



Biodiversity financing and safeguards

Lessons learned and proposed guidelines

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ISBN (English Print) 92-9225-561-4

ISBN (English Web) 92-9225-562-2

Citation:

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, Information Document UNEP/CBD/COP/12/INF/27 for the 12th Conference of the Parties of the Convention on Biological Diversity in Pyeongchang Korea.

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Note to the reader: This publication is a revised and expanded version of discussion papers on Safeguards UNEP/CBD/COP/11/INF/7 and UNEP/CBD/WGRI/5/INF/7

Cover image:

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Funding:

The main economic support to develop this policy paper was provided by the Swedish International Development Cooperation Agency (Sida) through the Resilience and Development Programme (SwedBio) at Stockholm Resilience Centre, Stockholm University. Research conducted for the project "Effective and Equitable Institutional Arrangements for Financing and Safeguarding Biodiversity" funded by The Swedish Research Council for Environment, Agricultural Sciences and Spatial Planning (Formas) also contributed to the development of this policy paper.

Find this publication on-line at:

<http://www.cbd.int/doc/?meeting=cop-12> and
<http://www.stockholmresilience.org/21/publications.html>

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Executive summary

This policy report examines the notion of safeguards in biodiversity financing mechanisms (BFMs) under the Convention on Biological Diversity, in order to inform discussions in CBD-COP12. It explores key elements in the process of scaling-up biodiversity financing for achieving the CBD objectives. It is a result of a lengthy and 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 development of BFMs is seen as a key element contributing to the achievement of the three goals of the Convention on Biological Diversity. However, concerns exist over potential social and environmental problems. To address these concerns, various stakeholders have stressed the importance of safeguards as prerequisites for reaching the CBD objectives. “Safeguards in BFMs” refer to measures for maximising the protection of biodiversity and people’s livelihoods while minimising negative impacts.

This policy report 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 and rights’ recognition of local right-holders. It suggests that a rights/duties based approach to safeguards in BFMs 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 holistic approach to safeguards views their operationalization as a dynamic process grounded in particular local level realities and linked to national and international processes.

The paper also analyses safeguards relating to different types of BFMs. This analysis found that, in practice, BFMs can be con-

nected with one another, as well as with broader institutional reforms and biodiversity resource mobilisation such as Official Development Assistance (ODA). Hence, 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 for scaling-up biodiversity financing.

Based on this analysis and informed by inputs from stakeholders and Parties, the paper proposes guidelines for safeguards in all the examined BFMs, and suggests elements for a roadmap to operationalize such guidelines. While countries face distinctive challenges due to their socio-ecological and legal landscapes, the proposed guidelines aim to provide advice on how Parties and other stakeholders can make more informed decision 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.

The CBD context of this policy report

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 the consideration by COP in its twelfth meeting.¹ SCBD Notification (SCBD/ITS/RS/LZ/81526) invited CBD Parties and relevant stakeholders to make submissions, commenting and providing 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 groups and semi-structured interviews were conducted in order to obtain further comments and inputs (See Box 2). 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

¹ CBD-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.

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 safeguards²” (UNEP/CBD/COP/12/4); the above-mentioned document on “possible risks and benefits of country-specific innovative financial mechanisms and safeguards” refers to the previous version of this policy paper (UNEP/CBD/WGRI/5/INF/7).

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 and 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 (UNEP/CBD/COP/11/4).⁵

The BFM s 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, proposed guidelines and suggested operationalization roadmap in this paper are also relevant to other potential mechanisms, such as those of the Nagoya Protocol and ABS system.

Main findings

Scaling-up biodiversity financing can be a means for meeting the CBD Objectives and the Aichi Biodiversity Targets, but both opportunities and risks need to be taken into account in the mobilization of resources for biodiversity. Potential impacts of BFM s on different elements of biodiversity, as well as BFM s’ effects on people’s rights and livelihoods need to be addressed. Particular attention is needed to the impacts and contribution by indigenous peoples⁷, local communities and women including their participation in the choice, design and operationalization of BFM s.

Guidelines can contribute to provide coherence of safeguards across different BFM s’ interacting risks and opportunities as well as to address unintended impacts of financing mechanisms and to maximise the opportunities. The process of developing and implementing effective safeguards across different BFM s’, 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 of stakeholders, *inter alia* in relationships of governments with local and indigenous 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, policies and practices, through country-driven and participatory processes can contribute to such processes. Dialogue between the CBD Secretariat and other Secretariats of the Rio Conventions and other relevant organisations can also foster consistency of safeguards across international institutions.

Proposed voluntary guidelines

Biodiversity underpins local livelihoods and resilience

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.

People’s rights, access to resources and livelihoods

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).

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

GUIDELINE 3.- Safeguards in financing mechanisms for biodiversity should be grounded in local realities and supported by country-driven and specific processes, and should make use of existing relevant international legal and policy frameworks, and observe, at a minimum, internationally agreed commitments regarding sustainable use of biological diversity and livelihoods, *inter alia*, under the CBD, UNFCCC, international human rights treaties and UNDRIP.

Governance, institutional frameworks and accountability

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.

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.

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

7 In this paper, we use the term “indigenous peoples” because some of the people providing comments to a previous version of this paper explicitly requested to use this term and because it is the term used, for example, in the submission by Peru with comments and inputs. We are aware of the present discussions under the CBD regarding “Analysis on the implications of the use of the term “Indigenous Peoples and Local Communities” for the Convention and its protocols” UNEP/CBD/COP/12/5/Add.1, 25 June 2014 which will be discussed at COP12.

Potential elements for an operational roadmap

The following are potential elements, which 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, include:

- The CBD Secretariat can engage in a dialogue with the other Secretariats of the Rio Conventions and other relevant organisations, in order to develop a strategy to provide coherence to guidelines and safeguards across international institutions with the aim of addressing unintended impacts of financing mechanisms as well as contributing to a just and equitable governance of biodiversity and ecosystems, to be presented to Parties. The organizations involved in this dialogue could include inter alia, the Human Rights Council, the Permanent Forum for Indigenous Peoples, the World Bank's Inspection Panel, the International Development Law Organisation, the Intergovernmental Platform on Biodiversity and Ecosystem Services and organisations involved in resource mobilisation for the Millennium Development Goals (MDGs) and post-2015 development agenda.
- Member States are recommended to 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, and to develop national systems for biodiversity and social safeguards with the effective participation of relevant stakeholders, inter alia local communities and indigenous peoples. This includes: a) identifying national legal provisions and policies relevant to substantive safeguards 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 the six biodiversity financing mechanisms mentioned in Goal 4 of the Strategy of Resource Mobilisation (2008–2015) (COP 9 Decision IX/11) and potential additional mechanisms, when such mechanisms are or will be operational in the country, and c) taking action in harmonising different safeguards in scaling-up biodiversity financing and developing new safeguards if needed, including by using the guidelines mentioned earlier.
- It is suggested that COP encourages 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.

