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February 15, 2013

Comments on the Assessment Framework for the Readiness Package

The Indian Law Resource Center welcomes the opportunity to offer the following comments to the Forest Carbon Partnership Facility (FCPF) regarding the Assessment Framework for the Reduction of Emissions from Deforestation and Forest Degradation (REDD+) Readiness Package.

We believe it critical that institutions and countries engaging in REDD+ Readiness put in place the legal framework and institutional capacity necessary for the protection of the rights of indigenous peoples and local communities prior to the initiation of any REDD+ projects. To assess a country's level of Readiness, therefore requires an effective assessment framework.

Our comments address both the proposed process for the Readiness Assessment, as well as the proposed Assessment Criteria and Diagnostic Questions.

Assessment Process

In order to have an accurate representation of a country's readiness, a self-assessment is not adequate. There needs to be a separate and formal avenue for direct assessment by indigenous peoples. As many indigenous peoples have stated, the claims of governments regarding the existence of or adequacy of REDD-related consultative processes are often not accurate. Moreover, when a traffic light grading system is utilized in a self-assessment in which financial resources are at stake, there is a powerful incentive for countries not to give themselves a 'red' score in any given area.

In order for indigenous peoples' concerns to be visible and accurately conveyed, there should be a separate and formal process for their assessment. This could be accomplished through a chapter or annex within the larger assessment, to be prepared directly by indigenous peoples. It was mentioned in the FCPF workshop February 11 and 12th that Paraguay's UN-REDD reporting, wherein an indigenous organization authored a chapter of the country's report, may be a good example. A formal process for the receipt of shadow assessments or evaluations by indigenous peoples is another option.

The assessment will also only be meaningful if it elicits enough detail to determine positive progress – not just that something was done. The criteria – just two or three-word phrases – do not do this. If the traffic

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light scoring is applied at the level of assessment criteria, and not diagnostic questions, it is likely that issues of most concern to indigenous peoples will be subsumed by other issues. So that for instance, a negative score in protection of indigenous peoples' land rights may be outweighed by positive scores regarding development of a legal carbon framework. The proposed assessment framework would also miss the opportunity to provide meaningful guidance to countries during the readiness process.

The assessment should therefore take place at the level of diagnostic questions, not at the broad criteria level, and the diagnostic questions themselves should be more specific. The fact that a country enacted legislation on titling of indigenous lands, for instance, does not mean that the country respected and protected indigenous peoples' land rights. It could actually mean that legislation was adopted that diminished or restricted indigenous peoples' effective rights. For this reason, enough specificity needs to be provided in the questions so that they elicit valuable answers.

Assessment Criteria and Diagnostic Questions

The assessment should more clearly evaluate progress against the Cancun safeguards, including that parties respect the knowledge and rights of indigenous peoples. Currently the assessment framework contains little mention of UNFCCC safeguards and the rights of indigenous peoples. The criteria should relate to the Cancun safeguards (e.g. respect for the rights of indigenous peoples) with diagnostic questions providing greater detail (e.g. legislative reforms protecting the rights of indigenous peoples to lands, territories and resources consistent with international law).

There are two critical issues relating to the rights of indigenous peoples, that must be addressed prior to the initiation of REDD projects:

- Recognition and protection of indigenous peoples' rights to own, use and manage their lands, territories and resources, including those owned by reason of traditional or collective possession, occupation or use, including through legal reform, titling and demarcation.
- Recognition and protection of indigenous peoples' rights of self-determination, and a process of socialization and capacity building with indigenous peoples so that communities are able to make informed decisions regarding their engagement with REDD+.

These issues should be among the primary indicators of readiness for REDD+ and should be granted prominence in the Readiness Assessment.

Providing greater detail in the criteria and diagnostic questions is critical both for having a meaningful and accurate assessment, but also for providing guidance to countries currently going through the readiness process.

