

A photograph of a lush tropical forest with various palm trees and dense green foliage. The top portion of the image is partially obscured by a semi-transparent dark green overlay containing text.

Climate
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Booklet

ART TREES Safeguard B

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In doing so, this project seeks to strengthen the high-integrity carbon market for Nature-Based Solutions (NBS) to climate change that provide economic, social and environmental benefits for the countries and local communities producing the carbon credits.

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Objective and structure of this document

The objective of this document is to provide a clear understanding of the scope and coverage of this safeguard and what Indigenous Peoples and Local Communities (IP and LCs) should expect from national and subnational government led processes when demonstrating conformance with TREES indicators under this safeguard.

The analysis contained therein is based on the authors' practical experience and international best practice. Direct quotations from TREES will be appropriately cited and quoted in italic.

This booklet is divided into two sections and associated questions:

- **What is TREES Safeguard 'B' and how does it protect IP and LCs?** This section will explain the scope and coverage of this safeguard, and how it recognizes and protects the rights of IP and LCs.
- **What to expect when demonstrating conformance with TREES safeguard 'B'?** This section will explain what IP and LCs should expect from national and sub-national governments when demonstrating conformance with TREES indicators under this safeguard.

1. What is TREES Safeguard ‘B’ and how does it protect IP and LCs?

As a reminder, TREES Safeguard B, and in alignment with Cancun Safeguard B, is *“Transparent and effective national forest governance structures, taking into account national legislation and sovereignty”*¹. This Safeguard has 4 themes, and we examine their scope below:

- THEME 2.1 Respect, protect, and fulfil the right of access to information
- THEME 2.2 Promote transparency and prevention of corruption, including the promotion of anti-corruption measures
- THEME 2.3 Respect, protect, and fulfil land tenure rights
- THEME 2.4 Respect, protect, and fulfil access to justice

THEME 2.1 Respect, protect, and fulfil the right of access to information

To address and respect this theme, national and subnational governments are expected to ensure that all stakeholders, including IP and LCs can access all information concerning the design and implementation of the REDD+ actions.

This theme is a direct reflection of article 19 of the Universal Declaration of Human Rights (UDHR). The UN Human Rights Committee interpreted the scope and limits of the right to information, stating that Article 19 ensures the right to access information held by public bodies and requires that states proactively disseminate information in the public interest and ensure that access is “easy, prompt, effective and practical.”²

¹<https://www.artredd.org/wp-content/uploads/2021/12/TREES-ESG-Safeguards-Guidance-Document-Aug-2021.pdf>

²UN Human Rights Committee, General Comment No. 34 Article 19: Freedoms of opinion and expression, (2011) <http://www.refworld.org/pdfid/4ed34b562.pdf>.

IP and LCs right to access to information is therefore expected to be recognized under this safeguard theme, as information about REDD+ actions should be made publicly and accessible to all stakeholders, in a way that they are able to understand how REDD+ actions will impact them.

THEME 2.2 Promote transparency and prevention of corruption, including the promotion of anti-corruption measures

To address and respect this theme, national and sub national governments are expected to promote transparency throughout the implementation of REDD+ actions including through the promotion of specific anti-corruption measures that include stakeholder participation³. This theme aligns with the Sustainable Development Goals (SDG), specifically SDG 16, which indicates that effective anti-corruption measures are an enabler of the 2030 Agenda and promote achievement of the SDGs⁴.

Some interpretations of this theme to also call for fair and transparent revenue distribution with regards to REDD+ results-based payments⁵. Revenue distribution is key to creating the necessary incentives to change deforestation and forest degradation behaviours and thus reduce carbon emissions, while also ensuring any incentives received from improved forest degradation behaviours are distributed fairly and equitably among the stewards of the forests, which in many cases are IP and LCs. A well-designed revenue distribution plan or mechanism can also support the effectiveness of forest management and increase the efficiency of REDD+ programs⁶.

This theme upholds IP and LC rights by ensuring accountability for transparent REDD+ implementation and actively combatting corruption, which disproportionately affects vulnerable and typically marginalized groups, including IP and LCs⁷.

³Rey, D., Roberts, J., Korwin, S., Rivera, L., and Ribet, U. (2013) A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards. ClientEarth, London, United Kingdom

⁴<https://www.ohchr.org/en/good-governance/corruption-and-human-rights>

⁵Rey, D., Roberts, J., Korwin, S., Rivera, L., and Ribet, U. (2013) A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards. ClientEarth, London, United Kingdom

⁶<https://www.cifor.org/knowledge/publication/4258/>

⁷Ibid

THEME 2.3 Respect, protect, and fulfil land tenure rights

To address and respect this theme, national and sub national governments are expected to recognize and uphold land tenure rights when designing and implementing REDD+ actions, in accordance with the applicable international law. This includes recognition that indigenous peoples have collective rights to own, use, and develop and control the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired, including lands and territories for which they do not yet possess title. REDD+ actions that may undermine or inadvertently weaken such rights are expected to be avoided⁸ (See Box 1).

