

Safeguards Roadmap

for Vietnam's National REDD+ Action Programme:
a contribution to a country-led safeguards approach

Version 2.0

February 2014



Acknowledgements

This roadmap was commissioned by Vietnam's National REDD+ Network's Sub-Technical Working Group on Safeguards (STWG-SG), with financial and technical assistance from the *Delivering Multiple Benefits from REDD+ in Southeast Asia* (MB-REDD) project. The MB-REDD project is implemented by SNV Netherlands Development Organisation's REDD+ programme in Vietnam. The MB-REDD project is part of the International Climate Initiative. The German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety supports this initiative on the basis of a decision adopted by the German Bundestag.

The legal gap analysis, which informs this iteration of the roadmap, was conducted by Daniela Rey (Climate Law & Policy Ltd), Doan Diem (independent consultant), Hoang Ly Anh (Hanoi Law University) and Le Ha Phuong (Vietnam REDD+ Office), with oversight by Steve Swan (SNV REDD+). This second revision of the safeguards roadmap builds upon an initial (v1.0) draft, supported by the MB-REDD project and prepared by David Annandale (Environmental and Social Consulting), Doan Diem and Ngo Huy Toan (independent consultants).

Both versions (v1.0 and 2.0) of the roadmap have greatly benefited from invaluable feedback and comments on draft iterations from a number of individuals and organisations: Centre of Research and Development in Upland Areas; European Forestry Institute REDD+ Facility; Forest Carbon Partnership Facility (FCPF); Mr Hua Duc Nhi; Lowering Emissions from Asia's Forests Project; Research and Capacity Building on REDD+, Livelihoods, and Vulnerability in Vietnam: Developing Tools for Social Analysis and Development Planning project; Dr Ta Long; the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD) and the Vietnam REDD+ Office (VRO).

Citation:

Rey, D., Hoang Ly Anh, Doan Diem, Le Ha Phuong & S.R. Swan (2014) Safeguards Roadmap (v2.0) for Vietnam's National REDD+ Action Plan: a contribution to a country-led safeguards approach. SNV Netherlands Development Organisation, REDD+ Programme, Ho Chi Minh City.

Table of Contents

Acknowledgements	ii
List of Boxes, figures and tables	iv
Abbreviations	v
Executive Summary	vii
1. Introduction	1
1.1 International safeguards requirements relevant to REDD+	1
1.2. Safeguards frameworks of multilateral REDD+ support initiatives	5
1.3. Vietnam’s national policy response to REDD+ safeguard requirements	5
1.4. Roadmap objectives and expected outcomes	7
2. Methods	8
2.1. Country-led safeguards approach – conceptual framework and process	8
2.1.1 Overview of the country-led safeguards approach	8
2.1.2 Elements of a country-led safeguards approach	9
2.1.3 Scope of a country-led safeguards approach	12
2.1.4 Steps for a country-led safeguards approach	12
2.2. Policy, legal and regulatory gap analysis	13
3. Summary Results	16
3.1 Safeguard (a) – national and international policy coherence	16
3.2 Safeguard (b) – forest governance	16
3.3 Safeguard (c) – rights of indigenous peoples and local communities	22
3.4 Safeguard (d) – stakeholder participation	24
3.5 Safeguard (e) – conservation of natural forests and biological diversity	27
3.6 Safeguards (f) and (g) – reversals and displacement of emissions	29
4. Recommendations	31
4.1. Near-term recommendations (2014-2020)	31
4.1.1 Legal framework recommendations	31
4.1.2 Institutional framework recommendations	35
4.1.3 Compliance framework recommendations	35
4.2. Longer-term vision (post-2020)	37
5. Conclusions	39
6. References	40
Annex I: Overview of safeguard frameworks of FCPF and UN-REDD Programme	42
Annex II: Detailed gap analysis methods	44
Annex III: List of policies, laws, regulations and other national ordinance analysed	45
Annex IV: List of international treaties and conventions relevant and applicable to Cancun safeguards, which Vietnam is party to	48
Annex V: Glossary of key terms	49

List of boxes, figures and tables

Boxes	Page
Box 1: The Cancun safeguards	2
Box 2: UNFCCC Guidance on implementation of Cancun safeguards	3
Box 3: UNFCCC requirements on the provision of information on how the Cancun safeguards are promoted and supported	4
Box 4: Benefits of adopting a country-led safeguards approach	9
Box 5: Cancun safeguards interpretation framework	14
Box 6: Indicative steps to guarantee the effective participation of stakeholders potentially affected by a policy or planned activity (Akwe: Kon Guidelines)	24
Box 7: UNDRIP requirements relating to Free, Prior and Informed Consent	26
Figures	Page
Figure 1: Main elements of a country-led safeguards approach	10
Figure 2: A stepwise process for a country-led safeguards approach	12
Tables	Page
Table 1: Overview of Vietnam's national legal framework structure	13
Table 2: Selected international instruments to support monitoring and reporting of Cancun safeguards	36

Abbreviations

BeRT	Benefits and Risks Tool
CBD	Convention on Biological Diversity
CERD	Convention on the Elimination of all forms of Racial Discrimination
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CFM	Community Forest Management
CIF	Climate Investment Fund
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COP	Conference of the Parties
CRAs	Corruption Risk Assessments
CSO	Civil society organisation
CSA	Country-led safeguards approach
DARD	Department of Agriculture and Rural Development
DER	Department of External Relations
DoSTIC	Department of Science, Technology and International Cooperation
ERPA	Emissions Reduction Programme Agreement
ER-PIN	Emissions Reduction Programme Idea Note
ESMF	Environmental and Social Management Framework
FAO	Food and Agricultural Organization of the United Nations
FCPF	Forest Carbon Partnership Facility
FIP	Forest Investment Programme
FLEGT	Forest, Law Enforcement Governance and Trade
FMT	FCPF Facility Management Team
FPIC	Free, prior and informed consent
FPDP	Forest Protection & Development Plan
GHG	Greenhouse gas
GRM	Grievance and redress mechanism
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IPCC	Intergovernmental Panel on Climate Change
ITTO	International Tropical Timber Organisation
LAI	Law on Access to Information
LAS	Legality Assurance System
LEP	Law on Environmental Protection
MARD	Ministry of Agriculture and Rural Development
MB-REDD	Delivering Multiple Benefits from REDD+ in Southeast Asia
MDGs	Millennium Development Goals
MEA	Millennium Ecosystem Assessment
MoHA	Ministry of Home Affairs
MoNRE	Ministry of Natural Resources and Environment
MoU	Memoranda(um) of understanding

MRV	Measurement, reporting and verification
NBSAP	National Biodiversity Strategy and Action Plan
NFMS	National Forest Monitoring System
NLBIATF	Non-Legally Binding Instrument on All Types of Forest
NRAP	National REDD+ Action Programme
OP	[World Bank] Operational Policies and Procedures
PLR	Policies, laws and regulations
PRAP	Provincial REDD+ Action Plans
REDD+	Reducing emissions from deforestation and forest degradation; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries
REDD+ SES	REDD+ Social and Environmental Standards
REL	Reference Emission Level
R-PIN	Readiness Preparation Proposal Idea Note
R-Package	Readiness Package
R-PP	Readiness Preparation Proposal
SEDP	Socio-Economic Development Plan
SESA	Strategic Environmental and Social Analysis
SEPC	Social and Environmental Principles and Criteria
SIA	Social Impact Assessment
STWG-SG	Sub-Technical Working Group on Safeguards
UN	United Nations
UNCCD	United Nations Convention to Combat Desertification
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
UN-REDD	United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries
VER	Verified Emission Reduction
VNFOREST	Vietnam Administration of Forestry
VPA	Voluntary Partnership Agreement
VRO	Vietnam REDD+ Office

Executive Summary

Safeguards requirements have been adopted under the United Nations Framework Convention on Climate Change (UNFCCC), and by several multilateral initiatives and bilateral agreements funding REDD+ initiatives. REDD+ is an international climate change mitigation financing mechanism that aims to contribute to the reduction of global greenhouse gas (GHG) emissions by incentivising avoided deforestation and forest degradation, conservation, sustainable management of forests and the enhancement of forest carbon stocks in developing countries.

As discussions have progressed under the UNFCCC, it has been recognised that the implementation of REDD+ can pose significant environmental and social risks, as well as provide an opportunity to promote multiple benefits. To address the potential risks and effectively promote the benefits REDD+, the international community has set requirements to implement appropriate safeguards when implementing REDD+ activities.

Multilateral initiatives, such as the Forest Carbon Partnership Facility (FCPF) and the UN-REDD Programme, have their own safeguard frameworks for REDD+ activities they financially support. Consequently, when participating simultaneously in more than one REDD+ related initiative, countries often face multiple safeguards, policy commitments and requirements, which can result in overlapping activities, increased transaction costs and hinder countries' efforts to ensure compliance with safeguards as well as compromise the overall social and environmental sustainability of REDD+.

In June 2012, Vietnam's Prime Minister approved the National REDD+ Action Programme: 2011-2020 (NRAP), which gives express recognition of the primacy of the UNFCCC ('Cancun') safeguards and associated UNFCCC requirements. To achieve the NRAP goals of *"reduced GHG emissions... increased GHG sequestration by forests, sustainable management of forest resources, biodiversity conservation, and contribution to the successful implementation the national strategy on climate change and poverty reduction, and striving towards sustainable development"*, it is important to identify how Vietnam can effectively respond to the Cancun safeguards, whilst additionally meeting multiple REDD+ safeguard requirements of relevant REDD+ programmes in which Vietnam participates.

The objective of this initial Safeguards Roadmap for the NRAP is to provide the first analytical input to inform initial options, priorities, milestones and recommendations on all aspects related to REDD+ safeguards in Vietnam, consistent with national regulations, capacities and circumstances, as well as international REDD+ processes. It is important to emphasise that the legal gap analysis conducted to inform this first draft of the roadmap constitutes the first analytical input into an ongoing process, and serves as the basis of specific recommendations provided in this version of the roadmap. The roadmap is a 'living document' that will require further analytical inputs and revisions, through a multi-stakeholder consultative process, facilitated by the National REDD+ Network's Sub-Technical Working Group on Safeguards (STWG-SG).

To achieve its objective, the roadmap gives consideration to all relevant UNFCCC decisions and guidance (see section 1.1.1), which inform the country-led safeguards framework employed to frame the options and recommendations provided in this roadmap (see section 1.1.3). The expected outcomes of this roadmap are:

1. Identification of all relevant UNFCCC decisions and guidance (see section 1.1.1), which inform a country-led safeguards approach (CSA), and frame the options and recommendations provided in this roadmap.
2. Identification and detailed analysis of Vietnam's legal framework (on paper, not in practice) that could be used to support the operationalisation of the Cancun safeguards.



3. Identification of options and recommendations to address identified gaps in Vietnam's legal framework, consistent with the NRAP, to fully operationalise the Cancun safeguards and applicable international conventions and agreements.
4. Provide options and recommendations on follow-on analytical studies required to further Vietnam's country-led approach to safeguards and elaborate on this initial draft roadmap.
5. Serve as a communications tool to demonstrate how Vietnam is promoting and supporting the Cancun Safeguards, during the readiness phase, through its existing legal framework.

The roadmap is divided into five sections. **Section 1** examines the UNFCCC safeguards, the REDD+ multilateral safeguard frameworks and Vietnam's national policy response to those safeguard frameworks. **Section 2** examines the methods employed to develop this roadmap, including presenting a conceptual framework for a CSA. The CSA model is utilised to provide a comprehensive conceptual framework to identify the various optional elements that Vietnam could consider as part of a national safeguards response ('map' aspects of the roadmap); and a stepwise process of moving from the broad statements of principle that constitute the Cancun safeguards to an operational response in country ('road' aspects of the roadmap). Additionally, section two outlines the methods (detailed in Annex I) utilised to carry out this legal gap analysis. **Section 3** presents the findings of the legal gap analysis and considerations for addressing them. **Section 4** presents near-term recommendations and longer-term strategic orientations. **Section 5** presents the conclusions.

It is important to note the roadmap recommendations are structured following the CSA model, and therefore categorised under the model's three constituent elements:

1. **Legal framework:** comprised primarily of national policies, laws and regulations (PLRs) that define how the safeguards are to be applied as well as regulate their implementation and compliance. The legal framework forms the basis of the CSA and informs the development and implementation of the system's institutional and compliance frameworks.
2. **Institutional framework:** the institutions and institutional arrangements mandated with a responsibility for overseeing the implementation and enforcement of the adopted safeguards' objectives, comprising the institutions and procedures that implement and enforce the legal framework.
3. **Compliance framework:** comprised of the elements required to ensure and demonstrate safeguard compliance, which are i) information system(s) (including any monitoring provisions); ii) grievance and redress mechanisms, and iii) non-compliance mechanisms.

Specific recommendations are only provided in relation to the legal framework, as it constitutes the only analytical input conducted thus far to inform this initial roadmap. However, it is important to note that the roadmap also contains next-step recommendations in relation to the analysis of institutional and compliance frameworks, and on how to further elaborate on the roadmap itself, feeding into an ongoing stakeholder consultation process.

Legal Framework Recommendations

A. Develop a national REDD+ safeguards framework, based on existing national PLRs, which interpret the Cancun safeguards in the national context, circumstances and capacities.

B. Engage in ongoing reformative agendas for specific PLRs, to address identified gaps in the legal framework.

Recommendations for Cancun Safeguard (a)

- Vietnam Administration of Forestry (VNFOREST) to guide pilot provinces to ensure Provincial REDD+ Action Plans (PRAPs) are consistent with existing provincial Forest Protection & Development Plans (FPDPs) and Socio-Economic Development Plans (SEDPs).

- VNFOREST to ensure review and completion of the list of relevant and applicable international agreements and conventions Vietnam is party to, presented in Annex IV of this roadmap, and publish on the REDD+ Vietnam website (<http://vietnam-redd.org>).
- VNFOREST to commission a study to identify synergies between the reporting requirements of international agreements and conventions Vietnam is party to and how Vietnam is currently meeting those requirements. This study should identify information already being produced by Vietnam to report to international conventions and agreements, which can be utilised to report to the UNFCCC on how Cancun safeguards are being addressed and respected.

Recommendations for Cancun safeguard (b)

- Ensure key articles of the 2013 Draft Law on Environmental Protection (LEP) and the 2013 Draft Law on Access to Information (LAI) are adopted, to address gaps identified regarding access to information. VNFOREST should ensure the Ministry of Agriculture and Rural Development (MARD) communicates to the responsible ministries revising these laws that these key articles are adopted in the revised laws and subsequent decrees and circulars.
- The Ministry of Natural Resources and Environment (MoNRE), in collaboration with the MARD, should develop strategic environmental (and social) assessment guidelines for forestry and agricultural sectoral planning at national and (possibly) provincial levels.
- The MARD should encourage the Departments of Agriculture and Rural Development (DARD) to ensure the implementation of the 2012 Law on Legal Dissemination and Education, which has relevant provisions requiring public institutions to provide information explaining the Forest Protection & Development and Land laws, regulations and procedures in an easily understandable language for ethnic minority, mountainous and remote peoples.

Recommendations for Cancun safeguard (c)

- Assess and strengthen statutory forestland tenure and access rights, and the process for land allocation, documentation and demarcation, with a view to ensure recognition of community land tenure based on customary rights of use. The assessment of forestland tenure and access rights could be conducted through the FCPF's Strategic Environmental and Social Analysis (SESA) and Environmental and Social Management Framework (ESMF).
- Drawing on experience from Community Forest Management (CFM) pilot programmes and provisions under the Law on Cooperatives, the MARD should task VNFOREST with drafting and submitting a national policy to support community forest management for approval by the Prime Minister.
- VNFOREST should consider creating a dedicated unit or designating a specialised person to support the effective implementation of CFM.

Recommendations for Cancun safeguard (d)

- Ensure key articles of the 2013 Draft LEP and 2013 Draft LAI are adopted to address gaps identified in access to information. VNFOREST should ensure the MARD communicates to the responsible ministry revising these laws that these key articles are adopted in the revised laws and subsequent decrees and circulars.

- The MARD, in cooperation with the Ministry of Home Affairs (MoHA), should recommend the Government issue a decree to implement the Ordinance on Grassroots Democracy in the forestry and agricultural sectors.
- VNFOREST to identify and pilot when free, prior and informed consent (FPIC) applies under the NRAP and PRAPs, ensuring Vietnam is consistent with international legal obligations under the one relevant international convention Vietnam is party to – United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (which requires FPIC in five specific cases, see findings under safeguard (d) in Section 3 for detailed information on FPIC under UNDRIP).
- VNFOREST-VRO to coordinate full implementation of the consultation and participation plan of the Readiness Preparation Proposal (R-PP), including stakeholder analysis aspects, in PRAP and other planning and implementation processes of REDD+ demonstration activities in pilot provinces.
- VNFOREST-Department of Science, Technology and International Cooperation (DoSTIC) lead in exploring and capitalising on synergies between the Forest, Law Enforcement Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA) and REDD+ stakeholder consultation fora and processes.

Recommendations for Cancun safeguard (e)

- Provincial DARDs should ensure PRAPs do not include conversion of natural forests.
- Integrate existing and future poverty reduction programmes into PRAPs as a means to explore synergistic integration of content and of co-financing REDD+ actions.
- Utilise measurement, reporting and verification (MRV) of emission reductions/enhanced removals to support monitoring and reporting on conversion of natural forests by REDD+ actions.
- Ensure provisions in the National Biodiversity Strategy and Action Plan (NBSAP) for REDD+ are fully implemented:
 - * Integrate biodiversity conservation targets into the implementation of the NRAP;
 - * Map areas of high biodiversity value in the NRAP;
 - * Map multiple (biodiversity and livelihood) benefits as a contribution to further national strategising for REDD+ and/or subnational PRAPs;
 - * Promote the use of native species for forest enrichment and restoration in the framework of REDD+; and
 - * Reduce risks to biodiversity from NRAP's implementation through application of stringent social and environmental safeguards.

Recommendations for Cancun safeguard (f) and (g)

Near-term solutions for meeting these safeguards largely entail technical design elements of national and subnational carbon accounting mechanisms, not PLR reform. Specific technical provisions for these carbon accounting risk mitigation safeguards are only provided below as examples of measures Vietnam could consider implementing:

- Track displacements of emissions into adjacent areas through detailed MRV and accounting mechanisms.
- Set guidance for estimating leakage through a qualitative leakage assessment.
- Application of a pooled buffer approach, in which emissions reductions or removals are kept aside to be drawn upon and cancelled should reversals occur.
- Require REDD+ actors (public and private sectors, civil society, village communities, individuals) to provide compensation in the case of an emissions reduction reversal.
- Develop formal insurance mechanisms for REDD+ actors.
- Commission a study to identify how FLEGT VPA Legality Assurance System (LAS) in Vietnam and neighbouring countries entering into VPA negotiations could contribute to meeting these safeguards. A particular focus should be PLR provisions and institutional capacities to implement the LAS by Vietnam's customs and forest protection agencies.
- Strengthen provisions of Memoranda of Understanding (MoUs) with neighbouring countries, especially those starting/preparing to enter VPA negotiations, with a view to cooperating in addressing illegal logging and minimising the risks of international leakage.

