



A complaint mechanism for REDD+

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Signing a letter to the Governor, demanding rights to their ancestral lands recognized: Indigenous peoples have for years tried to stop logging machines from destroying the last areas of intact rainforest in Sarawak, Malaysia.

Photo: Anja Lillegraven/Rainforest Foundation Norway

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Executive Summary

Reducing emissions from deforestation and forest degradation (REDD, or REDD+) has emerged as a forerunning strategy in the global effort to reduce carbon emissions. Many REDD+ activities have direct impacts at the local level, especially on indigenous peoples and forest-dependent communities. More specifically, these activities may result in impacts to lands, livelihoods, the environment, traditional uses of resources, and just processes. To ensure long-term success, it is essential that any international REDD+ initiative provides a means to consider, address, and minimize those impacts resulting from REDD+ activities.

Given the risks associated with REDD+-related impacts, it is vital that those affected have an opportunity to raise their concerns and, where appropriate, ask for problems to be remedied. We call the process of formally raising these concerns a “complaint mechanism.” Generally speaking, a complaint mechanism involves a set of standards and an institutional administrative office that determines whether those standards are being met in the implementation of specific activities. Complaint mechanism functions can include: fact-finding, advising, resolving disputes, assessing compliance, granting remedies, and/or awarding compensation. While various national- and sub-national court systems mediate legal matters on a case-specific basis, the availability, costs, limited jurisdiction, and procedural requirements for bringing a case may not always provide an effective or timely solution to REDD-related complaints. Moreover, national systems will not always provide effective resolution given that international organizations facilitating REDD+ activities generally enjoy sovereign immunity and cannot be sued. As such, an international complaint mechanism could provide the expertise and authority to consider REDD-related concerns in a timely and efficient manner.

In addition to providing timely responses to on-the-ground impacts, a complaint mechanism can help reduce risks and avoid “worst-case” scenario outcomes, and ultimately improve the outcomes of REDD+ activities. As such, REDD+ initiatives may be modified to minimize human and environmental harm, and address conflicts before they escalate. Maintaining a feedback mechanism to address and prevent adverse impacts to forest-dependent communities and the ecosystems on which they depend is essential, particularly in light of the rapidly evolving nature of the emerging REDD+ regime.

This report focuses primarily on opportunities to address allegations of violations to the rights of indigenous peoples and other forest-dependent communities.¹To be successful, a complaint mechanism for REDD+ should satisfy the principles of effective non-judicial grievance mechanisms enumerated by the U.N. Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: legitimacy, accessibility, predictability, equitability, rights-compatibility and transparency. We consider these principles in evaluating the accountability and recourse options of existing mechanisms, as well as considering design options for a new complaint mechanism.

Several mechanisms already exist that are capable of considering at least some portion of REDD-related claims. While the UNFCCC does not currently offer any such mechanism, the World Bank Inspection Panel, human rights systems, and OECD national contact points all provide particular opportunities to address certain complaints alleging rights violations related to REDD+. Each of these mechanisms has the authority to consider claims on issues related to REDD+; however, none is currently capable of hearing the full scope of REDD-related claims spanning the full scope of potential impacts and diverse actors involved.

Given that existing complaint mechanisms offer selective opportunities for limited recourse, this paper then offers design options for a new complaint mechanism capable of addressing the full scope of REDD-related claims. This report does not present a particular design for a new mechanism but rather offers options based on scope, functions, and operational considerations. One particular option explored is the possibility of referring at least some complaints to one or more of the existing mechanisms.

The complaint process begins with the filing of a claim, usually by those harmed or potentially harmed by REDD-related activities undertaken at either the project or national level. After a complaint is received by an office authorized to receive such complaints, it should be reviewed by the office in an impartial, independent, transparent and credible manner. If a submission is deemed eligible, the office could determine whether to review the complaints in-house or refer some of the complaints to other existing bodies with specific expertise on certain subject matters related to REDD complaints. In the event that a complaint has been investigated and harm (or the threat of harm) has been determined, the investigating office could issue findings of harm and other remedies as appropriate, such as compensation, remediation and/or injunctive relief.

In addition to design considerations, certain options could help enhance the effectiveness of a REDD-specific complaint mechanism. First, in severe cases of harm, complaints could impact funding flows if a remedy is not implemented or the harmful practice continues. Second, an annual reporting requirement describing complaints received, decisions taken, lessons learned, and recommendations for future action could enhance learning, improve operations, and contribute to UNFCCC monitoring, reporting, and verification activities. Third, it may be helpful to establish project-specific complaint resolution procedures in order to help resolve disputes efficiently and at the level most familiar with impacts and available remedies. Finally, the complaint mechanism could offer formal adjudication services to help resolve disputes between different REDD+ interests.

In conclusion, no existing mechanism can adequately address the full scope of potential REDD-related claims. At the same time, creating a new office to consider a comprehensive suite of REDD-related complaints would require significant time and resources. Recognizing that many existing mechanisms could provide valuable expertise to specific types of REDD-related claims, it might be possible to process claims more efficiently by authorizing a centralized office to receive the full scope of REDD-related complaints and then refer claims to the existing mechanisms where appropriate. This could help alleviate the burden for all mechanisms to investigate claims that are beyond their jurisdiction or competency, ultimately providing a better and more efficient outcome for all involved.

I. Introduction

If successfully implemented, REDD+ (Reduced Emissions from Deforestation and Forest Degradation) could help address climate change and improve the lives of several million forest-dependent people whose livelihoods depend on dwindling forests and forest resources. Protecting natural forests, however, is a daunting task. While the REDD+ regime is currently undertaking fast-start initiatives and hasty operationalization through a flurry of new institutional arrangements, the emissions reductions necessary for climate benefits may take many years to achieve, corresponding to the decades-long lifespan of trees and compounded by challenges associated with ownership rights and governance systems. Given that REDD+ is a long-term investment, its likelihood of success will be greatest where the local resource tenure situation is clear and conflicts are minimal. Accordingly, it is essential to ensure that the emerging REDD+ regime minimize adverse impacts to indigenous peoples and forest-dwelling communities as well as to the ecosystems on which they depend.

A complaint mechanism for claims related to REDD+ activities would help to improve outcomes not only for forests and the climate but also for the lives and livelihoods of indigenous peoples and forest-dependent communities. While REDD+ holds much promise, the regime must be designed to avoid and minimize adverse impacts to rights, livelihoods, and biodiversity while reducing emissions from deforestation and forest degradation. In order to guarantee rights and protect ecosystems – ultimately leading to a decreased risk of deforestation – the international REDD+ regime should provide for effective remedies when harms are incurred. A REDD+ complaint mechanism can help serve that purpose.

Protection of rights and forest ecosystems can help improve emissions reduction outcomes for REDD+. For example, a recent World Bank study found that indigenous territories maintain more forest cover than lands designated as conservation areas.² As this study illustrates, securing indigenous rights to forest lands and resources can help reduce deforestation, even when compared to designating new national park areas—a popular feature of national REDD+ strategies. The United Nations Permanent Forum on Indigenous Issues has challenged REDD+ activities to “address the need for global and national policy reforms and be guided by the United Nations Declaration on the Rights of Indigenous Peoples.”³ Indeed, the right of indigenous peoples to conflict and dispute resolution is explicitly stated in article 40 of the UN Declaration on the Rights of Indigenous Peoples.⁴ In sum, a complaint mechanism that helps remedy harms related to violations of indigenous rights can help resolve conflicts in a manner that both protects rights and maintain forests.

A complaint mechanism is a formalized right to a procedure for complaint, conflict resolution and remedy that can help ensure rights and protect ecosystems potentially impacted by REDD+. Generally speaking, a complaint mechanism involves a set of standards and an administrative office, which determines whether those standards are being met in the implementation of specific activities. At present, although some existing international obligations can help protect the rights and livelihoods of forest-dependent peoples (see Annex A and B), these obligations are not adequately operationalized in the current REDD+ regime.

International complaint mechanisms exist in many different forms, including fact-finding panels, tribunals, compensatory commissions, and mediation offices. While national legal systems maintain any number of courts to address legal matters on a case-specific basis, the availability, costs, limited jurisdiction, and procedural requirements for bringing a court case may not always provide an effective or timely solution to REDD-related complaints. A specialized international office to hear REDD+

complaints not effectively addressed or resolved at the national level can help the global REDD+ regime function in a more timely and efficient manner. The functions of a complaint mechanism can include fact-finding, advising, compliance assessment, dispute resolution, provision of remedy, and award compensation.

In developing and implementing a complaint mechanism for REDD+, this report first examines the need for such a mechanism in light of the risks associated with REDD+ activities. Part III considers principles that have been identified as necessary in a well designed mechanism. Next, Part IV examines the existing mechanisms available to consider REDD+ complaints in light of both the principles identified in Part III and the risks identified in Part II. Finally, recognizing that none of the existing mechanisms is able to consider the full scope of activities, obligations, and remedies needed to effectively address REDD+ complaints, the report then presents design and operational considerations for the creation of a new REDD+ complaint mechanism.

What is a complaint mechanism? Example: Compliance Advisor/Ombudsman

As the complaint mechanism for projects supported by the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), the Compliance Advisor/Ombudsman (CAO) of the World Bank Group addresses complaints by people affected by the social and environmental impacts of IFC and MIGA projects, whether or not there is an allegation of a violation of policies or procedures. The office first uses its ombudsman function to see whether a complaint can be resolved collaboratively, and if not, may use its compliance function to assess whether the IFC (or MIGA) violated its own policies, performance standards, guidelines, procedures and requirements.

The CAO process for addressing complaints is as follows:⁵

1. The Ombudsman conducts an assessment of the issues and concerns raised in the complaint. The Ombudsman identifies key stakeholders to be consulted, and considers their views and incentives to reach resolution and what processes might be most useful to them. The assessment can include review of IFC/MIGA files, meetings with stakeholders, site visits, and public meetings in the project area. The Ombudsman offers suggestions to the principal parties on how to proceed.
2. Based on the assessment, the Ombudsman works with the stakeholders to agree on a collaborative process for addressing the issues raised in the complaint. Collaborative processes can include various approaches, including facilitation and information sharing, joint fact-finding, dialogue and negotiation, and if agreed by all parties, conciliation and mediation.
3. If the collaborative phase does not result in progress, the Ombudsman can refer the complaint to the CAO's compliance function. An audit will then evaluate whether IFC or MIGA complied with its policies, performance standards, guidelines, and procedures.

II. Why Do We Need a Complaint Mechanism for REDD+?

There are a number of compelling reasons why a complaint mechanism should be an integral part of REDD+. First, it helps improve outcome via feedback. A complaint mechanism or procedure could be used to bring concerns to the attention of REDD+ funders and decision-makers. Complaints are a valuable source of information that allows decision-makers to improve the present functioning of a policy or program and ensures that those affected by the actual program can interact with and will not be negatively affected. By addressing REDD+ implementation, this mechanism would not only help improve the effectiveness of specific activities but would also help to identify strengths and weaknesses in the REDD+ system, ultimately securing long-term effectiveness. Additionally, a REDD+ complaint mechanism will help minimize harms to communities and ecosystems as well as respect existing rights,

standards and obligations. This section considers these justifications for a complaint mechanism in more detail below, first by considering the types of risks REDD+ may entail and then by considering how a rights based approach helps avoid and manage those risks and finally by examining how a complaint mechanism is essential to the process.

A. High risks: how REDD+ activities can impact communities and ecosystems

If poorly implemented, REDD+ activities may result in rights violations and loss of biodiversity, and may also fail to effectively reduce carbon emissions. While governments may have strong financial incentives to increase forest cover through REDD+, financial incentives alone will not ensure a successful outcome for peoples and communities whose lives and livelihoods have depended on forests for centuries. Particularly in light of the rapidly evolving nature of the nascent REDD+ regime, it is essential to maintain a feedback mechanism to address and correct adverse impacts to forest-dependent communities and the ecosystems on which they depend. A complaint mechanism can help prevent “worst-case” scenario outcomes, and ultimately improve the outcomes of REDD+ efforts. More specifically, conflicts may be resolved before they escalate, and REDD+ designs may be adjusted and improved to address local grievances. A complaint mechanism that is accessible to affected peoples and communities can provide timely feedback from ground-level implementation, and significantly improve the chances of successful REDD+ outcomes.

REDD+ activities will frequently impact indigenous and other forest-dependent communities inhabiting affected lands. For this reason, successful implementation of REDD+ policies requires establishing a complaint mechanism capable of addressing impacts to rights, livelihoods, and ecosystems. This section analyzes several REDD+ proposals to the Forest Carbon Partnership Facility (FCPF) in order to demonstrate the wide array of potential rights violations that may arise, with a particular focus on concerns related to lands, livelihoods, resources, and participatory processes.

Land-related rights implicated by REDD+ initiatives include: protection against illegal displacement; protection of the right to lands, territories and resources; recognition of legal personality of tribes, communities and other traditional collectives as indigenous peoples; and respect for free, prior and informed consent. Many REDD+ proposals generally call for protection of the rights of indigenous and other local communities; however, few provide specific measures to ensure these rights are respected and protected. For example, the FCPF reviewers who assessed the Democratic Republic of the Congo’s Readiness Preparation Proposal (R-PP) found little evidence of meaningful consultation with indigenous and other local groups in drafting the proposal.⁶ Although the government held meetings and workshops with non-governmental organizations (NGOs) and the private sector, the reviewers found these meetings only provided a “one-way flow of information” rather than “genuine consultations” with indigenous and local groups.⁷ Similarly, FCPF reviewers of Papua New Guinea’s Readiness Plan Idea Notes (R-PIN) found little evidence of consultation with local communities in drafting the R-PIN, despite the fact that 97 percent of the country’s land is owned by indigenous communities.⁸ Without meaningful consultation with indigenous and other local communities inhabiting the lands affected by REDD+ initiatives, even the policies enacted with all the best intentions are more likely to infringe these peoples’ rights related to land ownership and use.

Closely related to effective consultation with indigenous and other local communities are procedural rights implicated by REDD+. Such rights include the following: access to information regarding REDD+ activities; full and effective public participation in decision-making processes (including free, prior, and informed consent where appropriate); consideration and mitigation of adverse social and environmental

impacts; and access to justice, which requires national legal and institutional frameworks that effectively protect rights, livelihoods and ecosystems. The FCPF reviewers of the R-PP and R-PINs of Costa Rica, the Democratic Republic of the Congo and Papua New Guinea found little evidence that the public was involved in drafting the REDD+ proposals and monitoring implementation of REDD+ policies in these countries.⁹ Further, the social and environmental impact assessment for the draft R-PP of the Democratic Republic of the Congo did not effectively address land- and resource-driven tensions that may arise during the implementation of REDD projects, despite the country's continuing struggle to recover after years of ongoing conflict between cultural groups.¹⁰

FCPF reviewers also illustrate how weak government institutions, lack of capacity to implement programs, and lack of adequate monitoring could hinder the overall success of REDD+ initiatives. The reviews of the proposals submitted by Argentina, the Democratic Republic of the Congo and Papua New Guinea all express concern over the local and regional governments' capacities to implement proposed policies and adequately monitor related forest and land use.¹¹ Papua New Guinea's proposal fails to mention any existing monitoring system, implying that the country would need to create and enact an entirely new monitoring framework.¹² In addition, several States' proposals fail to provide a comprehensive list of the agencies and institutions responsible for implementing REDD+ policies, while other proposals establish such complex or vague institutional networks that it is unclear which organization is responsible for which tasks.¹³

Weak institutional frameworks, poor implementation and monitoring, lack of meaningful public participation, and failure to consider social and environmental impacts hinder the success of REDD+ initiatives. Without procedural rights (such as access to information and rights to decision-making), affected peoples and communities may be unaware of proposed policies, and will likely have little or no input in evaluating these policies. Further, it may be difficult to determine which agencies or actors are responsible for rights violations without transparent and accountable institutions. Therefore, the failure to protect procedural rights in the REDD context could lead to rights violations of the local populations affected by REDD+ activities.

To successfully implement REDD+ activities, it is essential to protect the rights of indigenous and other local communities, because these programs significantly affect rights related to peoples' livelihoods. Such rights include the equitable distribution of benefits resulting from REDD+ projects and protection of traditional forest-dependent lifestyles. Many proposals submitted by countries implementing REDD+ activities describe the need to distribute benefits from REDD+ initiatives to indigenous and local communities who own or inhabit affected forest lands, yet fail to provide details for ensuring equitable distribution of these benefits.¹⁴ The Democratic Republic of the Congo, for example, bases some aspects of its REDD+ framework on the country's 2002 Forest Code, which does not provide clear guidelines governing ownership and use of forests and trees.¹⁵ If national policies do not explicitly include protections for the rights of individuals and communities to their lands, territories and resources, forest-dependent communities will have limited recourse when their right to shared benefits in the forests they own or inhabit is claimed by third-party actors.

