

**Between Rights and Markets: The Structural Limits of Indigenous  
Participation in the Emerging Biodiversity Credit Market**

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## **Abstract**

Biodiversity credits have gained significant traction as a market-based mechanism for mobilizing private finance toward conservation and restoration, yet the governance structures underpinning these markets have been largely established without meaningful input from Indigenous Peoples and Local Communities (IPLC). This thesis examines the extent to which international Indigenous rights frameworks enable meaningful IPLC participation in biodiversity credit markets and the structural limitations that persist in practice. I argue that international Indigenous rights frameworks and biodiversity credit market governance operate on different foundational logics. Where rights frameworks are centered on collective rights, state obligations, and relational governance, market logic operates through the commodification of nature and transactional consent. This creates a persistent tension that existing frameworks were not designed to resolve. Through an analysis of ILO Convention 169, UNDRIP, and the CBD Kunming-Montreal Global Biodiversity Framework, the thesis identifies a binding gap and sovereignty constraint embedded in the architecture of international law that structurally limits the transformative potential of Indigenous rights frameworks. An empirical evaluation of two biodiversity credit projects in the Ecuadorean tropical Andes – Savimbo's Chandia Na'en project and InvestConservation's Tapichalaca Reserve – further demonstrates that this misalignment is not merely theoretical but manifests concretely in project governance, where commitments to FPIC, equitable benefit-sharing, and Indigenous governance authority are often procedural rather than substantive. The thesis concludes that bridging this gap does not require new rights frameworks but deliberate adaptation of existing ones, and that the infancy of the biodiversity credit market represents a critical window of opportunity to meaningfully embed genuine IPLC participation in market governance before its architecture further matures.

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# Chapter 1: Introduction

## 1.1: Research Problem and Questions

Biodiversity credits have gained significant recognition as a market-based mechanism for mobilizing private finance toward conservation and restoration, yet the governance structures underpinning these markets have been largely established without meaningful input from Indigenous Peoples and Local Communities (IPLC). As key stewards of 80% of the world's remaining biodiversity (World Bank, 2022), IPLC should be active stakeholders in shaping both biodiversity credit projects and the broader market architecture. However, the international legal and policy frameworks that govern IPLC rights were not primarily designed with markets in mind. Existing Indigenous rights frameworks often fail to translate their stated commitments to IPLC participation into effective implementation within biodiversity credit projects and the larger market. In circumstances where participation occurs it may not constitute meaningful engagement including genuine free, prior and informed consent (FPIC) processes, equitable benefit-sharing, recognition of traditional ecological knowledge, and true Indigenous governance authority over projects on their lands. This creates a structural equity problem where IPLC, who are often the stewards of the most biodiverse territories, risk becoming passive stakeholders of a market that profits from their lands and knowledge without genuinely empowering them.

With this background, this research poses the following question: **to what extent do international Indigenous rights frameworks enable or constrain IPLC to meaningfully engage in biodiversity credit projects and the larger market?** Throughout this thesis, I argue that international Indigenous rights frameworks and biodiversity credit market governance operate on different foundational logics creating a persistent tension that existing IR frameworks have not been designed to address. Indigenous rights frameworks are built around collective

rights, benefit sharing, and state obligations whereas market design is centered around commodification and transactional consent. This misalignment highlights that existing frameworks, as currently interpreted and applied, cannot enable meaningful IPLC participation in biodiversity credit markets. Nonetheless, bridging this gap does not require new rights frameworks, but deliberate adaptation of existing ones.

## 1.2: Methodology and Limitations

This research employs two complementary analytical approaches. The first is a policy analysis of three international Indigenous rights frameworks: ILO Convention 169, UNDRIP, and the CBD Kunming-Montreal Global Biodiversity Framework – frameworks most relevant to IPLC participation particularly in environmental contexts. It examines how each framework conceptualizes and institutionalizes IPLC rights to self-determination and FPIC, and evaluates the consistency and adequacy of the normative standard they collectively establish. Secondly, it uses a combined content and discourse analysis of two biodiversity credit project methodologies – Savimbo's Chandia Na'en project and InvestConservation's Tapichalaca Reserve, both located in the Ecuadorean tropical Andes – assessing the extent to which international rights standards are reflected, interpreted, or omitted within project documentation. The two projects were selected on the basis of data availability and comparability. As biodiversity credit markets remain in their infancy, publicly available project documentation is limited. Savimbo and InvestConservation were among the few organizations with sufficient methodology documentation to support meaningful analysis. Both projects are also currently in the issuance phase rather than the concept or piloting phase, providing a more developed evidentiary basis for evaluating governance commitments in practice.

It is important to acknowledge that this analysis is based on publicly available documentation rather than primary fieldwork. The findings therefore reflect how IPLC rights are

articulated within formal governance documents rather than how they are experienced in practice. This limitation underscores the need for further empirical research as the biodiversity credit market matures.

### 1.3: Positionality

As a non-Indigenous researcher, I recognize that my positionality shapes both the questions I ask and the limits of my analytical perspective. While I can examine the structural constraints that IPLC face within international governance and market frameworks, I cannot speak to these challenges from lived experience. The history of research on Indigenous peoples has been marked by extractive methodologies that have reproduced rather than challenged epistemic hierarchies, centering the perspectives of outside researchers while marginalizing Indigenous voices and knowledge systems (Smith, 1999). In recognition of this history, this research deliberately prioritizes the work of Indigenous and non-Western scholars throughout, seeking to ensure that this thesis is informed by those whose knowledge and experience are most directly relevant to the questions it asks. This does not resolve the limitations of my positionality but reflects a conscious methodological commitment to avoiding the reproduction of the same epistemic hierarchies that this research critiques.

### 1.4: Overview

This research examines the extent to which international Indigenous rights frameworks enable meaningful IPLC participation in biodiversity credit markets and identifies where structural limitations persist in practice. The literature review establishes the theoretical and conceptual foundation of the research by examining two interconnected bodies of literature: Indigenous perspectives on land, governance, and conservation, and biodiversity credits as an emerging form of nature finance. This discussion of existing literature revealing a fundamental tension between

Indigenous relational governance and market-based conservation logic. Chapter 3 analyzes how ILO Convention 169, UNDRIP, and the CBD Kunming-Montreal Global Biodiversity Framework conceptualize and institutionalize IPLC rights to self-determination and FPIC, finding that together they produce an uneven and inconsistent normative standard. Chapter 4 critically examines the structural limits embedded in these frameworks identifying a binding gap and sovereignty constraint that ensure the gap between stated commitments and meaningful IPLC participation is not incidental but architectural. Chapter 5 tests these findings empirically through a content and discourse analysis of two biodiversity credit project methodologies in the Ecuadorean tropical Andes, demonstrating that the misalignment between Indigenous rights frameworks and market governance manifests concretely in project design and implementation. The thesis concludes that bridging this gap requires not new frameworks but deliberate adaptation of existing ones and that the infancy of the biodiversity credit market represents a critical window of opportunity to embed genuine IPLC participation in market governance before its architecture becomes entrenched.

## Chapter 2: Literature Review

Understanding the relationship between Indigenous Peoples and Local Communities (IPLC) and biodiversity credit markets requires engaging with two distinct but interconnected bodies of literature. The first concerns Indigenous peoples themselves – their relationships with land and governance and the political ecology of conservation as a site of contested authority and power. The second concerns the emergence of biodiversity credits as a form of nature finance – the governance logic underpinning market-based conservation mechanisms, and the lessons that carbon market experience offers for understanding how these instruments engage with Indigenous rights in practice. Together, these two bodies of literature reveal a fundamental tension: biodiversity credit markets have gained significant recognition as a mechanism for mobilizing private finance toward conservation, yet the governance structures underpinning these markets have been largely established without meaningful collaboration from IPLC. This creates a structural equity problem in which IPLC risk becoming passive stakeholders of a market that profits from their lands and knowledge without genuinely empowering them.

Considering this context, this literature review establishes the theoretical and conceptual foundation for my research to construct the analytical framework through which the misalignment between Indigenous perspectives and biodiversity credit market governance can be understood and evaluated. This approach is guided by the following question: **what does existing literature reveal about the relationship between Indigenous peoples, environmental governance, and market-based conservation mechanisms?** In examining the two bodies of literature, I argue that existing literature establishes that IPLC hold a distinct and structurally disadvantaged position within international environmental governance. Simultaneously, the evolution of market-based conservation mechanisms contrasts with Indigenous worldviews

around nature as it centers the transaction and commodification of nature. These two bodies of literature establish that meaningful IPLC participation requires not just formal inclusion but genuine redistribution of authority, and that market governance logic as currently constructed creates structural conditions that make that redistribution difficult to achieve.

## 2.1: Centering Indigenous Perspectives in Conservation and Development

Development studies have long grappled with questions of power, knowledge, and whose interests are served by dominant approaches to economic and social change. Within this, critical development scholars have increasingly drawn attention to how dominant frameworks have historically treated Indigenous governance systems, territorial relationships, and knowledge as obstacles to be overcome rather than as legitimate ways of organizing human-ecological life (Coulthard, 2014; Smith, 1999). This dynamic is not a feature of past development practice alone but is actively reproduced within emerging market-based conservation mechanisms (Büscher et al., 2012; Escobar, 1995). Questions of power, knowledge, and authority of whose governance systems are recognized and whose are marginalized are central to my research.

### 2.1.1: Interrogating Power in Conservation

Political ecology examines how power relations shape access to, control over, and knowledge of natural resources, situating environmental problems within broader structures of political economy rather than treating them as purely technical phenomena (Robbins, 2012). Within conservation specifically, political ecologists have demonstrated how market-based conservation mechanisms have historically dispossessed Indigenous and local communities while concentrating authority and financial benefit among state and private actors (Brockington et al., 2008). Fairhead et al. (2012), extend this critique through the concept of "green grabbing"

through which the appropriation of land and resources for environmental ends in ways that dispossess Indigenous peoples. A dynamic particularly relevant to biodiversity credit markets where the ecological value of Indigenous territories is increasingly subject to market capture. Political ecology therefore provides the analytical tools to interrogate not just whether biodiversity credit markets include IPLC, but whose interests their governance architecture serves and whose authority it recognizes.

### 2.1.2: Land and Knowledge: The Foundations of Indigenous Beliefs

“Minobimaaisiwin” “or “continuous rebirth” forms the basis of Anishinabeg and Cree beliefs, peoples who have historically occupied to what is recognized as the north-central region of the North American continent. This cyclical and reciprocal relationship of birth and rebirth demonstrates a knowledge that the actions and decisions that one does today will in return affect one in the future (LaDuke, 1994). While it is essential to note that Indigenous ways of living and knowing are not homogenous, this way of living demonstrates a unique relationship to the land. Consistent throughout these relationships, is a distinct Indigenous understanding to all of Creation recognizing that knowledge “comes from the Creator and from Creation itself (McGregor, 2004, pg.388). Not only does this encompass relationships amongst people but includes relationships to other beings and to Creation itself. In this way, this relationship and way of life is fundamentally related to environmental and ecological knowledge. It provides guidance for biodiversity stewardship, influencing conservation practices, ecological management, and long-term sustainability of ecosystems. Altogether, this relationship serves as a guide to navigate responsibility, duties, accountability, and the moral and ethical conduct required to ensure ecological continuity (McGregor, 2018). Understanding Indigenous knowledge as a relational and lived system is particularly relevant in conservation, where ecological knowledge,

stewardship practices, and long-term ecosystem health are deeply intertwined with these relational perspectives.

Western-centric understanding and relationship to nature provides a contrasting approach to this way of being. In Western thinking, nature is often understood as an inferior form of life to human life. Human and nature are perceived as separate entities, where nature serves a purpose and becomes a “means to achieving an end” (Grosfoguel, 2020, pg.205). Escobar (1995) traces this dualism to the broader project of modernity and development, arguing that the separation of nature from culture has historically provided the conceptual foundation for the exploitation of both non-Western peoples and their environments. This understanding provides justification for the destruction of life, exercising human coloniality of power, knowledge, and being over the other. This Western ontological framework is not politically neutral. It prescribes to the same logic that underpins market-based conservation mechanisms, which render nature legible solely through quantification and commodification rather than through relational governance. This provides a stark contrast to ‘non-Western’ or Indigenous worldviews who do not view the relationship between human and nature as a dualistic exchange or extraction, but demonstrates a more holistic, connected, and interdependent understanding to humans and the ecosystems that allow everyday life to function. This interdependent perspective underscores the importance of integrating Indigenous voices and practices into biodiversity conservation, as the success of ecological outcomes depends on sustaining these reciprocal relationships with the land. As Coulthard (2014) argues, this ontological difference is not merely philosophical but political as Indigenous land relationships constitute a form of governance authority that colonial and market-based systems have historically sought to displace rather than accommodate.

