
ESSAYS

INTEGRATING SOCIAL AND ENVIRONMENTAL SAFEGUARDS IN THE IMPLEMENTATION OF THE PARIS AGREEMENT'S SUSTAINABLE DEVELOPMENT MECHANISM

BY

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Climate change is without a doubt the single most daunting challenge of our time. The impacts of climate change are already being felt and indicators show that they are here to stay. While early projections demonstrate that the Paris Agreement falls short of the efforts needed in the face of the looming climate crisis, the inclusion of new mechanisms to address climate change are promising. Article 6.4 of the Agreement provides for a new system, called the Sustainable Development Mechanism, which aims: “(a) To promote the mitigation of greenhouse gas emissions while fostering sustainable development; (b) To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party; (c) To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfill its nationally determined contribution; and (d) To deliver an overall mitigation in global emissions.”

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At present, it is hard to determine whether this mechanism will be effective given that the Parties to the Paris Agreement have been in a stalemate over its rules, modalities, and procedures since 2018, even as the rest of the Paris Agreement “rulebook” was adopted by the Parties that year. It is vital that social and environmental protections are in place before the mechanism is fully implemented to ensure that the guiding principles of the Agreement—including the promotion of human rights, ecosystems integrity, and climate justice—are respected when taking action to address climate change. To this end, best practices on environmental and social safeguards, as utilized under the Green Climate Fund and the REDD+ Framework, should be incorporated under the Sustainable Development Mechanism.

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I. INTRODUCTION

Climate change, and what we do to address it, will, undoubtedly, define this and generations to come. In the United Nations General Assembly High-Level Meeting on Climate and Sustainable Development, held March 28, 2019, General Assembly President María Fernanda Espinosa Garcés of Ecuador said that “we are the last generation that can prevent irreparable damage to our planet.”¹ We have no choice but to face this challenge head-on—there is no time to waste.

The impacts of climate change are already being felt all over the world. These impacts have wide-ranging implications on both the environment and on various socio-economic sectors, and we must take unprecedented and ambitious steps if we are to have any hopes of

¹ María Fernanda Espinosa Garcés, President of the 73rd Session of the U.N. General Assembly, Climate and Sustainable Development for All (Mar. 28, 2019), <https://perma.cc/KE3L-DBZD>.

slowing them down.² In fact, the 2019 United Nations Environment Programme Emissions Gap Report states that, even if all the current conditional and unconditional national commitments on greenhouse gas reductions are met, we are still headed toward a minimum trajectory of a 3°C average temperature rise and an emissions reduction gap of about thirty gigatons of equivalent carbon dioxide (GtCO₂e) from the 1.5°C pathway.³ This is alarming given that a special report from the Intergovernmental Panel on Climate Change (IPCC) on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways states that risks are significantly lower at 1.5°C compared to 2°C. Moving past 1.5°C will result in increases in: mean temperature in most land and ocean regions, hot extremes in most inhabited regions, heavy precipitation in several regions, and probability of drought and precipitation deficits in some regions.⁴ Global warming at 1.5°C will also lower impacts on terrestrial, freshwater, and coastal ecosystems and retain more of their services to humans compared to 2°C.⁵ The difference between 1.5°C and 2°C, while incremental, will mean that several hundred million more people will be exposed to climate-related risks and be susceptible to poverty by 2050.⁶

In light of the distressing scientific data, and in recognition of the significant amount of work left to do following the 1992 United Nations Framework Convention on Climate Change (UNFCCC) and subsequent 1997 Kyoto Protocol, a new universal and legally binding agreement in 2015 called the Paris Agreement was adopted by the Parties to the UNFCCC.⁷ Under this Agreement, all Parties seek to hold “the increase in the global average temperature to well below 2°C above pre-industrial levels and pursu[e] efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”⁸ To this

² United Nations Framework Convention on Climate Change (UNFCCC), *Climate Change: Impacts, Vulnerabilities and Adaptation in Developing Countries* 6, 8, 52 (2007), <https://perma.cc/N2PF-RQF8>.

³ United Nations Environment Programme, *Emissions Gap Report 2019: Executive Summary*, at ix (2019), <https://perma.cc/L4JJ-PZLQ>.

⁴ Intergovernmental Panel on Climate Change (IPCC), *Summary for Policymakers: Global Warming of 1.5°C: An IPCC Special Report on the Impacts of Global Warming of 1.5°C Above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty* 5, 7 (2018), <https://perma.cc/KE4X-37NP>.

⁵ *Id.* at 8.

⁶ *Id.* at 9.

⁷ JANE A. LEGGETT, CONG. RESEARCH SERV., R46204, THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, THE KYOTO PROTOCOL, AND THE PARIS AGREEMENT: A SUMMARY 1 (2020). As of February 2021, there are 190 Parties to the Paris Agreement. *Status of Treaties: 7. d Paris Agreement*, UNITED NATIONS TREATY COLLECTION, <https://perma.cc/MT6Q-BDVZ> (last visited Feb. 14, 2021).

