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RELATED PROVISIONS OF THE  
CONVENTION ON BIOLOGICAL DIVERSITY

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Item 5 of the provisional agenda\*

### **TAKING 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**

*Note by the Executive Secretary*

#### **INTRODUCTION**

1. At its twelfth meeting, the Conference of the Parties adopted voluntary guidelines on safeguards in biodiversity financing mechanisms ([decision XII/3](#), annex III). The guidelines indicate, inter alia, that the potential effects of biodiversity financing mechanisms on indigenous and local communities' rights and livelihoods need to be addressed effectively, in accordance with national legislation, and that particular attention needs to be given to the impacts on, and contribution of, indigenous peoples and local communities as well as women, and to their effective participation in the selection, design, and implementation of biodiversity financing mechanisms.
2. At its thirteenth meeting, the Conference of the Parties ([decision XIII/20](#), para. 26) 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 the voluntary guidelines into account when selecting, designing and implementing biodiversity financing mechanisms, and when developing instrument-specific safeguards for indigenous peoples and local communities, in accordance with decision XII/3, paragraph 16. It also requested the Executive Secretary, through paragraph 27 of decision XIII/20, to make this information available to the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions at its tenth meeting with a view to developing recommendations, for consideration by the Subsidiary Body on Implementation at its second meeting, on how the application of safeguards can ensure that the potential effects of biodiversity financing mechanisms on the social and economic rights and livelihoods of indigenous peoples and local communities are addressed effectively.
3. To assist the Working Group in its task, the present document reviews information, including good practices and lessons learned regarding safeguards in biodiversity financing, with a focus on the potential effects of these safeguards on the social and economic rights and livelihoods of indigenous peoples and local communities. Section I provides an overview of submissions received by the Executive Secretary on experiences in relation to using the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms and other aspects of safeguards in biodiversity financing mechanisms. Section II describes the development of safeguard mechanism under the Convention. Section III provides an overview of existing safeguard systems of a range of biodiversity financing mechanisms, to identify the current status and the trends in establishing such safeguard

\* [CBD/WG8J/10/1](#).

systems. Section IV provides a summary and conclusions for advancing implementation of the voluntary guidelines. Finally, building on proposals made in the previous sections, section V suggests a draft recommendation for the consideration of the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions at its tenth meeting, which will be forwarded for consideration by the Subsidiary Body on Implementation at its second meeting.<sup>1</sup> Accompanying the draft recommendation an annex containing possible questions that could be used as a checklist for compliance with requirements of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms.

## **I. OVERVIEW OF SUBMISSIONS ON THE VOLUNTARY GUIDELINES ON SAFEGUARDS IN BIODIVERSITY FINANCING MECHANISMS**

4. The Executive Secretary has issued a “compilation of views on resource mobilization: assessing the contribution of collective actions of indigenous peoples and local communities and safeguards in biodiversity financing mechanisms” ([CBD/WG8J/10/INF/10](#)) based on submissions received from Parties and other organizations. Two submissions were received by Parties and four from other relevant organizations with information and views about safeguards in biodiversity financing mechanisms.<sup>2</sup>

5. For the European Union and its Member States, the voluntary guidelines on biodiversity safeguards represent an important progress in addressing effectively the potential impacts of biodiversity financing mechanisms on biodiversity and on the rights and livelihoods of indigenous peoples and local communities. Now that they have been adopted, the voluntary guidelines need to be piloted and implemented in practice.

6. Sweden and the Swedish institutions SwedBio and Stockholm Resilience Centre were important players in the process leading to adoption of the voluntary guidelines at the twelfth meeting of the Conference of the Parties, since they engaged in research and a wide consultative process to provide inputs into the CBD process. Sweden's Programme for Global Development (PGU) to support the implementation of the 2030 Agenda for Sustainable Development<sup>3</sup> aims to strengthen policy coherence in that process by putting sustainability, human rights and the perspective of poor people at the centre. Sweden's Sami Parliament is also highly engaged in the work on the 2030 Agenda with a holistic perspective to sustainability, which represents alignment with the spirit of the voluntary guidelines.

7. The Forest Peoples Programme and several IIFB member organizations stressed three key requirements for working on financial mechanisms with a safeguard perspective: (a) to provide clear and transparent information, (b) to work in appropriate methodologies with an indigenous perspective, (c) to undertake research aimed to the protection of traditional knowledge, from the experience of the communities themselves.

8. For the Global Forest Coalition/Community Conservation Resilience Initiative, indigenous peoples and local communities still face prejudices in relation to biodiversity financing mechanisms because these continue to prioritize government-centric and often exclusionary approaches. To reverse this situation, they recommend to more strongly promote community conservation initiatives, as effective approaches for the conservation and sustainable use of biodiversity, and to seek broader legal, political, social, economic and other forms of support for them, beyond narrow results-based payments. They also highlight the importance of the full and effective participation and free, prior informed consent of indigenous peoples and local communities, including women in national policies, plans and programmes for biodiversity and related financing mechanisms.

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<sup>1</sup> Which will be held from 9 to 13 July 2018, in Montreal, Canada.

<sup>2</sup> European Union and its Member States together with national contributions from Sweden, the Forest People Programme (FPP), IIFB member organizations; Global Forest Coalition/Community Conservation Resilience Initiative; Indigenous Women's Network on Biodiversity from Latin America and the Caribbean (RMIB-LAC); and the Stockholm Resilience Centre.

<sup>3</sup> [General Assembly resolution 70/1](#), annex.

9. The Indigenous Women's Network on Biodiversity from Latin America and the Caribbean stressed the importance of 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. The Network recommends that safeguards be robust and aligned with international obligations and frameworks, such as the United Nations Declaration on the Rights of Indigenous Peoples,<sup>4</sup> and be supported by effective monitoring and accountability. The Network also recommends that other CBD instruments and decisions, including guidelines, should be used to strengthen and support safeguards. Full and effective participation of indigenous peoples and local communities and their free, prior and informed consent should be also requirements for effective safeguards.

10. The Stockholm Resilience Centre refers Parties and other relevant organizations and stakeholders to the previous report "Biodiversity financing and safeguards: lessons learned and proposed guidelines"<sup>5</sup> for a compilation of relevant case studies. This report was instrumental in supporting Parties in the discussions leading to the adoption of the voluntary guidelines; this is further commented on in the next section. The Stockholm Resilience Centre has also provided a list of references from recent academic literature with relevance to safeguards in biodiversity financing mechanisms.

