf/application/pdf/bnatschg_en_bf.pdf. h. For more information, see: http://www.bmu.de/files/english/pdf/application/pdf/das_zusammenfassung_en.pdf. i. For more information, see: http://www.bmu.de/files/pdfs/allgemein/application/pdf/aktionsplan_anpassung_klimawandel_en_bf.pdf

2.5 Validate options for legal and regulatory reform instruments through expert and stakeholder engagement

The acceptance of legal reform instruments and their adoption by the actors who are potentially affected by the reforms depends on the engagement of expert stakeholders who can validate recommendations, sectors of society who will be affected, decision makers and the general public. A common stakeholder engagement method is green and white paper consultations (see Box 2.12 for specific country examples).

Green and white papers – stakeholder engagement method

DEFINITIONS

Green paper:

A preliminary report of government proposals on specific issues, detailing possible courses of action, and published to stimulate discussion.

White paper:

A statement of policy, often setting out detailed proposals for new laws.

Stakeholder engagement should be undertaken at various stages of the implementation process in order to validate the choice of legal reform instruments chosen for each element of the Action Plan and to consult on detailed drafts of the legal reform instruments. Consultations around green and white papers correspond to these two stages.

GREEN PAPER

The graduated legal reform framework developed above should be translated into a formal green paper. A green paper can be thought of as a discussion paper. It does not bind the government to any one course of action, but should explain the issues and the suggested instrument(s) for legal reform. Green papers should be announced in

the media and elsewhere to make sure that the community is aware of the release. All interested parties should be invited to write submissions.

How and to whom to give the green paper? The mode of dissemination of the green paper is very important, and modern communication technologies should not be taken for granted. Alternate modes of communication, such as printed materials or oral communication, should likewise be considered. The green paper should be provided to stakeholders in multiple languages, if appropriate. Moreover, sufficient time must be given for stakeholders to read, digest and respond to the information provided in the green paper.¹⁸

WHITE PAPER

Once legal reform instruments have been conclusively chosen, following the green paper process and consideration of stakeholder submissions, detailed drafts of legal instruments should be prepared. These detailed drafts are called white papers and should build upon comments and submissions made during the green paper process. Section 2.6 provides more information on the process of legal drafting.

Stakeholder participation in legal drafting will make the legal instrument more relevant to the public.¹⁹ The white paper process provides an opportunity for stakeholders who will be affected by the new legal instruments to comment on their detailed implementation on the ground.

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18 Amanda Sheedy, 'Handbook on Citizen Engagement: Beyond Consultation', Canadian Policy Research Networks, p. 22; ClientEarth, 'REDD+ Partnership Guidelines to support Modalities for Stakeholders Participation', 23 July 2010, available at: <http://www.clientearth.org/reports/climate-and-forests-clientearth-recommendations-for-modalities-of-stakeholder-participation.pdf>, page 3.

19 AusAID, 'Vietnam: Legal and Judicial Development', Working Paper 3, p. 18, Australian Government Overseas Aid Program, 2000.

How and to whom to distribute the white paper? Different participation methods should be employed for white papers of different legal instruments, based upon those stakeholders and sectors that will be affected. For example, broad public consultation will not usually be required or expected for the collaborative drafting of voluntary standards for a specific industry. However, representatives from that industry must be consulted.

The **goal of the white paper process** is to reach consensus on the exact methods to be used to implement a low-emission, climate-resilient future by listening to concerns, answering questions and alleviating any misconceptions that exist. Any issues identified during the white paper process can be resolved with drafting changes before the proposed legal instruments are sent to the final decision makers for approval.

RECAP: WHAT SHOULD BE DONE?

- Expert and mid-level government consultation on the basis of draft green and white papers for each legal instrument, including national and sub-national levels of government, relevant ministries, agencies and legal experts;
- Close drafting collaboration with sectors directly targeted by informal instruments;
- Host public event(s) to release final white papers, to educate and communicate to the public the expectations of stakeholder participation;
- Seek submissions from interested members of the public on the papers; and
- Provide feedback to stakeholders on the outcomes of their participation: what information was obtained from the submissions and how was this information reflected in the final legal instrument?

Box 2.12: Green and white paper examples related to Green LECRDS

AUSTRALIA released the Carbon Pollution Reduction Scheme Green Paper in 2008 and further developed the policy framework with feedback from emissions and financial data voluntarily provided as a result. In 2009, Australia published the Low Pollution Future White Paper, which set out the policy framework developed, including a programme of assistance to eligible emissions-intensive trade-exposed activities under the Carbon Pollution Reduction Scheme.^a Early in 2010, the Australian Government published a position paper, *Adapting to Climate Change in Australia*, which proposed a process through the Council of Australian Governments to develop a national adaptation agenda.^b To assist in these efforts, in 2011 the Productivity

Commission announced a public inquiry into regulatory and policy barriers to effective climate change adaptation, the final report was sent to Government on 20 September 2012 and released on 14 March 2013.^c

SOUTH AFRICA first published a green paper on an Environmental Policy for South Africa in 1996 for public consideration and comment, which resulted in the Environmental Management Policy White Paper in 1997 (and revised in 1998).^d This was followed by a series of green and white papers on Green LECRDS-related sectors, such as energy policy, disaster management, land use and water.^e A more consolidated approach in line with Green LECRDS was taken with the release of

the National Climate Change Response Policy Green Paper in December 2010 for public comment and stakeholder consultations.^f The Green Paper was based on the National Climate Change Response Strategy and includes commitments requiring various legislative reforms. It resulted in the National Climate Change Response White Paper, published by the South African government in October 2011, which is a successful example of a low-emission climate-resilient development strategy.^g The 2011 White Paper calls for all government departments and state-owned enterprises to review the policies, strategies, legislation, regulations and plans falling within their jurisdictions in order to ensure full alignment with the National Climate Change Response by 2014.

Notes: a. Available at: <http://pandora.nla.gov.au/pan/102841/20090728-0000/www.climatechange.gov.au/whitepaper/report/index.html>. b. Available at: <http://www.climatechange.gov.au/en/government/adapt.aspx>. c. Available at: <http://www.pc.gov.au/projects/inquiry/climate-change-adaptation>. d. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=70436>. e. Available at: http://www.info.gov.za/view/DynamicAction?pageid=554&tabfield=kcYY&orderby=document_date_orig%20desc&tabval=2012. f. Available at: <http://www.pmg.org.za/files/docs/101117climatechange-greenpaper.pdf>. g. Available at: <http://www.info.gov.za/view/DynamicAction?pageid=623&myID=315009>.

2.6 Identify and train persons to fine-tune drafting for clarity, coherence, enforceability and flexibility

Legal drafting – who to involve?

Given the challenges inherent to writing legal instruments that are readily understandable, good legal drafting is a skill that requires practice. Many countries have dedicated drafting departments within the government, and the policy makers' role is then to develop the policy to such an extent that legal drafters can take that information and transform it into a legal instrument.

If there is no legal drafting department, general policy makers may lack the skills and knowledge required to effectively draft good legal instruments and should be trained. Internal capacity building is an important step in legal reform and there are many legal drafting manuals and even Internet courses available for this purpose (see Bibliography).

High-level decision makers may choose to select a group of policy makers to train in order to create a legal drafting department for future needs. Creating a department dedicated to drafting legislation can be beneficial over the long-term; ideally, new officers will be trained by their more experienced peers who will impart valuable knowledge from their legal drafting experience. Legal drafting skills and knowledge will give credibility to government officers undertaking legal drafting and secure better outcomes.

Characteristics of good legal drafting

Good legal drafting should combine four elements: clarity, coherence, enforceability and flexibility. Striking the right balance so that all of these elements are respected requires practice and review.

Figure 2.2: Characteristics of good legal drafting

Clarity	Coherence	Enforceability	Flexibility
Use plain language to state requirements clearly and specifically – focus on the what and the who	Within the legal instrument itself, for example cross-references and definitions	Enforcement provisions should be unambiguous about their scope	Provisions are flexible when they are drafted broadly to cover a range of situations
Limit unnecessary words, avoid unnecessary jargon and use short sentences	With the Constitution and prior legislation, from all levels of government	Enforcement mechanisms should focus on the actors whose behaviour is to be modified	Potential for innovation and creativity about compliance
Write with sufficient precision so that readers have enough information on the details of the law	With laws governing legal instruments, for example a general statutory interpretation law	Precision should be used to describe how officials are to use discretion in enforcement	Where discretion is given, precision should be used to describe how it is to be employed

Source: David C. Elliott: <http://www.davidelliott.ca/>

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Box 2.13: Sample table of contents for the Legal Action Plan

- I. Introduction and Rationale
- II. Key Capacity Parameters
 - a. Budget
 - b. Time-frame (against political milestones)
 - c. Human Resources
- III. Description of Compliance with Domestic Legal Reform Processes
- IV. Description of Legal Reform Instruments Assessed
 - a. Constitutional Amendments Necessary
 - b. Legislation
 - c. Regulations
 - d. Negotiated rule-making
 - e. Co-management
 - f. Self-regulation
 - g. Voluntary standards
- V. Description of Selection and Prioritization of Legal Reforms
- VI. Graduated Legal Reform Framework
- VII. Analysis of International and Domestic Legal Considerations
- VIII. Description of Stakeholder Engagement
 - a. Green Paper Process, including Summary of Submissions
 - b. White Paper Process, including Summary of Submissions
- IX. Recommendations for Legal Reform Instruments
- X. Annexes of Final Draft Legal Instruments

2.7 Draft a Legal Action Plan to submit to decision-making bodies for approval

The final step of the implementation process is to receive approval from decision makers for the package of legal instruments chosen to translate priority Green LECRDS policies into a Legal Action Plan of concrete legal reforms.

When to present the Legal Action Plan

This may be undertaken in stages, with urgent or immediate reforms being presented in one document and subsequent legal instruments presented in another. However, creating an overarching Legal Action Plan that includes all legal instruments will be important to ensure consistency and identify gaps or overlaps between sectors and legal reform instruments.

Drafting the Legal Action Plan

The following sample table of contents is included as a reference, which may be used by decision makers as a summary document of the legal instruments forming the Legal Reform Action Plan. Overall, it is intended as a helpful summary of the work undertaken and to help communicate implementation efforts.

Conclusion

This chapter provided decision makers with steps to navigate the domestic legal reform process in order to implement chosen legal reforms. Decision makers have chosen the most appropriate legal instruments to fit their country-specific situation, validated through a green and white paper stakeholder engagement process. Once confirmed as appropriate, this Guidebook provided an initial summary of the importance of drafting clear, coherent, enforceable and flexible legal instruments, with reference to further resources to help or train legal drafters. The regulatory framework codifies these steps and in particular includes the final draft legal instruments in order to present them to the final government decision makers for approval.

Chapter 3 emphasizes how to integrate continuous review and adaptation into the legal reform process in order to ensure that the chosen legal instruments result in the low-emission, climate-resilient and green growth aims desired.

Chapter 3: Implementing the Legal Action Plan

STEP 3

While the formal adoption of legal instruments is an important step in the legal reform roadmap, it does not signal the completion of the Green LECRDS process or the implementation of these reforms. The impacts of climate change, as well as the efficacy of different responses to climate change and development, are complex and constantly evolving. Therefore, it is appropriate that large-scale legal reforms such as implementation of Green LECRDS are iterative in nature and are subject to continual critical review and monitoring to verify the effectiveness of the legal reform programme.

In Step 3, sound implementation of the Legal Action Plan developed in Step 2, as well as ongoing measurement, review and verification of the Green LECRDS reform ensures that the Green LECRDS are implemented and, as necessary, adapted effectively. This step will ultimately lead to the production of a Legal Monitoring Plan, which will incorporate a number of sub-steps:

- 1) Establish work plans to effectively implement reforms;
- 2) Disseminate reforms and train key public and private actors ; and
- 3) Conduct periodic assessments of reform effectiveness based on expert and stakeholder engagement.

3.1 Establish work plans to effectively implement reforms

This section focuses on the implementation gap between adopting legal instruments for Green LECRDS and effectively implementing the new laws and regulations on the ground. Without appropriate planning and enforcement, there can be a discrepancy between what is written in legal instruments and their actual implementation. A work plan, detailing time-frames, responsibilities and information dissemination approaches can ensure that this discrepancy is avoided.

Decision makers should develop a work plan to support the implementation of legal reforms across multiple sectors and all levels of government (see Box 3.1). These work plans can be shared with other levels of government and set out a template to follow for implementation. Existing development plans and frameworks may already be following work plans and the Green LECRDS legal reforms may gain from integration with these to ensure that both are progressing compatibly.

ENSURING LONG-TERM DEDICATION

Changing societal behaviour and institutional structures through law reform requires long-term planning and commitment and ongoing assessment. A work plan pledging dedication to the implementation of the Green LECRDS may help ensure the continuity of legal reforms in support of adaptation and mitigation despite changing political contexts and turnover of governments and office holders.

