

# Using International Law to Advance Women's Tenure Rights in REDD+

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Edited by: Niranjali Amerasinghe

JUNE 2015



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Cite as: Silverman, Allison. 2015. Using International Law to Advance Women's Tenure Rights in REDD+. Edited by Niranjali Amerasinghe. Washington, DC: Rights and Resources Initiative and Center for International Environmental Law.



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Rights and Resources Initiative and  
Center for International Environmental Law (CIEL)  
June 2015

## ACKNOWLEDGMENTS

The author would like to express her thanks to the following individuals for their support in discussing, reviewing, editing, formatting, and designing this report:

Marcos Orellana; Carla Garcia Zendejas; Josh Lichtenstein; Ann Larson; Astrid Ulloa; Andrea Quesada; Kristin Hite; and the team at Rights and Resources Initiative, including: Annie Thompson, Solange Bandiaky-Badjii, Rodney Schmidt, Alexandre Corriveau-Bourque, Jenny Springer, and Madiha Waris Qureshi.

Any omissions of contributors are unintentional and any errors are the author's own.

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## I. INTRODUCTION

Reducing Emissions from Deforestation and Forest Degradation (REDD+) is an international initiative to mitigate climate change in the forest sector. It is intended to incentivize developing countries to reduce greenhouse gas emissions from deforestation and forest degradation, as well as promote sustainable management of forests, and conservation and enhancement of forest carbon stocks.

REDD+ has significant implications for land and resource rights, and raises particular concerns for women. These concerns arise from discrimination that women already face in resource management processes, largely due to unclear, unsecure and unequal tenure rights. Women represent a large percentage of the world's poor, and they are often directly dependent on natural resources. As a result, there are significant risks that REDD+ could exacerbate existing inequalities for women if it fails to respect women's tenure rights.

States have obligations to protect rights recognized in applicable national and international law. International law provides a critical normative baseline that can further support local and national efforts to ensure that rights are respected in REDD+ implementation. REDD+ requirements also recognize the need to ensure consistency with international conventions and agreements. Thus, international law presents opportunities for advocates to advance women's tenure rights, both to secure respect for rights where they are already recognized in customary, local, and national systems, as well as to strengthen rights where those governance systems are weak. However, it is important to recognize that gender dynamics will vary based on local contexts, a fact that must inform how advocates use international law.

This paper makes a case for advancing women's tenure rights and how international law can be used to promote those rights in the context of REDD+. It is intended for women's rights advocates involved in climate change and REDD+, and thus presumes a general familiarity with REDD+. International human rights law is presented as an additional framework for advocates to use in their strategies and messages to advance women's tenure rights in REDD+. While international law does not specifically address women's tenure rights, the paper provides a typology of key internationally-recognized human rights that are relevant to women's tenure rights. The typology groups the most significant rights into five categories: 1) Tenure-related rights 2) women's and/or gender-specific rights, 3) procedural rights, 4) Free, Prior, and Informed Consent, and 5) the right to a healthy environment. The paper evaluates how each category of rights is articulated in international human rights law. It then uses the typology to highlight the basis for advocating greater attention to women's rights in REDD+ policies and frameworks – specifically the United National Framework Convention on Climate Change (UNFCCC) and the World Bank's Forest Carbon Partnership Facility (FCPF).

While there are opportunities to advance women's tenure rights in REDD+, this paper does not endorse REDD+ as a solution to climate change or tenure issues.



## II. BACKGROUND AND CONTEXT

### REDD+: A Brief Overview

REDD+ is a voluntary international climate mitigation initiative established under the United Nations Framework Convention on Climate Change (UNFCCC) to provide incentives to developing countries to reduce emissions from deforestation and forest degradation. REDD+ also encourages the conservation of forest carbon stocks, sustainable management of forest, and enhancement of forest carbon stocks. As it is voluntary, countries can choose whether to participate in and receive funding for REDD+; however, once a country decides to participate in REDD+, it must follow the provisions established under the UNFCCC including the Cancun Safeguards for REDD+.

REDD+ implicates a number of international legal obligations and rights that must be protected. In fact, the agreed upon safeguards explicitly require that REDD+ be consistent with and complement relevant international conventions and agreements<sup>1</sup> and take into account relevant international obligations, specifically noting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>2</sup> Thus, REDD+ is inherently intertwined with existing international laws, including as they relate to women's tenure rights.

REDD+ may present opportunities and benefits, yet there are real risks of negative impacts. REDD+ has the potential to mitigate climate change, conserve forests, and promote biodiversity. REDD+ could also enhance Indigenous Peoples' and local communities' opportunities for participation in land-use decisions, as well as provide a space to help clarify and secure land and resource access and rights, supporting communities that depend on the forests. However, REDD+ also presents serious threats to these same stakeholders, particularly if the rights of Indigenous Peoples and local communities are not respected and environmental safeguards are not addressed in REDD+ policy, program, and project design, and implementation. Forest tenure security is particularly important in REDD+. If Indigenous Peoples' and local communities' tenure rights are not recognized in national laws, not only will they be excluded from receiving potential benefits, REDD+ could also increase risks of elite capture and land grabbing by outsiders resulting from loss of local user rights to forests and forest land.<sup>3</sup>

### Tenure and REDD+

REDD+, by its very nature, will change the way that land and natural resources are managed. A country's national REDD+ strategy may propose legislation related to changes in land tenure, which will have implications for the rights of Indigenous Peoples and local communities. These impacts will affect both men and women, as well as their ability to control their own destinies. Depending on the length of the REDD+ process, there are also risks for future generations.

The current, pervasive lack of clarity and security in land and resources tenure in the world's forests presents a major constraint to effective and equitable REDD+ implementation.<sup>4</sup> Recognized and secure local tenure rights are essential for REDD+ to be legitimate and effective;<sup>5</sup> and tenure reform is widely recognized as key to REDD+ readiness.<sup>6</sup> Governments in most countries have claimed ownership of forests, which are formalized in statutory laws. However, it is widely accepted that when Indigenous Peoples and local communities- who have lived in and have depended on forests for their lives and livelihoods for generations have secure community tenure rights, REDD+ and other efforts to combat climate change can be most effective and equitable.<sup>7</sup>

Tenure rights provide recognized rights-holders with the ability to be involved in and to benefit from the design and implementation of REDD+ activities. Increasingly, rights advocates are focusing on the critical importance of Indigenous Peoples and local communities in securing tenure over forests as well as strengthening other rights. While tenure reform has been recognized as essential to REDD+ success;<sup>8</sup> unclear and insecure<sup>9</sup> tenure are widely recognized as driving factors of deforestation and forest degradation in most tropical forest countries.<sup>10</sup> On the contrary, clearly defining and clarifying forest rights help identify the key stakeholders who need to be engaged to enhance long-term sustainability.<sup>11</sup>

Despite the importance of focusing on tenure rights broadly for Indigenous Peoples and local communities, in order to be successful in securing and advancing these rights, it is necessary to understand the specific potential impacts of REDD+ on women and ensure they are addressed. In advancing women's rights in REDD+, women not only need to be included more in REDD+ design and implementation, but there also needs to be a greater focus on their tenure rights and increased opportunities to include them in tenure reform processes. As women are often deprived of secure tenure and rights, addressing women's tenure rights first is critical.<sup>12</sup>

## Women's Participation in REDD+ and the Importance of Securing Women's Tenure Rights

While there are international laws and REDD+ institutional policies to protect rights, there are a number of sociopolitical barriers to advancing women's inclusion in REDD+. These barriers are particularly pervasive with respect to land tenure. Women are highly dependent on forests for their families' and their own lives and livelihoods. They use forests for food, fuel wood, medicine, clothing, shelter, and other non-timber forest products to meet daily needs.<sup>13</sup> Consequently, women have intimate experience with and knowledge of their communities' resources and natural resource management.<sup>14</sup> This understanding of forests suggests the importance of involving women in REDD+, including in forest monitoring; measurement, reporting, and verification (MRV); participation and representation in REDD+ decision-making and strategy development; benefit sharing; and land and forest tenure.<sup>15</sup> Although women are central actors in forest conservation and sustainable forest management,<sup>16</sup> and thus in a country's response to climate change,<sup>17</sup> they are not often recognized as a key stakeholder in forest protection. Instead, in both customary and statutory tenure systems, men dominate decision-making processes and regulate access to natural resources, making women dependent on men for access to land and resources.<sup>18</sup>

Women's rights have not been systematically incorporated into REDD+. Women's fundamental procedural access rights are often not respected, making it difficult for them to receive or fully understand REDD+-related information. Their capability and power to participate in REDD+ and influence REDD+ design and decision-making are often limited because of their traditional roles and gendered responsibilities. Women also have unequal access to markets, capital, and legal recourse, which makes them even more vulnerable and prevents them from benefiting from potential REDD+ benefits. Historical, cultural, and social norms may even limit women's willingness to exercise their rights under the law.<sup>19</sup> While REDD+ cannot be expected to resolve the broader and deeply rooted social, political, and economic issues facing women, it must not further exacerbate these issues.

In addition, women tend to have weak traditional rights. For example, customary tenure arrangements, social institutions, and statutory law often embody gender inequalities and unequal power relations for women.<sup>20</sup> Women's access, control, and ownership of forest resources are often unclear or limited by sociocultural, political, legal, and economic factors. Social constructs tend to place women in a

subordinate position. There may also be conflicts between customary and statutory laws regarding women's land inheritance. Institutionalized gender inequalities, biases, lack of legal rights, as well as weak traditional rights over land and natural resources have often led to ignoring women as stakeholders, limiting their participation in decision-making processes, and restricting their ability to share potential REDD+ benefits. This exclusion has further limited women's rights to land and forest resources.<sup>21</sup> Advancing women's tenure rights and formalizing their role as rights holders would enhance their status as key stakeholders as well as their ability to determine how resources are managed.

Positive changes at the national and local levels will help to overcome some of the barriers for women. However, such transformations may have limited effects due to the lack of enforcement and structural barriers and prejudices that have been difficult to overcome without sustained efforts at reform and cultural change.

## Why International Law Matters in Advancing Women's Tenure Rights

International law offers one of many ways through which advocates can advance women's tenure rights in REDD+. Women's rights and gender equality are enshrined in various international agreements and commitments. This inclusion in international law not only creates entitlements for women as rights holders, but also duties for States, requiring necessary actions such as including encouraging changes in legal frameworks, institutions, political decision-making structures, attitudes, and relationships<sup>22</sup> to support the realization of these rights. In addition, advocates are using international law and policies as a place to more actively integrate women's rights and call for "gender mainstreaming" – the aspiration to achieve gender equality in policy-making, planning, and decision-making.<sup>23</sup> To accomplish this goal, international law provides moral and political pressure, policy commitment, and a broad exchange of experiences among countries.

An international law lens provides additional support for advocates who are working to strengthen local and national laws. Advocates may not be familiar with the international rights obligations to which their States have committed, and understanding these obligations can further strengthen their arguments. In addition, cases brought before regional human rights bodies often set important legal precedents that may have far reaching implications beyond the relevant jurisdiction. For example, the *Awas Tingni*<sup>24</sup> and the *Saramaka People*<sup>25</sup> cases brought within the Inter-American Human Rights System are two important examples of cases that recognize indigenous rights to land (*Awas Tingni*) as well as extending those rights to tribal communities (*Saramaka*). These cases were then used to support an argument for

### BOX 1. A TOOL FOR UNDERSTANDING YOUR RIGHTS

ForestDefender is an English language legal database that provides a snapshot of international human rights and obligations relevant to forest governance. It captures the large amount of information found from various sources and presents it in a way that is accessible to and usable by lawyers, activists, and community members alike. For a full listing of international obligations in a specific country see the ForestDefender web tool at [www.forestdefender.org](http://www.forestdefender.org).

Source: CIEL. 2014. ForestDefender. Available at [www.forestdefender.org](http://www.forestdefender.org).

recognizing the traditionally held rights of tribal peoples in the Endorois case,<sup>26</sup> a landmark decision in the African Human Rights System. Further, the Aloebotoe case<sup>27</sup> provides case law regarding women and gender justice through a reference on how a matrilineal customary practice was taken into account in the design of adequate remedies. This case also offers insight into how international law can protect customary rights while also protecting individual rights.

Moreover, an international law perspective links general human rights obligations to gender-specific considerations. An explicit focus on women's rights in international law advances the status of women and limits discriminatory practices and structures. Thus, in promoting women's rights and non-discrimination, international law acts as a normative baseline, provides the background and sets a trend to improve women's equality globally. Focusing on the international law perspective here provides a legal and political rationale for including women in decision-making, especially where there are tensions with community customs and practices, such as in tenure.

Finally, international law can also provide a framework for understanding how issues related to tenure, women's rights, and REDD+ intersect. In international law and even in the REDD+ context, there is no specific treatment of women's tenure rights. As such, this paper discusses a number of rights that are protected under specific international instruments that are particularly relevant and that lay out civil and political as well as economic and social rights and obligations. As many Indigenous Peoples' groups have done to better enforce their rights, women's advocates could use international law to further advance women's tenure rights in REDD+.

### III. RIGHTS RELEVANT TO ADVANCING WOMEN'S TENURE RIGHTS IN REDD+: TYPOLOGY AND ASSESSMENT

National legal protections and customary practices have not yet fully supported gender justice and stronger rights for women. Recognizing that concrete advancements, including policy reforms, need to happen on the ground, international law, with a particular focus on human rights law, provides a basis for the recognition and operationalization of women's tenure rights. Thus, international law can offer an important way forward to strategically empower women and advance their equity and rights in REDD+.

International law protects human rights and creates legal obligations for States to uphold these rights. It provides certain parameters and exigencies for dealing with complex issues such as tenure at the national level, supporting complementarity with national laws. There are different sources of international law, which determine a particular instrument's force and legitimacy. The sources of international law used in the assessment below include international agreements, customary international law, and international declarations that address human rights. Also included are some particularly relevant voluntary international guidelines. While international law promotes and protects rights, it is important to understand the nature of these instruments to determine how best to use them in advocacy strategies to advance women's tenure rights.

