

ART Secretariat
2451 Crystal Drive, Suite 700
Arlington, Virginia 22202

Dear ART Secretariat and Board,

As representatives of Indigenous Peoples and representatives of Local Communities across Central and South America, along with allied organizations, we welcome the opportunity to provide you with input for the periodic review of the ART TREES 2.0 standard currently underway.

The voluntary carbon market has expanded quickly and significantly across our regions both at the project and jurisdictional levels. While these developments have created important opportunities to access new channels of finance, it has also created confusion and concern for Indigenous Peoples and Local Communities in understanding their rights to program benefits as well as the risks associated with these markets, especially concerning self-governance and self-determination, land tenure, territorial and carbon rights, access to justice, and respect for human rights. In the absence of stronger national legislation and regulation in many countries in our regions¹, the standards in the voluntary carbon market need to be strong, verifiable, and robust in order to adequately respect and fulfill rights that are protected in international laws and norms.

We see a promising opportunity in ART's jurisdictional crediting program to be a driver of positive change and create an impetus to advance and strengthen tenure rights, a cornerstone for an equitable and effective jurisdictional program. Since TREES 2.0 was released in August 2021, the standard was put into practice through the issuance of credits for the first and only time, to date, in Guyana. This process produced mixed results from Indigenous communities on the ground in terms of ensuring and verifying communities' Free, Prior and Informed Consent (FPIC), and their meaningful participation in the design of the program, among other issues, while exposing the inadequacies of ART's own grievance mechanism.

Our shared concern that governments, standard bodies, and related actors are failing to uphold the distinct and differentiated rights of Indigenous Peoples as well as those of Local Communities² in carbon market programs prompted us to take action. Nine organizations

¹ See policy brief by Rights and Resources Initiative: "State of Indigenous Peoples', Local Communities', and Afro-descendant Peoples' Carbon Rights in Tropical and Subtropical Lands and Forests" https://rightsandresources.org/wp-content/uploads/Policy-Brief_Carbon-Rights-EN.pdf

² It is important to note that Indigenous Peoples' rights refer to their individual and collective rights as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. These are considered alongside the broader rights protections enshrined in ILO Convention 169; The Universal Declaration on Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Covenant on Civil and Political Rights, among others, as well as the UNFCCC outcomes including the Warsaw Framework for REDD+, Paris Agreement, and subsequent decisions; and the Kunming-Montreal Global Biodiversity Framework for Indigenous Peoples and Local Communities, who may include or also be referred to as tribal, Afro-Descendent, *quilombola*, extractivists, traditional

representing Indigenous Peoples as well as Local Communities from across our regions came together during Climate Week in New York in September 2024 to discuss these issues. We formed a working group to develop policy proposals for improving the TREES standard which we hope you will take into strong consideration as you review and update the standard.

Based on our shared experiences, we have identified the three priorities that lay the foundation for the timely, meaningful, and effective engagement of Indigenous Peoples as well as Local Communities, in the ART program. Those priorities are:

1. Ensuring early, inclusive, informed, and meaningful consultation with Indigenous Peoples and with Local Communities in the design of jurisdictional programs.
2. Ensuring full and effective participation in decision-making around program design and implementation, including in determining governance structures, fair and equitable benefit distribution plans, and transparent monitoring and reporting.
3. Ensuring stronger quality controls in assessing safeguard conformance, especially in evaluating the alignment of national policy with international standards.

For each of the priorities outlined above, we highlight in the present document a key set of recommendations for the TREES standard. As one of the more recognized jurisdictional mechanisms in the voluntary carbon market, it is our hope that your consideration and adoption of these recommendations will ensure that future ART programs effectively safeguard the rights of Indigenous Peoples and the rights of Local Communities. Doing so will allow TREES to reach its potential as the voluntary carbon market standard capable of realizing high social integrity—the failure of which, however, will continue to undermine the credibility and confidence of the market as a whole.

1. Ensuring early, inclusive, informed, and meaningful consultation with Indigenous Peoples and with Local Communities in the design of jurisdictional programs.

The Issue

A resounding concern across our geographies is the often rushed and inadequate processes by which communities are consulted on jurisdictional REDD+ programs. Consultations that can lead to consent at the appropriate scale often do not occur, but rather are limited to workshops or information-sharing sessions that do not address potential risks and impacts of REDD+ actions, the scope and scale of the REDD+ actions themselves, or what alternatives communities may wish to consider.

communities, riverine communities, or equivalent rightsholders. Henceforth in this document, for brevity, these rights will be referred to as “the rights of Indigenous Peoples and the rights of Local Communities.” Similarly, the term “Local Communities” should be considered inclusive of the rightsholders listed previously.

