



# International Law Principles for REDD+

## The Rights of Indigenous Peoples and the Obligations of REDD+ Actors

By Leonardo A. Crippa & Gretchen Gordon  
Updated September, 2013

### WORKING PAPER

These principles of international law on Reducing Emissions from Deforestation and Forest Degradation (REDD+) address the questions that rights holders and stakeholders may have regarding the legal obligations and rights implications of REDD+ initiatives. This working paper was produced as a starting point for further discussions and will be revised as needed by the Indian Law Resource Center. Please direct feedback to [dcoffice@indianlaw.org](mailto:dcoffice@indianlaw.org).

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## PREFACE TO THE SEPTEMBER 2013 EDITION

The Indian Law Resource Center originally released the REDD+ Principles in May 2012 as a working draft. Based on conversations with indigenous peoples and evolving policy discussions within REDD+ institutions, we are happy to release this revised and updated version of the REDD+ Principles.

While the central human rights concepts that underpin the REDD+ Principles remain unchanged, the discussion of issues relevant to the rights of indigenous peoples now reflects recent developments in REDD+ institutions and the experiences of indigenous peoples engaging with those institutions. Since mid-2012, the main REDD+ international implementing agencies have embarked on, and in some cases concluded, major policy developments. For example, the World Bank's Forest Carbon Partnership Facility (FCPF) has developed new policy tools, including the draft Carbon Fund Methodological Framework and the FCPF Readiness Assessment Framework. In January 2013, the UN-REDD Programme (UN-REDD) adopted and launched its Guidelines on Free, Prior and Informed Consent. In conjunction with the United Nations Development Program, UN-REDD is developing its project grievance mechanism for the purpose of processing complaints from affected communities.

Additionally, critical policy developments taking place outside the REDD+ agencies are also influencing the evolution of REDD+ policy. The World Bank has begun a comprehensive revision of its environmental and social safeguard policies – policies which govern FCPF engagement with REDD+ hosting countries and delivery partners. Many of the issues at the center of the safeguards review are also critical for FCPF, including the Indigenous Peoples Policy, issues of land tenure, and indigenous peoples' free, prior and informed consent. We are hopeful that the safeguard review can provide the opportunity to bring World Bank safeguards into compliance with requirements under the United Nations Framework Convention on Climate Change (UNFCCC) Cancun Agreements to respect the rights of indigenous peoples. Unless and until that occurs, however, the FCPF needs to create additional safeguards to ensure that indigenous peoples' rights are respected.

Indigenous peoples have also gained greater experience with REDD+ institutions. Some indigenous peoples have been able to use REDD+ to negotiate greater land rights protections, while others have withdrawn from REDD+ citing a lack of respect for their rights. While the experiences of indigenous peoples have been both positive and negative, they all have highlighted the seriousness of the risks and the difficulty of the challenges that REDD+ poses, especially regarding indigenous peoples' collective ownership rights to their lands and resources. While much needed attention has been focused on policy development, we have also seen that unless there is adequate capacity and will on the ground to implement REDD+ from a human rights perspective, it will not be successful.

Based on the above, the Center has decided to update our views on issues addressed in the original version of this paper. We have learned a great deal by listening to indigenous peoples and participating in a limited capacity in the policy discussions previously mentioned. We also decided to address certain issues that had not been clearly addressed in the previous draft, such as “carbon rights” and “non-carbon benefits.” We have also paid more attention to land rights issues, including the meaning and implications of indigenous peoples' collective ownership rights to land and resources—i.e. collective land titles. We also call the attention of host countries and REDD+ agencies to take into account indigenous peoples whose lands are not titled when addressing benefit-sharing arrangements.

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*The Indian Law Resource Center is a non-profit law and advocacy organization established and directed by American Indians. We provide free legal assistance to indigenous peoples who are working to protect their lands, resources, human rights, environment and cultural heritage. Our principal goal is the preservation and well-being of Indian and other Native nations and tribes. The Center seeks to overcome the grave problems that threaten Native peoples by advancing the rule of law, by establishing national and international legal standards that preserve their human rights and dignity, and by challenging the governments of the world to accord justice and equality before the law to all indigenous peoples of the Americas.*

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## TERMS & ACRONYMS

Committee on Economic, Social and Cultural Rights	CESCR
Committee on the Elimination of Racial Discrimination	CERD
Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters	Aarhus Convention
Convention on Biological Diversity	CBD
Decisions of the UNFCCC, 16th Conference of the Parties	Cancun Agreements
Economic and Social Council	ECOSOC
Forest Carbon Partnership Facility	FCPF
Free, Prior, and Informed Consent	FPIC
Forest Investment Program	FIP
Global Environment Facility	GEF
Human Rights Council	HRC
Human Rights Impact Assessment	HRIA
Indian Law Resource Center	Center
Inter-American Development Bank	IDB
International Court of Justice	ICJ
International Intergovernmental Organizations	IIOs
International Labor Organization	ILO
Permanent Sovereignty over Natural Resources	PSNR
Reducing Emissions from Deforestation and Forest Degradation	REDD+
United Nations	UN
UN Declaration on the Rights of Indigenous Peoples	UN Declaration
UN Framework Convention on Climate Change	UNFCCC
UN-REDD Programme	UN-REDD
UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming	UN Common Understanding

## INTRODUCTION BY ARMSTRONG WIGGINS

The purpose of the *International Law Principles for REDD+: The Rights of Indigenous Peoples and the Legal Obligations of REDD+ Actors (REDD+ Principles)* is to address the significant risks that “Reducing Emissions from Deforestation and Forest Degradation” (REDD+) initiatives pose for indigenous peoples’ livelihoods and rights. The *REDD+ Principles* were prepared in response to the need identified by indigenous peoples for international REDD+ actors to respect their human rights. These *REDD+ Principles* lay out the human rights obligations of States and international agencies implementing REDD+ initiatives and the rights of indigenous peoples engaged in or impacted by REDD+. They explain the content of indigenous peoples’ substantive and procedural rights, which must be protected in REDD+ initiatives and set forth minimum standards for their protection. We thought it necessary here, however, to first start with the bigger picture of indigenous peoples and climate strategies to explain why a reorientation of REDD+ is critical for both the well-being of indigenous peoples, and for the success of REDD+ as a climate strategy.

A large part of the remaining forest land in the world is indigenous land. The lure of future REDD+ payments is already encouraging plans and projects that involve the takeover and even the theft of Indian lands in several countries. In the REDD+ readiness programs already underway, land is being identified that is forested or suitable for reforestation, and much of this project land will be the land of indigenous peoples. There have been numerous complaints: that land is being identified for REDD+ projects and management plans are being developed without the consent or even the involvement of the Indian owners and that individual Indians are being used to provide an appearance of Indian consent. In some countries Indians are being violently evicted from their lands to make way for REDD projects. These problems are severe, because Indian land is very vulnerable to takeover by almost anyone — especially the government of the country itself. Indian lands and indigenous communities often possess their traditional homelands without formal legal title. Indian land ownership is often poorly protected or not protected at all by domestic legal systems.

Not only is protection of indigenous peoples’ rights and livelihoods necessary to prevent injury to indigenous peoples, but it has also been shown to be an effective strategy for protecting the environment. Indigenous peoples are in many ways the guardians of the earth’s environment: their territories coincide with a substantial share of the remaining intact ecosystems and carbon stocks on forest lands, including eighty percent of the world’s biodiversity. Indigenous peoples have also been practicing sustainable development since time immemorial and have a wealth of knowledge and proven skills regarding how to live in harmony with nature. Indigenous peoples’ management of forests in Mexico, Central and South America, for instance, has been shown to be almost two times more effective at reducing deforestation than any other means of protection. In many parts of the world, indigenous peoples’ territories are also often one of the only backstops against the unregulated expansion of environmentally destructive activities such as extractive industries.

The UN Declaration on the Rights of Indigenous Peoples is the international legal standard for protecting the rights and livelihoods of indigenous peoples, representing world-wide consensus that indigenous peoples have the right to exist as distinct peoples. The Declaration establishes the obligations that must be observed in activities and programs that will affect indigenous peoples and their lands, territories, environment and natural resources. The Declaration contains many articles that are directly pertinent to the implementation of climate change programs, particularly REDD+ initiatives. Article 3 is of particular importance because it declares that “indigenous peoples have the right to self-determination. By that right they freely determine their political status and freely pursue their economic, social and cultural development.” Article 18 affirms indigenous peoples’ right to participate in decision making in matters which would affect their rights. Article 20 protects indigenous subsistence and other traditional economic activities. Articles 26 and 29 recognize indigenous peoples’ right to lands, territories and resources and “the conservation and protection of the environment and the productive capacity” of those lands, territories and resources. Article 32 provides that indigenous peoples have the right to determine how to use or develop their lands and resources.

Protecting indigenous peoples’ rights to their lands, territories, environment and natural resources, and strengthening indigenous peoples’ capacity to effectively manage their territories, is a critical strategy for preventing deforestation and should be a central goal of climate mechanisms, including REDD+. Unfortunately, many REDD+ initiatives instead seek to “conserve the forest from indigenous peoples” — restricting their access to their own land, territories and resources, expropriating their land, commodifying their environments, and criminalizing their traditional livelihoods. More often than not REDD+ has become synonymous with violations of indigenous peoples’ basic human rights and disruption of their livelihoods.

The protection of the rights and livelihoods of indigenous peoples must not be seen as merely a way of mitigating the negative impacts of REDD+, but as its central strategy. The key to this strategy is not merely consultations with indigenous peoples or increased participation, but respect for indigenous peoples’ rights of self-determination and autonomy — enabling us to strengthen our territorial management and fully exercise our rights to our lands, territories, environment and natural resources.

All international human rights work involves international politics as well as international law. No matter what steps are taken to promote our Indian rights at the international level, it is essential that Indian leaders and Indian rights advocates meet with human rights officials and government representatives to present the Indian position. As more of our Indian leaders appear before international organizations to present their case regarding REDD+ initiatives, to lobby for Indian rights and for better international legal protection for those rights, the likelihood of success will increase.

*Armstrong A. Wiggins is a Miskito Indian from the village of Karata, Nicaragua, and the Director of the Indian Law Resource Center’s Washington, DC Office. He was a political prisoner during the Somoza and Sandinista regimes because of his leadership in promoting human rights for his people. In 1981 Mr. Wiggins was forced into exile. It was at this time that he began working for the Center. He has more than 30 years experience in the field of human rights.*

## HOW TO USE THE REDD+ PRINCIPLES

### *What are REDD+ Initiatives?*

1. “Reducing Emissions from Deforestation and Forest Degradation” (REDD+) is a collection of programs and policy developments designed to combat climate change by creating incentives for the conservation of forest land in developing countries. For brevity’s sake, we use the term “REDD+ initiatives” to encompass legislative measures, policies, procedures, programs and projects falling under REDD+ mechanisms within the United Nations Framework Convention on Climate Change (UNFCCC), REDD+ Readiness and other activities to prepare for REDD+ or to engage in carbon markets, REDD+ pilot projects, national and local law reform efforts, bilateral initiatives, and private endeavors. Where discussing projects on specific lands, we use the term “REDD+ projects.”