Altogether, the literature consistently recognizes Indigenous peoples' distinct relationships to land as fundamentally challenging Western conceptions of nature as a resource to be managed, priced, and traded. This ontological distinction is directly relevant to the structural disadvantage that IPLC face within biodiversity credit markets. A market premised on valuing and trading biodiversity outcomes operates within a framework that reproduces the same dualistic separation of humans and nature that Indigenous ontologies resist. This reduces relational governance systems to measurable ecological units and positions IPLC as stewards of a commodity rather than as authorities over a living system. This is not merely a cultural incompatibility but a governance one. Having established the relational ontologies and governance relationships that ground Indigenous peoples' authority over land and biodiversity, this section turns to the second body of literature examining biodiversity credits and the market governance logic that underpins them.

## 2.2: Biodiversity Credits as a Form of Nature Finance

### 2.2.1: The Biodiversity Finance Gap and Nature Finance

The biodiversity finance gap describes the difference between funding currently invested and funding required to achieve the targets of the Global Biodiversity Framework (GBF) – an international framework further described in subsequent chapters (Seidl et al., 2024). According to the Biodiversity Finance Initiative (BIOFIN), this gap is approaching approximately \$700 billion USD with \$143 billion USD annually spent on biodiversity globally, compared to the \$824 billion USD needed to protect and restore nature (2021). Closing this gap is a central objective of nature finance, which intends to avoid biodiversity loss and promote nature-positive activities by mobilizing public, private, and blended sources of capital for nature” (Sayn-Wittgenstein, 2025). Within this landscape, biodiversity credits represent a market-based

mechanism that operationalizes nature finance by translating measurable positive biodiversity outcomes into tradable units to decrease the funding gap (Manez & Clifton, 2025). In this sense, biodiversity credits serve as a tangible bridge between the conceptual goals of nature finance and on the ground conservation actions, offering both a means of investment for biodiversity conservation and measurable ecological benefits.

Within the realm of biodiversity finance, biodiversity credits have been widely acknowledged as an emerging mechanism to mitigate biodiversity loss and mobilize conservation finance (Boruah et al., 2025; Kim et al., 2025; Manez & Clifton, 2025). As defined by the Biodiversity Credit Alliance (2024), a biodiversity credit is a “certificate that represents a measured and evidence-based unit of positive biodiversity outcome that is durable and additional to what would have otherwise occurred” (pg.7). Through conservation or restoration activities, these credits are priced and traded to both the public and private sectors (Manez & Clifton, 2025). While biodiversity credits are increasingly positioned as a promising solution to the biodiversity finance gap, their market-based architecture further discussed in the following section, raises important questions about whose interests are served, whose governance systems are compatible with this model, and whether IPLC communities who are most central to biodiversity conservation are meaningfully included in its design and governance.

### 2.2.2: Biodiversity Credit Market Design

Market-based conservation mechanisms emerged more than two decades ago from a growing recognition that public finance alone was insufficient to address the scale of global biodiversity loss. This form of conservation instrument materialized under the notion that if economic value is assigned to a resource or a species, both conservation objectives and economic development can be achieved (Mariki, 2016). By creating financial instruments that assign tradeable value to

conservation outcomes, nature markets seek to redirect private capital toward ecological restoration and protection.

Biodiversity credits represent the most recent iteration of this approach as tradeable units tied to measurable positive outcomes for species, ecosystems, and natural habitats – with their underlying market architecture closely mirroring that of the carbon credit market from which they have emerged (Croci et al., 2025; World Economic Forum, 2022). As the biodiversity credit market is still in its infancy, a robust body of academic literature specifically examining its governance logic has yet to fully emerge. Nonetheless, given the structural and architectural parallels between biodiversity and carbon credit markets, literature on carbon market logic offers the most analytically proximate body of evidence through which the governance logic of biodiversity credit markets can be understood. Thus, this section draws on carbon market scholarship and outlines the features of this market which is already highly reflective of the emerging biodiversity credit market. While it is important to note that the two markets are not entirely identical, their shared governance architecture and underlying logic of commodification make the carbon market experience a legitimate and necessary lens through which to evaluate the biodiversity credit market and anticipate the challenges that the biodiversity credit market is likely to reproduce.

The creation of an environmental market is a highly neoliberal endeavour. It is driven by the assumption that climate change and the effects associated with it is a techno-economic issue, rather than a sociopolitical problem that a diversity of actors must contribute to mitigate. As a result, market-based conservation is believed to be amenable to the universalistic neoliberal economic policy prescriptions that treat ecological harm as a market failure correctable through the right pricing mechanisms rather than through structural political change (Knox-Hayes, 2016).

Carbon markets and the biodiversity credit market operationalize this logic through several core components of its larger market design including: the quantification of ecological outcomes into measurable units, the establishment of caps or baselines, third-party verification and certification, and the creation of buyer-seller exchange mechanisms – all of these factors contributing largely overall to the commodification of nature (Knox-Hayes, 2016; Croci et al., 2025; Lohmann, 2012; Goodman & Boyd, 2010). Bailey et al. (2011) further identify these features as characteristic of neoliberal modes of environmental governance more broadly – governance through accountancy, disclosure, and audit, all necessary for producing a fungible and commensurable unit that can be commodified and traded. Nonetheless, this governance architecture is not politically or culturally neutral. As a neoliberal mechanism, Knox-Hayes (2016) argues that market-based governance represents a technocratic logic that contends that global problems like climate change and its effects can be solved with the application of one size fits all solutions derived from science and economics alone. Lohmann (2012) extends this critique further, arguing that carbon markets transform the qualitative political and social challenges of environmental governance into a quantitative field of scarce, ownable items. This process fundamentally reshapes whose values, relationships, and governance systems are compatible within the market. For IPLC, whose relationships with land and nature are grounded in collective governance, cultural continuity, and long-term stewardship rather than market exchange, this reshaping is not incidental but structurally exclusionary.

What emerges from this literature is that market-based conservation mechanisms, as currently designed, create structural conditions that privilege financial legibility over political empowerment. The features that make nature markets function such as standardization, quantification, third-party verification, and private exchange are the same features that make

genuine redistribution of authority difficult to accommodate within them. This tension between market efficiency and substantive participation is not incidental but embedded in the governance logic of nature markets from their intellectual origins, and it is a tension that the emerging biodiversity credit market, having inherited this architecture, is structurally predisposed to reproduce.

### 2.2.3: Debates in Market Governance

As the biodiversity credit market emerges, it concurrently raises a range of debates as significant uncertainties remain in how these credits are designed, measured, governed, and implemented.

The central dimension that my research addresses concerns IPLC equity in project implementation and larger market development. Despite their longstanding relationships to land and ecological knowledge systems, IPLC engagement within the biodiversity credit market is still often insufficient, raising issues in ensuring just participation and rights afforded to IPLC, governance authority, and equitable benefit distribution to IPLC (Crocchi et al., 2025). While the imperativeness to implement mechanisms for equitable benefit-sharing and active involvement particularly between IPLC is recognized, there is extremely limited literature that examines IPLC engagement within biodiversity credit projects. This absence underscores the urgency of interrogating how market architectures can address or will potentially exacerbate issues of justice and equitable Indigenous participation.

Despite the growing recognition of the importance of IPLC perspectives and participation in shaping conservation outcomes, Indigenous peoples are still often marginalized from environmental decision-making processes. This can be largely attributed to the ambiguity or undefined definitions of ‘active’ or ‘inclusive’ recognition and participation of IPLC. Participation-related buzzwords such as ‘consultation’ or ‘stakeholder engagement’ are

frequently used, yet what participation means within these terms varies widely in scope and meaning (Cornwall, 2008). This conceptual vagueness enables a lack of clarity regarding the degree of influence IPLC maintain in decision-making processes (Zurba & Papadopoulos, 2021). As a result, participation is often reduced to a more tokenistic approach, diminishing a substantive exercise of power or self-determination to a procedural formality in practice. This ambiguity allows proponents to claim that IPLC voices have been engaged, therefore meeting donor or policy requirements, while in practice maintaining existing hierarchies of authority and control. As Williams (2004) argues, this risks the danger of actively depoliticizing development, reducing participation to a checkbox and drawing a veil over repressive structures.

This tokenistic approach to IPLC participation is directly linked to the uneven distribution of costs and benefits that characterizes market-based conservation mechanisms more broadly. Biodiversity credits are designed to mobilize private capital, generating financial returns for investors and project developers while contributing to measurable ecological outcomes. However, the distribution of these benefits to the communities most central to biodiversity conservation particularly IPLC, is neither automatic nor guaranteed. Intermediaries such as project developers frequently capture a disproportionate share of credit revenues before benefits reach communities on the ground, reproducing patterns of financial extraction that mirror broader critiques of market-based development interventions (Crocì et al., 2025).

Like other nature finance mechanisms, biodiversity credits assign a price tag and monetizes nature (Boruah, 2025). This approach to the pricing of life “offers to nature the opportunity to earn its own right to survive in a world market economy” (McAfee, 1999, pg.134). This commodification logic creates a tension between market logic and IPLC rights and knowledge. It incentivises short-term profits and the expansion of capitalism at the expense of

long-term conservation, as market actors prioritize projects or interventions that generate immediate, verifiable credits rather than supporting sustained ecological health (Jose, 2025). This dynamic is especially consequential for IPLC as it inverts the relationships between stewardship and authority. IPLC whose governance of biodiverse territories generates the ecological value for credits, yet they are positioned as project participations rather than active market actors. Simultaneously, the financial benefit from this stewardship is awarded to investors and developers operating these projects, reproducing the pattern of institutional inclusion without redistribution of authority that this literature review identifies as the central obstacle to meaningful IPLC participation.

This tension is illustrated through IPLC experiences in the carbon market. For example, Thailand's implementation of carbon credits has led to the restriction of IPLC access to forests resulting in their displacement. More broadly, Redvers et al. (2025) document how carbon market projects across multiple jurisdictions have reproduced colonial patterns of land dispossession using the language of Indigenous partnership while pursuing conservation objectives that override Indigenous land use and governance systems. These experiences suggest that the distribution of costs and benefits in nature markets is not an incidental feature of poor project design but a structural tendency of market governance logic. A tendency that biodiversity credit markets, having inherited the same architectural blueprint, are structurally predisposed to reproduce unless deliberate governance interventions ensure otherwise.

## Chapter Conclusion

Altogether, the two bodies of literature examined reveal a significant gap. Existing scholarship provides important insights into Indigenous governance, knowledge, and participation in conservation. Concurrently, existing literature discusses the mechanisms and limitations of

biodiversity credits as an emerging form of nature finance. However, these literatures remain largely disconnected. This gap is particularly consequential given that market governance logic as currently constructed, creates conditions that make genuine redistribution of authority to IPLC difficult to achieve, and that the ontological incompatibility between Indigenous relational governance and market commodification is a governance issue rather than merely a cultural one. Addressing this gap is therefore critical to ensuring that biodiversity credits evolve in ways that are not only ecologically effective and financially credible, but also socially just and aligned with Indigenous knowledge and values.

## Chapter 3: Institutionalizing Indigenous Rights: ILO C.169, UNDRIP, and CBD GBF

This chapter outlines my anchoring concepts relevant to Indigenous participation – namely the right to self-determination and Free, Prior and Informed Consent (FPIC) – to evaluate the extent that United Nations (UN) frameworks enable or constrain Indigenous Peoples and Local Communities (IPLC) in meaningfully engaging in environmental decision-making in practice. The UN serves as the largest intergovernmental organization globally with the purpose of promoting international cooperation and maintaining international order (United Nations Security Council, n.d.). As such, it plays a highly influential role in establishing frameworks on Indigenous rights at the global scale, which are intended to be translated, interpreted, and implemented at the national level. This chapter discusses three internationally recognized Indigenous rights frameworks within various UN bodies – particularly the International Labour Organization (ILO) Convention 169, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and finally the Convention on Biological Diversity (CBD) Kunming-Montreal Global Biodiversity Framework (GBF) – in order to assess whether and how these rights are transposed and operationalized at the national level. These frameworks represent three distinct but complementary instruments spanning labour rights, Indigenous rights, and environmental governance respectively. Together, they constitute the most relevant international normative architecture for IPLC participation in biodiversity credit markets. As instruments developed within the UN system, they carry significant normative weight and are intended to be interpreted and implemented by states at the national level, posing important questions for the development actors tasked with translating these commitments into practice. With this context in mind, this chapter is guided by the following question: **how do these frameworks conceptualize and**

**institutionalize IPLC right to self-determination and FPIC within international environmental governance?** I argue that these frameworks establish an important but incomplete normative foundation for IPLC participation as their differing binding authorities, scopes, and articulations of consent and autonomy produce an uneven and inconsistent standard against which IPLC engagement in biodiversity credit projects and market can be measured. While the three frameworks collectively represent significant milestones in the international recognition of Indigenous rights, they do so in different ways, producing an uneven and inconsistent normative standard that cannot reliably secure meaningful IPLC participation – a limitation that becomes consequential when these frameworks are applied to the governance of biodiversity credit markets. The chapter concludes with a discussion on the strengths and shortcomings of these frameworks in enabling meaningful IPLC participation and overlaps of these three frameworks providing a critical foundation for a following chapter which analyzes specific biodiversity credit projects and methodologies and their engagement with IPLC in practice.

