

KNOW YOUR RIGHTS RELATED TO REDD+

A Guide for Indigenous and
Local Community Leaders

ABOUT MY GUIDE

KnowYourRights Related to REDD+ (MyGuide) provides fundamental information about human rights that you can use to defend the rights of communities and indigenous peoples in confronting issues related to Reducing Emissions from Deforestation and Forest Degradation (REDD+) initiatives. It is also relevant in the context of other forest governance initiatives, such as the Forest Law Enforcement Governance and Trade Action Plan (FLEGT).

My Guide was created by the Center for International Environmental Law (CIEL) in response to a direct solicitation from indigenous communities who requested basic information about REDD+, specific questions to ask during the REDD+ process, and international legal tools that can be used to defend rights. *My Guide* was written for local community and indigenous leaders as well as their advocates.

My Guide starts by exploring what REDD+ is and what the REDD+ safeguards are. It then clarifies what rights are related to REDD+. Finally, it offers advice on some practical questions you could ask as a leader in your community to ensure that your rights are protected and that you are well-positioned to negotiate in REDD+ processes, if you choose to do so.

The information contained in *My Guide* is for general information purposes. It serves as a starting point to protect and strengthen rights in the context of REDD+. It does not replace direct legal assistance, nor does it cover all REDD+ issues.

CIEL does not endorse or reject REDD+ as a concept. However, we do stand firmly behind the need to effectively implement the required safeguards. While there are international laws and standards that require respecting your rights when implementing REDD+, too often activities are carried out without respecting those rights. We hope that you can use this tool to change this, as well as to better defend- and strengthen- your rights.



ACKNOWLEDGMENTS

We greatly appreciate the initial solicitation, continued support and feedback from the Indigenous Peoples Confederation of Honduras (CONPAH), especially Edgardo Benitez, who was our primary contact, as well as feedback from the Miskitu Asla Takanka (MASTA).

We extend a big thank you to Professor Juan Pablo Suazo from the National Agricultural University of Honduras for his support administering community needs assessments with his students, which was used as the basis for *My Guide*.

We also want to recognize Osvaldo Mungia and Orlando Calderón, colleagues who kindly reviewed *My Guide* and with whom we discussed the themes highlighted in this tool in great detail.

Finally, we are grateful to all communities interested in using this tool to strengthen their knowledge about rights and REDD+.

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This publication was produced with the generous support from the Ford Foundation.

May 2014



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PART I BASIC CONCEPTS

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- 2 What are REDD+ Safeguards?
- 3 The seven REDD+ Safeguards
- 4 Who are the key REDD+ stakeholders?
- 5 What are governments' obligations in implementing REDD+?

WHAT IS REDD+?



REDD+ is one of the proposed international solutions to climate change under the United Nations Framework Convention on Climate Change (UNFCCC). Beyond the UNFCCC, there are other initiatives that are developing, supporting and funding REDD+ as well.

CLIMATE CHANGE

Increased concentrations of carbon dioxide and other "greenhouse gases" (GHG) that trap heat from the sun and warm our planet, causing environmental, social, and economic impacts

REDD stands for Reducing Emissions from Deforestation and Forest Degradation. The "+" expands REDD to include conservation, sustainable forest management, and enhancement of forest carbon stocks.

The basic concept recognizes that forests play an important role in protecting the climate. In fact, deforestation contributes to 12-17% of carbon dioxide emissions each year. Therefore, a major goal for REDD+ is to reduce global carbon emissions from deforestation by providing incentives to developing countries to stop or reverse the

loss of forests. In doing so, it is essential to respect the many functions that forests have in our environment.

FORESTS

Forests can absorb and store large amounts of carbon, they contribute to water vapor formation, maintain cloud cover, support biodiversity, and support communities and their livelihoods.





WHAT ARE REDD+ SAFEGUARDS?

REDD+ safeguards are minimum requirements agreed to under the UNFCCC that those who fund and implement REDD+ **must** address and respect. Applied correctly, the REDD+ safeguards:

- Help avoid environmental and social risks, and generate positive benefits when carrying out any REDD+ activity.
- Help promote and protect your human rights and generate other benefits, such as improvements to livelihoods, biodiversity, and forest governance.
- Require REDD+ funders and implementing bodies to comply with existing legal obligations and clarify how REDD+ activities should be implemented.

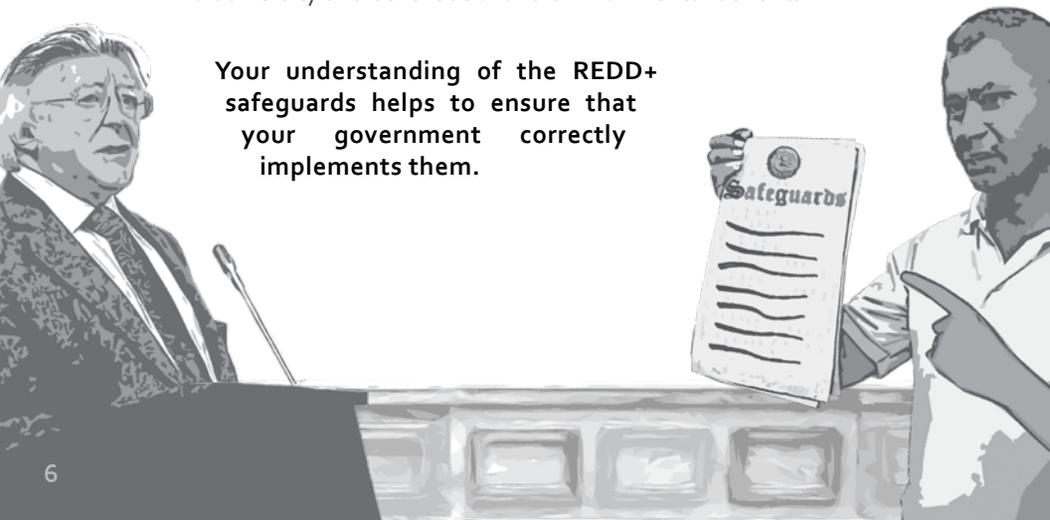
There are a number of REDD+ initiatives outside the UNFCCC that have their own guidance, requirements, and policies. Nevertheless, they need to be consistent with the UNFCCC, which is the main REDD+ framework.