If properly implemented, REDD+ activities will not only benefit indigenous and other forest-dependent communities, but will also protect forest ecosystems and effectively reduce carbon emissions; however, if poorly implemented, REDD+ activities could lead to biodiversity loss due to mismanagement and conversion of forests to plantations, and failure to actually reduce emissions. FCPF reviewers of the Democratic Republic of the Congo's 2010 R-PP and 2008 R-PIN and Papua New Guinea's R-PIN note the absence of information on the increased development of palm oil plantations, and measures to prevent

loss of biodiversity resulting from conversion of forests to plantations.¹⁶ In addition, reviewers note problems in accurately assessing and reporting data on the causes of deforestation and forest degradation in the Democratic Republic of the Congo, making carbon emissions reductions more difficult to achieve.¹⁷ The success of REDD+ projects depends on closely monitoring the factors contributing to emissions increases and changes in forest use. In sum, the reviews illustrate how poor implementation and oversight of REDD proposals would harm the environment by allowing for loss of biodiversity due to mismanagement and conversion of forested areas, ultimately failing to reduce carbon emissions.

The wide range of concerns related to the protection of lands, livelihoods, resources, and participatory processes illustrates the need for a mechanism that is capable of hearing claims of rights violations arising from REDD+ initiatives. Considering the potential social, cultural and environmental impacts, there must be some means to ensure that REDD+ proposals are designed and implemented in a manner that protects human rights and guarantees recourse for those adversely affected by REDD-related policies. In sum, an effective complaint mechanism for REDD+ should be able to address the following alleged or anticipated harms:

- (1) harm to forest resources and associated lands (including loss of rights or access to lands, territories and resources; displacement; lack of recognition of rights-holders; failing to respect obligations related to free, prior, and informed consent);
- (2) harm to forest-dependent livelihoods (including unfair distribution of financial and other benefits);
- (3) environmental harm (including loss of biodiversity, conversion of natural forests to plantations, and failure to reduce emissions);
- (4) harm to just processes (lack of full and effective participation in decision-making, failure to consider and minimize adverse social and environmental impacts);
- (5) lack of an adequate national legal and institutional framework to protect rights, livelihoods, and ecosystems; and
- (6) misappropriation/abuse of funds.

B. Obligations, rules and standards enable a rights-based approach

A complaint mechanism provides an opportunity to remedy situations and avoid undesired or unintended outcomes such as negative social and environmental impacts. This involves first identifying the obligations, rules, and standards that apply to a given activity. In the case of REDD+, rights and biodiversity have often been cited as two important components that merit protection. This report will specifically discuss rights implicated by REDD+ to illustrate how to operationalize a complaint mechanism. A similar analysis could be offered for obligations, rules and standards related to biodiversity (and any other “safeguard” meriting protection under a REDD+ regime).

To safeguard rights, it is first necessary to identify the obligations, rules, and standards applicable to REDD+ activities. International obligations include human rights treaties and other relevant international instruments that apply to the States in which the REDD+ activities occur. Customary international law may also be relevant to a State that is not a Party to a particular human rights treaty, although virtually all rights relevant to REDD+ are reflected in one or several of the treaties discussed below. Accordingly, there is a need for some form of complaint mechanism capable of hearing claims of violations of these instruments so as to ensure that REDD+ activities do not jeopardize fundamental rights to life, lands, territories, resources, culture, livelihood, and just processes. Governments, international organizations, and other actors may have additional rules and standards (such as administrative rules, operational policies and agency-specific procedures) relevant to a rights-based approach to REDD+.

Regardless of the implementing agency, REDD+ activities must meet certain international obligations. Because States have a primary obligation to protect human rights, as well as an obligation to provide recourse to vulnerable groups, it is important to consider the adequacy of both international- and national-level processes to respect and protect rights. John Ruggie, the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises described that the Human Rights Committee had made clear its view that “States Parties are required under the International Covenant on Economic, Social and Cultural Rights to legislate against abuse of the rights of individuals within their territory and/or jurisdiction by private actors, to impose adequate sanctions, and to ensure the existence of appropriate means of enforcement.”¹⁸ Ruggie has further noted that the Human Rights Committee has raised concerns about “adverse effects on indigenous peoples and minorities caused by extractive and land development activities, and has recommended that States Parties take steps to regulate and adjudicate activities capable of jeopardizing rights in such situations, including activities affecting access to justice.”¹⁹

International instruments (see Annex A) enumerate and support various human rights relevant to REDD+ activities, including rights related to identity, procedural rights, land,²⁰ and protection of life and livelihoods. Many of these instruments have specific provisions guaranteeing protection of specific rights, while others contain broader language supporting these rights. While the specific obligations may vary depending on a particular instrument and/or country, international instruments generally support the following rights applicable to REDD+: self-determination; culture; religion; non-discrimination; access to effective remedies; access to justice; participation and prior and informed consent in decision-making; access to information; life, livelihood, an adequate standard of living, and health; property, land, territories and natural resources; work; and the right to a healthy environment /sustainable development.²¹

All of these rights are recognized and protected by a variety of international agreements relevant to REDD+. For example, thirteen of these international instruments refer to the right to culture, including ILO Convention 169, International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of Racial Discrimination (ICERD), United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Convention on Biological Diversity (CBD).²² Eleven instruments support the right to participation in decision-making, including ICCPR, ICERD, ILO Convention 160, UNDRIP, and CBD.²³ In addition, nine agreements refer to the principle of non-discrimination²⁴, and seven core global human rights instruments support each of the following rights: religion and sacred sites;²⁵ access to justice;²⁶ and access to information.²⁷

Even though not all REDD+ participant countries are Parties to *all* human rights instruments, many of these rights are interconnected, which further demonstrates the broad scope of these instruments’ rights-related provisions. For example, the widespread international support of the rights to culture, religion and sacred sites also helps to guarantee protection of the property rights of communities to the lands and resources, as cultural and religious practices often coincide with territory that communities inhabit.²⁸ Thus, the right of indigenous peoples to land or natural resources they have traditionally owned or used may be enforced in a state that is not a party to any treaties respecting this particular right if that state is a party to one of the other treaties guaranteeing the right to culture or to religion and sacred sites. Due to the interconnection of core human rights guaranteed by international instruments to which REDD+ participants are parties, the international obligations of REDD+ states requires them to respect the crucial human rights enumerated in this paper.

C. A complaint mechanism helps ensure standards and obligations are met

In addition to determining which obligations, rules, standards, and policies apply to REDD+ activities, a rights-based approach requires identifying what further actions may need to be undertaken by different actors to operationalize the rights guarantees. For example, States have a primary obligation to ensure human rights are respected and protected, but international institutions and the private sector also have obligations. Regarding the question of what it means to “ensure” the full and effective enjoyment of human rights, the Inter-American Court of Human Rights has observed in *Velazquez-Rodriguez v. Honduras* that States have a duty to “organize the governmental apparatus and, in general, all the structures through which public power is exercised.”²⁹ REDD+ activities should therefore be consistent with a rights-based approach.

States are required to take actions to ensure that rights are both respected and protected. Under domestic and international law, States are required to maintain mechanisms that prevent and remedy rights violations.³⁰ The Special Rapporteur on the independence of judges and lawyers observes that “[a]ll States governed by the rule of law have a positive obligation to eliminate obstacles that impair or restrict access to justice.”³¹ This right exists as a moral and natural law imperative, and has been affirmed by a number of governments, particularly those in Latin America, including an operational mandate to guarantee access to justice to vulnerable groups, including indigenous and tribal communities,³² and internally displaced peoples.³³ Notwithstanding this recognition, many nations lack adequate procedural mechanisms for justice, and also lack of independence among judicial decision-makers – problems that “go hand in hand ...with the marginalization of indigenous peoples’ customary approaches to conflict resolution and the administration of justice.”³⁴ On a similar note, the Independent Expert on Minority Issues has recognized a right to remedy associated with discrimination, or exclusion from decision-making processes over land rights held by minorities.³⁵

Governments should adopt and enforce laws that safeguard the equal rights of minorities to land and property. Land laws should recognize a variety of forms of ownership, both individual and collective. Minorities should be enabled to register legal title to their land. Legal remedy and/or compensation should be made available to those previously displaced from their homes or traditional lands.

States Parties to particular treaties have obligations to issue rules and maintain systems to enforce those rules at the national level. Any international REDD+ mechanism should include policies that support States in meeting their obligations to ensure rights protections. Furthermore, any international REDD+ mechanism should detail expectations for REDD+-implementing entities to accept international oversight for monitoring activities and resolving complaints.

Private actors also have an obligation to respect and protect rights. A rights-based approach therefore suggests that a complaint mechanism should also consider allegations of harm caused by private actors. As Ruggie has noted, “The fact that various bodies in the UN human rights system are devoting increased attention to corporate abuse has been cited as evidence that businesses are capable of both breaching human rights and contributing to their protection.”³⁶ As such, a complaint mechanism could respond to allegations of private actors failing to respect international obligations whether or not such obligations are explicitly included in REDD-related rules, guidance, policies and procedures.

III. Principles for an effective complaint mechanism

A primary objective of a complaint mechanism for REDD+ is to avoid adverse impacts of REDD-related decisions and actions taken at the international, national, and project/community level. This mechanism should be capable of effectively addressing international obligations that apply to the design, implementation and monitoring of REDD+ policies and programs. An effective complaint mechanism should also have the authority to consider procedural violations at every level of decision-making – international, national, subnational, and community – that could contribute to adverse impacts of REDD+ initiatives.

The 2008 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (hereinafter Ruggie's Report) describes six principles for non-judicial grievance mechanisms: legitimacy, accessibility, predictability, equitability, rights-compatibility and transparency.³⁷

To evaluate options for a complaint mechanism, it is important to understand the six principles of an effective complaint mechanism, which Ruggie describes as follows:

- **Legitimacy** requires “clear, transparent and sufficiently independent governance structures to ensure that no party to a particular grievance process can interfere with the fair conduct of that process.”³⁸ This means that a complaint mechanism should be governed by an independent body free of political influence, and should operate in a transparent manner based on clear procedures. As Ruggie warns, problems may arise if an actor is both defendant and judge.³⁹
- **Accessibility** means a “mechanism must be publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal.”⁴⁰ With respect to the potential actors involved in a REDD+ complaint, accessibility is crucial, particularly for complainants, including members of local communities and indigenous peoples. Unless information is widely disseminated in an understandable language and in a culturally sensitive manner as an early part of REDD+ readiness activities, it is very likely that potential complainants will not be able to access the complaint mechanism.
- **Predictability** requires “a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome.”⁴¹ Predictability is particularly challenging for some of the issues that could form the subject of REDD+ complaints. Property disputes, for example, may take years – in some cases decades or longer – to resolve. In those cases where disputes are not easily resolved, it may be that the principle of predictability would encourage specific time limits to consider and address a complaint.
- **Equitability** means that a “mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms.”⁴² It is important to recognize that international actors may be more familiar with international processes than the local communities or indigenous peoples whose lands may be impacted by REDD-related activities. With respect to the emerging REDD+ regime, there may be significant disparities between the amount of information and expertise available to the different actors. An effective complaint mechanism should be aware of these disparities, identify those cases in which these asymmetries disadvantage local communities, and where appropriate, provide additional resources to help address the equitability concerns.

- **Rights-compatibility** requires “a mechanism must ensure that its outcomes and remedies accord with internationally recognized human rights standards.”⁴³ Considering the human rights obligations related to REDD+, it is clear that human rights standards are critical to the issues contemplated for consideration by a complaint mechanism.
- **Transparency** means “a mechanism must provide sufficient transparency of process and outcome to meet the public interest concerns at stake and should presume transparency wherever possible; non-State mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes.”⁴⁴ A rights-based approach under an international system could be seen to include an obligation by donor governments or governments housing corporations or other private actors engaged in REDD-related activities to provide access to a remedy. Several key international human rights instruments and processes already support the right to an “effective remedy,” which is a central element of a complaint mechanism. These treaties include ICCPR;⁴⁵ ICESCR;⁴⁶ ICERD;⁴⁷ ILO Convention 169;⁴⁸ and the African Charter on Human and Peoples’ Rights.⁴⁹ We can use these principles to evaluate the different options available for a complaint mechanism. Application of these principles to REDD+ can help determine whether it is more effective to use existing institutional options or to create a new REDD-specific mechanism.

Based on these principles, we can evaluate options for a complaint mechanism for REDD+. The following section will survey existing complaint mechanisms and evaluate their effectiveness in addressing REDD+ impacts, while the next section will consider how these principles would apply to the design of a new complaint mechanism specific to the REDD+ regime.

IV. Existing Complaint Mechanism Options

As discussed above, an effective complaint mechanism for REDD+ should be able to address the following impacts: harm to forest resources and associated lands; harm to forest-dependent livelihoods; environmental harm; harm to just processes, failure to consider and minimize adverse social and environmental impacts; lack of an adequate national legal and institutional framework to protect rights, livelihoods, and ecosystems; and misappropriation/abuse of funds. In addition to these components, an effective mechanism should follow the basic principles outlined in Ruggie’s reports: legitimacy, accessibility, predictability, equitability, rights-compatibility and transparency.⁵⁰ A threshold question in evaluating options for a REDD+ complaint mechanism is whether any existing mechanisms are adequate to address potential complaints, or whether a new mechanism should be created. To answer this question, we must first assess existing options with these functions and principles in mind.

A. Existing institutional mandates

A number of options already exist to address REDD-related complaints. Recognizing the many different actors and institutions involved in implementing REDD-related activities, we will first identify existing mechanisms, and then briefly analyze their adequacy based on the identified functions and principles for an effective complaint mechanism. Each of the mechanisms addressed below merits further analysis in light of potential REDD-related issues than is possible in this overview. Nevertheless, it is clear that while none offers a comprehensive option to address REDD-related concerns, the entities described below have specific knowledge and capacity that could address certain REDD-related impacts.

1. UNFCCC

There is currently no mechanism within the UNFCCC to address REDD-related allegations of harm to livelihoods, ecosystems, or processes. At present, two options exist within the UNFCCC to resolve disputes and assess compliance, but neither of these options is available to non-State actors. Further, neither option has a mandate to address the specific concerns identified above related to REDD+. These two existing options include the dispute settlement mechanism of the UNFCCC and the Compliance Committee under the Kyoto Protocol. Under the current UNFCCC framework for REDD+, it is unclear how either of these options have the authority to consider anything beyond the scope of emission reductions, such as the REDD+ safeguards adopted by the Parties in December 2010.

Article 14 of the UNFCCC and Article 19 of the Kyoto Protocol envision a dispute settlement mechanism “in the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention”. The dispute settlement provisions have not been invoked to date and thus there is no experience to draw upon. But even if there were, the state to state character of the mechanism precludes non-State actors, such as communities or individuals impacted by REDD+, from being able to use Article 14 or Article 19.

With respect to the Compliance Committee, this body was designed to “facilitate, promote and enforce compliance with the commitments under the Protocol.” The Compliance Committee has two branches, a facilitative branch and an enforcement branch (that theoretically can impose sanctions). At present, the compliance process can be triggered in two ways, either by a Party to the Kyoto Protocol or by an expert review team tasked with reviewing national communications and emissions inventories. There is no process for an impacted person or community to formally raise concerns during the compliance process. Moreover, it is unclear whether the REDD+ safeguards adopted in December 2010 could be a part of the compliance process, particularly since REDD is not being negotiated under the Kyoto Protocol. Even if the REDD+ safeguards were subject to the Compliance Committee, there is still no guarantee that the Committee could hear complaints from those whose rights, livelihoods, or ecosystems may be impacted by REDD-related projects. At present, non-State actors have no direct means of having their complaints heard by the Compliance Committee. If information related to REDD+ safeguards is reported in national communications or emissions inventories *and* if non-State parties can supplement information contained in national communications, then it may be possible to find a way to address some of the identified REDD-related concerns articulated above, but at this point that appears to be an attenuated possibility at best.

For the reasons discussed above, the existing options in the UNFCCC fail to address the potential harms or principles such as accessibility and rights-compatibility necessary for an effective complaint mechanism for REDD+. The discussion in Part V considers the option of creating a new mechanism to consider complaints, and a logical choice for housing such a new mechanism lies within the UNFCCC, potentially as a new committee, expert group, or Secretariat function under the UNFCCC.

2. World Bank

The World Bank Inspection Panel considers allegations of violations of a robust set of policies and procedures that govern World Bank operations. As such, the Forest Carbon Partnership Facility and Forest Investment Programme are both subject to certain World Bank policies and procedures, and therefore subject to the jurisdiction of at least some Inspection Panel claims.