C. Commission an assessment of the legal framework's implementation in practice

D. Ensure any and all in-country applications or interpretations of the Cancun safeguards are informed by this (and subsequent revisions of this) safeguards roadmap, to be consistently applied to all future decisions on REDD+ that might include safeguard provisions.

Institutional Framework Recommendations

A. Commission an assessment of the institutional framework in place to implement and enforce the legal framework, and its functionality in practice.

B. Design and implement an institutional capacity building programme on safeguards targeting government and non-government institutions identified in this PLR gap analysis.

Compliance Framework Recommendations

A. Commission an assessment of the different elements comprising the compliance framework and their functionality in practice:

- Consider utilising existing and relevant information and reporting systems to gather information on Cancun safeguards implementation.
- Consider UNFCCC requirements in terms of format and frequency for reporting on the Cancun safeguards.
- Consider utilising FCPF support and guidelines for development of grievance and redress mechanism (GRMs).

Conclusion

The identification and detailed analysis of Vietnam's legal framework demonstrates that Vietnam's PLRs are largely consistent with the Cancun safeguards on paper at least. However, specific legal gaps are identified, such as the rights and vulnerabilities of ethnic minority people, conversion of natural forests, reversals and displacement of emissions and recommendations provided. These gap-filling recommendations should be addressed to ensure Vietnam's legal framework is fully consistent with the Cancun safeguards and can be utilised as Vietnam's national policy response to international safeguards commitments for REDD+.

Addressing the legal gaps is not the only action necessary to ensure Vietnam can demonstrate an effective national response to international safeguards requirements. A country-led approach to operationalising the Cancun safeguards will also require building upon Vietnam's institutional and compliance frameworks. In this sense, it is important to recall that a country-led approach is composed of three elements: i) a legal framework that defines the safeguards as well as regulating their implementation and compliance; ii) an institutional framework, responsible for overseeing the implementation and enforcement of the safeguard's objectives; and iii) a compliance framework to monitor and report on safeguard compliance, as well as address grievances and non-compliance.

The nature of the roadmap as a living document requires further analytical work in relation to the three CSA frameworks, which can be supported by other national readiness initiatives, notably those under the FCPF and UN-REDD. The STWG-SG is expected to lead stakeholders through further iterative revisions of the roadmap based on the additional analytical work as recommend earlier.

Finally, it is important to recall the newly agreed Warsaw Framework for REDD+ under the UNFCCC, which clearly links the provision of results-based finance to demonstrate the application of the Cancun safeguards. This roadmap, therefore, constitutes an essential starting point for Vietnam to meet these requirements and obtain results-based finance from the international REDD+ mechanism.

1. Introduction

REDD+¹ is an international climate change mitigation financing mechanism, negotiated under the United Nations Framework Convention on Climate Change (UNFCCC), which aims to contribute to the reduction of global greenhouse gas (GHG) emissions by incentivising avoided deforestation and forest degradation, conservation, sustainable management of forests and the enhancement of forest carbon stocks in developing countries². As discussions have progressed under the UNFCCC, it has been recognised that the implementation of REDD+ can pose significant environmental and social risks, as well as provide an opportunity to promote multiple benefits (Harvey, et al. 2010; Global Witness 2010; Miles et al. 2010 and Dickson et al. 2012).

To address potential risks and effectively promote the benefits of REDD+, the international community has set requirements to implement appropriate safeguards when implementing REDD+ activities. Safeguards requirements have been adopted under the UNFCCC³ and by several multilateral initiatives and bilateral agreements funding REDD+ activities. These multilateral initiatives, such as the Forest Carbon Partnership Facility (FCPF) and the UN-REDD Programme among others, have their own set of safeguard frameworks and associated requirements for REDD+ activities they financially support.

Due to the variety of sources of REDD+ readiness finance and the fact that achieving REDD+ readiness often requires access to finance from more than one source, countries often participate in more than one REDD+ initiative. Consequently, when participating simultaneously in more than one REDD+ related initiative, countries often deal with multiple safeguards, policies and requirements. This potential crossover of initiatives can result in overlapping activities, increased transaction costs and impediments to countries' efforts to ensure compliance with safeguards, as well as compromise the overall social and environmental sustainability of REDD+.

As Vietnam seeks to participate in a future compliance REDD+ mechanism under the UNFCCC and is participating in several REDD+ readiness initiatives whilst moving towards demonstration activities, it is important to identify how it could effectively respond to a future UNFCCC agreement and additionally being able to meet multiple REDD+ safeguards requirements of relevant REDD+ initiatives.

1.1 International safeguards requirements relevant to REDD+

In December 2010, the 16th Conference of the Parties (COP 16) to the UNFCCC in Cancun, Mexico agreed to a set of seven safeguards to support REDD+ implementation (hereafter referred to as the Cancun safeguards). The Cancun safeguards aim not only to mitigate the risk of adverse social and environmental impacts of REDD+ activities, but also to actively promote benefits beyond carbon emission reductions, such as respect for the rights of indigenous peoples and local communities, enhancing biodiversity, improving forest governance and empowering relevant stakeholders by ensuring their full and effective participation. Box 1 reflects the Cancun Safeguards language.



1. Reducing emissions from deforestation and forest degradation; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries.
2. UNFCCC Decision 1/CP.16, FCCC/CP/2010/Add.1 paragraph 70 (a) through (e).
3. Referred to throughout this document as the 'Cancun safeguards', in recognition of the 16th UNFCCC Conference of the Parties in Cancun, where these international policy commitments were agreed.

Box 1: The Cancun safeguards

When undertaking [REDD+] activities ... the following safeguards should be promoted and supported:

- (a) 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 actions referred to in paragraphs 70 and 72 of this decision;*
- (e) Actions are consistent with the conservation of natural forest and biological diversity, ensuring that 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;*
- (f) Actions to address the risks of reversals; and*
- (g) Actions to reduce displacement of emissions.*

Source: UNFCCC Decision 1/CP.16, FCCC/CP/2010/Add.1 Appendix 1

Rather than defining a detailed set of safeguard provisions for REDD+, the international community agreed to this set of broad principles that should be implemented through a country-led approach. This approach allows countries to apply the requirements of the Cancun safeguards in accordance with their own contexts (Miles et al. 2010).

It is important to note that the Cancun safeguards do not necessarily create new obligations, but reflect the obligations contained in relevant international law, which many countries have already committed to implement⁴. Additionally, an integral piece of the Cancun Safeguards is safeguard (a), which requires REDD+ activities to, inter alia, complement or be consistent with the relevant international instruments that REDD+ countries have signed, ratified, or otherwise agreed to. These instruments pertain not only to the environment, but also to human rights and indigenous people's rights. Ensuring consistency with these relevant international instruments should not be seen as an additional requirement that countries must fulfil to implement REDD+. Instead, it should be seen as a way of enhancing or strengthening the implementation of existing international obligations.

Responsibility for the implementation of the Cancun Safeguards

The Cancun Agreement states that the Cancun Safeguards should be 'promoted and supported' in the implementation of REDD+ activities⁵. Therefore, any actor involved in the implementation of REDD+ activities will need to comply with the Cancun safeguards, including national and subnational governments, bilateral donors, civil society, multilateral financial institutions and the private sector (Rey et al. 2013a).

4. For a detailed analysis of relevant international instruments and breakdown of each safeguard into key requirements as reflected under international law, see Rey et al. (2013a).

5. UNFCCC, Decision 1/CP.16, paragraph 69; Decision 2/CP.17, paragraph 63.

Box 2: UNFCCC Guidance on implementation of Cancun safeguards

Decision 1/CP.16, paragraph 69, the COP:

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

Decision 2/CP.17, paragraph 63, the COP:

"Agrees that, regardless of the source or type of financing, the activities referred to in decision 1/CP.16, paragraph 70, should be consistent with the relevant provisions included in decision 1/CP.16, including the safeguards in its appendix I, in accordance with relevant decisions of the Conference of the Parties".

Responsibility for providing information about the Cancun Safeguards

Governments of countries undertaking REDD+ activities are responsible for *"providing information"* on how the Cancun safeguards are being *"addressed and respected"*, during all phases of REDD+⁶. Specific UNFCCC decisions related to the reporting of Cancun safeguards compliance are presented in Box 3.

The 'Warsaw Framework for REDD+'⁷ confirmed that developing countries should provide a summary of information on how they are addressing and respecting the Cancun safeguards *"periodically"* which should be included in national communications or communication channels agreed by the COP⁸. An *"additional and voluntary"* way for reporting is providing the *"summary of information"* via the web platform of the UNFCCC website⁹. Developing country Parties would only need to start providing the summary of information after the start of the implementation of REDD+ activities¹⁰. The frequency for reporting on safeguards should be consistent with their submission of national communications (on average, every four years)¹¹.

Results-based finance and safeguards compliance conditions

The UNFCCC Durban decision states that developing country Parties will only be able to *"obtain and receive results-based finance"* if they have a system for providing information on the safeguards compliance¹². This is recalled and further clarified in the Warsaw Framework¹³. Consequently, any country involved in implementing REDD+ activities and seeking to obtain and receive results-based finance, will need to have a system in place to provide information on how the safeguards are being addressed and respected¹⁴, or could be potentially excluded from whatever payment scheme emerges from the UNFCCC REDD+ negotiations (Rey et al. 2013c). The Warsaw Framework for REDD+ expands the scope of this conditionality, by not only requiring countries to have a system for providing information on how safeguards are addressed and respected, but also requiring countries to provide the most recent summary of information before they can access results-based payments¹⁵.

6. UNFCCC Decision 1/CP.16, paragraph 71(d).

7. Seven decisions from UNFCCC COP 19 constitute the Warsaw Framework for REDD+: 1) Decision 9/CP.19 Work programme on results-based finance to progress the full implementation of [REDD+] activities; 2) Decision 10/CP.19 Coordination of support for the implementation of activities in relation to mitigation actions in the forest sector by developing countries, including institutional arrangements; 3) Decision 11/CP.19 Modalities for national forest monitoring systems; 4) Decision 12/CP.19 The timing and the frequency of presentations of the summary of information on how all the safeguards... are being addressed and respected; 5) Decision 13/CP.19 Guidelines and procedures for the technical assessment of submissions from Parties on proposed forest reference emission levels and/or forest reference levels; 6) Decision 14/CP.19 Modalities for measuring, reporting and verifying; and 7) Decision 15/CP.19 Addressing the drivers of deforestation and forest degradation.

8. UNFCCC Decision 12/CP.19, paragraph 2.

9. http://unfccc.int/methods/redd/redd_web_platform/items/4531.php

10. UNFCCC Decision 12/CP.19, paragraph 4.

11. UNFCCC Decision -/CP.19, paragraph 5.

12. UNFCCC Decision 2/CP.17, paragraphs 63 and 64.

13. UNFCCC Decision 12/CP.19, paragraphs 3 and 4.

14. Decision 2/CP.17, paragraphs 63 and 64 should be read in conjunction with UNFCCC Decision 1/CP.16, paragraph 69 and Appendix 1, paragraph 2.

15. UNFCCC Decision 9/CP.19, paragraph 4.

Box 3: UNFCCC requirements on the provision of information on how the Cancun safeguards are promoted and supported

Decision 1/CP.16, paragraph 71, the COP:

"Requests developing country Parties aiming to undertake the activities referred to in paragraph 70, in the context of the provision of adequate and predictable support, including financial resources and technical and technological support to developing country Parties, in accordance with national circumstances and respective capabilities, to develop the following elements:

(d) A system for providing information on how the safeguards referred to in appendix I to this decision are being addressed and respected throughout the implementation of the activities referred to in paragraph 70 above, while respecting sovereignty".

Decision 12/CP.17 paragraph 2:

"Agrees that systems for providing information on how the safeguards referred to in appendix I to decision 1/CP.16 are addressed and respected should, taking into account national circumstances and respective capabilities, and recognizing national sovereignty and legislation, and relevant international obligations and agreements, and respecting gender considerations:

(a) Be consistent with the guidance identified in decision 1/CP.16, appendix I, paragraph 1;

(b) Provide transparent and consistent information that is accessible by all relevant stakeholders and updated on a regular basis;

(c) Be transparent and flexible to allow for improvements over time;

(d) Provide information on how all of the safeguards referred to in appendix I to decision 1/CP.16 are being addressed and respected;

(e) Be country-driven and implemented at the national level;

(f) Build upon existing systems, as appropriate".

Decision 12/CP.17 paragraph 3:

"Agrees also that developing country Parties undertaking the activities referred to in decision 1/CP.16, paragraph 70, should provide a summary of information on how all of the safeguards referred to in decision 1/CP.16, appendix I, are being addressed and respected throughout the implementation of the activities".

Decision 12/CP.17 paragraph 4:

"Decides that the summary of information referred to in paragraph 3 should be provided periodically and be included in national communications, consistent with relevant decisions of the Conference of the Parties on guidelines on national communications from Parties not included in Annex I to the Convention, or communication channels agreed by the Conference of the Parties".

Decision 12/CP.19 paragraph 4:

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

Decision 12/CP.19 paragraph 5:

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

1.2. Safeguards frameworks of multilateral REDD+ support initiatives

In parallel to the UNFCCC process, several multilateral initiatives and bilateral agreements have been providing funding for REDD+ readiness activities. These multilateral initiatives, such as the FCPF and UN-REDD Programme, have developed their own safeguard frameworks applicable to REDD+ readiness and demonstration activities that they financially support (see Annex I). It should be noted that the FCPF safeguard framework constitutes a contractual conditionality, whilst the UN-REDD safeguard framework serves as a voluntary guiding framework for UN-REDD and could be applied for national programmes.

Due to the variety of sources of REDD+ readiness finance and the fact that achieving REDD+ readiness often requires access to finance from more than one source, Vietnam, like many other countries, is participating simultaneously in various REDD+ related initiatives. These include the FCPF¹⁶ and the UN-REDD Programme¹⁷.

Phase I of the UN-REDD Vietnam Programme was completed in July 2012 (UN-REDD 2013a). Subsequently, at COP18 in December 2012 Vietnam and Norway signed a joint declaration for 2012 to 2015 to work towards reducing GHG emissions from, and increase carbon removals from the atmosphere through, Vietnam's forests (REDD desk 2013). This partnership allows for the expansion of the UN-REDD Programme into its second phase, which includes piloting REDD+ interventions in six provinces. The second phase officially began on 29 July 2013 (UN-REDD 2013b).

In January 2013, the FCPF project "Support for REDD+ Readiness Preparation in Vietnam" was approved by the MARD¹⁸. The project aims to strengthen the institutional and technical capacity of the National REDD+ Steering Committee, the Vietnam REDD+ Office and relevant central organisations and three pilot provinces (Dak Nong, Quang Binh and Quang Tri) to be REDD+ ready and contribute to the successful implementation of the National REDD+ Action Programme (REDD desk 2013).

The safeguard frameworks and requirements from the various multilateral initiatives have distinct differences in terms of content and process (see Annex I).

As a result, inconsistent safeguard requirements, in terms of content and process, could become a potential burden for Vietnam, leading to overlapping activities, increased transaction costs and hindering the country's efforts to effectively implement the Cancun safeguards and achieve multiple benefits.

1.3. Vietnam's national policy response to REDD+ safeguard requirements

In June 2012 the Prime Minister approved the National REDD+ Action Programme: 2011-2020 (NRAP)¹⁹. The NRAP requires that "solutions and measures applicable for implementing the NRAP should be systematic, coordinated, phased and focused, and consistent to the specific conditions of the country, the provisions of the UNFCCC, as well as the technical and financial support from the international community"²⁰. This indicates that Vietnam has given express recognition of the primacy of the Cancun safeguards and associated UNFCCC requirements, and has begun to define concrete steps to ensure its compliance. Moreover, the NRAP "is designed in compliance with policies and laws of Vietnam and consistent to the provisions of the United Nation Framework Convention on Climate Change and relevant treaties and international conventions Vietnam has joined"²¹. This demonstrates that the NRAP seeks to ensure national policy coherence and consistency with the objectives of relevant international conventions and agreements.

16. Vietnam is a REDD+ Country Participant of the FCPF.

17. Vietnam was one of the original UN-REDD "pilot" countries.

18. Decision 58/QĐ-BNN-HTQT.

19. Prime Ministerial Decision No. 799/QĐ-TTg, dated 27 July 2012, on Approval of the National Action Programme on Reduction of Greenhouse Gas Emissions through Efforts to Reduce Deforestation and Forest Degradation, Sustainable Management of Forest Resources, and Conservation and Enhancement of Forest Carbon Stocks: 2011-2020.

20. Chapter I, paragraph A (d).

21. Chapter I, paragraph A (b).

Among the NRAP's key tasks, the programme seeks to implement the following activities relevant to safeguards:

For the period 2011-2015:

1. *"Improvement of the legal system and technical guidance for implementing REDD+ activities";*
2. *"Establishment and pilot implementation of mechanisms to monitor and handle complaints and provide feedback during the programme implementation";*
3. *"Proposing and implementing the...REDD+ safeguards measures as well as the establishment of the database and information system required for REDD+ implementation".*

For the period 2016-2020:

1. *"Further performing the legal framework for implementing REDD+ on the basis of practical requirements as well as the provisions of the law of Vietnam and the international practices";*
2. *"Improving the system of information for REDD+, including...information system on safeguard measures, information on policies and technical solutions at the central and local levels adaptable to the specific conditions of the country as well as the international rules and support";*
3. *"Improving the monitoring and complaint handling mechanism and feedback during the programme implementation".*

Finally, the solutions chapter of the NRAP seeks *"improving the legal framework to facilitate REDD+ implementation"*, by *"reviewing and supplementing the existing legal framework and formulating legal documents on...safeguard measures...in accordance with the applicable laws of Vietnam and international agreements Vietnam has signed."* This demonstrates that the NRAP seeks to ensure Vietnam's legal framework is strengthened in terms of fully and effectively complying with the relevant and applicable international conventions and agreements, all of which would facilitate the implementation of safeguard measures.

In addition to the relevant NRAP provisions, it is important to highlight the commitments taken through the National REDD+ Network's STWG-SG, where the VRO clarified Vietnam's position in terms of seeking to take a country-led approach to meet the UNFCCC safeguard framework and where it was also agreed to develop a roadmap based on an initial legal gap analysis, as presented in this document (STWG-SG 2012).

Finally, it should also be noted that PRAP is currently being piloted at a subnational level as a means of implementing the following NRAP key task: *"Development of action plans to implement REDD+ at the provincial level and mainstream REDD+ into forest protection and development and land use planning, as well as programmes and projects that aim at reduction of emissions in agriculture and other related fields"*.

1.4. Roadmap objectives and expected outcomes

The objective of this roadmap is to provide the first analytical input to inform initial options, priorities, milestones and recommendations on all aspects related to REDD+ safeguards in Vietnam consistent with national regulations, capacities and circumstances, as well as international REDD+ processes²². To ensure all options and recommendations presented in this roadmap are consistent with the national and international legal obligations, this roadmap presents a comprehensive identification and analysis of Vietnam's national legal framework in relation to the Cancun safeguards language and associated UNFCCC requirements.

