

# A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards

A Review of Relevant International Law



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## Foreword

I welcome the publication of this report from ClientEarth, ‘A Guide to Understanding and Implementing UNFCCC REDD+ Safeguards’. It will provide useful and timely guidance to UNFCCC negotiators, national and local policy makers, local community and indigenous peoples’ representatives, civil society, donors and REDD+ practitioners in general. This Guide will also bring clarity and contribute to the design and effective implementation of country safeguards systems, moving the REDD+ safeguards dialogue from a high-level international discussion to implementation actions on the ground. It provides an excellent legal analysis of the substantive obligations contained in the UNFCCC REDD+ Safeguards, and identifies potential implementation measures to ensure their effective implementation.

As a leader in the UNFCCC negotiations of REDD+ and a REDD+ practitioner in the Philippines, I cannot overstate the importance of the authors’ analysis, in particular, as we move forward to define global rules on REDD+ finance, non-carbon benefits, and monitoring and reporting of the UNFCCC REDD+ Safeguards. Through this analysis, the authors offer an opportunity to ensure that work on the ground in the implementation of REDD+ Safeguards promotes transparency and accountability, and provide greater weight to considerations such as effective public participation, respect for indigenous peoples’ rights, good governance, the conservation of biological diversity, and environmental integrity.

As a champion of safeguards in the REDD+ negotiations, and a long time advocate for indigenous peoples and local communities’ rights, I am truly happy to see the authors of this report demonstrate that implementation of REDD+ country safeguard systems can and must live up to internationally accepted standards for human rights and environmental protection. By following this framework, countries can minimize risks posed by REDD+ activities, and maximise potential for realising REDD+ benefits—both carbon and non-carbon.

A robust analysis like the one presented in this report is essential for us to learn from and improve upon with regards to our management of forests, and we can expect this work will help promote positive outcomes beyond REDD+.

**Tony La Viña**

Dean

Ateneo School of Government

Philippine Negotiator for REDD+

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### Disclaimer

The contents of this report are a result of the analysis of the authors, and do not necessarily represent the views of ClientEarth or reflect the UK Government's official policies.

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## List of Acronyms

AHTEG	Ad hoc Technical Expert Group
CAS	ILO Committee on the Application of Standards
CBD	Convention on Biological Diversity
CEACR	ILO Committee of Experts on the Application of Convention and Recommendations
CERD	Convention on the Elimination of all forms of Racial Discrimination
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CGC	Compañía General de Combustibles
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on Migratory Species
COP	Conference of the Parties
COSP	Conference of States Parties to the Convention
CSICH	UNESCO Convention for the Safeguarding of Intangible Cultural Heritage
EU	European Union
FAO	Food and Agricultural Organization
FCPF	Forest Carbon Partnership Facility
FLEGT	Forest Law Enforcement, Governance and Trade
FPIC	Free, Prior and Informed Consent
FRA	European Agency for Fundamental Rights
GHG	Greenhouse gas
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILO	International Labour Organization
IPCC	Intergovernmental Panel on Climate Change
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
ISP	Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development
ITTA	International Tropical Timber Agreement
MDGs	Millennium Development Goals
MEA	Millennium Ecosystem Assessment
MESICIC	Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption
MRV	Monitoring, reporting and verification
NBSAP	National Biodiversity Strategy and Action Plan
NAAEC	North American Agreement on Environmental Cooperation
NFP	National Forest Programme
NGO	Non-Governmental Organisation
OAS	Organization of American States
OSCE	Organization for Security and Co-operation in Europe
PEFC	Programme for the Endorsement of Forest Certification
RAMSAR	Convention on Wetlands of International Importance especially as Waterfowl Habitat
REDD+	Reducing Emission from Deforestation and forest Degradation
REL	Forest reference emission levels
RL	Forest reference levels
SADC	South African Development Community
SPAW	Protocol concerning Specially Protected Areas and Wildlife



SIS	Safeguard Information System
TORs	Terms Of Reference
UDHR	United Nations Declaration on Human Rights
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCCD	United Nations Convention to Combat Desertification
UNCED	United Nations Conference on Environment and Development
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UN-REDD	United Nations Reducing Emissions from Deforestation and Forest Degradation Programme Programme
VERs	Verified Emission Reductions
WHC	World Heritage Convention
WTO	World Trade Organization

## Terms and Definitions

### Complaints and Grievance Mechanisms

In Part I and II of this Guidance Document we refer to complaints and grievance mechanisms as those that come into play at the national, sub-national or local level when there is a need to settle disputes between actors. Such processes tend to come in the form of negotiation, mediation, arbitration, or through use of judicial or administrative systems.

In Part III of this Guidance Document we refer to complaints or grievance mechanisms as those provided by international conventions. These refer to quasi-judicial processes for receiving and facilitating resolution of queries and grievances from affected rights holders.

### Compliance System

We understand a Country Safeguard System (CSS) requires an adequate and verifiable compliance system, which can ensure the accountability and effectiveness of the CSS. The compliance component of a CSS is comprised of effective and transparent monitoring and reporting systems; complaints and grievance mechanisms; and non-compliance mechanisms.

### Country Safeguard System (CSS)

We define a REDD+ country safeguard system (CSS) to be a system that allows a country to define how safeguards are to be dealt with in a cohesive manner, and ensure all REDD+ actions and activities within a country are covered by safeguard policies that apply across the board, regardless of the funding source or initiative.

The CSS will need to define substantively the safeguards that are to apply in the country; the measures to support their effective implementation; and the compliance aspects of the system that may allow for transparent monitoring and reporting, addressing grievances and addressing any failure to implement the requirements set forth in the safeguards.

### REDD+

An international climate mitigation strategy that aims to reduce emissions from deforestation and forest degradation in tropical forest countries, support the role of conservation, sustainable management of forests and enhancement of forest carbon stocks.

### REDD+ Activities

In this Guidance Document, the term REDD+ activities refers to those included in paragraph 70 of decision 1/CP.16.

### REDD+ Actions

We refer to REDD+ actions as the various national and or sub-national measures to achieve REDD+. These include national strategies, capacity building programs, enacting laws and policies, among others.

## **REDD+ Countries**

Since no international mechanism for REDD+ has been finalized, there is no official list of REDD+ countries. We use the term REDD+ countries to refer to countries that could be eligible, and/or are working towards, participation in REDD+ under the UNFCCC, once it has been finalized.

## **Safeguard Implementation Measures**

Safeguard implementation measures refer to those that seek to operationalize the UNFCCC REDD+ safeguards. Relevant measures include enacting a normative framework (policies, laws, and regulations) that operationalize the safeguards; appropriate processes and procedures to support the normative framework; and enhancing/creating institutions with a mandate to implement the measures.

## **Non-compliance Mechanisms**

Non-compliance mechanisms come into play when actors (individuals/institutions) do not comply (fully or partially) with the laws, regulations, and policies that make up part of their country safeguard system (CSS). This is different from complaints and grievance mechanisms, as non-compliance mechanisms are meant to address any failure to implement the requirements set forth in the safeguards. Non-compliance mechanisms could be administrative or judicial in nature, but should aim to provide a legal avenue for addressing issues of non-compliance.

## **Safeguards**

There is no universally agreed upon definition of 'safeguards'. However, 'safeguards' have been traditionally used by financial institutions such as the World Bank as measures to prevent and mitigate undue harm from investment or development activities.<sup>1</sup> In this case, safeguards are most commonly associated with a 'risk-based approach', which involves pricing and prioritizing risks according to a logic of economically efficient 'risk management'.<sup>2</sup> A risk management process aims to insure against the risk of a certain type of activity triggering an initiative's safeguard accountability mechanisms.<sup>3</sup>

In contrast, a 'rights-based approach' to safeguards prioritizes the protection of the individual rights of those affected.<sup>4</sup>

This report uses the term 'safeguard' to refer to the UNFCCC REDD+ Safeguards.

## **Safeguard Information System (SIS)**

Our understanding is that a SIS is a national system whereby REDD+ countries report to their domestic stakeholders, the international community and donors on how they are meeting the requirements embodied in the UNFCCC REDD+ Safeguards.

## **UNFCCC REDD+ Safeguards**

In this Guidance Document, the term 'UNFCCC REDD+ Safeguards' refers to paragraph 2 of Appendix I to decision 1/CP.16 (the Cancun Agreement). Our view is that the wording of the UNFCCC REDD+ Safeguards reflects obligations created by international instruments, many of which grant substantive rights (including the rights of indigenous peoples and local communities). The UNFCCC REDD+ Safeguards differ from 'traditional' safeguards as they are not linked to a financial institution, they do not include a set of safeguard implementation measures, and they do not focus on

defining acceptable and unacceptable performance, but instead require activities to be undertaken in accordance with a set of principles or criteria that define a minimum threshold and lead to social and environmental benefits. This would suggest the UNFCCC REDD+ Safeguards provide a rights-based approach rather than a risk based one.

Considering that implementation of REDD+ activities 'should be carried out in accordance with the UNFCCC REDD+ safeguards', which also 'should be promoted and supported' when implementing REDD+ actions and activities, we conclude that any actor involved in the implementation of REDD+ actions and activities is obligated to comply with and implement the UNFCCC REDD+ Safeguards, including national governments, bilateral donors, civil society, multilateral financial institutions and the private sector.

## Executive Summary

REDD+ is an international climate mitigation strategy that aims to reduce emissions from deforestation and forest degradation in tropical forest countries, support the role of conservation, sustainable management of forests and enhancement of forest carbon stocks. REDD+ has the overall objective of contributing to the reduction of global carbon emissions from deforestation by improving forest governance at the country level, and by providing financial incentives for halting or reversing forest lost.

In December 2010, the Sixteenth Conference of the Parties (COP 16) to the United Nations Convention on Climate Change (UNFCCC) in Cancun agreed to a set of seven safeguards to support REDD+ implementation (hereafter referred to as the UNFCCC REDD+ Safeguards). The UNFCCC REDD+ Safeguards aim not only to mitigate the risk of adverse social and environmental impacts of REDD+ activities, but also to actively promote benefits beyond carbon emission reductions, such as increased land tenure security, enhancing biodiversity, improving forest governance and empowering relevant stakeholders by ensuring their full and effective participation. The UNFCCC REDD+ Safeguards outline a global framework of social, environmental and governance principles according to which REDD+ actions and activities must be implemented. By following this framework, countries can minimize risks posed by REDD+ activities, and maximise potential for realising REDD+ benefits—both carbon and non-carbon.

Actors designing, funding and implementing REDD+ actions and activities will need to find a way to ensure the effective implementation, monitoring and reporting of the UNFCCC REDD+ Safeguards. One option is to design and implement a Country Safeguard System (CSS). A CSS offers an opportunity to define how safeguards are to be dealt with in a cohesive manner, and ensure all REDD+ actions and activities within a country are covered by safeguard policies that apply across the board, regardless of the funding source or initiative. This will help maximize their effectiveness, lead to reducing transactional costs, and avoid overlaps or duplication of activities. Furthermore, and most importantly, the development of a CSS could lead to considerable forest governance improvements, especially if it lives up to internationally accepted standards for human rights and environmental protection.

In order to be able to construct a CSS that ensures that the UNFCCC REDD+ Safeguards are addressed and respected, countries need to develop an understanding of the content or elements that make up the UNFCCC REDD+ Safeguards. At present there is a lack of substantive legal guidance to assist countries in understanding and implementing the UNFCCC REDD+ Safeguards, or to assist in the development of a CSS.

### **Guidance for Implementing UNFCCC REDD+ Safeguards and Development of a CSS**

This Guide aims to assist in understanding and implementing the UNFCCC REDD+ Safeguards, and contribute to the design and development of a CSS. In particular, the substantive guidance provided in this report contributes to the development of the three main components of a CSS:

- (1) adoption of national safeguards;
- (2) safeguard implementation measures; and
- (3) compliance measures.

To be able to adopt safeguards at the national level that are consistent with the UNFCCC REDD+ Safeguards, a clear understanding of the concepts and objectives encompassed in the UNFCCC REDD+ Safeguards is required. Conceptually, the language and content of the UNFCCC REDD+ Safeguards refer to measures already regulated by provisions of various international instruments. Therefore, in order to be able to consistently implement UNFCCC REDD+ Safeguards in conformity with international legal obligations, a better understanding of relevant and applicable international law is necessary. The interpretative analysis provided in Part I of this Guide can provide clarity over the concepts of the UNFCCC REDD+ Safeguards, as they are informed by these existing international obligations.

The recognition or adoption of safeguards is not enough to ensure that the UNFCCC REDD+ Safeguards are adequately addressed and respected. It is therefore critical to define and implement specific measures to operationalize them. Part II of this Guidance Document aims to assist in understanding and identifying potential implementation measures. Necessary implementation measures include a normative framework (laws, policies, and regulations), the existence of appropriate processes and procedures to support the normative framework, and institutions with a mandate to implement the measures.

In addition to the above, countries will need to develop a system for providing information on how UNFCCC REDD+ Safeguards are addressed and respected during the implementation of REDD+ actions and activities (also known as a Safeguards Information System, or SIS), and measures to address compliance issues. Part III of this report identifies the most relevant monitoring, reporting, complaints and grievance mechanisms under relevant and applicable international law. Monitoring and reporting mechanisms from various relevant international conventions to which participating REDD+ countries are Parties can be of particular usefulness for developing a CSS and SIS by building on existing systems.

This report is the result of an interpretative legal analysis of over 90 international and regional conventions, non-binding declarations, voluntary mechanisms and regional case law. Each of these instruments was selected by their thematic and/or conceptual similarity with the UNFCCC REDD+ safeguards language and objectives.

A brief summary of the analysis of the UNFCCC REDD+ Safeguards includes the following conclusions:

UNFCCC REDD+ Safeguard (a) requires countries to ensure that their REDD+ actions are consistent with their national forest programmes, as well as relevant international conventions and agreements. UNFCCC REDD+ Safeguard (a) does not imply any new commitments. On the contrary, it merely reaffirms already existing international obligations. By ensuring that REDD+ actions complement or are consistent with these relevant international instruments, REDD+ countries have the opportunity to implement the UNFCCC REDD+ Safeguards by building upon their existing domestic systems developed to comply with those international conventions and agreements. REDD+ countries will need to reassess and potentially strengthen their domestic systems by enacting and/or strengthening laws, policies and institutions to ensure that the UNFCCC REDD+ Safeguards are being addressed and respected.

UNFCCC REDD+ Safeguard (b) focuses on national forest governance structures, particularly with regards to transparency and effectiveness.

‘Transparent’ governance structures should: 1) provide a right of access to information, especially to vulnerable groups such as indigenous peoples and local forest communities; 2) ensure that in-

stitutions are capable of maintaining accountability and preventing corruption, and can guarantee access and distribution of information to members of the public on pertinent matters; and 3) provide information to promote public awareness of the right of access to information, and the public's ability to exercise that right.

Characteristics of 'effective' governance structures generally include: 1) enhancement of laws and regulations relating to governance and sustainable use of forests; 2) public participation in forest-related decision-making; 3) clear rights of ownership and possession (land tenure); 4) equitable benefit sharing; and 5) enforcement of those laws. It also means having adequate institutions and administrative frameworks, including judicial or administrative procedures providing for an effective remedy for infringement of rights, especially for indigenous peoples. Effective forest governance also requires preventing corruption, and providing adequate funds for forest protection and conservation. Furthermore, coordination is needed between sectors affecting forests, as well as integration of social and environmental considerations into decision-making processes.

UNFCCC REDD+ Safeguard (c) clearly focuses on the importance of recognising and respecting the rights of indigenous peoples and local communities. In this way, REDD+ actions and activities must be implemented in accordance with international law regarding indigenous peoples and local communities, and international human rights law. These rights apply both to the individual and the group as a whole, and include: 1) the right to equal enjoyment of internationally-recognised human rights; 2) respect and protection of rights regarding land tenure—including statutory, customary and traditional—and use of natural resources; 3) self-determination; 4) non-discrimination; 5) benefit-sharing; 6) participation, Free, Prior and Informed Consent (FPIC); and 7) respect for traditional knowledge.

UNFCCC REDD+ Safeguard (d) requires the full and effective participation of relevant stakeholders. In international legal instruments, full and effective participation is generally associated with the recognition and implementation of procedural rights (also known as access rights) such as access to information, participation and justice. In order to implement this safeguard, it will be necessary to create an enabling environment for individuals to practice their procedural rights. This includes: 1) identifying and notifying potentially affected persons, individuals and groups as early as possible; 2) active dissemination of pertinent information at all levels in a timely, culturally appropriate and accessible manner; 3) promotion, awareness-raising and capacity building for participation; 4) existence of mechanisms to ensure that views are taken into consideration in the decision making process; and 5) mechanisms to ensure access to justice for instances where participation is not enabled.

In this context, the term 'relevant stakeholder' is understood to include all members of the public potentially affected by a specific decision. Additionally, UNFCCC REDD+ Safeguard (d) specifically recognises indigenous peoples and local communities, and the need to deal with them as a separate relevant stakeholder, because they are more vulnerable to being left out of decision-making processes.

UNFCCC REDD+ Safeguard (e) aims to ensure environmental integrity throughout REDD+ implementation. According to this safeguard, REDD+ actions should be consistent with the conservation of natural forests and biological diversity. Specifically, REDD+ actions must not be used for the conversion of natural forests. Furthermore, protection of natural forests and their ecosystem services should be incentivised. Actions that contribute to the conservation of natural forest and biological diversity include: 1) identification, mapping and monitoring of natural forests and biodiversity; 2) regulation of biodiversity; 3) support for conservation research; 4) awareness-raising; and 5) integration of biodiversity concerns into other national sectors. REDD+ actions should also pro-

mote the enhancement of environmental and social benefits, such as environmental or ecosystem services and livelihoods.

UNFCCC REDD+ Safeguards (f) and (g) require REDD+ countries to take actions to address the risks of reversals, and to take actions to reduce displacement of emissions. Much of what makes up these safeguards is technical and REDD+ specific, and therefore they are not directly reflected in existing international obligations. However, there are many social and environmental measures that can assist in ensuring that leakage does not occur, and that reductions are long-lasting. Examples include: 1) promotion of sustainable use and management of forests; 2) responsible planning; 3) building awareness; 4) strengthening institutional governance and regulatory frameworks; and 5) ensuring participation and equitable sharing of sustainable benefits of REDD+. International cooperation in the implementation of these measures is also very important, since reductions in one country bordering another may result in transboundary leakage.



## Introduction

### Background and Context

Given that degradation and deforestation of the world's tropical forests are cumulatively responsible for 2,200 to 6,600 million metric tonnes of carbon dioxide equivalent (MtCO<sub>2</sub>e) per year, or about 4 to 14 percent of global emissions,<sup>5</sup> tackling the destruction of tropical forests is core to any concerted effort to combat climate change.

Reducing Emissions from Deforestation and Forest Degradation (REDD+) is an international climate policy that aims to contribute to the reduction of global carbon emissions by incentivising conservation, sustainable management of forests and the enhancement of forest carbon stocks in forest countries.<sup>6</sup>

REDD+ originates from a proposal by Papua New Guinea and Costa Rica for a mechanism to Reduce Emissions from Deforestation in Developing Countries presented at the Eleventh Conference of the Parties (COP 11) to the UN Framework Convention on Climate Change (UNFCCC) in Montreal, Canada. The proposal offered an opportunity to reduce global greenhouse gas (GHG) emissions while providing incentives to protect and conserve forests.<sup>7</sup> The Bali Action Plan recognised the proposal as a climate mitigation option, establishing the basis for negotiations on REDD+. This has been followed by further decisions in Cancun, Durban and Doha.<sup>8</sup>

#### A Need for REDD+ Safeguards

As REDD+ discussions progressed in the UNFCCC, it was recognised that implementation of REDD+ can pose significant environmental and social risks, as well as provide an opportunity to promote multiple benefits. Potential benefits include the promotion of biodiversity conservation and securing the provision of ecosystem services including water regulation, timber production, erosion control and the supply of non-timber forest products.<sup>9</sup> In addition, REDD+ can result in social benefits such as improvements in governance, livelihoods and clarification of land tenure.<sup>10</sup> The potential risks posed by REDD+ include, amongst others, appropriation of local communities and indigenous peoples' lands (involuntary displacement),<sup>11</sup> other human rights violations, and depletion of biodiversity.<sup>12</sup>

Failure to correctly address current national forest governance shortcomings, or mitigate the risk of adverse social effects of REDD+ actions and activities could potentially prevent REDD+ from achieving its long-term goal of sustainable reductions of GHG emissions from deforestation and forest degradation, or co-benefits.

To address these concerns and to effectively promote the multiple benefits REDD+ could achieve, the Parties to the UNFCCC have agreed on seven safeguards, hereinafter UNFCCC REDD+ Safeguards (see box 1).<sup>13</sup>

'Safeguards' is a term that can be traced to financial institutions such as the World Bank, where it refers to measures to prevent and mitigate undue harm from investment or development activities.<sup>14</sup> The World Bank's safeguards are a 'risk-based approach', which involves pricing and prioritizing risks according to a logic of economically efficient 'risk management'.<sup>15</sup> A risk management process aims to insure against the risk of a certain type of activity triggering an initiative's safeguard accountability mechanisms.<sup>16</sup>

In contrast, a ‘rights-based approach’ to safeguards prioritizes the protection of the individual rights of those affected.<sup>17</sup> The wording of the UNFCCC REDD+ Safeguards focuses on the obligations created by international instruments, many of which grant substantive rights (including the rights of indigenous peoples and local communities), rather than focus on financial conditionalities. This would suggest that the UNFCCC REDD+ Safeguards take a rights-based approach, rather than a risk based one. This interpretation leads to the conclusion that the UNFCCC REDD+ Safeguards go beyond merely ensuring that investments do no harm to vulnerable people and ecosystems, and require positive actions to operationalize the rights to which they refer, particularly in terms of indigenous peoples’ rights.

The UNFCCC REDD+ Safeguards also differ from traditional safeguards in that they do not focus on defining acceptable and unacceptable performance, but instead require improvements beyond a minimum threshold. In fact, the Cancun Agreement indicates the intention of the Parties that REDD+ activities should actively pursue benefits beyond carbon emission reductions, such as enhancing land tenure security, enhancing biodiversity and other ecosystem services, improving forest governance and empowering relevant stakeholders by ensuring participation, among other things.<sup>18</sup>

**Box 1: UNFCCC REDD+ Safeguards<sup>19</sup>**

- (a) Actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;
- (b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;
- (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;
- (d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in actions referred to in paragraphs 70 and 72 of this decision;<sup>20</sup>
- (e) Actions are consistent with the conservation of natural forest and biological diversity, ensuring that action referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits. (Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day.)
- (f) Actions to address the risks of reversals; and
- (g) Actions to reduce displacement of emissions.

The UNFCCC REDD+ Safeguards language and associated guidance constitute an international framework of social, environmental and governance principles, under which any REDD+ related activity should be implemented.<sup>21</sup> Following this framework, countries can both minimise risks posed by REDD+ activities, and go beyond risk minimisation, maximising the potential for realising REDD+ benefits—both carbon and non-carbon.

An integral piece of this framework is UNFCCC REDD+ Safeguard (a), which requires REDD+ activities to, *inter alia*, complement or be consistent with the relevant international instruments that REDD+ countries have signed, ratified, or otherwise agreed to. These instruments pertain not only to the environment, but also to human rights and indigenous peoples rights. Ensuring consistency with these relevant international instruments should not be seen as an additional requirement that REDD+ countries must fulfil to implement REDD+. Instead, it should be seen as a way of implementing existing international obligations to which countries have already committed themselves.

### **Responsibility for Implementing the UNFCCC REDD+ Safeguards and Safeguard Information Systems**

The Cancun Agreement states that REDD+ activities should be carried out in accordance with the UNFCCC REDD+ Safeguards, which should also be ‘promoted and supported’.<sup>22</sup> Considering the wording of this provision, a sensible interpretation seems to be that any actor involved in the implementation of REDD+ activities is obligated to comply with and implement the UNFCCC REDD+ Safeguards, including national governments, bilateral donors, civil society, multilateral financial institutions and the private sector.

Additionally, governments of countries undertaking REDD+ activities are responsible for reporting on how the UNFCCC REDD+ Safeguards are being addressed and respected, *during all phases* of REDD+, by providing information through a national Safeguard Information System (hereinafter SIS).<sup>23</sup>

### **Linking UNFCCC REDD+ Safeguards Implementation and Results-Based Payments**

A final and important consideration relates to results-based finance for REDD+ activities. The Durban decision links REDD+ finance with the effective implementation of the UNFCCC REDD+ Safeguards by stating that developing country Parties will only be able to “obtain and receive results-based finance” if they have a SIS in place.<sup>24</sup> Considering the wording of these provisions, our interpretation is that under a future UNFCCC mechanism for REDD+, any country involved in implementing REDD+ related activities will need to be able to demonstrate they have addressed and respected the UNFCCC REDD+ safeguards and related guidance/requirements.<sup>25</sup> Otherwise, these countries will be excluded from whatever emerges from the UNFCCC REDD+ negotiations.

### **Justification for this Guidance Document**

In light of the array of considerations highlighted above, it will be important for countries to take appropriate steps to ensure the effective implementation and reporting of the UNFCCC REDD+ Safeguards. One option countries might want to consider is the development of a Country Safeguard System (hereinafter referred to as CSS). A CSS would allow countries to define how safeguards are to be dealt with in a cohesive manner, and ensure that all REDD+ activities within their jurisdiction are covered by safeguard policies that apply across the board, regardless of the funding source or initiative. This will help maximize effectiveness of safeguards, contribute towards a reduction in transactional costs, and avoid overlaps or duplication of activities. Furthermore, and most importantly, the development of a CSS could lead to considerable forest governance improvements, especially if it lives up to internationally accepted standards for human rights and environmental protection.

In order to be able to construct a CSS that ensures that the UNFCCC REDD+ Safeguards are addressed and respected, countries need to develop an understanding of the content or elements that make up the UNFCCC REDD+ Safeguards. However, at present there is a lack of substantive legal guidance to assist countries in understanding and implementing the UNFCCC REDD+ Safeguards, or to assist in the development of a CSS. There is also an impression that the language of the UNFCCC REDD+ Safeguards is too vague, and that it creates burdensome additional obligations for participating in REDD+.

This Guidance Document aims to assist in understanding and implementing the UNFCCC REDD+ Safeguards, and contribute to the design and development of a CSS. The specific objectives of this Guidance Document are identified below.

It is important to highlight that our understanding is that a CSS will comprehend three main components:

- a. **Adoption of safeguards that are to apply in-country:** countries will need to define which set of safeguards are to be applied nationally. To ensure eligibility under the UNFCCC, countries might want to consider adopting the UNFCCC REDD+ Safeguards as their framework, and carry out a domestic interpretation of the UNFCCC REDD+ Safeguards through a multi-stakeholder process that is consistent with the country's international obligations, national laws and policy objectives;
- b. **Safeguards implementation measures:** the recognition or adoption of safeguards is not enough to ensure their effective implementation. It is therefore critical to have adequate implementation measures. Countries will need to assess which implementation measures are required to meet the UNFCCC REDD+ Safeguards, and to what extent their domestic laws, policies and institutions need to be strengthened or adapted to apply to REDD+ and the UNFCCC REDD+ Safeguards; and
- c. **Compliance measures:** the compliance aspects of the system will refer to those that allow for transparent monitoring and reporting, addressing grievances, and addressing any failure to implement the requirements set forth in the safeguards. To ensure consistency with the UNFCCC, consideration should be given to the guidance provided by the UNFCCC in terms of the development of a Safeguard Information System (SIS).

## Objectives of this Guidance Document

The following report aims to contribute to the development of the three components of a CSS identified above. This Guidance Document does not advise on the design of a framework for the CSS; rather, it focuses on providing substantive guidance for its development. REDD+ countries will need to define an appropriate framework in accordance with their national circumstances.<sup>26</sup> It is also important to highlight that this Guidance Document does not purport to promote REDD+ per se, but rather is intended to promote the effective implementation of UNFCCC REDD+ Safeguards under the initiative.

The Guidance Document aims to:

**a. Assist in the adoption of safeguards at the national level**

To be able to adopt safeguards at the national level that are consistent with the UNFCCC REDD+ Safeguards, a clear understanding of the concepts and objectives encompassed in the UNFCCC REDD+ Safeguards is required. This Guidance Document aims to assist various actors (e.g. governments, civil society, indigenous peoples, local communities, private sector) engaging in REDD+ activities understand the conceptual framework (concepts and objectives) of the UNFCCC REDD+ Safeguards, and the international legal obligations associated with them.

Part I of this report provides a legal analysis of the UNFCCC REDD+ Safeguards using relevant and applicable international law to support clarification of their conceptual content and objectives. Each UNFCCC REDD+ Safeguard is analysed and broken down into sub-elements to provide greater clarity over their interpretation. The scope of this section is limited to a legal analysis and interpretation of the UNFCCC REDD+ Safeguards, and does not provide recommendations for their implementation.

**b. Assist in the development/strengthening of safeguard implementation measures**

As mentioned previously, the recognition or adoption of safeguards is not enough to ensure their effective implementation. It is therefore critical to have adequate implementation measures. This Guidance Document aims to assist various actors engaging in REDD+ activities in understanding and identifying potential implementation measures. Implementation measures include a normative framework (policies, laws and regulations) that operationalize the safeguards, the existence of appropriate processes and procedures to support the normative framework, and institutions with a mandate to implement the measures.

Building upon the legal analysis and interpretation of the UNFCCC REDD+ Safeguards carried out in Part I of this Guidance Document, Part II of this report identifies potential implementation measures, all of which are consistent with REDD+ countries' relevant international obligations. The implementation measures provided in Part II do not constitute an exhaustive list, but are meant to assist various actors in identifying and defining specific implementation measures.

**c. Assist in the development of a compliance system (i.e. monitoring and reporting, complaints and grievance mechanisms, and non-compliance measures)**

Part III of this report identifies the most relevant monitoring, reporting, complaints and grievance mechanisms under relevant and applicable international law. Of particular usefulness for the development of a CSS and SIS are the monitoring and reporting mechanisms of the various relevant international conventions to which REDD+ participating countries are Parties.

## Methodology

As a basis for interpretative analysis, this report has used a select number of relevant and applicable international instruments. Over 90 international legal instruments were reviewed (see Annex). These include multilateral agreements, international and regional conventions, non-binding declarations, voluntary mechanisms, and regional and national case law.

The selection of instruments was made based on their thematic relevance, and their similarity to the terminology used in the UNFCCC REDD+ Safeguards. Numerous international instruments, ratified by most REDD+ countries, bear many similarities to the themes and language of the UNFCCC REDD+ Safeguards, covering human rights, environmental and governance objectives. Additionally, it is important to highlight that UNFCCC REDD+ Safeguard (a) requires REDD+ actions complement or be consistent not only with existing domestic forest programmes, but also with the relevant international instruments that REDD+ countries have signed, ratified, or otherwise agreed to. These instruments pertain not only to the environment, but also to human rights and indigenous peoples' rights.

As this Guidance Document will demonstrate, the UNFCCC REDD+ Safeguards do not create new or additional obligations or requirements that REDD+ countries must fulfil to implement REDD+. In fact, they reflect existing commitments contained in various relevant and applicable international legal instruments.

The relevant and applicable international instruments to REDD+ countries are identified in tables included at the end of this report.

The decision to include non-binding declarations, voluntary mechanisms, and binding conventions to which REDD+ countries are not Parties (such as the Aarhus Convention) was made due to their value in providing additional clarity to a number of broad and poorly-defined concepts, such as 'transparency' and 'participation', as some areas of relevance to our analysis are not covered by applicable binding instruments. The interpretative analysis clearly references each instrument utilized.

Due to the fact that our analysis was carried out for the purpose of clarifying the content and meaning of the UNFCCC REDD+ Safeguards, our approach in reviewing the relevant international law has been to examine the language contained therein for guidance purposes only. We have therefore not carried out any critical assessment of the instruments analysed.

Our analysis in Part I of this Guidance Document is broken down into a simple framework to highlight key safeguard considerations or elements of each safeguard. The implementation measures identified in Part II have been categorised in a similar but not identical structure to Part I.

The framework was drawn from the terminology used in the UNFCCC REDD+ Safeguards, and expanded to include several sub-elements to clarify certain concepts. We regard these as vital components of any successful national effort to implement the UNFCCC REDD+ Safeguards.

The framework with the key elements of each UNFCCC REDD+ Safeguard we have identified is the following:

*UNFCCC REDD+ Safeguard A:*

- A. Complement or be consistent with the objectives of national forest programmes
- B. Complement or be consistent with the objectives of relevant international conventions and agreements

*UNFCCC REDD+ Safeguard B:*

- A. 'Transparency', which is comprised of:
  - i. Right of access to information
  - ii. Accountability
- B. 'Effective' national forest governance, which is comprised of:
  - i. Appropriate institutional and legal frameworks
  - ii. Participation in decision-making processes that affect the environment
  - iii. Adequate access to justice
- C. Taking into account national legislation and sovereignty

*UNFCCC REDD+ Safeguard C*

- A. Defining indigenous peoples, members of local communities and knowledge
  - i. Indigenous peoples
  - ii. Local communities
  - iii. Knowledge
- B. The rights of indigenous peoples and members of local communities under international law
  - i. Non-discrimination
  - ii. Self-determination
  - iii. Rights associated with culture
  - iv. Collective land tenure
  - v. Benefit-sharing
  - vi. Procedural rights

*UNFCCC REDD+ Safeguard D*

- A. Understanding 'full and effective participation'
- B. Creating an enabling environment for effective participation
  - i. Adequate access to information
  - ii. Implementing participatory mechanisms
  - iii. Conflict resolution mechanisms/access to justice
- C. Effective participation of indigenous peoples and local communities
  - i. Creating an enabling environment
  - ii. Free, Prior and Informed Consent (FPIC)

*UNFCCC REDD+ Safeguard E*

- A. No conversion of natural forest
  - i. Defining natural forests, biological diversity and ecosystem services
  - ii. Prohibiting the conversion of natural forests
- B. Protection and conservation of natural forests and biological diversity
  - i. General measures to protect natural forests and biodiversity
  - ii. Enhancement of other benefits

*UNFCCC REDD+ Safeguard F & G*

- A. Background on the concepts of reversals and leakage
  - i. Reversals
  - ii. Leakage
- B. Monitoring and assessment
- C. Applicable principles of international law
  - i. Sustainable use of natural resources
  - ii. The precautionary principle
  - iii. International cooperation

## Part I: Understanding the UNFCCC REDD+ Safeguards in Accordance with International Law

Part I of this report provides a legal interpretation of each of the UNFCCC REDD+ Safeguards in accordance with international law, treaties and agreements. The objective of this section is to provide guidance clarifying the broad language of the UNFCCC REDD+ Safeguards' objectives; and therefore assist governmental and non-governmental actors in the development of a national interpretation of the UNFCCC REDD+ Safeguards.

The section below is divided into subsections of legal textual interpretive analyses for each UNFCCC REDD+ Safeguard, breaking down the different concepts and referencing each one to relevant and applicable international instruments. The interpretive analysis follows the simple framework provided in the methodology section of this Guidance Document.

### Safeguard (a): International Law

UNFCCC REDD+ Safeguard (a) language: ***“Actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements”***

To understand and interpret UNFCCC REDD+ Safeguard (a), it is important to consider and examine its two main concepts, and their implications:

- A. REDD+ actions must complement or be consistent with the objectives of national forest programmes
- B. REDD+ actions must complement or be consistent with the objectives of relevant international conventions and agreements

### Complement or are Consistent with the Objectives of National Forest Programmes

The Food and Agriculture Organisation (FAO) defines national forest programmes (NFPs) as:

*“Comprehensive forest policy frameworks that demand a broad inter-sectoral approach at all stages, including the formulation of policies, strategies and plans of action, as well as their implementation, monitoring and evaluation.”<sup>27</sup>*

According to the FAO, NFPs contain:

- forest (and forest-related) policy which in turn determines and guides;
- forest (and forest-related) legislation;
- the institutional framework and governance mechanism for implementation; and
- strategies, programmes and/or action plans for implementation of the forest policy.

Our interpretation of this element of UNFCCC REDD+ Safeguard (a) is therefore that countries looking to address and respect the UNFCCC REDD+ Safeguards should either use or build upon existing structures in order to complement or be consistent with NFPs.



## Complement or are Consistent with Relevant International Conventions and Agreements

The UNFCCC REDD+ Safeguards reflect human rights, environmental and governance obligations and commitments that are already embodied in a number of international instruments to which REDD+ countries have already agreed. Even prior to the Cancun Agreement, discussions at the UNFCCC level, notably those resulting in the Bali Action Plan, recognised that activities to reduce emissions from deforestation and forest degradation in developing countries “may contribute to achieving the aims and objectives of other relevant international conventions and agreements.”<sup>28</sup>

UNFCCC REDD+ Safeguard (a) reaffirms the link between REDD+ and the objectives of international conventions and agreements. The Cancun Agreement states that REDD+ activities should be carried out in accordance with the UNFCCC REDD+ Safeguards, which should also be ‘promoted and supported’<sup>1</sup>, including Safeguard (a), which requires that REDD+ actions complement or are consistent with relevant international instruments. REDD+ countries must also demonstrate they have ‘addressed and respected’<sup>29</sup> all safeguards through their SIS, which in this case would require countries to demonstrate that their REDD+ activities have been implemented satisfying the commitments under the relevant international instruments.

The implication of UNFCCC REDD+ Safeguard (a) is that not only should actions to implement REDD+ be carried out so as to be consistent with international obligations, but that conversely the UNFCCC REDD+ Safeguards can be an opportunity to ensure better implementation of the international obligations that REDD+ countries have already signed up to. This implies a requirement to recognize and take steps to effectively complement and be consistent with relevant and applicable international conventions and agreements. This means that countries implementing REDD+ actions will need to clearly identify applicable and relevant international conventions and agreements, and analyse to what extent their proposed REDD+ actions complement or are consistent with these international conventions and agreements.

Ensuring consistency with these relevant international instruments should not be seen as an additional requirement that countries must fulfil to implement REDD+. Consideration of these international instruments will help countries to align the UNFCCC REDD+ Safeguards with their existing commitments and aspirations to undertake the governance reforms necessary for the sustainable management of their forests, as indicated by their endorsement of relevant international instruments. By ensuring consistency, REDD+ countries have the opportunity to implement the UNFCCC REDD+ Safeguards by building upon their existing domestic systems developed to comply with those relevant international instruments.

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<sup>1</sup> Decision 1/CP.16, FCCC/CP/2010/7/Add.1, appendix 1, section 2

## Safeguard (b): Forest Governance

UNFCCC REDD+ Safeguard (b) language: ***“Transparent and effective national forest governance structures, taking into account national legislation and sovereignty”***

Interpreting this safeguard requires defining the concepts of ‘transparent’ and ‘effective’ governance at the national level. In our analysis we looked separately at the terms ‘transparent’ and ‘effective’ as they appear in relevant international and regional law, soft law,<sup>30</sup> regional case law, and a number of thematic and interpretative documents. The third concept of UNFCCC REDD+ Safeguard (b) that needs to be examined is the requirement to “take into account national legislation and sovereignty.”

Our analysis of UNFCCC REDD+ Safeguard (b) language is presented by breaking down the concepts under the following framework, supported by three tables that refer to provisions of international law relevant to the safeguard’s interpretation:

- A. Transparent national forest governance structures, which is comprised of:
  - i. Right of access to information
  - ii. Accountability
  
- B. Effective national forest governance structures, which is comprised of:
  - i. Appropriate institutional and legal framework
  - ii. Participation in decision-making processes that affect the environment
  - iii. Adequate access to Justice
  
- C. Taking into account national legislation and sovereignty
  - i. Taking into account sovereignty
  - ii. Taking into account national legislation

## Transparent National Forest Governance Structures

### (i) Right of Access to Information

The right of access to information is referred to most explicitly in international and regional conventions concerned with environmental governance and/or those dealing with corruption in positions of public office.<sup>31</sup>

For the purpose of interpreting UNFCCC REDD+ Safeguard (b), it is important to consider in more detail that access to information relates to the public’s<sup>32</sup> right to access<sup>33</sup> information<sup>34</sup> held by authorities<sup>35</sup> that is relevant to forest-related processes.

Relevant sources of international law specifically refer to the right of the public to gain access to existing information upon request,<sup>36</sup> as well as the duty to collect and disseminate information, known as active access to information.<sup>37</sup>

The duty of active access to information has been defined as the duty “to provide the public with the maximum quantity of information proactively, at least in terms of (i) the structure of the State; and (ii) the information required for the exercise of other rights.”<sup>38</sup> In this respect, the United Nations (UN), Organization of American States (OAS) and Organisation for Security and Co-operation in Europe (OSCE) Special Rapporteurs on Freedom of Expression specified in their Joint Declaration of 2004 that “[p]ublic authorities should be required to publish pro-actively, even in the absence of a request, a range of information of public interest.”<sup>39</sup>

In addition, the Inter-American Juridical Committee on Principles on the Right of Access to Information<sup>40</sup> established that:

*“[p]ublic bodies should disseminate information about their functions and activities – including, but not limited to, their policies, opportunities for consultation, activities which affect members of the public, their budget, and subsidies, benefits and contracts – on a routine and proactive basis, even in the absence of a specific request, and in a manner which ensures that the information is accessible and understandable.”<sup>41</sup>*

In addition, the existence of an effective and adequate legal recourse that can be used by all individuals in the event their request to access information is denied is essential.<sup>42</sup>

This has been confirmed by the Inter-American Court of Human Rights in the case of *Claude-Reyes et al. v. Chile* that the State must:

*“Guarantee...the effectiveness of an appropriate administrative procedure for processing and deciding requests for information, which establishes time limits for making a decision and providing information, and which is administered by duly trained officials.”<sup>43</sup>*

The right of access to information should also provide a recourse that “is simple, effective, quick, and non-onerous, that allows the challenging of decisions of public officials that deny the right of access to specific information or simply neglect to answer the request.”<sup>44</sup>

According to the Model Inter-American law on Access to Information and the Inter-American Commission on Human Rights’ (IACHR) thematic report on the right to access information in the Americas, the guiding principles of the right of access to information are maximum disclosure and good faith.<sup>45</sup>

The **principle of maximum disclosure**<sup>46</sup> informs that access to information must be the general rule, subject only to strict and limited exceptions. The Inter-American Court of Human Rights has confirmed this in the important case of *Claude-Reyes et al. v. Chile* declaring that:

*“All information is accessible, subject to a limited system of exceptions which must have been established by law, serve an objective allowed under the American Convention and be necessary in a democratic society, which in turn requires that they be intended to satisfy a compelling public interest.”<sup>47</sup>*

In the event that a request for information is denied, the burden of proof lies with the body from which the information was requested, to provide evidence why the refusal was justified.<sup>48</sup> The fi-

nal component of the principle of maximum disclosure is the requirement that in cases where an existing statute conflicts with the access to information law, the law of access to information must prevail.<sup>49</sup>

According to the IACHR, the **principle of good faith** requires that governments, through the relevant agencies “provide the necessary measures of assistance to petitioners, promote a culture of transparency, contribute to making public administration more transparent, and act with due diligence, professionalism, and institutional loyalty.”<sup>50</sup>

The IACHR explains that a culture of transparency involves systematic campaigns to inform the general public about the existence of the right of access to information and ways of exercising that right.<sup>51</sup> However, the culture of transparency as understood by the IACHR only relates to the exercise of the right of access to information—it does not require governments to actively disseminate information on citizens’ procedural rights in general.

## (ii) Accountability

Transparency in forest governance structures has been interpreted as the need to ensure the accountability of those in public office.

Accountability has been defined as a:

*“relationship between a bearer of a right or a legitimate claim and the agents or agencies responsible for fulfilling or respecting that right. The most basic accountability relationship is that between a person or agency entrusted with a particular task or certain powers or resources, on the one hand, and the ‘principal’ on whose behalf the task is undertaken, on the other. Accountability, simply put, is a two-way relationship of power. It denotes the duty to be accountable in return for the delegation of a task, a power or a resource.”<sup>52</sup>*

A review of academic literature suggests that there are two principle dimensions of accountability: vertical and horizontal accountability.<sup>53</sup>

Vertical accountability refers to the methods by which the State is (or is not) held to account by non-state agents through the relationship between citizens and their political representatives. This includes electoral accountability (elections) and democratic accountability, or the informal role of non-state agents checking governments’ powers via the media, vocal civil society organisations and popular protest. Democratic accountability is expressed through associations lobbying governments, demanding explanations and threatening government with less formal sanctions, like negative publicity.<sup>54</sup>

Horizontal accountability refers to the intra-governmental control mechanisms that exist between the legislature, the executive and the judiciary, and between different sub-entities of the executive, including the Cabinet, line ministries and lower level administrative departments and agencies. In addition to courts and parliamentary oversight functions, this includes special institutions that can exercise restraint, such as the auditor general, anti corruption commissions, human rights commissions, and the ombudsman.<sup>55</sup>

International law deals with vertical and democratic accountability in a general manner through provisions that recognise the importance of public participation (see section on UNFCCC REDD+ Safeguard (d)) in general, or in international instruments that deal with corruption.<sup>56</sup> International instruments that deal explicitly with corruption also provide numerous examples of what is understood by horizontal accountability. This generally means codes of conduct to prevent conflicts of interest and enforcement mechanisms for these codes.<sup>57</sup> It also envisions the existence of mechanisms to regulate the hiring of public officials,<sup>58</sup> requiring the publication of their assets,<sup>59</sup> and reporting in public procurement processes.<sup>60</sup>

Transparency and accountability are two mutually reinforcing principles, as one requires the other to function efficiently. Access to adequate information is essential to ensure that civil society can engage effectively with administrative structures, and a strong civil society that has experience engaging with government is more likely to ensure that transparency is respected.

**Table 1:** Provisions of international law relevant to UNFCCC REDD+ Safeguard (b)

Safeguard concepts	International instrument	Provision (for other relevant instruments see footnotes)
<p><i>“Transparent...national forest governance structures...”</i></p>	<p><b>International Covenant on Civil and Political Rights (ICCPR)</b></p>	<p><b>Article 19 (2)</b> “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>61</sup></p>
	<p><b>Rio Declaration on Environment and Development</b></p>	<p><b>Principle 10</b> “At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities ... States shall facilitate and encourage public awareness and participation by making information widely available.”<sup>62</sup></p>
	<p><b>Model Inter-American Law on Access to Information</b></p>	<p><b>Article 2</b> “[This Law establishes] a broad right of access to information, in possession, custody or control of any public authority, based on the principle of maximum disclosure, so that all information held by public bodies is complete, timely and accessible, subject to a clear and narrow regime of exceptions set out in law that are legitimate and strictly necessary in a democratic society.”<sup>63</sup></p>
	<p><b>UN Convention Against Corruption (UNCAC)</b></p>	<p><b>Article 5</b> “[Each State Party] shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”<sup>64</sup></p>

## Effective National Forest Governance Structures

### (i) Appropriate Institutional and Legal Frameworks

Institutional and legal frameworks are two of the main components of forest governance.<sup>65</sup>

The **institutional frameworks** of forest governance are the appropriate administrative departments at the various levels of government, from local to national.<sup>66</sup> Effective institutional frameworks require, *inter alia*, adequate funding, capable and accountable employees, facilities, and appropriate levels of decentralisation in decision making (see table 2).

