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DISCUSSION PAPER: SAFEGUARDS FOR SCALING-UP BIODIVERSITY FINANCE AND POSSIBLE GUIDING PRINCIPLES

Note by the Executive Secretary

INTRODUCTION

1. The Executive Secretary is circulating herewith the Discussion paper: Safeguards for Scaling-up Biodiversity Finance and Possible Guiding Principles. In recommendation 4/2, the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention, at its fourth meeting, had requested the organization of regional and expert workshops, as appropriate, and to assist Parties in exploring relevant financing mechanisms, including guiding principles and safeguards, and in gathering information and sharing national experiences on using the flexible reporting framework. It is in this context, that this document is prepared by a team of experts from Resilience and Development Programme at the Stockholm Resilience Centre, Stockholm University.

2. The document is being circulated in the form and language in which it was produced.

* UNEP/CBD/COP/11/1; UNEP/CBD/11/1/Add.1/Rev.1

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If you have comments on this discussion paper, please contact Maria Schultz at maria.schultz@stockholmresilience.su.se

Discussion paper: Safeguards for scaling-up biodiversity financing and possible guiding principles

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EXECUTIVE SUMMARY

This discussion paper examines the notion of safeguards and explores guiding principles that may be useful for the design and application of safeguards in Biodiversity Financing Mechanisms under the Convention on Biological Diversity. It builds on lessons learned from existing legal and policy processes, in particular the REDD+ discussions on safeguards under the UNFCCC and beyond. While scaling up biodiversity finance can be a means for contributing to the achievement of the three goals of the Convention on Biological Diversity, the development of new BFM's has also generated concerns over potential problems. To address these concerns, various stakeholders have stressed the importance of safeguards as prerequisites for reaching the CBD objectives. "Safeguards in BFM's" refer to measures for maximising the protection of biodiversity and people's livelihoods while minimising negative impacts.

This paper shows that safeguards in the environmental arena have evolved from an original defensive nature to a more comprehensive one. It suggests that a rights/duties based approach to safeguards in BFM's that goes beyond a defensive attitude can serve in constructively finding consensus for equitably allocating biocultural rights and duties among the parties involved. While distinguishing procedural safeguards from substantive safeguards, the paper highlights that both are needed for a more holistic approach to safeguards in which their operationalization is seen as a dynamic process grounded in particular local level realities and linked to national and international processes.

In terms of safeguards and BFM's, this analysis found that different BFM's can be connected in practice with broader institutional reforms, and also be linked to other means of biodiversity resource mobilisation such as Overseas Development Assistance. Hence, while Parties develop specific safeguards that respond to the risks and opportunities of each BFM, their efforts can be more effective by harmonising different safeguards in scaling-up biodiversity financing. Moreover, the paper proposes certain elements and guiding principles for safeguards in all the examined BFM's. For example on fiscal reforms, safeguards can serve to reduce perverse incentives such as avoiding subsidies to environmentally unsustainable practices with adverse impacts in biodiversity.

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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.¹ As a response to this problem, the Convention on Biological Diversity (CBD) was agreed upon between 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”.² At the tenth Conference of the Parties of CBD, in Nagoya 2010, its signatories agreed a new strategic plan, setting 20 so-called Aichi Biodiversity Targets.

Scaling up biodiversity financing can be a means for the achievement of the CBD and meeting the Aichi Biodiversity Targets.³ However, the development of biodiversity financing mechanisms has generated concern over many potential problems, notably their effects on the rights and livelihoods of indigenous peoples and local communities. To address these concerns, various stakeholders have stressed the importance of designing and implementing safeguards in BFMss. The CBD itself has also called for these safeguards (see Box 1). For example, 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.⁴

This discussion paper addresses how to develop and implement safeguards for scaling up biodiversity financing under CBD. We focus especially on the so-called “new and innovative financial mechanisms” under the CBD’s strategy for resource mobilization (Decision IX/1,1). In this paper, we use the term “biodiversity financing mechanisms” (BFMs), since these mechanisms actually include both established mechanisms and new alternatives in both the public and private sectors.⁵ “Safeguards in BFMs” 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 examining the notion of safeguards and exploring elements and guiding principles that can be useful for the design and application of safeguards under the BFMs.

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 and UNFCCC documents as well as in-depth semi-structured interviews. The interviews were conducted with experts from various organizations including intergovernmental and non-governmental organizations and scientific institutions, circulating a draft of this report among them for their feedback and comments.⁶ Different perspectives were expressed in the interviews; hence the interpretations and conclusions presented here do not imply a consensus, and are the responsibility of the authors.

¹ Millennium Ecosystem Assessment (MA) 2005, Ecosystems and Human Well-being: Biodiversity Synthesis, World Resources Institute, Washington, DC; Secretariat of the Convention on Biological Diversity (2010) Global Biodiversity Outlook 3. Montréal; UNEP 2007 and 2012, Global Environment Outlook, www.grid.unep.ch/activities/assessment/geo.

² 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.

³ COP 9 Decision IX/11, Review of implementation of Articles 20 and 21, www.cbd.int/decision/cop/?id=11654, accessed 25 July 2012.

⁴ 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).

⁵ 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.

⁶ The names and organizations of the people interviewed are listed in the acknowledgements.

