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# The Intersections of Public Rights and Private Rules: An Analysis of Human Rights in Forestry and Fisheries Certification Standards

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## Abstract

This article systematically evaluates whether, how, and to what extent twelve prominent forestry and fisheries certification schemes address human rights in their standards. In line with the broader cross-fertilization of the fields of international human rights and environmental law and policy, our results demonstrate that human rights norms and considerations – primarily Indigenous, labour, and procedural rights – are increasingly reflected in the rulemaking of these schemes. At the same time, our analysis also demonstrates the mixed and underwhelming performance of certification standards in protecting human rights norms, including those relating to women, children, racialized and ethnic minorities, persons with disabilities, Indigenous peoples, workers, 2SLGBTQIA+ communities, and peasants and rural peoples. Through descriptive statistics, we also show that levels of human rights adherence vary significantly across schemes and that standards developed in the forestry sector tend to outperform those for fisheries. Our methodology and results add a new dimension to efforts to assess the stringency, equity, and legitimacy of private authority in the environmental field.

**Keywords:** Human rights; Certification; Private authority; Environmental governance; Forestry; Fisheries; Transnational environmental law

## 1. Introduction

Corporations, industry bodies, and non-governmental organizations (NGOs) have developed various voluntary certification programmes to guide and track initiatives to sustainably manage forests, fisheries, and farming.<sup>1</sup> The transnational governance of natural resources has also been shaped by the growing influence of human rights, with a particular focus on recognizing and protecting the rights of Indigenous peoples

<sup>1</sup> G. Auld, *Constructing Private Governance: The Rise and Evolution of Forest, Coffee, and Fisheries Certification* (Yale University Press, 2014); B. Cashore, G. Auld & D. Newsom, *Governing through Markets: Forest Certification and the Emergence of Non-state Authority* (Yale University Press, 2004).

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and local communities.<sup>2</sup> While each of these developments has attracted significant attention from scholars,<sup>3</sup> little is known about their interactions.<sup>4</sup> In 2012, a major review of the scholarship on environmental certification specifically highlighted the lack of research on the implications of certification schemes for rights, social issues, and communities.<sup>5</sup> More research is thus needed to understand whether and how a broad range of human rights norms have been integrated into environmental certification programmes.<sup>6</sup>

Our article aims to address this gap in the literature by answering two important questions. The first is whether, how, and to what extent do environmental certification schemes address human rights norms and principles in their standards? Secondly, how and why do schemes in different sectors of environmental governance differ in their levels of human rights adherence? To answer these questions, we perform a systematic analysis of the human rights standards of twelve certification schemes for forestry and fisheries. These are two sectors with relatively well-developed certification markets,<sup>7</sup> which have been marked by a history of highly publicized human rights violations.<sup>8</sup> At the same time, these sectors are also shaped by different institutional factors that may influence adherence to human rights norms.

<sup>2</sup> F. Francioni, 'Natural Resources and Human Rights', in E. Morgera & K. Kulovesi (eds), *Research Handbook of International Law and Natural Resources* (Edward Elgar, 2016), pp. 323–27; R. Witter & T. Satterfield, 'The Ebb and Flow of Indigenous Rights Recognitions in Conservation Policy' (2019) 50(4) *Development and Change*, pp. 1083–108.

<sup>3</sup> The proliferation of certification programmes has given rise to countless studies of their emergence, nature, governance, credibility, influence, and effectiveness as forms of private authority in the field of conservation: J. Green, *Rethinking Private Authority: Agents and Entrepreneurs in Global Environmental Governance* (Princeton University Press, 2013); T. Bartley, *Rules without Rights: Land, Labor, and Private Authority in the Global Economy* (Oxford University Press, 2018); H. van der Ven, *Beyond Greenwash: Explaining Credibility in Transnational Eco-Labeling* (Oxford University Press, 2019); L.H. Gulbrandsen, *Transnational Environmental Governance: The Emergence and Effects of the Certification of Forests and Fisheries* (Edward Elgar, 2010). Likewise, the implications of Indigenous and human rights norms for resource management and conservation has been scrutinized by scholars: S. Jodoin, 'Can Rights-Based Approaches Enhance Levels of Legitimacy and Cooperation in Conservation? A Relational Account' (2014) 15(3) *Human Rights Review*, pp. 283–303; P. Kashwan, 'The Politics of Rights-Based Approaches in Conservation' (2013) 31 *Land Use Policy*, pp. 613–26.

<sup>4</sup> Notable exceptions include S. Teitelbaum et al., 'Regulatory Intersections and Indigenous Rights: Lessons from Forest Stewardship Council Certification in Quebec, Canada' (2019) 49(4) *Canadian Journal of Forest Research*, pp. 414–22; R. Kusumaningtyas, *Forest Certification and International Guidelines on the Protection of Human and Labour Rights* (Profundo, 2019).

<sup>5</sup> Steering Committee of the State-of-Knowledge Assessment of Standards and Certification, *Toward Sustainability: The Roles and Limitations of Certification*, Final Report (Resolve Inc., 2012).

<sup>6</sup> While the nature and impact of labour and fair-trade schemes have occasionally been studied alongside that of conservation programmes, this literature leaves key questions unanswered regarding the protection of human rights norms in environmental certification programmes: Bartley, n. 3 above; Auld, n. 1 above.

<sup>7</sup> Gulbrandsen, n. 3 above, pp. 40–1; Bartley, n. 3 above, p. 17.

<sup>8</sup> B.D. Ratner, B. Åsgård & E.H. Allison, 'Fishing for Justice: Human Rights, Development, and Fisheries Sector Reform' (2014) 27 *Global Environmental Change*, pp. 120–30; G. Magin, *Forests of Fear: The Abuse of Human Rights in Forest Conflicts* (Forests and the European Union Resource Network (FERN), 2001).

The article proceeds as follows. In Section 2 we provide an overview of the growing influence and potential of human rights in the field of environmental governance. We then, in Section 3, conceptualize certification as a dynamic and often competitive transnational legal process that interacts with a diverse array of legal, economic, political, and social norms and institutions. In Section 4 we present the design and results of our systematic analysis of the integration of human rights norms across a selection of certification standards. In Section 5 we draw on the existing literature and use descriptive statistics to examine how and why levels of human rights adherence in standard-setting vary across programmes in the forestry and fisheries sectors. We conclude, in Section 6, by addressing the relevance of our article for understanding the relationship between human rights and the environment and for studying stringency, equity, and legitimacy in the context of private authority.

## 2. The Emergence and Role of Human Rights in Transnational Environmental Law and Governance

Ever since the 1972 Stockholm Declaration on the Human Environment declared that humans have ‘the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being’,<sup>9</sup> there have been increasing levels of cross-fertilization between the fields of human rights and environmental governance.<sup>10</sup> Although most human rights conventions and instruments do not explicitly address the protection of the environment,<sup>11</sup> international and regional human rights tribunals, bodies, and experts have consistently held that environmental harm can interfere with existing human rights and that states are obliged to take steps to prevent and remedy this interference.<sup>12</sup> Domestic courts have also recognized that environmental problems, such as pollution or climate change, threaten the enjoyment of fundamental rights.<sup>13</sup> Because of their unique relationship with land and nature, the rights to life and culture of

<sup>9</sup> Declaration of the UN Conference on the Human Environment, Stockholm (Sweden), 5–16 June 1972, UN Doc. A/CONF.48/14/ Rev.1, Principle 1, available at: <http://www.un-documents.net/aconf48-14r1.pdf>.

<sup>10</sup> D. Shelton, ‘Human Rights, Environmental Rights, and the Right to Environment’, in S. Vanderheiden (ed.), *Environmental Rights* (Routledge, 2017), pp. 509–44; A. Boyle & M.R. Anderson, *Human Rights Approaches to Environmental Protection* (Oxford University Press, 1996); A. Boyle, ‘Human Rights and the Environment: Where Next?’ (2012) 23(3) *European Journal of International Law*, pp. 613–42; B. Boer, *Environmental Law Dimensions of Human Rights* (Oxford University Press, 2015).

<sup>11</sup> The notable exception in this respect is the African Charter on Human and Peoples’ Rights, Nairobi (Kenya), 27 June 1981, in force 21 Oct. 1986, Art. 24, available at: [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf).

<sup>12</sup> For a systematic overview of these decisions and statements see J.H. Knox, ‘Report of the Independent Expert on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Mapping Report’, 30 Dec. 2013, UN Doc. A/HRC/25/53, available at: <https://documents.un.org/doc/undoc/gen/g13/192/11/pdf/g1319211.pdf?token=zRZJ8pnqqiqBhYgMd&fe=true>.

<sup>13</sup> D.R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (University of British Columbia Press, 2011).

Indigenous peoples have been recognized as especially at risk from the adverse impacts of environmental hazards.<sup>14</sup>

The substantive role that human rights should play in addressing environmental problems is also manifested in the constitutional recognition of a right to a healthy environment in more than 110 countries.<sup>15</sup> The United Nations General Assembly (UNGA) recently adopted a resolution recognizing the right to a clean, healthy, and sustainable environment, affirming that states are obliged to respect, protect, and fulfil human rights when they act to protect the environment.<sup>16</sup> The Framework Principles on Human Rights and the Environment developed by former UN Special Rapporteur John Knox, although not formally endorsed by states, provide an authoritative articulation of how human rights obligations apply to the environmental realm.<sup>17</sup>

At the same time, rights-based concepts and approaches have assumed an increasingly influential role in transnational environmental law and governance.<sup>18</sup> Since the adoption of the Rio Declaration on Environment and Development,<sup>19</sup> procedural rights to participation, information, and access to justice in environmental matters have been enshrined into two regional conventions<sup>20</sup> and have become a cornerstone of environmental laws, policies, and practices around the world.<sup>21</sup> Human rights language has gained increasing currency in several multilateral environmental regimes, most notably in the decisions adopted by state parties to the UN Convention on Biological Diversity (CBD)<sup>22</sup> and the UN Framework Convention on Climate Change (UNFCCC).<sup>23</sup> Moreover, as a result of the success

<sup>14</sup> A. Solntsev, 'Indigenous Peoples and Environmental Rights', in J.R. May & E. Daly (eds), *Human Rights and the Environment: Legality, Indivisibility, Dignity and Geography*, Encyclopedia of Environmental Law, Vol VII (Edward Elgar, 2019), pp. 401–13.

<sup>15</sup> J.H. Knox & R. Pejan, *The Human Right to a Healthy Environment* (Cambridge University Press, 2018).

<sup>16</sup> UNGA Resolution 76/300, 'The Human Right to a Clean, Healthy and Sustainable Environment', 28 July 2022, UN Doc. A/RES/76/300, available at: [https://digitallibrary.un.org/record/3983329/files/A\\_RES\\_76\\_300-EN.pdf](https://digitallibrary.un.org/record/3983329/files/A_RES_76_300-EN.pdf).

<sup>17</sup> J.H. Knox, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment', 24 Jan. 2018, UN Doc. A/HRC/37/59, p. 3, available at: [https://digitallibrary.un.org/record/1474985/files/A\\_HRC\\_37\\_59-EN.pdf](https://digitallibrary.un.org/record/1474985/files/A_HRC_37_59-EN.pdf).

<sup>18</sup> K. Conca, 'Environmental Governance after Johannesburg: From Stalled Legalization to Environmental Human Rights?' (2006) 1(1–2) *Journal of International Law and International Relations*, pp. 121–38.

<sup>19</sup> Adopted by the UN Conference on Environment and Development, Rio de Janeiro (Brazil), 3–14 June 1992, UN Doc. A/CONF.151/26/Rev.1 (Vol. I), 14 June 1992, available at: <https://www.un.org/esa/dsd/agenda21/Agenda%202021.pdf>.

<sup>20</sup> V.V. Karageorgou, 'Access to Justice in Environmental Matters: Recent Developments at International and Regional Level and the Repercussions at the National Level', in May & Daly, n. 14 above, pp. 155–68.

<sup>21</sup> L.J. Kotzé & E. Daly, 'A Cartography of Environmental Human Rights', in J.E. Viñuales & E. Lees (eds), *Oxford Handbook of Comparative Environmental Law* (Oxford University Press, 2019), pp. 1043–70.