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Box 3.1: Examples of work plans for implementing reform

As part of the system of governance of the **EUROPEAN COMMUNITY**, the European Commission, acting upon the Directives or Regulation of the European Parliament and Council, often publishes work and action plans requiring implementation by Member States on the national and sub-national level. For example, to implement Directive 2009/28/EC (requiring each Member State to adopt a national renewable energy action plan), the Commission published a template for such action plans.^a The action plan template is composed of a catalogue of questions, which the respective national action plans should set out to answer. Questions include administrative procedures (e.g. Are there specific

trainings for case handlers of authorization, certification and licensing procedures of renewable energy installations?), information provisions (e.g. Please describe the existing and planned information, awareness raising and training programmes for citizens on the benefits and practicalities of developing and using energy from renewable sources), and responsibility delegation (e.g. What is the role of regional and local actors in the designing and managing these programmes?).

Similarly, in response to Regulation (EC) No 1980/2000 on a revised Community Eco-label award scheme, the Commission adopted a work plan and strategy for the development of the Eco-labels in Member States.^b This

work plan calls for joint promotion activities to improve stakeholder and public/private purchaser awareness. The short-term objective is informing all stakeholders about the Community Eco-label, and especially public procurement officers of the possibilities of using the Eco-label, *inter alia* by organizing training and information sessions.

Reform-related work plans are most commonly in place for activities related to the Kyoto Protocol's Clean Development Mechanism and for regional emissions trading, such as the European Union Emissions Trading Scheme and Reducing Emissions from Deforestation and Forest Degradation schemes.

Notes: a. Available at: <http://faolex.fao.org/docs/pdf/eur88701.pdf>. b. Available at : <http://faolex.fao.org/docs/pdf/eur64973.pdf>.

Time-frames

A work plan should indicate clear implementation time-frames for legal reforms. The time-frames should include transition times between the announcement of the reforms and their coming into effect. At a minimum, several months should be allocated to give affected stakeholders time to understand and prepare for the impacts of the legal reform. This transition time could appropriately be used for dissemination of information and training sessions on the legally binding reforms (see section 3.2).

Responsibilities

Responsibilities for implementing legal reforms should be divided between relevant agencies and among the various levels of government (national, sub-national and local). Any legal problems of overlapping *prima facie* responsibility among several institutions should be proactively addressed and primary responsibility given to one institution.

The choice of which government agency to give primary responsibility for implementing Green LECRDS policy reforms is important. An agency with broad responsibilities, such as the president or prime minister's office, will help to demonstrate the prominence of Green LECRDS and may stimulate better coordination across government agencies and levels. Such an agency might also be better equipped to mainstream Green LECRDS concerns in all government decisions. However, an agency specialized in the environment or in green development will have greater understanding of the technical or expert issues involved in individual policies. The implementation of specific Green LECRDS policies could benefit from the expertise and experience of such a specialized agency. However, an agency solely responsible for the environment may not have the same authority or ability for oversight as a central agency.

Depending on the complexity and size of the Green LECRDS approach in a given country, a coordinated approach may be the most appropriate, in which a high-level generalized agency takes responsibility for implementing the Green LECRDS as a whole but delegates responsibility for the implementation of each individual policy to a specialized agency. Understanding and acknowledging the political context will dictate which approach is most appropriate to best guarantee that the Green LECRDS continue to move forward.

RECAP: WHAT SHOULD BE DONE?

- Develop a work plan that all governments (national, sub-national and local) can follow to implement legal reforms effectively and coherently;
- Assign primary responsibility for the implementation of the Green LECRDS legal reforms to one institution, preferably an institution with broad responsibilities;
- Evaluate the institutions that would be best placed to implement each Green LECRDS legal reform, given their technical specializations; and
- Determine the division of responsibilities among government agencies and levels of government, codifying these to ensure the clarity of the roles and responsibilities of each institution.

3.2 Disseminate reforms and train key public and private actors

Once legal reforms have been adopted by parliament or other key decision makers, it will be important to inform stakeholders about the new low-emission, climate-resilient development laws or other legal instruments and how they may be affected by them. This dissemination and information process follows directly from the green and white paper stakeholder-engagement processes (see section 2.5).

Disseminating reforms

The acceptance and effectiveness of the Green LECRDS legal reform instruments depends on a high degree of knowledge of the reforms on the part of affected stakeholders, including private industry, civil society and the general public. Though the green and white paper process should have provided stakeholders with a good understanding of the possible options being pursued by government, stakeholder engagement processes must be continued once specific policies and legal instruments have been adopted. Regular communication of the implementation process can prevent many implementation difficulties, such as opposition to the reforms or refusal to conform to changes.

WHICH STAKEHOLDERS SHOULD BE INVOLVED?

A new round of dissemination and education activities should be tailored to specific stakeholder groups and should detail the changes that will occur, focusing on how they will affect the relevant stakeholders. For example, a series of public information dissemination events for the general public could be complemented by individual workshops with relevant industry sectors and civil society groups. Information dissemination events should be scheduled during the transition time, before the legal reform instruments come into effect.

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Box 3.2: Training on implementation of Green LECRDS

HONDURAS passed the National Plan Law and the Water Law in 2009–2010, which calls for inter-sectoral and landscape approaches to mainstream climate change concerns and for addressing the adverse impacts of climate change on water security.^a With UNDP support (which began in 2011 and is scheduled to extend to 2016), Honduras launched an institutional reform project to improve the application of those new laws by ensuring their compatibility with development priorities and by improving institutional capacity through targeted capacity building and outreach to all levels of stakeholders.

Similarly, in 2009, the **REPUBLIC OF THE PHILIPPINES** passed the Climate Change Act for mainstreaming climate change into government policy formulations, which also established the framework strategy and programme on climate change and a climate change commission.^b This requires “all relevant government agencies and local government units allocate adequate funds for the formulation, development and implementation, including training, capacity building and direct intervention, of their respective climate change programmes and plans. It shall also include public awareness campaigns on the effects of climate change and energy-saving solutions to mitigate these effects, and initiatives, through educational and training programmes and micro-credit schemes, especially for women in rural areas.”^c Moreover, two government facilities are mandated with “the development and provision of a training programme for local government units in climate change.”^d

WHERE, WHEN AND HOW SHOULD EDUCATION ACTIVITIES TAKE PLACE?

The location of the engagement should cater to the relevant stakeholders by being conveniently located, neutral and where stakeholders will feel comfortable. Sufficient notice must be given for stakeholders to attend the events and holding successive events in multiple locations across the country may be most appropriate. The mode of information dissemination is also very important and alternate modes of communication, printed materials or oral communication, should be considered. Information should also be provided in multiple languages, as appropriate to the national context.

Training key public and private actors

It is important to provide on-the-job training programmes for public and private actors who are critical to the successful implementation and enforcement of the legal reforms on the ground.

TRAINING GOVERNMENT OFFICIALS

Capacity building should provide assistance and easy-to-understand information on the new provisions to a broad range of government officials. Depending on the legal reforms being implemented, technical assistance may also be necessary for the more specialized group of government officials working in that technical area.

Who should be trained? Capacity building and training activities should ideally be undertaken across all levels of government, including on the ground at provincial and local levels where such reforms interact most directly with citizens. Greater skills and knowledge will give credibility to government officers implementing the reforms and will secure more efficient and successful implementation.²⁰

In addition, government officials who will be engaged in discretionary decision-making could be trained in transparent decision-making and reporting. As mentioned in Chapter 2, good legal drafting of legislation and regulation balances enforceability and flexibility by leaving some discretion to government officials to make decisions in individual cases (e.g. the distinction between “may issue” and “shall issue” in legislation covering whether to grant a permit or license. The former grants the government official discretion; the latter mandates that the official must issue a permit if other conditions are filled). To provide transparency and certainty to affected stakeholders in discretionary decision-making processes, government officials should be skilled in providing reasons for their decision, which should be based upon the rules and procedures outlined in the legal instrument in force, and these reasons should be provided to the applicant or made publicly available. Fair and transparent enforcement is important to build confidence in the new legal regime.

TRAINING PRIVATE ACTORS

It may be appropriate to hold joint training workshops for both public and private actors on national legal reform initiatives and, in particular, the issues that impact both sets of stakeholders. Undertaking joint workshops will encourage more proactive engagement among government officials and private

Notes: a. Available at: <http://faolex.fao.org/docs/texts/hon92441.doc>.

b. Available at: <http://faolex.fao.org/docs/texts/phi100134.doc>.

c. Section 18 of REPUBLIC ACT NO. 9729.

d. Section 15 of REPUBLIC ACT NO. 9729.

20 Thomas Krick et al., *From Words to Action: The Stakeholder Engagement Manual: Volume 2: The Practitioner's Handbook on Stakeholder Engagement, Accountability and UNEP*, 2005, p. 87.

actors (e.g. affected businesses).²¹ At these joint workshops, it will make sense to focus the training on issues presented as important by the participants themselves; it is likely that the key issues will include how the initiatives affect the environment for private sector growth, how national laws will be implemented at the local level and how to minimize administrative burdens on the private sector.

Training institutes, including universities and in some cases civil society groups who undertake information dissemination activities, should also be informed of the new laws. These groups should be given ample notice to allow them to adapt their curricula to reflect the new state of the law.

Funding for implementation activities, including capacity building exercises, is often available from the same organizations detailed in Annex 3.

RECAP: WHAT SHOULD BE DONE?

- Host public information events to disseminate information and build awareness of the changes that will occur due to the implementation of Green LECRDS reforms;
- Host workshops for civil society in order to educate on the legal reforms and to build capacity to aid the effective and ongoing implementation of Green LECRDS legal instruments;
- Host private workshops and information sessions with affected private industry sectors to support the effective implementation of new Green LECRDS legal instruments, before they come into effect; and
- Train both public and private actors in the implementation and compliance with new legal instruments.

3.3 Conduct periodic assessments of reform effectiveness based on expert and stakeholder engagement

On a periodic basis, conduct a rigorous assessment of the completed or ongoing legal reforms in order to determine the extent to which they successfully implement Green LECRDS or specific policies. Results will inform an ongoing process of adaption or amendment of legal instruments. It is critical that enforcement and compliance data be gathered to fully inform any proposed adaption. While it is ideal that this assessment be comprehensive, it is also critical to choose an assessment method sustainable over the long term, as the first assessment generally sets a benchmark against which all subsequent assessments will be compared. This comparison is only meaningful if one method or set of methods has been used consistently over time. Two methods of conducting periodical assessments of the reforms based on the evaluation criteria and expert and stakeholder engagement are outlined below.

21 United States Agency for International Development, 'Report on WTO Implementation and Linkages to Regulatory Reform and Rural, Value-Chain Development in Cambodia', 2008, p. 11, available at: <http://egateg.usaid.gov/sites/default/files/WTO%20Implementation%20and%20Linkages%20to%20Reform%20and%20Rural%20Value%20Chains.pdf>.

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Box 3.3: Rate of reform progress

This list is not comprehensive, but rather represents considerations that should be taken into account when assessing the rate of reform progress and the likelihood of long-term success:

- The degree of political support the reform has with stakeholder groups other individuals affected by the reform;
- The degree of cooperation between ministries or organizations responsible for implementing the legislation authorizing the reform; and
- The degree of political stability in the country.

Source: United States Agency for International Development (USAID), 'Recent Practices in Monitoring and Evaluation – TIPS', Center for Development Information and Evaluation, 2000.

Progress assessment and report

Simple reporting is the easiest and most cost effective method of assessing legal reforms, addressing the question, "Are we implementing the reforms we said we would?" This method is recommended as a bare minimum for evaluative purposes.

In this type of reporting, a document is compiled consisting of all legal reforms being undertaken and should include an update on their status. A particular focus is on rates of compliance over time. The status descriptors should be compared against the anticipated timeline for each stage of the reform created in Chapter 2. The report should also forecast the status of each reform for the following year(s), and provide overall comments on the rate of progress (see Box 3.3). A further step would be to report on immediate effects of the reforms, as data availability allows.

Effectiveness assessment and report

The second method of reporting is more complex and involved, addressing the question, "Are we making progress in achieving the results that we said we wanted to achieve in terms of a low-emission climate-resilient future?" This is the preferred evaluation method, and easily adds onto the Progress Assessment and Report method. The choice of reporting method will depend upon available resources.

In the Effectiveness Assessment and Report method, a report is compiled that lists evaluation criteria that will be used to assess legal instruments, correlated with relevant data on progress made towards a low-emission climate-resilient future, collected from monitoring networks. As in the first method, initial results serve as a benchmark and in subsequent reports results are then compared against the initial benchmark.

Evaluation criteria to measure progress

REVIEW THE BIG PICTURE

The evaluation criteria used to assess the effectiveness of legal instruments should pay particular attention to both substantive and situational results. Big picture thinking is once again required to place a programme of legal reforms in the context of threats to social, economic and ecological integrity, allowing the effectiveness of the reform programme to be judged against the best available scientific information and knowledge regarding the state of the environment.

IDENTIFY CRITERIA—INITIAL SCAN

The next step is to identify appropriate criteria by which to assess legal instruments. The ideal, though often difficult to achieve, is accurate local-level measurements of climate change impacts. The oversight body might want to consult external research to identify best practice indicators used in other jurisdictions, as well as consult government staff and stakeholder groups to properly understand what is already being reported. Some potential criteria based on environmental measurements are listed in Box 3.4. The results of this round of initial research on current measurement, monitoring and best practices can be proposed to various data providers who might share their feedback and modifications. In the selection of appropriate criteria, it is important to connect proposed criteria with legal instruments that might impact the criteria.

