



INDIAN LAW
RESOURCE CENTER

**Comments on the UN-REDD Programme Principles and Criteria
and Benefit and Risk Assessment Tool**

By

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ACRONYMS AND TERMS

Cancun Agreements	UNFCCC Cancun Agreements
Center	Indian Law Resource Center
Common Understanding	UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming
FPIC	Free, Prior and Informed Consent
FPIC Guidelines	Draft UN-REDD Programme Guidelines on Free, Prior and Informed Consent
Principles and Criteria	Draft Social and Environmental Principles and Criteria
REDD	Reduction of Emissions from Deforestation and Forest Degradation
Stakeholders Engagement Guidelines	Draft UN-REDD and FCPF Guidelines on Stakeholder Engagement in REDD Readiness, with a Focus on the Participation of Indigenous Peoples and Other Forest- Dependent Communities
UN Declaration	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
UN-REDD	UN-REDD Programme

I | INTRODUCTION

1. The Indian Law Resource Center (Center) welcomes the opportunity given by the UN-REDD Programme (UN-REDD) to comment on the development of policy related to the Reduction of Emissions from Deforestation and Forest Degradation (REDD) in developing countries. This paper, including the attached annex of line edits, entails the Center's comments on the "Social and Environmental Principles and Criteria, version 3" (Principles and Criteria) and "Benefit and Risks Tool" (BeRT).¹

2. Generally speaking, the Center is particularly interested in discussing the implications of REDD projects taking place in indigenous lands. Grassroots indigenous organizations from Mexico, Central and South America have made inquiries to us regarding REDD, because they are concerned that REDD programs and projects will affect their lands, natural resources and governing institutions. As a matter of both legal obligations and sound policy, UN-REDD policies must ensure respect for and protection of indigenous peoples' human rights.

3. **Comments by the Center on the previous consultation draft of the Principles and Criteria² called for a principle and set of criteria specifically addressing the collective rights of indigenous peoples, including the following:**

- **Indigenous peoples' rights of self-determination and self government**
- **Indigenous peoples' rights to permanent sovereignty over their natural resources**
- **Indigenous peoples full ownership rights to their lands, territories and resources**
- **The rights of indigenous peoples to exist in voluntary isolation**
- **The cultural rights of indigenous peoples, including to access their sacred sites in private**

Because these comments were not sufficiently incorporated in the present draft, we have provided here a more detailed description of the indigenous rights protections which must be included in UN-REDD policies, including the Principles and Criteria.

4. For the Center's position on other UN-REDD policies, see the Center's comments on the "Draft Guidelines on Stakeholder Engagement in REDD Readiness, with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities"³ (Stakeholders Engagement Guidelines) and the "Guidelines on Free, Prior and Informed Consent" (FPIC

¹ UN-REDD Programme Draft Social and Environmental Principles and Criteria and *Benefits and Risks Tool*. Available at http://www.un-redd.org/Multiple_Benefits/SEPC_BeRT/tabid/991/Default.aspx

² Indian Law Resource Center's Comments and Recommendations on the UN-REDD Programme "Social and Environmental Principles and Criteria, Draft for Consultations", August 2011. Available at <http://www.indianlaw.org/sites/default/files/2011-08%20ILRC%20Comments%20on%20UN-REDD%20PC-1.pdf>.

³ Indian Law Resource Center's Comments and Recommendations on the Forest Carbon Partnership Facility and UN-REDD Programme "Draft Guidelines on Stakeholder Engagement in REDD+ Readiness, with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities", June 2011. Available at <http://indianlaw.org/sites/default/files/2011-06%20FCPF%20UNREDD%20Guidelines%20Comments%20FINAL-1.pdf>.

Guidelines).⁴

5. The Center is encouraged by the UN-REDD's acknowledgment of the UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (Common Understanding) and the obligation to adopt a human rights-based approach within its policies. Under the Common Understanding, the UN-REDD Programme is obligated to comply with international human rights agreements, including the UN Declaration on the Rights of Indigenous Peoples (UN Declaration).⁵

6. These human rights standards must serve as the benchmarks for any REDD programs and policies. This is both a matter of UN-REDD's legal human rights responsibility as an agency of an intergovernmental organization; as well as a practical matter, as the only effective means of ensuring that the rights of indigenous peoples and other local communities are not violated due to REDD policies or projects.

