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Input on draft ER-PD, Mai-Ndombe Emission Reductions Programme, DRC

We thank you for the opportunity to give input to the ER-PD draft.

First we want to comment on the availability of the document and deadlines for commenting.

As English is not a common spoken language in DRC, we think it's problematic that the documents are not translated. That means that they are not accessible to all relevant stakeholders. We see this as a consequence of too limited deadlines for input, and we strongly urge CN REDD to ensure that all information and documentation is distributed in an accessible language.

The following is our input to the ER-PD document, the version dated 23 December 2015. RFN thinks the following gaps must be addressed before giving out money from the Carbon Fund:

1. Progress at the national level. Specifically, this must be implemented:
 - a. The law on indigenous peoples' rights should be adopted.
 - b. The regulation (arrêté) on local communities' forest concessions should be adopted, and both regulations (décret and arrêté) should be implemented.
 - c. Work on land reform and land use planning reform must be well underway.
2. Consultations.
3. Carbon benefits.
4. Social and environmental risks and mitigation analysis of the ER-program (Annex 12).
5. Grievance Mechanism.
6. Benefit-sharing.
7. Safeguards.
8. Free, Prior and Informed Consent (FPIC).

1a) A law on indigenous peoples' rights

Indigenous peoples' organizations, in collaboration with a group of parliamentarians, have developed a **draft bill on indigenous Pygmy peoples' rights**. The text is the result of more than four years of work. National and international experts have given their inputs. Indigenous peoples have been consulted in their environment, with a view to reflect the contextual diversity lived by indigenous peoples throughout the country. The text was submitted to the National Assembly in July, 2014.

In March 2015, on behalf of the Presidency and the Government, the DRC Minister of Environment and Sustainable Development officially expressed his support to the draft bill. The draft bill is to be discussed at the National Assembly.

The **adoption of this new legislation** would be a milestone for the protection of indigenous peoples' rights, set a clear baseline on the issue for tenure reforms, and also materialize the potential indigenous peoples' traditional management of the rainforests represent for REDD+ in DRC.

1b) Local communities' forest concessions

The DRC Government adopted a decree on local communities' forest concessions in August 2014. This is an important step towards the formal recognition of forest-dependent communities' rights on their customary lands and forests and their right to manage the later. In order to allow the full implementation of this decree, the second regulation (arrêté) should be adopted.

With the view of giving forest-dependent peoples the possibility to fulfil the rights recognized in the two regulations, and manage the challenges they may encounter in their implementation, DRC's international partners should commit themselves to secure substantial support, both technically and financially, to the work on local communities' forest concessions in DRC.

A common objective of the Government and international partners should be **the development of community forestry as a major sustainable management model** in the country's land use planning.

The ER-PD links community forestry to logging activities in collaboration with artisanal loggers (page 46). **Community forestry** is a much broader opportunity than a logging concession for communities, and **must be developed independently of artisanal loggers**.

1c) Tenure reform and land use planning

National tenure reform and land use planning should be given high priority by both the DRC Government and international partners. When reforming tenure legislation, indigenous peoples' land and access rights must be duly recognized and protected, and the diversity of the contexts indigenous peoples live throughout DRC must be taken into account. As reflected in the national REDD+ framework strategy, participatory mapping should be used widely and with due respect to the local contexts, to identify customary and indigenous peoples' rights. The information gathered through participatory mapping is both relevant for the tenure reform and land use planning.

Respecting indigenous peoples' right to free, prior, informed consent is an obligation, which should be included in tenure legislation and sustain any decision in land use planning that may affect indigenous peoples, their lands and natural resources.

2. Consultations

It is crucial that the predicted actions and interventions to be implemented under the ER program (chapter 4) have a **clear strategy for the involvement of stakeholders including civil society, local communities and indigenous peoples**. Their involvement in the planning is not reflected in a clear manner in the proposed activities, although they are directly affected by some activities.

The stakeholder consultations that have been undertaken also have to be documented. At page 59 the ER-PD states that representatives from 19 sectors and 8 territories were appointed. Which sectors, territories and how many people and who they represented should be annexed.

In chapter 4.3 **participatory mapping** is identified as a tool, but it is not linked to the rights of indigenous peoples and local communities. This was however a clear recommendation at the nineteenth meeting of the FCPF participants committee:

“Further, the PC encouraged the DRC to take into account the issues raised by the TAP expert, and the following issues raised in this meeting:

- Continue its efforts and make further progress to address the rights of indigenous peoples, including using innovative approaches such as participatory mapping, where appropriate.”¹

3. Carbon benefits

(Chapter 4,3 p. 47): The activities in the program are based on a well-functioning carbon-market: “The sectorial activities presented above are all directly linked to the emission reductions generated.” Some of the activities involving local communities are dependent on carbon performance-based payments. From information gathered in the field by local partners, there has already been problems in Mai Ndombe with less than expected amount of tons of CO2 being sold, leading to less income for the social closures. The program should develop **alternative strategies** and prioritize activities to **mitigate risks** if having to deal with a collapsed or very **weak carbon market**.