PRIORITIZE EVALUATION OPTIONS

The list of potential criteria can then be prioritized according to the reliability of available data to inform criteria, cost and effort to acquire data, comparability (i.e. with other jurisdictions), validity (i.e. if the criteria capture the essence of the desired result) and clarity / consistency (i.e. if team members agree on what is being measured).

In prioritizing criteria, it is important to remember that indicators should be used to provide approximate answers to a few important questions rather than seek to provide exact answers to many, less important questions. For benchmarking purposes, a series of key or core criteria may be appropriate, complemented by additional criteria in specific sectoral areas. Balance is key, in order to prevent the process of monitoring various criteria from appearing too onerous. This is important because, in some cases, new data gathering systems may need to be developed for certain important criteria.

CREATE DEFINITIONS AND REQUIREMENTS FOR DATA COLLECTION

Once prioritized, the oversight body should develop operational definitions for each of the selected criteria and define minimum standards for data collection.

Box 3.4: Criteria to measure low-emission climate resiliency

In a low-emission climate-resilient future, economies will have reduced their dependence on fossil fuel consumption, reduced transport needs and remained conscious of how demands on key resources such as water, soil and renewable energy sources are shifting through changing climatic conditions. The following indicators, developed by the Organisation for Economic Co-operation and Development, give a succinct picture of key aspects of climate resiliency. They were selected for their Green LECRDS relevance, their analytical soundness and their measurability.

- | | | |
|--|--|---|
| <ul style="list-style-type: none"> ■ Climate change <ul style="list-style-type: none"> • Carbon dioxide and greenhouse gas emission intensities ■ Ozone layer <ul style="list-style-type: none"> • Presence of ozone depleting substances ■ Air quality <ul style="list-style-type: none"> • Sulphur dioxide and nitrogen oxides emission intensities ■ Freshwater resources <ul style="list-style-type: none"> • Intensity of use of water resources • Susceptibility to disaster-related changes • Changes in water supply and quality • Increased competition for supplies | <ul style="list-style-type: none"> ■ Forest resources <ul style="list-style-type: none"> • Intensity of use of forest resources • Increases in forest fires and other damages • Changes in forest compositions and geographic range • Forest health and productivity ■ Energy resources <ul style="list-style-type: none"> • Intensity of energy use ■ Agriculture and agri-food <ul style="list-style-type: none"> • Disaster-related damages • Irrigation requirements • Crop yields • Crop diseases and infestations | <ul style="list-style-type: none"> ■ Coastal areas <ul style="list-style-type: none"> • Flooding of coastal lands and communities • Damage to coastal infrastructures • Shore erosion ■ Environmental pollution <ul style="list-style-type: none"> • Natural disaster-related spills and releases of pollutants into air, water and land systems ■ Health <ul style="list-style-type: none"> • Weather-related disaster mortality • Rates of infection and epidemics • Rates of respiratory diseases related to poor air quality |
|--|--|---|

Source: Organisation for Economic Co-operation and Development, 'OECD Environmental Indicators'. 2001.

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Box 3.7: Sample table of contents for the Legal Monitoring Plan

- I. Introduction and Rationale
- II. General Criteria for an Effective Monitoring Plan, Including:
 - a. Statement of what is monitored and why
 - b. Consistent and systematic approach
 - c. Clear accountability structure
 - d. Third party verification
 - e. Commitment to public reporting of results
 - f. Process for applying results to the continuous improvement of legal reforms
- III. Implementation Work Plan and Timeline
- IV. Implementation Responsibilities
- V. Process for Disseminating Reforms
- VI. Training Programmes for Government Officials and Private Actors
- VII. Assessment Reporting
 - a. Progress reporting
- VIII. Adaption of the Timeline for Reforms
- IX. Effectiveness Reporting
 - a. Evaluation criteria
 - b. Data collection
 - c. Using the data
 - d. Recommendations to re-prioritize and adapt reforms based on effectiveness
- X. Conclusion

Evaluating results for desired progress

GATHER AND ORGANIZE ALL RELEVANT DATA

Relevant data is collected from universities, scientists and other monitoring networks. As discussed above, data is gathered and organized according to established criteria and communicated with reference to the state of the environment and its drivers. Criteria are also correlated with those legal instruments intended to generate progress towards the relevant environmental indicator (e.g. deforestation policies should be correlated with the forest resources criteria).

PRESENT WORKSHOP RESULTS TO STAKEHOLDERS

Stakeholder engagement, such as in the fora of sectoral workshops, national consultations or public open comment periods, is helpful to take advantage of unique perspectives, experiences and knowledge related to the results of established criteria. Stakeholders are best positioned to answer questions on a local level, such as who is affected and where? What do they value? What are their points of view on a particular risk represented by results? Overall, the question to be addressed is how legal reforms might be adapted or developed to produce better results.

EVALUATE REFORM EFFECTIVENESS AND ADAPT REFORMS

In evaluating reform progress, legal instruments forming the legal reform programme are considered against appropriate data. An important role of the information provided through this data is to support feedback loops within a decision-making system. Those legal instruments not generating intended results for the state of the environment may need to be adapted for greater effectiveness, or an option may exist to reverse the reform should it be found to be maladaptive.

The oversight body must decide whether to accelerate the progress of each instrument and the method best suited to do so. Alternately, the oversight body can choose to do nothing—or even pull back on certain reform processes if the reforms are facing significant barriers.

Overall, this step points to the need for decision makers to be aware at the design stage that legal reforms should to be designed for rapid adjustment in response to new information.

UNDERSTAND AND INCORPORATE CHANGING RISKS

Information that helps identify and characterize climate risks is important to the evaluation of a programme of legal reforms. Decision makers need to understand what is happening (or what may happen) and who (or what area) is affected. However, characterizing risk is insufficient—risks will ultimately need to be prioritized. The prioritization process requires a different set of information, including insight into stakeholder preferences and information on options, costs, benefits and available resources to address risks. Some ongoing form of risk assessment and prioritization should be incorporated into the evaluative process to help the oversight body understand the urgency of certain outcomes and to build in the flexibility to re-prioritize certain legal reforms as needed.

REVIEW EVALUATION CRITERIA

In recognition of the dynamic nature of the implementation of legal reforms, the evaluation criteria themselves should be regularly reviewed and refined in order to ensure their continued relevance.

RECAP: WHAT SHOULD BE DONE?

- Mandate an institution to oversee the measurement, reporting and verification process and endow this institution with appropriate monitoring, inspection and verification powers;
- Build a monitoring and measuring network, including civil society and other third parties, in order to aid in the collection of relevant data;
- Establish reporting mechanisms and disseminate requirements to affected stakeholders;
- Hire third-party, independent bodies to verify reported data in line with predetermined criteria;
- Report on reform effectiveness frequently and using a consistent method; and
- Adapt legal instruments if they are not achieving desired results.

Conclusion

Chapter 3 outlined the processes decision makers should follow to monitor, measure, validate and report on the outcomes of the legal reforms implemented, and how to disseminate such results and use them to further adapt legal instruments as necessary to move the country in the direction of a successful low-emission climate-resilient future. The processes described continue to engage stakeholders and members of the task force through the oversight agency. The Legal Monitoring Plan described above provides a tool for communicating and disseminating the implementation of the reforms, as well as analysing their progress and effectiveness.

**THREE STEPS
OF LEGAL
ASSESSMENT
AND REFORM****1 ASSESS**

the legal frameworks and instruments required for successful implementation of Green LECRDS

2 SELECT

appropriate legal instruments for Green LECRDS to undertake a legal reform process

3 IMPLEMENT

monitor and adapt legal instruments

Chapter 4: Overall conclusion

Critical elements of an effective legal and regulatory reform process for Green LECRDS

There are a number of crucial elements without which Green LECRDS implementation process cannot be realized:

“

The roadmap presented here is intended to guide decision makers to a culmination of this work, resulting in a reformed legal and regulatory system based on green growth, a low-emission future and resilience to climate change impacts.

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- Ensuring that decision makers keep a clear and concise vision of the goal, purpose and objectives of Green LECRDS will constantly guide the implementation process in the right direction.
- Securing high-level public and private actors' political support and commitment to lead the reform process, identifying the available resources and budget and remaining vitally engaged and proactive during implementation, monitoring and assessment of the Green LECRDS will offer the best chance for success.
- Maintaining the sustained engagement of a wide range of stakeholders across Green LECRDS sectors will contribute to the effectiveness, legitimacy and public support of the legal and regulatory reform process towards a low-emission climate-resilient future.
- Assessing existing legal and regulatory instruments across various sectors relevant to Green LECRDS, including their implementation, compliance and enforcement will help to identify gaps, challenges, barriers, risks, benefits and opportunities for Green LECRDS. The resulting Legal Assessment Report should be validated through expert and stakeholder engagement.
- Considering country-specific needs and circumstances such that the legal and regulatory reforms undertaken are prioritized and appropriate to a country's current context will result in a Green LECRDS Roadmap that acknowledges the financial and human resources and time available and country's unique political and social climate.
- Integrating the Legal Action Plan into concrete legal reforms must be carried out according to domestic legislative procedural requirements, with the approval of relevant decision makers and with the support of experts and stakeholders. According to the agreed regulatory framework, legislation should be drafted to ensure clarity, coherence, enforceability and flexibility.
- Implementing legal reform alone does not guarantee realization of a country-specific low-emission climate-resilient future. Large-scale legal reforms such as Green LECRDS require continual critical review and modification to verify the effectiveness of the legal reform programme. Developing a Legal Monitoring Plan will provide guidance to decision makers on ensuring that the Green LECRDS legal reforms are implemented and, as necessary, adapted in an effective and sustainable manner.
- Establishing a transparent, inclusive and accountable decision-making, measuring, reporting and verifying, monitoring and reviewing process should foster responsible and transparent action on the part of governments and citizens that will maintain confidence in the new legal regime.

This Guidebook builds on existing climate information, financing plans and stakeholder mobilization efforts to implement the work of many years. The roadmap presented here is intended to guide decision makers to a culmination of this work, resulting in a reformed legal and regulatory system based on green growth, a low-emission future and resilience to climate change impacts.

Bibliography

AusAID, 'Vietnam: Legal and Judicial Development', Working Paper 3, Australian Government Overseas Aid Program, 2000.

Paula Castro et al., 'Solving the MRV challenge for new market-based mechanisms: What can past experience teach us?', Oeko-Institute (Institute for Applied Ecology), Discussion Paper 23, 23 November 2011.

Christa Clapp, Gregory Briner and Katia Karousakis, 'Low-Emission Development Strategies (LEDS): Technical, Institutional and Policy Lessons', Organisation for Economic Co-operation and Development, 2010.

Barry Dalal-Clayton and Steve Bass, 'The Challenges of Environmental Mainstreaming: Experience of Integrating Environment into Development Institutions and Decisions', International Institute for Environment and Development, 2009.

David C. Elliott, various articles on Legislative Drafting and Plain Language, 1997 onwards, available at: <http://www.davidelliott.ca/>.

Karen Ellis, Bryn Baker and Alberto Lemma, 'Policies for Low-Carbon Growth', Overseas Development Institute, November 2009.

European Union, 'Joint Practical Guide of the European Parliament, the Council and the Commission for Persons Involved in the Drafting of Legislation Within the Community Institutions', Office for Official Publications of the European Communities, 2003.

Liliana Fernanda Del Villar Arias, 'Preparación jurídica para el cambio climático y el fomento al desarrollo rural en México', 2011, available at: <http://www.idlo.int/Publications/MEXICOClimatechange.pdf>.

Liliana Fernanda Del Villar Arias, Juan Carlos Carrillo and Gustavo Alanis, 'Preparación jurídica para el cambio climático y el fomento al desarrollo rural en México: Documento de divulgación', 2011, available at: <http://www.idlo.int/Publications/MEXICOClimateChangeDivulgacion.pdf>.

International Law Institute, 'Training Programs' (including Workshops on Legislative Drafting), available at: <http://www.ili.org/training.html>.

Thomas Krick et al., *From Words to Action: The Stakeholder Engagement Manual: Volume 2: The Practitioner's Handbook on Stakeholder Engagement, Accountability and United Nations Environment Programme*, 2005.

Christopher James McGrath, 'How to Evaluate the Effectiveness of an Environmental Legal System', Ph.D. paper for Queensland University of Technology, 2007.

Organisation for Economic Co-operation and Development, *OECD Environmental Indicators 2001: Towards Sustainable Development*, 2001, available at: <http://www.oecd.org/dataoecd/37/1/33703867.pdf>.

Kenneth L. Rosenbaum, 'Legislative Drafting Guide: A Practitioner's View. A Resource for People Working On International Technical Assistance Projects', Legal Papers Online #64, Food and Agriculture Organization of the United Nations, February 2007, available at: http://www.fao.org/fileadmin/user_upload/legal/docs/lpo64.pdf.

United Nations Development Programme (UNDP), 'Multi-Stakeholder Decision-Making', 2012.

UNDP, 'Applying Climate Information for Adaptation Decision-Making: A Guidance and Resource Document', 2011.

