

## How can REDD+ *do better* for community rights? An examination of Peru's interpretation of Indigenous rights in the Cancun safeguards

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### Key Messages

1. The Cancun safeguards are one of the main mechanisms to prevent potentially harmful impacts from REDD+ and to promote additional social and environmental benefits; however, safeguards lack specific implementation guidelines, rely on self-reporting, and are interpreted by countries according to their laws and policy priorities.
2. Two of the Cancun safeguards directly relate to Indigenous Peoples (IPs) and local communities (LCs): (c) respecting their knowledge and rights, and (d) obtaining their effective participation in REDD+ design and implementation.
3. Peru, a REDD+ "early mover", has one of the largest relative Indigenous populations globally; a review of its national interpretation of the Cancun safeguards and legal frameworks for Indigenous rights provides lessons on how REDD+ may support the recognition and respect of community rights more widely.
4. Although Peru's legal frameworks are supportive of Indigenous rights, doing better will require further work on tenure rights for communal land and resources.
5. REDD+ is an opportunity to expand respect for community rights in Peru; to do so, regulations must be issued to address community carbon rights, equitable distribution of REDD+ benefits, and a transparent monitoring system for safeguards.

### Introduction

The Cancun safeguards were introduced in 2010 to prevent the negative social and environmental impacts, and promote additional social and environmental benefits, of the framework for reducing emissions from deforestation and forest degradation and enhancing forest carbon stocks (REDD+). Established at the 16th Session of the Conference of the Parties (COP 16) to the United Nations Framework Convention on Climate Change (UNFCCC) in Cancun (Mexico), these safeguards aim for REDD+ actions to (a) complement national forest programmes and international conventions and agreements; (b) maintain transparent governance; (c) respect the knowledge and rights of Indigenous Peoples and local communities; (d) obtain effective participation in REDD+ design and implementation; (e) promote forest conservation and other environmental and social co-benefits; (f) address risks of reversals; and (g) reduce leakage (Decision 1/CP.16, Appendix 1). At COP 17, the UNFCCC introduced the Safeguards Information Systems (SIS) for countries to monitor and self-report their adherence to the Cancun safeguards. At COP 19, SIS was established as

an eligibility criterion for performance payments (Ramcilovic-Suominen et al. 2021).

However, the UNFCCC has not set specific guidelines for the implementation of the Cancun safeguards, requesting only that REDD+ countries 'promote and respect' and interpret them according to their national laws and policy priorities. For matters related to Indigenous Peoples (IPs) and local communities (LCs), specific guidelines are lacking around what counts as 'respect' for their knowledge and rights (Safeguard C) and their 'effective participation' (Safeguard D). Thus, the recognition, respect, and promotion of community rights in the context of REDD+ rest on the specificities of different national legal and policy frameworks.

This Infobrief aims to understand how safeguards may aim at doing more than promoting actions that 'do no harm' and support progress towards 'doing better' in terms of the recognition and respect of community rights. We review Peru's national interpretation of Cancun safeguards C and D, contextualizing this within the wider relevant regulatory framework, and examining how REDD+ may further support recognition and respect of Indigenous Peoples' rights. Peru, a REDD+ "early mover" and one of the countries with the

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largest relative Indigenous populations<sup>3</sup>, illustrates relevant legal developments and can thus provide lessons for other countries undergoing similar processes, and for community actors that are monitoring those processes.

## Peru's interpretation of social safeguards under the Cancun safeguards

Peru is a signatory to the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention c169. Peru's constitutional court considers the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to be a non-binding international law instrument that provides general principles that may be adopted by the state. Despite progress, there are contexts in which Indigenous rights are not respected, given the different interests over their territories (Lindt 2023). This includes failure to secure Indigenous territories<sup>4</sup> and to address violence against environmental defenders. Between April 2020 and April 2022, 22 human rights defenders were murdered or disappeared in the Peruvian Amazon (Proetica and IDL 2022).

