

This consultation closed on April 10, 2024. Please reach out to anna.ducros@iied.org if you have any further questions.

**Recommendations on Biodiversity Credits of the
Community Advisory Panel (CAP) of the Biodiversity Credit Alliance (BCA):
Discussion Paper for Consultation**

11th March 2024

1. Executive Summary

This document is presented by the Community Advisory Panel of the Biodiversity Credit Alliance. It is intended to inform active discussions ongoing about establishing voluntary markets as a new form of finance for nature, in the context of the Kunming-Montreal Biodiversity Agreement.

The document comprises the following sections:

1. Executive Summary
2. A Preamble framing the debate on biodiversity credits as a financing instrument
3. The Background and Objectives of this document
4. Emphasis on the do no harm and human rights approach
5. Respect for Earth's and Nature's rights
6. Due diligence recommendations for actors in the biodiversity market, to respect Indigenous Peoples' and local communities' rights
7. Indigenous data sovereignty
8. Compensation and benefit-sharing
9. Enabling conditions for rights-respecting outcomes
10. Recognition of the contribution of Indigenous People and local communities to protecting the planet
11. Governance structures for biodiversity credit initiatives

This document does not take a position on voluntary biodiversity credits, but believes that this will serve to inform decision-making of Indigenous Peoples local community organizations who may have their own authoritative views on the subject matter.

Furthermore, this document primarily focuses on voluntary biodiversity credit markets (whether regulated or not) and should not be interpreted as Indigenous Peoples or local communities expressing their support for, or acceptance of mandatory, mandated, or compliance biodiversity credit markets.

We welcome any further questions and feedback to the Communities Advisory Panel of the Biodiversity Credit Alliance, whose Secretariat is provided by the International Institute for Environment and Development (IIED).

2. Preamble

Many Indigenous Peoples and local communities are the historical guardians of life that manifests in water, plants, fauna, savannah grasslands, forests, mountains, moorlands, snow-capped mountains, oceans, glaciers, mangroves, beaches, wetlands, and every living form that represents a cell of the existing cosmic order.

Since time immemorial, our ancestors understood the codes of nature, its laws, and its teachings, so that each people from every place of origin, according to traditions, totems, spiritualities, and knowledge, could exercise governance over life. This is the inheritance that ancestral wisdom has left us, which we still preserve and thus the reason we are biodiversity rich, and for this reason, we feel the duty to express to the United Nations and its member States, so that, in the face of today's environmental emergency, we may be heard from their consciousness.

With due respect, but without baggage, we express that we understand, but we lament the logic that those who hold technological power and economic power wield control over the world; because through this path, power has become an obsession of powerful nations that have blinded their essence as children of the earth and have become masters of the planet. In this utilitarian logic, they have objectified the world and commodified everything that exists, and this is now the backbone of the system that States have adopted today.

This wave of injustices against the goods of nature has been interpreted by many grandparents, elders, and sages of Indigenous Peoples as a war against Mother Earth and a denial of the rights of future generations; in the face of which many leaders of Indigenous Peoples and local communities have raised their voice of discontent, and many of them have sacrificed their lives for these claims. Therefore, we reaffirm that a large part of human history is a history of pain written with the blood of our ancestors.

We do not intend to denounce or scandalize the actions of those who currently hold the power of decision regarding the destinies of the world, but we do want them to remember that, in recent decades, injustices have been committed with Nature in the name of development, and rights of the land have been violated through megaprojects that have destroyed vital resources and desecrated sacred sites. Faced with all these irreparable damages, in recent years, it has been callously asserted that the polluter must pay, trying to imply that everything can be resolved with the god of money.

Around these injustices with the assets of nature, categories, and concepts about wealth and poverty have been created; social inequalities have been established, and above all, human thought has been contaminated, with all the repercussions that derive from it, and in the face of which Indigenous Peoples and local communities are often considered poor, backward, and ignorant. That is why today Indigenous Peoples and local communities ask the world if it is more ignorant to recognize the earth as a mother or to consider the earth as a commodity.

One of the first pieces of scientific equivalence of traditional and Indigenous Peoples' knowledge is that the earth is a living being, with sensitivity and epistemic wisdom; we owe to it what we are and what we do as peoples. Our history, traditions, myths, languages, and all practices as peoples are owed to Mother Earth; she is the source of the ancestral sciences of Indigenous Peoples and local communities which today are still in force and necessary for the preservation of life.

Therefore, in the face of the proposal for payment for environmental services or credits for various vital resources by those with economic power, it is necessary that we jointly evaluate the adverse impacts caused against nature, with effective participation of Indigenous Peoples and local communities as guardians and mourners of nature and not only by those who hold decision-making power in the spheres of global politics where climate change is discussed, but in reality, it is about the earth in a state of illness.

It is not fair that those who have caused the greatest contamination and deterioration of nature now assume a heroic stance as if it were a help with financial resources so that we continue to care for or restore nature's resources; which they further intend to be under their logic, their norms, and their convenience, in which we would end up absorbed by the market system. We cannot forget that today we are facing environmental damages caused by greed that no economic budget can repair.

We understand that the birth of the United Nations was motivated to safeguard order and advocate for rights related to life; hence the UN system has become institutionalised in all fields, which we recognize its importance. But at the same time, it seems paradoxical to us that around environmental issues today, life is in imminent danger. In this sense, we consider it urgent that, just as human rights have been declared binding for States, the rights of nature and of the earth must also be recognized as binding for States.

Therefore, from Indigenous Peoples and local communities, we urgently call upon the United Nations to lead this task in conjunction with the people. It is a commitment to just mitigation and a change in human behaviour in the face of the environmental emergency caused by projects such as mining, deforestation, the use of agrochemicals, biopiracy, animal trafficking, river, lake, and ocean pollution, among others. If every year heads of state meet to issue statements about their management or concern, why is it not possible to gather the many voices of the Indigenous Peoples and local communities, so that from the UN microphones, we can speak to the world on this issue?

