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**Positive Results,
no Negative Consequences
No-harm options for Article 6**

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Abstract

Contributions to sustainable development have always been a controversial issue within the CDM - especially host countries have been adamant that defining what constitutes sustainable development is a national prerogative that may not be impinged by international rule-making. On the other hand, the basic principle that any intervention should not do harm to the societies and the environment they take place in is well-established in bi- and multilateral development cooperation, and far less problematic in terms of national self-determination. The rationale behind this is clear - in order to be able to contribute to sustainable development in any country, activities must not hinder or negate some aspect of sustainable development in favour of promoting others.

In that sense, safeguard approaches are a necessary enabler of sustainable development - even if the existence of safeguards against negative effects in itself does not guarantee that the project activity will positively contribute to a country's sustainable development. In the context of the evolving framework for mitigation activities under the Paris Agreement's Article 6, safeguards thus constitute a minimal standard that project activities would have to fulfil in order to heed the call to connect Art. 6 activities to a country's sustainable development. The objective of this paper is to analyse and make recommendations on how such a minimal standard for Article 6 could look like.

Following some definitory aspects of what and how to safeguard, this paper compiles a number of safeguard systems and do no harm principles as well as tools to implement them from bi- and multilateral cooperation schemes in- and outside of the UNFCCC context and the realm of carbon markets. It then gives an overview on Parties' views on the matter, as uttered in their

latest submissions on Art. 6 options, as well as an overview of the references in the UNFCCC's SBSTA Chair's text with respect to sustainable development, safeguards, and human rights issues.

A key finding of the analysis is that the identification of principles of what to safeguard against should be the primary step at a very early stage. Based on Party submissions and the Chairs' proposal text, avoidance of human rights violations, a commitment to avoid negative economic impacts, and environmental protection are already on the table. Under these broad headers, the authors suggest to include

- as aspects of human rights: protection of marginalised groups and indigenous peoples, protection against involuntary resettlement, and gender equity concerns;
- as aspects of avoidance of negative economic impacts: access and equity rights, protection of public health, and core labour rights as defined by the ILO;
- as aspects of environmental protection: protection of natural habitats, conservation of biological diversity, as well as pollution prevention and resource efficiency.

These are shared across all organisations analysed, and together form a robust platform for a safeguard system that observes letter and spirit of Article 6 of the Paris Agreement.

The paper concludes by suggesting a number of tools to ensure compliance with the principles, depending on the type of cooperation.

1 Introduction

1.1 Why safeguards?

Carbon markets, especially the CDM, have in the past been criticised for focusing too much on achieving GHG reductions, and too little on the potential harm that mitigation activities may cause on the ground to local stakeholders and the environment. In some cases, even human rights concerns have been raised (Schade and Obergassel 2014). With the advent of the Paris Agreement (PA) and the SDG agenda, Parties now have the chance to take these concerns into account when designing the new cooperative approaches according to Article 6 of the PA, as has been recommended, among others, by IETA (IETA 2017).

Contributions to sustainable development have always been a controversial issue within the CDM - especially host countries have been adamant that defining what constitutes sustainable development is a national prerogative that may not be impinged by international rule-making. On the other hand, the basic principle that any intervention should not do harm to the societies and the environment they take place in is well-established in bi- and multilateral development cooperation, and far less problematic in terms of national self-determination. The rationale behind this is clear - in order to be able to contribute to sustainable development in any country, activities must not hinder or negate some aspect of sustainable development in favour of promoting others. To a great extent, this does concern *how* an activity is implemented, far less than *which* activities are eligible (though that aspect can and should not be completely negated).

In that sense, safeguard approaches are a necessary enabler of sustainable development -

even if the existence of safeguards against negative effects in a project activity in itself does not guarantee that the activity will positively contribute to a country's sustainable development. Safeguards thus constitute a minimal standard that project activities would have to fulfil in order to heed the call to connect Art. 6 activities to a country's sustainable development. The objective of this paper is to analyse and make recommendations on how such a minimal standard for Article 6 could look like.

Within the international negotiations on carbon markets, the term "safeguards" is often used in connotation with concerns of environmental integrity and the avoidance of double counting. We see this as an extremely important "climate safeguard" that absolutely should be observed in order to ensure the primary functions of mitigation mechanisms, to reduce greenhouse gas emissions. This paper, however, focuses at all do no harm issues *except* the climate aspects, i.e. social and other environmental aspects as well as economic effects, because the climate-related safeguard issues have been dealt with elsewhere (cp., p. ex., Schneider et al. 2017, Spalding-Fecher et al. 2017).

Following some definitory aspects of what and how to safeguard, this paper compiles a number of different aspects of a safeguard systems and a number of do no harm principles as well as tools to implement them ¹ that are already wide-spread in bi- and multilateral cooperation in- and outside of the UNFCCC context and the realm of carbon markets. It then gives an over-view on Parties' views on the matter, as uttered in their latest submissions on Art. 6 options, as

¹ For the purpose of this paper, the terms "safeguards" and "do no harm" are used interchangeably.

well as an overview of the references in the UN-FCCC's SBSTA Chair's text of March 2018 with respect to sustainable development, safeguards, and human rights issues². We have excluded Article 6.8 in this paper, as it explicitly is not a market mechanism. The paper concludes with a number of observations on how safeguard considerations could be integrated into future Art. 6.2 and Art. 6.4 activities in an effective manner without impinging (too much) on national sovereignty concerns.

