

The Forest Carbon Partnership Facility:

Facilitating the weakening of indigenous peoples' rights to lands and resources

Briefing by the Forest Peoples Programme (FPP)

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**Forest Peoples
Programme**

1c Fosseway Business Centre, Stratford Road,
Moreton-in-Marsh GL56 9NQ, UK

tel: + +44 (0)1608 652893 fax: +44 (0)1608 652878
info@forestpeoples.org www.forestpeoples.org

Background

Over the course of the past two years the World Bank has been developing a range of initiatives aimed at cornering the 'market' in funding for new climate change-related activities. Currently on the table at the World Bank are the Climate Investment Fund, the Transformation Fund for Sustainable Development and the Forest Carbon Partnership Facility (FCPF) – among several others.

Such initiatives represent potentially billions of dollars in funding for activities related to the mitigation of global climate change and for adaptation to changing climatic conditions. Many people, including indigenous leaders in developing countries, question the logic of having a multilateral bank that has been involved in funding the drivers of deforestation and climate change (fossil fuel energy extraction, mining, industrial logging, industrial plantations, and infrastructure – including dams, roads, oil and gas pipelines and coastal developments) through its past and present lending. These critics have called on the Bank to cease funding for fossil fuel and to prevent deforestation stemming from its projects.

At the same time, the structure and design of the FCPF has been questioned by some NGOs and indigenous organisations who requested in late 2007 that the whole proposal be delayed until proper public consultation had taken place and until serious questions on rights, equity and accountability had been answered. Others reject outright the proposal and advise the Bank to keep its "hands off" indigenous peoples' forests.

Despite these calls for the Bank to shelve its plans or at least delay any formal launch, the World Bank went ahead with the public launching of the FCPF in Bali and is now continuing with its controversial FCPF plans, seeking to retroactively 'consult' with indigenous peoples.

The Forest Carbon Partnership Facility is different from the other proposals and funds in that it is a facility for exchanging money (trading carbon) formed from two separate financial mechanisms. The funds are intended to provide payments for 'reducing emissions from deforestation and forest degradation' (REDD), a climate change mitigation concept that has attracted strong criticism in the past and forms part of the current negotiations under the UNFCCC.¹

This briefing examines the planned architecture of this Facility and the process through which the Facility has been developed to date in order to highlight particular concerns and dangers that the Facility poses for indigenous peoples and other forest-dependent peoples. The (draft) Charter of the Facility is central to this briefing as it forms the foundational document on which the Facility will rest and outlines roles and responsibilities of the key players that the Bank has identified.

Key shortcomings that have emerged from close reading of the draft Charter and other informational documents include:

- neither the draft FCPF Charter nor the design of the FCPF provide for the protection of the rights of indigenous peoples, specifically the FCPF fails to provide for indigenous peoples full participation in the decisions that affect them, it fails to provide for their free, prior and informed consent for development activities impacting on them, and it fails to reference and comply with the UN Declaration on the Rights of Indigenous Peoples

¹ See, for instance, 'Seeing RED?' Tom Griffiths
http://www.forestpeoples.org/documents/ifi_igo/avoided_deforestation_red_jun07_eng.pdf

- the process of developing the FCPF has been marked by a near-total lack of consultation with the peoples most likely to be directly affected, including indigenous peoples
- the process and content of the FCPF strongly favours national governments and implies all control of forest lands rests with governments, ignoring the presence of traditional and customary rights
- the draft arrangements for the FCPF ensure that consultation – if and when it occurs – will continue to be required only once plans are already well-developed
- the draft proposals for ‘emission reduction programmes’ include a variety of areas of great concern to indigenous peoples, including expansion of protected area systems, expansion of plantations, strong emphasis on law enforcement and patrolling of lands and no mention of rights holders to forest lands
- participation in the governance arrangements of the Facility is limited to an ‘invitation only’ and no-voting role for indigenous peoples.

Key to understanding the way the Bank sees this Facility working is understanding the state-centric process that the Bank has used to develop the Facility to date. The timeline of events is provided below. Notable in this is that only *after* the launch of the Facility and *after* the drafting of a legal Charter for the Facility is the Bank now holding information meetings to share information about the Facility with indigenous peoples.

