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National REDD+ Processes

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The Federal Ministry for Economic Cooperation and Development (BMZ) works to encourage sustainable economic development in its partner countries through bilateral cooperation and multilateral partnerships. The German Government has played an active role in the establishment of the FCPF and is a significant financial contributor to the Partnership. BMZ finances more than 40 bilateral projects globally in the context of REDD+, including the REDD+ for Early Movers Programme. In 2011, BMZ launched its Human Rights Strategy, which applies to all relevant actors in bilateral development cooperation. It aims for a cross-sectoral approach, with special attention to recognising and respecting indigenous peoples' rights.



Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) is a federally owned enterprise that supports the German Government in achieving its objectives in the field of international cooperation for sustainable development. GIZ was commissioned to organize the Weilburg Expert Workshop on behalf of BMZ and in cooperation with FCPF and UN-REDD.



The Forest Carbon Partnership Facility (FCPF) is a global partnership, housed within the World Bank's Carbon Finance Unit, which became operational in June 2008. The FCPF provides technical assistance and supports countries in their efforts to develop national strategies and systems for REDD+ in developing forest countries. The FCPF further assists countries to test approaches that can demonstrate that REDD+ can work, and provides them with performance-based payments for emission reductions programs. The support to countries for engaging in REDD+ activities is provided through two mechanisms within the FCPF, the Readiness Fund and the Carbon Fund.



The UN-REDD Programme is the United Nations collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD+) in developing countries. The Programme was launched in 2008 and builds on the convening role and technical expertise of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP). The UN-REDD Programme supports nationally-led REDD+ processes and promotes the informed and meaningful involvement of all stakeholders, including indigenous peoples and other forest-dependent communities, in national and international REDD+ implementation.



This paper was prepared for the Expert Workshop on Practical Approaches to Ensuring the Full and Effective Participation of Indigenous Peoples in REDD+: Assessing Experiences and Lessons to Date, which was held in Weilburg, Germany, on 10-12 September 2013.

The views expressed in this Report are those of the author and do not necessarily reflect the views of any of the organisations or individuals involved in the Workshop.

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EXECUTIVE SUMMARY

This paper, in section 1, provides an overview of the international framework regarding indigenous peoples' rights that are of particular importance for REDD+ processes. These are the rights to self-determination; to lands, territories and resources; and to consultation, participation and consent. Further, section 1 describes the safeguards, policies and procedures that govern FCPF and UN-REDD operations with regard to indigenous peoples when supporting partner countries' preparations for REDD+.

Section 2 examines country experiences from Cameroon, the Democratic Republic of Congo, Nepal, Philippines, Panama and Peru. Methodologically, the approach was to gather and relate information according to the following parameters and yard sticks:

- Key provisions of international standards regarding indigenous peoples' rights;
- Key provisions of FCPF and UN-REDD guidelines regarding stakeholder engagement and free, prior and informed consent;
- Key constitutional and legislative provisions of concerned countries; and
- Key experiences, emerging from the experiences of involved staff, government and agency staff, indigenous representatives and civil society resource persons.

While the differences in regional and country context, as well as the complexities and specificities of the UN-REDD and FCPF processes in the various countries, made direct comparisons between the case studies difficult, the methodology did allow for the identification of a series of conclusions, lessons learned and key messages.

These are presented in Section 3 as follows: FCPF and UN-REDD provide support to national-level REDD+ processes, mainly through government partners, but indigenous peoples are generally marginalised in the structure of modern states and the relationship is often characterised by discrimination and historical mistrust. These are the barriers that the Cancún safeguards under UNFCCC have set out to overcome.

However, recognising indigenous peoples' land and resource rights, and ensuring their self-governance and participation in inclusive governance structures ultimately require profound **transformation** of the legal and institutional framework of most states. The **main leverage of REDD+** to promote such transformation stems from its overall objective to conserve forests in order to reduce carbon emissions. Indigenous peoples have long practiced sustainable forest-management systems resulting in forest conservation. Thus, rights-based partnerships with indigenous peoples are critical for achieving the overall objective of REDD+ and carry the potential of pursuing multiple benefits from forest conservation.

However, the country cases also indicate **barriers** for realising this potential leverage of REDD+:

- Uncertainty regarding REDD+ funding of the necessary scale limits the strength of REDD+ to drive policy change.
- Decision-makers may have more immediate interest in economic activities such as logging, mining and conversion of forests than in forest conservation. This is reflected in the absence of more powerful government institutions, such as ministries of finance, agriculture and mining, from REDD+ in many countries.
- With limited understanding and knowledge about indigenous peoples, many countries do not have basic data about numbers, locations, livelihood practices, traditional institutions etc.

- Dominant sectors of the population hold discriminatory attitudes toward indigenous peoples' traditional occupations, which are even prohibited by law in certain countries.
- The unfamiliar concept of REDD+ – like the technicalities surrounding and internal dynamics of REDD+ as a changing subject – make it difficult to understand and communicate for most stakeholders.
- The focus on the highly specialised measurement, reporting and verification (MRV) elements of carbon emissions and carbon stock directs a lot of the initial readiness funding to technical specialists, making it difficult for stakeholders to identify shared interests and priorities.
- REDD+ and readiness are predefined concepts that are not necessarily aligned with indigenous peoples' aspirations for development. There is, therefore, the risk of disregarding indigenous peoples' potential contributions in terms of traditional knowledge and sustainable practices.

The uncertainty about funding will have to be addressed at a global scale, through UNFCCC, while the fundamental challenge of tying REDD+ to multiple benefits and differentiated interests and rights must be addressed in continuous dialogues from the global to the local levels. Most of the other barriers could be addressed in effective communication strategies contemplated in the readiness processes.

With a relatively small investment and short timeframe, the **direct leverage** of any FCPF or UN-REDD programme is limited and mainly comes from direct application of institutional safeguards, as well as the ability to open space for dialogue and facilitate alliances between governments, indigenous peoples and other stakeholders. This potential is probably greater in African and Asian countries with weak constitutional and legislative protections of indigenous peoples' rights and weak institutionalised mechanisms for dialogue.

Weak recognition and enforcement of indigenous peoples' **rights to lands, territories and resources** is a key issue in most countries. If not resolved with proper safeguards, REDD+ could lead to restrictions in access to forest resources, criminalisation of traditional practices, or even displacement of communities, if, for example, alienation of carbon rights leads to land grabbing. Resolving land-related issues requires legislative measures, as well as implementation, grievance and enforcement mechanisms, all of which require political will, resources and time beyond what can be mustered in the lifetime of a FCPF and UN-REDD supported readiness project.

Consequently, two factors will be crucial for using REDD+ as leverage to finally address the long-pending recognition of land and resource rights:

- 1) **genuine high-level commitments by participating states** to recognise and respect indigenous peoples' rights to land, territories and resources; and
 - 2) **seeking alliances and complementarities with other initiatives to support long-term processes** to implement provisions relating to indigenous peoples' rights to land, territories and resources, including building up the institutional capacity of states and indigenous peoples.
- ✓ **There is a need to combine an immediate safeguard approach to avoid negative impact while seeking synergies and complementarities with other long-term and comprehensive development efforts to positively ensure recognition and effective protection of indigenous peoples' land and resource rights.**

In many countries, particularly in the African and Asian regions, the concept of indigenous peoples is still not well understood and governments have only sporadic experiences of engaging with representative indigenous institutions. The explicit commitment of FCPF and UN-REDD to ensure indigenous peoples' rights has opened up **opportunities** and spaces for dialogue that has strengthened indigenous peoples' own struggle for recognition. In some countries, **representative indigenous institutions** are mainly found at the community or local levels. In others, **representation** of indigenous communities is disputed among a number of organisations. Some countries

experience a proliferation of indigenous NGOs or platforms that may have the capacity to engage in REDD+ processes, but may not have accountability linkages with the constituents they claim to represent.

FCPF and UN-REDD policy and operational framework contemplate “**forest-dependent communities**”, but the implications of this concept are not clear and the guidelines do not provide further guidance on the variety of legal issues that could be involved under international human rights law. For example, some afro-descendant communities in Latin America would fall under the category of “tribal peoples”, as understood in the context of ILO Convention No. 169. Also, as the situations of forest-dependent communities are diverse, and these communities may not count with customary law institutions, there may be particular challenges relating to their representation.

Given the huge and diverse challenges in working with a multitude of often weak and unrecognised representative institutions on technically complicated issues and with limited time and resources, country experiences indicate a tendency to group organisations together or reach out through one overall umbrella organisation. This is understandable for practical reasons, but may lead to conflicts or weaken the legitimacy of results. FCPF/UN-REDD Guidelines for Stakeholder Engagement rightly points to the need to carefully identify, map and work with the variety of actors through existing structures.

- ✓ **It will require efforts from all sides to overcome the challenges of ensuring adequate representation:** for indigenous peoples to clearly identify and mandate their legitimate representatives, for governments to duly recognise them, and for UN-REDD and FCPF to carefully identify and reach out to the legitimate representative institutions without simplifying relationships out of operational convenience.
- ✓ In accordance with procedures for stakeholder mapping, there is a need to **identify** in each particular country **those communities that are “forest-dependent” and ensure their adequate representation in REDD+ processes.**

FCPF and UN-REDD respond to the diverse institutional policies of both donors and “host institutions” (World Bank, FAO, UNEP, UNDP). Another challenge is to ensure adequate implementation and enforcement of institutional safeguards in sovereign states. While World Bank Operational Policies present **mandatory requirements**, the FCPF/UN-REDD joint guidelines are largely silent on how to enforce these and it is not made clear which principles and steps present hard **conditionalities** and which are more **aspirational guidelines** at the discretion of participating states.

Some **general operational experiences** detected from country cases are:

- The first-generation pilot programmes underestimated the complexities, time and resources required for REDD+ readiness and reflect a rush to reach quick results, skipping the more in-depth analysis that could lead to tailored interventions building on existing experiences and structures.
- The attempt to apply differentiated guidelines and procedures of UN-REDD, FCPF and other contributors to REDD+ processes unnecessarily complicates national processes that are challenged by numerous other factors.
- Many programmes show a tendency to compartmentalise components for awareness-raising, communication, consultation, participation and capacity-building, although these are intrinsically complementary and interdependent.
- Participation is often limited to the programme-implementation process, whereas participation in substantive and technical work is more limited. Where indigenous peoples have been involved in the research, analysis and design of technical interventions, it has clearly contributed to mutual learning, as well as the relevance, ownership, impact and sustainability of interventions.

- The Stakeholder Engagement Guidelines are not systematically applied in the context of targeted support from UN-REDD and largely depend on the thematic subject for the support. In cases where targeted support is oriented toward stakeholder engagement and capacity-building, it is a crucial complement to the more technical components of REDD+ readiness.

These weaknesses point to the need for a balance between firm policy commitments, concise procedural and operational requirements, and qualitative guidance on how to ensure flexible, integrated processes of full and effective participation in diverse country contexts. Such a harmonised and streamlined framework should be informed by a systematic analysis of implementation experiences from the ground.

As a general tendency, the UN system has stronger **policy commitments** in line with international human rights law, while the World Bank has stronger **procedural requirements** and compliance mechanisms. At the country level, agencies face the challenge of operating in states that are governed under diverse international and regional standards but often do not have adequate national legislation, or the institutional capacity or political will to comply with their commitments. Hence, from the outset, FCPF and UN-REDD are subject to complex layers of legal and institutional commitments and requirements that, if not followed, may result in severe legal, political, operational and reputational risks.

FCPF and UN-REDD have made **efforts to harmonise** operational templates, procedures, guidelines and safeguards, but many of these still follow separate tracks, referring back to institutional policies and guidelines, which are difficult to change. Moreover, the joint stakeholder guidelines reflect a number of **principles and safeguard criteria that are not fully accompanied by specific operational guidance, indicators or monitoring mechanisms**. Another implication of the complex pattern of joint and separate policies and guidelines is that it **requires time and expert knowledge** to fully understand the commitments, obligations, gaps and procedures. This poses a challenge for staff and partner countries in terms of operationalisation; it constitutes a real hindrance for indigenous peoples and civil society engagement, and it carries a risk of “safeguard leakages”, in the sense that some countries may choose to collaborate with the programme that is perceived to require the “easier” safeguards and/or compliance mechanisms. It seems unnecessary and impractical to continue with differentiated guidelines and operational policies, particularly as both FCPF and UN-REDD contribute to national processes that would eventually result in one national REDD+ strategy.

- ✓ There are strong arguments for further **reinforcing the process of streamlining and harmonising policy commitments and operational guidance** to the most generally applicable standard, which, in this case, is the UN Declaration on the Rights of Indigenous Peoples, as also reflected in the Cancún safeguards.
- ✓ Such strong and unified safeguards would ensure that the World Bank, FAO, UNDP, UNEP and others take a **coherent and independent position to ensure that processes and projects related to REDD+ adhere to the rights of indigenous peoples as enshrined in UNDRIP**.
- ✓ Such a safeguard approach would **require partner countries to commit to consulting and cooperating with indigenous peoples in order to obtain their free, prior and informed consent** (i) before adopting and implementing legislative or administrative measures that may affect them and (ii) prior to the approval of any project affecting their lands or territories and other resources.
- ✓ The ongoing **review of World Bank operational policies** may provide an opportunity to work toward such unified safeguards.

Most of the country cases show that governments have little experience and capacity to cooperate and consult with indigenous peoples’ representative institutions. The challenge of stakeholder engagement will increase as REDD+

countries move from readiness to implementation and from relatively closed circles in the capitals to the community levels. Only a few countries have institutional mechanisms to ensure the more systematic and institutionalised involvement of indigenous peoples.

- ✓ In most countries, the **systematic and institutionalised participation of indigenous peoples requires major investments**, which should be built into the readiness process. The FCPF/UN-REDD Guidelines could be strengthened to reflect the need to assess and address governments' institutional capacities and needs.

The UN-REDD Guidelines on free, prior and informed consent (FPIC) provide a strong argument for countries to comply with their obligation to obtain FPIC from communities. However, few countries have experiences in applying the concept of FPIC the way it is conceptualised in the UN-REDD FPIC Guidelines. **More practical guidance is needed in countries where** (i) indigenous peoples and their ownership rights over lands are recognised; (ii) indigenous peoples are not recognised as such or do not have recognised land and resource rights; and (iii) indigenous peoples and their land and resource rights are not recognised. Moreover, there seems to be a need to clarify that the Guidelines are mainly meant for obtaining FPIC in the context of specific REDD+ projects with a defined impact in a specific geographical area. This should not overshadow the fact that states have a duty to consult and cooperate with indigenous peoples in order to obtain FPIC with regard to any legislative and administrative measures that may affect them. This requirement is determined by the potential impact of such measures and can thus a priori not be limited to either the REDD+ readiness or implementation phase. This will particularly apply when readiness implies review and amendments of legal frameworks, the definition of carbon rights etc.

The UN-REDD FPIC Guidelines, however, do not elaborate much on the **broader governance approach to FPIC**, applicable, for example, to legislative measures and national programmes. Similarly, the joint sections of FCPF/UN-REDD Guidelines on Stakeholder Engagement are largely silent on the requirement for consent. Hence, there is tendency to compartmentalise the approach to indigenous peoples' rights, delinking the requirement for FPIC from consultation, participation and capacity-building. This is problematic, as experience shows that the possibility of obtaining consent in a specific project will depend on the broader governance context, the quality of the consultation and participation process, and the compatibility between the project and indigenous peoples' aspirations for development. If the focus is not broadened, there is a risk of reducing the concept of free, prior and informed consent from constructive collaborative decision-making to a reaction to externally defined projects or to a single event with no longer-term engagement.

- ✓ There is scope for **further strengthening FCPF and UN-REDD's commitment to indigenous peoples' rights by incorporating the requirement for free, prior and informed consent** in the stakeholder guidelines and providing operational guidance on how to embed this requirement in broader provisions for consultation, participation and capacity-building.
- ✓ **There is a need to supplement the FPIC Guidelines with guidance to countries on how to ensure consultation and consent in broader processes**, including at the national level.
- ✓ **The application of the Guidelines will require comprehensive technical assistance**, which should be built into national programmes and targeted support but also addressed through complementary activities such as research, documentation and the exchange of experiences, training courses etc. at regional and global levels.

FCPF and UN-REDD provide for participation of civil society and indigenous peoples at the **global level** and promote participation in steering committees and similar bodies at the **national level**. This has been followed in most cases. Participation in such bodies is appreciated and has led to positive results. However, in some cases there are questions regarding the real possibility of influencing decision-making. Most national programmes have taken years to get from formulation and approval to initiation. In some countries, this has implied that **momentum** is lost and the frustration of expectations from civil society and indigenous peoples has contributed to mistrust. In

other countries, the slow implementation pace has allowed civil society and indigenous peoples to **prepare and build their own capacities** for engagement with REDD+. There seems to be a general tendency that funding for stakeholder engagement, including awareness-raising and capacity-building, comes in at a relatively late stage while the need may be there even before a given programme is initiated.

The country cases strongly reaffirmed the **inter-linkages between awareness-raising, capacity-building, consultation, participation and consent**. Further, these elements must be regarded as continuous processes rather than one-off events that can be confined to particular stages of the REDD+ readiness or implementation phases.

- ✓ There is a need to **provide support to stakeholder engagement** from the **outset or even prior to the finalisation of broader grant agreements**.
- ✓ **Participation in national steering committees** could be made a **procedural requirement**, accompanied by necessary provisions for capacity-building and outreach.
- ✓ **Specific budget allocations for capacity-building of indigenous peoples** in the context of national programs could be made a **procedural requirement**. In parallel, participating agencies and other development partners should consider making **long-term predictable institutional funding available for indigenous peoples**, as a necessary element of effective participation.

Many of the country cases illustrate the **multitude of actors** involved with REDD+ processes, each with their distinct guidelines, implementation modalities, budgets, reporting requirements, safeguards, timeframes etc. This adds stress on already weak government institutions, constitutes major challenges for civil society and indigenous peoples' engagement, fragments the sector, complicates monitoring, increases transaction costs and, in general, goes against the principles established in the Declaration on Aid Effectiveness, which aims at ensuring alignment, harmonisation and ownership.

Moreover, most UN-REDD national programmes are **implemented directly by agencies** in collaboration with national partners. While this may imply some advantages in terms of overcoming weak national capacity and provide some flexibility with regard to collaboration with civil society and indigenous peoples, it raises questions of alignment with national priorities, institutionalisation of capacities, transaction costs and sustainability.

- ✓ There is a need to **seriously consider a profound reform of the way external assistance is provided to the forest sector and REDD+** by adhering to the principles of aid effectiveness to which most of the involved agencies have already agreed.

LIST OF ACRONYMS

ABS	Access and Benefit Sharing
ACHPR	African Commission on Human and Peoples Rights
AIDSEP	Asociación Interétnica de Desarrollo de la Selva Peruana
AIPP	Asia Indigenous Peoples Pact
ANAM	Autoridad Nacional del Ambiente (National Authority for the Environment)
BMZ	Federal Ministry of Economic Cooperation and Development
CBD	Convention on Biological Diversity
CBFF	Congo Basin Forest Fund
CBO	community-based organisation
CED	Centre for Environment and Development
CERD	Committee on the Elimination of Racial Discrimination
CONAP	Confederación de Nacionalidades Amazónicas
CSO	Civil society organisation
DENR	Department of Environment and Natural Resources
DfID	Department for International Development
DIM	Direct Implementation Modality
DRC	Democratic Republic of Congo
ER-PIN	Emission Reductions Program Idea Note
ESMF	Environmental and Social Management Framework
FAPI	Federación por la Autodeterminación de los Pueblos Indígenas
FCPF	Forest Carbon Partnership Facility
FECOFUN	Federation of Community Forestry Users Nepal
FIP	Forest Investment Program
FLEGT	Forest Law Enforcement, Governance and Trade
FMT	Facility Management Team
FPIC	Free, Prior and Informed Consent
FPP	Forest Peoples Programme
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GRM	grievance redress mechanism
GTCR	Groupe de Travail Climat REDD
ICCs	indigenous cultural communities
ICCPR	International Covenant on Civic and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDB	Inter-American Development Bank

ILO	International Labour Organization
IP	indigenous peoples
IPO	indigenous peoples' organisation
IPRA	Indigenous Peoples Rights Act
IUCN	International Union for the Conservation of Nature
MBOSCUDA	Mbororo Social and Cultural Development Association
MECNT	Ministry of Environment, Nature Conservation, and Tourism
MINEPDED	Ministry of Environment, Protection of Nature and Sustainable Development
MoFSC	Ministry of Forestry and Soil Conservation
MRV	measurement, reporting, and verification
NCIP	National Commission on Indigenous Peoples
NEFIN	Nepal Federation of Indigenous Nationalities
NGO	non-governmental organisation
NIM	National Implementation Modality
NMRC	National Multi-stakeholder REDD+ Council
NTFP-EP	Non-Timber Forest Products Exchange Programme
PNRPS	Philippine National REDD-Plus Strategy
REL	reference emission levels
RFN	Rainforest Foundation Norway
R-PIN	Readiness Plan Idea Note
R-PP	Readiness Preparation Proposal
SEPC	Social and Environmental Principles and Criteria
SES	social and environmental safeguard
SESA	Strategic Environmental and Social Assessment
TAP	Technical Advisory Panel
UNDG	United Nations Development Group
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	UN Framework Convention on Climate Change
UN-REDD	United Nations Collaborative Programme on Reducing Emissions from Deforestation and forest Degradation
WWF	World Wide Fund for Nature (World Wildlife Fund – US)

INTRODUCTION

The current paper was compiled as an input for the workshop on Practical Approaches to Ensuring the Full and Effective Participation of Indigenous Peoples in REDD+, which took place on 10-12 September 2013. The workshop was jointly organised by the Federal Ministry of Economic Cooperation and Development (BMZ), the Forest Carbon Partnership Facility (FCPF) and the United Nations Collaborative Programme on Reducing Emissions from Deforestation and forest Degradation (UN-REDD).