- Despite some differences, all guidance makes multiple references to respecting international obligations, respecting the rights of Indigenous Peoples and local communities, and protecting biodiversity and other social and environmental benefits.

REDD + INITIATIVES

For example, the UN-REDD Programme, the World Bank's Forest Carbon Partnership Facility (FCPF), and the World Bank's Forest Investment Program (FIP).

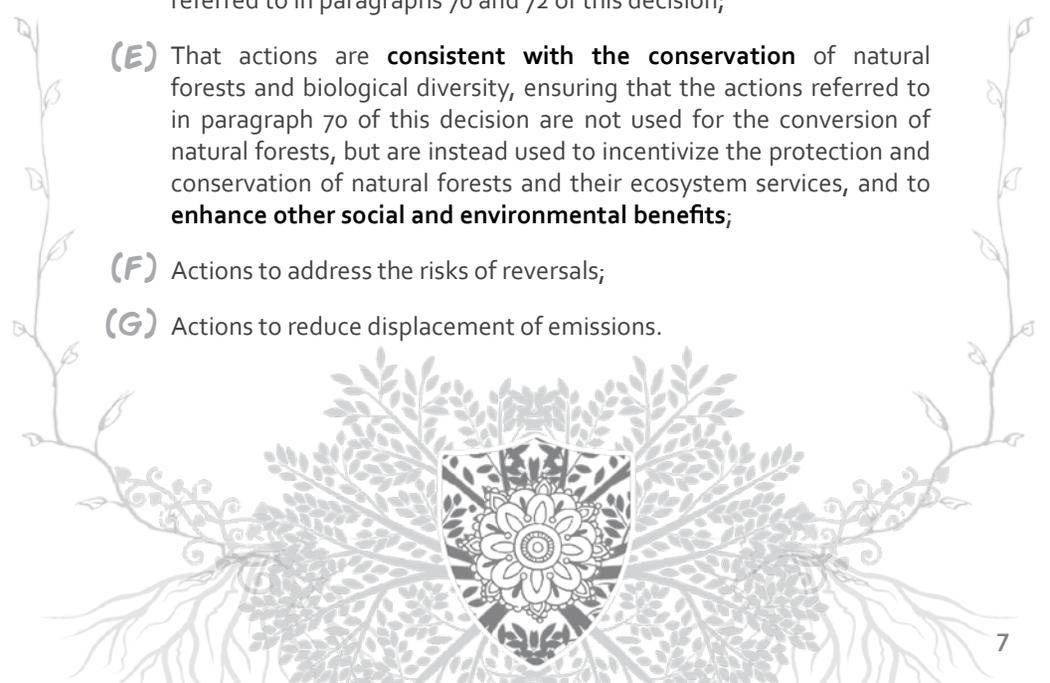
Your understanding of the REDD+ safeguards helps to ensure that your government correctly implements them.



THE SEVEN REDD+ SAFEGUARDS

In the UNFCCC Conference of Parties in Cancun in 2010, Parties agreed to the following seven REDD+ safeguards:

- (A)** That actions **complement or are consistent with the objectives** of national forest programmes and relevant **international conventions and agreements**;
- (B)** **Transparent and effective** national forest governance structures, taking into account national legislation and sovereignty;
- (C)** **Respect for the knowledge and rights of indigenous peoples and members of local communities**, by taking into account **relevant international obligations**, national circumstances and laws, and noting that the United Nations General Assembly has adopted **the United Nations Declaration on the Rights of Indigenous Peoples**;
- (D)** The **full and effective participation of relevant stakeholders**, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision;
- (E)** That actions are **consistent with the conservation** of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to **enhance other social and environmental benefits**;
- (F)** Actions to address the risks of reversals;
- (G)** Actions to reduce displacement of emissions.



WHO ARE THE KEY REDD+ STAKEHOLDERS?

Multi-stakeholder involvement is essential for REDD+ to be effective and to achieve desired social and environmental objectives. Stakeholders are broadly defined as those groups that have an interest or right in the forest. REDD+ could affect stakeholders either negatively or positively.

There are various REDD+ stakeholders, including:

- ☞ You! The local communities and Indigenous Peoples;
- ☞ Governments, including government agencies;
- ☞ Non-governmental organizations (NGOs) and civil society;
- ☞ The private sector; and,
- ☞ Multilateral organizations.

It is especially important to include and respect the needs and rights of women, indigenous peoples and local communities in REDD+. The participation of all relevant stakeholders assures that:

- ☞ No REDD+ action unintentionally contributes to or encourages deforestation;
- ☞ Monitoring systems are established to ensure that emission reductions are effective and permanent, and that safeguards are implemented; and,
- ☞ Benefits of REDD+ reach the appropriate stakeholders.

ABOUT REDD+, WOMEN AND INDIGENOUS PEOPLES

REDD+ could affect women and Indigenous Peoples more significantly because of the roles they play in protecting the environment, traditional knowledge and culture.

Although their roles are often not recognized, women and Indigenous Peoples have key functions in conservation and forest restoration.

While they are the least responsible for climate change, deforestation and forest degradation, women and Indigenous Peoples are likely to feel the negative impacts of these issues more acutely.

The safeguards can be implemented to strengthen the rights of women and Indigenous Peoples, which could generate environmental and social benefits for all.

WHAT ARE THE GOVERNMENTS' OBLIGATIONS IN IMPLEMENTING REDD+?

Individual countries, along with relevant international institutions, are responsible for ensuring that REDD+ is implemented properly. Countries participating in REDD+ have to develop their own country-level approaches to ensure that REDD+ activities respect and address the UNFCCC REDD+ safeguards and promote social and environmental benefits.

Participant governments are obligated to:

- ☞ Develop, implement and enforce national REDD+ strategies or action plans that address drivers of deforestation and forest degradation, forest governance issues, gender considerations, safeguards, and full and effective stakeholder participation.
- ☞ Develop a national forest monitoring system (NFMS) and a safeguards information system (SIS).
- ☞ Consider national development priorities, objectives, circumstances and their sustainable development needs in implementing REDD+.