Given all of the above, since the matter of bonds and/or credits will be a reality, we, as Indigenous Peoples and local communities, advocate for these processes to be based on principles that guarantee the exercise of the rights that we hold as pre-existing peoples to the

States; because before human laws, we are protected by the right of birth, in accordance with the natural law or law of origin written in the codes of nature since the beginning of time.

In this sense, the agreements, commitments, or deals that are to be established must bear the hallmark of transparency, good faith, and due process, where clear dialogue will be the guideline for understanding. Indeed, each agreement with the communities must be preceded by the corresponding consultation, so that there is prior, free, and informed consent. In this way, indigenous peoples do not assume the simple role of beneficiaries, but that of strategic allies to continue fulfilling the mission of being guardians of life.

Finally, we express our will that the present content be incorporated as a preamble or historical background to the terms of reference and the letter that will guide the parties involved in the upcoming agreements, with the certainty that the future of humanity depends on the health of Mother Earth, and her health depends on our actions and commitment as her children.

3. Background

In new times, humanity understands the need to safeguard the life of planet Earth as a condition to guarantee the permanence of human life; therefore, today it is an urgent obligation that States, companies and society establish agreements to protect the universal bank of nature (biodiversity), whose resources have been lent to us by creation.

Indigenous Peoples and local communities are no strangers to this task for life; on the contrary, from ancestral knowledge and under the guidance of wise grandparents we have assumed this mandate for life because we are aware of the incalculable and permanent value of biodiversity. That is why today we are present to be heard and so that our word is included and underscored in future agreements, because we are holders of ancestral systems of organization and governance with our own rules and ancestral principles and norms related to the protection of the living natural order and the fair use of the goods of nature based on the tradition of each people.¹

This document does not pre-emptively endorse nor condemn biodiversity credits as a mechanism; however, it is important to acknowledge that such mechanisms may be incompatible with the worldviews or priorities of many Indigenous Peoples or local

¹ Indigenous Peoples own customary laws and responsibilities, in some parts of the world referred to as "Greater rights", or "Ancestral rights", "refers to the memory and historical conscience of the Indigenous Peoples, based on a set of ancestral principles and norms related to the protection of the living natural order and the fair use of the goods of nature. The ancestral principles and norms of the indigenous peoples are pre-existent to the constitutional system of the state; they are inherent to the territory and tradition; and they constitute the source of their system of community life in connection with mother earth. In effect, the Major Right is a fundamental, prevalent and imprescriptible right of the indigenous peoples". Voices of Indigenous Traditional Authorities. 2005.

communities.² This document also recognizes, and emphasizes, that market-based solutions have historically, and continue to exclude rights-holders from decision-making, have presented new risks for us, and that such mechanisms have, in many cases, failed to address the real drivers of biodiversity and nature loss.³ Failure to effectively include and ensure respect for our rights has also created significant risks for many projects and their viability.

This document is therefore the starting point to establish a process of dialogue based on the diverse knowledge of the world, which reflects biodiversity. In this sense, the Indigenous Peoples and local communities hope that in the decision scenarios on the issue of credits for biodiversity, our spokespersons from the Community Advisory Panel (CAP) and other bodies and work commissions that result, be with voice and vote, because we have the firm conviction that in the coming decades, the ancestral sciences of Indigenous Peoples and local communities will be a main reference for decision-making in all matters related to safeguarding the planet.

3.1 Objective

This document seeks to establish a rights-holder-driven framework for guiding nature markets and biodiversity credits, with full recognition and respect for the rights of nature and the contribution of Indigenous Peoples and local communities, to protecting the planet.

Through this document, the Community Advisory Panel (CAP) seeks to provide key principles and recommendations for actors in biodiversity credit and nature markets, such as multi-stakeholder initiatives, project proponents and developers, standard-setters, registries, exchanges, marketplaces, brokers, buyers of credits, as well as Indigenous Peoples and local communities. While this document seeks to provide initial guidance, it needs to be adopted to the specific context and wide diversity of Indigenous Peoples and local communities. Given that discussions of biodiversity credit markets are at an early stage, the guidance and principles may require further clarification, guidance, or amendments. It should not be understood as a final, comprehensive guide or a checklist. This initial document is merely a starting point and does not preclude any rights or future positions of the CAP.

3.2 Who are Indigenous Peoples and Local Communities

There are approximately 5000 distinct Indigenous Peoples worldwide, and although no single definition exists of Indigenous Peoples, there are several criteria for identifying Indigenous Peoples.⁴ In some contexts, other terms may be used, such as Tribes, Pastoralists, First

² For example, at COP28, the International Indigenous Peoples Forum (IIPFCC) on Climate Change Caucus delivered a statement calling for a moratorium of Carbon markets and offsets, geo-engineering, mal-adaptation technologies, “Net Zero” frameworks and “Nature-based solutions” that violate Indigenous Peoples’ rights. See <https://www.iipfccpavilion.org/stories/openingcop28>

³ See e.g., the Indigenous Environmental Network (IEN) submission to the UNFCCC.

https://unfccc.int/sites/default/files/resource/SB007_call_for_input_indigenous_Indigenous%20Environmental%20Network.pdf

⁴ For further guidance on identifying Indigenous Peoples, see the Aluminum Stewardship Initiative (ASI) Criteria for the Identification of Indigenous Peoples. <https://aluminium-stewardship.org/wp-content/uploads/2017/04/ASI-IPAF-Fact-Sheet-1-Identifying-IPs-2015.pdf>

Peoples/Nations, Aboriginals, Ethnic groups, Adivasi, or Janajati. Moreover, many Indigenous Peoples are not recognized as such by their governments. In some contexts, the term Indigenous may be avoided due to discrimination or criminalization of people that self-identify as such. Indigenous Peoples exist within and across nation States as political, social, and legal entities represented through their own governance structures and exist regardless of formal State recognition or the terminology used by States to describe them.⁵ Indigenous Peoples do not just enjoy human rights individually but have rights as collective subjects of international law and not only as members of such communities or peoples.⁶

While ‘local communities’ is not a well-defined term in international law,⁷ and are distinct from Indigenous Peoples,⁸ actors in the biodiversity credit market should recognize that many non-Indigenous Peoples, communities, or groups, particularly those with customary or collective land tenure systems, or with distinct cultures tied to their lands, territories and resources, enjoy similar rights to Indigenous Peoples recognized by various international law instruments as well as national constitutions and legislation.⁹

4. Respect for Human Rights and Do no Harm Approach

Businesses, investors, governments, and other organisations in the biodiversity credit sector should pursue a ‘do no harm’ approach, and recognize, protect, respect, and promote the full range of Indigenous Peoples, and local communities’ rights as enshrined in international human rights law, and environmental law.

