

Vietnam Comments on the ER-PD TAP Assessment Dated November 20th

Vietnam acknowledges the receipt of the Technical Advisory Panel (TAP) Review of Vietnam's final FCPF Carbon Fund ER-PD on 22nd November. We appreciate the effort of the TAP reviewers in providing a detailed assessment of the revised ER-PD including Annexes that covers the wide-ranging requirements of the Methodological Framework, in a short timeframe. Given the importance of the TAP Review to the evaluation of the ER Program by the Carbon Fund Participants, we would like to briefly respond to several of the final TAP comments.

While on the whole, the TAP Review recognizes the significant changes that have been made to the document in response to the initial review, there are a number of specific comments where we would like to provide clarification and/or point to areas in the document that may have been overlooked by the TAP reviewers. Key issues of concern in the TAP review relate to:

- Apparent misunderstandings that the ER-PD does not include activities for conservation of forest carbon stocks or sustainable management of forests;
- Apparent misunderstandings related to livelihoods and poverty alleviation, and sustainable livelihoods – the TAP review states there is no program to support poverty alleviation, while there is in fact a large program;
- The TAP Review should recognize the proposed safeguards that are/ will be in place; and
- The TAP Review seems to be unduly negative and underemphasize the ER-PD recognition of people's rights and in particular ethnic minorities, in fact the ER-PD provides extensive dialogue on people's rights and a basket of measures are proposed in the ER-PD that, and in line with government policy, help recognize rights and provide the opportunity for more security of tenure.

Indicator/ Criterion	Comments from the TAP review	Observations from the PMU
	General remarks	
	The failure to provide a credible plan for addressing the ongoing conflicts and ambiguities surrounding forest protection contracts.	Generally there are few conflicts surrounding forest protection contracts as the contracts are given out by management boards and communities tend to manage them on a group basis.
	No information is provided on whether Vietnam intends to create its own or use an existing ER transaction registry.	Section 18, 18.2 states that: “The government will create and run an emission reduction carbon title system.” i.e. Vietnam will create its own transaction registry
	Furthermore, the TAP had pointed out the Provincial REDD+ Action Plans (PRAPs) have also been developed though the support of international projects. This gives the impression that that most of the funds to implement them will come from international sources, rather than from Vietnam’s own support under the Forest Protection and Development Plan.	It should be clarified that the PRAPs themselves were mainly completed by locally hired consultants. Much finance for the implementation of the PRAPs will come through the government budget.
	Lack of description of how the move from short-rotation (lower risk) forestry to longer (higher risk) rotations will work. While the TAP noted these plans are commendable, the section is not quite clear on how this change will be made to work i.e. how the risk aversion tendencies of individual farmers and larger firms will be overcome. This should also include production practices, processing capacity and markets.	Section 4.3.4 was expanded in the revised ER-PD and includes a number of activities to support the plantation transformation, including support for improved silviculture, technical training, and access to finance. Activity planning will of course take account of local demand for sawn timber and access to markets. However, as also stated in Section 4.3.4, there is already interest in the program region to invest in long rotation plantations to better meet the large and growing demand of the processing industry that serves export markets for furniture.
C1		
C1 1.2	The TAP is of the opinion that the ER-PD is still not well coordinated with the National REDD+ Actions Plans (NRAP). However, the new NRAP is currently being developed and this will be based on a much more detailed drivers (and indirect drivers) assessment to develop appropriate policies and measures (PaMs). By	It is not clear why the TAP finds that the ER-PD is not well coordinated with the NRAP, or how in their view such coordination should be achieved. The NRAP is currently being revised, and it is not clear what PAMs will be included. The ER-PD is aligned with the existing PRAPs and draws on the existing PRAP driver analyses (5 of six were completed prior to the ER-PD). The ER Program will support the PRSCs which are coordinating the NRAP at