NFMS

To monitor, measure, verify, and collect information on the performance of REDD+ activities, deforestation and national policies and measures in the forestry sector

SIS

To collect and provide information on how safeguards are being addressed and respected.

Governments must also:

- ☞ Follow their own laws, constitutions and standards, as well as comply with international human rights and environmental obligations. This includes addressing any gaps in law and policy with respect to your rights.
- ☞ Carefully consider the role that forests play in community development and ensure that your rights and those of your communities are fully respected.
- ☞ Have a plan to respond to violations of safeguards, contracts and benefit-sharing agreements

Participate! YOU can help your countries comply with their obligations by making your voices heard.

PART II RELEVANT RIGHTS

WHAT RIGHTS ARE RELEVANT TO REDD+? WHERE DO THEY COME FROM?

- 1 What are human rights?
- 2 Where should I look for information about rights relevant to REDD+?
- 3 Which rights could REDD+ impact?
- 4 What is the right to self-determination?
- 5 What are the rights to lands, territories, and natural resources?
- 6 Who has land tenure rights? Are they absolute? Are there competing claims?
- 7 What is the right to participation and access to information?
- 8 What is the right to free, prior and informed consent (FPIC)?
- 9 What is the right to culture?
- 10 What is access to justice?

WHAT ARE HUMAN RIGHTS?



Before determining what rights are specific to REDD+, it is important to take a step back and understand human rights as well as the relationship between environmental protection and human rights.

Human rights protect what each of us needs to live well, such as good health, access to essential resources and our dignity, among others. No matter who you are or where you live, basic human rights are the same for everyone and are recognized nationally and internationally. Some groups have additional rights addressing their specific needs, such as Indigenous Peoples, women, children and people with disabilities.

Human rights do not only protect individuals, but communities and groups of people as well. These collective rights are intergenerational and promote the protection of those whose culture, survival and environment are threatened. Governments have obligations to respect, protect and guarantee the enjoyment of these rights. If your rights have been violated, then you have the right to an effective remedy.

There are also **environmental laws** that traditionally focus on conserving and preserving natural resources. However, countries are increasingly reflecting the protection of human rights in environmental matters.

This link between human rights and environmental protection is crucial. Environmental degradation negatively impacts the enjoyment of numerous human rights. Several countries also recognize the right to a healthy environment. In the context of climate change, including REDD+, there is recognition that human rights should be respected when carrying out climate-related activities. Unfortunately, although countries from around the world have agreed to protect the environment and a range of human rights through specific regional and international laws, these rights are not always respected.

You can and should demand respect for your rights in REDD+!



WHERE SHOULD I LOOK FOR REDD+ RELEVANT RIGHTS?

Your REDD+ rights are protected in many places, including international and regional instruments, national and local laws, as well as case law and customary law. It is important to review national laws, such as a country's Forestry Act, as it may address the rights of your communities with respect to the forest and natural resources. Similarly, your community's longstanding or traditional practices and customs could be relevant in REDD+, if they are treated as customary land claims.

There are also various international instruments that are relevant for REDD+. Here is a list of a few of the key sources of relevant international obligations:

- ☞ Universal Declaration of the Rights of Indigenous Peoples (UNDRIP)
- ☞ International Labor Organization's Convention #169 (ILO 169)
- ☞ Universal Declaration of Human Rights (UDHR)
- ☞ International Covenant on Civil and Political Rights (ICCPR)
- ☞ International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ☞ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- ☞ Convention to Eliminate All Forms of Discrimination Against Women (CEDAW)
- ☞ Convention on the Rights of the Child (CRC)
- ☞ American Convention on Human Rights (ACHR)
- ☞ African Charter on Human and People's Rights (AfCHPR)
- ☞ UNESCO's Convention on Protection and Promotion of the Diversity of Cultural Expressions (CPPCDE)
- ☞ World Heritage Convention (WHC)
- ☞ Convention on Biological Diversity (CBD) Decision on REDD+ Safeguards
- ☞ UN Framework Convention on Climate Change (UNFCCC) Decision on REDD+ Safeguards

WHICH RIGHTS COULD REDD+ IMPACT?

Later in *My Guide* you will find more detail about the following rights relevant for REDD+. Each is protected by the REDD+ safeguards.

Right to Self-Determination

Right to Culture

Rights to Lands, Territories, and Natural Resources

Right to Participation

Access to Information

Free, Prior and Informed Consent

Access to Justice/Effective Remedy

In addition, there are other rights that could be affected by REDD+, including:

Right to Non-discrimination or Equality

Freedom of Expression

Torture/Violence

Indigenous Peoples' Rights

Right to a Fair Trial

Right to Religion

Women's Rights/Gender

Right to Life

Rights of the Child

Freedom of Assembly

Right to Food

Right to Health

Right to Water

Displacement/Involuntary Resettlement

Freedom from

We invite you to use the handout included in the annex of *My Guide* about the first seven rights listed above when you discuss these rights with members of your community



WHAT IS THE RIGHT TO SELF-DETERMINATION?

The right to self-determination recognizes that all peoples, including Indigenous Peoples, are equally entitled to control their own destinies. Equality and freedom are central to this right.

ALL COMMUNITIES AND PEOPLES:

- ☞ Should be able to make meaningful choices that affect their lives.
- ☞ Have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources.
- ☞ Should be able to assert their identity, preserve languages, cultures and traditions, and achieve greater self-management and autonomy, free from interference from governments.
- ☞ Have the right to autonomy or self-government.
- ☞ Have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions.
- ☞ Have the right not to be deprived of their means of subsistence.
- ☞ Have the right to determine the relationship of their governments to the national government.

WHAT ARE THE RIGHTS TO LANDS, TERRITORIES, AND NATURAL RESOURCES?

