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Examining support for the rights of Indigenous Peoples in the context of REDD+ in Peru

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Key messages

- Safeguard interpretation processes depend on national interpretations of relevant laws and recognized rights, including adherence to international agreements on the rights of Indigenous Peoples and local communities (IPLCs) and different political and economic priorities.
- Given this specificity, this flyer presents the results of a review of legal documents and interviews with specialists in Peru to understand the level of support for indigenous rights in law and policy in the context of REDD+.
- Although legal recognition of Indigenous Peoples in Peru is grounded in various international legal norms, the Constitution and different special laws, in some institutions and in some contexts there is still disregard for the rights of indigenous communities.
- Indigenous Peoples' land and resource rights are legally recognized to a partial extent, which fosters insecurity in a context of strong pressure over indigenous collective lands.
- Peru's recently launched Safeguards Information System (*Módulo de Información de Salvaguardas*) needs a strategy or roadmap to integrate the contributions and feedback of Indigenous Peoples if it is to build and monitor a fair and transparent benefit sharing system.

This flyer is part of a series on REDD+ safeguards, focusing on the rights and social inclusion concerns of the women and men of the Indigenous Peoples and local communities (IPLCs) that steward the forests where climate solutions are implemented. Flyers provide lessons for application in different national contexts, present evidence for decision makers and practitioners to consider the implications and benefits of supporting the rights of IPLCs, and contribute to the participation of IPLC representatives in discussions on and monitoring of safeguards.

Introduction

As the framework for reducing emissions from deforestation and forest degradation and enhancing forest carbon stocks (REDD+) moves to results-based payments, there is a need to re-examine safeguards. At the 2010 Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) in Cancun, seven safeguard principles for the implementation of REDD+ were adopted, including two that address Indigenous Peoples and local communities (IPLCs). The Cancun safeguards mandate that countries interpret these principles, deferring to national law in deciding what counts as 'respect' or 'participation' for IPLCs.

Scholars and practitioners have been concerned about REDD+'s potential impact on the rights of IPLCs from early on (Sarmiento Barletti and Larson 2017). Without proper guidelines, the application and operationalization of REDD+ safeguards varies between countries, with different impacts on IPLC rights (Jodoin 2017). Indeed, the national interpretation and roll out of safeguards is framed by country-specific legal interpretations of relevant rights, adherence to international agreements on the rights of IPLCs, and different political and economic priorities. Concerns over safeguards focus on the need to expand rights recognition and to bridge gaps in access to recognized rights, including to land and resources, as well as to participation (Savaresi 2013; Wallbott 2014).

The introduction of voluntary standards provided an opportunity for guidelines that are more supportive of IPLC rights than national interpretations of the Cancun principles. This transition is important in countries where IPLCs experience discrimination. For example, although Peru has one of the largest real and relative shares of indigenous populations in Latin America (4 million people or 12.5 per cent of its population), this sector of its population remains impoverished, with higher rates of morbidity and mortality than their non-indigenous counterparts. However, there is considerable variation in standards (Sarmiento Barletti et al. 2021). Whilst some standards motivate countries to increase their support for the rights of IPLCs by tying result-based payments to evidence of 'doing good' or in a few cases of 'doing better', others set lower bars of 'doing no harm' (Lofts et al. 2021).

Given the specificity of national safeguards interpretation processes, this flyer presents the results of a review of legal documents and interviews with specialists in Peru to understand the level of support for indigenous rights in law and policy in the context of REDD+ (Table 1). Further analysis will set out the voluntary standards that Peru's legal system already abides by, as well as the reforms that would be needed for more stringent options. We also aim to clarify the interplay between different standards that may not align, yet are deployed for the same activities within the same countries. Outputs will support REDD+ actors in navigating the range of criteria, indicators and rules, and integrating them into their national implementation frameworks and reporting processes for coherent safeguards operationalization.

Peru: The state of support for indigenous rights in the context of REDD+

Peru legally recognizes Indigenous Peoples in its 1993 Constitution; it is a signatory to relevant international agreements including International Labour Organization C169 and the United Nations Declaration on the Rights of Indigenous Peoples. The Constitution protects the ethnic and cultural plurality of the Nation (Art. 2.19), promotes the country's diverse cultural and linguistic manifestations (Art. 17), and protects the cultural identity and rights to communal property over land of indigenous communities in the Amazon and Andes (Art. 88 and 89). This recognition is also operationalized by specific laws such as the Law of Prior Consultation (No. 29785, 2011) and Law No. 29735 (2011) that regulates the use, preservation, promotion and dissemination of indigenous languages. Despite formal recognition, there also exists a de facto disregard for the rights of Indigenous Peoples, notably in contexts related to the expansion of extractive industries, and restricted access to the right to prior consultation for indigenous communities (Guevara and Cabanillas 2019).