Suggested language reflecting these comments is provided below in tracked changes to the October 5, 2012 version of the Proposed Assessment Criteria and Diagnostic Questions.

For additional information or clarifications, please contact Gretchen Gordon at ggordon@indianlaw.org.

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ANNEX III: Proposed Assessment Criteria and Diagnostic Questions (by R-Package subcomponent)

Component 1: Readiness Organization and Consultation
Subcomponent 1a: National REDD+ Management Arrangements

Rationale: National REDD+ readiness management has five main functions: (1) manage implementation of FCPF grant-funded activities (e.g., studies), (2) co-ordinate REDD+ readiness activities as defined in the R-PP (e.g., including those funded through other sources), (3) integrate REDD+ into broader national or sector strategies (e.g., national development plan, low-carbon development strategies), (4) manage inquiries, complaints and potentially grievances by stakeholders that may arise during the implementation of preparation activities, and (5) organize information sharing and stakeholder consultation and participation.
Effective readiness management during the preparation phase is indicative of the country's capacity to manage emission reduction programs under REDD+ implementation in the future. This part of the assessment focuses on national REDD+ management arrangements and their effectiveness in fulfilling core functions.

Assessment criteria and diagnostic questions (progress indicators):
1) Accountability and transparency
- How are national REDD+ institutions and management arrangements demonstrating they are operating in an open, accountable and transparent manner?

2) Operating mandate and budget
- How is it shown that national REDD+ institutions operate under clear mutually supportive mandates with adequate, predictable and sustainable budgets?

3) Coordination with national or sector policy frameworks
- How are national REDD+ institutions and management arrangements ensuring readiness activities are consistent with, coordinated, and integrated into the broader national or sector policy frameworks?

4) Technical supervision capacity
- How effectively and efficiently are national REDD+ institutions and management arrangements leading and supervising multi-sector readiness activities, including the regular supervision of technical preparations?

5) Funds management capacity
- How are institutions and arrangements demonstrating effective, efficient and transparent fiscal management?

6) Feedback and grievance redress mechanism
- What evidence is there to demonstrate the mechanism is operating transparently, ~~and~~ impartially, and with due process guarantees, and has a clearly defined mandate and adequate expertise and resources?
-What evidence is there that potentially impacted communities are aware of, have access to, and are receiving justice from the mechanism?
-What evidence is there that if indigenous peoples' lands, territories or resources are taken, damaged, or utilized without their consent, compensation will take the form of lands, territories and resources equal in quality, size and legal status?
-What evidence is there that project-affected communities have access to effective remedies within relevant domestic judicial and administrative systems for any human rights violations that occur as a result of REDD+ initiatives?

Subcomponent 1b. Consultation, Participation, and Outreach

Rationale: The national body responsible for leading the REDD+ process conducts consultations with key stakeholders12 and facilitates their participation in both stages of R-PP preparation and implementation, including activities related to national REDD+ strategy, reference levels, and monitoring systems. Consultation

and participation of key stakeholders builds on early dialogues during the formulation of the R-PP, and the plan for consultation, participation, and outreach that was developed for the R-PP. This process results in a sustainable institutional structure that ensures meaningful participation in decision-making concerning REDD+ strategies and activities beyond the readiness phase.

This part of the assessment focuses on how consultation, participation, and outreach are conducted during the preparation phase and the platform for consultation with and participation of key stakeholders for future REDD+ programs. The R-Package assessment reviews how consultations with key stakeholders are performed to ensure participation of different social groups, transparency, and accountability of decision-making.

Assessment criteria and diagnostic questions (progress indicators):

7) Engagement of key stakeholders
- How is the full and effective participation of key rights-holders and stakeholders in accordance with those roles demonstrated?
-What measures have been taken to ensure that indigenous peoples and forest-dependent communities have the capacity to effectively participate in relevant decision-making?