11. The submissions received from Parties and other organizations and stakeholders show a trend of growing understanding of the need for, and engagement in safeguarding biodiversity and indigenous peoples and local communities' rights and livelihoods when designing and implementing financing mechanisms. On the other hand, they demonstrate an uneven development of experiences at the international, national and local levels, partly due to the novelty of some biodiversity financing mechanisms, partly also to the early phase of implementation of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms, as well as of other safeguard systems and instruments that, although rapidly emerging and developing, are still in construction or in early application phases, and therefore the availability of lessons from implementation is still limited.

## II. DEVELOPMENT OF SAFEGUARDS UNDER THE CONVENTION

12. The Conference of the Parties adopted decision IX/11 that includes the CBD's Strategy for Resource Mobilization (2008–2015). Later in 2010, at its tenth meeting the Conference of the Parties in decision X/3 on the strategy for resource mobilization highlighted "the need for information about the opportunities and also the potential problems that biodiversity financing mechanisms could generate, and safeguards were identified as one of the means to address these potential problems".<sup>6</sup> Subsequent discussions in various CBD bodies saw a significant evolution of the notion and the importance of safeguards in biodiversity financing mechanisms, culminating in the until adoption of the voluntary guidelines on safeguards in biodiversity financing mechanisms by the Conference of the Parties at its twelfth meeting, in 2014. The document "Biodiversity financing and safeguards: lessons learned and proposed guidelines" ([CBD/COP/12/INF/27](#)), by demonstrating the importance of the CBD discussions and offering background on the international context of safeguards' development and implementation, was instrumental in supporting Parties in the adoption of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms.

13. Also of relevance, at its eleventh meeting, in 2012, the Conference of the Parties adopted [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 in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries", whereby the Parties made reference to the "Cancun Safeguards" adopted by the

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<sup>4</sup> [General Assembly resolution 61/295](#), annex.

<sup>5</sup> Ituarte-Lima, C., Schultz, M., Hahn, McDermott, C., and Cornell, S., 2014, Biodiversity financing and safeguards: lessons learned and proposed guidelines, Stockholm: SwedBio/Stockholm Resilience Centre at Stockholm University, published as [CBD/COP/12/INF/27](#) for the twelfth meeting of the Conference of the Parties.

<sup>6</sup> *Ibid.*, p. 8.

Conference of the Parties to the United Nations Framework Convention on Climate Change,<sup>7</sup> and noted that they may enhance benefits for biodiversity and for indigenous and local communities. On this basis, the Conference of the Parties invited developing country Parties to make use of information provided in the annex to that decision regarding the application of biodiversity-related safeguards.<sup>8</sup>

14. The information provided in decision XI/19 remains entirely valid in the context of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms. It includes safeguards related to both biodiversity and the livelihoods of indigenous peoples and local communities. Among possible adverse impacts that safeguards should aim to eliminate, reduce or mitigate it lists:

- (a) The conversion of natural forests to plantations and other land uses of low biodiversity value and low resilience;
- (b) Displacement of deforestation and forest degradation to areas of lower carbon value and high biodiversity value;
- (c) Increased pressure on non-forest ecosystems with high biodiversity value;
- (d) Afforestation in areas of high biodiversity value;
- (e) The loss of traditional territories and restriction of rights of indigenous and local communities to access to, use of and/or ownership of land and natural resources;
- (f) Lack of tangible livelihood benefits to indigenous and local communities and lack of equitable benefit-sharing;
- (g) Exclusion of indigenous and local communities from designing and implementation of policies and measures;
- (h) Loss of traditional ecological knowledge.

15. In the context of [decision X/3](#) of the Conference of the Parties on the Strategy for Resource Mobilization, the CBD discussions on safeguards have focused on “new and innovative financial mechanisms” as defined in Goal 4 of the Strategy for Resource Mobilization adopted by the Conference of the Parties at its ninth meeting ([decision IX/11](#)), namely: Schemes for payment for ecosystem services; Biodiversity offset mechanisms; Environmental fiscal reforms including innovative taxation models and fiscal incentives; Markets for green products, business-biodiversity partnerships and new forms of charity; International development finance that integrates biological diversity and its associated ecosystem services; and Funding mechanisms for climate change under the United Nations Framework Convention on Climate Change.

16. These mechanisms are very diverse and are generally still in evolution. They operate at different levels, from international to project and local levels, and are linked to, or designed through, a variety of policy process that may involve government institutions, private entities, civil society organizations and/or intergovernmental processes. In this context, processes for developing specific instruments for the application of safeguards are still in early phases and are taking different approaches. Given that the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms were adopted only in 2014, the Convention may need to revisit their impact and effectiveness continuously and iteratively in the future.

17. Paragraphs 3(b) and (c) of the voluntary guidelines recommend that, in defining the rights and responsibilities of actors and/or stakeholders in biodiversity financing mechanisms, as well as in designing their provisions, the Convention on Biological Diversity and its relevant decisions, guidance and principles should be taken into account. The Convention's guidelines and principles emanating from the programme of work of Article 8(j) contain relevant safeguard provisions for indigenous peoples and local communities which should be understood and used in a complementary way to or as part of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms,

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<sup>7</sup> UNFCCC decision 1/CP.16, appendix I.

<sup>8</sup> UNFCCC decision 1/CP.16, appendix I, para. 2.

even if the thematic context in which they were developed was not necessarily focused on financing mechanisms.<sup>9</sup>

18. An analysis of safeguard-related provisions in relevant Convention decisions, guidance and principles (See [CBD/WG8J/10/INF/7](#)) shows that the Convention has been constantly concerned about, and actively responding to the need for safeguards to protect the rights and livelihoods of indigenous peoples and local communities in the context of the design and implementation of development, conservation or financing actions, even before adopting the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms. The Convention has focused mainly on the following elements of safeguards for development or conservation actions:

- (a) Substantive aspects of safeguards, such as the protection of biodiversity-related livelihoods;
- (b) Protection of the rights of traditional knowledge holders;
- (c) Protection of material and immaterial cultural heritage of indigenous peoples and local communities, such as sacred sites and cultural values;
- (d) Protection against risks of further livelihood inequities, including in relation to gender and intergenerational equity;
- (e) Advance measures to move beyond defensive safeguards regarding the equitable sharing of benefits from development and conservation actions;
- (f) Procedural aspects of safeguards, in particular the requirements for full and effective participation of indigenous peoples and local communities in the design and implementation of development and conservation actions that touch on their lands and resources and their related livelihoods and cultures;
- (g) Requirements for transparency and sharing of information in accessible manner for indigenous peoples and local communities so that they can use it for informed involvement;
- (h) Indigenous peoples and local communities' free, prior and informed consent or approval for implementation of actions that could bring threats to their rights, cultures and livelihoods;
- (i) Integration of measures of redress in cases where impacts have been generated or are unavoidable.