### *The Risks for Indigenous Peoples*

2. REDD+ initiatives have been proposed as a means of combating climate change, while at the same time providing development opportunities for developing countries as well as indigenous peoples and communities who possess forested lands. However, these development benefits are not a guaranteed result. Moreover, REDD+ poses significant risks to indigenous peoples and other forest communities because their territories are and will continue to be a priority for REDD+ projects. Indigenous peoples inhabit the majority of remaining intact forests, and indigenous peoples-managed forests have been shown to be especially successful at preventing deforestation.<sup>1</sup> However, indigenous peoples are particularly vulnerable to harmful impacts of REDD+ due to their unique relationship with their environments, and because many indigenous peoples do not have secure titles to their land, and are marginalized or politically disenfranchised.

3. If REDD+ initiatives do not respect indigenous peoples’ rights to their lands and resources or create the conditions so that indigenous peoples may fully and effectively participate in relevant decision-making processes, REDD+ will not succeed. The conflict which developed between UN-REDD and indigenous peoples within the development of Panama’s national REDD+ program illustrates this point.<sup>2</sup> According to the Coordinadora Nacional de Pueblos Indígenas de Panamá (COONAPIP), which brings together the traditional authorities of the seven indigenous peoples of Panama, UN-REDD failed to secure the full and effective participation of indigenous peoples, to fulfill commitments, and to respect the rights of indigenous peoples.<sup>3</sup> As a result, COONAPIP withdrew from the UN-REDD program as the main indigenous peoples’ partner for Panama’s national REDD+ program.<sup>4</sup>

4. Indeed, REDD+ projects have been linked to serious rights violations, wherein indigenous peoples have been coerced into handing over their land rights, or subjected to forced eviction by armed forces as governments and private investors try to take advantage of the promise of REDD+ investments. Indigenous peoples have reported disturbing violations related to REDD+ in a variety of countries, including Kenya,<sup>5</sup> Papua New Guinea,<sup>6</sup> Brazil,<sup>7</sup> Mexico,<sup>8</sup> Peru,<sup>9</sup> Indonesia,<sup>10</sup> Ecuador<sup>11</sup> and Cameroon.<sup>12</sup>

### ***The Purpose of the REDD+ Principles***

5. In order to reorient REDD+ to respect the rights of indigenous peoples and address substantial risks to their livelihoods and ways of life, the Indian Law Resource Center (Center) proposes the “International Law Principles for REDD+: The Rights of Indigenous Peoples and the Legal Obligations of REDD+ Actors” (*REDD+ Principles*). The *REDD+ Principles* identify a pathway to implement a human rights-based approach to development within REDD+ initiatives. The goal of the *REDD+ Principles* is to educate actors engaged in REDD+ and indigenous communities potentially affected by REDD+, regarding the human rights implications of these initiatives. For States and international agencies engaged in REDD+, the *REDD+ Principles* identify both the applicable international legal obligations, as well as the rights of indigenous peoples that should be protected. The *REDD+ Principles* do not represent an exhaustive list of the rights of indigenous peoples, but highlight those collective rights issues most implicated by REDD+. For each of these priority issues, the paper states the applicable principle of law and suggests related implementation measures.

### ***Why the Rights of Indigenous Peoples must be Specifically Addressed***

6. The *REDD+ Principles* require respect by REDD+ actors for the human rights of all. However, special attention is given to the collective rights of indigenous peoples, which are critical for their very survival as distinct peoples. Indigenous peoples have unique rights under international law due to their status as peoples and distinct political, social, and legal entities within existing nation-states. In addition, indigenous peoples have a unique relationship to their lands, territories, and natural resources, the maintenance of which is critical for their economic, spiritual, social, and physical survival.<sup>13</sup> For this reason, policy and legal approaches that lump indigenous peoples into broader categories, such as “impacted communities” or “vulnerable groups,” fail to adequately protect indigenous peoples’ distinct rights.

7. The UN Declaration on the Rights of Indigenous Peoples (UN Declaration)<sup>14</sup> is the paramount articulation of the collective rights of indigenous peoples, and it provides a critical benchmark for evaluating REDD+ initiatives. States Parties to the UNFCCC agreed at the 16<sup>th</sup> Conference of the Parties in Cancun (Cancun Agreements) to respect the rights of indigenous peoples by taking into account relevant international obligations, including the UN Declaration.<sup>15</sup> Policy and legal approaches focusing only on the mere participation of indigenous peoples in decision-making, or in securing the free, prior, and informed consent of indigenous peoples for REDD+ projects, fall short in properly protecting the substantive legal rights articulated in the UN Declaration.

### ***A Paradigm Shift for REDD+***

8. For REDD+ to actually be successful as a climate or development strategy requires a paradigm shift away from the current model of REDD+ that views indigenous peoples as an obstacle to sustainable development, or a risk to be mitigated. Instead, to be successful, development agencies engaging in REDD+ must base their approach on both the protection of indigenous peoples’ lands and the recognition of their critical role in sustainable development, environmental protection and in fighting climate change. It has been shown, for instance, that protection of indigenous peoples’ territories is more effective at preventing deforestation than

creation of conservation areas.<sup>16</sup> Likewise, indigenous peoples who have secure land and resources rank higher in terms of development indicators.<sup>17</sup>

9. REDD+ initiatives must also address the most significant drivers of deforestation, including extractive industries and mega-industrial agriculture projects.<sup>18</sup> These activities, facilitated by lax regulatory environments and the consumption and investment practices of developed countries, are often directly at odds with the rights of local indigenous communities. As a matter of climate effectiveness as well as environmental justice, it is also imperative that REDD+ initiatives not be used to allow corporations or developed countries to avoid reducing their emissions or addressing the local environmental and social impacts of their activities.

### ***Applying a Human Rights-Based Approach to Development in REDD+***

10. A human rights-based approach to development recognizes not only that development policies must not violate human rights, but also that fulfilling human rights is an instrumental means of achieving development effectiveness, including poverty eradication and environmental sustainability.<sup>19</sup> The UN has identified the following three main components of human rights-based development programs and policies: (1) be operationally directed toward fulfilling human rights; (2) identify *rights holders* and their entitlements and corresponding *duty-bearers* and their obligations, and work towards strengthening the capacities of rights holders to claim their rights and of duty-bearers to meet their obligations; and (3) be guided in all phases by standards derived from international human rights law.<sup>20</sup> This approach to development has been formally adopted by UN agencies,<sup>21</sup> as well as the Organization for Economic Co-operation and Development (OECD)<sup>22</sup> and several REDD+ donor States.<sup>23</sup>

### ***What do the REDD+ Principles Govern?***

11. The *REDD+ Principles* are intended to govern the actions of both States and international implementing agencies (REDD+ agencies). This includes States hosting REDD+ initiatives, as well as States funding them, either bilaterally or through multilateral institutions. The *REDD+ Principles* also govern the actions of REDD+ agencies, including the UN-REDD Programme (UN-REDD),<sup>24</sup> the World Bank's Forest Carbon Partnership Facility (FCPF),<sup>25</sup> the Carbon Fund,<sup>26</sup> and Forest Investment Program (FIP),<sup>27</sup> the Global Environment Facility (GEF),<sup>28</sup> regional development banks such as the Inter-American Development Bank (IDB),<sup>29</sup> as well as activities of the UNFCCC Green Climate Fund.<sup>30</sup>

## LEGAL OBLIGATIONS FOR STATES AND INTERNATIONAL AGENCIES ENGAGED IN REDD+

### PRINCIPLE 1: OBLIGATION TO RESPECT HUMAN RIGHTS

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**States and international implementing agencies shall respect the human rights of all individuals and communities, including indigenous peoples, consistent with those rights as affirmed by international law and often by the law of the country where the REDD+ initiative will be implemented, whichever provides greater protection.**

12. States have an international legal obligation to respect human rights. This obligation arises from ratified universal<sup>31</sup> and regional<sup>32</sup> human rights treaties, as well as customary international law binding on all States. According to the UN, more than 80 percent of its 192 member States have ratified four or more of the nine core international human rights treaties.<sup>33</sup> The UN Charter calls for the universal respect of human rights without discrimination.<sup>34</sup> These obligations apply not only to activities within States' borders, but to activities with transboundary impacts, such as the financing of REDD+ projects either bilaterally, or through participation in multilateral institutions.<sup>35</sup> States are not relieved of their human rights obligations when acting collectively or through multilateral institutions.<sup>36</sup>

13. REDD+ agencies, including the World Bank and IDB's carbon finance units, UN-REDD, and GEF, also have an obligation to respect human rights because they are either international intergovernmental organizations (IIOs) or agencies of IIOs.<sup>37</sup> The International Court of Justice (ICJ) determined that IIOs are subjects of international law and as such can be bound by general rules of international law, treaties, and their own constitutions and founding documents.<sup>38</sup> The UN and the World Bank are IIOs.<sup>39</sup> The UN Declaration explicitly provides that UN specialized agencies, such as the World Bank,<sup>40</sup> shall contribute to the full realization of the rights of indigenous peoples.<sup>41</sup>

14. The climate and environmental agreements that govern REDD+ activities convey human rights obligations on REDD+ host States, donor States, and international agencies. The Cancun Agreements state "Parties should, in all climate change related actions, fully respect human rights."<sup>42</sup> The Cancun Agreements also establish broad safeguards for REDD+ by requiring that actions are consistent with relevant international conventions and agreements, and that the Parties respect the rights of indigenous peoples by taking into account the UN Declaration.<sup>43</sup> These safeguards apply to REDD+ activities regardless of the source of financing, including bilateral and multilateral financing.<sup>44</sup> Decisions of the Convention on Biological Diversity (CBD) recognize the human rights obligations of States and international agencies engaging in REDD+.<sup>45</sup>

15. The internal policies and constituent instruments of international REDD+ agencies also require them to respect human rights. For instance, UN-REDD has endorsed the “UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming” (UN Common Understanding),<sup>46</sup> which states that “[h]uman rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other [...] instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.”<sup>47</sup> The FCPF Charter requires that FCPF activities respect the rights of indigenous peoples “under national law and applicable international obligations.”<sup>48</sup>

16. States and REDD+ agencies must ensure that there is no violation of the rights of indigenous peoples related to REDD+ initiatives. These rights are those established by both domestic and international law. The human rights of individuals apply equally to all persons without discrimination. Such human rights include, but are not limited to, the rights to life, liberty, property, due process of law, and access to justice, as well as rights relating to food, water and housing. Indigenous peoples additionally have collective rights as distinct peoples, including the right of self-determination,<sup>49</sup> full ownership rights to their lands, territories and resources,<sup>50</sup> and others discussed further below. Where there is diversity in rights and obligations under national and international law, whichever law is more protective of human rights shall apply.<sup>51</sup>

## **IMPLEMENTATION MEASURES FOR PRINCIPLE 1**

**In meeting their obligation to respect human rights, REDD+ hosting States, donor States, and international implementing agencies should:**

- (a) Identify human rights obligations relevant to REDD+ initiatives under customary law, treaties, and other international instruments, as well as relevant domestic laws;**
- (b) Ensure that REDD+ initiatives comply with relevant international human rights law and domestic legal obligations;**
- (c) Ensure that relevant rights holders and stakeholders have the capacity to understand, implement, and monitor relevant legal and human rights requirements;**
- (d) Engage with potentially-impacted rights holders and stakeholders according to and in full respect of their human rights, including through establishment of policies governing interactions with and impacts on indigenous peoples in accordance with their distinct rights under international law;**
- (e) Ensure that no REDD+ initiatives violate or pose a substantial risk of violation of human rights;**
- (f) Adopt measures to ensure that no projects are initiated where indigenous peoples living in voluntary isolation may potentially be affected; and**
- (g) Ensure particular attention to the special needs and protection of the rights of indigenous elders, women, children, and persons with disabilities.**

## **PRINCIPLE 2: OBLIGATION TO ADOPT DOMESTIC MEASURES**

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**States shall adopt domestic measures to ensure that all individuals and communities potentially affected by REDD+ initiatives, including indigenous peoples, fully enjoy and exercise their human rights as affirmed and protected by international law. States and international implementing agencies shall refrain from proceeding with REDD+ projects until such measures are in place.**

17. States have an obligation to adopt appropriate measures to adjust domestic laws and policies to the minimum human rights standards arising from international law. This obligation is established within core universal<sup>52</sup> and regional<sup>53</sup> human rights treaties. It requires not only adoption of relevant laws to protect the rights guaranteed under international law, but also effective enforcement of those laws.<sup>54</sup>

18. Special legislative and administrative measures are required to safeguard the collective rights of indigenous peoples.<sup>55</sup> This is especially critical where indigenous peoples' land and resource rights are concerned. For example, States must not only recognize indigenous peoples' collective ownership rights to land in domestic law, but also enact procedures to demarcate indigenous peoples' lands; as well as title and register their collective ownership rights.