Box 1. The story of safeguards under CBD

The need for scaling up resources for biodiversity conservation was discussed at CBD-COP9 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".⁷

In 2010, the CBD-COP10 Decision X/3 on Strategy for Resource Mobilization in Support of the Achievement of the CBD's Three Objectives again referred to the aim of 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.⁸

Also at CBD-COP10, safeguards were debated⁹ 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.¹⁰

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).¹¹

In June 2012, the fourth meeting of the Ad Hoc Open Ended Working Group on Review of Implementation of the CBD (WGRI4) requested the CBD Secretariat to assist Parties in exploring guiding principles and safeguards associated to relevant financing mechanisms.¹²

The CBD Secretariat's synthesis on innovative financial mechanisms (Agenda item 4.1, for the up-coming CBD-COP11 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..."¹³ It mentions that "(d)eeper 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."¹⁴

1. VALUATION OF BIODIVERSITY

The justification for promoting and financing biodiversity is of course the value of biodiversity for human wellbeing. However, valuation of biodiversity and ecosystem service is not straightforward and often overlooks the importance of non-traded supporting and regulating services.¹⁵ The "insurance value" of resilience, biodiversity and well-functioning ecosystems should be regarded as an integral

⁷ COP 9 Decision IX/11, Review of implementation of Articles 20 and 21, www.cbd.int/decision/cop/?id=11654, accessed 25 July 2012.

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

⁹ Ibidem.

¹⁰ See Draft Decision UNEP/CBD/WG-RI/4/L.7, 11 May 2012, Agenda Item 6: Review of Implementation of the Strategy for Resource Mobilization, *Draft recommendation submitted by the Chair, the Ad Hoc Open-Ended Working Group on Review of Implementation of the Convention*, www.cbd.int/doc/meetings/wgri/wgri-04/in-session/wgri-04-L-07-en.doc, accessed 1 July 2012.

¹¹ 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.

¹² *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.

¹³ Page 11 and 12, *Synthesis on Innovative Financial Mechanisms*, Note by the Executive Secretary, UNEP/CBD/COP/11/14/Add.3, 28 August 2012.

¹⁴ Ibidem.

¹⁵ MA 2005, *Synthesis*, page 98-99.

part of their total economic value,¹⁶ and explicitly taken into account in safeguards for BFM. The Economics of Ecosystems and Biodiversity (TEEB) has distinguished three approaches to valuation:

- 1) *Recognizing value*: a feature of all human societies and communities and expressed through norms, regulations, regional planning, policies and legislations;
- 2) *Demonstrating value*: e.g. by showing the value of Protected Areas or wetlands in economic (monetary) terms, as a support for decision making; and
- 3) *Capturing value*: the introduction of taxes, subsidies or other mechanisms that incorporate the values of ecosystems as costs or benefits for market actors, e.g. through the establishment of systems for payments for ecosystem services (PES).¹⁷

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 2). The thorough discussion on biodiversity values conducted by TEEB is key for understanding BFM and we will return to this.

Box 2. 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.¹⁸ Another concern is the “corporatization of nature”, viewed by some as a process in which large corporations monopolise certain biodiversity-related rights.¹⁹

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 taxes/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 uses the market mechanism. More than 98% of all PES globally are paid by governments, multilateral organisations like Global Environmental Facility (GEF) and the World Bank²⁰. When the public sector totally controls supply or demand then 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.

¹⁶ The Economics of Ecosystems and Biodiversity 2010, Synthesis Report, www.teebweb.org/Portals/25/TEEB%20Synthesis/TEEB_SynthReport_09_2010_online.pdf. See page 25.

¹⁷ TEEB 2010, Synthesis Report.

¹⁸ 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.

¹⁹ 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. 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.

²⁰ 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. www.cbd.int/financial/doc/norway-innovative-financial-mechanisms-02-2011-en.pdf

2. 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.²¹ 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 “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”. World Bank safeguards have been developed to cover a wide range of social-environmental concerns including indigenous peoples, cultural property, disputed areas, involuntary resettlement, forestry and natural habitats.²² 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 by COP 9 Decision IX/11 to take prompt actions to implement the strategy for resource mobilization,²³ and it has financed projects that have BFM components such as PES.²⁴

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).²⁵ BFM 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. In recent years, discussions between CBD and UNFCCC on the linkages between REDD+ and biodiversity conservation have increased, supported a growing body of policy and research-based evidence.²⁶

The REDD+ safeguards were initially discussed almost only in the corridors, in side-events, among civil society representatives and by a few official delegates to UNFCCC. The official delegates’ negotiation focus was on the reduction of carbon emissions, yet a range of safeguards are now formally part of COP Decisions under the UNFCCC. Safeguards on REDD+ concern issues of participation of indigenous peoples and local groups, biodiversity conservation, good governance, and the prevention of conversion of natural forests in REDD+ projects (see Appendix 1). 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.²⁷ In 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.

²¹ 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.

²² See World Bank (2012) *Environmental Assessment*. <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/0,,contentMDK:20274458~menuPK:549248~pagePK:210058~piPK:210062~theSitePK:244381,00.html>

²³ 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.

²⁴ 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 1 October 2012.

²⁵ 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>.

²⁶ The history of this policy integration process is described on www.cbd.int/forest/redd-plus.