1.2 What to safeguard

Safeguarding systems define do no harm principles that outline their coverage, i.e. what to safeguard, or what to safeguard against. A good example for this are the 14 "Environmental and Social Principles" of the Adaptation Fund's environmental and social policy (Adaptation Fund 2013). This policy outlines the most important and most commonly found do-no-harm principles and groups that need special attention in safeguard policies:

Human rights: Activities need to respect and where applicable promote international human rights as laid out in the Universal Declaration on Human Rights and other relevant accords.

Core labour rights: Activities need to meet the labour standards set by the International Labour Organization.

Access and equity: Activities need to provide equitable access to benefits they create, and must not impede access to services such as health, water/sanitation, energy, education, housing, safe and decent working conditions,

or land, and not strengthen existing inequalities.

Marginalized and vulnerable groups: Activities must avoid adverse impacts on children, women/girls, elderly, indigenous peoples, tribes, displaced people, refugees, disabled people, or people living with incurable diseases such as HIV/AIDS.

Gender equity and women's empowerment: Activities need to ensure that women and men both are able to participate fully and equitably, receive comparable social and economic benefits, and are not faced with significant adverse effects.

Indigenous peoples: Activities must not impede the rights and responsibilities of Indigenous Peoples, as laid out in the UN Declaration on the Rights of Indigenous Peoples and other related international instruments.

Involuntary resettlement: Involuntary resettlement is to be avoided as far as possible. If it is unavoidable, affected persons need to be informed, consulted, and offered settlement alternatives that are technically, economically and socially feasible, or adequate and fair compensation.

Protection of natural habitats: Activities must not convert or degrade natural habitats if alternatives exist.

Conservation of biological diversity: Reduction or loss of biological diversity, and introduction of invasive species is to be avoided.

Climate change: Activities must not lead to an increase in GHG emissions or other drivers of climate change.

Pollution prevention and resource efficiency: Activities need to meet international standards for maximising energy and material efficiency, and produce as little waste and pollution as possible.

Public health: Activities must not have negative consequences on public health.

² At the end of SBSTA 48, the Co-Chairs of the Art. 6 negotiations issued a new informal note addressing omissions, mistakes and misrepresentations that Parties discussed at the session. This paper was finalised before this note was published, it is therefore not part of the analysis.

Physical and cultural heritage: Activities must avoid altering, damaging or removing cultural artefacts and sites that have special cultural value for the communities that live in the area the activity takes place in.

Lands and soil conservation: Soil conservation is to be promoted, degradation and land conversion to be avoided by any activity.

1.3 How to safeguard

In order to ensure that the do-no-harm principles outlined above are observed, a number of tools can be used (c.f. Spalding-Fecher and Schneider 2017; Equator Principles 2013). These include

Risk categorisation: Since not every activity is likely to carry the same risk of doing harm, it makes sense to differentiate the levels of safeguard requirements dependent on the likely risk level. A very common way to differentiate is a scale from A to C (cf. ADB 2009; Equator Principles 2013; IFC n.d.).

Category A (potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented) represents the highest risk-prone type, and C (minimal or no adverse environmental or social risks and/or impacts) the lowest. Impacts can be physical, biological, and socio-economic, including occupational and community health and safety, vulnerable groups, gender issues, and impacts on livelihoods and physical cultural resources. Higher risk categorisation means stronger strengths of disclosure requirements and, generally, a stronger scrutiny against identified risks. Furthermore, international development banks such as the IFC and the ADB include a special category "FI", for projects carried out by financial intermediaries, which requires those intermediaries to include an Environmental and Social Management System in their project design (ADB 2009; IFC n.d.).

Environmental and social impact assessments: Assessments of this type ensure that the effects of an activity can be gauged and negative effects can be countered. Ideally, independent consultants are employed to ensure that the process is viewed as credible. Many countries have regulations in place that necessitate impact assessments with varying degrees of severity. Likewise, most financing institutions have guidelines on how impact assessments are to be carried out (IFC 2012; Spalding-Fecher and Schneider 2017).

Management or action plans: In order to address negative effects an activity may have, a safeguard system can include requirements to develop a management or action plan to address and remove shortcomings. Depending on the risk level and type of negative effect, these may be more or less detailed, and can extend beyond project duration (ibid.).

Stakeholder consultations: Consulting with local people affected is an extremely important tool for ensuring that an activity does not affect communities negatively. In their most basic form, stakeholder consultations will consist of informing local communities of plans for an activity; however, an exchange of information and the identification of common solutions to potential risks is commonly accepted as superior. In addition, a round of international stakeholder input may be helpful if an activity takes places in an international context, as is typically the case for carbon market activities (Equator Principles 2009; Gold Standard 2018a).

Grievance and redress mechanisms: In cases of conflict over the effects of an activity, an independent body such as an ombudsman or an appeals body can aid in resolution through mediation or specific recommendations. This can also help to speed up conflict resolution, as judiciary systems especially in developing countries may not have the capacity to react quickly to complaints against negative effects. Grievance mechanisms may therefore also help

provide access to international courts, or courts in the implementer's country of origin.

Redress mechanisms may in addition to powers of conflict resolution hold a reserve to compensate stakeholders or communities that have been negatively affected by an activity. However, this type of mechanism is not very common (Spalding-Fecher and Schneider 2017).

Monitoring and verification: An important aspect of safeguarding against negative impacts is to monitor the effects of an activity on the local communities and environment over time. Therefore, monitoring systems are an indispensable tool to ensure continued compliance of an activity with defined safeguard principles. Independent verification of results can strengthen accountability and credibility of the monitoring process (ibid.).