19. Some of the indicated provisions correspond directly to the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms, which elaborate further on those substantive and procedural elements. Therefore, the safeguard provisions of previously adopted guidelines and principles are directly pertinent to the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms and constitute applicable complementary guidance for the development of financing mechanisms.

20. Some specific topics from the relevant Convention decisions, guidance and principles prior to the adoption of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms that complement them are the following:

- (a) Provisions to ensure equity, or reduce risks of inequity, in benefit sharing;
- (b) Cultural impact assessment procedures, including specifically respect for the spiritual values of indigenous peoples and local communities;
- (c) Respect of customary use as part avoidance of risks;
- (d) Provisions for risk mitigation and avoidance in relation to the traditional knowledge of indigenous peoples and local communities, especially regarding the protection of their knowledge rights.

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<sup>9</sup> [CBD/WG8J/10/INF/7](#), annex I, provides a summary of relevant safeguard provisions of some CBD Guidelines and instruments available under "Principles, Guidelines and Other Tools Developed under the Convention" on the Convention's webpage at <https://www.cbd.int/guidelines/>

21. An analysis of the way in which the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms are taken into account in the design and development of financing mechanisms and their safeguard systems and instruments, either explicitly or in terms of policy consistency, could be performed in an initial stage through a checklist framed as a set of questions reflecting the requirements of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms, as well as from other Convention decisions, guidance and principles.<sup>10</sup> Based on initial applications, this checklist could be developed further to become a more detailed analytical instrument to assess conformity of the biodiversity financing mechanisms with the Convention's safeguard requirements. A draft checklist of questions is provided in annex I for the consideration of the Working Group.

### **III. OVERVIEW OF EXISTING SAFEGUARD SYSTEMS OF A RANGE OF BIODIVERSITY FINANCING MECHANISMS**

22. This section presents an overview of existing safeguard systems relevant to biodiversity financing mechanisms, starting with the Convention's instruments, focusing on those developed or updated after the adoption of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms by the Conference of the Parties in October 2014. Earlier developments regarding safeguard systems were extensively reported and analysed in [UNEP/CBD/COP/12/INF/27](#).<sup>5</sup> The analysis is non-exhaustive and focuses also primarily on processes that are more directly related to biodiversity and indigenous peoples and local communities, but it should be noted that some processes that currently show no direct relationship (such as some instruments for greening investments) may nonetheless have relevant implications and thus require a much more thorough follow-up at a later stage.

#### **A. The World Bank and the International Finance Corporation**

23. Environmental and social safeguards were developed originally by multilateral development institutions in the early 1990s for application to their development finance operations.<sup>11</sup> The first safeguard policy of the World Bank, issued in 1986, focused on "cultural property"; most of the safeguard policies were issued between 1990 and 1998, with "Involuntary Resettlement" and "Indigenous Peoples" being among the earliest ones.<sup>12</sup>

24. The International Finance Corporation (IFC), a member of the World Bank Group, is the largest global development institution focused exclusively on the private sector in developing countries. The IFC used the same safeguards of the World Bank until 2006, when it adopted its own Sustainability Framework, which articulates its strategic commitment to sustainable development.<sup>13</sup> In 2012, the IFC Sustainability Framework was updated following an 18-month global consultation process with stakeholders.<sup>14</sup>

25. The IFC Sustainability Framework comprises the IFC policy on environmental and social sustainability, eight performance standards on environmental and social sustainability, and the IFC access to information policy. The performance standards topics include assessment and management of environmental and social risks and impacts, land acquisition and involuntary resettlement, indigenous peoples, and cultural heritage.<sup>15</sup>

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<sup>10</sup> An indicative, non-exhaustive list of questions for a checklist is presented in [CBD/WG8J/10/INF/7](#).

<sup>11</sup> A detailed analysis of the evolution of safeguard systems was presented in [UNEP/CBD/COP/12/INF/27](#), which provided substantial support to discussions at the twelfth meeting of the Conference of the Parties, in 2014.

<sup>12</sup> World Bank's OD 4.30 of June 1990 and OD 4.20 of September 1991, respectively.

<sup>13</sup> [http://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/safeguards-pre2006#Safeguard](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/safeguards-pre2006#Safeguard)

<sup>14</sup> IFC. Performance Standards on Environmental and Social Sustainability. 1 January 2012.

<sup>15</sup> The IFC has not issued updates to its safeguard policies and instruments since 2012, but it has produced a series of resources to support implementation, such as toolkits, handbooks and good practice guides. They are available from [http://www.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/Sustainability-At-IFC/](http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/)

26. The World Bank and IFC environmental and social safeguards became an important model for the development of safeguards internationally. An example of this is the adoption in 2011 by the Forest Carbon Partnership Facility (FCPF) of its “Common approach to environmental and social safeguards for multiple delivery partners”, which includes application of the World Bank system.<sup>16</sup>

27. The 2012 revision of the IFC performance standards inaugurated a new phase of environmental and social safeguards in the international financing system, where “safeguard systems have become more comprehensive and systematic, with greater harmonization among many development agencies”.<sup>17</sup> Given that the IFC performance standards were updated before the current World Bank process explained below, but benefited from the reviews that the World Bank system went through and from many processes that generated lessons and experiences, the IFC system became for some years the key reference for a new generation of safeguards.

28. The 2012 IFC standards addressed some of the issues on which the World Bank system was found lacking or where the reviews of the Bank itself showed the need for change, or those about which organizations representing indigenous peoples and local communities had been raising questions for some time. One important example is the shift from protection of “physical cultural resources” in the World Bank system to protection of “cultural heritage” in the IFC standards, whereby the protection of (a) intangible cultural heritage and (b) community access are newly included elements. Another important example is the introduction of “free, prior and informed consent” as part of the Standard on Indigenous Peoples, as well as the protection of the cultural heritage including knowledge, innovations, or practices of indigenous peoples.