Established by the World Bank Board of Directors in 1993 in response to public pressure for increased accountability, the Inspection Panel was the first of its kind to allow non-State actors—citizens and their communities—to challenge decisions of international bodies through a clear and independently administered accountability and recourse process.⁵¹ The creation of the Inspection Panel opened up new avenues for citizen involvement in a globalized world heavily influenced by international institutions.⁵² The Inspection Panel supports a process initiated by local and affected people to ensure that the safeguards embodied in Bank policies⁵³ are adhered to, and that in the case of noncompliance, corrective measures are initiated.⁵⁴ As an example of ways in which World Bank policies could apply to large-scale forest interventions, the Inspection Panel has previously issued findings related to communities and forests in the Democratic Republic of Congo (DRC).⁵⁵

As described by the Inspection Panel, the process of considering complaints is as follows:⁵⁶

Access to the Panel is intended to be an uncomplicated process: two or more people affected by a Bank-financed project may send a letter to the Panel asking for an investigation. Once the Panel has received and registered a Request, Bank Management has the opportunity to provide an initial response, which generally focuses on whether it has complied with the relevant Bank policies in that particular project. The Panel then examines the eligibility of the Request for a full investigation. If the Panel decides that the Request is eligible, it sends its recommendation for a full investigation to the Board of Executive Directors, which traditionally has agreed with the Panel's recommendations without interference in the Panel's work.

The Panel's methodology for an investigation includes field work, fact finding, verification, public meetings, interviews with affected people and Bank operations staff, and review of relevant project documents and policies. Once the Panel completes its investigation it sends its final report with findings to the Board and to Bank Management. Management, in consultation with the borrower and increasingly also with Requesters and affected populations, responds to the Panel's final report with recommendations and an action plan that lays out the process by which the project should be brought into compliance and the operational corrections that are to be initiated. The Board makes a decision regarding next steps based on both the Panel Report and Management's Response.

Notably, the Inspection Panel serves as a fact-finding body and not as a compliance body. As described above, the Panel may report on whether there have been violations of World Bank policies and procedures, but any remedial measures depend upon action by the World Bank Board and Management.

If there were political will, it might be possible for the Inspection Panel to consider REDD+ complaints beyond its institutional walls, such as for complaints arising under the Multiple Delivery Partners function of the FCPF. One advantage is that the Panel is already established. In addition, it is more insulated from political pressures of REDD+ implementation than many of the other options described below. Although there may be significant administrative challenges in establishing this approach, it may be worth considering as an option. This would, of course, require agreement by the World Bank's Board of Directors. Even if the World Bank agreed, it is not practical to presume all complaints related to multilateral REDD+ projects could be handled by the Inspection Panel. This is due in part to the Panel's mandate to only consider violations of the World Bank's institutional policies and procedures.

In addition to the administrative challenges in expanding the Inspection Panel's mandate, the World Bank as an institution does not automatically apply international obligations beyond its own walls. For example, with respect to UNDRIP, the World Bank⁵⁷ should comply with Article 42 (applying UNDRIP to Specialized Agencies of the UN), as it is one of 15 Specialized Agencies of the United Nations, organized under the purview of the Economic and Social Council (ECOSOC) according to the 1945 UN Charter.⁵⁸ The relationship between the UN and the World Bank was formalized in the 1947 Agreement between the UN and the International Bank for Reconstruction and Development.⁵⁹ While the agreement broadly outlines the relationship between the two entities as a cooperative one, it explicitly notes that the World Bank "is, and is required to function as, an independent international organization."⁶⁰ It is unclear how this agreement might be interpreted with respect to other entities or laws with respect to REDD+. Nothing in the "relationship agreement" between the two entities requires the Bank to comply with a decision of any organ of the United Nations, and the independence between the two entities is asserted throughout Bank and UN documents.⁶¹ As such, it is unclear whether the Inspection Panel would have full jurisdiction to consider violations of UNDRIP as well as other human rights violations unless the World Bank formally adopted a policy requiring compliance with international obligations including human rights. Without explicit jurisdiction to fully consider complaints regarding basic human rights violations, this particular mechanism could not meet the principle of rights-compatibility.

3. UN-REDD

UN-REDD follows a rights-based approach to its activities and has established an interim ombudsman process to receive complaints, including those alleging rights violations.⁶² Formal procedures have not yet been detailed, so at present it is not possible to determine whether a complaint mechanism under UN-REDD could in fact consider the full scope of concerns needed for REDD+ or whether it would meet any of the principles for an effective grievance mechanism articulated by Ruggie. Nevertheless, considering that UN-REDD is a formal part of the UN system, follows a rights-based approach, has requirements to follow UNDRIP, and respects the standard of free, prior, and informed consent, a complaint mechanism under UN-REDD has significant potential to address some of the principal concerns regarding REDD+ activities.

4. International Human Rights System

Individuals may bring claims of violations of many of the key human rights related to REDD+ before any of the bodies established by international human rights instruments. These rights include, *inter alia*, prohibition of discrimination; the right to culture; the right to religion and sacred sites; rights to lands, territories and resources; participatory rights; and the rights to life, livelihood and an adequate living standard (see Annex A). Four human rights treaties have formal bodies to consider complaints, including the ILO complaint mechanism, Committee on Economic, Social and Cultural Rights (CESCR), Human Rights Committee on Civil and Political Rights (CCPR), and Committee on the Elimination of Racial Discrimination (CERD). While the specific scope of their jurisdiction is defined by each of the underlying treaty obligations, individuals may bring claims of violations of the following rights before these human rights complaint mechanisms: self-determination;⁶³ access to justice;⁶⁴ participation in decision-making;⁶⁵ property, land and resources;⁶⁶ work;⁶⁷ access to effective remedies;⁶⁸ and free, prior and informed consent. Beyond these particular mechanisms, the Human Rights Council also supports special procedures, such as the Special Rapporteur on the Rights of Indigenous Peoples. Special Rapporteurs typically report on country- or issue-specific human rights concerns, sometimes at the request of concerned individuals and communities. While this is not a formal complaint resolution mechanism, it does provide some means of having a complaint considered.

While there are several means of recourse available to individuals claiming violations of international human rights instruments, some rights may be more easily enforced than others. As discussed below, the most developed and effective means of international recourse for REDD-related rights violations are the complaint mechanisms of the CESC, CCPR, CERD; ILO; and regional human rights bodies, such as the Inter-American Court of Human Rights. The rights of participation in decision-making and access to justice may be brought before all of these mechanisms except CESC. The CESC is the only mechanism that cannot consider complaints of violations of the rights to property. We briefly describe these bodies below.

ii. Committee on Economic, Social, and Cultural Rights

To enforce these rights, the Committee on Economic, Social, and Cultural Rights (CESC)⁶⁹ reviews reports on implementation regarding the International Covenant on Economic, Social, and Cultural Rights submitted by States Parties.⁷⁰ CESC can also hear claims⁷¹ brought against States Parties to the Optional Protocol to the International Covenant.⁷² Individuals or groups of individuals may inform the Committee of alleged Covenant violations by a State Party through written communications.⁷³

Once a claim is brought before the CESC, the Committee informs the State Party accused of the Covenant violation, and the State Party has six months to respond to the Committee with an explanation of the situation and a description of any remedy provided.⁷⁴ After the CESC considers the information brought before it, the Committee provides both parties with its opinion and recommendations.⁷⁵ States Parties involved in the dispute must submit another response to the Committee within six months of receiving the CESC's opinion, describing actions taken in furtherance of the Committee's opinion.⁷⁶ The Committee may continue to request information from the State Parties as it deems appropriate.⁷⁷

While the CESC meets many of the complaint mechanism principles articulated by Ruggie, communications to the CESC are subject to limitations on accessibility and predictability, as specified in OP-ICESC Articles 3 and 4.⁷⁸ Claimants first exhaust all domestic remedies (or demonstrate that such procedures are "unreasonably prolonged"),⁷⁹ and cannot simultaneously pursue redress in other international fora.⁸⁰ Claims of ICESC violations related to REDD+ activities could be brought before the CESC; however, the limitations previously described would likely reduce the effectiveness of a remedy issued by the Committee.

iii. The Human Rights Committee

ICCPR Article 28 establishes the Human Rights Committee on Civil and Political Rights,⁸¹ which monitors treaty compliance with the International Covenant on Civil and Political Rights by reviewing reports⁸² from States Parties and allowing States Parties and individuals to present claims of Covenant violations.⁸³ As with the CESC, individuals may present claims in the form of written communications to the Committee.⁸⁴ Article 4 of the First Optional Protocol to the International Covenant on Civil and Political Rights ("First Optional Protocol") requires the CCPR to notify the State Party of claims brought against it, and allows the State Party up to six months to respond.⁸⁵ In cases of imminent harm, however, individuals can request protection before the Committee adopts its final views, and the Committee can make an urgent request to the States to provide necessary protection.⁸⁶

Similar to the accessibility and predictability challenges of the CESC, the effectiveness of the CCPR mechanism is subject to limitations. Under Article 1 of the First Optional Protocol, only States Parties that have accepted the Protocol can be the subject of such communications to the Human Rights Committee.⁸⁷ Further, the First Optional Protocol imposes a number of limitations on the

communications procedure. Article 5.2 excludes communications that have been examined under another international procedure, and those that have not exhausted all domestic remedies.⁸⁸ These limitations may interfere with the Committee's efficiency in providing adequate recourse to individuals and groups claiming ICCPR violations resulting from REDD+ activities.

Another option is to use the reporting functions of the special procedures to provide guidance and lessons learned regarding REDD+. For example, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples reports annually on his activities to the Human Rights Council. This mandate holder could also be requested to submit REDD-related reports to the UNFCCC or other international entities administering REDD+ activities.

iv. Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination (CERD)⁸⁹ oversees implementation of the International Convention on the Elimination of All Forms of Racial Discrimination ("Convention on Racial Discrimination") and addresses questions of non-compliance.⁹⁰ Like the CESC and CCPR, CERD reviews reports from Parties and subsequently issues comments and recommendations to improve implementation.⁹¹ Further, the CERD can receive complaints from States or individuals with respect to actions taken by Parties to the Convention.⁹²

The CERD has very predictable procedures to help facilitate timely resolution of a complaint. First, a claimant must bring the complaint to a national body designated by the State Party; if no resolution is reached at the end of six months, the claimant may bring the issue before the CERD.⁹³ The Committee then notifies the State Party of the complaint, and the State Party must respond within three months, explaining the situation and any efforts to remedy the situation.⁹⁴ After considering the information provided, the CERD forwards its opinions and recommendations to both parties to the dispute.⁹⁵ In addition, the CERD has instituted two preventative measures of early-warning and urgent procedures.⁹⁶ Early warning measures may include suggesting that CERD members offering technical assistance to relevant States, and submitting a report to the UN Secretary General.⁹⁷ These are intended to resolve imminent conflicts or prevent conflicts from escalating into more serious situations.⁹⁸

Of particular relevance to REDD+, CERD General Recommendations have specifically addressed protecting indigenous peoples' rights under the Convention on Racial Discrimination. General recommendation No. 23 declares that States should promote sustainable development of indigenous peoples and secure property rights, informed consent, and effective participation in decisions related to these rights.⁹⁹ Recommendation No. 24 promotes State recognition of all indigenous peoples in implementing the Convention, and securing the rights guaranteed therein.¹⁰⁰

While the CERD broadly satisfies Ruggie's basic principles, it does not have jurisdiction to hear REDD-related complaints applicable to all international REDD actors and is therefore limited in its current use as a complaint mechanism tailored to REDD. Specifically, the CERD can only accept individuals' complaints against States that have recognized the Committee's competence to hear such claims.¹⁰¹ Further, CERD, like CESC and CCPR, cannot hear claims of petitioners who have not exhausted all domestic remedies, unless such remedies are "unreasonably prolonged."¹⁰² These features limit the CERD from providing effective redress for treaty violations arising under REDD+ activities.

v. ILO

As of May 2011, 22 countries had ratified ILO Convention 169, 15 of which are participants in REDD+ initiatives, plus four donor countries.¹⁰³ Should a State fail to uphold its obligations under ILO

conventions, ILO Member States may file a complaint, and the Governing Body may call for formation of a Commission of Inquiry either upon receipt of such a complaint or on its own.¹⁰⁴ The Commission of Inquiry then issues a report containing recommendations for resolving the issue to the Director-General of the ILO.¹⁰⁵ After the Director-General publishes and transmits the report to the concerned Member States, each government must reply with its decision on whether to accept the recommendations and whether to refer the complaint to the International Court of Justice.¹⁰⁶ If the concerned states fail to adhere to the Commission recommendations or to the ICJ decision, the “Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.”¹⁰⁷

In addition, under Article 24 of ILO Convention 169, a form of complaint called a “representation” may be used to allege a government’s violations of ILO conventions. A representation must be submitted to the ILO in writing by a workers’ or employers’ organization, and must identify the specific provisions of the convention that are alleged to have been violated. If the ILO Governing Body determines that the representation is eligible to be considered, then it will appoint a Tripartite Committee (i.e. one government representative, one employer representative and one worker representative) to investigate the claim. The Tripartite Committee writes a report including its findings and recommendations (which is made available to the public), and submits it to the Governing Body for adoption. The Committee of Experts then addresses the recommendations within its regular supervision.

Regarding the adequacy of ILO-specific mechanisms to address REDD-related complaints, Convention 169 is able to address an important subset of impacts pertaining to the rights of indigenous peoples, including rights to lands and resources; displacement; free, prior and informed consent; livelihoods; just processes; and national frameworks. However, ILO processes cannot easily address other impacts pertinent to REDD complaints, including many environmental harms, abuse of funds, or impacts associated with the resources or livelihoods of non-indigenous or non-tribal peoples. Additionally, the ILO’s “representation” mechanism to receive complaints from affected peoples requires involvement in a workers’ or employers’ organization. This could render the mechanism inaccessible to many affected peoples. Nevertheless, the Committee’s monitoring of implementation of ILO Convention 169 could be used as a means of ensuring REDD+ activities do not infringe on at least some key REDD-related rights afforded to indigenous peoples under this convention.

vi. Regional human rights bodies

In addition to international human rights bodies, regional institutions are instrumental in helping resolve rights-related complaints. The Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, the European Court of Human Rights, and the African Commission on Human Rights all have the authority to consider case-specific allegations of rights violations. For example, to enforce compliance, the American Convention on Human Rights authorizes the Inter-American Court of Human Rights (IACHR) to interpret and apply the Convention, and to provide recourse for victims of relevant rights violations.¹⁰⁸ The IACHR has issued landmark rulings for indigenous and tribal peoples in the Americas. Decisions by the Court can be internationally binding.¹⁰⁹ As such, eligible individuals claiming violation of their rights related to REDD+ activities may be able to seek recourse from the Court.

In terms of scope, the regional human rights courts have authority to hear claims regarding rights to lands, territories and resources, as well as just process. They have also increasingly considered environmental complaints related to livelihoods, but would not generally consider a complaint solely regarding carbon, ecosystems, or financial flows. Due to their regional placement, they tend to be more

accessible than a centralized international court. While the international community generally holds them to be very legitimate, member states have at times accepted their decisions and other times have ignored them. The courts by their very nature are rights-compatible, though they may vary in degree of transparency.

Saramaka People v. Suriname:

The Saramaka are a tribe descendant from Maroon slaves brought into Suriname during the 17th century. In the *Saramaka People v. Suriname* case, the Inter-American Commission of Human Rights asked the Court to determine the international responsibility of the State for the violation of Articles 21 (right to property) and 25 (right to judicial protection) of the American Convention on Human Rights in relation with the rights over traditionally occupied lands by the Saramaka people.¹¹⁰

The decision in *Saramaka People v. Suriname* represents an important interpretation of the rights to property and possession over ancestral lands of indigenous peoples. The Court decided a “tribal group, which shares the characteristics that make indigenous peoples unique [...] is entitled to the same spectrum of land and resource rights.”¹¹¹ Thus, the decision resonates in relation to REDD+ as traditional, tribal and other collectives, not fully recognized as indigenous, may also claim rights usually associated with indigenous peoples. Although limited in its legal scope to the Americas, the *Saramaka* decision does widen the spectrum of interpretation of property rights in conflicts associated with natural resources management and indigenous and forest-dependent peoples.

vii. Summary of human rights bodies

It is clear from the analysis that the current structure of international and regional human rights systems are not sufficiently strong and timely as to serve as a practical forum for direct attention to all complaints and demands from indigenous peoples or other forest dependent communities allegedly aggrieved by acts or omissions directly related to REDD+ implementation activities. Interactions between REDD+ actors, including Annex I and Non-Annex I governments, indigenous peoples, carbon brokers, and others are expected to increase dramatically in the immediate future. Based on the analysis above, it appears that the existing international and regional human rights systems are not well equipped to resolve many of the complaints that could arise alleging violations of the rights of indigenous peoples and local communities. In most cases, the human rights mechanisms are limited by the non-binding nature of their respective resolutions, their open procedural timeframes, and their inability to have direct influence on REDD+ processes.

