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CBD VOLUNTARY GUIDELINES FOR SAFEGUARDS: IMPLEMENTATION PATHWAYS

Note by the Executive Secretary

I. BACKGROUND

1. The Conference of the Parties, at its eleventh meeting, adopted decision XI/4, which requested the Secretariat of the Convention on Biological Diversity to further develop the discussion paper ‘Safeguards in scaling-up biodiversity financing and possible guiding principles’ (UNEP/CBD/COP/11/INF/7), with comments and inputs from Parties and relevant stakeholders; and requested the Working Group on Review of Implementation of the Convention, at its fifth meeting, to prepare a recommendation for consideration by the Conference of the Parties at its twelfth meeting. At its twelfth meeting, the Conference of the Parties adopted voluntary guidelines for safeguards in biodiversity financing mechanisms (decision XII/3 on resource mobilization). The Conference of the Parties, at its thirteenth meeting, requested that the Executive Secretary compile and analyse information, including good practices or lessons learned on how Parties, other Governments, international organizations, business organizations and other stakeholders take voluntary guidelines on safeguards in biodiversity financing mechanisms into account when selecting, designing and implementing biodiversity financing mechanisms, and when developing instrument-specific safeguards for them.

2. The policy paper contained in the present information document fulfils this request from the Parties. The policy paper aims to contribute to fostering an informed and interactive dialogue with Parties and other groups on the co-development of a post-2020 strategy for the operationalization of biodiversity and social safeguards in resource mobilization. It also aims to contribute to current discussions on the development of a post-2020 specific safeguards framework on indigenous peoples and local communities, as part of the integrated programme of work on Article 8(j).

3. The policy paper is reproduced in the language and style of submission. It includes a call for further review and comments in order to be peer reviewed in 2019.

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Note to the reader: This discussion paper is a revised and expanded version of discussion papers on biodiversity financing and safeguards UNEP/CBD/COP/11/INF/7 and UNEP/CBD/WGRI/5/INF/7. A final technical publication will be finalized in 2019 following CBD-COP 14th, taking into account, comments by Parties and others, as well as review by experts.

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For electronic version, see: <https://swed.bio/reports/guidelines-safeguards-implementation-pathways/>

The views reported in this publication do not necessarily represent those of the Convention on Biological Diversity nor of the donors.

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EXECUTIVE SUMMARY

Mainstreaming biodiversity within and across sectors is a critical approach for achieving the objectives of the Convention on Biological Diversity (CBD), as highlighted in Decision XIII/3 and the Cancun Declaration by the high-level segment of the United Nations Biodiversity Conference in 2016 (UNEP/CBD/COP/13/24). While numerous policies and tools exist to address the mainstreaming of biodiversity, many gaps in their implementation also exist. Resource mobilisation for conservation and sustainable use of biodiversity is needed. Good governance and safeguards in resource mobilization play a key role in fostering positive social-ecological outcomes in practice. The post-2020 global biodiversity framework provides a window of opportunity for rethinking the role of legal instruments, principles, standards and safeguards in fostering win-win strategies for people and nature.

This policy paper aims to contribute to fostering an informed and interactive dialogue with Parties and other groups on the co-development of a post-2020 strategy for the operationalisation of biodiversity and social safeguards in resource mobilization. It also aims to contribute to current discussions on the development of a post-2020 specific safeguards framework on indigenous peoples and local communities, as part of the integrated programme of work on Article 8(j). It is the result of a lengthy collaborative process, which has benefited from inputs and comments from Parties and other relevant stakeholders, and builds on lessons learned from existing legal and policy processes under various international and national frameworks.

The CBD adopted voluntary guidelines for safeguards in Biodiversity Financing Mechanisms at the 12th meeting of the Conference of the Parties in 2016, under Decision XII/3 on Resource mobilization, including the Annex III of this Decision with the guidelines. Safeguards in Biodiversity Financing Mechanisms (BFMs) are measures for addressing the risks and maximizing the protection of biodiversity and people's livelihoods, including local communities and indigenous peoples. The paper focuses on the implementation of the CBD voluntary guidelines on safeguards at national and local levels, and lessons learned from practice in different countries and from international initiatives. The operationalization of safeguards can contribute to mainstreaming biodiversity and human rights across international and national institutions.

The CBD context of this paper

CBD-COP Decision XI/4 requested the CBD Secretariat to further develop the discussion paper, 'Safeguards in scaling-up biodiversity financing and possible guiding principles,' (UNEP/CBD/COP/11/INF/7) with comments and inputs from Parties and relevant stakeholders; and requested WGRI5 to prepare a recommendation for consideration by COP in its twelfth meeting.¹ SCBD Notification (SCBD/ITS/RS//LZ/81526) invited CBD Parties and relevant stakeholders to make submissions, comments and provide inputs to the Principles and Safeguards Discussion Paper (UNEP/CBD/COP/11/INF/7). In addition to the submissions by Parties and other stakeholders, focus

¹CBD-COP Decision XI/4 "requests the Executive Secretary to further develop the paper for submission to WGRI-5 based on comments from Parties and other stakeholders and requests WGRI-5 to prepare a recommendation for the consideration by the Conference of the Parties at its twelfth meeting" UNEP/CBD/COP/DEC/XI/4, 5 December 2012.

groups and semi-structured interviews were conducted in order to obtain further comments and inputs (See Box 3). The Ad Hoc Open-ended Working Group on Review of Implementation of the Convention (WGRI5) requested the CBD Secretariat to develop, for consideration by the Conference of the Parties at its twelfth meeting, “Draft options for voluntary guidelines based on the challenges and possible risks of these mechanisms as identified in the document on possible risks and benefits of country-specific innovative financial mechanisms and safeguards”² (UNEP/CBD/COP/12/4). The first version of this policy paper (UNEP/CBD/WGRI/5/INF/7) was the above-mentioned document on “possible risks and benefits of country-specific innovative financial mechanisms and safeguards”.

Safeguards are also mentioned in the decisions adopted at COP11 in relation to REDD+³, as well as regarding trends to respect traditional knowledge and practices in the national implementation of the Strategic Plan for Biodiversity 2011–2020⁴. At its fourth meeting, the Ad Hoc Open Ended Working Group on Review of Implementation of the CBD (WGRI4), requested the Secretariat to assist Parties in exploring guiding principles and safeguards associated to relevant financing mechanisms (UNEP/CBD/COP/11/4)⁵. The former version of this report was developed to fulfil that request, which included a proposal of voluntary guidelines for safeguards in biodiversity financing mechanisms based on lessons learned (UNEP/CBD/COP/12/INF/27). The Convention revised and adopted the proposed voluntary guidelines for safeguards in biodiversity financing mechanisms at COP 12 (See Box 1) (UNEP/CBD/COP/DEC/XII/3). Consequently, at COP13, the Parties requested that the Executive Secretary compile and analyse information, including good practices or lessons learned on how Parties, other Governments, international organizations, business organizations and other stakeholders take voluntary guidelines on safeguards in biodiversity financing mechanisms into account when selecting, designing and implementing biodiversity financing mechanisms, and when developing instrument-specific safeguards for them (CBD/COP/DEC/XIII/20). The present policy report fulfils this request from the Parties.

This policy paper starts by examining the notion of safeguards in biodiversity financing mechanisms (BFMs) under the Convention on Biological Diversity (CBD). It explores key elements in the process of scaling-up biodiversity financing for achieving the CBD objectives. Resource mobilisation is a key element that contributes to the achievement of the three goals of the Convention on Biological Diversity. However, concerns exist over potential social and environmental problems in the process of resource mobilisation. To address these concerns, various governments, right-holders and actor have stressed the importance of safeguards as prerequisites for reaching the CBD objectives.

This paper shows that safeguards in the environmental arena have evolved from an original defensive nature, aimed at ensuring smooth top-down implementation of a program or policy, to a relatively more comprehensive one, that aims to support equitable biodiversity and ecosystem governance, including the participation of local right-holders and recognition of their rights. It suggests that a

² UNEP/CBD/WGRI/5/INF/7.

³ Decision XI/19. Biodiversity and climate change related issues: Advice on the application of relevant safeguards for biodiversity with regard to policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries, UNEP/CBD/COP/DEC/XI/19, 5 December 2012.

⁴ Annex “Indicative List of Indicators for the Strategic Plan for Biodiversity 2011–2020, UNEP/CBD/COP/DEC/XI/3, 5 December 2012.

⁵ Report of the Ad Hoc Open-Ended Working Group on Review of Implementation of the CBD on the Work of its Fourth Meeting, UNEP/CBD/COP/11/4, 21 June 2012, page 22.

rights/duties based approach to safeguards in BFM, that goes beyond a defensive approach, can serve in constructively finding consensus for equitably recognising and guaranteeing biocultural rights and duties among the parties involved. While distinguishing procedural safeguards from substantive safeguards, the paper highlights that both are needed. This more systematic approach to safeguards views their operationalization as a dynamic process, grounded in particular local realities and linked to national and international processes.

The paper also analyses safeguards relating to different types of BFM. This analysis found that, in practice, BFM can be connected with one another, as well as with broader institutional reforms and biodiversity resource mobilisation such as Official Development Assistance (ODA). While Parties develop specific safeguards that respond to the risks and opportunities of each BFM, their efforts can be made more effective by harmonising different safeguards in the process of scaling-up biodiversity financing.

The BFM addressed in this paper are the six mechanisms mentioned in Goal 4 of the Strategy of Resource Mobilisation (2008-2015) (COP9 Decision IX/11)⁶. The findings in this paper, the adopted guidelines, and a suggested operationalization roadmap are also relevant to other mechanisms such as those of the Nagoya Protocol and ABS system.

Based on this analysis and informed by inputs from Parties and other groups, the paper suggests elements for a roadmap to operationalize such CBD guidelines. Countries face distinctive challenges due to their socio-ecological and legal landscapes. The adopted guidelines aim to provide advice on how Parties and other stakeholders can make more informed decisions on choosing, designing and implementing mechanisms for financing biodiversity in a way that fosters the achievement of the three inter-dependent CBD objectives with both environmental and social dimensions.

Main findings

Scaling-up biodiversity financing can be a means for meeting the CBD objectives, but both opportunities and risks need to be taken into account in the mobilization of resources for biodiversity. The potential impacts of BFM on different elements of biodiversity and effects on people's rights and livelihoods need to be addressed. Particular attention needs to be paid to the impacts and contribution by indigenous peoples, local communities and women, including their participation in the choice, design and operationalization of BFM.

Law and institutions play a vital role for transformations for sustainability and environmental justice. The fact that the COP12 Decision XII/3 adopting the guidelines addresses both Parties of the CBD and also other actors, is especially relevant in the broad engagement context needed in transformations for sustainability and environmental justice. It signals that diverse actors have a role to play in scaling-up financing for biodiversity that brings about social-ecological benefits. Decision XII/3, "urges Parties, other Governments, business organizations and other stakeholders to take the voluntary guidelines on safeguards in biodiversity financing mechanisms into account when selecting, designing and implementing biodiversity financing mechanisms, and when developing instrument-specific safeguards for them..." Besides adopting the guidelines, the 2014 Decision XII/3 by the Conference of the Parties refers to operational next steps that link international level CBD processes

⁶ COP 9 Decision IX/11, Review of implementation of Articles 20 and 21, www.cbd.int/decision/cop/?id=11654, accessed 25 July 2012

with national legislation and policies. More specifically it, “urges Parties to consider undertaking, as appropriate, a review and assessment of existing legislation and policies governing biodiversity financing mechanisms, with a view to identifying opportunities for mainstreaming biodiversity and strengthening current policies and their complementary safeguards, and to make information on this work available to the Executive Secretary, including practical experiences and lessons learned”.

Principles and guidelines can contribute to coherent safeguards across the interacting risks and opportunities of different BFM, address unintended impacts, and maximise the opportunities of financing mechanisms. The process of developing and implementing effective safeguards across different BFM, supported by guidelines that adopt a rights/responsibilities based approach and consider ethical values, can contribute to improving equity and trust relationships between different groups. This includes, *inter alia*, the relationships of governments with indigenous peoples and local communities. A rights/responsibilities based approach to safeguards distinguishes between substantive safeguards (e.g. land, tenure and knowledge-related rights) and procedural safeguards (e.g. participation, transparency and accountability) and recognises that both are necessary and interdependent.

Consistency of safeguards across national and international institutions can contribute to fostering biodiversity equitable governance. A constructive process should recognize a plurality of legal systems (international, national and local customary norms) and support their interaction through more deliberative and participatory processes. Operationalising guidelines in law, policy and practice, through country-driven and participatory processes can contribute to a constructive process. Given the different characteristics of law and safeguards-related provisions in national frameworks and international agreements and international organizations, it is appropriate to disaggregate the strategies to address both the implementation of the CBD guidelines at national levels and the interaction of the CBD guidelines *vis-à-vis* other international organisations’ instruments. Dialogue between the CBD Secretariat, other Secretariats of the Rio Conventions, and other relevant organisations can also foster consistency in the implementation of safeguards across international institutions.⁷ The Subsidiary Body of Implementation 2 (CBD/SBI/2/20) highlights, “the convergence that is emerging between the existing processes for developing and/or improving safeguard systems of the financing mechanisms and the Convention’s voluntary guidelines on safeguards in biodiversity financing mechanisms, and encourages all such processes to further refer to the guidelines in order to create greater convergence”. Specifically, a multi-scale approach that considers the ways in which global dynamics interact with national and local processes as well as the interactions between international organisations is suitable for effective policies and adaptive governance.⁸

⁷ CBD/SBI/2/20 recommends CBD-COP14 to take note, that the “processes undertaken by the operating entities of the financial mechanism of the United Nations Framework Convention on Climate Change to design, establish and apply safeguard systems that would cover all climate-related financing under their responsibility”.

⁸ See e.g. on Ituarte-Lima, C. (2017), Transformative biodiversity law and Agenda 2030: mainstreaming biodiversity and justice through human rights, in Butter, B. Risk, Resilience, Inequality and Environmental Law, Edward Elgar Publishing, Knox (2015), Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment to the Human Rights Council, 3 February 2015, A/HRC/28/61, Special Feature on Law and Social-Ecological Resilience, Part II, Contributions from Law for Social- Ecological Resilience Symposium Stockholm, Sweden, 2010, (2013) 18 *Ecology and Society* <<http://www.ecologyandsociety.org/issues/view.php/feature/98>>, accessed 12 January 2016, Ahjand S Garmestani and Craig R Allen (eds) *Social-ecological resilience and law* (Columbia University Press 2014), Simon West and Lisen Schultz ‘Learning for resilience in the European Court of Human Rights: adjudication as an adaptive governance practice’ (2015) 20 (1) *Ecology and Society* 31.

Linking the CBD guidelines for safeguards with national legislation, and exchanging lessons learned from the process of doing so, can foster social learning relevant for biodiversity mainstreaming at distinct scales. One means to do this is via CBD-COP Decisions. For example, the CBD-COP 13 Decision requested that the “Executive Secretary compile and analyse information, including good practices or lessons learned on how, in accordance with paragraph 16 in decision XII/3, Parties, other Governments, international organizations, business organizations and other stakeholders take the voluntary guidelines on safeguards in biodiversity financing mechanisms into account when selecting, designing and implementing biodiversity financing mechanisms, and when developing instrument-specific safeguards for them”. This analysis serves to develop recommendations for the implementation of the voluntary guidelines on safeguards that can help countries, “to address effectively the potential impacts of biodiversity financing mechanisms on different elements of biodiversity, as well as their potential effects on the rights and livelihoods of indigenous peoples and local communities”.

Box 1. Adopted CBD voluntary guidelines for safeguards in BFM

Biodiversity underpins local livelihoods and resilience

Guideline (a). - The role of biodiversity and ecosystem functions for local livelihoods and resilience, as well as biodiversity’s intrinsic values, should be recognized in the selection, design and implementation of biodiversity financing mechanisms.

People’s rights, responsibilities and effective participation

Guideline (b). - Rights and responsibilities of actors and/or stakeholders in biodiversity financing mechanisms should be carefully defined at a national level. This should be done in a fair and equitable manner, with the effective participation of all actors concerned. Including the prior informed consent or approval and involvement of indigenous and local communities, taking into account, the Convention on Biological Diversity and its relevant decisions, guidance and principles and, as appropriate, the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP).

Local and country-driven/specific processes linked to the international level

Guideline (c). - Safeguards in biodiversity financing mechanisms should be grounded in local circumstances and be developed consistent with relevant country-driven/specific processes, national legislation and priorities. They should take into account relevant international agreements, declarations and guidance, developed under the Convention on Biological Diversity and, as appropriate, the United Nations Framework Convention on Climate Change, international human rights treaties and the United Nations Declaration of the Rights of Indigenous Peoples, among others.

Governance, institutional frameworks, transparency, accountability and compliance

Guideline (d). - Appropriate and effective institutional frameworks are of utmost importance for safeguards to be operational and should be put in place. This includes enforcement and evaluation mechanisms that will ensure transparency and accountability and compliance with relevant safeguards.

Potential elements for an operational roadmap

Looking ahead: resource mobilization and safeguards in the post-2020 global biodiversity framework

The co-development of a post-2020 strategy to implement principles, standards and guidelines relevant for safeguards in resource mobilization, including the CBD voluntary guidelines on safeguards in BFMs, can contribute to addressing the underlying causes of biodiversity loss and to mainstream biodiversity across sectors such as forestry and mining sector. This strategy can also contribute to operationalising international human rights treaties and safeguards under other multilateral environmental agreements such as UNFCCC.

The following potential elements would help to operationalize the guidelines and specify strategies for implementation, complementing the possible milestones and roadmap of resource mobilisation covering the period up to 2020 and the post 2020 global biodiversity framework:

- The CBD Secretariat could engage in active dialogue with the other Secretariats of the Rio Conventions and other relevant organizations, for the co-development of a strategy to implement legal instruments relevant for integrated approaches that create a win-win for people and biodiversity. Other relevant organizations working with substantive and procedural dimensions relevant for safeguards include the Human Rights Council, the UN Permanent Forum on Indigenous Issues, the World Bank's Inspection Panel, the International Development Law Organisations, the Intergovernmental Platform on Biodiversity and Ecosystem Services (in particular concerning its work on policy support tools and methodologies), and other organizations involved on operationalizing Agenda 2030 and the Sustainable Development Goals. The aim of such a dialogue would be to contribute to a just governance of biodiversity and healthy ecosystems. The outcome strategy could then be presented to CBD Parties and other relevant groups.
- Member States could reflect the above-mentioned guidelines in law, policies and practices in exercise of their sovereign rights over their biological resources and associated national autonomy in decision-making. It is recommended that the development of national systems for biodiversity and social safeguards has the effective participation of relevant stakeholders, *inter alia* local communities and indigenous peoples. This includes: a) identifying national, legal provisions and policies relevant to safeguards that are applicable to mechanisms for financing biodiversity and ecosystems; b) performing an assessment of the appropriateness and gaps of existing safeguards-related provisions in responding to the risks and opportunities of the six biodiversity financing mechanisms mentioned in Goal 4 of the Strategy of Resource Mobilisation (2008-2015) (COP 9 Decision IX/11), and an assessment of potential additional mechanisms including when such mechanisms are or will be operational in the country; and c) taking action in implementing different safeguards in scaling-up biodiversity financing and developing new safeguards, when needed, informed by the CBD guidelines for safeguards and other CBD principles and guidelines.
- The COP could encourage Parties to report to the CBD Secretariat their strategies associated with safeguards in BFMs, including pilot experiences. Lessons learned could be drawn from these strategies and could help the CBD Secretariat to provide advice to Parties and other stakeholders on how to better implement the guidelines for maximising the biodiversity and social benefits of BFMs, while also addressing the risks and challenges building on tangible experiences from various countries.

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- Using the CBD Voluntary guidelines for safeguards in Biodiversity Financing Mechanisms as a tool for implementing CBD article 8(j) and related provisions, side-event at WG(j) Montreal 14 December 2018
- Peer to peer dialogue on weaving Sustainable Development Goal 16 and international human rights law with the post-2020 global biodiversity framework in Machakos Kenya. SwedBio, International Development Law Organization, Office of the United Nations High Commissioner for Human Rights-Special Procedures, UN Environment and Natural Justice, Machakos, Kenya, 28-31 May 2018
- CBD Voluntary Guidelines on Safeguards, side-event at CBD-COP 13, 15 December 2016
- International Workshop on Financing for Biodiversity, Kartause Ittingen, Switzerland, 18–19 August 2014.
- The Ad Hoc Open-ended Working Group on Review of Implementation (WGRI5), Montreal, Canada 16–19 June 2014.
- Second Dialogue Seminar on Scaling up Finance for Biodiversity, Quito, Ecuador 9–12 April 2014.
- The Third Meeting of The Global Partnership For Business And Biodiversity, Montreal, Canada, 2–3 of October 2013.
- Seventh Trondheim Conference on biodiversity: ecology and economy for a Sustainable Society Trondheim, Norway, 27–31 May 2013.
- Bonn Expert Workshop on Community-Based Monitoring and Information Systems, 26–28 April 2013.
- Dialogue SRC – Faculty of Law, Stockholm University, 6th November 2012.
- Seminar on Landscapes in a Carbon Focused World, Gothenburg, 26 October 2012.

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Governmental and Inter-governmental organisations

Hem Pande, Indian Ministry of Environment and Forests, Government of India
Irvin Michael. South African Ministry of Environmental Affairs Department
Nathalie Rizzotti, Federal Office for the Environment, Swiss Federation.

⁹ The people participating on the working group on “Governance Safeguards and Equity” in Quito II were not included in this list as this event followed the Chatham House Rule.

Leticia Manzanera, Ministry of the Environment, SEMARNAT.
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Yves de Soye, United Nations Development Programme
Valerie Hickey
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Non-governmental organisations

Harry Jonas, Natural Justice
Camila Montesinos, GRAIN
Simone Lovera, Global Forest Coalition
Paul Matiku, Nature Kenya
Lucy Mulenkei, Indigenous Information Network
Zoe Cullen, Fauna and Flora International
Natalie Olsen, IUCN
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Pasang Dolma Sherpa, Nepal Federation of Indigenous Nationalities
Joenia Carvalho, Indigenous Council of Roraima (CIR), Brazil
Vicky Tauli-Corpuz, Tebtebba
Tarcila Rivera Zea, Director of Chirapaq, Peru

Business Sector

Jon K Grant, former Chairman and Chief Executive Officer of the Quaker Oats Company of Canada

Scientific institutions

Richard Klein, Stockholm Environment Institute
Terry Sunderland, Center for International Forestry Research
Susanne von Walter, Swedish University of Agricultural Science and Uppsala University
Jonas Ebbesson, Stockholm University and Chair of the Aarhus Compliance Committee
Sian Sullivan, University of London
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Aurélien Guingand, Caisse des Dépôts et Consignations group, France
Joël Houdet, Integrated Sustainability Services, South Africa
Vu Ti Hien, The Centre of Research and Development in Upland Areas, Vietnam
Harro Van-Asse, Stockholm Environment Institute
Ekaterina Alexandrova, ECOSUR-Mexico and Colorado State University

ACRONYMS

ABS	Access and Benefits Sharing: agreements linked to the access to genetic resources and their equitable use, an issue that became prominent in 2010 at COP-10 (Nagoya, Japan) in the “ <i>The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity</i> ”.
BBOP	Business and Biodiversity Offsets Programs: international initiative of cooperation between stakeholders (companies, governments, civil society organizations, financial institutions, etc.) to achieve a net gain of biodiversity by developing better practices.
BCPs	Biocultural Community Protocols: community-led statements about a local population’s priorities and values relating to their biocultural resources.
BFM	Biodiversity financing mechanisms: financial tools such as payments for ecosystem services, biodiversity offsets or environmental fiscal reforms that could help in reaching CBD goals.
CBD	Convention of Biological Diversity: international convention opened for signature during the 1992 United Nations Conference on Environment and Development (UNCED, or “Earth Summit”) in Rio de Janeiro, and enforced on 29 December 1993. It has three main objectives: “the conservation of biological diversity; the sustainable use of the components of biological diversity; the fair and equitable sharing of the benefits arising out of the utilization of genetic resources”.
CBMIS	Community Based Monitoring and Information Systems: refer to initiatives by indigenous peoples and local community organisations to monitor their community’s well-being and the state of their territories and natural resources, applying a mix of traditional knowledge and innovative tools and approaches.
CCBA	Climate, Community and Biodiversity Alliance: initiative established in 2003 to improve forest management and increase private and public interest in forest protection.
CCBS	Climate, Community and Biodiversity Standards: initiative of the CCBA to allow multilevel stakeholders to assess climate-change mitigation projects.
COP	Conference of the Parties: governing body of the Convention on Biological Diversity. Generally, the COP meetings are held every second year to take decisions regarding the development and implementation of the Convention.
EC	Ecological Compensation: measure to mitigate development impacts whereby loss of natural values is remedied or offset by a corresponding compensatory action on the same site or elsewhere, determined through the process of Environmental Impact Assessment.

ACRONYMS

EIA	Environmental Impact Assessment: a formal study prior to implementation of a policy or project assessing its potential effects on the environment.
ESIA	Environmental and Social Impact Assessment: type of EIA that includes an analysis on the social impacts, such as impacts to health and livelihoods, likely to happen during the construction and operation of development projects in order to prevent and mitigate possible social impacts.
FPIC	Free Prior Informed Consent. Procedural measure that allows indigenous peoples and local communities to give or withhold consent to a project that may affect them or their territories. Once they have given their consent, they can withdraw it at any stage. Furthermore, FPIC enables them to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated. Specific right that pertains to indigenous peoples and recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and in the CBD Mo'otz kuxtal voluntary guidelines. In this
GEF	Global Environment Facility: public funder which gathers in a partnership 182 countries, international institutions, companies and civil society organisations, in order to foster sustainable development initiatives and tackle global environment issues.
ICCA	Abbreviation for “territories and areas conserved by indigenous peoples and local communities” or “territories of life”. A close association is often found between a specific indigenous people or local community and a specific territory, area, or body of natural resources. When such an association is combined with effective local governance and conservation of nature, we speak of an “ICCA”.
IEE	Initial environmental examination: type of ESIA conducted in development projects considered small or creating lower impacts on the environment and society.
IPCC	Intergovernmental Panel on Climate Change: an international body under the auspices of the UN that assesses climate change. Its periodic reports gather scientific and policy communities for detailed review of the scientific evidence on climate change, its impacts and its mitigation.
IUCN	International Union for the Conservation of Nature: a membership Union composed of both government and civil society organisations. It aims at provide public, private and non-governmental organisations with knowledge and tools that enable human progress, economic development and nature conservation to take place together. IUCN was founded in 1948.
Lao PDR	Lao People's Democratic Republic
MA	Millennium Ecosystem Assessment: international assessment produced by the leading scientific community published in 2005 that analyses the state of the world's ecosystems and the impact of mankind on biodiversity.
MRV	Monitoring, Reporting and Verification: systems that help in measuring, understanding and

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following-up the implementation of mechanisms.

ODA	Official Development Assistance: “flows of official financing administered with the promotion of the economic development and welfare of developing countries as its main objective. ODA receipts comprise disbursements by bilateral donors and multilateral institutions”. (OECD, Glossary of Statistical Terms)
OOC	Olare Orok Conservancy: Kenyan conservancy, in the Maasai Mara region, that entered in a payment for ecosystem services scheme with tourist operators.
PES	Payment for Ecosystem Services: positive incentives based on subsidies given to landowners who use practices that enhance ecological services.
PEI	Poverty-Environment Initiative: joint programme of UNDP and the United Nations Environment Programme that supports country-led efforts to put pro-poor, pro-environment objectives into national and sub-national development planning.
REDD+	Reducing Emissions from Deforestation and Forest Degradation, conserving and sustainably managing forests and enhancing forest carbon stocks in Developing Countries.
SB	Socio Bosque program: governmental initiative implemented in Ecuador since September 2008 to preserve native forest ecosystem from deforestation.
SCS	Scientific Certification Systems: certification services proposed by SCS Global Services, a third-party environmental auditing and certification company which is in partnership with different stakeholders and delivers assessments and advice.
SEA	Strategic Environmental Assessment: a structured process to ensure that the environmental effects of a project or a policy have been identified.
TEEB	The Economics of Ecosystems and Biodiversity: study launched in 2007 by the G8+5 (after the summit in Potsdam, Germany) and which aimed at underlining the economic benefits of biodiversity and the costs of ecosystem degradation.
UN-REDD	United Nations-Reducing Emissions from Deforestation and forest Degradation: initiative launched in 2008 to better support REDD+ at the national level in developing countries.
UNDP	United Nations Development Program: branch of the United Nations Organization created in 1966, whose goal is to help developing countries in building strong societies to be able to withstand crises.

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UNDRIP	United Nations Declaration of the Rights of Indigenous Peoples: the most comprehensive international instrument on the rights of indigenous peoples, it establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples. The UN General Assembly adopted it in September 2007.
UNEP	United Nation Environment Program: UN agency founded in 1972 which coordinates environmental initiatives and helps developing countries in enforcing better policies and practices.
UNFCCC	United Nations Framework Convention on Climate Change: international treaty negotiated during the Rio Earth Summit in 1992, which provides a framework for further negotiations to reduce greenhouse gases.
UNPFII	United Nations Permanent Forum on Indigenous Issues: a high- level advisory body to the Economic and Social Council with the mandate to deal with indigenous issues related to economic and social development, culture, the environment, education, health and human rights.
VCS	Verified Carbon Standards: voluntary greenhouse gas program that works with public and private sectors to reduce greenhouse gas emissions by monitoring current practices and developing innovative ones.

1. INTRODUCTION

The Earth's biological resources are vital to humanity's economic and social development. Extensive evidence, first brought together in a worldwide effort for the Millennium Ecosystem Assessment, has clearly demonstrated that humans have changed ecosystems more rapidly and extensively over the past 50 years than in any other period in history.¹⁰ As a response to this problem, the Convention on Biological Diversity (CBD) was agreed upon by governments and came into force in 1993, with three objectives: “conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources”.¹¹ At the tenth Conference of the Parties (COP 10) in Nagoya, Japan, Parties agreed on a new strategic plan, setting 20 so-called Aichi Biodiversity Targets.

Scaling up biodiversity financing can be a means for the CBD to meet the Aichi Biodiversity Targets.¹² However, the development of some financial mechanisms has generated concern over many potential social and environmental problems. Notable among these are their effects on the rights and livelihoods of indigenous peoples and local communities, as well as potential adverse impacts on different elements of biodiversity if BFM s are not adequately developed.

To address these concerns, various stakeholders have stressed the importance of designing and implementing both environmental and social safeguards in biodiversity financing mechanisms. Parties have also called for these safeguards (see Box 2). Guiding principles and safeguards was a decision of the fourth meeting of the *ad hoc* open-ended Working Group on Review of Implementation of the CBD to assist Parties in exploring relevant financing mechanisms.¹³

In this context, an initial version of this paper was developed as an information document for COP-11 in Hyderabad, India on 8-19 October 2012 (UNEP/CBD/COP/11/INF/7). At its eleventh meeting, the Conference of the Parties (COP 11) took note of the initial discussion paper as well as other relevant documents. Paragraph 20 of Decision XI/4 “requests the Executive Secretary to further develop the paper for submission to WGRI-5 based on comments from Parties and other stakeholders and requests WGRI-5 to prepare a recommendation for the consideration by the Conference of the Parties at its twelfth meeting”.¹⁴ Paragraph 21 of Decision XI/4 invites Parties and relevant stakeholders to submit lessons learned on country-specific innovative financing mechanisms¹⁵, which may include safeguards. Accordingly, inputs have been received and have informed the further development of the initial discussion paper (See Box 3).

¹⁰ Millennium Ecosystem Assessment (MA) 2005, Ecosystems and Human Well-being: Biodiversity Synthesis, World Resources Institute, Washington, DC; UNEP 2007 and 2012, Global Environment Outlook, www.grid.unep.ch/activities/assessment/geo/; Secretariat of the Convention on Biological Diversity (2010) Global Biodiversity Outlook 3, Montréal; United Nations General Assembly, 2012, The Future We Want Rio +20, Resolution 66/288, A/RES/66/288 United Nations General Assembly, Sixty-sixth session Agenda item 19. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/476/10/PDF/N1147610.pdf?OpenElement>, Accessed 11 November 2012.

¹¹ Article 1, Convention on Biological Diversity, Convention on Biological Diversity (CBD) 1992, entered into force 29 December 1993, accessed 2 July 2012, www.biodiv.org/doc/legal/cbd-en.pdf.

¹² COP 9 Decision IX/11, Review of implementation of Articles 20 and 21, www.cbd.int/decision/cop/?id=11654, accessed 25 July 2012.

¹³ Report of the *ad hoc* open-ended working group on review of implementation of the CBD on the work of its fourth meeting, UNEP/CBD/COP/11/4, 21 June 2012 (see page 22).

¹⁴ Parr. 20, Page 37, Decision XI/4.

¹⁵ Decision XI/4. Review of Implementation of the Strategy for Resource Mobilization, including the establishment of targets Parr. 21

Box 2. The story of safeguards under CBD

The need for scaling up resources for biodiversity conservation was discussed at COP 9 in 2008, where Parties adopted Decision IX/11, which includes the CBD's Strategy for Resource Mobilization (2008-2015). The Strategy's Goal 4 is to: "Explore new and innovative financial mechanisms at all levels with a view to increasing funding to support the three objectives of the Convention".¹⁶

In 2010, COP 10 Decision X/3 on the Strategy for Resource Mobilization in Support of the Achievement of the CBD's Three Objectives reaffirmed the Parties' commitment to scaling up biodiversity financing, highlighting the need for information about the opportunities and also the potential problems that biodiversity financing mechanisms could generate. Safeguards were identified as one of the means to address these potential problems.¹⁷

Safeguards were also debated¹⁸ at COP 10, along with other issues relating to a Draft decision on Policy Options Concerning Innovative Financial Mechanisms. However, Parties did not reach consensus and, hence, this decision was not adopted.¹⁹

In early 2012, a Dialogue Seminar on Scaling up Biodiversity Finance in Quito (Quito Dialogue Seminar) was convened by the CBD Secretariat and Sweden, Ecuador, Norway, India and Japan. The importance of safeguards was highlighted, and that "economic incentives can play an important role for reaching the Aichi Biodiversity Targets and that governance and institutional frameworks, including safeguards, are critically important for all financing mechanisms for biodiversity".²⁰

In 2012, the fourth meeting of the Ad Hoc Open Ended Working Group on Review of Implementation of the CBD (WGRI4) requested the Secretariat to assist Parties in exploring guiding principles and safeguards associated to relevant financing mechanisms.²¹ Safeguards are also explicitly mentioned in the decisions adopted at COP 11 in relation to REDD+ as well as trends to respect traditional knowledge and practices in national implementation.

The Secretariat's synthesis on innovative financial mechanisms (Agenda item 4.1, for CBD-COP11) presented in October 2012 provides evidence of distinct perspectives on innovative financial mechanisms. Opinion "ranges widely from innovative financial mechanisms as problem solvers to highlighting the potential problems that may be caused by innovative financial mechanisms..".²² It mentions that a "deeper understanding of innovative financial mechanisms by all relevant stakeholders may contribute to consensus building, including through development of appropriate environmental and socio-economic safeguards that are called in several submissions".²³

In 2013-2014, for the fifth meeting of the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention (WGRI5) a new version of this Safeguards paper was developed (UNEP/CBD/WGRI/5/INF/7)²⁴. The WGRI5 requested the CBD Secretariat to develop, for consideration by the Conference of the Parties at its twelfth meeting: "Draft options for voluntary guidelines based on the challenges and possible risks of these mechanisms as identified in the document on possible risks and benefits of country-specific innovative financial mechanisms and safeguards"²⁵ (UNEP/CBD/COP/12/4). WGRI5 also takes note of the Co-Chair's Summary of

¹⁶ COP 9 Decision IX/11, Review of implementation of Articles 20 and 21, www.cbd.int/decision/cop/?id=11654, accessed 25 July 2012.