### 3.1: Contextualizing Indigenous Participation in Development

#### 3.1.1: The Right to Self-Determination

Established in June 1945, the Charter of the United Nations serves as the founding document of the United Nations. This document outlines that one of the purposes of the United Nations is to “Develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...” (United Nations Charter, n.d.-c). While the right to self-determination was a commonly known concept prior to it being recognized in the Charter, the UN Charter represents the first formal recognition within an international legal instrument (United Nations, n.d.-b). This right serves as a prerequisite to the full enjoyment of all

fundamental human rights, and as an element of the Charter – an international treaty – constitutes a legal and normative obligation for all UN Member States.

The right to self-determination is a fundamental principle in international law allowing the freedom of individuals to realize their autonomy on an individual or collective basis. This entails the ability to freely determine political status, use economic resources, determine their social or cultural development, without external interference (Hofbauer, 2016). In the context of Indigenous rights, the right to self-determination is primarily collective, not solely a political right, but a condition for survival. Without self-determination, IPLC cultures, identities, lands, and ways of life are at risk of erosion, assimilation, or destruction (Hofbauer, 2016; Turpel, 1992). Self-determination further recognizes Indigenous peoples' right to establish their own governing institutions and decision-making processes (Turpel, 1992). This understanding reflects Indigenous perspectives that link governance, land stewardship, and cultural continuity as inseparable, particularly in contexts shaped by colonial dispossession.

While the right to self-determination is recognized as foundational to Indigenous political authority and cultural survival, its operationalization within international law has generated significant controversy. A first tension concerns how international legal frameworks tend to recognize Indigenous political rights while simultaneously subordinating Indigenous territorial claims to state sovereignty; Affirming self-determination in principle while leaving the territorial authority necessary to exercise it meaningfully with the state. Coulthard (2014) argues that this dynamic reproduces rather than redresses colonial dispossession, as recognition of Indigenous rights without a corresponding transfer of territorial authority leaves the fundamental colonial relationship ever present. Tully (1995) extends this critique, observing that Indigenous land claims incorporated into existing legal frameworks are translated into terms — property rights,

legal title, state-recognized tenure — compatible with state sovereignty but often incompatible with Indigenous understandings of land as a relational and collective foundation of governance. A second tension concerns the limits of rights-based approaches as a vehicle for self-determination more broadly. Engle (2011) argues that incorporating self-determination into international human rights frameworks has narrowed its meaning, shifting from a robust political claim to a more limited right to cultural autonomy and procedural participation that does not fundamentally challenge state authority. Coulthard (2014) similarly contends that the politics of recognition reproduce colonial power relations rather than transform them, framing Indigenous participation as conditional on state approval rather than as an assertion of inherent political authority. Together, these critiques suggest that even where international frameworks articulate strong commitments to self-determination, the rights-based architecture within which those commitments are embedded may limit their capacity to deliver substantive rather than procedural outcomes for Indigenous peoples. These debates are directly relevant to evaluating the frameworks examined in this chapter. Each framework articulates the right to self-determination differently producing an uneven and inconsistent normative standard. As the debates above suggest, this inconsistency is not merely a technical drafting problem but reflects deeper structural tensions in how international law accommodates Indigenous self-determination without fundamentally redistributing the territorial and governance authority that meaningful self-determination requires.

Nonetheless, IPLC face significant barriers to advocating for self-determination and self-government when they are effectively excluded from public affairs and lack institutionalized forums providing the opportunity to articulate their aspirations or mobilize public support. This exclusion is evident through the marginalization of Indigenous delegates in international climate

and biodiversity negotiations, domestic planning and resource extraction processes initiated without prior Indigenous consent, and the non-recognition of customary governance institutions within national legal frameworks (Anaya, 1996; Foster, 2022). As such, inclusion cannot be reduced to formal enfranchisement alone. The inclusion of Indigenous voices in political processes alone is insufficient to address the need for Indigenous communities to exercise meaningful control over their lands, resources, and cultural affairs, areas central to historical marginalization. Participation within state institutions often limits Indigenous involvement to consultative or advisory roles, resulting in symbolic, tokenistic inclusion rather than substantive decision-making power (Kuokkanen & Maddison, 2025). Contrastingly, Indigenous political autonomy enables communities to implement policies and make binding decisions on matters that directly affect them, avoiding tokenism and ensuring genuine authority. Such autonomy challenges state-centric governance models that prioritize territorial sovereignty over Indigenous self-rule, a tension that has historically constrained the realization of self-determination in practice (Turpel, 1992). Such autonomy is essential to redressing historical and ongoing colonial injustices and to decolonizing political and institutional structures that continue to marginalize Indigenous peoples.

### 3.1.2: Free, Prior and Informed Consent

Building on the principle of the right to self-determination, the concept of Free, Prior and Informed Consent (FPIC) is embedded within this universal right. FPIC is a specific procedural mechanism pertaining to Indigenous peoples (United Nations Department of Economic and Social Affairs, 2016). As the name implies, FPIC is the right of Indigenous peoples to make autonomous and fully informed decisions regarding the use and development of their lands and resources prior to any activities or projects commencing. Prior to 2007, human rights treaty

bodies frequently limited their recommendations to the requirement to 'seek' consent, without explicitly addressing the need to honor or uphold the outcome of that consent (Doyle, 2015). Providing consent prior to the advancement of projects on Indigenous lands or in ways that directly affect Indigenous peoples ensures that they are not coerced or intimidated, consent is freely provided and can be withdrawn at any time, and that they are aware of the full extent of any proposed developments (Ward, 2011). Contrasting with the pre 2007 norms, FPIC establishes the requirement that the outcome of consent or lack thereof is recognized and upheld. In this way, FPIC operationalizes this right by providing a mechanism where communities can exercise meaningful decision-making power over external projects and policies that affect them. Altogether, it translates the normative principle of self-determination into enforceable practice.

However, the operationalization of FPIC within international law has generated significant debate, particularly around two questions: whether FPIC constitutes a genuine veto right or merely a requirement for consultation, and what the components of "free," "prior," and "informed" actually demand in practice. The most foundational tension within FPIC lies within whether IPLC hold the right to withhold consent entirely, or whether states and developers are simply required to engage in good faith consultation without being bound by the outcome. States and development actors have consistently resisted interpreting FPIC as a veto right, arguing that it would give IPLC disproportionate authority to block projects of broader public interest. However, this argument is countered on the basis that consent without the possibility of refusal is not consent at all, therefore reducing FPIC to a procedural requirement that legitimizes predetermined outcomes rather than genuinely empowering Indigenous decision-making (Doyle, 2015). The second debate concerns what "free," "prior," and "informed" actually require in practice. "Free" raises questions about whether consent obtained under conditions of economic

dependency or political pressure can be considered genuinely voluntary. "Prior" raises questions about at what stage of a project consent must be sought as it is argued that consultation frequently occurs after key decisions have already been made, rendering IPLC input procedurally present but substantively irrelevant. "Informed" raises questions about what information must be disclosed, in what language, and with what technical support, for communities to make genuinely informed decisions. Foster (2022) and Doyle (2015) both document how these components are frequently interpreted minimally by states and project developers, reducing FPIC to a box-ticking exercise rather than a genuine process of negotiation and consent.

The concept of FPIC is a mechanism for regulating and operationalizing IPLC participation to achieve more bottom-up participation by establishing the obligation to consult and obtain consent prior to projects that impact on IPLC lands, territories and resources. This allows just management of natural resources to introduce more effective local-scale practices of participation and active citizenship (Fontana & Grugel, 2016). While this mechanism is well-intentioned, it does not necessarily lead to better development outcomes or fair benefits for Indigenous peoples (Fontana & Grugel, 2016; Ward, 2011). Rodriguez-Garavito (2011) further describes FPIC as a “discussion of legal procedures” (pg.266) which often fail to address the entrenched power asymmetries between the state and Indigenous communities, as well as between Indigenous communities and private companies seeking profit from lands long inhabited by native peoples. These debates reveal that FPIC's effectiveness as a mechanism for self-determination is contingent not only on its formal recognition within international frameworks but on how its components are interpreted and implemented in practice. This distinction becomes particularly crucial when FPIC is applied within biodiversity credit markets, where market actors operate with significant discretion in defining what consultation and consent

require. Simultaneously, Indigenous movements view FPIC as an important tool for asserting collective rights. These stakes are best captured by the leader of the Bolivian Indigenous movement CONAMAQ (The National Council of Ayllus and Markas of Qullasuyu), who argues that FPIC is "key so that our rights are not violated" (Fontana & Grugel, 2016, p. 256) — framing consent not as a technicality but as a prerequisite for Indigenous territorial sovereignty and self-determination. Altogether, FPIC is not a neutral or apolitical process that automatically produces more democratic or just governance. Consultations cannot be reduced to administrative formalities; rather, they must be understood as an expression of the right to self-determination, requiring that Indigenous communities have genuine authority in decisions affecting their lands, resources, and cultural life.

Together, the right to self-determination and FPIC constitute the normative foundation upon which meaningful IPLC participation in environmental governance rests. However, as the debates examined in this section reveal, both concepts are marked by a fundamental tension between their transformative potential and the structural constraints of the international legal architecture within which they operate. Self-determination is affirmed in principle while territorial authority remains with states; FPIC is recognized as a right while its most substantive interpretation as a genuine veto is consistently resisted by state and market actors. The result is a pattern in which both rights are operationalized in ways that institutionalize IPLC inclusion without redistributing the decision-making authority that meaningful participation requires. It is against this contested and structurally constrained normative standard that the following sections evaluate the selected frameworks examining not only whether they recognize self-determination and FPIC, but whether their articulations of these rights are capable of delivering substantive rather than procedural outcomes for IPLC in the context of biodiversity credit markets.

### 3.2: Relevant UN Frameworks on Indigenous Rights

Building on the previous discussion, this section highlights the three selected UN frameworks and assess the extent that they codify the right to self-determination and/or FPIC. The International Labour Organization (ILO) Convention 169, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Convention on Biological Diversity’s (CBD) Kunming–Montreal Global Biodiversity Framework (GBF) each articulate obligations related to Indigenous participation, land rights, and self-determination, to varying scopes, enforceability, and emphasis. Table 1 provides an overview of each of the respective frameworks.

*Table 1: Comparison of UN Frameworks on Indigenous Rights*

	<b>International Labour Organization (ILO) Convention 169</b>	<b>UN Declaration on the Rights of Indigenous Peoples (UNDRIP)</b>	<b>Convention on Biological Diversity (CBD) Kunming-Montreal Global Biodiversity Framework (GBF)</b>
<b>Year Adopted</b>	June 1989	September 2007	December 2022
<b>Legal Status</b>	Legally binding	Not legally binding	Not legally binding
<b>Issuing Body</b>	International Labour Organization (ILO)	UN General Assembly	United Nations Environment Programme (UNEP)
<b>Objective</b>	Aims to overcome discriminatory practices affecting these peoples [Indigenous and tribal peoples] and enabling them to participate in decision-making that affects their lives by providing protections for them.	Establishes a universal framework of minimum standards for the survival, dignity and well-being of the Indigenous Peoples.	Supports the achievement of the Sustainable Development Goals and builds on the Convention’s previous Strategic Plans, sets out an ambitious pathway to reach the global vision of a world living in harmony with nature by 2050.
<b>Scope</b>	Indigenous and tribal peoples' rights in the context of labour, land, and natural resources within ratifying states.	Comprehensive political, cultural, and territorial rights of Indigenous peoples globally.	IPLC rights and participation within the specific context of biodiversity conservation and governance.
	Not explicitly:	Yes	Not explicitly:

<b>Reference to the Right to Self-Determination</b>	Refers to Indigenous peoples' right to determine their own development Article 6, 7, 16, 19, 23, 28	Article 3, 4	Refers to rights and participation of Indigenous peoples Section C, Target 1, 3, 5, 9, 19, 21, 22
<b>Reference to Free, Prior and Informed Consent</b>	Not explicitly: Refers to consent Article 6, 16	Yes Article 10, 11, 19, 28, 29	Yes Section C, Target 21

### 3.2.1: International Labour Organization (ILO) Convention 169

ILO C.169 is the first and only legally binding Convention on Indigenous rights, representing a recognition of Indigenous peoples as distinct political and cultural communities. Adopted in June 1989 and later entered into force in September 1991, this convention is “based on the recognition of indigenous and tribal peoples’ aspirations to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live” (International Labour Organization, 2012).