While utilizing the human rights system has the advantage of using existing human rights bodies to hear complaints rather than creating a new mechanism, it may be difficult to ensure impartial, credible, timely and full response to every complaint. Depending on the rights and policies to be applied, potential REDD-related complaints could reach beyond the collective jurisdiction of all the human rights bodies' mandates. Additionally, the human rights system might fail to fully satisfy the criteria of accessibility and predictability due to the relatively formal nature of addressing complaints under the human rights regime, added layers of bureaucracy, existing case backlogs, and limited resources. All of these factors could result in delays to the resolution of a complaint.

In conclusion, existing human rights bodies provide several means of recourse for peoples and communities claiming violations of REDD-related rights based on international human rights treaties. However, none of the mechanisms within the human rights system can adequately address all of the

functions for a recourse mechanism for REDD+. Particularly in light of the complex and technical nature of REDD-related activities and by virtue of the fact that inter-related activities may be implemented by many different actors at many different scales, existing human rights bodies may not be ideally suited to field the full spectrum of complaints related to REDD+. Therefore, it may be more helpful to consider the option of using existing human rights bodies as a non-exclusive one: while some complaints could be addressed by a particular court, committee, or special procedure, many others would need an alternative forum for recourse.

Many entities within the human rights system have specialized expertise in addressing at least some potential REDD impacts. As such, it might be worthwhile to consider a means for a centralized REDD+ mechanism to utilize the expertise that does exist. To this effect, Part V considers a new REDD-specific mechanism, including the option of referring complaints to existing entities, and this option may be particularly relevant here.

5. Aarhus Convention

Individuals affected by REDD+ activities by a State Party to the Aarhus Convention may be able to present claims of related rights violations through the Aarhus Convention's non-compliance mechanism.¹¹² Article 15 of the Convention requires the Meeting of the Parties to arrange for optional review of States Parties' compliance when agreed to by consensus.¹¹³ The public may participate in and present communications to the Meeting of the Parties.¹¹⁴ Although it is a regional agreement, the Aarhus Convention allows non-UNECE States to become Parties through accession, provided they are members of the United Nations; thus, the non-compliance mechanism could potentially be used by all REDD+ participants that accede to the treaty.¹¹⁵

Another potential venue is the Aarhus Convention's Compliance Committee, which safeguards the participatory rights of indigenous peoples and forest-dependent communities, including the right to full and effective participation.¹¹⁶ Any State Party, the Secretariat, or members of the public may raise compliance issues before the Committee.¹¹⁷ Additionally, NGOs that qualify as observers under the Aarhus Convention may nominate candidates to serve on the committee.¹¹⁸ The appointed experts' independence allows them to render their opinions without external diplomatic pressure, thereby elevating both the quality of their work and the overall functioning of the mechanism.¹¹⁹

Both the Aarhus Convention's non-compliance mechanism and Compliance Committee provide a means of recourse for those who are denied rights to just processes, including access to information, full and effective participation, and access to justice. The remaining impacts—to land, territories, resources, environment, fraud, etc.—would not generally be within the jurisdiction of the Aarhus mechanisms. Moreover, at present, the 44 parties to the Aarhus Convention do not include any of the REDD+ implementing countries, though they do include many REDD+ donor countries such as Norway, Denmark, Germany, and the United Kingdom. Given that REDD+ participant countries have not acceded to the Convention (which originated as a regional treaty for Europe), these Aarhus-specific mechanisms may not be readily accessible to the indigenous peoples and forest-dependent communities affected by local and national REDD+ initiatives. Nevertheless, the Aarhus mechanisms do provide a legitimate and rights-compatible forum with solid expertise regarding procedural rights.

6. OECD National Contact Points

Organisation for Economic Co-operation and Development (OECD) country governments, including those that house corporations or other non-state actors engaged in REDD-related activities, maintain a

system of national human rights institutions (NHRIs) and the National Contact Points (NCPs) of States adhering to OECD Guidelines. According to the research carried out under the Special Envoy of the Secretary General (SESG), at least 40 of the 85 recognized NHRIs are able to handle grievances related to the human rights performance of private actors.¹²⁰ Some NHRIs are limited to considering human rights abuses alleged against State-owned enterprises or private companies providing public services. Others can address grievances against a broader set of actors, but only with regard to specific kinds of human rights-related grievances, often discrimination. Another group of NHRIs – notably those in Africa – consider grievances against all companies with regard to any human rights concern.

Where NHRIs are able to address grievances, they can provide a means to hold both state and non-state actors accountable for their actions. NHRIs are well-positioned to use problem-solving approaches – whether adjudicative or mediation-based – that are culturally appropriate, accessible, and expeditious. Even if they cannot themselves handle specific complaints, NHRIs can provide information and advice on other avenues of recourse to those seeking remedy. Through increased exchange of information, NHRIs can serve a facilitative role within the wider system of complaint mechanisms, linking local, national and international processes across countries and regions.

The 40 States that adhere to the OECD Guidelines for Multinational Enterprises¹²¹ must provide a NCP who is responsible for considering and addressing grievances. OECD provides procedural guidance, although individual NCPs have significant flexibility in applying the Guidelines. While they have been criticized at times for providing inadequate remedies, OECD procedures currently under revision may better satisfy Ruggie’s principles for an effective complaint mechanism.¹²² For this reason, the NCPs could be an important option to consider for REDD+.

NCPs stress the need for operational flexibility that reflects national circumstances, which helps respond to individual country needs. At the same time, to ensure the credibility of the system as a whole, there should be minimum performance criteria in line with those principles set out by Ruggie’s reports. Certain NCPs, including those in Great Britain and the Netherlands, have developed innovative solutions to address this tension. Several States have engaged multiple government agencies, and created multi-stakeholder advisory groups. Perhaps most interesting is the decision of the Dutch Government to reorganize its NCP such that a four-person multi-stakeholder group handles grievances independent of, though supported administratively by, the government. Other alternatives include placing NCPs under the legislative branch or within a NHRI.¹²³

7. Summary of existing options

By examining these various recourse options, we see that many existing complaint mechanisms may be equipped to hear at least some complaints likely to arise to REDD+ activities. However, it is clear that no single mechanism has the competency to effectively address and/or remedy all of the categories of REDD-related complaints in accordance with Ruggie’s key principles. Moreover, as REDD+ financing is flowing independently of the existing recourse mechanisms, REDD+ funders may be increasing risks of harm by moving forward through financial mechanisms that do not provide sufficient recourse. New REDD+ funding streams and their accompanying institutional architecture indicate a potential need for new and additional means of recourse for REDD-related activities. The next section discusses design considerations for a new and independent body to hear REDD+ complaints.

V. Options and Considerations for a New International Complaint Mechanism

In Parts II and III we determined that an effective complaint mechanism should be able to consider and address impacts on lands, livelihoods, the environment, and just process and fulfill Ruggie's six key principles. In Part IV, we saw that the World Bank's Inspection Panel, UN-REDD ombudsman, human rights bodies, and OECD national contact points have specialized authority to consider at least some of the situations that could give rise to a complaint, and may be able to directly address the problems arising under those particular situations. However, none of these entities is able to consider all of the potential impacts created through internationally supported REDD+ activities. To have a single, centralized option to resolve REDD-related complaints, it would be necessary to establish an entirely new mechanism. This section considers the scope, functions, operational considerations, and design options for a new REDD-specific mechanism.

a. Scope, functions, and design components of a new mechanism

The discussion below offers considerations regarding the scope, functions, and design elements of a new mechanism in light of Ruggie's principles for non-judicial grievance mechanisms (legitimacy, accessibility, predictability, equitability, rights-compatibility and transparency).¹²⁴

i. Scope

We recall from Section II that the scope of complaints should include impacts to: forest resources and associated lands, forest-dependent livelihoods, environment, just processes, legal and institutional framework, and misappropriation/abuse of funds. For complaints related to lands, territories and resources, the principles of accessibility and transparency require clear and transparent procedures regarding how property disputes should be addressed and what standards and/or laws apply. For complaints regarding procedural issues, the principle of accessibility requires clear standards to be applied when considering whether a process is just. Moreover, specific procedures should be maintained to quickly address any threats of reprisal or retaliation.

It is a significant challenge to design a mechanism that will effectively address the full spectrum of REDD+ complaints relevant to all of these actors. As such, a threshold question is whether an ideal new REDD-specific complaint mechanism would have the general authority and expertise to consider all categories of complaints or whether the new mechanism would instead consider a subset of complaint categories and utilize existing options for the remainder. A third option would be to consider whether existing options, taken in sum, might be able to consider the full scope of complaints, and if so, whether a new mechanism could simply refer all complaints to existing mechanisms. In this section, we will focus on general design considerations for a new mechanism that considers complaints and later explore the option of referring at least a subset of complaints to existing mechanisms.

ii. Functions

In designing a new mechanism specific for REDD+ complaints, we not only need to consider the scope of complaints but also the functions the new mechanism would perform. Generally speaking, the suite of possible functions of a complaint mechanism includes: fact-finding, compliance assessment, and awarding remedies such as just compensation. We will consider these functions in light of the Ruggie principles and also present the options of including an appellate function, project-level dispute mediation, and a more formal adjudication process.

Given the challenges of predictability with respect to the length of time property and resource disputes can take, the mechanism should maintain policies with clear timeframes for dispute resolution and also consider alternative, interim options if a complaint cannot be resolved quickly. To ensure rights compatibility, it may be important for the mechanism to do more than issue findings of fact. A complaint mechanism that merely makes a determination that fundamental human rights have been violated has not ensured REDD+ activities are compatible with human rights. As such, the mechanism should have the authority to order remedial measures (in the case of rights violations) or to determine that certain outcomes can result in action-forcing measures such as implementing a social development plan or suspending funding flows until rights violations are remedied. If a complaint is processed and any investigation determines that specific action is warranted to remedy a situation, the mechanism should have a sufficient budget and authority to monitor outcomes. Beyond core functions of fact-finding, compliance assessment, and awarding remedies, two additional options would be to include an appellate function and to offer mediation/adjudication services. The first is to include within a new mechanism an appellate process to hear complaints challenging determinations made by project-based mechanisms or national-level adjudications that are alleged to violate international standards or obligations. An important consideration for predictability is the possibility of appeal and reversal of any initial outcome. On one hand, an appeals process can increase legitimacy of the mechanism. On the other hand, it can significantly extend the amount of time to resolve a complaint. To ensure greater predictability, an appeals process should have clear and efficient timelines and processes for reconsidering complaints.

A project-specific grievance mechanism can provide the first means of recourse to resolve complaints, and if effective, may be the most efficient option. An example of this is found in the requirement under IFC performance standards that private parties receiving international financing for a project must establish a specific process to receive complaints related to project activities.

A second option is that the new mechanism could offer mediation/adjudication services, ranging anywhere from project-level mediation to formal adjudication services. Best practice indicates that a project-specific grievance mechanism should focus on direct or mediated dialogue.¹²⁵ It should be designed and overseen jointly with representatives of the groups who may need to access it (including indigenous peoples and otherwise vulnerable populations).¹²⁶ Particular care should be taken to redress imbalances in information and expertise between parties, enabling effective dialogue and sustainable solutions.¹²⁷ It is also essential that a project-specific mechanism should not negatively impact opportunities for complainants to seek recourse through State-based or other international mechanisms, including the courts.¹²⁸

Beyond project-level mediation, formal adjudication services could also be provided at the international level. An example of this is a provision in the North American Free Trade Agreement that gives affected persons (generally investors) an opportunity to bring a claim before a tribunal. Chapter 11 of the agreement allows corporations or individuals to sue States (in this case Mexico, Canada and the United States) for compensation when actions taken by those governments or sub-national actors under their jurisdiction have adversely affected the claimant's investment.¹²⁹ In this model, States explicitly agree to submit to arbitration with adversely affected complainants under the rules of the International Centre for Settlement of Investment Disputes (ICSID) or the UN Commission on International Trade Law (UNCITRAL) if claims have not otherwise been resolved in a timely manner.¹³⁰

In considering which of these complaint mechanism functions would be best for REDD+ complaints, we should consider Ruggie's principles articulated above (legitimacy, accessibility, predictability,

equitability, rights-compatibility and transparency). Referencing the principle of legitimacy, it may be quicker to address a complaint when dealing with matters such as investigating facts that do not mandate remedial action, but such outcomes may be less permanent than those that provide direct remedies, such as awarding just compensation. At the same time, indigenous peoples and local communities who feel threatened by proposed REDD+ activities may be more likely to legitimize a complaint mechanism if it is able to provide a direct remedy for harms suffered. As such, the less likely a mechanism is to provide recourse, the less effective it may be in resolving the dispute. These challenges highlight the need for dialogue with key actors in designing an effective complaint mechanism.

The principle of accessibility requires that potential complainants be aware of the existence of a mechanism, and know how to and are able to avail themselves of it. One area where this arises is in communication: if the mechanism operates in one particular language, it should also accommodate those who speak other languages. Once a complaint is received, communication may be undertaken through translators (which the complainant should not be required to pay for). But how can accessibility be ensured before a complaint is registered? To register a complaint, a local resident must first know: (1) a mechanism to hear his/her complaints in fact, (2) national and international actors engaged in REDD+ activities are subject to such a mechanism, (3) applicable policies and standards that will be used to evaluate a complaint, and (4) how to technically submit a complaint.

With respect to the principle of equitability, it is particularly important that complaints regarding procedural issues are handled with enhanced equity considerations, because just process complaints tend to be correlated with already inequitable situations. With respect to possible functions of a complaint mechanism, it is important to consider what equitability means for dispute resolution/ombudsman functions, as simply bringing the actors together without considering access to information and relevant expertise could lead to an ineffective resolution of a complaint.

Generally speaking, the transparency principle means the default should be full disclosure in the public interest. It is possible that in particular cases (such as those where fear of reprisal is a concern) that the identity of the complainant might be withheld, but those cases should be the exception as opposed to the rule. Similarly, there may be cases where interim procedures or findings could be appropriately withheld from public release until an outcome is reached (such as a fact-finding investigation where disclosure of interim facts could impact the ability to gather additional facts).

b. Operational considerations and design elements

This section considers how to operationalize the scope, functions, and design considerations discussed above. Key considerations are (i) who can submit a complaint, (ii) who can receive and evaluate a complaint, (iii) what actions and remedies can be taken in the case of a violation, and (iv) how can outcomes be reported. Within these considerations, a number of options emerge that could be relevant to the design. This report does not take a position on these options but rather seeks to offer them and describe briefly how they could operate.

i. Who can submit a complaint?

Complaints could be received from persons harmed or potentially harmed by REDD-related activities undertaken at either the project or national level, as well as public interest groups, such as non-governmental organizations (NGOs) or civil society organizations (CSOs). The process of preparing, submitting and receiving complaints should be one that all indigenous peoples and local communities, regardless of language, culture, and technical resources, are able to use to communicate their concerns

without the need to hire outside experts. Depending on the issue, complaints could be brought against many different actors ranging from the local to international levels, including international, national, and local governmental agencies, local communities, and private companies.

It is helpful to consider how issues that may arise in a REDD-related complaint relate to the principle of accessibility. Environmental complaints have particular challenges related to accessibility because “the environment” cannot bring its own complaint. As such, a broad set of actors should be able to register complaints regarding environmental impacts (such as loss of biodiversity, potential extinction of a species). On the other end of the spectrum, it may be helpful to limit livelihood-related complaints to those peoples or communities whose livelihoods and cultural identities have been historically tied to traditional use of forested areas.

ii. Who can receive and evaluate a complaint?

This section considers some of the architectural challenges and institutional considerations associated with designing a complaint mechanism for REDD+ at the international level. Specifically, the scope of parties to a complaint, considerations regarding legitimacy, and institutional expertise are all key components when considering the design of a new institution for REDD+ complaints. In light of these considerations, the option emerges to utilize the subject matter expertise of existing institutions (such as those listed in Part IV) by referring at least some subset of complaints received. This section will consider this option below.

The office conducting fact-finding, determining compliance, awarding compensation, and/or facilitating mediation must have integrity, and must be impartial, independent, transparent and credible. To be independent, the budget for the office should be sufficient, reliable, and not subject to political manipulation. To be credible, senior officers should be highly-qualified, and internationally recognized as providing quality expertise in a fair and efficient manner. To maximize effectiveness, the office should regularly report outcomes to senior decision-makers and complainants, as well as publicize findings. The reports should be written and made easily available to the public, subject to redaction of any legitimately confidential information. The office should report back to the persons or community making the complaint about what happened to the complaint, as the World Bank Inspection Panel does. The office should also have the capacity to monitor how findings are addressed and recommendations are implemented.