Peru's legal framework also recognizes the land and resource access rights of Indigenous Peoples, but to a partial extent. Indigenous Peoples are mainly organized in Peasant and Native Communities (in the Andes and Amazon, respectively), which are constitutionally

recognized and protected (CNDDHH 2019).¹ The Constitution recognizes the right to communal property over lands (Art. 88), the legal personhood of Peasant and Native Communities, as well as the autonomy in their organization, communal labour, and the free use of their lands (Art. 89), and the communities' jurisdiction over activities conducted within their territories (Art. 149).² Collective land rights are also recognized in the Law of Peasant Communities (No. 24656) and the Law of Native Communities (No. 22175). While these laws grant communities collective titles, with rights that are imprescriptible and guaranteed against seizure, the Law of Forestry and Wildlife (No. 29763) establishes that forestlands fall under the mandate of the state and that no individual, community or company can own them; rather, forest resources can only be accessed through a contract system. To comply with this, communal rights in the Amazon are only granted to lands classified for agricultural use but not to forest land, for which they can only claim usufruct rights (Monterroso et al. 2017). Specialists interviewed for this research consider this dichotomy between agricultural and forest land a 'legal fiction' as in practice indigenous communities access and manage both types of land indistinctly. Despite this, this dichotomy negatively impacts territorial security as it complicates the process of land titling, which is especially worrisome in a context of strong pressure over collective lands.

Finally, carbon rights in Peru can be tied to land ownership and tenure (RRI 2020). Some of the legal specialists interviewed consider that the Law of Forestry and Wildlife and the Law on Compensation Mechanisms for Ecosystem Services (No. 30215) make clear that ecosystem services, such as a carbon storage, are inherent components of tenure rights over forests. Thus, although there is no specific legislation on carbon rights, it can be interpreted that whoever holds tenure rights – whether it is private or communal property or forestry concessions – over land also holds carbon rights. However, while communities may hold usufruct rights over forests – and thus are entitled to the economic benefits derived from the payment for ecosystem services – their control and management rights over forestlands are restricted. Thus, communities may not be able to decide and directly negotiate the decisions related to the sale of carbon offsets in their territories.

It is in this general legal scenario that the national safeguards interpretation process for REDD+ has taken place. The specialists interviewed for this research

considered that the completion of Peru's Safeguards Information System had been delayed by weak institutional and organizational capacities; it was completed in December 2021 by the Ministry of Environment (MINAM). The three components in Peru's *Módulo de Información de Salvaguardas* (MIS, Safeguards Information Module) remain untested. These are: 1) a safeguards portal; 2) an MIS application where users can register how REDD+ initiatives are respecting safeguards; and 3) a grievance mechanism (*Mecanismo de Atención al Ciudadano* – MAC REDD+). Although its development did not involve a formal consultation process, indigenous organizations – along with civil society and research organizations – participated in MINAM's Safeguards Technical Sub-committee, which was created in 2019. According to an independent assessment of the REDD+ readiness package conducted by a Peruvian NGO (Vásquez et al. 2019), the participation and involvement of national indigenous organizations based in Lima was actively promoted. This was not the case, however, with the subnational and local members of those same organizations. Indigenous women's organizations took part in the safeguards interpretation process, which had gender as a cross-cutting theme. The independent assessment found no evidence of a methodology, strategy or roadmap to integrate the contributions of Indigenous Peoples in the development of forest reference emissions levels and monitoring and information systems for REDD+.

In the opinion of the specialists interviewed for this research, given the recent launch of the Safeguards Information Module, it is still too early to assess if there will be robust provisions for the measurement, monitoring reporting and verification of REDD+ safeguards. However, they also noted that even though the state institutional infrastructure is weak, the role played by indigenous organizations and the participatory processes and platforms generated so far could be considered a solid foundation to build and monitor a fair and transparent benefit sharing system. To support this foundation, it will be essential for MINAM to develop a clear roadmap to integrate the contributions of indigenous organizations at both the national and local levels.