Those instruments include but not limited to:

- UN Guiding Principles on Business and Human Rights
- UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- UN Declaration on the Rights of Peasants (UNDROP)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)

⁵ Special Rapporteur on the Rights of Indigenous Peoples. (2022). A/77/238: Protected areas and indigenous peoples’ rights: the obligations of States and international organizations.

⁶ Inter-American Court of Human Rights, *Entitlement of legal entities to hold rights under the Inter-American Human Rights System*, Series A No. 22 (2016), para. 75

⁷ For example, the UN Permanent Forum on Indigenous Issues Twenty-First Session has stated that it is “unacceptable to undermine the status and standing of indigenous peoples by combining or equating them with non-indigenous entities such as minorities, vulnerable groups or local communities.” As such, grouping Indigenous Peoples together with non-Indigenous communities under umbrella terms such as “IPLCs” should be discontinued.

⁸ For further guidance on the specific rights and international instruments underpinning the rights of local communities, see the Land Rights Standard. <https://rightsandresources.org/land-rights-standard/>. Guidance on identifying local communities has also been developed by the Rights and Resource Initiative. See

<https://rightsandresources.org/blog/in-latin-america-a-new-set-of-criteria-to-help-identify-and-protect-local-communities/>

⁹ The ILO Convention No. 169 provides for the protection of rights of Tribal Peoples, including Afro-descendent Peoples. For further details, see <https://rightsandresources.org/land-rights-standard/>. The Jurisprudence of the Inter-American Court of Human Rights also provides for the protection of distinct peoples whose rights to their lands and natural resources is necessary for their social, cultural and economic survival. See Case of Saramaka vs Suriname. https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- ILO Convention 169 on Indigenous and Tribal Peoples
- American Convention on Human Rights
- African Charter on Human and Peoples' Rights
- Convention on Biological Diversity
- Jurisprudence and authoritative interpretations developed by international and regional human rights mechanisms.

To this end, it is critical that actors in the biodiversity credit take proactive steps to ensure that biodiversity schemes, standards, and initiatives recognize, protect, identify, and respect the full range of human rights that have been established by international law and jurisprudence. Those rights include but are not limited to:

Lands, territories, and resources: Indigenous Peoples and local communities' rights to their lands, territories, and resources should be respected, including rights to lands and resources of high social, cultural and economic importance.¹⁰ Particularly, the rights of Indigenous Peoples and local communities to enjoy their culture associated with a certain way of life associated with their lands should be respected.¹¹

As affirmed by UNDRIP Indigenous Peoples have the right to own, use, develop, and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.¹² The right of Indigenous Peoples to enjoy the territories and natural resources traditionally used for their subsistence and cultural identity is unalienable.¹³ Indigenous peoples' rights to traditional territories exist independently of domestic legislation, and the fact that the national legislation does not award them formal title is therefore irrelevant, according to international human rights law".¹⁴

Right to family life, home, privacy, and correspondence: The right of everyone to freedom from arbitrary or unlawful interference with family life, home, privacy, and correspondence, guaranteed by Article 17 of the ICCPR should be respected.

¹⁰ Committee on Economic, Social and Cultural Rights. (2022). General comment No. 26 on land and economic, social and cultural rights

¹¹ Human Rights Committee (1994). CCPR General Comment No. 23: Article 27 (Rights of Minorities)

¹² UNDRIP Article 26; Committee on Economic, Social and Cultural Rights. (2009). E/C.12/GC/21: *General comment No. 21. Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*, para. 36.

¹³ The Human Rights Committee (CCPR) has affirmed that the protection of Indigenous Peoples' rights to their lands, territories and resources is directed towards ensuring their survival and continued development of their cultural identity. In this context, the Committee considers that Indigenous Peoples "have an inalienable right [...] to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity." Human Rights Committee. (2022). CCPR/C/132/D/2552/2015: *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2552/2015*, para. 8.4.

¹⁴ Committee on the Elimination of Racial Discrimination. (2020). CERD/C/102/D/54/2013: *Opinion adopted by the Committee under article 14 of the Convention, concerning communication No. 54/2013*. para. 3.2

Data collection, including satellite or drone monitoring of their territories and the biodiversity within, or the use of park guards, public or private security, should not unlawfully or arbitrarily interfere with the right to privacy within the territories in which they reside and enjoy their family life and privacy.

In order to prevent and mitigate negative impacts on the right to privacy, mutually agreed mitigation and prevention measures, and acceptable methods of data collection should be agreed upon with Indigenous Peoples and local communities.¹⁵

Indigenous Peoples and local communities should have the possibility to collectively, or individually, ascertain in an intelligible form, whether, and if so, what data related to their way of life is stored by actors in the biodiversity credit market, and for what purposes, and if such data interferes with the right to privacy, the possibility to request its deletion.¹⁶

Right to participate in cultural life, to enjoy benefits from scientific progress, and protection of moral and material interests: The right of everyone to participate in cultural life, to enjoy benefits from scientific progress, and the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author, as guaranteed under Article 15 of ICESCR should be respected.¹⁷

Indigenous Peoples have a right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs, sports and traditional games, and visual and performing arts, and the right to maintain, control, protect, and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.¹⁸ No cultural, intellectual, religious or spiritual property shall be taken without free, prior, and informed consent.¹⁹ The individual or collective authorship of Indigenous Peoples of their scientific, literary, or artistic production, which are also expressions of their cultural heritage should be respected.