The paper was written by Ms. Birgitte Feiring with the assistance of Ms. Nanna Brendholdt Thomsen over a period of three weeks, based on a desk review of relevant guidelines, studies and reports, as well as interviews with key UN-REDD and FCPF staff, indigenous peoples' representatives and resource persons. Methodologically, the approach was to gather and relate information according to the following parameters and yardsticks:

- Key provisions of international standards regarding indigenous peoples' rights;
- Key provisions of FCPF and UN-REDD guidelines regarding stakeholder engagement and free, prior and informed consent;
- Key constitutional and legislative provisions of concerned countries; and
- Key experiences, emerging from the experiences of involved staff, government and agency staff, indigenous representatives and civil society resource persons.

A structured interview guide was prepared in an attempt to systematically gather information on the aforementioned issues in six sample countries, reflecting the diversity of regional and country situations. These countries are: Cameroon, Democratic Republic of Congo (DRC), Nepal, Panama, Peru and the Philippines.

The aspiration was that the application of a coherent methodology would allow for a certain level of homogeneity of data as well as quantification and comparison of country contexts and experiences. However, the differences in the regional and country context, and the limited time to review documentation and conduct interviews, as well as the complexities and specificities of the UN-REDD and FCPF processes in the various countries, limited the extent to which immediately comparable data or homogenous case studies could be compiled.

Rather than following a common format, the case studies therefore highlight different aspects that are particularly important for the given country contexts. However, the methodology did allow for the identification of a series of conclusions, lessons learned and key messages that are presented in the last section of the paper. Although the paper does not attempt to be exhaustive, it will hopefully contribute elements for further reflection on how to best ensure consultation, participation and consent of indigenous peoples in national REDD+ processes.

It has only been possible to compile this paper thanks to all those (listed in Annex B) who generously contributed with their time, insights, experiences and documentation.

1 APPLICABLE INTERNATIONAL STANDARDS

1.1 Indigenous Peoples' Rights Are Human Rights

The **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** is the instrument that most prominently defines indigenous peoples' rights under international law. UNDRIP is underpinned by and reflects the broad range of human rights enshrined in instruments of general application, such as the International Covenant on Civil and Political Rights (**ICCPR**), the International Convention on the Elimination of Racial Discrimination (**ICERD**) and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**). These instruments are ratified by the vast majority of states in all regions of the world. UNDRIP contextualises these universal human rights to the particular situation of indigenous peoples. Particularly, it articulates the collective aspects of these rights in order to overcome the historical injustices and current patterns of discrimination against indigenous peoples. UNDRIP was adopted in 2007 by an overwhelming majority of States.

UNDRIP does not have a single institutionalised monitoring mechanism, but as it reflects the full range of human rights treaties, the various treaty-monitoring bodies regularly address violations of indigenous peoples' rights. This is particularly the case with those monitoring the application of ICCPR, ICERD and ICESCR. Regional human rights bodies, such as the Inter-American Court and Commission on Human Rights and the African Commission on Human and Peoples Rights (ACHPR) have also been instrumental in addressing violations of indigenous peoples' rights (see for example UN-REDD, 2013 (b) for a compilation of references).

"Indigenous peoples' rights are not 'special' rights, but are articulations of universal human rights, as they apply to indigenous peoples. This means contextualizing rights to the situation of indigenous peoples and taking the collective aspects of these rights into account" (ILO, 2013:13).

The provisions of UNDRIP are compatible with and reinforced by the **International Labour Organisation (ILO) Convention No. 169** on the rights of indigenous and tribal peoples, which is ratified by 22 countries (including 17 donor and participant/partner countries of FCPF and UN-REDD¹). Once ratified, the Convention becomes legally binding on the countries and the ILO regularly supervises its application.

1.2 Key Elements of Indigenous Peoples' Rights

Estimates of how many indigenous peoples depend on forests for their livelihood are imprecise, ranging from 70-200 million (UN-REDD website; FPP, 2012). The vast majority of these peoples live in developing countries in Africa, Asia and Latin America, where REDD+ potentially will have implications for their rights.

UNDRIP is a broad governance instrument that covers the array of issues of concern to indigenous peoples. The key elements of indigenous peoples' rights of importance for REDD+ are:

¹ Argentina, Bolivia, Central African Republic, Chile, Colombia, Costa Rica, Denmark, Ecuador, Guatemala, Honduras, Mexico, Nepal, Netherlands, Nicaragua, Norway, Paraguay, Spain.

1.2.1 Self-determination and Self-government

UNDRIP explicitly recognises that indigenous peoples have the right to *self-determination and should be able to “freely pursue their economic, social and cultural development”* (article 3). The right to self-determination is at the heart of the Declaration and implies that any REDD+ initiative that affects indigenous peoples must find convergence with their self-determined aspirations for development.

UNDRIP, in article 18, specifies that indigenous participation in decision-making should be *“through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions”*. The important criterion is that representation should be determined by the indigenous peoples themselves. Hence, indigenous peoples, communities or sections of indigenous communities should identify and mandate the institutions that represent them, in order to avoid misrepresentation or manipulation. Likewise, institutions claiming to represent indigenous peoples should be able to legitimate their claim to representation as well as clarify the accountability mechanisms vis-à-vis their constituents.

The appropriateness of an institution in a given consultation process will depend on the subject, impact and scope of the proposed measure. In broad national consultations, there will be a need to take an inclusive approach, allowing for the participation of a diversity of organisations. In more specific consultations, the scope should be determined on the basis of impact. In many situations, representation will be contested or there will be a diversity of competing institutions, implying that the identification of a single representative institution may not be possible.

A fundamental condition for the adequate implementation of indigenous peoples’ rights is the existence of indigenous institutions with a mandate to represent their constituents. Such institutions are very diverse in terms of history, composition, structure, mandate and resources. Most traditional indigenous institutions have been weakened or eroded during processes of colonisation and domination, while more recent organisational structures often have limited resources and weak institutional and technical capacity. Hence, there will often be a need to support institutional strengthening and capacity-building to overcome disadvantages and ensure that indigenous peoples can engage in a meaningful way. This is provided for in article 39 of UNDRIP, which establishes that indigenous peoples have the right to *“access to financial and technical assistance from States and through international cooperation”*.

Ensuring that the institutions concerned are representative may in some cases also imply going beyond traditional institutions, for example in cases where women do not have a voice in traditional decision-making. UNDRIP requires that its provisions should be applied equally to women and men, and establishes that the promotion, development and maintenance of indigenous institutional structures should be *“in accordance with international human rights standards”* (article 34). Hence, indigenous institutions must strive to adhere to the principles of consultation, participation and consent in their internal decision-making processes and allow for participation of both men and women, although this may require an adjustment of customs and traditions.

1.2.2 Lands, Territories and Resources

UNDRIP (articles 25, 26) establishes that indigenous peoples have rights to the lands, territories and resources that they have traditionally occupied, owned or used. These rights go beyond the land they directly cultivate or inhabit, and cover the broader territory, inclusive of natural resources, rivers, lakes and coasts. Under international law, it is *“the traditional occupation and use which is the basis for establishing indigenous peoples’ land rights, and not the eventual official recognition or registration of that ownership”* (ILO, 2013: 21).

As a general principle, indigenous peoples should never be removed from their lands or territories and necessary relocation should take place only with their free, prior and informed consent (UNDRIP, article 10).

Further, indigenous peoples have rights to the natural resources of their territories, including the right to own, use, develop and control these resources. As a basic principle, these resources comprise both renewable and non-renewable resources. Hence, although not explicitly mentioned in UNDRIP, it must be assumed that indigenous peoples hold the rights over the carbon stored in their forests.

UNDRIP places a duty on States to ensure adequate recognition and effective protection of indigenous peoples' land and resource rights. This will in most cases require a combined set of procedures and mechanisms, including identification, demarcation, titling or other legal recognition, along with adequate access to justice and penalties for unauthorised intrusion.

1.2.3 Consultation, Capacity-Building, Participation, Consent

Articles 19 and 32(2) of UNDRIP jointly establish that *"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent"*

- *"before adopting and implementing legislative or administrative measures that may affect them"*(article 19); and
- *"prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources"* (article 32(2)).

The obligation of States to consult, cooperate and obtain free, prior and informed consent from indigenous peoples arises as a general obligation under article 19, whenever legislative or administrative measures may affect them directly. Such measures could, for example, concern revised forest legislation, provisions concerning carbon rights or the elaboration of national guidelines on consultation and consent. In addition, the Declaration particularly emphasises the need to obtain free, prior and informed consent under certain circumstances, including with regard to projects affecting their lands or territories and other resources, which would obviously apply to REDD+ projects on indigenous peoples' lands and territories (article 32(2)).

Under the Declaration, and international human rights law in general, the obligation to ensure appropriate consultation and consent clearly and expressly falls on governments.

Hence, the requirement for consultations and consent is both broad and specific, encompassing both national and localised measures and projects. The chances of obtaining free, prior and informed consent for a specific project is clearly dependent upon the broader legal and regulatory framework. In operational terms, this will often imply establishing permanent and institutionalised mechanisms for regular and broad consultation along with mechanisms to be applied, whenever a specific project may affect a specific community.

As noted by the **UN Special Rapporteur on the Rights of Indigenous Peoples**: *"It would be unrealistic to say that the duty of States to consult directly with indigenous peoples through special, differentiated procedures applies literally, in the broadest sense, whenever a State decision may affect them, since almost all legislative and administrative decisions that a State adopts may affect the indigenous peoples of the State along with the rest of the population in one way or another"* (A/HRC/12/34).

In order to practically assess when specific consultations with indigenous peoples are required, for example in the context of legislative measures, the Special Rapporteur has clarified that the particular duty to consult *"applies whenever a State decision may affect indigenous peoples in ways not felt by others in society"* (A/HRC/12/34). In other words, whenever a given measure is likely to affect indigenous peoples' collective rights, the requirement for specific consultations aimed at obtaining consent arises.

The Special Rapporteur has clarified that article 19 of UNDRIP “*should not be regarded as according indigenous peoples a general ‘veto power’ over decisions that may affect them, but rather as establishing consent as the objective of consultations with indigenous peoples*” (A/HRC/12/34, 2009). Further, he underlines that “*the strength or importance of the objective of achieving consent varies according to the circumstances and the indigenous interests involved. A significant, direct impact on indigenous peoples’ lives or territories establishes a strong presumption that the proposed measure should not go forward without indigenous peoples’ consent. In certain contexts, that presumption may harden into a prohibition of the measure or project in the absence of indigenous consent*” (A/HRC/12/34).

This principle is further reflected in the jurisprudence of the **Inter-American Court of Human Rights**, which, in a case involving the Saramaka people of Suriname, held that “*regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramaka, but also to obtain their free, prior, and informed consent, according to their customs and traditions*” (Caso del Pueblo Saramaka Vs. Surinam. Sentencia de 12 de agosto de 2008 Serie C No. 185).

In this context, the requirement for consent serves as a core human rights principle and a fundamental safeguard to ensure that indigenous peoples’ rights and interests are not violated through imposed government dispositions. Generally, governments should have no interest in proceeding with a given legal measure, program or project without the consent of the concerned peoples, as it would simply undermine the legitimacy, results and sustainability of such an action.

However, it is worth noting that UNDRIP links the concept of free, prior and informed consent to the broad governance requirements for consultation, participation and cooperation. In other words, the right to give or withhold consent is not just the right to react to measures proposed by the State or other external actors, but intimately linked to the right of indigenous peoples to self-determination and to full participation in the decisions of the broader society in which they live.

The UN Special Rapporteur on the Rights of Indigenous Peoples notes that the duty to consult with indigenous peoples “is a corollary of a myriad of universally accepted human rights, including the right to cultural integrity, the right to equality and the right to property. [...] More fundamentally, it derives from the overarching right of indigenous peoples to self-determination and from related principles of democracy and popular sovereignty” (A/HRC/12/34).

As with the duty to consult, cooperate and obtain consent, the duty to ensure participation arises as a general requirement – and is further emphasised as a specific requirement in certain instances. UNDRIP stipulates that:

- *Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State (article 5).*
- *Indigenous peoples have the right to participate in decision-making in matters that would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions (article 18).*
- *Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development (article 23).*

The participation of indigenous peoples in decision-making is an integral element of inclusive governance and participatory development. It ensures ownership and consent; it enriches and qualifies interventions and ensures the relevance and sustainability of results.

While consent clearly embodies the right to say yes or no to a particular proposal, this by no means captures the entirety of the content of the requirement for consultation and consent. When embedded in a broader context of collaborative governance, the requirement for consultation and consent need not be reduced to a simplistic option of saying “yes or no” to external predefined measures of which indigenous peoples have not participated in their formulation, and which do not reflect their aspirations for development. Also, this narrow interpretation of consultation and consent will often have a detrimental impact on community cohesion, as it polarises diverse positions within the concerned communities and almost inevitably leads to division and conflict.

“...the principles of consultation and consent are aimed at avoiding the imposition of the will of one party over the other, and at instead striving for mutual understanding and consensual decision-making” (UN Special Rapporteur on the Rights of Indigenous Peoples, A/HRC/12/34, 2009)

In general, it cannot be expected that indigenous communities are homogenous and will adopt a uniform position on a given measure. Therefore, it is of crucial importance that consultation and participation processes allow for indigenous peoples’ own decision-making processes to cope with differences of opinion through which a collective decision can emerge, without such differences being used and misused by the proponents of the measure.

Further, it should be underlined that indigenous peoples’ substantive rights, for example to lands, territories and natural resources, still need to be respected. As noted by Crippa and Gordon (2012): *“While FPIC is an important procedural standard, it is not an end in itself. Rather it is a standard and a set of criteria for the protection of indigenous peoples’ substantial rights. Without adequate recognition of and respect for indigenous peoples’ substantive legal rights, there can be no truly free consent”* (Ibid: 19). Likewise, neither recognition of indigenous peoples’ substantive rights nor access to, for example, social services such as education or health care, can be considered as fair compensation or benefit-sharing. States have a duty to protect indigenous peoples’ rights and to ensure effective equality, regardless of their position in a given consultation process.

Granting or withholding free, prior and informed consent should, in essence, reflect indigenous peoples’ self-determined decision-making processes and be the result of a constructive consultation process, closely tied to participation in decision-making, and conceptualised as a negotiation toward mutually acceptable agreements within the framework of indigenous peoples’ collective rights.

In the context of REDD+, which has potential implications for national-level policies and legislation as well as for specific local projects, indigenous peoples’ intertwined rights to consultation, participation and consent must be conceptualised as a continuous process, involving a series of stages and steps, rather than as a single event. This will often involve the establishment of mechanisms for effective engagement between indigenous peoples, government and other relevant actors in REDD+ at the national, sub-national and local levels.

1.3 Recognition under UNFCCC and CBD

Under the **UN Framework Convention on Climate Change (UNFCCC)**, the Conference of Parties (COP) in Cancún 2010 requested developing countries to develop the following core elements of REDD+:

- A national strategy or action plan;
- A national forest reference emission level and/or forest reference level;
- A robust and transparent national forest monitoring system for monitoring and reporting of emissions levels, conservation and enhancement of forest carbon stock and sustainable management of forests;

- A system for providing information on how safeguards are being addressed and respected (Cancún Decision 1/CP.16).

The safeguards included in Annex 1 of the **Cancún decision** require, inter alia:

- Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the UNDRIP;
- The full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities in REDD+.

Subsequently, the decision reached by the COP in **Durban 2011** included guidance on systems that would provide information on how REDD+ safeguards are addressed and respected. In sum, they would:

- Provide transparent and consistent information.
- Provide information that is accessible to all relevant stakeholders.
- Update the information on a regular basis.
- Provide information on how all the safeguards are addressed and respected.
- Be country-driven and implemented at the national level.
- Build upon existing processes, as appropriate.

As noted by the Accra Caucus, there is yet “*no firm guidance or reporting requirement*” on effective safeguard information systems (Accra Caucus, 2013). In the case of indigenous peoples, building on existing information processes would in many cases mean relying on indigenous and civil society observatories and community monitoring, as well as reporting and observations by regional and international human rights bodies.

Under the **Convention on Biological Diversity (CBD)**, the parties work on Access and Benefit-Sharing (ABS) and on the Programme of Work on Protected Areas (conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on sacred sites, lands and waters of indigenous peoples). The CBD mentions in Article 8(j) that the traditional knowledge of indigenous peoples and local communities may be used only with their approval. This has subsequently been interpreted to mean that it can be used only with their prior and informed consent. Likewise, the CBD requires governments (though subject to national legislation) to respect, preserve and maintain the knowledge and innovations of indigenous peoples relating to biodiversity conservation and management.

1.4 Donor and Institutional Policies and Requirements

Many of the donors to FCPF and UN-REDD have made explicit commitments to indigenous peoples’ rights. Denmark, Netherlands, Norway and Spain have ratified ILO Convention No. 169 and, along with the European Union, Germany and others, have adopted specific policies to operationalise their commitment to indigenous peoples’ rights in the context of external development cooperation.

Articles 41 and 42 of UNDRIP, specifically require the **UN system** at large to contribute to the full realisation of its provisions, including at the country level. This requirement has resulted in the 2008 adoption of the Guidelines on

Indigenous Peoples' Issues of the UN Development Group (UNDG). In addition, individual UN agencies such as FAO (FAO, 2010), UNEP (UNEP, 2012) and UNDP (UNDP, 2001) have developed institutional policies to operationalise their support to indigenous peoples. Most of these policies and guidelines are not accompanied by strict procedural requirements or monitoring and grievance mechanisms. UNDP's operational rules allow for following the so-called National Implementation Modality (NIM), through which funds are transferred to national partners, and managed and implemented through national institutions and systems. FAO and UNEP do not have provisions for NIM.

The **World Bank** is guided by its Operational Policy 4.10 (OP 4.10), which does not embrace the concept of free, prior and informed consent, as enshrined in international law. Instead it provides for "*free, prior, and informed consultation*". The discussions in this context have tended to confuse the key elements of international law, namely *consultation* as the process through which *consent* will be achieved. This has contributed to the erroneous interpretation that consultation and consent are contradictory elements, with *consultation* being 'weaker' than *consent*. Rather, in the context of international law, the two concepts are intrinsically linked and the quality of the consultation process will often be determining for the possibility of obtaining consent.

OP 4.10 is currently under review, along with the other safeguard policies of the World Bank. Indigenous peoples' aspiration is that the Bank's policy will eventually embrace the concept of *free, prior and informed consent*, as enshrined in UNDRIP. The application of OP 4.10 implies mandatory procedures, and complaints about non-compliance can be brought to the World Bank Inspection Panel.

A 2011 review of implementation of OP 4.10, points, inter alia, to the following implementation weaknesses and measures to improve policy implementation:

- *"Noting that many projects targeting or impacting Indigenous Peoples do not address issues related to land and resource rights, which are important to the wellbeing of Indigenous Peoples, the Bank should pay special attention to identifying and addressing these issues.*
- *Whether the Bank policy maintains the current principle of free, prior and informed consultation or adopts in the future the principle of free, prior and informed consent, the challenge is to operationalize the principle so that task teams are supported to translate them into practice"* (World Bank, 2011: vii-viii).

1.5 FCPF and UN-REDD Guidelines and Procedures

UN-REDD and FCPF originate from different institutional platforms with distinct and complex rules and procedures. This is particularly the case with UN-REDD, which in itself is an inter-agency collaboration between three distinct agencies. However, FCPF and UN-REDD have made an effort to harmonise some guidelines and procedures, while others remain applicable only to one of the programmes. The key documents of importance to indigenous peoples are:

- FCPF and UN-REDD template for Readiness Preparation Proposal (R-PP)
- UN-REDD and FCPF Joint Guidelines on Stakeholder Engagement
- The Common Approach to Social and Environmental Safeguards for Multiple Delivery Partners under the FCPF Readiness Fund
- The Social and Environmental Principles and Criteria (SEPC) of UN-REDD
- The Strategic Environmental and Social Assessment (SESA) of FCPF
- The UN-REDD Guidelines on Free, Prior and Informed Consent (FPIC)

- Joint UNDP-World Bank FCPF Guidance Note for REDD+ Countries: Establishing and Strengthening Grievance Resolution Mechanisms

The **R-PP template** is supposed to give countries a common framework for developing proposals to either FCPF or UN-REDD – or for preparing joint proposals in line with the Cancún decisions regarding readiness and safeguards. However, already from the outset, the template indicates two distinct tracks, basically differentiating between applicable World Bank and UN-REDD policies and safeguard requirements.

This same approach is reflected in the UN-REDD and FCPF **Joint Guidelines on Stakeholder Engagement** (see Annex E for an overview of the Guidelines). The Guidelines outline a series of joint general commitments, principles and expectations, but while UN-REDD commit to the UNDRIP and other international instruments, FCPF refers to World Bank OP 4.10. With regard to consent, UN-REDD refers to its Guidelines on FPIC whereas FCPF refers to World Bank OP 4.10 and the concept of free, prior and informed consultation “leading to broad community support”.

Likewise, with regard to social and environmental safeguards, UN-REDD expects countries to apply the Social and Environmental Principles and Criteria (SEPC), while FCPF requires a Strategic Environmental and Social Assessment (SESA).

The **Social and Environmental Principles and Criteria** (SEPC) of UN-REDD provide a guiding framework for: (i) addressing social and environmental issues in UN-REDD National Programmes and other UN-REDD funded activities; and (ii) developing national approaches to REDD+ safeguards in line with UNFCCC. SEPC consists of seven broad principles, and a series of more detailed criteria, of which two refer to existing Guidelines concerning indigenous peoples:

- *Ensure the full and effective participation of relevant stakeholders in design, planning and implementation of REDD+ activities, with particular attention to indigenous peoples, local communities and other vulnerable and marginalised groups* (to be implemented in accordance with the FCPF and UN-REDD joint Guidelines on Stakeholder Engagement);
- *Seek free, prior and informed consent of indigenous peoples and respect and uphold the decision taken (whether consent is given or withheld)* (to be implemented in accordance with UN-REDD FPIC Guidelines).

Additionally two criteria have explicit reference to indigenous peoples, but there is no further operational guidance on how to ensure the respect for these:

- Respect and promote the recognition and exercise of the rights of indigenous peoples, local communities and other vulnerable and marginalised groups to land, territories and resources, including carbon;
- Respect and protect traditional knowledge, and cultural heritage and practices.

