

To: ART Secretariat, REDD@Winrock.org

Oslo, 26. september 2019

Input to TREES standard from Rainforest Foundation Norway

Rainforest Foundation Norway (RFN) appreciates the opportunity to provide input to TREES and want to thank the Interim Steering Committee and the ART Secretariat for the hard and good work that has gone into developing this standard.

We welcome the establishment of this standard as part of a mechanism to provide finance for forest protection through the verification of high integrity carbon credits. RFN does not support using carbon credits generated from forests as offsets and reiterate our insistence that all countries and companies have to pursue deep and quick reductions in their emissions from fossil fuels. However, we also believe that this standard will increase the integrity of forest carbon credits used in offsetting mechanisms that are being developed.

We appreciate that TREES require crediting entities to be a jurisdiction, and preferably a country. We also appreciate the measures taken through TREES to make sure that credits are generated against a conservative baseline, which will have to be revised every five years and made increasingly conservative. This ensures that countries increase their ambition, in line with the design of the Paris Agreement. We also strongly support the measures to avoid double claiming of emissions reductions, especially requirements to make accounting adjustments to make sure that credits sold are not included in the host country's Nationally Determined Contributions (NDC). All these measures are important to ensure the environmental integrity of the credits and ART in general.

We believe that it is important for any mechanism financing forest protection to prioritize and incentivize the protection of natural forests, especially primary forest and intact forest landscapes. Therefore, we note with interest that the standard says that "It is the intent of ART to establish a robust approach to explicitly address this category and credit HFLDs in a manner consistent and fungible with credits from other REDD+ activities or other carbon markets", and that credits from HFLD countries can be tagged as HFLD credits as an interim measure. We appreciate this recognition and anticipate the development of such a robust approach, but encourage for this inclusion to be mandatory, changing the intent to wording where such an inclusion becomes mandatory. We also want to suggest that this approach incentivize countries to keep primary forests and intact forest landscapes intact, and not just to keep deforestation rates low, for example through the inclusion of removals.

An area of concern to us is the possibility for civil society organizations of providing inputs to the projects to be discussed in and approved by the ART Board. We recommend that project documentation that is deemed ready for consideration by the board should be publicly available at least three weeks prior to the board meeting, to facilitate independent review by, and inputs from,

civil society and other stakeholders. Other mechanisms working with REDD+ open for comments and inputs by civil society organizations before the approval of projects or policies. Such a measure would greatly increase the transparency of ART and build broad confidence in the legitimacy of the ART board decisions.

Regarding the Environmental, Social, and Governance Safeguards, we consider them to generally form a robust framework for ensuring conformity with environmental and social standards. Nevertheless, we note that the standard allows for countries to complete the first crediting period and issue credits without demonstrating full compliance with the Cancun safeguards. This runs contrary to Decision 9/CP.19 of the UNFCCC requiring countries to *“provide the most recent summary of information on how all the safeguards [...] have been addressed and respected before they can receive results-based payments.”*¹

TREES can also be stronger than UNFCCC tying the issuance of credits to verification of the safeguard information.

Though we appreciate the general approach and robustness applied in TREES, we also would like to recommend the following changes. Specific changes in the TREES document are suggested with red color below:

1. Indigenous peoples’ right to lands

The UNDRIP² and ILO Convention 169³ affirm indigenous peoples’ right to lands, territories, and resources. Traditional lands and resources are of existential importance to indigenous peoples.⁴ Thus, “the close ties of indigenous peoples with the land must be recognized and understood as the fundamental basis for their cultures, their spiritual life, their integrity, and their economic survival.”⁵ In the framework of REDD+, land tenure rights and the right to carbon in the REDD+ program area shall be defined early in the process, and the following actions should be taken: i) mapping of indigenous peoples’ land rights; ii) mapping of the overlap between the land claims of indigenous peoples and other forest-dependent communities and concessions, iii) the elaboration of a plan for the recognition of indigenous peoples’ territories.

Decision 1/CP.16 of the UNFCCC states that countries, when developing and implementing REDD+ strategies, are required to *“address land tenure issues ... ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities”*⁶.

TREES states that by the beginning of the program, all participant countries shall have in place procedures for the recognition, mapping, and security of land and resource tenure rights in the REDD+ accounting area. In addition, TREES states that by the end of the fifth year, and before entering the

¹ UNFCCC, Decision 9/CP.19, “Work program 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.