The absence of information and transparency limits the ability to respect the right to Free, Prior and Informed Consent, and is driven by the lack of time and resources to produce culturally adapted materials in languages that communities can understand. The lack of national and/or sub-national FPIC protocols, and the lack of recognition of FPIC rights at the national level³, leads to conflation of consultations with consent by Indigenous peoples and/or Local Communities, and confusion around who has authority to grant consent.

Consultation should be considered as the continual process by which stakeholders are adequately⁴ informed and supported to meaningfully engage in the design and implementation of a jurisdictional REDD+ program. Consultations should identify the specific current and future REDD+ activities where consent should be sought, allowing to make free, prior, and informed decisions around whether to participate, and/or sustain their participation in such programs. Consent⁵ should be considered as the specific negotiated agreements achieved for the participation, design and implementation of such programs, including the terms of participation, compensation, and monitoring, among others relevant to each affected stakeholder group (noting that achieving consent does not end with an agreement, and requires continued consultations and the consistent honoring of the terms therein).

These issues, combined with the lack of financial resources for Indigenous Peoples as well as Local Communities to retain technical and legal advising, all hinder effective engagement and consultation processes. As a result, communities lack access and information to understand the many facets of carbon market programs, associated risks and liabilities of REDD+ actions, such as how it affects their formally recognized and customary rights to land, territory, and the ecosystem services produced by these areas as a result of the direct and indirect actions of communities⁶, or how international or national safeguards apply to their specific context for adequate risk management.

Nevertheless, it is the government's obligation in J-REDD+ programs to provide for processes that allow communities to protect and defend their rights. Carbon market standards such as TREES have an important role to play in raising the expectations of governments for participating in jurisdictional programs, and this includes ensuring the quality of the consultation processes. Effective consultation processes need to solve for information asymmetries, considering each peoples' or communities' unique knowledge, needs, approaches, and timelines—all of which require time and resources that are often not accounted for in government budgets or jurisdictional programs.

³ See policy brief by Rights and Resources Initiative: "State of Indigenous Peoples', Local Communities', and Afro-descendant Peoples' Carbon Rights in Tropical and Subtropical Lands and Forests" https://rightsandresources.org/wp-content/uploads/Policy-Brief_Carbon-Rights-EN.pdf

⁴ In a manner that ensures accessibility and is culturally appropriate.

⁵ See for example FAO's "Free Prior and Informed Consent – An Indigenous Peoples' right and a good practice for local communities" <https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/>

⁶ Land rights standard [The-Land-Rights-Standard_EN.pdf](#)

There are cases of functioning FPIC and consultation protocols at the community and jurisdictional level, such as in Belize⁷ or in Peru⁸, where critical stages in regional FPIC and consultation processes are identified, such as preliminary stages during which consultation, dialogue, and/or negotiation plans are established. These plans generally should include defining who will be conducting the consultation and on what issue(s), as well as who will be consulted, at what time, the methodology and materials that will be used, and the bidirectional communications strategy that will be deployed to facilitate ongoing coordination and continued consent. In addition to specifying affected Indigenous Peoples and their relevant communities under a proposed program, consultation protocols should also clarify the identification of affected Local Communities, and could reference criteria promoted by local communities in Mesoamerica for such purposes⁹. Best practices call for FPIC and consultation frameworks that guarantee the right to withhold consent. Existing frameworks and related resources can serve as a reference for Participants seeking to ensure the full and effective participation and continued consent of Indigenous Peoples as well as of Local Communities in jurisdictional REDD+ programs.

Treatment in TREES

The TREES 2.0 standard, as written, lacks clarity and accountability from local, regional, and national government to Indigenous Peoples as well as Local Communities to ensure that communities and their respective representative organizations are meaningfully engaged and consulted early in the process. For a government to indicate their interest to participate in ART, they present a Concept Note to the ART Secretariat. The Concept Note is an important document as it is the one presenting for the first time the scope of the program, the scale, the program partners, the implementers, and the potential claims that will stem from the sale of the carbon credits.

However, there is no specific requirement to report on any consultations with affected stakeholders aside from claiming, in a simple checkbox exercise, whether a government sees their conformance with relevant safeguards, such as Safeguard D to fulfill “the full and effective participation of relevant stakeholders—in particular Indigenous Peoples and Local Communities” as being either in “conformance” or with a “plan for conformance”¹⁰. Nowhere in TREES is there a verifiable distinction made between implementing effective consultations (the process) and achieving consent (the outcome). Additionally, the outcome indicator under Theme

⁷ See the Maya of Southern Belize Free Prior and Informed Consent Protocol:

<https://drive.google.com/file/d/1YQtMKnihhq1d83civBqQrt6vybR7M19O/view>

⁸ See the Ley de Consulta Previa del Perú LEY N° 29785:

<https://consultaprevia.cultura.gob.pe/sites/default/files/pi/archivos/Ley%20N%C2%B0%2029785.pdf>

⁹ Proposed criteria for the identification of local communities, presented by members of the Mesoamerican Alliance of Peoples and Forests at UNFCCC COP29 in Baku, can be found here:

<https://redmocaf.org.mx/wp-content/uploads/2024/11/Side-event-CLVF.pdf>

¹⁰ Found under Section 12.5.4.

