



Policies, Laws and Regulations (PLRs) that can help to address the Cancun Safeguards for REDD+ in Myanmar

Summary by safeguard

May 2019

ACKNOWLEDGEMENTS

This document draws on information from a report produced by Howe Sustainable under contract to UNDP, as part of the Myanmar UN-REDD National Programme, with inputs from REDD+ stakeholders in Myanmar, including the Technical Working Group on Stakeholder Engagement and Safeguards (TWG-SES), members of the Myanmar UN-REDD Programme Management Unit, UNDP and UN Environment. It was compiled for the UN-REDD/Myanmar Programme by the UN Environment World Conservation Monitoring Centre (UNEP-WCMC).

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ACRONYMS AND ABBREVIATIONS

ADB - Asian Development Bank

EAO - Ethnic Armed Organization

ECC - Environmental Compliance Certificate

EIA - Environmental Impact Assessment

EMP - Environmental Management Plan

FAB - Farmland Administration Body

FLEGT - Forest Law Enforcement, Governance and Trade

FPIC - Free, Prior and Informed Consent

GAD - General Administration Department

GRM - Grievance Redress Mechanism

KNU - Karen National Union

MIC - Myanmar Investment Commission

MOALI - Ministry of Agriculture and Livestock

MOHA - Ministry of Home Affairs

MONREC - Ministry of Natural Resources, Environment, and Conservation

NDC - Nationally Determined Contribution

NE5C - National Environmental Conservation and Climate Change Central Committee

NLUC - National Land Use Council

NLUP - National Land Use Policy

PaMs - Policies and Measures

PFE - Permanent Forest Estate

PLRs - Policies, Laws and Regulations

REDD+ - Reducing Emissions from Deforestation and Forest Degradation, plus conservation, sustainable management of forests, and enhancement of forest carbon stocks

SEA - Strategic Environmental Assessment

SoI - Summary of Information

UNFCCC - United Nations Framework Convention on Climate Change

VFV Land - Vacant, Fallow and Virgin Land

VPA - Voluntary Partnership Agreement

INTRODUCTION

Countries wishing to participate in REDD+ are requested by the UNFCCC to address and respect¹ a set of seven social and environmental safeguards (commonly referred to as the Cancun Safeguards) throughout the implementation of REDD+ activities. By applying the safeguards, countries can enhance the positive impacts of REDD+ and prevent or mitigate any potential adverse impacts. Understanding a country's existing framework of policies, laws and regulations (PLRs) on social and environmental issues can be a key step towards designing an effective and nationally appropriate approach to safeguards application.

This document summarizes and analyzes the results of a review carried out in April/May 2018 by a team at Howe Sustainable that looked at the degree to which the safeguards for REDD+ agreed under the UNFCCC are already addressed by existing PLRs in Myanmar². The review of PLRs was structured in line with a list of key elements for each safeguard that has been developed by the UN-REDD Programme. It also took into account the potential social and environmental benefits and risks of the REDD+ Policies and Measures (PaMs) that are proposed for inclusion in the National REDD+ Strategy³. Both the initial PLR review and this summary have been updated in August 2018 and again in early 2019 to incorporate additional information, based on feedback from workshop participants⁴ and external reviewers, and further own research of members of the UN-REDD team.

The summary was drafted to facilitate consideration of PLRs in the next steps in developing Myanmar's country approach to the Cancun safeguards, especially the work on the national safeguards clarification that has been carried out through the Technical Working Group on Stakeholder Engagement and Safeguards (TWG-SES) with the support of the UN-REDD Programme⁵. It is also expected that the document will be useful as an input to the production of Myanmar's first Summary of Information (SoI) on safeguards⁶, and for identifying priorities in further work on ensuring good practice on safeguards in the design and implementation of PaMs. It gives an indication of areas where the safeguards are already well covered by the current PLR framework, and areas where additional efforts (such as PLR reforms or REDD+-specific procedures) might be advisable in order to ensure that the Cancun safeguards are fully addressed and respected.

¹ The UNFCCC decisions on safeguards include no definition of what is meant by 'addressed' and respected'. However, a widely accepted working definition is that 'addressing safeguards' means to put relevant PLRs and institutional arrangements in place to support REDD+ actions being implemented in line with the safeguards, while 'respecting safeguards' means to apply the safeguards in practice during the implementation of REDD+ actions, leading to positive outcomes on the ground.

² This work was part of a wider review of PLRs relevant for REDD+ implementation, see also the accompanying report "Review of Legal and Policy Frameworks for REDD+ (Reducing Emissions from Deforestation and Forest Degradation) Implementation in Myanmar".

³ For more information about the process through which the benefits and risks were assessed, see e.g. the report of the National workshop for assessing benefits and risks of REDD+ in Myanmar, available at

<https://www.unredd.net/documents.html?view=browse&customtags=34&startdate=&enddate=&dmlang=&checkalltags=0>.

⁴ Findings from the PLR review have been presented and discussed at three workshops specifically focusing on the review, and at a workshop on the national clarification of safeguards in June 2018. These workshops were attended by representatives of civil society organizations and key government departments.

⁵ For further explanation about the process to develop a country approach to safeguards for Myanmar, see the Myanmar REDD+ Safeguards Roadmap, available at:

<https://www.unredd.net/documents.html?view=browse&customtags=34&startdate=&enddate=&dmlang=&checkalltags=0>

⁶ See [UN-REDD Info Brief 5: Summaries of Information: How to demonstrate REDD+ safeguards are being addressed and respected](#), for more information.

With regard to the development of REDD+-specific procedures to support the application of safeguards, it is worth noting that a number of relevant steps have already been undertaken in Myanmar, such as:

- A study on options for a Grievance Redress Mechanism (GRM), which will allow stakeholders to raise concerns over the way REDD+ actions are implemented, including any perceived breaches of the safeguards,
- The design of a proposal for piloting a procedure to obtain the Free, Prior and Informed Consent (FPIC) of local communities to REDD+ actions, which will help especially with the application of safeguard c) on respecting the rights of indigenous peoples and local communities, and
- The elaboration of the national safeguards clarification, which will be used as a communication tool to inform both those who implement REDD+ actions and those who are affected by them about the Cancun safeguards and the way they are to be interpreted in the national context of Myanmar.

For each safeguard, this document provides the following information:

- Overview of key PLRs that are relevant to addressing the safeguard, and their main provisions;
- Open questions with regard to the PLR framework that could not be answered based on the information available at the time of review;
- Summary assessment of whether the existing PLR framework a) fully covers all elements of the safeguard, and b) covers all possible types of REDD+ activities, or whether there are gaps in coverage; where available, information on the degree to which the identified PLRs are implemented in practice, and any related capacity constraints, is also presented;
- Recommendations resulting from the PLR review and discussions with workshop participants.

A particular feature of the situation in Myanmar is that the country's PLR framework is at present not applied uniformly across the whole of the national territory, due to the ongoing armed conflict in some regions and the fact that some areas are under the *de facto* control of Ethnic Armed Organizations (EAOs). Rules or procedures established specifically for the governance of REDD+ activities (such as the establishment of a GRM, see above) may therefore have special importance for ensuring that the safeguards are always applied to a similar standard, regardless of where the activities are implemented.

SUMMARY BY SAFEGUARD

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

Key PLRs and their provisions:

- The Basic Principles of the 1992 Forest Law require that the Law should be implemented in accordance with the government's forestry and environmental conservation policy, as well as international agreements relating to the conservation of forests and of the environment. These principles should guide the work of all forest sector government institutions.
- The 1995 Forest Policy calls for the establishment of a Forest Policy Advisory Board under the Ministry in charge of Forestry (currently the Ministry of Natural Resources and Environmental

Conservation, MONREC), in order to review forest policy implementation and establish coordination with other sectors including harmonization at policy interfaces.

Gaps in information on the PLR framework:

No specific information gaps are identified for this safeguard. A preliminary list of relevant international agreements and treaties on topics related to the Cancun safeguards to which Myanmar is a party is included in the national clarification.

Assessment of whether the safeguard is fully addressed:

The Basic Principles of the Forest Law are supportive of safeguard a), but by themselves are not sufficient to ensure that all REDD+ PaMs are designed to be complementary to or consistent with the objectives of national forest programmes and relevant international conventions and agreements, because the principles are not linked to a specified operational mechanism. That is, no procedures are set out in the Law for verifying that planned actions are indeed aligned with the mentioned policies and agreements. Moreover, if REDD+ PaMs fall outside of the forestry sector (e.g. PaMs related to energy or agriculture), they would not be covered by the Basic Principles of the Forest Law.

There are a number of bodies that could take on a coordinating function to ensure the alignment of REDD+ PaMs with the objectives of other policies, programmes and international agreements, as required by the safeguard. However, it is likely that they would need to be officially mandated for this task in order for it to happen, and that attention would need to be paid to appropriate representation of the government units in charge of implementing the relevant policies, programmes and agreements. Potential options as a platform for enhanced coordination include:

- the REDD+ Task Force,
- the National Environmental Conservation and Climate Change Central Committee/NE5C (which has been highlighted by workshop participants for its mandate to coordinate on environmental issues across all ministries),
- the National Land Use Council/NLUC (which involves participation of GAD, MOALI, MOHA and MONREC, among others),
- any cross-sectoral coordinating bodies to be formed under the 2018 National Environmental Policy,
- the Forest Policy Advisory Board stipulated under the Forest Policy (though no further information on it could be accessed at the time of review).

This function could be given official recognition in the PLR framework. For example, in the case of NE5C, workshop participants have highlighted that the mandate of the Committee could be strengthened by anchoring it in the Environmental Conservation Law, and the screening of REDD+ PaMs against existing PLRs could be included among its tasks.

A positive point to highlight is that work on the current portfolio of proposed PaMs has involved the REDD+ Task Force and the Technical Working Group on Drivers & Strategy, i.e. coordination bodies established specifically for the REDD+ process, and that many of the PaMs under discussion could contribute to existing policy objectives. For example, they could support the objectives of the Nationally Determined Contribution (NDC) under the UNFCCC (e.g. PaMs on expanding the permanent forest

estate and on energy-efficient cook stoves), the 1995 Forest Policy (PaMs on expanding the permanent forest estate), or the SDGs (PaMs on support to sustainable livelihoods).

Recommendations:

- **Identification of existing and/or potential new coordination mechanisms** to ensure REDD+ PaMs are designed in line with the safeguard (including those PaMs that reach beyond the forestry sector), and assigning related mandates.
- **Identification of priority national policies/programmes and international agreements** that REDD+ PaMs should be aligned with (the list developed for the national clarification of the safeguards could be used to this purpose).