29. The World Bank has undertaken several reviews of its environmental and social safeguards over the years, as a result of which some of the safeguards have been gradually updated. Specifically, for example, in 2011 the World Bank reviewed the application of its Indigenous Peoples Safeguard,<sup>18</sup> and found significant weaknesses on issues such as addressing tenure and access rights, and applying the policy of “free, prior and informed consultation”.

30. The IFC Performance Standards are generally consistent with the requirements of the Convention’s voluntary guidelines on safeguards in biodiversity financing mechanisms. Substantively, the IFC standards have provisions that address the protection of the rights, livelihoods and cultural heritage of indigenous peoples and local communities; procedurally, stakeholder involvement is a strong requirement of the IFC standards, as well as access to information. Regarding free, prior and informed consent, there are some questions about conditioning it to “certain circumstances”, which may require a deeper examination on how such circumstances are defined in practice.

31. Based on the lessons from the reviews and the continuous interactions with constituencies interested in improvements in its safeguard system, the World Bank undertook in recent years a thorough consultative review that resulted in the adoption, in August 2016, of a new Environmental and Social Framework (ESF), aimed to provide “broad coverage, including important advances on transparency, non-discrimination, social inclusion, public participation and accountability”.<sup>19</sup> Although already adopted, the new ESF will be launched for application only in 2018. In preparation for that, on 1 November 2017, the World Bank issued a series of guidance notes for consultation,<sup>20</sup> providing detailed information and suggested steps to ensure application of the safeguards.

32. The World Bank’s ESF is composed of three pillars: a vision for sustainable development, the environmental and social policy, and the environmental and social standards.<sup>21</sup> With more direct

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<sup>16</sup> <https://www.forestcarbonpartnership.org/common-approach-environmental-and-social-safeguards>.

<sup>17</sup> GEF/ME/C.52/inf. 08.

<sup>18</sup> Implementation of the World Bank’s Indigenous Peoples Policy: A Learning Review (FY 2006-2008), August 2011.

<sup>19</sup> The ESF “is the result of the most extensive consultations ever conducted by the World Bank, with nearly four years of analysis and engagement around the world with governments, development experts, and civil society groups, reaching nearly 8,000 stakeholders in 63 countries “. World Bank, Environmental and Social Framework, July 2017.

<sup>20</sup> <http://www.worldbank.org/en/programs/environmental-and-social-policies-for-projects/brief/environmental-and-social-framework-esf-draft-guidance-notes-for-borrowers>

<sup>21</sup> *Ibid.*, p. ix.

relevance for this review, the new Environmental and Social Standards include: Assessment and Management of Environmental and Social Risks and Impacts; Land Acquisition, Restrictions on Land Use and Involuntary Resettlement; Biodiversity Conservation and Sustainable Management of Living Natural Resources; Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities; Cultural Heritage; Stakeholder Engagement and Information Disclosure.

33. In its current version, the World Bank ESF shows coherence with the Convention on Biological Diversity's voluntary guidelines on safeguards in biodiversity financing mechanisms. It recognizes the need to protect the rights and livelihoods of indigenous peoples and local communities; it also mandates the application of inclusive project practices. Similarly to the IFC, it includes the requirement of free, prior and informed consent in "certain circumstances" and has broadened its safeguard on cultural resources to "cultural heritage". However, some organizations of indigenous peoples and local communities have observed that the current ESF places more responsibility for implementation and accountability on the borrowers than on the Bank, which seems to leave application at the discretion of governments.

34. Regarding free, prior and informed consent, the draft guidance note issued on 1 November 2017 explains that the circumstances requiring its application are when projects (a) adversely impact on the land and natural resources under traditional ownership or customary use or occupation by Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities, (b) cause their relocation or (c) have significant impacts on their cultural heritage.<sup>22</sup>

35. One aspect of this formulation that has been the subject of criticism is that the assessment of impacts for determining their conditioning qualification (adverse, significant) will precede the process of obtaining free, prior and informed consent, and it is not clear by whom or through which procedure the impacts will be scored to trigger or not to trigger free, prior and informed consent.

## **B. The Global Environment Facility**

36. The Global Environment Facility (GEF) is today the financial mechanism for five major international environmental conventions: the United Nations Framework Convention on Climate Change; the Convention on Biological Diversity; the Stockholm Convention on Persistent Organic Pollutants; the United Nations Convention to Combat Desertification; and the Minamata Convention on Mercury. The safeguard system of GEF applies equally to all agencies and operations under the five conventions. In this sense, the overall impact of GEF in terms of application of its safeguard requirements is potentially very significant.

37. GEF adopted a "Policy on Agency Minimum Standards on Environmental and Social Safeguards" in November 2011, and issued a revised guidance for "Application of Policy on Agency Minimum Standards on Environmental and Social Safeguards" in February 2015.<sup>23</sup>

38. GEF operates through a partnership of 18 agencies that include United Nations institutions, multilateral development banks, international conservation organizations and national institutions in some countries. GEF requires that all agencies comply with its eight standards on environmental and social safeguards,<sup>24</sup> which include environmental and social impact assessment, natural habitats, involuntary resettlement, indigenous peoples, physical cultural resources, and accountability and grievance systems. Following the 2015 guidance, the majority of the 18 GEF agencies established their environmental and social safeguard systems in 2015 and 2016, and their experience in applying them is therefore very recent.

39. The process for upgrading the GEF environmental and social safeguards has recently included a major effort to improve agency compliance and will be followed by a further upgrade of the system,

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<sup>22</sup> Guidance Note for ESS7. Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities. Draft for public comment, 1 November 2017, p. 12.

<sup>23</sup> SD/GN/03.

<sup>24</sup> GEF/ME/C.52/inf. 08.



wherein the contribution of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms will be particularly valuable. It is important to note that GEF has significantly expanded its portfolio within and outside the Convention on Biological Diversity, and includes actions that take the shape of, support or include new and innovative mechanisms beyond conventional project implementation. The GEF process, for these reasons, is likely to have a very significant impact on the structure and application of safeguard systems globally.