The **legal framework** is the laws and policies that impact upon forest governance.<sup>67</sup> Legal frameworks that regulate forest governance include, *inter alia*, land tenure and property laws, regulations for granting resource use permits, laws prohibiting the capture of protected species, and laws distributing rights and benefits (see table 2).<sup>68</sup>

Effective governance requires that these laws are both enacted and enforced.

In addition to appropriate institutional and legal frameworks, there is a need to ensure the efficient, rational and sustainable utilisation of all types of forest resources, and adopt a long-term perspective and cross-sectoral approach in policy formulation.<sup>69</sup> Further details on the elements of effective forest governance institutional and legal frameworks can be found in Part II of this Guidance Document in relation to the ‘implementation measures’ of UNFCCC REDD+ Safeguard (b).

### (ii) Participation in Decision-Making Processes that Affect the Environment

Another essential element for ensuring effective forest governance structures is the need to secure meaningful public participation in forest-related decision making processes. The importance of public participation has been recognised in numerous international instruments, both in relation to environmental decision-making and in general.<sup>70</sup>

In the case of *Saramaka People v. Suriname*, the Inter American Court of Human Rights defined effective public participation as an obligation for the country to:

*“...both accept and disseminate information, and entails constant communication between the parties. These consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement.”<sup>71</sup>*

Participation is linked to institutional and legal frameworks, as they are responsible for its legal recognition and implementation. For a more in-depth analysis of the concept of ‘effective participation’ refer to the analysis and implementation recommendations for UNFCCC REDD+ Safeguard (d).<sup>72</sup>

### (iii) Adequate Access to Justice

Access to justice is a critical component of effective forest governance structures. People who are wronged or mistreated in some way usually turn to their country's justice system for redress. Without adequate access to justice, individuals and groups will not be able to protect and enforce their rights, rendering those forest governance structures ineffective.

In order to understand the concept of access to justice, it is necessary to understand that there are two types of rights recognised under human rights and environmental law. These are substantive and procedural rights.

**Substantive rights** refer to human and environmental protection rights, such as the right to freedom and environment quality that permits a life of dignity and well-being.<sup>73</sup>

**Procedural rights** are the means to effectively implement and ensure compliance with substantive rights. These include: equality before the law, access to effective judicial proceedings, the right to a fair trial, and the right to an effective remedy.<sup>74</sup>

Although confusion remains as to the precise nature of access to justice,<sup>75</sup> it is often understood as a form of grievance mechanism against violations of the full range of human rights including economic, social, cultural and environmental rights, whether they are substantive or procedural.<sup>76</sup> It has been considered that in ensuring adequate access to justice, countries have an obligation not to obstruct access to those remedies and also, in particular, a positive duty to organise their institutional apparatus so that all individuals can access those remedies.<sup>77</sup>

The three main components linked to access to justice, and therefore the enforceability of those substantive and procedural rights are: access to effective judicial proceedings, the right to a fair trial, and the right to an effective remedy. Each of these components should be taken into account when interpreting this aspect of UNFCCC REDD+ Safeguard (b).

A **right to effective judicial proceedings** requires that economic obstacles are eliminated; that free legal services are available; and that community mechanisms are strengthened, so that disadvantaged or marginalised groups that suffer from inequality are able to access the judicial protective bodies.<sup>78</sup> Governments are expected to provide the public with information about the rights they possess, and the judicial resources available to protect them.<sup>79</sup>

The IACHR has listed the following elements to guarantee the **right to a fair trial** in administrative proceedings, including but not limited to: the right to legal assistance; the right to exercise the right of defence; and the right to a reasonable time in which to prepare and formalise arguments, gain access, and refer to the corresponding evidence. The IACHR also concluded that prior notification of charges is a core component of that guarantee.<sup>80</sup>

With regard to **the right to an effective remedy**, the IACHR details that:

*“a) that the remedies should be simple, urgent, informal, accessible, and processed by independent bodies; b) that individuals have the opportunity to approach federal or national legal entities when bias is suspected in the conduct of state or local bodies; c) that the such remedies enjoy broad, active legitimacy; d) that they can be proc-*



*essed on an individual basis or as collective precautionary actions (to protect a particular group or one that is identifiable based on certain parameters as affected or at imminent risk); and, e) that provision be made for the implementation of protective measures in consultation with the affected parties.”<sup>81</sup>*

**Table 2:** Provisions of international law relevant to UNFCCC REDD+ Safeguard (b)

Safeguard concepts	International instrument	Provision (for other relevant instruments see footnotes)
<p><i>“...effective national forest governance structures...”</i></p>	<p><b>Agenda 21, United Nations Conference on Environment and Development (UNCED)</b></p>	<p><b>Article 11.4 (a)</b> “Rationalizing and strengthening administrative structures and mechanisms, including provision of adequate levels of staff and allocation of responsibilities, decentralization of decision making, provision of infrastructural facilities and equipment, inter-sectoral coordination and an effective system of communication.”</p> <p><b>Article 8.15</b> “The enactment and enforcement of laws and regulations (at the regional, national, state/provincial or local/municipal level) are also essential for the implementation of most international agreements in the field of environment and development.”<sup>82</sup></p>
	<p><b>African Convention on the Conservation of Nature and Natural Resources</b></p>	<p><b>Article 16</b> “Adopt legislative and regulatory measures necessary to ensure timely and appropriate ... c) participation of the public in decision-making with a potentially significant environmental impact.”<sup>83</sup></p>
	<p><b>Rio Declaration on Environment and Development</b></p>	<p><b>Principle 10</b> “Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”<sup>84</sup></p>

## Taking into Account National Legislation and Sovereignty

### (i) Taking into Account Sovereignty

According to the traditional Westphalian view, national sovereignty is embodied by the principles of legal equality between States, and of non-intervention of one State in the internal affairs of another State.<sup>85</sup> However, States have become increasingly subjected to rules of international law, which has somewhat modified this traditional view.<sup>86</sup>

The principle of permanent sovereignty over natural resources is reflected in UN General Assembly Resolution 1803 XVII of 1962, which proclaims “the right of peoples and nations to permanent sovereignty over their natural wealth and resources.”<sup>87</sup> Although not legally binding per se, Resolution 1803 has been referred to as such by international arbitral tribunals. Furthermore, this concept has not prevented resource conservation within a country’s territory from being treated as a question of ‘common concern’.<sup>88</sup>

Principle 21 of the Stockholm Declaration of the UN Conference on the Human Environment recognises national sovereignty over natural resources, subject to a responsibility not to cause harm to the environment of another State.<sup>89</sup> The fact that Principle 21 reflects customary law was confirmed by the International Court of Justice’s (ICJ) 1996 Advisory Opinion on *The Legality of the Threat or Use of Nuclear Weapons*.<sup>90</sup> This view is also reflected in a number of international and regional treaties (see Table 3 below).

While it is clear that the right to permanent sovereignty of a State over its natural resources is not in question, it is important to note that the trend in international law, as recognised in intergovernmental declarations such as Agenda 21, and by the ICJ leans heavily towards the understanding that sovereignty is qualified by a duty to ensure that no harm is caused to the environment of other States.

### (ii) Taking into Account National Legislation

Below we provide an analysis of what is meant by the term “taking into account national legislation.” It is important to note that because it provides useful information, the *Implementation Guide to the Aarhus Convention* has been utilised for this analysis. While it does not apply to REDD+ countries, it can serve as a useful source to understand this concept.

The *Aarhus Convention Implementation Guide* offers three possible interpretations for the concept of “in accordance with national legislation”, and its repercussions on the scope of implementation obligations in relation to an international obligation.<sup>91</sup> These are: flexibility in the means of implementation; flexibility of both means of implementing and the scope and/or content of the obligation; and consideration of existing legal frameworks, and the extent to which it must be modified.

#### Flexible Implementation

The *Aarhus Convention Implementation Guide* provides details regarding the flexible implementation approach:

*“According to this interpretation, the failure to introduce legislation cannot excuse the Party from the basic obligation, nor would a Party be excused from applying the par-*

*tical provision if there were a pre-existing national law on the subject. The language merely introduces some flexibility in the means that Parties may use to meet the obligation and apply the principles of the Convention; taking into account different national systems of law...This flexibility is not unlimited, however. It does not give Parties a licence to introduce or maintain national legislation that undermines or conflicts with the obligation in question.”<sup>92</sup>*

The first approach provides flexibility to countries in terms of what system of law can be utilized to implement their obligations. This means that the method of complying with their obligations can be chosen by the country (be it through pre-existing legislation or a new law). However, this flexibility does not extend to the degree of compliance with the obligation itself, only the method. In the case of the UNFCCC REDD+ Safeguards, this would mean that countries have the choice as to how to ensure the transparency and effectiveness of forest governance structures. Nevertheless, these measures cannot conflict with or undermine the obligations contained in the UNFCCC REDD+ Safeguards.

### Flexible Scope of Obligation

A second approach is that flexibility exists both in the means of implementing obligations and the scope and/or content of the obligations themselves. However, if this approach is followed it can lead to uneven implementation of obligations among countries. In the case of the Aarhus Convention, the concern was raised that Parties may seek to avoid certain obligations and actively promote differences in interpretation, thereby potentially undermining the Convention as a whole.<sup>93</sup> In this case, the *Aarhus Convention Implementation Guide* states that the Parties must clarify this confusion.<sup>94</sup>

In relation to the UNFCCC REDD+ Safeguards, this approach could lead to a different interpretation and an uneven implementation of the safeguards. As countries must demonstrate they have ‘addressed and respected’ the UNFCCC REDD+ Safeguards,<sup>95</sup> it will be important for countries to consider that such a situation could lead to their failure at a national and international level, if comparability is a factor taken into account.

### Examination of Existing Framework

The third approach refers to the consideration of the existing legal framework and the extent to which it must be modified to support the implementation on the country’s obligations.

Many countries may have legislation relevant to UNFCCC REDD+ Safeguard (b). Under this approach, to ensure the effective implementation of UNFCCC REDD+ Safeguard (b), countries would need to examine whether their existing legal framework needs to be modified to support aspects of transparency and effectiveness of their national forest governance structures.

In conclusion, the interpretation of the concept of “taking into account national legislation and sovereignty” should consider that countries might have flexibility with regards to the manner of implementation of UNFCCC REDD+ Safeguard (b). Nevertheless, they are bound by the obligations contained in the applicable and relevant international agreements to which they are a Party under UNFCCC REDD+ Safeguard (a), and in particular the duty to ensure that no harm is caused to the environment of other States.

**Table 3:** Provisions of international law relevant to UNFCCC REDD+ Safeguard (b)

Safeguard concepts	International instrument	Provision (for other relevant instruments see footnotes)
<p><i>“...taking into account national legislation and sovereignty.”</i></p>	<p><b>Convention on Biological Diversity</b></p>	<p><b>Article 3</b> “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”<sup>96</sup></p>
	<p><b>North American Agreement on Environmental Cooperation</b></p>	<p><b>Article 3</b> “Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and regulations, each Party shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations.”<sup>97</sup></p>
	<p><b>International Protocol on Civil and Political Rights</b></p>	<p><b>Article 2(2)</b> “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”<sup>98</sup></p>

## Safeguard (c): Indigenous Peoples and Local Communities

UNFCCC REDD+ Safeguard (c) language: ***“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.”***

UNFCCC REDD+ Safeguard (c) requires reference to, and analysis of, relevant international instruments related to ‘rights’ and ‘international obligations’. Specifically, the meaning of the terms ‘indigenous peoples’, ‘local communities’, and ‘knowledge’, as well as their ‘rights’, should be ascertained within the context of applicable international instruments. Procedural rights, particularly the right to Free, Prior and Informed Consent (FPIC) are only briefly mentioned in this section. Please refer to UNFCCC REDD+ Safeguard (d) for their detailed analysis.

The results of our analyses are set out below, supported by two tables (pg 43 and 48) that refer to provisions of international law relevant to UNFCCC REDD+ Safeguard (c)’s interpretation. The analysis involves a discussion of the different elements of the safeguard, and is broken down according to the following structure:

- A. Defining Indigenous peoples, members of local communities and knowledge
  - i. Indigenous peoples
  - ii. Local communities
  - iii. Knowledge
  
- B. The rights of indigenous peoples and members of local communities under international law
  - i. Non-discrimination
  - ii. Self-determination
  - iii. Rights associated with culture
  - iv. Collective land tenure
  - v. Benefit-sharing
  - vi. Procedural rights

## Defining Indigenous Peoples, Members of Local Communities and Knowledge

### (i) Indigenous Peoples

There is limited consensus in international law over the meaning of ‘indigenous peoples’.<sup>99</sup> A number of definitions have been put forward in international instruments that are discussed below.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) does not define indigenous peoples, but establishes that “indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.”<sup>100</sup>

On the other hand, ILO Convention No. 169 does define indigenous peoples, and identifies elements to define indigenous people.

Article 1(1) (b) of ILO Convention No. 169 defines indigenous peoples as:

*“Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic cultural and political institutions.”*<sup>101</sup>

Identification of indigenous peoples as linked to ‘pre-invasion’ and ‘pre-colonial societies’ is an approach also echoed by UN interpretative documents.<sup>102</sup>

The ILO Convention No. 169 Application Guide clarifies that the elements that define an indigenous people can be objective and subjective.<sup>103</sup> The Convention combines both types of elements in order to arrive at a conclusion on a case-by-case basis.

**Objective elements** identified by the ILO include:

*“(i) Historical continuity, i.e. they are societies that descend from groups that preceded conquest or colonization; (ii) territorial connection, in the sense that their ancestors inhabited that country or region; and (iii) distinctive and specific social, economic, cultural and political institutions, which are their own and are totally or partially retained.”*<sup>104</sup>

According to the ILO’s updated Handbook Guide to ILO Convention No. 169, the **subjective element** corresponds to collective self-identification as an indigenous people.<sup>105</sup> Article 1(2) Of ILO Convention No. 169 states that the subjective element (self-identification) is fundamental to the classification of indigenous peoples.

Following a similar approach as ILO Convention No. 169 in terms of identifying elements to help define indigenous peoples, a study by the UN Working Group on Indigenous Populations concluded that the elements or factors relevant to interpreting the concept of ‘indigenous’ include:

*“(i) priority in time, in terms of occupation and use of specific territory; (ii) voluntary perpetuation of cultural specificity, which can include aspects of their language, social organisation, religion and spiritual values, modes of production, legal forms and institutions; (iii) self-identification, as well as recognition by other groups, or by State authorities, as differentiated collectives; and (iv) an experience of subjugation, margin-*

*alisation, dispossession, exclusion or discrimination, whether these conditions persist or not.”<sup>106</sup>*

It is important to note that the Inter-American Commission on Human Rights (IACHR) states that “the criterion of self-identification is the principal one for determining the condition of indigenous people, both individually and collectively.”<sup>107</sup> In a 2010 ruling, the Inter-American Court of Human Rights further explained that it was not for the country or other external entities to identify an indigenous peoples’ composition or ethnic affiliation.<sup>108</sup> That indigenous people can belong to more than one ethnic group,<sup>109</sup> or live in a manner which differentiates them from their ethnic group,<sup>110</sup> was not deemed to detract from their identity as indigenous people by the Inter-American Court of Human Rights.

The criterion of self-determination allows international human rights case law to feature an inclusive and flexible approach to the interpretation of ‘indigenous peoples’ often relying on self-identification as a criterion for determining their status.

However, it has also been argued that in some countries, it is controversial to use the term ‘indigenous peoples’. There may be local terms (e.g. tribal, first people, traditional communities), or geographical labels (e.g. hill people) that refer to communities that could be otherwise defined as ‘indigenous’.<sup>111</sup> This raises the issue of the extent to which interpretation of relevant international law (UNDRIP and ILO Convention No. 169) can be expanded to protect the rights of these communities who consciously chose not to define themselves as ‘indigenous’. This point is also highly relevant to the discussion on the definition of the term ‘local communities’ below.

## (ii) Local communities

‘Local communities’ is a broad concept that often goes undefined and unrecognised, but could be given an equally flexible interpretation as ‘indigenous peoples’. There are no international instruments dealing specifically with ‘local communities’. However, there are specific references under international law that should be considered when ascertaining their rights at the national level.

In a 2011 expert group meeting of local community representatives within the context of Article 8 (j) and related provisions of the Convention on Biological Diversity (CBD), the term ‘local communities’ was not distinguished from the term ‘indigenous peoples’. The expert group noted that:

*“The Convention on Biological Diversity uses the term ‘indigenous and local communities’ with reference to communities that have a long association with, and depend on, the lands and waters that they have traditionally live on or used, this also includes ‘forest dependent communities’. Sometimes such communities are also referred to as ‘traditional communities.’”<sup>112</sup>*

The expert group went further, stating that many communities can be described as both ‘local’ and ‘traditional’, and that some local communities may also include peoples of indigenous descent. It was acknowledged that the term ‘local community’ remains an ambiguous term, as it can refer to a group with a legal personality and collective legal rights, or a group of individuals with shared interests but no collective rights.<sup>113</sup> The expert group concluded that self-identification is



the most appropriate way to establish who may be indigenous and/or a local and/or a traditional community.<sup>114</sup>

It is important to highlight that in the specific context of the African continent, the term 'local communities' is sometimes considered more appropriate than the term 'indigenous people'.<sup>115</sup> Accordingly, the South African Development Community (SADC) Protocol on Forestry defines 'local communities' as: "A coherent, social group of persons with interests or rights related to forests or forest resources, in a particular area, which the persons hold or exercise communally in terms of an agreement, custom or law."<sup>116</sup> This is an extremely useful interpretation of the term 'local communities' for the purpose of REDD+ as it identifies them in terms of their relation to forests.

According to the SADC Protocol on Forestry, definition of 'local communities' is related to the physical occupation of the forested area, whereas the term 'indigenous peoples' refers to a shared cultural identity and history, as well as collective physical occupation of land.<sup>117</sup> The term 'local communities', as used in the UNFCCC REDD+ Safeguards, could therefore be interpreted to mean forest dwelling local communities.

It is important for countries to clearly define if there is a distinction between indigenous peoples and local communities, as there are no international instruments dealing specifically with the rights of 'local communities'. Therefore, legal status of local communities and enjoyment of collective rights may vary according to national circumstances. For example, in Brazil 'local and traditional communities' are a legal entity in the national constitution and therefore enjoy collective rights.<sup>118</sup>

### **(iii) Knowledge**

'Knowledge' of indigenous peoples and local communities in international law is often referred to within the context of intangible cultural heritage,<sup>119</sup> or specific traditional knowledge passed down from generation to generation.<sup>120</sup> As a result, indigenous knowledge in international human rights law ranges from the protection and recognition of indigenous oral traditions<sup>121</sup> to traditional indigenous knowledge relevant to genetic resources for food and agriculture.<sup>122</sup> It is characterised by the continuity of a type of knowledge over time or amongst generations.<sup>123</sup> The concept of 'traditional forest-related knowledge' appears in a variety of international instruments,<sup>124</sup> but is rarely defined further, which allows for a broad interpretation of the term.

It is clear that some examples of indigenous knowledge will be especially relevant to REDD+ activities, including knowledge of traditional medicine and herbs;<sup>125</sup> knowledge and practice of traditional forest livelihoods linked to conservation;<sup>126</sup> knowledge on plant genetic resources;<sup>127</sup> knowledge on the spiritual value of forests;<sup>128</sup> and knowledge on flora and fauna.<sup>129</sup> Nevertheless, other types of indigenous knowledge, such as oral traditions or performing arts,<sup>130</sup> may also be affected by REDD+ activities. It will important to consider all types of knowledge when interpreting UNFCCC REDD+ Safeguard (c).

Reference to the knowledge of local communities is less prominent than to indigenous knowledge in international law. A useful definition of ‘traditional forest-related knowledge’ can be found in the SADC Protocol on Forestry, where knowledge of local communities is defined as:

*“The accumulated knowledge, innovations, practices and technologies related to forests that are vital for the conservation and sustainable use of forests or which are of socio-economic value, and which have been developed over the years by local people and communities.”<sup>131</sup>*

This definition helps shed some light on what is understood by the ‘knowledge’ of local communities according to international law. However, it does not extend to forest-related traditions which have a purely cultural value, which must nevertheless also be considered, respected and protected under UNFCCC REDD+ safeguard (c).

**Table 4:** Provisions of international law relevant to the interpretation UNFCCC REDD+ Safeguard (c)

Safeguard language	International instrument	Provision (for other relevant instruments see footnotes)
<i>"...indigenous peoples..."</i>	<b>International Labour Organization, Convention No. 169 concerning indigenous and tribal peoples in independent countries (ILO Convention No. 169)</b>	<b>Article 1</b> "...peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions." <sup>132</sup>
<i>"...local communities..."</i>	<b>Southern African Development Community Protocol on Forestry (SADC Protocol on Forestry)</b>	<i>"Local community</i> means a coherent, social group of persons with interests or rights related to forests or forest resources, in a particular area, which the persons hold or exercise communally in terms of an agreement, custom or law." <sup>133</sup>
<i>"...knowledge...of indigenous peoples and members of local communities..."</i>	<b>Convention on Biological Diversity (CBD)</b>	<b>Article 8(j)</b> "knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity." <sup>134</sup>
	<b>UN Declaration on the Rights on Indigenous Peoples (UNDRIP)</b>	<b>Article 31</b> "Cultural heritage, traditional knowledge and traditional cultural expressions can be defined as manifestations of indigenous peoples' sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts." <sup>135</sup>
	<b>SADC Protocol on Forestry</b>	<i>"traditional forest-related knowledge"</i> means the accumulated knowledge, innovations, practices and technologies related to forests that are vital for the conservation and sustainable use of forests or which are of socio-economic value, and which have been developed over the years by local people and communities." <sup>136</sup>

## The Rights of Indigenous Peoples and Members of Local Communities under International Law

International human rights law has developed to encompass a variety of universal rights that are legally enforceable. Indigenous peoples are entitled to enforce these rights, which results in both positive and negative obligations on the part of countries. Positive obligations are measures that countries should adopt to protect those rights, while negative obligations are requirements to ensure that indigenous peoples are not deprived of those rights.<sup>137</sup>

Although there is considerably less mention of the rights of local communities in international instruments, universal human rights invariably apply.<sup>138</sup> As discussed above, it is not entirely clear to what extent the rights granted to indigenous peoples in international instruments also apply to local communities. This may depend on how national legislation or practice interprets the term 'local communities'.

Despite the non-existence of a comprehensive definition of local communities in international law, the UNFCCC REDD+ Safeguards explicitly recognise local communities as having rights which must be protected, particularly those of forest dependent local communities. This means that in the event that countries do not have domestic legislation granting special status and protection to forest dependent local communities, addressing and respecting the UNFCCC REDD+ Safeguards will require clarifying responsibilities in relation to forest dependent local communities.

### (i) Non-Discrimination

International law recognises that indigenous peoples enjoy the same rights as all other citizens. ILO Convention No. 169 Articles 2(a) and 3 and UNDRIP Articles 1, 2 and 9, state that indigenous peoples enjoy the full measure of human rights and fundamental freedoms without discrimination. These include: the right to self-determination;<sup>139</sup> nationality;<sup>140</sup> the right to education;<sup>141</sup> the right to employment;<sup>142</sup> the right to fair and equal redress;<sup>143</sup> the right to access to healthcare;<sup>144</sup> the right to life;<sup>145</sup> the right to physical and mental integrity;<sup>146</sup> the right to liberty and security of person;<sup>147</sup> gender equality;<sup>148</sup> amongst others.<sup>149</sup>

### (ii) Self-Determination

The International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) roughly define the right to self-determination as the ability of a people to freely pursue their economic, social and cultural development, to freely dispose of their natural wealth and resources and to be secure in their means of subsistence.<sup>150</sup> UNDRIP asserts the right of indigenous peoples to self-determination, as well as the right to autonomy in matters relating to their internal affairs. In addition UNDRIP affords indigenous peoples the right to maintain and strengthen their distinct political, legal, economic, social and cul-

tural institutions, while retaining their right to participate fully—if they so choose—in the political, economic, social and cultural life of the country.<sup>151</sup>

Article 7 of ILO Convention No. 169 further states that:

*“The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”*

Article 8(2) of ILO Convention No. 169 also clarifies that the right to self determination includes the right to retain their own institutions:

*“These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.”*

According to Article 8(3), the right to self determination does not prevent members of these peoples from enjoying the rights granted to all citizens of their country nor from assuming the corresponding duties required.

Recognition of the right of self-determination of indigenous peoples as embodied in the ILO Convention No. 169 and UNDRIP is pivotal to the successful implementation of UNFCCC REDD+ Safeguard (c). The recognition of this right by governments designing and implementing their Country Safeguard System (CSS) is fundamental, as it is the substantive basis for the procedural rights that must be granted to indigenous peoples, such as effective participation and FPIC. Conversely, the right of FPIC is a procedural right that ensures that the rights of indigenous peoples to exercise control over their own economic, social and cultural development, and to maintain their own institutions and traditional decision-making structures (e.g. self-determination), are respected.

### **(iii) Rights Associated with Culture**

These rights can be categorised and protected under the right to respect for the identity, customs, traditions, and institutions of indigenous peoples.<sup>152</sup>

The right to exercise<sup>153</sup> and inherit<sup>154</sup> indigenous traditions can be considered separate rights in themselves. They require countries to actively protect the exercise and maintenance of cultural inheritance, and the right not to be subjected to forced assimilation or destruction of their culture.<sup>155</sup> UNDRIP recognises the right of indigenous peoples to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present

and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.<sup>156</sup>

This right can also be found enshrined in the UNESCO Convention Concerning the Protection of World Cultural and Natural Heritage.<sup>157</sup>

#### (iv) Collective Land Tenure

The collective and individual right<sup>158</sup> to ancestral lands is considered to be especially important for indigenous peoples due to their unique connection and cultural dependence.<sup>159</sup>

ILO Convention No. 169 recognises the right of ownership over collectively occupied land. It states that:

*“The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.”*<sup>160</sup>

UNDRIP also recognises this right, as well as the country’s duty to grant collectively occupied land legal recognition and protection.<sup>161</sup> In the case of *Mayagna (Sumo) Awas Tigni Community v. Nicaragua*, the Inter-American Court of Human Rights held that the country has an obligation to carry out the delimitation, demarcation and titling of an indigenous community’s lands, and that until this was completed “the State must abstain from any acts that might affect the existence, value, use or enjoyment of the property...”<sup>162</sup>

The right to land can be interpreted as an overarching right composed of a series of sub-rights including: the right to legal certainty of territorial property;<sup>163</sup> the right to effective mechanisms to resolve land disputes;<sup>164</sup> the right to restoration of land;<sup>165</sup> and the right to the installation of basic services and utilities for the communities.<sup>166</sup>

The right of indigenous peoples to not be removed from their ancestral land without their Free, Prior, and Informed Consent (FPIC) was recognised and enforced in the case of *Saramaka People v. Suriname*.<sup>167</sup> For more detailed analysis of the principle of FPIC, see our analysis of UNFCCC REDD+ Safeguard (d).

#### (v) Benefit-Sharing

International instruments recognise that indigenous peoples have the right to an equitable share of the benefits derived from genetic resources as well as indigenous and traditional forest-related knowledge.<sup>168</sup> According to the Nagoya Protocol to the Convention on Biological Diversity, ‘fair and equitable’ benefit sharing means that the holders<sup>169</sup> of a resource<sup>170</sup> grant access to the resource

based on mutually agreed terms.<sup>171</sup> The essential requirements of ‘fairness’ and ‘equity’ mean that for any benefit-sharing arrangement, the communities that stand to be affected by such an arrangement should have an active role in its design.

‘Benefit-sharing’ consists of both monetary and non-monetary benefits, including up-front payments, milestone payments, royalties, institutional capacity building, education and training.<sup>172</sup>

It is unclear how this will translate to REDD+ activities, because benefit-sharing is also tied up with other issues which need to be resolved, such as land tenure and ownership of carbon rights. In fact, the distribution of benefits has been identified as “one of the most challenging hurdles” facing REDD+.<sup>173</sup>

#### **(vi) Procedural Rights**

Both ILO Convention No. 169 and UNDRIP recognise that due to their particularly vulnerable nature, indigenous peoples require procedural rights that are additional to those provided to the general population under certain circumstances. These procedural rights must be respected in particular circumstances, such as the potential relocation of an indigenous people from their collective lands,<sup>174</sup> or when a government seeks to pass legislation that has a potentially significant impact on indigenous peoples.<sup>175</sup> For a more detailed analysis of the scope and content of FPIC, see the section on UNFCCC REDD+ Safeguard (d) below.

**Table 5:** Provisions of international law relevant to the interpretation UNFCCC REDD+ Safeguard (c)

Safeguard language	International instrument	Provision ( <i>for other relevant instruments see footnotes</i> )
<i>“...rights of indigenous peoples and members of local communities...”</i>	<b>ILO Convention No. 169</b>	<b>Article 3</b> “Indigenous peoples enjoy the full measure of human rights and fundamental freedoms without discrimination.” <sup>176</sup>
	<b>ILO Convention No 169</b>	<b>Article 7</b> “The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.” <sup>177</sup>
	<b>UN Declaration on the Rights of Indigenous Peoples (UNDRIP)</b>	<b>Article 13(1)</b> “Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.” <sup>178</sup>
	<b>ILO Convention No. 169</b>	<b>Article 14(1)</b> “The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.” <sup>179</sup>
	<b>Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity</b>	<b>Article 5(5)</b> “Each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge.” <sup>180</sup>



## Safeguard (d): Participation

UNFCCC REDD+ Safeguard (d) language: ***“The full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities, in actions referred to in paragraphs 70 and 72 of the decision.”***

Interpretation of UNFCCC REDD+ Safeguard (d) requires understanding the meaning of ‘full and effective participation’ and of ‘relevant stakeholders’. In particular, it requires grasping the fact that provisions for participation under international law are different for particularly vulnerable stakeholders such as indigenous peoples and local communities (as defined above).

Our analysis is therefore presented breaking down the concepts under the following framework supported by two tables that refer to provisions of international law relevant to the term’s interpretation:

- A. Understanding ‘full and effective participation’
- B. Creating an enabling environment for effective participation
  - i. Adequate access to information
  - ii. Implementing participatory mechanisms
  - iii. Conflict resolution mechanisms/access to justice
- C. Effective participation of indigenous peoples and local communities
  - i. Creating an enabling environment
  - ii. Free, Prior and Informed Consent (FPIC)

## Understanding ‘Full and Effective Participation’

According to our analysis, participation is considered to be one of the fundamental principles of democratic governance.<sup>181</sup> The Inter-American Strategy for the Promotion of Public Participation in Decision making for Sustainable Development (ISP)<sup>182</sup> defines public participation as:

*“All interaction between government and civil society, and includes the process by which government and civil society open dialogue, establish partnerships, share information, and otherwise interact to design, implement, and evaluate development policies, projects, and programs. The process requires the involvement and commitment of all interested parties, including, among others, the poor and traditionally marginalized groups, especially disadvantaged racial and ethnic minorities.”*<sup>183</sup>

Different types of participation include simple ‘information sharing’ (a one-way flow of information), ‘consultation’ (two-way flow of information and exchange of views), ‘collaboration’ (joint activities, involving other groups but the initiator retains decision making authority), ‘joint deci-

sion making’ (collaboration where there is shared control over a decision made) and ‘empowerment’ (where control over decision making, resources and activities from the initiator to other stakeholders).<sup>184</sup>

Ensuring ‘full and effective participation’ requires the recognition and implementation of a number of procedural rights. This includes: providing relevant information to stakeholders in a timely and culturally appropriate manner; ensuring stakeholder consultation in decision making processes at local, regional, and national levels, while respecting traditional decision making and governance systems in indigenous lands and territories; and providing stakeholders with access to recourse mechanisms regarding participation in decision making.<sup>185</sup>

Providing these procedural rights may not be sufficient to ensure participation in decision making and implementation processes in themselves. Nevertheless, stakeholder participation cannot be full or effective without them.

## Creating an Enabling Environment for Effective Participation

### (i) Adequate Access to Information

The right of access to information, as analysed in UNFCCC REDD+ Safeguard (b), is recognised as a fundamental right in a number of international and regional agreements. The International Covenant on Economic, Social, and Cultural Rights (ICESCR) identifies access to information as an essential element of effective participation, stating that “education shall enable all persons to participate effectively in a free society.”<sup>186</sup>

Access to environmental information ensures that relevant stakeholders are able to participate in decisions related to the environment in an informed manner. As seen in the analysis of UNFCCC REDD+ Safeguard (b), the right of access to information places the obligation on public bodies to ensure both passive and active access to information, as well as adequate legal recourse in the event of a refusal to provide the requested information.

The *Akwé: Kon Voluntary Guidelines of the Convention on Biological Diversity*, in the context of public participation in impact assessments for specific projects, provide some information on what is understood by ‘adequate’ information. According to the Guidelines, the proponent of a project or the responsible government authority, when engaging in a process of public consultation, should provide:

*“a brief summary of the proposal, the sites and communities likely to be affected, anticipated impacts (if any) on the conservation and sustainable use of biological diversity, as well as possible cultural and social impacts, arrangements for public consultation, contact details, key dates in the life of the project, including those regarding impact assessment procedures, and identify obligations under national and sub-national laws as well sub regional, regional and international agreements. The development proposal and impact assessment should be made available to organizations representing indigenous and local communities and relevant stakeholders for the purpose*

*of public scrutiny and consultation. It should include all details relevant to the proposal.”<sup>187</sup>*

This also means that access to environmental information should be available in a timely manner, early enough for the public to have the opportunity to respond and participate in the decision making process.<sup>188</sup>

The means of communication is also important and can include:

*“all normal public means of notification (print, electronic and personal media, including newspapers, radio, television, village/town meetings etc.) taking into account the situation of remote or isolated and largely non-literate communities, and ensure that such notification and consultation take place in the language(s) of the communities and region that will be affected.”<sup>189</sup>*

It will be important to ensure that notification takes place in a culturally appropriate manner.

Another necessary element to ensure access to information is adequate capacity. The Access Initiative concluded that one obstacle to effective public participation was the lack of understanding of what is meant by access to information.<sup>190</sup> The study found that:

*“Many government officials, including members of the judiciary do not have a thorough understanding of access [to information] laws and public participation practices ... At the same time, citizens are often unaware of their rights and lack the skills needed to participate effectively, demand and collect the information they need, and make complaints or seek remedies when they are dissatisfied with environmental decisions.”<sup>191</sup>*

It will be important that government officials, indigenous peoples, local communities, civil society and the private sector have the capacity to access adequate information to ensure that their participation is informed and effective.

## **(ii) Implementing Participatory Mechanisms**

Appropriate procedures to enable participation in decision making entail a two-way flow of information and exchange of views.<sup>192</sup>

Mechanisms that enable government and civil society to provide and obtain relevant information on policies, projects, and programmes in a timely and culturally appropriate manner must be in place to enable the participation of the relevant stakeholders in decisions related to the management of forest resources. This includes, for example, policy and project design, implementation and evaluation. Furthermore, adequate legal, regulatory and institutional frameworks must also be in place to support the effective implementation of these mechanisms.

The only current example of an international agreement that explicitly focuses on public participation is the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention). While it does not apply to REDD+

countries, it can be useful to consider how this instrument envisages “appropriate procedures to enable participation in decision-making.” The Aarhus Convention distinguishes between public participation on specific activities<sup>193</sup> and environmental policy decision-making in general.<sup>194</sup> In addition to reaffirming the steps identified above, the Aarhus Convention requires public authorities to take ‘due account’ of the outcome of the public participation in the final decision.<sup>195</sup>

The Recommendations of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption’s (MESICIC) Committee of Experts’ give the following guidance on mechanisms for ensuring the exchange of views between the public and government:

*“Governments should establish, within the framework of the executive and legislative branches (or of other agencies) or institutionalise consultation mechanisms to enable civil society to express opinions and make proposals in areas of concern to them. They should also take steps to enhance the effectiveness of provisions related to these consultation mechanisms, by issuing regulations on mechanisms such as referenda plebiscites, consultation panels and public hearings so that they can effectively be made available to the public.”<sup>196</sup>*

In this context, the term ‘consultation’ is used by the MESICIC Committee of Experts as meaning “a process which enables an exchange of views.” According to the spectrum of participation identified above, the procedures for enabling participation, both under the Aarhus Convention and the MESICIC Committee of Experts’ recommendations, are more likely to result in ‘consultation’ (two-way flow of information and exchange of views) rather than ‘joint decision-making’ (collaboration where there is shared control over a decision made) or ‘empowerment’ (where control over decision-making, resources and activities is transferred from the initiator to other stakeholders). We understand ‘full and effective participation’ to be closer to the concepts of ‘joint decision-making’ and ‘empowerment’,<sup>197</sup> and conclude that merely ensuring ‘consultation’ does not equate to ‘full and effective participation’ that would meet the objectives of UNFCCC REDD+ Safeguard (d).

Due to the vulnerability of indigenous peoples and local communities in decision making, mechanisms to ensure their participation are explicitly dealt with in international law and are examined in Section C below, entitled “effective participation of indigenous peoples and local communities.”

### **(iii) Conflict Resolution Mechanisms/Access To Justice**

It is necessary to provide certain (legal or quasi-legal) recourse to ensure that at the very least, the procedural steps that enable participation are respected. This will often rely on the existence of appropriate mechanisms for access to justice in the context of public participation, which differs to access to justice more generally.

Access to justice in the context of public participation generally refers to the right to challenge the failure of a public body to carry out its obligations in supporting public participation. In many cases, the failures relate to the obligation to provide information necessary for effective participation, or the failure to ensure adequate communication with the public, where such a legal obligation exists.

Relevant to the above, in the case of *Claude-Reyes et al v. Chile* the Inter-American Court of Human Rights ruled that countries should enshrine the right to a judicial review of any administrative decision denying access to information through a recourse that is “simple, effective, quick, and not burdensome, and that allows the challenging of decisions of public officials that deny the right of access to specific information or simply neglect to answer the request.”<sup>198</sup>

In the case of *Saramaka People v. Suriname*, the Inter-American Court of Human Rights held that the government of Suriname had violated the collective property right of the Saramaka people by granting logging and gold mining concessions on their ancestral territory without seeking their FPIC on the project. It ruled that:

*“To ensure the effective participation of the interested peoples, a State also has a duty to actively consult with said peoples...such consultations must be held in good faith, through culturally appropriate procedures and with the objective of reaching an agreement. The State must also initiate consultations from the early stages of the development project and that the people interested must be aware of possible health and environmental risks.”*<sup>199</sup>

This line of argument was followed in the recent ruling of the same Court in the case of *Sarayaku v. Ecuador*. In 2002 the company CGC Argentina entered the territory of the Sarayaku indigenous community in the Ecuadorian Amazon accompanied by the Ecuadorian Army, and began using explosives in oil exploration without the permission of the Sarayaku people. The Court ruled that Ecuador failed to take the appropriate procedural steps to ensure the Sarayaku people’s participation in the decision.<sup>200</sup>

**Table 6:** Provisions of international law relevant to the interpretation UNFCCC REDD+ Safeguard (d)

Safeguard language	International instrument	Provision (for other relevant instruments see footnotes)
<p><b><i>“...full and effective participation...”</i></b></p>	<p><b>Rio Declaration on Environment and Development</b></p>	<p><b>Principle 10</b> “Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have... the opportunity to participate in decision-making processes.” States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”<sup>201</sup></p>
<p><b><i>“...relevant stakeholders...”</i></b></p>	<p><b>Agenda 21</b></p>	<p><b>Article 10.10</b> “Governments at the appropriate level, in collaboration with national organizations and with the support of regional and international organizations, should establish innovative procedures, programmes, projects and services that facilitate and encourage the active participation of those affected in the decision-making process, especially of groups that have hitherto, often been excluded, such as women, youth, indigenous people and their communities and other local communities.”<sup>202</sup></p>

## Effective Participation of Indigenous Peoples and Local Communities

In its broadest sense ‘relevant stakeholders’ is understood to include all members of the public currently affected by the decision.<sup>203</sup> However, the language of the safeguard draws special attention to the status of indigenous peoples and local communities.

As seen under the interpretation of the concept of full and effective participation, ‘consultation’ is not necessarily sufficient to ensure the full and effective participation of relevant stakeholders on its own. At the very least, strong procedural measures to ensure access to justice can contribute to more full and effective participation by improving the accountability of decision-making. Due to their vulnerability, international law creates an additional procedural requirement that under certain conditions, and in relation to decisions, legislation or administrative actions that may affect indigenous peoples, their Free, Prior, and Informed Consent (FPIC) must be obtained.

### (i) Creating an Enabling Environment

The *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments*<sup>204</sup> can be useful to interpret the scope of full and effective participation for indigenous peoples and local communities. These guidelines are specifically provided to “Support the full and effective participation and involvement of indigenous and local communities in screening, scoping and development planning exercises.”<sup>205</sup> The guidelines provide the scope of public participation for indigenous peoples and local communities in decisions relating to proposed developments on their land, which include among others: notifications, financial, legal and technical support and review processes. The specific and relevant language of the guidelines is the following:

*“(a) Notification and public consultation of proposed development ... (b) Identification of indigenous and local communities and stakeholders likely to be affected ... (c) Establishment of mechanisms for indigenous and local community participation (d) Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community ... (e) Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures. (f) Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures; ... (i) Establishment of a review and appeal process.”<sup>206</sup>*

Article 6(1) of ILO Convention No. 169 recognises a general requirement to ‘consult’ with indigenous peoples.<sup>207</sup> Consultation with indigenous peoples is therefore a general obligation under the Convention, whenever legislative or administrative measures affect them directly.<sup>208</sup> In addition, the Convention particularly emphasizes the need to consult in specific circumstances, including prior to exploration or exploitation of sub-surface resources, and prior to relocation and land alienation.<sup>209</sup>

According to the ILO Committee of Experts on the Application of Conventions and Recommendation's (CEACR) 2010 General Observation:

- Consultations must be formal, full and exercised in good faith; here must be a genuine dialogue between governments and indigenous and tribal peoples characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord;
- Appropriate procedural mechanisms have to be put in place at the national level and they have to be in a form appropriate to the circumstances;
- Consultations have to be undertaken through indigenous and tribal peoples' representative institutions as regards legislative and administrative measures; and
- Consultations have to be undertaken with the objective of reaching agreement or consent to the proposed measures.<sup>210</sup>

The General Observation also clarifies that pro forma consultations or mere information will not meet the requirements of the Convention. At the same time, such consultations do not imply a right to veto, and they need not necessarily conclude in the reaching of agreement or consent.<sup>211</sup>

These guidelines have been reaffirmed by the Inter-American Court of Human Rights in the case of *Saramaka People v. Suriname*.<sup>212</sup> It is important to highlight that the Court also further defined what was understood by 'effective participation' in relation to development projects potentially affecting indigenous peoples:

*"This duty requires the State to both accept and disseminate information, and entails constant communication between the parties. These consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement. Furthermore, the Saramakas must be consulted, in accordance with their own traditions, at the early stages of a development or investment plan, not only when the need arises to obtain approval from the community, if such is the case. Early notice provides time for internal discussion within communities and for proper feedback to the State. The State must also ensure that members of the Saramaka people are aware of possible risks, including environmental and health risks, in order that the proposed development or investment plan is accepted knowingly and voluntarily. Finally, consultation should take account of the Saramaka people's traditional methods of decision making."*<sup>213</sup>

However, 'consultation' alone does not ensure 'full and effective participation' in relation to indigenous peoples. In specific circumstances, particularly in the event of relocation of indigenous peoples, ILO Convention No. 169<sup>214</sup> imposes an additional requirement to obtain FPIC on the developer. This was confirmed in the case of the *Saramaka People*:

*"Regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty not only to consult with the Saramakas, but also to obtain their free, prior and informed consent, according to their customs and traditions."*<sup>215</sup>



Finally, UNDRIP declares that public participation is effective when FPIC<sup>216</sup> of the concerned peoples is obtained. The principle of FPIC is also recognised in the Convention on Biological Diversity (CBD),<sup>217</sup> and Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.<sup>218</sup>

The *Handbook for ILO tripartite constituents on Understanding Convention No. 169* endorses the understanding that FPIC is a procedural right. It states that:

*“Indigenous peoples have the same rights as all other citizens to participate in the general democratic life of the State and to vote in such processes. In addition, States have the obligation to specifically consult with and ensure the participation of indigenous peoples, whenever measures are being considered which may affect them directly. This does not mean that indigenous peoples have special rights but that given their situation, special measures for consultation and participation are required, to safeguard their rights within the framework of a democratic State.”*<sup>219</sup>

Although the concepts of full and effective participation and FPIC are not inextricably linked, in the context of REDD+ obtaining the FPIC of indigenous peoples is a minimum procedural requirement on the path to ensuring their full and effective participation. The scope, content, and instances identified under international law that trigger the requirement of obtaining FPIC are examined below.

## (ii) Free Prior and Informed Consent (FPIC)

Ensuring the FPIC of indigenous peoples is a procedural obligation of countries and must be fulfilled in a number of circumstances in accordance with relevant international law, including:

- when considering the removal of indigenous peoples from their collective land;<sup>220</sup>
- in relation to the removal of cultural, intellectual, religious or spiritual property from indigenous territory;<sup>221</sup>
- prior to the adoption of legislative or administrative measures that may affect indigenous peoples;<sup>222</sup>
- prior to the storage or disposal of hazardous materials on the land or territory of indigenous peoples;<sup>223</sup>
- prior to the authorisation of projects for the extraction of natural resources from the territory of indigenous peoples;<sup>224</sup> and
- prior to accessing genetic resources or traditional knowledge associated with them.<sup>225</sup>

Although these international instruments refer to the need to ensure that FPIC is obtained, it is not actually defined. Furthermore, only limited authoritative and consistent guidance is provided in international law. UNDRIP is the most comprehensive in its requirements for FPIC. UNFCCC REDD+ Safeguard (c) explicitly refers to UNDRIP, which is also relevant for UNFCCC REDD+ Safeguard (d).

As noted above, our analysis of ‘full and effective participation’ suggests that UNFCCC REDD+ Safeguard (d) goes beyond the requirement to carry out a ‘consultation’, instead seeking joint decision-making or empowerment in the participatory process. The degree to which the right of FPIC provides a legal basis for ensuring ‘full and effective participation’ of indigenous peoples (in the empowerment sense of the term), and therefore whether international law is actually designed to enable it, depends largely on the scope and content of FPIC. See box 2 for the scope of FPIC under ILO Convention No. 169.