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 “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”.	MA	Millennium Ecosystem Assessment: international report written by leading scientists and published in 2005 that analyses the state of the world’s ecosystems and the impact of mankind on biodiversity.
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.	MRV	Monitoring, Reporting and Verification: systems that help in measuring, understanding and following-up the implementation of mechanisms.
BCPS	Biocultural Community Protocols: community-led statements about a local population’s priorities and values relating to their biocultural resources.	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)
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.	PES	Payment for Ecosystem Services: positive incentives based on subsidies given to landowners who use practices that enhance ecological services.
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”.	REDD+	Reducing Emissions from Deforestation and Forest Degradation, conserving and sustainably managing forests and enhancing forest carbon stocks in Developing Countries (REDD+)
CCBA	Climate, Community and Biodiversity Alliance: initiative established in 2003 to improve forest management and increase private and public interest in forest protection.	SB	Socio Bosque program: governmental initiative implemented in Ecuador since September 2008 to preserve native forest ecosystem from deforestation.
CCBS	Climate, Community and Biodiversity Standards: initiative of the CCBA to allow multilevel stakeholders to assess climate-change mitigation projects.	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.
COP	Conference Of the Parties: governing body of the Convention of Biological Diversity that since 2000 holds a meeting every two years to take decisions.	SEA	Strategic Environmental Assessment: a structured process to ensure that the environmental effects of a project or a policy have been identified.
EIA	Environmental Impact Assessment: a formal study prior to implementation of a policy or project assessing its potential effects on the environment.	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.
GEF	Global Environmental 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.	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.
IPBES	Intergovernmental Platform on Biodiversity and Ecosystem Services: an independent intergovernmental body created in April 2012 to synthesize knowledge of both the scientific and political communities and to enable improved science-informed decision-making processes.	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.
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.	UNEP	United Nation Environment Program: UN agency founded in 1972 which coordinates environmental initiatives and helps developing countries in enforcing better policies and practices.
IUCN	International Union for the Conservation of Nature: the first global environmental organization, created in 1948, it aims at preserving biodiversity.	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.
		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.⁸ 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".⁹ 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.¹⁰ 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 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 1). 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.¹¹

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".¹² Paragraph 21 of Decision XI/4 invites Parties and relevant stakeholders to submit lessons learned on country-specific innovative financing mechanisms¹³, which may include safeguards. Accordingly, inputs have been received and have informed the further development of the initial discussion paper (See Box 2).

Box 1. 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".¹⁴

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.¹⁵

Safeguards were also debated¹⁶ 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.¹⁷

8 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.

9 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.

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

11 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).

12 Parr. 20, Page 37, Decision XI/4.

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

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

15 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, www.pwccc.com/2010/04/24/peoples-agreement/.

16 Ibidem.

17 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

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” (emphasis added).¹⁸

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.¹⁹ 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...”²⁰ 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”.²¹

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)²². 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”²³(UNEP/CBD/COP/12/4). This paper is the new version that responds to the WGRI5 request. WGRI5 also takes note of the Co-Chair’s Summary of 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;²⁴ for some highlights on governance, safeguards and equity discussed in this Dialogue Seminar, see Box 7.

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 proposed 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 the term “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.²⁵ “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.

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 2 below and Appendix 1).²⁶ This revised version of the information document incorporates views and responses to submissions from Parties and other stakeholders, also outlined in Box 2. 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.

of the Convention, www.cbd.int/doc/meetings/wgri/wgri-04/in-session/wgri-04-L-07-en.doc, accessed 1 July 2012.

18 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.

19 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.

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

21 Ibidem.

22 UNEP/CBD/WGRI/5/INF/7.

23 UNEP/CBD/WGRI/5/INF/7.

24 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>.

25 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.

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

Box 2. 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 the European Union, India, Peru, Switzerland, and IUCN.

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

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 WGR1 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 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 (WGR15), Montreal, Canada 16–19 June 2014.

A previous version of this paper became Information Document for this meeting: UNEP/CBD/WGR1/5/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/wgr15/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 (WGR15) 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/wgr15/>). 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.²⁷

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 people.

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. Presentation and Q&A (around 30 people); video of the presentation publicly available.²⁸

²⁷ <http://www.cbd.int/doc/notifications/2013/ntf-2013-089-business-en.pdf>.

²⁸ <http://www.siani.se/video/legal-landscapes-biodiversity-and-social-safeguards-video>.

2. Valuing 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.²⁹ The “insurance value” of biodiversity and well-functioning resilient ecosystems should be regarded as an integral part of their total economic value,³⁰ and explicitly taken into account in safeguards in BFM. The Economics of Ecosystems and Biodiversity (TEEB) has distinguished three approaches to valuation:

RECOGNIZING VALUE: a feature of all human societies and communities and expressed through norms, regulations, regional planning, policies and legislations;

DEMONSTRATING VALUE: e.g. by showing the value of Protected Areas or wetlands in economic (monetary) terms, as a support for decision making; and

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).³¹

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 3). The potential of scaling-up biodiversity financing often depends on government intervention including their role in the development of safeguards.³² The thorough discussion on biodiversity values conducted by TEEB is key for understanding BFMs and we will return to this.

Box 3. 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.³³ Another concern is the “corporatization of nature”, viewed by some as a process in which large corporations monopolise certain biodiversity-related rights.³⁴

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.

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.³⁵ 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.³⁶

29 MA 2005, Synthesis, page 98–99.

30 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.

31 TEEB 2010, Synthesis Report.

32 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.

33 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.

34 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.

35 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, Norwegian University of Life Sciences, UMB. http://www.umb.no/statisk/noragric/publications/reports/2011_nor_rep_60.pdf.

36 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).

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.³⁷ 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”.³⁸ 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.³⁹ 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 Decision IX/11 to take prompt actions to implement the strategy for resource mobilization,⁴⁰ and it has financed projects that have BFM components such as PES.⁴¹

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).⁴² 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.⁴³

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 (see Appendix 3). 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.⁴⁴ 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 (See UNFCCC Decisions 2/CP.13, 4/CP.15, 1/CP.16, 2/CP.17 and 12/CP.17, 9/CP.19, 11/CP.19, 12/CP.19 in Appendix 3). These systems should provide transparent and consistent information that is accessible by

37 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.

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

39 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>

40 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.