Transparency requirements: As part of stakeholder consultation requirements, manage-

ment plans and monitoring and verification processes, activities may have to publish project documentation, impact assessments and monitoring reports. Another transparency criterion may include the publication of project plans and reports in local languages, and in a form that is understandable by local stakeholders (ibid.).

Project exclusion lists:

A number of project types may *a priori* be excluded from funding. This may include projects that are in conflict with international regulations, specific project types that are known to have a particularly high risk, or activities that are at odds with basic principles a financing institution may have adopted (IFC 2007; ADB 2009; World Bank 2015).

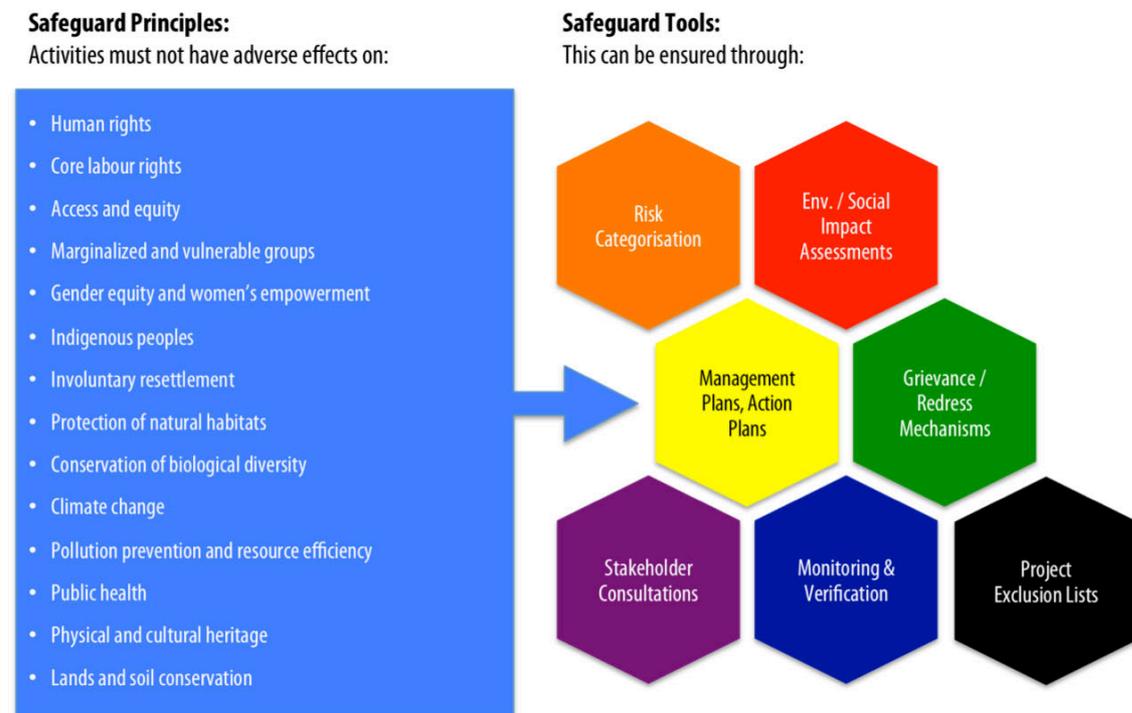


Figure 1: Overview of Safeguard Principles and tools for their Implementation. Source: Authors

2 Common Safeguard Features

The use of safeguards in climate and development cooperation has become the norm. Most major international and bilateral agencies have adopted standards, norms or policies that aim to ensure that project implementation does not cause harm to local stakeholders and environment. Among them are:

- the **IFC (International Finance Corporation) Performance Standards**, which are among the most detailed safeguard prescriptions on the multilateral level. They are cross-referenced by many other standards including the Equator Principles, and have been adopted by a wide variety of public and private sector actors, among them (on an interim basis) the Green Climate Fund (IFC 2012);
- the **Equator Principles**, another global standard for a risk management framework which is being observed by to date 92 financial institutions in 37 countries, among them the European Bank for Reconstruction and Development (EBRD), and which are increasingly used as a basis for other safeguard standards (Equator Principles 2013);
- the **Asian Development Bank Safeguard Policy**, which was formulated in an integrated manner in 2009, replacing a number of singular policies on special topics, and which specifically works with national governments to strengthen their domestic social and environmental safeguard systems (ADB 2009);
- the **Environmental and Social Policy of the Adaptation Fund**, which, while less prescriptive than many

other safeguard standards, sets clear rules for projects financed through the Adaptation Fund (Adaptation Fund 2013). It is the only safeguard policy under the Kyoto Protocol that is spelled out in any level of detail, and has received special mention by the UN Special Rapporteur on human rights and the environment as a possible blueprint for a future carbon mechanism under Article 6.4 PA (OHCHR 2016);

These safeguard standards all share very similar characteristics and features. As a basic requirement, all standards require that activities covered have to comply with host country social and environmental laws and regulations.³

In addition, some carbon market standards have included safeguarding features into their design as well. Among them are

- The **Gold Standard for the Global Goals** comprises a set of mandatory positive project achievements (“contributions to climate security and sustainable development”) as well as a detailed list of safeguarding principles. The latter cover a broad range of issues, including respect for human rights, provisions on displacement / resettlement, indigenous peoples, and economic aspects, such as labour rights and a consideration of potential risks to the local economy. The list is complemented by a dedicated section on environmental and ecologic safeguards (Gold Standard 2018b).