It is important to note that although the general objective of FPIC is to obtain consent, it is not clear to what degree consent must be obtained before a decision is made. According to the *Interpretative Guide to ILO Convention No. 169*, reaching consent does not necessarily mean reaching an agreement over the proposed action or process.<sup>226</sup> Consent under this guide can refer the fact indigenous peoples have reasonably understood to the proposed agreement, without actually giving their consent for it to go forward. According to the updated ILO’s *Handbook for Understanding the Indigenous and Tribal People’s Convention 1989 (No. 169)*, the extent of the obligation is to ensure a qualitative process of good faith negotiations through which agreement and consent can be achieved ‘if possible’ rather than broad information sharing with no possibility of influencing decision-making.<sup>227</sup>

Therefore, the precise scope and operationalization of FPIC, and the degree to which consent must be sought can only be ascertained through an examination of regional and national jurisprudence and country practice. Our limited examination of regional and national jurisprudence provides a contrasting approach. The EU Council Resolution of 30<sup>th</sup> November 1998 declared that “indigenous peoples have the right to choose their own development paths, which includes the right to object to projects, in particular in their traditional areas.”<sup>228</sup>

On the other hand, the recent case of *Sarayaku v. Ecuador*<sup>229</sup> before the Inter-American Court of Human Rights, indicates a contrasting example of state practice. The Government of Ecuador argued that while compliance with FPIC required the participation of indigenous peoples, it did not grant those indigenous peoples the right to veto a project.<sup>230</sup>

Analysis of the scope and content of FPIC under international and regional law indicates that while it is an essential procedural requirement, it does not go as far as enabling the ‘full and effective’ participation of indigenous peoples. The specific wording of UNFCCC REDD+ Safeguard (d) is that the ‘full and effective’ participation of relevant stakeholders should be enabled, meaning that it creates an obligation that goes beyond those currently found in international law. Countries should understand that addressing and respecting this safeguard consistently with international law means that although they must comply with current obligations, further steps must be taken to ensure that they go beyond consultation, and provide real opportunities for indigenous peoples to influence decisions in relation to legislative or administrative measures that may significantly affect them.

**Box 2: Scope and content of FPIC**

The basic principles of FPIC are outlined in the ILO's *Guide to Convention No. 169* in the following manner:<sup>231</sup>

**Free** refers to no coercion, intimidation, or manipulation;

**Prior** consent has been sought sufficiently in advance of any authorisation; commencement of activities and respect time requirements of indigenous consultation/ consensus processes;

**Informed** information provided covers (at minimum) the following aspects:

- a. The nature, size, pace, reversibility and scope of any proposed project or activity;
- b. The reason or purpose of the project and/or activity;
- c. The duration of the project or activity;
- d. The locality of areas that will be affected;
- e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle;
- f. Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others);
- g. Procedures that the project may entail.

**Consent:** the parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect and in good faith, and full and equitable participation. Indigenous peoples should be able to participate through their own freely chosen representatives and customary or other institutions. The inclusion of a gender perspective and the participation of indigenous women are essential, as well as participation of children and youth as appropriate. This process may include the option of withholding consent.

**Table 7:** Provisions of international law relevant to the interpretation UNFCCC REDD+ Safeguard (d)

Safeguard language	International instrument	Provision (for other relevant instruments see footnotes)
<p><i>“...full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities...”</i></p>	<p><b>ILO Convention No. 169</b></p>	<p><b>Article 6</b> “Governments shall consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.”<sup>232</sup></p>
	<p><b>UN Declaration on the Rights of Indigenous Peoples (UNDRIP)</b></p>	<p><b>Article 32(2)</b> “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”<sup>233</sup></p>
	<p><b>Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (ABS) to the Convention on Biological Diversity</b></p>	<p><b>Article 7</b> “In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.”<sup>234</sup></p>
	<p><b>UNDRIP</b></p>	<p><b>Article 28</b> “Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”<sup>235</sup></p>

## Safeguard (e): Biological Diversity and Natural Forests

UNFCCC REDD+ Safeguard (e) language: ***“Actions are consistent with the conservation of natural forests and biological diversity, ensuring that actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits.”<sup>1</sup>***

***<sup>1</sup>“Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day.”***

The primary objective of UNFCCC REDD+ Safeguard (e) is the conservation of natural forests and biological diversity. However, to understand what this specifically entails we draw on relevant international instruments. The Convention of Biological Diversity (CBD) is the most comprehensive international agreement that deals with the conservation of biological diversity. Many of its provisions are relevant, and its interpretative documents and COP decisions can help in understanding what is required in order to comply with UNFCCC REDD+ Safeguard (e).

Our analysis is presented by breaking down the various concepts that constitute UNFCCC REDD+ Safeguard (e) according to the following framework, supported by three tables that refer to provisions of international law relevant to the term’s interpretation:

- A. No conversion of natural forests
  - i. Defining natural forests, biological diversity and ecosystem services
  - ii. Prohibiting the conversion of natural forests
- B. Protection and conservation of natural forests and biological diversity
  - i. General measures to protect natural forests and biodiversity
  - ii. Enhancement of other benefits

### No Conversion of Natural Forests

#### (i) Defining Natural Forests, Biological Diversity and Ecosystem Services

##### Natural Forests

The definition of ‘forest’ is a disputed one. The degree of success of forest protection may in fact depend on what qualifies as a forest and therefore, what areas should be protected.

The current definition of ‘forests’ adopted by the Conference of the Parties serving as the Meeting of the Parties (CMP) to the Kyoto Protocol<sup>236</sup> has been a source of concern for a number of civil

society organisations,<sup>237</sup> who argue that it could include monoculture plantations, which contribute less to biodiversity compared to ‘natural forests’ as defined by FAO.

The wording of UNFCCC REDD+ Safeguard (e) however, explicitly uses the wording ‘natural forest’ rather than ‘forests’. The FAO’s *2010 Global Forest Resources Assessment* provides further information on the term ‘natural forest’, which it defines as: “naturally regenerated forest of native species, where there are no clearly visible indications of human activities and the ecological processes are not significantly disturbed.”<sup>238</sup> The wording of UNFCCC REDD+ Safeguard (e) therefore aims to address the concerns of civil society that monoculture plantations would be included under REDD+ activities.

### Biological Diversity

Article 2 of the Convention on Biological Diversity defines ‘biological diversity’ as being:

*“the variability among living organisms from all sources including, inter alia, terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species, and of ecosystems.”*

While instruments may vary as to the emphasis they place on specific aspects of biological diversity (e.g. flora, fauna, genetic resources), they are generally in agreement with the CBD’s definition.<sup>239</sup>

### Ecosystem Services

Neither the UNFCCC nor the CBD currently define ‘ecosystem services’. Currently, the most comprehensive definition is that of the *Millennium Ecosystem Assessment* (MEA),<sup>240</sup> which defines ecosystem services as the benefits provided by ecosystems, which include:

*“Provisioning services such as food, water, timber, fiber, and genetic resources; regulating services such as the regulation of climate, floods, disease, and water quality as well as waste treatment; cultural services such as recreation, aesthetic enjoyment, and spiritual fulfilment; and supporting services such as soil formation, pollination, and nutrient cycling.”*<sup>241</sup>

As UNFCCC REDD+ Safeguard (e) requires that actions are used to incentivise the protection and conservation of ecosystem services, it is important for REDD+ countries to identify and clearly define them. The scope of the *Millennium Ecosystem Assessment* definition of these services can be useful when undertaking this exercise. See Table 9 for some examples of these ecosystem services classified by: provisioning,<sup>242</sup> regulating,<sup>243</sup> cultural<sup>244</sup> and supporting services.<sup>245</sup>

#### (ii) Prohibiting the Conversion of Natural Forests

The importance of reducing the conversion of natural forests into land used for other purposes is clear. This is especially so when considering how surging international demand for commodities

such as oil palm, sugar, timber, pulp, paper and, increasingly for biofuels and feedstocks, has caused a significant increase in the conversion of natural forests to plantations.<sup>246</sup> Additionally, one frequently discussed risk to biodiversity from REDD+ is the creation of perverse incentives that would undermine biodiversity objectives, notably by subsidizing or otherwise facilitating industrial-scale extraction of timber.<sup>247</sup> Another risk that the implementation of REDD+ potentially causes for biodiversity is the displacement of deforestation and degradation to areas which are low in carbon but rich in biodiversity, or conversion or reforestation of an area with non-native tree species—often monocultures with greater carbon savings.<sup>248</sup>

The term ‘conversion of natural forests’ is not specifically defined in the analysed international instruments, but it is referred to. In its first session, the CMP to the Kyoto Protocol linked ‘deforestation’ to the ‘conversion’ of forests, when stating that deforestation is “the direct human-induced conversion of forested land to non-forested land.”<sup>249</sup> Likewise, the FAO *2000 Forest Resources Assessment*, defines deforestation as: ‘the conversion of forest to another land use or the long-term reduction of the tree canopy cover below the minimum 10 percent threshold.’

As highlighted before, the requirement of UNFCCC REDD+ Safeguard (e) that “actions referred to in paragraph 70<sup>250</sup> of the decision are not used for the conversion of natural forests” suggest that REDD+ activities should not include the conversion of natural forests into monoculture plantations.

**Table 8:** Provisions of international law relevant to the interpretation UNFCCC REDD+ Safeguard (e)

Safeguard language	International instrument	Provision (for other relevant instruments see footnotes)
<i>"...natural forests..."</i>	<b>FAO Global Forest Resources Assessment 2010</b>	"Naturally regenerated forest of native species, where there are no clearly visible indications of human activities and the ecological processes are not significantly disturbed." <sup>251</sup>
<i>"...biological diversity..."</i>	<b>Convention on Biological Diversity (CBD)</b>	<b>Article 2</b> "'Biological diversity' means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species, and of all ecosystems." <sup>252</sup>
<i>"...ecosystem services..."</i>	<b>Millennium Ecosystems Assessment (MEA)</b>	"Provisioning services such as food, water, timber, fiber, and genetic resources; regulating services such as the regulation of climate, floods, disease, and water quality as well as waste treatment; cultural services such as recreation, aesthetic enjoyment, and spiritual fulfillment; and supporting services such as soil formation, pollination, and nutrient cycling." <sup>253</sup>



**Table 9: Examples of ecosystem services**

Provisioning services	Regulating services	Cultural services	Supporting services
<b>Food</b> (derived from plants, animals, and microbes); fibre (wood, jute, cotton, hemp, silk, and wool);	<b>Air quality regulation</b> (ecosystems both contribute chemicals to and extract chemicals from the atmosphere, influencing many aspects of air quality);	<b>Cultural diversity</b> (the diversity of ecosystems is one factor influencing the diversity of cultures);	<b>Soil formation</b> (because many provisioning services depend on soil fertility, the rate of soil formation influences human well-being in many ways);
<b>Fuel</b> (wood, dung, and other biological materials serving as sources of energy); genetic resources (includes the genes and genetic information used for animal and plant breeding and biotechnology);	<b>Climate regulation</b> (ecosystems influence climate both locally and globally. At a local scale, for example, changes in land cover can affect both temperature and precipitation. At the global scale, ecosystems play an important role in climate by either sequestering or emitting greenhouse gases);	<b>Spiritual and religious values</b> (many religions attach spiritual and religious values to ecosystems or their components);	<b>Photosynthesis</b> (photosynthesis produces oxygen necessary for most living organisms; primary production (the assimilation or accumulation of energy and nutrients by organisms));
<b>Fresh water</b> (people obtain fresh water from ecosystems and thus the supply of fresh water can be considered a provisioning service). <sup>254</sup>	<b>Erosion regulation</b> (vegetative cover plays an important role in soil retention and the prevention of landslides);	<b>Knowledge systems</b> (ecosystems influence the types of knowledge systems developed by different cultures);	<b>Nutrient cycling</b> (approximately 20 nutrients essential for life, including nitrogen and phosphorus, cycle through ecosystems and are maintained at different concentrations in different parts of ecosystems); Water cycling (water cycles through ecosystems and is essential for living organisms). <sup>255</sup>

## Protection and Conservation of Natural Forests and Biological Diversity

### (i) General Measures to Protect Natural Forests and Biodiversity

Much attention has been focused on the international law governing the utilization of biological diversity, which has led to the development of six key global conventions. These are:

- The Convention on Wetlands (Ramsar Convention) adopted in 1971;
- The World Heritage Convention (WHC) adopted in 1972;
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) adopted in 1973;
- Bonn Convention adopted in 1979;
- The Convention on Biological Diversity (CBD) adopted in 1992; and
- The International Treaty on Plant Genetic Resources for Food and Agriculture (IPTGRFA), adopted in 2001.

To meet their objectives, these six conventions implement actions at global, regional and national levels, and have developed approaches, tools and guidelines. To ensure consistency in our interpretation and recommendations for implementing measures (See Part II of this Guidance Document), we suggest taking into account relevant provisions from all six of these conventions.

As the over-arching international instrument for the conservation of biological diversity, the CBD is the most pertinent convention to UNFCCC REDD+ safeguard (e). The CBD, through its relevant institutional bodies,<sup>256</sup> has produced a number of decisions, targets and work programmes that have specific relevance for the conservation of forest biological diversity.

The tenth meeting of the Conference of the Parties (COP 10) to the CBD saw the adoption of the Strategic Plan for Biodiversity 2011-2020, which is organised under a number of strategic goals and targets (the Aichi Biodiversity Targets).<sup>257</sup> The Strategic Plan is to be implemented through activities primarily at the national or sub-national level, with supporting action at the regional and global levels.<sup>258</sup> The detailed guidance for the implementation of the Strategic Plan is contained in the CBD's various thematic programmes of work. The expanded programme of work on forest biodiversity is the most relevant thematic programme of work for the purpose of UNFCCC REDD+ Safeguard (e).

The expanded programme of work on forest biological diversity and the Aichi Targets are too large and complex to examine in any detail for the purpose of this section. However, we recommend that countries looking to understand the term 'conservation of biological diversity', and the relevant implementing measures, refer to these two elements of the CBD's work.

### (ii) Enhancement of Other Benefits

The language of UNFCCC REDD+ Safeguard (e) specifically requires REDD+ actions to be used to enhance other social and environmental benefits, and to take into account:

*“the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day.”*

We have therefore examined the scope of this term and the international language surrounding the need for sustainable livelihoods of both local communities and indigenous peoples.

We note that the Inter-American Court of Human Rights has interpreted the right to life under the Protocol of San Salvador to include a duty to conserve forests. This is due to the relationship between forests and livelihoods, where the court acknowledged that forest conservation was necessary to ensure the livelihoods<sup>259</sup> as indigenous and local communities often depend on specific subsistence activities.<sup>260</sup> Examples of traditional livelihoods which depend on subsistence activities and traditional collective systems include hunting, gathering and fishing carried out in ancestral territories.<sup>261</sup>

In addition, links have been drawn between forests and the Millennium Development Goals (MDGs).<sup>262</sup> The FAO in particular has worked to raise awareness about the links between forests and the MDGs in order to highlight forests' contribution to national development goals, and to help adequately reflect poverty reduction and food security in national forest programmes and other sustainable development plans.<sup>263</sup>

The FAO has noted that forests (through their ecosystem services) have a significant impact on two of the MDGs: Goal 1, which pertains to poverty and hunger reduction; and Goal 7, which refers to environmental sustainability:

*“On the one side forests maintain land productivity and the provision of water resources to agricultural systems thus contributing to food production and food security; they provide wood and non wood forest products, income and employment to millions of people. On the other side, they protect biological diversity; maintain and provide clean and reliable water resources to urban and rural population; conserve soils, protect against flooding, enable carbon sequestration to protect the atmosphere and protect coastal and marine resources.”<sup>264</sup>*

UNFCCC REDD+ Safeguard (e) explicitly states that REDD+ activities should contribute to the enhancement of other social and economic benefits that support livelihoods.

Measures to incentivise the protection of biodiversity while also contributing to the enhancement of other social and economic benefits mainly fall into two categories: direct and indirect approaches.<sup>265</sup> Direct approaches generally provide monetary incentives such as ‘paying’ relevant actors to achieve biodiversity-friendly outcomes or, conversely, to not achieve outcomes that harm biodiversity. Examples include conservation leases, covenants or easements, and schemes providing payments for ecosystem services.<sup>266</sup>

Indirect approaches seek to support activities or projects that are not designed exclusively to conserve or promote the sustainable use of biodiversity, but have the effect of contributing towards these objectives. Many of these incentives are non-monetary in nature (although they may have financial implications for the provider) an example of which is the official recognition of the role of local communities in the context of community-based natural resource management programmes.<sup>267</sup>

From these examples we can see that indirect approaches for incentivising conservation of biodiversity could be applied to REDD+ activities.<sup>268</sup>

**Table 10:** Provisions of international law relevant to the interpretation UNFCCC REDD+ Safeguard (e)

Safeguard language	International instrument	Provision
<i>“...conservation of natural forests and their ecosystem services...”</i>	<b>World Charter for Nature</b>	<b>Article 1(4)</b> “Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other eco systems or species with which they coexist.” <sup>269</sup>
	<b>Agenda 21</b>	<b>Article 11.13(a)</b> “Maintain existing forests through conservation and management, and sustain and expand areas under forest and tree cover, through the conservation of natural forests, protection, forest rehabilitation, regeneration, afforestation, reforestation and tree planting, with a view to maintaining or restoring the ecological balance and expanding the contribution of forests to human needs and welfare.” <sup>270</sup>
	<b>ASEAN Agreement on the Conservation of Nature and Natural Resources</b>	<b>Article 2</b> “Conservation and management of natural resources are treated as an integral part of development planning at all stages and at all levels. In the formulation of all development plans, give as full consideration to ecological factors as to economic and social ones.” <sup>271</sup>

## Safeguards (f) and (g): Permanence and Leakage

UNFCCC REDD+ Safeguards (f) and (g) call, respectively, for **“actions to address the risks of reversals”** and **“actions to reduce displacement of emissions.”**

These safeguards differ from those previously analysed in that they relate closely to the greenhouse gas (GHG) mitigation goals of REDD+ and therefore the accounting rules. UNFCCC REDD+ Safeguard (f) seeks to ensure that emissions reductions are long lasting, while UNFCCC REDD+ Safeguard (g) looks to ensure that total global emissions are reduced.

Reaching the goals of permanence embodied in UNFCCC REDD+ Safeguard (f), and preventing leakage embodied in UNFCCC REDD+ Safeguard (g), must be approached in a holistic manner throughout the country or region. This implies a national/regional scale approach, rather than a project-based one. An essential requirement for compliance with UNFCCC REDD+ Safeguards (f) and (g) is adequate knowledge of the variables in relation to the national environment, including threats (be they human-induced or other), the state of biodiversity and activities directly or indirectly impacting forests.

This section provides a brief introduction to both safeguards, followed by a legal interpretation of the terms therein. Please note that it was not possible to catalogue the relevant international provisions in a table as in previous sections, because UNFCCC REDD+ Safeguards (f) and (g) are specific to REDD+ activities. Therefore, they are not explicitly referred to in other international instruments.

Hence, our analysis is presented breaking down the concepts under the following framework:

- A. Background on the concepts of reversals and leakage
  - i. Reversals
  - ii. Leakage
- B. Monitoring and assessment
- C. Applicable principles of international law
  - i. Sustainable use of natural resources
  - ii. The precautionary principle
  - iii. International cooperation

### Background on the Concepts of Reversals and Displacement

#### (i) Reversals

As mentioned above, UNFCCC REDD+ Safeguard (f) aims to address risks of reversals, and therefore seeks to ensure the ‘permanence’ of any GHG emission reduction. The term ‘permanence’ relates to the idea that GHG emission reductions through carbon storage in trees will be long-lasting.

There are many risks over the ‘permanence’ of GHG emission reduction in trees. Whether they be human or natural in origin, they have the potential to reverse long-term GHG benefits obtained through carbon storage in trees. If this carbon has already been accounted for and has received emissions reductions credits, and non-permanence occurs, this is considered a ‘reversal’.<sup>272</sup>

There are a number of risks of reversals that have been identified:

- Natural/ecological risk: variations in carbon stocks, caused by natural events such as storm, drought, pests, or fire;
- Climate change-related risk: Climate change may lead to systematic carbon losses in certain regions;
- Demand-side risk: Where demand for agricultural crops is the main driver of deforestation, an increase in prices on the national or world market may drive up opportunity costs to levels above the carbon prices agreed, making forest conversion more profitable;
- Inefficiencies in forest governance: Risk related to non-performance of the project can be due to, ineffective project management, insecure land tenure rights, bankruptcy of project partners; and
- Political risk: A change in government may lead to a change in or reversal of any prior approvals or commitments. The same may occur in the event of civil unrest.<sup>273</sup>

The purpose of UNFCCC REDD+ Safeguard (f) is to address those risks at a national level, and to ensure that GHG reductions are sustainable and long lasting.

## (ii) Leakage

UNFCCC REDD+ Safeguard (e) is intended to deal with displacement of emissions from one area to another, also commonly referred to as ‘leakage’. Different types of leakage can be distinguished by the nature of the processes that motivate the displacement:

**Primary leakage** (or ‘activity shifting’): direct displacement of activities from one area to another (e.g. local communities using forest for subsistence on another area, or encroachment of logging/agribusiness in another area).

**Secondary leakage** (or ‘market effects’): when forest conservation in one place indirectly creates incentives to deforest in other places, for instance, when the reduction in supply of commercial products (e.g. timber) causes price increase that makes logging more attractive to others (international).<sup>274</sup>

Secondary leakage is likely to occur across national boundaries, and therefore must be dealt with at the international level through mechanisms such as the UNFCCC or other international agreements. For the national interpretation and implementation of this safeguard and the scope of this section, we examined international instruments that are relevant to primary leakage.

Primary leakage (hereafter referred to simply as ‘leakage’) occurs when interventions to reduce emissions in one area (sub-national or national) lead to higher emissions in another area. Primary leakage may also occur when the scale of intervention is smaller than the scale of the problem, e.g. when emission reduction activities are carried out in locally limited areas.

Leakage processes can occur on different geographical scales. The process can be local (e.g. project based), or further reaching (e.g. national or international level). International leakage describes displacement from one country to another. That is, when a country introduces emission reduction policies and deforestation activities relocate to countries without those restrictions or with weaker forest governance structures.<sup>275</sup> Multilevel governance mechanisms are necessary to ensure overall emissions reductions. See Part II of the Guidance Document for more recommended implementing actions.

A project-by-project based approach will result in domestic leakage, unless there is appropriate national-level reconciliation. Even if REDD+ is to be implemented at a national level, activities that lead to forest loss such as logging or agriculture may be displaced to neighbouring areas.

The following section will examine the legal interpretation of both safeguards.

Our analysis over the interpretation of both UNFCCC REDD+ Safeguards (f) and (g) demonstrate that there are two main considerations that need to be taken into account when examining and defining the scope of these safeguards at the national level. These are: the technical approaches to monitoring and measuring permanence and leakage; and the relevant guiding principles of international law.

### **Monitoring and Assessment**

National REDD+ activities are critical for capturing in-country leakage and assessing risks of reversals in accounting frameworks. Setting reference levels, monitoring the rate of deforestation, and accounting for emissions reductions and increases in removals should therefore be performed at the national level. It is important for example, to establish coherent regulations on the responsibilities and procedures for monitoring by sub-national governments in order for the national accounting system to be coherent.<sup>276</sup> A coherent reporting system will enable the assessment of whether actions to address leakage are successful or not.

There are relevant international instruments and decisions that support the measurement, reporting and verification of emissions.<sup>277</sup> The UNFCCC requests developing countries to use the latest Intergovernmental Panel on Climate Change (IPCC) guidelines as a basis for estimating anthropogenic forests-related GHG emissions.<sup>278</sup> They also provide guidance for the development of an appropriate measuring, reporting and verification (MRV) system.<sup>279</sup>

It is important to highlight that UNFCCC COP 17 also established a number of decisions relevant to REDD+ that should be taken into consideration:

- The type of information which should be provided under the Safeguard Information System (SIS),<sup>280</sup>
- The modalities for national forest reference emission levels and/or forest reference levels (REL/RL); and
- Proposed RELs/RLs have to be expressed in tonnes of carbon dioxide equivalent per year and will be used as benchmarks for performance.<sup>281</sup>

The Subsidiary Body for Scientific and Technological Advice (SBSTA), charged with deciding modalities for National Forest Monitoring Systems (NFM) and for MRV of anthropogenic forest-related emissions has yet to reach a decision.<sup>282</sup> These two areas of work are still under development.



## Applicable Principles of International Law

The concepts of UNFCCC REDD+ Safeguards (f) and (g) are more difficult to clearly define in international instruments, because no instruments currently deal explicitly with leakage or reversals. We have therefore chosen to analyse the concepts through the relevant literature. However, it is possible to recognise a number of general principles of international environmental law that potentially apply to these safeguards. Whilst it is not possible to establish the precise legal status of every principle, they are nevertheless useful as guiding concepts when considering actions carried out with UNFCCC REDD+ Safeguards (f) and (g). The guiding principles which are examined below are: (i) Sustainable use of natural resources, (ii) the precautionary principle, and (iii) co-operation.

### (i) Sustainable Use of Natural Resources:

Four recurring elements appear in relation to ‘sustainable use of natural resources’:

- **The principle of intergenerational equity:** refers to the need to preserve natural resources for the benefit of future generations;<sup>283</sup>
- **The principle of sustainable use:** refers to exploiting of natural resources in a manner which is ‘sustainable’, or ‘prudent’, or ‘rational’, or ‘wise’ or ‘appropriate’;<sup>284</sup>
- **The principle of equitable use:** implies that benefits derived from utilisation of forest resources should be equitably shared among those who have rights over them;<sup>285</sup> and
- **The principle of integration:** refers to the need to ensure that environmental considerations are integrated into economic and other development plans, programmes and projects, and that development needs are taken into account in applying environmental objectives.<sup>286</sup>

### (ii) The Precautionary Principle

The precautionary principle aims to provide guidance in the development and application of international environmental law where there is scientific uncertainty. It continues to generate disagreement as to its meaning and effect.<sup>287</sup>

The core of the principle, which is still evolving, is reflected in Principle 15 of the Rio Declaration, which provides that: “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”<sup>288</sup> Principle 15 also provides that ‘the precautionary approach shall be widely applied by States according to their capabilities.’<sup>289</sup>

Although there is disagreement over the precise threshold at which the principle applies, it nevertheless provides a rationale for addressing the risk of reversals, and for avoiding leakage due to the environmental consequences of a failure to act.

### (iii) Cooperation

Both the Stockholm Declaration and Rio Declaration support commitment to cooperation in matters concerning protection of the environment.<sup>290</sup>

Of particular relevance to UNFCCC REDD+ Safeguard (g) is the requirement that “States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation.”<sup>291</sup>

Co-operative measures can include the sharing of information, scientific and technical cooperation, harmonising reporting methodologies, linking information data centres and law enforcement.

## Part II: Measures to Implement UNFCCC REDD+ Safeguards

The second of part of this Guide focuses on identifying and analysing relevant measures from international law to effectively implement the UNFCCC REDD+ Safeguards. As noted in the methodology section of this Guidance Document, the list of recommended implementation measures is the result of our analysis of over 90 international and regional conventions, non-binding declarations, voluntary mechanisms and regional case law.

The objective of this section is to identify and analyse implementation measures provided in the reviewed instruments, as they are relevant to the UNFCCC REDD+ Safeguards. Once identified, these implementation measures can be classified according to the UNFCCC REDD+ Safeguard they are most relevant to. Naturally, countries are only obliged to comply with the international agreements they have ratified. Therefore, implementation of relevant measures is only mandatory for the instruments to which countries are a Party. However, drawing from international law, these identified implementation measures are useful in that they can provide guidance to countries and various stakeholders on the variety of policy options that can be taken to effectively implement the UNFCCC REDD+ Safeguards. It must be noted that this analysis and compilation of implementing measures from international agreements is not exhaustive. It serves as guidance, rather than a comprehensive checklist for addressing and respecting the UNFCCC REDD+ Safeguards.

The implementation measures identified have been categorised under a similar but not identical structure to Part I.

### Implementing UNFCCC REDD+ Safeguard (a)

UNFCCC REDD+ Safeguard (a) requires that REDD+ activities complement or be consistent with the objectives of national forest programmes and relevant international conventions and agreements. The implementation measures are divided into the two constituent elements of the safeguard:

- A. REDD+ actions must complement or be consistent with the objectives of national forest programmes
- B. REDD+ actions must complement or be consistent with the objectives of relevant international conventions and agreements

### Complement or Consistent with the Objective of National Forest Programmes

As seen in Part I, national forest programmes include forest (and forest-related) policies; forest (and forest-related) legislation; the institutional framework and governance mechanism for implementation; and strategies, programmes and/or action plans for implementation of the forest policy. In order to address and respect UNFCCC REDD+ Safeguard (a), countries should understand that they do not necessarily need to modify the priorities of their national forest programmes so long as they are consistent with the second element of the safeguard.

1. Identify relevant national forest programmes, ministries, administrative institutions, working groups and enforcement agencies;
2. Examine the extent to which these national forest programmes activities are consistent

- with relevant obligations under international law; and
3. Examine the extent to which national forest programmes address the UNFCCC REDD+ Safeguards and take steps to ensure they are effectively complementary or consistent.

### Complement or consistent with relevant international conventions and agreements

The implementation of UNFCCC REDD+ Safeguard (a) will require identifying, recognizing and taking steps to effectively complement and be consistent with relevant and applicable international conventions and agreements. Consideration of these international instruments will help countries to align the UNFCCC REDD+ Safeguards with their existing commitments and aspirations to undertake the governance reforms necessary for the sustainable management of their forests. The following implementing measures have been identified as necessary steps to identify the scope and content of the international law obligations with which countries need to comply in order to adequately address and respect UNFCCC REDD+ Safeguard (a):

1. Systematically identify international instruments to which the country is a Party, and which are thematically relevant to REDD+ activities.
2. Examine the extent to which the international instruments identified are being implemented nationally and whether activities to address the UNFCCC REDD+ Safeguards could be linked to the implementation of those relevant international instruments.
3. As appropriate, take legal or administrative steps to further implement these relevant and applicable international instruments.

### Implementing UNFCCC REDD+ Safeguard (b)

Below is a breakdown of recommended implementation measures that countries may want to undertake to implement UNFCCC REDD+ Safeguard (b), many of which apply to more than one instrument. Firstly, measures relevant to 'Transparent' national forest governance structures' are listed, followed by measures applicable to 'effective' national forest governance structures. The final element of UNFCCC REDD+ Safeguard (b), "taking into account national legislation and sovereignty," is more in need of interpretation (as seen above) than implementation.

Our analysis is therefore presented breaking down the concepts under the following framework:

- A. Transparent national forest governance structures, which is comprised of:
  - i. The right of access to information
  - ii. Democratic accountability and anti corruption measures
- B. Effective national forest governance structures, which is comprised of:
  - i. Appropriate institutional and legal framework
  - ii. Participation in decision-making processes that affect the environment
  - iii. Adequate access to Justice

C. Taking into account national legislation and sovereignty

- i. Taking into account sovereignty
- ii. Taking into account national legislation

## Measures to Promote Transparent National Forest Governance Structures

### (i) Right of Access to Information

1. Provide legal recognition<sup>292</sup> and take necessary measures<sup>293</sup> to give effect to the right to access to information. This includes the adoption of legislative and regulatory measures necessary to ensure timely and appropriate<sup>294</sup> dissemination of environmental information.<sup>295</sup>
2. Establish and/or improve appropriate national institutions entrusted with the promotion and protection of the right to information.<sup>296</sup> This includes campaigns to inform the general public about the existence of the right of access to information and ways of exercising that right.<sup>297</sup>
3. Develop or improve mechanisms to ensure public access to information. This includes ensuring that officials and authorities assist and provide guidance to the public in seeking access to information, translating technical information necessary for informed decision making on land use and management into an accessible form for all sectors of the population, especially to local communities and women.<sup>298</sup>

### (ii) Accountability

1. Create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs.<sup>299</sup>
2. Establish codes of conduct to prevent conflicts of interest, and enforcement mechanisms for these codes. This includes the creation of mechanisms to regulate the hiring of public officials, such as implementing or strengthening measures for the timely detection of situations involving conflicts of interest prior to the commencement of public employment,<sup>300</sup> and requiring the publication of their assets and reporting in public procurement processes.<sup>301</sup>
3. Ensure that auditing rules are in force; ensuring the effectiveness of internal and external fiscal oversight systems and that they apply to the majority of public resources.<sup>302</sup> This could be done by legislation setting out the rules and procedures for accountability in law.
4. Take measures to promote the active participation of individuals and groups outside the public sector such as civil society, non-governmental organizations (NGOs) and community based organizations in the fight against corruption.<sup>303</sup>
5. Promote and strengthen mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors. This includes the adoption of legisla-

tive and other measures that are required to establish corruption as an offence; and establishing, maintaining and strengthening independent national anti-corruption authorities or agencies.<sup>304</sup>

6. Strengthen measures for oversight of public spending through methods including, *inter alia*; restricting the margin of discretion of public officials who handle the budget and public procurement; and allowing citizen participation in certain processes related to those topics and optimizing the use of technology in implementing the corresponding mechanisms.<sup>305</sup> This could be also done through legislation.

## Measures to Promote Effective National Forest Governance Structures

### (i) Appropriate Institutional and Legal Framework

1. Develop and implement integrated, enforceable, and effective laws and regulations that are based upon sound social, ecological, economic, and scientific principles.<sup>306</sup>
2. Strengthen cooperation and cross-sectoral coordination among sectors affecting or affected by forest management.<sup>307</sup> This includes the integration of relevant cross-sectoral plans, programs, and strategies.<sup>308</sup>
3. Secure adequate financial resources for forest protection and conservation.<sup>309</sup> This includes the development of financing strategies that outline the short, medium, and long-term financial planning for achieving sustainable forest management.<sup>310</sup>
4. Ensure adequate enforcement of forest-related laws, to combat and eradicate illicit trade practices over timber, wildlife, and other forest biological resources.<sup>311</sup> This includes reinforcing and supporting capacity building measures of the judiciary and law enforcement agencies.<sup>312</sup>
5. Support scientific and technical programmes of relevance to the conservation and management of natural resources, including monitoring research, the exchange of technical information, and evaluation of results.<sup>313</sup>
6. Adopt scientifically-based conservation, utilization and management plans for forests to ensure sustainable use of resources.<sup>314</sup> This includes the use of 'best environmental practice', meaning the application of the most appropriate combination of environmental control measures and strategies.<sup>315</sup>
7. Ensure that policies, plans, programmes, strategies, projects and activities likely to affect natural resources, ecosystems and the environment in general are the subject of adequate impact assessment at the earliest possible stage (both environmental and social), and that regular environmental monitoring and audits are carried out.<sup>316</sup>
8. Clarify and recognize the rights of ownership and possession over lands and territories by indigenous peoples, local communities, forest owners, concession holders, and other relevant stakeholders.<sup>317</sup>

9. Take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of forest resources that are held by indigenous and local communities are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms and free, prior and informed consent (FPIC).<sup>318</sup>
10. Regularly assess and, as needed, improve the laws, regulations, and related institutional/administrative machinery at the national/state and local/municipal level that govern forest management, with a view to rendering them effective in practice.<sup>319</sup>
11. Devolve responsibility and accountability to local management institutions (including both governmental and civil society organizations) for restoring, managing and rehabilitating degraded and secondary forests.<sup>320</sup>

#### **(ii) Participation in Decision-Making Processes That Affect the Environment**

1. Create an enabling environment to ensure public participation.<sup>321</sup> This includes: notification and public consultation of proposed developments or policies; identification of indigenous and local communities and stakeholders (including women, the elderly and youth) likely to be affected by the proposed development or policy; ensuring that all stakeholders, particularly indigenous and local communities are aware of their rights (if necessary, through written translations and use of mass communications in the languages of these peoples); establishment of mechanisms for indigenous and local community participation; establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted by a proposed development; identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures; and establishment of a review and appeal process.<sup>322</sup>
2. In cases where the national government retains ownership of mineral or sub-surface resources, or rights to other resources pertaining to lands (forests), it establishes or maintains procedures through which it shall consult potentially affected peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned will wherever possible participate in the benefits of such activities, and will receive fair compensation for any damages which they may sustain as a result of such activities.<sup>323</sup>
3. Make use of public telecommunications networks and electronic databases to facilitate the use of access to information mechanisms.<sup>324</sup>
4. Strengthen the capacity of actors for the collection, processing and dissemination of statistics on their trade in timber and information on the sustainable management of their forests.<sup>325</sup>

5. Promote awareness among the public at large of the importance of considering environment and development in an integrated manner, and establish mechanisms for facilitating a direct exchange of information.<sup>326</sup> This includes through education, public campaigns and capacity building.<sup>327</sup>

**(iv) Adequate Access to Justice**

1. Provide effective access to judicial and administrative proceedings, including redress and remedy.<sup>328</sup>
2. Take appropriate steps to ensure that parties to judicial proceedings have the right to seek review and, where warranted, correction of final decisions issued. Ensure that tribunals conducting or reviewing such proceedings are impartial and independent, and do not have any substantial interest in the outcome of the matter.<sup>329</sup>
3. Establish judicial and administrative procedures for legal redress and remedy of actions affecting the environment that may be unlawful or infringe on rights under the law. These should provide access to indigenous peoples, local communities, forest owners, and other relevant stakeholders (including women, the elderly and youth<sup>330</sup>) with a recognized legal interest.<sup>331</sup>
4. Take appropriate steps to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy,<sup>332</sup> including ensuring that judicial and quasi-judicial proceedings are fair, open and equitable. Such proceedings would also: (a) comply with due process of law; (b) be open to the public, except where the administration of justice otherwise requires; (c) entitle the parties to the proceedings to support or defend their respective positions, and to present information or evidence; and (d) not be unnecessarily complicated and not entail unreasonable charges, time limits or unwarranted delays.<sup>333</sup>

### Taking into Account National Legislation and Sovereignty

This element of UNFCCC REDD+ Safeguard (b) does not require its own implementing measures and is more of a framework consideration. As identified in Part I of this Guide, this element recognises States' sovereign right to exploit their own resources pursuant to their environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States, or of areas beyond the limits of national jurisdiction.<sup>334</sup> When considering a legal measure, States should also first consider whether it is necessary to amend/strengthen existing legislation before drafting a new law.<sup>335</sup> In addition, measures taken to address and respect the UNFCCC REDD+ Safeguards must be in accordance with the State's national laws, or in accordance with the fundamental legal principles of its judicial system.<sup>336</sup>



## Implementing UNFCCC REDD+ Safeguard (c)

There is an array of implementing measures contained in the international instruments identified and analysed under the interpretation of UNFCCC REDD+ Safeguard (c). Below is a breakdown of these implementation measures.

The analysis involves a discussion of the different elements of the safeguard, and is broken down according to the following structure:

- A. Defining indigenous peoples, members of local communities and knowledge
  - i. Defining indigenous peoples and local communities
  - ii. Respecting knowledge
  
- B. The rights of indigenous peoples and members of local communities under international law
  - i. Non-discrimination
  - ii. Self-determination
  - iii. Rights associated with culture
  - iv. Collective land tenure
  - v. Benefit-sharing
  - vi. Procedural rights

## Defining Indigenous Peoples, Members of Local Communities and Knowledge

### (i) Defining Indigenous Peoples and Local Communities

As was noted in Part I of this Guide, there is no single internationally agreed definition for indigenous peoples and local communities. It is therefore important for countries looking to address UNFCCC REDD+ Safeguard (c) to familiarise themselves with the international instruments relevant to indigenous peoples, to ratify them and effectively implement them.<sup>337</sup>

### (ii) Respecting Knowledge

1. Adopt legislative or other measures as may be necessary to give effect to or protect indigenous knowledge and/or rights,<sup>338</sup> and local communities' knowledge and/or rights.<sup>339</sup>
2. Integrate the knowledge and rights of indigenous<sup>340</sup> and local communities<sup>341</sup> into national policy.
3. Record, preserve and protect traditional forest-related knowledge. Develop standards, guidelines and other mechanisms in this regard.<sup>342</sup>

## The Rights of Indigenous Peoples and Members of Local Communities under International Law

### (i) Non-Discrimination

1. Recognize indigenous peoples' identity, culture and interests<sup>343</sup> without discrimination.<sup>344</sup>
2. Take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.<sup>345</sup>
3. Take effective measures and, where appropriate, special measures to ensure continuing improvement of indigenous peoples' economic and social conditions. Particular attention should be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.<sup>346</sup>

### (ii) Self-Determination

1. Respect indigenous peoples' traditions, customary laws, institutions and structures, such as judicial and administrative bodies or councils.<sup>347</sup>
2. Provide access for indigenous communities to forest resources and relevant markets in order to support livelihoods and income diversification from forest management.<sup>348</sup>
3. Provide capacity building support to indigenous peoples' rights and interests.<sup>349</sup>
4. Provide capacity building support to local communities' rights and interests.<sup>350</sup>
5. Develop or strengthen national arrangements to ensure that agencies and appropriate institutions and mechanisms exist to protect and fulfill the rights of indigenous peoples. It is essential to ensure that they have the means necessary for the proper fulfillment of the functions assigned to them.<sup>351</sup>

### (iii) Rights Associated with Culture

1. Adopt appropriate measures (including legislative measures) to guarantee certain rights of consultation with indigenous peoples,<sup>352</sup> and taking account of their cultural heritage.<sup>353</sup>
2. Implement education and information-sharing programmes.<sup>354</sup>
3. Protect, record and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.<sup>355</sup>

4. Take effective measures in order for individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.<sup>356</sup>

**(iv) Collective Land Tenure**

1. Establish or implement, in conjunction with indigenous peoples concerned, a process to adjudicate the rights of indigenous peoples pertaining to their lands, territories, and resources, and guarantee effective protection of their rights to ownership and possession. The process must give due recognition to indigenous peoples laws, traditions, customs, and land tenure systems.<sup>357</sup>
2. Adaptation of domestic legislation so as to ensure the enjoyment of specific rights, freedom and property.<sup>358</sup>
3. Establish or enhance mechanisms for community-based resource management programmes.<sup>359</sup>

**(v) Benefit-Sharing**

1. Share benefits arising from knowledge with members of indigenous peoples<sup>360</sup> and local communities<sup>361</sup> in a fair and equitable manner.
2. Provide access to forest resources and relevant markets for local communities, in order to support livelihoods and income diversification from forest management.<sup>362</sup>

**(vi) Procedural Rights**

1. Develop or strengthen mechanisms to ensure the active participation of indigenous peoples in decision making processes at all levels and phases (formulation, implementation, and evaluation) that may affect the rights or freedoms of indigenous peoples.<sup>363</sup> This includes obtaining free prior and informed consent (FPIC) from indigenous peoples prior to the approval of any action affecting their rights or freedoms.<sup>364</sup>
2. Consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their FPIC before adopting and implementing legislative or administrative measures that may affect them.<sup>365</sup>
3. Strengthen the active participation of indigenous peoples and local communities in the formulation of policies, laws and programs relating to forest management.<sup>366</sup> Carry out surveys and research on indigenous knowledge of trees and forests and their uses to improve the planning and implementation of sustainable forest management.<sup>367</sup>

4. Provide effective mechanisms for the prevention of, and redress for, any action that violates or undermines the rights or freedoms of local communities, especially concerning their rights to ownership and possession of lands and territories.<sup>368</sup>
5. Ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.<sup>369</sup>
6. Provide effective mechanisms for the prevention of, and redress for, any action that violates or undermines the rights or freedoms of local communities, especially concerning their rights to ownership and possession of lands and territories.<sup>370</sup>
7. Provide local communities with appropriate and effective grievance and dispute resolution mechanisms in order to enforce their rights,<sup>371</sup> particularly with regards to land claims.<sup>372</sup>

## Implementing UNFCCC REDD+ Safeguard (d)

Recommendations found in the Inter-American Strategy for the Promotion of Public Participation in Decision Making for Sustainable Development (ISP)<sup>373</sup> outline six main areas where measures should be taken. Although they relate to sustainable development in general, rather than forest governance in particular, they provide a good indication of the types of measures that should be taken to implement UNFCCC REDD+ Safeguard (d):

**Information and Communication:** formal and informal communication mechanisms to encourage information sharing, collaboration, and cooperation within and among civil society groups, within and between levels of government, and between all levels of government and civil society.

**Legal Frameworks:** legal and regulatory frameworks that ensure the participation of relevant stakeholders in sustainable development decisions.

**Institutional Procedures and Structures:** institutional structures, policies, and procedures that promote and facilitate, within all levels of government and civil society, interaction in sustainable development decisions, and encourage change within existing institutions to pursue a basis for long-term direct dialogue and innovative solutions.

**Education and Training:** developing and strengthening the capacity of individuals to participate in sustainable development decision making with an increased base of knowledge (local, traditional and technical) of sustainable development issues and public participation practices.

**Funding for Participation:** provide financial resources to initiate, strengthen, and/or continue participatory practices in decision making.

**Opportunities and mechanisms for Public Participation:** formal and informal opportunities and mechanisms for public participation in which sustainable development activities are discussed and decided upon.

Our own analysis of potential implementation measures for UNFCCC REDD+ Safeguard (d) is presented breaking down the concepts under the following framework:

A. Creating an enabling environment for effective participation

- i. Adequate access to information
- ii. Implementing participatory mechanisms
- iii. Conflict resolution mechanisms/access to justice

B. Effective participation of indigenous peoples and local communities

- i. Creating an enabling environment
- ii. Free, Prior and Informed Consent (FPIC)

### Creating an Enabling Environment for Effective Participation

**(i) Adequate Access to Information**

1. Provide legal recognition and take necessary measures to give effect to the rights to access to information, participation, and justice.<sup>374</sup>
2. Promote, on a permanent basis, access by the public to relevant information, and wide public participation in education and awareness activities; and encourage the establishment of associations that contribute to public awareness.<sup>375</sup>
3. Establish and improve appropriate national institutions entrusted with the promotion and protection of the right to information, participation, and justice.<sup>376</sup>
4. Circulate as widely as possible information on the significance of conservation measures and their relationship with sustainable development objectives. As far as possible, also organize participation of the public in the planning and implementation of conservation measures.<sup>377</sup> All planning and its essential elements need to be disclosed to the public by appropriate means in time to permit effective consultation and participation.<sup>378</sup>
5. Facilitate access by local populations to appropriate information and technology.<sup>379</sup>
6. Actively promote education, training, public awareness and capacity-building in connection with forests, forestry and forest-related activities.<sup>380</sup>

**(ii) Implementing Participatory Mechanisms**

1. Create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs.<sup>381</sup>
2. Develop or improve mechanisms to facilitate the involvement of indigenous peoples, local communities, forest owners, and other relevant stakeholders in decision-making at all levels.<sup>382</sup>
3. Promote participation of the private sector, labour unions, rural cooperatives, local communities, indigenous people, youth, women, user groups and non-governmental organisations in forest-related activities.<sup>383</sup>
4. Provide for effective participation at the local, national and regional levels of non- governmental organisations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organisations, in policy planning, decision making, and implementation and review of national action programmes.<sup>384</sup>
5. Design and implement programmes for disseminating information regarding the mechanisms for participating in the follow up of the public administration; and, when appropriate, training and providing civil society and NGOs with the tools needed to use those mechanisms adequately.<sup>385</sup>
6. Create mechanisms for appropriate involvement of individuals and groups in the development and enforcement of laws and regulations on environment and development.<sup>386</sup>
7. Environmental Impact Assessments carried out prior to potentially harmful activities should provide for public consultation.<sup>387</sup>

### **(iii) Conflict Resolution Mechanisms/Access to Justice**

1. Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision making authorities.<sup>388</sup>
2. Guarantee indigenous peoples, local communities, forest owners, and other relevant stakeholders' access to judicial, quasi-judicial and/or administrative proceedings to challenge the substantive and procedural legality of any decision, act, or omission relating to participation in environmental decision-making, including access to redress and remedy.<sup>389</sup>

## **Effective Participation of Indigenous Peoples and Local Communities**

### **(i) Creating an Enabling Environment**

1. Appropriate indigenous capacity and local knowledge regarding the conservation and sustainable use of forests should, through institutional and financial support and in collaboration with the people in the local communities concerned, be recognised, respected, recorded, developed

and, as appropriate, introduced in the implementation of programmes. Benefits arising from the utilisation of indigenous knowledge should therefore be equitably shared with such people.<sup>390</sup>

2. Establish means by which concerned [indigenous] peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them. Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.<sup>391</sup>
3. With the effective participation of the indigenous and local communities concerned, establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, including measures as made available through the Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.<sup>392</sup>

#### (ii) Free, Prior and Informed Consent (FPIC)

1. 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 legislative or administrative measures that may affect them.<sup>393</sup>
2. 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.<sup>394</sup>
3. States 'shall' consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.<sup>395</sup>
4. Take measures, as appropriate, with the aim of ensuring that the free, prior and informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources.<sup>396</sup>

### Implementing UNFCCC REDD+ Safeguard (e)

The Convention on Biological Diversity (CBD) (including its protocols and its Aichi Biodiversity Targets) is the most comprehensive—but not the only—international instrument in terms of providing guidance on appropriate implementing measures for UNFCCC REDD+ Safeguard (e). As stated in the interpretation section, the requirement that “actions are consistent with the conservation

of natural forests and biological diversity” is an umbrella term, which should guide all implementation measures.