The **Strategic Environmental and Social Assessment** (SESA) is FCPF’s tool to integrate key environmental and social considerations into REDD+ readiness. The SESA reflects FCPF’s responsibility to apply the World Bank’s Safeguard Policies and procedures as provided for in its various **Operational Policies**. In principle, all World Bank Safeguard Policies have the potential to apply to readiness preparation but for REDD+ the most relevant policies are assumed to be “the policies on Environmental Assessment (OP/BP 4.01), Natural Habitats (OP/ BP 4.04), Forests (OP/BP 4.36), Involuntary Resettlement (OP/BP 4.12), and Indigenous Peoples (OP/BP 4.10)” (FCPF/UN-REDD, 2011). As part of the SESA, an Environmental and Social Management Framework (ESMF) is to be put in place to manage environmental and social risks and to mitigate potential adverse impacts.

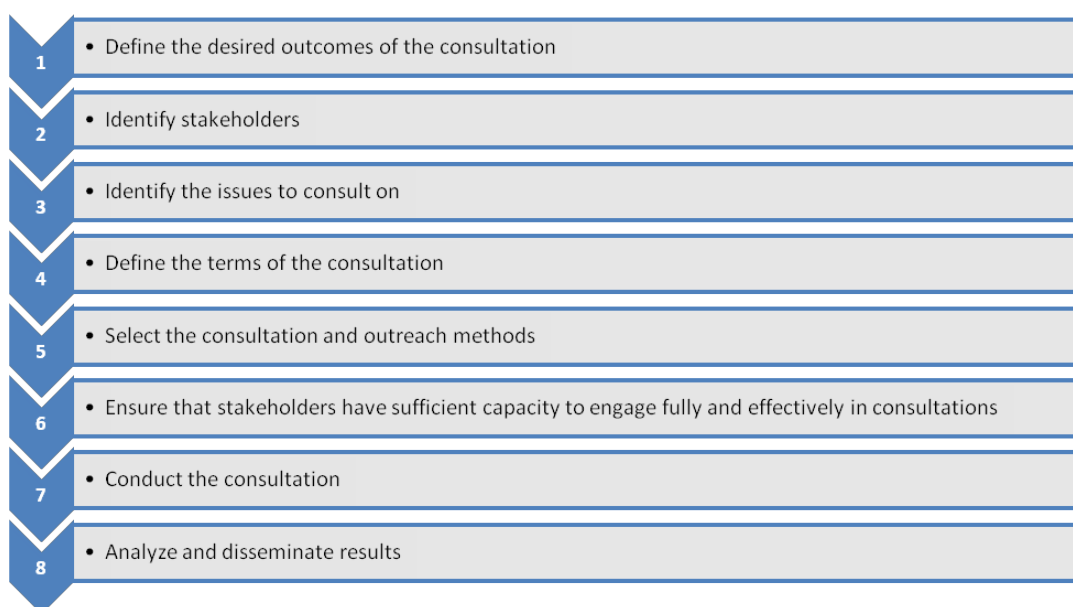
A FCPF note on World Bank Safeguard Policies and the UNFCCC REDD+ Safeguards considers that while “the verbatim texts of the World Bank environmental and social safeguard policies and the UNFCCC REDD+ safeguards are not identical,

the required application of the World Bank's safeguards (...) should be sufficient to ensure that the World Bank's safeguards successfully promote and support the UNFCCC safeguards for REDD+” (FCPF 2013: 1). However, given that the World Bank's OP 4.10 does not embrace the concept of free, prior and informed consent as enshrined in the UNDRIP, it can be questioned if the Bank's policy meets the requirement under UNFCCC of respect for indigenous peoples' rights.

In countries where UNDP is the delivery partner of FCPF, it needs to meet the substantive requirements of the World Bank's safeguard policies. This will require UNDP, over the next year, to review its social and environmental standards, including consolidating its accountability mechanism.

In terms of consultation and participation, the **Joint Guidelines on Stakeholder Engagement** provide for prior consultations and the elaboration of a Consultation and Participation Plan with a realistic budget to be included in R-PPs. Further, a national-level workshop should be held to initiate the consultation and participation process, and participatory structures and mechanisms should be put in place to manage the agreed process, e.g. through participation of indigenous peoples and other stakeholder in national REDD+ committees.

The Guidelines also outline eight generic steps for consultation, as illustrated below:



As can be seen, the Guidelines are non-specific about the purpose of the consultation and simply states that the results will be analysed and disseminated. It is only the specific UN-REDD track of the guidelines that addresses the objective to obtain consent, as stipulated in UNDRIP.

In terms of defining which issues to consult, the Guidelines provide a non-exhaustive list, which seems to be a combination of research topics, policy issues, programme outputs, participatory exercises etc. While all of these topics can potentially be made the subject of consultations, the Guidelines do not specify the generic stages and topics of REDD+ readiness and implementation stages that would require consultation under international law.

The **Joint Guidelines** indicate that in the case of REDD+, “issues for consultation may include (but are not limited to): Current status of national forests; Institutional, policy and regulatory frameworks; Main causes and drivers of deforestation and forest degradation; Past and present policies to halt deforestation and forest degradation, where they have succeeded and where they have not; Rights and needs of indigenous peoples and other forest-dependent communities; Type and pattern of land use by indigenous peoples; Land rights (user and property rights, traditional, customary) and land-tenure systems; Rights to carbon;

Inclusive participation in the design and implementation of REDD+ strategy and development of procedures and enablers throughout the REDD+ cycle; Proposed REDD+ strategy; Design of benefit-sharing systems for equitable and effective distribution of REDD+ revenues; Economic, social and environmental impacts and risks of REDD+ and the mitigation and prevention of risks; Design of monitoring systems to keep track of forests and forest emissions as well as environmental and social co-benefits; Issues of forest governance and mechanisms to ensure full compliance with social and environmental safeguards, including during REDD+ strategy development; Opportunity costs of land use; Groups likely to gain or lose from REDD+ activities; Role of the private sector”.

The Guidelines stipulate a series of specific requirements for UN-REDD National Programmes to follow, including validation of National Programme Documents: the elaboration of a Consultation and Participation Plan to be annexed to the Programme Document; involving indigenous peoples and other forest-dependent communities, and civil society organisations in all stages; activities and resources to support ongoing consultation, engagement and partnership; assessment of the impact of UN-REDD Programme activities on the rights of indigenous peoples and other forest-dependent communities. Further, the Guidelines have provisions for information disclosure and transparency, stipulating that annual reports and outcome documents from consultations should be circulated and made publicly available. The Guidelines do not provide similar specific requirements for R-PPs under FCPF.

Finally, the Guidelines indicate that National Programmes are required to establish **grievance mechanisms**.

The requirement for establishment of grievance mechanisms is also found in the **FCPF Common Approach to Social and Environmental Safeguards for Multiple Delivery Partners**, which forms part of the legally binding agreements between the Fund and implementing partners. Under the Common Approach, the Delivery Partners must ensure “substantial equivalence” to the World Bank’s environmental and social safeguard policies and procedures, namely the SESA and ESMF, FCPF/UN-REDD Guidelines on Stakeholder Engagement, FCPF Guidelines on Disclosure of Information and FCPF Guidelines for Establishing Grievance and Redress Mechanisms at the Country level.

Further, the Common Approach stipulates that if “*the environmental and social safeguard policies and procedures of a Delivery Partner are more stringent and/or protective than those of the World Bank, then those shall apply to activities undertaken under the FCPF Readiness Fund by that Delivery Partner*”.

In the interim, while UN-REDD is still in the process of developing guidelines on such mechanisms, stakeholders may direct grievances to the UN-REDD Programme Secretariat and the UN Resident Coordinator in country.

The Joint UNDP-World Bank FCPF Guidance Note for REDD+ Countries: Establishing and Strengthening Grievance Resolution Mechanisms was first circulated in draft form in August 2013. These Guidelines stipulate that a national feedback and grievance redress mechanism (GRM) needs to be effectively available as part of the country’s REDD+ institutional arrangements. Such a mechanism needs to be available to REDD+ stakeholders from the earliest stages of R-PP implementation.

The suggested GRMs are national and not in-house agency mechanisms like the Inspection Panel of the World Bank. Hence, this type of GRM cannot hold the involved agencies accountable toward their institutional policies and guidelines.

The Guidelines do not specify what would be the legal or policy basis for the assessments of grievances, i.e. if it would be project specific provisions, institutional policies of implementing agencies or the countries’ own legislative and policy frameworks.

Although the Guidelines are not specific about the basis for the GRM's functions, it should ensure that “*outcomes and remedies accord with internationally recognized human rights*”. Considering that indigenous peoples’ rights are internationally recognised human rights, UNDRIP and other human rights instruments should be the basis for GRM. This raises serious concerns about the political will and capacity of countries to set up such grievance mechanisms in the short term.

The picture becomes even more complex when looking at country coverage. A total of 63 countries receive support from FCPF or UN-REDD, either as full participants or candidates of FCPF, or through national programmes or targeted support of UN-REDD (see Annex C for an overview of participating countries and type of FCPF and/or UN-REDD intervention).

In 26 of these countries (41%), either FCPF or UN-REDD is the sole operator, whereas both programmes are active in 37 of the countries (59%), with UNDP being the Delivery Partner in up to seven of the 36 FCPF countries. There are 19 countries where there would potentially be a “pure” application of FCPF policies and safeguards, but as an example of the legal complexities, it can be mentioned that two of these countries have ratified ILO Convention No. 169 and five have ratified the American Convention on Human Rights, with legal implications beyond the World Bank’s Operational Policies. In the 37 countries where both FCPF and UN-REDD are active, the implementation of differentiated FCPF and UN-REDD guidelines and safeguards adds an additional layer of complexity.

1.6 UN-REDD FPIC Guidelines

The **UN-REDD Guidelines on Free, Prior and Informed Consent** (the “FPIC Guidelines”) are the latest instrument to ensure respect for indigenous peoples’ rights in the context of UN-REDD programmes.

The primary users of the Guidelines are supposed to be the States that implement national UN-REDD programmes or receive targeted support.

The aim of the Guidelines “*is to outline a normative, policy and operational framework for UN-REDD Programme partner countries to seek FPIC*” (UN-REDD, 2013(a): 10). Operationally, the Guidelines suggest to UN-REDD partner countries that during the REDD+ readiness phase they develop National FPIC Guidelines or FPIC Methodology to be applied mainly in the REDD+ implementation phase.

The Guidelines uphold that “*FPIC applies to REDD+ regarding potential changes in resource uses that could significantly impact the substantive rights of indigenous peoples and, where relevant, other forest-dependent communities. Under these circumstances, consistent with international human rights instruments and other treaty obligations, potentially impacted peoples have the right to participate in and consent to or withhold consent from a proposed action*” (Ibid: 18). This is clearly in line with the “safeguard” approach to consent, which aims to prevent situations where imposed government dispositions with a significant direct impact on indigenous peoples’ rights proceed without consent.

Following this approach, the Guidelines seem mainly aimed at implementing the activity-specific aspect of article 32(2) of UNDRIP, which requires good faith consultation and cooperation with indigenous peoples in order to obtain their free, prior and informed consent “*prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources*”.



The Guidelines specify that the applicability is mainly meant to be in the context of specific localised activities: *“Given that an FPIC process often concerns a specific proposed activity with potential impacts on a specific community, and that consent is given or withheld collectively by the community, FPIC is most often applied at the community level”* (Ibid: 28).

Moreover, the Guidelines are aimed at situations that would establish free, prior and informed consent as an absolute requirement, establishing that while *“these Guidelines often refer to ‘seeking’ consent, this is to be interpreted beyond what should be the general aspiration and goal of every good faith consultation, and to also include the requirement to actually ‘secure’ that consent where the circumstances so warrant”* (UN-REDD, 2013: 10).

While the safeguard approach to ensuring consent for specific projects at the community level is indisputably valuable, not to mention crucial for avoiding the classic violations of indigenous peoples’ land and resource rights, it is not sufficient to ensure self-determined development and ownership of initiatives through the adequate implementation of the collective and intertwined rights to consultation, participation and consent in the context of national REDD+ strategies. Realising these rights requires consultations, which are systematic in nature and extend beyond specific projects proposed in or near indigenous territories to address strategic developmental planning and governance issues aimed at ensuring respect for indigenous peoples’ collective rights.

With respect to broader legislative, administrative and policy measures, the Guidelines acknowledge that some components of a national REDD+ strategy may have implications for the rights of indigenous peoples *“and therefore at least those components require some form of consent”* (Ibid: 28). Further, the Guidelines specify that *“in the development of national REDD+ strategies, partner countries must guarantee effective, good faith consultations with indigenous peoples and forest-dependent communities with a view to reaching agreement in the validation phase”*. Moreover, the Guidelines state that *“where specific policies and determinations are being formulated in the development of the national REDD+ strategy and may affect indigenous peoples’ rights and interests and, where relevant, forest-dependent communities’ rights, especially their rights to self-determination; to own, use and control their lands, resources and territories; to their culture; to their health and environment; to ensure their traditional livelihoods or survival; to their equality before the law; or to be free from forced relocations, FPIC of the rights-holders through representative institutions shall be required under these Guidelines. The partner country will have a duty and obligation to secure FPIC as a mechanism to ensure the protection and effective enjoyment of the underlying substantive rights at issue”* (Ibid, 28).

In the context of international law and jurisprudence, the requirement for consent strengthens with the potential impact, regardless of whether the proposed measure or project will have local or national-level impact. Hence, while the Guidelines are strong on stipulating steps for ensuring a safeguard approach to localised REDD+ activities, they are relatively weak on providing guidance on how to operationalise the broader governance approach to free, prior and informed consent as stipulated in articles 19 and 32(2) and throughout the UNDRIP. This broader governance approach is intrinsically linked to the collective rights of indigenous peoples to consultation, participation and self-governance, but unfortunately FCPF/UN-REDD do not systematically address the requirement for consent in the context of their Guidelines for Stakeholder Engagement.

The Guidelines differentiate between the requirement for free, prior and informed consent in the context of indigenous peoples and the requirement to consult forest-dependent communities in good faith regarding matters that affect them “with a view to agreement” (Ibid: 11). Indigenous peoples’ collective rights to consultation, participation and consent ultimately derive from their right to self-determination, and are therefore applicable specifically to indigenous peoples. However, in the context of localised REDD+ projects with impact on forest-dependent communities, there may be issues of property rights that would also imply a requirement for consent, although not derived from UNDRIP.

2 REGIONAL AND COUNTRY-LEVEL EXPERIENCES WITH REDD+



2.1 Africa

Discussions of indigenous peoples' issues have emerged relatively recently in the African region, and some governments still struggle to come to terms with the concept. This is reflected in a low level of constitutional and legal recognition of indigenous peoples and their institutions, including their rights to consultation, participation and consent, and to lands, territories and resources. In general, the *"low-impact subsistence strategies of these communities make the land and resources they have traditionally occupied and used appear available for other intensive use – wherefore they are vulnerable to encroachment and dispossession"* (Feiring & Stidsen, 2013: 24-25). Even in countries with some recognition of collective rights to property and lands, the *"requirement that indigenous communities should have legal status before being able to claim collective rights to land prevents many indigenous communities from being able to enjoy the rights provided in national law"* (ILO & ACHPR 2009: 119).

Over the last decades, indigenous peoples' organisations have emerged in many African countries. Most indigenous institutions have limited institutional capacity and their representativeness of local communities is often disputed. However, due to the agency of indigenous peoples and the sustained work of the ACHPR, there are a number of **positive trends in the region:**

- In the Central African region, there is growing recognition of the forest-dwelling 'pygmy' communities as indigenous peoples.
- In 2010, the Central African Republic was the first African country to ratify ILO Convention No. 169 on indigenous peoples' rights.
- In 2011, the Republic of Congo adopted a specific Law on Indigenous Peoples Rights (CAR, 2011). Article 31 of the law states that indigenous peoples have individual and collective rights to own, possess, access and use traditional lands and natural resources.

The **African Commission on Human and Peoples Rights (ACHPR)**, through its Working Group on Indigenous Communities/Populations, has played a crucial role in contextualising the concept to the region and in developing important jurisprudence on indigenous peoples' land rights, based on the African Charter on Human and Peoples Rights. In the Endorois case in Kenya, ACHPR affirmed the Endorois' rights over traditional lands, indicating that forced dislocation from these lands had violated the provisions of the African Charter relating to rights to religion, property and culture, to freely dispose of wealth and natural resources, and to development (ACHPR, 2010).

ACHPR is instrumental in addressing indigenous peoples' rights based on the African Charter on Human and Peoples' Rights. In 2012, in its 53rd session, ACHPR provided the following recommendations to Cameroon:

- 1- Harmonise the national legislation with regional and international standards in respect of rights protection for the indigenous population/communities;
- 2- Collaborate with and invite the Working Group on Indigenous Populations to embark on a promotional visit to Cameroon to continue the dialogue on this subject matter and to find lasting solutions for the effective implementation of the rights of these populations;
- 3- Adopt as early as possible relevant legislation to protect the rights of indigenous populations;
- 4- Abandon use of the term "marginal population" as a tag for the indigenous populations;
- 5- Harmonise the land laws and adopt special measures to enable the indigenous populations to fully enjoy all their rights, particularly the right to landed property, and work toward the recognition of their cultural peculiarities, including nomadism, to ensure that this factor is not detrimental to the exercise of their rights.

2.1.1 Cameroon

Cameroon	Country facts
Type of intervention	FCPF country participant
Implementation modality	National implementation, Ministry of Environment, Protection of Nature and Sustainable Development (MINEPDED)
Timeframe	FCPF: Jan. 2013 – Dec. 2015
Budget	FCPF: USD 3.6 million
Budget allocation for stakeholder engagement	Promotion of Multi-stakeholder Consultations and Communication: USD 400,000 for technical workshops at national and department levels, and implementation of the communication strategy on REDD+ awareness.
Other	The CSO platform has received a USD 140,000 grant from the World Bank to set up regional and communal level branches
Applicable guidelines	WB OP 4.10: SESA, FCPF and UN-REDD Stakeholder Engagement Guidelines
Type of intervention	UN-REDD targeted support through FAO for MRV

2.1.1.1 FCPF Programme and UN-REDD Targeted Support

Cameroon submitted its Readiness Plan Idea Note (R-PIN) to FCPF in 2008, and in 2010 received a grant of USD 200,000 to formulate the R-PP. A national validation workshop in June 2012 was followed by a civil society meeting to analyse and provide recommendations for improvement of the R-PP. The R-PP was presented to FCPF in 2012 and reviewed by

a team of experts from the **FCPF Technical Advisory Panel (TAP)** for completeness and quality in meeting the criteria for R-PP. The observations of the TAP reflected to some extent the recommendations of the civil society.

The **TAP review** raised, among others, concerns about *“the numerical marginalization in the committee structures, of both civil society groups and indigenous peoples groups. They are greatly outnumbered on the committees and will find it hard to make their voices heard”*, and further that *“the interests of indigenous peoples have got buried under the more general rubric of ‘civil society’, an area of dialogue which is not well suited to the needs and habits of expression of the indigenous peoples of Cameroon’s forests”*. Further, the TAP team remarks that local communities are mentioned *“as playing a role in data collection, but exactly how this will happen is not developed further. This is a serious shortcoming, since these groups are an essential component of the dynamic of the forest, and have a potentially important role to play in any MRV system. This needs to be better addressed”* (Réponses du Gouvernement du Cameroun aux commentaires du TAP, Yaoundé, 28 September 2012).

TAP comments are public and presented to the FCPF Participants Committee and trigger discussions and responses from the government, leading to changes in the R-PP. Hence, the TAP review serves as a mechanism for reinforcing civil society concerns and for enhancing constructive dialogue and quality control of stakeholder engagement, including in decision-making structures and technical MRV work.

The **R-PP was approved** in February 2013. An analysis table² shows a mixed picture of incorporation of civil society recommendations in the final R-PP. While most have been taken fully or partially into account, this is not the case with observations regarding land rights and the composition of the Steering Committee. The World Bank internal due-diligence process is currently underway. One concern expressed by indigenous peoples is that the government may be eager to accommodate references to their participation and priorities in order to legitimate the R-PP without necessarily following up on those commitments once the funds are received.

UN-REDD has supported only one activity in the country, focused on MRV. The activity is implemented by FAO as one element under a regional programme that covers the 10 countries of the COMIFAC. The indigenous organisation MBOSCUA reports to have been involved with UN-REDD in international events but not at the national level.

2.1.1.2 The Concept of “Indigenous Peoples”

The term “indigenous peoples” is considered **controversial** by the government of Cameroon, but the Ministry of Social Affairs and the Ministry of External Relations are working on some studies to identify the groups that would be covered. Currently, there is a broad understanding that the term applies to the pastoralist Mbororo and the hunter-gatherer so-called “pygmies”, comprising the Baka, Bagyéli, Bedzang and Bakola groups. The Mbororo area is not densely forested, but the forest is important for conservation of water resources and cattle. The Mbororo, through their community associations, are organised in the Mbororo Social and Cultural Development Association (MBOSCUA). The pygmies have a non-hierarchical social structure and do not count with a national-level representative institution. The R-PP formulation process has positively helped raise the profile of indigenous peoples and it is recognised by the government, FCPF and civil society that REDD+ in Cameroon will fail if indigenous peoples are not fully involved.

2.1.1.3 Legislation, Leverage and Benefit-Sharing

The 1994 Forest Law does not recognise customary ownership rights of communities, but it introduces the concept of **“community forests”**, to which the communities have user rights. Civil society and indigenous peoples report on a tendency to favour large-scale investors in agro-industrial businesses with long-term leases over community

2 Available at: www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/Table%20analysis%20of%20RPP%20vs%20civil%20society%20statement.pdf

rights (forest conversion for agriculture, accounts for 80% of forest cover loss³). The Committee on the Elimination of Racial Discrimination (CERD) has expressed that it is “...concerned by the attacks on indigenous people’s land rights. It regrets that the land ownership legislation in force does not take into account the traditions, customs and land tenure systems of indigenous peoples, or their way of life” (CEED, 2010, para. 18).

