A Guide for Consistent Implementation of REDD+ Safeguards

Based on a Comparative Analysis of REDD+ Initiatives
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Foreword

This guide provides very valuable and timely guidance for countries seeking to implement REDD+ safeguards. Whilst a REDD+ mechanism has not yet been adopted under the United Nations Framework Convention on Climate Change (UNFCCC), several multilateral initiatives are currently funding the design and implementation of REDD+ activities. These multilateral initiatives, such as the Forest Carbon Partnership Facility (FCPF) and the UN-REDD Programme among others, have developed or are in the process of developing their own set of ‘safeguards’ and associated requirements for REDD+ activities financially supported by them. As a result, countries are dealing with multiple and sometimes conflicting ‘safeguards’ and requirements. This has led to some confusion, overlapping activities, increased transaction costs and is even hindering country’s efforts to ensure REDD+ safeguards are effectively implemented.

This guide will assist national and local policy makers, local community and indigenous peoples’ representatives, civil society, donors and REDD+ practitioners in defining and ensuring consistent implementation of REDD+ safeguards. It provides a comprehensive and much needed analysis over the different parameters of protection or recognition of the ‘safeguards’ of these initiatives in relation to the UNFCCC REDD+ Safeguards, and offers concrete guidance to ensure their consistent implementation. Through this analysis, the authors offer an opportunity to ensure that work on the ground implementing REDD+ safeguards consistently promotes transparency and accountability. This work should also provide greater weight to considerations such as effective public participation, respect for indigenous peoples’ rights, good governance, the conservation of biological diversity, and environmental integrity.

Being directly engaged in supporting countries to develop and implement a safeguards information system (SIS), I cannot overstate the importance of the analysis provided in this guide. Countries will need to develop and implement a SIS to demonstrate how the UNFCCC REDD+ Safeguards are being addressed and respected. This will essentially require countries to ensure a consistent implementation of safeguards, clearly showing the relation to the UNFCCC REDD+ Safeguards. By following this guidance, countries can better define how safeguards are to be dealt with in a coherent manner, and ensure that all REDD+ activities within their jurisdiction are covered by safeguard policies that apply across the board, regardless of the funding source or initiative. This will help maximize effectiveness of the safeguards and contribute towards ensuring the SIS plays an effective role in showing how the country is addressing and respecting UNFCCC REDD+ Safeguards and providing feedback to improve their implementation.

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Director, Climate, Community & Biodiversity Alliance (CCBA)
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We would like to thank Tony La Viña, Rosalind Reeve and the members of the REDD+ Safeguards Working Group (R-SWG) for their valued insights and comments that informed our understanding of the REDD+ climate change negotiations.

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In Mexico, we are grateful to Jose Carlos Fernandez, Josefina Braña Varela, and Ana Karla Perea Blazquez from CONAFOR for their insights as to what a Country Safeguard System (CSS) for Mexico might look like, and their willingness to work with us. We also like to thank Maria Elena Mesta from Rainforest Alliance for her perspectives and for organizing a large civil society meeting for us to gather insights as to the development of a CSS.

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Disclaimer

The contents of this report are a result of the analysis of the authors, and do not necessarily represent the views of ClientEarth or reflect the UK Government’s official policies.

Suggested Citation

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<td>WIPO</td>
<td>World Intellectual Property Organization</td>
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Terms and Definitions

Complaints and Grievance Mechanisms

In this document we refer to complaints and grievance mechanisms to those that come into play at the national, sub-national or local level when there is a need to settle disputes between actors. Such processes tend to come in the form of negotiation, mediation, arbitration, or through use of judicial or administrative systems.

Compliance System

We understand a Country Safeguard System (CSS) requires an adequate and verifiable compliance system, which can ensure the accountability and effectiveness of the CSS. The compliance component of a CSS is comprised of effective and transparent monitoring and reporting systems; complaints and grievance mechanisms; and non-compliance mechanisms.

Country Safeguard System (CSS)

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

The CSS will need to define substantively the safeguards that are to apply in the country; the measures to support their effective implementation; and the compliance aspects of the system that may allow for transparent monitoring and reporting, addressing grievances and addressing any failure to implement the requirements set forth in the safeguards.

REDD+

An international climate mitigation strategy that aims to reduce emissions from deforestation and forest degradation in tropical forest countries, support the role of conservation, sustainable management of forests and enhancement of forest carbon stocks.

REDD+ Activities

In this report, the term REDD+ activities refer to those included in paragraph 70 of decision 1/CP.16.

REDD+ Actions

We refer to REDD+ actions as the various national and or sub-national measures to achieve REDD+. These include national strategies, capacity building programs, enacting laws and policies, among others.

REDD+ Countries (or simply ‘countries’)

In this report, the term REDD+ countries refer to countries that are participants in the various REDD+ initiatives whose safeguards are being analysed.

In the case of the World Bank, the term REDD+ countries refer to borrower(ing) countries as per references in the Operational Policies and Procedures.

In the case of the FCPF, the term REDD+ countries refer to REDD+ Country Participant (as per the FCPF Charter).
In the case of IDB, the term REDD+ countries refer to ‘borrowing member countries’ or ‘borrowing countries’ which are defined as the members of the Organization of American States (OAS) and are divided into Groups I and II on the basis of their per capita income (currently 26 borrowing member countries).

In the case of ADB, the term REDD+ countries refers to ‘borrower’ countries which are defined as “Any recipients of ADB assistance for projects financed by a loan, grant, or other financial arrangement that is extended to a member state.”

In the case of UN-REDD, the term REDD+ countries refers to ‘partner’ countries which are defined as countries receiving either direct support to National Programmes or Targeted Support from the UN-REDD Global Programme.

In the case of FIP, the REDD+ countries refers to "pilot countries" in the context of countries participating in the Programme,"recipient countries" when referring to countries receiving financing under FIP; "borrowers" for provisions that refers to the relationship between the country and the MDB.

Safeguard Implementation Measures

Safeguard implementation measures refer to those that seek to operationalize the UNFCCC REDD+ Safeguards. Relevant measures include enacting a normative framework (policies, laws, and regulations) that operationalize the safeguards; appropriate processes and procedures to support the normative framework; and enhancing/creating institutions with a mandate to implement the measures.

Non-compliance Mechanisms

Non-compliance mechanisms come into play when actors (individuals/institutions) do not comply (fully or partially) with the laws, regulations, and policies that make up part of their country safeguard system (CSS). This is different from complaints and grievance mechanisms, as non-compliance mechanisms are meant to address any failure to implement the requirements set forth in the safeguards. Non-compliance mechanisms could be administrative or judicial in nature, but should aim to provide a legal avenue for addressing issues of non-compliance.

Safeguards

There is no universally agreed upon definition of ‘safeguards’. However, ‘safeguards’ have been traditionally used by financial institutions such as the World Bank as measures to prevent and mitigate undue harm from investment or development activities. In this case, safeguards are most commonly associated with a ‘risk-based approach’, which involves pricing and prioritizing risks according to a logic of economically efficient ‘risk management’. A risk management process aims to insure against the risk of a certain type of activity triggering an initiative’s safeguard accountability mechanisms.

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4 Ibid p.68.
5 Ibid.
In contrast, a ‘rights-based approach’ to safeguards prioritizes the protection of the individual rights of those affected.\(^6\)

This report uses the term ‘safeguard’ to refer in general to the safeguards of the selected REDD+ initiatives.

Safeguard Information System (SIS)

Our understanding is that a SIS is a national system whereby REDD+ countries report to their domestic stakeholders, the international community and donors on how they are meeting the requirements embodied in the UNFCCC REDD+ Safeguards.

UNFCCC REDD+ Safeguards

In this report, the term ‘UNFCCC REDD+ Safeguards’ refers to paragraph 2 of Appendix I to decision 1/CP.16 (the Cancun Agreement). Our view is that the wording of the UNFCCC REDD+ Safeguards reflects obligations created by international instruments, many of which grant substantive rights (including the rights of indigenous peoples and local communities). The UNFCCC REDD+ Safeguards differ from ‘traditional’ safeguards as they are not linked to a financial institution, they do not include a set of safeguard implementation measures, and they do not focus on defining acceptable and unacceptable performance, instead promoting and even requiring improvements beyond a minimum threshold.

This would suggest the UNFCCC REDD+ Safeguards provide a rights-based approach rather than a risk based one.

Considering that the UNFCCC REDD+ Safeguards “should be promoted and supported” when implementing REDD+ actions and activities, a sensible interpretation seems to be that any actor involved in the implementation of REDD+ actions and activities is obligated to comply with and implement the UNFCCC REDD+ Safeguards, including national governments, bilateral donors, civil society, multilateral financial institutions and the private sector.

\(^6\) Ibid.
Executive Summary

REDD+ is an international climate mitigation strategy that aims to reduce emissions from deforestation and forest degradation in tropical forest countries, support the role of conservation, sustainable management of forests and enhancement of forest carbon stocks. REDD+ has the overall objective of contributing to the reduction of global carbon emissions from deforestation by improving forest governance at the country level, and by providing financial incentives for halting or reversing forest lost.

In December 2010, the Sixteenth Conference of the Parties (COP 16) to the United Nations Convention on Climate Change (UNFCCC) in Cancun agreed to a set of seven safeguards to support REDD+ implementation (hereafter referred to as the UNFCCC REDD+ Safeguards). The UNFCCC REDD+ Safeguards aim not only to mitigate the risk of adverse social and environmental impacts of REDD+ activities, but also to actively promote benefits beyond carbon emission reductions, such as increased land tenure security, enhancing biodiversity, improving forest governance and empowering relevant stakeholders by ensuring their full and effective participation. The UNFCCC REDD+ Safeguards outline a global framework of social, environmental and governance principles according to which REDD+ actions and activities must be implemented. By following this framework, countries can minimize risks posed by REDD+ activities, and maximise potential for realising REDD+ benefits — both carbon and non-carbon.

Whilst the REDD+ mechanism has not yet been adopted under the UNFCCC, several multilateral institutions and bilateral agreements are currently in place funding REDD+ activities. These multilateral institutions, such as the World Bank, the Forest Carbon Partnership Facility (FCPF) and the UN-REDD Programme among others, have also developed or are in the process of developing their own set of ‘safeguards’ and associated requirements for REDD+ activities they financially support. When participating simultaneously in more than one REDD+ related initiative, countries are often dealing with a plethora of safeguards, policies and requirements, which are not necessarily in line with the UNFCCC REDD+ Safeguards. As a result, conflicting requirements have become a burden for countries, leading to overlapping activities, increased transactional costs and, finally, hindering countries efforts to ensure the effectiveness and sustainability of REDD+.

Actors designing, funding and implementing REDD+ actions and activities need to find a way to ensure they can implement safeguards that allows them to meet the objectives of the UNFCCC REDD+ Safeguards as well as comply with the multiple and often inconsistent ‘safeguards’ and requirements of the various multilateral, voluntary and bilateral REDD+ initiatives in which they are participating or wish to participate.

One option is to design and implement a Country Safeguard System (CSS). A CSS offers an opportunity to define how safeguards are to be dealt with in a cohesive manner, and ensure all REDD+ actions and activities within a country are covered by safeguard policies that apply across the board, regardless of the funding source or initiative. This will help maximize their effectiveness, lead to reducing transactional costs, and avoid overlaps or duplication of activities. Furthermore, and most importantly, the development of a CSS could lead to considerable forest governance improvements, especially if it lives up to internationally accepted standards for human rights and environmental protection.

In order to be able to construct a CSS that applies to all REDD+ activities within their jurisdiction regardless of the funding source or initiative, it is important for countries to be able to understand the different parameters of protection or recognition of the ‘safeguards’ of the relevant REDD+ initiatives in relation to the UNFCCC REDD+ Safeguards. At present there is a lack of substantive legal analysis to assist countries in understanding the multiple and often inconsistent ‘safeguards’ and requirements of the various multilateral, voluntary and bilateral REDD+ initiatives A Manual to Assist in the Consistent
Implementation of Safeguards

This report aims to contribute to the design and development of a CSS that is able to meet the objectives of the UNFCCC REDD+ Safeguards, as well as comply with the multiple and often inconsistent ‘safeguards’ and requirements of the various multilateral and voluntary REDD+ initiatives in which they are participating or wish to participate. In particular, the substantive guidance provided in this report contributes to the development of the three main components of a CSS:

1. adoption of national safeguards;
2. safeguard implementation measures; and
3. compliance measures.

To be able to adopt safeguards at the national level that are consistent with the UNFCCC REDD+ Safeguards and that can simultaneously facilitate compliance with the safeguards of the various relevant REDD+ initiatives, a clear understanding of the ‘safeguards’ of the relevant REDD+ initiatives in relation to the UNFCCC REDD+ Safeguards is required. Part I of this report provides a comparative legal analysis of the ‘safeguards’ of selected REDD+ related initiatives, assessing different parameters of protection or recognition in relation to the UNFCCC REDD+ Safeguards. A comprehensive legal and policy analysis of the ‘safeguards’ of selected REDD+ related initiatives is provided in Annex I-VI.

The recognition or adoption of safeguards is not enough to ensure that the UNFCCC REDD+ Safeguards are adequately addressed and respected. It is therefore critical to define and implement specific measures to operationalize them. The REDD+ related initiatives contemplate ‘implementation measures’ to support the implementation of their ‘safeguards’. Part I of this report provides a comparative legal analysis of the safeguard implementing approaches of the selected REDD+ initiatives, by examining their strengths and weaknesses in supporting the implementation of the principles/objectives encompassed in the UNFCCC REDD+ Safeguards. Annex I-VI provide a comprehensive legal analysis of the safeguard implementing approaches of the selected REDD+ related initiatives.

In addition to the above, countries will need to develop a system for providing information on how UNFCCC REDD+ Safeguards are addressed and respected throughout the implementation of REDD+ actions and activities (also known as a Safeguards Information System, or SIS), and measures to address compliance issues. Part II of this report identifies the most relevant monitoring, reporting and dispute resolution mechanisms of the selected REDD+ related initiatives. Special attention is given to the REDD+ SES initiative in relation to the monitoring and reporting of REDD+ safeguards in consistency with the UNFCCC REDD+ safeguards.

This report analyses the ‘safeguards’ and policy requirements of the a) UN-REDD programme; b) Forest Carbon Partnership Facility (FCPF); c) World Bank (WB) as the FCPF relies on the WB policies; d) Forest Investment Programme (FIP) and the multiple delivery partners of the FIP and FCPF, such as the e) Inter-American Development Bank and f) the Asian Development Bank.

This review was conducted between April 2012 and March 2013, and presents the state of play in each initiative as of the end of March of 2013. It is important to highlight that we have undertaken a theoretical comparison of the REDD+ related initiatives, and not a comparison of their implementation in practice.
A brief summary of the analysis of the REDD+ initiatives includes the following conclusions:

Where the UNFCCC REDD+ Safeguards lack specificity, or are open to a number of interpretations, the ‘safeguards’ of the analysed initiatives may provide more detailed guidance or support on operationalizing these environmental and social principles.

However, it is important to note that none of the ‘safeguards’ of the REDD+ related initiatives analysed in this Guide are entirely consistent with the UNFCCC REDD+ Safeguards. The initiative’s safeguards share some commonalities in their level of protection and approaches, and there is considerable overlap in the scope of issues addressed. There are, however, differences in the content (level of recognition and protection) and implementing approaches, which countries need to be aware of when seeking to effectively implement the UNFCCC REDD+ Safeguards.

In terms of consistency with UNFCCC REDD+ Safeguard (a) there are two elements to consider: consistency with international law and consistency with national forest programmes:

- In terms of consistency with international law: UN-REDD is the only initiative that seeks to ensure consistency with all relevant international instruments. The World Bank, FIP and IDB do not fully recognize the need to ensure consistency with international agreements (both human rights and environmental). The FCPF seeks to ensure consistency international law, but its reliance on World Bank safeguards might not ensure consistency with all international legal instruments. ADB requires consistency with international law, but consistency is subject to the existence of national implementing measures.
- In terms of consistency with national forest programmes: The World Bank and IDB do not recognize the need to be consistent with national forest programmes. FCPF and FIP implicitly promote consistency with national forest programmes, whilst UN-REDD and ADB explicitly require and promote it.

In terms of consistency with UNFCCC REDD+ Safeguard (b) there are several elements to consider, including the right to access information, public awareness of the right to access information, accountability, clear land tenure rights, gender equality, participation, appropriate institutional frameworks, and access to justice, among others. The general conclusions are:

- All initiatives do not recognize, promote and require a right to access to information, with none of them actively promoting public awareness of this right nor promoting institutions with clear mandates to ensure access and distribution of information.
- In terms of effective institutional frameworks all initiatives promote or require strengthening of institutional capacities. Linked to this, accountability and addressing corruption is also promoted and supported by all initiatives, except the World Bank.
- Linked to the above is the integration of social, economic and environmental considerations and cross-sectoral coordination. FIP and FCPF require integration and cross-sectoral coordination, whilst UN-REDD, IDB and ADB indirectly promote it. World Bank only requires in certain cases.
- Clarity and recognition over land tenure rights (statutory and customary) is addressed by all initiatives, but is important to note the World Bank requires it only for certain projects. Linked to this, equitable benefit sharing is promoted or supported by all initiatives, and it is also important to note the World Bank only requires it for certain projects/cases.
- In terms of promoting/ensuring participation of all relevant stakeholders, UN-REDD is the only initiative that effectively promotes it. Other initiatives partially promote the right to participate with notable limitations such as not addressing how stakeholders views and concerns will be taken into account in the decision making process.
- Gender equality is only effectively addressed by ADB and FCPF. UN-REDD does not clarify how the programme can contribute to addressing gender discrimination, if it has been identified.
The World Bank and FIP have specific safeguards, but do require addressing gender equality issues. IDB does not have provisions on the matter.

- Adequate access to justice is only effectively addressed by ADB and FCPF, in terms of requiring the establishment of grievance mechanisms and providing support/guidance. UN-REDD and FIP promote access to justice, but do not set it as a requirement or provide specific guidance/support. World Bank and IDB provide limited access to justice through their specific mechanisms.

In terms of consistency with UNFCCC REDD+ Safeguard (c), there are also several elements to consider, including defining indigenous peoples, respecting knowledge and other rights such as non-discrimination, self-determination, collective land tenure and benefit sharing. The general conclusions are:

- Clarity over who are to be recognized as ‘indigenous peoples’ and ‘local communities’ is not provided by any initiative. Some acknowledge definitions under international law, whilst others provide criteria for their identification/definition.
- Respecting ‘knowledge’ is required by UN-REDD, FIP, IDB and ADB. However, they do not provide a clear understanding/definition of traditional knowledge and in some cases local communities’ rights over knowledge are not recognized. Both World Bank and FCPF ‘promote’ but do not ‘require’ the respect of knowledge.
- The right to non-discrimination is only effectively addressed by IDB, in terms of having specific safeguards and measures in place. UN-REDD, FCPF, FIP and ADB do not explicitly recognize but have provisions which may assist in addressing it. The World Bank has no relevant provisions.
- The right to self-determination is only effectively addressed by the FIP and IDB. The FCPF, UN-REDD and ADB do not explicitly recognize this right, but indirectly promote it through the recognition of relevant international legal obligations on the matter. The World Bank does not promote or recognize this right.
- Cultural rights are only effectively recognized and promoted by the UN-REDD Programme. The IDB and ADB generally recognize this right, but do not mention local communities. The World Bank, FCPF and FIP do not explicitly recognize nor promote this right.
- Recognition and respect of collective land tenure rights are only effectively addressed by FCPF and UN-REDD. IDB and ADB promote the recognition of this right, but do not take local communities into consideration. The FIP and World Bank do not specifically require or promote the recognition and respect of collective land tenure rights for indigenous peoples and local communities.
- Benefit sharing is adequately addressed only by UN-REDD. The IDB, ADB and World Bank do not consider local communities. The FCPF does not guarantee benefit sharing will be discussed through participatory processes with indigenous peoples and local communities. The FIP does not require ‘equitable’ and ‘transparent’ benefit sharing arrangements.

In terms of consistency with UNFCCC REDD+ Safeguard (d), there are also several elements to consider, including recognition and implementing of procedural rights, promoting identification of relevant stakeholders, and requiring FPIC. The general conclusions are:

- None of the initiatives explicitly recognize procedural rights, but recognize/promote right to participate in environmental decision making processes.
- The identification of relevant stakeholders is required and promoted by World Bank, FCPF, UN-REDD, ADB and IDB. FIP is the only initiative that does not promote or require an early identification of relevant stakeholders.
- The right to access information is a requirement for World Bank, FCPF, UN-REDD and ADB. FIP and IDB promote this right, but do not ensure appropriate and cultural means of disclosure of information.
• The implementation of effective participatory approaches is required by the FCPF, UN-REDD and FIP. The IDB and ADB promote this right, but it is not clear to what extent affected people may influence the decision making process. The World Bank does not provide effective requirements or support.

• Grievance or conflict resolution mechanisms are only effectively addressed by ADB. The UN-REDD, FIP and IDB acknowledge the need to set them up, but do not specifically require, promote or support it. The World Bank provides access to its inspection panel, which is limited to examining non-compliance with its OPs. The FCPF requires set up of feedback and grievance mechanism, but also relies on World Bank’s inspection panel.

• FPIC is only fully recognized and required in consistency with UNFCCC REDD+ Safeguard (c) through the UN-REDD programme. It is important to note the UN-REDD extends FPIC to indigenous peoples and forest dependent communities that share common characteristics. All other initiatives refer to ‘consultation’ or ‘brad community support’, instead of consent.

In terms of consistency with UNFCCC REDD+ Safeguard (e), there are also several elements to consider, including if and how natural forest are defined, the existence of prohibitions to convert natural forests, the existence of implementing measures to protect biodiversity, the integration of biodiversity in cross-sectoral policies and the enhancement of other benefits. The general conclusions are:

• Natural forests are only defined by the World Bank. However, there is a lack of clarity regarding operative terms of the definition, which can result in expanding or narrowing the scope of what constitutes natural forests.

• The FIP is the only initiative that clearly prohibits the conversion of natural forest as required by the UNFCCC REDD+ Safeguard (e), and with no exceptions. The UN-REDD require the non-conversion of natural forests, but anticipates that it still may occur. The World Bank, FCPF, ADB and IDB do not prohibit the conversion of natural forests.

• Implementing measures to protect biodiversity are required by all initiatives. But only The UN-REDD and World Bank require an identification/mapping of natural forests and biodiversity.

• Research and awareness-raising is promoted and supported by The FCPF, IDB and ADB. The UN-REDD and FIP have no relevant provisions.

• The integration of biodiversity in cross-sectoral policies is only promoted by the World Bank and FCPF. The UN-REDD requires the integration of biodiversity considerations in cross-sectoral policies, but its language is mostly on of trade-offs, usually favouring carbon benefits over biodiversity. The FIP, ADB and IDB do not require the integration of biodiversity in cross-sectoral policies.

• The enhancement of multiple benefits is only effectively recognized and promoted by The FIP, through which countries are even required to provide evidence as to how they will achieve these multiple benefits.

In terms of consistency with UNFCCC REDD+ Safeguard (f) & (g), there are also several elements to consider, including monitoring and assessment provisions, general measures to address reversal and displacement, specific measures to tackle reversals and displacement, and international cooperation. The general conclusions are:

• All initiatives except the World Bank require specific monitoring and assessment frameworks. The World Bank provides general monitoring and assessment frameworks for projects, which encourage indigenous peoples or community participation.

• The IDB requires countries to assess their environmental governance capacity, as risk factor for the environmental sustainability of the operation. The UN-REDD, FIP and ADB provide general requirements/measures to address the risks of reversals and displacement, including sustainable forest management and sustainable development, as well as the need to prevent land degradation, conversion of natural forests, indirect land-use change, and impacts on non-
forest ecosystems and biodiversity. The World Bank and FCPF do not acknowledge nor provide general requirements/measures to address the risks of leakage or permanence.

- None of the initiatives provide specific measures to tackle the risks of reversals, but relevant provisions are considered.
- Measures to tackle displacement are only addressed by the ADB.
- International cooperation is recognized as an integral measure to tackle the risks of reversals and displacement by the World Bank, UN-REDD, FIP, ADB and IDB. The FCPF does not recognize the role of international cooperation to deal with risks of transboundary displacement.

It is important for countries to note that the UN-REDD programme contains voluntary guidance, whilst the FCPF, FIP, ADB, IDB and the World Bank contain binding policies. We recommend that countries seeking to implement consistent safeguards in relation to the UNFCCC REDD+ Safeguards follow all relevant voluntary and binding policies highlighted in this document, as they are considered pertinent to meet the UNFCCC REDD+ Safeguards.

We recommend that countries undertake a similar legal analysis of other relevant initiatives (in which they are participating or wishing to participate), in order to be able to define substantively the safeguards that are to apply in the country; the measures that may support their effective implementation; and the compliance aspects of the system that may allow for transparent monitoring and reporting, addressing grievances and addressing any failure to implement the requirements set forth in the safeguards. The consistent and effective implementation of safeguards will be strongly influenced by the presence or lack of a robust legal framework. The existence of an enforceable legal framework, which protects and promotes the environmental and social issues, encompassed in the UNFCCC REDD+ Safeguards and reflects the applicable and relevant international legal framework, will be essential.
Introduction

Background and Context

Given that the degradation and deforestation of the world’s tropical forests are cumulatively responsible for 2,200 to 6,600 million metric tonnes of carbon dioxide equivalent (MtCO₂e) per year, or about 4 to 14 percent of global emissions, tackling the destruction of tropical forests is core to any concerted effort to combat climate change.

Reducing Emissions from Deforestation and Forest Degradation (REDD+) is an international climate policy that aims to contribute to the reduction of global carbon emissions by incentivising conservation, sustainable management of forests and the enhancement of forest carbon stocks in tropical forest countries.

REDD+ originates from a proposal by Papua New Guinea and Costa Rica for a mechanism to Reduce Emissions from Deforestation in Developing Countries presented at the Eleventh Conference of the Parties (COP 11) to the UN Framework Convention on Climate Change (UNFCCC) in Montreal, Canada. The proposal offered an opportunity to reduce global greenhouse gas (GHG) emissions while providing incentives to protect and conserve tropical forests. The Bali Action Plan recognised the proposal as a climate mitigation option, establishing the basis for negotiations on REDD+. This has been followed by further decisions in Cancun, Durban and Doha.

A Need for REDD+ Safeguards

As REDD+ discussions progressed in the UNFCCC, it was recognised that implementation of REDD+ can pose significant environmental and social risks, as well as provide an opportunity to promote multiple benefits. Potential benefits include the promotion of biodiversity conservation and securing the provision of ecosystem services including water regulation, timber production, erosion control and the supply of non-timber forest products. In addition, REDD+ can result in social benefits such as improvements in governance, livelihoods and clarification of land tenure. The potential risks posed by REDD+ include, amongst others, appropriation of local communities and indigenous peoples’ lands (involuntary displacement), other human rights violations, and depletion of biodiversity.

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8 UNFCCC Decision 1/CP.16, FCCC/CP/2010/Add.1 paragraph 70 letters (a) through (e).
9 UNFCCC, (11 November 2005) Reducing emissions from deforestation in developing countries: approaches to stimulate actions, FCCC/CP/2005/MISC.1, 11th Conference of the Parties, Montreal.
10 UNFCCC Decision 1/CP.16, FCCC/CP/2010/Add.1; Decision 2/CP.17 FCCC/CP/2011/9/Add.1; Draft Decision -/CP.18 Agreed outcome pursuant to the Bali Action Plan.
Failure to correctly address current national forest governance shortcomings, or mitigate the risk of adverse social effects of REDD+ actions and activities could potentially prevent REDD+ from achieving its long-term goal of sustainable reductions of GHG emissions from deforestation and forest degradation, or co-benefits.

To address these concerns and to effectively promote the multiple benefits REDD+ could achieve, the Parties to the UNFCCC have agreed on seven safeguards, hereinafter UNFCCC REDD+ Safeguards (see box 1).  

‘Safeguards’ is a term that can be traced to financial institutions such as the World Bank, where it refers to measures to prevent and mitigate undue harm from investment or development activities. The World Bank’s safeguards are a ‘risk-based approach’, which involves pricing and prioritizing risks according to a logic of economically efficient ‘risk management’. A risk management process aims to insure against the risk of a certain type of activity triggering an initiative’s safeguard accountability mechanisms.

In contrast, a ‘rights-based approach’ to safeguards prioritizes the protection of the individual rights of those affected. The wording of the UNFCCC REDD+ Safeguards focuses on the obligations created by international instruments, many of which grant substantive rights (including the rights of indigenous peoples and local communities), rather than focus on financial conditionalities. This would suggest that the UNFCCC REDD+ Safeguards take a rights-based approach, rather than a risk-based one. This interpretation leads to the conclusion that the UNFCCC REDD+ Safeguards go beyond merely ensuring that investments do no harm to vulnerable people and ecosystems, and require positive actions to operationalize the rights to which they refer, particularly in terms of indigenous peoples’ rights.

The UNFCCC REDD+ Safeguards also differ from traditional safeguards in that they do not focus on defining acceptable and unacceptable performance, but instead promote and even require improvements beyond a minimum threshold. In fact, the Cancun Agreement indicates that the intention of the Parties is for REDD+ activities to actively pursue benefits beyond carbon emission reductions, such as enhancing land tenure security, enhancing biodiversity and other ecosystem services, improving forest governance and empowering relevant stakeholders by ensuring participation, among other things.

UNFCCC, Decision 1/CP.16, Annex I, paragraph 2.

16 McDermott, Constance L et al, supra note 3 p.65.

17 McDermott, Constance L et al, supra note 3 p.68.

18 McDermott, Constance L et al, supra note 3 p.68.

19 McDermott, Constance L et al, supra note 3 p.68.

20 Paragraph 72 of the Decision states that: “Country Parties, when developing and implementing their national strategies or action plans, to address inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of Appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities” UNFCCC, Decision 1/CP.16, paragraph 72.
Box 1: UNFCCC REDD+ Safeguards

(a) Actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;
(b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;
(c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;
(d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in actions referred to in paragraphs 70 and 72 of this decision;
(e) Actions are consistent with the conservation of natural forest and biological diversity, ensuring that action referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits (Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day.)
(f) Actions to address the risks of reversals; and
(g) Actions to reduce displacement of emissions.

The UNFCCC REDD+ Safeguards language and associated guidance constitute an international framework of social, environmental and governance principles, under which any REDD+ related activity should be implemented.21 By following this framework, countries can both minimise risks posed by REDD+ activities, and go beyond risk minimisation by maximising the potential for realising REDD+ benefits—both carbon and non-carbon.

An integral piece of this framework is UNFCCC REDD+ Safeguard (a), which requires REDD+ activities to, inter alia, complement or be consistent with the relevant international instruments that REDD+ countries have signed, ratified, or otherwise agreed to. These instruments pertain not only to the environment, but also to human rights and indigenous peoples’ rights. Ensuring consistency with these relevant international instruments should not be seen as an additional requirement that countries must fulfil to implement REDD+. Instead, it should be seen as a way of implementing existing international obligations to which countries have already committed themselves.

Responsibility for Implementing the UNFCCC REDD+ Safeguards and Safeguard Information Systems

The Cancun Agreement states that UNFCCC REDD+ Safeguards should be ‘promoted and supported’ in the implementation of REDD+ activities.\textsuperscript{22} Considering the wording of this provision, a sensible interpretation seems to be that any actor involved in the implementation of REDD+ activities is obligated to comply with and implement the UNFCCC REDD+ Safeguards, including national governments, bilateral donors, civil society, multilateral financial institutions and the private sector.

Additionally, governments of countries undertaking REDD+ activities are responsible for reporting on how the UNFCCC REDD+ Safeguards are being addressed and respected, during all phases of REDD+, by providing information through a national Safeguard Information System (hereinafter SIS).\textsuperscript{23}

Linking UNFCCC REDD+ Safeguards Implementation and Results-Based Payments

The Durban decision links the disbursement of REDD+ finance with the effective implementation of the UNFCCC REDD+ Safeguards by stating that developing country Parties will only be able to “obtain and receive results-based finance” if they have a SIS in place.\textsuperscript{24} Considering the wording of these provisions, our interpretation is that under a future UNFCCC mechanism for REDD+, any country involved in implementing REDD+ related activities will need to be able to demonstrate they have addressed and respected the UNFCCC REDD+ Safeguards and related guidance/requirements.\textsuperscript{25} Otherwise, these countries will be excluded from whatever payment scheme emerges from the UNFCCC REDD+ negotiations.

Array of Safeguards Approaches under Multiple REDD+ Initiatives

Whilst the REDD+ mechanism has not yet been adopted under the UNFCCC, several multilateral institutions and bilateral agreements are currently in place funding REDD+ activities. These international/multilateral institutions, such as the World Bank, the Forest Carbon Partnership Facility (FCPF) and the UN-REDD Programme among others, have also developed or are in the process of developing their own set of ‘safeguards’ and associated requirements for REDD+ activities financially supported by them.

Because the implementation of REDD+ activities often requires access to finance from various sources, countries are often dealing with a plethora of safeguards, policies and requirements, when participating simultaneously in more than one REDD+ related initiative, in addition to the UNFCCC REDD+ Safeguards.

In many cases, as the current analysis will show, the ‘safeguards’ and requirements from these various international/multilateral institutions are not necessarily in line with the UNFCCC REDD+ Safeguards. As a result, conflicting requirements have become a burden for countries, leading to overlapping activities, increased transactional costs and, finally, hindering countries efforts to ensure the effectiveness and sustainability of REDD+.

\textsuperscript{22} UNFCCC, Decision 1/CP.16, paragraph 69; Decision 2/CP.17, paragraph 63.
\textsuperscript{23} UNFCCC Decision 1/CP.16, paragraph 71(d).
\textsuperscript{24} UNFCCC Decision 2/CP.17, paragraph 63 and 64.
\textsuperscript{25} UNFCCC Decision 2/CP.17, paragraphs 63 and 64 should be read in conjunction with UNFCCC Decision 1/CP.16, paragraph 69 and Appendix 1, paragraph 2.
Justification for this Guidance Document

In light of the considerations highlighted above, and in particular due to the array of REDD+ Safeguards approaches, it will be important for countries to consider how they can implement safeguards nationally. They will want to find ways to meet the requirements of the UNFCCC REDD+ Safeguards as well as comply with the multiple and often inconsistent ‘safeguards’ and requirements of the various multilateral, voluntary and bilateral REDD+ initiatives in which they are participating or wish to participate.

One option countries might want to consider is the development of a Country Safeguard System (hereinafter referred to as CSS). A CSS would allow countries to define how safeguards are to be dealt with in a cohesive manner, and ensure that all REDD+ activities within their jurisdiction are covered by safeguard policies that apply across the board, regardless of the funding source or initiative. This will help maximize effectiveness of the safeguards, contribute towards a reduction in transactional costs, and avoid overlaps or duplication of activities. Furthermore, and most importantly, the development of a CSS could lead to considerable forest governance improvements, especially if it lives up to internationally accepted standards for human rights and environmental protection.

It is important to highlight that our understanding is that a CSS will comprehend three main components:

a. **Adoption of safeguards that are to apply in-country:** countries will need to define which set of safeguards are to be applied in the country. To ensure eligibility under the UNFCCC, countries might want to consider adopting the UNFCCC REDD+ Safeguards as their framework, and carry out a domestic interpretation of the UNFCCC REDD+ Safeguards through a multi-stakeholder process that is consistent with the country’s international obligations, national laws and policy objectives. It is important to consider that the adoption of safeguards at country level should aim to simultaneously facilitate compliance with the safeguards of the various relevant REDD+ initiatives (i.e. FCPF, UN-REDD, etc.) to ensure a consistent application, regardless of the funding source or initiative;

b. **Safeguards implementation measures:** the recognition or adoption of safeguards is not enough to ensure their effective implementation. It is therefore critical to have adequate implementation measures. Countries will need to assess which implementation measures are required to meet the standard of the UNFCCC REDD+ Safeguards, and to what extent their domestic laws, policies and institutions need to be strengthened or adapted to apply to REDD+ and the UNFCCC REDD+ Safeguards. Countries should consider linking the implementation measures defined under their CSS with the requirements, processes and procedures of REDD+ related initiatives in which they are participating. This can ensure the processes and procedures implemented by the country can also be utilized to comply with the processes and procedures of the REDD+ related initiatives, leading to reducing transactional costs; avoiding overlaps or duplication of activities.

c. **Compliance measures:** the compliance aspects of the system will refer to those that allow for transparent monitoring and reporting, addressing grievances, and addressing any failure to implement the requirements set forth in the safeguards. To ensure consistency with the UNFCCC, consideration should be given to the guidance provided by the UNFCCC in terms of the development of a Safeguard Information System (SIS). Additional consideration should be given to the monitoring, reporting, and dispute resolution aspects of the relevant and applicable REDD+ initiatives, which can support/strengthen the compliance aspects of the CSS.
Objectives

This document aims to contribute to the development of the three components of a CSS identified above. This report does not advise on the design of a framework for the CSS; rather, it focuses on providing substantive guidance for its development through an analysis of the strengths and weakness of the safeguards of the various REDD+ initiatives.

Countries will need to define an appropriate framework in accordance with their national circumstances. It is also important to highlight that this report does not purport to promote REDD+ per se, but rather is intended to promote the effective implementation of Safeguards under REDD+.

The document aims to:

A. Assist in the Adoption of Safeguards at the Country Level

Considering that there are an array of REDD+ related initiatives with their own set of ‘safeguards’ it is important for countries to be able to understand the strengths and weaknesses of the ‘safeguards’ under these initiatives, and define which set of safeguards are to be applied in the country in a cohesive manner, ensuring that all REDD+ activities within their jurisdiction are covered by safeguard policies that apply across the board, regardless of the funding source or initiative.

Part I of this report provides a comparative legal analysis of the ‘safeguards’ of selected REDD+ related initiatives, assessing different parameters of protection or recognition in relation to the UNFCCC REDD+ Safeguards. A comprehensive legal and policy analysis of the ‘safeguards’ of selected REDD+ related initiatives is provided in Annex I-VI. Recommendations and considerations are provided with the objective of supporting countries in identifying and addressing gaps in the safeguards of the selected REDD+ initiatives and highlight where, if applicable, they are inconsistent with our legal interpretation of the UNFCCC REDD+ Safeguards.

B. Assist in the Development/Strengthening of Implementation Measures

As mentioned previously, the recognition or adoption of safeguards is not enough to ensure their effective implementation. It is therefore critical to have adequate implementation measures. This report aims to assist various actors engaging in REDD+ activities in understanding and identifying potential implementation measures. Implementation measures include a normative framework (policies, laws and regulations) that operationalize the safeguards, the existence of appropriate processes and procedures to support the normative framework, and institutions with a mandate to implement the measures.

The REDD+ related initiatives contemplate ‘implementation measures’ to support the implementation of their ‘safeguards’.

Part I of this report provides a comparative legal analysis of the safeguard implementing approaches of the selected REDD+ initiatives, by examining their strengths and weaknesses in supporting the objectives of the UNFCCC REDD+ Safeguards. Annex I-VI provide a comprehensive legal and policy analysis of the safeguard implementing approaches of the selected REDD+ related initiatives.

C. Assist in the Development of a Compliance System

Part II of this report identifies the most relevant monitoring, reporting and dispute resolution mechanisms of the REDD+ related initiatives. Special attention is given to the REDD+ SES initiative in terms of supporting the monitoring and reporting of REDD+ safeguards in consistency with the UNFCCC REDD+ safeguards.

D. Contribute to International Debates for Future Improvements of REDD+ Related Initiatives

Some REDD+ related initiatives are in the process of reviewing their ‘safeguards’ and implementing approaches (i.e. the World Bank). This Guide also aims to contribute to international debates over the strengthening of these initiatives.
Methodology

This document analyses the ‘safeguard’ and policy requirements of the a) UN-REDD programme; b) Forest Carbon Partnership Facility (FCPF); c) World Bank (WB) as the FCPF relies on the WB policies; d) Forest Investment Programme (FIP) and the multiple delivery partners of the FIP and FCPF, such as the e) Inter-American Development Bank and f) the Asian Development Bank.

This document also covers the REDD SES initiative, as it is the only initiative specifically developed to support countries in the monitoring and reporting of REDD+ safeguards. The analysis is therefore focused in assessing how it can support countries’ efforts in monitoring and reporting on REDD+ safeguards.

These initiatives were considered because the majority of countries participating in REDD+ are mostly involved in these initiatives. It was also considered the level of funding available from these initiatives and, therefore, their capacity to influence and shape countries decisions. An analysis of the African Development Bank safeguards was not included in this report because it is currently undergoing a revision of its safeguards.

The framework analysis for these REDD+ related initiatives builds on a complementary analysis entitled “A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards”, which provides a legal interpretation of the language of the UNFCCC REDD+ Safeguards. Based on the analysis and interpretation of the UNFCCC REDD+ Safeguards in the context of international law, this Guide identifies a framework of core safeguard considerations for analysing the safeguard systems of each REDD+ related initiative. The framework elements/components and interpretation of each of these safeguards considerations are contained below.

This analysis considered the identification of relevant concepts in various provisions and their implications for local implementation. Based on the policies from each of the initiatives identified in this report, specific measures and processes were analysed to verify how their respective safeguards, at least on paper, would contribute to the implementation of each UNFCCC REDD+ Safeguard. The analysis highlights the strengths and weakness of these identified measures and processes, and provides recommendations and considerations to support countries’ efforts in developing and implementing their own CSS.

This review was conducted between April 2012 and March 2013, and presents the state of play in each initiative as of the end of March of 2013. Taking into consideration that these REDD+ related initiatives are subject to continuing discussion and review, we recommend that countries take into account updates that are likely to take place in the future. Please note that several relevant documents from these initiatives were not included in this analysis, as they are currently being developed or revised.

The structural template used for reviewing the initiatives is not intended to be comprehensive, but instead is meant to cover key components without which the UNFCCC REDD+ Safeguards could not be successfully implemented. It is important to highlight that we have undertaken a theoretical comparison of the REDD+ related initiatives, and not a comparison of their implementation in practice.
Box 2: Framework of UNFCCC REDD+ Core Safeguards Components

**UNFCCC REDD+ Safeguard A:**
1. Complement or Consistent with the Objective of National Forest Programmes
2. Complement or Consistent with Relevant International Conventions and Agreements

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

**UNFCCC REDD+ Safeguard C**
1. Defining Indigenous Peoples, Members of Local Communities and Knowledge
   (i) Defining Indigenous Peoples and Local Communities
   (ii) Respecting ‘Knowledge’
2. Recognition and Implementation of Rights in Accordance with International Law
   (i) Non-Discrimination
   (ii) Self-Determination
   (iii) Rights Associated with Culture
   (iv) Collective Land Tenure
   (v) Benefit-Sharing
   (vi) Procedural Rights

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

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

**UNFCCC REDD+ Safeguard F & G**
1. Monitoring and Assessment
2. Measures to Avoid Reversals and Displacement
   (i) General Measures
   (ii) Measures to Tackle Reversals
   (iii) Measures to Tackle Displacement
3. International Cooperation
Background Analysis of Each UNFCCC REDD+ Safeguard Component

The framework outlined above and used for the analysis of this document, was developed through our complementary analysis entitled “A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards”, which provides a legal interpretation of the language of the UNFCCC REDD+ Safeguards. Below we provide a brief overview of said analysis and interpretation to assist with the understanding and justification of the identified safeguard components.

UNFCCC REDD+ Safeguard (a)

To address and respect Safeguard (a), countries will need to ensure that their REDD+ activities are consistent with their national forest programmes as well as relevant international conventions and agreements. This means that countries implementing REDD+ activities will need to clearly identify applicable and relevant international conventions and agreements and national forest programmes, and analyse to what extent the proposed REDD+ activities complement or are consistent with them.

UNFCCC REDD+ Safeguard (b)

Safeguard (b) focuses on national forest governance structures, particularly with regards to ‘transparency’ and ‘effectiveness’. A transparent governance structure should provide a right of access to information, especially to vulnerable groups such as indigenous peoples and local communities. Furthermore, each relevant institution should: ensure access to and proactive dissemination of information to members of the public on pertinent matters; to promote public awareness of the right of access to information, and the ability to exercise that right; and ensure accountability and prevent corruption.

Characteristics of effective governance structures generally include: enhancement of laws and regulations relating to forest governance and sustainable use of forests, and enforcement of those laws; ensuring public participation in decision making and related processes; providing clear rights of ownership and possession (land tenure) including for traditional and customary ownership; and ensuring fair and equitable benefit sharing arrangements. It also means having adequate institutions and administrative frameworks in place to ensure effective implementation of laws and policies; and ensuring access to judicial or administrative procedures that can provide effective remedy for infringements of rights, and to resolve disputes, especially for indigenous peoples. In addition, effective forest governance requires providing adequate funds for forest protection and conservation. Coordination is needed between sectors affecting forests, as well as integration of social and environmental considerations, including human rights, in decision-making.

UNFCCC REDD+ Safeguard (c)

Safeguard (c) focuses on the recognition and respect of the rights of indigenous peoples and local communities. In this way, REDD+ activities must be executed in accordance with international law, and national circumstances and laws—regarding both indigenous peoples and local communities, and human rights agreements. These rights apply both to the individual and the group as a whole, and include, but are not restricted to: the respect for traditional knowledge; the respect and protection of rights regarding land tenure; self-determination; non-discrimination; benefit-sharing; participation; and Free, Prior and Informed Consent (FPIC).

UNFCCC REDD+ Safeguard (d)

The interpretation of ‘full and effective participation’ is generally associated to the recognition and implementation of procedural rights (also known as access rights) such as access to information, participation, and justice.
International law recognises special procedural rights with respect to indigenous peoples who, due to their different identities, cultures, languages and institutions, are more vulnerable to being left out of decision making processes. Therefore, countries should assess the existence and effective implementation of the right to FPIC in decisions that will impact indigenous peoples, as well as local communities.

**UNFCCC REDD+ Safeguard (e)**

The overarching objective behind Safeguard (e) is that REDD+ actions must be ‘consistent with the conservation of natural forests and biological diversity.’ Specifically, REDD+ activities must not be used for the conversion of natural forests, which has particular implications for enhancement of forest carbon stocks through the use of plantations. Furthermore, protection of natural forests and their ecosystem services should be incentivised. This consists of promoting various actions that contribute to the conservation of natural forest and biological diversity, which include: identification, mapping and monitoring of natural forests and biodiversity; regulation of biodiversity; support for conservation research; awareness raising; and integration of biodiversity concerns into other national sectors. Of particular importance for incentivising conservation, REDD+ activities should also promote the enhancement of environmental and social benefits, such as environmental services and livelihoods.

**UNFCCC REDD+ Safeguards (f) & (g)**

Safeguards (f) and (g) require countries to take action to ‘address the risks of reversals’, and to take actions to ‘reduce displacement of emissions’. Much of what makes up these safeguards is technical in nature, relating closely to accounting, monitoring, reporting and compliance rules for greenhouse gas emissions developed under the UNFCCC. For instance, countries must establish a National Forest Monitoring System (NFMS) to measure and report emissions from deforestation and forest degradation, as well as define a national Forest Reference Emission Level and/or a Forest Reference Level (REL/RL).

Nevertheless, social and environmental measures used to implement the other UNFCCC REDD+ Safeguards will be extremely relevant to Safeguards (f) and (g), in terms of ensuring that leakage does not occur, and that forest emission reductions and removals are lasting. Examples may include promotion of sustainable use and management of forests, responsible planning, building awareness and strengthening institutional governance and regulatory frameworks, cross-sectoral coordination and integration, as well as ensuring participation and equitable sharing of sustainable benefits of REDD+. International cooperation in the implementation of such measures is also very important, since emissions reductions in one country bordering another, depending on the circumstances (e.g. migration of individuals and/or activities across borders), may result in transboundary leakage.

Ensuring the consistent implementation of forest governance policies is integral for helping to build community acceptance and capacity to implement REDD+ activities effectively, and eliminate perverse incentives for deforestation and forest degradation. If these measures are implemented successfully, REDD+ is less likely to result in reversals or displacement of emission.
Part I: Comparative Analysis of the Safeguards of REDD+ Initiatives in Relation to the UNFCCC REDD+ Safeguards

Part I of this report provides a comparative analysis of the ‘safeguards’ of the selected REDD+ initiatives, assessing different parameters of protection or recognition in relation to the UNFCCC REDD+ Safeguards.

The comparative analysis presented in this section follows the framework of core safeguard considerations provided in the methodology section of this report, highlighting if and how each selected REDD+ initiative covers all of the core safeguards considerations. It is important to note that a detailed analysis of the selected REDD+ initiatives, and therefore a detailed examination of their parameters of protection or recognition in relation to the UNFCCC REDD+ Safeguards are contained in Annex I-V. This section aims to summarize through the use of tables the different parameters of compliance of the selected REDD+ initiatives in relation to the UNFCCC REDD+ Safeguards.

We encourage countries and interested stakeholders to examine the relevant initiative’s analysis (Annex I-V) if they seek to fully understand how the relevant initiatives are consistent or not with the UNFCCC REDD+ safeguards. Additionally, the analysis of each initiative provides a series of recommendations to address the gaps and weaknesses identified.

Please note that the World Bank Operational Policies and Procedures also apply to FCPF activities that are supported by the World Bank. Therefore, the analysis of the World Bank should also be considered when assessing the FCPF.

It is also important to note that some initiatives, like the UN-REDD programme contain voluntary guidance, whilst other initiatives, like the FCPF contain binding policies. Our analysis takes the above into consideration when assessing the level of protection and recognition of the ‘safeguards’. The legend below illustrates how we assessed each REDD+ initiative’s safeguard relative to the UNFCCC REDD+ Safeguards.

Legend

- 👍 Adequately covered by the REDD+ initiative
- 😞 Not adequately covered by the REDD+ initiative
- 🤔 Partially covered by the REDD+ initiative
### Summary Table of the Comparative Analysis of REDD+ Initiatives

<table>
<thead>
<tr>
<th>UNFCCC REDD+ Safeguard A</th>
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## Comparative Analysis of REDD+ Initiatives

### Safeguard A: International Law and Forest Programmes – Summary Table

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<tbody>
<tr>
<td><strong>Consistency with International Law</strong>&lt;br&gt;(Human Rights and Environmental)</td>
<td>👎 Requires consistency with environmental agreements. Does not require or mention the need for consistency with other relevant international instruments (i.e. human rights and indigenous rights conventions). Only recognizes that indigenous peoples’ rights are increasingly being dealt with in international law.</td>
<td>👍 The operation of the Facility shall respect the rights of forest dependent indigenous peoples and forest dwellers under national and applicable international obligations. However, as it relies on WB safeguards it does not ensure consistency with all relevant international obligations.</td>
<td>👍 The SEPC draw on, are consistent with, and seek to help countries meet their commitment to UN Conventions, treaties and declarations and other multilateral agreements, and when applicable the decisions taken in their COP/MOPs. Includes compliance with environmental and human rights commitments, and instruments that protect indigenous people’s rights.</td>
<td>👎 The FIP should complement the forest-related aims and objectives of other global environmental conventions and processes, but does not set requirements or support to ensure this. Additionally, it does not require or promote consistency with human right conventions.</td>
<td>👍 All IDB-financed operations are required to be designed and carried out in compliance with national obligations established under ratified MEAs. Consistency with human rights instruments is only required for projects that affect indigenous peoples rights. Thus IDB has no general requirement of compliance with human rights agreements.</td>
<td>👍 Requires compliance with countries’ social and environmental laws and regulations, including those laws implementing host country obligations under international law. Consequently, social and environmental obligations might not be considered if the country has no implementing legislation.</td>
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<tr>
<td>UNFCCC Safeguard A</td>
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<tr>
<td><strong>Consistency with National Forest Programmes</strong></td>
<td>🕳️ Does not require or promote ‘consistency’ with national forest programmes.</td>
<td>🕳️ Implicitly promotes consistency with national forest programmes.</td>
<td>🕳️ UN-REDD guidance promotes consistency with national forest programmes.</td>
<td>🕳️ The FIP requires its programming process to be consistent with and complement national sustainable development plans and to ‘take fully into account’ forest-related programs, rather than seeking consistency or complementarities.</td>
<td>🕳️ The IDB requires development projects that affect forest areas to be consistent with national development priorities, statutes and regulations.</td>
<td>🕳️ Requires consistency with countries’ long term plans for forestry development.</td>
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**Safeguard B: Forest Governance – Summary Table**

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<tbody>
<tr>
<td><strong>Right of Access to Information</strong></td>
<td>🗑️ Does not recognize or acknowledge the importance of the right to access information. The Bank operates under a presumption in favour of disclosure [subject to confidentiality provisions].</td>
<td>🗑️ Right to access information is not recognized, nor promoted.</td>
<td>🗑️ Recognizes and promotes the right to access information, but does not promote principle of maximum disclosure and good faith.</td>
<td>🗑️ Does not explicitly recognize nor promote the right to access information, but promotes the principle of transparency and disclosure of documents.</td>
<td>🗑️ Recognizes and promotes access to all public Bank information. Additionally, it operates under a presumption in favour of disclosure [subject to confidentiality provisions]. However, there are confidentiality provisions that jeopardize the right to access information and transparency of the activities.</td>
<td>🗑️ Recognises the right to access information and operates under a proactive policy for disclosure of information. However, it is subject to confidentiality provisions and exceptions, which may undermine the right to access information.</td>
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<td>UNFCCC REDD+ Safeguard B</td>
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<tr>
<td>Public Institutions within their Mandates Must Ensure Access and Distribution of Information</td>
<td>🗑️ No general requirement or support provided to ensure institutions effectively disseminate information.</td>
<td>🗑️ Does not explicitly require or promote that institutions should be in place with mandates to ensure access to information. However, it requires countries to provide mechanisms and procedures for active and passive access to information, which may require institutional set-ups.</td>
<td>🗑️ Does not explicitly require or promote that institutions should be in place with mandates to ensure access to information. However, it requires countries to provide mechanisms and procedures for active and passive access to information, which may require institutional set-ups.</td>
<td>🗑️ Does not explicitly require or promote that institutions should be in place with mandates to ensure access to information. However, it requires countries to provide mechanisms and procedures for active and passive access to information, which may require institutional set-ups.</td>
<td>🗑️ Does not require or support that institutions should be in place with mandates to ensure access to information. However, it requires countries to provide mechanisms and procedures for ensuring access to information.</td>
<td>🗑️ Does not require or promote institutions to disseminate information. However, in the context of indigenous people's plans it requires setting up institutional arrangements that could lead to promoting access to information.</td>
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<tr>
<td>UNFCCC REDD+ Safeguard B</td>
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<tr>
<td><strong>Promoting Public Awareness on Access to Information</strong></td>
<td>🙄 The WB offers a translation framework, but does not provide requirements or support to promote education or public awareness on access to information.</td>
<td>🙄 No general requirement or support to promote education or public awareness on access to information. The feedback mechanisms under the FCPF are not required to spread awareness of their functions or to inform relevant stakeholders of their right to access information.</td>
<td>🙄 Requires active dissemination of information, but there is no general requirement or support to promote education or public awareness on the right to access information in itself.</td>
<td>🙄 No general requirement or support to promote education or public awareness on access to information.</td>
<td>🙄 No general requirement or support to promote education or public awareness on access to information.</td>
<td>🙄 No general requirement or support to promote education or public awareness on access to information.</td>
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<tr>
<td>Accountability</td>
<td>🔄 Only for program results lending is there a requirement on countries to prevent, detect and respond to actual or alleged fraud and corruption. No general requirements or support to address corruption. Requires Delivery Partners to carry out an assessment of the country’s financial management and procurement capacity. Countries are required to address questions around laws and measures to deal with anti-corruption and national best practices for fiscal transparency, among others. However, there is no explicit recognition and requirements around accountability and anti-corruption assessments.</td>
<td>🔄 The SEPC and supporting documents require ensuring accountability of public institutions and provide several guidelines and support for assessing corruption.</td>
<td>🔄 Countries are required to include information on the process for developing and implementing activities in terms of transparency, coordination, capacity and accountability. However, specific requirements or support is not provided.</td>
<td>🔄 The IDB provides support to countries to battle corruption. Provides an anti-corruption framework to ensure that allegations of corruption in Bank financed activities are investigated and sanctioned.</td>
<td>🔄 Provides explicit support and guidance to address corruption and ensuring accountability. Provides an accountability mechanism policy and an anti-corruption policy. It also supports anti-corruption programs (strategies, statutes, codes of conduct, etc.) in the countries.</td>
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<td>Clear Land Tenure Rights</td>
<td>👎 Only for certain projects is there a requirement to recognize customary and traditional land rights. In cases of involuntary resettlement an assessment of land tenure rights must be carried out, but no clarification or recognition of rights is required. Notably, the WB can provide support to establish legal recognition of traditional or customary land tenure systems.</td>
<td>👍 Recommends developing clarity of both statutory and customary rights of owners or users of forests. However, it is not a requirement, and no specific guidance or support is provided.</td>
<td>👍 Requires respecting and promoting the legal recognition and exercise of the rights of indigenous peoples, local communities and other vulnerable groups to land, territories and resources. Promotes an examination of domestic legal system to identify different forest tenure rights for indigenous peoples and other forest dependent communities.</td>
<td>👍 The FIP aims to support and promote land tenure reform through its investments. However, it does not ensure recognition and respect of clear land tenure rights.</td>
<td>👍 Requires clarity and recognition of both statutory and customary rights in accordance with the ‘applicable legal norms’, which include all national indigenous legislation, indigenous juridical systems, national legislation and applicable international norms in force for each country, including customary law.</td>
<td>👍 Requires examination of the degree to which customary land rights and land tenure of relevant forest-dwelling and/or forest-dependent communities are satisfactory and to design and agree upon, with countries necessary steps to rectify significant shortcomings in these issues.</td>
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## Equitable Distribution of Benefits

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<td><strong>Equitable Distribution of Benefits</strong></td>
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<td><img src="image" alt="thumbs_down" /> No provisions on equitable distribution of benefits, except in the cases of involuntary resettlement (benefits are restricted to rights that are recognized) and in the cases that involve indigenous peoples. Outside these cases, there is no explicit mention or requirement related to equitable benefit sharing arrangements.</td>
<td><img src="image" alt="thumbs_up" /> Recognition and requirement to provide equitable distribution of benefits. However, they are only addressed at a later stage, which limits the effectiveness in which they are developed through participatory means.</td>
<td><img src="image" alt="thumbs_up" /> Requires and supports countries to ensure equitable, non-discriminatory and transparent benefit-sharing among relevant stakeholders, in a participatory manner, with special attention to marginalized and vulnerable groups.</td>
<td><img src="image" alt="thumbs_up" /> Requires and supports countries to ensure equitable, non-discriminatory and transparent benefit-sharing among relevant stakeholders, in a participatory manner, with special attention to marginalized and vulnerable groups.</td>
<td><img src="image" alt="thumbs_down" /> The FIP does not explicitly require equitable non-discriminatory and transparent benefit sharing. However, the FIP requires that its investment catalyse, support, measure and monitor the delivery of demonstrable improvement in social and economic well-being of forest dependent communities, including equitable benefit sharing.</td>
<td><img src="image" alt="thumbs_down" /> The IDB does not support countries in guaranteeing that all relevant stakeholders can access equitable distribution of the benefits. Participation in ‘project benefits’ is only addressed when indigenous peoples are directly or indirectly affected.</td>
<td><img src="image" alt="thumbs_down" /> Only encourages countries to take into account what indigenous peoples would prefer in terms of equitable distribution of benefits. Does not take into account other forest dependent communities.</td>
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<td><strong>Gender and Equality</strong></td>
<td>🙋 Provides a specific operational policy intended to deal with gender issues. However 'gender equality' is not explicitly mentioned. WB requires gender assessments, and if gender issues are identified there are measures to take them into account. However, this does not equate to a requirement to address gender equality issues.</td>
<td>🙋 Encourages countries to conduct consultations in a gender sensitive manner. SESA encourages assessment of key gender concerns, particularly gender based risks. These should be addressed in the ESMF.</td>
<td>🙋 Requires the promotion and enhancement of gender equality, equity and women's empowerment in general. However, it does not raise the issue of how the UN-REDD+ programme can contribute to addressing gender discrimination, if it has been identified.</td>
<td>🙋 The development and implementation of the investment strategy should be inclusive, transparent and participatory involving women's groups and other stakeholders. However, there is no requirement or support to ensure gender equality is addressed.</td>
<td>🙋 Does not have any particular safeguard aimed at ensuring gender equality in the IDB's operations. However, the IDB supports and encourages research on women’s participation.</td>
<td>🙋 Requires the integration of gender considerations into all aspects of the Bank’s operations at all stages of the project cycle (including identification, preparation, implementation and monitoring and evaluation).</td>
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<tr>
<td><strong>Appropriate Institutional Framework</strong></td>
<td>![Hand Icon] Social and environmental safeguards require an assessment of institutional capacity. Most promote addressing gaps or weaknesses identified.</td>
<td>![Hand Icon] In SESA, countries are expected to assess institutional capacity. Where weaknesses or gaps are identified, countries are expected to develop a plan to strengthen capacity. The R-PP promotes institutional capacity building for the SIS and NFMS. However, there is no emphasis on the need for financial resources to improve institutional governance frameworks. Additionally, the R-PP promotes institutional capacity building for SIS and NFMS.</td>
<td>![Hand Icon] Institutional capacity should be assessed, and if weaknesses are found countries should develop an implementation plan to deal with these issues. However, countries are only required to consider certain issues, and there is no emphasis on the need for financial resources to improve institutional governance frameworks.</td>
<td>![Hand Icon] The FIP promotes and supports institutional capacity. Investment Strategy should provide information on the status of the enabling environment for REDD+ (public policy, regulatory framework and institutions). The FIP also provides capacity building support.</td>
<td>![Hand Icon] The IDB will provide financing and technical cooperation for institutional strengthening by creating new forest-related institutions or strengthening existing ones. The IDB also requires its borrowers to assess their own executing agency environmental governance capacity.</td>
<td>![Hand Icon] Institutional capacity should be assessed, and if weaknesses are found countries should develop an implementation plan to deal with them. Will provide capacity building support.</td>
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<td><strong>Participation in Decision-making Processes that Affect the Environment</strong></td>
<td>🙁 No general recognition or promotion of the right to participate in decision making processes. Consultation and/or participation are only required at project level.</td>
<td>🙁 No general recognition or promotion of the right to participate, but recognition of indigenous peoples’ right to participate. Countries must develop consultation and participation plans to develop REDD+ strategy options.</td>
<td>☑️ The UN-REDD requires countries to ensure full and effective participation of all relevant stakeholders in design, planning and implementation of REDD+ activities.</td>
<td>🙁 The FIP investment strategies, programs and projects should be designed and implemented under a process of public consultation, with full and effective participation of all relevant stakeholders. However, the operative details are provided by MDB specific safeguards.</td>
<td>☑️ The right to participate in decision-making processes is promoted by the IDB, but with certain limitations, which need to be complemented by a more comprehensive national framework.</td>
<td>🙁 Does not explicitly recognise a general right to participate in decision making processes. There are certain provisions for the participation of indigenous peoples and affected people. However, it is not clear how parties view and concerns will be taken into account in the decision making process.</td>
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<td><strong>Adequate Access to Justice</strong></td>
<td>🚫 Grievance mechanisms are only required for indigenous peoples and involuntary resettlement. Provides access to World Bank Inspection Panel, but it is limited and cannot guarantee effective access to justice.</td>
<td>🤗 The R-PP requires feedback and grievance mechanisms are set at the national level. Tools and guidance are provided.</td>
<td>🙁 Promotes and supports the rule of law, access to justice and effective remedies. No guidance provided for the design of national-level grievance mechanisms.</td>
<td>🤗 FIP investment strategies promote the establishment of a conflict resolution mechanism where appropriate. However, it is not a requirement.</td>
<td>🙆 Afected parties will have access to the Independent Consultation and Investigation Mechanism (ICIM). However the ICIM has several limitations and cannot guarantee effective access to justice.</td>
<td>🙆.Requires the establishment of a grievance/redress mechanism and provides stakeholders with an accountability mechanism (with problem solving and compliance review functions).</td>
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<tr>
<td>Integration of Social, Economic and Environmental Considerations and Cross-Sectoral Coordination</td>
<td>🔴 EA requires integration of social and environmental considerations but no scope for international human rights obligations. In cases of development policy lending integration is not necessarily required.</td>
<td>🔴 A SESA requires integration of social and environmental considerations. The R-PP promotes these through the creation of an inter-ministerial coordination body.</td>
<td>🔴 Requires countries to carry out environmental and social impact assessment in relation to activities planned in REDD+ strategy. However, no guidance is provided on how to weigh these considerations, nor does it require ensuring integration. Also requires countries to promote coordination, efficiency and effectiveness among all agencies and implementing bodies relevant to REDD+, including the creation of an inter-ministerial coordination body.</td>
<td>🔵 FIP promotes the integration of the role of forests into national sustainable development strategies, and requires cross-sectoral coordination. Requires countries to establish a Cross-cutting multi-stakeholder ‘National-Level Steering Committee’.</td>
<td>🔴 The IDB does not expressly mention the need to integrate economic, social, and environmental considerations into decision making. However, it promotes cross-sectoral communication and cooperation.</td>
<td>🔴 Indirectly promotes integration of social, economic and environmental considerations through a sectoral analysis.</td>
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## Safeguard C: Indigenous Peoples and Local Communities – Summary Table