<sup>22</sup> Rio de Janeiro (Brazil), 5 June 1992, in force 29 Dec. 1993, available at: <http://www.cbd.int/convention/text>. See E. Morgera, 'No Need to Reinvent the Wheel for a Human Rights-Based Approach to Tackling Climate Change: The Contribution of International Biodiversity Law', in E. Hollo, K. Kulovesi & M. Mehling (eds), *Climate Change Law* (Springer, 2013), pp. 359–90; N.S. Koh, C. Ituarte-Lima & T. Hahn, 'Mind the Compliance Gap: How Insights from International Human Rights Mechanisms Can Help to Implement the Convention on Biological Diversity' (2022) 11(1) *Transnational Environmental Law*, pp. 39–67.

<sup>23</sup> New York, NY (US), 9 May 1992, in force 21 Mar. 1994, available at: <https://unfccc.int/resource/docs/convkp/conveng.pdf>. See S. Atapattu, *Human Rights Approaches to Climate Change: Challenges and*

of Indigenous peoples in having their rights and status recognized at the global level<sup>24</sup> and a broader turn towards rights-based approaches,<sup>25</sup> human rights and procedural safeguards have increasingly permeated the decisions and policies adopted by multilateral institutions concerning the sustainable management of natural resources.<sup>26</sup> Most notably, the International Union for the Conservation of Nature (IUCN) adopted a new ‘rights-based’ paradigm to conservation in 2003<sup>27</sup> and committed in 2012 to ‘respect, protect, promote and fulfil all procedural and substantive rights, including environmental and customary rights, for just and equitable conservation’.<sup>28</sup>

While the onus of protecting and realizing human rights falls primarily on states as a matter of international law, corporations, international organizations and NGOs are also responsible for ensuring that the management of natural resources respects, protects, and fulfils human rights set out in international law and any applicable domestic legal regimes.<sup>29</sup> Seven of the largest conservation NGOs have established an initiative focused on respecting and mainstreaming human rights in their programming.<sup>30</sup> The UN Guiding Principles on Business and Human Rights highlight the responsibility that enterprises have to respect rights, especially relevant to the certification context, which is explicitly business-oriented.<sup>31</sup> Corporations active in the field of natural resources have also increasingly pledged to abide by human rights standards in their operations.<sup>32</sup>

In line with the work of the UN Special Rapporteur on Human Rights and the Environment<sup>33</sup> and the policies adopted by the main international conservation organizations,<sup>34</sup> we conceive of a rights-based approach here as encompassing human rights norms recognized in international treaties or soft law instruments

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*Opportunities* (Routledge 2016); S. Duyck, S. Jodoin & A. Johl, *The Routledge Handbook of Human Rights and Climate Governance* (Routledge, 2018).

<sup>24</sup> Solntsev, n. 14 above.

<sup>25</sup> T. Greiber (ed.), *Conservation with Justice: A Rights-Based Approach* (IUCN, 2009). See also Jodoin, n. 3 above; Witter & Satterfield, n. 2 above.

<sup>26</sup> Francioni, n. 2 above. See, e.g., Decisions of the Conference of the Parties to CITES in Effect after its 18<sup>th</sup> Meeting, Geneva (Switzerland), Decision 18.31, ‘Engagement of Indigenous Peoples and Local Communities’, available at: <https://cites.org/eng/node/55648>.

<sup>27</sup> ‘The Durban Action Plan’, in *Benefits Beyond Boundaries: Report of the 5<sup>th</sup> IUNC World Parks Congress*, Durban (South Africa), 8–17 Sept. 2003, pp. 224–66, available at: <https://portals.iucn.org/library/sites/library/files/documents/2005-007.pdf>.

<sup>28</sup> IUCN, Resolution 99, ‘IUCN Policy on Conservation and Human Rights for Sustainable Development’, IUCN Doc. WCC-2012-Res-099, available at: [https://portals.iucn.org/library/sites/library/files/resrec-files/WCC\\_2012\\_RES\\_99\\_EN.pdf](https://portals.iucn.org/library/sites/library/files/resrec-files/WCC_2012_RES_99_EN.pdf).

<sup>29</sup> Boyle, n. 10 above, pp. 619–21.

<sup>30</sup> The Conservation Initiative on Human Rights (CIHR), ‘Learn More About Us’, available at: <http://www.thecihr.org>.

<sup>31</sup> ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’, adopted by the UN HRC in Resolution 17/4, 16 June 2011, UN Doc. HR/PUB/11/4, available at: [https://digitallibrary.un.org/record/720245/files/GuidingPrinciplesBusinessHR\\_EN.pdf](https://digitallibrary.un.org/record/720245/files/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>32</sup> S.J. Turner, ‘Chapter VII.28: Business Practices, Human Rights and the Environment’, in M. Faure (ed.), *Encyclopedia of Environmental Law* (Edward Elgar, 2019), pp. 376–86.

<sup>33</sup> Knox, n. 17 above.

<sup>34</sup> Greiber, n. 25 above; IUCN, n. 28 above; CIHR, n. 30 above; J. Springer, J. Campese & M. Painter, ‘Conservation and Human Rights: Key Issues and Contexts’, Scoping Paper for the CIHR, Oct. 2011.

adopted by states, including resolutions of the UN General Assembly and the UN Human Rights Council (HRC) as well as key declarations of international environmental law.<sup>35</sup> This includes civil and political rights (such as the rights to life, personal security, freedom of movement, and freedom from discrimination);<sup>36</sup> economic, social and cultural rights (such as the rights to an adequate standard of living, health, food, water, and culture);<sup>37</sup> procedural environmental rights to information, participation, and access to justice;<sup>38</sup> and the right to a healthy environment.<sup>39</sup> A rights-based approach also entails recognizing and protecting the rights held by groups under specialized instruments or through the application of the right to non-discrimination, specifically women,<sup>40</sup> children,<sup>41</sup> racialized and ethnic minorities,<sup>42</sup> persons with disabilities,<sup>43</sup> Indigenous peoples,<sup>44</sup> workers,<sup>45</sup>

<sup>35</sup> Kotzé & Daly, n. 21 above. While we focus in this article on the diffusion of norms of international human rights law into certification standards, we acknowledge that there are alternative conceptions of rights-based approaches that refer to broader principles of environmental justice; see, e.g., S. Walker, 'The Meaning and Potential of a Human Rights-Based Approach to Climate Change Post-Sharma' (2022) 47(3) *Alternative Law Journal*, pp. 194–8.

<sup>36</sup> International Covenant on Civil and Political Rights, New York, NY (United States (US)), 16 Dec. 1966, in force 23 Mar. 1976, available at: <https://www.ohchr.org/sites/default/files/ccpr.pdf>.

<sup>37</sup> International Covenant on Economic, Social and Cultural Rights, New York, NY (US), 16 Dec. 1966, in force 3 Jan. 1976, available at: <https://www.ohchr.org/sites/default/files/cescr.pdf>.

<sup>38</sup> Rio Declaration, n. 19 above.

<sup>39</sup> UNGA Resolution 76/300, n. 16 above.

<sup>40</sup> Convention on the Elimination of All Forms of Discrimination against Women, New York, NY (US), 18 Dec. 1979, in force 3 Sept. 1981, available at: <https://www.ohchr.org/sites/default/files/cedaw.pdf>.

<sup>41</sup> Convention on the Rights of the Child, New York, NY (US), 20 Nov. 1989, in force 2 Sept. 1990, available at: <https://www.ohchr.org/sites/default/files/crc.pdf>.

<sup>42</sup> International Convention on the Elimination of All Forms of Racial Discrimination, New York, NY (US), 7 Mar. 1966, in force 4 Jan. 1969, available at: <https://www.ohchr.org/sites/default/files/cerd.pdf>.

<sup>43</sup> Convention on the Rights of Persons with Disabilities, New York, NY (US), 13 Dec. 2006 in force 3 May 2008, available at: [https://www.ohchr.org/sites/default/files/Ch\\_IV\\_15.pdf](https://www.ohchr.org/sites/default/files/Ch_IV_15.pdf).

<sup>44</sup> UNGA Resolution 61/295, 'UN Declaration on the Rights of Indigenous Peoples' (UNDRIP), 13 Sept. 2007, UN Doc. A/RES/61/295, available at: [https://digitallibrary.un.org/record/606782/files/A\\_RES\\_61\\_295-EN.pdf](https://digitallibrary.un.org/record/606782/files/A_RES_61_295-EN.pdf); International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, Geneva (Switzerland), 27 June 1989, in force 5 Sept. 1991, available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169).

<sup>45</sup> ILO Convention (No. 105) concerning the Abolition of Forced Labour, Geneva (Switzerland), 25 June 1957, in force 17 Jan. 1959, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20320/volume-320-I-4648-English.pdf>; ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, Geneva (Switzerland), 29 June 1951, in force 23 May 1953, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20165/volume-165-I-2181-English.pdf>; ILO Convention (No. 29) concerning Forced or Compulsory Labour, as Modified by the Final Articles Revision Convention, 1946, 28 June 1930, Geneva (Switzerland), in force 1 May 1932, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%2039/volume-39-I-612-English.pdf>; ILO Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organize, San Francisco, CA (US), 9 July 1948, in force 4 July 1950, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%2068/volume-68-I-881-English.pdf>; ILO Convention (No. 138) concerning Minimum Age for Admission to Employment, Geneva (Switzerland), 26 June 1973, in force 19 June 1976, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201015/volume-1015-I-14862-English.pdf>; ILO Convention (No. 155) concerning Occupational Safety and Health and the Working Environment, Geneva (Switzerland), 22 June 1981, in force 11 Aug. 1983, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201331/volume-1331-I-22345-English.pdf>.

2SLGBTQIA+ communities,<sup>46</sup> and peasants and rural peoples.<sup>47</sup> Efforts to protect the rights of equity-seeking groups, moreover, must be carried out in an intersectional manner that takes into account the unique and compounding effects of the intersecting forms of discrimination faced by individuals who hold multiple social identities.<sup>48</sup>

Despite the growing recognition of human rights in transnational environmental law and governance, the Special Rapporteur on the Rights of Indigenous Peoples concluded in a 2016 report that the implementation of a rights-based approach remains rife with challenges and that efforts to conserve and manage natural resources continue to routinely violate the rights of Indigenous peoples around the world.<sup>49</sup> The field of resource conservation and management has long had a complex relationship with the promotion of human rights. In principle, conservation efforts have the potential to support the realization of a wide range of human rights, including the rights to life, health, work, food, water, and culture.<sup>50</sup> This is especially the case for communities who depend on the lands, ecosystem services, and resources being conserved, as the unsustainable depletion of resources can undermine the enjoyment of their rights and exacerbate inequalities.<sup>51</sup> However, conservation has a notorious history of displacing local communities, destroying their means of subsistence, disrupting their cultural practices, and fuelling arbitrary arrests, detention, and the excessive use of force.<sup>52</sup> Exclusionary practices of this kind undermine the civil, political, and cultural

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pdf; ILO Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, as modified by the Final Articles Revision Convention, 1961, Geneva (Switzerland), 1 July 1949, in force 18 July 1951, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%2096/volume-96-I-1341-English.pdf>; ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Geneva (Switzerland), 17 June 1999, in force 19 Nov. 2000, available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312327:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312327:NO).

<sup>46</sup> UN HRC Resolution 32/2, 'Protection Against Violence and Discrimination based on Sexual Orientation and Gender Identity', 30 June 2016, UN Doc. A/HRC/RES/32/2, available at: [https://digitallibrary.un.org/record/845552/files/A\\_HRC\\_RES\\_32\\_2-EN.pdf](https://digitallibrary.un.org/record/845552/files/A_HRC_RES_32_2-EN.pdf). See also Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, adopted by the Conference of International Legal Experts, Yogyakarta (Indonesia), 6–9 Nov. 2006, Mar. 2007, available at: [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf).

<sup>47</sup> UNGA Resolution 73/165, 'Declaration on the Rights of Peasants and Other People Working in Rural Areas' (UN Declaration on the Rights of Peasants), 17 Dec. 2018, UN Doc. A/RES/73/165, available at: [https://digitallibrary.un.org/record/1661560/files/A\\_RES\\_73\\_165-EN.pdf?ln=en](https://digitallibrary.un.org/record/1661560/files/A_RES_73_165-EN.pdf?ln=en).

<sup>48</sup> See generally G. de Beco, 'Protecting the Invisible: An Intersectional Approach to International Human Rights Law' (2017) 17(4) *Human Rights Law Review*, pp. 633–63.

<sup>49</sup> V. Tauli-Corpuz, 'Report of the Special Rapporteur of the Human Rights Council on the Rights of Indigenous Peoples', 29 July 2016, UN Doc. A/71/229, available at: [https://digitallibrary.un.org/record/838642/files/A\\_71\\_229-EN.pdf](https://digitallibrary.un.org/record/838642/files/A_71_229-EN.pdf).