Peru's interpretation of the Cancun safeguards, as part of its responsibilities under the UNFCCC, builds on its legislation including international obligations. Safeguards C and D include important factors regarding Indigenous rights (see Table 1).<sup>5</sup>

Although Peru's interpretation mentions Indigenous territories, existing laws place the forests within recognized collective lands under government control, despite the work that Indigenous men and women put toward stewarding them. Similarly, while there is a mention of the full and effective participation of IPs in the REDD+ process, this is not specifically Free, Prior and Informed Consent (FPIC). This is despite Peru's Law of Prior Consultation, which while being progressive in comparison to other REDD+ countries (see Dhedy et al. 2022, for the Democratic Republic of the Congo and Tamara et al. 2022, for Indonesia), tends to be more about communicating decisions to communities (Schilling-Vacaflor and Flemmer 2015).<sup>6</sup> Effective consultation and participation was not the norm in early REDD+ initiatives in Peru, and the country has not undertaken a consultation process with IPs regarding the whole REDD+ mechanism. Positive exceptions in the broader climate process nationally were the participatory processes included in the National Strategy on Forests and Climate Change, which serves as Peru's National REDD+ Strategy, and the Technical Sub-Committee on Safeguards.

Peru's interpretation also includes considerations regarding IPs' access to natural resources, the protection of their physical existence and culture, respect for their traditional knowledge, the equitable distribution of REDD+ benefits, and gender equity. This is a narrow interpretation which fits safeguards C and D within aspects of the existing national legal framework, rather than considering the wider range of Indigenous rights

**Table 1. Peru's interpretation of Cancun safeguards C and D**

Cancun safeguard	National interpretation	Premises
Safeguard C. Respect the knowledge and rights of Indigenous Peoples	<ul style="list-style-type: none"> <li>Indigenous rights are recognized, respected, and promoted in the design and implementation of REDD+ actions, following Peru's international human rights obligations and national regulations.</li> <li>Tenure rights are respected in the design and implementation of REDD+ actions, with consideration for the cultural, economic, and spiritual practices of Indigenous Peoples.</li> <li>The design and implementation of REDD+ actions recognize, respect, and promote the traditional knowledge and development priorities of Indigenous Peoples, in accordance with international human rights obligations and national regulations.</li> <li>There is guaranteed fair and equitable participation in the distribution of benefits generated by REDD+ actions.</li> </ul>	<ul style="list-style-type: none"> <li>Respect for Indigenous rights, considering relevant international obligations and national legislation.</li> <li>Tenure rights are fundamental rights for the physical and cultural existence of Indigenous Peoples.</li> <li>Natural resource usage requires measures for equitable benefit distribution.</li> <li>REDD+ actions recognize and respect the traditional knowledge of Indigenous Peoples.</li> <li>Implementation of REDD+ actions is carried out without discrimination.</li> </ul>
Safeguard D. Obtain effective participation in REDD+ design and implementation	<ul style="list-style-type: none"> <li>The implementation of REDD+ actions ensure the full and effective participation of stakeholders, in particular Indigenous Peoples.</li> </ul>	<ul style="list-style-type: none"> <li>The design and implementation of REDD+ actions guarantee the recognition and regulation of participatory mechanisms in decision-making.</li> <li>The implementation of culturally appropriate mechanisms to ensure their participation.</li> </ul>

Source: Table by the authors, based on data from MINCU (2016)

<sup>3</sup> In the 2017 census, 25.8% of the total national population self-identified as part of one of 55 different Indigenous Peoples. See <https://bdpi.cultura.gob.pe/pueblos-indigenas>.

<sup>4</sup> Including cases where areas traditionally inhabited by IPs have been made into protected areas, see <https://www.forestpeoples.org/en/news/2023/Peru-un-cerd-questions-state-indigenous-rights-pncaz-REDD>

<sup>5</sup> See the First summary of information on how REDD+ safeguards are being addressed and respected in Peru (Report period 2012–2019). In: [https://redd.unfccc.int/files/resumen\\_de\\_informacion\\_salvaguardas\\_\\_1\\_.pdf](https://redd.unfccc.int/files/resumen_de_informacion_salvaguardas__1_.pdf)

<sup>6</sup> Indigenous leaders are skeptical on whether the results of consultations are incorporated into decision-making (CNDDHH 2019). There are also questions regarding the representativity of consultation processes, as women constituted just 23% of all participants in the processes carried out during 2011–2019 (Defensoria del Pueblo 2019).

recognized under UNDRIP, a key international document mentioned in UNFCCC decisions regarding REDD+ (Rodríguez et al. 2022). To understand possible avenues to extend and reinforce the rights considered under REDD+ safeguards in Peru, the next section explores the wider range of recognized rights for IPs, within Peru's own existing legal system, the country's responsibilities under international agreements, relevant national and regional court decisions, and their potential applicability to REDD+.