Timeline

2006–2007	Internal Bank discussions about climate change funding, including preliminary discussions on a proposed ‘Global Forest Partnership’ and the ‘Forest Carbon Partnership Facility’ as a funding mechanism for ‘Reduced Emissions from Deforestation and Forest Degradation’
July 18–20 2007	World Bank held “consultations” with European and International NGOs on the FCPF
September 2007	World Bank Board approves the FCPF
November 11 2007	NGO consultation held in Washington DC with very limited participation by indigenous peoples. A statement was released warning the Bank against further development of the Facility without widespread consultation and prior resolution of key rights and accountability issues.
November 12–13 2007	World Bank hosts a ‘design meeting’ with donor governments in Washington DC. NGO statement is read. ²

² NGO Statement on the World Bank’s Proposed Forest Carbon Partnership Facility (FCPF), 30 November
http://www.forestpeoples.org/documents/forest_issues/unfccc_bali_ngo_statement_nov07_eng.pdf

- December 2007 UNFCCC COP13, the FCPF is launched to widespread controversy. The International Forum of Indigenous Peoples on Climate Change releases a statement strongly rejecting the principle of payments for reduced emissions from deforestation and forest degradation proposed by the Bank.³ The Chair of the UN Permanent Forum on Indigenous Issues releases a statement highlighting the history of violation of the rights of indigenous peoples through forest strategies and policies such as those repeated in the FCPF.⁴
- January 2008 Meeting in Gland (Switzerland) between World Conservation Union (IUCN), Swiss Development Co-operation and the World Bank on FCPF and REDD policies and the linkages to Forest Law Enforcement (FLEG) policies. The meeting heard divergent views and the Bank failed to answer serious questions on rights and governance issues.⁵
- March 2008 Planned retroactive 'consultations' or information meetings for indigenous peoples in three continents. These meetings will be held in **Kathmandu (February 27–28)**, **Mexico City (March 5–6)** and **Bujumbura (March 13–14)**.

Despite the fact that the FCPF was launched in Bali in 2007, the Charter (the foundational legal document of the Facility) remains in draft form. This Charter will be up for discussion in the information meetings that the Bank will be holding in February and March 2008.

At this stage, however, there are disturbing signs that the Bank plans to finalise the Charter BEFORE it concludes its forthcoming meetings with indigenous peoples.

³ The International Forum of Indigenous Peoples on Climate Change (IFIPCC) Statement to the 13th Session of Conference of the Parties to the UNFCCC SBSTA 27, agenda item 5/REDD
http://www.forestpeoples.org/documents/forest_issues/unfccc_bali_ifipcc_statement_redd_nov07_eng.shtml

⁴ Victoria Tauli-Corpuz, Chair, UN Permanent Forum on Indigenous Issues, Grand Hyatt Hotel, Bali, Indonesia, 11 December 2007, *Statement on the Announcement of the Forest Carbon Partnership Facility*. Available at

http://www.forestpeoples.org/documents/forest_issues/unpfii_statement_fcpf_dec07_eng.pdf

⁵ http://www.fern.org/media/documents/document_4109_4111.htm

What is the Forest Carbon Partnership Facility?

The Forest Carbon Partnership Facility (FCPF) of the World Bank was launched in Bali during the 13th COP of the UNFCCC.⁶ Prior to this launch, a concept note regarding the design and objectives of the Facility was produced by the Bank, with a limited circulation.⁷ Just prior to the launch an 'information memorandum' available on the FCPF website provided the proposed draft text for the Charter of the FCPF and further publicity documents are emerging in early 2008.⁸

The FCPF is being promoted by the World Bank to governments as an avenue of funding – a new financial mechanism – to fund so-called “Reduced Emissions from Deforestation and Degradation (REDD)”. The Bank is proposing that the Facility be funded from market sources (carbon trading) and non-market sources, including funds from bilateral development agencies, public finance institutions, the International Finance Corporation, the Global Environment Facility and private foundations. However, other than seed money for the Facility Carbon Fund (see below) the public funds would be used primarily for “readiness” activities to pave the way for REDD financed through the carbon market.

Structurally the Facility would have two funding mechanisms: a 'readiness fund' and a 'carbon fund'. The purpose of the 'readiness fund' is to provide financial support to countries to prepare them to begin trading avoided carbon emissions, and the 'carbon fund' would administer payments to countries who are considered 'ready' to trade in offset emissions.

The Facility aims to have USD 300 million raised from its various potential donors, and provide USD 100 million of this through the 'Readiness Fund' and the remaining USD 200 million through the Carbon Fund. However the Bank plans to have the Facility operating once the minimum levels of required funds are obtained in the Readiness Fund – this level has been set at USD 20 million. The Carbon Fund would come into operation once its capital reached USD 40 million from donors.

Structure of the Facility

Participants in the Facility:

Three types of participants are recognized by the Facility, namely: REDD country participants, donor participants and carbon fund participants.

REDD country participants – are countries (ie governments) which apply to the Readiness Fund and develop their required 'REDD strategy', monitoring system and baselines.

Donor participants – are any country, agency or institution that provides at least USD 5 million to either of the two trust funds in the Facility.

Carbon fund participants – are any company, institution, agency or country that enters a Carbon Partnership Agreement with the fund, meaning that they enter into a payment scheme for reduced emissions. Each carbon fund participant must provide a minimum of USD 5 million to the Carbon fund.