UNDP, 'Catalysing Climate Finance – A Guidebook on Policy and Financing Options to Support Green, Low-Emission and Climate-Resilient Development', March 2011.

UNDP, 'Formulating Climate Change Scenarios to Inform Climate-Resilient Development Strategies', April 2011.

UNDP, 'Preparing Low-Emission and Climate-Resilient Development Strategies (LECRDS) – Executive Summary', April 2011.

UNDP, 'Technology Needs Assessment Handbook', November 2010.

UNDP, 'Mapping Climate Change Vulnerability and Impact Scenarios – A Guidebook for Sub-national Planners', November 2010.

UNDP, 'Toolkit for Designing Climate Change Adaptation Initiatives', 2010.

UNDP, 'Applying Climate Information for Adaptation Decision-Making: A Guidance and Resource Document', 2009.

UNDP, 'Charting a New Low-Carbon Route to Development: A Primer on Integrated Climate Change Planning for Regional Governments', June 2009.

UNDP, 'Managing the National Greenhouse Gas Inventory Process', National Communications Support Programme, 2005.

UNDP, 'National Capacity Self-Assessment Resource Kit', 2005.

UNDP Indonesia, 'Enhancing Communication, Advocacy and Public Participation Capacity for Legal Reform (CAPPLER)', November 2008, available at: <http://www.undp.or.id/humanrights-justice/>.

United Nations Environment Programme, 'Guidebook on National Legislation for Adaptation to Climate Change', 2011.

United States Agency for International Development (USAID), 'Recent Practices in Monitoring and Evaluation – TIPS', Center for Development Information and Evaluation, 2000.

University of Johannesburg, 'Faculty of Law, Certificate in Legislative Drafting', 2011, available at: <http://www.uj.ac.za/EN/Faculties/law/coursesandprogrammes/Documents/Legislative%20Drafting%20Web%202011.pdf>.

University of London, Institute of Advanced Legal Studies, 'Legislative Drafting Course', available at: http://ials.sas.ac.uk/postgrad/courses/cls_legislative_drafting_course.htm.

USAID, 'Report on WTO Implementation and Linkages to Regulatory Reform and Rural, Value-Chain Development in Cambodia', 2000.

World Resources Institute, 'Governance of Forests Initiative Toolkit', 2009.

Annex 1: Examples of overarching Green LECRDS policies for national and sub-national governments by sector

Sector	Region	Development trajectories for low greenhouse gas emissions	Legal framework
Energy	Basque Country, Spain	Target to improve the energy efficiency of the European Emissions Trading Scheme (EU-ETS) covered industrial sector by 13.5 percent and 6 percent for non-covered industries by 2010 Target to decrease the energy intensity of the residential and commercial sectors by 4 percent by 2012	(Law 82/80 of 30 November, Energy conservation provision to Law 54/1997, Electric Power Act, which establishes a Development Plan for Renewable Energies to ensure that by 2010 renewable energy sources covering at least 12 percent of total energy demand in Spain) ¹ Spanish Energy Efficiency and Savings Strategy - 4E ² calls for the promotion of technological change, encouraging the use of renewable energy sources and improving energy efficiency (Development Plan Renewable Energy, 1999) and Energy Plan adopted in October 2002, liberalization of gas and electricity, economic incentives and efficiency savings for both supply and demand, enhancing the market entry of biofuels in transport, more efficient production processes to enhance competitive advantages, reduced emissions, reduced energy bill Basque Plan Against Climate Change ³ , Basque Environmental Strategy for Sustainable Development 2002-2020 ⁴ , Spain's 2008-2012 National Plan for the Allocation of Greenhouse Gas Emissions Rights (NAP 2008-2012) which establishes the total volume of rights allocated to each sector and facilities, including the electric sector ⁵ , see policy summary ⁶
	Carriacou, Grenada⁷	Target of converting 30 percent of electricity generation to renewable energy by 2014 (10 mw) using geothermal energy, and to produce 10 percent of electricity from solar energy, installation of a 2mw wind turbine. ⁸	National Energy Policy ⁹ , National Environmental Strategy And Action Plan, 2007 National Climate Change Policy and Action Plan ¹⁰ , Grenada Electricity Services Ltd. (GRENLEC), the sole electricity provider, Interconnection Policy which provides guidelines for the interconnection of renewable energies to the company's grid ¹¹
	Flanders municipality, Belgium	Target of 6 percent of renewable energy sources in electricity production by 2010 (Indicative Target set by the RES- electricity European Directive from 2001, Directive 2007/71/EC). Savings target of 9 percent in final energy consumption to be realized in 2016 and an intermediate target of 3 percent in 2010.	Flemish Energy and Natural Resources Policy¹² of 2004 and 2009 stipulated that by 2010, 25 percent of the electricity supplied in Flanders had to be generated by RES and cogeneration. Specifically, for renewable energy from wind, biomass and solar, the energy policy defines a 6 percent target. The remaining 19 percent must be generated by Cooling Heating and Power Plants, see also Flanders Action Plan- MAIN POLICY INSTRUMENTS: Quota obligations, Green certificates Price, Investment support schemes (subsidies) for RES-e, Obligatory targets have been set (obligation for all electricity suppliers to supply a specific proportion of RES-E) and guaranteed minimum prices or 'fall back prices' ¹³
	Nova Scotia, Canada¹⁴	Obtain 18.5 percent of Nova Scotia's total electricity needs from renewable sources by 2013 (Environmental Goals and Sustainable Prosperity Act ¹⁵)	Nova Scotia Renewable Energy Standard (2007)¹⁶ requires Nova Scotia Power Inc. to generate an additional 10 percent of its electricity, by 2013, from renewable sources created after 2001, raising the renewable portion of the electricity supply to a minimum of 18.5 percent (Renewable Electricity Regulations/ Renewable Energy Standard Regulations. The Renewable Electricity Plan 2010 commits the 2015 target of 25 percent renewable electricity to law, for example by splitting renewable electricity projects evenly between the state-run and Independent Power Producers; establishing a community-based feed-in tariff for renewable electricity projects connected to the grid at the distribution level and introducing programs to assist community groups in the technical, financial, and regulatory work; expanding the current net metering programme available to consumers; encourage the use of locally-produced natural gas; and \$1.5 billion in green investment, etc. ¹⁷ See other examples ¹⁸

Sector	Region	Development trajectories for low greenhouse gas emissions	Legal framework
Energy	Sao Paulo, Brazil	Promote the elimination of fossil fuel subsidies while incentivizing decentralized, renewable energy generation Sao Paulo State Policy on Climate Change (city council law 14.933) aims to reduce Sao Paulo's city-wide greenhouse gas emissions by 30 percent of 2005 levels by 2012 through measures focused on transportation, renewable energy, energy efficiency, waste management, construction and land use. ¹⁹	Sao Paulo State Policy on Climate Change (city council law 14.933) ²⁰ , Article 4 (Objectives). The specific objectives of the State Policy on Climate Change are: IV. to carry out actions to increase the share of renewable sources in the energy matrixes within and outside the State. Article 11 ...the following initiatives, among others, must be taken into consideration in the areas of: III. energy conservation that encourages efficient in production and final use; IV. renewable energies, notably solar and bioenergy; ²¹ Climate Change Policy in São Paulo aims to reduce Sao Paulo's citywide greenhouse gas emissions by 30 percent of 2005 levels by 2012 through several measures, such as adopting new options to meet the energy needs of users and attract investments for the installation of equipment and the sale of surplus energy promoting the installation of distributed generation units; creating incentives for the adoption of new energy sources; evaluation of new Cogen & Trigen technologies to generate electrical energy, heat and cold; studying mechanisms to promote the generation and decentralized use of energy and cogeneration systems (Decree Nº 52.209, of March 24, 2011); this also includes the development of fiscal and financial incentives to research about energy efficiency and green products and incentives for the use of renewable energy sources (city council law 14.933, Section II Energy, Article 7, II – “promotion of efforts in all spheres of government to eliminate of subsidies on fossil fuels and provide incentives for the generation and the use of renewable energy” ²²) See also National Legislation Relevant to Climate Change on Energy ²³
	Brittany region of France	Promote train transportation to reduce car traffic and GHG emissions Case study of private-public partnership (PPP) operation in France ²⁴	European Commission approved operational programme for the region of Brittany in France for 2007-2013 to extend existing high-speed line from Paris to enhance accessibility to the most westerly parts of France. It is consistent with the undertakings emerging from the Grenelle Environment Forum namely 2,000 km of new high-speed railway lines by 2020. ²⁵ For its implementation, this high-speed line was declared in the public interest to opt for a public-private partnership contract; bids were scored on the basis of the five criteria of cost, financial robustness, technical and environmental quality of the project, line construction times and involvement of SME. ²⁶ By 2013, the programme is expected to increase the percentage of travellers using rail (between Brittany and Ile-de-France) from 43.5 to 48.5 percent; limit greenhouse gas emissions (CO2 and equivalent) to 100kT; increase the percentage of commuters using public transport from 3.4 percent (in 1999) to 5 percent; achieve a 5 percent average annual growth rate in metropolitan area employment. (Operational programme 'Brittany' under the Regional Competitiveness and Employment Objective, co-financed by the European Regional Development Fund ²⁷ . See also EU/EC Structural Funds Regulations 2007-2013 ²⁸)
	California, United States of America	10 percent reduction in the carbon content of the state's transportation fuels (Low Carbon Fuel Standard, 2006; see also Global Warming Solutions Act of 2006 ²⁹)	The fuel standard aims to reduce the state's greenhouse gas emissions (by 15 million metric tonnes) to the 1990 levels by 2020 and decrease dependency on petroleum by regulating emissions from a variety of sources, from oil and gas refining to electric power generation; requiring utilities to increase the amount of renewable electricity; mandate the use of lower emissions transportation fuels; suppliers to cut carbon emissions. Implementation Rules drafted by California Air Resources Board (ARB's Low Carbon Fuel Standard Program) went into effect early 2010 ³⁰ Starting January 1, 2011 and for each year thereafter, a regulated party must meet the average carbon intensity requirements set forth in Table 1 and Table 2 of this section for its transportation gasoline and diesel fuel, respectively, in each calendar year. ³¹
Transport	Sao Paulo, Brazil	Reduce fossil fuel used in public transit by 10 percent per year, with all city fleets running on renewable fuels by 2017	Sao Paulo State Policy on Climate Change (city council law 14.933) ³² Four main objectives of Sao Paulo STATE POLICY ON CLIMATE CHANGE ³³ : to give priority to public transportation, non-motorized transportation and to changing the energy matrix and the use of renewable fuels and clean energy , and to implement measures to improve efficiency and expand intermodal integration. ³⁴ Article 15 Sustainable Transport, for example, paragraph XXV, adaptation of the energy matrix by, among other methods: a) improved fuel quality; b) transition to source with a lower environmental impact; c) energy conservation; etc. São Paulo Climate Change Action Plan: Improve the quality of the vehicle fleet of collective public transportation, by improving comfort, accessibility, energy efficiency and the use of renewable and clean technologies Improve the indicators for quality, health, energy efficiency and comfort to be used in the purchase of new vehicles. ³⁵ Amyris to Supply São Paulo City Buses with Renewable Diesel from Sugarcane, 160 of which will run on a blend of 10 percent renewable (sugarcane-based) diesel, to help meet the city's target of reducing fossil fuel use in the public transit system. ³⁶ See also Sao Paulo Sustainable Transport Plan (no reference found to development trajectory) ³⁷