Safeguard b: Transparent and effective national forest governance structures, taking into account national legislation and sovereignty

Two aspects of the relationship between the PLR framework and proposed REDD+ PaMs are relevant for this safeguard and discussed here:

- 1) Whether the existing PLR framework is sufficient to ensure that REDD+ PaMs are implemented in a transparent and effective way; and
- 2) Whether REDD+ PaMs can strengthen the PLR framework and its implementation in order to enhance transparency and effectiveness in national forest governance.

Key PLRs and their provisions:

The PLR analysis focused on key aspects of forest governance identified during stakeholder consultations and the assessment of REDD+ benefits and risks.

- **Access to information / transparency:** A number of Myanmar laws contain requirements on making specific types of information on land and forest management publicly available (e.g. the 1894 Land Acquisition Act in relation to land that is required for public purposes). Under certain conditions, there is also provision in the PLR framework for local stakeholders to request information; for example, they may ask the Land Records Department to provide them with information (including maps) on the status of land in which they have a recognized interest (Forms 103 and 105). The National Land Use Policy stipulates that all individuals, communities and organizations should have equal rights to access accurate and complete information related to land, and the One Map Myanmar initiative has been tasked with the development of a unified land data management system (including land cover data, land records, etc.) to enable this. There is currently no comprehensive law on the right to information, although a draft was produced in 2016.
- **Accountability:** Procedural requirements supporting accountability exist in relation to the granting of licenses for the extraction of forest products by commercial enterprises (under the 1992 Forest Law), on approving changes in the status of land for the benefit of foreign investors (e.g. in order to allow conversion, under the 2017 Investment Rules), on due process relating to land conversion (under the 2012 VFV and Farmland Laws) and on conducting Environmental Impact Assessments (2015 EIA Procedure). The National Land Use Policy sets out procedures (including stakeholder consultation and investigation of existing land uses) for the land use planning process to be applied by the National Land Use Council and the subnational and local

Land Use Committees. However, these committees and the land use planning process itself are not yet operational. Community Forest User Groups can have their use certificate revoked if they fail to comply with the Forest Law, with the rules and obligations set out in their management plan or with their duties on record-keeping and reporting. There is no comprehensive legal framework on public procurement.

- **Land tenure:** The Farmland Law (2012) sets out how farmers can apply for land use certificates, giving them the right to cultivate the land with either seasonal or perennial crops. There is no corresponding process for the registration of customary land tenure or communal grazing and forest rights. Rights to cultivate land categorized as ‘vacant, fallow or virgin’ (VFV) Land can be allocated by the VFV Central Committee under the VFV Land Law. Rights to forest land can be given a legal status by obtaining a community forestry certificate under the Community Forestry Instructions (2016), while the establishment of plantations can be granted through permission under the Forest Law. The National Land Use Policy (2016) aims to harmonize land-related legislation; its objectives include strengthening land tenure security for people in both urban and rural areas, and recognizing and protecting customary land tenure rights and procedures of the ethnic nationalities. However, the National Land Law foreseen under the policy has not yet been passed.
- **Cross-sectoral coordination:** because different categories of land in Myanmar come under the authority of different ministries and are defined and regulated in different and sometimes not fully consistent laws, coordination across sectors is of particular importance to ensure consistency in governance. The 2012 VFV Land Management Rules require cross-sectoral consultation before applications to work VFV land are approved “in order to avoid damage to the forest land managed by the government, and in order to avoid damage to natural habitats”. The National Land Use Policy stipulates the establishment of the National Land Use Council, which is expected to take on a relevant coordinating role and over the long-term work towards the harmonization of the legal framework on land use and the classification of land, but has only recently taken up its work. For coastal areas (where coordination in relation to the protection and management of mangrove forests is a key issue), some work has been carried out recently towards the development of a strategy for marine spatial planning, and a National Coastal and Marine Resources Management Committee has been set up.
- **Devolution:** Myanmar is currently undergoing a transition towards more devolved governance, and some responsibilities have been delegated to the recently formed state or region level governments. In some cases, this has led to ambiguities about the separation of roles in relation to control over natural resources. According to the 2017 Investment Rules, duties relating to the authorization of land rights (a precondition for investments involving land use change) can be assigned to a State or Regional Committee.
- **Preventing corruption:** The 1992 Forest Law makes provision for legal prosecution of any forestry staff members engaged in corruption or breaking the law. The 2013 Anti-Corruption Law further sets up a commission supported by working committees and working groups that is tasked with investigating and preventing cases of bribery. Myanmar is exploring the possibility of negotiating a Voluntary Partnership Agreement under the EU Initiative on Forest Law Enforcement, Governance and Trade (i.e. a FLEGT-VPA).
- **Use of correct and up-to-date information in planning:** Insufficient availability and use of robust information in planning processes has been identified as a governance issue that has some relevance in Myanmar. The Forest Law mandates the Forest Department to carry out inventory

activities, and the National Forest Policy sets out that inventory data should be used to support forest management. However, no further detail on procedure is provided. A 5-year project to design, develop, plan and implement a National Forest Inventory (NFI) and National Forest Monitoring and Information System (NFMS) is currently underway. No PLRs mandating the collection and use of other types of data in forest management planning have been identified. The National Land Use Policy states that Land Use Committees should base proposals for land use changes in appropriate areas on approved and updated information from the land use planning process, and that they should be provided with precise and correct land information for the stakeholders to use in deciding how much land should be allocated to projects related to national development, environmental conservation, land use planning and investment. The ongoing work on developing a unified land data management system (see 'Access to information' above) may help to improve the availability and uptake of good quality information in planning processes.

Gaps in information on the PLR framework:

Given the breadth of topics covered by safeguard b), it seems likely that not all relevant PLRs, especially at the sub-legal level (i.e. the level of rules, regulations, procedures, etc.), could be covered by the PLR review. Topics on which little information is available include procedures around protected area planning/management (e.g. in relation to transparency and accountability), cases of overlap or gaps between national and subnational PLR frameworks, and requirements related to the collection and use of environmental and socio-economic data as a basis for planning.

Assessment of whether the safeguard is fully addressed:

Based on the results of the PLR review, the current PLR framework still contains some gaps and inconsistencies that pose a constraint to transparent and effective forest governance. Some key points in relation to the implementation of REDD+ PaMs are highlighted below.

- **Access to information:** Participants in workshops for the PLR review and the assessment of benefits and risks of proposed REDD+ PaMs expressed concerns that the provision of information about REDD+ PaMs to stakeholders might be insufficient. Questions were also raised about the form in which information would be provided, as language or technological barriers (such as lack of internet access) could prevent some stakeholders from accessing information even if it has been published. Key gaps highlighted by the PLR review include:
 - The identified PLRs on information provision only apply to clearly specified types of information (such as the tenure status of a particular piece of land), and do not cover all information needs related to the transparent planning and implementation of REDD+ PaMs;
 - There is no comprehensive law on the right to information (yet), and
 - The progressive stipulations of the National Land Use Policy on access to land-related information have not yet been fully implemented.

It seems therefore that REDD+-specific measures (such as guidelines or procedures) may be the best way of ensuring stakeholders are comprehensively informed about plans and decisions related to REDD+. Workshop participants suggested that the communication strategy developed by the UN-REDD Programme could offer a starting point for this.

- **Accountability / preventing corruption:** The assessment of potential benefits and risks of REDD+ PaMs revealed concerns that powerful stakeholders could be given undue advantages in

processes related to land use planning, land allocation and allocation of benefits. Workshop participants also expressed the view that financial accountability in relation to REDD+ PaMs might need to be ensured by specific measures. The legal provisions described above, most importantly the procedures related to land conversion and Environmental Impact Assessment and the anti-corruption stipulations in the 2018 Forest Law and the Anti-Corruption Law, go some way towards addressing these issues. The procedures on land use planning foreseen under the National Land Use Policy will also be very relevant once passed. However, the results of the PLR review suggest that implementation of the existing legal framework is constrained by capacity limitations and in some cases a lack of impartiality of those tasked with maintaining accountability. While workshop participants recognized that the Anti-Corruption Commission is the main body with a mandate to assess and act on corruption risks, it seems unlikely that the Commission (which meets at least four times a month) will be able to address corruption risks at the level of individual REDD+ PaMs.

- **Equity in law enforcement:** An identified risk in relation to PaMs that aim to improve enforcement of the rule of law in forestry and land use is that poor and vulnerable people could be disproportionately or unduly targeted by strengthened enforcement efforts, as government officials might be reluctant or unable to deal with more powerful offenders⁷. There is no information from the PLR review to suggest that this issue is addressed in the current PLR framework (e.g. by differentiating fines or penalties in order to make allowances for vulnerable stakeholders who have few alternatives or lack the knowledge and capacity to stay within the law). Addressing the risk in the design of REDD+ PaMs thus seems like the most immediately accessible option for dealing with this aspect of the safeguard. Relevant PaMs on prioritizing law enforcement effort have already been proposed for the National REDD+ Strategy.
- **Inclusion of stakeholders with unclear land tenure status:** As described above, the current legal situation related to land tenure is complex, and practical implementation of laws is made even more difficult by issues of stakeholder capacity and incomplete documentation. This is likely to pose some problems for implementing REDD+ PaMs in line with the Cancun safeguards, e.g. groups without documented land rights may be unable to participate in or benefit from certain PaMs. Some kinds of PaMs, such as those on expanding the Permanent Forest Estate (PFE) area or promoting the establishment of protected areas, could even lead to displacement or loss of livelihoods for users of areas categorized as VFV land, as evidence suggests that land selected for reallocation is not always investigated (as would be required by the VFV Rules) to ensure that it is indeed vacant.
It may be possible in some cases to address this issue through appropriate design of REDD+ PaMs. However, over the medium to long term, increasing institutional and stakeholder capacity to clarify land tenure, and strengthening the PLR framework (e.g. by implementing the National Land Use Policy and resolving inconsistencies around the recognition of customary land tenure and land use systems) is likely to be the most effective approach.
- **Environmental and social impact assessment:** As demonstrated by the benefits and risks assessment, REDD+ PaMs can have both positive and negative impacts on the environment, local stakeholders and society as a whole⁸. Myanmar's Environmental Conservation Law offers

⁷ Note that some workshop participants suggested to consider this as a corruption issue – however, there may be underlying capacity constraints preventing officials from targeting powerful offenders that are not linked to corruption of the individual.