3.1, which requires the identification of Indigenous Peoples as well as Local Communities, should be met, at the latest, at the submission of the registration document.¹¹

Furthermore, the Concept Note is not subject to external scrutiny, and there are few means to ensure relevant stakeholders and rights holders have been informed of, or able to review and comment on the government's submission, even when their lands and territories have been included in the Concept Note, as was the case in Guyana. The mechanism by which ART announces the acceptance of a new jurisdiction's Concept Note to the ART listserv (Section 15.2) is too late and too limited (within a 30-day window) to facilitate, and face scrutiny or productive dialogue from relevant stakeholders.

We consider that ART's listserv is an insufficient way to ensure full and effective information sharing and participation of Indigenous Peoples as well as Local Communities. Indigenous Peoples as well as Local Communities, and their respective leaders, often have difficulty accessing emails in a constant and effective manner, so this mechanism does not guarantee an efficient and timely exchange of information. While ART allows stakeholders to have an opportunity to submit comments regarding a government's submissions, it does not explicitly require governments to provide stakeholders with access to draft documentation before its submission to ART. Indeed, it is unclear in the text of Section 15.2 how governments will be expected to address comments received during ART's 30-day window, which should be clarified and included in the third-party review of a Participant's subsequent submissions. The Secretariat's presumption that "*Participant information is available for public scrutiny, and demonstration to the contrary shall be incumbent on the Participant*" (Section 15.2) essentially issues Participants—i.e., national or subnational governments—a *carte blanche* to determine the level of transparency they deem appropriate, while providing little to no accountability.

The lack of clear requirements for transparency and consultation in the early stages of programs, especially in the form of the TREES Concept Note, limits the ability of stakeholders to provide timely and meaningful inputs to inform the development of the documents that will be submitted. The lack of requirements for external scrutiny of the Concept Note further limits accountability at this crucial stage in the design of ART programs.

Our Recommended Revisions to the Standard

Based on these observations, we recommend the incorporation of three new requirements for stakeholder consultation, transparency, and accountability at the initial stages of program design and implementation. Together, these three measures, by enhancing transparency and inclusiveness in the early stages of the ART Program design, will better ensure relevant stakeholders have sufficient time to review and provide meaningful inputs and therefore

¹¹ For an example of a best practice, the FCPF requires jurisdictions to conduct a detailed land tenure assessment, identifying right holders, customary rights, and tenure types, while ensuring that Indigenous Peoples' rights are legally recognized and protected through documented legal frameworks and policies.

achieve early conformance with the outcome indicator under Theme 2.1¹² of the standard. It is in ART's own interest to increase the transparency and opportunities for public consultations at an early stage, as this will minimize the reputational risks of the program and standard, while increasing program effectiveness and equitable implementation.

1.1 New requirements regarding early stakeholder consultation

We recommended the incorporation of more robust requirements in the Concept Note concerning stakeholder consultation in the initial submission of a Participant's documents to ART, which should include disclosures on all Safeguard C and D Themes¹³. Conformance with the outcome indicator under Theme 3.1, referring to adequate identification of relevant stakeholders, should be met with regards to the identification of affected Indigenous Peoples - including Peoples in Voluntary Isolation and Initial Contact - as well as Local Communities, and should be a prerequisite for continuing with program activities. Indicators for Theme 4.1 and Theme 4.2 should clearly refer to any existing jurisdictional FPIC protocol, where applicable, or mandate the existence of a stakeholder engagement plan, either of which should provide evidence by which FPIC can be granted at the appropriate levels and authority. Meanwhile, indicators for Theme 4.1 should require reporting on available budgets, with adequate funds being allocated for consultation activities, the provision of independent legal counsel of communities' own choosing, and resources for communities' own internal governance processes.

All such requirements should be elaborated in a guidance document defining the principles of an effective stakeholder engagement plan and process to achieve FPIC, including further references to best practices that Participants should adhere to, the preparation of which should be designed in consultation with any interested Indigenous Peoples and/or Local Community representative organizations. In updating these new requirements, TREES should draw from established frameworks and similar guidelines and requirements that are already in place with other international organizations. For example, the World Bank's ESS10 mandates the development and implementation of a stakeholder engagement plan, which must be disclosed as early as possible and before project appraisal.¹⁴ Similarly, the GCF requires the

¹² TREES Theme 2.1 covers the requirement to "Respect, protect, and fulfill the right of access to information."