Sector	Region	Development trajectories for low greenhouse gas emissions	Legal framework
Transport	Vancouver City Transportation Implementation Plan (British Columbia, Canada)	<p>To implement a comprehensive plan for ensuring that Vancouver's city centre remains a thriving commercial centre and a pleasant place to visit.</p> <p>To facilitate increased travel downtown without increasing road capacity on existing bridges and roads.</p> <p>To promote transit, walking and cycling while minimising congestion.</p> <p>Green Transportation, Goal 4: Make walking, cycling, and public transit preferred transportation options. 2020 Targets:</p> <p>Target #1: Make the majority of trips (over 50 percent) on foot, bicycle, and public transit. Target #2: Reduce distance driven per resident 20 percent from 2007 levels. See Greenest City 2020 Action Plan (GCAP)³⁸,</p>	<p>Greenest City 2020 Implementation Plan 2010³⁹</p> <p>Make Streets Safer for Pedestrians and Cyclists (Action 24): identify and seek approval for trial routes for protected bike lanes, implementation of 30-km/h speed limits on local street bikeways (street sign installation), approved snow and ice treatment for all bicycle routes in the city and required snow and ice clearance of all sidewalks to improve pedestrian safety, bike lane reallocation, reducing speed limits to 40km/hr requires change to Provincial Motor Vehicle Act; Create a Public Bike Sharing Program (Action 25); Enable Electric Mobility (Action 26): requirements for multi-family buildings, pilot public charging station; discounted parking rates to electric plug-in vehicles; procure electric vehicles for city use; build on Olympic Transportation Initiatives (Action 27); Conduct Car-Free Vancouver Trials (Action 28); Advocate for Investments in Public Transit (Action 29), etc.</p> <p>Highest Priority Actions:</p> <ol style="list-style-type: none"> 1. Update the City's transportation plan and develop a more detailed active transportation master plan 2. Develop a pedestrian safety study and action plan to identify opportunities to improve safety through engineering, education, and enforcement measures. 3. Support transportation and active transportation planning with land use policies that enable the City to meet mobility targets. 4. Continue to work with partners to deliver high capacity, fast, frequent, and reliable rapid transit 5. Launch a public bicycle sharing programme. <p>Strategies to 2020:</p> <ol style="list-style-type: none"> 1. Land Use: support shorter trips and sustainable transportation choices through mixed land use, pedestrian oriented design, transit supportive densities, and new housing choices that put the majority of residents close to jobs, schools, recreation and transit. 2. Walking and Cycling: make active transportation choices such as walking and cycling feel safe, convenient, comfortable and fun for people of all ages and abilities. 3. Transit: support transit improvements to increase capacity and ensure service that is fast, frequent, reliable, fully accessible, and comfortable. 4. Demand Management: advance policies that help reduce automobile usage and ownership. 5. Low Carbon Vehicles: accelerate the shift to low- and zero emissions vehicles. 6. Goods Movement: work with partners to develop a sustainable urban goods movement strategy that supports a growing economy while reducing GHG emissions related to goods movement through and within Vancouver.
	California, United States of America	<p>All new residential construction will be zero net energy by 2020.</p> <p>All new commercial construction will be zero net energy by 2030.</p> <p>(The Green Building Initiative aims to increase energy efficiency in state facilities 20 percent by 2015⁴⁰)</p>	<p>2008 Building Energy Efficiency Standards for Residential and Nonresidential Buildings⁴¹ went into effect January 1, 2010, including the 2008 Residential Compliance Manual⁴² and the 2008 Non-residential Compliance Manual^{43, 44}</p> <p>See Green Building Basics which establish environmental requirements, such as guidelines for: Energy, Materials, Water efficiency, Indoor air quality, Nontoxic performance standards for cleaning and maintenance products, Sustainable site planning and landscaping considerations⁴⁵</p>
	New South Wales, Australia	The NSW Government has committed to reduce emissions from building energy use to 2000 levels by 2020	NSW Government Sustainability Policy ⁴⁶ sets targets and strategies for the NSW Government to lead by example in sustainable water use, reducing greenhouse gas emissions from building energy, fleet management, sustainable purchasing and reducing waste. The Policy provides an important step for the Government to meet its commitment of becoming carbon-neutral by 2020. Targets: Greenhouse gas emissions from building energy use, State-wide target to return greenhouse gas emissions from building energy use to 2000 levels (1.5 million tonnes) by 2019/20.
Building and construction	Sao Paulo, Brazil	Develop new energy efficiency, sustainability and material quality regulations with which newly constructed or renovated buildings must comply to receive necessary permits	<p>Sao Paulo State Policy on Climate Change (city council law 14.933)⁴⁷ Article 11. [...] the following initiatives, among others, must be taken into consideration in the areas of:</p> <p>Civil construction in all its stages, promoting, among other things, the reduction of losses, technical norms that assure product performance and quality, the use of recycled materials and solar energy, charging for the use of material whose extraction created environmental impacts and costs borne by society as a whole.⁴⁸</p> <p>Construction: Develop new energy efficiency, sustainability and material quality regulations with which newly constructed or renovated buildings must comply to receive necessary permits; Develop new efficiency and green space guidelines for all new public use construction; Allow only legally harvested, certified wood to be used in municipal construction⁴⁹</p>

Source: The Climate Group, States and Regions Programme, <http://www.theclimategroup.org/programmes/states-and-regions/land-use/>, and UNDP, 'Charting a New Low-Carbon Route to Development', 2009.

Notes

- 1 http://noticias.juridicas.com/base_datos/Admin/I54-1997.t10.html#dt10; http://www.cne.es/cne/doc/legislacion/NE_LSE.pdf
- 2 <http://www.mityc.es/energia/desarrollo/EficienciaEnergetica/Documents/AprobacionEstrategia.pdf>
- 3 http://www.ingurumena.ejgv.euskadi.net/r49-11293/en/contenidos/plan_programa_proyecto/plan_cambio_climatico/en_cc/adjuntos/pvlcc.pdf; see also http://www.ingurumena.ejgv.euskadi.net/r49-11293/en/contenidos/plan_programa_proyecto/plan_cambio_climatico/en_cc/plan.html
- 4 http://www.ingurumena.ejgv.euskadi.net/r49-11293/en/contenidos/plan_programa_proyecto/plan_cambio_climatico/en_cc/adjuntos/pvlcc.pdf
- 5 Enacted through Royal Decree 1402/2007 amending Royal Decree 1370/2006, see <http://www.endesa.com/en/nuestrocompromiso/PoliticaSostenibilidad/PlanDeEndesa/retos/RetoCambioClima/Paginas/PlanNacAsignacion.aspx>; see original text http://www.mma.es/secciones/cambio_climatico/documentacion_cc/normativa_cc/pdf/acu_cmasi_ind_pna2.pdf
- 6 Spanish climate change policy, <http://www.bcn.cat/climatechange/en/politiques-espanyoles.html>
- 7 Grenada established a specialized energy desk within the government in 2003, with the Ministry of Agriculture, Land, Forestry, Fisheries, Public Utilities, Energy and the Marketing and National Importing Board (MNIB) responsible for the energy sector and the formulations of policies. See http://www.acp-cd4cdm.org/media/283535/dna_grenada.pdf, p. 40.
- 8 http://www.acp-cd4cdm.org/media/283535/dna_grenada.pdf
- 9 http://www.gov.gd/egov/docs/other/GNEP_Final_Nov_23_2011.pdf; http://www.sepa-america.net%2Fdescarga.php%3F%3Ddata%2Festadisticas%2F41.pdf%26a%3DOASGrenada_HRprint.pdf&ei=a61OT5GNGuGM4gSk5W1Bw&usg=AFQjCNHFKXsexutTGcbpEs5A7WXBcgiaA
- 10 <http://www.gov.gd/>
- 11 <http://www.grenlec.com/index.php/corporate-information/history/grenada.html>; http://www.acp-cd4cdm.org/media/283535/dna_grenada.pdf, p. 44. See also Caribbean Solar Finance Programme (CSFP)
- 12 Flemish Region Action Plan 2004-2009, <http://www2.vlaanderen.be/economie/energiesparen/milieuvriendelijke/ActieplanMVRE2008-2009.pdf>; http://www.google.de/url?sa=t&rct=j&q=flanders%20renewable%20energy%20sources%20in%20electricity%20production&source=web&cd=2&ved=0CDgQFjAB&url=http%3A%2F%2Fwww.ep.liu.se%2Fecp%2F057%2Fvol12%2F002%2Fecp57vol12_002.pdf&ei=nVNNT-XLOyJE0QXgytmeBQ&usg=AFQjCNEPWW-4RTLKgrBopSnYMHg1nik4w
- 13 http://www.google.de/url?sa=t&rct=j&q=flanders%20renewable%20energy%20sources%20in%20electricity%20production&source=web&cd=1&ved=0CC4QFjAA&url=http%3A%2F%2Fwww.erec.org%2Ffileadmin%2Ferec_docs%2FProjcet_Documents%2FRES2020%2FBELGIUM_RES_Policy_Review_09_Final.pdf&ei=nVNNT-XLOyJE0QXgytmeBQ&usg=AFQjCNFUQA7OFurl5TNCq8uCFWUVSbZBZA; http://www.energy.eu/renewables/factsheets/2008_res_sheet_belgium_en.pdf
- 14 See Government of Nova Scotia, List of Acts and Regulations, <http://www.gov.ns.ca/energy/rules-regulations/acts-regulations.asp>.
- 15 http://www.gov.ns.ca/tenders/policy/pdf_files/2020FactSheet.pdf
- 16 O.I.C. 2007-42 (January 22, 2007), N.S. Reg. 35/07. Effective February 1, 2007. Amendment No. 1 - OIC 2007-569 (October 30, 2007), N.S. Reg. 416/2007, <http://www.gov.ns.ca/just/regulations/regs/elecrenew.htm>
- 17 <http://www.gov.ns.ca/energy/resources/EM/renewable/renewable-electricity-plan.pdf>, <http://www.gov.ns.ca/energy/renewables/renewable-energy-standard/>
- 18 The proposed national Reduction of Carbon Dioxide Emissions from Coal-Fired Generation of Electricity Regulations will set a stringent performance standard for new coal-fired units and those that have reached the end of their useful life. This will phase out high-emitting coal-fired generation and promote a transition towards lower- or non-emitting types of generation such as high-efficiency natural gas, renewable energy, or fossil fuel-fired power with carbon capture and storage. Draft regulations to reduce GHGs from the electricity sector have not yet been published in Canada Gazette, see <http://gazette.gc.ca/rp-pr/p1/2011/2011-08-27/html/reg1-eng.html>; Regulations are scheduled to come into effect on July 1, 2015. <http://ecoaction.gc.ca/news-nouvelles/20100623-2-1-eng.cfm>, <http://ecoaction.gc.ca/news-nouvelles/20100623-2-eng.cfm>. Renewable Fuel Regulations, requiring an average renewable fuel content of five percent in gasoline, starting December 15, 2010, <http://www.gazette.gc.ca/rp-pr/p2/2010/2010-09-01/html/sor-dors189-eng.html>, see also <http://ecoaction.gc.ca/news-nouvelles/20100901-1-eng.cfm> and the ecoENERGY for Renewable Power Program: <http://ecoaction.gc.ca/ecoenergy-ecoenergie/power-electricite/index-eng.cfm>.
- 19 <http://www.nossasaopaulo.org.br/portal/files/LeiClima.pdf>; http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf; see also Guidelines for the Action Plan of the City of São Paulo for Mitigation and Adaptation to Climate Change.
- 20 <http://www.nossasaopaulo.org.br/portal/files/LeiClima.pdf>; draft translation: http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf; see also Guidelines for the Action Plan of the City of São Paulo for Mitigation and Adaptation to Climate Change.
- 21 http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf
- 22 Law No. 14,933, JUNE 5, 2009, Bill No. 530/08, <http://www.nossasaopaulo.org.br/portal/files/LeiClima.pdf>; http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf; see also Guidelines for the Action Plan of the City of São Paulo for Mitigation and Adaptation to Climate Change, <http://live.c40cities.org/storage/Sao%20Paulo%20bilingue%20-%20maio%202011.pdf>.
- 23 <http://www.mct.gov.br/index.php/content/view/20888.html>
- 24 <http://www.eib.org/projects/press/2011/2011-122-france-552-5-millions-deuros-pour-la-ligne-a-grande-vitesse-bretagne-pays-de-la-loire.htm>
- 25 <http://www.europeanrailwayreview.com/7997/rail-industry-news/brittany-loire-valley-high-speed-line-rff-selects-eiffage/>
- 26 <http://www.europeanrailwayreview.com/7997/rail-industry-news/brittany-loire-valley-high-speed-line-rff-selects-eiffage/>
- 27 http://ec.europa.eu/regional_policy/country/prordn/details_new.cfm?LAN=7&gv_PAY=FR&gv_reg=ALL&gv_PGM=1146&gv_defl=9
- 28 http://ec.europa.eu/regional_policy/information/legislation/index_en.cfm
- 29 http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0001-0050/ab_32_bill_20060927_chaptered.pdf, http://www.energy.ca.gov/low_carbon_fuel_standard/
- 30 Pursuant to the California Assembly Bill AB 32 and the Governor's Executive Order S-01-07, see <http://www.arb.ca.gov/fuels/lcfs/lcfs.htm>, <http://www.arb.ca.gov/regact/2009/lcfs09/lcfscombofinal.pdf>. However, the Low Carbon Fuel Standard regulation is currently being amended and was ruled to be in violation of federal law on interstate commerce because it discriminates against out-of-state fuels in a U.S. District Court in December 2011, see <http://www.nytimes.com/2011/12/30/us/judge-blocks-californias-low-carbon-fuel-standard.html>.
- 31 <http://www.arb.ca.gov/regact/2009/lcfs09/lcfscombofinal.pdf>
- 32 <http://www.nossasaopaulo.org.br/portal/files/LeiClima.pdf>; draft translation: http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf; see also Guidelines for the Action Plan of the City of São Paulo for Mitigation and Adaptation to Climate Change.
- 33 São Paulo city council law 14.933, http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf
- 34 Measures include the integration of transportation planning and urban planning; making the supply of transportation compatible with population distribution; investments in subways, trains and exclusive bus corridors (medium and high capacity transportation); integrating modes of transportation, such as by linking the São Paulo subway to the regional train system to buses, and offering new transportation alternatives such as bicycle lanes; improvement of mobility by improving the speed, regularity, accessibility