While the Convention does not explicitly mention the right to self-determination or FPIC, it refers to these principles through similar language. For example, Article 7 refers to the right to self-determination through Statement 1:

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes

for national and regional development which may affect them directly. (United Nations Human Rights Office of the High Commissioner, 1989)

While Article 7 does not explicitly use the language of self-determination, it articulates a functional equivalent by affirming Indigenous peoples' authority to define development priorities and exercise control over aspects of their economic, social, and cultural development. However, this authority is explicitly constrained by the phrase "to the extent possible" and by the broader framework of state sovereignty, illustrating the tension between Indigenous autonomy and state control that runs throughout the Convention. This reflects a wider critique in the literature that ILO C.169 was deliberately designed to operate within existing state structures rather than challenge them, positioning Indigenous autonomy as conditional on state accommodation rather than as an inherent political right (Anaya, 1996; Thornberry, 2002).

Similarly, reference to FPIC is referred to in Article 6 Statement 2 which states: "The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures" (United Nations Human Rights office of the High Commissioner, 1989). Article 6(2) reflects an early articulation of what would later be conceptualized as FPIC. Despite this advancement, the Convention frames consent as an objective of consultation rather than as a binding requirement, falling short of granting Indigenous peoples the right to withhold consent (Ward, 2011). This effectively highlights the foundational debate between FPIC as a veto right and FPIC as a consultation requirement in favour allowing states to claim compliance even where Indigenous peoples have clearly objected, as long as consultation was conducted in good faith (Doyle, 2015). The Convention's silence on what constitutes meaningful consultation compounds this limitation, leaving states with considerable discretion in defining what the

obligation requires in practice (Foster, 2022). This distinction has significant implications in practice, as it allows states to proceed with projects following consultation even where agreement is not reached, limiting Indigenous peoples' effective decision-making power. Altogether, while ILO Convention 169 represents a significant advancement in recognizing Indigenous participation and autonomy, its consultation-based approach reflects the limits of international law in redistributing authority away from the state (Fontana & Grugel, 2016).

### 3.2.2: UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

In September 2007, UNDRIP was adopted by the General Assembly by a majority of 143 states in favour, with 4 votes against – Australia, Canada, New Zealand, and the United States – and 11 abstentions. Although initially opposed by these settler-colonial states, all four members have since reversed their positions and now formally support the Declaration, underscoring its growing normative legitimacy within international law. UNDRIP is the “most comprehensive international instrument on the rights of Indigenous peoples” (UN Department of Economic and Social Affairs, n.d.). It establishes a universal framework of minimum standards to safeguard the survival, dignity, and well-being of Indigenous Peoples, while elaborating existing human rights norms and fundamental freedoms as they apply to the specific circumstances of Indigenous Peoples.

The Declaration makes explicit reference to both the right to self-determination and FPIC. In reference to the former, Article 3 states: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (United Nations, 2007-b). Unlike the ILO C.169 which implied self-determination through participation or consultation, UNDRIP explicitly recognizes Indigenous peoples as actors to define their own development. This

articulation situates self-determination not merely as a principle of inclusion within existing state structures, but as a foundational right that underpins Indigenous governance, territorial authority, and cultural continuity. However, this stronger articulation of self-determination is immediately complicated by Article 46, which states that nothing in the Declaration may be used to undermine the territorial integrity or political unity of sovereign states. This clause effectively subordinates Indigenous self-determination to state sovereignty, reproducing the same structural tension identified in ILO C.169. UNDRIP affirms it in one article while limiting it in another, producing an internal inconsistency that states can invoke to resist more transformative interpretations of Indigenous autonomy

UNDRIP provides one of the clearest articulations of FPIC within international law. For example, Article 10 states:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. (United Nations, 2007-b)

As illustrated by Article 10, UNDRIP's references to FPIC frame consent not as a procedural formality but as a substantive safeguard against the dispossession and coercion that Indigenous peoples have historically faced. Within UNDRIP, FPIC is positioned as a mechanism intended to operationalize the right to self-determination, particularly in contexts involving land governance and development interventions. Unlike ILO C.169, which frames consent as an objective of consultation, UNDRIP's articulation of FPIC comes closer to recognizing it as a genuine right, one that must be obtained rather than merely sought.

Coupled with ILO Convention 169, both UNDRIP and ILO C.169 serve as mutually reinforcing instruments providing the framework to codify, promote, and protect Indigenous rights globally. (International Labour Organization, 2012; Fontana & Grugel, 2016). While ILO C.169 provides legally binding obligations for ratifying states, UNDRIP plays a critical complementary role by establishing a more expansive and rights-affirming normative framework, particularly in relation to self-determination and consent. Notwithstanding, the UNDRIP is a non-legally binding instrument, serving only as a mechanism of soft law. Despite this limitation, its provisions have increasingly been invoked in domestic legislation, court decisions, and other international policy frameworks, exerting substantial normative influence on state practice and development standards (Doyle, 2015).

### 3.2.3: Convention on Biological Diversity (CBD) Kunming-Montreal Global Biodiversity Framework (GBF)

The CBD Kunming-Montreal Global Biodiversity Framework (GBF) was adopted during the fifteenth meeting of the Biodiversity Conference of the Parties (COP) which concluded in Montreal, Canada in December 2022. The overall objective of the CBD is to “encourage actions, which will lead to a sustainable future” (United Nations, n.d.-a). The GBF specifically supports the achievement of the Sustainable Development Goals particularly to live in harmony with nature by 2050. Within this, there are four goals for 2050 and 23 targets for 2030. In adopting the GBF, “all Parties are committed to setting national targets to implement the framework, while all other actors have been invited to develop and communicate their own commitments (Convention on Biological Diversity, n.d.). This multi-actor approach reflects the increasing involvement of private sector and market-based actors in biodiversity governance, a dynamic that has important implications for Indigenous rights.

The GBF does not make explicit reference to the right to self-determination but largely refers to the rights and participation of Indigenous peoples. This broader reference to self-determination reflects a shift away from rights-based instruments of the previously discussed sections, as Indigenous political autonomy is not articulated as a foundational principle of biodiversity governance within the framework. This framing is evident in Target 1 of the GBF which states:

Ensure that all areas are under participatory, integrated and biodiversity inclusive spatial planning and/or effective management processes addressing land- and sea-use change, to bring the loss of areas of high biodiversity importance, including ecosystems of high ecological integrity, close to zero by 2030, while respecting the rights of indigenous peoples and local communities. (Convention on Biological Diversity, 2022)

While this target explicitly acknowledges Indigenous rights, it first prioritizes biodiversity outcomes. Indigenous rights are framed as considerations within this space, rather than as expressions of self-determined authority over land and territory. In this way, participation is emphasized, but decision-making power remains ambiguous (Hughes & Grumbine, 2023; Zhang et al., 2025). This reflects a broader tendency within global environmental governance to recognize Indigenous peoples as stewards of biodiversity without fully engaging with the political dimensions of Indigenous sovereignty and territorial governance.

In contrast to its limited engagement with self-determination, the GBF makes explicit reference to FPIC most notably through Target 21:

Ensure that the best available data, information and knowledge are accessible to decision makers, practitioners and the public to guide effective and equitable governance, integrated and participatory management of biodiversity, and to strengthen

communication, awareness-raising, education, monitoring, research and knowledge management and, also in this context, traditional knowledge, innovations, practices and technologies of indigenous peoples and local communities should only be accessed with their free, prior and informed consent, in accordance with national legislation.

(Convention on Biological Diversity, 2022)

The inclusion of the clause “in accordance with national legislation” effectively conditions FPIC on domestic legal frameworks, which may themselves fall short of international Indigenous rights standards. As a result, FPIC within the GBF risks being reduced to a procedural safeguard governing knowledge extraction, rather than a substantive mechanism through which Indigenous peoples can exercise control over biodiversity-related interventions.

While the GBF is not a legally binding instrument like the ILO C.169, it carries significant political weight as parties are required to translate its contributions through publicly available National Biodiversity Strategies and Action Plans (NBSAPs) and to regularly report on implementation progress (UN Environment Programme, n.d.). This makes the GBF a critical site where international Indigenous rights norms may potentially be diluted, selectively applied, or reinterpreted as they are operationalized through national policy, conservation initiatives, and other emerging biodiversity finance mechanisms. As such, the GBF occupies a pivotal position in assessing whether rights articulated “on paper” are meaningfully applied in practice. It is precisely this dynamic that becomes most relevant in the context of biodiversity credit markets, where the GBF's operationally vague treatment of FPIC and Indigenous governance authority creates the conditions for market actors to engage with Indigenous rights selectively rather than being held to a coherent and enforceable standard.

## Chapter Conclusion

This chapter has examined how ILO C.169, UNDRIP, and the CBD GBF conceptualize and institutionalize the rights to self-determination and FPIC within international environmental governance. While each framework represents a meaningful milestone in the recognition of Indigenous rights, their collective analysis reveals an important but incomplete normative foundation that is uneven in binding authority, inconsistent in its articulation of consent and autonomy, and structurally constrained by the state-centric architecture within which all three instruments operate. Together, these three frameworks produce a fragmented normative architecture in which the strength of IPLC rights depends on which instrument is invoked, by whom, and in which governance context, rather than on a consistent and enforceable international standard. It is against this uneven standard that a following chapter evaluates whether biodiversity credit projects meaningfully uphold the rights these frameworks articulate on paper, or whether the structural limitations embedded in this normative architecture are reproduced and compounded within market governance itself.

## Chapter 4: Structural Limits of Indigenous Participation in International Indigenous Rights Frameworks

The normative progress demonstrated by these frameworks should not, however, obscure the significant limitations that persist in translating international Indigenous rights commitments into meaningful Indigenous People and Local Communities (IPLC) participation. International Indigenous rights instruments, such as ILO C.169, UNDRIP and the CBD GBF, have expanded formal recognition of Indigenous self-determination, land rights, and access to decision-making processes. Nonetheless, this recognition does not automatically translate into meaningful authority or ensured participation in practice. This chapter critically examines the structural limits of international Indigenous rights frameworks to establish that the gap between stated commitments and meaningful IPLC participation is not incidental but embedded in the architecture of these frameworks themselves. This analysis is guided by the following question: **what are the structural limitations of international IR frameworks, and how do these limitations constrain the ability of IPLC to meaningfully participate in environmental governance?** Two interconnected structural features of international law shape the scope and form of Indigenous engagement: the binding gap – the inability of international Indigenous rights instruments to generate enforceable obligations independent of state discretion – and the sovereignty constraint – the privileging of state territorial authority over Indigenous self-determination within the architecture of international law. Together, these features explain why normative recognition of Indigenous rights consistently falls short of transforming the distribution of governance authority in ways that would make IPLC participation substantive rather than procedural. I argue that international Indigenous rights frameworks are structurally limited in their ability to secure meaningful IPLC participation and highlight how these

frameworks institutionalize IPLC inclusion without meaningfully challenging the power structures that constrain it. It is important to emphasize, however, that these structural constraints do not render international law irrelevant. Indigenous movements have strategically mobilized UNDRIP and other treaty standards and frameworks in domestic courts, constitutional reform processes, and transnational advocacy campaigns (Lightfoot & Khare, 2025). These structural constraints are not merely abstract features of international governance, but have direct implications for the functioning of biodiversity credit markets. As biodiversity credit projects and the larger market rely on state-level implementation of international commitments, the binding gap and sovereignty constraint do not remain at the international level but travel into market governance through the states and private standard-setting bodies responsible for regulating and overseeing projects. Understanding these structural limits is therefore a necessary precondition for evaluating whether biodiversity credit markets can enable meaningful IPLC participation in practice. By situating Indigenous participation within these structural limits, this chapter underscores the existing tensions within international rights frameworks, highlighting both their potential and limitations in supporting meaningful participation and authority for IPLC.