## Peru's current regulatory framework

The Peruvian Constitution recognizes the right to communal land ownership (Article 88), as well as IPs' legal existence, organizational autonomy, and respect for their cultural identity (Article 89). It also includes the rights to ethnic and cultural identity, and the use of Indigenous languages (Article 2), health (Article 7), and bilingual and intercultural education (Article 17). These rights are operationalized by laws like the Law of Prior Consultation (Law 29785), and Law 29735, which regulates the use, preservation, promotion, and dissemination of Indigenous languages. Collective land rights are also recognized in the Law of Peasant Communities (Law 24656) and the Law of Native Communities (Law 22175). Rights on natural resources management are regulated under the Law of Forestry and Wildlife (Law 29763), and its Regulation for Forest and Wildlife Management in Native Communities and Peasant Communities (Supreme Decree 021-2015-MINAGRI), the Law of the Environment (Law 28611), the Framework Law for Climate Change (Law 30754), the Law of Sustainable Use of Natural Resources (Law 26821) and the Law of Protected Areas (Law 26834).

Despite the recognition of Indigenous rights across these laws, the meaning and scope of such rights – and thus their implementation, and the possibility for rights-holders to hold duty-bearers accountable if implementation fails – rests on their respect by government agencies and the Constitutional Court's interpretation of such rights, in response to petitions. Table 2 summarizes a set of recognized IP rights, their interpretation by the Constitutional Court, how the Court understands these rights to appear in relevant national and international legislation and agreements, and their relevance to REDD+ safeguards. In making these connections, we suggest that REDD+ could support further respect for those rights.

Although Table 2 does not specifically mention gender equity and women's inclusion, it is worth noting that the Law of Forestry and Wildlife (No. 29763) establishes that the state must guarantee equal access to resources, development opportunities and benefit-sharing mechanisms to women and men in the design and implementation of forest public policy. The Ministry of the Environment has developed an Action Plan for Gender and Climate Change, which contains a chapter on forests, to incorporate a gender-based approach within policy and management tools on climate change adaptation and mitigation (Rodríguez et al. 2022).

## Gaps in Peru's regulatory framework

A comparison of the information in Tables 1 and 2 reveals how Peru's interpretation of REDD+ safeguards could further

support Indigenous rights. Despite the richness of Peruvian law regarding Indigenous rights, including the interpretations of its Constitutional Court, there are several gaps in their operationalization and respect. If national interpretations are an extension of the status quo (e.g., of existing legal and policy frameworks), how can REDD+ do better in terms of the recognition and respect of the rights of IPs? UNFCCC guidelines are generalised and countries self-report compliance; however, safeguards must not only protect rights but also establish, strengthen, and provide clarity for rights that remain unclear under Peruvian law (Rodríguez et al. 2022) if they are to benefit communities. Comparing Peru's interpretation with the wider legal framework may provide some ideas on how to proceed.

There is a dichotomy between ownership over land and over forests, as natural resources are the patrimony of the nation, and the state is sovereign in their use (Constitution, Article 66). Under the Law of Forestry and Wildlife, no individual, community, or company can own forestlands; they can only access forest resources through a contract system (e.g., concession, authorization, or permit). Legally, IPs can only hold usufruct rights over forest lands within their titled territories<sup>7</sup>, and the process to access forest resources is complex and overregulated, leading many communities to extract timber informally, for which they are fined (Notess et al. 2018; Rodríguez et al. 2022). Despite this dichotomy, the Ministry of the Environment has set the titling, monitoring and governance of Indigenous lands as REDD+ actions, given their potential to reduce deforestation and support forest conservation (MINAM 2021). These actions, however, are limited; by the legal frameworks that restrict communal ownership of forests; by conflicts related to the recognition of collective lands, including overlaps in rights in areas claimed by IPs (Monterroso et al. 2017; Cano 2021); and by challenges to the recognition of IP land in areas with REDD+ initiatives.<sup>8</sup> These are wider and complex issues that cannot be resolved by REDD+, but safeguards have the potential to support the work of IP organizations and their allies to close to gaps between recognized rights and their exercise.

