



Forest Peoples Programme

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FOREST PEOPLES PROGRAMME COMMENTS AND PROPOSALS ON THE DRAFT UNREDD SOCIAL AND ENVIRONMENTAL PRINCIPLES (SEPC) AND BENEFIT AND RISK ASSESSMENT TOOL (BeRT)

January 20, 2012

Forest Peoples Programme submits these comments and proposals following the call for submissions and comments to the draft Benefit and Risk Assessment Tool, and the Social and Environmental Principles and Criteria.

This submission is subdivided in two sections, the first providing comments on the BeRT based on the questions proposed in the cover note to the draft BeRT, and the second providing general comments and recommendations on the SEPC. More specific comments on the SEPC are provided in the enclosed form.

We have focussed our analysis and attention on the sections that are relevant to indigenous peoples and indigenous peoples' rights.

In general terms both the BeRT and the SEPC drafts show significant improvements in terms of content and we commend UNREDD for having taken into due account our and other CSO's recommendations to provide both drafts together to facilitate a cross-analysis and a more consistent contribution. We also commend UNREDD for having accepted to convene a final seminar-consultation with relevant stakeholders and rightsholders, prior to the finalization of the documents.

Nevertheless, in our thorough analysis of both documents we found some discrepancy between improved text and apparent lack of clear guidance on how these will be made operational. In particular, the SEPC, as it stand now seems to be apt to fulfill only one of the three stated goals, notably to assist in the preparation of the National REDD Plan. In order to fulfill the other two goals, namely to assess National Programme Delivery and review National Programmes prior to submission

to the Policy Board of the UNREDD, appropriate procedures will have to be put in place.

As regards the BeRT, we note the lack of reference to specific indicators to assess performance on the respect of rights, and we provide some suggestions on how to address this gap. Since the BeRT is meant to be a tool for stakeholders' use, FPP recommends that UNREDD considers options to support a participatory process to develop and implement assessment methodologies with and by indigenous peoples and integrate them into the UNREDD-FCPF Guidelines for Stakeholder Engagement.

As regards both the BeRT and the SEPC, we note the lack of clarity on how these will be operationalised in particular in the formulation of the Readiness Preparation Plan (RPP) in the cases when UNREDD and FCPF operate in the same country and use the harmonized template. As a matter of fact, the most recent version of the RPP Template does not contain any indication on how these will be taken into account in the Readiness Phase.

Thanking you for your attention we wish a positive discussion and outcome at the Geneva workshop and send you

our best regards

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SECTION 1. COMMENTS ON THE BeRT (Benefit and Risks Assessment Tool)

a. How helpful is the BeRT in understanding the SEPC?

- **Are the questions clear?**

FPP find the questions quite comprehensive, especially those related to indigenous peoples' rights although we would recommend some additions (see specific section below). They are helpful to identify gaps in legislation as regards recognition of international obligations and standards such as ILO169 and UNDRIP, and to seek information on the extent to which these are being respected. However, while the questions are good in providing criteria to screen the National governance and legislative framework related to rights, there seems to be a gap in the definition of indicators to assess performance, especially as regards rights. In this sense we would recommend that other tools be also taken into consideration and that such an assessment be extended to other relevant international environmental and human rights obligations and instruments (see below).

- **How comprehensively does the BeRT address principles and criteria?**

While the SEPC cluster together many of the relevant IP rights in a same principle (Principle 2: "respect and protect stakeholders' rights, including human rights, statutory and customary rights and collective rights") and then spells them out referring explicitly to Indigenous Peoples, the BeRT splits them in separate principles, but it still seems to be taking into consideration the broad suite of relevant rights: a. procedural – participation, b. access to information, c. land tenure/carbon rights (to be amended see below), d. prevent involuntary resettlement, e. benefit sharing, f. FPIC, g. respect for traditional knowledge and practices. By doing so the BeRT in fact provides a pretty comprehensive elaboration of the SEPC sections on Indigenous peoples' rights.

b. How effectively could the BeRT contribute to the elaboration of National Programs?