#### 4.1: The Binding Gap: Normative Recognition Without Enforceability

A central constraint that shapes Indigenous participation is what I conceptualize as *the binding gap*. The binding gap refers specifically to the inability of international Indigenous rights instruments to generate enforceable obligations independent of state discretion. This gap recognizes the expansion of IPLC rights and therefore participation within global governance frameworks, while simultaneously, the lag between institutional capacity and oftentimes political willingness of the international legal system to ensure enforceability of these rights at the state level. Since the 1980s there has been an expansion of Indigenous participation and international

instruments articulating robust commitments to Indigenous self-determination, land rights, FPIC, and so forth. I identify the binding gap across three interrelated dimensions: (1) the tendency of international frameworks to incorporate IPLC into existing governance structures without redistributing decision-making authority, (2) the limited legal status of key Indigenous rights instruments, which reduces binding obligations to aspirational standards that states are not compelled to enforce; and (3) the absence of centralized enforcement mechanisms at the international level, leaving implementation contingent on state willingness rather than systemic accountability. Together, these dimensions constrain Indigenous participation by limiting the extent to which formal recognition translates into binding decision-making power. This produces a pattern in which IPLC are included in governance processes without gaining genuine authority over decisions that affect their lands, resources, and futures. The binding gap thus reflects a structural feature of the international legal system itself, one in which the sovereignty of states consistently takes precedence over the rights of non-state actors, leaving Indigenous rights frameworks dependent on voluntary state compliance rather than enforceable obligation.

The first dimension of this gap lies in the rights-based language that is often unmatched by structural redistribution of authority to IPLC. International Indigenous rights frameworks have increasingly recognized Indigenous rights in language, but do not reorganize the system in a way that actually shifts authority to IPLC in practice. Through international Indigenous rights frameworks, IPLC are often institutionally included and granted certain rights but often not accompanied by a meaningful transfer of decision-making authority or material resources to IPLC. UNDRIP for example articulates strong commitments to self-determination and FPIC, yet the operationalization of these principles only frequently occurs through procedural mechanisms such as consultation requirements rather than through recognition of co-decision or shared

jurisdiction (United Nations, 2007). Instruments like the UNDRIP say little or nothing about how consultations with IPLC should take place in practice or what constitutes as ‘consent.’ Most international instruments state that states should consult with IPLC but do not discuss what this entails in practice (Foster, 2022). Additionally, UNDRIP and ILO C.169 specifically also say little or make no mentions about benefits or compensation that should be offered to IPLC and how financial or other resources and benefits should be managed or distributed. This highlights how the expansion of Indigenous rights language does not necessarily entail a redistribution of material authority over territory, capital, or governance institutions. Participation may be institutionalized procedurally without a meaningful transfer of control.

The second dimension of the binding gap concerns the legal status of Indigenous rights instruments. While hard law such as regulations and treaties are legally binding instruments, soft law is not legally required to be adopted at the state level (Abbott & Snidal, 2000). Both hard and soft law may grant IPLC rights allowing them to participate within their respective contexts, however, the legal status affects the enforceability of their rights and ability to participate. ILO C.169 is an example of a legally binding international treaty for countries that have ratified it. On the other hand, other instruments such as the UNDRIP operate as a form of soft law and consequently lacks a binding force within international law (Barelli, 2009). Nonetheless, although soft law does not have hard enforcement mechanisms as hard law, it cannot be regarded as legally irrelevant. Olivier (2002) recognizes soft law as a grey area between law and non-law. With the example of UNDRIP, this form of soft law represents a significant normative advancement in recognizing IPLC as collective rights-holders, yet its non-binding nature allows compliance to depend on a state’s political uptake rather than political compulsion (Barelli, 2009). UNDRIP influences legal interpretation and shapes expectations, but does not create

enforceable obligations in the same manner as ratified treaties. This underscores soft law's authority as persuasive rather than coercive. Contrastingly, even binding instruments do not fully resolve the binding gap. ILO C.169 is legally binding only for ratifying states, with ratification itself as a voluntary mechanism. As Anaya (1996) notes, the implementation of Indigenous rights ultimately depends on state incorporation which is often confronted by political and economic forces preventing the full realization of these rights. Altogether, the binding gap is not simply a matter of soft versus hard law. Rather, it reflects the structural dependence of international law on state consent and enforcement, which constrains the capacity of even binding instruments to generate transformative outcomes.

Extending from the legal status dimension of the binding gap, the lack of enforcement mechanisms within both hard and soft law highlights the limited implementation capacity of international rights frameworks therefore limiting IPLC participation. International Indigenous rights frameworks whether binding or non-binding lack strong coercive mechanisms compared to domestic legal systems. Oversight typically occurs through self reporting procedures and review rather than sanctions or third-party verification. Anaya (1996) further emphasizes that international human rights mechanisms operate primarily through normative pressure rather than legal obligation. States may often want to appear to be in compliance with their international obligations due to this pressure and in wanting to avoid public condemnation or more serious consequences for violating international obligations. While states may on paper be in accordance with international Indigenous rights frameworks, the implementation of these rights may not be fully realized to the extent that international frameworks intend. Similarly, Xanthaki (2007) explains that UN standards on Indigenous rights rely heavily on state reporting systems and supervisory committees that issue recommendations rather than binding orders. With the

example of ILO C.169, states that have ratified the Convention are subject to reporting requirements and supervisory mechanisms under the ILO Constitution. However, the reporting requirements are often self-fulfilled by states and the ILO Committee may only solicit additional information as they see fit (Anaya, 1996). These processes create important forums for scrutiny and advocacy, however, they do not impose direct penalties for non-compliance. Altogether, the absence of centralized enforcement authority highlights that the realization of rights remains contingent on domestic political dynamics rather than guaranteed by international adjudication. These enforcement limits reflect deeper structural features of the international system, explored in the following section.

Together, these dynamics reveal that the binding gap is a flaw embedded within the architecture of international law itself. IPLC are increasingly acknowledged as collective rights-holders, yet remain structurally constrained by existing mechanisms. The system's mismatch in institutional inclusion and structural redistribution, reliance on state authority and consent, and limited enforcement capacity highlight how normative recognition of Indigenous rights and participation can advance without equivalent transformation of governance authority. International Indigenous rights frameworks are therefore caught in a fundamental tension: they formally recognize IPLC as rights-holders and mandate their inclusion in governance processes, yet they do not, and by the logic of the international system, cannot compel the redistribution of decision-making authority, territorial control, or material resources that would make that inclusion substantive rather than procedural. As a result, participation is often procedurally institutionalized yet structurally constrained, contingent on state political will rather than guaranteed through binding international adjudication. This binding gap cannot be solely understood as an issue of institutional weakness or insufficient enforcement but rather reflects a

deeper principle of the international system: the respect of state sovereignty. International law is structured around the consent and territorial authority of states, and Indigenous rights frameworks must operate within this state-centered architecture — one that privileges the formal recognition of rights over their enforced realization, and institutional inclusion over the transformation of existing power structures that continue to constrain meaningful IPLC participation. The implications of this for biodiversity credit markets are significant. Biodiversity credit markets do not operate in a governance vacuum, rather they are structured, regulated, and overseen by states and private standard-setting bodies whose own obligations to IPLC are shaped by the same binding gap identified here. Where states have not translated international FPIC, benefit-sharing, and Indigenous governance commitments into domestic law or market regulation, biodiversity credit projects operating within these jurisdictions are effectively ungoverned by the rights standards that international frameworks articulate. The binding gap therefore does not stop at the international level but creates an environment in which market actors can claim alignment with Indigenous rights standards without being held to any enforceable definition of what those standards require in practice. The following section therefore examines the tension between state sovereignty and Indigenous self-determination, exploring how the foundational assumptions of international law ultimately limit the transformative potential of Indigenous participation.

## 4.2: Sovereignty Constraint: State-Centrism vs. the Right to Self-Determination

Another critical debate within the realm of international Indigenous rights frameworks and the participation of IPLC as a product of these rights, is the prioritization of state sovereignty over Indigenous self-determination. This tension reflects the structural limits of participation embedded in the international legal system, where recognition does not automatically translate

into decision-making power. International law is fundamentally state-centric. States are the primary subjects of international law, the signatories to treaties, the entities recognized as possessing territorial jurisdiction, and the actors responsible for implementation and reporting. Indigenous rights frameworks, including UNDRIP and ILO C.169, therefore operate within an architecture that presumes the state as the ultimate authority. This structural orientation creates an inherent tension between the right of Indigenous peoples to self-determination and the sovereignty of states. This matters directly for biodiversity credit markets because states occupy a dual role within them: they are simultaneously the entities responsible for upholding IPLC rights under international law and the primary actors responsible for approving, regulating, and reporting on biodiversity credit projects within their territories.

The sovereignty constraint that shapes Indigenous participation in international rights frameworks is not a neutral or natural feature of the international system but has deep historical and structural roots. As Anghie (2005) demonstrates, the modern conception of state sovereignty emerged through the colonial encounter, in which Indigenous polities were excluded from recognition as independent actors in international law. Colonial powers created legal and political structures that privileged state authority and territorial control, subordinating Indigenous forms of governance and self-determination. This historical trajectory established a structural bias in international law where states are recognized as the primary subjects and rights-holders, while non-state actors, including Indigenous nations, must operate within frameworks defined by state authority (Anghie, 2005). Similarly, Coulthard (2014) argues that this legacy persists in current governance structures, as the politics of recognition often operate to reproduce state power while limiting Indigenous agency, framing participation as conditional on state approval rather than as an assertion of inherent political authority. The privileging of state sovereignty

within Indigenous rights frameworks, therefore, reflects structural and historical legacies that shape the boundaries of Indigenous participation to date.

Within international legal discourse, Indigenous peoples are recognized as a collective characterized by their exposure to human rights violations and consequently, the affirmation of their group rights – most notably, the right to self-determination. The recognition of these rights is framed as a moral imperative grounded in existing and emerging international human rights norms (Anaya, 2005). However, as Engle (2011) argues, this framing within the international system limits the right to self-determination. The translation of Indigenous political struggle into rights-based language is therefore a double-edged process: it grants IPLC formal recognition within international institutions yet simultaneously constrains self-determination by reducing it to forms of autonomy that do not fundamentally challenge state authority. Although contemporary international law has evolved to recognize Indigenous peoples as collective rights-holders, the guarantors of those rights remain the colonial states whose political and territorial authority these same rights are meant to challenge. Sovereignty continues to function as the organizing principle that determines who may act as a subject of international law and who must operate within its margins. In practice, this highlights how Indigenous authority is acknowledged symbolically and procedurally, but substantive power over territory, resources, or governance structures remains with the state. This framing reflects a larger structural compromise Indigenous peoples are faced with. While they are recognized as a collective with distinct rights, their authority is articulated in ways that remain compatible with state supremacy.

While states more readily accommodate individual rights as these rights contribute to personal welfare or utility, collective rights introduce claims that can disrupt existing hierarchies to a state's sovereignty (Xanthaki, 2007). Recognizing Indigenous peoples' right to self-

determination highlights a deeper challenge, as it threatens the state's claim to exclusive territorial authority and control over resources. Within international discourse and international organizations, a state's sovereignty is favoured over any claim of competing sovereignty by non-state actors or non-member entities (Anaya, 2005). This reflects the broader structural compromise identified earlier that Indigenous rights are often affirmed, but in ways that preserve the foundational architecture of a state-centric international order. This dynamic is reflected within all of the Indigenous rights frameworks which I discuss to varying degrees. Under CBD GBF, IPLC are increasingly recognized as central actors in biodiversity conservation. The GBF refers to rights and participation of Indigenous peoples, references traditional knowledge, and affirms the importance of participation (CBD GBF, 2022). Nonetheless, this recognition operates within an intergovernmental framework in which states retain ultimate authority over territory, resources, and implementation. IPLC participation is encouraged and, in some instances, normatively required, but is mediated through state institutions and dependent on state-led reporting, financing, and enforcement mechanisms. The GBF therefore reproduces the sovereignty constraint with particular clarity: IPLC are positioned as essential partners in biodiversity governance, yet their participation remains dependent on state facilitation rather than constituting an independent exercise of authority. This has direct consequences for biodiversity credit markets. The GBF represents the most contextually relevant international framework for biodiversity credit governance, yet its reliance on state-mediated implementation means that biodiversity credit projects operating within states that have not translated GBF commitments into domestic policy or market regulation are effectively ungoverned by the rights standards the GBF articulates. The sovereignty constraint thus reproduces itself at the project level: just as IPLC cannot enforce their rights against states at the international level, they have limited

authority against market actors operating within jurisdictions where states have chosen not to give those rights domestic legal force. Even the most progressive biodiversity governance instrument currently in force thus includes IPLC as stakeholders and rights-holders, but not as parallel sovereign authorities.