Although much of the REDD+ literature highlights the importance of clear and enforceable local rights to forests and carbon (e.g., Duchelle et al. 2017), Peruvian legislation is unclear regarding community carbon rights. Peru's Safeguards Information Summary to the UNFCCC<sup>9</sup> notes that both the Organic Law for the Sustainable Use of Natural Resources and the General Law of the Environment grant IPs first rights to use the natural resources in their lands, and to a fair and equitable participation in the economic benefits generated from activities in those lands (MINAM 2020). In same vein, the Constitutional Court interprets that the right to natural resources includes participation in any benefits from the prospection and exploitation of those resources; however, the Court is yet to be asked to interpret whether it deems REDD+ benefit sharing as a collective right. Since IPs hold only usufruct rights over forests, it could be interpreted that they are entitled

7 IPs have legally challenged this division of rights over lands and forests, see <https://www.forestpeoples.org/index.php/en/press-release/2023/landmark-ruling-for-kichwa-community-defends-indigenous-rights>

8 See <https://www.forestpeoples.org/es/2023/organizaciones-Kichwas-San-Martin-lamentan-ruptura-dialogo-Cordillera-Azul>

9 [https://redd.unfccc.int/files/resumen\\_de\\_informacion\\_salvaguardas\\_\\_1\\_.pdf](https://redd.unfccc.int/files/resumen_de_informacion_salvaguardas__1_.pdf) and <https://salvaguardas.minam.gob.pe/#inicio>

**Table 2. Indigenous Peoples' rights, interpretation by Peru's Constitutional Court, and relevance to REDD+ safeguards**