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<tr>
<td><strong>Defining Indigenous Peoples and Local Communities</strong></td>
<td>❌ Indigenous peoples are defined broadly, with no reference to international law. This leaves numerous identification factors out of consideration. Local communities are defined under the Operational Policy on Forests.</td>
<td>🗝 No definition of indigenous peoples, although World Bank OPs apply (see left). No definition of local communities, but instead refers to ‘forest dwellers’ and ‘other forest dependent communities’. This categorization can cause limitations on certain rights.</td>
<td>🗝 Acknowledges various definitions under international law, with one common element, which is self-identification and recognition by other groups. Does not define explicitly local communities, but uses the term forest dependent communities to refer to anyone who is forest dependent but not indigenous peoples.</td>
<td>🗝 The FIP does not define the term indigenous peoples or local communities. It does not provide criteria for identifying them either. However, for the purpose of the FIP “indigenous peoples and local communities will include tribal communities.”</td>
<td>❌ Does not define the term indigenous peoples. However, the IPP provides common elements used by international instruments for identifying indigenous peoples. Local communities are not defined nor are criteria for their identification provided.</td>
<td>🗝 Provides its own definition of indigenous peoples, however, it requires countries to consider their own national laws, customary laws and international conventions. No definition for local communities, but reference to the term forest dependent communities and forest dwelling communities in forestry policy.</td>
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<td><strong>Respecting Knowledge</strong></td>
<td>![Aims to ensure respect for indigenous peoples’ cultures, but there is no requirement to respect cultural or traditional knowledge per se. No mention of local communities.]</td>
<td>![Knowledge is not defined. Aims to respect indigenous knowledge, but there is no clear requirement. No mention of local communities, other than the recognition of their role as holders of traditional knowledge.]</td>
<td>![The SEPC require countries to respect and protect traditional knowledge but does not define the term. It instead refers to the WIPO’s definition, which only focuses on ‘use’ of knowledge, rather than knowledge itself.]</td>
<td>![Respecting traditional knowledge is one of the purposes of the DGM. However, the FIP does not define ‘knowledge’ or ‘traditional knowledge’.]</td>
<td>![Requires protection of indigenous people’s traditional knowledge. The IDB provides that countries will use the definitions of indigenous knowledge, cultural resources, and intellectual property derived from applicable national and international law. There are no provisions to ensure local communities’ knowledge is respected.]</td>
<td>![No definition of traditional knowledge is provided. It has a provision to respect indigenous people’s knowledge, but only in the context of its commercial development. There are no provisions to ensure local communities’ knowledge is respected.]</td>
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<td><strong>Non-Discrimination</strong></td>
<td>🖕 No provisions, other than in the context of requiring that indigenous peoples have access to an equal due process for disputes over land that would be provided to other land owners with full legal title. No mention of local communities.</td>
<td>🖕 No explicit references to non-discrimination. However, there is a requirement to respect the rights of forest-dependent dwellers under national and international obligations, which could encompass the right of non-discrimination. No mention of local communities.</td>
<td>🖕 Not explicitly recognized, except in the context of benefit sharing for both indigenous peoples and local communities. Provides guidance to ensure this right is respected, but only in the context of benefit sharing.</td>
<td>🦬 The FIP does not provide specific safeguards against the discrimination of indigenous people or local communities. However, it provides equal emphasis on the rights of men and women.</td>
<td>🦐 The IDB will not finance projects that exclude indigenous peoples on the basis of ethnicity. If implicit factors exclude indigenous peoples and individuals based on ethnic grounds, the IDB requires countries to include corrective measures.</td>
<td>🖕 No provisions to protect indigenous peoples and local communities from discrimination. However, the SPS states that its safeguards are understood to protect the rights of those likely to be affected or marginalized by the development process.</td>
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<td>🔴 Does not promote or recognise this right.</td>
<td>🍁 No explicit reference to self determination. However, there is a requirement to respect rights of forest-dependent dwellers under national and international obligations, which could encompass self-determination.</td>
<td>🍁 Promotes the right to self-determination through the recognition of international law. The duty to obtain FPIC stems from the right to self-determination.</td>
<td>🍁 The FIP recognizes the right. FIP consultation processes with indigenous peoples and local communities “should recognize their own existing processes, organizations and institutions, including, inter alia, councils of elders, headmen, and tribal leaders, as well as indigenous peoples organizations and institutions.”</td>
<td>🍁 The IDB recognizes and promotes the right. The IDB Strategy on Indigenous Peoples states that the Bank will take into account indigenous juridical systems, “according to the rules for their recognition, established in the legislation of each”.</td>
<td>🍁 No explicit recognition of this right, but recognizes the rights of indigenous peoples to direct the course of their own development (which does not necessarily cover the scope of the right to self-determination).</td>
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<td>Rights associated with Culture</td>
<td><img src="image1" alt="Not recognized" /> No explicit recognition of rights associated with culture, and their links to lands and natural resources. Requires prior agreement for commercial development of cultural resources.</td>
<td><img src="image2" alt="Not recognized" /> No explicit recognition of cultural rights. It provides guidance on assessing socio-cultural risks from REDD+ activities. ESMF is to give special attention to cultural heritage.</td>
<td><img src="image3" alt="Yes" /> Requires protection and respect of cultural heritage and practices. Countries are required to assess whether their REDD+ Programme is likely to significantly affect cultural traditions of affected communities, in which case FPIC will need to be obtained. It provides guidance to implement this right.</td>
<td><img src="image4" alt="Not recognized" /> The FIP does not explicitly recognize or protect the cultural rights of indigenous peoples or local communities.</td>
<td><img src="image5" alt="Rejection" /> The IDB will not support operations that, in its opinion, will significantly damage critical cultural sites. Additionally, the IPP sets a specific safeguard requiring countries to include necessary measures in order to protect the indigenous culture, identity, language and traditional knowledge. However, there is no mention of local communities’ cultural rights.</td>
<td><img src="image6" alt="Rejection" /> General recognition of the duty to protect cultural identities, practices and habitats of indigenous peoples. Specific obligations only in the context of commercialisation of cultural practices (see knowledge). No mention of local communities’ cultural rights.</td>
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<td><strong>Collective Land Tenure</strong></td>
<td>👎 Countries must pay attention to collective and individual customary rights to land and natural resources in IPP/IPPF. However, there is no requirement to recognize them, except for certain specified activities. This may not cover all REDD+ activities, providing uncertainty for customary and traditional rights holders.</td>
<td>👍 For SESA, countries are recommended to identify/map indigenous peoples and other forest dependent communities’ rights, including local ownership. The ESMF should then articulate management responses for dealing with rights and ownership issues.</td>
<td>👍 Requires recognition and respect of collective ownership and user rights by indigenous peoples and local communities as well as recognition of customary tenure systems.</td>
<td>👎 The FIP does not specifically require or promote the recognition and respect of collective land tenure rights for indigenous peoples and local communities.</td>
<td>👍 The IDB requires the strengthening of titling and physical management processes for territories, lands, and natural resources traditionally occupied or used by indigenous peoples in accordance with applicable legal norms, and with environmental protection objectives. IDB also provides safeguards for operations that will directly or indirectly affect the legal status, possession or management of territories, lands, or natural resources traditionally occupied or used by indigenous peoples. There no mention of local communities rights.</td>
<td>👍 Promotes recognition of customary rights to lands of indigenous peoples, both individual and collective. It requires countries to include an action plan for the legal recognition of customary rights, but does not provide any guidance.</td>
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<td>Benefit-Sharing</td>
<td>👣 Requires countries to have a benefit sharing plan and measures for indigenous peoples and displaced persons to ensure they receive culturally and gender appropriate social and economic benefits. No mention of local communities.</td>
<td>👣 Benefits are supposed to be discussed through participatory processes under SESA. However, it does not mention the importance of including indigenous peoples and local communities. The ESMF should articulate equitable and accessible benefit sharing mechanisms for indigenous peoples and local communities.</td>
<td>👣 Requires countries to ensure equitable non-discriminatory and transparent benefit sharing. Specifies that indigenous peoples and local communities concerned have the right to determine the form that benefits will take. Provides guidance to ensure this right is effectively implemented.</td>
<td>👣 The FIP does not explicitly require equitable non-discriminatory and transparent benefit sharing when indigenous peoples and local communities are involved.</td>
<td>👣 The IDB supports whenever possible, the indigenous peoples' enjoyment of the benefits generated by the use of natural, cultural and knowledge resources. By stating 'whenever possible' the IDB is diminishing the protection of the right of indigenous peoples to access equitable benefit sharing. Additionally, it makes no reference to local communities.</td>
<td>👣 It does not require, and only promotes culturally appropriate and gender inclusive sharing of benefits for indigenous peoples. It makes no reference to local communities.</td>
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## Safeguard D: Participation – Summary Table

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<td><strong>Recognition and Implementation of Procedural Rights</strong></td>
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<td>No general recognition of procedural rights. Requires ‘consultation’, rather than ‘participation’, which does not by itself ensure full and effective participation.</td>
<td>No general recognition of procedural rights. Requires full and effective participation of relevant stakeholders in the design, planning and implementation of REDD+ activities. However, FCPF emphasises the importance of consultation and participation during REDD+ readiness and implementation.</td>
<td>Requires the full and effective participation of all relevant stakeholders. However, it does not recognise the right to access to justice. The FIP recognises the indigenous peoples’ procedural right of Free, Prior and Informed ‘Consensus –reflecting broad community support.’</td>
<td>Recognition of procedural rights of indigenous peoples. No mention of procedural rights for local communities or other relevant stakeholders.</td>
<td>Recognition of procedural rights of indigenous peoples. No mention of procedural rights for local communities or other relevant stakeholders.</td>
<td>Recognition of procedural rights of indigenous peoples. No mention of procedural rights for local communities or other relevant stakeholders.</td>
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## Identification of Relevant Stakeholders

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<tr>
<td>Safeguard D</td>
<td><img src="thumbs_up.png" alt="thumbs_up" /> <strong>References</strong> are made to groups or individuals that may be affected by projects. Screening is required to identify indigenous peoples and potentially displaced persons.</td>
<td><img src="thumbs_up.png" alt="thumbs_up" /> <strong>Guidelines</strong> provide a non-exhaustive list of stakeholders. Stakeholder mapping and analysis of stakeholder concerns are required early on, but does not require notification or early dialogue with communities on the ground.</td>
<td><img src="thumbs_up.png" alt="thumbs_up" /> <strong>Requires identification</strong> through a rigorous methodology. Provides guidance on definition of stakeholder types and how to identify them.</td>
<td><img src="thumbs_down.png" alt="thumbs_down" /> <strong>Does not require</strong> countries to conduct a process of stakeholder identification.</td>
<td><img src="thumbs_up.png" alt="thumbs_up" /> <strong>Requires countries</strong> to conduct a stakeholder analysis that identifies affected and interested parties, their inter-relations and interests regarding the project.</td>
<td><img src="thumbs_up.png" alt="thumbs_up" /> <strong>Requires an early screening process</strong> to define, identify and enumerate the people and communities to be affected. Provides guidance for the identification of affected people and displaced persons.</td>
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<td>Providing Access to Information</td>
<td>👍 In the context of consultations for EAs there is a requirement to provide timely relevant material prior to consultation in a form and language understandable and accessible to groups being consulted. Requirement for draft resettlement instruments to be available at a place accessible to displaced persons and NGOs in a form, manner and language understandable to them.</td>
<td>👍 Promotes early information sharing and planning documents and processes with representatives of stakeholders groups in a culturally and linguistically appropriate manner to share basic REDD+ concepts and components with relevant stakeholders.</td>
<td>👍 Supports access to information through the timely access to information, information dissemination at all levels and in a culturally sensitive manner as a pre-requisite to consultations. Also provides guidance on the type of information countries should share, and requires them to provide information to potentially interested members of the public about how information will be made accessible to them.</td>
<td>👍 Drafts of Investment strategies will be publicly available in country through its website. FIP does not ensure appropriate and cultural means of disclosure of information.</td>
<td>👍 The IDB recognizes that “information is the true gateway to participation. However, IDB does not ensure appropriate and cultural means of disclosure of information.</td>
<td>👍 Recognises the right to access information in a timely, accessible manner and a language that is understandable to affected peoples and other stakeholders, including the general public.</td>
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<td><strong>Implementing Participatory Approaches</strong></td>
<td>Requirement to consult in EAs and involuntary resettlement. For the latter, there is a requirement to develop strategies for participation. There is no requirement for EA to detail results of consultation, or to state whether the views expressed in consultations where factored into the decision, and if so, how. For DPLs no requirement to consult or engage.</td>
<td>The R-PP needs to result in a consultation and participation plan through consultation and stakeholder participation. Stakeholders should be consulted in system design and operations of specific components of REDD+. ESMF should contain procedures for on-going consultation and mechanisms for monitoring participation.</td>
<td>Participatory mechanisms should be developed with and approved by relevant right holders and stakeholders groups. Consultation should be tailored to the local context, using socially and culturally appropriate methods and at mutually agreed locations. The results of consultations should be disseminated and indicate how inputs were taken into account.</td>
<td>The FIP investment strategies, programs and projects to be “designed and implemented under a process of public consultation.” Countries should keep a record of the consultation process and a report on the outcome of the consultation (publicly disclosed in a culturally appropriate manner, form and language).</td>
<td>Participation is sought through “meaningful consultation” but there is no specific guidance as to how results from consultation processes are ultimately integrated or not into decisions. It is not clear to what extent affected people may influence the decision making process.</td>
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<td><strong>Conflict Resolution Mechanisms</strong></td>
<td>🌶 No requirements to set up grievance or dispute resolution mechanisms, except for projects relating to indigenous peoples and involuntary resettlement. Access to the World Bank Inspection Panel, which is limited to examining non-compliance with OPs.</td>
<td>🍦 The R-PP requires to set-up of feedback and grievance mechanism. It has a draft tool box for setting up national grievance mechanisms. Access to the World Bank Inspection Panel, which is limited to examining non-compliance with OPs.</td>
<td>🍦 Acknowledges the need for a national level grievance mechanism but provides no guidance.</td>
<td>🍦 The FIP investment strategies should describe an inclusive process for stakeholder engagement in the design, implementation, monitoring and evaluation of FIP programs and projects. Such process may include the establishment of a conflict resolution mechanism where appropriate.</td>
<td>🍦 Does not require to set-up feedback or grievance mechanisms. Provides access to the ICIM and the Access to Information Committee, which have considerable limitations.</td>
<td>🍦 Has an accountability mechanism to resolve project-related conflicts and non-compliance with ADB policies. Additionally requires countries to establish grievance and redress mechanisms.</td>
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<td>Creating an Enabling Environment for indigenous peoples and local communities</td>
<td>🕵️‍♂️ Can support and provide financial assistance for making development processes more inclusive for indigenous peoples, for example through legal reform, and capacity building.</td>
<td>🕵️‍♂️ Recognizes the need and the right of indigenous peoples to participate through representatives chosen by themselves in accordance to their procedures and decision making institutions.</td>
<td>🕵️‍♂️ Requires countries to ensure the full and effective participation of relevant stakeholders in design, planning and implementation of REDD+ activities, with particular attention to indigenous peoples, local communities and other vulnerable and marginalised groups.</td>
<td>🕵️‍♂️ The FIP establishes a Dedicated Grant Mechanism, to support their participation in the development of the FIP investment strategies, programs and projects.</td>
<td>🕵️‍♂️ The special mechanisms to ensure the early and effective participation of indigenous peoples provided by the IDB are expert screenings, early and socio-culturally appropriate consultation and good faith negotiation process.</td>
<td>🕵️‍♂️ Requires providing measures to strengthen the social, legal and technical capabilities of government institutions to address indigenous peoples issues in the project area.</td>
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<td>No requirement to adhere to applicable international obligations, which include provisions regarding the participation of indigenous peoples and local communities.</td>
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<td>Countries are required to describe processes to include relevant local organizations and NGOs to carry out the measures of indigenous people’s plans for the project.</td>
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<td>A Consultation plan should provide plans of engagement in consultation and mapping. Guidelines recommend capacity building and training. Should note, FCPF relies on WB safeguards for consistency with all relevant international obligations.</td>
<td>Requires ratifying relevant international instruments as well as respecting and protecting the substantive and procedural rights of indigenous peoples and local communities in order to foster an enabling environment.</td>
<td>Provides guidelines to facilitate the full and effective participation of indigenous peoples and local communities.</td>
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<td>There is no mention of local communities.</td>
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<td><strong>Free, Prior, and Informed Consent</strong></td>
<td>↓ Does not require FPIC. Requires free, prior and informed ‘consultation’ resulting in broad community support for projects affecting indigenous peoples. Requires ‘prior agreement’ for commercial development of cultural resources and knowledge. For social aspects of policy reforms, ‘consultation’ is only encouraged.</td>
<td>↓ Does not require FPIC. Adopts WB’ standard as of free, prior and informed ‘consultation’. However, the FCPF expects country Parties to ILO 169 to comply with their obligations, including FPIC, which might not guarantee compliance.</td>
<td>&amp;thickspace; Recognizes Free, Prior and Informed Consent as a key component for stakeholder engagement. FPIC applies to indigenous peoples and forest dependent communities that share common characteristics. Recognises that FPIC entails the right to ‘veto’ (withhold consent or withdraw), which can result in the termination of a project.</td>
<td>↓ Does not require FPIC. Requires free, prior and informed ‘consultation’ reflecting broad community support.</td>
<td>↓ Does not require FPIC. Requires meaningful consultations to reach ‘consent’, which is understood as ‘broad community support’ and applies only for certain cases (for community development of indigenous peoples’ cultural resources and knowledge and natural resources on indigenous peoples’ lands and for physical displacement).</td>
<td>↓ Does not require FPIC. Requires meaningful consultations to reach ‘consent’, which is understood as ‘broad community support’ and applies only for certain cases (for community development of indigenous peoples’ cultural resources and knowledge and natural resources on indigenous peoples’ lands and for physical displacement).</td>
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## Safeguard E: Biological Diversity and Natural Forests – Summary Table

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| **Defining Natural Forests** | 🍃 Defines natural forests and natural habitats similar to definitions provided in international law. However, there is a lack of clarity regarding operative terms of the definitions, which can result in expanding or narrowing the scope of what constitutes natural forests. | 🍂 No definition of natural forests is provided. However, WB OPs apply. | 🍂 Does not define ‘natural forests’, only ‘naturally re-generated forests’. | 🍂 Refers to natural forests, but does not define natural forests. Refers to IPCC guidance. | 🍂 Refers to natural forests, but does not define natural forests. | 🍂 The ADB does not provide a definition for natural forest. However it does provide a definition for ‘old growth forests’ and ‘natural habitats’, which provide elements that could be useful/considered by countries to define what constitutes ‘natural forests’.
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<tr>
<td><strong>Prohibiting the Conversion of Natural Forests</strong></td>
<td>✖️ Does not prohibit the conversion of natural forests. However, it does not support the ‘significant’ conversion or degradation of ‘critical’ natural habitats or forests, unless there are no feasible alternatives and benefits substantially outweigh the environmental costs.</td>
<td>✖️ No prohibition of conversion of natural forests. Note that WB Ops apply.</td>
<td>✖️ Requires countries to ensure that REDD+ activities do not cause the conversion of natural forests, but anticipates that it still may occur.</td>
<td>✖️ The FIP states that it should safeguard natural forests and should not support the conversion, deforestation or degradation of such forests. The FIP in particular should safeguards high conservation value forest. However, it is unclear if this integrates/refers to natural forests.</td>
<td>✖️ The IDB policies do not prohibit the conversion of natural forests. However, the IDB will not support operations that, in its opinion, significantly convert or degrade natural habitats and critical natural habitats, unless benefits substantially outweigh the environmental costs.</td>
<td>✖️ The ADB foresees specific conditions and requirements under which conversion or degradation may take place in natural or critical habitats. Commercial logging operations in primary tropical moist forests and old-growth forests are listed as a prohibited investment activity by the ADB.</td>
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<td>Identifying Natural Forests and Biodiversity</td>
<td>🌟 Promotes and supports the identification of natural habitats and promotes measures for their protection. It may also support country efforts to identify threats to natural habitats and forests.</td>
<td>🍀 Does not mention identifying or mapping natural forests, or important components of biodiversity.</td>
<td>🌟 Requires countries to map natural forests and biodiversity.</td>
<td>🍀 Requires mapping of forest cover, forest type and use patterns, including identification and mapping of high conservation value forest, which might not include all natural forests. No provisions to identify biodiversity.</td>
<td>🍀 The IDB does not require countries to identify and map natural forests or important components of biodiversity.</td>
<td>🍀 There are no specific provisions for identifying natural forests and biodiversity. However, countries are required to include an environmental baseline data to describe physical, biological and socioeconomic conditions of the project area. They are also required to assess the significance of project impacts and risks to biodiversity.</td>
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Implementing Measures to Protect Biodiversity

EAs require an assessment of policy, legal and institutional capacity for implementing conservation and mitigation measures. Promotes measures to protect critical natural habitats, and the establishment of protected ecological areas.

ESMF must specifically consider biodiversity.

The SIS is expected to be capable of collecting data on conservation of biodiversity and other ecosystem services. However, no guidance is provided in the event that REDD+ activities conflict with these policies.

Requires countries to ensure consistency with and contribute towards national biodiversity conservation policies. The FIP promotes measures to protect biodiversity, by requesting countries to provide information on how FIP investment will deliver protection and enhancement of biodiversity and strengthened resilience of ecosystems, with associated ecosystem.

The IDB supports environmental and natural resources management operations by including targeted investments to protect biodiversity and fragile ecological systems. Specific safeguards are provided.

Biodiversity conservation must be considered as an integral criterion for timber concessions and forest projects. The ADB also encourages mixed plantations rather than monocultures and the development of low-cost small-scale projects to promote and protect biodiversity. Additionally, it requires borrowers to identify measures to avoid, minimize or mitigate potentially adverse impacts and risks and propose compensatory measures.
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<td>Supporting Conservation Research and Awareness Raising</td>
<td>🗣️ Supports economic and sector work to <em>inter alia</em>, identify natural habitats issues and special needs for natural habitat conservation efforts. Encourages countries to provide affected groups with appropriate information to protect natural habitats.</td>
<td>🗣️ Consultations and SESA require studies on drivers of deforestation. NFMS should consider qualitative and quantitative variables on non-carbon benefits. Recommends information, education and communication campaigns of REDD+ objectives, risks, opportunities and roles.</td>
<td>🗣️ There are no provisions supporting conservation research and awareness-raising.</td>
<td>🗣️ The FIP does not include provisions regarding awareness-raising or supporting conservation research.</td>
<td>🗣️ The Bank promotes conservation research and awareness-raising. It will consider financing activities for promoting science and technology as methods to protect forest areas and improve forestry practices and training of forest-technical personnel.</td>
<td>🗣️ The ADB supports policy and technical research studies to implement comprehensive forestry development programs at the country level.</td>
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<td><strong>Integration of Biodiversity in Cross Sectoral Policies</strong></td>
<td>✅ Encourages integration of conservation and ecological function maintenance issues into development and environmental strategies.</td>
<td>✅ Encourages coherence between existing biodiversity conservation initiatives and REDD+ strategy options. Requirement to consider synergies/conflicts between biodiversity and GHG emission reduction objectives.</td>
<td>🚫 There are few provisions in the SEPC explicitly requiring the integration of biodiversity considerations in cross-sectoral policies. However, language is mostly on trade-offs, usually favouring carbon benefits over biodiversity.</td>
<td>🚫 The FIP does not require countries to integrate biodiversity in cross-sectoral policies.</td>
<td>🚫 The IDB policies do not have special provisions aiming to integrate biodiversity matters in cross-sectoral policies.</td>
<td>🚫 There are no explicit provisions requiring cross-sectoral integration of biodiversity into other policies. However, some provisions regarding the need to have a sectoral and multi-sectoral approach and an assessment of sectoral policy objectives when developing forest projects are found.</td>
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<td><strong>Enhancement of Other Benefits</strong></td>
<td><img src="image" alt="Certification schemes for commercial harvesting require measures to enhance and maintain multiple benefits. However, no mention of environmental or social benefits." /></td>
<td><img src="image" alt="Promotes innovative concepts for social benefits. ESMF supposed to provide special consideration for livelihoods. SIS/NF should be capable of collecting data on social and environmental benefits, and rural livelihoods enhancement. However, no specific guidance on how to ensure multiple benefits." /></td>
<td><img src="image" alt="Requires countries to ‘monitor’ the impacts of REDD+ activities on livelihoods and promote sustainable livelihoods. No guidance or requirements to implement measures to promote multiple benefits, other than through benefit sharing." /></td>
<td><img src="image" alt="The FIP aim to contribute to achieving multiple benefits, which include biodiversity conservation, protection of the rights to indigenous peoples and local communities, poverty reduction and rural livelihood enhancement. Countries are required to provide evidence as to how they will achieve these multiple benefits." /></td>
<td><img src="image" alt="The IDB will provide financing and technical cooperation to assist borrowing countries to utilize and conserve their forest resources and to provide social, economic and environmental benefits to present and future generations. No specific measures or guidance is provided." /></td>
<td><img src="image" alt="ADB strategies need to take into consideration the multiple and complementary functions and uses of forests. However, countries are not required to enhance the social values of forests while implementing ADB-assisted forest projects." /></td>
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### Safeguard F & G: Permanence and Leakage – Summary Table

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<td><strong>Monitoring and Assessment</strong></td>
<td>![Hand Icon] Provides general monitoring and assessment frameworks for projects, which encourage indigenous peoples or community participation.</td>
<td>![Hand Icon] In a R-PP, countries are expected to create a work plan for developing REL/RL. NFMS must be capable of monitoring GHG removals and non-carbon aspects. Significantly, it is meant to complement and be linked to the SIS.</td>
<td>![Hand Icon] Requires the assessment of land use, land use change drivers and forest law, policy and governance for the purpose of identifying drivers of deforestation. Provides guidance on how to monitor and complete risk assessment.</td>
<td>![Hand Icon] Requires the implementation of systems for forest monitoring, which should be transparent, measurable, reportable and verifiable. It also requires national systems for independent forest monitoring.</td>
<td>![Hand Icon] The IDB will monitor the country’s compliance of the mitigation measures included ESMP, environmental or associated social noncompliance issues arise during project implementation; safeguard indicators and ex-post evaluation. Affected parties can play a role in monitoring.</td>
<td>![Hand Icon] Countries are required to propose and implement monitoring measures on the particular risks and impacts identified and to submit periodic monitoring reports on their implementation performance. Participation of affected people and indigenous peoples is required for the validation of monitoring and evaluation reports regarding projects.</td>
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<td>General measures to avoid leakage and ensure permanence of emission reductions</td>
<td>❌ Does not include general measures to address reversals or displacement of emissions. Applies the precautionary principle to natural resources management.</td>
<td>🧴 Recommends inclusion of measures to address risks of reversals or displacement of emissions in countries’ REDD+ strategy. However, does not provide guidance.</td>
<td>☑ Broad recommendations are provided, including sustainable forest management and sustainable development, as well as the need to prevent land degradation, conversion of natural forests, indirect land-use change, and impacts on non-forest ecosystems and biodiversity.</td>
<td>☑ Permanence and leakage risks and current mitigation measures are included in the criterion of Demonstration of FIP’s Investment potential at scale. No specific guidance is provided.</td>
<td>☑ The IDB requires countries to assess their environmental governance capacity, as risk factor for the environmental sustainability of the operation.</td>
<td>☑ Applies the precautionary principle to natural resources management. Countries are required to seek the reduction of project-related anthropogenic greenhouse gas emissions and to quantify direct and indirect emissions derived from the project implementation.</td>
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| **Measures to Tackle Reversals** | 🍃 No explicit requirements to deal with reversals.  
No coherent policy for integrating climate change considerations into projects. | 🌐 SESA requires countries to assess suitability of locations based on, *inter alia*, state of degradation, capacity to regenerate, and resilience to environmental changes.  
Recommends participation in design and operation of NFMS.  
No specific guidance for dealing with reversals. | 🌐 Requires countries to address the risk of reversals of REDD+ achievements. Little guidance provided. | 🌐 No explicit requirement to address reversals. The FIP provides relevant provisions to tackle reversals, such addressing drivers of deforestation and forest degradation. | 🌐 The IDB provides relevant provisions to tackle reversals, though no explicit reference is provided. | 🌐 Requires countries to assess the impacts (including those related to climate change) as part of their environmental assessments. No explicit requirement to address reversals. |
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<td>Measures to Tackle Displacement</td>
<td>🙆‍♂️ EA’s are required to consider unplanned developments within the project’s ‘area of influence’. For involuntary resettlement, countries are required to ensure that displaced people receive support. However, no requirement to recognise customary, traditional or other non-formal legal rights to land.</td>
<td>🙆‍♂️ Countries must document how NFMS will address displacements. However, no guidance for dealing with displacement.</td>
<td>🙆‍♀️ Countries are required to assess the potential for displacement of land-use as a result of REDD+ actions. No guidance on how to tackle displacement.</td>
<td>🙆‍♀️ Has no explicit requirements, but provides relevant provisions.</td>
<td>🙆‍♀️ No explicit requirements, but provides relevant provisions.</td>
<td>🙆‍♀️ Impacts and risks of any project will consider areas and communities potentially affected by impacts from “unplanned but predictable” developments caused by the project, that may occur later or at a different location. Countries are required to assess potential trans-boundary, global and cumulative effects, including climate change and emission of greenhouse gases in their environmental assessments.</td>
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<td>International Cooperation</td>
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<td>Requires transboundary impact assessments in EA. Only supports projects in disputed areas if the governments concerned agree that project can go forward without causing problems.</td>
<td>No recognition of the role of international cooperation to deal with risks of transboundary displacement.</td>
<td>Requires identification of potential drivers of international leakage.</td>
<td>FIP investment strategies, programs and projects are required to support replicable national or regional pilot programs.</td>
<td>Whenever possible, the Bank will promote regional programs and technical cooperation for the application of the Forest Development Policy.</td>
<td>Countries are required to assess potential transboundary, global and cumulative effects, including climate change and emission of greenhouse gases in their environmental assessments.</td>
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Part II: Compliance Aspects of REDD+ Related Initiatives

Introduction

A country safeguard system (CSS) requires an adequate and verifiable compliance component, which can ensure the accountability and effectiveness of the CSS. The compliance component of a CSS should include the development of: (1) effective and transparent monitoring and reporting systems; (2) grievance or dispute resolution mechanisms; and (3) non-compliance mechanisms.

The following sections provide a brief overview and analytical perspective of the above mentioned compliance components, but providing particular attention to the monitoring and reporting systems of selected REDD+ related initiatives. In this compliance component we highlight the specific role the REDD+ Social and Environmental Standards (REDD+ SES) Initiative can play in supporting the development of a Safeguard Information System (SIS).

Apart from establishing a robust and transparent national SIS, countries will need to link them to some type of grievance or dispute resolution mechanisms, and with non-compliance mechanisms. It is important to point out that none of the initiatives covered in our analysis are very strong in this area. A more in-depth analysis of the grievance and non-compliance mechanisms of the selected REDD+ initiatives is provided in Part I of this document.

Monitoring and Reporting of Safeguards Performance

The development of an effective and transparent monitoring and reporting system refers to the development and implementation of a system for providing information on how the UNFCCC REDD+ safeguards are being addressed and respected (safeguards information system, or SIS). After putting in place laws and policies designed to protect and even enhance human rights and environmental protection, countries will need to monitor and report on their effectiveness. This is usually done through the development of a monitoring framework, where desired results (avoidance of risks or attainment of benefits) are defined and quantitative or qualitative indicators are established in order to measure performance against these desired results. Depending on the desired result, indicators can be directed towards looking at the existence of policies or institutions, how processes are carried out, or outcomes. In addition to prioritising ‘what’ information goes into the SIS, sources of data and information are identified.

A SIS will be vital in terms of assessing and reporting the extent to which REDD+ safeguards are being addressed at the national level. It will also be important as a form of internal and external accountability mechanisms as governments will need to report to domestic stakeholders, donors and the international community. Of the initiatives we have analysed that involve international financial institutions, none have a monitoring or reporting mechanism specifically designed to assess or to demonstrate that the UNFCCC REDD+ safeguards have been addressed and respected. Furthermore, experience has

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27 UNFCCC Decision 1/CP.16, paragraphs 69 and 71(d), FCCC/CP/2010/7/Add.1.
shown that monitoring and reporting systems are often unable to verify whether projects are conducted in accordance with established environmental and social safeguards standards, or that sustainable development objectives are being achieved.\textsuperscript{28}

Nevertheless, the REDD+ SES Initiative has a unique potential to contribute towards national processes for designing a SIS. In particular, REDD+ SES integrates a participatory approach to setting up and implementing a SIS in a way that aims to be consistent with the UNFCCC REDD+ Safeguards.

Below we provide a brief overview and analysis of the monitoring and reporting aspects of selected REDD+ related initiatives.

**The World Bank and the FCPF**

The World Bank monitors and evaluates its own contribution to results using a framework for monitoring and evaluation. Under this framework, the World Bank is supposed to, \textit{inter alia}: formulate expected results, indicators of outputs and outcomes; establish a system for collecting, analysing and reporting; and monitor and evaluate progress.\textsuperscript{29}

For project investment lending, the World Bank is supposed to supervise borrower implementation of Bank-financed projects, which includes monitoring, evaluative review and technical assistance activities.\textsuperscript{30} However, to the extent possible, the World Bank relies on the borrowing country’s monitoring and evaluation systems.\textsuperscript{31} If these systems are not strong, the Bank assists the borrowing country in strengthening them, by providing support for strengthening statistical capacity for example. The World Bank’s Operational Policies do not specify any particular criteria for identification of weak monitoring and evaluation systems, although supervision plans are developed cooperatively between the borrower country and the World Bank. In particular, safeguards supervision varies depending on a number of circumstances such as perceived risk, scope of the project, potential impacts and the number and nature of safeguards triggered.\textsuperscript{32} During implementation, the borrower country monitors progress, and evaluates results upon completion, while the World Bank also monitors important aspects of project implementation, including compliance with environmental and social safeguards. This may consist of reviewing the borrower country’s monitoring and evaluation reporting, or conducting site visits.\textsuperscript{33} Depending on risk or profile of the project, the frequency of these activities may vary.

Similarly, under the World Bank’s development policy lending (DPLs), the borrowing country monitors progress during implementation, and evaluates results after completion.\textsuperscript{34} The World Bank is supposed to assess and monitor the process by which the borrower country carries out these duties, verify that requirements have been complied with, and validate findings from monitoring and evaluation.\textsuperscript{35}

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\textsuperscript{29} OP 13.60 – Monitoring & Evaluation, para 3.

\textsuperscript{30} OP 13.05 – Project Supervision, para 1 and 2.

\textsuperscript{31} OP 13.60 – Monitoring & Evaluation, para 4.


\textsuperscript{33} OP 13.05, para 9.

\textsuperscript{34} OP 8.60 – Development Policy Lending, para 16.

\textsuperscript{35} Id.
Evidence obtained thus far on the effectiveness of this approach demonstrates that the framework the World Bank uses to monitor compliance and effectiveness of its safeguards is insufficient. A 2010 report conducted by the World Bank’s own Independent Evaluation Group (IEG) found that safeguards monitoring and evaluation was the weakest aspect of supervision, and that more than one-third of World Bank projects suffered from inadequate monitoring and evaluation.\textsuperscript{36} The IEG’s assessment concluded that the World Bank does not have a clear framework for assessing performance and impacts of its safeguard policies.\textsuperscript{37} The World Bank was also critiqued for rarely specifying or integrating performance indicators into project result frameworks, not routinely collecting or using data from monitoring and evaluation, underinvestment in client monitoring capacity and poor follow-up during supervision.\textsuperscript{38}

In a more recent assessment, the IEG concluded that “the monitoring and reporting systems of the World Bank forest sector operations are inadequate to verify whether its operations are supporting forest management in an environmentally and socially sustainable way.”\textsuperscript{39} It was pointed out that environmental and poverty indicators used in forest projects were intended mainly to measure process or efforts, rather than impact.\textsuperscript{40}

The FCPF contains a slightly more detailed monitoring and evaluation framework for safeguards. Under both the Readiness Fund and the Carbon Fund, countries are supposed to develop and implement monitoring and evaluation systems to measure specific results.

Under the Readiness Fund, the \textit{R-PP Template} provides examples of process and progress indicators, including transparency in R-PP development, stakeholder inclusiveness, dissemination of information, means of feedback, and adherence to guidelines for procurement.\textsuperscript{41} Countries are also expected to integrate SIS into their monitoring and evaluation framework, including indicators on participation and inclusion of stakeholders, environmental and social impacts, the UNFCCC REDD+ safeguards, and non-carbon, governance, social and environmental benefits, among others.\textsuperscript{42} Nevertheless, countries are left to define—in nationally-led process involving all stakeholders—goals and outputs for REDD+, major safeguards issues, and prioritised non-carbon benefits. Country Participants are expected to submit information gathered for assessment through a mid-term progress report, and finally a Readiness Package (R-Package) to assess outcomes of readiness activities.

Country participants’ Environmental and Social Management Framework (ESMF) is intended to be a framework for dealing with social and environmental risks associated with specific REDD+ strategies or activities.\textsuperscript{43} It includes measures for environmental and social impact screening, assessment and monitoring. For purposes of the R-Package, the ESMF should describe institutional arrangements, procedures and capacity to monitor the implementation of various action plans designed to reduce, mitigate


\textsuperscript{38} Id.


\textsuperscript{40} Id.

\textsuperscript{41} R-PP Template, Version 6, for Country Use (April 20, 2012), Component 6, p. 67.

\textsuperscript{42} Id. See also, FCPF Readiness Fund, Monitoring and Evaluation Framework for the FCPF,” FMT Note 2012-11 rev (February 5, 2013), p. 32.

\textsuperscript{43} For a more thorough analysis of the role that SESA and ESMF play in developing REDD+ readiness, please see our analysis of the FCPF
and/or offset adverse impacts.\textsuperscript{44} If necessary, capacity building measures should be outlined in the R-Package. In their ESMF, country participants are expected to include, as appropriate, an Indigenous Peoples Planning Framework (IPPF), a Process Framework or Resettlement Policy Framework (RPF) for Involuntary Resettlement, and/or a Stakeholder Engagement and Dispute Resolution Framework. However, these frameworks are very non-specific in what they require in terms of monitoring requirements. For example, IPPFs are only required to set out “monitoring and reporting arrangements, including mechanisms and benchmarks appropriate to the projects.”\textsuperscript{45} RPFs are not much different, and are only required to describe “arrangements for monitoring by the implementing agency and, if required, by independent monitors.”\textsuperscript{46}

In the IEG’s evaluation of the World Bank’s experience with managing forest resources for sustainable development, problems with monitoring, reporting and evaluation were found to be especially bad for projects that rely on policy frameworks, because they included multiple subprojects that are less supervised than those with specific risk assessments and mitigation plans.\textsuperscript{47} In particular, this could have implications for countries working on developing CSS for REDD+ under the Readiness Fund of the FCPF, because reliance on policy frameworks may not require the specificity needed for effective monitoring and reporting on these issues.

The above would indicate that being able to verify performance of the UNFCCC REDD+ Safeguards will not only rely on measuring processes or efforts, but also on looking at impacts or results those processes achieve. Instead of focusing on a tick-box approach, countries need to focus on demonstrating actual impacts or outcomes. Experience has also shown that framework monitoring arrangements such as IPPFs and RPFs may be insufficient for developing appropriate monitoring and evaluation arrangements. Therefore, countries should only use these mechanisms as a basis for developing a more comprehensive SIS. Furthermore, if monitoring efforts will be successful for demonstrating that REDD+ actors have addressed and respected the UNFCCC REDD+ Safeguards, countries need to dedicate enough financial and technical resources to build capacity of those involved in monitoring, reporting and evaluating safeguards, including local communities.

The UN-REDD Programme

Under UN-REDD, a number of tools exist for setting up indicators in order to monitor and evaluate impacts of REDD+, particularly for governance and biodiversity. In particular, the Social and Environmental Principles and Criteria (SEPC) serves as a framework for handling environmental, social and governance issues associated with REDD+. The SEPC draws from, and should be coherent with, \textit{inter alia}, the UNFCCC REDD+ Safeguards and other international agreements, including the Convention on Biodiversity (CBD), International Labour Organization Convention 169 (ILO Convention No. 169) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).\textsuperscript{48} The SEPC consists of seven broad principles that relate to relevant environmental, social and governance issues. Under these principles, a number of criteria are elaborated for more specificity.

\textsuperscript{44} FCPF, “Guidelines and Generic Terms of Reference for SESAs and ESMF”, Annex C to the R-PP v. 6, p. 4.
\textsuperscript{45} World Bank, OP 4.10, Annex C, para 1(f).
\textsuperscript{46} World Bank, OP 4.12, Annex A, para 24(m).
There is limited guidance on how to apply, monitor and report on safeguards under UN-REDD, and no official process for assessment of safeguards has been developed.\(^{49}\) The Draft Benefits and Risks Tool (BeRT) is meant to guide application of SEPC in-country. However, it is not a tool for external assessment of programmes supported by UN-REDD.\(^{50}\) Furthermore, it is not a national assessment tool, but instead is a ‘decision-support tool’ designed to help stakeholders identify and assess how particular risks and opportunities should be addressed in their national REDD+ programmes. The BeRT could however be useful for identifying information needs, risks, challenges and opportunities that could be helpful for developing monitoring and evaluation systems as national REDD+ programmes progress through development, and subsequently during implementation.

For governance indicators, the UN-REDD Programme applies a Framework for Assessing and Monitoring Forest Governance, a tool designed by the UN Food and Agriculture Organisation (FAO) and the Program on Forests (PROFOR). The framework has three main pillars, including:

- Policy, legal, institutional and regulatory frameworks;
- Planning and decision-making processes; and
- Implementation, enforcement and compliance.

It is a relatively loose framework that countries can use, depending on their needs. The usefulness of having a multi-stakeholder process for defining these indicators, as well as verification is acknowledged. However, it does not explicitly acknowledge the UNFCCC REDD+ safeguards.

The UN-REDD Guidance for Provision of Information on REDD+ Governance also recognises that relevant stakeholders should be engaged in providing information on REDD+ safeguards.\(^{51}\) To this end, UN-REDD is using a Participatory Governance Assessment (PGA), which is a process designed to assist countries develop governance indicators in a participatory and country-specific manner with relevant stakeholders. This process is not meant to have a monitoring and evaluation role in itself, although it is valuable for constructing a future monitoring system for governance issues. While indicators must be agreed by the participants from each country, examples of such indicators could include current rates of deforestation, REDD+ funding that has been received, amounts of funds distributed, court cases brought, and levels of perceived corruption, among others.\(^{52}\) Based on the indicators that are agreed, this process should result in a national system for sharing information on various aspects of governance.

UN-REDD also has specific Draft Guidelines for Monitoring the Impacts of REDD+ on Biodiversity and Ecosystem Services. The Guidelines are intended to be used as a tool to indicate whether UNFCCC REDD+ Safeguard (e) is being met, as well as to ensure “multiple functions of forests and ecosystems are taken into account during REDD+ activities.”\(^{53}\) However, this guidance is quite general in nature. It is therefore supplemented by a Draft Annotated Guide to Useful Resources for Monitoring the Impacts of REDD+ on Biodiversity and Ecosystem Services, which is intended to point to a number of sources that provide guidance on monitoring and reporting on specific information, such as pressures on biodiversity and ecosystems, conservation, sustainable use, co-benefits and community involvement.

From the foregoing, it is important for countries to remember that the UN-REDD initiative and its safeguards can be used as conceptual resources to help build in-country capacity for monitoring and evaluating performance of the UNFCCC REDD+ Safeguards. However, it should be noted that the SEPC and BeRT, which are primary safeguard instruments of UN-REDD, are not actually tools for external or internal assessment of safeguards performance under UN-REDD. In order to comply with UNFCCC Guidance on REDD+, countries will need to establish some separate arrangement—either within or outside UN-REDD—to demonstrate adherence to the UNFCCC REDD+ Safeguards during the Readiness Phase of REDD+. Moreover, the UN-REDD tools outlined above only provide a conceptual basis for the further development of monitoring and evaluation systems for safeguards. Therefore, countries will need to combine these tools with those available under other initiatives.

The Forest Investment Programme (FIP)

The FIP states that it places importance on information management, and it is based on promotion of transparent and measurable outcomes for performance, including forest governance, livelihoods, climate resilience, biodiversity and other forest benefits.\(^{54}\) As one of the FIP’s criteria for investment strategies, programs and projects, “forest governance criteria and indicators should be integrated into project design as well as into performance assessments to ensure measurable outcomes.”\(^{55}\)

Monitoring and evaluation is supposed to be multi-stakeholder, participatory, transparent and verifiable. The FIP’s Operational Guidelines call for annual reporting by pilot countries and Multilateral Development Banks (MDBs) on implementation progress, including information on progress towards achieving desired results, performance of involved stakeholders, tracking of co-financing and lessons learned.\(^{56}\) The report is supposed to go through a national level multi-stakeholder assessment process, after which it is reviewed by the FIP Sub-Committee.

To guide reporting, the FIP Subcommittee has developed a Results Framework. The purpose of the Results Framework is to “establish a basis for monitoring and future evaluation of the impact, outcomes and outputs of FIP-funded activities.”\(^{57}\) It should be flexible, taking capacity into account, and be designed to operate within existing national monitoring and evaluation systems.\(^{58}\) The Results Framework contains a ‘logic model’, also known as a results chain, which is intended to demonstrate cause and effect, from inputs and activities through to outputs, outcomes and impact.\(^{59}\) The Results Framework also contains some basic guidance on how to agree on results, indicators, and a performance measurement strategy, a plan that identifies sources, methodology, and responsibilities for data collection.

Relevant for safeguards, the Results Framework covers a number of different results and corresponding indicators on poverty reduction; improved community forest management; reduced biodiversity loss and increased resilience of forest ecosystems; institutional and legal/regulatory frameworks that support sustainable forest management and protection of the rights of indigenous peoples and local communities; empowerment of local communities and indigenous peoples; and increased capacity to

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\(^{55}\) Id. At p 9.

\(^{56}\) P. 10.


address drivers of deforestation and forest degradation. However, the Results Framework does not make any explicit references or links with the UNFCCC REDD+ Safeguards, or SIS.

The Results Framework under the FIP does not currently contain guidance on how to establish specific “core” indicators that all countries are required to report on. However, it is possible that such indicators may be developed in the future. The Results Framework is currently being revised in order to address several constraints that have been identified in the existing framework, including over-complication of the results chain and indicators.

In addition to the Results Framework, FIP supervision is delegated to each respective MDB through which FIP finance is channelled. Accordingly, each MDB has its own policies and procedures for monitoring and evaluation. Therefore, countries should be aware that they may be subject to a number of monitoring and evaluation frameworks, depending on which MDBs channels FIP finance. Moreover, there is limited guidance on indicators related to safeguards, much less the UNFCCC REDD+ Safeguards. For instance, there are no references to adherence to relevant international legal obligations, or conversion of natural forests. The Results Framework also lacks clear outcome-based indicators, a similar to the World Bank. Therefore, to effectively demonstrate ‘address and respect’ for UNFCCC REDD+ Safeguards, countries need to go beyond the Results Framework of the FIP.

The Specific Role of REDD+ SES

The REDD+ Social and Environmental Standards (REDD+ SES) Initiative differs from other multilateral and voluntary REDD+ related initiatives (e.g. FCPF, FIP and UN-REDD). First, these initiatives are designed to support the development of policies, laws, rules and regulations to effectively implement REDD+. In addition, they have their own set of ‘safeguards’ and implementing approaches. On the other hand, REDD+ SES is not designed to support the implementation of REDD+, and does not provide a set of safeguards per se. The REDD+ SES is particularly designed to support a country-led process for development of a national SIS.

One of the stated primary roles of the REDD+ SES is:

“to provide a mechanism for country-led, multi-stakeholder assessment of REDD+ program design, implementation and outcomes to enable countries to show how internationally- and nationally-defined safeguards are being addressed and respected,” including how multiple benefits are being delivered.

In its earlier stages, it was envisioned that the REDD+ SES initiative would serve as a total package for countries to utilise in establishing a national safeguards system. However, as it has evolved it has become increasingly clear that REDD+ SES is primarily a tool for developing a SIS, which is only one component of a country’s safeguards system.

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The framework that has been developed under REDD+ SES has been closely linked to the language of the UNFCCC REDD+ Safeguards. Nevertheless, the REDD+ SES is not necessarily attached to any particular system of safeguards. Whichever national safeguards system is defined domestically, REDD+ SES is intended to help countries to demonstrate externally that they are effectively addressing and respecting those safeguards.

The REDD+ SES is composed of two core documents:

1. The REDD+ SES (or the standards); and
2. Guidelines for the use of REDD+ SES at country level.

The standards themselves provide a set of seven principles, which are subdivided into criteria and indicators. The principles lay out high level objectives for national REDD+ programmes in order to comply with particular aspects of the REDD+ safeguards. Below the principles, the criteria and indicators further define what these principles mean in practice, and what information should be monitored and reported in order to demonstrate that REDD+ safeguards are being addressed and respected. As a framework of principles, criteria and indicators, the standards may serve as a starting point for developing national safeguards monitoring system, or they may be copied verbatim and used as the basis of a national SIS.

If the standards are meant to help determine what information should be monitored under REDD+, the Guidance is meant to steer the national process that leads to such a determination. The Guidance provides a step-by-step approach for using the REDD+ SES in order to develop, implement and evaluate a SIS in the national context. It provides objectives, guidelines and good practice for:

- building understanding of the REDD+ safeguards and REDD+ SES;
- developing domestic institutions that can facilitate and oversee the REDD+ SES process;
- development of country-specific indicators; and
- development and implementation of monitoring, assessment and reporting around the indicators.

The Guidance is important because REDD+ SES will still need to be developed and used in accordance with the UNFCCC REDD+ safeguards. As such, the process of using REDD+ SES needs to be transparent, respect indigenous peoples’ and local communities’ rights, and be conducted using effective participation of all relevant stakeholders, to name a few.

It is important to clarify that the REDD+ SES does not represent a set of REDD+ safeguards, but standards which are meant to define a measurable level of performance that must be achieved in relation to the REDD+ safeguards. Primarily through the development and use of indicators, this means embarking on a multi-stakeholder process to develop a system that allows people to see that the safeguards system that the country has developed for itself is performing at a high level. In this way, the REDD+ SES provides a framework for monitoring and reporting on the UNFCCC REDD+ safeguards, and therefore for the development of a national-led SIS.

Guidance on “what” to monitor through the REDD SES

In order to develop their SIS, countries will need to gain an understanding of what needs to be monitored and reported in relation to the UNFCCC REDD+ Safeguards. As demonstrated in the table below, the framework of indicators contained within the principles and criteria of the REDD+ SES is relevant to understanding the type of information that needs to be considered for reporting on each safeguard. While the principles and criteria are not an exhaustive list of relevant issues to report under the
UNFCCC REDD+ Safeguards, because they were developed specifically with the UNFCCC REDD+ Safeguards in mind, they are indicative of many of the social, environmental and governance issues countries will need to report on under their national SIS. Table 1 below shows how the REDD+ SES intersects with many of the core elements of the UNFCCC REDD+ safeguards that we have analysed in our Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards.
Table 1: Relevance between indicators contained under the principles and criteria of the REDD+ SES and the UNFCCC REDD+ safeguards

<table>
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<tr>
<th>UNFCCC Safeguard</th>
<th>REDD+ SES Principles, Criteria and Indicators</th>
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<tbody>
<tr>
<td><strong>Safeguard (a)</strong></td>
<td>Principle 4, criteria 7:</td>
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<td></td>
<td>• How REDD+ contributes to the respect, protection and fulfilment of human rights by national and international law.</td>
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<td>• Identify relevant policies, and how they are helping address identified human rights issues, including performance on key human rights indicators.</td>
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<td>Principle 7:</td>
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<td>• How REDD+ programs comply with all applicable laws (local, national and international), including those on human rights, indigenous peoples and local communities.</td>
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<td>• Identify laws and appropriate measures taken to comply with applicable laws, including areas of potential/actual non-compliance.</td>
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<td>• Process where inconsistencies/gaps between applicable laws identified and addressed.</td>
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<td><strong>Safeguard (b)</strong></td>
<td>Principle 2:</td>
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<td></td>
<td>• How potential benefits, costs and risks are assessed in a transparent and participatory manner at all levels with all relevant stakeholders during program design/implementation.</td>
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<td></td>
<td>• How effective/efficient/transparent equitable benefit sharing mechanisms are established.</td>
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<td></td>
<td>• Extent to which mechanisms consider relevant rights-holders/stakeholder groups, ability to participate in decision-making regarding form, distribution and delivery of benefits.</td>
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<td>• Policies, guidelines and administrative procedures under the benefit sharing mechanism to ensure timely, transparent, effective and efficient benefit sharing.</td>
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<td>Safeguard (b)</td>
<td><strong>Principle 4, criteria 1, 2, 3, 4, 5:</strong></td>
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<td></td>
<td>How governance structures are clearly defined, transparent, effective and accountable.</td>
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<td>Identify roles, responsibilities, decision-making process and governance structures, and public availability of such information.</td>
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<td>Whether decisions are actually made according to defined processes/rules, and oversight.</td>
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<td>Coordination/coherence of policies, strategies at relevant levels and in relevant sectors.</td>
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<td>Whether inconsistencies between policies/strategies and human rights/land use being resolved.</td>
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<td>Effectiveness/efficiency of coordination between REDD+, forest and relevant agencies/organisations.</td>
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<td></td>
<td>Public’s (including potentially interested members) access to free/timely information during program design, implementation and evaluation for social and environmental impact assessments, benefit sharing procedures/guidelines, and FPIC.</td>
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<td></td>
<td>Transparent and accountable financial management for both public and private finance</td>
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<td>Information on financial management, public access, duties/responsibilities, accounting, reporting schedules, and procedures for internal controls and external/independent audits.</td>
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<td></td>
<td>Extent to which REDD+ leads to forest governance improvement, including targets for forest and other relevant sectors, and institutional capacity to improve governance.</td>
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<th><strong>Principle 5, criteria 4:</strong></th>
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<tr>
<td>How predicted/actual environmental impacts (direct/indirect) are transparently assessed with participation of all relevant rights-holders/stakeholders.</td>
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<tr>
<th><strong>Principle 6, criteria 4, 5:</strong> What national, local, regional, international and customary processes used to effectively resolve grievances/disputes that arise at all stages of REDD+, particularly over land/natural resource use rights, benefit sharing and participation.</th>
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<tr>
<td>Information on how the above are transparent, timely, impartial, safe and accessible.</td>
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<td>Extent to which rights-holders/stakeholders need/have access to all relevant information about the REDD+ program.</td>
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<td>Safeguard (c)</td>
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<td>Safeguard (d)</td>
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<td><strong>Principle 1, criteria 3:</strong></td>
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| - Identification of policies for design/implementation used to uphold FPIC for activities that affect rights to lands, territories and resources for indigenous peoples and local communities.  
- How collective rights-holders are able to define the process of FPIC, including choosing representative(s)/institution, level of transparency, extent that communities’ views are taken into account, gender-sensitivity, inclusion of marginalized community members and extent that FPIC applies to relocation/displacement. |  
| **Principle 2:** |  
| - How potential benefits, costs and risks are assessed in a transparent and participatory manner at all levels with all relevant stakeholders during program design/implementation.  
- How effective/efficient/transparent equitable benefit sharing mechanisms are established.  
- Extent to which mechanisms consider relevant rights-holders/stakeholder groups, ability to participate in decision-making regarding form, distribution and delivery of benefits.  
- Policies, guidelines and administrative procedures under the benefit sharing mechanism to ensure timely, transparent, effective and efficient benefit sharing. |  
<p>| <strong>Principle 4, criteria 3:</strong> |<br />
| - Extent of the public's (including potentially interested members) access to free/timely information during program design, implementation and evaluation for social and environmental impact assessments, benefit sharing procedures/guidelines, and FPIC. |</p>
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<th>Safeguard (d)</th>
<th>Principle 6, criteria 1, 2, 5, 6:</th>
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<td></td>
<td>- Identify all relevant rights-holders/stakeholders &amp; their ability to access all relevant information on REDD+.</td>
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<td>- Identify potential barriers to participation for each rights-holder/stakeholder group, especially women and marginalized and/or vulnerable people.</td>
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<td>- All relevant rights-holders/stakeholders involved in REDD+ program design, implementation, monitoring and evaluation.</td>
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<td>- Institutional structure to ensure full and effective participation.</td>
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<td>- Extent that consultation is culturally appropriate.</td>
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<td>- All relevant levels of government involved, with roles/responsibilities clearly defined.</td>
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<td>- Extent that participation leads to adaptation/response throughout design, implementation and evaluation of REDD+.</td>
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<td>- Extent that rights-holders/stakeholders are able to choose their own representatives, and that those representatives are held accountable.</td>
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<td>- Availability of all relevant information on REDD+ in a timely/culturally/gender appropriate and accessible manner, including design, implementation and evaluation, governance structures and processes, social and environmental assessments, FPIC, benefit sharing procedures and guidelines, grievance procedures at all levels, and relevant laws at all levels.</td>
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<td>- Effectiveness of information dissemination, and extent to which constraints to effective participation are addressed through capacity building for understanding rights, access to information and grievance mechanisms, and access to legal advice regarding rights, focusing on most vulnerable groups.</td>
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<td>- Extent that representatives collect/disseminate all relevant information on REDD+ in a timely/appropriate way to representatives, including women and/or marginalised people.</td>
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<td>- Whether rights-holders/stakeholders have adequate time to provide input.</td>
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<th>Safeguard (e)</th>
<th>Principle 2:</th>
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<td>- Extent that benefit sharing mechanisms consider relevant rights-holders/stakeholder groups, ability to participate in decision-making, and distribution form and delivery of benefits.</td>
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<th>Principle 3, criteria 1, 2:</th>
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<td>- Information on any positive impacts on long-term livelihood security/well-being of indigenous peoples and local communities, particularly women/marginalised communities.</td>
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<td>- Which objectives/policies achieve positive impacts relative to scenarios without REDD+.</td>
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| Safeguard (e) | - Actual additional resources (financial, human or other) generated from REDD+.
- Extent that REDD+ program is adapted to avoid/mitigate negative impacts on indigenous peoples and local communities, or to enhance positive benefits. |
| Principle 4 criteria 6: | - Extent that REDD+ contributes to national sustainable development policies, strategies and plans including poverty reduction, biodiversity and other relevant policies/plans. |
| Principle 5 criteria, 1, 2, 3, 4, 5: | - How identifying, prioritising and mapping biodiversity/ecosystems potentially affected by REDD+.
- How priority biodiversity/ecosystem services are maintained and/or enhanced relative to a scenario without REDD+, including generation of new resources to meet this task.
- Proof that no conversion/degradation of natural forests or other areas important for maintaining priority biodiversity/ecosystems services has taken place
- Information on positive and/or negative impacts to priority biodiversity/ecosystem services, and adaptations to avoid negative impacts, or to enhance positive impacts. |
| Safeguards (f) & (g) | The REDD+ SES does not directly address permanence or leakage. However, as demonstrated throughout the rest of this Guidance, effectively addressing the other five UNFCCC REDD+ safeguards can help reduce the risk of leakage and non-permanence. An effective SIS will be vital in monitoring whether these safeguards are being effectively addressed and respected, and whether these are producing desired results or impacts, such as improved livelihoods or enhance governance and community empowerment. |
Using the REDD+ SES to Monitor and Report on REDD+ Safeguards under other REDD Initiatives

According to UNFCCC Guidance, developing countries will need to develop and utilise their SIS in a manner that is consistent with the UNFCCC REDD+ safeguards. As talks are still on-going in the UNFCCC, it is important to note that international level guidance on SIS is still forthcoming.

Before setting up their SIS, countries will need to determine for themselves in a transparent and inclusive manner, what they want to achieve with REDD+, and associated environmental and social issues or risks that will provide challenges to meeting stated objectives. In addition they will need to determine how they will collect information (monitor) on these issues and related safeguards through their domestic processes. They will also need to decide how to convey that information externally in a transparent manner.

The REDD+ SES contributes towards the development of a national SIS by providing a multi-stakeholder process for the above issues to be discussed domestically. While the REDD+ SES contains principles similar to those contained in other initiatives, its real value comes in contributing to the debate at the national level on how to develop a system to show or demonstrate how the safeguards that have been chosen are being met, or are performing. Together with the standards, the Guidance provides a principled framework and examples of best practice on how to proceed with these determinations in a way that is consistent with the UNFCCC REDD+ safeguards.

Instead of being attached or linked back to any one set of safeguards, the Guidance on how to use REDD+ SES at country level can provide countries with an important tool that lays out a process of how a national-level SIS should be developed, whichever set of safeguards is used. The process defined in the Guidance is intended to be both adaptive in nature, and inclusive of relevant stakeholders. The process set out by the REDD+ SES Guidelines generally covers how countries can set up a REDD+ SES process; develop country-specific indicators; and develop a monitoring and assessment plan.

The REDD+ SES envisions two sets of institutional bodies: one to facilitate and support the process of developing and applying REDD+ SES in-country (a Facilitation Team); and another oversee the use of REDD+ SES in-country (a national level Standards Committee). The Committee is in charge of reviewing and approving indicators, the assessment process and assessment reports. It should be composed of a well-balanced representation of interested and affected stakeholders. It is important to note that the development and operations of these institutions need to be consistent with the UNFCCC REDD+ safeguards, especially effective transparency, governance, participation, and accountability.

The actual development of indicators on safeguards and their assessment is supposed to be an inclusive and participatory process. Once a plan and process for designing the system has been agreed, stakeholders are supposed to come together in a working group setting, after which a wider consultation should be conducted.

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64 UNFCCC decision 12/CP .17, para 2(a).
65 UNFCCC decision 12/CP .17, paragraph 6 (FCCC/CP/ 2011/9/Add.2; and Draft conclusions proposed by the Chair on Methodological guidance for activities relating to reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries, SBSTA 37, Doha 26 November to 1 December 2012 (FCCC/SBSTA/2012/L.31).
66 REDD+ SES, “Guidelines for the use of REDD+ Social & Environmental Standards at country level”, p.11.
Lastly, a process for monitoring, reviewing and reporting safeguards information needs to be completed. This requires defining what and how information will be collected, creating a process to facilitate stakeholder scrutiny over information collected, and how to externally communicate that information once it has been finalised.

**Linking SIS and Accountability to Effectively Promote Safeguards**

Developing a SIS cannot be an end in itself. It is but one component of a broader aspect of compliance within a country’s CSS. To effectively promote and support safeguards, SIS will need to have a mechanism to feed experience and lessons towards improvement of national safeguard systems, and to deal with non-compliance in order to ensure accountability.

It is important to highlight that non-compliance mechanisms come into play when actors (individuals/institutions) violate laws, regulations, and policies, in place that are part of their CSS. This is different from grievance or dispute resolution mechanisms, as non-compliance mechanisms are meant to address any failure to implement the requirements/objectives set forth in the safeguards. The non-compliance response measures would need to tailored to particular circumstances of the case and may include imposition of liabilities. Grievance and redress mechanisms, on the other hand, imply resolving disputes between different sets of parties, either through negotiation, mediation, arbitration, or other judicial or administrative mechanisms. It should be noted that these systems should not replace traditional judicial or administrative mechanisms for dealing with traditional legal complaints.

Out of the initiatives we analysed, most incorporate mechanisms for dealing with grievance and redress rather than non-compliance with safeguards. Moreover, links between these mechanisms and SIS is somewhat lacking, and none explicitly indicates an accountability mechanism to address non-compliance.

**Non-compliance Mechanisms**

At the international level, the REDD+ SES Initiative envisions the establishment of an International Review Mechanism, which would provide feedback to countries on their use of the REDD+ SES (the process used to develop and operate their SIS). This mechanism should be able to provide an assessment of the extent to which countries have used the REDD+ SES and have followed the Guidelines, and provide guidance on how to make improvements. In this way, to the extent that the REDD+ SES and corresponding Guidance embody principals and requirements contained the UNFCCC REDD+ Safeguards, the International Review Mechanism may be seen to act as a sort of informal non-compliance mechanism. However, because the REDD+ SES is a voluntary initiative, establishment of accountability for non-compliance is outside of the role of the International Review Mechanism.

At the national level, the Standards Committee is intended to oversee the use of REDD+ SES. However, like the International Review Mechanism, dealing with non-compliance is outside the Standards Committee’s scope.

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67 Guidelines for the use of REDD+ Social & Environmental Standards at country level, Version 2, 16 November 2012, p. 20.
From the above, it can be said that sanctions or other consequences for non-compliance with safeguards are outside the scope of the REDD+ SES. Therefore, countries using the REDD+ SES will still need to define how non-compliance with the safeguards would be dealt with, within or outside the REDD+ SES.

Under the UN-REDD Programme, there is very little that currently exists for dealing with non-compliance with safeguards. An interagency working group, formed by FAO, UNDP and UNEP, is currently working on reviewing policies and procedures for a global level accountability mechanism. This mechanism should allow both grievances and allegations of non-compliance with UN-REDD Programme guidance and policies by affected people. However, the outcome of this process is still not clear.

There is also little scope for addressing non-compliance under the FIP or the Readiness Fund of the FCPF. Nevertheless, the World Bank Inspection Panel may investigate violations of applicable World Bank safeguards, due to the World Bank’s role as Trustee of both the FIP and the FCPF.

In contrast however, the FCPF Carbon Fund may potentially provide for consequences in the event of non-compliance with safeguards. In order to sell emissions reductions under the Carbon Fund, country participants must enter into an Emissions Reductions Payment Agreement (ERPA). These ERPAs are subject to principles and conditions contained in a document called the ERPA Term Sheet, which details various buyer and seller obligations. Among the country participant’s obligations as a seller, they must submit a Benefit Sharing Plan and a Safeguards Plan, and provide information on its implementation of the Benefit Sharing and Safeguards Plans. According to the ERPA Term Sheet, failure of the country participant to comply with or implement these plans, or failure to implement a feedback and grievance redress mechanism under its ER Program will result in a seller event of default. This would allow the buyer to pursue a number of different remedies.

In addition, because the World Bank also acts as a Trustee to the Readiness and Carbon Fund, groups of individuals would also be able to complain to the World Bank’s Inspection Panel over allegations that the World Bank’s safeguards have not been complied with. The same arguably applies to the FIP.

Grievances and Redress Mechanisms

The REDD+ SES Initiative envisions that the National Standards Committee will oversee the use of REDD+ SES in-country, including disputes that arise during the development and operation of REDD+ SES. Also, as noted in Table 1 (above), the REDD+ SES contains indicators related to processes for resolving grievances and disputes that arise during all stages of REDD+.

For the UN-REDD Programme and the FCPF, guidelines for setting up a national level grievance mechanism are established by the R-PP Template. This guidance calls for incorporation of a feedback element, suggesting an outreach or information dissemination function, as well as receiving and dealing with inquiries from interested public. However, while the R-PP Template mentions that it may be helpful to integrate feedback and

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68 For a more thorough analysis of the World Bank Inspection Panel, please see World Bank Section. Safeguard Analysis
grievance mechanisms into other aspects of REDD+ work, such as monitoring and evaluation, it does not mention the need to make links between grievance and redress mechanisms and national-level SIS.

Other than the R-PP Template, which is supplemented to some extent by Guidelines on Free, Prior and Informed Consent, there is little guidance on establishing national level grievance and redress mechanisms under the UN-REDD Programme. Currently, aggrieved stakeholders can only direct complaints to the UN-REDD Programme Secretariat, and the UN Resident Coordinator. Nevertheless, the UN-REDD Programme is in the process of preparing an additional Guidance Note providing more detailed principles and methodology for establishing and/or strengthening a national-level grievance mechanism.\textsuperscript{71}

Under the FCPF, grievance and redress mechanisms are treated separately under the Readiness Fund and the Carbon Fund. The FCPF has released a more in-depth Draft Toolbox for addressing grievances and disputes that arise during the Readiness Stage. This approach focuses on complaints that arise during the policy preparation process and other Readiness activities, and building capacity for dealing with problems likely to arise during implementation. The Draft Toolbox does not mention SIS explicitly. However, corresponding draft guidance does highlight the role that information generated from complaints or grievances can play in accountability, and identifying systemic issues in capacity.\textsuperscript{72} The draft guidance also states that performance of the mechanism should be made transparent through statistics, case studies and other information.\textsuperscript{73}

There is also a requirement for participant countries to have a grievance mechanism for ER Programs under the Carbon Fund. Under the ERPA Term Sheet, the FCPF Working Group on the Methodological and Pricing Approach for the Carbon Fund has recommended that: the ER Program meets World Bank social and environmental safeguards, promotes and supports the safeguards included in UNFCCC guidance related to REDD+, and provides information on how these safeguards are addressed and respected, including through the application of appropriate grievance mechanisms.\textsuperscript{74} This potentially provides an implicit recognition of the need to link SIS with grievance and redress mechanisms. However, the details of this requirement are still being determined.

Under its Operational Policies on Indigenous Peoples and Involuntary Resettlement, the World Bank also envisions the development of country-level grievance mechanisms for dealing with grievances.\textsuperscript{75} These policies do not apply to DPLs however, and there are no specific criteria on such mechanisms, and the government is largely responsible for dealing with challenges associated with environmental or human rights protections. While the Operational Policies on Indigenous Peoples and Involuntary Resettlement do apply to the FIP, it does not contain any explicit additional provisions regarding grievance and redress mechanisms.

\textsuperscript{71} UN-REDD Programme, “Guidelines on Free, Prior and Informed Consent,” (January 2013), p. 34.
\textsuperscript{73} Id. at p. 3, 9, and 11.
\textsuperscript{75} OP 4.10, Annex B, para 2(h), and Annex C, para 1(e); and OP 4.12, para 13(a), 14. For a more thorough analysis of grievance and redress mechanisms under the World Bank, please see World Bank Section Analysis
Conclusions

Effective monitoring, evaluation and verification of how UNFCCC REDD+ Safeguards have been ‘addressed and respected’ will be vital to a CSS. We recommend that countries be aware that sole reliance on the FIP, UN-REDD programme, FCPF, and World Bank’s monitoring and reporting frameworks may very well hinder countries’ abilities to effectively monitor and evaluate all aspects of UNFCCC REDD+ Safeguards performance. If those monitoring and reporting framework instruments are going to be used in the development of national REDD+ safeguard systems, countries will still need to take further steps in developing a monitoring and reporting system that is able to demonstrate that the UNFCCC REDD+ Safeguards are being addressed and respected, in accordance with UNFCCC guidance. In this sense, the REDD+ SES can be very helpful, as its principles, criteria and indicators have been developed primarily with the UNFCCC REDD+ Safeguards in mind.

In order to effectively demonstrate on the UNFCCC REDD+ Safeguards performance, indicators also need to be more indicative of outcomes or impacts, as opposed to tick-box approach looking primarily at process or policy. This will be of significant importance for demonstrated that safeguards have been addressed and respected, and even more so for demonstrating that non-carbon benefits have been achieved. Therefore, we recommend that when countries are designing their CSS they determine to what extent they will rely on the FCPF and World Bank’s monitoring and reporting frameworks and determine the need for developing more focused and relevant indicators for REDD+ safeguards-specific information regarding performance.