⁸ Examples of possible benefits identified in the assessment include improved water quality, support to livelihoods, enhanced food security and protection of biodiversity; identified risks include conflict over allocation of resources,

Environmental Impact Assessment (EIA) of projects and Strategic Environmental Assessment (SEA) of policies or programmes as mechanisms that could be used to anticipate and address such impacts as part of an effective governance process (see also safeguard e)⁹. However, there is some uncertainty about the degree to which EIA or SEA will be applied to REDD+ programmes or individual PaMs. Based on the information provided by the PLR review, the text of the existing legal framework and the National Land Use Policy suggests that an EIA should be conducted for all projects that involve a change of land category, lease of government land or land acquisition, given the potentially significant impacts that this could have on the environment and local communities. However, feedback from workshop participants and information from the available literature suggests that EIA is currently mainly considered as an instrument to assess major development projects, and might not be applied to REDD+ PaMs at all. Given the amount of resources that would be needed to conduct EIA at the level of individual REDD+ PaMs, it has been suggested that a more realistic proposition could be to conduct a broader SEA for major strategic planning documents only (e.g. for the National REDD+ Strategy or the REDD+ Investment Plan, or any planning documents required by specific funders). However, detailed operational procedures and practical experience currently exist only for EIA, not for SEA. This question should be further investigated, and if necessary, alternative options should be identified to ensure that potential environmental and social impacts of REDD+ PaMs are assessed and addressed. There is also a question about appropriate institutional arrangements to avoid conflicts of interest – if EIA or SEA are to be applied to REDD+, both the entity proposing the intervention (i.e. the Forest Department) and the entity in charge of the EIA/SEA process (i.e. the Environmental Conservation Department) will be located in the same ministry.

The PLR review has also identified a number of areas where limited capacities to comply with existing PLRs could pose a constraint to implementation of REDD+ PaMs in line with the safeguard. These include:

- Capacity of Community Forest User Groups to carry out appropriate management planning, collect information and submit annual reports, and implement “protection” activities in their areas (as mandated by the Community Forestry Instructions)
- Stakeholder awareness of the processes required under the VFV Lands Management Law, e.g. for granting permission to use VFV land, as a basis for improved management and planning of land use
- Capacity of government staff to implement all provisions of the EIA Procedure, including the assessment of social impacts, in an effective and timely manner (see also safeguards c) and e))
- Availability, transparency and consistency of land-related data as a basis for better implementation of processes linked to land classification, tenure clarification, land use planning, issuing of concessions, approval of investments, etc.
- Availability of forest inventory data as a basis for forest management planning.

marginalization of vulnerable groups, displacement of land use pressure to new areas and health risks from inappropriate handling of alternative energy sources. For more details, see the report of the National workshop for assessing benefits and risks of REDD+ in Myanmar, available at

<https://www.unredd.net/documents.html?view=browse&customtags=34&startdate=&enddate=&dmlang=&checkalltags=0>.

⁹ Note that the definition of ‘environmental impacts’ used under the Environmental Conservation Law comprises both environmental and social aspects.

The benefits and risks assessment further highlighted the need to consider capacity requirements in the design of REDD+ PaMs, to avoid overburdening of institutions with possible negative impacts on the effectiveness of forest governance.

As mentioned above, REDD+ PaMs themselves can make a strong contribution towards the enhanced transparency and effectiveness of national forest governance structures, and the set of proposed PaMs for the National REDD+ Strategy includes a number of relevant suggestions, e.g. to address:

- Land tenure clarification
- Participatory land use planning and protected area management planning
- Coherence in the classification of land (e.g. VEV land, Permanent Forest Estate)
- Cross-sectoral coordination on land use
- More consistent application of laws in view of the existence of parallel land management systems in areas controlled by EAOs
- Strengthened implementation of requirements for the granting of concessions or approval of investments and conducting EIAs
- Strengthened legal compliance across all aspects of timber extraction and trade
- Increased accountability and reduced risk of corruption.

Participants at the workshop on the national clarification of safeguards supported the idea that a part of the portfolio of REDD+ PaMs should be dedicated to addressing issues of forest governance.

Recommendations:

Next steps to support the implementation of safeguard b) could include the following:

- **Develop mechanisms to ensure that stakeholders are comprehensively informed about plans for REDD+.** The type of content to be shared should be specified and could include information on the concept of REDD+ and the relevant legal framework, including complaints and feedback mechanisms, and information on the planned REDD+ PaMs (objectives, activities, risk mitigation, budget, progress, impacts, etc.)
- **Develop procedures or guidelines and build capacity to ensure transparency, accountability and fairness** in the implementation of REDD+ PaMs, with particular focus on the allocation of rights to use land and resources and the sharing of benefits
- **Accelerate the implementation of the National Land Use Policy**, especially with regard to the recognition of customary land tenure; in the interim, **design REDD+ PaMs to avoid negative impacts on groups without documented land rights**
- **Clarify to which extent EIA and/or SEA should be applied to plans for REDD+** (one option could be SEA of key strategies and plans), and identify mechanisms to deal with remaining gaps in the assessment and management of social and environmental risks
- **Strengthen cross-sectoral coordination and coordination between different levels of government** on land use (including conversion between land categories) and fully operationalize the existing coordination bodies; implementation of the National Land Use Policy offers major opportunities in this regard
- **Ensure that PaMs to improve law enforcement do not disproportionately affect vulnerable stakeholders**

- **Identify options to address capacity gaps and implementation constraints** in relation to the Community Forestry Instructions, the VFV Land Management Law, the EIA Procedure (and/or any other procedures that will be used to assess social and environmental impacts of PaMs) and the collection and sharing of land-related data.

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

Key PLRs and their provisions:

- **Definition of “indigenous peoples”:** A definition of indigenous people is provided in the 2015 EIA Procedure (“People with a social or cultural identity distinct from the dominant or mainstream society, which makes them vulnerable to being disadvantaged in the processes of development”). Other related terms used in the regulatory framework include “national races”, “ethnic nationalities” and “ethnic groups”. The first two of these are translations of the terms used in the 2008 Constitution, and refer to a list of the ethnic groups that are officially recognized in Myanmar. (The term therefore includes the majority Bamar ethnic group.) The term “ethnic groups” has been defined in the 2015 Ethnic Rights Protection Law as “ethnic groups who have resided continuously within the Republic of the Union of Myanmar, stipulating as the original State. In this expression, naturalized citizens and associate citizens are not included”. These terms are thus not synonymous with the definition of indigenous people as provided in the EIA Procedure, and are translated differently in Myanmar language. It is reported that some ethnic groups have questioned whether the term “indigenous peoples” should be applied to them. Workshop participants have also indicated that the definition of “ethnic groups” from the Ethnic Rights Protection Law is contentious, as ethnic groups may or may not be native (given e.g. the problem of displaced people), and that in their view it did not cover all necessary aspects of the concept. Reflecting this complex situation and ongoing debate, the national clarification of safeguards does not provide a definition of “indigenous peoples”. Instead, it stipulates that a clear and specific definition should be agreed through a comprehensive stakeholder dialogue process involving key government departments and representatives of ethnic peoples.
- **Definition of “members of local communities”:** There is no explicit definition of “local communities” within the PLR framework. The 2016 Community Forestry Instructions specify that persons should live within around 5 miles from a given forest area in order to qualify for participation in a Forest User Group. The Instructions also set out a requirement that a person should have been resident in the area for a minimum of 5 years. Exceptions to both rules are possible depending on local conditions, especially where a forest area is traditionally managed by local people. A 5-year residency requirement is also included in the 2012 Ward / Village Tract Administration Law, if people want to access services available to local citizens. Given that stakeholders in Myanmar are familiar with such requirements, it may be useful to clarify explicitly whether a residency requirement would apply for the purposes of defining “members of local communities” in relation to REDD+ safeguards, and if yes, what it should be. Concerns have been raised about a 5 year minimum requirement being too high in the context of Myanmar, especially in conflict-affected areas, as it might lead to exclusion of a large number

of people. The national clarification of safeguards stipulates that “when ‘members of local communities’ are identified, care should be taken not to exclude persons who have been displaced by conflict or natural disaster”.

- **Rights to land, territories and resources:** Myanmar’s PLR framework provides some protection of officially recognized land tenure rights (e.g. for holders of a land use certificate or other form of legal documentation) in procedures for the acquisition of land for a public purpose such as declaration of a protected public forest, reserved forest or protected area (under the Forest Law and the 2018 Biodiversity and Protected Areas Law), or as a precondition for an investment project (under the Land Acquisition Act and the Investment Rules). Procedures for settling grievances are provided in the Farmland Law (2012), VFV Land Law (2012) and to some degree in the Forest Law (2018) and the Biodiversity and Protected Areas Law (2018). The Land Acquisition Act offers several options of compensation for persons with an interest in the land that has been acquired.

The Farmland Rules, which regulate the work of farmland management committees, also allow for complaint cases to be made about decisions related to farmland, e.g. on the right to work a certain piece of land, and for compensation to be offered if farmland is requisitioned in the state or public interest under the Farmland Law.

Land users without legal documentation generally have much fewer options to assert a right to continued access or compensation than those holding a land use certificate. At the same time, large numbers of people are unable to obtain land use certificates due to administrative problems (such as land not being officially classified as farmland, or missing cadastral maps) or shortages of capacity on the side of the farmland administration bodies. In the case of conflicts over the use of VFV land, the VFV Land Management Rules specify that farmers who are able to present “sound evidence” of having continuously cultivated the land for a long time should not be unfairly dealt with if land use rights are granted to a new land user. Available information suggests that in practice, such existing uses are not always investigated and taken into account before VFV land is reallocated. The new Biodiversity and Protected Areas Law (2018) states that the Director General shall, with the approval of the Ministry, make provisions for customary rights and privileges of the people in the region where it is proposed to establish a protected area.

One of the objectives of the National Land Use Policy (2016) is to recognize and protect customary land tenure rights and procedures of the ethnic nationalities. The Policy also stipulates that the process of land use planning (to be carried out by newly established Land Use Committees) should be conducted in a participatory manner and protect all land use rights, whether they are registered or not registered. It further requires that any proposed changes in land use should be made based on an understanding of their potential impacts on existing livelihoods, land use and land tenure rights. However, no laws or regulations to implement these parts of the policy have yet been passed¹⁰. The options for resolving disputes related to land acquisition as proposed in the National Land Use Policy have also not been made operational yet.

