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Sent: Friday, September 27, 2024 10:54 PM
To: A6.4mechanism-info <A6.4mechanism-info@unfccc.int>
Cc: Sinclair Vincent ▇▇▇▇▇▇▇▇▇▇▇▇▇
Subject: Comments on Article 6.4 SD Tool

To the members of the Article 6.4 Supervisory Body,

A group of ~35 experts on topics related to human rights, Indigenous Peoples, social and environmental standards and SDG impacts from diverse backgrounds including representatives of local communities, VCM standard certification bodies, NGOs, UN agencies and others convened yesterday at a meeting hosted by Rocky Mountain Institute, Namati and OHCHR to discuss version 9 of the A6.4 SD Tool.

I participated in this meeting and would like to share comments on the latest tool ahead of its potential finalization at your upcoming meeting. I understand the drafting process has been a multi-year process, and these comments are coming at the end; still I hope they can contribute in some way to the final version.

As you well know, the UNFCCC, through the A6.4 SD Tool, has a momentous opportunity to set the bar for social and environmental safeguards and sustainable development impacts in the context of carbon markets at a level commensurate with international best practice.

At a time when actors on both the supply and demand sides are calling for greater social integrity in carbon markets, with:

- new integrity initiatives emerging daily;
- VCM standards upgrading their safeguards;
- carbon credit rating agencies incorporating safeguards and SD impact into their ratings methodologies;
- corporates enhancing their due diligence procedures and seeking greater assurances on their purchases;
- governments designing regulations to be fit for purpose; and
- Indigenous Peoples and local communities demanding respect for their rights -

the UNFCCC is well positioned to signal global commitment to upholding the highest standards, increasing confidence in the market and addressing serious concerns related to continued and potential adverse impacts resulting from weak and insufficient requirements to date.

Below are some reflections on how the A6.4 SD Tool could be enhanced to meet this moment.

- Objective of the tool with regard to safeguards should reflect the more commonly used language below, reflecting the risk mitigation hierarchy:
    - Maximize social and environmental opportunities and benefits;
    - Avoid adverse impacts to people and the environment;
    - Minimize, mitigate, and manage adverse impacts where avoidance is not possible.

The operational means of doing this is: 1.) identify; 2.) assess and 3.) manage potential social and environmental risks and impacts. This needs to be clarified in the Tool.

- Risk screening should incorporate risk categorization methodology, leading to greater clarity on assessment and management requirements. Attached is a powerpoint which summarizes how this could be done. See also: UNDP's Social and Environmental Screening Procedure (SESP) and UNDP SES Guidance on Assessment and Management for additional context and guidance on how this methodology works and its logical flow. Greater clarity is needed on the assessment and management procedures and requirements, including how they relate to the indicators. In particular, in some places the indictors are referred to as *the* means of addressing a risk, but the indicators should be the means to monitor the management measures and plans, and are not a management measure in and of themselves.

- You will see the SESP also includes a questionnaire as a starting point for identifying risks. Many of the shortcomings of the A6.4 SD Tool questionnaire could be addressed drawing on the example of the SESP, e.g.
    o It is recommended to streamline the response options to yes/no and remove "potentially" and "N/A" by revising how the questions are worded, which would result in a much clearer result/next step in the process related to assessment and management.
    o It is recommended to ensure each question correlates to the specific safeguards requirements.

- The safeguards themselves should be assessed against international best practice safeguards requirements, to ensure comprehensive coverage of topics, proper formulation of wording, etc. Attached is a document that breaks down UNDP's Social and Environmental Standards into its core requirements, this document could be a good basis to assess the comprehensiveness of the A6.4 safeguards language and requirements. UNDP's SES are fully aligned with international best practice, including international law; were globally consulted upon over a ~2 year period, and updated in 2021. In particular (non-exhaustive list, more could be identified through a comprehensive comparative assessment against the core SES requirements as described above):
    o Gender is usually not taken as only a *do no harm* safeguard, but also incorporates the *do good* aspect by requiring projects to take specific actions to improve gender equality and women's empowerment (here there can be a noted overlap with SD impact). Same with human rights, it is not only about avoiding adverse impacts, but about having projects promote the further respect for rights.
    o The Gender safeguard should include provisions addressing risks of gender-based violence, sexual harassment and sexual exploitation and abuse (not only in the questionnaire, but explicitly in the requirements). This is now best practice since a few years ago.
    o Suggest a close review of wording related to human rights, Indigenous Peoples rights, and international law. Suggest reference to "Indigenous individuals" is removed. Please see UNDP's Principle on Human Rights; Standard on IPs; and below suggested definition of Applicable Law, for use in the Tool consistently and throughout and in place of other references to national law, international law, etc.

- "Projects will comply with applicable legal and institutional framework, including obligations under Applicable Law* and confirm that the project would not be supported if it contravenes international obligations."
- *Applicable Law is defined as "national law and obligations under international law, whichever is the higher standard".
- International human rights law could be footnoted along these lines (or check with OHCHR for updated wording): "Since 1945 the international community has progressively developed and defined international human rights law. The founding documents in this regard are the Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1948). Today, the key definitions of human rights are comprised in the Declaration, in nine core international human rights treaties and in nine optional protocols. United Nations human rights work is largely undertaken within this normative framework. The treaties are central to the work and activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) at national, regional and international levels. The treaties and their optional protocols are ratified or acceded to by States on a voluntary basis; once a State becomes a party to a treaty or a protocol, it takes on the legal obligation to implement its provisions and to report periodically to a United Nations "treaty body" composed of independent experts." ([Reference](#))

  o The Tool seems to be mixing up land acquisition with involuntary resettlement.
  o Important to ensure that the list of activities where FPIC would be required is aligned with international best practice and international law.

- While it was noted that requirements related to stakeholder engagement, information disclosure and the A6.4 grievance mechanism can be found in other documents, it is still recommended to build out what many refer to as the 'Social and Environmental Management System' component of the Tool. This typically includes the associated requirements around:
  - Stakeholder engagement (currently the focus is on feedback on the documents, but it should go much further than that), see for example [UNDP SES requirements on Stakeholder Engagement](#) and [UNDP SES Guidance on Stakeholder Engagement](#)
  - Access to Information, see UNDP SES requirements on [Access to Information](#)and [Disclosure](#) of safeguards related documentation
  - Grievance Redress Mechanisms, see [UNDP SES Guidance on Grievance Redress Mechanisms](#). It is recommended to include provisions for project level grievance mechanism requirements, and describe how they relate to the A6.4 mechanism. This is best practice, with a lot of [guidance](#) around what an effective GRM is.
  - Compliance Review Process

- Suggest there be Guidance developed to accompany the Tool, which would further define key concepts, in line with international best practice, see below, and also the IFC Performance Standards and Guidance.
  - [UNDP SES Guidance on Indigenous Peoples](#)
  - [UNDP SES Guidance on Displacement and Resettlement](#)
  - [UNDP SES Guidance on Labor and Working Conditions](#)
  - [UNDP SES Guidance on Gender Based Violence](#)
  - [UNDP SES Guidance on Cultural Heritage](#)

- [UNDP FAQ on FPIC](#)

I wasn't able to undertake as detailed a review of the SD component of the Tool, so have limited my comments to the safeguards aspects, though I did note it was not clear what specific steps would occur if an adverse SD impact was identified, because the SD impacts don't follow a similar methodology of assessment and management, it seemed to response would be the development of indicators, which would likely not be sufficient.

I hope these are useful and happy to support further.

Best,
Jen