The types of implementation measures envisaged under UNFCCC REDD+ Safeguard (e) can be categorised into two broad categories: 1) that REDD+ actions should not be used for the conversion of natural forests; and 2) that they should ensure the protection and conservation of biological diversity.

Our analysis of implementation measures therefore follows the framework below:

A. No conversion of natural forests

- i. Defining natural forests, biological diversity and ecosystem services
- ii. Prohibiting the conversion of natural forests

B. Protection and conservation of natural forests and biological diversity

- i. General measures to protect natural forests and biodiversity
- ii. Enhancement of other benefits

## No Conversion of Natural Forests

### (i) Defining Natural Forest, Biological Diversity and Ecosystem Services

1. Map and categorize forests in a manner that indicates different types of natural forests, forest quality, and forest plantations.<sup>397</sup>

### (ii) Prohibiting of Conversion of Natural Forest

1. Take appropriate measures to anticipate, prevent or minimize the causes of deforestation and other damage to, or destruction of, forests.<sup>398</sup>

## Protection and Conservation of Natural Forests and Ecosystem Services

### (i) General Measures to Protect Natural Forests and Biodiversity

1. Identify, monitor, and regulate processes and activities that threaten natural forests and biodiversity,<sup>399</sup> such as: pests and invasive alien species;<sup>400</sup> fire;<sup>401</sup> disease;<sup>402</sup> and human activities, including threats from pollution,<sup>403</sup> poaching<sup>404</sup> and over-grazing.<sup>405</sup>
2. Take effective economic, social and other appropriate incentive measures to encourage the conservation of biological diversity and the sustainable use of biological resources. This includes the promotion of sustainable production systems, such as traditional methods of agriculture, agro-



- forestry, forestry, range and wildlife management, which use, maintain or increase biodiversity.<sup>406</sup>
3. Adopt suitable laws and regulations for the protection and preservation of flora and fauna within national jurisdictions.<sup>407</sup> Regulate the use of biological resources and wood products, including the trade of such resources.<sup>408</sup>
  4. Create, develop, or expand protected forest areas,<sup>409</sup> in particular areas with high biodiversity,<sup>410</sup> and make use of buffer zones and corridors.<sup>411</sup>
  5. Identify and monitor, through sampling and other techniques, the components of biological diversity and forest quality at national and sub-national levels, and maintain and organise data derived from this identification and monitoring activities.<sup>412</sup>
  6. Based on identification, monitoring, and other relevant techniques, prepare a list of protected species and areas.<sup>413</sup> Countries should pay particular attention to those areas requiring urgent conservation measures, and those that offer the greatest potential for sustainable use.<sup>414</sup>
  7. Facilitate, promote and continually improve policy and legal frameworks that promote sustainable forest management.<sup>415</sup> Issue certificates authorising the exportation or transit of protected species of flora or fauna, or parts thereof. Prohibit the importation of any species of fauna or flora, or any part thereof protected by the country of origin unless accompanied by a certificate of lawful exportation.<sup>416</sup> Investigate and prosecute cases of poaching, illegal logging and illegal trade of protected species.<sup>417</sup>
  8. Adopt effective measures to prevent land degradation. To such effect, develop long-term integrated strategies for the conservation and sustainable management of land resources, including soil, vegetation and related hydrological processes.<sup>418</sup>
  9. Undertake efforts to maintain and increase forest cover and forest productivity in ecologically, economically and socially sound ways through the rehabilitation, reforestation and re-establishment of trees and forests on unproductive, degraded and deforested lands, and through the management of existing forest resources.<sup>419</sup>
  10. Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas.<sup>420</sup>
  11. Support and develop tropical timber reforestation, as well as rehabilitation and restoration of degraded forest land, with due regard for the interests of local communities dependent on forest resources.<sup>421</sup>
  12. Introduce and undertake environmental impact assessment of programmes, policies, and actions that are likely to have significant adverse impacts on biological diversity, with a view of avoiding or minimising such effects.<sup>422</sup>

13. Promote conservation and sustainable use of biological diversity through coordination and integration of relevant sectoral or cross-sectoral plans, programs, and policies.<sup>423</sup> Develop or adapt national strategies, plans, or programmes that act as incentives for the conservation and sustainable use of biological diversity.<sup>424</sup>
14. Develop new and/or strengthen existing strategies, plans or programmes of action for the conservation of biological diversity and the sustainable use of biological resources, taking account of education and training needs. Integrate strategies for the conservation of biological diversity and the sustainable use of biological and genetic resources into relevant sectoral or cross-sectoral plans, programmes and policies, with particular reference to the special importance of terrestrial and aquatic biological and genetic resources for food and agriculture.<sup>425</sup>
15. Promote broader international and regional cooperation in furthering scientific and economic understanding of the importance of biodiversity and its functions in ecosystems.<sup>426</sup>
16. Pursue fair agricultural policies that promote, as appropriate, the development and maintenance of diverse farming systems that enhance the sustainable use of agricultural biological diversity and other natural resources.<sup>427</sup>
17. Conserve biological diversity and ensure the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.<sup>428</sup>
18. Coordinate efforts to eradicate activities related to poaching, and to take concerted, energetic measures to control and monitor them, particularly in transboundary habitats.<sup>429</sup>
19. Strengthen existing institutions and/or establish new ones responsible for the conservation of biological diversity, and consider the development of mechanisms such as national biodiversity institutes or centres.<sup>430</sup>
20. Promote technical and scientific cooperation in the field of conservation of biological diversity and the sustainable use of biological and genetic resources.<sup>431</sup>
21. Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation.<sup>432</sup>
22. Activities which might have an impact on nature should be controlled, and the best available technologies that minimise significant risks to nature or other adverse effects used.<sup>433</sup>
23. Raise awareness of the issues of environmental protection and the rational use of natural resources.<sup>434</sup>
24. Reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.<sup>435</sup>

25. The use of pesticides shall be minimised and appropriate silvicultural alternatives and other biological measures preferred.<sup>436</sup>
26. Implement mechanisms for the improvement, generation, development and sustainable use of biotechnology and its safe transfer, particularly to developing countries, taking account of the potential contribution of biotechnology to the conservation of biological diversity and the sustainable use of biological resources.<sup>437</sup>

#### **(ii) Enhancement of Other Benefits**

1. Take appropriate measures for the fair and equitable sharing of benefits derived from research and development and use of biological and genetic resources, including biotechnology, between the sources of those resources and those who use them.<sup>438</sup>
2. Identify and evaluate the potential economic and social implications and benefits of the conservation and sustainable use of terrestrial and aquatic species.<sup>439</sup>
3. Promote alternative livelihoods and improvement of national economic environments with a view to strengthening programmes aimed at sustainable management of natural resources.<sup>440</sup>
4. Promote alternative livelihood opportunities, particularly through development of employment schemes that increase the productive base, will have a significant role in improving the standard of living among the large rural population living in forest ecosystems.<sup>441</sup>
5. Promote income-generating activities, such as sustainable tourism, fisheries and environmentally sound mining, and to improve infrastructure and social services, in particular to protect the livelihoods of local communities and indigenous people.<sup>442</sup>
6. Promotion of alternative livelihoods in forest ecosystems should be viewed as part of a country's anti-poverty or alternative livelihoods programme.<sup>443</sup>
7. Generate data on alternative livelihoods and diversified production systems at the village level on annual and tree crops, livestock, poultry, beekeeping, fisheries, village industries, markets, transport and income-earning opportunities, taking fully into account the role of women and integrating them into the planning and implementation process.<sup>444</sup>
8. Create farm and non-farm employment opportunities, particularly among the poor and those living in marginal areas, taking into account alternative livelihoods.<sup>445</sup>

### **Implementing UNFCCC REDD+ Safeguards (f) and (g)**

Due to the specific and technical nature of UNFCCC REDD+ Safeguards (f) and (g) in relation to REDD+, no international instrument uses exactly the same language as Decision 1/CP.16.<sup>446</sup> Nevertheless, a number

of implementing measures can be identified which contribute to the realization of the objectives of permanence and avoidance of leakage in a more general manner. As discussed in the interpretation section, UNFCCC REDD+ Safeguards (f) and (g) broadly require a more holistic policy development process, including identification and development of policies to address drivers of deforestation.

REDD+ policies and activities affecting forests throughout the country or region will need to consider leakage and permanence, particularly where a local REDD+ project may result in displacement of emissions to another region within the country (emphasizing the importance of a national REDD+ strategy rather than sub-national). An essential requirement for compliance with UNFCCC REDD+ Safeguards (f) and (g) is adequate knowledge of the variables in relation to the national environment. This includes threats (drivers), the state of biodiversity and activities taking place within, or in relation to, forests.

Implementing measures under UNFCCC REDD+ safeguards (f) and (g) can be grouped into two broad categories: 1) measures related to the monitoring and measuring of risks; and 2) measures necessary to minimize these risks. Our analysis of implementing measures is therefore presented breaking down the concepts under the following framework:

- A. Measures for monitoring and assessment of risks
- B. Measures to minimize risks
  - i. General measures
  - ii. Measures to tackle reversals and avoid displacements

### Implementing Measures to Enable Monitoring and Measuring of Risks

1. Consolidate and update land-use and forest inventory and management information for management and land-use planning of wood and non-wood resources, including data on shifting cultivation and other agents of forest destruction.<sup>447</sup>
2. Collect, compile and regularly update and distribute information on land classification and land use, including data on forest cover, areas suitable for afforestation, endangered species, ecological values, traditional/indigenous land use values, biomass and productivity, correlating demographic, socio-economic and forest resources information at the micro- and macro-levels, and undertaking periodic analyses of forest programmes.<sup>448</sup>
3. Facilitate the exchange of information: establish linkages with other data systems and sources relevant to supporting forest management, conservation and development, while further developing or reinforcing existing systems such as geographic information systems—both nationally and internationally.<sup>449</sup>
4. Harmonise the methodologies for programmes involving data and information activities to ensure accuracy and consistency.<sup>450</sup>

5. Promote and, whenever possible, support scientific and technical programmes relevant to the conservation and management of forest natural resources, including monitoring research.<sup>451</sup>

## Measures to Minimize Risks

### (i) General Measures

1. Promote sustainable utilisation and conservation of forests and other relevant resources in domestic laws and policies.<sup>452</sup>
2. Implement science and research programs that may advance sustainable forest management and resource management approaches.<sup>453</sup>
3. Employ tools to assess environmental impacts of projects that may significantly affect the conservation and management of forests.<sup>454</sup>
4. Coordinate regional and sub-regional research on carbon sequestration, air pollution and other environmental issues.<sup>455</sup>
5. Develop and strengthen national, sub-regional and regional research capabilities, including the development of local skills and the strengthening of appropriate capacities.<sup>456</sup>
6. Enhance research and scientific forest-related capacities, particularly the capacity of research organizations, to generate and access forest-related data and information; and promote and support integrated and interdisciplinary research on forest-related issues, and disseminate research results.<sup>457</sup>
7. Support and further develop, as appropriate, international and intergovernmental programmes and networks or organisations aimed at defining, conducting, assessing and financing research, data collection and systematic observation. Taking into account the need to minimise duplication of effort, link national, sub-regional and regional data and information centres more closely, and integrate with global information sources.<sup>458</sup>
8. Facilitate regional and international technical and scientific cooperation in the field of conservation and sustainable use of forest resources and biological diversity, where necessary, through appropriate international, regional and national institutions.<sup>459</sup>
9. Create and implement regional agreements to reduce cross-border displacement of deforestation.<sup>460</sup> Seek regional harmonization of laws, regulations, procedures, policies, and practices taking into account the differing environmental, social and economic realities between the countries.<sup>461</sup>
10. Strengthen sub-regional, regional and international cooperation in areas relevant to forest management.<sup>462</sup>

11. Promote policies and strengthen institutional frameworks that develop cooperation and coordination, in a spirit of partnership, between the donor community, governments at all levels, local populations and community groups; and facilitate access by local populations to appropriate information and technology.<sup>463</sup>

**(ii) Measures to Tackle Reversals and Displacements**

1. Establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of forest resources and biodiversity.<sup>464</sup>
2. Design and implement capacity-building and awareness-raising programs on sustainable forest management.<sup>465</sup>
3. Regulate liability and compensation for actions that affect the conservation and management of forests.<sup>466</sup>
4. Implement effective law enforcement to combat and eradicate illegal forest-related practices.<sup>467</sup>
5. Create clear and secure land and territory rights, and clear and equitable distribution of benefits.<sup>468</sup>
6. Provide access for local communities and indigenous peoples to forest resources and relevant markets in order to support livelihoods and income diversification from forest management.<sup>469</sup>
7. Promote alternative livelihoods and improvement of national economic environments with a view to strengthening programmes aimed at sustainable management of natural resources.<sup>470</sup>

## Part III. Selected Monitoring, Reporting, Complaints and Grievance Mechanisms under International Law

### Introduction

The objective of the previous parts to this Guidance Document was to provide greater clarity to the scope and content of the obligations contained in the UNFCCC REDD+ Safeguards. The analysis has demonstrated that rather than creating wholly new obligations, the UNFCCC REDD+ Safeguards embody existing obligations under international law, thematically organised into broad categories such as transparency and effectiveness of governance, human rights, indigenous peoples' rights, public participation, and the protection of biological diversity. By utilising efforts to comply with existing obligations under various international agreements, countries can build on existing domestic systems to contribute towards achieving consistency with the UNFCCC REDD+ Safeguards.

Part III of this Guidance Document identifies the most relevant monitoring, reporting, grievance and dispute resolution mechanisms under relevant and applicable international law. Of particular usefulness for the development of a CSS and SIS are monitoring and reporting mechanisms from various relevant international conventions to which REDD+ participating countries are Parties.

By identifying existing mechanisms, countries can gain a comprehensive view of the various implementing measures currently being carried out domestically to comply with their international obligations. Countries can then build on these current activities, where relevant, to demonstrate how they are addressing and respecting the UNFCCC REDD+ Safeguards. Countries need to be aware that the usefulness of these mechanisms is limited, and that effective reporting of UNFCCC REDD+ Safeguards will require more than just reporting implementation of obligations contained in applicable international instruments. Countries must therefore go beyond these mechanisms for sources of information on how UNFCCC REDD+ Safeguards have been addressed and respected.

Understanding different monitoring and reporting processes under international conventions will also help countries identify common reporting guidelines, methodologies and best practices, all of which can contribute to the development of a national SIS.<sup>471</sup>

An effective CSS also requires strong mechanisms for addressing the grievances of groups and individuals whose rights may be affected by REDD+ activities. Domestic judicial systems are fundamental for ensuring adequate access to justice. Therefore, any mechanism created to deal with grievances that may arise out of REDD+ activities should not serve as a replacement for existing judicial avenues. However, REDD+ grievance mechanisms do not necessarily have to be inseparable from the national judicial systems. It is up to each country to choose how they will design and implement their grievance mechanism for REDD+, either by creating a completely new mechanism, or by expanding the mandate of existing courts or oversight bodies to encompass REDD+ activities.

Although certain international instruments contain mechanisms for individual rights holders or groups to make complaints in relation to a breach of their rights under the convention, most instruments lack these mechanisms. In any case, they should not be a replacement for the design of a national grievance mechanism under the CSS to ensure that vulnerable stakeholders (such as indigenous peoples) are guaranteed access to justice.

The following sections provide an analysis of the monitoring, reporting and grievance mechanisms of a selected number of relevant international conventions organised thematically according to the UNFCCC REDD+ Safeguards. This section is not meant to be comprehensive, and is merely indicative of the monitoring, reporting and grievance mechanisms that could contribute to the design and implementation of a CSS. We recommend that countries take note of the list of international agreements provided in the Annex to this guide, identify the agreements to which they are parties, and carry out a similar identification to the one in this section.

The following analysis excludes UNFCCC REDD+ Safeguards (a), (f) and (g). As identified above, UNFCCC REDD+ Safeguard (a) is an obligation to ensure that national REDD+ actions and activities are consistent with countries' international obligations. As with Parts I and II of this Guidance Document, UNFCCC REDD+ Safeguard (a) provides the basis for examining relevant international law mechanisms to draw lessons for the implementation of the UNFCCC REDD+ Safeguards. UNFCCC REDD+ Safeguards (f) and (g) are specific to REDD+, and therefore are not represented in international law to any great degree. No monitoring, reporting compliance and dispute resolution mechanisms exist under international law that relate directly to these safeguards.

## Definitions

### Monitoring

There are two types of monitoring under international conventions: 1) monitoring of scientific and technical environmental conditions (operational); and 2) monitoring performance of the implementation of international obligations (performance review).<sup>472</sup> Depending on the convention examined, the scope of activities monitored can cover either both types, or one or the other. For every convention examined, we will identify the specific monitoring provisions; that is, the provisions that designate the entity (such as the national focal point) responsible for the operational monitoring, and for assessing the implementation of the instrument by State Parties (such as the Secretariat, the COP or another State Party); and those that create the reporting obligations.

### Reporting

'Reporting' obligations under international instruments usually require the provision of at least one of two types of information. The first dimension, termed 'operational reporting', usually refers to information on ambient environmental conditions (in the case of the Convention on Biological Diversity), or national characteristics or sites relevant to the convention (Convention on the Preservation of Intangible Cultural Heritage). Operational reporting can contribute to the development of a CSS in terms of providing the raw data to assess future needs and goals for more effective implementation, and to plan and develop appropriate policies to achieve these goals. The second dimension is referred to as 'performance review information', which generally means the measures that Parties have taken to implement a particular instrument, usually by submitting annual reports on their relevant laws or policies.<sup>473</sup>

### Complaints and Grievance Mechanisms

Complaints or grievance mechanisms provided for by international conventions are quasi-judicial processes for receiving and facilitating resolution of queries and grievances from affected rights holders.<sup>474</sup> These mechanisms are therefore usually limited to international instruments that grant specific rights to individuals or vulnerable groups of society such as indigenous peoples, women, children or ethnic minorities.



We distinguish complaints and grievance mechanisms from non-compliance systems. Both complaints mechanisms<sup>475</sup> and non-compliance systems<sup>476</sup> involve a committee that considers how State Parties are fulfilling their obligations under the convention. However, whereas a complaints or grievance mechanism enables an individual to send a formal complaint to the corresponding committee alleging that their rights have been violated,<sup>477</sup> a non-compliance system aims to identify compliance difficulties and to facilitate better compliance in a non-adversarial manner.<sup>478</sup>

Non-compliance mechanisms do not grant remedies to individuals whose rights have been breached. On the other hand, the purpose of complaints or grievance mechanisms is to grant such access to remedies, and hence more directly relevant for the design of a CSS. For this reason, complaints and grievance mechanisms shall be the focus of this analysis.

### Monitoring, Reporting, Complaint and Grievance Mechanisms Relevant to UNFCCC REDD+ Safeguard (b)

The analysis of UNFCCC REDD+ Safeguard (b) has shown that two essential thematic elements of “transparent and effective forest governance structures” are accountability of those occupying public office, and access to justice. For this reason, we have selected the UN Convention Against Corruption (UNCAC) (2003) and the International Covenant on Civil and Political Rights (ICCPR) (1966) for analysis. Both the UNCAC and the ICCPR contain reporting obligations, which shall be examined. However, it should be noted that only the ICCPR contains procedures for dealing with individual complaints and grievances.

National reporting requirements under the UNCAC can provide useful inputs to the SIS for monitoring and assessing accountability under UNFCCC REDD+ Safeguard (b). National reports should contain a general overview of the legal, institutional and political system of the country, as well as institutions and laws that govern anti-corruption efforts and therefore provide a good basis for reporting on how the country deals with accountability under the SIS. The UNCAC also requires countries to demonstrate how they have facilitated the involvement of civil society, non-governmental and community-based organisations in monitoring corruption. This is relevant to the assignment of roles and responsibilities under a CSS, as civil society can assist in monitoring safeguards implementation, providing much needed capacity to relevant overseeing institutions.

The ICCPR’s reporting obligations require countries to provide a broad overview of how governments respect human rights in their territory. The Covenant also provides a complaints procedure for those who claim that their human rights have been infringed. These procedures can also be drawn upon to provide an overview of how UNFCCC REDD+ Safeguard (b) is addressed, particularly as the ICCPR’s provisions cover most of the elements of UNFCCC REDD+ Safeguard (b) such as access to information, public participation and access to justice. However, it should be noted that because all domestic judicial remedies must have been exhausted before a complaint is eligible under the ICCPR, its procedures are not sufficient in themselves to serve as a grievance mechanism for REDD+.

While these two instruments are relevant for a significant number of elements contained in UNFCCC REDD+ Safeguard (b), they do not cover everything and should be considered as but one of many sources of information for a SIS. Each country should also still carry out a gap analysis of other legal and institutional frameworks that could contribute towards monitoring of implementation issues related to transparency and effective forest governance.

## United Nations Convention Against Corruption

### Monitoring

The governing body of the UNCAC is the Conference of State Parties to the Convention (COSP), and its objective is to promote and review implementation of the UNCAC.<sup>479</sup> The COSP is responsible for “Periodically reviewing the implementation of this Convention by its States Parties.”<sup>480</sup> Furthermore, the COSP has the power to “establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.”<sup>481</sup>

UNCAC requires Parties to ensure the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations (NGOs) and community-based organisations in the prevention and fight against corruption. These actors contribute through activities such as ensuring that the public has effective access to information; and undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, and school and university curricula.<sup>482</sup> It is clear from the UNCAC that civil society has a role to play in monitoring corruption, and can therefore contribute to the development of the CSS and SIS by providing additional monitoring capacity and holding public authorities accountable.

At its third session, held in Doha in 2009, the COSP adopted a ‘Review Mechanism’ to review implementation of the UNCAC.<sup>483</sup> Each ‘phase’ of the Review Mechanism is to be composed of two review cycles of five years each. One quarter of the State parties are to be reviewed in each of the first four years of each review cycle.<sup>484</sup> According to the terms of reference (TORs) of the Review Mechanism, the review is divided into regional groups, with the number of State Parties in each group being proportionate to the size of that group and the number of its members that are State Parties to the Convention.<sup>485</sup>

### Reporting

The UNCAC provides that States Parties must take measures to enhance transparency in public administration “including with regard to its organization, functioning and decision-making processes, where appropriate.”<sup>486</sup> This can be considered to be a form of operational reporting and includes:

*“(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; ... (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.”<sup>487</sup>*

Each State Party to the Convention must also provide the COSP with information “on its programmes, plans and practices, as well as on legislative and administrative measures to implement [UNCAC], as required by the [COSP].”<sup>488</sup> According to the TORs of the Review Mechanism,<sup>489</sup> each State Party must first provide to the Secretariat the information required by the COSP on its compliance with, and implementation of, the Convention using the comprehensive self-assessment checklist.<sup>490</sup> Information required as part of the self-assessment includes:

- General information on the ratification and status of the Convention in the reporting country;
- An overview of the legal, institutional and political system of the reporting country;
- If available, details of any prior assessment of anti-corruption taken by the reporting country (gap analysis, reports of other international and regional review mechanisms, policy studies);
- Relevant draft bills, policies and other measures to be taken into account;
- Challenges facing full implementation of the Convention; and
- Any technical assistance needs.<sup>491</sup>

The UNCAC does not have a grievance mechanism. Therefore, only its monitoring and reporting mechanisms are examined. However, the ICCPR does include a grievance mechanism, which will be examined below in addition to its monitoring and reporting mechanism.

## The International Covenant on Civil and Political Rights

### Monitoring

The ICCPR establishes a Human Rights Committee<sup>492</sup>, which is responsible for monitoring implementation of the Covenant by Parties (hereafter referred to as the HR Committee). There are two ways in which the HR Committee monitors States Parties implementation of their treaty obligations. The first is by considering reports submitted periodically by States Parties on their implementation of the treaties.<sup>493</sup> States Parties are legally obliged to submit these reports, which inform the HR Committee about actions the State has taken to implement its obligations under the ICCPR<sup>494</sup> (a more detailed analysis of reporting obligations is undertaken in the following section). The HR Committee also monitors compliance with the ICCPR by considering complaints made by individuals alleging that their rights under a particular treaty have been violated. The complaints procedure is discussed in greater detail below.

### Reporting

According to Article 40 of the ICCPR, State Parties “undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights.” The Covenant initially required the first reports to be submitted within one year of its entry into force.<sup>495</sup> However the HR Committee noted that the initial reports were so brief and general it was necessary to elaborate general guidelines regarding the form and content of the reports.<sup>496</sup> Guidelines were developed and released by the HR Committee in 1982,<sup>497</sup> in 1995,<sup>498</sup> in 1998<sup>499</sup> and in 2001.<sup>500</sup> Since then, a new set of harmonized guidelines for all the major international human rights treaties has been released.<sup>501</sup>

According to the harmonized guidelines, the report must contain: 1) a common Core Document; and 2) a Treaty-Specific Document.<sup>502</sup>

The Core Document must contain:

- Demographic, economic, social and cultural characteristics of the State;<sup>503</sup>
- The constitutional, political and legal structure of the State;<sup>504</sup>
- Evidence of their acceptance of international human rights norms;<sup>505</sup>
- Their legal framework for the protection of human rights at the national level;<sup>506</sup>
- The framework within which human rights are promoted at the national level;<sup>507</sup>

- Information on the process by which their reports (common core document and treaty-specific documents) are prepared;<sup>508</sup> and
- Information on non-discrimination and equality.<sup>509</sup>
- 

The Treaty-Specific Document should follow “the most current treaty-specific guidelines.”<sup>510</sup> These are the Consolidated Guidelines for State reports under the ICCPR.<sup>511</sup> These Guidelines require State Parties to report on:

- How Article 2 of the ICCPR is applied, setting out the principal legal measures which the State Party has taken to give effect to Covenant rights, and the range of remedies available to persons whose rights may have been violated;
- Whether the ICCPR is incorporated into domestic law in such a manner as to be directly applicable;
- If not, whether its provisions can be invoked before and given effect to by courts, tribunals and administrative authorities;
- Whether the Covenant rights are guaranteed in the Constitution or other laws and to what extent or whether Covenant rights must be enacted or reflected in domestic law by legislation so as to be enforceable.
- Information should also be given about the judicial, administrative and other competent authorities having jurisdiction to secure Covenant rights.
- The report should include information about any national or official institution or machinery which exercises responsibility in implementing Covenant rights or in responding to complaints of violations of such rights, and give examples of their activities in this respect.<sup>512</sup>

Despite the Harmonized Guidelines, however, some reports are still so brief and general that they do not satisfy the reporting obligations. Even reports that have been generated in accordance with the Harmonized Guidelines have in substance been incomplete. In the cases where the reports are either too brief or incomplete, the HR Committee has granted State Parties the ability to complement their reports with additional information within a specified deadline.<sup>513</sup>

### Complaints and Grievance Mechanism

The Optional Protocol to the ICCPR (hereafter referred to as the Optional Protocol) establishes the legal basis for the complaints and grievance mechanism. It states that:

*“A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the [HR] Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.”<sup>514</sup>*

The Optional Protocol grants individuals that have had their rights under the ICCPR violated the right to submit a written communication to the HR Committee for consideration, provided they have exhausted all available domestic remedies.<sup>515</sup>

Once a communication has been submitted, and if it is found to be admissible,<sup>516</sup> the HR Committee will bring it to the attention of the State Party in question. The State Party then has six months to “submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.”<sup>517</sup>

In the event of failure by the State Party to take appropriate steps, the case is referred to a member of the HR Committee, the Special Rapporteur on Follow-up of Views, for consideration of further measures to be taken. The Special Rapporteur may, for example, issue specific requests to the State Party, or meet with its representatives to discuss the action taken.<sup>518</sup>

As can be seen in the Optional Protocol, an individual complainant must have exhausted all domestic judicial avenues before they can submit a complaint to the HR Committee. This procedure is likely to be lengthy and does not remove the need for an effective domestic grievance mechanism as part of a CSS. In order to satisfy UNFCCC REDD+ Safeguard (b), countries should design a robust and accessible grievance mechanism to ensure access to justice for their citizens, particularly vulnerable groups.

### **Monitoring, Reporting, Complaint and Grievance Mechanisms Relevant to Safeguard (c)**

UNFCCC REDD+ Safeguard (c) requires recognition and respect for the knowledge and rights of indigenous peoples. The reference to rights and knowledge make it clear that relevant instruments of international law are those that focus on human and indigenous peoples' rights, as well as those that focus on preserving cultural heritage.

The instrument selected for this section that deals with culture is the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (CSICH) (2003), which only has provisions for monitoring and reporting, and lacks a grievance mechanism. The reporting activities under the CSICH can contribute to countries' efforts towards identifying, and subsequently protecting and respecting the cultural rights of their indigenous peoples (a necessary requirement as noted in the analysis of UNFCCC REDD+ Safeguard (c) above). These activities include providing inventories of the intangible cultural heritage in their territory, and performance review reports detailing the legislative, regulatory and other measures taken to implement the CSICH. Both the inventories and reports are useful for the SIS.

The most comprehensive international convention dealing with the rights of indigenous people is International Labour Organisation Convention No. 169 (ILO Convention No. 169) (1989).<sup>519</sup> However, due to its emphasis on participation it will be analysed in the section on UNFCCC REDD+ Safeguard (d).

National reporting under ILO Convention No. 169 encompasses laws, regulations and rules that give effect to each article in the Convention (that is, protect and respect for the rights identified in the Convention). ILO Convention No. 169 also provides for national authorities and institutions that have a supervisory role in the national reporting process. These laws and institutions will be essential to demonstrating compliance with UNFCCC REDD+ Safeguard (c) in the SIS.

However, UNFCCC REDD+ Safeguard (c) explicitly acknowledges the UNDRIP, which recognises rights of indigenous peoples that are not included in ILO Convention No. 169. Respecting ILO Convention No. 169 is therefore not sufficient in itself to ensure consistency with UNFCCC REDD+ Safeguard (c). Countries should therefore ensure that in addition to analysing their country reports under ILO Convention No. 169, they familiarise themselves with the full scope of UNFCCC REDD+ Safeguard (c)<sup>520</sup> above to ensure they are respecting the rights of indigenous peoples and local communities. They should also identify any gaps in implementation, and report on how they are addressing these gaps in their SIS.

Although it is not sufficient on its own, countries developing their CSS and SIS can nevertheless draw upon the reporting, dispute resolution and grievance mechanisms under the ILO Convention No. 169 as a first step for addressing, and subsequently demonstrating how they are addressing both UNFCCC Safeguards (c) and (d).

As with UNFCCC REDD+ Safeguard (b), this section is merely indicative, and we recommend that countries identify other relevant conventions that they are parties to, and examine how such monitoring, reporting, dispute resolution and grievance mechanisms can be linked to their CSS and SIS, particular for monitoring issues related to UNFCCC REDD+ Safeguard (c).

## UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (CSICH)

### Monitoring

Under the CSICH, the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage (the CSICH Committee) is established.<sup>521</sup> Its role is, *inter alia*, to “promote the objectives of the Convention, and to encourage and monitor the implementation thereof;”<sup>522</sup> to examine reports submitted by State Parties, and to summarize them for the General Assembly of States Parties (General Assembly), the governing body of the CSICH.<sup>523</sup> The CSICH Committee is also responsible for establishing, maintaining and publishing a Representative List of the Intangible Cultural Heritage of Humanity (Representative List), and for drawing up the criteria for the establishment, updating and publication of this Representative List.<sup>524</sup> In addition to the Representative List, the CSICH Committee is charged with establishing, maintaining and publishing a List of Intangible Cultural Heritage in Need of Urgent Safeguarding (Urgent Safeguarding List).<sup>525</sup> Finally, on the basis of its activities and the reports by State Parties (which shall be examined in the section below on reporting), the CSICH Committee must submit a report to the General Assembly at each of its sessions.<sup>526</sup>

### Reporting

The CSICH requires State Parties to provide operational reports in the form of inventories of the intangible cultural heritage present in their territory,<sup>527</sup> as well as performance review reports detailing the legislative, regulatory and other measures taken for the implementation of the CSICH.<sup>528</sup>

Reports to the CSICH Committee on national level implementation measures of the Convention must be received by UNESCO on or before 15 December of the sixth year following the year in which the State Party deposited its instrument of ratification, acceptance or approval, and every sixth year thereafter.<sup>529</sup>

Each report must include measures taken for the implementation of the CSICH at the national level, as well as cover the current status of all elements of intangible cultural heritage present in its territory that have been inscribed on the Representative List.

During its second session in 2008, the General Assembly adopted the Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage,<sup>530</sup> which provides guidance to State Parties for selecting intangible cultural heritage that they want to include on the Representative List and the Urgent Safeguarding List.<sup>531</sup>

The criterion for inclusion on the Representative List includes:

- The element must constitute intangible cultural heritage as defined in Article 2 of the Convention;
- Inscription of the element must contribute to ensuring visibility and awareness of the significance of the intangible cultural heritage and to encouraging dialogue, thus reflecting cultural diversity worldwide and testifying to human creativity;
- Safeguarding measures must be elaborated to protect and promote the element
- The element must have been nominated following wide participation of the community group and with their free, prior and informed consent; and
- The element must be included in an inventory of the intangible cultural heritage present in the territory of the submitting State Party.<sup>532</sup>

As well as listing the elements present in the reporting country's territory that appear on the Representative List and the Urgent Safeguarding list,<sup>533</sup> the country report must include, *inter alia*:

- Any programmes, project or activities selected as best reflecting the principles and objectives of the Convention;
- Any legal, technical, administrative and financial measures undertaken by the State or fostered by the State and undertaken by civil society;
- The State should also describe its efforts to ensure the widest possible participation of communities, groups and individuals that create, maintain and transmit intangible cultural heritage and involve them actively in its management;
- The measures taken by the State Party to strengthen institutional capacities for safeguarding intangible cultural heritage;
- The national inventories of the intangible cultural heritage in the State's territory;
- The ways in which communities are involved in identifying and defining intangible cultural heritage; and
- Other safeguarding measures (such as fostering scientific, technical and artistic studies with a view to effective safeguarding and facilitating access to information relating to intangible cultural heritage).<sup>534</sup>

Neither the CSICH, nor subsequent General Assembly resolutions provide for a grievance or complaints mechanism. As identified below, the principle Convention which creates a complaints mechanism for protecting the rights of indigenous peoples under international law is ILO Convention No. 169.

### Monitoring, Reporting, Complaint and Grievance Mechanisms Relevant to Safeguard (d)

UNFCCC REDD+ Safeguard (d) requires that countries ensure the full and effective participation of all relevant stakeholders, in particular indigenous peoples and local communities. The International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) (1989), which focuses on consultation and participation, is particularly relevant to UNFCCC REDD+ Safeguard (d).<sup>535</sup> In fact, most of ILO Convention No. 169 cases that have been brought to the attention of the supervisory bodies of the ILO under its complaints mechanism have concerned an alleged failure to consult with indigenous peoples regarding measures or projects that affect their land.<sup>536</sup>

National reports under ILO Convention No. 169 should include information on laws, regulations and rules which give effect to the provisions of the Convention. Furthermore, Parties are required to list representative organisations of employers and workers who participate in the preparation of the report (relevant stakeholders). Parties are also recommended to consult indigenous peoples' organisations through their traditional institutions on measures taken to give effect to ILO



Convention No. 169, and report the results of those consultations. Such information is directly relevant for REDD+, and needs to be monitored and reported through country's Safeguard Information Systems (SIS) from the beginning of Readiness planning throughout implementation of REDD+ activities.

UNFCCC REDD+ Safeguard (d) does not relate exclusively to the participation of indigenous peoples and local communities, and should include 'all relevant stakeholders'. For this reason, countries looking to demonstrate their compliance with UNFCCC REDD+ Safeguard (d) can also draw on their national reports for the ICCPR, and other international instruments with obligations to ensure public participation (see analysis of UNFCCC REDD Safeguards (b) and (d) for more instruments).

### International Labour Organisation Convention No. 169

While the substantive rights of indigenous peoples can be found in the ILO Convention No. 169 itself, the monitoring, reporting and complaints provisions of the Convention are contained in the ILO's Constitution,<sup>537</sup> which shall also be examined for the purpose of this section. The ILO is a tripartite UN agency that includes government, employer, and worker representatives on relatively equal ground to develop and implement policies of the ILO.<sup>538</sup>

#### Monitoring

The primary organs responsible for monitoring implementation of the ILO Conventions are the Committee of Experts on the Application of Convention and Recommendations (CEACR), and the Committee on the Application of Standards (CAS) (collectively referred to as 'Supervisory Bodies').<sup>539</sup> Reports are submitted by Parties to the CEACR for review at intervals established by the ILO supervisory bodies (see section on reporting for more details). The CEACR then publishes its findings in its annual report, which is made public. If the CEACR identifies a particular problem relating to implementation, it may solicit additional information from the country concerned.<sup>540</sup> The CEACR is also authorized to make on-site visits if deemed necessary. If a problem is serious enough, the CEACR may refer the matter to the CAS,<sup>541</sup> which can request Parties to appear before it to address the problem.<sup>542</sup> The CAS then reports its conclusions at the annual International Labour Conference. In these tasks, the CEACR also relies on information received from workers' and employers' organizations, as well as, *inter alia*, official UN documents, judicial decisions and legislation.<sup>543</sup>

#### Reporting

According to the ILO Constitution, one year after the entry into force of the ILO Conventions, Parties have to send their first report on the implementation of the Conventions to the ILO.<sup>544</sup> The one-year interim period gives Parties time to make sure national laws and practice are in agreement with the Convention. After this, the normal reporting period for ILO Convention No. 169 is every five years. However, if a situation needs to be followed closely, the ILO supervisory bodies may request a report outside the regular reporting cycle.<sup>545</sup>

In accordance with the ILO's Constitution,<sup>546</sup> Parties must submit a copy of their report to the most representative workers' and employers' organisations to allow for comments. These organisations may also send their comments directly to the ILO in the form of 'communications' (see section on complaints below).<sup>547</sup> Following the entry into force of the Convention, the content of the Party's first report should cover all the provisions of the Convention and answer each of the questions set out in the comprehensive Report Form.<sup>548</sup> These reports should provide, *inter alia*:



- A list of all laws, regulations and rules which give effect to the provisions of the Convention and information concerning the extent to which these laws regulations and rules have been enacted or modified to permit implementation or as a result of, ratification;
- Countries should also indicate in detail for each article of ILO Convention No. 169 the provisions of the above-mentioned legislation, regulations or other measures under which each article is applied as well as the information that is specifically requested in the individual articles;<sup>549</sup>
- Information on the authorities and institutions to whom the application of the above-mentioned laws, regulations and rules are entrusted;
- Any decisions by courts or tribunals made involving questions of principle relating to the application of the Convention;
- Any technical assistance the Party has received under an ILO cooperation project; and
- A list of representative organisations of employers and workers to which copies of the report have also been communicated as well as their observations on the report.
- Optionally, Parties can also consult indigenous peoples' organisations through their traditional institutions on measures taken to give effect to the Convention and in preparing reports on its application and report on the results of those consultations.

Subsequent reports are then normally limited to providing information on:

- New legislation or other measures affecting the application of the Convention;
- Replies to questions in the report form on the practical application of Convention (for example statistics, results of inspections, judicial or administrative decisions) as well as comments received from workers and employers organizations; and
- Replies to any comments previously received from the ILO supervisory bodies.<sup>550</sup>

The Supervisory Bodies often request additional information from Parties beyond the regular reports due every five years. There is thus an on-going dialogue between the governments concerned and the ILO Supervisory Bodies regarding implementation.

Comments from the CEACR come in two forms:

- 'Observations', which are the CEACR's public comments on the application of ILO Conventions; and
- 'Direct requests', which are sent directly to the government in question, and generally ask for more information on specific subjects.<sup>551</sup>

As an outcome of such individual cases, the CAS adopts conclusions addressed to the ILO State Party examined.

### **Complaints and Grievance Mechanism**

A peculiarity of the ILO's complaints mechanism is that it does not require exhaustion of domestic remedies. Nevertheless, submitting a complaint may be affected if domestic remedies have not been attempted.<sup>552</sup>

The procedure can be triggered in one of two ways. First, as tripartite constituents of the ILO, workers' and employers' organizations can submit 'comment's on the application of the Convention, or lodge 'complaints'.<sup>553</sup> The rules governing submission of comments and complaints are the

Standing Orders Concerning the Procedure for the Examination of Representations under Articles 24 and 25 of the Constitution of the ILO (Standing Orders).<sup>554</sup>

Indigenous peoples' organisations are not among the ILO's tripartite constituents. However in some cases, indigenous peoples have formed alliances with specific workers' and employers' organizations or specific chapters within broader organizations.<sup>555</sup> Past experience has also demonstrated that the ILO will sometimes accept direct informal communications from indigenous peoples' organisations in relation to alleged breaches of the obligations contained in ILO Convention No. 169.<sup>556</sup>

When a representation is made to the International Labour Office, the Director-General acknowledges its receipt and informs the Member government against which the representation is made.<sup>557</sup> If the Governing Body considers the representation admissible,<sup>558</sup> it will establish a Committee to examine the representation. The Committee is:

*"Composed of members of the Governing Body chosen in equal numbers from the Government, Employers' and Workers' groups. No representative or national of the State against which the representation has been made and no person occupying an official position in the association of employers or workers which has made the representation may be a member of this Committee."*<sup>559</sup>

Article 10 of the Standing Orders states that once a representation is communicated to the Governing Body, the procedure of complaint provided for in Article 26 and the following articles of the ILO Constitution apply, including the right of the concerned Member to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration.<sup>560</sup>

The second trigger for the complaints procedure is Article 26, under which any Member has the right to file a complaint with the International Labour Office if it is not satisfied that "any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles."<sup>561</sup> Complaints can also be presented to a delegate to the International Labour Conference or the Governing Body directly.<sup>562</sup> Once the complaints procedure is triggered, the Governing Body sets up a 'Commission of Inquiry', which conducts quasi-judicial proceedings, consisting of hearings, written submission, and limited evidence gathering.<sup>563</sup>

At the end of the proceedings, the Commission of Inquiry makes conclusions and recommendations for corrective measures, which it then publishes for the Governing Body and the Member concerned.<sup>564</sup>

The Member in question then has three months to inform the Director-General of the International Labour Office whether or not it accepts the recommendations contained in the report of the Commission. If not, the Member may propose to refer the complaint to the International Court of Justice (ICJ),<sup>565</sup> in which case the resulting decision is considered final.<sup>566</sup>

If a Member fails to carry out recommendations within the time specified by the report of the Commission of Inquiry, or in the decision of the ICJ, the Governing Body may recommend to the ILO Conference such action as it may deem wise and expedient to secure compliance therewith.<sup>567</sup>

### **Monitoring, Reporting, Complaint and Grievance Mechanisms Relevant to Safeguard (e)**

UNFCCC REDD+ Safeguard (e) requires REDD+ actions to be consistent with the conservation of natural forests and biological diversity, and is used to incentivize the protection and conservation

of natural forests and their ecosystem services. There are numerous international instruments that are relevant to UNFCCC REDD+ Safeguard (e).<sup>568</sup> For the purposes of this Guide, we will focus on the monitoring and reporting provisions of the Convention on Biological Diversity (CBD) (1992), due to its near universal adherence (193 parties), extensive scope, and its particular relevance to REDD+.<sup>569</sup> As the CBD does not have a mechanism for addressing complaints or grievances, the Convention on the International Trade of Endangered Species of Wild Fauna and Flora (CITES)(1973) will also be examined.

The CBD is extremely comprehensive in its guidance on which types of activities should be carried out by governments to enable the conservation and sustainable use of biological diversity. The national reports to the CBD, if completed properly, can provide a sound basis for demonstrating that UNFCCC REDD+ Safeguard (e) has been satisfactorily addressed and respected. Requirements for the reports include providing information on the nation's biotic assets, capacity (human resources, institutions, facilities and funding) and ongoing programmes, major threats to national biodiversity, and Parties' national biodiversity strategy and action plan (NBSAP). The NBSAP is particularly useful for the SIS as it should include both the measurable targets that the country has set for itself in terms of biodiversity conservation, and the extent to which it has been implemented. The main gaps between CBD national reports and UNFCCC REDD+ Safeguard (e) are the latter's insistence that no natural forests can be converted as part of REDD+ activities, and that additional social, environmental and economic benefits must be ensured.

The implementing activities under CITES can also be useful to the reporting under the SIS as national CITES reports provide detailed lists of endangered biodiversity, both flora and fauna, as well as enforcement measures and mechanisms. The management and scientific authorities that must be created under CITES could potentially work with the national CBD focal point to gather and prepare the data on national biodiversity and protection measures for the SIS.

## Convention on Biological Diversity

### Monitoring

Article 23 of the CBD establishes the Conference of the Parties (COP) which is responsible for reviewing implementation of the Convention. It is authorised to "establish the form and the intervals for transmitting the information to be submitted" under the CBD, as well as "consider such information as well as reports submitted by any subsidiary body."

### Reporting

Parties' obligation to submit information is governed by Article 26 of the CBD. It states that:

*"each contracting Party, at intervals to be determined by the Conference of the Parties, must present to the Conference of the Parties, reports on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of this Convention."*

As can be seen from the following analysis, many of the activities reported in CBD implementation reports can be directly transposed towards reporting the implementation of UNFCCC REDD+ Safeguard (e).