These collective rights include the possession, use and management of lands, territories and natural resources. They are rooted in property rights, cultural integrity and self-determination, and special measures to protect them are also premised on the need to redress historical discrimination and existing vulnerability. They require that a group's relationship with their lands, territories and resources are respected according to their ancestral and traditional patterns of use and occupation. Although the right to property may be held both individually and collectively, here we focus on its collective dimension.

KEY ASPECTS:

- ☞ Communities cannot be evicted from the lands they occupy, except under clear conditions and where necessary as an "exceptional measure." States must ensure full and fair compensation and rehabilitation. They maintain the right to return to the land when the exceptional situation no longer exists.
- ☞ Communities must have a say in any resource exploration or extraction on their lands and territories, as well as the opportunity to benefit equitably from those activities.



WHO HAS LAND TENURE RIGHTS? ARE THEY ABSOLUTE? ARE THERE COMPETING CLAIMS?



There can be varying and sometimes overlapping land tenure claims, including access, use, ownership, and management of land and natural resources. It is often thought that the government has exclusive claim to State lands and that it is held in public trust. Nevertheless, Indigenous Peoples have traditions of communal land ownership that were established even before “States” came into existence. Moreover, Indigenous Peoples’ spiritual and emotional connection with the land upon which they depend grants them with particular rights. These tenure rights must be claimed by possession, occupation or long-term use.

There can be gaps between national laws and customary rights, which result in conflicting or overlapping tenure claims. However, international law recognizes that countries have obligations to protect and respect all legitimate tenure rights:

- ☞ There is an affirmative duty to ensure that people are not arbitrarily evicted or otherwise victims of discrimination.
- ☞ Governments should respect a community’s own processes to resolve disputed tenure claims within a community.

Women’s land tenure rights are often difficult to secure because women confront cultural discrimination despite the role they play in supporting their communities and their homes. In many tenure systems, women are dependent on men for access to natural resources.

TAKE NOTE: When there are problems of insecure tenure watch out for “elite capture” of REDD+ benefits, where only a few people end up profiting. Make sure that you are involved in the design and distribution of benefits, or know how to raise your concerns and those of your communities if you are deprived of benefits.

WHAT IS THE RIGHT TO PARTICIPATE AND ACCESS TO INFORMATION?



The right to participation is the ability and right to be involved in decision-making in all matters that affect your community. Your views should be heard and given fair weight. For participation to be effective, it must include necessary capacity-building for stakeholders while ensuring their representation in planning and decision-making. Information needs to be provided in the local language and in a culturally-appropriate way. Access to all relevant information is essential for effective participation. It also promotes transparency and accountability more generally.

A community should be free to decide if, how best, and when to participate in REDD+. States must consult affected communities and cooperate in good faith. They must have clear and meaningful procedures for consultation before undertaking or permitting any programs.

In the case of Indigenous Peoples, various international instruments go into detail about their right to participate in decision-making in matters that affect them. States and international REDD+ implementing agencies cannot implement REDD+ initiatives affecting Indigenous Peoples without providing for their full and effective participation in the design, implementation and evaluation stages. The right to participation is also linked with FPIC (see next page).



WHAT IS THE RIGHT TO FREE, PRIOR AND INFORMED CONSENT (FPIC)?



This right, currently applied to Indigenous Peoples, allows communities to choose to give their consent- or not- before activities affecting their lands, territories, or resources are approved and implemented. It also requires the timely provision of information in order to be effectively involved in decision-making around such activities. Decisions must be informed, and made without coercion, intimidation or manipulation.

There are several key aspects to this right:

- ✎ At the heart of Free, Prior and Informed Consent (FPIC) is respecting the cultures and traditions of those whose lands and resources are affected by a proposed activity.
- ✎ FPIC has been framed primarily as one for Indigenous Peoples, but it may also extend to other communities depending on their relationship to the land, among other factors.
- ✎ FPIC is also applicable if a community is forcibly removed or relocated from their lands or territories, or if hazardous wastes are stored or dumped on their land or territories.

- ✎ National laws should create the space to implement FPIC and communities should push to advance this right in all national-level policies and procedures.
- ✎ FPIC provides an opportunity for a community to take proactive steps to develop its own protocols and to figure out how to deal with a proposed REDD+ activity.
- ✎ It is essential to include the perspectives and participation of women.
- ✎ States have an obligation to consult with Indigenous Peoples and cooperate in good faith in obtaining their consent before approving a project that could affect their lands and territories.
- ✎ Indigenous Peoples have the right to an effective remedy in case their lands and territories are taken, occupied, used or harmed without their consent.

NOTE: The law in this area is still developing.

Your community can determine whether or not a project can go ahead!



WHAT IS THE RIGHT TO CULTURE?

This right implies that *all* cultural groups have a right to exist and to enjoy their own culture, religion and language. It is based on the fact that each culture has dignity and value that must be respected and preserved. The right to culture includes the protection of economic and social activities. It can be claimed both by the group itself and individuals that comprise it.

This right requires special attention for Indigenous Peoples' cultural heritage, including art, scientific knowledge, songs, and stories, among other tangible and intangible aspects. It also covers aspects of an indigenous group's survival, including economic and political institutions, land-use patterns, language and religious patterns.

The State has a duty to preserve cultures and to prevent groups from being forced to assimilate into another culture or destroy their own culture. Moreover, States cannot discriminate Indigenous Peoples based on their culture or ethnic identity. In fact, indigenous groups are entitled to affirmative measures to remedy the past undermining of Indigenous Peoples' cultural survival and guard against continuing threats. Also, as discussed, States must support their traditional forms of use and possession of lands and resources, which could include clearly demarcating lands belonging to indigenous groups.