7. Unfortunately, while the Principles and Criteria are intended to be "consistent with" and to "help countries meet their commitment to" internationally recognized human rights standards, they fail to do so. **The Principles and Criteria will only be effective at deterring human rights violations in REDD projects if they are binding, concretely linked to specific human rights standards rather than more general impact statements, and provide for effective remedies. This is especially the case regarding the rights of indigenous peoples to their lands, territories and resources.**

8. To remedy this serious shortcoming, **the Principles and Criteria must: 1) operationalize a human rights-based approach; 2) track the substance of actual human rights standards; 3) address the unique collective rights of indigenous peoples; and 4) require compliance with human rights standards.**

9. The Center believes that the above indicated issues are critical not only for the survival of indigenous peoples, but also for the effectiveness of UN-REDD supported projects when taking place in indigenous territories. We hope the concerns outlined in this paper are fully addressed at the upcoming UN-REDD Policy Board meeting, which is scheduled to take place on March 25–26, 2012, and prior to any adoption of final policy documents.

II | OPERATIONALIZE A HUMAN RIGHTS-BASED APPROACH

10. The Principles and Criteria should be designed to prevent human rights abuses by identifying human rights risks and obligations, not merely social and environmental

⁴ Indian Law Resource Center Comments on UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC), January 2012. Available at <http://www.indianlaw.org/sites/default/files/2012-01-15%20ILRC%20FPIC%20Guidelines%20Comments%20ENG.pdf>.

⁵ The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies. Available at http://www.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf.

considerations. The BeRT should provide information on the substance of human rights obligations in order to facilitate an analysis of whether a host country's policies and practices and the REDD program policies and practices comply with international human rights law obligations.

11. To do this, the Principles and Criteria must start its analysis by identifying rights-holders, and then deriving relevant rights, impact assessments, obligations and safeguards from that starting point. Though the Principles and Criteria uses rights-holder language in limited instances, it generally uses the term "stakeholder," which it defines to include rights-holders and other interested parties. This is confusing because different stakeholders have different rights, and on some issues, certain stakeholders have no rights. The right of self-determination, for instance, is a right belonging to indigenous peoples as peoples. "Stakeholders" do not have a right to self-determination under international law. Grouping indigenous peoples into a vague category of "stakeholders" renders them invisible and not surprisingly, their rights are neither sufficiently identified nor protected within the Principles and Criteria.

12. The Principles and Criteria must also themselves be phrased in terms of rights obligations. For example, instead of the criterion of "respect and protect...cultural heritage" the Principles and Criteria should require respect for "cultural rights" as those rights have been defined in international law and thus the standard becomes a more substantive and objective one.

13. The sources of rights standards and obligations that should serve as the basis for the Principles and Criteria include the UN treaties and instruments identified in the Principles and Criteria policy, but additionally should include customary international law. In addition, UN-REDD should also pay particular attention to REDD host countries' regional human rights law obligations. Almost all REDD host countries located in Africa and the Americas have ratified the main regional human rights treaties—e.g., the African Charter on Human and Peoples' Rights and the American Convention on Human Rights.

14. Important lessons should be taken from regional human rights bodies' key decisions, especially from human rights courts' rulings regarding the rights of indigenous peoples. For example, the Inter-American Court of Human Rights (Court) issued a decision, quite relevant to REDD, in the "Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua" (Awas Tingni case).⁶ That ruling protected an indigenous community's lands and natural resources against logging and provides quite relevant guidance on the protection of indigenous peoples' rights and measures to take to prevent deforestation and forest degradation in indigenous lands. In this case, the Court decided that

the State must carry out the delimitation, demarcation, and titling of the corresponding lands of the members of the Mayagna (Sumo) Awas Tingni Community and, until that delimitation, demarcation and titling has been done, it must abstain from any acts that might lead the agents of

⁶ Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, I/A Court H.R. (Series C No. 79), August 31, 2001.

the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area where the members of the Mayagna (Sumo) Awas Tingni Community live and carry out their activities.⁷

15. The decision highlights an issue critical to REDD: Prior to actions that may affect indigenous peoples' lands, States must adopt the necessary measures to protect indigenous peoples' full ownership rights to land and natural resources. Failure to do so would imply a State violation of indigenous peoples' property rights, and should be prevented by UN-REDD policies. In the Awas Tingni case, for example, the Court made it clear that:

the State must adopt in its domestic law, [...] the legislative, administrative, and any other measures necessary to create an effective mechanism for delimitation, demarcation, and titling of the property of indigenous communities, in accordance with their customary law, values, customs and mores.⁸

16. The decision also illustrates a major shortcoming of the Principles and Criteria, which is that it does not identify which human rights obligations and protections must serve as preconditions for any REDD project. This issue is discussed further in Section V.

III | TRACK THE SUBSTANCE OF ACTUAL HUMAN RIGHTS STANDARDS

17. The Principles and Criteria fail to track the substance of existing human rights standards. The relevant principles and criteria for UN-REDD should be those internationally recognized human rights standards. The Principles and Criteria could serve a useful function if they were to identify these rights obligations and elucidate the substantive standards required by REDD programs and policies in order to meet them. Unfortunately, while some of the principles mention "human rights" or "international commitments" as general phrases, the content of those standards or commitments is not provided within the Principles and Criteria, or the BeRT.