⁶ <http://carbonfinance.org/Router.cfm?Page=FCPF&FID=34267&ItemID=34267>

⁷ Forest Carbon Partnership Facility: Concept Note, March 2007; *Non-Paper on the Forest Carbon Partnership Facility – Chair's summary of the Berlin Workshop* Discussions Federal Ministry of Economic Cooperation and Development and Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, G8, April 2007

⁸ <http://carbonfinance.org>

Proposed Governance Structure:

The importance of the definition of 'participant' in the Facility becomes particularly important when the governance arrangements are provided. The Facility is proposed to have:

- (a) A Participants Assembly;
- (b) A Participants Committee;
- (c) A Carbon Fund Participants Committee;
- (d) One or more Ad Hoc Technical Advisory Panels;
- (e) A Facility Management Unit; and
- (f) Trustee of the Readiness Fund and Trustee of the Carbon Fund⁹.

The **Participant Assembly** is the oversight body for the Facility, meeting once a year to review the work of the Facility. The attendees of this Assembly are the participants in the facility, namely REDD countries, donors and participants in the Carbon Fund. The Assembly may review some decisions of the Participant Committee (although not all) and may overturn Committee decisions with a two-thirds vote (see FCPF Charter for details). Other people (representatives of NGOs, private sector companies, forest-dependent peoples and indigenous peoples) *may* be invited to the Assembly meetings on request of the Facility Management Unit as observers. Voting rights are allocated one vote = one participant.

The **Participant Committee** is a more managerial body within the Facility, with no more than twenty members (ten from participant countries, and ten from donors and carbon fund participants collectively). The Committee may be established with less members than the full twenty, but will always be evenly spread between country participants on the one hand and donor/carbon fund participants on the other. The Committee has responsibility for establishing any Ad Hoc Technical Advisory Panels that might be needed, and is proposed to meet at least twice a year. Voting is a one vote = one participant arrangement.

There is no allowance for empowered participation of any other group except the defined groups of participants as defined above. However it is proposed in the draft charter that there will be observer status with no voting rights given to "One representative from Relevant International Organizations, one representative from Relevant Non-Governmental Organizations, one representative from Forest-Dependent Indigenous Peoples and Forest Dwellers and one representative from Relevant Private Sector Entities"¹⁰. The Bank proposes that each of these groups will establish their own process for nominating their observer.

The **Carbon Fund Participant Committee** may be established by the Trustee of the Carbon Fund. It is proposed to provide guidance on carbon finance regulation. If it has not yet been established then meetings between the Carbon Fund Participants held in an ad hoc manner can provide advice instead. Voting is allocated based on the size of the contributions made to the Fund (1 vote = USD 1 million).

The **Ad Hoc Technical Advisory Panel(s)** can be established by the Participant Committee, by the Carbon Fund Participant Committee or by the Facility Management Unit. They are constituted to provide impartial advice as required.

The **Facility Management Unit (FMU)** is made up of Bank staff and consultants and provides the day-to-day management for the Facility. It conducts the initial review of applications to the Readiness Fund and oversees the administration of grant agreements and other daily management tasks as required. It is tasked with coordinating with any other

⁹ Forest Carbon Partnership Facility, Information Memorandum, DRAFT, December 3, 2007. p 20

¹⁰ Forest Carbon Partnership Facility, Information Memorandum, DRAFT, December 3, 2007. p 27

relevant international bodies, and providing secretarial services to all the committees of the Facility. It also drafts the terms for, and selects members of, Technical Advisory Panels.

It is also entrusted with all oversight regarding safeguard application where relevant – to ensure that activities funded are in alignment with the policies and practices of the World Bank Group. Further details of the full range of tasks of the Facility Management Unit can be found in the Charter of the FCPF.

The **Trustees** of each of the funds are empowered with regular trustee duties over the funds as described in the Charter.

A key concern with the proposed governance arrangements is that they allow input from indigenous peoples only on invitation and only on a no-voting-rights basis. Further, oversight for safeguard application is entrusted to the secretariat (the FMU) and there is no allowance for a grievance or redress mechanism for indigenous peoples.

As mentioned, there are two funds contained within the proposed Facility, the 'readiness fund' and the 'carbon fund'. These two funds are briefly described below.

The 'Readiness Fund'

The 'readiness fund' is the first part of the Facility that the Bank plans to bring on line, and it is the part of the Facility for which the more advanced plans have already been prepared. The objectives of the 'readiness fund' have been defined by the Bank as:

1. Designing and implementing accurate measurements, monitoring and verification systems to enable countries to report on emissions from deforestation and eventually forest degradation;
2. Adopting a national REDD Strategy that reflects each country's priorities and is mindful of its constraints; and
3. Developing a national reference scenario for REDD¹¹.