In order to accomplish the above, components of SIS will need to be given serious attention and resources. This has been a problem in the past, as demonstrated with the World Bank. However, resource and capacity mobilisation for developing SIS does not need to be a daunting task. There are tools available under REDD+ SES and UN-REDD that can provide conceptual building blocks for SIS, and participation in these initiatives can potentially help unlock additional technical and financial resources. While it has not been specifically addressed in this Part, community monitoring can also be a cost-efficient source of data and information on safeguards performance, in addition to source of alternative livelihoods for indigenous peoples’ and local communities and a way to enhance country ownership.

Lastly, a SIS does not only provide an information feedback and improvement function. In order to provide accountability a SIS will need to link up in some way with either a national non-compliance mechanism and/or grievance and redress mechanisms to deal with disputes that arise in relation to the UNFCCC REDD+ Safeguards. While some of the initiatives reviewed above provide conceptual and practical guidance on establishing or enhancing grievance and redress mechanisms, there is very little in terms of dealing with non-compliance. In order for CSS to be credible—both internally and externally—this issue will need to be addressed.
Overall Conclusions

The UNFCCC REDD+ Safeguards represent a global framework of principles informed by relevant legal obligations, many of which contain measures that can serve to protect both human rights and the environment. Where the UNFCCC REDD+ Safeguards lack specificity, or are open to a number of interpretations, the ‘safeguards’ of the analysed initiatives may provide more detailed guidance or support on operationalizing these environmental and social principles.

However, it is important to note that none of the ‘safeguards’ of the REDD+ related initiatives analysed in this Guide are entirely consistent with the UNFCCC REDD+ Safeguards. The initiative’s safeguards share some commonalities in their level of protection and approaches, and there is considerable overlap in the scope of issues addressed. There are, however, differences in the content (level of recognition and protection) and implementing approaches, which countries need to be aware of when seeking to effectively implement the UNFCCC REDD+ Safeguards.

In terms of consistency with UNFCCC REDD+ Safeguard (a) there are two elements to consider: consistency with international law and consistency with national forest programmes:

- In terms of consistency with international law: The UN-REDD is the only initiative that seeks to ensure consistency with all relevant international instruments. The World Bank, FIP and IDB do not fully recognize the need to ensure consistency with international agreements (both human rights and environmental). The FCPF seeks to ensure consistency with international law, but its reliance on World Bank safeguards might not ensure consistency with all international legal instruments. The ADB requires consistency with international law, but consistency is subject to the existence of national implementing measures.
- In terms of consistency with national forest programmes: The World Bank and IDB do not recognize the need to be consistent with national forest programmes. The FCPF and FIP implicitly promote consistency with national forest programmes, whilst The UN-REDD and ADB explicitly require and promote it.

In terms of consistency with UNFCCC REDD+ Safeguard (b) there are several elements to consider, including the right to access information, public awareness of the right to access information, accountability, clear land tenure rights, gender equality, participation, appropriate institutional frameworks, and access to justice, among others. The general conclusions are:

- All initiatives do not recognize, promote and require a right to access to information, with none of them actively promoting public awareness of this right nor promoting institutions with clear mandates to ensure access and distribution of information.
- In terms of effective institutional frameworks, all initiatives promote or require strengthening of institutional capacities. Linked to this, accountability and addressing corruption is also promoted and supported by all initiatives, except the World Bank.
- Linked to the above is the integration of social, economic and environmental considerations and cross-sectoral coordination. The FIP and FCPF require integration and cross-sectoral coordination, whilst the UN-REDD, IDB and ADB indirectly promote it. The World Bank only requires it in certain cases.
• Clarity and recognition over land tenure rights (statutory and customary) is addressed by all initiatives, but it is important to note the World Bank requires it only for certain projects. Linked to this, equitable benefit sharing is promoted or supported by all initiatives, and it is also important to note that the World Bank only requires it for certain projects/cases.

• In terms of promoting/ensuring participation of all relevant stakeholders, the UN-REDD is the only initiative that effectively promotes it. Other initiatives partially promote the right to participate with notable limitations such as not addressing how stakeholders views and concerns will be taken into account in the decision making process.

• Gender equality is only effectively addressed by the ADB and FCPF. The UN-REDD does not clarify how the programme can contribute to addressing gender discrimination, if it has been identified. The World Bank and FIP have specific safeguards, but do require addressing gender equality issues. The IDB does not have provisions on the matter.

• Adequate access to justice is only effectively addressed by the ADB and FCPF, in terms of requiring the establishment of grievance mechanisms and providing support/guidance. The UN-REDD and FIP promote access to justice, but do not set it as a requirement or provide specific guidance/support. The World Bank and IDB provide limited access to justice through their specific mechanisms.

In terms of consistency with UNFCCC REDD+ Safeguard (c), there are also several elements to consider, including defining indigenous peoples, respecting knowledge and other rights such a non-discrimination, self-determination, collective land tenure and benefit sharing. The general conclusions are:

• Clarity over who are to be recognized as ‘indigenous peoples’ and ‘local communities’ is not provided by any initiative. Some acknowledge definitions under international law, whilst others provide criteria for their identification/definition.

• Respecting ‘knowledge’ is required by the UN-REDD, FIP, IDB and ADB. However, they do not provide a clear understanding/definition of traditional knowledge and in some cases local communities’ rights over knowledge are not recognized. Both the World Bank and FCPF ‘promote’ but do not ‘require’ the respect of knowledge.

• The right to non-discrimination is only effectively addressed by the IDB, in terms of having specific safeguards and measures in place. The UN-REDD, FCPF, FIP and ADB do not explicitly recognize but have provisions which may assist in addressing it. The World Bank has no relevant provisions.

• The right to self-determination is only effectively addressed by the FIP and IDB. The FCPF, UN-REDD and ADB do not explicitly recognize this right, but indirectly promote through the recognition of relevant international legal obligations on the matter. The World Bank does not promote or recognize this right.

• Cultural rights are only effectively recognized and promoted by the UN-REDD Programme. The IDB and ADB generally recognize this right, but do not mention local communities. The World Bank, FCPF and FIP do not explicitly recognize nor promote this right.

• Recognition and respect of collective land tenure rights are only effectively addressed by the FCPF and UN-REDD. The IDB and ADB promote the recognition of this right, but do not take local communities into consideration. The FIP and World Bank do not specifically require or promote the recognition and respect of collective land tenure rights for indigenous peoples and local communities.

• Benefit sharing is adequately addressed only by the UN-REDD. The IDB, ADB and World Bank do not consider local communities. The FCPF does not guarantee benefit sharing will be discussed through participatory processes with indigenous peoples and local communities. The FIP does not require ‘equitable’ and ‘transparent’ benefit sharing arrangements.
In terms of consistency with the UNFCCC REDD+ Safeguard (d), there are also several elements to consider, including recognition and implementing of procedural rights, promoting identification of relevant stakeholders, and requiring FPIC. The general conclusions are:

- None of the initiatives explicitly recognize procedural rights, but recognize/promote the right to participate in environmental decision making processes.
- The identification of relevant stakeholders is required and promoted by the World Bank, FCPF, UN-REDD, ADB and IDB. The FIP is the only initiative that does not promote or require an early identification of relevant stakeholders.
- The right to access information is a requirement for the World Bank, FCPF, UN-REDD and ADB. The FIP and IDB promote this right, but do not ensure appropriate and cultural means of disclosure of information.
- The implementation of effective participatory approaches is required by the FCPF, UN-REDD and FIP. The IDB and ADB promote this right, but it is not clear to what extent affected people may influence the decision making process. The World Bank does not provide effective requirements or support.
- Grievance or conflict resolution mechanisms are only effectively addressed by the ADB. The UN-REDD, FIP and IDB acknowledge the need to set them up, but do not specifically require, promote or support it. The World Bank provides access to its inspection panel, which is limited to examining non-compliance with its OPs. The FCPF requires set up of feedback and grievance mechanism, but also relies on the World Bank’s inspection panel.
- FPIC is only fully recognized and required in consistency with UNFCCC REDD+ Safeguard (c) through the UN-REDD programme. It is important to note the UN-REDD extends FPIC to indigenous peoples and forest dependent communities that share common characteristics. All other initiatives refer to ‘consultation’ or ‘broad community support’, instead of consent.

In terms of consistency with UNFCCC REDD+ Safeguard (e), there are also several elements to consider, including if and how natural forest are defined, the existence of prohibitions to convert natural forests, the existence of implementing measures to protect biodiversity, the integration of biodiversity in cross-sectoral policies and the enhancement of other benefits. The general conclusions are:

- Natural forests are only defined by the World Bank. However, there is a lack of clarity regarding operative terms of the definition, which can result in expanding or narrowing the scope of what constitutes natural forests.
- FIP is the only initiative that clearly prohibits the conversion of natural forest as required by the UNFCCC REDD+ Safeguard (e), and with no exceptions. The UN-REDD require the non-conversion of natural forests, but anticipates that it still may occur. The World Bank, FCPF, ADB and IDB do not prohibit the conversion of natural forests.
- The implementation of measures to protect biodiversity are required by all initiatives. But only the UN-REDD and World Bank require an identification/mapping of natural forests and biodiversity.
- Research and awareness-raising is promoted and supported by the FCPF, IDB and ADB. The UN-REDD and FIP have no relevant provisions.
- The integration of biodiversity in cross-sectoral policies is only promoted by the World Bank and FCPF. The UN-REDD requires the integration of biodiversity considerations in cross-sectoral policies, but its language is mostly on trade-offs, usually favouring carbon benefits over biodiversity. The FIP, ADB and IDB do not require the integration of biodiversity in cross-sectoral policies.
• The enhancement of multiple benefits is only effectively recognized and promoted by the FIP, through which countries are even required to provide evidence as to how they will achieve these multiple benefits.

In terms of consistency with UNFCCC REDD+ Safeguard (f) & (g), there are also several elements to consider, including monitoring and assessment provisions, general measures to address reversal and displacement, specific measures to tackle reversals and displacement, and international cooperation. The general conclusions are:

• All initiatives except the World Bank require specific monitoring and assessment frameworks. The World Bank provides general monitoring and assessment frameworks for projects, which encourage indigenous peoples or community participation.
• The IDB requires countries to assess their environmental governance capacity, as risk factor for the environmental sustainability of the operation. The UN-REDD, FIP and ADB provide general requirements/measures to address the risks of reversals and displacement, including sustainable forest management and sustainable development, as well as the need to prevent land degradation, conversion of natural forests, indirect land-use change, and impacts on non-forest ecosystems and biodiversity. The World Bank and FCPF do not acknowledge nor provide general requirements/measures to address the risks of leakage or permanence.
• None of the initiatives provide specific measures to tackle the risks of reversals, but relevant provisions are considered.
• Measures to tackle displacement are only addressed by the ADB.
• International cooperation is recognized as an integral measure to tackle the risks of reversals and displacement by the World Bank, UN-REDD, FIP, ADB and IDB. The FCPF does not recognize the role of international cooperation to deal with risks of transboundary displacement.

It is important for countries to note that the UN-REDD programme contains voluntary guidance, whilst the FCPF, FIP, ADB, IDB and the World Bank contain binding policies. We recommend that countries seeking to implement consistent safeguards in relation to the UNFCCC REDD+ Safeguards follow all relevant voluntary and binding policies highlighted in this document, as they are considered pertinent to meet the UNFCCC REDD+ Safeguards.

We recommend countries undertake a similar legal analysis of any other relevant initiative (in which they are participating or wishing to participate), in order to be able to define substantively the safeguards that are to apply in the country; the measures that may support their effective implementation; and the compliance aspects of the system that may allow for transparent monitoring and reporting, addressing grievances and addressing any failure to implement the requirements set forth in the safeguards. The consistent and effective implementation of safeguards will be strongly influenced by the presence or lack of a robust legal framework. The existence of an enforceable legal framework, which protects and promotes the environmental and social issues, encompassed in the safeguards and reflects the applicable and relevant international legal framework, will be essential.

Below we provide an overview of the legal analysis of the safeguards of each initiative.
General Overview of How Safeguards are Addressed by the World Bank

The World Bank OPs promote disclosure of information and consultation or participation at the project level. They both require a dissemination of information in accessible formats to affected stakeholders, and provide for specific instances where affected stakeholders must be involved in the planning, implementation and monitoring and evaluation of various aspects of the project. The World Bank also provides support for capacity building on a number of issues ranging from public participation to biodiversity conservation.

However, there are a number of areas where the World Bank OPs are inconsistent with principles or implementing measures articulated by the UNFCCC REDD+ Safeguards. This includes the World Bank’s failure to require adherence to relevant international human rights and indigenous rights obligations, or national forest programmes. Furthermore, the World Bank does not require application of Free, Prior and Informed Consent (FPIC) towards indigenous peoples, preferring instead to apply a standard of “free, prior and informed consultation that results in broad community support.” The OPs also fail to consider special protection for the rights of ‘local communities’, and fail to require respect for knowledge of either indigenous peoples or local communities. In addition, the OPs support conversion of natural forests in certain instances. Moreover, while the OPs do mention land tenure, benefit sharing and grievance mechanisms, they fail to properly emphasise the need for land tenure security, recognition of traditional and customary use rights, or national-level grievance mechanisms. Finally, the World Bank’s OPs were not meant to deal with issues such as leakage and permanence, although they do contain provisions that will be relevant to dealing with such risks.

A distinction also needs to be made between the World Bank’s project and investment lending, and its development policy lending (DPLs), which are not subject to traditional safeguards. This has relevance for REDD+, particularly in the readiness phase, because DPLs focus on policy, legal and institutional reforms. Unlike project lending, DPLs do not require an Environmental Assessment, or even a Strategic Environmental Assessment. Furthermore, DPLs are not subject to consultation or participation requirements, even when they pertain to indigenous peoples. Use of DPLs therefore, would tend to contradict the UNFCCC REDD+ Safeguards, particularly with regard to transparency, participation and respect for indigenous peoples’ rights.

Lastly, there is a relatively strong disconnect between the OPs on one hand, and ensuring effective implementation and positive outcomes on the other. The World Bank has been criticised by its own Independent Evaluation Group (IEG) for having an inadequate monitoring and evaluation framework for safeguards implementation, and its inability to verify performance and impacts related to safeguards.

General Overview of How Safeguards are Addressed by the FCPF

The FCPF is relatively cognizant of the UNFCCC REDD+ Safeguards, and the potential for further development of REDD+ Guidance under the UNFCCC. In principal at least, this has provide the basis for development of rules under the Readiness Fund and the Carbon Fund. Furthermore, guidance under the FCPF goes further than the World Bank in some areas, in particular on participation and grievance mechanisms. However, this is offset somewhat by the application of the World Bank safeguards, some of which are inconsistent with inter-
national principles that make up the UNFCCC REDD+ safeguards. For example, the FCPF relies the World Bank’s policy of “free, prior and informed consultation that results in broad community support”, which does not comport with “Free, Prior and Informed Consent” (FPIC). The FCPF also does not go further than the World Bank OPs relating to conversion of natural forests, entirely failing to mention it.

Furthermore, the FCPF’s reliance on framework planning instruments employed by the World Bank safeguards may be insufficient to properly assess environmental and social risks associated with national REDD+ processes. Through the use of SESA, ESMF, IPPF and RPF, for example, important components that should be addressed during REDD+ Readiness, such as land tenure security issues, grievance mechanisms, and benefit sharing would not need to be addressed until projects have been proposed, or are even being implemented. However, these issues need to be dealt with in a comprehensive manner during the readiness stage, before REDD+ activities get planned on the ground.

**General Overview on How Safeguards are Addressed by the FIP**

The UNFCCC REDD+ Safeguards are partially addressed by the FIP. The FIP requirement to design and implement FIP investment strategies, programs and projects under a process of public consultation, with full and effective participation of all relevant stakeholders, the prohibition of the conversion of natural forests, and the establishment of the Dedicated Grant Mechanism for indigenous peoples and local communities are actions completely aligned with UNFCCC REDD+ Safeguards. In addition, the requirement to provide information on the status of the enabling environment for REDD+, accountability, gender equality, equitable sharing of benefits, the delivery of protection and enhancement of biodiversity and strengthened resilience of ecosystems, permanence and leakage risks and current mitigation measures will contribute to the implementation of the UNFCCC REDD+ Safeguards.

However, there are considerable gaps, which would need to be addressed to ensure a consistent implementation with the UNFCCC REDD+ Safeguards. These include the recognition and respect of the right of access to information and the effective protection of the rights of indigenous peoples and local communities, including collective land tenure rights, access to justice, and equitable sharing of benefits. Finally, the free, prior and informed ‘consensus, including support from the community as expressed by their leader(s), reflecting broad community’, does not equate to a requirement to reach ‘consent’ from indigenous peoples.

**General Overview on How Safeguards are Addressed by the Inter-American Development Bank**

The UNFCCC REDD+ Safeguards are partially addressed by the IDB’s policies. The promotion of the right to access information and transparency, the requirement for countries to conduct an assessment of their own environmental governance capacity, and the need to conduct socio-culturally appropriate consultation and

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76 For our complete analysis of the World Bank safeguards and where they diverge from the UNFCCC REDD+ safeguards, see our World Bank analysis in Annex I.
good faith negotiations will support the implementation of the UNFCCC REDD+ Safeguards. Particularly, the safeguards set by the IDB for protecting indigenous peoples’ rights, such as non-discrimination, self-determination, rights associated with culture, and the requirement to act in consistency with the applicable legal framework -which includes customary rights, for projects affecting territories, lands and resources traditionally occupied or used by indigenous peoples.

However, in certain cases the IDB’s provisions need to be complemented to ensure total consistency with the UNFCCC REDD+ Safeguards. These include provisions related to ensuring the right of access to justice in environmental decision making and ensuring that the results of consultation processes will be ultimately integrated in decision-making processes. Furthermore, in certain cases IDB does not contain relevant safeguard provisions. Important provisions that are missing refer to recognizing and respecting local communities’ rights, ensuring gender equality, prohibiting the conversion of natural forest, integrating biodiversity in cross sectoral policies and recognizing the procedural right of free, prior, inform consent as established by international law.

**General Overview of How Safeguards are Addressed by the Asian Development Bank**

The ADB’s policies on environment, indigenous peoples, gender, forestry, public communications and accountability address and are consistent with the UNFCCC REDD+ Safeguards.

In fact, the explicit recognition by the ADB of the right to information, the need to clarify and resolve potential land use conflicts, and the requirement to set up grievance redress and accountability mechanisms, are key elements that may support adequate implementation of the UNFCCC REDD+ Safeguards. Moreover, the recognition of the vulnerable status of certain groups (including indigenous peoples, the elderly, women and the poor) and the need to identify social and environmental impacts aim to protect both human rights and the environment.

Nevertheless, some aspects of the policies are not sufficiently aligned with the UNFCCC REDD+ Safeguards. For instance, the SPS understands ‘consent’ merely as ‘broad community support’ and omits to specify that it should be given previously to any implementation action, free from any coercion and after adequate information has been provided to the people that will or may be affected. Another important shortcoming of the ADB’s safeguards is the possibility to convert or degrade natural habitats (which may include natural forests) under certain conditions, especially if conversion or degradation is deemed ‘inevitable’. It is also important to be aware that ADB policies contemplate benefit sharing for indigenous peoples, but is silent on the benefits that forest dependent communities may receive.

In addition, there are several aspects of the ADB’s policies that could be improved in order to be totally consistent with the UNFCCC REDD+ Safeguards. For instance, there is no doubt that ‘meaningful consultation’ should be the first step towards seeking the consent of the people that may be affected by REDD+. However, ‘meaningful consultation’, as foreseen by the ADB, cannot be equated to ‘full and effective participation’ (as sought by the UNFCCC REDD+ Safeguards) since it is not clear how consultation processes will effectively influence decision making and/or provide criteria on how the results of consultation processes are ultimately integrated (or not) in decision-making processes.
General Overview of How Safeguards are Addressed by the UN-REDD Initiative

The analysis of the UN-REDD’s SEPC and other supporting documents, which were developed to assist countries in meeting the UNFCCC REDD+ Safeguards has shown that the Programme requires countries to be consistent with their commitments under international law as well as their national forest programmes. However, the guidance also provides that the REDD+ activities should be consistent with national development strategies, which could potentially lead to conflict between policy choices as development strategies may not be compatible with the objectives of REDD+.

The UN-REDD Programme documents contain useful guidance for countries looking to ensure the transparency of their national forest governance structures, requiring them to recognise and enforce the right of access to information and providing an assessment tool for identifying risks of corruption from REDD+ activities. The guidance also generally promotes and recognises the rights of indigenous peoples and local communities, in accordance with relevant international law, particularly in relation to land tenure and benefit-sharing. It also goes even further than current international law in recognising that forest-dependent communities (indigenous peoples and local communities) enjoy the same rights. The guidance on participation is extensive and satisfactory, even expanding the current understanding of FPIC, interpreting it as a right for indigenous peoples and local communities to veto the development of a project if the affected communities do not support it.

Although the Programme recognises the importance of ensuring access to justice and provides some guidance for this, an important gap is the absence of guidance for the design and implementation of national grievance mechanisms. Additionally, the UN-REDD guidance documents do not address UNFCCC REDD+ Safeguard (e) in a satisfactory manner, not adequately defining ‘natural forests’ and contemplating the likely development of monoculture plantations (‘new forests’) as mitigation for the conversion of natural forests, so long as trade-offs have been assessed and alternatives explored. Although indicators and additional documents are provided for countries to map and assess risks to biodiversity, insufficient guidance is provided as to how countries can take steps to incentivise biodiversity conversion and enhance ‘other’ benefits.

As the UN-REDD documents deal specifically with guidance for national REDD+ activities, there are numerous provisions relevant to UNFCCC REDD+ Safeguards (f) and (g). Countries are required to complete risk assessments identifying key risks of reversals and displacement of emissions and are encouraged to develop plans to address these risks, and to identify other national climate change work streams that could support the reduction of these risks (such as NAPAs, NAMAs, forest planning).
Annex I: Analysis of the World Bank Safeguards

Background of the World Bank’s Role in the FCPF and REDD+

The World Bank has been playing an important role in providing finance for REDD+ Readiness. The World Bank houses the Forest Carbon Partnership Facility (FCPF) within its Carbon Finance Unit. Through the International Bank for Reconstruction and Development (IBRD), the World Bank also acts as a Trustee to the FCPF, whereby it holds and disperses funds to REDD+ Participant Countries. The World Bank also serves as the Secretariat to the FCPF, and as a Delivery Partner (DP).

Documents/Policies Used For the Analysis

The World Bank has developed a set of environmental and social safeguard policies in order to avoid, mitigate or minimize adverse environmental and social impacts from World Bank-supported projects. The objective of the World Bank’s safeguard policies is “to prevent and mitigate undue harm to people and their environment in the development process.” These safeguard policies can be found in the World Bank’s Operational Manual, which is composed of individual Operational Policies and Procedures (OPs). They are supplemented by the World Bank’s Policy on Access to Information and its Policy on Disclosure of Information. In particular, a number of the World Bank’s Operational Policies could be implicated by REDD+ (presented in Table: 1 below). Together, these safeguards apply to FCPF activities that are supported by the World Bank.

| Table: 1. World Bank Operational Policies potentially relevant to REDD+ activities |
|-------------------------------------------------|-------------------------------------------------|------------------|
| World Bank Operational Policies and Procedures (OPs) | Description | Relevant UNFCCC REDD+ Safeguard |
| OP 4.00: Piloting the Use of Borrower Systems to Address Environmental Country safeguard systems. As such, may pilot the use of borrower | The World Bank encourages the development of borrower country safeguard systems. As such, may pilot the use of borrower | (b) |

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82 N. Moss & R. Nussbaum, supra note 21 p. 7.
and Social Safeguard Issued in World Bank-Supported Projects

<table>
<thead>
<tr>
<th>OP 4.01: Environmental Assessment</th>
<th>To ensure that projects are environmentally sound and sustainable, an environmental assessment must be carried out by the borrower country in order to evaluate projects potential environmental risks and impacts.</th>
<th>(a), (b), (d), (e), (f), (g)</th>
</tr>
</thead>
<tbody>
<tr>
<td>OP 4.04: Natural Habitats</td>
<td>Specifies conditionalities for projects that may affect natural habitats, in order to support protection, maintenance and rehabilitation.</td>
<td>(b), (e), (f) &amp; (g)</td>
</tr>
<tr>
<td>OP 4.09: Pest Management</td>
<td>Ensures that projects involving the use of biological or environmental control methods of managing pests that affect agriculture or public health are addressed in the context of an environmental assessment.</td>
<td>(e)</td>
</tr>
<tr>
<td>OP 4.10: Indigenous Peoples</td>
<td>Provides special requirements for projects that affect indigenous peoples.</td>
<td>(b), (c), (d)</td>
</tr>
<tr>
<td>OP 4.11: Physical Cultural Resources</td>
<td>Addresses impacts on physical cultural resources resulting from project activities in order to avoid or mitigate adverse impacts.</td>
<td>(b), (c), (d)</td>
</tr>
<tr>
<td>OP 4.12: Involuntary Resettlement</td>
<td>Includes safeguards to address and mitigate risks of impoverishment associated with involuntary resettlement caused by development projects.</td>
<td>(b), (c), (d), (e), (f) &amp; (g)</td>
</tr>
<tr>
<td>OP 4.20 Gender and Development</td>
<td>Guides World Bank assistance towards borrower countries to implement gender and development goals to reduce gender disparities and inequalities.</td>
<td>(b), (d)</td>
</tr>
<tr>
<td>OP 4.36: Forests</td>
<td>Covers projects that may have impacts on the health and quality of forests, the way they are utilised or managed, or the rights and welfare of forest-dependent communities.</td>
<td>(a), (b), (c), (d), (e)</td>
</tr>
<tr>
<td>OP 4.37: Safety of Dams</td>
<td>Provides special safety requirements for the financing of World Bank-financed projects for new and existing dams.</td>
<td>(f) &amp; (g)</td>
</tr>
<tr>
<td>OP 7.50: Projects on International</td>
<td>Safeguards against adverse transboundary impacts from World Bank-Supported Projects.</td>
<td>(f) &amp; (g)</td>
</tr>
</tbody>
</table>
Mechanisms that Support the Implementation of the UNFCCC REDD+ Safeguards

Environmental Assessment (EA)

For projects that carry potential risks for the environment, the borrower country must conduct an Environmental Assessment (EA). The EA may take one or more forms, depending on the nature of the project, including: an Environmental Impact Assessment (EIA), regional or sectoral EA, Strategic Environmental and Social Assessment (SESA), environmental audit, hazard or risk assessment, Environmental Management Plan (EMP), or Environmental and Social Management Framework (ESMF). These documents must, inter alia, detail how the country will deal with specific identified risks during implementation of the project. The SESA and ESMF are particularly relevant to REDD+, especially under the FCPF where participant countries must prepare a SESA and ESMF during their REDD+ Readiness process.

84 World Bank, OP 4.01 – Environmental Assessment. See also OP 4.04 – Natural Habitats, OP 4.11 – Physical Cultural Resources, and OP 4.36 – Forests, which must be included in the EA, where relevant.
85 World Bank, OP 4.01, paragraph 7.
Special Procedures for Indigenous Peoples

A number of special procedures apply for projects that have the potential to adversely impact indigenous peoples. In these cases, the World Bank must first conduct a screening, whereby it determines whether indigenous peoples are located within the project area. If so, the country must conduct a social assessment to evaluate the various impacts on indigenous peoples, and design project alternatives through a process of Free Prior and Informed Consultation (FPIConsultation).\(^{66}\) Subsequently, the borrower country must draft either an Indigenous Peoples Plan (IPP) or an Indigenous Peoples Planning Framework (IPPF) in the case the project consists of annual investment programmes or multiple projects. These planning documents set out measures that the country will include in implementing the project. For subprojects, the country may also need to prepare individual IPPs.

Involuntary Resettlement Processes

The World Bank envisions that some of the projects it supports will result in involuntary taking of land.\(^{67}\) In these cases, the borrower country must draft a ‘resettlement plan’ (RP) or a ‘resettlement policy framework’ (RPF), which details how the country will manage adverse impacts to persons affected by the project. For projects that restrict access to legally designated parks or protected areas affecting livelihoods, a ‘Process Framework’ for addressing impacts to affected people must be prepared.\(^{68}\) The process framework is a participatory process for determining how specific components of the project will be prepared and implemented, how eligibility of displaced persons will be determined, which measures will be used to assist displaced persons, and how conflicts will be resolved. Through the Process Framework, a plan of action is developed, which includes measures to be undertaken to assist the displaced persons and manage natural resources.

InfoShop

The World Bank uses a web-based tool called InfoShop to disclose documents and information related to its programs and projects, as well as other information that it holds that is available to the public.

Inspection Panel

The World Bank has an independent Inspection Panel that has the competence to hear complaints from affected individuals and communities alleging that their rights or interests have or are likely to be affected as a result of the World Bank’s failure to comply with its safeguard policies during the design, appraisal and/or implementation of projects financed by the World Bank. Requests for inspection must be made in writing to the office of the Inspection Panel—either directly or through a World Bank field office—by the individuals, or by

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\(^{66}\) It is important to emphasise that ‘FPIConsultation’ is not the same as Free Prior and Informed Consent (FPIC) as it is recognised in applicable international legal instruments such as ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

\(^{67}\) World Bank, OP 4.12 – Involuntary Resettlement, paragraph 3. ‘Involuntary taking of land’ can mean either: 1) the involuntary taking of land resulting in relocation or loss of shelter, loss of assets or access to assets, or loss of income resources or means of livelihood, whether or not the affected persons must move to another location; or 2) the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the displaced persons.

\(^{68}\) World Bank, OP 4.12 paragraphs 7 and 31.
local representatives. During an investigation, the Inspection Panel has access to staff and all pertinent World Bank Records. Decisions of the Panel are made by consensus and provided to the President and the Executive Directors of the World Bank, after which they are published. In response, the World Bank management must prepare a report that indicates recommendations in response to the report. While the Inspection Panel has seen considerable use by aggrieved parties, for reasons which we detail below, it has had limited effectiveness in ensuring that grievances are properly addressed and remedied.
Analysis of the World Bank Safeguards

Consistency with UNFCCC REDD+ Safeguard (a)

Summary of Findings for Safeguard (a)

Through its Operational Policies on Environmental Assessment (EA) and Forests, the World Bank promotes recognition of and consistency with national forest programs or other relevant country-driven processes. However, the World Bank OPs fail to adequately incorporate international human rights and indigenous peoples’ rights conventions and instruments, which is inconsistent with the requirements of UNFCCC REDD+ Safeguard (a). For example, while the World Bank safeguards require adherence to international environmental obligations, it does not reference any such a requirement for international human rights obligations.

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

In its EA, the borrower country should take into account its national environmental action plans, policy framework, national legislation, among other things. If the project relates to forest management, the borrower country should provide information on, *inter alia*, its national forest programmes or other relevant country-driven processes. However, there is no explicit requirement for the borrower country to ensure consistency.

Countries should use the REDD+ Readiness process as an opportunity to revisit their national forest programmes in order to guide development of national REDD+ programmes so as to contribute towards achieving those goals. These objectives could also provide a basis for measuring/monitoring performance of individual projects once they begin implementation.

2. Complement or Consistent With Relevant International Conventions and Agreements

The World Bank states that it “does not finance projects that contravene applicable international environmental agreements.” As such, a borrowing country’s EA must consider, *inter alia*, “obligations of the country, pertaining to project activities, under relevant international environmental treaties and agreements.”

Despite this requirement, the World Bank does not require the borrower country to consider applicable international human and Indigenous peoples’ rights obligations, nor does it state that it will refrain from

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89 OP 4.01, para 3.
90 OP 4.36, para 14.
91 OP 4.36, paras 3 and 14; and OP 4.01, para 3.
92 OP 4.01, para 3.
financing projects that contravene such obligations. The World Bank Operational Policy on Indigenous Peoples only states that it ensures that the development process fully respects the human rights of indigenous peoples, and that indigenous peoples’ rights “are increasingly being dealt with under domestic and international law.” This arguably falls short of UNFCCC REDD+ Safeguard (a)’s calls for REDD+ activities to complement or be consistent with international obligations.

While REDD+ related activities are likely to have environmental impacts—particularly on biodiversity—there are also well-known risks to indigenous peoples’ and human rights. That is why the UNFCCC REDD+ Safeguards require REDD+ to complement or be consistent with international obligations broadly, rather than just those that pertain to the environment.

We recommend that, in consideration of UNFCCC REDD+ Safeguard (a), countries ensure protection of welfare and rights of affected indigenous peoples and communities according to their international obligations during all phases of REDD+.

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### Consistency with UNFCCC REDD+ Safeguard (b)

#### Summary of Findings for Safeguard (b)

Although the World Bank itself claims to operate under a policy of maximum disclosure, the World Bank safeguards do not recognise a right to access information, and underemphasise the importance of ensuring transparent forest governance. While there are disclosure requirements for project and program-related documents that the World Bank holds, its broad catch-all exception that can be used by itself and borrowing countries runs contrary to the principle of maximum disclosure. There are also few provisions for dealing with corruption.

The World Bank OPs provide a good framework for requiring assessment of policy, legal and institutional governance capacity for projects that affect forests or natural habitats. However, in some instances, institutional capacity does not need to be enhanced, even if gaps have been identified. The World Bank’s Policies also do not place great emphasis on ensuring protection and clarification of land tenure, or enforcement of forest laws. Furthermore, because the World Bank’s Inspection Panel cannot hear complaints that do not come under one of its OPs, which may include violations of international human rights law. Also, the Inspection Panel does not have the power to monitor recommendations that stem from a finding of non-compliance with the World Bank OPs. While the World Bank OPs do promote some integration of environmental and social issues into project planning, they do not adequately take human rights into consideration. DPLs also do not adequately provide for social and environmental safeguards. Moreover, the World Bank does not promote cross-sectoral communication or coordination on issues related to forests, or the environment in general.

1. **Transparency**

   *(i) A Right of Access to Information*

   The World Bank’s *Policy on Disclosure of Information* (PID), supplemented by the World Bank’s *Operational Manual*, sets out its policy on access to information it possesses, and materials available to the public.\(^{94}\) The World Bank states that it operates under a presumption in favour of disclosure, based on a policy of maximizing access.\(^{95}\) It also recognises transparency as being “critical for enhancing good governance, accountability, and development effectiveness.”\(^{96}\)

   However, the World Bank does not require or encourage borrowing countries to recognise a right of access to information in their legal framework. Furthermore, it does not acknowledge the importance of providing a right of access to information. The importance of a right of access to information, especially regarding environmental matters, should not be understated, especially for enhancing environmental and forest governance in line with UNFCCC REDD+ Safeguard (b).

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\(^{94}\) World Bank Policy on Disclosure of Information, p 1


\(^{96}\) The World Bank Policy on Access to Information (July 1, 2010), p 1.
We recommend that countries recognise and proactively promote the right of access to information, especially information pertaining to environmental matters, because such a right enhances and supports more inclusive governance processes. It also ensures transparency, especially with regard to environmental matters.

(ii) Institutions to Ensure Access and Distribution to Information

In order to facilitate access to information, the World Bank has an Access to Information Committee (the AI Committee). The AI Committee facilitates proactive disclosure of information through its website, InfoShop. It accepts requests for information not disclosed on its website, as long as it is made with reasonable specificity to the information sought. The AI Committee also maintains an appeals process for access requests that are denied.

Routine documents prepared throughout the project cycle for individual projects are usually available after they have either been reviewed internally by World Bank management or finalized. Such documentation includes Project Information Documents (PIDs), which contain preliminary safeguard information; Project Appraisal Documents (PADs), which are prepared as part of the World Bank’s due diligence, before it approves the project; and summaries of finalised EA reports, Resettlement Instruments (RIs), and Indigenous Peoples’ Plans/Frameworks (IPPs/IPPFs). Analytic work conducted for Development Policy Loans (DPLs) is also made available in line with the World Bank’s Access to Information Policy as part of the consultation process.

However, there are a number of reserved exceptions to this policy. Borrowing countries reserve the right to classify any information they send to the World Bank. For example, if a borrowing country opposes disclosure of the EA report to the public for an IBRD-supported project, the issue is submitted to the Executive Directors of the World Bank “for further processing.” The World Bank EA Policy is silent as to the result of this process, implying that there is no requirement for the final EA report to be publicly disclosed. The World Bank also “reserves the right not to disclose, under exceptional circumstances, information that it determines that such disclosure is likely to cause harm that outweighs the benefits of disclosure.”

The above exceptions inhibit providing transparency in line with UNFCCC REDD+ Safeguard (b), as they allow for wide discretion to maintain secrecy.

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97 To access InfoShop, go to: [www.worldbank.org](http://www.worldbank.org)
98 The World Bank Policy on Access to Information, (July 1, 2010), pp. 11-12, paragraphs 24-27
103 World Bank, OP 4.01, paragraph 18.
To comply with UNFCCC REDD+ Safeguard (b), we recommend that countries go beyond the World Bank safeguard policies and allow access to information unless there is a very good and limited reason overriding the public’s interest of having that information made public. We also recommend that countries act in ‘good faith’ when dealing with requests for information from interested members of the public, particularly on matters pertinent to REDD+.

The World Bank OPs do not mention the need to ensure proactive flows of information between the borrower country and the public concerned, but for a number of exceptional circumstances. Moreover, there is neither a specific requirement for the borrowing country to assess its institutional capacity to ensure proactive dissemination of relevant information, nor a requirement to enhance this capacity outside of projects that require an EA. The existence of an adequate institution with proper functions and authority to ensure that relevant information is made public is an integral component of transparent forest governance.

Upon assessment of institutional frameworks for facilitating availability of relevant environmental information in their EA, countries should take steps to either create or enhance such institutions so that they are able to proactively disseminate and provide access to pertinent information.

(iii) Promoting Public Awareness on Access to Information

The World Bank has a “Translation Framework” that it follows when there is a need to translate documents into appropriate languages. However, the World Bank does not appear to have an active strategy for promoting awareness of this service, or its access to information policy in general. Its OPs also do not require borrower countries to promote public awareness or education on the right to access publicly-held information. It is uncertain how transparent forest governance is to be achieved if members of the public are not aware of their right to keep themselves informed.

We recommend that countries promote awareness of their right to access information, and that they make efforts to ensure access to any interested individuals.

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105 For more information on these circumstances, please see our analysis of participation in the section on UNFCCC REDD+ Safeguard (d) (below).
106 OP 4.01, paragraph 14 expects components to strengthen capacity to carry out key EA-related functions. Transparency is not explicitly mentioned, but it is a key EA function.
(iv) Accountability

The World Bank’s OPs are largely silent regarding the role of transparency in preventing or dealing with corruption. Certification systems, which are required for commercial harvesting operations, should have decision-making procedures that are, *inter alia*, “designed to avoid conflicts of interest.” Otherwise, the World Bank’s OPs have nothing more to say on the matter.

In order to address drivers of deforestation and forest degradation, and to enhance forest governance, countries will necessarily need to reign in corruption and promote more transparent governance structures.

Although the World Bank’s safeguards do not adequately address this issue, we recommend that countries seriously consider strategies to enhance transparency in order to deal with such matters, especially in forestry and related sectors. This could be done starting with ratification and implementation of relevant international instruments.

3. Effective National Forest Governance Structures

(i) Appropriate Legal Framework

Before it provides final approval for a project, the World Bank conducts an appraisal where it assesses the borrower country’s legal framework. In the EA, the country must assess its overall environmental and social policy framework and national legislation. For projects that may impact forests and/or the rights and welfare of local forest communities, the EA must also assess the country’s national forest programmes. Based on the assessment, the country must incorporate measures to strengthen its legal framework, including “the roles and rights of the government, the private sector and local people.”

The above requirements can serve as a guide to countries as they assess their policy, legal and institutional governance frameworks in terms of REDD+ readiness. For purposes of effective governance and consistency with UNFCCC REDD+ Safeguard (b), we recommend that when countries assess their legal frameworks they analyse laws related to participation, land tenure, institutional, regulatory and enforcement capacity, and ability to address grievances.

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108 World Bank OP 4.36, paragraph 11.
109 Corruption is in fact addressed in Operational Policy 9.00 on Program for Results Lending (P4R), a form of World Bank lending to governments where disbursement occurs after pre-determined results have been achieved. Under P4R Lending, the borrowing country is responsible for preventing, detecting and responding to actual or alleged fraud and corruption. The World Bank has a right to investigate allegations, and sanction relevant parties. Because it uses a different safeguard methodology, P4R are not addressed as part of this analysis. The World Bank has also provided “Guidelines on Preventing and Combating Fraud and Corruption in Program-for-Results Financing.”
110 World Bank OP 4.01, paragraph 3.
111 OP 4.36, paragraphs 13-14.
Clear Land Tenure Rights

The World Bank OPs contain several provisions on land tenure and possession rights. The World Bank Operational Policy on Forests states that in order for an independent forest certification system to be acceptable to the World Bank, it must require, *inter alia*, “recognition of and respect for any legally documented or customary land tenure and use rights as well as the rights of indigenous peoples and workers.” However, this requirement only applies to commercial harvest operations—not operations that impact forests in general.

Notably, the World Bank may provide support for, *inter alia*, strengthening local legislation, as needed, to establish legal recognition of the customary or traditional land tenure systems of indigenous peoples. Furthermore, the World Bank Operational Policy on Indigenous Peoples requires countries’ Indigenous Peoples Plan (IPP) to include an action plan for legal recognition of traditionally owned or customarily used or occupied lands or territories for activities “contingent on establishing legally recognized rights to lands and territories (such as land titling projects)” or land acquisitions. However, it is unclear from the Policy as to what the exact scope of these projects is intended to be, and the Operational Policy on Indigenous Peoples may not cover all REDD+ activities. Furthermore, such actions are not required under an Indigenous Peoples Planning Framework (IPPF). This would imply that such a plan is not needed until a project is being proposed on the ground.

It is important for countries to be aware that in order to comply with UNFCCC REDD+ Safeguard (b), governments should undertake measures to address and clarify the legal rights of local peoples, especially with respect to recognition of customary land tenure or use rights, whenever there is a chance they may be impacted by REDD+ activities.

Countries should develop an action plan for legal recognition of land tenure at the earliest stage possible, preferably during the Readiness stage, and it must be seen as a broader national forest governance strategy. Countries can do this by taking advantage of opportunities for assistance from the World Bank in developing their laws and policies with regard to recognition and clarification of land tenure.

In preparation of its Involuntary Resettlement Plan (RP), the borrowing country is required to assess its legal framework around tenure and natural resource use rights, both customary and traditional, including legal steps necessary to recognise such rights. However, there is no explicit requirement to recognise rights not already recognised by law, even though these rights determine the assistance to which displaced persons are eligible.

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113 OP 4.36, paragraph 10(b).
114 OP 4.10, paragraph 22(a) and (b).
115 OP 4.10, paragraph 17.
117 OP 4.12, paras 14 -16.
After analysing such laws, we recommend that countries clarify customary, traditional or uncertain land tenure rights situations. Clarification should take place in a manner consistent with those countries’ applicable international legal obligations, especially with regard to indigenous peoples’ rights. Such measures will enhance forest governance frameworks by reducing risk of conflict, providing clarity around rights and responsibilities, and allowing for an equitable distribution of benefits.

**Equitable Distribution of Benefits**

In their IPP, countries must include a plan of measures to ensure that indigenous peoples receive appropriate benefits. However, outside of the context of indigenous peoples, neither the World Bank’s Operational Policy on Forests nor its Operational Policy on Natural Habitats explicitly mention equitable benefit sharing arrangements. Nevertheless, it is important for countries to recognise that not only indigenous peoples, but also local forest communities will be impacted by REDD+ activities. As such, it will be just as important to ensure that those communities receive equal opportunity to share in the benefits that arise, especially vulnerable groups such as women, the elderly, or impoverished.

In order to ensure equitable results in line with UNFCCC REDD+ Safeguard (b), countries should go further than the World Bank safeguards and ensure that all impacted individuals and communities are able to equitably share benefits from REDD+ in a culturally, gender and intergenerational appropriate manner.

It will also be important to ensure clarity and simplicity in determining eligibility to share REDD+ benefits. Under the World Bank’s Operational Policy on Involuntary Resettlement, if individuals do not have formal legal rights to land, their claims to such land or assets are not recognized under national law, or there is no process to recognise such claims during implementation of the resettlement plan, they are only eligible for resettlement assistance “and other assistance, as necessary.”118 There is no requirement for governments to establish a process to recognise customary, traditional or other non-formal legal rights to land. Because many forest-dwelling communities do not have formal legal titles to land, either due to non-traditional ownership or poverty, adherence to this policy could still result in communities losing their land without compensation.

Countries need to ensure that not only arrangements for benefit sharing are fair, but also to implement inclusive, fair and understandable processes in order to define eligibility to participate in benefit sharing arrangements that are created. This will be particularly important for realising certain non-carbon benefits such as livelihood enhancement, and ensuring that trade-offs for sustaining carbon pools in forested areas outweigh benefits from previous uses.

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118 OP 4.12, para 16.
Gender Equality

The World Bank’s Operational Policy on Gender and Development is intended to deal with gender issues that may arise as part of its lending operations. However, it does not explicitly mention ‘gender equality’. It is also very vague in how gender equity issues are supposed to be integrated into project development. Nevertheless, the World Bank does conduct gender assessments, either stand-alone or as part of broader poverty and social impact assessments or institutional analysis. While the Operational Policy on Gender and Development does not say how, these assessments inform policy dialogue between the World Bank and its member countries. If gender issues are identified in a project, World Bank assistance also includes measures for addressing and taking them into account. However, this does not equate to a requirement to address gender equity issues.

When assessing legal, policy and institutional frameworks for gender issues, we recommend that countries look specifically at equality and discrimination issues that might affect women during REDD+ activities, especially with regard to participation and benefit sharing.

(ii) Appropriate Institutional Frameworks

The World Bank OPs recognise the need for countries to conduct institutional analyses and ensure institutional capacity to manage projects that impact societies and the environment. In its EA, the borrower country must assess its institutional framework, as well as its capacity to carry out EA-related functions, such as review of the EA, ensuring safety, environmental monitoring, inspections, conservation, or management of mitigation measures. In developing its Resettlement Plan, the country must assess its institutional capacity to effectively implement its laws that apply to resettlement. Moreover, if a country wishes to pilot the use of its own environmental and social safeguards during the implementation of a project, it must demonstrate to the World Bank that it has a good implementation record and adequate capacity. Similar considerations apply for DPLs.

Under most of the World Bank’s safeguards, if institutional capacity problems for handling negative impacts are identified, the project generally includes components to develop capacity of national and local institutions, or to address legal gaps. However, this is not required under the World Bank Operational

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Policies on Physical Cultural Resources or Involuntary Displacement, or for DPLs. In the case of displacement, if the borrower country requests, the World Bank may provide assistance to assess and strengthen frameworks, and capacities of agencies responsible for managing resettlement.

In order to have an effective forest governance structure consistent with UNFCCC REDD+ Safeguard (b), institutional gaps and inadequacies that are identified must be addressed in a meaningful way. Regardless of whether the World Bank requires institutional capacity building, in order to be consistent with UNFCCC REDD+ Safeguard (b), countries need to make enhancement a priority prior to embarking on particular REDD+ projects on the ground.

Therefore, we recommend that during the Readiness phase for REDD+, countries take steps to identify institutional and regulatory governance gaps and take meaningful steps towards enhancement to ensure they can build effective forest governance structures.

The World Bank does promote enforcement to an extent in its OPs. As a prerequisite for World Bank support for commercial forest harvesting operations, the operation must be certified by a system that requires compliance with relevant laws. However, while there is a requirement to assess compliance performance, there is no requirement for verification that laws have been enforced. Moreover, there is no requirement that the country be capable of enforcing its laws, or that the country take steps to enhance its law enforcement capacity.

Illegal activities account for a good portion of deforestation that takes place. If REDD+ is going to deliver desired results and meet UNFCCC REDD+ Safeguard (b), forest laws need to be enforced.

Therefore, we recommend that as countries design strategies to enhance governance they focus on improving their capacity to enforce laws relating to forests, basing these on the results of assessments prepared for the World Bank.

(iii) Participation in Decision-Making Processes that Affect the Environment

Similar to its Policy on Access to Information, the World Bank’s OPs do not recognise a right to participate in decisions that relate to the environment. A number of OPs require participation by project-affected groups, including some forest-related projects, while a number of others also require consultation. In its Operational Policy on Forests, the World Bank expects that if needed the borrower country will implement

128 See OP 4.09, para 16; and OP 4.10, para 22.
129 OP 4.12, para 32.
130 OP 4.36, paras 9 & 10.
131 OP 4.10, OP 4.12, and OP 4.36 (but only for projects that fund commercial harvesting operations or harvesting operations by small-scale landholders or local communities under community forest management).
132 OP 4.01, OP 4.10 and OP 4.12.
measures to strengthen “the roles and rights of the government, the private sector and local people.” However, it should be mentioned that participation is a specific measure governments could take to enhance the roles and rights of local people in decisions that affect them and their environment.

There is a significant connection between this aspect of meeting UNFCCC REDD+ Safeguard (b) and UNFCCC REDD+ Safeguard (d), as there cannot be effective governance without participation of individuals and groups affected by governance decisions.

While full and effective participation will be more thoroughly discussed in its specific section, we recommend that countries thoughtfully consider the connection between ensuring full and effective participation when considering how to design effective national forest governance structures. It is also important to remember that participation should also be included when talking about the roles and rights of local peoples.

(iv) Adequate Access to Justice

The World Bank OPs aim to provide a number of avenues for affected individuals to have their grievances heard that may arise during projects. First, the World Bank Inspection Panel has the ability to receive complaints from groups of individuals alleging that one of the World Bank OPs has not been complied with. While the World Bank provides generally for a grievance mechanism that can be accessed by individuals in response to breaches of World Bank OPs, a number of gaps remain that countries must be aware of if they want to provide adequate access to justice in line with UNFCCC REDD+ Safeguard (b). Limitations include:

- The Inspection Panel’s ability to only hear complaints related to a breach of World Bank Ops, and not for wrong acts in general such as violations of international human or indigenous peoples’ rights;
- The inability for complainants to use the Inspection Panel to challenge World Bank decisions or omissions, unless they can point to a violation of an OP;
- The Inspection Panel cannot monitor or follow up on action plans developed in response to a finding that one of the World Bank Policies or Procedures has been violated.

Therefore, we would not recommend that countries rely on the World Bank Inspection Panel for purposes of consistency with the UNFCCC REDD+ safeguards. It is important that access to a grievance or complaints mechanism which can provide an effective remedy throughout the planning and implementation of REDD+ activities be considered a key component of ensuring effective forest governance under UNFCCC REDD+ Safeguard (b). We recommend that in developing readiness for REDD+, countries take steps to adapt existing judicial mechanisms in their countries, or create new ones, to ensure that affected persons or groups can have their grievances heard in a fair manner consistent with international standards.

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113 OP 4.36, para 14.
Secondly, the Operational Policy on Involuntary Resettlement requires borrower countries to have an "appropriate and accessible grievance mechanism" for persons that are relocated or lose their shelter, assets or access to assets, or loss of income sources or means of livelihood as a result of involuntary taking of land for a World Bank-funded project. These procedures should be affordable and accessible for third party settlement of disputes, and should take into account the availability of judicial recourse and community and traditional dispute settlement mechanisms. The borrower country’s Process Framework (PF) should also describe the process for resolving disputes relating to resource use restrictions that may arise between or among affected communities, and grievances that may arise from members of communities who are dissatisfied with the eligibility criteria, community planning measures, or actual implementation.

The World Bank Operational Policy on Indigenous Peoples also requires a country’s IPP to provide for “accessible procedures appropriate to the project to address grievances...taking into account the availability of judicial recourse and customary dispute settlement mechanisms,” or in the case of an IPPF, an institutional arrangement for addressing any grievances. However, the UNFCCC REDD+ Safeguards apply to all stages of REDD+, not just the project stage. While the World Bank’s provisions for preparing an IPP may be consistent with the UNFCCC REDD+ safeguards, its provisions for preparing an IPPF are overly vague and do not provide sufficient guidance.

If preparation of an IPPF is required, we recommend that borrowing countries prepare them, at the very least, in line with the guidelines for IPPs in order to be consistent with UNFCCC REDD+ Safeguard (b).

(v) Integration of Economic, Social and Environmental Considerations, and Cross-Sectoral Coordination

Ensuring sustainability is a stated objective of the World Bank’s Operational Policies. It supports and requires borrower countries “to apply a precautionary approach to natural resource management.” To ensure a sound process is followed for projects that impact the environment, the World Bank generally requires countries to utilise independent experts in conducting EAs.

We recommend that borrower countries take steps to integrate a precautionary approach into decision-making processes that affect forests and the environment more generally. Furthermore, we encourage borrower countries to integrate sound science and expertise into decision-making, especially in conducting an EA.

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134 OP 4.12, paras 13(a) and 14.
135 OP 4.12, Annex A, para 27 (d).
136 OP 4.10, Annex B, para 2(h); Annex C, para 1(e). Grievance mechanisms for Indigenous are discussed more in-depth in UNFCCC REDD+ Safeguard (c).
137 See OP 4.01, para 1; OP 4.04, para 1; OP 4.36, para 1; and OP 4.10, paras 1 and 21.
138 OP 4.04, para 1.
139 OP 4.01, para 4; and OP 4.04, para 7. OP 4.04 also includes more stringent requirements regarding expertise.
Under its Operational Policy on Forests, the World Bank states that it “uses environmental assessments, poverty assessments, social analysis, Public Expenditure Reviews, and other economic and sector work to identify the economic, environmental, and social significance of forests in its borrowing countries.” The World Bank also requires EAs to consider natural and social aspects in an integrated way. Furthermore, the World Bank aims to “harness the potential of forests to reduce poverty in a sustainable manner,” and “integrate forests effectively into sustainable economic development.” From time to time, the World Bank also assesses gender dimensions of development within and across sectors in countries for which it is providing assistance.

It is also important for countries to further integrate social and human rights considerations into decision-making. As mentioned in our analysis of UNFCCC REDD+ Safeguard (a), the World Bank does not require borrower countries to adhere to applicable international human right obligations. In using the World Bank safeguards, countries should realise that those safeguards do not necessarily integrate all relevant economic, social and environmental considerations to the extent called for in the UNFCCC REDD+ Safeguards.

For purposes of UNFCCC REDD+ Safeguard (b), in order to effectively integrate social considerations into decision-making in countries could combine human rights impact assessment components into EA processes required by the World Bank.

If the World Bank determines that any of its Development Policy Lending (DPL) operations are likely to have significant poverty and social impacts, it will summarize those impacts in the Program Document. In addition, it will conduct a Poverty and Social Impact Analysis (PSIA), whereby it will analyse the borrower country’s systems for reducing adverse effects and enhancing positive effects, focusing on distributional consequences of policy reforms. If gaps or shortcomings exist in those systems, the World Bank will describe how they will be addressed, either before or during implementation. While a PSIA should assess impacts on different groups, including poor and vulnerable groups, it does not mention indigenous peoples or local communities explicitly. Furthermore, although one of the elements for assessment is institutions, there is no mention of the need to examine legal or policy frameworks.

In addition, for DPLs the Bank will look at whether the operations are likely to cause significant effects on the borrower country’s environment, forests, or other natural resources. Such analysis can build on existing country information that has been conducted through the World Bank, for instance through Country Assistance Strategy papers. Analyses may also be carried out through a Country Environmental Analysis, or a Strategic Environmental Assessment (SEA). However, there is no prescribed process for carrying out this work. If such likelihood exists, an assessment of the borrower country’s policy and institutional framework to

140 OP 4.36, para 4.
141 OP 4.01, para 3.
142 OP 4.36, para 1.
143 OP 4.20 – Gender and Development, para 2.
144 OP 8.60, para 10.
145 OP 8.60, para 10; see also, “Good Practice Note: Using Poverty and Social Impact Analysis to Support Development Policy Operations,” p 3.
146 OP 8.60, para 11.
manage the environment is carried out, and if gaps or shortcomings exist, the World Bank will make appropriate recommendations. World Bank guidance only states that regions should develop their own procedures to ensure DPLs that affect environment and natural resources are addressed in accordance with OP 8.60.\textsuperscript{147}

One common element for dealing with both social and environmental impacts in DPLs is the vague framework nature in which they are supposed to be addressed, and the fact that World Bank OPs do not apply. It is understandable that not all risks of policy reform processes may be known before they are undertaken. However, environmental and social risks that stem from reform processes related to REDD+ are relatively well-known.

\begin{quote}
Therefore, we encourage analytical and assessment work conducted prior to enacting reforms for REDD+ to be as detailed as possible with regard to social and environmental risks. Moreover, countries should not use DPLs in the REDD+ context unless they are accompanied by safeguards that can meet the standards and principles contained in the UNFCCC REDD+ Safeguards.\textsuperscript{148}
\end{quote}

The World Bank OPs do not promote or support enhancement of inter-ministerial communication, or require inter-ministerial consultations or cooperation for projects that affect the environment or forests. However, it is important to recognise that decisions around forests often affect other sectors, just as decisions in other sectors often affect forests and forest communities. If countries can enhance communication and coordination between different sectors, they can develop more comprehensive forest governance approaches.

\begin{quote}
Therefore, we recommend that when assessing institutional and governance frameworks and in seeking the effective implementation of UNFCCC REDD+ Safeguard (b), countries focus on capacity for cross-sectoral communication and cooperation, and develop measures that will enhance such capacity.
\end{quote}

(vi) Sustainable Forest Management

In its Operational Policy on Forests, the World Bank states its objective of helping borrowing countries to harness the potential of forests to reduce poverty sustainably, and to effectively integrate forests into sustainable economic development.\textsuperscript{149} Generally, the forests policy applies to projects that have the potential to impact health and quality of forests, affect people that depend upon forests, or have potential to modify management, protection or use arrangements of forest resources.\textsuperscript{150} The World Bank also applies specific

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\textsuperscript{148}For a legal analysis of the content and scope of the UNFCCC REDD+ Safeguards, see ClientEarth, “Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards.”

\textsuperscript{149}OP 4.36, para 1.

\textsuperscript{150}OP 4.36, para 3.
standards to three different types of projects:

- Plantations (which will be discussed under UNFCCC REDD+ Safeguard (e));
- Commercial harvesting operations; and
- Small-scale harvesting operations and community forest management.

The World Bank will finance commercial harvesting operations, as long as:

- It is not on critical forest or related critical natural habitat;
- The operations are independently certified as meeting specified standards of responsible forest management and use;
- The certified standards are based on objective and measurable performance standards defined at the national level that are compatible with internationally accepted principles and criteria of sustainable forest management;
- There is independent third-party assessment of forest management performance.\(^{151}\)

However, even if operations do not meet those standards, they may still move forward as long as an acceptable time-bound action plan is put forward to meet certification standards. Moreover, while there is a requirement for assessment, there is no verification requirement. In the context of REDD+, commercial timber harvesting operations should not move forward unless standards can in fact be met to ensure that those operations are truly sustainable and not compromising the achievement of REDD+ goals, including the benefits envisioned under its implementation. Furthermore, while certification can be used as evidence of legality, certification standards should not alone be considered as a viable alternative for effective regulation and oversight by proper competent authorities.\(^{152}\) Therefore, we would caution against too much reliance on certification standards to ensure the sustainability of forest harvesting operations.

We would recommend that countries ensure that if they do use certification that potential operators be able to meet established standards before they are allowed to operate, and that such standards be verifiable.

The World Bank will also finance small scale harvesting operations under joint or community forest

\(^{151}\) OP 4.36, para 8, 9 and 11. Standards include: a) compliance with relevant laws; b) recognition of and respect for any legally documented or customary land tenure and use rights as well as the rights of indigenous peoples and workers; c) measures to maintain or enhance sound and effective community relations; d) conservation of biological diversity and ecological functions; e) measures to maintain or enhance environmentally sound multiple benefits accruing from the forest; f) prevention or minimization of the adverse environmental impacts from forest use; g) effective forest management planning; h) active monitoring and assessment of relevant forest management areas; and i) the maintenance of critical forest areas and other critical natural habitats affected by the operation.

management if they meet acceptable forest management standards. The World Bank actually states that “preference will be given to small-scale, community-level management approaches where they best harness the potential of forests to reduce poverty in a sustainable manner.”\textsuperscript{153} The World Bank safeguards also recognise the role that indigenous peoples play in long-term sustainable management of critical ecosystems.\textsuperscript{154}

As such, the World Bank tries to avoid involuntarily restricting indigenous communities from legally designated parks and protected areas. If avoiding restriction of access is not feasible, the World Bank requires the borrower country to create a Process Framework, consistent with its policy on involuntary resettlement, with the peoples concerned. Through a process of Free, Prior and Informed Consultation (FPIConsultation), this process should result in a management plan. The management plan should consist of a collaborative arrangement where the peoples concerned should be allowed continued use of their resources in an ecologically sustainable manner, and to share equitably in the benefits.

However, as we will analyse more fully in our section on UNFCCC REDD+ Safeguard (d), there are deficiencies in FPIConsultation that may prevent indigenous peoples from freely consenting to such measures.

\begin{quote}
Recognising that indigenous peoples have an important role to play in the sustainable management of forests and forest resources in line with UNFCCC REDD+ Safeguard (b), we recommend that countries ensure that indigenous peoples and local communities are properly consulted when developing sustainable forest management arrangements. Their views should be respected and taken into account when decisions are made that affect their welfare and rights, and solutions should be devised in line with international standards for participation and benefit sharing.\textsuperscript{155}
\end{quote}

\textsuperscript{153} OP 4.36, para 14.
\textsuperscript{154} OP 4.10, para 21.
\textsuperscript{155} For legal analysis on international standards for participation and benefit sharing, particularly with indigenous peoples, please see our Safeguard (b) analysis in “A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards.”
Consistency with UNFCCC REDD+ Safeguard (c)

Summary of Findings for Safeguard (c)

While the World Bank Operational Policies (OPs) define ‘indigenous peoples’, there is no adequate recognition of ‘local communities’, which may affect the rights these groups are entitled to have recognised. Although the World Bank recognises the need to respect cultural and traditional knowledge of indigenous peoples, its safeguards make no mention of respect for local community knowledge, although this is a requirement of UNFCCC REDD+ Safeguard (c). As mentioned under the analysis of UNFCCC REDD+ Safeguard (a), the World Bank safeguards do not acknowledge any specific international human rights or indigenous rights instruments or the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Moreover, the World Bank does not require countries to recognise or implement applicable international human or indigenous rights instruments in projects sponsored by the World Bank. However, the World Bank does require “prior agreement” of indigenous peoples for commercial development of cultural resources and knowledge. Furthermore, equitable benefit sharing is promoted. There is no reference to the right to self-determination, and only a very weak reference to non-discrimination. Furthermore, provisions on collective land tenure do not provide sufficient certainty that customary or traditional rights will be respected.

1. Defining Indigenous Peoples, Members of Local Communities and Knowledge

   (i) Defining Indigenous Peoples and Local Communities

Recognising the lack of a universal definition of ‘indigenous peoples’ or ‘local communities’ in international law, the World Bank does not define these terms in its Operational Policies and Procedures (OPs). Instead of adopting a specific definition, the World Bank generically refers to ‘indigenous peoples’ as a:

   “distinct, vulnerable, social and cultural grouppossessing the following characteristics in varying degree:

   1. Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
   2. Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats or territories;
   3. Customary, cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
   4. An indigenous language, often different from the official language of the country or region.”

This definition also includes groups that have lost attachment to their original territories because of ‘forced severance’. Parting with international instruments on the topic, the World Bank does not make reference to

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156 There is no a priori minimum threshold.
time and place of inhabitancy in contrast to time of colonisation. Instead, it emphasises collective subjective elements used by indigenous peoples’ communities to identify themselves, and their attachment to geographical areas. This could be potentially seen as a less stringent and more flexible requirement, since it does not require establishing continuity of existence back to a certain time period, while emphasising characteristics of collective self-identity.

We recommend countries take into consideration relevant and applicable international laws. Countries are encouraged to recognise that there is not an exhaustive list of factors that define what constitutes ‘indigenous peoples’, and therefore to also apply a flexible policy of identification towards these groups.

In its Operational Policy on Forests, the World Bank defines ‘local communities’ as “the group of people living in or near a forest, who are considered to have some significant level of dependence upon or interaction with the forest.” The Operational Policy on Forests also incorporates the Operational Policy on Indigenous Peoples, recognising that local communities may also constitute indigenous peoples’ communities. However, the World Bank safeguards to not explicitly recognize that indigenous peoples may be referred to as ‘local communities’, which is possible in some cultural traditions. As we highlight in our Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards, certain rights may be granted or limited based on a particular group’s categorisation under national law.

In order to ensure that local communities are afforded the rights they are entitled to, countries should be aware that the local communities may also constitute indigenous peoples and should take appropriate steps to recognize them.

(ii) Respecting ‘Knowledge’

While one of the aims of the Operational Policy on Indigenous Peoples is to ensure that indigenous peoples’ cultures are respected, there is no requirement to respect cultural or traditional knowledge of local communities per se.

The World Bank will not fund ‘commercial development’ of indigenous peoples’ cultural resources and knowledge without prior agreement to such development. The borrower country must also ensure Free, Prior and informed Consultation (FPIC), which contains special information requirements. The Indigenous Peoples Plan (IPP) must reflect this agreement, and provide for ‘culturally appropriate’ and ‘equitable’ sharing of benefits derived from commercial development. The World Bank may also provide

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160 OP 4.10, para 1.
161 OP 4.10, para 19.
162 See discussion of free prior and informed consultation under UNFCCC REDD+ Safeguard (d) (below).
financial assistance to document Indigenous culture, institutions, religious beliefs and resource use patterns, and protect Indigenous knowledge by strengthening intellectual property rights. However, this does not equate to a requirement to respect indigenous knowledge outside of commercial development.

In order to ensure that REDD+ activities do not adversely impact internationally-recognised rights protecting indigenous knowledge, we recommend that borrower countries ensure that, where applicable, such rights are recognised under domestic law, and that appropriate mechanisms are in place to ensure that they are respected.

The Operational Policy on Forests incorporates requirements from both the Operational Policy on Indigenous Peoples and on Physical Cultural resources. Therefore, local forest communities would share the same rights to cultural resources and knowledge if a project sought to commercially develop these resources. However, this would only be the case if the community could be classified as an indigenous people.

It is important for countries to recognise that there are a number of different types of indigenous or community knowledge, which includes tangible as well as physical resources. Under international law, both types of resources are protected, and these rights must be respected under international law to effectively implement UNFCCC REDD+ Safeguard (c). It should also be recognised that local communities that may not fall under the definition of indigenous peoples may possess cultural and traditional knowledge that needs to be protected under UNFCCC REDD+ Safeguard (c).

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

The World Bank states that its Operational Policy on Indigenous Peoples contributes to its “mission of poverty reduction and sustainable development by ensuring the development process fully respects the human rights of indigenous peoples.” It also recognises that indigenous peoples’ rights “are increasingly being dealt with under domestic and international law.” However, as mentioned in our UNFCCC REDD+ Safeguard (b) analysis (above), the World Bank’s safeguards do not acknowledge any specific international human rights or indigenous peoples’ rights instruments. It also does not mention the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and it does not require borrower countries to implement relevant international human or Indigenous rights instruments.

It is important that countries understand that to comply with UNFCCC REDD+ Safeguard (c), in addition to taking into account national circumstances and laws, they must take into account relevant international obligations. Therefore, even though the World Bank does not contain a requirement to adhere to applicable human rights and indigenous peoples’ rights obligations countries should seek to do so in order to

164 OP 4.10, para 22(e) and (h).
165 OP 4.10, para 1.
comply with UNFCCC REDD+ Safeguard (c).

(i) Non-discrimination

The World Bank’s Operational Policy on Indigenous Peoples does not mention equal enjoyment of human rights or the right to protection from discrimination. The closest mention of equal enjoyment of rights can be found in a requirement to ensure that indigenous peoples receive “rights to due process at least equivalent to that which any landowner with full legal title to the land would be entitled in the case of commercial development on their land.” Nevertheless, under international law indigenous peoples should enjoy the full measure of human rights and fundamental freedoms, without discrimination.

In order to comply with UNFCCC REDD+ Safeguard (c), countries will need to recognise more than just equal due process for indigenous peoples, but should enact laws that protect them from discrimination.

(ii) Self-determination

The World Bank does not recognise or promote a right to self-determination. Nevertheless, it does require FPCI Consultation if a project has the potential to adversely affect indigenous peoples, and if a project affects indigenous lands and related natural resources, both natural and cultural. It is important to recognise that indigenous peoples have a collective right to self-determination under international law, which allows them to freely determine their own development and what they do with their natural resources through their own institutions.