	the end of 2016, all the Provincial REDD+ Actions Plans (PRAPs) would have been revised with a more robust analyses of drivers of deforestation and forest degradation, including underlying causes.	the province level. There is no intention to revise the PRAPs in 2016.
C3		
Indicator 3.1	<p>The ER-PD includes the following REDD+ activities: deforestation, forest degradation, enhancement in existing forests and enhancement through reforestation. It does not include activities for conservation of forest carbon stocks or sustainable management of forests. The TAP notes that this will not lead to the potential for leakage or omission of key emissions sources, but is simply a definitional issue.</p> <p>It does not include activities for conservation of forest carbon stocks or sustainable management of forests.</p>	<p>To be clearer, the sentence should have read: "The ER-PD includes the following REDD+ activities <u>as sources and sinks</u>:..."</p> <p>This is contradicted by the TAP's comment on Indicator 27.1, which acknowledges that "There is also a subsection that describes actions to deliver the '+' (SFM, rehabilitation, conservation) under the ER-P."</p> <p>Conservation of forest stocks and sustainable management of forest is an important component of the ER Program and is extensively discussed in a number of sections, including the following:</p> <p>Section 4.1.2 Lack of incentives for SFM pages, 36, 37,39 Section 4.1.3 page 41, and "Policies to promote sustainable forest management and forest certification" pages 43 and "Forest Restructuring and Forest Land Allocation" pages 44, 45, and 46, 47 Section 4.3 Page 48 Section 4.3.2 Adaptive collaborative management of forest areas, pages 50 and 51 Section 4.3.5 Sustainable forest management, pages 53, 54, Section 4.3.6 Other planned and ongoing programs in the NCC with links to the ER Program pages 54, 55 Section 4.3.7 Linking the ER Program Activities to the Drivers of Deforestation and Forest Degradation, Table 4.7 "Relationship between the ER Program activities and drivers" page 55 Section 4.5 Analysis of laws, statutes and other regulatory frameworks, page 63 Section 5.1 Description of stakeholder consultation process, page 68 Section 14.1 see heading "Plantation development and the protection of natural forests," page 127</p>

		<p>See also Annex 9 Design, scale and underlying assumptions of the ER-P intervention models where it is also extensively discussed esp. Tables 9.2, page 63; and 9.3 page 64</p> <p>See also Annex 10 especially Table 10.1 Key results for Reference scenario and REDD+ scenario and opportunity costs, page 72</p> <p>See also Annex 11 Business models and feasibility for Acacia plantation restoration / transformation</p> <p>Annex 16 MMR</p>
5.1 no	Ind. 5.1 The ER Program identifies the IPCC methods used to estimate emissions and removals for Reference Level setting and Measurement, Monitoring and reporting (MMR).	<p>Cannot address now. In future when Cycle 2 and 3 of forest inventory available will be easy to address.</p> <p>Clarity required on what is wanted - If modelling approach (i.e. spread removals over time) possible but makes it more complicated.</p> <p>But doubtful if it will improve precision, but would look more consistent with IPCC guidance.</p>
Ind 6.1	Discussion of key uncertainties; Section 12 includes a discussion of the key uncertainties. However, the TAP found that uncertainties for the ER calculations were missing, in particular those relating to growth rates for the proposed new plantations.	<p>It was assumed that the uncertainty levels for the REL also applied to the ex-ante ER estimates. The estimated ERs were thus reduced by 4 % (in addition to an 18% buffer) (Section 13.1). Under Indicator 22 the TAP notes that “in the final ER-PD, Vietnam applied an uncertainty set-aside (4% of total ERs). A 4% “conservativeness factor”, given the current accuracy assessment estimations, is a credible assumption.”</p> <p>If required, it would be possible to do a separate uncertainty analysis for the ex-ante ER estimates, using the same methodology as that used for the REL.</p>
6.2 no	Ind 6.2 For the following spatial information, maps and/or synthesized data are displayed publicly, and reasonable efforts are made to explain how these were derived from the underlying spatial and other data, and to make key data sets or analyses publicly available:	
Ind 6.2	...the underlying data sets are currently not publicly	All the data and reports are available on two websites. The data on the VRO