It is important to emphasise that the legal gap analysis conducted to inform this first draft of the roadmap constitutes the first analytical input into an ongoing process and serves as the basis of specific recommendations provided in this version of the roadmap. The roadmap is a 'living document' that will require further analytical inputs and revisions, through a multi-stakeholder consultative process facilitated by the STWG-SG.

To achieve its objective, the roadmap gives consideration to all relevant UNFCCC decisions and guidance (see section 1.1.1), which inform the country-led safeguards framework employed to frame the options and recommendations provided in this roadmap (see section 1.1.3). The expected outcomes of this roadmap are:

1. Identification of all relevant UNFCCC decisions and guidance (see section 1.1.1), which inform a country-led safeguards approach, and frame the options and recommendations provided in this roadmap.
2. Identification and detailed analysis of Vietnam's legal framework (on paper, not in practice) that could be used to support the operationalisation of the Cancun safeguards.
3. Identification of options and recommendations to address identified gaps in the legal framework to fully operationalise the Cancun safeguards and the relevant international conventions and agreements.
4. Provide options and recommendations on follow-on analytical studies required to further Vietnam's country-led approach to safeguards and elaborate on this initial draft roadmap.
5. Serve as a communications tool to demonstrate that Vietnam is currently promoting and supporting the Cancun Safeguards during the readiness phase through its existing legal framework.

It is important to clarify that this roadmap does not provide an assessment of Vietnam's legal framework in relation to safeguard frameworks of multilateral REDD+ initiatives, such as those applied by the FCPF or UN-REDD Programme (see Annex I). The legal gap analysis conducted to inform this roadmap in relation to the Cancun safeguards seeks to support Vietnam's efforts to ensure consistency with the international requirements set out in the relevant UNFCCC decisions, in addition to other existing international and national obligations. Finally, it should be noted that this initial version of the roadmap is informed largely by an assessment of the existing legal framework, as articulated on paper. An assessment of the legal framework's application in practice has yet to be conducted (see sub-section 4.1.1 – legal framework recommendation C).

A glossary of key terms used in this roadmap is provided in Annex V.

22. Taking into account the guidance and requirements set out by the UNFCCC Decision 1/CP.16 and Decision 2/CP.17 and the Warsaw Framework for REDD+ (Decisions 9-15/CP.19).

2. Methods

2.1. Country-led safeguards approach – conceptual framework and process

Although high-level fora on aid effectiveness (especially those organised in Paris and Accra) have placed considerable stress on the need for countries to develop their own national cross-sectoral safeguard systems, REDD+ has elicited the development of multiple specific safeguard frameworks. In light of the array of considerations and requirements highlighted earlier, it is beneficial for Vietnam to determine a country-led approach that ensures the effective implementation of UNFCCC requirements, as well as meet the multiple requirements of different multilateral REDD+ initiatives. This would assist in avoiding the burden of having to respond individually or to integrate multiple external international safeguard frameworks. Additionally, a country-led approach could be used to provide guidance for a consistent implementation of safeguards at the subnational level.

If Vietnam seeks to be consistent with UNFCCC guidance and requirements, such an approach will need to include the following characteristics (see Rey et al. 2013c):

- a) Country-driven and implemented at the national level²³;
- b) Build upon existing systems²⁴;
- c) Flexibility²⁵;
- d) Inclusiveness²⁶;
- e) Linked to demonstrating compliance of the Cancun safeguards²⁷;
- f) Consistency with national and international law²⁸.

To meet these criteria, and help countries ensure that all REDD+ activities are covered by safeguard policies that apply across the board, regardless of the funding source or initiative, is the CSA (see Rey et al. 2013c). The design and implementation of a CSA is being explored by a number of REDD+ countries²⁹. The CSA model is presented here as a conceptual framework, which structures and informs the options and recommendations of this roadmap.

It is important to clarify that the CSA model is not presented here as a competing safeguard framework or as a model for Vietnam to necessarily adopt. The CSA is presented and utilised in this roadmap to provide:

1. A comprehensive conceptual framework to identify various optional elements that a country could consider as part of a national safeguards response ('map' aspects of the roadmap);
2. A stepwise process of moving from the broad statements of principle that constitute the Cancun safeguards to an operational response in country ('road' aspects of the roadmap).

2.1.1 Overview of the country-led safeguards approach

A CSA allows a country to respond to the relevant and applicable international requirements in a country-driven manner and by building upon existing domestic frameworks, ensuring that all REDD+ activities within the country are covered by safeguard policies that apply across the board, regardless of funding source or initiative. In particular, the development of a CSA could lead to considerable forest governance improvements and inclusive participation. The benefits of developing a CSA are outlined in Box 4.

23. UNFCCC Decision 1/CP.16, Annex 1, paragraph 1 (c); UNFCCC Decision 12/CP.17, paragraph 2 (e).

24. UNFCCC Decision 12/CP.17, paragraph 2 (f).

25. UNFCCC Decision 12/CP.17, paragraph 2 (c).

26. UNFCCC Decision 1/CP.16, paragraph 72.

27. UNFCCC Decision 12/CP.17, paragraph 2 (a) and (d).

28. UNFCCC Decision 12/CP.17, paragraph 2.

29. Mexico and other countries in the Central American region.

It is important to clarify that a CSA does not require the creation of an entirely novel system. Instead, it is created or drawn from a country's existing legal, institutional and compliance frameworks that combined and linked to the Cancun safeguards can operationalise them at a national level. A CSA is, therefore, a country-led and proactive approach to implementing safeguards, which can provide benefits beyond the context of REDD+. It also seeks to build on existing country frameworks to ensure compliance with safeguards can be demonstrated.

Most importantly, the CSA seeks to strengthen legal, institutional and compliance frameworks by promoting effective implementation of relevant and applicable national and international legal obligations, to which countries have already committed to.

Box 4: Benefits of adopting a country-led safeguards approach

Control over the safeguards that are promoted and supported when implementing REDD+. It allows the country to define how safeguards are to be promoted and supported.

Control over the activities that are subject to safeguards. It allows the country to define in which cases safeguards are to be promoted and supported.

Retention of national sovereignty. It avoids separate systems for all bilateral or multilateral institutions or initiatives operating in country (through demonstration of equivalency by the CSA).

Country ownership. This is in line with the Paris Declaration and Accra Agenda for Action, which recognises that it is the norm for aid recipients to develop their own national development strategies.

The ability to tailor systems to each country. It is specifically tailored to the country's context and can reflect the uniqueness of a country's circumstances, particularly in terms of opportunities and challenges for the implementation of safeguards.

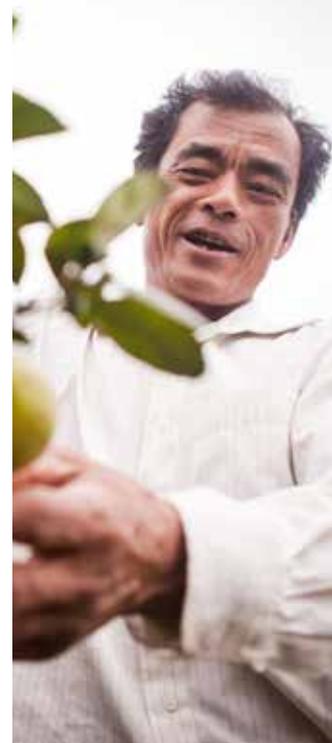
Cost-effectiveness. It avoids the burden of having to respond individually or having to integrate multiple external international safeguard frameworks.

Flexibility. A strong CSA also allows for flexibility to integrate the requirements of new programmes and international requirements, speeding up their implementation, and making the country more attractive to donors, investors and programme implementers.

Source: Rey et al. (2013c)

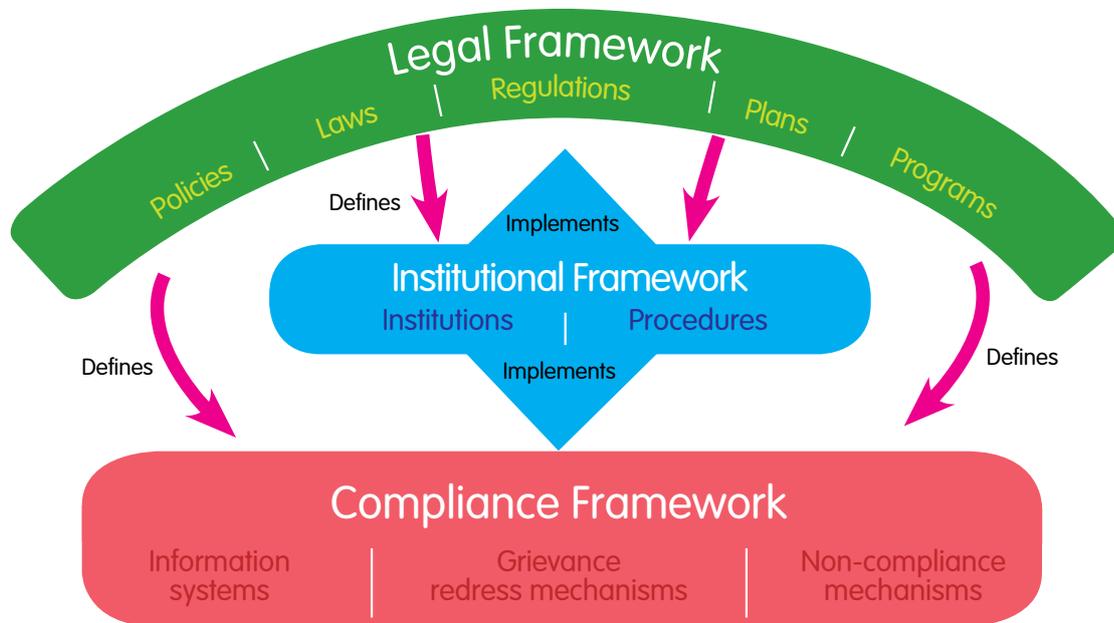
2.1.2 Elements of a country-led safeguards approach

Regardless of the scope of the CSA a country chooses to implement, it will be comprised of three main elements (Figure 1). These elements reflect the CSA approach towards ensuring a country-led safeguard response builds upon existing systems³⁰:



30. In accordance with UNFCCC Decision 1/CP.17 article 2 (f): "Build upon existing systems, as appropriate".

Figure 1: Main elements of a country-led safeguards approach



Source: Rey & Swan (2014)

a) Legal framework – what safeguards apply and how are they guaranteed?

The legal framework is comprised primarily of national:

- **Policies** – which provide political direction to the adoption, implementation and interpretation of laws related to safeguards;
- **Laws** – which define and regulate which safeguards must be guaranteed and how, without covering operational aspects;
- **Regulations** – issued by different government departments and agencies to carry out the intent of legislation related to safeguards;
- **Plans** – which generally provide guiding quantitative targets and qualitative principles for programmes and projects that could be relevant to the implementation of the safeguards; and
- **Programmes** – which operationalise the goals and objectives of plans and are spatially, temporally and technically explicit about the actions and resources needed to achieve the goals outlined in the plan.

The legal framework is the basis of the CSA and informs the development and implementation of institutional and compliance frameworks of the system. In terms of designing and implementing a CSA, the legal framework should be used to:

- Give legal recognition to the safeguard objectives of the country and clarify which set of safeguards are to be applied. It is important for REDD+ countries to make sure their country approach to safeguards is based on the Cancun safeguards at the very least;
- Provide the legal basis for compliance with the safeguards (i.e. which aspects of the legal framework will protect and promote the safeguards);

- c) Provide clarity as to which institutions/institutional arrangements will be responsible for overseeing the implementation of safeguards (i.e. the legal framework needs to clarify the mandates and jurisdiction);
- d) Provide clarity as to which aspects of the compliance framework will guarantee the safeguards' fulfilment. This means the legal framework needs to clarify which information gathering and reporting arrangements will be used (including any monitoring provisions), which grievance and dispute resolution mechanisms will apply and which sanctions will be triggered if safeguards are not addressed or respected.

b) Institutional framework – who will implement the safeguards?

The institutional framework refers to the institutions and institutional arrangements mandated with a responsibility for overseeing the implementation and enforcement of the safeguards' objectives. In terms of designing and implementing safeguards system, the institutional framework should be used to oversee and put in practice the safeguards defined, protected and promoted by the legal framework. The institutional framework might encompass several key stakeholder categories that will need to work together to ensure transparency and effective participation.

The institutional framework will need to be accompanied by well-articulated processes and procedures through which the institutions can effectively operate and coordinate, in order to ensure effective implementation and compliance with the safeguards. The processes and procedures will be the means and methods through which the institutions will seek to guarantee compliance.

c) Compliance framework – how to guarantee the fulfilment of the safeguards?

The compliance framework comprises the elements required to ensure and demonstrate safeguard compliance, which are: i) information systems (including any monitoring provisions); ii) grievance and redress mechanisms; and iii) non-compliance mechanisms. In terms of designing and operating the CSA, the compliance framework is to be used for providing information on safeguards' implementation (including any monitoring provisions), to address any grievances that should arise in relation to the safeguards and to address the non-compliance or insufficient compliance with the safeguards. Each of the sub-elements of the compliance framework are as follows:

1) Information system

The information system component of the CSA is related to the legal and institutional frameworks which define and oversee what, how and when information is to be collected, analysed and to whom it should be provided. This element would be utilised to report to the UNFCCC on how safeguards are being addressed and respected.

2) Grievance and redress mechanisms

Grievance or dispute resolution mechanisms come into play when there is a need to settle disputes between actors. Such processes tend to come in the form of negotiation, mediation, arbitration or through use of judicial or administrative systems. A CSA compliance framework will require mechanisms to address grievances of groups or individuals whose rights may be affected.

3) Non-compliance measures

Non-compliance measures address any failure to implement requirements set forth in the CSA legal framework. The non-compliance measures could be administrative or judicial in nature, but should aim to provide a legal venue for addressing a finding of non-compliance.

Countries need to determine non-compliance mechanisms when an actor has failed to adequately implement or respect the CSA legal framework, and measures that such non-compliance will trigger.

2.1.3 Scope of a country-led safeguards approach

It is important to note that the CSA gives countries the option to define which activities, therefore which sectors, are covered by its CSA. Three broad options to be considered when defining the scope of a CSA are:

- a) a REDD+-specific system;
- b) a sector-wide system; or
- c) a cross-sector system.

A REDD+ safeguard system would seek to apply safeguards only to REDD+ activities financed by REDD+ within the country. It could comprise a single sector, or a number of sectors. However, this system will require cross-sector coordination, as REDD+ activities in most countries will cover multiple sectors, such as agriculture, energy and forestry.

A sector-wide safeguard system seeks to apply safeguards to the operations and activities of one particular sector, such as agriculture or forestry, irrespective of the financing mechanism.

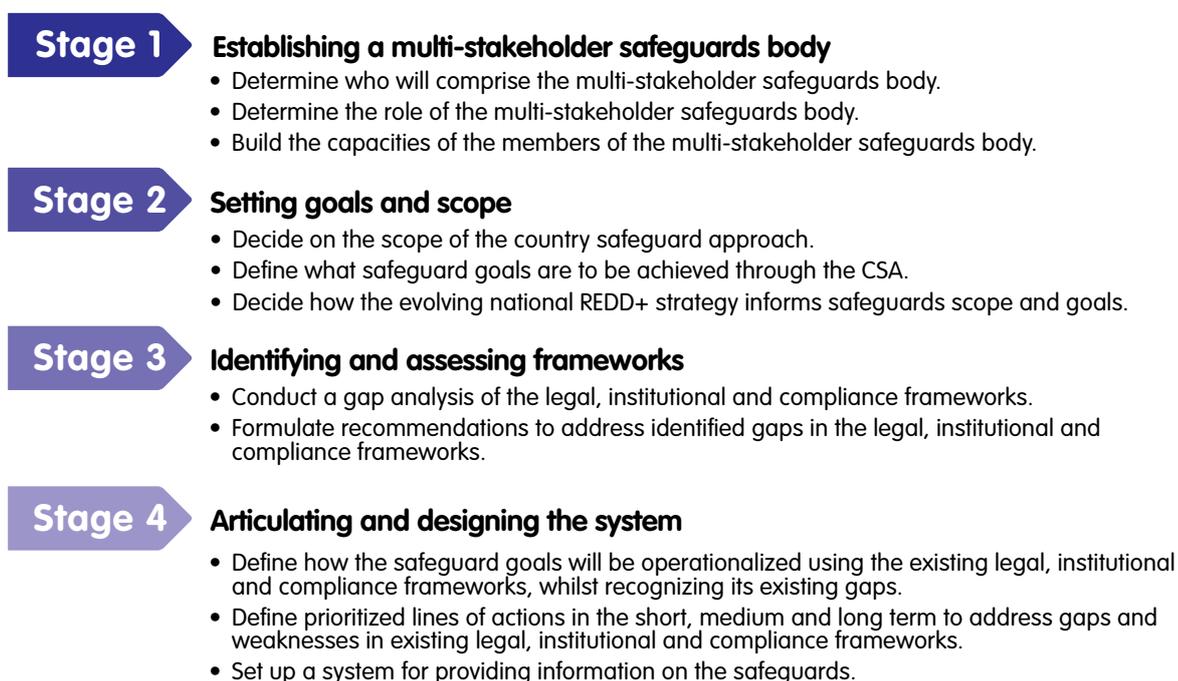
Finally, a cross-sector safeguard system covers multiple sectors that seek to apply safeguards in operations or activities across their operations and activities.

These three options could be arranged in sequential order – going from REDD+-specific to single sector to cross sector – as a phased approach to developing a comprehensive CSA for land-based activities, driven by REDD+. For example, a CSA developed initially for REDD+ financed activities alone could be expanded to include wider activities within one or more target sectors funded through other means, such as regular public sector budgetary expenditure or payments for other ecosystem services.

2.1.4 Steps for a country-led safeguards approach

While the means and options to operationalise safeguards may vary between countries, there are generic steps that may be useful for countries to consider for the development of their CSA (Figure 2). Some of these steps could be implemented in parallel.

Figure 2: A stepwise process for a country-led safeguards approach



Rey & Swan (2014)

2.2. Policy, legal and regulatory gap analysis

To identify the relevant and applicable international and national legal framework in relation to how the Cancun safeguards are addressed and respected, the framework of interpretation presented in the document *Guide to Understanding and Implementing Safeguards REDD+ the UNFCCC* (Rey et al. 2013a), summarised in Box 5 was utilised. This framework (criteria, sub-criteria and indicators) was developed following an analysis of the Cancun safeguards language in relation to selected REDD+-relevant and applicable instruments of international law. It therefore constitutes a legal interpretation of what thematic elements need to be addressed to promote and support REDD+ safeguards in accordance with international law.

The Vietnamese legal framework is made up of more than 10,000 hierarchically structured legal instruments³¹. In this hierarchy, higher-ranking legal instruments set out more general rules, while lower-ranking ones provide details for implementing the higher-ranking ones. Different bodies within the Vietnamese system have the authority to issue different legal instruments. Table 1 summarises the key types of legal instruments that were considered and examined in hierarchical order. Court judgments were not examined, as they are not a source of law. Judges in Vietnam do not have the power to interpret the law and court judgments are non-binding in subsequent cases.