- and comfort of buses; improve sidewalk conditions on the main pedestrian routes; improve the entire system of traffic signals, control and monitoring. See Guidelines for the Action Plan of the City of São Paulo for Mitigation and Adaptation to Climate Change.
- 35 See Guidelines for the Action Plan of the City of São Paulo for Mitigation and Adaptation to Climate Change
- 36 www.amyrisbiotech.com/en/newsroom/205-amyris-to-supply-sao-paulo-city-buses-with-renewable-diesel-from-sugarcane
- 37 <http://www.stm.sp.gov.br/index.php/pitu-2020-english>
- 38 <http://vancouver.ca/ctyclerk/cclerk/20110712/documents/rr1.pdf>
- 39 <http://vancouver.ca/ctyclerk/cclerk/20100204/documents/penv4.pdf>; Council also adopted long-range climate protection targets to reduce greenhouse gas emissions by 33% from 2007 levels by 2020 and a target of having all new buildings in Vancouver be carbon neutral by 2030 (June 2007).
- 40 Executive Order S-20-04 creating the Green Building Initiative, sets a goal of a twenty percent reduction in electricity use in commercial buildings by 2015. The Green Building Action Plan, which accompanied the Order, directs the California Energy Commission to perform two tasks related to the energy reduction goal: 1. To develop a simple, California-specific energy efficiency benchmarking system for California's commercial buildings. This system should be coordinated with the United States Environmental Protection Agency (US EPA) ENERGY STAR benchmarking system. 2. To provide the Governor with an implementation plan to benchmark all commercial and public buildings. The benchmark information should be made available to tenants and to buyers at time of sale. http://www.energy.ca.gov/greenbuilding/documents/executive_order_s-20-04.html; <http://www.energy.ca.gov/2005publications/CEC-400-2005-051/CEC-400-2005-051-CMF.PDF>
- 41 <http://www.energy.ca.gov/2008publications/CEC-400-2008-001/CEC-400-2008-001-CMF.PDF>
- 42 http://www.energy.ca.gov/title24/2008standards/residential_manual.html
- 43 http://www.energy.ca.gov/title24/2008standards/nonresidential_manual.html
- 44 The Energy Commission adopted the 2008 Standards on April 23, 2008, and the Building Standards Commission approved them for publication on September 11, 2008. , <http://www.energy.ca.gov/title24/2008standards/>
- 45 <http://www.calrecycle.ca.gov/greenbuilding/Basics.htm>
- 46 <http://www.environment.nsw.gov.au/resources/government/08453SustainabilityPolicy.pdf>
- 47 <http://www.nossasaopaulo.org.br/portal/files/LeiClima.pdf>; draft translation: http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf; see also Guidelines for the Action Plan of the City of São Paulo for Mitigation and Adaptation to Climate Change.
- 48 http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf
- 49 <http://www.wri.org/stories/2009/08/sao-paulo-adopts-comprehensive-climate-change-policy>
- 50 http://www.energiarenovables.ciemat.es/adjuntos_documentos/PRUEBA.pdf, http://www.ctfc.es/infobio/docs/est_viabilitat_5eures.pdf
- 51 http://www20.gencat.cat/docs/canviclimatic/Home/Politiques/Politiques%20catalanes/pla_angles.pdf; <http://www20.gencat.cat/portal/site/canviclimatic/menuitem.daafef89898de25e9b85ea75b0c0e1a0/?vgnextoid=fdadcf68a97d6210VgnVCM1000008d0c1e0aRCRD&vgnextchannel=fdadcf68a97d6210VgnVCM1000008d0c1e0aRCRD&vgnextfmt=default>
- 52 http://www20.gencat.cat/docs/canviclimatic/Home/Politiques/Politiques%20catalanes/pla_angles.pdf
- 53 http://www20.gencat.cat/docs/economia/Documents/Articles/Arxiu/doc_13254225_1.pdf
- 54 <http://moef.nic.in/downloads/about-the-ministry/introduction-nep2006e.pdf>, or <http://www.envfor.nic.in/nep/nep2006e.pdf>, p. 25.
- 55 <http://pmindia.nic.in/Pg01-52.pdf>; <http://www.c2es.org/international/country-policies/india-climate-plan-summary/06-2008>
- 56 The elements of this Programme may include the following: Training on silvicultural practices for fast-growing and climate-hardy tree species; Reducing fragmentation of forests by provision of corridors for species migration, both fauna and flora; Enhancing public and private investments for raising plantations for enhancing the cover and the density of forests; Revitalizing and upscaling community-based initiatives such as Joint Forest Management (JFM) and Van Panchayat committees for forest management; Implementation of the Greening India Plan; Formulation of forest fire management strategies. See <http://pmindia.nic.in/Pg01-52.pdf>.
- 57 [http://www.forestry.gov.uk/pdf/fcfc125.pdf/\\$FILE/fcfc125.pdf](http://www.forestry.gov.uk/pdf/fcfc125.pdf/$FILE/fcfc125.pdf)
- 58 <http://www.forestry.gov.uk/forestry/inf6-6aggzw>
- 59 <http://www.forestry.gov.uk/woodlandremoval>; [http://www.forestry.gov.uk/pdf/ForestExpansion.pdf/\\$FILE/ForestExpansion.pdf](http://www.forestry.gov.uk/pdf/ForestExpansion.pdf/$FILE/ForestExpansion.pdf); <http://www.forestryscotland.com/media/101263/rffg%20lower%20res%20web%20version%202.pdf>
- 60 <http://www.nossasaopaulo.org.br/portal/files/LeiClima.pdf>; draft translation: http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf; see also Guidelines for the Action Plan of the City of São Paulo for Mitigation and Adaptation to Climate Change.
- 61 <http://www.dpi.vic.gov.au/agriculture/about-agriculture/strategy-and-policy/future-farming>; <http://www.dpi.vic.gov.au/agriculture/about-agriculture/strategy-and-policy/future-farming/strategy-complete-publication>
- 62 <http://www.nossasaopaulo.org.br/portal/files/LeiClima.pdf>; draft translation: http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf; see also Guidelines for the Action Plan of the City of São Paulo for Mitigation and Adaptation to Climate Change.
- 63 <http://www.nossasaopaulo.org.br/portal/files/LeiClima.pdf>; draft translation: http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf; see also Guidelines for the Action Plan of the City of São Paulo for Mitigation and Adaptation to Climate Change.
- 64 <http://www.dwaf.gov.za/Masibambane/documents/strategies/pwsp/lp/limpopo-strategy.pdf>
- 65 <http://www.dwaf.gov.za/Masibambane/documents/strategies/pwsp/lp/limpopo-strategy.pdf>
- 66 <http://www.dwaf.gov.za/Masibambane/documents/strategies/pwsp/lp/limpopo-strategy.pdf>
- 67 <http://www.dwa.gov.za/WFGD/documents/WfGDv6Nov21.pdf>
- 68 <http://www.dwa.gov.za/WFGD/documents/WfGDv6Nov21.pdf>
- 69 <http://www.southafrica.info/business/economy/infrastructure/olifants-280508.htm>
- 70 <http://www.nossasaopaulo.org.br/portal/files/LeiClima.pdf>; draft translation: http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf; see also Guidelines for the Action Plan of the City of São Paulo for Mitigation and Adaptation to Climate Change.
- 71 For the purposes contemplated in this Law, the following definitions have been taken into account: XI. Negative effects of climate change: changes in the physical environment or the biota, resulting from climate changes that have a significant harmful effect on the composition, resilience or productivity of natural and managed ecosystems, on the functioning of socioeconomic systems or on human health and well-being. http://www.cetesb.sp.gov.br/tecnologia/draft_climate.pdf
- 72 <http://www.ambiente.sp.gov.br/legislacao/estadual/leis/2007%20LEI%2012780.pdf>; <http://homologa.ambiente.sp.gov.br/ea/noticias/18-consultapublica.asp>
- 73 <http://www.ambiente.sp.gov.br/pemc.php>

Annex 2: Global databases of Green LECRDS legal and regulatory instruments and examples of national laws and regulations dealing with the implementation of Green LECRDS, developed from FAOLEX

Global databases of Green LECRDS legal and regulatory instruments

ECOLEX is an environmental law database, operated jointly by the Food and Agriculture Organization, the International Union for Conservation of Nature and UNEP. The database includes information on treaties, international soft-law and other non-binding policy and technical guidance documents, national legislation, judicial decisions and law and policy literature. Users have direct access to the abstracts and indexing information about each document, as well as to the full text of most of the information provided.

FAOLEX is a comprehensive and current legislative database created by the Food and Agriculture Organization. The database is one of the world's largest electronic collections of national laws and regulations on food, agriculture and renewable natural resources. Areas of focus include agriculture, air and atmosphere, cultivated plants, energy, environment, fisheries, food, forestry, land and soil, livestock, mineral resources, sea, waste and hazardous substances, water, wild species and ecosystems.

IEA/IRENA Global Renewable Energy Policies and Measures database includes information on policies and measures in all International Renewable Energy Agency Member Countries and Signatories. This includes information on policy processes, regulatory instruments, education and outreach and financial incentives/subsidies in the areas bioenergy, fossil fuels, geothermal, hydropower, multiple renewable energy sources, ocean, solar, solar photovoltaic, solar thermal and wind.

The **Climate Law Database** provides information on climate change legislation in EU Member states, both existing and proposed, and provides information on compliance, content and enforcement of climate change laws. Similarly, the **European Environmental Legislation** website offers key legislation at the European level, but also at the international and the national level (for EU member states).

The **UNEP 'Guidebook on National Legislation for Adaptation to Climate Change'** provides an overview of the national laws and regulations, as well as the policy, legislative and institutional arrangement, of Cambodia, Lao PDR and Vietnam relevant to adaptation to the adverse impacts of climate change. It provides draft legal provisions aimed at improving national legal and regulatory regimes to support and facilitate the development and implementation of measures for adaptation.

Example list of national laws and regulations dealing with the implementation of Green LECRDS

SECT.	SOURCE (Year)	TITLE / DESCRIPTION	REFERENCE
CLIMATE / ENVIRONMENT (CROSS-SECTORAL)	Afghanistan	Environment Act	http://faolex.fao.org/docs/pdf/afg63169E.pdf
	Albania: Law No. 9890, 8934 (2002)	Environmental protection	http://faolex.fao.org/docs/texts/alb83674.doc
	Argentina: Resolution No. 1.125/01	Creates the National Programme on Impacts of Climate Change	http://faolex.fao.org/docs/texts/arg43611.doc http://www.medioambiente.gov.ar/
	Bangladesh: Act No. 1 (1995), Act Nos 12 (2000, 2002); (2007)	Environment Conservation Act, 1995; Implemented by: Rule for the Conservation of the Environment	http://faolex.fao.org/docs/pdf/bgd42272.pdf http://faolex.fao.org/docs/pdf/bgd19918.pdf http://faolex.fao.org/docs/pdf/bgd42277.pdf
	Bahrain: Resolution No. 51 (2007)	Establishing the Joint Committee on Climate Change	http://faolex.fao.org/docs/pdf/bah89463.pdf
	Bolivia: Supreme Decree No. 25558	Creates the Interagency Council on Climate Change	http://faolex.fao.org/docs/texts/bol28699.doc
	Brazil: Law No. 12.187 (2009); Implemented by: Decree No. 7.390 (2010); Decree No. 6.263	National Policy on Climate Change; Inter-Ministerial Committee on Climate Change; Brazilian Commission for Climate Change	http://faolex.fao.org/docs/texts/bra93834.doc http://www.senado.gov.br/ http://faolex.fao.org/docs/texts/bra109906.doc http://faolex.fao.org/docs/texts/bra77881.doc http://faolex.fao.org/docs/html/bra25275.htm
	Bulgaria	Law of Preservation of Environment	http://faolex.fao.org/docs/texts/bul52883.doc http://www2.moew.government.bg/
	Costa Rica: Decree No. 34.548/MINAE; Decree No. 36.823/MINAE	Ecological Blue Flag Program; Regulation of creation and functioning of the Inter-Ministerial Technical Committee on Climate Change	http://faolex.fao.org/docs/pdf/cos82170.pdf http://www.gaceta.go.cr/
	Croatia:	Environmental Protection Act	http://faolex.fao.org/docs/pdf/cro82346E.pdf
	Ecuador: Resolution No. 342	Creates the Permanent Commission for Climate Change	http://faolex.fao.org/docs/texts/ecu77388.doc http://www.tribunalconstitucional.gov.ec/
	Germany	Federal Nature Protection Act or Act on protection of nature and preservation of landscape; Energy and Climate Change Fund Act	http://faolex.fao.org/docs/pdf/ger38940E.pdf http://faolex.fao.org/docs/pdf/ger99560.pdf http://faolex.fao.org/docs/pdf/ger99560b.pdf
	Indonesia: Presidential Regulation No. 46/2008	National Council of Climate Change	http://faolex.fao.org/docs/pdf/ins86914.pdf
	Kenya: No. 8 (1999)	Environmental Management and Co-ordination Act, 1999	http://faolex.fao.org/docs/pdf/ken41653.pdf http://faolex.fao.org/docs/texts/ken41653.doc http://faolex.fao.org/cgi-bin/faolex.exe?database=faolex&search_type=query&table=result&query=ID:LEX-FAOC041653&format_name=ERALL&lang=eng
	Liberia	Environment Protection Law	http://faolex.fao.org/docs/pdf/lbr53038.pdf
	Marshall Islands (2003)	Environmental Planning and Policy Coordination (OEPPC) Act	http://faolex.fao.org/docs/texts/mas64985.doc http://www.paclii.org/
	Mauritius: Regulations 2010 (G.N. No. 74 of 2010)	Environment Protection (Designated National Authority)	http://faolex.fao.org/docs/pdf/mat102078.pdf http://faolex.fao.org/docs/texts/mat47831.doc http://www.gov.mu/
	Nepal: No. 24 (1997)	Environment Protection Act 1997;	http://faolex.fao.org/docs/texts/nep52633.doc
	New Zealand	Environmental Protection Authority Act, 2011; Climate Change Response Act, 2002	http://faolex.fao.org/docs/pdf/nze108498.pdf http://faolex.fao.org/docs/pdf/nze80299.pdf http://faolex.fao.org/docs/texts/nze80301.doc http://www.legislation.govt.nz/