⁸ United Nations Framework Convention on Climate Change Conference of the Parties, Twenty-First Session, *Adoption of the Paris Agreement*, annex, art. 2, ¶ 1, art. 3, U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015) [hereinafter *Paris Agreement*].

end, Parties are to undertake and communicate ambitious efforts that show progression over time through nationally determined contributions (NDCs).⁹ The Paris Agreement is considered a triumph for environmental multilateralism, being the first agreement on climate change with binding universal emission reduction targets.¹⁰ Since 2015, the Parties have been negotiating on the rules, modalities, and procedures that guide the Parties for the first implementation period which began in 2020.¹¹

To aid Parties in the implementation of their mitigation targets, cooperative mechanisms are provided for in the Paris Agreement under Article 6. Article 6.4 in particular provides for a new type of measure, dubbed the Sustainable Development Mechanism (SDM), which aims:

- (a) To promote the mitigation of greenhouse gas emissions while fostering sustainable development;
- (b) To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party;
- (c) To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfill its nationally determined contribution; and
- (d) To deliver an overall mitigation in global emissions.¹²

At present, the rules, modalities, and procedures for the implementation of the SDM have yet to be finalized.¹³ Based on the latest draft adopted by the Parties, social and environmental safeguards—a set of policies, standards, and guidelines that ensure protection from social and environmental risks¹⁴—will not even be

⁹ *Id.* art. 4, ¶¶ 2–3.

¹⁰ *U.N. Chief Hails New Climate Change Agreement as “Monumental Triumph”*, U.N. NEWS (Dec. 12, 2015), <https://perma.cc/T3CQ-QS7B>; *COP 21: The Key Points of the Paris Agreement*, MINISTRY FOR EUROPE & FOREIGN AFFS., <https://perma.cc/VZ8N-FQLB> (last visited Nov. 14, 2020).

¹¹ *Mitigation in the Negotiations*, UNITED NATIONS CLIMATE CHANGE, <https://perma.cc/85HX-2Q4W> (last visited Nov. 30, 2020). *See also The Paris Agreement: What is the Paris Agreement?*, UNITED NATIONS CLIMATE CHANGE, <https://perma.cc/5UAP-J2AV> (last visited Dec. 29, 2020).

¹² *Paris Agreement*, *supra* note 8, art. 6, ¶ 4.

¹³ Steve Zwick & Jos Cozijnsen, *Technical Phase of Climate Negotiations Ends with No Agreement on Markets*, ECOSYSTEM MARKETPLACE (Dec. 9, 2019), <https://perma.cc/E7A5-PVPZ>.

¹⁴ U.N. Env’t Mgmt. Grp., *A Framework for Advancing Environmental and Social Sustainability in the United Nations System*, at 9 (2012), <https://perma.cc/U779-WPXS> [hereinafter *U.N. Sustainability Framework*].

considered until 2028.¹⁵ This puts into question the ability of the SDM to meet its goal of fostering sustainable development, given that global sustainability is dependent on environmental protection and social development.¹⁶ The SDM must also ensure that its projects abide by the principles that guide the implementation of the Paris Agreement such as ecological integrity, respect for human rights, and climate justice.¹⁷ This Essay will first look into the Clean Development Mechanism, the SDM's predecessor, to determine the risks associated with similar mechanisms and identify opportunities for improvement. It will then explore the use of social and environmental safeguards within the REDD+ framework and the Green Climate Fund and identify best practices that could be replicated for the implementation of the SDM.

II. THE SUSTAINABLE DEVELOPMENT MECHANISM

A. History – CDM to SDM

The Sustainable Development Mechanism of the Paris Agreement has its roots in the Clean Development Mechanism (CDM) of the Kyoto Protocol. The CDM allows countries with emission-reduction commitments under the Protocol to implement mitigation projects in developing countries in order to earn Certified Emission Reduction credits that are counted toward their own targets.¹⁸ This system paved the way for Kyoto countries to meet their targets at a lower cost, while providing sustainable development gains to developing countries.¹⁹ As of 2018, the UNFCCC registered 7,803 projects under the CDM, involving 140 countries and accounting for almost 2 billion tons of carbon dioxide equivalent reductions.²⁰ The CDM also accounted for \$303.8 billion in invested financing for climate and sustainable development projects, and \$200 million contributed to the Adaptation Fund.²¹ Aside from these direct emissions and financial benefits accounted from the CDM, many

¹⁵ United Nations Framework Convention on Climate Change Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, *Draft Text on Matters Relating to Article 6 of the Paris Agreement: Rules, Modalities, and Procedures for the Mechanism Established by Article 6, Paragraph 4, of the Paris Agreement*, ¶ 11, U.N. Doc. DT.CMA2.i11b.v3 (Dec. 15, 2019) [hereinafter UNFCCC, *Draft Text*].

¹⁶ *U.N. Sustainability Framework*, *supra* note 14, at 9.

¹⁷ *Paris Agreement*, *supra* note 8, pmbl.

¹⁸ Kyoto Protocol to the United Nations Framework Convention on Climate Change, art.12, ¶¶ 3, 8, U.N. Doc. FCCC/CP/1997/L.7 (Dec. 10, 1997) [hereinafter Kyoto Protocol].

¹⁹ DAMILOLA S. OLAWUYI, THE HUMAN RIGHTS-BASED APPROACH TO CARBON FINANCE 7–8 (2016).

²⁰ United Nations Framework Convention on Climate Change, *Achievements of the Clean Development Mechanism: Harnessing Incentive for Climate Action, 2001–2018*, at 2–3 (2018), <https://perma.cc/MS35-Y36P>.