18. For example, Principle 1 states: "Apply norms of democratic governance, including those reflected in national commitments and Multilateral Agreements." None of the Criteria under Principle 1, however, make reference to such multilateral agreements or international human rights standards. In addition, the Principles and Criteria do not translate what those treaties and conventions mean substantively for REDD programs and policies.

19. Similarly, Principle 2 states: "Respect and protect stakeholder rights, including human rights, statutory and customary rights, and collective rights." But what are those rights, where are they to be found, and what do they mean for the responsibilities of REDD hosts or implementing agencies? The Criteria under Principle 2 do not answer these questions. UN-REDD policies must identify rights in enough detail to clearly describe the content or source of the right, and the obligations implied.

⁷ Id. at Operative Paragraph 4.

⁸ Id. at Operative Paragraph 3.

20. Obviously UN-REDD’s policies will need to distill and translate relevant human rights standards to make them applicable to REDD programs and policies. But that translation still needs to be accurate in substance. In no way should UN-REDD create new standards that disregard or fall below existing international law. This can be confusing and can lead to serious gaps in protection. As an example, the BeRT makes an inquiry as to access to information on “rights to lands, trees and resources.” There is no international definition or standard on the “right to trees.” There are, however, international standards on individual and communal property rights and land rights, or the rights of indigenous peoples to “lands, territories and resources.” Using established standards allows host countries and implementing actors to know more concretely what their obligations are.

21. The UN treaty bodies and expert mechanisms, especially the three UN mechanisms with specific mandates regarding the rights of indigenous peoples—i.e. the UN Special Rapporteur on the Situation of Human Rights and Indigenous Peoples, the UN Permanent Forum on Indigenous Issues and the UN Expert Mechanism on the Rights of Indigenous Peoples – should be able and willing to provide the necessary technical support to ensure that UN-REDD policies are accurate and consistent with international human rights law.

IV | ADDRESS THE UNIQUE COLLECTIVE RIGHTS OF INDIGENOUS PEOPLES

22. Because the Principles and Criteria do not take a human rights-based approach by identifying distinct rights-holders, rights, and obligations, the specific rights of indigenous peoples are neither identified nor protected. These rights include:

- Indigenous peoples’ rights of self-determination and self government
- Indigenous peoples’ rights to permanent sovereignty over their natural resources
- Indigenous peoples full ownership rights to their lands, territories and resources
- The rights of indigenous peoples to exist in voluntary isolation
- The cultural rights of indigenous peoples, including to access their sacred sites in private

23. The fact that these differentiated collective rights of indigenous peoples are neither identified nor protected within the Principle and Criteria demonstrates why it is necessary to have a stand-alone UN-REDD policy on indigenous peoples. The Center stressed in our comments on the previous Principles and Criteria draft the need for a specific policy on the differentiated collective rights of indigenous peoples.⁹ That need has still not been addressed. Such a policy ultimately must be developed in consultation with indigenous peoples and with technical assistance from UN expert bodies and mechanisms. As a means of illustration, we provide a description below of minimum standards necessary to protect indigenous rights in UN-REDD-supported programs:

⁹ Indian Law Resource Center’s Comments and Recommendations on the UN-REDD Programme “Social and Environmental Principles and Criteria, Draft for Consultation”, August 2011. Available at <http://www.indianlaw.org/sites/default/files/2011-08%20ILRC%20Comments%20on%20UN-REDD%20PC-1.pdf>.

Respect and Protect Human Rights

24. **Respect and protect the human rights** of all individuals and communities, including the collective rights of indigenous peoples, as those rights are established in international law and domestic law, whichever provides greater protection.
25. **Bring host country's domestic legislation into compliance** with the rights of indigenous peoples under international law, including the UNDRIP.
26. Ensure in their protection of the rights of indigenous peoples that special measures are enacted to **ensure attention to the special needs and protection of the rights of indigenous elders, women, children, and persons with disabilities.**
27. Have a **distinct policy to govern interactions with and impacts on indigenous peoples**, consistent with international legal norms.
28. **Ensure that no projects are initiated where there is a possibility of affecting peoples in voluntary isolation or initial contact.**
29. Take reasonable and prudent measures to **review the capacity of human rights protection, including exercise of due diligence** to assess, investigate, gather evidence, examine the law, review the human rights records of project partners and risks of policy and project proposals to ensure their actions or those of REDD partners do not cause, enable, support, encourage, or prolong any violation of human rights.
30. **Employ participative human rights assessment, monitoring and review** with impacted communities at all major policy and project stages.
31. Identify any possible areas where the design and/or implementation of the program does not, or may not, comply with relevant local and national laws and international treaties, conventions and other instruments, and **take appropriate measures to ensure compliance, prior to initiation of REDD projects.**
32. Take appropriate measures to fully implement these policies, including comprehensive **communication, training, and oversight of implementing agencies and staff.**
33. **Prohibit use of military or armed forces within indigenous territories or traditional lands.**

Self-Determination and Self-government

34. **Respect indigenous peoples' self-government rights and right of self determination**, including recognition of the duly established governments of indigenous peoples as representatives of the interests of their respective communities, and respect for their systems of governance and decision-making.