SECT.	SOURCE (Year)	TITLE / DESCRIPTION	REFERENCE
CLIMATE / ENVIRONMENT (CROSS-SECTORAL)	Oman: Royal Decree No. 90 (2007)	Establishing the Ministry of Environment and Climate Affairs	http://faolex.fao.org/docs/pdf/oma97418.pdf
	Paraguay: Decree No. 14.943/01	Implements the National Climate Change Program	http://faolex.fao.org/docs/texts/par47962.doc
	Philippines: R Act No. 9729 (2009); AO No. 220 (1992)	Climate Change Act of 2009; creating an Inter-Agency Committee on Climate Change	http://faolex.fao.org/docs/texts/phi100134.doc http://www.chanrobles.com/ http://faolex.fao.org/docs/pdf/phi19941.pdf
	Tuvalu: Cap. 30.25	Environment Act 2008	http://faolex.fao.org/docs/pdf/tuv99601.pdf ; http://www.tuvalu-legislation.tv
	Uganda	National Environmental Management Policy	http://faolex.fao.org/docs/texts/uga44975.doc
	United Kingdom: Chapter 27 (2008)	Climate Change Act 2008	http://faolex.fao.org/docs/texts/uga44975.doc
AGRICULTURE	Albania: Law No. 9244; Regulation No. 59 (2005); Regulation No. 80 (2005)	Agricultural land protection; Analysis of agricultural land indicators; Establishment, functioning, tasks and responsibilities of the agricultural land protection authorities	http://faolex.fao.org/docs/texts/alb66988.doc ; http://www.qpz.gov.al/ ; http://faolex.fao.org/docs/texts/alb66989.doc ; http://faolex.fao.org/docs/texts/alb66990.doc
	Brazil: Law No. 11.326; Implemented by: Decree No. 6.882 (2009); Amended by: Law No. 12.512 (2011)	National Policy for Family Agriculture and Rural Family Units; Amended by: Support Programme for Environmental Conservation and for the Promotion of Rural Productive Activity	http://faolex.fao.org/docs/texts/bra66188.doc ; http://faolex.fao.org/docs/texts/bra93836.doc ; http://faolex.fao.org/docs/texts/bra109848.doc
	Cape Verde: Act No. 9/II/82	Agricultural Reform	http://faolex.fao.org/docs/pdf/cvi8300.pdf ; http://faolex.fao.org/cgi-bin/faolex.exe?database=faolex&search_type=query&table=result&query=ID:LEX-FAOC008300&format_name=ERALL&lang=eng
	Germany: Landwirtschaftsanpassungsgesetz, LwAnpG (1991); Bundesgesetzblatt, Part I, No. 68, 27 December 1996, p. 2082.	Agricultural Adaption Act; Amended by: Fourth Act on the amendment of the Agriculture Adaption Act. See also Federal Nature Protection Act or Act on protection of nature and preservation of landscape	http://faolex.fao.org/docs/pdf/ger89204.pdf ; http://faolex.fao.org/docs/pdf/ger8177.pdf ; http://faolex.fao.org/docs/texts/ger8246.doc ; http://faolex.fao.org/docs/pdf/ger38940E.pdf
	Kenya: L.N. No. 166 of 2009	Agriculture (Farm Forestry) Rules	http://faolex.fao.org/docs/texts/ken101360.doc
	New Zealand (2010)	Climate Change (Agriculture Sector) Regulations	http://faolex.fao.org/docs/pdf/nze99173.pdf http://www.legislation.govt.nz/
	Philippines: Republic Act No. 7881 (1987)	Act to amend the Comprehensive Agrarian Reform Law of 1988	http://faolex.fao.org/docs/html/phi23040.htm
	United States of America: Public Law 103-354 (1994)	Department of Agriculture Reorganization Act	http://faolex.fao.org/docs/html/Usa4837.htm
CONSTRUCTION	Armenia (1998)	Law on urban construction	http://faolex.fao.org/docs/texts/arm46968.doc ; http://faolex.fao.org/docs/texts/arm108695.doc
	Belarus: Law No.2613-XII (1993)	Law on basic architectural and urban construction activity	http://faolex.fao.org/docs/texts/blr50354.doc
	Cambodia: (1994)	Law on the Country Planning, Urbanization and Construction	http://faolex.fao.org/docs/texts/cam39955.doc
	Indonesia: Regulation of the State Minister for the Environment No. 08/2010	Criteria and certification of green buildings	http://faolex.fao.org/docs/pdf/ins98571.pdf
	Lao, People's Dem. Rep.: PDR (No. 5/PM) (1995)	Decree of the Prime Minister on the adoption and implementation of the regulation on environment related to road construction in Lao	http://faolex.fao.org/docs/pdf/lao17658.pdf

SECT.	SOURCE (Year)	TITLE / DESCRIPTION	REFERENCE
CONSTRUCTION	Lebanon: Resolution No. 49/1 (2009) of the Ministry of Environment	Defining types and sizes of major construction projects	http://faolex.fao.org/docs/pdf/leb90376.pdf
	Malta: Act No. I (1992); Act No. XX (2001)	Development Planning Act, 1992; Environment Protection Act, 2001	http://faolex.fao.org/docs/pdf/mlt75209.pdf
	Norway: Act No. 77 of 1985	Act relative to planning and construction;	http://faolex.fao.org/docs/texts/nor13886E.doc
(RENEWABLE) ENERGY	Austria: Eco-Power Act (2002)	Federal Act on the establishment of a Climate and Energy Fund, Federal Act amending the Climate and Energy Fund Act	http://faolex.fao.org/docs/pdf/aut87901.pdf ; http://www.ris.bka.gv.at/
	China (2006)	The Renewable Energy Law	http://faolex.fao.org/docs/texts/chn51067.doc
	Czech Republic: No. 180 (2005)	Act on the promotion of renewable sources of energy.	http://faolex.fao.org/docs/html/cze74056.htm http://faolex.fao.org/cgi-bin/faolex.exe?database=faolex&search_type=query&table=result&query=ID:LEX-FAOC074056&format_name=ERALL&lang=eng
	Germany: Energieverbrauchsrelevante Produkte Gesetz (EVPG, 2008)	Energy-Using Products Acts or Act on the environmental-friendly handling of energy-using products Energy-Using Products Ordinance or Act on eco-design requirements for energy-using products	http://faolex.fao.org/docs/pdf/ger77950.pdf http://faolex.fao.org/docs/pdf/ger109458.pdf
	Guyana: Laws of Guyana, pp. 1-5., Cap. 57:02 (2002)	Energy Sector (Harmonisation of Laws) Act	http://faolex.fao.org/docs/pdf/guy43809.pdf
	India: Act No. 36 (2003)	Electricity Act, 2003	http://faolex.fao.org/docs/pdf/ind82256.pdf http://faolex.fao.org/docs/pdf/ind82257.pdf http://faolex.fao.org/docs/pdf/ind82258.pdf
	Japan: Act No. 71 (2002)	Basic Act on Energy Policy	http://faolex.fao.org/docs/pdf/jap75588.pdf http://homepage2.nifty.com/
	Korea, Republic of: Act No. 8800 (2007)	Integrated Energy Supply Act; Energy Use Rationalization Act	http://faolex.fao.org/docs/pdf/kor52111.pdf http://faolex.fao.org/docs/texts/kor100508.doc ; http://www.klri.re.kr/
	Lao, People's Dem. Rep. (1997)	Decree of the President of the Lao People's Democratic Republic on the Promulgation of the Law on Electricity	http://faolex.fao.org/docs/pdf/lao82818.pdf
	New Zealand (2002)	Climate Change Response Act, 2002 (Amended by: Climate Change (Liquid Fossil Fuels) Amendment Regulations, 2010, Environmental Protection Authority Act, 2011)	http://faolex.fao.org/docs/texts/nze91125.doc http://faolex.fao.org/docs/pdf/nze80299.pdf http://faolex.fao.org/docs/pdf/nze99193.pdf http://faolex.fao.org/docs/pdf/nze108498.pdf http://www.legislation.govt.nz/
	Poland (2006)	Energy Law; (Implemented by: Obligation For Power Purchase From Renewable Sources; Announcement on power policy of the State until 2025; Regulation on detailed scope of obligation for buying electrical energy and heat produced from renewable power sources; Regulation on the obligation of enterprises to use renewable power sources for the production of electric energy and heat)	http://faolex.fao.org/docs/pdf/pol42753E.pdf ; http://www.mg.gov.pl/English http://faolex.fao.org/docs/pdf/pol60283.pdf ; http://isip.sejm.gov.pl/ http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=034142&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL
	Sweden: SFS 2007:1153	Decree containing instructions for the State Energy Authority	http://faolex.fao.org/docs/texts/swe86676.doc
	United Kingdom: Chapter 19 (2006)	Climate Change and Sustainable Energy Act 2006	http://faolex.fao.org/docs/pdf/uk77811.pdf ; http://faolex.fao.org/docs/pdf/uk81639.pdf ; http://www.opsi.gov.uk/

SECT.	SOURCE (Year)	TITLE / DESCRIPTION	REFERENCE
FORESTRY	Bolivia: Act 1700	Forest Act	http://faolex.fao.org/docs/pdf/bol6960.pdf
	China: 1998, 2000	Forestry Law of The People's Republic of China	http://faolex.fao.org/docs/texts/chn23271.doc
	Germany (Baden-Württemberg): (1982)	Baden-Württemberg Forestry Law	http://faolex.fao.org/docs/pdf/ger83655.pdf www.baden-wuerttemberg.de http://faolex.fao.org/docs/pdf/ger83897.pdf ; http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=067577&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL
	Guyana: Laws of Guyana, pp. 1-27 (1953); Act No. 15 (1997)	Forests Act	http://faolex.fao.org/docs/pdf/guy4339.pdf http://faolex.fao.org/docs/pdf/guy4354.pdf http://faolex.fao.org/docs/pdf/guy11146.pdf
	Kazakhstan: No.477-II (2003)	Forest Code	http://faolex.fao.org/docs/texts/kaz41426E.doc http://faolex.fao.org/docs/html/kaz72104.htm
	Kenya: L.N. No. 166 (2009)	Agriculture (Farm Forestry) Rules, 2009	http://faolex.fao.org/docs/texts/ken101360.doc
	Lao, People's Dem. Rep.: (2007, 1993, 1992)	Forestry Law; Decree on the Establishment of National Forest Reserves; Provisions on the Rights and Duties in Forestry Resources Management at Village Level	http://faolex.fao.org/docs/pdf/lao89474.pdf ; http://faolex.fao.org/docs/pdf/lao6321.pdf http://faolex.fao.org/docs/pdf/lao6329.pdf
	Paraguay: Resolution No. 941/07	Definition of forest for sequestration projects and carbon reduction	http://faolex.fao.org/docs/texts/par87588.doc
	Saudi Arabia	Implementing Regulation of Forest and Pasture Act	http://faolex.fao.org/docs/pdf/sau18653.pdf
	Samoa	Forests Act 1967	http://faolex.fao.org/docs/pdf/sam3905.pdf http://www.pacii.org/
	Tanzania : No. 4 (1999); Amended by: No. 2 (2004)	The Land Act, 1999 and The Village Land Act, 1999; Amended by: Land (Amendment) Act, 2004	http://faolex.fao.org/docs/pdf/tan23795.pdf http://faolex.fao.org/docs/pdf/tan53051.pdf http://faolex.fao.org/docs/pdf/tan53051.pdf
LAND USE AND MANAGEMENT	American Samoa (USA) (1990)	Coastal Management Act of 1990	http://faolex.fao.org/docs/texts/ams51383.doc http://faolex.fao.org/docs/texts/ams68628.doc http://www.asbar.org/
	Antigua and Barbuda: No. 6 (2003)	Physical Planning Act, 2003	http://faolex.fao.org/docs/pdf/ant43862.pdf
	Cape Verde: Resolution No. 4/2000	National Programme against Desertification and Draught Mitigation	http://faolex.fao.org/docs/pdf/cvi51748.pdf
	Ghana: No. 35 (1957)	Land Planning and Soil Conservation Act	http://faolex.fao.org/docs/pdf/gha3102.pdf http://faolex.fao.org/docs/pdf/gha3120.pdf http://www.epa.gov.gh/
	Indonesia: Law No. 27/2007	Management of Coastal Area and Isle	http://faolex.fao.org/docs/pdf/ins107226.pdf
	Senegal: Ministerial Order No. 8807 MEPNBRLA-DEEC (2008)	Establishment, composition and operation of the Project Steering Committee "Adapting to Climate Change-Responding to coastal change and its human dimensions in West Africa in the context of integrated coastal management"	http://faolex.fao.org/docs/texts/sen92763.doc
	South Africa: No. 2 (1995)	Land Administration Act 1995	http://faolex.fao.org/docs/texts/saf8947.doc http://faolex.fao.org/docs/pdf/saf8950.pdf http://faolex.fao.org/docs/pdf/saf104418.pdf http://www.info.gov.za/
	Sri Lanka: No. 25 (1951)	Soil Conservation Act, 1951	http://faolex.fao.org/docs/pdf/srl14668.pdf http://faolex.fao.org/docs/texts/srl28847.doc http://faolex.fao.org/docs/pdf/srl14677.pdf
	Viet Nam: Decision No. 865/QD-TTg (2008)	Approving the planning on construction of the northern coastal region up to 2025 with a vision to 2050	http://faolex.fao.org/docs/pdf/vie84537.pdf