40. In May 2017, GEF undertook a thorough review of its policy on agency minimum standards on environmental and social safeguards and its usefulness in addressing environmental and social risks particularly in the context of its Sixth Portfolio cycle.<sup>25</sup> Following the review, the GEF Council at its 53rd Meeting, in November 2017, is considering a "Plan to review the GEF's social and environmental safeguards",<sup>26</sup> with a view to addressing the recommendations emanating from the review and upgrading its whole system to the latest international standards and policy provisions. The Plan will be implemented between December 2017 and November 2018, and offers a useful opportunity to promote greater synergies with the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms.

41. Further, in November 2017, GEF issued a report on a review of GEF engagement with indigenous peoples which specifically contains an analysis of the indigenous peoples safeguards of the 18 GEF agencies and provides useful lessons for exploring ways to strengthen their application along the lines required by the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms.

42. GEF safeguards generally comply with provisions of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms, but there are some areas for improvement. The 2017 review of the GEF minimum standards found that, although the core principles of the system "remain highly relevant today, [...] there has been significant evolution in environmental and social safeguard standards in the intervening years in terms of thematic breadth, specificity and procedures",<sup>27</sup> and, therefore, improvements should be considered in areas such as the following: human rights, non-discrimination and equity; stakeholder engagement; sustainable resource management; involuntary resettlement; indigenous peoples and free, prior and informed consent; and cultural heritage.

43. The proposed directions for improvement recommended by the review seem fully consistent with the spirit and provisions of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms. The upcoming process of upgrading the GEF system would therefore significantly benefit from considering the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms as a guiding framework and as a checklist.

### **C. Funds under the financial mechanism of the United Nations Framework Convention on Climate Change**

44. Item VI of the list of "new and innovative financial mechanisms" identified in Conference of the Parties decision IX/11 refers to funding mechanisms under the United Nations Framework Convention on Climate Change (UNFCCC).

45. It is important to note that the Conference of the Parties to UNFCCC at its twenty-first session (Paris, 2015) recognized "the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change", and established "a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner".<sup>28</sup> Further, at its twenty-third meeting, in November 2017, the Conference of the Parties decided that the platform, among other functions, "should facilitate the integration of diverse knowledge systems, practices and innovations in designing and implementing

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<sup>25</sup> GEF/ME/C.52/inf.8. Several parts of this section rely on the findings of the GEF review.

<sup>26</sup> GEF/C.53/07.

<sup>27</sup> GEF/ME/C.52/inf. 08.

<sup>28</sup> FCCC/CP/2015/10/Add.1, para 135.

international and national actions, programmes and policies in a manner that respects and promotes the rights and interests of local communities and indigenous peoples".<sup>29</sup>

46. UNFCCC has three operating entities of its financial mechanism,<sup>30</sup> fulfilling different but complementary functions.<sup>31</sup> GEF has served as an operating entity of the financial mechanism since 1994. In 2011, UNFCCC Parties designated the Green Climate Fund (GCF) as an operating entity of the financial mechanism. Parties also established the Adaptation Fund under the Kyoto Protocol in 2001.

### 1. *The Green Climate Fund*

47. GCF is the global fund created to support developing countries to respond to the challenge of climate change, by helping them limit or reduce their greenhouse gas emissions and adapt to climate change.

48. GCF works through a wide range of Accredited Entities – private or public, non-governmental, sub-national, national, regional or international, whose role is to channel resources for implementation. As of August 2017, 186 entities were registered in the pipeline for accreditation, with 54 institutions already accredited.

49. Through Notification SCBD/MCO/DC/AF/NP/ML/YX/86771 of 14 August 2017, the Executive Secretary informed Parties of the opportunities emerging from GCF for supporting synergistic implementation of the Rio conventions. As the Notification indicates, GCF has evolved rapidly to become the largest multilateral climate fund, with an initial resource mobilization of pledges amounting to US\$ 10.3 billion for the 2015-2018 programming period. The areas of work of GCF are of direct relevance to the objectives of the Convention on Biological Diversity.

50. GCF informed the UNFCCC Conference of the Parties at its 23<sup>rd</sup> meeting, in November 2017, of the expansion of its portfolio to US\$ 2.69 billion, including its regular programmes and its Readiness and Preparatory Support Programme. Although many pledges have yet to materialize, this represents a significant scaling-up of its operations.<sup>32</sup>

51. The relevance of GCF in terms of reviewing its safeguards relates to the scale of its funding and operations, and the feature that it operates through a large number of Accredited Entities, which will probably number close to 200 in the coming years.

52. In October 2017, GCF initiated the second phase of a consultative process for developing its environmental and social management system, which essentially includes the environmental and social policy of GCF, and a set of environmental and social safeguards and related application procedures. Accredited Entities are currently using "interim environmental and social safeguards" based on the IFC Standards<sup>33</sup> for their operations.

53. GCF has a requirement of compliance with safeguards applicable to all Accredited Entities. This means that, at the moment they obtain accreditation, the Accredited Entities have to show that they (a) integrate the social and environmental safeguards in their own institutional frameworks and adopt the respective policy provisions, (b) commit to implementing the safeguard system in all the projects that they channel resources for, and (c) establish the necessary instruments to ensure effective application of the safeguards.

54. To date, as per the requirements, 54 Accredited Entities of GCF have adopted environmental and social safeguard systems compliant with the GCF interim provisions, and related instruments for

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<sup>29</sup> FCCC/SBSTA/2017/L.29, para 6.

<sup>30</sup> <http://bigpicture.unfccc.int/content/climate-finance/what-is-the-financial-mechanism-what-are-the-other-funds.html>

<sup>31</sup> FCCC/CP/2017/L.4, 15 November 2017.

<sup>32</sup> FCCC/CP/2017/L.8, 16 November 2017.

<sup>33</sup> IFC Performance Standards on Environmental and Social Sustainability, 1 January 2012.

application of the safeguards to their GCF projects and programmes. Further, 134 institutions which are currently in the pipeline for accreditation will have to comply with the same requirement.

55. The new GCF environmental and social policy “articulates how GCF integrates environmental and social considerations into its decision-making and operations to effectively manage environmental and social risks and impacts and improve outcomes”.<sup>34</sup> Its new environmental and social management system will include, in addition to the policy, the environmental and social standards, processes and procedures, a stakeholder engagement framework, and guidance and tools for implementing the environmental and social policy and standards.