¹⁵ For Indigenous Peoples the right to family life and privacy be understood in relation to Indigenous Peoples' special relationship to their territories in which they reside and enjoy their privacy. See. Human Rights Committee. (2022). CCPR/C/132/D/2552/2015: *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2552/2015*, para. 8.4

¹⁶ See CCPR General Comment No. 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, para. 8 and 10

¹⁷ Committee on Economic, Social and Cultural Rights. (2009). E/C.12/GC/21: *General comment No. 21. Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*, para. 37; Committee on Economic, Social and Cultural Rights. (2020). *General comment No. 25 on science and economic, social and cultural rights*, para. 39

¹⁸ UNDRIP Article 31; Committee on Economic, Social and Cultural Rights. (2020). *General comment No. 25 on science and economic, social and cultural rights*, para. 39. paras 39-40

¹⁹ UNDRIP Article 11; see also Committee on Economic, Social and Cultural Rights. (2005). *General Comment No. 17: The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant)*

The right to consultation, participation in decision-making, and right to give or withhold free, prior, and informed consent: Actors in the biodiversity credit market should recognize and respect the three interrelated rights of consultation, participation in decision-making, and free, prior, and informed consent as guaranteed by various international human rights instruments and jurisprudence.²⁰ Those rights must be aimed at guaranteeing Indigenous Peoples' and local communities' rights, dignity, and well-being, including their lands and culture.²¹

The right to consultation should include the possibility to determine how to be consulted, and how to exercise free, prior, and informed consent. Effective participation in decision-making requires that Indigenous Peoples and local communities are part of designing biodiversity credit programs at the conceptualization stage of a proposal and not just at the point of approval of a proposal or project, and that their social, cultural, and economic priorities are central to any decision-making. It also requires that rightsholders, can give or withhold their free, prior, and informed consent to each relevant aspect of a proposal. For example, for free, prior and informed consent to occur, information should be made available regarding the human rights track record of buyers of biodiversity credits, investors, and other intermediaries, and enable Indigenous Peoples or local communities to refuse them if they fail to ensure respect for Indigenous Peoples' or local communities' rights. Consent must be "ongoing" with express opportunities and requirements for review and renewal set by the parties. Indigenous Peoples and local communities should have sufficient time and resources to make their own informed assessments and decisions.²²

For Indigenous Peoples, free, prior and informed consent is an expression of self-determination, and as such, Indigenous Peoples have the right to determine how to exercise free, prior and informed consent,²³ in accordance with their own procedures and protocols, through freely chosen representatives.²⁴ It is also a safeguard of collective rights of Indigenous Peoples, and as such, consent cannot be exercised by individual members of a community.²⁵

The right to self-determination, autonomy and self-governance of Indigenous Peoples.²⁶

Actors in the biodiversity credit market should carry out due diligence to identify and respect the self-determined laws, protocols, customs and traditions, as well as structures of Indigenous Peoples. In particular, actors in the biodiversity credit market shall not undermine the autonomy

²⁰ For an explanation of the thresholds that must occur for free, prior, and informed consent to occur, see <https://www.ohchr.org/en/documents/thematic-reports/free-prior-and-informed-consent-human-rights-based-approach-study-expert>

²¹ For operational guidance on FPIC, see e.g., the RSPO FPIC Guide 2022. <https://rspo.org/rspo-publishes-free-prior-and-informed-consent-fpic-guide-2022/>

²² UNDRIP Article 39

²³ Expert Mechanism on the Rights of Indigenous Peoples. (2018, August). *A/HRC/39/62: Free, prior, and informed consent: a human rights-based approach - Study of the Expert Mechanism on the Rights of Indigenous Peoples*, para. 42.

²⁴ UNDRIP Article 18

²⁵ For a guide on community-led free, prior, and informed consent, see <https://www.sirgecoalition.org/fpic-guide>

²⁶ As affirmed by the UNDRIP, International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

of Indigenous Peoples' autonomous institutions or structures by exerting undue influence or dividing organizational structures or communities.

The right to rights to life, to liberty and security of person, to freedom of opinion and expression, to freedom of peaceful assembly and to freedom of association. In many countries, Indigenous Peoples and local communities that seek to defend their rights are frequently subject to undue criminal prosecution and other acts, including direct attacks, killings, threats, intimidation, harassment and other forms of violence. Actors in the biodiversity credit markets should adopt a zero-tolerance approach towards such acts and proactively take steps to ensure risks are effectively prevented.

The right to remedy as enshrined in the UN Guiding Principles on Business and Human Rights and the UNDRIP, including restitution for lands and resources and cultural, intellectual, religious, and spiritual property taken from Indigenous Peoples without their free, prior and informed consent.²⁷

5. Respect for Earth's and Nature's Rights

Actors in the biodiversity credit sector should recognize, protect, and respect the inherent rights of earth and nature. Accordingly, whereas nature has inherent rights, the guardians of nature may give it legal voice through representation. Concepts such as biodiversity offsets, which seek to justify the destruction of nature and violation of the rights of earth and nature by pretending to offset, or conserve it elsewhere, would be contrary to respect for the rights of nature.²⁸

Likewise, for companies to use biodiversity credits to claim "nature positive" outcomes, while damaging nature, including on Indigenous and local community lands, would be misleading and contrary to respect for the rights of nature.

Respect for Earth's and Nature's rights also means that biodiversity credits should not commodify nature by seeking to measure its economic value, but rather, seek to value the service provided to nature itself.