35. **Work with and through indigenous peoples' chosen local representatives and governance structures**, allowing sufficient time and accessible information for those processes.
36. **Respect the right of indigenous peoples to reject REDD policies and to refuse participation** in REDD programs.
37. **Ensure that no indigenous peoples are denied security in their means of subsistence.**
38. Ensure that wherever possible, **indigenous peoples directly manage REDD projects involving their lands.**

Consultation and Free, Prior, Informed Consent

39. **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 REDD policies or projects which might affect them.
40. **Ensure that consultation is meaningful**, in that indigenous peoples must actually have the opportunity to influence the project, including whether and how it is undertaken, and in good faith, in that the government must actually take the opinions of the indigenous and local communities into consideration.
41. Ensure that **where REDD-impacted lands or resources are owned by an indigenous people or by a person or community, then the consent of the owner is treated as indispensable** for proceeding with the project or policy.
42. **Codify within domestic law the obligation to secure free, prior, and informed consent by indigenous peoples** prior to approval of any policies or projects directly affecting their lands, territories or resources; any removal of indigenous peoples from their lands or territories; any confiscation, use, occupation, or damage to indigenous peoples' traditional lands, territories or resources; and any use of cultural, intellectual, religious or spiritual property.
43. **Codify a process for FPIC within domestic law** as a consensual agreement 1) sought without coercion or manipulation, 2) sought sufficiently in advance of any authorization of activities, 3) based on full and understandable information on the proposed project, likely impacts and alternatives, and 4) which respects both the community's internal collective decision-making processes and authority or representative structure. The more specific details of an FPIC process for a particular REDD project shall be determined by the affected community.
44. **Guarantee indigenous peoples' right to full and effective participation in any REDD-related policy or program design, implementation, and evaluation which may impact their rights**, including decisions of whether or not to engage in REDD-related activities or markets.

45. **Ensure that the participation of indigenous and local communities is meaningful and real**, which means that they must have the ability to sway decisions or even stop the project according to their interests. **Provide necessary financial, legal, and technical support** to ensure meaningful access.

Permanent Sovereignty over Natural Resources

46. **Respect and protect the rights of indigenous peoples to permanent sovereignty over their natural resources**, or the collective rights to own, use, develop and control the lands, territories and natural resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

47. Ensure that no REDD project goes forward without **protections for indigenous peoples' permanent sovereignty over their natural resources**, including a fair, independent, and transparent **process to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources**, including those traditionally owned or otherwise occupied or used. This process should be developed with indigenous peoples and respect indigenous peoples' laws, traditions, customs and land tenure systems.

48. **Ensure that no project shall alter indigenous peoples' land tenure systems or regulate the customary use of natural resources by indigenous peoples** on their lands and territories without their free, prior and informed consent.

49. Ensure that no REDD project goes forward without **prior resolution of land claims** in the project area.

50. Ensure that any **ownership of carbon rights is based on the statutory and customary rights to the lands, territories and resources** that generated the greenhouse gas emissions and removals. Any contracts restricting use of resources, or granting rights to carbon resources must be of limited duration and reviewable. No carbon contracts shall be signed without provision of competent legal and technical assistance to the signing indigenous peoples.

51. **Prohibit relocation of indigenous or other communities or restriction of their access to their lands or resources without their free, prior, and informed consent.** Ensure that if relocation occurs with such consent, the community must receive **equitable compensation**, including compensation in the form of land of comparable quantity and quality, if possible and so desired by the community.

52. Ensure **transparent and equitable benefit-sharing** with indigenous peoples of any benefits derived from the development or commercialization of their lands, territories or natural resources, the **form of benefits and mechanism for distribution** with indigenous peoples to be determined by those peoples.

Cultural Rights

53. **Respect and protect indigenous peoples' cultural rights and rights to traditional knowledge.**
54. **Ensure that any REDD policies or programs, including seemingly benign measures such as benefit-sharing and participation processes, do not infringe on the cultural rights of indigenous peoples.**
55. **Ensure that REDD projects do not restrict indigenous peoples' ability to practice their traditions and customs or restrict indigenous peoples' access to sacred sites, traditional medicines or natural and cultural resources** without their free, prior, informed consent.

Access to Information

56. **Guarantee potentially impacted indigenous peoples full access to information** regarding the content of their rights, the details of any proposed REDD project or policy, including alternatives, potential risks and benefits to the community, the identity of participating entities, potential benefits, costs and risks to all participants, as well as impact on global climate and any offsetting. Ensure this information is available to indigenous communities in their language and in a culturally appropriate format.