41 Information about projects with PES components financed by the World Bank can be found at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/EXTTEEI/0,,contentMDK:20487983~menuPK:1187844~pagePK:210058~piPK:210062~theSitePK:408050~isCURL:Y,00.html> Accessed 21st May 2014.

42 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>.

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

44 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

all relevant stakeholders.⁴⁵ Standards and guidance for the implementation of REDD+ safeguards have also progressively developed beyond the UNFCCC framework (see Box 4).

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”.⁴⁶ Similarly in development cooperation, safeguards may refer to the means for ensuring that financial resources provided are used for their designated purpose, without adverse environmental and social impacts.⁴⁷ 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.⁴⁸ 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 proposed safeguard.

Box 4. 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.”⁴⁹

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.⁵⁰

45 See Decision 12/CP.17 Guidance on systems for providing information on how safeguards are addressed and respected and modalities relating to forest reference emission levels and forest reference levels as referred to in decision 1/CP.16, see <http://unfccc.int/resource/docs/2011/cop17/eng/09a02.pdf>, accessed 26 July 2012.

46 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/ymb/rri/dfgcc9/html/ymbvol173num3e.html, accessed 30 July 2012.

47 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.”

48 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.

49 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.

50 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).

4. Safeguards in existing 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 5). 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.⁵¹ 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 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. ⁵² 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. ⁵³

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.⁵⁴

Box 5. 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.⁵⁵

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.⁵⁶ 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.⁵⁷ In particular, Articles 21 (i) and 12.3 of the Nagoya Protocol refer to community protocols:

51 For examples of substantive environmental rights, see e.g. Brush, Coker and Van Arsdale 2001. Brush, 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.

52 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).

53 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 Ghezae, 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.

54 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).

55 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.

56 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>

57 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 community protocols provide an opportunity for a particular community to work on Biocultural protocols that are in consonance with their own values and priorities.”⁵⁸ 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.⁵⁹ 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.⁶⁰ 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.⁶¹ 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.⁶² 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 4) and the Plan Vivo system⁶³, 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 Box 6).

Box 6. The potential role of environmental impact assessments and social impact assessments

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)⁶⁴ and environmental impact assessments (EIAs) that facilitate the consideration of all available climate-change mitigation and adaptation options...”

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.⁶⁵

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”.⁶⁶

⁵⁸ 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).

⁵⁹ 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.

⁶⁰ 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.

⁶¹ 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.

⁶² See UNFCCC Decision 11/CP.19 in Appendix 3 and also 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/wsfbm-eoc-01/official/wsfbm-eoc-01-chairs-summary-en.pdf>, accessed 12 November 2012.

⁶³ www.planvivo.org.

⁶⁴ Decision VIII/28 (Voluntary guidelines on biodiversity-inclusive impact assessment).

⁶⁵ Poncelet, C. (2012) Access to Justice in Environmental Matters—Does the European Union Comply with its Obligations? *J Environmental Law*, eqs004 first published online March 16, 2012 doi:10.1093/jel/eqs004.

⁶⁶ Synthesis on Innovative Financial Mechanisms, Note by the Executive Secretary, UNEP/CBD/COP/11/14/Add.3, 28 August 2012.

5. Proposed voluntary guidelines for safeguards in BFM

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 proposed 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 7. 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..."⁶⁷

⁶⁷ 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 ⁶⁸ (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 / 1975 ⁶⁹ • Convention on the Conservation of Migratory Species of Wild Flora and Fauna, 1973/ 1975 ⁷⁰ • 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 proposed 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) • Tkarhwaie-ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities, (CBD 2010)
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 Human Rights and Environment 1994 • 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.

⁶⁸ The first year mentioned is when the international treaty was adopted and second when it entered into force.

⁶⁹ Amended 1979.

⁷⁰ Amended 1979.

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 2.⁷¹

Table 2. Types of safeguards and guidelines

	GUIDELINES			
TYPES OF SAFEGUARDS	Biodiversity underpins local livelihoods and resilience	People's rights, access to resources and livelihoods	Local and country-driven/ specific processes linked to the international level	Governance, institutional frameworks and accountability
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>	
Procedural safeguards		<p>X</p> <p>Convention on Biological Diversity (Art 21)</p> <p>International Covenant on Civil and Political Rights (Art 2.1)</p>	<p>X</p> <p>Convention on Biological Diversity (Art 14.1(c, e, d)), 14.2</p> <p>United Nations Framework Convention on Climate Change Decision 1/CP.16, Appendix 1 (1.c, e,f,h)</p>	<p>X</p> <p>Convention on Biological Diversity (Art. 6, 21, 14.1 (a, b), 16.2, 17),</p> <p>Aarhus Convention (Art. 5, 9.3)</p> <p>UNFCCC Decision 1/CP.16, Appendix 1 (1.i; 2.c,e)</p>

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

⁷¹ It worth noting that the boundaries both between the proposed guidelines and the type of safeguards is sometimes blurred.

5.1 Biodiversity underpins local livelihoods and resilience

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.⁷²

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 security⁷³ access to water, and the health of present and future generations.⁷⁴ 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.⁷⁵

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.⁷⁶ 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.⁷⁷ 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.⁷⁸ 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.⁷⁹ The latter is about protecting against shocks and disturbances that are not currently occurring. A high insurance value corresponds to a high level of resilience.⁸⁰ The TEEB report is also emphatic that even when a single service is the focus, as is the case for many BFMs, general approaches to sustaining biodiversity are required for long-term resilience.⁸¹

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.⁸² 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 monitoring and information systems, community territorial planning, and Indigenous and Community Conserved Areas (ICCAs).⁸³ BFMs 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.

72 Guideline 1 has been adjusted to respond to EU comments to strengthen biodiversity safeguards; IUCN comments that general benefits to biodiversity should be achieved and Peru submission saying that principles should recognize intrinsic biodiversity values and aspects of resilience.

73 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.

74 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.

75 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 Momsen, 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.

76 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.

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

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

79 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.

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

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

82 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.

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

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,⁸⁴ and that ensure the inclusion of a precautionary approach.⁸⁵ 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 and 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.

5.2 People's rights, access to resources and livelihoods

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).⁸⁶

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 BFMs. 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.⁸⁷ 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.⁸⁸

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".⁸⁹ 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.⁹⁰

84 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>.

85 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>.

86 Guideline 2 has been rephrased considering the submission by India and comments received in the International Workshop on Financing for Biodiversity in the Ittingen concerning the terms prior informed consent and free prior informed consent. Adjustments in this Guideline also respond to Switzerland suggestion concerning "participation", Peru comment that principles should include social values that contribute to solve conflicts concerning property rights and natural resources access and the suggestions made by the focus group in Bonn saying that safeguards should put more emphasis on Human Rights and Indigenous people Rights and promote legitimacy of benefits.