¹⁷ See point 8(c) of CBD COP10 Decision X/3, accessed 29 August 2012, www.cbd.int/decisions/?id=12269. The World People's Conference on Climate Change and the Rights of Mother Earth took place in April 2010 in Cochabamba, Bolivia with the participation of people from 140 countries. The initiative called for the building of a Global People's Movement for Mother Earth "based on the principles of complementarity and respect for the diversity of origin and visions among its members, constituting a broad and democratic space for coordination and joint worldwide actions". Accessed 29 August 2012, pwccc.wordpress.com/2010/04/24/peoples-agreement/.

¹⁸ Ibidem.

¹⁹ See Draft Decision UNEP/CBD/WG-RI/4/L.7, 11 May 2012, Agenda Item 6: Review of Implementation of the Strategy for Resource Mobilization, *Draft recommendation submitted by the Chair, the Ad Hoc Open-Ended Working Group on Review of Implementation of the Convention*, www.cbd.int/doc/meetings/wgri/wgri-04/in-session/wgri-04-L-07-en.doc, accessed 1 July 2012.

²⁰ Farooqui, M.F. and Schultz, M., 2012, page 5. One of the Quito Dialogue recommendations to the CBD Secretariat is to develop a report on lessons learned and possible risks of biodiversity financing mechanism.

²¹ *Report of the Ad Hoc Open-Ended Working Group on Review of Implementation of the CBD on the Work of its Fourth Meeting*, UNEP/CBD/COP/11/4, 21 June 2012, page 22.

²² Page 11 and 12, *Synthesis on Innovative Financial Mechanisms*, Note by the Executive Secretary, UNEP/CBD/COP/11/14/Add.3, 28 August 2012.

²³ Ibidem.

²⁴ UNEP/CBD/WGRI/5/INF/7.

²⁵ UNEP/CBD/WGRI/5/INF/7.

the Second Informal Dialogue Seminar on Scaling up Finance for Biodiversity which included, as specific objectives, to seek enhanced understanding of various ways of operationalising mechanisms for mobilizing financial and non-financial resources, including principles and safeguards for their implementation;²⁶ for some highlights on governance, safeguards and equity discussed in this Dialogue Seminar, see Box 8.

The Convention revised and adopted the proposed voluntary guidelines for safeguards in biodiversity financing mechanisms at COP 12 in 2014 (UNEP/CBD/COP/DEC/XII/3). Consequently, at COP13, the Parties requested the Executive Secretary to compile and analyse information, including good practices or lessons learned on how Parties, other Governments, international organizations, business organizations and other stakeholders take voluntary guidelines on safeguards in biodiversity financing mechanisms into account when selecting, designing and implementing biodiversity financing mechanisms, and when developing instrument-specific safeguards for them (CBD/COP/DEC/XIII/20).

This paper addresses how to develop and implement safeguards for scaling up biodiversity financing under CBD and proposes guidelines and elements for an operational roadmap. We focus especially on the so-called “new and innovative financial mechanisms” (IFMs) under the CBD’s strategy for resource mobilization (Decision IX/11) which are: payments for ecosystems services, biodiversity offsets, environmental fiscal reform, international development finance, markets for green products and climate financing with co-benefits to biodiversity. These mechanisms under Goal 4 are distinct in nature. As OECD (2013) highlights, these mechanisms may vary in terms of their purpose, their applicability as well as in the amount of finance they have been able to mobilise and the opportunities to scale-up. Likewise, distinct design and implementation considerations need to be taken into account depending on the type of mechanism. The adopted guidelines in Section 5 are relatively general because they aim to be applicable to all the BFM’s while also taking into consideration the interconnectedness of BFM’s risks and opportunities. A step-wise approach is suggested including the proposed elements for an operational roadmap in Section 7, which can then contribute to further specify the guidelines and methodologies for safeguards in particular BFM’s as well as for safeguards addressing the linkages of BFM’s risks and opportunities.

In this paper, we use “biodiversity financing mechanisms” (or BFM’s) to refer to “new and innovative financial mechanisms” (IFMs) under the CBD’s strategy for resource mobilization (Decision IX/11) because these mechanisms actually include both established mechanisms and new alternatives in both the public and private sectors.²⁷ “Safeguards in BFM’s” refer to measures for maximising the protection of biodiversity and people’s livelihoods while minimising negative impacts. Rather than defining a set of safeguards, the focus of this study is to examine the notion of safeguards and explore elements and guidelines that can be useful for the design and application of safeguards in BFM’s.

Indigenous peoples and local communities play a prominent role in biodiversity governance. Therefore, efforts to select, design and implement BFM’s must take those key actors into account, both as right-holders and key agents of sustainability solutions. In this paper, following CBD Decision XII/12, we use the terms “indigenous peoples and local communities” (IPLC). In line with Decision CBD/COP/DEC/XIII/18, we use the term Free Prior Informed Consent (FPIC), to refer to consent by indigenous peoples and local communities that is free of any form of coercion; provided sufficiently in advance; respecting customary decision-making processes and time requirements by indigenous peoples and local communities; where information for this decision-making is relevant and complete;

²⁶ Ogwal, S.F. and Schultz, M., 2014. *Co-Chairs’ Summary of Second Dialogue Seminar on Scaling up Finance for Biodiversity, Quito 9-12 April 2014*. Montreal: Secretariat of the Convention on Biological Diversity. <http://www.cbd.int/doc/meetings/fin/ds-fb-02/official/ds-fb-02-report-en.pdf>.

²⁷ See Farooqui, M.F. and Schultz, M., 2012. *Co-chairs’ Summary of Dialogue Seminar on Scaling up Biodiversity Finance, Quito 6-9 March 2012*, www.cbd.int/doc/meetings/fin/ds-fb-01/official/ds-fb-01-02-en.pdf, accessed 30 June 2012. At the Quito dialogue seminar, participants discussed that the term “innovative financing mechanisms” was inappropriate to refer to the breadth of mechanisms discussed under the CBD’s strategy for resource mobilization and that “biodiversity financing mechanisms” would constitute a better alternative.

involving full and effective participation; and is in accordance with national legislation.²⁸ As certain instruments for scaling-up BFM take place at national levels, it worth noting that in some national contexts FPIC is phrased as “Prior and informed consent” or “approval and involvement”.

In order to scope the range of views on safeguards for scaling-up biodiversity financing, we used a composite of methods including a literature review, analysis of relevant official CBD, UNFCCC and other international law treaties documents. The lead author presented the Discussion Paper in the events where comments and inputs were received, as well as conducted focus groups and in-depth semi-structured interviews with experts from various organizations including governmental, intergovernmental and non-governmental organizations and scientific institutions (see Box 3 below and Appendix 1).²⁹ This revised version of the information document incorporates views and responses to submissions from Parties and other stakeholders, also outlined in Box 3. Different perspectives were expressed in the country submissions, interviews, focus groups and events where the paper was presented; hence, the interpretations and conclusions presented here do not imply a consensus and are the responsibility of the authors.

Box 3. Methodology and list of submissions and events where comments and inputs were received (See Appendix 1 for a summary of the inputs and the way they are addressed in the paper).

16 Semi-structured in-depth interviews

Submissions by Parties and other stakeholders

Comments and inputs were received between October 2012 and August 2014 in the following events and focus/working groups:

Using the CBD Voluntary guidelines for safeguards in Biodiversity Financing Mechanisms as a tool for implementing CBD article 8(j) and related provisions, Montreal 14 December 2017. In this side event, dialogue with various stakeholders revolved around the co-development of a strategy for the operationalisation of the CBD voluntary guidelines on safeguards at national and local levels as well as on next steps for providing coherence to guidelines and safeguards across diverse international institutions relevant in the process of biodiversity resource mobilization including lessons learned from practice from different countries.

Peer to peer dialogue on weaving Sustainable Development Goal 16 and international human rights law with the post-2020 global biodiversity framework in Machakos Kenya. SwedBio, International Development Law Organization, Office of the United Nations High Commissioner for Human Rights-Special Procedures, UN Environment and Natural Justice, Machakos, Kenya, 28-31 May 2018. In this event, the connections between the CBD guidelines for safeguards, environmental impact assessments and human rights were discussed and relevant insights were received by participants of this Dialogue.

CBD Voluntary Guidelines on Safeguards, side-event at CBD-COP 13, 15 December 2016. In this side event, experiences on the implementation of safeguards by international and national institutions relevant in the process of biodiversity resource mobilization were discussed including lessons learned from practice in Africa, Latin America, Europe and Asia.

International Workshop on Financing for Biodiversity, Kartause Ittingen, Switzerland, 18-19 August 2014. A draft of this paper became part of the meeting documents for this workshop (see <http://www.cbd.int/doc/?meeting=RMWS-2014-05>). The overall aim of the workshop, where selected experts from various countries participated, was “to provide technical follow-up to the elements of the recommendation on resource mobilization adopted by WGRI 5. The workshop will take into account the existing strategy for resource mobilization, including elements from all eight of its goals, the report of the High-Level Panel on the Global Assessment of Resources for implementing the Strategic Plan for Biodiversity 2011-2020, the Co-Chair’s

²⁸ For a detailed account of what FPIC entails, see section two in the annex of CBD/COP/DEC/XIII/18

²⁹ The names and organizations of the people interviewed are listed in the acknowledgements.

Summary of the Second Dialogue Seminar on Scaling up Finance for Biodiversity, and the ongoing initiatives and activities on technical support and capacity-building.
Presentation via video link (around 50 participants).

The Ad Hoc Open-ended Working Group on Review of Implementation (WGRI5), Montreal, Canada 16-19 June 2014.

A previous version of this paper became Information Document for this meeting: UNEP/CBD/WGRI/5/INF/7 "Identifying guiding principles for safeguards in financing biodiversity and lessons learned from risks, benefits and safeguards in country-specific mechanisms", a revised and expanded version of Discussion Paper "Safeguards for scaling-up biodiversity financing and possible guiding principles" (UNEP/CBD/COP/11/INF/7) and comments were received by Parties and other stakeholders (see <http://www.cbd.int/wgri5/documents/>).

Presentation in a side event via audio (around 80 participants).

The outcome of the Ad Hoc Open-ended Working Group on Review of Implementation (WGRI5) supports the twelfth meeting of the Conference of the Parties in addressing the review of implementation of the Convention, including the items suggested in the multi-year programme of work of the Conference of the Parties for the period 2011-2020 (paragraph (b) of decision X/9) (see <http://www.cbd.int/wgri5/>).

Presentation via audio link

Second Dialogue Seminar on Scaling up Finance for Biodiversity, Quito, Ecuador 9-12 April 2014.

Participants: State Members representatives and key actors on financing biodiversity, including experts active in CBD discussions on resource mobilization and also from related processes, as well as national level actors from sectors dealing with financing of biodiversity and ecosystem services, intergovernmental and non-governmental organizations, social movements, farmer organizations, indigenous and local communities, scientists and private sector (see <http://www.cbd.int/doc/meetings/fin/ds-fb-02/official/ds-fb-02-report-en.pdf>).

Presentation (to around 80 people) and focus/working group on "Governance, safeguards and equity" (20-25 people).

The Third Meeting of The Global Partnership For Business And Biodiversity, Montreal, Canada, 2-3 of October 2013.

Participants: businesses, business associations, governments, intergovernmental and non-governmental organizations and academia.

Presentation at the Panel "Safeguards & mechanisms", Q&A and panel discussion (around 25 people) webcasted.³⁰

Seventh Trondheim Conference on biodiversity: ecology and economy for a Sustainable Society Trondheim, Norway, 27-31 May 2013.

Organized by Norwegian Government in cooperation with the United Nations Environment Programme (UNEP), the Secretariat of the Convention on Biological Diversity (CBD), the Food and Agriculture Organisation (FAO) and the United Nations Development Programme (UNDP)

Participants: Member States, relevant UN entities and selected international organizations and institutions that are involved in supporting the implementation of the CBD. *Presentation (around 350 people) and focus group (7 people).*

Bonn Expert Workshop on Community-Based Monitoring and Information Systems, 26-28 April 2013

Participants: members of local communities, NGOs, academia and intergovernmental organizations who share interests and expertise on traditional knowledge, biodiversity, human well-being and the rights of indigenous peoples.

Presentation (around 40 people), Q&A and focus group (4 people).

Dialogue SRC – Faculty of Law, Stockholm University, 6th November 2012

Discussant, Jonas Ebbesson, Professor of Environmental Law at Stockholm University and Chair of the Aarhus Compliance Committee,

Participants: researchers and students from SRC and Faculty of Law, Stockholm University.

Presentation, discussant reply and dialogue (around 25 people).

Seminar on Landscapes in a Carbon Focused World, Gothenburg, 26 October 2012.

Participants: Stakeholders that share interests and expertise on Landscape approach to discuss climate change governance, sustainability, resilience and improvement of agriculture.

³⁰ <http://www.cbd.int/doc/notifications/2013/ntf-2013-089-business-en.pdf>.

2. VALUATION OF BIODIVERSITY

The justification for promoting and financing biodiversity is of course the value of biodiversity for human well-being. However, valuation of biodiversity and ecosystem services is not straightforward and often overlooks the importance of non-traded supporting and regulating services.³² The “insurance value” of biodiversity and well-functioning resilient ecosystems should be regarded as an integral part of their total economic value,³³ and explicitly taken into account in safeguards in BFM. The Economics of Ecosystems and Biodiversity (TEEB) has distinguished three approaches to valuation:

- 1) *Recognizing value*: a feature of all human societies and communities and expressed through norms, regulations, regional planning, policies and legislations;
- 2) *Demonstrating value*: e.g. by showing the value of Protected Areas or wetlands in economic (monetary) terms, as a support for decision making; and
- 3) *Capturing value*: the introduction of taxes, subsidies or other mechanisms that incorporate the values of ecosystems as costs or benefits for market actors, e.g. through the establishment of systems for payments for ecosystem services (PES).³⁴

A common misunderstanding is that financing biodiversity is the same thing as putting a price tag on nature and letting the market solve the problem. In fact, financing biodiversity does not usually rely on markets or even valuation (Box 4). The potential of scaling-up biodiversity financing often depends on government intervention including their role in the development of safeguards.³⁵ The thorough discussion on biodiversity values conducted by TEEB is key for understanding BFMs and we will return to this.

Box 4. Values and markets

There are many divergent perspectives on the valuation of ecosystem services. In BFM debates, some stakeholders have raised concerns about the process of trading ecosystem services and biodiversity in the abstract (as assets which can be commercialised further as money and associated derivative products) in contrast to regular trade in goods and products.³⁶ Another concern is the “corporatization of nature”, viewed by some as a process in which large corporations monopolise certain biodiversity-related rights.³⁷

³¹ <http://www.siani.se/video/legal-landscapes-biodiversity-and-social-safeguards-video>.

³² MA 2005, Synthesis, page 98-99.

³³ The Economics of Ecosystems and Biodiversity, 2010. Mainstreaming the Economics of Nature. A synthesis of the approach, conclusions and recommendations of TEEB Available at: <http://www.teebweb.org/wp-content/uploads/Study%20and%20Reports/Reports/Synthesis%20report/TEEB%20Synthesis%20Report%202010.pdf> Accessed 21st May 2014 See page 25.

³⁴ TEEB 2010, Synthesis Report.

³⁵ See e.g. Co-chairs summary, International Workshop on Finance Mechanisms for Biodiversity: Examining Opportunities and Challenges, convened by the OECD, World Bank, GEF, and the European Commission, together with Sweden and India, 12 May 2012 - Montreal, Canada, <http://www.cbd.int/doc/meetings/fin/wsfmb-eoc-01/official/wsfmb-eoc-01-chairs-summary-en.pdf>, accessed 12 November 2012.

³⁶ See Farooqui, M.F. and Schultz, M., 2012, page 5. See also Sullivan, S., 2012, *Financialisation, Biodiversity Conservation and Equity: Some Currents and Concerns*, Third World Network, Penang, Malaysia.

³⁷ The Oxford English Dictionary defines “corporatize” as “to convert (a state organization) into an independent commercial company.” http://oxforddictionaries.com/definition/american_english/corporatize, accessed 3 August 2012. See e.g. James, D., 2011, *Food Security, Farming, and the WTO and CAFTA*, www.globalexchange.org/resources/wto/agriculture, accessed 2 August 2012. On intellectual property rights, see e.g. Shiva, V., 1997, *Biopiracy: the plunder of nature and knowledge*, South End Press, Boston, and ETC 2001, *Andean Groups Hopping Mad About Popping-Bean Patent*, 20 March, News Release by the Erosion, Technology and Concentration Action Group, viewed 4 May 2004, www.etcgroup.org.

In reality, most valuation has very little to do with markets. TEEB's "first step" in valuation, recognizing value, does not rely on *monetary* values, and therefore has nothing necessarily to do with markets. As an example, almost all national parks worldwide were probably valued and justified by other means than monetary calculations of their ecological value. When values are estimated or "demonstrated" in monetary terms to inform decision-makers about the costs and benefits that are not reflected in market prices, this may improve decisions but will not change the market.³⁸

Finally, when the purpose of valuation is to change the economic incentives (price signals) on the market (e.g. through taxation/charges, subsidies, PES or other ways of internalising the ecological costs or benefits), this is not the same as "marketization". It is not letting the market solve the problem; it is rather a government intervention that alters relative prices. As much as 99 per cent of all PES derive from public sources, while this percentage is 97 for developing countries.³⁹ When the public sector possesses full control over supply or demand there is no real market. Hence, even when "price tags" are put on biodiversity and ecosystem services to change economic incentives relating to their use, this is not the same as delegating the power to decide on biodiversity to the market. In this context, efforts to scale-up biodiversity financing do not necessarily involve commodification of biodiversity products and processes or the use of associated market mechanisms.⁴⁰

3. THE EVOLVING NOTION OF SAFEGUARDS

The term "safeguards" was first used in the 1990s in reference to policies for preventing unintended negative consequences for people and ecosystems arising from international interventions. "Safeguards" initially referred to the defensive approach deployed by the World Bank and other financial institutions engaging in development projects at the time.⁴¹ The World Bank responded to high profile controversies (e.g. forced resettlements related to projects developed in the 1970s and 1980s) with a range of reforms in the early 1990s. Since then, in socio-legal processes in the international environmental arena, a more comprehensive content of the notion of "safeguards" has emerged. The term has come to inhabit new arenas and now includes a much broader set of issues. The World Bank defines safeguards as follows: "Board-approved mechanisms for integration of environmental and social issues into the decision-making process. They provide a set of specialized tools to support the development processes, and support participatory approaches and transparency".⁴² World Bank safeguards have been developed to cover a wide range of social-environmental concerns including indigenous peoples and local communities, cultural property, disputed areas, involuntary resettlement, forestry and natural habitats.⁴³ The World Bank's Operational Policy 4.04 "expects borrowers to apply a precautionary approach to natural resource management to ensure opportunities for environmentally sustainable development". The World Bank is among the institutions invited in

³⁸ Hahn, T., McDermott, C., Ituarte-Lima, C., Schultz, M., Green, T., Tuvendal, M., 2015. Purposes and degrees of commodification: economic instruments for biodiversity and ecosystem services need not rely on markets or monetary valuation. *Ecosystem Services* 16: 74–82. doi.org/10.1016/j.ecoser.2015.10.012

³⁹ Vatn, A., D.N. Barton, H. Lindhjem and S. Movik, (with I. Ring and R. Santos), 2011, *Can markets protect biodiversity? An evaluation of different financial mechanisms*. Noragric Report No. 60. Department of International Environment and Development Studies, Noragric. Norwegian University of Life Sciences, UMB. http://www.umb.no/statisk/noragric/publications/reports/2011_nor_rep_60.pdf.

⁴⁰ Input from India's submission with comments on Discussion Paper on 'safeguards for scaling-up biodiversity finance and possible guiding principles' (UNEP/CBD/COP/11/INF/7).

⁴¹ Herbertson, K. 2012, Will safeguards survive the next generation of development finance? *International Rivers*, accessed 19 July 2012, www.internationalrivers.org/files/attached-files/will_safeguards_survive_june_2012.pdf.

⁴² <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/0,,contentMDK:20274458~menuPK:549248~pagePK:210058~piPK:210062~theSitePK:244381,00.html>.

⁴³ See World Bank (2012) *Environmental Assessment*.

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,contentMDK:20543912~menuPK:1286357~pagePK:64168445~piPK:64168309~theSitePK:584435,00.html>

Decision IX/11 to take prompt actions to implement the strategy for resource mobilization,⁴⁴ and it has financed projects that have BFM components such as PES.⁴⁵

Safeguards have gained particular momentum in the context of reducing emissions from deforestation and forest degradation, conserving and sustainably managing forests and enhancing forest carbon stocks in developing countries (REDD+) under the UN Framework Convention on Climate Change (UNFCCC).⁴⁶ BFMs can draw many direct lessons from this experience. Parties to the CBD noted that well-designed and properly implemented REDD+ projects would confer substantial benefits for forest biodiversity as well as reduce greenhouse gas emissions provided that there are adequate biodiversity and social safeguards. In recent years, discussions between CBD and UNFCCC on the linkages between REDD+ and biodiversity conservation have increased supported by a growing body of policy and research-based evidence.⁴⁷

The REDD+ safeguards were initially discussed almost only in corridors and at side-events, among civil society representatives and by a few official delegates to UNFCCC. Yet, now a range of safeguards are formally part of COP Decisions under the UNFCCC. An interviewee noted that although the reduction of greenhouse emissions continues to be the main focus of official delegates to the UNFCCC, safeguards are increasingly seen as an indispensable means to reach climate-related objectives in an effective and equitable way. Safeguards in REDD+ concern issues of participation of indigenous peoples and local communities, biodiversity conservation, good governance, and the prevention of conversion of natural forests in REDD+ projects. In COP-16 in Cancun 2010, the UNFCCC's safeguards were adopted. Subsequently an expert group provided guidance on how to assess their implementation in REDD+ activities.⁴⁸ In UNFCCC COP-17 in Durban 2011, Parties agreed that systems for providing information on how the safeguards are addressed should be country-driven, taking into account national circumstances and relevant international obligations. These systems should provide transparent and consistent information that is accessible by all relevant stakeholders. Standards and guidance for the implementation of REDD+ safeguards have also progressively developed beyond the UNFCCC framework (see Box 5).

Safeguards are demanded by a broad range of stakeholders, from the business sector to indigenous peoples and local communities and their advocates, and governments. However, the REDD+ experience highlights that the notion of safeguards takes different forms depending on the framework under which safeguards are discussed and the stakeholders who are demanding them. For example, at an open dialogue held by the Rights and Resources Initiative in London in 2011, a carbon market expert, the Managing Director and Global Head of Carbon Emissions at the Bank of America Merrill Lynch, expressed the need for "designing and enforcing safeguards, addressing accounting issues and developing appropriate standards".⁴⁹ Similarly in development cooperation, safeguards may refer to the means for ensuring that financial resources provided are used for their designated purpose, without

⁴⁴ COP 9 Decision IX/11, *Review of implementation of Articles 20 and 21*, <https://www.cbd.int/decision/cop/?id=11654>, accessed 16 September 2012.

⁴⁵ Information about projects with PES components financed by the World Bank can be found at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/EXTTEEL0,contentMDK:20487983-menuPK:1187844-pagePK:210058-piPK:210062-theSitePK:408050-isCURL:Y.00.html> Accessed 21st May 2014.

⁴⁶ United Nations Framework Convention on Climate Change (UNFCCC) 1992, entered into force 21 March 1994; accessed 2 August 2010, <http://unfccc.int/resource/docs/convkp/conveng.pdf>.

⁴⁷ The history of this policy integration process is described on www.cbd.int/forest/redd-plus.

⁴⁸ UNFCCC 2011, *Guidance on systems for providing information on how safeguards for REDD-plus activities are addressed and respected*, http://unfccc.int/methods_science/redd/items/6149.php

⁴⁹ Summary of the ninth rights and resources initiative dialogue on forests, governance and climate change, *Rights and Resources Initiative Dialogue Bulletin*, Vol. 173 No. 3, 9 February 2011, www.iisd.ca/ymbv/ri/dfgcc9/html/ymbvol173num3e.html, accessed 30 July 2012.

adverse environmental and social impacts.⁵⁰ When the term safeguards is used by indigenous peoples and local communities, it is often in terms of having decision power in projects or initiatives, including the design, changes or even veto regarding a project, as well as the right of complaint (e.g. to an ombudsperson) or redress in the event of problems in the process.⁵¹ Hence, when exploring safeguards in BFM, it is important to consider these different understandings of the term and recognize the multi-faceted features of each adopted safeguard.

Box 5. Climate, Community and Biodiversity Alliance Standards

Certain provisions of Climate, Community and Biodiversity Standards (CCBS) and multi-stakeholder processes can be framed as safeguards. The CCBS are among the main international standards for the multiple benefits of land-based carbon projects. The standards were developed by a partnership of international NGOs and research institutes, called the Climate, Community and Biodiversity Alliance (CCBA). CCBA aims at promoting land management practices that simultaneously mitigate climate change, conserve biodiversity and confer sustainable development benefits. It aims to promote policies and markets for the development of forest protection, restoration and agroforestry projects through multiple-benefit and high quality land-based carbon projects. “As of November 2008, six projects completed the validation process and ten projects were in the public comment phase. These 16 CCB projects aim to reduce greenhouse gas emissions by over 4.4 million tons of CO₂e per year and cover 1,385,190 ha. Around 100 additional projects have indicated to the CCBA their intent to use the CCB Standards”.⁵²

Nonetheless, standard-setting organizations, including the CCBA, are unlikely to enjoy acceptance on the part of Parties (including member states of the CBD) as well as other stakeholders, unless they comprise of both national and local actors in the process of design, implementation, monitoring and verification of standards. Standards gain acceptance and become established depending upon who owns and drives these processes.⁵³

4. SAFEGUARDS IN LEGAL AND POLICY INSTRUMENTS AND STANDARDS

Certain safeguards are already embedded in existing legal frameworks. It is useful to distinguish **procedural safeguards** from **substantive safeguards**, recognising that both are needed for the more holistic approach that many stakeholders have called for (see an example in Box 6). The operationalisation of both procedural and substantive safeguards can be seen as a dynamic process that needs to be grounded in particular local level realities.

Substantive safeguards define the rights and duties while procedural safeguards entail the processes and means for making effective and enforcing those rights and duties.⁵⁴ Substantive safeguards enshrined in international law and national constitutions can be used to address environmental concerns that affect human livelihoods such as the right to life, right to property, and right to health. In particular, substantive safeguards associated with the equitable distribution of tenure or property

⁵⁰ Development cooperation safeguards relate to Goal 5 in CBD COP Decision IX/11 on CBD Strategy for Resource Mobilization: “Goal 5: Mainstream biological diversity and its associated ecosystem services in development cooperation plans and priorities including the linkage between Convention's work programmes and Millennium Development Goals.

“5.1. To integrate considerations on biological diversity and its associated ecosystem services into the priorities, strategies and programmes of multilateral and bilateral donor organizations, including sectoral and regional priorities, taking into account the Paris Declaration on Aid Effectiveness.”

⁵¹ The types of ombudsperson differ between countries, see Hossain, K. 2000, *Human Rights Commissions and Ombudsman Offices: National Experiences Throughout the World*, Martinus Nijhoff Publishers.

⁵² CCBA. 2008. *Climate, Community & Biodiversity Project Design Standards*, Second Edition. CCBA, Arlington, VA. https://s3.amazonaws.com/CCBA/Third_Edition/CCB_Standards_Third_Edition_December_2013.pdf accessed 21st May 2014.

⁵³ Input from India's submission with comments on Discussion Paper on ‘safeguards for scaling-up biodiversity finance and possible guiding principles’ (UNEP/CBD/COP/11/INF/7).

⁵⁴ For examples of substantive environmental rights, see e.g. Brush, Coker and Van Arsdale 2001. Bruch, C., Coker, W., & VanArsdale, C. (2001). Constitutional environmental law: Giving force to fundamental principles in Africa. *Columbia Journal of Environmental Law*, 26, 131–211. See examples of procedural environmental rights in Shelton, D. (2006). Human rights and the environment: What specific environmental rights have been recognized? *Denver Journal of International Law and Policy*, 35, 129–171.

rights, over both tangible (e.g. land rights) and intangible resources (e.g. knowledge and innovations), can have an important role in the success of BFM. ⁵⁵ Natural resource tenure includes rights over land (farmland, grassing land) and also over other resources such as use and non-use values of flora and fauna, rivers and fisheries. ⁵⁶

Procedural safeguards refer to the opportunities and abilities to exercise environmental-related rights, including public participation in decision-making, access to information, and access to justice. These kinds of safeguards can contribute to processes where empowered communities engage with outsiders as equals and operate within robust legal frameworks (as systems). Towards this end, broader nationally driven processes associated with substantive and procedural safeguards could promote meaningful community engagement. These processes can become resilient and locally rooted safeguards, especially considering that small changes in social-ecological systems can have large effects at the community level. Countries may request technical assistance in order to strengthen their national efforts in developing and implementing safeguards in consonance with their national and local circumstances and conditions. ⁵⁷

Box 6. Example of the linkages between procedural and substantive dimensions of safeguards

Development agencies and research institutes can engage in operationalizing substantive (e.g. tenure) and procedural (e.g. participatory) related aspects of safeguards. One example is the Alternatives to Slash and Burn (ASB) program of International Centre for Research in Agroforestry. In Indonesia, the ASB facilitated a tenure reform by investing several years in dialogue and consensus building with NGOs, local government offices, and the Krui community. Eventually the ASB managed to convince the authorities of the high social benefits from community agroforestry. ⁵⁸

The international legal framework provides an important point of departure when developing safeguards, and also delineates the “policy space” within which BFM safeguards need to be devised. ⁵⁹ The discussion of safeguards can build on consensus already reached in CBD negotiation processes as well as legal and policy instruments that are already known to be important in the context of the BFMs such as the United Nations Declaration on the Rights of Indigenous Peoples and international human rights treaties. In the CBD, certain issues relevant for safeguards in BFMs, such as the participation of indigenous peoples and local communities in decision-making, have been discussed under the CBD framework since its drafting in the early 1990s. More recently, equity and participation in decision-making have received much attention in the negotiation of the 2010 Nagoya Protocol. ⁶⁰ In particular, Articles 21 (i) and 12.3 of the Nagoya Protocol refer to community protocols: “Biocultural community protocols provide an opportunity for a particular community to work on

⁵⁵ *Tenure* “is the relationship, whether legally or customarily defined, among people as individuals or groups, with respect to land and associated natural resources. Rules of tenure define how property rights in land are to be allocated within societies. Land tenure systems determine who can use what resources for how long, and under what conditions”. FAO Multilingual Thesaurus on Land Tenure, 2003 (Ch. 1.T.4, p. 36).

⁵⁶ The various elements of natural resources’ tenure are part of an integrated ecosystem and have particular physical qualities and technical constraints concerning their use. See Ghezze, N., Berlekom, M., Engström, L., Eriksson, M.L., Gallardo, G., Gerhardt, K., Knutsson, P., Malmer, P., Stephansson, E., and von Walter, S. 2009, *Natural Resource Tenure – a crucial aspect of poverty reduction and human rights*, Sida Studies No. 23, Editia.

⁵⁷ Input from India submission with comments on Discussion Paper on ‘safeguards for scaling-up biodiversity finance and possible guiding principles’ (UNEP/CBD/COP/11/INF/7).

⁵⁸ Tomich TP, Lewis J. 2001. Putting community-based forest management on the map. ASB policy brief 2, Alternatives to Slash-and-Burn Program, Nairobi. www.asb.cgiar.org/PDFwebdocs/PolicyBrief2.pdf.

⁵⁹ See e.g. Sands, P et al, (2012) *Principles of International Environmental Law*, Cambridge University Press and *Living Convention on Biocultural Diversity* <http://naturaljustice.org/wp-content/uploads/pdf/LivingConventiononBioculturalDiversity-FirstEdition2012-1.pdf>

⁶⁰ Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity 2010, www.cbd.int/cop10/doc, viewed 5 January 2011 .

Biocultural protocols that are in consonance with their own values and priorities”.⁶¹ BCPs outline the local procedures and conditions for engaging with other actors such as governmental institutions and conservation agencies on issues related to the community’s biocultural resources.⁶² Community protocols can be seen as a concept that links international treaties and national laws with the customary norms and priorities of local people.

Likewise, BFM can draw lessons from international guidelines and standards by recognising that the latter play a key role in supporting countries in implementing safeguards at the national level.⁶³ Standards agreed at the international level, such as the REDD+ Social and Environmental Standards, can serve to inform both the content and implementation of the guidelines for BFMs.⁶⁴ Systems with embedded social and environmental standards developed for monitoring, reporting and verification (MRV) together with Safeguards Information Systems (SIS) mentioned earlier in REDD+ projects could be used in addressing biodiversity and social safeguards in addition to assessing carbon emissions reduction.⁶⁵ While this would entail significant changes in the planning, management and monitoring of verifiable emission reductions under REDD+, independent (non-governmental) initiatives, such as the CCBA (see Box 5) and the Plan Vivo system⁶⁶, are developing standards with the aim of addressing this challenge. These standards, whether agreed at the international or national levels or bilaterally between contract parties, include safeguards relevant to the CBD’s BFMs. National experiences in applying these existing guidelines for safeguards can be shared under the CBD, aiding the design and implementation of BFM safeguards. Furthermore, although important challenges remain especially in terms of implementation, countries can often count upon relevant substantive and procedural legal provisions in their respective Constitutions as well as secondary legislation in order to provide the legal basis for both biodiversity and social safeguards (see Table 3 with a case study of Ecuador).

Certain provisions in legal and policy instruments relating to environmental impact assessments (EIA), strategic environmental assessments (SEA) and social impact assessments (SIA) can be seen as a form of safeguard for some BFMs (see section 7).

⁶¹ Input from India’s submission with comments on Discussion Paper on ‘safeguards for scaling-up biodiversity finance and possible guiding principles’ (UNEP/CBD/COP/11/INF/7).

⁶² For examples of community protocols, see e.g. ASOCASAN, 2010. Protocolo Comunitario Biocultural para el Territorio del Consejo Comunitario Mayor del Alto San Juan, Tado Choco, Colombia, Natural Justice, PNUD, Instituto de Investigaciones Ambientales del Pacifico, Colombia, Available at: www.pnuma.org/publicaciones/PCB%20ASOCASAN_espanol_2012.pdf Accessed 21st May 2014. Also Bavikatte, K. and Jonas, H., 2010, How bio-cultural community protocols can empower local communities, *Endogenous Development Magazine* no. 16, p 4-6; and Kohler-Rollefson, I. et al., 2010, Livestock keepers’ rights: the state of discussion. *Animal Genetic Resources*, Vol. 47, p 119-123.

⁶³ For example, the Forest Carbon Partnership Facility (FCPF) and UN-REDD developed *Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities* www.forestcarbonpartnership.org/sites/fcp/files/Documents/tagged/FCPF%20UN-REDD%20Stakeholder%20Guidelines%20Note%20Draft%2011-17-10.pdf Accessed 22nd May 2014.