²¹ *Id.* at 3. The Adaptation Fund, established in 2001, finances adaptation projects and programs for particularly vulnerable developing country Parties to the Kyoto Protocol. *Adaptation Fund*, UNITED NATIONS CLIMATE CHANGE, <https://perma.cc/7BGF-5ZTT> (last visited Feb. 14, 2021).

sustainable development achievements were also observed. These include the creation of employment and greater involvement of the private sector in the climate crisis, greater stakeholder engagement, improved transportation systems, and wider access to a reliable energy supply.²²

However, feedback from the implementation of the CDM is not all positive. The CDM has been heavily criticized for failing to respect a number of procedural human rights, such as the right of participation, access to information, prior and informed consent, and equal protection in the project development process.²³ Substantive human rights have also been affected, such as indigenous peoples' rights and the right to property.²⁴ In fact, it has been determined that displacements as a result of climate change mitigation and adaptation activities negatively affect several million people a year.²⁵ Another criticism of the CDM is its prioritization of financial gains over sustainable development benefits.²⁶ Given that it is primarily a market mechanism, proponents tend to prioritize financial return rather than sustainability,²⁷ and it is therefore not surprising that projects that score high on sustainable development indicators—such as renewable energy and energy efficiency—are not competitive in the CDM market.²⁸ Many have also questioned the CDM's overall contribution to climate change mitigation due to a weak policing on "additionality," thereby casting doubt on the ecological integrity of the entire mechanism.²⁹ "Additionality" is a term

²² *Id.* at 5–6, 14–15, 17–18, 23.

²³ OLAWUYI, *supra* note 19, at 9–10; Marcos Orellana, *Climate Change, Sustainable Development and the Clean Development Mechanism*, in *REALIZING THE RIGHT TO DEVELOPMENT* 321, 330–31 (U.N. Hum. Rights Off. of the High Comm'r ed., 2013).

²⁴ Marcos Orellana, *Climate Change, Sustainable Development and the Clean Development Mechanism*, in *REALIZING THE RIGHT TO DEVELOPMENT*, *supra* note 23, at 321, 330–31.

²⁵ OLAWUYI, *supra* note 19, at 9.

²⁶ Marcos Orellana, *Climate Change, Sustainable Development and the Clean Development Mechanism*, in *REALIZING THE RIGHT TO DEVELOPMENT*, *supra* note 23, at 321, 330–31.

²⁷ Charlotte Streck, *Expectations and Reality of the Clean Development Mechanism: A Climate Finance Instrument Between Accusation and Aspirations*, in *CLIMATE FINANCE: REGULATORY AND FUNDING STRATEGIES FOR CLIMATE CHANGE AND GLOBAL DEVELOPMENT* 67, 70 (Richard B. Stewart et al. eds., 2009).

²⁸ *Id.* at 70–71. *See also* Marcos Orellana, *Climate Change, Sustainable Development and the Clean Development Mechanism*, in *REALIZING THE RIGHT TO DEVELOPMENT*, *supra* note 23, at 321, 330–31 (concluding that "renewable energy, energy efficiency and transport project activities . . . are less competitive in the CDM market").

²⁹ Charlotte Streck, *Expectations and Reality of the Clean Development Mechanism: A Climate Finance Instrument Between Accusation and Aspirations*, in *CLIMATE FINANCE: REGULATORY AND FUNDING STRATEGIES FOR CLIMATE CHANGE AND GLOBAL DEVELOPMENT*, *supra* note 27, at 67, 70–71.

used for projects with mitigation benefits that would have happened anyway, despite of its categorization as a CDM project.³⁰

The Paris Agreement's drafters sought to address the CDM's shortcomings in the SDM. A close comparison between the CDM and SDM reveals the Paris Agreement more greatly emphasizes sustainable development and overall global emissions mitigation.³¹ In addition, Article 6.5 of the Paris Agreement can also be interpreted as a preliminary barrier to "double counting," the accounting of a GHG emission reduction twice leading to an inaccurate report of progress toward meeting both national pledges and international targets.³² These supplemental provisions were deemed necessary considering the risks associated with the mechanism, as was observed in the implementation of CDM.³³ These risks are further discussed in the next subpart.

B. Risks Associated with SDM

To ensure that the SDM is aligned with the overall goals of the Paris Agreement, it is imperative that the mistakes of the CDM are fixed rather than repeated. Given that the SDM will serve all Parties to the Agreement, there is a bigger risk of overlooking double counting.³⁴ The wider scope of the SDM may also increase the risk of additionality, considering that Parties from the global South will also need to meet their own mitigation targets as indicated in their NDCs.³⁵ Ineffective

³⁰ United Nations Framework Convention on Climate Change, *Glossary: CDM Terms Version 10.0*, at 5, U.N. Doc. CDM-EB07-A04-GLOS (Sept. 12, 2019), <https://perma.cc/6P9S-P335>.

³¹ See Adrian Muller, *Risk Management in the Clean Development Mechanism (CDM): The Potential of Sustainability Labels*, in ECONOMICS AND MANAGEMENT OF CLIMATE CHANGE: RISKS, MITIGATION AND ADAPTATION 193, 194 (Bernd Hansjürgens & Ralf Antes eds., 2008) (discussing sustainability risks under the CDM); *Paris Agreement*, *supra* note 8, art. 6, ¶ 4 (establishing the SDM's goal of overall mitigation in global emissions).

³² See *Paris Agreement*, *supra* note 8, art. 6, ¶ 5 ("Emission reductions resulting from the mechanism referred to in paragraph 4 of this article shall not be used to demonstrate achievement of the host Party's nationally determined contribution if used by another Party to demonstrate achievement of its nationally determined contribution.").