87 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. See also REDD+ safeguards in Appendix 3.

88 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".

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

90 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.

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.⁹¹ 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 BFM 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”.⁹²

Besides international law, the legislation and policy decisions at the national level can serve to specify equitable benefit sharing in BFM and make it responsive to local concerns particularly related to rights, livelihoods and resources.⁹³ 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 8 illustrates that this guideline is already institutionalised in some national laws.⁹⁴

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 134Bis 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.

In the submission by India as well as some participants in the International Workshop on Financing for Biodiversity in the Ittingen, Switzerland, 2014 preferred the wording “PIC”; it is the term up to now used in the CBD (e.g. Akwé Kon Voluntary guidelines (CBD 2004)) as well as in the national legislation of other countries (see e.g. Peruvian Law 27811 in Box 8). 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.

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 8. 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.⁹⁵ 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.⁹⁶ It is not only the substantive content of safeguards that is important but also the way in which they are implemented.⁹⁷ In Law 27811, under 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).⁹⁸

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

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

93 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>.

94 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%2Fview.aspx%3FList%3D4dfcb-b6c-8249-4f61-baa9-2e84199ea8b5%26View%3D0d9a923a-0dd4-4499-b428-626683fb8f-ba%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.

95 Alexander, M., Chamundeeswari, 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.

96 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.

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

98 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. Submission of Switzerland.

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.⁹⁹ 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 stakeholders¹⁰⁰ 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.¹⁰¹ 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 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 BFMs 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 communities.

⁹⁹ e.g. Interview 17 July 2012.

¹⁰⁰ 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.

¹⁰¹ 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.

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

GUIDELINE 3.- Safeguards in financing mechanisms for biodiversity should be grounded in local realities and supported by country-driven and specific processes, and should make use of existing relevant international legal and policy frameworks, and observe, at a minimum, internationally agreed commitments regarding sustainable use of biological diversity and livelihoods, inter alia, under the CBD, UNFCCC, international human rights treaties and UNDRIP.¹⁰²

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 BFM's 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-making¹⁰³ 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.¹⁰⁴ The proposed guidelines also recognise that according to Article 3 of the Convention on Biological Diversity and the Charter of the United 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 BFMs. 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".¹⁰⁵ The need to go beyond a top-down approach was an aspect identified by interviewees from the private sector¹⁰⁶ and community organizations¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹ 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.¹¹⁰

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

¹⁰² The guideline has been changed in order to respond to the comments in the focus group in the Bonn workshop about including Human Rights and the suggestions made by Peru to further discuss about conflicts that arise with property rights and rights to access natural resources.

¹⁰³ 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

¹⁰⁴ 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.

¹⁰⁵ Seventh Trondheim Conference On Biodiversity: Ecology And Economy For A Sustainable Society (Trondheim, Norway, 27–31 May 2013).

¹⁰⁶ 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.

¹⁰⁷ Focus group at Expert Workshop on Community-Based Monitoring and Information Systems, The Bohn workshop celebrated in April 2013.

¹⁰⁸ 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.

¹⁰⁹ Perú Submission on the discussion paper "Safeguards for scaling-up biodiversity financing and possible guiding principles".

¹¹⁰ Interview, Expert Workshop on Community-Based Monitoring and Information Systems, April 2013.

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 +20.¹¹¹ 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 inclusion of stakeholders to protect them and mitigate environmental risks).¹¹² 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.¹¹³

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.¹¹⁴

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.¹¹⁵

5.4 Governance, institutional frameworks and accountability

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.¹¹⁶

Institutional frameworks—necessary for all safeguards to function—influence countries' ability to choose and develop appropriate safeguards in BFMs 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 own interests.¹¹⁷ 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. BFMs 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.

111 Dialogue SRC-Law Faculty, Stockholm University.

112 <http://static.squarespace.com/static/52026c1ee4b0ee324ff265f3/t/525d7449e4b0924d-2f4618a2/1381856329700/Gaborone-Declaration.pdf> (last access the 14/05/2014).

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

114 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.

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

116 The guideline has been rephrased to respond to Switzerland's comment about adding the term transparency to the principle, as well as the suggestions made by the focus group in Bonn and the SRC-Faculty of Law, Stockholm University Dialogue where the importance of compliance mechanisms.

117 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.

Certain institutional requirements for follow-up and monitoring are necessary for safeguards in BFM 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.”¹¹⁸ At the regional level, an example of legal developments in regulation relevant for compliance mechanisms in BFM are the European Union Directives on Environmental Impact Assessment mentioned earlier.¹¹⁹

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 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.¹²⁰ 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 institutional and legal frameworks. In this context, capacity building remains an important challenge.¹²¹

The importance of capacity-building was highlighted in the submissions by Switzerland, India, 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 mobilisa-

tion with national legal systems and customary norms”.¹²² 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.¹²³ 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.¹²⁴ 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.¹²⁵ 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.

118 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.

119 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.

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

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

122 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>

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

124 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>.

125 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 that stake and the available resources.

6. Safeguards and different types of BFMs

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).¹²⁶

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.¹²⁷ 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.¹²⁸ Currently, governments and governmental organisations finance 97–99% of PES globally.¹²⁹ 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. This PES scheme covers 11% of Costa Rica’s land area, and was 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.¹³⁰

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.¹³¹ Important challenges, however, remain, including reaching out to the poorest segments of society.¹³² 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

¹²⁶ 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.

¹²⁷ 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/>.

¹²⁸ 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.

¹²⁹ 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/statistik/noragric/publications/reports/2011_nor_rep_60.pdf

¹³⁰ Page 22 in Farooqui, M.F. and Schultz, M., 2012.

¹³¹ 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.

¹³² 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.

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.¹³³ 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.¹³⁴

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.¹³⁵

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).¹³⁶ 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 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.¹³⁷ Currently, the government is looking for alternative funding streams from certificates¹³⁸ (agreements with companies that

commit to support PSB), new green taxes¹³⁹ (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-Maitre (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.¹⁴⁰ 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.

¹³³ Page 23 in Farooqui, M.F. and Schultz, M., 2012.

¹³⁴ 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).

¹³⁵ Page 23 in Farooqui, M.F. and Schultz, M., 2012.

¹³⁶ 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.

¹³⁷ De Koning, Bridging the gap between forest conservation and poverty alleviation: the Ecuadorian Socio Bosque program, 2011, p. 539.

¹³⁸ 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.

¹³⁹ Fehse, J., Private conservation agreements support climate action: Ecuador's Socio Bosque programme, Climate and development knowledge network, September 2012.

¹⁴⁰ Perrot-Maitre, D. (2006). The Vittel payments for ecosystem services: a “perfect” PES case. International Institute for Environment and Development, London, UK, 1–24.