<sup>50</sup> J.H. Knox, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment', UN Doc. A/HRC/34/49, 19 Jan. 2017, available at: [https://digitallibrary.un.org/record/861173/files/A\\_HRC\\_34\\_49-EN.pdf](https://digitallibrary.un.org/record/861173/files/A_HRC_34_49-EN.pdf).

<sup>51</sup> *Ibid.*, p. 16.

<sup>52</sup> N.L. Peluso, 'Coercing Conservation? The Politics of State Resource Control' (1993) 3(2) *Global Environmental Change*, pp. 199–217; N.S. Paudel, S. Ghimire & H.R. Ojha, 'Human Rights: A Guiding Principle or an Obstacle for Conservation?' (2007) 15 *IUCN Policy Matters*, pp. 299–310.

rights of Indigenous peoples and local communities and contribute to their marginalization.<sup>53</sup> Ultimately, most scholars take the view that a ‘fortress conservation’ approach is self-defeating as it fails to generate the support of local communities that is essential for the long-term sustainability of efforts to manage resources in complex environments involving multiple actors.<sup>54</sup> To the contrary, there is considerable evidence that empowering Indigenous and local communities by securing and protecting their rights to land and forests, and respecting their traditional knowledge and practices, can yield more sustainable outcomes.<sup>55</sup>

The promise of human rights in this fraught context stems from the authoritative norms and principles that they provide for developing, implementing, and monitoring resource governance efforts in a just and equitable manner, which not only protects but also empowers Indigenous peoples and local communities.<sup>56</sup> A resolution adopted by the HRC in 2011 reflects this optimistic view of the benefits of rights-based approaches for environmental governance: ‘human rights obligations and commitments have the potential to inform and strengthen international, regional and national policymaking in the area of environmental protection, promoting policy coherence, legitimacy and sustainable outcomes’.<sup>57</sup> It is important to acknowledge, however, that the cross-cultural legitimacy and transformative potential of human rights are not without controversy. Whereas the field of international human rights law is premised on the notion that human rights are universal, many scholars argue that they are a colonial project that reflects Western values and have been used to oppress communities in the global south.<sup>58</sup> As human rights are seen to be resting on neoliberal conceptions of personhood and an anthropocentric understanding of the relationship between humans and nature, there is significant scholarly scepticism that rights can engender just and equitable outcomes for Indigenous peoples or local communities in the context of efforts to protect the environment.<sup>59</sup> On the other hand, others would argue that, depending on their goals and the structural conditions in which they operate,

<sup>53</sup> P. West & D. Brockington, ‘An Anthropological Perspective on Some Unexpected Consequences of Protected Areas’ (2006) 20(3) *Conservation Biology*, pp. 609–16.

<sup>54</sup> L. Domínguez & C. Luoma, ‘Decolonising Conservation Policy: How Colonial Land and Conservation Ideologies Persist and Perpetuate Indigenous Injustices at the Expense of the Environment’ (2020) 9(3) *Land*, pp. 1–22; H. Siurua, ‘Nature above People: Rolston and “Fortress” Conservation in the South’ (2006) 11(1) *Ethics and the Environment*, pp. 71–96.

<sup>55</sup> N. Dawson et al., ‘The Role of Indigenous Peoples and Local Communities in Effective and Equitable Conservation’ (2021) 26(3) *Ecology and Society*, pp. 1–39.

<sup>56</sup> Jodoin, n. 3 above; J. Campese et al., *Rights-Based Approaches: Exploring Issues and Opportunities for Conservation* (Center for International Forestry Research & IUCN, 2009); Greiber, n. 25 above.

<sup>57</sup> UN HRC Resolution 16/11, ‘Human Rights and the Environment’, 24 Mar. 2011, UN Doc. A/HRC/RES/16/11, available at: [https://digitallibrary.un.org/record/702003/files/A\\_HRC\\_RES\\_16\\_11-EN.pdf](https://digitallibrary.un.org/record/702003/files/A_HRC_RES_16_11-EN.pdf).

<sup>58</sup> B. Ibhawoh, *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History* (State University of New York Press, 2008); C. Samson, *The Colonialism of Human Rights: Ongoing Hypocrisies of Western Liberalism* (John Wiley & Sons, 2020).

<sup>59</sup> I. Watson, ‘Aboriginal Relationships to the Natural World: Colonial “Protection” of Human Rights and the Environment’ (2018) 9(2) *Journal of Human Rights and the Environment*, pp. 119–40; J. Dehm, ‘Indigenous Peoples and REDD+ Safeguards: Rights as Resistance or as Disciplinary Inclusion in the Green Economy?’ (2016) 7(2) *Journal of Human Rights and the Environment*, pp. 170–217.

communities and social movements can mobilize and translate human rights norms to advance social and environmental causes.<sup>60</sup> Ultimately, a proper assessment of the impacts of human rights for people on the ground is beyond the scope of this article. Our primary focus lies in understanding how and why forestry and fisheries schemes have incorporated human rights in their standards, rather than whether they *should* do so. Nonetheless, it is worth bearing in mind that human rights remain a contested domain outside the narrow context of public international law.

### 3. Understanding Certification as a Transnational Legal Process

The emergence of certification as a new form of transnational environmental law during the past three decades is generally associated with growing dissatisfaction over the failure of governments to achieve meaningful outcomes for environmental protection.<sup>61</sup> The disillusionment with the potential of state-centred international environmental law gave way to an offloading of environmental responsibility onto transnational corporations and environmental NGOs, with certification serving as a market-based mechanism for regulating products, services, and supply chains.<sup>62</sup> The rapid globalization of the world economy, coupled with growing faith in the ability of markets to address problems, further reinforced this shift to certification.<sup>63</sup> At another level, advocacy campaigns targeting transnational corporations increased demand for certification from both consumers concerned with the ethics of the products they purchase and corporations interested in protecting their reputations.<sup>64</sup> Although the promise of certification schemes is tied to the private context in which they are developed and promulgated, their development and evolution is shaped by a complex set of interactions between governmental and non-governmental actors, institutions, and rulemaking.<sup>65</sup>

We conceive of environmental certification as a transnational legal process in which various public and private actors develop, interpret, propagate, and apply legal norms at the domestic, regional, and international levels.<sup>66</sup> In spite of its ambition to transcend or complement inadequate state laws,<sup>67</sup> private rulemaking has a multifaceted relationship with state-driven public legal norms, including domestic laws, international treaties, and other private certification schemes and codes of

<sup>60</sup> See, e.g., S.E. Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press, 2006); B. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press, 2010).

<sup>61</sup> Cashore, Auld & Newsom, n. 1 above, p. 10; Bartley, n. 3 above, p. 13.

<sup>62</sup> Bartley, n. 3 above, pp. 13–4.

<sup>63</sup> *Ibid.*, p. 8.

<sup>64</sup> *Ibid.*, p. 3.

<sup>65</sup> L.H. Gulbrandsen & G. Auld, 'Contested Accountability Logics in Evolving Nonstate Certification for Fisheries Sustainability' (2016) 16(2) *Global Environmental Politics*, pp. 42–60; J.F. Green & G. Auld, 'Unbundling the Regime Complex: The Effects of Private Authority' (2019) 6(2) *Transnational Environmental Law*, pp. 259–84; Van der Ven, n. 3 above.

<sup>66</sup> H.H. Koh, 'Transnational Legal Process' (1996) 75(1) *Nebraska Law Review*, pp. 181–208; G. Shaffer, 'Transnational Legal Process and State Change' (2012) 37(2) *Law & Social Inquiry*, pp. 229–64.

<sup>67</sup> T. Bartley, 'Transnational Governance as the Layering of Rules: Intersections of Public and Private Standards' (2011) 12(2) *Theoretical Inquiries in Law*, pp. 519–42.

conduct.<sup>68</sup> For one thing, many certification schemes are influenced by public international law and seek to act as market-based mechanisms for the enforcement of rules set out in international conventions and instruments.<sup>69</sup> Certification standards may also refer or respond to domestic legal norms, and domestic laws may, in turn, incorporate these standards or require compliance with them.<sup>70</sup> For another, private forms of authority have in many ways evolved to develop some of the institutional claims, features, and functions typically associated with formal lawmaking, including mechanisms to consult and engage multiple stakeholders, draw on scientific expertise, amend and interpret rules, learn from experience, and resolve disputes.<sup>71</sup>

Although transnational legal processes can lead to the diffusion and transplantation of legal norms, they can also result in the *translation* of legal norms across different socio-legal contexts.<sup>72</sup> This arises from the inherent ambiguity of law;<sup>73</sup> the mediating influence of legal, social, political, economic, and cultural structures;<sup>74</sup> and the divergent interests of actors that stand to gain or lose from legal stasis or change.<sup>75</sup> Transnational legal processes are often contentious as public and private actors and institutions struggle over the elaboration, promotion, and application of legal norms in a given field.<sup>76</sup> This competitive dynamic is commonplace in the field of certification where NGOs, corporations, industry bodies, international organizations, and governments cooperate as well as compete with one another to establish, fund, sponsor, shape, promote, and oppose certification schemes as part of their efforts to establish an authoritative set of legal norms that reflect their

<sup>68</sup> See E. Partiti, *Regulating Transnational Sustainability Regimes* (Cambridge University Press, 2022), pp. 58–100.

<sup>69</sup> S. Jodoin, *Forest Preservation in a Changing Climate: REDD+ and Indigenous and Community Rights in Indonesia and Tanzania* (Cambridge University Press, 2017); Bartley, n. 3 above.

<sup>70</sup> S.L. Burns, P.F. Yapura & L. Giessen, 'State Actors and International Forest Certification Policy: Coalitions behind FSC and PEFC in Federal Argentina' (2016) 52 *Land Use Policy*, pp. 23–9; L. Giessen et al., 'From Governance to Government: The Strengthened Role of State Bureaucracies in Forest and Agricultural Certification' (2016) 35(1) *Policy and Society*, pp. 71–89.

<sup>71</sup> J. Ellis, 'Constitutionalization of Nongovernmental Certification Programs' (2013) 20(2) *Indiana Journal of Global Legal Studies*, pp. 1035–60; E. Meidinger, 'The Administrative Law of Global Private-Public Regulation: The Case of Forestry' (2006) 17(1) *European Journal of International Law*, pp. 47–87; P. Paiement, 'Jurisgenerative Role of Auditors in Transnational Labor Governance' (2019) 13(2) *Regulation & Governance*, pp. 280–98.

<sup>72</sup> P. Levitt & S. Merry, 'Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States' (2009) 9(4) *Global Networks*, pp. 441–61; B. Brake & P.J. Katzenstein, 'Lost in Translation? Nonstate Actors and the Transnational Movement of Procedural Law' (2013) 67(4) *International Organization*, pp. 725–57.

<sup>73</sup> T. Halliday & B. Carruthers, *Bankrupt: Global Lawmaking and Systemic Financial Crisis* (Stanford University Press, 2009).

<sup>74</sup> S.E. Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) 108(1) *American Anthropologist*, pp. 38–51.

<sup>75</sup> Halliday & Carruthers, n. 73 above.

<sup>76</sup> Jodoin, n. 69 above; Y. Dezalay & B. Garth, 'Merchants of Law as Moral Entrepreneurs: Constructing International Justice from the Competition for Transnational Business Disputes' (1995) 29(1) *Law & Society Review*, pp. 27–64; E. Meidinger, 'Beyond Westphalia: Competitive Legalization in Emerging Transnational Regulatory Systems', in C. Brüttsch & D. Lehmkuhl (eds), *Law and Legalization in Transnational Relations* (Routledge, 2007), pp. 121–43.

ideas and interests in a given domain.<sup>77</sup> Building on these insights, we expect that the integration of human rights in certification is likely to give rise to diverging legal norms and practices across different types of standard. As we explore further in Section 5, we posit that variations in whether and how human rights norms are recognized by different certification schemes can be explained by the dynamics underlying the emergence and evolution of private authority in a sector,<sup>78</sup> and the salience and implications of different human rights norms across various fields of environmental governance.<sup>79</sup>

## 4. A Systematic Analysis of Human Rights in Forest and Fisheries Certification Standards

### 4.1. Research Design

We conducted a systematic legal analysis of the human rights content of certification standards in the fields of forestry and fisheries. We began by compiling a dataset of forest and fisheries certification schemes that had broad geographic coverage and have been considered in the literature to have significant market share in their respective sectors.<sup>80</sup> Our final dataset includes twelve certification schemes in total, including six focused on forestry<sup>81</sup> and six focused on fisheries (Table 1).