Potential parties to a REDD+ complaint include international agencies, government agencies (at national, regional and local levels), indigenous peoples, local communities, and private companies. Legitimacy requires that none of these actors can interfere with a complaint submission and investigation. This may be difficult to achieve at the international level given the proliferation of actors and the need, on one hand, to politically insulate the employees working to process a complaint, and on the other hand, to ensure that the findings of the mechanism are respected and addressed in a way that remedies any problems.

There are several considerations relevant to legitimacy when considering impacts to lands, livelihoods, the environment, and just processes. While independence is necessary to ensure legitimacy, the more independent the administrative entity, the less obligated an actor is to respect any decision rendered by that administrative entity. It may be difficult to obtain resolution for many of the issues that could be the subject of complaints without some form of agreement that an actor will respect the decision. For example, changes in political processes may be particularly difficult to effect if actors are not required to

accept the findings or recommendations from the complaint mechanism. One way that some institutions have addressed this tension is to nest a high-level group of experts in a large international institution where it has an established budget and reports directly to the top tier of decision-makers. Another way to address this potential outcome is for the relevant actors to sign a memorandum of understanding that recognizes the legitimacy of the mechanism, and agrees to recognize its decision.

Beyond these basic principles, it is also important to consider the degree to which an institution has competency to address the full scope of complaints. One option is to fund the new REDD-specific mechanism sufficiently to employ staff with expertise in all subject matter areas—ranging from human rights to fiduciary standards to biodiversity. While this could result in a significant operational expense, it would also provide a straightforward, centralized office to receive and process complaints. Another option is to consider a “clearinghouse” model where REDD-specific complaints could be processed through a central office and then forwarded to a mechanism with specialized expertise in the matters particular to a given complaint.

Given the diversity of expertise needed to consider the full scope of complaints, it may be worthwhile to consider the option of referring some complaints (where appropriate) to the existing mechanisms described in Part IV. For example, recognizing that lands, territories, resources, livelihoods, and just processes are inherently tied to human rights obligations, a (new) REDD-specific complaint mechanism could sign a memorandum of understanding with (existing) UN human rights bodies to ensure that their findings and expertise will be adequately incorporated into any complaint mechanism. Such an arrangement could decide that (1) if human rights form the core part of a complaint, it would be possible to refer the complaint from the (new) REDD-specific directly to (existing) human rights bodies for expedited resolution, and (2) any decision taken by an (existing) human rights body could be enforced through the (new) REDD complaint mechanism. While initial design might be challenging to negotiate across international institutions, the efficiency gains to the system by tapping existing expertise may make this option well worthwhile to pursue.

The office designated to receive complaints could review submissions for eligibility based upon specific terms of reference. It could then either consider all eligible complaints in-house or, depending on the subject matter, refer some of the complaints to other expert bodies with specialized expertise to address particular impacts related to REDD+ activities. Any internationally-sanctioned agreement to undertake REDD+ activities could contain an explicit requirement to (1) enforce obligations and ensure access to justice at the national level, (2) accept the jurisdiction of an international office to hear complaints not effectively resolved at the national and local levels, (3) notify potentially affected persons of the existence of the office as a part of required consultations, and (4) comply with any resulting findings and recommendations to address the issues raised in the complaint.

iii. What action can be taken in the case of a violation and what remedies are available?

To be effective, a complaint mechanism must be able to order appropriate remedies if it finds a violation of an obligation or breach of duty. The degree of harm or the potential for ongoing violations may determine the appropriate action for remedy. In order to ensure the remedy is effective, it is important to establish a clear understanding of who has oversight and authority to provide a remedy. It is also important to agree on applicable rules and dispute resolution processes before harm occurs to ensure that remedial action is satisfactorily completed.

Particular to resolution of matters pertaining to land tenure and usufruct rights, a complaint mechanism should have the authority to grant particular remedies to address the principle of rights-compatibility. The UN Basic Principles and Guidelines on Development-Based Evictions and Displacement lays out the State obligation to refrain from, and protect against, forced evictions from homes and land.¹³¹ To address potential violations, the guidelines provide that “States must ensure that adequate and effective legal or other appropriate remedies are available to any person” claiming violation of their rights.¹³² All persons threatened with or subject to evictions have the right to access to remedy, which includes a fair hearing, legal counsel, legal aid, and any of many possible types of compensation (e.g. damages, resettlement, and/or right of return). To this effect, the international community “bears an obligation to promote, protect and fulfill the human right to housing, land and property” and therefore REDD-related activities should identify specific procedures for forced evictions and provide legal remedies to victims.¹³³

One specific design option available for a remedy is to link findings of significant violations to funding flows. Funding provides an important incentive to meet obligations. Consistent with a rights-based approach, international support for REDD+ should not be complicit in financing activities known to violate rights. A variety of funding distribution mechanisms may be tested at the national level, including direct payments to individuals where rights are clearly established, as well as indirect payments (e.g. to local government units) also being made to improve development service delivery. The complaint should ideally have the potential to impact and even end the funding for the national REDD+ programs/projects if reparation is not provided, or action is not taken to stop the harmful practice.

In light of these international obligations to ensure an effective remedy, a REDD+ complaint mechanism should have the authority to use various approaches when responding to complaints, including:

- Declaration and public disclosure: issue and publicize findings of violation (compatible with fact-finding function).
- Injunction: halt violation (compatible with arbitration or other forms of dispute resolution such as fact-finding, if the terms of reference for the relevant institution allow for recommendations and those recommendations are not rejected).
- Compensation: pay for harm caused by violation (compatible with mediation, arbitration, and fact-finding, where the TOR allow for recommendations and those recommendations are not rejected). For example, ILO Convention 169 provides in article 4 that special measures “shall be adopted as appropriate” by State Parties to safeguard the rights of indigenous and tribal peoples. In terms of the substantive aspects of remedy, ILO Convention 169 contains several provisions relating to compensation for harm suffered through exploration, or use of resources, on indigenous and tribal peoples’ lands.
- Sanction: punish violation (primarily compatible with adjudication but could be a component of fact-finding, depending on TOR).
- Restitution, i.e. restore to pre-harm state (compatible with adjudication and potentially awarded as component of mediation or fact-finding recommendations). Restitution is the remedy favored by international law when it is practical.

iv. How can outcomes be reported?

In addition, any national or international grievance mechanism or expert reviewing claims should have an annual reporting requirement describing complaints received, decisions taken, lessons learned, and

recommendations for future action. The monitoring of a complaint mechanism's outcomes can increase its predictability, which helps satisfy one of Ruggie's key principles.

In order for REDD+ to work in a manner that is in accordance with human rights and that avoids human suffering and conflicts, REDD+ plans should explicitly ensure that safeguards are in place and rights are protected and not undermined. The human rights impacts of local forest-dependent groups should also be monitored and reported on, and one or several mechanisms should be in place whereby local people and others may file complaints on irregularities and violations, and seek recourse.

An additional option in reporting outcomes is to incorporate indicators for compliance with obligations into the UNFCCC's process of Measurement, Reporting and Verification (MRV). Indicators of specific obligations related to MRV will enable better identification and understanding of those obligations which apply. MRV requirements can help address due diligence obligations. Monitoring, reporting, and verifying compliance with obligations can help resolve disputes. In theory, it may even be possible to incorporate some of the reporting functions of human rights mandate holders such as the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.

VI. Conclusion

There are various reasons why a complaint mechanism should be an integral part of REDD+. First, it helps improve outcome via feedback. A complaint mechanism or procedure could be used to bring concerns to the attention of REDD+ funders and decision-makers. Complaints are a valuable source of information that allows decision-makers to improve the present functioning of a policy or program and ensures that those affected by the actual program will not be negatively affected and can interact with REDD+ decision-makers. By addressing REDD+ implementation, this mechanism would not only help improve the effectiveness of specific activities but would also help to identify strengths and weaknesses in the REDD+ system, ultimately securing long-term effectiveness. Additionally, a REDD+ complaint mechanism will help minimize harms to communities and ecosystems as well as respect existing rights, standards and obligations.

The scope of complaints should include impacts to: forest resources and associated lands, forest-dependent livelihoods, environment, just processes, legal and institutional framework, and misappropriation/abuse of funds. Rights to protections from these impacts are found in specific provisions of international instruments that apply broadly to countries implementing REDD+ activities. While the specific obligations may vary depending on a particular instrument and/or country, international instruments generally support the following rights applicable to REDD+: self-determination; culture; religion; non-discrimination; access to effective remedies; access to justice; participation and prior and informed consent in decision-making; access to information; life, livelihood, an adequate standard of living, and health; property, land, territories and natural resources; work; and the right to a healthy environment /sustainable development.¹³⁴ As such, a complaint mechanism for REDD+ should be capable of effectively addressing international obligations that apply to the design, implementation and monitoring of REDD+ policies and programs.

Principles to evaluate and/or design a mechanism include legitimacy, accessibility, predictability, equitability, rights-compatibility and transparency. Based on this scope and principles, we can evaluate existing options and then consider the option of designing of a new REDD-specific complaint mechanism.

A number of options already exist to address REDD-related complaints. The UNFCCC has two mechanisms to resolve disputes but neither of these options is available to non-State actors, nor do they currently have a mandate to address the scope of impacts related to REDD+ beyond carbon. The World Bank maintains an Inspection Panel, which is able to address many impact categories, including property rights, access to resources, some impacts to ecosystems, and fiduciary standards, but there is less authority to consider human rights. Moreover, the Inspection Panel may not be available to hear many REDD-related complaints due to certain restrictions regarding the trust funds that finance REDD-related activities. UN-REDD follows a rights-based approach to its activities but formal procedures have not yet been detailed for a complaint mechanism, so it is not yet possible to determine the adequacy and effectiveness of a complaint mechanism under UN-REDD. The international human rights system offers many options to hear impacts to livelihoods, rights, and property, although it does not have the authority to hear the full scope of REDD-related complaints, and even the complaints that it does hear can take a long time to resolve. The Aarhus Convention and OECD national contact points offer opportunities to address procedural and substantive rights violations of European and other donor countries but those mechanisms are less available to potential complainants in REDD-participant countries.

By examining these various recourse options, we see that many existing complaint mechanisms may be equipped to hear at least some complaints likely to arise to REDD+ activities. While none of the existing entities offers a comprehensive option to address the full scope of REDD-related complaints, many have specialized knowledge and capacity that could potentially address certain REDD-related impacts. However, it is clear that no single mechanism has the competency to effectively address and/or remedy all of the categories of REDD-related complaints in accordance with Ruggie's key principles. Moreover, as REDD+ financing is flowing independently of the existing recourse mechanisms, REDD+ funders may be increasing risks of harm by moving forward through financial mechanisms that do not provide sufficient recourse. New REDD+ funding streams and their accompanying institutional architecture indicate a potential need for new and additional means of recourse for REDD-related activities.

Given that no single existing mechanism is adequate to address the full scope of REDD+ complaints, we can explore the option of designing a new REDD-specific complaint mechanism. Key considerations include the scope, functions, and design elements of a new mechanism in light of Ruggie's principles for non-judicial grievance mechanisms (legitimacy, accessibility, predictability, equitability, rights-compatibility and transparency).¹³⁵

Generally speaking, the suite of possible functions of a complaint mechanism includes: fact-finding, compliance assessment, and awarding remedies such as just compensation. Ruggie's principles suggest that fact-finding alone may not be sufficient to ensure rights-compatibility, though the stronger the remedy the more difficult it may be to expedite a complaint. It may also be worthwhile to consider the options of including an appellate function, project-level dispute mediation, and a more formal adjudication process.

The design elements of a new mechanism include (i) who can submit a complaint, (ii) who can receive and evaluate a complaint, (iii) what actions and remedies can be taken in the case of a violation, and (iv) how can outcomes be reported. Within these considerations, a number of options emerge that could be relevant to the design. This report does not take a position on these options but rather seeks to offer them and describe briefly how they could operate.

Logistically speaking, complaints could be received from persons harmed or potentially harmed by REDD-related activities undertaken at either the project or national level, as well as public interest groups, such as non-governmental organizations. The office designated to receive complaints could review submissions for eligibility based upon specific terms of reference. It could then either consider all eligible complaints in-house or, depending on the subject matter, refer some of the complaints to other expert bodies with specialized expertise to address particular impacts related to REDD+ activities. Any internationally-sanctioned agreement to undertake REDD+ activities could contain an explicit requirement to (1) enforce obligations and ensure access to justice at the national level, (2) accept the jurisdiction of an international office to hear complaints not effectively resolved at the national and local levels, (3) notify potentially affected persons of the existence of the office as a part of required consultations, and (4) comply with any resulting findings and recommendations to address the issues raised in the complaint.

To be effective, a complaint mechanism must be able to order appropriate remedies if it finds a violation of an obligation or breach of duty. The degree of harm or the potential for ongoing violations may determine the appropriate action for remedy. In order to ensure the remedy is effective, it is important to establish a clear understanding of who has oversight and authority to provide a remedy. It is also important to agree on applicable rules and dispute resolution processes before harm occurs to ensure that remedial action is satisfactorily completed. In light of international obligations to ensure an effective remedy, a REDD+ complaint mechanism should have the authority to use various approaches when responding to complaints, including declaration and public disclosure, injunction, compensation, sanction, and restitution.

In addition, any national or international grievance mechanism or expert reviewing claims should have an annual reporting requirement describing complaints received, decisions taken, lessons learned, and recommendations for future action. An additional option in reporting outcomes is to incorporate indicators for compliance with obligations into the UNFCCC's process of Measurement, Reporting and Verification (MRV). In theory, it may even be possible to incorporate some of the reporting functions of human rights mandate holders such as the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.

In sum, no existing mechanism can adequately address the full scope of potential REDD-related claims. At the same time, creating a new office to consider a comprehensive suite of REDD-related complaints would require significant time and resources. Recognizing that many existing mechanisms could provide valuable expertise to specific types of REDD-related claims, it might be possible to process claims more efficiently by authorizing a centralized office to receive the full scope of REDD-related complaints and then refer claims to the existing mechanisms where appropriate. This could help alleviate the burden for all mechanisms to investigate claims that are beyond their jurisdiction or competency, ultimately providing a better and more efficient outcome for all involved.

Annexes:

ANNEX A: Select International Obligations Relevant to REDD+

ANNEX B:

Selected International Instruments Applicable to REDD Participant Countries

[See attached excel spreadsheet]

ANNEX A: Select international obligations relevant to REDD+

The International Labour Organization (ILO) Convention on Indigenous and Tribal Peoples, 1989 (No.169) ("ILO Convention 169")¹³⁶ is important to the discussion over indigenous peoples' rights. Presently, ILO 169 has been ratified by twenty two countries that collectively include over 899 million hectares of tropical forests, including a large portion of the Amazon basin and a large portion of the tropical forests in Central America. Sixteen of these countries are rainforest countries that have entered into REDD+ agreements. Large parts of these forest areas correspond to areas traditionally owned, occupied, and/or utilized by indigenous peoples. Between 2000 and 2005, REDD+ countries with tropical forests party to ILO Convention 169 lost an aggregate total of 4.892 million hectares of forest area, representing 66.8, about two thirds, of the total global deforestation.¹³⁷

Several specific provisions of ILO Convention 169 are particularly relevant to REDD+. Article 7 grants all affected peoples¹³⁸ "the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use."¹³⁹ The Convention references the rights of indigenous and tribal peoples to cultural identity, practices and customs;¹⁴⁰ "religious ... values and practices";¹⁴¹ health, livelihood and well-being;¹⁴² ownership and possession of property, land and natural resources;¹⁴³ and sustainable development.¹⁴⁴ Additionally, the treaty supports access to justice¹⁴⁵ and participation and informed consent in decision-making;¹⁴⁶ prohibits discrimination;¹⁴⁷ and addresses the right to work.¹⁴⁸ This is significant in the REDD+ context because carbon (or the ability to store carbon) is inherent in certain natural resources (namely forests) associated with the land.