² Arts. 10 - 11, and 25 - 28.

³ Arts. 13 - 19.

⁴ Jose Martinez, *Study of the Problem of Discrimination against indigenous Populations*, E/CN.4/Sub.2/1986/7/Add.4, 28 June 1983, at para. 379. *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II. Doc. 56/09, December 30, (2009), at 63 - 70. *Yakye Axa indigenous Community*, Merits, Reparations and Costs, Judgment of June 17, 2005, Case No. 125, at para. 163.

⁵ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31 2001, C No. 79, at para. 149.

⁶ Paragraph 72.

second crediting period, it is expected that stakeholders get access to, use of, and control over land and resources. Nevertheless, access to and control over land and resources does not mean having legal recognition of tribal areas, territories, or domains. Therefore, we suggest making this goal stronger by stating that before entering the second crediting period, the outcome should be that indigenous peoples' collective rights to lands, territories, and natural resources in the accounting area have been recognized. Please, find below our suggestion with red color:

Text to be added on page 45 of TREES:

THEME 2.3 Respect, protect, and fulfill land tenure rights

Outcome Indicator: Stakeholders had access to, use of, and control over land and resources in conformity with relevant ratified international conventions, agreements, and/or domestic legal framework. In addition, indigenous peoples' collective rights to lands, territories, and natural resources in the accounting area have been recognized. An official recognition or registration of that ownership has been done by the State. No relocation took place without the free, prior, and informed consent (FPIC) of any indigenous peoples and local communities (or equivalent) concerned.

2. Respect of indigenous peoples and local communities in the design and implementation of REDD+ actions

In TREES, each Cancun safeguard is broken down into three indicators: i) Structural: Where Participants **have in place structures** such as laws or procedures for accessing the Cancun safeguards; ii) Process: Where public institutions of the Participant country **made use of those structures**; iii) Outcome: **Implementation** of the Cancun Safeguards, in terms of the **respect of rights** and fulfillment of duties⁷. Therefore, we believe that Cancun Safeguard C in TREES "Respect for the knowledge and rights of indigenous peoples and members of local communities" should reflect this logic.

On page 46 of TRESS, the Cancun safeguard C is broken down into the three indicators stated above. The first one, the structural indicator, states that participants shall **have in place processes** that recognize and protect the full measure of human rights and fundamental freedoms for its citizens. The second, the process indicator, requires that public institutions **made use of procedures** to legal framework to protect the rights of indigenous peoples. Accordingly, we believe that the outcome Indicator should be **the respect** of the rights on the ground. Therefore, we would like to suggest the following amendment to make clear what the expected result under this outcome indicator should be:

Text to be added on page 47 of TREES:

THEME 3.3 Respect, protect, and fulfill rights of indigenous peoples and local communities, or equivalent

Outcome Indicator: ~~The full measure of human rights and fundamental freedoms of indigenous peoples and local communities, or equivalent, have been identified and incorporated in the design and implementation of REDD+ actions.~~ The rights of indigenous peoples and local communities have been respected in the design and implementation of REDD+ actions in the accounting area under TREES.

3. Sharing of benefits coming from REDD+ with indigenous peoples and local communities

⁷ Page 43 of TREES.

Although there are no UNFCCC decisions that prescribe which elements a benefit-sharing plan should include, the UN-REDD Program and Forest Carbon Partnership Facility (FCPF) agree that it should consist of the objectives and scope of the benefits, who gets rewarded, why, under what conditions, for how long, and in what proportions⁸.

TREES does not require countries to have a Benefit-Sharing Plan on how the benefits coming from the program will reach indigenous peoples and local communities, and leaves the distribution of benefits to the discretion of the country. Nevertheless, RFN believes that when REDD+-programs are implemented in indigenous peoples' and local communities' territories; they should be offered a fair share of the benefits.

TREES states that countries participating in ART shall indicate the rainforest areas to be included in TREES⁹. Given this, we believe it is possible to identify and give benefits to the indigenous peoples and local communities located in the accounting area under TREES. For example, "REDD for Early Movers (REM) program" that Germany has in Colombia requires that *"At least 60% of funds will benefit local actors. This share will go primarily towards benefiting smallholder farmers, forest-dependent communities, and indigenous communities..."*¹⁰. And in Acre, REM requires that at least 70% of the funds reach actors at the local level¹¹. We believe that these examples should inspire ART.