8) Consultation and consent processes
- What evidence demonstrates that consultation processes at the national and local levels are clear, inclusive, transparent, respect indigenous peoples' institutions and decision-making processes, and facilitate timely access to information in a culturally appropriate form?
-What evidence demonstrates that the government has consulted and cooperated in good faith with the concerned indigenous peoples, through their own representative institutions, in order to obtain their free prior and informed consent prior to the adoption of REDD-related legislative or administrative measures that may affect them?

9) Information sharing
- How have national REDD+ institutions and management arrangements demonstrated transparent, consistent and comprehensive sharing and disclosure of information (related to all readiness activities, including the development of REDD+ strategy, reference levels, and monitoring systems)?
-How has relevant information been shared with indigenous peoples in a format and language understandable to them?

10) Implementation of consultation outcomes
- How are the outcomes of consultations taken into account in management arrangements, strategy development and technical activities related to reference level and monitoring systems development?

Component 2: REDD+ Strategy Preparation

Subcomponent: 2a. Assessment of Land Use, Land Use Change Drivers, Forest Law, Policy and Governance

Rationale: The purpose of the assessment of land use, land- change drivers, forest law, policy and governance, is to identify key drivers of deforestation and/or forest degradation, as well as activities concerning conservation, sustainable management of forests, and enhancement of forest carbon stocks. The assessment also addresses how shortcomings in current land use, and forest law, policy and governance contribute to the drivers of deforestation and forest degradation and develops potential solutions. Taking into account the country's past experience in addressing these shortcomings (including the issues that led to underperformance of previous programs), the assessment directly informs the country's REDD+ strategy and identifies ways to address the key deforestation and degradation drivers in a prioritized fashion. This part of the readiness assessment focuses on the causal relationship between the economic, legal, policy setting of the country and associated patterns of land use change, deforestation and forest degradation.

Assessment criteria and diagnostic questions (progress indicators):

11) Assessment and analysis
- Does the summary of the work conducted during the R-PP formulation and implementation phases for this component present a complete and comprehensive analysis of recent historical land use trends and assessment of relevant land tenure, natural resource rights and governance issues?
-Does the summary of the work conducted present a complete and comprehensive analysis of relevant obligations under international environmental agreements and human rights law, including the United Nations Declaration on the Rights of Indigenous Peoples; relevant domestic law on indigenous peoples, human rights and land; the country's current state of compliance in meeting such obligations; and any gaps or potential human rights risks related to REDD+?

12) Prioritization of direct and indirect drivers
- How was the analysis used to prioritize key direct and indirect drivers to be addressed by the programs and policies included in the REDD+ strategy?

13) Links between drivers and REDD+ activities
- What evidence demonstrates that systematic links between key drivers and REDD+ activities were identified?

14) Actions plans to address natural resource right, land tenure, governance
- Do action plans to make progress in the short-, medium- and long-term towards ~~addressing~~ bringing relevant land tenure, natural resource rights and governance issues ~~in priority regions~~ related to specific REDD+ programs into compliance with international law, outline further steps, and identify required resources?
- How are indigenous peoples' territorial and forest management systems being supported?

15) Implications for forest law and policy
- Does the assessment identify implications for forest law and policy in the long-term?

Subcomponent: 2b. REDD+ Strategy Options

Rationale: The REDD+ strategy forms the basis for the development of a set of policies and programs to reduce emissions from deforestation and/or forest degradation and enhancing carbon uptake from the other REDD+ activities. The strategy needs to address the drivers of deforestation and/or forest degradation identified in the assessment above, including drivers linked to other sectors competing for the same land resources, in the context of the national priorities for sustainable development.
This part of the assessment focuses on the motivation and rationale for countries to engage in any or all of the five REDD+ activities, and the strategic options that were identified and analyzed during preparation to ascertain that actions taken on REDD+ are beneficial, feasible and cost-effective.

Assessment criteria and diagnostic questions (progress indicators):

16) Presentation and prioritization of REDD+ strategy options
- Are REDD+ strategy options prioritized based on comprehensive assessment of direct and indirect drivers of deforestation, and via a transparent and participatory process?
-Are there regulatory safeguards in place to prevent land or carbon speculation?