²⁷ 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

These systems should provide transparent and consistent information that is accessible by all relevant stakeholders.²⁸ Standards and guidance for the implementation of REDD+ safeguards have also progressively developed beyond the UNFCCC framework (see Box 3 for an example).

Safeguards are demanded by a broad range of stakeholders, from the business sector to indigenous 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 that the “Cancún Agreement achieved elements needed to ensure private sector involvement... designing and enforcing safeguards, addressing accounting issues, and developing appropriate standards”.²⁹ 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.³⁰ When the term safeguards is used by indigenous 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.³¹ Hence, when exploring safeguards in BFM, it is important to consider these different understandings of the term and recognize the multifaceted features of any proposed safeguard.

Box 3. Climate, Community and Biodiversity Alliance Standards

Certain provisions of Climate, Community and Biodiversity Standards (CCBS) and multistakeholder processes can be framed as safeguards. The CCBS are among the main international standards for the multiple benefits of land-based carbon projects. CCBA aims 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 agro forestry projects through multiple-benefit and high quality land-based carbon projects. and were developed by a partnership of international NGOs and research institutes, called the Climate, Community and Biodiversity Alliance (CCBA)

“As of November 2008, six projects had 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.” Certain provisions of international standards such as the Climate, Community and Biodiversity Standards (CCBS) and multistakeholder processes can be framed as safeguards. The CCBS are among the main international standards for the multiple benefits of land-based carbon projects. CCBA aims 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 agro forestry projects through multiple-benefit and high quality land-based carbon projects. and were developed by a partnership of international NGOs and research institutes, called the Climate, Community and Biodiversity Alliance (CCBA).³²

²⁸ 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.

²⁹ 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/yimb/rri/dfgcc9/html/yimbvol173num3e.html, accessed 30 July 2012.

³⁰ 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.”

³¹ 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.

³² CCBA. 2008. *Climate, Community & Biodiversity Project Design Standards*, Second Edition. CCBA, Arlington, VA. www.climate-standards.org, accessed 6 August 2012.

3. LEARNING FROM 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 4). 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 defines the rights and duties while procedural safeguards refers to the processes and means for making effective and enforcing those rights and duties. Substantive safeguards, in particular those 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 BFM³³. 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.³⁴

Procedural safeguards contribute to processes where empowered communities engage with outsiders as equals and operate within robust legal frameworks (as systems).³⁵ These processes can become resilient and locally rooted safeguards. Towards this end, broader processes could promote meaningful community engagement, especially considering that small changes in social-ecological systems can have large effects at the community level.

Box 4. Example of the linkages between procedural and substantive dimensions of safeguards

Development agencies and research institutes can engage to operationalise substantive (e.g. tenure) and procedural (e.g. participatory) 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.³⁶

The international legal framework provides an important point of departure when developing safeguards, and also delineates the “policy space” within which BFM³³ safeguards need to be devised. 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 BFM³³ 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 BFM³³, such as the participation of indigenous 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

³³ *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).

³⁴ 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.

³⁵ See examples in CBD 2011, *Workshop Report on Innovative Financial Mechanisms*, Budapest Hungary, 22-23 March 2011, www.cbd.int/financial/doc/2011-03-budapest-IFM-report-en.pdf, accessed 3 August 2011. Hereafter, CBD 2011, IFM report.

³⁶ 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.

received much attention in the negotiation of the 2010 Nagoya Protocol³⁷. In particular, Articles 21 (i) and 12.4 of the Nagoya Protocol refer to Biocultural Community Protocols (BCPs). The BCPs are statements of self-determination of a particular community, based on their own values and priorities; they describe local procedures and conditions for engaging with other actors such as governmental institutions and conservation agencies on issues related to their biocultural resources.³⁸ They can be seen as a concept to link international treaties and national laws with customary norms and priorities of local people.

Likewise, the BFM can draw lessons from international guidelines and standards, recognising that these play a key role in supporting countries in implementing safeguards at the national level.³⁹ Standards agreed at the international level, such as the REDD+ Social and Environmental Standards already mentioned, can serve to inform both the content and implementation of the guiding principles for BFMs.⁴⁰ Systems with embedded social and environmental standards developed for monitoring, reporting and verification (MRV) in REDD+ projects could be used in addressing biodiversity and social safeguards in addition to assessing carbon emissions reduction. 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 2) and the Plan Vivo system⁴¹, 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. Furthermore, national experiences in applying these existing principles and guidance for safeguards can be shared under the CBD, aiding the design and implementation of BFMs safeguards.

Certain provisions in legal and policy instruments relating to environmental impact assessments (EIA) and social impact assessments (SIA) can be seen as a form of safeguard for some BFMs (see Box 5). For example, they include provisions referring to rights to participation (discussed more fully in section 5.4). In the implementation of safeguards for existing or new BFMs, EIA and SIA can serve to identify what aspects of biodiversity and people's wellbeing need to be safeguarded in a particular context.

³⁷ 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, viewed 5 January 2011, <<http://www.cbd.int/cop10/doc>>.

³⁸ 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; 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.