The government has commenced reform of Cameroon’s Land Tenure Law, including the elaboration of a new Forest Law, but in a submission to CERD, the Forest Peoples Programme (FPP) and the Centre for Environment and Development (CED) raise concerns “that both the process of reform and the contents of the proposed new law are racially discriminatory towards indigenous peoples” (FPP and CED submission to CERD, 2013).

Indigenous and civil society representatives expect that REDD+, as a voluntary mechanism, will only have limited leverage to drive legislative and policy reform for increased recognition of community rights. Generally, the focus of the government is on making land profitable, for example through mining concessions that in many cases overlap with the densely forested areas in the southern part of the country. Further, the Ministry of the Environment and Nature Protection and Sustainable Development (MINEPDED), which is responsible for the REDD+ readiness process, is one of the weaker government institutions, while strong ministries such as those on forestry and mining are only sparsely involved.

The 1994 Forest Law contemplates various schemes for **benefit-sharing** from forest resources, particularly the establishment of a decentralised tax, which allowed the allocation of a portion of the revenue from the sale of forest products to go to local forest communities. A case study undertaken by the Accra Caucus raises concerns with regard to using the existing benefit-sharing systems to inform the development of a REDD+ benefit-sharing mechanism, as “existing systems have had mixed results, with sometimes negative impacts on local development and poverty reduction. To avoid elite capture, and the corruption which has beset other areas of resource distribution in Cameroon, the case highlights that the rules for the distribution of REDD+ benefits must be based on a transparent and participatory process involving all stakeholders and rights-holders” (Accra Caucus 2013).

2.1.1.4 Engagement of Indigenous Peoples and Civil Society

Indigenous peoples participate in the national REDD+ readiness process through the broader **REDD and Climate Change Platform of civil society organisations**, as they consider that their weak institutional capacity would not make them very influential on their own. Indigenous representatives express that they have been given a well-recognised position within the broader Platform, including in the forthcoming decentralisation of activities. One of the aims of the Platform is to identify and set up a registry of forest-dwelling villages, as the government does not have such information available.

The pygmies participate through a network of CSOs that provide support to them, while the Mbororo are represented by MBOSCUA. The Mbororos were not involved when the Cameroonian government initially engaged with FCPF and started elaborating its R-PP in 2008, but got involved in 2011 when a World Bank official encouraged the government to include them. In general, the lengthy process of formulating the R-PP had positive aspects, as it allowed CSOs and indigenous peoples to build their capacity and knowledge about the issue through their own efforts.

One concern raised is that forest-dependent Bantu communities are not directly represented in the Platform, as there is an unconfirmed assumption that these will be represented by mainstream CSOs. Another concern is that the Platform is now the only CSO structure being consulted in the process, leaving out other platforms and networks, such as the **Plateforme Forêts et Communautés** organised in relation to the Forest Law Enforcement, Governance and Trade (FLEGT) initiative, which is supported by the European Union. This Platform provided input into the R-PP formulation process, but has been weakly involved after the validation of the proposal. Apparently, the government has wanted to have a single CSO constituency, while the internal dynamics of civil society may make it difficult to bring all relevant actors into a single structure.

3 Rainforest Alliance at: <http://www.rainforest-alliance.org/community-forestry/regions/cameroon>

Indigenous representatives participated in the presentation and validation of the R-PP at the FCPF Participants Committee meeting in 2012. There is also one indigenous and one CSO representative among the 21 members of the Steering Committee, of which 14 are government representatives. However, following lobbying from civil society and the concern expressed by the TAP team, noted in the revised R-PP is that decision-making will be by consensus, which should give some opportunity to empower indigenous peoples and civil society although they remain a minority. The opportunity to be involved in the formulation of the R-PP and participate at various levels is appreciated.

MINEPDED is reported to have no previous experience with consultation of indigenous peoples, which is seen as positive, as the Ministry demonstrate openness, including to a joint initiative by GIZ, World Wide Fund (WWF) and the Centre for Environment and Development (CED) to develop national guidelines on free, prior and informed consent. Generally, the understanding and capacity of government, indigenous peoples and CSOs on issues relating to consultation and consent are estimated to be low, and the needs for awareness-raising and capacity-building are high. However, the Ministry of Livestock, Fisheries and Animal Industries (MINEPIA) has fully involved MBOSCUDA in the process of reviewing the policy governing the agro-pastoral livestock subsector since 2009, and the International Fund for Agricultural Development (IFAD) sponsored a project to enable effective participation of MBOSCUDA in the formulation of the Pastoral Code that is waiting to be submitted to parliament for adoption.

The REDD and Climate Change Civil Society National Platform has received two grants of a total amount of USD 100,000 from the World Bank to strengthen its capacities, including a decentralisation process, and to ensure better outreach and representation at the local level. The Platform currently counts 10 regional coordinators and is expanding with communal coordinators. 35% of the coordinators are indigenous peoples and 30% are women. The Platform has now formulated a five-year work programme on REDD+, but does not have secured funding for the programme, which comprises key components on awareness-raising and capacity-building. Access to long-term sustainable funding is a key challenge for the Platform, as most funds under the FCPF will be channelled to the government.

Related to this is the challenge of raising awareness and building local capacities for REDD+. Indigenous people in particular have very limited access to education and information, and there is a need to adapt communication tools and approaches to really reach indigenous men and women at the local level.

2.1.2 Democratic Republic of Congo

Democratic Republic of Congo (DRC)	Country facts
Type of intervention	UN-REDD national programme
Implementation modality	Direct implementation
Timeframe	June 2010 – December 2013
Budget	USD 5.5 million
Applicable guidelines	World Bank OP 4.10 (FCPF/UN-REDD Guidelines on Stakeholder Engagement)
Type of intervention	FCPF country participant
Implementation modality	National implementation, Ministry of Environment, Nature Conservation and Tourism (MECNT)
Timeframe	2010 – 2013
Budget	USD 3.4 million, request for additionally USD 5 million presented to FCPF Participants Committee

2.1.2.1 A Variety of REDD-Related Programmes

Given the extension and importance of its forest, the DRC is a key country for a variety of forest initiatives. DRC is a participant country of **FCPF** and has also implemented a **UN-REDD** national programme that ended in 2012. The FCPF-funded programme is in its final stages and DRC has requested for an additional funding of USD 5 million that is currently under consideration by the Participants Committee.

FCPF operates with a national implementation modality through the Ministry of Environment, Nature Conservation and Tourism (MECNT). MECNT has established a National REDD+ Coordination Unit (CN-REDD), which has an Information, Education and Communication Cell with two full-time staff. The UN-REDD programme was implemented with the Direct Implementation Modality (DIM), implying that funds were managed directly by the involved UN agencies.

DRC is also a pilot country under the Forest Investment Program (**FIP**), with a budget of USD 60 million; it is a partner country under the EU Forest Law Enforcement, Governance and Trade (**FLEGT**), and has also secured USD 22 million from the Congo Basin Forest Fund (**CBFF**) for integrated REDD+ pilot projects. In November 2012, DRC established a National REDD+ Fund to serve as the financial arm for the implementation of the National REDD Strategy for its Emissions Reduction Program (ER-Program). The National REDD+ Fund is supposed to ensure coordinated allocation and provide a transparent channel for funding while ensuring alignment of the ER-Program with national REDD+ priorities.

Further, DRC has submitted its Emission Reductions Program Idea Note (ER-PIN) to **FCPF Carbon Fund**. The ER-PIN is seen as a step toward national implementation of the REDD+ strategy, as well as an opportunity to provide input into the UNFCCC process on REDD+. Norway is supporting a REDD+ project, implemented through UNDP, that is aiming at the operationalisation of the National REDD+ Fund and the elaboration of a concrete REDD+ investment programme. The programme also has a civil-society component for developing culturally appropriate communications tools in local languages.

DRC has an estimated funding of USD 98.133 million from UN-REDD, FCPF, WWF and other sources (UN-REDD, 2012(a)). Given the importance of the forest sector in DRC, as well as the volume of economic support for readiness and the prospect of imminent investments, REDD+ has considerable leverage in DRC. REDD+ initiatives are reported to have support at the highest level of the central and provincial governments.

Most FCPF projects are implemented by national institutions. The national implementation is assumed to slow down the implementation pace, but also build capacity and generate national ownership and sustainability in the process.

In contrast, most UN-REDD national programmes are implemented directly by the involved UN agencies. This is supposed to speed up the implementation pace. In the case of DRC, it is hoped that sustainability and national ownership will be secured through the National REDD+ Fund, with involved UN agencies in an advisory role.

With these initiatives, DRC is moving from REDD+ readiness (phase 1) to REDD+ implementation (phase 2). However, the sequencing of phases is not as clear-cut as originally envisioned, and readiness activities are still ongoing while investment funds are coming in. Hence, rather than distinct phases, there will be “transition years” during which different regions of the country will undergo differentiated processes. In general, the time required for readiness is believed to be underestimated. Given the time pressure to elaborate a national REDD+ strategy in order to enter into the REDD+ implementation phase, DRC adopted its National REDD+ Framework Strategy in November 2012, based on the information that was readily available. This Strategy is not the final version and also the adoption of national strategies can be foreseen to be more dynamic and continuous processes than originally foreseen.

Given the diversity of initiatives with differentiated timeframes, guidelines, implementation modalities etc., it is not surprising that most stakeholders consulted had **difficulties distinguishing between the programmes**, including their differentiated guidelines and safeguards. FCPF staff reports to be relying more on the Operational Policies of the World Bank than the joint Guidelines for Stakeholder Engagements, as the latter are perceived to have weaker operational guidance. There is no practical experience in DRC with seeking free, prior and informed consent. The government, probably informed by the differences between UN-REDD and FCPF guidelines on the subject, seems to interpret *consultation* or *consent* as two alternative options when engaging indigenous communities, although international law provides for consultation in order to obtain consent. However, this discussion is seen as largely theoretical, as the priority at this stage is to reach out and inform communities about REDD+. If the communities perceive that REDD+ will be beneficial, then the question of obtaining consent is assumed to be a pure formality.

Although FCPF and UN-REDD have separate programmes in DRC, they have worked closely together, including through joint missions and by seeking complementarity of activities and budget allocations, which has increased the overall flexibility of the programmes. As UN-REDD has already finished while the FCPF continues, this flexibility has been lost as the Norwegian funds currently channelled through UNDP have a more predefined budget.

2.1.2.2 Legislation and Policies

Community rights to forests in DRC are mainly regulated by **customary law**. The new Congolese forest law contains general provisions on communities' rights and calls for the elaboration of implementing decrees and enabling legislation. The Department for International Development (DfID) funded a participatory process to elaborate a decree to recognise community forests through collective titles. Civil society shared reports of a positive process, but approval of the decree has been pending for the last two years due to discussions in the Council of Ministers that apparently reflect a lack of political will. Civil society are pushing donors to raise the issue with the government, and although there is a perception that donors, including FCPF and UN-REDD, are doing so, the decree has not yet been adopted. There are grounds to believe communities' ownership of forests would enhance the latter's sustainable management, but some fear that communal titles would lead to increased logging as communities have weak capacity to negotiate and control logging companies. Hence, there is a need to accompany legal reform with capacity-building of the communities.

2.1.2.3 Engagement of Indigenous Peoples and Civil Society

The REDD+ process in DRC is known as being largely participatory, although participation is mainly concentrated in the capital. Indigenous peoples and civil society are organised in the **Groupe de Travail Climat REDD (GTCCR)**. Many of the actors had collaborated before during the mobilisation around a complaint filed to the World Bank in 2005 concerning the social responsibilities of logging companies. This experience provided a strong basis for engaging collectively with REDD+.

The platform was formed during and just after the first joint FCPF/UN-REDD mission to DRC in January 2009, with funding from Rainforest Foundation Norway (RFN), and technical and financial support from UN-REDD and FCPF. Civil society and indigenous peoples are now in a process of restructuring themselves, with indigenous peoples considering establishing their own platform, as they are increasingly gaining strength and able to negotiate with UN-REDD and FCPF independently. However, the links between the platform and its constituents in the forest are still perceived to be weak.

For the government, the establishment of such unified platforms is helpful, as it would otherwise have to interact with a multitude of organisations. The challenge is to balance the need for unified participation with the respect for the internal dynamics and multiple voices of civil society. The government is also reported to be very much aware of the requirements for participation in REDD+, and strive to ensure participation and consultations whenever workshops or field trips are organised.

Representatives of indigenous peoples and CSOs participate with four out of 12 members in the Comité Nationale de REDD+, which orients the national REDD+ process. Also, the CSO and indigenous participation in the international governance bodies of UN-REDD and FCPF is appreciated.



GTCR has made use of international fora to present a series of memoranda expressing concerns about various aspects of the national REDD+ process and architecture, which led to more favourable government positions on the issues addressed.

From the outset, stakeholder participation in the context of FCPF and UN-REDD was mainly in the context of other activities, while the main funds were channelled to the government. GTCR received some small grants from FCPF to conduct consultations in some villages, and annual meetings of the “REDD+ University” were organised in Kinshasa, bringing together hundreds of participants for intense discussions on REDD+. Later, however, the programmes assigned specific support to civil-society involvement. Also, the recent proposal for FCPF, as well as the Norwegian-funded project through UNDP and FIP, contemplate considerable budget allocations for the involvement of civil society through GTCR.

RFN has provided sustained support to GTCR throughout the process. This support predates the REDD+ process and is seen as instrumental for consolidating a strong platform for engagement with REDD+. In September 2013, indigenous peoples and civil society will undertake a self-evaluation of their involvement with the REDD+ process. This is expected to bring out difficult and important issues of representation outreach etc., but also to identify crucial elements to improve future participation.

Overall, the participation process is seen to have been positive, although there is a fear that participation may not been as influential and decisive as expected and, for example, not lead to recognition of land rights. An Accra Caucus case study concludes that *“participation has been hampered by insufficient resources, lack of capacity in the REDD+ governance bodies, and, crucially failure of commitment by the government to assume the overall responsibility for consultations on REDD+. In practice, consultations have been left in the hands of civil society, who have been increasingly distrustful of the multiple REDD+ institutions established to enable stakeholder participation. The suspicion is that they are designed to give the international community the impression that there is a participatory process, while in reality the key decisions are made behind closed doors”* (Accra Caucus 2013).

Securing indigenous peoples' **land rights** as a crucial element of REDD+ is the key challenge, as it must be assumed that consultation of communities recognised as land owners would be different from consultation with those without recognised right. Reaching out to indigenous and other local communities in the forest is seen as another challenge. This is particularly challenging as there are only a few prior experiences in consulting these communities and many of them do not have formalised or vertical leadership structures that can easily be consulted. Moreover, REDD+ is a technically complicated subject that is difficult to communicate. All parties agree that it will require time, resources and concerted effort to engage the communities in a meaningful way, for example by providing the national Platforms with resources to do outreach and to fund comprehensive local-consultation processes over longer periods of time. Also, resources should be made available for sustained long-term capacity-building and the country should elaborate culturally appropriate basic communication tools.

2.1.2.4 Involvement in Studies and Technical Work

GTCR has been involved in several of the technical studies and processes related to readiness. For example, in collaboration with FAO, GTCR undertook one component of the study on drivers of deforestation. As their comparative advantage, CSOs had previous experience in mapping and also close links to communities, which allowed for detailed discussions of community use of forest resources. The study showed that slash and burn agriculture, as well as charcoal production, rather than industrial logging, were big drivers of deforestation in some areas. This was a controversial finding on an issue that had previously divided CSOs and government. The study was also criticised by many local NGOs for using flawed methodology, with studies taking place mainly around urban centres – hence leading to the controversial findings. The GTCR has said the choice of study sites was due to limited resources, as the money and time did not allow the researchers to go further into the forest or into logging areas. Interestingly, the study led to a consensus between the actors about the importance of agriculture as one main pillar of the National REDD+ Strategy. In this context, numerous relevant activities have been identified, e.g. building capacity of the communities, providing them with seeds, addressing land tenure issues etc.

Overall, UN-REDD reports the success of experiences with participatory approaches to the formulation of social and environmental (SE) **safeguards** that cover several areas, including enhancing governance and capturing the multiple benefits of REDD+. The participatory process has *“enhanced the confidence among Congolese stakeholders on the potential of REDD+ to deliver multiple SE benefits while minimising risks of negative impacts under certain circumstances. For a complex process like REDD+, with potentially negative unintended consequences, when activities start being implemented in a fragile state like DRC, it has been extremely valuable to have a nationally-owned process to elaborate a system to manage social and environmental risks and benefits”* (UN-REDD, undated).

2.2 Asia

Asia shows a varied picture with regard to the recognition of indigenous peoples' rights. Most countries have national terms to denominate indigenous peoples, but many governments are still reluctant to recognise the generic term and its connotations under international law. The adoption of the 1997 Philippine Indigenous Peoples Rights Act (IPRA) and the 2007 ratification of Convention No. 169 by Nepal constitute major breakthroughs. Several other countries in the region have developed legislation to recognise some aspects of collective community land rights, e.g. the 2001 Cambodian Land Law, which provides for collective ownership of lands and the participation of customary institutions in decision-making. The key challenge related to these legal provisions is the generalised weak implementation. The economic and commercial pressures on indigenous peoples' land and resources continue on an unprecedented scale, resulting in massive land grabbing, including through the rapid expansion of oil-palm plantations. There is not yet an effective regional human rights system in Asia that reinforces indigenous peoples' rights.

The political and institutional strengths of indigenous peoples also vary considerably across the region. However, the Asia Indigenous Peoples Pact (AIPP) is a network that with great effectiveness provides support to its national members and facilitates their access to decision-making processes at national and international levels. FCPF and UN-REDD have

both organised regional-level workshops through AIPP to discuss the concerns of indigenous peoples in relation to REDD+, particularly with regard to issues such engagement, representation, capacity-building and awareness-raising.

Particularly in South-East Asia, due to the existence of large forest areas, REDD+ has become a vehicle for tabling the discussion on indigenous peoples’ rights, including issues relating to free, prior and informed consent. As noted in a forthcoming report of the International Land Coalition, *“this trend is noted in Indonesia, Cambodia, Lao, Thailand, Vietnam and Burma/Myanmar. For example in Indonesia, the national alliance of indigenous peoples Aliansi Masyarakat Adat Nusantara (AMAN) and the National Land Authority in 2011, signed a Memorandum of Understanding allowing indigenous peoples to register their land and territories, which have been documented over the past years through community participatory mapping. In November 2012, AMAN officially handed over 265 maps of ancestral domains covering 2,402,222 hectares, to concerned government authorities. Also in 2011, the national parliament officially decided to give priority to a Draft Act on the Recognition and Protection of indigenous Peoples’ Rights”* (ILC, forthcoming).



2.2.1 Nepal

Nepal	Country facts
Type of intervention	UN-REDD targeted support for two studies
Type of intervention	FCPF country participant
Implementation modality	National implementation, through Ministry of Forestry and Soil Conservation (MoFSC)
Timeframe	2011 - 2013, but implementation is delayed and programme will possibly be extended
Budget	USD 3.6 million

2.2.1.1 FCPF and UN-REDD Programme

The **FCPF grant agreement** with Nepal was signed in March 2011. The R-PP is to be implemented by the Ministry of Forestry and Soil Conservation, but implementation is delayed. According to the Accra Caucus, “due to a low level of REDD+ awareness among government officials and the various stakeholders in Nepal, RPP implementation in Nepal has been slow (...) The plan to develop a national REDD+ strategy by 2012 was pushed forward by a year, giving the REDD+ Cell a mandate to complete the REDD+ readiness process by the end of 2013” (Accra Caucus, 2013). Separate contracts to carry out two major components of the R-PP (development of reference levels and forest-monitoring systems) were awarded in May-June 2013. The scope of work for other key components of the R-PP is going to be revised after a consultation with multiple stakeholders in June 2013 to reflect relevant developments and insights since the finalisation of the R-PP. Additional key components funded by the FCPF include (i) carbon ownership, (ii) SESA (slated to start in late 2013, through the award of another contract recently) and (iii) strategic analysis (FCPF Readiness Progress Fact Sheet, June 2013).

Nepal does not have a **UN-REDD** national programme but is a **partner country** since 2009, benefiting from regional trainings and workshop, participation in the UN-REDD Programme Community of Practice and observer status at the Policy Board. Also, UN-REDD has provided targeted support to Nepal for two studies regarding: (i) drivers of deforestation and forest degradation and (ii) funding mechanisms for REDD+.

In principle, the UN-REDD Guidelines apply to targeted support to partner countries that do not have national programmes. In any event, any donor or programme operating in Nepal, including FCPF and UN-REDD, would have to adhere to the provisions of ILO Convention No. 169, which requires consultation “*with the objective of achieving agreement or consent*”.

The Ministry of Forest and Soil Conservation (MoFSC) has established a **multi-stakeholder REDD Working Group**, which includes participation of the Nepal Federation of Indigenous Nationalities (NEFIN).

2.2.1.2 The Concept of Indigenous Peoples

Indigenous peoples in Nepal are known as Adivasi Janajati. They comprise 59 distinct ethnic groups, constituting a minimum of 37% of the total population. There are no exact data about the indigenous communities that live in the forest, but peoples like Chepang and Raute are entirely dependent upon forest resources. The 59 recognised indigenous peoples are organised in NEFIN.

Exclusion and marginalisation in Nepal are structured according to complex patterns of ethnicity, caste and gender. Indigenous peoples are poorly represented in government and often marginalised in local government institutions and civil-society organisations. This is also said to be the case within the Federation of Community Forestry Users Nepal (FECOFUN), which is a formal network of forest user groups from all over Nepal. Indigenous peoples experience that they have difficulties making their voices heard by the government and civil society (FECOFUN).

2.2.1.3 Legislation and Policy

Nepal came out of a decade-long civil war in 2007 and ratified **ILO Convention No. 169** in the context of the peace agreements. Nepal counts with an interim constitution, while the Constitutional Assembly that was tasked with drafting a new Constitution has been dissolved.