**International agreements:** These are considered "hard sources" of law, and include treaties,<sup>28</sup> conventions,<sup>29</sup> charters, protocols, and covenants. International agreements only bind the nations that have agreed to its terms,<sup>30</sup> taking into account relevant reservations<sup>31</sup> made by the country. After a country has ratified a convention or a treaty, it must promote and fulfill its provisions through national laws and programs, and other approaches. **Examples:** The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); The International Convention on the Elimination of All

Forms of Racial Discrimination (ICERD); and the International Labour Organization Convention on Indigenous and Tribal Peoples, Convention No. 169 (ILO 169).

**Customary international law:** Also considered “hard law,” it is defined by State practice<sup>32</sup> that is followed out of a sense of legal obligation. It generally applies to all nations, unless a nation has persistently objected to the rule when it was formed. Its scope can be global or regional. Customary international law is distinct from local customary practices, which are followed based on a community’s traditional and cultural values.

**Examples:** Prohibitions against slavery, torture, genocide, and crimes against humanity.

**International declarations:** These are considered “soft law,” and are aspirational statements that are not formally binding. However, they are powerful statements of international consensus, agreed upon moral norms or political commitments, and can be used as guidance for implementing existing rights. They can also offer a “focused re-statement”<sup>33</sup> of existing laws and legal standards, providing detail to the rights and freedoms mentioned in binding agreements. Moreover, some declarations contain certain norms that have arguably reached a status of universally recognized customary international law. **Examples:** United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Universal Declaration of Human Rights (UDHR).

**Voluntary guidelines:** They provide practical guidance to support willing States in the progressive realization of specific rights. They do not establish legally binding obligations for States or international organizations, but States are encouraged to apply voluntary guidelines in developing their strategies, policies, programs, and activities. Voluntary guidelines take into account relevant considerations, principles and international instruments. They are often developed by broad stakeholder participation, and States are generally responsible for their implementation. States may even report voluntarily on relevant activities and progress achieved in implementing voluntary guidelines. **Examples:** FAO’s Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security, and FAO’s Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

There are also some important cross-cutting themes in international law that warrant mention. First is the issue of **security**. International law recognizes that it is fundamental that “all persons have the right to life, liberty and security.”<sup>34</sup> The issue of security includes security of person, of livelihood, and of social security. Women often take on the responsibility of securing food, water, shelter, and fuel. When women have secure rights to land, they are better able to sustainably manage resources, conserve forests, and are less dependent on men for their security.<sup>35</sup> Thus, the issue of security is particularly relevant to women and REDD+ because of the unique social and economic conditions that characterize women’s lives. If the implementation of REDD+ results in limiting women’s access to resources, then women and their families could face even greater threats to their security and personal integrity. **Non-discrimination** is another threshold issue relevant to women’s tenure rights in REDD+. It is both a right and a principle that has overarching implications. Many international instruments uphold the entitlement to freedom and the exercise of rights without discrimination on the “basis of race, colour, gender, sexual orientation and gender identity, language, religion, political or other opinion, national or social origin, property, birth, disability or other prohibited grounds in international law.”<sup>36</sup> In addition to protection against discrimination in law (*de jure*), there is also concern about discrimination in fact (*de facto*). Non-discrimination is referenced in several provisions articulating civil and political rights,<sup>37</sup> as well as social, economic, and cultural rights. It has also been expressed in terms of the principle of equality and equal rights.

Opportunities to advance women’s tenure rights in REDD+ using international human rights law and in select REDD+ frameworks are analyzed here based on the typology described below. As women’s tenure rights are not specifically addressed in international law, the typology looks to broader rights that can support women’s tenure rights. The typology groups key rights into five categories: 1) land tenure rights; 2) women’s and gender-specific rights, 3) procedural rights, 4) the right to free, prior, and informed consent, and 5) the right to a healthy environment.

This typology is not intended to be exhaustive: there are other rights that could be used to promote women’s tenure rights in REDD+ as well. The typology of rights was chosen based on the following factors: relevance to REDD+ and women; relevance to women’s engagement in decisions about land and resources; and emerging international law that supports the link between human rights and the environment. The assessment below defines and evaluates the typology of rights in international law, and then identifies where those rights are recognized in select REDD+ frameworks.

## IV. ASSESSMENT OF HOW INTERNATIONAL LAW CAN ADVANCE WOMEN’S TENURE RIGHTS

### 1. Land Tenure-Related Rights

As a climate change mitigation initiative grounded in protecting forests, REDD+ necessarily involves land tenure. Land tenure is generally defined as “the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land.”<sup>38</sup> Tenure-related rights are articulated as both formal property rights defined in statutory terms as well as more informal customary rights governing the control and management of resources.<sup>39</sup> Framed as a “bundle” of underlying rights<sup>40</sup> over land and forest resources, tenure-related rights determine who can own, access, use, withdraw, exclude, manage, and alienate the land, forests, and its resources, and for what duration.<sup>41</sup> The right to due process and compensation (“extinguishability”) is also included in the bundle of rights.<sup>42</sup> Established tenure-related rights should clarify the conditions under which the rights holder has control and for how long.<sup>43</sup> However, these differentiated rights can also create multiple, overlapping types of property rights holders depending on the number of and types of claims made over a specific resource.<sup>44</sup>

Individual, community and public land tenure rights can exist within the same tenure system. There can also be simultaneous multiple legal systems in which the different rights and obligations relevant to land resources exist simultaneously, a situation known as legal pluralism.<sup>45</sup> For example, land tenure related rights can derive from both customary and statutory tenure systems and there may be overlap between them. It is common for countries to be characterized by multiple forest tenure systems, including public, community, or private forests.<sup>46</sup> In addition to multiple tenure systems, there are multiple formal and informal claims on ownership, access, and management rights.<sup>47</sup> Furthermore, these systems can evolve depending on a country’s political context and the existence of customary claims.<sup>48</sup>

Considering that global forest tenure can and has evolved over time,<sup>49</sup> there could be opportunities to focus land reform not only on increasing community ownership, which can lead to successful forest protection and even combating climate change,<sup>50</sup> but also on recognizing women’s rights to land and natural resources. Although there is limited research on the intersection of land tenure, property rights, and women, the findings thus far suggest that strengthening women’s rights to land and property leads to numerous positive benefits, such as increased net household income and increased spending on children’s food and education,

among others.<sup>51</sup> As women still have fewer rights to land and less and lower quality access than men, relevant property and land rights protected in international law could provide a way forward.

While issues related to ownership, use, and access to land are typically matters addressed in national legislation, international law addresses land tenure rights in different ways, such as the rights to land, territories, and resources.<sup>52</sup> Land tenure rights are also inextricably linked to and often seen as a necessary precondition for realizing other internationally protected human rights, such as the right to food, shelter, and life, among others.<sup>53</sup> Thus, it is important and relevant, particularly in advancing women's rights. Also, there is an increasing international push to establish some basic international principles and norms for the recognition and protection of local rights.<sup>54</sup> Voluntary international guidelines, such as FAO's Voluntary Guidelines for the Governance of Tenure,<sup>55</sup> highlight the need to promote women's tenure rights, to strengthen the rights of women, to ensure equality, to prohibit discrimination, and to recognize the specific obstacles women face with regard to tenure rights. International law offers relevant explicit references to property and land rights, as well as references embedded in existing international obligations to protect and promote rights related to non-discrimination and gender equality, among others.

### **Relevant explicit references in international law**

International legal instruments make explicit references to property and land rights that are central to land tenure. Under international law, the right to own property is provided on both an individual level as well as in association with others.<sup>56</sup> No one can be arbitrarily deprived of his property.<sup>57</sup> In addition, the American Convention on Human Rights states that the right to use and enjoy property is protected;<sup>58</sup> and, if someone is deprived of her property, then compensation is required.<sup>59</sup> Similarly, the African Charter on Human and Peoples' Rights guarantees the right to property, which can only be limited for public interest purposes.<sup>60</sup> Public interest should be determined through participatory processes that include women. In a significant decision in the Inter-American Court, the Court held that the concept of "property" is not only defined in domestic law, but also by Indigenous Peoples' customary land tenure.<sup>61</sup> Thus, jurisprudence affirms that rights protected in international human rights instruments have "autonomous meaning that cannot be limited by...domestic law."<sup>62</sup>

Land rights are also explicitly protected under international law. For example, ILO Convention 169 provides that Indigenous Peoples have collective rights to own and possess the lands they have traditionally occupied.<sup>63</sup> Their rights to "participate in the use, management and conservation"<sup>64</sup> of the natural resources pertaining to their lands are protected;<sup>65</sup> and, "adequate procedures" established to resolve land claims<sup>66</sup> and issues related to the transmission of land rights.<sup>67</sup> Moreover, their rights are also protected if they "had access for their subsistence and traditional activities"<sup>68</sup> even if they did not exclusively occupy the land. Indigenous land tenure systems are recognized as well;<sup>69</sup> and international law requires States to respect the land tenure systems of Indigenous Peoples.<sup>70</sup> Indigenous Peoples have the right to decide their own priorities over the "lands they occupy or otherwise use,"<sup>71</sup> as well as their priorities for development.<sup>72</sup> Furthermore, their "free and informed consent" is required before Indigenous Peoples are relocated from the lands they occupy.<sup>73</sup> Indigenous Peoples shall also benefit from activities and receive fair compensation for any damages from activities related to their land and resource rights.<sup>74</sup>

Women's equal rights over "ownership, acquisition, management, administration, enjoyment, and disposition of property"<sup>75</sup> are explicitly protected under international law, most notably in The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW is the only human rights instrument specific to women's rights. Women have equal rights to dispose of property<sup>76</sup> as well as to conclude contracts.<sup>77</sup> Other instruments affirm a woman's equal right to inherit property,<sup>78</sup> as well as a

woman's right to own and manage property during and after marriage.<sup>79</sup> In the FAO's Voluntary Guidelines on Land Tenure, States are also encouraged to "ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights."<sup>80</sup> The UN's Agenda 21, a non-binding action plan for sustainable development produced at the Earth Summit, further urges governments to ensure women's access to property rights in promoting sustainable development.<sup>81</sup> Such explicit and special protections for women are necessary as they face particular obstacles with regard to tenure and property rights, such as from forced evictions,<sup>82</sup> even though States who are party to CEDAW are required to take measures to ensure that women have equal treatment in land reform and resettlement schemes.<sup>83</sup>

Furthermore, considering that some local customary practices can conflict with international laws that require States Parties to condemn discrimination against women, international law plays a critical role in advancing women's tenure rights in REDD+. A growing body of international law seeks to "modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."<sup>84</sup> For example, the Beijing Declaration and Platform for Action encourages States to undertake reforms to give women full and equal access to economic resources, including land and property ownership as well as inheritance rights.<sup>85</sup>

### References embedded in international law

Land and property rights are also implicitly protected in international law through a growing recognition that land is central to the realization of several human rights, such as livelihood rights, and the rights to housing and food.<sup>86</sup> A number of instruments broadly ensure equal rights to the enjoyment of all economic, social and cultural rights.<sup>87</sup> As land, territories, natural resources and property fall into these categories, they are implicitly protected. In addition, tenure rights are associated with the basic human rights of non-discrimination, participation, access to justice, and transparency.<sup>88</sup> Recognition of a connection between traditional knowledge and customary uses implicitly protects property and resource rights as well. For example, the Convention on Biological Diversity (CBD) requires States to respect and preserve indigenous and local communities' "knowledge, innovations, and practices and traditional lifestyles relevant for conserving and sustainably using biological diversity."<sup>89</sup> It also encourages the protection of customary uses of biological resources in accordance with traditional practices.<sup>90</sup> Additionally, the draft text agreed upon at the 2014 CBD Conference of the Parties stated that future decisions on this issue will contain the terminology "Indigenous Peoples and local communities."<sup>91</sup> However, this change does not update the Convention itself.

Also, the concept of legal security of tenure implicitly protected in international law has evolved in response to the need to protect people who faced forced evictions but did not have formal property rights.<sup>92</sup> For women, who depend on forestland to meet their families' daily needs as well as their own lives and livelihood, these implicit references to various fundamental rights grounded in international law are critical for advancing their tenure rights.

Although sociocultural factors limit women's tenure rights, international law could offer an alternative perspective on how to advocate for women in the context of tenure and REDD+. Especially with land tenure, where it is possible to develop a system of legal pluralism, international law lends itself to preserving customary land tenure and statutory law while incorporating the rights and obligations under international law. Explicit references to right to property and land rights, and the implicit rights related to livelihood, housing, food, and equal rights offer a way forward to demand greater respect for and involvement of women.



## 2. Explicit Reference to Women's and/or Gender Rights

All rights provided under international law apply equally to men and women, however further elaboration of these rights with respect to women can be found in certain international instruments. Included here are examples of where there are *explicit* references to women, gender, or sex in international laws that implicate REDD+ and tenure.