6. Due Diligence

Per the UN Guiding Principles on Business and Human Rights, States must protect, fulfill, and respect human rights. Businesses should carry out due diligence independently of States' abilities and/or willingness to fulfil their own human rights obligations. Actors in the biodiversity credit market, including but not limited to buyers, exchanges, certifiers, and project developers,

²⁷ UNDRIP Article 11 & 28

²⁸ See also the E-Sak-Ka-Ou Declaration developed at the Asia Regional Conference on Indigenous Peoples' Rights, Biodiversity, and Climate Change, which states that offsetting is not the solution. <https://aijppnet.org/wp-content/uploads/2023/11/E-Sak-Ka-Ou-Declaration-DIGITAL.pdf>

should meet their obligations and responsibilities in line with the UN Guiding Principles on Business and Human Rights and emerging legal frameworks, including but not limited to the following.

Identify any actual or potential human rights and environmental impacts that may arise from biodiversity credit initiatives, in collaboration and cooperation with rights-holders, and take adequate actions to prevent and mitigate such impacts, and to avoid complicity.²⁹ Heightened attention should be given to contracts signed with third parties without free, prior and informed consent of rights-holders, unfair contracts or agreements that seek to impose strict restrictions on access to lands, territories and resources, extinguish legal rights or limit them in perpetuity, or that restrict the ability to re-negotiate contracts and agreements, or that restrict the possibility to access judicial and non-judicial grievance and resource mechanisms. Incentivizing land speculation by creating financial assets out of Indigenous Peoples' and local communities' lands, territories and resources, such as 'Natural Asset Companies', or digital tokens, or contracts that grant 'investors' in such assets a right or control over such lands, territories and resources should be avoided.

Identify Indigenous Peoples and local communities' lands, territories and resources that they have a right to through traditional possession, occupation or use, regardless of whether they possess formal title over such lands or not.³⁰ Particular attention should be given to biodiversity credit projects in protected areas established on or near Indigenous territories and local community lands without free, prior, and informed consent. Particular attention should also be given to projects in lands traditionally owned, occupied, which have been confiscated or taken without their free, prior, and informed consent, and which Indigenous Peoples and local communities still have cultural or spiritual ties to, as well as responsibilities to future generations.³¹

Identify their legitimate representative institutions, to consult and seek free, prior and informed consent, and if consent is granted, ensure that decisions taken or agreements that affect Indigenous Peoples and local communities' rights reflect the interests of the Indigenous People or local communities concerned, in accordance with their own protocols and decision-making systems.³² If free, prior, and informed consent is not granted, then projects should not proceed.

²⁹ For comprehensive guidance on Indigenous Peoples' land rights, see Forest Peoples Programme's Stepping Up Due Diligence Guidance: <https://www.forestpeoples.org/en/en/stepping-up-due-diligence>

³⁰ For guidance on participatory mapping of lands, see the HSCA Social Requirements: <https://highcarbonstock.org/wp-content/uploads/2023/01/HCSA-Social-Requirements-2020.pdf>, as well as the Appendix 3 to its implementation guidance. <https://highcarbonstock.org/wp-content/uploads/2020/08/HCSA-Implementation-Guide-Apr-2020.pdf>. See also Forest Peoples Programme's Guidelines for Participatory Mapping. <https://www.forestpeoples.org/sites/default/files/documents/Guidelines%20for%20mapping.pdf>

³¹ UNDRIP Article 25

³² For guidance on FPIC, see e.g., the Aluminum Stewardship Initiative (ASI) Indigenous Peoples' Free, Prior and Informed Consent. <http://aluminium-stewardship.org/wp-content/uploads/2017/04/ASI-IPAF-Fact-Sheet-2-FPIC-2015.pdf>

Identify any competing land claims or interests and avoid causing or contributing to conflicts over resources. Actors should avoid developing mechanisms or structures that incentivize conflicts over lands, territories and resources, including over territorial boundaries.

Carry out due diligence to ensure that data collected from Indigenous territories and local lands or imparted by Indigenous Peoples and local communities is not distributed or transferred to actors that seek to exploit this information for unauthorized purposes, or actors that seek to exploit such information to weaken Indigenous Peoples and local communities' control over their territories and lands, or to transfer ownership or control of such lands, territories and resources, or cultural, intellectual, religious and spiritual property to external actors without the free, prior and informed consent of Indigenous Peoples.

Ensure grievance mechanisms are independent, accessible, rights-compatible, and culturally appropriate, and cooperate in remediation of adverse impacts, including for restitution of lands, territories and resources, and cultural, intellectual, religious, and spiritual property taken from Indigenous Peoples and local communities without their free, prior and informed consent.³³

7. Data Sovereignty and Ownership

Indigenous Peoples and local communities hold a rich cultural diversity and knowledge of biodiversity, transmitted through generations. Across generations, Indigenous Peoples' and local communities' knowledge, innovation, and practices, including Indigenous Peoples and local communities' languages, knowledge systems, culture, identity, and livelihoods have generated a wealth of knowledge and data related to the sustainable management of biodiversity. Actors in the biodiversity credit market should recognize the sovereignty of Indigenous Peoples and local communities over data that is about them or collected from them and that pertains to Indigenous Peoples and local communities' knowledge systems, customs or territories, land and resources.³⁴

Where data collected on such knowledge, or innovation, and practices is used for biodiversity credits, or data is collected from Indigenous Peoples' or local communities' territories and lands, the right to primary ownership of such data should be recognized and respected. Furthermore, the rights to academic, scientific, and personal credit for the work of Indigenous Peoples and local communities and biodiversity credits should be respected. Such knowledge, innovation, and practices shall only be used with free and prior consent of the knowledge-holders, and after mutual agreement on benefit-sharing and academic, scientific and personal credit.

³³ For best practices on non-judicial grievance mechanisms, see e.g., https://www.forestpeoples.org/sites/default/files/documents/Non-Judicial-Grievance-ENG-v04_0.pdf

³⁴ See Special Rapporteur on the Right to Privacy. (2018). A/73/438 Right to privacy: Note by the Secretary-General

8. Compensation and Benefit-sharing

Actors in the biodiversity credits markets should develop mechanisms to ensure that compensation and benefit-sharing is, at minimum, consistent with international human rights and environmental law and jurisprudence,³⁵ as well as best practice.