The type of benefits should be discussed with indigenous peoples and local communities. Benefits could be monetary or in-kind. We consider that direct cash payments could be of two types: based on performance (where indigenous peoples and local communities receive payments based in exchange of some concrete activities or achievements) or non-based on performance (where no conditionalities are attached to the payments). In-kind benefits could include, for example, supporting the implementation of indigenous peoples' and local communities' life plans, development of infrastructure needed by the communities, and conservation of biodiversity and ecosystems in the accounting area. Therefore, we would like to suggest including the following item under chapter 12 of TREES regarding "Environmental, Social, and Governance Safeguards":

Text to be included on page 49 of TREES:

12.5. Sharing of benefits coming from REDD+ with indigenous peoples and local communities

⁸ UN-REDD Program, "Principles of REDD+ Benefit Distribution System" available at: http://www.google.no/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKewia7_6P2OzUAhUKYIAKHeqiCvUQFg0MAE&url=http%3A%2F%2Fwww.unredd.net%2Fdocuments%2Fun-redd-partner-countries-181%2Fasia-the-pacific-333%2Fa-p-knowledge-management-a-resources%2Fasia-pacific-lessons-learned-series-749%2F2118-asia-pacific-lessons-learned-benefit-distribution-system-2118%2Ffile.html&usg=AFQjCNGwsfG0gijBGRE3AgjXklgbThMoQg FCPF and UN-REDD Program, "REDD+ Benefit-Sharing: A comparative assessment of three national Policy Approaches" available at: <https://www.forestcarbonpartnership.org/fcpf-un-redd-joint-papers-stakeholder-participation-benefit-sharing-safeguards> FCPF, "Benefit-Sharing" available at: <http://www.forestcarbonpartnership.org/benefit-sharing> CIFOR has done an analysis of benefit-sharing in REDD+ programs: <https://www.cifor.org/knowledge-tree/>

⁹ Page 19, second paragraph of TREES.

¹⁰ "Rewarding REDD+ Action and Supporting Low-deforestation Development in the Colombian Amazon". Available at: https://www.kfw-entwicklungsbank.de/PDF/Entwicklungsfinanzierung/Themen-NEU/REM-Colombia-agreement-resumen_english_final.pdf

¹¹ "REDD+ in the State of Acre, Brazil: Rewarding a pioneer in forest protection and sustainable livelihood development". Available at: <https://www.kfw-entwicklungsbank.de/PDF/Entwicklungsfinanzierung/Themen-NEU/REDD-Early-Movers-Acre-Fact-Sheet.pdf>

Participant countries shall develop benefit-sharing plans in collaboration with indigenous peoples and local communities. Participants shall promote the meaningful engagement of indigenous peoples and local communities in the development of the plans. Robust capacity building shall be provided to indigenous peoples and local communities before and during the development of these plans.

4. Inputs by civil society before the approval of REDD+ programs, guidelines or policies

The TREES does not include the possibility for civil society of providing inputs to the projects to be discussed in and approved by the ART Board. We recommend that project documentation that is deemed ready for consideration by the board is publicly available at least three weeks prior to the board meeting, to facilitate independent review by, and inputs from, civil society and other stakeholders. Other mechanisms working with REDD+ such as the Forest Carbon Partnership Facility (FCPF), the UN-REDD Program, the Green Climate Fund, and BioCarbon Fund Initiative for Sustainable Forest Landscapes open for comments and inputs by civil society organizations before the approval of REDD+ programs, guidelines or policies. Such a measure would increase the transparency of ART and build broad confidence in the legitimacy of the ART boards decisions. Therefore, we would like to suggest the following text under chapter 15 of TREES “Registry Requirements”:

To be included on page 54 of TREES:

15.3. Inputs from civil society organizations before the approval of REDD+ programs, guidelines or policies under ART

The ART secretariat will make publicly available TREES documents listed in Section 2.4 and other documents provided by the participant country or the participating subnational jurisdiction that are not classified as Commercially Sensitive Information as defined on page 58. Project documentation shall be made publicly available at least three weeks prior to the ART Board meeting to facilitate independent review by, and inputs from, civil society and other stakeholders.

To be included on page 54 of TREES:

15.2 Publicly available documentation

All approved and final TREES documents listed in Section 2.4 shall be publicly available through the ART Registry. TREES Participants may designate certain parts of the documentation as Commercially Sensitive Information (CSI). Information regarding the application of Cancun Safeguards cannot be considered under the category of CSI.