17) Feasibility assessment
- Are REDD+ strategy options assessed for their social and environmental feasibility, risks and opportunities, and analysis of costs and benefits?

18) Consistency with other policies

- Have major inconsistencies between the priority REDD+ strategy options and policies or programs in other sectors (e.g., transport, agriculture) been identified? Has consistency with UNFCCC safeguards, including respect for the rights and knowledge of indigenous peoples, been shown?

19) Integration with relevant strategies and policies
- Is an agreed timeline and process is in place to resolve inconsistencies and integrate REDD+ strategy options with relevant development policies?

Subcomponent: 2c. Implementation Framework

Rationale: The implementation framework defines institutional, economic, legal and governance arrangements necessary to implement REDD+ strategy options, and reflects the lessons learned from the implementation of relevant programs in the past. The implementation of REDD+ strategy options is specific to a given country's land uses and legal and social circumstances, and countries have flexibility to tailor their REDD+ interventions to their socioeconomic conditions, drivers of deforestation, and development objectives. Country-specific solutions need to be found to define the role of government, landowners, and other participants in REDD+ transactions, to share and deliver REDD+ benefits (e.g., to local communities), to respect the rights of indigenous peoples and forest-dependent communities, to clarify land tenure, and to mediate associated conflicts, and to manage carbon transactions through a transparent process.

Assessment criteria and diagnostic questions (progress indicators):

20) Adoption of legislation and regulations
- Have necessary legislation and/or regulations related to REDD+ programs and projects have been adopted?
-Is the right of indigenous peoples to own, use and manage their lands, territories and resources, including those owned by reason of traditional or collective possession, occupation or use, protected under law, and in practice, including through the titling, demarcation and regularization of indigenous peoples' lands?
-Is the right of indigenous peoples to self-determination respected under law, including a requirement for obtaining the free, prior and informed consent of potentially affected indigenous peoples, through their own representative institutions, before adopting and implementing 1) any REDD+ project that will take place on their lands or involve, interfere with, or diminish their natural or cultural resources, or 2) any REDD+ initiative that will directly and substantially affect their lands, territories, natural or cultural resources, the health and welfare of their people, or other rights.
-If carbon rights are established, how does the legal framework ensure that the rights of indigenous peoples and other owners of the underlying lands and natural resources are protected?

21) Transparent and equitable framework
- What evidence is there that the implementation framework is operating in a transparent and equitable manner, and defines e.g., the process for participation in programs, carbon rights, benefits sharing/distribution of benefits, REDD+ financing mechanism/financial architecture and financing modalities, procedures for official approvals, monitoring systems and grievance mechanisms?

Benefit-Sharing mechanism
- What evidence is there that the implementation framework ensures transparent, inclusive and equitable benefit-sharing with indigenous peoples and forest-dependent communities of any benefits derived from the development, use, or commercialization of their natural or cultural resources; ensures that the form of benefits and mechanism for distribution is determined by those peoples and communities according to their own decision-making processes; and ensures that they are able to participate effectively in monitoring the implementation of the agreed benefit-sharing processes at national and local levels.

22) National REDD+ information system or registry

- Is a national geo-referenced REDD+ information system or registry operational, comprehensive of all relevant information (e.g., information on the location, ownership, carbon accounting and financial flows for sub-national and national REDD+ programs and projects), and does it ensure public access to REDD+ information?