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1 Other community-based tenure regimes that grant resource access and territorial rights to Indigenous Peoples are *Reservas Comunales* (Communal Reserves), which are natural protected areas jointly managed by the state and indigenous communities, and *Reservas Territoriales* (Territorial Reserves), which assign territorial protection to Indigenous Peoples living in voluntary isolation or initial contact.

2 However, for some indigenous organizations full legal recognition will only be achieved when legal personhood is ascribed to Indigenous Peoples (*pueblos indígenas*) and not only to their communities.

What is in the table?

The table lists ten criteria regarding Peru's legal system's support for the rights of Indigenous Peoples. The criteria are: (1) recognizes historically underrepresented groups; (2) aligns with the Cancun safeguards; (3) recognizes gender and/or women's concerns; (4) recognizes the rights of Indigenous Peoples under international law; (5) recognizes land and resource rights for Indigenous Peoples; (6) recognizes community carbon rights; (7) recognizes the right of Indigenous Peoples to consultation and free, prior, and informed

Table 1. Peru's support for indigenous rights in the context of REDD+ (at a glance)

	Rating	Detail	Reference/Source
(1) Groups recognized by law	Yes (Indigenous Peoples)	Indigenous Peoples' rights are legally recognized in Peru. Various international legal norms that mandate the normative and jurisprudential recognition of indigenous rights interlace with the Constitution of 1993. The Constitution consecrates and protects the ethnic and cultural plurality of the Nation, and recognizes the right to communal property over lands (Art. 88), the legal personhood of Peasant and Native Communities (in the Andes and Amazon, respectively), as well as autonomy in their organization, communal labour, and the free use of their lands (Art. 149), and the communities' jurisdiction over activities conducted within their territories (Art. 149). Furthermore, different laws implement some of these provisions, such as the Law of Prior Consultation, enacted in 2011. It is important to note, however, that for some indigenous organizations, full legal recognition will only be achieved when legal personhood is ascribed to Indigenous Peoples and not only to their communities.	Guevara Gil A and Cabanillas C. 2019. Mineralizing the right to prior consultation: From recognition to disregard of indigenous and peasant rights in Peru. <i>Global Jurist</i> 20(1).
(2) Cancun safeguards/SIS	Yes (SIS completed in 2021)	The Safeguards Information System (<i>Modulo de Información de Salvaguardas</i> , MIS) was presented in December 2021 as an untested pilot scheme. It has three core components: 1) a safeguards portal; 2) an MIS application where users can register how REDD+ initiatives are respecting safeguards; and 3) a grievance mechanism (<i>Mecanismo de Atención al Ciudadano</i> – MAC-REDD+). Its development included a consultation process with different stakeholders, including Indigenous Peoples' organizations.	https://www.un-redd.org/news/honduras-and-peru-launch-new-platforms-ensure-redd-environmental-safeguards
(3) Gender/women's concerns	Limited	The Law of Forestry and Wildlife (No. 29763) establishes that the state must guarantee equal access conditions to resources, development opportunities and benefit sharing mechanisms with a gendered approach, through the design and implementation of forest public policy. Accordingly, the Ministry of Environment has developed an Action Plan of Gender and Climate Change with the aim of incorporating a gender-based approach within policy and management tools on climate change adaptation and mitigation. Gender is considered to be a cross-cutting theme within the process of implementing the Nationally Determined Contributions (NDCs), yet its mention remains to be translated into concrete and relevant mitigation and adaptation actions. Gender was also a cross-cutting theme in the national process of safeguards interpretation (which included indigenous women's organizations among the consulted stakeholders), as in the establishment of the Safeguards Technical Sub-Committee.	DGCCD. 2020. <i>Primer resumen de información sobre la forma en que están siendo abordadas y respetadas las salvaguardas REDD+ en el Perú</i> . AAS, ONAMIAP, RRI. 2021. <i>Inclusión de los derechos humanos, étnicos y de género en las contribuciones determinadas a nivel nacional (NDC) de Colombia y Perú</i> .
(4) Indigenous Peoples rights under international law	Yes	Signatory of ILO 169 (ratified in 1994), the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the OAS' American Declaration on the Rights of Indigenous Peoples, and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.	
(5) Land and resource rights	Limited	The Constitution recognizes the right to communal property over lands (Art. 88); the legal personhood of Peasant and Native Communities, as well as "autonomy in their organization, communal labour, and the free use of their lands" (Art. 89); and communities' jurisdiction over activities conducted within their territories (Art. 149). In addition, communal land rights over land are recognized through the Law of Peasant Communities (No. 24656) and the Law of Native Communities (No. 22175). While the law grants these communities collective titles, with rights that are imprescriptible and guaranteed against seizure, the range of rights conferred to Native Communities is limited. Under the Law of Forestry and	Monterroso et al. 2017. <i>Reclaiming collective rights. Land and forest tenure reforms in Peru (1960–2016)</i> . Working Paper 224, CIFOR.