Explicit references to women's and/or gender-specific rights in international law cover women's procedural rights – access to information, right to participate, and access to justice – as well as substantive rights of education, property, culture, food, water, and non-discrimination. CEDAW most comprehensively elaborates on explicit rights for women. CEDAW requires States to ensure women have access to information and education.<sup>93</sup> In addition, it obligates States Parties to take appropriate measures to ensure that women can participate in all aspects of cultural life,<sup>94</sup> including in the formulation and implementation of government policy as well as in development planning.<sup>95</sup> These gender-specific references to access to information and to participate protected under international law are critical to women's ability to be included in REDD+ and securing their tenure rights. Moreover, women are provided the right to receive equal treatment in land reforms and have an adequate standard of living without discrimination.<sup>96</sup> Particularly important to REDD+ is the provision of the same rights of “ownership, acquisition, management, administration, enjoyment and disposition of property” for both spouses.<sup>97</sup>

Explicit reference to women's and/or gender-specific rights can be both individual and collective in nature. For example, the right to participate is extended to individual women as well as groups of women. UNDRIP guarantees equal rights and freedoms “to male and female indigenous individuals.”<sup>98</sup> Agenda 21 recognizes the need to strengthen the role of major groups, such as women and articulates “[t]he need for new forms of participation, such as for individuals, groups, and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions...”<sup>99</sup>

In international law, the principle of equality is at the heart of human rights. Thus, one expression of women's rights is a reference to their equal rights. Explicit references to women's equal rights are recognized in different ways in international law. They are protected broadly,<sup>100</sup> such as a general reference to the equal protection of men and women's civil and political,<sup>101</sup> and economic, social, and cultural rights.<sup>102</sup> International law also provides more specific references to women's equal rights and responsibilities. For example, it obligates the state to provide women the same opportunities as men; it also acknowledges that women have the “identical” legal capacity to men to arrange contracts and administer property.<sup>103</sup> Women's equal rights are protected during and upon dissolution of marriage,<sup>104</sup> which has important implications for a woman's right to property and land. Married women have the explicit right to have balanced responsibilities with their spouses.<sup>105</sup> International instruments have also recognized the need to specifically protect women's rights and special needs,<sup>106</sup> particularly against all forms of violence and discrimination. Thus, women's rights are often framed as an entitlement of equal protection of and before the law, without discrimination based on their sex.<sup>107</sup>

In addition to protecting women's equal rights, women's rights are framed in terms of non-discrimination. The concept of non-discrimination is delineated in different ways. In numerous international instruments, it is denoted as entitling every individual to certain rights “without distinction”<sup>108</sup> to sex. It is also frequently stated as respect for and observance of human rights and fundamental freedoms for all “without any discrimination”<sup>109</sup> based on sex. While a number of international instruments make gender-specific references to non-discrimination, CEDAW defines discrimination against women to broadly include “any distinction, exclusion or restriction made on the basis of sex.”<sup>110</sup>

Women's rights are often framed as a State's obligation to ensure the elimination of discrimination against women.<sup>111</sup> States that are parties to CEDAW are also compelled to ensure the full development and advancement of women.<sup>112</sup> These obligations are especially relevant in the context of REDD+ where customary and statutory laws, institutions, and practices may prevent women from participating in key decisions, accessing relevant information necessary to make those decisions, or land tenure security.

In addition to protecting equal rights of women and promoting non-discrimination on the basis of sex, international instruments explicitly recognize the vital role that women play in society. For example, in the CBD, which focuses on the conservation of biological diversity, sustainable use, and equity in the sharing of benefits of genetic resources,<sup>113</sup> women are recognized as playing a vital role in conserving and sustainably using biological diversity.<sup>114</sup> It thus affirms, though perhaps implicitly, the distinct need for women to fully participate in making and implementing policies regulating the use of natural and cultural resources.<sup>115</sup> Recognizing this need for women's rights is essential to support the goals of poverty alleviation and sustainable environmental management.<sup>116</sup> Naturally, CEDAW also recalls that discrimination against women and limitations to women's participation hamper the growth of societies, families, as well as individuals. Considering women's reliance on forests for their livelihoods, CEDAW's recognition of the concern that "women have the least access to food, health, education, training and opportunities"<sup>117</sup> is particularly relevant for REDD+.

Finally, many international instruments protect rights by stating that "every person," "each individual," or "everyone" has specific rights. Some instruments, such as the American Convention on Human Rights, clarify that "person" means every human being.<sup>118</sup> Other instruments, such as the Convention on the Rights of the Child specify both "his or her right."<sup>119</sup> Thus, in addition to the explicit references to women's rights in international law, the typology that follows extends specific rights relevant to tenure and REDD+ to women implicitly.

### 3. Procedural Rights

The right to information, the right to participate in decision-making, and the right to access justice are fundamental procedural access rights that are integral to increasing the security of women's tenure rights in the context of REDD+. Where women's tenure rights are already recognized, these procedural rights enable women to operationalize their substantive rights. However, where women's tenure rights have not been recognized, procedural rights provide an opportunity for women to engage in the decisions that affect the land and resources that they depend on for their lives and livelihoods. Each of these three rights can stand alone; but, all three are often grouped together, found in the same international instruments, and often referred to in the international law context as "access rights."<sup>120</sup> Principle 10 of the Rio Declaration on Environment and Development, the Aarhus Convention, and the American Convention on Human Right are the most notable articulations of the three rights in international law.<sup>121</sup> These three rights have also been interpreted to relate to other rights, including freedom of expression<sup>122</sup> and non-discrimination. These procedural access rights both work together and depend on each other to be effective. For example, access to information and the right to participate have been articulated as "fundamental prerequisites for the achievement of sustainable development."<sup>123</sup> Moreover, participation based on appropriate access to information is recognized as the best way to handle environmental issues.<sup>124</sup>

## Access to information

In order to advance women's tenure rights in REDD+, women need access to information about activities and decisions that affect the land and resources upon which they depend. As key stakeholders, access to information is a prerequisite for women's full and effective engagement. It is also the foundation for transparency and accountability in REDD+.<sup>125</sup> The right of access to information refers to the availability of information and the process public authorities use to provide such information. Access to information is explicitly and implicitly referenced in numerous legal instruments, ranging from global<sup>126</sup> and regional<sup>127</sup> human rights treaties, and declarations,<sup>128</sup> as well as in environmental agreements<sup>129</sup> and governing body decisions.<sup>130</sup> Some provisions explicitly reference the right, providing "the right to receive information"<sup>131</sup> and "to seek, receive, and impart information."<sup>132</sup> The implicit references often speak of education,<sup>133</sup> capacity building or training,<sup>134</sup> which are particularly important to understanding REDD+. Other references include drawing up and updating inventories, making use of communication hubs,<sup>135</sup> having State Parties periodically submit reports to provide information to those inventories,<sup>136</sup> or creating conditions to facilitate access to resources.<sup>137</sup> Reference to transparency is also an implicit way of addressing the right of access to information.

There are active and passive approaches to access to information rights and obligations. Active access to information relates to providing specific information, such as information collection, updating and disseminating information.<sup>138</sup> Passive access to information focuses on a government's duty to refrain from placing obstacles to the free flow of information.<sup>139</sup> Without adequate active and passive access to information, potential REDD+ stakeholders such as women are unlikely to be able to fully and effectively participate in REDD+. This reduces the legitimacy of the process and undermines women's ability to exercise tenure related rights.

Access to information is central to protecting both individual and collective rights. However, it is most often referenced for the individual as every person's right to access information. The timing and frequency of providing information is important, as is access to information that is accurate and accessible. These issues are captured most explicitly in the related right of free prior and informed consent discussed below. The right to information also enables full and effective participation and supports transparency and governance. Exchanging information and consultation are therefore often linked.<sup>140</sup>

## Right to participate

To advance women's tenure rights in REDD+, women need to be able to effectively engage and be perceived as key stakeholders. The right to participate refers to the opportunity for citizens to provide meaningful, timely and informed input, and to help shape decisions. This right is presented both as an individual right as well as a collective right. In some instruments, both are encouraged. For example, "[e]ach State Party shall endeavor to ensure the widest possible participation of communities, groups, and, where appropriate, individuals."<sup>141</sup> The scope of participation is often referenced as the right to "participate fully."<sup>142</sup> This right extends to the right to participate in decision-making in matters affecting rights.<sup>143</sup> Although "consultation" means different things to different people, participation has also been framed in terms of the "right to consultation."<sup>144</sup> Participation is also implicated in monitoring and mapping activities.<sup>145</sup>

Both the implicit and explicit references to the right to participate are important for a woman's individual and collective participation in REDD+ design and implementation, including

decision-making and monitoring and mapping of REDD+. Increasing women's participation in community forestry management committees will enhance their abilities to address their own needs and assure their rights to REDD+ benefits.<sup>146</sup> Although in many cultures, the customary practice is to exclude women or exclusively grant men with the decision-making power, women's particular needs, uses and knowledge of the forest are critical to REDD+'s long-term success.<sup>147</sup>

As REDD+ is often presented as a “pro-poor” initiative<sup>148</sup> framed as improving the livelihood and strengthening the rights of the most vulnerable, women's right to participate in REDD+ is supported through extending the right to participate in government<sup>149</sup> and in rural development planning;<sup>150</sup> to take part in public affairs;<sup>151</sup> and to participate in the political, economic, social, and cultural life of the State, including formulating and implementing government policy.<sup>152</sup> Participation can be direct or through “freely chosen” representatives.<sup>153</sup> Moreover, States are required to take all appropriate measures to ensure that women can vote, participate in the development of government policy, in non-governmental organizations,<sup>154</sup> and in rural development<sup>155</sup> since discrimination against women creates an obstacle to women's participation on equal terms with men.<sup>156</sup>

Despite the lack of secure tenure rights, women's participation has also been affirmed as necessary for conservation purposes. International law recognizes “...the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation.”<sup>157</sup> Considering the conservation values of protecting forests through REDD+, women's participation is essential; advancing their tenure rights in REDD+ could further support their vital engagement.

### Access to justice

In situations where REDD+ implementation is adversely impacting women's access to land and natural resources, having access to justice is essential. Access to justice includes access to effective remedies, including the opportunity to have a case heard before competent judges. It recognizes a State's obligation to provide effective, culturally appropriate remedies when rights have been violated.<sup>158</sup> The right to access justice provides remedies for both individuals and communities who are harmed or affected in their enjoyment of rights. It is formulated as “an effective remedy” for violations of fundamental rights and freedoms.<sup>159</sup> The effective remedy can encompass an administrative process or judicial remedies. It is generally referenced explicitly, yet in different ways. It is framed as the “right to redress” or “recourse”<sup>160</sup> in situations such as when property or land is taken without Free, Prior, and Informed Consent.<sup>161</sup> It is also referenced as the provision of “just and fair” procedures for dispute,<sup>162</sup> or the “right to Judicial Protection... [for] simple and prompt recourse” for violations of fundamental rights.<sup>163</sup> Access to justice is also presented as an explicit obligation to provide access to competent authorities,<sup>164</sup> judicial remedies, enforcement,<sup>165</sup> and independent courts.<sup>166</sup>

Access to justice is also articulated more implicitly as one's right to be recognized as “a person before the law.”<sup>167</sup> It has also been articulated as “all persons shall be equal before the courts and tribunals,”<sup>168</sup> as well as the rights of women to effective legal protection equal to that of men.<sup>169</sup> The right to compensation is another implicit reference to access to justice.<sup>170</sup>

Access to justice is vital for women's tenure rights in REDD+. Although there are safeguards required for REDD+,<sup>171</sup> REDD+ may not necessarily be implemented properly, or disagreements may arise regarding the interpretation of contracts and agreements. If rights are violated, redress for those who have suffered harm is a key component of the right of access to justice.

## 4. Free, Prior, and Informed Consent

The right to Free, Prior, and Informed Consent (FPIC) provides communities with the ability to give or withhold their consent to proposed projects that might affect their lands, territories or resources. It also requires the timely provision of information that communities may understand in order to effectively participate in decision-making. The foundation for FPIC is rooted in the rights to life, property and self-determination.<sup>172</sup> As such, it is an overarching, comprehensive right that goes beyond the “procedural access rights” in the category above.

FPIC is a collective right<sup>173</sup> that addresses rights to effective participation and access to information. As a collective right, FPIC requires respect for culturally appropriate traditional decision-making structures. However, relevant cultural practices must be consistent with human rights, and they cannot be used to legitimize an inequitable structure. Thus, FPIC could be used to advance women’s tenure rights because it interlinks various procedural and substantive rights and also because the notion of the collective community must be inclusive of the community as a whole. FPIC should not be limited to appointed or self-appointed decision makers within the community. The right to FPIC must also be extended to those who have been traditionally excluded from access to information and decision-making processes.

One of the clearest articulations of women’s right to FPIC is in UN-REDD’s Guidelines on Free Prior and Informed Consent, which applies to countries receiving UN-REDD funding. The Guidelines include women as a key group that must be informed; and in explaining who gives or withholds consent, the Guidelines strongly encourages women to be represented in the decision-making process.<sup>174</sup> The Guidelines also highlight the importance of noting whether women have access to use of community lands and resource as well as the importance of assessing how decisions will ensure women’s participation. Moreover, CEDAW (an international agreement) and UNDRIP (an international declaration) provide women the right to equality in exercising Indigenous Peoples’ right to participate in internal and external decision-making processes and institutions.<sup>175</sup> Furthermore, although FPIC is a collective right, given that some of the rights in which it is rooted can be individual in nature suggests that FPIC also has individual dimensions, and could be useful in advancing women’s tenure rights in REDD+.

FPIC is an evolving right that most often applies with respect to Indigenous Peoples. It requires good faith consultations and cooperation through Indigenous Peoples’ own institutions, leading to an outcome determined by the peoples themselves.<sup>176</sup> FPIC is also required for indigenous communities before development projects are approved, especially those related to mineral, water and other resources.<sup>177</sup> Given the implications of REDD+ on land tenure, FPIC is a critical right to use in advancing women’s tenure rights. This right also includes large-scale impact on a community’s territory<sup>178</sup> as well as the prohibition against the forcible removal of Indigenous Peoples from their lands or territories without the free prior and informed consent of those concerned, and includes an agreement on just and fair compensation with the option to return.<sup>179</sup> Thus, FPIC is particularly important in the REDD+ context given the real risk and potential impact of community displacement. As FPIC is still primarily recognized for Indigenous Peoples, for those who live in countries that refuse to recognize indigenous status, the right to FPIC may be limited.<sup>180</sup> However, it may also extend to other communities depending on their relationship to the land, among other factors, even if national laws provide otherwise.<sup>181</sup> Communal property rights that are based on traditional use, culture, and customary laws must be respected regardless of whether the national government explicitly recognizes them.<sup>182</sup> FPIC is an emerging right that other local communities as well as women should continue to demand, especially in the REDD+ context.

## 5. Right to a Healthy Environment

There is a strong link between human rights and environmental concerns. This link is key to the discussion of rights related to women's tenure rights for REDD+. Fundamental human rights that are related to REDD+, including the rights to life; health and well-being; culture; housing, and adequate standard of living; integrity of the person; and the right to property, among others are also closely linked to environmental protection. For example, the Stockholm Declaration affirms the fundamental right to “freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”<sup>183</sup>

This linkage has been recognized by the Human Rights Council in various resolutions on human rights and the environment.<sup>184</sup> In addition, the relationships between human rights and the environment have been further elaborated by a Special Procedure of the Council, which has been explicitly tasked with applying a “gender perspective.”<sup>185</sup> The Independent Expert on Human Rights and the Environment has demonstrated, on the basis of normative evidence, the existence, scope and content of procedural and substantive human rights obligations with respect to environmental protection.<sup>186</sup> Thus, there is widespread recognition of a healthy and sustainable environment as a prerequisite to the full enjoyment of fundamental rights. Environmental protection is promoted as essential to the health, well-being and “the enjoyment of human rights, including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination, the right to development and the right to safe drinking water and sanitation...”<sup>187</sup>

The scope of the right to a healthy environment implicitly includes the right to an adequate standard of living for health and well-being. Particularly relevant for women's rights and REDD+, this category encompasses food, water, housing, shelter and biodiversity. Although many of the rights grouped in this category are dealt with separately in some international instruments, they are closely interconnected in this context. In the Draft Declaration of Human Rights and the Environment, tenure is included as a key right for everyone, which implicitly includes women: “All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment.”<sup>188</sup> Noting that women are at considerable risk because they lack security of tenure, promoting this right could help to advance women's tenure rights in REDD+.