*Table 1. REDD+ Participant Countries Parties to ILO 169, respective total forest surface, net change in land-use and annual rates of deforestation.*¹⁴⁹

Country	Total forest surface, 2005 (in 1,000 ha.)	Net forest change, 2000-2005 (in 1,000 ha.)	Net % change, 2000-2005
Argentina	33 021	-150	-0.4%
Bolivia	58 740	-270	-0,5%
Brazil	477 698	-3 103	-0,6%
Central African Republic	22 755	-30	-0.1%
Chile	16 121	57	0,4%
Costa Rica	2 391	3	0,1%

Colombia	60 728	-47	-0,1%
Ecuador	10 853	-198	-1,7%
Guatemala	3 938	-54	-1,3%
Honduras	4 648	-156	-3,1%
Mexico	64 238	-260	-0,4%
Nepal	3 636	-53	-1,4%
Nicaragua	5 189	-70	-1.3%
Paraguay	18 475	-179	-0,9%
Peru	68 742	-94	-0,1%
Venezuela	47 713	-288	-0,6%
Total	899,932	4892	
Total net and % global deforestation in ILO 169 REDD+ Parties		7,317+ 66.8%	

REDD-related Provisions of ILO Convention 169

The International Covenant on Economic, Social and Cultural Rights¹⁵⁰ (ICESCR) is relevant to REDD+ because it sets an important precedent for safeguarding several principal rights related to culture, identity, and livelihood in the international community. The ICESCR prohibits discrimination¹⁵¹ and supports the rights to self-determination;¹⁵² participation in cultural life;¹⁵³ religion;¹⁵⁴ health, livelihood and an adequate standard of living;¹⁵⁵ and work.¹⁵⁶

The UN International Covenant on Civil and Political Rights (ICCPR) also enumerates several REDD-related rights.¹⁵⁷ Specifically guaranteed are the rights to self-determination;¹⁵⁸ minorities' rights to the enjoyment of culture;¹⁵⁹ religion;¹⁶⁰ and life.¹⁶¹ The ICCPR also prohibits discrimination,¹⁶² supports the right to livelihood,¹⁶³ and protects universal access to justice,¹⁶⁴ effective remedies¹⁶⁵ and participation in decision-making.¹⁶⁶

Besides prohibiting discrimination based on race,¹⁶⁷ the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) secures other rights pertaining to REDD+ activities, including the rights to partake in cultural activities;¹⁶⁸ religion;¹⁶⁹ health care and social services;¹⁷⁰ property ownership;¹⁷¹ and work.¹⁷² The Convention also supports several procedural rights, including the rights of equality and equal treatment before the law,¹⁷³ participation in public affairs and services,¹⁷⁴ and access to effective remedies.¹⁷⁵

The 1998 UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice ("Aarhus Convention")¹⁷⁶ encapsulates Principle 10 of the Rio Declaration on Environment and Development, which combines three essential elements of "environmental democracy": the rights to access to information, public participation in environmental policy and decision making processes, and access to justice.¹⁷⁷

The American Convention on Human Rights¹⁷⁸ guarantees several rights potentially impacted by REDD+. Specifically enumerated by the Convention are the rights to life,¹⁷⁹ religion,¹⁸⁰ "use and enjoyment" of property,¹⁸¹ participation in government and public affairs,¹⁸² and the right to "effective recourse."¹⁸³ Additionally, the Convention supports the right of access to justice.¹⁸⁴

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP)¹⁸⁵ affirms the rights of indigenous peoples in activities affecting their lands and resources. Particular guarantees include the right of self-determination;¹⁸⁶ “the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use”;¹⁸⁷ the right to cultural identity, heritage, values, and customs;¹⁸⁸ and the right to free, prior, and informed consent.¹⁸⁹ This is especially relevant in the REDD+ context because REDD+ activities, in all likelihood, will affect lands and resources utilized by indigenous peoples. UNDRIP also requires states to secure available and effective methods of redress for the peoples concerned in the declaration;¹⁹⁰ and participation in decision-making and “in the political, economic, social and cultural life of the State.”¹⁹¹

Although UNDRIP is a General Assembly Resolution, it is authoritative for UN bodies that may operationalize REDD+, expressing broadly accepted views of the particular application of international and customary law obligations regarding indigenous peoples.¹⁹² Recognizing that much of the world’s forests correspond to the lands, territories and resources of indigenous peoples, UNDRIP is an important instrument for REDD-related activities, particularly as relates to Article 32 which requires consultation and good faith cooperation through indigenous peoples’ free, prior and informed consent prior to the approval of any project affecting their lands, territories or resources. Additionally, article 40 affirms that indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights.

The UN Convention on Biological Diversity (CBD) expressly recognizes the relationship between biological resources and indigenous and local communities.¹⁹³ Article 10(c) encourages Parties to preserve sustainable traditional and cultural use of resources.¹⁹⁴ In terms of *in situ* conservation of biodiversity, Article 8(j) of the CBD requires Parties to respect, preserve, and maintain the knowledge and practices of indigenous and local communities and promote equitable benefit sharing.¹⁹⁵ The Convention further supports the rights of communities and individuals to participation in decision-making;¹⁹⁶ access to information;¹⁹⁷ livelihood;¹⁹⁸ traditional use of land and resources;¹⁹⁹ and sustainable development.²⁰⁰

Parties to the CBD who may participate in a REDD+ mechanism may want to consider enhanced means of ensuring consistency between their CBD obligations and implementation of REDD+ activities. As the CBD requires preservation of traditional and cultural practices that reflect sustainable use and conservation of resources, a complaint/recourse mechanism to REDD+ will have to ensure that REDD+ activities do not infringe the aforementioned rights of indigenous and tribal peoples enumerated by the CBD.

The United Nations Forum on Forests (UNFF) Non-legally Binding Instrument on All types of Forests²⁰¹ (NLBI) is a non-binding expression of agreement on certain international forest policy topics relevant to a REDD+ mechanism. The NLBI provides guidance for national authorities to reduce deforestation, increase social benefits from forests, and increase forest protected areas, and generate new forest finance. In regard to indigenous peoples, the NLBI guides governments to:

- Generate regulations to incentive investment and co-investment by indigenous peoples and other forest dependent communities in sustainable forest management.
- Develop technologies that may be used by indigenous peoples to enhance sustainable forest management.
- Launch new education and capacity building efforts to improve forest management.

A complaint mechanism for REDD+.

A report from the Center for International Environmental Law (CIEL) and Rainforest Foundation Norway (RFN)

- Enhance access by forest dependent local and indigenous communities; living in and outside forest areas, to forest resources and relevant markets in order improve livelihoods and income diversification.

¹ This does not suggest that a complaint mechanism should be limited in scope and ignore other impacts beyond rights violations. Rather, this report focuses on rights because (1) standards are already well defined, (2) concerns regarding REDD+ and rights are broadly recognized as warranting some level of protection, and (3) the risk and irreversibility of harm is severe.

² Andrew Nelson & Kenneth Chomitz, *Protected Area Effectiveness in Reducing Tropical Deforestation: A Global Analysis of the Impact of Protection Status*, WORLD BANK INDEP. EVAL. GROUP EVAL. BRIEF 7 (October 2009), available at http://siteresources.worldbank.org/INTOED/Resources/protected_areas_eb.pdf.

³ See U.N. Permanent Forum on Indigenous Issues, *Final Report from the 7th session (21 April-2 May 2008)*, 23 Econ. & Soc. Council Official Records Supp. (2008).

⁴ United Nations Declaration of the Rights of Indigenous Peoples art. 40, U.N. Doc. A/RES/47/1(2007) (hereinafter “UNDRIP”) (“Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.” *Id.*)

⁵ BASES Wiki, Compliance Advisory Ombudsman, World Bank Group, http://baseswiki.org/en/Compliance_Advisor/Ombudsman,_World_Bank_Group (last visited Aug. 3, 2010). Note that the initial assessment phase has a time limit of 120 days, which may be reduced or increased with the consent of the parties. The time-table for the problem-solving process is agreed on a case-by-case basis with the parties. Note also that the option for mediation is not exclusive of the option to engage in fact-finding. For example, the International Finance Corporation’s Compliance Advisory Ombudsman is a hybrid of compliance fact-finding and mediation services.

⁶ FOREST CARBON PARTNERSHIP FACILITY, REVISED FCPF TAP SYNTHESIS REVIEW OF R-PP OF DEMOCRATIC REPUBLIC OF CONGO 5-6 (2010) (revised Mar. 17, 2010) [hereinafter DRC R-PP REVIEW].

⁷ *Id.* at 6.

⁸ FOREST CARBON PARTNERSHIP FACILITY, READINESS PLAN IDEA NOTE (R-PIN) – EXTERNAL REVIEW FORM 3-4 (2008) (reviewing the R-PIN of Papua New Guinea) [hereinafter PNG R-PIN REVIEW]. However, the reviewers did note that Papua New Guinea does have a functioning legal framework recognizing the land ownership rights of local populations. *Id.* at 3.

⁹ FOREST CARBON PARTNERSHIP FACILITY, TAP REVIEW OF R-PP OF: COSTA RICA 8 (2010); *see supra* notes 1-3 and accompanying text.

¹⁰ DRC R-PP REVIEW, *supra* note 1, at 11-12.

¹¹ *Id.* at 7; FOREST CARBON PARTNERSHIP FACILITY, TAP SYNTHESIS REVIEW OF R-PP OF: ARGENTINA 3 (2010); PNG R-PIN REVIEW, *supra* note 3, at 2-3.

¹² FOREST CARBON PARTNERSHIP FACILITY, READINESS PLAN IDEA NOTE (R-PIN) – EXTERNAL REVIEW FORM 4 (2008) (revised July 7, 2008) (reviewing the R-PIN of the Democratic Republic of the Congo) [hereinafter DRC R-PIN REVIEW].

¹³ DRC R-PP REVIEW, *supra* note 1, at 3, 10; PNG R-PIN REVIEW, *supra* note 3, at 2.

¹⁴ DRC R-PIN REVIEW, *supra* note 7, at 5.

¹⁵ *Id.*

¹⁶ DRC R-PP REVIEW, *supra* note 1, at 9; DRC R-PIN REVIEW, *supra* note 7, at 5; PNG R-PIN REVIEW, *supra* note 3, at 2.

¹⁷ DRC R-PP REVIEW, *supra* note 1, at 12-13.

¹⁸ See Human Rights Council document A/HRC/11/13/Add.1, at 13 (“Ruggie’s 2009 Report (addendum)”), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

¹⁹ See Ruggie’s 2009 Report (addendum), Human Rights Council document A/HRC/11/13/Add.1, at 14, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>.

²⁰ Including rights to lands, territories, and resources.

²¹ For specific information on the instruments and related obligations, please see Annex A & B.

²² Seven other global instruments supporting the right to culture include the following: Universal Declaration of Human Rights; Convention Concerning the Protection of the World Cultural and Natural Heritage; Convention for the Safeguarding of the Intangible Cultural Heritage; Universal Declaration on Cultural Diversity; Convention on the Protection and Promotion of the Diversity of Cultural Expressions; Convention on the Rights of the Child; and

Convention on the Elimination of All Forms of Discrimination Against Women. For specific information on the instruments and related obligations, please see Annex A & B.

²³ Six other global instruments supporting the right to participation in decision-making include the following: Universal Declaration of Human Rights; Convention for the Safeguarding of the Intangible Cultural Heritage; Universal Declaration on Cultural Diversity; Convention on the Protection and Promotion of the Diversity of Cultural Expressions; Convention on the Rights of the Child; and Convention on the Elimination of All Forms of Discrimination Against Women. For specific information on the instruments and related obligations, please see Annex A & B.

²⁴ The following global human rights instruments reference the principle of non-discrimination: Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; ILO Convention 169; UN Declaration on the Rights of Indigenous Peoples; Convention on the Protection and Promotion of the Diversity of Cultural Expressions; Convention on the Rights of the Child; and Convention on the Elimination of All Forms of Discrimination Against Women. For specific information on the instruments and related obligations, please see Annex A & B.

²⁵ The following global human rights instruments reference the right to religion and sacred sites: Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; ILO Convention 169; UN Declaration on the Rights of Indigenous Peoples; and Convention on the Rights of the Child. For specific information on the instruments and related obligations, please see Annex A & B.

²⁶ The right of access to justice is reference by these global human rights instruments: Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; ILO Convention 169; UN Declaration on the Rights of Indigenous Peoples; Convention on the Rights of the Child; and Convention on the Elimination of All Forms of Discrimination Against Women. For specific information on the instruments and related obligations, please see Annex A & B.

²⁷ The following seven global instruments refer to the right of access to information: Convention on Biological Diversity; UN Declaration on the Rights of Indigenous Peoples; Convention Concerning the Protection of the World Cultural and Natural Heritage; Convention for the Safeguarding of the Intangible Cultural Heritage; Universal Declaration on Cultural Diversity; Convention on the Protection and Promotion of the Diversity of Cultural Expressions; and Convention on the Rights of the Child. For specific information on the instruments and related obligations, please see Annex A & B.

²⁸ The link between the rights to culture, religion and sacred sites, and ownership and use of land and natural resources is exemplified in UNDRIP Article 25, which requires States Parties to respect the right of indigenous peoples to “their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources.” UNDRIP Art. 25. All but seven REDD participants (Colombia, Kenya, Equatorial Guinea, Ethiopia, Papua New Guinea, Uganda and Vanuatu) voted in favor of UNDRIP, demonstrating the widespread support of the relationship between these three rights among REDD countries. For specific information on the instruments and related obligations, please see Annex A & B.

²⁹ Velásquez-Rodríguez v. Honduras, Inter-Am. Comm’n H.R. 35, OAS/Ser. L/V/III. 19, doc. 13, ¶ 166 (1988).

³⁰ *Id.*

³¹ Special Rapporteur on the Independence of Judges and Lawyers, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, U.N. Doc. A/HRC/8/4 (May 13, 2008), available at <http://www2.ohchr.org/english/bodies/hrcouncil/8session/reports.htm>.

³² UNDRIP addresses the appropriate substantive remedies for the loss of indigenous peoples’ lands, territories and resources, or harm suffered through the use of such lands and resources, without their free, prior and informed consent in articles 10, 28 and 32. Additionally, under article 8 of UNDRIP, States are expected to provide effective mechanisms to prevent and provide redress for actions that violate the right of indigenous peoples not to be subjected to forced assimilation or destruction of their culture. Under article 11, States are also expected to provide redress where indigenous cultural property is appropriated without the free, prior and informed consent of the peoples involved.

³³ Brasilia Regulations Regarding Access to Justice for Vulnerable People, <http://www.aiamp.net/sistema/UserFiles/File/Reglas%20de%20Brasilia%20Ingles.pdf>. At the 14th meeting of the Latin-American Judicial Summit, a majority of Latin American countries (notably absent Brazil) adopted these Brasilia Rules on access to justice for persons in vulnerable situations.

³⁴ Special Rapporteur on the Independence of Judges and Lawyers, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, U.N. Doc. A/HRC/8/4 (May 13, 2008), available at <http://www2.ohchr.org/english/bodies/hrcouncil/8session/reports.htm>.

³⁵ Independent Expert on Minority Issues, *Report of the Independent Expert on Minority Issues: Implementation of General Assembly Resolution 60/251 of 15 MARCH 2006 Entitled "Human Rights Council,"* U.N. Doc. A/HRC/11/13 (Apr. 22, 2009) http://www.wunrn.com/news/2007/05_07/04_30_07/050607_un3.pdf; Independent Expert on Minority Issues, *Report of the Independent Expert on Minority Issues: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the right to Development*, U.N. Doc. A/HRC/10/11 (Feb. 16, 2007), available at http://www.wunrn.com/news/2009/04_09/04_27_09/042709_un_files/Independent%20Expert%20on%20Minority%20Issues%20Report%20to%20UN%20HRC%2010.pdf.

³⁶ *See* John Ruggie, Business and Human Rights: the Evolving International Agenda, Corporate Social Responsibility Initiative Working Paper no. 38 (June 2007), at 20, available at http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_38_ruggie.pdf

³⁷ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Apr. 7, 2008, available at <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>, at paras. 92-95. In the conclusion of the 2010 Report, the Special Representative undertook to provide a set of guiding principles for the operationalization of the framework, which could prove instructive to operationalization of the above-mentioned principles. *See* Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Apr. 9, 2010, available at <http://www.reports-and-materials.org/Ruggie-report-2010.pdf>, at paragraph 124. The 2009 and 2010 Reports summarized a seventh consideration –that a company or project-level mechanism should “operate[] through dialogue and engagement rather than the company itself acting as adjudicator.” *See* Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Apr. 22, 2009, para. 99 & Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Apr. 9, 2010, available at <http://www.reports-and-materials.org/Ruggie-report-2010.pdf>, at para. 94; *see also* Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Apr. 7, 2008, available at <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>, at paras. 92- 95; <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf> (collectively, “Ruggie’s Reports”). According to Ruggie’s 2010 Report, five companies are testing these principles. *See id.* at para. 95, available at <http://www.reports-and-materials.org/Ruggie-report-2010.pdf>.

³⁸ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Apr. 7, 2008, para. 92, available at <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

³⁹ *Id.* at para. 95.11

⁴⁰ *Id.* at para. 92.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ ICCPR art. 2.3 (requiring States Parties to ensure the right to “an effective remedy,” to be “determined by competent judicial, administrative or legislative authorities or by any other competent authority provided for by the legal system of the State,” and to have a decision in their favor enforced.”).

⁴⁶ International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR], available at <http://www2.ohchr.org/english/law/cescr.htm>; *see also* State Obligations to Provide Access to Remedy for Human Rights Abuses by Third Parties, Including Business: An Overview of International and Regional Provisions, Commentary and Decisions, U.N. Doc. A/HRC/11/13/Add.1 (May 15, 2009) at ¶ 92 (interpreting article 2.1 of the ICESCR as implying the obligation to provide access to an effective remedy in the obligation of States “to take steps . . . [toward] achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means.”); Business and Human Rights: the Evolving International Agenda, Corporate Social Responsibility Initiative Working Paper no. 38 (June 2007), at ¶ 23, available at http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_38_ruggie.pdf.