## Chapter Conclusion

Both the binding gap and sovereignty constraint reveal that Indigenous participation is structurally constrained rather than simply underdeveloped or poorly enforced. The binding gap demonstrates that even when international instruments articulate robust normative recognition of Indigenous rights, these commitments are often procedural and dependent on state discretion, leaving substantive decision-making authority and control over resources largely with states. The inclusion of IPLC in consultation processes, reporting mechanisms, and biodiversity governance initiatives does not automatically translate into meaningful shifts in power or the redistribution of authority necessary for transformative participation. Similarly, the sovereignty constraint underscores that international law is fundamentally state-centric, privileging territorial and institutional authority of states over the self-determination claims of Indigenous peoples. Recognition of collective rights, including self-determination, is framed within existing legal and political structures in ways that ensure they remain compatible with state supremacy. This compatibility is not incidental, but historically produced through the same colonial encounter that generated the dispossession these frameworks seek to redress. Indigenous authority is acknowledged symbolically and procedurally, but substantive power and decision-making remain subordinate within the architecture of the state-centric international system. Together, the binding gap and sovereignty constraint explain the central paradox of international Indigenous rights frameworks: they have expanded normative recognition and procedural inclusion without

transforming the distribution of authority in ways that would make that inclusion substantive. IPLC participation is therefore both enabled and limited simultaneously, contingent on the willingness of states to translate international commitments into practice. Rights-based inclusion and procedural mechanisms, though important for visibility and advocacy, cannot substitute for genuine authority or co-governance. Where states have failed to translate international commitments into enforceable domestic standards, biodiversity credit markets inherit the same procedural inclusion without substantive redistribution of authority that characterizes the international frameworks examined in this chapter. This structural analysis provides the necessary foundation for Chapter 5, which examines whether and how these constraints manifest concretely in the design and implementation of biodiversity credit projects — testing whether the procedural inclusion described translates into meaningful IPLC participation in practice, or whether the biodiversity credit market reproduces and compounds the structural limits identified in this chapter.

## Chapter 5: Evaluating IPLC Participation in Biodiversity Credit Methodologies

This chapter assesses biodiversity credit projects and their governing methodologies to evaluate whether Indigenous Peoples and Local Communities' (IPLC) rights recognized under the previously discussed international frameworks are meaningfully upheld within local project governance methods. My research focuses specifically on biodiversity credit projects and methodologies from Savimbo and InvestConservation, both located within the Ecuadorean tropical Andes through an analysis of the organizations' respective project documentation and methodologies – refer to Table 2 and Image 1 for an overview of the selected projects and project location. As discussed in the limitations section of my introduction, as biodiversity credit projects are only starting to operationalize in practice, meaning there is limited available information on project details, methodologies, and documented outcomes. The two projects were selected as they were among the few with sufficient publicly available documentation to support meaningful analysis. Additionally, both projects take place in the same country and globally recognized biodiversity hot spot, reducing contextual differences that may contribute to contextual variation in project methodology. Ecuador provides a particularly instructive national context for this analysis – as a state that has constitutionally recognized the rights of nature and incorporated Indigenous rights provisions into its legal framework, it represents a relatively strong domestic rights environment against which the translation of international frameworks into project governance can be assessed. To guide this chapter, I pose the following question: **to what extent do biodiversity credit projects and their governing methodologies uphold the rights to FPIC, equitable benefit-sharing, and Indigenous governance authority granted to IPLC under international Indigenous rights frameworks?** As evidenced by the two cases

examined in this chapter, I argue that a persistent gap exists between the rights afforded to IPLC on paper and their realization in practice which demonstrate that commitments to FPIC, benefit-sharing, and IPLC governance are often procedural rather than substantive. This misalignment between international Indigenous rights frameworks and market governance is not merely theoretical but manifests concretely in the design and implementation of biodiversity credit projects, where market integrity and project viability often take precedence over genuine IPLC empowerment. While the findings of two cases cannot be generalized beyond the projects examined, they offer an instructive illustration of the structural conditions identified in Chapters 3 and 4 suggesting that the limitations embedded in international frameworks travel into market governance in predictable rather than incidental ways. The chapter first provides an overview of the Ecuadorean context to better situate the analysis. The second section then presents the specific organizations and selected projects through their publicly available documentation. The following sections then use this foundation to analyze and compare the methodologies through a discourse analysis, assessing the extent to which the international rights frameworks are translated or lost in project documentation.

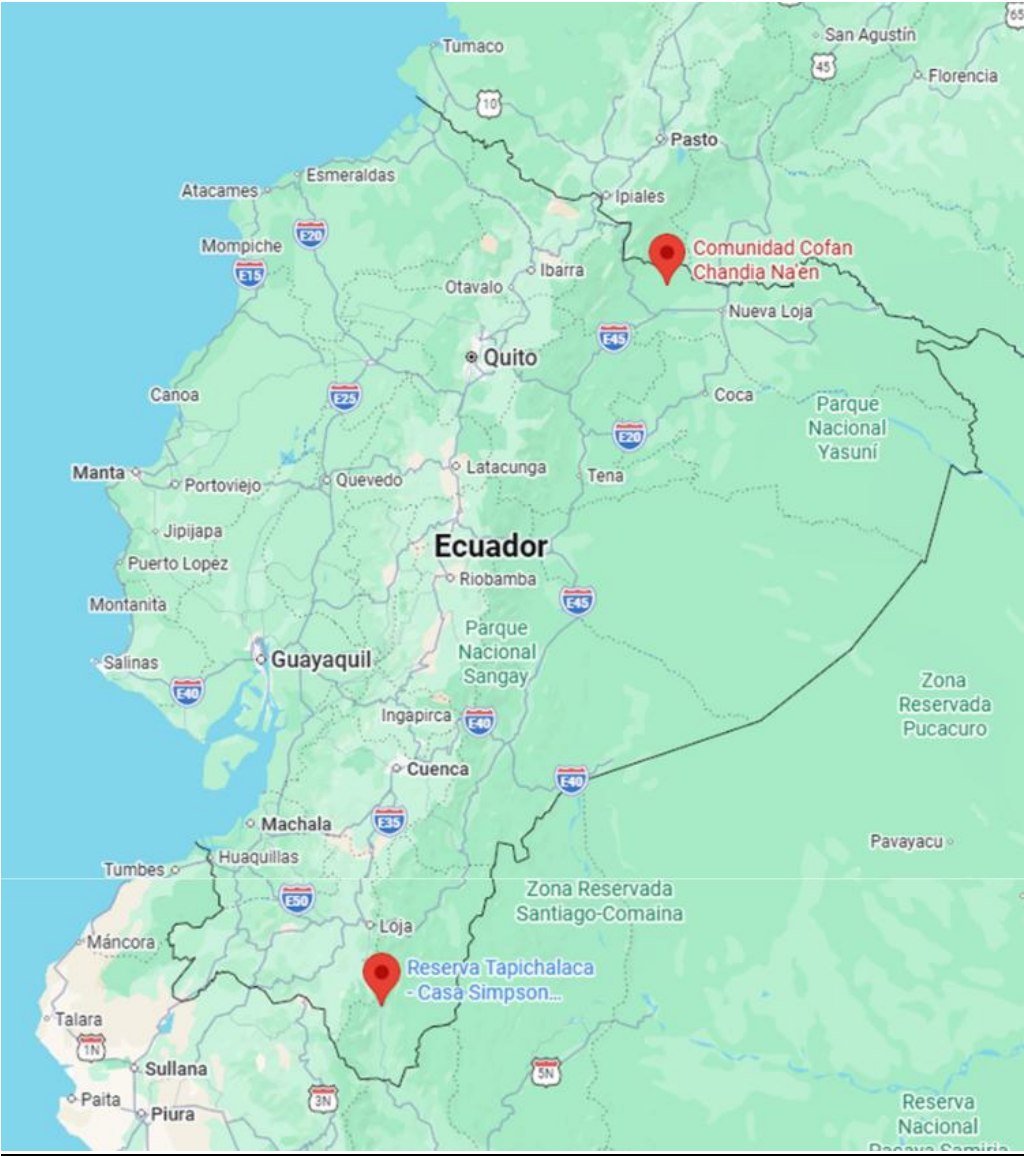
*Table 2: Overview of Selected Projects*

	<b>Savimbo</b>	<b>InvestConservation</b>
<b>Project Name</b>	Chandia Na'en	Tapichalaca Reserve
<b>Location of Project Operation</b>	Ecuador tropical Andes	
<b>Project Coverage</b>	55,451 hectares	6,525 hectares
<b>Credit Size</b>	1 hectare = 1 credit	1hectare = 1 credit
<b>Project Length</b>	10 years	50 years

<b>Protected Species</b>	87 various species	Tapichalaca Tree Frog, Jocotoco Antpitta, Mountain Tapir, Golden-plumed Parakeet
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*Image 1: Approximate Locations of Projects*

*Savimbo’s Chandia Na'en project takes place in the Northern part of the tropical Andes with InvestConservation’s Tapichalaca Reserve project in the South.*



*Image created by author using Google Maps.*

## 5.1 The Ecuadorean Context

Ecuador holds a unique national context for my analysis given the country's recognition of the three various UN frameworks discussed, coupled with Indigenous rights being formally respected within their Constitution. Ecuador was the third country globally to ratify ILO C.169 (Drange, 2021), voted in favour of the UNDRIP (United Nations, 2007-a), and has ratified the Convention on Biological Diversity (Convention on Biological Diversity, n.d.-b). This positions Ecuador as one of the most formally committed states in the world to international Indigenous rights standards, making it a particularly informative context for assessing whether the international frameworks examined are meaningfully translated into project level governance, or whether the binding gap and sovereignty constraint identified in Chapter 4 persist even in jurisdictions with relatively strong domestic rights commitments.

The rights enshrined through these various frameworks are further recognized through Ecuador's Constitution. Article 57 of the Constitution states "Indigenous communes, communities, peoples and nations are recognized and guaranteed, in conformity with the Constitution and human rights agreements, conventions, declarations and other international instruments" (Republic of Ecuador, 2008). The following collective rights are further identified within this section:

4. To keep ownership, without subject to a statute of limitations, of their community lands, which shall be unalienable, immune from seizure and indivisible. These lands shall be exempt from paying fees or taxes.
5. To keep ownership of ancestral lands and territories and to obtain free awarding of these lands.
7. To free prior informed consultation, within a reasonable period of time, on the plans and programs for prospecting, producing and marketing nonrenewable resources located

on their lands and which could have an environmental or cultural impact on them; to participate in the profits earned from these projects and to receive compensation for social, cultural and environmental damages caused to them.

8. To keep and promote their practices of managing biodiversity and their natural environment. (Republic of Ecuador, 2008)

The constitutional recognition of these rights particularly Articles 57(7) and 57(8), are directly relevant to the biodiversity credit projects examined in this chapter. Article 57(7)'s guarantee of FPIC and benefit-sharing in resource-related projects and Article 57(8)'s recognition of Indigenous biodiversity management practices, establish a domestic legal standard against which Savimbo's and InvestConservation's methodologies can be assessed. In principle, any biodiversity credit project operating within Ecuador is subject not only to the international frameworks examined in Chapters 3 and 4 but also to these constitutionally entrenched rights. This legal recognition creates a strong domestic enforcement environment that should respect IPLC rights in practice.

