



Forest Peoples Programme

***Submission to the SBSTA
regarding a System of
Information for
Safeguards in REDD+***

17th September 2011

KEY RECOMMENDATIONS:

THE SYSTEM OF PROVIDING INFORMATION ON SAFEGUARDS (SIS) SHOULD BE BASED ON RIGHTS-BASED INDICATORS TO ASSESS, AMONG OTHERS:

- *the degree of implementation of the safeguards*
- *the level of compliance of existing national legislation to international obligations and standards related to indigenous peoples and human rights such as the UNDRIP and ILO 169;*
- *the extent by which the REDD country has secured or intends to secure indigenous peoples' rights throughout the REDD cycle, programs and projects*

THE SYSTEM OF PROVIDING INFORMATION ON SAFEGUARDS' (SIS) SHOULD BE EFFECTIVE, TRANSPARENT, RELIABLE AND PARTICIPATORY AND BASED ON THE FOLLOWING PILLARS:

- *Respect of highest standards contained in international human rights, environmental and social obligations, standards and instruments (including at national level)*
- *Free Prior Informed Consent, independent recourse mechanisms and parallel reportina by indiaenous peoples*

INTRODUCTION

This submission to the SBTS is presented by the Forest Peoples Programme (FPP) in collaboration with the Indigenous Peoples Network of Malaysia in response to the invitation to Parties and Observers made by the Subsidiary Body for Scientific and Technological Advice at its Thirty-fourth session Bonn, 6–16 June 2011 under Agenda Item 4 “*Methodological guidance for activities relating to reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries*”.

More specifically this submission refers to the “*systems for providing information on how safeguards referred to in appendix I to decision 1/CP.16 are addressed and respected*” and notably on *Guidance on systems for providing information on how safeguards are addressed and respected*:

- (a) *Characteristics;*
- (b) *Design;*
- (c) *Provision of information;*
- (d) *Potential barriers, including barriers, if any, to providing information, on addressing and respecting safeguards;”*

The remaining forests of developing countries are spaces inhabited by indigenous peoples. These spaces have been shaped, protected and expanded by indigenous peoples over generations. The relationship of indigenous peoples to forests is linked to livelihoods, cultures, world views and traditional knowledge and may be expressed through forms of customary tenure, land use and resource use. By proposing social and rights-based indicators and building blocks, this submission promotes a holistic view of REDD+ that protects carbon stocks as well as the rights and benefits of the forest peoples.

A. THE SYSTEM OF PROVIDING INFORMATION ON SAFEGUARDS (SIS) SHOULD BE BASED ON RIGHTS-BASED INDICATORS

FPP and JOAS strongly believe that the SBSTA should produce guidance on the SIS that include information on how **and extent by which** the safeguards are being addressed and respected (in accordance with Paragraph 71 (d) of the Cancun Agreement and para 69 that mandates that REDD+ activities should be carried out *in accordance* with the safeguards).

To facilitate their work, SBSTA could refer to accepted reports of UN appointed experts. For example, the 2011 Report of the UN High Commissioner on Human Rights, referred to the need for indicators in realizing economic, social and cultural rights that are “*relevant, valid and realizable; simple, timely and few in number; based on objective, reliable and independent data-generating mechanisms; suitable for comparison over time and territory*”¹

Such information should be based on “*performance indicators*” that would - among others - assist both the national government, civil society, indigenous peoples and the international donor community to identify gaps and needs related to the obstacles to the full and effective implementation of safeguards.

These obstacles can range from governance and legal gaps that would have to be filled with robust and sustained governance and legal reforms to recognize and respect indigenous peoples’ rights, to contingent obstacles, including a limited or non-existent consideration of those drivers of deforestation and social and economic factors that directly or indirectly impact on indigenous peoples and the effectiveness of REDD actions.

The scope and nature of the type of information to be retrieved and communicated varies according to phase. During the readiness phase, most of the activity related to the SIS will be relevant to a methodological analysis and strategic assessment (such as in the SESAs and ESMF of the FCPF) and thus the SIS would need to identify those policy actions implemented, or that

¹ U.N. Economic and Social Council. Report of the UN High Commissioner on Human Rights, substantive session of 2011 (E/2011/90) p 7.

would need to be implemented, to respect and protect indigenous peoples. In the implementation phase the need to directly assess the level of compliance to the actual Cancun safeguards is more evident and stringent and the SIS would then have to contain an assessment of the degree by which these policies and legislation, as well as safeguards, are respected.