The interim constitution has some weak provisions but there is no adequate legislation on forest resources. The indigenous Chepang communities do not have recognised forest rights and traditional shifting cultivation practices are prohibited by law. While traditional occupations are not recognised, contractors are given licences to exploit forest resources. Also, conservation areas are established without consultation with indigenous peoples. As noted in a case study by the Accra Caucus, “*the case from Nepal highlights the need for awareness raising in indigenous communities that are likely to be involved in and affected by REDD+. Nepal has not used the REDD+ readiness process as an opportunity to acknowledge indigenous cultures and livelihoods or to acknowledge indigenous peoples as rights-holders, even though it was a party to the recent International Labour Organisation (ILO) Convention No. 169 (see Appendix). The lack of security of the land rights of indigenous peoples in Nepal raises the risk that REDD+ may in fact undermine their livelihoods and rights, and drive them deeper into poverty*” (Accra Caucus, 2013).

2.2.1.4 Stakeholder Engagement

When the R-PIN was approved by FCPF in 2009, indigenous peoples raised concerns that they were not consulted, although the R-PIN is largely regarded as a procedural step, mainly to confirm the country’s entry into the FCPF. Since then, indigenous peoples were included in the **R-PP formulation process** but feel that once the FCPF grant was approved, they were not adequately involved afterwards. When the government undertakes consultations at local and regional levels, NEFIN claims that the government disregards NEFIN’s regional chapters and instead consults with indigenous representatives of their own choice. Also, NEFIN notes that their participation in the REDD Working Group is not effective, as their input has been largely ignored. This gives rise to a perception of only being used to legitimise the proposal.

NEFIN has received a small **grant for capacity-building** from FCPF, but has a much larger and sustained support from AIPP and the International Work Group for Indigenous Affairs (IWGIA), for capacity-building, awareness-raising and advocacy. Without that support, NEFIN estimates that indigenous participation would have been weaker. A big-basket funding mechanism for stakeholder engagement, set up by bilateral donors, is said to favour non-indigenous civil-society organisations and provide little support for indigenous peoples.

Government institutions are seen to have weak capacity for stakeholder engagement and NEFIN suggests that government officials should be trained on relevant stakeholder guidelines and international commitments.

The REDD+ Cell, under the MoFSC, has taken on the task of developing appropriate social and environmental **safeguard** (SES) indicators. In 2011, the REDD+ Cell requested input from stakeholders, including indigenous peoples in the process. NEFIN faced a series of difficulties, including delays and difficulties with the translation of documents, limited technical skills of indigenous people and limited time during the official stakeholder workshop. Thus, NEFIN separately organised a series of workshops and discussions with their own sources of funding to ensure quality input from indigenous peoples. It is, however, unclear to what extent this input is being considered in the final SES indicators. As noted by AIPP, *“it is doubtful that without these meetings the full and effective participation of indigenous peoples in developing the SES indicators would have been possible. Nepal is in the fortunate position of having a national-level indigenous federation with district-level chapters across the country as well as other indigenous peoples’ networks, which allows the mobilization of local-level leaders and ensures a fairly representative participatory process”* (AIPP, 2012).

Experiences indicate the need for enabling conditions to ensure full and effective participation include:

- *“Making documents accessible through proper translation and processing in order to simplify the language.*
- *Sufficient time for discussions, reflections and formulations of responses.*
- *Good process of facilitation.*
- *The use of existing indigenous peoples’ organizations and networks”* (Ibid).

AIPP concludes that the *“low level of awareness on indigenous peoples’ rights in general and their relevance in the context of climate change and REDD+, the frequent changes of government staff responsible for REDD and the difficulties in making new staff familiar with and positively disposed toward indigenous peoples’ concerns are seen as key hindrances in developing in indigenous peoples friendly REDD+ strategy in Nepal”* (Ibid).

2.2.2 Philippines

Philippines	Country facts
Type of intervention	UN-REDD national programme
Implementation modality	National implementation
Timeframe	2011 – 2012
Budget	USD 500,000 from UN-REDD. Contributions from other agencies such as GIZ and USAID.

2.2.2.1 The National REDD+ Process

The Philippine National REDD-Plus Strategy (PNRPS) was elaborated in 2009-10 with financial and technical support from Germany, Netherlands and Switzerland, as well as NGOs. Civil society participated through **CoDeREDD**, which has three

meanings: Community Development through REDD, Communities Developing REDD, and Conservation and Development through REDD. CoDeREDD is composed of forest-based communities and civil-society organisations involved in livelihood, conservation and community-development projects. Leaders from indigenous cultural communities/indigenous peoples (ICCs/IPs) and indigenous peoples' organisations (IPOs) are not members of CoDeREDD, but they participated in all activities.

CoDeREDD initiated the preparatory activities while GIZ assisted in the final phase of the strategy elaboration with support to consultations, elaboration of the final draft and an international peer review through its project called Climate-Relevant Modernization of the National Forest Policy and Piloting of REDD Measures in the Philippines (2009 – 2013), implemented jointly with the Philippine Department of Environment and Natural Resources (DENR), with funds from the International Climate Initiative of the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU).

Representatives of ICCs/IPs from two REDD+ demonstration projects implemented by the Non-Timber Forest Products Exchange Programme (NTFP-EP) in the Philippines and Flora and Fauna International, as well as select leaders of ICCs/IPs from other ancestral domains, participate in national working groups and other capacity-building and communication activities, but there is still a great gap in terms of information, technical skills and a need for massive culturally appropriate capacity-building and information resources to contribute to ICCs'/IPs' meaningful participation in REDD+.

As a contribution to the Strategy, GIZ in collaboration with DENR and the NTFP-EP and others conducted four countrywide policy studies, including on carbon rights and a review of implementation of FPIC. A total of 38 case studies were undertaken: four for carbon rights and 34 for FPIC.

UN-REDD initiated its programme in 2011. The expected outcomes of the Programme were REDD+ readiness support by effective, inclusive and participatory management process; a systematic and structural approach to REDD+ readiness identified through concrete studies of options and inclusive consultation; and enhanced capacities for monitoring and MRV. Most components were designed for implementation within one year, with an overall programme budget of only USD 0.5 million. The Forest Management Bureau implemented the Programme through CoDeREDD, the Climate Change Commission and individual consultants. The activities included the conduct of awareness-raising road shows in various areas around the country. This road show was conceptualised by CoDeREDD and DENR with assistance from GIZ based on the PNRPS Communication and Media Plan.

Another main target for UN-REDD was to produce a safeguards framework that includes principles, criteria, indicators, actions and implementers. A draft document has been submitted for comments to the members of the Safeguards Technical Working Group and a revised draft will be submitted for consideration of the National Multi-stakeholder REDD+ Council (NMRC).

The NMRC, however, is not yet established. The process has been pending for more than one year, subject to the decision of the Climate Change Commission as the overall policy body for climate change, including REDD+, in the Philippines. Once operational, the NMRC is supposed to oversee the implementation of the national REDD+ strategy, with multi-stakeholder REDD+ councils also at regional and provincial levels. Field implementation of REDD+ is the task of DENR as the operational arm for REDD+ based on the mandate given by Executive Order 881 of 2010. The interim constitution of NMRC declares the need for representatives from government institutions, and indigenous representatives from the seven ethno-regions of the country, as well as representatives of the **National Federation of Peoples Organisations (NCIP)** involved with community-based forest management.

2.2.2.2 Application of Free and Prior Informed Consent

In the Philippines, the requirement for free and prior informed consent is stipulated in the **Indigenous Peoples Rights Act**

(IPRA), adopted in 1997. IPRA does not provide for consultation and cooperation in order to obtain consent in the broader context of legislative or administrative measures, as reflected in UNDRIP, but provides for free, prior and informed consent to specific projects in the context of indigenous peoples' Ancestral Domains. This limited focus on area-specific projects is in line with the UN-REDD Guidelines on FPIC and those elaborated by GIZ (GIZ/RECOFTC, 2011). The FPIC process is supervised by the NCIP, which also has a registry and an indicative map of titles and claimed ancestral domains, where the FPIC requirement would apply equally.

IPRA defines free prior and informed consent as *“the consensus of all members of the Indigenous Cultural Communities/ Indigenous peoples to be determined in accordance with their respective customary laws and practices”* (IPRA; section 3, (g)). The requirement for consensus of all members of an indigenous community/people to a given decision is not a requirement under international law and would hardly be feasible in a strict sense. In the Philippines, consensus is used to refer to the internal process of decision-making of indigenous peoples and communities, based on validated indigenous political structures.

The **assessment of a number of FPIC processes**, supported by GIZ, concluded that *“in most cases, there had been considerable procedural and substantial violations of the FPIC guidelines. The assessment could not even state of more than 50% full and faithful implementation of the guidelines. For the most part, indigenous communities had been short-changed, if not deceived by many FPIC applicants”* (GIZ et al, 2013: 5).

Under the previous Guidelines, the requirement for FPIC was often interpreted in a purely formalistic way, particularly in the context of resource extraction from indigenous land. Often, consent was sought by the proponent from indigenous individuals without a proper consultation process that would ensure broader community support or alignment with community priorities and aspirations for development. Hence, experiences from the Philippines suggest that the territorial defence and self-governance of indigenous peoples is not solely dependent upon legal recognition, but also on the organisational strength and cohesion of the communities. Where community organisations are weak, companies may easily achieve FPIC as a formality without offering major benefits for the community.

The **FPIC Guidelines** under IPRA were **revised** in 2012 *“in response to reports concerning alleged irregularities in the implementation of the 2006 FPIC Guidelines and reported violations, ranging from the creation of fictitious tribal associations, possible collusion with proponents, to claims of outright corruption”* (UN-REDD 2012: 15). The 2006 FPIC Guidelines have now been repealed and replaced by the Revised Guidelines on Free and Prior Informed Consent and Related Processes of 2012 (...) which expressly state that they apply to “carbon trading and related activities”.

The most notable change in the revised Guidelines is that free, prior informed consent needs to be given by the broader community/ancestral domain according to customary law, and not just a few leaders. There are approximately 120 different indigenous peoples in the Philippines, each with a distinct customary law, and the identification of representatives and adequate procedures thus vary widely. However, in NCIP experience, the most ancestral domains adhere to simple majority rule, implying that consent can be given by 50% plus one. The participation of women varies according to customs, with some communities limiting women's participation. NCIP does not impose a requirement for equal participation. Any internal disagreements will have to be resolved by the indigenous peoples. And if they withhold consent, the project cannot be implemented.

The Guidelines stipulate requirements for the FPIC process that are quite extensive and have budgetary implications for the proponent who would have to cover costs related to food, transport, accommodation and external advice, if requested. Although there are limited experiences with FPIC processes related to REDD+ in the Philippines, NCIP estimate that such a complicated issue may require a consultative process of six to 12 months for each ancestral domain to consider a local-level project. As NCIP has provincial offices, it will be able to handle simultaneous processes. Upon complaints from extractive

industries, NCIP has recently been given additional budget to speed up FPIC processes.

The experience of NTFP-EP in two **demonstrations sites** in Palawan and Quezon highlights various challenges. One site comprises 35 dispersed communities that are partly nomadic and their leaders change frequently. The FPIC process is still ongoing and NTFP-EP had to request an extension of the project from two to three years to conclude the process. In the other site, 12 communities gave their FPIC, but one community later withdrew consent as the project engaged in mining. In both projects, the resource implications had been underestimated. Another challenge faced was the low facilitation capacity of NCIP and the project manager/staff and the dynamics of a changing REDD+ concept from 2009 to 2013.

NCIP is a quasi-judicial body, constituted with regional hearing offices at which it can receive complaints concerning all issues related to IPRA. Decisions of the hearing offices are appealable to the Commission. This parallel system has advantages and disadvantages: NCIP does not have the same level of sophistication as a court. However, NCIP does not charge filing fees from the complainants and have less stringent procedures than the courts.

2.2.2.3 Rights to Natural Resources and Carbon

As in many other countries, Philippine laws and practices present contradictions regarding indigenous peoples' land and resource rights. While IPRA recognises indigenous peoples' ownership to ancestral domains, some DENR officials still maintain that the ancestral title only recognises rights to land and not to natural resources. Hence, indigenous peoples still need to seek permission from DENR for commercial exploitation of their natural resources. In general, the delineation of competences between agencies that are guided by different laws and policies, administrative orders and procedures remain a challenge.

This same dispute is reflected in the current discussions about carbon rights. The study undertaken by GIZ, NTFP and DENR indicated that it would create a chaotic situation if carbon rights are segregated from tenure rights, which could eventually lead to displacement of communities. The study has been presented to government and the policy recommendations available to the public.

However, a resolution of NCIP (Resolution A-020, Series of 2010) already declared that indigenous peoples have carbon ownership within ancestral domains pursuant to IPRA and the rights-based approach.

2.2.3 Testing of Approaches to FPIC in Viet Nam and Indonesia

There are not yet any experiences of applying the UN-REDD FPIC Guidelines, but field tests in Indonesia and Viet Nam were conducted when drafts of the global guidelines were under development. Each country developed its own framework, and so did not field test the global Guidelines per se.

In Indonesia, FPIC was tested in two communities with very different outcomes. One community rejected consultation, as an NGO had previously been to the village and told villagers that REDD+ would take the forest by force and destroy the socio-cultural values of the community. The other village changed the proposal significantly through input and comments from community members. The proposed changes included assistance to resolve boundary disputes, forest-management training and the provision of nutmeg and durian seedlings. This highlights that FPIC needs to be linked to provisions regarding participation and consultation to make sure that proposals are aligned with indigenous peoples' aspirations for development.

In Viet Nam, the communities "gave their consent to Viet Nam's UN-REDD National Programme activities at the field level. The question actually posed to villagers was: 'Do you agree with the proposed UN-REDD Programme activities and want to participate in these activities?' with the relevant activities being indicated using a poster showing four field activities. However, an independent review of the process shows that there was some level of confusion among villagers as to what the UN-REDD Programme was, and to what was actually being proposed, with the recollection of many villagers being that they gave their consent to 'forest protection'" (UN-REDD 2012: 12).

The field-testing provided a valuable lesson learned, as it raised the essential question regarding what should be the subject of FPIC (the UN-REDD programme, REDD+ as such or a specific project to impact the community). Further, it illustrates the limited use of seeking FPIC (as a yes or no response) for a predefined intervention, instead of pursuing a broader governance approach to jointly identifying, at the national, sub-national and local levels, the needs and priorities of the concerned communities in terms of sustainable forest management and how these can be encompassed within a national REDD strategy and programme. Also, for Viet Nam, the exercise was groundbreaking as the communities were consulted and their consent sought, perhaps for the first time.

Finally, the **evaluation** concludes that *“FPIC guidelines are best tested in a location where there is a concrete proposal that requires community consent”*. In a more general way, this reaffirms that the topic for consultation cannot be decontextualised from the process. In other words, a mechanical application of a generic “FPIC process” will only be relevant in the limited cases where a community is faced with an externally, predefined proposal and is given the limited options of either embracing or rejection this proposal.

2.3 Latin America

Latin America is the region where most progress has been made with regard to constitutional and legal recognition of indigenous peoples’ rights. For example, 14 countries in the region have ratified ILO Convention No. 169 and most countries have some legislation to recognise indigenous peoples’ collective right to lands, territories and resources, leading to mapping, demarcation and titling of indigenous lands and territories in most countries. A frequent problem is the existence of overlapping and contradictory legislation and policies that hamper effective implementation. For example, it is estimated that indigenous territories constitute 25.3% of the Amazon basin, and protected areas constitute 20.9%. The overlap between the two territorial categories is 41.2 % (TIG, undated).

The region has in-depth expertise and experience on all matters relating to indigenous peoples’ land and resource rights, and there is a wealth of data, information, studies and maps available as well. Further, the combination of legislative recognition and relative weak implementation has led to comprehensive jurisprudence coming out of national courts, the Inter-American system and ILO supervisory bodies, particularly concerning land and resource rights.



Consultation and consent, particularly in the context of natural resource exploitation, hydropower plants and other mega-projects, are key challenges in the region, and few countries have developed specific legislation, regulations or institutions to operationalise the duty to consult and to obtain consent. The current tendency to focus on legislative development may be necessary to adequately operationalise the duty to consult and obtain consent. However, there is also a risk that it may obscure the fact that the duty to consult and seek consent is applicable, regardless of the development of specific legislation or regulations. Further, it may contribute to a narrow and legalistic interpretation of consultation and consent, typically contextualised to situations of conflicting interests, in which the linkages to participation and governance are overlooked and positions are polarised. In this context, existing positive experiences of collaborative governance and the participatory

development of public policies are not considered. Hence, recent legislative progress in the region, for example in Peru, has not necessarily contributed to building up trust and good faith, nor has it highlighted the constructive nature of consultation and consent as elements of good governance. This may, ironically, make the practical application of legislation more difficult.

2.3.1 Panamá

Panama	Country facts
Type of intervention	UN-REDD national programme
Implementation modality	Direct implementation
Timeframe	2010 - 2013
Budget	USD 5.3 million
Budget allocation for stakeholder engagement	Yet to be defined
Type of intervention	FCPF participant country
Implementation modality	UNDP selected as Delivery Partner
Timeframe	Panama will resubmit an updated R-PP to FCPF by September 2013

2.3.1.1 UN-REDD and FCPF Programmes

Panama, through the National Authority for the Environment (ANAM), presented its proposal for national REDD+ readiness simultaneously to FCPF and UN-REDD in June 2009. Both FCPF and UN-REDD requested Panama to ensure further stakeholder engagement and validation of the proposal.

Subsequently, the UN agencies involved with **UN-REDD** worked with representatives of the **National Coordinator of Indigenous Peoples of Panama (COONAPIP)** over a period of three weeks to review and revise the proposal, and to ensure reflection of indigenous peoples' concerns and priorities. In this context, COONAPIP's leadership identified 19 points that they saw as essential for the implementation of REDD+ in Panama, including ratification of Convention No. 169 and legal recognition and titling of indigenous territories. The proposal was approved by the UN-REDD Policy Board in October 2010 and initiated in January 2011. The Panama programme is one of the early UN-REDD pilot programmes, and the design reflects the expectations that prevailed in 2008-9, namely that REDD+ readiness was a fairly simple undertaking that over a couple of years would make a given country ready to receive REDD+ investments.

The **FCPF** approval and initiation of the R-PP is still pending but a revised proposal is expected to be presented to FCPF in early 2014.

2.3.1.2 Legislation

The seven indigenous peoples in Panama have very differentiated levels of recognition of their lands and territories. Some live within well-established *comarcas*, or collective territories that are established by law with their own governance units. Others were more recently recognised under the 2008 Law on Collective Lands. A few have no legal recognition of their lands and territories. The 1994 Forest Law establishes that all natural forest belongs to the State, a disposition that is contradictory to the recognition of indigenous territories under other laws and is reflected in contradictory opinions regarding indigenous peoples' carbon rights.

Each of the **comarcas** and collective lands has its own territorial governance institution, established according to customs and recognised by the State. The 11 territorial institutions are organised in COONAPIP, which was

restructured in 2009 to instate the 11 territorial authorities as its collective leadership. However, the 11 constituting authorities remain autonomous within their territories and COONAPIP has until now served more as a political coordination body than an implementer of programmes in the various territories.

2.3.1.3 Stakeholder Engagement

The national UN-REDD programme was validated by COONAPIP, and it was expected that COONAPIP would be responsible for all elements related to consultation, participation and capacity-building of indigenous peoples. There was an expectation from COONAPIP that the programme would address the 19 points identified by the indigenous authorities as essential, but the commitment of the State to these points was not clear. Further, the programme document did not specify or concretise results, activities budget allocations or implementation modalities for these elements. Hence, it was only in the ensuing discussions that differences of expectations with regard to thematic coverage and budget emerged. Also, the implementation modality was not defined, and the discussions were complicated by COONAPIP not having been established as a legal entity that can receive funding directly. Some of its constituents also do not agree that COONAPIP should have an implementing role in the territories.

The end result was that in February 2013, **COONAPIP** announced its withdrawal from the UN-REDD national programme, alleging a lack of respect for indigenous peoples' right. The UN-REDD programme responded by suspending all activities relating to indigenous peoples, while an independent investigation and evaluation was carried out from May to July 2013. In the meantime, COONAPIP and ANAM have agreed that ANAM will present a proposal to COONAPIP regarding its possible reintegration in the national REDD+ process and/or UN-REDD programme.

With regard to the issue of representation, the investigation and evaluation team concluded that when the UN-REDD programme was formulated in 2009, COONAPIP *"had recently restructured its organisation and therefore had no clear formal definition – nor operational experiences – to accurately determine the powers, roles and responsibilities of political representation and technical implementation"*. Further, the team found that the national programme *"did not conduct a thorough prior analysis of the representative institutions of indigenous peoples of Panama (...) as stipulated in the Operational Guidelines"*. This led to a situation where, on the one hand, the national programme was accused of creating divisions between the national and the territorial authorities by responding to requests from individual territorial authorities. On the other, it was also accused of ignoring the legitimate territorial representatives by working through the national authorities. Further, internal differences contributed to weakening and fragmenting COONAPIP, with several territorial authorities expressing their disagreement with the position of COONAPIP vis-à-vis the programme. The investigation and evaluation team made a call to the numerous external actors that were taking positions on this particular issue to respect the diversity of indigenous institutions and support, to the extent necessary and requested, indigenous institutions at the territorial and national level to internally define their roles, responsibilities and competencies with regard to the state and foreign cooperation.

Some of the **lessons learned** highlighted in the evaluation of the UN-REDD Programme in Panama are:

The UN-REDD Guidelines served as safeguards to ensure the initial consultation and validation of the national programme by the indigenous peoples. However, the Guidelines did not provide for adequate quality control of the programme design, including the definition of roles and responsibilities between UN agencies, government institutions, indigenous peoples and civil society. In particular, the UN agencies should carefully delineate their roles and responsibilities vis-à-vis the State in order to avoid generating expectations about the programme beyond the commitments of the state.

UN-REDD programmes should, from the outset, devise interrelated strategies for consultation, participation, communication and capacity-building of the various stakeholders. These should be designed as continuous processes, tied to the various phases of the programme and the REDD+ readiness process. Such multifaceted and flexible processes could, for example, comprise the following elements:

- Initial communication and consultation processes concerning the national programme;

- Participation and consultation as permanent processes, institutionalised in the decision-making bodies of the programme and the national REDD+ process;
- Institutional strengthening and capacity-building to ensure full and effective participation;
- Consultations with various sectors concerning the themes relevant for the national REDD+ strategy;
- Diversified communication strategies relating to the outputs generated by the national programme;
- Internal processes of consultation, in accordance with indigenous peoples' customs and self-governance institutions, in order to consolidate their positions with regard to REDD+;
- Specific consultations with indigenous peoples concerning legislative or administrative measures that may affect them.