We then systematically collected and coded the latest version of the standards established by each scheme to assess whether and how they adhered to the human rights norms that we identified as relevant for the governance of natural resources (see the Appendix to this article in the [Supplementary Material](#)). In the case where schemes have developed both standards specific to a country or region and ‘generic’ international standards, we included only the latter in our analysis.<sup>82</sup> Likewise, some of the schemes have standards designed for specific species (such as the ASC standards for salmon, shrimp, and tilapia). We evaluated only one species-specific standard picked out at random (in the case of the ASC, the salmon standard), after ensuring that much of the content of the standards was similar across species. A key limitation of our analysis is that we have focused on the ‘rules’ set by certification schemes and do not, therefore, address other important aspects of how schemes operate, such as

<sup>77</sup> Meidinger, n. 76 above; Green, n. 3 above; S. Wyatt & S. Teitelbaum, ‘Certifying a State Forestry Agency in Quebec: Complementarity and Conflict around Government Responsibilities, Indigenous Rights, and Certification of the State as Forest Manager’ (2020) 14(3) *Regulation & Governance*, pp. 551–67.

<sup>78</sup> C. Overdevest, ‘Comparing Forest Certification Schemes: The Case of Ratcheting Standards in the Forest Sector’ (2009) 8(1) *Socio-Economic Review*, pp. 47–76; Van der Ven, n. 3 above; Cashore, Auld & Newsom, n. 1 above; Auld, n. 1 above.

<sup>79</sup> Teitelbaum et al., n. 4 above; Jodoin, n. 69 above.

<sup>80</sup> Auld, n. 1 above.

<sup>81</sup> We collapsed forest product, forest, and forest carbon schemes under the single category of ‘forest certification’ because they contribute to global forest governance and are shaped by similar dynamics.

<sup>82</sup> We originally collected and coded the country- and region-specific standards but have not included these results in our article. In general, we found that there were greater variations in human rights performance between different generic international standards (i.e., the FSC against the PEFC) than between different country- and region-specific versions of the same standard (i.e., the Canadian FSC standard against the Canadian PEFC standard). Further research involving a larger dataset is needed to assess whether and how domestic local and regional variables affect the human rights performance of certification schemes.

**Table 1.** Certification Schemes Included in Systematic Analysis

Scheme Name	Sector	Year of Scheme Establishment	Year of Most Recent Update to Standard
Aquaculture Stewardship Council (ASC) – Salmon	Fishery	2004	2022
Climate, Community & Biodiversity Alliance Standards (CCBA)	Forestry	2003	2017
Forest Stewardship Council (FSC)	Forestry	1994	2018
Friend of the SEA (FOS)	Fishery	2008	2020
Global Aquaculture Alliance Best Aquaculture Practices (GAA BAP)	Fishery	1997	2023
Global Good Agricultural Practices Integrated Farm Assurance for Aquaculture (Global GAP IFAA)	Fishery	2007	2022
Gold Standard Land Use & Forests Framework (Gold Standard LUF)	Forestry	2003	2020
Marine Stewardship Council (MSC)	Fishery	1997	2022
Natural Forest Standard	Forestry	2012	2014
Naturland Standards Sustainable Capture Fishery (Naturland Wild Fish)	Fishery	2007 (for fisheries)	2022
Plan Vivo	Forestry	1997	2022
Programme for Endorsement of Forest Certification (PEFC)	Forestry	1999	2018

the procedures for obtaining certification, auditing requirements and procedures, compliance and dispute-resolution mechanisms, institutions for governance and stakeholder engagement, and the processes for reviewing and setting standards.

Our analysis focused on the consistency of a standard with the language and substance of human rights norms.<sup>83</sup> We further categorized rights as substantive, procedural, or held by groups in vulnerable situations,<sup>84</sup> namely Indigenous peoples, workers, and other equity-seeking groups (see Table 2). While this distinction provides analytical clarity and reflects state practice,<sup>85</sup> there are many overlaps between substantive and procedural rights under international law<sup>86</sup> and equity-seeking groups hold both types of rights. Nonetheless, as we shall discuss below, this way of categorizing human rights norms is consistent with the practices and patterns through which human rights norms have or have not been incorporated in environmental certification standards.

<sup>83</sup> E.g., with regard to the right to water, we did not simply focus on whether a standard explicitly included the term ‘the right to water’ or ‘water rights,’ but also on what measures, if any, it required project developers to take to protect or enhance the access of individuals and communities to safe and clean water.

<sup>84</sup> See Knox, n. 12 above, p. 8 (identifying procedural obligations, substantive obligations, and special obligations towards those in vulnerable situations flowing from the right to a healthy environment).

<sup>85</sup> See, e.g., Knox, n. 17 above.

<sup>86</sup> D. Shelton, ‘Human Rights, Environmental Rights, and the Right to Environment’ (1992) 28 *Stanford Journal of International Law*, pp. 103–38.

**Table 2.** Key Types of Human Rights Applicable to Conservation

Substantive rights	Rights to life, clean drinking water, housing, adequate food, lands and natural resources, and culture.
Procedural rights	Rights to participation, free, prior and informed consent (FPIC),* information, and access to justice.
Rights of Indigenous peoples	Rights to self-determination, traditional lands and natural resources, and traditional knowledge and culture.
Rights of workers	Rights to fair and safe conditions at work, non-discriminatory employment, and freedom from forced labour and child labour.
Rights of equity-seeking groups	Rights to equality and freedom from non-discrimination held by women, persons with disabilities, children, racialized and ethnic minorities, peasant and rural peoples, and 2SLGBTQIA+.

Note \*The right to FPIC is recognized in international human rights jurisprudence as an Indigenous right, explicitly set out in UNDRIP, n. 44 above (T. Ward, 'The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights within International Law' (2011) 10(2) *Northwestern University Journal of International Human Rights*, pp. 54–84.) In practice, FPIC has also been applied to non-Indigenous local or forest-dwelling communities (B. McGee, 'The Community Referendum: Participatory Democracy and the Right to Free, Prior and Informed Consent to Development' (2009) 27(2) *Berkeley Journal of International Law*, pp. 570–635, at 572).

Inspired by the tripartite distinction between obligations to respect, protect, and fulfil human rights,<sup>87</sup> we assigned a score from 1 to 3 to reflect whether the standard was sensitive, responsive, or transformative<sup>88</sup> in its integration of human rights:

- *Sensitive* (Score = 1): The standard requires that a project *consider* the rights norm and consult rights holders, but does not require specific action to respect, protect or fulfil human rights.
- *Responsive* (Score = 2): The standard requires that a project *respect* the right norms and consult rights holders but does not require specific action to protect or fulfil human rights.
- *Transformative* (Score = 3): The standard requires that a project *respect, protect, and fulfil* human rights norms and ensure the full and effective participation of rights holders.<sup>89</sup>

<sup>87</sup> See R. Pisillo Mazzeschi, 'Content and Nature of the Obligations: Various Categories and Their Validity', in R. Pisillo Mazzeschi (ed.), *International Human Rights Law: Theory and Practice* (Springer, 2021), pp. 135–53, at 141.

<sup>88</sup> R.P. Bixler et al., 'The Political Ecology of Participatory Conservation: Institutions and Discourse' (2015) 22(1) *Journal of Political Ecology*, pp. 164–82.

<sup>89</sup> E.g., if we consider the right to clean drinking water, a sensitive approach will include a suggestion to consider the impacts of the project on water quality or accessibility. A responsive approach will indicate a requirement to avoid any negative impacts on water quality or accessibility. A transformative approach will mean a requirement to improve and fulfil communities' access to water; see UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 15 (2002): The Right to Water (Arts 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)', 20 Jan. 2003, UN Doc. E/C.12/2002/11, paras 21, 23, 25, available at [https://digitallibrary.un.org/record/486454/files/E\\_C-12\\_2002\\_11-EN.pdf](https://digitallibrary.un.org/record/486454/files/E_C-12_2002_11-EN.pdf). Considering instead a procedural right, such as the right to participation, a sensitive approach would indicate that the project may consult communities in project development. A responsive approach would mandate some sort of consultation or participation. A transformative approach would go further and necessitate a community-led project.

#### 4.2. Adherence to Different Categories of Human Rights

Our systematic analysis reveals that all the certification standards in our dataset adhere to at least one substantive human right and at least one procedural human right – a finding that reflects the growing role of rights-based approaches in the field of environmental governance. On the other hand, we observed that only six standards in our dataset include a criterion dedicated to the general protection of human rights.<sup>90</sup> Three schemes (Plan Vivo, Gold Standard LUF, and PEFC) referred to the Universal Declaration on Human Rights<sup>91</sup> when articulating their general statement on human rights. The Gold Standard LUF went further by drawing in the project's relationship with the state, providing that no projects will be recognized that 'may contribute to a violation of a State's human rights obligations'.<sup>92</sup> Other schemes, such as the CCBA, were more vague in their commitment, as they only mandate a consideration of effects on human rights rather than respect for human rights.

In fact, we found that there are significant variations in the different categories of human rights that have been incorporated across these standards (Table 3). Except for the Natural Forest Standard, all schemes contain a provision related to considering, protecting, or fulfilling workers' rights. Nine of the twelve schemes incorporate Indigenous rights norms. On the other hand, there appears to be a general lack of adherence across all the schemes to the rights of minorities, women, people with disabilities, peasants and rural peoples, and 2SLGBTQIA+ communities. These results suggest that different categories of human rights norms and obligations have varying levels of salience and influence in the field of resource conservation and governance.

#### 4.3. Adherence to Procedural and Substantive Rights

Almost all of the standards refer to the rights to participation, information, and to a fair grievance system. Generally, they do so in a stringent manner (see Table 4). Descriptions of grievance mechanisms are generally relatively detailed, with some schemes like Plan Vivo and the FSC even adopting transformative approaches requiring that systems for redress be culturally appropriate and developed through consultation with local communities.

Comparatively, most of the standards perform poorly with regard to the right to free, prior and informed consent (FPIC), as FOS, GAA BAP, Global GAP IFAA, MSC, and Naturland Wild Fish fail to have any considerations or requirements related to community or Indigenous consent. Consistent with a trend that has been observed by Jodoin in the field of reducing emissions from deforestation and forest degradation in developing countries (REDD+),<sup>93</sup> four of the six schemes that include an FPIC

<sup>90</sup> The Gold Standard LUF imposes a duty to ensure 'no human rights abuses' and the CCBA requires the consideration of project impacts on communities' human rights.

<sup>91</sup> UNGA Resolution 217A (III), Universal Declaration of Human Rights, New York, NY (US), 10 Dec. 1948, UN Doc. A/810, p. 71, available at: <http://hrlibrary.umn.edu/instree/b1udhr.htm>.

<sup>92</sup> Gold Standard Foundation, 'Gold Standard for the Global Goals: Safeguarding Principles & Requirements', Version 1.2, Oct. 2019, pp. 9–10, available at: [https://globalgoals.goldstandard.org/standards/103\\_V1.2\\_PAR\\_Safeguarding-Principles-Requirements.pdf](https://globalgoals.goldstandard.org/standards/103_V1.2_PAR_Safeguarding-Principles-Requirements.pdf).

<sup>93</sup> Jodoin, n. 69 above, pp. 195–6.