Table 1: Overview of Vietnam’s national legal framework structure

Legal instrument	Issuing body
The Constitution Laws (including Codes) Resolutions	National Assembly
Ordinances and resolutions	Standing Committee of the National Assembly
Decrees, regulations and resolutions	The Government
Decisions and directives	The Prime Minister
Circulars	Ministries
Decisions	Ministers

All international and regional treaties, conventions or agreements, as well as non-binding declarations, were considered as elements comprising the international legal framework. Therefore, identification of the relevant international legal framework applicable to Vietnam (see Annex IV) was based on the ratification of the instrument, in the case of a treaty or international agreement, and adherence to vote for the instrument in the case of international declarations. This roadmap does not provide an analysis of the international instruments, which has been done in other relevant studies (Rey et al. 2013a) and taken into consideration. The roadmap utilised the relevant and applicable international instruments to inform the options and recommendations in terms of filling any identified gaps in the national legal framework.

To carry out the legal gap analysis of the national legal framework, an analytical matrix was developed against the Cancun safeguards. The matrix provides interpretative criteria in relation to each of the Cancun safeguards. In instances where the Cancun safeguards language encompasses several issues requiring separate analysis, an interpretative sub-criterion was provided³². Each criterion and sub-criterion is accompanied by a diagnostic question and a set of indicators³³.

31. The Vietnamese legal system is often said to be similar to a civil law jurisdiction, in that its only source of law is written legislation, commonly referred to in Vietnam as ‘legal instruments’.

32. Available from: <http://www.vietnam-redd.org/Web/Default.aspx?tab=download&zoneid=152&subzone=156&child=284&lang=en-US>.

33. The 2005 Law on Conclusion, Accession and Implementation of International Treaties, Article 6 provides that based on the requirements, content and nature of the international treaty, the National Assembly, the President and the Prime Minister (while making the decision to be consent to an international treaty) can also decide to apply directly, partly or wholly that international treaty to agencies, organisations, individuals, and also decide or propose to revise, promulgate, denounce legal normative documents for the implementation of that international treaty.

It is important to note that the findings in the matrix are presented in two ways. In cases where the wording of the legal provisions precisely coincided with the criteria, sub-criteria or indicators, only the relevant PLRs and their provisions or articles are presented. In cases where the wording of the PLRs did not coincide exactly with the criteria, sub-criteria or indicators, a corresponding interpretation has been provided. It should be noted that some PLRs themselves were considered as 'indicators' because they cover criteria and sub-criteria through their objectives. In this way, the analysis only displays the title of the PLR and its objectives.

It must be understood that this legal gap analysis was only applied to Vietnam's existing legal framework on paper and did not encompass an assessment of how the legal framework is implemented and enforced in practice.

See Annex II for more details on how the methods used to conduct the legal gap analysis inform this first iteration of the safeguards roadmap.

Box 5: Cancun safeguards interpretation framework

Cancun safeguard (a): *"Actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements"*

1. Complement or Consistent with the Objective of National Forest Programmes;
2. Complement or Consistent with Relevant International Conventions and Agreements.

Cancun safeguard (b): *"Transparent and effective national forest governance structures, taking into account national legislation and sovereignty"*

1. Transparency, which is comprised of:
 - (i) Right of Access to Information;
 - (ii) Institutions to Ensure Access and Distribution of Information;
 - (iii) Promoting Public Awareness on Access to Information;
 - (iv) Accountability.
2. Effective National Forest Governance, which is comprised of:
 - (i) Appropriate Legal Framework:
 - Clear Land Tenure Rights;
 - Equitable Distribution of Benefits;
 - Gender and Equality.
 - (ii) Appropriate Institutional Framework;
 - (iii) Participation in Decision-Making Processes that Affect the Environment;
 - (iv) Adequate Access to Justice;
 - (v) Integration of Social, Economic and Environmental Considerations and Cross-Sectoral Coordination.

Cancun safeguard (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"*

1. Defining Indigenous Peoples, Members of Local Communities and Knowledge:
 - (i) Defining Indigenous Peoples and Local Communities;
 - (ii) Respecting 'Knowledge'.

2. Recognition and Implementation of Rights in Accordance with International Law:

- (i) Non-Discrimination;
- (ii) Self-Determination;
- (iii) Rights Associated with Culture;
- (iv) Collective Land Tenure;
- (v) Benefit-Sharing;
- (vi) Procedural Rights.

Cancun safeguard (d): *"The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in [REDD+] actions"*

- 1. Recognition and Implementation of Procedural Rights;
- 2. Creating an Enabling Environment for an Effective Participation:
 - (i) Identification of Relevant Stakeholders;
 - (ii) Providing Access to Information;
 - (iii) Implementing Participatory Mechanisms;
 - (iv) Conflict Resolution Mechanisms.
- 3. Effective Participation of Indigenous Peoples and Local Communities:
 - (i) Creating an Enabling Environment;
 - (ii) Free, Prior and Informed Consent.

Cancun Safeguard (e): *"Actions are consistent with the conservation of natural forest and biological diversity, ensuring that [REDD+] actions... are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits"*

- 1. No Conversion of Natural Forests
 - (i) Defining Natural Forest
 - (ii) Prohibiting the Conversion of Natural Forests
- 2. Protection and Conservation of Natural Forests and Biodiversity
 - (i) Identifying Natural Forests and Biodiversity
 - (ii) Implementing Measures to Protect Biodiversity
 - (iii) Supporting Conservation Research and Awareness-Raising
 - (iv) Integration of Biodiversity in Cross-Sectoral Policies
 - (v) Enhancement of Other Benefits

Cancun safeguards (f) & (g): *"Actions to address the risks of reversals; and actions to reduce displacement of emissions"*

- 1. Monitoring and Assessment;
- 2. Measures to Avoid Reversals and Displacement:
 - (i) General Measures;
 - (ii) Measures to Tackle Reversals;
 - (iii) Measures to Tackle Displacement;
- 3. International Cooperation.

Source: Rey et al. (2013a)

3. Summary Results

This section provides a synthesis of the findings derived from the legal gap analysis and some relevant considerations, which could be used to support the operationalisation of the Cancun safeguards. Specific legal gap-filling recommendations are identified in Section 4. The detailed findings and identification of relevant provisions that support each of these findings, are contained in a comprehensive technical matrix³⁴. The summary findings presented in this section follow the same interpretative criteria and sub-criteria in relation to each of the Cancun safeguards utilised in the analytical matrix. Considerations related to REDD+ multilateral initiatives and FLEGT VPA are provided so Vietnam is able to consider how the products and processes under these initiatives can be utilised to support a country-led approach to safeguards.

3.1 Safeguard (a) – national and international policy coherence

“Actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements”

Criteria

1. Complement or be Consistent with Objectives of National Forest Programmes

Findings: The NRAP is consistent with the Forest Protection and Development Law, the National Forestry Development Strategy and ensures consistency with objectives of national forest programmes.

Considerations: N/A as legal framework is consistent with Cancun requirements.

2. Complement or be Consistent with Objectives of Relevant International Conventions and Agreements

Findings: As identified in the analysis of safeguard (a), Vietnam is party to at least 18 international legal treaties or conventions (see Annex IV), which are relevant and applicable to the safeguards as well as a number of declarations. Under Vietnamese law, international treaties take precedence over domestic legislation. In case of any inconsistency, international treaties apply. This means gaps identified in the current PLRs can potentially be addressed by referring to international law. In addition, the 2005 Law on Conclusion, Accession and Implementation of International Treaties states that international treaties can be directly applied in whole or in part or be implemented by enactment of new law(s)/regulations or revision of current laws or regulations to ensure conformity with international law.

Considerations: Systematise the list of international treaties and conventions Vietnam is party to and identify the national implementing normative document³⁵. Ensure these international agreements are met through REDD+ planning and implementation.

3.2 Safeguard (b) – forest governance

“Transparent and effective national forest governance structures, taking into account national legislation and sovereignty”

34. Available from: <http://www.vietnam-redd.org/Web/Default.aspx?tab=download&zoneid=152&subzone=156&child=284&lang=en-US>.

35. The 2005 Law on Conclusion, Accession and Implementation of International Treaties, Article 6 provides that based on the requirements, content and nature of the international treaty, the National Assembly, the President and the Prime Minister (while making the decision to be consent to an international treaty) can also decide to apply directly, partly or wholly that international treaty to agencies, organisations, individuals, and also decide or propose to revise, promulgate, denunciate legal normative documents for the implementation of that international treaty.

Criteria

1. Transparent National Forest Governance Structures

a. Right of Access to Information

Findings: The legal framework recognises the right to access information in several PLRs either explicitly or implicitly, including providing a definition of information, the methods, forms, formalities and procedures for securing this right. Nevertheless, there are some gaps that need to be addressed in detail, including the absence of a definition of 'information' and inadequate guarantee of passive access to information.

Considerations: Adopt the 2013 Draft LEP³⁶ and the 2013 Draft LAI³⁷, which will address gaps identified earlier³⁸. Moreover, the Vietnamese legal framework recognises that international law must be followed and can potentially help to address some of these gaps. Vietnam might want to consider the following international obligations relevant to the right to access information:

- Principle 10 of the Rio Declaration on Environment and Development, to which Vietnam is a signatory, specifies that at the national level "each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes"³⁹. The duty to ensure access to environmental information is also recognised in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)⁴⁰, in the UN Framework Convention on Climate Change⁴¹ and in the UN Convention to Combat Desertification (UNCCD)⁴².
- Principle 10 of the Rio Declaration goes beyond the recognition of a right to request information, but also provides that States must facilitate and encourage public awareness "by making information widely available"⁴³, thus also recognising the importance of active dissemination of relevant information to potentially affected stakeholders. The need to ensure active dissemination of information is also recognised by the Convention on Biological Diversity (CBD)⁴⁴. Vietnam is also a signatory to Agenda 21, which provides extensive detail in relation to the need to ensure adequate access to information for the purpose of environmental decision-making. This means not only to ensure the collection and assessment of data by public authorities⁴⁵, but also "to make information in the form and at the time required to facilitate its use"⁴⁶ and to "create mechanisms to ensure public access to this information"⁴⁷. Public authorities are generally expected to provide technical information necessary for informed decision-making on land use and management in accessible forms to "all sectors of the population, especially to local communities and women"⁴⁸.

Based on these examples of international law, Vietnam might want to consider taking further steps to facilitate access to information relevant to environmental decision-making and actively disseminate such information to relevant stakeholders to increase opportunities to participate in these decisions.



36. The 2013 Draft LEP (Draft of 30 August 2013), art 3 (24), Chapter XI, and art. 131-133.

37. The 2013 Draft LAI arts 1, 2, 3 (1), art 4 (1) and (2), art 10-13, art 21-25, art 26-30; and Chapter III.

38. The 2013 Draft LEP (Draft of 30 August 2013) creates a more solid and clearer legal mechanism for recognition and ensuring the right to access to information, which appears to address problems relating to the right to access to information. 2013 Draft LAI provides a clear definition of 'information to be accessed' including the information developed and received by the State agencies. The definition draws on international good practice, for example, from the Model Inter-American Law on Access to Information.

39. Rio Declaration Principle 10.

40. CITES article 8 paragraph 8.

41. UNFCCC article 6 letter a(iii).

42. UNCCD article 10 paragraph 2 letter e.

43. Rio Declaration Principle 10.

44. CBD article 14(1) letter c.

45. Agenda 21 Chapter 40.5 letter a.

46. Agenda 21 Chapter 40.5 letter d.

47. Agenda 21 Chapter 11.4 letter c.

48. Agenda 21 Chapter 10.11 letter e.

Finally, it is important to note that an annex to the FLEGT VPA on public information and transparency is being negotiated, and could be a useful tool to help demonstrate compliance with this element of the safeguard.

b. Institutions to ensure access and distribution of information

Findings: The legal framework provides clear mandates for the distribution (dissemination and disclosure) and gathering of information to several existing institutions, but leaves some institutions without a clear mandate or responsibility⁴⁹.

Considerations: Adoption of the 2013 Draft LAI will address gaps identified earlier.

c. Promoting public awareness on access to information

Findings: The legal framework requires institutions to provide information explaining the laws, regulations and procedures related to forest management in an easily understandable language for forest users. It is not clear if this includes awareness raising on people's rights to access information.

Considerations: Although Vietnam has the **2012 Law on Legal Dissemination and Education**, which has relevant provisions requiring public institutions to provide information explaining the laws, regulations and procedures related to forest management in an easily understandable language for forest users, it is important this is taken up by the relevant public institutions⁵⁰.

d. Accountability

Findings: The legal framework adequately seeks to promote accountability and address corruption, including within the forest sector. In the case of the forestry sector, it creates dedicated institutions with competence for promoting transparency of the forest sector activities, which include supervision and monitoring of funds. Furthermore, forest budgets are to be scrutinized by a parliamentary and governmental procedure and information about the forest agencies budget should be publicly available.

Considerations: Identify and strengthen the capacities and resources of the agencies or institutions with competence for promoting transparency of the forest sector activities through REDD+ programming.

With regards to multilateral REDD+ initiatives, Vietnam might want to consider utilising their support. The UN-REDD Programme has a number of requirements and tools to assist in achieving consistency with this safeguard. In terms of requirements, the UN-REDD Social and Environmental Principles and Criteria (SEPC) require transparency and accountability of fiduciary and fund management systems linked to REDD+ activities⁵¹. The UN-REDD SEPC Benefit and Risks Tool (BeRT) provides additional information on what is required for accountability, including the existence of policies explaining organisational decision-making structures as well as principles that guide decision-making. There is also a general requirement that countries comply with international obligations, including the UN Convention Against Corruption, which Vietnam ratified in 2009.

In terms of support and tools, the UN-REDD Programme has also developed a REDD+ Corruption Risk Assessment (REDD+ CRA) guidance tool to support countries in identifying corruption risks in REDD+ country programmes and in developing systems and capacities to mitigate those risks. The results of such an assessment can form the basis for the design and implementation of REDD+ specific anti-corruption measures (UN-REDD 2012b). Vietnam might want to consider utilising this tool and the UN-REDD Programme's support to implement and demonstrate compliance of this safeguard.

49. The 2013 Draft LAI provides a comprehensive system of the State agencies, which are responsible for the provision with information at all levels including Office of the National Assembly, Office of the President, Office of the Government, Ministries and Ministry-level agencies, the Supreme People's Court, the Supreme People's Procuracy and provincial State agencies from the communal level upward to district and provincial level. Additionally, the draft Law , creates clear mandates providing active and passive access to the information by these State agencies, including active dissemination of the information created by them, providing or guiding public to access to the information received by them or to have access to State bodies creating the information.

50. Particularly because the LEP, the Law on Land, Law on Biodiversity and other relevant PLRs do not contain or reference this relevant provision.

2. Effective National Forest Governance Structures

a. Clear Land Tenure Rights

Findings: The legal framework provides clarity on land tenure and land-use rights. It states that all land in Vietnam belongs to Vietnamese citizens as a whole, with the State administering the land on their behalf. Citizens and organisations can hold 'land-use rights', but do not have ownership rights (ownership is provided only for planted production forests using the forest user's funds). The legal framework also regulates the potential expropriation of land-use rights, but there is no mention of compensation or resettlement⁵².

Considerations: Address the legal status of local communities and recognise customary rights of ethnic minorities and local communities in accordance with international legal obligations. It is important to note that UNDRIP recognises customary collective rights to land and goes as far as to recognise the right to "own, use and control the lands, territories and resources that they possess by reason of traditional ownership or traditional occupation or use"⁵³.

With regards to multilateral REDD+ initiatives, Vietnam might want to consider utilising the support they can provide. As part of the SESA process under the FCPF, issues such as land tenure and resource rights, processes of land title demarcation and status of indigenous peoples and local communities' land use and ownership should be clarified⁵⁴. The resulting ESMF should then articulate an appropriate legislative and regulatory response for managing those issues.

The FCPF's SESA and ESMF can be used to strengthen Vietnam efforts to clarify land tenure and resource rights, processes of land title demarcation and the status of indigenous peoples and local communities' land use and ownership.

b. Equitable Distribution of Benefits

Findings: The legal framework requires guaranteeing the fair and equitable distribution of benefits arising from the use of forest resources, regulating benefit-sharing arrangements in several PLRs, whilst promoting gender equality.

Considerations: N/A as the legal framework is consistent with the interpretation of the Cancun safeguards applied in this analysis. However, although the legal framework is consistent with the interpretation of the Cancun safeguards, Vietnam might want to consider utilising the support multilateral REDD+ initiatives can provide to strengthen or link their existing benefit distribution system for REDD+. The UN-REDD Programme provides guidance on how to ensure the equitable distribution of benefits, including requiring the national REDD+ programme to clearly identify what benefits from REDD+ will be shared.

c. Gender Equality

Findings: The legal framework promotes and enhances gender equality and women empowerment, especially with regards to benefit sharing, participation and land tenure. It also addresses gender discrimination and requires public institutions to raise awareness on gender equality.

Considerations: N/A as the legal framework is consistent with interpretation of the Cancun safeguards applied in this analysis. However, although the legal framework is consistent with the interpretation of the Cancun safeguards, to assess the practical implementation of Vietnam's legal framework on this matter, the country might want to consider utilizing the support multilateral REDD+ initiatives can provide. As part of the implementation of the FCPF's SESA process, participant countries are encouraged to assess key gender concerns, particularly potential gender-based risks or disparities that could inhibit participation or access to benefits, such as the role of gender in land tenure (FCPF-UN-REDD 2012a).

51. UN-REDD SEPC, p. 5.
52. Prime Ministerial Decision No.126/QĐ-TTg Art. 1.4a.
53. UNDRIP article 26.
54. Ibid.

d. Law Enforcement

Findings: The legal framework regulates law enforcement through establishment of clear mandates and adequate authority for law enforcement. This is regulated by forestry and non-forestry PLRs and defines forest-related offenses and appropriate/corresponding penalties, with clear procedures for collecting evidence and documentation related to forest-related offences.

Considerations: To ensure law enforcement efficiency, Vietnam could consider seeking coordination between institutions in charge of enforcement mechanisms under forestry and non-forestry PLRs. Vietnam could also consider engaging community participation as part of forest law enforcement to improve forest governance and accountability.

Additionally, utilising the support multilateral REDD+ initiatives can provide is an option for Vietnam. As part of the FCPF's SESA process, countries are asked to "identify shortcomings in current land use, forest law, policy and governance structures that contribute to the drivers of deforestation and forest degradation" (FCPF-UN-REDD 2012a). This can include lack of institutional capacity in areas such as law enforcement. The ESMF, an output of the SESA process, is designed to provide a framework for countries to address the issues identified as part of the SESA. This means any identified law enforcement capacity shortcomings could be addressed as part of the NRAP's implementation.

e. Appropriate Institutional Framework

Findings: The legal framework provides public authorities with a clear mandate and power (including law enforcement) under the law. However, the mandates for public authorities appear to be general and possibly overlapping, requiring further interpretation or elaboration. The legal framework does not fully guarantee mutually supportive mandates to forest-related agencies.