56. This summary of the GCF environmental and social management system and its safeguards shows that all the relevant elements of the Convention’s voluntary guidelines on safeguards in biodiversity financing mechanisms are being addressed in its development. However, in the current stakeholder consultation process, some civil society organizations have observed that the consultation has had a constraining time frame and thus have made recommendations in this regard, as well as for strengthening provisions on free, prior and informed consent, positive outcomes and ways of enhancing the accountability of Accredited Entities on compliance with the safeguards.

## 2. *The Adaptation Fund*

57. The Adaptation Fund finances climate adaptation projects and programmes for vulnerable communities in developing countries that are Parties to the Kyoto Protocol. It operates through Implementing Entities that, as of March 2017, numbered 43 (25 national, 6 regional, and 12 multilateral). In November 2017, at the 23rd session of the UNFCCC Conference of the Parties, the Adaptation Fund announced an effective portfolio of US\$ 93.3 million.

58. In 2013, the Adaptation Fund adopted an environmental and social policy (ESP), which was amended in 2016. It establishes that “all projects/programmes be screened for their environmental and social impacts, that those impacts be identified, and that the proposed project/programme be categorized according to its potential environmental and social impacts”.<sup>35</sup>

59. The Adaptation Fund’s ESP is composed of 15 environmental and social safeguard principles that address such topics as: (a) fair and equitable access to benefits; (b) avoidance of disproportionate adverse impacts on marginalized and vulnerable groups; (c) respect and, where applicable, promote international human rights; (d) gender equality; (e) consistency with the rights and responsibilities set forth in the United Nations Declaration on the Rights of Indigenous Peoples and other applicable international instruments relating to indigenous peoples; (f) avoidance or minimization of the need for involuntary resettlement; and (g) avoidance of impacts on cultural heritage.

60. In June 2016, the Adaptation Fund issued a “Guidance document for Implementing Entities on compliance with the Adaptation Fund environmental and social policy”, to support Implementing Entities in “achieving and demonstrating compliance with the environmental and social policy in the project and programme cycle whenever project implementation has the potential to trigger environmental and/or social risks”.<sup>36</sup>

61. An analysis of the Adaptation Fund’s ESP and Guidance shows that the system complies with the requirements set forth by the Convention’s voluntary guidelines on safeguards in biodiversity financing mechanisms and by related guidelines and principles of the Convention. The architecture of the Adaptation Fund’s ESP in terms of instruments and tools appears lighter than those of GCF or GEF, but it does not seem to affect the requirements for compliance with safeguards; as it builds on existing instruments of other systems to which many Implementing Entities already adhere, it may, in

<sup>34</sup> [http://www.greenclimate.fund/documents/20182/820027/GCF\\_2017\\_Inf.02\\_-\\_Environmental\\_and\\_social\\_management\\_system.pdf/fec82d6c-1e68-4398-908e-f32c14f2814f](http://www.greenclimate.fund/documents/20182/820027/GCF_2017_Inf.02_-_Environmental_and_social_management_system.pdf/fec82d6c-1e68-4398-908e-f32c14f2814f)

<sup>35</sup> [https://www.adaptation-fund.org/wp-content/uploads/2013/11/Amended-March-2016\\_-\\_OPG-ANNEX-3-Environmental-social-policy-March-2016.pdf](https://www.adaptation-fund.org/wp-content/uploads/2013/11/Amended-March-2016_-_OPG-ANNEX-3-Environmental-social-policy-March-2016.pdf)

<sup>36</sup> <https://www.adaptation-fund.org/document/guidance-document-implementing-entities-compliance-adaptation-fund-environmental-social-policy/>.

practice, be equally fit to ensure implementation and compliance. As in other cases, however, it is at an early phase of development and application, and the robustness of the system should be further examined in the future.

### C. REDD+ and related safeguards

62. Several processes have been put in place for developing safeguards applicable to Reduced Emissions from Deforestation and Forest Degradation (REDD+), as described in UNEP/CBD/COP/12/INF/27, starting with the safeguards adopted by the UNFCCC in its decision 1/CP.16 from 2011.<sup>37</sup> The document also offers a summary of decisions adopted under the Convention on Biological Diversity providing advice on the application of REDD+ safeguards.

63. In this section, two initiatives are reviewed that are related to REDD+ and have been updated recently: the Climate, Community and Biodiversity (CCB) Standards, and the Gold Standard for the Global Goals.

64. A recent development related to REDD+ safeguards is version 3.1 of the CCB Standards, issued in June 2017.<sup>38</sup> CCB Standards were originally developed through a multi-stakeholder process by the Climate, Community & Biodiversity Alliance (CCBA), and a partnership of CARE, Conservation International, The Nature Conservancy, the Rainforest Alliance and the Wildlife Conservation Society.<sup>39</sup> CCB Standards work at site-based project levels and have been managed by the Verified Carbon Standard programme (VCS)<sup>40</sup> since November 2014; they apply to any land management project that delivers “net positive benefits for climate change mitigation, for local communities and for biodiversity”; therefore, they are not specific to REDD+ but can include it.

65. The CCB Standards are a certification instrument and programme that provide a compliance label, or CCB Standards approval, to projects that meet a set of 17 standards; the programme therefore goes beyond safeguards and checks projects also for tangible benefits. The 17 criteria are obligatory and there are also 3 optional criteria (“Gold Level criteria”) for exceptional projects.<sup>41</sup>

66. CCBA developed also the REDD+ Social and Environmental Standards (REDD+ SES) for REDD+ government-led strategies and actions. “The issues covered by the REDD+ SES and the Climate, Community & Biodiversity Standards are very similar but both standards were developed through separate multi-stakeholder processes and are differently structured and organized”.<sup>42</sup>

67. The focus of CCB Standards and programme on site-based projects and their certification approach allow them to apply equally to projects with government agencies, non-governmental organizations and the private sector (“private companies, multilateral agencies and other funders investing in carbon projects or sourcing carbon credits”).<sup>43</sup> This is an important consideration because they can cover projects irrespective of their funding source and therefore have the potential to complement the role of the UNFCCC financial mechanism entities in terms of ensuring safeguards compliance.