Right	Interpretation	Relevant laws, international agreements, legal precedents, and decisions
Self-determination or autonomy	Right to organizational, economic, and administrative autonomy, respect for collective work, and acceptance of their free will to decide land use. Autonomy implies the recognition of self-governance through their institutions, traditions, and procedures.	<ul style="list-style-type: none"> <li>• Recognition of IPs' legal existence and legal personhood and organizational, economic, and administrative autonomy (ILO c169, Art. 5); any measures must be consulted (Art. 56).</li> <li>• Recognition of their political determination and economic, social, and cultural development (UNDRIP, Art. 3); local affairs (Art. 4); and identity or membership to be determined according to their customs and traditions (ILO c169, Art. 5).</li> <li>• Recognition of right to apply customary law to resolve conflicts within a community provided that third parties are not violated (Constitutional Court, Opinion 03343-2007-PA).</li> <li>• Right to self-organization, without political or economic intervention by third parties (Constitutional Court, Opinion 03343-2007-PA).</li> <li>• Right to self-identification (IACHR, <i>Xákmok Kásek vs. Paraguay</i>).</li> </ul>
Cultural identity	Right to determine their identity or group membership under their customs and traditions. States must respect IP's social, cultural, religious, and spiritual values, practices, and institutions.	<ul style="list-style-type: none"> <li>• Recognition and protection of ethnic and cultural identities (Constitution, Arts. 2 and 89), and of Indigenous Peoples' traditional spaces (Art. 2)</li> <li>• Respect and protection of values, ancestral knowledge, and social, cultural, religious, and spiritual practices (ILO c169, Art. 5)</li> <li>• Preservation of past, present, and future practices, traditions, and customs specific to their cultures, including their languages (UNDRIP, Art. 11).</li> <li>• Recognition of the link between IPs' land and territories and their cultural traditions and practices (IACHR, <i>Xákmok Kásek vs. Paraguay</i>)</li> <li>• Right to be consulted on matters that affect or may affect their socio-cultural life, in accordance with their own organization (IACHR, <i>Kichwa de Sarayaku vs. Ecuador</i>).</li> </ul>
Participation	Right to participate in the design, formulation, and application of programmes, plans and other measures that might affect them. The right to participation requires appropriate institutions and mechanisms for long-term sustainability.	<ul style="list-style-type: none"> <li>• Participate collectively in the nation's political, economic, social, and cultural life (Constitution, Art. 2), including regional and municipal councils (Art. 191).</li> <li>• Participation in the formulation, implementation and evaluation of national and regional development programmes (ILO c169, Art. 7); in the use, management, and conservation of natural resources in their territories (ILO c169, Art. 7); in the implementation of educational programmes (Art. 27); and in the planning and administration of community development projects (ILO c169, Art. 7).</li> <li>• The right to "effective participation" in decision making in relation to any investment or project that may affect them, where consultation is just one aspect of this right (IACHR, <i>Xákmok Kásek vs. Paraguay</i>).</li> </ul>
Prior consultation	The right to decide on measures (legislative or administrative) that may have a positive or negative impact on their collective rights. This implies that consultation is to be carried out with appropriate procedures, in good faith, and with the purpose of reaching an agreement or obtaining consent about the proposed measures.	<ul style="list-style-type: none"> <li>• Right to be consulted on legislative or administrative measures likely to affect them (ILO c169, Art. 6; UNDRIP, Art. 19)</li> <li>• Right to be consulted on measures of land extraction (ILO c169, Art. 15).</li> <li>• Consultations must be prior, informed, and free (UNDRIP, Art. 19).</li> <li>• Consultation procedures must be carried out through state representative institutions, conducted in good faith, and in accordance with the circumstances, with a view to reach an agreement or obtain consent on the proposed measures (ILO c169, Art. 6).</li> <li>• Agreements adopted in consultations are binding (Law of Prior Consultation, Art. 15).</li> <li>• Consultations must be culturally appropriate, and carried out from the early stages of the development of a project or activity, in order to arise to obtain community approval. Social and environmental impact assessments must be carried out to identify and assess the possible risks of the project or activity, and to ensure that good practices, respecting the traditions and culture of IPs; they are made aware of the possible risks of the project or activity, including environmental and health risks (Inter-American Court on Human Rights, <i>Kichwa de Sarayaku vs. Ecuador</i>).</li> </ul>
Decide their development priorities	The right to participate and influence state decisions on the various stages of developing plans design and implementation according to IP's cosmovision, plans and priorities.	<ul style="list-style-type: none"> <li>• Free decision-making on their priorities and development in terms of their lives, beliefs, institutions and customs, and to control, as far as possible, their own economic, social, and cultural development (ILO c169, Art. 7; UNDRIP, Art. 3; Sawhoyamaya vs. Paraguay; Constitutional Court, file 3303-2007-PA).</li> </ul>
Preserve their customs and institutions	Right to retain and develop IP's own social, economic, cultural, and political institutions, including their practices, customs, customary law, and legal systems.	<ul style="list-style-type: none"> <li>• Application of customary law when there is no governing law (Constitution, Art. 139; ILO c169, Art. 8; COPI, Art. 10; AA/TC).</li> <li>• Institutions and preservation of social practices (ILO c169, Arts. 4 and 5; UNDRIP, Art. 20; IACHR, <i>Yatama vs. Ecuador</i>).</li> </ul>
Special jurisdiction	Right to the administration of justice within IP's territory and in accordance with IP's customs. The state must establish coordination mechanisms between ordinary and Indigenous jurisdictions.	<ul style="list-style-type: none"> <li>• Communal authorities can apply customary law within their territory, provided it does not infringe on fundamental rights (ILO c169, Art. 8; UNDRIP, Art. 20; Constitutional Court, file 01126-2011-PHC/TC).</li> <li>• When judges impose criminal sanctions on members of Indigenous Peoples, they should consider their characteristics (ILO c169, Art. 10).</li> </ul>
Land and territory	Right to the conservation and protection of IP's lands and territories. Territory includes land areas occupied or used in some way. Recognition and adequate protection of property and tenure rights over their traditionally used lands and subsistence activities.	<ul style="list-style-type: none"> <li>• Recognition of communal ownership (Constitution, Art. 88); their lands are imprescriptible and guaranteed against abandonment (Art. 89).</li> <li>• Recognition of the unique connection with their lands (ILO c169, Art. 13), of ownership and possession rights (ILO c169, Art. 14), which will be protected by sanctions against intrusion (Art. 18).</li> <li>• Safeguard land ownership against the granting of concessions for the exploration and exploitation of natural resources (ILO c169, Art. 13) to ensure effective participation; (b) to ensure benefit sharing; and (c) to ensure prior social and environmental impact assessments (ILO c169, Art. 13; UNDRIP, Art. 3; IACHR, <i>Xákmok Kásek vs. Paraguay</i> vs. <i>Suriname</i>).</li> <li>• Protection of natural resources in Indigenous territories (IACHR, <i>Kichwa de Sarayaku vs. Ecuador</i>).</li> </ul>
Natural resources	This includes the protection of vacant lands that are traditionally used for traditional, temporary and subsistence activities.	<ul style="list-style-type: none"> <li>• Recognition of participation in the use, management, and conservation of natural resources in their territories (ILO c169, Art. 7); participation – whenever possible – in the use, management, and conservation of natural resources on their lands and to receive equitable compensation for any damage they suffer (ILO c169, Art. 7; UNDRIP, Art. 3; Sawhoyamaya vs. Paraguay; Constitutional Court, file 3303-2007-PA).</li> <li>• Right to control and use the natural resources in their lands and territories to maintain their physical and cultural identity (ILO c169, Art. 7; UNDRIP, Art. 3; Sawhoyamaya vs. Paraguay; Constitutional Court, file 3303-2007-PA).</li> </ul>
Intercultural health	Right to culturally adequate health services; traditional medicine should be respected.	<ul style="list-style-type: none"> <li>• Protection of community health (Constitution, Art. 7).</li> <li>• Health policy for equitable access to health services (Constitution, Art. 9).</li> <li>• Adequate health services (ILO c169, Art. 25).</li> </ul>
Language and intercultural education	Right to education that is tailored to their needs.	<ul style="list-style-type: none"> <li>• Bilingual education in their language (Constitution, Arts. 13, 14 and 17; UNDRIP, Art. 14).</li> <li>• Educational programmes respond to their needs and encompass their history, knowledge and skills, values, and cultural aspirations (ILO c169, Art. 27; UNDRIP, Art. 15).</li> </ul>