Considerations: N/A as legal framework is consistent with the interpretation of the Cancun safeguards applied in this analysis. However, although the legal framework is consistent with the interpretation of the Cancun safeguards, the lack of mutually supportive mandates of forest-related agencies could potentially be identified with the support multilateral REDD+ initiatives.

As part of the FCPF SESA process, countries are asked to "identify shortcomings in current land use, forest law, policy and governance structures that contribute to the drivers of deforestation and forest degradation." (FCPF-UN-REDD 2012a) The lack of mutually supportive mandates of forest-related agencies could potentially be identified in the SESA and addressed in the ESMF.

f. Recognition of the Right to Participate in Decision-Making Processes that Affect the Environment

Findings: The legal framework recognises the right to participate in decision-making processes, but does not provide specific provisions to guarantee the effective implementation of this right. Only a few PLRs seek to ensure opportunities to participate are provided in a timely and culturally appropriate manner and that inputs provided are effectively addressed. The legal framework promotes gender equality in public participation.

See findings under safeguard (d) for more details.

Considerations: The legal framework is largely consistent with the interpretation of the Cancun safeguards applied in this analysis. However, to guarantee the effective implementation of this right, further measures might be required. As noted under safeguard (a), the Vietnamese legal framework recognises that international law must be followed and can potentially help to address gaps. Vietnam might want to consider the following international obligations relevant to the right to participate in decision-making processes:

- Principle 10 recognises that “environmental issues are best handled with participation of all concerned citizens, at the relevant level”⁵⁵ and requires States to “facilitate and encourage public participation”⁵⁶. Furthermore, the UN’s Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests (Forest Principles) states that governments should “promote and provide opportunities for the participation of interested parties, including local communities and indigenous people, industries, labour, non-governmental organisations and individuals, forest dwellers and women, in the development, implementation and planning of national forest policies”⁵⁷. This principle is also recognised in the UN Non-Legally Binding Instrument on All Types of Forest (NLBIATF)⁵⁸.
- Agenda 21 provides more details as to what specific provisions to guarantee the effective implementation of the right to participation would entail. This essentially means creating an enabling environment for participation, by developing or improving mechanisms to facilitate the involvement of concerned individuals, groups and organisations in decision-making⁵⁹. This includes women⁶⁰, indigenous peoples and local communities⁶¹.

See section on safeguard (d) for more details and considerations.

g. Adequate Access to Justice

Findings: The legal framework recognises the right to access to justice at all levels, providing access to legal services and support. The legal framework also guarantees access to appeals, remediation, compensation and the enforceability of its decisions.

Considerations: N/A as legal framework is consistent with the interpretation of the Cancun Safeguards applied in this analysis. However, Vietnam might want to consider utilising the support that multilateral REDD+ initiatives can provide in the practical implementation of this element of the safeguard.

In the context of the FCPF, as part of their national REDD+ management framework, countries must establish a feedback and grievance mechanism to respond to complaints that arise during consultation, development of REDD+ strategy options, and monitoring and evaluation. In particular, Vietnam could make use of the Draft Toolbox for Addressing Grievances and Disputes (UNDP-FCPF 2013).

h. Integration of Social, Economic and Environmental Considerations

Findings: The legal framework promotes the integration of social, economic and environmental considerations through information sharing, monitoring and public participation.

Considerations: N/A as legal framework is consistent with the interpretation of the Cancun safeguards applied in this analysis.

i. Cross-Sector Coordination

Findings: The legal framework defines mechanisms and institutional arrangements to support cross-sector coordination, including clear lines of communication between and across different sectors and levels of government for forest management.

Considerations: N/A as a legal framework is consistent with the interpretation of the Cancun safeguards applied in this analysis.

55. Rio Declaration Principle 10.

56. Rio Declaration Principle 10.

57. Forest Principles, Principle 2 letter d.

58. NLBIATF part V (6) letter (w).

59. Agenda 21 Chapter 8.3 letter c.

60. Rio Declaration Principle 20.

61. Rio Declaration Principle 22.

3.3 Safeguard (c) – rights of indigenous peoples and local communities

“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”

Criteria

Defining Indigenous Peoples and Members of Local Communities

Findings: The legal framework does not define “indigenous peoples”, as Vietnam utilises the term “ethnic people” and/or “ethnic minority” instead of “indigenous peoples”. However, the legal framework does not provide a clear definition of “ethnic people” or “ethnic minority”, but appears to integrate them into the definition of local communities, who are clearly defined as the “population communities, including communities of Vietnamese living in the same villages, hamlets or similar population quarters having the same customs and practices or the same descents”.

Considerations: Clarify the definition of “ethnic minority” to coincide with the interpretation of “indigenous peoples” under international law. The lack of clarity over who constitutes ethnic minorities can have repercussions in relation to which specific rights are enjoyed by which group of the population, particularly in relation to the implementation of international law. Differentiation will also be important to demonstrate compliance with this safeguard.

As noted under safeguard (a), the Vietnamese legal framework recognises that international law must be followed and this could potentially help address identified gaps. Vietnam could consider meeting the following international obligations. In accordance with the UNDRIP, indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions⁶². This means that although Vietnam’s legal framework does not define “ethnic minorities”, they are entitled to the same rights under international law as indigenous peoples, so long as they identify themselves as such, given their particular customs and traditions.

Furthermore, Vietnam could utilise the FCPF’s SESA and ESMF to help identify ethnic minorities.

Definition of Traditional Knowledge of Indigenous Peoples and Local Communities

Findings: The Law on Biodiversity only defines and regulates “traditional knowledge” in the context of genetic resources.

Considerations: Recognise and regulate all varieties of ethnic minorities’ and local communities’ knowledge on forest resources, including traditional knowledge, in accordance with Vietnam’s international legal obligations.

As noted under safeguard (a), the Vietnamese legal framework recognises that international law must be followed and can potentially help to address gaps. Vietnam might want to consider the following international obligations. Under international law, “traditional knowledge” has been referred to in the context of “intangible cultural heritage”⁶³, thus broadening the types of knowledge that must be protected. UNDRIP elaborates on this concept, recognising the elements of “traditional knowledge” to include “the manifestation of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts”⁶⁴.

62. UNDRIP article 33(1).

63. The Convention for the Safeguarding of Intangible Cultural Heritage (to which Vietnam is a Party) recognises “intangible cultural heritage” to include “the practices, representations, expressions, knowledge, skills that communities, groups and, in some cases, individuals recognise as part of their cultural heritage” in article 2(1).

64. UNDRIP article 31(1).

Recognition and Implementation of Rights in Accordance with International Law

a. Non-Discrimination

Findings: The legal framework seeks to protect and prohibit all acts of discrimination against ethnic minorities and local communities. It is also important to note that Vietnam acceded to the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in June 1982.

Considerations: Although the legal framework seeks to protect ethnic minorities from discrimination, it does not clearly or explicitly include measures that address any discrimination that might take place. Vietnam might want to consider the following international obligations. According to the UN ICERD, Parties must not only rescind discriminatory laws and regulations⁶⁵, but also provide effective remedies through their national tribunals or other State institutions to anyone within their jurisdiction, against acts of racial discrimination, including the possibility of obtaining reparation or satisfaction for damage suffered⁶⁶. According to UNDRIP, this protection is to be extended to indigenous peoples⁶⁷.

b. Self-Determination

Findings: The legal framework implicitly recognises the right to self-determination, by recognising everyone's right to use their own language and system of writing, to preserve their national identity, and to promote their customs, habits, traditions and culture, and forbids all acts of national discrimination and division.

Considerations: N/A as legal framework is consistent with Cancun requirements.

c. Rights Associated with Culture

Findings: The legal framework recognises and promotes the cultural rights and cultural inheritance of ethnic minorities' cultural rights.

Considerations: N/A as legal framework is consistent with Cancun requirements.

d. Collective Land Tenure

Findings: Under the 2013 amended Constitution of Vietnam the land belongs to the entire people (including ethnic minorities and local communities), with the State acting as their representative. Therefore, collective land tenure rights are not recognised, only 'land-use rights'. The legal framework recognises collective ownership of forests. However, there are several legal issues that undermine such recognition and its effective protection. Additionally, there is no legal recognition or protection of ethnic minorities' customary collective rights to land and other natural resources⁶⁸.

Considerations: Vietnam might want to consider the following international obligations to address the legal status of local communities and recognition of customary traditional rights of ethnic minorities and local communities. UNDRIP recognises customary collective rights to land and goes as far as to recognise the right to "own, use and control the lands, territories and resources that they possess by reason of traditional ownership or traditional occupation or use"⁶⁹.

e. Equitable Benefit-Sharing

Findings: The legal framework regulates the equitable distribution of benefits.

Considerations: N/A as legal framework is consistent with Cancun requirements.

65. ICERD article 2(1) letter c.

66. ICERD article 6.

67. UNDRIP articles 1, 2, 9 and 40.

68. Reports confirm that the concept and practice of customary law in forestland tenure play an important role in Vietnam's rural communities. The conflict between current government policies and traditional conceptions of land tenure and use rights is considered to be one of the major causes of the many conflicts and disputes in Vietnam's upland regions during the past decade. See Tan et al. (2008) for more details.

69. UNDRIP article 26.

3.4 Safeguard (d) – stakeholder participation

“The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in [REDD+] actions”

Criteria

Regulation of Full and Effective Participation

Findings: The legal framework recognises this right, but does not have detailed or specific provisions that regulate and operationalise the right to a full and effective participation of relevant actors, in accordance with relevant and applicable international law.

Considerations: As noted under safeguard (a), the Vietnamese legal framework recognises that international law must be followed and it could potentially help to address gaps. Vietnam might want to consider the following applicable international obligations. The right to participate in decision-making processes is fundamental to the democratic process and is enshrined in the International Covenant on Civil and Political Rights⁷⁰ and Rio Declaration on Environment and Development⁷¹. Guidance as to how to ensure full and effective participation of relevant stakeholders can be found in various instruments under international law and can provide a blueprint to ensure that this safeguard objective is achieved in Vietnam.

The CBD’s Akwe: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities (Akwe: Kon Guidelines) outline a number of steps (see Box 6) to guarantee the effective participation of stakeholders potentially affected by a policy or planned activity (CBD 2004):

Box 6: Indicative steps to guarantee the effective participation of stakeholders potentially affected by a policy or planned activity (Akwe: Kon Guidelines)

- (a) Notification and public consultation of the proposed development by the proponent;
- (b) Identification of indigenous and local communities and relevant stakeholders likely to be affected by the proposed development;
- (c) Establishment of effective mechanisms for indigenous and local community participation, including for the participation of women, the youth, the elderly and other vulnerable groups;
- (d) Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted by a proposed development;
- (e) Establishment of a process whereby local and indigenous communities may have the option to accept or oppose a proposed development that may impact on their community;
- (f) Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation.

Although this guidance is specifically designed for impact assessments and focused on indigenous peoples and local communities, the steps outlined are indicative of the types of measures that need to be taken to ensure the effective participation of affected stakeholders. The International Tropical Timber Organisation (ITTO) Guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests also include similar recommendations to ensure the effective participation of relevant stakeholders (ITTO 2002). Furthermore, multilateral REDD+ initiatives can also provide guidance for the operationalisation of this right. The joint FCPF-UN-REDD stakeholder engagement guidelines can also be of use for enhancing full and effective participation and ought to be used to meet this requirement (FCPF-UN-REDD 2012b).

70. ICCPR Article 25(a).

71. Rio Declaration Principle 10.

Creating an Enabling Environment for Effective Participation

a. Identification of Relevant Stakeholders

Findings: The legal framework does not require conducting an assessment or identification of who the relevant stakeholders would be prior to a decision-making process. The legal framework defines the relevant stakeholders allowed to participate in decision-making processes in certain cases. The legal framework requires the representation or engagement of local communities and ethnic minorities in forest decision-making processes, in limited cases.

Considerations: Ensure that the identification of all relevant stakeholders (including ethnic minorities and local communities) likely to be affected by the proposed REDD+ activities, prior to the decision-making process, is a regulatory requirement. This should be considered at national and provincial levels. Additionally, Vietnam might want to consider utilising the support the multilateral REDD+ initiatives and forest governance processes can provide on this matter. Under the FCPF, a stakeholder analysis should be conducted early on to set up a national REDD+ working group that reflects the diversity of all stakeholders (FCPF-UN-REDD 2012b). This means that stakeholders and their concerns should be mapped and identified, along with potential risks and negative impacts from REDD+ activities, to be addressed in a Consultation and Participation Plan (FCPF-UN-REDD 2012b). With regards to the FLEGT VPA process, the identification and engagement of forest-dependent stakeholders should also have taken place as part of Vietnam's negotiation and implementation of its VPA.

b. Providing Access to Information for Decision-Making

Findings: The legal framework regulates access to information in terms of what, how and when information should be provided as well as aspects of accountability. Nevertheless, these issues have gaps that need to be addressed in detail.

Considerations: The 2013 Draft LEP and the 2013 Draft LAI will address these identified gaps⁷².

c. Implementing Participatory Mechanisms

Findings: The legal framework does not define nor regulate clear processes/mechanisms for ensuring public participation in environmental decision-making processes.

Considerations: Vietnam could consider the applicable international obligations identified under criteria 1 of safeguard (d).

Additionally, Vietnam might want to consider utilising the support that multilateral REDD+ initiatives and forest governance processes can provide. The FCPF requires countries to ensure participation throughout implementation of the R-PP through preparation of a Consultation and Participation Plan (as noted earlier) (FCPF-UN-REDD 2012a). The plan's requirements include procedures for disclosure of information on environmental and social issues, and how stakeholders should participate. In addition to including procedures and measures for participation, the Consultation and Participation Plan should facilitate the establishment of an institutional structure that can "ensure meaningful participation in decision-making" during and after the readiness phase (FCPF-UN-REDD 2012a). During R-PP implementation, affected stakeholders must be able to participate in a manner consistent with the Consultation and Participation Plan drafted by the REDD+ country. The Readiness Package (R-Package) is also intended to promote and serve as a multi-stakeholder participatory platform and process. The ESMF, presented with the R-Package, should contain procedures for ongoing consultation, as well as a mechanism for monitoring participation (FCPF-UN-REDD 2012a).

72. The 2013 Draft LEP (Draft of 30 August 2013) creates a more solid and clearer legal mechanism for recognition and ensuring the right to access to information, which appears to address the problems relating to the right to access information. The 2013 Draft LAI provides a clear definition of "information to be accessed", including information developed and received by State agencies. The definition draws on international good practice, for example, from the Model Inter-American Law on Access to Information.

d. Access to Justice/Conflict Resolution Mechanisms in Environmental Decision-Making

Findings: The legal framework provides accessible dispute resolution mechanisms relevant to environmental decision-making.

Considerations: The analysis of Vietnam's legal framework concluded that it provides dispute resolution mechanisms relevant to environmental decision-making, which are accessible and appropriate. Rather than creating additional mechanisms in the context of REDD+, Vietnam should consider strengthening institutions or bodies in charge of these mechanisms, in terms of capacity and resources to ensure they can manage potential additional grievances or disputes brought forward under REDD+.

Additionally, Vietnam could consider utilising the support that multilateral REDD+ initiatives and forest governance processes can provide. In the context of the FCPF, as part of their national REDD+ management framework, countries must establish a feedback and grievance mechanism to respond to complaints arising during consultation, development of REDD+ strategy options as well as monitoring and evaluation.

Effective Participation of Indigenous Peoples and Local Communities

e. Creating an Enabling Environment

Findings: To a limited extent, the legal framework requires the incorporation of culturally sensitive, traditional and community structures for decision-making processes relevant to the forestry sector.

Considerations: In the development of participatory mechanisms, Vietnam should take into account international legal obligations related to the respect and recognition of ethnic minorities and local communities' rights, such as UNDRIP.

f. Free, Prior and Informed Consent

Findings: Legal framework does not recognise nor regulate the right to FPIC.

Considerations: As noted under safeguard (a), the Vietnamese legal framework recognises that international law must be followed and can potentially help to address gaps identified. It has been noted that Vietnam is a signatory to UNDRIP (see Box 7), and it is also important to acknowledge that UNDRIP is explicitly referred to in Cancun safeguard (d).

Additionally, Vietnam might want to consider utilising the support that multilateral REDD+ initiatives and forest governance processes can provide. The UN-REDD Programme provides extensive guidance

Box 7: United Nations Declaration on the Rights of Indigenous Peoples requirements relating to Free, Prior and Informed Consent

According to UNDRIP, FPIC is required only in the following cases:

- (a) When considering the removal of indigenous peoples from their collective land⁷³;
- (b) In relation to the removal of cultural, intellectual, religious or spiritual property from indigenous territory⁷⁴;
- (c) Prior to the adoption of legislative or administrative measures that may affect indigenous peoples⁷⁵;
- (d) Prior to the storage or disposal of hazardous materials on the land or territory of indigenous peoples⁷⁶; and
- (e) Prior to the authorisation of projects for the extraction of natural resources from the territory of indigenous peoples⁷⁷.

73. UNDRIP article 10.

74. UNDRIP article 11.

75. UNDRIP article 19.

76. UNDRIP article 29.

77. UNDRIP article 32.

on the implementation of FPIC, including guidance on key steps to comply with FPIC as required under international law (UN-REDD 2013c).

3.5 Safeguard (e) – conservation of natural forests and biological diversity

“Actions are consistent with the conservation of natural forest and biological diversity, ensuring that [REDD+] actions... 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”

Criteria

No Conversion of Natural Forests

a. Definition of Natural Forest, Biological Diversity and Ecosystem Services

Findings: The legal framework provides a definition of the terms “natural forests”, “biological diversity” and “ecosystem services”. Circular 34/2009 of the MARD defines natural forests and sub-classifies them into rich, poor and very poor natural forest⁷⁸.

Considerations: N/A as the legal framework is consistent with the interpretation of the Cancun safeguards applied in this analysis.

b. Prohibiting the Conversion of Natural Forests

Findings: Circular 58/2999 of the MARD does not prohibit the conversion of natural forests, which could have implications in terms of ensuring REDD+ activities are not utilised for the conversion of natural forests. Conversion is allowed with the permission of Government institutions or officials.

Considerations: Although international law does not prohibit the conversion of natural forests, safeguard (e) is quite explicit in its requirement. This safeguard seeks to retard deforestation by prohibiting the conversion of natural forest through REDD+ activities⁷⁹. The importance of reducing the conversion of natural forests into land used for other purposes is clear. This is especially so when considering how surging international demand for commodities – such as coffee, pulp, paper, rubber, timber and increasingly biofuels and feedstocks – has caused a significant increase in the conversion of natural forests to plantations.

It is important to note that the draft legality definition contained in Vietnam’s VPA does not prohibit the sale of timber resulting from the conversion of natural forests, as long as it complies with relevant laws and regulations.

Protection and Conservation of Natural Forests and Biodiversity

c. Identifying Natural Forests and Biodiversity

Findings: The legal framework requires the mapping of forests, and in certain cases requires the mapping of biological diversity.