⁶⁴ REDD+ Social & Environmental Standards (SES) Draft, Version 2 (22 June 2012), at www.reddstandards.org. The REDD+ Social & Environmental Standards rely upon the oversight by an international Standards Committee which is constituted by members of governments, Indigenous Peoples’ organizations, community associations, social and environmental NGOs and the private sector. Tanzania, Ecuador, the State of Acre in Brazil, Nepal, and the Province of Central Kalimantan in Indonesia have started using the REDD+ SES. Tanzania is applying the REDD+ SES in drafting its National REDD Strategy. Likewise, this country is also participating in other international REDD+ related programs specifically the UN-REDD Programme, the Forest Carbon Partnership Facility which also has relevant guidelines for safeguards, www.redd-standards.org/tanzania-overview.

⁶⁵ See co-chairs summary, International Workshop on Finance Mechanisms for Biodiversity: Examining Opportunities and Challenges, convened by the OECD, World Bank, GEF, and the European Commission, together with Sweden and India, 12 May 2012 - Montreal, Canada, <http://www.cbd.int/doc/meetings/fin/wsfmb-eoc-01/official/wsfmb-eoc-01-chairs-summary-en.pdf>, accessed 12 November 2012.

⁶⁶ www.planvivo.org.

The CBD guidelines for safeguards in BFM address factors and conditions relevant to social-ecological governance and hence to guidance under the CBD, even if it is adopted after those CBD guidelines.⁶⁷ The operationalization of the CBD guidelines can contribute to sustainability and justice in protected areas but also in the case of **Other Effective Area-based Conservation Measures (OECM)**⁶⁸ (see Box 7).

Box 7 Safeguards and Other Effective Area-based Conservation Measures, Harry Jonas, Future Law

Currently, an “**other effective area-based conservation measure**” (OECM/conserved area) is defined as “A geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the *in situ* conservation of biodiversity, with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values”.⁶⁹ In other words, OECMs are generally areas that are not managed to conserve biodiversity but achieve it either because there is active conservation of the area’s ecological functions (‘secondary conservation’) or because biodiversity thrives despite a lack of focus on the area’s ecological integrity (‘ancillary conservation’). Some areas of primary conservation might also be OECMs if the governance authority prefers to be recognised as an OECM instead of a protected area (IUCN-WCPA, 2018).⁷⁰ Government agencies, private entities and/or Indigenous peoples and local communities can govern OECMs.

Once the relevant Convention in Biological Diversity (CBD) decision is adopted at COP 14 and the potential positive conservation outcomes of OECMs realised, biodiversity-financing mechanisms will likely be called upon to support conservation initiatives outside protected areas. Without adequate safeguards, the governance authorities of territories and areas conserved by Indigenous peoples and local communities (ICCAs) that are recognised as OECMs, may at best be disinterested in engaging with BFM or at worst, OECMs may be used - whether inadvertently or not - to further undermine the social-ecological integrity of ICCAs.

With the correct support, including incentives provided by BFM with adequate safeguards in place, OECMs may achieve some of the wider aims suggested by the IUCN Task Force on OECMs such as: increasing the potential to engage and support a range of new partners in global conservation efforts, incentivizing the recognition or application of robust conservation and management measures to areas of biodiversity significance, and contributing to improved management and restoration of areas that could usefully contribute to long-term *in situ* conservation of biodiversity (IUCN-WCPA, 2018).⁷¹

⁶⁷ Biggs, R., Schlüter, M. and Schoon, M. L. 2015. Principles for building resilience. Sustaining Ecosystem Services in Social-Ecological Systems. Cambridge University Press.

⁶⁸ The term ‘other effective area-based conservation measures’ first appeared in the Aichi Biodiversity Targets as part of the Strategic Plan for Biodiversity 2011-2020 (CBD, 2010). In the closing hours of the 10th Conference of the Parties to the Convention on Biological Diversity (COP/CBD), Parties finalized their negotiations of Target 11, which resulted in the following formulation: By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes.

⁶⁹ Draft decision on OECM. CBD/SBSTTA/22L.2 6 July 2018

⁷⁰ IUCN-WCPA (2018). (Draft) *Guidelines for Recognizing and Reporting Other Effective Area-based Conservation Measures: First Version*. Gland, Switzerland: IUCN.

⁷¹ *Idem*.

5. ADOPTED VOLUNTARY GUIDELINES FOR SAFEGUARDS IN BFMS

In this section, we describe examples of elements that would need safeguarding in scaling-up biodiversity financing, as well as some possible guidelines for safeguards in BFMs. Guidelines can serve as concrete tools to foster biodiversity equitable governance. They can also provide a shared and understandable language, which is key to building trust and consensus during the negotiation and implementation of BFMs and achieving the CBD's objectives while also building on lessons learned from risks, benefits and safeguards from country-specific financing mechanisms (see Box 7). Because of the voluntary nature of the adopted guidelines, they could be more readily expanded through the Convention on Biological Diversity's processes as we learn more about lessons learned by Parties and other stakeholders' experiences. The possible guidelines described in this section build on international, national legal and policy instruments and standards as well as customary norms and principles. Table 1 below outlines non-exhaustive international legal instruments that inform the guiding principles.

Box 8. Quito II – highlights from discussion of Working Group session II on Governance, safeguards and equity.

"A richness of perspectives and constructive proposals were provided in the working group on guiding principles and safeguards for biodiversity financing mechanisms for contributions to equitable biodiversity governance. Participants highlighted the importance of considering both social and biodiversity safeguards as well as the specificities of these two types of safeguards. Likewise, participants talked about the relationships and characteristics of guiding principles and safeguards which would be suitable for the process of resource mobilisation for biodiversity under the CBD. Participants noted the importance of taking into consideration national and local specificities and expressed that instead of trying to agree on compulsory safeguards for biodiversity financing, international guiding principles of a voluntary nature that would take into account existing international laws and policies would be a better alternative. In this context, countries could then decide the best way to operationalise guiding principles considering both legal approaches and other strategies including those of a political nature. There was no consensus though on the legal nature that national safeguards should have: some considered that compulsory legislation was needed in order to ensure that risks associated with mechanisms for biodiversity financing are effectively addressed and go beyond good intentions, while others considered that compulsory safeguards was not the best way forward. The possibilities and limitations of safeguards were also addressed. On the one hand, safeguards were seen as useful established tools for operationalising risk reduction and "doing no harm" in the process of resource mobilisation for biodiversity. On the other hand, participants also noted that in certain political contexts, other strategies than safeguards and a focus on risks would be more suitable for convincing people, especially politicians, about the importance of considering both environmental and livelihoods aspects in scaling-up biodiversity financing.

Different opinions were expressed regarding the relationships of safeguards to social equity. Certain challenges associated with equity were identified including the complexity of social situations, the difficulty to measure equity and fairness dimensions and its relativistic nature. In turn, it was also noted that precisely recognising such complexities is what made it even more important to consider equity and fairness in the process of resource mobilisation: from choosing the adequate mechanisms for a specific social and environmental contexts to the associated design and implementation of the respective safeguards. This could then prevent social conflicts and enhance the possibilities of equitable biodiversity governance in the long run. It was also noted that equity has been a concern under the CBD since its adoption as part of the 3th pillar/objective of the Convention..."⁷²

⁷² Ogwal, S.F. and Schultz, M., 2014. *Co-Chairs' Summary of Second Dialogue Seminar on Scaling up Finance for Biodiversity, Quito 9-12 April 2014*. Montreal: Secretariat of the Convention on Biological Diversity. <http://www.cbd.int/doc/meetings/fin/ds-fb-02/official/ds-fb-02-report-en.pdf>

Table 1. International legal instruments informing the guidelines

	International treaties ⁷³ (binding)	Declarations, principles and guidelines agreed between States (non-binding)
Environment	<ul style="list-style-type: none"> – Convention on Biological Diversity, 1992 / 1993 – Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization 2010 – Cartagena Protocol on Biosafety 2000 /2003 – The Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety 2000/ 2010 – United Nations Framework Convention on Climate Change 1992/1994 – United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994 / 1996 – Convention on Wetlands of International Importance Especially as Waterfowl Habitat, 1971 / 1975 – Convention on the International Trade in Endangered Species of Wild Fauna and Fauna 1973 / 1975⁷⁴ – Convention on the Conservation of Migratory Species of Wild Flora and Fauna, 1973/ 1975⁷⁵ – Convention on Access to Information, Public Participation In Decision-Making, and Access to Justice In Environmental Matters, 1998 / 2001 – The International Treaty on Plant Genetic Resources for Food and Agriculture, 2001/ 2004 	<ul style="list-style-type: none"> – Stockholm Declaration of the United Nations Conference on the Human Environment, 1972 – World Charter for Nature, 1982 – Rio Declaration on Environment and Development, 1992 – Agenda 21, 1992 – Forest Principles, United Nations Conference on Environment and Development Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, 1992 – Johannesburg Declaration on Sustainable Development (UN, 2002) – The Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization (CBD 2002) – Akwé on Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments adopted to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities (CBD 2004) – Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity (CBD 2004) – Delos Initiatives: The Monserrat Statement on sacred natural sites in technologically developed countries (IUCN, 2006) – Interlaken Declaration on Animal Genetic Resources (FAO, 2007) – Sacred natural sites, guidelines for protected area managers (IUCN/UNESCO, 2008) – Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities, (CBD 2010)

⁷³ The first year mentioned is when the international treaty was adopted and second when it entered into force.

⁷⁴ Amended 1979.

⁷⁵ Amended 1979.

Human Rights	<ul style="list-style-type: none"> – International Covenant on Civil and Political Rights, 1966 / 1976 – International Covenant on Economic, Social and Cultural Rights, 1966 /1976 – International Convention on the Elimination of All Forms of Racial Discrimination , 1965 /1969 – Convention on the Rights of the Child, 1989/ 1990 – Convention on the Elimination of All Forms of Discrimination Against Women – Indigenous and Tribal Peoples Convention No. 169, 1989/1990 (depository: ILO) 	<ul style="list-style-type: none"> – Universal Declaration of Human Rights, 1948 – Declaration of Rights and Development in Social Contexts, 1969 – United Nations Declaration on the Right to Development, 1986 – United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992 – Declaration of responsibilities of actual generations with future generations, 1997 – Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992 – United Nations Declaration of the Rights of Indigenous Peoples, 2007 – The Universal Declaration on Cultural Diversity (UNESCO 2001) – The Universal Declaration on Bioethics and Human Rights (UNESCO 2005) – Guiding principles on business and human rights (UNHR, 2011)
Intellectual Property / Heritage	<ul style="list-style-type: none"> – Berne Convention for the Protection of Literary and Artistic Works, 1886 last amended 1976 (depository: WIPO) – Convention establishing the World Intellectual Property Organisation (WIPO), 1967 amended 1979. – Convention on means of prohibiting and preventing the illicit import, export and transport of ownership of cultural property, 1970/1972. (depository: UNESCO) – Agreement on Trade- Related Aspects of Intellectual Property Rights (TRIPS), 1994 – Agreement which established the World Trade Organisation (WTO), 1994 – Andean Decision 391: Common Regime on Access to Genetic Resources 1996 – Bangui Agreement on the Creation of an African Intellectual Property Organization OAPI (WIPO, 1999) – Convention Concerning the Protection of the World Cultural and Natural Heritage (UNESCO, 1972) – Convention for Safeguarding of the Intangible Cultural Heritage (UNESCO, 2003) – The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) 	<ul style="list-style-type: none"> – The Universal Declaration of Principles of International Cultural Co-operation (UNESCO, 1966) – The Tunis Model Law on Copyright for Developing Countries (UNESCO/WIPO, 1976) – Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions (UNESCO/WIPO, 1982) – Recommendation on the Safeguarding of Traditional Culture and Folklore adopted by the General Conference at its twenty fifth session (UNESCO, 1989) – Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples (UNHR, 1993) – Pacific Regional Framework for the Protection of TK and Expressions of Culture to assist Pacific Island countries and territories wishing to legally protect its Traditional Knowledge and Expressions of Culture (UNESCO, 2002) – Cusco Declaration on Access to Genetic Resources, Traditional Knowledge and Intellectual Property Rights of Like-Minded Megadiverse Countries (UNASUR, 2002) – Declaration on Cultural Diversity (UNESCO, 2001)

Source: own elaboration based on various sources including e.g. UNEP (2006) Manual on Compliance with and Enforcement of Multilateral Environmental Agreements, UNEP/Earthprint and Sands, P., & Peel, J., 2012. Principles of international environmental law. Cambridge University Press, UK.

The emphasis of some guidelines is on substantive safeguards while others in procedural safeguards (see Table 2 below). The guidelines and safeguards enshrine internationally agreed commitments; a non-exhaustive selection of provisions is included in Table 2.⁷⁶

Table 2. Types of safeguards and guidelines

	GUIDELINES			
TYPES OF SAFEGUARDS	Biodiversity underpins local livelihoods and resilience	People's rights, responsibilities and effective participation	Local and country-driven/ specific processes linked to the international level	Governance, institutional frameworks, transparency, accountability and compliance
Substantive safeguards	<p>X</p> <p>Convention on Biological Diversity (Art 1, 2 ,3, 8(c, k), 15.1)</p> <p>Convention on Intangible Cultural Heritage, (Art. 11).</p> <p>United Nations Framework Convention on Climate Change, Decision 1/CP.16, Appendix 1 (1. d, g, k; 2.c,e)</p>	<p>X</p> <p>Convention on Biological Diversity (Art 8(j), 10(c))</p> <p>United Nations Framework Convention on Climate Change (Art 3 .1, 3.2)</p> <p>International Covenant on Economic, Social and Cultural Rights, (Arts 1, 6, 11, 12);</p> <p>ILO Convention 169 (Arts. 3.1, 4,6,8, 13, 14, 15, 16),</p> <p>International Convention on the Elimination of All Forms of Racial Discrimination (Art 2)</p> <p>Convention on the Rights of the Child (Art 30)</p>	<p>X</p> <p>Convention on Biological Diversity (Art 5, 8(m), 9 (e), 10 (a) 14(c))</p> <p>Nagoya Protocol (Art. 11, 15 & 16).</p> <p>Convention on Intangible Cultural Heritage, (Art. 19).</p> <p>United Nations Framework Convention on Climate Change (Art 3 .1, 3.2)</p>	

⁷⁶ It worth noting that the boundaries both between the adopted guidelines and the type of safeguards is sometimes blurred.

Procedural safeguards		X Convention on Biological Diversity (Art 21) International Covenant on Civil and Political Rights (Art 2.1)	X Convention on Biological Diversity (Art 14.1(c, e, d)), 14.2 United Nations Framework Convention on Climate Change Decision 1/CP.16, Appendix 1 (1.c, e,f,h)	X Convention on Biological Diversity (Art. 6, 21, 14.1 (a, b), 16.2, 17), Aarhus Convention (Art. 5, 9.3) UNFCCC Decision 1/CP.16, Appendix (1.i; 2.c,e)

Source: own elaboration based on the provisions of the respective international agreement mentioned in this Table.

5.1 BIODIVERSITY UNDERPINS LOCAL LIVELIHOODS AND RESILIENCE

Guideline (a).- The role of biodiversity and ecosystem functions for local livelihoods and resilience, as well as biodiversity's intrinsic values, should be recognized in the selection, design and implementation of biodiversity financing mechanisms.

The conditions and processes of ecosystems play a fundamental role in sustaining and fulfilling human life. Sustaining biodiversity is essential for the maintenance of functioning ecosystems that are capable of delivering the multiple services on which humanity (and non-human beings) depend. The recognition of the many ways in which humans benefit from well-functioning ecosystems underpins the concept of ecosystem services. The state of ecosystems determines people's scope for sustainable natural resource management and has direct consequences for livelihoods including food security⁷⁷, access to water, and the health of present and future generations.⁷⁸ However, there is frequently a need to disaggregate the broad definition of ecosystem services as 'the benefits people derive from ecosystems' into more specific terms of benefits derived by different sections of society. It is particularly important to consider those individuals and collectives in relatively disadvantaged positions or with differentiated individual and collective rights due to e.g. socioeconomic aspects, gender, ethnicity, geography, and livelihood conditions.⁷⁹

Sustaining people's livelihoods is in turn dependent on the resilience of the intertwined social and ecological systems. Since most ecosystems are managed by people, the term "ecosystem resilience" is increasingly being replaced by the term "social-ecological resilience", meaning the capacity of linked social and ecological systems to absorb disturbance and adapt or reorganise so as to still retain essentially the same function, structure and identity.⁸⁰ The resilience of social-ecological systems focuses on the capacity of ecosystems and social actors to co-adapt and reorganise, and can be seen as a prerequisite for sustainable development.⁸¹ Poverty and social disadvantage are important factors that increase vulnerability and reduce social-ecological resilience. The resilience that biodiversity confers is an important element to be safeguarded in BFM.

Social-ecological resilience provides people with a kind of "insurance" against reaching a non-desired state.⁸² This "insurance value" of biodiversity and resilience has been defined in different ways. It relates to what economists have long since referred to as option value and quasi-option value, but more recently it has become a specific concept for understanding the value of biodiversity and ecosystems. A key message of TEEB is to distinguish between the output values generated by the current state of the ecosystems (such as flood control), and the insurance values.⁸³ The latter is about protecting against shocks and disturbances that are not currently occurring. A high insurance value

⁷⁷ E.g. for food security, see Barthel, S., Crumley, C., Svedin, U. 2013. Bio-cultural refugia—Safeguarding diversity of practices for food security and biodiversity, *Global Environmental Change*, 23(5), 1142–1152.

⁷⁸ United Nations General Assembly, 2012, The Future We Want Rio +20, Resolution 66/288, A/RES/66/288 United Nations General Assembly, Sixty-sixth session Agenda item 19, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/476/10/PDF/N1147610.pdf> Accessed 21st May 2014.

⁷⁹ See e.g. Daw, T., Brown, K., Rosendo, S. and Pomeroy, R., 2011. Applying the ecosystem services concept to poverty alleviation: the need to disaggregate human well-being, *Environmental Conservation* 38 (4), 370–379. For more information on for example on gender dimensions, see Momen, J. H. (2007), Gender and Biodiversity: A New Approach to Linking Environment and Development. *Geography Compass*, 1: 149–162. doi: 10.1111/j.1749-8198.2007.00011.x.

⁸⁰ Folke C., Carpenter S.R., Walker B., Scheffer M., Chapin T., Rockström J. 2010. Resilience thinking: integrating resilience, adaptability and transformability. *Ecology and Society* 15:20.

⁸¹ Folke C. (2006) Resilience: The emergence of a perspective for social–ecological systems analyses. *Global Environmental Change* 16, 253–267.

⁸² Mäler, K.-G., 2008. Sustainable development and resilience in ecosystems. *Environmental and Resource Economics* 39 (1), 17–24.

⁸³ Pascual, U. et al. 2010. Chapter 5 "The economics of valuing ecosystem services and biodiversity". In TEEB *Ecological and Economic Foundations*, pp. 183–240: Earthscan.

corresponds to a high level of resilience.⁸⁴ The TEEB report is also emphatic that even when a single service is the focus, as is the case for many BFM, general approaches to sustaining biodiversity are required for long-term resilience.⁸⁵

These significant non-use values associated with biodiversity are increasingly being discussed because of the global scale of degradation of ecosystems and the loss of biodiversity. The ecosystem services concept is explicitly anthropocentric and utilitarian: values are framed in terms of the benefits that humans derive. An alternative view is that value from nature does not originate with human preferences, but that nature has intrinsic or “existence” value in its own right. Intrinsic values are determined on ethical or philosophical grounds, not utilitarian economic ones. The ecosystem services concept seeks to include the spiritual, religious, cultural and aesthetic values that people attach to ecosystems, landscapes, or species. Hence, it is important to recognising both the direct use-values of ecosystems by people as well as capturing the very significant non-use values associated with biodiversity. However, because both ecological resilience and insurance values are difficult to measure, and intrinsic values have fundamentally different metrics, different means are needed for ensuring that these values can be explicitly recognised and expressed.

Multiple systems of life emerge from the understanding and intrinsic relationships of many indigenous peoples and local communities with specific ecosystems and elements of nature.⁸⁶ Locally designed and implementable tools and mechanisms can be helpful in recognising the value of biodiversity and ecosystem services to local livelihoods. These include eco-calendars and eco-mapping, community based monitoring and information systems (CBMIS), community territorial planning, and territories and areas conserved by indigenous peoples and local communities, “ICCAs”.⁸⁷ Biodiversity financing mechanisms need to recognize that along with biodiversity, the diversity of human perspectives and knowledge contributions also lies at the heart of resilience and sustainable development.

A fuller range of values (both social and ecological) can be taken into account by choosing appropriate institutions that allow these diverse values to be articulated in addition to utilitarian values,⁸⁸ and that ensure the inclusion of a precautionary approach.⁸⁹ Institutional arrangements can recognise the insurance and intrinsic values of biodiversity, for example by ensuring that these perspectives are taken into account in the management plans of national parks and indigenous peoples and local community natural protected areas. These can be seen as substantive biodiversity safeguards. In contrast, institutional arrangements that allocate clear liabilities to compensate for infringements in nature reserves can be seen as procedural biodiversity safeguards.

⁸⁴ Baumgärtner, S. and Sebastian S. 2014. The economic insurance value of ecosystem resilience. *Ecological Economics* 101:21-32.

⁸⁵ TEEB (2010). Chapter 2 Key message, <http://www.teebweb.org/wp-content/uploads/2013/04/D0-Chapter-2-Biodiversity-ecosystems-and-ecosystem-services.pdf>.

⁸⁶ Pacheco, D. 2003. *Vivir Bien en Armonía y Equilibrio con la Madre Tierra: una propuesta para el cambio de las relaciones globales entre los seres humanos y la naturaleza*, Fundación de la Cordillera La Paz.

⁸⁷ <http://www.teebweb.org/index.php/content/271-developing-and-implementing-cbmis-the-global-workshop-and-the-philippine-workshop-reports>.

⁸⁸ TEEB (2010) Chapter 4 Key message, <http://www.teebweb.org/wp-content/uploads/2013/04/D0-Chapter-4-Socio-cultural-context-of-ecosystem-and-biodiversity-valuation.pdf>.

⁸⁹ TEEB (2010) Policy Summary, page 8 http://www.unep.org/pdf/TEEB_D1_Summary.pdf and TEEB Synthesis Report, page 26 <http://www.teebweb.org/wp-content/uploads/Study%20and%20Reports/Reports/Synthesis%20report/TEEB%20Synthesis%20Report%202010.pdf>.

Guideline (b).- Rights and responsibilities of actors and stakeholders in biodiversity financing mechanisms should be carefully defined at national level, in a fair and equitable manner, with the effective participation of all actors concerned, including the prior informed consent or approval and involvement of indigenous and local communities, taking into account the Convention on Biological Diversity and its relevant decisions, guidance and principles and, as appropriate, the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP).

The justification and content of safeguards in biodiversity-relevant processes have so far tended to be defensive in nature, seeking primarily to ensure a smooth implementation of projects. Defensive tools are not sufficient for enabling conditions for the well-being of peoples and communities that can potentially be affected by BFM. A rights and duties-based approach could help overcome this limitation. Certain stakeholders in scaling-up biodiversity financing have therefore called for rights, resources and people's livelihoods as elements to be safeguarded.⁹⁰ Within a rights- and duties-based approach, local people are not merely stakeholders whose views may (or may not) be taken into account by governmental and other agencies, but they are right-holders with statutory rights and obligations.⁹¹

Lessons are being learned from case studies on PES and conservation incentive programs that show how important it is to "adopt a rights-based approach that respects internationally-agreed safeguards".⁹² Rights-based approaches are not simply defensive demands of marginalised people, but constructive commitments to work towards consensus on the basis of mutual recognition of parties' respective rights and duties on biodiversity issues. A rights- and duties-based approach to safeguards in BFMs would imply viewing safeguards as part of a broader institutional and legal framework that constructively seeks consensus in order to equitably allocate biocultural rights and duties among the parties involved, both in the choice of BFMs to develop and in their implementation.⁹³

Rights and duties defined in a fair manner include the way in which monetary and non-monetary benefits, costs and risks are distributed between different stakeholders.⁹⁴ At the international level, consensus now exists on the importance of equity, so this is the reason why we frame it as a guiding guideline. The CBD and Human Rights instruments as well as national law influence the governance of BFMs as well as their distributional impacts, and can serve to interpret this guideline. Article 21 under the CBD refers to a mechanism for the provision of financial resources to developing country Parties and highlights "...the importance of burden-sharing among the contributing Parties".⁹⁵

Besides international law, the legislation and policy decisions at the national level can serve to specify equitable benefit sharing in BFMs and make it responsive to local concerns particularly related to

⁹⁰ For example, regarding rights, "(t)he European Union indicated that in the same way that innovative financial mechanisms should have positive impacts on biodiversity conservation and sustainable use, safeguards should be in place to ensure that the generation of resources does not cause adverse social impacts. An important aspect is the tenure and user rights of local peoples...". Page 3, Synthesis on Innovative Financial Mechanisms, Note by the Executive Secretary, UNEP/CBD/COP/11/14/Add.3, 28 August 2012.

⁹¹ It worth noting though that to be considered a "party", the person (individual or moral), needs to prove a "legal interest" and hence many stakeholders which cannot prove such legal interest may be excluded if we use strict definition of "legal party".

⁹² Lessons Learned for REDD+ from PES and Conservation Incentive Programs, examples from Costa Rica, Mexico and Ecuador www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/June2012/redd%2B_book_english_final.pdf, accessed 5 August 2012.

⁹³ For further discussion on the negotiation of biocultural rights and duties at different scales, see Ituarte-Lima, C., 2011, 'Negotiating Intellectual Property Rights in the Upper Amazon' PhD Thesis, University College London, London.

⁹⁴ See various definitions and dimensions of equity in McDermott, M., Mahanty, S. and Schreckenberg, K., 2013. Examining equity: A framework for evaluating equity in payments for ecosystem services. *Environmental Science and Policy* 33, pp.416-427.

⁹⁵ Convention on Biological Diversity (CBD) 1992, accessed 2 July 2012, www.biodiv.org/doc/legal/cbd-en.pdf.

rights, livelihoods and resources.⁹⁶ While the social scale of communities and the associated equity dimensions are addressed in both the CBD and the UNFCCC (e.g. see Article 8(j) under the CBD and the social safeguards in the Annex of UNFCCC COP 16 Decision (2010)), national law and policy as well as customary norms can give further meaning to both substantive rights such as property-related rights and procedural rights such as the right to prior informed consent. Box 9 illustrates that this guideline is already institutionalised in some national laws.⁹⁷

In the panel “Safeguards and mechanisms” (The Third Meeting Of The Global Partnership For Business And Biodiversity in Montreal) and in the 2013 Bonn workshop on Community Monitoring and Information Systems, some participants highlighted the importance of “free prior informed consent”. Certain national legislation (e.g. Forest Law (LGDFS) Article 134Bis in Mexico), international declarations such as the UNDRIP and Conventions such as Convention for the Safeguarding of the Intangible Cultural Heritage also refer to this concept as FPIC. Current CBD language e.g. the Mo’otz kuxtal Voluntary Guidelines refers to ensuring “the ‘prior and informed consent’, ‘free, prior and informed consent’ or ‘approval and involvement’, depending on national circumstances, of indigenous peoples and local communities” (CBD/COP/DEC/XIII/18).⁹⁸

Considering the inclusive approach of this discussion paper as well as the differences in national legislations, we have included both “prior informed consent” and “free prior informed consent”. Furthermore, this guideline recognises that States have the sovereign right over their own natural resources and the right of pursuing their own environmental policies in accordance with their national legislation.

Box 9. Examples of access and benefit sharing in national laws and policies

The Peruvian “Law introducing a protection regime for indigenous peoples’ collective knowledge associated with biological resources”, called Law 27811, establishes a regime that includes license agreements on the one hand and public, confidential and local registers of knowledge, on the other. Peru was the first country with a large indigenous population to create such a regime.⁹⁹ Among the objectives of Law 27811 are: promoting the respect and protection of collective knowledge associated with biological resources, guaranteeing that their use is made with the **prior informed consent** of indigenous peoples, and promoting just and equitable **benefits sharing** derived from the use of collective knowledge associated with biological resources.¹⁰⁰ It is not only the substantive content of safeguards that is important but also the way in which they are implemented.¹⁰¹ In Law 27811, under

⁹⁶ For legal developments and associated challenges to operationalize the equitable principle at the international and national level, see e.g. Ituarte-Lima, C and Subramanian, S., 2013. Retreading negotiations on equity in environmental governance: case studies contrasting the evolution of ABS and REDD+’ in Maes, F., Cliquet, A., du Plessis, W., McLeod-Kilmurray, H. (eds), *Climate Change and Biodiversity: Linkages at International, National and Local Levels*, IUCN Academy of Environmental Law Series, Edward Elgar Publishing, Surrey and Northampton, United Kingdom; and Ituarte-Lima, C., et al., Assessing equity in national legal frameworks for REDD+: The case of Indonesia. *Environ. Sci. Policy* (2014), <http://dx.doi.org/10.1016/j.envsci.2014.04.003>.

⁹⁷ For further discussion on the allocation of property rights and duties associated with biodiversity, see Ituarte-Lima, C. and Subramanian, S., 2011, *Environment-related property laws: a means to achieve equity or inequity?* United Nations University Institute of Advanced Studies (UNU-IAS) Working Paper Series, Yokohama, Japan. https://community.iucn.org/rba1/Documents/ItuarteLimaSubramanian2011.pdf?Mobile=1&Source=%2Frbal%2F_layouts%2Fmobile%2Fviews.aspx%3FList%3D4dfcbb6c-8249-4f61-baa9-2e84199ea8b5%26View%3D0d9a923a-0dd4-4499-b428-626683fb8fba%26CurrentPage%3D1 and Ituarte-Lima, C., 2009, Categories of Intellectual Property and Biodiversity in Western Inspired Legal Cultures, in: *Law and Anthropology—Current Legal Issues*, vol 12, eds M Freeman and D Napier, Oxford University Press, Oxford, pp 313-350.

⁹⁸ In the participatory process involved in this report, some people referred to “free prior informed consent” (FPIC) and others to “prior informed consent” (PIC).

⁹⁹ Alexander, M., Chamundeswari, K., Kambu, A., Ruiz, M., and Tobin, B., 2004, *The role of registers and databases in the protection of traditional knowledge: A comparative analysis*, United Nations University Institute of Advanced Studies, Yokohama, Japan http://archive.ias.unu.edu/binaries/UNUIAS_TKRegistersReport.pdf Accessed 22nd May 2014.

¹⁰⁰ Ley 27811, Ley que establece el régimen de protección de los conocimientos colectivos de los pueblos indígenas vinculados a los recursos naturales /Law 27811, Law introducing a protection regime for indigenous peoples’ collective knowledge associated with biological resources (2002), <https://www.cbd.int/abs/measures/measure.shtml?id=7920> Accessed 22nd May 2014.

¹⁰¹ See Ituarte-Lima, C and Subramanian, S (2013) ‘Retreading negotiations on equity in environmental governance: case studies contrasting the evolution of ABS and REDD+’ in Maes, F., Cliquet, A., du Plessis, W., McLeod-Kilmurray, H. (eds), *Climate Change and Biodiversity:*

article 15, an autonomous national public institution, the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPi) is responsible for both the National Public Register and the National Confidential Register of Collective Knowledge of Indigenous People, including the associated responsibilities for diffusing the content of the law and the characteristics of these registers among collective knowledge holders.

Australia's 2000 Commonwealth Public Inquiry into Access to Biological Resources in Commonwealth Areas as well as the Legislative Assembly of the Northern Territory in Australia (2006) refers to the fairness of **access and benefit sharing** agreements in bioprospecting activities in relation to **informed consent** and the possibility of indigenous communities to receive independent legal advice (emphasis added).¹⁰²

In terms of applying the guideline of equitable allocation of rights and responsibilities to the local level, certain indigenous peoples and local communities view safeguards in BFM with cautious optimism because they fear that safeguards will merely impose another layer of regulations and obligations on those who are developing and implementing projects.¹⁰³ They argue that these approaches focus on the user or project proponent, without taking into consideration how to empower other stakeholders within the framework. Hence, they call for 'safeguards' to be conceived with a more holistic approach. We discuss the implications of this more fully in the following section.

Various stakeholders¹⁰⁴ have flagged the need for meaningful participation of concerned actors as a procedural safeguard for the proper design and implementation of BFMs, in particular for PES, biodiversity offsets and REDD+. In the focus group at the 2013 Trondheim Conference, participants specifically considered the need for balance between on one hand, policy measures that ensure that biodiversity and social objectives are reached in a timely manner and on the other hand, legitimacy of process that participatory safeguards aim to foster.¹⁰⁵ A contributor in this focus group noted that effective participation does not mean that all stakeholders get to express their views on everything, nor that everyone is included in every single step taken for the design or implementation of a program or policy. Rather, to be effective, safeguards concerning participation need to be intertwined with decision-making as well as with broader national democratic processes, to ensure that those potentially affected can express their concerns and be sure of being heard. The costs and the time needed for engaging in these processes is an integral part of mechanisms such as PES, biodiversity offsets and REDD+.

Risks for local communities and indigenous peoples stemming from innovative financing mechanisms and possible safeguards to address them were issues addressed in the "Safeguards and Mechanisms" Panel of the Global Partnership Meeting on Business and Biodiversity. In terms of substantive safeguards, the panel highlighted the need for measures to address the risks that indigenous peoples lose access to their lands, including their sacred sites. One of the panellists considered that the implementation of REDD+, PES and offsets could generate fears and conflicts, leading to internal divisions within communities, while another panellist reminded that equitable benefit sharing is also one of the main concerns. Two of the speakers linked these substantive dimensions to the need to implement procedural safeguards. The lack of participation and free, prior and informed consent (FPIC) of relevant right-holders such as indigenous peoples and local communities, both in the policy-forming discussions and in the decision-making processes, were identified as key reasons for the

Linkages at International, National and Local Levels, IUCN Academy of Environmental Law Series, Edward Elgar Publishing, Surrey and Northampton.

¹⁰² Commonwealth of Australia 2000, *Commonwealth Public Inquiry into Access to Biological Resources in Commonwealth Areas* (John Voumard Inquiry Chair), viewed 10 July 2012, <http://www.environment.gov.au/system/files/resources/d0f84da6-eb69-4053-8d96-ec294da649bc/files/abrca.pdf> and Legislative Assembly of the Northern Territory in Australia 2006, *Biological Resources Bill 2006 Serial No. 69, Explanatory Statement*, viewed 23 May 2010, www.austlii.edu.au/au/legis/nt/bill_es/brb2006220/es.html.

¹⁰³ e.g. Interview 17 July 2012.

¹⁰⁴ Switzerland submission, Third Meeting of the Global Partnership For Business And Biodiversity took place in Montreal (Canada) the 2-3 of October 2013, "Safeguards and Mechanisms" Panel (the Safeguards paper was presented by the lead author such panel); Trondheim.

¹⁰⁵ The need for linking and addressing the trade-offs of substantive and procedural safeguards was an aspect also highlighted in the SRC-Law Faculty, Stockholm University Dialogue.

emergence of risks associated with land and tenure rights, among other concerns. Hence, implementing procedural safeguards (such as participation and FPIC) in a timely and effective manner is a way to prevent various risks. Major challenges were identified in implementing FPIC in practice in biodiversity financing mechanisms such as REDD+, PES and biodiversity offsets; specifically that local communities and indigenous peoples are often unaware of the exact terms of the contracts or do not fully understand their implications. Independent Legal Advice for indigenous peoples and local communities in BFM is a procedural safeguard that could help tackle this challenge. Yet to operationalize this safeguard, there is thus a need to increase the number of lawyers with the proper inter-cultural skills and willingness to work as advisers for indigenous peoples.