³³ See Adrian Muller, *Risk Management in the Clean Development Mechanism (CDM): The Potential of Sustainability Labels*, in ECONOMICS AND MANAGEMENT OF CLIMATE CHANGE: RISKS, MITIGATION AND ADAPTATION, *supra* note 31, at 193, 194 (discussing risks associated with the CDM). See generally Luca Lo Re et al., *Designing the Article 6.4 Mechanism: Assessing Selected Baseline Approaches and Their Implications* (Org. for Econ. Co-op. & Dev., Climate Change Expert Grp., Working Paper No. 2019(5)) (critiquing CDM methodologies and discussing whether revisions under the Paris Agreement's sustainable development mechanism are needed).

³⁴ See Lambert Schneider et al., *Addressing the Risk of Double Counting Emission Reductions Under the UNFCCC*, (Stockholm Env't Inst., Working Paper No. 2014-02) (assessing how double counting of emission credits may occur and is currently addressed under the UNFCCC, and recommending methods for addressing double counting).

³⁵ *Paris Agreement*, *supra* note 8, art. 3 ("As nationally determined contributions to the global response to climate change, *all Parties* are to undertake and communicate ambitious efforts") (emphasis added)).

additionality tests for the SDM will further reduce available finance for legitimate mitigation and adaptation projects.³⁶

As mentioned, Article 6.5 of the Paris Agreement provides for a preliminary directive against double counting, stating that “emission reductions resulting from the mechanism . . . shall not be used to demonstrate achievement of the host Party’s nationally determined contribution if used by another Party to demonstrate achievement of its nationally determined contribution.”³⁷ Article 6.4(d) can also be construed as addressing the issue of additionality stating that the SDM shall aim “to deliver an overall mitigation in global emissions.”³⁸ However, while these risks are addressed in the Paris Agreement, the provisions are vague and could be misinterpreted absent clear and instructive rules and procedures for the Agreement’s implementation.

In addition to ensuring that the SDM results in significant mitigation benefits, Parties must also make sure that the implementation of projects under the mechanism does not lead to human rights abuses and the further degradation of biodiversity and ecological resources. The Preamble of the Paris Agreement provides guidance on this, stating that Parties, when taking action to address climate change:

should . . . respect, promote, and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.³⁹

It also highlights the importance of “ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity” on all matters addressed in the Agreement.⁴⁰ However, despite the critiques of the CDM, the Paris Agreement does not have clear guidelines on how to avoid such risks, leaving it to the Parties to further negotiate on the matter.

³⁶ See Axel Michaelowa & Sonja Butzengeiger, *Ensuring Additionality Under Art. 6 of the Paris Agreement* 11, 25 (Perspectives Climate Research, Discussion Paper, Nov. 2017) (discussing criticism of CDM additionality regulation).

³⁷ *Paris Agreement*, *supra* note 8, art. 6, ¶ 5.

³⁸ *Id.* art. 6, ¶ 4.

³⁹ *Id.* pmbl.

⁴⁰ *Id.*

C. Status of Negotiations

Article 6.7 of the Paris Agreement states that the rules, modalities, and procedures for the Sustainable Development Mechanism shall be adopted by the first session of the Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement (CMA).⁴¹ That session has come and gone⁴² but still, there is no clarity as to how the mechanism would be implemented. Negotiations on Article 6.4 have been heavily debated with little progress since the CMA began its work. When the 24th Conference of the Parties (COP) to the UNFCCC ended, only Article 6 issues remained unsolved.⁴³ Parties whittled down unresolved parts of the negotiating texts, or “brackets,” of the various Paris Agreement segments, leaving only those related to 6.4 to spill over to the following year’s COP.⁴⁴

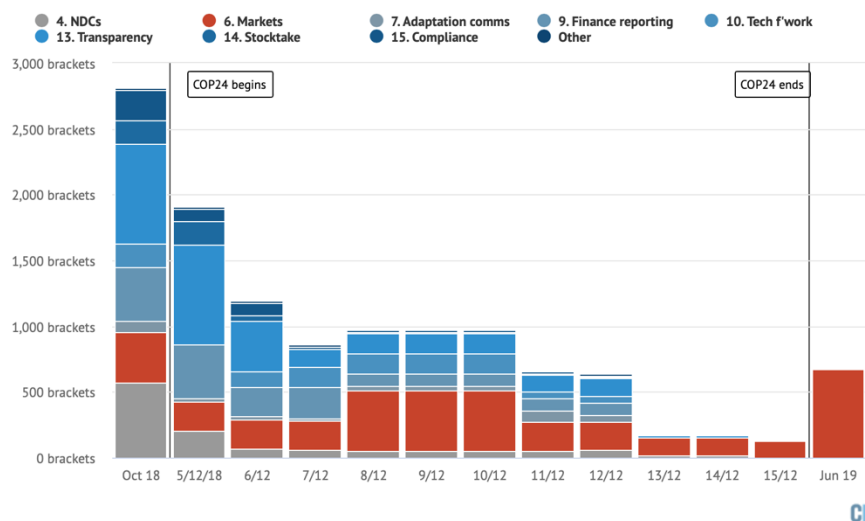


Figure 1: Carbon Brief monitoring of remaining unresolved negotiation “brackets” from before and after UNFCCC COP 24.

At COP 25, Parties merely noted the draft texts and once again pushed the agreement on substantive issues to the next COP, originally

⁴¹ *Id.* art. 6, ¶ 7.

⁴² *Marrakech Climate Change Conference - November 2016*, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://perma.cc/5L3J-YCVX> (last visited Nov. 9, 2020).