Table 3. Lessons learned from safeguard-related legal provisions in Ecuador and from their operationalization in Proyecto Socio Bosque¹⁴¹

Types of provisions		Selected safeguard-related legal provisions ¹⁴²	Lessons learned from the Socio Bosque scheme
Biodiversity	Substantive	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).	Land tenure issues ⁵ may limit participation and create disruptions within Socio Bosque ^{6, 7} that makes government’s efforts to address land-related issues very relevant. Need of safeguards that protect areas under the Proyecto Socio Bosque (PSB) from exploitation projects.
	Procedural	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).	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	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).	The program could gain from specifying rights of indigenous peoples and landowners ⁸ over natural resources in PSB contracts.
	Procedural	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).	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. ⁹

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.¹⁴⁸ Biodiversity offsets adhere to the already well-recognised polluter pays principle, which is supported by both international and national legal and policy frameworks.¹⁴⁹ 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”.¹⁵⁰

In most discussions on biodiversity offsets and ecological compensation (these concepts are often used synonymously)¹⁵¹ 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.¹⁵²

As the last step of the mitigation hierarchy, it has been questioned whether biodiversity offsetting is indeed a biodiver-

¹⁴¹ This Proyecto Socio Bosque case study was developed by Nicolas Audifax.

¹⁴² See “cited legal instruments” in the reference list.

¹⁴³ Ecuador – Property rights And Resources Governance Profile, USAID country profile, July 2011.

¹⁴⁴ Reed, P. (2011). REDD+ and the indigenous question: a case study from Ecuador. *Forests*, 2(2), 525–549.

¹⁴⁵ K. Podvin, Institutional analysis of the Socio Bosque Program: an Ecuadorian forest governance initiative and its interactions with REDD, master thesis, 2013.

¹⁴⁶ T. Krause & L. Loft (2013), Benefit Distribution and equity in Ecuador’s Socio Bosque Program, *Society & Natural Resources: An International Journal*.

¹⁴⁷ 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.

¹⁴⁸ Parker, C., Cranford, M., Oakes, N., Leggett, M. ed., 2012. *The Little Biodiversity Finance Book*, Global Canopy Programme; Oxford.

¹⁴⁹ 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.

¹⁵⁰ BBOP Principles on Biodiversity Offsets, accessed 12 July 2012 <http://bbop.forest-trends.org/guidelines/participation.pdf>.

¹⁵¹ 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).

¹⁵² 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

sity 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 biodiversity degradation.¹⁵³ 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.¹⁵⁴ 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.¹⁵⁵

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.¹⁵⁶ 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 implemented offsets voluntarily and several companies have committed to no net loss, or net gain policies, including

Rio Tinto, BHP and Billiton.¹⁵⁷ 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.¹⁵⁸ 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.¹⁵⁹

While some of the interviewees in this study 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 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.¹⁶⁰ 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.¹⁶¹

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 conferences¹⁶² 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 9). 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

153 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>

154 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.

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

156 Conway et al. 2013.

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

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

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

160 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.

161 CBD 2011, IFM report.

162 See e.g. CBD 2011, IFM report.

place. Offset design and implementation should avoid displacing activities harmful to biodiversity to other locations”.¹⁶³ Keeping offset mechanisms within a country is considered to minimise the risks of displacement.

Box 9. 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).¹⁶⁴ 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.¹⁶⁵

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”.¹⁶⁶

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”.¹⁶⁷ 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.¹⁶⁸

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”.¹⁶⁹ 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.¹⁷⁰

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 (FTT) 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).¹⁷¹

¹⁶⁷ 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.

¹⁶⁸ 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.

¹⁶⁹ See e.g. Humavindu, M. and Jonathan, L., 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.drfin.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.

¹⁷⁰ 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.

¹⁷¹ Barbier E. (2012) Sustainability: Tax ‘societal ills’ to save the planet. *Nature* 483, 30.

¹⁶³ BBOP Principles.

¹⁶⁴ 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> 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.

¹⁶⁵ 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.

¹⁶⁶ Ibidem.

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.¹⁷²

ODA is dealt with under Goals 3¹⁷³ and 5¹⁷⁴ 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 programmes and Millennium Development Goals as well as the Paris Declaration on Aid Effectiveness¹⁷⁵, 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 agroecological 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 Box 6). 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.

¹⁷² UNEP/CBD/WGRI/3/INF/5.

¹⁷³ 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.

¹⁷⁴ 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.

¹⁷⁵ COP 9 Decision IX/11, Review of implementation of Articles 20 and 21, www.cbd.int/decision/cop/?id=11654, accessed 25 July 2012.

Box 10. 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.¹⁷⁶ 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.¹⁷⁷ Another example of a project in culturally and biologically rich areas is the project: “Reducción de la deforestación y degradación en la Reserva Nacional Tambopata y en el Parque Nacional Bahuaja-Sonene del ámbito de la región Madre de Dios – Perú”.¹⁷⁸

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)¹⁷⁹, 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.¹⁸⁰ 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.

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.¹⁸¹

¹⁷⁶ See The Plan Vivo Standards 2008 available at www.planvivo.org/documents/standards.pdf.

¹⁷⁷ See <http://www.forestcarbonportal.com/project/index.php>

¹⁷⁸ See www.forestcarbonportal.com/project/ashaninca-communal-reserve-redd-project.

¹⁷⁹ Department of Environment and Conservation (NSW) (2005) Biodiversity certification and banking in coastal and growth areas. DEC NSW: Sydney.

¹⁸⁰ <http://www.ecolabelindex.com>.

¹⁸¹ 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.

Box 11: Label IP-Suisse – System and criteria for biodiversity

IP-Suisse is a farmer association-led labeling 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).

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.¹⁸² 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 peoples, it is necessary not to overlook the associated trade-offs.¹⁸³ 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.¹⁸⁴

The CBD Secretariat has provided advice on the application of relevant safeguards for biodiversity with regard to REDD+ (see Box 12), which can be relevant also for biodiversity safeguards concerning ecosystems other than forests.¹⁸⁵ Such advice identifies possible risks to biodiversity and indigenous and local communities¹⁸⁶ 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 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 12. Summary of CBD Advice on the application of safeguards for biodiversity with regard to REDD+¹⁸⁷

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 sites¹⁸⁸ and lands and waters traditionally occupied or used by indigenous and local communities¹⁸⁹
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.¹⁹⁰
Decision VII/28

Voluntary guidelines on biodiversity-inclusive impact assessment
Decision VIII/28

Elements of the Tkarihwaï:ri¹⁹¹ Code of Ethical Conduct pertaining to research, access to, use, exchange and management of information concerning traditional knowledge, innovations and practices for the conservation and sustainable use of biological diversity.
Decision X/42

After Cancun, the 2011 Durban Climate Change Conference gave more room to financial cooperation between countries for REDD+ and launch the Safeguards Information System (see Appendix 3). 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

182 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.