Considerations: Although the legal framework requires the mapping of forests (including natural forests), it does not require the systematic mapping of biological diversity. According to the Convention on Biodiversity, to which Vietnam is a Party, one of the key obligations is for Parties to identify and monitor components of biodiversity important for its conservation and sustainable use⁸⁰. This needs to be undertaken within and outside protected areas⁸¹, with the results of such an assessment included in the Party’s national report to the secretariat of the CBD⁸².

78. Circular 34/2009 of the MARD.

79. UNFCCC Decision 16/CMP.1, op cit, Annex. UNFCCC sees deforestation as “the direct human-induced conversion of forested land to non-forested land”.

80. CBD article 7.

81. CBD article 8 letter c.

82. CBD article 26.

It is important to also consider Vietnam's efforts as part of its NBSAP⁸³ and reported in its national reports⁸⁴, which could be used to demonstrate its compliance with safeguard (e). Other biodiversity-focused international instruments such as CITES and the national reports submitted⁸⁵ could be used to demonstrate compliance with safeguard (e).

d. Implementing Measures to Protect Biodiversity and Natural Forests

Findings: The legal framework regulates the protection of natural forest areas and biodiversity.

Considerations: N/A as legal framework is consistent with the interpretation of the Cancun safeguards applied in this analysis. However, Vietnam could consider utilising the support that multilateral REDD+ initiatives and forest governance processes provide to ensure the effective implementation of this element of the safeguard. For example, a future FLEGT VPA could also support this aspect of safeguard (e), particularly given that the legality definition could exclude endangered or protected tree species from export to all foreign, and possibly even to domestic, markets.

e. Supporting Conservation Research and Awareness-Raising

Findings: The legal framework has limited provisions to promote access to technology and resources for the monitoring of forests and biological diversity. However, it contains adequate provisions that seek to raise awareness about the value of biodiversity and forests.

Considerations: As noted under safeguard (a), the Vietnamese legal framework recognises that international law must be followed and can potentially help to address identified gaps. Vietnam could consider the following applicable international obligations:

- According to the CBD, Parties are expected to "establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components and provide support for such education and training" and to "promote and encourage research which contributes to the conservation and sustainable use of biological diversity"⁸⁶. This type of measure is also included in instruments such as the NLBIATF⁸⁷ and Agenda 21⁸⁸.
- Consistent with requirements of international law, Vietnam might want to consider implementing measures to improve access to technology and resources to monitor and conserve biodiversity through, inter alia, the encouragement of scientific research and/or the establishment or improvement of centres for biodiversity research and monitoring, through legislative or administrative measures.
- In addition to measures related to the legal framework, Vietnam might want to consider utilising the support that multilateral REDD+ initiatives and forest governance processes can provide. As part of the FCPF SESA process, required during the preparation of a national REDD+ strategy, countries are supposed to identify key drivers of deforestation as well as conservation and sustainable forest management activities (FCPF-UN-REDD 2012a). Furthermore, as part of the development of their National Forest Monitoring System (NFMS) countries are supposed to include ideas on monitoring non-carbon priorities such as conservation of biodiversity, this includes the development of methodologies and criteria to better study biodiversity (FCPF-UN-REDD 2012a).

83. According to Article 6 of the Convention on Biological Diversity, the principle measure for Contracting Parties to implement the Convention is to develop: "[a] national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention relevant to the Contracting Party concerned".

84. CBD article 26.

85. CITES article 8.

86. CBD article 12 letters a and b.

87. NLBIATF article 6 letter r.

88. Agenda 21 Chapter 15.5 letter f.

f. Integration of Biodiversity in Cross-Sectoral Policies

Findings: The legal framework requires considerations of biodiversity impacts in forest and land-use policy settings.

Considerations: N/A as legal framework is consistent with the interpretation of the Cancun safeguards applied in this analysis.

g. Enhancement of Other Benefits

Findings: The legal framework has limited provisions that seek to maintain ecological, biological, climatic, socio-cultural, and economic contributions of forest resources. They also lack operational measures.

Considerations: As noted under safeguard (a), the Vietnamese legal framework recognises that international law must be followed and can potentially help to address identified gaps. Vietnam might want to consider the meeting applicable international obligations that could be utilised to define operational measures to comply with this aspect of safeguard (e), including:

- Identification and evaluation of potential socio-economic implications and benefits of conservation and sustainable use of terrestrial biodiversity⁸⁹.
- Promotion of alternative livelihoods as part of the country's anti-poverty strategy⁹⁰.
- Promotion of alternative livelihood opportunities, particularly through development of employment schemes, to improve the standard of living among the large rural population living in forest ecosystems⁹¹.
- Promotion of income-generating activities, such as sustainable tourism and environmentally sound mining, as well as improvement of infrastructure and social services with a view to protect the livelihoods of indigenous peoples and local communities⁹².

3.6 Safeguards (f) and (g) – reversals and displacement of emissions

“Actions to address the risks of reversals; and actions to reduce displacement of emissions”

It is important to emphasise that Cancun safeguards (f) and (g) deal with fundamentally REDD+ carbon accounting related-risks and technical issues, which cannot be comprehensively resolved through a PLR reform-based approach. Nevertheless, the legal gap analysis sought to identify some broad areas of intervention that would be relevant to application of these two safeguards.

1. Monitoring and Assessment

Findings: The legal framework effectively regulates the monitoring and assessment of land use and forests. However several gaps need to be addressed, such as operational provisions or measures for monitoring forest supply chains, as well as monitoring and reporting on social and environmental impacts of forest programmes.

Considerations: Countries must demonstrate how their national REDD+ programmes achieve emission reductions based on the development of a reference level (or reference emission level)⁹³. Countries are also required to design a NFMS to measure and report GHG removals from REDD+ activities⁹⁴. The NFMS could also be capable of measuring non-carbon aspects and countries are asked to define

89. Agenda 21 Chapter 15.6 letter d.

90. Agenda 21 Chapter 13.21.

91. Agenda 21 Chapter 13.21.

92. Agenda 21 article 13.15 letter b.

93. UNFCCC Decision 1/CP.16, paragraph 71 (b); UNFCCC Decision 14/CP.19, paragraph 5.

94. UNFCCC Decision 1/CP.16, paragraph 71 (c).

specific priorities for monitoring such information including “key quantitative or qualitative variables representing rural livelihoods, conservation of biodiversity, key governance factors directly pertinent to REDD+ implementation in the country, and impacts of the REDD+ strategy on the forest sector, and how safeguards are being addressed” (FCPF-UN-REDD 2012a).

Vietnam might want to consider utilising the support that multilateral REDD+ initiatives and forest governance processes can provide to ensure effective implementation of this element of the safeguard.

Measures implemented under the FLEGT VPA could also serve to demonstrate synergies between timber supply chain monitoring under the LAS and the MRV functions of NFMS required under REDD+.

2. Measures to Tackle Reversals and Displacement

Findings: The legal framework contains several provisions to support tackling the risks of reversals and displacement of emissions. These include measures to promote the sustainable utilisation and conservation of forests and other relevant resources, the regulation of liability and compensation for actions that affect the conservation and management of forests, and law enforcement to combat and eradicate illegal forest-related practices, among others. However, it is important to note that the legal framework has limited provisions dealing with risk mitigation mechanisms.

Considerations: Vietnam might want to consider utilising the support that multilateral REDD+ initiatives and forest governance processes can provide to ensure effective implementation of this element of the safeguard.

The FCPF provides some indication of general measures that can be followed by countries to minimise leakage and reversals. The R-PP Template asks that when assessing different REDD+ Strategy options, countries conduct risk analysis on each of the options. These should look at, *inter alia*, environmental, socio-cultural and broader strategy risks, such as the risk of leakage (FCPF-UN-REDD 2012a). Countries are also supposed to identify potential sources of reversals and have measures in place to address major risks of anthropogenic reversals in the REDD+ programme area, e.g. the “creation of buffer reserves, use of insurance, effective forest management practices, or other approaches” (FCPF Participant’s Committee 2012). As noted, the ESMF framework should be implemented with a view to addressing the risks of leakage and reversals identified in the SESA. It is recommended that Vietnam utilise the FCPF SESA and ESMF to assess and define measures to address risks or reversals and displacements, which can be used to demonstrate compliance with this safeguard.

Under the FLEGT VPA, cross-border timber flows will be monitored and the legality of timber imports into Vietnam verified. This could be relevant for tracking displacement of emissions.

3. International Cooperation

Findings: The legal framework promotes international cooperation and coordination to reduce cross-border displacement of deforestation and forest degradation. However, the legal framework has limited provisions promoting international cooperation on law enforcement to combat the illegal trade in forest products.

Considerations: N/A as legal framework is consistent with Cancun requirements.

Vietnam might want to consider utilising the support that multilateral REDD+ initiatives and forest governance processes can provide. The FLEGT VPA process could potentially help drive international cooperation to minimise leakage and reversals, in particular by promoting cooperation in addressing illegal deforestation.

4. Recommendations

This section presents recommendations on all aspects related to the Cancun safeguards in Vietnam, consistent with national regulations, capacities, circumstances as well as international REDD+ processes⁹⁵. The section is subdivided into two sub-sections:

- Section 4.1 presents specific near-term recommendations to operationalise the Cancun safeguards over the timeframe of the NRAP, 2014-2020; and
- Section 4.2 presents longer-term aspirational visions for Vietnam to work towards post-2020.

Recommendations in both sub-sections are structured according to the CSA model introduced in Section 2 and are categorised under legal, institutional and compliance frameworks. The CSA is applied in this roadmap as a conceptual framework to breakdown the challenge of operationalising the Cancun safeguards into different components for ease of understanding. Adoption of the CSA framework is not a recommendation *per se*.

Specific recommendations in both sub-sections, informed by the PLR gap analysis at the core of this roadmap, can only be provided in relation to the legal framework as this is the only framework assessed. The institutional and compliance frameworks needed to implement these PLRs, were not analysed. However, in the absence of systematic analysis of the institutional and compliance frameworks, opportunistic recommendations are made for these elements in the near-term in the interests of providing some proposals for immediate consideration at this crucial juncture (transitioning between phases I and II) in Vietnam's REDD+ process.

It is also important to remember that the nature of the roadmap as a 'living document' requires the STWG-SG to lead stakeholders through further iterative revisions of the roadmap, based on the additional analytical work identified in these recommendations.

4.1. Near-term recommendations (2014-2020)

Due to the uncertainty over REDD+ finance and the fact that implementing a country-led safeguards approach will require a long-term and cross-sector political commitment, this section seeks to present near-term options and recommendations that could be implemented in relation to the legal, institutional and compliance aspects of the Cancun safeguards.

4.1.1 Legal framework recommendations

A. Develop a national REDD+ safeguards framework, based on existing national PLRs, which interpret the Cancun safeguards in the national context, circumstances and capacities

In response to the NRAP key task for 2011-2015 "*improvement of the legal system and technical guidance for implementing REDD+ activities*", development of a national safeguard framework based on the existing PLRs is recommended. The national safeguards framework would interpret the broad aspirational statements of principle of the Cancun safeguards to meet the specific context, circumstances and capacities of Vietnam.

The national safeguards framework would function at three levels:

1. **International** – communicating Vietnam's national policy response to international commitments under the UNFCCC and other relevant international conventions;



⁹⁵ Taking into account the guidance and requirements set out by the UNFCCC Decision 1/CP.16 and Decision 2/CP.17.

2. **National** – ensuring consistent application of safeguards for key pieces of emerging national REDD+ architecture. These include the proposal for a national REDD+ fund and any subsequent decisions, carbon service regulations under the national policy on PFES and existing national information system(s) that might be employed for REDD+ purposes;
3. **Subnational** – giving coherent operational guidance to provinces in developing and implementing PRAPs, and the systematic collation of subnational information on how the safeguards are being addressed and respected.

The national safeguards framework could take the form of principles, criteria and possibly indicators, which would elaborate upon each of the Cancun safeguards in terms of Vietnam's existing legal, institutional and compliance frameworks to support the implementation of the Cancun safeguards. If a national safeguard framework structure was elaborated down to the indicator level, these 'framework indicators' could be applied and adapted by individual provinces as part of their PRAP development and implementation processes to further contextualise safeguard implementation to meet the particular circumstances and capacities of the province.

Any national safeguards framework should be elaborated through a multi-stakeholder consultative process, led by VNFOREST and endorsed by the MARD. The document should be revised in 2020, at the close of the first NRAP period of operations, drawing on practical experiences of piloting REDD+ in selected provinces.

B. Engage in ongoing reformative agendas for specific PLRs, to address identified gaps in the legal framework

Feasible near-term recommendations are presented safeguard-by-safeguard to address specific gaps in the legal framework as identified by the PLR analysis informing this roadmap. These recommendations respond to the proposed solutions of the NRAP that seek *"improving the legal framework to facilitate REDD+ implementation [by] reviewing and supplementing the existing legal framework and formulating legal documents on...safeguard measures...in accordance with the applicable laws of Vietnam and international agreements Vietnam has signed"*.

Recommendations for Cancun Safeguard (a) –

"[REDD+] actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements"

- VNFOREST to guide pilot provinces to ensure PRAPs are consistent with existing provincial FPDPs and SEDPs.
- VNFOREST to ensure the review and completion of the list of relevant and applicable international agreements and conventions Vietnam is party to (see Annex IV).
- VNFOREST should commission a study to identify synergies between reporting requirements to international agreements and conventions Vietnam is party to, and how Vietnam is meeting those requirements. This study should identify information already being produced by Vietnam with respect to international conventions and agreements, which can be utilised to report to the UNFCCC on how Cancun safeguards are being addressed and respected.

Recommendations for Cancun Safeguard (b) –

"Transparent and effective national forest governance structures, taking into account national legislation and sovereignty"

- Ensure articles of the 2013 Draft LEP⁹⁶ and 2013 Draft LAI⁹⁷ are adopted, to address gaps identified regarding access to information. VNFOREST should ensure the MARD communicates to the responsible ministries revising these laws that these key articles are adopted in the revised laws and subsequent decrees and circulars.

96. The 2013 Draft LEP (Draft of 30 August 2013), art 3 (24), Chapter XI, and art. 131-133.

97. The 2013 Draft LAI arts 1, 2, 3 (1), art 4 (1) and (2), art 10-13; art 21-25; art 26-30; and Chapter III.

- The MoNRE, in collaboration with the MARD, should develop strategic environmental and social assessment guidelines for forestry and agricultural sectoral planning at a national, and possibly provincial⁹⁸, level.
- The MARD should encourage provincial DARDs to ensure the implementation of the 2012 Law on Legal Dissemination and Education, which has relevant provisions requiring public institutions to provide information explaining the Forestry and Land laws, regulations and procedures in an easily understandable language for ethnic minorities and people in remote inaccessible areas⁹⁹.

Recommendations for Cancun Safeguard (c) –

“Respect for the knowledge and rights of indigenous peoples and members of local communities”

- Assess and strengthen statutory forestland tenure and access rights, and the process for land allocation, documentation and demarcation. This could be done through the FCPF’s SESA and ESMF.
- Drawing on experience from CFM pilot programmes and provisions under the Law on Cooperatives, the MARD should task VNFOREST with drafting and submitting a national policy to support community forest management for approval by the Prime Minister.
- VNFOREST should consider creating a dedicated unit or designating a specialised person to support the effective implementation of CFM.

Recommendations for Cancun Safeguard (d) –

“Full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in [REDD+] actions”

- Ensure relevant articles of the 2013 Draft LEP¹⁰⁰ and 2013 Draft LAI¹⁰¹ are adopted, to address gaps identified regarding access to information. VNFOREST should ensure the MARD communicates to the responsible ministry revising these laws that these key articles are adopted in the revised laws and subsequent decrees and circulars.
- The MARD, in cooperation with the MoHA, should recommend the Government issue a decree to implement the Ordinance on Grassroots Democracy in the agriculture and forestry sectors.
- VNFOREST to identify and pilot when FPIC applies under the NRAP and PRAPs, ensuring Vietnam is consistent with international legal obligations under the one relevant international convention Vietnam is party to – UNDRIP (which requires FPIC in five specific cases; see findings under safeguard (d) in Section 3 for detailed information on FPIC under UNDRIP).
- VNFOREST-VRO to coordinate the full implementation of the Consultation and Participation Plan of the R-PP, including stakeholder analysis aspects, in PRAP and other planning and implementation processes of REDD+ demonstration activities in pilot provinces.
- VNFOREST-DoSTIC to lead in exploring and capitalising on synergies between the FLEGT VPA and REDD+ stakeholder consultation fora and processes.

Recommendations for Cancun Safeguard (e) –

“[REDD+] actions are consistent with the conservation of natural forest and biological diversity, ensuring that [REDD+] actions are not used for the conversion of natural forests, but are instead used

98. To be applied to PRAPs.

99. Particularly because the LEP, Law on Land, Law on Biodiversity and other relevant PLRs do not contain or reference this relevant provision. This would support NRAP’s relevant provisions requesting to strengthen propaganda, to raise awareness and to mobilise participation of local people and communities in REDD+ planning, implementation and monitoring.

100. The 2013 Draft LEP (Draft of 30 August 2013), art 3 (24), Chapter XI, and art. 131-133.

101. The 2013 Draft LAI arts 1, 2, 3 (1); art 4 (1) and (2); art 10-13; art 21-25; art 26-30; and Chapter III.

to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits”

- Provincial DARDs should ensure PRAPs do not include conversion of natural forest or plantation activities in forested areas (of natural forests).
- Integrate existing and future poverty reduction programmes into PRAPs as a means to explore synergistic integration of content and co-financing.
- Utilise MRV systems to support monitoring and reporting on the conversion of natural forests by REDD+ activities.
- Ensure provisions¹⁰² in NBSAP for REDD+ are fully implemented:
 - * Integrate biodiversity conservation targets into the implementation of the NRAP;
 - * Map areas of high biodiversity value in the NRAP;
 - * Map multiple (biodiversity and livelihood) benefits as a contribution to further national strategise for REDD+ and/or subnational PRAPs;
 - * Promote the use of native species for forest enrichment and restoration in the framework of REDD+; and
 - * Reduce risks to biodiversity from implementation of the NRAP through application of stringent social and environmental safeguards.

Recommendations for Cancun Safeguard (f) and (g) –

“Actions to address the risks of reversals; and actions to reduce displacement of emissions”

Near-term solutions for meeting these safeguards largely entail technical design elements of national and subnational carbon accounting mechanisms and not PLR reform. Specific technical provisions for these carbon accounting risk mitigation safeguards are only provided as examples of measures Vietnam could consider implementing:

- Track displacements of emissions into other areas through detailed MRV and accounting mechanisms;
- Set guidance for estimating leakage through a qualitative leakage assessment;
- Application of a pooled buffer approach, in which emissions reductions or removals are kept aside to be drawn upon and cancelled should reversals occur;
- Require REDD+ actors (public and private sectors, civil society, village communities, individuals) to provide compensation in the case of an emissions reduction reversal;
- Develop formal insurance mechanisms for REDD+ actors.