We recommend that countries recognise indigenous peoples’ right to self determination. At the very least, when dealing with indigenous peoples during all stages of REDD+, countries should respect this right.

(iii) Rights Associated with Culture

The World Bank’s Operational Policy on Indigenous Peoples acknowledges the importance of culture and identity of indigenous peoples, and their links to lands and natural resources. However, this Policy does not explicitly recognise cultural rights of indigenous peoples. Nevertheless, it does establish certain requirements for projects that might affect cultural values. First, borrower countries must pay attention to natural resources that are vital to the sustainability of cultures and livelihoods, and cultural and spiritual values that indigenous

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166 OP 4.10, para 18.
168 OP 4.10, para 1.
170 OP 4.10, paras 2, and 4(c).
peoples attribute to specific lands and resources. In addition, in order to commercially develop cultural resources, including knowledge, countries must receive prior agreement through FPIConsultation. In instances of involuntary resettlement, countries must also ensure that resettlement is compatible with the indigenous peoples’ cultural preferences. Lastly, in their IPP countries are required to include “an action plan of measures to ensure that the indigenous peoples receive social and economic benefits that are culturally appropriate.”

Nevertheless, the above requirements still fail to recognise a requirement to respect cultural rights of indigenous peoples in general, which is required under international law and essential in order to be consistent with UNFCCC REDD+ Safeguard (c).

We recommend that in order to meet the requirements of UNFCCC REDD+ Safeguard (c), countries ensure that all rights recognised under applicable international law on indigenous peoples are respected throughout the development and implementation of REDD+ activities.

(iv) Collective Land Tenure

In conducting social assessments and preparing its IPP/IPPF, the World Bank expects the borrower country to pay special attention to collective and individual customary rights over lands and related natural resources, including protection from illegal intrusion or encroachment, cultural and spiritual values attributed to these lands, and resources and natural resource management practices that contribute to long-term sustainability. However, as noted in the analysis of UNFCCC REDD+ Safeguard (b) (above), the World Bank does not require the country to legally ‘recognise’ customary rights, or for the country’s IPP to set forth a plan for legal recognition of Indigenous rights of ownership, occupation or use, but for activities “contingent on establishing legally recognized rights to lands and territories (such as land titling projects)” or land acquisitions. This may not cover all REDD+ activities, providing uncertainty for customary and traditional rights holders.

If indigenous peoples’ rights are not officially recognised in domestic law, there cannot be certainty that these rights will be respected. It should also be emphasised that benefit sharing is closely related to recognition of collective land tenure and natural resource use rights, and therefore recognition of such rights will need to be clarified in order for relevant indigenous communities to be able to enjoy such benefits.

In order to ensure the respect for indigenous peoples’ rights in consistency with UNFCCC REDD+ Safeguard (c), and to ensure that Indigenous communities share equitably from the benefits of REDD+, traditional and

\[171\] OP 4.10, para 16(a) and (c).
\[172\] OP 4.10, paras 18 and 19.
\[173\] OP 4.10, paras 9 and 20. This is reflected also in OP 4.12, paras 6, 13 and fn 11.
\[174\] OP 4.10, para 12, and Annex B, para 2(e).
\[175\] OP 4.10, para 16.
\[176\] OP 4.10, para 17.
customary rights should be *legally recognised* under domestic law.

(v) Benefit Sharing

The World Bank specifies measures in order to ensure that projects in which indigenous peoples are impacted or are displaced are allowed to equitably share in the benefits accrued from the project.\(^{177}\) As mentioned above, in its IPP the county must detail measures it will implement to ensure that affected indigenous peoples receive culturally and gender appropriate social and economic benefits.\(^{178}\) It should be noted that such a plan or framework is not required for an IPPF. Where protected areas, or commercial development of natural and cultural resources is envisioned, the country must include arrangements that enable indigenous peoples to equitably share the accrued benefits.\(^{179}\)

Borrower countries need to ensure that they have a proper mechanism, at both the project and framework level, with appropriate procedures to ensure that indigenous peoples and local communities can equitably share in benefits derived from REDD+. Borrower countries should also ensure that women are able to share in such benefits equally and without discrimination.

(vi) Procedural Rights

The World Bank does not interpret or apply the right to Free, Prior and Informed Consent (FPIC), as enshrined in ILO Convention No. 169 or UNDRIP.\(^{180}\) This falls far short of the requirement to promote and support the implementation of UNFCCC REDD+ Safeguard (c), which requires “taking into account relevant international obligations.” This will be more fully explored in our analysis of UNFCCC REDD+ Safeguard (d) (below).

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\(^{177}\) OP 4.10, para 1; OP 4.12, para 2.
\(^{178}\) OP 4.10, para 12.
\(^{179}\) OP 4.10, paras 18, 19 and 21.
\(^{180}\) For a more in-depth analysis of participation rights of Indigenous Peoples and FPIC, see UNFCCC REDD+ Safeguard (d).
### Summary of Findings for Safeguard (d)

The World Bank does not recognise a right to participation. Other than its Operational Policies on Indigenous Peoples and Involuntary Settlement, and to a limited extent in its Operational Policy on Forests, it does not refer to ‘participation’. Instead, the World Bank refers to consultation’ throughout most of its safeguards. While consultation is one mechanism that can be utilised in the participatory process, by itself it cannot always ensure full and effective participation of relevant stakeholders. The Operational Policy on DPLs also does not require participation or consultation. Moreover, the World Bank does not require borrower countries to assess capacity to handle consultations or deal with grievances or complaints that arise during the process. The World Bank has a number of ways to describe ‘relevant stakeholders’, and it contains provisions for identifying relevant stakeholders early on the project, although this is not entirely clear what this implies. Moreover, there are provisions for providing access to relevant planning documents during the EA process or involuntary resettlement. For the latter, there is also a relatively good framework for conducting consultations; however, there are no precise requirements for explaining results of participatory processes or their outcomes.

The World Bank also does not apply Free, Prior and Informed “Consent” (FPIC) as it is recognised under international law. The World Bank also does not recognise or promote the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Instead, it applies Free, Prior and Informed ‘Consultation’ (FPIConsultation) resulting in “broad community support for the project.” It is also uncertain whether the World Bank applies FPIConsultation in its Operational Policy on Physical Cultural Resources, because that policy does not make reference to indigenous peoples. In addition, there is no requirement to consult through representative institutions of Indigenous communities concerned, procedure normally required by international instruments pertaining to the rights of indigenous peoples. It is also worrying that the World Bank’s Operational Policy on DPLs does not mention even FPIConsultation.

### 1. Recognition and Implementation of Procedural Rights

While the World Bank does include requirements for participation for certain projects, and consultation for others, this cannot be equated to a requirement that borrower countries recognize a general human right of public participation in environmental matters.

While the World Bank Operational Policies (OPs) mention the need to consult affected groups during the development of projects, ‘participation’, or the right to participation is often left out. Only the Operational

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181 OP 4.10, para 11.
183 See the 1948 UN Universal Declaration of Human Rights, Art 19, which refers to the ‘right to take part in the government of his country, directly or through freely chosen representatives;’ See also, the 1966 International Covenant on Civil and Political Rights, Article 12, which declares that every citizen has the right to participate in ‘the conduct of public affairs, directly or through freely chosen representatives.’
Policy on Indigenous Peoples and Involuntary Resettlement explicitly require ‘participation’. The Operational Policy on Involuntary Resettlement requires displaced persons and/or host communities to be “meaningfully consulted” and “opportunities to participate on design project options, such as resettlement programs, and implementation.” While this Policy does include provisions for participation of local non-governmental organisations (NGOs) at various points in the process, it is not required at all stages.

**UNFCCC REDD+ Safeguard (d) calls for full and effective participation of relevant stakeholders, which includes relevant NGOs. Therefore, we recommend that countries allow all interested individuals and groups, including NGOs, to participate in all stages of project development.**

The Operational Policy on Forests does recognise an additional need for participation, at least with regard to specific operations. Among the World Bank’s criteria for funding commercial forest harvesting operations, an independent certification system must be in place that contains standards that are developed with ‘meaningful participation’ of different stakeholders. In addition, funding operations for small-scale harvesting operations, or community or joint forest management arrangements require a standard of forest management developed with ‘meaningful participation’ of locally affected communities.

The Operational Policy on Natural Habitats does not require participation unless the Operational Policy on Indigenous Peoples applies, in which case FPIConsultation would be applicable (discussed below). Otherwise, it requires consultation as stipulated by the Operational Policy on Environmental Assessment (EA).

While the World Bank Operational Policy on EA describes Strategic Environmental and Social Assessments (SESAs) as an instrument to describe analytical and participatory approaches, there is no explicit recognition of participation in that Policy. Furthermore, even though the Operational Policy on EA recognises the need to assess relevant environmental treaties and agreements, which may include provisions on participation, it does not explicitly recognise human rights treaties, which also have strong components on the right to public participation and would be useful for countries to consider when seeking to implement UNFCCC REDD+ Safeguard (d).

Public consultation is required for EA’s for ‘Category A’ and ‘Category B’ projects, and for projects that are likely to affect physical cultural resources. For projects involving natural habitats, the borrower country must take into account, *inter alia*, the views of groups affected, and “involve such people in planning, designing and implementing, monitoring and evaluating such projects.” Significantly, the World Bank adds that “involvement may include identifying appropriate conservation measures, managing protected areas and

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184 OP 4.12, para 2(a); para 13(a); and paras 2(b), 7, 13(a); Annex A, para 15.
185 OP 4.04, para 11.
186 OP 4.04, para 12.
187 OP 4.01, para 14; OP 4.22, para 11. Category A projects are projects “likely to have significant adverse environmental impacts that are sensitive, diverse or unprecedented.” Category B Projects may have “adverse environmental impacts on human populations or environmentally important areas—including wetlands, forests, grasslands and other natural habitats” that are not sensitive, diverse or unprecedented.
188 OP 4.04, para 10.
other natural habitats, and monitoring and evaluating specific projects.\textsuperscript{189}

For Development Policy Loans (DPLs), the World Bank ‘advises’ borrower countries “to consult with and engage the participation of key stakeholders,” including social groups directly affected by the operations, within the context of constitutional and legislative framework.\textsuperscript{190}

From the above, it is clear that the World Bank prefers to use ‘consultation’ as a mode of participation, which will not always satisfy UNFCCC REDD+ Safeguard (d)’s requirement for full and effective participation. It is important to note the distinction between consultation and participation.

While consultation is a mechanism used as one of many during the process of participation, it does not by itself ensure full and effective participation. It is important for countries to recognise this distinction and take appropriate steps to meet UNFCCC REDD+ Safeguard (d).

2. Creating an Enabling Environment for an Effective Participation

(i) Identification of Relevant Stakeholders

Neither the World Bank’s OPs, nor its Policy on the Disclosure of Information explicitly defines ‘relevant stakeholders’. Instead, the World Bank usually refers to particular individuals or groups affected by a project. Table 2 describes potential stakeholders identified by each of the World Bank’s OPs.

| Operational Policy on Environmental Assessment | “project affected groups and local [NGOs]” |
| Operational Policy on Indigenous Peoples | affected indigenous peoples’ communities, Indigenous Peoples Organizations, and other civil society organizations identified by the affected indigenous peoples’ communities |
| Operational Policy on Involuntary Resettlement | “displaced persons”, which are described as “persons who are affected in any of the ways described in para. 3 of this OP,”\textsuperscript{191} and other stakeholders, including local authorities, and, as appropriate, NGOs; “vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and children, indigenous peoples, ethnic minorities, and other displaced persons who may not be protected through national land compensation legislation.” |
| Operational Policy on Forests | people whose rights, welfare and level of dependence upon or interaction with forests are affected by projects; local people and communities, indigenous peoples, NGOs representing con-

\textsuperscript{189} Ibid.
\textsuperscript{190} OP 8.60, para 6.
\textsuperscript{191} OP 4.12, para 2(b), fn 3.
sumer, producer and conservation interests, and other members of civil society, including the private sector; locally affected communities, defined as “the group of people living in or near a forest, who are considered to have some significant level of dependence upon or interaction with the forest”

**Operational Policy on Natural Habitats** – “groups, including local [NGOs] and local communities, affected by Bank-financed projects involving natural habitats”

**Operational Policy on Physical Cultural Resources** – “… normally includes relevant project-affected groups, concerned government authorities, and relevant [NGOs]”

Significantly, perhaps the most expansive description of stakeholders is provided in the Operational Policy on Forests. Operational Policies on Involuntary Resettlement and Indigenous Peoples refer distinctly to ‘vulnerable groups’. The latter describes indigenous peoples as particularly vulnerable groups. Good Practice Guidance for Development Policy Loans (DPLs) provides special mention for stakeholders that may be traditionally excluded, such as women, indigenous groups, and people with disabilities. Other vulnerable groups, such as those below the poverty line, the landless, the elderly, women, youth, and ethnic minorities are not mentioned in participation provisions of the World Bank Project lending Operational Policies, although they are mentioned in the Operational Policy on Involuntary Resettlement.

We recommend that borrower countries be particularly vigilant about identifying these vulnerable groups as they identify potential stakeholders in order to ensure that they can participate in REDD+ processes and have their voices heard. It is vitally important that these vulnerable groups be included in REDD+, because they make up a majority of forest-dwelling communities, and the success of REDD+ may very well be tied to their participation and buy-in.

In conducting its EA, the borrowing country is required to assess the area of influence of the project. Where indigenous peoples are involved, the World Bank conducts a screening to determine whether indigenous peoples are present in, or have collective attachment, to the area, with consultation of the borrower country and indigenous peoples concerned. In addition, to identify potential displaced persons a census must be carried out following procedures that allow for “meaningful consultations with affected groups and individuals.” Although not precisely defined, these studies must be carried out “early on in the project,” upon identification of the need for involuntary resettlement, or before a social assessment is carried out for indigenous peoples. For involuntary settlement, potentially displaced persons should be notified early on in the project, while for indigenous peoples consultation must be ‘prior’.

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192 ‘local communities’, as defined by OP 4.10.
193 See OP 4.12, para 8.
195 OP 4.10, para 8.
196 OP 4.12, para 14.
It is important for the purpose of UNFCCC REDD+ Safeguard (d) that affected groups and individuals be identified and notified as early as possible, so as to allow full and effective participation throughout the life of the project, including planning and implementation.

(ii) Providing Access to Information

For consultation on EAs, the borrower country is required to provide relevant material “in a timely manner prior to consultation in a form and language that are understandable and accessible to the groups being consulted.”\(^{197}\) During the drafting process, the draft EA must be “available at a public place accessible to project-affected groups and local NGOs.”\(^{198}\) After the EA is finalised, the World Bank places it on InfoShop.

Where involuntary displacement occurs, the country’s draft Resettlement Instrument (RI), while being developed in consultation with affected persons, must be made available “at a place accessible to displaced persons and local NGOs, in a form, manner, and language that are understandable to them.”\(^{199}\) The final RI must also be disclosed in the same way.

However, as previously mentioned, the borrowing country may object to disclosure. Furthermore, the Operational Policy on EA is silent as to whether the finalised EA is also distributed to the groups being consulted in the same manner as other information. Without being able to assess the final product, relevant stakeholders cannot hold decision-makers accountable. It is important to note that such wide exceptions to disclosure do not comport with international principles of transparency, and inhibit full and effective participation.

In order to ensure consistency with UNFCCC REDD+ Safeguard (d), exceptions to disclosure should be minimised, and countries should maintain a presumption of openness with all relevant stakeholders.

Analytical work conducted for DPLs is made available in line with the World Bank’s Access to Information Policy as part of the consultation process.\(^{200}\) Interestingly, if the borrowing country consents, the program document of the DPL may be made public before it has been considered by the Executive Directors of the World Bank.\(^{201}\)

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197 OP 4.01, para 15.
198 OP 4.01, para 16.
199 OP 4.12, para 22.
200 OP 8.60, para 6.
201 OP 8.60, para 29.
In the interest of keeping affected stakeholders informed and able to participate in the preparation of legislative and policy reform processes for REDD+, we would encourage borrower countries to promote such openness.

(iii) Implementing Participatory Mechanisms

The World Bank imposes the duty to carry out consultations upon the borrower country. For projects that will have environmental risks and impacts, the EA will take into account the country’s institutional capacity on environmental and social aspects, including technical and legal capacity to carry out key EA-related functions.\textsuperscript{202} For forest-related projects in particular, the country is supposed to incorporate measures to address respective roles and legal rights of the government, the private sector, and local people. However, the World Bank’s policies are non-specific in this regard.

It is important for countries to recognise that EA and environment-related functions include capacity to handle consultations, disseminate timely and relevant information, integrate views, and deal with grievances or complaints that arise during the participation process, and that such capacity is necessary in order to ensure full and effective participation under UNFCCC REDD+ Safeguard (d).

For DPLs, the World Bank merely ‘advises’ borrower countries to consult and engage the participation of key stakeholders.\textsuperscript{203} In particular, when conducting a preliminary Poverty and Social Impact Analysis (PSIA), borrower countries are encouraged to involve key stakeholders, through institutional coordination mechanisms such as multi-stakeholder committees.\textsuperscript{204} However, this does not necessarily equate to a requirement to consult.

In order to be consistent with Safeguard (d), countries need to engage all groups that might be impacted by policy or legal reforms during REDD+ readiness preparation.

The World Bank’s Operational Policy on EA requires the EA to contain records of consultations, including the means of conducting those consultations. However, there is no requirement for the EA to detail the results of consultations, or to state whether the views expressed in the consultations factored into a decision, and if so, how. The World Bank can require more EA work to be done, particularly with regard to participation and consultation work.\textsuperscript{205} However, this is not presented as a requirement, and there is no guidance as to what constitutes satisfactory EA work.

\textsuperscript{202} OP 4.01, paras 3 and 13; see also OP 4.36, paras 13 and 14; and OP 4.04, para 10.
\textsuperscript{203} OP 8.60, para 6.
\textsuperscript{205} OP 4.01, para 5.
If stakeholder participants cannot be sure that they have been afforded the ability to fully and effectively participate during the decision-making process, they are less likely to accept such decisions as legitimate. Furthermore, UNFCCC REDD+ Safeguard (d) requires that participatory processes be accountable, and such processes can only be fully accountable when they are transparent in terms of result.

We highly recommend that countries document and detail the process of how consultations are conducted, including what information is disseminated, who participates, how decisions were made, the views of all those participating, and how these views were taken into account.

Where involuntary restrictions of access to legally designated parks and protected areas are imposed by a project, a Process Framework (PF) is required so that displaced persons can participate in determining the nature of restrictions, and mitigation measures. The PF must include a breakdown of the process, criteria for eligibility of displaced persons, measures to assist displaced persons in their transition, and identification of how any potential conflicts involving displaced persons will be resolved, and description of a monitoring process. Furthermore, the Process Framework should cover, *inter alia*, the process for resolving disputes and grievances, administrative and legal procedures and monitoring arrangements. Resettlement Instruments (RIs) also require a strategy for providing for community participation, including: how to carry out consultations and provide for participation; summarize views expressed and take them into account; review alternatives presented by views represented; and institutional arrangements to communicate concerns and measures to ensure representation of particularly vulnerable groups. If the borrower country requests it, the World Bank may provide financial and technical assistance to strengthen capacity of agencies responsible for affected people to participate more effectively in resettlement operations.

Participatory frameworks such as the one above provide a good model in terms of dealing with process, results and managing conflicts that arise during the participatory process. While the Process Framework above only applies to involuntary displacement, it could be used as a model in general for countries to follow as they set up participatory processes for REDD+.

(iv) Conflict Resolution Mechanisms

The Operational Policy on Involuntary Resettlement requires a grievance and dispute resolution mechanism to be established. However, there is no explicit requirement that this mechanism be used to hear complaints related to the denial of the right to participate. Other than the Operational Policy on Indigenous Peoples, none of the other OPs require a grievance mechanism to be established. As mentioned above, in order to ensure full and effective participation of all relevant stakeholders in consistency with UNFCCC REDD+

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206 OP 4.12, para 7.
209 OP 4.12, para 32(b).
Safeguard (d), countries should have procedural and institutional capacity in place to hear and deal with complaints that arise during the participatory process.

It is possible for the World Bank Inspection Panel to look at complaints relating to consultation or participation. However, as noted earlier, this option is limited because the OPs do not require respect or adherence to a right to participation or access to information. The Inspection Panel would only be able to look at such a complaint if it is linked to a violation of one of its OPs. Furthermore, because not all OPs provide a requirement to set up a mechanism to ensure challenges can be made during participative processes, the Inspection Panel would not be able to hear such a claim in all instances.

In order to ensure an accountable participatory process during REDD+ and adherence to UNFCCC REDD+ Safeguard (d), countries should therefore not rely on the World Bank’s inspection system. We recommend the establishment of institutional and administrative mechanisms that ensure complaints or grievances that arise during the participatory process can be heard in an equitable manner that ensures fairness and accountability.

3. Effective Participation of Indigenous Peoples and Local Communities

(i) Creating an Enabling Environment

Participation is explicitly recognised as an important concept in the World Bank Operational Policy on Indigenous Peoples. The policy recognises that indigenous peoples are often left out of participatory processes that affect their lands, territories and other natural resources.

As mentioned in our analysis of UNFCCC REDD+ Safeguard (a) (above), the World Bank OPs only acknowledges that indigenous peoples’ rights are increasingly being addressed under international law. Therefore, the OPs do not actually impose a requirement for countries to adhere to applicable international obligations, which include provisions on participation.

Nevertheless, the Operational Policy on Indigenous Peoples will provide support to countries in order to “make the development process more inclusive.” This can be done by, inter alia, “policy and legal reforms, capacity building, and free, prior and informed consultation and participation.” The World Bank will also provide support to “strengthen the capacity of indigenous peoples’ communities to prepare, implement, monitor and evaluate development programs.”

We recommend that countries implement applicable international legal obligations that relate to indigenous peoples and local communities rights. Countries should also take advantage of opportunities to receive support to better enable participation by indigenous peoples and local communities. In order to fully and effectively participate in accordance with UNFCCC REDD+ Safeguard (d), indigenous peoples and local communities will not only need appropriate frameworks to ensure their participatory rights, but also capacity to engage in decision-making processes and during the implementation of projects.
Free, Prior and Informed Consent

Countries are required to engage in [F]ree, [P]rior and [I]nformed [C]onsultation” with affected indigenous peoples to fully identify their views and ascertain their broad community support for the project.210 The World Bank interprets Free Prior and Informed Consultation (FPIC) as:

“a culturally appropriate and collective decision-making process subsequent to meaningful and good faith consultation and informed participation regarding the preparation and implementation of the project.”211

This requirement extends to every stage of the project, including preparation, implementation, monitoring and evaluation.212 However, it is still uncertain whether FPIC applies to all relevant World Bank-funded projects. Specifically, while the World Bank Operational Policy on Physical Cultural Resources requires consultation, it does not make any reference to indigenous peoples, even though physical cultural resources are highly relevant to indigenous peoples’ identities and cultures.213

During planning and implementation of REDD+, countries need to keep in mind that UNFCCC REDD+ Safeguard (d) requires FPIC for most REDD+ activities that affect indigenous peoples and their rights.214

The World Bank requires countries to establish an appropriate gender and inter-generationally inclusive framework, and socially and culturally appropriate consultation methods.215 However, there is no requirement to consult through representative institutions of Indigenous communities concerned. This is inconsistent with ILO Convention No. 169, requires indigenous peoples to be consulted through “appropriate procedures and in particular through their representative institutions.”216

We recommend that countries note the need to conduct consultations with indigenous peoples’ communities not only in a culturally appropriate and accessible manner, but within institutions recognised by those groups.

Effective consultations require prior and timely notice. In order to provide enough time for consultations with indigenous peoples, and to respect their own processes, the World Bank calls for consent to be sought far enough in advance of authorising a project. The Operational Policy on Indigenous Peoples states that the

210 OP 4.10, para 1, fn 4. Please note that free, prior and informed consultation should not be confused with “Free, Prior and Informed Consent” (FPIC), which is recognised by ILO Convention No. 169 and UNDRIP.
211 OP 4.10, para 1, fn 4.
212 OP 4.10, paras 10-11.
213 OP 4.11, para 11.
214 For a non-exhaustive list of activities that require FPIC, see “A Guide to understanding and implementing the UNFCCC REDD+ Safeguards,” ClientEarth (2013).
215 OP 4.10, paras 1, and 15, and fn’s 4 and 15.
216 ILO Convention No. 169, Article 6.
borrower country should allow time for consensus building, and that opportunity for consultation should be provided at each stage of project preparation and implementation.\textsuperscript{217} For resettlement, displaced persons must be notified at an ‘early stage’.\textsuperscript{218}

However, World Bank Policies do not specify how far in advance information needs to be provided for it to be useful to affect the process of consultation between the borrower country, the World Bank and indigenous peoples. It is important for countries to consider the institutional processes of indigenous peoples, and the fact that the time it takes to make a decision may vary depending on the group.

Countries should think about establishing processes that provide indigenous peoples’ communities with information as early as possible, providing them with sufficient and flexible time to consider such information.

Consultation requires the provision of “all relevant information about the project” in a culturally appropriate manner and language at each stage of the project preparation and implementation.\textsuperscript{219} Specifically, for projects that involve commercial development of indigenous peoples’ cultural resources and knowledge, or natural resources on indigenous lands or traditionally owned territories, or that are customarily used or occupied, the affected communities must be informed of:

1. “Their rights to such resources under statutory and customary law;
2. The scope and nature of the proposed development and the parties interested or involved in such development; and
3. The potential effects of such development on the indigenous peoples’ livelihoods, environment, and use of such resources.”\textsuperscript{220}

In instances of displacement, indigenous peoples’ communities must be consulted in accordance with FPIC-consultation in developing the Process Framework, and resettlement packages should be prepared with their consultation.\textsuperscript{221} For involuntary taking of land, they must be provided with information on their options and rights pertaining to resettlement.\textsuperscript{222} While there are no specific information requirements for involuntary restriction of access to legally designated parks and protected areas, the Operational Policy on Indigenous Peoples applies.\textsuperscript{223}

Furthermore, social assessments and IPPs must be widely disseminated using culturally appropriate methods and locations.\textsuperscript{224} IPPFs may be distributed by relevant indigenous peoples’ organisations or civil society organisations at the appropriate level so that they reach likely affected indigenous peoples. Before formal

\begin{footnotesize}
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\item \textsuperscript{217} OP 4.10, para 10(b), fn 11.
\item \textsuperscript{218} OP 4.12, para 19.
\item \textsuperscript{219} OP 4.10, para 10(c), and fn 11. The Social assessment and the draft IPP/IPPF must also be disclosed in this manner.
\item \textsuperscript{220} OP 4.10, paras 18 and 19.
\item \textsuperscript{221} OP 4.12, para 11.
\item \textsuperscript{222} OP 4.12, para 6(a)(i).
\item \textsuperscript{223} OP 4.12, para 8.
\item \textsuperscript{224} OP 4.12, para 15, fn 15
\end{itemize}
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World Bank appraisal, the IPP/IPPFs and RIs are made publicly available, specifically to affected indigenous peoples’ communities in the same form as explained above. The final versions of these documents are also made publicly available.

While all relevant information is supposed to be disclosed to affected indigenous peoples’ communities, the World Bank OPs do not require the borrower country to inform indigenous peoples of their rights under applicable international law. Moreover, there is no requirement to inform indigenous peoples of the World Bank’s applicable safeguards, or of the existence of the World Bank Inspection Panel.

Countries should keep in mind that World Bank requirements for disclosing all relevant information may not be exhaustive, and that relevancy may depend on the circumstances of the project. Therefore, we recommend that countries adopt an open and flexible approach towards disclosing all relevant information so that indigenous peoples can exercise their right to FPIC consistent with UNFCCC REDD+ Safeguard (d).

The Operational Policy on Indigenous Peoples does not mention the word ‘consent’; instead it uses ‘consultation’. In this context, the World Bank will only provide funding if it can ascertain that there is “broad community support for the project.” FPIConsultation does not constitute a right of veto for an individual or groups. There appears to be a slightly stronger standard for commercial development of cultural resources and knowledge, which is conditional upon ‘prior agreement’.

We must highlight that the Operational Policy on Indigenous Peoples is not consistent UNFCCC REDD+ Safeguard (d) because its use of the term ‘consultation’ is not equivalent to ‘consent’ recognized under UNFCCC REDD+ Safeguard (d). While consultation is one of a number of methods for carrying out effective participation, it is more about a two-way exchange of information and views. While in theory consultation can lead to consent, it does not have to result in such a conclusion. Instead, more is required to ensure consent has been reached, which is an essential element of FPIC.

Furthermore, the phrase ‘broad community support’ is vague, and arguably does not equate to a requirement for consent from indigenous peoples’ communities. Without stating clear and objective criteria as to what constitutes ‘broad’, the term could be used to describe a significant minority in acceptance of a particular option, allowing the minority to outweigh the majority. Furthermore, ‘support’ does not have to equate to consent. For instance, support could be implied by passive or affirmative action. However, consent cannot be passive, and requires some affirmative indication. Without more objective criteria, the lack of resistance could be seen as consent, when in fact it is not.

The World Bank states that its Operational Policy on Indigenous Peoples is consistent with the Cancun

\[225\] OP 4.10, para 15; OP 4.12, para 22; and World Bank Policy on Disclosure of Information, para 34.

\[226\] OP 4.10, para 1, fn 4.

\[227\] OP 4.10, para 1, fn 4.

\[228\] OP 4.10, para 19.

\[229\] For our in-depth analysis on the scope and content of full and effective participation, please see “Understanding and Implementing the UNFCCC REDD+ Safeguards,” ClientEarth (2013).
Decision 1/CP.16, in particular UNFCCC REDD+ Safeguard (d)’s requirement for full and effective participation.\textsuperscript{230} The World Bank’s position is that its Operational Policy on Indigenous Peoples enables it to operate in a manner that can be considered ‘substantially equivalent’ to the principle of FPIC.\textsuperscript{231} Although this Policy does not expressly mandate FPIC, if the country has ratified the ILO Convention No. 169 or adopted a national legislation on FPIC, the World Bank will support adherence to that principle; if the World Bank is working on a project with a development partner that expressly applies FPIC, the World Bank supports adherence through its \textit{Common Approach}.\textsuperscript{232}

The World Bank’s view that its Operational Policy on Indigenous Peoples is substantially equivalent to FPIC has been rejected by indigenous peoples in a number of international fora.\textsuperscript{233} The UN-REDD Initiative has its own more stringent Guidelines on FPIC, although the FCPF and UN-REDD have prepared joint-guidance on stakeholder engagement.\textsuperscript{234} Furthermore, the simple fact that the World Bank will apply FPIC through the Common Approach demonstrates that its own standard is lower than FPIC.

Countries should be aware of the inconsistency between the World Bank Operational Policy on Indigenous Peoples and the scope of FPIC under international law. Under ILO Convention No. 169, there is an international obligation to ensure ‘consent’. Consent within FPIC should be defined with sufficient clarity in order to ensure respect for indigenous peoples’ opinions regarding decisions that affect their rights and livelihoods. In order to achieve a standard of consent in line with UNFCCC REDD+ Safeguard (d), we would recommend that countries use relevant international agreements to guide their interpretation of FPIC rather than the World Bank’s FPIConsultation standard. This can be effectively realised through legal incorporation of UNDRIP into domestic legal systems, with the participation of indigenous peoples.

FPIC also applies to the development and adoption of laws and policies that may affect indigenous peoples. As mentioned previously, the World Bank provides Development Policy Lending (DPLs) for policy and institutional reforms aimed at achieving specific development results.\textsuperscript{235} Unlike project investments, safeguards such as the Operational Policy on Indigenous Peoples do not apply to DPLs.

For example, the World Bank provides financial assistance to “make the development process more inclusive of indigenous peoples by incorporating their perspectives in the design of development programs and poverty

\begin{itemize}
  \item \textsuperscript{231} Id.
  \item \textsuperscript{232} Id.
  \item \textsuperscript{234} The UN-REDD Programme recommends adherence to FPIC. See FCPF/ UN-REDD Programme, “Joint Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities,” April 20, 2012 (revision of March 25 version), p 2.
  \item \textsuperscript{235} World Bank, \url{http://web.worldbank.org/WEBSITE/EXTERNAL/PROJECTS/O_contentMDK:20120732~menuPK:268725~pagePK:41367~piPK:51533~theSitePK:40941,00.html}
\end{itemize}
reduction strategies, and providing them with opportunities to benefit more fully from development programs through policy and legal reforms, capacity building, and free, prior, and informed consultation and participation.\textsuperscript{236} For these types of operations, the Operational Policy on DPLs applies instead of the Operational Policy on Indigenous Peoples.

There is a danger that under the Operational Policy on DPLs, legislation or policy formulation with indirect but substantial impacts on indigenous peoples can proceed with World Bank financing without any requirement to provide for the effective participation of indigenous peoples and without any requirement to ensure their support for such actions. This could be borne out by the fact that the Operational Policy on DPLs does not mention special consultation or consent requirements for dealing with indigenous peoples. Even in its \textit{Good Practice Note for Development Policy Lending on Supporting Participation in Development Policy Operations}, it does not mention anything related to the FPIConsultation standard referred to in the Operational Policy on Indigenous Peoples.

It is important for countries to understand that to meet the UNFCCC REDD+ Safeguards—especially UNFCCC REDD+ Safeguard (d)—affected stakeholders, particularly indigenous peoples and local communities must have the ability to fully and effectively participate, not only in the development and implementation of projects on the ground, but also during policy, legal and institutional governance reform processes that may impact them. Furthermore, the international principle of FPIC applies not just to projects on the ground, but to policy and legal formulation that would have an impact on indigenous peoples’ rights. As such, we recommend that in taking steps to implement UNFCCC REDD+ Safeguard (d), countries adopt an FPIC approach not just towards REDD+ projects on the ground but also towards policy, law and institutional formulation or reform for REDD+.

\textsuperscript{236} OP 4.10, para 22(b).
### Consistency with UNFCCC REDD+ Safeguard (e)

#### Summary of Findings for Safeguard (e)

<table>
<thead>
<tr>
<th>Even though UNFCCC REDD+ Safeguard (e) states rather explicitly that REDD+ actions should not be used for conversion of natural forests, the World Bank’s safeguards do not prohibit it from supporting such activities.</th>
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<tr>
<td>The World Bank applies a precautionary approach and promotes identification of natural habitat issues, natural habitat conservation and improved land use, and there may be scope for supporting research and awareness-raising. While the World Bank OPs support integration of natural habitat and forest issues into its development and economic work, there is very little mention of promoting cross-sectoral coordination. Lastly, the World Bank promotes support for capacity building, but its safeguards are fairly vague in promoting the enhancement of environmental and social benefits.</td>
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#### 1. No Conversion of Natural Forests

##### (i) Defining Natural Forest

The World Bank’s definitions of forests and natural forests are similar to definitions provided in international instruments. Natural forests are defined as “forest land and associated waterways where the ecosystem’s biological communities are formed largely by native plant and animal species and where human activity has not essentially modified the area’s primary ecological functions.” For their part, natural habitats are defined as “land and water areas where (i) the ecosystem’s biological communities are formed largely by native plant and animal species, and (ii) human activity has not essentially modified the area’s primary ecological functions.”

Two aspects of the definitions provided are sources of interpretational ambiguity. First, what constitutes whether a forest or habitat is formed largely of native plant and animal species? Second, what constitutes human activity that has essentially modified the area’s primary ecological functions? Depending on which interpretation one decides to take, the scope of what constitutes ‘natural’ could expand or narrow accordingly. If standards are set too high, REDD+ activities could more easily result in the conversion of valued natural forests, which would prevent the country participant from complying with UNFCCC REDD+ Safeguard (e).

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237 See OP 4.04, paras 4 and 5; and OP 4.36, paras 5 and 7.
238 Under OP 4.36, Annex A, paragraph (a), Forest is “an area of land of not less than 1.0 hectare with tree crown cover (or equivalent stocking level) of more than 10 percent that have trees with the potential to reach a minimum height of 2 meters at maturity in situ. A forest may consist of either closed forest formations, where trees of various stories and undergrowth cover a high proportion of the ground, or open forest. Young natural stands and all plantations that have yet to reach a crown density of 10 percent or tree height of 2 meters are included under forest, as are areas normally forming part of the forest area that are temporarily unstocked as a result of human intervention such as harvesting or natural causes that are expected to revert to forest. The definition includes forests dedicated to forest production, protection, multiple uses, or conservation, whether formally recognized or not. The definition excludes areas where other land uses not dependent on tree cover predominate, such as agriculture, grazing or settlements. In countries with low forest cover, the definition may be expanded to include areas covered by trees that fall below the 10 percent threshold for canopy density, but are considered forest under local conditions.
239 OP 4.36, Annex A, para (b).
In order to realise the full potential of ecological, carbon and livelihood benefits available from resilient natural forests, we recommend adopting a definition of natural forests that provides sufficient protection for forested eco-regions rich in biodiversity.

(ii) Prohibiting the Conversion of Natural Forests

The World Bank prefers to finance plantation projects on lands that have already been converted. Furthermore, it does not support projects that involve ‘significant’ conversion or degradation of ‘critical’ natural habitats or forests. Nevertheless, the World Bank will finance significant conversion of natural habitats or forests if there are no feasible alternatives, and if the overall benefits would “substantially outweigh the environmental costs.”

It is important to highlight that UNFCCC REDD+ Safeguard (e) is explicit in prohibiting REDD+ activities from being “used for the conversion of natural forests.” While critical habitats and forests should be targeted for preservation in REDD+, natural forests are also very important because of their ability to absorb carbon, and because such systems tend to be more resilient and support ecosystem services better than forests or habitats that have been significantly disturbed. Furthermore, the no conversion requirement was intended to ensure that low carbon development strategies, such as monoculture or plantations do not conflict with biodiversity conservation objectives. Hence, UNFCCC REDD+ Safeguard (e) does not place higher importance to critical forest areas and related critical natural habitats over non-critical natural forests or related natural habitats—UNFCCC REDD+ Safeguard (e) simply states that natural forests should not be converted. Therefore, the conversion of both critical and non-critical natural forest habitats would be inconsistent with UNFCCC REDD+ Safeguard (e).

It is also important to highlight that the World Bank also limits its prohibition to ‘significant conversion’ of natural forests and habitats. The World Bank Operational Policy on Natural Habitats defines significant conversion as “the elimination or severe diminution of the integrity of a critical or other natural habitat caused by a major, long-term change in land or water use.” However, the policy does not define ‘non-significant conversion’, and it does not differentiate between significant and non-significant degradation. Nevertheless, the language of UNFCCC REDD+ Safeguard (e) would suggest that it is irrelevant whether conversion is significant or not—it simply requires no conversion of natural forests.

The main take-away from the points above is that to meet UNFCCC REDD+ Safeguard (e) countries must not convert natural forests through REDD+ activities. UNFCCC REDD+ Safeguard (e) does not have different standards for critical and non-critical natural forests, and it does not distinguish between significant and non-significant conversion. We therefore recommend that countries take measures to prevent REDD+ ac-

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241 OP 4.04, para 4; OP 4.36, para 5.
242 OP 4.04, para 5; OP 4.36, para 7.
tivities, particularly plantations, which would result in conversion of natural forested areas.

Notably, the World Bank prefers to finance projects on lands already converted. This could actually benefit rehabilitation projects under REDD+, which has the potential to act as an incentive for borrowing countries to cite potential REDD+ projects on already deforested or degraded lands. However, countries must be aware that this policy can act as a perverse incentive to engage in conversion before REDD+ begins, which is a behaviour that UNFCCC REDD+ Safeguard (e) is specifically intended to protect against.

Therefore, while recognising the value of habitat restoration of degraded lands, we recommend countries take precaution not to provide perverse incentives for converting natural habitats prior to the start of REDD+, which would contravene UNFCCC REDD+ Safeguard (e).

2. Protection and Conservation of Natural Forests and Biodiversity

UNFCCC REDD+ Safeguard (e) seeks to ensure that REDD+ actions incentivise protection and conservation of natural forests and ecosystem services. In order to do this, countries should identify and map forests resources, including biodiversity; establish conservation areas; and promote conservation research and awareness.

(i) Identifying Natural Forests and Biodiversity

As part of its economic and sector work, the World Bank helps to identify “natural habitat issues and special needs for natural habitat conservation (particularly critical habitats),” and “measures for protecting such areas.” This means that it performs functions in this area outside of its project finance work. It also encourages borrower countries to incorporate major natural habitat issues, including identification of important natural habitat sites, their ecological functions, and threats to the site in their development and environmental strategies. The World Bank may also support country efforts to identify threats to natural habitats and forests.

We would recommend to countries that they utilize this available support to strengthen their capacity for protecting biodiversity.

(ii) Implementing Measures to Protect Biodiversity

The World Bank Operational Policies on Forests and Natural Habitats recognise the essential need for

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244 OP 4.04, para 2.
245 OP 4.04, para 9.
conservation. As previously mentioned, ensuring sustainability is an objective of the World Bank’s OPs, and countries are expected to apply a precautionary approach to natural resource management.

For projects that affect natural forests and habitats, the World Bank expects the borrower country to assess its policy, legal, and institutional capacity to implement appropriate conservation and mitigation measures in its EA. If such capacity is lacking, the project includes components for enhancement. As a prerequisite for commercial harvesting operations in particular, certification systems must require, inter alia: “compliance with relevant laws;” “conservation of biological diversity and ecological function, measures to maintain or enhance environmentallysound multiple benefits accruing from the forests;” and “prevention or minimization of the adverse environmental impacts from forest use.”

The World Bank promotes measures to protect identified critical natural habitats as part of its economic and sectoral work. It promotes and supports “natural habitat conservation and improved land use by financing projects that integrate development with natural habitat conservation and maintenance of ecological functions.” Furthermore, the World Bank promotes the establishment of protected ecological areas as a mitigation measure. The World Bank also supports the protection, maintenance, and rehabilitation of natural habitats and their functions.

We would recommend that countries take advantage of the framework that the World Bank provides for establishing protected areas. However, we also urge that countries ensure that protected areas are established with the participation of affected indigenous peoples and local communities in order to establish a set of incentives to protect that area. While the World Bank does have safeguards that address community participation, there is a lack of integration with its policy on establishing protected areas. Since protected areas are often designed to exclude, it is necessary to have affected peoples as part of the process so that solutions to underlying issues such as poverty and local community needs can truly be addressed. Countries need to develop policy and legal frameworks that ensure inclusion and participation of all affected communities and individuals so that they are empowered and encouraged to conserve and protect habitats and biodiversity.

(iii) Supporting Conservation Research and Awareness-Raising

The World Bank may use country assistance programmes to identify the economic, environmental and social

246 OP 4.04, para 1; OP 4.36, para 1.
247 See OP 4.01, para 1; OP 4.04, para 1; OP 4.36, para 1; and OP 4.10, paras 1 and 21.
248 OP 4.04, para 1.
249 OP 4.36, para 14; and OP 4.04, para 6.
250 OP 4.36, para 10.
251 OP 4.04, para 3.
252 OP 4.04, para 5.
253 OP 4.04, para 1.
significance of forests.\textsuperscript{254} The World Bank’s economic and sector work can also include identification of natural habitat issues and special needs for natural habitat conservation.\textsuperscript{255} These policies could potentially be used to support scientific research to support conservation efforts.

We encourage countries to explore support strategies, including those available under the World Bank, to undertake further forests and biodiversity research.

Other World Bank policies on gender and development, and development planning and poverty reduction strategies for indigenous peoples could potentially be used as entry points for capacity building and raising awareness of the importance of biodiversity. Specifically, the World Bank encourages governments to provide affected groups with ‘appropriate information’ to ‘protect natural habitats’.\textsuperscript{256}

We recommend that countries take advantage of available development assistance, where appropriate, to enhance capacity and understanding around forest and biodiversity issues.

**(iv) Integration of Biodiversity in Cross-Sectoral Policies**

One of the objectives of World Bank’s Operational Policy on Forests is to “integrate forests effectively into sustainable economic development, and protect vital local and global environmental services and values of forests.”\textsuperscript{257} While biodiversity is not explicitly mentioned here, the inherent importance of biodiversity to the functioning of healthy forests would suggest that it should be included within the Forest Policy’s scope. Even so, the World Bank’s Operational Policy on Natural Habitats states that it finances “projects designed to integrate into national and regional development the conservation of natural habitats and the maintenance of ecological functions.”\textsuperscript{258} It also encourages incorporation of major natural habitat issues into borrower countries’ development and environmental strategies.\textsuperscript{259}

While these policies suggest that they could be used to achieve cross-sectoral integration, they are quite vague and provide no requirement or guidance on how to achieve integration. Nevertheless, the World Bank’s EA requirements, as well as its Operational Policies on Projects on International Waterways and Safety of Dams are examples that countries can consider in relation as to how to ensure that environmental considerations are integrated into other decision-making processes.\textsuperscript{260}

\textsuperscript{254} OP 4.36, para 4.
\textsuperscript{255} OP 4.04, para 2.
\textsuperscript{256} OP 4.04, para 10. This provision also relates to promoting the right to information on environmental matters, analysed more fully in UNFCCC REDD+ Safeguards (b) and (d) (above).
\textsuperscript{257} OP 4.36, para 1.
\textsuperscript{258} OP 4.04, para 3.
\textsuperscript{259} OP 4.04, para 2.
\textsuperscript{260} See OP 7.50 – Projects on International Waterways; and OP 4.37 – Safety of Dams.
Achieving integration requires more than coordination. It also requires providing capacity to governmental departments with competence over biodiversity issues so they can have a say in other relevant areas of government policy.

We recommend that as countries set up national REDD+ strategies, forest and biodiversity issues be seen as issues that affect and are affected by other sectors. Communication and dialogue should also be established between environment and other sectors, and policy should be coordinated to ensure that economic and development decision-making takes into account the impacts on biodiversity.

(v) Enhancement of Other Benefits

The World Bank tries to promote the enhancement of other benefits in projects that impact forests, natural habitats, and indigenous and local communities that depend on these areas. For instance, the World Bank gives preference to supporting small-scale, community-level management where forests can be used for sustainable reduction of poverty. Certification schemes for commercial harvesting operations must require measures to maintain or enhance ‘multiple benefits’ from forests. The World Bank also expects borrower countries to include local NGOs and affected local communities in the planning, design, implementation, monitoring and evaluation of projects involving natural habitats, and encourages governments to provide such people with incentives to protect natural habitats.

However, while for indigenous peoples the IPP/IPPF must include measures to provide affected indigenous peoples with culturally appropriate project benefits, there is no explicit requirement to enhance environmental or social benefits. There is also a disconnect between the World Bank’s policies on participation and the generation of benefits, seen in the section on biodiversity conservation and protection.

Throughout the development of REDD+ strategy options and in order to meet UNFCCC REDD+ Safeguard (e), we recommend that countries not only focus on sharing benefits with project-affected groups and individuals, but prioritize projects to enhance environmental and social benefits. Such prioritisation can be achieved by developing priorities with forest-dependent local communities as well as indigenous peoples. This is particularly important because these groups depend on forest-related services for their livelihoods. UNFCCC REDD+ Safeguard (e) explicitly recognises this, emphasising the need to develop strategies that mutually support livelihoods and forest protection. Ensuring a participative atmosphere that respects rights, provides these groups with relevant information about the potential benefits of various REDD+ options, and allows their views to be heard, is more likely to ensure such services are protected and enhanced.

261 OP 4.36, para 14.
262 OP 4.36, para 10(e).
263 OP 4.10, paras 1 and 11(c).
### Consistency with UNFCCC REDD+ Safeguards (f) & (g)

<table>
<thead>
<tr>
<th>Summary of Findings for Safeguards (f) &amp; (g)</th>
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<tr>
<td>The shortcomings of the World Bank’s safeguards in the areas of land tenure rights, benefit sharing, participation, enhancement of enforcement capacity, and dispute resolution limit their effectiveness as policies for reducing the risk of displacement or reversals. Currently, the borrower country is supposed to consider all environmental and social impacts within a project’s area of influence, including unplanned development, and there are measures to ensure displaced persons receive sufficient support and share equitably in benefits that accrue from the project. However, the World Bank’s safeguards do not sufficiently recognise the need for secure tenure rights, which may increase the risk of leakage. Additionally, the World Bank does place an emphasis on international cooperation for projects that may potentially have transboundary impacts. While community monitoring is not required in all World Bank-supported projects, including commercial harvesting, the World Bank does support community collaborative arrangements and benefit sharing.</td>
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1. Monitoring and Assessment

For monitoring and evaluation of lending operations generally, it is the responsibility of the borrowing country to monitor progress during implementation; evaluation of achievement of results is conducted upon completion.\(^\text{264}\) It is the World Bank’s responsibility to review that country’s report of its monitoring and evaluation.\(^\text{265}\)

More specifically, during project implementation the borrowing country is required to monitor and assess environmental and social impacts identified in the EA.\(^\text{266}\) For projects that impact natural habitats, the World Bank expects local communities to be involved in all aspects of the project including implementation, monitoring and evaluation.\(^\text{267}\) Furthermore, in projects that affect indigenous peoples, the borrower must detail how affected indigenous peoples will participate in monitoring and evaluation, and receive an equitable of the benefits derived from parks and protected areas, giving priority to collaborative arrangements.\(^\text{268}\) Community participation in monitoring and evaluation is also required for small scale harvesting and community forest management operations; however, there is no such requirement for commercial harvesting operations, although they must have an adequate “independent forest certification system” in place that can be assessed by a third party.\(^\text{269}\)

\(^{264}\) OP 13.60 – Monitoring and Evaluation, para 4.

\(^{265}\) OP 13.05 – Project Supervision. For more on monitoring and evaluation frameworks generally, and under the World Bank specifically, please see Part II of this document.

\(^{266}\) OP 4.01, para 19.

\(^{267}\) OP 4.04, para 10.

\(^{268}\) OP 4.10, para 21.

\(^{269}\) OP 4.36, para 12.
The ability to effectively monitor and assess forest cover, as well as emissions reductions and removals, is an integral component for ensuring the integrity and credibility of REDD+. Additionally, in order to ensure that emissions reductions are lasting, and to minimise the risk of displacements, countries need to monitor and assess the impact and effectiveness of their implementation of the UNFCCC REDD+ safeguards through safeguard information systems (SIS). The development and operation of national-level SIS must of course be done in compliance with the UNFCCC REDD+ safeguards, not least Safeguards (b) and (d). We encourage countries to adopt monitoring strategies that include community participation as an important element. This can help to create a robust monitoring system, as forest communities tend to have valuable/detailed knowledge of their forests. Furthermore, community monitoring schemes can help contribute to alternative sustainable livelihoods, as well as stronger public acceptance of REDD+.

2. Measures To Avoid Reversals and Displacement

(i) General Measures

As identified earlier, the World Bank supports sustainable management and use of forest resources through its requirement for borrower countries to apply the precautionary principles to natural resource management, assessment of environmental and social policy and institutional framework, and support for strengthening these frameworks. Complying with international obligations, ensuring transparent and effective participatory forest governance processes, and ensuring protection of biodiversity can help to ensure equitable outcomes, community ownership over REDD+ strategies, and enhanced public acceptance of decisions made around REDD+ and forests.

As a general measure for addressing reversals and displacement, we recommend that borrower countries place importance on implementing safeguards (a) through (e) in accordance with relevant international obligations that pertain to those safeguards.  

(ii) Measures to Tackle Reversals

As previously mentioned in Safeguard (b) and (d) (above), the World Bank does not require clarification over land tenure as a precondition for all projects that affect forests or forest-dependent groups. The World Bank also does not impose very stringent participation requirements for such projects, or place very strong emphasis on law enforcement. Furthermore, while the World Bank Operational Policies on Indigenous Peoples and Involuntary Resettlement require procedures to address grievances, such procedures are not required for all projects that affect forests or the welfare of forest communities.

Where a project affects land or natural resource use rights that are uncertain, and does not have strong mechanisms for participation or hearing complaints, that project is less likely to receive public acceptance.

270 For such an analysis, please see “Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards,” ClientEarth (2013).
from the individuals and groups affected. In turn, the project is less likely to succeed in its objectives. The success of REDD+ in terms of ensuring permanence of emissions reductions and preventing leakage, will require countries to fully and effectively implement the other UNFCCC REDD+ Safeguards, in particular with regards to the recognition of clear tenure rights, equitable benefit sharing, participation and access to an effective remedy. Furthermore, countries need to ensure that forest laws are enforced—otherwise emissions reductions will not be realised.

It is also important to note that although the World Bank OPs require the borrowing country to conduct an EA, which arguably should cover climate change considerations, the World Bank does not have a coherent policy on integrating climate change considerations into its projects. This may be especially important for projects that look to protect or conserve biodiversity or ecosystems. Permanence may not just be affected by human actions but also by natural environmental factors, such as climate change itself. For instance, some ecosystems may be less resilient to effects from climate change because of degradation.

While the World Bank does not have any policy as yet on integrating such issues into national programmes or projects, for purposes of UNFCCC REDD+ Safeguard (f) countries will need to pay attention to these issues in order to ensure that efforts result in lasting emission reductions and removals. In addition countries should explore how other UNFCCC REDD+ Safeguards issues relate to permanence of emissions reductions, particularly those that relate to equitable sharing of benefits in a sustainable manner.

(iii) Measures to Avoid Displacement

EAs are required to consider unplanned developments induced by the project within its ‘area of influence’, including spontaneous settlement, logging, or shifting agriculture along access roads.271 The World Bank also recognises the potential social and environmental risks from involuntary resettlement.272 As such, it requires the borrower country to consider off-site areas for resettlement in the development of the project, and to have measures in place to ensure that displaced persons are provided compensation, assisted and supported during relocation, and provided with equivalent services, among other forms of support.273

Similar to the eligibility to share in benefits accrued from World Bank-funded projects, displaced persons must first qualify to receive such support. If they do not have formal legal rights to land, their claims to such land or assets are not recognized under national law, or there is no process to recognise such claims during the implementation of the resettlement plan, they are only eligible for resettlement assistance “and other assistance, as necessary.”274 There is no requirement for governments to establish a process to recognise customary, traditional or other non-formal legal rights to land. Because many forest-dwelling communities do not have formal legal titles to land, adherence to this policy could still result in communities losing their land without compensation. This in turn, could displace emissions to areas where the displaced persons are

271 OP 4.01, para 2.
272 OP 4.12, para 1.
273 OP 4.12, para 6.
274 OP 4.12, para 16.
In order to ensure that displacement of emissions does not occur, and therefore meet UNFCCC REDD+ Safeguard (g), countries need to ensure that if resettlement must occur that both formal as well as non-formal rights are recognised in the resettlement plan and receive appropriate support. This includes a clear, transparent and participatory process for recognising tenure rights, including customary and traditional rights; and establishing clear substantive and procedural criteria for compensating affected persons. We also recommend that countries develop clear and protective legal frameworks for instances where involuntary resettlement occur, in order to ensure that all affected persons are provided with opportunities equivalent to what they had before displacement. This will ensure that forest livelihoods are maintained, the risk of leakage is minimised, and that international human rights are respected.

3. International Cooperation

REDD+ activities may very well have transboundary implications, especially if activities in one country displace emissions across its borders. Therefore, not only do countries have a customary legal obligation to prevent transboundary environmental harm, but in order to meet UNFCCC REDD+ Safeguard (g) they should take actions to reduce transboundary displacement of emissions into bordering countries.

The World Bank has relevant rules that apply in these situations. First, the Operational Policy on EA requires assessment of transboundary impacts. Furthermore, in order to avoid delicate cross-border problems, the World Bank can only support a project in a disputed area if the governments concerned can agree that the project can go forward without prejudicing the claims of one of the countries. In addition, the World Bank has special requirements for projects that have effects on international waterways, particularly industrial activities and projects that have the potential to pollute an international waterway.

Countries need to recognise that REDD+ activities conducted solely within national jurisdictions still have the potential to result in negative environmental and social impacts in bordering countries. This may have implications outside of REDD+, as such negative consequences could constitute transboundary environmental harm, which is prohibited as a matter of Customary International Law.

In order to be in line with UNFCCC REDD+ Safeguard (g), we recommend that countries consider transboundary impacts and exercise proper due diligence when assessing the opportunities and risks associated with particular REDD+ activities. Moreover, transboundary forest concerns need to be integrated into plan-
ning for non-forest projects that may have transboundary impacts.
Summary of Recommendations Ensuring Consistency between WB and UNFCCC REDD+ Safeguards

UNFCCC REDD+ Safeguard (a):

1. When conducting their Environmental Assessment (EA), whether at framework or project level, countries should identify relevant national forest strategies or other relevant national processes, and as appropriate, enact measures to ensure that national REDD+ programmes and activities are consistent with those plans.

2. Countries should go beyond the World Bank and take measures to ensure that the development and implementation of national REDD+ programmes and activities comply with all relevant international obligations, including environmental, indigenous peoples’ rights and human rights obligations. These obligations should be identified in countries’ EAs, and subsequently measures should be articulated in the appropriate management framework, whether it is an ESMF, IPP, IPPF, or Resettlement Instrument.

UNFCCC REDD+ Safeguard (b):

1. Countries should recognise a right to access information in environmental matters to all interested and affected individuals. The right to access information should be ensured by guaranteeing that institutions have the capacity to facilitate access through active dissemination, through the promotion of awareness of the right of access information, translation, and the ability to challenge refusals of access. Such capacity should be assessed as part of countries’ EAs, including SESAs.

2. In order to promote transparency, countries should refrain from opposing disclosure of planning documents related to REDD+ and held by the World Bank, unless legitimately stated according to predefined narrow and reasoned criteria in line with a presumption towards disclosure.

3. Countries need to promote accountability and transparency in decision making processes to ensure the right to access to information, and take measures in order to reign in and limit corruption in the forest sector.

4. We recommend that when conducting environmental and social assessments for the World Bank, countries analyse their laws and policies with an eye towards enhancing capacity where relevant, particularly with regard to participation, recognition and clarification of land tenure, benefit sharing, and institutional, regulatory and enforcement capacity.

5. Upon conducting an assessment of its land tenure framework, countries should incorporate a plan of measures to clarify customary, traditional or uncertain land tenure rights situations where needed. This should come as early in the REDD+ planning process as possible, ideally during the Readiness stage and during formulation of the country’s Indigenous Peoples Planning Framework (IPPF). Such a process should become part of countries’ overall strategies for forest governance and all forest-related projects—not just land titling projects and land acquisitions. At the very least, countries should contemplate clarifying land tenure for all REDD+ project-affected areas.
6. Countries should ensure that they have plans for equitable benefit sharing with all stakeholders of REDD+ activities—including local communities and other vulnerable groups—not just indigenous peoples. These could start to be articulated during the country’s EA preparation process. If resettlement is needed, in their Resettlement Instrument countries should provide for a fair and inclusive process that allows not just indigenous peoples but other vulnerable groups such as local communities, women, those in poverty to be able to share equitably in benefits from REDD+.

7. Regardless of whether or not the World Bank requires it, countries should prioritise enhancing regulatory, institutional and law enforcement capacity where such needs are identified during various assessment processes required by the World Bank. Such improvements should be taken prior to undertaking particular projects on the ground.

8. Countries need to recognise the continuing role of indigenous peoples and local communities in sustainably managing forests for REDD+, avoiding involuntary restrictions or displacement, and promoting collaborative management and equitable benefit sharing.

9. Countries should ensure the right to participate to all interested and affected individuals and groups should be provided with a right to participate during all stages of REDD+ supported by the World Bank, including planning, implementation and monitoring and evaluation.

10. Countries should not leave it to the Inspection Panel to handle disputes raised during REDD+. Countries need to ensure adequate access to justice during all phases of REDD+, including planning, implementation and monitoring and assessment, especially for contentious issues such as resettlement. Steps need to be taken to adapt existing mechanisms, or to create such mechanism where they do not already exist, to ensure all individuals and groups have access to a fair process for hearing complaints and disputes, and access to an effective remedy.

11. Indigenous peoples and local communities need to be ensured access to culturally and institutionally compatible domestic mechanisms for resolving grievances and disputes that may arise during all stages of REDD+ that are supported by the World Bank, including during the planning and consultation stage.

12. Countries should take advantage of the World Bank’s economic and sectoral support for enhancing integration of environment and forests into economic development, and ensure integrated analysis of environmental and social impacts during assessments prepared for the World Bank. Countries should also focus should on building capacity for cross-sectoral communication and coordination between different government agencies.

13. Countries should integrate human rights considerations into social and environmental assessments prepared for the World Bank. This could be done through the incorporation of human rights assessment tools.

14. While certification schemes can promote adherence to sustainable forest management standards, countries go beyond the World Bank and should not over-rely on them at the expense of effective regulation and oversight by proper competent authorities.
UNFCCC REDD+ Safeguard (c):

1. Countries are encouraged to apply a flexible policy of identification and classification towards indigenous peoples similar to that used by the World Bank. Countries should also ensure that local communities are not denied special rights simply because they do not carry the label ‘indigenous peoples’, which the World Bank does not recognise.

2. Countries should go beyond the World Bank safeguards and recognise more than just equal due process for indigenous peoples, and should take measures to incorporate applicable international standards on indigenous peoples’ rights, and to ensure that indigenous peoples are able to equally enjoy the full measure of human rights and fundamental freedoms without discrimination.

3. During REDD+ planning processes, in their Indigenous Peoples Plan (IPP) or Indigenous Peoples Planning Framework (IPPF) countries should include measures for how they will legally recognise customary and traditional land rights held by indigenous peoples.

4. Countries should undertake to identify traditional and cultural community knowledge in their Environmental or Social Assessments that could be impacted by REDD+ activities, and develop measures in their planning and management frameworks to ensure that knowledge is respected and protected.

UNFCCC REDD+ Safeguard (d):

1. Countries should go beyond the World Bank safeguards and afford all interested and affected individuals and groups, including civil society organisations, a right to participate in matters related to REDD+, along with a corresponding right to access information. This should apply to all stages of REDD+, including policy and legal reform, planning, implementation, and monitoring and assessment.

2. It is important to note that while consultation is a mechanism by which participation can occur, it does not by itself ensure full and effective participation. Instead of relying on consultation like the World Bank countries should be more flexible in offering more engaging modes of participation during REDD+ to ensure full and effective participation under UNFCCC REDD+ Safeguard (d).

3. In their EAs and social assessments, countries should identify all relevant stakeholders, especially members of vulnerable groups such as women, youth, landless, those under the poverty and ethnic minorities.

4. All affected groups and individuals should be provided relevant information on planning processes and documents such as EAs, social assessments, IPPs, IPPFs and RIs in a timely, transparent, accessible and culturally sensitive manner.

5. Countries should have mechanisms in place that have capacity to make people aware how consultations are conducted and how planning documents such as EAs, social assessments, IPPs, IPPFs and RIs are finalised, including the views of all those participating, and how these views were taken into account.
6. Countries should go beyond what the World Bank safeguards require, and have domestic institutional mechanisms in place to hear complaints and grievances related to denials of a right to participate in an equitable manner for all affected individuals and groups.

7. Countries should go beyond the World Bank’s standard of FPIConsultation when deciding on aspects of REDD+ that would affect indigenous peoples’ and local communities’ lands, territories and other natural resources. At the minimum, countries should abide by international standards on Free, Prior and Informed consent (FPIC) during all stages of REDD+, including Readiness.

8. We recommend that countries conduct FPIC with indigenous peoples’ communities not only in a culturally appropriate, timely and accessible manner, but within institutions recognised by those groups and consistent with other international human rights obligations.

9. Countries need to ensure FPIC is conducted in a timely and culturally appropriate decision-making process through representative institutions chosen by indigenous peoples and local communities concerned. Furthermore, all relevant information about programmes or projects should be communicated and distributed in a culturally appropriate and accessible manner.

10. In order to exercise FPIC, communities should be informed of their rights under applicable World Bank and UNFCCC REDD+ Safeguards, including international law, and resources should be focused on building capacity to exercise those rights.

11. FPIC should be applied not only at the project level for REDD+, but also, as appropriate, throughout the process of policy and legal reforms.

UNFCCC REDD+ Safeguard (e):

1. In order to be consistent with UNFCCC REDD+ Safeguard (e), countries need to go beyond the World Bank’s safeguards and take measures to ensure that REDD+ activities do not result in the conversion of natural forests. This should be understood to protect both critical and non-critical natural forests, from both significant and non-significant conversion.

2. Countries should take advantage of the World Bank’s support for identification of issues and needs for natural habitat conservation and protection in order to strengthen capacity for protecting biodiversity.

3. Countries should take advantage of the World Bank’s support for integration of natural habitat conservation and maintenance of ecological functions, the establishment of protected areas, and rehabilitation of degraded ecosystems. However, countries should go beyond the World Bank and ensure that procedural guarantees are in place to ensure that affected indigenous peoples and local communities are treated as partners in the establishment of protected areas and other forest conservation and management strategies related to REDD+.

4. Countries should use the World Bank’s Operational Policy on Forests to pursue cross-sectoral integration between government agencies in charge of forests, biodiversity and other sectors. This includes measures to enhance communication, dialogue, collaboration, and cooperation in matters
that may affect forests and biodiversity. This should be supplemented by ensuring that forest and biodiversity issues are given proper consideration in the country’s EA.

5. Countries should develop and support strategies to better understand forests and biodiversity issues, including those related to REDD+, through research, dissemination of information, and capacity building.

6. To ensure enhancement of other benefits from REDD+, priorities for such benefits should be developed with the participation and collaboration of these communities going beyond the World Bank’s safeguards on EA, indigenous peoples or involuntary resettlement.

UNFCCC REDD+ Safeguards (f) & (g):

4. In order to minimise risks of leakage and non-permanence, countries can secure and clarify land tenure rights, including customary and traditional rights, and participatory rights. In addition, respect and enforcement of such rights needs to be ensured, including by having grievance mechanisms in place to peacefully and equitably settle disputes.

5. Countries’ EAs under the World Bank should consider off-site resettlement and development in response to REDD+ activities. If relocation or restrictions will be necessary, clear and equitable procedural processes must be in place to ensure affected persons or groups are provided equitable alternatives, and can share in the benefits of resulting REDD+ activities.

6. Where traditional and customary rights are concerned with resettlement or restriction of use, such rights need to be recognised, and such persons should be compensated through clear, transparent procedural frameworks that ensure their rights are respected going beyond the World Bank’s involuntary resettlement policy.

Countries need to consider the potential for transboundary environmental and social impacts in their EAs during REDD+ activities.

7. Recognising the value of community monitoring in sustaining alternative livelihoods, encouraging public participation, and gaining valuable knowledge on forests and biodiversity, countries should adopt monitoring strategies where community involvement is a strong component.
Annex II: Analysis of the Forest Carbon Partnership Facility Safeguards

Background of the FCPF

The FCPF is a global partnership fund under the World Bank designed to help countries ‘get ready’ for REDD+. Among its stated objectives are:

- To provide eligible countries with financial and technical assistance in building their capacity for REDD+;
- To pilot a performance-based payment system for Emissions Reductions (ERs) generated from REDD+ activities; and
- To broadly disseminate knowledge gained in the development of the Facility, and implementation of Readiness Preparation Proposals (R-PPs) and Emission Reductions Programs (ER Programs).

The FCPF is composed of two separate funds: the ‘Readiness Fund’ and the ‘Carbon Fund’. The Readiness Fund is intended to assist developing countries prepare for future participation in REDD+, including:

- preparing a REDD+ strategy and/or complementing the country’s existing strategy and policy framework for forest and environmental management;
- establishing a reference scenario for emissions from deforestation and/or forest degradation, based on recent historical emissions and, possibly, an assessment of future emissions; and
- establishing a national monitoring, reporting and verification (MRV) system for emissions and ERs to calculate the reductions in emissions against the reference scenario.

Through the Carbon Fund, the FCPF will pilot incentive payments for REDD+ policies and measures that result in verified emission reductions (VERs) implemented in participating developing countries.

There are also a number of important actors and bodies that participate in the FCPF:

- FCPF REDD+ Participant Countries (REDD+ countries): Countries participating in the FCPF as a means for developing Readiness for REDD+.

- The Participants Committee (PC): The main decision-making body of the FCPF. The PC is responsible for inter alia, selecting REDD+ countries to the different funds, approving planning documents, grant allocation, developing criteria and procedures for allocation, and adopting various policy guidelines.

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including safeguards.\textsuperscript{282} The PC is comprised of REDD+ countries, donor countries, and observers representing indigenous peoples, civil society, international organisations, the UN-REDD Initiative and the UNFCCC.