- **are the resources useful? What other resources might be included?**

The resources are useful, however, especially in terms of assessing progress in respect and implementation of rights, additional resources should be used. For instance, in the section on traditional knowledge and traditional heritage (Principle 2 criterion 11) we recommend the insertion of the Convention on Biological Diversity's "*Akwé: Kon Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities (2004)*".

The section on forest biodiversity could also include other tools and resources such as the CBD AHTEG reports, the CBD “REDD+ and biodiversity”, and “Biodiversity and Livelihoods – REDD benefits” publications as well as the relevant work undertaken by the Convention on Biological Diversity to develop specific safeguards for REDD+.

Additionally, and in line with the UN rights-based approach and to the “One UN” goal, UNREDD could refer – especially in Principle 1 criterion 4 that contains questions related to the extent to which the country fulfils international obligations - to recommendations contained in accepted reports of UN appointed experts.

For example, the 2011 Report of the UN High Commissioner on Human Rights, referred to the need for indicators in realizing economic, social and cultural rights that are *“relevant, valid and realizable; simple, timely and few in number; based on objective, reliable and independent data-generating mechanisms; suitable for comparison over time and territory”*

Such information should be based on *“performance indicators”* that would - among others - assist both the national government, civil society, indigenous peoples and the international donor community to identify gaps and needs related to the obstacles to the respect to the Social and Environmental Principles and Criteria.

An additional useful body of work to assess the degree of compliance of indicators to international human rights norms has been developed by the Office of the High Commissioner on Human Rights of the UN. The OHCHR framework proposes structural, process and outcome indicators as tools aimed at assessing the steps being taken by States in addressing their obligations – *“from commitments and acceptance of international human rights standards (structural indicators) to efforts being made to meet the obligations that flow from the standards (process indicators) and on to the results of those efforts (outcome indicators)”* .

It should also be stressed that the SEPC lists a whole range of International obligations and instruments that do not seem to be adequately reflected in the range of questions contained in the BeRT. We would suggest that a checklist table be attached to the BeRT and the SEPC to define the extent to which international environmental and human rights conventions and instruments have been signed, ratified and/or adopted and supported by the specific REDD country.

This would respond to a key recommendation made in the Report of the United Nations High Commissioner for Human Rights on Human Rights Indicators (2011) that states:

“First, when selecting indicators, it is essential that indicators identified for the implementation of human rights have a clear link to the applicable international and national human rights framework. Indicators selected for measuring certain aspects of a specific human right need to be anchored in the normative content of the right as enumerated in the international and national human rights standards. They also need to capture not only the outcomes, but also commitments and efforts made by the State to discharge its obligations ensuing from the right.”

- **does this type of tool seem useful to articulate risks and opportunities, and actions to address them within National UNREDD programmes?**

As said above, the tool looks useful in providing elements for a gap analysis but it still needs to be more specific in the determination of risks and opportunities, and hence to identify ensuing actions. In fact the methodology used in the diagram that was provided in the first working draft of the Social Principles Risk Assessment Tool (October 2010) could be a good additional instrument – when readapted - to understand and identify any need for corrective action in terms of policies, programmes and operations.

The assessment of risks and benefits should be the outcome of a consultative and participatory process with relevant stakeholders and rights holders, before the actual validation meeting. Rather than adopting a one-size-fits-for-all methodology, the necessary methodology can be developed in a participatory manner with relevant stakeholders in particular indigenous peoples, before the BeRT is being used.

As a matter of fact, UNREDD specifies that the BeRT is also a tool for stakeholders, and hence, a process will have to be identified to ensure that these, and in particular indigenous peoples, have a chance to adapt it to their specific circumstances and conditions.

This process should also entail the faculty of indigenous peoples to provide their own reporting, that then would be fed into the BeRT process. In that regard, the ILO-UNPFII report of an international expert meeting on the theme held in 2011 proposes that

“12. The (reporting) framework (on compliance with human rights obligations) should be elaborated in partnership with indigenous peoples, to reflect their visions and to ensure their full participation in the operationalisation and use of the framework, including in community-led assessment processes.”

and

“21. Efforts should be made to encourage and enable indigenous peoples to undertake their own processes of assessing the implementation of their rights at local, national, regional and international levels. Such processes will inform indigenous peoples’ own decision-making and also allow them to feed quality information into existing mechanisms, including UN treaty monitoring bodies, ILO supervisory mechanisms and specialized UN mechanisms such as the UN Special Rapporteur on the Rights of Indigenous Peoples, the EMRIP and the UNPFII as well as poverty reduction strategies, PRSPs, CCA-UNDAFs and other national policies and strategies.”