In particular the system should provide data aimed at an assessment of the extent by which indigenous peoples' rights are being recognized and respected at the national level throughout the whole process (from design, to planning, to decision-making, implementation, MRV), with a view to evaluate the level of accomplishment of the preconditions ("*milestones*") set up for the Readiness and implementation phases of REDD+.

A very useful body of work to assess the degree of compliance of indicators to international human rights norms has been developed by the Office of the High Commissioner on Human Rights of the UN. The OHCHR framework proposes *structural*, *process* and *outcome* indicators as a tool aimed at assessing the steps being taken by States in addressing their obligations – "*from commitments and acceptance of international human rights standards (structural indicators) to efforts being made to meet the obligations that flow from the standards (process indicators) and on to the results of those efforts (outcome indicators)*"². SBSTA should provide guidance to REDD+ countries to develop specific indicators on information related to the degree of implementation of indigenous peoples' rights, building up on methodologies already developed by the Office of the High Commissioner on Human Rights on the monitoring and assessment of implementation of human rights.

Additional elements can be drawn from relevant work developed by Convention on Biological Diversity (such as - inter alia - the Akwé:Kon Voluntary Guidelines³ and the REDD+ safeguards on biodiversity currently

² <http://www2.ohchr.org/english/issues/indicators/framework.htm>

³ Convention on Biological Diversity (2004), "Akwé: Kon Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities".

under elaboration), as well as by the UNREDD for instance with the UNREDD-FAO Guidelines for Governance in REDD+. ⁴

A.1. Performance indicators within the SIS

The development and use of “performance indicators” can achieve two goals. Firstly, to serve the purpose of describing the situation at a given moment in time, and secondly to provide data about planned or required policy and legal action that the REDD government will have to undertake to ensure that those obstacles to the implementation of safeguards are properly addressed. All this information - to be included in the SIS - will be key to ensuring robustness, reliability and effectiveness of the system while contributing to identifying areas of capacity building and further technical assistance.

Hence the SIS should include:

a. a clear assessment of the degree of implementation of the safeguards, and actions undertaken to prevent harm to indigenous peoples taking into due account gender-related concerns, including measures to respect the right to Free Prior Informed Consent, as well as actions undertaken to redress and compensate for any harm inflicted as a consequence of REDD policies, programmes and actions.

b. an assessment of the level of compliance of existing national legislation to international obligations and standards related to indigenous peoples and human rights such as the UNDRIP and ILO 169;

c. an assessment of the extent by which the REDD country has secured or intends to secure the following indigenous peoples’ rights throughout the REDD cycle, programs and projects:

- Rights to land, territories and natural resources;
- Right to Free Prior Informed Consent (FPIC)

⁴ UN REDD Programme - Chatham House (2011), “Guidance for the Provision on Information on REDD+ Governance”, draft, June 2011

- Rights to traditional knowledge and practices;
- Rights to self determination and exercise of customary laws, governance and customary land use and forest management;
- Rights to full and effective participation on decision-making on matters that affect Indigenous Peoples and local communities;
- Rights to law enforcement and conflict resolution through traditional governance systems, with local monitoring and reporting of infringements;
- Rights to full and effective participation and consultation of indigenous peoples and local communities, and timely access to adequate information in culturally appropriate manner;
- Right to equitable benefit sharing

d. degree and modalities of indigenous peoples’ participation in the definition of the criteria and ToRs for the SIS at the national level, and measures to ensure indigenous peoples’ participation throughout the whole process of gathering, analyzing, producing information for the SIS.

B. THE SYSTEM OF PROVIDING INFORMATION ON SAFEGUARDS’ (SIS) SHOULD BE EFFECTIVE, TRANSPARENT, RELIABLE AND PARTICIPATORY

The effectiveness and sustainability of any REDD+ program, project and action is best ensured by means of a reliable and robust system of information on safeguards that will have to be embedded into a rights-based “*architecture*” aimed at ensuring the respect of safeguards, and that can be based on the following pillars:

B. 1. Respect of highest standards contained in international human rights, environmental and social obligations, standards and instruments

Any safeguard system, and related information tools will have to be anchored to the highest standards on human rights and indigenous peoples rights, such as those contained in the UN Declaration on the rights of Indigenous Peoples (UNDRIP). The adoption and provision of a safeguard system cannot be separated from the necessary policy actions required at the national level to align national legislation to international obligations and standards. The two levels, i.e. national legal and policy enhancement and its alignment to international obligations and standards and the adoption of national level safeguards are not separable.

