

**Submission to the FCPF Carbon Fund
For consideration in the FCPF CF Methodological Framework**

**From: Environmental Investigation Agency, Bank Information Center, Center for International Environmental Law
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Best Practices on Transparency and Access to Information in response to Question 1 in Issue Paper 5

Early and effective transparency will be an essential element to the success of the Carbon Fund. As a pilot initiative to test early approaches to payments for performance in the forest sector, a primary objective of the fund will be to generate learning and, indeed, confidence in various approaches tested. The piloting and learning objective of the FCPF puts a premium on effective (and short cycle) reporting, monitoring and evaluation, above and beyond what the World Bank would routinely do. Without full and early access to all the relevant documents, it will be difficult, if not impossible, to fully exploit the learning opportunity. Therefore, there should be a strong presumption of full public disclosure of all documents to maximize learning and engender confidence, and special efforts to make sure communities in ER Program areas are getting early and accurate information in languages and forms they can understand, and other REDD practitioners and civil society generally are able to access program information in a timely way.

Much of the discussion that has taken place thus far in the FCPC CF has centered on the disclosure of the Emissions Reductions Purchase Agreement (ERPA). As a matter of World Bank Access to Information policy, these documents should be disclosed. There would only be a protection of commercial secrets if there were a functioning compliance market for jurisdictional REDD credits and some specific parties that stood to lose from disclosure, and only then if the public interest in the information didn't outweigh their commercial interests. ERPA disclosure neither meets the harm test, nor is a matter of little public interest. However, equally importantly, without full disclosure of the terms of the ERPA and the benefits being negotiated therein, local communities and indigenous peoples will not be able to engage in fair negotiations on a benefit sharing plan. Withholding the terms of the ERPA will exacerbate already significant asymmetries in negotiating power. While benefits generated through an ERPA can be both monetary and non-monetary, it will be necessary to evaluate the full landscape of benefits to determine what constitutes "equitable." Full disclosure of the ERPA will also increase confidence among stakeholders that the CF is acting in good faith in achieving its goals of equitable benefit sharing. It is also a legal provision among many member countries, the first in the CF pipeline among them, for disclosure of government signed contracts with third parties.

World Bank Access to Information policy includes a presumption of disclosure, and limits relevant exceptions to information that is deliberative in nature, or information that represents a confidential business practice and disclosure of which would cause harm to one or more parties. While the Carbon Finance Unit of the World Bank has not made it standard practice to disclose ERPA's, neither have they established which information within these contracts is truly confidential business information whose disclosure could be reasonably thought to damage specific commercial interests. Since the CF is in fact encouraging ER-P proponents to engage in negotiations with other potential buyers, the terms of the various contracts will be widely known among interested parties in any case. In this formative stage of REDD, it is of greater importance to disclose even the potentially sensitive information around price and volume, as well as specific agreements in terms of MRV, benefit sharing and safeguards, than it is to protect the potential negotiating power of public or private sector sellers and buyers.

Initial informal consultation with Carbon Fund participants indicates a strong willingness to, and indeed interest in, disclosing relevant information to stakeholders, including the ERPA. The CF should proceed by creating a clearly articulated disclosure policy for the CF, much as was done in the Readiness Fund, laying out which documents will be produced throughout the business cycle and the time of their disclosure.

Another consideration is that many national governments in REDD countries have a legal requirement to disclose all contracts signed or entered into with third parties. This is the case for the first country in the CF pipeline, Costa Rica, as discussed at CF5. Additionally, many aspects of country reporting for the CF should pilot and test ways to synthesize and bring together relevant information on country forest monitoring and safeguard information systems, another reason for public disclosure and structuring CF reporting in ways that meets multiple purposes.

We therefore recommend that the **CF methodological framework include a section on information disclosure** which covers both documents produced by the WB and those produced by countries/program entities, along the following lines:

- ER-PINs and ER Program documents will be disclosed to the public upon receipt or after the FMT completeness check. Additionally, project proponents will make reasonable efforts to make such documents available to communities in the ER Program area, in a language and form understandable to those communities within this same time period. They shall be translated into English and the language of the ER Program at least 60 days before the CF meeting at which they will be considered.
- ER-PIN reviews and ER Program reviews conducted by the WB, including the "safeguards issues memo" produced by the FMT, will be disclosed to the

public on the FCPF website within 14 days of their completion, and no later than 60 days before the consideration of an ER-PIN or ERP at a CF meeting.

- All WB safeguard specific instruments (including but not limited to any additional social and/or environmental assessments, Environmental Management Plan, Environmental Management Framework, Indigenous Peoples Plan, Indigenous Peoples Planning Framework, Forest Management Plan, Physical Cultural Resources Management Plan, Resettlement Action Plan, Resettlement Process Framework, Process Framework, etc.) will be publically disclosed 60 days prior to the signing of an ERPA, and a special effort to make draft documents available to communities in the proposed ER Program area in a language and form understandable to them even earlier will be undertaken.
- All ERPA's will be disclosed to the public on the FCPF website and relevant government agency websites within 14 days of their signing. Additionally, project proponents will make reasonable efforts to make such documents available to communities in the ER Program area, in a language and form understandable to them within this same time period.
- Any additional plans (included as sub agreements to the ERPA or not) including those on benefit sharing and safeguards will be disclosed to the public on the FCPF website and relevant government agency websites within 30 days of signing or as specified in the ERPA. Additionally, project proponents will make such documents available to communities in the ER Program area, in a language and form understandable to those communities within this same time period.
- All country/project proponent reports, including Performance Reports, Verification Reports, and Interim Progress Reports shall be publically disclosed on the FCPF website upon receipt by the FMT. They shall be translated into English, and/or the national language of the ER Program area at least 60 days before the CF meeting at which they will be considered.
- Any additional third party verification reports contracted by the Bank or project proponent will be disclosed to the public within 14 days of receipt by the FMT, and will be translated to English, and the national language of the ER Program area at least 60 days before the next CF meeting where they will be considered.
- All World Bank due diligence and supervision reports including Grant Monitoring Reports, Aide Memoires, Implementation Supervision Report's, and Implementation Completion Report's will be disclosed to the public within 14 days of their completion and at least 30 days before the next CF meeting at which the respective ER-Program will be considered.

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