These elements related to participatory assessments and parallel reporting on risks, benefits and possible actions to implement the SEPC and use the BeRT could be integrated in the FCPF-UNREDD guidance for Stakeholder Engagement with particular reference to Indigenous Peoples.

An additional issue to be taken into due account is related to the relationship between the BeRT and the RPP.

It is clear that the BeRT will be used to support the integration of the SEPC in the National Development Programs in cases where only UNREDD operates in a country. However and similar to the FPIC guidelines, there is no clarity on the extent to which these would apply in countries where UNREDD and FCPF work together. What would be in that case the tool that will be used? The SESA or the BeRT?

A thorough reading of the latest version of the RPP template shows that while the BeRT and SEPC are referred to in the initial pages, there is no placeholder or further consideration of these in the broad range of actions that have to be undertaken within the RPP.

We would expect that once the SEPC and the BeRT are finalized, the UNREDD will hold a dialogue with FCPF to revise the RPP template accordingly.

COMMENTS AND PROPOSALS ON SPECIFIC BeRT PRINCIPLES

a. Principle 1 criterion 3 “Ensure transparency and accessibility of all information related to REDD+”

This will have to specify that the BeRT should determine whether culturally appropriate information is legally recognized in the country as public policy on access to information and not only as a specific feature limited to REDD program

b. Principle 1 criterion 4

“Has the country ratified ILO 169 and does it support UNDRIP? If so does the country actively enforce the principles from these conventions? “

As said above, it would be good to anchor this question on ratification and endorsement of international obligations and standards such as ILO 169 and UNDRIP to a broader assessment of the degree to which the country has ratified and implemented human rights and environmental conventions and instruments. Accordingly, the formulation proposed here would be:

“Has the country ratified ILO 169 and has it supported UNDRIP? If so does the country actively fulfill the ensuing obligations and related commitments? See checklist table with list of other international human rights and environmental conventions and instruments to have the complete picture of the extent to which the country has ratified/endorsed/implemented relevant international obligations and instruments”.

c. Principle 2 criterion 7

BeRT principle 2 criterion 7 is related to *SEPC: principle 2. Criterion 7: respect and promote the recognition and exercise of equitable land tenure and carbon rights by indigenous peoples and other local communities”* and in the specific to *“Respect and promote the recognition and exercise of the rights to land, territories and resources,*

through land tenure reform, land demarcation and titling, and defining rights over forest resources (including carbon)”

We would recommend that, in accordance to our recommendation on the specific SEPC language, the following questions

A. Are there existing policies and measures in place that help promote the recognition and exercise of equitable land tenure and carbon rights by indigenous peoples and local communities?

B. Does the REDD+ programme include specific action to respect and promote the recognition and exercise of equitable land tenure and carbon rights by indigenous peoples and local communities?

be re-edited as follows:

A. Are there existing policies and measures in place to respect and promote the recognition and exercise of the rights to land, territories and resources, through land tenure reform, land demarcation and titling, and the definition of rights over forest resources (including carbon)?”

B. Does the REDD+ programme include specific action (s) to respect and promote the recognition and exercise of the rights of indigenous peoples and local communities to land, territories and resources, through land tenure reform, land demarcation and titling, and defining rights over forest resources (including carbon)?

Additionally, the following question will have to be inserted:

“Has the country ratified ILO 169 and has it supported UNDRIP? If so does the country actively fulfill the ensuing obligations and commitments? See checklist table with list of other international human rights and environmental conventions and instruments to have the complete picture of the extent to which the country has ratified/endorsed/implemented relevant International obligations and instruments”.

d. Principle 2 Criterion 10 deals with involuntary resettlement:

Guiding question: *“Has the country ratified ILO 169 and does it support UNDRIP? “*

Again, we would suggest the following reformulation: *““Has the country ratified ILO 169 and has it supported UNDRIP? If so does the country actively fulfill the ensuing obligations and commitments? See checklist table with list of other international human rights and environmental conventions and instruments to have the complete picture of the extent to which the country has ratified/endorsed/implemented relevant International obligations and instruments”.*

e. Principle 2, criterion 11 refers to Traditional Knowledge and the respect thereof .