When project implementers bring projects to local communities, they risk focusing only on the issue proposed, losing perspective of a broad range of implications that the project may involve. BCPs aim to be processes in which peoples and groups step back from fragmented and contentious issues and discuss who they are, and the kinds of broader plans and futures they aim for themselves (in Spanish, "Plan de Vida" / "Buen Vivir"). Once this process has taken place and a breath of perspectives are discussed in a gradual way, people can then come back to the table and are able to relate in more equitable terms. This process starts from the position that it is peoples and communities who ought to decide their involvement in BFMs after processes of reflection in which information and knowledge sharing among the community plays an important role, according to their own timelines (see www.community-protocols.org, accessed 17 September 2012).

³⁹ 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.

⁴⁰ 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.

⁴¹ www.planvivo.org

Box 5. 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)⁴² 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.⁴³

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."⁴⁴

4. POSSIBLE ELEMENTS AND GUIDING PRINCIPLES 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 guiding principles for safeguards in BFM. Guiding principles can serve to show the relevance of safeguards in BFM to a broad range of stakeholders involved in biodiversity governance. They can also provide a shared and understandable language, which is key in building trust and consensus during the negotiation and implementation of BFM and achieving the CBD's objectives. Like international conventions such as the CBD and the UNFCCC, general principles of law are explicitly recognised by States as one of the formal sources of international law.⁴⁵ The possible guiding principles described in this section are not all recognised as legal principles of law, yet they build on international, national legal and policy instruments and standards as well as customary norms.

5.1 BIODIVERSITY VALUES FOR LOCAL LIVELIHOODS.

Possible guiding principle: The fundamental underpinning role of biodiversity and ecosystem processes for insurance value, resilience and local livelihoods should be recognised in the design and implementation of BFM. Proper institutional arrangements are needed for safeguarding biodiversity and the associated ecosystem functions and services.

The conditions and processes of natural ecosystems play a fundamental role in sustaining and fulfilling human life. The recognition of the many ways in which humans benefit from well-functioning ecosystems underpins the concept of ecosystem services⁴⁶. The state of ecosystems determines people's scope for sustainable natural resource management and has direct consequences for livelihoods. In this regard, ecosystem resilience provides a "natural insurance" against potential shocks and losses of ecosystem services.

The social-ecological resilience that biodiversity confers is an important element to be safeguarded in BFM. A system's resilience is its capacity to absorb disturbance and adapt or reorganise so as to still retain essentially the same function, structure and identity.⁴⁷ People managing ecosystems can be seen

⁴² Decision VIII/28 (Voluntary guidelines on biodiversity-inclusive impact assessment).

⁴³ Poncelet, C. (2012) Access to Justice in Environmental Matters—Does the European Union Comply with its Obligations? *J Environmental Law*, first published online March 16, 2012 doi:10.1093/jel/eqs004.

⁴⁴ Synthesis on Innovative Financial Mechanisms, Note by the Executive Secretary, UNEP/CBD/COP/11/14/Add.3, 28 August 2012.

⁴⁵ See The Statute of the International Court of Justice (Article 38.1).

⁴⁶ Daily, G., ed. 1997, *Nature's Services: Societal Dependence on Natural Ecosystems*. Washington: Island Press; MA 2005; TEEB 2010.

⁴⁷ 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.

as interdependent social-ecological systems. 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.⁴⁸

Because both ecological resilience and insurance values are difficult to measure, different means are needed for ensuring that these values can be explicitly recognised and expressed. A fuller range of values (social and ecological) can be taken into account by choosing appropriate institutions that allow these values to be articulated in addition to utilitarian values,⁴⁹ and that ensure the inclusion of a precautionary approach.⁵⁰ Such institutional arrangements can be seen as biodiversity safeguards.

The CBD Secretariat has provided Advice⁵⁶ on the application of relevant safeguards for biodiversity with regard to REDD+ (see Box 6), which can be relevant also for biodiversity safeguards concerning ecosystems other than forests.⁵¹ Such advice identifies possible risks to biodiversity and indigenous and local communities⁵² 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 6. Summary of CBD Advice on the application of safeguards for biodiversity with regard to REDD+⁵³

- | | |
|--|--------------------------|
| • The Ecosystem Approach, and relevant operational level guidance | Decisions V/6 and VII/11 |
| • The expanded programme of work on forest biodiversity | Decisions VI/22 and IX/5 |
| • The Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity | Decision VII/12 |
| • The Akwé: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding sacred sites and lands and waters traditionally occupied or used by indigenous and local communities | 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. ⁵⁴ | Decision VII/28 |
| • Voluntary guidelines on biodiversity-inclusive impact assessment | Decision VIII/28 |
| • Elements of the Tkarihwaié:ri ⁵⁵ 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 |

⁴⁸ Folke C. (2006) Resilience: The emergence of a perspective for social–ecological systems analyses. *Global Environmental Change* 16, 253-267.

⁴⁹ TEEB (2010) Chapter 4 Key message, www.teebweb.org/EcologicalandEconomicFoundationDraftChapters/tabid/29426/Default.aspx

⁵⁰ TEEB (2010) Policy Summary, page 8. www.teebweb.org/ForPolicymakers/tabid/1019/Default.aspx and TEEB Synthesis Report, page 26 www.teebweb.org/TEEBSynthesisReport/tabid/29410/Default.aspx.

⁵¹ UNEP/CBD/COP/11/24, Note by the Executive Secretary, 24 August 2012, <http://www.cbd.int/cop11/doc/> accessed 1 October 2012.

⁵² 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).

