

A vibrant tropical forest scene with various palm trees and lush green foliage under a bright sky. The top portion of the image is partially obscured by a semi-transparent grey box containing text.

Climate
Law & Policy
Global Impact Partner

Booklet

ART TREES Safeguard D

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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 IP and LCs should expect from national and subnational government led processes ('Participants') 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 'D' 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 'D'?** 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 ‘D’ and how does it protect IPLCs?

As a reminder, TREES Safeguard D and in alignment with Cancun safeguard D calls for “*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 decision 1/CP.16*”¹. This safeguard has two themes and their scope will be examined below:

- THEME 4.1 Respect, protect, and fulfil the right of all relevant stakeholders to participate fully and effectively in the design and implementation of REDD+ actions
- THEME 4.2 Promote adequate participatory procedures for the meaningful participation of IPLCs, or equivalent

THEME 4.1 Respect, protect, and fulfil the right of all relevant stakeholders to participate fully and effectively in the design and implementation of REDD+ actions

To address and respect this theme, national and sub national governments are expected to guarantee the full and effective participation of stakeholders in the design and implementation of REDD+ actions. This theme upholds IP and LC rights by recognizing and protecting their human right to participate in decision making processes.

In international law ensuring ‘full and effective participation’ requires the recognition and implementation of a number of procedural rights. These include²:

1. providing relevant information to stakeholders in a timely (early enough for the public to have the opportunity to respond and participate in the decision-making process) and culturally appropriate manner;

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

²Rey, 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

2. ensuring stakeholder participation in decision making processes at local, regional, and national levels, while respecting traditional decision making and governance systems in indigenous lands and territories; and
3. providing stakeholders with access to dispute resolution mechanisms in connection to participatory processes. This 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.

Additionally, there are different understandings of the scope of ‘stakeholder participation’ (point 2 above), which can range from 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 decision 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).³

The UN REDD+ programme also defines full and effective participation as “meaningful influence of all relevant rights holder and stakeholder groups who want to be involved throughout the process, and includes consultation and free, prior and informed consent”⁴.

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

To address and respect this theme, national and sub national governments are expected to recognize that in its broadest sense ‘relevant stakeholders’ is understood to include all members of the public currently affected by the REDD+ actions (as per Theme 4.1). However, the language of this safeguard theme draws special attention to the status of indigenous peoples and local communities, and that they are expected to guarantee their meaningful participation in the design and implementation of REDD+ actions.

³Daviet, F., (2011), A Draft Framework for Sharing Approaches for Better Multi-Stakeholder Participation Practices, FCPF-UN-REDD, p. 6.

⁴<https://www.un-redd.org/glossary/full-and-effective-participation>

In international law the meaningful participation of IP and LCs encompasses a participation that is timely and culturally appropriate, while respecting traditional decision-making and governance systems in indigenous lands and territories⁵ ⁶. 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 (Box 1).

This safeguard recognizes and protects IP and LCs because it directly and clearly requires national and sub national governments guarantee the meaningful participation of IP and LCs in the design and implementation of REDD+ actions.

Box 1: FPIC application in accordance with international law

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;⁷
- in relation to the removal of cultural, intellectual, religious or spiritual property from indigenous territory;⁸
- prior to the adoption of legislative or administrative measures that may affect indigenous peoples;⁹
- prior to the storage or disposal of hazardous materials on the land or territory of indigenous peoples;¹⁰
- prior to the authorisation of projects for the extraction of natural resources from the territory of indigenous peoples;¹¹ and
- prior to accessing genetic resources or traditional knowledge associated with them.¹²

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,

⁶Proforest, 2023, Respecting Rights of Indigenous Peoples and Local Communities in Landscape Initiatives A Guide for Practitioners on Minimum Safeguards and Evolving Best Practices, accessible at: https://www.international-climate-initiative.com/fileadmin/iki/Dokumentation/Publikationen/Projekte/20_III_087/IPLCs_in_Landscape_Initiatives.pdf

⁷ILO Convention No. 169, Article 16 and 10, UNDRIP, Article 10.

⁸UNDRIP, Article 11

⁹UNDRIP, Article 19

¹⁰UNDRIP, Article 29

¹¹UNDRIP, Article 32

¹²Nagoya Protocol, Articles 6 and 7.

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

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, under 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 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-Documents-Aug-2021.pdf>

¹⁵ibid

¹⁶ibid

THEME 4.1 Respect, protect, and fulfil the right of all relevant stakeholders to participate fully and effectively in the design and implementation of REDD+ actions

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 the full and effective participation of stakeholders.
- A full list of ratified relevant international treaties, conventions, and agreements relevant to this theme.
- 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 full and effective participation of stakeholders in the context of the design and implementation of REDD+ actions.

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 implement the full and effective participation of stakeholders in REDD+ design and implementation. For instance, standard operating procedures for conducting stakeholder consultations, adoption of stakeholder engagement plans, etc.

Outcome indicator

- Description and evidence of how the REDD+ actions have been designed and implemented in correlation to guaranteeing stakeholders' right to full and effective participation.

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

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 the meaningful participation of IP and LCs.
- A full list of ratified relevant international treaties, conventions, and agreements relevant to this theme.
- 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 meaningful participation of IP and LCs in the context of the design and implementation of REDD+ actions.

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 implement the meaningful participation of IP and LCs in REDD+ design and implementation. For instance, standard operating procedures for conducting FPIC processes.

Outcome indicator

- Description and evidence of how the REDD+ actions have been designed and implemented in correlation to guaranteeing meaningful participation of IP and LCs in REDD+ design and implementation.