¹³ Cancun Safeguard C themes under TREES include Theme 3.1 to "Identify indigenous peoples and local communities, or equivalent," Theme 3.2 to "Respect and protect traditional knowledge," and Theme 3.3 to "Respect, protect, and fulfill rights of indigenous peoples and/or local communities, or equivalent"; Cancun Safeguard D themes under TREES include Theme 4.1 to "Respect, protect, and fulfill the right of all relevant stakeholders to participate fully and effectively in the design and implementation of REDD+ actions" and Theme 4.2 to "Promote adequate participatory procedures for the meaningful participation of indigenous peoples and local communities, or equivalent."

¹⁴See the World Bank's Environmental & Social Framework for IPF Operations "ESS10: Stakeholder Engagement and Information Disclosure"

<https://documents1.worldbank.org/curated/en/476161530217390609/ESF-Guidance-Note-10-Stakeholder-Engagement-and-Information-Disclosure-English.pdf>

establishment of a stakeholder engagement process and provides guidelines as well¹⁵. The IFC also requires a stakeholder engagement plan.¹⁶ Meanwhile the UN-REDD Programme and FCPT's FPIC Guidelines¹⁷ as well as those of RECOFTC y GIZ¹⁸ provide a comprehensive guide to building a consultation process that can lead to consent.

1.2 New requirements for public consultations procedures by ART Participants

We recommend the incorporation of a new requirement that mandates that all relevant documents (such as the Concept Note, Registration Document, and Monitoring Reports) be made available in national and, as applicable and relevant, Indigenous Peoples' or local languages, for public comments by Participants for a period of at least 60 days prior to submission to ART, as a way to increase access to information to Indigenous Peoples as well as Local Communities, including their representative institutions, communities, and community members. Participants should be required to proactively communicate with Indigenous peoples as well as Local Communities, through their representative organizations, about the publication and dissemination of the aforementioned relevant documents. This can be done in coordination with the relevant ministries in the country.

Doing so prior to the submission of the Concept Note is particularly important given that there are no means of verification or sufficient supporting evidence provided for ensuring compliance to TREES indicators at this initial stage, but should nevertheless be the responsibility of ART to ensure their program is transparent and accessible. Reporting on this requirement in the Concept Note should be included in new mandated disclosures on Safeguard B, Theme 2.1¹⁹, that reflect at a minimum where and how stakeholders have accessed the draft submission and the ways by which that access was communicated to stakeholders prior to being made public. Reporting on this Theme should cross reference modalities identified by Indigenous Peoples, as well as Local Communities, in any existing FPIC protocol relating to how they prefer to receive access to public notices. Such

¹⁵ See the Green Climate Fund's "Sustainability Guidance Note: Designing and ensuring meaningful stakeholder engagement on GCF-financed activities"

<https://www.greenclimate.fund/sites/default/files/document/sustainability-guidance-stakeholder-engagement-may2022.pdf> and "Operational guidelines: Indigenous Peoples Policy"

<https://www.greenclimate.fund/sites/default/files/document/ipp-operational-guidelines.pdf>

¹⁶ See Performance Standards 1 (Risk Management) and 7 (Indigenous Peoples) and resources on stakeholder engagement such as <https://www.ifc.org/en/insights-reports/2000/publications-handbook-stakeholderengagement--wci--1319577185063>

¹⁷ See the UNREDD and FCPF's "Guidelines on Stakeholder Engagement in REDD+ Readiness With a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities"

[https://www.forestcarbonpartnership.org/system/files/documents/Guidelines%20on%20Stakeholder%20Engagement%20April%2020,%202012%20\(revision%20of%20March%2025th%20version\).pdf](https://www.forestcarbonpartnership.org/system/files/documents/Guidelines%20on%20Stakeholder%20Engagement%20April%2020,%202012%20(revision%20of%20March%2025th%20version).pdf)

¹⁸ See the RECOFTC and GIZ's "Free, Prior, and Informed Consent in REDD+: Principles and Approaches for Policy and Project Development"

https://redd.unfccc.int/uploads/2_74_redd_20130710_recoftc_free_2C_prior_2C_and_informed_consent_in_reddplus.pdf

¹⁹ Cancun Safeguard B Theme 2.1 aims to "Respect, protect, and fulfill the right of access to information."

specifications on providing early and public access to documentation should be reviewed, reaffirmed and/or updated in Participant's subsequent submissions.

1.3 Amendment of ART's own public consultation procedures

Likewise, ART's public comment period on the Concept Note should remain open for a period of at least 60 days, and clarify that stakeholder feedback be incorporated into the government's submission of the Registration and Monitoring reports, while providing detailed responses on how all comments received by at least Indigenous Peoples as well as Local Community stakeholders have been considered and addressed. TREES should address this gap by drawing from FCPF's requirements that stakeholder feedback be incorporated into final program designs.