Nonetheless, despite this progressive legal architecture, the translation of constitutional rights into practice has been uneven. Ecuador's constitutional recognition of Indigenous rights has been invoked in several significant legal cases where Indigenous communities have successfully asserted their rights against state and private actors. Most notably, in 2012 and 2019 respectively, the Sarayaku Kichwa and the Huaorani and Cofán peoples of the Ecuadorian Amazon won cases against the Ecuadorian government for its lack of consultation on planned oil exploration (Etchart, 2022). In relation to the former, the 20-year class-action lawsuit *Kichwa Indigenous People of Sarayaku v. Ecuador* ultimately ruled that the Ecuadorian government had violated the Sarayaku Kichwa's right to FPIC, communal property, and cultural identity when an

oil project was initially approved in 1996 which would have extracted oil in a territory belonging to a number of Indigenous communities that included the Sarayaku Kichwa (pg.6). Similarly, in 2019 a lawsuit was filed against the Ecuadorian Ministry of Energy and Non-Renewable Natural Resources on the basis that the Ministry conducted a flawed consultation process (Brown, 2019). It was ultimately ruled that this consultation process was flawed and had violated the Huaorani community's rights of FPIC. This ruling was particularly significant as it expanded the legal recognition of Indigenous territorial rights beyond their previous scope. Ecuadorean law had previously recognized Indigenous jurisdiction over ancestral territory while simultaneously maintaining state ownership of the land, as a result, this ruling began to challenge that division of authority (Etchart, 2022).

Together, these cases illustrate both the potential and limits of Ecuador's progressive legal framework. On one hand, they demonstrate that constitutional entrenchment of Indigenous rights creating genuine legal leverage for IPLC to assert their rights against state and private actors. Simultaneously, as these cases involved legal battles spanning decades underscores the observation from Chapter 4 that the realization of Indigenous rights ultimately depends on state willingness rather than systemic accountability. The Sarayaku case in particular requiring a 20-year legal process to obtain recognition of rights that were constitutionally guaranteed, illustrates the sovereignty constraint identified in Chapter 4 where even when rights are formally recognized, their enforcement remains contingent on Indigenous communities having the resources, capacity, and political support to pursue legal action against a state that retains ultimate territorial authority. While these cases are significant precedents in IPLC rights recognition, it is important to note that they were established in extractive industry contexts where state actors were directly implicated. This condition that does not straightforwardly apply

to biodiversity credit markets, where private organizations set the terms of IPLC engagement and constitutional protections remain largely untested in practice. With the Ecuadorean context now established, the following sections examine specific biodiversity credit projects and methodologies and the extent to which these rights are recognized within the respective organizations project documentation and overall approaches to biodiversity conservation.

## 5.2 Projects and Methodologies

### 5.2.1: Savimbo and Chandia Na'en

As described through the organization's website, Savimbo is a social enterprise "Created by, and for, Indigenous Peoples and local communities. [They] were founded by Indigenous leaders in the Colombian Amazon to disintermediate climate markets for *both* Indigenous Peoples and local communities" (Savimbo, n.d.-b, About section). As further outlined in this section of Savimbo's website, through their work, Savimbo:

Pays Indigenous Peoples and subsistence farmers in tropical forests to preserve ecosystems. If they need help to participate, our nonprofit arm subsidizes their entry to sustainable businesses and climate markets. Then we certify credits, sell them internationally, and split gross revenue. Effective, inexpensive, and globally-beneficial climate action. (Savimbo, n.d.-b, About section)

Savimbo currently undertakes four biodiversity credit projects within Latin America, of which this research focuses specifically on the Chandia Na'en project in the Ecuadorean tropical Andes which focuses on "preserving or extending intact ecosystems" (Savimbo, n.d.-a, Chandia Na'en project section). The Chandia Na'en location is home to the Cofan nation which are Indigenous peoples that occupy what is recognized today as the Northeast corner of Ecuador (Cofan Survival Fund, n.d.). As described by Savimbo's project details "This site has approximately 30 families

and is a traditional community, using modern high-tech tools to protect and preserve their forest against illegal mining and logging incursions (Savimbo, n.d.-a, Chandia Na'en project section).

### 5.2.2: Savimbo Methodology

As an organization created by and for IPLC, Savimbo's methodology places much emphasis on IPLC collaboration and equitable outcomes. Described through the organization's executive summary of their project methodology, their methodology has been designed for:

Simplicity and rapid deployment. It was co-developed with Indigenous Peoples (IP) and local communities (LC) involved in grassroots conservation in the Colombian Amazon, then translated to global markets by a dedicated core of conservation scientists for the immediate use of like-groups... To date, leaders from eighteen Indigenous communities and hundreds of Indigenous smallfarmers in the Colombian Amazon have directly contributed to the design and piloting of this methodology. (Savimbo, 2023, Executive Summary section).

This approach was "specifically designed to eliminate the scientific bureaucracy and market middlemen that could siphon money out of the commercialization of this service. Instead, it enables immediate and autonomous quantification and direct payments to these groups and their smallfarmer neighbors" (Savimbo, 2023, Executive Summary section). Additionally, the methodology was designed to influence conservation-related behavior by recognizing the central role of IPLC in biodiversity protection. It recognizes that IPLC have "unrestricted access to hunt or study the rarest and most valuable species on earth. They have traditional knowledge that far exceeds our best botanical and behavioral science" (Savimbo, 2023, Executive Summary section). As a result, the methodology is intentionally designed to "economically incentivize positive role models within IP and LC and enables them to self-reinforce traditional ways of life

which conserve and retain knowledge of biodiversity in its fullest expression” (Savimbo, 2023, Executive Summary section).

The methodology further outlines a set of principles for working with IPLC, particularly in projects implemented on Indigenous lands. These principles include:

Land rights: The rights of Indigenous peoples over the lands they occupy must be recognized.

Free, prior, and informed consent (FPIC): Any intervention in IP territories must undergo a process of free, prior, and informed consent.

Direct funding: Direct access to climate funding.

Protection of life: IP conservation leaders must not continue to be criminalized or assassinated.

Traditional knowledge preservation: Policies developed in IP territories must consider traditional knowledge, which needs to be incorporated into climate change strategies.

(Savimbo, 2023, Principles of Working with IP and LC section)

In the same section of the methodology it states that projects must:

Implement a fair and equitable way of distributing project funds to the actual individuals on the ground. The technology for funds disbursement must have safeguards against corruption and eliminate middlemen and other potential diversions or dilutions of funds from the people who are actually preserving the ecosystem. (Savimbo, 2023, Principles of Working with IP and LC section)

The methodology further outlines what effective participation should look like within projects. It states that if the respective project is not run and/or managed by IPLC, the project must have an effective participation protocol that includes:

A stakeholder map, an institutional map of the governance structure or institutions and leaders associated with decision-making in the territory, associated with the BCP activities. Consensual decision with local governance structures. Which must include clear information about the nature, size, pace, reversibility and scope of any activity, including information about possible risks, benefits, should be made available as part of any FPIC process. Mapping of FPIC processes including a schedule of BCP decision-making meetings. A conflict management protocol which includes handling of petitions, complaints, claims, and requests, and their traceability. A document of agreement, signed by the local community representative parties for the development of the BCP. In this case, community representativeness is given, as a minimum, by explicit agreement with the local governance structures and represented in their designated leader(s). (Savimbo, 2023, Effective Participation section)

Altogether, Savimbo's methodology presents a biodiversity credit framework that explicitly centers IPLC participation across project design, implementation, governance, and benefit-sharing. Through defined requirements related to land rights recognition, FPIC, financial transparency, and disclosure of Indigenous involvement, the methodology sets out a structured approach for integrating IPLC as primary actors within biodiversity credit governance. On paper, Savimbo's methodology is notably progressive relative to the broader biodiversity credit market – its explicit enumeration of FPIC requirements, direct payment mechanisms, and effective participation protocols suggests a genuine attempt to operationalize the rights recognized under ILO C.169, UNDRIP, and the CBD GBF. The methodology's emphasis on eliminating market intermediaries and ensuring direct financial flows to IPLC also speaks directly to the benefit-sharing gap identified in the preceding chapters, where international frameworks provide limited

guidance on how financial resources should be managed and distributed. Similarly, the effective participation protocol's requirements for consensual decision-making, stakeholder mapping, and conflict management mechanisms reflect an understanding of FPIC that goes beyond procedural consultation toward the kind of substantive governance authority that international frameworks articulate but rarely operationalize.

### 5.2.3: InvestConservation and Tapichalaca Reserve

InvestConservation is a for-profit organization focused on “Making Conservation Investable by driving private capital to conservation of Tropical Rainforests” (InvestConservation, n.d.-a, About us section). As further described in this section, InvestConservation was founded in 2022 and was “born out of the need to go beyond philanthropy and bring scalable private investment to the protection of natural standing forests and threatened biodiversity” (InvestConservation, n.d.-a, About us section).

Like Savimbo, InvestConservation operates a handful of projects across Latin America and in Indonesia. My research analyzes their Tapichalaca Reserve project also in the tropical Andes where “deforestation is a significant threat, primarily from expansion of smallholder agriculture” (InvestConservation, n.d.-b, Tapichalaca Reserve section). The Tapichalaca Reserve serves as a “link between the Podocarpus and Yacuri National Parks and coordinates protection of local forests that provide water catchment for lower elevation communities” (InvestConservation, n.d.-b, Tapichalaca Reserve section).

### 5.2.4: InvestConservation Methodology

InvestConservation’s biodiversity credit methodology was designed with specific aim of “promoting the conservation of biodiversity hotspots in threatened tropical forests” (InvestConservation, 2023, 1.0 Overview section). The standard prioritizes ecological protection

through the establishment and management of conservation reserves and aims to maximize financial resources directed toward on the ground conservation activities. It states

The establishment of conservation reserves is the most effective strategy to protect biodiversity. It is based on a model of land sparing where land is set aside for biodiversity protection. Historically, land sparing has been a more effective conservation approach than alternative regimes integrating biodiversity conservation and food production on the same land. (InvestConservation, 2023, 1.2 Biodiversity Impact of Conservation Reserves section)

Within the formal methodology and other publicly available documentation, there is no explicit reference to IPLC, Indigenous rights, the right to self determination, or FPIC. The methodology does not outline requirements related to Indigenous participation, consent processes, nor does it discuss benefit-sharing. The closest engagement to IPLC lies in a section on Nature-Based Contributions which solely states “Social-Local Communities & employment” (InvestConservation, n.d., Nature Based Contributions section). Additional references to community engagement and alignment with FPIC appear in external sources rather than within InvestConservation’s official methodology or website materials. According to the section on the Bloom Labs database focusing specifically on the InvestConservation methodology and its position on Indigenous Rights, it states:

Conservation is a community asset generating revenue, sustainable employment and training, providing community support and alignment with Free, Prior and Informed Consent (FPIC). In many of the conservation reserves, there are no individuals living in the landscapes other than the rangers. Where there are, there are community managers working for the representation of community rights and stewardship. Transparency and

understanding are key. (Bloom Labs, n.d. InvestConservation Scheme Indigenous Rights section)

Overall, InvestConservation's methodology presents a conservation framework focused on protecting biodiversity hotspots through reserve-based management and biodiversity credit issuance. While the methodology is ecologically detailed and operationally specific in its approach to conservation outcomes, it is notably silent on the rights dimensions that the international frameworks examined in this research identify as foundational to meaningful IPLC participation. The absence of explicit reference to FPIC, self-determination, benefit-sharing, or Indigenous governance authority within the formal methodology is significant not merely as an oversight but as a reflection of the governance logic identified in the literature review, in which market-based conservation instruments prioritize ecological measurability and financial viability over the political and rights-based dimensions of Indigenous engagement. The methodology's framing of community involvement primarily through employment and operational participation reproduces precisely the pattern identified in Chapters 3 and 4 – institutional inclusion without structural redistribution of authority – positioning IPLC as beneficiaries of conservation activity rather than as rights-holders with decision-making authority over their lands and territories. The reliance on an external database entry rather than the methodology itself to establish FPIC alignment further underscores this gap, suggesting that rights commitments are peripheral to rather than embedded within InvestConservation's governance framework. The extent to which this divergence reflects broader patterns in biodiversity credit market governance is examined in the comparative analysis that follows.

### 5.3: Analysis of Methodologies

A combined content and discourse analysis of the two methodologies reveals not only what is present or absent in terms of rights-related provisions, but how each organization linguistically frames the role of IPLC within biodiversity credit governance and what these framing choices reveal about underlying assumptions regarding IPLC authority, participation, and benefit-sharing. The analysis is organized around the three analytical dimensions established at the outset of this chapter: FPIC, equitable benefit-sharing, and Indigenous governance authority.