5.3 LOCAL AND COUNTRY-DRIVEN/SPECIFIC PROCESSES LINKED TO THE INTERNATIONAL LEVEL

Guideline (c).- Safeguards in biodiversity financing mechanisms for biodiversity should be grounded in local circumstances, be developed consistent with country-driven/specific processes as well as national legislation and priorities, and take into account relevant international agreements, declarations and guidance, developed under the Convention on Biological Diversity and as appropriate, the United Nations Framework Convention on Climate Change, international human rights treaties and United Nations Declaration of the Rights of Indigenous Peoples, among others.

Challenges and opportunities derived from financing mechanisms may vary from country to country depending on the distinctive socio-ecological conditions and local values. Likewise, national legal frameworks, play a critical role in mediating concerns about BFMs effects on local communities and social equity more generally within different country contexts; from the definition of fundamental constitutional rights and legislation related to certain natural resources (e.g. forests) and legal instruments concerning the implementation of mechanisms. For example, in Indonesia, certain Ministerial Decrees refer to the distribution of benefits and participation in REDD+ decision-making¹⁰⁶ and in Ecuador Ministerial Agreements regulate the Socio-Bosque Programme, articulating various national legal instruments in Ecuador (see Table 3). Therefore, in this guideline we refer to **country specific processes**.

In order to respond the above-mentioned specific socio-ecological conditions and legal frameworks, **country-driven processes** were highlighted as an important element in scaling-up biodiversity financing including safeguards. India's submission in response to the initial version of this document emphasises the importance of nationally-driven safeguards, both substantive and procedural. Where needed, these country processes can be complemented with technical assistance that supports them in developing safeguards taking into account their local situations. At the national level, the appropriateness and relevance of safeguards in BFMs will be influenced by the interaction of different legal regimes and institutions. Lessons can be learned from case studies e.g. on legal frameworks for PES and benefit sharing, in particular with regard to the importance of the national and local contexts and institutions in implementing these frameworks.¹⁰⁷ The adopted guidelines also recognise that according to Article 3 of the Convention on Biological Diversity and the Charter of the United

¹⁰⁶ Ituarte-Lima, C., McDermott, C.L. & Mulyani, M., 2014. Assessing equity in national legal frameworks for REDD+: The case of Indonesia. Environmental Science & Policy. Available at: <http://www.sciencedirect.com/science/article/pii/S1462901114000677> Accessed 2nd June 2014

¹⁰⁷ Lessons Learned for REDD+ from PES and Conservation Incentive Programs, examples from Costa Rica, Mexico and Ecuador http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/June2012/redd%2B_book_english_final.pdf, accessed 5 August 2012.

Nations, States have the sovereign right over their own resources and the right of pursuing their own environmental policies.

Safeguards **grounded in local realities** and participatory processes can more effectively assess and address the risks and opportunities associated with BFM. In a focus group at the Trondheim Conference, a participant expressed the view that sometimes it may prove challenging for governments to identify potential risks and associated safeguards of new and innovative financial mechanism under Goal 4 of the strategy of resource mobilization. Another member of the group replied that the participation of potential affected stakeholders can contribute to the identification of such risks: “Often the need for safeguards is raised by people who are affected by interventions, projects, new policies. They seem to be very well aware of the risks that is why they demand safeguards against potentially negative impacts. So that rather than from the top thinking what are the potential things that could go wrong and what can we do about it, is really to find out what are the concerns on the ground, or in the private sector or wherever it is”.¹⁰⁸ The need to go beyond a top-down approach was an aspect identified by interviewees from the private sector¹⁰⁹ and community organizations¹¹⁰ as key for effective biodiversity policy-making including safeguards.

At the local level, the complexity of customary law systems derived from traditional resource management may guide responsible use of resources in different landscapes.¹¹¹ Peru’s submission recognises the importance of indigenous and local community rights in mechanisms for biodiversity financing, including their role in the choice and design of mechanisms, considering that indigenous people and local communities depend heavily on access to the locally provided ecosystem services (timber, fruits, wildlife) for their food security.¹¹² An interviewee at the Global Expert Workshop on Community-based Monitoring & Information Systems (CMIS), considered that safeguards in biodiversity financing mechanisms should not try to re-invent but take into account all existing principles and instruments at the international level. An interviewee at this Global Expert Workshop considered that substantive safeguards should not only focus on protecting biodiversity but also establish a clear link with the State’s human rights obligations, and set out clearly how those rights are going to be respected based on the principle of not causing harm, and remaining in line with the United Nations Declaration on the Rights of Indigenous People and other international agreements.¹¹³

An integral interpretation of the guideline of country-driven processes in BFMs implies seeing it in synergy with the **international legal and policy frameworks** such as the ones mentioned in Table 1 and 2. One dimension of a multiple level approach to safeguards, that explicitly includes the both the local level and international level, is that safeguarding efforts can be linked to human rights and be in line with international processes such as Rio +20.¹¹⁴ In 2012, African countries signed the Gaborone Declaration that reaffirms their commitment to the Africa consensus statement to Rio+20 and agree on safeguards-related issues to go along side with the implementation of the System for Environmental-Economic Accounts (SEEA). These safeguards-related issues include social-substantive aspects (eradication of poverty, equity concerns), as well as environmental substantive (promoting ecological health, protecting natural resources from overexploitation) and procedural ones (communication and

¹⁰⁸ Seventh Trondheim Conference On Biodiversity: Ecology And Economy For A Sustainable Society (Trondheim, Norway, 27-31 May 2013).

¹⁰⁹ The interviewee was manager for 20 years of a multinational corporation and member of Nature Conservancy. The Third Meeting Of The Global Partnership For Business And Biodiversity took place in Montreal (Canada) the 2-3 of October 2013.

¹¹⁰ Focus group at Expert Workshop on Community-Based Monitoring and Information Systems, The Bohn workshop celebrated in April 2013.

¹¹¹ See Forest Peoples Program (2011), Lessons from the field: REDD+ and the rights of indigenous peoples and forest dependent communities, Rights, forests and climate briefing series – November 2011 and Farhan-Ferrari (2012), ‘Indigenous resource management systems: A holistic approach to nature and livelihoods’, http://blog.ecoagriculture.org/2012/03/14/forest_peoples_programme/, accessed 7 August 2012.

¹¹² Perú Submission on the discussion paper “Safeguards for scaling-up biodiversity financing and possible guiding principles”.

¹¹³ Interview, Expert Workshop on Community-Based Monitoring and Information Systems, April 2013.

¹¹⁴ Dialogue SRC-Law Faculty, Stockholm University.

inclusion of stakeholders to protect them and mitigate environmental risks).¹¹⁵ Current regional agreements such as UN Economic Commission for Europe Aarhus Convention link, on the one hand, environmental rights and human rights and, on the other hand, government accountability and environmental protection by focusing on interactions between civil society and public authorities in a democratic context.¹¹⁶

Country specific and country-driven processes do not imply a disconnection from global processes. For example, the Nagoya Protocol recognises the importance of national legislation (Article 15 and 16) and also aims to promote transboundary cooperation (Article 11). Another example is the Convention on Intangible Cultural Heritage, which recognises that cooperation at the bilateral, sub-regional, regional and international levels constitutes a means for safeguarding heritage of general interest to humanity (Article 19(2)). International cooperation can play an important role in enabling institutional conditions for safeguards in BFM to be effective provided that they respect national and local-driven safeguarding efforts. Here too, lessons can be learned from the development and implementation of different standards and guidelines related to REDD+ and their use by national governments. For instance, the UN-REDD Programme developed the Social and Environmental Principles and Criteria (SEPC) in collaboration with UNEP-WCMC as a guiding framework but also as a means to support countries in developing national approaches to social and environmental safeguards.¹¹⁷

Similarly, applying the guideline of country-driven processes implies an awareness that common biodiversity concerns, such as the conservation of species and ecosystems, are often located in more than one country. There is also need to recognise the potential alliances in biodiversity-related projects between indigenous peoples, who in some cases inhabit more than one country.¹¹⁸

5.4 GOVERNANCE, INSTITUTIONAL FRAMEWORKS, TRANSPARENCY, ACCOUNTABILITY AND COMPLIANCE

Guideline (d).- Appropriate institutional frameworks are of utmost importance for safeguards to be operational and should be put in place, including enforcement and evaluation mechanisms that will ensure transparency and accountability, as well as compliance with relevant safeguards.

Institutional frameworks—necessary for all safeguards to function—influence countries' ability to choose and develop appropriate safeguards in BFM and to implement them accordingly. While some countries may have the institutional capacity (including available personnel and economic resources) to develop and implement their own standards including safeguards, other countries may lack this capacity. In the latter case, international standards become particularly relevant, but assessing the particular needs of countries and communities also plays an important role.

Environmental law, more than any other field of law, requires means for ensuring accountability and the compliance with safeguards because biodiversity and its different components cannot voice their

¹¹⁵ <http://static.squarespace.com/static/52026c1ee4b0ee324ff265f3/t/525d7449e4b0924d2f4618a2/1381856329700/Gaborone-Declaration.pdf> (last access the 14/05/2014).

¹¹⁶ See <http://www.uncece.org/env/pp/introduction.html>, last accessed 30 May 2014.

¹¹⁷ In its meeting in 2012, the UN-REDD Board welcomed this Social and Environmental Principles and Criteria http://www.un-redd.org/Multiple_Benefits_SEPC/tabid/54130/Default.aspx.

¹¹⁸ See e.g. M Alcalde, CF Ponce, and Y Curo is 'Peace Parks in the Cordillera del Cóndor Mountain Range and Biodiversity ConservationCorridor' (Environmental Change and Security Program, issue 11, 2009).

own interests.¹¹⁹ Likewise, judicial remedies are important since many biodiversity-rich areas are located in isolated places, inhabited by communities in a politically and economically marginalised position with limited capacity to defend their rights and needs against well-funded project developers. Specific challenges often arise in the implementation of compliance mechanisms when local people are claimants. For example, a concern for fairness requires that the burden of proof does not fall entirely on the claimant, who tends to have far less capacity in legal issues than the governmental institutions and the business sector. BFM's are only a part of a broader institutional and economic framework of drivers of biodiversity loss. These drivers, and underlying perverse incentives, need to be addressed (see section on PES and Fiscal Reform below).

At the Global Expert Workshop on Community-based Monitoring & Information Systems (CMIS), a participant considered that often governmental institutions are the ones receiving the economic resources associated with environmental financing while biodiversity-holders and those conducting sustainable use of natural resources do not have direct access to economic resources. Hence, it was suggested that biodiversity holders of knowledge and of bio-cultural resources rights have direct access to monetary and non-monetary resources derived from biodiversity financing mechanisms. In its submission, Peru mentions the need to have proper institutional frameworks with low transaction costs so the distribution of benefits reaches indigenous and local communities.

Certain institutional requirements for follow-up and monitoring are necessary for safeguards in BFM's to be effective. In terms of operationalizing accountability measures, guidance can be drawn and lessons learned from the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. The Aarhus Convention is also relevant when discussing safeguards at the national and regional level. For example, Article 9(3) states that: "each party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment".¹²⁰ At the regional level, an example of legal developments in regulation relevant for compliance mechanisms in BFM's are the European Union Directives on Environmental Impact Assessment mentioned earlier.¹²¹

The REDD+ experience has already demonstrated that certain countries may not have the institutional capacity and economic resources to comply with requirements for developing Safeguards Information Systems, MRV and carbon accounting systems. In some cases, requirements intended to promote equity and accountability within national contexts can be fostering inequity at the global level, where it is not the countries in most need that receive resources but those that have the institutional capacity to comply with the requirements. An interviewee considered that while a demand to observe accountability, transparency and efficiency in BFM's is necessary, it is also important to be aware of the existing conditions in the country where safeguards are intended to be applied. Too high requirements in the application of such guidelines risks leaving worse off the people who are intended to benefit from the safeguards and underlying principles.¹²² While this risk is broadly recognised in many areas of international development cooperation (aid projects), it applies even more to PES schemes such as REDD+ which have complicated and highly technical MRV systems and complex

¹¹⁹ See e.g. Poncelet, C. (2012) Access to Justice in Environmental Matters—Does the European Union Comply with its Obligations? *Journal of Environmental Law* eqs004, doi:10.1093/jel/eqs004.

¹²⁰ The Aarhus Convention links environmental rights and human rights and establishes that sustainable, its Article 5 refers to compliance. More information about the Compliance Committee can be found at: www.unece.org/env/pp/cc.html.

¹²¹ Poncelet, C. (2012) Poncelet, C., 2012. Access to Justice in Environmental Matters—Does the European Union Comply with its Obligations? *Journal of Environmental Law*, pp. 1-23.

¹²² Richard Klein, Stockholm Environment Institute, interview 9 July 2012 .

institutional and legal frameworks. In this context, capacity building remains an important challenge.¹²³

The importance of capacity-building was highlighted in the submissions by Switzerland, India, and Peru as well as by participants in the Quito II Seminar Dialogue. In the “Governance, safeguards and equity” working group at Quito II Seminar Dialogue, participants suggested the development of a “toolkit” consisting of “a catalogue of lessons learned by countries in applying safeguards related to biodiversity financing, and strategies to strengthen national capacity in articulating the CBD provisions and COP Decisions on resource mobilisation with national legal systems and customary norms”.¹²⁴ There is also scope for systematising experience on safeguards associated with climate financing including REDD+ under UNFCCC and voluntary standards. Potential synergies exist for BFM with the SCBD and the International Development Law Organisation Initiative on Legal Preparedness for achieving the Aichi Targets. Beyond funding options, an interviewee at the Quito II Dialogue Seminar considered that the SCBD should increase its role in facilitating the exchange of expertise and lessons learned between distinct countries and regions (such as between Asia and Latin America).

Beyond judiciary recourses, compliance mechanisms can also take a non-adversarial and non-judicial form, such as an ombudsman. Depending on the kind of ombudsman, the complaint procedure may have mandatory outcomes or not. An example at the international level is the International Ombudsman Centre for the Environment and Development (OmCED) established by a Memorandum of Agreement between the World Conservation Union (IUCN) and the Earth Council Foundation. This ombudsman aims to deal authoritatively to address potential and actual conflictive issues concerning environmental and sustainable development.¹²⁵ Lessons learned from these mechanisms can be relevant for ensuring compliance of safeguards in BFM.

Another compliance mechanism relevant for safeguards in BFM is the World Bank Inspection Panel. The World Bank refers to it as an accountability and recourse mechanism that aims to investigate and determine whether the Bank has complied with its operational policies and procedures (including social and environmental safeguards), as well as address related issues of harm in projects financed by the Bank for Reconstruction and Development and the International Development Association.¹²⁶ Its Operational Policy 4.0 on Environmental Assessment aims to evaluate a project's potential environmental risks and impacts in its area of influence. Environmental Assessments should include biodiversity dimensions (which are framed as a transboundary and global environmental issues) as well as social dimensions.

One interviewee considered that a key lesson from the implementation of the World Bank safeguards to BFM is that in order to achieve inclusive sustainable outcomes, the emphasis should be on the *output*, not the input of safeguarding processes.¹²⁷ A transactional approach that focuses on the inputs (e.g. whether or not a consultation meeting was adequately developed and recorded, or an EIA conducted) tend to be cheaper and easier to conduct. Yet it is more important that the process or project did in fact promote integral development conservation with actual benefits to the stakeholders.

¹²³ CBD 2011, IFM report, www.cbd.int/financial/doc/2011-03-budapest-IFM-report-en.pdf.

¹²⁴ Ogwal, S.F. and Schultz, M., 2014. *Co-Chairs' Summary of Second Dialogue Seminar on Scaling up Finance for Biodiversity, Quito 9-12 April 2014*. Montreal: Secretariat of the Convention on Biological Diversity. <http://www.cbd.int/doc/meetings/fin/ds-fb-02/official/ds-fb-02-report-en.pdf>

¹²⁵ Anon (2000) International Ombudsman Centre for the Environment and Development is established, *International Journal of Sustainability in Higher Education*, Vol. 1 Issue 3.

¹²⁶ In 1993, the Inspection Panel was established by identical Resolutions of the Boards of Executive Directors of the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). <http://ewebapps.worldbank.org/apps/ip/Pages/Home.aspx>.

¹²⁷ Interview, 13 July 2012.

An interviewee at the Global Expert Workshop on Community-based Monitoring & Information Systems (CMIS) mentioned that safeguards should be supported by compliance mechanisms and that the establishment of an inspection panel or body for BFMs that could act as a mediator to solve possible conflicts should be considered. In addition, the interviewee noted that a problem-solving approach with an emphasis in the local level institutions can help identify the issues that need to be addressed and the optimal ways to finance them according to the issue at stake and the available resources.

6. SAFEGUARDS, DIFFERENT TYPES OF BFMS AND CASES

Goal 4 of Decision IX/11 refers to the general category of IFMs some of which include important elements for safeguards. For example:

“4.1. To promote, where applicable, schemes for payment for ecosystem services, **consistent and in harmony with the Convention and other relevant international obligations.**

4.2. To consider biodiversity offset mechanisms where relevant and appropriate while **ensuring that they are not used to undermine unique components of biodiversity**” (emphasis added).¹²⁸

In the following section we give examples of potential safeguards for specific mechanisms mentioned in Goal 4 of CBD Decision IX/11.

6.1 PAYMENTS FOR ECOSYSTEMS SERVICES

PES are positive incentives which have conditionality as a method for influencing environmentally-sound behaviour.¹²⁹ PES include payments or compensations to landowners for a specific land use that is considered to enhance biodiversity and ecosystem services. Institutional arrangements in PES may involve conditionality of payments on performance.¹³⁰ Currently, governments and governmental organisations finance 97-99% of PES globally.¹³¹ PES is an example of using the market mechanism (price signal), but it needs not be based on or rely on monetary valuation.

For example, in Costa Rica the level of PES to landowners for sustaining forestry is not based on an estimation of the monetary value of the targeted biodiversity and ecosystem services. Instead, the level is based on an estimation of the opportunity cost of conservation (here, sustainable forestry), i.e. the net income forgone from commercial forestry. The Costa Rican government controls the “market”, and has increased the annual payment from US\$ 42/ha to US\$ 78/ha during the first ten years of operation to motivate a sufficient number of forest owners to protect their forests. In this way, the government recognises the right of the forest owners to commercial forestry and compensates them for turning to conservation practices.¹³² This PES scheme covers 11% of Costa Rica’s land area, and was

¹²⁸ COP 9 Decision IX/11, Review of implementation of Articles 20 and 21, <https://www.cbd.int/decision/cop/?id=11654> , accessed 16 September 2012.

¹²⁹ Sommerville, M.M., Jones, J.P.G. and Milner-Gulland, E.J. 2009, A Revised Conceptual Framework for Environmental Services, *Ecology and Society* 14(2): 34 [online] URL: <http://www.ecologyandsociety.org/vol14/iss2/art34/>.

¹³⁰ See Switzerland’s submission with comments on Discussion Paper on ‘safeguards for scaling-up biodiversity finance and possible guiding principles’ (unep/cbd/cop/11/inf/7) and Pattanayak et al. (2010): Show Me the Money: Do Payments Supply Environmental Services in Developing Countries? where the conditionality of payments on performance is highlighted.

¹³¹ Vatn, A., D.N. Barton, H. Lindhjem and S. Movik, (with I. Ring and R. Santos), 2011, *Can markets protect biodiversity? An evaluation of different financial mechanisms*. Noragric Report No. 60. Department of International Environment and Development Studies, Noragric. Norwegian University of Life Sciences, UMB. http://www.umb.no/statisk/noragric/publications/reports/2011_nor_rep_60.pdf

¹³² Hahn, T., McDermott, C., Ituarte-Lima, C., Schultz, M., Green, T., Tuvendal, M., 2015. Purposes and degrees of commodification: economic instruments for biodiversity and ecosystem services need not rely on markets or monetary valuation. *Ecosystem Services* 16: 74–82. doi.org/10.1016/j.ecoser.2015.10.012

enabled by the 1996 Forest Law which banned land conversion but not sustainable use. The PES program has become the most important revenue stream for several indigenous communities. An advantage of the Costa Rican example of PES is that property rights are defined in the process. Provisions of the Forest Law and other institutions are safeguards that allow them to use their forests sustainably. However, it took a prolonged period of trust-building before landowners overcame their suspicion that the PES program would be a cheap way for the government to take ownership of the land resources from them.¹³³

Similarly to Costa Rica, Mexico has been among the first countries to introduce PES schemes. In terms of social safeguards, Mexico has made certain progress in developing associated supportive legal and policy frameworks. For instance, Mexico's Payments for Forest Environmental Services Program has gradually increased its focus on poverty reduction, and the National Forestry Commission (CONAFOR) has Technical Advisory Council that aims to facilitate continued involvement of civil society.¹³⁴ Important challenges, however, remain, including reaching out to the poorest segments of society.¹³⁵ Not all communities support PES schemes. Some perceive it as back-door privatisation of resources such as water, and as an imposition of conditions on land-use which would be unsustainable and lead to displacement. An example of a community sceptical to PES is the Lachiguiri community in Oaxaca, Southern Mexico. This community has practiced sustainable agroforestry for centuries, planting corn and organic coffee within the forest. The community entered into forest conservation contracts with local government that they did not fully understand. They discovered too late that they could no longer use the land for agroforestry systems as they had done before. While the community received cash for the protection of ecosystem services, the unintended consequences of the project included alterations in their traditional resource management. In Lachiguiri, over 200 families now consider that they have lost their livelihood possibilities.¹³⁶ Such strict conservation measures in PES, including restrictions to villagers using their ancestral agricultural land can lead to a loss in agrobiodiversity and ecological knowledge.¹³⁷

These examples from Costa Rica and the Lachiguiri community illustrate the role of safeguards as part of broader institutional frameworks. The "direct" safeguards differed in that the contracts in Costa Rica allowed sustainable forestry. The "indirect" safeguards in Costa Rican Forest Law and other regulations focused its efforts not on regulating indigenous peoples but on changing perverse incentives and thereby tackling drivers of biodiversity loss.¹³⁸

Case study I. Lessons learned from safeguard-related legal provisions in Ecuador

Another scheme that aims at providing incentives for the conservation and sustainable use, is the *Proyecto Socio Bosque* (PSB), an initiative of the Ecuadorian Ministry of the Environment (MAE).¹³⁹ Launched in 2008, it combines ecosystem services preservation and poverty alleviation through three main goals: protecting 3,600,000 hectares of native ecosystems – *inter alia* forests, paramos – and

¹³³ Page 22 in Farooqui, M.F. and Schultz, M., 2012.

¹³⁴ FONAFIFO, CONAFOR and Ministry of Environment. 2012. *Lessons Learned for REDD+ from PES and Conservation Incentive Programs. Examples from Costa Rica, Mexico, and Ecuador*. pp. 164 and Corbera, E., Soberanis, C., and Brown, K. "Institutional Dimensions of Payments for Ecosystem Services: an Analysis of Mexico's Carbon Forestry Programme". *Ecological Economics* 68, no. 3 (2009): 743–761.

¹³⁵ See Muñoz-Piña, C., Guevara, A., Torres, J.M. and Braña, J. "Paying for the Hydrological Services of Mexico's Forests: Analysis, Negotiations and Results". *Ecological Economics* 65 (2008): 725–736.

¹³⁶ Page 23 in Farooqui, M.F. and Schultz, M., 2012.

¹³⁷ Another case study in Mexico assessing PES is Ibarra, J.T., Barreau, A., Del Campo, C., Camacho, C.I, Martin ,G.J., and McCandless, S.R. 2011, When formal and market-based conservation mechanisms disrupt food sovereignty: impacts of community conservation and payments for environmental services on an indigenous community of Oaxaca, Mexico, *International Forestry Review* Vol.13(3).

¹³⁸ Page 23 in Farooqui, M.F. and Schultz, M., 2012.

¹³⁹ The Ecuadorian Ministry of the Environment frames *Socio Bosque* as a "compensation for ecosystem services" scheme, not payment for ecosystem services (See e.g. Órgano de difusión del Foro de los Recursos Hídricos (Chimborazo) y la Mesa Provincial de Ambiente de Chimborazo, 2009 *Compensación de Servicios Ambientales: Iniciativas y Experiencias*, www.agruco.org/bioandes/pdf/FORO4.pdf, accessed 24 September 2012). However, the *Socio Bosque* Project can provide lessons learned for BMFs including PES and operationalizing biodiversity and social safeguards.

their values; reducing deforestation and greenhouse gas emissions; and improving the livelihood of local population. In the table below (Table 3) we select certain legal provisions relevant to substantive and procedural safeguards applicable to financing mechanisms and then explore lessons learned from the *Socio Bosque* scheme. PSB is a financing mechanism that combines different BFM in order to scale up its “compensation for ecosystem services” scheme. For instance, to enhance the attractiveness of the program and its positive social impacts (poverty alleviation), it includes environmental fiscal incentives by exempting the areas under PSB of the local and national land-based taxes.¹⁴⁰ Currently, the government is looking for alternative funding streams from certificates¹⁴¹ (agreements with companies that commit to support PSB), new green taxes¹⁴² (environmental fiscal reform), international cooperation with the German government and its Cooperation Bank KfW (ODA mechanism) and potentially a REDD+ carbon scheme (climate financing with biodiversity co-benefits). Such funding flows could contribute to PSB financial viability and provide an example of distinct BFMs can be linked in practice.

The private sector has been involved in certain PES schemes. For example, in France, Vittel (Nestlé Waters) faced a risk of nitrate contamination that would damage its mineral water bottling business. To address this risk, it developed a PES scheme to finance farmers and to allow them to change their agricultural practices in order to decrease the nitrates. According to Perrot-Maître (2006) the Vittel PES scheme shows that the positive outcomes of the Vittel PES depended on safeguard-related elements such as drafting the contracts through a collaborative process, communication, technical assistance and economic remuneration.¹⁴³ The authors also recognize that the significant investments on time, communication and economic resources required for this PES might not be affordable by all firms.

Table 3. Lessons learned from safeguard-related legal provisions in Ecuador and from their operationalization in *Proyecto Socio Bosque*¹⁴⁴

Types of provisions		Selected safeguard-related legal provisions ¹⁴⁵	Lessons learned from the <i>Socio Bosque</i> scheme
Biodiversity	Substantive	<ul style="list-style-type: none"> • Rights recognized to “Mother Nature” (Art. 71.; 72. Ecuadorian Constitution) and duties attributed to the State (Art. 3-7.; 395-1 Ecuadorian Constitution). • State policies to enhance biodiversity conservation and sustainable use (Art. 5.-b. Forest Law). • Measures to avoid, prevent, mitigate and repair environmental damage (Art. 72.; 396. Ecuadorian Constitution). 	<ul style="list-style-type: none"> • Land tenure issues¹⁴⁶ may limit participation and create disruptions within Socio Bosque^{147, 148} that makes government’s efforts to address land-related issues very relevant. • Need of safeguards that protect areas under the <i>Proyecto Socio Bosque</i> (PSB) from exploitation projects.

¹⁴⁰ De Koning, *Bridging the gap between forest conservation and poverty alleviation: the Ecuadorian Socio Bosque program*, 2011, p. 539.

¹⁴¹ K. Podvin, Institutional analysis of the Socio Bosque Program: an Ecuadorian forest governance initiative and its interactions with REDD, master thesis, 2013 ; Folleto de sistematización Socio Bosque.

¹⁴² Fehse, J., *Private conservation agreements support climate action: Ecuador’s Socio Bosque programme*, Climate and development knowledge network, September 2012.

¹⁴³ Perrot-Maitre, D. (2006). The Vittel payments for ecosystem services: a “perfect” PES case. International Institute for Environment and Development, London, UK, 1-24.

¹⁴⁴ This *Proyecto Socio Bosque* case study was developed by Nicolas Audifax.

¹⁴⁵ See “cited legal instruments” in the reference list.

¹⁴⁶ Ecuador – Property rights And Resources Governance Profile, USAID country profile, July 2011.

¹⁴⁷ Reed, P. (2011). REDD+ and the indigenous question: a case study from Ecuador. *Forests*, 2(2), 525-549.

¹⁴⁸ K. Podvin, Institutional analysis of the Socio Bosque Program: an Ecuadorian forest governance initiative and its interactions with REDD, master thesis, 2013.

	Procedural	<ul style="list-style-type: none"> • Exclusive jurisdiction of the State over natural resources (Art 261-7.; 261-8. Constitution of Ecuador) support effective sustainable use processes. • Incentives including economic incentives (Art. 34. Environmental Management Law), appropriate measures and sanctions if environmental damages in order to protect biodiversity (Art. 65.; 437.-H.; 580. Penal Code). • Processes to reach environmental goals (Ministerial Agreement N°169, 2008; Unified Manual of Socio Bosque, 2012). 	<ul style="list-style-type: none"> • Need for grievance mechanisms prompting the State to follow its duties accordingly. • Financial sustainability of PSB is key in order to make the scheme sustainable and reach the environmental goals.
Social	Substantive	<ul style="list-style-type: none"> • Rights of citizens and indigenous peoples to benefit from natural resources that ensure them a good living (Art. 74. Constitution of Ecuador) and to participate in environmental management (Art. 28. Environmental Management Law). • Incentives in order to alleviate poverty and implement biodiversity conservation processes (Art. 71. Constitution of Ecuador; Ministerial Agreement N°169, 2008; Unified Manual of Socio Bosque, 2012). 	<ul style="list-style-type: none"> • The program could gain from specifying rights of indigenous peoples, local communities and landowners¹⁴⁹ over natural resources in PSB contracts.
	Procedural	<ul style="list-style-type: none"> • Participation of citizens in the decision-making process recognized and valued (Art. 57.-17. Constitution of Ecuador; Art. 81.; 82.; 83. Organic Law of Citizen Participation). • Procedures to reach free prior informed consent in PSB (Ministerial Agreement N°169, 2008) and duty of the State to take answers into account granted by legal provisions (Art. 20. Unified Text of Secondary Environmental Legislation). 	<ul style="list-style-type: none"> • Effective mechanisms for both free prior informed consent and consultation in order to address some stakeholders' concerns. In particular that some provisions such as Art. 22 and 83 Organic Law of Citizen Participation can limit these rights. • Measures to prevent inequities that could arise between stakeholders involved in PSB.¹⁵⁰

Case study II. PES in the Maasai Mara region, Kenya

The present analysis was developed by Rodrigo Martínez-Peña and Claudia Ituarte-Lima, authors in this report, based on extensive scientific research carried out by Phillip Osano and his team in the Maasai Mara region.^{151, 152}

This case is an example of how CBD guidelines for safeguards in BFM can be used as a lens to identify procedural and substantive safeguarding strategies in the implementation of Payment for Ecosystem Services (PES). Furthermore, this analysis shows that the above mentioned guidelines are useful to identify elements of PES where safeguarding strategies are necessary. These guidelines can serve as principles for the development of concrete measures that respond to the specific challenges of the case because they reflect standards in international law.

The Maasai Mara ecosystem comprises arid and semi-arid lands that annually receive the great migration of wildebeest travelling from the Serengeti National Park in Tanzania. This natural phenomenon is a major tourism attraction that accounts for 18% of all annual tourist visits in Kenya

¹⁴⁹ T. Krause & L. Loft (2013), Benefit Distribution and equity in Ecuador's Socio Bosque Program, Society & Natural Resources: An International Journal.

¹⁵⁰ Krause, T., Collen, W., & Nicholas, K. A. (2013). Evaluating Safeguards in a Conservation Incentive Program: Participation, Consent, and Benefit Sharing in Indigenous Communities of the Ecuadorian Amazon. Ecology and Society, 18(4), 1.

¹⁵¹ Osano, P. M., Said, M. Y., de Leeuw, J., Ndiwa, N., Kaelo, D., Schomers, S., Birner, R., Ogutu, J. O. (2013). Why keep lions instead of livestock? Assessing wildlife tourism-based payment for ecosystem services involving herders in the Maasai Mara, Kenya. Natural Resources Forum 37(4), 242–256.

¹⁵² Osano P. M., Said M. Y., de Leeuw J., Moiko S.S., Kaelo D. O., Schomers, S., Birner R. and Ogutu J.O. (2013). Pastoralism and ecosystem-based adaptation in Kenyan Masailand International Journal of Climate Change Strategies and Management Vol. 5 No. 2, pp. 198-214. Available at: www.emeraldinsight.com/1756-8692.htm

and propels a thriving wildlife tourism industry. The Maasai people have historically occupied this territory and relied on this ecosystem for their livelihood as pastoralists. More recently, agriculture and tourism have played a more central role in local livelihoods. In the late 1990's, national policies started a process of dividing large parcels under collective tenure into small parcels under individual or corporate tenure. Conservancies emerged as a strategy to derive benefits from wildlife tourism both from communal lands and individually owned lands. In both cases, institutional arrangements in the form of PES have been adopted to promote land uses compatible with provision of ecosystem services that support wildlife tourism.

This study focuses in the case of the Olare Orok Conservancy (OOC), whose territory comprises 227 individually owned plots that together add up to 10,040 ha and are located in northern part of the Maasai Mara National Reserve. After assembling the conservancy, landowners whose main livelihood was agriculture and herding, brokered land lease agreements in coalition with tourism operators. The agreement adopted the form of a PES scheme between private parties. In this PES arrangement, each landholder receives a direct payment based on the amount of individually owned land within the conservancy, irrespective of the number of visitors. In exchange, landowners agree to: a) move out of the conservancy, b) not sell their lands, and c) exclude activities considered non-compatible with wildlife such as growing crops, fencing and herding. The agreement was first signed in 2006 for two and a half years, it was renewed for five more years, and in 2010 tourism operators offered a 15-year extension. Every time the contract was renewed, a new and higher payment rate was negotiated. For landholders in this conservancy, PES has constituted a secure and stable source of income during droughts, when income from herding can drop below the official Kenyan poverty line. Yet, increasing resilience of income does not necessarily mean increasing resilience of livelihoods. Therefore, measures are needed to assess how policy instruments such as PES can affect the access to ecosystem services upon which people depend for their livelihoods and subsequently tailor policy instruments to respond the associated risks and opportunities. When analysing this case through the CBD guidelines for BFM, several lessons can be drawn (see Table 4 for a summary).

Lessons learned from looking at PES focusing on the Olare Orok Conservancy through the lens of guideline (a). *Biodiversity underpins local livelihoods and resilience*

- ***Increasing resilience of livelihoods and not only resilience of income.*** As landowners secured a stable source of income during droughts, they managed to overcome crises without dropping out of the PES scheme. Nonetheless, the herders' access to pasture lands was reduced and therefore, resources that were crucial to deal with severe or extreme droughts were not available. This reduced the herds' ability to recover and as a result the resilience of herders' livelihood critically decreased. In the Ol Kiration conservancy (also located in the Maasai Mara region), the government of Kenya along with the Global Environmental Facility (GEF) entered into a PES agreement with a community whose land was under collective property. In that agreement, herders were allowed to use the conservancy as a drought refuge during severe and extreme droughts. This measure prevented herders from critically losing livestock, which as a consequence, increased their livelihood's resilience. Under this more flexible arrangement, PES can serve as a climate change adaptation tool that is relevant in the Kenyan context, where intense and frequent droughts form part of a likely future scenario.
- ***Creating funds to safeguard long term PES arrangements.*** In the Olare Orok Conservancy, tourism operators created a contingency fund that enabled them to make payments to landowners regardless of the number of visitors. This was key to maintaining the conservancy during the tourism industry crisis in 2007/2008 following post-elections violence. Securing landowners' income reduced the likelihood of them dropping off from the conservancy project, which could have resulted in the disassembling of the territory that the conservancy is based on. The conservancy fund acted as an instrument that safeguarded landowners' income and indirectly

increased the resilience of the PES system to political shocks. This has led to maintaining the conservancy which is a biodiversity safeguarding strategy.