Right to Remedy

57. **Ensure access to prompt and effective remedy**, including through both judicial and administrative mechanisms that are open and transparent and include procedures for the submission and independent consideration of complaints of human rights violations on behalf of any person or group with respect to a REDD project.
58. Ensure indigenous peoples are aware of and have access to redress mechanisms including through **provision of necessary financial, legal, and technical resources.**

V | REQUIRE COMPLIANCE WITH HUMAN RIGHTS STANDARDS

59. It is unclear what the legal or binding nature of the Principles and Criteria will be for UN-REDD funding and programmatic decisions, and how it will be enforced. Nor do the Principles and Criteria identify the implications for REDD actions or funding if a REDD program does not recognize or protect relevant human rights.
60. **The Principles and Criteria should not merely identify goals, but should set a minimum standard for UN-REDD activities and should prohibit activities that are inconsistent with the protection and promotion of human rights.** As the policy currently

stands, it does not convey an obligation of compliance with human rights standards, nor facilitate a process of achieving compliance.

61. As an example, Criterion 10 states: “Ensure there is no involuntary resettlement as a result of REDD+”. The BeRT, however, then contradictorily asks: “Are there existing policies and measures in place that help to avoid involuntary resettlement in development programmes, or to deal with involuntary resettlement in a way that protects livelihoods?” This effectively undermines the force of the prohibition on involuntary resettlement in Criterion 10. Involuntary resettlement must be an absolute bar to participation in UN-REDD.

62. Strangely, the Principles and Criteria do provide relatively strong language on compliance with international standards relating to environmental issues. Principle 4, for example states “Contribute to low-carbon, climate-resilient sustainable development policy, *consistent with...commitments under international conventions and agreements.*” Similarly, most of the criteria under Principle 4 (i.e. 14, 16, and 17) have language on compliance, such as “*ensure consistency with and contribution to national climate policy objectives...and international commitments.*”

63. While Principle 4 is described as dealing with “social and environmental policy coherence”, it lacks any mention of international human rights commitments and thus gives the appearance of only applying to environmental and climate agreements. Either Principle 4 needs to explicitly discuss human rights, or the language of Principle 4 should be utilized in the principles and criteria dealing with human rights. It is unclear why compliance language for human rights issues in Principles 1, 2, and 3 should be significantly weaker than the language on environmental obligations in Principle 4.

64. The U.N. Framework Convention on Climate Change Cancun Agreements (Cancun Agreements) REDD+ Safeguards provide "b) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements" and "c) 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 National General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples.”¹⁰ The Agreements additionally emphasize that “[p]arties should, in all climate change related actions, fully respect human rights.”¹¹

¹⁰ U.N. Framework Convention on Climate Change Conference of the Parties, Nov. 29-Dec. 10, 2010, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention, FCCC/CP/2010/7/Add.1 (Mar. 15, 2011) Appendix 1: Guidance and Safeguards for Policy Approaches and positive incentives on issues relating to reducing the emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forest and enhancement of forest carbon stocks in developing countries, 2(c).

¹¹ Id., at ¶ 8.

65. **To comply with the Cancun Agreements as well as the Common Understanding, the Principles and Criteria must be paired with mechanisms to ensure compliance of UN-REDD-sponsored projects with international human rights standards, including the UN Declaration, and provide access to remedy should any violations occur.**

66. Additionally, in many areas, effectively preventing human rights violations requires bringing domestic law and practice into compliance with international human rights standards prior to initiation of any REDD project. These key preconditions include recognition of indigenous peoples' collective rights to their lands, territories and resources; recognition of and a protocol for guaranteeing indigenous peoples' rights to free, prior and informed consent; an effective process for resolving land claims and resolution of any land claims in the project area.

VI | CONCLUSION

67. The Center believes that the above indicated issues are critical not only for the survival of indigenous peoples, but also for the effectiveness of UN-REDD supported projects when taking place in indigenous territories. We again take this opportunity to stress that the UN treaty bodies and expert mechanisms, especially the three UN mechanisms with specific mandates regarding the rights of indigenous peoples should be relied upon to provide the necessary technical support to ensure that UN-REDD policies are accurate and consistent with international human rights law.

68. We hope the concerns outlined in this paper are fully addressed at the upcoming UN-REDD Policy Board meeting, which is scheduled to take place on March 25–26, 2012, and prior to any adoption of final policy documents.

VII | ANNEX

See attached spread sheet for line edits and comments on the Principles and Criteria and BeRT.

Comments form for UN-REDD Programme Social and Environmental Principles and Criteria, version 3 (Draft for Consultation)

Please return to ccb@unep-wcmc.org before 31 December 2011

Please do not feel required to enter a comment in every row; please do add extra rows if necessary below. Many thanks for your contribution.