183 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.

184 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/>.

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

186 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).

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

188 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;

189 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.

190 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

191 Pronounced [Tga-ree-wa-yie-ree], a Mohawk term meaning “the proper way”.

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.”¹⁹² Bolivia 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.¹⁹³

¹⁹² E/CN.18/2013/5, Istanbul, Turkey, 8–19 April 2013.

¹⁹³ 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.

7. Proposed elements for an operational roadmap

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. Here we outline some possible elements of the strategies for this implementation:

THE CBD SECRETARIAT: engagement in active dialogue with the other Secretariats of the Rio Conventions, and other relevant organisations can form the basis of the co-development of a strategy to provide coherence to guidelines and safeguards across diverse international institutions representing the many different interests in BFM. The aim of such a dialogue would be to address the unintended impacts of financing mechanisms as well as contributing 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 Permanent Forum for Indigenous Peoples, 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 BFMs, 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 BFMs while also addressing the risks and challenges, building on tangible experiences from various countries.

8. 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 traditional 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:kong 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 directly 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 the potential proliferation of competing labels and claims, highlighting the importance of effective communication, education and transparency regarding 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 that, if followed, 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 BFMs may be interlinked in practice. Likewise, BFMs can be related to other means of resource mobilisation such as ODA. Hence, while Parties develop specific safeguards that respond to the risks and op-

portunities of each BFMs, their efforts can be more effective by harmonising different safeguards in scaling-up biodiversity financing. Moreover, the proposed guidelines (Biodiversity underpins local livelihoods and resilience; People's rights, access to resources and livelihoods; Local and country-driven/ specific processes linked to the international level; Governance, institutional frameworks and accountability) can be the baseline underlying safeguards in all the BFMs .

Guidelines for safeguards in scaling-up biodiversity financing can be articulated using official legal instruments and also the already existing voluntary standards and guidelines. The proposed guiding principles for safeguards in BFMs 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 BFMs and ensuring that BFMs 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 BFMs. Identifying key elements to be safeguarded in BFMs in particular contexts including those associated with rights, resources and livelihoods on the one hand, and the values of biodiversity including its insurance, resilience and intrinsic values on the other hand, is key for fulfilling the objectives of the CBD. Moreover, this study has found that institutional capacity and accountability are prerequisites for safeguards to function in BFMs.

In terms of further research, analysis of the way safeguards in BFMs articulate with various legal systems at different scales can help to harmonise the actions needed for the operationalisation of safeguards in BFMs and contribute to the fulfilment of the CBD's objectives. In this context, the discussion would benefit from case studies that examine the necessary measures to synchronise substantive safeguards, 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 BFMs in order to achieve equitable and sustainable outcomes.

In the environmental legal and policy arena, the discussion on safeguards has centered 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 BFMs. 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.

Acknowledgements

The authors wish to acknowledge the valuable comments and inputs provided in the submissions by the European Union, India, Peru, Switzerland, and IUCN. We would also like to thank the people who provided comments in the following events:

- 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.

We are also grateful to people who participated in focus/working groups and interviews for the development of this project (see list below). We would also like to thank Nicolas Audifax and Carmen Seco for providing support in systematising comments and inputs received to previous drafts and to Ellika Hermansson Török for her support in the layout. People participating in focus/working groups and interviews are mentioned below:¹⁹⁴

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.

Leticia Manzanera, Ministry of the Environment, SEMARNAT.

Carolina Muñoz, National System of Conserved Areas, Costa Rica and Sandra Jimenez (Costa Rica)

Bente Herstad, The Norwegian Agency for Development Cooperation, Norway

Johannes Stahl, Convention on Biological Diversity Secretariat

Annett Möhner, UN Framework Convention on Climate Change Secretariat

Yves de Soye, United Nations Development Programme

Valerie Hickey

Fabiano de Andrade Correa, International Development Law Organisation

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, International Union for Conservation of Nature.

Maria Yolanda Teran Maigua, Indigenous Women's Network on Biodiversity

Joji Carino, Forest Peoples Programme

Pasang Dolma Sherpa, Nepal Federation of Indigenous Nationalities

Joenia Carvalho, Indigenous Council of Roraima

Vicky Tauli-Corpuz, Tebtebba

Tarcila Rivera Zea, 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 Aarhus Compliance Committee

Sian Sullivan, University of London

Maryanne Grieg-Gran, International Institute for Environment and Development

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

¹⁹⁴ 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.

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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 ¹⁹⁵	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 Nations Declaration of the Rights of Indigenous Peoples (UNDRIP).	The main findings now mention the Nagoya Protocol on Access and Benefit Sharing. Guideline 2 “People’s Rights, Access to Resources and Livelihoods” and Guideline 3 “Local and country-driven/specific processes linked to the international level” now specifies that BFM should consider the UNDRIP among other internationally agreed commitments. Table 2 “International legal instruments informing the guidelines” now contains also relevant treaties such as the Nagoya Protocol in order to operationalize ABS.
	Highlight experiences of the World Bank that provide relevant insights on safeguarding approaches.	The paper refers to the World Bank in several parts of the paper such as in Section 3 “Evolving notion of safeguards”. 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.
	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”.

¹⁹⁵ The terms IFM or BFM are included depending on how the respective country refer to them in their submission.

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.	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. Section 4 "Safeguards in existing legal and policy instruments and standards" Table 3 draws lessons learned from Socio Bosque program in Ecuador Section 6.5 "Markets for Green Products" in Box 11 "Label IP-Suisse - System and criteria for biodiversity" provides an example of Switzerland. Both have been included responding to this comment.
Request to revise some terms considered as politically loaded such as "free prior informed consent" and "self-determination" and the term "broader processes".	Reference to "self-determination" is no 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 BFMs" 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 8.
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 3 "Values and markets".
Discussion about social safeguards should also include local communities that rely on locally provided ecosystem services and not only indigenous people.	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 BFM.	As part of the proposed 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 inputs and help to solve property rights and natural resources access conflicts.	Guideline 1 "Biodiversity Underpins Local Livelihoods and Resilience" and Guideline 2 "People's Rights, Access to Resources and Livelihoods" 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 comprehensively 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. In Appendix 3. UNFCCC-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.	Section 5.4 "Governance, institutional frameworks and accountability", 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. 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.
	Include participation as part of Guideline 2.	Guideline 2 explicitly refers to participation "People's Rights, Access to Resources and Livelihoods" In section 5.2 "People's Rights, Access to Resources and Livelihoods" paragraph 5 also makes reference to participation.
	Include lessons learned from REDD+ safeguards.	A new Section 6.6 on climate financing with a focus on REDD+ was included. As part of the proposed roadmap to operationalize the guidelines, the paper suggests the SCBD to engage in dialogue with UNFCCC.
	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.
	Address the six mechanisms under Goal 4 of the strategy of resource mobilization and include ABS as a IFM. A comment was provided on the role of markets for green products, giving the example of Label IP-Suisse.	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. The IP-Suisse example is included in a new illustrative box 11 under section 6.5 "Markets for Green Products".