At its Second COP (COP 2), the Parties to the CBD established the first guidance on the form and content of the first set of national reports.<sup>570</sup> The guidelines for the first national report required the Parties to:

- Describe the legal and policy framework that provides the mandate and instructions for preparing the action plan report. This includes a short summary of the nation's biotic assets, capacity (human resources, institutions, facilities, and funding) and ongoing programmes;
- State the vision for biodiversity and its place in the society, focusing on its protection, scientific understanding, sustainable use, and on the equitable sharing of its benefits and costs. The specific targets to meet the local, national, and international goals in terms of protecting, assessing, utilizing, and benefiting from biodiversity and its components need to be determined;
- Summarize the gaps between the current situation in the country and the stated vision, goals and objectives. Summarize the strategic recommendations, including the activities, policies, and tasks that have been selected for implementation to cover the gaps;
- Describe the public and private entities, communities and industries that have participated in the process and have agreed to be responsible for particular activities and investments;
- Present the detailed activities, tasks and policies to be implemented. Explain which partner (Ministry, industry, indigenous group, NGO, or university) will implement each item, including where, and what measures the partners will employ;
- Present a timetable for the implementation of the various tasks, reflecting the priorities that have been assigned;
- Provide the budget for the plan of action, showing funding requirements for operating expenses, capital purchases, transport, field costs, etc. List the personnel needed by category of skill or background, the facilities and services required, and possible international technical and financial cooperation;
- Explain the measures to be used for tracking the results of the action plan and for monitoring changes in the economy, environment and society. Give the indicators that will be used. Present the individuals and organizations that will carry these responsibilities and how they were selected; and
- Present information and case studies which reflect the range of experiences countries encountered in the implementation of Article 6, taking into account local and external factors.<sup>571</sup>

The format for submissions has been updated multiple times including at COP 5,<sup>572</sup> COP 6,<sup>573</sup> COP 7,<sup>574</sup> and COP 8.<sup>575</sup> The current reporting guidelines were decided upon at COP 10.<sup>576</sup>

According to the updated reporting guidelines, the national reports must contain three parts:<sup>577</sup>

**Part I** - An update on biodiversity status, trends, and threats and implications for human well-being. This includes answering the following questions:

- Why biodiversity is important for the reporting country;
- What major changes have taken place in the status and trends of biodiversity in the reporting country;
- What the main threats to biodiversity are in the reporting country; and
- How the changes in biodiversity impact on ecosystems services, as well as the socio-economic and cultural implications of those impacts;<sup>578</sup>

**Part II** - The national biodiversity strategy and action plan (NBSAP), its implementation, and the mainstreaming of biodiversity. This includes answering the following questions.<sup>579</sup>

- What measurable biodiversity targets the country has set in line with the Aichi Biodiversity Targets;
- How the NBSAPs have been updated to incorporate these targets;
- What actions the reporting country has taken to implement the Convention since the fourth report (relevant legislation, policies, institutional and cooperative mechanisms, and funding) as well as the outcomes of these actions;
- How effectively biodiversity has been mainstreamed into relevant sectoral and cross-sectoral strategies, plans and programmes; and
- The extent to which the NBSAPs have been implemented.

**Part III** - Progress towards the 2015 and 2020 Aichi Biodiversity Targets and contributions to the relevant 2015 Targets of the Millennium Development Goals (MDGs). This includes answering the following questions:

- What progress has been made by the country towards the implementation of the Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets, target by target;
- What contribution actions to implement the CBD have made towards that achievement of the relevant MDGs in the reporting country; and
- What lessons have been learned from the implementation of the CBD in the reporting country.<sup>580</sup>

The reporting guidelines also request Parties to involve stakeholders in the preparation of their national reports, including non-governmental organisations (NGOs), civil society, indigenous and local communities, business, and the media.<sup>581</sup> Of particular relevance to the development of a national SIS, the reporting guidelines encourage the national focal point responsible for preparing national reports to work closely with national counterparts responsible for implementation of other related conventions.<sup>582</sup> By coordinating report preparation, the focal points for the various conventions can share data and analysis, ensuring consistency among reports and reduce the overall reporting burden for the country.

As the CBD lacks a mechanism for addressing grievances and complaints, for the purpose of UNFCCC REDD+ Safeguard (e), after a brief overview of the monitoring and reporting provisions, the grievance mechanism of CITES shall be examined.

## Convention on the International Trade of Endangered Species of Wild Fauna and Flora (CITES)

### Monitoring

The Conference of the Parties (COP) is the organ responsible for monitoring implementation of CITES by Parties.<sup>583</sup> Its powers include the capacity to:

*“Review the implementation of the present Convention and may (c) review the progress made towards the restoration and conservation of the species included in Appendices I, II and III ... receive and consider any reports presented by the Secretariat or by any Party; and ... where appropriate, make recommendations for improving the effectiveness of the present Convention.”*

In addition, each Party is required to designate “one or more Management Authorities competent to grant permits or certificates on behalf of the Party and ... one or more Scientific Authorities.”<sup>584</sup>

The Management Authority is authorized to communicate with other Parties and with the Secretariat. The Scientific Authority of each Party is obligated to monitor the export permits granted by the State for Appendix II specimens,<sup>585</sup> and the actual exports of such specimens.<sup>586</sup>

The Secretariat to CITES also has monitoring responsibilities. One of its functions is “to study the reports of Parties and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the present Convention.” In this capacity, the Secretariat may be “assisted, by suitable inter-governmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora.”<sup>587</sup> Accordingly, NGOs such as the TRAFFIC Network,<sup>588</sup> and international bodies such as the World Customs Organisation and Interpol, assist in the implementation of CITES by performing monitoring functions and reporting infractions to the Secretariat.<sup>589</sup>

This has important implications for REDD+, especially in the context of the CSS and SIS. Illegal trade in certain species of timber protected by CITES is a notable driver of deforestation and biodiversity loss. NGOs can play an important role in providing supportive capacity in terms of monitoring implementation and compliance with the obligations provided under CITES, which should curtail such practices.

## Reporting

Parties have two types of reporting obligations:<sup>590</sup> operational review, and performance review. The operational reporting obligations state that:

*“Each Party shall maintain records of trade in specimens of species included in Appendices I, II and III which shall cover: (a) the names and addresses of exporters and importers; and (b) the number and type of permits and certificates granted; the States with which such trade occurred; the numbers or quantities and types of specimens, names of species as included in Appendices I, II and III and, where applicable, the size and sex of the specimens in question.”*<sup>591</sup>

Furthermore:

*“Each Party shall prepare periodic reports on its implementation of the present Convention and shall transmit to the Secretariat: (a) an annual report containing a summary of the information specified in sub-paragraph (b) of paragraph 6 of this Article.”*<sup>592</sup>

Under performance review, Parties must submit: “a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention.”<sup>593</sup>

The annual reports should summarize the following information:

- The number and type of permits and certificates granted;
- The States with which trade in specimens of species included in Appendices I, II and III occurred;
- The numbers or quantities and types of specimens and the names of species as included in Appendices I, II and III; and
- The size and sex of the specimens in question.<sup>594</sup>

The biennial report format is divided into five parts, including:

- General information;
- Legislative and regulatory measures;

- Compliance and enforcement measures;
- Administrative measures; and
- General feedback.<sup>595</sup>

Information on the above measures will be relevant for assessing REDD+ country performance of measures to conserve biodiversity under UNFCCC REDD+ Safeguard (e). Therefore, it should be included as information transmitted through REDD+ countries' SIS. Since countries should be reporting this information under their CITES obligations, already existing processes could be also be incorporated for purposes of monitoring UNFCCC REDD+ Safeguard (e).

### Complaints and Grievance Mechanism

Article 13 establishes the foundation of the compliance mechanism of CITES. It states:

*"1. When the Secretariat in the light of information received is satisfied that any species included in Appendix I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information to the authorized Management Authority of the Party or Parties concerned. 2. When any Party receives a communication as indicated in paragraph 1 of this Article, it shall, as soon as possible, inform the Secretariat of any relevant facts insofar as its laws permit and, where appropriate, propose remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party. 3. The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate."*

Annual and biennial reports, legislative texts, and other special reports and responses to information requests provide the primary—but not exclusive—means of monitoring compliance with CITES obligations.<sup>596</sup> Parties concerned over matters related to trade in specimens of CITES-listed species by another Party may bring the matter up directly with that Party and/or call upon the Secretariat for assistance.<sup>597</sup>

The Secretariat can also be assisted by inter-governmental agencies and bodies, international or national NGOs technically qualified in protection, conservation and management of wild fauna and flora.<sup>598</sup> The non-compliance mechanism of CITES can therefore potentially be triggered by NGOs (as mentioned in the section on monitoring).

COP 11 adopted a formal Non-Compliance Procedure under Resolution 11.3.<sup>599</sup> This mechanism may be invoked for any compliance matter, including where Parties fail to meet their reporting requirements.<sup>600</sup> The resolution states that:

*"a) when, in application of Article 13, the Secretariat requests information on an alleged infraction, Parties reply within a time-limit of one month or, if this is impossible, acknowledge within the month and indicate a date, even an approximate one, by which they consider it will be possible to provide the information requested; b) when, within a one year time-limit, the information requested has not been provided, Parties provide the Secretariat with justification of the reasons for which they have not been able to respond; c) if major problems with implementation of the Convention by particular Parties are brought to the attention of the Secretariat, the Secretariat work together with the Parties concerned to try to solve the problem and offer advice or technical assistance as required; d) if it does not appear a solution can be*

*readily achieved, the Secretariat bring the matter to the attention of the Standing Committee, which may pursue the matter in direct contact with the Party concerned with a view to helping to find a solution.”*

Upon a finding of non-compliance, possible actions that may be taken by the COP include:

- Requiring the Secretariat to issue security paper (i.e. watermarked and of identifiable authenticity) for permits and certificates to reduce instances of forgery and to confirm permits for a period of time;
- Issuing formal warnings;
- The Secretariat suspending cooperation with the non-compliant Party;
- The Secretariat conducting on-site verifications;
- The Standing Committee recommending suspension of trade in CITES-listed species with the non-compliant Party and specifying the conditions to be met before the trade restrictions can be lifted.<sup>601</sup>

## Conclusions

The above analysis has shown that there are numerous international instruments that are thematically relevant to each UNFCCC REDD+ Safeguard, whose implementation will serve as a basis for addressing the issues that the UNFCCC REDD+ Safeguards identify as key requirements (such as the need to respect the rights of indigenous peoples and conserve biodiversity). Furthermore, most of these relevant international instruments have reporting obligations, where Parties must not only provide an overview of their legal, institutional and political frameworks, but also demonstrate in detail how each convention is being implemented, article by article.

These reports can be useful for countries looking to demonstrate their adherence to the UNFCCC REDD+ Safeguards in their SIS. As such, we recommend that countries identify international conventions they are parties to and understand to which UNFCCC REDD+ Safeguard(s) they are relevant. Part I of this Guidance Document can contribute to this activity.

It is however important to note that the UNFCCC REDD+ Safeguards sometimes go beyond obligations under international law (for example the requirement that REDD+ activities do not result in the conversion of natural forests), and demonstrating adherence to relevant international obligations may not be sufficient to demonstrate that the UNFCCC REDD+ Safeguards have been addressed and respected.

It is therefore essential that countries fully understand the scope and content of the obligations contained in the UNFCCC REDD+ Safeguards. Once this has been accomplished, countries can draw from their existing implementing and reporting activities, identify gaps, and address these gaps before reporting their activities under the SIS.

Although the grievance mechanisms identified in the conventions above provide potential routes to have complaints heard, a major limitation is that they often require the exhaustion of all domestic remedies before granting eligibility to complaints. They also lack effective remedies. Therefore, countries cannot rely on existing international grievance mechanisms to address complaints that may arise under their domestic REDD+ activities, and must take steps to either strengthen their domestic judicial systems (for example by extending the mandate of existing institutions to include REDD+ activities), or design and implement a new mechanism for dealing with these complaints.



We therefore recommend that in addition to reporting activities under relevant international instruments, countries draw lessons from selected international grievance mechanisms and feed these lessons into the design of national REDD+ grievance mechanisms, if applicable.

## Overall Conclusions

Effective implementation of the UNFCCC REDD+ Safeguards and the development of a Country Safeguards System (CSS) offers an opportunity to strengthen forest governance. In turn, if a CSS is capable of living up to internationally accepted standards for human rights and environmental protection, countries will have a better chance of achieving permanent GHG emission reductions, through reduced deforestation and forest degradation. An effective CSS also offers the opportunity to strengthen livelihoods and rights of indigenous peoples and local communities, and enhance conservation of biodiversity and essential ecosystem services.

This Guidance Document has demonstrated that the UNFCCC REDD+ Safeguards encompass existing standards, principles and commitments under international law. Using Safeguard (a) as a starting point, we have identified the content and elements of the UNFCCC REDD+ Safeguards. These normative instruments not only provide clarity to the somewhat vague nature of the UNFCCC REDD+ Safeguards, but they also contain a number of practical implementing measures that countries can utilise in setting up their CSS.

The wording of the UNFCCC REDD+ Safeguards goes beyond merely the minimum baseline of ensuring that investments do no harm to vulnerable people and ecosystems. The UNFCCC REDD+ Safeguards do not focus on defining acceptable and unacceptable performance, but instead, require activities to be undertaken in accordance with a set of principles or criteria that define a minimum threshold and lead to social and environmental benefits.<sup>602</sup> Furthermore, addressing and respecting the UNFCCC REDD+ Safeguards entails positive actions to operationalize the rights they refer to, particularly in terms of indigenous peoples' rights such as land tenure. If these actions are capable of empowering indigenous peoples and forest-dependent local communities as right-holders in forest issues, the UNFCCC REDD+ Safeguards will contribute to much more than just risk minimisation.

The UNFCCC REDD+ Safeguards can encourage governments to address the proximate and underlying drivers or causes of deforestation and forest degradation, by improving forest governance.<sup>603</sup> Effective implementation of the UNFCCC REDD+ Safeguards has the potential to promote transparency and accountability, and provide greater weight to considerations such as effective public participation, respect for indigenous rights and the conservation of biological diversity. Each of the above will be required in order to have a successful domestic participatory discussion to understand competing interests and assess the different drivers of deforestation.<sup>604</sup> Furthermore, they will be necessary for ensuring that appropriate institutional and legal frameworks are developed or strengthened to achieve an efficient, rational and sustainable utilisation of all types of forest resources, ensuring protection of natural forests and for adopting a long-term perspective and cross-sectoral approach in policy formulation.

Our analysis has identified that, according to relevant international and regional instruments as well as relevant case law, compliance with the UNFCCC REDD+ safeguards has the potential to promote improved forest governance in a number of areas (see box 3 below). With substantive guidance to assist in understanding and implementing the UNFCCC REDD+ safeguards, governments, civil society, indigenous peoples, local communities and the private sector have an oppor-

tunity to develop a robust CSS through an inclusive multi-stakeholder process. The value of such a process and its outcome will hold benefits beyond REDD+.

**Box 3: Examples of how UNFCCC REDD+ safeguards can promote good forest governance**

UNFCCC REDD+ Safeguard **(a)** requires REDD+ activities to complement or be consistent with the objectives of national forest programmes and relevant international conventions and agreements. This implies a requirement to recognize and take steps to effectively complement and be consistent with relevant and applicable international conventions and agreements. Consideration of these international instruments will help countries to align the UNFCCC REDD+ Safeguards with their existing commitments and aspirations to undertake the governance reforms necessary for the sustainable management of their forests, as indicated by their endorsement of relevant international instruments. By ensuring consistency with these relevant international instruments, REDD+ countries have the opportunity to implement the UNFCCC REDD+ Safeguards by building upon their existing domestic systems developed to comply with those relevant international instruments. REDD+ countries will need to examine and potentially strengthen their domestic systems by enacting/strengthening existing laws, policies and institutions to ensure that the UNFCCC REDD+ Safeguards are being addressed and respected.

UNFCCC REDD+ Safeguard **(b)** focuses specifically on the effectiveness and transparency of forest governance structures. The effective implementation of this safeguard is directly linked to forest governance, and could serve as a catalyst for successful regulatory and institutional reforms, including: the enhancement of laws and regulations relating to access to and dissemination of relevant information; vertical and horizontal accountability, including measures against corruption; governance and sustainable use of forests; participation; clear rights of ownership and possession (land tenure); equitable benefit sharing; and enforcement of those laws. It could also promote strengthening institutional and administrative frameworks, including judicial or administrative procedures that can secure effective remedy for infringement of rights, especially for indigenous peoples and local communities.

UNFCCC REDD+ Safeguards **(c)** and **(d)** focus on promoting and protecting rights, from both a substantive and procedural perspective. Safeguard (c) focuses specifically on indigenous peoples' and local communities' rights, which must be recognised and respected (this includes ensuring that indigenous peoples are not discriminated against, that their collective rights to land are respected, that benefits are adequately distributed and that procedural rights are strengthened).

UNFCCC REDD+ Safeguard **(d)** is procedural in nature, and aims to support and protect substantive rights by ensuring the effective participation of relevant stakeholders in decision-making processes, including through Free, Prior and Informed Consent (FPIC) of indigenous peoples. Groups and individuals living in forest areas, particularly indigenous peoples and local communities depend on forests for their livelihoods. Due to a number of factors, including insecurity over land tenure rights and lack of access to decision-making processes, these groups' rights are at a high risk of being negatively affected or disregarded, if they are not able to effectively participate. Effective implementation of these safeguards can catalyse the strengthening of the legal and institutional frameworks that protect the rights and interests of indigenous peoples and local communities. Furthermore, implementation can promote empowerment of indigenous peoples and local communities by strengthening their ability to access information, participate in decision

making processes, and access effective justice mechanisms.

UNFCCC REDD+ Safeguard **(e)** aims to ensure that REDD+ related activities actively protect and promote the conservation of natural forests, and integrate biodiversity into all REDD+ plans and policies. Specifically, this safeguard requires that REDD+ actions do not result in the conversion of natural forests and that the protection of natural forests and their ecosystem services should be incentivised. The implementation of this safeguard can promote forest governance improvements, by eliminating any perverse incentives that would undermine the conservation of biodiversity and protection of essential ecosystems, notably any incentives that facilitate the conversion of natural forests into plantations. Furthermore, implementation can contribute towards the achievement of other social and environmental benefits for communities, and help protect and support enhancement of forest-dependent livelihoods.

Compliance with UNFCCC REDD+ Safeguards **(f)** and **(g)** is not as directly linked to the issues identified above, and although they can also contribute to improved forest governance, the implementing measures required are mostly linked to the certainty of long term results of REDD+ activities, both in terms of space and time. Nevertheless, there are principles of international law, such as sustainable use, the precautionary principle, and the principle of international cooperation, which can perhaps guide and enhance implementation of these safeguards. These safeguards can contribute to improved forest governance as they require a more holistic policy development process, including identification and development of policies to address drivers of deforestation.

## Tables Identifying International Instruments Relevant to REDD+ Countries

Below we provide tables identifying international instruments used for this analysis, which also identify which instruments are applicable to REDD+ countries. The tables may assist countries in the identification of their international and regional instruments relevant to the UNFCCC REDD+ safeguards.

## International and Regional Agreements Relevant to REDD+ Countries - Africa

	Algeria	Benin	Botswana	Burkina Faso	Burundi	Cameroon	Central African Republic (CAR)	Chad	Congo	Cote d'Ivoire	Democratic Republic of Congo (DRC)	Equatorial Guinea	Ethiopia	Gabon	Ghana	Kenya	Liberia	Madagascar	Malawi	Mozambique	Niger	Nigeria	Rwanda	Senegal	Sierra Leon	South Sudan	Sudan	Tanzania	Uganda	Zambia	
Agreement for Cooperation and Consultation between the Central African States for the Conservation of Wild Fauna (1983)						S			S					S													S				
Agreement on the Conservation of African-Eurasian Migratory Waterbirds (1995)	P							P	P			P	P		P	P		P			P	P		P				P	P		
Agreement on the Conservation of Gorillas and their Habitats (2007)							P		P		P			P								P	P								
Agreement on the Joint Regulations on Fauna and Flora (1977)						P		P													P	P									
African Charter on Human and Peoples' Rights (1981)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P	P	P
African Convention on the Conservation of Nature and Natural Resources (1968)		S		S	P		S	S	S	S	S	S	S		P	S	S	S		S	P	S	P	S	S		S	S	S	S	

	Algeria	Benin	Botswana	Burkina Faso	Burundi	Cameroon	Central African Republic (CAR)	Chad	Congo	Cote d'Ivoire	Democratic Republic of Congo (DRC)	Equatorial Guinea	Ethiopia	Gabon	Ghana	Kenya	Liberia	Madagascar	Malawi	Mozambique	Niger	Nigeria	Rwanda	Senegal	Sierra Leon	South Sudan	Sudan	Tanzania	Uganda	Zambia
African Union Convention on Preventing and Combating Corruption (2003)	P	P		P	P	S		S		S	S	S	P	P	P	P	P	P	P	P	P	P	P	P			S	P	P	P
Cartagena Protocol on Biosafety to the Convention on Biological Diversity (The Biosafety Protocol) (2000)	P	P	P	P	P	P	P	P	P				P	P	P	P	P	P	P	P	P	P	P	P			P	P	P	P
Convention on Biological Diversity (CBD) (1992)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) (1979)	P	P		P	P	P	S	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P					P	
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P		P	P
Convention on the Law of Non-navigational Uses of International Watercourses (1997)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P				P	P
Convention relative to the Preservation of Fauna and Flora in their Natural State (1933)		P		P						S												P								

	Algeria	Benin	Botswana	Burkina Faso	Burundi	Cameroon	Central African Republic (CAR)	Chad	Congo	Cote d'Ivoire	Democratic Republic of Congo (DRC)	Equatorial Guinea	Ethiopia	Gabon	Ghana	Kenya	Liberia	Madagascar	Malawi	Mozambique	Niger	Nigeria	Rwanda	Senegal	Sierra Leon	South Sudan	Sudan	Tanzania	Uganda	Zambia
Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention) (1983)																											P	P		
Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (1985)																P		P			P								P	
Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)		P		P	P	P	P	P	P	P	P	P	P	P		P		P	P	P	P	P	P	P			P			
Convention on the Rights of the Child (1989)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P
Convention for the Safeguarding of Intangible Cultural Heritage (2003)	P	P	P	P	P		P	P	P	P	P	P	P	P		P		P		P	P	P		P			P	P	P	P



	Algeria	Benin	Botswana	Burkina Faso	Burundi	Cameroon	Central African Republic (CAR)	Chad	Congo	Cote d'Ivoire	Democratic Republic of Congo (DRC)	Equatorial Guinea	Ethiopia	Gabon	Ghana	Kenya	Liberia	Madagascar	Malawi	Mozambique	Niger	Nigeria	Rwanda	Senegal	Sierra Leon	South Sudan	Sudan	Tanzania	Uganda	Zambia
Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971) (RAMSAR)	P	P	P	P	P	P	P	P	P	P	P			P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P
International Covenant on Civil and Political Rights (ICCPR) (1966)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P
International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P		P	P	P	P
International Treaty on Plant Genetic Resources for Food and Agriculture (2001)	P	P		P	P	P	P	P	P	P	P		P	P	P	P	P	P	P		P	S	P	P	P		P	P	P	P
International Tropical Timber Agreement (ITTA) (1985/2006)		P				P	S		P	P	P			P	P		P	S				S								
International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) (1989)							P																							
ILO 107															P				P											

	Algeria	Benin	Botswana	Burkina Faso	Burundi	Cameroon	Central African Republic (CAR)	Chad	Congo	Cote d'Ivoire	Democratic Republic of Congo (DRC)	Equatorial Guinea	Ethiopia	Gabon	Ghana	Kenya	Liberia	Madagascar	Malawi	Mozambique	Niger	Nigeria	Rwanda	Senegal	Sierra Leon	South Sudan	Sudan	Tanzania	Uganda	Zambia
Kyoto Protocol to the UNFCCC (1997)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	
Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora									P				P			P	P											P	P	P
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (ABS) to the Convention on Biological Diversity (2010)	S	S		S			S	S	S	S	S			P	S	S		S	S	S	S		P	S			S			
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)									S		S			S	S			S						S						
Programme for the Endorsement of Forest Certification (PEFC) International Standard Sustainable Forest Management (2010)						P								P																
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against		S	P	P	S	P			S	P		P		P	P		S	S	S	P	P	P	P	P	S			P		S

	Algeria	Benin	Botswana	Burkina Faso	Burundi	Cameroon	Central African Republic (CAR)	Chad	Congo	Cote d'Ivoire	Democratic Republic of Congo (DRC)	Equatorial Guinea	Ethiopia	Gabon	Ghana	Kenya	Liberia	Madagascar	Malawi	Mozambique	Niger	Nigeria	Rwanda	Senegal	Sierra Leon	South Sudan	Sudan	Tanzania	Uganda	Zambia	
Women (OP-CEDAW) (1999)																															
Protocol Agreement on the Conservation of Common Natural Resources (1982)										S																	P		S		
Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region (1985)																		S													
Protocol on Energy (1996)			P																P	P									P		P
Protocol on Forestry (2002)			P							S									S	P									P		P
Protocol concerning pollution from land-based sources and activities (1999)																															
Protocol on Wildlife Conservation and Law Enforcement (1999)			P							S									P	P									P		P
UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

	Algeria	Benin	Botswana	Burkina Faso	Burundi	Cameroon	Central African Republic (CAR)	Chad	Congo	Cote d'Ivoire	Democratic Republic of Congo (DRC)	Equatorial Guinea	Ethiopia	Gabon	Ghana	Kenya	Liberia	Madagascar	Malawi	Mozambique	Niger	Nigeria	Rwanda	Senegal	Sierra Leon	South Sudan	Sudan	Tanzania	Uganda	Zambia
United Nations Convention to Combat Desertification (UNCCD) (1994)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	
UN Convention against Corruption (2005)	P	P	P	P	P	P	P		P	S	P		P	P	P	P	P	P	P	P	P	P	P	P			S	P	P	P
United Nations Declaration on Human Rights (UNDHR) (1948)																														
United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007)	Vi F	Vi F	Vi F	Vi F	A	Vi F	Vi F		Vi F	Vi F	Vi F	Vi F	D N V	Vi F	Vi F	A	Vi F	Vi F	Vi F	Vi F	Vi F	A	Vi F	Vi F	Vi F	D N V	Vi F	Vi F	Vi F	Vi F
United Nations Framework Convention on Climate Change (UNFCCC) (1992)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P
United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	P	S		P		S			S					P	P		S				S	P	P	P	S				P	
WTO General Agreement on Tariffs and Trade (1994)		P	P	P	P	P	P	P	P	P	P			P	P	P			P	P	P	P	P	P				P	P	P

## International and Regional Agreements Relevant to REDD+ Countries – Latin America

	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Ecuador	El Salvador	Guatemala	Guyana	Honduras	Mexico	Panama	Paraguay	Peru	Suriname
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” (1988)	P	P	P	S	P	P	P	P	P		P	P	P	P	P	P
American Declaration of the Rights and Duties of Man (1948)	P	P	P	P	P	P	P	P	P							
American Convention on Human Rights (Pact of San Jose) (1969)	P	P	P	P	P	P	P	P	P		P	P	P	P	P	
Cartagena Protocol on Biosafety to the Convention on Biological Diversity (The Biosafety Protocol) (2000)	S	P	P	S	P	P	P	P	P	P	P	P	P	P	P	P
Convention on Biological Diversity (CBD) (1992)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Convention for the Conservation of the Biodiversity and the Protection of Wilderness Areas in Central America (1992)						P		P	P		P		P			

	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Ecuador	El Salvador	Guatemala	Guyana	Honduras	Mexico	Panama	Paraguay	Peru	Suriname
Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) (1979)	P	P		P		P	P				P		P	P		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Convention on the Law of Non-navigational Uses of International Watercourses (1997)	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P
Convention relative to the Preservation of Fauna and Flora in their Natural State (1933)														S		
Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention) (1983)					P				S	P		P	P			
Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (1940)	P	S	P	P	S	P	P	P	P			P	P	P	P	P
Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)	P	P	P	P		P	P		P	P	P	P	P	P	P	
Convention on the Rights of the Child (1989)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Ecuador	El Salvador	Guatemala	Guyana	Honduras	Mexico	Panama	Paraguay	Peru	Suriname
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Convention for the Safeguarding of Intangible Cultural Heritage (2003)	P	P	P	P	P	P	P		P		P	P	P	P	P	
Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971) (RAMSAR)	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P
International Covenant on Civil and Political Rights (ICCPR) (1966)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Inter-regional Framework Co-operation Agreement between the European Community and its Member States, on the one part, and the Southern Common Market and its Party States on the Other Part (1999)	P		P											P		
International Treaty on Plant Genetic Resources for Food and Agriculture (2001)	S		P	S	S	P	P	P	P		P		P	P	P	

	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Ecuador	El Salvador	Guatemala	Guyana	Honduras	Mexico	Panama	Paraguay	Peru	Suriname
International Tropical Timber Agreement (ITTA) (1985/2006)			S		S		P		P	P	P	P	P	S	P	
International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) (1989)	P	P	P	P	P	P	P		P		P	P		P		
ILO 107								P					P			
Inter-American Convention Against Corruption (1996)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem Do Para”) (1995)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Inter-American Convention on Human Rights (1969)	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P
Inter-American Declaration of Principles on Freedom of Expression (2000)																
Kyoto Protocol to the UNFCCC (1997)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P



	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Ecuador	El Salvador	Guatemala	Guyana	Honduras	Mexico	Panama	Paraguay	Peru	Suriname
Mercosur Framework Agreement on Environment (2004)	P		P											P		
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (ABS) to the Convention on Biological Diversity (2010)	S		S		S	S	S	S	S		S	P	S	S		
OECD Anti-Bribery Convention (1997)	P		P	P								P				
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	P	P		S		S	P	P	S					S		
Programme for the Endorsement of Forest Certification (PEFC) International Standard Sustainable Forest Management (2010)	P		P	P												
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) (1999)	P	P	P	S	P	P	P	S	P			P	P	P	P	
Protocol concerning Protected Areas and Wildlife (SPA) (adopted 1990)					P				S	P		S	P			

	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Ecuador	El Salvador	Guatemala	Guyana	Honduras	Mexico	Panama	Paraguay	Peru	Suriname
Protocol concerning pollution from land-based sources and activities (1999)					S	S				P			P			
Regional Convention for the Management and Conservation of the Natural Forest Ecosystems and the Development of Forest Plantations (1993)						P		P	P		S		P			
Treaty for Amazonian Cooperation (1985)		P	P		P		P			P					P	P
UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
United Nations Convention to Combat Desertification (UNCCD) (1994)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
UN Convention against Corruption (2005)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	

	Argentina	Bolivia	Brazil	Chile	Colombia	Costa Rica	Ecuador	El Salvador	Guatemala	Guyana	Honduras	Mexico	Panama	Paraguay	Peru	Suriname
United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007)	ViF	ViF	ViF	ViF	A <sup>1</sup>	ViF	ViF	ViF	ViF	ViF	ViF	ViF	ViF	ViF	ViF	ViF
United Nations Framework Convention on Climate Change (UNFCCC) (1992)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	P	P		P	P		P	P	P	P	P	P		P	P	
WTO General Agreement on Tariffs and Trade (1994)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

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<sup>1</sup> now endorses

## International and Regional Agreements Relevant to REDD+ Countries - Asia

	Azerbaijan	Bangladesh	Bhutan	Cambodia	Fiji	India	Indonesia	Lao PDR	Malaysia	Mongolia	Nepal	Pakistan	Philippines	Solomon Islands	Sri Lanka	Thailand	Vanuatu	Vietnam
ASEAN Agreement on the Conservation of Nature and Natural Resources (1985)							P						P			P		
Cartagena Protocol on Biosafety to the Convention on Biological Diversity (The Biosafety Protocol) (2000)	P	P	P	P	P	P	P	P	P	P	S	P	P	P	P	P		P
Convention on Biological Diversity (CBD) (1992)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) (1979)		P				P				P		P	P		P			
CERD	P	P	S	P	P	P	P	P		P	P	P	P	P	P	P		P
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

	Azerbaijan	Bangladesh	Bhutan	Cambodia	Fiji	India	Indonesia	Lao PDR	Malaysia	Mongolia	Nepal	Pakistan	Philippines	Solomon Islands	Sri Lanka	Thailand	Vanuatu	Vietnam
Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (1986)					P									P				
Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)	P	P		P		P	P	P		P								P
Convention on the Rights of the Child (1989)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Convention for the Safeguarding of Intangible Cultural Heritage (2003)	P	P	P	P	P	P	P	P		P	P		P		P		P	P
Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971) (RAMSAR)	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P		P
International Covenant on Civil and Political Rights (ICCPR) (1966)	P	P		P		P	P	P		P	P	P	P		P	P	P	P
International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)	P	P		P		P	P	P		P	P	P	P	P	P	P		P

	Azerbaijan	Bangladesh	Bhutan	Cambodia	Fiji	India	Indonesia	Lao PDR	Malaysia	Mongolia	Nepal	Pakistan	Philippines	Solomon Islands	Sri Lanka	Thailand	Vanuatu	Vietnam
International Treaty on Plant Genetic Resources for Food and Agriculture (2001)		P	P	P	P		P	P	P		P	P	P			S		
International Tropical Timber Agreement (ITTA) (1985/2006)				P	P	P	P		P				P					
International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) (1989)					P						P							
ILO 107		P				P						P						
Kyoto Protocol to the UNFCCC (1997)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (ABS) to the Convention on Biological Diversity (2010)		S	S	S		S	S			S						S	S	
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	S									P				S				

	Azerbaijan	Bangladesh	Bhutan	Cambodia	Fiji	India	Indonesia	Lao PDR	Malaysia	Mongolia	Nepal	Pakistan	Philippines	Solomon Islands	Sri Lanka	Thailand	Vanuatu	Vietnam
Programme for the Endorsement of Forest Certification (PEFC) International Standard Sustainable Forest Management (2010)									P									
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) (1999)	P	P		P			S			P	P		P	P	P	P	P	
UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) (1992)	P																	
UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
United Nations Convention to Combat Desertification (UNCCD) (1994)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
UN Convention against Corruption (2005)	P	P	S	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
United Nations Declaration on Human Rights (UNDHR) (1948)																		

	Azerbaijan	Bangladesh	Bhutan	Cambodia	Fiji	India	Indonesia	Lao PDR	Malaysia	Mongolia	Nepal	Pakistan	Philippines	Solomon Islands	Sri Lanka	Thailand	Vanuatu	Vietnam
United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007)	A	A	A	ViF	DNV	ViF	ViF	ViF	ViF	ViF	ViF	ViF	ViF	DNV	ViF	ViF	DNV	ViF
United Nations Framework Convention on Climate Change (UNFCCC) (1992)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	P	P		S			P						P		P			
WTO General Agreement on Tariffs and Trade (1994)		P		P	P	P	P		P	P	P	P	P	P	P	P	P	P

P: Party S: Signatory ViF: Voted in Favour VAg :Voted Against A: Abstained DNV: Did not vote \*: Resolution adopted by consensus (no vote)



## Annex: International and Regional Instruments Analysed

1. Agreement for Cooperation and Consultation between the Central African States for the Conservation of Wild Fauna (1983)
2. Agreement on the Conservation of African-Eurasian Migratory Waterbirds (1995)
3. Agreement on the Conservation of Gorillas and their Habitats (2007)
4. Agreement on the Joint Regulations on Fauna and Flora (1977)
5. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” (1988)
6. African Charter on Human and Peoples’ Rights (1981)
7. African Convention on the Conservation of Nature and Natural Resources (1968)
8. African Union Convention on Preventing and Combating Corruption (2003)
9. Agenda 21 (1992)
10. American Declaration of the Rights and Duties of Man (1948)
11. ASEAN Agreement on the Conservation of Nature and Natural Resources (1985)
12. Cartagena Protocol on Biosafety to the Convention on Biological Diversity (The Biosafety Protocol) (2000)
13. Commission Ind. States (CIS) Agreement on Cooperation in the Sphere of Timber Industry and Forestry (1998)
14. Convention on Biological Diversity (CBD) (1992)
15. Convention for the Conservation of the Biodiversity and the Protection of Wilderness Areas in Central America (1992)
16. Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) (1979)
17. Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965)
18. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)
19. Convention on the Law of Non-navigational Uses of International Watercourses (1997)
20. Convention relative to the Preservation of Fauna and Flora in their Natural State (1933)
21. Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention) (1983)
22. Convention for the Protection of the Marine Environment of the North-East Atlantic (1992)
23. Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (1985)
24. Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (1940)
25. Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (1986)
26. Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)
27. Convention on the Rights of the Child (1989)
28. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)
29. Convention for the Safeguarding of Intangible Cultural Heritage (2003)
30. Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971) (RAMSAR)

31. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1992)
32. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (1998)
33. Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) (1972)
34. Energy Charter Protocol on Energy Efficiency and related Environmental Aspects (1994)
35. European Convention for the Protection of Human Rights and Fundamental Freedoms (1998)
36. EU Timber Regulation (2013)
37. First Optional Protocol to the International Covenant on Civil and Political Rights (1966)
38. Harare Commonwealth Declaration (1991)
39. International Covenant on Civil and Political Rights (ICCPR) (1966)
40. International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
41. International Convention for the Protection of Birds (1950)
42. Inter-regional Framework Cooperation Agreement between the European Community and its Member States, on the one part, and the Southern Common
43. Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2011)
44. Market and its Party States on the Other Part (1999)
45. International Treaty on Plant Genetic Resources for Food and Agriculture (2001)
46. International Tropical Timber Agreement (ITTA) (1985/2006)
47. International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) (1989)
48. International Labour Organisation Indigenous and Tribal Populations Convention (ILO Convention No. 107)(1957)
49. International Labour Organisation Convention Concerning Discrimination in Respect of Employment and Occupation (ILO Convention No. 111)(1958)
50. International Labour Organisation Concerning basic aims and standards of social policy (ILO Convention No. 117)(1962)
51. Inter-American Convention Against Corruption (1996)
52. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem Do Para”) (1995)
53. Inter-American Convention on Human Rights (1969)
54. Inter-American Declaration of Principles on Freedom of Expression (2000)
55. ITTO/IUCN guidelines for the conservation and sustainable use of biodiversity in tropical timber production forests (2009)
56. Lacey Act (USA - 1900)
57. Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora
58. OECD Anti-Bribery Convention (1997)
59. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)
60. Programme for the Endorsement of Forest Certification (PEFC) International Standard Sustainable Forest Management (2010)
61. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) (1999)
62. Protocol Agreement on the Conservation of Common Natural Resources (1982)

63. Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region (1985)
64. Protocol on Energy (1996)
65. Protocol on Forestry (2002)
66. Protocol concerning Protected Areas and Wildlife (SPAW) (adopted 1990)
67. Protocol on the prevention, reduction and control of land-based sources and activities (1999)
68. Protocol on Wildlife Conservation and Law Enforcement (1999)
69. Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2012)
70. Model Inter American Law on Access to Information 2010
71. Mercosur Framework Agreement on Environment (2004)
72. Migratory Bird Treaty Act (1918)
73. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (ABS) to the Convention on Biological Diversity (2010)
74. Non-Legally Binding Instruments on All Types of Forests (NLBI on Forests) (2007)
75. North American Agreement on Environmental Cooperation (NAAEC) (1993)
76. Regional Convention for the Management and Conservation of the Natural Forest Ecosystems and the Development of Forest Plantations (1993)
77. Rio Declaration on Environment and Development (Rio Declaration) (1992)
78. Treaty for Amazonian Cooperation (1985)
79. Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa (2005)
80. US Foreign Corrupt Practices Act
81. UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) (1992)
82. UNEP draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States (UNEP draft Principles) (1978)
83. UNESCO Universal Declaration on Cultural Diversity (2001)
84. UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)
85. UNESCO Convention against discrimination in education (1960)
86. United Nations Conference on Trade and Development Biotrade Initiative Biotrade Principles and Criteria (2007)
87. United Nations Convention to Combat Desertification (UNCCD) (1994)
88. UN Convention against Corruption (2005)
89. Universal Declaration of Human Rights (UDHR) (1948)
90. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007)
91. United Nations Guiding Principles on Business and Human Rights
92. United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
93. UN Statement of principles for the Sustainable Management of Forests (1992)
94. United Nations World Charter for Nature (1982)
95. WTO General Agreement on Tariffs and Trade (1994)

ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

As legal experts working in the public interest, we act to strengthen the work of our partner organisations. Our work covers climate change and energy system transformation, protection of oceans, biodiversity and forests, and environmental justice.

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For further information please contact [info@clientearth.org](mailto:info@clientearth.org)

ClientEarth offices:

**Brussels**

4ème Etage  
36 Avenue de Tervueren  
Bruxelles 1040  
Belgium

**London**

274 Richmond Road  
London E8 3QW  
UK

**Warsaw**

Aleje Ujazdowskie 39/4  
00-540 Warszawa  
Poland

ClientEarth is a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 2-6 Cannon Street, London EC4M 6YH, with a registered branch in Belgium, N° d'entreprise 0894.251.512, and with a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208

- <sup>1</sup> McDermott, Constance L., Coad, L., Helfgott, A., Schroeder, H., (2012), Operationalizing social safeguards in REDD+: actors, interests and ideas, *Environmental Science and Policy*, 21, p.65.
- <sup>2</sup> McDermott, Constance L et al Operationalizing social safeguards in REDD+ *op cit* p.68.
- <sup>3</sup> McDermott, Constance L et al Operationalizing social safeguards in REDD+ *op cit* p.68.
- <sup>4</sup> McDermott, Constance L et al Operationalizing social safeguards in REDD+ *op cit* p. 68.
- <sup>5</sup> Vermeulen et al. (2012) based on van der Werf G.R., Morton D.C., DeFries R.S., Olivier J.G.J., Kasibhatla, P.S., Jackson R.B., Collatz G.J., Randerson J.T., (2009) CO<sub>2</sub> emissions from forest loss, *Nature Geoscience* 2, pp.738-739.
- <sup>6</sup> UNFCCC Decision 1/CP.16, FCCC/CP/2010/Add.1 paragraph 70 letters (a) through (e).
- <sup>7</sup> UNFCCC, (11 November 2005) Reducing emissions from deforestation in developing countries: approaches to stimulate actions, FCCC/CP/2005/MISC.1, 11<sup>th</sup> Convergence of the Parties, Montreal.
- <sup>8</sup> UNFCCC Decision 1/CP.16, FCCC/CP/2010/Add.1; Decision 2/CP.17 FCCC/CP/2011/9/Add.1; Draft Decision -/CP.18 Agreed outcome pursuant to the Bali Action Plan.
- <sup>9</sup> Harvey, C.A., Dickson, B., Kormos, C., (2010) Opportunities for achieving biodiversity conservation through REDD, *Conservation Letters* 3, pp. 53-61.
- <sup>10</sup> Dickinson B. et al. (2012) REDD+ Beyond Carbon: Supporting Decisions on Safeguards and Multiple Benefits, UN-REDD Programme Policy Brief, p.1.
- <sup>11</sup> As well as loss of access, exclusion from potential financial benefits or misappropriation of funds intended for social development due to fraud or political corruption. Global Witness (2010) Understanding REDD+: The role of governance, enforcement and safeguards in Reducing Emissions from Deforestation and Forest Degradation, online: <<http://www.globalwitness.org/sites/default/files/library/Understanding%20REDD+.pdf>> [Accessed 31 January 2013].
- <sup>12</sup> Miles, L., and Dickinson, B., (2010) REDD+ and Biodiversity opportunities and challenges, *Unasylva* Vol. 61 No. 236 pp. 56-63, online: <<http://www.fao.org/docrep/013/i1758e/i1758e14.pdf>> [Accessed 31 January 2013]
- <sup>13</sup> UNFCCC, Decision 1/CP.16, *op cit*, Annex I, paragraph 2.
- <sup>14</sup> McDermott, Constance L et al Operationalizing social safeguards in REDD+ *op cit* p.65.
- <sup>15</sup> McDermott, Constance L et al Operationalizing social safeguards in REDD+ *op cit* p.68.
- <sup>16</sup> McDermott, Constance L et al Operationalizing social safeguards in REDD+ *op cit* p.68.
- <sup>17</sup> McDermott, Constance L et al Operationalizing social safeguards in REDD+ *op cit* p. 68.
- <sup>18</sup> Paragraph 72 of the Decision states that: “country Parties, when developing and implementing their national strategies or action plans, to address *inter alia*, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of Appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, *inter alia* indigenous peoples and local communities” UNFCCC, Decision 1/CP.16, *op cit*, paragraph 72.
- <sup>19</sup> UNFCCC, Decision 1/CP.16, *op cit*, Appendix 1, paragraph 2.
- <sup>20</sup> Paragraph 70 states that: The Conference of the Parties “Encourages developing country Parties to contribute to mitigation actions in the forest sector by undertaking the following activities, as deemed appropriate by each Party and in accordance with their respective capabilities and national circumstances: (a) Reducing emissions from deforestation; (b) Reducing emissions from forest degradation; (c) Conservation of forest carbon stocks; (d) Sustainable management of forests; (e) Enhancement of forest carbon stocks.” And paragraph 72 states that the COP: “Also requests developing country Parties, when developing and implementing their national strategies or action plans, to address, *inter alia*, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, *inter alia* indigenous peoples and local communities.” UNFCCC, Decision 1/CP.16, *op cit* paragraphs 70, 72
- <sup>21</sup> Moss, N., and Nussbaum, R., (2011), A Review of Three REDD+ Safeguard Initiatives, Forest Carbon Partnership Facility, UNREDD-Programme, p. 3.
- <sup>22</sup> UNFCCC, Decision 1/CP.16, *op cit*, para 69; Decision 2/CP.17, *op cit*, para 63.
- <sup>23</sup> UNFCCC Decision 1/CP.16, *op cit*, para 71(d).
- <sup>24</sup> UNFCCC Decision 2/CP.17, *op cit*, para 63 and 64.
- <sup>25</sup> UNFCCC Decision 2/CP.17, *op cit*, paragraphs 63 and 64 should be read in conjunction with UNFCCC Decision 1/CP.16, *op cit*, paragraph 69 and Appendix 1, paragraph 2.
- <sup>26</sup> For more information see ClientEarth’s briefing paper: A Framework for the Development of a REDD+ Country Safeguard System (CSS): Considerations and Key Components, Also see Daviet, F., and Larsen, G., (2012) Safeguarding Forests and People: A Framework for Designing a National System to Implement REDD+ Safeguards, WRI.
- <sup>27</sup> FAO, National Forest Programme: NFP as a comprehensive forest governance framework, online: <<http://www.fao.org/forestry/nfp/74076/en/>> [Accessed 16 April 2013]
- <sup>28</sup> UNFCCC, Decision 2/CP.13, FCCC/CP/2007/6/Add.1 [8<sup>th</sup> plenary meeting, 14-15 December 2007], Preamble.
- <sup>29</sup> UNFCCC Decision 1/CP.16, *op cit*, paragraph 71(d).
- <sup>30</sup> We define soft law as: non-binding international agreements; international agreements that are not in force; voluntary and UN declarations; principles of international law. These instruments do not create binding obligations but are useful for interpretive purposes.
- <sup>31</sup> **African Union Convention on Preventing and Combating Corruption** (Maputo, 11 July 2003) *entered into force* 5 August 2006, Article 9; **Convention for the Protection of the Marine Environment of the North-East Atlantic [OSPAR]** (Paris, 22 September 1992) 2354 U.N.T.S. 67 *entered into force* 25 March 1998, Article 9; **Inter-American Convention Against Corruption** (Caracas, 29 March 1996) *entered into force* 6 March 1997; **Model Inter-American Law on Access to Information** (8 June 2010) AG/RES. 2607 (XL-O/10), Article 2; **North American Agreement on Environmental Cooperation** (17 December 1992) *entered into force* 1 January 1994, Article 21; **South African Development Community Protocol on Forestry** (Luanda, 3 October 2002) *entered into force* 17 July 2009, Article 21; **United Nations Convention Against Corruption** (Vienna, 31 October 2003) 2349 U.N.T.S. 41, G.A Res A/RES/58/4 *entered into force* 14 December 2005, Article 10.