³ The Equator Principles further state that if there are no applicable laws and regulations, the IFC Performance Standards and the World Bank’s Environmental, Health and Safety Guidelines apply.

- the **CCB Standards (Climate, Community & Biodiversity Standards)**, formulated by a partnership of Conservation International, CARE, Rainforest Alliance, The Nature Conservancy, and Wildlife Conservation Society as a means to establish meaningful requirements for climate, communities and biodiversity in forest protection, restoration and agroforestry projects yielding carbon offset certificates (Vera 2017).

Another safeguard system under the UNFCCC is spelled out under **REDD+**. It differs somewhat from the other standards, norms and policies presented above as it is very specifically geared towards the forestry sector in developing countries. In effect, it has defined relatively detailed rules on relations with indigenous peoples in the design of national forestry governance structures. Otherwise the level of detail is extremely low (UNFCCC 2018).

Common features as well as specialities of individual safeguard standards are outlined below.

2.1 Risk categorisation

Projects covered by all safeguard standards in this review have to undergo a screening process, and sorted into risk categories A-C accordingly. The categorisation determines to a large extent the level of scrutiny the funded projects will receive.

In many cases multilateral banks will not implement projects or programmes directly, but lend or otherwise disburse funds to intermediaries. In order to secure safeguards in such indirect settings as well, international development banks such as the IFC and the ADB include a special category "FI", for projects carried out by financial intermediaries, which requires those intermediaries to include an Environmental and Social Management System in their project design, again depending on risk levels.

2.2 Environmental and social impact assessments

The ADB requires that category A projects publish a full-scale Environmental Impact Assessment 120 days in advance of project approval. Category B projects only need an initial environmental examination, while Category C projects do not need such an assessment.

The Equator Principles share the varying level of scrutiny, but do not prescribe a certain date when the assessment has to be published. They do, however, explicitly mention that specific human rights due diligence may be needed for some high risk circumstances. Assessments have to be carried out by external experts.

The IFC's Performance Standard 1 (Assessment and Management of Environmental and Social Risks and Impacts) give detailed guidance on setting up an integrated risk management system. This includes an overarching policy for the achievement of the environmental and social objectives and assessment requirements similar to those of the Equator principles for all projects that have environmental and social risks (i.e. category A and to some extent category B projects).

The Gold Standard's safeguarding procedure obliges project developers to first undertake an upfront assessment against the principles to be included in the project design document. On this basis, project-specific monitoring parameters are to be defined, which are then to be taken up in monitoring reports as well as in verification and performance review processes.

2.3 Requirements for management/action plans

The IFC's Performance Standard 1 includes a requirement for all IFC clients to establish environmental and social management systems, in-

cluding a safeguard policy, if risks have been identified. Such management systems have to include integrated assessments of environmental and social impacts, risks and opportunities of envisaged projects, and have to engage affected communities.

All other safeguards standards include very similar, if mostly more generally stated, requirements to set up risk management systems that mitigate identified potential harm done through a project activity.

2.4 Stakeholder engagement

All safeguard standards reviewed here include high levels of stakeholder engagement. Especially local stakeholders affected by a project activity have to be informed and consulted. In high-risk activities, local stakeholder engagement is necessary at all stages of the project. This also includes information requirements such as project documentation that needs to be available and readily accessible. Special clauses for indigenous people exist in most safeguard standards, including the requirement to translate necessary information into local languages.

2.5 Grievance and redress mechanisms

A mechanism that receives and facilitates the resolution of complaints and grievances is required by the Equator Principles for all category A and some category B projects. Similar clauses exist in all other safeguard standards as well. The Adaptation Funds' environmental and social policy also explicitly includes a provision that complaints against a project can be directly filed with the Adaptation Fund's secretariat. In the case of the Gold Standard, a project-specific grievance mechanism is to be established for all projects at the first stakeholder

meeting, including complaint procedures and protocols.

2.6 Monitoring and review

Under the Equator Principles (EP), category A and some category B projects are required to have the documentation of the fulfilment of the Equator Principles independently reviewed. The reviewer also proposes ways to bring projects into compliance with the EP if that is not the case. The independent environmental and social consultant is required for monitoring and reporting, or, alternatively, other qualified external experts have to be retained for that purpose. Similar clauses are contained in the ADB's and the IFC's standards. Notably, the Adaptation Fund does not require external reviews for the monitoring and evaluation of Adaptation Fund programmes. The Gold Standard requires validation of the PDD and verification of the outcomes by a Gold Standard-accredited independent entity. Moreover, all completed validations / verifications undergo an additional Gold Standard review.

2.7 Transparency of information

Directly related to stakeholder engagement, all safeguard standards require that risk assessments and project progress / performance reports are publicly available. A specific requirement of the Equator Principles is the public disclosure of GHG emission levels if projects emit more than 100,000 tCO₂e/a.

2.8 Project exclusion lists

ADB and IFC have published a list of projects that they categorically do not provide finance for. Among them are

- exclusions on biodiversity grounds, i.e. commercial logging, purchase of logging equipment for use in primary or old-growth forests, and driftnet fishing with nets longer than 2.5 km
- exclusions on social grounds, i.e. child labour, forced labour, and gambling, as well as projects that have a high risk of impeding physical, territorial, or cultural integrity of Indigenous Peoples without their consent and appropriate measures to address adverse impacts (IFC);
- exclusions of products, i.e. weapons and munitions, unbound asbestos, alcoholic beverages, tobacco, radioactive materials (including whole or parts of nuclear reactors), ozone depleting substances, persistent organic pollutants, wood and forestry products that have not been produced from sustainably managed forests (IFC).
- commercial exclusions, i.e. products illegal under host country law, and/or illegal under international conventions and agreements, products subject to international phase-outs or bans, CITES-regulated wildlife, prohibited transboundary movements of waste products (ADB), and the like (IFC 2007; ADB 2009; World Bank 2015).