The evaluation recommends the UN-REDD programme to find ways to simplify the management of joint national programmes through national implementation or implementation through a single agency. Further, it recommends adapting guidelines (stakeholder engagement, FPIC) to better reflect the complex realities and experiences generated from implementation on the ground.

2.3.2 Peru

Peru	Country facts
Type of intervention	UN-REDD targeted support
Budget	In June 2012, UN-REDD approved USD 145,000 as targeted support for the capacity-building of indigenous peoples for their informed participation in the design and implementation of Peru's REDD+ mechanism.
Type of intervention	FCPF participant country
Implementation modality	The Inter-American Development Bank (IDB) is the Delivery Partner
Timeframe	Prospect to be initiated in 2014
Type of intervention	FIP pilot country
Implementation modality	Delivery partner to be defined
Timeframe	Prospect to be initiated in 2014

2.3.2.1 FCPF, UN-REDD and FIP Programmes

Peru presented its R-PIN to FCPF in 2008 without any participation of civil society or indigenous peoples. This caused negative reactions, although submission of the R-PIN is largely regarded as a purely procedural step. Subsequently, the government committed to developing the R-PP in a participatory manner.

Until mid-2010, there was not much progress, given the limited technical capacity of the government to understand and comply with the R-PP requirements. Another reason for the delay was the high level of conflict between the government and indigenous peoples due to the adoption of a series of legislative measures without due consultation with indigenous peoples. The conflict culminated with the 2009 violent clash in Bagua, where a number of indigenous protestors and policemen were killed. Although these conflicts were not directly linked to

REDD+, they contributed to a generalised climate of mistrust and affected the possibility of conducting constructive consultations and participatory processes.

When resumed in 2010, the **R-PP formulation process** was participatory, involving civil society and government institutions, organised in the **Grupo REDD+ Peru**, as well as indigenous organisations. The input from civil society and indigenous peoples was presented to the FCPF Participants Committee, but not all of it was included (particularly from civil society). Therefore, this input still needs to be incorporated in the final version of the R-PP. The government included most proposals from civil society and indigenous peoples in the draft R-PP, which was presented to the FCPF Participants Committee in 2011 with the support of Grupo REDD+, as well the Asociación Interétnica de Desarrollo de la Selva Peruana (AIDESEP). AIDESEP is one of the main indigenous organisations from the Amazon area, representing 66 local federations and approximately 1400 communities. The revision and updating of the R-PP is still pending and needs to be completed before the grant agreement can be signed (this was expected to happen in September 2013).

The draft R-PP differentiates between consultations and participation of civil society and other actors, and the specific consultations and participation of indigenous peoples, as required under ILO Convention No. 169. The R-PP 2011 states (p. 37-38) that indigenous peoples will be consulted on the document that will encompass the national programme or national strategy on REDD+. However, the Participation Plan (RPP Annex 1b-2) has still not been formally adopted. While deadlines are approaching, it is doubtful the timeframe is adequate to allow for real influence on the content of the document.

UN-REDD provides limited targeted support to Peru, responding *“to specific technical and capacity needs identified by the Government of Peru to strengthen national REDD+ readiness efforts. This support will contribute to the UN-REDD Programme’s ‘Support to National REDD+ Actions – Global Programme 2011-2015’ by ensuring indigenous peoples’ engagement in national REDD+ efforts, strengthening national systems for transparent, equitable, credible and accountable management of REDD+ funding and supporting the realization of social benefits from REDD+”* (UN-REDD response to Peru, June 2012). Under the programme, there is a series of studies regarding participation, distribution of benefits, safeguards and corruption risks. The results of these studies will be presented in September 2013.

In March 2010, Peru was selected as one of the eight **FIP pilot** countries. The resource envelope for planning FIP investments in Peru is USD 30-50 million, comprised of grants and concessional loans. The draft investment plan is supposed to reflect input from indigenous peoples and civil society, and has a funding mechanism dedicated to indigenous communities. The FIP Participation Plan does not specify when consultation will take place and there has not yet been a national consultation process regarding the FIP National Strategy. Indigenous peoples and civil-society representatives have requested to have two representatives in the FIP Steering Committee.

UN-REDD targeted support to Peru was jointly requested by the government and AIDESEP and is aimed at building the capacity of AIDESEP on issues such as safeguards, distribution of benefits etc. in the light of forthcoming FCPF and FIP funding.

AIDESEP has elaborated its own proposal for Indigenous REDD+ (**REDD+ Indígena**) in Peru, which contemplates elements such as recognition, titling and enlargement of communal territories, and law reform to bring legislation in line with Convention No. 169 and UNDRIP, as well as ensuring that REDD+ incorporates indigenous cultural values and respects traditional forest-management practices (AIDESEP, 2011).

2.3.2.2 Legislation

Since the finalisation of the draft R-PP, Peru has adopted a specific **law on consultation with indigenous peoples**, accompanied with a procedural regulation. This is one of the few examples of such a specific national legislative framework. The law is formulated in accordance with the provisions of Convention No. 169, which is ratified by Peru. The law establishes the right of indigenous peoples to be consulted with regard to legislative or administrative measures that will directly affect their collective rights, as well as to national and regional plans, programmes and projects that may affect these rights (article 2). Further, the law establishes that the objective of consultation is to achieve agreement or consent between the State and indigenous peoples through an intercultural dialogue that guarantees the latter's inclusion in the decision-making processes of the State and the adoption of measures that are respectful of their collective rights.

However, there is still no regulation of consultations concerning legislative measures, as the current Regulation (Decreto Supremo 001-2012-MC) only applies to the Executive Branch. It implies that the draft law on payment for ecosystem services cannot be consulted. The Regulation also establishes that the organisations to be consulted should correspond to the territorial scope of the measure (art. 27.3). It means that consultation on national plans and programmes would only occur with national organisations. The most recent element of this regulatory framework is a registry of indigenous communities. This, however, is contested, as it seems to exclude indigenous communities from the Andean highlands. The experiences with implementation of this regulatory framework are still sporadic, but have the potential of inspiring and informing REDD+ implementation beyond Peru.

2.3.2.3 Stakeholder Engagement

In 2011, the government reached an agreement with AIDESEP to establish a national **indigenous REDD+ platform**, along with regional platforms. The establishment was pending for some years, as the government required that the national platform should also involve the Confederación de Nacionalidades Amazónicas (CONAP), which historically has been in opposition to AIDESEP. However, on 30 July 2013, AIDESEP and CONAP agreed to establish the Platform (Mesa Nacional de REDD+ Indígena de Perú). The Platform will be the main interlocutor between indigenous peoples and all other actors involved in REDD+ in Peru.

Throughout the formulation process of FIP and FCPF, AIDESEP has actively participated and expressed its concerns regarding the process and substance. In July 2013, FIP and FCPF undertook a series of joint regional consultation workshops. These were rejected by the involved indigenous organisations, which stated their concern about the draft FIP investment plan, as well as failure of the Peruvian government to conduct consultation in good faith due to inadequate prior notice or allocation of sufficient time for the event.

One concern is that such positive steps are mainly aimed at resolving the immediate crisis and do not reflect long-term commitments to stakeholder engagement. Another concern is the government's weak financial and institutional capacity to comply with its commitments. There is thus a perceived need for a monitoring system to follow the fulfilment of agreements, as well as indicators to clarify the foreseen impact of the agreements.

2.3.3 Paraguay

Paraguay	Country facts
Type of intervention	UN-REDD national programme
Budget	USD 4.7 million
Implementation modality	Direct implementation
Timeframe	2011 - 2014

The involvement of indigenous peoples in the UN-REDD national programme in Paraguay presents some **unique and very interesting features**. In 2008, when the government initially presented its proposal for a national UN-REDD programme, it did not mention indigenous peoples. Also, the **Federation for the Self-Determination of Indigenous Peoples (FAPI)** did not have any previous knowledge about REDD+. However, FAPI decided to engage in the process from the outset, knowing that it would be an experimental process. FAPI became one of the main counterparts to the government, and has worked in a participatory way to involve indigenous peoples in the REDD+ process through awareness-raising and capacity-building, also reaching out to those that are not members of FAPI.



FAPI has elaborated **Guidelines for implementation of the National Programme in Indigenous Peoples' Territories**. These stipulate that all REDD activities shall recognise, respect and apply the human rights of indigenous peoples and communities as affirmed in the international instruments, including the UNDRIP. The Guidelines also stipulate that legal recognition of lands is a precondition for the implementation of REDD+ projects in indigenous territories. Further, the National Programme establishes specific outputs related to indigenous peoples' rights, including development of a consultation protocol for free, prior and informed consent, and a plan for the participation of indigenous peoples in the design of REDD+ activities. FAPI has also been involved in the technical studies undertaken by the programme, for example, the elaboration of a map of sacred sites in collaboration with UNEP.

Beyond the activities supported by UN-REDD, FAPI has sustained institutional support from the Rainforest Foundation Norway, Forest Peoples Programme and the Spanish NGO Almaciga, including for participation in REDD+ events and discussions at international level and for the capacity-building of its constituents.

FAPI participate in all the decision-making bodies created through UN-REDD, including in political meetings with the Resident Coordinator of the UN system and in the Technical Committee. Currently, there is a process to establish a National REDD+ Committee, which will comprise farmers, private sector, indigenous peoples, NGOs etc.

3 KEY FINDINGS

3.1 Country Contexts

The opportunities and barriers for REDD+ are not only determined by the policies and guidelines of the involved agencies, but also will inevitably be formed by the specific historical, economic, political, social and cultural conditions of any given country. FCPF and UN-REDD provide support to national-level REDD+ processes, mainly through government partners. However, one almost defining aspect of indigenous peoples is that their customary law and governance institutions are marginalised in the structure of modern nation-states. Hence, the relationship between indigenous peoples and states is generally characterised by discrimination and historical mistrust. These are the barriers that the Cancún safeguards under UNFCCC have set out to overcome, but resolving the historical injustices against indigenous peoples will require the long-term, concerted, coordinated and systematic efforts of states and their development partners to go well beyond REDD+. The extent to which REDD+ can be an important element of these efforts will depend on a series of factors that are briefly discussed below.

3.1.1 REDD+ Leverage

Recognising indigenous peoples' land and resource rights, and ensuring their self-governance and participation in inclusive governance structures, are profound issues that ultimately require **transformation** of the legal and institutional framework of most states. This leads to the question of the actual leverage of REDD+ to achieve such national transformation and the fear that REDD+ will be "overloaded" with expectations beyond what it can realistically achieve.

The **main leverage** stems from the objective of REDD+, namely to provide positive incentives to developing countries for activities that reduce greenhouse gas emissions from deforestation and degradation, conservation of forest carbon stocks, sustainable management of forests and enhancement of forest carbon stocks. Indigenous peoples have long practiced sustainable forest-management systems resulting in forest conservation. Thus, establishing rights-based partnerships with indigenous peoples is one of many critical means for achieving the overall objective of REDD+ and carries the potential of pursuing multiple benefits from forest conservation. Engaging indigenous peoples in REDD+ is not merely a safeguard requirement, but a strong asset for more effective forest conservation and management, mutual learning and prevention of conflict.

REDD+ has an evident potential in DRC due to the vastness of the forest and the imminent prospects of REDD+ funding. The case from DRC indicates support from the highest level of government.

While the above constitute the main leverage for REDD+ to promote respect for indigenous peoples' rights, the country cases also show the **barriers** for getting this message across to decision-makers and the population in general:

- There is still uncertainty regarding where REDD+ funding of the necessary scale will come from, which limits the strength of REDD+ to drive policy change.
- Government officials and decision-makers may have more immediate interest in pursuing other economic activities such as logging, mining and conversion of forests into agriculture or plantations, rather than ensuring long-term forest conservation. This is also reflected in the absence of stronger and more powerful government institutions, such as ministries of finance, agriculture and mining, from REDD+ in many countries.
- There is limited understanding and knowledge about indigenous peoples, and many countries do not have basic data about numbers, locations, livelihood practices, traditional institutions etc.

- In most countries, non-indigenous sectors of the population hold discriminatory attitudes toward traditional occupations, which are even prohibited by law in certain countries.
- The unfamiliar concept of REDD+ and the technicalities surrounding it make it difficult to understand and communicate for most stakeholders. The internal dynamics of REDD+ as a changing subject make clear communication even more difficult. The focus on highly specialised MRV elements of carbon emissions and carbon stock in most readiness processes directs a lot of the initial readiness funding to technical consultants and specialists, which makes it difficult for stakeholders to identify shared interests and priorities.
- REDD+ and readiness are predefined concepts that are not necessarily aligned with indigenous peoples' aspirations for development. There is, therefore, the risk of disregarding indigenous peoples' potential contributions in terms of traditional knowledge and sustainable practices.

The uncertainty about funding will have to be addressed at a global scale, through UNFCCC. The fundamental challenge of tying REDD+ to multiple benefits and differentiated interests and rights must be addressed in continuous dialogues from the global to the local levels. Most of the other barriers outlined above could be addressed in effective communication strategies contemplated in the readiness processes.

It is obvious that, with a relatively small investment and short timeframe, the **direct leverage** of any FCPF or UN-REDD programme is limited. The most immediate leverage seems to stem from the direct application of institutional safeguards that specify operational requirements (such as the requirement for consultation and validation of proposals) and the ability to open space for dialogue and facilitating alliances between governments, indigenous peoples and other stakeholders. The potential for FCPF and UN-REDD to open new spaces for dialogue is probably greater in African and Asian countries with weaker constitutional and legislative protection of indigenous peoples' rights and weak or non-existing institutionalised mechanisms for dialogue between governments and indigenous peoples.

Particularly for UN-REDD, its potential leverage is also tied to its ability to provide specialised technical expertise to help governments ensure that REDD+ will achieve its goals. While this may be clear to government partners, it is not necessarily communicated to the broader range of stakeholders.

The **leverage of REDD+**, as well as of FCPF and UN-REDD, will depend on a complex combination of factors. Without attempting to provide a universal recipe for addressing this key concern, there seem to be **two crucial factors** that would be valid across country contexts:

- ✓ **Genuine high-level commitments by participating states** to recognise and respect indigenous peoples' rights to land, territories and resources, including their traditional livelihoods and occupations. Such commitments could be expressed in a variety of ways, depending on the circumstances, but should be specific and measurable in order to balance expectations. It could, for example, comprise ratification of international instruments such as ILO Convention No. 169, constitutional or legislative reforms, or administrative measures to issue collective titles to indigenous communities. These commitments should be explicitly reflected in national REDD+ readiness programmes and incorporated into the results framework, as appropriate.
- ✓ **Seeking alliances and complementarities with other initiatives to support long-term processes** to implement provisions relating to indigenous peoples' rights to land, territories and resources, including building up the institutional capacity of states and indigenous peoples.

3.1.2 The Concept and Representation of Indigenous Peoples

In many countries, particularly in the African and Asian regions, the concept of indigenous peoples is still not well understood, although there are encouraging processes reflecting increasing regional and national contextualisation and capacity. In countries where governments are reluctant to embrace the concept, the explicit commitment of

FCPF and UN-REDD to ensure indigenous peoples' rights has opened up **opportunities** and spaces for dialogues that have strengthened indigenous peoples' own struggle for recognition.

There are examples, particularly in Latin America and some parts of Asia, of national federations of representative indigenous institutions. In some cases, these are also duly recognised by government. However, in many countries, **representation** is disputed among a number of organisations. In other countries, particularly in Africa, representative indigenous institutions are mainly found at the community or local/sub-national levels and are often not recognised by the government. Some countries, including in Latin America, experience a proliferation of indigenous NGOs or platforms that may have the skills and capacity to engage in REDD+ processes, but may not qualify as representative institutions, given the absence of accountability linkages with their constituents. Operationally, most countries have only sporadic experiences of engaging with representative indigenous institutions.

Good practice: As of September 2013, FCPF and UN-REDD have been supporting civil society and indigenous peoples in DRC to undertake a self-evaluation of their participation in REDD+.

The FCPF/UN-REDD Guidelines for Stakeholder Engagement rightly points to the need to carefully identify and map the variety of actors, including issues of *"local ownership, demonstrated mandate, legitimacy as claimant, competence and expertise, and accountability"*. The Guidelines also highlight the need to work with the diversity of actors and through existing structures.

Given the huge and diverse challenges in working with a multitude of often weak and unrecognised representative institutions on technically complicated issues and with limited time and resources, country experiences indicate a certain tendency to group organisations together or reach out to the diversity of organisations through one overall umbrella organisation. While this is understandable for practical reasons, it may not be in compliance with indigenous peoples' rights, and may also lead to conflicts or weaken the legitimacy of results.

- ✓ **It will require efforts from all sides to overcome the challenge of ensuring adequate representation:** for indigenous peoples to clearly identify and mandate their legitimate representatives, for governments to duly recognise them and for external actors such as UN-REDD and FCPF to carefully identify and reach out to the legitimate representative institutions without simplifying relationships out of operational convenience.

3.1.3 The Concept of Forest-Dependent Communities

Throughout the African, Asian and Latin-American regions, there are forest-dependent communities that are key stakeholders in the context of REDD+. Some of these communities would fall under the category of "tribal peoples", as understood in the context of ILO Convention No. 169, which provides for equal rights to indigenous and tribal peoples. This, for example, is the case of some afro-descendant communities in Latin America. Other forest-dependent communities that do not qualify as indigenous or tribal peoples will still have important stakes and rights, including ownership rights to the forest, that warrant particular attention, as rightly pointed out throughout the FCPF and UN-REDD policy and operational framework. For example, the Joint Stakeholder Guidelines asserts that *"in particular the voices of forest-dependent and vulnerable groups must be heard, whether they are indigenous or not"*. However, the definition of forest-dependent communities is not very clear,⁴ and the guidelines do not provide further guidance on the variety of legal issues that could be involved under international human rights law in the case of

In Cameroon, there is an assumption that forest-dependent Bantu communities would be represented by mainstream Bantu NGOs, although there may be no accountability links to legitimate such representation.

⁴ In the context of the UN-REDD Guidelines on FPIC it is stated that "Forest-dependent communities shall refer to communities that would not satisfy the commonly accepted definitions of indigenous peoples".

forest-dependent communities. Also, as the situations of forest-dependent communities are diverse, and they may not count with customary law institutions, there may be particular challenges relating to their representation.

- ✓ **In accordance with procedures for stakeholder mapping at the earliest stages of the readiness phase, there is a need to identify in each particular country the communities that come under the concept of “forest-dependent” and ensure their adequate representation in REDD+ processes.** Such experiences could be documented to further reflect on the term and its implications under REDD+.

3.1.4 Rights to Lands, Territories and Natural Resources

Weak recognition and enforcement of indigenous peoples’ rights to lands, territories and resources is a key issue in most countries. Even countries that have strong constitutional and legislative provisions, such as the Philippines and many Latin American countries, still face implementation challenges. Typical shortcomings are the overlap between indigenous territories and protected areas, or contradictory legislation that delinks land and territorial rights from resource rights. The implications for REDD+ readiness are two-fold: on the one hand, if not resolved with proper safeguards, REDD+ could lead to restrictions in access to forest resources, criminalisation of traditional practices, or even displacement of communities, if, for example, alienation of carbon rights leads to land grabbing. On the other hand, REDD+ may be a positive incentive to increase the political will of governments to finally address the long-pending recognition of land and resource rights. In any case, resolving land-related issues requires legislative measures as well as implementation, grievance and enforcement mechanisms, all of which require political will, resources and time probably beyond what can be immediately provided or accomplished in the lifetime of a FCPF and UN-REDD supported readiness project.

- ✓ **There is a need to combine an immediate safeguard approach to avoid negative impact while seeking synergies and complementarities with other long-term and comprehensive development efforts** to positively ensure recognition and effective protection of indigenous peoples’ land and resource rights.

3.1.5 Government Capacity

Most of the country cases show that governments have **little experience and capacity** to cooperate and consult with indigenous peoples’ representative institutions. In some countries, the existence of such institutions is not even recognised by the state. Some government agencies are willing to engage with indigenous peoples but do not have the knowledge, experience or capacity to do so and lack appropriate legal framework and institutional mechanisms. In particular, many government institutions have difficulties coping with the multifaceted nature of civil society and indigenous institutions. Also, many government officials express doubts about the usefulness and feasibility of stakeholder engagement, which is seen as time consuming, costly and of limited technical value. In this regard, the firm commitment of FCPF and UN-REDD to stakeholder engagement is opening spaces and setting important precedents.

The **challenge of stakeholder engagement**, including adequate application of provisions for consultation, participation, and free, prior and informed consent will increase as REDD+ moves from readiness to implementation and from relatively closed circles in the capitals to the community levels. Only a few countries, such as the Philippines and Peru, have existing institutional mechanisms that would ensure the more systematic and institutionalised involvement of indigenous peoples.

- ✓ **In most countries, the systematic and institutionalised participation of indigenous peoples requires major investments** in terms of institutional capacity-building and training of staff, which should be built into the readiness process. The FCPF/UN-REDD Guidelines for stakeholder engagement could be strengthened to also reflect the need to assess and address the governments’ institutional capacity and needs in this regard.

3.2 Challenging Operationalisation of a Composite Framework

3.2.1 Operating within a Common Framework

Under international law, donor and participant countries to REDD+ have pre-existing legally binding commitments to indigenous peoples' rights. This implies that failure to respect those rights may result in observations and judgements by regional and international human rights bodies, as well as by the national judicial system. In the context of REDD+, provisions regarding lands, territories and natural resources, as well as **consultation, participation and consent**, are of particular importance.

FCPF and UN-REDD are operating in contexts – and on subject matters – that are regulated by international law and regional standards. Further, the programmes must respond to the diverse institutional policies of both donors and “host institutions” (the World Bank, FAO, UNEP, UNDP). As a general tendency, the UN system has stronger **policy commitments**, in line with international human rights law, while the World Bank has stronger **procedural requirements** and compliance mechanisms. At country level, agencies face the challenge of operating in states that often do not have adequate national legislation, or the institutional capacity or political will to comply with international commitments.