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<sup>32</sup> **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters** [Aarhus Convention] (Aarhus, 25 June 1998) 2161 U.N.T.S. 447 entered into force 30 October 2001, Article 2.4 states that: “‘The public’ means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups.”

<sup>33</sup> **Model Inter-American Law on Access to Information**, *op cit*, Article 5 states that: “Any person making a request for information to any public authority covered by this Law shall be entitled, subject only to the provisions of Part IV of this Law a) to be informed whether or not the public authority in question holds a record containing that information or from which that information may be derived; b) if the public authority does hold such a record, to have that information communicated to the requester in a timely manner; c) to an appeal where access to the information is denied; d) to make an anonymous request for information; e) to make a request without providing justifications for why the information is requested; f) to be free from discrimination based on the nature of the request; and g) to be provided with the information free of charge or at a cost limited to the cost of reproduction.” See also: Human Rights Committee, International Covenant on Civil and Political Rights, (12 September 2011) General comment No. 34 CCPR/C/GC/34, paragraph 20.

<sup>34</sup> **Model Inter-American Law on Access to Information**, *op cit*, Article 1 defines ‘information’ as being “any type of data in the custody or control of a public authority”.

<sup>35</sup> **Model Inter-American Law on Access to Information**, *op cit*, Article 3 states that: “This Law applies to all public authorities, including the executive, legislative and judicial branches at all levels of government...non-state bodies which are owned or controlled by government and private organizations which operate with substantial public funds or benefits (directly or indirectly) or which perform public functions and services...”.

<sup>36</sup> Which, in opposition to active access to information, (see below), we refer to as passive access to information, **Model Inter-American Law on Access to Information**, *op cit*, Article 2.

<sup>37</sup> **Model Inter-American Law on Access to Information**, *op cit*, Articles 9, 11, 12, 13 and 14, **Office of the Special Rapporteur for Freedom of Expression Inter American Commission on Human Rights**, (30 December 2009), The Inter-American Legal Framework Regarding the Right to Access to Information pp.6-7.

<sup>38</sup> **Office of the Special Rapporteur for Freedom of Expression Inter American Commission on Human Rights**, The Inter-American Legal Framework Regarding the Right to Access to Information, *op cit*, paragraph 19.

<sup>38</sup> **United Nations Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression** (2004), International Mechanisms for Promoting Freedom of Expression: Joint Declaration.

<sup>39</sup> **International Mechanisms for Promoting Freedom of Expression (6 December 2004) Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression**, available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=319&IID=1> [accessed 15 April 2013]

<sup>40</sup> **Inter-American Judicial Committee**, 73<sup>rd</sup> Regular Session 4 to 14 August 2008 Rio de Janeiro, Brazil, Principles on the Right of Access to Information, CJI/RES. 147 (LXXIII-O/08).

<sup>41</sup> **Inter-American Judicial Committee**, Principles on the Right of Access to Information, *op cit*, p. 163.

<sup>42</sup> **Office of the Special Rapporteur for Freedom of Expression Inter-American Commission on Human Rights** (30 December 2009), The Inter-American Legal Framework Regarding the Right to Access to Information p. 7.

<sup>43</sup> **Inter American Court of Human Rights**, *Case of Claude-Reyes et al. v. Chile*. Judgment of September 19, 2006. Series C No. 151, paragraph 137.

<sup>44</sup> **Inter American Court of Human Rights**, *Case of Claude-Reyes et al. v. Chile*. Judgment of September 19, 2006. Series C No. 151, paragraph 137.

<sup>45</sup> **Office of the Special Rapporteur for Freedom of Expression Inter American Commission on Human Rights**, The Inter-American Legal Framework Regarding the Right to Access to Information, *op cit*, p. 3-5; **Model Inter-American Law on Access to Information**, *op cit*, Article 2.

<sup>46</sup> Maximum disclosure is interpreted as meaning that “all information held by public bodies is accessible, subject to a clear and narrow regime of exceptions set out in law that are legitimate and strictly necessary in a democratic society based on the standards and jurisprudence of the Inter-American system.”, **Model Inter-American Law on Access to Information** Article 2.

<sup>47</sup> **I/A Court H. R.**, *Case of Claude-Reyes et al. v. Chile*, *op cit*, paragraphs 89-92.

<sup>48</sup> **I/A Court H. R.**, *Case of Claude-Reyes et al. v. Chile*, *op cit*, Paragraph 98.

<sup>49</sup> **United Nations Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media and the OAS Special Rapporteurs on Freedom of Expression** (2004), International Mechanisms for Promoting Freedom of Expression: Joint Declaration.

<sup>50</sup> See note 45 above.

<sup>51</sup> **Office of the Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights**, (30 December 2011), The Right to Access Information in the Americas, Inter-American Standards and Comparison of Legal Frameworks, p. 105,

<sup>52</sup> Lawson, A., and Rakner, L., (2005), Understanding Patterns of Accountability in Tanzania, Final Synthesis Report, Oxford Policy Management, p. 9,

<sup>53</sup> Lawson, A., and Rakner, L., Understanding Patterns of Accountability, *op cit*, p. 10.

<sup>54</sup> Goetz, A., M. Jenkins, R., (2005), Reinventing Accountability: Making Democracy Work for Human Development, Palgrave-Macmillan p.15.

<sup>55</sup> Lawson, A., and Rakner, L., Understanding Patterns of Accountability, *op cit*, p.11.

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<sup>56</sup> For instance, the UN Convention Against Corruption states, in Article 13 that “Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organisations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.”

<sup>57</sup> **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 5.4; **Inter-American Convention Against Corruption**, *op cit*, Article 3; **UN Convention Against Corruption**, *op cit*, Article 8; **United Nations Office on Drugs and Crime**, (2009) Technical Guide to the United Nations Convention Against Corruption, U.N.O.D.C. online: <[http://www.unodc.org/documents/corruption/Technical\\_Guide\\_UNCAC.pdf](http://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf)> pp. 13-42; **Organization of American States**, Committee of Experts (31 March 2006) Hemispheric Report on the First Round of Review of the Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention Against Corruption (MESICIC) p. 18.

<sup>58</sup> **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 5.4; **Inter-American Convention Against Corruption**, *op cit*, Article 3.5; **UN Convention Against Corruption**, *op cit*, Article 7; **OAS**, Committee of Experts (11 December 2008) Hemispheric Report on the Second Round of Review of the Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention Against Corruption, p. 16.

<sup>59</sup> **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 5.4; **Inter-American Convention Against Corruption**, *op cit*, Article 3.4; **UN Convention Against Corruption**, *op cit*, Article 10; **OAS**, Hemispheric Report on the First Round of Review of the Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention Against Corruption (MESICIC), p. 20.

<sup>60</sup> **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 5.4; **Inter-American Convention Against Corruption**, *op cit*, Article 3.5; **UN Convention Against Corruption**, *op cit*, Article 9; **OAS**, Committee of Experts Hemispheric Report on the Second Round of Review of the Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention Against Corruption, *op cit*, p. 18.

<sup>61</sup> **International Covenant on Civil and Political Rights** (New York, 16 December 1966) 993 U.N.T.S. 3, *entered into force* 3 January 1976, Article 19; **Universal Declaration of Human Rights** (10 December 1948), G.A. Res. 217 A (III), U.N. Doc A/810 at 71 (1948), Article 19; **American Convention on Human Rights** (San Jose, Costa Rica, 22 November 1969), 9 I.L.M. 673 (1970), *entered into force* 18 July 1978, Article 13.

<sup>62</sup> **United Nations Rio Declaration on Environment and Development** [Rio Declaration], (Rio de Janeiro, 13 June 1992), 31 I.L.M. 874 (1992), Principles 10, 17, 20, 22; **International Tropical Timber Agreement** (Geneva, 18 November 1983) 1393 U.N.T.S. 671 *entered into force* 1 April 1985, amended in Geneva, 27 January 2006, Doc.TD/TIMBER.3/12, Article 1(h)(o), para. I; **United Nations Declaration on the Rights of Indigenous Peoples** [UNDRIP] (13 September 2007) G.A. Res 61/295 A, Articles 10, 16; **United Nations Conference on Environment and Development** [Agenda 21: Programme of Action for Sustainable Development] (14 June 1992), Articles 8.4(f), 10.11(c), 11.3(b); **African Convention on the Conservation of Nature and Natural Resources**, (Algiers, 15 September 1968) 1001 U.N.T.S. 3, CAB/LEG/24.1, *entered into force* 16 June 1969, Article 16; **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 9; **Association of South East Asian Nations Agreement on the Conservation of Nature and Natural Resources** (Kuala Lumpur, 9 July 1985) ECOLEX TRE-000820 *not yet entered into force*, Article 16.2; Secretariat of the Convention on Biological Diversity, (Montreal, 2004) **Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment 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**, (2004) CBD Guidelines Series, Secretariat of the Convention on Biological Diversity; **Cartagena Protocol on Biosafety to the Convention on Biological Diversity** [Cartagena Protocol] (Cartagena, 29 January 2000) 2226 U.N.T.S. 208 *entered into force* 11 September 2003, Article 23.1, 23.3; **Convention on the Conservation of Migratory Species of Wild Animals** [Bonn Convention] (Bonn, 23 June 1979) 1651 U.N.T.S. 333 *entered into force* 1 November 1983, Article 5.5(n); **Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region** (Cartagena, 24 March 1983) 1506 U.N.T.S. 157 *entered into force* 11 October 1986, Article 12.3; **OSPAR**, *op cit*, Article 9.1, Appendix 1 para 6(a); **Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region** [Nairobi Convention] (Nairobi, 21 June 1985) *entered into force* 30 May 1996, amended at Nairobi, 31 March 2010, Article 13; **Convention on the Protection and Promotion of the Diversity of Cultural Expressions** (Paris, 20 October 2005) 2440 U.N.T.S. 311 *entered into force* 18 March 2007, Articles 2.1, 9(c); **Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**, (9 December 1998) A/RES/53/144, Article 6(a), 14; **Model Inter-American Law on Access to Information**, *op cit*, Articles 3, 14, 62; **International Treaty on Plant Genetic Resources for Food and Agriculture** (Rome, 3 November 2001) OJ L 378 23.12.2004 *entered into force* 29 June 2004, Article 13; **ITTO** (2002) ITTO Guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests, ITTO Policy Development Series No.13, Principle 4; **Interregional Framework Cooperation Agreement between the European Community and the Southern Common Market**, (15 December 1995) OJ L 69 19.03.1996, Article 17; **Maastricht Centre for Human Rights and International Commission of Jurists** (28 September 2011) Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, Principle 2; **The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity** [Nagoya Protocol], (Nagoya 29 October 2010), UNEP/CBD/COP/DEC/X/1 *not yet entered into force*, Article 28; **Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests** [Forest Principles], (14 August 1992), A/CONF.151/26 (vol.III), Principle 2(c); **Non-legally binding instrument on all types of forests** (New York, 22 October 2007) A/C.2/62/L.5, Article 6(t)(x); **North American Agreement on Environmental Cooperation** (17 December 1992) *entered into force* 1 January 1994, Article 2.1(a), 4, 5; **Programme for the Endorsement of Forest Certification** [PEFC] (26 November 2012) Sustainable Forest Management, PEFC ST 1003:2010, Criterion 1.6; **Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region**, (Nairobi, 21 June 1985) Ecolx TRE-000821 *entered into force* 30 May 1996, Articles 14, 15; **Protocol Concerning Spe-**



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cially Protected Areas and Wildlife to the Convention for the protection and development of the marine environment of the wider Caribbean region [SPAW Protocol] (Kingston, 18 January 1990) 2180 U.N.T.S. 101, Article 6; **South African Development Community Protocol on Forestry** (Luanda, 3 October 2002) *entered into force* 17 July 2009, Article 11(c); **Protocol concerning pollution from land-based sources and activities to the Convention for the protection and development of the marine environment of the wider Caribbean region** [LBS Protocol] (Oranjestad, Aruba, 6 October 1999) ECOLX TRE-001331 *entered into force* 13 August 2010, Articles 7.4, 10; **UN Conference on Trade and Development BioTrade Initiative**, Bio Trade Principles and Criteria, (New York June 2007), UNCTAD/DITC/TED/2007/4, Principle 3; **United Nations Educational, Scientific and Cultural Organization** [UNESCO], (Paris, 17 October 2003), Convention for the Safeguarding of Intangible Cultural Heritage, MISC/2003/CLT/CH/14, Article 14; **UN Convention Against Corruption**, *op cit*, Articles 10(c), 13, 15, 17, 18, 19, 20, 21, 22; **UN Convention to Combat Desertification**, (Paris, 14 October 1994) 1954 U.N.T.S. 3 *entered into force* 26 December 1996, Articles 13, 19; **Aarhus Convention**, *op cit*, Articles 1, 3, 5, 6.9.

<sup>63</sup> **Model Inter-American Law on Access to Information** *op cit*, Article 2; according to this article, all information held by public bodies must be complete, timely and accessible, subject to certain exceptions: (a) these exceptions must be interpreted restrictively, in such a way that favours the right of access to information; (b) grounds must be given for decisions to deny information, and the State has the burden to prove that the information being requested may not be released; and (c) in the event of a doubt or legal vacuum, the right of access to information must take priority. For more information on the principle of maximum disclosure, see **Office of the Special Rapporteur for Freedom of Expression Inter-American Commission on Human Rights**, (30 December 2011), The Right To Access to Information in the Americas Inter-American Standards and Comparison of Legal Frameworks, OAS OEA/Ser.L/V/II.CIDH/RELE/INF.7/12.

<sup>64</sup> **African Union Convention on Preventing and Combating Corruption**, *op cit*, Articles 5, 7; **Inter-American Convention Against Corruption**, *op cit*, Article 3; **OECD Convention on combating bribery of foreign public officials in international business transactions** (Paris, 17 December 1997) *entered into force* 15 February 1999, Articles 1, 8; **UN Convention Against Corruption**, *op cit*, Articles 7, 8, 9, 10.

<sup>65</sup> Davis, C., Daviet, F., Nakhoota, S., (September 2009), Governance of Forest Initiative Indicator Framework (Version 1), WRI, p. 3.

<sup>66</sup> Davis, C., Daviet, F., Nakhoota, S., Governance of Forest Initiative Indicator Framework (Version 1), *op cit*, p. 3.

<sup>67</sup> Davis, C., Daviet, F., Nakhoota, S., Governance of Forest Initiative Indicator Framework (Version 1), *op cit*, p. 3.

<sup>68</sup> **International Tropical Timber Agreement** (Geneva, 18 November 1983) 1393 U.N.T.S. 671 *entered into force* 1 April 1985, amended in Geneva, 27 January 2006, Doc.TD/TIMBER.3/12, Article 1 paragraphs m and n; **International Labour Organization** [ILO], **Convention (No. 169) concerning indigenous and tribal peoples in independent countries**, (Geneva, 5 September 1991), 1650 U.N.T.S. *entered into force* 5 September 1991, Articles 7, 11, 14, 17; **Convention on Biological Diversity**, (Rio de Janeiro, 5 June 1992), 1760 U.N.T.S. 79, *entered into force* 29 December 1993; **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Article 6 paragraph n; **ITTO guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests**, *op cit*, Principle 5; **Nagoya Protocol**, *op cit*, Article 5; **Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests [Forest Principles]**, (14 August 1992), A/CONF.151/26 (vol.III), Principle 12; **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Article 6(f); **PEFC International Standard Sustainable Forest Management**, *op cit*, Criterion 6(3); **UN Bio Trade Principles and Criteria**, *op cit*, Principle 7; **UNDRIP**, *op cit*, Articles 26, 27.

<sup>69</sup> **Convention on Biological Diversity**, *op cit*, Articles 6, 10; **Agenda 21**, *op cit*, Articles 8.4(b), 11.21(b); **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 4, 6, 7, 8, 10; **Mercosur Framework Agreement on Environment** (Asuncion, Paraguay, 22 June 2001) 2270 U.N.T.S. 347, IEA 3336 *entered into force* 23 June 2004, Article 3(c); **Forest Principles**, *op cit*, Principles 6(b), (c), 9(c); **ITTO guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests**, *op cit*, Principle 4; **Mercosur Framework Agreement on Environment**, *op cit*, Article 3(b); **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Article 6(k); **PEFC International Standard Sustainable Forest Management**, *op cit*, Criterion 1(4), (5); **SADC Protocol on Forestry**, *op cit*, Article 4(3), (4); **Protocol on Wildlife Conservation and Law Enforcement**, (Enugu, 3 December 1977) Ecolx TRE-000101 *entered into force* 3 December 1977, Article 7; **Southern African Development Community Protocol on Energy**, (Maseru, 24 August 1996), *entered into force* 17 April 1998, Article 2(10); **Treaty for Amazonian Cooperation**, *op cit*, Article 7; **Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa and to establish the Central African Forests Commission** (COMIFAC)(Brazzaville 5 February 2005) Article 1; **UN Bio Trade Principles and Criteria**, *op cit*, Principles 1, 2; **UN Convention to Combat Desertification**, *op cit*, Annex I Article 4(1)(c), Annex III Article 4.

<sup>70</sup> **Universal Declaration on Human Rights**, *op cit*, Article 19; **Rio Declaration on Environment and Development**, *op cit*, Principles 10, 17, 20, 22; **International Covenant on Civil and Political Rights**, *op cit*, Article 19; **International Covenant on Economic, Social and Cultural Rights** (New York, 16 December 1966) 993 U.N.T.S. 3, *entered into force* 3 January 1976, Article 13; **American Convention on Human Rights**, *op cit*, Article 13; **ITTA**, *op cit*, Article 1(l); **UNDRIP**, *op cit*, Article 5, 10, 18, 19; **Agenda 21**, *op cit*, Article 8.4(f); **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Articles 14, 16; **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 12; **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 16; **Cartagena Protocol on Biosafety**, *op cit*, Article 23(2); **Convention for the Elimination of All Forms of Discrimination Against Women**, (New York, 18 December 1979) 1249 U.N.T.S. 13 *entered into force* 3 September 1981, Article 7; **Declaration on the Right to Development** (4 December 1986) A/RES/41/128, Articles 2, 8; **Declaration on the Right & Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms** (8 March 1999) G.A. res.53/144, annex, 53 U.N. GAOR Supp., U.N. Doc. U.N. Doc. A/RES/53/144 (1999), Article 8; **ILO Convention No. 169**, *op cit*, Articles 2, 6, 7, 15, 16, 20, 22, 23, 25, 27, 33; **ITTO guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests**, *op cit*, Principle 8; **Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora**, (Lusaka, 8 September 1994) Ecolx TRE-001197 *entered into force* 10 December 1996, Article 4; **Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights**, *op cit*, Principles 7, 14; **Mercosur Framework Agreement on Environment**, *op cit*, Article 3(e); **Nagoya Protocol**, *op cit*, Articles 6, 7, 12; **Forest Principles**, *op cit*, Principle 2(d); **North American Agreement on Environmental Cooperation**, *op cit*, Articles 1(h), 4(b); **PEFC International Standard Sustainable Forest Management**, *op cit*, Criterion 1(11)(a); **SADC Protocol on Forestry**, *op cit*, Articles 4, 11(c), 12; **Protocol on the prevention, reduction and control of**



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land-based sources and activities to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, (Oranjestad 6 October 1999), *entered into force* 13 August 2010, Articles 7(4), 10; **Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa**, *op cit*, Article 1; **UN Bio Trade Principles and Criteria**, *op cit*, Principle 3; **UN Convention against Corruption**, *op cit*, Article 13(a); **UN Convention to Combat Desertification**, *op cit*, Articles 3(a), 5(d), 10(2)(f), Annex I Article 6(2), 8(2)(c), 9(a), (c), Annex II Article 4(b), (d), Annex III Article 3(2), 5(b), (d); **Aarhus Convention**, *op cit*, Articles 1, 3, 7, 8; **World Charter for Nature**, *op cit*, Article 23.

<sup>71</sup> **I/A Court H.R., Case of Saramaka People v. Suriname** Judgment of November 28, 2007, Series C No. 172, paragraph. 133.

<sup>72</sup> Although the specific wording of UNFCCC Safeguard (d) is “full and effective participation of relevant stakeholders,” the term ‘relevant stakeholders’ has been defined in the relevant section to include civil society organisations acting in the public interest, and therefore equate to ‘public participation’.

<sup>73</sup> International Union for Conservation of Nature Rights-based approach to conservation, Substantive and procedural rights, online: <<https://community.iucn.org/rba1/Pages/Substantive%20and%20procedural%20rights.aspx>> [Accessed 31 January 2013].

<sup>74</sup> International Union for Conservation of Nature Rights-based approach to conservation, Substantive and procedural rights, *op cit*.

<sup>75</sup> The general consensus in the EU is that access to justice is predominately a procedural right, but it has been argued that a more substantive approach should be added to the understanding of the concept. For more information, see the discussion in Mendez, E., Pinedo, M., (December 2011), Access to Justice as Hope in the Dark in Search of a New Concept in European Law, *International Journal of Humanities and Social Science*, Vol. 1 No. 19, p. 9.

<sup>76</sup> **Inter-American Commission on Human Rights**, Access to Justice as a Guarantee of Economic, Social and Cultural Rights, *op cit*, p.1.

<sup>77</sup> **Inter-American Commission on Human Rights**, Access to Justice as a Guarantee of Economic, Social and Cultural Rights, *op cit*, p. 2.

<sup>78</sup> **Inter-American Commission on Human Rights**, Access to Justice as a Guarantee of Economic, Social and Cultural Rights, *op cit*, p. 2,

**I/A Court H.R. Case of Baena Ricardo v. Panama**, Judgement of February 2, 2001, Series C No. 72, paragraph 126, **Inter-American Commission on Human Rights**, Access to Justice as a Guarantee of Economic, Social and Cultural Rights *op cit* p. 2.

<sup>79</sup> **Inter-American Commission on Human Rights**. Access to Justice as a Guarantee of Economic, Social and Cultural Rights *op cit* p. 2.

**I/A Court H.R. Case of Baena Ricardo v. Panama**, Judgement of February 2, 2001, Series C No. 72. para. 126. **Inter-American Commission on Human Rights**. Access to Justice as a Guarantee of Economic, Social and Cultural Rights *op cit* p. 2. **I/A Court H.R. Case of Baena Ricardo v. Panama**, Judgement of February 2, 2001, Series C No. 72. para. 126.

<sup>80</sup> **IACHR**, (7 September 2007), *op cit*, paragraph 14.

<sup>81</sup> **IACHR**, (7 September 2007), *op cit*, paragraph 264

<sup>82</sup> **Agenda 21**, *op cit*, Articles 2.33, 8.13-8.15 11.4(a),11.21, 8.21(c), 11.3(a), **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 4.2, 17; **Convention on International Trade in Endangered Species [CITES]** (Washington DC., 3 March 1973) 993 U.N.T.S. 243 *entered into force* 1 July 1975, amended at Bonn, 22 June 1979, Article 9; ITTO and IUCN (2009) **ITTO/IUCN Guidelines for the conservation and sustainable use of biodiversity in tropical timber production forests**, ITTO Policy Development Series 17, Principles 3, 5; ITTO (2002) **ITTO Guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests**, ITTO Policy Development Series No 13, Principles 4, 7; **Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the protection and development of the marine environment of the wider Caribbean region [SPAW Protocol]** (Kingston, 18 January 1990) 2180 U.N.T.S. 101, Articles 10.2, 16.2(b); **UN Convention to Combat Desertification**, *op cit*, Article 19(j), Annex I Article 4.1(c); **International Tropical Timber Agreement**, *op cit*, paras m, n; **ILO Convention No. 169**, *op cit*, Article 7; **Convention on Biological Diversity**, *op cit*, Articles 8(k), 14; **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Article 6(n); **North American Agreement on Environmental Cooperation**, *op cit*, Article 1(g), 5, 45; **PEFC Sustainable Forest Management**, *op cit*, Criterion 7; **SADC Protocol on Forestry**, *op cit*, Article 11; **Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Article 4; **UN Convention Against Corruption**, *op cit*, Article 7, 36.

<sup>83</sup> **African Convention on the Conservation of Nature and Natural Resources** *op cit*, Article 16; **Universal Declaration of Human Rights** *op cit*, Article 19; **Rio Declaration on Environment and Development**, *op cit*, Principles 10, 17, 20, 22; **International Covenant in Civil and Political Rights**, *op cit*, Article 19; **International Covenant on Economic, Social and Cultural Rights**, *op cit*, Article 13; **American Convention on Human Rights**, *op cit*, Article 13; **International Tropical Timber Agreement**, *op cit*, Article 1(l); **UNDRIP**, *op cit*, Articles 5, 10, 18,19; **Agenda 21**, *op cit*, Article 8.4(f); **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Articles 14, 16; **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 12; **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 16; **Cartagena Protocol on Biosafety**, *op cit*, Article 23(2); **Convention for the Elimination of All Forms of Discrimination Against Women**, *op cit*, Article 7; **Declaration on the Right to Development**, *op cit*, Articles 2, 8; **Declaration on the Right & Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**, *op cit*, Article 8; **ILO Convention No. 169**, *op cit*, Articles 2, 6, 7, 15, 16, 20, 22, 23, 25, 27, 33; **ITTO guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests**, *op cit*, (Principle 8); **Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora**, (Lusaka, 8 September 1994) *Ecolex* TRE-001197 *entered into force* 10 December 1996, Article 4; **Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights**, *op cit*, Principles 7, 14; **Mercosur Framework Agreement on Environment**, *op cit*, Article 3(e); **Nagoya Protocol**, *op cit*, Articles 6, 7, 12; **Forest Principles**, *op cit*, Principle 2(d); **North American Agreement on Environmental Cooperation**, *op cit*, Articles 1(h), 4(b); **PEFC International Standard Sustainable Forest Management**, *op cit*, Criterion 1(11)(a); **SADC Protocol on Forestry**, *op cit*, Articles 4, 11(c), 12; **Protocol on the prevention, reduction and control of land-based sources and activities**, *op cit*, Articles 7(4), 10; **Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa**, *op cit*, Article 1; **U. N. Bio Trade Principles and Criteria**, *op cit*, Principle 3; **UN Convention against Corruption**, *op cit*, Article 13(a); **UN Convention to Combat Desertification**, *op cit*, Articles 3(a), 5(d), 10(2)(f), Annex I Articles 6(2), 8(2)(c), 9(a), (c), Annex II Article 4(b), (d), Annex III Articles 3(2), 5(b), (d); **Aarhus Convention**, *op cit*, Articles 1, 3, 7, 8; **World Charter for Nature**, *op cit*, (art. 23).

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<sup>84</sup> **Rio Declaration on Environment and Development**, *op cit*, Principle 10; **International Covenant on Civil and Political Rights and its First Protocol**, *op cit*, Articles 2, 9, 14, 26, 50; **American Convention on Human Rights**, *op cit*, Articles 8, 25; **UNDRIP**, *op cit*, Articles 8, 11, 13, 20, 28, 32, 40; **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Articles 14, 17; **Convention for the Elimination of All Forms of Discrimination Against Women**, *op cit*, Article 15; **Declaration on the Right & Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**, *op cit*, Article 9; **Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework** (16 June 2011) HR/PUB/11/04, Articles 25, 26, 27; **Model Inter-American Law on Access to Information**, *op cit*, Article 47, 51; **Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women**, [Convention of Belém do Pará] (Belém do Pará, Brazil, 9 June 1994) *entered into force* 5 March 1995, Article 4(f), (g); **ILO Convention No. 169**, *op cit*, Articles 9, 12, 14; **North American Agreement on Environmental Cooperation**, *op cit*, Articles 5(1)(j), (6), (7); **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**, *op cit*, Article 5; **SADC Protocol on Forestry**, *op cit*, Articles 4(10), 5; **UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** (New York, 18 December 1990) 2220 U.N.T.S. 3 *entered into force* 1 July 2003, Articles 15, 18, 24; **UN Convention on the Elimination of all Forms of Racial Discrimination**, [CERD] (New York, 7 March 1966) 660 U.N.T.S. 195 *entered into force* 4 January 1969, Articles 5(a), 6; **Universal Declaration of Human Rights**, *op cit*, Articles 7, 8, 10; **Aarhus Convention**, *op cit*, Article 1, 9; **World Trade Organization General Agreement on Tariffs and Trade** (Geneva, 30 October 1947) 55 U.N.T.S. 187 *provisionally entered into force on* 1 January 1948, *superseded by* Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Marrakesh, Morocco 15 April 1994), 1867 U.N.T.S. 14, *on* 1 January 1995, Article 10(3)(a), (b) (art. X (3)).

<sup>85</sup> Kreijen, G., Brus, M., Duursma, J., De Vos, E., and Dugard, J., (2002), *State, Sovereignty and National Governance*. Oxford University Press, p. 1.

<sup>86</sup> Kreijen, G., Brus, M., Duursma, J., De Vos, E., and Dugard, J., *State, Sovereignty and National Governance*, *op cit*, p. 1.

<sup>87</sup> **UN General Assembly Resolution 1803 on Permanent Sovereignty over Natural Resources** (GAR 1803), GA Res. 1803 (XVII)/17 U.N. GAOR, 17<sup>th</sup> Sess., U.N. Doc A/RES/1803(XVII) (1962); See also: **International Court of Justice [ICJ] Case of Texaco v Libya** Judgement January 19, 1977 389; *BP v Libya*, 53 ILR (1977) 297, and more generally, Schrijver, N., (1997), *Sovereignty over natural resources: balancing rights and duties*, Cambridge University Press.

<sup>88</sup> Birnie, P., Boyle, A., and Redgwell, C., (2009), *International Law and the Environment*, Oxford University Press, p. 192.

<sup>89</sup> **United Nations Conference on the Human Environment [Stockholm Declaration]** (Stockholm, 16 June 1972) 11 I.L.M. 1416 (1992), Principle 21 states that: "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

<sup>90</sup> **International Court of Justice**, (1996) *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports, p. 226 paragraph 21.

<sup>91</sup> **Economic Commission for Europe**, (2000), *The Aarhus Convention: An Implementation Guide*, ECE/CEP/72, p. 30.

<sup>92</sup> **Economic Commission for Europe**, (2000), *The Aarhus Convention: An Implementation Guide*, ECE/CEP/72, p. 31.

<sup>93</sup> **Economic Commission for Europe**, (2000), *The Aarhus Convention: An Implementation Guide*, ECE/CEP/72, p. 31.

<sup>94</sup> **Economic Commission for Europe**, (2000), *The Aarhus Convention: An Implementation Guide*, ECE/CEP/72, p. 31.

<sup>95</sup> **UNFCCC Decision 1/CP.16**, *op cit*, paragraph 71(d).

<sup>96</sup> **Convention on Biological Diversity**, *op cit*, Preamble, Article 3; **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Preamble; **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 20(1); **Charter of the United Nations** (San Francisco, 26 June 1945) *entered into force* 24 October 1945, Article 2(2); **International Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, (Preamble); **International Tropical Timber Agreement**, *op cit*, Preamble (d); **Forest Principles**, *op cit*, Principle 1(a); **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Preamble; **North American Agreement on Environmental Cooperation**, *op cit*, Preamble; **Rio Declaration on Environment and Development**, *op cit*, Principle 2; **Protocol on the prevention, reduction and control of land-based sources and activities**, *op cit*, Article 2; **Stockholm Declaration**, *op cit*, Principle 21; **Treaty for Amazonian Cooperation**, *op cit*, Article 4; **UN Convention to Combat Desertification**, *op cit*, Preamble; **World Charter for Nature**, *op cit*, Principle 2.

<sup>97</sup> **North American Agreement on Environmental Cooperation**, *op cit*, Article 3; **Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, (Preamble).

<sup>98</sup> **Agenda 21**, *op cit*, Articles 8.17, 11.3(c); **Convention for the Elimination of All Forms of Discrimination Against Women**, *op cit*, Article 2(a), (g); **American Convention on Human Rights**, *op cit*, Article 2; **Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women**, *op cit*, Article 7(e); **International Covenant on Civil and Political Rights**, *op cit*, Article 2; **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Principle V(n); **UN Convention to Combat Desertification**, *op cit*, Articles 5(e), 19(j); **UN Convention on the Elimination of all Forms of Racial Discrimination**, *op cit*, Article 2(c).

<sup>99</sup> **Inter-American Commission on Human Rights**, (30 December 2009) *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources Norms and Jurisprudence of the Inter-American Human Rights System*, OEA/Ser.L/V/II.Doc.56/09, pp. 9-10.

<sup>100</sup> **UNDRIP**, *op cit*, Article 33.

<sup>101</sup> **ILO Convention No. 169**, *op cit*, Article 1(1)(b).

<sup>102</sup> **United Nations Commission on Human Rights**, (11 March 1986), *Study of the Problem of Discrimination against Indigenous Populations*, E/CN.4/RES/1986/35, para 379.

<sup>103</sup> **ILO** (2013), *Understanding the Indigenous and Tribal Peoples' Convention*, 1989 (No. 169) Handbook for ILO Tripartite Constituents.

p.2

<sup>104</sup> **ILO**, (10 May 2009), *Indigenous & Tribal peoples' Rights in Practice – A Guide to ILO Convention No. 169*, p. 9.

- <sup>105</sup> ILO, Understanding the Indigenous and Tribal People's Convention (No. 169) Handbook for ILO Tripartite Constituents, *op cit* p. 2
- <sup>106</sup> Daes, E., I., **Chairperson-Rapporteur, United Nations Economic and Social Council**, (10 June 1996), Working Paper on the concept of 'indigenous people', E/CN.4/Sub.2/AC.4/1996/2, paragraphs. 69-70.
- <sup>107</sup> **Inter-American Commission on Human Rights**, (28 June 2007), Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, OEA/Ser.L/V/II Doc. 34, paragraph 216.
- <sup>108</sup> **I/A Court H.R.**, *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Judgment of August 24, 2010. Series C No. 214, paragraph 37.
- <sup>109</sup> **I/A Court H.R.**, *Case of the Xákmok Kásek Indigenous Community v. Paraguay*, *op cit*, paragraphs 39-43.
- <sup>110</sup> **I/A Court H.R.**, *Case of the Saramaka People v. Suriname*. *op cit*, paragraph 164.
- <sup>111</sup> Laughlin, J., Srisakthian, G., (December 2011) Guidelines on Free, Prior and Informed Consent, Draft for Comment, **UN-REDD Programme**, p. 22.
- <sup>112</sup> Expert Group Meeting of Local Community Representatives within the Context of Article 8(j) and Related Provisions of the Convention on Biological Diversity, (Montreal, 7 July 2011) Guidance for the Discussions Concerning Local Communities within the Context of the Convention on Biological Diversity, UNEP/CBD/AHEG/LCR/1/2, p.1.
- <sup>113</sup> Guidance for the Discussions Concerning Local Communities within the Context of the Convention on Biological Diversity, *op cit*, p. 2
- <sup>114</sup> Guidance for the Discussions Concerning Local Communities within the Context of the Convention on Biological Diversity, *op cit*, p. 2
- <sup>115</sup> Ludwig, G., (2012) Property Rights and Participation in REDD+: The Case of Mozambique, *Transnational Environmental Law*, Vol. 1(2), p. 387 argues that "In general, the dominant population in Africa is descended from the original inhabitants, so the distinction between indigenous and non-indigenous people usually does not apply in the African context."
- <sup>116</sup> **SADC Protocol on Forestry**, *op cit*, Article 2(1).
- <sup>117</sup> Ludwig, G., Property Rights and Participation in REDD+, *op cit*, p. 387.
- <sup>118</sup> Ludwig, G., Property Rights and Participation in REDD+, *op cit*, p. 387.
- <sup>119</sup> **Convention for the Safeguarding of Intangible Cultural Heritage**, *op cit*, Article 2(1).
- <sup>120</sup> For example, see: **Convention on the Protection and Promotion of the Diversity of Cultural Expressions**, *op cit*, Article 4(1); **Convention on Biological Diversity**, *op cit*, Articles 8(j), 10(c); **UNDRIP**, *op cit*, Article 31.
- <sup>121</sup> **UNDRIP**, *op cit*, Article 13(1).
- <sup>122</sup> **International Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, Article 9.2(a); **Nagoya Protocol**, *op cit*, Article 5.
- <sup>123</sup> **Convention on the Protection and Promotion of the Diversity of Cultural Expressions**, *op cit*, Article 4.1; **Convention on Biological Diversity**, *op cit*, Articles 8(j), 10(c); **UNDRIP**, *op cit*, Article 31.
- <sup>124</sup> **Convention on Biological Diversity**, *op cit*, Articles 8(j), 10(c); **Nagoya Protocol**, *op cit*, Article 12; **Convention No. 169**, *op cit*, Article 7; **SADC Protocol on Forestry**, *op cit*, Articles 1, 3(2)(g); **Non-legally binding instrument on all types of forests**, *op cit*, Article 6(f).
- <sup>125</sup> **UNDRIP**, *op cit*, Articles 24(1), 31.
- <sup>126</sup> **Convention on Biological Diversity**, *op cit*, Article 8(j); **Agenda 21**, *op cit*, Article 15.4(g); **Forest Principles**, *op cit*, Principle 12.
- <sup>127</sup> **International Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, Article 9.2(a); **Nagoya Protocol**, *op cit*, Article 5..
- <sup>128</sup> **UNDRIP**, *op cit*, Article 11(1), (2).
- <sup>129</sup> **UNDRIP**, *op cit*, Article 31.
- <sup>130</sup> **UNDRIP**, *op cit*, Article 31.
- <sup>131</sup> **SADC Protocol on Forestry**, *op cit*, Article 1(2).
- <sup>132</sup> **Convention No. 169**, *op cit*, Article 1; **UNDRIP**, *op cit*, Article 33(1).
- <sup>133</sup> **SADC Protocol on Forestry**, *op cit*, Article 1.
- <sup>134</sup> **Convention on Biological Diversity**, *op cit*, Article 8(j); **Agenda 21**, *op cit*, Article 15(4)(g); **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Article 6(f); **Forest Principles**, *op cit*, Principle 12.
- <sup>135</sup> **UNDRIP**, *op cit*, Articles 11, 13, 24, 31; **Convention on the Protection and Promotion of the Diversity of Cultural Expressions**, *op cit*, Article 4(1); **Convention Concerning the Protection of the World Cultural and Natural Heritage**, (Paris, 19 November 1972) 1037 U.N.T.S. 151 *entered into force* 17 December 1975, Articles 1, 2; **Convention for the Safeguarding of Intangible Cultural Heritage** (Paris, 17 October 2003) MISC/2003/CLT/CH/14, Article 2(1); **Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, Article 9(2)(a); **Nagoya Protocol**, *op cit*, Article 5.
- <sup>136</sup> **SADC Protocol on Forestry**, *op cit*, Article 1.
- <sup>137</sup> **I/A Court H.R.**, *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Judgment of March 2006. Series C No. 146, paragraph 152.
- <sup>138</sup> **Convention No. 169**, *op cit*, Articles 2(a), 3; **UNDRIP**, *op cit*, Articles 1, 2, 9.
- <sup>139</sup> **International Covenant on Civil and Political Rights**, *op cit*, Article 1; **International Covenant on Economic, Social and Cultural Rights** (New York, 16 December 1966) 993 U.N.T.S. 3, *entered into force* 3 January 1976, Article 1.
- <sup>140</sup> **UNDRIP**, *op cit*, Article 6.
- <sup>141</sup> **International Covenant on Economic, Social and Cultural Rights**, *op cit*, Articles 13,14; **International Covenant on Civil and Political Rights**, *op cit*, Article 18(4); **United Nations Convention on the Rights of the Child** (New York, 20 November 1989) 1577 U.N.T.S. 3, 28 I.L.M 1448 (1989) *entered into force* 2 September 1990, Articles 28, 31; **UN Convention on the Elimination of All Forms of Racial Discrimination**, *op cit*, Article 5(e)(v); **Convention on the Elimination of All Forms of Discrimination against Women**[CEDAW] (New York, 18 December 1979) 1249 U.N.T.S. 13 *entered into force* 3 September 1981, Article 10; **International Labour Organisation Convention Concerning discrimination in respect of employment and occupation (ILO Convention No. 111)** (Geneva, 25 June 1958) 362 U.N.T.S. 31 *entered into force* 15 June 1960, Article 3; **International Labour Organisation Convention Concerning basic aims and standards of social policy (ILO Convention No. 117)** (Geneva, 22 June 1962) 494 U.N.T.S. 250 *entered into force* 23 April 1964, Articles 15-16; **UNESCO Convention against discrimination in education** (Paris, 14 November 1960) 429 U.N.T.S. 94 *entered into force* 22 May 1962.
- <sup>142</sup> **UNDRIP**, *op cit*, Article 17(1).

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<sup>143</sup> **UNDRIP**, *op cit*, Article 8, 11.2, 20, 28, 32, 40; **American Convention on Human Rights**, *op cit*, Article 25; **Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, *op cit*, Article 83; **UN Convention on the Elimination of All Forms of Racial Discrimination**, *op cit*, Article 14(1); **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms** (9 December 1998) A/RES/53/144, Article 9.

<sup>144</sup> **UN Committee on Economic, Social and Cultural Rights**, (11 August 2000), Substantive Issues Arising in the Implementation of the International Covenant on Economic Social and Cultural Rights, General Comment No. 14, p.12.

<sup>145</sup> **UNDRIP**, *op cit*, Article 7(1).

<sup>146</sup> **UNDRIP**, *op cit*, Article 7(1).

<sup>147</sup> **UNDRIP**, *op cit*, Article 7(1).

<sup>148</sup> **Convention on the Elimination of all forms of Discrimination Against Women**, *op cit*, Article 2.

<sup>149</sup> **European Convention for the Protection of Human Rights and Fundamental Freedoms** (Rome, 4 November 1950) CETS No. 005 entered into force 3 September 1953.

<sup>150</sup> **ICCPR**, *op cit*, Article 1, **ICESCR**, *op cit*, Article 1.

<sup>151</sup> **UNDRIP**, *op cit*, Articles 3-5.

<sup>152</sup> **Convention No. 169**, *op cit*, Article 20( b); **Convention on Biological Diversity**, *op cit*, Articles 8(j), 10; **Nagoya Protocol**, *op cit*, Article 7; **Agenda 21**, *op cit*, Article 26.3(a) (iii); **UNDRIP**, *op cit*, Article 8, 11.1, 12, 13, 15, 24, 31; **UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, *op cit*, Article 31; **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Article 17; **Convention on the Rights of the Child**, *op cit*, Article 30; **Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights** [Protocol of San Salvador] (San Salvador, 17 November 1988) available at: <http://www.unhcr.org/refworld/docid/3ae6b3b90.html> [Accessed: 18 February 2013] entered into force 30 June 2003, Article 14; **UNDRIP**, *op cit*, Articles 11, 12, 31; **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities** (18 December 1992) A/RES/47/135, Article 2.

<sup>153</sup> **UNDRIP**, *op cit*, Articles 9, 15, 16.

<sup>154</sup> **UNDRIP**, *op cit*, Article 13(1).

<sup>155</sup> **UNDRIP**, *op cit*, Article 8(1).

<sup>156</sup> **UNDRIP**, *op cit* Article 11(1).

<sup>157</sup> Which states that: "Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage." **Convention Concerning the Protection of the World Cultural and Natural Heritage**, *op cit*, Article 4.

<sup>158</sup> **ILO** (2009), *Indigenous and Tribal Peoples: A Guide to ILO Convention No. 169*, p 94.

<sup>159</sup> For further discussion see: **IACHR**, (2009) *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, *op cit*, p. 20.

<sup>160</sup> **ILO Convention No. 169**, *op cit*, Article 14.

<sup>161</sup> **UNDRIP**, *op cit*, Article 26.

<sup>162</sup> **I/A Court HR**, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, *op cit*, p. 5.

<sup>163</sup> **Inter-American Commission on Human Rights**, (30 December 2009) *Democracy and Human Rights in Venezuela*. Doc. OEA/Ser.L/V/II. Doc. 54, p. 269

<sup>164</sup> **Inter-American Commission on Human Rights**, *Democracy and Human Rights in Venezuela*, *op cit*, 269.

<sup>165</sup> **Office of the High Commissioner for Human Rights**, (1997), *General Recommendation 23, Indigenous Peoples*, U.N. Doc. A/52/18, Annex V, para. 5.

<sup>166</sup> **Inter-American Commission on Human Rights**, (9 March 2001), *Third Report on the Situation of Human Rights in Paraguay*. Doc. OEA/Ser./L/VII.110, Doc. 52, Chapter IX, paragraph 46.

<sup>167</sup> **I/A Court HR**, *Case of Saramaka People v. Suriname*, *op cit*, paragraph 134.

<sup>168</sup> **Convention on Biological Diversity**, *op cit*, Articles 8(f)(j), 10(c); **Nagoya Protocol**, *op cit*, Article 7; **Non-legally binding instrument on all types of forests**, *op cit*, Article 1(f); **ILO Convention No. 169**, *op cit*, Article 7.

<sup>169</sup> In the case of the Nagoya Protocol the holders of the resource are indigenous peoples and local communities. **Nagoya Protocol**, *op cit*, Articles 6, 7.

<sup>170</sup> In the case of the Nagoya Protocol the resources in question are genetic resources or traditional knowledge associated with genetic resources. **Nagoya Protocol**, *op cit*, Articles 6, 7.

<sup>171</sup> **Nagoya Protocol** *op cit*, Article 5.

<sup>172</sup> **Nagoya Protocol** *op cit*, Annex.

<sup>173</sup> Lutrell, C., et al, (2012) *Who should benefit and why? Discourses on REDD+ benefit sharing*, in Angelsen, A., (ed.) (2012) *Analysing REDD+: Challenges and Choices*, CIFOR p.129.

<sup>174</sup> **ILO Convention No. 169**, *op cit*, Article 16.

<sup>175</sup> **ILO Convention No. 169**, *op cit*, Article 6.

<sup>176</sup> **ILO Convention No. 169**, *op cit*, Articles 2(a), 3; **UNDRIP**, *op cit*, Articles 1, 2, 9.

<sup>177</sup> **ILO Convention No. 169**, *op cit*, Article 7; **UNDRIP**, *op cit*, Articles 3, 4, 23, 25, 32, 33, 34, 35; **International Covenant on Civil and Political Rights**, *op cit*, Article 1(1); **International Covenant on Economic, Social and Cultural Rights**, *op cit*, Article 1(1).

<sup>178</sup> **ILO Convention No. 169**, *op cit*, Article 20( b); **Convention on Biological Diversity**, *op cit*, Articles 8(j), 10; **Nagoya Protocol**, *op cit*, Article 7; **Agenda 21**, *op cit*, Article 26.3(a)(iii); **UNDRIP**, *op cit*, Articles 8, 11(1), 12, 13, 15, 24, 31; **UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, *op cit*, Article 31; **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Article 17; **Convention on the Rights of the Child**, *op cit*, Article 30; **Additional Protocol to the**

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**American Convention on Human Rights in the area of Economic, Social and Cultural Rights** [Protocol of San Salvador] (San Salvador, 17 November 1988) *entered into force* 30 June 2003, Article 14; **UNDRIP**, *op cit*, Articles 11, 12, 31; **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities** (18 December 1992) A/RES/47/135, Article 2.