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 represent and should thus stress more the need for investments in building capacity and appropriate safeguards.	Section 5.2 “Governance, institutional frameworks and accountability” 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 proposed 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 proposed 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. Participants: businesses, business associations, governments, intergovernmental and non-governmental organizations and academia. Presentation at Panel “Safeguards & mechanisms”, Q&A and panel discussion. http://www.cbd.int/business/bc/3m.shtml	Importance of participation in PES, Biodiversity offsets and REDD+.	In Section 5.2 “People’s rights, access to resources and livelihoods” a new paragraph has been developed in order to respond to this comment stating that procedural safeguards should also include the participation of relevant stakeholders.
	Panellists highlighted the importance of free prior informed consent (FPIC) in safeguarding approaches.	The paper kept the originally used terminology of “free prior informed consent” as well as “prior informed consent” (Section 5.2 “People’s rights, access to resources and livelihoods”, Guideline 2). A new paragraph has been included under Section 5.2.

<p>Focus group at the Seventh Trondheim Conference On Biodiversity: Ecology And Economy For A Sustainable Society (Trondheim, Norway, 27–31 May 2013) Organized by Norwegian Government in co-operation 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) Participants: Member States, relevant UN entities and selected international organizations and institutions that are involved in supporting the implementation of the CBD. Presentation and focus group. http://www.cbd.int/doc/notifications/2013/ntf-2013-002-trondheim-en.pdf</p>	<p>Include more references to lessons learnt 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. 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>Dialogue SRC – Faculty of Law, Stockholm University. Discussant, Jonas Ebbesson, Professor of Environmental Law at Stockholm University and Chair of the Aarhus Compliance Committee. Participants: researchers at students from SRC and Faculty of Law, Stockholm University. Presentation, discussant reply and Q&A.</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 Permanent Forum for Indigenous Peoples.</p>
	<p>Need to stress the importance of country-specific safeguards.</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>Importance of compliance mechanisms with enforceable rights and responsibilities.</p>	<p>Guideline 4 “Governance, Institutional Frameworks and Accountability” now includes transparency and compliance mechanisms with enforceable rights and responsibilities.</p>
<p>Focus Group at the Bonn Experts Workshop on Community-Based Monitoring and Information Systems (April 2013) 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 people. Presentation, Q&A and focus group. http://www.tebtebba.org/index.php/content/271-developing-and-implementing-cb-mis-the-global-workshop-and-the-philippine-workshop-reports</p>	<p>The paper should build on already existing safeguards and organizations and put more emphasis on human rights and indigenous rights.</p>	<p>As part of the proposed roadmap to operationalize the guidelines, the paper suggests to engage in dialogue with bodies such as IDLO, Human Rights Council and the Permanent Forum for Indigenous Peoples. Guideline 2 and Guideline 3” now specify that BFM should consider the UNDRIP among other internationally agreed commitments.</p>
	<p>Include participation of relevant stakeholders as well as transparency in communication and information.</p>	<p>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.</p>
	<p>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.</p>	<p>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. Participants: Stakeholders that share interests and expertise on Landscape approach to discuss climate change governance, sustainability, resilience and improvement of agriculture. Presentation and Q&A. http://www.siani.se/event/landscapes-carbon	Importance of safeguards in REDD+ and of considering climate dimension in environmental initiatives.	As part of the proposed roadmap to operationalize the guidelines, the paper suggests the SCBD to engage in dialogue with UNFCCC. 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.
	Mention landscape approach and tools used in articulating customary norms with to with environmental law and policy.	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. Landscapes and seascapes are now mentioned in various sections in the paper.

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=RM-WS-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>Comments on guiding principles and voluntary guidelines</p> <p>One country proposed 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, Requests 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”;¹⁹⁶</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>Need to clarify the differences and inter-relations of country driven and country specific processes</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 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>
<p>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</p>	<p>A new paragraph was included as part of the operational roadmap.</p>
<p>Complement UNFCCC Decisions relevant to REDD+ and safeguards</p>	<p>Additions were made in the text specifically in Section 3 as well as in Appendix 3 in order to include further relevant UNFCCC-COP Decisions referring to safeguards.</p>

¹⁹⁶ UNEP/CBD/WGRI/5/INF/7.

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=RM-WS-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>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>	<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 Ittingen, Switzerland, 2014 preferred the wording “PIC”; it is the term up to now used in the CBD (e.g. Akwé Kon Voluntary guidelines (CBD 2004)) as well as in the national legislation of other countries (see e.g. Peruvian Law 27811 in Box 8). 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>
<p>A question was raised on how general or specific the proposed guidelines should be.</p>	<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 proposed 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.”</p>

Appendix 2. Definitions

*Definitions*¹⁹⁷

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.¹⁹⁸

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.

¹⁹⁷ The definitions of Biological diversity (biodiversity), biological resources and ecosystem can be found in Article 2 of the Convention on Biological Diversity.

¹⁹⁸ MA, 2005, Synthesis. TEEB 2009, For National and International Policy Makers.

Appendix 3. UNFCCC-COP Decisions referring to safeguards

UNFCCC Decision 12/CP.19 *The timing and the frequency of presentations of the summary of information on how all the safeguards referred to in decision 1/CP.16, appendix I, are being addressed and respected* The Conference of the Parties, <http://unfccc.int/resource/docs/2013/cop19/eng/10a01.pdf#page=28>, Accessed 10 August 2014

Also recalling, in particular, decision 12/CP.17, paragraph 5,

1. *Reiterates* that according to decision 12/CP.17, paragraph 3, developing country Parties undertaking the activities referred to in decision 1/CP.16, paragraph 70, should provide a summary of information on how all of the safeguards referred to in decision 1/CP.16, appendix I, are being addressed and respected throughout the implementation of the activities;

2. *Also reiterates* that according to decision 12/CP.17, paragraph 4, the summary of information referred to in paragraph 1 above should be provided periodically and be included in national communications, or communication channels agreed by the Conference of the Parties;

3. *Agrees* that the summary of information referred to in paragraph 1 above could also be provided, on a voluntary basis, via the web platform on the UNFCCC website;¹

4. *Decides* that developing country Parties should start providing the summary of information referred to in paragraph 1 above in their national communication or communication channel, including via the web platform of the UNFCCC, taking into account paragraph 3 above, after the start of the implementation of activities referred to in decision 1/CP.16, paragraph 70;

5. *Also decides* that the frequency of subsequent presentations of the summary of information as referred to in paragraph 2 above should be consistent with the provisions for submissions of national communications from Parties not included in Annex I to the Convention and, on a voluntary basis, via the web platform on the UNFCCC website.