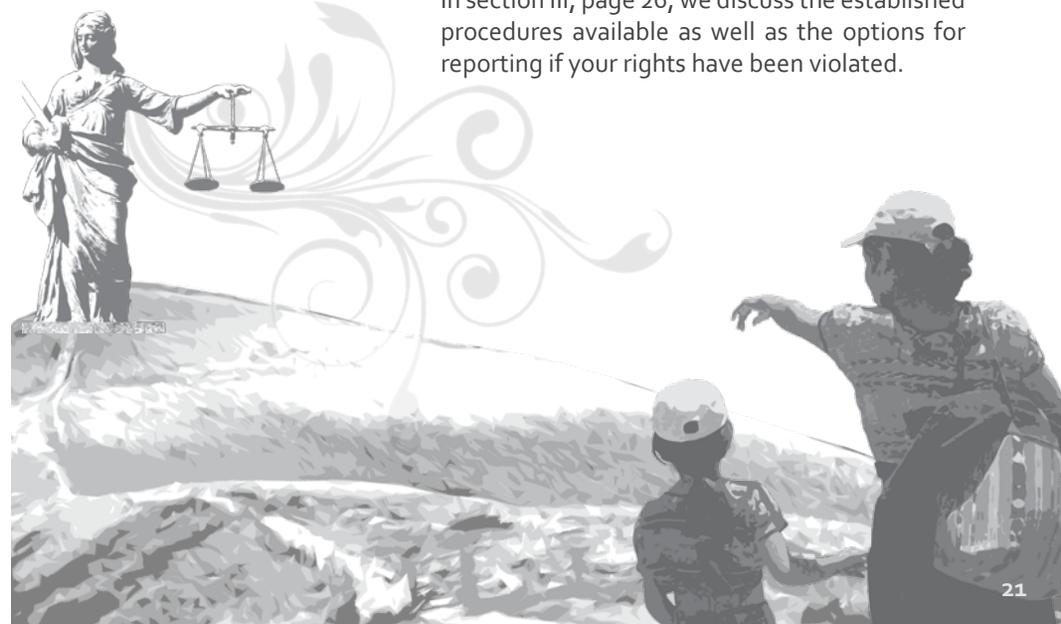
WHAT IS ACCESS TO JUSTICE?

Access to justice requires that individuals or communities who are harmed in some way have an effective remedy. These remedies must be legitimate, accessible, fair, and transparent.

The right encompasses both procedural and substantive justice. Procedural access to justice includes having a fair hearing. Substantive justice includes receiving a fair and just remedy for the violation of one's rights. It is important to note that access to justice is not intended to address historically-rooted grievances.

You can seek access to justice at multiple levels, nationally and internationally. However, international procedures are a supplement to, not a replacement for, national-level mechanisms to secure rights.

In section III, page 26, we discuss the established procedures available as well as the options for reporting if your rights have been violated.



PART III PROTECTING MY RIGHTS

HOW DO I PROTECT MY RIGHTS?



There are a number of ways you can defend your rights if REDD+ is coming to your community. You may wish to participate or may be asked to participate in the development of national REDD+ policies. If so, it is important not only to understand your rights but also how to assess proposed laws or policies, and to determine if they protect your rights or not. You may also be asked to negotiate a specific REDD+ activity in your area. In this case, in addition to understanding your rights and your country's legal framework, understanding how to be strategic when negotiating is critical.

You may want to organize your community and others and work with civil society groups and coalitions to put public pressure on proposed or existing REDD+ activities. If your community is impacted by a REDD+ activity, you may wish to seek remedies. To do this, you will need to find out what grievance mechanisms or complaints processes you have access to. Your options will depend on who is funding the REDD+ activity and where they are taking place. Accessing justice may involve using international, regional and national courts, and/or raising complaints with the violating government or funder (international financial institution or corporation).

It is important to mention that although you may have various options to protect your rights in the case of a violation, none are completely full proof. They take time, resources, and an in-depth understanding of both international and national laws.

- 1 How do I protect my rights?
- 2 How do I protect my rights in negotiating REDD+?
- 3 Where Can I Raise Concerns if My Rights Are Violated?
- 4 Examples of two important cases
- 5 Is my country following its international obligations?
- 6 What are the limitations of international law?



HOW DO I PROTECT MY RIGHTS IN NEGOTIATING REDD+?



The first step is to decide whether your community is willing to negotiate and begin a dialogue on REDD+ or other governance activities. This decision is critical, as it may affect your community's ability to engage in the future. If your community decides to negotiate and you are their chosen representative, here are some basic tips:

- 1 In advance, know your community's goals, the decisions that you can take on their behalf, on what issues your community is and is not willing to compromise, and when you would need to consult further with them.
- 2 Find out who else will be involved in and present at the negotiations. Consider what their interests are. Understand who the players are: who are your allies, and who may be more adversarial based on conflicting interests.
- 3 Make sure that you know your rights, as well as what laws and safeguards the government and other stakeholders must follow.
- 4 Remember that as a leader of your community, you should consistently communicate the progress of the negotiations with others in your community, as they have the right to have access and knowledge of this information
- 5 Think about the logistics of the negotiation:
 - ☞ Have you been provided with all relevant information about this REDD+ initiative?
 - ☞ Have you been given enough time to analyze the information? Have you requested support from a specialist to advise you on specific technical components?

- ☞ Were you provided information in your own language, in an appropriate format for you to understand, engage and relay his information to your community?
- ☞ Have you received resources to assist you and other community representatives in participating in the negotiation, such as transportation costs, lodging, and food?
- ☞ Where are the negotiations taking place?
- ☞ How is the space arranged?

- 6 Do not be afraid to request changes if you feel uncomfortable with the situation.
- 7 Avoid visualizing the negotiation as adversarial.
 - ☞ Explore the possibility of turning different needs into win-win opportunities.
 - ☞ If possible, show the other parties how meeting your needs will help them meet theirs in the long term.
 - ☞ BUT, do not be afraid to ask for what you want. You may need to ask in different ways depending on what is most important to the other stakeholders.
- 8 Clarify your goal and articulate it with confidence
- 9 Take the time to listen, look for things you share in common, and recognize the other party's weaknesses
- 10 If someone wants you to compromise, ask them what you get in return.
- 11 If you are given new documents, do not be afraid to ask for more time to read and understand them.
- 12 Ask for a break at any point you feel you need one.
- 13 Be willing to walk away.



WHERE CAN I RAISE CONCERNS IF MY RIGHTS ARE VIOLATED?