Meanwhile, to increase information accessibility and transparency, ART should make all program related materials available in all official languages of the countries in which it wishes to make its program available, and distributed according to the jurisdictional FPIC protocol, where applicable and/or stakeholder engagement plan. In addition to a listserv, public consultation periods should be more easily accessible on ART TREES website as well as other communication channels (e.g., WhatsApp channel) should be made available for stakeholders.

2. Ensuring full and effective participation in decision-making around program design and implementation, including in determining governance structures, fair and equitable benefit distribution plans, and transparent monitoring and reporting.

The Issue

Similar to the rushed consultation processes in which communities are approached and consulted according to a process they have been unable to define, they are equally marginalized in decision-making around the design of jurisdictional REDD+ programs and how they will be implemented. Rarely are Indigenous Peoples or Local Communities exposed to the rationale behind key decisions that could impact the benefits or mitigate risks associated with such programs.

Communities who become part of a J-REDD+ program either (i) give up some of their rights for the purposes of the program; (ii) contribute to its objectives by working towards it; or (iii) are negatively affected by it. Such communities, in all cases, should be fairly compensated in benefit sharing arrangements. To date, there is a striking gap in understanding around how benefit sharing agreements in the jurisdictional REDD+ programs (aside from perhaps Costa Rica or Guatemala) are determined for the equitable distribution of revenues between

stakeholders, i.e., government, Indigenous Peoples, Local Communities, or other rightsholders, and the mechanisms by which those funds are managed and distributed.

At the same time, the application of the safeguards and the mitigation of risks happen at different scales in jurisdictional REDD+ programs. It is key for Indigenous Peoples as well as Local Communities to define for themselves how global REDD+ safeguards should be understood and applied at the national and territorial level²⁰. The design and function of a jurisdiction's Safeguards Information Systems (SIS) is another component of J-REDD+ programs that should involve and rely on community participation. While most SISs are not operational yet or are under development, adequate SIS should facilitate the ability of communities to contribute to the ongoing monitoring and implementation of programs. Yet, they are frequently developed without meaningful stakeholder involvement. As a result, communities do not understand what safeguards apply to them, how they can monitor impacts, and know to which entities they can report impacts. Such gaps infringe on the rights of Indigenous Peoples and the rights of Local Communities to effective participation in negotiating policies and programs that affect them.

Mechanisms can be established to meet the needs of Indigenous Peoples as well as Local Communities for the continuous monitoring of programs through a jurisdiction's SIS. The Mesoamerican Alliance of Peoples and Forests suggest that “this includes setting clear and specific stages for monitoring, which are defined by the communities themselves through a consultation process, allowing them not only to receive information but also to actively contribute to the tracking and evaluation of projects or measures, thereby improving the transparency of the processes”²¹

If governments indeed wish to collaborate with Indigenous Peoples and with Local Communities on J-REDD+ programs, they have an obligation to share decision-making authority and be ready to co-design each aspect of the program as partners. The recent Indigenous National Jurisdictional REDD+ Concept Note submitted to ART by the Ministry of Environment of Peru, in collaboration with the national Amazonian Indigenous organizations AIDSESEP, CONAP, and ANECAP, is a notable example of a step in the right direction, as it showcases the type of cooperation and coordination that jurisdictional programs can facilitate.

Finally, communities and their organizations at subnational and national levels may struggle to maintain continuity in policy and program engagements as they experience periodic transitions of elected leadership. Any mechanisms for collaboration and cooperation that are established in jurisdictional REDD+ programs should account for such gaps and ensure regular and publicly accessible documentation of consultations and the work of governance committees.

²⁰ Reference the Mesoamerican Alliance of Peoples and Forests' “Comprehensive Guide on Rights and Transparency in Carbon Markets and REDD+ Projects” accessible here:

https://www.alianzamesoamericana.org/es/wp-content/uploads/2024/10/english_carbon_markets.pdf

²¹ *Ibid.*

Treatment in TREES

TREES requires governments to demonstrate that stakeholders, especially Indigenous Peoples as well as Local Communities, have been fully and effectively involved in the design and implementation of REDD+ actions. This is covered under Theme 4.1²², which specifies that participation must be timely and meaningful, however, TREES does not explicitly mandate the establishment of a formal stakeholder engagement mechanism during the program's design phase, nor of a governance mechanism that can guarantee continuous engagement and participation in the implementation of the program.