A particularly difficult case is the question of customary rights for land users practicing shifting cultivation, as this practice does not receive consistent treatment under Myanmar's PLR

¹⁰ In some areas under the control of EAOs, land registration programmes have been carried out; the Union government may agree to recognize those (as has happened for example in the 2012 Myanmar-KNU ceasefire agreement).

framework. The Farmland rules ban shifting cultivation, and the Forest Law and Forestry Policy, as well as a number of other PLRs such as the National Action Programme under the UNCCD, treat shifting cultivation as a threat to forests and the environment. At the same time, the National Land Use Policy recognizes it as a legitimate form of subsistence agriculture that should receive full consideration in the context of customary land tenure and use rights. It has been argued that the recently formed Ministry of Ethnic Affairs could play a role in promoting the use rights of ethnic communities, but so far no related initiatives have been taken.

Some protection for forest users' rights can be obtained through participation in a Forest User Group under the Community Forestry Instructions, which grant members a right to compensation for the loss of trees and crops due to development projects being implemented in their area. They also instruct the Forest Department to assist Forest User Groups in protection against encroachment and illegal logging or extraction of non-timber forest products. The Community Forestry Instructions name traditional management of a forest area by the local community as one of the criteria for approval of community forestry operations. However, as the Instructions are not backed up by a corresponding law, the right to compensation may not be enforceable in relation to development activities that come under the authority of other ministries than MONREC.

Somewhat stricter requirements apply to projects that involve involuntary resettlement, or that could have adverse impacts on indigenous people as defined in the EIA Procedure. For these cases, the EIA Procedure stipulates that, until national procedures governing such projects have been issued by the responsible ministries, international good practice shall be applied. The standards of the World Bank and Asian Development Bank are cited as acceptable examples of such good practice. Under World Bank safeguard policies, Free, Prior and Informed Consent (FPIC) of indigenous peoples is required for all interventions that involve land acquisition or would lead to their displacement and/or entail cultural harm or appropriation. Where a project causes people (indigenous or non-indigenous) to be displaced, the EIA Procedure assigns responsibility to the project proponent to support affected persons until they have regained at least their former level of socio-economic stability. The Involuntary Resettlement Safeguards of the Asian Development Bank recognize a right for all displaced persons to receive compensation, although the level of compensation varies depending on whether the persons had formal legal rights to the land from which they are displaced, claims to the land that are recognized or recognizable under national law, or neither formal legal rights nor recognized or recognizable claims. According to the ADB Safeguards, compensation, assistance and benefits should be offered in order to enhance or at least restore the livelihoods of all displaced persons in real terms relative to pre-project levels and to improve the standards of living of the displaced poor and other vulnerable groups. The ADB Involuntary Resettlement Safeguards do not contain a specific FPIC requirement for indigenous people, and can under certain conditions allow indigenous people to be resettled against their will.

In areas covered by the 2015 National Ceasefire Agreement, for the duration of the peace talks, consultation with EAOs and local communities is also required before projects that could have a major impact on civilians living in the area are planned or implemented.

- **Respect for traditional knowledge:** As described above, the World Bank safeguards procedures (which can be applied to meet the requirements of the EIA Procedure) ask for FPIC to be obtained where a project could affect critical cultural heritage of indigenous people or proposes to make use of cultural heritage, including knowledge. The 2015 Ethnic Rights Protection Law

sets out the right of ethnic groups to preserve their cultural heritage, and gives the Ministry of Ethnic Affairs duties and powers to engage in development and preservation of culture and customs of ethnic groups. It also requires ethnic groups to be informed about major projects in their areas, and for coordination about these projects to take place. There are as yet no rules to implement this law. According to the 2017 Investment Law, business investments that may affect the traditional culture and customs of the ethnic groups within the Union should not be permitted, and all investors should respect and comply with the customs, traditions and traditional culture of the ethnic groups.

- **Right to benefit-sharing:** The National Land Use Policy asks for land-related laws to be amended so that persons affected by land acquisition receive the right to invest in the project for which the acquisition was made. No other relevant provisions have been identified.

Gaps in information on the PLR framework:

Most of the information available is focused on rights to compensation in the case of land acquisition for development, or for the establishment of protected areas. There is less clarity on the rights of local stakeholders in relation to potential restrictions on land use resulting from land use planning and protected area planning/management decisions. This is an important topic given that improved allocation of land to different uses is a central element in a number of proposed REDD+ PaMs.

The information gaps on the applicability of EIA requirements to REDD+ programmes or individual REDD+ PaMs, as mentioned under safeguard b), are also relevant here. If the EIA Procedure is considered not applicable to (most) REDD+ PaMs, this will rule out one of the most comprehensive available legal instruments to protect the land use rights of local stakeholders, especially indigenous communities and those applying customary land use practices.

Assessment of whether the safeguard is fully addressed:

A number of identified weaknesses in the PLR framework are relevant to the implementation of REDD+ PaMs in line with safeguard c). These are described below:

- **Rights to land, territories and resources:** The key concern raised in this context during the benefits and risks assessment is whether the livelihoods of traditional farmers and other land users without formally documented use rights (such as users of forest resources or people practicing shifting cultivation) could be affected by PaMs related to land use planning, expansion of the PFE, strengthening of the protected areas system, establishment of plantations, increased law enforcement, etc. As described above, there is little protection in the current PLR framework for traditional use rights of such groups, and even less for land users with no long and well documented history of working the land (e.g. internally displaced persons). The Ministry of Ethnic Affairs could undertake initiatives to resolve some of these issues based on its mandate under the Ethnic Rights Protection Law, but so far this has not happened. The EIA Procedure could also be an important instrument to ensure that indigenous peoples' and local communities' rights to lands, territories and resources are respected in REDD+ implementation. However, as pointed out above, it seems unlikely at this stage that EIA procedures would be applied to all types of REDD+ interventions that could have an impact on the rights of indigenous peoples and local communities, so there would be gaps in coverage. Concerning the application of FPIC, workshop participants further highlighted a need for clearer guidelines on how to conduct the process, as there were shortcomings in practice even where

such procedures are applied (e.g. with regard to the provision of adequate information). As recommended under safeguard b), a two-pronged approach could be used to handle the complex land rights situation. This means that in the short term, the design of REDD+ PaMs would be the key means for addressing the safeguard (e.g. through appropriate guidance for the assessment of social impacts, for the involvement of stakeholders in decisions on land use, or for applying FPIC procedures), while over the medium to long term increased clarification of land use rights would be sought (e.g. through implementation of the National Land Use Policy and/or the strengthening of legal provisions on participatory management approaches such as Community Forestry and Local Community Protected Areas).

- **Rights to preserve cultural heritage and customs:** While such rights are recognized in the Ethnic Rights Protection Law, no rules to implement this law have been passed and currently the only operational mechanism that could ensure they are respected is that of the EIA Procedure. However, available information suggests that intangible cultural heritage (such as practice of traditional lifestyles) is not routinely considered in EIA. The question as to which types of REDD+ PaMs would be subject to an EIA or SEA is again relevant here.
- **Rights to benefit-sharing:** There are currently no provisions in the PLR framework that would specifically require benefits from REDD+ PaMs to be shared with indigenous people and local communities (or any other stakeholders). If PLRs to regulate REDD+ are being considered (e.g. legislation on carbon rights), the issue of benefit-sharing could be addressed there. If not, the approach to benefit-sharing could be set out in REDD+-specific documents (e.g. the National REDD+ Strategy or guidelines for the implementation of REDD+ PaMs). It should be noted that a large variety of approaches to benefit-sharing are possible and different countries are making different choices (e.g. direct involvement of stakeholders in implementation of REDD+ activities or their monitoring and evaluation, PES schemes, allocation of monetary vs. non-monetary benefits, etc.). It may be possible to draw on some experiences from the sharing of benefits within Community Forest User Groups, as required by the Community Forestry Instructions (benefits are to be shared equally in accordance with the group's Management Plan).

There are also some areas where capacities to implement or comply with existing PLRs could be limiting for the application of safeguard c) to REDD+ PaMs. These include:

- **Implementation of EIAs and SEAs:** Available information suggests that the capacity of government institutions to fully implement all aspects of the EIA Procedure is currently insufficient, e.g. with regard to the involvement of technical experts of various backgrounds in the development of EIA reports (to cover the full range of relevant environmental and social considerations), the involvement of stakeholders in a way that is accessible and effective for all groups, or the timing and sequencing of EIAs within the process of approving a project or investment. There is a particular shortage of social specialists in MONREC, while the Ministry of Ethnic Affairs is not currently much engaged in the EIA process. As discussions at the workshop have shown, there is also a widespread misconception that social and health-related aspects are not covered in the EIA Procedure. As mentioned earlier, practical experience with the implementation of SEAs at the level of strategies or programmes is basically non-existent. It is therefore likely that even if EIA or SEA were applied to planned REDD+ actions, the capacity of the responsible institutions would need to be built to avoid shortcomings in the way the

processes are carried out. This applies not least in relation to the social aspects that are relevant for safeguard c).

- **Equitable inclusion of all stakeholders:** A number of concerns have been raised during the assessment of benefits and risks about the possibility of elite capture in processes for the recognition of customary rights or land use / management planning. In particular, there appears to be a risk that poor or vulnerable groups might lose out due to a lack of information about their rights or a lack of capacity to assert them, or due to a lack of awareness about the needs of vulnerable groups on the part of those conducting the process. The same risk is likely to appear in relation to any future arrangements on benefit-sharing.
- **Access to justice:** There are concerns that some members of minority ethnic groups may be less able to access the available mechanisms for settling complaints and grievances under the Farmland Law, the VFV Land Management Law and the Forest Law due to language barriers. Also, the authorities in charge often do not have enough staff and resources to deal with complaints, and are not well coordinated with each other. Capacity issues will also need to be considered in any new mechanisms to be set up specifically for REDD+, such as a REDD+ GRM.
- **Land-related data:** The assertion of land rights and efforts to clarify land tenure can be hindered by the continued lack of systematic and accurate records of land ownership in some areas.

As already mentioned under safeguard b), some of the proposed REDD+ PaMs can themselves help to strengthen the PLR framework. PaMs that support the clarification and recognition of land rights are of particular importance here.