⁵³ UNEP/CBD/COP/11/24, Note by the Executive Secretary, 24 August 2012, <http://www.cbd.int/cop11/doc/> accessed 1 October 2012.

⁵⁴ CBD Technical Series 24 *Closing the Gap: Creating ecologically representative protected area systems*, www.cbd.int/ts

⁵⁵ Pronounced {Tga-ree-wa-yie-ree}, a Mohawk term meaning “the proper way”.

5.2 PEOPLE'S RIGHTS, ACCESS TO RESOURCES AND LIVELIHOODS.

Possible guiding principle: Measures to allocate rights and duties in BFMs, including the distribution of access to resources and benefit sharing, should be done in a fair and equitable manner and with the free prior informed consent of indigenous peoples and local communities to interventions that may have consequences for their livelihoods.

Certain stakeholders in scaling-up biodiversity financing have called for rights, resources and people's livelihoods as elements to be safeguarded.⁵⁶ 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.⁵⁷ The justification and content of safeguards in biodiversity-relevant processes have so far tended to be defensive in nature, seeking to ensure a smooth implementation of projects. While defensive tools can be useful, they are not sufficient for enabling conditions for the wellbeing of peoples and communities that can potentially be affected by BFMs. A rights and duties-based approach could help overcome this limitation. Indeed, lessons learned from case studies on PES and conservation incentive programs include to "adopt a rights-based approach that respects internationally-agreed safeguards".⁵⁸ As Jonas *et al.* (2010) note, 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.⁵⁹

The equitable allocation of rights and responsibilities refers to the way in which monetary and non-monetary benefits, costs and risks are allocated between different stakeholders.⁶⁰ At the international level, consensus now exists on the importance of equity, so this is the reason why we frame it as a guiding principle. The CBD, the UNFCCC and associated international instruments as well as national law influence the governance of BFMs as well as their distributional impacts, and can serve to interpret this principle. 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".⁶¹ Similar to CBD Article 21, the UNFCCC's Article 3 also addresses the global community as a subject of equity: "1. The Parties should protect the climate system for the **benefit** of present and future generations of humankind, on the basis of **equity** (emphasis added)." ⁶² Under REDD+, this includes the participation of all stakeholders and the respect for the rights and knowledge of indigenous peoples and members of local communities.⁶³ The UNFCCC acknowledges that the

⁵⁶ 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 1.

⁵⁷ 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 can not prove such legal interest may be excluded if we use a traditional way of referring to a "legal party".

⁵⁸ Lessons Learned from REDD+ from PES and Conservation Incentive Programs, examples from Costa Rica, Mexico and Ecuador www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/June2012/redd%2B_book_english_final.pdf, accessed 5 August 2012.

⁵⁹ 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.

⁶⁰ See various definitions and dimensions of equity in McDermott, M., Mahanty, S. and Schreckenberg, K. (forthcoming) Defining Equity: A framework for evaluating equity in the context of ecosystem services, *Environmental Science and Policy*.

⁶¹ Convention on Biological Diversity (CBD) 1992, accessed 2 July 2012, www.biodiv.org/doc/legal/cbd-en.pdf.

⁶² UNFCCC 1992, viewed 2 August 2010, <http://unfccc.int/resource/docs/convkp/conveng.pdf>.

⁶³ See the UNFCCC reference to equity in Article 12 and associated Conference of the Parties Decisions: Appendix 1 of the UNFCCC-COP 16 and the UNFCCC-COP 13 on the Bali Action Plan. This consensus is also reflected on literature concerning climate governance (see e.g. Doviet *et al* 2011, *A draft framework for sharing approaches for better multi-stakeholder participation practices*, UN-REDD Programme

different countries that are Parties to the convention face diverse challenges (Article 3(1.2)); this is further developed in relation to REDD in the 2007 UNFCCC COP 13 Decision on the Bali Action Plan.

Besides international law, the legislation and policy decisions at the national level can serve to specify the equitable benefit sharing principle in BFM and make it responsive to local concerns particularly related to rights, livelihoods and resources. 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 free prior informed consent. Box 7 illustrates that this guiding principle is already institutionalised in some national laws.⁶⁴

Box 7. 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 on the other hand public, confidential and local registers of knowledge. Peru was the first country with a large indigenous population to create such a regime.⁶⁵ 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.⁶⁶ It is not only the substantive content of safeguards that is important but also the way in which they are implemented.⁶⁷ 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) refer 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).⁶⁸

In terms of applying the principle of equitable allocation of rights and responsibilities to the local level, certain indigenous peoples and local communities view safeguards under the BFM with cautious optimism but consider that safeguards risk being merely another layer of regulations and obligations developed to regulate those who are developing and implementing projects.⁶⁹ They argue that these approaches focus on the user or project proponent, without also considering how to

and the Forest Carbon Partnership Facility), and in biodiversity (see e.g. Schroeder, D. and Pisupati B., 2010, *Ethics, Justice and the Convention on Biological Diversity*, United Nations Environmental Programme, University of Central Lancashire).

⁶⁴ 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. www.ias.unu.edu/sub_page.aspx?catID=7&ddIID=196; 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.

⁶⁵ 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.

⁶⁶ 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), Diario Oficial “El Peruano”, 10 August 2002, accessed 17 May 2010, www.elperuano.com.pe, art 5.

