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May 19, 2010

## Re: Emerging Accountability Gap at FCPF Creates Legal and Reputational Risk

Dear Participants Committee Members:

The World Bank's Forest Carbon Partnership Facility (FCPF) is currently considering proposals to allow multiple delivery partners (MDPs) - currently the three regional development banks and three UN agencies (UNEP, UNDP and FAO) - to implement FCPF readiness grants in countries where the World Bank is unable or unwilling to engage the government in forest sector reform. The FCPF agreed to establish a Task Force to develop a common approach to social and environmental safeguards for the provision of readiness support for REDD countries.<sup>1</sup> However, the current proposals for a common approach represent a potentially significant weakening of safeguards, provide for no independent accountability mechanism and do not ensure the necessary supervision and monitoring of funds.

Activities supported by the FCPF will affect the land, livelihood and cultural survival of indigenous peoples and forest dependent communities. The potential for adverse social and environmental impacts in REDD finance is significant. While the FCPF is providing relatively small amounts of money, and the readiness process is conceived of as mostly strategic planning, important precedents are being set at the FCPF. Robust risk management is therefore essential to the success of the FCPF.

An effective approach to risk management entails strong safeguards as well as independent and accessible accountability mechanisms, along with effective supervision and monitoring of results. A 2010 report by the World Bank's Independent Evaluation Group found that "quality-at-entry and careful supervision are the WBG's main mechanisms to ensure successful outcomes."<sup>2</sup> The current approach to MDPs however risks creating a significant accountability gap, undermining the FCPF's objective to test robust, efficient approaches to REDD, and creates an additional challenge to effective implementation of REDD+ financing.

The current proposal to allow MDPs presents several areas of serious concern:

**Weakened Safeguards.** The FCPF Charter currently requires that the facility "comply with the World Bank's Operational Policies and Procedures...and applicable international obligations" (Article 3.1). All potential delivery partners must comply with the core set of FCPF requirements<sup>3</sup> as well as their own fiduciary framework, policies, guidelines and procedures. All delivery partners must achieve "substantial

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<sup>1</sup> In a resolution on piloting Multiple Delivery Partners, the FCPF agreed to establish a Task Force to develop a common approach for the

<sup>2</sup> Independent Evaluation Group, World Bank. "Safeguards and Sustainability Policies in a Changing World." September 2010.

<sup>3</sup> The relevant FCPF requirements include: (i) Guidelines and generic terms of reference for Strategic Environmental and Social Assessments (SESAs) and Environmental and Social Management Frameworks (ESMFs), as set forth in the FCPF's Readiness Preparation Proposal (R-PP) Template; (ii) FCPF Guidelines on Stakeholder Engagement in REDD+ Readiness preparation; (iii) FCPF Guidance on Disclosure of Information; and (iv) Guidelines contained in the FCPF R-PP Template for establishing grievance and redress mechanisms at the national level.

equivalence” with World Bank’s environmental and social safeguard policies.<sup>4</sup> Instead of determining substantial equivalence based on World Bank policies and procedures and identifying gap-filling measures where policies were not substantially equivalent, the task force proposed that the so-called “material elements” taken from WB OP 4.00 were a sufficient benchmark, or removed policy areas in their entirety, as has already happened with Access to Information and has been proposed for accountability, grievance and redress mechanisms. OP 4.00 operational principles are merely summaries that omit important requirements of the Bank’s policies and procedures. Moreover, World Bank legal counsel have stated from the beginning that the use of the term substantial equivalence in country systems projects is based on not only comparing policies, but on implementation capacity, so the task force is already cutting corners by not including the latter in its analysis.

If the task force does not make a good faith effort to establish real substantial equivalence with World Bank policies and procedures, including capacity to implement, and identify gap filling measures where there is not substantial equivalence, it will fail to carry out its mandate. There cannot be a continuous weakening of standards and narrowing of the scope without the process losing legitimacy.

**No Accountability Mechanism.** The draft common approach currently does not include an accountability mechanism, meaning that communities harmed by REDD+ projects have no assurance of recourse. To ensure efficacy under the common approach, potentially affected communities must have access to an international, independent, and enforceable accountability and redress mechanism, whose findings will be respected and acted upon by each delivery partner. While access to justice at the national level is a critical element of effective REDD policies and programs, it is also essential that international institutions can be held directly accountable when harm is done to those impacted by their programs and projects. (International institutions generally enjoy sovereign immunity in national courts and cannot be sued, even by governments).

If an institution does not currently have in place an accountability mechanism, they will not have demonstrated substantial equivalence with World Bank policies and procedures and cannot be an FCPF delivery partner.

**No Supervision.** The draft common approach does not adequately address the need for effective supervision of the use of FCPF funds. Effective supervision and monitoring are key pillars of achieving results and ensuring accountability. In the same evaluation of the WBG’s safeguard policies, the IEG noted that: “Supervision provides an opportunity to deal with unanticipated risks that arise during implementation.”<sup>5</sup>

At present, the “common approach” does not designate a single responsible party to determine substantial equivalence and to oversee implementation in accordance with the Charter and the common approach. Given that the common approach uses as its reference World Bank policies and procedures, and the World Bank fulfills the role of secretariat and funds manager for the FCPF, the World Bank is best placed to retain responsibility for the substantial equivalence determination and supervisory authority.

### **Recommendations:**

The FCPF is considering adopting the common approach as early as June, at the next meeting of its governing body. Management will report to the Board following adoption of the common approach and if a decision is taken about whether and how to fully operationalize the multiple delivery partner arrangement at the 10<sup>th</sup> Participants Committee meeting in November 2011, which will require an

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<sup>4</sup> FCPF “Common Approach to Environmental and Social Safeguards for Multiple Deliver Partners., Draft 3” April 8, 2011.

<sup>5</sup> Independent Evaluation Group, World Bank. “Safeguards and Sustainability Policies in a Changing World.” September 2010.

amendment to the FCPF Charter. Several issues must be resolved before the common approach is adopted or the charter is amended. The FCPF must ensure:

- Substantial equivalence with all relevant Bank policies and procedures including, supervision, accountability and redress mechanisms.
- Effective supervision of all FCPF funds, including the use of DP funds and the determination of substantial equivalence.

The World Bank and donors to the FCPF face substantial legal and reputational risks by agreeing to include delivery partners that do not have accountability mechanisms in place and cannot otherwise demonstrate the substantial equivalence of their safeguards and supervision policies. A correction in course to remedy this accountability gap is urgently needed if the FCPF is achieve its objectives.

Sincerely,

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Centro Alexander von Humboldt, Nicaragua

Center for International Environmental Law, US

Church World Service, US

Civic Response, Ghana

ClientEarth, UK

FERN, UK

Friends of the Earth Norway

Friends of the Earth US

Forest Management Trust, US

Forest Peoples Programme, UK

Global Witness, UK

Greenpeace International

Indigenous Environmental Network, US

Institute for Agriculture and Trade Policy (IATP), US

International Forum on Globalization, US

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National Forum for Advocacy (NAFAN), Nepal

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Pro Regenwald, Germany

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