Recommendations:

- Clarify whether the **definition of “indigenous people”** as provided by the EIA Procedure should be applied across all aspects of implementing the safeguard (which would facilitate building on the existing EIA process), or whether a new definition should be developed. This question should be addressed through a comprehensive stakeholder dialogue process as stipulated in the national clarification of safeguards. In the meantime, one option could be to refrain from differentiating “indigenous people” and extending the rights due to them to all members of local communities, thus protecting everybody’s rights to the same high standard. (This approach has been adopted by a number of other countries where the term “indigenous people” proved contentious.)
- Clarity should also be established on the **definition of “members of local communities”**, especially with regard to a possible minimum residency requirement.
- **Develop suitable mechanisms to involve local stakeholders in the planning of REDD+ PaMs and provide compensation** in the case of use restrictions or prohibitions of use affecting their rights, setting up a fair and transparent process that takes into account the needs of vulnerable groups and respects FPIC requirements where applicable.
- **Develop clear guidelines for processes to request the Free, Prior and Informed Consent (FPIC) of affected stakeholders** in REDD+ PaMs, including guidance on when FPIC should be sought and how the process should be conducted.
- **Build the capacity of government staff for conducting participatory and inclusive planning processes, and raise awareness of local stakeholders** (in particular vulnerable groups) about

REDD+ procedures, their opportunities to participate in REDD+, and options for raising complaints if they feel their rights are not respected (e.g. GRM).

- **Clarify whether (and if yes, how) EIA and/or SEA should be applied to different types of REDD+ interventions.** If it turns out that EIA/SEA are not applicable to some types of PaMs that could affect the rights of indigenous people and local communities, alternative processes should be identified to assess these possible impacts during the planning stage and ensure they are managed appropriately.
- **Development of the National Land Law should be accelerated,** and the situation of persons without land use certificates, including those who practice customary land uses, should be addressed in the law.
- **Provisions on participatory management approaches (e.g. under the Forest Law and the Biodiversity and Protected Areas Law) should be strengthened.** In the case of the Community Forestry Instructions, given that Community Forestry plays an important role in some of the proposed PaMs, options should be considered to strengthen the instructions by recognizing them in a law, to increase their applicability outside of the designated forest area.
- Options should be identified to **address the implementation constraints described above in relation to the recognition of rights to land, resources and territories,** including through efforts to strengthen capacity and access to information on land tenure, land classification and land use rights.
- **An inclusive and equitable approach should be developed for the sharing of benefits from REDD+ with stakeholders,** including indigenous people and local communities. There is a large variety of possible approaches, and experiences from other countries could be useful.

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

Participation in REDD+ actions, as required by this safeguard, can take several forms. While broad stakeholder participation in planning and monitoring is possible for all types of REDD+ actions, only a subset of stakeholders may be in a position to actively participate in the implementation of activities. Both forms of participation are discussed below.

Key PLRs and their provisions:

- **Definition of “relevant stakeholders”, and legitimacy and accountability of stakeholder representatives:** There is no definition in the PLR framework that would indicate who should be considered “relevant stakeholders” in the context of REDD+ actions. However, a stakeholder mapping for REDD+ has been conducted at the national level through the Technical Working Group on Stakeholder Engagement and Safeguards as part of preparations for the development of the National REDD+ Strategy. This could be used as a starting point to identify who should be involved in the planning and/or implementation of specific REDD+ PaMs, depending on the geographic scale at which they are aimed. Mechanisms for participation will likely need to be different for the planning and implementation of site-level interventions as compared to PaMs that are aimed at the national or subnational level (e.g. policy-oriented PaMs or PaMs supporting legal reforms or institutional strengthening), or for the development of REDD+ strategies and programmes. While direct participation of local stakeholders may be possible for site-level interventions, discussions at the national level may need to involve representatives

selected through an appropriate mechanism. The currently available information suggests that there are no provisions in the PLR framework about how representatives of indigenous peoples and local communities should be selected to ensure that they can legitimately speak on behalf of their stakeholder group. There are also no specified mechanisms to ensure that the representatives remain accountable to their group.

- **Definitions of “indigenous peoples” and “local communities”:** these points have been discussed under safeguard c).
- **Establishment of mechanisms or platforms to facilitate participatory processes during the design, planning, implementation and monitoring of REDD+ strategies and PaMs:** No mechanisms or platforms specifically aimed at facilitating participation in REDD+ strategies or PaMs are mandated by existing PLRs. However, a number of platforms and working groups have been created at the national level as part of the readiness process (e.g. the REDD+ Task Force, the Technical Working Groups on Drivers & Strategy and on Stakeholder Engagement and Safeguards and the REDD+ Stakeholder Network). For the subnational level, there are a number of existing structures and platforms that could potentially be used as a starting point, to avoid having to create new ones. For example, the interim arrangements set out by the National Ceasefire Agreement could offer a platform for engagement between the Union Government and EAOs. Building on the Land Use Committees at State/Region, district and local level as mandated by the National Land Use Policy could be a possibility to engage a range of stakeholders, once these committees are established. According to the NLUP, the State/Region committees should include farmers’ representatives as well as representatives from all local ethnic nationalities and relevant experts. The local level Land Use Committees will be tasked with conducting public consultation on proposed land use maps, and should therefore be in a good position to facilitate stakeholder participation. A second option that could be explored for the local level is the possibility to involve stakeholders through the recently established Township Planning and Implementation Committees, or where these do not yet exist, the Township Management Committees. Another entry point that has been mentioned by workshop participants are the Farmland Administration Bodies (FAB) and the VFV Land Management Committees, which exist at the different administrative levels. However, the mandate of these bodies is focused on the land category for which they were set up, and broadening their remit might be difficult. Also, their composition is mainly made up of government officials; for example, the Farmland Administration Bodies do not include elected stakeholder representatives except at the village tract level.
- **Public Participation in EIA:** As explained under safeguards b) and c), EIA and/or SEA could play a role in managing the social and environmental impacts of some REDD+ PaMs. If this option is pursued, stakeholder involvement in EIAs or SEAs related to REDD+ should be supported as part of ensuring full and effective stakeholder participation in REDD+ actions. According to the 2015 EIA Procedure, the proponent of a project that requires an EIA has to arrange for appropriate public consultation throughout all phases of the process, and disclose documentation to the public in a timely manner. Consultations should include all stakeholders who could be affected by, or otherwise have an interest in, the project. There is not much detail in the Procedure about how this should be done, for example how accessibility of the consultations for vulnerable stakeholder groups or groups with low capacity should be achieved. Participants in the national safeguards clarification workshop commented that implementation of the procedure is still sometimes weak. Draft Guidelines for Public Participation in Myanmar’s EIA Process have been

finalized in 2017 by a multi-sector working group, but have not yet been adopted. The Guidelines propose a requirement to develop a Public Participation Plan for the EIA process that includes complaints management and grievance redress mechanisms. They also suggest that the Environmental Management Plan (EMP) included in the final EIA Report should set out a complaints and grievance management mechanism for the project. The guidance on identification of persons affected by the project and other stakeholders that is provided in the draft Guidelines could potentially be useful in the wider context of identifying relevant stakeholders for REDD+ PaMs (see above), even if it turns out that the full EIA Procedure will not be applied in the REDD+ context.

Gaps in information on the PLR framework:

No particular gaps in information have been identified for this safeguard, except for the question mentioned earlier about the applicability of EIA/SEA to different types of REDD+ PaMs.

Assessment of whether the safeguard is fully addressed:

There are currently very few legal provisions that would help to ensure REDD+ PaMs are designed and implemented in line with safeguard d), with the notable exception of the EIA Procedure in case it is found to be applicable to REDD+. The draft Guidelines for Public Participation in EIA could also provide useful material that could be drawn upon in the development of guidance on participation for REDD+ PaMs.

Topics on which further clarification and the development of specific approaches for REDD+ would seem particularly useful include:

- Guidance for the identification of relevant stakeholders and representatives of stakeholder groups, as appropriate
- Definition of what is considered as “full and effective” participation, and guidance on suitable mechanisms for the involvement of stakeholders in different types of PaMs, including (where appropriate) their monitoring
- Guidance on where and how stakeholders should be offered the opportunity to participate in PaMs implementation¹¹.

As with safeguard c), questions of stakeholder capacity to participate in planning processes and make their perspectives heard are highly relevant for the effective implementation of this safeguard. Capacity-building and logistical support may be necessary especially for vulnerable and marginalized stakeholder groups, and their needs may need to be specifically considered in the design of mechanisms for participation (e.g. there may be a need to ensure that people without formal land use rights are not excluded from the process). Given that public participation in decision-making on land use is a relatively new concept in Myanmar’s legal framework (both the NLUP and the EIA Procedure are less than five years old and there are still gaps in their implementation), the capacity of those who are tasked with conducting consultations may also need to be built.

¹¹ At present, the only element of the PLR framework that makes any reference to involving local communities in interventions implemented in their vicinity is the stipulation in the National Land Use Policy that land-related laws should be amended so that persons affected by land acquisition receive the right to invest in the project for which the acquisition was made.

A number of the PaMs proposed for the National REDD+ Strategy already explicitly include participatory approaches in their design, e.g. PaMs on land use planning, promoting community forestry and enabling more effective creation and management of protected areas.

Recommendations:

- Identify options to address the PLR gaps described above. It seems likely that REDD+-specific solutions such as the **development of guidance for the identification of stakeholders** and/or their representatives, and for **stakeholder involvement in different types of REDD+ PaMs**, offer the most straightforward approach for ensuring that REDD+ implementation is in line with safeguard d).
- **Build the capacity of both government staff and local stakeholders** (in particular vulnerable groups) for participatory processes, and ensure that adequate levels of support are available.
- As suggested by participants at the national clarification workshop, **stakeholders or stakeholder groups should have the possibility to 'self-identify'** to allow for inclusive participation. Mechanisms should also be developed to **ensure that stakeholder representatives are well aware of their roles and responsibilities**, and that there is a two-way flow of information between them and the group they speak for.
- **Guidelines for stakeholder involvement should address participation in all stages of PaMs development and implementation**, including the assessment of potential impacts, design and planning, implementation of activities, and monitoring/evaluation. It is worth exploring whether some elements of the draft Guidelines for Public Participation in EIA could be drawn upon in this. Options to finalize and adopt the EIA Participation Guidelines themselves should also be pursued.

Safeguard e: [REDD+] actions are consistent with the conservation of natural forests and biological diversity, ensuring that the [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

This safeguard includes a particularly wide range of aspects, as it covers both environmental and social impacts of REDD+, and calls both for the achievement of benefits and the avoidance of harm. Not surprisingly, the largest number of potential benefits and risks identified during the assessment of proposed REDD+ PaMs for Myanmar's National REDD+ Strategy relates to safeguard e). As it is impossible to foresee all possible impacts for all potential PaMs at this stage, the focus in assessing the PLR framework is on the general availability of procedures for the management of environmental and social impacts of REDD+ actions, on capacities for their implementation, as well as on selected priorities among the identified benefits and risks.