The Gold Standard uses a combination of positive and negative lists. Directly excluded are projects involving fossil fuels (including fossil fuel switch), nuclear power, and geo-engineering. The so-called "Activity Requirements" comprise three areas of pre-defined eligible project in the fields of land use and forests, community services activities, and renewable energy. This is complemented by GS approved methodologies and specific product requirements. Other project types can be suggested, but must comply with the standard's vision and mission statement.

2.9 Observations

The safeguard standards, policies and procedures outlined above share more similarities than differences. Especially the standards and policies adopted by financial institutions all show the same main features such as risk categorisation systems, use of environmental and social impact assessments as well as action plans to ensure their effective implementation, stakeholder engagement requirements including grievance mechanisms, and monitoring systems. In a way, this is no surprise, as these systems have all been developed in parallel, with clear intentions to harmonise them (World Bank 2015). Still, the level of detail varies greatly, from the relatively general approach adopted by the Adaptation Fund to the extremely detailed guidance of the IFC Performance Standards. The findings are summarised in the table at the end of this chapter.

The Kyoto carbon market standards, Gold Standard and CCB Standard, place a strong focus on stakeholder consultations and dialogue. They differ somewhat from the above policies and standards in that they are not only used as assurance that projects covered do no harm, but also to some extent as positive reinforcement, as a "quality seal" for buyers to show that emission reductions and resulting credits have been achieved in a manner that positively influenced affected people. The intended use of quality-added credits also necessitates strong independent verification and validation processes.

The REDD+ safeguard system stands apart to some extent, as it is very specifically geared towards national forest governance and the protection of indigenous peoples. One speciality does stand out - while it is theoretically not mandatory to report on safeguarding activities for a REDD+ programme, there is a factual requirement to do so because in order to be eligible for results-based payments, a country

needs to report on its implementation progress on safeguard systems (UNFCCC 2013).

	IFC Performance Standards	Equator Principles	Adaptation Fund	ADB Safeguard Policy	Gold Standard	CCB Standard	REDD+ safeguards
Risk Categorisation	A (high)-C (low); FI (financial intermediaries)	A (high)-C (low)	A (high)-C (low)	A (high)-C (low); FI (financial intermediaries)	no categorisation	no direct categorisation, instead identification / mitigation of risks to expected climate, community, biodiversity benefits	no categorisation
Environmental & Social Assessments	Cat. A: always; Cat. B: depends Cat. C: no Cat FI: safeguard due diligence by IFC	Cat. A: always; Cat. B: depends Cat. C: no	Cat. A: always; Cat. B: depends Cat. C: no	Cat. A: always; Cat. B: depends Cat. C: no Cat FI: safeguard due diligence by ADB	Detailed list of social, economic, and environmental aspects to be assessed (both positive contributions and potential risk)	Assessment only mentioned in conjunction with Rights of Indigenous Peoples, otherwise documentation of consultation/engagement only	No direct mention, but reference to "safeguards information systems" building on national systems, development of national strategies / action plans
Requirements for management/action plans	full environmental/social management system incl. sustainability policy if risks are identified	Cat. A and B projects are required to develop/maintain an Environmental and Social Management System, as well as a plan to fulfil EP requirements if any gaps are identified.	If risks are identified, an environmental and social management plan is required	If risks are identified, an environmental and social management plan is required	Ex-ante safeguarding principles assessment, (independently validated); assessment outcomes to be included in monitoring and reporting plan; independent verification	measures to mitigate risks need to be outlined, no prescriptions on design	national action plans for the development of REDD systems overall only, no mention of addressing identified risks of REDD-related activities

	IFC Performance Standards	Equator Principles	Adaptation Fund	ADB Safeguard Policy	Gold Standard	CCB Standard	REDD+ safeguards
Stakeholder engagement	Requirements for stakeholder analysis and engagement planning, ensuring to identify, engage and consult all relevant affected persons and communities ; Indigenous Peoples need to give Free Prior and Informed Consent	mandatory for Cat. A and B projects at all stages, incl. appropriate documentation; Indigenous Peoples need to give Free Prior and Informed Consent	stakeholder participation at all stages of projects; exclusion of projects that are inconsistent with UN Declaration on the Rights of Indigenous Peoples and other applicable international instruments on Indigenous Peoples	stakeholder participation at all stages of projects; women's participation especially mentioned. Indigenous Peoples to participate in meaningful consultation, development of Indigenous Peoples Plan. No mention of FPIC	Detailed gender-sensitive stakeholder consultation procedure with two mandatory consultation rounds, incl. feedback on how comments were taken into account. Extensive provisions for stakeholder identification and conduction of the process.	Detailed requirements: dedicated stakeholder engagement standard, incl. access to information, consultation, participation in decision-making and implementation, anti-discrimination, and feedback and redress procedures Detailed requirements for engaging Indigenous Peoples	effective participation of all relevant stakeholders requested in development and implementation of national action plans, explicit mention of indigenous peoples and local communities
Grievance and redress mechanisms	If affected communities are identified, establishment of a grievance mechanism is mandatory	mechanism that receives and facilitates the resolution of complaints and grievances is required for all category A and some category B projects	requirement to establish a grievance mechanism; in addition grievances can be expressed directly to the AF Secretariat	If affected communities are identified, establishment of a grievance mechanism is mandatory	Mandatory project-specific grievance mechanism to be established at stakeholder meeting, including complaint procedures and protocols	Demonstration of a staged grievance redress procedure (resolution-mediation-arbitration, incl. supranational adjudication if necessary)	no mention
External monitoring and review	In general, self-monitoring; external experts for verification of projects with significant impacts; experts to also advise on corrective action	mandatory for Cat. A and some B projects , reviewer to also propose ways to enhance compliance with EP	only self-reporting; including plans for corrective action	In general, self-monitoring; external experts for verification of projects with significant impacts; experts to also advise on corrective action	Validation and verification by a GS-accredited independent entity ("VVB")	Use of independent validation/verification bodies for compliance with all CCB Standards required	national monitoring systems only