5. Management of reversals

We appreciate the establishment of a buffer pool to address the risk of reversals and leakage, and measures to account for the uncertainty in the data. These are essential measures to build confidence that ART will contribute to lasting reductions in deforestation. Nevertheless, we would like to point out to the formula adopted by Germany within the “REDD for Early Movers (REM)” where for each ton

of rewarded emission reduction, an additional ton is permanently retired¹². We believe that this formula is better to ensure that all ART credits issued are permanent. Accordingly, we would like to suggest amending chapter 7.2.1 “Buffer Pool Contribution” as follows:

To be included on page 33 of TREES:

7.2 1. Management of reversals

For each tCO2e the Participant obtains payment for, one tCO2e should be permanently retired. This retirement data shall be registered by the TREES participant and in the ART Registry.

6. Free, prior and informed consent (FPIC)¹³

Although Free, prior and informed consent (FPIC) is not explicitly stated in the list of Cancun safeguards adopted by the UNFCCC, it is a right of indigenous peoples recognized by international law.

The FPIC Guidelines of the UN-REDD states that FPIC is “a special standard that safeguards and functions as a means for the exercise of indigenous peoples’ substantive rights.”¹⁴ The UN Special Rapporteur on the rights of indigenous peoples (SRRIP) 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’ 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

Although the country implementing REDD+ has not ratified ILO Convention 169 or adhered the UNDRIP, the donor country or the multilateral institution providing finance for REDD+ may require the

¹² “Rewarding REDD+ Action and Supporting Low-deforestation Development in the Colombian Amazon”. Available here: <https://www.kfw-entwicklungsbank.de/PDF/Entwicklungsfinanzierung/Themen-NEU/20151128-REM-Colombia-agreement-summaryFINAL.pdf>

¹³ There is no binding international agreement on the scope of and content of the FPIC requirement. Nevertheless, it is stated in ILO Convention 169, article 16 (2) and six provisions of the UNDRIP. The UNDRIP argues for the inclusion of FPIC in the case of the relocation of indigenous peoples (article 10), in negotiations regarding the adoption of legislative or administrative measures that may affect indigenous peoples (article 19), before the approval of projects affecting indigenous peoples’ lands (article 32.2), among other cases.

¹⁴ The document is available at <https://www.unclearn.org/sites/default/files/inventory/un-redd05.pdf> at page 18.

¹⁵ Report of the Special Rapporteur on the rights of Indigenous Peoples, James Anaya, A/HRC/21/47 (6 July 2012), at para. 49.

¹⁶ UN-REDD, FPIC Guidelines, (throughout the document).

application of FPIC. FPIC has been a requirement in the REDD+ agreements that Norway has signed with rainforest countries. FPIC is also a requirement under the UN-REDD+ program.

In the case of ART, we appreciate that TREES requires FPIC. It states that the planning, implementation, and evaluation of REDD+ actions have to be undertaken with the participation of indigenous peoples and local communities, or equivalent, through FPIC. We believe this formulation is good to ensure the application of FPIC and we encourage this to be maintained in the final version of the TREES.

Some countries and regions have guidelines for the consultation with indigenous peoples; this is the case of Brazil where Rede de Cooperação Amazônica (RCA) has developed Guidelines for the application of FPIC in different Indigenous Peoples territories. When the state does not have guidelines or legislation for consultation with indigenous peoples, RFN recommends the elaboration of a “National FPIC Guidelines’ Plan”. This is already a requirement within the FCPF and the UN-REDD program¹⁷. The process should be led by the national or regional government in collaboration with indigenous peoples and other relevant stakeholders. The National FPIC Plan should include the activities that will require FPIC, and how FPIC will be applied in the REDD+ accounting area.¹⁸ Participants in TREES shall ensure that there is a process of public consultation and validation by stakeholders on the guidelines, and; formalize the guidelines by adopting the principle of FPIC in national legislation.¹⁹ Accordingly, we would like to recommend the following text under the chapter “12.4.4 Cancun Safeguard D”:

To be added on page 48 of TREES:

THEME 4.2. Promote adequate participatory procedures for the meaningful participation of indigenous peoples and local communities, or equivalent

Outcome Indicator: Planning, coordination, implementation, and evaluation of REDD+ actions were, where relevant, undertaken with the participation of indigenous peoples and local communities, or equivalent, through which FPIC, in accordance with relevant international and/or domestic legal framework, was given. When the TREES participant does not have guidelines for consultation with indigenous peoples, ART recommends the elaboration of a National or Regional FPIC Guidelines’ Plan. The FPIC Guidelines’ Plan should include the activities that will require FPIC.