This should include compensation for any limitation of the regular use of our property, territories, traditional lands and natural resources, and separately, to sharing of the benefits derived from the usage of our property, lands and natural resources,³⁶ and from the utilisation of our traditional knowledge, innovations, and practices related to the conservation and sustainable-use of biodiversity.³⁷

Benefit-sharing agreements should be reached through a free, prior, and informed consent process, ensuring that all rights holders have full information about their right to benefit-sharing, as well as full and objective information about the underlying revenues or expected revenues on which benefit-sharing arrangements are based.

Benefit-sharing agreements should be arranged in a manner that ensures that:

- They do not extinguish any rights or limit them in perpetuity, limit autonomy, or limit access to services;
- Indigenous Peoples and local communities' funds are under the full control of the these Peoples and communities concerned;
- They are aligned with community social, economic, cultural, and political needs, interests, and priorities;
- They respect customary laws, customs and traditions, while giving special attention to the needs of women, youth, children, elders, and people with disabilities;
- They create internal accountability of representatives and revenue managers to their constituencies, and do not create incentive structures that put Indigenous Peoples or local community leaders or representatives in a conflict of interest situation vis-a-vis their communities;
- Information is available and accessible to all rights holders (this should also ensure audit rights clauses are part of all standard agreements);
- There is regular scheduled communication between signatories, and where relevant, independent observers or rights holders' freely chosen advisors;
- Sufficient capacity-building is provided to Indigenous Peoples and local communities to directly manage and distribute funds in a manner that is just and equitable;

³⁵ Special Rapporteur on the Rights of Indigenous Peoples. (2010). A/HRC/15/37: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, para. 79.

³⁶ See the jurisprudence of the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights (Case of Saramaka vs Suriname, para. 129, 139-140, 153-154; Kaliña and Lokono Peoples vs Suriname para. 201, 227-229, 305; Endorois vs Kenya, para. 294-295). The right to benefit-sharing has also been reiterated by UN treaty bodies, including CEDAW, CERD, CCPR, and CESCR (See e.g., CEDAW/C/GC/39; CEDAW/C/PAN/CO/8; CEDAW/C/IDN/CO/8; CERD/C/62/CO/2; CCPR/C/PHL/CO/5; E/C.12/SLV/CO/6).

³⁷ Convention on Biological Diversity Article 8 (j); See also the Mo' otz Kuxtal Guidelines.

<https://www.cbd.int/doc/publications/8j-cbd-mootz-kuxtal-en.pdf>; See also Committee on the Elimination of Discrimination against Women General recommendation No. 39 (2022) on the rights of Indigenous women and girls, para. 55 (c).

- They are legally enforceable;
- They are co-monitored by the signatories;
- Contain clauses and processes to amend agreements, including due to new circumstances or where new information has come to light, or where free, prior and informed consent processes have been inadequate;
- Information imparted by Indigenous Peoples and local communities in the context of benefit-sharing is secured, private, and strictly utilized only for the purposes explicitly agreed upon and not for any other unauthorized or undisclosed purposes;
- Non-financial benefits are also considered, if appropriate and as agreed with Indigenous Peoples and local communities..

9. Enabling Conditions for Enjoyment of Rights

For the materialization and effective enjoyment of these rights, it is necessary to take into account that, within the dialogue process between the holders of supply and demand within biodiversity credits, certain minimums are guaranteed, namely:

- Promotion, protection, and legal recognition of the rights of Indigenous Peoples and local communities, in line with international human rights law.
- Direct dialogue between those who own the economic resources and all those of us who are holders of the ancestral rights that in the timeline are pre-existing to the States, the constitutions, and their laws. This direct dialogue will allow a climate of understanding and fair negotiations.
- Budgets are set aside by investors and project proponents for Indigenous Peoples and local communities to access their own independent technical, legal, and financial advice.
- Ongoing consent for any agreements, with express opportunities for renewal by the parties, which will initially allow the generation of a climate of understanding of categories and concepts that both companies and Indigenous Peoples and local communities maintain around biodiversity.
- Right to review agreements, when communities, for spiritual or other reasons, feel affected or do not see their expectations met or commitments not met. The voice of recommendation, observation, or objection by the elders of the Indigenous Peoples and local communities, as well as customary laws and practices, will have special attention for its compliance.
- Biodiversity credit schemes and standards allow for continued cultural practices and activities related to the administration of the territory that Indigenous Peoples carry out in parallel with the care of the fauna species that are in their habitat, such as traditional hunter-gatherer activities and practice of traditional health practices and utilization of medicinal plants. Strict restrictions on cultural practices should be avoided as part of standard methodologies or contracts.
- Procedures should be appropriate to the diversity of Indigenous Peoples, local communities according to their cultural practices (rituality, use of the ancestral

language, totemic animals and related practices, own norms); because to be guardians of nature we have not needed property documents. Indeed, to be guardians of biodiversity and to access the benefits of this mission, they should not be subject to external categories and requirements of the land market.

- Ensure that intercultural dialogue is thoughtfully incorporated into spaces for discussion and negotiation, giving due consideration to the diverse categories and concepts surrounding biodiversity. Take into account the various logics, notions, and meanings that have been developed over centuries in jungles, mountains, seas, moors, rivers, plains, and other landscapes.
- The business model must be to the full satisfaction of the communities, for which they will be the ones who design and approve the methodology and project plan and will autonomously develop the corresponding activities.
- Communication with rights holders should be in their preferred and chosen language, whether Indigenous or other languages are used.
- Actors external to Indigenous Peoples or local communities should receive training in cultural competency, including with regards to Indigenous Peoples and local communities' customs and traditions, laws and structures, and free, prior, and informed consent, in a manner that ensures respectful interactions and engagement.
- Avoiding incentive structures that create a conflict of interest and collusion between certification bodies, auditors, and project proponents.³⁸ Costs of audits could be paid through contributions to a shared fund to ensure the independence of audits.³⁹
- Provide clear case studies of biodiversity or carbon projects that have succeeded and failed and enable direct access to other Indigenous Peoples and local communities involved in, or affected by such projects, as to guarantee peer-advice on the results and effects of implementation.
- Establishment of a hotline to enable Indigenous Peoples or local communities to receive advice when being approached by biodiversity “cowboys” or “pirates”.⁴⁰