	available in a single, consolidated location that would make it possible to understand how the data were used in the calculations.	website is consolidated and complete. (Should be a YES) http://www.vietnam-redd.org/Web/Default.aspx?tab=project&zoneid=110&itemid=630&lang=en-US
Ind 7.1	Although not specified in this criteria, the TAP notes that growth rates used in calculating the ERs are not backed by any references and, while within known ranges, appear high in some cases.	Several references to growth rates are provided in section 13.4 page 119 and a web link is also provided.
10.3 no	Ind 10.3 The ER Program explains what steps are intended in order for the Reference Level to achieve consistency with the country's existing or emerging greenhouse gas inventory	There is consistency between RL and national GHG-I, Forest definition and stratification and carbon pools and gases However, inconsistency remains in AD (statistic vs spatial data); EF (IPCC default values vs national equations for EF generation), National GHG-I is for specific year. UN-REDD is supporting to close the gaps
17.1	Despite the positive developments, the TAP is of the opinion that the risk rating of displacement as "low" may be overly optimistic given the difficulties in controlling cross-border displacements. As such the ER-PD should consider this a serious risk and give higher priority in mitigating the risk.	The risk rating for international displacement always was medium and remains medium reducing to low over time. Section 10, 10.1 Table 10.1.
C22	The TAP notes that the assumed survival rate of plantations in the RL is 87%, but is 90% in the estimated ER calculation	This is not the case. See 13.2 For carbon stock enhancement activities on plantations and areas related to reforestation, it is assumed that 87% of the plantation will survive and generate carbon stock enhancements.
C23 no	C 23 To prevent double-counting, ERs generated under the ER Program shall not be counted or compensated for more than once.	
	Ind 23 In sum, it would be useful for the ER-PD to provide a status of REDD+ related projects in the country and how double counting will be avoided both from project to subnational level programs	As discussed in Section 18.2, Vietnam proposes to develop a system of carbon titles attached to land titles, and a land title Registry. This will provide a system for checking to ensure that land, and the attached carbon, can be titled only once to a single owner.

C23	<p>TAP comment There may also be at least one additional project (that the TAP was able to discover) in the pipeline within the NCC region: the Khe Nuoc Trong Carbon Balanced Project (World Land Trust as the project developer), although the TAP does not have information on the status of the project.</p>	<p>The exact legal status of the project cited is unclear as the NGOs involved report that they have a “30 year lease”. This could be a local "Decision" as the land is actually under the management of a PFMB, so this would effectively be an informal lease. It would clearly be difficult for the GOV to regulate and be responsible for an informal lease and on the matter of potential double counting again this can only be viewed as an informal arrangement.</p> <p>If the GOV issued a carbon title (or land title) and this were to overlap on an informal carbon (or land deal) that would not normally be the responsibility of the government to resolve - it would be between the two parties.</p>
Ind 24.1	<p>TAP comments: "Another critical issue is basic food security and poverty alleviation. If the ER-PD restricts the use of forest land for food crops, without alternative options then demand for land for subsistence farming will continue to be a threat to the sustainability of the ER Program. The ER Program has nothing on support to agriculture as it is just focused mainly on forests. The focus which is entirely within the forest sector remains cause for worry."</p>	<p>The ER Program includes a large program to support basic food security and poverty alleviation together with ACMA (see Sections 4, 6, 15 and Annex 12). This is also recognized by the TAP under Indicator 30.1: "Elsewhere in the ER-PD, a poverty alleviation plan in program areas, which had been called for in the social safeguards section has also been well-described and speaks to non-carbon benefits, alongside biodiversity and ecological processes."</p>
Ind 24.2	<p>It also pointed out the fact that ethnic minorities, given that Vietnam’s Land Law of 2013 which does not recognize community tenure (<i>common property rights</i>), are likely to be marginalized despite the fact that they constitutes 11.5% of the overall population of the NCC Region</p>	<p>Ethnic minorities are fully encouraged to have LURC and this is included in the ER-PD, about 28% of forest land is under individual and household lease (904,903ha) and 710,497ha under agricultural land for individual and households.</p> <p>[The SESA and baseline socio-economic survey have more detailed analysis and data on the ethnic minority land holdings; production land is a crucial asset for ER-P communities, with 93.3% of the surveyed households reported to have at least one parcel of production land and land holdings is reviewed by minority group.]</p>
25.1 & 26.2	<p>The ER-PD has also stated that during the implementation of the ER Program, an M and E system will be designed and be based on performance benchmarks of which one will be on safeguards.</p>	<p>The SESA and EMSF both safeguard monitoring; an overall Results Framework and M&E system is available and was included in the Advanced Draft ER-PD due to space constraints it was not included in the final ER-PD</p>

