

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
Law & Policy
Global Impact Partner

Booklet

ART TREES
Safeguard E

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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 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 'E' 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 'E'?** 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 ‘E’ and how does it protect IPLCs?

As a reminder, TREES safeguard E and in alignment with Cancun safeguard E states, *“That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of decision 1/CP.16 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”¹*.

Safeguard E has three themes and their scope will be examined below:

- THEME 5.1 Non-conversion of natural forests.
- THEME 5.2 Protect natural forests, biological diversity, and ecosystem services.
- THEME 5.3 Enhancement of social and environmental benefits.

THEME 5.1 Non-conversion of natural forests

To address and respect this theme, national and sub national governments are expected to ensure REDD+ activities must not be used for the conversion of natural forests, which has particular implications for enhancement of forest carbon stocks through the use of plantations².

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.³ 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.⁴

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.

³FAO, (2023) Global Forest Resources Assessment

⁴Global Witness, 2010, Understanding REDD+

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.⁵

IP and LCs relevant rights and interests are therefore expected to be recognized under this safeguards theme, because national and sub national governments are expected to define and protect natural forests from being reconverted by REDD+ actions, granting further protections to IP and LC land tenure rights.

THEME 5.2 Protect natural forests, biological diversity, and ecosystem services.

To address and respect this theme, national and sub national governments are expected to protect and conserve natural forest areas, biodiversity and ecosystem services which could be supported by REDD+ actions. The Convention on Biological Diversity (CBD) defines biological diversity as “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.”⁶ This definition means that biological diversity concerns not only living organisms but also ecosystem processes, habitats, hydrological cycles, processes of erosion and sedimentation, landscapes, etc.⁷

⁵Schmidt, L., Phiapalath, P., McBreen, 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.

⁶<https://www.cbd.int>

⁷The Convention on Biological Diversity defines a ‘habitat’ as the place or type of site where an organism or population naturally occurs. “Critical natural habitat” _refers to habitats that are not man-made and that fulfil a critical role for an organism or a population that in the absence or disappearance of that habitat might be severely affected or become extinct. Specific knowledge about a habitat (either common knowledge, traditional insights, or the result of formal scientific research) is always the basis for identifying critical natural habitats. Often, but by no means always, this has resulted in assigning a protected status to such a critical habitat. The principle refers to legal protection at all levels of governance. The absence of legal protection alone cannot be used to conclude that a habitat is not to be considered a critical natural habitat. Reference is made to knowledge about the importance and intrinsic value of a habitat. The precautionary principle prevails where such knowledge is inadequate or inconclusive.

Critical natural habitats, their location, characteristics and critical value may be identified based upon their actual or proposed legal protection status, on common knowledge or traditional or indigenous knowledge, or on scientific information on their value. The legal protection refers to all levels of government, as well as international conventions and agreements like the Convention on Wetlands (Ramsar, Iran, 1971). Scientific knowledge may be in the form of peer-reviewed, published scientific research, or inventory lists prepared by authoritative sources like the UNESCO Man and the Biosphere Programme, the International Union for Conservation of Nature (IUCN) and the United Nations Environment Programme (UNEP). Large non-governmental conservation organizations like the World Wide Fund for Nature, Birdlife International, and Conservation International may also be sources of useful information.

Moreover, the Millennium Ecosystem Assessment (MEA)⁸ 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.”⁹

IP and LCs relevant rights and interests are expected to be recognized under this safeguard theme as national and sub national governments must ensure their REDD+ actions incentivise the protection of natural forests, biological diversity and ecosystem services, thus granting further protections to IP and LC’s lands, territories, and resources.

THEME 5.3 Enhancement of social and environmental benefits

To address and respect this theme, national and sub national governments are expected to use REDD+ actions to enhance the social and environmental benefits. In accordance with the language of Cancun safeguard ‘E’, enhancing social and environmental benefits requires taking into account the need for sustainable livelihoods of IP and LCs 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 Day¹⁰. In this sense, 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 forests¹¹. This is due to the relationship between forests and livelihoods, where the court acknowledged that forest conservation was necessary to ensure the livelihoods¹² as IP and LCs often depend on specific subsistence activities¹³. Examples of traditional livelihoods which depend on subsistence activities and traditional collective systems include hunting, gathering and fishing carried out in ancestral territories¹⁴.

⁸The 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.

⁹Millennium Ecosystem Assessment (2005) Ecosystems and Human Well-being: Synthesis, p. 39.

¹⁰<https://redd.unfccc.int/fact-sheets/safeguards.html>

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.

¹²IACHR, (2009) Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources, op cit, p. 64.

¹³IACHR, Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Judgment of January 31, 2001. Series C No. 79, p ar. 140(f).

¹⁴IACHR, (2009) Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources, op cit, p. 64.

IP and LCs relevant rights and interests are expected to be recognized under this safeguard theme as national and sub-national governments must ensure their REDD+ actions enhance social and environmental benefits, thus recognizing and promoting their interdependence on forests and their sustainable livelihoods.

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

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 safeguard¹⁵. 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.*¹⁶
- **Process Indicators:** *demonstrate that appropriate processes, procedures or mechanisms are in place to enact and enforce the arrangements outlined in the Structural indicator.*¹⁷

¹⁵<https://www.artredd.org/wp-content/uploads/2022/01/TREES-Val-and-Ver-Standard-v2-Dec-2021.pdf>

¹⁶<https://www.artredd.org/wp-content/uploads/2021/12/TREES-ESG-Safeguards-Guidance-Document-Aug-2021.pdf>

¹⁷ibid

- **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.*¹⁸

THEME 5.1 Non-conversion of natural forests

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 legal, policy, and/or regulatory arrangements in place, and associated procedures related in whole or in part to this theme, which apply to the design and implementation of REDD+ actions.
- 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 focus on ensuring these REDD+ actions do not lead to the conversion of natural forests.

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 identify natural forests in the context of the design and implementation of REDD+ actions.

Outcome indicator

- Description and evidence that the REDD+ actions have not led to the conversion of natural forests.

¹⁸Ibid

THEME 5.2 Protect natural forests, biological diversity, and ecosystem services

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 legal, policy, and/or regulatory arrangements in place, and associated procedures related in whole or in part to this theme, which apply to the design and implementation of REDD+ actions.
- 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 focus on ensuring these REDD+ actions protect natural forest, biological diversity and ecosystem services.

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 protect natural forests, biodiversity, and ecosystem services in the context of the design and implementation of the REDD+ actions.

Outcome indicator

- Description and evidence that the REDD+ actions have protected natural forests, biodiversity, and ecosystem services.

THEME 5.3 Enhancement of social and environmental benefits

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 legal, policy, and/or regulatory arrangements in place, and associated procedures related in whole or in part to this theme, which apply to the design and implementation of REDD+ actions.
- 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 focus on ensuring these REDD+ actions enhance social and environmental benefits.

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 identify social and environmental benefits and promote them in the context of the design and implementation of the REDD+ actions.

Outcome indicator

- Description and evidence that the REDD+ actions have led to social and environmental benefits, in particular in terms of promoting and protecting IP and LCs sustainable livelihoods.