⁴³ See Simon Evans & Josh Gabbatiss, *In-Depth Q&A: How ‘Article 6’ Carbon Markets Could ‘Make or Break’ the Paris Agreement*, CARBON BRIEF (Nov. 29, 2019), <https://perma.cc/57N9-9WGQ>.

⁴⁴ *In-depth Q&A: How ‘Article 6’ Carbon Markets Could ‘Make or Break’ the Paris Agreement*, CARBON BRIEF, <https://perma.cc/2EPE-2C54> (last updated Dec. 23, 2019). A version of this article with figure 1 in color is available at <https://perma.cc/6JTS-UR9A>.

scheduled for November of 2020.⁴⁵ The last version of the draft text itself provides little clarity or guidance on avoiding the risks of implementing the mechanism. Social and economic impacts of the mechanism are not substantively addressed, and the Subsidiary Body for Implementation shall only consider further safeguards as part of the review procedure that will be held in 2026 for completion by 2028.⁴⁶ Given the widespread effects of the SARS-CoV-2 global pandemic, COP 26 has now been postponed to November 2021.⁴⁷

III. SOCIAL AND ENVIRONMENTAL SAFEGUARDS

A. Safeguards for SDM

Many, especially in the human rights sector, were unsatisfied with the outcome of the negotiations on Article 6.4 at COP 25, especially the delay on establishing safeguards until 2028.⁴⁸ This delay is a glaring gap considering that one of the overarching aims of the SDM, and of the entire Agreement, is to foster sustainable development.⁴⁹ It is well recognized that human rights are integral to the fulfillment of sustainable development⁵⁰ and the 2030 Agenda for Sustainable Development explicitly states that the aim of the Sustainable Development Goals (SDGs) is to “realize the human rights of all.”⁵¹ Furthermore, the SDGs are to be implemented in an integrated, balanced, and indivisible manner that leaves no one behind.⁵² Parties to the Paris Agreement must not be allowed to undertake climate actions to the detriment of the other social and environmental goals of the 2030 Agenda.

Environmental and social safeguard policies have long been established under many other international frameworks to avoid and mitigate possible harmful impacts of development projects on people and the environment.⁵³ Safeguards also establish transparency and

⁴⁵ United Nations Framework Convention on Climate Change Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement, *Chile Madrid Time for Action*, ¶¶ 11–13, U.N. Doc. FCCC/PA/CMA/2019/6/Add.1 (Mar. 16, 2020).

⁴⁶ UNFCCC, *Draft Text*, *supra* note 15, ¶¶ 11–12.

⁴⁷ *COP26 to Take Place from 1–12 November 2021*, UNITED NATIONS CLIMATE CHANGE (May 29, 2020), <https://perma.cc/D3BA-74VC>.

⁴⁸ Simon Evans & Josh Gabbatiss, *COP25: Key Outcomes Agreed at the UN Climate Talks in Madrid*, CARBON BRIEF (Dec. 15, 2019), <https://perma.cc/A3V3-DC4U>.

⁴⁹ See generally *Paris Agreement*, *supra* note 8, art. 2, art. 6, ¶ 4 (providing that the Paris Agreement “aims to strengthen the global response to the threat of climate change, in the context of sustainable development”).

⁵⁰ *Human Rights and the 2030 Agenda for Sustainable Development*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://perma.cc/Z8KQ-CUSB> (last visited Nov. 9, 2020).

⁵¹ G.A. Res. 70/1, pmb1 (Sept. 25, 2015).

⁵² *Id.*

⁵³ U.N. Green Climate Fund Readiness Programme, *Environmental and Social Safeguards at the Green Climate Fund*, in GREEN CLIMATE FUND HANDBOOK, at 5 (Dec. 2015),

trust between contracting partners and the public, including public and private investors, while maximizing environmental benefits of activities.⁵⁴ Similar safeguards have been utilized in mechanisms under the ambit of the UNFCCC with good results, in particular the Reducing Emissions from Deforestation and Forest Degradation (REDD+) Framework and the Green Climate Fund (GCF). These UNFCCC mechanisms facilitate and support ambitious climate actions while taking into account the overarching goal of sustainable development.⁵⁵ The Parties to the Paris Agreement should look into these mechanisms and the Agreement's use of social and environmental safeguards to identify replicable best practices for the SDM, ensuring that the SDM achieves both its mitigation and sustainable development targets.

B. REDD+ Safeguards

REDD+ is a mechanism established under the UNFCCC that gives a financial value to the carbon that is stored in forests by incentivizing conservation and sustainable management of forests.⁵⁶ With deforestation accounting for a significant part of global greenhouse gas emissions,⁵⁷ REDD+ is seen as an opportunity to foster cost-effective and immediate climate mitigation while helping fight poverty and conserve biodiversity.⁵⁸ Article 2 of the Kyoto Protocol first introduced the REDD+ framework as a measure to achieve emission limitation and reduction commitments, promoting sustainable development.⁵⁹ The framework, including existing UNFCCC decisions relating to forests, was adopted as part of the Paris Agreement under Article 5. As of February 2021, the UNFCCC Lima REDD+ Information Hub has registered projects with over 8.7 billion tons of CO₂ equivalent per year from ten countries.⁶⁰

<https://perma.cc/733V-GUVU>; U.N. Environment Management Group, *A Framework for Advancing Environmental and Social Sustainability in the United Nations System*, at 30 (2012), <https://perma.cc/RHA4-YFKB>.