- \textit{Facility Management Team (FMT):} The FMT is in charge of administering the FCPF and its day-to-day operations, including \textit{inter alia}, reviewing plans and proposals, and providing assistance to REDD+ countries.\textsuperscript{283}

- \textit{Trustee:} The Trustee, the World Bank, is responsible for administering, managing and using funds contributed from donor countries on behalf of the funds.

- \textit{Delivery Partners (DPs):} DPs are in charge of channelling funds from the Trustee to the REDD+ countries. There are several DPs for the FCPF, including the World Bank, the Food and Agricultural Organization (FAO), the UN Development Program (UNDP), the Inter-American Development Bank (IDB) and the Asian Development Bank (ADB).

Participation in the FCPF’s Readiness Fund can roughly be broken up into four stages (illustrated in Chart 1 below): (i) Preparation and submission of the Readiness Preparation Proposal Idea Note (R-PIN); (ii) Readiness Preparation Proposal (R-PP) formulation and implementation; (iii) Preparation and submission of the Readiness Package (R-Package); and (iv) transition to the Carbon Fund.

While different stages within the Readiness Fund are relatively established, details over transition to, and participation in the Carbon Fund are still under consideration.

\textsuperscript{282} FCPF Charter, Chapter V, Article 11, Section 11.1(a) – (q).
\textsuperscript{283} FCPF Charter, Chapter V, Article 14, Section 14.1(a) – (p).
Chart 1: The FCPF’s step-wise approach to REDD+ Readiness:

Documents/Policies Used for the Analysis

Since its inception, the FCPF has been constructing a framework over how to deal with safeguards issues. The FCPF Charter provides the terms and conditions of the FCPF, including objectives and principles, organisation, participation and governance structure, among others. These fundamental operational principles must be adhered to in the FCPF’s operations. The Charter of the FCPF requires it to “seek to ensure consistency with the UNFCCC Guidance on REDD.”284 Therefore, at least on paper the FCPF and its standards must be consistent with the UNFCCC REDD+ Safeguards.

The World Bank’s Operational Policies and Procedures (OPs) also apply to FCPF activities that are supported by the World Bank.285 Under the FCPF Readiness Fund’s Common Approach to Environmental and Social Safeguards for Multiple Delivery Partners (Common Approach), DPs must “achieve ‘substantial equivalence’ to

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284 FCPF, Chapter II, Article 3, Section 3.1(c).
285 FCPF Charter, Chapter II, Article 3, Section 3.1(d). See also N. Moss & R. Nussbaum, “A Review of Three REDD+ Safeguards Initiatives”, FCPF and UN-REDD Programme (June 1, 2011), p. 7. For an extensive list of potentially applicable World Bank social and environmental safeguards applicable to REDD+, see Table 1 from our analysis on the World Bank Safeguards.
the material elements of the World Bank’s environmental and social safeguard policies and procedures. However, if a DP has stronger safeguards than the World Bank, it may apply its own safeguards instead. The Common Approach is subject to change in order to “respond to elaboration of UNFCCC policy guidance on environmental and social safeguards for REDD+.” Countries receiving FCPF funding are required to ensure compliance with the Common Approach.

To date, most activities within the FCPF have focused on developing preparedness for REDD+ under the Readiness Fund. Therefore, most of the standards that have been developed under the FCPF (shown in Table 1 below) have been framed within the context of the Readiness Fund.

<table>
<thead>
<tr>
<th>Document/Instrument</th>
<th>Description</th>
<th>Relevant UNFCCC REDD+ Sefeguard</th>
</tr>
</thead>
<tbody>
<tr>
<td>World Bank Operational Policies &amp; Procedures (OPs)</td>
<td>Includes all relevant World Bank social and environmental project investment safeguards, including the World Bank's policies on disclosure of information held by the World Bank.</td>
<td>(a), (b), (c), (d), (e), (f) &amp; (g)</td>
</tr>
<tr>
<td>FCPF Charter</td>
<td>Founding instrument that governs the FCPF’s operations.</td>
<td>(a), (b), (c), (d), (e), (f) &amp; (g)</td>
</tr>
<tr>
<td>Common Approach</td>
<td>Provides a minimum set of requirements for the safeguards by any Delivery Partner (DPs) under the Readiness Fund.</td>
<td>(a), (b), (c), (d), (e), (f) &amp; (g)</td>
</tr>
<tr>
<td>FCPF Guidelines and generic Terms of Reference for SESA &amp; ESMF</td>
<td>Provides guidelines for countries to follow as they develop Terms of Reference for their SESA/ESMF process.</td>
<td></td>
</tr>
<tr>
<td>FCPF/UN-REDD Guidelines on Stakeholder engagement in REDD+ Readiness</td>
<td>Provides REDD+ countries with guidance on how to support effective stakeholder engagement during Readiness preparedness for REDD+.</td>
<td>(b), (c), (d)</td>
</tr>
</tbody>
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288 R-PP Template, Component 2d, p. 44.
FCPF Guidance on Disclosure of Information

Provides guidance on what information must be disclosed at different stages of Readiness preparation, when and how such information is released, and who is responsible for dissemination of such information. (b), (d)

FCPF Guidelines for Establishing Grievance and Redress Mechanisms at the Country Level

Provides advice on how to develop or enhance mechanisms for information sharing and hearing grievances early on so that it can handle requests for feedback or hear disputes throughout the Readiness Stage and beyond. (b), (c), (d)

Currently, safeguards are being developed for the Carbon Fund. In addition to also being required to comply with World Bank safeguards and the FCPF Charter, several instruments (shown in Table 2) are currently being drafted. Because some of these instruments are not yet finalised, we have not included all of them in our analysis. Nevertheless, we recommend countries to track their progress.

### Table 2: List of safeguard instruments relevant to the Carbon Fund of the FCPF

<table>
<thead>
<tr>
<th>Document/Instrument</th>
<th>Description</th>
<th>Relevant UNFCCC REDD+ Safeguard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbon Fund Methodological Framework (MF)</td>
<td>The MF is ‘standards-based’ guiding framework designed to help FCPF REDD+ countries design ER Programs. It will need to be complied with in order for ER Programs to be eligible for payments under the Carbon Fund.</td>
<td>(a), (b), (c), (d), (e), (f) &amp; (g)</td>
</tr>
<tr>
<td>FCPF ERPA Terms Sheet</td>
<td>A document containing a set of General Conditions (non-negotiable) and Commercial Terms (negotiable) that forms the basis for future ERPAs under the Carbon Fund. While it is still under negotiation, it will likely require participant countries to elaborate a safeguards plan and a benefit sharing plan.</td>
<td>(a), (b), (c), (d), (e), (f) &amp; (g)</td>
</tr>
<tr>
<td>Guiding Principles on the Key Methodological Framework</td>
<td>Provides overarching high guidance that elaborates elements that provide the basis for development of the MF under the Carbon Fund.</td>
<td>(a), (b), (c), (d), (e), (f) &amp; (g)</td>
</tr>
<tr>
<td>World Bank Operational Policies &amp; Procedures</td>
<td>See table 1 (above).</td>
<td>(a), (b), (c), (d), (e), (f) &amp; (g)</td>
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</table>
Identified Mechanisms that Assist With the Implementation of the Safeguards

The Readiness Preparation Proposal Template (‘R-PP Template’)

The R-PP Template provides guidance and requirements that countries must aim to meet during Readiness Preparation. It contains guidance for six different components:

- Organize and Consult: Includes setting up national readiness management arrangements, information sharing and early dialogue with key stakeholder groups;
- Prepare a REDD+ Strategy: Includes assessment of land use, land use change drivers, forest law, policy and governance, REDD+ strategy options and implementation framework, and dealing with social and environmental impacts during Readiness Preparation and implementation;
- Develop a National Forest Reference Emission Level and/or a Forest Reference Level;
- Design Systems for National Forest Monitoring and Information on Safeguards;
- Schedule and Budget; and
- Design a Program for Monitoring and Evaluation Framework.

Strategic Environmental and Social Assessment (SESA)

The SESA stems from environmental assessment (EA) requirements of the World Bank.²⁸⁹ It is intended to be an inclusive process whereby the REDD+ country, with the participation of all potentially affected stakeholders, seeks to “identify likely impacts and risks, as well as opportunities,” among different strategic REDD+ options. During the SESA process these impacts, risks and opportunities are assessed and weighed by the various stakeholders. The SESA should conclude with the production of an Environmental and Social Management Framework (ESMF) as a means for managing environmental and social risks as REDD+ countries develop their REDD+ national strategies.

Environmental and Social Management Framework (ESMF)

All REDD+ countries must produce an ESMF as a direct output of the SESA process.²⁹⁰ The ESMF lays out principles, rules, guidelines and procedures for assessing issues and impacts associated with planned REDD+ activities that may occur in the future but are not presently known or are uncertain.²⁹¹ It largely provides a framework for REDD+ countries to address environmental and social issues in their REDD+ Strategy as it is implemented. The ESMF is completed and presented, to the extent possible, as part of the REDD+ country’s R-Package. However, if REDD+ investments have not yet been specifically identified, the ESMF remains a general principles-based document, leaving specific details for later.

²⁸⁹ See OP 4.01 – Environmental Assessment, para. 7; and Annex A, para. 10.
²⁹⁰ R-PP Template, Component 2d, p. 44.
²⁹¹ Common Approach, p. 47, para. 23.
The Readiness Package (R-Package) & the R-Package Assessment Framework

The R-Package is a document prepared by the REDD+ country that summarises its Readiness process and outcomes from development of activities outlined in its R-PP. According to the FCPF Charter, submission of an R-Package is voluntary. Nevertheless, a positive assessment by the PC of a country’s R-PP is required before the REDD+ country can participate in the Carbon Fund. The R-Package Assessment Framework is a two-step process to assess countries’ ‘relative’ Readiness progress and to identify remaining gaps or needs. In step one, the REDD+ country is supposed to self-assess its progress, with multi-stakeholder involvement, guided by an R-Package Template somewhat similar to the R-PP Template. In step two, the REDD+ country’s R-Package is assessed by the PC.

Emissions Reduction Program Idea Note (ER-PIN) Selection

Once a participant country is ready to propose an Emissions Reduction Program (ER Program) eligible for the Carbon Fund, it will develop and submit a preliminary ER-PIN for consideration by the PC. In order to be selected to move into the Carbon Fund pipeline, the ER-PIN must meet certain criteria, including inter alia, consistency with the Methodological Framework of the Carbon Fund, and generation of substantial non-carbon benefits. It should also explain whether there are likely to be any gaps or issues regarding compliance with the UNFCCC REDD+ Safeguards.

Emissions Reductions Payment Agreement (ERPA)

Before entering into an ERPA with the Trustee of the FCPF, the World Bank, a participant country will need to submit an ER Program Document. The content that will be required in this document has not been decided. However, it will need to provide information sufficient for the PC to determine that the participant country’s ER Programme is consistent with the UNFCCC REDD+ Safeguards, applicable World Bank safeguards, the Methodological Framework of the Carbon Fund, and the FCPF ERPA Term Sheet.

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293 FCPF Carbon Fund ER-PIN Template v. 3 (September 8, 2012), 7.2, p. 7.
Analysis of the FCPF Safeguards

Consistency with UNFCCC REDD+ Safeguard (a)

<table>
<thead>
<tr>
<th>Summary of Findings for Safeguard (a)</th>
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<tbody>
<tr>
<td>Under the Common Approach of the Readiness Fund, REDD+ countries are expected to provide information on their national forest programmes or other relevant country-driven processes. While there is no explicit requirement for consistency with national forest programmes, REDD+ countries’ ER-PIN should describe how proposed ER-Programs are consistent with national laws and development priorities. The FCPF is supposed to be consistent with UNFCCC Guidance on REDD+, as well as respect applicable international obligations on the rights of forest-dependent indigenous peoples and forest dwellers. However, the FCPF’s reliance on the World Bank’s safeguards, which in some instances are inconsistent with international standards, and thus requirements of UNFCCC REDD+ Safeguard (a).</td>
</tr>
</tbody>
</table>

1. Complement or Consistent with the objectives of National Forest Programmes

The FCPF Charter does not directly mention a requirement that actions and activities under the FCPF’s Readiness or Carbon Funds must be consistent with national forest programmes. Nevertheless, the FCPF’s Information Memorandum, which laid the basis for development of the FCPF, stated that the initiative would be designed to provide support in a framework that is aligned with and integrated into national forest and agricultural sector strategies. Furthermore, under the Common Approach, REDD+ countries should apply the World Bank’s Operational Policy on Forests, which expects them to provide information on their national forest programmes or other relevant country-driven projects.

In developing an ER-PIN for initial consideration under the Carbon Fund, REDD+ countries are also asked to describe “how activities in the proposed ER Program are consistent with national laws and development priorities.”

In order to be consistent with UNFCCC REDD+ Safeguard (a), we recommend that countries assess consistency with national forest programmes while conducting their SESA under the FCPF. Countries also ensure that appropriate measures are incorporated in their ESMF to ensure consistency. Lastly, countries need to communicate how they will ensure consistency with the above in their ER-PIN.

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2. Complement or Consistent With Relevant International Conventions and Agreements

Under its Charter, the FCPF must “seek to ensure consistency with the UNFCCC Guidance on REDD.” As such, the FCPF’s policies are always subject to change in order to remain consistent with decisions of the Conference of the Parties to the UNFCCC. The Common Approach under the Readiness Fund is similar, as is the emerging Methodological Framework of the Carbon Fund. The Charter also requires the FCPF to respect the rights of forest-dependent indigenous peoples and forest dwellers “under national and applicable international obligations.” In their ER-PIN, countries are supposed to describe how the ER Program “will respect the knowledge and rights of Indigenous Peoples and local communities, by taking into account relevant international obligations...” Assuming World Bank Operational Policy 4.01 applies, countries participating in the Readiness Fund and the Carbon Fund must also ensure compliance with relevant international environmental treaties and agreements.

The FCPF’s commitment to human rights obligations arguably goes further than the World Bank. However, it is still inconsistent with UNFCCC REDD+ Safeguard (a), because it relies on the World Bank safeguards, which as we demonstrate in the analysis below, fall below the principles contained in UNFCCC REDD+ Safeguard (a) in some places. Specifically, the World Bank safeguards do not ensure compliance with relevant international indigenous peoples’ rights or human rights treaties and agreements.

Countries should be aware that because the FCPF relies on the World Bank safeguards, it does not ensure consistency with all relevant international obligations. As such, it is inconsistent with UNFCCC REDD+ Safeguard (a). We recommend that countries seeking to meet UNFCCC REDD+ Safeguard (a) recognise the need to ensure that REDD+ actions and activities conducted under the Readiness Fund and the Carbon Fund are consistent with their relevant and applicable international conventions and agreements, including on indigenous peoples’ rights and human rights.

297 FCPF Charter, Chapter II, Article 3, Section 3.1(c).
299 FCPF Charter, Chapter II, Article 3, Section 3.1(d). See also, R-PP Template, Component 1c, p. 26; and Guidelines on Stakeholder Engagement, p. 1.
300 OP 4.01 – Environmental Assessment, para. 3. See also our analysis of the World Bank Safeguards (above).
Consistency with UNFCCC REDD+ Safeguard (b)

Summary of Findings for Safeguard (b)

The FCPF does not recognise a right of access to information. Nevertheless, the FCPF does envision transparency and accountability as part of countries’ REDD+ management framework. While there are disclosure requirements for FCPF-related documents, there is a broad catchall exception that could potentially be used to suppress information that countries or the FCPF do not want public. Furthermore, the FCPF does not sufficiently convey the need for countries to promote awareness of the public’s ability to access information. Participant countries are supposed to establish a feedback and grievance mechanism to disseminate information, handle requests for information and address concerns or grievances during all phases of REDD+. However, it is not required to be linked to the REDD+ country’s Safeguards Information System (SIS). The FCPF safeguards do contain provisions on corruption; however, insufficient guidance is provided on how to deal with such issues.

The SESA process provides a framework for assessing policy, legal and institutional governance issues. The FCPF does place emphasis on ensuring land tenure security, but it is still up to countries to prioritise such issues. While the FCPF does require benefit sharing, it overlooks inclusion of affected stakeholders in identifying and prioritising the potential benefits from REDD+ at an early stage. Furthermore, while the ESMF encourages improvement of forest governance frameworks, there is a lack of emphasis for ensuring that proper technical and financial resources are available to enact these enhancements. There are also aspects of the FCPF’s policies on grievance mechanisms provide a basis for ensuring accountability. The World Bank’s Inspection Panel could also potentially hear complaints that arise under the Readiness Fund, and under the Carbon Fund. However, it could only hear cases alleging a violation of one of World Bank’s Operational Policies, severely limiting its reach to hearing claims, excluding claims of to human rights violations. Lastly, while the SESA/ESMF process establishes a basis for integrating environmental and social considerations into the decision-making process on REDD+, both horizontally and vertically, its framework nature and lack of emphasis for human rights issues prevents it from sufficiently addressing all environmental and social issues relevant to REDD+.

1. Transparency

   (i) A Right of Access to Information

The FCPF does not recognise the right of access to information in any of its safeguards documentation. Nevertheless, countries seeking to meet UNFCCC REDD+ Safeguard (b) should remember that the right to access information is a cornerstone to ensuring transparency in forest governance structures—particularly in REDD+. Furthermore, it has been recognised by a number of international instruments. 301

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301 For an analysis of international instruments relevant to UNFCCC REDD+ Safeguard (b), See “A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards,” ClientEarth (2013).
As part of their SESA, countries should assess legislation on access to information on environmental matters. If no legislation exists, countries should take measures to recognise such a right. This should be done at an early stage, if possible, in order to ensure concerned individuals have information on REDD+ throughout the entire process.

(ii) Institutions to Ensure Access and Distribution of Information

The FCPF promotes transparency during the Readiness Phase. The national REDD+ working group that is envisioned to manage REDD+ Readiness is supposed to report, disclose and disseminate information to promote transparency and public outreach. The R-PP should explain how this information will be disseminated. Countries should also set up a feedback mechanism as part of the national REDD+ management framework to handle requests for feedback on questions, inquiries, or potential grievances related to the REDD+ strategy or process. In addition, a monitoring and evaluation framework should be developed during R-PP implementation that countries can use to encourage efficient and transparent management of resources. It should “provide real time feedback to government and other stakeholders of how well the preparatory work towards REDD+ Readiness is progressing.”

We encourage countries to set up national REDD+ working groups that have the ability and the authority to be transparent (in line with relevant international instruments) towards interested and/or affected individuals and groups. Furthermore, mechanisms set up to provide feedback, and to monitor and evaluate Readiness and implementation, should operate according to these principles. We also recommend that as countries establish feedback and grievance mechanisms, with the capacity to handle requests for access to information, and to provide for an equitable and timely appeals process for requests that are denied. Furthermore, we recommend that countries provide for different legal avenues for individuals to challenge denials of access to information in order to ensure accountability over the transparency function feedback and grievance mechanisms are intended to provide.

Delivery Partners (DPs) must also publish on the FCPF website a list of staff in charge of supporting and supervising each R-PP, and other contact information for responding to complaints over administration of grants. FCPF Guidance on Disclosure of Information details when specific pieces of information must be made available.

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302 R-PP Template, Component 1a and 1b.
303 R-PP Template, Component 1a, p. 16.
304 R-PP Template, Component 6, p. 67.
305 For a list of examples of such instruments, please See “A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards,” ClientEarth (2013).
306 Common Approach, p. 49, para. 35.
“All information generated by FCPF grants, including information regarding social and environmental risks and safeguards that is not covered by one or more of the exceptions under the DP’s policy on access to information, or is not restricted from public access by the DP’s exercise of prerogative to restrict shall be either routinely disclosed or made publicly available upon request.”

Information subject to the Guidance on Disclosure of Information includes documents related to countries’ R-PIN, R-PP, Grant Agreements, ToRs for major studies, DP reports, progress reports, the R-Package and monitoring reports. Depending on the type of documentation, either countries, DPs or FMT, as the Secretariat of the FCPF, have responsibility for making these documents public.

As with the World Bank’s Policy on the Disclosure of Information, there is an exception for instances where disclosure would cause harm outweighing the benefits of disclosure. Likewise, there is no guidance to interpret the scope of this exception, leaving a wide amount of discretion to DPs or countries to invoke the exception. This exception could provide opportunity to suppress sensitive information relating to particularly controversial REDD+ strategy options, and specific risks or impacts. This would contravene the principles of good faith and maximum disclosure, inhibiting transparency.

We recommend that counties act in good faith and operate in accordance with a presumption for maximum disclosure with information related to REDD+, and that such information should not be excused from public disclosure unless it is under a legitimate and narrow reason that is established by law.

(iii) Promoting Public Awareness on Access to Information

Early information sharing is one of the first components of Readiness under the FCPF. The mechanisms set up to promote transparency under the FCPF, such as the feedback mechanism, are not required to spread awareness about their functions, or to inform relevant stakeholders that they are able to access information on the REDD+ process. Furthermore, the FCPF’s disclosure policy does not take into account that most affected stakeholders do not have ready access to the Internet, speak a different language, or may be illiterate. Therefore, most programme documents, and contact information for people in charge of responding to complaints, may be out of reach for most project-affected individuals. The World Bank contains a Translation Framework, but this is not well known.

We recommend that countries enable institutions in charge of disseminating information to the public with the capacity and authority make people aware of their right and/or ability to request information. Furthermore, we recommend that when countries are looking to create or strengthen institutions to promote transparency that they budget for resources in order to have capacity for translation and proper

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308 Common Approach, p. 49, para. 32.
309 Ibid.
310 For more about good faith and the principle of maximum disclosure, please see A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards,” ClientEarth (2013).
(iv) Accountability

The FCPF Charter has provisions to prevent conflicts of interest from arising during Readiness preparation and subsequent involvement in the FCPF Carbon Fund. Specifically, if a REDD+ country, or one of its affiliates or employees is “directly involved in preparing and/or implementing” the R-PP or R-Package of another REDD+ country’s ER Program under consideration by the Carbon Fund, such involvement must be disclosed to the FMT.\textsuperscript{311} The FMT can then decide, under the circumstances, whether to advise the REDD+ country in question to participate or recuse themselves from the decision. The FMT also has competence to develop guidelines around process and procedure on conflict of interest.\textsuperscript{312}

Before entering into a Grant Agreement so that countries can implement their R-PP, DPs must assess, \textit{inter alia}, the country’s financial management and procurement capacity.\textsuperscript{313} The R-PP Template itself does not directly address corruption. Nevertheless, as a key question for developing their REDD+ implementation framework, countries are requested to address questions around laws and measures to deal with anti-corruption and national best practices for fiscal transparency, among others.\textsuperscript{314} In their SESAs, countries are also expected to assess issues of accountability in revenue distribution systems, and effectiveness of law enforcement.\textsuperscript{315} However, neither the R-PP Template, nor other documentation provides guidance on how to address corruption issues.

We recommend that countries seriously analyse issues around accountability and anti-corruption in their assessments of institutional capacity for REDD+, particularly during the SESA. Furthermore, measures to enhance transparency and deal with corruption should be included in the ESMF.

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2. Effective National Forest Governance

(i) Appropriate Legal Framework

Through the R-PP process, the FCPF promotes and calls for assessment of existing policy and legal frameworks relating to forests, and enhancement of those frameworks. First, in deciding whether to sign a REDD+ preparation grant agreement so that countries can develop their R-PP, DPs must assess, \textit{inter alia}, the REDD+ country’s technical, social and environmental capacity, compliance with applicable safeguard policies and

\begin{itemize}
  \item \textsuperscript{311} FCPF Charter, Chapter IV, Article 8, Section 8.3(a) and (b).
  \item \textsuperscript{312} FCPF Charter, Chapter IV, Article 8, Section 8.3(c).
  \item \textsuperscript{313} Common Approach, p. 42, para. 10.
  \item \textsuperscript{314} R-PP Template, Component 2c, p. 41.
  \item \textsuperscript{315} R-PP Template, Component 2a, p 33.
\end{itemize}
Countries are also required to begin conducting their Strategic Environmental and Social Assessment (SESA) process when they begin formulating their R-PP. The objective of the SESA is to “develop country-specific frameworks and guidelines that comply with World Bank safeguards.”317 As part of the SESA process, countries are asked to “identify shortcomings in current land use, forest law, policy and governance structures contribute to the drivers of deforestation and forest degradation.”318 Subsequently, a work plan should be developed to address challenges and gaps that are identified in the assessment. From this, the REDD+ country should develop an Implementation Framework, whereby it sets out a plan to implement necessary changes to legal arrangements.319

In addition, the Environmental and Social Management Framework (ESMF), an output of the SESA process, is designed to provide a framework for countries to address environmental and social issues as they begin to implement various aspects of their REDD+ strategy. While largely a framework in nature, the SESA/ESMF process provides a basis and an opportunity for countries to analyse legal capacity, or Readiness, for REDD+.

We recommend that countries take advantage of the SESA process in order to assess current laws and regulations on forests, and identify gaps where improvements could be made.

While the ESMF provides an opportunity for countries to outline how they will deal with potential environmental and social impacts, because it is a framework responses may be too vague to adequately deal with likely or identified gaps or risks.

Understanding that not all protective measures can be articulated before actual projects or activities begin to take shape, in order to meet UNFCCC REDD+ Safeguard (b) we encourage countries to provide as much specificity as possible when developing their ESMF’s, at least in terms of legislative or regulatory responses. This will provide greater certainty for potentially affected individuals and communities as actual planning moves forward.

Clear Land Tenure Rights

In its criteria for selection of countries, the FCPF Charter states that consideration should be given to countries that provide leadership in land tenure rights.320 The R-PP Template also recommends that countries

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316 Common Approach, p. 42, para. 10.
318 RPP Template, Component 2a, p. 32.
319 R-PP Template, Component 2c, p. 40.
address certain issues in their REDD+ Implementation Framework such as ownership of carbon rights, distribution of REDD+ benefits to local communities, and issues of land tenure. Specifically, the R-PP recommends developing clarity over both statutory and customary owners or users of forests, relationships between carbon ownership and land tenure, and how to resolve or mediate issues over land tenure or carbon ownership. SESA analysis must include assessment of issues around land tenure and resource rights, including relevant legislation, traditional land uses of indigenous peoples’ communities and processes of land title demarcations. Subsequently, the Implementation Framework should address relevant questions to the roles of landowners and other participants in REDD+ transactions. The Participants Committee (PC) has also approved recommendations that the Carbon Fund should contribute towards securing land tenure.

In order to be able to assign clear rights and responsibilities, and to ensure proper benefit sharing arrangements, countries will need to clarify land tenure and associated rights, including traditional and customary use and ownership rights.

We recommend that countries seriously consider options involved in including clarifying land tenure in developing their REDD+ Implementation Framework, ensuring institutional capacity and clear and simple criteria and procedures. If a legal framework for recognising customary and traditional land tenure rights does not exist, countries should develop a plan within their ESMF that puts them on a path to recognising such rights. If such a legal framework already exists, countries should place high importance on ensuring effective implementation in order to ensure that all eligible stakeholders’ rights are actually recognised and protected.

**Equitable Distribution of Benefits**

The R-PP Template requests countries to address issues of benefit sharing in their Implementation Framework, such as design of a national benefit sharing mechanism, including necessary legislation and institutional capacity. However, the R-PP Template does not encourage countries to address benefits while assessing various REDD+ strategy options, which comes before and feeds into the Implementation Framework. It is important that potential benefits be explored during this stage in a participatory manner with relevant stakeholders, as it may have the potential to affect certain strategy options. While formulating an equitable benefit sharing mechanism is very important, the process for deciding which potential benefits are shared is equally important.

These preliminary steps are important, because in order to be able to receive results-based payments from the Carbon Fund, countries will be required to have a Benefit-Sharing Plan that complies with the World Bank

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321 R-PP Template, Component 2c, p. 40.
322 R-PP Template, Component 2c, p. 40.
323 R-PP Template, component 2c, p. 40.
Safeguards and the UNFCCC REDD+ Safeguards.\footnote{FCPF Participants Committee, “Term Sheet for the FCPF General Conditions of the Emission Reductions Payment Agreement,” (hereafter referred to as ‘ERPA Term Sheet’), endorsed by the PC 15 (March 19-21, 2013), para. 22.}

We recommend that countries assess potential benefits together with affected communities, ideally during the SESA analysis. This should then feed into the development of a benefit sharing mechanism, during the development of a national REDD+ Implementation Framework. Countries should also develop their Benefit-Sharing Plans with project-affected stakeholders, viewing them as partners—not just recipients. In order to encourage participation from stakeholders, Benefit-Sharing Plans should provide clear and simple eligibility criteria and procedures governing participation. They should also include a grievance mechanism for disputes that arise during the design and implementation of the Benefit-Sharing Plan.

Gender Equality

The FCPF mentions gender equity issues, particularly for REDD+ Readiness. The Guidelines on Stakeholder Engagement encourages countries to conduct consultations in a gender sensitive manner.\footnote{FCPF/ UN-REDD Programme, “Joint Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities,” April 20, 2012 (revision of March 25 version), p. 5.} During the SESA process, participant countries are also encouraged to assess key gender concerns, particularly potential gender-based risks or disparities that could inhibit participation or access to benefits, such as the role of gender in land tenure.\footnote{R-PP Template, Overarching Guidelines, p. 6; Component 1b, p. 21; and Component 2d, p. 32.} Countries are asked to address the results of this assessment in their R-PP, and to incorporate considerations for addressing these issues in their ESMF. For participation and information sharing specifically, “special arrangements should be made” in order to overcome social norms and language barriers, including direct engagement, gender sensitive consultations, and institutions with relevant expertise.\footnote{R-PP Template, Component 1b, p. 21.}

We recommend that participant countries follow this guidance and carefully assess women’s equality issues, particularly in benefit sharing and participation during REDD+, taking measures where necessary to prevent discrimination consistent with their relevant international obligations.

(ii) Appropriate Institutional Framework

Through the R-PP process, the FCPF promotes and calls for assessment and enhancement of institutional and governance frameworks relating to forests. In their SESAs, where weaknesses are identified, the REDD+ country needs to develop a plan on how to strengthen institutional capacity, and deal with issues such as law enforcement, governance, anti-corruption, transparency, and accountability.\footnote{R-PP Template, Component 2c, p. 41.}
It is important to note that for purposes of UNFCCC REDD+ Safeguard (b), countries will need appropriate institutional frameworks to demonstrate effective forest governance structures. We recommend countries take advantage of the SESA/ESMF process to assess and enhance institutional and regulatory capacity.

In particular, to enhance forest governance countries are encouraged to develop their National Forest Monitoring System (NFMS) along with their Safeguards Information System (SIS). In doing so, countries should assess current institutional capacity to measure, report and verify greenhouse gas emission reductions, implementation of safeguards and other non-carbon priorities.330

Where appropriate, institutional capacity should be enhanced and recommendations for capacity building and training should be provided.331 The SIS, for its part, should also address key governance issues pertinent to implementation of REDD+, including land tenure and law enforcement, social and environmental impacts, and the roles of relevant stakeholders.332 Importantly, countries are required to indicate the level of financial support needed to support the development of the SIS and the NFMS.333 However, there is no emphasis on the need for financial resources to improve institutional governance frameworks. While the R-PP calls for countries to input budget needs for every component of the R-PP, it does not ask countries to outline short, medium and long-term financial planning to achieve, for instance, more effective institutions or implementation and enforcement of laws in order to enhance forest governance.

We recommend that countries be aware of the need to take financial needs into consideration in developing strategies for assessment and improvement of sustainable forest governance frameworks by better emphasising the need for financial resources in this area.

(iii) Participation in Decision-Making Processes that Affect the Environment

The FCPF does not recognise a right to participate generally, although it does acknowledge an indigenous peoples’ right to participate in decisions that affect them.334 The REDD+ country must develop a Consultation and Participation Plan for developing REDD+ strategy options, as well as specific components of REDD+ Readiness. The SESA is also intended to combine consultation into the preparation of the REDD+ strategy. Participation aspects of the FCPF are analysed more thoroughly under UNFCCC REDD+ Safeguard (d).

We draw attention to the fact that the right to participate is a cornerstone of effective forest governance, and we recommend that countries take effective steps to ensure the public be afforded a right to

330 R-PP Template Component 4b, pp. 61 – 62.
331 R-PP Template, Component 4b, pp. 61 – 62.
332 R-PP Template, Component 4b, pp. 61 – 62.
333 R-PP Template, Component 4b, p. 63.
334 R-PP Template, Component 1c, p. 26.
participate in matters that affect the environment, particularly forests.

(iv) Adequate Access to Justice

Feedback, grievance and redress mechanisms are a component of the REDD+ country’s REDD+ management framework, and are required early on in Readiness planning and implementation. The R-PP Template recommends that countries establish a connection between the mechanism and their consultation process, REDD+ strategy, and monitoring and evaluation. Importantly, *Guidelines for Establishing Grievance and Redress Mechanisms*, which were developed by the FCPF, recognize the importance of formal legal, administrative, and other public or civic mechanisms for achieving remedy.

In early 2013, the FCPF released a *Draft Toolbox for Grievance Redress Mechanisms* (Draft Toolkit). It is composed of three separate documents: one providing information on the World Bank’s approach to grievance redress in projects; a guidance note intended to help countries strengthen capacity for grievance resolution during the Readiness phase; and lastly, a manual for establishing and strengthening grievance mechanisms.

In particular, the guidance note specifies principles that should guide the design of grievance and redress mechanisms. These include: legitimacy, accessibility, predictability, equity, transparency, ensuring accordance with internationally recognised human rights, learning, and engagement and dialogue.

The guidance also notes the value of the UN *Guiding Principles on Business and Human Rights* (Guiding Principles), which relates to issues of human rights and transnational corporations. However, it misconstrues the main intent of the Guiding Principles as being directed towards corporations. The Guiding Principles are in fact directed towards both corporations and governments. The Guiding Principles clarify States’ ‘obligation’ to protect and fulfil human rights and freedoms, while companies have a ‘responsibility’ to respect human rights by complying with domestic laws of the countries in which they operate. Under the Guiding Principles, as part of their duty to protect against human rights violations, States must ensure access to an effective remedy.

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335 R-PP Template, component 1a, para. 6, p. 16; see also “Guidelines for Establishing Grievance and Redress Mechanism at the Country Level,” R-PP v. 6 draft Revised (April 20, 2012), Revised August 9, 2012, p. 2.
336 R-PP Template, Component 1c, p. 29.
We recommend that countries take special note of the Guiding Principles, and ensure that companies operating within their jurisdiction abide by their laws and that when such laws are broken that affected individuals have access to an effective remedy in line with the principles outlined above.

Neither the *Guidance for Establishing Grievance and Redress Mechanisms*, nor the Draft Toolkit recommends linking the grievance and redress mechanism with the SIS. This could potentially deprive the SIS from serving as an effective mechanism for facilitating improvement, and accountability for ensuring respect and adherence to the safeguards. The Draft Toolkit does recognise that “monitoring, tracking and reporting on outcomes is essential to promote credibility of the mechanism to users and to encourage feedback and organisational learning.”

In order to effectively implement UNFCCC REDD+ Safeguard (b), countries should consider using the SIS not just as a monitoring and evaluation tool, but also as a means of providing accountability.

The FCPF requires that DPs must also have accountability measures available to address, at a minimum, breaches of the DP’s own policies and procedures. This includes having an independent, transparent, effective, accountability mechanism accessible to all affected people, or at least a commitment to provide one in the future. In latter instances, the DP must have an independent safeguard expert or consultant able to receive complaints and provide advice on potential complaints.

Because the World Bank serves as a DP, and the Trustee to the Readiness and Carbon Fund, its Inspection Panel has the ability to receive complaints from groups of individuals alleging that one of the World Bank’s OPs has not been complied with. However, as mentioned in our separate analysis of World Bank safeguards (above), this would be insufficient, mainly due to the fact that complaints are can only be heard for alleged violations of the World Bank’s own safeguards, which do not encompass international human rights or indigenous peoples’ rights.

The FCPF’s framework for accountability provides a good start for ensuring that complaints and grievances are heard throughout the REDD+ Readiness process. However, countries should note that the framework lacks consistency with human rights obligations recognized under international law. We recommend that countries address this gap, in order to comply with UNFCCC REDD+ Safeguards (b) and (a). Countries should

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343 Common Approach, p. 49, para 34.
344 Common Approach, p. 49, para 34.
also not rely on dispute resolution mechanisms such as the World Bank’s Inspection Panel, because they are not sufficient for ensuring access to justice. Countries should instead establish and maintain effective country-level grievance and dispute resolution mechanisms that are accessible and fair.346

Lastly, neither the FCPF Guidance for Establishing Grievance and Redress Mechanisms, nor the Draft Toolkit, differentiates between grievance mechanisms for indigenous peoples’ communities and other affected groups. The FCPF Guidance does state that “effective grievance redress mechanisms should use understandable and transparent process that is culturally appropriate and readily accessible to all segments of affected stakeholders.” 347 Nevertheless, the FCPF’s recognition of the right to effective redress could be enhanced by making specific reference to redress mechanisms for aggrieved indigenous peoples, and providing guidance on how such mechanisms should be constructed.

We recommend that countries keep in mind that indigenous peoples’ communities may have their own institutions and cultural practices for resolving disputes or grievances and that these should be respected consistent with international standards.

The guidance note also provides a step-by-step explanation of how to handle grievances, from start to finish, including appeals. It also distinguishes between grievances that may arise during Readiness and implementation of REDD+ activities. Guidance provided in the Draft Toolbox is mostly focused on developing grievance and redress mechanisms during the Readiness phase. However, it is also intended to be useful for identifying and dealing with disputes that arise during implementation, which could relate to benefit sharing, and natural resource and tenure rights.

Although this Draft Toolbox is not yet finished, it can be useful for countries as they begin to experiment with establishing and strengthening grievance and redress mechanisms.

(v) Integration of economic, social and environmental considerations, and cross-sectoral coordination

The SESA/ESMF process is intended to integrate social and environmental considerations into the REDD+ Readiness Preparation and Implementation. As a requirement of the World Bank’s Environmental Assessment (EA) policy, SESA requires consideration of environmental and social aspects, including impacts, in an integrated way. During the Readiness stage, the SESA/ESMF process is intended to be a national framework approach for dealing with a number of environmental and social impacts that will be associated with various REDD+ activities.

During the formulation and assessment of the REDD+ Strategy, a great deal of diagnostic and analytical work should be carried out. This is the prime function of the SESA. For REDD+, this work should identify key drivers of deforestation, associated environmental and social issues such as land tenure, benefit sharing, access to resources and environmental and social risks and potential negative and positive impacts of particular REDD+ strategy options. This requires an integrated assessment of social, economic and environmental issues, and legal, policy and institutional capacity to deal with risks. Results of this process should feed into and inform the strategy development process, and the choice of measures.

A summary of the SESA must be included in the REDD+ REDD+ country's R-Package. It should consist, at the minimum, a discussion of:

- Institutional arrangements for coordinating environmental and social issues into REDD+ Readiness;
- Triggered safeguard policies, based on studies conducted;
- Key environmental and social issues associated with drivers of deforestation and forest degradation;
- Social and environmental priorities defined in the form of REDD+ strategy options;
- Recommendations for capacity building in policy, law, regulation and institutions, based on gap studies conducted;
- Results of environmental and social assessments conducted on various REDD+ strategy options;
- ESMF (in a final or advanced draft);
- Description activities conducted as part of the stakeholder engagement process.

Through the SESA process, an ESMF should be developed to mitigate and manage risks, and enhance legal, policy and institutional capacity. As a framework, the ESMF is supposed to incorporate procedures for appropriate capacity building and environmental and social assessment and screening during implementation of the REDD+ Strategy.

The ESMF must also be consistent with the World Bank’s Operational Policy on Environmental Assessment. To meet this requirement, the ESMF must include, at the very least:

- Environmental and social assessment (The EA component);
- Indigenous Peoples Planning Framework (IPPF);
- Process Framework for involuntary resettlement; and
- Stakeholder engagement and dispute resolution framework.

348 R-PP Template, Component 2b, p. 36.
351 The ESMF is a component of Operational Policy 4.01 – Environmental Assessment.
352 The rules that apply to the development of the IPPF are contained in Operational Policy 4.10 – Indigenous Peoples.
353 Involuntary resettlement and/or restriction of access to natural resources having adverse livelihood impacts. The rules that apply to the development of the process framework are contained in Operational Policy 4.12 – Involuntary Resettlement.
Although the SESA and ESMF are useful tools to integrate social and environmental issues, countries should note they do not require adherence to international human rights treaties and agreements, including civil, political, economic, social and cultural rights. Therefore, reliance on SESA and ESMF processes does not necessarily guarantee compliance with UNFCCC REDD+ safeguard (b). Human rights and environmental considerations cannot be treated in an integrated way when there is a requirement to adhere to international law on one issue, but not the other. It is also inconsistent with UNFCCC REDD+ Safeguard (a), which requires adherence to all applicable international obligations.

We recommend countries to take note that environmental and social impacts are interlinked, especially in REDD+. Where appropriate, countries should therefore integrate human rights impact assessment aspects into their environmental assessments.

The FCPF also tries to promote cross-sectoral coordination and cooperation. The national body in charge of managing REDD+ Readiness should be a coordinating body or cross-sectoral working group with diverse membership reflecting all relevant stakeholders. Countries are also asked to assess “how coordination of existing policy processes occurs, especially relating to land use decisions.” Furthermore, countries are encouraged to include national law and policy in other sectors, and international obligations within their initial assessments of their legal, policy and governance framework in preparation of their REDD+ Strategy. Countries are also encouraged to consider existing tools and ensure coordination for monitoring and other needs, under initiatives such as the EU Action Plan on Forests, Law Enforcement, Governance and Trade (FLEGT).

Cross-sectoral communications between ministries and sectors that affect—and are affected by—forests is also promoted. Countries are encouraged to create platforms for participation, including with government agencies from different sectors. However, there is little guidance on how to go about doing this.

This above have the potential to increase cross-sectoral coordination during the REDD+ planning process. We recommend that countries take effective steps to enable all relevant sectors that affect—and are affected by—forests be consulted and actively involved in developing REDD+ strategies. This will require communication and information exchange from early stages of REDD+ Readiness, including development of awareness and preparation and assessment of different REDD+ strategies.

354 R-PP Template, Component 2d, p. 45.
355 R-PP Template, Component 2a, p. 33.
356 R-PP Template, Component 2a, p. 32.
357 R-PP Template, Overarching Guidance, p. 8; and Component 6, p. 62.
Consistency with UNFCCC REDD+ Safeguard (c)

Summary of Findings for Safeguard (c)
The FCPF does not specifically define indigenous peoples or local communities, although it does refer to ‘forest dwellers’. In addition, it does not categorically define, or require countries to respect, indigenous people or community knowledge. The FCPF recognises the need for, and is required under its Charter to respect indigenous peoples’ rights. However, this is potentially undermined by the World Bank safeguards, which do not require adherence with applicable international human rights obligations, particularly indigenous peoples’ rights obligations. Likewise, there is no requirement to ensure that indigenous peoples enjoy equal enjoyment to internationally recognised human rights. The FCPF does not say anything about self-determination, a collective right of indigenous peoples under international law. The SESA/ESMF process does provide emphasis on securing traditional and customary collective land tenure. However, there is no particular requirement to secure or protect these rights. Moreover, countries are supposed to involve indigenous peoples and local communities in establishing benefit sharing arrangements. However, guidance does not mention that these groups should be engaged at the earliest stage when conversations over benefits are beginning. Furthermore, the FCPF does not apply free, prior and informed ‘consent’ (FPIC) as it is recognised under international law, instead deciding to apply a policy of free, prior and informed ‘consultation’, a much less stringent standard.

1. Defining Indigenous Peoples, Members of Local Communities and Knowledge
   (i) Defining Indigenous Peoples and Local Communities

The FCPF does not define indigenous peoples or local communities. However, the World Bank does define indigenous peoples in its Operational Policy on Indigenous Peoples. The FCPF also does not refer directly to local communities, although it refers to ‘other forest-dependent communities’ and in some cases ‘forest dwellers’.

We encourage countries to recognise that there is not an exhaustive list of factors that define what constitutes ‘indigenous peoples’, and therefore to also apply a flexible policy of identification towards these groups.

As we highlight in “A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards,” certain rights may be granted or limited based on a particular group’s categorisation under international law.

In order to ensure that local communities are afforded the rights they are entitled to, we also recommend that countries be aware that local forest-dependent communities may also constitute indigenous peoples and should take appropriate steps to legally recognize them. Moreover, because of their similarly vulnerable status, countries

358 OP 4.10 – Indigenous Peoples, para. 4. See also, our UNFCCC REDD+ Safeguard (c) analysis of the World Bank safeguards (above).
need to ensure that local communities that may not necessarily fit within the definition of indigenous peoples also have their rights respected.

(ii) Respecting ‘knowledge’

The Common Approach is clear in stating that the World Bank’s Operational Policy on Indigenous Peoples applies to Readiness activities. This Policy specifies procedural requirements for commercial development of indigenous peoples’ knowledge, although the term ‘knowledge’ is not defined. While one of the stated aims of the Operational Policy on Indigenous Peoples is to ensure respect for indigenous peoples’ cultures, rights and dignity, there is no requirement to protect indigenous knowledge per se. There is no mention of local communities. Other than acknowledging that indigenous and forest-dependent communities have a unique role to play because of their traditional knowledge, the FCPF does not articulate any additional requirements, at least during Readiness.

During the development of their R-PP, we recommend that countries analyse their existing legal frameworks for protecting indigenous knowledge. If gaps exist or improvements are needed, countries should take steps to strengthen those protections to ensure that indigenous peoples and local communities concerned can have better control over how that knowledge is used, and so they can benefit equitably from REDD+. Countries should also ensure that ER Programs developed under the Carbon Fund respect traditional and cultural knowledge of indigenous peoples and local communities.

2. Recognition and Implementation of Rights In Accordance With International Law

The FCPF Charter states that the FCPF’s operations shall respect the rights of forest-dependent indigenous peoples and forest dwellers “under national and applicable international obligations.” These requirements go further than those of the World Bank safeguards. Even though it does not specifically mention local communities, the term ‘forest dwellers’ could still be implied to refer to local communities.

We recommend that countries comply with their relevant international obligations relating to indigenous peoples during activities undertaken under the Readiness Fund and the Carbon Fund, in order to comply with UNFCCC REDD+ Safeguard (c). Countries also need to ensure that local communities’ rights are also respected in the same way, whether they are referred to as forest dwellers or another name.

(i) Non-discrimination

Similar to the World Bank safeguards, the FCPF does not say much on the subject of discrimination with regard to recognition of human rights. Interestingly, in the Guidelines on Stakeholder Engagement in REDD+ Readiness, a list of

361 FCPF Charter, Chapter II, Article 3, Section 3.1(d).
international instruments is articulated that countries participating in UN-REDD are required to adhere to, including General Recommendation XIII on the Rights of Indigenous Peoples by the UN Committee on the Elimination of Racial Discrimination. However, these requirements are not articulated for countries participating in the FCPF.

Under existing international law, indigenous peoples are entitled equal enjoyment of fundamental international human rights, and other special rights, due to their marginalisation from the rest of society. This right protects their identity, culture, language, economic and social development and ownership and use of lands and natural resources.

We recommend that when engaging with indigenous peoples during Readiness development, as well as in the context of individual projects under the Carbon Fund, that countries follow relevant international instruments on indigenous peoples’ rights. We also recommend that countries take similar measures to protect local communities, which also enjoy special internationally-recognised human rights.

(ii) Self-determination

None of the documentation under the FCPF mentions a right of self-determination enjoyed by indigenous peoples. However, international law recognises this right, which allows indigenous peoples to prioritise and exercise control over their own processes for development. This means that they should be involved and have a say in the national REDD+ process, because it will potentially affect them, as well as on the ground projects—particularly through respect for FPIC—that could affect their economic, social or cultural wellbeing in a more direct way.

We recommend that countries recognise and respect indigenous peoples’ right to self-determination during the development of national REDD+ strategy options under the FCPF. While developing Readiness, countries should assess how this right is integrated into their legal frameworks during the SESA, while the ESMF should detail a plan for implementing REDD+ under the Carbon Fund in a way that respects indigenous peoples’ right to self-determination.

(iii) Rights Associated with Culture

The FCPF recognises that forest-dependent communities and indigenous peoples rely on forests for their cultural well-being, among other things. The FCPF’s Common Approach recognises the risk that REDD+ poses to, among other things, culture. This is provided as a rationale for engaging with affected stakeholders, particularly indigenous peoples and forest-dependent communities.

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365 R-PP Template, Component 1a, p. 20.
The FCPF mostly relies on the World Bank safeguards to protect indigenous peoples’ culture, in particular its Operational Policies on Indigenous Peoples and Physical Cultural Property.\(^{367}\) However, the FCPF also provides guidance. For example, during the development of different REDD+ strategy options, countries are supposed to undertake a risk analysis that looks at, *inter alia*, socio-cultural risks associated with certain strategy activities.\(^{368}\) Ideally, this would be analysed during the REDD+ country’s SESA process, where risks are supposed to be considered along with the feasibility of avoiding or mitigating such risks. In turn, the ESMF should respond to, and give special consideration to, rights, and cultural heritage of indigenous peoples and other traditional forest-dependent communities.\(^{369}\)

We recommend that countries seriously consider potential risks and benefits to cultural property and values of forest-dependent indigenous and local communities in a participatory manner during the SESA process. Countries should then take advantage of REDD+ strategies and activities that enhance cultural values and benefits, and identify measures in their ESMF to ensure that indigenous peoples’ cultural rights are respected and protected.

(iv) Collective Land Tenure

The FCPF *Guidance on Stakeholder Engagement* recognises the need for “clarifying and ensuring [indigenous peoples’ communities] rights to land and carbon assets, including community (collective) rights, in conjunction with the broader array of indigenous peoples’ rights as defined in applicable international obligations, and introducing better access to and control over resources.”\(^{370}\) As part of the SESA diagnostic work, countries are encouraged to identify issues surrounding land tenure and resource access, and assess institutional, policy, legal, regulatory capacity to handle those issues.\(^{371}\) The *Guidance on Stakeholder Engagement* also recommends mapping indigenous peoples’ and other forest-dependent communities’ rights, including local ownership.\(^{372}\) The ESMF should then articulate an appropriate legislative and regulatory response for managing those issues.

The FCPF also provides guidance over engagement and consultation with indigenous peoples and other forest-dependent communities in the context of involuntary resettlement. In such instances, the FCPF largely relies on the World Bank’s Operational Policies on Indigenous Peoples and Involuntary Resettlement.

Under international law, indigenous peoples enjoy collective rights of ownership to their traditionally occupied lands, which should be recognised.\(^{373}\)

\(^{367}\) See our analysis of the World Bank’s safeguards, particularly as it relates to UNFCCC REDD+ Safeguard (c) (above).

\(^{368}\) R-PP Template, Component 2b, p. 36.

\(^{369}\) R-PP Template, Component 2d, p. 45.

\(^{370}\) FCPF/ UN-REDD Programme, “Joint Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities,” April 20, 2012 (revision of March 25 version), p. 5; See also, R-PP Template, Component 1c, p. 26.

\(^{371}\) R-PP Template, Component 2a, p. 33.


\(^{373}\) For more on indigenous peoples’ rights around collective land tenure, see “A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards,” ClientEarth (2013).
We recommend that as part of their SESA, countries assess their legislative, policy and regulatory framework for recognising customary and traditional tenure. Where gaps are identified, measures should be taken under countries' ESMF to ensure that those frameworks ensure respect and protection of land tenure and associate natural resource use rights of indigenous peoples and local communities.

(v) Benefit Sharing

According to the R-PP Template, while preliminary consultations are taking place stakeholders are supposed to be able to discuss potential expectations for future benefits for REDD+. However, it does not mention the importance of including indigenous peoples and local communities in this conversation. We recommend that countries include indigenous and local communities or their representatives at all stages of development and implantation of benefit sharing mechanisms, including in preliminary conversations so that they can be involved in defining benefits for REDD+.

In their SESA, the country is expected to analyse, among other things, benefits and risks of different REDD+ strategy activity options. On the other hand, benefit-sharing mechanisms are expected to be included in countries' Implementation Framework, which should be based on findings from the assessment of benefits and risks.

Aside from describing a general process for developing national benefit sharing mechanisms, and providing some guidance towards promoting connections between land tenure security and equitable benefit sharing arrangement, the FCPF relies in large part on the World Bank's OPs. In particular, the Operational Policy on Indigenous Peoples contains requirements for equitable sharing of compatible social and economic benefits. However, one of the problems identified with the World Bank safeguards is its lack of emphasis on clarifying land tenure in order for indigenous and local communities to be able to share equitably in benefits from particular projects. Furthermore, according to the Common Approach, an IPPF is only required at the stage where the ESMF and any other planning documents are supposed to be submitted. Under the Operational Policy on Indigenous Peoples, the IPPF does not require countries to provide any details on benefit sharing plans or frameworks.

In order to be able to comply with UNFCCC REDD+ Safeguard (c), we recommend that countries make a link between providing land tenure security and equitable benefit sharing arrangements in their SESA/ESMF processes. Countries should also provide as many details on benefit sharing arrangements in their IPPF.

(vi) Procedural Rights

The FCPF also recognises the right of indigenous peoples to participate prior to the design of projects or programs, and at every stage of the REDD+ process through representatives chosen by themselves in accordance with their own

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374 R-PP Template, Component 1b, p. 20.
375 Common Approach, para. 19; See also, R-PP Template, Component 2b, p. 37.
376 R-PP Template, Component 2c, p. 39.
procedures and decision-making processes, organisations and institutions.\textsuperscript{377}

The FCPF does encourage countries to take note of UNDRIP; however, the FCPF does not itself recognise UNDRIP. Instead, the FCPF relies on the World Bank’s OP 4.10, which only requires free, prior and informed ‘consultation’. This is not consistent with Free, Prior and Informed ‘Consent’ (FPIC) as it is recognised under international law, and is not consistent with international law or the UNFCCC REDD+ safeguards.\textsuperscript{378}

The FCPF’s Guidelines for Establishing Grievance and Redress Mechanisms does state that “effective grievance redress mechanisms should use an understandable and transparent process that is culturally appropriate and readily accessible to all segments of affected stakeholders.”\textsuperscript{379}

We recommend that countries keep in mind that indigenous peoples’ communities may have their own institutions and cultural practices for resolving disputes or grievances, and that these should be respected. Feedback and grievance mechanisms set up during REDD+ Readiness should respect these institutions and practices, as well as provide other adequate and accessible routes to justice.

\textsuperscript{377} R-PP Template, Component 1c, p. 26.
\textsuperscript{378} See our analysis of UNFCCC REDD+ Safeguard (d) (below) for a more in-depth analysis of the FCPF’s interpretation of FPIC.
Consistency with UNFCCC REDD+ Safeguard (d)

Summary of Findings for Safeguard (d)

While the FCPF requires participation and consultation during Readiness Preparation, it does not promote a general right to participation in environmental matters. The FCPF requires that development and implementation of the R-PP be conducted through stakeholder engagement from an ‘early stage’, but it does not require engagement at the local level at initial stages, which places indigenous and local forest communities at a disadvantage from the start of the Readiness process. The FCPF does provide guidance on developing and strengthening feedback and grievance mechanisms to deal with issues of participation. The FCPF also places importance on ensuring that consultations are undertaken in a culturally appropriate and timely manner, and in building capacity of indigenous peoples and local communities to participate. Lastly, the FCPF recognises the right of indigenous peoples to participate according to their own customs and institutions. However, the FCPF applies the World Bank’s version of free, prior and informed ‘consultation’ instead of FPIC, which is inconsistent with international standards.

1. Recognition and Implementation of Procedural Rights

Similar to access to information, the FCPF does not recognise a general right to participation in environmental matters. Nevertheless, the FCPF does emphasise the importance of consultation and participation during REDD+ Readiness Preparation and Implementation.

In deciding which countries should participate under the Readiness Fund, the PC is supposed to give priority to countries whose proposal demonstrates an inclusive approach to REDD+. Participation is also required throughout the Readiness Process, particularly in the development, implementation, reporting and evaluation of REDD+ Readiness strategy options. The Implementation Framework, for example, should address relevant questions regarding stakeholder engagement.

However, providing opportunities for affected individuals and groups to participate in the development and implementation of REDD+ strategy options is not an alternative for providing a right of meaningful participation in forest- and environmental-related decisions, for it is the right itself that can ensure inclusion. Relevant groups and individuals, especially those that play a role in sustainable forest management, need to have certainty that their voices will be heard when policies or laws are being considered that will affect them.

We encourage countries to ensure that all relevant stakeholders are able to participate in the development of REDD+ programmes and strategies through recognition of the right to participate in forest and environment-related matters.

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381 R-PP Template, Component 2c, p. 40.
2. Creating an Enabling Environment for Full and Effective Participation

The FCPF/UN-REDD Guidelines on Stakeholder Engagement provide advice on how to carry out effective consultations on REDD+ by elaborating on various topics, including: defining desired outcomes of consultation; identifying stakeholders; defining issues to consult on; defining terms of consultation; selection of consultation and outreach methods; ensuring stakeholder capacity to fully and effectively engage in consultations; conducting consultations; and analysing and disseminating results. Plans to engage stakeholders should build on lessons learned from other processes, such as the Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT) and Voluntary Partnership Agreements (VPAs). 382

(i) Identification of Relevant Stakeholders

The FCPF encourages a stakeholder analysis to be conducted ‘early on’ in order to develop a national REDD+ working group that reflects the diversity of all stakeholders. 383 Stakeholders and their concerns should be mapped and identified, incorporating gender, and potential risks and negative impacts from REDD+ activities. These should then be addressed in a Consultation and Participation Plan. 384

The FCPF recognises a wide number of potential interested stakeholders in REDD+. They are provided below (Table 2), but this list is by no means meant to be exhaustive.

<table>
<thead>
<tr>
<th>Table 2: Relevant Stakeholders under the FCPF. 385</th>
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<tr>
<td>“Those groups that have a stake/interest (social, cultural or economic)/right in the forest [and adjacent lands] and those that will be affected either negatively or positively by [proposed] REDD+ activities.” They include relevant government agencies (forests, environment, agriculture, energy, transportation, finance, planning, national, state, local, etc.); formal and informal forest users; private sector entities (loggers, ranchers, energy producers, industry, farmers, agri-business, etc.), indigenous peoples and other forest-dependent communities. Additional stakeholders may include, but are also not limited to: pastoralists and farmers that depend on forests for livelihoods; civil society (NGO’s community associations, etc.); vulnerable groups; and academia.</td>
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The R-PP Template recognises indigenous peoples, other forest dwellers and forest-dependent communities as especially relevant. Other vulnerable groups must also be heard. The R-PP Template specifically contemplates assessment of gender concerns consistent with the World Bank’s Operational Policy 4.20 on Gender and Development.

382 R-PP Template, Component 1b, p. 20.
383 Including indigenous peoples, other forest-dependent communities, women, other marginalised groups, civil society organisations, community-based organisations, indigenous peoples’ organisations, non-governmental organisations and relevant institutions. FCPF/UN-REDD Programme, “Joint Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities,” April 20, 2012 (revision of March 25 version), p. 7.
384 Component 1b, pp. 20-21; See also FCPF/UN-REDD, “Joint Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities,” April 20, 2012 (revision of March 25 version), p 7.
While the R-PP is being drafted, countries must engage in early information sharing and dialogue with ‘representative’ stakeholder groups, although community-level consultations are not necessarily required at this time. During this stage, views should be collected, and “the most critical information distributed and comments received during the outreach” should be fed into the drafting process for the R-PP.  

This means that the initial level of consultation does not require notification or initiation of dialogue with communities on the ground. While critical information in a general sense may be gathered, local information may be missed at this preliminary stage. The R-PP Template recognises the failure to consult at the local level, explaining that talking about REDD+ in the abstract at the community level with indigenous peoples and other stakeholders can be very difficult, and may start premature discussions about payments. However, this rationale could also be used to emphasise the need to inform potentially affected people at this stage, in an appropriate manner, rather than later in the process. Current FCPF guidance prevents potentially affected people from being informed of REDD+ early on, inhibiting their ability to fully and effectively participate later on in the process.

We recommend that countries think about participation at the earliest point possible. If feasible, we encourage countries to begin sharing appropriate information and promoting awareness of REDD+ at local levels parallel with discussions that are being initiated at the national level.

In what is evidently lacking from the World Bank’s own safeguards, the FCPF recognises the need to completely avoid indigenous peoples that have been living in voluntary isolation. In order to do this, the FCPF recommends the communities be identified in consultation with relevant entities at all appropriate levels, in consultation with relevant entities.

While the above is a good policy approach on behalf of the FCPF, there is no way to ensure accountability with this requirement, especially at the level of the World Bank. The World Bank’s Operational Policies do not contain any requirement preventing contact with Indigenous Tribes living in voluntary isolation. Furthermore, the FCPF’s policy could go further by recommending measures to ensure that these communities remain undisturbed.

We recommend that while conducting their SESA countries identify, assess risks to voluntarily isolated communities that have been identified through stakeholder mapping, and analyse their current legal and regulatory framework for ensuring these groups are not disturbed. If appropriate, countries should articulate further measures in their ESMF to ensure that these communities can reside in peace and that their rights are respected.

(ii) Providing Access To Information

As mentioned above, the information sharing and early dialogue stage is designed for “awareness-raising and

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386 R-PP Template, Component 1b, p. 22.
387 R-PP Template, Component 1b, p. 20.
388 R-PP Template, Component 1c, p. 27.
information sharing and dialogue with representative groups of stakeholders," in culturally appropriate formats and manner, including language, in order to share “basic REDD+ concepts and the various components of the R-PP to the relevant stakeholders.” However, as noted above, information sharing and dialogue is not required to reach all stakeholders at the local level, implying that information does not need to be shared with these groups at this stage.

A national-level workshop during this stage is supposed to result in the development of a nation-wide information sharing campaign demonstrating how the REDD+ country is going to raise awareness and disseminate information on REDD+ to different stakeholders during R-PP implementation. The campaign should identify, *inter alia*, how the REDD+ country will prepare relevant REDD+ information far enough ahead of time for stakeholders “to digest the information and organise themselves for meaningful discussions,” and prepare a communication and outreach strategy. The FCPF/UN-REDD *Guidelines on Stakeholder Engagement* provides a non-exhaustive list of issues for possible consultation that should be forwarded to different stakeholders.

In principle, consultations are premised on transparency and timely access to information in a culturally appropriate manner. This is especially so during the SESA process and the development of the REDD+ country’s ESMF, which are subject to consultation requirements. The SESA is intended to allow for participation in identifying and prioritising key issues, assessing gaps in policies and institutions for managing different priorities, and in the disclosure of the REDD+ country’s progress on Readiness preparation. During its preparation, the ESMF should be publicly disclosed so that stakeholders may be consulted and kept informed on environmental and social issues that affect them, as well as policies and legal reforms. This applies to initial and advanced draft versions.

Prior to disclosure, the ESMF must contain:

> “1) relevant information for stakeholders regarding risks and potential impacts that could affect them as a result of the implementation of the emerging REDD+ strategy; and 2) useful descriptions of principles to be adopted and procedures to be followed by the lead agencies to comply with the relevant safeguards, based on an assessment of how the DP in the REDD+ country has achieved substantial equivalence to the material elements of the applicable World Bank safeguard policies.”

Results of consultations, including the outcome and how different views were gathered and taken into account, should be “publicly disclosed in a culturally appropriate form, including in local languages.” If views have not been taken into account, the results should state why.

FCPF *Guidelines on Disclosure of Information* outline disclosure requirements for DPs regarding FCPF-related documents under the Readiness Fund. However, the Guidance mostly requires disclosure through paper or electronic

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389 R-PP Template, Component 1b, p. 20.
391 R-PP Template, Component 1c, p. 26.
395 R-PP Template, p. 6, and Component 1c, p. 27.
means to relevant stakeholders. As most local forest and Indigenous Communities will find it difficult to access documents through these means, they may experience difficulties in accessing this information.

**Countries should outline measures to ensure that FCPF-related documents are accessible to potentially affected groups and individuals.**

The R-PP itself should be disseminated through culturally appropriate means, including in local language and through mediums that can be accessible for different groups. \(^{396}\) Furthermore, special arrangements should be made to overcome cultural barriers in communicating the Consultation and Participation Plan. \(^{397}\) Procedures for access to information and participation must also be disclosed, and records of consultations should be disclosed in a similar manner. \(^{398}\)

However, it is uncertain whether there is a requirement to disclose other information regarding specific components of Readiness in this same manner. Therefore, there may be gaps in information that various stakeholder groups possess, preventing them from fully understanding particular strategy options.

**Countries should be sensitive towards communicating information effectively so that all affected and interested individuals and groups can access this information, and use it to participate fully and effectively.**

(iii) Implementing Participatory Mechanisms

In order to ensure participation throughout implementation of the R-PP, countries must prepare a “Consultation and Participation Plan” through consultation and stakeholder participation. \(^{399}\) The plan should include procedures for disclosure of information on environmental and social issues, and how stakeholders should participate. In this way, the SESA and the development of the ESMF are envisioned to act as a component of the Consultation and Participation Plan. In addition to including procedures and measures for participation, the Consultation and Participation Plan should facilitate the establishment of an institutional structure that can “ensure meaningful participation in decision-making” during and after the Readiness phase. \(^{400}\)

During R-PP implementation, affected stakeholders must be able to participate in a manner consistent with a Consultation and Participation Plan drafted by the REDD+ country. Local affected communities and groups, particularly indigenous peoples, and other forest dwellers, NGOs, various government agencies or institutes and the private sector should be consulted on system design and operation of specific components of REDD+ design, such as with the national forest monitoring system (NFMS) and Safeguards Information Systems (SIS) in order to build accountability.

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\(^{395}\) R-PP Template, Component 1c, pp. 25 – 29.
\(^{397}\) R-PP Template, Component 1c, pp. 25 – 26.
\(^{398}\) R-PP Template, Component 1c, p. 28.
\(^{399}\) R-PP Template, Component 1c, pp. 25-26.
\(^{400}\) R-PP Template, Component 1c, p. 25.
Monitoring and review should also be participative. The R-PP template, while being non-prescriptive, does mention the need to make special arrangements for cultural and language barriers.

The R-Package is also intended to be a multi-stakeholder participatory process. Specifically, the ESMF, which is presented with the R-Package, should also contain procedures for on-going consultation, as well as a mechanism for monitoring participation.

We recommend that countries ensure that there is a mechanism in place to ensure participation of all relevant stakeholders from the start of Readiness preparation through participation in the Carbon Fund, and that it has capacity to allow participation in all aspects of REDD+, including planning, implementation, and monitoring and evaluation.

(iv) Conflict Resolution Mechanisms

As a guiding principle for effective stakeholder participation, “impartial, accessible and fair mechanisms for grievance, conflict resolution and redress must be established and accessible.” As part of their national REDD+ management framework, countries must establish a feedback and grievance mechanism that can respond to complaints that arise during consultation, development of REDD+ strategy options, and monitoring and evaluation. As a component of the REDD+ management framework, it should be subject to public dialogue and consultation with stakeholders, although it is not specified which stakeholders should be involved in the process. The R-PP template also identifies the need to incorporate existing feedback and grievance mechanisms to ensure the handling of disagreements between stakeholders during discussions.

The Draft Toolbox for Addressing Grievances and Disputes During REDD+ Readiness Preparation explicitly acknowledges that during the Readiness phase, complaints that arise are likely to relate to adequacy of participation, prior disclosure and lack of appropriate information.

We recommend that countries develop or improve feedback and grievance mechanism so that they are able to hear disputes related to participatory matters, such as the inability to access appropriate information or participate. This could be done either through existing formal judicial or administrative mechanisms, or through separate dispute resolution processes particular to REDD+ or participation issues.
3. Effective Participation of Indigenous Peoples and Local Communities

(i) Creating An Enabling Environment

The FCPF’s Charter requires that its operations take into account “the need for effective participation of forest-dependent indigenous peoples and forest dwellers in decisions that may affect them.”407 The FCPF recognises the right of indigenous peoples to participate through representatives chosen by themselves in accordance with their own procedures and decision-making institutions.408

As part of its Consultation Plan, the REDD+ country must detail how it is going to engage and consult with indigenous peoples and local communities.409 The Guidelines on Stakeholder Engagement are intended to assist countries in developing and implementing this plan. The Guidelines recommend mapping indigenous peoples’ and other forest-dependent communities’ organisations, authorities and institutions, and to consider the complex relationships between different Indigenous groups, and that marginalisation can also take place within groups.410 Once relevant groups or communities have been identified, the Guidelines recommend following a step-wise approach before consultations actually begin, including:

- Identifying priority issues for consultation;
- Defining the terms of the consultation such as timing, the agenda for defining outcomes of the consultation, representation, capacity building, and transparency of outcomes;
- Selection of methods for consultation an outreach; and
- Ensuring capacity for stakeholders to effectively engage in consultations.411

The Guidelines recommend training and capacity building to help indigenous communities to be able to fully engage in consultations. Assessments should also be conducted to ensure that capacity meets a sufficient standard for effective consultation. If capacity is not sufficient, additional information should be provided prior to the consultation.