C28	A continuing concern of the TAP concerns the dismissive treatment of customary rights in the ER-PD.	<p>This concern seems to be based on a confusion (or miscommunication) surrounding the separate (but related issues) of customary land tenure and customary rights. The initial TAP review contained statements about customary land tenure, which is not legally recognized in Vietnam. The revisions to the ER-PD sought to make this clear, but did not intend to be dismissive of customary rights. Vietnam supports the treatment of customary rights, and the ER-PD contains many references to customary rights including those that are covered under the Civil Code, Land Law, Forest Protection and Development Law etc. (similar references the TAP were included). Customary rights are extensively and constructively discussed in Sections 4, 6, 14 and 15.</p> <p>The response includes that the ER-PD supports a basket of measures that are available including Circular 38, Cooperatives, Associations pages 61, 62 (legal entity), that allow the recognitions of people’s rights and that these measures can be used protect and manage forest. Also of note is that Decision 799 (NRAP) recognizes indigenous knowledge – this has been used by NGOs’ to make the case for involvement of these important issues (e.g. REDD+ initiative funded by Norad and EU and implemented by CERDA).</p>
28.1	The same report states elsewhere that in practice (government) forest management entities often acknowledge the customary use of forest resources. This calls into question the statement in the ER-PD that communities “recognize that this type of land tenure has disappeared.	This actually relates to customary land tenure as opposed to customary use of forests and ER-PD Section 4.4.2 page 59 goes on to say “Current day farmers in all NCC ethnic minority groups prefer household or individual land tenure arrangements because the LURC provides them with a semblance of formal title and can contribute towards financial security in the form of helping to secure loans etc. and lending organisation will normally try and to avoid a foreclosure on ethnic minority households. This has become more important as non-monetarized forms of reciprocity have become less prevalent.”
28.1	Furthermore, there are a number of legal ambiguities which are not mentioned in the ER-PD, though most of these are highlighted in the Land Tenure and Resources Report.	The Land Report is part of the ER-PD package, and not everything was repeated. Section 4 does include a number of relevant conflicts.
28.1	The role of the ACMA “disputes over compensation for resettlement....there are however no strategies proposed to deal with the latter issue [resettlement]	This is quite specialised and depending on the issue would be more appropriately handled under the specific safeguard instruments ESMF, EMPF, RPF and PF

	issue ”	
28.1	An important issue that is not identified here regards the frequent conflicts between forest management entities and forest contractors, which are not mentioned in this section, though they are highlighted in the Land Tenure and Resources Report.	Most conflicts of note relate to agricultural encroachment conflicts, but this is not related to forest protection contracts. A complaint is late payment, and lack of transparency. Additionally the ACMA is designed to address the forest resource use and protection issues.
28.2	In contrast, the ER-PD does not provide a proposal for how customary rights will be taken into account in program implementation. While there may be scope for obtaining more recognition for customary rights through the ACMA, there is no specific attention paid to this issue. Moreover, the Safeguards Plan does not provide for any measures to provide legal recognition of rights (i.e. LURCs) to ethnic minorities This is a notable omission, given that customary rights are recognized by the law as among the bases for allocating forest land, in particular for communal land (Land Law 2013, Art. 5(3), 131, 143; Civil Code 2015, Art. 5, 175, 208, 211).	As noted by the TAP, customary rights are recognized by the law as among the bases for allocating forest land, in particular for communal land. This will also apply for the allocation of LURCs under the program. Customary use rights are discussed under the ACMA process, one of the key legal instruments used an example to support ACMA and customary forest rights is described in the ER-PD (see Decision 126) See section 15.5.1 Customary use rights are specifically covered under the RPF and PF.
28.3 no	Ind 28.3 The ER Program provides a description of the implications of the land and resource regime assessment for the ER Program Entity’s ability to transfer Title to ERs to the Carbon Fund [Transfer of Title to ERs 18.2]	In Vietnam the arrangements required for the carbon title including making titles internationally transferable are comparatively straightforward and will be through a formal Decision from the Prime Minister. The Decision is legally binding and is a normal way to introduce an amendment to a Law. This has been explained to the TAP but they do not seem to accept the approach.
	Further comments from TAP: Vietnam could consider two questions that could help to address this indicator. The first is the identification of the entities other than the State that can claim some form of land and resource rights in the Accounting Area and the extent to which these entities participate in the Program or may have their land and resource rights limited by the Program. Note that state companies may	It is unclear what is meant in “identification of the entities other than the State that can claim some form of land and resource rights” i.e. what is the nature or the type of the “claim” referred to and what entities or whom are the entities that are suppose to make the claim? Unclear what is meant by “extent to which the major conflicts and issues identified in the land and resource tenure assessment may pose a risk to the ability to transfer” The documentation provided states that processes for