On the question of benefit sharing, Theme 2.2²³ includes an outcome indicator requiring governments to demonstrate that the distribution of benefits from REDD+ activities has been fair, transparent, and equitable, in accordance with international agreements and domestic legal frameworks. In order to have fair compensation it is crucial that relevant stakeholders have meaningful participation at the appropriate scale (as much as at the community as the jurisdictional scale) in the decision making process regarding benefit sharing arrangements. Nevertheless, there is no requirement under Theme 2.2 requiring meaningful stakeholder participation in the creation of a plan that would define the respective allocations and modalities by which revenues would flow. A requirement to have a governance structure that allows for continuous participation could help ensure that REDD+ activities are implemented in the way that Theme 2.2 suggests, but also that the outcome indicators under Theme 4.1 and Theme 4.2²⁴ are achieved in a way clearly supported by evidence.

In addition, TREES does state the requirement to have an SIS in place, however it does not offer guidance on the design or set-up of such a system, nor does it clarify the criteria for what constitutes to have an SIS “in place” for validation and verification purposes. As these systems are meant to facilitate the participation of Indigenous Peoples and that of Local Communities in the government’s reporting on safeguards relevant to them, they should be assured a voice in how those mechanisms should function. It should be Indigenous Peoples as well as Local Communities who define the process of implementing the SIS, and in particular how it should be implemented at the national level and with national authorities and/or at subnational with representative organisations, if applicable.

Our Recommended Revisions to the Standards

Based on these observations, we recommend the incorporation of new requirements for program governance, benefit sharing, and the establishment of Safeguard Information Systems.

²² Reference footnote #13 for full text.

²³ Theme 2.2 covers the requirement to “Promote transparency and prevent corruption, including through the promotion of anti-corruption measures.”

²⁴ Reference footnote #13 for full text.

2.1 New requirements for program governance

Require from Participants the establishment of an inclusive and accessible formal multi-stakeholder governance mechanism, which should be financially supported by Participants, that allows for continuous participation and representation of Indigenous Peoples and of Local Communities. Linked with the jurisdictional FPIC protocol and/or stakeholder engagement plan, such a governance mechanism would allow representatives of Indigenous Peoples and those of Local Communities, including women and youth, to engage and negotiate with relevant government authorities on the design and operational procedures of a proposed program, and facilitate the construction of agreements that are rooted in community processes for consent.

The procedures and proceedings of such a formal multi-stakeholder governance mechanism should ensure full and effective participation, which requires adequate and sufficient decision making power of Indigenous Peoples and of Local Communities, and the decisions should be verified by mutually agreed, binding agreements with the disclosure of records that are regularly and publicly accessible, so as to ensure transparency and accountability.

2.2 New requirement for a benefit sharing plan

Require from Participants the establishment of a fair and equitable benefit sharing plan, agreed among all affected Indigenous Peoples and affected Local Communities at the appropriate scale (at the community as well as the jurisdictional scale), respecting the jurisdictional FPIC protocol and/or stakeholder engagement plan, and adhering to Safeguard D's provision that adequate participatory procedures are in place to ensure the full, effective, and meaningful participation of Indigenous Peoples as well as Local Communities.

The design, consultation, and approval of a benefit sharing plan should ensure fair compensation and be part of the agenda of the formal multi-stakeholder governance mechanism, agreements for which would be validated by the relevant authority of each affected Indigenous People or Local Community. In cases where territories with Indigenous Peoples in Voluntary Isolation or Initial Contact are identified, there should be assigned resources for protecting their territories and appropriate measures for managing those resources responsibly. The implementation of the benefit sharing plan, including the impact generated from the investments, should also be subject to monitoring and evaluation.

Program Participants must provide evidence that information about the timing, size, and use of received REDD+ finances is clearly and transparently communicated in a timely manner that can be used by impacted stakeholders and affected communities. TREES should draw from FCPF's mandate that benefit-sharing plans be finalized and disclosed before the transactions for emission reductions payments are made, which includes clear criteria and indicators for assessing the inclusiveness and equity of benefit-sharing mechanisms (including both monetary and non-monetary benefits, such as cash payments, capacity

building, and infrastructure improvements, tailored to beneficiaries' specific needs through stakeholder consultations).

2.3 Amend requirements for the establishment of an SIS

Amend section 3.1.2 to clarify that Participants (both national and sub-national) should comply with all UNFCCC decisions on safeguards for REDD+, including guidance provided for the set-up of the SIS, the process for which should adhere as well to Safeguard D's provision that ensures the full, effective, and meaningful participation of Indigenous Peoples as well as Local Communities. This system should contain indicators for the monitoring and evaluation of impacts on Indigenous Peoples as well as Local Communities generated from REDD+ actions as well as related investments under the ART program. The design and establishment of a programmatic monitoring framework and SIS should be a part of the agenda of the formal multi-stakeholder governance mechanism. The agreements and regular monitoring reports should be validated by the relevant authority of each affected Indigenous People or affected Local Community, and such validation should be independently verified by the Validation and Verification Body (VVB).