In this respect, it is worth recalling the Report of the United Nations High Commissioner for Human Rights on Human Rights Indicators (2011) that states:

“First, when selecting indicators, it is essential that indicators identified for the implementation of human rights have a clear link to the applicable international and national human rights framework. Indicators selected for measuring certain aspects of a specific human right need to be anchored in the normative content of the right as enumerated in the international and national human rights standards. They also need to capture not only the outcomes, but also commitments and efforts made by the State to discharge its obligations ensuing from the right.”⁵

B. 2. Retain highest standards at national level

Priority should be given to ensure that the set of safeguards adopted at the international level - and the related system of information - are not weakened or selectively readjusted in the process of “translation” and adaptation at the national level. Re-adaptation of the international safeguard system at the national level and “according to national circumstances” still obliges the parties to ensure the highest rights standards are retained throughout the REDD program cycle. This can be ensured - among others - by means of a truly participatory process of re-elaboration, analysis, monitoring, reporting and verification that includes indigenous peoples from the very beginning.

B.3. Free, Prior Informed Consent

⁵ see note 1, above, page 6

Free Prior Informed consent, meant as an iterative process of interaction with indigenous peoples and indigenous communities can - among others - represent an effective modality to ensure constant monitoring and adjustment of REDD programmes and principles, as well as a mechanism to ensure continuous information feedback loops that can contribute to the objectivity and robustness of the information produced on the degree of compliance to the safeguards.

B. 4. independent recourse and complaint mechanisms –

If a system of information on safeguards is also meant to be a dynamic process of improvement , then FPIC and an independent recourse mechanism are mutually supportive. National systems that do not currently have such a system should elaborate actions undertaken toward the setting up of such mechanisms. The SIS should also report on any claim to the recourse mechanism, or to other competent bodies, that generates from the lack of compliance of safeguards, and inform about its resolution.

B. 5. Parallel reporting by Indigenous Peoples

The importance of indigenous peoples' traditional knowledge in REDD+ is recognized by decision 4/CP.15, especially as regards indigenous peoples' participation and the contribution of traditional knowledge in monitoring and reporting on REDD+.

The importance of direct engagement of indigenous peoples in developing and adopting their own reporting frameworks to assess the level of advancement of human rights and indigenous peoples' rights has been recognized in other relevant international fora. For instance , the ILO-UNPFII report of an international expert meeting on the theme held in 2011⁶ proposes that

⁶ UN Permanent Forum on Indigenous Issues. 10th session. Follow-up to the recommendations of the Permanent Forum: (a) Economic and Social Development - Report of

“12. The (reporting) framework (on compliance with human rights obligations) should be elaborated in partnership with indigenous peoples, to reflect their visions and to ensure their full participation in the operationalisation and use of the framework, including in community-led assessment processes.”⁷

and

“21. Efforts should be made to encourage and enable indigenous peoples to undertake their own processes of assessing the implementation of their rights at local, national, regional and international levels. Such processes will inform indigenous peoples’ own decision-making and also allow them to feed quality information into existing mechanisms, including UN treaty monitoring bodies, ILO supervisory mechanisms and specialized UN mechanisms such as the UN Special Rapporteur on the Rights of Indigenous Peoples, the EMRIP and the UNPFII as well as poverty reduction strategies, PRSPs, CCA-UNDAFs and other national policies and strategies.”⁸

The SIS should hence include the contribution from parallel reporting carried out by Indigenous Peoples with support duly provided in the national and international REDD+ programmes and activities. The related data would complement the national system of information, by providing information that are directly related to the potential impacts and/or benefits of REDD+ , as well as to the level of compliance to safeguards at the community/project level.

OTHER MATTERS

the international technical expert meeting on “Keeping track – indicators, mechanisms and data for assessing the implementation of indigenous peoples’ rights”. E/C.19/2011/11

⁷ ibidem, page 8

⁸ ibidem, page 11

FPP, JOAS and the other signatories to this submission wish to underline that many of the key operational features of the SIS (Safeguard Information System) are well defined and analyzed in the submission by the Ecosystems and Climate Alliance (ECA), and fully complement those contained herein.