<sup>179</sup> **ILO Convention No. 169**, *op cit*, Article 14; **American Convention on Human Rights**, *op cit*, Article 21; **UNDRIP**, *op cit*, Articles 25, 26; **International Labour Organisation Indigenous and Tribal Populations Convention, 1957 (ILO Convention No. 107)** superseded by **ILO Convention No. 169**, *op cit*, Article 14; **UN BioTrade Principles**, *op cit*, Principle 7; **Agenda 21**, *op cit*, Article 26(3)(a)(ii); **PEFC Sustainable Forest Management**, *op cit*, Criterion 6(3).

<sup>180</sup> **Convention on Biological Diversity**, *op cit*, Articles 8(f), (j), 10(c); **Nagoya Protocol**, *op cit*, Article (art 5); **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Article 1(f); **ILO Convention No. 169**, *op cit*, Article 7.

<sup>181</sup> The principle of public participation is based on the fundamental human right to hold and express opinions and to seek, receive and impart ideas. **Universal Declaration of Human Rights**, *op cit*, Article 19 refers to the “right to take part in the government of his country, directly or through freely chosen representatives”; the **International Covenant on Civil and Political Rights**, *op cit*, Article 12 declares that every citizen has the right to participate in “the conduct of public affairs, directly or through freely chosen representatives.” See also **ILO** (2013), *Understanding the Indigenous and Tribal People’s Convention, 1989 (No. 169) Handbook for ILO Tripartite Constituents*, *op cit*, p.11.

<sup>182</sup> Adopted by the **Inter-American Council for Integral Development** in CIDI/RES. 98 (V-O/00).

<sup>183</sup> **Inter-American Strategy for the Promotion of Public Participation in Decision-making for Sustainable Development** (Washington D.C., 20 April 2000) OEA/Ser.W/II.5, CIDI/doc.25/00, CIDI/RES.98 (V-O/00), p. 1.

<sup>184</sup> Daviet, F., (2011), *A Draft Framework for Sharing Approaches for Better Multi-Stakeholder Participation Practices*, FCPF-UN-REDD, p. 6.

<sup>185</sup> **Rio Declaration**, *op cit*, Principle 10, states that: “environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities [...] Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

<sup>186</sup> **International Covenant on Economic, Social, and Cultural Rights**, *op cit*, Article 13.

<sup>187</sup> **Akwé: Kon Voluntary Guidelines**, *op cit*, paragraphs 10-11.

<sup>188</sup> **IACHR**, (30 September 2011) *The Right to Access to Information in the Americas: Inter-American Standards and Comparison of Legal Frameworks*, *op cit*, p. 108.

<sup>189</sup> **Akwé: Kon Voluntary Guidelines**, *op cit*, p.10.

<sup>190</sup> The Access Initiative: <http://www.accessinitiative.org/> [Accessed 4 January 2013]

<sup>191</sup> The Access Initiative: <http://www.accessinitiative.org/> [Accessed 4 January 2013]

<sup>192</sup> Daviet, F., *A Draft Framework for Sharing Approaches for Better Multi-Stakeholder Participation Practices*, *op cit*, p. 6.

<sup>193</sup> **Aarhus Convention**, *op cit*, Article 6.

<sup>194</sup> **Aarhus Convention**, *op cit*, Article 7.

<sup>195</sup> **Aarhus Convention**, *op cit*, Article 6.

<sup>196</sup> **OAS**, *Hemispheric Report on the First Round of Review of the Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention Against Corruption*, *op cit*, p. 22.

<sup>197</sup> Daviet, F., *A Draft Framework for Sharing Approaches for Better Multi-Stakeholder Participation Practices*, *op cit*, p. 6.

<sup>198</sup> **I/A Court H.R.**, *Case of Claude-Reyes et al. v. Chile*, *op cit*, paragraph. 137.

<sup>199</sup> **I/A Court H.R.**, *Case of the Saramaka People v. Suriname*, *op cit*, paragraphs. 124-58.

<sup>200</sup> **I/A Court H.R.**, *Case of the Sarayaku People v. Ecuador* Judgement of June 27, 2012. Series C No. 245 paragraphs 231-232.

<sup>201</sup> **Rio Declaration**, *op cit*, Principles 10, 17, 20, 22; **Universal Declaration of Human Rights**, *op cit*, Article 7, 8, 10, 19, 21; **International Covenant in Civil and Political Rights**, *op cit*, Articles 19, 25; **Optional protocol to the International Covenant on Civil and Political Rights** (16 December 1966) 999 U.N.T.S. 171 *entered into force* 23 March 1976, Articles 2, 9, 14, 26, 50; **American Convention on Human Rights**, *op cit*, Articles 8, 13, 23, 25; **International Tropical Timber Agreement**, *op cit*, Article 1(h)(o); **UNDRIP**, *op cit*, Articles 5, 8, 10, 11, 13, 16, 18, 20, 28, 32, 40; **Agenda 21**, *op cit*, Articles 8.4(f), 8.21, 10.11(c), 11.3; **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Articles 14, 16, 17; **African Union Convention on Preventing and Combating Corruption**, *op cit*, Articles 9, 12; **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 16; **Cartagena Protocol**, *op cit*, Article 23; **Convention on Biological Diversity**, *op cit*, Article 14(a); **Convention for the Elimination of All Forms of Discrimination Against Women**, *op cit*, Articles 7, 15; **Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region**, *op cit*, Article 12(3); **Declaration on the Right to Development**, *op cit*, Article 2, 8; **Declaration on the Right & Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**, *op cit*, Articles 6(a), 8, 9, 14; **ILO Convention No. 169**, *op cit*, Articles 2, 6, 7, 9, 12, 14, 15, 16, 18-23, 25, 27, 33; **Inter-American Treaty Against Corruption**, *op cit*, Article 3(11); **ITTO Guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests**, *op cit*, Principles 4, 8; **Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora**, *op cit*, Article 4; **Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights**, *op cit*, Principles 2, 7, 14; **Mercosur Framework Agreement on Environment**, *op cit*, Article 3(e); **Nagoya Protocol**, *op cit*, Articles 6, 7, 12, 28; **Forest Principles**, *op cit*, Principle 2(c), (d); **North American Agreement on Environmental Cooperation**, *op cit*, Article 1(h), 2(1)(a), 4-7; **PEFC Sustainable Forest Management**, *op cit*, Criterion 1(6), 1(11)(a); **SADC Protocol on Energy**, *op cit*, Articles 2, 3(1), 8, Annex I; **SADC Protocol on Forestry**, *op cit*, Articles 4, 5, 11(c), 12; **Protocol on the prevention, reduction and control of land-based sources and activities**, *op cit*, Articles 7(4), 10; **Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa**, *op cit*, Article 1; **UN BioTrade Principles and criteria**, *op cit*, Principle 3; **UN Convention Against Corruption**, *op cit*, Articles 10(c), 13, 15, 17-22; **UN Convention to Combat Desertification**, *op cit*, Articles 3(a), 5(d), 10.2(f), 13, 19, Annex I Article 6.2, 8.2(c), 9(a)(c), Annex II Article 4(b)(d), Annex III Article 3(2), 5(b)(d); **Aarhus Convention**, *op cit*, Articles 1, 3, 5,

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6(9), 7-9; *World Charter for Nature*, *op cit*, Article 23; **Akwé: Kon Voluntary Guidelines**; *Convention on Migratory Species*, *op cit*, Article 5.5(n); *OSPAR*, *op cit*, Article 9(1); *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, *op cit*, Article 1(1), 9(c); *Model Inter-American Law on Access to Information*, *op cit*, Articles 3, 14, 47, 51, 62; *International Treaty on Plant Genetic Resources for Food and Agriculture*, *op cit*, Article 13; *Interregional framework cooperation agreement between the European Community and the Southern Common Market*, *op cit*, Article 17; *Non-Legally Binding Instrument on All Types of Forests*, *op cit*, Articles 2(c), 6(t)(w)(x); *Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region*, *op cit*, Articles 14, 15; *Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the protection and development of the marine environment of the wider Caribbean region*, *op cit*, Article 6; *Protocol of San Salvador*, *op cit*, Article 22; *African Charter on Human and Peoples Rights*, *op cit*, Article 13; *Protocol on Wildlife Conservation and Law Enforcement*, *op cit*, Article 5(e); *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (16 June 2011) HR/PUB/11/04, Articles 25-27; *Convention of Belém do Pará*, *op cit*, Article 4(f)(g); *OECD Convention on combating bribery of foreign public officials in international business transactions*, *op cit*, Article 5; *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, *op cit*, Article 15, 18, 24; *International Convention on the Elimination of All Forms of Racial Discrimination*, *op cit*, Article 5(a), 6; *WTO General Agreement on Tariffs and Trade*, *op cit*, Article 10(3)(a)(b); *UN Convention to Combat Desertification*, *op cit*, Annex II Article 4(1)(b), Annex III Article 3(2);

<sup>202</sup> **Agenda 21**, *op cit*, Article 10.10; **Aarhus Convention**, *op cit*, Article 1(5); *International Covenant on Civil and Political Rights*, *op cit*, Article 23; *Rio Declaration*, *op cit*, Principle 23, *Universal Declaration of Human Rights*, *op cit*, Articles 19, 21; *World Charter for Nature*, *op cit*, Part 3 para 23 **Agenda 21**, *op cit*, Article 11.3(b); **Bonn Convention**, *op cit*, Article 3.5(c); **Forest Principles**, *op cit*, Principle 2(d).

<sup>203</sup> **Aarhus Convention**, *op cit*, Article 2(5).

<sup>204</sup> Adopted in Decision VII/16 at CBD COP 7 in Kuala Lumpur, 13 April 2004, UNEP/CBD/COP/DEC/VII/16.

<sup>205</sup> **Akwé: Kon Voluntary Guidelines**, *op cit*, p. 5.

<sup>206</sup> **Akwé: Kon Voluntary Guidelines**, *op cit*, paragraph 8.

<sup>207</sup> Article 6(1) stipulates that governments should: "Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly." **ILO Convention No. 169**, *op cit*, Article 6(1).

<sup>208</sup> **ILO** (2013), *Understanding the Indigenous and Tribal People's Convention, 1989 (No. 169) Handbook for ILO Tripartite Constituents*, *op cit*, p.12.

<sup>209</sup> **ILO Convention No. 169**, *op cit*, Article 15(2).

<sup>210</sup> Adopted in 2010, published at the 100<sup>th</sup> ILC session (2011) available at [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3089262,,2010](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3089262,,2010) [accessed 27<sup>th</sup> March 2013]

<sup>211</sup> CEACR General Observation 2010 *op cit*. For more detail on the appropriate procedures for consultation according to the ILO Convention No. 169 see the Handbook for ILO tripartite constituents *Understanding the Indigenous and Tribal People's Convention 1989 (No. 169)*, *op cit*, pp.15-16.

<sup>212</sup> **I/A Court H.R.**, *Case of the Saramaka People v. Suriname*, *op cit*.

<sup>213</sup> **I/A Court H.R.**, *Case of the Saramaka People v. Suriname*, *op cit*, paragraph 133.

<sup>214</sup> **ILO Convention No. 169**, *op cit*, Article 16.

<sup>215</sup> **I/A Court H.R.**, *Case of the Saramaka People v. Suriname*, *op cit*, paragraph 134.

<sup>216</sup> **UNDRIP**, *op cit*, Articles 10, 11, 19, 28, 29, 32.

<sup>217</sup> **Convention on Biological Diversity**, *op cit*, Article 15

<sup>218</sup> **Nagoya Protocol**, *op cit*, Articles 6, 7.

<sup>219</sup> Handbook for ILO tripartite constituents *Understanding the Indigenous and Tribal People's Convention 1989 (No. 169)* *op cit* p.13.

<sup>220</sup> **ILO Convention No. 169**, *op cit*, Article 16 and 10 **UNDRIP**, *op cit*, Article 10.

<sup>221</sup> **UNDRIP**, *op cit*, Article 11.

<sup>222</sup> **UNDRIP**, *op cit*, Article 19.

<sup>223</sup> **UNDRIP**, *op cit*, Article 29.

<sup>224</sup> **UNDRIP**, *op cit*, Article 32.

<sup>225</sup> **Nagoya Protocol**, *op cit*, Articles 6 and 7.

<sup>226</sup> The Handbook for ILO tripartite constituents *Understanding the Indigenous and Tribal People's Convention 1989 (No. 169)*, *op cit*, states that "Convention No. 169 does not provide indigenous peoples with a veto right, as obtaining the agreement or consent is the purpose of engaging in the consultation process, and is not an independent requirement. On the other hand, the ILO supervisory bodies have clearly stated that a simple information meeting, where indigenous peoples could be heard without having any possibility of influencing decision-making, cannot be considered as complying with the provisions of the Convention" p.16.

<sup>227</sup> The Handbook for ILO tripartite constituents *Understanding the Indigenous and Tribal People's Convention 1989 (No. 169)*, *op cit*, p.16

<sup>228</sup> paragraph 5 available at [http://eeas.europa.eu/human\\_rights/ip/docs/council\\_resolution1998\\_en.pdf](http://eeas.europa.eu/human_rights/ip/docs/council_resolution1998_en.pdf) [accessed 28 March 2013].

<sup>229</sup> **I/A Court H.R.**, *Case of Sarayaku People v. Ecuador*, *op cit*.

<sup>230</sup> **I/A Court H.R.**, *Case of Sarayaku People v. Ecuador*, *op cit*, paragraph 231-232.

<sup>231</sup> **ILO** (2009), *Indigenous and Tribal Peoples: A Guide to ILO Convention No. 169*, *op cit*, p. 62.

<sup>232</sup> **ILO Convention No. 169** *op cit*, Article 6; **UNDRIP**, *op cit*, Article 19.

<sup>233</sup> **UNDRIP**, *op cit*, Article 32(2); **ILO Convention No. 169** *op cit* Article 15.

<sup>234</sup> **Nagoya Protocol**, *op cit*, Articles 6, 7.

<sup>235</sup> **UNDRIP**, *op cit*, Articles 10, 11, 28; **ILO Convention No. 169**, *op cit*, Article 16



<sup>236</sup> The definition is the following: ““Forest” is a minimum area of land of 0.05–1.0 hectare with tree crown cover (or equivalent stocking level) of more than 10–30 per cent with trees with the potential to reach a minimum height of 2–5 metres at maturity in situ. A forest may consist either of closed forest formations where trees of various storeys and undergrowth cover a high proportion of the ground or open forest. Young natural stands and all plantations which have yet to reach a crown density of 10–30 per cent or tree height of 2–5 metres are included under forest, as are areas normally forming part of the forest area which are temporarily unstocked as a result of human intervention such as harvesting or natural causes but which are expected to revert to forest.” UNFCCC Decision 16/CMP.1 FCCC/KP/CMP/2005/8/Add.3 Annex.

<sup>237</sup> D. Lehr (24 February 2010), Campaigners Criticise proposals to define palm oil plantations as forests, Global Witness, online: <<http://www.globalwitness.org/fr/node/3943>> [Accessed: 4 January 2013].

<sup>238</sup> FAO, (2010) Global Forest Resources Assessment 2010, FAO Forestry Paper, available at : <http://www.fao.org/forestry/fra/fra2010/en/> [accessed 10 December 2012].

<sup>239</sup> **Agreement on the Conservation of African-Eurasian Migratory Waterbirds [AEWA]** (The Hague, 16 June 1995) 2365 U.N.T.S 203 entered into force 1 November 1999, Article 3; **Agreement on the Joint Regulations on Fauna and Flora** (Enugu, 3 December 1977) Ecolx TRE-000101 entered into force 3 December 1977, Article 3; **Agreement on the Conservation of Gorillas and their Habitats** (Paris, 26 October 2007) Ecolx TRE-144926 entered into force 1 June 2008, Article 1; **CITES**, *op cit*, Appendix I, II, III; **Convention on the Law of Non-Navigational Uses of International Watercourses** (New York, 21 May 1997) A/51/869 not yet entered into force, Article 1; **North American Agreement on Environmental Cooperation**, *op cit*, Article 10(2)(i); **International Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, Article 6(2)(a).

<sup>240</sup> **The Millennium Ecosystem Assessment (MEA)** was called for by the United Nations Secretary-General Kofi Annan in 2000. Initiated in 2001, the objective of the MA was to assess the consequences of ecosystem change for human well-being and the scientific basis for action needed to enhance the conservation and sustainable use of those systems and their contribution to human well-being.

<sup>241</sup> **Millennium Ecosystem Assessment** (2005) *Ecosystems and Human Well-being: Synthesis*, p. 39.

<sup>242</sup> **Millennium Ecosystem Assessment**, *op cit*, p.40.

<sup>243</sup> **Millennium Ecosystem Assessment**, *op cit*, p.40.

<sup>244</sup> **Millennium Ecosystem Assessment**, *op cit*, p.40.

<sup>245</sup> **Millennium Ecosystem Assessment**, *op cit*, p.40.

<sup>246</sup> FAO, (2010) Global Forest Resources Assessment 2010 Main Report, available at: <http://www.fao.org/docrep/013/i1757e/i1757e.pdf> [accessed 28 March 2013] p.11.

<sup>247</sup> Global Witness, *Understanding REDD+*, *op cit*, p.5.

<sup>248</sup> Schmidt, L., Phiapalath, P., McBrean, J., (December 2012), REDD+ related risks, opportunities and safeguards for biodiversity conservation – a survey of issues and options in Lao PDR and Ecuador Synthesis Report. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

<sup>249</sup> UNFCCC Decision 16/CMP.1, *op cit*, Annex.

<sup>250</sup> See note 20 above.

<sup>251</sup> FAO, (2010) Global Forest Resources Assessment 2010, FAO Forestry Paper, available at: <http://www.fao.org/forestry/fra/fra2010/en/> [accessed 10 December 2012].

<sup>252</sup> **Convention on Biological Diversity**, *op cit*, Article 2; **Agreement on the Conservation of African-Eurasian Migratory Waterbirds**, *op cit*, Article 2; **Agreement on the Joint Regulations on Fauna and Flora**, *op cit*, Article 2; **Agreement on the Conservation of Gorillas and their Habitats**, *op cit*, Article 1; **CITES**, *op cit*, Appendix I, II, III; **Convention on the Law of Non-Navigational Uses of International Watercourses**, *op cit*, Article 1; **North American Agreement on Environmental Cooperation**, *op cit*, Article 10(2)(i); **International Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, Article 6(2)(a).

<sup>253</sup> **Millennium Ecosystem Assessment** (2005) *op cit*, p.39.

<sup>254</sup> **Millennium Ecosystem Assessment** (2005) *op cit*, p.40.

<sup>255</sup> **Millennium Ecosystem Assessment** (2005) *op cit*, p.40.

<sup>256</sup> For a more complete overview of the Convention on Biological Diversity's bodies see: <<http://www.cbd.int/convention/bodies/intro.shtml>> [Accessed 31 January 2013]

<sup>257</sup> **Convention on Biological Diversity**, COP 10, Nagoya 18-29 October 2010 Decision X/2, UNEP/CBD/COP/DEC/X/2.

<sup>258</sup> **Convention on Biological Diversity**, Decision X/2, *op cit*, Annex part 5.

<sup>259</sup> **IACHR**, (2009) *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, *op cit*, p. 64.

<sup>260</sup> **I/A Court H.R.**, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Judgment of January 31, 2001. Series C No. 79, p ar. 140(f).

<sup>261</sup> **IACHR**, (2009) *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, *op cit*, p. 64.

<sup>262</sup> In September 2000, world leaders came together at United Nations Headquarters in New York to adopt the United Nations Millennium Declaration, to reduce extreme poverty and set out a series of time-bound targets - with a deadline of 2015 - that have become known as the Millennium Development Goals. The goals are: 1) eradicate extreme poverty and hunger; 2) achieve universal primary education; 3) promote gender equality and empower women; 4) reduce child mortality; 5) improve maternal health; 6) combat HIV/AIDS, malaria and other diseases; 7) ensure environmental sustainability, and 8) develop a global partnership for development. <http://www.un.org/millenniumgoals/> [Accessed 14 April 2013]

<sup>263</sup> <http://www.fao.org/forestry/26559/en/> [Accessed 12 April 2013]

<sup>264</sup> <http://www.fao.org/forestry/26559/en/> [Accessed 12 April 2013]

<sup>265</sup> CBD Technical Series No. 56.(2011) *Incentive measures for the conservation and sustainable use of biological diversity, case studies and lessons learned*. Secretariat of the Convention on Biological Diversity, Montreal, p.14.

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<sup>266</sup> In many countries, such incentives are also generated through the use of breaks on governmental levies such as taxes, fees or tariffs that grant advantages or exemptions for activities that are beneficial for conservation and/or sustainable use. CBD Technical Series No. 56.(2011) *op cit*, p.14.

<sup>267</sup> CBD Technical Series No. 56.(2011) *op cit*, p.16.

<sup>268</sup> Countries could potentially support to the development or commercialization of biodiversity-based products or services, such as sustainable or eco-tourism in biodiversity-rich regions, or the marketing of biodiversity-related goods and services e.g. non-timber forest resources ('biotrade'). CBD Technical Series No. 56.(2011) *op cit*, p.16.

<sup>269</sup> **World Charter For Nature**, *op cit*, Section 1.4; **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Articles 1-12; **African Convention on the conservation of Nature and Natural Resources**, *op cit*, Articles 6(a), 8(1); **Agreement on the Joint Regulations on Fauna and Flora**, *op cit*, Articles 1, 3, 5; **PFEC Sustainable Forest Management**, *op cit*, Criterion 1, 3, 4(1), 4(5); **Nagoya Protocol**, *op cit*, Article 1; **North American Agreement on Environmental Cooperation**, *op cit*, Articles 1, 10; **Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region**, *op cit*, Articles 2(1), 7; **SADC Protocol on Forestry**, *op cit*, Articles 3(1)(a), 4(3), 4(7), 11(1)(b), 15(2)(e); **Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Articles 3(1), 7(1); **Amazon Treaty**, *op cit*, Article 7; **Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa**, *op cit*, Article 1; **UN BioTrade Principles and criteria**, *op cit*, Principle 1.

<sup>270</sup> **Agenda 21**, *op cit*, Articles 11.12, 11.13(a), 15.4(c), 15.5(b)(h); **International Tropical Timber Agreement**, *op cit*, Article 1(j); **Forest Principles**, *op cit*, Principles 8(b), 13(d).

<sup>271</sup> **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 1; **Convention on Biological Diversity**, *op cit*, Articles 6, 10(b); **Interregional framework cooperation agreement between the European Community and the Southern Common Market**, *op cit*, Article 10(6); **Mercosur Framework Agreement on Environment**, *op cit*, Articles 1, 3; **World Charter for Nature**, *op cit*, Articles 4, 7, 11; **International Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, Article 2; **Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region**, *op cit*, Article 4; **Nairobi Convention**, *op cit*, Articles 4.1, 10; **Protocol on the prevention, reduction and control of land-based sources and activities**, *op cit*, Article 3; **Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa**, *op cit*, Article 1; **AEWA**, *op cit*, Articles 2, 3; **Agreement on Conservation of Gorillas and their Habitats**, *op cit*, Article 2; **Convention on Migratory Species**, *op cit*, Articles 2, 3(a); **Convention on nature protection and wildlife preservation in the Western Hemisphere**, *op cit*, Article 7; **Protocol concerning Protected area and wild fauna and flora in the eastern African region**, *op cit*, Article 4; **Convention on the Law of Non-Navigational Uses of International Watercourses**, *op cit*, Article 22; **Cartagena Protocol**, *op cit*, Articles 1, 10(6); **OSPAR**, *op cit*, Article 2(1)(a), 2(2)(a); **Rio Declaration**, *op cit*, Principles 4, 15; **Maastricht Principles of Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights**, *op cit*, Principle 13.

<sup>272</sup> Nicholas Institute for Environmental Policy Solutions, prepared on behalf of the World Bank Carbon Finance Unit (BioCarbon Fund), (15 May 2012) Addressing Non-Permanence and Reversal Risks of Afforestation and Reforestation (A/R) Activities under the Clean Development Mechanisms (CDM).

<sup>273</sup> Dutschke, M., and Angelsen, A., (2008) How do we ensure permanence and assign liability?, in Angelsen, A., (ed.), (2008) Moving Ahead with REDD: issues, options and implications, CIFOR, p. 79.

<sup>274</sup> Focali, (2012), Accounting for Carbon Leakage from REDD+ are current quantification methods suitable?, Focali Brief, p. 1.

<sup>275</sup> Wunder, S., (2008) How do we deal with leakage?, in Angelsen, A., (ed.) (2008) *op cit*, p. 66.

<sup>276</sup> Korhonen-Kurki, K., et al., (2012) 'Multiple levels and multiple challenges for REDD+', in Angelsen, A., (ed.) (2012) Analysing REDD+: Challenges and Choices, CIFOR, p. 106.

<sup>277</sup> **UNFCCC**, (Copenhagen, 19 December 2009) Decision 4/CP.15, 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, FCCC/CP/2009/11/Add.1, p. 11.

<sup>278</sup> **UNFCCC**, COP 15 Decision 4/CP.15, 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, *op cit* p. 11.

<sup>279</sup> **UNFCCC**, COP 15 Decision 4/CP.15, 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, *op cit* p. 11.

<sup>280</sup> **UNFCCC**, (Durban, 11 December 2011) Decision 12/CP.17 Guidance on systems for providing information on how safeguards are addressed and respected and modalities relating to forest reference emission levels and forest reference levels as referred to in decision 1/CP.16, FCCC/CP/2011/9/Add.2, p. 16.

<sup>281</sup> **UNFCCC**, COP 17 Decision 12/CP.17, Guidance on systems for providing information on how safeguards are addressed and respected and modalities relating to forest reference emission levels and forest reference levels, *op cit*, p. 17.

<sup>282</sup> The latest information regarding negotiations on NFMs and MRV is available at: **UNFCCC**, (Bonn, 24 May 2012), 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, FCCC/SBSTA/2012/L9/Rev.1, Annex, p. 3.

<sup>283</sup> **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, p. 1; **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Preamble; **Convention on Biological Diversity**, *op cit*, pp. 1-2; **CITES**, *op cit*, p. 1; **Convention on Migratory Species**, *op cit*, p. 1; **Nairobi Convention**, *op cit*, preamble; **Rio Declaration**, *op cit*, Principle 4; **Stockholm Declaration**, *op cit*, Principle 1; **Convention Concerning the Protection of the World Cultural and Natural Heritage**, *op cit*, Article 4.

<sup>284</sup> **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, p. 1; **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Articles 1(1), 12(1); **Cartagena Protocol**, *op cit*, Article 1; **Convention on Biological Diversity**, *op*



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*cit*, Preamble and Articles 1, 8, 11, 12, 16-18; **OSPAR**, *op cit*, Preamble, Article 1; **International Tropical Timber Agreement**, *op cit*, Article 1(h); **World Charter for Nature**, *op cit*, Articles 4, 10.

<sup>285</sup> **Rio Declaration**, *op cit*, Principle 3; **Convention on Biological Diversity**, *op cit*, Articles 1, 15(7); **Nagoya Protocol**, *op cit*, Article 5; **UNFCCC** (New York, 9 May 1992) 1771 U.N.T.S. 107 *entered into force* 21 March 1994, Article 3.1, 4.2(a).

<sup>286</sup> Sands, P., (2012) *Principles of International Environmental Law* 3<sup>rd</sup> Edition, Cambridge University Press, p. 216.

<sup>287</sup> Sands, P. *Principles of International Environmental Law*, *op cit*, p. 217.

<sup>288</sup> **Cartagena Protocol**, *op cit*, Articles 10(6), 11(8), 15; **Convention on Biological Diversity**, *op cit*, Preamble; **OSPAR**, *op cit*, Article 2(2)(a); **Rio Declaration**, *op cit*, Principle 15; **UNFCCC**, *op cit*, Article 3(3).

<sup>289</sup> **Rio Declaration**, *op cit*, Article 15.

<sup>290</sup> Principle 24 of the Stockholm Declaration reflects a general political commitment to international co-operation in matters concerning the protection of the environment, and Principle 27 of the Rio Declaration states rather more succinctly that “States and people shall co-operate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.”

<sup>291</sup> **Rio Declaration**, *op cit*, Principle 14; **Framework Agreement on the Environment of Mercosur**, *op cit*, Article 1.

<sup>292</sup> **American Convention on Human Rights**, *op cit*, Article 2; **Universal Declaration on Human Rights**, *op cit*, Article 19; **Rio Declaration**, *op cit*, Article 10; **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 9; **Declaration on the Rights and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**, *op cit*, Articles 6(a), 14(1); **Model Inter-American Law on Access to Information**, *op cit*, Article 2; **SADC Protocol on Forestry**, *op cit*, Article 11(c); **Aarhus Convention**, *op cit*, Article 1.

<sup>293</sup> For necessary measures see: **IACHR**, (2011) *The Right to Access to Information in the Americas*, *op cit*, p. 108; **International Covenant on Civil and Political Rights**, Human Rights Committee (Geneva, 11-29 July 2011) CCPR/C/GC/34, General comment No. 34, pg 5. Additional measures for establishing a mechanism for access to information can be found in: **OAS**, (2006) *Hemispheric report on the first round of review of the committee of experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption's (MESICIC)*, *op cit*, p. 21.

<sup>294</sup> Competent authorities should be required to make available requested environmental information to any natural or legal person, in response to any reasonable request, without that person's having to prove an interest, without unreasonable charges, as soon as possible and at the latest within two months. **OSPAR**, *op cit*, Article 9; **Model Inter-American Law on Access to Information**, *op cit*, Articles 5, 14.

<sup>295</sup> **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Article 16; **Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**, *op cit*, Article 14(2); **Aarhus Convention**, *op cit*, Article 5(2).

<sup>296</sup> **African Charter on Human and Peoples Rights**, *op cit*, Article 26; **Model Inter-American Law on Access to Information**, *op cit*, Article 55.

<sup>297</sup> **IACHR**, (2011), *The right to access to information in the Americas*, *op cit*, p. 105.

<sup>298</sup> **Agenda 21**, *op cit*, Article 10.11(c); **Model Inter-American Law on Access to Information**, *op cit*, Article 14; **Nagoya Protocol**, *op cit*, Article 21; **Aarhus Convention**, *op cit*, Article 3(2).

<sup>299</sup> This includes: “(a) Enhancing the transparency of and promoting the contribution of the public to decision making processes; (b) Ensuring that the public has effective access to information; (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.” **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 12(2); **UN Convention Against Corruption**, *op cit*, Article 13; **Inter-American Treaty Against Corruption**, *op cit*, Article 3(11).

<sup>300</sup> **OAS**, (2006) *Hemispheric report on the first round of review of the committee of experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption's (MESICIC)*, *op cit*, p. 18.

<sup>301</sup> **African Union Convention on Preventing and Combating Corruption**, *op cit*, Articles 2, 5, 7, 20; **Inter-American Treaty against Corruption**, *op cit*, Articles 3, 7; **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**, *op cit*, Articles 1, 8; **U. N. Convention Against Corruption**, *op cit*, Articles 7, 8, 9, 10.

<sup>302</sup> **OAS**, (2006) *Hemispheric report on the first round of review of the committee of experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption's (MESICIC)*, *op cit*, p. 19.

<sup>303</sup> **U. N. Convention Against Corruption**, *op cit*, Article 13; **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 2, 5, 7, 20; **Inter-American Treaty against Corruption**, *op cit*, Article 12; **Inter-American Treaty against Corruption**, *op cit*, Article 3.

<sup>304</sup> **United Nations Office on Drugs and Crime** (2009), *Technical Guide to the United Nations Convention Against Corruption*, *op cit*, pp. 43-45, this includes: “To analyse vulnerable sectors (forestry) and take proactive measures including include: pre-appointment screening of successful candidates (ensuring that the potential appointee has already demonstrated high standards of conduct); specific terms and conditions of service for successful candidates; procedural controls, such as benchmarking performance, or the rotation of staff, as means of limiting inducements to and effects of corruption arising from protracted incumbency.”

<sup>305</sup> **United Nations Office on Drugs and Crime** (2009), *Technical Guide to the United Nations Convention Against Corruption*, *op cit*, p.45.

<sup>306</sup> **Agenda 21**, *op cit*, Articles 8.13, 8.14; **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Article 6(d); **Convention on Biological Diversity**, *op cit*, Article 8(k); **Guidelines for the conservation and sustainable use of biodiversity in tropical timber production forests**, *op cit*, Principle 3; **SADC Protocol on Forestry**, *op cit*, Article 4(4).

<sup>307</sup> **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Article 6(k), (n), (l).

<sup>308</sup> **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Article 7(c); **Convention on Biological Diversity**, *op cit*, Article 6; **Agenda 21**, *op cit*, Article 2.34; **Guidelines for the conservation and sustainable use of biodiversity in tropical timber production forests**, *op cit*, Principle 4; **Framework Agreement on Environment of Mercosur** (Asuncion, 22 June 2001) Ecolex TRE-153663, Article 3; **Forest Principles**, *op cit*, Principle 9(c); **Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa and to establish the Central African Forests Commission (COMIFAC)**, *op cit*, Article 1.

<sup>309</sup> **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Article 7(a).

<sup>310</sup> **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Articles 6(l), 7(c)(g).

<sup>311</sup> **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Article 2(b), Articles 6(n), 7(h)(i); **North American Agreement on Environmental Cooperation**, *op cit*, Article 1(g); **PEFC Sustainable Forest Management**, *op cit*, Criterion 7; **SADC Protocol on Wildlife Conservation and Law Enforcement** (18 August 1999) Ecolex TRE-001348 *entered into force* 30 November 2003, Article 4(2).

<sup>312</sup> **Agreement on the Conservation of Gorillas and their Habitats**, *op cit*, Article 3(2)(e); **International Tropical Timber Agreement**, *op cit*, Article 1(n); **North American Agreement on Environmental Cooperation**, *op cit*, Article 5.

<sup>313</sup> **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 15; **PEFC Sustainable Forest Management**, *op cit*, Criterion 1(7).

<sup>314</sup> **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Article 8.1(a); **Agenda 21**, *op cit*, Article 10.3; **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 4; **PEFC Sustainable Forest Management**, *op cit*, Criterion 1.4, 6.14; **SPAW Protocol**, *op cit*, Article 6; **SADC Protocol on Forestry**, *op cit*, Article 11(a); **Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Article 7; **Treaty for Amazonian co-operation** (Brasilia, 3 July 1978) 1202 U.N.T.S. 71 *entered into force* 12 August 1980, Article 7; **UN Bio Trade Principles and Criteria**, *op cit*, Principle 3.

<sup>315</sup> **OSPAR**, *op cit*, Appendix 1, Article 1.

<sup>316</sup> **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Article 14; **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 14; **Cartagena Protocol**, *op cit*, Article 15; **Convention on Biological Diversity**, *op cit*, Article 14; **Akwé: Kon Voluntary Guidelines**, *op cit*; **Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region**, *op cit*, Article 12(1); **Nairobi Convention**, *op cit*, Article 13; **ITTO Guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests**, *op cit*, Principle 12; **Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights**, *op cit*, Principle 14; **Forest Principles**, *op cit*, Principle 8(h); **SPAW Protocol**, *op cit*, Article 16(1); **SADC Protocol on Forestry**, *op cit*, Article 11(1)(d); **Protocol concerning pollution from land-based sources and activities to the convention for the protection and development of the marine environment of the wider Caribbean region**, *op cit*, Article 7; **Rio Declaration**, *op cit*, Principle 17.

<sup>317</sup> **Convention No. 169**, *op cit*, Articles 14, 15, 16, 17, 18. **ITTO/IUCN Guidelines for the conservation and sustainable use of biodiversity in tropical timber production forests**, *op cit*, Principle 5; **ITTO Guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests**, *op cit*, Principle 5; **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Article 7(j); **PEFC Sustainable Forest Management**, *op cit*, Criterion 6(3); **SADC Protocol on Forestry**, *op cit*, Article 5.

<sup>318</sup> **Nagoya Protocol**, *op cit*, Articles 5, 6; **Forest Principles**, *op cit*, Principle 12(d).

<sup>319</sup> **Agenda 21**, *op cit*, Articles 8.3(a), 8.17, 11.2, 11.3; **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Article 6(n)(w); **ITTO/IUCN Guidelines for the conservation and sustainable use of biodiversity in tropical timber production forests**, *op cit*, Principle 5; **OAS**, (23 April 2010) *Commentary and guide for implementation for the model Inter-American law on access to information*, CP/CAJP-2841/10, p. 1.

<sup>320</sup> **ITTO Guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests**, *op cit*, Principle 7; **SADC Protocol on Forestry**, *op cit*, Article 11(2).

<sup>321</sup> **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 12; **Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region**, *op cit*, Article 12(3); **Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**, *op cit*, Article 8; **Framework Agreement on the Environment of Mercosur**, *op cit*, Article 3(e); **Nagoya Protocol**, *op cit*, Article 12; **Forest Principles**, *op cit*, Principle 2(d); **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Article 6(d); **North American Agreement on Environmental Cooperation**, *op cit*, Articles 1(h), 4(b); **SADC Protocol on Forestry**, *op cit*, Article 12; **Protocol concerning pollution from land-based sources and activities to the convention for the protection and development of the marine environment of the wider Caribbean Region**, *op cit*, Articles 7(4), 10; in addition, the **OAS**, (2006) *Hemispheric report on the first round of review of the committee of experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption's (MESICIC)*, *op cit*, pp. 22-23, provides information on mechanisms for consultation.

<sup>322</sup> **Agenda 21**, *op cit*, Articles 8.3, 11.4(c); **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Article 6(w); **American Convention on Human Rights**, *op cit*, Article 2; **Akwé: Kon Voluntary Guidelines**, *op cit*; **Convention for the Elimination of All Forms of Discrimination Against Women**, *op cit*, Articles 7(b), 14(a); **Convention No. 169**, *op cit*, Articles 2, 6, 7, 15, 16, 20, 22, 23, 25, 27, 30, 33, according to the ILO, the principles of consultation and participation in Convention No. 169 relate not only to specific development projects, but also to broader questions of governance, and the participation of indigenous and tribal peoples in public life. For more information see Leaflet on Indigenous and Tribal Peoples - No.2 ILO Convention No.169, and ILO programmes specifically addressing indigenous and tribal peoples available at <[http://www.ilo.org/indigenous/Resources/Publications/WCMS\\_100662/lang-en/index.htm](http://www.ilo.org/indigenous/Resources/Publications/WCMS_100662/lang-en/index.htm)>; **ITTO Guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests**, *op cit*, Principle 8; **SADC Protocol on Forestry**, *op cit*, Article 11(c); **Rio Declaration**, *op cit*, Principles 20, 22; **UNDRIP**, *op cit*, Article 32(3).

<sup>323</sup> **ILO Convention No. 169**, *op cit*, Article 15(2); **UNDRIP**, *op cit*, Article 32(2).

<sup>324</sup> **OAS**, (2006) *Hemispheric report on the first round of review of the committee of experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption*, *op cit*, p. 18; **Aarhus Convention**, *op cit*, Article 5(3).

<sup>325</sup> **International Tropical Timber Agreement**, *op cit*, Article 1(l).

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- <sup>326</sup> **Agenda 21**, *op cit*, Article 8.11(c); **Cartagena Protocol**, *op cit*, Article 23.1(a); **Bonn Convention**, *op cit*, Article 5.5(n); **Interregional Framework Cooperation Agreement between the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part – Joint Declaration on political dialogue between the European Union and Mercosur** (Madrid, 15 December 1995) Treaty EC, Article 113, 130y entered into force 1 July 1999, Article 17; **Lusaka Agreement on Co-operative Enforcement Operations directed at Illegal Trade in Wild Fauna and Flora** (Lusaka, 8 September 1994) Ecolex TRE-001197 entered into force 10 December 1996, Article 4.7; **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Article 6(t); **Protocol concerning pollution from land-based sources and activities to the convention for the protection and development of the marine environment of the wider Caribbean region**, *op cit*, Article 10, 11; **Aarhus Convention**, *op cit*, Article 3.3.
- <sup>327</sup> **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 16; **Agreement on the Conservation of Gorillas and their Habitats**, *op cit*, Article 8.1(e); **Model Inter-American Law on Access to Information**, *op cit*, Article 9; **Joint Declaration on political dialogue between the European Union and Mercosur**, *op cit*, Article 17; **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Article 6(t); **Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region**, *op cit*, Article 14, 15; SPAW Protocol, *op cit*, Article 16, **SADC Protocol on Forestry**, *op cit*, Article 19.
- <sup>328</sup> **Rio Declaration**, *op cit*, Principle 10.
- <sup>329</sup> **North American Agreement on Environmental Cooperation**, *op cit*, Articles 4, 7(3).
- <sup>330</sup> **Convention of Belém do Pará**, *op cit*, Article 7(f), g).
- <sup>331</sup> **Agenda 21**, *op cit*, Article 8.18; **UNDRIP**, *op cit*, Articles 27, 28; **North American Agreement on Environmental Cooperation**, *op cit*, Articles 6, 7; **Convention for the Elimination of All Forms of Discrimination Against Women**, *op cit*, Article 15(a); **Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**, *op cit*, Article 9; **Guiding Principles on Business and Human Rights**, *op cit*, Article 25, **Inter-American Convention on Human Rights**, *op cit*, Articles 8, 21, 25; **International Covenant on Civil and Political Rights**, *op cit*, Articles 2, 9, 14, 26; **North American Agreement on Environmental Cooperation**, *op cit*, Article 6.
- <sup>332</sup> **Guiding principles on Business and Human Rights**, *op cit*, Article 26.
- <sup>333</sup> **North American Agreement on Environmental Cooperation**, *op cit*, Article 7(1); **UNDRIP**, *op cit*, Article 40.
- <sup>334</sup> **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Preamble; **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 20(1); **Charter of the United Nations**, *op cit*, Article 2(2); **Convention on Biological Diversity**, *op cit*, Preamble, Article 3; **International Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, Preamble; **International Tropical Timber Agreement**, *op cit*, Preamble(d); **Forest principles**, *op cit*, Principle 1(a); **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Preamble; **North American Agreement on Environmental Cooperation**, *op cit*, Preamble; **Rio Declaration**, *op cit*, Principle 2; **Protocol on the prevention, reduction and control of land-based sources and activities**, *op cit*, Article 2; **Stockholm Declaration**, *op cit*, Principle 21; **Treaty for Amazonian Cooperation**, *op cit*, Article 4; **U. N. Convention to Combat Desertification**, *op cit*, Preamble; **World Charter for Nature**, *op cit*, Principle 2.
- <sup>335</sup> **Agenda 21**, *op cit*, Articles 8.17, 11, 11.3(c); **Convention for the Elimination of All Forms of Discrimination Against Women**, *op cit*, Article 2(a),(g); **Inter-American Convention on Human Rights**, *op cit*, Article 2; **Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women**, *op cit*, Article 7(e); **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Principle 5(n); **UN Convention to Combat Desertification**, *op cit*, Articles 5(e), 19(j); **UN Convention on the Elimination of all Forms of Racial Discrimination**, *op cit*, Article 2 (c).
- <sup>336</sup> **Agreement on the Joint Regulations on Fauna and Flora**, *op cit*, Article, *op cit*, Article 4; **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 2(3); **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 1; **Declaration on the Right & Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**, *op cit*, Article 3; **International Covenant on Civil and Political Rights**, *op cit*, Article 2; **International Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, Articles 4, 5; **Nagoya Protocol**, *op cit*, Article 6; **Protocol Concerning Specially Protected Areas and Wildlife**, *op cit*, Articles 3, 10(1); **Protocol on the prevention, reduction and control of land-based sources and activities**, *op cit*, Articles 3, 6, 7, 10; **Aarhus Convention**, *op cit*, Articles 4, 5, 6, 9; **United Nations Convention against Corruption**, *op cit*, Article 5(1); **World Charter for Nature**, *op cit*, Principle 23.
- <sup>337</sup> **Agenda 21**, *op cit*, Article 26.4(a).
- <sup>338</sup> **American Convention on Human Rights**, *op cit*, Articles 1(1), 2; **UNDRIP**, *op cit*, Articles 31, 38; **UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, *op cit*, Article 84; **PEFC Sustainable Forest Management**, *op cit*, Criterion 1(1); **UN BioTrade Principles and criteria**, *op cit*, Principle 6(2); **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Article 17; **Nagoya Protocol**, *op cit*, Article 5; **Agenda 21**, *op cit*, Article 26(3)(a)(i); **UN General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities** (18 December 1992) A/RES/47/135, Article 1.
- <sup>339</sup> **Nagoya Protocol**, *op cit*, Article 5; **SADC Protocol on Forestry**, *op cit*, Article 12.
- <sup>340</sup> **Forest Principles**, *op cit*, Principles 5, 12; **Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region**, *op cit*, Article 12.
- <sup>341</sup> **Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region**, *op cit*, Article 12.
- <sup>342</sup> **Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region**, *op cit*, Article 16.2(a), (b).
- <sup>343</sup> **Rio Declaration**, *op cit*, Principle 22; **Agenda 21**, *op cit*, Article 26.3(a. iii).
- <sup>344</sup> **Convention on the Protection and Promotion of the Diversity of Cultural Expressions**, *op cit*, Article 2.
- <sup>345</sup> **UNDRIP**, *op cit*, Article 15(2).
- <sup>346</sup> **UNDRIP**, *op cit*, Article 21(2).
- <sup>347</sup> **Convention No. 169**, *op cit*, Articles 8, 9, 12; **SADC Protocol on Forestry**, *op cit*, Article 3(2)(g).
- <sup>348</sup> **Convention on Biological Diversity**, *op cit*, Article 8(j); **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, para. 6(y).

<sup>349</sup> **SADC Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Article 10; **Convention for the Safeguarding of Intangible Cultural Heritage**, *op cit*, Article 14(a.iii); **Nagoya Protocol**, *op cit*, Article 22.

<sup>350</sup> **SADC Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Article 10; **International Tropical Timber Agreement**, *op cit*, Section r; **Nagoya Protocol**, *op cit*, Article 22; **SADC Protocol on Forestry**, *op cit*, Article 12(1)(a), 19(2)(d).

<sup>351</sup> **Convention No. 169**, *op cit*, Article 33.

<sup>352</sup> **UNDRIP**, *op cit*, Article 31, 38; **Convention No. 169**, *op cit*, Article 2, 7; **Agenda 21**, *op cit*, Article 26.6(a).

<sup>353</sup> **Convention No. 107**, *op cit*, Article 4.

<sup>354</sup> **Convention for the Safeguarding of Intangible Cultural Heritage**, *op cit*, Articles 14(a) 14(b)(c); **Convention on the Rights of the Child**, *op cit*, Article 29; **Nagoya Protocol**, *op cit*, Articles 12, 21.

<sup>355</sup> **Convention on Biological Diversity**, *op cit*, Article 10(c); **Agenda 21**, *op cit*, Article 15.5(e).

<sup>356</sup> **UNDRIP**, *op cit*, Article 14(3).

<sup>357</sup> **UNDRIP**, *op cit*, Article 27; **ILO Convention No. 169**, *op cit*, Articles 14, 15, 17; **Agenda 21**, *op cit*, Article 26.3(a. ii).