19. The enactment of domestic measures is instrumental for ensuring that REDD+ activities meet relevant human rights standards and comply with REDD+ safeguards outlined in the Cancun Agreements, especially those requiring consistency with relevant international conventions and agreements, and respect for the rights of indigenous peoples.<sup>56</sup> For this reason, REDD+ implementing agencies, whether national or international, should pay particular attention to States' compliance with this obligation for the purpose of complying with the Cancun Agreements.

### **IMPLEMENTATION MEASURES FOR PRINCIPLE 2**

**In meeting their obligation to adopt domestic measures, REDD+ hosting States should:**

- (a) Carry out a study analyzing the compatibility of existing domestic laws and policies governing the implementation of REDD+ initiatives with minimum international human rights standards;**
- (b) Where domestic laws do not meet minimum international human rights standards, take measures necessary to guard against human rights violations by REDD+ initiatives, including reforming existing laws, policies, and practices relating to the rights of indigenous peoples, especially rights to lands, territories and resources<sup>57</sup>; and**
- (c) Ensure that law and policy reform processes are carried out through transparent and democratic means and with the informed and meaningful participation of potentially affected indigenous peoples.**

**REDD+ donor States and international implementing agencies should:**

- (a) Require host States to carry out the above indicated comprehensive study; and**
- (b) Where the host State’s study or investigation by the implementing agency show that domestic laws fail to meet minimum international human rights standards, ensure that no REDD+ projects are implemented without adequate measures guaranteeing effective protections consistent with such standards.**

**PRINCIPLE 3: OBLIGATION TO PREVENT HUMAN RIGHTS VIOLATIONS**

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**States and international implementing agencies shall use due diligence to identify rights holders and assess human rights risks and impacts, in order to ensure that their REDD+ financing, policies, or other actions do not cause, enable, support, encourage, or prolong the violation of human rights by any REDD+ partner or third party.**

20. States and REDD+ agencies have the obligation not only to refrain from directly violating human rights, but to take due diligence measures to prevent human rights violations, including those perpetrated by third parties. States are complicit in the human rights violations perpetrated by third parties where they lend support to a violating act or allow the act to occur without preventing it or punishing those responsible.<sup>58</sup> REDD+ agencies contribute to the state violation of human rights when they fund projects that affect human rights protected by international law.<sup>59</sup>

21. States and REDD+ agencies should institute a human rights-based approach to all REDD+ programming, requiring identification of rights holders that may potentially be affected, establishing REDD+ policies and safeguards meeting or exceeding minimum international human rights standards, and requiring rigorous assessments of human rights risks associated with REDD+ proposals. Assessments and safeguards focusing solely on “social and environmental impacts” that are not anchored to human rights and relevant obligations are inadequate for assessing human rights impacts and preventing violations. While social and environmental impacts are often thought of in terms of requiring mitigation, where human rights are at issue there is a much stronger and more comprehensive obligation to prevent violations and to provide redress.

22. Human Rights Impact Assessment (HRIA) must be a central and continuous part of REDD+ policy design, implementation, monitoring, and evaluation. HRIA is a means of assessing an existing or proposed project’s human rights risks, identifying various rights holders within the project area, determining the nature of the rights in play (both collective and individual), and identifying the appropriate measures to be adopted in order to prevent human rights violations. These assessments should be participative, involving potentially impacted communities. They should additionally cover not only the activities of the State or REDD+

agency, but also the potential actions of foreseeable third parties, including conservation organizations and carbon investors. These measures must occur prior to legislative, programmatic, or funding decisions related to REDD+ that could have human rights implications. Where significant risks are identified, and measures cannot be taken to eliminate the risk, the REDD+ initiative should not go forward. Once a project is operational, HRIAs must be performed regularly to identify impacts and appropriate measures for addressing and remedying any human rights violations.

### **IMPLEMENTATION MEASURES FOR PRINCIPLE 3**

**In meeting their obligation to prevent human rights violations, REDD+ hosting States, donor States, and international implementing agencies should:**

- (a) Adopt domestic laws and institutional policies requiring assessment by State implementing agencies regarding the human rights risks of all REDD+ initiatives;**
- (b) Take reasonable measures to prevent human rights violations by REDD+ partners and third parties, including exercising due diligence to investigate and assess project proposals and policies and practices of project partners for potential human rights risks;**
- (c) Where human rights risks or impacts are identified, implement measures to ensure their actions or those of REDD+ partners and foreseeable third parties do not cause, enable, support, encourage, or prolong a violation of human rights. No REDD+ initiative should be funded or proceed where doing so poses a risk of human rights violations.**
- (d) Once a REDD+ initiative is implemented, employ participative HRIA, monitoring, and review with potentially impacted communities at all major policy and project stages.**

### **PRINCIPLE 4: OBLIGATION TO REDRESS HUMAN RIGHTS VIOLATIONS**

**States and international implementing agencies shall take appropriate measures to correct wrongful acts related to REDD+ initiatives which have produced or led to human rights violations, as well as measures to redress such violations.**

23. The obligation to redress human rights violations is reflected in several human rights treaties,<sup>60</sup> and has been considered a norm of customary international law, binding on all States.<sup>61</sup> The duty to provide redress means that it is not sufficient for a State to merely identify human rights impacts. Instead, where a violation has occurred, the State has an obligation first to prevent the violation from continuing or from repeating, and secondly, to address and to compensate for any consequences and harms that arise out of that violation.<sup>62</sup>

24. The UN Declaration emphasizes this obligation, especially when human rights violations involve indigenous peoples' lands, territories, and natural resources.<sup>63</sup> According to the UN Declaration, States must "provide effective mechanisms for just and fair redress" and take appropriate measures to mitigate adverse environmental, economic, social, cultural, or spiritual impacts of development activities.<sup>64</sup> This includes providing restitution, or when this is not possible, just, fair, and equitable compensation in the form of lands, territories and resources equal in quality, size, and legal status or monetary compensation or other redress measures as preferred by the community.<sup>65</sup>

25. The duty to provide redress also applies to REDD+ agencies. The UN Economic and Social Council (ECOSOC) has called upon the World Bank specifically to facilitate the development of appropriate remedies for responding to violations of economic, social and cultural rights associated with its activities.<sup>66</sup> See Principle 10 for a discussion concerning remedies and complaint mechanisms.

#### **IMPLEMENTATION MEASURES FOR PRINCIPLE 4**

**In meeting their obligation to redress human rights violations, REDD+ host States, donor States, and international implementing agencies should:**

- (a) Identify practices and actions that led or contributed to human rights violations or environmental harm;**
- (b) If human rights violations or environmental harm are identified, immediately inform competent national and local authorities, including prosecutors, ombudsmen, and indigenous peoples agencies;**
- (c) Adopt appropriate measures to prevent ongoing violations from continuing any further;**
- (d) Take corrective actions to prevent wrongful practices from reoccurring in future REDD+ initiatives; and**
- (e) If there was a violation of indigenous peoples' human rights:**
  - i. Provide for restitution or, when this is not possible, just, fair, and equitable compensation; and**
  - ii. When indigenous peoples' land, territories and resource rights are violated, ensure that compensation take the form of lands, territories, and natural resources equal to or greater in quality, size and legal status, or of monetary compensation or other appropriate redress as freely agreed upon by the peoples concerned.**

## RIGHTS OF INDIGENOUS PEOPLES IN REDD+

### PRINCIPLE 5: SELF-DETERMINATION & SELF-GOVERNMENT

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**States and international implementing agencies shall respect indigenous peoples' self-determination and self-government rights, including recognition of their duly-established autonomous systems and institutions of self-governance, decision-making, and permanent sovereignty over their natural resources.**

26. One of the most fundamental rights of indigenous peoples is the right of self-determination.<sup>67</sup> The right of self-determination is a right of peoples,<sup>68</sup> not of individuals. Indigenous peoples' right of self-determination includes self-government, which entitles them to govern their internal affairs and maintain and develop distinct economic, social and cultural institutions without external interference.<sup>69</sup> Indigenous peoples' right of self-determination also includes a right to not be deprived of their means of subsistence, including control over their lands and resources.<sup>70</sup> Similarly, indigenous peoples are guaranteed the right to determine their own development strategies and priorities.<sup>71</sup>

27. Indigenous peoples' governments must be guaranteed the right to determine whether or not to participate in REDD+ initiatives and what those initiatives will look like. Respecting the right of self-determination also requires that REDD+ initiatives not interfere with indigenous peoples' self-government and autonomous management of their lands, territories and resources. States and REDD+ agencies should ensure that REDD+ initiatives are based on and respect the right of indigenous peoples to exercise permanent sovereignty over their natural resources (PSNR). According to the UN Special Rapporteur on the Rights of Indigenous Peoples, PSNR is the principle of international law that “[p]eoples and nations must have the authority to manage and control their natural resources and in doing so to enjoy the benefits of their development and conservation.”<sup>72</sup> Indigenous peoples' PSNR entails “legal, governmental control and management authority over natural resources, particularly as an aspect of the right to self-determination.”<sup>73</sup> PSNR is enshrined in core international treaties<sup>74</sup> and the UN Declaration,<sup>75</sup> among other instruments.<sup>76</sup>

28. Where a REDD+ project will take place on an indigenous community's lands, the community should directly administer the project. The UN Declaration recognizes indigenous peoples' right “to be actively involved in developing and determining...economic and social programs affecting them and, as far as possible, to administer such programs through their own institutions.”<sup>77</sup> Likewise, the parties to the CBD have agreed that “the establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for the rights of, indigenous and local communities...”<sup>78</sup>

29. Rather than imposing forest management models, REDD+ should focus on strengthening the capacity of indigenous peoples to effectively manage their lands and resources based on their self-identified needs. Community-based approaches to forest management have been found to be a just way to reduce deforestation and degradation; contribute to sustainable development and poverty eradication; and foster good governance, accountability and gender equality. In Belize, the Maya Q'eqchi' people have developed a successful forest management system for a national park based on indigenous peoples' rights and community-based biodiversity monitoring.<sup>79</sup> These community-based approaches to forest management, if coupled with strong rights protections, can be instrumental in achieving conservation and development goals.