68. The safeguard-related topics of the CCB Standards are well aligned with the Convention’s voluntary guidelines on safeguards in biodiversity financing mechanisms. Issues covered are both substantive (such as land tenure and resource access security) and procedural (such as full stakeholder involvement and free, prior and informed consent). In terms of instruments, the criteria require projects

<sup>37</sup> FCCC/CP/2010/7/Add.1. Appendix to Decision 1/CP.16.

<sup>38</sup> <http://www.v-c-s.org/project/ccb-program/rules-requirements-and-guidance/updates-to-the-ccb-standards-version-3/>. Earlier developments of the standards were reported on in document CBD/COP/12/INF/27 – see Box 4 in p. 11., and footnote 61 in p. 15. There have not been updates of the REDD+ SES since its version of 2012.

<sup>39</sup> <http://www.climate-standards.org/about-ccba/>

<sup>40</sup> <http://www.v-c-s.org/project/ccb-program/>

<sup>41</sup> <http://www.climate-standards.org/ccb-standards/summary-scorecard/>

<sup>42</sup> [http://www.v-c-s.org/wp-content/uploads/2017/06/CCB-Standards-v3.1\\_ENG.pdf](http://www.v-c-s.org/wp-content/uploads/2017/06/CCB-Standards-v3.1_ENG.pdf), p. 7

<sup>43</sup> *Ibid.*, p. 4.

to demonstrate through verifiable information not only measures for risk management but also evidence of positive outcomes through comparative analysis of without-project and with-project scenarios.

69. The Gold Standard for the Global Goals is a project certification programme defined as a “next-generation standard” that enables initiatives to quantify, certify and maximise their impacts through “enhanced safeguards, holistic project design, management of trade-offs and local stakeholder engagement”.<sup>44</sup> The scope of projects it certifies is wide, and it specifically seeks to target innovative instruments, including “renewable energy certificates, certified emissions reduction statements (...), certified SDG Impact statements or carbon credits”. Created in 2003, it updated its system in July 2017.

70. Projects certified by the Gold Standard must meet a set of principles, rules and requirements, including on safeguards in three areas: (a) Social Safeguards, (b) Economic Safeguards, and (c) Environmental & Ecological Safeguards.<sup>45</sup> The social and economic safeguards are composed of twelve principles that include among others Human Rights, Gender Equality and Women’s Rights, Cultural Heritage, Indigenous Peoples, Displacement and Resettlement, Land Tenure and Other Rights. To complement the substantive aspects of safeguards, the Gold Standard has also developed “Stakeholder Consultation & Engagement Procedure, Requirements & Guidelines”, as well as Gender Guidelines and a Gender Policy.<sup>46</sup>

71. The safeguard requirements of the Gold Standard are comprehensive and comply with the provisions set forth in the Convention’s voluntary guidelines on safeguards in biodiversity financing mechanisms; on indigenous peoples’ issues, although the United Nations Declaration on the Rights of Indigenous Peoples is not explicitly mentioned, all the relevant issues are covered in the safeguards. In terms of procedures, the requirements and the assessment instruments seem to configure a system suited to ensure proper application and screening of the safeguards.

72. The two systems reviewed in this section have several commonalities: they are project focused, are orientated towards certification of projects, include projects with private investors, and cover a range of projects related to land management, with a particular interest in climate change-related topics, including REDD+. Both updated their standards and safeguards in June-July 2017. Their systems show also many commonalities, both in substantive aspects of safeguards and also on procedural elements, with stakeholder involvement, indigenous peoples and free, prior and informed consent being explicitly integrated. An important feature of both systems is that they are outside the formal climate change-related financing and operate also outside of government or intergovernmental control and reporting systems – which does not seem to be a weakness of accountability because they operate within, or are linked to, important standard-setting networks, such as the Verified Carbon Standard Association (VCSA),<sup>47</sup> and the ISEAL Alliance, a global membership association for sustainability standards.<sup>48</sup>

#### **IV. SUMMARY AND CONCLUSIONS FOR ADVANCING THE IMPLEMENTATION OF THE VOLUNTARY GUIDELINES**

73. In the last few years, several international financial mechanisms relevant to biodiversity have been revising their own safeguard systems or adopting new ones in order to respond to the same concerns expressed by the Parties to the Convention on Biological Diversity and the Convention’s broader constituency, including indigenous peoples and local communities. Today, there is generally an important trend of developing and upgrading safeguard systems in biodiversity and environmental financing to meet higher standards of biodiversity and ecosystem conservation and for the protection of

<sup>44</sup> <https://globalgoals.goldstandard.org/>

<sup>45</sup> <https://globalgoals.goldstandard.org/100/101-4-gold-standard-for-the-global-goals-safeguarding-principles-requirements>

<sup>46</sup> <https://globalgoals.goldstandard.org/100/101-3-gold-standard-for-the-global-goal-stakeholder-procedure-requirements-guidelines>

<sup>47</sup> <http://www.v-c-s.org/wp-content/uploads/2016/05/2012-Annual-Report-FINAL.pdf>

<sup>48</sup> [https://www.isealalliance.org/sites/default/files/ISEAL\\_Mission\\_Goals\\_2013.pdf](https://www.isealalliance.org/sites/default/files/ISEAL_Mission_Goals_2013.pdf)

the rights and livelihoods of indigenous peoples and local communities, as well as to ensure gender equality.<sup>49</sup>

74. Overall, the review of the safeguard systems of relevant financial mechanisms show that (a) they are expanding in number and coverage of actions, (b) they are evolving in design, architecture and instruments, (c) they are expanding the thematic scope, (d) they are looking more thoroughly at implementation mechanisms.<sup>50</sup> There is a new generation of safeguard and standard systems, and the cases examined in this review are only examples of a broader stream of change in terms of setting up and/or upgrading such systems.

75. In recent years safeguard systems have generally become more comprehensive and systematic, with greater harmonization among many agencies, actors and processes. This is an important development that has taken greater dimension in recent years, and that offers an important opportunity for the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms, as these can precisely promote, support and facilitate harmonization based on compliance with their provisions.

76. The trend identified in UNEP/CBD/COP/12/INF/27 of safeguards moving from "defensive" to "positive-outcome-oriented" has become stronger. Indeed, in early phases of safeguards their intention was to reduce risk and harm and therefore to "defend" vulnerable populations and ecosystems from threats or dangerous developments. Today, practically all safeguard systems include, or are linked to, specific approaches to generate positive outcomes for communities and ecosystems, as specifically proposed by the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms. The continuation of this shift may be difficult, however, because the instruments originally devised for defensive safeguards are insufficient to ensure positive outcomes.