	IFC Performance Standards	Equator Principles	Adaptation Fund	ADB Safeguard Policy	Gold Standard	CCB Standard	REDD+ safeguards
Transparency of information	Affected communities need to be provided with all relevant information; depth of information dependent on scale and significance of envisaged risks and impacts; Mechanisms to receive and register external communications mandatory; publication of periodic reports encouraged	At least a summary of the environmental and social assessment needs to be accessible to stakeholders and be put online by the project client	environmental and social assessment needs to be accessible to stakeholders and is put online by the AF Secretariat; Project/ programme performance reports including the status on implementation of env/social measures shall be publicly disclosed	general requirement for a timely disclosure of relevant and adequate information accessible and understandable by affected people	“Key Project Information” note in non-technical language to be delivered in the most appropriate language(s) on project design, timetable, social, economic and environmental benefits and impacts; comprehensive stakeholder identification process	Project documentation needs to be obtainable to all stakeholders to full extent	information systems and national forest governance structures to be transparent and effective
Project exclusion lists	yes	no	no (adaptation projects only)	yes	yes	no (LULUCF projects only)	no (REDD+ activities only)
Others	Performance Standard 1: all general requirements; PS 2: labour and working conditions; PS3: resource efficiency and pollution prevention; PS4: community health, safety, security; PS5: land acquisition and involuntary resettlement; PS6: biodiversity conservation / management of living natural resources; PS7: indigenous people; PS8: cultural heritage	Covenants: projects under the EP enter a legal requirement to comply with all EP principles. Public disclosure of emissions in projects emitting >100,00tCO ₂	very short in comparison to most other standards; general terms supplemented by reference to IFC Performance Standards	no provisions on labour conditions; covered by separate policy	Specific requirements for Land Use and Forestry, as well as community services and REN projects; SD impact quantification	CCB projects need to demonstrate climate, community, and biodiversity <i>benefits</i> as much as risk management strategies	Safeguards as presented in UNFCCC Decision 1/CP.16 do not have a mandatory character (“safeguards should be promoted and supported”), but provision of information on how safeguards are addressed and promoted is part of eligibility requirements for results-based payments under UNFCCC Decision 9/CP.19

3 The UNFCCC process and safeguards so far

3.1 Party submissions

At the 46th meeting of the UNFCCC's subsidiary bodies in Bonn 2017, it was decided that Parties submit their input on selected aspects of the Art. 6 negotiations shortly before COP 23, taking place in Bonn in early November 2017. This chapter summarises the views submitted during this process, with a special focus on sustainable development, safeguards, and human rights issues (for an overall analysis, cp. Obergassel and Asche 2017).

With respect to **safeguards**, this term is directly mentioned in three submissions: Norway expects that Art 6.2 guidance will "reflect reporting requirements and fit with accounting guidance developed through other work streams (APA) as well as national arrangements regarding safeguards on sustainable development".

New Zealand points out Parties' concern "that there is also direction to Parties as to how they will meet their responsibilities with respect to the promotion of sustainable development (though many also regard this as nationally determined)". In this context, it mentions "limits and safeguards" as a related matter.

AOSIS notes that "provisions" are needed to "addressing and providing the tools, institutions, processes and safeguards needed to deliver against the requirements ... promoting sustainable development, ... ensuring environmental integrity, and transparency,

including in governance; and ... robust accounting".

In addition, the submission of the EIG demands that Parties "have to refrain from carrying out activities when there is a **risk of conflict with other environment-related aspects**". The group mentions the conservation of biodiversity, water pollution or the protection of the ozone-layer as examples of such aspects. Measures are to be introduced to mitigate any negative trade-offs. The group also calls for the host Party to confirm that the activity is in line with sustainable development and human rights when authorizing private and / or public entities to participate in the activity.

Finally, both the Arab group and the Like Minded Developing Countries (LMDCs) demand that activities under the Art. 6.8 framework assess and address "the possible negative socio-economic impacts on vulnerable Parties stemming from the activities under Article 6 and ensures a **link to Article 4.15**", thus connecting the issue to the 'response measures' discussion on minimising adverse economic, social and environmental impacts of climate action on selected Parties, such as oil exporting countries.