The right to a healthy environment is gaining increasing recognition. It is recognized in the African Charter on Human and Peoples' Rights in the following terms: “all peoples shall have the right to a general satisfactory environment favorable to their development.”<sup>189</sup> The San Salvador Protocol to the American Convention on Human Rights references it as well.<sup>190</sup> In addition, the right to a healthy environment has been affirmed in some form in more than one hundred national constitutions around the world.<sup>191</sup> The right to a healthy environment has also been recognized in case law of regional human rights bodies.<sup>192</sup> Furthermore, the right of women to a healthy environment has been recognized in the Maputo Protocol to the African Charter.<sup>193</sup>

Moreover, many rights that are intrinsic to creating a healthy environment provide an additional basis to support the more holistic, comprehensive right to a healthy environment. For example, the right to a healthy environment relates to the right to compensation for environmental harm under the right to life and the right to private life,<sup>194</sup> as well as on the basis of rights to property and family.<sup>195</sup> In addition, certain international instruments treat the right to a healthy environment as a subset of the right to an adequate standard of living.<sup>196</sup> The right to an adequate standard of living entails certain basic subsistence rights, such as the right to food, right to water and sanitation, and the right to housing,<sup>197</sup>

among others. It is noteworthy that the right to adequate housing includes requirements of legal security of tenure, habitability, accessibility, cultural adequacy, among others.<sup>198</sup> Moreover, a woman's right to enjoy adequate living conditions is linked to housing.<sup>199</sup> International legal instruments recognize everyone's right to an adequate standard of living,<sup>200</sup> framing it as both an individual right as well as a collective one by including reference to family.

In addition to the strong linkages with the right to an adequate standard of living, a number of international instruments<sup>201</sup> have recognized that procedural rights, such as the right to access to information, the right to participate in decision-making, or the right to effective legal remedies discussed in the typology above, are also crucial for the ability to live in a healthy environment.

The right to a healthy environment is integral to REDD+, and thus requires the advancement of women's tenure rights. Forests and natural resources are central to livelihoods and basic needs, such as food and shelter. Considering that women rely on forest resources to sustain their families as they are typically responsible for cooking, gathering water, and fuel, and providing agricultural labor,<sup>202</sup> advancing this right to a healthy environment in REDD+ design and implementation should be prioritized. The right to a healthy environment is particularly important to women in the context of REDD+ as customary rules often limit their ability to control resources, own land and participate in management bodies.<sup>203</sup> Considering that women's land tenure security is weak, if existent, advocating for a right to a healthy environment as part of a larger strategy to advance women's tenure rights is especially important in limiting environmental degradation as well as in mitigating climate change.

## V. SELECT REDD+ FRAMEWORKS: OPPORTUNITIES TO ADVANCE WOMEN'S TENURE RIGHTS THROUGH THE UN FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE FOREST CARBON PARTNERSHIP FACILITY

The following sections highlight opportunities to advance women's tenure rights in select REDD+ frameworks by applying the typology to rules and guidelines contained in the United Nations Framework Convention on Climate Change (UNFCCC) REDD+ Decisions and the Forest Carbon Partnership Facility (FCPF). It is important to recognize that both the UNFCCC REDD+ framework and the FCPF have significant shortcomings in providing for tenure rights (identified broadly in each section). Relevant policies do not address issues of land tenure with sufficient clarity or detail. The focus of this analysis is to identify provisions that can positively support advocates working to advance women's tenure rights in REDD+; however, it is not intended to endorse REDD+ or the two frameworks analyzed below as solutions to the discrimination faced by women in natural resource management. Importantly, including a discussion of international frameworks helps to illustrate the importance of international law in ensuring that international funding, including from the World Bank, does not undermine international human rights.

### The UN Framework Convention on Climate Change

The main international framework for REDD+, setting out key requirements for implementing REDD+ activities, is contained in a series of decisions adopted by Parties to the UNFCCC.<sup>204</sup> These decisions include references to human rights, including those identified in the typology. In particular, there are seven social, environmental, and governance safeguards that need to be addressed and respected in REDD+ (REDD+ Safeguards),<sup>205</sup> and before receiving funding for REDD+ results countries must show

that these safeguards are being effectively implemented.<sup>206</sup> Additionally, countries agreed that “when undertaking [REDD+] activities, the...safeguards should be promoted and supported,”<sup>207</sup> which highlights the importance of funding for safeguards implementation in all phases of REDD+. UNFCCC Parties have also agreed that human rights should be respected in *all* climate activities as part of the overarching framework for 2012-2020 climate action (Cancun Agreements), which includes REDD+.<sup>208</sup>

Despite these positive developments, there is a need to support operationalizing the rights language presented in the REDD+ safeguards. At present, there is no clear guidance about what the safeguards mean and what is expected of countries in safeguards implementation. There are also outstanding issues still under negotiation that are critical for ensuring that rights are respected in REDD+: international guidance on incentivizing non-carbon benefits and safeguards reporting. If countries adopt decisions on these issues, they could provide further support to efforts to strengthen women’s tenure rights in REDD+. The analysis below is focused on the REDD+ decisions, however, where there are important references to specific rights in the Cancun Agreements, those references are highlighted as well.

As a general matter, it is important to note that there is debate as to whether decisions adopted in the context of an international convention or agreement are binding under international law. They are not typically considered “hard sources” of law in the same way that conventions or agreements are; the extent to which decisions are binding will often depend on the specific context of the agreement, the

## BOX 2. THE CANCUN SAFEGUARDS

When undertaking the activities referred to in paragraph 70 of this decision [REDD+], the following safeguards should be promoted and supported:

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

Source: Quoted from Appendix 1, to Decision 1 of the Conference of the Parties. The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention. <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>.



powers granted to the governing body in adopting decisions, and whether countries intend to be bound by the decisions, among other considerations. However, many environmental regimes make important advancements through decisions and there is an expectation that countries will implement those decisions. This is especially true in the context of the UNFCCC and REDD+, and countries as well as other multilateral initiatives recognize the UNFCCC REDD+ requirements as the primary rules that govern REDD+ implementation.

### **Tenure-related rights**

The REDD+ framework does not specifically address tenure rights. It does, however, request developing country Parties to address land tenure issues, gender considerations, and the seven safeguards in developing and implementing national REDD+ strategies.<sup>209</sup> The need to address all three issues creates a useful starting point for advancing women's tenure rights in REDD+. However, as noted above, there is no operational guidance that addresses tenure-related issues in any detail.

Addressing and respecting the required safeguards, in particular, implicates tenure rights and women's rights by reference to international law. First, the requirement to respect the knowledge and rights of Indigenous Peoples and local communities, taking into account relevant international obligations, national circumstances and laws as well as the specific mention of UNDRIP in safeguard (c) provides a basis on which to address Indigenous Peoples' tenure-related rights.<sup>210</sup> For instance, UNDRIP promotes Indigenous Peoples' rights to their "distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources"<sup>211</sup> and their "rights to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."<sup>212</sup> Additionally, safeguard (a) calls for consistency with "objectives of national forest programmes and relevant international conventions and agreement."<sup>213</sup> As analyzed above, various international conventions and agreements both explicitly and implicitly address land tenure rights, women's rights, and specific rights related to property, land, territories, and natural resources. Finally, safeguard (b), which requires transparent national forest governance, implicates land tenure because it involves addressing how forest land and resources are managed through statutory law and/or customary practices.<sup>214</sup> Where national laws and governance structures do not adequately address land tenure, safeguards (a) and (c) could be used to leverage international law to strengthen domestic processes.

### **Overarching references to women or gender**

The Cancun Agreements contain a number of references to women and gender, including recognizing the importance of gender equality and effective participation of women for effective action on climate change,<sup>215</sup> as well as taking into account gender in capacity building efforts.<sup>216</sup> In Durban (2011), Parties were urged to give particular consideration to the impacts of climate change response measures on women<sup>217</sup> and to take into the account the need to achieve "gender balance."<sup>218</sup> In addition, the governing instrument for the Green Climate Fund, which is expected to fund REDD+ activities, adopted a "gender-sensitive approach."<sup>219</sup> Thereafter in Doha (2012), Parties agreed to promote gender balance and to improve the participation of women in climate negotiations.<sup>220</sup> Similar to the reference to respect human rights in all climate related activities, these overarching references to women and gender are useful in promoting women's tenure rights in REDD+.

With respect to the REDD+ decisions, as noted above, developing countries are requested to address gender considerations in REDD+.<sup>221</sup> UNFCCC Parties also agreed that when developing reporting

systems for providing information on how safeguards are being addressed and respected (the REDD+ safeguard information systems) they should recognize relevant international obligations and respect gender considerations.<sup>222</sup> Although the REDD+ safeguards do not make specific references to gender, the references to international conventions and agreements in safeguard (a) and relevant international obligations in safeguard (c) implicate women's rights as they exist in international law. As discussed above, various international instruments explicitly and implicitly promote and address women's rights.

### Procedural rights

Overall, procedural rights protected in international law are implicated by the requirements to be consistent with international conventions and agreements in safeguard (a) and to take into account relevant international obligations in respecting the rights of Indigenous Peoples and local communities in safeguard (c). In addition to the fact that procedural rights are implicated generally through international law references, there are other aspects of the REDD+ decisions that relate to transparency, effective participation, and access to justice.

### Access to information

Safeguard (b) calls for national forest governance structures to be transparent, implying that information about those governance structures and decision-making processes should be made available. Further, safeguard (d) calls for full and effective participation of stakeholders, which implicates access to information because in order to participate effectively stakeholders must have access to all relevant information. This right is also supported by requesting Parties to ensure participation when developing national strategies and more broadly within the UNFCCC Cancun Agreements through the recognition that capacity building is essential to enable full participation.<sup>223</sup> Finally, the required safeguard information system for REDD+ should provide information on how safeguards are being addressed and respected at the country level through its legal and institutional framework, which supports access to information.

### Right to participate

The Cancun Agreements provide clear support for the full and effective participation of affected individuals and peoples in decision-making processes. Parties recognize that “effective participation of women is important for effective action on all aspects of climate change.”<sup>224</sup> Parties also agreed to strengthen the “participation of various stakeholders in relevant social, economic and environmental policies and actions.”<sup>225</sup> Specifically for REDD+, countries are requested to ensure the full and effective participation of relevant stakeholders when developing and implementing their national strategies, noting that these strategies must address the “drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards.”<sup>226</sup> The REDD+ safeguards themselves explicitly require “[t]he full and effective participation of relevant stakeholders” in safeguard (d).<sup>227</sup> While not specifically defined, as women are primary users of forests and thus key REDD+ stakeholders, their right to participate must be supported. Furthermore, the need to involve all stakeholders in the monitoring, reporting and verification of REDD+ implementation implicates the right to participate; and women should be involved and provided the necessary tools and knowledge needed to engage meaningfully.<sup>228</sup>

### Access to justice

While there is no explicit reference to access to justice or grievance mechanisms in the UNFCCC REDD+ framework, it is a fundamental right in international law (as noted above).<sup>229</sup> Safeguards (c) and

(d) implicitly address access to justice through calling for respecting the rights of Indigenous Peoples and local communities and promoting the full effective participation of relevant stakeholders. The specific UNDRIP citation further supports the obligation of States to provide effective mechanisms and redress for harm caused to indigenous people.<sup>230</sup> Finally, access to justice is fundamental to realizing other human rights, implying that access to justice is critical to the implementation of the UNFCCC safeguards.

### **Free, prior, and informed consent**

Although the right to FPIC is not explicitly stated in the UNFCCC REDD+ framework, the safeguards could be interpreted to include the right implicitly. For instance, FPIC is indicated by reference to respecting the rights of Indigenous Peoples and local communities as well as UNDRIP in safeguard (c). UNDRIP explicitly states that FPIC is a right of Indigenous Peoples.<sup>231</sup> Taking into account relevant international obligations in safeguard (c) and relevant international conventions and agreements in safeguard (a) also implicate international law that supports FPIC for Indigenous Peoples<sup>232</sup> and for communities facing forced evictions. Finally, safeguard (d), supporting the right of full and effective participation, is a core part of FPIC. Taken together, these implicit references can help to promote women's rights in decision-making related to tenure.

### **Right to healthy environment**

As discussed above, the right to a healthy environment is an emerging law and one that relates to a number of existing internationally-protected rights. While not explicitly addressed in REDD+ decisions, safeguards (a) and (c) provide support for women promoting their rights to access or control natural resources as well as a healthier environment. Furthermore, REDD+ safeguard (e) refers to REDD+ actions being consistent with the conservation of natural forests and biological diversity, which also supports the right to a healthy environment.

## **The World Bank's Forest Carbon Partnership Facility**

The World Bank's Forest Carbon Partnership Facility (FCPF) is a "global partnership of stakeholders, including governments, business, civil society, and Indigenous Peoples focused on REDD+."<sup>233</sup> The FCPF supports REDD+ implementation through two distinct but complementary funds: the Readiness Fund and the Carbon Fund.<sup>234</sup> The Readiness Fund is intended to help participating countries prepare for REDD+ through the development of REDD+ policies, strategies, reference levels, monitoring systems, and institutional systems, including safeguards.<sup>235</sup> The Carbon Fund pilots payments for verified emissions reduction programs (ER Programs) in a small number of countries, building on progress made in the readiness phase.<sup>236</sup> There are several policies and guidelines that govern the operation of these two funds, including the FCPF Charter, the Readiness Fund's Common Approach, the Readiness Package Assessment Framework, the Carbon Fund Methodological Framework, and Guidelines on Stakeholder Engagement.