Subcomponent: 2d. Social and Environmental Impacts

Rationale: The country receiving FCPF funding for readiness preparation through the World Bank will be required to ensure compliance with the Common Approach. All countries will prepare a country-specific Environmental and Social Management Framework (ESMF). There may also be national legislative requirements related to safeguards or the management of social or environmental risks and impacts that should be identified and addressed. Additionally, FCPF funded programs are required to be consistent with UNFCCC safeguards. The readiness preparation phase is meant primarily for technical assistance and capacity building activities, with the objective to prepare the country for large-scale intervention yet to come. ~~FCPF grants do not finance any implementation of REDD+ pilots on the ground (investments, pilot projects involving use of land or change in use of land and physical works), that hence could have adverse impacts on communities).~~

This part of the assessment focuses on implementation of the SESA and the resulting outputs, including the stand-alone ESMF document. It includes a summary describing the public consultation and participation process in which the SESA was embedded, and the main findings and results of SESA. The SESA will be reflected in the preparation of the R-Package components in an integrated way (not as a stand-alone document), mostly in the form of the final REDD+ strategy and the documentation of the consultation and participation process carried out during the R-PP formulation and readiness preparation stages.

Assessment criteria and diagnostic questions (progress indicators):

23) SESA coordination and integration arrangements
- Are the necessary institutional arrangements for coordinating the integration of environmental and social considerations into the REDD+ process in place?

24) Analysis of safeguard issues
- What evidence is there that applicable safeguard ~~issue~~ policies have been fully addressed via relevant studies or diagnostics, preparation measures and implementation plans?
-What evidence is there that UNFCCC safeguards and other international obligations have been fully addressed via relevant studies or diagnostics, preparation measures and implementation plans?

25) REDD+ strategy design with respect to impacts
- How are SESA results and the identification of social and environmental impacts (both positive and negative) used for prioritizing and designing REDD+ strategy options? How are human rights risks identified and prevented?

26) Environmental and Social Management Framework
- What evidence is there that the ESMF is in place and managing environmental and social risks and potential impacts during the REDD+ strategy implementation phase to achieve outcomes in compliance with relevant institutional and UNFCCC safeguards, and international legal obligations?

Component 3: Reference Emissions Level/Reference Levels

Rationale: Estimates of changes in forest area and carbon content over time and the corresponding emissions to and uptake from the atmosphere are used to measure the performance of REDD+ policy interventions relative to a forest reference emissions level (REL) or reference level (RL). Recent UNFCCC decisions13 request countries to develop a REL/RL as a benchmark for assessing performance in implementing REDD+ activities

at a national level, with subnational approaches as interim measures. The REL/RL should be established transparently taking into account historical data, and adjusted for national circumstances.

Information presented in the R-Package reflects the general approach used to establish a REL/RL. This includes compilation and analysis of relevant data, capacity building in the application of proven methods and fundamental techniques (e.g., mapping, field sampling), and assessment of different methodologies. Preliminary results of this work generate fundamental inputs to allow first-order estimates of emission at the national or subnational level and the construction of REL/RL.

Assessment criteria and diagnostic questions (progress indicators)

27) Clear, step-wise methodology
- Is the preliminary sub-national or national forest REL or RL presented using a clearly documented methodology based on a step-wise approach?

- Are plans for additional steps and data needs provided, and is the relationship between the sub-national and the evolving national reference level demonstrated?

28) Historical data, and adjustment for national circumstances
- How does the establishment of the REL/RL take into account historical data, or if adjusted for national circumstance, what is the rationale and supportive data that demonstrate that proposed adjustments are credible and defendable?
- Is sufficient data and documentation provided to allow for the reconstruction of the REL/RL?

29) Consistency with UNFCCC/IPCC guidance and guidelines
- Is transparent, complete and accurate information consistent with UNFCCC guidance and the most recent IPCC guidance and guidelines provided, allowing for technical assessment of the data sets, approaches, methods, models, if applicable, and assumptions used in the construction of a reference level?