The issue of preventing **human rights violations** is also mentioned by the Parties or groups. The EU demands that, in order to comply with the preamble of the Paris Agreement ('Parties should respect, promote and consider their respective obligations on human rights'), the modalities under Article 6.4 should also reflect this request. Host Par-

ties should in their view confirm that activities are in conformity with their respective obligations on human rights. The Environmental Integrity Group (EIG) posits that promoting sustainable development is consistent with the SDGs, “including that it is consistent with and represent no threat to human rights”. Tuvalu stipulates that mitigation activities shall promote environmental protection and do not adversely affect human rights.

On **stakeholder consultations**, the EIG notes for Art. 6.4 that the respective supervisory body is to “define rules for the consultation of stakeholders during the design and the implementation of the activity”. The body is also to define a respective grievance process building on the host country’s national processes. The LDCs suggest that the Art. 6.4 body should develop a “recommendation for best practice application ... on stakeholder consultation processes and how to address any grievances of affected public”. Norway suggests to build stakeholder provisions on the experience gained with CDM and REDD+.

3.2 The SBSTA Chair’s informal note

On 16 March 2018, the SBSTA Chair published three informal documents on draft elements of guidance on cooperative approaches according to articles 6.2 and 6.4 of the PA, (subsequently called „the Chair’s text”), as well as 6.8 which is not part of this analysis (see above).⁴ These build on prior Parties’ submissions (see preceding chapter) and the discussions held at SBSTA 47. In the following, we summarise the references in

⁴ „Informal documents”, 16 March 2018, SBS-TA48.Informal.2, SBSTA48.Informal.3, SBS-TA48.Informal.4

the Chair’s text with respect to sustainable development, safeguards, and human rights issues⁵.

Under Article 6.2, the potential list of participation requirements includes that the Party has a process to ensure that ITMOs have **not caused environmental harm**, and do not adversely affect **human rights** (VIII 23, k (ii); (iii)). Going even further, each participating Party may potentially be required to demonstrate that creation, transfer, use, and acquisition processes of ITMOs avoided environmental harm, **avoided human rights violations**, and promoted countries’ implementation of the **Sustainable Development Goals** (XI A (Option B) 54, (d) (ix); (viii); (vii)).

Furthermore, the text includes a dedicated safeguards section (XV A-C). Here, safeguards refer to the overall climate / environmental integrity of the mechanism, addressing issues like overall mitigation or quantitative limits in order to hedge, inter alia, risks of transferring ‘hot air’.

Under Article 6.4, **human rights obligations** rank as one option to be included in the principles section.

Moreover, the Chair’s proposal text contains some more concrete options that point in the direction of a possible do-no-harm approach under the future mechanism. **The promotion of the Sustainable Development Goals** is mentioned in a number of paragraphs, both for hosts and transferring, acquiring and using Parties, along with obligations on **human rights** and consultation of

⁵ At the end of SBSTA 48, the Co-Chairs of the Art. 6 negotiations issued a new informal note addressing omissions, mistakes and misrepresentations that Parties discussed at the session. This paper was finalised before the note was published, it is therefore not part of the analysis.

local stakeholders (VIII B (Option A); IX C (Option A)).

The list of eligibility requirements of activities for the Art. 6.4 mechanism includes fostering sustainable development, but notably also **stakeholder consultations** and **avoidance of negative environmental impacts** (XII B, (2); (f); (g)). Under the mitigation activity cycle (XIII), own paragraphs have been included on a **grievance process / appeal rights** (para. 59), and the **protection of human rights** (para. 60).

4 Recommendations

If the future activities under Article 6 are to promote sustainable development effectively, adopting a basic set of safeguard principles and tools is extremely important to assure an avoidance of negative effects from Art. 6 mitigation activities.

Safeguards systems have become the norm within bi- and multilateral climate / development cooperation. In chapter 2, we have compiled a number of them with a view to identify workable options for future Art. 6 approaches. In addition, Party views are summarised in order to identify points of convergence that may lead to a common do-no-harm approach under Article 6 of the PA.

4.1 Lessons from submissions

In general, Party submissions do not cover the level of detail that would allow to propose an approach that assuredly will be palatable for a consensus decision under the CMA.

Two points are of note, though:

First, not one country has explicitly excluded safeguards or, for that matter, any elements thereof in its submission. The argument often put forward is that a reference to national prerogatives to define sustainable development would eliminate the option to also install safeguards in the governance system of a future mechanism. This argument, however, does not hold. A safeguard system does not interfere with sustainable development in any country, but is a means to ensure that sustainable development is made possible in the first place. Country submissions show

that this avenue for further deliberation has not been closed.

Second, many elements of a possible do-no-harm approach have been put forward in Parties' submissions- Among them are both principles and tools:

- the promotion of human rights
- protection from negative socio-economic impacts
- environmental protection
- transparency requirements
- stakeholder consultation processes, and
- grievance mechanisms

These are key elements of a safeguard system that may very well feed into a more fleshed out common system at a later stage.

4.2 Lessons from the Chair's Proposals

The textual proposals by the SBSTA Chair issued prior to SB48 already partly reflect the Parties' insights that elements of a safeguard system should be put in place under the Article 6 work streams.

This is mirrored, for example, in the text on Article 6.2, which features as one possible participation requirement that the Party has a process to ensure that ITMOs have not caused environmental harm, and do not adversely affect human rights. On top of that, each participating Party may be obliged to show that creation, transfer, use, and acquisition processes of ITMOs avoided environmental harm, human rights violations, and

promoted countries' implementation of the Sustainable Development Goals.