**Table 3.** Adherence to Categories of Human Rights in Certification Schemes

Scheme Name	Substantive Rights	Procedural Rights	Indigenous Peoples' Rights	Worker Rights	Peasant Rights	Minority Rights	Disability Rights	Gender Rights	2SLGBTQIA + Rights	Rights of Children
ASC	✓	✓	✓	✓						✓
CCBA	✓	✓	✓	✓				✓	✓	
FSC	✓	✓	✓	✓		✓		✓		✓
FOS	✓	✓		✓						✓
GAA BAP	✓	✓		✓						✓
Global GAP IFAA	✓	✓	✓	✓						
Gold Standard LUF	✓	✓	✓	✓		✓	✓	✓	✓	✓
MSC	✓	✓	✓	✓						✓
Natural Forest Standard	✓	✓								
Naturland Wild Fish	✓	✓	✓	✓						✓
Plan Vivo	✓	✓	✓	✓		✓		✓		✓
PEFC	✓	✓	✓	✓						✓

**Table 4.** Level of Adherence to Procedural Rights Norms across Certification Schemes

Scheme Name	Right to Participation	Right to Information	Right to Fair Grievance System	Right to FPIC
ASC	■	■	■	■
CCBA	■	■	■	■
FOS	■	■	■	■
FSC	■	■	■	■
GAA BAP	■	■	■	■
Global GAP IFAA	■	■	■	■
Gold Standard LUF	■	■	■	■
MSC	■	■	■	■
Natural Forest Standard	■	■	■	■
Naturland Wild Fish	■	■	■	■
PEFC	■	■	■	■
Plan Vivo	■	■	■	■

Key: ■ = Not present; ■ = Sensitive; ■ = Responsive; ■ = Transformative

requirement (Plan Vivo, Natural Forest Standard, CCBA, FSC) apply it to both Indigenous peoples and local communities. While this development may be beneficial for local communities and may align with growing efforts to recognize the rights of peasants and rural communities, it can also be seen as a harmful dilution of the distinctive legal status of Indigenous peoples that undermines their claims to sovereignty. Of the schemes that include FPIC, only the PEFC extends this right to Indigenous peoples only. Finally, the ASC standard contains only a watered-down version of FPIC, requiring ‘evidence of a protocol agreement, or an active process to establish a protocol agreement, with indigenous communities’.<sup>94</sup> The failure of schemes to require FPIC from project proponents is potentially troubling as this right is essential for the realization of self-determination for Indigenous peoples<sup>95</sup> and a key enabling mechanism for respecting their substantive and procedural rights.<sup>96</sup>

With regard to substantive rights, the schemes perform relatively poorly (Table 5). None of the schemes referred to the right to life, or considered the dire situation of many environmental human defenders in the regions in which the schemes operate. Although there are many schemes (ten out of the twelve) that consider the right to water, the majority do so only superficially. For example, Plan Vivo’s standard obliges project managers to consider project impacts on the ‘disturbance of water and energy

<sup>94</sup> ASC, ‘ASC Salmon Standard’, Version 1.4, 1 Feb. 2023, p. 58, available at: <https://www.asc-aqua.org/wp-content/uploads/2022/09/ASC-Salmon-Standard-v1.4-Final.pdf>.

<sup>95</sup> J. Meadows, M. Annandale & L. Ota, ‘Indigenous Peoples’ Participation in Sustainability Standards for Extractives’ (2019) 88 *Land Use Policy*, article 104118.

<sup>96</sup> A. McKeehan & T. Buppert, ‘Free, Prior and Informed Consent: Empowering Communities for People-Focused Conservation’ (2014) 35(3) *Harvard International Review*, pp. 48–52.

**Table 5.** Level of Adherence to Substantive Rights Norms Across Certification Schemes

Scheme Name	Right to Life	Right to Water	Right to Housing	Right to Food	Right to Lands and Natural Resources	Right to Culture
ASC	Not present	Sensitive	Not present	Not present	Responsive	Not present
CCBA	Not present	Not present	Responsive	Sensitive	Responsive	Responsive
FOS	Not present	Not present	Not present	Not present	Responsive	Not present
FSC	Not present	Responsive	Not present	Sensitive	Responsive	Transformative
GAA BAP	Not present	Not present	Not present	Not present	Responsive	Not present
Global GAP IFAA	Not present	Not present	Not present	Not present	Responsive	Not present
Gold Standard LUF	Not present	Responsive	Responsive	Responsive	Responsive	Responsive
MSC	Not present	Sensitive	Not present	Not present	Responsive	Sensitive
Natural Forest Standard	Not present	Not present	Not present	Not present	Sensitive	Not present
Naturland Wild Fish	Not present	Responsive	Not present	Not present	Responsive	Not present
PEFC	Not present	Not present	Not present	Sensitive	Responsive	Responsive
Plan Vivo	Not present	Not present	Not present	Responsive	Responsive	Sensitive

Key: = Not present; = Sensitive; = Responsive; = Transformative

supply’,<sup>97</sup> but does not necessitate avoiding negative impacts on water supply; nor does it make any explicit connection between water and the communities who depend on it. Adherence to food rights is similarly minimal, with very few references to protecting or enhancing the food security of communities. Further, adherence to housing rights is limited, as only the Gold Standard LUF and CCBA include an explicit provision requiring that there be no forced displacement of local community members. Conservation has a notorious history of fuelling involuntary resettlement<sup>98</sup> and the lack of attention paid to such risks in these schemes is a troubling oversight. The underwhelming performance of these schemes on these dimensions is concerning and is reflective of a gap between the priorities of the scheme proponents and those of local communities who have experienced the adverse effects of conservation and resource management schemes.

While almost all the schemes acknowledge the rights of communities to lands and natural resources, the stringency of related requirements is relatively limited. Only six schemes require project proponents to take steps to protect land and resource rights, and no scheme obliges them to adopt transformative measures to enhance tenure for Indigenous peoples and local communities. The limited way in which certification schemes protect and increase land tenure and access to resources for Indigenous peoples and local communities fails to respond to what has emerged as a key priority for the

<sup>97</sup> Plan Vivo, ‘Plan Vivo Project Design Guidance’, Version 1.1, 19 Sept. 2022, pp. 26–7, available at: <https://www.planvivo.org/Handlers/Download.ashx?IDMF=d351ce91-57b9-45bb-bbbe-4be2a27ff02a>.

<sup>98</sup> M.M. Cernea & K. Schmidt-Soltan, ‘Poverty Risks and National Parks: Policy Issues in Conservation and Resettlement’ (2006) 34(10) *World Development*, pp. 1808–30.

field of conservation and resource management. Moreover, considering the body of evidence showing that tenure security can yield important benefits for enhancing conservation outcomes,<sup>99</sup> the lack of importance accorded to community land and resource rights is counterproductive as it may undermine their potential to contribute to more sustainable outcomes.

The right to culture is also integrated poorly through the schemes, although the FSC provides an exception by adopting a transformative approach, mandating that project proponents identify and protect important cultural sites in cooperation with communities. Going further, the scheme also requires that ‘whenever sites of special cultural [or] spiritual significance are newly observed or discovered, management activities cease immediately in the vicinity’.<sup>100</sup> Comparatively, the MSC requires only that management be appropriate to the ‘cultural context of the fishery’.<sup>101</sup> The neglect of cultural rights in the schemes analyzed prioritizes a technocratic and scientific conception of environmental and resource governance, and thus overlooks the critical role of land, nature, and animals in Indigenous ways of knowing and being.<sup>102</sup> The failure to recognize and grapple with the competing understandings and claims of different actors regarding the environment is likely to limit the ability of certified projects to generate the shared understandings and collaborative relationships with communities that are key to effective and equitable conservation processes and outcomes.

Overall, the tendency of the schemes to prioritize procedural rights over substantive rights fails to live up to the full promise of a rights-based approach for enhancing equity in conservation and management outcomes. Unfortunately, the inclination of these schemes towards procedural conceptions of justice over substantive ones and the focus on participation rather than consent is typical of the broader ways in which human rights and equity issues have been operationalized in environmental law and governance. Commenting on the tendency to recognize participatory rights in forest governance, Ribot and Larson lament that ‘[l]ocal people are often given strong rights to valueless resources, rights to forests rather than markets, rights to implement rather than decide, rights to participate rather than control’.<sup>103</sup> By supporting the recognition and implementation of the rights of communities to ‘participate’ in conservation and resource projects, while neglecting their substantive rights to access, govern, control, and benefit from lands and resources, certification schemes may, in fact, be reproducing

<sup>99</sup> A. BenYishay et al., ‘Indigenous Land Rights and Deforestation: Evidence from the Brazilian Amazon’ (2017) 86 *Journal of Environmental Economics and Management*, pp. 29–47; B.E. Robinson et al., ‘Incorporating Land Tenure Security into Conservation’ (2018) 11(2) *Conservation Letters*, pp. 1–12.

<sup>100</sup> FSC International, Performance and Standards Unit, ‘FSC Principles and Criteria for Forest Stewardship’, 2023, p. 26, available at: <https://fsc.org/en/fsc-standards>.

<sup>101</sup> MSC, ‘MSC Fisheries Standard’, Version 3.0, 2022, p. 60, available at: [https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-standard-v3-0.pdf?sfvrsn=53623a3\\_21](https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/fisheries-program-documents/msc-fisheries-standard-v3-0.pdf?sfvrsn=53623a3_21).

<sup>102</sup> S. Brondizio et al. ‘Locally Based, Regionally Manifested, and Globally Relevant: Indigenous and Local Knowledge, Values, and Practices for Nature’ (2021) 46 *Annual Review of Environment and Resources*, pp. 481–509.

<sup>103</sup> J. Ribot & A.M. Larson, ‘Reducing REDD Risks: Affirmative Policy on an Uneven Playing Field’ (2012) 6(2) *International Journal of the Commons*, pp. 233–54, at 236.

the inequitable processes, extractive outcomes, and colonial structures that have led to the unsustainable use of natural resources in the first place.

#### 4.4. Adherence to the Rights of Indigenous Peoples

By and large, the schemes incorporate the rights of Indigenous peoples in their standards in a limited manner (Table 6). Three schemes (FOS, GAA BAP, Natural Forest Standard) fail to include any references to the rights of Indigenous peoples. Meanwhile, the seven schemes that do refer to Indigenous rights norms do so in a highly variable and generally modest manner. The right to self-determination is referenced only in four schemes, a trend that does little to decolonize environmental governance and advance the sovereignty of Indigenous peoples and the resurgence of their institutions and cultures.<sup>104</sup> Five schemes refer to the rights of Indigenous peoples to their traditional lands and resources, although they do not all use rights language in doing so. For example, the ASC demands respect for Indigenous traditional territories, yet does not refer specifically to respect for the rights of Indigenous peoples to those territories. Only the ASC, CCBA, Gold Standard LUF, and FSC refer to the right to traditional knowledge and culture, offering some protection for the use of Indigenous traditional knowledge and the sharing of benefits therefrom. Five schemes refer to all three key Indigenous rights included in our systematic analysis. The highest performing scheme in terms of Indigenous rights is the FSC, which clearly delineates a requirement related to the right to self-determination, mandating respect for the rights of Indigenous peoples to maintain control over project management activities.

Given the push by numerous actors for a conservation framework based on the realization of Indigenous rights,<sup>105</sup> we expected that the schemes would perform well in this respect. We nonetheless found that forestry and fisheries schemes are not well positioned to address the urgent challenge of ensuring that conservation and resource management projects respect, protect, and fulfil the rights of Indigenous peoples. Unfortunately, this finding is consistent with the notion that Indigenous rights in conservation are only paid ‘lip service’ and are not fully addressed or considered.<sup>106</sup> Although Indigenous peoples are guaranteed participatory rights and the right to FPIC in some schemes, the failure to realize their unique rights in most schemes is contrary to the suggestions of many conservation actors, and undermines their control over project activities on their territories.<sup>107</sup>

#### 4.5. Adherence to Labour Rights

The schemes seem to cover labour rights relatively well, with most of the standards referencing at least one labour right (Table 7). Only the Natural Forest Standard failed

<sup>104</sup> J. Corn tassel, ‘Re-envisioning Resurgence: Indigenous Pathways to Decolonization and Sustainable Self-determination’ (2012) 1(1) *Decolonization: Indigeneity, Education & Society*, pp. 86–101.

<sup>105</sup> Witter & Satterfield, n. 2 above.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

**Table 6.** Levels of Adherence to Rights of Indigenous Peoples across Certification Schemes

Scheme Name	Right to Self-determination	Right to Traditional Lands and Resources	Right to Traditional Knowledge and Culture
ASC	Responsive	Responsive	Responsive
CCBA	Responsive	Transformative	Responsive
FOS	Responsive	Responsive	Responsive
FSC	Responsive	Responsive	Transformative
GAA BAP	Responsive	Responsive	Responsive
Global GAP IFAA	Responsive	Responsive	Responsive
Gold Standard LUF	Responsive	Responsive	Responsive
MSC	Responsive	Responsive	Responsive
Natural Forest Standard	Not present	Responsive	Responsive
Naturland Wild Fish	Responsive	Transformative	Responsive
PEFC	Responsive	Responsive	Responsive
Plan Vivo	Responsive	Responsive	Responsive

Key: □ = Not present; ◻ = Sensitive; ◻ = Responsive; ◼ = Transformative

to mandate any requirements related to protecting workers or maintaining appropriate working conditions. Most of the standards adopt responsive and transformative approaches to considering labour rights. Nine standards mention both the rights to fair and safe working conditions and the right to non-discriminatory employment. Most schemes reference the right to freedom from forced labour, although the Natural Forest Standard, CCBA, and Global GAP IFAA do not.