7. Feedback and Grievance Redress Mechanism (GRM) for REDD+ under TREES

Although TREES has a “Complaints and Appeals” mechanism, we believe TRESS should also have a Feedback mechanism. A Feedback mechanism will allow ART to improve the program and avoid complaints.

A Feedback mechanism is not a requirement in the Cancun safeguards, but we believe TREES should still have it. This should be seen in relation to our comment regarding the participation of civil society

¹⁷ FCPF, UNREDD R-PP Template, Version 6 (April 4, 2012) http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=6953&Itemid=53

FCPF and UN-REDD Programme, Guidelines on Stakeholder Engagement in REDD+ Readiness with a focus on the Participation of indigenous peoples and Other Forest-Dependent Communities (April 20, 2012) (hereinafter Guidelines on Stakeholder Engagement), at 7.

¹⁸ UN-REDD programme, *Guidelines on Free, Prior and Informed Consent (FPIC)* (Geneva: UNREDD programme, FAO, UNEP, and UNDP, 2013) (hereinafter FPIC Guidelines), at 24.

¹⁹ Ibid at 23.

in ART, with no possibility to provide inputs prior to board approval. The UN-REDD Program and the Forest Carbon Partnership Facility (FCPF) recommends the developments of mechanism that includes both feedback and complaints²⁰.

To be included on page 55 of TREES:

16. Complaints, appeals and feedback

[...]

16.3 Feedback

Feedback to the mechanism on ART's policies and procedures can be sent to the ART Secretariat represented by Winrock International anytime at REDD@Winrock.org. A number will be assigned to each case and promptly response regarding any further procedures will be provided to the sender of the communication.

8. Appeals and human rights violations

In the case of human rights violations, it is always possible for the applicant to bring claims in front of a national or an international court. Accordingly, we would like to suggest the following addition under the chapter 16.2 "Appeals" to avoid confusion among the TREES participants and civil society.

To be added on page 55 of TREES:

16.2 Appeals

iii. The decision reached by the committee shall be communicated via written response to the TREES Participant or stakeholder. Any decision reached by the committee shall be final, except in the case of human rights violations where claims can be brought both to national or international courts.

9. Verification of information in the process for initial registration

The ART cycle relies mainly on a desktop review of the documentation submitted by the TREES participant. We would like to recommend the inclusion of visits to the ground and interviews as measures for the verification of information provided to ART. Visits and interviews are already mechanisms for verification in other REDD+ financial institutions such as the FCPF. Thus, we would like to suggest the following text:

To be added on page 16 of TREES:

2.5. Timeline and deadlines

²⁰ "Joint FCPF/UN-REDD Programme Guidance Note for REDD+ Countries: Establishing and Strengthening Grievance Redress Mechanisms", 2015. Available at : <https://www.unredd.net/documents/global-programme-191/grievance-and-compliance-1455/national-grievance-mechanisms-3390/14201-joint-fcpfun-redd-guidance-note-for-redd-countries-establishing-and-strengthening-grievance-redress-mechanisms-1.html?path=global-programme-191/grievance-and-compliance-1455/national-grievance-mechanisms-3390>

Proposed TREES Participants may submit the TREES Concept at any time. The Secretariat shall acknowledge receipt of the documentation. The Secretariat will then conduct a desktop review of the TREES Concept. This desktop review can be complemented with visits to the ground, interview with indigenous peoples, local communities and other relevant stakeholders to verify the information provided by the participant.

10. Leakages between neighboring countries

Currently, there is no measure in TREES to address leakage of CO₂ emissions among countries. ART could consider developing incentives for neighboring countries to present collective strategies to avoid regional leakages of emissions. One idea could be to tag credits coming from accounting areas covering more than one country as “Neighboring Countries credits”. Countries meeting this requirement could have their credits tagged as such to allow greater visibility to the market and buyers, in the same way TREES is planning to do with credits coming from HFLD countries. We encourage the ART Board to design mechanisms to enhance the protection of intact forest landscapes.

RFN contact

For more information, please contact Head of policy, Anders Haug Larsen, andershl@rainforest.no.