Component 4: Monitoring Systems for Forests and Safeguards

Subcomponent: 4a. National Forest Monitoring System

Rationale: The national forest monitoring system needs to be designed to generate information that allows comparison of changes in forest area and carbon content (and associated GHG emissions) to the baseline estimates used for the forest reference emissions level (REL) or reference level (RL). The development of an operational forest monitoring system is a long-term effort, generally serves multiple purposes (e.g., natural resource management more generally), and commonly entails a combination of remote sensing and field-based data collection from the national forest inventory or other sources. Countries may not be able to finalize the design of the national forest monitoring system for the emission reductions and removals in the absence of definitive guidelines from the UNFCCC, and thus use a step-wise approach to gradually develop the system (starting with data collection, analytic work, capacity building etc. with further refinements being made later as guidance becomes available). 14 A national forest monitoring system assimilates data collected nationally and locally (e.g., through sampling in community-managed forests), helps build trust among local constituencies via a participatory approach, and contributes to the national GHG inventory that countries report to UNFCCC in their National Communications and Biennial Update Reports.

This part of the assessment focuses on progress made in designing and developing operational forest monitoring systems. It describes the approach of how the system is expected to be enhanced over time as capacity increases, more data become available, and guidance from the UNFCCC is provided. It describes the information that is generated and its use and application, and includes output from early work (e.g., mapping forest cover change in high deforestation areas). It provides clear institutional arrangements, including budgeted action plans and human resource needs.

Assessment criteria and diagnostic questions (progress indicators):

30) Documentation of step-wise approach
- How is the system designed and proposed to be developed to monitor the specific REDD+ activities prioritized in the country's REDD+ strategy?
- Is there clear rationale or analytic evidence supporting the selection of the used or proposed methodology (systems resolution, coverage, accuracy, inclusions of carbon pools and gases) and improvement over time? Are potential sources of uncertainties identified to the extent possible?
- How does the system identify and assess displacement of emissions (leakage), and what are the early results?

31) Demonstration of early implementation
- How has the step-wise design and early implementation of the forest monitoring system been demonstrated?
- How are key stakeholders participating/consulted in the development and early implementation of the system, including data collection and any potential verification of its results?

32) Institutional arrangements and capacities
- Are mandates to perform task related to forest monitoring clearly defined (e.g., satellite data processing, forest inventory, information sharing)?
- What evidence is there that a transparent means of publicly sharing forest and emissions data are presented and are in at least an early operational stage?
- Have associated resource needs been identified and estimated, required capacities, training, hardware/software, and budget?

Subcomponent: 4b. Information System for Multiple Benefits, Other Impacts, Governance, and Safeguards

Rationale: The R-Package specifies the non-carbon aspects prioritized for monitoring by the country (e.g., key quantitative or qualitative variables representing rural livelihoods enhancement, conservation of biodiversity, ecosystem services provision, key governance factors directly pertinent to REDD+ implementation in the country, and the impacts of the REDD+ strategy on the forest sector). The system should be capable of reporting how safeguards are being addressed and respected during the implementation of REDD+ activities, with due attention to the specific monitoring provisions included in the country's ESMF.

Assessment criteria and diagnostic questions (progress indicators):

33) Identification of priorities for non-carbon ~~aspects~~ outcomes
- How have priority non-carbon ~~aspects~~ outcomes of REDD+ implementation been identified?
- How is the program making progress on improving local livelihoods, building transparent and effective forest governance structures, securing indigenous peoples and local communities' rights to lands and resources, building local resource management capacity, and enhancing or maintaining biodiversity or other ecosystem services?

34) Monitoring and reporting capabilities
- How is the system transparently providing consistent and periodic information, through a participatory process, on non-carbon aspects of REDD+ implementation, including all UNFCCC safeguards?
- How is the system transparently providing consistent and periodic information, through a participatory process, on human rights impacts, including indigenous peoples' rights to land and natural resources, and right of self-determination?

35) Information sharing
- How is the following information being made available: key quantitative and qualitative variables about impacts on rural livelihoods, conservation of biodiversity, ecosystem services provision, key governance factors

directly pertinent to REDD+ implementation, and the implementation of safeguards, paying attention to the specific provisions included in the ESMF?