⁵⁴ U.N. Green Climate Fund Readiness Programme, *supra* note 53, at 5.

⁵⁵ United Nations Framework Convention on Climate Change, Seventeenth Session, *Governing Instrument for the Green Climate Fund*, annex, ¶¶ 1–2, U.N. Doc. FCCC/CP/2011/9/Add.1 (Dec. 11, 2011) [hereinafter *GCF Governing Instrument*]; United Nations Framework Convention on Climate Change, Sixteenth Session, *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*, app. I, ¶ 1, U.N. Doc. FCCC/CP/2010/7/Add.1 (Dec. 10, 2010).

⁵⁶ *About REDD+*, UN-REDD PROGRAMME, <https://perma.cc/LAD6-69X8> (last visited Nov. 9, 2020).

⁵⁷ VIVIENNE HOLLOWAY & ESTEBAN GIANDOMENICO, *THE HISTORY OF REDD POLICY* 3 (2009).

⁵⁸ *Id.*

⁵⁹ Kyoto Protocol, *supra* note 18, art. 2.

⁶⁰ *Lima REDD+ Information Hub*, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://perma.cc/XZ2U-NWE2> (last visited Feb. 13, 2021).

Intending to substantially reduce prospective risks in order to fully realize the benefits that REDD+ could offer, a set of seven safeguards, known as the Cancun Safeguards, were adopted by the Conference of the Parties to the UNFCCC in 2010.⁶¹ The Cancun Safeguards recognize that environmental integrity, transparent governance, respect for human rights, and the protection of social well-being are an integral part of reducing greenhouse gas emissions through REDD+ implementation.⁶² These safeguards are enumerated as follows:

- (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 [taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day],
- (f) Actions to address the risks of reversals;
- (g) Actions to reduce displacement of emissions.⁶³

A number of guidance frameworks for the interpretation and implementation of the Cancun Safeguards have also been developed by

⁶¹ United Nations Framework Convention on Climate Change, Sixteenth Session, *The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Co-operative Action Under the Convention*, ¶ 69, U.N. Doc. FCCC/CP/2010/7/Add.1 (Dec. 10, 2010).

⁶² *Id.* app. I, ¶ 2.

⁶³ *Id.* (bracketed text from *id.* n.1).

different institutions and organizations. The Forest Carbon Partnership Facility (FCPF) Readiness Fund Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners, or “Common Approach,” is one such framework that provides a set of environmental and social safeguards to ensure that the projects implemented will support sustainable development.⁶⁴ FCPF suggests a two-tiered approach for the management of environmental and social risks: a Strategic Environmental and Social Assessment that would result in the incorporation of environmental and social considerations in the formulation of REDD+ strategies, and an Environmental and Social Management Framework, which would manage residual harm arising from the implementation of REDD+ strategies.⁶⁵

The UN-REDD Programme Social and Environmental Principles and Criteria (UN-REDD SEPC) on the other hand aims to address social and environmental issues in the UN-REDD programs and support countries in developing national approaches to REDD+ safeguards.⁶⁶ Apart from the Cancun Safeguards, a number of other international instruments were taken into consideration in the development of the UN-REDD SEPC, such as other UNFCCC decisions, the Convention on Biological Diversity, the Non-Legally Binding Instrument on all Types of Forests, the Convention on the Elimination of All Forms of Discrimination against Women, International Labour Organization Convention 169, United Nations Convention Against Corruption, United Nations Declaration on the Rights of Indigenous Peoples, United Nations Convention on the Elimination of All Forms of Racial Discrimination, and the Millennium Development Goals.⁶⁷

C. Green Climate Fund Safeguards

The Green Climate Fund (GCF) on the other hand, is an operating entity of the UNFCCC’s financial mechanism established to enable significant and ambitious contributions to global efforts on climate change.⁶⁸ The GCF is meant to

contribute to the achievement of the ultimate objective of the Convention through sustainable development, . . . [promoting a] paradigm shift towards low-emission and climate-resilient development pathways by providing support to developing countries to limit or reduce their greenhouse gas emissions and to adapt to the impacts of climate change,

⁶⁴ *About FCPF*, FOREST CARBON P'SHIP FACILITY, <https://perma.cc/HCR8-2U7P> (last visited Nov. 9, 2020).

⁶⁵ FOREST CARBON P'SHIP FACILITY, FOREST CARBON PARTNERSHIP FACILITY (FCPF) READINESS FUND: COMMON APPROACH TO ENVIRONMENTAL AND SOCIAL SAFEGUARDS FOR MULTIPLE DELIVERY PARTNERS 6–9 (2012), <https://perma.cc/36BZ-YGJG>.

⁶⁶ UN-REDD Programme, *UN-REDD Programme Social and Environmental Principles and Criteria* 3, U.N. Doc. UNREDD/PB8/2012/V/1 (Mar. 25, 2012).

⁶⁷ *Id.* at 2.