4. Social and environmental risks and mitigation analysis of the ER-program (Annex 12)

In this table serious risks are identified, but the solutions proposed are not necessarily relevant to the challenges acknowledged. For example two of the risks identified addresses **severe negative impacts on local communities**:

- H2: “Reduction of communal area, reduction of the spaces of IPs and local communities through the Local Sustainable Development plans.
- Grabbing of sacred areas by the stakeholders in the ER-PD, giving the impression that the Local Sustainable development Plans is an opportunity to easily recover cultural and sacred areas.”

The mitigation measure proposed is to “Reinforce the social mobilization around the appropriation of the program and collective and individual participation.”

RFN does not understand why the problem itself is not addressed, namely the risk for reduction of the communal areas of local communities and indigenous peoples, and the grabbing of sacred land. These are negative impacts that cannot be justified if the program follows safeguards.

RFN wants to stress that a REDD+ program must have **do no harm** as a basic principle, and the solution to these risks are to take measures to: **(i) Ensure that communal land is not reduced, (ii) have clear regulations** and information that stresses that **stakeholders cannot grab sacred or cultural land**.

5. Grievance Redress Mechanism (GRM)

The FCPF has defined GRMs as organizational systems and resources established by national government agencies (or by regional or municipal agencies) to receive and address concerns about the impact of their policies, programs and operations on external stakeholders². These are our recommendations for the GRM in DRC:

- **A national GRM needs to be available to REDD+ stakeholders from the earliest stages of Readiness Preparation Proposal (R-PP) implementation** in order to facilitate handling of any request for feedback or complaint by any stakeholders, with attention to providing access to geographically, culturally or economically isolated or excluded groups³.

However, as it is stated on page 77 of the ER-PD, the GRM is not yet ready in DRC. This

¹ FCPF. Nineteenth Meeting of the FCPF Participants Committee. May 17-19, 2015. Co-Chairs’ Summary.

² Joint FCPF/UN-REDD Guidance Note for REDD+ Countries: Establishing and Strengthening Grievance Redress Mechanisms, May 2015.

³ Ibid.

situation must be remediated as soon as possible, taking into account that DRC has already been admitted to the Carbon Fund.

- On Page 77 of the ER-PD a number of principles to guide the GRM are listed. Nevertheless, one important principle, required by the FCPF, is not included: **Stakeholder engagement and dialogue**⁴. **This principle must also guide the elaboration of the GRM in DRC.**
- The FCPF has also stated that REDD+ countries are expected to establish GRMs based on an assessment of potential risks to forest-dependent communities and other stakeholders. Since the purpose is to provide a rapid and effective recourse for stakeholders, it is essential to design and implement the GRM in close consultation with them⁵.

Therefore, not only the implementation but also **the design of the GRM in DRC**, describe from page 77 to 79, **must include representatives of indigenous peoples, local communities, civil society organizations, women and youth.** Later, the list with the names of participants in the consultation process must be available for public scrutiny.

- On page 78 of the ER-PD a “list of reasons for and type of complains” is stated. Nevertheless, on page 2 of the “Joint FCPF/UN-REDD Guidance Note” it is mentioned that: “Purpose: GRMs act as recourse for situations in which, despite proactive stakeholder engagement, some stakeholders have a concern about a project or program’s potential impacts on them. Not all complaints should be handled through a GRM. For example, grievances that allege corruption, coercion, or major and systematic violations of rights and/or policies, are normally referred to organizational accountability mechanisms or administrative or judicial bodies for formal investigation, rather than to GRMs for collaborative problem solving.”⁶

The “Joint FCPF/UN-REDD Guidance Note” does not prescribe a list of topics suitable for complain. Thus, **additional restriction can not be introduced by the ER-PD document.**

- Additionally, on page 78 of the ER-PD, **indigenous peoples, women and youth** must be included as a group with the role of **monitoring, evaluating and inspecting** the GRM.

6. Benefit-Sharing

From page 77 to 88 of the ER-PD document, the arrangements for benefit-sharing are described. Nevertheless, **the criteria/guidance used** for the elaboration of this benefit-sharing strategy is **not mentioned.** The plan described on those pages is not comprehensive and **important issues are not stated, such as a full participation of indigenous peoples, civil society organizations, women and youth** not only in the implementation stage but also during the elaboration of the benefit-sharing plan. In order to cover all situations, a concrete reference to the criteria used for the elaboration of the plan is needed. Currently, FCPF and UN-REDD have adopted standards that include specific requirements for the elaboration and implementation of benefit-sharing plans.