**Relevance to REDD+ safeguards**

<p>ve autonomy (Constitution, Art. 89). ure that may affect them must be t. 3), self-government in their internal or ons (Art. 33). parties' fundamental rights are not rt Opinion 1126-2011-HC/TC).</p>	<p><i>Safeguard B. Maintain transparent governance</i></p> <ul style="list-style-type: none"> <li>• The Law of Forestry and Wildlife recognizes that Indigenous communities have the right to decide on their internal structure and management of their communal lands according to their uses, customs, norms, and organizational structure (Art. 79). Community members may organize as community forest surveillance and control committees, acting as custodians of the Nation's forest and wildlife (Art. 148).</li> <li>• Communal Reserves aim to protect flora and fauna to benefit local populations and communities (Law of Natural Protected Areas). The Reserves' beneficiaries (Indigenous communities in their buffer zones) carry out its co-management (Supreme Decree 038-2001-AG).</li> </ul>
<p>ous languages (Art.48) and their use in ces (ILO c169, Art. 5). ding archaeological and historical sites R, Yakye Axa v. Paraguay). eir values, uses, customs and forms of</p>	<p><i>Safeguard C. Respect the knowledge and rights of IPs and LCs</i></p> <ul style="list-style-type: none"> <li>• The government respects IP's management, use, and traditional knowledge of forest and wildlife (Law of Forestry and Wildlife). This knowledge is incorporated into the technical standards that regulate community forest management. Forestry authorities promote the systematization of traditional knowledge linked to forest and wildlife resources (Art. 78).</li> <li>• Anyone who wants to access collective knowledge for commercial application purposes must have the prior written informed consent of the community and comply with legal provisions (Law of Forestry and Wildlife).</li> </ul>
<p>cluding electoral quota to participate in plans and programmes likely to affect territories (Art. 15); in the formulation and unity health services (Art. 25). affect Indigenous Peoples' territories, and</p>	<p><i>Safeguard D. Obtain effective participation in REDD+ design and implementation</i></p> <ul style="list-style-type: none"> <li>• As a cross-cutting theme, Peruvian law recognizes the importance of promoting Indigenous Peoples' participation in climate change affairs and forestry activities (Framework Law of Climate Change, Art. 22).</li> <li>• National and subnational authorities must ensure the implementation of participation spaces and mechanisms (Supreme Decree 013-2019-MINAM).</li> </ul>
<p>DRIP, Art. 19), including natural resource od faith, and appropriate to the 9, Art. 6). f an initiative and not only when the need Following international standards and ne proposed development or investment ku vs. Ecuador).</p>	<p><i>Safeguard C. Respect the knowledge and rights of IPs and LCs</i></p> <ul style="list-style-type: none"> <li>• Peru's climate change framework indicates that prior consultation must be carried out whenever climate change-related legislative or administrative measures might have direct effects on the collective rights of Indigenous or native peoples (Supreme Decree No. 013-2019-MINAM).</li> <li>• Prior consultation is mandatory before forest zoning is approved (Law of Forestry and Wildlife, Art. 26) and in the categorization process or establishment of a Protected Natural Area (Supreme Decree 038-2001-AG).</li> </ul>
<p>piritual well-being and the lands they LO c169, Art. 7; UNDRIP, Art. 23; IACHR,</p>	<p><i>Safeguard C. Respect the knowledge and rights of IPs and LCs</i></p> <ul style="list-style-type: none"> <li>• Climate Change Framework defines a Life Plan or its equivalents as an instrument designed and elaborated by IPs that may contain, among others, inputs, and proposals for climate management at national, regional, and local levels.</li> <li>• Regional authorities must consider climate change actions defined in Life Plans (Supreme Decree 013-2019-MINAM).</li> <li>• Developing guidelines and/or methodological REDD+ documents can consider Life Plans (Supreme Decree 013-2019-MINAM).</li> </ul>
<p>Constitutional Court, file No. 00220-2012- s. Nicaragua).</p>	<p>There is no specific provision for applying customary law on forestry and climate change laws.</p>
<p>ndamental rights (Constitution, Art. 149); social, economic, and cultural</p>	<p>There is no specific provision on the application of customary law on forestry and climate change laws.</p>
<p>ed against seizure, except in case of ights over their traditionally used land atural resources found therein: (a) to ntal impact assessment (IACHR, Saramaka</p>	<p><i>Safeguard C. Respect the knowledge and rights of IPs and LCs</i></p> <ul style="list-style-type: none"> <li>• Natural resources exploitation on IP's lands -regardless of their legal status- must be authorized by the communal assembly.</li> <li>• For IPs in isolation and initial contact, the state must protect their lives through preventive actions and policies; respect their decisions; protect their culture and traditional ways of life; recognize their right to own the lands they occupy, restricting entry to them; ensure extensive use of their lands and natural resources for their traditional subsistence activities; and establish Indigenous Reserves, when appropriate (Law for the Protection of Indigenous Peoples in Isolation and Initial Contact)</li> </ul>
<p>itories; prior consultation before the state sible – in the benefits of prospecting and may suffer (ILO c169, Art. 15). d cultural survival (IACHR, Kichwa de</p>	<p><i>Safeguard C. Respect the knowledge and rights of IPs and LCs</i></p> <ul style="list-style-type: none"> <li>• As a cross-cutting theme, IPs have preference for the sustainable use of the natural resources of their lands (Law for the Sustainable Use of Natural Resources).</li> <li>• Forestry activities performed by IPs have their own regulations (Supreme Decree 021-2015-MINAGRI).</li> </ul>
<p></p>	<p>There is no specific provision on intercultural health in forestry and climate change laws.</p>
<p>ue systems and other social, economic,</p>	<p><i>Safeguard C. Respect the knowledge and rights of IPs and LCs</i></p> <ul style="list-style-type: none"> <li>• Forestry authorities promote education programmes tailored to IPs. Research on forest ecology, forest management, conservation of forest areas, sustainable use, transformation, marketing and management of forest and wildlife resources considers collective, ancestral, and traditional knowledge, with a gender and intercultural approach (Law of Forestry and Wildlife).</li> </ul>