As a World Bank initiative, the FCPF must also comply with relevant World Bank operational policies and procedures, which include safeguards on environmental assessment (in this case strategic environmental and social assessment – SESA), Indigenous Peoples, involuntary resettlement, forests, and natural habitats.<sup>237</sup> These safeguard policies are currently under revision and will impact any agreements signed with the World Bank after the revised policies are adopted.<sup>238</sup> Where the FCPF provides funding to other institutions to assist with REDD+ readiness, such as through Delivery Partners in the Readiness Fund, those institutions must achieve substantial equivalence with World Bank safeguards and comply with FCPF requirements on strategic environmental and social assessment, stakeholder engagement,

information disclosure, and grievance mechanisms.<sup>239</sup> Under the Carbon Fund, prior to approving ER Programs, the World Bank must conduct due diligence to ensure that safeguards are complied with.<sup>240</sup> Lack of compliance with safeguards can be grounds for default under the legal agreement between the ER Program proponent and the World Bank.<sup>241</sup>

The FCPF Charter provides that the FCPF must “Seek to ensure consistency with UNFCCC guidance on REDD+,”<sup>242</sup> thus it must promote and support consistency with the UNFCCC REDD+ safeguards discussed above. The Charter also requires that the rights of forest dependent Indigenous Peoples and forest dwellers under national law and applicable international obligations be respected.<sup>243</sup>

Most of the rights in the typology are referenced in FCPF requirements, thus taken together there are opportunities to promote women’s tenure rights in FCPF-financed activities. Nevertheless, there may be significant challenges in ensuring that tenure security is achieved through FCPF activities because of the lack of clarity in the extent to which tenure issues must be resolved prior to signing emission reduction agreements and because the ability to transfer emission reductions is not necessarily connected to land or resource rights-holders.<sup>244</sup>

### Tenure-related rights

Tenure-related issues are addressed, to varying degrees, in both the Readiness Fund and the Carbon Fund of the FCPF. For example, countries are supposed to conduct a land and resource tenure assessment as part of the REDD+ readiness process.<sup>245</sup> However, land tenure issues are referred to in some countries’ Readiness Proposals in relation to deforestation risk and less so in relation to what they imply for REDD+ design and implementation.<sup>246</sup>

Under the Carbon Fund, an ER Program is expected to undertake an assessment of land and resource tenure regimes, though with some qualification – it is to be done when needed and the ER Program can rely on work done in the readiness phase.<sup>247</sup> This vagueness is a big and potentially damaging loophole. Further, it is unclear to what extent any tenure issues need to be resolved prior to ER program activities taking place and there is no requirement for a clear time-bound action plan to resolve issues during REDD+ implementation.<sup>248</sup> The Carbon Fund does not provide clarity on how to address risks associated with the ambiguity of “carbon rights” or “rights to transfer ER title.”<sup>249</sup> Moreover, few countries have defined who holds these rights to carbon.<sup>250</sup> While it states that ER Program entities must demonstrate that they have the ability to transfer ER title, “while respecting land and resource tenure rights or potential rights-holders,”<sup>251</sup> it is not clear whether those who hold the authority to transfer title and those who hold the rights to the land or resources are the same.<sup>252</sup> The Carbon Fund does state that if the ability to transfer ER titles is unclear or contested, then the emission reductions proportional to the disputed area will be withheld. However, this provision could undermine incentives to resolve insecure tenure situations and to ensure environmental integrity because it allows ER Program proponents to simply set aside the emission reductions rather than resolve the situation.

The Carbon Fund also recognizes that securing land tenure is a potential non-carbon benefit. In other words, an ER Program may receive funds for “improvements in land tenure.”<sup>253</sup> The methodological framework of the FCPF explores the purpose of the ER program to reduce deforestation and degradation and reduce carbon emissions, but also to positively affect land tenure and resource rights.<sup>254</sup> Programs are encouraged to show how they can contribute to clarifying land and resource tenure.

Finally, the World Bank’s due diligence assessment for its safeguards includes special considerations for situations that result in resettlement or where Indigenous Peoples’ rights to lands or natural resources are

implicated. Depending on the results of the due diligence, the ER Program may need to develop a Resettlement Action Plan or an Indigenous Peoples' Plan to address tenure issues, both of which have implications for tenure-related rights.<sup>255</sup> Coupled with requirements for gender-sensitive consultations,<sup>256</sup> these tenure-related provisions in the FCPF could provide opportunities to advance women's tenure rights in FCPF activities.

### Gender-specific rights

As part of the FCPF's "Common Approach" for the multiple Delivery Partners, the FCPF includes gender considerations, noting their roles in resource management.<sup>257</sup> During the Readiness Preparation Proposal (R-PP) Formulation Phase, a stakeholder analysis should include an analysis of gender concerns, risks and benefits.<sup>258</sup> Such an analysis should be consistent with the World Bank Gender and Development Operational Policy or with comparable Delivery Partner gender policies.<sup>259</sup> The analysis should also incorporate gender considerations into information sharing and dialogue as well as grievance mechanisms. In addition, targeted opportunities are encouraged to be identified to reduce gender-based biases in accessing and benefiting from REDD+. The Carbon Fund, which builds on requirements in the Readiness Fund, also specifically recognizes gender considerations when dealing with non-carbon benefits and benefit-sharing.<sup>260</sup>

### Access rights

#### Right to information

A Strategic Environmental and Social Assessment (SESA) is required for all FCPF projects to integrate key environmental and social considerations into REDD+. Although it does not articulate obligations in terms of explicit rights, the right to information is implied. The SESA should include an information dissemination plan with a "timely dissemination of relevant information"<sup>261</sup> It should also include early investment in capacity building and institutional strengthening including a required multi-stakeholder workshop, as well as a focus on strengthening of constituent groups. For the R-PP Consultation and Participation Plan, access to information is a prerequisite: "Consultations should be premised on and facilitate timely access to information."<sup>262</sup> Under the Guidelines on Stakeholder Engagement in REDD Readiness, information is a "prerequisite to meaningful consultations;"<sup>263</sup> and information dissemination is required "at all levels." The Guidelines suggest promoting public awareness and communications campaigns. Finally, both the Readiness Fund and the Carbon Fund have guidelines for information disclosure, which specify which documents need to be publicly disclosed and the time frames for their disclosure.<sup>264</sup> While there is a presumption of disclosure for key documents, such as ER Program Agreements, countries can request that agreements or contracts be withheld, which is a significant loophole.<sup>265</sup>

#### Right to participate

The FCPF claims that it was designed to make sure that participation rights are respected and that local communities are included in the planning and implementation of national REDD+ programs and projects. For example, the SESA is supposed to include a participatory approach in the decision-making process. The SESA encourages active informed participation of all stakeholders.<sup>266</sup> In addition, the R-PP template provides specific guidelines on national readiness management arrangements and stakeholder consultation and participation. Under the R-PP Consultation and Participation Plan, meaningful participation is suggested for all levels,<sup>267</sup> and enhanced participation for vulnerable groups.<sup>268</sup> Moreover, the overarching guidelines for preparing a country's R-PP promote women's unique role in natural resource management and stresses the importance of identifying "gender-based risks or unequal benefits."<sup>269</sup>

Countries participating in the FCPF Readiness Fund are expected to implement a Consultation and Participation Plan before and/or while they develop their REDD+ Strategy. The Plan is designed to increase the inclusiveness, transparency, and accountability of decision-making over the lifetime of the preparatory work leading to REDD readiness. There is also technical guidance, which elaborates the Key Objectives and Principles of Effective Consultations and Participation and gives guidance for implementation. Finally, there are Guidelines on Stakeholder Engagement in REDD in which “consultations” should occur at “every stage”<sup>270</sup> of the REDD process. Nevertheless, the R-PP process has been criticized for failing to integrate consultation with local civil society and for treating community rights as secondary to reducing deforestation.

### Access to justice

The FCPF requires grievance redress mechanisms, which should in theory provide access to justice. According to the FCPF’s Common Approach, each Delivery Partner must have accountability measures to address breaches of their policies and procedures.<sup>271</sup> For activities that the World Bank implements, the Inspection Panel would be the relevant accountability mechanism for community members to raise concerns.

REDD+ countries are also requested to develop national-level grievance mechanisms.<sup>272</sup> According to the R-PP Consultation and Participation Plan, redress must be “accessible” throughout REDD implementation<sup>273</sup> as well as “accessible and affordable.”<sup>274</sup> The FCPF and UN-REDD Programme have Joint Guidance for Establishing and Strengthening Grievance Redress Mechanisms at the national level. This guidance supports the right to access to justice as it assists REDD+ stakeholders in providing feedback or making a complaint. It pays particular attention to “providing access to geographically, culturally or economically isolated or excluded groups.”<sup>275</sup> The existence of an appropriate feedback and grievance redress mechanism is also a criterion for approving ER Programs in the Carbon Fund’s Methodological Framework.<sup>276</sup>

### Free, prior, and informed consent

The FCPF does not recognize FPIC as the right to free, prior, and informed *consent*. Despite the World Bank Group’s mandate for “meaningful consultation,” the World Bank’s safeguard on Indigenous Peoples calls for free, prior, and informed *consultation* with “broad community support” rather than *consent*.<sup>277</sup> Nevertheless, the World Bank does assist countries in applying a consent standard if the country indicates that they wish to do so or if they are receiving funding from UN-REDD.

### Right to a healthy environment

Although not framed explicitly as the right to a healthy environment, the stated goal of the World Bank, and by association FCPF, is sustainable poverty reduction. The focus on peoples’ well-being in connection with sustainable development could implicitly support the right to a healthy environment. In addition, World Bank activities must be consistent with national law, which is particularly relevant in situations where national constitutions recognize the right to a healthy environment.

## VI. CONCLUSION

International law is an important tool for advocates in advancing women’s tenure rights in REDD+. REDD+ has significant implications for tenure rights, particularly for women because women are primary

users of forests for their lives and livelihoods as well as to support their families. Thus, women have intimate experience with and knowledge of their communities' resources and natural resource management and should be regarded as key stakeholders. However, numerous sociopolitical barriers have limited women's engagement in REDD+, and they are often subject to land tenure regimes that disadvantage them in relation to men. Securing women's tenure rights is fundamental, as these rights provide recognized rights-holders with the ability to be involved in and to benefit from the design and implementation of REDD+ activities.

A variety of rights articulated in international law can be used to support women's tenure rights. An in-depth analysis of key international human rights instruments shows that these rights are recognized and protected explicitly and implicitly. Accordingly, they could be better incorporated in advocacy relating to REDD+. Specifically, land tenure rights, women's and gender-specific rights, procedural access rights, the right to Free, Prior, and Informed Consent, and the right to a healthy environment are critical for communities and civil society groups promoting women's rights. Up until now, many women's rights advocates have focused primarily on women's participation rights to promote their greater inclusion in REDD+. As presented in this paper, advocates can use international law to better link women's participatory rights with other fundamental rights relevant to tenure and REDD+, and thereby advance women's tenure rights.

Strengthening women's land tenure could give women a stronger voice and greater decision-making power in REDD+. There could be several opportunities to advance women's tenure rights as countries implement REDD+. For example, advocates can use international law to influence the design of REDD+ strategies and Emission Reduction Programs, the design of safeguards and safeguard information systems, and the assessment of readiness, among others. In addition, noting that there are weaknesses in the policies and procedures of REDD+ initiatives, there are also provisions that can support women's tenure rights. International law can also support local approaches to any REDD+ programs, projects, or activities that countries may wish to implement, such as Indigenous REDD+ Proposals.