Thus countries would be supported through the readiness fund to establish a baseline (the 'reference scenario'), create a strategy for REDD at a national level and then design and create a monitoring system for the strategy.

The current proposal for the Facility indicates that Readiness Fund activities will not be fully covered by the Bank's mandatory social or environmental safeguard policies, nor will they require detailed assessments as per its usual social and environmental management systems.¹²

Instead, for the three steps associated with 'readiness', the Bank proposes that the applicant country would be responsible for assessing any social or environmental risks in a 'simplified assessment'. It is notable that there is no reference in the safeguard section of the proposal to existing safeguards developed by the Bank (such as Operational Policy 4.10 on Indigenous Peoples) nor is there a responsibility to conduct or oversee such assessments on the side of the Bank. The 'readiness fund' proposal likewise discusses the role of 'consultation' in the

¹¹ Forest Carbon Partnership Facility, Information Memorandum, DRAFT, December 3, 2007. p 16

¹² Ibid p. 22

development of national REDD strategies. Indigenous peoples are referenced as one of the stakeholders who may be consulted only “after thorough analysis of the people who may be affected, analysis of how they can be included in the process in a meaningful and timely way, and included in the implementation of any strategy.”¹³

As the proposal currently stands for the initial phased implementation of the Facility, the Readiness Fund, there are no enforceable safeguards outside of the short paragraphs contained in the proposal.

Another key concern is that the draft Charter makes no commitment to uphold human rights in Facility operations and does not hold the Bank to meeting standards in the UN Declaration on the Rights of Indigenous Peoples. The existing draft FCPF Charter and its annex on Readiness Criteria reveal that the Bank’s binding safeguard standards will not apply to much of its strategy and policy making work relating to forests in participating countries (this has been publicly confirmed by the Bank’s legal department).

The Carbon Fund

The Carbon Fund is seen as the payment mechanism for ‘reduced emissions’ and many details of what the Fund would pay money for are left blank at the moment, for clarification later when participant countries begin to apply for money for having ‘reduced emissions’ in a demonstrable way. These applications by participant countries are referred to as ‘ER Programs’ – or Emission Reduction Programmes. The Bank sees four main areas in which such programmes could be proposed:

1. General Economic Policies and Regulations (including taxation and law enforcement improvement)
2. Forest policies and regulations (including again taxation and forest law, governance and enforcement activities and expansion of protected areas – also mentions land reform and land tenure issues)
3. Forest management (**including ‘reduced impact’ logging and reforestation through plantations**)
4. Rural development (including community development and ‘alternatives’ to swidden agriculture)¹⁴.

These programmes can be proposed at a national or sub-national level, but are the responsibility of the sovereign government to design and enforce. Only when the national government approves an alternative entity may a different organization enter into such a programme.

It is only once an Emissions Reduction (ER) Programme has been proposed and accepted that assessments required under the World Bank safeguards are fully required.¹⁵

¹³ Ibid

¹⁴ ibid p. 24-25

¹⁵ ibid. p. 30

Despite verbal statements by Bank staff that the FCPF will not finance industrial logging companies the Bank will not affirm this in writing and leaves the door open to finance for the timber industry.¹⁶

There are grave concerns that the Bank's FCPF plans to allow low impact logging and plantation development in the emission reduction programmes will mean business as usual for World Bank forestry sector interventions that have conventionally provided backing for large-scale industrial logging companies and plantation companies at the expense of indigenous peoples and the environment (see *Broken Promises* (2005): http://www.forestpeoples.org/publications/broken_promises_eng.shtml)

The draft Charter and the design of the FCPF to date (including both the readiness fund and the carbon fund) fail to meet even existing standards on protections for the rights of indigenous peoples. Not only has the Facility been developed largely without the involvement of indigenous peoples, there is insufficient allowance for the involvement of indigenous peoples in future planning or monitoring. At a minimum the Charter should confirm and uphold the right of indigenous peoples to full participation in decisions affecting them, as has been upheld by the Convention on Biological Diversity.¹⁷

Further the Facility must recognize indigenous peoples as rights holders and open avenues for consultation, mediation and ultimately grievance mechanisms to ensure that the Facility does not become a tool for the alienation of indigenous peoples from their lands and territories.

¹⁶ World Bank Letter to Global Witness, 20th February 2008. On possible international support for the logging industry, see also controversial press release on forests and climate change issued by logging interests at: <http://www.globeinternational.org/content.php?id=2:8:0:748:0>

¹⁷ See the language of the Convention on Biological Diversity in relation to protected areas. Decision VII/28 Protected Areas, at para. 22. In, *Decisions Adopted by the Conference of Parties to the Convention on Biological Diversity at its Seventh Meeting*. UNEP/CDB/COP/7/21, pp. 344–365.