Additionally, the following can be recommended:

- Commission a study to identify how a FLEGT VPA LAS in Vietnam, and neighbouring countries entering into VPA negotiations, could contribute to meeting these safeguards. Such a study could focus on the PLR provisions and institutional capacities to implement them by Vietnam’s customs and forest protection agencies.
- Strengthen provisions of MoUs with neighbouring countries, especially those starting/preparing to enter VPAs negotiations, with a view to cooperating in addressing illegal logging.

102. Chapter II Major Tasks, number 5. – Biodiversity conservation in the context of climate change – (c) Implement forest regeneration programmes using methods and approaches such as biodiversity conservation, carbon storage, and climate change adaptation and mitigation.

C. Commission an assessment of the legal framework's implementation

Given that the legal framework constitutes the basis of a country-led approach to REDD+ safeguards and regulates the institutional and compliance frameworks of the CSA model, the PLR gap analysis presented in this roadmap represents an important first step. However, addressing these legal gaps on paper is not the only action necessary to ensure the legal framework can support implementation of the Cancun safeguards. It is also necessary to analyse the implementation and enforcement of the relevant PLRs in practice.

As part of the assessment of the legal framework's implementation, Vietnam could utilise UN-REDD and FCPF technical assistance products and processes for assessments on corruption¹⁰³, gender¹⁰⁴ and law enforcement practices, among others.

4.1.2 Institutional framework recommendations

A. Commission an assessment of the institutional framework and its functionality in practice

The 'institutional framework' is composed of institutions and institutional arrangements mandated to oversee the implementation and enforcement of the legal and compliance framework. Therefore, in addition to analysing how the legal framework is implemented in practice, a recommended immediate next step would be to undertake an analysis of the country's existing institutional framework and how those institutions and procedures function in practice.

The institutional framework gap analysis entails identification and assessment of relevant institutions in terms of clear mandates, authority and capacities to oversee the implementation of the legal and compliance framework.

Through this assessment, Vietnam could determine the capacities and effectiveness of institutions as well as the need for improved capacity, or even if new institutions, are required. Specifically, this means ensuring that appropriate institutions exist with clear mandates for collecting information on how the safeguards are being addressed and respected (which could involve monitoring and regular internal domestic reporting), and addressing grievances and non-compliance with safeguards. Vietnam could consider utilising the financial and technical support of the FCPF readiness project to undertake this assessment¹⁰⁵.

B. Design and implement an institutional capacity building programme on safeguards

A capacity building programme on REDD+ safeguards should be promoted to ensure institutional capacities are in place to support implementation of the Cancun safeguards. It will be important to consider investing in civil society capacity building until the institutional assessment identifies the relevant government agencies responsible for safeguards provisions. These agencies would need to be part of the capacity building programme.

4.1.3 Compliance framework recommendations

A. Commission an assessment of the different elements comprising the compliance framework and their functionality in practice

The compliance framework would provide information on safeguards implementation (including any monitoring provisions) to address safeguard-related grievances, as well as any non-compliance of, or insufficient compliance with, the safeguards. Therefore, in addition to analysing the implementation of the legal framework in practice, a recommended immediate next step would be to undertake an analysis of the country's existing compliance framework.

103. UN-REDD Programme support for addressing corruption. Specifically consider utilising the Corruption Risk Assessment (REDD+ CRA) guidance tool to identify corruption risks and develop systems and capacities to mitigate those risks. The results of such an assessment can form the basis of the design and implementation of REDD+ specific anti-corruption measures (UN-REDD 2012b).

104. FCPF's SESA and ESMF to assess and, if necessary, further strengthen the practical implementation of Vietnam's legal framework on gender and equality, in particular to ensure actions and measures can promote and guarantee gender equality in the context of REDD+.

105. Under the FCPF's SESA process, countries are asked to "identify shortcomings in current land use, forest law, policy and governance structures that contribute to the drivers of deforestation and forest degradation".

The assessment should seek to identify and assess existent monitoring and reporting systems, which could be used to provide information on how the safeguards are being addressed and respected, to identify and assess existing grievance and dispute resolution mechanisms for possible use to address safeguard-related grievances and identify and assess non-compliance mechanisms. Through the assessment Vietnam can determine if new mechanisms are required and/or existing ones need to be strengthened.

B. Consider utilising existing and relevant information and reporting systems to gather information on the Cancun safeguards implementation

This could include, for example, existing forest inventory and mapping initiatives or regular socio-economic census activities of Vietnam's General Statistics Office. It will also be important to consider utilising the existing monitoring and reporting processes under relevant and applicable international obligations to which Vietnam is party. Table 2 identifies some of the relevant international legal instruments for providing information on specific aspects of the Cancun safeguards.

Table 2: Selected international instruments to support monitoring and reporting of Cancun safeguards

International Legal Instrument	Relevant Cancun REDD+ Safeguard	Specific aspect of Cancun safeguards
UN Convention Against Corruption	(b)	Measures to tackle corruption
International Covenant on Civil and Political Rights	(b)	Access to information, public participation, access to justice
UNESCO Convention for the Safeguarding of Intangible Cultural Heritage	(c)	Protection of cultural rights of indigenous peoples
UNDRIP	(c), (d)	Protection of rights and participation of indigenous peoples
Convention on Biological Diversity	(e)	Mapping, monitoring and protection of biodiversity
Convention on the International Trade of Endangered Species of Fauna and Flora	(e)	Forest law enforcement measures and capacity

C. Consider the requirements from the UNFCCC in terms of format and frequency for reporting on the Cancun safeguards

The COP19 in Warsaw resulted in adoption of the Warsaw Framework for REDD+, which included a decision on guidance for the provision of information on how safeguards are being addressed and respected¹⁰⁶. This includes the requirement that REDD+ countries submit summary safeguard information reports through national communications¹⁰⁷. VNFOREST-VRO should establish coordination arrangements with the MoNRE, UNFCCC (and CBD) focal point, to ensure information on safeguards implementation can be submitted through national communications. This roadmap (or a summary thereof), and the ongoing process of its revision, could constitute an initial source of information on how the safeguards are being addressed and respected under the NRAP.

106. UNFCCC Decision 12/CP.19.

107. UNFCCC Decision 12/CP.19, paragraph 4.

D. Consider utilising FCPF support and guidelines for the development of a GRM

In the context of the FCPF, countries must establish a feedback and grievance mechanism that can respond to complaints that arise during consultation, development of REDD+ strategy options, and monitoring and evaluation. Vietnam might want to consider utilising this feedback and grievance mechanism developed under the FCPF in the short term. Its development can make use of the Draft Toolbox for Addressing Grievances and Disputes (UNDP-FCPF 2013).

4.2. Longer-term vision (post-2020)

This section only presents a long-term vision for Vietnam's legal framework post-2020. Long-term guidance for the institutional and compliance frameworks cannot be given until such time as they have been systematically assessed for gaps and weaknesses on paper and in practice.

The following recommendations will require cross-sector political commitment and coordination in relation to legal, institutional and compliance aspects of the Cancun safeguards.

Instigate reformative agendas for specific policies, laws and regulations, to address gaps in the legal framework:

Recommendations for Cancun Safeguard (a) –

"[REDD+] actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements"

- Integrate the relevant and applicable international obligations into REDD+ planning and implementation. Build on the systematised list of relevant and applicable international agreements and conventions Vietnam is Party to (which was developed under the short-term recommendations) to support the implementation of this recommendation.

Recommendations for Cancun Safeguard (b) –

"Transparent and effective national forest governance structures, taking into account national legislation and sovereignty"

- Strengthen relevant law enforcement mechanisms under forestry and non-forestry PLRs.

Recommendations for Cancun Safeguard (c) –

"Respect for the knowledge and rights of indigenous peoples and members of local communities"

- **Clarify definition of "ethnic people" or "minority" to coincide with the interpretation of "indigenous peoples" under international law, in particular under UNDRIP.** The lack of clarity on who constitutes "ethnic minorities" can have repercussions in relation to which specific rights are enjoyed by which groups of the population, particularly in relation to the implementation of international law. Differentiation will also be important to demonstrate compliance with this safeguard.
- **The MoNRE should seek to recognise and regulate traditional knowledge of ethnic minorities and local communities over forest resources by expanding the definition of "traditional knowledge" in the context of genetic resources in the Law on Biodiversity.** Vietnam should elaborate these legal provisions in consistency with its international legal obligations, such as those under UNDRIP that require recognising the elements of "traditional knowledge" to include: "The manifestation of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts"¹⁰⁸.

108. UNDRIP article 31(i).

- **Issue a decree guiding the implementation of administrative remedies to address discrimination on the basis of race or ethnic origin.** Vietnam should guide the effective implementation of relevant legal provisions¹⁰⁹ in consistency with its international legal obligations, such as those under the UN ICERD. These require that State Parties must not only rescind discriminatory laws and regulations¹¹⁰, but also provide effective remedies through national tribunals or other State institutions to anyone within their jurisdiction against acts of racial discrimination, including the possibility of obtaining reparation or satisfaction for damage suffered.
- **Revise civil law to define communities as legal entities, and ensure the land and forest protection and development laws are modified in line with this.** This would allow communities to enter into legally binding contractual arrangements for forest protection and environmental service provision, as well as secure statutory forestland and carbon ‘ownership’.
- **Codify, in national legislation, UNDRIP obligations in terms of recognition of customary collective rights to land,** which go as far as to recognise the right to “own, use and control the lands, territories and resources that they possess by reason of traditional ownership or traditional occupation or use”¹¹¹.

Recommendations for Cancun Safeguard (d) –

“Full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in [REDD+] actions”

- Amend the Ordinance on Grassroots Democracy to include legal provisions and procedures that promote the full and effective participation of relevant actors in accordance with relevant and applicable international law. These provisions should include a requirement to identify all relevant stakeholders (including ethnic minorities and local communities) likely to be affected by proposed REDD+ activities prior to the decision-making process.
- Codify FPIC application ensuring Vietnam is consistent with international legal obligations derived from UNDRIP.

Recommendations for Cancun Safeguard (e)-

“[REDD+] actions are consistent with the conservation of natural forest and biological diversity, ensuring that [REDD+] actions are not used for the conversion of natural forests, but are instead used to incentivise the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits”

- The MARD should ensure non-conversion of natural forests as a priority policy reform agenda to meet REDD+ and FLEGT expectations.

Recommendations for Cancun Safeguard (f) and (g) –

“Actions to address the risks of reversals; and actions to reduce displacement of emissions”

- Control timber imports to Vietnam from neighbouring countries, which may assist in addressing displacement of emissions. This could be led by the Forest Protection Agency in cooperation with Customs.

109. The relevant PLRs include 1999 Penal Code (Amended in 2010, Article 87), the 2012 Law on Handling with Administrative Penalties. Especially, the 2009 Law on State Compensation Liability addresses the State compensation for individuals or organisations that have suffered damage, material and moral, caused by the public-duty performers while carrying out their duties.

110. ICERD article 2(1) letter c.

111. UNDRIP article 26.

5. Conclusions

Vietnam has given express recognition of the primacy of the Cancun safeguards and associated UNFCCC requirements, and has begun to define a country-led approach for meeting the UNFCCC safeguard framework¹¹². Through this country-led approach, Vietnam seeks to utilise its own domestic legal framework to operationalise the Cancun safeguards. The identification and detailed analysis of Vietnam's legal framework demonstrated that Vietnam's PLRs are largely consistent with the Cancun safeguards. However, specific legal gaps were identified and recommendations provided. These recommendations should be addressed to ensure Vietnam's legal framework is fully consistent with the Cancun safeguards and can be utilised as Vietnam's national policy response to international safeguards commitments.

Addressing the legal gaps is not the only action necessary to ensure Vietnam demonstrates an effective national response to international safeguards requirements. A country-led approach to operationalising the Cancun safeguards will also require building upon Vietnam's institutional and compliance frameworks. Therefore, the recommendations and long-term vision provided in Section 4 of this roadmap should also be considered and addressed. The STWG-SG will need to lead stakeholders through further iterative revisions of the roadmap, commissioning and drawing on additional analytical work covering the institutional and compliance aspects of a country-led safeguard approach.

Finally, it is important to highlight that by complying with the Cancun safeguards in consistency with Vietnam's international legal commitments, Vietnam will be able to demonstrate compliance of the substantive elements of the safeguards frameworks of multi- and bilateral REDD+ support initiatives.



112. On June 2012 the Prime Minister approved the "National Action Programme on Reduction of Greenhouse Gas Emission through Efforts to Reduce Deforestation and Forest Degradation, Sustainable Management of Forest Resources and Conservation and Enhancement of Forest Carbon Stocks" (INRAP) for 2011-2020.

6. References

- Convention on Biological Diversity (CBD) (2004). *Akwe: Kon Voluntary Guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities*. Secretariat of the Convention on Biological Diversity. Available from: <http://www.cbd.int/doc/publications/akwe-brochure-en.pdf>
- Davis, C., Goers Williams, L., Lupberger, S., & Daviet, F., (2013). *Assessing Forest Governance: the Governance of Forests Initiative Indicator Framework*. World Resources Institute (WRI). Available from: <http://www.wri.org/publication/assessing-forest-governance>
- European Forest Institute EU FLEGT Facility (2012). *Guidance for Developing Legality Definitions in FLEGT Voluntary Partnership Agreements*. Available from: http://www.forest.go.th/check_wood/images/stories/file/EU_FLEGT_information/EFI_FLEGT-in-action_LD_Legality_Definition_A4_ENG_web%20%282%29.pdf.
- Forest Carbon Partnership Facility (2012). *Guidelines for Establishing Grievance and Redress Mechanism at the Country Level*. Forest Carbon Partnership Facility Washington D.C.: Forest Carbon Partnership Facility, World Bank. Available from: <http://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Aug2012/Attachment%204%20grievance%20and%20redress%20mechanism%208-9-2012.pdf>
- Forest Carbon Partnership Facility (2013). *Carbon Fund Draft Methodological Framework, Draft 5 September 2013*. Forest Carbon Partnership Facility Washington D.C.: Forest Carbon Partnership Facility, World Bank. Available from: https://www.forestcarbonpartnership.org/sites/fcp/files/2013/Sep2013/FCPF%20Carbon%20Fund%20draft%20Meth%20Framework%20September%205%202013%20version-%20final_0.pdf
- Forest Carbon Partnership Facility Participants Committee (2012). *Recommendations of the Working Group on the Methodological and Pricing Approach for the Carbon Fund of the FCPF*. FMT Note. Available from: https://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/June2012/FMT%20Note%202012-8%20Working%20Group%20Recomm%2006-09-12%20EN_0.pdf
- Forest Carbon Partnership Facility Readiness Fund (2011). *Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners*. Available from: http://www.forestcarbonpartnership.org/sites/forestcarbonpartnership.org/files/Documents/PDF/Nov2011/FCPF%20Readiness%20Fund%20Common%20Approach%20_Final_%2010-Aug-2011_Revised.pdf
- FCPF-UN-REDD (2012a). *R-PP Template Version 6 for Country Use*. Available from: <http://www.forestcarbonpartnership.org/fmt-notes-guidelines-templates>
- FCPF- UN-REDD Programme 20 April 2012b (revision of 25 March version), *Joint Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities*. Available from: <https://www.forestcarbonpartnership.org/sites/fcp/files/2013/May2013/Guidelines%20on%20Stakeholder%20Engagement%20April%2020,%202012%20%28revision%20of%20March%2025th%20version%29.pdf>
- Greenpeace, (2012). *Forest and People First: The Need for Universal REDD+ Safeguards*. Amsterdam, Netherlands. Available from: <http://www.greenpeace.org/international/Global/international/publications/forests/2012/REDD/Forests-and-People-First.pdf>
- ITTO (2002) *Guidelines for the restoration, management and rehabilitation of degraded and secondary tropical forests*. ITTO Policy Development Series.
- Mackenzie, C., (2012); *REDD+ Social Safeguards and Standards Review*. Forest Carbon Markets and Communities (FCMC) Programme. Arlington, VA. Available from: http://www.fcmcglobal.org/documents/Safeguards_Paper.pdf

REDD Vietnam (2012). *Joint Declaration between the Socialist Republic of Vietnam and the Kingdom of Norway on REDD+*. Available from: <http://vietnam-redd.org/Web/Default.aspx?tab=newsdetail&zoneid=107&subzone=157&itemid=639&lang=en-US>

Rey, D., & Roberts, J., (2012). *Map of AWG LCA Submissions working paper: Financing Results-Based REDD related to decision 1/CP.16, paragraphs 68-70 and 70*. ClientEarth, London United Kingdom. Available from: <http://www.clientearth.org/reports/redd-plus-finance-mapping-summary-of-submissions.pdf>

Rey, D., Roberts, J., Korwin, S., Rivera., & Ribet, U. (2013a) *A Guide to Understanding and Implementing the UNFCCC*, ClientEarth, London, United Kingdom. Available from: <http://www.clientearth.org/reports/a-guide-to-understanding-and-implementing-unfccc-redd+-safeguards.pdf>.

Rey, D., Roberts, J., Korwin, S., Rivera, L., Ribet, U. & Ferro, P., (2013b) *A Guide for Consistent Implementation of REDD+ Safeguards*, ClientEarth, London, United Kingdom. Available from: <http://www.clientearth.org/reports/a-guide-for-consistent-implementation-of-redd+-safeguards.pdf>

Rey, D., Swan, S., & Enright, A., (2013c) *A Country led approach to safeguards and multiple benefits*. SNV Netherlands Development Organisation, Ho Chi Minh City, Vietnam.

The REDD desk (2013) *Vietnam country profile*. Available from: http://www.theredddesk.org/countries/vietnam/readiness_overview

ROYAL NORWEGIAN EMBASSY. (2013). *Second Phase of UN-REDD Programme Officially Begins*. Available: http://www.norway.org.vn/Norway_and_Vietnam1/

Nguyen Quang Tan, Nguyen Van Chinh & Vu Thu Hanh (2008). *Statutory and Customary Forest Rights and their Governance Implications: The Case of Viet Nam*. IUCN Hanoi, Vietnam.

STWG-SG (2012). *Minutes of the 2nd meeting of STWG-SG, April 2012*. Available from: <http://www.vietnam-redd.org/Web/Default.aspx?tab=newsdetail&zoneid=108&subzone=113&child=209&itemid=471&lang=en-US>

UNDP-FCPF (2013). *Draft FCPF Guidance Note for REDD+ Countries: Establishing and Strengthening Grievance Resolution Mechanisms*. United Nations Development Programme, New York and the Forest Carbon Partnership Facility, Washington, DC. Available from: <http://www.forestcarbonpartnership.org/draft-toolbox-addressing-grievances-and-disputes-during-redd-Readiness-preparation-1>.

UN-REDD Programme (2012a). *Social and Environmental Principles and Criteria*. Available from: http://www.un-redd.org/Multiple_Benefits_SEPC/tabid/54130/Default.aspx

UN-REDD Programme (2012b) *Guidance on Conducting REDD+ Corruption Risk Assessments (REDD+ CRA)*. Available from: http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8322

UN-REDD (2013a). *Final evaluation of the UN-REDD Viet Nam Programme*. United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD), Geneva. Available from: <http://vietnam-redd.org/Web/Default.aspx?tab=project&zoneid=110&itemid=60&lang=en-US>.