3. Ensuring stronger quality controls in assessing safeguard conformance, especially in evaluating the alignment of national policy with international standards.

The Issue

The rights of Indigenous Peoples and the rights of Local Communities, as recognized in international law²⁵, are too often inadequately interpreted by standard bodies, project developers, and validation and verification bodies in the carbon market. Failure to uphold international law and recognized best practices for fulfilling human rights and the rights of Indigenous Peoples and the rights of Local Communities, weakens the credibility, transparency, and integrity of climate financing initiatives.

Despite ongoing efforts to enhance the integrity, transparency, and reliability of carbon crediting standards, effective implementation of countries' international obligations remains problematic from a rights-based perspective. Instead of upholding international law and best practice, standards are broadly applicable per national laws only, rendering them ineffective in contexts where rights are limited or inadequately recognized. This is particularly evident in national legislation concerning such issues as land tenure, carbon rights, and access to justice and grievance mechanisms. Furthermore, the quality of ART auditors' social safeguards expertise,

²⁵ Please refer to footnote #2 for relevant international legislation.

as well as the thoroughness of the validation and verification process, have been put into question both for the ART credits in Guyana, and more recently, in Costa Rica²⁶.

If carbon crediting bodies like ART wish to claim coherence with international laws and standards, they have an obligation to ensure their programs meet acceptable criteria for the protection of rights and can facilitate a more effective and accurate interpretation of those rights for validation purposes. Moreover, ART can be an impetus to improve access to rights and the formation of enabling conditions that allow jurisdictional programs to strengthen the autonomy and self-determination of Indigenous Peoples, as well as the autonomy of Local Communities. We note that these enabling conditions are also required for JREDD+ programs to be effective at reducing emissions.

Treatment in TREES

TREES has established a more comprehensive reporting structure around the Cancun Safeguards relative to other jurisdictional standards in the carbon market, comprising structural, procedural, and outcome indicators. The degree of flexibility and respect for sovereignty afforded to governments in interpreting and complying with internationally recognized safeguards, however, puts the fulfillment of rights of Peoples and communities that have been historically vulnerable and marginalized - often by those same governments - at risk.

The standards do not prescribe specific methods for assessing the quality of safeguard conformance. This reliance on national systems without a dedicated mechanism for evaluating the effectiveness or adequacy of safeguards leads to potential gaps in implementation and variability in how safeguards are applied.

For example, TREES safeguard Theme 2.3 has the mandate to respect, protect and fulfill land tenure rights, asking Participants to have legal frameworks in place to secure statutory and customary land rights (structure indicator), public institutions recognize and map these rights (process indicator), and that stakeholders have access to and control over land, with FPIC required for any relocations (outcome indicator). However, TREES does not prescribe specific approaches or assessments that must be used to document the legitimacy and completeness of assertions about land tenure made by governments in their registration documents and monitoring reports.

Furthermore, while TREES does not provide a detailed process or guidance concerning FPIC or stakeholder participation, the TREES Theme 4.2 outcome indicator requires that 'design, implementation and assessments of REDD+ actions were, where relevant, undertaken with the participation of indigenous peoples and/or local communities, or equivalent, including if

²⁶ See the recent December 5, 2024 article in Development Today "Forest carbon deal delayed. Costa Rica calls for changes in Norwegian-funded certification system." <https://www.development-today.com/archive/2024/dt-9--2024/forest-carbon-deal-delayed.-costa-rica-calls-for-changes-in-norwegian-funded-certification-system>

applicable through FPIC, in accordance with relevant international and/or domestic and if applicable, subnational, legal framework, and in accordance with their respective rights and decision-making structures and processes’.

In order to comply with this indicator, governments should therefore be expected to clearly define how the FPIC process and stakeholder consultation process is carried out and to document its implementation and outcomes in reporting safeguards related to indicator 4.2 and potentially other safeguards indicators such as 4.1. Without clear guidance, the means of verifying and validating such requirements are left undefined, which could be easily remedied through the provision of agreements validated and signed by the relevant authority of affected Indigenous Peoples or affected Local Communities.

Similarly, TREES requires governments to provide stakeholders with access to grievance mechanisms, but TREES does not specify a dedicated REDD+ grievance redress mechanism, and little guidance is provided to ensure existing grievance mechanisms meet acceptable requirements for accessibility and effectiveness. Nor is there an assessment of the quality of the justice system within which such mechanisms are operationalized and whether access to justice exists on paper, or in practice. Adequate grievance redress mechanisms can only be assured by an impartial and independent adjudication process.

Our Recommended Revisions to the Standards

Based on these observations, we recommend the incorporation of new requirements for quality assessments of Indigenous Peoples’ rights and those of Local Communities, as well as new requirements for the expertise held by Validation and Verification bodies.