#### **IMPLEMENTATION MEASURES FOR PRINCIPLE 5**

**In respecting indigenous peoples' right of self-determination, REDD+ hosting States, donor States, and international implementing agencies should:**

- (a) Ensure that REDD+ initiatives strengthen the autonomy and territorial management capacity of indigenous peoples and that indigenous peoples can directly design and manage any REDD+ projects involving their lands, territories or resources;**
- (b) Respect indigenous peoples' systems and institutions of self-governance and decision-making;**
- (c) Work with and through indigenous peoples' self-selected leaders and governance systems in a way that provides sufficient time and culturally accessible information so that indigenous peoples' self-governance systems and institutions are able to process and assess proposed REDD+ initiatives in a meaningful way;**
- (d) Respect the right of indigenous peoples to reject or refuse participation in REDD+ initiatives;**
- (e) Ensure that no indigenous peoples are denied security in their means of subsistence;**
- (f) Ensure that indigenous peoples have direct access to a fair and equitable amount of REDD+ and other climate funding rather than requiring State or third-party intermediaries; and**
- (g) Enact necessary changes and additions to domestic legislation and institutional policies to ensure the protection of indigenous peoples' right of self-determination.**

## **PRINCIPLE 6: LANDS, TERRITORIES & NATURAL RESOURCES**

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**States and international implementing agencies shall respect indigenous peoples' permanent sovereignty over their natural resources and their collective ownership rights over the lands under their possession, including those owned by reason of traditional ownership or acquired by other means. Indigenous peoples shall not be relocated from their territories because of a REDD+ project.**

30. Indigenous peoples' land and resource ownership deserves special attention because of its collective nature and importance for physical and cultural survival. Indigenous peoples are intricately linked to their lands. They have typically inhabited them since time immemorial and their ways of life depend on the natural environment. Indigenous peoples usually own their land and resources collectively, and, although they may not hold formal title, their ownership of the land by reason of long-standing possession, occupation, or use is recognized in international law.<sup>80</sup>

31. The content of indigenous peoples' right to land is that of full ownership. Generally speaking, ownership gives the right holder the power to control, manage, use and enjoy the fruits of the land, including the right to convey it to others.<sup>81</sup> This is different than a diminished right to land, such as a right of use or usufruct, which are usually limited in time.<sup>82</sup> For these reasons, the Inter-American Court has stated that domestic laws that only recognize mere use and/or usufruct rights with regard to indigenous peoples' land, instead of full collective ownership, violate Article 21 (Right to Property) of the American Convention on Human Rights.<sup>83</sup>

32. Indigenous peoples' ownership right to land is collective, not individual, according to the UN Declaration, the ILO Convention and regional human rights law.<sup>84</sup> In a landmark case relevant for REDD+, the Inter-American Court set the governing legal principle by stating that such "ownership of the land is not centered on an individual but rather on the group and its community."<sup>85</sup> For more than ten years, the Court has maintained this standard as the state of the law throughout the Americas.<sup>86</sup>

33. Prior to implementing any REDD+ initiatives, States must take measures to prevent harm to indigenous peoples' governmental and legal control and management authority over their lands and natural resources. In the leading case previously referred to, the Inter-American Court held that the State has an obligation to carry out the delimitation, demarcation, and titling of an indigenous community's lands and that until that was done "the State must abstain from any acts that might affect the existence, value, use or enjoyment of the property..." either directly or through the acts of third parties.<sup>87</sup>

34. Additionally, States establishing "carbon rights" must ensure that indigenous peoples' full ownership rights to their lands and resources are respected. While land titling is not a simple endeavor, as the Inter-American Commission has asserted, "the complexity of the matter is no excuse for the State to consider or administer untitled indigenous lands as State lands."<sup>88</sup> See Principle 9 on Benefit-Sharing.

## **IMPLEMENTATION MEASURES FOR PRINCIPLE 6**

**In respecting indigenous peoples' PSNR, REDD+ hosting States, donor States, and international implementing agencies should:**

- (a) Ensure that no REDD+ projects go forward without protections for indigenous peoples' PSNR, including a fair, independent, and transparent process to recognize the rights of indigenous peoples pertaining to their lands, territories, and resources, including those traditionally owned or otherwise occupied or used;**
- (b) Ensure that no REDD+ project goes forward without prior resolution of land and resource claims in the proposed project area;**
- (c) Until indigenous peoples' land rights are recognized, abstain from any act that might lead State agents or third parties to affect the concerned indigenous peoples' property rights to land, territories, natural resources, and environment;**
- (d) Ensure that there is no relocation of indigenous peoples due to a REDD+ initiative;**
- (e) Ensure that no REDD+ initiative shall alter indigenous peoples' land tenure systems or regulate or impede indigenous peoples' control and use of their natural resources without their free, prior, and informed consent;**
- (f) Ensure that any attribution of the ownership of "carbon rights" is based on the ownership rights to the lands, territories, and resources or performance of environmental services that generated the carbon emissions or removals at issue, including indigenous peoples' ownership through traditional possession, occupation, or use as recognized in international law; and**
- (g) Ensure that no contracts regarding "carbon rights" violate the human rights of indigenous peoples, and that no carbon contracts shall be signed without provision of competent legal and technical assistance to the indigenous peoples involved.**

## **PRINCIPLE 7: PARTICIPATION IN DECISION-MAKING**

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**States and international implementing agencies shall not implement national or sub-national REDD+ initiatives affecting indigenous peoples without providing for the full and effective participation of those peoples in their design, implementation, and evaluation.**

35. Generally speaking, the right of people to participate in decisions impacting them is protected under universal and regional human rights treaties.<sup>89</sup> In particular, the UN Declaration recognizes this right<sup>90</sup> and establishes the general duty to consult in good faith with indigenous peoples.<sup>91</sup> UN human rights treaty bodies have consistently emphasized this duty,<sup>92</sup> and it has

been affirmed by regional human rights bodies.<sup>93</sup> In addition, environmental and climate agreements require that REDD+ activities ensure the participation of potentially impacted indigenous peoples.<sup>94</sup> The Cancun Agreements' REDD+ safeguards specifically require the full and effective participation of indigenous peoples.<sup>95</sup>

36. If indigenous and non-indigenous communities will be affected by a national or sub-national REDD+ program, they should be involved in its design and implementation. Participation only of national or regional indigenous organizations is not sufficient unless specifically opted for by the potentially affected communities. The participation of indigenous and non-indigenous communities must be meaningful and real, which means that they must have the ability to sway decisions according to their interests. Participation must be full and effective, and it must be much more than mere consultation or a seeking of indigenous views or a sharing of information.

37. This necessarily includes providing the affected peoples or communities with full and accurate information regarding the content of their rights, the details of any proposal, the identity of actors involved, alternatives to the initiative, and the likelihood of potential costs and benefits to the community and to other actors. The information should be portrayed in a culturally sensitive and appropriate manner to the members of the community or the indigenous government, as the case may be, who will communicate with the rest of the community and make decisions on behalf of the community.

#### **IMPLEMENTATION MEASURES FOR PRINCIPLE 7**

**In respecting the right of indigenous peoples to participate in decision-making, REDD+ hosting States, donor States, and international implementing agencies should:**

- (a) Guarantee indigenous peoples' right to full and effective participation in any REDD+-related initiative design, implementation, and evaluation at the international, national and local levels, which may impact their rights, including decisions of whether or not to engage in REDD+-related activities or markets;**
- (b) Ensure that the participation of indigenous and local communities is meaningful and real, which means that they must have the ability to sway decisions;**
- (c) Ensure that indigenous peoples have timely access to accurate and culturally appropriate information regarding the content of their rights, the details of any proposed initiative, the identity of actors involved, alternatives to the initiative, and the likelihood of potential costs and benefits to the community and to other actors; and**
- (d) Provide necessary mechanisms, including financial, legal, and technical support to ensure that indigenous peoples are able to participate in REDD+ initiative design and implementation in a meaningful way.**

## PRINCIPLE 8: FREE, PRIOR & INFORMED CONSENT

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**States and international implementing agencies shall obtain the free, prior and informed consent (FPIC) of potentially-affected indigenous peoples, through their own representative institutions, before adopting or implementing 1) any REDD+ project that will take place on their lands or involve, interfere with, or diminish their natural or cultural resources, or 2) any REDD+ initiative that will directly and substantially affect their lands, territories, natural or cultural resources, the health and welfare of their people, or other rights.**

38. FPIC has gained significant traction in international law and policy arenas in recent years. International and regional human rights bodies widely recognize the duty of States to obtain the FPIC of potentially affected indigenous peoples in certain situations, including the UN Human Rights Council,<sup>96</sup> the UN Special Rapporteur on the Rights of Indigenous Peoples,<sup>97</sup> the UN Expert Mechanism on the Rights of Indigenous Peoples,<sup>98</sup> the Inter-American Court<sup>99</sup> and the African Commission.<sup>100</sup>

39. FPIC means the seeking of a consensual agreement (1) without coercion or manipulation, (2) sought sufficiently in advance of any authorization of activities, (3) based on full and understandable information on the proposed project and likely impacts, and (4) which respects both the community's internal collective decision-making processes and leadership or representative structure.<sup>101</sup> The specific process for a particular indigenous community to give or withhold FPIC must be decided by that community in accordance with its rights of self-determination and self-government, customs and traditions. The obligation of States and REDD+ agencies towards securing FPIC of indigenous peoples is a continuous obligation that lasts throughout the life of the REDD+ project.

40. Under the UN Declaration, FPIC is a prerequisite for REDD+ projects that take place on or involve indigenous peoples' lands, territories and resources, as indigenous peoples have full ownership rights over their lands, territories and resources.<sup>102</sup> REDD+ initiatives which do not take place on, nor directly and substantially affect indigenous peoples' lands or resources, but which may nonetheless impact indigenous peoples, convey an obligation on States and agencies to consult and cooperate in good faith with such peoples in order to obtain FPIC prior to adoption, though consent is not a prerequisite.<sup>103</sup> While FPIC is an important procedural standard, it is not an end in itself. Rather it is a standard and a set of criteria for the protection of indigenous peoples' substantive legal rights.<sup>104</sup> Without adequate recognition of and respect for indigenous peoples' substantive legal rights, there can be no truly free consent. REDD+ initiatives that rely solely on FPIC to safeguard the rights of indigenous peoples may actually facilitate the ceding of those rights.