⁴⁷ ICERD art. 6 (requiring Parties to provide “effective protection and remedies, through the competent national tribunals and other State institutions” for violations of the Convention.).

⁴⁸ See ILO 169 art. 4 (requiring the adoption of special measures by States Parties to safeguard the rights of indigenous and tribal peoples, and noting further that articles 15 and 16 contain several provisions relating to compensation for harm suffered through exploration, or use of resources, on indigenous and tribal peoples' lands).

⁴⁹ The African Commission has interpreted the African Charter on Human Rights to require remedies at the national level to be "available, effective and sufficient." *State Obligations to Provide Access to Remedy for Human Rights Abuses by Third Parties, Including Business: An Overview of International and Regional Provisions, Commentary and Decisions*, U.N. Doc. A/HRC/11/13/Add.1 (May 15, 2009) at ¶ 92.

⁵⁰ Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations*, ¶ 92, U.N. Doc. A/HRC/8/5 (April 7, 2008), available at <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>.

⁵¹ The World Bank Inspection Panel. BP 17.55, Annex A -Inspection Panel Resolution. IBRD Resolution 93-10 and IDA Resolution 93-6 adopted by the Bank's Board of Executive Directors on September 22, 1993.

⁵² World Bank Inspection Panel, *Accountability at the World Bank: The Inspection Panel at 15 Years* (2009), at ix.

⁵³ See, e.g., World Bank Operational Policies. OP 4.10 - Indigenous Peoples, July 2005, available at <http://go.worldbank.org/TE769PDWN0> (requiring a social assessment; the results of the free, prior, and informed consultation with the affected indigenous peoples' communities that was carried out during project preparation and its implementation; an action plan of measures to ensure distribution of benefits; and measures to avoid, minimize, mitigate, or compensate adverse effects and accessible procedures appropriate to the project to address grievances by the affected indigenous peoples' communities arising from project implementation; further mandating consideration of culturally appropriate judicial recourse and customary dispute settlement mechanisms and benchmarks appropriate to the project for monitoring, evaluating, and reporting on the implementation of the policies).

⁵⁴ The World Bank Inspection Panel, *Accountability at the World Bank: The Inspection Panel at 15 Years* (2009), at x.

⁵⁵ See The World Bank, *Progress on Inspection Panel Action Plan*, 31 August 2009, available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTAFRSUMESSD/EXTFORINAFR/0,,contentMDK:22110875~pagePK:148956~piPK:216618~theSitePK:2493451,00.html?cid=3001> (discussing an "action plan for the forest sector, that monitors a moratorium on future logging concessions, support the legal review on remaining logging contracts, integrate forest-dependent communities more widely into the Bank's activities and support critical activities such as capacity building, participatory zoning, customary rights, law enforcement and independent monitoring in forthcoming forest-related operations.").

⁵⁶ WORLD BANK INSPECTION PANEL, *ACCOUNTABILITY AT THE WORLD BANK: THE INSPECTION PANEL AT 15 YEARS* x (2009).

⁵⁷ In discussions regarding the Inspection Panel, the term "World Bank" will include the International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA), two arms of the institution. See The World Bank, *World Bank History*, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/EXTARCHIVES/0,,contentMDK:20053333~menuPK:63762~pagePK:36726~piPK:36092~theSitePK:29506,00.html> (last visited July 23, 2009).

⁵⁸ U.N. Econ. & Soc. Council, UN Agencies, <http://www.un.org/docs/ecosoc/unagencies.html> (last visited May 13, 2011). Specialized Agencies are independent, international institutions that have entered into agreements with the UN pursuant to Articles 57 and 63 of the UN's 1945 Charter. See U.N. Charter arts. 57, 63, available at <http://www.un.org/en/documents/charter/intro.shtml>. The UN defines these Specialized Agencies as "legally independent international organizations with their own rules, membership, organs and financial resources ... brought into relationship with the United Nations through negotiated agreements." See U.N. Chief Executives Board for Coordination, *United Nations System*, <http://www.unsceb.org/ceb/about/un> (last visited May 13, 2011). In general, there are degrees of 'independence' among Specialized Agencies, and the degree to which each agency deviates from mandates, conventions or requests of the UN varies depending on the specific agreement between the entities and the function of the organization, among other factors. See MAC DARROW, *BETWEEN LIGHT & SHADOW; THE WORLD BANK, THE INTERNATIONAL MONETARY FUND AND INTERNATIONAL HUMAN RIGHTS LAW*, STUDIES IN INTERNATIONAL LAW NO. 1, at 124 (Hart Publishing 2005). All agreements between Specialized Agencies and the United Nations are available at: <http://www.unsystemceb.org/reference/system/agreements>.

⁵⁹ Articles of Agreement of the International Bank for Reconstruction and Development, Dec. 27, 1945, 60 Stat. 1440, 2 U.N.T.S. 134 (amended Dec. 17, 1965); G.A. Res. 124(II), U.N. Doc. 124(II) (Nov. 15, 1947); see also

Draft Agreements between the United Nations and International Bank for Reconstruction and Development and the International Monetary Fund, U.N. Doc. [A/349](#) (Sept. 2, 1947), and note that the agreement came into force upon adoption by the General Assembly on November 15, 1947.

⁶⁰ Agreement between the UN and the IBRD, *supra* note 22 at art. 1, §2.

⁶¹ *See, e.g.*, U.N. Chief Executives Board for Coordination, United Nations System, <http://www.unsceb.org/ceb/about/un> (last visited Aug. 3, 2010).

⁶² While UN-REDD policy is developing a more detailed ombudsman process to process complaints, at present claims are processed through the UN-REDD Secretariat and referred to the Policy Board.

⁶³ *See* Annex B. Claims of violations of the right to self-determination may be brought before CCPR, CESC, and the ILO complaint mechanism.

⁶⁴ *See* Annex B. CCPR, CERD and the ILO complaint mechanism may consider claims of violations of the rights of access to justice; participation in decision-making; and property, land and resources.

⁶⁵ *See* Annex B.

⁶⁶ *Id.*

⁶⁷ *Id.* CESC, CERD and the ILO complaint mechanism can hear claims of violations of the right to work.

⁶⁸ *See* Annex B. CCPR and CERD can hear claims.

⁶⁹ Created by U.N. Econ. & Soc. Council [ECOSOC] Res. 1985/17 (May 28, 1985), *available at* <http://www2.ohchr.org/english/bodies/cescr/index.htm>.

⁷⁰ States Parties must submit a report to the Committee once every 5 years. *See* Office of the UN High Commissioner for Human Rights, Committee on Economic, Social and Cultural Rights, <http://www2.ohchr.org/english/bodies/cescr> (last visited Aug. 2, 2010).

⁷¹ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights art. 1, 2, *opened for signature* Dec. 19, 1966, U.N. Doc. A/63/435 [hereinafter OP-ICESCR], *available at* http://www2.ohchr.org/english/law/docs/A.RES.63.117_en.pdf.

⁷² Adopted in December 2008 with thirty signatories as of 21-10-2009, including at least nine countries engaged in REDD-related initiatives (Argentina, Chile, El Salvador, Gabon, Ghana, Guatemala, Madagascar, Paraguay and Republic of Congo), the Protocol has not yet entered into force. UN Treaty Collection, Chapter V Human Rights: Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2010), http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en. *See* Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, G.A. res. 63/117 (2008).

⁷³ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, GA Res. A/RES/63/117, Art. 2 (Dec. 10, 2008), art. 2. *available at*

http://www2.ohchr.org/english/law/docs/A.RES.63.117_en.pdf

⁷⁴ *Id.*, art. 6.

⁷⁵ *Id.*, art. 9.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*, arts. 3-4.

⁷⁹ *Id.*, art. 3.

⁸⁰ *Id.*

⁸¹ *Id.*, art. 28.

⁸² Office of the UN High Commissioner for Human Rights, Human Rights Committee, <http://www2.ohchr.org/english/bodies/hrc/index.htm> (last visited Aug. 3, 2010) [hereinafter Human Rights Committee]. States Parties must submit reports to the Committee within one year of the Covenant entering into force, and then when the CCPR so requests. International Covenant on Civil and Political Rights art. 40.1, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]. The CCPR generally requests reports from States Parties once every four years.

⁸³ International Covenant on Civil and Political Rights art. 40.1, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171, art. 41.1; Optional Protocol to the International Covenant on Civil and Political Rights art. 1, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter FOP-ICCPR], *available at* <http://www2.ohchr.org/english/law/ccpr-one.htm>.

⁸⁴ Optional Protocol to the International Covenant on Civil and Political Rights art. 1, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171, art. 1, *available at* <http://www2.ohchr.org/english/law/ccpr-one.htm>.

⁸⁵ *Id.* art. 4, *available at* <http://www2.ohchr.org/english/law/ccpr-one.htm>.

⁸⁶ Overview of procedure, website of the Office of the UN High Commissioner for Human Rights, First Optional Protocol to the International Covenant on Civil and Political Rights, <http://www2.ohchr.org/english/bodies/hrc/procedure.htm> (last visited Aug. 3, 2010) (“People who allege that their human rights are being violated may need protection before the Committee adopts its final views. Without prejudging the merits of complaints, the Committee has for this reason sometimes addressed urgent requests to the States involved. There have been cases, for example, in which the Committee has advised against a threatened expulsion, requested the suspension of a death sentence or drawn attention to the need for an urgent medical examination.”)

⁸⁷ FOP-ICCPR, art. 1. the FOP-ICCPR has 35 signatories and 113 parties. See UN Treaty Collection, Chapter V Human Rights: Optional Protocol to the International Covenant on Civil and Political Rights (2010), http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en. Twenty-four REDD participants have ratified this protocol: Argentina, Bolivia, Cameroon, Central African Republic, Chile, Colombia, Costa Rica, Democratic Republic of Congo, El Salvador, Equatorial Guinea, Ghana, Guatemala, Guyana, Honduras, Madagascar, Mexico, Nepal, Nicaragua, Panama, Paraguay, Peru, Republic of Congo, Suriname and Uganda. *Id.*

⁸⁸ Optional Protocol to the International Covenant on Civil and Political Rights art. 1, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171, art. 5.2, *available at* <http://www2.ohchr.org/english/law/ccpr-one.htm>.

⁸⁹ *Id.* art. 8.1, *available at* <http://www2.ohchr.org/english/law/ccpr-one.htm>.

⁹⁰ “Monitoring racial equality and non-discrimination,” Committee on the Elimination of Racial Discrimination, website of the Office of the UN High Commissioner for Human Rights, Committee on the Elimination of Racial Discrimination, <http://www2.ohchr.org/english/bodies/cerd/index.htm> (last visited Aug. 3, 2010).

⁹¹ International Convention on the Elimination of All Forms of Racial Discrimination art. 9.1, *adopted* Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter ICERD]. Article 9.1 requires States Parties to submit reports every two years and upon request by CERD. *Id.*

⁹² *Id.* arts. 11, 14.

⁹³ *Id.* arts. 14.2, 14.5.

⁹⁴ *Id.* art. 14.6.

⁹⁵ *Id.* art. 7(b).

⁹⁶ Notwithstanding these innovative measures, there has been a proposal for an optional protocol to the Convention and an inquiry procedure for gross violations of the Convention. See Preparatory Committee of the Durban Review Conference, *Replies submitted by the Committee on the Elimination of Racial Discrimination to the Questionnaire Prepared by the Office of the United Nations High Commissioner for Human Rights, Pursuant to Decision PC.1/10 of the Preparatory Committee of the Durban Review Conference at Its First Session*, A/CONF.211/PC.2/CRP.5, at 7 (Apr. 23, 2008), *available at* <http://www.un.org/durbanreview2009/pdf/CRP.5.pdf>. Another proposal so far is to develop a follow up mechanism and include its framework in the protocol. *Id.* at 8.

⁹⁷ Committee on the Elimination of Racial Discrimination, *Working Paper: Prevention of Racial Discrimination, Including Early Warning and Urgent Procedures*, annex III, at 3-4, A/62/18, at http://www2.ohchr.org/english/bodies/cerd/docs/A_48_18_Annex_III_English.pdf.

⁹⁸ Committee on the Elimination of Racial Discrimination, “About the early-warning measures and urgent procedures,” website of the Office of the UN High Commissioner for Human Rights, – Early-Warning Measures and Urgent Procedures, at <http://www2.ohchr.org/english/bodies/cerd/early-warning.htm#about> (last visited Aug. 3, 2010). Early-warning measures and urgent procedures became part of CERD’s regular agenda in 1994. *Id.*

⁹⁹ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples*, arts. 4-5, 18/08/97 Gen. Rec. No. 23. (Aug. 18, 1997).

¹⁰⁰ *Id.* arts. 1-2, 27/08/99 Gen. Rec. No. 24 (Aug. 27, 1999).

¹⁰¹ International Convention on the Elimination of All Forms of Racial Discrimination art. 14.1, *adopted* Dec. 21, 1965, 660 U.N.T.S. 195.

¹⁰² *Id.* art. 7(a).

¹⁰³ Argentina, Bolivia, Brazil, Central African Republic, Chile, Colombia, Costa Rica, Denmark, Ecuador, Guatemala, Honduras, Mexico, Nepal, Netherlands, Nicaragua, Norway, Paraguay, Peru, and Spain have all ratified. See status of ratification webpage for International Labour Organization, Convention No. C169 (2009), at <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C169>.

¹⁰⁴ ILO Constitution art. 26, *available at* <http://www.ilo.org/ilolex/english/constq.htm>.

¹⁰⁵ *Id.* arts. 28-29.

¹⁰⁶ *Id.* art. 29.

¹⁰⁷ *Id.* art. 33. Note, however, that Article 33 has only been used once since the ILO's existence. International Labour Organization, *See also* ILO website regarding complaints, at http://www.ilo.org/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/Complaints/lang--en/index.htm (last visited August 2, 2010).

¹⁰⁸ American Convention on Human Rights arts. 62.3, 63.1, *opened for signature* Nov. 22, 1969, 1144 U.N.T.S. 123.

¹⁰⁹ Human Rights Education Associates, The Inter-American Human Rights System, http://www.hrea.org/index.php?base_id=150 (last visited Jun. 21, 2010). The Court only has jurisdiction over States Parties to the American Convention on Human Rights that have recognized the Court's competence to hear claims against them. *Id.*

¹¹⁰ *See Saramaka People v. Suriname*, Inter-Am. Ct. H.R. No. 172 (Nov. 28, 2007).

¹¹¹ Lisl Brunner, *The Rise of Peoples' Rights in the Americas: The Saramaka People Decision of the Inter-American Court of Human Rights*, 7 No. 3 CHINESE J. INT'L L. 699 (2008).

¹¹² Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention"), art. 15, *opened for signature* June 25, 1998-Dec. 21, 1998, *available at* <http://www.unece.org/env/pp/documents/cep43e.pdf> [hereinafter Aarhus Convention].

¹¹³ *Id.* art. 15.

¹¹⁴ *Id.* art. 15.

¹¹⁵ *Id.* art. 19.3.

¹¹⁶ *Id.* art. 15 ("The Meeting of the Parties shall establish, on a consensus basis, option arrangements of non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention.")

¹¹⁷ Meeting of the Parties of the Aarhus Convention, Decision I/7, *Review of Compliance*, parts IV-VI (2002).

¹¹⁸ *Id.*, annex ¶ 4 (2002).

¹¹⁹ Svitlana Kravchenko, *The Aarhus Convention and Innovations in Compliance with Multilateral Environmental Agreements*, 18 COLO. J. INT'L ENVTL. L. & POL'Y 1 (2007).

¹²¹ The OECD member countries are: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Organization for Economic Cooperation and Development, Member Countries, <http://www.oecd.org> (follow "By Country" hyperlink under "Browse") (last visited Aug. 3, 2010).

¹²² Past criticisms have noted challenges in the housing of some NCPs primarily or wholly within government departments tasked with promoting business, trade and investment raises questions about conflicts of interest; a lack of resources to undertake adequate investigation of complaints and the training to provide effective mediation; and no clear time frames for the commencement or completion of the process; and inadequate reporting of outcomes. *See generally* Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Business and Human Rights: Towards Operationalizing the "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/11/13 (Apr. 22, 2009) [hereinafter *Business and Human Rights*], *available at* <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>; Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *State Obligations to Provide Access to Remedy for Human Rights Abuses by Third Parties, Including Business: An Overview of International and Regional Provisions, Commentary and Decisions*, U.N. Doc. A/HRC/11/13/Add.1 (May 15, 2009) [hereinafter *State Obligations*], *available at* <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.Add.1.pdf>

¹²³ *Business and Human Rights: the Evolving International Agenda*, Corporate Social Responsibility Initiative Working Paper no. 38 (June 2007), at 20, *available at* http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_38_ruggie.pdf; *State Obligations to Provide Access to Remedy for Human Rights Abuses by Third Parties, Including Business: An Overview of International and Regional Provisions, Commentary and Decisions*, U.N. Doc. A/HRC/11/13/Add.1 (May 15, 2009).