If you believe that your rights have been or could be violated, ask civil society groups or lawyers what avenues you have for raising your concerns. At the national and international levels, there are number of ways that you can raise concerns. Financial institutions have also established processes that may be able to hear your objection:

AT THE INTERNATIONAL LEVEL there are different channels established under international treaties. These mechanisms vary depending on the treaties that apply to your country and the sources of finance for REDD+.

If your country has violated international human rights law, there are mechanisms that could address this violation, including **international monitoring and reporting procedures, as well as complaint procedures**. The following are examples of processes and avenues that can provide you access to justice:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS AND THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS are regional bodies for the Americas and Africa, respectively. *The Inter-American Commission* monitors the human rights situation in its member states, receiving and reviewing individual petitions/complaints, and advancing priority topics. *The African Commission* can receive complaints from any person or group whose country has ratified the African Charter. It investigates allegations, makes recommendations to the states concerned, and prevents recurrence of violations.

THE UN HUMAN RIGHTS COUNCIL has a grievance procedure that allows individuals and organizations to provide information about human rights violations. The Council also works with the UN Special Procedures, including the Special Rapporteurs and independent experts who can monitor, advise, and publicly report on human rights situations.

THE UN WORKING GROUP ON INDIGENOUS POPULATIONS receives written and oral reports from anyone, providing broad access to constituents that focus on developments concerning Indigenous Peoples' rights. While these complaints generate public response to government violations, this body is generally unequipped to investigate or respond to all complaints

ILO COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS is available to address Indigenous Peoples' concerns specifically, with a central focus on labor

issues. However, it cannot be invoked by Indigenous Peoples or a community. The Committee interprets government obligations and compliance based on a country's self-reporting, which may lead to a site visit by the Committee.

INTERNATIONAL FINANCIAL INSTITUTIONS and Implementing Agencies also have independent bodies to ensure that their operations comply with their own operational policies and procedures. These bodies can get involved if their policies have been violated or if a project is likely to have a negative effect. Below are some examples:

THE WORLD BANK INSPECTION PANEL investigates World Bank-financed projects. Persons who believe they have suffered or could suffer harm from these projects can submit a Request for Inspection.

THE COMPLIANCE ADVISOR OMBUDSMAN (CAO) investigates projects financed by the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). Individuals, groups and communities who believe they have been or could be affected by such projects can make a claim.

THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM (ICIM) investigates allegations of affected parties who claim that projects financed by the Inter-American Development Bank's (IDB) violated its own Operational Policies. It also provides a space for parties potentially affected to raise their concerns and seek solutions.

THE UNDP'S SOCIAL AND ENVIRONMENTAL STANDARDS are still under review but will provide a framework for responding to complaints based on non-compliance of UNDP's social and environmental policies and commitments to ensure that individuals and affected communities have access to appropriate procedures.

DISPUTE RESOLUTION PROCESSES WITHIN UN-REDD AND THE FOREST CARBON PARTNERSHIP FACILITY (FCPF) are being included as requirements for institutions that finance and/or implement REDD+ activities.

AT THE NATIONAL LEVEL, you can use administrative and/or existing judicial processes to ensure that your complaints are dealt with and you receive compensation for damages. Additionally, some countries are developing their own national REDD+ grievance procedures. These national-level processes will be very different from country to country. We do not explore these here, but it is important to know that they may exist. Make sure you ask a domestic lawyer to advise you on the most suitable options for your situation.



EXAMPLES OF TWO IMPORTANT CASES

Use these two cases explained below as inspiration; and, make connections with the facts and rights at issue. Do note the length of time, limited circumstances, and amount of resources required to arrive at these victories. Both cases were heard before the Inter-American Court on Human Rights.

AWAS TINGNI V. NICARAGUA (2001)

FACTS: The Nicaraguan government did not consult the Awas Tingni Indigenous community when it negotiated (without compensation) a permit with an international company to exploit tropical forest belonging to the Awas Tingni. The community strongly opposed the intrusion on their land. This lack of consultation violated national law as well as international law.

This was the first case brought to the Inter-American Court concerning Indigenous Peoples rights, focusing on property rights and a community's dependence on its lands and natural resources for its existence.

RIGHTS VIOLATED: Right to property; right to land tenure; right to territories and natural resources; right to judicial protection; right to self-determination; right to culture; right to free, prior and informed consent; right to non-discrimination; right to freedom of association; right to life, right to freedom of religion; and the right to protection of the family, among others.

Many of these rights are protected in international instruments to which Nicaragua is a party, including the American Convention on Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Racial Discrimination, among others.

OUTCOME: The Commission required Nicaragua to define the land held by indigenous populations and provide compensation for their lost resources, but Nicaragua did not comply. The Commission brought the case before the Inter-American Court of Human Rights. The Court found that the State violated the rights to property and judicial protection of Awas Tingni community. The ruling concludes that the government cannot exploit the natural resources of Indigenous Peoples without consulting them, and that it is bound to create an effective mechanisms for delineating the Indigenous Peoples' territories with the participation of the communities themselves and according to their norms, values and community practices.

SARAMAKA PEOPLE V. SURINAME (2007)

FACTS: The Saramaka Peoples, who are not considered Indigenous Peoples, were not consulted when the government of Suriname granted timber and gold-mining concessions. The government claimed that as the Saramaka were not Indigenous Peoples, they did not have the right to special measures. However, the Court recognized them as a tribal community based on: their social, cultural and economic traditions; their self-regulation according to their own customs; and their self-identify with their ancestors.

RIGHTS VIOLATED: Right to cultural survival; property rights; right to participate; right to free, prior and informed consent; right to judicial protection; and rights to lands, territories and natural resources, among others.

Many of these rights are protected in international instruments to which Suriname is a party, including the American Convention on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Declaration on the Rights of Indigenous Peoples, among others.

OUTCOME: For the first time, this case recognized that an independent tribal community, whose social, cultural and economic characteristics are similar to Indigenous Peoples, should be treated that same as Indigenous Peoples under international law. The Saramaka People received compensation for damages. The Court also recognized that it is the people who should decide which person or group represents them in each consultation process, not the state. The Court adopted the right to consent as a standard for major development projects throughout the Americas.