9.1 Addressing Structural Drivers of Biodiversity Loss and Degradation

Biodiversity credit initiatives should be developed in a manner that gives due consideration to structural drivers of biodiversity loss and degradation, taking social, cultural, political, and economic factors into account, including colonialism. Such initiatives should not distract from the need to drastically halt and reduce destruction of nature through adequate policies and

³⁸ See e.g., <https://gspp.berkeley.edu/assets/uploads/page/Quality-Assessment-of-REDD+-Carbon-Crediting.pdf>

³⁹ See e.g., <https://www.forestpeoples.org/sites/default/files/documents/How%20to%20re-build%20confidence%20in%20the%20audit%20system%20of%20certification%20schemes%20EN.pdf>

⁴⁰ Carbon cowboys or pirates typically refer to actors in the carbon credit market that seek to sign unfair deals with communities. Such agreements may have been signed without full information provided to communities, without external legal counsel, and with strict confidentiality clauses. As such, biodiversity cowboys or pirates could be understood to be the equivalent in the biodiversity credit market.

regulation.⁴¹ These should be developed and implemented through good faith consultation and cooperation with Indigenous Peoples and local communities.⁴² Nor should they divert attention from the imperative to expand the protection of Indigenous and traditional territories and lands and protect environmental and land defenders.⁴³

Biodiversity credits could play a relevant role in providing finance for biodiversity protection and restoration, but may also have limitations in terms of scale as they will likely be restricted by project- and location-specific indicators, and as such, may not adequately address the need to protect transboundary ecosystems. It should also be noted that Indigenous Peoples have a right to conservation of the environment and the productive capacity of their lands or territories and resources as affirmed by the UNDRIP, meaning that States shall establish and implement assistance programmes for Indigenous Peoples for such conservation and protection,⁴⁴ with, or without biodiversity credit initiatives.

From the perspective of Indigenous Peoples and local communities, on one hand, biodiversity credits could be designed to recognize Indigenous Peoples and local communities' historical protection of the planet, support their ongoing contribution and protection, and on the other hand, to reduce external threats to Indigenous territories and traditional lands. Where Indigenous Peoples' and local communities' territories and lands have been degraded, such initiatives may be designed to strengthen their institutional capacity to restore nature and biodiversity, including by promoting the intergenerational transmission of cultural and biodiversity knowledge acquired over many generations. Moreover, biodiversity credit initiatives could be designed to strengthen legal land rights and security of tenure of Indigenous Peoples and local communities, including through demarcation and collective land and territories titling.⁴⁵ The protection of Indigenous territories and traditional lands also requires that biodiversity is protected and restored outside of Indigenous territories and traditional lands, given the interconnectedness of ecosystems.

10. Recognition of the Contribution of Indigenous People and local communities to Protecting the Planet

⁴¹ See e.g., the E-Sak-Ka-Ou Declaration developed at the Asia Regional Conference on Indigenous Peoples' Rights, Biodiversity, and Climate Change, which states that carbon and biodiversity can distract from the main aim of drastically reducing carbon emissions caused by polluters and actors who have a historical responsibility for causing climate change.

<https://aijppnet.org/wp-content/uploads/2023/11/E-Sak-Ka-Ou-Declaration-DIGITAL.pdf>

⁴² See UNDRIP Article 19

⁴³ Often, Indigenous land and environmental defenders face serious risks to their life, well-being and integrity, including judicial harassment, including arbitrary detention, and strategic lawsuits against public participation, killings, intimidation and threats, beatings, and other forms of violence.

⁴⁴ UNDRIP Article 29

⁴⁵ Formal recognition and titling of Indigenous lands and territories has been proven to be highly effective in protecting biodiversity. See e.g., Prioli Duarte, D., Peres, C. A., Perdomo, E. F. C., Guizar-Coutiño, A., & Nelson, B. W. (2023). Reducing natural vegetation loss in Amazonia critically depends on the formal recognition of indigenous lands. *Biological Conservation*, 279, 109936. <https://doi.org/10.1016/j.biocon.2023.109936>

Actors in the biodiversity market should recognize the contribution of Indigenous Peoples and local communities in protecting the planet, and the risks Indigenous Peoples and local communities often face in doing so.⁴⁶ Recognizing the valuable contribution of Indigenous Peoples and local communities to protecting the planet requires that biodiversity credit initiatives are designed in a manner that avoids rewarding only those that have historically destroyed nature while excluding those that have stewarded and protected nature.

The issuance of biodiversity credits should not preclude Indigenous Peoples or local communities from engaging in other conservation initiatives, or receiving other forms of support for their historical and ongoing protection of nature.

10.1 Redressing historical injustices

Actors in the biodiversity market should recognize the historical injustices many Indigenous Peoples and local communities have faced in protecting their rights and the world's biodiversity. For biodiversity credit markets to be just and equitable, they must not just apply safeguards, but also seek to redress historical injustices, and create mechanisms to give Indigenous Peoples and local communities agency to exercise their rights and social, economic, political, and spiritual interests and priorities. The restitution and compensation for Indigenous Peoples and local communities' lands, territories and resources must be understood as a right of Indigenous Peoples and local communities, independently of the existence of biodiversity market mechanisms.⁴⁷ As such, companies and State actors should first redress and repair the historical destruction they have caused or contributed, not in order to claim credits, but to comply with an international right of Indigenous Peoples and local communities.