⁶⁷ See Ituarte-Lima, C. and Subramanian, S., 2011.

⁶⁸ Commonwealth of Australia 2000, *Commonwealth Public Inquiry into Access to Biological Resources in Commonwealth Areas* (John Voumard Inquiry Chair), viewed 10 July 2012, www.environment.gov.au/biodiversity/publications/inquiry/index.html 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.

⁶⁹ e.g. Harry Jonas, Natural Justice, interview 17 July 2012.

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.

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

Possible guiding principle: *Safeguards in BFM need to be grounded in local realities and supported by country-driven and specific processes that make use of existing relevant international legal and policy frameworks.*

Lessons can be learned from case studies concerning legal frameworks on REDD+ and allocation and benefit sharing, which have highlighted the importance of the national and local contexts and institutions in implementing these frameworks.⁷⁰ At the national level, the appropriateness and relevance of BFMs’ safeguards will be influenced by the interaction of different legal regimes and institutions. At the local level, the complexity of customary law systems derived from traditional resource management may guide responsible use of resources in different landscapes.⁷¹

An integral interpretation of the principle of country-driven processes in BFMs implies seeing it in synergy with international cooperation. For example, the Nagoya Protocol recognises the importance of national legislation (Article 15 and 16) and also aims to promote transboundary cooperation (Article 11). In this context, safeguarding this principle does not imply a disconnection from global processes. International cooperation can play an important role in enabling institutional conditions for safeguards in BFMs to be effective. 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.⁷²

Likewise, applying the principle 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 a need to recognise the potential alliances in biodiversity-related projects between indigenous peoples, who in some cases inhabit more than one country.⁷³

5.4 GOVERNANCE, INSTITUTIONAL FRAMEWORKS AND ACCOUNTABILITY

Possible guiding principle: *Appropriate institutional frameworks and accountability mechanisms to support effective and equitable governance are a prerequisite for all safeguards to function properly. This includes addressing drivers of biodiversity loss and removing perverse incentives. Besides developing appropriate socially and environmentally laws and policies, Parties should also have effective means for ensuring accountability and the compliance with safeguards.*

⁷⁰ 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.

⁷¹ 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.

⁷² 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

⁷³ See e.g. M Alcalde, CF Ponce, and Y Curion is 'Peace Parks in the Cordillera del Cóndor Mountain Range and Biodiversity ConservationCorridor' (Environmental Change and Security Program, issue 11, 2009.

Institutional frameworks, necessary for all safeguards to function, influence countries' ability to choose and develop appropriate safeguards for BMFs on the one hand, and to implement such safeguards on the other hand. 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.

The REDD+ experience has already demonstrated that certain countries may not have the institutional capacity and economic resources to comply with requirements of developing monitoring, reporting and verification (MRV) and carbon accounting systems. It is evident that 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 BMFs 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 principles risks leaving worse off the people intended to be benefited from the safeguards and underlying principles.⁷⁴ 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.⁷⁵

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.⁷⁶ 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. BMFs 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 below).

Certain institutional requirements for follow-up and monitoring are necessary for safeguards on BMFs to be effective. In terms of operationalising 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.⁷⁷ 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." At the regional level, an example of legal developments in regulation relevant for compliance mechanisms in BMFs are the European Union Directives on Environmental Impact Assessment mentioned earlier.⁷⁸

⁷⁴ Richard Klein, Stockholm Environment Institute, interview 9 July 2012 .

⁷⁵ CBD 2011, IFM report, www.cbd.int/financial/doc/2011-03-budapest-IFM-report-en.pdf.

⁷⁶ 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.

⁷⁷ 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.

⁷⁸ Poncelet, C. (2012)

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.⁷⁹ 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.⁸⁰ 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.⁸¹ 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) tends 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.

5. SAFEGUARDS AND DIFFERENT TYPES OF BFM

The 2009 CBD-COP 9 Decision IX/11 refers to the general category of “biodiversity mechanisms” in its Goal 4. Some of the mechanisms mentioned under this Decision also 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).⁸²

In the following section we give examples of potential safeguards under specific mechanisms.

6.1 PAYMENTS FOR ECOSYSTEMS SERVICES (PES)

PES can be seen as payments or compensations to landowners for a specific land use that is considered to enhance biodiversity and ecosystem services. Currently, governments and governmental

⁷⁹ Anon (2000) International Ombudsman Centre for the Environment and Development is established, *International Journal of Sustainability in Higher Education*, Vol. 1 Issue 3.

⁸⁰ 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://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,menuPK:64132057~pagePK:64130364~piPK:64132056~theSitePK:380794,00.html>, accessed 31 August 2012.

⁸¹ Interview, 13 July 2012.

⁸² 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.

organisations finance 98-99% of PES globally. PES is an example of using the market mechanism (price signal), but it need 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 on 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.⁸³

However, not all communities support PES schemes. Some perceive it as back-door privatisation of resources such as water, and as imposing conditions on land-use which would be unsustainable and lead to displacement. An example of a community sceptical to PES is the Lachiguirí 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 Lachiguirí, over 200 families now consider that they have lost their livelihood possibilities.⁸⁴ 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.⁸⁵

These examples from Costa Rica and the Lachiguirí 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 differed too in that the Costa Rican Forest Law and other regulations focused its efforts not on regulating indigenous peoples but on changing perverse incentives and thereby tackling drivers.⁸⁶

Another example of a PES scheme currently receiving much attention is REDD+. 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.⁸⁷ Experience from successful implementation of PES schemes at national level should 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. While REDD+ promotes the channeling of carbon finance to reduce forest loss, concerns have been raised regarding associated negative impacts, such as local

⁸³ Page 22 in Farooqui, M.F. and Schultz, M., 2012.