Your details:

Name	Leonardo Crippa and Gretchen Gordon
Organisation (if applicable)	Indian Law Resource Center
Country of residence	United States
Contact e-mail address	lcrippa@indianlaw.org
Do you wish for your comments to	no
Date of submission	Friday, January 20, 2012

Principle/Criterion or section	Referring to text:	Comment(s)
(General comments)		
	SEE ATTACHMENT FOR FULL COMMENTS	
Introduction and Context		
	"The Principles and Criteria reflect the UN-REDD Programme's responsibility to apply a human-rights-based approach to its programming, uphold UN conventions, treaties and declarations, and apply the UN agencies' policies and procedures."	We appreciate UN-REDD's commitment to a human-rights-based approach, however the Principles and Criteria fall short of actually achieving that goal due to the reasons identified in overall comments attached.
	"The Social and Environmental Principles and Criteria draw on, are consistent with, and seek to help countries meet their commitment to the following international agreements and, when applicable, the decisions taken in their COPs/MOPs:... International Labour Organization Convention 169 (ILO 169), United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Convention on the Elimination of All Forms of Racial Discrimination (UNCERD)..."	We encourage UN-REDD to additionally look to regional human rights systems as a source of human rights obligations, especially with regards to the Inter-American and African human rights systems' relevant jurisprudence on the rights of indigenous peoples, see overall comments attached.
	"The Principles and Criteria, which are consistent with UNFCCC agreements on safeguards for REDD+..."	The Principles and Criteria are not consistent with UNFCCC agreements on REDD+ Safeguards. Those Safeguards include " b) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements " and "c) 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 United Nations Declaration on the Rights of Indigenous Peoples. " The Cancun agreements additionally "emphasiz[e] that Parties should, in all climate change-related actions, fully respect human rights." See general comments above.
Purpose		
	"The Principles and Criteria will provide the UN-REDD Programme with a framework to ensure that its activities promote social and environmental benefits and reduce risks from REDD+."	The purpose of the Principles and Criteria should not be merely to ensure that its activities "promote social and environmental benefits and reduce risks", but to ensure that its activities respect and promote human rights, consistent with international human rights standards.
Structure and Application		
		The Principles and Criteria will only be effective at deterring human rights violations in REDD projects if they are binding, concretely linked to specific human rights standards rather than more general impact statements, and enforced through an effective complaint mechanism. This is especially the case regarding the rights of indigenous peoples to their lands, territories and resources. The content of these rights is complex and is not sufficiently protected merely by referencing "forest tenure rights".
	"The Principles are overarching, fundamental, active statements about the achievement of a desired outcome... The Criteria are the conditions that need to be met by UN-REDD Programme funded activities to contribute to the achievement of the Principle."	The Principles and Criteria should be binding minimum requirements for UN-REDD projects.
Process		
	"Approval of the Principles and Criteria will be sought from the Policy Board at its first meeting in 2012."	The Principles and Criteria should not be adopted until the concerns addressed herein are resolved.
Principle 1	Apply norms of democratic governance, including those reflected in national commitments and Multilateral Agreements	
Criterion 1	Ensure the integrity and transparency of fiduciary and fund management systems	Transparency should be explained in terms of what it means for impacted communities, i.e. in linguistically and culturally appropriate format. These mechanisms should not only be available, but their existence should be actively made known to impacted communities.
	BeRT	Should address fiduciary responsibility and transparency in terms of obligations toward communities and local rights-holders participating in projects.
Criterion 2	Ensure accountability and legitimacy of all bodies representing stakeholders, including through establishing responsive national feedback, complaints and grievance mechanisms, amongst others	Rights-holder analysis should not be confused with stakeholder analysis. Identification of relevant stakeholders must follow from an analysis of land and resource rights under national and international law.
Criterion 3	Ensure transparency and accessibility of all information related to REDD+, including active dissemination among relevant stakeholders	
	BeRT: "2. Does the REDD+ programme have clear procedures for making information publicly available?"	Should stress culturally appropriate manner for impacted communities and local rights holders.
	BeRT: "1a. ...Are there other government policies that support free and timely stakeholder access to information about the REDD+ program, including information on rights to lands, trees and resources?..."	Information should be provided regarding the rights of local rights-holders, including the rights of indigenous peoples to lands, territories and resources, provided under national and local law as well as those recognized under international law. Information must also be provided regarding the costs, benefits and alternatives to REDD projects for different rights and stakeholders, including the impact of any proposed REDD market mechanisms on overall emissions reduction or offsetting.