Biodiversity credit initiatives should ensure that they do not further contribute to historical inequities by disproportionately rewarding those that have taken, and damaged Indigenous and traditional territories and lands without free, prior, and informed consent.⁴⁸ Many Indigenous and traditional territories and lands have been confiscated, taken, occupied, used or damaged without their free, prior, and informed consent, for which Indigenous Peoples and local communities have a right to restitution, or where that is not possible, compensation for such lands, territories and resources.⁴⁹ For example, only rewarding biodiversity "uplifts" could deepen historical inequities by rewarding those that have coercively confiscated or taken Indigenous territories and degraded the biodiversity within, or by further restricting dispossessed Indigenous Peoples' or local communities' access to their traditional lands that they still hold a cultural or spiritual relationship to.

10.2 Reducing power imbalances and entry barriers

⁴⁶ Indigenous Peoples comprise approximately 6% of the world's population, but make up over a third of assassinated environmental defenders worldwide. See e.g. <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/>

⁴⁷ UNDRIP Article 28

⁴⁸ For example, only rewarding "uplifts" of degraded areas could deepen historical inequities by rewarding

⁴⁹ UNDRIP Article 28

Moreover, biodiversity credit markets should be developed in a manner that actively reduces the barriers for Indigenous Peoples and local communities. This means ensuring that the specific situation, interests and priorities of Indigenous Peoples and local communities are given due consideration. Methodologies should be developed in a manner that enables Indigenous Peoples and local communities to participate effectively in any project taking place on their territory, taking their social, economic, and political situation and experiences into account. If requested, Indigenous Peoples and local communities should have the possibility to access, or to develop, their own freely chosen advisors, capacity-building, and resources, and to undertake their own independent assessments and plans, and to participate in the development of methodologies.

10.3 Reducing risks for Indigenous Peoples and Local Communities

Biodiversity credit initiatives can present new risks for Indigenous Peoples and local communities, including perverse incentives, power asymmetries, and unfair contracts. While for businesses and investors, biodiversity credit schemes could present reputational and financial risks. Risks for Indigenous Peoples and local communities could include threats to their entire way of life, culture, livelihood. Actors in the biodiversity credit market should actively reduce those risks by design in their initiatives, including in regulation, policies, standards, projects, and agreements with business partners.

Good practice to reduce risks for Indigenous Peoples and local communities could include the development of binding protocols for free, prior and informed consent and good faith negotiation and engagement, prior to initiating a project. Such frameworks could guarantee that the rights, including free, prior and informed consent, compensation, and benefit-sharing measures will be respected in all ongoing and future engagements or agreements.

Moreover, without adequate safeguards, biodiversity credit initiatives could give rise to undue financial risks for Indigenous Peoples and local communities. Factors outside of the control of Indigenous Peoples and local communities, such as climate change, illegal encroachment of their territories, or governmental approval of extractive activities, can lead to unforeseen biodiversity outcomes and foregone revenues and lost investments. Such risks may be heightened if biodiversity credits represent a significant share of their income or investments. To mitigate those risks, it is imperative to ensure sufficient safeguards and insurance for Indigenous Peoples and local communities for factors outside their control and avoid altogether financial penalties for failure of project goals.

Furthermore, there is a risk that biodiversity credits compromise Indigenous Peoples' and local communities' agency and create economic dependency on buyers of biodiversity credits, or intermediaries that do not recognize or respect their rights. Actors in the biodiversity credit markets should develop mechanisms to enable Indigenous Peoples and local communities to set

minimum conditions that buyers of biodiversity credits must meet, in terms of biodiversity protection as well as respect for Indigenous Peoples' and local communities' rights.

There may also be risks of biodiversity credits leading to the commodification of Indigenous and traditional territories and lands, leading to land speculation, and that they are used by external actors to usurp control over Indigenous and traditional territories and lands. Actors in the biodiversity credit market should carry out due diligence and require that business partners do not seek to seize control or ownership of collectively owned, occupied or used Indigenous and traditional territories and lands.

There may also be risks of biodiversity credits being used to push extractive agendas onto our territories. This may happen by seeking to employ credits as "offsets" to justify the destruction of Indigenous and traditional territories and lands, or by project proponents exerting undue influence with the promise of economic revenues, or by weakening Indigenous and local control over the territories. In this context, it is critical that actors carry out due diligence to ensure that initiatives or agreements do not preclude Indigenous Peoples and local communities from taking direct or indirect action, or using resources derived from biodiversity credit agreements, to challenge regulation policies, action plans that drive biodiversity loss or violate Indigenous and traditional rights, including any inseting schemes, permits, licenses, or concessions awarded on or near our territories without our free, prior and informed consent.

Indigenous Peoples and local communities may also face reputational, regulatory, and financial risks if they are involved in biodiversity credit schemes that make false claims. Full information about the integrity of biodiversity credit schemes could help reduce such risks.

11. Governance Structures of Biodiversity Credit Initiatives

Biodiversity credit initiatives, such as private-sector, government-led, and international programs, including Task Forces, standard-setters, certifying bodies etc., should recognize that simply inserting Indigenous Peoples and local communities into a system that is developed for States, corporations, and investors, may put many Indigenous Peoples and local communities at a disadvantage. To guarantee the effective participation, such initiatives should:

- Ensure that Indigenous Peoples and separately, local communities, including those that dissent to such initiatives, are consulted about and participate in the formation (or non-formation) of such initiatives from the conceptualization stage, not just after governance structures have already been decided.
- Recognize that Indigenous Peoples' and local communities' representatives may have many competing threats and demands, and lack of resources, and that market-driven timelines may hinder many Indigenous Peoples and local communities' effective participation.

- Recognize that simply consulting Indigenous and local groups or including Indigenous individuals in an advisory panel does not necessarily comprise effective participation and may further reproduce existing power asymmetries.
- Develop policies for respecting rights, inclusive dialogue, participation and FPIC for Indigenous Peoples, and separately, local communities, as well as respect for their timelines.
- Earmark or set aside budgets to enable Indigenous Peoples and separately, local communities to commission their own independent studies, reports, and recommendations.
- Ensure that in the decision-making spaces there be equal representation for Indigenous Peoples and local communities. Decisions shall not only happen in spaces developed for non-Indigenous Peoples, but should seek to incorporate Indigenous Peoples' decision-making systems.