## **IMPLEMENTATION MEASURES FOR PRINCIPLE 8**

**In respecting the FPIC of indigenous peoples, REDD+ donor States and international implementing agencies should:**

- (a) Ensure through policy requirements and verification methods that REDD+ policies require the FPIC of indigenous peoples prior to implementation of 1) any REDD+ project that will take place on their lands or involve, interfere with, or diminish their natural or cultural resources, or 2) any REDD+ initiative that will directly and substantially affect their lands, territories, natural or cultural resources, the health and welfare of their people, or other rights;**
- (b) For all other REDD+ initiatives that may affect indigenous peoples, ensure through policy requirements and verification methods that indigenous peoples are consulted with in good faith with the aim of obtaining their FPIC; and**
- (c) Outline clear protocols on FPIC and consultation procedural requirements, consistent with due process and international law.**

**In obtaining the FPIC of the indigenous peoples concerned, REDD+ hosting States should:**

- (a) Codify requirements and procedures for securing FPIC of indigenous peoples prior to the approval of 1) any REDD+ project that will take place on their lands or involve, interfere with, or diminish their natural or cultural resources, or 2) any REDD+ initiative that will directly and substantially affect their lands, territories, natural or cultural resources, the health and welfare of their people, or other rights;**
- (b) Codify requirements and procedures with due process guarantees for consultation and cooperation with indigenous peoples with the aim of securing FPIC prior to the approval of any additional REDD+ initiatives that may affect them;**
- (c) Present a full report to the implementing agency on the protocol followed to consult with indigenous peoples or to secure FPIC as required above; and**
- (d) Ensure that FPIC includes an agreement between the indigenous communities concerned and the State implementing agency, in which due redress measures are identified, as well as the opportunity for withdrawal of consent should material conditions change.**

## PRINCIPLE 9: BENEFIT-SHARING

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**States and international implementing agencies shall ensure equitable benefit-sharing with indigenous peoples of any benefits derived from the development, use, or commercialization of their lands, territories, or natural or cultural resources.**

41. According to international law, the development or commercialization of natural or cultural resources located on indigenous lands requires benefit-sharing. The ILO Convention 169<sup>105</sup> and the CBD<sup>106</sup> have clear provisions in this regard. The Inter-American Court has stated that indigenous peoples must participate in the benefits derived from their lands,<sup>107</sup> and the African Commission has determined that the absence of benefit-sharing with indigenous peoples violates their right to development.<sup>108</sup> Some domestic laws also require benefit-sharing with indigenous peoples. Nicaragua's Law 445, for instance, includes indigenous communities as one of the direct beneficiaries of the benefits derived from the development of natural resources located on the indigenous communities' lands.<sup>109</sup>

42. Benefit-sharing is an instrumental component of any agreements regarding REDD+. The benefits at issue for indigenous peoples may be monetary – actual payments deriving from ownership rights to land and resources, or for conservation activities or any related transactions of carbon credits. Additionally, the environmental and social benefits which may derive from a REDD+ project if conscientiously incorporated into its design are also critical, including biodiversity conservation, improvement of local livelihoods, strengthened recognition of indigenous peoples' land and resource rights, etc. Under the Cancun Agreements, these “non-carbon benefits” are necessary for REDD+ to “enhance other social and environmental benefits,”<sup>110</sup> especially for the “sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests.”<sup>111</sup>

43. Benefit-sharing agreements should ensure that indigenous peoples share equitably in all the benefits of REDD+, according to their rights either as owners of the land and resources generating carbon emissions or as those doing the work of conserving resources and generating emissions reductions. Agreements should be made directly with the community entitled to the previously indicated benefits – that is the indigenous community which owns the resources under international law, or performs the conservation activity. When the community in question is indigenous, self-determination (Principle 5) and collective ownership rights to lands and resources (Principle 6) must be the guiding legal basis for such agreements.

44. The lack of formal land title should not prevent indigenous peoples from accessing benefits from REDD+. Both the Inter-American Commission<sup>112</sup> and the Inter-American Court<sup>113</sup> agree that the possession of traditional lands by indigenous peoples has effects equivalent to those of State-issued full collective ownership property titles. Consequently, benefit-sharing agreements must recognize these rights.

## **IMPLEMENTATION MEASURES FOR PRINCIPLE 9**

**In providing for benefit-sharing with indigenous peoples, REDD+ hosting States, donor States, and international implementing agencies should:**

- (a) Ensure transparent, inclusive and equitable benefit-sharing with indigenous peoples of any benefits derived from the development, use, or commercialization of their natural or cultural resources;**
- (b) Ensure that the form of benefits and mechanism for distribution with indigenous peoples is determined by those peoples according to their own decision-making processes; and**
- (c) Ensure that indigenous peoples participate effectively in monitoring the implementation of the agreed benefit-sharing process at national and local levels.**

## **PRINCIPLE 10: EFFECTIVE REMEDY**

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**States and international implementing agencies shall ensure that REDD+ project-affected communities have access to effective and timely remedies within domestic judicial and administrative systems for any human rights violations that occur as a result of REDD+ initiatives. In addition, remedies shall be provided through establishment of complaint mechanisms for REDD+ initiatives.**

45. Under international law, everyone has the right to an effective remedy for acts violating their human rights. The right to an effective remedy is a fundamental human right recognized extensively in core universal<sup>114</sup> and regional human rights instruments,<sup>115</sup> and may be considered a norm of customary international law.<sup>116</sup> To fulfill this right, someone who alleges a rights violation must have access to a decision-making body that is adequate<sup>117</sup> and effective<sup>118</sup> at protecting legal rights,<sup>119</sup> and which must be able to provide a prompt decision in assessing whether there was a violation of a legal right.<sup>120</sup> Depending on the legal system, effective remedy may be provided by either a court<sup>121</sup> or another “national authority”<sup>122</sup> equipped with the “powers and guarantees” necessary to provide effective remedies to complainants.<sup>123</sup> The UN Declaration recognizes the right of indigenous peoples to “effective remedies for all infringements of their individual and collective rights.”<sup>124</sup>

46. Hosting States and REDD+ agencies must also create and provide access to project-complaint mechanisms. These mechanisms must allow project-affected communities (or concerned parties where there is no project-affected community) to lodge complaints concerning a REDD+ initiative in the case of (1) a violation of a right of the community, (2) environmental harm, or (3) lack of compliance with applicable laws and policies. The mechanism must have the capacity to investigate complaints and adopt relevant corrective actions or redress measures where necessary.

47. Any mechanism should be based on due process of law<sup>125</sup> and measure compliance with human rights norms and relevant policies. Such a mechanism should be independent from the REDD+ initiative at issue, and operate openly and transparently. It must have the power to secure corrective action by the financing or implementing agency or project host as appropriate.

#### **IMPLEMENTATION MEASURES FOR PRINCIPLE 10:**

**In respecting the right to an effective remedy, REDD+ hosting States should:**

- (a) Ensure that communities affected by a national or sub-national program have access to effective judicial or administrative remedy.**

**Donor States and international implementing agencies should:**

- (a) Ensure that no REDD+ project is implemented without first having in place complaint mechanisms at the project level to hear complaints of (1) a violation of a right of the community, (2) environmental harm, or (3) lack of compliance with applicable laws and policies;**
- (b) Ensure that the complaint mechanism decision-making body or official is independent from those agencies and agents who have responsibility for the REDD+ project at issue;**
- (c) Ensure that complaint mechanisms operate in an open and transparent manner, are consistent with human rights norms and have the power to bring about corrective action by the financing or implementing agency or hosting country as appropriate;**
- (d) Ensure that communities in the project area are aware of the existence of the complaint mechanism and how it operates and that the mechanism is accessible to communities in their native language without requiring legal or technical expertise or financial resources;**
- (e) Ensure that when either human rights violations or environmental harm are identified in the project area, the project complaint mechanism communicate and collaborate with the competent local and national authorities, including criminal prosecutors; and**
- (f) Ensure that, regardless of the existence or use of any complaint or grievance mechanism, no REDD+ project-affected community is deprived of access to prompt and effective remedies available at the national and international level.**

## NOTES

<sup>1</sup> Andrew Nelson & Kenneth Chomitz, *Protected Area Effectiveness in Reducing Tropical Deforestation: A Global Analysis of the Impact of Protection Status*, in WORLD BANK INDEPENDENT EVALUATION GROUPS EVALUATION BRIEF 7 (Oct. 2009), available at [www://http://siteresources.worldbank.org/INTOED/Resources/protected\\_areas\\_eb.pdf](http://siteresources.worldbank.org/INTOED/Resources/protected_areas_eb.pdf)

<sup>2</sup> COONAPIP Letter to UN-REDD Program 1 (March 1, 2013), on file with authors.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> In Kenya, the Ogiek people were forcibly evicted to make the Mau Forest “ready” for REDD+. See Interim Coordinating Secretariat, Office of the Prime Minister on behalf of the Government of Kenya, Rehabilitation of the Mau Forest Ecosystem, at 41, Sept. 2009, available at [http://www.kws.org/export/sites/kws/info/maurestoration/maupublications/Mau\\_Forest\\_Complex\\_Concept\\_paper.pdf](http://www.kws.org/export/sites/kws/info/maurestoration/maupublications/Mau_Forest_Complex_Concept_paper.pdf). (recognizing that “[t]here is consensus within the Government that all people living in the protected forests and many people now living in what was formerly forest will have to be relocated or resettled”); Robyn Dixon, *Kenyan tribe slowly driven off its ancestral lands*, L.A. TIMES, Jan 4, 2010, available at <http://articles.latimes.com/2010/jan/04/world/la-fg-kenya-forest4-2010jan04> (stating that “[i]n November [2009], the Kenyan government finally acted to save the Mau Forest. The first step: Evict the Ogiek again -- this time from their villages near the edge of the forest”).

<sup>6</sup> REDD+ contract scams are rampant—in one case in 2009, the land of 45,000 indigenous people in East Pangia was transferred to a carbon trader. See Ilya Gridneff, *Critics see REDD over PNG carbon schemes*, THE SYDNEY MORNING HERALD, Aug. 6, 2010, available at <http://www.smh.com.au/breaking-news-world/critics-see-redd-over-png-carbon-schemes-20100806-11lxq.html>; Marian Wilkinson and Ben Cubby, *Australian firm linked to PNG's \$100m carbon trading scandal*, THE SYDNEY MORNING HERALD, Sept. 4, 2009, available at <http://www.smh.com.au/environment/australian-firm-linked-to-pngs-100m-carbon-trading-scandal-20090903-fa2y.html#ixzz1tAIu9WtN><http://www.smh.com.au/environment/australian-firm-linked-to-pngs-100m-carbon-trading-scandal-20090903-fa2y.html>; Ben Cubby and Marian Wilkinson, *I am a top foreigner in Papua New Guinea, says carbon kingpin*, THE SYDNEY MORNING HERALD, Sept. 4, 2009, <http://www.smh.com.au/environment/i-am-a-top-foreigner-in-papua-new-guinea-says-carbon-kingpin-20090903-fa0m.html#ixzz1tAJ9CmWq>; CHRIS LANG, REDD-MONITOR, MORE QUESTIONS THAN ANSWERS ON CARBON TRADING IN PNG (2009), <http://www.redd-monitor.org/2009/09/11/more-questions-than-answers-on-carbon-trading-in-png/#nupan>.

<sup>7</sup> Armed guards have been used to enforce REDD projects, while carbon companies sign illegal contracts for indigenous peoples’ resources. See CHRIS LANG, REDD-MONITOR, INJUSTICE ON THE CARBON FRONTIER IN GUARAQUECABA (2009), BRAZIL, <http://www.redd-monitor.org/2009/11/06/injustice-on-the-carbon-frontier-in-guaraquecaba-brazil/>; Mark Shapiro, *GM’s Money Trees*, MOTHER JONES, Nov. 2009, available at <http://motherjones.com/environment/2009/11/gms-money-trees>; World Rainforest Movement, *Forest carbon project in Paraná, Brazil: Reduction of deforestation and persecution of local communities* (2011), <http://wrm.org.uy/bulletin/169/viewpoint.html>; Fundação Nacional do Índio (State National Indian Foundation of Brazil), *Esclarecimentos da Funai sobre atuação do mercado voluntário de REDD em Terras Indígenas*, [http://www.funai.gov.br/ultimas/noticias/2012/03\\_mar/PDF/Esclarecimentos-REDD.pdf](http://www.funai.gov.br/ultimas/noticias/2012/03_mar/PDF/Esclarecimentos-REDD.pdf).