	not necessarily be considered as 'the State' from a legal point of view. The second could be the extent to which the major conflicts and issues identified in the land and resource tenure assessment may pose a risk to the ability to transfer unencumbered title to ERs.	resolving conflicts related to land are already provided for in the Land Law 2013, further there are other Laws that cater for the resolution of disputes. For the ER-P additional specific measures include the FGRM and setting up of the ACMAs will facilitate dialogue between communities and the forest management entities.
36.2 no	Ind 36.2 The ER Program Entity demonstrates its ability to transfer to the Carbon Fund Title to ERs, while respecting the land and resource tenure rights of the potential rights-holders, including Indigenous Peoples (i.e., those holding legal and customary rights, as identified by the assessment conducted under Criterion 28), in the Accounting Area.	A similar response as 28.3 the arrangements required for the carbon title (including making transfer of title) will be through a formal Decision from the Prime Minister. The Decision is legally binding and is a normal way to introduce an amendment to a Law. This has been explained to the TAP including the steps that are required of hiring a legal team to draft the Decision, the draft is circulated to all Ministries for comments then sent to the Prime Minister Office. The expect time for this is about 12 months. There should be adequate time to complete the Decision.
36.3 no	Ind 36.3 The ER Program Entity demonstrates its ability to transfer Title to ERs prior to ERPA signature, or at the latest, at the time of transfer of ERs to the Carbon Fund.	Response is as above.
36.3	has not yet been considered in detail raises concerns. It is important to highlight that the development of a strategy to secure title to ERs and, in particular, actually going about securing titles can take considerable time.	It is unclear what is meant by the comment of "securing a title". A carbon title would be registered and guaranteed by the government. It would be an asset and attached to land, therefore would fall under the Land Law. The government would give a clear title free of encumbrances. Consistent with other Laws which deal with natural resources such as land forest and minerals, the carbon assets would viewed as being owned by the government and managed on behalf of the people.
37.4	Administrative procedures are defined for the operations of a national or centralized REDD+ Programs and Projects Data Management System; and an audit of the operations is carried out by an independent third party periodically, as agreed with the Carbon Fund [Data management and Registry systems to avoid multiple claims to ERs 18.2]	As is stated in 18.2 The government would run the REDD+ Registry there two aspects 1) as the carbon title is an asset attached to land it is administered as part of the Land Law – an existing legal approach and requirement, but consistent with the management of forest, the asset would be also administered through the Law on Forest Protection and Development (MARD); 2) there will be register of REDD+ projects.

<p>Ind 38.1</p>	<p>Based on national needs and circumstances, the ER Program host country has made a decision whether to maintain its own national ER transaction registry, or instead to use a centralized ER transaction registry managed by a third party on its behalf [Data management and Registry systems to avoid multiple claims to ERs 18.2]</p> <p>No information is provided in Section 18.2 on whether Vietnam intends to create its own or use an existing ER transaction registry.</p>	<p>As stated in 18.2: The government will create and run its own emission reduction carbon title system.</p>
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