SECT.	SOURCE (Year)	TITLE / DESCRIPTION	REFERENCE
TRANSPORT/ SHIPPING	Bahrain: Resolution No. 8 (2002)	Resolution on pollutant standards and on standards for substances emitted by vehicles and exhaust pipes	http://faolex.fao.org/docs/pdf/bah70019.pdf
	Estonia: Regulation No. 225	Environmental Eligibility Requirements for Powered Aircraft	http://faolex.fao.org/docs/texts/est98686E.doc http://www.legaltext.ee/
	Guyana: Cap. 49:01	Guyana Shipping Act	http://faolex.fao.org/docs/pdf/guy43457.pdf
	Malta: L.N. 528 (2004)	Use of Biofuels or other Renewable Fuels for Transport Regulations, 2004	http://faolex.fao.org/docs/pdf/mlt49317.pdf http://www.doi.gov.mt/
	Tanzania, Un. Rep. of: No. 21 of 2003)	Merchant Shipping Act, 2003	http://faolex.fao.org/docs/pdf/tan61354.pdf
	Trinidad and Tobago: Cap. 50:10	Shipping (Ship and Port Facility Security) Regulations	http://faolex.fao.org/docs/pdf/tri106235.pdf
	European Union: Council Directive 80/1268/EEC	Approximation of the laws of the Member States relating to the fuel consumption of motor vehicles	http://faolex.fao.org/docs/pdf/eur39578.pdf http://faolex.fao.org/docs/pdf/eur41226.pdf
WATER	Australia (2008)	Water Supply (Safety and Reliability) Act	http://faolex.fao.org/docs/pdf/qs82040.pdf http://www.legislation.qld.gov.au/
	Austria (2009)	National Water Management Plan Ordinance	http://faolex.fao.org/docs/pdf/aut98381.pdf http://www.ris.bka.gv.at/
	Brazil: Law No. 10.638	Instituting the Program for Combating Drought (PROSECA)	http://faolex.fao.org/docs/texts/bra44311.doc http://www.senado.gov.br/
	Cambodia (2007)	Law on Water Resources Management	http://faolex.fao.org/docs/texts/cam75723.doc
	Cape Verde: Resolution No. 4/2000	Instituting the National Programme against Desertification and Draught Mitigation	http://faolex.fao.org/docs/pdf/cvi51748.pdf
	China (1991)	Law of the People's Republic of China on Water and Soil Conservation	http://faolex.fao.org/docs/texts/chn23747E.doc
	Germany (2002)	Federal Nature Protection Act or Act on protection of nature and preservation of landscape	http://faolex.fao.org/docs/pdf/ger38940E.pdf
	Guyana	Water and Sewerage Act	http://faolex.fao.org/docs/pdf/guy43370.pdf http://www.caricomlaw.org/
	Lao PDR: Law No. 106 (1996); No. 0598/ MAG. DI (1993)	Water and Water Resource Law; Regulations on the Management and Use of Irrigation systems in the Lao People's Democratic Republic	http://faolex.fao.org/docs/pdf/lao7478.pdf http://faolex.fao.org/docs/pdf/lao6313.pdf
	Vietnam: Decision No. 1590/QD-TTg (1998)	Law on Water Resource Viet Nam	http://faolex.fao.org/docs/pdf/vie94772.pdf

Source: <http://faolex.fao.org>. Note: This list is not meant to be comprehensive, but to provide a sample of legal text. Not all legal texts are available in English. Texts available in English, in countries in which the official language is not English, are marked with "E".

Annex 3: International support for Green LECRDS legal reform

United Nations Development Programme (UNDP), together with the **United Nations Environment Programme** (UNEP), have been designated convening agencies for cross-UN cooperation on climate change capacity building. Both programmes facilitate a number of projects and initiatives supporting Green LECRDS. For example, the UNDP and UNEP jointly managed the National Communications Support Programme, which provides technical and policy support to developing countries for preparing their Second (or Third) National Communications to the United Nations Framework Convention on Climate Change. The agencies also support the development of nationally appropriate mitigation actions¹ (and Green LECRDS more generally) through the Africa Adaptation Programme and the Low-Emission Capacity Building Programme.²

EU-UNDP **Climate Change Capacity Building Programme** and **Low Emission Capacity Building Programme** provide support to countries to strengthen technical and institutional capacities at the country level for developing Green LECRDS with funding from the European Union / European Commission and German government and support from the United Nations Development Programme.³ Over a dozen countries are involved in efforts to develop greenhouse gas inventory management systems, opportunities for nationally appropriate mitigation actions, low emission development strategies and systems for measuring, reporting and verifying proposed actions and means to reduce greenhouse gas emissions.⁴ The design and adoption of mitigation actions are also being facilitated by selected industries in some countries, with the participation of the private sector, as appropriate, taking into account national priorities and circumstances and national economic plans.⁵

International Development Law Organization (IDLO) enables governments to reform laws and institutions to promote peace, justice, social development and sustainable economic growth. Through its Legal Preparedness for Climate Change Initiative, IDLO provides developing countries with legal and institutional reform services, including recommendations to overcome legal and institutional barriers to adaptation, mitigation by participation in international mitigation schemes and access to international climate funding; engaging stakeholders to set legal and institutional reform priorities and ensuring

1 For example: How-to Guide: Low-emission Development Strategies and Nationally Appropriate Mitigation Actions: Eastern Europe and CIS: <https://docs.google.com/viewer?a=v&q=cache:m14KqQz0LwsJ:www.undp.org.pl/content/download/459/2623/file/How-%2520to%2520Guide-%2520Low%2520emission.PDF+&hl=en&gl=ca&pid=bl&srcid=ADGEEs97SvRHUBYP0BBL40JlYG8qYTHS8gP235CGPJN12TsyZGimKIPG--nYRYbrIIA4wKLqEDetEu7hiDr27Vt-5wBa5W9mixcnzDhWosC6-zXrb9hG3HLIehfi0K2uLFUBHGhEK&sig=AHIEt bRWHNgLWFAX80VtZdlf-NGLk4V7bA>

2 http://www.undp.org/content/undp/en/home/ourwork/environmentandenergy/focus_areas/climate_strategies/undp_projects_thatcontributetogreenlecrds.html; see also <http://www.worldresourcesreport.org/responses/changing-course-development-undps-role-supporting-national-level-decision-making-processes>

3 http://www.undp.org/content/undp/en/home/ourwork/environmentandenergy/focus_areas/climate_strategies/undp_projects_thatcontributetogreenlecrds/national_sub-nationalstrategies/low_emission_capacitybuildingprogramme.html

4 Consultations for these public sector activities are currently taking place with Chile, Colombia, DRC, Ecuador, Egypt, Kenya, Morocco, Peru, the Philippines, Uganda, and Zambia. The programme also includes activities to build private sector capacity to uptake mitigation actions, for which Brazil, China, Egypt, Mexico and South Africa are currently being consulted.

5 <http://www.lowemissiondevelopment.org/about.html>, http://www.undp.org/content/undp/en/home/ourwork/environmentandenergy/focus_areas/climate_strategies/undp_projects_thatcontributetogreenlecrds.html

stakeholder consultations that respect acceptable legal norms; co-designing legal and institutional reform action plans; enhancing the legal and institutional capacity of national and local climate change actors to implement action plans; and providing legal research and analysis of proposed climate change related laws, regulations, standards and guidelines in order to ensure that domestic legislation is in line with relevant international laws and standards (including those on climate finance, biodiversity, gender and human rights).⁶

Climate Policy Initiative supports nations' efforts towards low-carbon growth including analysis of policy tools, policy implementation effectiveness, and international coordination of policy.⁷ Its headquarters are in San Francisco, with regional offices in Beijing, Berlin, Rio de Janeiro and Venice, as well as projects in India and Indonesia.

One UN Training Service Platform on Climate Change (UN CC:Learn) is a collaborative initiative involving 32 multilateral organizations which supports Member States, UN agencies and other development partners in designing and implementing country-driven, results-oriented and sustainable learning to address climate change. UN CC:Learn supports country pilot projects to strengthen human resources and skills to address climate change.

United Nations Institute for Training and Research is collaborating with Environment and Development Action in the Third World to develop institutional capacity and knowledge sharing at the regional level in Africa to address climate change vulnerability in specific areas (e.g. food security).⁸

The **Climate and Development Knowledge Network**, funded by the UK Government, aims to help decision makers in developing countries design climate compatible development by providing demand-led research and technical assistance to support policy processes at the country level.⁹

The **World Bank Group**, and specifically, the International Development Association and the International Bank for Reconstruction and Development support country-led development strategies and priorities aimed at adaptation and mitigation action, while helping countries take advantage of new economic, capacity building, and financing opportunities that arise from the global climate change agenda.¹⁰ Development Policy operations funded by the World Bank provide untied, direct budget support to governments for policy and institutional reforms aimed at achieving a set of specific development results. The World Bank also created the Climate Change Knowledge Portal, as an online tool for access to data related to climate change and development to assist in capacity building and knowledge development.¹¹

The **Climate Investment Fund** (CIF) helps developing countries pilot low-emissions and climate-resilient development. With CIF support, 46 developing countries are piloting transformations in clean technology, sustainable management of forests, increased energy access through renewable energy, and

6 <http://www.idlo.int/english/WhatWeDo/Programs/ClimateChange/Pages/default.aspx>, <http://www.idlo.int/english/WhatWeDo/Programs/ClimateChange/Pages/ProjectsDetails.aspx?IDPRJ=71>

7 <http://climatepolicyinitiative.org/>

8 http://www.unclearn.org/news/cop_16_one_un_side_event_capacity_building_fe

9 http://cdkn.org/?loclang=en_gb

10 <http://siteresources.worldbank.org/EXTSDNET/Resources/Results2012-SDN-Climate-Change.pdf>

11 <http://sdwebx.worldbank.org/climateportal/>

climate-resilient development. The World Bank and regional development banks are working with a number of practitioners to support countries in the development of programmes and plans associated with CIF funding instruments. These include the Climate Technology Fund and the Strategic Climate Fund, which supports the Forest Investment Program, the Pilot Program for Climate Resilience and the Program for Scaling Up Renewable Energy in Low Income Countries.¹²

There are many other **climate related funds**, such as the Global Environment Facility Trust Fund and its managed funds, the Least Developed Countries Fund and Special Climate Change Fund. The Global Environment Fund is the largest public funder of projects to improve the global environment. The Global Environment Fund provides grants for projects related to biodiversity, climate change, international waters, land degradation, the ozone layer and persistent organic pollutants. The Least Developed Countries Fund was established to assist Least Developed Country undertake the preparation and implementation of national adaptation programmes of action (NAPAs). NAPAs use existing information to identify a country's priorities for adaptation actions. As of June 2012, the Least Developed Countries Fund had funded the preparation of 48 NAPAs, of which 47 have been completed, while the remaining one is in the final stages of preparation. The Special Climate Change Fund was established to support adaptation and technology transfer in all developing country parties to the UNFCCC. As of June 2012, the Special Climate Change Fund adaptation programme had mobilized \$162.24 million for 39 projects and 3 programmes in developing countries, and this money had leveraged \$1.25 billion in co-financing. The Special Climate Change Fund has also supported a total of six technology transfer projects, totalling \$26.64 million. Additional information on financing mechanisms such as the Adaptation Fund, the UNFCCC Green Climate Fund, the Green Venture Fund and the Climate Public-Private Partnership Fund can be obtained through the Climate Funds Update or Climate Fund.¹³

Global Green Growth Institute, an initiative of the Government of South Korea and ClimateWorks Foundation, assists developing countries with the development of green growth economic development strategies by building institutional capacity and supports the implementation of green growth plans by advising on institutionalization in governmental structures and policy and by engaging private investors and public donors in their successful execution.¹⁴

Additional Sources of Support

- World Resources Institute
- Center for Clean Air Policy
- World Watch Institute
- International Institute for Sustainable Development (<http://openei.org/CLEAN>)

¹² <http://www.climateinvestmentfunds.org/cif/>

¹³ <http://www.climatefundsupdate.org/>, <http://www.climatefund.info/>

¹⁴ <http://www.gggi.org/>