Although labour violations have become especially salient in the context of fisheries certification,<sup>108</sup> schemes in this sector have incorporated labour rights at similar levels to those in the field of forestry. The comparatively stronger labour rights performance of the schemes across both sectors reflects the influence of the broader and long-standing transnational efforts of labour activists, experts, and organizations to develop and promote shared understandings of core labour rights<sup>109</sup> and their success in generating a convergence of labour norms in domestic laws and private standard-setting initiatives.<sup>110</sup>

<sup>108</sup> A. Miller, ‘Repurposing Ecolabels: Consumer Pressure as a Tool to Abate Human Rights Violations in International Fisheries’ (2017) 44(3) *Ecology Law Quarterly*, pp. 116–31; C. Tindall et al., ‘Illuminating the Mechanisms to Mitigate Forced and Child Labour Risks within Marine Stewardship Council Certified Fisheries’ (2022) 143 *Marine Policy*, article 105140.

<sup>109</sup> See generally A. Blackett & A. Trebilcock, *Research Handbook on Transnational Labour Law* (Edward Elgar, 2015).

<sup>110</sup> G. Mundlak & I. Rosen-Zvi, ‘Signaling Virtue? A Comparison of Corporate Codes in the Fields of Labor and Environment’ (2011) 12(2) *Theoretical Inquiries in Law*, pp. 603–63, at 619–20.

**Table 7.** Adherence to Labour Rights across Certification Schemes

Scheme Name	Right to Fair and Safe Conditions at Work	Right to Non-discriminatory Employment	Right to Freedom from Forced Labour	Right to Freedom of Association
ASC	Transformative	Transformative	Transformative	Transformative
CCBA	Sensitive	Responsive	Responsive	Responsive
FOS	Transformative	Transformative	Transformative	Transformative
FSC	Transformative	Transformative	Transformative	Transformative
GAA BAP	Transformative	Transformative	Transformative	Transformative
Global GAP IFAA	Transformative	Transformative	Transformative	Transformative
Gold Standard LUF	Transformative	Transformative	Transformative	Transformative
MSC	Sensitive	Responsive	Responsive	Responsive
Natural Forest Standard	Transformative	Transformative	Transformative	Transformative
Naturland Wild Fish	Transformative	Transformative	Transformative	Transformative
PEFC	Transformative	Transformative	Transformative	Transformative
Plan Vivo	Sensitive	Responsive	Responsive	Responsive

Key: = Not present; = Sensitive; = Responsive; = Transformative

**4.6. Adherence to the Rights of Equity-Seeking Groups**

As early as 2006, Brockington and co-authors heeded a warning to conservation actors to focus on the rights of groups of marginalized people alongside the rights of Indigenous peoples.<sup>111</sup> Nevertheless, we found that the certification schemes in our dataset generally neglect the rights of other equity-seeking groups (Table 8). None of the schemes referred directly to the rights of peasants and rural peoples. However, five schemes (Gold Standard LUF, Plan Vivo, Natural Forest Standard, CCBA, FSC) include local communities in their requirement to seek FPIC, and eleven schemes referred in some way to the resource rights or tenure rights of local communities – both are developments that may serve as a modest and indirect recognition in international law of the rights of peasants and people working in rural areas.

Apart from measures to prohibit child labour included in nine schemes, none of the schemes refer to other rights of children in their requirements. Of the three schemes that integrate gender to any extent into their requirements, only the CCBA requires that the project produce net positive benefits for women. Comparatively, Plan Vivo mandates only the consideration of project impacts on gender equality, and the FSC requires additional attention to be paid to ensuring that women are adequately represented in the consultation processes. Finally, none of the certification schemes consider the rights of persons with disabilities and only the CCBA refers to the rights of 2SLGBTQIA+ people. That sole consideration of 2SLGBTQIA+ rights required by

<sup>111</sup> D. Brockington, J. Igoe & K. Schmidt-Soltau, ‘Conservation, Human Rights, and Poverty Reduction’ (2006) 20(1) *Conservation Biology*, pp. 250–2.

**Table 8.** Adherence to the Rights of Equity-Seeking Groups

Scheme Name	Rights of Peasants and Rural Peoples	Minority Rights	Disability Rights	Gender Rights	2SLGBTQIA + Rights	Rights of Children
ASC						
CCBA				Transformative		
FOS						
FSC		Sensitive		Sensitive		
GAA BAP	Sensitive					
Global GAP IFAA						
Gold Standard LUF		Responsive		Responsive		
MSC						
Natural Forest						
Naturland Wild Fish						
PEFC						
Plan Vivo		Sensitive		Sensitive		

Key: = Not present; = Sensitive; = Responsive; = Transformative

the CCBA standards is limited at best, considering it refers only to protecting project participants from discrimination on several grounds, of which sexual orientation is one.

The poor performance of these schemes in relation to the rights of (non-Indigenous) equity-seeking groups evinces the incomplete ways in which human rights norms have been translated in the resource management sector, and may reflect the inherent bias of these schemes towards ecological over social outcomes.<sup>112</sup> It may also point to the diverging priorities and varying impacts of transnational social movements dedicated to promoting different types of human rights norm in the environmental field.<sup>113</sup> Although we have found that Indigenous rights norms are reflected in these standards in a limited manner, it is undeniable that such norms have achieved greater salience in transnational environmental law than the rights of minorities, women, children, people with disabilities, peasants and rural communities, or 2SLGBTQIA+ individuals. Yet, even from the perspective of protecting Indigenous peoples and their interests, the general failure to include these rights is problematic. For one thing, many schemes operate in places where Indigenous peoples may be recognized as religious or ethnic minorities, or as rural or local communities, rather than as Indigenous. The omission of minority, peasant, and rural rights thus leaves many Indigenous communities unprotected in practice. For another, from an intersectional standpoint, the lack of attention given to the rights of other equity-seeking groups neglects individuals who are Indigenous and face other forms of discrimination based on gender, age, disability, and gender and sexuality.

The lack of recognition of gender rights is surprising given that gender-responsive approaches have been advocated in the international development sphere for decades. At the same time, it remains consistent with evidence of gendered exclusion in the field of natural resource management.<sup>114</sup> Ultimately, the limited ways in which conservation schemes promote gender equality fails to reflect the evidence that the meaningful participation of women and full consideration of their diverse knowledge and needs is essential for the success of conservation projects.<sup>115</sup> The singular focus on banning child labour in these schemes is likely to reflect their nature as market-based instruments that govern supply-chains on behalf of companies and consumers. Based on the evidence that children face distinct and disproportionate risks in the context of

<sup>112</sup> M. Boström, 'The Problematic Social Dimension of Sustainable Development: The Case of the Forest Stewardship Council' (2012) 19(1) *International Journal of Sustainable Development & World Ecology*, pp. 3–15; C.L. McDermott, 'Certification and Equity: Applying an "Equity Framework" to Compare Certification Schemes Across Product Sectors and Scales' (2013) 33 *Environmental Science & Policy*, pp. 428–37.

<sup>113</sup> On the influence of NGOs on certification standards see T. Bartley, 'How Foundations Shape Social Movements: The Construction of an Organizational Field and the Rise of Forest Certification' (2007) 54(3) *Social Problems*, pp. 229–55.

<sup>114</sup> J. Kariuki & R. Birner, 'Are Market-based Conservation Schemes Gender-Blind? A Qualitative Study of Three Cases from Kenya' (2016) 29(4) *Society & Natural Resources*, pp. 432–47; R. James et al., 'Conservation and Natural Resource Management: Where Are All the Women?' (2021) 55(6) *Oryx*, pp. 860–7.

<sup>115</sup> H. Anthem & K. Westerman, 'Conservation For All, By All: Making Conservation Effective and Equitable' (2021) 55(6) *Oryx*, pp. 801–2, at 801.

environmental problems,<sup>116</sup> it is disappointing that these schemes do not include broader commitments to the rights and well-being of children in the impact assessments and co-benefit criteria associated with forestry and fisheries projects.

The omission of disability rights in these schemes regrettably mirrors the systematic neglect of the disability community in the field of environmental governance.<sup>117</sup> This exclusion undercuts the claims of people with disabilities to equality and citizenship, exacerbates their social and economic marginalization, and ultimately limits the share of the population who can participate in and benefit from conservation initiatives.<sup>118</sup> Given that people with disabilities comprise 15% of the world's population, are disproportionately affected by environmental risks and hazards, have knowledge and requirements that can enhance the equity and effectiveness of environmental governance, and are affected by higher levels of poverty and unemployment, there is a strong case for fully including their rights in forestry and fisheries certification standards.

The same can be said for members of the 2SLGBTQIA+ community, as they form a sizeable, even if often invisible, minority and have a unique set of needs, perspectives, and challenges that are relevant to the governance of forestry and fisheries.<sup>119</sup> Unlike the other equity-seeking groups considered here, the 2SLGBTQIA+ community is not explicitly protected by an international human rights treaty. Their sexualities and identities also continue to be persecuted and criminalized in many countries around the world, including many that host forestry and fishery conservation projects. As such, the disregard of human rights relating to sexual orientation and gender identity may undermine the ability of certification schemes to fill these key gaps in the legal systems of certain host countries.

## 5. Variations in Human Rights Adherence across Forest and Fisheries Standards

Our systematic analysis has shown that there are significant variations in whether, how and the extent to which different standards adhere to human rights norms. To obtain a sense of the general human rights performance of each scheme, we added the scores that were assigned to reflect whether and how the scheme treated each human rights norm to generate an overall score.<sup>120</sup> Our analysis included 23 human rights norms, each of which was scored on a scale of 0 to 3. We had three additional human rights norms

<sup>116</sup> P. Lucas et al., 'Future Impacts of Environmental Factors on Achieving the SDG Target on Child Mortality: A Synergistic Assessment' (2019) 57 *Global Environmental Change*, article 101925.

<sup>117</sup> For an assessment of the inclusion of disability rights in climate governance see S. Jodoin, N. Ananthamoorthy & K. Lofts, 'A Disability Rights Approach to Climate Governance' (2020) 47(1) *Ecology Law Quarterly*, pp. 73–116.

<sup>118</sup> A. Charles & H. Thomas, 'Deafness and Disability: Forgotten Components of Environmental Justice: Illustrated by the Case of Local Agenda 21 in South Wales' (2007) 12(3) *Local Environment*, pp. 209–21; D. Fenney Salkeld, 'Sustainable Lifestyles For All? Disability Equality, Sustainability and the Limitations of Current UK Policy' (2016) 31(4) *Disability and Society*, pp. 447–64.

<sup>119</sup> See J. Sbicca, 'Eco-queer Movement(s): Challenging Heteronormative Space through (Re)Imagining Nature and Food' (2012) 3 *European Journal of Ecopsychology*, pp. 33–52 (for an overview of unique perspectives derived from queer ecology).

<sup>120</sup> For our complete dataset and scores see 'Dataset of Human Rights Norms in Conservation Certification Programs', available at: <http://www.sjodoin.ca/data>.

**Table 9.** Overall Human Rights Adherence Scores of Certification Schemes

FSC	42
Gold Standard LUF	40
CCBA	33
Plan Vivo	33
PEFC	30
ASC (Salmon)	25
Naturland Wild Fish	17
FOS	16
GAA BAP	17
MSC	14
Global GAP IFAA	10
Natural Forest Standard	7

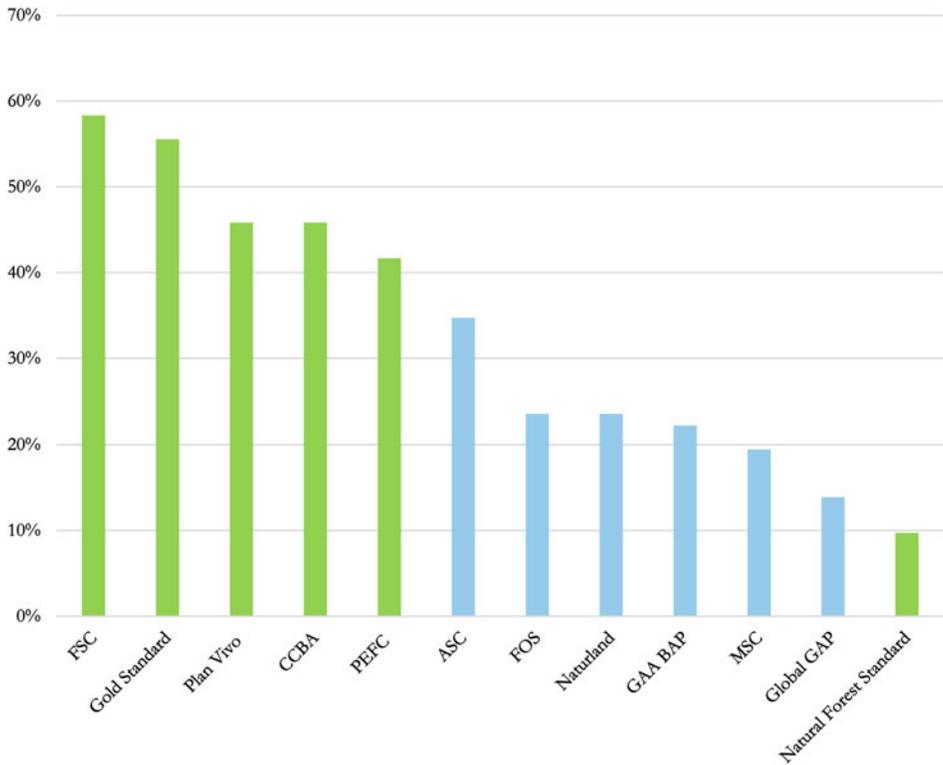
that were binary for a score of 0 or 1. The maximum possible score that a scheme could achieve was 72.