However, the guidance does not articulate any requirement for demonstration of sufficient capacity of communities to fully and effectively engage before consultations begin. However, participants cannot effectively participate without sufficient capacity.

We recommend that countries take consultations with indigenous peoples seriously, and ensure that they have sufficient capacity to engage in consultations in a culturally appropriate way before actual consultations begin.

407 FCPF Charter, Chapter II, Article 3, Section 3.1(d).
408 R-PP Template, Component 1c, p. 26.
409 R-PP Template, Component 1c, p. 28.
411 FCPF/UN-REDD, “Joint Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities,” April 20, 2012 (revision of March 25 version), pp. 6-10.
Free, Prior and Informed Consent

As part of its Common Approach, the FCPF relies on the World Bank safeguards to govern consultations with indigenous peoples and local communities, which it maintains is consistent with the UNFCCC REDD+ safeguards. In particular, the FCPF utilises the World Bank’s Operational Policy on Indigenous Peoples, which requires free and prior ‘consultation’ resulting in broad community support. The FCPF’s clarifies that it encourages countries “to take note of the adoption of UNDRIP, and that it expects parties to ILO Convention No. 169 to comply with their obligations under that convention. The FCPF concludes that this approach equates to ‘substantial equivalence’ with the UNFCCC REDD+ safeguards.

We must highlight that the Operational Policy on Indigenous Peoples is not consistent UNFCCC REDD+ Safeguard (d) because its use of the term ‘consultation’ is not equivalent to ‘consent’ recognized under UNFCCC REDD+ Safeguard (d). While consultation is one of a number of methods for carrying out effective participation, it is more about a two-way exchange of information and views. While in theory consultation can lead to consent, it does not have to result in such a conclusion. Instead, more is required to ensure consent has been reached, which is an essential element of FPIC.

Furthermore, the phrase ‘broad community support’ is vague, and arguably does not equate to a requirement for consent from indigenous peoples’ communities. Without stating clear and objective criteria as to what constitutes ‘broad’, the term could be used to describe a significant minority in acceptance of a particular option, allowing the minority to outweigh the majority. Furthermore, ‘support’ does not have to equate to consent. For instance, support could be implied by passive or affirmative action. However, consent cannot be passive, and requires some affirmative indication. Without more objective criteria, the lack of resistance could be seen as consent, when in fact it is not.

The FCPF and World Bank positions contrasts with the UN-REDD Programme’s explicit statement that countries must “adhere to standards outlined in key relevant international instruments, and to uphold the principle of free, prior and informed consent (FPIC) as stated in [UNDRIP].” For reasons that we articulate in our analysis of the World Bank’s safeguards and FPIC (above), the FCPF’s reliance on the Operational Policy on Indigenous Peoples is not consistent with UNFCCC REDD+ Safeguard (d).

We recommend that countries use the international standard for consent and FPIC rather than the World Bank’s FPI-Consultation standard.

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413 R-PP Template, Component 1c, p. 27; See also FCPF/UN-REDD, “Joint Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities,” April 20, 2012 (revision of March 25 version), p. 3.
414 FCPF/UN-REDD, “Joint Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities,” April 20, 2012 (revision of March 25 version), p. 3.
415 For an in-depth analysis on the scope and content of full and effective participation, please see “A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards,” ClientEarth (2013).
416 FCPF/UN-REDD, “Joint Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities,” April 20, 2012 (revision of March 25 version), p.2. The document goes on to name a number of specific international instruments that countries are expected to comply with, including UNDRIP, ILO Convention No. 169, the Convention on Biological Diversity, and a number of recommendations and General Assembly resolutions.
### Consistency with UNFCCC REDD+ Safeguard (e)

#### Summary of Findings for Safeguard (e)

The SESA and the ESMF provide a basis for incorporating consideration for issues such as livelihoods and biodiversity. However, there is a major flaw in both the World Bank’s and the FCPF’s safeguards, in that neither prohibit REDD+ actions from being used to convert natural forests. Furthermore, the FCPF overlooks the need to identify and map important components of biodiversity, and it does not place sufficient emphasis on conservation research or awareness-raising for conservation. Lastly, other benefits, including social and environmental, need to be given a more prominent role within the goals and objectives of the FCPF, to be defined with the relevant stakeholders that could be impacted by REDD+.

<table>
<thead>
<tr>
<th>1. No Conversion of Natural Forests</th>
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<td>(i) Defining Natural Forests</td>
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None of the FCPF documentation reviewed provides a definition of forests or natural forests. Nevertheless, the World Bank’s Operational Policies on Forests and Natural Habitats are relevant for defining natural forests. Because the World Bank’s definition is ambiguous, further guidance under the FCPF would be helpful.

Countries should make these determinations based on sound science and refrain from setting a standard for defining natural forests. Such work could be conducted using the Food and Agriculture Organization’s (FAO’s) 2010 forest resources assessment.

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<th>(ii) Prohibiting the Conversion of Natural Forests</th>
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Neither the R-PP Template nor its accompanying guidance mentions that REDD+ activities are prohibited from converting natural forests. Although the World Bank’s Operational Policies on Forests and Natural Habitats also apply to the FCPF, these standards do not prohibit the World Bank from funding conversion of natural habitats.\(^{417}\)

Even though projects are not yet being implemented on the ground, countries are considering various REDD+ strategies that they can implement in the future. Failure to understand that strategies that come at the expense of natural forests and biodiversity are prohibited by the UNFCCC REDD+ safeguards may result in countries embarking on the wrong strategies. Therefore, it is important to point out that REDD+ cannot be used for the conversion of natural forest under UNFCCC REDD+ Safeguard (e).

In line with UNFCCC REDD+ Safeguard (e), we recommend that countries not implement REDD+ activities that would result in conversion of natural forests. Instead, strategy options should try to complement and synergise with...

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\(^{417}\) See our UNFCCC REDD+ Safeguard (e) analysis in the Section on the World Bank (above).
biodiversity objectives and conservation of natural forests and habitats.

2. Protection and Conservation of Natural Forests and Ecosystem Services

(i) Identifying Natural Forests and Biodiversity

The FCPF does not mention anything about the importance of, or the need to identify and map natural forests or important components of biodiversity. However, it is important to point out that one of the first steps in protecting natural forests and diverse habitats is through official identification and mapping. Once this step is completed, more can be learned about the area, and appropriate protections can be established.

We recommend that countries include identification and mapping of important natural forests and biodiversity into Readiness strategies in order to ensure that these important areas are protected and not forgotten during planning for REDD+.

(ii) Implementing Measures to Protect Biodiversity

The ESMF must give special consideration to biodiversity.\textsuperscript{418} Countries are also expected to develop a Safeguards Information System (SIS) capable of collecting quantitative and qualitative data on conservation of biodiversity and other ecosystem services.\textsuperscript{419} While developing REDD+ strategy options, countries must identify and consider synergies and conflicts between low carbon development strategies and other objectives, such as biodiversity conservation. However, the FCPF does not prohibit countries from developing strategies at the expense of conversion of natural forests. This links above to the fact that neither the FCPF nor the World Bank prohibits the conversion of natural forest, even though the UNFCCC REDD+ safeguards emphasise that REDD+ cannot be used for conversion of natural forest.

We recommend that countries use the SESA/ESMF process to integrate biodiversity-related impacts and risks, and identify protective measures in their Implementation Framework to ensure that REDD+ activities promote biodiversity conservation.

(iii) Supporting Conservation Research and Awareness-raising

None of the FCPF safeguards documents relate explicitly to support for conservation research. Nevertheless, conducting environmental studies are inherent to the SESA process, which is a requirement during countries’ preparation of their REDD+ Strategy options. As part of this process, countries are supposed to identify key drivers of

\textsuperscript{418} R-PP Template, Component 2d, p. 45.
\textsuperscript{419} R-PP Template, Component 4b, p. 61.
deforestation and/or forest degradation, conservation and sustainable forest management activities.\textsuperscript{420} Furthermore, as part of their development of their National Forest Monitoring System (NFMS), countries are supposed to include early ideas on non-carbon priorities such as conservation of biodiversity, such as possible quantitative or qualitative variables.\textsuperscript{421} Although not expanded upon, this would require its own set of studies and research. In order to be able to take advantage of non-carbon benefits available from REDD+, we recommend that countries focus attention and resources on conservation research efforts that will contribute towards building capacity to ensure such benefits can be realised.

The \textit{Guidelines on Stakeholder Engagement} recommend consulting on specific issues, including the current status of national forests, main causes and drivers of deforestation and forest degradation, and design of monitoring systems to keep track of forests and forest emissions, among others.\textsuperscript{422} It also recommends providing information, education and communication campaigns to raise public awareness over REDD+ objectives, risks, opportunities, and potential roles that people can play. Biodiversity is not explicitly mentioned. Nevertheless, biodiversity conservation has a large role to play in developing REDD+ strategies and activities.

Thus, we would recommend for countries to ensure that during the early information and dialogue process for REDD+ preparedness they are engaging in awareness campaigns to enhance public knowledge around the importance of preserving biodiversity and forests. It will be especially important to reach particular forest-dependent stakeholders with this information so that they are aware of the unique role they can play, and so they can become better informed with time as REDD+ processes move forward.

\textbf{(iv) Integration of Biodiversity in Cross-Sectoral Policies}

The R-PP Template recommends that countries establish coherence between REDD+ work being conducted, and work being conducted in other initiatives, including conservation and development projects.\textsuperscript{423} It also asks countries to assess synergies or conflicts between identified REDD+ strategy options and other priorities including, inter alia, biodiversity.\textsuperscript{424}

The above recommendations are helpful for assessing trade-offs between biodiversity conservation and REDD+ objectives as part of the SESA process. However, they do not guarantee that biodiversity concerns will be given equal or overriding consideration to GHG emission reduction objectives. Moreover, it does not guarantee that biodiversity objectives will be integrated across sectors more broadly, which will be important for holistic decision-making processes in general.

\textsuperscript{420} R-PP Template, Component 2a, p. 32.
\textsuperscript{421} R-PP Template, Component 4a, p. 56.
\textsuperscript{422} FCPF/UN-REDD, “Joint Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on Indigenous Peoples and Other Forest-Dependent Communities,” April 20, 2012 (revision of March 25 version), pp 7-8.
\textsuperscript{423} R-PP Template, p. 9.
\textsuperscript{424} R-PP Template, Component 2b, p. 36.
We recommend that in addition to integrating REDD+ process with initiatives already focused on biodiversity conservation that countries take measures to ensure that biodiversity objectives are taken into account in REDD+ processes, and provided appropriate consideration in relevant decision-making processes.

(v) Enhancement of Other Benefits

One of the objectives of the FCPF is “to test ways to sustain or enhance livelihoods of local communities and to conserve biodiversity.” Furthermore, among the considerations included in the FCPF’s criteria for selecting countries is the country’s “focus on innovative and/or advanced concepts of monitoring, reporting and remote sensing ... for ... biodiversity protection and social benefits.” REDD+ strategies should identify not only synergies but also conflicts with development priorities and goals, for example enhancing carbon stocks at the expense of rural incomes or biodiversity. The ESMF should also give special consideration to livelihoods, and the SIS should be capable of collecting quantitative and qualitative data on rural livelihoods enhancement.

As part of their development of their National Forest Monitoring System (NFMS), countries are supposed to include early ideas on non-carbon priorities such as conservation of biodiversity, such as possible quantitative or qualitative variables. The R-PP Template also promotes linkages between NFMS and SIS to monitor non-carbon aspects of REDD+.

We recommend using NFMS and SIS as tools to track non-carbon benefits, including social, environmental and governance benefits. In particular, a strong NFMS and SIS together would allow countries to promote and track livelihood improvements, as well as natural forest cover and ecosystem resilience.

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425 FCPF Charter, Chapter II, Article 2, Section 2.1(c).
427 R-PP Template, Component 2b, p. 36.
428 R-PP Template, Component 4b, p. 61.
429 R-PP Template, Component 4a, p. 56.
Consistency with UNFCCC REDD+ Safeguards (f) & (g)

Summary of Findings for Safeguards (f) and (g)

Countries are required to establish Forest Reference Emissions Levels/Reference Levels (RELs/RLs) and a National Forest Monitoring System (NFMS). Some technical components of REDD+ such as NFMS promote a good framework for integrating social and environmental considerations, for example through linking NFMS and Safeguards Information Systems (SIS). However, there is still insufficient mention of the supportive role that enhanced forest governance and respect and adherence to UNFCCC REDD+ Safeguards (a) through (e) can play in ensuring that reversals and displacements do not occur. There is also very little guidance to countries on how to avoid or minimise risks of leakage or displacement. Furthermore, while international leakage is mentioned as an issue, there is no requirement to take measures to ensure that transboundary leakage does not occur.

1. Monitoring and Assessment

Countries are expected to develop a work plan on how they will establish their REL/RL for their R-PP. During implementation of their R-PP, the REDD+ country develops the REL/RL. Countries’ ER-PINs will need to establish how ER Programs will be measured based off established RELs/RLs, according to guidance established in the Methodological Framework of the Carbon Fund. In doing so, countries are asked to consider their national circumstances, including socio-economic, greenhouse gas (GHG) emissions and mitigation policies, and areas of forested lands over which they do not have control or there is conflict. In addition, countries are encouraged to develop a work plan on producing future projections of forest cover change and GHG emissions.

Countries should also design a national forest monitoring system (NFMS) that can measure and monitor GHG removals from REDD+ activities. Significantly, it is meant to complement the REDD+ country’s Safeguards Information System (SIS), and there is a potential to link up the two. Countries must develop a work plan to bring the NFMS and SIS into existence, and develop a methodological approach for monitoring, and to integrate or make consistent with sub-national systems. Countries are also asked to use the NFMS to measure non-carbon aspects, and to define specific priorities for monitoring such information. For instances, these could include:

“Monitoring key quantitative or qualitative variables representing rural livelihoods, conservation of biodiversity, key governance factors directly pertinent to REDD+ implementation in the county, and impacts of the REDD+ strategy on the forest sector, and how safeguards are being addressed.”

ER-PINs will also be required to explain how monitoring of carbon and non-carbon aspects, “as feasible,” will be conducted, including through community monitoring.

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430 R-PP Template, Component 3, p. 49.
432 R-PP Template, Component 3, p. 50.
433 R-PP Template, Component 3, p. 49.
434 R-PP Template, Component 4a, p. 61.
435 R-PP Template, Component 4a, p. 57.
436 R-PP Template, Component 4a, p. 61.
We recommend that countries establish RELs/RELs based on conservative estimates that ensure integrity of REDD+, and that GHG emissions reductions are actually realised. We also recommend that countries take advantage of the potential synergies between NFMS and SIS, where they exist.

2. Measures To Avoid Reversals and Displacements

(i) General Measures

The R-PP Template only briefly discusses measures for addressing risks of reversals or displacements. It is very non-descriptive, recommending only that measures should be considered in the development of the REDD+ country’s REDD+ Strategy.\(^{438}\) The R-PP Template asks that when assessing different REDD+ Strategy options, countries conduct risk analysis on each of the options, looking at, *inter alia*, environmental, socio-cultural, and broader strategy risks, such as the risk of leakage.\(^{439}\) The R-PP Template identifies this stage of the REDD Strategy development process as the best time to identify, study and consider actions to address reversals and displacement.

We recommend that countries address issues related to permanence and leakage as early as possible. The earlier these issues are addressed, the more national governments and stakeholders involved can consider the viability of particular REDD+ strategy options.

More emphasis could also be provided by the FCPF regarding integration of environmental considerations in order to support countries’ NFMS. For example, there is insufficient mention of the supportive role that enhanced forest governance and respect and adherence to UNFCCC REDD+ Safeguards (a) through (e) can play in ensuring that reversals and displacements do not occur.

Countries should also be aware that while technical aspects of monitoring and evaluating emissions are important in meeting UNFCCC REDD+ Safeguards (f) and (g), effective implementation of UNFCCC REDD+ Safeguards (a) through (e) can help reduce risks of leakage and non-permanence.

(ii) Measures To Tackle Reversals

During the SESA, countries are supposed to conduct diagnostic and assessment activities on a number of different issues related to environment. In conducting this assessment, and in assessing individual REDD+ activities or projects, it would be good to analyse the suitability of certain locations, based on their state of degradation, capacity to

\(^{438}\) R-PP Template, Component 2b, p. 37.

\(^{439}\) R-PP Template, Component 2b, p. 36.
regenerate, and their resilience to environmental changes, among other things. None of the FCPF documentation acknowledges the importance of these feasibility studies. However, they are integral to choosing pragmatic interventions that can result in lasting emission reductions from REDD+.

We recommend countries to factor in climate change and other relevant considerations such as ecosystem resiliency and the state of degradation into environmental assessments conducted as required by the FCPF, to better understand and plan for the event of reversals.

In their ER-PIN countries are also supposed to identify potential sources of reversals, and have measures in place to address major risks of anthropogenic reversals for the ER Program area, to the extent feasible. However, guidance in this area is brief, including only “creation of buffer reserves, use of insurance, effective forest management practices, or other approaches.”

Issues particularly linked to sustainable forest management and reversals are participation and benefit sharing arrangements. If countries ensure local communities and indigenous peoples are included in participatory forest management arrangements, and guarantee that benefits are shared with all individuals and groups affected by REDD+, emission reductions and other benefits are more likely to be lasting and sustainable. Relatedly, in order to equitably share in benefits customary and traditional land tenure rights should be secure. Furthermore, indigenous peoples and forest-dependent communities need to be empowered at the local level in order to be able to be effective stewards.

Significantly, the R-PP Template recognises the value in using the NFMS as a tool for establishing accountability and trust with local affected groups, particularly indigenous peoples, and other forest dwellers and stakeholders. In order to accomplish this, they should be consulted on system design and operation of the NFMS. This is supported by the World Bank safeguards, which places importance on participatory community approaches to forest management and conservation.

We recommend that countries prioritise issues of benefit sharing, clarity around land tenure, and participatory forest management issues as they assess risks and opportunities for REDD+, and as they plan REDD+ activities. In addition, we recommend that countries ensure that from the earliest stage groups and communities potentially affected by REDD+ are aware of the role they have to play, particularly through community monitoring. Resources should be dedicated towards enhancing capacity and inclusiveness in the process. This will help to ensure that communities can have sustained alternative livelihoods.

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442 R-PP Template, Component 4a, p. 55.
(iii) Measures to Tackle Displacement

Leakage is an issue that is particularly tied to social impacts. In countries’ work plans for the NFMS they must indicate “how they propose to conduct analytic or other activities to determine how to address displacement in their [NFMS].”

When beginning to develop ER Programs, countries are asked to identify potential sources of domestic sources of displacement “by assessing all the drivers of land-use change relevant to the ER Program.” After identification, countries are expected to come up with a list of measures to minimise or mitigate these risks. Again, little guidance is given, other than accounting and enhanced law enforcement capacity.

As with reversals, the FCPF does not recognise the value of effective implementation of forest governance arrangements and respect for UNFCCC REDD+ Safeguards in reducing the risk of displacement. In particular, respecting the rights of indigenous peoples and local communities, ensuring participation during all stages of the development and implementation of REDD+ strategies, and ensuring that equitable and accessible benefit sharing arrangements are in place could keep certain practices from moving from one area to another as a result of REDD+.

We recommend that countries try to see the UNFCCC REDD+ Safeguards as a holistic approach to addressing risks of displacement of emissions in REDD+. If UNFCCC REDD+ Safeguards (a) through (e) are not addressed or respected (for instance, if REDD+ activities are not inclusive or do not follow FPIC), the risk of leakage is likely to be greater.

3. International Cooperation

The FCPF does not recognise the role that international cooperation can play in minimising the risk of leakage or reversals. However, a number of the World Bank’s OPs are designed to prevent negative transboundary environmental and social impacts. In particular, in conducting their EA, borrower countries are supposed to assess impacts within the area of influence, including transboundary impacts. In their ER-PIN, countries are expected to assess the potential for international displacement, although under current recommendations from the Working Group on the Methodological and Pricing Approach for the Carbon Fund, there should only a requirement to develop measures to address domestic displacement.

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443 R-PP Template, Component 4a, p. 57.
445 Ibid.
447 World Bank, OP 4.01 – Environment Assessment, paras. 2 and 3.
Particularly for countries that share forests across borders with other countries, we recommend that efforts should be undertaken in a cooperative manner to ensure that strategy options do not result in negative transboundary impacts. This is particularly important as transboundary displacement emissions could potentially be considered as transboundary environmental harm, which is prohibited under customary international law.
Summary of Recommendations for Ensuring Consistency between FCPF and UNFCCC REDD+ Safeguards

UNFCCC REDD+ Safeguard (a)

1. During formulation of national REDD+ programmes under the FCPF, countries should provide information on their national forest programmes through their SESA. Countries should also ensure that measures are incorporated into their ESMF and ER Programs to ensure consistency with national forest programmes during implementation of REDD+ pilot projects under the Carbon Fund.

2. Countries should go beyond the FCPF’s reliance on the World Bank safeguards, which do not require adherence to applicable international human rights and indigenous peoples’ rights obligations. For compliance with UNFCCC REDD+ Safeguard (a), countries need to incorporate and ensure compliance with all relevant international obligations throughout their participation under the Readiness Fund and the Carbon Fund.

UNFCCC REDD+ Safeguard (b)

1. Countries need to ensure that all affected and interested individuals and groups, including civil society organizations have a right of access to information on REDD+. Access should be ensured for all relevant information on the FCPF, including during development of Readiness planning, implementation, and monitoring and assessment of pilot projects under the Carbon Fund.

2. While a national REDD+ working group can serve as an institutional structure for promoting transparency and disseminating relevant information on REDD+, relevant agencies and institutions should be established or strengthened to ensure that relevant members of the public have access to information on environmental matters, especially those that impact forests.

3. Public institutions should be designed with capacity to promote awareness over the right of access to information. Information should also be made available, accessible and understandable with consideration for different cultures, languages and abilities.

4. Public authorities should limit exceptions to disclosure of information on REDD+, particularly under the FCPF, to narrow and reasoned circumstances. There should also be a presumption for maximum disclosure, especially regarding information pertaining to social and environmental matters. Countries’ feedback and grievance mechanisms should be able to handle requests for access to information, and provide for an equitable and timely appeals process for denials. Countries should also provide for different legal avenues for individuals to challenge denials in order to ensure accountability over transparency.

5. Countries should use their SESA process in order to assess current legislation and regulations on forests, and identify gaps where improvements could be made. The ESMF should then detail how impacts will be dealt with, and how laws and regulations can be enhanced. Countries should be committed to implementing these changes to their legal frameworks.

6. Frameworks for legal recognition and respect for traditional, customary and conflicting land tenure rights should be assessed as part of the SESA process. Furthermore, in the Implementation Framework, countries
should develop a plan on how to clarify such rights. Such a process should be begun before activities projects are planned and undertaken as part of ER programmes under the Carbon Fund.

7. Countries should assess potential benefits from REDD+ in a participatory and inclusive manner with affected communities, ideally during the SESA analysis, to the extent possible. Once benefits are identified, within their Implementation Framework countries should provide for a mechanism that provides clear and simple eligibility criteria and procedures governing participation and sharing of benefits.

8. Countries should be aware of the need to take financial needs into consideration in developing strategies for assessment and improvement of sustainable forest governance frameworks by better emphasising the need for financial resources in this area.

9. Countries should take effective steps to ensure the public is afforded a right to participate in matters that affect the environment. This should be practiced in consultation and engagement with stakeholders during REDD+ Readiness, and included in implementation, monitoring and evaluation frameworks in the long-term.

10. Countries should ensure that an effective grievance and redress mechanism is in place to address issues that rise during the development of national REDD+ strategies, implementation, and monitoring and evaluation. This mechanism should also be anchored in a right to access justice for matters related to the environment.

11. Countries should use the Readiness preparation process to undertake assessments of opportunities for enhancement of cross-sectoral coordination and cooperation between forest and other sectors. Countries should also fully integrate social considerations into their SESAs by ensuring that human rights impacts, and compliance with international standards, are covered.

UNFCCC REDD+ Safeguard (c)

1. Countries should apply a flexible policy of legal recognition of indigenous peoples. Countries should also be aware that local communities may also constitute indigenous peoples, and should take appropriate steps to recognize them and ensure that their rights are respected.

2. Countries should identify and protect indigenous and community knowledge that might be affected by REDD+. This should be done through the SESA process, and measures identified and implemented through the ESMF.

3. FCPF participant countries should go beyond the World Bank’s Operational Policy on Indigenous Peoples and ensure that they respect and protect applicable internationally-recognised indigenous rights and human rights, including the right to be free from discrimination in enjoyment of their fundamental human rights, the right to self-determination, and cultural rights. Relevant legal frameworks should be assessed during the SESA process, and measures implemented in response.

4. Countries need to undertake measures to ensure that they completely avoid indigenous peoples living in voluntary isolation.

5. To ensure that indigenous peoples and local communities enjoy equal, individual and collective rights protections—including traditional and customary—countries should ensure that these groups have proper access to...
effective grievance redress mechanisms. Such mechanisms should comport with their customary traditions, culture, language and institution. Such mechanisms should be available during preparation of Readiness, implementation, and monitoring and assessment.

UNFCCC REDD+ Safeguard (d)

1. In order to ensure full and effective participation throughout the development of Readiness, implementation and monitoring assessment phases of the FCPF, countries should recognize participation in environmental matters, and a right of access to information.

2. Consultation plans should include enhancement of institutional capacity to ensure the ability of interested and affected individuals and groups to participate in decision-making over development and implementation of REDD+. Institution should be capable of coordinating activities such as the identification of relevant stakeholders (including indigenous peoples living in voluntary isolation), dissemination of relevant information in a timely, culturally appropriate manner, translation, and promoting awareness.

3. Countries need to ensure that relevant institutions mechanisms have capacity to provide feedback, and to address complaints and grievances that arise during the participatory process. If in their SESA they determine that no proper mechanism exists, they should take measures to ensure that such a mechanism is established.

4. Countries need to ensure that in addition to identifying and engaging with indigenous peoples and local communities from an early stage prior to beginning REDD+ activities, these communities and groups have the requisite capacity to effectively consult and engage in an understanding way, in line with their own cultural and institutional processes.

5. Countries should ensure that where applicable, they adhere to international standards of participation, including Free, Prior and Informed Consent (FPIC) for matters that impact indigenous peoples, including development of REDD+ Readiness, implementation and monitoring and assessment.

UNFCCC REDD+ Safeguard (e)

1. In assessing legal and policy frameworks during the SESA process, countries need to ensure that they have a legal framework that prohibits REDD+ activities that would result in conversion of natural forests. Such considerations also need to be included in environmental assessments for individual projects, and based on sound scientific information.

2. Countries should include identification and mapping of important natural forests and habitats into their Readiness strategies so that they can be prioritized for protection and conservation during REDD+.

3. Countries should focus attention and resources on conservation research efforts that will contribute towards building capacity to ensure such benefits can be realised. Countries also need to ensure that during the early information and dialogue process for REDD+ preparedness they are engaging in awareness campaigns to enhance public knowledge around the importance of preserving biodiversity and forests, particularly with forest-dependent stakeholders.
4. In developing REDD+ Readiness strategies under the FCPF, countries should assess and identify potential synergies and conflicts with other goals that can result in or enhance other benefits, such as livelihoods or ecosystem services.

UNFCCC REDD+ Safeguards (f) and (g)

1. Forest Reference Emission Levels/Reference Levels (RELS/RLs) should be based on conservative estimates that ensure integrity of REDD+, and that GHG emissions reductions are actually realised.

2. Countries should take advantage of the potential synergies between NFMS and SIS, where they exist, in order to integrate relevant reporting aspects of GHG emission reductions with safeguards performance.

3. Countries should address issues related to permanence and leakage as early as possible. The earlier these issues are addressed, the more national governments and stakeholders involved can consider the viability of particular REDD+ strategy options.

4. While technical aspects of monitoring and evaluating emissions are important in meeting UNFCCC REDD+ Safeguards (f) and (g), countries should good faith efforts to implement UNFCCC REDD+ Safeguards (a) through (e) in order to reduce risks of leakage and non-permanence.

5. Countries to factor in climate change and other relevant considerations such as ecosystem resiliency and the state of degradation into environmental assessments conducted as required by the FCPF, to better understand and plan for the event of reversals.

6. In their SESA and ESMF, countries should identify and manage potential risks for transboundary leakage. Countries should also identify and undertake measures to promote international cooperation and collaboration to ensure that transboundary leakage does not occur.
Annex III: Analysis of the Forest Investment Programme Safeguards

Background Information

The FIP is a targeted program of the Strategic Climate Fund (SCF), which is one of two funds within the framework of the Climate Investment Funds (CIF). The Trustee of the SCF, and consequently of the FIP, is the World Bank through the International Bank for Reconstruction and Development (IBRD).

The FIP supports developing country REDD-efforts by providing financial support for their readiness efforts. The FIP aims to help developing countries to adapt to the impacts of climate change on forests and to contribute to multiple benefits such as biodiversity conservation, protection of the rights of indigenous peoples and local communities, poverty reduction and rural livelihoods enhancements.449

The FIP funds are disbursed through Multilateral Development Banks (MDBs), acting as delivery partners.450 FIP’s programming, approval and supervision processes will follow the MDB’s policies and procedures, including the relevant MDB’s disclosure policy.451 Additionally, the processing of FIP financed projects and programs will follow the MDBs’ established policies and procedures and comply with the FIP investment criteria.452

450 Climate Investment Fund official website https://www.climateinvestmentfunds.org/cif/MDB-Role
451 FIP, FIP Design Document, para. 36
## Documents Used for the Analysis

<table>
<thead>
<tr>
<th>Table1: FIP Documents relevant to REDD+ activities</th>
<th>Documents</th>
<th>Description</th>
<th>Relevant UNFCCC REDD+ Safeguards</th>
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<tr>
<td></td>
<td>Design document for the Forest Investment Program, a targeted program under the SCF Trust Fund (<strong>FIP Design Document</strong>)</td>
<td>This document provides the information regarding FIP establishment, background, objectives, purpose and scope, principles, selection criteria and internal organization. Provides in Annex III the Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the FIP.</td>
<td>(a)(b), (c), (d), (e), (f), (g)</td>
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<td></td>
<td>Criteria for selecting country and regional pilots under the FIP.</td>
<td>Paragraph 15 of the FIP Design Document provides the criteria to be used in selecting the country or regional pilots. This document provides more detailed information on selecting criteria.</td>
<td>(b), (c)</td>
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<td></td>
<td>Design for the dedicated grant mechanism for indigenous peoples and local communities to be established under the FIP (<strong>DGM Design Document</strong>)</td>
<td>The grant mechanism is created to provide grants to indigenous peoples and local communities in country or regional pilots to support their participation in the development of the FIP investment strategies.</td>
<td>(c)</td>
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<td></td>
<td>FIP: Investment Criteria and Financing Modalities (<strong>FIP-ICFM</strong>)</td>
<td>This document details the investment criteria to guide the programming of FIP. Investments in selected pilots based on priority assessments and the financing modalities for those investments.</td>
<td>(b), (c), (d), (e), (f), (g)</td>
</tr>
<tr>
<td></td>
<td>FIP Operational Guidelines (<strong>FIP-OG</strong>)</td>
<td>This document sets out the procedures under FIP to program and plan its investments.</td>
<td>(b), (d), (e), (f), (g)</td>
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Mechanisms that Support the Implementation of the UNFCCC REDD+ Safeguards

FIP Investment Strategy and FIP Project and Programme Proposal

Selected pilot countries willing to use FIP resources need to submit an Investment Strategy. The Investment Strategy should include the information requested under the consolidated investment criteria for programming priorities in a FIP pilot (FIP-ICFM). Suggestions and guidance for structuring the Strategy and the FIP Project and Programme proposals are provided by the FIP Operational Guidelines and Annex B of FIP’s Design Document.

Cross-cutting Multi-Stakeholder National Level Steering Committee

Committee created to assist in program planning, implementation, monitoring and evaluation, which should include representatives of provincial, state and local authorities, indigenous peoples and local communities, NGOs, private sector and other members of civil society.

Dedicated Grant Mechanism for Indigenous Peoples and Local Communities

This mechanism is in the process of being implemented. Its objective is to provide grants to indigenous peoples and local communities in country or regional pilots to support their participation in the development of the FIP investment strategies, programs and projects.

FIP Programming Process

According to the FIP Operational Guidelines, FIP programming can be divided into two phases, pre-programming and programming. The pre-programming phase extends from the pilot country selection to the selected countries invitation to participate in the FIP. The programming phase comprises the development of the Investment Strategy (assisted by a Country-led joint MDB mission), the Endorsement of the Investment Strategy, preparation of the FIP investment programmes and projects until the FIP Sub-Committee and MDB final approval.\footnote{FIP, FIP-OG, para. 2}
Analysis of the FIP Safeguards

Consistency with UNFCCC REDD+ Safeguard (a)

<table>
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<th>Summary of Findings for Safeguard (a)</th>
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<tbody>
<tr>
<td>FIP requires countries to demonstrate that the FIP investment falls within the REDD+ national strategies or action plans (or equivalents). FIP’s main focus is on ensuring consistency with ‘national forest low carbon programmes’, instead of national forest programmes.</td>
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<tr>
<td>Additionally, FIP does not require countries to demonstrate how they FIP financed activities are consistent with their international obligations.</td>
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</table>

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

The FIP requires that all its programming process should be consistent with and complement pilot countries’ national sustainable development plans. Furthermore FIP programming should “take fully into account national climate change efforts, forest-related programs, and on-going and planned MDB operations in the country’s forest sector”. Countries are required to demonstrate in their FIP Investment proposal how the FIP strategy is embedded in their national development plans, REDD+ strategies and action plans or any equivalent framework that includes low carbon objectives from natural resources management. In order to demonstrate this, countries should provide information on:

- A brief summary of the government’s existing forest-relevant development plans or programs that include low carbon objectives related to forests, including specific forest or other relevant sectors and climate change strategies.
- Information on how FIP investment will address REDD+ priorities as presented in national REDD+ strategies or action plans or equivalents.
- Information on how the expected economic, social and environmental impacts from FIP are consistent with relevant national strategies and plans.

Additionally, for co-investments with FIP, countries are only required to confirm that the investment falls within their
REDD+ national strategies or action plans (or equivalents), including, where appropriate, REDD+ readiness plans. \(^{460}\)

The FIP requirements are insufficient to properly implement UNFCCC REDD+ Safeguard (a). The requirement of ‘taking fully into account’ does not equal to the UNFCCC REDD+ Safeguards requirement to ‘complement or be consistent with national forest programmes’. Second, we consider that the information required for countries to include in their FIP’s proposals is focused in ensuring FIP investments consistency with the forest low carbon programmes.

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We recommend countries include in their FIP’s proposals information on their general national forest programmes and identify how FIP investments will aim to complement or be consistent with national forest programmes.
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2. Complement or Consistent With Relevant International Conventions and Agreements

According to the principle on cooperation with other actors and processes, the FIP should complement the forest-related aims and objectives of other global environmental conventions and processes, such as the UN System, the Convention on Biological Diversity, the UN Convention to Combat Desertification, the Non-Legally Binding Instrument on all Types of Forests of the United Nations Forum on Forests (UNFF), and the International Tropical Timber Agreement. \(^{461}\)

However, the FIP does not require countries to demonstrate how they FIP financed activities are consistent with their international obligations. Moreover, the FIP lacks of any requirement to complement human rights conventions.

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We recommend countries to take proactive steps and provide information in their FIP Investment proposals on how FIP-financed activities complement or are consistent with their international obligations, including relevant environmental and human rights instruments.
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\(^{460}\) FIP, FIP-ICFM, para. 22

\(^{461}\) FIP, FIP Design Document, para. 13 e)


Consistency with UNFCCC REDD+ Safeguard (b)

### Summary of Findings for Safeguard (b)

Countries are required to ensure ‘transparency’ when developing their FIP Investment Strategies, programs and projects. However, FIP lacks of an access to information policy in order to guarantee to the public the right to be informed. Measures provided by FIP are not sufficient for ensuring transparent forest governance. Countries need to complement these provisions with a comprehensive legal framework that primarily ensures the right to access information and the effective distribution of information.

Forest governance is an important item assessed by FIP in countries investment strategies, programs and projects as well as an item for assessing their performance. For that reason, countries need to provide information on established indicators that effectively contribute towards implementing UNFCCC REDD+ Safeguard (b). However, FIP does not address all necessary elements that are required to fully guarantee the effectiveness of national forest governance.

**1. Transparency**

(i) **A Right of Access to Information**

The FIP does not recognise the right of access to information in any of its documentation. However, the FIP promotes transparency in its operations. According to the FIP’s Design Document, “transparent performance measures and procedures for performance assessment should be part of the project design and should serve as a basis for course correction during implementation in close collaboration with the relevant actors at the national or regional level”.

Countries are required to publicly disclose their draft Investment Strategies, project and programmes proposals along with related documents for purposes of consultation. Additionally, each project and programme should include information on the process for developing and implementing activities in terms of participation, transparency, coordination, capacity and accountability.

In order to fulfil UNFCCC REDD+ Safeguard (b) we recommend countries build upon FIP’s requirements by providing a legal recognition of the right to access information and take necessary measures to give effect to the right of access to information (such as adopting appropriate regulations and policies and procedures), in order to leverage the protection of stakeholders in accordance with UNFCCC REDD+ Safeguard (b).

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462 FIP, FIP Design Document, para. 13 c)
463 FIP, FIP Design Document, para. 34
464 FIP, FIP-ICFM, para. 24
465 For more measures for ensuring the right to access to information See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (b).
(ii) Institutions to Ensure Access and Distribution to Information

FIP does not provide mechanisms that specifically deal with ensuring access and distribution of information, nor does it promote or support countries to ensure institutions are in place. Instead, FIP uses the internet as the only means to disclose relevant information, including essential information for consultation process.\(^{466}\) Furthermore, there is no mechanism where the public can address a request on information.

However, it is important to note that countries are required to apply MDB-specific safeguards (thus their mechanism and institutions will be responsible for ensuring access and distribution of information).

We recommend countries acknowledge the special circumstances of affected stakeholders in REDD+ activities, especially the vulnerable peoples, such as indigenous peoples, which may not have the means to access the internet or may not have the level of technical understanding to submit a request. Countries should consider that the institutions, procedures and mechanisms to share and receive information should be culturally appropriate, easily understood and available to the different array of stakeholders. These measures may include the use of a translation framework.\(^{467}\) Countries may need to strengthen their institutional capacity to actively share information, including training government staff to permanently support vulnerable stakeholders such as indigenous peoples.

(iii) Promoting Public Awareness on Access to Information

FIP documents do not require countries to address or promote public awareness on access to information in their Investment strategies, programs or projects. We suggest countries to address this gap by taking appropriate measures.

Since awareness of the right to access information is essential for transparent forest governance, we recommend countries to promote it at all levels and among all relevant stakeholders, especially those that might be considered vulnerable ones. We recommend countries strengthen their national mechanisms in charge promoting the right to access information. Awareness should be promoted in culturally and appropriate means.

(iv) Accountability

The FIP seeks to promote transparency on financial matters by coordinating among relevant institutions at the country-level the monitoring and recording of data about the resources received, transferred and spent, with clear lines of accountability.\(^{468}\) Additionally, the FIP promotes accountability by linking financial data to specific objectives, geographic area, expected emission reductions of proposed activities, and by making such data publicly available.\(^{469}\)

\(^{466}\) FIP, FIP-OG, para. 17  
\(^{468}\) FIP, FIP-ICFM, para. 19  
\(^{469}\) FIP, FIP-ICFM, para. 19
Countries are required to include information on the process for developing and implementing activities in terms of transparency, coordination, capacity and accountability for each project and programme.\(^{470}\)

We recommend countries take note of FIP’s requirements, all of which can assist in implementing UNFCCC REDD+ Safeguard (b). We additionally, encourage countries to promote, strengthen or create domestic mechanisms to prevent, detect, punish and eradicate corruption.

2. Effective National Forest Governance Structures

Since the FIP is a program created to be results-based over time and to promote measurable outcomes in various areas besides GHG reduction,\(^{471}\) countries need to set baselines to assess the outcomes achieved by the FIP investment. For measuring improvement in forest governance the FIP sets indicators that will serve both as a criterion for financing and for performance assessment of any FIP operation,\(^{472}\) as follows:

- Relevant governance challenges and needs are systematically assessed and addressed in a practical manner.
- Governance criteria and indicators defined and baseline established.
- Conflict resolution measures in place, locally and nationally.\(^{473}\)

FIP requires countries to include in their Investment Strategy a description of the country and sector context, including background information on forest governance.\(^{474}\) According to the guidance for preparing FIP Investment Strategies, this information should focus on the country’s legislation, regulations, land rights and tenure systems, institutions and their capacities, participation of key stakeholders including indigenous and other forest communities, and accountability arrangements.

Additionally, FIP requires countries to include in their investment strategies, programmes and projects a description on how identified barriers and related needs will be addressed.\(^{475}\)

We recommend countries take note of the information that needs to be provided in their Investment Strategy and raise it up to a wider analysis of their environmental/forest governance structures, in order to identify weaknesses and gaps. Additionally, we suggest to include the existence of grievance procedures in the list of indicators, and to require the preparation of an action plan to address the findings of this assessment.

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\(^{470}\) FIP, FIP-ICFM, para. 24

\(^{471}\) FIP, FIP Design Document, para. 13 c)


\(^{473}\) FIP, FIP Design Document, para. 16 f)

\(^{474}\) FIP, FIP-OG, Annex B: Guidance for Preparing the Country-Level Investment Strategy, page 16

\(^{475}\) FIP-ICFM, Annex A: Criteria to be considered in reviewing FIP Investment Strategies, Projects and Programs, page 25
(i) Appropriate Legal Framework

Effective governance requires that laws are both enacted and enforced. The FIP states that it will support and promote through its investments forest law enforcement, along with land tenure reform, and removal of perverse incentives favouring deforestation and degradation. 476

Countries are required to include in their Investment Strategy background information on their legislation, regulations, land rights and tenure systems. 477 However, the FIP does not require countries to ensure the effectiveness of their legal frameworks nor does it provide measures to support its effectiveness.

We recommend countries to conduct a thorough assessment of their national legal frameworks, especially on laws that will have an impact on forest governance and ensure that they are effective, enforceable and integrated, and that are based upon sound, ecological, economic and scientific principles. Moreover, countries should assess if their current regulations on forest governances are adequately enforced 478

Clear Land Tenure Rights

As already mentioned, countries are required to provide information on the current status of land rights and tenure systems in their Investments Proposals. 479 However, the FIP does not require the clarification or respect of land tenure rights.

In order to meet this component of UNFCCC REDD+ Safeguard (b), we recommend countries conduct a domestic legal assessment on statutory, customary and traditional land tenure rights. Additionally, it is important countries ensure that land tenure and property rights are adequately guaranteed and protected not only to indigenous peoples, but to other relevant stakeholders involved in REDD+ activities.

Equitable Distribution of Benefits

Countries are required to set out in their investment proposals “how FIP investment will catalyse, support, measure and monitor the delivery of demonstrable improvement in social and economic well-being of forest dependent communities, including equitable benefit sharing.” 480 However, the FIP does not require countries to ensure equitable non-discriminatory and transparent benefit sharing.

476 FIP, FIP Design Document, para. 12 a)
478 See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (b).
480 FIP, FIP-ICFM, para. 27
To meet UNFCCC REDD+ Safeguard (b) is important for countries to be aware that not only indigenous peoples may be the ones affected or the only beneficiaries of forest projects. In this sense, countries should ensure that all relevant stakeholders can access benefits—be those monetary or non-monetary—that may arise from REDD+ activities. Countries also need to consider that in the context of REDD+, benefit sharing is inextricably linked to other issues that need to be resolved such as land tenure clarification. We recommend countries clarify in their legal framework who will have the right to participate directly or indirectly in the benefits generated by REDD+, and that this is done in a transparent, non-discriminatory and equitable manner.

Gender Equality

According to the FIP Design document, the development and implementation of the investment strategy should be inclusive, transparent and participatory involving women’s groups and other stakeholders.481

Interestingly, for the purposes of the FIP the concepts of indigenous peoples and local communities include “tribal communities and implies equal emphasis on the rights of men and women”.482

However, the FIP does not request countries to provide any information on how gender equality is being addressed by their FIP’s proposals, nor to ensure the existence and enforcement of gender equality laws.

To meet this component of UNFCCC Safeguard (b), countries should pay particular attention to the role that both men and women play in sustainable forest management and the importance to address any gender disparities in REDD+ activities and actions.

We recommend countries fill the FIP’s gap, and ensure the existence and enforcement of gender equality laws. Finally, it is essential for countries to ensure that any REDD+ consultations, decision-making and benefit sharing processes are implemented in a gender-sensitive way.

(ii) Appropriate Institutional Frameworks

The enhancement and improvement of institutions is one of the FIP’s criteria for investment, as FIP investment is expected to build local and national capacities and to create more effective institutions.483

In order to assess the potential for a FIP’s strategy successful implementation, countries will need to provide information on: (1) their key REDD+ policy, institutional and other issues relevant to the achievement of REDD+ objectives, (2) the identification of the institutions responsible for REDD+ implementation, along with an assessment

481 FIP, FIP Design Document, paras. 16 d) and 32
483 FIP, FIP Design Document, para. 16 j)
of their capacity to support REDD+ objectives.\textsuperscript{484}

If countries consider that capacity building is needed for institutional and implementation arrangements, the FIP states that it “should be identified and funded.”\textsuperscript{485}

\begin{quote}
We recommend countries take note that the FIP requirement to undertake an internal assessment to identify institutional and governance capacity gaps is a useful tool for implementing UNFCCC REDD+ Safeguard (b). When doing so, we recommend countries to identify both strengths and weaknesses and consider specific issues such as land tenure, distribution of benefits, enforcement, gender considerations and grievance mechanisms. This institutional ‘self-assessment’ should allow countries to carefully plan how to address needs and improve their capacity to enforce forest-related laws and ultimately enhance forest governance. Additionally, we recommend countries verify if all appropriate administrative departments at the various levels of government are in place, along with adequate funding, well-trained and accountable staff for the effective operation of REDD+ activities. Finally, we encourage countries to request the FIP financial support for improving their institutional framework.
\end{quote}

\begin{quote}
(iii) Participation in Decision-Making Processes that Affect the Environment

FIP requires pilot countries to design and implement FIP Investment Strategies, programs and projects under a “process of public consultation, with full and effective participation of all relevant stakeholders.”\textsuperscript{486} Countries are required to enclose to their FIP’s proposals -strategy, program or project- “information on stakeholder consultation and participation plans”.\textsuperscript{487}

It is positive that the FIP does make a distinction between consultation and participation, and requires full and effective participation of all relevant stakeholders. However, requirements on participation are too broad and countries will need to complement the operative details with the MDB-specific safeguards. Further analysis on full and effective participation will be presented below in UNFCCC REDD+ Safeguard (d).
\end{quote}

\begin{quote}
We recommend countries take note of FIP’s provisions and complement them with a more comprehensive national framework. In particular, it will be important for countries to establish how participation and consultation processes will effectively influence decision making and/or provide criteria on how the results of consultation processes are ultimately integrated (or not) in final project documents or decision-making processes. We strongly recommend countries put in place mechanisms for the appropriate involvement of all relevant stakeholders and to create an enabling environment for participation.
\end{quote}

\begin{quote}
(iv) Adequate Access to Justice
\end{quote}

\textsuperscript{484} FIP, FIP-ICFM, para. 21
\textsuperscript{485} FIP, FIP-ICFM, para. 21, b)
\textsuperscript{486} FIP, FIP Design Document, para. 16 d)
\textsuperscript{487} FIP, FIP-ICFM, Annex A: Criteria to be considered in reviewing FIP Investment Strategies, Projects and Programs, page 23
Countries are required to provide information relevant to access to justice. Firstly, one indicator for measuring improvement in forest governance derived from a FIP Investment Strategy should assess “if conflict resolution measures are in place, locally and nationally.” Secondly, countries “may include the establishment of a conflict resolution mechanism, where appropriate” in their FIP Investment Strategy, when describing the inclusive process for stakeholder engagement in the design, implementation, monitoring and evaluation of FIP programs and projects.

Notwithstanding the above, the FIP does not directly provide access to a grievance mechanism which would ensure the prevention of, and redress for, any action that violates or undermines the rights that may be affected by the development or implementation of a FIP strategy, programme or project.

In order to implement UNFCCC REDD+ Safeguard (b) countries need to ensure access to a grievance or complaints mechanism that can provide effective remedy throughout the planning and implementation of REDD+ activities. We recommend countries take necessary measures to create or strengthen grievance mechanisms in their countries, which should be gender responsive, culturally appropriate, and readily accessible to all segments of the affected people.

(v) Integration of Economic, Social and Environmental Considerations, and Cross-Sectoral Coordination

For co-financed investments, countries are required to include in their FIP projects and programmes proposals a description on how they will integrate the role of forests into national sustainable development strategies.

Regarding cross-sectoral coordination, the FIP promotes in-country level coordination of relevant institutions with respect to implementing and financing its investments. Particularly, the FIP is interested in the status of the enabling environment for REDD+, which includes key institutions and policies relevant for the achievement of REDD+ objectives. Therefore, if countries identified a particular need or barrier in this regard they should create a cross-sectoral coordination mechanism to deliver on REDD+. This requirement will be applicable also for co-financed investment proposals.

Additionally, for the Investment Strategy section regarding ‘Addressing drivers of deforestation and degradation’ countries should include information on the measures they will take to generate positive incentives and reverse problematic incentives across sectors, and lead to lasting change.

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489 FIP, FIP-ICFM, para. 21.
490 FIP, FIP-ICFM, para. 22 and FIP, FIP-ICFM, Annex A: Criteria to be considered in reviewing FIP Investment Strategies, Projects and Programs, page 25
491 FIP, FIP-ICFM, para. 19
492 FIP, FIP-ICFM, para. 21
493 Annex A: Criteria to be consider in reviewing FIP Investment Strategies, Projects and Programs page 25
494 FIP, FIP-ICFM, para. 22.
495 FIP, FIP-ICFM, Annex A: Criteria to be considered in reviewing FIP Investment Strategies, Projects and Programs, pages 24 and 25
We recommend countries take the FIP’s provisions into consideration when seeking to implement this component of the UNFCCC REDD+ Safeguard. In addition, we recommend that when assessing institutional and governance frameworks countries focus on capacity for cross-sectoral communication and cooperation, and develop measures that will enhance such capacity. Communication, along with constant coordination, institutional strengthening and political will are key elements to achieving integrated approaches (that consider economic, environmental and social aspects) for forest governance and development. Additionally, countries may want to consider integrating a requirement to take into account economic, social, and environmental aspects for decision-making processes that impact forests (including project and strategy development, such as REDD+) in their legal frameworks.

Finally, although it is not explicitly provided by FIP’s documents, we suggest countries to use the FIP’s cross-cutting multi-stakeholder ‘National-Level Steering Committee’, as a platform for promoting and supporting enhancement of inter-ministerial coordination.\footnote{FIP, FIP-OG, para. 32}
Consistency with UNFCCC REDD+ Safeguard (c)

Summary of Findings for Safeguard (c)

The FIP does not define indigenous peoples, local communities or knowledge. Therefore, countries participating in the FIP will need to use their own definitions or the ones provided by their correspondent MDB. However, the FIP provides particular approaches to these terms that countries are encouraged to follow, as they can provide a higher standard of protection.

UNFCCC REDD+ Safeguard (c) requires countries to demonstrate ‘respect’, not just acknowledgement of indigenous peoples’ and local communities’ rights. Therefore, in order to ensure the effective implementation of UNFCCC REDD+ Safeguard (c) countries will need to consider their obligations derived from ratified and applicable international instruments relevant to indigenous peoples.

1. Defining Indigenous Peoples, Members of Local Communities and Knowledge

(i) Defining Indigenous Peoples and Local Communities

The FIP does not define the term of indigenous peoples nor does it provides criteria to assist in their identification. However, it provides that for the purpose of the FIP “indigenous peoples and local communities will include tribal communities […].”

We recommend countries define their own criteria for identifying “indigenous peoples”, taking into consideration relevant and applicable international laws. Countries should take note of FIP’s inclusion of ‘tribal communities’ into the term of indigenous peoples and local communities.

Although the FIP does not provide a specific definition of the term ‘local communities’, we can extract from its documents that local communities are those living in or near the forest and depends on forests.

The FIP uses the formula ‘indigenous peoples and local communities’ throughout FIP’s documents, without making a distinction between them. Although, the FIP do not explicitly recognize that indigenous peoples may be referred to as ‘local communities’, there is a provision that can lead to that conclusion. The FIP provides that “participation is essential for achieving FIP objectives whenever there are indigenous peoples and local communities living in or near the forest.” Countries should be aware that the local communities may also constitute indigenous peoples and should take appropriate steps to recognize them.

497 FIP, Criteria for Selecting Country and Regional Pilots under the FIP, page 2, footnote 2; FIP, FIP Design Document, page 4, Footnote 3
499 FIP, DGM Design Document, para. 10
We recommend countries to define, according to their own circumstances, the content of the terms “indigenous peoples” and “local communities”. In doing so, they may consider the terminology provided by FIP. We also encourage countries to examine the relevant and applicable national and international law on the matter, taking into considerations standards already set by it.\(^{500}\)

It is important to consider that the UNFCCC Safeguard (c) explicitly mentions local communities. Therefore, countries would need to define whether they are given the same rights, similar rights or different rights afforded to indigenous peoples. We acknowledge that international law does not adequately define local communities yet, but we recommend that countries nevertheless take necessary steps to give them proper recognition and protection.

(ii) Respecting ‘Knowledge’

The FIP does not provide a definition of ‘knowledge’ or ‘traditional knowledge’. However, respecting traditional knowledge is one of the purposes of the Dedicated Grant Mechanism for indigenous peoples and local communities.\(^{501}\)

We recommend countries ensure their legal frameworks include clear definitions of knowledge referring to both indigenous and local communities. We recommend countries examine the relevant and applicable national and international law on the matter to define them.

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

The protection of the rights of indigenous peoples and local communities is one of the multiple benefits expected from FIP-financed operations.\(^{502}\) However, when developing their FIP Strategy or project and programmes proposals, countries are required to provide information on how they ‘acknowledge’ the rights and roles of indigenous peoples and local communities.\(^{503}\) We consider that this requirement does not effectively contribute to implementing UNFCCC REDD+ Safeguard (c), as it expressly requires the respect of indigenous peoples and local communities’ rights.

In order to ensure the effective implementation of UNFCCC REDD+ Safeguard (c) we recommend countries seek to ‘respect’ the rights of indigenous peoples and local communities derived from the relevant and applicable international agreements and conventions.\(^{504}\) Particularly relevant are the respect and implementation of rights regarding the right to exercise traditional livelihoods, self-determination, rights associated with culture, benefit-sharing.

\(^{500}\) See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (c).

\(^{501}\) FIP, DGM Design Document, para. 10

\(^{502}\) FIP, FIP Design Document, para. 10; FIP, FIP-ICFM, para. 25

\(^{503}\) FIP, FIP-ICFM, para. 27 and Annex A: Criteria to be consider in reviewing FIP Investment Strategies, Projects and Programs page 24-25

\(^{504}\) See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (c).
rights surrounding collective land and cultural inheritance. In doing so, they should also take customary laws into account.

(i) Non-Discrimination

Although the FIP does not provide specific safeguards against indigenous people or local communities’ discrimination, it states that for its purposes “indigenous peoples and local communities [...] will imply equal emphasis on the rights of men and women”\textsuperscript{505}. We recommend countries complement FIP’s provision with a clear domestic legal framework that guarantees indigenous peoples or local communities cannot be discriminated on the basis of ethnicity. We also recommend countries enact specific measures to implement this guarantee, which might include recourse mechanism.

(ii) Self-Determination

FIP consultation processes with indigenous peoples and local communities “should recognize their own existing processes, organizations and institutions, including, inter alia, councils of elders, headmen, and tribal leaders, as well as indigenous peoples’ organizations and institutions [...]”\textsuperscript{506}. We recommend countries to consider FIP’s provision and complement it with domestic measures to guarantee the right of self-determination, taking into consideration the relevant and applicable international law.\textsuperscript{507} Countries also need to identify those cases where projects or activities may undermine the right of indigenous peoples and local communities to their own self-determination and therefore require consent from them to be developed.

(iii) Rights Associated with Culture

The FIP does not explicitly recognise cultural rights of indigenous peoples and local communities and does not requires countries to provide information on how they are respecting indigenous peoples’ and local communities cultural rights.

However, it does acknowledge indigenous people and local community’s cultural rights by requesting “sensitivity with the culture”\textsuperscript{508} or by requiring countries to make public information available “in a culturally appropriate and accessible manner, form, and language”\textsuperscript{509}.

\textsuperscript{505} FIP, Criteria for Selecting Country and Regional Pilots under the FIP, page 2, footnote 2; FIP, FIP Design Document, page 4, Footnote 3
\textsuperscript{506} FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program, page 4
\textsuperscript{507} See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (c).
\textsuperscript{508} FIP, DGM Design Document, para. 9
\textsuperscript{509} FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for
To comply with UNFCCC REDD+ Safeguard (c), countries must fill this gap. We recommend countries seek to ensure this guarantee is provided in the domestic legal framework to all the REDD+ activities that could impact or represent a potential risk to indigenous peoples’ and local communities cultural rights. As far as possible, countries should aim to identify what are rights are to be protected under “cultural rights” according to their own contexts. For instance, they should consider respect for their identity, language, customs, traditions, rituals, cultural institutions, cultural sites and assets, among others.

(iv) Collective Land Tenure

According to the FIP “secur[ing] land tenure, resource and territorial rights are vital to the survival of indigenous peoples and local communities’ dependant on forests; in particular, for indigenous peoples their territorial rights are essential”. Additionally, the FIP requires the DGM to respect the meaning of land tenure, resource and territorial rights in each indigenous and local context; in which “indigenous peoples take a holistic approach to the concept of land, including, in an integrated manner, spiritual, cultural, political and livelihood dimensions [and] the concept of “forest” includes non-material dimensions and is spiritually linked to the land, the sky, the water and the entire biodiversity of life.” Moreover, the DGM will support the strengthening of customary land tenure and resource rights of indigenous peoples and local communities, by enhancing the capacity of indigenous peoples and local communities to participate fully, effectively and continuously in REDD+ activities.

However, the FIP does not require respect of land tenure rights.

We recommend countries take note of the FIP’s approach regarding the relationship between land tenure, resource and territorial rights and indigenous peoples. Additionally, we recommend countries to provide a comprehensive framework that guarantee the existence and respect of collective land tenure rights for indigenous people and local communities.

(v) Benefit Sharing

As we presented in the analysis of UNFCCC REDD+ Safeguard (b), countries are required to set out in their investment proposals how the FIP investment will catalyse, support, measure and monitor the delivery of demonstrable improvement in social and economic well-being of forest dependent communities, including equitable benefit sharing. However, there is no expressed requirement for countries to ensure benefit sharing arrangements are non-discriminatory and transparent. Neither does it require providing information on how countries are putting in place benefit-sharing with indigenous and local communities.

the Forest Investment Program, page 20, para. 3
510 FIP, DGM Design Document, para. 12
511 FIP, DGM Design Document, para. 12
512 FIP, FIP Design Document, para. 39; Design proposal for the DGM para. 10
513 FIP, FIP-ICFM, para. 27

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Finally, countries should note that according to the design for the DGM, this mechanism will support the development of the indigenous peoples and local communities’ capacity to participate in national REDD+ processes including planning, implementation, monitoring and evaluation to benefit-sharing. Additionally, the DGM will support and strengthen the linkages of REDD-relevant plans or equivalents to strategies and plans that apply to equitable sharing of forest and carbon benefits.

(vi) Procedural Rights

In order to facilitate the full and effective participation of indigenous peoples and local communities likely to be affected by a FIP strategy, program or project, the FIP provides an Annex with the Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program. Ultimately, these guidelines are intended to address FPIC.

The FIP recognises indigenous peoples and local communities procedural right to a Free, Prior and Informed ‘Consensus reflecting broad community support’ instead of a Free, Prior and Informed ‘Consent’—derived from international instruments on indigenous peoples’ rights. Further analysis on FPIC will be provided in the UNFCCC REDD+ Safeguard (d) section.

We call attention that the guidelines address, only indigenous peoples’ and local communities’ rights of access to information and participation in decision-making; but not the right of access to justice.

We recommend countries ensure all procedural rights are recognized and effectively implemented. We also recommend countries aim to guarantee domestically the existence, promotion and protection of FPIC for projects and activities that affect indigenous peoples’ rights in accordance with applicable and relevant international law.

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514 FIP, DGM Design Document, page 9
515 FIP, DGM Design Document, para. 11
516 FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program, page 20
517 FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program, page 20, para. 6
518 See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (d).
519 See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (d).
# Consistency with UNFCCC REDD+ Safeguard (d)

## Summary of Findings for Safeguard (d)

<table>
<thead>
<tr>
<th>Countries are required to provide information on their stakeholder consultation and participation plan in their FIP investment strategies, programmes and projects. However, is important to note FIP requires countries to apply MDB-specific safeguards to demonstrate the inclusiveness of processes and participation of all important stakeholders, including indigenous peoples and local communities.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Cross-Cutting Multi-Stakeholder National-Level Steering Committee and the dedicated grant mechanism are important mechanisms that will support the implementation of UNFCCC REDD+ Safeguard (d).</td>
</tr>
<tr>
<td>The procedural right of FPIC as such is not fully recognized nor implemented by the FIP. The FIP requires ‘broad community support’ which does not equate to a requirement for consent from indigenous peoples’ communities.</td>
</tr>
</tbody>
</table>

## 1. Recognition and Implementation of Procedural Rights

The FIP recognizes the full and effective participation of all relevant stakeholders. In line with UNFCCC REDD+ Safeguard (d), the FIP requires for its investment strategies, programs and projects to be “designed and implemented under a process of public consultation, with full and effective participation of all relevant stakeholders on matters that affect their distinctive rights [...].”

Moreover, the FIP distinguishes between participation and consultation, as countries are required to provide in their FIP investment strategies, programmes and projects “information on stakeholder consultation and [a] participation plan”. We encourage countries to understand and acknowledge that participation comprises different levels and processes of stakeholders’ interaction. While consultation is a mechanism utilised to facilitate participation it does not in itself ensure full and effective participation.

The FIP provides guidelines for carrying out consultations, in which the procedural rights of access to information and right to participate through consultations are included. However, the FIP does not recognize and implement the procedural right of access to justice in the context of participation. Countries will need to address this gap. This will be further analysed below.

## 2. Creating an Enabling Environment for an Effective Participation

### (i) Identification of Relevant Stakeholders

The FIP provides a definition of relevant stakeholders as “those whose distinctive rights are affected by a FIP

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520 FIP, FIP-ICFM, para. 31
521 FIP, FIP Design Document, para 16 d); FIP, FIP-ICFM, para. 32
522 FIP, FIP-ICFM, Annex A: Criteria to be considered in reviewing FIP Investment Strategies, Projects and Programs, page 27
523 See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (d).
Investment Program or Strategy, including in particular indigenous peoples, local communities and women.\textsuperscript{524}

According to FIP’s documents, the development of the Investment Strategy should involve the following stakeholders: sectoral ministries; provincial, state or local authorities; development partners working in the country, including UN and bilateral development agencies; representative NGOs, indigenous people’s organizations, women’s groups and local communities and private sector.\textsuperscript{525}

Derived from the above, countries are required to demonstrate that “continuous consultation and participation of a wide range of government and non-government stakeholders, including indigenous peoples and local communities, in the development and implementation of strategies, programs and projects.”\textsuperscript{526}

The FIP documents are not clear regarding the process on how countries will identify the members of the national-level multi-stakeholder steering committee, and countries are not encouraged by the FIP to conduct an earlier process of identification of relevant stakeholders for purposes of consultations.

We strongly recommend countries to address this gap by conducting a stakeholder diagnosis prior to the consultations take place, and to consider the list of stakeholders provided by the FIP.

(ii) Providing Access to Information

For purposes of consultation, drafts Investment Strategies will be publicly available in the country.\textsuperscript{527} Countries are required to “make available [the draft Investment Strategy] for public information and comment on a government website at least two weeks before its submission to the Climate Investment Fund (CIF)”\textsuperscript{528} Then, final Investment Strategies are required to be made publicly available in-country and on the FIP website no later than four weeks prior to the next meeting of the FIP-Subcommittee,\textsuperscript{529} which in terms of the Operational Guidelines, is “sufficient time for public review and comment before FIP-SC endorsement.”\textsuperscript{530}

We consider that posting information on a website diminish the effective implementation of the right of access to information. We strongly encourage countries to avoid using internet as a principal mean for disclosing information and instead employ a more appropriate and cultural means of disclosure, such as domestic newsletters.

For FIP programs and investments, the FIP provides that once the Investment Strategy is endorsed by the FIP-Subcommittee, countries are required to developed a detailed proposal with the concepts of project and programmes, indicating who will be the responsible for executing them (such as governments, indigenous peoples or

\textsuperscript{524} FIP, FIP Design Document, para. 16 d); FIP, FIP-OG, para. 31
\textsuperscript{525} FIP, FIP Design Document, para. 32
\textsuperscript{526} FIP, FIP Design Document, Annex II: Initial Guidance on How Transformational Change Will Be Defined and Assessed under the Forest Investment Program, page 18
\textsuperscript{527} FIP, FIP Design Document, para. 34
\textsuperscript{528} FIP, FIP Design Document, para. 34; FIP, FIP-OG, para. 17
\textsuperscript{529} FIP, FIP Design Document, para. 34; FIP, FIP-OG, para. 17
\textsuperscript{530} FIP, FIP Design Document, para. 34
their organizations, community based organizations, NGOs, private enterprise or other members of civil society).\textsuperscript{531}

Additionally, countries must make publicly available through websites both the FIP’s proposals and projects along with the documents related to them, ‘allowing sufficient time for public review and comment’, which will be four weeks.\textsuperscript{532}

According to the Operational Guidelines, “The FIP programming, approval and supervision processes will follow the MDB’s policies and procedures, including the relevant MDB’s disclosure policy”.\textsuperscript{533} Although this might not reduce the time frame for consultation purposes, it can affect the transparency of the process, due to some restrictions on disclosure that the MDBs have.

We recommend countries take additional steps in order to fully implement UNFCCC REDD+ Safeguard (d). Countries should ensure that all relevant background information and FIP’s investment strategies, programmes and projects are adequately disclosed for public review and consultation, through appropriate means, with sufficient time to allow for effective participation, and in the appropriate language and format.

(iii) Implementing Participatory Mechanisms

We can state that consultation is the main mechanism for relevant stakeholder’s participation in FIP’s operations. FIP provides special guidance on how consultation should be conducted with stakeholders.

The consultation process is required in various stages of FIP’s operations. At a very early stage of FIP’s programming, the pilot country government will lead and coordinate a joint mission with the MDBs, which will include relevant stakeholders aimed to promote awareness of the importance of the diagnosis, stakeholder consultation and carry out the consultations.\textsuperscript{534} Countries should note that awareness-raising regarding the consultation processes will represent a positive action towards implementing UNFCCC REDD+ Safeguard (d).

The above-mentioned joint mission includes workshops and appropriate field trips.\textsuperscript{535} However the FIP’s documents do not include detailed information on how the workshops should be carried out.

Regarding the design, implementation and monitoring stages, as we mentioned earlier, the FIP investment strategies, programs and projects are required to be designed and implemented under an inclusive and public process of consultation. One mechanism useful for ensuring all stakeholders participation is the Cross-Cutting Multi-Stakeholder National-Level Steering Committee.\textsuperscript{536} This Committee is envisaged to “assist in program planning, implementation, monitoring and evaluation, where representatives of provincial, state and local authorities, indigenous peoples and local communities, NGOs, private sector and other members of civil society are included.”\textsuperscript{537}
Our concern is that the Cross-Cutting Multi-Stakeholder National-Level Steering Committee is limited to a specific mandate of ‘assistance’. However, countries can use this Committee as a helpful platform towards ensuring a full and effective participation, since it is envisaged to have representatives of all relevant stakeholders.