3.1 New requirements for adequately assessing the status of rights in a national context

In the first Registration Document for ART certification, ART should require Participants conduct a quality assessment of the adequacy of national laws and programs to protect and defend the rights of Indigenous Peoples and the rights of Local Communities as reflected in applicable international legal instruments. Such an assessment could draw from previous country assessments and land tenure assessments (e.g., REDD+ readiness requirements under the FCPF) as well as new tools to facilitate such assessments²⁷, and should be based on a factual analysis of how Indigenous Peoples’ rights and Local Communities’ rights – especially those related to land (recognizing different categories of tenure), traditional knowledge, autonomy, and cultural heritage – are being respected in practice, identifying legal gaps and citing the status and resolution of complaints of rights violations in the jurisdiction.

²⁷ See for example Climate Law and Policy’s 2024 “Jurisdictional REDD+ Safeguards Conformance Assessment Tool-Kit” here: https://climatelawandpolicy.com/jurisdictional_redd_safeguards_conformance_assessment_tool-kit.aspx

Such a report should be conducted by a recognized external and unbiased legal expert with relevant expertise. Validation and verification bodies should vet the neutrality and thoroughness of such an analysis, which should be reflected in the VVB Guidelines.

3.2 New requirements for an independent grievance redress mechanism (GRM)

The standard should be modified to require an independent, functioning grievance redress mechanism at that jurisdictional level that is a dedicated mechanism for REDD+ processes, aligned with international best practice (see for example the UNREDD/FCPF Joint Guidance on GRMs²⁸) which center on the basic principles of legitimacy, accessibility, predictability, equity, transparency and rights compatibility. Such mechanisms should be designed in consultation with the stakeholders who will use it, and should possess the authority and resources to resolve the social and environmental safeguard issues most likely to arise in the context of a JREDD+ program. This will avoid the common problems of GRM's that exist on paper only, or are not independent of government or are unduly influenced by them, and GRM's that have little or no authority to actually resolve problems encountered in program implementation.

3.3 New requirements or clarifications for assessment of FPIC standard

The standard should clarify that when FPIC is required for a country program, the VVB's should assess government compliance with the highest and most protective standard, whether that be at the international, national or sub-national level. This can help avoid programs utilizing substandard FPIC standards that are not aligned to international law and best practice and thus do not fulfill a country's international legal obligations to comply with human rights norms. This change should be reflected in the VVB guidelines as well.

3.4 New requirements for expertise demonstrated by Validation and Verification Body in assessing ART documentation against international human rights law

Recognizing the important role of the VVBs in assessing the possible risks to rights and social safeguards in program documentation, a new requirement should be incorporated that VVBs should necessarily demonstrate expertise in international human rights law and Indigenous Peoples' rights. The VVBs should have, at a minimum, skills with national and/or local languages, and when possible, relevant experience with stakeholder engagement in the region or jurisdiction.

²⁸ See the Joint FCPF/UN-REDD Programme Guidance Note for REDD+ Countries: Establishing and Strengthening Grievance Redress Mechanisms: <https://www.unclearn.org/resources/library/joint-fcpf-un-redd-programme-guidance-note-for-redd-countries-establishing-and-strengthening-grievance-redress-mechanisms/>

Again, we appreciate the opportunity to provide this input to the revision of TREES 2.0. For any or all of our recommendations, all of us contributing to this submission are willing to make ourselves available for discussions with the ART Secretariat, its Board, and relevant experts. To this end, we would like to request a meeting with you as soon as possible to present our proposals, clarify any remaining questions, and begin the conversation to advance the needed revisions.

We kindly request an answer to this letter by January 18th, 2025, confirming receipt of this document as well as on the possibility of having a meeting to discuss any of the recommendations.

Thank you for your attention and consideration.

Julian Cho Society, Belize
 Toledo Alcaldes Association, Belize
 Maya Leaders Alliance of Southern Belize, Belize
 Articulação dos Povos Indígenas do Brasil (APIB), Brazil
 Conselho Indígena de Roraima (CIR), Brazil
 Conselho Nacional das Populações Extrativistas (CNS), Brazil
 Organización Nacional de los Pueblos Indígenas de la Amazonia Colombiana (OPIAC), Colombia
 Confederación de Nacionalidades Indígenas de la Amazonia Ecuatoriana (CONFENIAE), Ecuador
 Asociación de Comunidades Forestales de Petén (ACOFOP), Guatemala
 Asociación de Forestería Comunitaria Utz Che (Utz Che'), Guatemala
 North Pakaraimas District Council (NPDC), Guyana
 South Rupununi District Council (SRDC), Guyana
 Asociación Interétnica de Desarrollo de la Selva Peruana (AIDSESP), Peru
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 Rainforest Foundation Norway
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