Table 9 summarizes the overall performance of each scheme across all the human rights norms included in our analysis. The average score across the schemes was 24, or approximately 33%, illustrating the modest ways in which human rights have been incorporated in the standards. These results also further demonstrate the wide variations in human rights adherence in forest and fisheries certification, with the FSC achieving the highest score (42) and Natural Forest Standard scoring the lowest (7).

As Figure 1 shows, a comparison of the overall human rights performance of the standards suggests that forestry schemes outperformed fisheries schemes. The top performers (which include the FSC, Gold Standard LUF, CCBA, Plan Vivo, and PEFC) were all schemes that operate in the forestry sector. The sole outlier to this pattern was the Natural Forest Standard, which was the lowest performing standard overall. Comparatively, the highest performing fishery scheme was the ASC with a score of 35%, which ranked it only in sixth place, and almost 25% lower than the FSC score. The remaining fishery schemes all scored relatively poorly, ranging around the 22% mark.

How can we account for the superior human rights performance of forestry schemes over those of fisheries schemes? One potential explanation may be tied to differences in the knowledge, relationships, and approaches of their founders. As Auld has explained, ‘the design of a new certification program should reflect the resources and capabilities, perception of the problem, and network ties held by those individuals and organizations instrumental in the early stages of development’.<sup>121</sup> Although schemes do evolve over time, the existing literature suggests that they do so in path-dependent ways that are shaped by their original purposes, underlying problem

<sup>121</sup> Auld, n. 1 above, p. 40.



**Figure 1.** Comparison of Schemes' Total Human Rights Scores

definitions, and institutional design.<sup>122</sup> All the schemes in our dataset were created by environmental or conservation NGOs and/or corporations or industry associations in forestry, fisheries, and agriculture, and were designed primarily to address an environmental problem, rather than human rights or social issues.<sup>123</sup> The CCBA, Plan Vivo, and the Gold Standard LUF are key exceptions as they included strong commitments to community well-being from the outset; therefore it is not surprising that they are among the highest performers in our analysis. Likewise, the FSC, the highest performing scheme overall, includes social benefits in its conception of sustainable forest management and defines its purpose as 'nurturing responsible forestry so forests and people can thrive'.<sup>124</sup> By contrast, the schemes the standards of which adhere the least to human rights (such as the MSC and Natural Forest

<sup>122</sup> Auld, n. 1 above, pp. 23–52; Van der Ven, n. 3 above, pp. 31–6.

<sup>123</sup> See Auld, n. 1 above (providing detailed accounts of the creation of the ASC, FoS, FSC, GAA BAP, Global Gap, PEFC, and MSC); Van der Ven, n. 3 above, p. 86 (discussing the creation of Naturland Wild Fish); R.G. Wood, *Carbon Finance and Pro-Poor Co-Benefits: The Gold Standard and Climate, Community and Biodiversity Standards* (IIED, 2011), pp. 5–7 (discussing the creation of the Gold Standard and the CCBA); Natural Forest Standard, 'Home', available at: <https://www.naturalforeststandard.com>; and Plan Vivo, 'Our History', available at: <https://www.planvivo.org/history>.

<sup>124</sup> FSC, 'About Us', available at: <https://fsc.org/en/about-us>.

Standard) remain strongly focused on environmental outcomes.<sup>125</sup> While the Global Gap includes social responsibility in its mission, its decision to develop an environmentally focused set of standards for aquaculture (the Global GAP IFAA standard analyzed above) and to establish a separate ‘add-on’ tool focused on human rights and social justice (the Global GAP Risk Assessment on Social Practice)<sup>126</sup> explains its overall low human rights score.

Yet, this only begs the further question of why and how forestry schemes have tended to expand their focus to encompass human rights and social considerations, while fisheries schemes have generally not done so. This difference may be explained by the market and political opportunity structures of the certification market and how they have evolved in these two sectors.<sup>127</sup> When certification schemes emerge in a field of environmental governance, their proponents will compete to gain market share and may set less stringent regulatory standards as a way of attracting industry engagement.<sup>128</sup> Over time, as certification becomes institutionalized in a sector, established schemes may begin to compete with one another over their rigour and credibility, and may engage in processes of learning and benchmarking that can lead to the development of more stringent standards.<sup>129</sup> Having emerged in the early 1990s, forestry certification is characterized by a more mature organizational landscape and has achieved extensive levels of uptake in forest management around the world. By comparison, the fisheries sector is considered a ‘latecomer’ to certification governance and has yet to match the prevalence of forest certification.<sup>130</sup> Figure 2, which shows that schemes<sup>131</sup> that have been established for longer appear to perform better in terms of human rights adherence, supports the hypothesis that market dynamics and benchmarking have shaped the adoption of human rights norms across these two sectors of certification.

<sup>125</sup> The MSC defines its mission as: ‘to use our ecolabel and fishery certification program to contribute to the health of the world’s oceans by recognising and rewarding sustainable fishing practices, influencing the choices people make when buying seafood and working with our partners to transform the seafood market to a sustainable basis’ (MSC, ‘What Is the MSC?’, available at: <https://www.msc.org/about-the-msc/what-is-the-msc>), and the Natural Forest Standard states that the ‘core mission of the NFS program is to deliver reliable finance to trustworthy ecological projects making a real and measurable difference in an efficient manner’ (Natural Forest Standard, ‘Home’, available at; <https://www.naturalforeststandard.com>).

<sup>126</sup> GlobalG.A.P., ‘What is GRASP?’, available at: <https://www.globalgap.org/what-we-offer/solutions/grasp/#:~:text=also%20about%20people.,The%20GLOBALG.,well%2Dbeing%20at%20farm%20level.>

<sup>127</sup> For an explanation of how sectoral dynamics relate to demand for certification, and the presence of competing standard setters can shape the evolution of certification programmes, see Auld, n. 1 above, pp. 224–37.

<sup>128</sup> Auld, n. 1 above, pp. 238–40.

<sup>129</sup> C. Overdeest, ‘Comparing Forest Certification Schemes: The Case of Ratcheting Standards in the Forest Sector’ (2010) 8(1) *Socio-Economic Review*, pp. 47–76; D. Judge-Lord, C.L. McDermott & B. Cashore, ‘Do Private Regulations Ratchet Up? How to Distinguish Types of Regulatory Stringency and Patterns of Change’ (2020) 33(1) *Organization and Environment*, pp. 96–125.

<sup>130</sup> Auld, n. 1 above, pp. 186–218.

<sup>131</sup> This metric was operationalized with the year of scheme establishment, even when the standard itself had since been updated. For example, Version 3 of the MSC standard, published in 2022, was used in our analysis. However, the MSC standard is still considered a more established scheme, because it has an older year of establishment than others included in our analysis.

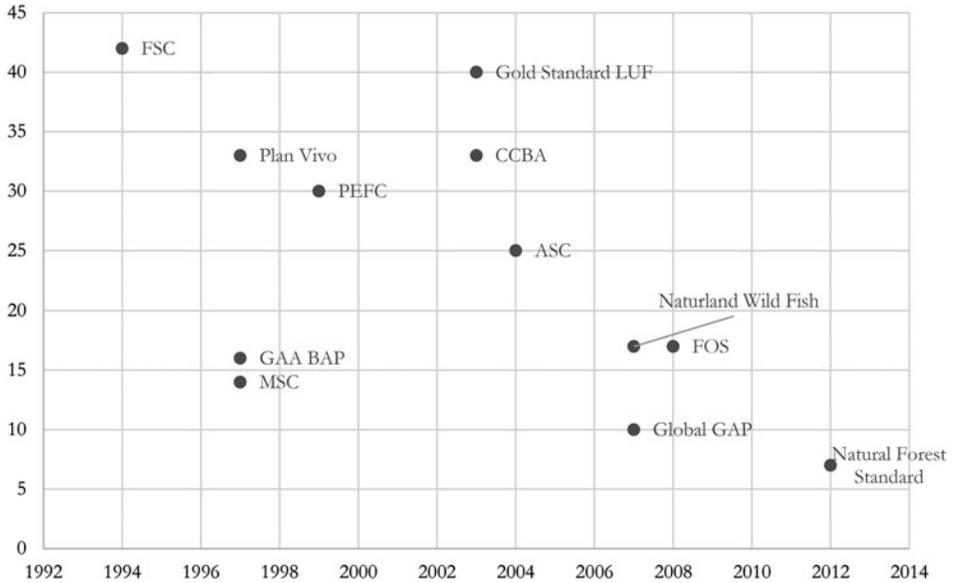


Figure 2. Total Human Rights Scores Compared with Year of Scheme Origin

A final hypothesis worth exploring is that our findings reflect underlying differences in the diffusion of human rights norms across these two sectors of transnational law and governance. As can be seen in Figure 3, forestry schemes tended to incorporate Indigenous rights norms more frequently and with greater stringency than did fishery schemes, mirroring the same pattern that was seen with respect to overall human rights adherence.

Historically, both forestry and fishery sectors have perpetuated the marginalization of Indigenous peoples and undermined their rights to their lands, waters, and resources. However, Indigenous rights have gained greater recognition in global forest management in recent decades.<sup>132</sup> Indigenous tenure and community-based approaches have generated significant attention as a way of enhancing the sustainability of forest governance<sup>133</sup> and Indigenous peoples have secured growing recognition of their rights in the legal norms developed by multilateral institutions and private standards in the context of forest governance.<sup>134</sup> On the other hand, fisheries as a sector has been criticized for failing to incorporate Indigenous rights fully and meaningfully, and to equitably manage tensions between non-Indigenous and Indigenous interests.<sup>135</sup>

<sup>132</sup> T. Sikor & J. Stahl (eds), *Forests and People: Property, Governance, and Human Rights* (Routledge, 2011).

<sup>133</sup> J.H. Lawler & R.C.L. Bullock, 'A Case for Indigenous Community Forestry' (2017) 115(2) *Journal of Forestry*, pp. 117–25.

<sup>134</sup> Teitelbaum et al., n. 4 above; Jodoin, n. 69 above.

<sup>135</sup> A. Davis & S. Jentoft, 'The Challenge and the Promise of Indigenous Peoples' Fishing Rights: From Dependency to Agency' (2001) 25(3) *Marine Policy*, pp. 223–37; L. Richmond, 'Incorporating Indigenous Rights and Environmental Justice into Fishery Management: Comparing Policy Challenges and Potentials from Alaska and Hawai'i' (2013) 52(5) *Environmental Management*, pp. 1071–84.