Finally, we highlight the following FIP provisions applicable to countries in their consultation processes:

- Keep a record of the consultation process and a report on the outcome of the consultation that is to be publicly disclosed in a culturally appropriate manner, form and language.\(^{538}\)
- A consensus reflecting broad community support for the investment strategy, program or project should emerge from the consultations before the strategy, program or project moves forward.\(^{539}\)
- Integrate in the design and implementation of the investment strategy, program or project the conclusions and recommendations arising from the consultations.\(^{540}\)

We consider that these provisions and requirements are positive actions towards implementing UNFCCC REDD+ Safeguard (d), as they will ensure adequate access to information and transparency in decision-making. However, additional measures are required. These include measures to incorporate and address results of the consultations. It will be essential to have provisions that clearly state how consultations results will be analysed and integrated (or not) in the decision.

(iv) Conflict Resolution Mechanisms

As mentioned before, countries are required to describe an inclusive process for stakeholder engagement in the design, implementation, monitoring and evaluation of FIP programs and projects. This process may include the establishment of a conflict resolution mechanism where appropriate.\(^{541}\)

It is positive the FIP includes a reference on the establishment of a conflict resolution mechanism. However, it does not provide guidance for its design, nor does it directly provide access to a conflict resolution mechanism under the FIP.

In this sense we strongly advice countries not to rely on the FIP provisions to effectively implement this component of UNFCCC REDD+ Safeguard (d). We recommend countries to put in place measures that will enable all stakeholders to access judicial, quasi-judicial and/or administrative proceedings that would allow them to challenge substantive and procedural legality of any decision, act or omission relative to participation in decision-making, especially in

\(^{538}\) FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program, page 20, para. 5
\(^{539}\) FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program, page 20, para. 6
\(^{540}\) FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program, page 20, para. 8
\(^{541}\) FIP, FIP-ICFM, para. 21 d)
3. Effective Participation of Indigenous Peoples and Local Communities

(i) Creating an Enabling Environment

The FIP envisages financial support for indigenous peoples and local communities for the FIP’s operations design, development and implementation. In order to channel this financial support, the FIP creates a Dedicated Grant Mechanism (DGM), which will provide grants to indigenous peoples and local communities in country or regional pilots to support their participation in the development of the FIP investment strategies, programs and projects.

This DGM is in the process of being implemented. Undoubtedly, the DGM for indigenous peoples and local communities will represent a key mechanism for implementing UNFCCC REDD+ Safeguards (c) and (d). Further analysis will need to be developed on how this mechanism will operate and to what extent countries can rely on it and use their actions towards implementing the UNFCCC REDD+ Safeguards.

Another useful tool provided by the FIP are guidelines presented in Annex III to the FIP Design Document that list several provisions that countries “should follow to facilitate the full and effective participation of indigenous peoples and local communities likely to be affected by a proposed strategy, program or project in a process of public consultation”. These guidelines should also be followed by MDBs as FIP also states that “MDBs should provide detailed information on safeguards to be applied to each project and program, and confirm application of the guidelines in Annex III of the FIP Design Document and consistency with relevant decisions for REDD+ under the UNFCCC once decided”.

Countries should be aware that no MDB fully recognises the procedural right to Free, Prior and Inform Consent (FPIC) in decisions that will impact indigenous peoples and local communities. In the next section we will analyse to what extend the FIP recognizes and implements the procedural right of FPIC.

We recommend countries build upon these requirements to implement UNFCCC REDD+ Safeguard (d). Additionally, we recommend to complement FIP’s provisions by ensuring consultations with indigenous peoples’ communities are carried out not only in a culturally appropriate and accessible manner, but through institutions recognised by those groups.

(ii) Free, Prior and Informed Consent (FPIC)

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542 FIP, FIP Design Document, para. 38
543 FIP, FIP Design Document, para. 38; Design of the Dedicated Grant mechanism paragraph 11 and 12
544 FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program, page 20
545 FIP, FIP-ICFM, para. 34
According to the Annex III of FIP Design Document, consultations with indigenous peoples and local communities likely to be affected by any FIP operations:

- Should occur freely and voluntarily, without any external manipulation, interference, or coercion.\(^{546}\)
- Should start early and with adequate lead time in order to allow them to fully understand and incorporate their concerns and recommendations.\(^{547}\)
- Should guarantee that indigenous peoples and local communities likely to be affected have prior access to available information on the intent, design, and scope of the proposed strategy, program or project (including relevant options).\(^{548}\)
- Should guarantee that information is available and presented in a culturally appropriate and accessible manner, form, and language.\(^{549}\)

The FIP does not require the element of consent and instead only requires “consensus, including support from the community as expressed by their leader(s), reflecting broad community support for FIP’s operations moves forward”.\(^{550}\) As discussed in the World Bank analysis, the phrase broad community support is very vague and arguably does not equate to a requirement for consent from indigenous peoples’ communities.

We recommend that countries take note of FIP’s inconsistency in terms of seeking to reach ‘consensus’ rather than ‘consent’ as the UNFCCC REDD+ Safeguard (d) requires. We recommend countries to consider that UNFCCC REDD+ Safeguard (d) requires guaranteeing the procedural right to FPIC for indigenous peoples, in the circumstances provided by international law. Countries should ensure FPIC applies in all cases provided under the relevant and applicable international law.\(^{551}\)

\(^{546}\) FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program, page 20, para. 1
\(^{547}\) FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program, page 20, para. 2
\(^{548}\) FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program, page 20, para. 3
\(^{549}\) FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program, page 20, para. 3
\(^{550}\) FIP, FIP Design Document, Annex III: Guidelines for Consultations to be carried out in accordance with subparagraph 16(d) of the Design Document for the Forest Investment Program, page 20, para. 6
\(^{551}\) See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (d)
Consistency with UNFCCC REDD+ Safeguard (e)

<table>
<thead>
<tr>
<th>Summary of Findings for Safeguard (e)</th>
</tr>
</thead>
<tbody>
<tr>
<td>As a forest-focused Program, the FIP addresses the non-conversion of natural forests and seeks to safeguard ‘high conservation value forests’. However, the FIP does not provide a definition of what would constitute a ‘high conservation value forest’.</td>
</tr>
<tr>
<td>Additionally, a key objective of the FIP is to sustain biodiversity and ecosystem services and enhance the adaptive capacity of forest ecosystems and forest dependent communities to the impacts of climate change, while contributing to other economic, environmental and social multiple benefits. However, it does not promote the integration of biodiversity in cross-sectoral policies or specific measures to protect biodiversity.</td>
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1. No Conversion of Natural Forests

   (i) Defining Natural Forest

   The FIP is consistent with UNFCCC REDD+ Safeguard (e) in terms of referring to ‘natural forests’ in its provisions. However, it does not provide a definition. There is a special provision stating that the “FIP should draw upon the IPCC and the IPCC Good Practice Guidance for agreed definitions and terms related to forest and climate change, as it recognizes the evolving characteristic of the vocabulary within the UNFCCC process.”

   We recommend countries define the term natural forest in their national legal frameworks, to provide clear legal certainty as to what should be protected. We particularly suggest countries to use the definition provided by the FAO as guidance, which states as follows: “naturally regenerated forest of native species, where there are no clearly visible indications of human activities and the ecological processes are not significantly disturbed.”

   (ii) Prohibiting the Conversion of Natural Forests

   As a forest-focused Program, the FIP addresses the non-conversion of ‘natural forests’. The FIP Design Document states that the “the FIP should safeguard natural forests and should not support the conversion, deforestation or degradation of such forests, inter alia, through industrial logging, conversion of natural forests to tree plantations or other large-scale agricultural conversion[...].”

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552 FIP, FIP Design Document, para 16 g); FIP, FIP-ICFM, para 29.
553 FIP, FIP Design Document, para. 9
554 See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (e).
556 FIP, FIP Design Document, para. 16 g)
Moreover, the FIP Design Document also provides that in safeguarding the integrity of natural forest, the FIP “in particular, [...] should safeguard high conservation value forests.” On this regard, the guidance provided by the same document includes the following indicator for assessing investment strategies, programs and projects: “The plan builds on or proposes assessment and mapping of forest cover, forest type and use patterns, including identification and mapping of high conservation value forest.”

However, the FIP does not provide a definition of what would constitute a ‘high conservation value forest’, making it unclear if ‘high conservation value forests’ will always integrate/refer to natural forest.

We recommend countries take note that UNFCCC REDD+ Safeguard (e) specifically requires countries to ensure that all REDD+ activities are not used for the conversion of natural forests. We consider that FIP provisions are aligned with UNFCCC REDD+ Safeguard (e) and recommend countries take the FIP provisions into consideration when implementing measures to guarantee the non-conversion of all natural forest through REDD+ activities.

2. Protection and Conservation of Natural Forests and Ecosystem Services

One objective of the FIP is to sustain biodiversity and ecosystem services and enhance the adaptive capacity of forest ecosystems and forest dependent communities to the impacts of climate change.

Forest ecosystem services is one of the targeted areas for FIP Investment, including forest conservation; promotion of payments for environmental services and other equitable benefit-sharing arrangements; restoration and sustainable management of degraded forests and landscapes; afforestation and reforestation on previously deforested land; restructurings of forest industries and promotion of company-community partnerships; forest protection measures; improved land management practices; and promotion of forest and chain of custody certification.

As a consequence of the above, countries are required to provide information in their proposals for FIP investments strategies, programmes and projects on how FIP investment will catalyse, support and measure and monitor the delivery of protection and enhancement of biodiversity and strengthened resilience of ecosystems, with associated ecosystem services.

Countries should note that FIP’s requirement is aligned with UNFCCC REDD+ Safeguard (e) and contributes towards its implementation. We additionally suggest countries to prioritize the protection and conservation of natural forest and ecosystem services in their forest policies and REDD+ strategies.

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557 FIP, FIP Design Document, para. 16 g)
559 FIP, FIP Design Document, para. 10; FIP, FIP-ICFM, para. 25
560 FIP, FIP Design Document, para. 12 (b)
561 FIP, FIP-ICFM, Annex A: Criteria to be considered in reviewing FIP Investment Strategies, Projects and Programs, pages 26 and 27
(i) Identifying Natural Forests and Biodiversity

As stated before, the FIP documents do not provide a definition of natural forest. However the FIP Design document provides guidance on how countries will safeguard the integrity of natural forests. One indicator for assessing investment strategies, programs and projects requires countries to inform if they “plan, build on or propose an assessment and mapping of forest cover, forest type and use patterns, including identification and mapping of high conservation value forest.”

We consider that ‘natural forests’ might fall within the category of ‘high conservation value forest’. However, as it is not expressively mentioned it remains uncertain if the identification of natural forests will be undertaken in compliance with this provision.

Regarding the identification of biodiversity, there is no provision requiring the mapping or monitoring of biodiversity, although countries are required to provide information regarding how FIP investment will contribute towards the protection and enhancement of biodiversity.

We suggest countries fill this gap by undertaking a domestic identification and mapping of natural forests and biodiversity in order to ensure that these important areas are protected throughout REDD+ implementation.

(ii) Implementing Measures to Protect Biodiversity

FIP does not provide specific measures for protecting biodiversity. However, it requires countries to set out how the FIP investment will catalyse, support and monitor the protection of biodiversity, as well as demonstrate how the investment will strengthen resilience of ecosystems and associated ecosystem services.

Countries should note the appropriateness of the above provisions in implementing UNFCCC REDD+ Safeguard (e). We recommend countries to complement this ensuring adequate provisions to protect biodiversity are foreseen in their legal frameworks including specific measures to protect it. Additionally, we recommend countries ensure that protected areas are established with the participation of affected indigenous peoples and local communities in order to establish a set of incentives to protect that area.

(iii) Supporting Conservation, Research and Awareness-Raising

FIP does not include provisions regarding support for awareness-raising or conservation research.

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562 FIP, FIP Design Document, page 19
563 FIP, FIP-ICFM, Annex A: Criteria to be considered in reviewing FIP Investment Strategies, Projects and Programs, page 27
564 FIP, FIP-ICFM, para. 27
In order to fully implement UNFCCC REDD+ Safeguard (e), we recommend countries take appropriate measures to support awareness-raising and conservation research. These are key elements that will allow countries to develop practical tools to protect natural forests and biodiversity.

(iv) Integration of Biodiversity in Cross-Sectoral Policies

The FIP does not require countries to integrate biodiversity into their policies.

Countries are recommended to address this gap by promoting conservation and sustainable use of biological diversity through coordination and integration of relevant sectoral or cross-sectoral plans, programs, and policies. Additionally, countries may develop or adapt national strategies, plans, or programmes that act as incentives for the conservation and sustainable use of biological diversity.

(v) Enhancement of Other Benefits

The main purpose of FIP is to support financially developing countries REDD readiness efforts, while taking into account opportunities to help them adapt to the impacts of climate change on forests and to contribute to multiple benefits. These multiple benefits are biodiversity conservation, protection of the rights to indigenous peoples and local communities, poverty reduction and rural livelihood enhancement.565

For instance, the FIP will promote investments outside the forest sector necessary to reduce the pressure on forests such as: alternative livelihood and poverty reduction opportunities; alternative energy programs; agricultural investments in the context of rationalized land-use planning; and agricultural intensification including agro-forestry.566

Additionally, the FIP is intended to contribute to the livelihoods and human development of forest dependent communities, including indigenous peoples and local communities, and should generate benefits to sustain biodiversity and ecosystem services.567

Countries are required to provide evidence in their Investment Strategy of the activities that they are going to implement for enhancing economic growth or by improving services to the poor, taking into account the gender dimension of poverty and/or; and to provide local or regional environmental benefits such as greater biodiversity, improved watershed management or better soil quality.568

Additionally, as presented in the UNFCCC REDD+ Safeguard (b) analysis, indicators for accepting and reviewing FIP investment strategies, programs and projects require information on demonstrable improvement of social and

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565 FIP, FIP Design Document, para. 10
566 FIP, FIP Design Document, para. 12 (c)
567 FIP, FIP Design Document, para. 13 (b)
568 FIP, FIP-OG, page 18
economic well-being of forest dependent communities, the protection and enhancement of biodiversity and strengthened resilience of ecosystems.\textsuperscript{569}

We consider that FIP’s requirements and indicators regarding the generation of multiple benefits are aligned and contribute towards the implementation of UNFCCC REDD+ Safeguard (e). We recommend countries recognize that conservation of forests may bring social and environmental benefits, such as poverty eradication or promotion of sustainable livelihoods of both local communities and indigenous peoples. This is particularly important because these groups depend on forest-related services for their livelihoods. UNFCCC REDD+ Safeguard (e) explicitly recognises this, emphasising the need to develop strategies that mutually support livelihoods and forest protection.

\textsuperscript{569} FIP, FIP-ICFM, Annex A: Criteria to be considered in reviewing FIP Investment Strategies, Projects and Programs, pages 26 and 27
Consistency with UNFCCC REDD+ Safeguards (f) & (g)

Summary of Findings for Safeguards (f) & (g)

Monitoring at the country level should be transparent, measurable, reportable, and verifiable. This will be coordinated by the multi-stakeholder national level steering committee. The FIP envisages monitoring broader dimensions, not limited to forest sector, but covering the legal, social, economic, enforcement and management dimensions of forest governance that will be vital to the long-term success of any efforts to reduce or prevent deforestation and forest degradation.

Permanence and leakage risks and current mitigation measures are included in the criterion of demonstration of FIP’s investment potential at scale. Countries are required to explain how permanence and leakage risks have been addressed in their FIP investment strategies; however, no guidance is provided.

As a forest-focused programme, the FIP will serve substantially to countries for implementing UNFCCC REDD+ Safeguard (f) and (g). As we mentioned these safeguards are technical in nature, relating closely to accounting, monitoring, reporting and compliance rules for greenhouse gas emissions developed under the UNFCCC, which are intended to be covered by the FIP.

We must recall that the main purpose of FIP is to financially support developing countries REDD+ readiness efforts, while taking into account opportunities to help them adapt to the impacts of climate change on forests and to contribute to multiple benefits. Therefore, FIP pilot countries will be selected in accordance to their “potential to lead significantly reduced greenhouse gas emissions from deforestation and forest degradation or lead further efforts to conserved, sustainably manage or enhance carbon stocks whilst protecting biodiversity and supporting rural livelihood”.

1. Monitoring and Assessment

Implementation of systems for forest monitoring, is one of the areas to be supported and promoted by FIP, along with information management and inventory. The reason of FIP’s support relies on the intention to be a results-based approach programme over time; and monitoring will be an essential tool for measuring the effectiveness of FIP investments or outcomes.

Having participatory and independent approaches to monitoring and evaluation, (including inter alia changes in deforestation and forest degradation, biodiversity, ecosystem, forest governance, and economic and social benefits) is an indicator in order to evidence FIP’s measurable outcomes and results-based approach.

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570 FIP, FIP Design Document, para. 10
571 FIP, FIP Design Document, paras. 9 and 15 a)
572 FIP, FIP Design Document, para. 12
According to FIP’s documents, monitoring at the country level should be transparent, measurable, reportable, and verifiable. For guaranteeing the participatory nature, countries should establish multi-stakeholder national level steering committee, which will be responsible for coordinating the in country monitoring. Additionally, it is envisaged that the dedicated grant mechanism will “support for the involvement of indigenous peoples and local communities in monitoring and evaluation of forest activities, in conformity with relevant national laws and regulations.”

Moreover, the FIP Design document requires national systems of independent forest monitoring already developed to be adapted to incorporate REDD and to be developed where they do not exist.

Countries (and MDBs) are required to submit a report to the FIP report Sub-Committee for review every year on the progress in implementing the Investment Strategy through projects and programs. The report should be approved by the multi-stakeholder national-level steering committee, posted on the CIF website and should include information on the:

- progress towards achieving agreed results,
- performance of involved stakeholders,
- tracking of co-financing
- progress of developing and implementing the dedicated grant mechanism for indigenous peoples and local communities in the pilot country
- Important lessons learned during the reporting period.

Finally it is very important to note that the FIP envisages monitoring into a broader dimension, not limited to forest sector, but to the legal, social, economic, enforcement and management dimensions of forest governance that will be vital to the long-term success of any efforts to reduce or prevent deforestation and forest degradation.

Countries are strongly encouraged to take note of FIP’s provisions, which can serve to guarantee ownership of monitoring strategies and the permanence of emissions reductions. Community ownership over the monitoring can contribute to build stronger public acceptance of REDD+.

With regards to the assessment, once the country is selected to be part of the FIP, they are required to demonstrate that a FIP investment will indeed conduct a transformational change in their countries.

For demonstrating that, countries must highlight the activities that are additional and provide an alternative to the business-as-usual scenario and result in sector- and cross-sector wide impact related to GHG savings. Along with

574 FIP, FIP Design Document, para. 37; FIP, FIP-OG, para. 33
575 FIP, FIP Design Document, para. 41
576 FIP, FIP Design Document, para. 39
577 FIP, FIP Design Document, para. 41; FIP, FIP-OG, para. 33
578 FIP, FIP-OG, para. 34
579 FIP, FIP Design Document, para. 41
580 FIP, FIP-ICFM, para. 6
an assessment of the direct GHG savings over the lifetime of the propose project/program.\textsuperscript{581}

The FIP also requires countries to set a baseline and for that it is stated that emissions reductions and avoidance will be calculated by subtracting projected lifetime emissions of the FIP-financed project from the projected lifetime emissions of the business-as-usual using a clearly articulated reference level.\textsuperscript{582}

By providing information on the GHS savings, along with establishing the baseline and assessing the potential savings that a FIP-finance project will achieve, countries are contributing towards the implementation of UNFCCC REDD+ Safeguard (f) & (g). We suggest countries to complement these actions by taking appropriate measures in order to define a national Forest Reference Emission Level and/or a Forest Reference Level (REL/RL).\textsuperscript{583}

2. Measures To Avoid Reversals and Displacement

   (i) General Measures

Permanence and leakage risks and current mitigation measures are included in the criterion of demonstration of FIP’s investment potential at scale. Although, it is very positive that the FIP includes permanence and leakage risks within its criteria for FIP investment, it lacks guidance for countries as to how to address those risks and demonstrate results. Additionally, is important for countries to note that complying with international obligations, ensuring transparent and effective participatory forest governance processes, and ensuring protection of biodiversity can help to ensure equitable outcomes, community ownership over REDD+ strategies, and enhanced public acceptance of decisions made around REDD+ and forests.

We recommend countries take note that the FIP requirements to address permanence and leakage are positive steps towards implementing UNFCCC REDD+ safeguards (f) and (g). We additionally recommend countries place importance on implementing UNFCCC REDD+ Safeguards (a) to (e) in order to address reversals and displacement.

(ii) Measures to Tackle Reversals

UNFCCC REDD+ Safeguard (f) seeks to ensure the ‘permanence’ of any greenhouse gas (GHG) emission reduction by addressing the risk of reversals. The term ‘permanence’ relates to the idea of GHG emission reductions through carbon storage in trees to be long-lasting.\textsuperscript{584} In this sense, addressing drivers of deforestation should support implementing UNFCCC REDD+ Safeguard (f).

To support addressing the drivers of deforestation, the FIP provides an indicator which requires countries to perform

\textsuperscript{581} ICFM para 9, FIP, and Annex A: Criteria to be considered in reviewing FIP Investment Strategies, Projects and Programs, page 23
\textsuperscript{582} ICFM para 9, FIP, and Annex A: Criteria to be considered in reviewing FIP Investment Strategies, Projects and Programs, page 23
\textsuperscript{583} See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (f) & (g)
\textsuperscript{584} See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (f) & (g)
an identification of direct and underlying causes and drivers of deforestation and forest degradation, including “gaps, challenges and strategic opportunities to reverse deforestation and degradation and requires that measures to address them should be prioritized, incorporating lessons learned from past efforts.” 585

In addition, FIP investment strategies, programs and projects should assess and address the key direct and underlying drivers of deforestation and forest degradation within and outside the forest sector, avoid perverse incentives and ensure a holistic and inclusive national approach to REDD+.586

We recommend countries take note of FIP provisions and seek to identify and address the direct and underlying causes and drivers of deforestation and forest degradation, which will support the implementation of UNFCCC REDD+ Safeguards (f) and (g). We note that further measures are required to ensure the effective implementation of UNFCCC REDD+ Safeguards (f) and (g).

(iii) Measures to Avoid Displacement

Displacement of emissions is intrinsically related to the displacement of activities from one area to another.587 The FIP does not provide any guidance or requirements towards mitigating the risks of displacement of emissions. However, FIP provides relevant provisions for countries to consider. These provisions provide a non-exhaustive list of projects the FIP could finance:588

- Lending for new non-traditional practices adoption which may reduce incentives pressures which lead to deforestation
- Lending to alternative livelihood projects which can be replicated in scale to reduce deforestation
- “Seed” equity could be provided to catalyse senior investments into a fund which makes FIP eligible investments (e.g. in reforestation or new sustainable harvesting practices)

We recommend countries take the above provisions into account, but take effective domestic measures to address risks of displacement of emissions. Effective domestic measures may include clear and protective legal frameworks for cases of involuntary resettlement. This will ensure that forest livelihoods are maintained, the risk of leakage minimized and that international human rights are respected.

3. International Cooperation

586 FIP, FIP Design Document, para. 16 a)
587 See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (f) & (g)
588 FIP, FIP-ICFM, para. 83
Another type of leakage occurs when forest conservation in one place indirectly creates incentives to deforest in other places. This is likely to occur across national boundaries, causing a transboundary impact. FIP investment strategies, programs and projects are required to support replicable national or regional pilot programs in order to demonstrate how to scale up public, private and other resources and activities so as to achieve transformational change.

We recommend countries take note of FIP’s promotion of regional programs in order to enhance international cooperation between bordering countries, that can be reflected in regional strategies and programming. We recommend countries strengthen sub-regional, regional and international cooperation in areas relevant to forest management or create and implement regional agreements to reduce cross-border displacement of deforestation.

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590 FIP, FIP Design Document, para. 16 e)
591 See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (f) & (g)
Summary of Recommendations for Ensuring Consistency between FIP and UNFCCC REDD+ Safeguards

UNFCCC REDD+ Safeguard (a):

1. Countries should include in their FIP’s proposals information on how FIP investments will complement or be further consistent with their national forest programmes.

2. Countries should take proactive steps and provide information in their FIP investment proposals on how FIP-financed activities complement or are consistent with relevant international legal agreements, including environmental and human rights instruments.

UNFCCC REDD+ Safeguard (b):

1. Countries should provide a legal recognition of the right of access to information and take necessary measures to effectively implement it, such as adopting appropriate regulations, policies and procedures.

2. Countries should take additional actions than those required by the FIP in order to ensure that information is adequately collected, compiled, updated and distributed to all relevant stakeholders in a culturally appropriate manner.

3. Countries should promote public awareness of the right to access information. We recommend the strengthening of national mechanisms in charge of the promotion of the right to access information. Additionally, we recommend the training of officials and authorities in charge of providing public access to information, and ensuring that technical information can be translated into an accessible form for all the relevant stakeholders, in particular for those that are vulnerable.

4. Countries should take note of the FIP’s provisions on accountability as positive actions towards implementing UNFCCC REDD+ Safeguard (b), particularly the positive value of linking the financial data to the specific objectives of the projects.

5. Countries should note that FIP requirements of providing information on forest governance and a description on how identified barriers and related needs will be addressed, can serve countries to assess the current status of their forest governance structures, and thus will contribute towards implementing UNFCCC REDD+ Safeguard (b).

6. Countries should conduct a thorough assessment of their national legal frameworks, especially on laws that will have an impact on forest governance and ensure that they are effective, enforceable and integrated, and that are based upon sound, ecological, economic and scientific principles.

7. Countries should conduct a domestic legal assessment on statutory, customary and traditional land tenure rights situations in their countries. This assessment will be useful to request the FIP for assistance in pursuing any necessary reforms.
8. Countries should take appropriate measures to guarantee equitable distribution of benefits throughout the implementation of REDD+ activities.

9. Countries should ensure the existence and enforcement of gender equality laws.

10. Countries should conduct an internal assessment to identify institutional and governance capacity gaps.

11. Countries should take note of FIP’s support regarding capacity building, and if needed require support for improving their REDD+ institutional framework.

12. Countries should ensure and guarantee the right to participate in decision-making processes that affect the environment in their legal frameworks. Countries should recognize the connection between effective governance and participation, as it cannot be effective governance without participation of individuals and groups affected by governance decision.

13. Countries should ensure access to a grievance or complaints mechanism that can provide effective remedy throughout the planning and implementation of REDD activities, including the development or implementation of a FIP strategy, programme or project.

14. Countries should note FIP’s provisions regarding integration of economic, social and environmental considerations, and cross-sectoral coordination, which contribute towards implementing UNFCCC REDD+ Safeguard (b).

15. Countries can complement FIP’s provisions by conducting a domestic assessment to determine which mechanisms can strengthen cross-sectoral coordination. We also encourage countries to strengthen inter-ministerial coordination and cooperation, and develop measures that will enhance that capacity.

16. Countries should use the FIP’s cross-cutting multi-stakeholder ‘National-Level Steering Committee’, as a platform for promoting and supporting enhancement of inter-ministerial coordination.

UNFCCC REDD+ Safeguard (c):

1. Countries should develop their own domestic criteria for defining “indigenous peoples” by taking into consideration relevant and applicable international laws. Countries should take note of FIP’s inclusion of ‘tribal communities’ into the indigenous people’s term.

2. Countries should define domestically the term ‘local communities’ and to take appropriate steps towards recognizing the rights that they are entitled to, in accordance with relevant and applicable international agreements.

3. Countries should provide definitions for knowledge and traditional knowledge in their legal frameworks and take appropriate measures for ensuring the respect of indigenous peoples’ and local communities’ knowledge.

4. Countries should seek to ‘respect’ the rights of indigenous peoples and local communities derived from the relevant and applicable international agreements and conventions.
5. Countries should take appropriate measures in order to guarantee that REDD+ activities will not exclude indigenous peoples and local communities on the basis of their ethnicity.

6. Countries should ensure the respect of indigenous peoples’ right to self-determination in their legal framework by taking into consideration relevant and applicable international conventions.

7. Countries should ensure the recognition and respect of cultural rights under applicable international law on indigenous peoples, throughout the development and implementation of REDD+ activities.

8. Countries should note FIP’s approach regarding the relationship between land tenure, resource and territorial rights and indigenous peoples. Countries should also provide a comprehensive framework that guarantees the existence and respect of collective land tenure rights for indigenous people and local communities.

9. Countries should provide information regarding equitable benefit sharing for indigenous peoples in their FIP’s proposals. Benefit sharing arrangements should be transparent and non discriminatory.

10. Countries should seek to guarantee that their legal framework ensures that all relevant stakeholders participating in REDD+ will be entitled to equitable benefit sharing.

11. Countries should set a higher level of protection by guaranteeing domestically the existence, promotion and protection of FPIC on consent for projects and activities that affect Indigenous Peoples’ rights in accordance with applicable and relevant international law.

UNFCCC REDD+ Safeguard (d):

1. Countries should conduct a stakeholder diagnosis prior to the FIP’s consultations take place. Countries can consider the list of stakeholders provided by the FIP Design Document.

2. Countries should avoid using internet as a principal mean to disclosing information and instead use more appropriate and cultural means of disclosure, such as domestic newsletters.

3. Countries should ensure that all relevant background information and FIP’s investment strategies, programmes and projects are adequately disclosed for public review and consultation, through appropriate means, with sufficient time to allow for effective participation and in the appropriate language and format.

4. Countries should take note that the promotion of awareness-raising through FIP’s joint-mission with the MDBs will represent a positive action towards implementing UNFCCC REDD+ Safeguard (d).

5. Countries should take note of FIP’s requirement to keep a record of the consultation process and to report on the outcome of the consultation in a culturally appropriate manner, form and language.

6. Countries should take note of FIP’s requirement to obtain a ‘consensus reflecting broad community support’ for the investment strategy, program or project from the consultations before the strategy, program or project moves forward.
7. Countries should take note of FIP’s requirement to integrate in the design and implementation of the Investment Strategy, Program or Project the conclusions and recommendations arising from the consultations. However, additional steps are required to ensure the participatory mechanisms to be implemented provide appropriate consideration and address the stakeholder’s views.

8. Countries should ensure that their country safeguard system has adequate judicial and administrative procedures that guarantee the right to access justice in the context of participation, as the FIP does not guarantee this right.

9. Countries should seek to meet the international standard for consent through FPIC, as FIP does not guarantee this right.

UNFCCC REDD+ Safeguard (e):

1. Countries should define the term natural forest in their national legal frameworks, to provide legal certainty as to what should be protected. We particularly suggest countries to use the definition provided by the FAO as guidance.

2. Countries should take adequate measures to guarantee that conversion of all natural forest by REDD+ activities are expressly prohibited.

3. Countries should prioritize the protection and conservation of natural forest and ecosystem services in their forest policies.

4. Countries should undertake a domestic identification and mapping of natural forests and biodiversity in order to ensure that these important areas are protected throughout REDD+ implementation.

5. Countries should take appropriate measures to support conservation research and awareness-raising.

6. Countries should promote conservation and sustainable use of biological diversity through coordination and integration of relevant sectoral or cross-sectoral plans, programs, and policies. Additionally, countries may develop or adapt national strategies, plans, or programmes that act as incentives for the conservation and sustainable use of biological diversity.

7. Countries should take note that FIP’s requirement of information and indicators for assessing FIP investments regarding the generation of multiple benefits contribute to the implementation of UNFCCC REDD+ Safeguard (e).

UNFCCC REDD+ Safeguards (f) & (g):

1. Countries should take note of FIP’s monitoring and assessment processes.

2. Countries are strongly encouraged to take note of FIP’s provisions, which can serve to guarantee ownership of monitoring strategies and the permanence of emissions reductions. Community ownership over the monitoring can contribute to build stronger public acceptance of REDD+.
3. By providing information on the GHS savings, along with establishing the baseline and assessing the potential savings that a FIP-finance project will achieve, countries are contributing towards the implementation of UNFCCC REDD+ Safeguard (f) & (g). We suggest countries to complement these actions by taking appropriate measures in order to define a national Forest Reference Emission Level and/or a Forest Reference Level (REL/RL).592

4. We recommend countries take note of FIP provisions and seek to identify and address the direct and underlying causes and drivers of deforestation and forest degradation, which will support the implementation of UNFCCC REDD+ Safeguards (f) and (g).

5. We recommend countries place importance on implementing UNFCCC REDD+ Safeguards (a) to (e) in order to address reversals and displacement.

6. We recommend countries take note of FIP’s promotion of regional programs in order to enhance international cooperation between bordering countries, that can be reflected in regional strategies and programming. We recommend countries strengthen sub-regional, regional and international cooperation in areas relevant to forest management or create and implement regional agreements to reduce cross-border displacement of deforestation.

592 See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (f) & (g).
Annex IV: Analysis of the Inter-American Development Bank Safeguards

Background of the IDB

The Inter-American Development Bank (IDB) is the main financing institution for economic and social development projects in Latin America. The IDB’s two overarching objectives are to eliminate poverty and inequality and promote sustainable economic growth in Latin America and the Caribbean through the financing of a large array of projects. Some of the areas prioritized by the Bank relate to the protection of the environment, responses to climate change, promotion of renewable energy and ensuring food security. The Bank is already involved in projects to reduce deforestation, including REDD+ projects. The conceptualization, development and execution of the IDB’s projects are guided by several policies, which must be applied during the complete project cycle.

Documents and Policies Used For the Analysis

In order to carry out the analysis we selected the relevant IDB’s policies that define the borrower’s countries obligations related to the UNFCCC REDD+ Safeguards. It is important to mention that IDB requires all operations and activities financed by it to be consistent with all its relevant policies.

The IDB’s policies revised for this analysis were the following:

594 IDB, Report on the Ninth General Increase in the Resources of IDB, para. 3.18
<table>
<thead>
<tr>
<th>Policies and Operating Guidelines</th>
<th>Description</th>
<th>Relevant UNFCCC REDD+ Safeguard</th>
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<tr>
<td>Access to Information Policy (AIP)</td>
<td>Through the implementation of this policy and its guidelines the Bank seeks to demonstrate its transparent use of public funds and by deepening its engagement with stakeholders, to improve the quality of its operations and knowledge and capacity building activities.</td>
<td>(b), (d)</td>
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<tr>
<td>AIP Implementation Guidelines (AIP-IG)</td>
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<td>Disclosure of Information Policy</td>
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<tr>
<td>Operational Policy on Indigenous Peoples (IPP)</td>
<td>The IPP and its guidelines establish mandatory requirements and safeguards that apply to the Bank, its staff and the Borrowers. It applies to all operations and activities financed by the Bank. The IPP objectives are: • “Support the development with identity of indigenous peoples” • “Safeguard indigenous peoples and their rights against adverse impacts and exclusion in Bank-funded development projects”.</td>
<td>(a), (b), (c), (d)</td>
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<td>IPP Operating Guidelines (IPP-OG)</td>
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<td>Strategy for Indigenous Development</td>
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<tr>
<td>Environment and Safeguards Compliance Policy (ESCP)</td>
<td>The specific objectives of the ESCP are: • to enhance long-term development benefits to its members countries by integrating environmental sustainability outcomes in all Bank operations and activities and strengthening environmental management capacities in its borrowing member countries • to ensure that all Bank operations and activities are environmentally sustainable as defined in this Policy, and • to foster corporate environmental responsibility within the Bank. The Bank will act to achieve these specific objectives by adopting measures to mainstream the environment into overall economic and social development, and to safeguard the environment in all Bank activities.</td>
<td>(a), (b), (c), (d), (e), (f), (g)</td>
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<td>ESCP Implementation Guidelines</td>
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<tr>
<td>Forestry Development Policy (FDP);</td>
<td>This policy aims to assist IDB’s member countries to utilize and conserve their forest resources to provide social, economic and environmental benefits to the present and future generations.</td>
<td>(a), (b), (c), (e), (g)</td>
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Involuntary Resettlement Operational Policy and Background Paper

This Policy and its guidelines were created to minimize the disruption of the livelihood of people living in the project's area of influence, by avoiding or minimizing the need for physical displacement, ensuring that when people must be displaced they are treated equitably and, where feasible, can share in the benefits of the project that requires their resettlement.

Strategy for Promoting Citizen Participation in Bank Activities

The objective of this Strategy is to establish general guidelines and criteria and specify areas of action in which the Bank can expand, strengthen, and systematize citizen participation in its activities.

As stated in the Strategy, this document is more on the order of a corporate strategy inasmuch as it refers to Bank procedures for incorporating public participation into its operational activities.

Policy establishing the Independent Consultation and Investigation Mechanism (ICIM Policy)

Policy has been developed to provide a forum and process to address complaints from parties that allege that they are or might be adversely affected by IDB operations.

Women In Development Policy (WDP)

The objective of this Policy is to set the field of activities in which the Bank through its lending and technical cooperation programs will assist member countries in their efforts to bring about the fuller integration of women into all stages of the development process and improvement in their socioeconomic situation.

Mechanisms that Support the Implementation of the UNFCCC REDD+ Safeguards

Access to Information Policy two-stage review process

The first stage is by the Access to Information Committee (AIC), and in the event that AIC denies this request, a second-stage review is conducted by an external panel.

Environmental Assessment (EA)

Any operation that is likely to cause significant negative environmental and associated social impacts, or have profound implications affecting natural resources will require an environmental assessment (EA). For investment operations, an Environmental Impact Assessment (EIA) will be required or other environmental assessments such as a Strategic Environmental Assessment (SEA). For operations that are likely to cause mostly local and short-term negative environmental and associated social impacts an Environmental and Social Management Plan (ESMP) will be required.

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598 IDB, AIP-IG, para. 2.11
IDBDOCS

The IDB’s Records Management System is the virtual docket where all information classified as ‘public’ produced or received by IDB is saved.

Public Information Centre (PIC)

The PIC is the institution in charge of acknowledging public requests of information, preparing responses when the information is readily available on the Bank’s website, and in all other cases, channelling requests to other organizational units for preparation of responses.\textsuperscript{599}

\textsuperscript{599} IDB, AIP-IG, para. 2.9
Analysis of IDB Safeguards

Consistency with UNFCCC REDD+ Safeguard (a)

Summary of findings

Under the IDB Forestry Development Policy, development projects that affect forest areas are required to be consistent with national development priorities, statutes and regulations, but not with national forest programmes, as required under UNFCCC REDD+ Safeguard (a).

All IDB-financed operations are required to be designed and carried out in compliance with national obligations established under ratified MEAs. For operations with an impact on indigenous peoples, countries are required to design and carry out in compliance with applicable international norms, which include human rights obligations. Therefore, the IDB lacks a general requirement for its operations to comply with international human rights agreements.

1. Complement or Consistent With National Forest Programmes

The Forestry Development Policy (FDP) requires development projects that affect forest areas to be consistent with national development priorities, statutes and regulations.600

We recommend countries complement the FDP requirement by ensuring that REDD+ activities are consistent and complement the objectives of their national forest programmes.

2. Complement or Consistent with International Conventions and Agreements

All IDB-financed operations are required to be designed and carried out in compliance with environmental laws and regulations of the country, including national obligations established under ratified Multilateral Environmental Agreements (MEAs).601 If the operation potentially triggers relevant ratified MEAs, the IDB requires borrowers to verify that necessary measures are in place in order to comply with the specific international obligations.602 This IDB’s provision is less stringent than other REDD+ initiatives. For instance, the World Bank will refrain from financing projects that contravene applicable international environmental agreements.603

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602 IDB, ESCP-IG, page 22
603 World Bank, OP 4.36, paras. 3 and 14; World Bank, OP 4.01, para. 3
Regarding human rights obligations, IDB, through the IPP, requires that all potential operations that will have an impact to indigenous peoples should comply with the ‘applicable legal norms,’ in order to be eligible for financing. For IPP, applicable legal norms comprise all national indigenous legislation, indigenous juridical systems, national legislation and applicable international norms in force for each country. The IPP provides a list of international legislation, which includes several human rights conventions and declarations, such as the UNDRIP.

Even though the definition of applicable legal norms comprises several international human rights conventions, these conventions are required to be complied with only if indigenous peoples are affected by the IDB’s operations. Thus, the IDB does not have a general requirement of compliance with other international agreements, such as human rights conventions, as it has for the MEAs.

UNFCCC REDD+ Safeguard (a) requires all REDD+ activities to complement or be consistent with relevant international conventions and agreements.

We recommend countries to go beyond the IDB’s policies and take appropriate measures to ensure that the development and implementation of national REDD+ programmes and activities comply and are consistent with all relevant international obligations. Thus, not limited to situations in which indigenous peoples will be affected.

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604 IDB, IPP, page 8
605 IDB, IPP, page 5, footnote 3
Consistency with UNFCCC REDD+ Safeguard (b)

Summary of findings

The IDB aims to ensure transparency of its operations and its engagement with stakeholders through its Access to Information Policy (AIP). The Bank is not legally obliged to disclose certain categories of information listed in the AIP or information that has been expressly required by the countries/borrowers not be disclosed. This could generate a lack of transparency that may jeopardize countries’ efforts to meet UNFCCC REDD+ Safeguard (b). In relation to accountability, the IDB has adopted an anti-corruption framework that positively contributes towards implementing UNFCCC REDD+ Safeguard (b).

As part of the Environmental Assessment countries are required to assess the governance capacity of their executing agencies, and if needed appropriate measures are to be taken in order to guarantee the environmental viability of IDB’s operations. The IDB policies provide affected parties a “right to influence” decisions that will fall to the responsible authority in each instance, however this does not equal to the right to fully and effectively participate.

The Independent Consultation and Investigation Mechanism (ICIM), is the IDB’s grievance mechanism that contributes for implementing UNFCCC REDD+ Safeguard (b). However, this only responds to breaches of the IDB’s policies and not for wrongful acts in general, leaving numerous gaps that countries are recommended to address.

1. Transparency

The IDB “reaffirms its commitment to transparency in all aspects of its operations [...] as a matter of enhancing its accountability and development effectiveness.” Additionally, the IDB seeks to improve the quality of its operations and capacity-building by deepening its engagement with stakeholders through its Access to Information Policy (AIP).

(i) Right of Access to Information

The IDB works under the principle of transparency and accountability. One of these principles refers to the recognition of the right of access to information, by stating that “access to all public Bank information should be available in any of the Bank’s member Countries.”

Additionally, the AIP operates under the principles of maximum access to information (subject to confidentiality provisions); narrow and clear exceptions; simple and broad access to information; and principles of explanation of decisions and a right to review.

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608 IDB, AIP, para. 2.1
The IDB operates under a presumption in favour of disclosure; however it is subject to confidentiality provisions. Countries have a right to require the IDB not to disclose some information, even if the information does not fit under the exceptions category. Countries should be aware that this jeopardizes the transparency of IDB’s operations.

In order to implement UNFCCC REDD+ Safeguard (b), countries should operate under a principle of maximum disclosure and guarantee relevant information will be available in their countries. Therefore, we recommend countries to provide legal recognition and take necessary measures to give effect to the right of access to information (which involves seeking, receiving and imparting ideas and information) under a maximum disclosure principle, good faith and very limited and narrow exceptions. If countries decide not to disclose information, their decisions should be explained and justified. Moreover, exemptions from disclosure should be included in specific legislation/regulations.

(ii) Institutions to Ensure Access and Distribution of Information

The IDB does not require countries to provide mechanisms and procedures to guarantee active and passive access to information. However, it provides its own mechanism for ensuring access and distribution of information related to IDB-funded operations.

IDB’s principal means for disclosing information is through its website. All the information produced and certain information received and classified as ‘public’ is saved in the Records Management System called IDBDOCS. These measures are not enough for ensuring access and distribution of information, as it does not guarantee that all interested individuals, especially vulnerable groups can effectively access information.

When the information is not available at the IDBDOCS, the public can send a request to the Public Information Centre (PIC). The PIC is the institution in charge of acknowledging public requests of information, preparing responses when the Information is readily available on the Bank’s website, and in all other cases, channelling requests to other Bank organizational units for preparation of responses.

In the case where the person or group making a request for information believe that the PIC has denied access to information in violation of the policy, the AIP grants the right of review such decision. The AIP creates a two-stage review process. The first stage is by the Access to Information Committee (AIC), and in the event that AIC denies this request, a second-stage review is conducted by an external panel. All requests for review are to be submitted to the Bank in writing, in one of the four official languages of the IDB (English, Spanish, Portuguese and French) and include a

609 IDB, AIP, para. 2.1
610 See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (b)
611 IDB, AIP-IG, para. 4.2
612 is the system used by the Bank for the creation, maintenance, protection, use and disposition of its records, currently an electronic system called IDBDOCS. IDB, AIP-IG, Glossary, page iii
613 IDB, AIP-IG, para. 2.9
614 IDB, AIP-IG, para. 2.17
615 IDB, AIP-IG, para. 2.11
detailed description of the information requested and a statement explaining the basis for submitting the request for
review.\textsuperscript{616}

Both the IDBDOCS and the PIC are useful mechanisms for ensuring access to information. However, we recommend
countries to complement them with national institutions, mechanisms and procedures that can guarantee the right
to an active and passive access to information.

We recommend countries acknowledge the special circumstances of affected stakeholders in REDD+ activities,
especially the vulnerable peoples, such as indigenous peoples, which may not have the means to access the
internet or may not have the level of technical understanding to submit a request. Countries should consider that
the institutions, procedures and mechanisms to share and receive information should be culturally appropriate,
easily understood and available to the different array of stakeholders. These measures may include the use of a
translation framework.\textsuperscript{617} Countries may need to strengthen their institutional capacity to actively share
information, including training government staff to permanently support vulnerable stakeholders such as
indigenous peoples.

(iii) Promoting Public Awareness on Access to Information

The IDB lacks provisions regarding the promotion of public awareness on the right of access to information. Moreover,
the IDB does not support countries to promote public awareness or education on the right to access publicly-held in-
formation.

It is important to ensure that the public (especially, vulnerable groups, such as indigenous peoples) is aware of their
right to access information, to request information and to be informed of the activities and policies that will have an
impact on them.

Since awareness of the right to access information is essential for transparent forest governance, we recommend
countries to promote it at all levels and among all relevant stakeholders, especially those that might be considered
vulnerable ones. Awareness should be promoted in culturally and appropriate means.

(iv) Accountability

\textsuperscript{616} IDB, AIP-IG, para. 6.3
\textsuperscript{617} See the translation framework of the World Bank, To access the Translation Framework, available at:
Since 2001, the IDB adopted an anti-corruption framework to ensure that allegations of corruption in Bank financed activities are investigated and sanctioned. Additionally, the IDB is strengthening the support it provides to countries to battle corruption.\textsuperscript{618}

In order to take measures against fraud and corruption, the IDB’s anti-corruption framework provides mechanisms such as the Office of Institutional Integrity (OII), Sanctions Committee and the Anti-Corruption Policy Committee.\textsuperscript{619}

The OII is an independent advisory office within the IDB’s organization, in charge of carrying out prevention activities to improve the IDB’s integrity of policies and mechanisms and of investigating possible prohibited practices, including fraud and corruption, within Bank-financed activities. The OII has a case officer responsible for reviewing OII investigative findings, which has the authority to sanction parties for wrongdoing, including a suspension from participating in Bank-funded programs. Recommendations provided by the case officer can be appealed to the sanctions committee, which includes external members, as well as IDB staff.\textsuperscript{620}

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We recommend countries take note of IDB’S mechanisms and their functions, both the preventive activities on combating corruption and the right granted to the public to report a fraud or corruption, all of which can assist in implementing UNFCCC REDD+ Safeguard (b). We additionally, encourage countries to promote, strengthen or create domestic mechanisms to prevent, detect, punish and eradicate corruption. \\
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2. Effective National Forest Governance

The IDB acknowledges the importance of having effective environmental governance structures by “support[ing] borrowing countries and clients in identifying and financing operations designed specifically to enhance environmental governance, policy development and institutional capacity building.”\textsuperscript{621}

As part of the IDB programming processes, the IDB has to conduct a country-level environmental analysis, which is strategic in nature and focused on targeted sectors or areas that are likely to be relevant for the IDB. One of the several aspects to be considered in this analysis is the state of the environmental governance. The ESCP mentions a list of indicators that are used in this assessment, such as the level of institutional development, civil society participation, access to information, adequacy of the legal, policy, and regulatory framework, and public sector capacity for environmental management. Following the analysis, the IDB will discuss with the country strategic objectives and possible actions to address key environmental and related social issues in a cross-sectoral manner.\textsuperscript{622}

\textsuperscript{621} IDB, ESCP, para. 4.7
\textsuperscript{622} IDB, ESCP, para. 4.5.
We recommend countries take note of this assessment and indicators and raise it up to a wider analysis of their environmental/forest governance structures, in order to identify weaknesses and gaps. Additionally, we suggest to include the existence of grievance procedures in the list of indicators, and to require the preparation of an action plan to address the findings of this assessment.

(i) Appropriate Legal Frameworks

The IDB does not support countries in assessing the effectiveness of their own legal frameworks. However, the IDB requires the forest projects it finances to be consistent with the domestic legal framework, and to be in compliance with environmental law and regulations of the country where they are being implemented.

We recommend countries to conduct a thorough assessment of their national legal frameworks, especially on laws that will have an impact on forest governance and ensure that they are effective, enforceable and integrated, and that are based upon sound, ecological, economic and scientific principles. Moreover, countries should assess if their current regulations on forest governances are adequately enforced.

Clear Land Tenure Rights

The FDP provides that in forestry projects financed by the IDB, deterioration of the living conditions of local groups, including indigenous communities, should be avoided, by respecting their land and other rights, as determined by the national legislation. However, there is no provision supporting countries to ensure that their national legislation on land tenure and property rights is clear and effective.

Provisions safeguarding indigenous lands and territories affected by the IDB-funded operations are provided by the IPP. The IPP requires borrowing countries to respect the rights recognized in accordance with the ‘applicable legal norms’, which include all national indigenous legislation, indigenous juridical systems, national legislation and applicable international norms in force for each country, including customary law. The safeguards provided by the IPP are adequately aligned with UNFCCC REDD+ Safeguard (b) and we encourage countries to take note of this. A section regarding collective land tenure will be provided in the UNFCCC REDD+ Safeguard (c) analysis.

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623 IDB, IPP, page 8
624 IDB, ESCP, paras. 4.15 and 4.19
625 For more measures to promote Effective National Structures See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (b)
626 IDB, FDP, section: 7. Forestry-Related Services
627 IDB, ESCP-IG, page 43
628 IDB, IPP, page 8
In order to meet this component of UNFCCC REDD+ Safeguard (b), we recommend countries to follow, to the extent possible, the IDB’s provisions highlighted above. Additionally, is important countries ensure that land tenure and property rights are adequately guaranteed and protected not only to indigenous peoples, but to other relevant stakeholders involved in REDD+ activities.

**Equitable Distribution of Benefits**

IDB only refers to ‘participation in project benefits’ through its IPP. Therefore, participation in project benefits is only addressed when indigenous peoples, are directly or indirectly affected, and it does not guarantee an equitable distribution of benefits. 629 This will be further analysed in the UNFCCC REDD+ Safeguard (c) section.

The IDB does not support countries in guaranteeing that all other relevant stakeholders can access equitable distribution of the benefits. We suggest countries to bear in mind this gap and address appropriately.

To meet UNFCCC REDD+ Safeguard (b) is important for countries to be aware that not only indigenous peoples may be the ones affected or the only beneficiaries of forest projects. In this sense, countries should ensure that all relevant stakeholders can access benefits—be those monetary or non-monetary—that may arise from REDD+ activities. Countries also need to consider that in the context of REDD+, benefit sharing is inextricably linked to other issues that need to be resolved such as land tenure clarification. We recommend countries clarify in their legal framework who will have the right to participate directly or indirectly in the benefits generated by REDD+.

**Gender Equality**

Although the IDB has a policy that addresses women in development, it does not have any particular safeguard for ensuring gender equality in the IDB’s operations.

The Women Development Policy (WDP) provides guidelines for the IDB performance when planning particular programming activities or projects. The WDP main focus is obtaining more information regarding the women’s roles, the collection and publication of sex-disaggregated data and qualitative information on the participation of women and how to enhance the integration of gender-relevant aspects within overall operations in the sectors that sectors in which the IDB has more influence. 630

The IDB supports and encourages the research on women’s actual and potential participation in productive activities, decision-making structures and social activities; and on mechanisms to enhance their contribution. 631

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629 IDB, IPP, page 8 and 9
631 IDB, WDP, in section 5. Research and studies on the participation of women.
IDB does not support countries to ensure the existence and enforcement of gender equality laws. We suggest countries to address this gap in order to guarantee the effectiveness of their legal framework.

To meet this component of UNFCCC Safeguard (b), countries need to be aware that gender refers to “socially constructed roles, rights and responsibilities ascribed to men and women and the relationship and distribution of power between them.”

Therefore, countries should pay particular attention to the role they both play in sustainable forest management and the importance to address any gender disparities in REDD+ activities and actions.

We recommend countries ensure the existence and enforcement of gender laws. Countries should utilise IDB’s policies to gather relevant information. Additionally, countries may also consider requesting assistance for conducting national gender analysis and specific gender issues in projects, exploring opportunities to address emerging issues for women and raise awareness on gender inequalities and concerns. Finally, it is essential for countries to ensure that any REDD+ consultations, decision-making and benefit sharing processes are implemented in a gender-sensitive way.

(ii) Appropriate Institutional Frameworks

According to the FDP, the IDB will provide financing and technical cooperation for institutional strengthening by creating new forest-related institutions or strengthening the existing ones. The objective is to assist countries so they can have forest-related institutions capable of effectively formulating, coordinating and implementing policies and regulations on forest management and protection. Moreover, the FDP provides that the IDB has the intention to cooperate with the borrowing countries in their efforts to train personnel such as forest specialists, technicians and workers in order to achieve better management of forest resources and to facilitate technology transfer.

The ESCP provides that, as a part of the EA, environmental governance capacity of the country will be assessed as a potential risk for the environmental viability of the operation. For that reason, the IDB requires its borrowers to assess their own executing agency environmental governance capacity. This assessment will be performed by the IDB’s project team and will analyse the borrower’s ability and commitment to: a) address and manage environmental matters; b) mobilize resources for environmental oversight; c) have sufficient and qualified staff to perform environmental management and regulatory task; and d) have environmental management track record.

Based on the results of this environmental governance capacity assessment, the project team will evaluate if the potential environmental risk factors found may generate significant risks to the environmental sustainability of

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633 IDB, FDP, in section Fields of Activity, 1.a) Forestry development Policy.

634 IDB, ESCP, Directive B.4, page 8

635 IDB, ESCP, Directive B.4, page 8

636 IDB, ESCP-IG, page 27
the project. If so, the project team will identify and propose measures to manage such risks, and will then monitor them during the execution of the project.  

We recommend countries take note that the IDB environmental governance capacity assessment is a useful tool for implementing UNFCCC REDD+ Safeguard (b). When doing so, we recommend countries to identify both strengths and weaknesses and consider specific issues such as land tenure, distribution of benefits, enforcement, gender considerations and grievance mechanisms. This institutional ‘self-assessment’ should allow countries to carefully plan how to address needs and improve their capacity to enforce forest-related laws and ultimately enhance forest governance. Additionally, we recommend countries verify if all appropriate administrative departments at the various levels of government are in place, along with adequate funding, well-trained and accountable staff for the effective operation of REDD+ activities.

(iii) Participation in Decision-Making Processes that Affect the Environment

There is a significant connection between UNFCCC REDD+ Safeguard (b) and UNFCCC REDD+ Safeguard (d), as there cannot be effective governance without the participation of individuals and groups affected by governance decisions.

The IDB Strategy for Promoting Citizen Participation defines participation as the “processes whereby citizens, via their governments or directly, can influence the decision making process.” Interestingly, the strategy clarifies that “citizen participation does not mean deciding, but rather having the possibility of influencing decisions that will fall to the responsible authority in each instance.”

As part of the Environmental Impact Assessment (EIA), operations with significant environmental impacts will require consultations with affected parties and consideration of their views. Consultations with other interested parties (such as NGO’s and community based organisations) may also be undertaken in order to consider a broader range of expertise and perspectives. Additionally, if a preliminary resettlement plan is needed, it should be prepared as part of the EIA, and must undergo a meaningful consultation process with the affected population.

Moreover, the Implementation Guidelines of the ESCP provides that “meaningful consultations and consideration of each other’s views imply that the parties involved are willing to be influenced in their opinions, activities and plans, and to consider them to a reasonable extent, resulting in concrete actions that take other parties’ concerns into account.”

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637 IDB, ESCP-IG, page 28
638 IDB, Strategy for Promoting Citizen Participation in Bank Activities, para 1.7
639 IDB, Strategy for Promoting Citizen Participation in Bank Activities, para 1.7
640 IDB, ESCP, para 4.20
641 IDB, ESCP, para 4.20
643 IDB, ESCP-IG, page 34
However, we notice that the ESCP does not require parties to evidence how the concerns of the other parties are taken into account. It is not the case for the Involuntary Resettlement Policy in which it requires to include the results of the consultations in the EIA. In the case of operations with a direct or indirect impact on indigenous peoples’ rights, the IPP requires countries to hold socio-culturally appropriate consultation and good faith negotiation processes in order to reach an “agreement” with indigenous peoples in each process. Further analysis on this matter will be developed in UNFCCC REDD+ Safeguard (c) section.

We can conclude that the right to participate in decision-making process is promoted by the IDB, but with certain limitations which need to be complemented by a more comprehensive national framework.

We recommend countries take note of IDB’s provisions and complement them with by a more comprehensive national framework. In particular, it will be important for countries to establish how participation and consultation processes will effectively influence decision making and/or provide criteria on how the results of consultation processes are ultimately integrated (or not) in final project documents or decision-making processes. We strongly recommend countries put in place mechanisms for the appropriate involvement of all relevant stakeholders and to create an enabling environment for participation. Finally, we recommend countries consider the IDB definition on ‘meaningful consultation’ which requires consideration of the views of all parties involved, to a reasonable extend, resulting in concrete actions that take other parties’ concerns into account.

(iv) Adequate Access to Justice

The IDB does not support the establishment of a grievance mechanism for its financed-operations. However, affected parties have access to the Independent Consultation and Investigation Mechanism (ICIM), which is the main forum to investigate allegations from affected parties who claim that the IDB has failed to apply correctly its Relevant Operational Policies.

Unlike other IDB policies, such as the ESCP or the IPP, the ICIM Policy includes a more comprehensive list of affected parties. For the ICIM Policy, the term ‘affected parties’ comprises individuals, groups, associations, or organizations, including community-based organizations, indigenous peoples, and nongovernmental organizations residing in the country where the Bank-financed operation is or will be implemented.

The ICIM applies to all “Relevant operational Policies” which include, among others, the policies consulted for the analysis: the AIP, ESCP, IPP and Involuntary Resettlement. However, the ICIM will only hear complaints related to a

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644 IDB, Involuntary Resettlement Policy and Background Paper, pages 4 and 23
645 IDB, IPP, page 6
647 IDB, ICIM Policy, para. 30
648 IDB, ICIM Policy, page 3
breach of the IDB’s Policies and Procedures, but not for wrongful acts in general. This means that the ICIM could only look at alleged violations of human rights obligations if is related to a breach of IDB’s policies.

Countries should be aware of the ICIM limitations and therefore must not to rely in the ICIM as a mechanism to guarantee access to justice. We recommend countries take necessary measures to create or strengthen grievance mechanisms in their countries, which should be gender responsive, culturally appropriate, and readily accessible to all segments of the affected people.

(v) Integration of Social, Economic and Environmental Considerations and Cross-Sectoral Coordination

The IDB does not expressly mention the need to integrate economic, social, and environmental considerations into decision making. It is important for countries to take effective measures to ensure the integration of relevant cross-sectoral plans, programmes, and strategies, along with the integration of economic, social, and environmental considerations into decision making at all levels and in all ministries.

Regarding cross-sectoral coordination, the FDP provides that for multi-sectoral projects that include a forestry development component, the IDB will seek to “ensure that this component is clearly stated and that mechanisms for coordination among its different components are in place.” However, the IDB documents do not specify which measures need to be taken in order to ensure the existence of those mechanisms.

Regarding cross-sectoral cooperation, the FDP provides that the Bank will aim to cooperate in the programmes of member countries for applied research and studies on the integration of forest activities with national forest protection programs and with other activities in related sectors such as agricultural, energy, infrastructural and industrial investments, and in rural development schemes.

We recommend that when assessing institutional and governance frameworks countries focus on capacity for cross-sectoral communication and cooperation, and develop measures that will enhance such capacity. Communication, along with constant coordination, institutional strengthening and political will are key elements to achieving integrated approaches (that consider economic, environmental and social aspects) for forest governance and development. Additionally, countries may want to consider integrating a requirement to take into account economic, social, and environmental aspects for decision-making processes that impact forests (including project and strategy development, such as REDD+) in their legal frameworks.

649 The process at ICIM involves two phases: consultation and compliance review. The consultation phase is conducted by a Project Ombudsperson and involves one or more consensual methods of addressing the concerns of a Requester. Consultation phase is preceded by the Compliance Review Phase carried out by a Panel of independent experts and involves a formal investigation of whether the Bank violated its own Relevant Operational Policies. IDB, ICIM Policy, pages 6 and 9.
650 IDB, FDP, section: Criteria that will guide the Bank’s assistance for activities in the forest sector
651 IDB, FDP, section: 2. Research and studies
Consistency with UNFCCC REDD+ Safeguard (c)

Summary of findings

The IPP is the main operational policy relevant to UNFCCC REDD+ Safeguard (c), but it only applies to indigenous peoples’ rights. Local communities are barely mentioned in IDB policies. For IDB, applicable national and international law should be used as a reference for defining “indigenous knowledge”, “cultural resources”, and “intellectual property”.

The IPP requires countries to prevent or mitigate direct or indirect adverse impacts on indigenous peoples or their individual or collective rights or assets. Thus, the IDB has put in place several mechanisms aiming to guarantee the protection of indigenous human rights, such as the requirement of consultations through good faith and the need to reach an agreement and in particular cases, consent. These mechanisms directly support the implementation of UNFCCC REDD+ Safeguard (c).

The IPP addresses the rights of non-discrimination, self-determination, rights associated with culture, collective rights to land, equitable benefit-sharing and procedural rights including FPIC.

1. Defining Indigenous Peoples, Members of Local Communities and Knowledge

   (i) Defining Indigenous Peoples and Local Communities

For the IDB indigenous peoples are those who meet the following criteria: (i) they are descendants from populations inhabiting Latin America and the Caribbean at the time of the conquest or colonization; (ii) irrespective of their legal status or current residence, they retain some or all of their own social, economic, political, linguistic and cultural institutions and practices; and (iii) they recognize themselves as belonging to indigenous or pre-colonial cultures or peoples.⁶⁵²

We recommend countries to define, according to their own circumstances, the content of the terms “indigenous peoples” and “local communities”. In doing so, they may consider the criteria and terminology provided by IDB. We also encourage countries to examine the relevant and applicable national and international law on the matter, taking into considerations standards already set by it.⁶⁵³ For instance, the ILO Convention No. 169 provides an extra criterion stating that indigenous peoples are those “which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries.”⁶⁵⁴

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⁶⁵² IDB, IPP, page 3
⁶⁵³ See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (c)
⁶⁵⁴ International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) (1989), article 1(1)(b)
Regarding local communities, they are mentioned in the ESCP when referring to the protection of cultural sites, as IDB recognizes that those areas are “initially recognized as protected by traditional local communities”. However, the IPP does not have any reference nor definition for local communities. This raises potential problems, in the event that a forest-dependent local community does not consider itself to be indigenous people and has an interest or rights related to forests or forest resources, which could derive from an agreement, custom or law. The potential results are that they will not be covered by the rights and obligations under the IPP.

Therefore, ‘local communities’ as such are not defined and neither represents a special stakeholder’s category for the IDB.

It is important to consider that the UNFCCC Safeguard (c) explicitly mentions local communities. Therefore, countries would need to define whether they are given the same rights, similar rights or different rights afforded to indigenous peoples. We acknowledge that international law does not adequately define local communities yet, but we recommend that countries nevertheless take necessary steps to give them proper recognition and protection. Countries could use experiences of other countries that have already defined them.

(ii) Respecting ‘Knowledge’

In order to respect ‘knowledge’ we consider vital having a clear understanding of what it entails. The IDB’s documents do not provide a definition of the term ‘knowledge’ or ‘traditional knowledge’. Instead, the IPP sets as a reference that “countries will use the definitions of indigenous knowledge, cultural resources, and intellectual property derived from applicable national and international law”.

According to the IPP, Bank’s operations will include necessary measures to protect indigenous culture, identity, language, and traditional knowledge. These measures include prior agreement by the affected peoples as well as provisions for their equitable participation in the benefits.

As local communities’ knowledge is not recognized in the IDB’s policies, there are no provisions to ensure it is respected.

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655 IDB, ESCP-IG, pages 42 and 43.
656 For more information on this topic please See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (c).
657 “Local community” means a coherent, social group of persons with interests or rights related to forests or forest resources, in a particular area, which the persons hold or exercise communally in terms of an agreement, custom or law.” South African Development Community Protocol on Forestry (Luanda, 3 October 2002) entered into force 17 July 2009, Article 2(1)
659 IDB, IPP, page 9
660 IDB, IPP, page 9
We recommend countries ensure their legal frameworks include clear definitions of knowledge referring to both indigenous and local communities. We recommend countries follow IDB provisions and examine the relevant and applicable national and international law on the matter to define them.

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

Following the IPP’s objective of mainstreaming indigenous identity, the Bank states that it will promote and support the implementation of the appropriate adjustments to address the needs and development to “respect the traditional knowledge, cultural heritage, natural assets, social capital, and the systems specific to indigenous peoples with respect to social, economic, linguistic, spiritual and legal systems and support for indigenous culture, identity, language, traditional arts and techniques, cultural resources, and the intellectual property of indigenous peoples, including providing assistance to national governments and indigenous peoples in strengthening the corresponding legal frameworks”.

This intention is reflected in the IPP by requiring countries to prevent or mitigate direct or indirect adverse impacts on indigenous peoples or their individual or collective rights or assets. In order to protect those rights, countries are required to satisfy the safeguards included in the IPP to demonstrate that they have, through a good faith negotiation process, obtained agreements regarding the operation and measures to address the adverse impacts as necessary to support, in the Bank’s judgment, the socio-cultural viability of the operation.

The IDB has in place several mechanisms aiming to guarantee the protection of indigenous human rights, which will support the implementation of UNFCCC REDD+ Safeguard (c). However, we recommend countries to complement the IDB’s mechanisms with strong and comprehensive domestic legislation on indigenous peoples and local communities’ rights based in accordance with international relevant and applicable international conventions. In order to comply with UNFCCC Safeguard (c), countries need to take into account relevant international human rights and obligations regarding indigenous peoples’ rights and knowledge. Particularly relevant are the respect and implementation of rights regarding the right to exercise traditional livelihoods, self-determination, rights associated with culture, benefit-sharing, rights surrounding collective land and cultural inheritance. In doing so, they should also take customary laws into account if applicable.

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661 IDB, IPP, page 7
662 IDB, IPP, page 8
663 IDB, IPP, page 8
664 See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (c)
(i) Non-discrimination

The IPP provides a safeguard expressly stating the Bank will not finance projects that exclude indigenous peoples on the basis of ethnicity. Additionally, in the event of implicit factors that exclude indigenous peoples and individuals from the benefits of a Bank-funded activity on ethnic grounds, the IDB requires countries to include corrective measures in the project activities. These measures include informing indigenous organizations and individuals of their rights under labour, social, financial, and business legislation and of the recourse mechanisms available; dissemination, training, and measures to eliminate barriers to benefits; granting to indigenous workers, entrepreneurs, and beneficiaries the same protection afforded under national legislation.

We recommend countries complement IDB policies with a clear domestic legal framework that guarantees indigenous peoples or local communities cannot be discriminated on the basis of ethnicity. We also recommend countries enact specific measures to implement this guarantee, which might include recourse mechanism.

(ii) Self-determination

The IDB Strategy on Indigenous Peoples states that the Bank will take into account indigenous juridical systems, “according to the rules for their recognition, established in the legislation of each”. Additionally, the strategy states that the concept of indigenous juridical system includes laws of origin, customary rights, and customs and uses.