- <sup>1</sup> UN Framework Convention on Climate Change (UNFCCC). 2010. Dec.1/CP.16, app. I, paragraph 2 (a).
- <sup>2</sup> Id. at app. I, paragraph 2 (c).
- <sup>3</sup> A. M. Larson et al. 2013. Land Tenure and REDD+: The Good, The Bad and The Ugly. *Global Environmental Change* 23(3), 678–689. Available at [http://www.umb.no/statisk/ior/land\\_tenure\\_and\\_redd.pdf](http://www.umb.no/statisk/ior/land_tenure_and_redd.pdf).
- <sup>4</sup> Rights and Resources Initiative. 2014. What Future for Reform? Progress and Slowdown in Forest Tenure Reform since 2002. Washington, DC: RRI. Available at [http://www.rightsandresources.org/wp-content/uploads/RR14011D\\_FlagshipMAR2014r13B.pdf](http://www.rightsandresources.org/wp-content/uploads/RR14011D_FlagshipMAR2014r13B.pdf); W. D. Sunderlin et al. 2013. How are REDD+ Proponents Addressing Tenure Problems? Evidence from Brazil, Cameroon, Tanzania, Indonesia, and Vietnam, *World Development*. Available at <http://r1.ufrrj.br/cpda/wp-content/uploads/2013/11/Sunderlin-et-al.pdf>; Center for International Forestry Research. 2012. Analyzing REDD+: Challenges and Choices. Bogor, Indonesia: CIFOR. Available at [http://www.cifor.org/publications/pdf\\_files/Books/BAngelsen1201.pdf](http://www.cifor.org/publications/pdf_files/Books/BAngelsen1201.pdf).
- <sup>5</sup> CIFOR, Realising REDD+: National Strategy and Policy Options. 2009. Bogor, Indonesia: CIFOR. Available at [http://www.cifor.org/publications/pdf\\_files/Books/BAngelsen0902.pdf](http://www.cifor.org/publications/pdf_files/Books/BAngelsen0902.pdf); A. Awono et al. 2013. Tenure and participation in local REDD+ projects: Insights from Southern Cameroon. *Environmental Science & Policy*. Available at <http://dx.doi.org/10.1016/j.envsci.2013.01.017>; Hatcher, Jeffrey. 2009. Securing Tenure Rights and Reducing Emissions from Deforestation and Degradation: Costs and Lessons Learned. Washington, DC: RRI; The Munden Project. 2011. REDD and Forest Carbon: Market-Based Critique and Recommendations.
- <sup>6</sup> W.D. Sunderlin et al. *supra* note 4; T. H. Do et al. 2012. Will Current Forest Land Tenure Impede REDD+ Efforts in Vietnam? Policy Brief No. 27. ASB Partnership for the Tropical Forest Margins. World Agroforestry Centre.
- <sup>7</sup> C. Stevens et al. 2014. Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change. Washington, DC: Rights and Resources Initiative and World Resources Institute; *Supra* note 4 (citing A. Chhatre & A. Agrawal. 2009. Trade-offs and Synergies Between Carbon Storage and Livelihood Benefits from Forest Commons).
- <sup>8</sup> A. E. Duchelle. 2013. Linking Forest Tenure Reform, Environmental Compliance, and Incentives: Lessons from REDD+ Initiatives in the Brazilian Amazon. *World Development*. Available at <http://dx.doi.org/10.1016/j.worlddev.2013.01.014>; A. M. Larson et al. 2010. Infobrief 33. Rights to Forests and Carbon Under REDD+ Initiatives in Latin America. Bogor, Indonesia: CIFOR; A. Angelsen. et al. 2008. *Supra* note 4; Eliasch, J. 2008. Climate Change: Financing Global Forests. *The Eliasch Review UK*; Stern, N. 2007. *The Economics of Climate Change*. The Stern Review. Cambridge University Press; Rights and Resources Initiative. 2012. What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights. Washington, DC: RRI.
- <sup>9</sup> According to the Food and Agriculture Organization of the United Nations (FAO), tenure insecurity exists when a user or holder's land and natural resource rights are at risk and uncertain in duration (adapted from the FAO Multilingual Thesaurus on Land Tenure, 2013).
- <sup>10</sup> Rights and Resources Initiative, *supra* note 4.
- <sup>11</sup> K. Hite, Tenure Rights. 2014. Human Rights and REDD+: Knowledge, Skills and Tools for Effective Results. USAID/FCMC.
- <sup>12</sup> W. Sunderlin et al. 2008. From Exclusion to Ownership? Challenges and Opportunities in Advancing Forest Tenure Reform. Washington, DC: RRI (citing M. Colchester. 2007. Beyond Tenure: Rights-base Approaches to People and Forests. Unpublished manuscript).
- <sup>13</sup> J.N. Abramovitz & R. Nichols. 1992. Women and Biodiversity: Ancient Reality, Modern Imperative. United Nations Conference on Environment and Development. June 3–14; Rio Declaration on Environment and Development. 1992. Princ. 20. U.N. Doc. A/CONF.151/26. August 12 [hereinafter Rio Declaration]; Agenda 21. 1992. Chapter 24, Point 24 U.N. GAOR, 46th Sess., Agenda Item 21, UN Doc A/Conf.151/26 [hereinafter Agenda 21].
- <sup>14</sup> United Nations Environment Programme et al. 2013. Women and Natural Resources: Unlocking the Peacebuilding Potential.
- <sup>15</sup> L. Ogle. 2011. Integrating Gender Considerations in REDD+. UNDP/UN-REDD Programme. Available at <http://www.undp.or.jp/uploads/pdfs/132729815203.pdf>.
- <sup>16</sup> L. Aguilar et al. 2013. Forest and Gender. International Union for Conservation of Nature. Available at [http://www.iucn.org/about/work/programmes/gender/gender\\_resources/?13661/Forest-and-Gender-Publication](http://www.iucn.org/about/work/programmes/gender/gender_resources/?13661/Forest-and-Gender-Publication); International Union for Conservation of Nature. 2012. Art of Implementation: Gender Strategies Transforming National and Regional Climate Change Decision Making. Available at: <https://portals.iucn.org/library/efiles/documents/2012-086.pdf>.
- <sup>17</sup> Id.



- <sup>18</sup> L. Cotula. 2002. FAO Legislative Study: Gender and Law: Women's Rights in Agriculture. 76. Available at <http://www.fao.org/docrep/005/y4311e/y4311e03.htm#bm03.3.1>.
- <sup>19</sup> D. Budlender & E. Alma. 2011. *Women and Land: Securing Rights for Better Lives*. Ottawa, Canada: International Development Research Centre.
- <sup>20</sup> C. Doss et al. 2013. *Gender Inequalities in Ownership and Control of Land in Africa: Myth versus Reality*. International Food Policy Research Institute. Available at <http://www.ifpri.org/sites/default/files/publications/ifpridp01308.pdf>.
- <sup>21</sup> Rights and Resources Initiative, *supra* note 4, at 7.
- <sup>22</sup> United Nations. 2002. *Gender Mainstreaming: An Overview*. Available at <http://www.un.org/womenwatch/osagi/pdf/e65237.pdf>.
- <sup>23</sup> Formally defined by the UN Economic and Social Council and first featured at the Beijing Platform for Action, 1995.
- <sup>24</sup> *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. August 31, 2001.*
- <sup>25</sup> *Case of the Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment Inter-Am. Ct. H.R. November 28, 2007.*
- <sup>26</sup> *Case of Endorois Welfare Council v. Kenya, Afr. Comm'n on Hum. and Peoples Rts. 2010.*
- <sup>27</sup> *Case of Aloeboetoe et al v. Suriname, Inter-Am. Ct. H.R. 1993.*
- <sup>28</sup> The Vienna Convention on the Law of Treaties defines a treaty in Article 2 as “an international agreement concluded between States in written form and governed by international law.” Vienna Convention on the Law of Treaties, art. 2, 115 U.N.T.S. 332 (1969). It is worth noting Article 34 clarifies that a treaty does “not create either obligations or rights for a third State without its consent.”
- <sup>29</sup> Note that conventions are a type of treaty.
- <sup>30</sup> This typically occurs through signing and ratification or accession.
- <sup>31</sup> A reservation refers to a statement made by a State that purports to exclude or modify a provision of a treaty. Vienna Convention on the Law of Treaties, *supra* note 28, at art. 2(1)(d).
- <sup>32</sup> Evidence of State practice can be found in declarations from state officials, official instructions to foreign diplomats, judgments and opinions of international and national judicial and arbitral tribunals, the writings of scholars, and pronouncements by states that undertake to state a rule of international law. Restatement (Third) of Foreign Relations Law of the United States §103 (1987); J.L. Brierly, *The Law of Nations: An Introduction to the International Law of Peace*, 6th ed. (1963).
- <sup>33</sup> H. Tugendhat & E. Dictaan-Bang-oa. 2013. *Realizing Indigenous Women's Right: A Handbook on the CEDAW*. 35. Tebtebba Foundation, Forest Peoples Programme and Asia Indigenous Women's Network. Available at <http://www.tebtebba.org/index.php/content/287-realizing-indigenous-womens-rights-a-handbook-on-the-cedaw>.
- <sup>34</sup> Universal Declaration of Human Rights, art.3, G.A. Res. 217A (III), U.N. Doc. 1948. A/810 [hereinafter UDHR]; International Covenant on Civil and Political Rights. 1966. Art. 9, S. Treaty Doc. No. 95-20, 6 I.L.M. 368, 999 U.N.T.S. 171 [hereinafter ICCPR].
- <sup>35</sup> Agarwal, B. 2009. *Gender and Forest Conservation: The Impact of Women's Participation in Community Forest Governance, Ecological Economics*; UN Women. 2014. *World Survey on the Role of Women in Development*. Available at [http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2014/unwomen\\_surveyreport\\_advance\\_16oct.pdf](http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2014/unwomen_surveyreport_advance_16oct.pdf).
- <sup>36</sup> *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*. 2012.
- <sup>37</sup> See e.g., ICCPR, *supra* note 34, art. 2, 3, and 26.
- <sup>38</sup> Food and Agriculture Organization. 2002. *Land Tenure and Rural Development, Land Tenure Studies No. 3, 7*. Available at <ftp://ftp.fao.org/docrep/fao/005/y4307E/y4307E00.pdf>.
- <sup>39</sup> E. Corbera et al. 2011. *Rights to Land, Forests and Carbon in REDD+: Insights from Mexico, Brazil and Costa Rica* (citing L. Fortmann. 2002. *Property in Non-Timber Forest Products*, European Tropical Forest Research Network). Available at [www.mdpi.com/1999-4907/2/1/301/pdf](http://www.mdpi.com/1999-4907/2/1/301/pdf).
- <sup>40</sup> E. Ostrom & E. Schlager. 1996. *The Formation of Property Rights in Rights to Nature: Ecological, Economic, Cultural and Political Principles of Institution for the Environment*.

- <sup>41</sup> Rights and Resources Initiative, *supra* note 8.
- <sup>42</sup> Rights and Resources Initiative, *supra* note 4 (adapting the bundle of rights defined in E. Schlager & E. Ostrom. 1992. Property-rights Regimes and Natural Resources: A Conceptual Analysis, *Land Economics* 68 (3), 249–262).
- <sup>43</sup> W. Sunderlin et al. 2009. Forest Tenure Rights and REDD+: From Inertia to Policy Solutions.
- <sup>44</sup> E. Ostrom & E. Schlager, *supra* note 40, at 67.
- <sup>45</sup> Henri Dekker. 2005. In Pursuit of Land Tenure Security. Amsterdam: Pallas Publications.
- <sup>46</sup> E. Corbera et. al., *supra* note 39, at 323.
- <sup>47</sup> *Id.*
- <sup>48</sup> *Id.* at 305.
- <sup>49</sup> Rights and Resources Initiative, *supra* note 4.
- <sup>50</sup> C. Stevens et al., *supra* note 7; Rights and Resources Initiative, *supra* note 4.
- <sup>51</sup> R. Giovarelli et al. 2013. USAID Issue Brief: Land Tenure, Property Rights and Gender (citing C. D. Deere et al. 2004. Female Land Rights and Rural Household Incomes in Brazil, Paraguay, and Peru. University of Massachusetts Economics Department Working Paper Series). Available at [http://usaidlandtenure.net/sites/default/files/USAID\\_Land\\_Tenure\\_Gender\\_Brief\\_061214.pdf](http://usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_Gender_Brief_061214.pdf).
- <sup>52</sup> It is important to note that the concept of land is also treated in terms of “territories” in certain international legal instruments, such as International Labour Organization Convention No. 169, among others.
- <sup>53</sup> R. Plant. 1993. Land Rights in Human Rights and Development: Introducing a New ICJ Initiative. *The ICJ Review* No. 51.
- <sup>54</sup> S. Leckie & C. Huggins. 2011. Conflict and Housing, Land and Property Rights: A Handbook on Issues. *Human Rights Review*.
- <sup>55</sup> FAO. 2012. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security [hereinafter FAO Voluntary Guidelines]. Available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.
- <sup>56</sup> UDHR, *supra* note 34, at art. 17; International Convention on the Elimination of All Forms of Racial Discrimination [hereinafter ICERD]. 1966. Art. 5(d) para (v), 660 U.N.T.S. 195.
- <sup>57</sup> UDHR, *supra* note 34, at art. 17(2).
- <sup>58</sup> American Convention on Human Rights. 1969. Art. 21(1), 1144 U.N.T.S. 143 [hereinafter ACHR].
- <sup>59</sup> *Id.* at art. 21(2).
- <sup>60</sup> African Charter on Human and Peoples’ Rights. 1981. Art. 14, 21 I.L.M. 58 [hereinafter ACHPR].
- <sup>61</sup> See *Awas Tingni Community*, *supra* note 24, at paragraph 146.
- <sup>62</sup> See *id.*
- <sup>63</sup> International Labour Organization Convention No. 169. 1989. Indigenous and Tribal Peoples Convention. Art. 14(1) [hereinafter ILO 169].
- <sup>64</sup> *Id.* at art. 15(1).
- <sup>65</sup> *Id.* at arts. 15(2), 17(2).
- <sup>66</sup> *Id.* at art. 14(3).
- <sup>67</sup> *Id.* at art. 17(1).
- <sup>68</sup> *Id.* at art. 14(1).

- <sup>69</sup> S. Leckie & C. Huggins, *supra* note 54 (citing Optional Protocol, December 16, 1996, 999 UNTS 302) (cited in James Anaya. 2004. *Indigenous Peoples in International Law*. Oxford University Press. 2d ed).
- <sup>70</sup> United Nations Declaration on the Rights of Indigenous Peoples [hereinafter UNDRIP]. 2007. Art. 26(3), G.A. Res. 61/295, U.N. Doc. A/RES/61/295. September 13.
- <sup>71</sup> *Id.* at art. 17.
- <sup>72</sup> ILO 169, *supra* note 63, at art. 7.
- <sup>73</sup> *Id.* at art. 16(2); International Covenant on Economic, Social and Cultural Rights, art. 11, 6 I.L.M. 360 (1967) [hereinafter ICESCR]; United Nations. 2007. *Basic Principles and Guidelines on Development-based Evictions and Displacement*, 13 and 21. Available at: [http://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf).
- <sup>74</sup> ILO 169, *supra* note 63, at arts. 15(2), 16(4).
- <sup>75</sup> Convention on the Elimination of All Forms of Discrimination Against Women. 1979. Art. 16(1)(h), 1249 U.N.T.S. 13 [hereinafter CEDAW].
- <sup>76</sup> *Id.* at art. 16(1)(h).
- <sup>77</sup> *Id.* at art. 15(2).
- <sup>78</sup> See e.g., ICERD *supra* note 56, at art. 5(d) para (vi).
- <sup>79</sup> S. Leckie et al., *supra* note 54 (citing Human Rights Committee CCPR General Comment No. 28, Equality of Rights Between Men and Women. 2000. CCPR/C/21/Rev.1/Add.10).
- <sup>80</sup> FAO Voluntary Guidelines, *supra* note 55, at guideline 4.6. There are a number of other explicit references to women's equitable tenure rights to land and forests in the Voluntary Guidelines.
- <sup>81</sup> Agenda 21, *supra* note 13.
- <sup>82</sup> ICESCR General Recommendation No. 7. 1997. Paragraph 10; Asia Indigenous Peoples' Pact. 2015. Briefing Paper on the Rights of Indigenous Women to their Lands, Territories and Resources in Asia. Available at: [http://ccmin.aippnet.org/attachments/article/1295/Edited\\_Briefing%20Paper%20on%20Rights%20of%20Indigenous%20Women.pdf](http://ccmin.aippnet.org/attachments/article/1295/Edited_Briefing%20Paper%20on%20Rights%20of%20Indigenous%20Women.pdf).
- <sup>83</sup> CEDAW, *supra* note 75, at art. 14(2)(g).
- <sup>84</sup> *Id.* at art. 2(f).
- <sup>85</sup> UN Beijing Declaration and Platform for Action. 1995. Chapter IV.A. Women and Poverty. Fourth World Conference on Women A/CONF.177/20. Available at: <http://www.un-documents.net/bpa-4-a.htm>.
- <sup>86</sup> Eriksen, C.C et al. 2010. *The New International Law: An Anthology*.
- <sup>87</sup> See e.g. ICESCR, *supra* note 73.
- <sup>88</sup> FAO's Voluntary Guidelines on Land Tenure cite the importance of respecting international obligations more than a dozen times. See e.g., FAO Voluntary Guidelines, *supra* note 55, at 2.2, 4.2, 3A, 4.8, 5.2, 6.2, 7.2, 7.6, 9.3, 12.7, and 25.2.
- <sup>89</sup> Convention on Biological Diversity. 1992. Art. 8(j), 31 I.L.M. 818 [hereinafter CBD].
- <sup>90</sup> *Id.* at art. 10(c).
- <sup>91</sup> Draft text agreed at CBD 12th Conference of the Parties. 2014. See also Climate Change Monitoring and Information Network at [www.ccmin.aippnet.org](http://www.ccmin.aippnet.org).
- <sup>92</sup> *The New International Law: An Anthology*. 2010, *supra* note 86 (citing ICESCR General Comment No. 4, paragraph 8(a). 1991).
- <sup>93</sup> CEDAW, *supra* note at 75, at art. 10.
- <sup>94</sup> *Id.* at art. 13(1)(c).