77. In a similar vein, there has been a transition from "safeguards" to "standards" in the sense that safeguards are seen as elements of a broader architecture of standards. Safeguards are basically policies and tools for avoiding, reducing and mitigating harm; standards are principle-based frameworks and tools to achieve the highest degrees of operation for avoiding harm and for creating good outcomes. The Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms, although they focus on safeguards, are rather aimed at framing a standard and proposing principles of a model of operation that has the highest levels of compliance with objectives of concurrent positive outcomes for biodiversity and communities.

78. There is a clear will in the new wave of standards and safeguards to strengthen their principle basis, and, for this purpose, they make increasing use of international instruments that provide credible references and directions, such as the Universal Declaration of Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples. This has been further strengthened by the calls and engagement of the United Nations special rapporteurs on environment and human rights and on the rights of indigenous peoples, who have addressed the topic and have called for improved application of safeguards in their respective mandates.<sup>51</sup>

79. Substantively and procedurally, the new generation of safeguards are increasingly converging towards key common principles that are included in the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms. For example, the substantive requirement that the tenure and access rights of indigenous peoples and local communities should not be affected by financing mechanisms or projects is universally accepted; similarly, stakeholder involvement throughout the cycle, and free, prior and informed consent are today common principles (although some questions remain on how "consent" and "consultation" are framed in certain cases). This process

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<sup>49</sup>As the GEF Review summarizes, "The adoption of environmental and social safeguard standards among a wide range of international development and finance institutions reflects a broad consensus among governments, development economists, environmental and social experts, civil society groups, and other stakeholders that such policies are critical to achieving sustainable development outcomes and avoiding and/or minimizing social and environmental harm", GEF/ME/C.52/inf. 08, p. 38.

<sup>50</sup> The GEF Review elaborates further on some of the aspects of this architectural and thematic expansion of safeguards. See GEF/ME/C.52/inf. 08, p. 38.

<sup>51</sup> See A/HRC/34/49 and A/HRC/36/46, respectively.

towards common approaches and principles can be further strengthened and facilitated through the use of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms as an authoritative reference framework.

80. Safeguard and standard systems are increasingly recognizing multi-scale needs and challenges, and, if looked at in a complementary way, they can help address local and national scales. This trend corresponds well to the concepts of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms of developing safeguards grounded in local circumstances while also corresponding to the national frameworks.

81. The safeguard and standard systems currently in development or under improvement do not, in general, explicitly use the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms, among other reasons because of the timeframes – the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms were adopted in 2014, while most of the current processes started well before that, even if their new structures have been emerging more recently. In the current phase, in which many such processes are still in development, the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms would be very useful, as proposed earlier, but a more active outreach to promote this instrument would be needed for greater uptake.

82. The actors behind financing mechanisms and safeguard systems point systematically to the greatest challenge: implementation. Many of the systems still lack adequate tools, capacities and institutional arrangements; building and sustaining enabling processes and conditions are, in addition, extremely demanding and difficult in many countries. This goes beyond the design and development of the safeguard systems, and calls for greater synergies among a diversity of actors, including Parties to the Convention on Biological Diversity and stakeholder organizations, to create the critical mass of social action that is needed to ensure that the objectives of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms are met on the ground.

## V. SUGGESTED RECOMMENDATION

83. As requested in paragraph 27 of decision XIII/20, and in the light of the comments and suggestions contained in section III above, the Ad Hoc Open-ended Working Group on Article 8(j) and Related Provisions at its tenth meeting may wish to consider the following as a possible draft recommendation for consideration by the Subsidiary Body on Implementation at its second meeting, and adoption by the Conference of the Parties at its fourteenth meeting.

### **Safeguards in biodiversity financing, with focus on the potential effects of these safeguards on the social and economic rights and livelihoods of indigenous peoples and local communities**

#### *The Conference of the Parties*

1. *Highlights* with appreciation the important synergies and convergence that are 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 for creating greater synergies;

2. *Takes note*, in particular, of the processes undertaken by the United Nations Framework Convention on Climate Change financial mechanism's operating entities to design, establish and apply safeguard systems that would cover all climate-related financing under their responsibility in a way that would be consistent with the voluntary guidelines on safeguards in biodiversity financing mechanisms;

3. *Welcomes*, in particular, the Global Environment Facility's process to review and upgrade its environmental and social safeguards and the related systems of its agencies, noting that the result of such a process will be equally applicable to climate-related financing

under the United Nations Framework Convention on Climate Change and to biodiversity-related financing under the Convention on Biological Diversity, and invites the Global Environment Facility to inform the Conference of the Parties about how it is taking into account the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms in its important process;

4. *Invites* the Green Climate Fund and the Adaptation Fund as operating entities of the financial mechanism of the United Nations Framework Convention on Climate Change, to share their views and lessons on the value of using the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms in their processes to develop and implement their safeguard systems to address potential risks and impacts of climate-related funding on the rights and livelihoods of indigenous peoples and local communities and to enhance the benefits of such funding to them;

5. *Invites* 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;

6. *Also invites* Parties, other stakeholder organizations and other institutions to contribute views on experiences, opportunities and options to advance the application of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms to the design and operation of biodiversity financing mechanisms;

7. *Requests* the Executive Secretary to compile further information on the use and value of the Convention's voluntary guidelines on safeguards in biodiversity financing mechanisms and other relevant guidance under the Convention by Parties, other stakeholder organizations and international institutions in relation to the development and application of relevant safeguard systems.

#### *Annex*

### **ASSESSMENT OF REQUIREMENTS UNDER THE CONVENTION ON BIOLOGICAL DIVERSITY FOR SAFEGUARDS IN BIODIVERSITY FINANCING MECHANISMS**

The following questions may be used as a checklist for compliance with requirements of 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 and local communities and to maximize 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 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.**

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 prior informed consent or approval and involvement of indigenous and local communities in the definition of such roles and responsibilities?

B.4 Has the mechanism taken into account 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 take into account 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 required complying with safeguards' provisions?

**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 ensure 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 safeguard provisions for risk mitigation and avoidance in relation to the traditional knowledge of indigenous peoples and local communities, especially regarding the protection of their knowledge rights?
-