<sup>358</sup> **American Convention on Human Rights**, *op cit*, Article 2; **Convention on the Elimination of all Forms of Racial Discrimination**, *op cit*, Article 2(1).

<sup>359</sup> **SADC Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Article 7(4).

<sup>360</sup> **Convention on Biological Diversity**, *op cit*, Article 8(f); **Nagoya Protocol**, *op cit*, Articles 5(2), 5(5), 12; **Agenda 21**, *op cit*, Article 15.5(e); **SADC Protocol on Forestry**, *op cit*, Articles 3, 12.

<sup>361</sup> **Convention on Biological Diversity**, *op cit*, Article 8(f); **Nagoya Protocol**, *op cit*, Article 5.2, 5.5.

<sup>362</sup> **Convention on Biological Diversity**, *op cit*, Article 8(j); **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Article 6(y).

<sup>363</sup> **Agenda 21**, *op cit*, Articles 26.3(b)(c), 26.6; **Convention No. 169**, *op cit*, Articles 4, 6, 7, 15, 16, 17, 22,23, 27, 28, 33; **Rio Declaration**, *op cit*, Principle 22.

<sup>364</sup> **UNDRIP**, *op cit*, Article 32; **Convention No. 169**, *op cit*, Article 16.

<sup>365</sup> **UNDRIP**, *op cit*, Article 19.

<sup>366</sup> **Agenda 21**, *op cit*, Article 26.3(b), (c); **Nagoya Protocol**, *op cit*, Article 7; **SADC Protocol on Forestry**, *op cit*, Article 3(2)(g).

<sup>367</sup> **Agenda 21**, *op cit*, Article 11.14(d).

<sup>368</sup> **UNDRIP**, *op cit*, Articles 8, 10, 20, 28, 40; **ILO Convention No. 169**, *op cit*, Articles 14, 15, 18.

<sup>369</sup> **UNDRIP**, *op cit*, Article 13(2).

<sup>370</sup> **UNDRIP**, *op cit*, Articles 8, 10, 20, 28, 40; **ILO Convention No. 169**, *op cit*, Articles 14, 15, 18.

<sup>371</sup> **Convention No. 169**, *op cit*, Articles 9, 10, 11,12, 14.3; **UNDRIP**, *op cit*, Article 40.

<sup>372</sup> **ILO Convention No. 169**, *op cit*, Article 14.

<sup>373</sup> **Organization of American States, Unit for Sustainable Development and Environment**, (2001), Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development, *op cit*.

<sup>374</sup> **American Convention on Human Rights**, *op cit*, Article 2; **Universal Declaration on Human Rights**, *op cit*, Article 19; **Rio Declaration**, *op cit*, Article 10; **Agenda 21**, *op cit*, Article 8.13.

<sup>375</sup> **Cartagena Protocol**, *op cit*, Article 23(1); **UN Convention to Combat Desertification**, *op cit*, Article 19(3)(a), (b); **Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora**, *op cit*, Article 4(7).

<sup>376</sup> **African Charter on Human and Peoples Rights**, *op cit*, Article 26; **Agenda 21**, *op cit*, Article 8.26.

<sup>377</sup> **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 16(2); **SADC Protocol on Forestry**, *op cit*, Articles 11(1)(c), 12(a).

<sup>378</sup> **World Charter for Nature**, *op cit*, Part 3, Section 16

<sup>379</sup> **UN Convention to Combat Desertification**, *op cit*, Article 10(2)(e).

<sup>380</sup> **SADC Protocol on Forestry**, *op cit*, Article 19(1).

<sup>381</sup> This includes: '(a) Enhancing the transparency of and promoting the contribution of the public to decision making processes; (b) Ensuring that the public has effective access to information; (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. **African Union Convention on Preventing and Combating Corruption**, *op cit*, Article 12(2); **UN Convention Against Corruption**, *op cit*, Article 13; **Inter-American Treaty Against Corruption**, *op cit*, Article 3.11.

<sup>382</sup> **Agenda 21**, *op cit*, Articles 8.3, 11.14(c); **Non Legally Binding Instrument on All Types of Forests**, *op cit*, Article 6(w); **American Convention on Human Rights**, *op cit*, Article 2.

<sup>383</sup> **Agenda 21**, *op cit*, Articles 10.10, 11.3, 11.13; **UN Convention to Combat Desertification**, *op cit*, Article 19(1)(a); **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Article 6(w).

<sup>384</sup> **UN Convention to Combat Desertification**, *op cit*, Article 10(2)(f).

<sup>385</sup> **OAS**, (2006) Hemispheric report on the first round of review of the committee of experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption's (MESICIC), *op cit*, pg 23.

<sup>386</sup> **Agenda 21**, *op cit*, Article 8.21; **North American Agreement on Environmental Cooperation**, *op cit*, Article 1(h).

<sup>387</sup> **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Article 14; **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 14; **Cartagena Protocol**, *op cit*, Article 15; **Convention on Biological Diversity**, *op cit*, Article 14; **Akwé: Kon Voluntary Guidelines**, *op cit*.; **Convention for the Protection and Development of the Marine Environment of the wider Caribbean Region**, *op cit*, Article 12(1); **Nairobi Convention**, *op cit*, Article 13; **ITTO Guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests**, *op cit*, Principle 12; **Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights** (Principle 14); **Forest Principles**, *op cit*, Principle 8(h); **SPAW Protocol**, *op cit*, Article 16(1); **SADC Protocol on Forestry**, *op cit*, Article 11(1)(d); **Protocol concerning pollution from land-based**

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sources and activities to the convention for the protection and development of the marine environment of the wider Caribbean region, *op cit*, Article 7; Rio Declaration, *op cit*, Principle 17.

<sup>388</sup> African Convention on the Conservation of Nature and Natural Resources, *op cit*, Article 17(3); SADC Protocol on Forestry, *op cit*, Article 4(9); UN Convention Against Corruption, *op cit*, Article 10(b).

<sup>389</sup> Rio Declaration, *op cit*, Article 10; International Covenant on Civil and Political Rights and its First Protocol, *op cit*, Article 50;

American Convention on Human Rights, *op cit*, Article 25; UNDRIP, *op cit*, Article 8; North American Agreement on Environmental Cooperation, *op cit*, Articles 6, 7.

<sup>390</sup> Forest Principles, *op cit*, Principle 12(d).

<sup>391</sup> ILO Convention No. 169, *op cit*, Article 6(1)(b), (c).

<sup>392</sup> Nagoya Protocol, *op cit*, Article 12(2).

<sup>393</sup> UNDRIP, *op cit*, Article 19; ILO Convention No. 169, *op cit*, Article 6.

<sup>394</sup> UNDRIP, *op cit*, Article 10; ILO Convention No. 169, *op cit*, Article 14.

<sup>395</sup> UNDRIP, *op cit*, Article 32(2); ILO Convention No. 169, *op cit*, Article 15(2).

<sup>396</sup> Nagoya Protocol, *op cit*, Articles 6, 7; UN BioTrade Principles and criteria, *op cit*, Principle 7(2).

<sup>397</sup> Agenda 21, *op cit*, Article 11.13; SADC Protocol on Forestry, *op cit*, Articles 9, 10.

<sup>398</sup> SADC Protocol on Forestry, *op cit*, Article 4(8).

<sup>399</sup> Convention on Biological Diversity, *op cit*, Article 7(c).

<sup>400</sup> Convention on Biological Diversity, *op cit*, Article 8(h)(g); Convention on Migratory Species, *op cit*, Article 3(4)(c).

<sup>401</sup> Non-Legally Binding Instrument on All Types of Forests, *op cit*, para. 5.6(o); Agenda 21, *op cit*, Article 11.10.

<sup>402</sup> Non-Legally Binding Instrument on All Types of Forests, *op cit*, Article 5(6)(o); Agenda 21, *op cit*, Article 11.13(g).

<sup>403</sup> Agenda 21, *op cit*, Article 11.10, 11.13(g); ASEAN Agreement on the Conservation of Nature and Natural Resources, *op cit*, Article 10; Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, *op cit*, Article 4.

<sup>404</sup> Agreement on the Joint Regulations on Fauna and Flora, *op cit*, Article 4; Non-Legally Binding Instrument on all Types of Forests, *op cit*, Articles 6(n), 7(h)(l); CITES, *op cit*, Article 8; North American Agreement on Environmental Cooperation, *op cit*, Article 1(g); Protocol Agreement on the Conservation of Common Natural Resources (Khartoum, 24 January 1982) Ecolex TRE-000772, Article 2; PEFC Sustainable Forest Management, *op cit*, Criterion 7; Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, *op cit*, Article 3; SADC Protocol on Wildlife Conservation and Law Enforcement, *op cit*, Article 4(2); Agreement on the Conservation of Gorillas and their Habitats, *op cit*, Article 3(2)(e); International Tropical Timber Agreement, *op cit*, Article 1(n); Lusaka Agreement on Co-operative Enforcement Operations directed at Illegal Trade in Wild Fauna and Flora, *op cit*, Article 4.1; North American Agreement on Environmental Cooperation, *op cit*, Article 5; Lacey Act of 1900, 16 U.S.C. §§ 3371-3378 (1900) amended by §8204 (2008) (see prohibited acts incurring criminal liability, § 3372); Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa, *op cit*, Article 1.

<sup>405</sup> Aichi Targets, *op cit*, Target 8; Agenda 21, *op cit*, Article 11.13(g); Non-Legally Binding Instrument on All Types of Forests, *op cit*, Article 6(o).

<sup>406</sup> Agenda 21, *op cit*, Article 15.5(d).

<sup>407</sup> Convention on Nature Protection and wildlife preservation in the western hemisphere, *op cit*, Article 5.

<sup>408</sup> Convention on Biological Diversity, *op cit*, Articles 7(c), 8(c), (i), 10.

<sup>409</sup> Non-Legally Binding Instrument on All Types of Forests, *op cit*, Article 6(p), (q); Convention on Nature Protection and wildlife preservation in the western hemisphere, *op cit*, Article 2; Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa, *op cit*, Article 1.

<sup>410</sup> Convention on Biological Diversity, *op cit*, Article 8(a)(b)(d); Non-Legally Binding Instrument on All Types of Forests, *op cit*, Section 5.6(p); Bonn Convention, *op cit*, Section 3.4; Agenda 21, *op cit*, Article 11.13(b), 26.3(a).

<sup>411</sup> Agenda 21, *op cit*, Article 11.13(c).

<sup>412</sup> Agenda 21, *op cit*, Article 15.5(c); Convention on Biological Diversity, *op cit*, Article 7; CITES, *op cit*, Article 9.

<sup>413</sup> Agreement on the Joint Regulations on Fauna and Flora, *op cit*, Article 1; Agenda 21, *op cit*, Article 11.13(b); Convention on Biological Diversity, *op cit*, Article 10(a); World Charter for Nature, *op cit*, Article 2(a); Convention on Wetlands (Ramsar, 2 February 1971) 996 U.N.T.S. 245 entered into force 21 December 1975, Article 3.1; Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, *op cit*, Article 8; SPAW Protocol, *op cit*, Article 4.

<sup>414</sup> Convention on Biological Diversity, *op cit*, Article 7.

<sup>415</sup> SADC Protocol on Forestry, *op cit*, Article 4(4).

<sup>416</sup> World Charter for Nature, *op cit*, Article 9(1), 9(2).

<sup>417</sup> Agreement on the Joint Regulations on Fauna and Flora, *op cit*, Article 4; Non-Legally Binding Instrument on all Types of Forests, *op cit*, Article 6(n), 7(h), (l); CITES, *op cit*, Article 8; North American Agreement on Environmental Cooperation, *op cit*, Article 1(g); Protocol Agreement on the Conservation of Common Natural Resources (Khartoum, 24 January 1982) Ecolex TRE-000772, Article 2; PEFC Sustainable Forest Management, *op cit*, Criterion 7; Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region, *op cit*, Article 3; SADC Protocol on Wildlife Conservation and Law Enforcement, *op cit*, Article 4(2); Agreement on the Conservation of Gorillas and their Habitats, *op cit*, Article 3(2)(e); International Tropical Timber Agreement, *op cit*, Article 1(n); Lusaka Agreement on Co-operative Enforcement Operations directed at Illegal Trade in Wild Fauna and Flora, *op cit*, Article 4.1; North American Agreement on Environmental Cooperation, *op cit*, Article 5; Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa, *op cit*, Article 1.

<sup>418</sup> African Convention on the Conservation of Nature and Natural Resources, *op cit*, Article 6; ASEAN Agreement on the Conservation of Nature and Natural Resources, *op cit*, Article 1; Protocol of San Salvador, *op cit*, Article 11(2).

<sup>419</sup> Forest Principles, *op cit*, Principle 8.

<sup>420</sup> Agenda 21, *op cit*, Article 15.5(j).

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<sup>421</sup> **International Tropical Timber Agreement**, *op cit*, paragraph j.

<sup>422</sup> **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Article 14; **Agenda 21**, *op cit*, Article 15.5(k); **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 14; **Cartagena Protocol**, *op cit*, Article 15; **Convention on Biological Diversity**, *op cit*, Article 14; **Akwé: Kon Voluntary Guidelines**, *op cit*, Article 12(1); **Nairobi Convention**, *op cit*, Article 13; **ITTO Guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests**, *op cit*, Principle 12; **Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights**, *op cit*, Principle 14; **Forest Principles**, *op cit*, Principle 8(h); **SPAW Protocol**, *op cit*, Article 16(1); **SADC Protocol on Forestry**, *op cit*, Article 11(1)(d); **Protocol concerning pollution from land-based sources and activities to the convention for the protection and development of the marine environment of the wider Caribbean region**, *op cit*, Article 7; **Rio Declaration**, *op cit*, Principle 17.

<sup>423</sup> **Framework Agreement on the Environment of Mercosur**, *op cit*, Article 3; **Convention on Biological Diversity**, *op cit*, Article 6(b), 10(e); **Agenda 21**, *op cit*, Article 15.11(d), 15.4(b), 15.5(b).

<sup>424</sup> **Convention on Biological Diversity**, *op cit*, Articles 6(a), 10, 11; **Agenda 21**, *op cit*, Article 15.4(b), 15.5(j).

<sup>425</sup> **Agenda 21**, *op cit*, Article 15.5(a)(b).

<sup>426</sup> **Agenda 21**, *op cit*, Article 15.4(i).

<sup>427</sup> **International Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, Article 6(2)(a).

<sup>428</sup> **Convention on Biological Diversity**, *op cit*, Article 1; **Nagoya Protocol**, *op cit*, Article 5.

<sup>429</sup> **Agreement on the Conservation of Gorillas and their Habitats**, *op cit*, Article 3(d).

<sup>430</sup> **Agenda 21**, *op cit*, Article 15.11(a).

<sup>431</sup> **Agenda 21**, *op cit*, Article 15.5(c)(f); Article 15.7(c); **Nagoya Protocol**, *op cit*, Article 8 **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Article 6(r).

<sup>432</sup> **Convention on Biological Diversity**, *op cit*, Article 10(c); **Agenda 21**, *op cit*, Article 15.5(e).

<sup>433</sup> **World Charter for Nature**, *op cit*, Article 11.

<sup>434</sup> **Interregional framework cooperation between EU and southern common market**, *op cit*, Article 17; **Agenda 21**, *op cit*, Article 15.5(m).

<sup>435</sup> **Rio Declaration**, *op cit*, Principle 8; **PEFC Sustainable Forest Management**, *op cit*, Criterion 3(6); **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, Article 1(b).

<sup>436</sup> **PEFC Sustainable Forest Management**, *op cit*, Criterion 2(8).

<sup>437</sup> **Agenda 21**, *op cit*, Article 15.4(h).

<sup>438</sup> **Agenda 21**, *op cit*, Article 15.4(d).

<sup>439</sup> **Agenda 21**, Article 15.6(d).

<sup>440</sup> **UN Convention to Combat Desertification**, *op cit*, Article 10.4; **Protocol of San Salvador**, *op cit*, Article 7(d).

<sup>441</sup> **Agenda 21**, *op cit*, Article 13.3(b), 13.14.

<sup>442</sup> **Agenda 21**, *op cit*, Article 13.15(b).

<sup>443</sup> **Agenda 21**, *op cit*, Article 13.21.

<sup>444</sup> **Agenda 21**, *op cit*, Article 13.17(b).

<sup>445</sup> **Agenda 21**, *op cit*, Article 14.16.

<sup>446</sup> **UNFCCC Decision 1/CP.16**, *op cit*, Annex I para 2.

<sup>447</sup> **Agenda 21**, *op cit*, Article 11.14(b); **Convention on Biological Diversity**, *op cit*, Article 7; **PEFC Sustainable Forest Management**, *op cit*, Criterion 1.7; **SADC Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Article 7(2).

<sup>448</sup> **Agenda 21**, *op cit*, Article 11.4(a); **International Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, Article 5(1)(a), (f); **AEWA**, *op cit*, Article 3(2)(e); **Agreement on the Joint Regulations on Fauna and Flora**, *op cit*, Article 5; **Agreement on the Conservation of Gorillas and their Habitats**, *op cit*, Article 3(2)(g), 8(1)(d); **Convention on Migratory Species**, *op cit*, Article 5(5)(c); **Forest Principles**, *op cit*, Principle 6(d); **Protocol concerning pollution from land-based sources and activities to the convention for the protection and development of the marine environment of the wider Caribbean Region**, *op cit*, Article 6; **SADC Protocol on Forestry**, *op cit*, Article 9(1).

<sup>449</sup> **Agenda 21**, *op cit*, Article 11.4(b); **Convention on Biological Diversity**, *op cit*, Article 17.

<sup>450</sup> **Agenda 21**, *op cit*, Article 11.32(b), **International Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, Article 13(2)(a); **Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region**, *op cit*, Article 17; **SPAW Protocol**, *op cit*, Article 21; **SADC Protocol on Forestry**, *op cit*, Article 8(4); **SADC Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Article 8(2)(c).

<sup>451</sup> **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 15.

<sup>452</sup> **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Principle 4; **Forest Principles**, *op cit*, Principle 6(c); **Convention on Biological Diversity**, *op cit*, Articles 8, 14; **CITES**, *op cit*, Article 7; **ILO Convention No. 169**, *op cit*, Article 7; **Protocol of San Salvador**, *op cit*, Article 11; **International Treaty on Plant Genetic Resources for Food and Agriculture**, *op cit*, Article 6(1); **International Tropical Timber Agreement**, *op cit*, paragraph (m); **North American Agreement on Environmental Cooperation**, *op cit*, Article 1; **SADC Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Article 4(2)(a); **Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa and to Establish the Central African Forests Commission (COMIFAC)**, *op cit*, Article 1.

<sup>453</sup> **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, paragraphs (r), (s); **Convention on Biological Diversity**, *op cit*, Article 9, 10; **Nagoya Protocol**, *op cit*, Article 8(a); **SADC Protocol on Energy**, *op cit*, Article 9; **UN Convention to Combat Desertification**, *op cit*, Article 16.

<sup>454</sup> **African Convention on the Conservation of Nature and Natural Resources**, *op cit*, Article 14; **ASEAN Agreement on the Conservation of Nature and Natural Resources**, *op cit*, Article 14; **Cartagena Protocol**, *op cit*, Article 15; **Convention on Biological Diversity**, *op cit*, Article 14; **Akwé: Kon Voluntary Guidelines**, *op cit*. **Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region**, *op cit*, Article 12(1); **Nairobi Convention**, *op cit*, Article 13; **ITTO Guidelines for the restoration, man-**



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agement and rehabilitation of degraded and secondary tropical forests, *op cit*, Principle 12; **Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights**, *op cit*, Principle 14; **Forest Principles**, *op cit*, Principle 8(h); **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Article 6(c); **SPAW Protocol**, *op cit*, Article 16.(1); **SADC Protocol on Forestry**, *op cit*, Article 11(1)(d); **Protocol concerning pollution from land-based sources and activities to the convention for the protection and development of the marine environment of the wider Caribbean Region**, *op cit*, Article 7; **Rio Declaration**, *op cit*, Principle 17.

<sup>454</sup> **Agenda 21**, *op cit*, Article 11.15(b); **Convention on Biological Diversity**, *op cit*, Article 18(1); **Nairobi Convention**, *op cit*, Article 14; **Convention on Migratory Species**, *op cit*, Article 2(a); **World Charter for Nature**, *op cit*, Article 6; **OSPAR**, *op cit*, Article 8(1); **Interregional framework cooperation agreement between the European Community and the Southern Common Market**, *op cit*, Article 15; **Non-legally Binding Instrument on All Types of Forests**, *op cit*, Principle 7(n); **Nagoya Protocol**, *op cit*, Article 23; **Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region**, *op cit*, Articles 17, 18; **SADC Protocol on Energy**, *op cit*, Article 9(3); **Amazon Treaty**, *op cit*, Articles 9, 15; **UN Convention to Combat Desertification**, *op cit*, Article 12.

<sup>455</sup> **Agenda 21**, *op cit*, Article 11.15(b); **Convention on Biological Diversity**, *op cit*, Article 18.1; **Nairobi Convention**, *op cit*, Article 14; **Convention on Migratory Species**, *op cit*, Article 2(a); **World Charter for Nature**, *op cit*, Article 6; **OSPAR**, *op cit*, Article 8(1); **Interregional framework cooperation agreement between the European Community and the Southern Common Market**, *op cit*, Article 15; **Non-legally Binding Instrument on All Types of Forests**, *op cit*, Principle 7(n); **Nagoya Protocol**, *op cit*, Article 23; **Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region**, *op cit*, Article 17, 18; **SADC Protocol on Energy**, *op cit*, Article 9.3; **Amazon Treaty**, *op cit*, Articles 9, 15; **UN Convention to Combat Desertification**, (Paris, 14 October 1994) 1954 U.N.T.S. 3 entered into force 26 December 1996, Article 12.

<sup>456</sup> **UN Convention to Combat Desertification**, *op cit*, Article 17(1)(d); **Nagoya Protocol**, *op cit*, Article 22(1).

<sup>457</sup> **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Article 7(o).

<sup>458</sup> **UN Convention to Combat Desertification**, *op cit*, Article 16(a. iv), Annex III Article 5; **Treaty on the Conservation and Sustainable Management of Forest Ecosystems in Central Africa and to Establish the Central African Forests Commission (COMIFAC)**, *op cit*, Article 1; **World Charter for Nature**, *op cit*, Article 6; **Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region**, *op cit*, Article 16; **SPAW Protocol**, *op cit*, Article 17(2), 17(3); **SADC Protocol on Energy**, *op cit*, Article 6(1); **Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Article 8; **UNFCCC**, *op cit*, Article 5.

<sup>459</sup> **Convention on Biological Diversity**, *op cit*, Article 18(1); **Nairobi Convention**, *op cit*, Article 14; **Convention on Migratory Species**, *op cit*, Article 2(a); **World Charter for Nature**, *op cit*, Article 6; **OSPAR**, *op cit*, Article 8(1); **Interregional framework cooperation agreement between the European Community and Mercosur**, *op cit*, Article 15; **Non-legally Binding Instrument on All Types of Forests**, *op cit*, Principle 7(n); **Nagoya Protocol**, *op cit*, Article 23; **Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region**, *op cit*, Articles 17, 18; **SADC Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Article 8; **Amazon Treaty**, *op cit*, Article 9, 15; **UN Convention to Combat Desertification**, *op cit*, Article 12.

<sup>460</sup> **Convention on Migratory Species**, *op cit*, Article 4.

<sup>461</sup> **Framework Agreement on the Environment of Mercosur**, *op cit*, Article 6; **Agreement on the Joint Regulations on Fauna and Flora**, *op cit*, Article 13; **SADC Protocol on Energy**, *op cit*, Article 3(1).

<sup>462</sup> **UN Convention to Combat Desertification**, *op cit*, Article 4(2)(e); **Langkawi Declaration on the Environment** (Langkawi 21 October 1989), Principle 8.

<sup>463</sup> **UN Convention to Combat Desertification**, *op cit*, Article 10(2)(e).

<sup>464</sup> **Convention on Biological Diversity**, *op cit*, Article 12(a); **Framework Agreement on the Environment of Mercosur**, *op cit*, Article 6(h).

<sup>465</sup> **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Article 6(f)(t)(u)(v); **Convention No. 169**, *op cit*, Articles 21, 22, 23; **International Tropical Timber Agreement**, *op cit*, paragraphs (q), (r); **Convention on Biological Diversity**, *op cit*, Article 8(j), 10; **Interregional framework cooperation agreement between the European Community and Mercosur**, *op cit*, Article 17; **SADC Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Article 7(7)(b).

<sup>466</sup> **Rio Declaration**, *op cit*, Principle 13.

<sup>467</sup> **CITES**, *op cit*, Article 3, 4; **Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora**, *op cit*, Article 4(1); **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, Section 6(n); **SADC Protocol on Forestry**, *op cit*, Article 15; **SADC Protocol on Wildlife Conservation and Law Enforcement**, *op cit*, Article 4(c), 6(1), 9(1).

<sup>468</sup> **International Tropical Timber Agreement**, *op cit*, paragraphs (m), (n); **Convention No. 169**, *op cit*, Article 7; **Convention on Biological Diversity**, *op cit*, Article 8(k), 14; **Non-Legally Binding Instrument on all Types of Forests**, *op cit*, paragraph (n).

<sup>469</sup> **Convention on Biological Diversity**, *op cit*, Article 8; **Non-Legally Binding Instrument on All Types of Forests**, *op cit*, paragraph (y).

<sup>470</sup> **UN Convention to Combat Desertification**, *op cit*, Article 10(4); **Protocol of San Salvador**, *op cit*, Article 7(d).

<sup>471</sup> According to **UNFCCC Decision 1/CP.16**, paragraph 71 (d) country Parties must develop "a system for providing information on how the safeguards referred to in appendix I to this decision are being addressed and respected throughout the implementation of the activities referred to in paragraph 70."

<sup>472</sup> UNEP (Nairobi 2005), *Compliance Mechanisms Under Selected Multilateral Environmental Agreements*, p. 21.

<sup>473</sup> UNEP, *Compliance Mechanisms Under Selected Multilateral Environmental Agreements* *op cit* p. 29.

<sup>474</sup> **United Nations Office of the High Commissioner for Human Rights**, Pamphlet Number 4, *Minorities and the United Nations Human Rights Treaty Bodies and Complaint Mechanisms*. Online: <<http://www.ohchr.org/Documents/Publications/GuideMinorities4en.pdf>> [Accessed 12 April 2013] p. 1.

<sup>475</sup> **UN Office of the High Commissioner for Human Rights**, Pamphlet Number 4, *Minorities and the United Nations Human Rights Treaty Bodies and Complaint Mechanisms*, *op cit*, p.1.

<sup>476</sup> UNEP, *Compliance Mechanisms Under Selected Multilateral Environmental Agreements*, *op cit* p.31.

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<sup>477</sup> **UN Office of the High Commissioner for Human Rights**, Pamphlet Number 4, Minorities and the United Nations Human Rights Treaty Bodies and Complaint Mechanisms *op cit* p.13.

<sup>478</sup> UNEP, Compliance Mechanisms Under Selected Multilateral Environmental Agreements, *op cit*, p.31.

<sup>479</sup> **UN Convention Against Corruption**, *op cit*, Article 63(1).

<sup>480</sup> **UNCAC**, *op cit*, Article 63(4)(e).

<sup>481</sup> **UNCAC**, *op cit*, Article 63(7).

<sup>482</sup> **UNCAC**, *op cit*, Article 13.

<sup>483</sup> The Conference adopted the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, and the draft guidelines for governmental experts and the secretariat in the conduct of country reviews and the draft blueprint for country review reports. COSP 3 Resolution 3/1 – Review mechanism available at <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session3-resolutions.html>

<sup>484</sup> **UNCAC** COSP 3 Resolution 3/1 paragraph 3

<sup>485</sup> **UNCAC** COSP 3 Resolution 3/1 Annex I, Terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption. Part IV Section B paragraph 14.

<sup>486</sup> **UNCAC**, *op cit*, Article 10.

<sup>487</sup> **UNCAC**, *op cit*, Article 10.

<sup>488</sup> **UNCAC**, *op cit*, Article 63(6).

<sup>489</sup> **UNCAC** COSP 3 Resolution 3/1 Annex I *op cit* Part IV Section B paragraph 15.

<sup>490</sup> **UNCAC** COSP 1 Resolution 1/2 paragraph 1 called for the Secretariat to prepare a self-assessment checklist to be used as a tool to facilitate the provision of information on implementation of the Convention. In COSP Resolution 2/1, the COSP requested the Secretariat to explore the option of modifying the self-assessment checklist to create a comprehensive information-gathering tool that could serve as a useful starting point for collecting implementation information in any future reviews. This has resulted in the development of a computer application where State Parties under review can report on their compliance with the Convention. The Comprehensive Self-Assessment Checklist on the Implementation of the United Nations Convention Against Corruption tool is available at <http://www.unodc.org/unodc/en/treaties/CAC/self-assessment.html>

<sup>491</sup> The full checklist can only be accessed by downloading the application. However an indicative list of questions for assessment can be found at <http://persmin.gov.in/DOPT/EOI Revised/Annexure%204colly Sample Question flow.pdf>

<sup>492</sup> **ICCPR**, *op cit*, Article 28.

<sup>493</sup> **ICCPR**, *op cit*, Article 40.

<sup>494</sup> **UN Office of the High Commissioner for Human Rights**, Pamphlet Number 4, Minorities and the United Nations Human Rights Treaty Bodies and Complaint Mechanisms *op cit* p.2.

<sup>495</sup> **International Covenant on Civil and Political Rights**, *op cit*, Article 40(1)(a).

<sup>496</sup> Overview of the working methods of the Human Rights Committee, section II: Guidelines for reporting by State Parties available at: <http://www2.ohchr.org/english/bodies/hrc/workingmethods.htm#a2a>

<sup>497</sup> CPCR/C/19/Rev.1.

<sup>498</sup> CPCR/C/5/Rev.2.

<sup>499</sup> Annex VIII to the Committee's 1998 report to the General Assembly (A/53/40).

<sup>500</sup> CPCR/C/66/GUI/Rev.2.

<sup>501</sup> United Nations International Human Rights Instruments (June 2006) Harmonized Guidelines on Reporting Under the International Human Rights Treaties, Including Guidelines on a Core Document and Treaty-Specific Documents HRI/GEN/2/Rev.6 online: <<http://www.fokusvinner.no/PageFiles/3379/harmonizedguidelines-2006.pdf>> [Accessed 13 April 2013].

<sup>502</sup> UN Harmonized Guidelines on Reporting Under the International Human Rights Treaties, *op cit*, p.2.

<sup>503</sup> The Guidelines do not require detailed historical narratives; it is sufficient to provide a concise account of key historical facts where these are necessary to assist the treaty bodies in understanding the context of the State's implementation of the treaties. UN Harmonized Guidelines on Reporting Under the International Human Rights Treaties, *op cit* p.8.

<sup>504</sup> Including the type of government, the electoral system, and the organization of the executive, legislative and judicial organs, information about any systems of customary or religious law that may exist in the State as well as information on the administration of justice (crime figures, information indicating the profile of perpetrators and victims of crime and sentences passed and carried out). UN Harmonized Guidelines on Reporting Under the International Human Rights Treaties, *op cit* p.9.

<sup>505</sup> Including information on their ratification of the main international human rights instruments, their reservations and declarations in relation to these treaties as well as any derogations, restrictions or limitations they may have. UN Harmonized Guidelines on Reporting Under the International Human Rights Treaties, *op cit* p.10.

<sup>506</sup> Whether human rights treaties have been incorporated into the national legal system; (a) which judicial, administrative or other authorities have competence affecting human rights matters and the extent of such competence; (b) whether the provisions of the various human rights instruments can be, and have been, invoked before, or directly enforced by, the courts, other tribunals or administrative authorities; (c) what remedies are available to an individual who claims that any of his or her rights have been violated, and whether any systems of reparation, compensation and rehabilitation exist for victims; (d) whether any institutions or national machinery exist with responsibility for overseeing the implementation of human rights, the mandate of such institutions, the human and financial resources available to them, and whether policies and mechanisms for gender mainstreaming and corrective measures exist; (e) Whether the State accepts the jurisdiction of any regional human rights court or other mechanism and, if so, the nature and progress of any recent or pending cases. UN Harmonized Guidelines on Reporting Under the International Human Rights Treaties, *op cit* p.11.

<sup>507</sup> Including information on the national and regional parliaments and assemblies, national human rights institutions, extent to which each of the international human rights instruments to which the State is party have been translated, published and disseminated



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within the country, on measures taken to ensure adequate education and training in human rights for those with responsibilities for the implementation of the law, on measures taken to promote respect for human rights through education and training amongst others. UN Harmonized Guidelines on Reporting Under the International Human Rights Treaties, *op cit* p.12.

<sup>508</sup> Including on (a) The existence of a national coordinating structure for reporting under the treaties; (b) Participation of departments, institutions and officials at national, regional and local levels of governance and, where appropriate, at federal and provincial levels; (c) Whether reports are made available to or examined by the national legislature prior to submission to the treaty monitoring bodies amongst others. UN Harmonized Guidelines on Reporting Under the International Human Rights Treaties, *op cit* p.13.

<sup>509</sup> Including general information on the implementation of its obligations to guarantee equality before the law and equal protection of the law for everyone within their jurisdiction, in accordance with the relevant international human rights instruments, including information on the legal and institutional structures. UN Harmonized Guidelines on Reporting Under the International Human Rights Treaties. *op cit* p.14.

<sup>510</sup> UN Harmonized Guidelines on Reporting Under the International Human Rights Treaties, *op cit* p.15.

<sup>511</sup> /CCPR.C.66.GUI.Rev.2. available at [http://www.ecmi.de/fileadmin/doc/Implementing\\_Human\\_Rights/English/Reporting/UN%20Conventions/Guidelines/ICCPR.pdf](http://www.ecmi.de/fileadmin/doc/Implementing_Human_Rights/English/Reporting/UN%20Conventions/Guidelines/ICCPR.pdf)

<sup>512</sup> Consolidated Guidelines for State reports under the International Covenant on Civil and Political Rights, *op cit*, p.3.

<sup>513</sup> Overview of the working methods of the Human Rights Committee, section II: Guidelines for reporting by State Parties, *op cit*.

<sup>514</sup> **Optional Protocol to the ICCPR**, *op cit*, Article 1.

<sup>515</sup> **Optional Protocol to the ICCPR**, *op cit*, Article 2.

<sup>516</sup> According to Article 3 the Committee considers inadmissible “any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.” For more details on the Procedure under the Optional Protocol to the International Covenant on Civil and Political Rights see <http://www2.ohchr.org/english/bodies/petitions/individual.htm#case>

<sup>517</sup> **Optional Protocol to the ICCPR**, *op cit*, Article 4(2).

<sup>518</sup> Procedure under the Optional Protocol to the International Covenant on Civil and Political Rights, *op cit*.

<sup>519</sup> Which includes reporting obligations and a grievance mechanism.

<sup>520</sup> See section on UNFCCC REDD+ Safeguard (c) in Part I of this guide.

<sup>521</sup> **CSICH**, *op cit*, Article 5.

<sup>522</sup> **CSICH**, *op cit*, Article 7(a).

<sup>523</sup> **CSICH**, *op cit*, Article 7(f).

<sup>524</sup> **CSICH**, *op cit*, Article 16.

<sup>525</sup> **CSICH**, *op cit*, Article 17(1).

<sup>526</sup> **CSICH**, *op cit*, Article 30.

<sup>527</sup> **CSICH**, *op cit*, Article 12.

<sup>528</sup> **CSICH**, *op cit*, Article 29.

<sup>529</sup> Instructions for completing form ICH-10 for examination in 2014 available at <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00460>

<sup>530</sup> Resolution 2.GA 5 ITH/08/2.GA/CONF.202/Resolutions; although the Operational Directives have been updated during subsequent General Assembly meetings (Resolution 3.GA 5 ITH/10/3.GA/CONF.201/Resolutions Rev and Resolution 4.GA 5 ITH/12/4.GA/Resolutions), these modifications are mainly procedural in nature and do not substantially affect requirements identified above.

<sup>531</sup> Once they have identified the elements that they want to include on the Lists, Parties submit them to the Committee as per Article 17 for inclusion on the central lists.

<sup>532</sup> Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage Chapter 1: Safeguarding Intangible Cultural Heritage section 1.1.

<sup>533</sup> For guidance on drafting the Urgent Safeguarding List see the Operational Directives *op cit* Chapter 1 section 1.2.

<sup>534</sup> See ICH-10 form for periodic reports available at <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00460>

<sup>535</sup> Handbook for ILO tripartite constituents Understanding the Indigenous and Tribal People’s Convention 1989 (No. 169), *op cit*, p.11

<sup>536</sup> Handbook for ILO tripartite constituents Understanding the Indigenous and Tribal People’s Convention 1989 (No. 169), *op cit*, p.7.

<sup>537</sup> The ILO was created in 1919, as part of the Treaty of Versailles that ended World War I. Its Constitution was drafted between January and April 1919 by the Labour Commission set up by the Peace Conference. The original text of the **ILO Constitution**, established in 1919, has been modified by the amendment of 1922 which entered into force on 4 June 1934; the Instrument of Amendment of 1945 which entered into force on 26 September 1946; the Instrument of Amendment of 1946 which entered into force on 20 April 1948; the Instrument of Amendment of 1953 which entered into force on 20 May 1954; the Instrument of Amendment of 1962 which entered into force on 22 May 1963; and the Instrument of Amendment of 1972 which entered into force on 1 November 1974.

<sup>538</sup> <http://www.ilo.org/global/about-the-ilo/who-we-are/tripartite-constituents/lang--en/index.htm>

<sup>539</sup> Anaya, S., J., (2004). Indigenous Peoples in International Law, Second Edition, Oxford University Press, p. 226.

<sup>540</sup> Anaya, S., J., Indigenous Peoples in International Law, *op cit* p. 226

<sup>541</sup> According to Article 7 of the Standing Orders of the International Labour Conference (Standing Orders) the ILCCR is established by the General Conference of Representatives of the Members.

<sup>542</sup> Anaya, S., J., Indigenous Peoples in International Law, *op cit*, p. 226.

<sup>543</sup> **ILO Constitution**, *op cit*, Articles 3 and 23.

<sup>544</sup> **ILO Constitution**, *op cit*, Article 22

<sup>545</sup> International Labour Organisation (2009) Indigenous and Tribal Peoples’ Rights in Practice, A guide to ILO Convention No. 169, *op cit*, p.179.

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<sup>546</sup> **ILO Constitution**, *op cit*, Article 23.

<sup>547</sup> **ILO Constitution**, *op cit*, Article 24.

<sup>548</sup> Available at <http://pro169.org/res/materials/en/convention169/Report%20form%20169.pdf>

<sup>549</sup> For a list of requirements article by article, see the Report Form at <http://pro169.org/res/materials/en/convention169/Report%20form%20169.pdf>

<sup>550</sup> A guide to ILO Convention No. 169 *op cit* p.178.

<sup>551</sup> A guide to ILO Convention No. 169 *op cit* p.179.

<sup>552</sup> Anaya, S., J., Indigenous Peoples in International Law, *op cit* p.250.

<sup>553</sup> **ILO Constitution**, *op cit*, Article 24.

<sup>554</sup> Adopted by the Governing Body at its 57th Session (8 April 1932), modified at its 82nd Session (5 February 1938), 212th Session (7 March 1980), and 291st Session (18 November 2004) available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/meetingdocument/wcm\\_041899.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcm_041899.pdf)

<sup>555</sup> Handbook for ILO tripartite constituents Understanding the Indigenous and Tribal People's Convention 1989 (No. 169) (2013) *op cit* p. 9.

<sup>556</sup> See the case of the Sami Parliament's complaint against the government of Norway in relation to legislation that affected the recognition of collective lands. A guide to ILO Convention No. 169, *op cit* p.180.

<sup>557</sup> Article 1 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization, *op cit*.

<sup>558</sup> According to the criteria set out in Article 2 of the Standing Orders.

<sup>559</sup> Article 3 of the Standing Orders.

<sup>560</sup> **ILO Constitution**, *op cit*, Article 26(5).

<sup>561</sup> **ILO Constitution**, *op cit*, Article 26(1).

<sup>562</sup> **ILO Constitution**, *op cit*, Article 26(4).

<sup>563</sup> Anaya, S., J., Indigenous Peoples in International Law, *op cit* p 249; See also **ILO Constitution**, Article 27.

<sup>564</sup> **ILO Constitution**, *op cit*, Articles 28-29.

<sup>565</sup> **ILO Constitution**, *op cit*, Article 29(2).

<sup>566</sup> **ILO Constitution**, *op cit*, Articles 30-31.

<sup>567</sup> **ILO Constitution**, *op cit*, Article 33.

<sup>568</sup> Including The Convention on Wetlands; the World Heritage Convention; the Convention on International Trade in Endangered Species of Wild Fauna and Flora; the Convention on Migratory Species and the International Treaty on Plant Genetic Resources for Food and Agriculture.

<sup>569</sup> Article 1 of the **Convention on Biological Diversity** states its objective as being: "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources."

<sup>570</sup> **CBD COP 2 Decision II/17 Annex** available at <http://www.cbd.int/decision/cop/?id=7090>

<sup>571</sup> **CBD COP 2 Decision II/17 Annex**, *op cit*.

<sup>572</sup> **CBD COP 5 Decision V/19** available at <http://www.cbd.int/decision/cop/?id=7161> endorsed the format contained in annex I of the note by the Executive Secretary on national reporting (UNEP/CBD/COP/5/13/Add.2) as the recommended format.

<sup>573</sup> **CBD COP 6 Decision VI/25 Annexes I and II** available at <http://www.cbd.int/decision/cop/?id=7161>

<sup>574</sup> **CBD COP 7 Decision VII/25** available at <http://www.cbd.int/decision/cop/?id=7762> endorsed the format for the third national report, as contained in the annex to the note by the Executive Secretary on guidelines for the third national report (UNEP/CBD/COP/7/17/Add.2).

<sup>575</sup> **CBD COP 8 Decision VIII/14** available at <http://www.cbd.int/decision/cop/?id=11028> Welcomed the draft guidelines for the fourth national report (UNEP/CBD/COP/8/24, annex) as a significant improvement over the guidelines for the third national report and requested the Executive Secretary to further improve the guidelines in line with the guidance provided by the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention and to make the finalized guidelines available to Parties by the end of July 2006.

<sup>576</sup> **CBD COP 10 Decision X/10 and Annex** available at <http://www.cbd.int/decision/cop/?id=12276>

<sup>577</sup> Parties are expected to report on national implementation of the Convention in narrative form, where appropriate, structured as substantive and concise answers to a number of key questions. In addition, Parties are encouraged to complement narrative reporting with any tables, charts, figures, graphics and indicators that might help support or better communicate the information presented. A resource manual with detailed suggestions for each part of the report will include some suggested tables or matrices, charts, figures, and indicators for use by Parties. Parties are also invited to contact the Secretariat for any clarification on the use of the guidelines or the preparation of the fifth national report. COP 10 Decision X/10 *op cit* Annex paragraphs 6 and 8.

<sup>578</sup> For the full guidance see **CBD COP 10 Decision X/10 Annex Part II**.

<sup>579</sup> For the full guidance see **CBD COP 10 Decision X/10 Annex Part II**.

<sup>580</sup> For the full guidance see **CBD COP 10 Decision X/10 Annex Part II**.

<sup>581</sup> **CBD COP 10 Decision X/10 op cit Annex paragraph 9**.

<sup>582</sup> **CBD COP 10 Decision X/10 op cit Annex paragraph 9**.

<sup>583</sup> **CITES**, *op cit*, Article 4(3).

<sup>584</sup> **CITES**, *op cit*, Article 19.

<sup>585</sup> Article 2 of **CITES** states that Appendix II contains "(a) All species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control."

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<sup>586</sup> **CITES** Article 4(3).

<sup>587</sup> **CITES**, *op cit*, Article 12, section 1.

<sup>588</sup> TRAFFIC is an international wildlife trade monitoring network that was founded in 1976 as a joint programme between the WWF and IUCN-The World Conservation Union. It works cooperatively with the CITES Secretariat in implementing the Convention, its mission being to ensure that wildlife trade does not threaten nature conservation see [http://www.traffic.org/about/what\\_is.html](http://www.traffic.org/about/what_is.html)

<sup>589</sup> Reeves, R., (2002), Policing International Trade in Endangered Species: the CITES Treaty and Compliance, Earthscan Publications, London, p.69.

<sup>590</sup> **CITES**, Resolution Conf. 11.17.

<sup>591</sup> **CITES**, *op cit*, Article 8, sections 6 and 7.

<sup>592</sup> **CITES**, *op cit*, Article 8, section 7.

<sup>593</sup> **CITES**, *op cit*, Article 8, section 7(b).

<sup>594</sup> See guidelines for the preparation and submission of annual reports which were endorsed during **CITES** COP 11 by Resolution Conf. 11.17 Amended at the 12th, 13th and 14th meetings of the Conference of the Parties, and corrected by the Secretariat following the 15th meeting. <http://www.cites.org/eng/res/11/11-17R14C15.php> see the Guidelines for the preparation and submission of CITES annual reports available at <http://www.cites.org/eng/notif/2011/E019A.pdf>

<sup>595</sup> Biennial report format as provided by Notification No. 2005/035, endorsed by the COP in Resolution Conf. 11.17 available at <http://www.cites.org/eng/res/11/11-17R14C15.php>

<sup>596</sup> **CITES** COP 14 Resolution Conf. 14.3 CITES Compliance Procedures, Annex, paragraph 15 available at <http://www.cites.org/eng/res/14/14-03C15.php>

<sup>597</sup> **CITES** COP 14 Resolution Conf. 14.3 CITES Compliance Procedures, *op cit* Annex, paragraph 18.

<sup>598</sup> **CITES**, *op cit*, Article 13.

<sup>599</sup> <http://www.cites.org/eng/res/11/11-03R15.php> (amended at the 13, 14 and 15 COPs).

<sup>600</sup> UNEP, Compliance Mechanisms Under Selected Multilateral Environmental Agreements, *op cit*, p.41.

<sup>601</sup> Reeves, R., Policing International Trade in Endangered Species: the CITES Treaty and Compliance, Earthscan Publications, London, 2002, p.93 also see **CITES** COP 14 Resolution Conf. 14.3 CITES Compliance Procedures, *op cit* Annex paragraphs 29, 30.

<sup>603</sup> **FAO**, Submission to the UNFCCC Secretariat on issues identified in decision 1/CP.16, paragraph 72 and appendix II, in answer to the invitation of paragraph 5 of draft conclusions UNFCCC/SBSTA/2011/L.25 [2012]: "Direct drivers of deforestation include conversion to agriculture, infrastructure expansion and mining, among others. Direct drivers of forest degradation include i.e. long-term overharvesting of forest products (including unsustainable fuel wood harvest), poor harvesting practices and overgrazing. Underlying drivers include range of political, cultural and socio-economic factors, including unsound policies, weak governance and lack of law enforcement, landlessness and unclear allocation of rights, rural poverty, lack of investment and financial resources, population growth and migration, and civil conflict."

<sup>604</sup> Our understanding of a participatory discussion equates to the full and effective participation of relevant stakeholders, as analysed in the section on UNFCCC Safeguard (d).