<sup>95</sup> *Id.* at arts. 7(b), 14(2)(a).

<sup>96</sup> *Id.* at art. 14(2).

<sup>97</sup> *Id.* at art. 16(1)(h).

<sup>98</sup> UNDRIP, *supra* note 70, at art. 44.

<sup>99</sup> Agenda 21, *supra* note 13, at Chapter 23.

<sup>100</sup> UDHR, *supra* note 34. Paragraph 5; ACHR, *supra* note 58, at art. 17(4); UNDRIP, *supra* note 70, at art. 44; CEDAW, *supra* note at 75. Paragraph 1.

<sup>101</sup> ICCPR, *supra* note 34, at art. 3. It should be noted that this article references all the civil and political rights set forth in ICCPR, therefore women's rights to each of the rights outlined should be analyzed as having a gender-specific reference.

<sup>102</sup> ICESCR, *supra* note 73, at art. 3. It should be noted that this article references all the economic, social and cultural rights set forth in ICESCR, therefore women's rights to each of the rights outlined should be analyzed as having a gender-specific reference.

<sup>103</sup> CEDAW, *supra* note 75, at art. 15(2).

<sup>104</sup> ICCPR, *supra* note 34, at art 23; UDHR, *supra* note 34, at art. 16; ACHR *supra* note 58, at art. 17(4).

<sup>105</sup> ACHR *supra* note 58, at art. 17(4).

<sup>106</sup> UDHR, *supra* note 34, at art. 25; UNDRIP, *supra* note 70, arts. 21(2), 22(1), 22(2).

<sup>107</sup> CEDAW, *supra* note 76, at art. 15.

<sup>108</sup> UDHR, *supra* note 34, at art. 2; ICCPR, *supra* note 34, at arts. 2, 26; ICERD *supra* note 56. Paragraph 1, ACHPR, *supra* note 60, at art. 2.

<sup>109</sup> ICCPR, *supra* note 34, at art 26; ICESCR *supra* note 73, at art. 2; Convention on the Rights of the Child, art. 2, 1577 U.N.T.S. 3 (1989) [hereinafter CRC]; ILO 169, *supra* note 63, art. 3; ACHR *supra* note 58, at art. 1.

<sup>110</sup> CEDAW, *supra* note 75, at art. 1.

<sup>111</sup> *Id.* at arts. 1, 2, 13; ACHPR, *supra* note 60. Paragraph 7, art. 18.

<sup>112</sup> CEDAW, *supra* note 75, at art. 3.

<sup>113</sup> See CBD, *supra* note 89.

<sup>114</sup> *Id.* at preamble. Paragraph 13.

<sup>115</sup> *Id.*

<sup>116</sup> United Nations. 2011 Millennium Development Goals Report. ISBN 978-92-1-101244-6. June.

<sup>117</sup> CEDAW, *supra* note 75, at preamble. Paragraph 8.

<sup>118</sup> ACHR *supra* note 58, at art. 1 (2).

<sup>119</sup> CRC, *supra* note 109, at arts. 2, 3, and 29.

<sup>120</sup> Considering that “access rights” are also part of the bundle of rights for tenure, to distinguish these three rights for the purposes of this paper we refer to these rights as “procedural access rights.”

<sup>121</sup> Rio Declaration, *supra* note 13, principle 10; Convention on Access to Information. 1998. Public Participation in Decision-making, and Access to Justice in Environmental Matters [hereinafter Aarhus Convention].

<sup>122</sup> Human Rights Committee. 2011. General Comment No. 34. Available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

- <sup>123</sup> Agenda 21, *supra* note 13, at section 3.
- <sup>124</sup> Rio Declaration, *supra* note 13, principle 10.
- <sup>125</sup> P. Noorlander. 2013. Ensuring Inclusive, Transparent and Accountable National REDD+ Systems: The Role of Freedom of Information. UN-REDD Programme.
- <sup>126</sup> Global Treaties: Convention Concerning the Protection of the World Cultural and Natural Heritage; Convention on Biological Diversity; Convention on the Elimination of Discrimination Against Women; Convention on the Rights of the Child; International Covenant on Civil and Political Rights; International Labour Organization Convention No. 169; Convention for the Safeguarding of Intangible Cultural Heritage; Convention on the Protection and Promotion of Diversity of Cultural Expressions; International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights; and Aarhus Convention, among others.
- <sup>127</sup> Regional Treaties: African Charter on Human and Peoples' Rights; American Convention on Human Rights; and European Convention for the Protection of Human Rights and Fundamental Freedoms, among others.
- <sup>128</sup> Declarations: United Nations Declaration on the Rights of Indigenous Peoples; and the Universal Declaration of Human Rights, among others.
- <sup>129</sup> Environmental Agreements: Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; Aarhus Convention; UN Framework Convention on Climate Change; Convention on Persistent Organic Pollutants; and Rio Declaration, among others.
- <sup>130</sup> Governing Body Decisions: United Nations Framework Convention on Climate Change Decision 1/CP.16; and Convention on Biological Diversity Decision XI/19, among others.
- <sup>131</sup> ACHPR, *supra* note 60, at art. 9.
- <sup>132</sup> ACHR *supra* note 58, at art. 13.
- <sup>133</sup> UDHR, *supra* note 34, at art. 26; CEDAW, *supra* note at 75, at arts. 10, 14, 16(1)(e); ICERD *supra* note 56, at arts. 5, 7; ICESCR *supra* note 73, at art. 13; CBD, *supra* note 89, at arts. 12, 13, 17; CRC, *supra* note 109, at arts. 23, 24, 28, 40; UNDRIP, *supra* note 70, arts. 14, 17, 21; ILO 169, *supra* note 63, arts. 7, 26, 27; ACHPR, *supra* note 60, at arts. 17, 25; ACHR *supra* note 58, preamble. Paragraph 5, arts. 26, 42; UNESCO Convention for the Safeguarding of Intangible Cultural Heritage. 2003. Arts. 2(3), 14 [hereinafter CSICH]; Convention on the Protection and Promotion of Diversity of Cultural Expressions. 2005. Art. 10 (2005) [hereinafter CPPCDE].
- <sup>134</sup> ICERD *supra* note 56, at art. 5(e)(i)(v); CEDAW, *supra* note at 75, at arts. 10, 11, 14(2)(d); CBD, *supra* note 89, at arts. 12, 17; ICESCR *supra* note 73, at art. 6(2); ILO 169, *supra* note 64, art. 27; WHC Article 22; CPPCDE, *supra* note 133, at art. 10; CRC, *supra* note 109, at arts. 23, 40(4).
- <sup>135</sup> CBD Dec. XI/19. 2012. Annex, paragraph 15.
- <sup>136</sup> CSICH, *supra* note 133, at art.12.
- <sup>137</sup> CBD, *supra* note 89, at art. 15(2).
- <sup>138</sup> Aarhus Convention, *supra* note 121.
- <sup>139</sup> Rio Declaration, *supra* note 13.
- <sup>140</sup> CBD, *supra* note 89, at art. 14(1)(c).
- <sup>141</sup> CSICH, *supra* note 133, at art.15.
- <sup>142</sup> UNDRIP, *supra* note 70, at art. 5.
- <sup>143</sup> *Id.* at art. 18.
- <sup>144</sup> *Id.* at art. 19.
- <sup>145</sup> See for example, CBD, *supra* note 89.
- <sup>146</sup> Women's Inclusion in REDD+ in Cambodia: Lessons from Good Practices in Forest, Agriculture and Other Natural Resources Management Sectors. 2013. Women Organizing for Change in Agriculture and Natural Resource Management (WOCAN), UN-REDD and USAID. Available at

[http://www.wocan.org/system/tdf/Cambodia\\_Gender%20and%20REDD%20Report.pdf?file=1&type=node&id=1072](http://www.wocan.org/system/tdf/Cambodia_Gender%20and%20REDD%20Report.pdf?file=1&type=node&id=1072).

<sup>147</sup> UN-REDD. 2013. Guidelines on Free Prior and Informed Consent.

<sup>148</sup> UN-REDD. Accessed in May 2015 at [www.un-redd.org/AboutREDD/tabid/582/Default.aspx](http://www.un-redd.org/AboutREDD/tabid/582/Default.aspx); IUCN's Pro-Poor REDD+ Options. Accessed in May 2015 at [http://www.iucn.org/about/work/programmes/forest/fp\\_our\\_work/fp\\_our\\_work\\_thematic/redd/iucns\\_approach\\_to\\_redd\\_plus\\_/iucns\\_pro\\_poor\\_redd/](http://www.iucn.org/about/work/programmes/forest/fp_our_work/fp_our_work_thematic/redd/iucns_approach_to_redd_plus_/iucns_pro_poor_redd/); A. Enright, A et al. 2012. An Approach to Designing Pro-Poor Local REDD+ Benefit Distribution Systems: Lessons from Vietnam.

<sup>149</sup> ACHR supra note 58, at art. 23.

<sup>150</sup> CEDAW, supra note at 75, at art. 8.

<sup>151</sup> UDHR, supra note 34, at art. 21.1; ACHR supra note 58, at art. 23.1; ICCPR, supra note 34, at art. 25.

<sup>152</sup> CEDAW, supra note at 75, at art. 7.

<sup>153</sup> ICCPR, supra note 34, at art. 25; ACHPR, supra note 60, at art. 13.

<sup>154</sup> CEDAW, supra note at 75, at art. 7.

<sup>155</sup> Id. at art. 14(2).

<sup>156</sup> Id. preamble. Paragraph 7.

<sup>157</sup> CBD, supra note 89, preamble. Paragraph 13.

<sup>158</sup> ICCPR, supra note 34, at art. 2.

<sup>159</sup> Id. at arts. 2,3; UDHR, supra note 34, at art. 8.

<sup>160</sup> ACHR supra note 58, at art. 7.

<sup>161</sup> UNDRIP, supra note 70, at arts. 11.2, 28.

<sup>162</sup> Id. at art. 40.

<sup>163</sup> ACHR supra note 58, at art. 25.1.

<sup>164</sup> ICCPR, supra note 34, at arts. 2.3(b), 13, 14.

<sup>165</sup> ACHR supra note 58, at art. 25.2; ICCPR, supra note 34, at art. 2.3(c).

<sup>166</sup> ACHPR, supra note 60, at art. 26.

<sup>167</sup> ICCPR, supra note 34, at art. 16; UDHR, supra note 34, at art. 6; ACHR supra note 58, at art. 3.

<sup>168</sup> ICCPR, supra note 34, at art. 13.

<sup>169</sup> CEDAW, supra note at 75, at art. 2(c).

<sup>170</sup> ACHR supra note 58, at art. 10; ICCPR, supra note 34, at art. 9(5).

<sup>171</sup> UNFCCC Dec.1/CP.16, supra note 1, app. I, paragraph 2.

<sup>172</sup> As such, in addition to the explicit references noted here, FPIC is referenced implicitly in accordance with the rights to self-determination, life, property, participation as well as access to information and access to justice.

<sup>173</sup> FPIC is recognized in number of international legal instruments as a collective right of Indigenous Peoples and is gaining broader acceptance as an international standard. While some view FPIC as simply a principle, there is strong support for framing it as a right. FPIC is grounded in international law and is an expression of other fundamental rights, such as to self-determination and right to property.