<sup>8</sup> In a REDD project established in the Montes Azules Reserve of the Lacondon jungle— a site of longstanding land conflict - the State government promised to evict ‘irregular settlers’ and cancelled medical services for the community, leading to several deaths. Jeff Conant, *Do trees grow on money?*, EARTH ISLAND JOURNAL, Autumn 2011, available at [http://www.earthisland.org/journal/index.php/eij/article/do\\_trees\\_grow\\_on\\_money](http://www.earthisland.org/journal/index.php/eij/article/do_trees_grow_on_money).

<sup>9</sup> The Matsés and Shipibo people have been targeted by *carbon cowboys* to hand over their land titles. ASOCIACIÓN INTERÉTNICA DE DESARROLLO DE LA SELVA PERUANA (NATIONAL ORGANIZATION OF THE AMAZONIAN INDIGENOUS PEOPLES OF PERU), DECLARACIÓN DE IQUITOS (2011), <http://www.aidesep.org.pe/editor/documentos/1371.pdf>; Patrick Bodenham and Ben Cubby, *Carbon cowboys*, SYDNEY MORNING HERALD, July 23, 2011, available at <http://www.smh.com.au/environment/conservation/carbon-cowboys-20110722-1hssc.html>; ASOCIACIÓN INTERÉTNICA DE DESARROLLO DE LA SELVA PERUANA, ALERTA SOBRE FUTUROS PROBLEMAS CON “SERVICIOS AMBIENTALES”, “MERCADO DE CARBONO” (O “REDD”) EN COMUNIDADES SHIPIBAS (2011), <http://www.forestpeoples.org/sites/fpp/files/news/2011/08/CasoREDDShipibo-4.pdf>.

<sup>10</sup> In Indonesia, indigenous peoples reported not being allowed to engage in the development of REDD+ activities nor recognized as forest-owners. Barnard Steni, HuMa (Association for Community and Ecologically Based Law Reform of Indonesia), *Better governance in the forestry sector, or business as usual?*, in REALIZING RIGHTS, PROTECTING FORESTS: AN ALTERNATIVE VISION FOR REDUCING DEFORESTATION, ACCRA Caucus on Forests and Climate Change, June 2010, at 10, available at [http://www.rightsandresources.org/documents/files/doc\\_1590.pdf](http://www.rightsandresources.org/documents/files/doc_1590.pdf).

<sup>11</sup> In Ecuador, the national REDD+ strategy has been criticized for not respecting indigenous peoples’ representative structures and decision-making institutions. Laourdes Barragan, Centro de Planificación y Estudios Sociales of Ecuador, *Building REDD+: the need for social participation and inclusion of indigenous and other forest-dependent peoples*, in REALIZING RIGHTS, PROTECTING FORESTS: AN ALTERNATIVE VISION FOR REDUCING DEFORESTATION, *supra* note 8, at 14.

<sup>12</sup> In Cameroon, a serious land-grabbing situation arose where elites were acquiring large areas of community forest lands and the pygmy people are being forced out of the forest. Samuel Nnah Ndobe, Center for Environment and Development of Cameroon, *Challenges for REDD within the current land and forest tenure legislation*, in REALISING RIGHTS, PROTECTING FORESTS: AN ALTERNATIVE VISION FOR REDUCING DEFORESTATION, *supra* note 8, at 26.

<sup>13</sup> The UN Special Rapporteur and regional human rights bodies, such as the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights, have clearly acknowledged the unique context of indigenous peoples and their special relationship to their lands. *See e.g.*, U.N. Special Rapporteur, Erica-Irene Daes, *Prevention of Discrimination and Protection of Indigenous Peoples: Indigenous Peoples' Permanent Sovereignty Over Natural Resources*, paras. 40, 54, 58, U.N. E/CN.4/Sub.2/2004/30 (July 13, 2004); *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-Am. Ct. H.R. (ser. C) No. 79, para. 149 (Aug. 31, 2001); *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, African Comm. on Human & Peoples' Rights Communication 276/2003 (Nov. 11-25, 2009).

<sup>14</sup> U.N. Declaration, G.A. Res. 61/295, pmb., U.N. Doc A/RES/61/295 (Sept. 13, 2007).

<sup>15</sup> UNFCCC Conference of the Parties, Nov. 29-Dec. 10, 2010, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention [Cancun Agreements], appendix 1(2), FCCC/CP/2010/7/Add.1 (Mar. 15, 2011).

<sup>16</sup> Andrew Nelson & Kenneth Chomitz, *Protected Area Effectiveness in Reducing Tropical Deforestation: A Global Analysis of the Impact of Protection Status*, in WORLD BANK INDEPENDENT EVALUATION GROUPS EVALUATION BRIEF 7 (Oct. 2009), available at [www://http://siteresources.worldbank.org/INTOED/Resources/protected\\_areas\\_eb.pdf](http://siteresources.worldbank.org/INTOED/Resources/protected_areas_eb.pdf).

<sup>17</sup> U.N. Department of Economic and Social Affairs, Division for Social Development and Policy, Secretariat of the Permanent Forum on Indigenous Issues, *State of the World's Indigenous Peoples*, at 41 (Dec. 2009), available at [http://www.un.org/esa/socdev/unpfii/documents/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf) (identifying "security of rights to territories, lands and natural resources" as the main "indicators to measure status of and trends in indigenous peoples' well-being at global, regional, national and local levels").

<sup>18</sup> In the opinion of the Accra Caucus on Forests and Climate Change, "[a]n international agreement to protect forests should address the drivers of deforestation, confront the forces that seek to destroy forests, and empower the communities who are best placed to protect, maintain and enhance them." REALIZING RIGHTS, PROTECTING FORESTS: AN ALTERNATIVE VISION FOR REDUCING DEFORESTATION, *supra* note 10, at 39.

<sup>19</sup> Office of the United Nations High Commissioner for Human Rights, *Frequently asked questions on the human rights-based approach to development cooperation*, 2006, at 15, 16, available at <http://www.ohchr.org/Documents/Publications/FAQen.pdf>.

<sup>20</sup> *Id.*

<sup>21</sup> UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming [UN Common Understanding], 2003, [http://www.undg.org/archive\\_docs/6959-The\\_Human\\_Rights\\_Based\\_Approach\\_to\\_Development\\_Cooperation\\_Towards\\_a\\_Common\\_Understanding\\_among\\_UN.pdf](http://www.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf).

<sup>22</sup> Organization for Economic Co-operation and Development's Development Assistance Committee, DAC Action-Oriented Policy Paper on Human Rights and Development (2007), <http://www.oecd.org/dataoecd/50/7/39350774.pdf>.

<sup>23</sup> *See e.g.* Germany's Federal Ministry for Economic Cooperation and Development, [http://www.bmz.de/en/publications/type\\_of\\_publication/strategies/Strategiepapier305\\_04\\_2011.pdf?follow=adword](http://www.bmz.de/en/publications/type_of_publication/strategies/Strategiepapier305_04_2011.pdf?follow=adword); Swedish International Development Cooperation Agency, <http://www.sida.se/English/Partners/Sida-Partnership-Forum/Sida-Partnership-Forum1/Courses-2011/Courses-Autumn-2011/RBA112/> (last visited Nov. 7, 2011); British Department for International Development, [http://www2.ohchr.org/english/issues/development/docs/human\\_rights\\_tsp.pdf](http://www2.ohchr.org/english/issues/development/docs/human_rights_tsp.pdf) (last visited Nov. 7, 2011); Norwegian Agency for Development Cooperation, <http://www.norad.no/en/tools-and-publications/publications/evaluations/publication?key=385467> (last visited Nov. 7, 2011).

<sup>24</sup> UN-REDD is the UN initiative on REDD+, which assists developing countries in preparing and implementing national REDD+ strategies. UN-REDD is a collaboration between the Food and Agriculture Organization of the United Nations, the United Nations Development Programme and the United Nations Environment Programme. UN-REDD Programme, <http://www.un-redd.org/AboutUNREDDProgramme/tabid/583/Default.aspx> (last visited Apr. 27, 2012).

<sup>25</sup> FCPF is the World Bank initiative that focuses on helping countries get ready for future REDD+ programs and projects. *See e.g.*, Forest Carbon Partnership Facility, <http://www.forestcarbonpartnership.org/fcp/node/12> (last visited Apr. 27, 2012). *See also*, International Bank for Reconstruction and Development Charter Establishing The Forest Carbon Partnership Facility [FCPF Charter], May 11, 2011, Section B (determining that "the Bank desires to establish the Forest Carbon Partnership Facility to build partnerships among developed and developing countries, public and private sector entities, international organizations, nongovernmental organizations, forest-dependent indigenous peoples and forest dwellers to prepare for possible future systems of positive incentives for REDD").

<sup>26</sup> The FCPF's Carbon Fund provides "performance-based payments to about five countries that have made significant progress in their REDD+ readiness endeavors." FCPF, The Carbon Fund, <http://www.forestcarbonpartnership.org/fcp/search/node/carbon%20fund> (last visited May 2, 2012).

<sup>27</sup> FIP is part of the World Bank's Strategic Climate Fund. FIP funds projects that have been identified through the REDD Readiness program. Forest Investment Program, <http://www.climateinvestmentfunds.org/cif/node/5> (last visited Apr. 27, 2012).

<sup>28</sup> GEF is one of the largest public funders of projects focusing on global environmental issues. "Since 2007, the GEF has increasingly provided resources for pilot projects focusing on REDD+, with a focus on fostering cross-sectoral cooperation" Global Environmental Facility, <http://www.thegef.org/gef/SFM> (last visited Apr. 27, 2012).

<sup>29</sup> IDB is an implementing agency for climate change-related funds with a focus in developing countries in the Americas. Inter-American Development Bank, <http://www.iadb.org/en/topics/forestry/idb-works-with-fip-cfp-and-grif,2678.html> (last visited Apr. 27, 2012).

<sup>30</sup> The 2010 Cancun UNFCCC negotiations also created a Green Climate Fund (Fund) as the main multilateral finance mechanism under the UNFCCC to support policies and activities in developing country Parties. The Fund will use thematic funding windows, one of which will likely be REDD+. The World Bank (Bank) was appointed interim trustee of the Fund and a Transitional Committee is in the process of developing policies and safeguards for the Fund.

<sup>31</sup> Universal Declaration of Human Rights, preamble, G.A. Res. 217A (Dec. 12, 1948); International Covenant on Civil and Political Rights, arts. 2(1) and 2(2), G.A. Res. 2200A (XXI) (Dec. 16, 1966); International Covenant on Economic, Social and Cultural Rights, art. 2(2), G.A. Res. 2200A (XXI) (Dec. 16, 1966); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 7, G.A. Res. 45/158 (Dec. 18, 1990); International Convention on the Elimination of All Forms of Racial Discrimination, preamble, G.A. Res. 2106 (XX) (Dec. 21, 1965).

<sup>32</sup> Organization of American States, American Convention on Human Rights, art. 1, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 1, Nov. 17, 1988, O.A.S.T.S. No. 69; U.N. Charter, art. 55(c); Council of Europe, European Convention for the Protection of the Human Rights and Fundamental Freedoms, art. 1, Nov. 4, 1950, 213 U.N.T.S. 221; Council of Europe, European Social Charter, preamble (Oct. 18, 1961); Organization of African Unity, African Charter of Human and People's Rights, art. 1 (June 27, 1981); League of Arab States, Arab Charter of Human Rights, art. 2 (Sept. 15, 1994).