⁸⁴ Page 23 in Farooqui, M.F. and Schultz, M., 2012.

⁸⁵ 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).

⁸⁶ Page 23 in Farooqui, M.F. and Schultz, M., 2012.

⁸⁷ 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.

communities losing their user rights and the conversion of natural ecosystems into tree plantations at the expense of biodiversity.⁸⁸ 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.

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.⁸⁹ Biodiversity offsets adhere to the already well recognised polluter pays principle which is supported by both international and national legal and policy frameworks.⁹⁰ The development of safeguards for biodiversity offsets should build on initiatives such as the Business and Biodiversity Offsets Programme (BBOP) Principles on Biodiversity Offsets, who state 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”.⁹¹

Biodiversity offsets can function with or without a market. 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 conferences⁹² about IFMs and BBOP has stressed that offsets should only be applied on a national and local level (see examples of national offsetting policies in Box 8). According to the BBOP Principles on Biodiversity Offsets, biodiversity safeguarding measures need to be taken so that offsets “achieve conservation outcomes above and beyond results that would have occurred if the offset had not taken place. Offset design and implementation should avoid displacing activities harmful to biodiversity to other locations”.⁹³ Keeping offset mechanisms within a country is considered to minimise the risks of displacement.

Box 8. Examples of biodiversity offsetting policies

Since 2005, the UK Government has had an example of 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.⁹⁴ The NPPF states: “118. 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

⁸⁸ McDermott, C.L., Coad, L., Helfgott, A., Schroeder, H. (In Press) Operationalizing social safeguards in REDD+: Actors, interests and ideas. *Environmental Science and Policy*. 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.

⁸⁹ Parker, C., Cranford, M., Oakes, N., Leggett, M. ed., 2012. *The Little Biodiversity Finance Book*, Global Canopy Programme; Oxford.

⁹⁰ 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

⁹¹ BBOP Principles on Biodiversity Offsets, accessed 12 July 2012 <http://bbop.forest-trends.org/guidelines/participation.pdf>

⁹² See e.g. CBD 2011, IFM report

⁹³ BBOP Principles

⁹⁴ PPS9 Defra, 2005, page 3, accessed 1 October 2012, www.communities.gov.uk/documents/planningandbuilding/pdf/147408.pdf. NPPF Department for Communities and Local Government 2012, page 27, accessed 1 October 2012 www.communities.gov.uk/publications/planningandbuilding/nppf

landowner must acquire increases. In these cases, State-level provisions encourage landowners to establish vegetation corridors.⁹⁵

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”.⁹⁶

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. 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.⁹⁷ Concerning social risks at the community level, local people in one region normally depend on the biodiversity 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.⁹⁸

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 goals⁹⁹. This can be achieved by providing economic incentives to correct market failure in the management of natural resources and the control of pollution.”¹⁰⁰ 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.¹⁰¹

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.¹⁰² 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

⁹⁵ ten 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.

⁹⁶ Ibidem.

⁹⁷ CBD 2011, IFM report.

⁹⁸ 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.

⁹⁹ Environmental Fiscal Reform for Poverty Reduction, OECD 2005

¹⁰⁰ 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.

¹⁰¹ 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.

¹⁰² See e.g. Humavindu, M. and Jonathan, I., 2006. The identification and quantification of best practice in innovative financing for biodiversity conservation and sustainable use in Namibia, DEA Research Discussion Paper, No. 75, July 2006; 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; 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.

mining and these revenues have been used for a variety of purposes including PES schemes and labour tax reductions. Some countries earmark the revenues for particular subsidies in order to create legitimacy for the fiscal reform (see Box 9).

Box 9. Example of a fiscal reform at the national level

The Socio Bosque program (SB) of the Ecuadorian Ministry of Environment is a governmental initiative which started in September 2008 and aims to preserve native forest ecosystems in Ecuador, reduce the high rate of deforestation in the country and increase the wellbeing of the forest dependent population. The contracts established with the Ministry of Environment allow for the use of the forests in a traditional sustainable way, including hunting and fishing for personal consumption, and prohibit these activities for commercial purposes. Communities in the SB program invest the monetary incentives they receive in areas such as health, education, conservation, housing infrastructure, economic development projects, and capacity-building.

The SB program is a so-called compensation for environmental services scheme, but the reason we discuss it here is that it will be financed through a fiscal reform. While this scheme has the same characteristics as schemes framed as PES in other countries, the Ecuadorian Government refers to this initiative as “compensation for environmental services”.¹⁰³ The budget in 2012 was approximately US\$ 9.5 million and this will be financed by a newly implemented green tax on plastic bottles, taxes on fossil fuels and hydroelectric companies, compensation schemes from mining, international cooperation opportunities through a trust fund, and perhaps funds received through REDD+.¹⁰⁴ Hence the SB program is an example of a compensation for environmental services scheme financed by an earmarked fiscal reform.