In order to identify PLRs that can help to ensure that REDD+ actions are aligned with safeguard e), it is useful to look at the different available mechanisms for managing the environmental and social impacts of land-related policies and measures. Options to support positive outcomes exist at various stages in the planning and implementation of REDD+ actions:

- **Selection and prioritization of PaMs:** the REDD+ portfolio can be chosen so that priority is given to those PaMs that are well suited to achieving positive impacts on forests and other

ecosystems, and on the well-being of stakeholders. For example, where there is potential to implement REDD+ effectively and equitably through PaMs that support the protection and conservation of natural forest (as specified in the safeguard), such actions should be prioritized over other PaMs that are likely to yield lower benefits for biodiversity and ecosystem services (such as reforestation). Often, combining PaMs that complement each other in terms of their expected benefits, or in terms of mitigating each other's risks, can also be a useful approach. (In fact, this is reflected in the portfolio of PaMs currently proposed for Myanmar's National REDD+ Strategy). For example, it can make sense to combine PaMs that aim to make agricultural practices more effective with PaMs focused on protecting remaining forest areas, or to balance PaMs that strengthen forest law enforcement against PaMs that develop alternative livelihood options for communities who depend on forest products.

- **Location of PaMs:** the impacts of a PaM often depend on where it is implemented. For example, PaMs that reduce deforestation rates will be most beneficial for biodiversity in an area with forests of high conservation value, and PaMs that entail some environmental risks (such as setting up infrastructure for renewable energies) may be less harmful if located at some distance from remaining natural forests. Social benefits can often be increased by targeting PaMs towards areas with high poverty rates or with serious socio-economic or health problems resulting from environmental degradation.
- **Design of PaMs:** the details of how a PaM is implemented can determine the level of its positive or negative impacts. For example, applying good forestry or agricultural practice, setting suitable limits for resource extraction, facilitating the inclusion of vulnerable stakeholders, setting up structures for coordination with other sectors or ensuring that workers receive training on safe handling of equipment can all help to ensure that REDD+ actions deliver the best possible outcomes.
- **Implementation, monitoring and adaptive management of PaMs:** Once the planning stage has been completed, a key question is whether PaMs are actually implemented in line with the plan (e.g. whether any agreed risk mitigation measures are being applied). Monitoring the implementation and outcomes of a PaM can help to detect any deviations from the plan; it can also show if the desired impacts are being achieved, or if any adaptations in PaM design are needed.

When the possible impacts of a specific PaM or a portfolio of PaMs are being assessed, there are often both direct and indirect effects to consider. Assessing indirect effects can be methodologically difficult, especially if the impacts occur at a distance from the area where the measure is being implemented, or in another ecosystem.

With regard to impacts on ecosystem services, it can be helpful to identify which of the many potential services that could be affected by REDD+ are most relevant in the national context. The ecosystem services that were most frequently mentioned during the assessment of benefits and risks for proposed PaMs in Myanmar are soil erosion control and regulation of the quality and quantity of water at the watershed level. Regulating local climate and providing recreational value were also raised as potential benefits derived from forest ecosystems.

Key PLRs and their provisions:

- **Definition of natural forest:** There is no definition of 'natural forest' in the PLRs that have been reviewed, although some of them use the term (e.g. the 2016 Community Forestry Instructions),

and the Forest Department has a Division of Natural Forest and Plantations. According to the Forest Reference Level submission, the national codes to be used for land use/cover mapping do not distinguish between natural and planted forest. If no suitable definitions are available from other appropriate sources - such as technical documents relating to the forest inventory - it will be important to reach agreement on the criteria for identifying areas that hold natural forest (and are therefore, according to safeguard e), off-limits for any REDD+ PaMs that could lead to forest conversion).

- **Avoiding conversion of natural forest:** There are no legal provisions in Myanmar that would amount to a ban on converting natural forest to other uses, such as timber or fuelwood plantations¹². However, there are different kinds of approvals that may need to be obtained for the establishment of plantations or conversion to agriculture, depending on:
 - 1) Whether the land in question is classified as forest, or as another land type (e.g. in cases where forest is located on VFV land). Conversion of forest situated on 'Forest Land' to agricultural land or to aquaculture (e.g. in the case of mangroves) has to be approved by MONREC, or, if an Investment Permit is required (see below), by the "relevant State or Region Authority" as per the 2017 Myanmar Investment Rules. The available information suggests that a conversion of forest situated on Forest Land to a plantation would not require a change in the official land classification. According to the Forest Law, plantations¹³ may be established on Forest Land or other land at the disposal of the government through the Director General of the Forest Department with the approval of the Minister. Village firewood plantations can even be established in a reserved forest or protected public forest. A number of government policies or programmes (e.g. the Forest Policy, the National Energy Policy or the National Reforestation and Rehabilitation Programme) implicitly suggest that plantation activities should be located in degraded or denuded forest lands. However, there are no explicit legal provisions requiring this, or preventing the establishment of plantations in areas with good forest status. The 2016 Community Forestry Instructions allow establishment of community forests in "degraded natural forests where natural regeneration is difficult." On VFV land that is forested, MONREC is responsible for managing the trees, but MOALI remains responsible for the land. Where a conversion is planned on VFV land, the VFV Land Committee is in charge of assessing the proposal, and is tasked with undertaking consultation with relevant ministries including MONREC before the change is approved.
 - 2) Whether the land in question is located within a protected area, in which case all questions related to land use are managed by MONREC¹⁴.
 - 3) Whether the planned change in land use meets the criteria for requiring an EIA, in which case an Environmental Compliance Certificate (ECC) is needed for the activity to go ahead. The authority for approving the findings of an EIA and issuing an ECC lies with

¹² Conversion of forest to plantations is the most relevant scenario for safeguard e), as it seems unlikely that any REDD+ measures would intentionally support the conversion of forest to a low-carbon land cover type such as an agricultural field. However, indirect land use change caused by a REDD+ PaM could also be relevant. For example, if crop cultivation or cattle grazing is banned from a plot of land under the REDD+ PaM, this could lead to forest being cleared elsewhere to make up for the loss in agricultural area.

¹³ The types of plantations regulated under the Forest Law include: commercial plantations, industrial plantations, environmental conservation plantations, local supply plantations, village firewood plantations and other plantations.

¹⁴ Restrictions on land use in protected forest areas are governed by the 1992 Forest Law, the 1995 Forest Rules and the Community Forestry Instructions (revised in 2016).

MONREC. Based on the criteria mentioned in the EIA Procedure, it can be argued that all REDD+ actions related to concessions and/or land conversion would need either an EIA or an SEA under the Environmental Conservation Law. As mentioned earlier, however, it is not clear whether this is in line with current practice for determining the applicability of EIA and SEA to projects.

- 4) Whether the change in land use meets the criteria for requiring an Investment Permit under the 2016 Myanmar Investment Law and the 2017 Myanmar Investment Rules (e.g. if an agricultural investment covers more than 1,000 acres of land); the Myanmar Investment Commission (or the relevant regional or state investment committee for investments under US\$ 5 million) is responsible for approving Investment Permits.

Different rules may be applied in areas under the control of EAOs. For example, the Karen National Union (KNU) has its own investment permitting/licensing systems as well as land use policy, and a KNU forestry policy is in draft form.

Generally, the level of protection from conversion is higher for forests situated within the Permanent Forest Estate (PFE) than for forests on VFV Land. PaMs aiming to support the integration of VFV lands holding forest into the Permanent Forest Estate are thus directly supportive of this element of safeguard e).

- **Avoiding negative impacts (and enhancing positive ones) of REDD+ actions on natural forests, carbon stocks, biodiversity and other ecosystem services:** The only PLRs providing a mechanism for identifying and managing possible negative environmental impacts of projects or programmes are the 2012 Environmental Conservation Law, the 2014 Environmental Conservation Rules and the 2015 Environmental Impact Assessment Procedure, which together set out the mandates and processes for EIA and SEA. If applied at the planning stage of REDD+ strategies and programmes or individual REDD+ PaMs, EIA and SEA could help to identify possible negative environmental impacts and avoid those or mitigate them through measures included in an Environmental Management Plan (EMP). EMPs should also set out a plan for monitoring the success of risk mitigation measures throughout the operational phase of an activity. As mentioned earlier, the Strategic Environmental Assessment guidelines stipulated in the EIA Procedure have not yet been issued by MONREC and there is little relevant experience for practicing SEA.

With regard to the identification of appropriate locations for PaMs, some forms of land use zonation and accompanying rules for the type of activities that can be allowed are provided by the Forest Law (with regard to Forest Land and protected forest areas), the 1994 Protection of Wildlife and Conservation of Protected Areas Law and its successor, the 2018 Biodiversity and Protected Areas Law (for other categories of protected areas), the VFV Land Law, and the Farmland Law. The National Land Use Policy further states that in the development of land use plans, “agricultural and ecological conservation zones” should be established to encourage protection of land resources and the environment.

For REDD+ PaMs that receive funding from external sources, environmental standards and risk mitigation procedures (including monitoring requirements) may apply through the procedures of the organizations through which the funding is channeled; examples include the Operational Policies of the World Bank or the Performance Standards of the International Finance Corporation.

Based on the findings of the PLR review, it appears that few standards or guidelines have been

issued in Myanmar to prescribe environment-friendly practices for the types of land management activities that are likely to be included in REDD+ PaMs, although the Environmental Conservation Law provides MONREC with the powers to issue environmental quality standards and guidelines and propose economic incentives and conditions for sustainable development that is compatible with environmental conservation. Existing guidelines and standards that could be relevant for REDD+ include the Criteria & Indicators for Sustainable Forest Management and the Reduced Impact Logging guidelines. There is currently no certification system for forest products or products from plantations that addresses environment-friendly management and harvesting practices.

- **Avoiding negative impacts (and enhancing positive ones) of REDD+ actions on economic and social well-being:** In addition to environmental impacts, the EIA Procedure covers social, socio-economic, health, personal safety and cultural impacts of interventions¹⁵. Similarly, the standards and procedures applied by funding organizations typically address both environmental and social aspects. Thus, much of the information described under the previous point applies here as well.

Also, some of the provisions mentioned under safeguards c) and d), such as procedures for raising grievances or the draft Guidelines for Public Participation in EIA (once adopted), can help to ensure that social considerations are reflected in the planning and implementation of REDD+ PaMs.