Hence, already from the outset, FCPF and UN-REDD operations are subject to complex layers of legal and institutional commitments and requirements that, if not followed, may result in severe legal, political, operational and reputational risks for both the concerned countries and agencies.

The **variables** that would determine the applicability of diverse FCPF and UN-REDD policies and guidelines are, first, whether a programme is FCPF or UN-REDD, and then what agency or delivery partner it is (FAO, IDB, UNDP, UNEP). Further, for FCPF, whether a readiness activity is co-financed in a parallel or joint manner is an important variable. If the safeguards of the partner organisation in a joint co-financing situation are perceived to be stronger or more protective than those of the World Bank, then the FCPF will in turn support adherence to those principles. To this should be added the regional context, which would determine the applicability of regional human rights instruments, and, finally, the country context. Further, as the aim of UN-REDD and FCPF is to support national REDD+ strategies, they will necessarily have to ensure synergies and complementarities with a variety of other REDD+ initiatives, including bilateral initiatives such as those supported by Denmark, Germany and Norway with strong national policies on indigenous peoples' rights.

Hence, it seems unnecessary and impractical to continue with the differentiated guidelines and operational policies of FCPF and UN-REDD, particularly as both programmes contribute to national processes that would eventually result in one national REDD+ strategy. One risk related to the differentiated approaches is that there could be “safeguard leakages”, in the sense that some countries may choose to collaborate with the programme that is perceived to require the “easier” safeguards and/or compliance mechanisms.

- ✓ **There are strong arguments for further reinforcing the process of streamlining and harmonising policy commitments and operational guidance** to the most generally applicable standards, which, in this case, is the UNDRIP as also reflected in the Cancún safeguards.
- ✓ Strong and unified safeguards, in line with the Cancún agreements, would ensure that the World Bank, FAO, UNDP, UNEP and other external agencies take a **coherent and independent position to ensure that processes and projects related to REDD+ adhere to the rights of indigenous peoples as enshrined in UNDRIP** (particularly provisions regarding lands and resources, as well as consultation, participation and consent).
- ✓ Basically, such a safeguard approach would **require partner countries to commit to consulting and cooperating with indigenous peoples in order to obtain their free, prior and informed consent** (i) before adopting and implementing legislative or administrative measures that may affect them and (ii) prior to the approval of any project affecting their lands or territories and other resources.

- ✓ Practically, the on-going review of World Bank operational policies may provide an opportunity to work toward such unified safeguards.

3.2.2 Complex Operational Policies and Guidelines

FCPF and UN-REDD have made **efforts to harmonise** operational templates, procedures, guidelines and safeguards, but many of these still follow separate tracks, referring back to differentiated institutional policies and guidelines, which are difficult to change. Moreover, the stakeholder engagement guidelines reflect a number of **guiding principles and safeguard criteria that are not fully accompanied by specific operational guidance, indicators or monitoring mechanisms**. This, obviously, poses a major challenge for operationalisation.

The first implication of this complex pattern of joint and separate policies and guidelines is that it **requires time and expert knowledge** to fully understand the commitments, obligations, gaps and procedures. This poses a challenge for staff and partner countries in terms of operationalisation; but also constitute a real hindrance for indigenous peoples and civil society engagement, as they attempt to monitor and contribute to REDD+ readiness processes.

- ✓ **For operational purposes and to enhance accountability, there is a need to further pursue the harmonisation of policies and guidelines between FCPF and UN-REDD, aligned with UNDRIP.**

3.2.3 Enforcement

One challenge faced by both FCPF and UN-REDD is to ensure adequate implementation and enforcement of safeguards in the sovereign states where they operate. While obligations under international law are clear, national implementation is lagging far behind and basically all REDD+ participant countries present weaknesses in terms of meeting their international obligations, particularly with regard to indigenous peoples' land and resource rights, and rights to consultation, participation and consent.

While World Bank Operational Policies present **mandatory requirements**, the FCPF/UN-REDD joint guidelines are largely silent on how to enforce these and it is not made clear which principles and steps present hard **conditionalities** and which are more **aspirational guidelines** at the discretion of participating states. With many uncertainties still surrounding the future funding mechanisms for REDD+, the economic incentives may not be sufficient to drive policy and legislative changes, implying a risk of raising expectations to REDD+ beyond its political leverage.

3.2.4 Pursuing a Governance Approach to Free, Prior and Informed Consent

The UN-REDD Guidelines on free, prior and informed consent provide a strong argument for countries to comply with their obligation to obtain consent from affected communities in the context of specific REDD+ projects. However, the Guidelines do not elaborate much on the **broader governance approach to free, prior and informed consent**, applicable, for example, to legislative measures and national programmes. Similarly, the joint sections of FCPF/UN-REDD Guidelines on Stakeholder Engagement are largely silent on the requirement for consent. Hence, there is tendency to compartmentalise the approach to indigenous peoples' rights, delinking the requirement for free, prior and informed consent from consultation, participation and capacity-building. This is problematic, as experience shows that the possibility of obtaining consent in a specific project will depend on the broader governance context, the quality of the consultation and participation process, and the compatibility between the project and indigenous peoples' aspirations for development. If the focus is not broadened, there is a risk of reducing the concept of free, prior and informed consent from constructive collaborative decision-making to a reaction to externally defined projects or to a single event with no longer-term engagement.

- ✓ **There is scope for further strengthening FCPF and UN-REDD's commitment to indigenous peoples' rights by incorporating the requirement for free, prior and informed consent in the stakeholder guidelines and providing operational guidance on how to embed this requirement in broader provisions for consultation, participation and capacity-building.**

3.3 Application of Policy Commitments, Principles and Procedural Requirements

FCPF and UN-REDD guidelines are generic and do not offer much analysis or guidance on how to operationalise them in highly diverse country contexts. The Guidelines also do not provide more detailed discussions about resource allocation, timeframes, implementation modalities etc.

In general, the **implementation and operationalisation of Guidelines** seem to have been more successful where these either (i) lead back to operational policies of the World Bank with well-defined procedural steps, such as the TAP review, and an institutionalised grievance mechanism, or (ii) are synthesised in concise operational requirements, such as the validation of national programme documents by indigenous peoples and civil society. Most country cases show weaknesses in terms of embedding the more formal requirements for stakeholder engagement in continuous processes of full and effective participation.

Some of the more **general operational weaknesses** detected from the country cases are:

- In particular the pilot programmes underestimated the complexities, time and resources required for REDD+ readiness. Also, the pilot programmes reflect a rush to reach quick results, thereby skipping the more in-depth analysis of specific country situations that could lead to more tailored interventions building on existing experiences and structures.
- The attempt to apply differentiated guidelines and procedures of UN-REDD, FCPF and other contributors to REDD+ processes may serve differentiated internal institutional purposes but unnecessarily complicates national processes that are challenged by numerous other factors.
- Many programmes show a tendency to compartmentalise components or strategies for awareness-raising, communication, consultation, participation and capacity-building, although these are intrinsically complementary and interdependent elements for full and effective participation.
- Participation is often limited to the programme-implementation process, whereas participation in substantive and technical work is more limited. Where indigenous peoples have been involved in the research, analysis and design of technical interventions, it has clearly contributed to mutual learning, as well as the relevance, ownership, impact and sustainability of interventions.
- The Guidelines are not systematically applied in the context of targeted support from UN-REDD and largely depend on the thematic subject for the support. In cases where targeted support is oriented toward stakeholder engagement and capacity-building, it is a crucial complement to the more technical components of REDD+ readiness.
- ✓ **The weaknesses identified above point to the need for a balance between firm policy commitments, concise procedural and operational requirements, and qualitative guidance on how to ensure flexible, integrated processes of full and effective participation in diverse country contexts. Such a harmonised and streamlined framework should be informed by a systematic analysis of implementation experiences from the ground.**

3.3.1 Implementation Modalities

Many of the country cases illustrate the **multitude of actors** involved with REDD+ processes, each with their distinct guidelines, implementation modalities, budgets, reporting requirements, safeguards, timeframes etc. This adds stress to already weak government institutions, constitutes major challenges for civil society and indigenous peoples' engagement, fragments the sector, complicates monitoring, increases transaction costs and, in general,

goes against the principles established in the Declaration on Aid Effectiveness, which aims at ensuring alignment, harmonisation and ownership.

Moreover, most UN-REDD national programmes are implemented directly by agencies in collaboration with national partners. While this may imply some advantages in terms of overcoming weak national capacity and provide some flexibility with regard to collaboration with civil society and indigenous peoples, it raises questions of alignment with national priorities, institutionalisation of capacities, transaction costs and sustainability.

- ✓ **There is a need to seriously consider a profound reform of the way external assistance is provided to the forest sector and REDD+ by adhering to the principles of aid effectiveness to which most of the involved agencies have already agreed.**

3.3.2 Timing and Sequencing

Most FCPF and UN-REDD programmes have taken years to get from formulation and approval to initiation. In some countries, this has implied that **momentum** is lost and the frustration of expectations from civil society and indigenous peoples has contributed to mistrust. In other countries, the slow implementation pace has allowed civil society and indigenous peoples to prepare and build their own capacities for engagement with REDD+.

In general, there seems to be a tendency that funding for stakeholder engagement, including awareness-raising and capacity-building, comes in at a relatively late stage while the need may be there even before a given programme is initiated.

- ✓ **There is a need to provide support to stakeholder engagement from the outset or even prior to the finalisation of broader grant agreements.**

3.3.3 Participation in Decision-Making Bodies

Both FCPF and UN-REDD provide for participation of civil society and indigenous peoples at the **global level** and promote participation in steering committees and similar bodies at the **national level**. This has been followed in most cases. Participation in such bodies is appreciated and has led to positive results in terms of ownership, capacity, policy commitment etc. However, in some cases there are questions regarding the real possibility of influencing decision-making. Participation in REDD+ processes should not be considered an end in itself, but contribute to realisation of indigenous peoples' substantive rights, including legal recognition of land rights where they are not protected. Another main concern is the representativeness and linkages between selected representatives and their constituents at regional and national levels. The quality of self-selecting processes at global, regional and national levels depends very much on the specific circumstances, including the capacity and representativeness of indigenous institutions at the various levels.



The experiences generated so far, internationally as well as in specific countries such as Cambodia, are currently under review and can contribute to further strengthening of participation.

- ✓ **Participation in national steering committees should be ensured in all programmes, accompanied by necessary provisions for capacity-building and outreach.**

3.3.4 The Application of FPIC Guidelines

Apart from the Philippines and limited field-testing experiences in Viet Nam and Indonesia, few countries have experiences in applying the concept of FPIC the way it is conceptualised in the UN-REDD FPIC Guidelines. This poses a challenge for operationalisation and for the staff that is tasked with providing guidance and advice to implementing countries.

One of the main questions that are coming up is the **applicability of the Guidelines**. **More practical guidance is needed in countries where** (i) indigenous peoples and their ownership rights over lands are recognised; (ii) indigenous peoples are not recognised as such or do not have recognised land and resource rights; and (iii) indigenous peoples and their land and resource rights are not recognised. Moreover, there seems to be a need to further clarify that the Guidelines are mainly meant for obtaining FPIC in the context of specific REDD+ activities with a defined impact in a specific geographical area. This should not overshadow the fact that states have a duty to consult and cooperate with indigenous peoples in order to obtain their free, prior and informed consent with regard to any legislative and administrative measures that may affect them. This requirement is determined by the potential impact of such measures and can thus a priori not be limited to either the REDD+ readiness or implementation phase. This will particularly apply when readiness implies review and amendments of the legal frameworks, the definition of carbon rights etc.

- ✓ **There is a need to supplement the FPIC Guidelines with further guidance to countries on how to ensure consultation and consent in broader** processes, including at the national level. Such guidance should also be systematically integrated with the FCPF/UN-REDD Guidelines for Stakeholder engagement and should be informed by existing experiences, particularly from Latin America, of the collaborative formulation of legislation, public policies and programmes.

Other operational questions regarding the identification of representative institutions, the requirement or not for absolute consensus, the involvement of women and so forth will have to be answered in the specific country and community contexts, taking into account the provisions of UNDRIP, the customary laws and self-governance institutions of the concerned indigenous peoples and the design of government institutions to conduct the processes.

In the context of UN-REDD, UNDP has global and regional stakeholder engagement specialists to advise participating countries on the application of guidelines. The regional specialists cover 14 to 17 countries and report spending up to 50% of their time explaining the Stakeholder Engagement and FPIC Guidelines to country partners. As the Guidelines are gradually being “rolled out”, it must be assumed that the demand for technical assistance will increase, as most countries do not have operational experience or institutional mechanisms.

- ✓ **The application of the Guidelines will require comprehensive technical assistance**, which should be built into national programmes and targeted support but also addressed through complementary activities such as research, documentation and the exchange of experiences, training courses etc. at regional and global levels.

3.3.5 Capacity and Resources to Engage

The country cases have strongly reaffirmed the **inter-linkages between awareness-raising, capacity-building, consultation, participation and consent**. Further, these elements must be regarded as continuous processes rather than one-off events that can be confined to particular stages of the REDD+ readiness or implementation phases.

Some of the **main experiences and challenges illustrated in the country cases** are:

- The effective participation of indigenous peoples in the preparatory phase is critical for the consequent phases and can be a determining factor for the overall success of REDD+. Some programmes, but not all, indicate a specific **budget allocation** for stakeholder engagement, capacity-building etc.

- Many indigenous peoples' representative institutions, particularly in Africa and Asia, have weak institutional and technical **capacity**, as well as limited access to sustained funding to ensure their operations and increase their capacity. In many cases, indigenous participation has been guaranteed by sustained NGO or bilateral support independently from FCPF and UN-REDD. The existence of indigenous institutions is a fundamental requirement for the application of other rights and while REDD+ cannot assume full responsibility for ensuring this, it must be specifically considered, addressed and, where possible, built into programmes or complementary actions by NGOs or other partners.

The next generation of UN-REDD Programme support to stakeholder engagement, e.g. in South Sudan, Côte d'Ivoire and the Republic of Congo, have initial budget allocations to allow civil society and indigenous peoples to define their own plans and priorities from the outset.
- The organisation of civil society and indigenous peoples in **platforms** that can engage with government and other actors in a systematic way is practical and ensures coordination, continuity and the building of collective capacities. However, the internal dynamics must also be taken into account and such platforms need to be open and inclusive, and not replace existing structures or suppress internal differences. There should not be a requirement for indigenous peoples or civil society to speak with only one voice.

The example of FCPF in Cameroon providing funding for outreach is positive, but the long-term sustainability of such processes must be considered.
- **Reaching out** to indigenous and local communities and institutions in the forest is the main challenge in many countries. Diversified capacity-building strategies should reflect the differentiated needs and skills of the different stakeholders and provide comprehensive long-term strategies to reach out to communities in the forests.
- ✓ Within the context of FCPF and UN-REDD, **specific budget strategies and budget allocations for the capacity-building of indigenous peoples in the context of national programmes could be made a specific procedural requirement.**
- ✓ In parallel, **participating agencies and other development partners should consider making long-term predictable institutional funding available for indigenous peoples**, as a necessary element of effective participation.

Annex A: Literature and References

A/HRC/12/34 *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 15 July 2009.

ACHPR, 2010 *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 276 / 3003 (4 February 2010).

Accra Caucus, 2013 *REDD+ Safeguards: more than good intentions? Case studies from the Accra Caucus*.

AIDSEP, 2011 *Construyendo REDD Indígena: Adecuación intercultural de REDD+ Peru a los derechos de los pueblos indígenas*.

AIPP, 2012 *Briefing paper on REDD+, Rights and Indigenous Peoples: Lessons from REDD+ Initiative in Asia*.

Carob Fund, 2013 *Carbon Fund Brochure*, available at: <http://www.forestcarbonpartnership.org/carbon-fund>

CERD, 2010 *CERD/C/CMR/CO/15-18*, 30 March 2010.

Crippa, L.A. & Gordon, G., 2012 *International Law Principles for REDD+: The Rights of Indigenous Peoples and the Legal Obligation of REDD+ Actors*, Indian Law Resource Center, Washington.

FAO, 2010 *FAO Policy on Indigenous and Tribal Peoples*, Rome.

FCPF/UN-REDD, 2011 *A Review of Three REDD+ Safeguard Initiatives*.

FCPF, 2013 *World Bank Safeguard Policies and the UNFCCC REDD+ Safeguards*, FMT Note CF-2013-3.

Feiring, B. and Stidsen, S., 2013 *Indigenous Peoples and Climate Change in Africa: Traditional Knowledge and Adaptation Strategies*, Charapa Consult.

FPP, 2012 *Forest Peoples: Numbers across the world*, Forest Peoples Programme.

GIZ et al, 2013 *A Policy Brief: Free and Prior Informed Consent Assessment*.

ILO, 2013 *Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, International Labour Standards Department.

ILO and ACHPR, 2009 *Overview Report of the Research Project by ILO and ACHPR on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries*, ILO, Geneva.

Programa ONU-REDD Paraguay *Directrices de la Federación por la Autodeterminación de los Pueblos Indígenas (FAPI) para la implementación del Programa Nacional Conjunto en Territorios Indígenas*.

TIG, undated *Territorio Indígena y Gobernanza: Superposición de Territorios y Áreas protegidas; gobernanza* and other themes, available at: <http://www.territorioindigenaygobernanza.com/index.html>

UNDP, 2001 *UNDP and Indigenous Peoples: A Policy of Engagement*.

UNEP, 2012 *UNEP and Indigenous Peoples: A Partnership in Caring for the Environment*, Policy Guidance, November 2012

UN-REDD, 2012 Free Prior and Informed Consent for REDD+ in the Asia-Pacific Region: Lessons Learned.

UN-REDD, 2012 (a) *Countries at a glance*, October 2012.

UN-REDD, 2013 (a) *Guidelines on Free, Prior and Informed Consent*.

UN-REDD, 2013 (b) *Legal Companion to the UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC): International Law and Jurisprudence Affirming the Requirement of FPIC*.

UN-REDD, undated *Including Stakeholders In The Development Of Social And Environmental Standards For REDD+ In The Democratic Republic Of The Congo (DRC)*, available at: http://www.un-redd.org/Newsletter34/new_Success_Story_DRC/tabid/106734/Default.aspx

World Bank, 2011 *Implementation of the World Bank's Indigenous Peoples Policy: A Learning Review (FY 2006-2008)*.

Annex B: List of People Contributing

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Annex C: Overview of FCPF and UN-REDD Participating Countries

Country	FCPF participant	FCPF candidate	UN-REDD national programme	UN-REDD partner country
1. Argentina				
2. Bangladesh				
3. Belize				
4. Benin				
5. Bhutan				
6. Bolivia				
7. Burkina Faso				
8. Burundi				
9. Cameroon				
10. Cambodia	Delivery Partner: UNDP			
11. Central African Republic	Delivery Partner: UNDP			
12. Chad				
13. Chile				
14. Colombia				
15. Congo (DRC)				
16. Congo, Republic of				
17. Costa Rica				
18. Côte d'Ivoire				
19. Dominican Republic				
20. Ecuador				
21. El Salvador				
22. Ethiopia				
23. Fiji				
24. Gabon				
25. Ghana				
26. Guatemala				
27. Guyana				
28. Honduras	Delivery Partner: UNDP			
29. Indonesia				

Country	FCPF participant	FCPF candidate	UN-REDD national programme	UN-REDD partner country
30. Jamaica				
31. Kenya				
32. Lao				
33. Liberia				
34. Madagascar				
35. Malaysia				
36. Mexico				
37. Mongolia				
38. Morocco				
39. Mozambique				
40. Myanmar				
41. Nepal				
42. Nicaragua				
43. Nigeria				
44. Pakistan				
45. Panama	Delivery Partner: UNDP			
46. Papua New Guinea	Delivery Partner: UNDP			
47. Paraguay	Delivery Partner: UNDP			
48. Peru				
49. Philippines				
50. Solomon Islands				
51. Sri Lanka				
52. South Sudan				
53. Sudan				
54. Suriname	Delivery Partner: UNDP			
55. Tanzania				
56. Thailand				
57. Togo				
58. Tunisia				
59. Uganda				
60. Uruguay				

Country	FCPF participant	FCPF candidate	UN-REDD national programme	UN-REDD partner country
61. Vanuatu				
62. Viet Nam				
63. Zambia				

Annex D: Overview of UN-REDD and FCPF Guidelines on Stakeholder Engagement

Rationale	
FCPF and UN-REDD recognise the importance and special status of indigenous peoples in terms of their historical and cultural connection to forests and are committed to applying specific policies to safeguard their rights and interests.	
Indigenous peoples and other forest-dependent communities have a special role to play in REDD+ given their traditional knowledge of and relationship to the forest and their presence on the ground.	
Joint UN-REDD and FCPF commitments	
Stakeholders have to be involved at the project/program formulation as well as the preparation and implementation stages.	
Ensure that REDD+ programs respect indigenous peoples' rights and comply with relevant international obligations.	
A clear commitment will have to be made to ensure that indigenous peoples' and forest-dependent communities' rights are fully respected throughout the REDD+ program cycle.	
Expectations to participating countries	
UN-REDD and FCPF recognise as part of their policies and procedures that for REDD+ to be implemented, participating countries should comply with applicable international obligations, treaties and national laws.	
Commitments to international instruments/policies	
Provisions specific to UN-REDD	Provisions specific to FCPF
<p>It is critical for UN-REDD Programme countries to ensure that:</p> <p>Activities follow a human rights-based approach and adhere to UNDRIP, UNDG Guidelines on Indigenous Peoples' Issues, and ILO Convention No. 169;</p> <p>Countries adhere to standards outlined in key relevant international instruments (including UNDRIP, ICERD, ILO Convention No. 169, UNFCCC, CBD).</p>	<p>In the context of FCPF, activities affecting indigenous peoples are governed by the World Bank Operational Policies, in particular Operational Policy 4.10 (OP 4.10) on Indigenous Peoples, and by the FCPF Charter.</p> <p>OP 4.10 aims to ensure that the development process fully respects the dignity, human rights, economies and cultures of indigenous peoples.</p>
Provisions for FPIC/consultation	
<p>Countries are expected to uphold the principle of FPIC as stated in the UNDRIP.</p> <p>FPIC should be sought in accordance with the UN-REDD Programme Guidelines on FPIC (when FPIC is a provision under national law or practice, that standard will also apply).</p> <p>In UN-REDD Programme partner countries or countries supported by FAO, UNDP or UNEP, consultation plans should include an additional component that outlines provisions for FPIC. The appropriate level of consultation will depend on the issue or activity being considered, the objectives and the desired outcomes of the proposed consultation.</p>	<p>According to OP 4.10, the Bank provides financing only where free, prior and informed consultation results in broad community support for a project by the affected indigenous peoples. The Bank's OP 4.10 is consistent with the Cancun Decision 1/CP.16, in particular its emphasis on respect for the knowledge and rights of indigenous peoples and on their full and effective participation. The Bank deems that OP 4.10 enables the Bank to operate in a manner that can be considered substantially equivalent to the principle of FPIC. Further, if the country has ratified ILO Convention No.169 or adopted national legislation on FPIC, or if the Bank is working on a project with a development partner that expressly applies the principle of FPIC, the Bank will support adherence to that principle. If an organisation other than the World Bank is the Delivery Partner (DP) in the FCPF and has more stringent and/or protective social safeguard policies and procedures than those of the WB, the DP shall apply its policies and procedures to activities.</p>

Social and environmental safeguards

The UN-REDD Programme's Social and Environmental Principles and Criteria (SEPC) will provide a guiding framework to: (i) addressing social and environmental issues in UN-REDD National Programmes and other UN-REDD funded activities; and (ii) supporting countries to develop national approaches to REDD+ safeguards in line with UNFCCC. SEPC specifies seven overall principles:

1. Apply norms of democratic governance, as reflected in national commitments and Multilateral Agreements.
2. Respect and protect stakeholder rights in accordance with international obligations.
3. Promote sustainable livelihoods and poverty reduction.
4. Contribute to low-carbon, climate-resilient sustainable development policy consistent with national development strategies, national forest programmes and commitments under international conventions and agreements.
5. Protect natural forest from degradation and/or conversion.
6. Maintain and enhance multiple functions of forest including conservation of biodiversity conservation and provision of ecosystem services.
7. Avoid or minimise adverse impacts (direct and indirect) on non-forest ecosystem services and biodiversity.

