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November 25, 2013

RE: FCPF Carbon Fund poised to undermine rights

Dear Carbon Fund Participants,

We, the undersigned organizations, are writing to express our concern that the Forest Carbon Partnership Facility's (FCPF) Carbon Fund is poised to undermine years of progress on land tenure rights, in violation of the FCPF Charter and international human rights obligations as well as possibly the World Bank Operational Policies.

The Carbon Fund (CF) has been developed to pilot performance based payments for emissions reductions and may set a precedent for future systems. Policy guidance is currently being negotiated to govern the selection and approval of emissions reductions programs under the CF, referred to as the "Methodological Framework" (MF).¹ The current draft of the MF does not require progress on securing equitable land tenure reform. While there is mention of the need to pay attention to both statutory and customary rights, the draft framework does not contain requirements for adherence to international law and related country obligations to recognize and respect collective property rights of indigenous peoples and other customary landowners. At the same time, the framework seeks to create new property rights in carbon that impinge upon existing statutory and customarily held rights and fails to ensure free, prior and informed consent. The draft MF threatens both the rights of indigenous peoples and local communities as well as the very success of achieving climate objectives, like REDD+, among forest

¹ Facility Management Team, Forest Carbon Partnership Facility. "FCPF Carbon Fund draft Methodological Framework Draft September 5, 2013 – Revised by FMT October 17, 2013 + CFP Comments."

peoples, civil society and the private sector alike.

Upholding international law and securing equitable land tenure and resource rights for indigenous peoples and local communities has been recognized by the international community as necessary for the successful implementation of forest and climate change mitigation policies and programs. However, the draft MF proposes merely an assessment of the *range* of rights and the *categories* of rights-holders with neither robust due diligence requirements to assess legality (including compliance with applicable international legal norms) nor a time-bound action plan to resolve outstanding tenure and rights issues.

If left unresolved, the failure to apply agreed international norms and fulfill international obligations creates serious risks of negative impacts, on-going tenure insecurity, land theft, further land and resource conflict, and significantly increases the possibility of reversals. Moreover, the lack of clear requirements to strengthen indigenous peoples' and local communities' tenure rights is in clear violation of the Cancun agreements, which requires REDD+ activities to promote and support respecting the rights of indigenous peoples and local communities. It may also violate World Bank Operational Policies on indigenous peoples. The FCPF and the associated MF must require compliance with international law and incentivize progress on land tenure reform by clearly requiring outstanding land tenure issues to be resolved and establishing robust mechanisms to respect free, prior, informed consent (FPIC) before emission reductions programs are signed.

The proposed MF also raises several critical and unresolved legal issues regarding how a right to carbon or a title to transfer carbon intersects with indigenous peoples statutory and customary rights. The draft MF currently allows countries to establish a new right or title to carbon that could be transferred or sold in clear violation of customary and statutorily held rights to land, territories and resources. The draft MF therefore stands to violate the FCPF founding charter, which explicitly requires respect for the rights of indigenous peoples and forest dependent communities under national law and applicable international obligations. By merely requiring that the right to transfer title to an emissions reduction be clear, the MF establishes a clear incentive to nationalize the right to carbon, and may discourage further allocations of rights.

If adopted in its current form, the MF risks causing a worsening of forest governance and increased conflict, reversing the trend towards better recognition of forest community tenure and management of forests. The focus on generating new carbon property rights is both unnecessary and burdensome. The FCPF should instead ensure local communities' customary rights to land, territories and resources are being strengthened and that CF programs do not go ahead in areas with unresolved tenure conflict or where free, prior, informed consent is not established.

We thank you for your attention to these matters.

Sincerely,

ARA, Germany
Asociacion Ambiente Y Sociedad, Colombia
Ateneo School of Government, Philippines
Bank Information Center, US
Brainforest, Gabon
Bretton Woods Project, UK
Center for International Environmental Law (CIEL), US
Centre for Environment and Development, Cameroon
Centre for Nature Conservation and Development (CNCD), Cameroon
Centro de Planificación y Estudio Social (CEPLAES), Ecuador
Derecho, Ambiente y Recursos Naturales, Peru
Environmental Investigation Agency (EIA), US
Federations of Community Forestry Users (FECOFUN), Nepal
FERN, UK
Forest Management Trust, US
Forest Peoples Programme, US
Forests of the World
Forum Ökologie & Papier, Germany
Friends of the Earth, Mauritius
Friends of the Earth, Norway
Friends of the Earth, US
Global Witness, UK
Green Development Advocates (GDA), Cameroon
Greenpeace International
Helvetas Swiss Intercooperation, Switzerland
Inclusive Development International
Instituto Latinoamericano para una Sociedad y un Derecho Alternativos (ILSA),
Colombia
International Forestry Resources and Institutions (IFRI)
National Association of Professional Environmentalists (NAPE), Uganda
PRISMA (Programa Salvadoreño de Investigación sobre Desarrollo y Medio Ambiente),
El Salvador
Pro Natura, Switzerland
Pro REGENWALD, Germany
Rainforest Action Network, US
Rainforest Foundation Norway
Rainforest Foundation UK
RECOFTC - The Center for People and Forests
Rights and Resources Initiative
SONIA, Italy
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Cc:

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