Very few PLRs were identified that could incentivize the planning of REDD+ PaMs to enhance positive impacts. The Myanmar Investment Commission has issued a notification (MIC 3/2017) on “promoted geographies” under the Myanmar Investment Law, based on which investors in less-developed regions of Myanmar can obtain an exemption from income tax that lasts longer than that which is granted to investors in the more highly developed areas. In theory, this mechanism could help to direct REDD+ PaMs that are implemented through private investment towards regions with higher poverty rates. If these PaMs are designed to support local livelihoods (e.g. by providing employment), this could have positive socio-economic impacts. With regard to the consideration of gender aspects in REDD+ PaMs, the National Land Use Policy outlines equal rights of men and women in decision-making and consultation on land use (including forestry). However, this part of the policy has not yet been operationalized, and concerns have been raised that although the Farmland Law, VFV Land Law and Forest Law are gender-neutral, women and men may not have the same opportunities to exercise or claim their rights under these laws. This is partly due to customary practices and prevailing social and gender norms, as well as unclear administrative and institutional frameworks when it comes to women’s rights to ownership of land and resources. Women also often lack information about their rights, and remain very underrepresented in forestry planning and management meetings and decision-making processes.

There may be further relevant components in Myanmar’s PLR framework, such as policies for social inclusion, labour and employment-related laws or regulatory measures initiated under the National Strategy for Rural Development and Poverty Reduction. However, the information collected for the PLR review did not reveal any provisions beyond those already described.

¹⁵ Nevertheless, as mentioned earlier, there seems to be a common perception that the EIA Procedure only addresses environmental aspects.

Gaps in information on the PLR framework:

Some of the information gaps raised for other safeguards are also relevant to safeguard e), especially those on applicability of EIA/SEA requirements to different kinds of REDD+ programmes or individual PaMs, and on procedures related to land use planning, including any standards within those procedures that could ensure land use planning leads to overall social and environmental benefits and avoids risks of elite capture and dominance of short-term economic interests.

As mentioned above, given the wide range of potential environmental and social impacts linked to different types of REDD+ PaMs, it seems likely that not all relevant PLRs, especially at the sub-legal level (i.e. the level of rules or instructions), could be covered by the PLR review. Further targeted exploration of PLRs related to key types of activities or impacts in the context of REDD+ would be useful to close this gap. Based on the findings of the benefits and risks assessment for the PaMs currently under discussion, important information could relate to PLRs (including standards, instructions or guidelines) on:

- Identifying particularly sensitive natural areas or areas of high value for biodiversity, ecosystem services or carbon stocks, and protecting them from harmful land use practices (e.g. by considering them in forest management plans, land use plans, etc.) – the available information suggests that this is an area where the PLR framework is very weak.
- Sustainable agricultural practices (e.g. with regard to soil conservation, limiting use of agrochemicals, maintaining genetic diversity of crops, etc.) and consideration of environmental aspects and social inclusivity (e.g. women, poor farmers and those without land rights) in the work of agricultural extension services
- Sustainable location, establishment and management of plantations (including choice of tree species, e.g. to avoid inadvertent introduction of invasives)
- Sustainable management of activities likely to be promoted as alternative livelihood strategies, e.g. ecotourism¹⁶, use of non-timber forest products
- Addressing environmental impacts and impacts on access to land / livelihoods from different kinds of alternative energy sources including bioenergy
- Health and safety in relation to new practices that could be promoted by REDD+ PaMs, such as use of alternative sources of energy, community forestry activities or alternative practices in agriculture
- Preventing and managing conflicts related to land use planning, protected area management, processes for tenure recognition, etc.
- Promoting Corporate Social Responsibility measures and social standards in commercial agriculture and forestry operations
- Promoting socially responsible lending
- Promoting equal opportunities for women and men in government programmes.

Assessment of whether the safeguard is fully addressed:

Based on the findings of the PLR review, the existing PLR framework contains some strong points in relation to safeguard e), but there are also a number of gaps as detailed below:

¹⁶ The 2018 Biodiversity and Protected Areas Law makes reference to prescribed regulations and Standard Operating Procedures for community-based tourism and ecotourism activities. It is not clear, however, whether these have already been developed.

- **Avoiding conversion of natural forest:** As mentioned above, there are no provisions in the PLR framework that would prevent REDD+ PaMs being used for the conversion of natural forest. Given the complex legal situation on land use governance, the fact that responsibilities for approving forest conversion are distributed among a number of institutions, and the absence of an official definition of ‘natural forest’, it seems likely that REDD+-specific procedures would be the most efficient way to address this aspect of the safeguard.
- **Avoiding negative impacts of REDD+ actions:** The EIA Procedure provides a framework for the identification and mitigation of environmental and social risks that could address many of the concerns raised during the benefits and risks assessment for the National REDD+ Strategy (see above), if the Procedure was applied consistently to all PaMs. Strategic Environmental Assessment across the whole portfolio of planned REDD+ PaMs at the national level or within smaller planning units such as a region or state could capture issues around the selection, prioritization and spatial targeting of PaMs, including the consideration of cumulative and landscape-scale impacts. One shortcoming of the EIA Procedure is that it provides little guidance on the assessment of indirect impacts such as those that might be caused by land use displacement (see also safeguard g). The absence of guidelines for SEA and the lack of clarity on whether and how the EIA Procedure would be applied to different types of REDD+ PaMs are further challenges in using this instrument to address safeguard e). In the (likely) case that some or even most types of REDD+ PaMs will not be subject to EIA, the available information suggests that not all potential environmental and social risks may be sufficiently addressed by existing PLRs on land use zonation or environmental and social standards and guidelines. Implementation of land use planning as foreseen by the National Land Use Policy could help to close some of the gaps in relation to the spatial targeting of PaMs, especially if the identification of ecological conservation zones is based on robust data about environmentally sensitive areas, and if REDD+ is explicitly considered in the plans.
- **Promoting positive impacts:** There are very few provisions in the current PLR framework that could promote the design and implementation of REDD+ PaMs in a way that enhances social and environmental benefits, as requested by safeguard e). Most relevant PLRs, including the EIA Procedure, are primarily focused on avoiding or minimizing risks. The definition of “promoted geographies” under the Myanmar Investment Law is the only identified example of a PLR that could provide an incentive for prioritizing REDD+ PaMs to achieve a specific benefit (in this case socio-economic development of under-developed regions). It seems likely that REDD+-specific procedures would be needed in order to fully address this aspect of the safeguard. These could include guidance for the design of different types of PaMs, or incentives for PaMs that meet certain criteria in terms of expected co-benefits. Participants in the national clarification workshop suggested that engagement with stakeholders and cross-sectoral coordination during REDD+ planning could support the identification of opportunities to enhance benefits. Below, some examples are given of benefits identified during the benefits and risks assessment that would be more likely to arise if they are actively promoted during the selection, spatial targeting, design and implementation of PaMs:

 - Improving the **livelihoods and wellbeing of vulnerable and marginalized groups**, such as members of ethnic minorities, poor people and smallholders without secure land tenure, and promoting **gender equality** in the distribution of benefits and burdens of REDD+ PaMs: Often, members of vulnerable groups will find it difficult to participate in PaMs, e.g. because they don’t have access to information or are unable to afford initial

investment or meet legal requirements. They may also more often lose out in the distribution of benefits (such as employment opportunities or payments for ecosystem services) or allocation of burdens (such as increases in workload or loss of access to land), due to prevalent power relationships. If the inclusion of vulnerable groups and gender aspects are factored into the design of PaMs, more equitable outcomes can be achieved and risks of elite capture avoided.

- Increasing the capacity of local community members to **participate in decision-making**: Local stakeholders may often lack the knowledge and skills to make use of participation opportunities even where those are offered. Incorporating related capacity-building into the design of PaMs can provide social benefits that reach far beyond the PaM itself.
- Enhancing the contribution of REDD+ to the **conservation of biodiversity and ecosystem services**: While most REDD+ PaMs will provide some benefits for biodiversity and ecosystem services, their contribution can be increased by prioritizing PaMs and their locations so that high biodiversity areas or areas delivering important ecosystem services are protected. Taking account of landscape-scale aspects such as habitat connectivity and hydrological processes can also improve outcomes. For example, degraded land areas at risk of soil erosion can be chosen as plantation sites in order to enhance the delivery of ecosystem services without compromising biodiversity.
- Improving agricultural practices to deliver benefits for **nutrition, food security, health and environmental quality**: A number of proposed REDD+ PaMs aim to increase productivity in agriculture. The relevant actions (such as strengthening extension services, supporting market access, supporting certification and supply chain measures) can be designed to promote practices that not only increase yields but are also more sustainable in terms of environmental conservation and human well-being, e.g. by diversifying crops, managing soils more sustainably, reducing over-application of agrochemicals, etc. PaMs can also be designed to strengthen the implementation of social standards in commercial agriculture and forestry operations.
- Use of revenues from REDD+ to **support health, education and other social services**: Some REDD+ PaMs will generate income for communities or authorities at different levels. This income could be used in various ways. Setting aside a share of revenues for purposes that are of direct public interest could be a way to enhance social benefits from REDD+.

In addition to the gaps in the PLR framework described above, there are also some areas where capacities to implement or comply with existing PLRs could be limiting for the application of safeguard e) to REDD+ PaMs. These include:

- Capacity to implement EIA and SEA: as mentioned under safeguard c), available information suggests that the capacity of the relevant government institutions to fully implement all aspects of the EIA Procedure is currently insufficient. For example, the review of EIA reports by a team of experts from relevant organizations is often not carried out due to time limitations, and there is insufficient involvement of social experts. Staff may also lack the technical skills to assess some types of impacts. Subjecting all types of REDD+ PaMs to SEA/EIA might place an excessive strain on already stretched resources.

- Availability of tools, skills and information to support the selection of areas for REDD+ implementation: there is a lack of robust data and methodological guidance to inform the consideration of landscape-scale environmental linkages and environmentally sensitive areas, as well as for considering existing land uses and possible indirect impacts of land use decisions, in SEA/EIA and land use planning, or in any other mechanisms to guide the identification of suitable locations and risk mitigation measures for REDD+ PaMs.
- Capacity of relevant stakeholders, especially members of vulnerable groups, to participate in and contribute to EIA, SEA or land use planning processes and get their concerns reflected in the outcome.