- ***Creating partnerships to fund PES related to public goods at larger scales.*** Besides the direct benefit that local tourism operators obtain from wildlife-related ecosystem services in the OOC, this conservancy contributes to safeguard the larger Maasai biodiversity, which in turn supports the regional wildlife tourism industry. In recognition of this production of a public good, state actors could contribute to fund the PES scheme, which would increase its long-term viability and secure landowners' livelihoods.

Lessons learned from looking at PES in the Olare Orok Conservancy through the lens of guideline (b) *People's rights, responsibilities and effective participation*

- ***Considering non-economic costs and benefits of PES.*** In the OOC case, the benefit that landowners obtained from entering into a PES scheme was a partial substitution of income from herding and agriculture. Moreover, PES constituted a secure source of income in spite of droughts and political unrest that otherwise would have brought landowners under the Kenyan official poverty line. Additionally, tourism operators assumed the costs of moving landowners out of the conservancy area. The notion of PES as a benefit that exceeds the opportunity costs of not entering into a PES agreement can be used as an initial criterion to safeguard the right to livelihood. However, non-economic costs should be taken into account. Complementary to FPIC mentioned below, a procedural safeguard to bring this idea into practice is to secure that landowners have access to negotiate payment conditions (e.g. payment rates and times) - as indicated below. Landowners have their own experience and therefore will be able to identify some of the non-economic costs and benefits of entering in a PES scheme. States or NGO's interested in enhancing this safeguarding strategy could help to identify other non-economic costs and benefits.
- ***Access to negotiating payment rates.*** In the OOC, the fact that landholders had access to negotiating payment rates every time a contract was signed, allowed for payment rates to be set that made sense to both parties. This has contributed to a long lasting agreement that protects biodiversity and livelihoods. This case shows that securing participation and establishing payment rates acts as a procedural safeguard.
- ***Complying with free prior informed consent.*** Although in the Olare Orok Conservancy PES was agreed freely between landowners and tourism operators, it is unclear whether landowners had access to relevant information that could enhance their bargaining position in the negotiation process. Legal and financial information might be unavailable to landowners. A mechanism to make effective PES as a procedural safeguard is to provide legal and financial advice to landholders. This might come either from government agencies or non-government actors.
- ***Considering costs and benefits of all landholders.*** In this type of PES, where the benefit of landowners depends on the amount of individually owned land, it is possible that households owning smaller lands do not obtain a benefit that exceeds the opportunity cost of not joining the PES scheme. Furthermore, it is possible that they accepted to enter into PES agreement due to peer pressure, coercion, and need for immediate cash income. These situations may push poor households to join in order to meet short-term needs at the expense of their long-term wellbeing, including giving up critical pasturelands. Neglecting the cost/benefit ratio of these groups entails a violation to tenure rights. Additionally, it might precipitate conditions that lead to non-compliance with the land use agreed in the PES arrangement. This would reduce the conservancies' effectiveness. A strategy for safeguarding both livelihoods and

effectiveness of the PES schemes could be to implement exceptional payment rates for disadvantaged groups in a way that would help them to be better off.

Lessons learned from looking at PES in the Olare Orok Conservancy through the lens of guideline (c) *Local and country-driven/specific processes linked to the international level* and (d) *Governance, institutional frameworks, transparency, accountability and compliance*.

As lessons drawn from these guidelines are closely related to each other they can be collated into a single section.

- ***Coordinating policies for protecting the rights of disadvantaged groups.*** Landless households in the area currently occupied by the OOC conservancy were involuntarily displaced as a consequence of the PES. The disadvantage of not owning land is often related to other conditions of inequality such as gender, age and migratory status. Groups facing this situation have little negotiating power to influence their conditions. Additionally, they might risk entering in an even more disadvantaged situation after being displaced. In order to safeguard the rights of these groups, adequate policies need to be in place and implemented promptly before these types of vulnerabilities are reinforced.
- ***Addressing causes of inequality previous to the adoption of PES.*** The amount of individually owned land determined the income that each household obtained from joining the PES scheme. Therefore, land distribution – i.e. who among the inhabitants of the region and within the household owned land - determined who received the benefits from PES and how unequal these benefits became. Finding mechanisms to allocate property land rights in equitable ways would significantly decrease inequality in receiving the benefits of the PES scheme.
- ***Sustainable management considering regional carrying capacity for herding.*** As a consequence of the PES agreement, herders moved outside the conservancy, which increased the chances of overgrazing in the remaining pasturelands. In addition, human population growth intensified pressure over this resource resulting in a process of worsening degradation of pastoral commons. Under this scenario, the sustainability of the conservancy constitutes a trade-off with the vulnerability of the livelihoods of herders at regional level, which in the medium-long term poses a high risk over the feasibility of the conservancy and PES scheme. Maintaining the sustainability of the region require tailored policies that carefully consider the carrying capacity of the region and rights considerations mentioned earlier. International assistance could contribute to support tailored regional management practices.

Table 4. Strategies for implementing the CBD guidelines for safeguards and corresponding lessons learned from the case of Payment for Ecosystem Services in the Olare Orok conservancy in Kenya.

CBD Guidelines for safeguards in Biodiversity Financing Mechanisms	a) Biodiversity underpins local livelihoods and resilience	b) People's rights, responsibilities and effective participation	c) Local and country-driven/specific processes linked to the international level	d) Governance, institutional frameworks, transparency, accountability and compliance
Strategies	PES should exceed opportunity costs. Ensuring payments in spite of economic and environmental fluctuations	Giving access to negotiating PES payment rates contributes to long lasting agreements.	Conservancies and PES can contribute to conservation of transboundary moving fauna. Yet, they may foster migration to cities in a context of sustained	Implementation of laws and policies for protecting the rights of disadvantaged groups is vital in PES processes.

	provided resilience to the PES programme.		population growth that poses pressure over common pastures.	
Lessons of the case	Non-economic costs should be taken into account. Benefits at higher scales in public goods can be taken into account for creating partnerships to increase funding of PES	Providing legal and financial information to landowners is part of the implementation of FPIC. Neglecting the cost/benefit ratio of joining the PES for the most disadvantaged propitiates violation of their rights.	International assistance could help to tailor strategies to regional sustainability planning and management.	Without governmental intervention, internal inequalities risk being reinforced. Timely and tailored policies are needed

6.2 BIODIVERSITY OFFSETS

Biodiversity offsets are mechanisms based on the understanding that the land converters ought to compensate for the negative impact they impose on biodiversity.¹⁵³ Biodiversity offsets adhere to the already well-recognised polluter pays principle, which is supported by both international and national legal and policy frameworks.¹⁵⁴ The development of safeguards for biodiversity offsets could build on initiatives such as the Business and Biodiversity Offsets Programme (BBOP) Principles on Biodiversity Offsets, which states that the goal of these mechanisms is to achieve no net loss and preferably a net gain in biodiversity, through compensating “for significant residual adverse biodiversity impacts arising from project development after appropriate prevention and mitigation measures have been taken”.¹⁵⁵

In most discussions on biodiversity offsets and ecological compensation (these concepts are often used synonymously)¹⁵⁶ there is a reference to the mitigation hierarchy. Degradation should, according to the mitigation hierarchy, first be *avoided* by choosing a less valuable site for the development project. Once a site has been approved for exploitation, degradation (negative impacts) should be *minimised*. The third step of the mitigation hierarchy is that the developer takes *rehabilitation or restoration measures* on the ecosystems impacted, and the final step consists of off-site *offset measures* to compensate for significant adverse residual impacts.¹⁵⁷

As the last step of the mitigation hierarchy, it has been questioned whether biodiversity offsetting is indeed a biodiversity financing mechanism (BFM). At the Quito II Dialogue Seminar in April 2014, it was argued that ideally biodiversity offsets are part of development/exploitation projects that have no net effects on biodiversity (if the offset is perfect), but in practice exploitation often results in

¹⁵³ Parker, C., Cranford, M., Oakes, N., Leggett, M. ed., 2012. *The Little Biodiversity Finance Book*, Global Canopy Programme; Oxford.

¹⁵⁴ OECD, 1972. *Guiding Principles Concerning the International Economic Aspects of Environmental Policy* (adopted by the Council on 26 May 1972). Accessed 4th Aug. 2012, www.ciesin.org/docs/008-574/008-574.html.

¹⁵⁵ BBOP Principles on Biodiversity Offsets, accessed 12 July 2012 <http://bbop.forest-trends.org/guidelines/participation.pdf>.

¹⁵⁶ A possible difference is that existing ecological compensation schemes are not designed along any metrics to ensure no net loss of biodiversity which is the explicit aim of biodiversity offsets (Conway et al. 2013).

¹⁵⁷ Dickie, I., et al. 2010. The use of market-based instruments for biodiversity protection: The case of habitat banking. Technical Report by eftec IEEP and others. http://ec.europa.eu/environment/enveco/pdf/eftec_habitat_technical_report.pdf

biodiversity degradation in spite of offsetting.¹⁵⁸ It was also argued that, considering that this exploitation would take place anyway, compensation by offsetting is better than no compensation at all. In this debate there is a strong concern that policies for biodiversity offsets would result in less emphasis on the legal trial for planning permissions for exploitation projects. The risk is that such projects are accepted to a larger extent than presently, due to the expectation that “the damage will be compensated for anyway”. For example, Hough and Robertson (2009) argue that the US wetland mitigation has focused too much on the compensation part and neglected the earlier stages of the mitigation hierarchy.¹⁵⁹ The Swedish Environmental Court has made similar arguments, and used the compensation (offset) to justify that the national interest for nature conservation and recreation did not have to be weighed against the national interest for mining because other land areas would be restored which were thought to ensure that the value for nature conservation would remain the same.¹⁶⁰

A **substantive safeguard** against this risk is to apply the mitigation hierarchy in a strict sense by separating the process of planning permission (weighing competing interests according to environmental legislation, identifying “no-go areas” and searching for how the damage could be avoided by exploiting a less valuable area) from the process of determining an appropriate compensation, if and only if the exploitation project is approved.

Biodiversity offsets can function with or without a market, i.e. the weighing between the degraded ecosystem values and the restored values can be done by municipalities and multi-stakeholder agencies or by trading conservation credits (issued by these agencies). Except for the US habitat banking, almost all mandatory schemes for ecological compensation are determined by agencies; the most advanced examples in Europe are the German Compensation Pools.¹⁶¹ German compensation pools can be regarded as a form of habitat banking, but unlike US habitat banks the exchange of land is done by agencies or municipalities, not by a market of land exploiters and landowners. The advantage of a pool (“bank”), compared to case-by-case compensation, is that the agencies can choose compensation land to create green corridors in the larger landscapes and seascapes. This advantage is lost if market actors choose the site for compensation. In addition to mandatory programmes, a number of private sector industries have committed to no net loss, or net gain policies.¹⁶² The actual outcomes of these commitments would need to be assessed. Financial institutions such as the International Finance Corporation (IFC) Performance Standards 6 (PS6) guidelines and the Asian Development Bank have also developed environmental safeguards systems that include biodiversity offsets. For instance, the Asian Development Bank has developed the Safeguards Policy Document in 2009 that proposes to use biodiversity offsets as a “last resort” and also refers to the mitigation hierarchy.¹⁶³ Safeguards and guidance designed by financial institutions such as the IFC include rankings for biodiversity conservation which are drawn from existing conservation planning tools and approaches, including the IUCN Red List, Key Biodiversity Areas, and international bank environmental safeguard policies.¹⁶⁴

While some of the interviewees who informed this policy paper have highlighted that safeguards should be developed and implemented in this BFM, others considered that biodiversity offset mechanisms should not be developed as such, on the grounds of the biodiversity loss and social risks they pose and their lack of synchrony with the CBD’s objectives. One risk is that the offset mechanism

¹⁵⁸ Ogwal, S.F. and Schultz, M., 2014. *Co-Chairs’ Summary of Second Dialogue Seminar on Scaling up Finance for Biodiversity, Quito 9-12 April 2014*. Montreal: Secretariat of the Convention on Biological Diversity. <http://www.cbd.int/doc/meetings/fin/ds-fb-02/official/ds-fb-02-report-en.pdf>

¹⁵⁹ Hough, P. and M. Robertson. 2009. Mitigation under Section 404 of the Clean Water Act: where it comes from, what it means. *Wetlands Ecology and Management* 17(1):15-33.

¹⁶⁰ Environmental Court (MÖD) judgement 2006:49. <https://lagen.nu/dom/mod/2006:49>.

¹⁶¹ Conway et al. 2013.

¹⁶² OECD (2013), *Scaling-up Finance Mechanisms for Biodiversity*, OECD Publishing. <http://dx.doi.org/10.1787/9789264193833-en>.

¹⁶³ IUCN & ICMM’s Independent Report on biodiversity offsets (January 2013).

¹⁶⁴ Pilgrim, J et al, A process for assessing the offsetability of biodiversity impacts. *Conservation Letters*, 2013, vol. 6, no 5, p. 376-384.

would result in more permissions being approved, exemplified above with the US wetland banking. In terms of biodiversity risks, impacts in one area of an ecosystem may disturb the whole system and may affect its resilience. Moreover there is the risk of negative effects on unique ecosystems and species. Ecosystems and their functions including the livelihood opportunities that they offer are not fully replaceable in a strict sense. Likewise, biodiversity offsets risk not accounting for the non-use and intrinsic values of biological diversity.

Concerning social risks at the community level, local people in one region normally depend on the biodiversity and ecosystem services in that area for their livelihoods. It is there where their traditional knowledge is produced and constantly developed. This problem has been raised by actors such as Forest Peoples Programme.¹⁶⁵ If policies for biodiversity offsets result in approval of land exploitation that would otherwise not have been approved, the wellbeing of local communities will be compromised.¹⁶⁶

The biodiversity and social risks associated with offset schemes will therefore differ depending on the design, scale and place where these mechanisms are applied. Much of the debate at various conferences¹⁶⁷ about IFMs and BBOP have stressed that offsets should only be applied on a national and local level (see examples of national offsetting policies in Box 10). According to the BBOP Principles on Biodiversity Offsets, biodiversity safeguarding measures need to be taken so that offsets “achieve conservation outcomes above and beyond results that would have occurred if the offset had not taken place. Offset design and implementation should avoid displacing activities harmful to biodiversity to other locations”.¹⁶⁸ Keeping offset mechanisms within a country is considered to minimise the risks of displacement.

Box 10. Examples of biodiversity offsetting policies

Since 2005, the UK Government has implemented a biodiversity offsetting policy introduced in Planning Policy Statement PPS9 on Biodiversity and Geological Conservation and now superseded by the 2012 National Planning Policy Framework (NPPF).¹⁶⁹ The NPPF states: “When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles: if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”.

Brazilian regulation includes an offsetting policy. On each property larger than 50 hectares in the eastern, central-west and southern regions, the Brazilian Forest Code of 1965 (Law 4771) requires at least 20% of the native vegetation to be preserved as a Legal Forest Reserve and permits only sustainable forestry practices in these areas. If the landowner does not want to preserve the respective proportion of the land within the property, the landowner must buy similar land in a nearby area where the environmental restrictions would apply. In the event that the offset area is outside the original “microregion” or “hydrographic basin”, the compensatory area that the landowner must acquire increases. In these cases, State-level provisions encourage landowners to establish vegetation corridors.¹⁷⁰

¹⁶⁵ See Forest Peoples Programme, 2011, Submission to the Convention on Biological Diversity relating to innovative financial mechanisms and the rights of indigenous peoples and local communities.

¹⁶⁶ CBD 2011, IFM report.

¹⁶⁷ See e.g. CBD 2011, *IFM* report.

¹⁶⁸ BBOP Principles.

¹⁶⁹ PPS9 Defra, 2005, page 3, accessed 22nd May 2014.

<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/planningandbuilding/pdf/147408.pdf> f NPPF Department for Communities and Local Government 2012, page 27, accessed 1st October 2012
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf.

¹⁷⁰ Kate, K., Bishop, J., and Bayon, R. (2004). *Biodiversity offsets: Views, experience, and the business case*. IUCN, Gland, Switzerland and Cambridge, UK and Insight Investment, London, UK.

Possible social safeguards for offset policies include ensuring equity in the design and implementation of safeguards. In the BBOP Principles, this means “sharing rights and responsibilities, risks and rewards associated with a project and offset in a fair and balanced way, respecting legal and customary arrangements. Special consideration should be given to respecting both internationally and nationally recognised rights of indigenous peoples and local communities”.¹⁷¹

Case study III. Ecological compensation in Sweden, synchronizing biodiversity and social safeguards

The present analysis is a synthesis of Koh, N. S., Hahn, T., Ituarte-Lima, C. 2017. Safeguards for enhancing ecological compensation in Sweden. Land Use Policy, Volume 64, May 2017, Pages 186–199

Ecological compensation (EC), also known as biodiversity offsetting, involves compensating for the biodiversity losses that occur from economic activities in one place by conserving similar biodiversity values someplace else. This relocation of biodiversity values may affect the provision of cultural ecosystems services and thereby impact the wellbeing and rights of distinct individuals and groups. The voluntary CBD guidelines for safeguards in BFM (summarised in Table 5) are useful for synchronising biodiversity and social safeguards to promote resilience of social-ecological systems. This case study finds that safeguards specific to EC, which are embedded in national legislation, are key for operationalising social and ecological goals associated with BFM. Table 5 demonstrates how the two selected case studies in Sweden revealed important lessons learned and challenges that emerged in the implementation of BFM safeguards.

Despite the three CBD objectives that integrate social and ecological concerns, compensation projects in Sweden have so far focused on biodiversity values rather than social values.¹⁷² There have been few cases where the courts have required compensation for impacts on social or cultural values.¹⁷³ The Ecosystem Impact Assessment (EIA) serves as a preliminary platform for considering social values. A social impact assessment could be integrated with the EIA to assess what actors use both the ecosystems to be impacted and the compensation sites. Two cases from Sweden, dealing with transport infrastructure and mining, show how integrating biodiversity and social safeguards is especially important when selecting the compensation site and appropriate restoration measures.

The case studies show that biodiversity and social safeguards are intertwined with human rights, such as cultural rights, and rights over natural resources. Transparency in the measurements of biodiversity values and ecosystem functions used in EC, as well as how public participation is considered in decision-making is a part of integrating safeguards into this process. In creating an environment for exercising these rights, it is important to consider the impacts of loss and degradation of biodiversity in society, especially the effects on people in disadvantaged positions or with differentiated individual and collective rights. The means to safeguard social equity and socio-ecological related human rights, including rights of the Sami people, should be further developed in Sweden both in the legislation and implementation of EC.

E12 highway: Safeguarding people's wellbeing through access to recreation

According to Chapter 14 of the Swedish Road Law, road projects must be announced in advance and made available for public appeal. Since the proposed highway would compromise recreational values for the neighbouring community, the project ensured that reasonable access to recreation is maintained

¹⁷¹ Ibidem.

¹⁷² Runderantz, K., 2006. Environmental compensation in Swedish road planning. Eur. Environ. 16 (6), 350–367, <http://dx.doi.org/10.1002/eet.429>.

¹⁷³ Lerman, P., 2014. Kapitel 3: Kompensation för kulturmiljöintresse [Chapter 3: Compensation for cultural environmental interests]. In: Danielson, B., Lerman, P., Nordblad, J., Rönn, M., Swedberg, S., Grahn Danielson, B., Rönn, N., Swedberg, S. (Eds.), Kulturarv i samhällsplaneringen –Kompensation av kulturmiljövärden. Rio Kulturlandskapet and KTH/Arkitektur, Stockholm, pp. 39–82, Retrieved from http://www.kulturland.se/wp-content/uploads/2014/12/Kompensation_low.pdf

through on-site measures. Overall, the impact site community maintains reasonable access to recreation, while the compensation site community gains an improved recreational site. There is no ambition from the municipality to present the compensation project as a substitute for the impact site's loss of recreational values, nor the expectation that the impact site community will travel the five km distance to use the compensation site. The compensation mainly serves the purpose of helping to finance the restoration of a site located within the municipality's green infrastructure planning.

Mertainen mine: Safeguarding cultural rights and rights over natural resources

The right to herd reindeer is an important part of the indigenous Sami people traditions and essential to their livelihoods; as acknowledged in Chapter 1§2 of the Swedish constitution. However, the International Convention on Civil and Political Rights (ICCPR)¹⁷⁴ Committee¹⁷⁵ and the United Nations Human Rights Council's Report¹⁷⁶ of the Special Rapporteur on indigenous peoples, have recommended that Sweden take further measures to adequately define and recognize the Sami peoples' cultural rights and rights over natural resources. For instance, the Special Rapporteur on the rights of indigenous peoples, in its mission report on the human rights situation of the Sami people, notes that "Unlike its Finnish and Norwegian counterparts, the Minerals Act does not include any explicit references to Sami rights".¹⁷⁷ The recommendations to Sweden by the special Rapporteur includes a revision of its Minerals Act to ensure it is in compliance with international human rights standards and refers to adequate consultations with affected indigenous communities, mitigation measures, compensation, and fair and equitable benefit-sharing.

In 2012, the state-owned mining company LKAB signed a major agreement with the two Sami communities affected by the mine. The agreement represents a commitment by the mining company to compensate for reindeer husbandry losses caused by mining activities. For each intrusion into reindeer husbandry, LKAB committed to collaborate with the Sami communities in monthly consultations to reach a solution that minimizes interference. The agreement influenced mitigation issues such as the location of operations, a wildlife passage and monetary compensation for additional costs incurred such as feeding. Despite the agreement and monetary compensation, the mining project will still result in further losses of grazing land and physical obstacles. Even if the additional costs are paid for by LKAB, this cannot substitute for the cumulative losses of land endured by the Sami communities. A lesson from Mertainen mine is that when complex property rights and equity issues are at stake, an in-depth investigation for operationalizing social safeguards including socio-ecological related human rights and compensation of social values should be required.

¹⁷⁴ See International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

¹⁷⁵ International Convention on Civil and Political Rights Committee, 2009. Concluding Observations of the Human Rights Committee for the Ninety-Fifth session: Sweden, U.N. Doc. CCPR/C/SWE/CO/6, 20. Human Rights Committee, New York

¹⁷⁶ UN Human Rights Council, 2016. Report of the Special Rapporteur on the Rights of Indigenous Peoples on the Human Rights Situation of the Sami People in the Sápmi Region of Norway, Sweden and Finland. UN Human Rights Council, Retrieved, from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/175/50/PDF/G1617550.pdf?OpenElement>

¹⁷⁷ See par. 40, p. 12

Table 5. The CBD guidelines for safeguards in BFM and lessons learned from the operationalisation of safeguards in ecological compensation in Sweden.

CBD (2014) Guidelines for safeguards in Biodiversity Financing Mechanisms	a) Biodiversity values and ecosystem functions	b) People's rights, access to resources, and livelihoods	c) Local and country-driven/specific processes linked to the international level	d) Governance, enforcement and accountability
Examples of legal instruments applicable in Sweden	Mitigation hierarchy: a specific biodiversity safeguard for EC (Chapter 2§6 and 2§7 of the Environmental Code).	Participation rights and heightened protection of Sami people's and other ethnic minorities' cultural rights (Swedish Constitution Chapter 1§2).	Need to articulate the Environmental Code, e.g. Chapter 16§9, with the Swedish Constitution and international instruments, e.g. CBD Guidelines, human rights law including UNDRIP.	Developer obliged to conduct an EIA. If the permit is approved, the mitigation hierarchy and its enforcement is required (Chapter 16§9 and 26 of the Environmental Code).
Lessons learned concerning safeguards in E12 highway case	Swedish Road Law ¹⁷⁸ lacks EC legal provisions unless development occurs in protected areas.	Public consultation and EIA (Swedish Road Law §14) should be done early in the planning process.	EC for impacts in protected areas, e.g. Natura 2000, could support financing the municipality's green infrastructure.	EC exemptions to the development of roads limit enforceability of safeguards.
Lessons learned concerning safeguards in the Mertainen mine case	High conservation values in tension with mining extraction; both are legally considered "national interest".	Rights of local landowners are strong. Lack of explicit reference to Sami rights in the Minerals Act.	In operationalizing CBD and the EU's <i>no net loss</i> initiative, risks of biodiversity leakage arise.	Chapter 16§9 does not require full compensation (i.e. no net loss) and additionality is unclear. Social safeguards exist but were not sufficiently operationalized.

6.3 ENVIRONMENTAL FISCAL REFORM

Environmental fiscal reform can be defined as “a range of taxation or pricing instruments that can raise revenue, while simultaneously furthering environmental goals. This can be achieved by providing economic incentives to correct market failure in the management of natural resources and the control of pollution”.¹⁷⁹ The emphasis is on the simultaneous revenue raising and reduction of incentives to use the environment in an unsustainable way. Reducing perverse incentives, i.e. subsidies to unsustainable practices, are of course the most efficient way of raising revenues but this often involves challenging strong political-economic interests. Hence removing the most harmful subsidies makes economic sense but may be very hard politically.¹⁸⁰

¹⁷⁸ See Vägslag (1971:948) §18 for highways, <https://www.notisum.se/rnp/sls/lag/19710948.htm>

¹⁷⁹ World Bank, 2005. *Environmental fiscal reform. What should be done and how to achieve it*, The International Bank for Reconstruction and Development/The World Bank, Washington, USA
<http://siteresources.worldbank.org/INTRANETENVIRONMENT/Publications/20712869/EnvFiscalReform.pdf>, accessed 12 November 2012. See also OECD 2005 Environmental Fiscal Reform for Poverty Reduction, DAC Guidelines and Reference Series, : <http://www.oecd.org/greengrowth/green-development/34996292.pdf> accessed 12 November 2012.

¹⁸⁰ van Beers, C. and J.C.J.M. van den Bergh, 2001, Perseverance of perverse subsidies and their impact on trade and environment, *Ecological Economics* 36, 475-486.

Environmental fiscal reforms often include increased tax on fossil fuels and reducing other taxes such as labour taxes or earmarking the tax revenue for specific uses, like creating “green jobs”.¹⁸¹ In reality, there is rarely a clear match between taxes and subsidies in an environmental fiscal reform. For example, in countries like Costa Rica, Ecuador and Sweden, the largest revenues in their fiscal reforms have been fossil fuel and mining and these revenues have been used for a variety of purposes including PES schemes and labour tax reductions.

In South Africa, creating green jobs in order to deal with poverty and particularly attract young people into the new jobs created is part of the social dimensions of their fiscal reform. Recognizing that poverty is a big challenge in South Africa, the interviewee mentioned that one of the key priorities of the government is in terms of job creation and equitable sharing of benefits, which is embedded in the environmental sector as well as other sectors’ resource mobilization.¹⁸²

At the international level, sources for international innovative finances include new international taxes such as international airline taxes and international environmental footprint taxes. A financial transaction tax on the sale of financial assets, such as stock, bonds or futures, was proposed by the EU at the G20 summit in France in November 2011, as a way to increase funding for developing countries. An alternative is a currency-transaction tax (Tobin tax).¹⁸³

6.4 INTERNATIONAL DEVELOPMENT FINANCE AND OFFICIAL DEVELOPMENT ASSISTANCE

International development finance is the subject under the above-mentioned Goal 4.5: “To integrate biological diversity and its associated ecosystem services in the development of new and innovative sources of international development finance, taking into account conservation costs”.

At the Bonn meeting on IFMs held in 2009, options for financial innovations for biodiversity and ecosystem services within the international flows of funds for development were discussed. International flows of funds for development is a broad topic understood to include for example migrant workers’ remittances and Foreign Direct Investment. The outcomes of the meeting’s discussions can be clustered into three focal areas: first, innovative approaches for the use of funds; second, innovative approaches to the sources of funds and third, innovative international finance mechanisms.¹⁸⁴

Official Development Assistance (ODA) is dealt with under Goals 3¹⁸⁵ and 5¹⁸⁶ of the Strategy for Resource Mobilization which relates to the increase of ODA associated with biological diversity and poverty alleviation, and mainstreaming biological diversity and its associated ecosystem services in development cooperation plans and priorities. These include the linkages between the CBD’s work

¹⁸¹ See e.g. Humavindu, M. and Jonathan, I., 2006. The identification and quantification of best practice in innovative financing for biodiversity conservation and sustainable use in Namibia, DEA Research Discussion Paper, No. 75, July 2006 <http://www.drfn.info:85/pdf/RDP75.pdf> Accessed 22nd May 2014; Sahlén L. and Stage, J. 2012, Environmental Fiscal Reform in Namibia: A Potential Approach to Reduce Poverty? *The Journal of Environment and Development*, Vol. 21 no. 2 and Farooqui, M.F. and Schultz, M., 2012.

For a deeper description of the favourable conditions for implementing environmental fiscal reform, see UNEP (2004) *Opportunities and Challenges for the Use of Economic Instruments in Environmental Policy*, United Nations Environment Programme, Geneva, Switzerland. <http://www.unep.ch/etb/publications/EconInst/econInstruOppChnaFin.pdf> Accessed 22nd May 2014.

¹⁸² Interview conducted at the Third Meeting Of The Global Partnership For Business And Biodiversity took place in Montreal (Canada) the 2-3 of October 2013.

¹⁸³ Barbier E. (2012) Sustainability: Tax 'societal ills' to save the planet. *Nature* 483, 30.

¹⁸⁴ UNEP/CBD/WGRI/3/INF/5.

¹⁸⁵ Goal 3: Strengthen existing financial institutions and promote replication and scaling-up of successful financial mechanisms and instruments. 3.2 To strive to increase official development assistance associated with biological diversity, where biodiversity is identified as a priority by developing country Parties in poverty reduction strategies, national development strategies, United Nations development assistance frameworks and other development assistance strategies and in accordance with priorities identified in national biodiversity strategies and action plans.

¹⁸⁶ Goal 5: Mainstream biological diversity and its associated ecosystem services in development cooperation plans and priorities including the linkage between Convention's work programmes and Millennium Development Goals.

programmes and Millennium Development Goals as well as the Paris Declaration on Aid Effectiveness¹⁸⁷, as well as the four common principles for ODA adopted at the fourth High Level Forum on Aid Effectiveness in Busan 2011 which are 1) Ownership, 2) Results based, 3) Inclusive partnerships, and 4) Transparency and responsibility. In this context, safeguards in biodiversity-related ODA are linked to biodiversity for human well-being and poverty reduction, for example measures to ensure the sustainable use of biodiversity in productive landscapes such as agro ecological systems, forested areas, and inland and seascapes.

BFM is considered to be other financing than ODA, but ODA can provide seed money, and BFM could provide tools under ODA. When elaborating on safeguards in new and innovative sources of international development finance there is a need to learn from ODA e.g. regarding transparency, harmonization, alignment, efficiency, ownership, participatory approaches, rights issues and understanding of tenure and user rights, socio-cultural understanding, and the importance of gender issues in development. To safeguard these aspects, impact assessments are performed (see chapter 7). It is also important to recognise the development of policy coherence, notably between trade, environment and development cooperation, in safeguarding both social and environmental results.

Box 11. Plan Vivo System

In addressing safeguards in relation to ODA and biodiversity, it is critical to understand how ODA can ensure positive outcomes in terms of biodiversity, peoples' well-being and biocultural heritage. One initiative that has tried to address these issues is the Plan Vivo system. It was first conceived and developed as part of a UK Department for International Development (DFID)-funded research project in the Chiapas region of Southern Mexico in 1994. Subsequently it transformed itself into a Foundation. The Plan Vivo Foundation now governs and oversees the process of project design and registration all around the world, and it aims to ensure that producers in developing countries receive fair payments for the ecosystem services they deliver through their Plan Vivo.¹⁸⁸ The Plan Vivo System includes a set of standards, administrative processes, tools and guidance, which can be applied.

Community-based land-use projects under revision by the Plan Vivo system include the project "Much Kanank'aax, Carbon Offset Project" located in the Yucatan Peninsula in Mexico, an ecologically and culturally significant area with important carbon storage potential which is also highly vulnerable. Part of the project includes Maya traditional sustainable uses of forest resources, conservation and restoration activities.¹⁸⁹ Another example of a project in culturally and biologically rich areas is the project: "REDD in the Tambopata National Reserve and the Bahuaja-Sonene National Park in the Madre de Dios region, Peru".¹⁹⁰

6.5 MARKETS FOR GREEN PRODUCTS

There is a large and growing array of certification and labelling schemes that have developed environmental and social performance standards for "green products". These initiatives cover a wide range of sectors, from the certification of biodiversity offsets (e.g. in New South Wales)¹⁹¹, to standards for carbon, timber, agricultural commodities and tourism, among others. As just one indication of the scale of this market, the Ecolabel Index currently tracks ecolabels in 25 industry sectors, in 197 countries.¹⁹² Schemes may be national or global, and they may be supported by governments, civil society movements, and the private sector; several are partnerships among these actors.

¹⁸⁷ COP 9 Decision IX/11, Review of implementation of Articles 20 and 21, www.cbd.int/decision/cop/?id=11654, accessed 25 July 2012.

¹⁸⁸ See The Plan Vivo Standards 2008 available at www.planvivo.org/documents/standards.pdf.

¹⁸⁹ See <http://www.forestcarbonportal.com/project/index.php>

¹⁹⁰ See www.forestcarbonportal.com/project/ashaninca-communal-reserve-redd-project.

¹⁹¹ Department of Environment and Conservation (NSW) (2005) Biodiversity certification and banking in coastal and growth areas. DEC NSW: Sydney.

¹⁹² <http://www.ecolabelindex.com>.

The substantive priorities of these schemes vary considerably, including their degree of convergence with the guidelines put forward in this paper. For example, schemes such as Fair Trade or Social Accountability International prioritize social benefits, although they may also include a few environmental standards. In contrast, other schemes may enforce prescriptive standards for biodiversity conservation but have relatively few and/or flexible standards on social equity.

As witnessed by the wide body of research comparing and contrasting existing certification schemes and their impacts, there is both considerable potential to use certification as a means to assess and verify the application of safeguards, and a great need for ongoing research and communication to ensure transparency regarding the social and environmental claims they entail.¹⁹³

Box 12: Label IP-Suisse - System and criteria for biodiversity

IP-Suisse is a farmer association-led labelling scheme for food products. This label bases its image on “nature- and environment-friendly production” and on “biodiversity”. The participating farms are obliged to fulfill increasingly ambitious criteria concerning quantity and quality of ecological compensation areas (ECAs). Each ECA is rated according to criteria considering type, size and position of the area. The farm has to reach a minimal score which has been continuously increased during the past few years. The aim is to reach a network of ECAs all over the farm to ensure a minimal biodiversity standard on each farm. Furthermore, the farms have to accept specific limitations using fertilizers and pesticides beyond the general level of Cross Compliance (e.g. no herbicides in potatoes, no fungicides or insecticides in cereals). Scientific evaluation has shown a clear positive correlation between score and abundance and diversity of plant, insect and bird species.

Source: Federal Department of the Environment, Transport, Energy and Communications (DETEC), Switzerland's submission with comments on Discussion Paper on 'safeguards for scaling-up biodiversity finance and possible guiding principles' (UNEP/CBD/COP/11/INF/7).

Case study IV. Responding to agricultural disease in biodiversity hotspots

This case is based on research performed by Antoine Libert Amico who has been closely involved in research and the partnerships between universities, communities and *Programa Mexicano del Carbono*.

Shade-grown *arabica* coffee is the main source of income for millions of smallholders throughout Mexico and Latin America. Coffee plantations grown under the shade of diverse endemic species provide crucial ecosystem services (biodiversity, carbon stocks, and hydrological services) to coffee producing families and the general population, in a strident example of agrobiodiversity.