To guide the interpretation of the arrangements stated from page 79 to 88 of the ER-PD, we suggest the inclusion of the following paragraph at the beginning of section 15.1 of the ER-PD:

“The arrangements for benefit-sharing, stated in this section, will be guided by, among others (i) the UN-REDD Social and Environmental Principles and Criteria (namely criteria 11 and 12)⁷, (ii) the

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Available at: http://www.un-redd.org/Multiple_Benefits_SEPC/tabid/54130/Default.aspx

World Bank Operational Policies, (namely OP 4.10 – Indigenous Peoples, at 18)⁸, (iii) the FCPF Carbon Fund Methodological Framework⁹, and (iv) Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities¹⁰.

The ER-PD states on page 74 that DRC will work to meet the World Bank Safeguards and to promote and support the safeguards included in UNFCCC guidelines related to REDD+. Therefore, the suggestion stated above should not be problematic. The inclusion of UN-REDD standards in this context is important since they interpret UNFCCC guidance in light of human rights law and practice.

7. Safeguards:

In 2011, the UNFCCC adopted Decision 2/CP.17 where it agreed that regardless of the source of financing, REDD+ activities should be consistent with the safeguards included in Decision 1/CP.16 (appendix I), the Cancun Agreements¹¹. In this respect, the ER-PD document on page 74 states: “Safeguards: Description of how the ER program meets the World Bank social and environmental safeguards and promotes and promotes and supports the safeguards included in UNFCCC guidelines related to REDD+”.

However, **two of the Cancun safeguards are not fully met: (i) respect for indigenous peoples’ rights and local communities; (ii) effective participation** of indigenous peoples and local communities. Examples are stated from point 1 to 6 of this letter.

In this respect is important to highlight Decision 9/CP.19 of the UNFCCC which sets out that developing countries need to provide their latest report on how all the safeguards referred in Decision 1/CP.16, Appendix I, paragraph 2 have been promoted and supported, before they can receive results-based finance.¹² In consequence, safeguards must be fully respected before payments for concrete CO2 reductions.

To guide the interpretation of the safeguards stated from page 74 to 79 of the ER-PD, we suggest the inclusion of the following paragraph at the beginning of section 14 of the ER-PD document:

“Safeguards stated in this section will be implemented in accordance with safeguards adopted under, among others, the UN-REDD program, namely (i) The Social and Environmental Principles and Criteria (Principles 1, 2 and 3) and The Free, Prior and Informed Consent Guidelines. As well as safeguards adopted under the FCPF, namely OP 4.10, OP 4.12, OP 4.04, OP 4.01, and OP 4.36”.

8. Free, Prior and Informed Consent (FPIC)

The FPIC Guidelines¹³ states that FPIC is ‘a special standard that safeguards and functions as a means for the exercise of indigenous peoples’ substantive rights.’¹⁴ In the same arena, the Special Rapporteur

⁸Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20553653~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184.00.html>

⁹Available at: <https://www.forestcarbonpartnership.org/sites/fcp/files/2014/MARch/March/FCPF%20Carbon%20Fund%20Methodological%20Framework%20Final%20Dec%2020%202013.pdf>

¹⁰ Available at: http://www.un-redd.org/Stakeholder_Engagement/Guidelines_On_Stakeholder_Engagement/tabid/55619/Default.aspx

¹¹ UNFCCC, Decision 2/CP.17, ‘Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention’, FCCC/CP/2011/9/Add.1 (2012).

¹² UNFCCC, Decision 9/CP.19, ‘Work programme on results-based finance to progress the full implementation of the activities referred to in decision 1/CP.16, paragraph 70’, FCCC/CP/2013/10/Add.1 (2014), at para. 4.

¹³ UN-REDD programme, Guidelines on Free, Prior and Informed Consent (FPIC). Geneva: UNREDD programme, FAO, UNEP, and UNDP, 2013.

¹⁴ Ibid, page 18. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, A/HRC/21/47, para. 49.

on the rights of indigenous peoples asserts that ‘It is a standard that supplements and helps effectuate substantive rights ... including the right to property ... and other rights that may be implicated in natural resource development.’¹⁵

Indigenous peoples’ and forest dependent communities’ FPIC in the framework of REDD+ means the development of a process by the State, with the aim of seeking a consensual agreement with indigenous peoples on a particular project which affects them, without using coercion (free), sought sufficiently in advance of any authorization of activities (prior), based on understandable information on the proposed project (informed) and which respects the community’s representative structure and its customary decision-making processes.¹⁶

Therefore, the participation of indigenous peoples groups, forest dependent communities, women and youth must be included through out the three stages of REDD+ mechanism (readiness, implementation and payment). Indigenous peoples’ participation must be required continuously, in their native language and sufficiently in advance of any authorization of activities.

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¹⁵ Report of the Special Rapporteur on the rights of Indigenous Peoples, James Anaya, A/HRC/21/47, para. 49.

¹⁶ UN-REDD programme, Guidelines on Free, Prior and Informed Consent (FPIC). Geneva: UNREDD programme, FAO, UNEP, and UNDP, 2013. (throughout the document).