UNFCCC Decision 11/CP.19 *Modalities for national forest monitoring systems*, <http://unfccc.int/methods/lulucf/items/6917.php>, Accessed 10 August 2014.

The Conference of the Parties,
Recalling decisions 2/CP.13, 4/CP.15, 1/CP.16, 2/CP.17 and 12/CP.17,

...

5. *Acknowledges* that Parties' national forest monitoring systems may provide, as appropriate, relevant information for national systems for the provision of information on how safeguards in decision 1/CP.16, appendix I, are addressed and respected.

UNFCCC Decision 9/CP.19 *Work programme on results-based finance to progress the full implementation of the activities referred to in decision 1/CP.16, paragraph 70*, <http://unfccc.int/methods/lulucf/items/6917.php>, Accessed 10 August 2014.

The Conference of the Parties,

...

4. *Agrees* that developing countries seeking to obtain and receive results-based payments in accordance with decision 2/CP.17, paragraph 64, should provide the most recent summary of information on how all of the safeguards referred to in decision 1/CP.16, appendix I, paragraph 2, have been addressed and respected before they can receive results based payments;

....

11. *Decides* that the information hub will contain, as reported through the appropriate

channels under the Convention:

... (c) The summary of information on how all of the safeguards referred to in decision 1/CP.16, appendix I, are being

UNFCCC Decision 12/CP.17, "*Guidance on systems for providing information on how safeguards are addressed and respected and modalities relating to forest reference emission levels and forest reference levels as referred to in decision 1/CP.16*", <http://unfccc.int/resource/docs/2011/cop17/eng/09a02.pdf#page=16>, accessed 17 August 2012.

1. Notes that the implementation of the safeguards referred to in appendix I to decision 1/CP.16, and information on how these safeguards are being addressed and respected, should support national strategies or action plans and be included in, where appropriate, all phases of implementation referred to in decision 1/CP.16, paragraph 73, of the activities referred to in paragraph 70 of the same decision;

2. *Agrees* that systems for providing information on how the safeguards referred to in appendix I to decision 1/CP.16 are

addressed and respected should, taking into account national circumstances and respective capabilities, and recognizing national sovereignty and legislation, and relevant international obligations and agreements, and respecting gender considerations:

- (a) Be consistent with the guidance identified in decision 1/CP.16, appendix I, paragraph 1;
- (b) Provide transparent and consistent information that is accessible by all relevant stakeholders and updated on a regular basis;
- (c) Be transparent and flexible to allow for improvements over time;
- (d) Provide information on how all of the safeguards referred to in appendix I to decision 1/CP.16 are being addressed and respected;
- (e) Be country-driven and implemented at the national level;
- (f) Build upon existing systems, as appropriate;

UNFCCC Decision 1/CP.16, "The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention", available at UNFCCC/CP/2010/7/Add.1, 15 March 2011, <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>. Accessed 17 August 2012.

"69. Affirms that the implementation of the activities referred to in paragraph 70 below should be carried out in accordance with appendix I to this decision, and that the safeguards referred to in paragraph 2 of appendix I to this decision should be promoted and supported;

70. Encourages developing country Parties to contribute to mitigation actions in the forest sector by undertaking the following activities, as deemed appropriate by each Party and in accordance with their respective capabilities and national circumstances:

- (a) Reducing emissions from deforestation;
- (b) Reducing emissions from forest degradation;
- (c) Conservation of forest carbon stocks;
- (d) Sustainable management of forests;
- (e) Enhancement of forest carbon stocks;"

Appendix 1 to the UNFCCC Decision 1/CP.16, "Guidance and safeguards for 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" available at UNFCCC/CP/2010/7/Add.1, 15 March 2011, pages 26–27, <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>. Accessed 17 August 2012

"1. The activities referred to in paragraph 70 of this decision should:

- (a) Contribute to the achievement of the objective set out in Article 2 of the Convention;
- (b) Contribute to the fulfilment of the commitments set out in Article 4, paragraph 3, of the Convention;
- (c) Be country-driven and be considered options available to Parties;
- (d) Be consistent with the objective of environmental integrity and take into account the multiple functions of forests and other ecosystems;
- (e) Be undertaken in accordance with national development priorities, objectives and circumstances and capabilities and should respect sovereignty;
- (f) Be consistent with Parties' national sustainable development needs and goals;
- (g) Be implemented in the context of sustainable development and reducing poverty, while responding to climate change;
- (h) Be consistent with the adaptation needs of the country;
- (i) Be supported by adequate and predictable financial and technology support, including support for capacity-building;
- (j) Be results-based;
- (k) Promote sustainable management of forests;

2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:

- (a) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;
- (b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;
- (c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;
- (d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision;
- (e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;¹
- (f) Actions to address the risks of reversals;
- (g) Actions to reduce displacement of emissions".

Decision 4/CP.15 Methodological guidance for activities 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, <http://unfccc.int/methods/lulucf/items/6917.php>. Accessed 10 August 2014.

Recognizing the need for full and effective engagement of indigenous peoples and local communities in, and the potential contribution of their knowledge to, monitoring and reporting of activities relating to decision 1/CP.13, paragraph 1 (b) (iii),

Recognizing the importance of promoting sustainable management of forests and co-benefits, including biodiversity, that may complement the aims and objectives of national forest programmes and relevant international conventions and agreements,.

Decision 2/CP.13 Reducing emissions from deforestation in developing countries: approaches to stimulate action <http://unfccc.int/methods/lulucf/items/6917.php>. Accessed 10 August 2014.

The Conference of the Parties,

Recognizing that reducing emissions from deforestation and forest degradation in developing countries can promote co-benefits and may complement the aims and objectives of other relevant international conventions and agreements,

Recognizing also that the needs of local and indigenous communities should be addressed when action is taken to reduce emissions from deforestation and forest degradation in developing countries...

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ISBN (English Print) 92-9225-561-4

ISBN (English Web) 92-9225-562-2

This publication is available on-line at:

<http://www.cbd.int/doc/?meeting=cop-12> and

<http://www.stockholmresilience.org/21/publications.html>