to economic benefits derived from payments for carbon or ecosystem services, but not to decide or directly negotiate the terms of these sales (Rodríguez et al. 2022). Given that Peru recognizes IP's rights to participation and for communities to decide their development priorities, there is a legal framework to include IPs in the decision-making processes linked to the commercialization of emission reductions from their lands. Peru has also included measures on equitable benefit distribution as part of its interpretation of Safeguard C (see Table 1), but it is yet to make its benefit-sharing mechanism official.

To ensure full and effective participation, relevant participatory spaces and mechanisms recognized in climate change and forestry laws must be visible, accessible, and decentralized so that Indigenous men and women can participate freely and effectively (see Larson et al. 2022 for a proposal on what these spaces may look like). Full and effective participation requires transparent and accountable mechanisms, and access to information and relevant technical assistance for communities to make free (e.g., without coercion, manipulation, or intimidation) and informed decisions regarding whether to participate in REDD+ (Venuti 2014; Duchelle et al. 2017). However, although Peru has legislated free, prior, and informed consent (FPIC) as the Law of Prior Consultation, this right has not been recognized for any non-Indigenous communities that may also be affected by an initiative or project (Sarmiento Barletti and Larson 2020). At the time of writing, it is unclear whether Peru's REDD+ mechanism will undergo an FPIC process with Indigenous organizations; if it is implemented, the participatory process organised as consultations for the Framework Law for Climate Change would be a good example to emulate. Importantly, these participation questions take place against a backdrop of gender-related challenges that have been recognized in Peru's Action Plan for Gender and Climate Change, but this action plan is yet to be translated into concrete and relevant actions (Rodríguez et al. 2022). Regardless, increasing women's participation may not translate automatically to more equitable REDD+ as consultations over the distribution of benefits tend to prioritize men's perspectives, excluding women and exacerbating pre-existing gender and social inequalities (Bee and Sijapati Basnett 2017). The implementation of Peru's gender action plan must include an assessment of gender-related risks and opportunities across sectoral climate policies and initiatives; activities and safeguards to mitigate risks and enhance gender equality; assessment of human and financial resources required to implement the identified actions; clear targets and guidelines for monitoring and reporting on progress; and established accountabilities (CIFOR 2018).