IS MY COUNTRY FOLLOWING ITS INTERNATIONAL OBLIGATIONS?



If you want to actively promote your rights as your country develops REDD+, here are some questions you can ask a national lawyer to help assess whether your country's legal framework protects your rights:

- ☞ What international human rights instruments is your country a party to or has ratified? Even if your country did not ratify a specific instrument, certain rights can still apply to your country if they can be considered “customary international law.”
- ☞ Is your country's national legal framework consistent with these international obligations?
 - ☞ Does the legal framework provide for a transparent process in relation to REDD+?
 - ☞ Are there protections to ensure full and effective participation, in a culturally-appropriate and gender-sensitive manner? Is there effective implementation of FPIC?
 - ☞ Do stakeholders like you or your community have access to justice?
 - ☞ Is there recognition of your rights to cultural integrity, non-discrimination, and self-determination as well as rights to land, territories and resources?
- ☞ Are national laws and regulations consistent with the protection of biodiversity and other environmental obligations?
- ☞ Does the legal framework have ways of dealing with instances of corruption and conflicts of interest?

WHAT ARE THE LIMITATIONS OF INTERNATIONAL LAW?



International law contains binding obligations for countries, which is very important. However, justice can still feel out of reach.

Points to consider:

- ☞ Enforcing international law can be a challenge
- ☞ International courts are sometimes only available after exhausting national remedies.
- ☞ Governments do not always correct their misconduct even after communities and/or civil society secure an international victory.
- ☞ The existence of law does not necessarily mean that the conflict is easy to resolve.

Nevertheless, international law does carry moral weight. Government violations of international laws can be brought to global attention. Moreover, public pressure placed on governments who do not respect international law may help resolve the situation

You can talk to civil society groups or lawyers in your country about how best to use applicable international law to your specific situation.

A useful resource they can access is **www.forestdefender.org**. This webtool goes into detail about which rights relate to which international instrument, and which countries are obligated to respect these rights.

ANNEX

IMPORTANT QUESTIONS

PART I

IS MY COUNTRY PROPERLY IMPLEMENTING REDD+?

1. Do you know if your country has developed a strategy to respect and address UNFCCC REDD+ safeguards?
 - a. If so, does it do so?
2. Do you feel like your country's national REDD+ strategy address the following issues:
 - a. Drivers of deforestation and forest degradation?
 - b. Forest governance issues, including gender considerations, safeguards, and full and effective stakeholder participation?
3. Do you believe that your country has carefully considered the role that forests play in your community's development?
4. Is your country complying with international human rights obligations?
5. Is your country following its own constitution, laws and standards in its REDD+ implementation?
6. Do you think that REDD+ is being implemented in accordance with your country's national development priorities, objectives, circumstances and its sustainable development needs?
7. Do you know how your country plans on handling violations of safeguards, contracts and benefit-sharing agreements?



PART II

WHERE SHOULD I LOOK FOR REDD+ RELEVANT RIGHTS?

1. To which international legal instruments is my country a party?
2. To which regional legal instruments is my country a party?
3. Which rights are protected by these instruments?
4. Are there any international or regional cases that provide precedent (i.e. a standard example) for a similar rights issue you are dealing with? Check out page 28-29 to learn about two key cases.
5. Are there formal written laws implemented by your country's government and the judiciary that might relate to REDD+? (a.k.a. **Statutory rights**)
 - a. For example, a country's Forestry Act may provide local communities with the right to manage forests.
6. Does your country define "forest tenure" or rights to land and natural resources? If so, how?
 - a. This issue is important as it determines who has rights to own, manage and use what resources, for how long, and under what conditions.
7. Are there longstanding or traditional practices, customs, rituals and/or habits that your community upholds that might relate to REDD+? (a.k.a. **Customary rights**)
 - a. For example, ongoing, long-term use and management of a community's land is an example of a customary land claim.
8. Do you own the land and resources or do you have the right to use them? Are the rights individual or collective?
9. Are there other places that protect my rights when it comes to REDD+?
 - a. Think broadly! REDD+ issues flow across various issues.
 - b. How might climate and resource governance intersect with your rights?



RIGHT TO SELF-DETERMINATION

As a result of REDD+ related activities:

1. Do you feel that you/your family can make your own life choices?
2. Have you felt that you were unable to assert your own identity?
3. Do you feel your culture and traditions are being preserved?
4. Do you think other governments are interfering with your life and lifestyle?
5. Do you feel that you can live freely under and by your/your community's own will?
6. Are you able to participate in key decisions affecting you and your family's life?
7. If you did not agree with a particular issue related to REDD+ and your community did not give its consent, was the decision made anyway?
8. Do you believe that you have been deprived of any of your means of subsistence?
 9. Do you believe that you can determine your own development strategies and priorities?
 10. Can you/your community determine the relationship of your governing body to the State?

RIGHTS TO LANDS, TERRITORIES, AND RESOURCES

1. Can you live within your own community's territory and on your land?
2. Have you been removed from the lands you once occupied?
 - a. If so, were the conditions laid out clearly?
 - b. If so, were you relocated because of an extraordinary situation?
 - c. If so, do you believe that you may return to the land after the situation changes?

3. Is there legal recognition of your right to lands? To territories? To resources?
4. Have you come to use your land, territories and/or resources based on your own customs and traditions?
 - a. Have you possessed, occupied or used the land for a long time?
5. Are you able to use the land the way you want to?
6. Can you use natural resources the way you choose to?
7. Do you feel that the resources and/or land at issue are important to your basic survival?
8. Do you rely on the land and/or resources at issue to support yourself financially?
9. Do you feel that you can participate in the use, management and conservation of your resources?
10. Do you have a say in any resource exploration or extraction on your lands?
 - a. If so, have you benefited from those activities?

WHO HAS LAND TENURE RIGHTS? ARE THEY ABSOLUTE? ARE THERE COMPETING CLAIMS?