<sup>33</sup> See United Nations Development Group, Human Rights Based-approach to Development Programming, <http://www.undg.org/?P=221> (last visited Apr. 30, 2012).

<sup>34</sup> United Nations Charter, art. 55 (stating that "[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: . . . c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion").

<sup>35</sup> See e.g. CESCR, *General Comments 15: The Right To Water (Art. 11 and 12)*, *supra* note 31; *General Comments 14: The Right To The Highest Attainable Standard Of Health (Art. 12)*, *supra* note 31; *General Comments 13: The Right To Education (Art. 11)*, *supra* note 31; and *General Comments 12: The Right To Adequate Food (Art. 11)*, *supra* note 31.

<sup>36</sup> See e.g., U.N. Economic and Social Council [ECOSOC], Procedural Decisions, U.N. Doc. E/1999/22, para. 515.5 (1999) (emphasizing that "international organizations, as well as the Governments that have created and manage them, have a strong and continuous responsibility to take whatever measures they can to assist Governments to act in ways which are compatible with their human rights obligations and to seek to devise policies and programmes which promote respect for those rights"). See also, ECOSOC, Conclusions and Recommendations, Jordan, para. 28, U.N. Doc. E/C.12/1/Add.46 (2000) (stating that for the purpose of ensuring that rights protected by the ICESCR are not undermined, obligations under the ICESCR should be considered in all aspects of a member State's negotiations with international financial institutions).

<sup>37</sup> According to the UN International Law Commission, an IIO is "an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities." U.N. Int'l L. Comm'n, *Responsibility of International Organizations: Titles and Texts of the Draft Articles 1, 2 and 3 Adopted by the Drafting Committee*, art. 2, U.N. Doc. A/CN.4/L.632 (June 4, 2003) [hereinafter U.N. Int'l L. Comm'n, *Draft Articles 1, 2 and 3*].

<sup>38</sup> Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt, Advisory Opinion, 1980 I.C.J. 73, 89-90 (Dec. 20) (stating that IIOs "are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties").

<sup>39</sup> Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 I.C.J. 179 (Apr. 11) (concluding that the United Nations has "a large measure of international personality and the capacity to operate upon an international plane").

<sup>40</sup> Agreement Between the United Nations and the International Bank for Reconstruction and Development, 109 U.N.T.S. 341 (Apr. 15, 1948). ("The Bank is a specialized agency established by agreement among its member Governments and having wide international responsibilities, as defined in its Articles of Agreement, in economic and related fields within the meaning of Article 57 of the Charter of the United Nations. By reason of the nature of its international responsibilities . . . the Bank is, and is required to function as, an independent international organization"); See U.N. Charter, art. 57 (stating that specialized agencies are those intergovernmental organizations operating in conjunction with the United Nations and pursuant to Article 63 of the Charter).

<sup>41</sup> U.N. Declaration, *supra* note 14, at 41, 42.

<sup>42</sup> Cancun Agreements, *supra* note 15, at 8.

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<sup>43</sup> *Id.*, at appendix 1(2).

<sup>44</sup> Within the UNFCCC, the Conference of the Parties agreed that regardless of the source or type of financing, the activities related to REDD+—e.g. reducing emissions from deforestation, reducing emissions from forest degradation, conservation of forest carbon stocks, sustainable management of forests, and enhancement of forest carbon stocks—should be consistent with the safeguards outlined in the Cancun Agreements. UNFCCC Conference of the Parties, Draft decision [-/CP.17]: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, at 63, *available at* [http://unfccc.int/files/meetings/durban\\_nov\\_2011/decisions/application/pdf/cop17\\_lcaoutcome.pdf](http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_lcaoutcome.pdf).

<sup>45</sup> Convention on Biological Diversity, Conference of the Parties: COP 9 Decision IX/5 Forest Biodiversity [CBD Conference of the Parties 9 Decision], at 2 (a), *available at* <http://www.cbd.int/decision/cop/?id=11648> (last visited Apr. 30, 2012) (inviting Parties, other Governments, and relevant international organizations to “[e]nsure that possible actions for reducing emissions from deforestation and forest degradation... respect the rights of indigenous and local communities in accordance with national laws and applicable international obligations”).

<sup>46</sup> UN-REDD Programme Guidelines on Free, Prior and Informed Consent, Draft for Comments at § 1.3, Dec. 2011, *available at* [http://www.un-redd.org/NewsCentre/FPIC\\_Guidelines\\_Open\\_For\\_Review/tabid/79163/Default.aspx](http://www.un-redd.org/NewsCentre/FPIC_Guidelines_Open_For_Review/tabid/79163/Default.aspx) (establishing that UN-REDD follows a human rights-based approach to programming and policy as outlined in the UN Common Understanding, in order to realize human rights outlined in the Universal Declaration of Human Rights, United Nations Development Group Guidelines on Indigenous Peoples Issues, United Nations Declaration on the Rights of Indigenous Peoples, Convention on Biological Diversity, International Labour Organization Convention 169 on Indigenous and Tribal Peoples, and Cancun Agreements decision on REDD+, among other instruments).

<sup>47</sup> UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming [UN Common Understanding], 2003, [http://www.undg.org/archive\\_docs/6959-The\\_Human\\_Rights-Based\\_Approach\\_to\\_Development\\_Cooperation\\_Towards\\_a\\_Common\\_Understanding\\_among\\_UN.pdf](http://www.undg.org/archive_docs/6959-The_Human_Rights-Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf).

<sup>48</sup> FCPF Charter, *supra* note 25, Sec. 3.1(d).

<sup>49</sup> U.N. Declaration, *supra* note 14, at 3, 4.

<sup>50</sup> *Id.*, at 26.

<sup>51</sup> This is one of those situations where the *pro homine* principle applies. In virtue of this principle, when interpreting human rights obligations, the interpreter should adopt the most protective reading when it comes to recognizing the extent of protected rights and, simultaneously, that it should opt for the most restrictive reading of provisions intended to suppress the exercise of specific human rights. Monica Pinto, *El Principio pro homine. Criterios de Hermenéutica y Pautas para la Regulación de los Derechos Humanos [The Pro Homine Principle. Interpretative Means and Guides for the Regulation of Human Rights]*, in LA APLICACIÓN DE LOS TRATADOS SOBRE DERECHOS HUMANOS POR LOS TRIBUNALES LOCALES [THE ADJUDICATION OF HUMAN RIGHTS TREATIES BY DOMESTIC COURTS], 163 (Martin Abregu and Christian Courtis, eds., CELS, Editores del Puerto, 1997).

<sup>52</sup> See International Covenant on Economic, Social and Cultural Rights, *supra* note 31, at 2(1); International Covenant on Civil and Political Rights, *supra* note 31, at 2(2); U.N. Declaration, *supra* note 14, at 38.

<sup>53</sup> See American Convention on Human Rights, *supra* note 32, at 2; African Charter of Human and People’s Rights, *supra* note 32, at 1.

<sup>54</sup> Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, Inter-Am. Ct. H.R. (ser. C No. 94), para. 113 (June 21, 2002).

<sup>55</sup> See International Labor Organization, Convention Concerning Indigenous and Tribal Peoples in Independent Countries [ILO Convention 169], June 27, 1989, at 4(1), *available at* <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169> (stating that “[s]pecial measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labor, cultures and environment of the peoples concerned”). See also, Maya Indigenous Communities of the Toledo District, Case 12.053, Inter-Am. C.H.R. Report 40/04 (2004) (Belize) at para. 96 (determining that “protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population”).

<sup>56</sup> Cancun Agreements, at appendix 1(2).

<sup>57</sup> See Principle 6.

<sup>58</sup> Case of Velasquez-Rodriguez v. Honduras, Inter-Am. Ct. H.R. (ser. C No. 4), para. 173 (July 29, 1988).

<sup>59</sup> Leonardo A. Crippa, *Multilateral Development Banks and Human Rights Responsibility*, 25 AM. U. INT’L. REV. 549 (2010).

<sup>60</sup> International Covenant on Civil and Political Rights, *supra* note 31, at 2(3); American Convention on Human Rights, *supra* note 32, art. 63(1).

<sup>61</sup> Case of De la Cruz-Flores v. Peru, Inter-Am. Ct. H.R. (ser. C No. 115), para. 139 (Nov. 18, 2004) (stating that as a norm of customary law, the obligation to redress reflects one of the fundamental elements of contemporary international law on State responsibility, in virtue of which “[w]hen an unlawful act occurs, which can be attributed to a State, this gives rise immediately to its international responsibility for violating the international norm, with the consequent obligation to cause the consequences of the violation to cease and to repair the damage caused”).

<sup>62</sup> *Id.*

<sup>63</sup> See Principle 6.