Principle/Criterion or section	Referring to text:	Comment(s)
		The BeRT should avoid muddling understanding of human rights through such language as "rights to lands, trees and resources" which does not reflect internationally recognized human rights standards.
	BeRT: "2. Does the REDD+ programme have clear procedures for making information publicly available?"	Information should be provided regarding the rights of local rights holders, including the rights of indigenous peoples to lands, territories and resources provided under national and local law as well as those recognized under international law. Information must also be provided regarding the costs, benefits and alternatives to REDD projects for different rights and stakeholders, including the impact of any proposed REDD market mechanisms on overall emissions reduction or offsetting.
Criterion 4	Ensure the full and effective participation of relevant stakeholders, in particular, indigenous peoples and other forest dependent communities, with special attention to the most vulnerable and marginalized groups	
	BeRT	should ask: Do national policies and practice respect and protect the rights of indigenous peoples and other impacted communities, as established in international law, including in the UN Declaration on the Rights of Indigenous Peoples? Do policies respect the self-determination and autonomy of indigenous peoples, including their rights to permanent sovereignty over their natural resources? Is the right of indigenous peoples not to participate in REDD programs and to reject the imposition of REDD projects in their territories respected? Do participation processes respect indigenous peoples' rights to self-determination and autonomy?
Criterion 5	Promote coordination, efficiency and effectiveness, including cooperation across sectors and in the enforcement of laws	
Criterion 6	Ensure the rule of law and access to justice	Indigenous peoples and local communities should have access to impartial technical and legal support necessary to ensure access to justice.
	BeRT: "1. Are there existing measures in place that ensure access to justice and the rule of law?"	Does local government law and practice comply with international human rights law, especially indigenous peoples' rights to land, territories and resources? Where are the major gaps? Does the local government propose measures to ensure compliance and to what extent are these likely to be effective? Will domestic laws be brought into compliance with international standards on land tenure, prior to any implementation of REDD projects?
Principle 2	Respect and protect stakeholder rights, including human rights, statutory and customary rights, and collective rights	Respect and protect the rights of all individuals and communities, including the collective rights of indigenous peoples, as those rights are established by international law and domestic law, whichever is more protective.
Criterion 7	Respect and promote the recognition and exercise of equitable land tenure and carbon rights by indigenous peoples and other local communities	With regard to indigenous peoples, the standard here should not just be equitable land tenure, but indigenous peoples' rights to land, territories and resources, consistent with the UN Declaration. Because these rights are complex, this should not be a criterion, but a separate principle with more specific criterion that elaborate the content of indigenous peoples' permanent sovereignty over their natural resources, including the collective rights to own, use, and manage the lands, territories and natural resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
		Ensure that no REDD projects go forward without protections in domestic law for the PSNR of indigenous peoples , including recognition, demarcation and protection of collective and traditional ownership of land and resources.
	BeRT "1a. Does the law recognize a breadth of different forest tenure rights for indigenous and other forest dependent communities? Including a recognition of indigenous rights over forest lands and/or resources that they have traditionally managed; collective forest ownership by communities, and/or of adequate forest use and management rights for communities living in or dependent upon public forests; and recognition of customary tenure systems"	The first inquiry should be, is the law consistent with international human rights standards, including the UN Declaration? Does it respect indigenous peoples' collective ownership over lands and resources and does it recognize different systems of land tenure?
	BeRT "1b. Do existing legal frameworks adequately support and protect a variety of different types of forest tenure? Including giving adequate space for communities to define their own internal tenure administration rules; ensuring legal clarity; processes for registering rights of all stakeholders; and protection from rights being taken away or changed without consent."	Do existing legal frameworks respect indigenous peoples' rights of self-determination and self-government, including management of their natural resources.
	BeRT "1c. Is there an existing legal framework that defines rights to own or trade carbon, or other ecosystem services? If not, are such systems in development?"	Any carbon rights should be derived from rights to land and resources and should respect indigenous peoples' permanent sovereignty over their natural resources.
	BeRT "2a. Does the programme identify how it will help to overcome any issues described in 1a - 1d, and identify the risks of not doing so?"	Projects should not proceed on indigenous lands until rights are identified and protected.
Criterion 8	Promote and enhance gender equality, gender equity and women's empowerment	
Criterion 9	Seek free, prior and informed consent of indigenous peoples and other forest dependent communities and respect and uphold the decision taken (whether consent is given or withheld)	It is good that this specifies that decisions must be respected regardless of whether consent is given or withheld.
Criterion 10	Ensure there is no involuntary resettlement as a result of REDD+	...or related policy initiatives or activities
		Any relocation of indigenous peoples or restriction of their access to their lands, territories and resources shall only proceed with their free, prior and informed consent, and shall only take place after agreement on just and fair compensation and with the option for return.
	BeRT: "1. Are there existing policies and measures in place that help to avoid involuntary resettlement in development programmes, or to deal with involuntary resettlement in a way that protects livelihoods?"	Involuntary resettlement must not be permitted. National laws and practice must comply with international law on resettlement, including the UN Declaration, Article 10: <i>Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.</i>