At the international level, sources for international innovative finances include new international taxes such as international airline taxes and international environmental foot print 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 raise funding for developing countries. An alternative is a currency-transaction tax (Tobin tax).¹⁰⁵

6.4 INTERNATIONAL DEVELOPMENT FINANCE AND INTERNATIONAL DEVELOPMENT ASSISTANCE (ODA)

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.¹⁰⁶

ODA is dealt with under Goals 3¹⁰⁷ and 5¹⁰⁸ of the Strategy for Resource Mobilization which relates to the increase of ODA associated with biological diversity and poverty alleviation, and mainstreaming

¹⁰³ 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.

¹⁰⁴ Page 21 in Farooqui, M.F. and Schultz, M., 2012.

¹⁰⁵ Barbier E. (2012) Sustainability: Tax 'societal ills' to save the planet. *Nature* 483, 30.

¹⁰⁶ UNEP/CBD/WGRI/3/INF/5

¹⁰⁷ 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.

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 Effectiveness.¹⁰⁹ In this context, safeguards in biodiversity-related ODA are linked to biodiversity for human wellbeing 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 marine landscapes. To safeguard these aspects, impact assessments are performed (see box 5). It is also important to recognise the development of policy coherence, notably between trade, environment and development cooperation, in safeguarding both social and environmental results.

Box 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' wellbeing 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.¹¹⁰ 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.¹¹¹ 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".¹¹²

6. CONCLUDING REMARKS

Safeguards in the environmental arena have evolved from an original defensive nature to a more comprehensive one. This study suggests that a rights/duties based approach to safeguards in BFM that goes beyond a defensive attitude can serve in constructively finding consensus for equitably allocating biocultural rights and duties among the parties involved, both in the choice of BFM to develop as well as in their implementation. In a progressive interpretation of safeguards, the recognition and dialectic interaction of a plurality of legal systems including customary, national and international laws plays an important role. Below we mention specific conclusions and recommendations associated with the BFM examined in this paper and then more general conclusions in relation to the possible guiding principles .

7.1 SAFEGUARDS ON PAYMENTS FOR ECOSYSTEM SERVICES

Legislative and policy efforts should not be focused on regulating indigenous 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 for 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.

¹⁰⁸ 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.

¹⁰⁹ COP 9 Decision IX/11, Review of implementation of Articles 20 and 21, www.cbd.int/decision/cop/?id=11654, accessed 25 July 2012.

¹¹⁰ See The Plan Vivo Standards 2008 available at www.planvivo.org/documents/standards.pdf.

¹¹¹ See www.forestcarbonportal.com/project/much-kanan-k%20%b4aax-carbon-offset-project-mexico.

¹¹² See www.forestcarbonportal.com/project/ashaninca-communal-reserve-redd-project.

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.

7.2 SAFEGUARDS ON OFFSETS

Bearing in mind the unproved dimensions of offsets and applying the precautionary principle, well-designed procedural safeguards should be in place for the careful and participatory assessment of the design, approval and implementation of offset mechanisms. CBD tools such as the Akwe:kon guidelines on environmental, social and cultural impact assessment can serve to inform such assessments and identify if they should be approved or rejected as well as the necessary substantive safeguards.

7.3 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 for other BFMs such as PES.

7.4 SAFEGUARDS, BFMS AND ODA

While Overseas Development Assistance may not be part of the so-called innovative financing mechanisms as such, they are often closely related. For example, ODA can provide seed money for innovative financing mechanisms such as PES. Moreover, BFMs can learn from ODA on relevant issues for safeguards, e.g. regarding transparency, efficiency, participatory approaches, the understanding of ownership, tenure and user rights and rights issues, socio-cultural understanding and importance of gender issues in development, as well as demands for impact assessments (through EIA, SIA and SEA) of contributions.

7.5 SAFEGUARDS AND POSSIBLE GUIDING PRINCIPLES

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 opportunities of each BFMs, their efforts can be more effective by harmonising different safeguards in scaling-up biodiversity financing. Moreover, the proposed guiding principles can be the baseline underlying safeguards in all the BFMs.

Guiding principles in safeguards for 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 are not comprehensive but provide useful food for thought in the process of developing and implementing safeguards related scaling up biodiversity financing: from framing safeguards in BFMs and ensuring that BFMs have consistency and harmony with the CBD 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 CBD's objectives. 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 guiding principles 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.

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People interviewed

Inter-governmental organisations

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

Non-governmental organisations

Harry Jonas, Natural Justice
Camila Montesinos, GRAIN
Simone Lovera, Global Forest Coalition
Paul Matiku, Nature Kenya

Scientific institutions

Richard Klein, Stockholm Environment Change
Terry Sunderland, Center for International Forestry
Susanne von Walter, Swedish University of Agricultural Science and Uppsala University

APPENDIX 1. UNFCCC-COP DECISIONS REFERRING TO SAFEGUARDS

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 I 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".

APPENDIX 2. DEFINITIONS

Definitions¹¹³

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.¹¹⁴

¹¹³ The definitions of *Biological diversity (biodiversity)*, *biological resources* and *ecosystem* can be found in Article 2 of the Convention on Biological Diversity.

¹¹⁴ MA, 2005, *Synthesis*. TEEB 2009, *For National and International Policy Makers*.