We suggest to include reference to the CBD Awkwe:won guidelines as detailed above.

f. Principle 3 criterion 9 on FPIC

The draft Social and Environmental Principles and Criteria (SEPC) rightfully and consistently recognize in Principle 2 *“Respect and protect stakeholder rights, including human rights, statutory and customary rights and collective rights”* that *“criterion 9: seek free, prior and informed consent of indigenous peoples and other forest dependent communities and respect and uphold the decision taken (whether consent is given or withheld).”*

The Benefit and Risk Assessment Tool (BeRT) is also meant to be used in conjunction with the Stakeholder Engagement guidelines. The way the BeRT is designed and applied and the scope and reach of Free Prior Informed Consent are therefore relevant to the effective implementation of these UNREDD tools.

Specifically, the BeRT should provide criteria to assess the extent to which the right to FPIC has been secured in national legislation as well as an assessment of the enablers that have to be put in place in the course of the readiness phase to ensure Indigenous Peoples’ full enjoyment of the right to FPIC throughout the subsequent phases.

Moreover additional questions should be added, notably:

a. Has a methodology of consultation been determined by the community including their preferences for how they wish the process and consent to be documented? And are there methods of verifying the FPIC process and its outcomes, including, where relevant, participatory monitoring arrangements and mechanisms for independent validation?

b. Are communities given the opportunity to seek advice from independent legal and technical experts?

c. Are FPIC arrangements and procedures set out in community rules and guidelines for community consultation and consent recognized, where such guidelines exist and where they have been developed, agreed, validated and adopted collectively by affected rights holders? Where communities do not have such guidelines, are capacity building on FPIC and time ensured to develop their own FPIC rules internally before they engage with government and project proponents?

g. BeRT principle 3 Promote and enhance forest’s contribution to sustainable livelihoods

We suggest an additional question to ensure proper consideration of indigenous peoples’ concepts and visions, notably:

“Is there a process to ensure that the definition of criteria to assess forest contribution to sustainable livelihoods is based on, and does it take into due account, indigenous peoples’ visions (or development plans) and concepts (where this applies)?”

SECTION 2 : GENERAL COMMENTS ON THE SOCIAL AND ENVIRONMENTAL PRINCIPLES AND CRITERIA (SEPC)

As in the case of the BeRT, the general content of the SEPC has substantially improved and FPP welcomes UNREDD's efforts to take into account concerns expressed in the course of past exchanges. Specific comments on the principles are articulated in the form provided for comments.

In more general terms, we would point out some areas for further improvement, as regards the procedural and operational aspects of the application of the SEPC.

The draft SEPC document states that the three goals of the SEPC are respectively to assist in the formulation of the National REDD Programmes, to assess National Programme delivery, and to review National Programmes prior to submission to the Policy Board of the UNREDD.

Therefore, if one of the goals of the SEPC is to assess National Programme delivery, and also review National Programmes prior to submission to the Policy Board of the UNREDD, then there needs to be some sort of protocol/procedure to ensure a process of benchmarking and assessing compliance of the REDD Programme to the SEPC due to be funded with the SEPC. This is not clear in the document. Nor is it clear whether and how the SEPC will apply to inform already funded National Programmes.

The other important element is the "*assessment of National Programme delivery*". This would mean that the SEPC should also be accompanied with performance criteria and compliance indicators to assess how these are being respected in National Programme delivery.

Furthermore, and similar to the comments made on the BeRT, there is an outstanding issue related to the integration of the SEPC, particularly in the RPP. As a matter of fact, the most recent draft RPP template does not provide any indication on how the SEPC will be made operational in the activities envisaged in the RPP. Nor does it clarify when and whether the SEPC apply in cases where FCPF (World Bank or other delivery partners) and UNREDD operate together in the same country. For the sake of consistency and to ensure the proper application and use of the SEPC, these points need to be clarified and the RPP template revised accordingly.