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	BeRT: "3. If voluntary resettlement will occur as a result of the programme, will this be agreed upon by relevant stakeholders through free, prior and informed consent (FPIC) and are resettlement plans comprehensive?"	The relevant analysis is not whether voluntary resettlement procedures are "comprehensive" but whether they meet national and international law standards, including agreement on just and fair compensation, with the option for return, and whether resettlement situations protect the community's human rights.
Criterion 11	Respect and protect traditional knowledge and cultural heritage and practices	With regard to indigenous peoples, this should state "Respect and protect the cultural rights of indigenous peoples, including rights to traditional knowledge, practices and resources, rights to revitalize their spiritual and religious traditions, and rights to access in privacy their religious and cultural sites, as consistent with the UN Declaration. "
	BeRT	The BeRT should describe what international legal obligations imply for REDD projects, including the UNESCO convention on protection of the World Cultural and Natural heritage; the UNESCO Convention for the safeguarding of the Intangible Cultural heritage; the Convention on Biological diversity.
	BeRT: "2e. In cases where traditional knowledge may represent a driver of deforestation or forest degradation [1], does the programme address the issue?"	...in a way consistent with human rights obligations.
Principle 3	Promote and enhance forests' contribution to sustainable livelihoods	
Criterion 12	Ensure equitable, non-discriminatory and transparent benefit sharing and distribution among relevant stakeholders with special attention to the most vulnerable and marginalized groups	Benefit-sharing must respect the property and cultural rights of indigenous peoples as well as their rights of self-determination consistent with international law, including the UN Declaration.
		The Principles and Criteria and BeRT are silent with regards to contracts. The BeRT should provide guidance on contract fairness. Governments must take effective measures to prevent swindling or duress of communities regarding any REDD projects. No contracts should lead to the taking of indigenous peoples' lands or resources. Any contracts should be of short duration, reviewable, and should not require indemnity by the community. Local communities must have access to legal assistance in contract issues. Contracts with indigenous peoples should include a clause prohibiting human rights violations.
Criterion 13	Protect and enhance, while minimizing adverse impacts on, economic, social and political well-being of relevant stakeholders with special attention to the most vulnerable and marginalized groups	
Principle 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	
Criterion 14	Ensure consistency with and contribution to national climate policy objectives, including mitigation and adaptation strategies and international commitments	
Criterion 15	Address the risk of reversals of REDD+ achievements, including potential future risks to forest carbon stocks and other benefits to ensure the efficiency and effectiveness of REDD+	
Criterion 16	Ensure consistency with and contribution to national poverty reduction strategies and other sustainable development goals (including those outlined under the Millennium Development Goals framework), including alignment with ministries' and sub-national strategies and plans that may have an impact on, or be affected by the forest sector and/or land use change	
Criterion 17	Ensure consistency with and contribution to national biodiversity conservation policies, other environmental and natural resource management policy objectives, national forest programmes, and international commitments	Those international commitments include respect for the rights of indigenous peoples to permanent sovereignty over their natural resources, including the rights of self-government and control over natural resources as consistent with the UN Declaration.
	BeRT	The BeRT should identify those international commitments and facilitate compliance assessment.
Principle 5	Protect natural forest from degradation and/or conversion to other land uses, including plantation forest	
Criterion 18	Ensure that REDD+ activities do not cause the conversion of natural forest to other land uses, including plantation forest, and make reducing conversion due to other causes (e.g. agriculture, timber and fuelwood extraction, infrastructure development) a REDD+ priority	
Criterion 19	Minimise degradation of natural forest by REDD+ activities and make reducing degradation due to other causes (e.g. agriculture, timber and fuelwood extraction, infrastructure development) a REDD+ priority	
Criterion 20	Minimise indirect land-use change impacts of REDD+ activities on forest carbon stocks, biodiversity and other ecosystem services (including impacts of extractive activities)	
Principle 6	Maintain and enhance multiple functions of forest to deliver benefits including biodiversity conservation and ecosystem services	
Criterion 21	Ensure that land-use planning for REDD+ explicitly takes account of ecosystem services and biodiversity conservation in relation to local and other stakeholders' values, and potential synergies and trade-offs between different benefits	
Criterion 22	Ensure that planted and natural forests are managed to maintain and enhance ecosystem services and biodiversity important in both local and national contexts	
Principle 7	Minimise adverse impacts (direct and indirect) on non-forest ecosystem services and biodiversity	
Criterion 23	Minimise adverse impacts on carbon stocks, biodiversity and other ecosystem services of non-forest ecosystems resulting directly from REDD+ activities (such as afforestation)	
Criterion 24	Minimise indirect land-use change impacts on carbon stocks, biodiversity and other ecosystem services of non-forest ecosystems (including impacts of extractive activities)	
Criterion 25	Minimise other adverse indirect impacts on biodiversity and carbon stocks of non-forest ecosystems, such as those resulting from intensification of land use	