UN-REDD (2013b). *UN-REDD Viet Nam Phase II Programme Document: Operationalising REDD+ in Viet Nam*. United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD), Hanoi. Available from: <http://www.vietnam-redd.org/Web/Default.aspx?tab=project&zoneid=110&lang=en-US>.

UN-REDD (2013c). *Guidelines on Free, Prior and Informed Consent*, p.17. Available from: http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=8717&itemid=53

Annex I: Overview of safeguard frameworks of FCPF and UN-REDD Programme¹¹³

Initiative		Safeguards
FCPF	Readiness Fund	<p>World Bank Operational Policies (OPs)¹¹⁴: OP 4.00, OP 4.01, OP 4.04, OP 4.09, OP 4.10, OP 4.11, OP 4.12, OP4.20, OP 4.36, OP 4.37, OP 7.50, OP 7.60, OP 8.60, OP 13.05, OP 17.55.</p> <p>The OPs are supplemented by the World Bank's Policy on Access to Information and its Policy on Disclosure of Information.</p> <p>Together, these safeguards apply to FCPF activities that are supported by the World Bank.</p> <p>Safeguards of delivery partners ¹¹⁵.</p>
	Carbon Fund	<p>World Bank Operational Policies¹¹⁶: OP 4.00, OP 4.01, OP 4.04, OP 4.09, OP 4.10, OP 4.11, OP 4.12, OP4.20, OP 4.36, OP 4.37, OP 7.50, OP 7.60, OP 8.60, OP 13.05, OP 17.55.</p> <p>The OPs are supplemented by the World Bank's Policy on Access to Information and its Policy on Disclosure of Information.</p> <p>Together, these safeguards apply to FCPF activities supported by the World Bank.</p> <p>Safeguards of delivery partners¹¹⁷.</p>
UN-REDD Programme		<p>Applies the Cancun safeguards and uses the Social and Environmental Principles and Criteria to support countries in the development of their country approach to safeguards.</p>

113. Adapted from Rey et al. (2013b) and Peskett & Todd (2013).

114. These safeguard policies can be found in the World Bank's Operational Manual, composed of individual OPs.

115. Under the FCPF Readiness Fund's Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners (Common Approach), delivery partners must "achieve 'substantial equivalence' to the material elements of the World Bank's environmental and social safeguard policies and procedures." However, if a delivery partner has stronger safeguards than the World Bank, it may apply its own safeguards instead. It is important to note that the Common Approach is subject to change to "respond to elaboration of UNFCCC policy guidance on environmental and social safeguards for REDD+."

116. These safeguard policies can be found in the World Bank's Operational Manual, which is composed of individual OPs.

117. Under the FCPF Readiness Fund's 'Common Approach', delivery partners must "achieve 'substantial equivalence' to the material elements of the World Bank's environmental and social safeguard policies and procedures." However, if a delivery partner has stronger safeguards than the World Bank, it may apply its own safeguards instead. It is important to note that the Common Approach is subject to change to "respond to elaboration of UNFCCC policy guidance on environmental and social safeguards for REDD+."

Key documents and guidance	Mechanisms relevant to the safeguards
<p>FCPF Charter</p> <p>Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners (Common Approach)</p> <p>FCPF Guidelines and generic Terms of Reference for SESA & ESMF</p> <p>FCPF/UN-REDD Guidelines on Stakeholder Engagement in REDD+ Readiness</p> <p>Guidance on Disclosure of Information</p> <p>Guidance for establishing Grievance and Redress Mechanisms.</p>	<p>The Readiness Preparation Proposal Template ('R-PP Template')</p> <p>Strategic Environmental and Social Assessment (SESA)</p> <p>Environmental and Social Management Framework (ESMF)</p> <p>The R-Package and the R-Package Assessment Framework.</p>
<p>Guiding Principles on the Key Methodological Framework</p> <p>Draft Carbon Fund Methodological Framework</p> <p>FCPF ERPA Terms Sheet.</p>	<p>Emissions Reduction Programme Idea Note (ER-PIN) Selection</p> <p>Emissions Reductions Payment Agreement.</p>
<p>Guidance on Conducting REDD+ Corruption Risk Assessments</p> <p>UN-REDD Programme Rules of Procedure and Operational Guidelines</p> <p>UN-REDD Programme Handbook for National Programmes and Other National-Level Activities</p> <p>Joint Guidelines on Stakeholder Engagement</p> <p>Guidelines on FPIC</p> <p>R-PP template (with guidelines)</p> <p>Draft manual on the collection of forest governance data</p> <p>LEG-REDD+</p> <p>Strengthening/Establishing National-Level Grievance Mechanisms</p> <p>Framework for assessing and monitoring forest governance</p> <p>Draft Guidelines for Monitoring the Impacts of REDD+ on Biodiversity and Ecosystems Services</p> <p>Draft annotated guide to useful resources for monitoring the impacts of REDD+ on biodiversity and ecosystem services</p> <p>Guidance Note on Gender Sensitive REDD+</p> <p>National Forest Monitoring Systems: Monitoring and Measurement, Reporting and Verification (M&MRV) in the context of REDD+ Activities.</p>	<p>SEPC Benefits and Risk Tool</p> <p>Participatory Governance Assessments for REDD+.</p>

Annex II: Detailed gap analysis methods

To identify the relevant and applicable international and national legal frameworks of Vietnam, in relation to the Cancun safeguards, a “Guide to Understanding and Implementing Safeguards REDD+ under the UNFCCC” (Rey et al. 2013a) was used. This framework provides interpretative criteria for the Cancun safeguards (see Box 4).

Methodological steps

On the basis of the interpretative criteria provided in this framework, the relevant and applicable international legal instruments and national legal framework were identified, according to their relevance and thematic resemblance to the Cancun safeguards.

Identification of international law: It is important to note that the identification of international law covered international and regional conventions and non-binding declarations. The identification of relevant international law was based on the ratification of the instrument in the case of a treaty or international agreement and adherence or vote for in the case of international declarations. Annex II of the “Guide to Understanding and Implementing Safeguards REDD+ under the UNFCCC” (Rey et al. 2013a) was used as a basis for this identification.

Identification of national legal framework: The identification of the relevant national legal framework was also carried out following the relevance and thematic resemblance with the Cancun safeguards framework.

The identification of the national legal framework included national policies¹¹⁸, laws¹¹⁹ and regulations¹²⁰ that define the safeguards that are to be applied, and regulate their effective implementation and compliance. Plans¹²¹ and programmes¹²² which could contribute to the implementation of the safeguards, but rely on the recognition and compliance of the PLRs.

After the legal framework was identified, a legal matrix was utilised to conduct a gap analysis of the national legal framework (policies, laws, regulations, programmes and plans) against the Cancun safeguards. The matrix provided interpretative criteria in relation to the Cancun safeguards, and in cases where the Cancun safeguards language encompasses several issues that must be analysed separately, an interpretative sub-criteria is provided. The interpretative criteria and sub-criteria were drawn primarily from the Cancun safeguards framework from the document “A Guide to Understanding and Implementing the Cancun safeguards”¹²³.

Each criterion and sub-criterion was accompanied by a diagnostic question and a set of indicators¹²⁴. The purpose of each diagnostic question was to help assess if and how the legal framework could support the safeguards implementation, and identify any potential gaps. To answer each diagnostic question the analyst utilized the indicators provided. For each indicator the analyst had the option to choose if:

	The instrument covers indicator
	Indicator is partially addressed by the instrument
	Indicator is not covered/addressed by the instrument

118. Policies that provide political direction to the adoption, implementation and interpretation of laws related to safeguards.

119. Laws that define and regulate which safeguards must be guaranteed and how, without covering operational aspects.

120. Regulations issued by different government departments and agencies to carry out the intent (i.e. operational aspects) of the legislation related to safeguards.

121. Plans generally provide guiding quantitative targets and qualitative principles for programmes and projects, which could be relevant to the implementation of the safeguards.

122. Programmes operationalise the goals and objectives of plans. Programmes are spatially, temporally and technically explicit about the actions or activities and resources needed to achieve the goals outlined in the plan.

123. Rey, D., et al. A Guide to Understanding and Implementing the Cancun Safeguards, (2013) ClientEarth, London, United Kingdom.

124. The diagnostic question and indicators have been developed using a combination of several relevant methodologies and frameworks, including the authors “A Guide to Understanding and Implementing the Cancun Safeguards” and the Governance of Forest Indicators of WRI (<http://www.wri.org/project/governance-of-forests-initiative>).

Annex III: List of policies, laws, regulations and other national ordinance analysed

Fundamental Law

1. Constitution 1992 (revised 2001 and 2013)

Other Laws

1. Law on Forest Protection and Development (2004)
2. Law on Environmental Protection (2005)
3. Draft Law on Environmental Protection (2013)
4. Law on Biological Diversity (2008)
5. Law on Land (2003)
6. Draft Law on Land (2013)
7. Law on Minerals (2010)
8. Law on Construction (2003)
9. Law on Conclusion, Accession and Implementation of International Treaties (2005)
10. Law on Enactment of Legal Normative Documents (2008)
11. Law on Gender Equality (2006)
12. Law on Corruption Fighting and Prevention (2012)
13. Law on Complaints and Denunciations (2011)
14. Law on Handling with Administrative Penalties (2012)
15. Draft Law on Access to Information (2013)

Ordinance, Decrees and Regulations

Forestry

1. Decision No.799/QD-TTg of the Prime Minister dated 27 June 2012 on approval of NRAP for the period 2011-2020
2. Decision No.750/QD-TTg of the Prime Minister dated 3 June 2009 on approval of rubber tree development plan towards 2015 and vision to 2020
3. Resolution No.30a of the Government dated 27 December 2008 on a programme to support quick poverty reduction for 61 poor districts
4. Decision No.661/QD-TTg on Objectives, Tasks, Policies and Organisational Arrangements for Implementation of the Five Million Hectares Reforestation Project
5. Decree No.186/2006/ND-CP on promulgation of Forest Management Regulation
6. Decree No.99/2010/ND-CP on the policies for payment of forest environmental services
7. Decision No.178/2001/QD-TTg dated 12 November 2001 by the Prime Minister issuing a regulation on the benefit rights, responsibilities of the households, individuals who are allocated, leased and contracted forest land
8. Decree No.99/2009/ND-CP of the Government dated 2 November 2009 on administrative penalties in forest management, protection and forest products management
9. Prime Minister Decision No.126/QD-TTg dated 2 February 2012 on a benefit sharing pilot in the sustainable management, protection and development of special use forests

10. Decree 05/2008/ND--CP of the Government dated 14 January 2008 on the Forest Protection and Development Fund
11. Decision No.24/2012/QD-TTg of the Prime Minister on investment policy for SUF development during 2011-2020
12. Decision No.07/2012/QD-TTg of the Prime Minister dated 8 February 2012 on promulgating some policies to strengthen forest protection
13. Decree No.117/2010/ND-CP of the Government dated 24 December 2010 on organisation and management of special use forests
14. Decree No.163/1999/ND-CP of the Government dated 16 November 1999 on forestland allocation, leases to organisations, households and individuals to use long-term and sustainable basis for forestry purposes
15. Decree No.01/CP of the Government dated 4 January 1995 promulgating regulation for land contracting for agriculture, forestry and fishery in State enterprises
16. Decree No.200/2004/ND-CP of the Government dated 3 December 2004 on rearrangement, renovation and development of State forest enterprises
17. MARD Circular 35/2011/TT-BNNPTNT dated 20 May 2011 guiding implementation of timber and NTFPs harvesting
18. MARD Circular 34/2009/TT-BNNPTNT dated 10 June 2009 on criteria to identify and classify forests
19. MARD Circular 127/2008/TT-BNN dated 31 December 2008 guiding rubber planting on forestry land.

Other sectors

- Ordinance on Exercise of Democracy in Communes, Wards and Townships (2007)
- Decree No.65/ND-CP dated 11 June 2010 providing details and guiding the implementation of the Law on Biological Diversity
- Decree No.69/2009/ND-CP dated 13 August 2009 of the Government on the additionally providing for land use planning, land prices, land recovery, compensation, support and resettlement
- Decree No.123/2007/NC-CP dated 27 July 2007 of amending and supplementing a number of articles of Decree No.188/2004/ND-CP of 16 November 2004, on methods of determining land prices and price brackets of land of different categories
- Decision No.134/2004/QD-TTg dated 20 July 2004 on a number of policies to provide support in terms of production land, residential land, dwelling houses and daily-life water to poor ethnic minority households meeting with difficulties
- Decision No.198/2007/QD-TTg on amending and supplementing a number of articles of the Prime Minister's Decision No.134/2004/QD-TTg dated 20 July 2004, on a number of policies on support regarding production land, residential land, residential houses and daily-life water for poor ethnic minority households.

Strategies, Plans and Programmes

Forestry

4. Vietnam Forest Development Strategy 2006-2020, approved by the Decision of the Prime Minister, No.18/2007/QD-TTg, dated 5 February 2007
5. Forest Protection and Development Plan for 2011-2020, approved by the Decision of the Prime Minister, No. 57/Q-TTg, dated 9 January 2012.

Other sectors

- National Biodiversity Strategy toward 2020 and the Vision up to 2030 approved by the Decision of the Prime Minister No.250/QD-TTg dated 31 July 2013
- Programme on Gender Equality for 2011-2015 approved by the Decision of the Prime Minister No.1241/QD-TTg dated 22 July 2011
- National Strategy on Gender Equality for 2011-2020 approved by the Decision of the Prime Minister No.2351/QD-TTg dated 24 December 2010
- National Strategy on Green Development approved by the Decision of the Prime Minister No.393/QD-TTg dated 25 September 2012
- National Strategy for Climate Change approved by the Decision of the Prime Minister No.2139/QD-TTg dated 5 September 2011
- National Action Plan on Climate Change for the Period 2012-2020 approved by the Decision of the Prime Minister No.1474/QD-TTg dated 5 October 2012
- Strategy for Ethnic Affairs by 2020 by the Decision of the Prime Minister Number 49/QD-TTg dated 12 March 2013
- National Strategy for Environmental Protection until 2020 and Vision toward 2030 approved by the Decision of the Prime Minister No.1216/QD-TTg dated 5 September 2012
- National Strategy for Energy Development until 2020 and vision toward 2050 approved by the Decision of the Prime Minister No.1855/QD-TTg dated 27 December 2007
- National Strategy for Disaster Prevention, Combat and Reduction by 2020 approved by the Decision of the Prime Minister No.172/2007/QD-TTg dated 16 November 2007
- National Climate Change Target Programme to Respond to Climate Change Approved by the Decision No.158/QD-TTg dated 2 December 2008
- Action Plan on Responding to Climate Change in the Sector of Industry and Trade from 2010 to 2015
- National Strategy for Development of Electricity Sector from 2004 to 2010 and the Vision toward 2020
- National Socio-Economic Development Strategy from 2011-2020 dated 17 March 2011
- Resolution on the National Socio-Economic Development Plan (2011-2016) approved by the National Assembly
- Resolution No.41/2004/NQ-TW by the Politburo of the 9th Communist Party Congress on Environmental Protection during the Industrialisation and Modernisation Process
- Decision No.153/2004/QD-TTg dated 17 August 2004 of the Prime Minister Promulgating the Oriented Strategy for Sustainable Development in Vietnam (Vietnam's Agenda 21).

Annex IV: List of international treaties and conventions relevant and applicable to Cancun safeguards, which Vietnam is party to

1. Cartagena Protocol on Biosafety to the Convention on Biological Diversity (The Biosafety Protocol) (2000)
2. Convention on Biological Diversity (CBD) (1992)
3. Convention on the Elimination of all forms of Racial Discrimination (CERD) (1969)
4. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)
5. Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)
6. Convention on the Rights of the Child (1989)
7. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)
8. Convention for the Safeguarding of Intangible Cultural Heritage (2003)
9. Convention on Wetlands of International Importance, especially as Waterfowl Habitat (1971) (RAMSAR)
10. International Covenant on Civil and Political Rights (ICCPR) (1966)
11. International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
12. Kyoto Protocol to the UNFCCC (1997)
13. UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)
14. United Nations Convention to Combat Desertification (UNCCD) (1994)
15. UN Convention against Corruption (2005)
16. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) (Voted in Favour)
17. United Nations Framework Convention on Climate Change (1992)
18. WTO General Agreement on Tariffs and Trade (1994)

Annex V: Glossary of key terms

Cancun Safeguards

The term 'Cancun Safeguards' refers to the safeguards developed under the UNFCCC in paragraph 2 of Appendix I to decision 1/CP.16 (the Cancun Agreement).

Compliance framework

A CSA requires an adequate and verifiable compliance framework, which can ensure the accountability and effectiveness of the CSA. The compliance framework of a CSA is comprised of three elements: i) information system (including any monitoring provisions); ii) grievance and redress mechanisms, and iii) non-compliance mechanisms.

Country-led safeguard approach

An approach that allows a country to define how safeguards are to be dealt with in a cohesive manner, and ensure all REDD+ activities within a country are covered by safeguard policies that apply across the board, regardless of the funding source or initiative.

Grievance and redress mechanisms

Grievance and redress mechanisms as those that come into play at the national, subnational or local level when there is a need to settle disputes between actors. Such processes tend to come in the form of negotiation, mediation, arbitration, or through use of judicial or administrative systems.

Information system

The information system component of the CSA is related to the legal and institutional frameworks, and which defines and oversees what, how, and when information is to be collected and provided.

Institutional framework

Institutional framework is comprised of the institutions and the procedures of implementing and enforcing the legal framework.

Legal framework

Legal framework is comprised primarily of national PLRs that define which safeguards are to be applied, and regulate their effective implementation and compliance. Programmes and plans contribute to the implementation of the safeguards, but rely on the recognition and compliance of the PLRs.

Non-compliance mechanisms

Non-compliance measures are those that address any failure to implement the requirements set forth in the CSA legal framework. This is different from the GRM, as non-compliance mechanisms are meant to address any failure to implement the requirements set forth in the safeguards. Non-compliance mechanisms could be administrative or judicial in nature, but should aim to provide a legal avenue for addressing issues of non-compliance.

REDD+ actions

The term REDD+ activities refers to those included in paragraph 70 of decision 1/CP.16.

REDD+ activities

REDD+ activities are the various national and or subnational policies and measures adopted to achieve REDD+. These include national strategies, capacity building programmes, enacting laws and policies, among others.

REDD+ countries

Since no international mechanism for REDD+ has been operationalised, there is no official list of REDD+ countries. The term REDD+ country is used to refer to countries that could be eligible, and/or are working towards, participation in REDD+ under the UNFCCC, once it has been operationalised.

SNV Netherlands Development Organisation

REDD+ Programme

5th floor, 5 Nguyen Gia Thieu

Ward 6, District 3, Ho Chi Minh City, Vietnam

Tel: 84 8 3930 0668

Email: sswan@snvworld.org

www.snvworld.org/redd