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- <sup>64</sup> U.N. Declaration, *supra* note 14, art. 28, 32.
- <sup>65</sup> *Id.*, at 28.
- <sup>66</sup> ECOSOC, *Procedural Decisions*, *supra* note 36, at 515.
- <sup>67</sup> Robert T. Coulter, *The Law of Self-Determination and the United Nations Declaration on the Rights of Indigenous Peoples*, 15 UCLA J. INT'L L. & FOREIGN AFF. 1 (2010); U.N. Declaration, *supra* note 14, at 3, 4.
- <sup>68</sup> International Covenant on Civil and Political Rights, *supra* note 31, at 1; International Covenant on Economic, Social and Cultural Rights, *supra* note 31, at 1; U.N. Charter, at 1, 55; African Charter on Human and Peoples' Rights, *supra* note 32, at 20. See UN Human Rights Committee [HRC], *CCPR General Comment No. 12: Article 1 (Right to Self-determination), The Right to Self-determination of Peoples*, Mar. 13, 1984, available at <http://www.unhcr.org/refworld/docid/453883f822.html> (determining that the right to self-determination enjoys a special fundamental status among human rights because it is "an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights").
- <sup>69</sup> Committee on the Elimination of Racial Discrimination [CERD], *General Recommendation No. 21: Right to self-determination*, Aug. 23, 1996, at 4.
- <sup>70</sup> U.N. Declaration, *supra* note 14, at 20 (establishing that indigenous peoples have the right "to be secure in the enjoyment of their own means of subsistence and development and to engage freely in all their traditional and other economic activities"); International Covenant on Civil and Political Rights, *supra* note 31, at 1(2); International Covenant on Economic, Social and Cultural Rights, *supra* note 31, at 1(2).
- <sup>71</sup> U.N. Declaration, *supra* note 14, at 23, 32; ILO Convention 169, *supra* note 55, at 7.
- <sup>72</sup> U.N. Special Rapporteur, Erica-Irene A. Daes, *supra* note 13, at 6.
- <sup>73</sup> *Id.*, at 18.
- <sup>74</sup> International Covenant on Civil and Political Rights, *supra* note 31, at 1; International Covenant on Economic, Social and Cultural Rights, *supra* note 31, at 1.
- <sup>75</sup> U.N. Declaration, *supra* note 14, at 4, 8, 26, 27, 28, 29, 30, 32.
- <sup>76</sup> See e.g. African Charter on Human and Peoples' Rights, *supra* note 32, at 21; CBD, 1760 UNTS 79 (1992), at 3; United Nations Conference on the Human Environment Stockholm, June 16, 1972, *Stockholm Declaration*, at principle 21, A/CONF.48/14; UNFCCC, FCCC/INFORMAL/84 (May 9, 1992), at prmb1, para. 8; United Nations Conference on Environment and Development, Aug. 12, 1992, *Rio Declaration*, at principle 2, A/CONF.151/26 (vol. I); Vienna Convention on the Succession of States in Respect of Treaties, A/CONF.80/31 (Aug. 22, 1978), at 13, as corrected by A/CONF.80/31/Corr.2 (Oct. 27, 1978).
- <sup>77</sup> U.N. Declaration, *supra* note 14, at art 23.
- <sup>78</sup> CBD Conference of the Parties Decision VII/28 Protected Areas, Feb. 2004, para. 22.
- <sup>79</sup> See generally, Sarstoon-Temash Institute for Indigenous Management (SATIIM), <http://www.satiim.org.bz/index.php?section=1> (last visited Aug. 29, 2013).
- <sup>80</sup> U.N. Declaration, *supra* note 14, at 26.
- <sup>81</sup> *Black's Law Dictionary*, (13th ed.), at 1138.
- <sup>82</sup> *Id.*, at 1580.
- <sup>83</sup> Case of the Saramaka People v. Suriname, Inter-Am. Ct. H.R. (Ser. C) No. 172 (Nov. 28, 2007), at 116.
- <sup>84</sup> U.N. Declaration, *supra* note 14, at 26(2) (stating that "[i]ndigenous peoples have the right to own...the lands, territories and resources that they possess"); ILO Convention 169 *supra* note 55 at art 13; African Charter on Human and Peoples Rights *supra* note 32, art 14.
- <sup>85</sup> The Mayagna (Sumo) Awas Tingni Community v. Nicaragua, *supra* note 13, at para. 149.
- <sup>86</sup> See Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Inter-Am. Ct. H.R. (Ser. C) No. 245 (June 27, 2012); case of the Xákmok Kásek Indigenous Community v. Paraguay, Inter-Am. Ct. H.R. (Ser. C) No.214 (Aug. 24, 2010); Case of the Saramaka People v. Suriname, *supra* note 84; Case of the Yakye Axa Indigenous Community v. Paraguay, Inter-Am. Ct. H.R. (Ser. C) No. 146 (June 17, 2007); Case of the Sawhoyamaya Indigenous Community v. Paraguay, Inter-Am. Ct. H.R. (Ser. C) No.146 (Mar. 29, 2006); Case of the Moiwana Community v. Suriname, Inter-Am. Ct. H.R. (Ser. C) No.124 (June 15, 2005).
- <sup>87</sup> Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua, *supra* note 13, at 4.
- <sup>88</sup> Inter-Am. Comm'n H.R., *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System* 34, OEA/Ser.L/V/II, Doc. 59/09 (Dec. 30, 2009).
- <sup>89</sup> International Covenant on Civil and Political Rights, *supra* note 31, at 25; Universal Declaration of Human Rights, G.A. Res. 217A (Dec. 12, 1948), at 21; American Convention on Human Rights, *supra* note 32, at 23; African Charter on Human and Peoples' Rights, *supra* note 32, at 13; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters [Aarhus Convention], 2161 UNTS 447 (1999), at 6, 7, 8.
- <sup>90</sup> U.N. Declaration, *supra* note 14, at 5, 18.
- <sup>91</sup> *Id.*, at 10, 11, 15, 17, 19, 28, 29, 30, 32, 36, 37, 38.
- <sup>92</sup> See e.g., U.N. Expert Mechanism on the Rights of Indigenous Peoples, *Progress report on the study on indigenous peoples and the right to participate in decision-making*, A/HRC/EMRIP/2010/2 (May 17, 2010); U.N. Human Rights Committee,

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*Concluding observations of the Human Rights Committee: Mexico*, CCPR/C/79/Add.109 (July 27, 1999); CERD, *Considerations of the Reports Submitted by the States Parties Under Article 9 of the Convention: Canada*, CERD/C/CAN/CO/18 (May 25, 2007), at 15, 25; CERD, *Considerations of the Reports Submitted by the States Parties Under Article 9 of the Convention: New Zealand*, CERD/C/NZL/CO/17 (Aug. 15, 2007), at 19; CERD, *Considerations of the Reports Submitted by the States Parties Under Article 9 of the Convention: Indonesia*, CERD/C/IDN/CO/3 (Aug. 15, 2007), at 17; CERD, *Considerations of the Reports Submitted by the States Parties Under Article 9 of the Convention: Democratic Republic of the Congo*, CERD/C/COD/CO/15 (Aug. 17, 2007), at 18; CERD, *Considerations of the Reports Submitted by the States Parties Under Article 9 of the Convention: Ecuador*, CERD/C/ECU/CO/19 (Aug. 15, 2008), at 16; CERD, *Considerations of the Reports Submitted by the States Parties Under Article 9 of the Convention: United States of America*, CERD/C/USA/CO/6 (Febr. 2008), at 29.

<sup>93</sup> See *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, African Comm. on Human & Peoples' Rights, *supra* note 13.

<sup>94</sup> Rio Declaration, *supra* note 76, at principle 22; Aarhus Convention, *supra* note 90; United Nations Conference on Environment and Development, June 3-14, 1992, Agenda 21: The United Nations Programme of Action from Rio, Chapter 26, at para. 4.

<sup>95</sup> Cancun Agreements, *supra* note 15, at Appendix I and para. 69.

<sup>96</sup> See e.g., HRC, *Outcome of the universal periodic review: New Zealand*, A/HRC/DEC/12/106 (Oct. 9, 2009).

<sup>97</sup> See e.g., U.N. Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples*, U.N. Doc. A/HRC/12/34 (July 15, 2009).

<sup>98</sup> See e.g., U.N. Expert Mechanism on the Rights of Indigenous Peoples, *supra* note 93.

<sup>99</sup> See e.g., *Case of the Saramaka People v. Suriname*, *supra* note 84.

<sup>100</sup> See *Endorois Welfare Council v. Kenya*, *supra* note 13.

<sup>101</sup> See e.g., U.N. Permanent Forum on Indigenous Issues, *Report of the International Workshop on Methodologies Regarding Free, Prior and Informed Consent*, U.N. Doc. E/C.19/2005/3 (Feb. 17, 2005).

<sup>102</sup> U.N. Declaration, *supra* note 14, at 26, 28.

<sup>103</sup> *Id.*, at 19, 32.

<sup>104</sup> U.N. Dep't of Eco. & Soc. Affairs, Div. for Soc. Policy & Dev., Workshop on Free, Prior, & Informed Consent, Contribution of the Indian Law Resource Center, *Indigenous Peoples' Right of Free Prior Informed Consent with Respect to Indigenous Lands, Territories & Resources*, at 1, U.N. Doc. PFII/2004/WS.2/6 (Jan. 17-19, 2005). See also, Leonardo A. Crippa, *Cross-cutting Issues in the Application of the Guatemalan "NEPA": Environmental Impact Assessment and the Rights of Indigenous Peoples*, 24 AM. U. INT'L L. REV. 130, 131 (2008).

<sup>105</sup> ILO Convention 169, *supra* note 55, at 15.

<sup>106</sup> CBD, *supra* note 76, 8(j).

<sup>107</sup> *Case of the Saramaka People v. Suriname*, *supra* note 84, at 129, 138.

<sup>108</sup> *Endorois Welfare Council v. Kenya*, *supra* note 13, at 228.

<sup>109</sup> Ley 445, Ley del Régimen de Propiedad Comunal de los Pueblos Indígenas y Comunidades Étnicas de las Regiones Autónomas de la Costa Atlántica de Nicaragua y de los Rios Bocay, Coco, Indio y Maiz [Law on Indigenous Peoples' Collective Property Rights in the Atlantic Coast and the Bocay, Coco, India and Maiz Rivers], Jan. 22, 2003, at 34.

<sup>110</sup> Cancun Agreements, *supra* note 15, Appendix 1(2)(e).

<sup>111</sup> *Id.*, at Appendix 1(2)(e) footnote 1.

<sup>112</sup> Inter-Am. Comm'n H.R., *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System* 111, OEA/Ser.L/V/II, Doc. 59/09 (Dec. 30, 2009).

<sup>113</sup> *The Mayagna (sumo) Awas Tingni Community v. Nicaragua*, *supra* note 13, at para. 151.

<sup>114</sup> Universal Declaration of Human Rights, *supra* note 90, at 8, 10; U.N. Declaration, *supra* note 29, at 40.

<sup>115</sup> American Convention on Human Rights, *supra* note 32, at 25; European Convention on Human Rights, *supra* note 32, at 13; African Charter on Human and Peoples' Rights, *supra* note 32, at 7; Aarhus Convention, *supra* note 90, at 9.

<sup>116</sup> Leonardo A. Crippa, *Multilateral Development Banks and Human Rights Responsibility*, *supra* note 59, at 572.

<sup>117</sup> *Case of Velásquez-Rodríguez v. Honduras*, *supra* note 64, at 64 (July 29, 1988) (determining that "[a]dequate domestic remedies are those which are suitable to address an infringement of a legal right").

<sup>118</sup> *Id.*, at 66 (establishing that an effective remedy is a remedy "capable of producing the result for which it was designed").

<sup>119</sup> Leonardo A. Crippa, *Multilateral Development Banks and Human Rights Responsibility*, *supra* note 59, at 573.

<sup>120</sup> According to the European Court, three factors should be considered when determining the reasonableness of the time required to carry out a proceeding: (1) the complexity of the case, (2) the procedural activity of the interested party, and (3) the conduct of the judicial authorities. *Vernillo v. France*, Eur. Ct. H.R., para. 30 (1991); *Motta v. Italy*, Eur. Ct. H.R., para. 16 (1991); *Ruiz-Mateos v. Spain*, Eur. Ct. H.R. art. I, paras. 30-54 (1993). The Inter-American Court has followed the same analysis, and determined that is necessary to do a comprehensive analysis of the entire proceedings before domestic courts as an overall

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assessment. *See* Genie Lacayo Case v. Nicaragua, Inter-Am. Ct. H.R. (ser. C No. 30), at 77 (Jan. 29, 1997); Suárez-Rosero v. Ecuador, Inter-Am. Ct. H.R. (ser. C No. 35), at 73 (Nov. 12, 1997).

<sup>121</sup> American Convention on Human Rights, *supra* note 32, at 25(2).

<sup>122</sup> European Convention on Human Rights, *supra* note 32, at 13.

<sup>123</sup> *Chahal v. United Kingdom*, Eur. Ct. H.R., para. 152 (1996) (finding the remedies at issue ineffective where the national authority's—the Home Secretary—decision could not be reviewed by another authority, only took into account risk and national security concerns, and failed to provide adequate procedural safeguards, such as the right to counsel).

<sup>124</sup> U.N. Declaration, *supra* note 14, Art. 40.

<sup>125</sup> Both the European Court and the Inter-American Court agree that all due process of law guarantees must be observed in administrative proceedings and in any other procedure whose decisions may affect human rights. *Albert and Le Compte*, Eur. Court. H.R., para. 39 (1983); *Case of Baena Ricardo et. al v. Panama*, Inter-Am. Ct.H.R. (ser. C No. 72), at 125-29 (Feb. 2, 2001).