Some of the proposed PaMs for the National REDD+ Strategy could help to increase capacities for the application of safeguard e) or address some of the identified PLR gaps, for example PaMs on strengthening the application of EIA and other environmental legislation, improving law enforcement and transparency, collection of data on land use and use rights, and establishing certification schemes for agriculture and forestry products or sustainable supply chain initiatives.

Recommendations:

- **Agree on a clear definition of natural forests** that can be used across all aspects of REDD+, **develop accurate information** on the spatial distribution of natural forests within and outside the official Forest Land and **make this information available** to all those who plan and implement REDD+ PaMs.
- **Identify a mechanism to ensure that REDD+ PaMs do not lead to natural forest conversion.**
- **Identify processes and build capacity for the assessment of potential social and environmental impacts of PaMs** (including indirect impacts) at different stages of planning (e.g. when types of PaMs are selected for inclusion in strategies and plans, and when the planning of concrete steps is carried out by those tasked with implementation).
As part of this, assess the role that EIA/SEA can realistically play in addressing the safeguard, taking into account both the legal remit and available capacities. If SEA is chosen as the main instrument for assessing REDD+ impacts at a programmatic level, it may be useful to build staff capacity in the Environmental Conservation Department and fast-track the development of operational guidelines for SEA.
- Identify processes and build capacity for **managing the social and environmental impacts of PaMs** during the planning and implementation stage, including through appropriate selection, prioritization, location and design of PaMs, and through identification of risk mitigation measures where needed.
- **Consider developing specific guidance for impact assessment and management of REDD+ PaMs**, drawing on the benefits and risks assessments already carried out, and covering questions of particular relevance to REDD+ safeguards such as assessing the risk of indirect land use change (noting the link with safeguard g) and promoting the delivery of benefits. This could make application of EIA/SEA or other impact assessment/risk management procedures simpler and more efficient. The guidance may need to differentiate between different types of PaMs, e.g. policy-level PaMs and site-level interventions.
- Develop mechanisms to **promote the enhancement of priority benefits** for Myanmar (as identified during the benefits and risks assessment, see above), e.g. by providing positive incentives for REDD+ PaMs that deliver these benefits in addition to achieving carbon gains.

- Identify ways to **increase opportunities for women to participate in or benefit from REDD+ PaMs**, e.g. by screening proposed PaMs for possible obstacles to the participation of women.
- **PaMs that involve land use or management planning should be supported by capacity-building and transparency measures** to ensure that environmental and social objectives are appropriately considered, and that ecological linkages at landscape level are taken into account.
- Options to **operationalize suitable monitoring procedures** for the social and environmental impacts of REDD+ PaMs should be investigated, e.g. as part of wider monitoring and evaluation processes for REDD+.

Safeguard f: Actions to address the risks of reversals

There are two ways in which PLRs can support the application of this safeguard: 1) by supporting the assessment and management of reversal risks during the planning and implementation of REDD+ PaMs, and 2) by directly supporting the long-term effectiveness of the PaMs. Both aspects are discussed below.

Key PLRs and their provisions:

- The EIA Procedure does not explicitly ask for consideration of risks to the permanence of the results achieved by a project; however, it does ask for the identification of potential impacts of climate change on the project, as well as for the identification of project impacts that could arise after the intervention has ended. To some degree, this kind of information could be useful for assessing risks of reversals.
- PLRs related to land use planning and establishment of protected areas, such as the National Land Use Policy, the Forest Law and the Biodiversity and Protected Areas Law, could provide a way to secure forest areas, including newly established forests, against future deforestation. The 10-year logging ban imposed for the Bago-Yoma region is an example of an interim measure that could have a role in preventing reversals until more long-term solutions are put in place.

Gaps in information on the PLR framework:

No PLRs have been identified that explicitly refer to reversals of REDD+ results. However, given the specificity of the topic and the fact that the system of rules and procedures for REDD+ in Myanmar is still under development, this is not a surprising result.

There is also no information on whether any procedures other than EIA/SEA exist for assessing and/or monitoring the long-term viability of proposed government strategies or programmes.

Assessment of whether the safeguard is fully addressed:

Based on the findings of the PLR review, it appears that the current PLR framework does not fully address the safeguard, especially in the light of uncertainties concerning the applicability of EIA/SEA to REDD+ planning. REDD+-specific procedures to identify and manage risks of reversals seem like the most accessible option for ensuring that the safeguard is applied.

Possible procedures to support the application of safeguard f) that are mentioned in the literature mostly relate to the design stage and the monitoring of PaMs. They include:

- Identifying the underlying drivers of deforestation and forest degradation and ensuring that REDD+ PaMs address these effectively, rather than just trying to manage land use in a specific

location (note: a drivers study for Myanmar has been carried out and has informed the identification of proposed PaMs)

- Assessing risks of non-permanence for the PaMs (note: risks of non-permanence were assessed during the benefits and risks assessment for the National REDD+ Strategy; some risks were identified in relation to possible ‘rebound effects’, i.e. non-forest land uses and timber extraction might become more profitable as a result of REDD+, which in turn could lead to increased conversion pressure or degradation in the future)
- Ensuring that any permits or other arrangements necessary for REDD+ PaMs are secured for the long term (e.g. contracts for the lease of land for plantations, Community Forest Certificates – currently a maximum term of 30 years applies to many of these arrangements; access to Land Use Certificates will also be important for farmers who are encouraged to invest in agroforestry or other sustainable land use practices)
- Using suitable legal instruments to secure forest areas against future conversion (as mentioned above, the National Land Use Policy may be relevant here)
- Planning for long-term financial viability of PaMs (this may include considering needs for continued awareness-raising or capacity-building among stakeholders).

In order to ensure efficiency, the assessment of reversal risks and possible ways to counteract them could be included as a matter of routine in feasibility assessments or EIA/SEA of proposed REDD+ PaMs.

Capacity-building may be necessary for those tasked with assessing risks of reversals, as some aspects of this can be methodologically difficult (e.g. identifying potential changes in environmental and socio-economic conditions that could affect the success of a REDD+ PaM). A call for capacity-building on this topic was expressly supported by participants in the national clarification workshop.

To enable regular reviews of how successfully the safeguard is applied, the design of the National Forest Monitoring System should include a mechanism for detecting occurrence of reversals. (Note: a definition of ‘reversal’ may need to be agreed.)

Recommendations:

- **Investigate options for incorporating an assessment of risks of reversals into the design stage of REDD+ PaMs**
- **Provide capacity-building on assessment and management of reversal risks** to those who are tasked with REDD+ planning
- **Support implementation of the National Land Use Policy, and integration of REDD+ PaMs into land use plans**, as a way to reduce the risk of reversals due to conflicting developments.
- Develop approaches for **detecting occurrence of reversals** through the National Forest Monitoring System.
- Where reversals are detected, the **reasons should be analyzed so that the design and implementation of REDD+ PaMs can be improved** over time based on lessons learned.

Safeguard g: Actions to reduce displacement of emissions

Similarly as for safeguard f), PLRs can support the application of this safeguard both by mandating the assessment and management of displacement risks, and by directly reducing those risks.

Key PLRs and their provisions:

- The EIA Procedure does not currently call for consideration of project impacts on greenhouse gas emissions, or of indirect impacts on land use change. However, the Procedure does cover the identification of possible impacts of projects on livelihoods; if EIA is applied to REDD+, this information could be relevant for detecting risks of emissions displacement resulting from restrictions on land use imposed through the PaMs.
- PLRs related to land use planning and establishment of protected areas, such as the National Land Use Policy, the Forest Law and the Biodiversity and Protected Areas Law, could provide a way to secure forest areas, including newly established forests, against indirect land use change.
- Initiatives to combat illegal logging, such as the development of a FLEGT-VPA or efforts to enhance cross-border cooperation on timber legality with China, can also help to reduce the risk of emissions displacement.

Gaps in information on the PLR framework:

No PLRs have been identified that explicitly refer to displacement of greenhouse gas emissions. Again, this may partly be due to the fact that climate change-related policies in Myanmar are still fairly young.

Assessment of whether the safeguard is fully addressed:

Based on the findings of the PLR review, it appears that the current PLR framework does not fully address the safeguard. (As with safeguard f), the uncertainties about applicability of EIA/SEA to REDD+ contribute to this gap.) REDD+-specific procedures to prevent or reduce displacement of emissions therefore seem like a good option for ensuring that the safeguard is applied.

As for safeguard f), possible approaches to support the application of safeguard g) that are mentioned in the literature mostly relate to the design stage and the monitoring of PaMs. They include:

- Ensuring that REDD+ PaMs effectively address underlying drivers of deforestation and forest degradation (see also safeguard f)
- Implementing REDD+ in a consistent way across the entire national territory (note: this point may be difficult to implement fully in Myanmar's current situation due to the state of the Peace Process)
- Assessing risks of emissions displacement during the design stage of PaMs (note: risks related to displacement were assessed during the benefits and risks assessment for the National REDD+ Strategy; some risks of emissions displacement, including across national borders, were identified, e.g. as a result of: using agricultural land for plantations; introducing restrictions on land use; strengthening law enforcement in some areas; or promoting a switch to alternative fuels which themselves have a high carbon footprint)
- Designing REDD+ PaMs to minimize identified risks of displacement, e.g. by promoting alternative sources of income for stakeholders affected by land use restrictions, embedding PaMs in land use planning, and using suitable legal instruments to protect forests and other carbon-rich ecosystems from land use pressures shifting to new areas.

Capacity-building may be necessary for those tasked with assessing risks of emissions displacement, as the identification of likely impacts of a PaM in terms of indirect land use change can be methodologically difficult. Approaches to assess such impacts may involve reviewing the possible consequences of the PaM for local livelihoods and for the supply of forest and agricultural products in relation to demand.

Identification of the areas and ecosystems to which displaced land use activities might shift may be required in order to assess the amount of emissions that would be caused.

To enable reviews of how successfully the safeguard is applied, the design of the National Forest Monitoring System should include a mechanism for detecting displacement of emissions.

Recommendations:

- Investigate options to incorporate an **assessment of risks of emissions displacement** into the design stage of REDD+ PaMs
- **Build capacity for identifying and managing displacement risks**
- Support **implementation of the National Land Use Policy**, and **integration of REDD+ PaMs into land use plans**
- Identify ways to **ensure REDD+ is implemented as coherently as possible across all of the national territory**; this may entail a need for coordination with EAOs for territories under their control
- Develop approaches for **detecting occurrence of displacement** through the National Forest Monitoring System
- **Lessons learned** from cases where emissions displacement is detected should be reflected in the design of future Policies and Measures.