Sierra Madre of Chiapas in south eastern Mexico is a biodiversity hotspot with a tradition of smallholder shade-grown coffee production within and around protected areas and Biosphere reserves. The Chiapas Sierra Madre ecological region spans approximately one million hectares, of which 47% corresponds to protected areas (including three Biosphere Reserves) managed by the federal government.¹⁹⁴ Approximately 14% of the region is covered in coffee plantations, ranging from sun-grown *robusta* coffee monocultures in the lower regions, to diversified shade-grown agroforestry

¹⁹³ E.g. Jason Potts, Matthew Lynch, Ann Wilkings, Gabriel Huppé, Maxine Cunningham, Vivek Voora. 2014. The State of Sustainability Initiatives Review 2014: Standards and the Green Economy. IISD, IIED.

¹⁹⁴ Libert Amico, A. 2017. *La preparación ante un futuro incierto. Respuestas al cambio climático en la Sierra Madre de Chiapas, México*. PhD Thesis, Universidad Autónoma Metropolitana, unidad Xochimilco.

systems in and around cloud forests.¹⁹⁵ Coffee agroforestry systems increase connectivity between protected areas and biodiversity hotspots.

As of 2011 in Central America, and 2012 in Mexico, *arabica* coffee production has been devastated by a series of atypical outbreaks of coffee rust, in an epidemic which has been associated with global environmental change.¹⁹⁶

Agricultural institutes and coffee companies have sought to avoid further losses in coffee production by promoting rust-tolerant coffee varieties through aggressive plantation renovation campaigns.¹⁹⁷ These coffee renovation campaigns have been accompanied with recommendations for producers to reduce shade cover, since many favoured varieties are vulnerable to other diseases when grown under shade at high altitudes.

This response has encouraged the region's coffee producing systems to undergo a transition from rustic diverse crops mixed with endemic species of old growth and secondary forest as shade to, commercial sun-grown monocultures of rust-tolerant coffee varieties that have constrained the diversity of shade cover.¹⁹⁸ The latter type of coffee plantations has fostered a transition from low intensity organic management to a high intensity management that is increasingly dependent on agro-chemical inputs. In this region, the overall outcome has been land-use change, forest degradation, biodiversity loss, fragmentation in the continuum of certain species, and deepening of producers' dependency on external inputs. At the same time, new rust-resistant varieties have been questioned by the coffee industry for their limited storage capacity and lower cup quality.¹⁹⁹

This drastic change represents a setback for the fulfilment of international commitments in light of global environmental change. This includes the CBD's Aichi Biodiversity Targets, which discuss enhancing biodiversity and ecosystems services through sustainable management of agricultural areas, while recognizing the role of agricultural biodiversity in addressing pests and diseases (c.f. Targets 7, 13 and 14).

Some coffee cooperatives have sought to promote alternative strategies in coffee leaf rust management. These include plantation renovation campaigns with high-quality coffee varieties, pest management strategies based on principles of agroecology, and producer training in order to strengthen pest management. Though, most producers are pressured by economic losses to enter credit schemes that promote low quality coffee varieties which require less shade cover and more agricultural inputs (mainly fertilizers and fungicides). These coffee cooperatives are betting on maintaining coffee quality and traditional shade-grown varieties, rather than competing with large producers in terms of quantity.

In seeking to support local initiatives that favour shade-grown coffee producers and their ecosystems, the research centre *Programa Mexicano del Carbono* (Mexican Carbon Programme) has carried out a diagnostic of the environmental impacts of the coffee rust epidemic. They also looked at the impacts

¹⁹⁵ Data obtained from the Agrofood and Fisheries Information Service (SIAP in Spanish). <https://www.gob.mx/siap/acciones-y-programas/produccion-agricola-33119> Consulted in 2016

¹⁹⁶ Avelino, J., Cristancho M., Georgiou S., Imbach P., Aguilar L., Bornemann G., Läderach P., Anzueto F., Hruska A., and Morales, C. 2015. The coffee rust crisis in Colombia and Central America (2008-2013): impacts, plausible causes and proposed solutions, *Food Security* 7: 303-321.

¹⁹⁷ Dalberg, 2015. Smallholder tree crop renovation and rehabilitation (R&R). A Review of the State of the Emerging R&R Market and Opportunities to Scale Investment. The Sustainable Trade Initiative. Available at: <https://www.idhsustainabletrade.com/uploaded/2017/03/Dalberg-RR-Report.pdf>

¹⁹⁸ Libert-Amico, A., Wong González, J.C. y Paz Pellat, F. 2017. Impacto de la roya del café en los almacenes de carbono en la Sierra Madre de Chiapas. In: Paz, F. y R. Torres (eds.). *Estado Actual del Conocimiento del Ciclo del Carbono y sus Interacciones en México: Síntesis a 2016*. Programa Mexicano del Carbono and Universidad Autónoma del Estado de Hidalgo, Texcoco. pp 219-225.

¹⁹⁹ Libert, A., Ituarte-Lima, C., Elmqvist, T., in press. Learning from social-ecological crisis for legal resilience building: multilevel dynamics in the coffee rust epidemic.

of corresponding land use change, on the region's carbon stocks, floristic diversity, and soil nutrition. Results shed light on carbon emissions and biodiversity loss in the transition from complex polycultures of shade-grown coffee to high-productivity landscapes of new coffee plantations with varieties produced for industrial management. This social-ecological study is the basis for a series of proposed biodiversity financing mechanisms that favour carbon stocks and biodiversity in shade-grown coffee systems of the Chiapas Sierra Madre.

Proposed BFM include a certification currently under discussion with coffee cooperatives and fair-trade consumers, which would provide additional value to the carbon stocks and biodiversity in shade-grown coffee fields. Furthermore, the *Programa Mexicano del Carbono* is currently developing an insurance scheme to cover losses from coffee rust and avoid deforestation and habitat loss. In 2018, environmental authorities published a decree which seeks to regulate coffee renovation investments within the protected areas of this region so that they foment shade-grown agroforestry systems which are compatible with biodiversity conservation.²⁰⁰ This decree was a product of a long process of multi-stakeholder meetings and discussions which brought together environmental authorities with research centres and civil society organizations.

These BFM are the result of a two-year collaborative research program which brings together universities, research institutes, producers organisations and community authorities to seek alternatives to the social-ecological crisis derived from the coffee leaf rust epidemic. This work has been promoted by a publicly funded research institute which has allowed for involved actors to dedicate the necessary time in order to ensure transparency and build trust. Particularly between dedicated researchers in the field and coffee producers throughout the region. At the same time, collaboration agreements have been consolidated between research institutes, producers' organisations and government institutions to foment multilevel governance arrangements and institutional accountability.

Land tenure arrangements are a key issue in the governance of agriculturally biodiverse systems (see Table 6). For example, protected areas in Mexico tend to respect pre-existing land tenure, presenting the need for collaboration between conservation authorities and local inhabitants. The environmental authority CONANP (National Commission of Natural Protected Areas) is attributed to manage protected areas through management plans which regulate permitted activities. In 2018, after considering the environmental impacts of the responses to the coffee rust epidemic within protected areas in the Sierra Madre, CONANP published a decree inviting investments in coffee plantation renovation to encourage shade-grown agroforestry systems that are compatible with biodiversity conservation. Despite prolonged timeframes, multi-stakeholder fora can contribute data-driven policy recommendations in favour of sustainable pathways, which combine sustainable production with biodiversity conservation. The challenge remains of converting decrees which favour BFM into implementation (see Table 7 for lessons learned from this case).

Table 6. Lessons learned from safeguard-related provisions, both substantive and procedural, and their operationalization in agroforestry diverse systems.

Provisions		Selected safeguard-related governance strategy	Lessons learned
Biodiversity	Substantive	Program <i>Reglas de operación</i> (operation rules) has been shaped through social pressure to include regional realities, such as in the case of the forestry ministry (CONAFOR) programs like PES (which have been able to include shade-grown coffee) and Reforestation activities (which have included reforestation within coffee areas as potential receptors of support).	Regional intervention can promote innovation: although coffee fields have been known to be excluded from PES in other regions, PES schemes in the Sierra Madre region have included shade-grown coffee within supported areas. Scientific studies provide updated information on agroforestry systems' contributions to ecosystem services.
	Procedural	Exclusive jurisdiction of the State over natural resources (Art. 27 of the Constitution) supports effective sustainable use processes. Incentives include sanctions in case of environmental damages (as trees belong to the nation, tree felling requires corresponding permits, even if de	Dialogue and negotiation between coffee producers, research institutes and government institutions is key in order to update environmental management in light of social-ecological crisis. Dialogue might overcome barriers to cross-sector coordination

²⁰⁰ <http://ambio.org.mx/dictamen-tecnico-para-el-fomento-de-cafeticultura-en-areas-naturales-protegidas/>

		facto most forest related activity in the region is unregulated).	(e.g. between forestry and agriculture departments, or between environmental authorities and agricultural outlets).
Social	Substantive	Rights of forest owners to receive the benefits of environmental services conservation and/or improvement that derive from sustainable forest management (Sustainable Forest Development Law, Art. 134 <i>bis</i>)	It remains unclear how Mexico proposes to distribute benefits from emissions reductions, since conflicting claims for legal rights over benefits remain in process.
	Procedural	Participation of citizens in the decision-making process recognized and valued. Updated procedures to reach free prior informed consent.	Local efforts need to be developed in coordination with the international agenda in order to coincide with state priorities.

Table 7. Instruments for implementing the CBD guidelines for safeguards, and lessons learned, from coffee plantations affected by coffee rust

CBD Guidelines for safeguards in Biodiversity Financing Mechanisms	a) Biodiversity values and ecosystem functions	b) Rights and responsibilities of actors and/or stakeholders	c) Local and country-driven/specific processes linked to the international level	d) Governance, enforcement and accountability
Instruments	Mexico's official climate change documents and Vision of REDD+ mention the value of agroforestry systems in climate change mitigation and adaptation.	Participation forums, general assemblies, and stakeholder meetings have sought wide participation and input in this interdisciplinary participatory action-research project.	Focus on Chiapas Sierra Madre, allows for regional particularities to be included in state and national level planning. It also provides key input to negotiations with international donors such as the World Bank and GEF.	Public system for access to information are in place. ²⁰¹ Legal regulations mandate for participatory spaces in agriculture secretary, and environmental and forestry commissions.
Lessons of the case	High conservation values, compatible with local livelihoods, in tension with agricultural intensification and the demand from global markets. Within the coffee sector, conflict between high quality coffee beans (with a necessarily higher price) and less quality but high quantity monoculture production in response to rising demand.	The region's form of production must be taken into account: smallholders, both private and communal (<i>ejido</i>) landholders, with limited access to information, credits, markets and innovation.	Particular regional dynamics in this eco-region marked by indigenous and non-indigenous smallholders, in which coffee forests insure biological connectivity and ecosystem services.	Challenges in measuring DD. Information gaps (official statistics are not updated or with limited comparability due to diverse methodologies) Need for regulations to guide interventions by diverse actors (from different government institutes to distinct corporations).

6.6 CLIMATE FINANCING WITH CO-BENEFITS TO BIODIVERSITY

While REDD+ promotes the channelling of carbon finance to reduce forest loss, concerns have been raised regarding associated negative impacts, such as local communities losing their user rights and the conversion of natural ecosystems into tree plantations at the expense of biodiversity.²⁰² Appendix 1 gives the already agreed safeguard text for REDD+, but further attention to biodiversity and social safeguards coupled with accountability mechanisms is still needed to address these concerns. While there is potential for win-win situations in terms of forest-based climate change mitigation, biodiversity conservation and enhancement of the conditions for the wellbeing of forest-dependent

²⁰¹ Federal Institute for Access to Public Information and Data Protection (IFAI in Spanish)

²⁰² McDermott, C.L., Coad, L., Helfgott, A., Schroeder, H. (2012) Operationalizing social safeguards in REDD+: Actors, interests and ideas. *Environmental Science and Policy* 21:63-72. Van Asselt, H., 2011, Integrating biodiversity in the climate regime's Forest Rules: options and tradeoffs in greening REDD design. *Review of European Community and International Environmental Law* 20(2), 139-149.

peoples, it is necessary not to overlook the associated trade-offs.²⁰³ Experience from successful implementation of PES schemes at the national level could serve as a first test before entering or even qualifying for REDD+ since REDD+ involves all the challenges of national PES and on top of that adds a further, international, level of complexity.²⁰⁴

The CBD Secretariat has provided advice on the application of relevant safeguards for biodiversity with regard to REDD+ (see Box 13), which can be relevant also for biodiversity safeguards concerning ecosystems other than forests.²⁰⁵ Such advice identifies possible risks to biodiversity and indigenous peoples and local communities²⁰⁶ which include the conversion of natural forests to land uses of low biodiversity value and low resilience, an increased pressure on non-forest ecosystems with high biodiversity value as well as an absence of livelihood benefits to indigenous peoples and local communities and a lack of equitable benefit-sharing. It also mentions that safeguards, if designed and implemented appropriately, can reduce risks and enhance multiple benefits of REDD+ and acknowledges that financial support to countries is needed to implement such safeguards.

Box 13. Summary of CBD Advice on the application of safeguards for biodiversity with regard to REDD+²⁰⁷

• The Ecosystem Approach, and relevant operational level guidance	Decisions V/6 and VII/11
• The expanded programme of work on forest biodiversity	Decisions VI/22 and IX/5
• The Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity	Decision VII/12
• The Akwé: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding sacred sites ²⁰⁸ and lands and waters traditionally occupied or used by indigenous and local communities ²⁰⁹	Decision VII/16
• Spatially explicit information on biodiversity priority areas, for example as developed by many countries in their national ecological gap analysis under the programme of work on protected areas. ²¹⁰	Decision VII/28
• Voluntary guidelines on biodiversity-inclusive impact assessment	Decision VIII/28
• Elements of the Tkarihwaï:ri ²¹¹ Code of Ethical Conduct pertaining to research, access to, use, exchange and management of information	Decision X/42

²⁰³ Certain strengths and limitations have been highlighted by the literature regarding biodiversity co-benefits of REDD+ policies, see e.g. Phelps, J., Webb E. L. and Adams, W.M. (2012) Biodiversity co-benefits of policies to reduce forest-carbon emissions *Nature Climate Change* 2, 497–503, DOI:10.1038/NCLIMATE1462, accessed 2 August 2012.

²⁰⁴ It worth noting that some REDD+ activities are framed as PES. Yet, it is not clear if certain national and subnational-level activities under REDD+ fulfill the criteria to be considered PES. Sommerville, M.M., Jones, J.P.G. and Milner-Gulland, E.J. 2009, A Revised Conceptual Framework for Environmental Service, Ecology and Society 14(2): 34 [online] URL:<http://www.ecologyandsociety.org/vol14/iss2/art34/>.

²⁰⁵ UNEP/CBD/COP/11/24, Note by the Executive Secretary, 24 August 2012, <http://www.cbd.int/cop11/doc/> accessed 1 October 2012.

²⁰⁶ From the final report of the Global Expert Workshop on Biodiversity Benefits of Reducing Emissions from Deforestation and Forest Degradation in Developing Countries, Nairobi, Kenya, 20–23 September 2010 (UNEP/CBD/WS-REDD/1/3).

²⁰⁷ UNEP/CBD/COP/11/24, Note by the Executive Secretary, 24 August 2012, <http://www.cbd.int/cop11/doc/> accessed 1 October 2012.

²⁰⁸ See also IUCN resolutions and guidelines related to management and recognition of sacred sites in natural protected areas. IUCN Resolution, 4.038 http://intranet.iucn.org/webfiles/doc/IUCNPolicy/Resolutions/2008_WCC_4/English/RES/res_4_038_recognition_and_conservation_of_sacred_natural_sites_in_protected_areas_.pdf Accessed 26th May 2014;

IUCN, 2008. Statement of custodians of sacred natural sites and territories <http://www.gaiafoundation.org/sites/default/files/documents/Custodian-Statement-on-Sacred-Natural-Sites1.pdf> Accessed 26th May 2014

IUCN/UNESCO, 2008. Sacred natural sites, guidelines for protected area managers; http://cmsdata.iucn.org/downloads/pa_guidelines_016_sacred_natural_sites.pdf Accessed 26th May 2014;

IUCN, 2012. Recommendation, M054 Sacred natural sites, support for custodian protocols and customary laws in the face of global threats and challenges <https://portals.iucn.org/docs/2012congress/motions/en/M-054-2012-EN.pdf> Accessed 26th May 2014-05-27;

²⁰⁹ See also African Biodiversity Network Nanyuki Statement of common African customary laws for the protection of sacred sites in 2012. http://www.gaiafoundation.org/sites/default/files/documents/Statement%20of%20the%20Common%20African%20Customary%20Laws%20for%20the%20Protection%20of%20Sacred%20Sites%202012_0.pdf Accessed 26th May 2014.

²¹⁰ CBD Technical Series 24 *Closing the Gap: Creating ecologically representative protected area systems*, <http://www.cbd.int/doc/publications/cbd-ts-24.pdf> Accessed 21st May 2014

After Cancun, the 2011 Durban Climate Change Conference gave more room to financial cooperation between countries for REDD+ and launch the Safeguards Information System. The Swiss-Philippine Initiative “Best Practices in Governance and Biodiversity Safeguards for REDD- Plus: Valuing national and field bases experiences to catalyse synergy between the UNFCCC and CBD” aims that “both nations’ strong commitment towards community-based forest management, indigenous peoples’ rights, and environmental integrity and biodiversity conservation are reflected in the development and implementation of REDD- Plus internationally and nationally”. In the course on the initiative, consultations were conducted in Bohol, Philippines and Kathmandu, Nepal. The Initiative shows how safeguards are being adapted in practice and bringing “synergistic guidances” into UNFCCC and CBD processes including the following:

1. REDD-Plus implementation succeeds when it adds value to the overall national forest management strategy and local development goals
2. Transparency and effective participation in REDD-Plus entail ownership of forest governance structures by empowered local stakeholders
3. REDD-Plus should demonstrate that it facilitates sustainability of the forest sector by providing multiple benefits, including the conservation of biodiversity and ecosystem services, and the associated rights of indigenous and local communities, particularly in areas of high biodiversity value
4. The Safeguards Information System is a critical platform for demonstrating compliance with REDD-Plus safeguards that secures results-based payments
5. REDD-Plus payment schemes should form part of an innovative and sustainable financing strategy linked to broader performance parameters

The Swiss-Philippine Initiative provides with some recommendations and advocates:

- The development of synergies in the implementation of REDD+ (through a better and more effective national but also international cooperation between UNFCCC and CBD)
- A mutual recognition of guidances between the 2 organizations
- A facilitated common standards and guidances building process
- The creation of multi-levels multi-stakeholders processes
- The implementation of a multiple benefits model that will make REDD+ actions more sustainable and allow mitigation and adaption to last
- A development of safeguards information system following a transparent, inclusive and participatory approach (to respect landownership and communities’ rights)
- An equitable benefit sharing granted by governance frameworks (trial payments as suitability tests)
- A cost-benefit analysis of the different schemes when there are multiple benefits

The United Nations Forum on Forests’ conclusions and recommendations for addressing key challenges of forests and economic development recognize the linkages between forests and climate regulation and suggest among others “To promote cross-sectorial and cross-institutional collaboration through a landscape approach at the national and subnational levels that brings together forest-dependent communities, the private sector and local governments and share lessons learned in implementing a landscape approach to assist in achieving sustainable forest management”.²¹² Bolivia

²¹¹ Pronounced {Tga-ree-wa-yie-ree}, a Mohawk term meaning “the proper way”.

²¹² E/CN.18/2013/5, Istanbul, Turkey, 8-19 April 2013.

has utilised the recommendations and holistic approach of this recommendation by the United Nations Forum on Forests (E/CN.18/2013/5) for developing a “Joint Mitigation and Adaptation Mechanism for the Comprehensive and Sustainable Management of the Forest and the Mother Earth”. This mechanism aims to promote integrated and sustainable management of forest in synergy with other elements of systems of life (land, water, forest and biodiversity) as well as with the development of sustainable production systems. It also aims to put into practice the integrated and indissoluble goals of mitigation and adaptation to climate change.²¹³

Case study V. Linking REDD+ and CBD guidelines for safeguards

This case study is based on the article by Claudia Ituarte-Lima and Constance L. McDermott. 2017. *Are More Prescriptive Laws Better? Transforming REDD+ Safeguards into National Legislation*. Journal of Environmental Law, 0, 1–32; and McDermott, C. L., and C. Ituarte-Lima. 2016. Safeguarding what and for whom? The role of institutional fit in shaping REDD+ in Mexico. Ecology and Society 21(1):9. <http://dx.doi.org/10.5751/ES-08088-210109>. Further analysis linking the cases with the CBD voluntary guidelines was developed by Rodrigo Martínez-Peña and Claudia Ituarte-Lima.²¹⁴

Economic instruments that aim to reduce carbon emissions from deforestation, can directly co-benefit both the conservation and sustainable use of biodiversity and ecosystems as well as the human rights of indigenous peoples and local communities. However, ensuring this synergy requires of implementing safeguarding instruments. Under this assumption, REDD+ has developed safeguards compatible with CBD guidelines for safeguards in BFM.²¹⁵ Experiences on implementing REDD+ can provide important lessons on how to shape voluntary safeguards in general, and on how to enhance positive effects and minimizing risks of drawing on REDD+ as BFM, in particular.

Mexico hosted the UNFCCC Conference of the Parties in which the Cancun REDD+ safeguards were adopted. This created a political momentum at national level that gave rise to a set of three REDD+ related legal reforms and its associated safeguards. Changes were made to the *Ley General del Equilibrio Ecológico y Protección al Ambiente* (hereafter referred to as the National General Environmental law), *Ley General de Desarrollo Forestal Sustentable* (hereafter referred to as the National Forest Law) and *Ley General de Cambio Climático* (hereafter referred to as the National Climate Change Law). Through these regulations, the Mexican government made some of the REDD+ related safeguards binding. From these regulations, clear substantive and procedural co-benefits to biodiversity arose, from which is possible to draw lessons (see Table 8). Mexico exhibits characteristics that make it a relevant example of adoption and implementation of biodiversity and social safeguards. Firstly, it is a biodiversity hotspot, meaning that it possesses significant biodiversity that is threatened with destruction. Secondly,²¹⁶ 80% of Mexico’s forest area belongs to either *ejidos* or indigenous communities who collectively manage their forests. Finally, both *ejidos* and indigenous communities are governed by communal assemblies that operate under internal regulations, as supported the Mexican Agrarian Law²¹⁷. The lessons learned from this case are presented below and sorted according to the accepted CBD guidelines for safeguards in BFM (see Table 9 for a summary).

²¹³ Pacheco, D. (2003), Vivir Bien en Armonía y Equilibrio con la Madre Tierra: una propuesta para el cambio de las relaciones globales entre los seres humanos y la naturaleza, Fundación de la Cordillera La Paz.

²¹⁴ As part of the evolving nature of safeguards, there have been certain legal and policy development after this case study was conducted which go beyond the scope of this study.

²¹⁵ The full text of the Cancun safeguards can be found at UNFCCC ‘The Cancun Agreements: Outcome of the work on the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention. Report of the Conference of the Parties on its sixteenth session’ (29 November–10 December 2010) (2011) FCCC/CP/2010/7/Add.1. See also UNFCCC ‘Guidance on systems for providing information on how safeguards are addressed and respected. Report of the Conference of the Parties on its seventeenth session’ (28 November to 11 December 2011) (2012) FCCC/CP/2011/9/Add.2.

²¹⁶ T. M. Brooks, *et al.* 2006. Global Biodiversity Conservation Priorities. *Science* 313, 58

²¹⁷ Mexican Agrarian Law. Article 22 and Article 10. 2017. http://www.diputados.gob.mx/LeyesBiblio/pdf/13_270317.pdf

Table 8. Lessons learned from biodiversity and social safeguards in REDD+ related legal provisions in Mexico

Provisions		Selected safeguard-related provision	Lessons learned
Biodiversity	Substantive	<p>‘Environmental services’ definition explicitly refers to benefits generated by ecosystems, ‘necessary for the survival of the natural and biological system as a whole’ (LGEEPA, art 3 XXXVI).</p> <p>The definition for ‘Environmental services’ explicitly refers to benefits generated by forest ecosystems including ‘biodiversity protection’ (LGDFS, art 7 XXXIX).</p> <p>It is stated as a duty of the executive power to create economic mechanisms to promote forest owners to produce environmental services as a means to guaranteeing biodiversity and human life sustainability (LGDFS, art 30 VII).</p>	These provisions’ effectiveness could gain from synchronisation with biodiversity procedural safeguards.
	Procedural	Article 45 of National Forest Law establishes a Measurement, Reporting and Verification System focusing on carbon	The National Safeguards System as well as biodiversity monitoring could be implemented through a MRV system, though policy integration is lacking
Social	Substantive	<p>Rights to Equitable distribution of benefits from environmental services to owners and legitimate possessors of forest land (art 133 and 134 BIS II LGDFS); and “Inclusion and territorial, cultural, social and gender equality” (Article 134 bis IV. LGDFS).</p> <p>“Certainty and respect to property rights and legitimate possession and access to natural resources of owners and legitimate possessors” (Article 134 bis III. LGDFS).</p> <p>“Recognition and respect to all forms of internal organization” (Article 134 bis VII. LGDFS).</p> <p>The ‘Environmental services’ definition explicitly refers to benefits generated by ecosystems necessary “to provide human benefits” (LGEEPA, art 3 XXXVI).</p>	<p>These safeguards could gain from synchronisation with social procedural safeguards.</p> <p>People within ejidos that rely on ecosystems but hold no land rights are the most vulnerable so they should be taken into account in the design of carbon-related policies and instruments.</p> <p>Dialogue Clash between governmental regulations and local institutions can be addressed through dialogue for shaping of safeguards.</p>
	Procedural	<p>FPIC: Right of ejidos, communities and indigenous peoples to free, prior informed consent (art 134 BIS LGDFS)</p> <p>“Social diversity and participation” and “inclusion and territorial, cultural, social and gender equality” (Article 134 bis V. LGDFS and Article 134 bis IV. LGDFS)</p>	<p>Local groups not falling into indigenous peoples, communities or ejidos have no access to FPIC</p> <p>Previous institutional arrangements both at local and national level might hamper safeguards on participation, equality and inclusion</p>

Source: Ituarte-Lima C. and C. L. McDermott. 2017. Are More Prescriptive Laws Better? Transforming REDD+ Safeguards into National Legislation. *Journal of Environmental Law*, 0, 1–32

Lessons learned from REDD+ legal provisions in Mexico through the lens of *guideline (a) Biodiversity underpins local livelihoods and resilience*

Expanding carbon-related safeguards to include wider ecosystem services. Regulations supporting REDD+ that address carbon-related ecological processes have the potential to integrate ecosystems and biodiversity, which strongly coheres with Cancun safeguard (e) “That actions are consistent with the conservation of natural forests and biological diversity”. In the Climate Change Law it is stated that government at all levels, ‘should collaborate in reducing emissions and sequestering carbon from agriculture, forests and other land uses,’ and then it complements ‘as well as in preserving ecosystems and biodiversity.’²¹⁸ This article constitutes a substantive safeguard that prevents the implementation of policies that would promote a carbon-oriented management and disregard a wide variety of process supporting both human wellbeing and ecological resilience.

Legal provisions for safeguarding ecosystem services that support healthy ecosystems. The Mexican Environmental Law refers to ‘Legal and environmental policy instruments for regulating and enhancing conservation and improvement of environmental services [...]’.²¹⁹ The definition of

²¹⁸ Climate Change Law. Article 34.1. http://www.inecc.gob.mx/descargas/2012_lgcc.pdf

²¹⁹ National General Environmental Law. Art 3 XXXVI. http://www.diputados.gob.mx/LeyesBiblio/pdf/148_240117.pdf

ecosystem services in this law goes beyond the common anthropocentric focus on benefits only to people by including, ‘benefits generated by ecosystems, that are necessary for the survival of the natural and biological system as a whole’. Still, local communities and indigenous peoples have to legally prove that specific benefits generated by ecosystems are necessary for the survival of both the natural and biological system as a whole. Explicit recognition to values and definitions concerning ecosystems embedded in consuetudinary norms could contribute to fill this gap (see lesson ‘establishing sustained dialogue with consuetudinary systems’ in CBD guideline (d) section). Some key ecosystem services might be pollination, soil formation and predator-prey relations. These kind of more flexible measure are relevant to prevent a restrictive interpretation of ‘ecosystem services’ definition leading to conservation strategies opposing either local people’s use of natural resources or general ecological resilience.

Lessons learned from REDD+ legal provisions in Mexico case through the lens of guideline (b) *People’s rights, responsibilities and effective participation*

Explicitly defining FPIC right holders. The amendment of the National Forest Law recognises ‘ejidos, communities and indigenous peoples’ as right holders of FPIC.²²⁰ This procedural safeguard extended the legal possibility of exercising FPIC from its original application exclusive to indigenous peoples, according to the Mexican Constitution, to also include local communities and *ejidos*. Additionally, it reinforced the rights of indigenous peoples by recognising them also as a legal entity entitled to exercise the FPIC right.

People in vulnerable situations that historically rely on ecosystems but hold no land rights. Land rights holders often represent a small portion of the local population that draw on local ecosystems to fulfil their needs in both *ejidos* and communities. Land titles are often inherited by the oldest male descendant. Under this distribution of land ownership, benefits from policy instruments supporting biodiversity conservation and reducing carbon emissions pose two risks. First, it might reinforce inequality within *ejidos* and communities by benefiting only land right holders. Second, activities supporting livelihoods of non-landholders can be restricted. Combined, these risks increase the likelihood of internal conflicts and represent a threat to the long-term viability of instruments such as REDD+. The right to livelihood underpinned by ecosystems is still to be safeguarded for those holding no land titles.

Recognizing people’s contribution to sustainable environmental governance. The National Forest Law constitutes a substantive safeguard establishing a direct relation between rights and duties in forest management.²²¹ It links economic benefits of environmental policy instruments to ‘owners and legitimate possessors of forest land’ that perform ‘sustainable forest management’ and ‘maintain and/or improve environmental services’. It also includes a equality related provision among right holders concerning the ‘Equitable distribution of benefits’.²²²

Adopting a bottom-up approach for the MRV system. Measurement, Reporting and Verification (MRV) system required by REDD+ is a carbon procedural safeguard, though it can be a means to make effective procedural social safeguards on participation and information. This would require including a bottom-up approach and recognizing different knowledge systems in the development and monitoring of MRV systems. Through dialogue, local stakeholders can contribute to shape MRV

²²⁰ National Forest Law. Article 134 bis I. http://www.diputados.gob.mx/LeyesBiblio/pdf/259_240117.pdf

²²¹ National Forest Law. Article 134 bis. http://www.diputados.gob.mx/LeyesBiblio/pdf/259_240117.pdf

²²² National Forest Law. Article 134 bis II. http://www.diputados.gob.mx/LeyesBiblio/pdf/259_240117.pdf

systems by identifying what information is needed and how can be collected, e.g. through community monitoring (see lesson ‘Including cross-scale dialogue as a procedural safeguard’ in CBD guideline (d) section). Public participation of right-holders in MRV can help to identify potential locally tailored procedural safeguards. Additionally, these measures may contribute to solve issues faced by policies of both climate change and biodiversity conservation, such as displacement of biodiversity loss and carbon emissions that occur when resource exploitation is transferred to another locality. MRV can include community monitoring, which empowers right holders to produce information on the state of ecosystems under REDD+. As in Mexico short MRV implementation times have limited participation, it is suggested to schedule implementation times that provide room to comprehensive participatory processes.²²³

Lessons learned from REDD+ legal provisions in Mexico through the lens of guideline (c) *Local and country-driven/specific processes linked to the international level*

Implementing international safeguards while supporting national driven processes. The amended National Forest Law²²⁴ states that, “Legal instruments and environmental policy for regulating and promoting conservation and improvement of environmental services, must guarantee the respect of safeguards recognized by international law”. This safeguard could significantly gain from appointing the task of generating further operative regulations (*reglamento*) to a specific government agency. Operative regulations could benefit from specifying how international regulations will be applied to particular carbon-related financing mechanisms, such as REDD+. Nonetheless, it is recommended to leave space for dialogue when designing and implementing recently adopted safeguards (see lesson ‘Including cross-scale dialogue as a procedural safeguard’ in CBD guideline (d) section).

Dialoguing with consuetudinary systems. Amendments to the national forest law included “Recognition and respect to all forms of internal organization”.²²⁵ This substantive safeguard has complex implications. On the one hand, it provides legal support to consuetudinary norms regulating livelihood related practices that foster sustainable use of local biodiversity and ecosystems; on the other, consuetudinary institutions have the risk to reinforce local inequalities. Under these conditions, dialogue processes can help progressively address sustainability and inequality issues while respecting internal organizations (see lesson ‘Including cross-scale dialogue as a procedural safeguard’ in CBD guideline (d) section).

Lessons learned from looking at REDD+ in Mexico through the lens of guideline (d) *Governance, institutional frameworks, transparency, accountability and compliance*

Finding synergies among policies. Amendment in the National Forest Law²²⁶ states that policy tools and instruments in the three government levels must be, “interlinked, integrated, coordinated and complementary”. Although this provision allocates the duty of preserving biodiversity and ecosystems to all government levels in collaboration (relevant to CBD safeguard (b)), which delineates a cross-scale approach necessary to tackle complexity of ecosystem loss and degradation, it poses important institutional challenges. For instance, Mexico adopted a National Safeguards System separate from the MRV system. This separation can limit opportunities of policy integration and hamper implementation

²²³ National Forest Law Art 45. http://www.diputados.gob.mx/LeyesBiblio/pdf/259_240117.pdf

²²⁴ Ibid 9.

²²⁵ National Forest Law Article 134 bis VII. http://www.diputados.gob.mx/LeyesBiblio/pdf/259_240117.pdf

²²⁶ National Forest Law Article 134 bis VIII. http://www.diputados.gob.mx/LeyesBiblio/pdf/259_240117.pdf

of the interlinked dimensions of the Climate Change Law,²²⁷ the National Forest Law and community rights. Institutional coordination and coherence could benefit from appointing the task of facilitating coordination to a specific government agency.

Implementing cross-scale dialogue as a procedural safeguard. In Mexico, pre-existing institutions at both local and national levels established conditions giving rise to inequalities that are hard to overcome through REDD+ safeguards only. For instance, at the national level, government agencies involved in setting parameters for REDD+ implementation have often crafted rules and norms without taking into account local visions of sustainability. Cross-scale dialogue could be implemented as a procedural safeguard that would help to support inclusive sustainability visions. This can be done by using a ‘Not too tight, not too loose’ approach, which recommends enough precision regarding State’s obligations to protect human rights, while leaving room for how safeguards will be operationalized - by means of dialogue.

Table 9. Instruments for implementing the CBD guidelines for safeguards, and lessons learned, from REDD+ related regulations in Mexico

CBD Guidelines for safeguards in Biodiversity Financing Mechanisms	a) Biodiversity values and ecosystem functions	b) Rights and responsibilities of actors and/or stakeholders	c) Local and country-driven/specific processes linked to the international level	d) Governance, enforcement and accountability
Instruments	<i>‘Environmental services’ definition explicitly refers to benefits generated by ecosystems, ‘necessary for the survival of the natural and biological system as a whole’ (LGEEPA, art 3 XXXVI)</i>	“Certainty and respect to property rights and legitimate possession and access to natural resources of owners and legitimate possessors” (Article 134 bis III. LGDFS)	Article 134 bis of the National Forest Law included explicitly international safeguards	Article 34.1 of the Climate Change Law and Article 134 bis VIII of the National Forest Law establish that federal, state and municipal government levels should collaborate in carbon and ecosystem conservation issues. Article 134 bis IV ‘inclusion and territorial, cultural, social and gender equality’ and Article 134 bis VII of the National Forest Law “Recognition and respect to all forms of internal organization”
Lessons of the case	Locals and indigenous people are forced to legally prove that specific benefits generated by ecosystems are necessary for the survival of the natural and biological system as a whole. Explicit recognition to values and	Not all inhabitants in <i>ejidos</i> , or indigenous communities that rely on the local ecosystem and biodiversity have property rights. Furthermore, not all local groups fall into these categories. Safeguarding	Lack of specificity hampers applicability.	Appointing the process of integrating policies in a synergic way to a specific government agency, so collaboration can be reached. Safeguards seeking inclusion, participation and equality might clash with pre-existent

²²⁷ Climate Change Law. http://www.inecc.gob.mx/descargas/2012_lgcc.pdf

	definitions concerning ecosystems embedded in consuetudinary norms could contribute to fill this gap.	livelihoods of these groups is key for avoiding conflict.		institutional arrangements at local and national level. Cross-scale dialogue as a formal safeguard can help to overcome these barriers.
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7. SAFEGUARDS AND ENVIRONMENTAL IMPACT ASSESSMENT

Prior to developing BFM safeguards, environmental impact assessments can be relevant for identifying what needs to be safeguarded in the respective BFMs and specific cases. Environmental Impact Assessment (EIA) is a formal study conducted prior to the implementation of a policy or a project for analysing its potential effects on the environment. In some cases, it also includes an evaluation of whether impacts can be mitigated and managed (UNEP-UNDP, 2010).