A systematic review of rights-related terms across both methodologies reveals a stark divergence in how each organization engages with Indigenous rights. Savimbo's methodology explicitly references FPIC, land rights, traditional knowledge, direct funding, and Indigenous governance authority as formal methodological requirements tied to project legitimacy and credit issuance. These provisions are not incidental as they appear across multiple sections of the methodology, including the executive summary, principles of working with IP and LC, and effective participation sections, suggesting that rights-based commitments are structurally embedded rather than rhetorically appended. In contrast, InvestConservation's methodology contains no explicit reference to FPIC, self-determination, Indigenous rights, or benefit-sharing within its formal documentation. The term "community" appears only in relation to employment and operational participation, and FPIC alignment is referenced solely in an external database entry rather than within the methodology itself. This absence is analytically significant as it is not simply that InvestConservation uses different language to express the same commitments, but that the rights dimensions foundational to meaningful IPLC participation are structurally absent from the governance framework the methodology establishes. In comparing the two methodologies, despite the projects occurring within the same biodiversity hotspot, these organizations have apparent differing approaches to how Indigenous participation and benefit-

sharing are framed. These differences are reflected not only in the language used within each methodology, but also in how IPLC are positioned in relation to project governance, implementation, and financial benefits.

Within Savimbo's methodology, IPLC are framed as central actors in biodiversity protection. The methodology explicitly situates IPLC as co-developers of the framework and as primary participants throughout the project lifecycle. Linguistically, this framing is significant as Savimbo's methodology consistently uses active language when describing IPLC roles. Phrases such as "co-developed with Indigenous Peoples," "direct payments," and "autonomous quantification" position IPLC as subjects with decision-making authority rather than objects of conservation intervention. The methodology's language of "eliminating middlemen" and "direct access to climate funding" further constructs IPLC as market participants with economic agency, rather than as beneficiaries dependent on organizational mediation. This framing is consistent with the understanding of meaningful participation established in the previous chapters an approach that requires not just formal inclusion but genuine redistribution of authority and resources. Indigenous participation is articulated through defined principles, including land rights recognition, FPIC, and respect for Indigenous autonomy and traditional knowledge. Benefit-sharing is addressed through explicit requirements related to direct financial gain, transparent revenue distribution, disclosure of ownership and staffing arrangements, and safeguards to ensure that benefits reach individuals directly engaged in conservation activities. In this framing, Indigenous participation and benefit-sharing are embedded as formal methodological requirements tied to credit issuance and project legitimacy.

In contrast, InvestConservation's methodology frames biodiversity conservation primarily through an ecological and reserve-based lens, with an emphasis on protecting biodiversity

hotspots and maximizing funding for on the ground conservation activities. Discursively, the methodology consistently positions nature and ecological outcomes as the primary subject of governance, with communities appearing instrumentally whose involvement is valued only as it serves conservation objectives. The land sparing model articulated in the methodology implicitly constructs Indigenous land relationships as incompatible with conservation goals. The reliance on an external database to establish FPIC alignment is itself a discursively significant choice. It suggests that rights commitments are treated as external validation criteria rather than as governance principles embedded in project design. Within the formal methodology and official documentation, IPLC are not explicitly referenced, and there are no articulated requirements related to Indigenous participation, self-determination, FPIC, or benefit-sharing mechanisms. References to communities appear primarily in relation to employment, operational roles, and local engagement within conservation reserve management. Where discussions of community benefits and FPIC alignment arise, these are located in external sources rather than within the methodology itself, and are not presented as binding methodological criteria.

This analysis reveals that the divergence between the two methodologies is not merely a matter of degree but of kind. Savimbo's methodology constructs IPLC as rights-holders and governance actors, embedding participatory and consent-based requirements as structural features of project legitimacy. InvestConservation's methodology constructs IPLC primarily as community stakeholders whose involvement is operationally useful but not rights-constitutive, a framing that reproduces the pattern of institutional inclusion without structural redistribution of authority identified in Chapter 4. Both methodologies operate within the same national legal framework and the same biodiversity hotspot, yet arrive at fundamentally different governance logics – suggesting that the divergence reflects organizational design choices and market

incentives rather than contextual necessity. The two methodologies indicate different orientations toward the role of IPLC within biodiversity credit projects. Savimbo's methodology explicitly defines Indigenous participation and benefit-sharing as core components of project design and accountability, while InvestConservation's methodology emphasizes conservation outcomes and operational engagement, with community involvement framed more implicitly and without formalized rights-based or consent-based requirements within the standard itself.

#### 5.4: Comparison of Methodologies Against UN Frameworks

Building from the previous chapter discussion of UN frameworks on Indigenous rights, this section examines how principles articulated at the international level are reflected, interpreted, or reconfigured within biodiversity credit methodologies in practice. The analysis reveals that the gap between rights on paper and rights in practice which manifests unevenly across the two methodologies – with Savimbo reflecting a closer alignment with international standards and InvestConservation reproducing the pattern of institutional inclusion without substantive rights-based commitments.

Savimbo's methodology reflects a close alignment with the rights-based language articulated in UNDRIP, particularly in its explicit recognition of Indigenous autonomy, land rights, and FPIC. This explicit alignment is seen with UNDRIP, Articles 3 and 10 on self-determination and FPIC respectively, which positions IPLC as primary actors rather than passive stakeholders embedded across project governance, benefit-sharing, and implementation. The methodology also reflects the intent of ILO Convention 169, particularly Articles 6 and 7, which outline consultation, participation, and functional expressions of self-determination. Additionally, Savimbo's practices correspond with the CBD Kunming-Montreal Global Biodiversity Framework (GBF), particularly Targets 1 and 21, which reference participatory management,

data sharing, and FPIC-aligned decision-making processes. In this way, Savimbo’s approach reflects an attempt to translate international rights frameworks into market mechanisms that structurally embed Indigenous participation rather than treating it as a consultative process. However, it is important to note that Savimbo's alignment with these frameworks is evident at the level of methodology documentation – whether these commitments are fully realized in practice remains difficult to verify given the limited availability of project outcome data, a limitation acknowledged in this chapter's introduction.

In contrast, InvestConservation’s methodology reflects a more limited engagement with the rights articulated in UN frameworks. Its formal documentation makes no explicit reference to self-determination, FPIC, or Indigenous governance structures, and community involvement is primarily framed in terms of employment, operational participation, and the distribution of conservation-related benefits. While external sources note alignment with FPIC and community-oriented outcomes, these principles are not embedded in the methodology itself. References to self-determination and FPIC appear indirectly, and alignment with UN frameworks are aspirational rather than formally codified. While the methodology supports community engagement, it does not establish enforceable requirements to ensure meaningful Indigenous participation or direct authority over conservation decision-making. This suggests they function more as aspirational commitments than enforceable standards. This illustrates how rights articulated at the international level can be selectively translated or omitted within conservation initiatives.

Taken together, the comparison of these methodologies highlights how emerging biodiversity credit mechanisms engage unevenly with international Indigenous rights frameworks. While Savimbo’s methodology more explicitly reflects the language and intent of

UN frameworks, the analysis of both cases confirms the chapter's central argument – that commitments to FPIC, benefit-sharing, and Indigenous governance authority are often procedural rather than substantive, and that market integrity and project viability shape how, and whether, international rights standards are translated into project governance. The translation of rights on paper into practice is mediated by institutional design choices, economic incentives, and power asymmetries that shape whose authority is recognized and how participation is structured. This uneven engagement with international frameworks is not incidental but reflects the structural conditions identified throughout this thesis – that the fragmented and inconsistent normative standard produced by ILO C.169, UNDRIP, and the CBD GBF creates the conditions under which market actors can engage with Indigenous rights selectively, defaulting to whichever standard is most permissive rather than being held to a coherent and enforceable obligation.

## Chapter Conclusion

This chapter has demonstrated that emerging biodiversity credit mechanisms translate international Indigenous rights frameworks unevenly, shaped less by the consistency of international normative standards than by the institutional priorities, governance logics, and market orientations of the organizations designing them. Despite occurring within the same national legal framework and biodiversity hotspot, Savimbo and InvestConservation's methodologies differ fundamentally in how they position IPLC within project governance. This difference reflects the organizational logics underpinning each project. Savimbo, founded by and for IPLC, constructs Indigenous participation as a governance principle embedded in project design. InvestConservation, as a for-profit conservation enterprise prioritizing ecological outcomes and private capital mobilization, constructs community involvement instrumentally.

The divergence therefore suggests that meaningful IPLC participation in biodiversity credit markets is contingent on organizational design choices rather than international framework obligations. This finding affirms the chapter's central argument that commitments to FPIC, benefit-sharing, and Indigenous governance authority are often procedural rather than substantive, and that market integrity and project viability shape how international rights standards are translated into project governance. The fragmented normative standard produced by ILO C.169, UNDRIP, and the CBD GBF does little to resolve this, leaving the realization of Indigenous rights within biodiversity credit markets contingent on organizational willingness rather than systemic obligation. It is important to acknowledge that this analysis is based on publicly available methodology documentation rather than documented project outcomes. Therefore, the extent to which rights commitments are realized in practice remains beyond the scope of this analysis and underscores the need for further research as the market matures. The concluding chapter examines what deliberate adaptation of existing frameworks and market governance standards would be required to ensure that IPLC participation in biodiversity credit markets is substantive rather than procedural.

## Chapter 6: Conclusions and Ways Forward

This thesis set out to examine the extent to which international Indigenous rights frameworks enable meaningful Indigenous Peoples and Local Communities (IPLC) participation in biodiversity credit markets, and where structural limitations persist in practice. The analysis demonstrates that ILO Convention 169, UNDRIP, and the CBD GBF establish an important but incomplete normative foundation where differing binding authorities, scopes, and articulations of consent and autonomy produce an uneven standard that cannot reliably secure meaningful IPLC participation. These limitations are not incidental but structural, embedded in a binding gap and sovereignty constraint that ensure Indigenous rights remain contingent on state willingness rather than systemic accountability. The empirical analysis of Savimbo and InvestConservation's methodologies confirms that this misalignment is not merely theoretical and that commitments to FPIC, benefit-sharing, and Indigenous governance authority are often procedural rather than substantive, where market integrity frequently takes precedence over genuine IPLC empowerment.

Nonetheless, I assert that bridging this gap does not require new frameworks but deliberate adaptation of existing ones. The normative architecture of ILO Convention 169, UNDRIP, and the CBD GBF already contains the foundational commitments necessary to secure meaningful IPLC participation in biodiversity credit markets. What is missing is not the substance of these rights, but the deliberate interpretation and application of existing commitments to the specific governance context of biodiversity credit markets. This requires action at multiple levels. States must translate international commitments into domestic legal standards that explicitly govern biodiversity credit projects ensuring that FPIC requirements, benefit-sharing obligations, and Indigenous governance authority are enforceable at the project

level rather than aspirational at the international level. Standard-setting bodies and market actors must embed these standards as binding methodological requirements rather than voluntary principles, closing the discretionary space that currently allows market actors to engage with Indigenous rights selectively. Adaptation in this sense is not a technical exercise but a political one. It requires states, market actors, and standard-setting bodies to prioritize genuine IPLC empowerment over market efficiency, and to treat Indigenous rights not as constraints on market development but as foundational conditions for its legitimacy.

To embed these adaptations in practice, the joint paper between the Biodiversity Credit Alliance, International Advisory Panel on Biodiversity Credits, and the World Economic Forum on High-Level Principles to Guide the Biodiversity Credit Market offer a promising practical framework through which international normative commitments can be operationalized within biodiversity credit contexts (Biodiversity Credit Alliance, 2025). At the knowledge level, Indigenous approaches such as Two-Eyed Seeing which draws on both Indigenous and Western knowledge systems in environmental contexts offer a model for integrating Indigenous epistemologies into conservation governance in ways that recognize rather than subordinate Indigenous authority (Bartlett et al., 2012). Together, these adaptations suggest that the path toward meaningful IPLC participation lies not in reforming international law but in ensuring that market actors and states translate existing commitments into enforceable and substantive practice.

While this thesis has examined the structural limits of IPLC participation in biodiversity credit markets, it also surfaces several questions that warrant further investigation. Future research can examine what biodiversity credit market-specific governance standards are needed beyond what existing frameworks provide. This can include how FPIC should be operationalized

within biodiversity credit transactions, how benefit-sharing obligations can be made enforceable within private governance frameworks, and how Indigenous governance authority can be structurally embedded rather than procedurally acknowledged. As the market matures, empirical research into community experiences within biodiversity credit projects will be essential moving further beyond methodology documentation to examine how rights commitments are realized or undermined in practice. I conclude with the cautious optimism that the task ahead is not to build something new but to ensure that what already exists is taken seriously. If the market is designed with genuine commitment to Indigenous rights from the outset – rather than as an afterthought – biodiversity credits hold real potential to become a mechanism that not only protects nature but genuinely empowers the peoples who have stewarded it for generations.

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