As for Article 6.4, avoiding human rights violations is considered a possible element for the principles section, thus putting the issue onto a level of possible basic standards of the mechanism. In addition, the promotion of the SDGs features prominently in a number of paragraphs, both for hosts and transferring, acquiring and using Parties, as do obligations on human rights and consultation of local stakeholders. Fostering sustainable development, but notably also stakeholder consultations and avoidance of negative environmental impacts are also mentioned as possible eligibility requirements. Under the mitigation activity cycle, the text includes dedicated paragraphs on a possible grievance process / appeal rights and the protection of human rights. As with most paragraphs in the Chair's proposal, these will require further development, but it is remarkable that they have been included already.

Especially the reference to appeal rights implies that the Chair's text reflects a distinct possibility of adopting a set of do-no-harm principles, because otherwise there would be no transparent legal grounds to appeal against a specific activity. The Chair's proposal mentions the possibility to delegate the development of these requirements to the Supervisory Body of the Art. 6.4 mechanism, which we see as a sensible way forward in order to not bog down the general development of the mechanism.

4.3 Recommendations for 'do no harm' elements

In chapter 2, we have sketched out how different existing organisations have implemented necessary tools for safeguarding

against negative effects of funded activities.⁶ A key finding is that there is no singular way of implementing safeguard systems, and not every organisation uses all elements identified here. However, common to all of them is an aspect that precedes the choice of tools: the identification of principles of what to safeguard against (see 1.2). This primary step should be defined at a very early stage of the Art. 6 approaches' implementation.

4.3.1 Do no harm principles

As we glean from Party submissions and the Chairs' proposal text, avoidance of human rights violations, a commitment to avoid negative economic impacts, and environmental protection are already on the table. Under these broad headers, we would suggest to include

- as aspects of human rights: protection of marginalised groups and indigenous peoples, protection against involuntary resettlement, and gender equity concerns;
- as aspects of avoidance of negative economic impacts: access and equity rights, protection of public health, and core labour rights as defined by the ILO;
- as aspects of environmental protection: protection of natural habitats, conservation of biological diversity, as well as pollution prevention and resource efficiency.

These are shared across all organisations we have analysed above, and together form a robust platform for a safeguard system that observes letter and spirit of Article 6 of the Paris Agreement. Notably, these principles could be used for all approaches defined under Article 6.

⁶ see also the overview table in chapter 2 for more detailed information

4.3.2 Tools

The principles sketched out above in our view form an indivisible whole - it seems hardly justifiable to exclude any of them, and as such there is good reason why they form the backbone of all the safeguard systems we have reviewed in this paper. The way they are implemented, however, is a question of circumstance and choice of the negotiating Parties deciding upon the design of Article 6 approaches.

Therefore, choosing the right tools to ensure that no harm is done from activities under Article 6 will in our view depend on the type of cooperation. In the following, we have sketched out some broad avenues for decision in the coming negotiations.

ITMOs under Art. 6.2

Since transfer and use of ITMOs under Art. 6.2 will most likely not take place through an international mechanism *per se*, it is important that the rules for the function of the mechanism ascertain a level of due diligence within participating Parties. The Chair's proposal text already contains the most important dimensions as possible parts of the reporting requirements: avoidance of environmental harm, and of human rights violations. Strikingly, the text proposes to establish these elements not only as *ex-post* demonstration requirements, but already as *ex-ante* participation requirements. This will ensure effective use of available means of funding, and strengthen sustainable development strategies in partnering countries from the get-go. It may be expected that participating Parties will have their own tools at their disposal to ensure due diligence in the creation, use and transfer of ITMOs, observing the basic principles that the international community sets for basic eligibility. Similarly to the existing practice under REDD+, information on how safeguards have been implemented could be

made a prerequisite for transactions recorded under the Art. 6.2. This would ensure a level of international scrutiny without putting undue burden on individual countries.

Art 6.4 mechanism

The Art. 6.4 mechanism, on the other hand, will have a Supervisory Body. It will fall to that body to provide oversight over mitigation activities covered by the mechanism, to further develop the rules, modalities and procedures adopted by the CMA and to aid in ensuring that they do no harm.

In that vein, the inclusion of human rights as an eligibility requirement in the Chairs' proposal is a step that already goes beyond most expectations from past practice under the Kyoto mechanisms. In refining the proposed obligations for host and using Parties to explain how activities conform with human rights, independent verification may be considered as a control instance.

The inclusion of stakeholder consultations during the project design phase is a tried-and-true tool that is very commonly used, and has been successfully implemented under the CDM. It therefore seems highly likely that this will be replicated in the new mechanism.

However, the Chairs' proposal text adds another layer to stakeholder inclusion through a possible grievance mechanism. While this is a very common design element in the context of international cooperation, it was not implemented under the Kyoto mechanisms. There are, however, designs available under the UNFCCC framework: the Adaptation Fund Board not only requires that project partners establish such a mechanism, but also allows for direct address of grievances to the Adaptation Fund's secretariat. The Adaptation Fund does not prescribe the design of the grievance mechanism, giving Parties flexibil-

ity. If a more clear-cut design is desired, the Supervisory body may look at the "premium" carbon standards such as the CCB or the Gold Standard. Both have clearly defined rules on how to set up grievance and redress mechanisms.

An effective way of limiting workloads for project developers and Parties would be to base due diligence requirements in general on a prior project risk assessment similar to the approaches of most multilateral banks. However, this would require a relatively elaborate set of basic rules for the setup and design of project activities. If the CMA were to decide that this is necessary, the Equator Principles provide a consistent set safeguard rules including clear guidance documents on all elements that could form the basis for an Art. 6.4 safeguard system.

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