The CBD Secretariat's Advice on the application of relevant safeguards for biodiversity with regard to REDD+, explicitly mentions the assessment of impacts of mitigation and adaptation measures on biodiversity "...based on results from strategic environmental assessments (SEAs)²²⁸ and environmental impact assessments (EIAs) that facilitate the consideration of all available climate-change mitigation and adaptation options..."

This is in accordance with framework principle 8 on human rights and the environment that states, "To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights".²²⁹

The Human Rights Council's Compilation of Good Practices establishes that, assessing environmental impacts is a procedural obligation of States for safeguarding the substantive right to the enjoyment of a safe, clean, healthy and sustainable environment.²³⁰ Likewise, the UN rapporteur of human rights points out that it is, "state's obligation to provide for the assessment of environmental impact assessment (EIA) that may interfere with human rights".²³¹ Moreover, the monitoring of performance and compliance of the EIA and Environmental Management Plans if implemented adequately can lead to greater transparency and accountability. Every State has an obligation to provide for the assessment of environmental impacts that may interfere with the full enjoyment of human rights

Box 14. The European Union recognises procedural safeguards dimensions of EIA

²²⁸ [Decision VIII/28](#) (Voluntary guidelines on biodiversity-inclusive impact assessment).

²²⁹ Knox, 2018 A/HRC/37/59

²³⁰ UN, 2015 - A/HRC/28/61

²³¹ Knox, 2017

The EU Directive 2003/35 recognises the right of participation in decision-making involving EIAs (Directive 85/337) and provides for judicial remedies in cases where the right of participation is not respected.²³²

The EU, in its submissions sent to the CBD secretariat responding to paragraph 8 (c) of decision X/3 A, mentioned that, “Prior to the implementation of any kind of innovative financial mechanism, a thorough environmental impact assessment needs to be carried out in order to evaluate and gauge the impact on biodiversity but also on the larger environment”.²³³

Case study VI. Environmental Impact Assessment in Lao PDR

This case is a synthesis of Martinez-Peña, R., Ituarte-Lima, C., Kempf, I., and Wong, G., (forthcoming) *Connecting the dots between Human Rights, Environmental Impact Assessments and the Convention on Biological Diversity*.

During the last decades, high inflows of foreign direct investment have driven a remarkable economic growth in Lao People’s Democratic Republic (PDR).²³⁴ Development of the mining, biofuel, hydropower, forestry and agriculture sectors, have vigorously driven deforestation, land cover conversion, pollutants spills, erosion, and damage to waterways and fish stocks²³⁵. Consequently, profound impacts to biodiversity, ecosystem health and human rights took place in spite of existing regulatory measures.²³⁶ EIA has been integral part of regulations of natural resources and land concessions.²³⁷ However, compliance was very uneven across the country, associated rules and procedures were unclear, capacity and resources to monitor investments were lacking, agreement with investors was reached before conducting an EIA, and not all stakeholders were included in consultations.²³⁸

During the last decade, one of the government’s main policy efforts to minimize negative impacts of foreign direct investment while maximizing its benefits has been strengthening the EIA system. The Ministry of Natural Resources and Environment work in close and sustained collaboration with the Poverty–Environment Initiative (PEI) (a UNDP-UNEP programme addressing country-specific poverty-environment nexus), the Finnish-funded Environmental Management and Support Programme (EMSP) replacing the earlier Swedish Strengthening Environment Management, and the Swiss-funded Centre for Development and Environment. Together, they revised the EIA regulatory framework and enhanced its implementation through capacity building and development of guidelines for officers. EIA was replaced by ESIA (Environmental and Social Impact Assessment), which included social dimensions.²³⁹ One of the improvements addressed in the new regulatory framework was in the consistency between substantive and procedural provisions for both social and biodiversity related issues. There is still room for improvement, as shown in Table 10. This case is an example of how social and biodiversity safeguards can be put in place by building on existing regulatory frameworks and policy instruments.

²³² Poncelet, C. (2012) Access to Justice in Environmental Matters—Does the European Union Comply with its Obligations? *J Environmental Law*, first published online March 16, 2012 doi:10.1093/jel/eqs004.

²³³ Synthesis on Innovative Financial Mechanisms, Note by the Executive Secretary, UNEP/CBD/COP/11/14/Add.3, 28 August 2012.

²³⁴ The World Bank. Lao PDR Southeast Asia Disaster Risk Management Project (P160930). 2017. Project Information Document/Integrated Safeguards Data Sheet (PID/ISDS). Report No: PIDISDSC19620

²³⁵ Poverty - Environment Initiative (PEI) Lao PDR. 2010. Economic, social and environmental impacts of investments in mining. Issues Brief 08. www.unpei.org/sites/default/files/dmdocuments/PEI%20brief%2008_2010_Mining_english_d.pdf Accessed 10th September 2017.

²³⁶ Regulation No. 1770/STEA: Regulation on Environment Assessment in the Lao PDR. 2000. Lao People’s Democratic Republic.

²³⁷ e.g.: Water and Water Resources Law (1996), Mining Law (1997), Law of Minerals (2011).

²³⁸ Jusi (2010); PEI Mining briefing (2010); PEI Plantations briefing (2010)

²³⁹ UNEP-UNDP. 2015. Seeds of CHANGE.

The relevant lessons learned from this case to implement EIA as a biodiversity and social safeguard, have been organized according to the CBD voluntary guidelines for safeguards in BFM (see Table 11 for a summary).

Lessons learned from looking at ESIA in Lao PDR through the lens of guideline (a) *Biodiversity underpins local livelihoods and resilience and HR principle of interconnectedness and indivisibility*

Recognizing the underpinning role of biodiversity for human rights. Laotian Constitution allocates the responsibility of protecting the environment and natural resources to ‘all organisations and citizens’.²⁴⁰ This provision can be interpreted to embed human rights obligations of State related to biodiversity and healthy ecosystems because biodiversity underpins healthy ecosystems that provide ecosystem services on which the constituents of wellbeing/ human rights depend - such as the right to life, health and food.²⁴¹

Table 10. Lessons learned from safeguard-related legal provisions of the ESIA regulatory framework in Lao PDR

Provisions		Selected safeguard-related legal provision	Lessons learned from the case
Biodiversity	Substantive	It is the duty of all organisations and citizens to protect the environment (Art. 19. Laotian Constitution).	It could gain from recognizing biodiversity as underpinning ecosystem services, on which human rights depend
	Procedural	ESIA mandatory for investment projects likely to affect sites of high value either environmental or social (Ministerial Agreement No. 8056/ MONRE - Remarks) Evaluation of impacts on biodiversity is based on scientific knowledge. (Environmental Impact Assessment Guidelines. Appendix 9 – 2.1) Updated regulations specifying the types of development projects requiring ESIA making operations easier (Ministerial Agreement No. 8056/ MONRE - Remarks)	This safeguard could gain from specifying which impacts on biodiversity and ecosystems are not allowed. The evaluation system could gain from including values from other knowledge systems. High level of specificity makes procedures easier to comply, assess and monitor
Social	Substantive	Land use rights are granted to customary users (art.26. Decree on the Implementation of the Land Law No. 88/PM). Article 17 of Laotian Constitution establishes that ‘The State protects the property rights (such as the rights of possession, use, usufruct and disposition)’	Recognition of customary rights could gain from coherence with procedural safeguards preventing legalization of involuntary re-settling.

²⁴⁰ See Article 19 in Lao People’s Democratic Republic Constitution. 2003.

²⁴¹ United Nations, General Assembly. 2017. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. A/HRC/34/49. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/97/PDF/G1700997.pdf?OpenElement> Accessed 18th November 2017

	Procedural	<p>Informed public involvement free of power abuse is a joint responsibility of both government and the project developer (<i>Ministerial Instructions No. 8029/MONRE and 8030/MONRE</i>). Local population hold the right to participate in all the ESIA-related discussions at all government levels (Decree No 112/PM).</p> <p>Project developers must compensate project-affected persons for losing land use rights as well as for cultural losses (Art. 6 Decree on Compensation and Resettlement Management in Development Projects No. 192/PM; Art. 3; Decree on Compensation and Resettlement Management in Development Projects No. 84).</p> <p>Project developers have the responsibility of funding public involvement and making it effective (Art. 8; No 112/PM On Environmental Impact Assessment; Ministerial Instructions No. 8029/MONRE and 8030/MONRE).</p> <p>Project-affected persons hold the right to submit a proposal to the government regarding compensation, resettlement, and rehabilitation of their livelihood from the development project; (Art. 3; Decree on Compensation and Resettlement Management in Development Projects No. 84)</p>	<p>Several provisions could jointly achieve FPIC if project-affected persons and local stakeholders have and enjoy the right of veto.</p> <p>If compensation is not linked to FPIC, it risks to legalizing cultural loss or involuntary displacement</p> <p>As interests of the public and project developers might be opposed, a third party could undertake participation responsibilities.</p> <p>Access to grievance mechanisms is key to operationalize this procedural safeguard.</p>
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Safeguarding places of high bio-cultural value. According to the EIA Decree, investment projects are divided in two categories depending on their potential impact, Environmental and Social Impact Assessment (ESIA) or the lesser strict study Initial Environmental Evaluation (IEE).²⁴² If an investment project is likely to affect sites of either high biological or social value – according to other regulations - conducting the most comprehensive EIA is mandatory.²⁴³ Although conservation forests and UNESCO sites are recognized, this safeguard could gain from specifying other social, cultural, biodiversity and ecosystems related criteria of “no-go areas” customary lands or ecologically fragile areas, which are not formally recognized.

Integrating values from different knowledge systems. Although ministerial regulations²⁴⁴ state that knowledge of local stakeholders and project-affected persons regarding impacts on biological aspects must be included in the environmental impact assessment, the system for evaluating the relevance of biodiversity and ecosystems is based on ‘consensus in the scientific community’.²⁴⁵ Including values from different knowledge systems in the evaluation process would complement the capacity of scientific knowledge to safeguard important components of biodiversity and ecosystems.²⁴⁶ It would also attribute relevance to species and ecological processes important for livelihoods, food security and cultural wellbeing at the local level.

Linking compensation for cultural loss to FPIC. EIA guidelines contemplate compensation for cultural losses such as those related to traditional livelihoods, institutions and use of natural resources.²⁴⁷ This provision aims to establish a disincentive for developers risking to produce impacts on local societies that traditionally use biodiversity and ecosystems sustainably. Compensation provisions need to be synchronized do not replace the need to safeguard procedural rights such as FPIC, public participation and access to information.

²⁴² See Art. 2 in Ministerial Decree No. 112/PM: Decree on Environmental Impact Assessment. 2010.

²⁴³ See Remarks in Ministerial Agreement No. 8056/ MONRE: Ministerial Agreement on the Endorsement and Promulgation of List of Investment Projects and Activities Requiring for Conducting the Initial Environmental Examination or Environmental and Social Impact Assessment. 2013.

²⁴⁴ See Art. 2.8 in Ministerial Instruction 8029/MONRE: Ministerial Instruction on the Process of Initial Environmental Examination of the Investment Projects and Activities. 2013; and Art 2.12 in Ministerial Instruction 8030/MONRE: Ministerial Instruction on Environmental and Social Impact Assessment Process of the Investment Projects and Activities. 2013.

²⁴⁵ See Appendix 9 – 2.1 in Environmental Impact Assessment Guidelines. 2011.

²⁴⁶ Tengö, M., Brondizio, E. S., Elmqvist, T., Malmer, P., & Spierenburg, M. 2014. Connecting Diverse Knowledge Systems for Enhanced Ecosystem Governance: The Multiple Evidence Base Approach. *Ambio*, 43(5), 579–591. <http://doi.org/10.1007/s13280-014-0501-3>

²⁴⁷ See Chapter 3.6 in Environmental Impact Assessment Guidelines. 2011.

Lessons learned from looking at ESIA in Lao PDR through the lens of guideline (b) *People's rights, responsibilities and effective participation*

Need to synchronize procedural and substantive rights. The EIA Decree recognizes the right to information through stating that, “project-affected persons have the right to be previously and thoroughly informed about development projects, the right to discuss at all government levels EIA related document and processes including information on substantive issues such as compensation, mitigation resettlement and restoration”.²⁴⁸ Furthermore, *Ministerial Instructions*²⁴⁹ state that project developers should not make use of, “threat, coercion, force, violence, bribery or deception”. These procedural safeguards could jointly constitute the equivalent of rights to FPIC by also including the right of veto.

Recognizing and defending land property rights. According to Laotian constitution, “The State protects the property rights (such as the rights of possession, use, usufruct and disposition)”. Furthermore, land regulations recognize customary use rights that protect social groups that have traditionally used territories in spite of not having certificates.²⁵⁰ Nonetheless, these substantive rights have not been enough to prevent involuntary resettlements.²⁵¹ Regulations on compensation and resettlement establish project developers must compensate impacts on lands of project-affected persons by providing a similar piece of land in a different location.²⁵² Under power imbalances conditions, compensation mechanisms risks allowance of involuntary displacement. Adopting FPIC is a procedural means to make land rights a safeguard.

Implementing public participation and avoiding conflict of interests. Laotian regulation establishes that government and project developers have the shared responsibility of making participation effective by providing information in local language, collecting opinions of project-affected persons and other stakeholders²⁵³, and promoting informed public involvement free of power abuse. Similarly, financing involvement of project-affected persons is a cost assumed by project developers.²⁵⁴ However, making project developers responsible for public participation constitutes a conflict of interests. Project developers have the incentive to not incorporate the concerns of participants who might oppose the investment project being evaluated. Allocating the responsibility of implementing public participation to independent agencies with no economic and/or political interest in the assessment's outcome, could be a way forward to address this challenge. Right holders should have direct access to this agency

Improving monitoring of public participation. In order to assess efforts on improving participation, PEI provided officials from the Department of Environmental and Social Impact Assessment with training to obtain evidence of public involvement in the hydropower, agriculture and mineral sectors.

Providing access to remedies. Project affected persons have the right to enter into dispute with the project developer on rights and responsibilities in managing and utilizing of natural resources and

²⁴⁸ Ministerial Decree No. 112/PM: Decree on Environmental Impact Assessment. 2010. Lao People's Democratic Republic. Available at: <http://www.laolandissues.org/wp-content/uploads/2011/12/EIA-Decree-112-PM-2010-Inofficial-transl.-Eng.pdf> Accessed 10th September 2017

²⁴⁹ Ministerial Instructions No. 8029/MONRE and No. 8030/MONRE

²⁵⁰ See Art. 26 in Ministerial Decree No. 88/PM: Decree on the Implementation of the Land Law. 2008.

²⁵¹ Delang C. And M. Toro. 2011. Hydropower-induced displacement and resettlement in the Lao PDR. *South East Asia Research*, 19, 3, pp 567–594 doi: 10.5367/sear.2011.0056

²⁵² See Art. 7 in Ministerial Decree No. 192/PM: Decree on Compensation and Resettlement Management in Development Projects. 2005.

²⁵³ See Art. 8 in Ministerial Decree No. 112/PM: Decree on Environmental Impact Assessment. 2010.

²⁵⁴ Ministerial Instruction 8029/MONRE: Ministerial Instruction on the Process of Initial Environmental Examination of the Investment Projects and Activities. 2013; Ministerial Instruction 8030/MONRE: Ministerial Instruction on Environmental and Social Impact Assessment Process of the Investment Projects and Activities. 2013.

biodiversity.²⁵⁵ Likewise, project affected persons have the right to submit a proposal to the government in regards to compensation, resettlement, and rehabilitation of their livelihood from the development project.²⁵⁶ In order to improve the effectiveness of these safeguards, it is relevant to ensure access to grievance mechanisms and to spaces for submitting proposals.

Lessons learned from looking at ESIA in Lao PDR through the lens of guideline (c) *Local and country-driven/specific processes linked to the international level*

Investigating local reality for tailored strategies. PEI (an initiative implemented by UNDP and UN Environment), conducted several case studies across many sectors in order to identify local necessities and institutional gaps. This information aimed to raise awareness among policy makers about the importance of integrated approaches in environmental governance, and was helpful to tailor strategies that strengthen institutions and establish better handling of foreign direct investment. This can foster an enabling environment to exercise human rights. Through PEI, Lao PDR has engaged with neighbouring countries to learn from their EIA experiences (e.g. Thailand) and shared their lessons with others (e.g. Myanmar). These exchanges can benefit the countries to strengthen their policy and legal framework. They can help to ensure that foreign direct investment benefits the sustainable use of their resources and their people, and at the same time prevent and even end human rights violations linked to the exploitation and use of natural resources

Relying and building on pre-existing regulations. Part of the strategy to enhance the safeguarding capacity of ESIA was providing means to increase the effectiveness of pre-existing regulations.²⁵⁷ PEI and other development programs, such as the Finnish-supported Environmental Management Support Program and the Swiss-funded Centre for Development and Environment, contributed to strengthen the ESIA-related regulations. They also assisted in putting them in practice by building capacity.

Lessons learned from looking at ESIA in Lao PDR through the lens of guideline (d) *Governance, institutional frameworks, transparency, accountability and compliance*

Implementing standard procedures. The EIA system in Lao PDR lacked clear procedures. This was addressed through guidelines for reviewing the ESIA submitted by project developers, and guidelines for the monitoring of social and environmental impacts.²⁵⁸ PEI complemented these procedural safeguards, by providing the staff of the Department of Environmental and Social Impact Assessment in both central and provincial levels with training. Likewise, PEI worked with the Ministry of Planning and Investment to develop Memorandum of Understanding legal templates and Concession Agreement for the agriculture and tourism sectors that reflects social and environmental

²⁵⁵ Ministerial Decree No. 112/PM: Decree on Environmental Impact Assessment. 2010. Lao People's Democratic Republic. Available at: <http://www.laolandissues.org/wp-content/uploads/2011/12/EIA-Decree-112-PM-2010-Inofficial-transl.-Eng.pdf> Accessed 10th September 2017.

²⁵⁶ See Art. 3 in Decree on Compensation and Resettlement Management in Development Projects No. 84. 2016.

²⁵⁷ E.g. Ministerial Instructions No. 8030/MONRE and No. 8056/ MONRE rely on a regulatory framework that includes Constitution of Lao PDR the Environmental Protection Law, the EIA Decree, the Law on Investment Promotion, among other regulations.

²⁵⁸ UNEP-UNDP Poverty–Environment Initiative. 2010. Guidelines and Checklists to Review Environmental and Social Impact Assessments. ESIA Component, Lao PDR. https://www.unpei.org/sites/default/files/e_library_documents/ESIA_review_guidelines_JULY_16_2010_for%20consultations.pdf Accessed 1st September 2017.

considerations.²⁵⁹ These legal templates can be useful to mainstream human rights and biodiversity into investment projects, such as agriculture and tourism.

Self-financing of the ESIA system. Aiming to achieve financial sustainability of the ESIA system, PEI developed a manual on financial management regulations.²⁶⁰ This financial management system is for internal use of the Department of Environmental and Social Impact Assessment within the Ministry of Environment and Natural Resources, in order to monitor financing received from ODA and investment projects and their associated expenditures.

Promoting synergies on monitoring between government agencies. PEI worked together with the Centre for Development and Environment, to promote coordination and collaboration between the Investment Promotion Department and the Department for Environmental and Social Impact Assessment. Jointly, they worked to link their investment compliance database and environmental and social compliance databases, which enhanced their ability to monitor development projects. This procedural tool can contribute to increase transparency and compliance. To begin to link their investment compliance database and environmental and social compliance databases this, PEI linked the database of the Investment Promotion Department with the one of the Department of Environmental and Social Impact Assessment. Joint monitoring led to an increase in resource efficiency. It also enabled better networking, coordination and information sharing between the Ministry of Planning and Investment and the Ministry of Natural Resources and Environment. Then, they identified remaining gaps and are currently working on it. The fact that this database is institutionalized helps ensuring sustainability of PEI results.

Table 11. Regulations for implementing the CBD guidelines for safeguards, and corresponding lessons learned from the ESIA regulatory framework in Laos PDR

CBD Guidelines for safeguards in Biodiversity Financing Mechanisms	a) Biodiversity values and ecosystem functions	b) Rights and responsibilities of actors and/or stakeholders	c) Local and country-driven/specific processes linked to the international level	d) Governance, enforcement and accountability
Instruments	ESIA includes specific criteria for assessing the value of biodiversity and ecosystems that might be impacted by development projects. Criteria are based on scientific consensus (Appendix 9 – 2.1. Environmental Impact Assessment Guideline).	The article 8 of the Environmental Impact Assessment Decree widely establishes procedures for informing and consulting project-affected persons and local stakeholder all along the stages of the development project.	Both guidelines for conducting and for reviewing ESIA state that relevant international agreement should be included in the assessment among other elements to take into account. (Chapter 4.4.3 EIA Guidelines, 2011; Guidelines and Checklists to Review Environmental and Social Impact Assessments).	Ministerial Instruction No. 8056/ MONRE specifies what types of development projects have to conduct Environmental and Social Impact Assessment, which enhanced compliance. Additionally, it specifies that projects likely to affect sites of high social or biological value are obliged to conduct ESIA.
Lessons of the case	Including local knowledge systems as assessment criteria would complement the capacity to safeguard important natural components at local	Safeguarding participation related rights such as the right to information and the right to consultation is key, but in order to gain effectiveness it is required to	These procedural measures could gain from increasing the obligation level of complying with international agreements.	PEI general strategy to enhance the safeguarding capacity of EIA consisted in providing means to enhance compliance of pre-existing national regulations.

²⁵⁹ UNDP-PEI. 2016. Poverty Environment Initiative (PEI) Phase 2. Project Brief. Project ID: 00078225. Available at: http://www.la.undp.org/content/dam/laopdr/docs/Project%20Briefs_Fact%20Sheets/Environment/FINAL%20PEI%20Project-Brief_Dec2016.pdf Accessed 10th September 2017

²⁶⁰ *Idem*

	level as well as sustainable practices.	safeguard the right to veto.		
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8. PROPOSED ELEMENTS FOR AN OPERATIONAL ROADMAP: RESOURCE MOBILIZATION AND SAFEGUARDS IN THE POST-2020 GLOBAL BIODIVERSITY FRAMEWORK

Note: the box and table in this section still need to be included in the index

The guidelines outlined above, need to be incorporated into a roadmap for operationalization and resource mobilization that complements the key milestones of the CBD up to 2020. These kind of measure can inform the post-2020 global biodiversity framework. Below we outline some possible elements of the strategies for this implementation. We build on prior CBD Decisions and other relevant legal and policy instruments that were mentioned earlier in this publication, as well as in Outcomes on safeguards at the last CBD meetings on CBD-WG 8(j) 10th and SBI2 (see the checklist included in Box 15).

Following the request of the Conference of the Parties at its thirteenth meeting, the CBD Executive Secretary issued a notification and received submissions on experiences in relation to using the CBD voluntary guidelines on safeguards in BFM. In accordance with paragraph 21 of decision XIII/20 on resource mobilization, the Executive Secretary made the submissions available to the Ad Hoc Open-ended Working Group on Article 8(j) (WG8J) and Related Provisions. This Working Group on Article 8(j) (WG8J) and Related Provisions developed recommendations for increasing effectiveness of safeguards for indigenous peoples and local communities for the consideration by the Subsidiary Body on Implementation at its second meeting (CBD/WG8J/10/6). Along with the submissions, the Working Group presented a document containing information relevant for safeguards and indigenous peoples and local communities. Subsidiary Body of Implementation 2 building on input from WG8J, the submissions and other relevant document made recommendations on how to address both the overarching topic of biodiversity and social safeguards. They also made recommendation for specifically in relation indigenous peoples and local communities (CBD/SBI/2/20). The proposed roadmap in this publication continues to build on CBD meetings' outcomes and the contributions by Parties and other groups.

Box 15

Checklist of safeguards in biodiversity financing mechanisms under the convention on biological diversity

The following questions may be used as a checklist for complying with the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms.

Overall question on the purpose of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms

Does the financing mechanism have a safeguard system designed to effectively avoid or mitigate its unintended impacts on the rights and livelihoods of indigenous peoples and local communities in accordance with national legislation, and which maximizes its opportunities to support them?

Guideline A: The role of biodiversity and ecosystem functions for local livelihoods and resilience, as well as biodiversity's intrinsic values, should be recognized in the selection, design and implementation of biodiversity financing mechanisms.

A.1 Is the role of biodiversity and ecosystem functions for local livelihoods and resilience recognized in the selection, design and implementation of the mechanism?

A.2 Are biodiversity's intrinsic values recognized?

Guideline B: Rights and responsibilities of actors and/or stakeholders in biodiversity financing mechanisms should be carefully defined, at national level, in a fair and equitable manner, with the effective participation of all actors concerned, including the free prior informed consent, prior informed consent or approval and involvement of indigenous peoples and local communities, taking into account, the Convention on Biological Diversity and its relevant decisions, guidance and principles and, as appropriate, the United Nations Declaration of the Rights of Indigenous Peoples.

B.1 Are the rights and responsibilities of actors and/or stakeholders carefully and equitably defined?

B.2 Has there been effective participation of all actors concerned in the definition of such roles and responsibilities?

B.3 Has there been free prior informed consent, prior informed consent or approval and involvement of indigenous peoples and local communities in the definition of such roles and responsibilities?

B.4 Has the mechanism considered the Convention on Biological Diversity and its relevant decisions, guidance and principles and, as appropriate, the United Nations Declaration on the Rights of Indigenous Peoples?

Guideline C: Safeguards in biodiversity financing mechanisms should be grounded in local circumstances, should be developed in consistency with relevant country-driven/specific processes as well as national legislation and priorities, and take into account relevant international agreements, declarations and guidance developed under the Convention on Biological Diversity and, as appropriate, the United Nations Framework Convention on Climate Change, international human rights treaties and the United Nations Declaration on the Rights of Indigenous Peoples, among others.

C.1 Are the financing mechanism's safeguards grounded in local circumstances?

C.2 Are safeguards consistent with relevant country-driven/specific processes as well as national legislation and priorities?

C.3 Do they consider the instruments mentioned in point B.4 and the United Nations Framework Convention on Climate Change, international human rights treaties and others, as appropriate?

Guideline D: Appropriate and effective institutional frameworks are of utmost importance for safeguards to be operational and should be put in place, including enforcement and evaluation mechanisms that will ensure transparency and accountability, as well as compliance with relevant safeguards.

D.1 Are appropriate and effective institutional frameworks in place to ensure application of the safeguards?

D.2 Does the safeguard system include enforcement and evaluation mechanisms?

D.3 Are requirements of transparency and accountability included?

D.4 Are all stakeholders involved complying with relevant safeguards?

Additional questions elaborated from the relevant decisions, guidance and principles under the Convention on Biological Diversity would include the following:

E. Are there provisions to promote equity, or reduce risks of inequity, in benefit-sharing?

F. Are cultural impact assessment procedures included in safeguard instruments? Do they specifically include respect for the spiritual values of indigenous peoples and local communities?

G. Is customary use considered in avoidance of risks?

- H. Are there safeguards in relation to the traditional knowledge of indigenous peoples and local communities, especially regarding the protection of their knowledge rights?

Submissions received by the Executive Secretary (See Table xx), highlight issues with a broader scope such as identifying synergies between the CBD guidelines for safeguards in BFM and 2030 Agenda for Sustainable Development and incorporating a gender perspective.

Table XX. Overview of submissions on the voluntary guidelines on safeguards in biodiversity financing mechanisms for both WG8J 10th and SBI2, and relation with the guidelines-related development in the present report.

Submissions to the SCBD by Parties and relevant stakeholders to WG(8j)	Synthesis of inputs (see also CBD/WG8J/10/6)	Incorporation of comments in this publication
European Union and its Member States	Voluntary guidelines for safeguards in BFM need to be piloted and implemented.	Case studies with examples of how the CBD guidelines for safeguards can be operationalized.
Sweden	The 2030 Agenda for Sustainable Development is an opportunity to strengthen policy coherence putting sustainability, human rights and the perspective of poor people at the centre.	Guideline c refers explicitly to international agreements such as the international human rights treaties and the roadmap calls for fostering synergies with 2030 Agenda for Sustainable Development
	Sweden's Sami Parliament finds 2030 Agenda to have a common ground with the voluntary guidelines	
The Forest Peoples Programme and several IIFB member organizations	(a) to provide clear and transparent information	Included in the guideline b as FPIC
	(b) to work in appropriate methodologies with an indigenous perspective	Guideline b takes this approach into account referring explicitly to UNDRIP. Lessons learned in case study IV highlights the importance of tailored methodologies including those by indigenous peoples and local communities
	(c) to undertake research aimed to the protection of traditional knowledge, from the experience of the communities themselves	Case study V exemplifies how incorporating traditional knowledge contributes to safeguarding ecosystem services and livelihoods through policy tools such as EIA.
Global Forest Coalition/Community Conservation Resilience Initiative	Moving away from government-centric approaches by strengthening community conservation initiatives and seeking broader support beyond narrow results-based payments.	Lessons learned including case study IV highlights the importance of horizontal dialogue between government and indigenous peoples and local communities as a safeguarding mechanisms for designing and implementing BFM
	Enhancing participation and FPIC of indigenous peoples and local communities, including women in national policies, plans and programmes for biodiversity and related	Included in the guideline b as FPIC. Lessons learned from the case studies including case study IV and operationalisation of guideline b, highlight the need of affirmative action for

	financing mechanisms.	enabling conditions for people to exercise their rights in particular those in vulnerable situations.
The Indigenous Women's Network on Biodiversity from Latin America and the Caribbean	Framing biodiversity financing mechanisms not only on returns or benefits from carbon sequestration but on broader conservation and sustainable use benefits, linked to a wide consideration of ecosystem services.	Recommendations aligns with guideline a. Lessons learned including in case study IV show a way forward to take a more holistic approach to climate financing.
The Foundation for Aboriginal and Islander Research Action (FAIRA) ²⁶¹	Development of a possible element of work in the post-2020 biodiversity framework's for Article 8(j) and related provisions, of a specific safeguards framework under the CBD for indigenous and local communities based on principles, standards and guidelines adopted under the Convention.	This recommendation is address in the section below as well as in the proposed operational roadmap.

Note: see prior submissions and the way they have been incorporated in the report in the Appendix

General recommendations concerning biodiversity and social safeguards

CBD documents (CBD/WG8J/10/6 and CBD/SBI/2/20), highlight that “convergence is emerging between the existing processes for developing and/or improving safeguard systems of the financing mechanisms and the Convention’s voluntary guidelines on safeguards in biodiversity financing mechanisms” and encourage all such processes to further refer to the CBD guidelines for safeguards in order to create greater convergence (see recommendations 1, 3 and 4 in Box 16). Among the processes highlighted by these documents are the World Bank and the International Finance Corporation, the Global Environment Facility, and funds under the financial mechanism of the United Nations Framework Convention on Climate Change, such as the Green Climate Fund and the Adaptation Fund, REDD+ and REDD+ related safeguards, and the Gold Standard for the Global Goals. CBD/SBI/2/20 recommendation 4 is that GEF informs the Conference of the Parties about how it is taking into account the CBD voluntary guidelines on safeguards in biodiversity financing mechanisms in its process of reviewing and upgrading its environmental and social safeguards and the related systems of its agencies. It also notes that the result of such a process will be applicable to all projects funded by the Facility.

The recommendations adopted by the SBI in its second meeting, includes a checklist in an annex that serves as a first step to comply with the CBD guidelines for safeguards in BFM (see Box 15 with the checklist). SBI recommends to include in the upcoming CBD-COP Decision to urge, “Parties, other stakeholder organizations and other institutions to continue using the Convention’s voluntary guidelines on safeguards in biodiversity financing mechanisms in designing and operating their financing mechanisms and in setting up their safeguard systems, making use, as appropriate, of the checklist contained in the annex to the present decision”. This effort might be complemented by developing specific checklists for safeguards as they applied to distinct BFM. Likewise, Parties, other

²⁶¹ This submission was received in response to a notification dated 15 January 2018 which provided an opportunity for additional views before the second meeting of the Subsidiary Body on Implementation. A submission from United States of America was received but it is not included here as it is a suggestion of re-wording recommendations. (CBD/SBI/2/20)

stakeholder organizations and other institutions, might obtain significant benefits from developing and implementing a platform to share lessons learned in a systematic way. This aligns with recommendations included in this publication building on CBD decisions and associated Parties and other stakeholders submissions.

Specific recommendations concerning indigenous peoples and local communities

A key lesson learned from the case studies in this document shows that tenure rights are critical aspect in safeguarding both biodiversity and human rights. This finding resonates with the recommendation by CBD/SBI/2/20 that, “Recognizes the importance of tenure over traditional territories (lands and waters) of indigenous peoples and local communities for their survival and ways of life”. It also highlights that “holistic, solid safeguards backed by transparent accountability and constant vigilance are therefore required in line with international obligations and frameworks, such as the United Nations Declaration on the Rights of Indigenous Peoples, and instruments, decisions and guidelines of the Convention on Biological Diversity. This recommendation also refers to the full and effective participation of indigenous peoples and local communities and their free prior informed consent, prior informed consent or approval and involvement of indigenous peoples and local communities, in accordance with national processes, policies and legislation, as appropriate”.

It is advised to assess the complex dynamics that affect tenure rights and develop appropriate safeguards concerning this substantive right and associated procedural safeguards that support their implementation. The findings from the case studies included in this publication, highlight that the ability of indigenous and local communities to safeguard their bio-cultural heritage and tenure rights is key to biodiversity conservation and sustainable use, as well as for an enabling environment for the exercise of other human rights such as right to food. Recommendations of SBI2 resonate with these findings. SBI recommends to request the Executive Secretary the development of a post-2020 specific safeguards framework on indigenous peoples and local communities under the Convention, based on principles, standards and guidelines adopted under the Convention. This safeguards framework could be included as a possible element of work on Article 8(j) and related provisions within the post-2020 biodiversity framework and be a means of implementing the CBD voluntary guidelines for safeguards and other relevant legal and policy instruments.

The CBD Secretariat: engagement in active dialogue with the other Secretariats of the Rio Conventions, and other relevant organisations can form the basis for the co-development of a strategy that provides coherence to guidelines and safeguards across diverse international institutions that represent the many different interests in BFM. The aim of such a dialogue would be to address the intended and unintended impacts of financing mechanisms and contribute to a just and equitable governance of biodiversity and ecosystems. The outcome strategy could then be presented to Parties.