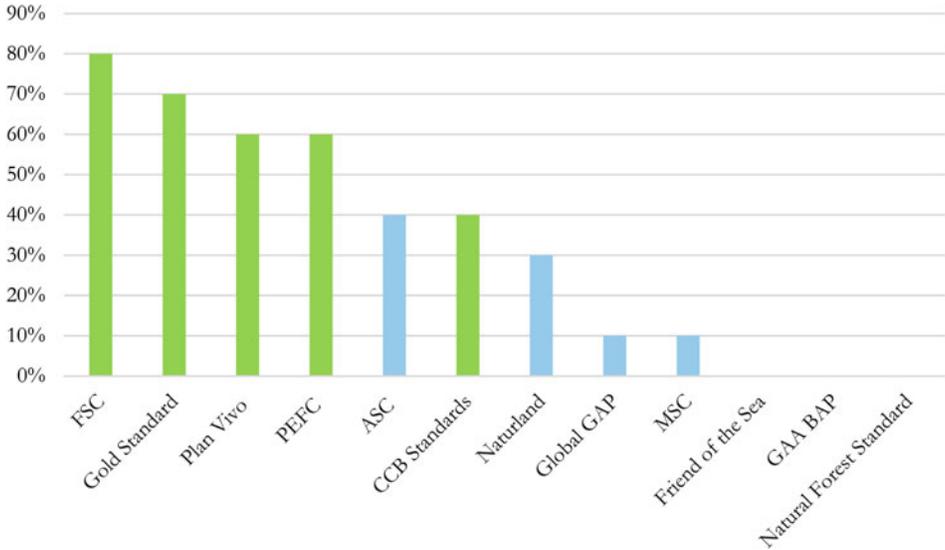


Figure 3. Comparison of Schemes’ Scores on Indigenous Rights Recognition

Despite a long history of Indigenous-led activism,<sup>136</sup> Indigenous rights to traditional waters have been under-emphasized in international discourses and many domestic laws fail to account for Indigenous interests in water governance.<sup>137</sup> Likewise, in spite of the efforts of the Food and Agriculture Organization of the UN (FAO) to promote rights-based approaches for small-scale fisheries,<sup>138</sup> small-scale fisheries and collaborative approaches to fisheries management have achieved limited salience and uptake around the world,<sup>139</sup> including among conservation NGOs.<sup>140</sup>

In sum, the patterns of human rights adherence illustrated above suggest that the underlying institutional priorities, capabilities, and reputational pressures<sup>141</sup> that have been found to shape NGO and corporate approaches to the stringency of environmental standards may also influence the incorporation of human rights norms. Of course, these descriptive statistics should merely be taken as a starting point for generating hypotheses. Establishing the causal role of these and other variables in shaping human rights outcomes in private standard setting requires

<sup>136</sup> E.S. Norman, ‘Standing Up for Inherent Rights: The Role of Indigenous-Led Activism in Protecting Sacred Waters and Ways of Life’ (2017) 30(4) *Society & Natural Resources*, pp. 537–53.

<sup>137</sup> E. Macpherson, ‘Indigenous Water Rights in Comparative Law’ (2020) 9(3) *Transnational Environmental Law*, pp. 393–402.

<sup>138</sup> Food and Agriculture Organization of the UN (FAO), *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication* (FAO, 2015), available at: <http://www.fao.org/3/i4356en/i4356en.pdf>.

<sup>139</sup> FAO et al., ‘SSF Guidelines Uptake and Influence: A Pathway to Impact’, 2021, available at: <https://www.fao.org/3/cb7657en/cb7657en.pdf>.

<sup>140</sup> See R.L. Singleton et al., ‘Conservation and the Right to Fish: International Conservation NGOs and the Implementation of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries’ (2017) 84 *Marine Policy*, pp. 22–32.

<sup>141</sup> Gulbrandsen, n. 3 above; Judge-Lord, McDermott & Cashore, n. 129 above; McDermott, n. 112 above.

in-depth qualitative case studies of the integration of human rights in specific schemes or the use of regression methods involving a larger dataset.

## 6. Conclusion

Our article presents the first known systematic evaluation of the incorporation of human rights norms in voluntary environmental certification schemes. One finding of our study is that the broader emergence of human rights in the field of transnational environmental law and governance is reflected in forestry and fisheries standards. Every scheme in our dataset incorporates respect for at least one procedural and one substantive human right protected under international law, and most schemes include provisions to protect the rights of Indigenous peoples, workers, and children. Our framework and methodology add an important new dimension to scholarly efforts to assess the regulatory stringency of certification programmes.<sup>142</sup> As human rights are enshrined in international legal obligations that bind most countries in the world and are understood as generating responsibilities for companies,<sup>143</sup> they may provide an authoritative normative framework for assessing the procedural and substantive dimensions of equity in the context of private standard setting.<sup>144</sup> That said, not all scholars are convinced that human rights should be applied to assess social and environmental justice, especially in contexts that involve Indigenous peoples.<sup>145</sup>

The evidence that human rights are permeating (even if unevenly and imperfectly) the fields of forestry and fisheries certification adds further complexity to efforts to understand the ‘layering of rules’ in the emergence, evolution, and influence of private authority.<sup>146</sup> The development of voluntary environmental standards has become enmeshed in a variety of public and private rules that now span multiple fields of international and domestic law. In this complex transnational legal process, different actors mobilize, translate, and resist human rights norms to advance competing conceptions of sustainability and justice across forms of environmental law and governance at the transnational, international, national, and local levels. Given the key role that the protection of fundamental rights has come to play in the constitution and governance of political authority in the West, contests over the integration of human rights are likely to have important implications for how certification schemes establish the validity of their authority, whether this relies on legitimation through reliance on external bodies of law or through the emergence of an endogenous form of the rule of law.<sup>147</sup>

<sup>142</sup> Judge-Lord, McDermott & Cashore, n. 129 above.

<sup>143</sup> K. Buhmann, ‘Business and Human Rights: Understanding the UN Guiding Principles from the Perspective of Transnational Business Governance Interactions’ (2015) 6(2) *Transnational Legal Theory*, pp. 399–434.

<sup>144</sup> For assessments of equity in certification programmes see McDermott, n. 112 above.

<sup>145</sup> For an alternative vision of environmental justice see D. McGregor, S. Whitaker & M. Sritharan, ‘Indigenous Environmental Justice and Sustainability’ (2020) 43 *Current Opinion in Environmental Sustainability*, pp. 35–40.

<sup>146</sup> Bartley, n. 67.

<sup>147</sup> Ellis, n. 71 above.

At the same time, our analysis also reveals the mixed performance of forestry and fisheries certification programmes in integrating human rights norms. The average overall human rights score of the twelve schemes was 24 out of 72 (33%). We also found that the certification schemes in our dataset are skewed towards procedural rather than substantive human rights norms, which is likely to limit their potential to disrupt power asymmetries and promote equity in the context of certified projects. Despite the long-held demands of Indigenous peoples and their allies, growing support for an Indigenous rights-based approach to environmental governance among conservation NGOs, scientists, and policymakers, and international legal protection of the rights and status of Indigenous peoples, the integration of Indigenous rights across these schemes remains modest. This makes it unlikely that they can make up for underlying gaps in human rights protection in host countries, or upend the conservation field's problematic history of infringing the rights of Indigenous peoples and local communities. We also found that forestry and fisheries standards are increasingly conflating the rights of Indigenous peoples and local communities in ways that may be seen as undermining the distinctive legal status and claims of the former as peoples. Going forward, it may be helpful to draw inspiration from recent developments in international law that recognize the rights of peasants and rural peoples without undermining those of Indigenous peoples.<sup>148</sup>

Furthermore, the neglect of the rights of minorities, women, children, people with disabilities, peasants and rural peoples, and 2SLGBTQIA+ communities in forestry and fisheries schemes is likely to undermine their ability to address gaps in human rights protection. They also run the risk of failing to live up to the changing social norms and expectations that consumers, governments, and companies may have in relation to gender, racial, and disability justice<sup>149</sup> and intersectionality in environmental justice.<sup>150</sup> Significant reforms may be needed to align these standards with international human rights law and ensure that they can be used by businesses and NGOs to fulfil their responsibilities and commitments at the intersections of human rights and the environment.<sup>151</sup>

In any case, the incorporation of stronger human rights standards might only serve as a first step. As Larson and Ribot argue, 'a rights-based approach is successful when the power dynamics of access are altered and access to livelihood assets are improved for formerly excluded and marginalized groups'.<sup>152</sup> The full and effective

<sup>148</sup> See, e.g., UN Declaration on the Rights of Peasants, n. 47 above, Art. 2(3) (declaring that '[w]ithout disregarding specific legislation on indigenous peoples ... States shall consult and cooperate in good faith with peasants and other people working in rural areas').

<sup>149</sup> J. Vredenburg et al., 'Brands Taking a Stand: Authentic Brand Activism or Woke Washing?' (2020) 39(4) *Journal of Public Policy & Marketing*, pp. 444–60 (discussing the increasing importance of racial, gender, and 2SLGBTQIA+ equity in corporate marketing and branding).

<sup>150</sup> C. Jampel, 'Intersections of Disability Justice, Racial Justice and Environmental Justice' (2018) 4(1) *Environmental Sociology*, pp. 122–35.

<sup>151</sup> For a discussion of the role that voluntary sustainability standards can play in enabling businesses to implement human rights due diligence in their operations see Partiti, n. 68 above, p. 63.

<sup>152</sup> A.M. Larson & J.C. Ribot, 'The Poverty of Forestry Policy: Double Standards on an Uneven Playing Field' (2007) 2(2) *Sustainability Science*, pp. 189–204, at 192.

incorporation of human rights norms in certification must therefore be accompanied by measures that strengthen the auditing, verification, and compliance mechanisms of the human rights dimensions of these schemes.<sup>153</sup> Indeed, a key limitation of our findings is that we have focused on the standards set by certification schemes and have not addressed other aspects of how they operate. Further research is needed to analyze how human rights are recognized and protected in the context of procedures for obtaining certification, auditing requirements and procedures, compliance and dispute-resolution mechanisms, institutions for governance and stakeholder engagement, and the processes for reviewing and setting standards.

Another key finding is that levels of human rights adherence vary significantly across schemes and do so in ways that appear to be influenced by the same types of institutional and sectoral variable that scholars have identified as shaping the stringency of environmental standard setting. This conclusion is provisional, of course, and merely the starting point of a line of enquiry. Additional research should assess the hypotheses explored in Section 5 through quantitative analysis that involves a larger sample of certification standards, including those in sectors such as ecotourism, agriculture, or manufacturing. A wider, cross-sectoral dataset would make it possible for scholars to use advanced quantitative methods to explain variations in the integration of human rights in environmental certification. This analysis could also be expanded to further explore the role that contextual variables relating to the governance or operation of schemes may play in generating variations in human rights performance. This should include differences in the nature of the environmental problems that are addressed by different schemes, the state of scientific knowledge regarding the potential and limitations of collaborative or devolved governance in resolving them, and variations in the domestic recognition and protection of human rights across countries and regions where schemes operate.

Most importantly, qualitative research is needed to understand the micro-level processes shaping whether, how, and why the administrative bodies and communities of practice that govern these schemes have internalized, understood, translated, and resisted different human rights norms. Case studies are needed to explain how the diffusion of human rights has interacted with and been shaped by the origins, goals, and scope of a scheme, processes of institutional evolution and learning, and evolving market pressures and problem definitions in each sector. Moreover, understanding the role of certification in the promotion of human rights on the ground will require in-depth qualitative accounts of their interactions with the discursive, political, and legal opportunity structures that shape the mobilization, internalization, and implementation of human rights norms by public and private actors at the local and national levels.<sup>154</sup>

<sup>153</sup> Bartley, n. 3 above, pp. 163–257 (on the challenges of ensuring compliance with transnational labour standards).

<sup>154</sup> See, e.g., H.J. McCammon et al., 'Movement Framing and Discursive Opportunity Structures: The Political Successes of the U.S. Women's Jury Movements' (2007) 72(5) *American Sociological Review*, pp. 725–49; E.A. Andersen, *Out of the Closets and into the Courts: Legal Opportunity Structure and Gay Rights Litigation* (University of Michigan Press, 2006).

Finally, our work yields new insights into the comparative and intersecting realities of human rights and environmental norms in the context of private authority. Scholars have argued that the standards set by labour-focused voluntary initiatives are likely to converge as a result of the established international consensus concerning core norms that govern how companies should treat their employees.<sup>155</sup> Our results tend to confirm this hypothesis – the rights of workers were recognized at higher levels and with greater consistency across forestry and fisheries schemes than the rights of other groups. However, this outcome cannot be explained solely by the ostensible clarity of labour rights obligations in international law. Whatever advantages international labour law may have over norms of environmental responsibility regarding certainty and consensus, they are roughly equivalent to those enjoyed by most international human rights instruments discussed here (with the notable exception of 2SLGBTQIA+ rights). Accordingly, future research should investigate whether and how social movements shape the salience of different human rights norms for the communities of practice that govern forestry and fisheries certification.<sup>156</sup>

**Supplementary material.** To view the Appendix to this article, please visit <https://doi.org/10.1017/S2047102523000250>

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<sup>155</sup> Mundlak & Rosen-Zvi, n. 110 above, pp. 619–20.

<sup>156</sup> Bartley, n. 3 above, p. 73.

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