¹²⁴ "Protect, Respect and Remedy" Framework, U.N. Doc. A/HRC/11/13 (Apr. 22, 2009) [hereinafter *Business and Human Rights*], *available at* <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>.

¹²⁵ Business and Human Rights: the Evolving International Agenda, Corporate Social Responsibility Initiative Working Paper no. 38 (June 2007), at ¶ 23, *available at* http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_38_ruggie.pdf; *State Obligations to Provide Access to Remedy for Human Rights Abuses by Third Parties, Including Business: An Overview of International and Regional Provisions, Commentary and Decisions*, U.N. Doc. A/HRC/11/13/Add.1 (May 15, 2009).

¹²⁶ *Id.*

¹²⁷ Business and Human Rights: the Evolving International Agenda, Corporate Social Responsibility Initiative Working Paper no. 38 (June 2007), at ¶ 23, *available at* http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_38_ruggie.pdf; *State Obligations to Provide Access to Remedy for Human Rights Abuses by Third Parties, Including Business: An Overview of International and Regional Provisions, Commentary and Decisions*, U.N. Doc. A/HRC/11/13/Add.1 (May 15, 2009).

¹²⁸ Business and Human Rights: the Evolving International Agenda, Corporate Social Responsibility Initiative Working Paper no. 38 (June 2007), at ¶ 23, *available at* http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_38_ruggie.pdf; *State Obligations to Provide Access to Remedy for Human Rights Abuses by Third Parties, Including Business: An Overview of International and Regional Provisions, Commentary and Decisions*, U.N. Doc. A/HRC/11/13/Add.1 (May 15, 2009).

¹²⁹ See Organization of American States, Foreign Trade Information System: North American Free Trade Agreement (2010) <http://www.sice.oas.org/trade/NAFTA/chap-111.asp>.

¹³⁰ *Id.*

¹³¹ Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, *Basic Principles and Guidelines on Development-Based Eviction and Displacement*, U.N. Doc. A/HRC/4/18 [hereinafter *Guidelines on Development-Based Eviction and Displacement*], *available at* http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf. This right comes from the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). *Id.*

¹³² Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, *Basic Principles and Guidelines on Development-Based Eviction and Displacement*, U.N. Doc. A/HRC/4/18

¹³³ *Id.* This right is found in UDHR, ICESCR, CRC, CEDAW, and ICERD. See Annex A & B.

¹³⁴ For specific information on the instruments and related obligations, please see Annex A & B.

¹³⁵ “Protect, Respect and Remedy” Framework, U.N. Doc. A/HRC/11/13 (Apr. 22, 2009) [hereinafter *Business and Human Rights*], *available at* <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>.

¹³⁶ Convention Concerning Indigenous and Tribal Peoples in Independent Countries, *adopted* June 27, 1989, 28 I.L.M. 1382 [hereinafter ILO Convention 169].

¹³⁷ U.N. Food and Agriculture Organization, *State of the World’s Forest 2009* annex tbl. 2 (2009).

¹³⁸ ILO Convention 169 calls for the protection of the rights of both tribal and indigenous peoples, which is significant in that it can apply beyond groups traditionally considered “indigenous.” See, e.g., *Saramaka People v. Suriname*, Inter-Am. Ct. H.R. No. 172 (Nov. 28, 2007). ILO 169 is quite flexible, as we have seen in granting the character of indigenous or tribal to any group that self-identifies as such. It is significant that the Convention allows for *self-identification* of groups, but not individuals, as indigenous or tribal peoples. See ILO Convention 169 art. 1.2 (calling for self-identification as indigenous or tribal to be a “fundamental criterion for determining the groups to which the provisions of this Convention apply”).

¹³⁹ ILO Convention 169 art. 7.

¹⁴⁰ *Id.* 169 arts. 2, 5(a)-(b), 8.1-2.

¹⁴¹ *Id.* 169 art. 5(a).

¹⁴² *Id.* arts. 7.2, 23.1, 25.1

¹⁴³ *Id.* arts. 13.1, 14.1, 15, 16, 19. Articles 15 and 16 interpret “lands” to “include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.”

¹⁴⁴ *Id.* arts. 7.2, 7.4, 30.1.

¹⁴⁵ *Id.* arts. 2, 12. Article 2 describes government responsibility in ensuring protection of indigenous and tribal peoples' rights; Article 12 states that "[t]he peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights." *Id.*

¹⁴⁶ *Id.* arts. 2.1, 5, 6.1(a)-(b), 7, 12, 15, 16.2, 17.2, 23.1, 33

¹⁴⁷ *Id.* arts. 3.1, 20.2.

¹⁴⁸ *Id.* arts. 5(c), 20, 23. Article 5(c) declares that "[p]olicies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected"; Article 20 is concerned with ensuring equality and non-discrimination in employment and recruiting; and Article 23 encourages recognition of the economic, cultural and developmental significance of preserving "[h]andicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering." *Id.*

¹⁴⁹ U.N. Food and Agriculture Organization, *State of the World's Forest 2009* annex tbl. 2 (2009).

¹⁵⁰ ICESCR.

¹⁵¹ *Id.* art. 2.2

¹⁵² *Id.* arts. 1.1, 1.3.

¹⁵³ *Id.* art. 15.1(a)

¹⁵⁴ *Id.* arts. 2.2, 13.3. Article 2.2 prohibits discrimination based on religion, and Article 13.3 guarantees parents the right "to ensure the religious and moral education of their children in conformity with their own convictions." *Id.*

¹⁵⁵ *Id.* arts. 1.2, 11, 12.

¹⁵⁶ *Id.* arts. 6.1, 7.

¹⁵⁷ ICCPR.

¹⁵⁸ *Id.* art. 1.1.

¹⁵⁹ *Id.* art. 27.

¹⁶⁰ *Id.* arts. 18.1, 27.

¹⁶¹ *Id.* art. 6.1.

¹⁶² *Id.* arts. 2.1, 26, 27.

¹⁶³ *Id.* art. 1.2.

¹⁶⁴ *Id.* art. 16 ("Everyone shall have the right to recognition everywhere as a person before the law.").

¹⁶⁵ *Id.* art. 2.3.

¹⁶⁶ *Id.* art. 25. Article 25 calls for participation in public affairs, and protects universal suffrage and the rights to be elected and to receive public services. *Id.*

¹⁶⁷ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) arts. 2.1, 5.

¹⁶⁸ *Id.* art. 5(e).

¹⁶⁹ *Id.* art. 5(d).

¹⁷⁰ *Id.* art. 5(e).

¹⁷¹ *Id.* art. 5(d).

¹⁷² *Id.* art. 5(e).

¹⁷³ *Id.* art. 5(a).

¹⁷⁴ *Id.* art. 5(c).

¹⁷⁵ *Id.* art. 6.

¹⁷⁶ Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters ("Aarhus Convention"), Jun. 25, 1998, 2161 U.N.T.S. 447, *available at* <http://www.unece.org/env/pp/documents/cep43e.pdf>.

¹⁷⁷ United Nations Conference on Environment and Development, U.N. Doc. A/CONF.151/5/Rev.1 (Jun 14, 1992), 31 I.L.M. 874 (1992) [hereinafter Rio Declaration], *available at* <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>.

¹⁷⁸ Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (hereinafter "American Convention on Human Rights").

¹⁷⁹ *Id.* art. 4.

¹⁸⁰ *Id.* art. 12.

¹⁸¹ *Id.* art. 21.1.

¹⁸² *Id.* art. 23.

¹⁸³ *Id.* art. 25; *See also id.* art. 8 (guaranteeing the right to a fair trial).

¹⁸⁴ *Id.* art. 3

¹⁸⁵ United Nations Declaration of the Rights of Indigenous Peoples, U.N. Doc. A/RES/47/1 (2007) [hereinafter UNDRIP].

¹⁸⁶ *Id.* arts. 3, 23, 33.1.

¹⁸⁷ *Id.* arts. 8.2(b), 10, 25, 26.1-2, 29.1.

¹⁸⁸ *Id.* arts. 8.2(a), 8.2(d)-(e), 10, 11.1, 15.1, 31.1, 34.

¹⁸⁹ *Id.* arts. 10, 19, 28, 29, 32.

¹⁹⁰ *Id.* arts. 8.2, 11.2, 20, 28.1, 32.2, 32.3.

¹⁹¹ *Id.* 5, 18-19, 23, 27, 32.2, 38, 41.

¹⁹² Although UNDRIP is not a legally binding instrument itself, commentators argue that the Declaration “has some kind of binding force both as a resolution of the General Assembly grounded in the authority of the United Nations Charter, and from the perspective of the substantive rights enshrined therein.” United Nations Permanent Forum on Indigenous Issues, *International Expert Seminar on The Role of UN Mechanisms with Specific Mandate Regarding The Rights Of Indigenous Peoples*, ¶ 14, U.N. Doc. E/C.19/2009/CRP.17 (February 4-6, 2009).

¹⁹³ United Nations, Convention on Biological Diversity preamble ¶ 12, Jun. 5, 1992, U.N. Doc. ST/DP1/1307, 31 I.L.M. 818 (1992) [hereinafter CBD]. In particular, it notes the traditional dependence of such communities on biological resources and highlights the desirability of equitable benefit sharing. Indeed, in certain instances, specific sites of conjunction of traditional management of biodiversity are considered bio-cultural regions. See E. Boege, *El Patrimonio Biocultural de los Pueblos Indígenas de México* 18 (2009) [free translation by author].

¹⁹⁴ CBD art. 10(c).

¹⁹⁵ CBD art. 8(j) (requiring Parties to “...respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices”).

¹⁹⁶ CBD arts. 8(j), 10(c)-(e), 14.1(a).


¹⁹⁷ CBD arts. 16.4, 17.1.

¹⁹⁸ CBD art. 8(j).

¹⁹⁹ CBD art. 10(c)-(e).

²⁰⁰ CBD arts. 6, 8(e), 8(j), 10 (d).

²⁰¹ U.N. Forum on Forests, *Report of the Seventh Session*, E/2007/42, E/CN.18/2007/8, Supp. No. 22 (Feb. 24 2006 and Apr 16 to 27, 2007).

 <div> <div>The Center for International Environmental Law</div> </div>		Selected International Instruments Applicable to REDD Participant Countries										
Country	<u>Conv. on Biological Diversity</u>	<u>Univ. Decl. on Human Rights¹</u>	<u>Int. Cov. on Econ., Soc. & Cult. Rights</u>	<u>Int. Cov. on Civ. & Pol. Rights</u>	<u>Int. Conv. on the Elim. of Racial Discr.</u>	<u>ILO Conv. 169</u>	<u>UN Decl on the Rights of Indig. Peoples</u>	<u>World Cult. and Nat. Heritage Conv.</u>	<u>Conv. on Safeguard. of Int. Cult. Heritage</u>	<u>Conv. on Prot. & Prom. of Cultural Diversity</u>	<u>Conv. on the Rights of the Child</u>	<u>Conv. on the Elim. Discr. Against Women</u>
Argentina*	Party	Applies (Voted in favor)	Party	Party	Party	Party	Voted in Favor	Party	Party	Party	Party	Party
Bangladesh*	Party	Applies	Party	Party	Party	X	Abstained	Party	Party	Party	Party	Party
Bhutan*	Party	Applies	X	X	Signatory	X	Abstained	Party	Party	X	Party	Party
Bolivia*	Party	Applies (Voted in favor)	Party	Party	Party	Party	Voted in Favor	Party	Party	Party	Party	Party
Brazil°	Party	Applies (Voted in favor)	Party	Party	Party	Party	Voted in Favor	Party	Party	Party	Party	Party
Burkina Faso°	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	Party	Party	Party	Party
Cambodia*	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	Party	Party	Party	Party
Cameroon*	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	X	Party	Party	Party
Central African Republic*	Party	Applies	Party	Party	Party	Party	Voted in Favor	Party	Party	X	Party	Party
Chile*	Party	Applies (Voted in favor)	Party	Party	Party	Party	Voted in Favor	Party	Party	Party	Party	Party
Colombia*	Party	Applies (Voted in favor)	Party	Party	Party	Party	Abstained & now endorses	Party	Party	X	Party	Party
Congo-Brazzaville*	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	X	Party	Party	Party
Costa Rica*	Party	Applies (Voted in favor)	Party	Party	Party	Party	Voted in Favor	Party	Party	X	Party	Party
Democratic Republic of the Congo*°	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	X	X	Party	Party
Ecuador*	Party	Applies (Voted in favor)	Party	Party	Party	Party	Voted in Favor	Party	Party	Party	Party	Party
El Salvador*	Party	Applies (Voted in favor)	Party	Party	Party	X	Voted in Favor	Party	X	X	Party	Party
Equatorial Guinea*	Party	Applies	Party	Party	Party	X	Not Present	X	X	X	Party	Party
Ethiopia*	Party	Applies (Voted in favor)	Party	Party	Party	X	Not Present	Party	Party	Party	Party	Party
Gabon*	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	Party	Party	Party	Party
Ghana°	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	X	X	Party	Party
Guatemala*	Party	Applies (Voted in favor)	Party	Party	Party	Party	Voted in Favor	Party	Party	Party	Party	Party
Guyana*	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	X	Party	Party	Party
Honduras*	Party	Applies	Party	Party	Party	Party	Voted in Favor	Party	Party	X	Party	Party
Indonesia*°	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	Party	X	Party	Party
Kenya*	Party	Applies	Party	Party	Party	X	Abstained	Party	Party	Party	Party	Party
Lao PDR°	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	Party	Party	Party	Party
Liberia*	Party	Applies (Voted in favor)	Party	Party	Party	X	Voted in Favor	Party	X	X	Party	Party
Madagascar*	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	Party	Party	Party	Party
Mexico*°	Party	Applies (Voted in favor)	Party	Party	Party	Party	Voted in Favor	Party	Party	Party	Party	Party
Mozambique*	Party	Applies	X	Party	Party	X	Voted in Favor	Party	Party	Party	Party	Party
Nepal*	Party	Applies	Party	Party	Party	Party	Voted in Favor	Party	X	X	Party	Party
Nicaragua*	Party	Applies (Voted in favor)	Party	Party	Party	Party	Voted in Favor	Party	Party	Party	Party	Party
Nigeria*	Party	Applies	Party	Party	Party	X	Abstained	Party	Party	Party	Party	Party
Panama*	Party	Applies (Voted in favor)	Party	Party	Party	X	Voted in Favor	Party	Party	Party	Party	Party
Papua New Guinea*	Party	Applies	Party	Party	Party	X	Not Present	Party	Party	X	Party	Party
Paraguay*	Party	Applies (Voted in favor)	Party	Party	Party	Party	Voted in Favor	Party	Party	Party	Party	Party
Peru°	Party	Applies (Voted in favor)	Party	Party	Party	Party	Voted in Favor	Party	Party	Party	Party	Party
The Philippines*	Party	Applies (Voted in favor)	Party	Party	Party	X	Voted in Favor	Party	Party	X	Party	Party
Solomon Islands*	Party	Applies	Party	X	Party	X	Not Present	Party	X	X	Party	Party
Sri Lanka*	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	Party	X	Party	Party
Sudan*	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	Party	Party	Party	X
Suriname*	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	X	X	Party	Party
Tanzania*	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	X	X	Party	Party
Thailand*	Party	Applies (Voted in favor)	Party	Party	Party	X	Voted in Favor	Party	X	X	Party	Party
Uganda*	Party	Applies	Party	Party	Party	X	Not Present	Party	Party	X	Party	Party
Vanuatu*	Party	Applies	X	Party	X	X	Not Present	Party	X	X	Party	Party
Vietnam*	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	Party	Party	Party	Party
Zambia*	Party	Applies	Party	Party	Party	X	Voted in Favor	Party	Party	X	Party	Party

*: Country participates in the UN-REDD Programme
 X: Country has not expressed its consent to be bound by the treaty.

•: Country participates in FCPF

°: Country participates in the FIP Programme
Party: Country has expressed its consent to be bound by the treaty

¹ The Universal Declaration was adopted by the General Assembly on 10 December 1948 by a vote of 48 in favor, 0 against, with 8 abstentions (all the Soviet Bloc states, Byelorussia, Czechoslovakia, Poland, Ukraine, USSR, as well as Yugoslavia, South Africa and Saudi Arabia). It has over time been widely accepted as the fundamental norms of human rights and as a customary rule of international law that everyone should respect and protect.