FCPF is using the Strategic Environmental and Social Assessment (SESA) to integrate key environmental and social considerations into REDD+ readiness. The SESA allows: (i) social and environmental considerations to be integrated into the REDD+ Readiness process, in particular the REDD+ strategy; (ii) participation in identifying and prioritising key issues, assessment of policy, institutional and capacity gaps to manage these priorities and recommendations, and disclosure of findings in the REDD+ country's progress report on Readiness preparation; and (iii) an Environmental and Social Management Framework (ESMF) to be put in place to manage environmental and social risks and to mitigate potential adverse impacts. The SESA guidelines stipulate the FCPF to:

- Undertake existing or new diagnostic work to identify and prioritise the drivers of deforestation and the key social and environmental issues associated with the drivers, including those linked to the Bank safeguard policies, covering issues such as land tenure, sharing of benefits, access to resources, likely social and environmental impacts of REDD+ strategy options; legal, policy and institutional aspects of REDD+ readiness;
- Assess existing capacities and gaps to address the environmental and social issues identified;
- Draft REDD+ strategy options taking into consideration the above issues;
- Develop a framework to mitigate and manage the risks of the REDD+ strategy options, i.e. to be included in an ESMF; and
- Establish outreach, communication and consultative mechanisms with relevant stakeholders for each of the above steps.

The consultations for SESA will be integral to consultations for the REDD+ readiness process and the REDD country's consultation plan should therefore include the consultations on the social and environmental considerations as well.

RPP Template

The Readiness Preparation Proposal (R-PP) template contains specific guidelines to assist a REDD+ Country to organise itself to become ready for REDD+. With respect to participation and consultation, the R-PP template provides specific guidelines on national readiness management arrangements, and stakeholder consultation and participation. In countries using the R-PP template these Guidelines should be used in parallel with the guidelines presented in the R-PP template.

Common guiding principles for effective stakeholder engagement

The consultation process should include a broad range of relevant stakeholders at the national and local levels. The diversity of stakeholders needs to be recognised. In particular the voices of forest-dependent and vulnerable groups must be heard, whether they are indigenous or not. Different stakeholders have different stakes and/or interests in REDD+. Some may be positively impacted, others negatively.

Consultations should be premised on transparency and timely access to information. In the context of REDD+, timely information dissemination at all levels and in a culturally appropriate manner is a pre-requisite to meaningful consultations. Stakeholders should have prior access to information on the proposed consultation activities. Sufficient time is needed to fully understand and incorporate concerns and recommendations of local communities into the design of consultation processes. Public awareness and information, education and communication campaigns are important vehicles for ensuring that stakeholders understand the objectives of REDD+, the related risks and opportunities and their potential role in the process, and can – if they decide to do so – make informed and substantive contributions to the formulation of REDD+ strategies and policies.

Consultations should facilitate dialogue and exchange of information, and consensus-building reflecting broad community support should emerge from consultation. The consultation process should occur voluntarily. In the case of the UN-REDD Programme, consultations leading to giving or withholding consent should be carried out in accordance with the UN-REDD Programme Guidelines on FPIC.

Consultations with indigenous peoples must be carried out through their own existing processes, organisations and institutions. Indigenous peoples should have the right to participate through representatives chosen by themselves in accordance with their own procedures and decision-making institutions. It is also important to ensure that consultations are gender sensitive.

Special emphasis should be given to the issues of land tenure, resource-use rights and property rights as indigenous peoples' customary/ancestral rights may not necessarily be codified in, or consistent with, national laws. Another important issue to consider for indigenous peoples and other forest dwellers is that of livelihoods. Thus, clarifying and ensuring their rights to land and carbon assets, including community (collective) rights, in conjunction with the broader array of indigenous peoples' rights as defined in applicable international obligations, and introducing better access to and control over the resources will be critical priorities for REDD+ formulation and implementation.

Impartial, accessible and fair mechanisms for grievance, conflict resolution and redress must be established and accessible during the consultation process and throughout the implementation of REDD+ policies, measures and activities.

Guidance on stakeholder engagement for activities under the FCPF and UN-REDD

Consultations should start prior to the design phase of the project/program and be applied at every stage of the REDD+ process including planning, implementation, monitoring and reporting. This should occur with adequate lead time since decision-making among some local communities may take time and be iterative. A Consultation and Participation Plan should be developed for countries submitting R-PPs and/or UN-REDD National Programme Documents. This should include an analysis of proposed REDD+ readiness activities to identify when consultations will be required, at what level these should be conducted and whom they should include. The Consultation and Participation Plan should be prepared with a realistic budget and financing plan, and implemented by the National REDD+ Committee or the agency(ies) or committee(s) responsible for REDD+ policy design.

A national level workshop should be held to initiate the consultation and participation process. The workshop should include a broad range of local and national stakeholders. The goal of this workshop is to review and assess the content of the Consultation and Participation Plan, which is not considered final until this workshop has taken place.

It is important that participatory structures and mechanisms exist to manage the agreed process outlined in the Consultation and Participation Plan. For example, national REDD+ committees should include representatives from relevant stakeholder groups, including indigenous peoples and civil society. In addition to the national level, participatory fora need to be established (or existing ones used) at the local level to ensure active engagement of local stakeholders.

Records of consultations and reports on the outcome of the consultations should be prepared and publicly disclosed in a culturally appropriate form, including in local languages. Consultation processes should clearly document how views gathered through the consultation process have been taken into account and, where they have not, explanations provided as to why.

Prior to the development of a REDD+ program/activity, indigenous peoples living in voluntary isolation that may be affected should be identified in consultation with the relevant entities at the national, sub-national and/or local level to ensure that the program/activity is developed in a way that completely avoids contact with these communities.

Practical steps for carrying out effective consultations

1. Define the desired outcomes of consultations

A good consultation and participation process is one that is carefully planned, has a clear mandate, and articulates the objectives and desired outcomes of the consultation. This should be placed in the context of overall REDD+ readiness, clarifying why the consultation was considered necessary, how it fits within the broader scope of planned activities and how the outcomes will be used toward expected REDD+ readiness activities.

It should also be clear what degree of participation will be expected of the stakeholders, e.g. is it a one-way flow of information to keep actors informed and support transparency goals, or a two-way consultation resulting in feedback and reactions that may be incorporated in formal outputs, or a joint decision-making consultation resulting in shared control over a decision-based outcome? If the consultation is part of a longer process or series of consultations, the same stakeholder representatives may need to be available to attend a number of consultations to ensure continuity and effective engagement. This should also be stated clearly as it may have an impact on how stakeholders will select participating representatives. This should all be understood and agreed upon by stakeholders in advance of the consultation to avoid misinformation and generating unrealistic expectations, and to ensure that trust is maintained.

2. Identify stakeholders

The consultation planners need to identify the groups that have a stake/interest in the forest and those that will be affected by REDD+ activities. It is important to ensure that the process of selecting stakeholders is transparent so that all interested parties may participate and all stakeholders are provided with equal opportunity to engage and contribute to outcomes. Particular attention needs to be given to the inclusion of indigenous peoples and other forest-dependent communities, women and other marginalised groups. Stakeholder groups should be supported to self-select representatives where appropriate.

Identify civil society organisations (CSOs), community-based organisations (CBOs), indigenous peoples' organisations (IPOs), non-governmental organisations (NGOs) and institutions with extensive experience working with or representing indigenous peoples and/or forest-dependent communities and/or their issues, being mindful that these do not replace proper indigenous representation. Identify and consult with existing civil society participatory structures at the country level, for example, civil society and/or indigenous peoples' focal points, CSO Advisory Committees, the National Steering Committees of the Global Environment Facility Small Grants Programme and/or National Forest Programmes. Verify that the appropriate stakeholders are being represented by consulting with a wide range of related organisations to ensure that a broad spectrum of views is considered.

Conduct a mapping of indigenous peoples' and other forest-dependent communities' organisations, authorities and institutions, including priority issues, rights, needs and desires. Issues of local ownership, demonstrated mandate, legitimacy as claimant, competence and expertise, and accountability will be significant features to consider. Indigenous organisations may represent diverse, overlapping and conflicting constituencies and interests. It is critical to identify the appropriate indigenous peoples' institutions with which to partner. While traditional leaders are recognised as the higher authorities in their communities, representatives of indigenous peoples' organisations may have the skills and knowledge to interact with the technical process and may be able to articulate the views of traditional leaders. It is important to be open and inclusive to a wide range of indigenous peoples' organisations and community-based representatives, and to be aware of tensions that may exist among various indigenous groups. The choice of partners should also take into account groups that are often marginalised within their own indigenous communities, in particular women and youth. Assess the situation to make the most appropriate choice and avoid misrepresentations, as formally approved organisations may not always be representative of the people at large.

3. Define the issues on which to consult

The key issues should broadly correspond to the R-PP components and/or the components of the UN- REDD National Programme Document. In the case of REDD+, issues for consultation may include (but are not limited to): the current status of national forests; institutional, policy and regulatory frameworks; main causes and drivers of deforestation and forest degradation; past and present policies to halt deforestation and forest degradation, where they have succeeded and where they have not; rights and needs of indigenous peoples and other forest-dependent communities; type and pattern of land use by indigenous peoples; land rights (user and property rights, traditional, customary) and land-tenure systems; rights to carbon; inclusive participation in the design and implementation of REDD+ strategy, and development of procedures and enablers throughout the REDD+ cycle; proposed REDD+ strategy; design of benefit-sharing systems for equitable and effective distribution of REDD+ revenues; economic, social and environmental impacts and risks of REDD+, and the mitigation and prevention of risks; design of monitoring systems to keep track of forests and forest emissions, as well as environmental and social co-benefits; issues of forest governance and mechanisms to ensure full compliance with social and environmental safeguards, including during REDD+ strategy development; the opportunity costs of land use; groups likely to gain or lose from REDD+ activities; the role of the private sector.

4. Define the terms of the consultation

Ideally, any consultation should be guided by a clear elaboration of the process and elements of the consultation. All stakeholders should know how the consultation process will be conducted and how the outcomes of the consultation will be used, including the rights and responsibilities of the different stakeholders. These terms should be understood and agreed upon by all stakeholders and should include information on the following:

- **Timing** – A common understanding of timelines and deadlines should be reached, including the minimum amount of time required to: give advance notice of a planned consultation; carry out self-selection processes to identify suitable representatives (where appropriate); provide any required capacity-building in advance of the consultation; and make available key documents that may need to be circulated and reviewed in advance of discussions.
- **Agenda and the process for determining consultation outcomes** – The agenda of the consultation and how participating stakeholders will contribute to the desired outcomes of the consultation should be stated. If it is a decision-making consultation, it should be clarified how the decision will be reached (e.g. majority, consensus) and which participants have decision-making authority. If the consultation is to solicit opinions and views, clarify how these will be reviewed and incorporated (e.g. whether participants will be able to comment on future drafts). Tensions may already exist or may arise between indigenous peoples and other forest-dependent communities vis-à-vis REDD+ activities. Bearing this in mind, it is recommended that decisions made among all interested stakeholders regarding who will organise or lead the consultative process take place with sufficient time.
- **Representation** – Decide which stakeholder groups should be represented and the number of representatives that can be accommodated for the purposes of the consultation, noting that self-selection of representatives should be supported, where appropriate. Also clarify what the roles of different representatives are in the context of the consultation's desired outcome, e.g. if there is a decision-making process as part of the consultation, state which representatives have decision-making authority and which representatives may be acting in an observer capacity only.
- **Capacity building** – Develop a shared understanding of capacity needs and steps that will be taken to build capacity in advance of the consultations.
- **Transparency on outcomes** – Decide how the outcomes of the consultation will be documented and made publicly available (e.g. government websites, written press, national and community radio). Ensure the consultation includes a component for evaluation by the participants.

5. Select the consultation and outreach methods

The most effective consultations are custom-designed to place and purpose and provide for adequate budgets and human resources, including expert facilitation. A variety of stakeholder-engagement methods can be used for consultations to allow for bottom-up participation and ensure that information is rigorously gathered and fairly presented, such as workshops, surveys and focus groups.

The communication and outreach methods should ensure that adequate and timely information is provided to all stakeholders in an accessible language and style. As REDD+ involves complex, technical issues, information should be carefully synthesised to ensure that it is easily understood. Depending on the target audience and objectives of the consultation, various forms of communication media such as printed materials, electronic media, community radio, and local plays and drama can be used to disseminate information as widely as possible.

Identify facilitators with experience working with indigenous peoples and other forest-dependent communities and their issues. The use of indigenous and/or community co-facilitators, depending on the context of the consultation, is encouraged. Facilitators need to be trained in advance to ensure that they manage the consultation and record views appropriately.

The form and content of consultation may be designed in collaboration with indigenous peoples and other forest-dependent communities to ensure that these processes are appropriate and enough time is allocated to allow for proper consultation within the communities in accordance with their traditional decision-making processes.

6. Ensure that stakeholders have sufficient capacity to engage fully and effectively in consultations

Certain stakeholders may require capacity-building or training in advance of a consultation to ensure that their understanding of the issues and ability to contribute are sufficient; this need should be identified in the terms of the consultation (step #4 above). The awareness and capacity of indigenous peoples and forest-dependent communities to engage with REDD+ discussions should be assessed with the use of questionnaires, surveys, focus group discussions and/or workshops. If their existing level of information and knowledge is not sufficient, proper steps should be taken to provide information prior to the start of the consultations. This should be factored into the timeline.

7. Conduct the consultations

Consultations should be held in accordance with the terms of the consultation as agreed upon under step #4; any deviations from this should be discussed with and agreed upon by the stakeholders. The legitimate authorities of indigenous peoples and forest-dependent communities should be consulted and their decision-making processes respected. Broad community support, in the case of the FCPF, or free, prior and informed consent, in the case of the UN-REDD Programme, can be withheld at the community level, and such a decision should be respected.

8. Analyse and disseminate results

The findings from every consultation should be analysed, reported and discussed with representative stakeholder groups. It is important that the data analysis feeds back into the decision-making process. Providing timely feedback is also important to sustain interest in and commitment to the process.

On completing a consultation: develop a report or findings; acknowledge key issues raised during consultations and respond as appropriate; and describe how the outcomes of the consultation process will be incorporated into REDD+ strategy and programs. In addition, the findings of all the consultations should be disclosed through the communication channels agreed upon under the terms of the consultation (step #4).

Participation in global UN-REDD Programme structures	Participation in global FCPF structures
<ul style="list-style-type: none"> ■ Indigenous peoples will be represented as full member on the UN-REDD Policy Board by the Chair of the United Nations Permanent Forum on Indigenous Issues or by his/her designate, and by three indigenous peoples observers representing each of the three regions: Africa, Asia and the Pacific, and Latin America and the Caribbean. ■ Civil society organisations will be represented on the UN-REDD Policy Board by one full member and three observers representing each of the three regions and industrialised countries. Representatives of civil society organisations will be identified through a self-selection process and will choose amongst themselves who will serve as the full member. ■ Indigenous peoples and other forest-dependent peoples will be invited to engage with the International Advisory Group on Forests, Rights and Climate Change, which is empowered to monitor activities and provide substantive advice to the UN-REDD Programme Policy Board. 	<p>The FCPF has observer status for:</p> <ul style="list-style-type: none"> ■ 1 representative - Forest-dependent indigenous peoples and other forest dwellers ■ 1 representative - International organizations ■ 2 representative (1 southern; 1 northern) - Non-governmental organizations <p>Though these are the official “observer seats” participation of the following representatives is supported:</p> <ul style="list-style-type: none"> ■ 4 CSO (1 northern, 3 southern - Asia, Africa, Latin America and the Caribbean) ■ 5 indigenous peoples (2 Latin America and the Caribbean - central and south America, 2 Africa- Anglophone and Francophone, 1 Asia)
Participation in UN-REDD National Programmes:	Participation in FCPF national programmes
<p>Indigenous peoples and other forest-dependent communities shall be represented on National REDD+ Steering Committees or equivalent bodies, where established.</p> <p>1. Validation of National Programme Documents:</p> <p>In order to be endorsed by the UN-REDD Secretariat for approval by the UN-REDD Programme Policy Board, draft National Programmes must submit minutes of a “validation meeting” of National Stakeholders (where established: the National REDD+ Steering Committee), including indigenous peoples’ representative(s).</p> <p>Any representative who participates in the “validation meeting” must satisfy one of the following criteria:(1) is selected through a participatory and consultative process; has previous experience working with the government and UN system; has demonstrated experience serving as a representative, receiving input from, consulting with and providing feedback to a wide scope of civil society/indigenous peoples’ organisations;</p>	<p>FCPF provide broad guidance in Component 1 of the R-PP template: “Organize and Consult”. This presents suggestions for multi-stakeholder participation, including indigenous peoples. In this Component, Section 1b. “Information Sharing and Early Dialogue with Key Stakeholder Groups” provides further guidance and indicates various suggested steps and best practice for countries to follow in engaging indigenous peoples and other forest-dependent communities.</p>

or (2) has participated in a UN-REDD Programme scoping and/or formulation mission and sits on a UN-REDD Programme consultative body established as a result of the mission; or (3) is an individual recognised as legitimate representative of a national network of civil society and/or indigenous peoples' organisations (e.g. the GEF Small Grants National Steering Committee or National Forest Programme Steering Committee).

2. The "validation meeting" will be one step of a wider Consultation and Participation Plan and will be documented as an annex to the Programme Document.

3. The National Programme Consultation and Participation Plan should effectively involve indigenous peoples and other forest-dependent communities, and civil society organisations in all stages, including program design, implementation, and monitoring and evaluation, adhering to the same guiding principles as mentioned in the Principles and Guidance for Effective Stakeholder Engagement on page 5 of these Guidelines.

4. National Programmes should include activities and resources to support ongoing consultation, engagement and partnership to ensure that national UN-REDD Programme activities take into account current priorities and concerns articulated by representatives of indigenous peoples and other forest-dependent communities.

5. National Programmes will assess the impact of UN-REDD Programme activities on the rights of indigenous peoples and other forest-dependent communities prior to taking decisions on such activities.

Transparency and Accountability

6. Outcome documents from consultations, such as meeting minutes, reports, work plans and roadmaps for implementation should be: (i) circulated to indigenous peoples' organisations for an assessment of their accuracy; (ii) publicly accessible; and (iii) reflected, as appropriate, in National Programme documents and on the UN-REDD website, and submitted to the Policy Board annually.

7. The UN Resident Coordinator will distribute annual reports on UN-REDD Programme activities to indigenous peoples and civil society networks through the indigenous peoples' and other forest-dependent communities' representative on the National UN-REDD Steering Committee in order to ensure transparency.

Addressing grievances

National Programmes are required to establish grievance mechanisms. This requirement is already outlined in the FCPF and UN-REDD Readiness Preparation Proposal (R-PP) Template, where REDD+ countries will:

- Conduct a rapid assessment of existing formal or informal feedback and grievance mechanisms, including an assessment of how existing mechanisms could be modified to ensure that the eventual mechanism is accessible, transparent, fair, affordable and effective in responding to challenges in REDD+ implementation;
- Develop a framework for the proposed grievance mechanism, including steps that will be taken to define the structure, functioning and governance of such a mechanism, taking into account customary grievance approaches and best practices, where feasible;
- Describe how information-sharing and consultation on the proposed mechanism will occur.

The UN-REDD Programme is in the process of developing elaborated guidelines on national-level grievance mechanisms, which will be shared for external consultation in the first half of 2012. In the interim, stakeholders may direct grievances to both the UN-REDD Programme Secretariat and the UN Resident Coordinator in country for review and appropriate action.

The FCPF-UNREDD Guidance Note on Establishing and Strengthening Grievance Redress Mechanisms for REDD+ is expected to be issued in 2014.

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p. 37: U.Sonntag/GIZ; p. 43: UN-REDD Programme; p. 51: UN-REDD Programme



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