Box 1: Guidance over involuntary relocation – based on international best practices

IP and LCs should consider that involuntary relocation refers to both ‘physical displacement’ (relocation or loss of shelter) and ‘economic displacement’ (loss of assets or access to assets that lead to loss of income sources or other means of livelihood)⁹. Relocation is considered involuntary when affected persons or communities – such as IP and LCs - do not have the right to refuse land acquisition or restrictions on land use that results in physical or economic displacement. This displacement can be because of either: 1) lawful expropriation or temporary or permanent restrictions on land use, and 2) negotiated settlements in which the land buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail¹⁰.

⁸Article 42 of UNDRIP, which provides that the “United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.” See UN Declaration on the Rights of Indigenous Peoples, available at: <http://undesadspd.org/IndigenousPeoples/Declarationon-theRightsofIndigenousPeoples.aspx>

⁹<https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf>

¹⁰Ibid

THEME 2.4 Respect, protect, and fulfil access to justice

To address and respect this theme, national and sub national governments are expected to provide access to judicial or administrative mechanisms that can provide effective remedy for infringements of rights , especially for IP and LCs in relation to the design and implementation of REDD+ actions¹¹. It is also important to highlight that upholding this safeguard theme also means providing avenues to seek justice which are accessible to all and not cost-prohibitive, as per applicable international human rights law. The Declaration of the High-level Meeting on the Rule of Law committed Member States to take all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid¹². This includes at a minimum, publicly promoting the relevant dispute mechanism institution or source, how to access it and what the procedure looks like.

This theme upholds IP and LC rights by recognizing and protecting their human right to access justice in relation to the design and implementation of REDD+ actions.

¹¹Rey, D., Roberts, J., Korwin, S., Rivera, L., and Ribet, U. (2013) A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards. ClientEarth, London, United Kingdom

¹²<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>

2. What to expect when demonstrating conformance with TREES safeguard ‘B’?

This section will explain what IP and LCs should expect from national and sub-national governments when demonstrating conformance with TREES indicators under this safeguard. Please note the TREES Safeguards Guidance document provides a prescriptive list of the validation and verification body’s (VVB) requirements for the provision of information on each safeguard¹³. This section is instead intended to provide a clear understanding for IP and LCs of the types of information they should expect to see from national and subnational government led processes when demonstrating conformance with TREES indicators under this safeguard, and which is most relevant to them.

As a reminder, each theme TREES has three types of indicators that national and subnational governments would need to demonstrate conformance with. The guidance document from TREES states the following in relation to each type of indicator:

- **Structural Indicators:** *demonstrate that relevant governance arrangements (e.g., policies, laws, and institutional arrangements) are in place in the country or applicable jurisdiction(s) to ensure that design and implementation of REDD+ actions is done in line with relevant safeguards theme. These arrangements may be part of the national or subnational legal framework or may be REDD+ specific arrangements.*¹⁴
- **Process Indicators:** *demonstrate that appropriate processes, procedures or mechanisms are in place to enact and enforce the arrangements outlined in the Structural indicator.*¹⁵
- **Outcome Indicators:** *demonstrate implementation outcomes for each theme are being monitored. For the outcome indicator for all themes, Participants [national and sub national governments] will need to identify and describe the selected monitoring parameters including how a successful outcome is defined, monitoring methods to be used and a summary of collected data. If the data analysis does not indicate a successful outcome, a description of how the governance arrangements or supporting processes, procedures or mechanisms (structure or process indicators) will be modified should be included.*¹⁶

¹³<https://www.artredd.org/wp-content/uploads/2022/01/TREES-Val-and-Ver-Standard-v2-Dec-2021.pdf>

¹⁴<https://www.artredd.org/wp-content/uploads/2021/12/TREES-ESG-Safeguards-Guidance-Document-Aug-2021.pdf>

¹⁵ibid

¹⁶ibid

THEME 2.1 Respect, protect, and fulfil the right of access to information

Based on international best practices, IP and LCs should expect to see the following relevant information from national and subnational government led processes when demonstrating conformance with each of TREES indicators under this theme:

Structural indicator

- A full list of the legal, policy, and/or regulatory arrangements in place, and associated procedures related in whole or in part to access to information, which apply to the design and implementation of REDD+ actions.
- A full list of ratified relevant international treaties, conventions, and agreements relevant to this theme (i.e. related to access to information).
- Description of how the identified the legal, policy, and/or regulatory arrangements in place are aligned with relevant and ratified international conventions and agreements
- Description of how the identified legal, policy, and/or regulatory arrangements apply to the design and implementation of REDD+ actions, with a view of guaranteeing that stakeholders have access to information.