⁶⁸ *GCF Governing Instrument*, *supra* note 55, ¶ 1.

taking into account the needs of those developing countries particularly vulnerable to the adverse effects of climate change.⁶⁹

Guided by the principles and provisions of the UNFCCC, the GCF aims to operate in a transparent, accountable, efficient, and effective manner and “play a key role in channeling new, additional, adequate, and predictable financial resources to developing countries and will catalyse climate finance, both public and private, and at the international and national levels.”⁷⁰ It is designed to “pursue a country-driven approach and promote and strengthen engagements at the country level through effective involvement of relevant institutions and stakeholders.”⁷¹ In addition it must, throughout this process, “promot[e] environmental, social, economic and development co-benefits, [while] taking a gender-sensitive approach.”⁷² The GCF is also mandated to serve the implementation of the Paris Agreement, starting with a goal of mobilizing \$100 billion per year by 2020 for meaningful adaptation and mitigation actions.⁷³ As of February 2021, the GCF had 159 projects in its portfolio and a total value of \$23.3 billion, \$1.6 billion of which have been disbursed.⁷⁴

The GCF adopted environmental and social safeguards to avoid or mitigate possible negative impacts from funded projects and ensure that GCF projects do not result in harm to people or the environment.⁷⁵ In 2014, the GCF Board decided to adopt the International Finance Corporation Performance Standards to serve as their interim environmental and social safeguards framework.⁷⁶ These eight Performance Standards are:

- PS1: Assessment and management of environmental and social risks and impacts;
- PS2: Labor and working conditions;
- PS3: Resource efficiency and pollution prevention;
- PS4: Community health, safety and security;
- PS5: Land acquisition and involuntary resettlement;

⁶⁹ *Id.* ¶ 2.

⁷⁰ *Id.* ¶ 3.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Climate Finance in the Negotiations*, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://perma.cc/8Y9U-YQ2F> (last visited Nov. 9, 2020).

⁷⁴ *Portfolio Dashboard*, GREEN CLIMATE FUND, <https://perma.cc/C8GZ-WT6C> (last visited Feb. 13, 2021).

⁷⁵ GREEN CLIMATE FUND, GCF IN BRIEF: SAFEGUARDS (2018), <https://perma.cc/8RUA-8X34>.

⁷⁶ See generally *Interim Environmental and Social Safeguards of the Fund (Performance Standards of the International Finance Corporation)*, GREEN CLIMATE FUND, <https://perma.cc/F6SX-HABP> (last visited Nov. 9, 2020).

PS6: Biodiversity conservation and sustainable management of living natural resources;

PS7: Indigenous peoples; and

PS8: Cultural heritage⁷⁷

In 2018, the GCF Board adopted two additional policies: the Environmental and Social Policy (ESP) and the Indigenous Peoples Policy (IPP).⁷⁸ The ESP is a set of procedures that help the GCF “identify, analyse, avoid, minimize, and mitigate any potential adverse environmental and social impact of climate finance activities.”⁷⁹ Under this policy, all GCF activities must avoid or mitigate adverse impacts on people and the environment, enhance equitable access to development benefits, and give due consideration to vulnerable populations that are or may be affected by the activity.⁸⁰ Furthermore, the policy also takes into account, and attempts to limit, possible transboundary harm and gives importance to gender equality and stakeholder inclusivity.⁸¹ On the other hand, the IPP seeks to ensure that indigenous populations “benefit from GCF activities and projects in a culturally appropriate manner[] and do not suffer harm or adverse effects from the design and implementation of” the activities.⁸² IPP also highlights indigenous peoples’ engagement in the planning process, with due importance given to traditional knowledge.⁸³

D. Best Practices on Safeguards

As stated above, safeguards are put in place so that there is a process for identifying, minimizing, and mitigating harmful social and environmental impacts and allow for redress in case such impacts occur.⁸⁴ Safeguards seek to improve the quality of projects, avoid failure, and increase the reputation of the mechanism to foster public investments.⁸⁵ While the REDD+ Framework and GCF safeguards are not perfect, they integrate social and environmental concerns in the decision-making process, monitor and evaluate the implementation of

⁷⁷ GREEN CLIMATE FUND, INTERIM ENVIRONMENTAL AND SOCIAL SAFEGUARDS OF THE FUND (PERFORMANCE STANDARDS OF THE INTERNATIONAL FINANCE CORPORATION) (2014).

⁷⁸ Green Climate Fund, *Decisions of the Board, Nineteenth Meeting of the Board, 26 February – 1 March 2018*, at 10–11, Doc. GCF/B.19/43 (Mar. 16, 2018).

⁷⁹ GREEN CLIMATE FUND, *supra* note 75.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See discussion *supra* Section III.C.

⁸⁵ See STEPHANIE ROE ET AL., SAFEGUARDS IN REDD+ AND FOREST CARBON STANDARDS: A REVIEW OF SOCIAL, ENVIRONMENTAL, AND PROCEDURAL CONCEPTS AND APPLICATION 9 (2013) (discussing the various purposes served by the formulation of forest carbon and REDD+ safeguards).

projects, and provide a venue for affected communities and proponents to address issues through a fair dispute resolution process.⁸⁶ These effects result in greater accountability and transparency, both from the executing institution and the project proponents.⁸⁷ The safeguards are a significant step toward ensuring that the goals of the mechanism are ultimately achieved.

The GCF provides for an Independent Redress Mechanism (IRM) that addresses grievances related to the execution of the Fund's policies and procedures. The IRM reports to the Board of the GCF but is independent of its Secretariat.⁸⁸ The IRM members work closely with the GCF's environmental and social safeguards team to prevent conflict and strengthen grievance mechanisms.⁸⁹ The collaboration has resulted in greater accountability on the part of the GCF Secretariat to prioritize social and environmental issues in its work. In 2018, for example, the IRM identified a wrongful categorization of the social and environmental impacts of a wetlands project in Peru.⁹⁰ It found that the project inadequately considered indigenous peoples (IP) living within the area and that there was a weak enforcement of the free and prior informed consent (FPIC) process.⁹¹ The IRM identified remedial measures to be taken and, as of February 2021, three of the four measures has been completed: issuance of guidance on FPIC requirements and risk categorization for IP projects, and the completion of a legal assessment opinion on the impacts of the project on the collective land rights of affected IP.⁹² Safeguards provide for a standard in which social and environmental performance may be evaluated and monitored.