consent (FPIC); (8) requires formal benefit sharing mechanisms; (9) requires formal grievance mechanisms; and (10) includes provisions for monitoring, reporting and verification (MRV) for rights and social inclusion concerns. We rated each criterion based on whether it aligned with Peru's laws fully (yes), in a limited way (limited – for those that only met some aspects of the criterion), or not at all (no). The table also includes references to legal documents and reports that were reviewed for this flyer. The table and its companion text build on interviews with six Peruvian REDD+ specialists.

	Rating	Detail	Reference/Source
		Wildlife it is established that no individual, community or company can own forestlands but instead can only access forest resources through a contract system. To comply with this, communal rights can only be granted to lands classified as appropriate for agriculture or pastures, whereas for land classified as forests, Indigenous Peoples can only claim usufruct rights. The process to access such contracts is complex and overregulated, leading communities to extract timber informally for which they receive fines. Although experts consider this dichotomy a 'legal fiction' (in practice indigenous communities access and manage both types of land indistinctly), it does negatively influence the titling of indigenous lands, as it complicates the titling process. Furthermore, rights over the resources in the subsoil of titled communities are held by the state.	
(6) Community carbon rights	Limited	There is no ad hoc legislation on carbon rights. Yet, based on the Law of Forestry and Wildlife (No. 29763), and in the Law on Compensation Mechanisms for Ecosystem Services (No. 30215), it can be interpreted that whoever holds tenure rights over land – whether it is private or communal property, or forestry concessions – also holds carbon rights. However, as native communities only hold usufruct rights over forest lands, they may be entitled to the economic benefits derived from payments for ecosystem services but not to decide or directly negotiate the terms of such commercialization.	Peña P. 2014. <i>El marco legal peruano para implementar REDD+</i> . SPDA. RRI. 2021. <i>Status of Legal Recognition of Indigenous Peoples', Local Communities' and Afro-descendant Peoples' Rights to Carbon Stored in Tropical Lands and Forests</i> . Technical Report.
(7) Free, prior and informed consent	Yes	Legislated under the Law of Prior Consultation and its bylaws, following Peru's responsibilities under ILO C169. Although the safeguards interpretation process did not involve a formal consultation process, indigenous organizations participated in the Safeguards Technical Sub-Committee, which was created in 2019. According to a REDD+ readiness package independent assessment conducted by a Peruvian NGO (DAR 2019), the participation and involvement of national indigenous organizations based in Lima was actively promoted. However, this was not the case with the subnational and local bases of the same organizations. The assessment found no evidence of a methodology, strategy or roadmap to integrate the contributions of Indigenous Peoples in the development of forest reference emissions levels and monitoring and information systems for REDD+.	DAR. 2019. <i>Independent Assessment of Peru's REDD+ Readiness Package</i> . Executive Summary.
(8) Formal benefit sharing mechanism	No	Although the benefit sharing mechanism was expected to be concluded in 2019, it has yet to be presented. The Law of Forestry and Wildlife can provide some important guidelines for the design of this mechanism. For instance, this law establishes that forest rights holders are entitled to receive the benefits derived from payment for ecosystem services schemes. It remains to be seen how this will be included in the formal benefit sharing mechanism for REDD+.	
(9) Formal grievance mechanism	Limited	The <i>Mecanismo de Atención al Ciudadano</i> (MAC-REDD+) was designed as part of the Safeguards Information Module (MIS). The MAC-REDD+ has already gone through a participatory process to receive feedback to improve its performance. MAC-REDD+ will be accessible on-site, online and via telephone.	
(10) MRV of social/rights concerns	No	Given the recent launch of the Safeguards Information Module (MIS), it is too early to assess if there are robust provisions for the measurement, monitoring, reporting and verification with respect to REDD+ safeguards.	

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