- <sup>174</sup> UN-REDD FPIC Guidelines, *supra* note 147.
- <sup>175</sup> *Id.* (citing UN Office of the High Commissioner for Human Rights Expert Mechanism on the Rights of Indigenous Peoples, Final Report on the study on Indigenous Peoples and the right to participate in decision-making. 2011. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/154/84/PDF/G1115484.pdf?OpenElement>).
- <sup>176</sup> UNDRIP, *supra* note 70, at art. 19.
- <sup>177</sup> *Id.* at art. 32.
- <sup>178</sup> Saramaka People, *supra* note 25.
- <sup>179</sup> UNDRIP, *supra* note 70, at art. 10; ILO 169, *supra* note 63, at art. 16(2).
- <sup>180</sup> However, it is important to note the 2007 case of the Saramaka People v. Suriname, which extended FPIC rights to tribal peoples as well.
- <sup>181</sup> Saramaka People, *supra* note 25.
- <sup>182</sup> See e.g., Awas Tingni Community, *supra* note 24.
- <sup>183</sup> UN Conference on the Human Environment. 1972. Stockholm Declaration, principle 1. Available at <http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503>.
- <sup>184</sup> Human Rights Council. 2012. Res. 19/10, Human Rights and the Environment. Available at <http://ieenvironment.org/wp-content/uploads/2013/05/1910-PDF.pdf>.
- <sup>185</sup> *Id.* at paragraph 2(e).
- <sup>186</sup> Knox, J. 2014. Report of the Independent Expert on the Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Mapping report. at <http://www.ohchr.org/EN/Issues/Environment/IEEnvironment/Pages/MappingReport.aspx>.
- <sup>187</sup> Human Rights Council, Resolution on Human Rights and Climate Change. 2014. Available at <http://ieenvironment.org/wp-content/uploads/2013/05/A-HRC-26-L33.pdf>.
- <sup>188</sup> Draft Principles on Human Rights and the Environment. 1994. Annex I, Part II, paragraph 10. It should be noted that this Declaration was not adopted by the then Commission on HRs and thus remains an expression of experts in the field.
- <sup>189</sup> ACHPR, *supra* note 60, at art. 24.
- <sup>190</sup> Organization of American States. 1988. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights: Protocol of San Salvador. Art. 11, OAS Doc. OAS/Ser.L/V/II.4 rev. 13. November.
- <sup>191</sup> Knox, J. 2012. Human Rights Council report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean and Healthy and Sustainable Environment. Available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43_en.pdf); UNHCR and UNEP, 2014. Regional consultation report on human rights defenders and good practices with a focus on Asia and the Pacific. May. Available at <http://ieenvironment.org/wp-content/uploads/2013/05/Bangkok-consultation-report-Final-Version-25-July-2014.docx>; Boyd, D. 2012. The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment. Available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43_en.pdf).
- <sup>192</sup> See for example, The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, Communication 155/96; Afr. Comm'n on Hum. and Peoples Rts., Fifteenth Annual Activity Report, Annex V, 31-44. 2001-2002. Available at [http://www.achpr.org/files/sessions/30th/communications/155.96/achpr30\\_155\\_96\\_eng.pdf](http://www.achpr.org/files/sessions/30th/communications/155.96/achpr30_155_96_eng.pdf); Gabcikovo-Nagymaros Project (Hungary v. Slovakia), I.C.J. Reports. 1997. September 25. Available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=8d&case=92&code=hs&p3=4>.
- <sup>193</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. 2000. Arts. 16, 18, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6. Reprinted in 1 Afr. Hum. Rts. L.J. 40. September 13. Available at <http://www.achpr.org/instruments/women-protocol/>.
- <sup>194</sup> See Öneriyıldız v. Turkey, Eur. Ct. H.R. 2004; Lopez Ostra v. Spain, Eur. Ct. H.R. 1994.
- <sup>195</sup> See D. Shelton. 2002. Human Rights and the Environment: Jurisprudence of Human Rights Bodies, 32 Environmental Policy and Law, No. 3-4, 158-167.

- <sup>196</sup> See for example, ASEAN Human Rights Declaration. Available at <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>.
- <sup>197</sup> ICERD supra note 56, at art. 5(e) para iii; UDHR, supra note 34, at art. 25 (includes the right to housing in the right to an adequate standard of living).
- <sup>198</sup> ICESCR supra note 73, at art. 1(1).
- <sup>199</sup> CEDAW, supra note at 75, at art. 14(2)(h).
- <sup>200</sup> UDHR, supra note 34, at art. 25(1); ICESCR supra note 73, at art. 11; UN Committee on Economic, Social and Cultural Rights, General Comment No. 4, Right to Adequate Housing; CRC, supra note 109, at art. 27.
- <sup>201</sup> See e.g., Aarhus Convention, supra note 121; Rio Declaration, supra note 13; ILO 169, supra note 63.
- <sup>202</sup> Karuru, N & Yeung. 2015. Integrating Gender into Post-conflict Natural Resource Management, in C. Bruch, et al. 2015. Governance, Natural Resources and Post-Conflict Peacebuilding. London: Earthscan.
- <sup>203</sup> *Id.*
- <sup>204</sup> UNFCCC Dec. 9/CP.19 (2013), Dec. 10/CP.19 (2013), Dec. 11/CP.19 (2013), Dec. 12/CP.19 (2013), Dec. 13/CP.19 (2013), Dec. 14/CP.19 (2013), Dec. 15/CP.19 (2013), Dec. 1/CP.18 (2012), Dec 2/CP.17 (2011), Dec. 12/CP.17 (2011), Dec. 1/CP.16 (2010), Dec. 4/CP.15 (2009), Dec. 2/CP.13 (2007).
- <sup>205</sup> UNFCCC Dec.1/CP.16, supra note 1, at app. I.
- <sup>206</sup> UNFCCC Decision 2/CP.17, supra note 204.
- <sup>207</sup> UNFCCC Dec.1/CP.16, supra note 1, at paragraph 71.
- <sup>208</sup> UNFCCC Dec.1/CP.16, supra note 1, at paragraph 8.
- <sup>209</sup> UNFCCC Dec.1/CP.16, supra note 1, at paragraph 72.
- <sup>210</sup> UNDRIP, supra note 70, preamble. Paragraph 7.
- <sup>211</sup> *Id.* at art. 25.
- <sup>212</sup> *Id.* at art. 26.
- <sup>213</sup> UNFCCC Dec. 1/CP.16, supra note 1, app. I.
- <sup>214</sup> See for example, USAID. 2012. Lessons about Land Tenure, Forest Governance, and REDD+: Case Studies from Africa, Asia, and Latin America. January.
- <sup>215</sup> UNFCCC Dec.1/CP.16, supra note 1, at paragraph 7.
- <sup>216</sup> *Id.* at paragraph 130.
- <sup>217</sup> UNFCCC Decision 2/CP.17, supra note 204, paragraph 90.
- <sup>218</sup> UNFCCC Decision 2/CP.17, supra note 204, paragraph 103, Annex VI(2).
- <sup>219</sup> UNFCCC Dec. 3/CP.17, paragraph 3 (2011).
- <sup>220</sup> UNFCCC Dec. 23/CP.18 (2012).
- <sup>221</sup> UNFCCC Dec.1/CP.16, supra note 1, paragraph 72.
- <sup>222</sup> UNFCCC Decision 12/CP.17, supra note 204.



<sup>223</sup> UNFCCC Dec.1/CP.16, *supra* note 1. Section IV.C.

<sup>224</sup> *Id.* paragraph 7.

<sup>225</sup> *Id.* paragraph 130(d).

<sup>226</sup> *Id.* paragraph 72.

<sup>227</sup> *Id.* app. I, paragraph 2(d).

<sup>228</sup> IUCN-Gender and Environment & WEDO, Gender and REDD+ Roadmaps. Available at [http://gender-climate.org/wp-content/uploads/docs/publications/IUCN\\_Gender\\_REDD\\_Roadmaps.pdf](http://gender-climate.org/wp-content/uploads/docs/publications/IUCN_Gender_REDD_Roadmaps.pdf).

<sup>229</sup> Relevant international laws include the International Covenant on Civil and Political Rights; the American Convention on Human Rights; the African Charter on Human and Peoples' Rights; the International Labour Organization Convention No. 169; the Universal Declaration of Human Rights; the Rio Declaration; the Doha Work Programme on Article 6 of the UNFCCC; the Rio+20 outcome document; and the United Nations Declaration on the Rights of Indigenous Peoples.

<sup>230</sup> UNDRIP, *supra* note 70, at art. 8(2).

<sup>231</sup> UNDRIP, *supra* note 70, at arts. 10, 11(2), 19, 28, 29(2), (32).

<sup>232</sup> ILO 169, *supra* note 63, at arts. 6, 16.

<sup>233</sup> See Forest Carbon Partnership Facility (hereinafter referred as FCPF) Website, accessed in April 2015. <http://www.forestcarbonpartnership.org/fcpf>.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> See FCPF Charter. Sections 6.3, 14. Available at <https://www.forestcarbonpartnership.org/sites/fcp/files/2013/FCPF%20Charter%20-%2010-24-12%20clean.pdf> [hereinafter FCPF Charter]; FCPF. 2012. Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners, paragraph 3, sec. III. Available at <https://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Aug2012/FCPF%20Readiness%20Fund%20Common%20Approach%208-9-12.pdf> [hereinafter FCPF Common Approach].

<sup>238</sup> For more information, see Rights and Resources Initiative. 2015. Comments on the World Bank draft Environmental and Social Framework dated July 30, 2014. February 28.

<sup>239</sup> FCPF Common Approach, *supra* note 237.

<sup>240</sup> FCPF, Carbon Fund Methodological Framework. 2013. 2, 31, and Annex I. Available at <https://www.forestcarbonpartnership.org/sites/fcp/files/2014/MArch/March/FCPF%20Carbon%20Fund%20Methodological%20Framework%20Final%20Dec%2020%202013.pdf> [hereinafter CF Methodological Framework].

<sup>241</sup> FCPF. 2013. Emission Reduction Program Agreement Term Sheet. Paragraph 9. Available at <http://www.bicusa.org/wp-content/uploads/2013/12/FCPF-ERPA-Term-Sheet-01-23-2013-Draft.pdf>.

<sup>242</sup> FCPF Charter, *supra* note 237, at sec. 3.

<sup>243</sup> *Id.*

<sup>244</sup> See Carbon Fund Methodological Framework, *supra* note 240, at secs. 5, 6.

<sup>245</sup> FCPF, Readiness Assessment Framework. 2013. 11. Available at <https://www.forestcarbonpartnership.org/sites/fcp/files/FMT%20Note%202013-1%20rev%20R-Package%20Assessment%20Framework.pdf>.

<sup>246</sup> E. Corbera, et al., *supra* note 39, at 317.

<sup>247</sup> Carbon Fund Methodological Framework, *supra* note 240, at criterion 28.

<sup>248</sup> See Carbon Fund Methodological Framework, *supra* note 240.

<sup>249</sup> See Carbon Fund Methodological Framework, *supra* note 240, at criterion 36; Rights and Resources Initiative. 2014. Status of Forest Carbon Rights and Implications for Communities, the Carbon Trade, and REDD+ Investments. Washington, DC: RRI. Available at [http://www.rightsandresources.org/documents/files/doc\\_6594.pdf](http://www.rightsandresources.org/documents/files/doc_6594.pdf).

<sup>250</sup> See Carbon Fund Methodological Framework, *supra* note 240, at criterion 36; RRI, *supra* note 249.

<sup>251</sup> Carbon Fund Methodological Framework, *supra* note 240, at criterion 36.2.

<sup>252</sup> See *id.*; RRI, *supra* note 249.

<sup>253</sup> The FCPF Carbon Fund: Piloting REDD+ Programs at Scale, [http://www.forestcarbonpartnership.org/sites/fcp/files/2013/june2013/CF%20Origination-web\\_0.pdf](http://www.forestcarbonpartnership.org/sites/fcp/files/2013/june2013/CF%20Origination-web_0.pdf).

<sup>254</sup> Carbon Fund Methodological Framework, *supra* note 240.

<sup>255</sup> *Id.* at 31.

<sup>256</sup> FCPF & UN-REDD. 2012. Guidelines on Stakeholder Engagement in REDD+ Readiness. 5. Available at <https://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/July2012/Guidelines%20on%20Stakeholder%20Engagement%20April%202012%20%28revision%20of%20March%2025th%20version%29%20%281%29.pdf> [hereinafter FCPF/UN-REDD Guidelines on Stakeholder Engagement].

<sup>257</sup> FCPF Common Approach, *supra* note 237, at attachment 2.

<sup>258</sup> *Id.*

<sup>259</sup> FCPF. 2012. Readiness Preparation Proposal Submission Template (with Guidance). 6. Available at <https://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Apr2012/FCPF%20UNREDD%20R-PP%20Template%20Version%206%20-%20April%2020%2C%202012-FINAL.docx>.

<sup>260</sup> Carbon Fund Methodological Framework, *supra* note 240, at criteria 30, 34.

<sup>261</sup> FCPF. 2012. Guidelines and Generic Terms of Reference for ESMF. 5. Available at <https://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Jun2011/Attachment%201%20Guidelines%20and%20generic%20ToR%20for%20SESA%20and%20ESMF.pdf>.

<sup>262</sup> FCPF, *supra* note 259 at 26.

<sup>263</sup> FCPF/UN-REDD Guidelines on Stakeholder Engagement, *supra* note 256, at paragraph 9.1.

<sup>264</sup> See FCPF. Readiness Fund Disclosure Guidelines. Available at <https://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Aug2012/Attachment%203%20Disclosure%20Guidance%208-9-2012.pdf>; Carbon Fund Disclosure Guidelines. [http://www.forestcarbonpartnership.org/sites/fcp/files/2014/June/FMT%20Note%20CF%202013-2%20FCPF%20Draft%20Disclosure%20Guidance%20for%20the%20Carbon%20Fund\\_revised\\_Nov%202013.pdf](http://www.forestcarbonpartnership.org/sites/fcp/files/2014/June/FMT%20Note%20CF%202013-2%20FCPF%20Draft%20Disclosure%20Guidance%20for%20the%20Carbon%20Fund_revised_Nov%202013.pdf).

<sup>265</sup> *Id.*

<sup>266</sup> FCPF Common Approach, *supra* note 237, at paragraph 20.

<sup>267</sup> R-PP Template, *supra* note 259, at 26.

<sup>268</sup> *Id.*

<sup>269</sup> UN-REDD, Guidance Note on Gender Sensitive REDD+. 2013. 15. Available at [http://www.undp.org/content/dam/undp/library/gender/Gender%20and%20Environment/Guidance%20Note%20Gender%20Sensitive%20REDD%20English\\_FINAL.pdf](http://www.undp.org/content/dam/undp/library/gender/Gender%20and%20Environment/Guidance%20Note%20Gender%20Sensitive%20REDD%20English_FINAL.pdf).

<sup>270</sup> FCPF/UN-REDD Guidelines on Stakeholder Engagement, *supra* note 256, paragraph 9.b-c.

<sup>271</sup> FCPF Common Approach, *supra* note 237, paragraph 34.

<sup>272</sup> *Id.*

<sup>273</sup> FCPF, *supra* note 259, at 26.

<sup>274</sup> FCPF/UN-REDD Guidelines on Stakeholder Engagement, *supra* note 256, at paragraph 19.

<sup>275</sup> FCPF/UN-REDD. 2014. Guidance Note for REDD+ Countries: Establishing and Strengthening Grievance Redress Mechanisms. 1.

<sup>276</sup> CF Methodological Framework, *supra* note 240, at criterion 26.

<sup>277</sup> World Bank. 2013. Operational Policy 4.10 and Indigenous Peoples Policy. Accessed in May 2015. <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20553653~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>.



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