The need to balance flexibility and accountability is a critical issue in establishing social and environmental safeguards.⁹³ Additional requirements necessarily increase the difficulty in accessing funds, especially for developing countries, and create confusion and variability in the implementation and reporting processes.⁹⁴ For the REDD+

⁸⁶ Green Climate Fund, 2019 Independent Redress Mechanism Annual Report, No. GCF/B.25/Inf.08 (Feb. 19, 2020) (reviewing the goals and activities of the GCF's Independent Redress Mechanism).

⁸⁷ ROE ET AL., *supra* note 85, at 47 (discussing REDD+ safeguards). *See generally* Green Climate Fund, *Accountability in Action: 2019 Independent Redress Mechanism Annual Report*, No. GCF/B.25/Inf.08 (Feb. 19, 2020) (discussing GCF's Independent Redress Mechanism) [hereinafter *Accountability in Action*].

⁸⁸ *Id.* at 2.

⁸⁹ *See id.* at 9–10 (discussing IRM-hosted workshops for GCF staff).

⁹⁰ Green Climate Fund, *Independent Redress Mechanism: Summary of the Preliminary Inquiry Report, and Undertakings Provided by the GCF Secretariat*, C-0002-Peru, at 2 (2019), <https://perma.cc/JF3E-2CLW>.

⁹¹ *Id.* at 3–4.

⁹² *Accountability in Action*, *supra* note 87, at 6–7; *C0002 Peru*, GREEN CLIMATE FUND (Aug. 5, 2019), <https://perma.cc/JKY3-2PR6>.

⁹³ *U.N. Sustainability Framework*, *supra* note 14, at 11.

⁹⁴ *See* ROE ET AL., *supra* note 85, at 20 (discussing challenges of implementing and reporting safeguard standards).

Framework, the proliferation of safeguard systems—public and private, mandatory and discretionary—has led to unnecessary administrative burdens for proponents.⁹⁵ It is therefore important that safeguards are prescriptive but adaptable.⁹⁶ The REDD+ Social & Environmental Standards Initiative is an organization that provides guidance and tools for country-level adoption of social and environmental safeguards.⁹⁷ The Initiative has found that a participatory, transparent, and comprehensive approach results in greater participation of vulnerable and marginalized groups, the ability to foster multiple benefits, and increased funding.⁹⁸

Notwithstanding each mechanism's approach, it is clear that consideration of social and environmental safeguards in mechanisms addressing climate change is essential. The SDGs and the 2030 Agenda can only be achieved through a robust collaboration across the different sectors, territories, and generations.⁹⁹ Countries are required to integrate economic, social, and environmental goals into their national strategies to achieve sustainable development and establish safeguards to provide an enabling environment for success.¹⁰⁰

IV. CONCLUSION

The Paris Agreement represents what could possibly be humanity's last stand against the climate crisis. Unprecedented and ambitious mitigation and adaptations efforts must be undertaken, but we must remember that climate actions do not exist within a bubble. In the 2019 High Level Political Forum on Sustainable Development, the United Nations General Assembly called the SDGs targets "integrated and indivisible, balancing the economic, social, and environmental dimensions of sustainable development."¹⁰¹ We must not repeat the mistakes of the past and instead move toward the future we truly desire. This requires putting in place the necessary protections that will ensure that not one sector of society is left behind. The Sustainable Development Mechanism is in a prime position to stimulate greater collaboration across the global economic divide. Social and economic safeguards will give assurance that, in doing so, we will do no further

⁹⁵ *Id.*

⁹⁶ ROE ET AL., *supra* note 85, at 20.

⁹⁷ *About the Initiative: What is the Social and Environmental Standards Initiative?*, REDD+ SOCIAL AND ENVIRONMENTAL STANDARDS INITIATIVE, <https://perma.cc/EGL4-N6Q5> (last visited Nov. 9, 2020).

⁹⁸ REDD+ SOCIAL AND ENVIRONMENTAL STANDARDS INITIATIVE, COUNTRY APPROACHES TO SAFEGUARDS FOR REDD+ (2016), <https://perma.cc/BF42-SACD>.

⁹⁹ UNITED NATIONS DEVELOPMENT PROGRAMME, INSTITUTIONAL AND COORDINATION MECHANISMS: GUIDANCE NOTE ON FACILITATING INTEGRATION AND COHERENCE FOR SDG IMPLEMENTATION 14 (Lance Garner ed., 2017), <https://perma.cc/87YJ-VD4B>.

¹⁰⁰ *National Sustainable Development Strategies*, U.N. DEPT ECON. & SOC. AFF.: DIV. FOR SUSTAINABLE DEV. GOALS, <https://perma.cc/TQ7G-RCXA> (last visited Nov. 9, 2020).

¹⁰¹ G.A. Res. 74/4, ¶ 6 (Oct. 15, 2019).

damage to our already vulnerable society and ecology. Our experiences in the GCF and the REDD+ Framework provide a wealth of knowledge that we must replicate and gain from. While the delay in the Article 6.4 negotiations is unfortunate, it buys negotiators some time to take a closer look at what rules, modalities, and procedures the mechanism needs to be truly successful and effective.