Process indicator

- A full breakdown of the relevant public institutions in place for the REDD+ actions and associated mandates relevant to this theme.
- Description of any processes and procedures executed with regards to this theme, in particular any activities/ processes undertaken to provide relevant access to information to IP and LCs.

Outcome indicator

- Description and evidence of how the REDD+ actions have been designed and implemented in correlation to guaranteeing stakeholders' right of access to information, including how the right of access to information has been specifically recognized, protected and promoted for IP and LCs.

THEME 2.2 Promote transparency and prevention of corruption, including the promotion of anti-corruption measures

Based on international best practices, IP and LCs should expect to see the following relevant information from national and subnational government led processes when demonstrating conformance with each of TREES indicators under this theme:

Structural indicator

- Full list of the of the legal, policy, and/or regulatory arrangements in place related to transparency, anticorruption measures, and the fair, transparent, and accountable distribution of monetary and non-monetary REDD+ revenues.
- List of ratified relevant international treaties, conventions, and agreements relevant to this theme (e.g. related to transparency, anticorruption, etc.)
- Description of how the identified the legal, policy, and/or regulatory arrangements in place are aligned with relevant and ratified international conventions and agreements
- Description of how the identified legal, policy, and/or regulatory arrangements apply to the design and implementation of REDD+ actions, with a view of guaranteeing transparency, anticorruption, and the fair, transparent, and accountable distribution of monetary and non-monetary REDD+ revenues.

Process indicator

- A full breakdown of the relevant public institutions in place for the REDD+ actions and associated mandates relevant to this theme
- Description of any processes and procedures executed with regards to this theme. For instance, the design and adoption of a REDD+ benefit sharing plan.

Outcome indicator

- Description and evidence of how the REDD+ actions have been designed and implemented in a transparent and accountable manner, including how the distribution of REDD+ revenues was done in a fair manner for IP and LCs.

THEME 2.3 Respect, protect, and fulfil land tenure rights

Based on international best practices, IP and LCs should expect to see the following relevant information from national and subnational government led processes when demonstrating conformance with each of TREES indicators under this theme:

Structural indicator

- Full list of the of the legal, policy, and/or regulatory arrangements in place related to the recognition and protection of land tenure rights, including for conducting Free Prior Informed Consent (FPIC) processes of any IP and LCs (or equivalent) concerned.
- List of ratified relevant international treaties, conventions, and agreements relevant to this theme (i.e. related to land tenure rights).
- Description of how the identified the legal, policy, and/or regulatory arrangements in place are aligned with relevant and ratified international conventions and agreements.
- Description of how the identified legal, policy, and/or regulatory arrangements apply to the design and implementation of REDD+ actions, with a view of guaranteeing the recognition and protection of land tenure rights.

Process indicator

- A full breakdown of the relevant public institutions in place for the REDD+ actions and associated mandates relevant to this theme
- Description of any processes and procedures executed with regards to this theme, in particular any activities/ processes undertaken to recognize land tenure rights of IP and LCs.

Outcome indicator

- Description and evidence of how the REDD+ actions have been designed and implemented in correlation to guaranteeing stakeholders' land tenure rights, including how this right has been specifically recognized, protected and promoted for IP and LCs. For instance, outcomes of FPIC processes.

THEME 2.4 Respect, protect, and fulfil access to justice

Based on international best practices, IP and LCs should expect to see the following relevant information from national and subnational government led processes when demonstrating conformance with each of TREES indicators under this theme:

Structural indicator

- Full list of the of the legal, policy, and/or regulatory arrangements in place related to guaranteeing non-discriminatory and non-cost-prohibitive access to dispute resolution mechanisms.
- List of ratified relevant international treaties, conventions, and agreements relevant to this theme (i.e. human right access to justice).
- Description of how the identified the legal, policy, and/or regulatory arrangements in place are aligned with relevant and ratified international conventions and agreements.
- Description of how the identified legal, policy, and/or regulatory arrangements apply to the design and implementation of REDD+ actions, with a view of guaranteeing non-discriminatory and non-cost prohibitive access to dispute resolution mechanisms.

Process indicator

- A full breakdown of the relevant public institutions in place for the REDD+ actions and associated mandates relevant to this theme
- Description of any processes and procedures executed with regards to this theme. For instance, the adoption of standard operating procedures for the dispute resolution mechanisms, capacity building/awareness sessions to promote access to these mechanisms, etc.

Outcome indicator

- Description and evidence of how the REDD+ actions have been designed and implemented in correlation to guaranteeing stakeholders' access to justice right, including how this right has been specifically recognized, protected and promoted for IP and LCs. For instance, the instances IP and LCs have been able to access the relevant dispute resolution mechanisms, and the outcomes of such processes.