Finally, a mechanism for the Measurement, Reporting and Verification (MRV) of social safeguards may not be required by the UNFCCC, but this remains necessary to ensure transparency and accountability in the implementation of safeguards. REDD+ social safeguards establish norms (rather than formal rules) for governance towards social and environmental (e.g., biodiversity and environmental services) outcomes, but actors who do not adhere to them are not formally sanctioned, and voluntary standards place more emphasis on monitoring and verifying the carbon-related aspects of REDD+ (Jagger et al. 2014; Sarmiento Barletti et al. 2021). Historical community rights violations in forests of the Global South reinforce the need to ensure that national REDD+ programmes include community monitoring and participatory processes as part

of their evaluation (Sarmiento Barletti and Larson 2020). Community monitoring could also provide valuable inputs to national REDD+ programmes, enhancing the evaluation of forest conservation impacts (Danielsen et al. 2013). At the time of writing, Peru was still to pilot its Safeguards Information System (Modulo de Informacion de Salvaguardas, Safeguards Information Module). However, local perceptions of the social impacts of REDD+ interventions must be prioritized in the monitoring of safeguards, as communities will make the collective difference in how forests are managed, and thus on the effectiveness of REDD+.

## Conclusions

The Cancun safeguards were introduced to mitigate negative impacts from REDD+ and promote additional social and environmental benefits. However, this mission has thus far been limited by the lack of specific guidelines for compliance from the UNFCCC. Countries interpret the Cancun safeguards according to their existing laws and policy priorities, and self-report their implementation via a Safeguards Information System. While this approach promotes flexibility and allows for country-specific approaches, national interpretation processes will yield a wide variety of outcomes, with different degrees of support for the recognition, respect, and promotion of rights for Indigenous Peoples (IPs) and Local Communities (LCs).

This brief has examined support for the rights of IPs in Peru's national interpretation of REDD+ safeguards. This REDD+ "early mover" has a rich legal framework in support of Indigenous rights, but its national interpretation rests on a narrow scope of those rights. As a result, the process is an extension of the legal status quo, in which the wider scope of Indigenous rights is not operationalized. Peru's interpretation mentions tenure rights and access to natural resources for IPs, but that access must be contextualized within a legal framework that puts forests under government control. Similarly, the interpretation refers to an equitable distribution of benefits, but Peru is yet to make official its REDD+ benefit distribution mechanism and lacks clear legislation on community carbon ownership rights. Under current laws, IPs could benefit from REDD+ but may not participate in decision-making regarding the sale of carbon credits from their territories, including deciding who they are sold to (Peña and Sarmiento Barletti 2023). Peru's interpretation likewise includes considerations about the full and effective participation of IPs in the REDD+ process, but it does not mention FPIC specifically, a central aspect of ILO C169, which Peru has ratified. At the time of writing, there is no clarity whether IPs will be consulted on the broader REDD+ mechanism.

REDD+ may be an opportunity to extend respect for the rights of IPs and LCs, but moving from a basic aim of doing no harm to doing better will require effort. In Peru, this effort requires closing the gaps in the operationalization and respect of Indigenous rights, which is clearly a structural issue. However, the broad scope of Indigenous rights in Peru's legal framework provides a good starting point for increased ambition beyond its interpretation of REDD+ safeguards, and thus what REDD+ initiatives will need to comply with. This will not only require a transparent and robust method to monitor respect but will require support from the demand side of carbon markets, including from the organizations that set standards for

voluntary markets to ensure fair practices. Such a transition requires greater effort to secure and respect community rights over land and resources. It also requires a legal system that supports community self-determined wellbeing and livelihoods pathways, and clear FPIC guidelines so that consultations are not mere information exercises but rather ensure that Indigenous men and women make informed decisions. Furthermore, regulations must clearly address carbon rights and benefit sharing, including mechanisms for IPs to participate in decision-making regarding the commercialization of credits from emission reductions in the forests they steward. And finally, there is need for a safeguards MRV system that is robust, transparent, and inclusive.

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