1. How can security of land tenure rights be improved?
 - a. Should these rights be clarified before REDD+ proceeds? Or, can it be done as part of the REDD+ process?
 - b. If tenure rights are not clear, do you know how they can be resolved in your country?
 - c. While tenure is being clarified, do you know to what rights you are entitled?
2. Can conflicts be resolved through mediation or negotiation?
 - a. Must it be brought to the courts?



RIGHT TO CULTURE

In the context of REDD+ activities:

1. Do you feel that you can practice and enjoy your own culture, religion and language?
2. Do you believe that you and your community's culture is respected and preserved?
3. Is the way you use the land, speak and follow religion respected?
4. Do you feel pressured to assimilate to a different culture?

RIGHT TO PARTICIPATE AND ACCESS TO INFORMATION

1. Have you and your community considered how you want to participate in REDD+ activities?
 - a. What about when you want to and/or are invited to participate?
2. Do you believe that the State consulted and communicated with you in good faith?
 - a. Did the State consult with your community according to your own traditions and customs?
3. Have you been informed of REDD+ activities before they were undertaken or permitted?
4. Do you feel that you were effectively able to participate in the design, implementation and evaluation of REDD+?
5. Do you have access to any and all information you need to effectively participate?

6. Have you participated in any training related to skills or information related to the proposed activity?
 - a. Have any of the other stakeholders received training?
7. Did you feel that your interests were represented in both the REDD+ planning and decision-making?

FREE PRIOR AND INFORMED CONSENT

1. Has the State consulted you regarding a specific REDD+ activity?
2. If so, **when** were you consulted? Was it at the beginning of the process, such that you were able to have an influence?
3. If you were consulted, do you believe that you were given all of the information you needed to make an **informed** decision?
 - a. If so, were you given the ability to approve and reject the proposal?
 - b. If so, did you feel that you could freely decide or did you feel pressured in any way?
 - c. If so and if you rejected the proposal, was your decision respected?
4. Did you feel that you were respected in the consultation process?
5. Were you given the space to develop your own protocols for a proposed REDD+ activity?
6. Were you forced to relocate from your lands or territories?
7. Are there hazardous wastes stored/dumped on your land or territories?
8. Does your country create the space to implement FPIC?
 - a. Does it exist in all national-level policies and procedures?



ACCESS TO JUSTICE

1. If you feel that your human rights have been violated, do you know what solutions and resources are available to you nationally?
 - a. How can you assert your rights and concerns?
 - b. Do you feel that you have access to a legitimate process that fairly compensates you for your loss and/or inconvenience?
2. Do you know if your country and/or any partners prepare reports to any international or regional institutional bodies, such as:
 - a. The Inter-American Commission on Human Rights?
 - b. The UN Human Rights Committee and the Committee on Elimination of Racial Discrimination?
 - c. The ILO Committee of Experts on the Application of Conventions and Recommendations?
 - d. The UN Commission on Human Rights and The Sub-Commission on Prevention of Discrimination and Protection of Minorities?
 - e. The UN Working Group on Indigenous Populations?
 - f. Others?
3. Did you know that YOU can prepare a report- either in writing or orally- to express problems with your government's actions related to Indigenous Peoples?
 - a. What would you include in this report?



PART III

WHAT QUESTIONS SHOULD I ASK TO PROTECT AND DEFEND MY RIGHTS?

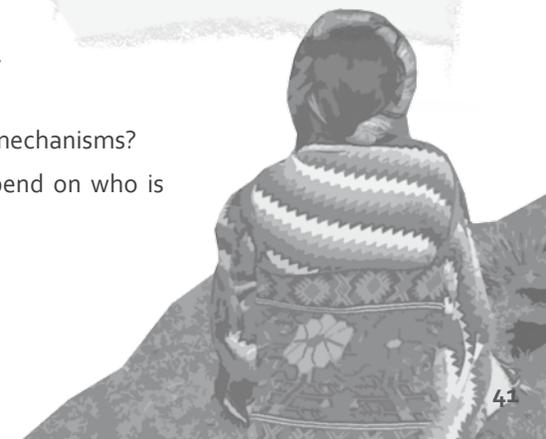
First ask:

1. "How do I protect and assert my rights?"
2. "What are my opportunities to participate?"
3. "How have I proactively argued my position?"
4. "Have they heard or incorporated my perspectives?"

After understanding what rights you may have, the next questions you should ask yourself are:

5. Who are the people and entities implementing REDD+ in my country? Who is financing REDD+ in my country?
6. Have you considered the relevant laws and cases from your own country as well as the international instruments to which your country is a party?
7. What are the available grievance mechanisms?
 - a. (Note: Your options will depend on who is funding the REDD+ activity.)

Generally, your country is a party to an instrument if it has agreed to it. A country first signs on to an instrument when it is open for signature and then must ratify it to make it binding. Alternatively, your country may have become a party by accepting the instrument.



WHAT ARE THE QUESTIONS TO ASK WHEN ASSESSING WHETHER MY COUNTRY'S LEGAL FRAMEWORK IS CONSISTENT WITH INTERNATIONAL OBLIGATIONS?

If you want to actively promote your rights as your country develops REDD+, here are some questions you can ask a national lawyer to help assess whether your country's legal framework protects your rights:

1. What international human rights instruments is your country a party to or has ratified?
 - a. Even if your country did not ratify a specific instrument, can the rights still apply to your country? For example, some rights contained in specific agreements could be considered customary international law.
2. Is your country's national legal framework consistent with these international obligations?
 - a. Does the legal framework provide for a transparent process in relation to REDD+?
 - b. Are there protections to ensure full and effective participation, in a culturally-appropriate and gender-sensitive manner?
 - i. Is there effective implementation of FPIC?
 - c. Do stakeholders like me have access to justice?
 - d. Is there recognition of my rights to cultural integrity, non-discrimination, and self-determination?
 - e. What about rights to lands, territories and resources?
3. Are national laws and regulations consistent with biodiversity and other environmental obligations?
4. Does the legal framework have ways of dealing with instances of corruption and conflicts of interest?



Since 1989, the Center for International Environmental Law (CIEL) has worked to strengthen and use international law and institutions to protect the environment, promote human health, and ensure a just and sustainable society.

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