Organisations to engage in this dialogue working with substantive and procedural dimensions relevant for safeguards *inter alia* the Human Rights Council, the UN Permanent Forum on Indigenous Issues (UNPFII), the World Bank’s Inspection Panel, the International Development Law Organisations, the Intergovernmental Platform on Biodiversity and Ecosystem Services (in particular concerning its work

on policy tools and methodologies) and organisations involved on resource mobilisation for the Millennium Development Goals (MDGs) and post-2015 development agenda.

- **Member States:** the guidelines can be reflected in national law, policies and practices, as appropriate in exercise of States' sovereign rights over their biological resources and associated national autonomy in decision-making. National systems can be developed for biodiversity and social safeguards, following the best practices that are currently emerging worldwide. Institutional arrangements should enable the effective participation of relevant stakeholders, *inter alia* local communities and indigenous peoples. Steps to inform national responses should include: a) identifying national legal provisions and policies relevant to substantive and procedural safeguards applicable to mechanisms for financing biodiversity and ecosystems; b) performing an assessment of the appropriateness and gaps of existing safeguards-related provisions in responding to the risks and opportunities of biodiversity financing mechanisms; and c) taking action towards harmonising different safeguards in scaling-up biodiversity financing, using the guidelines.
- **To the CBD Secretariat and Member States:** it is advised that the COP encourages Parties to report to the CBD Secretariat their safeguarding strategies associated with BFM, including pilot experiences. Lessons learned could be drawn from these strategies and could support the Executive Secretariat in providing advice to Parties and other stakeholders on how to better implement the guidelines for maximising the biodiversity and social benefits of BFM while also addressing the risks and challenges, building on tangible experiences from various countries.

9. CONCLUDING REMARKS

Scaling-up biodiversity financing can be a means for meeting the CBD Objectives and the Aichi Biodiversity Targets. Both opportunities and risks exist, and need to be taken into account in the mobilization of resources for biodiversity. Key concerns are the potential impacts of BFM on different elements of biodiversity, and their effects on the rights and livelihoods of different individuals and groups in society. Issues of empowerment, capacity and equity are particularly acute for indigenous peoples and local communities, given their close interdependence with their local environments. Gender issues also need to be taken into consideration.

Developing, implementing and providing coherence to biodiversity and social safeguards across national and international institutions is necessary for addressing unintended impacts of financing mechanisms. Safeguards in the environmental arena are evolving, and no longer relate just to the smooth administrative implementation of a mechanism. Safeguards can play a key role in improving equity and trust relationships between distinct stakeholders. Safeguards framed in a rights/responsibilities based approach can serve in constructively finding consensus for equitably allocating biocultural rights and duties among multiple parties.

In a progressive interpretation of safeguards, a plurality of legal systems including customary, national and international laws needs to be recognised. The dialectic interaction of these systems plays an important role in both social and environmental wellbeing.

8.1 SAFEGUARDS AND PAYMENTS FOR ECOSYSTEM SERVICES

Legislative and policy efforts should not be focused on regulating indigenous peoples and local communities with strict conservation efforts, but rather on changing the drivers of unsustainable natural resource management such as illegal logging. This can be done through indirect safeguards for tackling these drivers. In addition to these indirect safeguards in PES, direct procedural safeguards can be developed. For example, a process can be put in place for achieving free prior informed consent and mutually agreed terms and conditions between land users and other stakeholders in PES contracts. These should be synchronised with substantive safeguards in the distribution of the bundles of tenure/property rights. These safeguards should observe, at a minimum, internationally agreed commitments that refer to equitable allocation of rights and duties in for example the CBD, UNFCCC, international human rights treaties and the United Nations Declaration of the Rights of Indigenous Peoples.

8.2 SAFEGUARDS AND OFFSETS

Bearing in mind the unproved dimensions of biodiversity offsets and applying the precautionary principle, well-designed procedural safeguards should be in place for the careful and participatory assessment of the design, approval and implementation of offset mechanisms. CBD tools such as the Akwe:kon guidelines on environmental, social and cultural impact assessment can serve to inform such assessments and identify if they should be approved or rejected. The substantive safeguards are mainly about ensuring that new policies for biodiversity offsets do not result in permissions to exploit areas that would otherwise not be exploited. Indeed, the application of the polluter pays principle should result in less exploitation in total, as well as an avoidance of “no-go areas” because areas with less biodiversity tend to be easier and cheaper to compensate.

8.3 SAFEGUARDS AND FISCAL REFORMS

This analysis has found that one type of BFM may be linked to another type of BFM. For example, a PES can be financed by an earmarked fiscal reform. Hence, Parties can contribute to achieve sustainable biodiversity conservation and social development by harmonising safeguards in fiscal reforms with those in PES. With a strong political will, Parties can apply safeguards that reduce perverse incentives such by avoiding subsidies to environmentally unsustainable practices. These measures can constitute indirect safeguards in other BFMs such as PES.

8.4 SAFEGUARDS, INTERNATIONAL DEVELOPMENT FINANCE AND OFFICIAL DEVELOPMENT ASSISTANCE

When elaborating on safeguards in new and innovative sources of international development finance for biodiversity protection, there is a need to learn from the long experience of Overseas Development Assistance on issues relating to good governance. While ODA is not an innovative financing mechanism as such, they are often closely related. For example, ODA can provide seed money for innovative financing mechanisms such as PES. The main tools used in ODA to safeguard these aspects are impact assessments (such as EIA, SIA and SEA) of contributions. It is also important to recognise the development of policy coherence, notably between trade, environment and development cooperation, in safeguarding both social and environmental results.

8.5 SAFEGUARDS AND GREEN MARKETS

There are various roles that green markets can play in BFM. They can help in raising finance for biodiversity by providing market access or green premiums for products originating from land areas managed to conserve biodiversity. They can also serve as a source of performance standards and verification that helps determine whether an offset has been adequately designed and subsequently implemented. However, there are many lessons to learn from other sectors regarding potential

proliferation of competing labels and claims, highlighting the importance of effective communication, education and transparency when it comes to precisely how biodiversity safeguards are defined and assured across different standards.

8.6 SAFEGUARDS AND CLIMATE FUNDING WITH CO-BENEFITS FOR BIODIVERSITY

REDD+ under the UNFCCC, has provided an important arena for the incorporation of social and environmental safeguards into forest and land use governance at both project and larger subnational, national and international levels. The CBD has produced advice on the interpretation of REDD+ safeguards for biodiversity. If followed, it can help to ensure that climate funding – whether for REDD+ or some via some other climate mechanism – produces co-benefits for biodiversity and for peoples' livelihoods.

8.7 SAFEGUARDS AND GUIDELINES

This study has found that different BFM s may be interlinked in practice. Likewise, BFM s can be related to other means of resource mobilisation such as ODA. Hence, while Parties develop specific safeguards that respond to the risks and opportunities of each BFM s, their efforts can be more effective by harmonising different safeguards in scaling-up biodiversity financing. Moreover, the adopted guidelines (Biodiversity underpins local livelihoods and resilience; People's rights, responsibilities and effective participation; Local and country-driven/specific processes linked to the international level; Governance, institutional frameworks, transparency, accountability and compliance) can be the baseline underlying safeguards in all the BFM s.

Guidelines for safeguards in scaling-up biodiversity financing can be articulated using official legal instruments and already existing voluntary standards and guidelines. The adopted guiding principles for safeguards in BFM s aim to provide useful food for thought in the process of developing and implementing safeguards related to scaling up biodiversity financing. From framing safeguards in BFM s and ensuring that BFM s have consistency and harmony with the Convention, and other relevant international obligations, to implementing them and verifying their compliance. Likewise, they can provide better understanding of safeguards in BFM s. Identifying key elements to be safeguarded in BFM s in particular contexts, including those associated with both rights, resources and livelihoods and the values of biodiversity including its insurance, resilience and intrinsic values is key to fulfilling the objectives of the CBD. Moreover, this study has found that institutional capacity and accountability are prerequisites for safeguards to function in BFM s.

In terms of further research, analysis of the way safeguards in BFM s articulate with various legal systems at different scales can help to harmonise the actions needed for the operationalisation of safeguards in BFM s and contribute to the fulfilment of the CBD's objectives. In order to achieve equitable and sustainable outcomes, the discussion would benefit from case studies that examine the necessary measures to synchronise substantive safeguards that are associated with property/tenure rights and duties and procedural safeguards referring to the elements and the kinds of safeguards needed in the interaction between various stakeholders in BFM s.

In the environmental legal and policy arena, the discussion on safeguards has centred on forest resources, a topic which has gained momentum especially in relation to REDD+. There are important lessons to learn from REDD+ in terms of the content and implementation of safeguards and possible guidelines in BFM s. However, it is important that the attention on forest ecosystems in the international negotiations does not obscure the use and non-use values of other ecosystems and

biological resources. Further work and research is needed in designing and implementing safeguards in BFMs, that focus on non-forested areas such as deserts and wetlands with the participation of various stakeholders including communities that depend on these other ecosystems.

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APPENDICES

APPENDIX 1. COMPILATION OF VIEWS AND COMMENTS, AND DESCRIPTION OF ADJUSTMENTS AND FURTHER DEVELOPMENT

Below is a table which describes the adjustments and further developments included in UNEP/CBD/WGRI/5/INF/7 “Identifying guiding principles for safeguards in financing biodiversity and lessons learned from risks, benefits and safeguards in country-specific mechanisms”, a revised and expanded version of Discussion Paper “Safeguards for scaling-up biodiversity financing and possible guiding principles” (UNEP/CBD/COP/11/INF/7). The adjustments and further development were made in order to respond to comments and inputs received by Parties and other relevant stakeholders following Decision UNEP/CBD/COP/DEC/XI/4 which “requests the Executive Secretary to further develop the paper for submission to WGRI-5 based on comments from Parties and other stakeholders and requests WGRI-5 to prepare a recommendation for the consideration by the Conference of the Parties at its twelfth meeting”. The submissions mentioned below are in response to SCBD Notification (SCBD/ITS/RS//LZ/81526) which invited CBD Parties and relevant stakeholders to make submissions, commenting and providing inputs to the above-mentioned Discussion Paper.

Table 1

Submissions to the SCBD by Parties and relevant stakeholders	Main comments to the Discussion Paper (UNEP/CBD/COP/11/INF/7)	Adjustments made in this revised version in order to address the comments to the Discussion Paper
European Union submission	The paper should explore more deeply the benefits arising from synergies between social and environmental objectives; strengthen biodiversity safeguards as well as the safeguards that could apply to fiscal reform.	Guideline 1: “Biodiversity Underpins Local Livelihoods and Resilience” deepens the analysis of the benefits arising from synergies between social and environmental objectives. A new example of safeguards related to fiscal reform is included.
	Markets for green products and biodiversity co-benefits in climate change funding should be added as IFM ²⁶²	New sections 6.5 “Markets for green products” and 6.6 “Climate financing with co-benefits to biodiversity” have been developed to respond to this comment.
	EU suggest to build on EU submission of information concerning IFM pursuant to decision X/3, A, paragraph 8 (29 June 2011). Among the relevant instruments to consider in safeguarding efforts are Nagoya Protocol on Access and Benefit Sharing and the United	The main findings now mention the Nagoya Protocol on Access and Benefit Sharing. Guideline 2 “People’s Rights, Responsibilities and Effective Participation” and Guideline 3 “Local and country-driven/specific processes linked to the international level” now

²⁶² The terms IFM or BFM are included depending on how the respective country refer to them in their submission.

	Nations Declaration of the Rights of Indigenous Peoples (UNDRIP).	<p>specifies that BFM should consider the UNDRIP among other internationally agreed commitments.</p> <p>Table 2 “International legal instruments informing the guidelines” now contains also relevant treaties such as the Nagoya Protocol in order to operationalize ABS.</p>
	Highlight experiences of the World Bank that provide relevant insights on safeguarding approaches.	<p>The paper refers to the World Bank in several parts of the paper such as in Section 3 “Evolving notion of safeguards”.</p> <p>As part of the proposed roadmap to operationalize the guidelines, the paper suggests the SCBD to engage in dialogue with the World Bank’s Inspection Panel.</p>
	The use of performance standards should also be covered.	Reference to performance standards has been added to the paper in Section 6.2 “Biodiversity offsets” and in the new Section 6.5 “Market for Green Products”.
India submission	Refer to States’ sovereignty over natural resources and autonomy in biodiversity conservation in decision-making.	Under Section 4 “Safeguards in existing legal, and policy instruments and standards”, and in the proposed operational roadmap, the paper explicitly refers that States have sovereign rights over their biological resources and associated national autonomy in decision-making.
	Provide more “best practices” by giving more examples and drawing more lessons from past experiences.	<p>As part of the proposed roadmap to operationalize the guidelines, the paper suggests that States and relevant stakeholders identify the national policies and legal provisions relevant for safeguards and the process of scaling up biodiversity financing.</p> <p>Section 4 “Safeguards in existing legal and policy instruments and standards” Table 3 draws lessons learned from Socio Bosque program in Ecuador</p> <p>Section 6.5 “Markets for Green Products” in Box 12 “Label IP-Suisse - System and criteria for biodiversity” provides an example of Switzerland.</p> <p>Both have been included responding to this comment.</p>
	Request to revise some terms	Reference to “self-determination” is no

	considered as politically loaded such as “free prior informed consent” and “self-determination” and the term “broader processes”.	longer mentioned in the paper; the term “broader processes” is specified to refer to national broader processes and Guideline 2 was adjusted.
	ABS should be included as an IFM.	In Section 5 “Possible elements and guidelines in BFM” Table 1. “International legal instruments informing the guidelines” has a section for legally binding and non-binding treaties related to intellectual property and heritage. Examples of ABS safeguards in Peru and Australia have been included in Box 9.
	The lack of capabilities of local communities to negotiate and discuss complex questions, in ABS agreements, should be acknowledged.	The need of capacity building is now mentioned in various sections of the paper; reference is also made to consider Independent Legal Advice for local communities.
	Importance of nationally-driven both substantive and procedural safeguards and that, in case needed, country processes can be complemented with technical assistance.	Referred as national-driven, in Section 4 “Safeguards in existing legal and policy instruments and standards”, in the paragraph that explains existing safeguards. Adjustments were made in the section as well. New paragraph was included to respond to this comment under Section 5.3 “Local and country-driven/specific processes linked to the international level”.
	Valuation of nature and biodiversity does not need to be market based.	This has been reflected in Section 2 “Valuation of biodiversity” in the Box 4 “Values and markets”.
	Discussion about social safeguards should also include local communities that rely on locally provided ecosystem services and not only indigenous peoples.	Adjustments to include local communities have been done in the text.
Peru submission	Specify the need of coherency between the plans and programs in place to achieve the Millennium Development Goals and BFMs.	As part of the adopted roadmap to operationalize the guidelines, the paper suggests the SCBD to engage in dialogue with the organizations in the Millennium Development Goals and post-2015 development agenda.
	Principles should recognize biodiversity social value too, beyond its economics	Guideline 1 “Biodiversity Underpins Local Livelihoods and Resilience” and

	inputs and help to solve property rights and natural resources access conflicts.	Guideline 2 “People’s Rights, Responsibilities and Effective Participation” now have been further developed in order to respond to this comment.
	The paper should remind the need for BFM to be grounded in the country.	This point came back in many discussions (SRC dialogue with Jonas Ebbesson) and reports (Policy Brief on “Best Practices in Governance and Biodiversity Safeguards for REDD-Plus”, Swiss-Philippine Initiative, 2012) and we have now develop this point more comprehensibly in the paper e.g. in Guideline 3 “Local and country-driven/specific processes linked to the international level”.
	BFM should be aligned with an institutional framework but also remain flexible.	The paper refers to resilience and flexibility in relation to institutions. UNFFCCC-COP decisions referring to safeguards, states that they need to be flexible.
	Peru recognizes the importance of Indigenous and local community rights and their reliance on locally provided ecosystem services.	Section 5.3 “Local and country-driven/specific processes linked to the international level” Paragraph 3 was added responding to Peru’s comment on local communities and ecosystem services.
Switzerland Submission	Add a more comprehensive definition of “proper institutional framework” including transparency, conditionality of payments on performance and sanctions.	<p>Section 5.4 “Governance, institutional frameworks, transparency, accountability and compliance”, Guideline 4 “Appropriate institutional frameworks, transparency, accountability, and compliance mechanisms with enforceable rights and responsibilities, constitute prerequisites for safeguards in financing biodiversity to function properly” now includes transparency and compliance mechanisms with enforceable rights and responsibilities (which includes sanctions and conditionality of payments) as prerequisites for effective safeguarding.</p> <p>Conditionality of payments on performance and sanctions have been also addressed in Section 6.1 “Payments for Ecosystem Services” Paragraph 1 when discussing payments for ecosystem services.</p>

	Include participation as part of Guideline 2.	<p>Guideline 2 explicitly refers to participation “People’s Rights, Responsibilities and Effective Participation”</p> <p>In section 5.2 ”People’s Rights, Responsibilities and Effective Participation” paragraph 5 also makes reference to participation.</p>
	Include lessons learned from REDD+ safeguards.	<p>A new Section 6.6 on climate financing with a focus on REDD+ was included.</p> <p>As part of the adopted roadmap to operationalize the guidelines, the paper suggests the SCBD to engage in dialogue with UNFCCC.</p>
	The safeguards and principles related to biodiversity offsets should emphasize the importance of the mitigation hierarchy and specify that this mechanism should be “a last resort after all reasonable measures have been taken first to avoid and minimize the impact of a development project”.	Section 6.2 “Biodiversity Offsets” was further developed highlighting the importance of mitigation hierarchy and including new references such as the Policy Brief on “Best Practices in Governance and Biodiversity Safeguards for REDD-Plus” (Swiss-Philippine Initiative, 2012) suggest by Switzerland as well as the IUCN & ICMM’s Independent Report on biodiversity offsets (January 2013) which both consider biodiversity offsets as a “last resort” mechanism and the mitigation hierarchy as a keystone.
	<p>Address the six mechanisms under Goal 4 of the strategy of resource mobilization and include ABS as a IFM.</p> <p>A comment was provided on the role of markets for green products, giving the example of Label IP-Suisse.</p>	<p>New sections 6.5 “Market for Green products” and 6.6 “Climate financing with co-benefits to biodiversity” were developed in order to cover the six mechanisms under Goal 4 of the strategy for resource mobilization.</p> <p>The IP-Suisse example is included in a new illustrative box 12 under section 6.5 “Markets for Green Products”.</p>
IUCN Submission	Include a principle referring to general benefits to biodiversity independent of the benefits to local livelihoods.	The title has been adjusted Guideline 1 “The underpinning role of biodiversity and ecosystem functions for local livelihoods and resilience, as well as biodiversity’s intrinsic values, shall be recognized in the design and implementation of Financing Mechanisms” This guideline has been further developed in the main text in order to strengthen biodiversity safeguards.
	The principles should acknowledge the burden that strict requirements	Section 5.2 “Governance, institutional frameworks, transparency,

	represent and should thus stress more the need for investments in building capacity and appropriate safeguards.	accountability and compliance” among others now addresses capacity building.
	The principles should also advocate for a strong involvement of the private sector.	Section 6.3 “Environmental Fiscal Reform” refers to the example of South Africa involving green jobs. New sections 6.5 “Markets for Green products”, 6.6 “Climate financing with co-benefits to biodiversity” and 8.2 “Safeguards on offsets” address private sector as well.
	The paper would gain from cataloguing the safeguards relevant to each BFM in terms of risks and opportunities.	In section 8. 2 “Concluding remarks”, among others, different BFMs are linked to risks and opportunities and safeguards. In order to address safeguards of the six BFMs under Goal 4, two new sections (6.5 “Markets for green products” and 6.6. “Climate financing with co-benefits to biodiversity”) have been included.
	The paper would gain from referring at natural capital accounting.	The paper provides refers to natural capital accounting and the Gaborone the Declaration (2012).
Quito II, 9-12 April 2014. Participants: State Members representatives and key actors on financing biodiversity, including experts active in CBD discussions on resource mobilization and also from related processes, as well as national level actors from sectors dealing with financing of biodiversity and ecosystem services, intergovernmental and non-governmental organizations, social movements, farmer organizations, indigenous and local communities, scientists and private sector. Presentation and focus/working group on “Governance Safeguards and Equity”. http://www.dialogueseminars.net/quito/quito_home.html	Importance of country driven safeguards and sharing associated lessons learned.	As part of the adopted roadmap to operationalize the guidelines, national autonomy and decision-making is recognized and it is suggested that States and relevant stakeholders identify the national policies and legal provisions relevant for safeguards and the process of scaling up biodiversity financing.
	Suggestion to engage in dialogue with global organizations such as International Development Law Organization (IDLO).	As part of the adopted roadmap to operationalize the guidelines, IDLO is referred to as a relevant partner for discussing safeguards.
	ABS should be included as a BFM.	The main findings now mention the Nagoya Protocol on Access and Benefit Sharing and ABS, as potential mechanisms to mobilize resources for biodiversity.
The Third Meeting Of The Global Partnership For Business And Biodiversity, Montreal, Canada, 2-3 of October 2013.	Importance of participation in PES, Biodiversity offsets and REDD+.	In Section 5.2 “People’s rights, responsibilities and effective participation” a new paragraph has been developed in order to respond to this comment stating that procedural

<p>Participants: businesses, business associations, governments, intergovernmental and non-governmental organizations and academia.</p> <p>Presentation at Panel “Safeguards & mechanisms”, Q&A and panel discussion.</p> <p>http://www.cbd.int/business/bc/3m.shtml</p>		safeguards should also include the participation of relevant stakeholders.
	<p>Panelists highlighted the importance of free prior informed consent (FPIC) in safeguarding approaches.</p>	<p>The paper kept the originally used terminology of “free prior informed consent” as well as “prior informed consent” (Section 5.2 “People’s rights, responsibilities and effective participation”, Guideline 2).</p> <p>A new paragraph has been included under Section 5.2.</p>
<p>Focus group at the Seventh Trondheim Conference On Biodiversity: Ecology And Economy For A Sustainable Society (Trondheim, Norway, 27-31 May 2013)</p> <p>Organized by Norwegian Government in cooperation with the United Nations Environment Programme (UNEP), the Secretariat of the Convention on Biological Diversity (CBD), the Food and Agriculture Organization (FAO) and the United Nations Development Programme (UNDP)</p> <p>Participants: Member States, relevant UN entities and selected international organizations and institutions that are involved in supporting the implementation of the CBD.</p> <p>Presentation and focus group.</p> <p>http://www.cbd.int/doc/notifications/2013/ntf-2013-002-trondheim-en.pdf</p> <p>https://www.cbd.int/sbstta/doc/trondheim-07-cochairs-report-en.pdf</p>	<p>Include more references to lessons learned from countries safeguarding experiences and provide more concrete examples of national implementation.</p>	<p>As part of the proposed roadmap to operationalize the guidelines, the paper suggests that States and relevant stakeholders identify the national policies and legal provisions relevant for safeguards and the process of scaling up biodiversity financing.</p> <p>New examples of Ecuador, Switzerland and France have been included.</p>
	<p>Emphasis on the involvement of relevant actors.</p>	<p>The importance of participation and involving key stakeholders that are affecting or affected by the outcomes of the mechanisms is now highlighted throughout the paper.</p>
	<p>Specific substantive and procedural safeguards that respond to the risks and opportunities of each biodiversity financing mechanism are needed, and safeguarding efforts can be made more effective by harmonizing different safeguards in scaling-up biodiversity financing.</p>	<p>Lessons learnt from concrete cases were included. Special attention was paid to the correlation between substantive and procedural safeguards.</p>
<p>Dialogue SRC – Faculty of Law, Stockholm University. Discussant, Jonas Ebbesson, Professor of Environmental Law at Stockholm University and Chair of the Aarhus Compliance Committee.</p> <p>Participants: researchers at students from SRC and Faculty of Law, Stockholm University.</p> <p>Presentation, discussant reply and</p>	<p>Emphasis on multilevel governance including the local-level and its relationship to human rights.</p>	<p>As part of the proposed roadmap to operationalize the guidelines, the paper suggests to engage in dialogue with bodies such as the Human Rights Council and the UN Permanent Forum on Indigenous Issues.</p>
	<p>Need to stress the importance of country-specific safeguards.</p>	<p>As part of the adopted roadmap to operationalize the guidelines, the paper suggests that States and relevant stakeholders identify the national policies and legal provisions relevant</p>

Q&A.		for safeguards and the process of scaling up biodiversity financing.
	Importance of compliance mechanisms with enforceable rights and responsibilities.	Guideline 4 “Governance, institutional frameworks, transparency, accountability and compliance” now includes transparency and compliance mechanisms with enforceable rights and responsibilities.
<p>Focus Group at the Bonn Experts Workshop on Community-Based Monitoring and Information Systems (April 2013)</p> <p>Participants: different stakeholders (NGOs, academia and intergovernmental organizations) that share interests and expertise on Traditional knowledge, biodiversity, human well-being and the rights of Indigenous peoples.</p> <p>Presentation, Q&A and focus group.</p> <p><u>http://www.tebtebba.org/index.php/content/271-developing-and-implementing-cbmis-the-global-workshop-and-the-philippine-workshop-reports</u></p>	The paper should build on already existing safeguards and organizations and put more emphasis on human rights and indigenous rights.	As part of the adopted roadmap to operationalize the guidelines, the paper suggests to engage in dialogue with bodies such as IDLO, Human Rights Council and the UN Permanent Forum on Indigenous Issues.
	Include participation of relevant stakeholders as well as transparency in communication and information.	Guideline 2 and Guideline 3” now specif that BFM should consider the UNDRIP among other internationally agreed commitments.
	Safeguards could be interpreted as performance indicators or tools and guiding principles should guide how the impacts should be measured and how safeguards should be judged. Examples of previous certification schemes could be used as baseline.	In Section 5, Guideline 2 and 4 were further developed: Guideline 2.- “Rights and duties in financing mechanisms should be defined in a fair and equitable manner, with the effective participation of all actors concerned and with the prior informed consent of indigenous peoples and local communities in projects that may have consequences for their rights, as recognised in some national legislation, or free prior informed consent as recognised in other national legislation and the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP)” and Guideline 4 “Appropriate institutional frameworks, transparency, accountability, and compliance mechanisms with enforceable rights and responsibilities, constitute prerequisites for safeguards in financing biodiversity to function properly” also refer to these elements.
		Section 4. “Safeguards in existing legal and policy instruments and standards” last paragraph mentions that BFM could learn from international guidelines and standards for designing safeguards that address monitoring and compliance.

<p>Seminar on Landscapes in a Carbon Focused World, Gothenburg, 26 October 2012.</p> <p>Participants: Stakeholders that share interests and expertise on Landscape approach to discuss climate change governance, sustainability, resilience and improvement of agriculture.</p>	<p>Importance of safeguards in REDD+ and of considering climate dimension in environmental initiatives.</p>	<p>As part of the adopted roadmap to operationalize the guidelines, the paper suggests the SCBD to engage in dialogue with UNFCCC.</p> <p>A new Section 6.6 "Climate financing with co-benefits to biodiversity" has been added to address climate change mechanisms with possible co-benefits to biodiversity.</p>
<p>Presentation and Q&A.</p> <p><u>http://www.siani.se/event/landscapes-carbon</u></p>	<p>Mention landscape approach and tools used in articulating customary norms with to with environmental law and policy.</p>	<p>Section 4. "Safeguards in existing legal and policy instruments and standards" refers to bio-cultural community protocols in an extended way as means of articulating customary norms with environmental law and policy.</p> <p>Landscapes and seascapes are now mentioned in various sections in the paper.</p>

Table 2

Below are the main comments received to UNEP/CBD/WGRI/5/INF/7 “Identifying guiding principles for safeguards in financing biodiversity and lessons learned from risks, benefits and safeguards in country-specific mechanisms”, a revised and expanded version of Discussion Paper “Safeguards for scaling-up biodiversity financing and possible guiding principles” (UNEP/CBD/COP/11/INF/7) at WGRI-5 and to a draft of this paper at the International Workshop on Financing for Biodiversity in the Ittingen, Switzerland. A description of adjustments and further developments in order to address these comments is also summarised.

International Workshop on Financing for Biodiversity, Kartause Ittingen, Switzerland, 18-19 August 2014.

A draft of this paper became part of the meeting documents for this workshop (see <http://www.cbd.int/doc/?meeting=RMWS-2014-05>). Presentation via video link (around 50 participants).

Main comments to the Discussion Paper (UNEP/CBD/WGRI/5/INF/7)	Adjustments and further developments in order to address the comments to the Discussion Paper (UNEP/CBD/WGRI/5/INF/7)
<p><i>Comments on guiding principles and voluntary guidelines</i></p> <p>One country adopted to change wording from “guiding principles” to “guidelines”, due to legal considerations at national level in this country; another country representative mentioned that his/her country could only accept voluntary guidelines.</p> <p>In WGRI5 report UNEP/CBD/COP/12/4 Decision 5/10, <i>Requests</i> the Executive Secretary to develop, for consideration by the Conference of the Parties at its twelfth meeting, para 1d “Draft options for voluntary guidelines based on the challenges and possible risks of these mechanisms as identified in the document on possible risks and benefits of country-specific innovative financial mechanisms and safeguards”,²⁶³</p>	<p>The title and content in this paper has been adapted in accordance with the Decision from WGRI5 5/10 para 1d related to “voluntary guidelines” instead of “Guiding principles”.</p> <p>Comments from authors: While each country faces unique challenges and will develop context-driven and specific solutions, Guiding Principles can aim to provide governments with direction and a more elements for them to choose, design and implement mechanisms for financing biodiversity in a way that fosters the achievement of the three CBD objectives. Because these 4 principles are non-binding, they can be more readily amended and expanded through the Convention on Biological Diversity's processes as we learn more about lessons learned by Parties and other stakeholders' effective solutions. Guiding principles would recognise that according to Article 3 of the Convention on Biological Diversity, States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right over their own resources and the right of pursuing their own environmental policies. Yet, in order to respond to the Decision 5/10 para 1d from WGRI5 the wording is changed to Guidelines</p>
<p><i>Need to clarify the differences and inter-relations of country driven and country specific processes</i></p>	<p>Text added under Guideline 3 in order to respond to this comment.</p> <p>Further comments from the authors: If processes are country driven, the result should be that they are also specific processes. For example, even when Mexico and Indonesia are emerging economies, the national legislation enacted to implement REDD+ in these two countries is quite different responding to distinctive ecological, cultural and other contextual factors. Likewise, they are</p>

²⁶³ UNEP/CBD/WGRI/5/INF/7.

	<p>specific in the sense that the need to respond to specific challenges and opportunities as well as to local values e.g. implementing a REDD+, PES or ABS in Indonesia with hundreds of languages, islands and ethnic groups is quite different from implementing it in Costa Rica with a relatively more homogenous population.</p> <p>If the Tobin tax would be agreed at the international level, it would still require country driven/specific processes for its implementation and for providing coherency with national legislation.</p>
<i>Include reporting the impacts of new and additional biodiversity finance mechanisms (BFM) applied in country and ensure that the proper regulatory frameworks are set in place, including appropriate social and environmental safeguards</i>	A new paragraph was included as part of the operational roadmap.
<i>Complement UNFCCC Decisions relevant to REDD+ and safeguards</i>	Additions were made in the text specifically in Section 3 in order to include further relevant UNFCCC-COP Decisions referring to safeguards.

International Workshop on Financing for Biodiversity, Kartause Ittingen, Switzerland, 18-19 August 2014

A draft of this paper became part of the meeting documents for this workshop (see <http://www.cbd.int/doc/?meeting=RMWS-2014-05>). Presentation via video link (around 50 participants).

Main comments to the Discussion Paper (UNEP/CBD/WGRI/5/INF/7)	Adjustments and further developments in order to address the comments to the Discussion Paper (UNEP/CBD/WGRI/5/INF/7)
Regarding in Guideline 2, some participants commented upon the term “free prior informed consent” and that they would prefer the term “prior informed consent”, referring to their national legislation.	<p>Considering the inclusive approach of this discussion paper as well as considering the differences in national legislations, Guideline 2 was adjusted: Rights and duties in financing mechanisms should be defined in a fair and equitable manner, with the effective participation of all actors concerned and with the prior informed consent of indigenous peoples and local communities in projects that may have consequences for their rights, as recognised in some national legislation, or free prior informed consent as recognised in other national legislation and the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP)</p> <p>The following paragraphs were also included:</p> <p>In the participatory process involved in this discussion paper, some people referred to “free prior informed consent” (FPIC) and others to “prior informed consent”(PIC). In the panel “Safeguards and mechanisms” (The Third Meeting Of The Global Partnership For Business And Biodiversity in Montreal) and in the Bonn workshop on Community Monitoring and Information Systems, some participants highlighted the importance of “free prior informed consent”. Certain national legislation (e.g. Forest Law (LGDFS) Article 134 Bis in Mexico), international declarations such as the UNDRIP and Conventions such as Convention for the Safeguarding of the Intangible Cultural Heritage refer to this concept as FPIC.</p> <p>In the submission by India as well as some participants in the International Workshop on Financing for Biodiversity in the</p>

	<p>Ittingen, Switzerland, 2014 preferred the wording “PIC”; I and this is the term used in the national legislation of other some countries (see e.g. Peruvian Law 27811 in Box 9). Some view that informed consent, in advance (prior), and in good faith implies that it is “freely” given; this was a view also expressed in the process involved in developing this discussion paper.</p> <p>Furthermore, this guideline recognises that States have the sovereign right over their own natural resources and the right of pursuing their own environmental policies in accordance with their national legislation.</p>
A question was raised on how general or specific the adopted guidelines should be.	<p>In the introduction, the following paragraph is included in order to respond to this issue:</p> <p>“This paper addresses how to develop and implement safeguards for scaling up biodiversity financing under CBD and proposes guidelines and elements for an operational roadmap. We focus especially on the so-called “new and innovative financial mechanisms” (IFMs) under the CBD’s strategy for resource mobilization (Decision IX/11) which are: payments for ecosystems services, biodiversity offsets, environmental fiscal reform, international development finance, markets for green products and climate financing with co-benefits to biodiversity. These mechanisms under Goal 4 are distinct in nature. As OECD (2013) highlights, these mechanisms may vary in terms of their purpose, their applicability as well as in the amount of finance they have been able to mobilise and the opportunities to scale-up. Likewise, distinct design and implementation considerations need to be taken into account depending on the type of mechanism. The adopted guidelines in Section 5 are relatively general because they aim to be applicable to all the BFM’s while also taking into consideration the interconnectedness of BFM’s risks and opportunities. A step-wise approach is suggested including the adopted elements for an operational roadmap in Section 7, which can then contribute to further specify the guidelines and methodologies for safeguards in particular BFM’s as well as for safeguards addressing the linkages of BFM’s risks and opportunities”.</p>

Definitions²⁶⁴

Biological diversity is the variability among living organisms from all sources and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.

Biological resources includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

Ecosystems are dynamic complexes of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

Ecosystem services are the benefits that people receive from ecosystems. Some of these, such as the provisioning services (or goods) like food, timber and fresh water, are well-known and routinely included in assessments. Others, such as the habitat services, regulating services arising from Earth's natural processes (e.g., carbon storage and sequestration, watershed protection, storm protection, pollination, nutrient cycling) and cultural services (e.g., recreation and spiritual values), are often overlooked because they are to a lesser extent traded in the market and internalised in traditional cost-benefit analyses.²⁶⁵

Socio-ecological resilience is the capacity of linked social and ecological systems to absorb disturbance and adapt or reorganise so as to still retain essentially the same function, structure and identity.

²⁶⁴ The definitions of *Biological diversity* (biodiversity), *biological resources* and *ecosystem* can be found in Article 2 of the Convention on Biological Diversity.

²⁶⁵ MA, 2005, *Synthesis*. TEEB 2009, *For National and International Policy Makers*.