Additionally IDB requires countries to act in consistency with the applicable legal framework, which includes national legislation and applicable international norms, all national indigenous legislation and indigenous juridical systems.

We recommend countries to consider IDB’s policies and complement them with domestic measures to guarantee the right of self-determination, taking into consideration their relevant and applicable international law. Countries also need to identify those cases where projects or activities may undermine the right of indigenous peoples to their own self-determination and therefore require consent from them to be developed.

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665 IDB, IPP, page 9  
666 IDB, IPP, page 9  
667 IDB, IPP, page 20.  
668 IDB, IPP, page 20.  
669 IDB, IPP, page 5  
670 See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (c)  
671 We will analyse the concept of consent when analysing UNFCCC Safeguard (d).
(iii) Rights Associated With Culture

As a general rule, the IDB will not support operations that, in its opinion, will significantly damage critical cultural sites.672 Additionally, the IPP sets a specific safeguard requiring countries to include necessary measures in order to protect the indigenous culture, identity, language and traditional knowledge. Moreover, in relevant projects (there is no definition or reference on how a relevant project will be identified) countries will need to conduct consultations and good faith negotiation processes to identify potential risks and impacts to the cultural assets and to design and implement socio-cultural appropriate measures.673

We recommend countries take IDB’s policies into consideration when seeking to implement this component of UNFCCC REDD+ Safeguard (c). However, we additionally recommend to ensure this guarantee is provided in the domestic legal framework to all the REDD+ activities that could impact or represent a potential risk to indigenous peoples’ and local communities cultural rights, not only to IDB’s ‘relevant projects’. As far as possible, countries should aim to identify what are rights are to be protected under “cultural rights” according to their own contexts. For instance, they should consider respect for their identity, language, customs, traditions, rituals, cultural institutions, cultural sites and assets, among others.

(iv) Collective Land Tenure

The IPP is the leading policy that determines how indigenous people’s lands and territories will be treated in IDB’s operations.674 The IPP includes two types of provisions regarding land tenure and property rights, one is a policy directive and the other are specific safeguards.

Firstly, the IPP policy directive lists as an important activity the “strengthening of titling and physical management processes for territories, lands, and natural resources traditionally occupied or used by indigenous peoples in accordance with applicable legal norms, and with environmental protection objectives.”675

Secondly, the IPP provides safeguards for operations that will directly or indirectly affect the legal status, possession, or management of territories, lands, or natural resources traditionally occupied or used by indigenous peoples. The IDB requires countries to act in consistency with the applicable legal framework regarding ecosystem and land protection, conduct prior consultation processes, provide mechanisms for indigenous peoples participation, fair compensation for any damage and whenever possible participation in project benefits.676

The IPP requires borrowers to respect the rights recognized in accordance with the ‘applicable legal norms’ for operations that will directly or indirectly affect the legal status, possession, or management of territories, lands, or natural resources traditionally occupied or used by indigenous peoples.677 According to the IPP, applicable legal norms in-

672 IDB, ESCP, para 4.23, B.9
673 IDB, IPP, page 9
674 IDB, ESCP-IG, page 43
675 IDB, IPP, page 7
676 IDB, IPP, page 8
677 IDB, IPP, page 8
clude: national legislation and applicable international norms, all national indigenous legislation and indigenous juridical systems.\textsuperscript{678}

Additionally, in the event where a domestic legal framework provides insufficient legal or administrative protection the IPP requires countries to include pertinent restrictions or corrective or compensatory measures, to ensure the project will not directly or indirectly cause the deterioration of the legal status of the indigenous peoples affected lands, territories or resources.\textsuperscript{679}

We recommend countries to take into consideration these provisions and recommend they work on their land use planning to determine where indigenous peoples and local communities are located and establish what rights need to be recognised. Furthermore, we recommend countries to take advantage of the assistance they can get from development agencies to strengthen/adjust their domestic legislations to establish legal recognition of customary land use.

\textbf{(v) Benefit-Sharing}

The Bank claims to support, whenever possible, the indigenous peoples’ enjoyment of the benefits generated by the use of natural, cultural and knowledge resources.\textsuperscript{680} Accordingly, in forestry projects financed by the IDB, “it will be ensured that local groups, including indigenous communities, participate directly or indirectly in the economic benefits generated by these projects”.\textsuperscript{681}

In this sense the IPP states that for projects related to natural resource extraction and management and protected areas management, countries are required to conduct prior consultations, establish mechanisms for the participation of indigenous peoples, provide fair compensation for any damage these peoples might suffer as a result of the project and provide “whenever possible, participation in project benefits”.\textsuperscript{682}

Although it is positive that the IDB provides the above mentioned provisions; we consider that by stating ‘whenever possible’ the IDB is diminishing the protection of the right of indigenous peoples to access equitable benefit sharing. Additionally, it makes no reference to local communities.

We recommend countries ensure their domestic legal framework provides both indigenous people and local communities the right to participate directly or indirectly in the benefits generated by REDD+. In doing so, countries need to include minimum conditions for the sharing of benefits in their legal frameworks and pay particular attention in determining who is ‘eligible’ to receive them or at least discuss the criteria to identify potential ‘beneficiaries’.

\textsuperscript{678} IDB, IPP, page 5
\textsuperscript{679} IDB, IPP, page 8
\textsuperscript{680} IDB, Strategy for Indigenous Development, page 37
\textsuperscript{681} IDB, FDP, section: Investment criteria
\textsuperscript{682} IDB, IPP, page 9
Additionally, we recommend take note of the corrective measures included in the IPP, for the protection of indigenous peoples in benefit sharing of the Bank-funded operations in order to develop their own corrective measures in their legal framework.\textsuperscript{683}

(vi) Procedural Rights

The recognition and implementation of procedural rights by IDB policies will be analysed in the UNFCCC REDD+ Safeguard (d) section below.\textsuperscript{684}

\textsuperscript{683} IDB, IPP, page 9
\textsuperscript{684} IDB, IPP, page 33
Consistency with UNFCCC REDD+ Safeguard (d)

**Summary of findings**

The Bank promotes participation through: information, consultation and participation in the implementation of its activities. The IDB does not guarantee access to justice in the context of participation.

The IDB requirement to perform a stakeholder analysis is a positive step in implementing UNFCCC REDD+ Safeguard (d). However, the Bank does not ensure the full and effective participation of all relevant stakeholders, by distinguishing between affected and interested parties.

With regards to indigenous peoples right to FPIC, the IDB distinguishes between ‘agreement’ and ‘consent’. Consent is only required for IDB’s independent operations specifically targeting indigenous beneficiaries. The lack of clarity surrounding the requirement of obtaining ‘agreement’ or ‘consent’ diminish the right to the FPIC as recognized under international law.

IDB does not provide specific provisions to enable the participation of local communities.

<table>
<thead>
<tr>
<th>1. Recognition and Implementation of Procedural Rights</th>
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<tbody>
<tr>
<td>The IDB Strategy for Promoting Citizen Participation states that “participation does not mean deciding, but rather having the possibility of influencing decisions that will fall to the responsible authority in each instance.” According to IDB’s operational policies, the public can influence decisions related to the Bank by using: information, consultation and participation in the implementation of the activities themselves. It is important to highlight that within the context of IDB’s policies, every time the term ‘participation’ is used, it refers to the “involvement of community-based groups and other types of civil society organizations in the execution of Bank-funded projects”. In general terms, it is positive that the Bank acknowledges that participation is a broader concept that comprises the right to information. However, countries must note that IDB does not recognize or promote the implementation of access to justice. This procedural right is not identified by the IDB as an essential aspect of participation and IDB’s policies do not provide specific mechanisms in which the substantive or procedural legality of any decision relating to participation in environmental decision-making could be challenged.</td>
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685 IDB, Strategy for Promoting Citizen Participation in Bank Activities, para. 1.7
686 IDB, Strategy for Promoting Citizen Participation in Bank Activities, para. 5.1
687 IDB, Strategy for Promoting Citizen Participation in Bank Activities, para. 5.17
We recommend countries complement IDB’s policies in terms of recognizing and effectively implementing the three procedural rights (access to information, access to participate in decision making processes and access to justice in environmental matters).

2. Creating an Enabling Environment for a Full and Effective Participation

(i) Identification of Relevant Stakeholders

As part of the Environmental Assessment process for operations that are considered will affect the environment, the IDB requires countries to conduct consultations with affected parties and consideration of their views. Consultations are preceded by a stakeholder analysis, which is defined as the exercise of “mapping the social landscape associated with the project that identifies affected and interested parties, their inter-relations and interests regarding the project.”

For the purposes of consultation, affected parties are individuals, group of individuals or communities who may be directly impacted (positively or negatively) by a Bank-financed operation. Those parties are allowed to designate representatives as part of the consultation process. Meanwhile, interested parties are considered those individuals or groups who have expressed support or concern regarding a proposed or existing bank-financed operation.

This distinction will be very important for the process of participation, because according to ESCP, the environmental assessment will only require consultation with ‘affected parties’ and will only consider their views. This means that opinions, suggestions, criticism and recommendations from interested parties, such as local NGOs, community-based organizations (CBOs), among others will not necessarily be heard, nor considered in the consultation process, as the ESCP states that their consultation may also be undertaken in order to consider a broader range of expertise and perspectives, but no obligation to take these views into account is stipulated.

For the Involuntary Resettlement Policy project affected persons are those who are displaced and therefore are entitled to receive compensation, rehabilitation, or both, under a resettlement plan. Consultations regarding the design of the resettlement plan will be carried out only with one person that represents the displaced community and other representative for the host community.

In the light of the above, it is important to reiterate that the identification of all relevant stakeholders in the process of participation is essential for implementing UNFCCC REDD+ Safeguard (d). The IDB requirement to perform a stakeholder analysis is a positive step in implementing UNFCCC REDD+ Safeguard (d), however, is important to note that the distinction done by the Bank between affected and interested parties for the process of participation is not aligned with UNFCCC REDD+ Safeguard (d), which requires full and effective participation of all relevant stakeholders.

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688 IDB, ESCP, para. 4.20
689 IDB, ESCP-IG, page 35
690 IDB, ESCP, page 17
691 IDB, ESCP, para. 4.20
692 IDB, Involuntary Resettlement Policy and Background Paper, page 23
We recommend countries promote the participation of all interested individuals and groups, including NGOs, and to guarantee the considerations of their inputs.

(ii) Providing Access to Information

IDB recognizes that “information is the true gateway to participation.” As we discussed in the analysis of UNFCCC REDD+ Safeguard (b), the AIP is intended to be geared towards transparency with a special aim to deepening its engagement with stakeholders.

The ESCP provides that as part of the EA process, borrowers should provide “appropriate information on location(s), format(s) and language(s) to allow for affected parties to be meaningfully consulted, to form an opinion and to comment on the proposed course of action.” The Bank considers that appropriate information means: information which is relevant, understandable to the recipient, precise, and timely. We consider that both the ESCP provision and the definition of ‘appropriate information’ are aligned and contribute to the implementation of UNFCCC REDD+ Safeguard (d).

Additionally, the ESCP requires that during execution, affected parties should be kept informed of those project-related environmental and associated social mitigation measures affecting them, as defined in the ESMP. In this sense, it is important to note that consultation is not only limited to the early stages of a project or operation, but to all stages.

We recommend countries enact provisions which guarantee that all relevant stakeholders will be informed at all stages and to use adequate means to guarantee that the information is effectively distributed.

It is important to highlight that the Disclosure Information Policy requires that “information provided to the public shall be made available in a form and at a time that enhances the transparency and therefore the quality of Bank activities.” However, IDB has further provisions that we consider inconsistent. For instance, the AIP provides that the EIAs should be made available to the public, in accordance with what is provided in its policy, meaning that it should be done through the IDB’s website. We consider that IDB’s website is not an ideal means to guarantee an effective distribution of information, as required by UNFCCC REDD+ Safeguard (d).

693 IDB, Strategy for Promoting Citizen Participation in Bank Activities, para. 5.2
694 IDB, AIP, para 1.1
695 IDB, ESCP, para. 4.20 and AIP, 5.2
696 IDB, ESCP-IG, para 34
697 IDB, ESCP, para. 4.20
698 IDB, Disclosure of Information Policy, page 1
699 IDB, ESCP, para. 4.20
We strongly recommend countries should take necessary measures to ensure that all relevant background information concerning the operation that will be submitted to consultation, is disclosed to the public through appropriate means, and in time to allow for effective participation in the decision making process.

(iii) Implementing Participatory Mechanisms

As mentioned before, the IDB provides a participatory framework for the public to influence Bank related decisions, comprised of: information, consultation and participation in the implementation of the activities.700

Consultation is the main mechanism use by IDB for “soliciting of opinions, suggestions, criticism and recommendations from the public [or indigenous people when appropriate] on Bank activities such as strategies, policies and projects.”701

Consultations regarding projects that will have environmental risks and impacts are undertaken through an Environmental Assessment (EA). The EA will take into account the borrower’s institutional capacity on environmental and social aspects, including technical and legal capacity to carry out key EA-related functions. Is important for countries to be aware that the EA requires countries to have the capacity to handle consultations, disseminate timely and relevant information, integrate views, and deal with grievances or complaints that arise during the participation process.

The IDB does not require countries to detail the results of all consultations, as it will depend on the policy. For consultation processes with indigenous peoples, the IDB requires countries to inform the commitments reached between the parties.702 The resettlement policy requires countries to include the result of the consultation in the IEA.703 However, the ESCP mandates that operations with negative impact on the environment will require consultations with affected parties and consideration of their views,704 but no further provisions are included regarding how these views are to be considered.

We recommend countries complement IDB policies. In order to implement UNFCCC REDD+ Safeguard (d) countries should implement measures to incorporate and address the results of the consultations. It will be essential to have provisions that clearly state how consultations results will be analysed and integrated (or not) in the decision.

For projects that will have impact on indigenous peoples’ rights the IPP provides special mechanisms to ensure the early and effective participation of indigenous peoples, such as assessments, expert screenings, early and socio-

700 IDB, Strategy for Promoting Citizen Participation in Bank Activities, para. 5.1
701 IDB, Strategy for Promoting Citizen Participation in Bank Activities, para. 5.2
702 IDB, IPP, para. 3.2
703 IDB, Involuntary Resettlement Policy and Background Paper, pages 4 and 23
704 IDB, ESCP, B.6.
culturally appropriate consultation and good faith negotiation process. This will be addressed in the section regarding an enabling environment for the participation of indigenous people.

(iv) Conflict Resolution Mechanisms

The only policy that specifically addresses access to justice in the context of participation is the IPP, by mentioning that in the context of an agreement reached by the borrower and affected indigenous peoples, “it would be good practice to include conflict management provisions in the agreements”. This would be used to resolve differences in the course of implementing the agreement and offer tools so that once the agreement is freely adopted; it could not be arbitrarily violated by the project proponent or repudiated by the community. Although, we consider this as a relevant provision, it must be noted the conflict management provisions are only recommended as a ‘good practice’, but not required.

Additionally access to justice in the context of public participation under the IDB is supported by the ICIM and by the AIC (analysed under UNFCCC REDD+ Safeguard (b)). However, we consider these mechanisms insufficient due to the fact that both mechanisms are limited to whether the IDB has or has not applied correctly its own relevant operational policies.

In this sense we strongly advice countries not to rely on the IDB provisions when seeking to effectively implement this component of UNFCCC REDD+ Safeguard (d). We recommend countries to put in place measures that will enable all stakeholders to access judicial, quasi-judicial and/or administrative proceedings that would allow them to challenge substantive and procedural legality of any decision, act or omission relative to participation in decision-making, especially in forest decision-making, including access to redress and remedy.

3. Effective Participation of Indigenous Peoples and Local Communities

(i) Creating an Enabling Environment

The IPP provides special mechanisms to ensure the early and effective participation of indigenous peoples, in the relevant stages of Bank operations and activities that may potentially and significantly impact them, such as assessments, expert screenings, early and socio-culturally appropriate consultation and good faith negotiation process.

For projects with moderate or significant adverse impacts on indigenous peoples and their individual or collective rights or heritage, the IPP requires countries to conduct socio-culturally appropriate consultation processes, unless is part of the programming operation of the IDB, in which the IDB will be one conducting the consultations. Requirements include: consultations with indigenous peoples must be initiated early in the project cycle, including the identi-
ification of indigenous peoples’ affected and their legitimate representatives; methodologies that define the role of existing IP mechanisms must be inclusive, transparent, effective and should prevent manipulation or coercion; and a mechanism for conflict management should be provided.  

As required by the IPP, a socio-culturally appropriate consultation with indigenous people process must conclude in an agreement, and must be reached through good faith negotiations. Good faith negotiations are defined as the “earnest and respectful negotiation process […] which includes seeking and possibly securing agreements, with respect to the scope, design, and execution of actions included in the Bank-funded projects.”

Additionally, the IPP requires further measures to be taken in order to guarantee that affected people are adequately informed. Therefore, information must be complete and updated and it “should be presented in an accessible language and format and be made available during the advance period required for an independent technical and deliberative review of the project.” Finally, the IPP requires countries to have factual evidence and documents of consultations processes.

We consider IDB provides detailed and adequate mechanisms that contribute to an enabling environment for the participation of indigenous peoples. We recommend countries build upon these requirements to implement UNFCCC REDD+ Safeguard (d). Specifically, we recommend countries to ensure provisions related to an enabling environment apply to local communities.

Additionally, we recommend to complement IDB’s policies by ensuring consultations with indigenous peoples’ communities are carried out not only in a culturally appropriate and accessible manner, but through institutions recognised by those groups.

(ii) Free, Prior and Informed Consent

According to the Strategy for Indigenous Development, the IDB participatory mechanisms and processes must take into account the general principle of the free, prior and informed consent of indigenous peoples as a way to exercise their rights and decide their own priorities for the process of development. To understand how the IDB deals with FPIC, it is important to note that the IPP makes a distinction between agreement and consent.

In the IDB, agreement is understood as “the set of commitments between the project proponent and the indigenous peoples affected by a project” and consent is defined as “the right of indigenous peoples to control development investments in their own territories and to determine the goals, priorities, and processes relating to their own development.” The difference is that “consent” represents a real right to influence IDB’s decisions, whilst agreement only presents the results of the issues discussed during the consultation.

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709 IDB, IPP-OG, pages 34-35
710 IDB, IPP, para. 3.15 page 40
711 IDB, IPP, para. 3.5
712 IDB, IPP, para. 3.5
713 IDB, Strategy for Indigenous Development, page 34
714 IDB, IPP-OG, para 3.2
715 IDB, IPP-OG, para 3.5
The IPP states that consent “where applicable, should be freely given in advance, be informed, and be documented in agreements”.\textsuperscript{716} Consent of indigenous peoples is only required for IDB’s independent operations specifically targeting indigenous peoples.\textsuperscript{717} This means that general IDB’s operations that only mainstream indigenous peoples’ rights can be processed without obtaining consent from indigenous people. On the one hand, it is positive that all independent operations specifically targeting indigenous beneficiaries require consent, but on the other hand, some circumstances might not fit under independent operations and leave indigenous peoples’ rights vulnerable.

Agreement with indigenous peoples should be free of coercion and consistent with the internal decision-making processes of the affected peoples; reached prior to approval of the project by the Bank’s Board of Executive Directors.\textsuperscript{718} The IDB expressly requires a prior agreement, not consent, from indigenous peoples for cases of commercial development of indigenous cultural and traditional knowledge resources, as well as provisions for their equitable participation in the benefits derived from such commercial development.\textsuperscript{719}

Although the IDB intends to guarantee the right of FPIC, the lack of clarity surrounding the requirement of obtaining ‘agreement’ or ‘consent’, diminish the right of FPIC as recognized under international law. Furthermore, the circumstances under which FPIC applies according to international law (such as the circumstances provided by ILO when considering the removal of indigenous peoples from their collective land, UNDRIP and CBD) are not recognized under IDB.

We recommend countries to consider that UNFCCC REDD+ Safeguard (d) requires guaranteeing the procedural right to FPIC for indigenous peoples, in the circumstances provided by international law. Countries should therefore ensure FPIC applies in all cases provided under the relevant and applicable international law.\textsuperscript{720}

\textsuperscript{716} IDB, IPP, page 33
\textsuperscript{717} IDB, IPP, page 33
\textsuperscript{718} IDB, IPP-OG, para 3.2
\textsuperscript{719} IDB, IPP, page 9
\textsuperscript{720} See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (d)
Consistency with UNFCCC REDD+ Safeguard (e)

<table>
<thead>
<tr>
<th>Summary of findings</th>
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<tbody>
<tr>
<td>The IDB lacks substantial safeguards regarding the conservation of biodiversity and natural forests.</td>
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<tr>
<td>A major step back in implementing UNFCCC REDD+ Safeguard (e) is that the IDB will allow the conversion of non-critical natural habitat if: (i) there are no feasible alternatives acceptable to the Bank; (ii) the overall benefits from the operation substantially outweigh the environmental costs; or (iii) the Bank accepts the mitigation and compensation measures. Countries must be aware of this and realise that the UNFCCC REDD+ Safeguard is very precise and it prohibits conversion of natural forest in any circumstance.</td>
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1. No Conversion of Natural Forests
   
   (i) Defining Natural Forests
   
   The IDB policies do not define the term forest or natural forest even though it refers to the terms “natural forest” and “man-made forest.” 721
   
   We acknowledge that there is no unanimous internationally agreed definition of a “natural forest”, but the UNFCCC REDD+ Safeguard (e) language explicitly refers to “natural forests” as opposed to simply “forests”.

   We recommend countries provide a clear definition of the term “natural forest” in their national legal frameworks, to ensure legal certainty as to what should be protected. 722 We particularly suggest taking as a basis the definition provided by the FAO, which states: ‘naturally regenerated forest of native species, where there are no clearly visible indications of human activities and the ecological processes are not significantly disturbed.’ 723

(ii) Prohibiting the Conversion of Natural Forests

IDB policies do not explicitly prohibit the conversion of natural forests. The FDP provides that activities in the forestry sector should be assessed in terms of potential environmental impact, but there is no prohibition of converting natural forest. 724

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721 IDB, FDP, section: 3. Forest management, reforestation, afforestation and restoration programs.
722 For more information regarding the implications of “natural forest” definition, please see ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (d), pp. 60 and 88.
724 IDB, FDP, section: Investment criteria
Due to the FDP lack of substantive provisions, we consider that the leading policy is the ESCP. The ESCP provides the policy Directive B.9 on conversion, stating that the IDB will not support operations that, in its opinion, significantly convert or degrade natural habitats and critical natural habitats.\(^{725}\)

For the purposes of ESCP, significant conversion occurs when the integrity of a critical or other natural habitat is eliminated or severely diminished by a major, long-term change in land or water use. Additionally, conversion of natural habitats can occur as the result of severe pollution and/or directly from the action of a project or through an indirect mechanism.\(^{726}\)

According to the ESCP critical natural habitats are (i) existing protected areas, areas officially proposed by governments for protection or sites that maintain conditions that are vital for the viability of the aforementioned areas; and (ii) unprotected areas of known high conservation value.

Natural habitats are defined as the biophysical environments where (i) the ecosystems’ biological communities are formed largely by native plant and animal species; and (ii) human activity has not essentially modified the area’s primary ecological functions.\(^{727}\)

Moreover, the same policy directive B.9 provides that whenever feasible, Bank-financed operations and activities will be sited on lands already converted. However, the IDB will allow the conversion and degradation of non-critical natural habitat if: (i) there are no feasible alternatives acceptable to the Bank; (ii) the overall benefits from the operation substantially outweigh the environmental costs; or (iii) the Bank accepts the mitigation and compensation measures.\(^{728}\)

There are a number of problems with the IDB’s current policies. First, and foremost, there is a lack of provisions that require REDD+ actions not to be used for the conversion of natural forests. Secondly, even though the directive policy B.9 is the closest the IDB has to a prohibition on conversion, it is possible to convert natural forests under the IDB if the overall benefits would “substantially outweigh the environmental costs”, which is clearly not consistent with the language of UNFCCC REDD+ Safeguard (e).

UNFCCC REDD+ Safeguard (e) is explicit in requiring that REDD+ actions “are not used for the conversion of natural forests” and it does not place higher importance to critical forest areas and related critical natural habitats over non-critical natural forests or related natural habitats. It would seem that conversion of both critical and non-critical natural forest habitats would be inconsistent with UNFCCC REDD+ Safeguard (e).

Countries should be aware that while IDB’s policies distinguish critical and non-critical natural forest habitats and allow the conversion of the latter, as far as the UNFCCC REDD+ Safeguard (e) requirements are concerned there is no difference. We urge countries to put in place specific legal provisions ensuring that REDD+ actions are not used for the conversion of natural forest, and provide appropriate definitions of the terms ‘natural forest’ and ‘conver-
2. Protection and Conservation of Natural Forests and Ecosystem Services

The IDB will support conservation and protection measures including the establishment, management and protection of forest areas with specific ecological, economic and social functions; the creation of mechanisms for protection and security of forests; and forestry activities for watershed, soil and reservoir protection. However, it does not support countries in protecting and conserving natural forest and ecosystem services.

(i) Identifying Natural Forests and Biodiversity

The IDB does not have any provisions or requests countries to identify and map natural forests or important components of biodiversity. It is important for countries to note that one of the first recommended measures to ensure the protection of natural forests and diverse habitats is through their official identification and mapping. Once this step is completed, more can be learned about the area, and appropriate protections can be established.

We recommend countries carry out identification and mapping of natural forests and biodiversity, in order to ensure that these important areas are protected and not forgotten throughout REDD+ implementation.

(ii) Implementing Measures to Protect Biodiversity

The IDB supports environmental and natural resources management operations by including targeted investments to protect biodiversity and fragile ecological systems.

According to the FDP, species reintroduction is allowed for activities aiming to rehabilitate degraded forest ecosystems according to FDP. For that cases, species selected for planting should be suited to local climatic and geographical conditions and to present or future markets, taking into consideration long term risks on forest production caused by fire and pests.

Furthermore, the ESCP provides a specific safeguard stating that the IDB does not support operations that introduce invasive species. Invasive species are defined as a species that are (i) non-native (or alien) to the ecosystem under

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729 IDB, FDP, section: 6. Forest Conservation and Protection Measures
730 IDB, ESCP, para. 4.7
731 IDB, FDP, section: 3. Forest Management, Reforestation, Afforestation and Restoration Programs
732 IDB, ESCP, para. 4.7
733 IDB, ESCP, para. B9
consideration; and (ii) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. 734

Countries should note the appropriateness of the above provisions in implementing UNFCCC REDD+ Safeguard (e). We recommend countries to complement this ensuring adequate provisions to protect biodiversity are foreseen in their legal frameworks including specific measures to protect it. Additionally, we recommend countries ensure that protected areas are established with the participation of affected indigenous peoples and local communities in order to establish a set of incentives to protect that area.

(iii) Supporting Conservation Research and Awareness-Raising

The FDP provides that the Bank will consider financing activities that promote the training of technical personnel and the education and participation of the local population in the development of forest activities. Special attention will be given to support science and technology methods that would protect forest areas and improve forestry practices. 735

We recommend countries take advantage of IDB available financial support, where appropriate, to enhance capacity and understanding around forest and biodiversity issues. We also recommend countries take adequate administrative measures aiming to promote research and awareness-raising of forest and biodiversity conservation.

(iv) Integration of Biodiversity in Cross-Sectoral Policies

The IDB policies do not have special provisions aiming to integrate biodiversity matters in cross-sectoral policies.

Countries are recommended to address this gap and take appropriate steps to ensure coordination and integration of economic, social and development decisions takes into account the impacts on biodiversity.

(v) Enhancement of Other Benefits

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734 IDB, ESCP-IG, page 41
735 IDB, FDP, section: Objectives
According to the FDP, the IDB will provide financing and technical cooperation to countries so they may utilize and conserve their forest resources and provide social, economic and environmental benefits to present and future generations.\textsuperscript{736}

Throughout the development of REDD+ strategy options and in order to meet UNFCCC REDD+ Safeguard (e), we recommend that countries prioritize options that may enhance environmental and social benefits.

<table>
<thead>
<tr>
<th>Countries should consider and prioritize REDD+ strategy options aimed at enhancing other benefits, such as poverty eradication or promotion of sustainable livelihoods of both local communities and indigenous peoples. This is particularly important because these groups depend on forest-related services for their livelihoods. UNFCCC REDD+ Safeguard (e) explicitly recognises this, emphasising the need to develop strategies that mutually support livelihoods and forest protection.</th>
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</thead>
</table>

\textsuperscript{736} IDB, FDP, section: Objectives
Consistency with UNFCCC REDD+ Safeguards (f) & (g)

Summary of findings

The Forest Development Policy is the relevant policy for the implementation of UNFCCC REDD+ Safeguards (f) and (g).

Countries must recall that in order to effectively implement UNFCCC REDD+ Safeguards (f) and (g), they need to ensure that reductions are lasting and to minimize the risk of displacement. REDD+ projects financed by the IDB will be subject to the IDB’s monitoring mechanisms in terms of assessing risks of reversals and displacement.

The IDB promotes regional programs and technical cooperation in order to enhance international cooperation between bordering countries, which can be reflected in regional strategies or programmes.

1. Monitoring and Assessment

According to the Policy Directive on Supervision and Compliance of the ESCP, the IDB will monitor the country’s compliance of the following items: 1) general compliance with mitigation measures included in the Environmental and Social Management Plan (ESMP); 2) environmental or associated social noncompliance issues that arise during project implementation; 3) Safeguard Indicators; 4) Ex-post Evaluation.

The overall objective of monitoring is to identify significant changes to the physical, biological and social environment brought about by the project and to determine the effectiveness of the mitigation measures, as well as verify fulfillment of the commitments stated in the ESMP. According to the ESCP, affected parties can be asked to play a role in monitoring the ESMP.

The monitoring activities will focus on compliance with the resettlement plan in terms of the social and economic conditions achieved or maintained in the resettled and host communities.

In projects with significant indigenous components, the project teams will select and include monitoring frameworks and indicators that facilitate the monitoring of compliance and verification of the quality of implementation. The design of projects and mitigation frameworks will include, where applicable, identification of indicators that are socioculturally appropriate for the well-being of the indigenous peoples and their objectives for development with identity. The baseline for the evaluation will be established during the project analysis or based on data collected during the early stages of implementation. In the case of the IPP, the monitoring and evaluation frameworks will include independent reviews for impact mitigation frameworks.

Regarding monitoring of forest activities, the FDP provides that “Whenever pertinent, ex-post evaluation must include an assessment of the environmental impact of the project, and in community-oriented operations, of the participation

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737 IDB, ESCP-IG, page 36
738 IDB, ESCP-IG, page 36-37
739 IDB, ESCP-IG, page 67
740 IDB, ESCP-IG, page 32
741 IDB, Involuntary Resettlement Policy and Background Paper, page 5
742 IDB, IPP, para. 2.42
of the beneficiaries of the project. In these cases, the evaluation will be financed by the Bank on a no reimbursable basis.\textsuperscript{743}

The ability to effectively monitor and assess forest cover, as well as emissions reductions and removals, is an integral component for ensuring the integrity and credibility of REDD+. Additionally, having a detailed knowledge of the forest will enable countries to have a robust monitoring system. In this regard, the FDP provides that it will cooperate in the programs of member countries for applied research and studies in areas such as the acquisition of scientific data on timber resources, forest soils, hydrology, genetic and ecological characteristics of different tree species.\textsuperscript{744}

We encourage countries to take IDB provisions into consideration and seek to complement them. One complementary measure we recommend countries to implement is the adoption of monitoring strategies that include community participation. This can help create a robust monitoring system, as forest communities tend to have valuable/detailed knowledge of their forests. Furthermore, community monitoring schemes can help contribute to alternative sustainable livelihoods, as well as stronger public acceptance of REDD+.

2. Measures to Avoid Reversals and Displacement

(i) General Measures

None of the IDB’s operational policies address particularly the risk of reversals and/or displacement of GHG emissions. However, is important to note that IDB considers as a risk factor for the environmental viability of the Bank’s operations, the environmental governance capacity of the country and will be an item of assessment.\textsuperscript{745}

We recommend countries to consider that to avoid reversals and displacement of emissions, is important to ensure the implementation of the UNFCCC REDD+ Safeguards (a) through (e). Complying with international and national obligations, enhancing transparent and participatory forest governance, and ensuring biodiversity protection will contribute to ensuring emissions reductions are lasting.

(ii) Measures to Tackle Reversals

The IDB lacks specific provisions aimed at tackling the risk of reversals. However, among relevant considerations for ensuring permanence of emissions reductions is clear land tenure, along with ensuring full and effective participation, respect for the rights of indigenous peoples and local communities, access to effective remedies, and enforcement of

\textsuperscript{743} \textit{IDB, FDP}, section: Investment criteria
\textsuperscript{744} \textit{IDB, FDP}, section: 2. Research and Studies
\textsuperscript{745} \textit{IDB, ESCP}, para. 4.5.
the law. IDB has relevant policies that address the above issues, and where examined through the analysis of UNFCCC REDD+ Safeguard (a) to (d).

An additional and important consideration in terms of tackling the risks of reversals, is addressing the current and potential drivers of deforestation and forest degradation.

<table>
<thead>
<tr>
<th>We recommend countries develop an integrated approach of measures that can assist in addressing the risks of reversals, which consider how measures directly oriented towards the implementation of UNFCCC REDD+ Safeguards (a)-(d) can serve to address risks of reversals. Additionally, countries should specifically develop measures aimed at addressing drivers of deforestation and forest degradation.</th>
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(iii) Measures to Avoid Displacements

Displacement of emissions is intrinsically related to the displacement of activities from one area to another. The IDB recognizes the potential social and environmental risk derived from involuntary resettlement. Therefore, it requires countries to carry out an environmental impact assessment for each proposed relocation site, and to be included in the resettlement plan. The EIA will be conducted “in order to prevent or mitigate any impacts that result from the development of infrastructure, densification of the host area, or pressure on natural resources and ecologically sensitive areas”.

<table>
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<tr>
<th>We recommend countries take consideration of IDB’s provision which require that an environmental impact assessment should be carried out in cases of involuntary resettlement. We also recommend countries ensure a clear and protective legal framework for involuntary resettlement, which can ensure all affected stakeholders are provided with opportunities equivalent to what they had before the displacement. This will ensure that forest livelihoods are maintained, the risk of leakage is minimised, and that international human rights are respected.</th>
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3. International Cooperation

Another type of leakage occurs when forest conservation in one place indirectly creates incentives to deforest in other places. This is likely to occur across national boundaries, causing a transboundary impact. According to ESCP operations affecting another country’s use of waterways, watersheds, coastal marine resources, biological corridors, regional air sheds and aquifers can be identified and addressed through an EA process.

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746 See ClientEarth, “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” an analysis of UNFCCC REDD+ Safeguard (f) & (g)
747 IDB, Involuntary Resettlement Policy and Background Paper, page 13
748 IDB, Involuntary Resettlement Policy and Background Paper, page 4
749 IDB, Involuntary Resettlement Policy and Background Paper, page 4
751 IDB, ESCP, para. B.8
In this regard, the IDB further provides that “whenever possible, the Bank will promote regional programs and technical cooperation for the application of the [FDP].”\textsuperscript{752} This constitutes a positive step towards implementing UNFCCC REDD+ Safeguard (g), as we consider that co-operative measures can include the sharing of information, scientific and technical cooperation, harmonising reporting methodologies, linking information data centres and law enforcement.

We recommend countries take note of IDB promotion of regional programs and technical cooperation in order to enhance international cooperation between bordering countries, which can be reflected in regional strategies or programmes.

\textsuperscript{752} IDB, FDP, section: Investment criteria
Summary of Recommendations for Ensuring Consistency between IDB and UNFCCC REDD+ Safeguards

UNFCC REDD+ Safeguard (a)

1. Countries should complement and ensure consistency with the objectives of national forest programmes.

2. Countries should go beyond the IDB’s policies and take appropriate measures to ensure that the development and implementation of all national REDD+ programmes and activities are always consistent with and complement relevant international obligations, including environmental human rights instruments.

UNFCCC REDD+ Safeguard (b)

1. Countries should acknowledge the importance ensuring transparency in their governance processes, by recognizing the right of the public to access to information.

2. Countries should guarantee that access to all public IDB information will be available in their countries.

3. Countries should provide legal recognition and take necessary measures to give effect to the right of access to information (which involves seeking, receiving and imparting ideas and information) under a maximum disclosure principle, good faith and very limited and narrow exceptions. If countries decide not to disclose information, their decisions should be explained and justified. Moreover, exemptions from disclosure should be included in specific legislation/regulations.

4. Countries should take note that the IDBDOCS and the Public Information Centre are useful mechanisms for promoting access to information. However, we recommend countries to complement them with institutional strengthening and mechanisms and procedures that can guarantee the right to an active and passive access to information.

5. Countries should acknowledge the special circumstances of affected stakeholders in REDD+ activities, especially the vulnerable peoples, such as indigenous peoples, which may not have the means to access the internet or may not have the level of technical understanding to submit a request. Countries should consider that the institutions, procedures and mechanisms to share and receive information should be culturally appropriate, easily understood and available to the different array of stakeholders.

6. Countries may need to strengthen their institutional capacity to actively share information, including training government staff to permanently support vulnerable stakeholders such as indigenous peoples.

7. Countries should promote awareness-raising at all levels and among all relevant stakeholders, especially those that might be considered vulnerable ones. Awareness should be promoted in culturally and appropriate means.

8. Countries should take note of IDB’S mechanisms and their functions, both the preventive activities on combating corruption and the right granted to the public to report a fraud or corruption, all of which can assist in implementing UNFCCC REDD+ Safeguard (b). We additionally, encourage
countries to promote, strengthen or create domestic mechanisms to prevent, detect, punish and eradicate corruption.

9. Countries should note of IDB’s environmental governance assessment and indicators and raise it up to a wider analysis of their environmental/forest governance structures, in order to identify weaknesses and gaps. Additionally, we suggest to include the existence of grievance procedures in the list of indicators, and to require the preparation of an action plan to address the findings of this assessment.

10. Countries should conduct a thorough assessment of their national legal frameworks, especially on laws that will have an impact on forest governance and ensure that they are effective, enforceable and integrated, and that are based upon sound, ecological, economic and scientific principles. Moreover, countries should assess if their current regulations on forest governances are adequately enforced.

11. Countries should ensure that land tenure and property rights are adequately guaranteed and protected not only to indigenous peoples, but to other relevant stakeholders involved in REDD+ activities.

12. Countries should take note that the IDB requires the respect of customary law, for projects regarding indigenous lands and territories.

13. The IDB only refers to the distribution of benefits in the context of indigenous peoples. To meet UNFCCC REDD+ Safeguard (b) countries should be aware that not only indigenous peoples may be the ones affected or the only beneficiaries of forest projects. In this sense, countries should ensure that all relevant stakeholders can access benefits-be those monetary or non monetary- that may arise from REDD+ activities. Countries also need to consider that in the context of REDD+, benefit sharing is inextricably linked to other issues that need to be resolved such as land tenure clarification. We recommend countries clarify in their legal framework who will have the right to participate directly or indirectly in the benefits generated by REDD+.

14. The IDB does not request countries to provide gender equality laws. We recommend countries ensure the existence and enforcement of gender laws. Countries should utilise IDB’s policies to gather relevant information. Additionally, countries may also consider requesting assistance for conducting national gender analysis and specific gender issues in projects, exploring opportunities to address emerging issues for women and raise awareness on gender inequalities and concerns. Finally, it is essential for countries to ensure that any REDD+ consultations, decision-making and benefit sharing processes are implemented in a gender-sensitive way.

15. Countries should take note that the IDB environmental governance capacity assessment is a useful tool for implementing UNFCCC REDD+ Safeguard (b). When doing so, we recommend countries to identify both strengths and weaknesses and consider specific issues such as land tenure, distribution of benefits, enforcement, gender considerations and grievance mechanisms. Additionally, we recommend countries verify if all appropriate administrative departments at the various levels of government are in place, along with adequate funding, well-trained and accountable staff for the effective operation of REDD+ activities.

16. Countries should establish how participation and consultation processes will effectively influence decision making and/or provide criteria on how the results of consultation processes are ultimately integrated (or not) in final project documents or decision-making processes.
17. Countries should put in place mechanisms for the appropriate involvement of all relevant stakeholders and create an enabling environment for participation.

18. Countries should consider IDB’s definition on ‘meaningful consultation’ which requires consideration of the views of all parties involved, to a reasonable extend, resulting in concrete actions that take other parties’ concerns into account.

19. Countries should not rely in the ICIM as a mechanism to guarantee access to justice. Countries should take necessary measures to create or strengthen grievance mechanisms in their countries, which should be gender responsive, culturally appropriate, and readily accessible to all segments of the affected people.

20. When assessing institutional and governance frameworks countries should focus on capacity for cross-sectoral communication and cooperation, and develop measures that will enhance such capacity. Additionally, countries may want to consider integrating a requirement to take into account economic, social, and environmental aspects for decision-making processes that impact forests (including project and strategy development, such as REDD+) in their legal frameworks.

UNFCCC REDD+ Safeguard (c)

1. Countries should define, according to their own circumstances, the terms “indigenous peoples” and “local communities”. In doing so, they may consider the criteria and terminology provided by IDB. We also encourage countries to examine the relevant and applicable national and international law on the matter, taking into considerations standards already set by it.

2. Countries should take effective measures to ensure the recognition of local communities. Countries would need to define whether they are given the same rights, similar rights or different rights afforded to indigenous peoples.

3. Countries should ensure their legal frameworks include clear definitions of knowledge referring to both indigenous and local communities. We recommend countries follow IDB provisions and examine the relevant and applicable national and international law on the matter to define them.

4. The IDB has in place several mechanisms aiming to guarantee the protection of indigenous human rights, which will support the implementation of UNFCCC REDD+ Safeguard (c). However, countries should complement the IDB’s mechanisms with strong and comprehensive domestic legislation on indigenous peoples and local communities’ rights based in accordance with international relevant and applicable international conventions.

5. Countries should complement IDB policies with a clear domestic legal framework that guarantees indigenous peoples cannot be discriminated on the basis of ethnicity. Countries should enact specific measures to implement this guarantee, which might include recourse mechanisms.

6. Countries should consider IDB’s policies and complement them with domestic measures to guarantee the right of self-determination, taking into consideration their relevant and applicable international law.

7. Countries should take IDB’s policies into consideration when seeking to ensure cultural rights are recognised and respected. We recommend complementing this with a domestic legal framework that extends this guarantee beyond IDB’s ‘relevant projects’. As far as possible, countries should aim to identify what rights are to be protected under “cultural rights” according to their own contexts.
For instance, they should consider respect for their identity, language, customs, traditions, rituals, cultural institutions, cultural sites and assets, among others.

8. Countries should take into consideration IDB’s provisions on land tenure rights as it requires the recognition of customary rights of indigenous peoples on the legal status, possession and management of territories and lands.

9. Countries should work on their land use planning in order to determine where indigenous peoples and local communities are located and establish what rights need to be recognised. Furthermore, we recommend countries to take advantage of the assistance they can get from development agencies to strengthen/adjust their domestic legislations to establish legal recognition of customary land use.

10. Countries should ensure their domestic legal framework provides both indigenous people and local communities the right to participate directly or indirectly in the benefits generated by REDD+.

11. Countries should take note of the corrective measures included in IDB’s IPP, for the protection of indigenous peoples in benefit sharing of the Bank-funded operations in order to develop their own corrective measures in their legal framework.

UNFCCC REDD+ Safeguard (d)

1. Countries should complement IDB’s policies in terms of recognizing and effectively implementing the three procedural rights (access to information, access to participate in decision making processes and access to justice in environmental matters).

2. Countries should promote the participation of all interested individuals and groups, including NGOs and to guarantee the considerations of their inputs.

3. Countries should enact provisions which guarantee that all relevant stakeholders will be informed at all stages of the operations in order to ensure a full and effective participation in REDD+ activities and to use adequate means to guarantee that the information is effectively distributed.

4. Countries should take necessary measures to ensure that all relevant background information concerning the operation that will be submitted to consultation, is disclosed to the public through appropriate means, and in time to allow for effective participation in the decision making process.

5. Countries should implement measures to incorporate and address results of the consultations. It will be essential to have provisions that clearly state how consultations results will be analysed and integrated (or not) in the decision.

6. Countries should not to rely on IDB provisions on access to justice in the context of participation. Countries should put in place measures that will enable all stakeholders to access judicial, quasi-judicial and/or administrative proceedings that would allow them to challenge substantive and procedural legality of any decision, act or omission relative to participation in decision-making, especially in forest decision-making, including access to redress and remedy.

7. IDB provides detailed and adequate mechanisms that contribute to an enabling environment for the participation of indigenous peoples Countries should build upon these requirements to implement UNFCCC REDD+ Safeguard (d). Specifically, we recommend countries to ensure provisions related to an enabling environment apply to local communities.
8. Countries should complement IDB’s policies by ensuring consultations with indigenous peoples’ communities are carried out not only in a culturally appropriate and accessible manner, but through institutions recognised by those groups.

9. Countries should consider that UNFCCC REDD+ Safeguard (d) requires guaranteeing the procedural right to FPIC for indigenous peoples, in the circumstances provided by international law. Countries should ensure FPIC applies in all cases provided under the relevant and applicable international law.

UNFCCC REDD+ Safeguard (e)

1. Countries should provide a clear definition of natural forest (taking as a basis the definition provided by the FAO or relevant international standards provided) in their national legal frameworks, to give a better legal certainty as to what should be protected.

2. Countries should be aware that while IDB’s policies distinguish critical and non-critical natural forest habitats and allow the conversion of the latter, as far as the UNFCCC REDD+ Safeguard (e) requirements are concerned there is no difference. We urge countries to put in place specific legal provisions ensuring that REDD+ actions are not used for the conversion of natural forest, and provide appropriate definitions of the terms ‘natural forest’ and ‘conversion’.

3. Countries should carry out an identification and mapping of natural forests and biodiversity, in order to ensure that these important areas are protected and not forgotten throughout REDD+ implementation.

4. Countries should note the appropriateness of IDB’s provisions on invasive species. Countries should complement them by ensuring adequate provisions to protect biodiversity are foreseen in their legal frameworks including specific measures to protect it.

5. Countries should ensure that protected areas are established with the participation of affected indigenous peoples and local communities in order to establish a set of incentives to protect that area.

6. Countries should take advantage of IDB available financial support, where appropriate, to enhance capacity and understanding around forest and biodiversity issues.

7. Countries should take adequate administrative measures aiming to promote research and awareness-raising of forest and biodiversity conservation.

8. Countries should ensure coordination and integration of economic, social and development decision-making takes into account the impacts on biodiversity.

9. Countries should consider and prioritize REDD+ strategy options aiming to enhance other benefits, such as poverty eradication or promotion of sustainable livelihoods of both local communities and indigenous peoples.

UNFCCC REDD+ Safeguard (f) & (g)

1. Countries should adopt monitoring strategies that include community participation.
2. Countries should consider that to avoid reversals and displacement of emissions, it is important to ensure the implementation of the UNFCCC REDD+ Safeguards (a) through (e). Complying with international and national obligations, enhancing transparent and participatory forest governance, and ensuring biodiversity protection will contribute to ensuring emissions reductions are lasting.

3. Countries should develop measures aimed at addressing drivers of deforestation and forest degradation.

4. Countries should take consideration of IDB’s provision which require that an environmental impact assessment should be carried out in cases of involuntary resettlement. We also recommend countries ensure a clear and protective legal framework for involuntary resettlement, which can ensure all affected stakeholders are provided with opportunities equivalent to what they had before the displacement. This will ensure that forest livelihoods are maintained, the risk of leakage is minimised, and that international human rights are respected.

5. Countries should take note of IDB’s promotion of regional programs and technical cooperation in order to enhance international cooperation between bordering countries, which can be reflected in regional strategies or programmes.
Annex V: Analysis of the Asian Development Bank Safeguards

Background of the Asian Development Bank

The Asian Development Bank (ADB) is the main financing institution for economic and social development projects in Asia and the Pacific. The ADB’s main goal is to alleviate poverty and to promote sharing of the benefits derived from a sustained and inclusive growth. When developing and implementing projects, the ADB applies a set of safeguards that “seek to avoid, minimize, or mitigate adverse environmental and social impacts, including protecting the rights of those likely to be affected or marginalized by the development process.”

The ADB’s safeguard policy framework consists of three operational policies covering the environment, indigenous peoples and involuntary resettlement. In addition to these policies, there are several other policies and strategies applied to the ADB’s core operational areas and drivers of change, which impose obligations on borrowers which could be relevant to the UNFCCC REDD+ Safeguards (see Table 1).

Documents/Policies Used for the Analysis

In order to analyse how the ADB’s policies and safeguards compare with the UNFCCC REDD+ Safeguards, we have selected relevant ADB policies that countries need to comply with in order to obtain funds from the Bank to develop projects and activities.

For our analysis, we have reviewed the following ADB polices:

753 http://www.adb.org/about/main.
757 According to the ADB’s Public Communications Operations Manual (section B), “borrower” is understood as any recipient of ADB assistance for projects financed by a loan, grant, or other financing arrangement that is i) extended to a member state or ii) guaranteed by a member state (projects known as “sovereign projects”). In this section, we will use the term ‘country’ or ‘countries’ indistinctly to refer to the recipient/s described under this definition. (Asian Development Bank, Public Communications Operations Manual, (April 2012), p. 1, available at: http://www.adb.org/sites/default/files/oml3.pdf, accessed 25 February, 2013).
The ADB SPS is the result of a four-year revision process of the ADB’s Safeguard Policies, which had previously existed in three separate policies (one on environment, one on indigenous people, and one on involuntary resettlement).  

Table 1: ADB Policies relevant to REDD+ activities

<table>
<thead>
<tr>
<th>Policies and Operations Manuals</th>
<th>Description</th>
<th>Relevant UNFCCC Safeguard</th>
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<tbody>
<tr>
<td>1. Safeguard Policy Statement (SPS) (2009) and its Operations Manual</td>
<td>The SPS aims to avoid, minimize and mitigate adverse impacts of projects on the environment and affected people or compensate when avoidance is not possible. It also seeks to develop countries’ capacity to manage environmental and social risks.</td>
<td>(c), (d)</td>
</tr>
<tr>
<td>2. Accountability Mechanism Policy (2012) and its Operations Manual</td>
<td>The Accountability Mechanism seeks to be responsive and fair to the concerns of project-affected people, increase projects’ quality and enhance transparency.</td>
<td>(b), (d)</td>
</tr>
<tr>
<td>3. Public Communications Policy (2011) and its Operations Manual</td>
<td>The Public Communications Policy establishes disclosure requirements for documents the ADB produces or requires to be produced. The fundamentals of the policy are proactive disclosure, right to access and impart information and ideas, country ownership, limited exceptions and right to appeal.</td>
<td>(b), (d)</td>
</tr>
<tr>
<td>4. Gender and Development Policy (1998) and its Operations Manual</td>
<td>The policy aims to place direct emphasis on gender mainstreaming and to provide the scope for addressing new and emerging issues for women in the region to improve their status.</td>
<td>(b)</td>
</tr>
<tr>
<td>5. Anticorruption Policy (1998) and its Operations Manual</td>
<td>ADB’s Anticorruption Policy aims to provide means for an accountable, ethical and transparent public administration as well as combat corruption at all levels while implementing ADB projects.</td>
<td>(b)</td>
</tr>
</tbody>
</table>

758 The ADB SPS is the result of a four-year revision process of the ADB’s Safeguard Policies, which had previously existed in three separate policies (one on environment, one on indigenous peoples, and one on involuntary resettlement).
759 ADB, SPS, p. 4
Mechanisms that Support the Implementation of the UNFCCC REDD+ Safeguards

Environmental Assessments (EA)

Countries must conduct an environmental assessment when projects carry potential risks for the environment. Proposed projects are screened according to the nature, magnitude, location and sensitivity of their potential environmental impacts and classified in the following categories:

- Category “A” if it is likely they have significant adverse environmental impacts that are irreversible, diverse, or unprecedented.
- Category “B” if the potential adverse environmental impacts of projects are less adverse than those of Category A projects. These impacts are site-specific, and mitigation measures can be designed more readily than for category A projects.
- Category “C” projects are likely to have minimal or no adverse environmental impacts. No environmental assessment is required, although environmental implications still need to be reviewed.766

Environmental assessments may take one or more form, depending on the nature of the project, including Environmental Impact Assessment (EIA), Initial Environmental Examination (IEE), Environmental Assessment Review Framework (EARF) and Environmental and Social Management System (ESMS).767 Environmental Management Plans (EMPs) are required to address potential impacts and risks for Category A and B projects.

Procedures for Indigenous Peoples

Countries are required to conduct a screening to determine whether indigenous peoples are located in the area of the project or its area of influence. If they are identified, a Social Impact Assessment (SIA) is

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764 ADB, Policy on Forestry, p 11.
766 ADB, SPS, p. 19, 20.
767 EIAs are required for Category A projects; IEEs are required for Category B projects. EARFs are required additionally for specific finance modalities (sector lending, multitranche financing facilities and emergency assistance loans); ESMS are required for investments where financial intermediaries are involved. (ADB, SPS, 66-69).
carried out to identify potential social impacts and risks, and to provide a profile of the indigenous
groups in the project area and project impact zone. Based on the SIA, an Indigenous Peoples Plan
(IPP) is developed, which includes a framework for continued consultation with the affected indige-
nous peoples communities during project implementation; measures to ensure culturally appropriate
benefits; measures to avoid, minimize, mitigate, or compensate for any adverse project impacts; and
includes culturally appropriate grievance procedures, monitoring and evaluation arrangements, and a
budget and time-bound actions for implementing the planned measures. An Indigenous Peoples Plan-
ning Framework (IPPF) is required for specific finance modalities (sector lending, multi-tranche financ-
ing facilities and emergency assistance loans).

Involuntary Resettlement Processes

Countries are required to conduct a screening to determine whether or not a project involves involu-
tary resettlement. If so, a SIA is carried out to provide a baseline socio-economic data to identify all
persons who will be displaced by the project, and to assess the project’s socio-economic impacts. Based on the SIA, countries need to develop a Resettlement Plan (RP) elaborating on displaced per-
sons’ entitlements, the income and livelihood restoration strategy, institutional arrangements, moni-
toring and reporting framework, budget, and time-bound implementation schedule. In addition, Re-
settlement Frameworks (RF) are required for specific finance modalities (sector lending, multi-tranche
financing facilities and emergency assistance loans).

Other Requirements

An Initial Poverty and Social Analysis (IPSA) is required for all loan and grant-based investment projects
and programs to identify expected poverty and social impacts, identify key social and identify and allo-
cate resources for conducting social analysis during the feasibility study or due diligence.

Access to Information

The ADB’s Public Information and Disclosure Unit (InfoUnit) is in charge of receiving requests for infor-
mation, posting information on ADB projects and activities on the web, and designing strategies to in-
form the public on information that is available.

Accountability and Anticorruption

The ADB’s accountability mechanism has two functions: problem solving and compliance review. The ADB’s Anticorruption Policy seeks to ensure that financing is used for intended purposes only. The Office of Anticorruption and Integrity is the initial point of contact for allegations of fraud, corrup-
tion or abuse within ADB or ADB-financed projects or its staff.

768 ADB, SPS, p. 57.
769 ADB, SPS, p. 66-69.
770 ADB, SPS, p. 46, 47 and 57.
771 ADB, SPS, p. 17.
772 ADB, SPS, p. 66-69.
775 ADB, Accountability Mechanism Policy, p. 4.
Analysis of Asian Development Bank Safeguards

Consistency with UNFCCC REDD+ Safeguard (a)

**Summary of findings for UNFCCC Safeguard (a)**

Through its Safeguard Policy Statement (SPS) and Policy on Forestry, the ADB promotes coherence between the Bank’s assisted projects and the country’s long-term forestry plans, national legislation and international obligations. However, international agreements and obligations may not be applied or taken into consideration if countries have not developed national laws or regulations to implement them.

1. **Complement or Consistent with the Objectives of National Forest Programmes**

The ADB’s Policy on Forestry establishes that “each forestry investment project to be financed by the Bank should fit within the country’s long-term plan for forestry development.” Additionally, it states that forest investment should be based on a “strong sectoral analysis and an assessment of appropriateness of sectoral policies, objectives, and supporting legislation”.

We recommend countries follow ADB’s policies which contribute to the implementation of UNFCCC REDD+ Safeguard (a). Countries should ensure their national REDD+ programmes are consistent with their national forestry objectives embodied in their national plans and legislation.

2. **Complement or Consistent with Relevant International Conventions and Agreements**

The SPS states that “ADB will not finance projects that do not comply with its safeguard policy statement, nor will it finance projects that do not comply with the host country’s social and environmental laws and regulations, including those laws implementing host country obligations under international law.”

Even though there is an explicit mention to comply with the host country’s social and environmental international obligations, this would mean that, in practice, international agreements would not apply to ADB’s funded projects if a country has not developed national laws or regulations to implement them. Accordingly, social and environmental international obligations may not be considered for the implementation of ADB’s funded projects if the countries where they take place, have not implemented them at the national level. Consequently, while ADB policies’ provisions may be in accordance with UNFCCC Safeguard (a) in that there is a need to comply with national laws and regulations, they may not meet the UNFCCC REDD+ Safeguard entirely.

In this sense, the ADB may not be fully aligned with the objective of UNFCCC REDD+ Safeguard (a). It is important for countries to acknowledge that ADB’s SPS and other policies are triggered by specific cir-

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779 For the purpose of the UNFCCC Safeguards, the term “social” would include compliance with international human rights and indigenous peoples rights obligations.
780 ADB, SPS, p. 15.
cumstances (mainly when projects impact the environment, result in involuntary resettlement and impact indigenous peoples). Accordingly, they may not be always applied in every context. Conversely, UNFCCC REDD+ Safeguard (a) requires that all REDD+ activities to complement or be consistent with international obligations.

We recommend countries ensure that their international obligations (regarding environmental, human rights and indigenous peoples issues) are fulfilled during all activities linked to REDD+ and all REDD+ phases. To do so, it is important that countries not only ratify international agreements, but also develop national laws and regulations to put them in practice.
Consistency with UNFCCC REDD+ Safeguard (b)

Summary of findings for Safeguard (b)

Although the ADB recognises the right to receive and impart information and operates under a proactive policy for disclosure of information, the exceptions foreseen by the Public Communications Policy may undermine this right. Moreover, the lack of a request or support for countries to recognise the right to access to information, promote its awareness and to have proper mechanisms with this purpose weakens transparency in ADB’s operations. Furthermore, the modality of requesting information (in writing) and the lack of clarity and criteria on when countries may refuse to make information available to the public, may exclude certain stakeholders access to information.

The two-stage appeals process included in ADB policies is a fair means to ensure accountability and transparency in ADB-assisted projects. However, the fact that the appeals mechanism only applies to ADB’s operational policies may restrict hearing of complaints.

On the other hand, ADB’s policies provide a good framework for requiring countries to assess their policy, legal and institutional governance capacities to deal with projects that may affect forests and indigenous peoples. Furthermore, ADB provides useful provisions regarding land tenure, gender equality and grievance mechanisms that may be considered by countries when implementing REDD+. However, ADB’s provisions on “meaningful consultation” processes fall short on ensuring the full and effective participation of stakeholders, since it is not clear how they will influence decision making.

1. Transparency
   (i) Right to Access to Information

Access to information is governed by the ADB’s Policy on Public Communications and accompanying Operations Manual. The objective of this policy is to “increase transparency, accountability and participatory development” in order to “enhance stakeholders’ trust in and ability to engage with ADB.”

The policy expressly recognizes “the right of people to seek, receive and impart information and ideas” on ADB activities and operations. However, the ADB does not require or support countries to recognise the right to access information in their legal frameworks or to have measures/mechanisms to provide access to information in order to ensure transparency.

Presumably, the ADB’s Policy on Public Communications is based on a presumption in favour of proactive disclosure of information. However, the policy provides several potential overly-broad exceptions to disclosure. For instance, according to the policy, any information provided “in confidence” by a member or international organization that (if disclosed) “would be likely to materially prejudice ADB’s relations with that party or any other member” must not be disseminated.

781 ADB, Public Communications Policy, p. 6 and 12.
782 ADB, Public Communications Policy, p. 12.
783 ADB, Public Communications Policy, p. 12.
784 Exceptions to presumed disclosure under the Public Communications Policy include i) deliberative and decision-making processes; ii) information provided in confidence; iii) information that could affect commercial, financial or competitive interests; iv) personal information; v) financial information; vi) security and safety; vii) legal or investigative matters and viii) internal audit reports and trust fund audit reports. (ADB, Public Communications Policy, p. 23-25)
785 ADB, Public Communications Policy, p. 23.
However, there is no mention to any criteria/methodology to assess how the disclosure of certain information may impact negatively on the member country or any third party. Therefore, under this exception, any type of information could be qualified as “prejudicial” and thus, not be disclosed. Furthermore, the exception that allows the Bank not to disclose deliberative and decision-making processes\(^786\) may undermine transparency between ADB and its stakeholders in some cases.

Under extraordinary circumstances, the policy allows ADB to reserve the right to override the policy exceptions if it determines that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure (“positive override’). On the other hand, however, the ADB is exempted from sharing information subject to disclosure if it determines that such disclosure would, or is likely to cause harm that outweighs the benefit of disclosure (“negative override”).\(^787\)

We recommend countries take note that although the ADB recognises the right to receive and impart information and operates under a proactive policy for disclosure of information, the exceptions for disclosure may undermine this right and UNFCCC REDD+ Safeguard (b). To meet UNFCCC REDD+ safeguard (b), we recommend countries ensure their legal frameworks explicitly recognise the right to access to information (which involves seeking, receiving and imparting ideas and information) under maximum disclosure principles, good faith and very limited and narrow exceptions. In any case, if countries do decide not to disclose any information regarding projects or initiatives, their decisions need to be well explained and justified. Moreover, exemptions from disclosure should be included in specific legislation/regulations. Countries also need to develop appropriate mechanisms (regulations, policies and procedures) to operationalize the right in accordance with UNFCCC Safeguard (b).

(ii) Institutions to Ensure Access and Distribution to Information

The ADB utilises its website as the primary vehicle to proactively disseminate knowledge and information about its work (including institutional, financial, and project-related information). Unless restricted by the exceptions within the policy, common project documents are regularly posted on the ADB website once they have been circulated to or approved by the ADB Board of Directors.\(^788\)\(^789\)

Within the ADB, InfoUnit is in charge of receiving requests for information and is responsible for posting information on ADB’s projects and activities on the web, and designing strategies to inform the public on information that is available.\(^790\) Nevertheless, the Public Communications Policy states that “before disclosing certain documents, the views of DMCs shall be considered with regard to the

\(^{786}\) ADB, Public Communications Policy, p. 23.

\(^{787}\) ADB, Public Communications Policy, p. 4.

\(^{788}\) Among the documents that are regularly posted are: projects and programs (including projects data sheets, information to affected peoples and stakeholders, projects safeguards documents; Initial Poverty and Social Analysis; major changes in projects and completion Reports and policies and Strategies subject to Public Consultations. [ADB, Public Communications Policy, p. 15-20].

\(^{789}\) Documents submitted to the Board for information shall be posted on the ADB website upon circulation to the Board. The majority of Board documents submitted to the Board for consideration shall be posted on the ADB website before approval or endorsement by the Board. Other Board documents shall be posted on the ADB website upon approval or endorsement by the Board (Public Communications Policy, p. 12). However, it is also important to note that under this policy the term “upon” is defined as “upon” approval, circulation, completion, endorsement, discussion, issuance, receipt, or submission, means as soon as is reasonably practical, and no later than 2 weeks (14 calendar days) following the date of approval, circulation, completion, endorsement, discussion, issuance, receipt, or submission (ADB, Public Communications Policy, p. v).

\(^{790}\) ADB, Public Communications Policy, p. 28.
contents and timing of their disclosure". From this provision, it is not clear what ‘certain documents’ are, nor if this provision means that countries are entitled to accept or refuse sharing of the documents fully or partially. It could be interpreted that countries have in fact discretion to decide on this. Accordingly, information regarding projects financed by ADB, may not be shared with the public. If this is the case, the Public Communications Policy does not list any measures that the ADB should take in cases where countries refuse to make project information available to the public.

Depending on the circumstances, other means of information sharing are also used. In particular, when seeking feedback on the proposed projects, the ADB states that information to be provided to affected people and other interested stakeholders “shall be made available to them in a manner, form, and languages(s) understandable to them” and in an accessible place.” However, it is important to note that any request of information must be made in writing. This could exclude certain stakeholders who may be illiterate or may not have the level of technical understanding to submit a request. If there is already a provision that allows ADB to share information “in a manner, form, and languages(s) understandable to them [meaning, stakeholders]”, this could be equally applied to the information requests presented by them.

The ADB’s Public Communications Policy recognises the right of those requesting information to a two-stage appeals process when they believe that ADB has denied their request in violation of its policy. The Public Disclosure Advisory Committee (PDAC) is authorised to review denials of requests for information. Decisions made by the PDAC are reviewed by an Independent Appeals Panel (IAP) which has the right to uphold or reverse them. However, positive override requests can only be considered by the PDAC and any recommendation to disclose or deny information requires the approval of the Board or President. Negative override requests can only be considered by the Board.

Countries should take note that ADB’s modality of requesting information (in writing) could exclude certain stakeholders who may be illiterate or may not have the level of technical understanding to submit a request.

In light of the above and in order to meet UNFCCC REDD+ Safeguard (b), we recommend countries to consider the special circumstances of the different array of stakeholders when deciding the means, processes and mechanisms to share/receive information (including collection, compilation and adequate distribution). These must be culturally appropriate, easily understood and available. Additionally, countries could consider implementing a two-stage appeals process to access information when designing/implementing their own REDD+ safeguards systems. However, to do so, countries may need to strengthen their institutional capacities to actively share information, including training government staff to permanently support vulnerable stakeholders such as indigenous peoples. In this way transparency, as conceived under UNFCCC Safeguard (b) may be encouraged and ensured.

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791 ADB, SPS, p. 3.
792 ADB undertakes translations to encourage participation in, understanding and support of ADB assisted-activities by stakeholders under the Bank’s Translation Framework. ADB Public Communications Policy, p. 25.
793 ADB, Public Communications Policy, p. 16.
794 ADB, Public Communications Policy, p. 16.
795 ADB, Public Communications Operations Manual, p. 3.
(iii) Promoting Public Awareness on Access to Information

The ADB’s Public Communications Policy does not require countries to promote public awareness or education on the right to access publicly-held information. The SPS is also silent on these matters. 

Since awareness of the right to be informed is essential for transparent forest governance, we recommend countries to promote it at all levels, especially among stakeholders that may be considered vulnerable. Accordingly, awareness must be promoted in culturally and appropriate means.

(iv) Accountability

Accountability plays a key role for ensuring transparency in forest governance. The ADB’s Accountability Mechanism Policy aims to be responsive to the concerns of project-affected people and stakeholders and enhance independence and transparency in ADB-assisted projects. The Accountability Mechanism Policy is a ‘last resort’ mechanism designed to be complementary to other supervision, audit, quality control and evaluation systems at the ADB.

The ADB also has an Anticorruption Policy which seeks to ensure that ADB financing is used for the intended purposes only. To reduce corruption in the country where it operates, ADB may support explicit anticorruption programs, including developing a national anticorruption strategies, statutes and codes of conduct; improving courts’ abilities to deal with corruption cases, and strengthening the legal mechanisms for judicial review. ADB also supports training, education and dissemination activities among government officials. Within ADB, the Anticorruption Policy designates the Office of Anticorruption and Integrity which is the initial point of contact for allegations of fraud, corruption or abuse within ADB or ADB-financed projects or its staff.

To implement UNFCCC REDD+ Safeguard (b) and to ensure transparency in forest governance, countries should consider the utility and feasibility of ADB’s support for addressing corruption. Countries might also want to consider building upon and/or implementing similar provisions to ADB’s arrangements on accountability. Countries should have mechanisms to combat corruption according to their own national contexts and legal frameworks.

2. Effective National Forest Governance

There is not a specific reference to ‘forest governance’ in the ADB’s current policies, including its current Forest Policy. However, the term governance is referenced in supporting work conducted by the ADB. In this work, strengthening forest governance and capacity building are seen as a means to...
improve resource access and security, promote review of regulatory regimes, assess pricing policies that may impact forestry (agricultural prices, subsidies to balance supply and demand of forest products and services), and secure stakeholders agreements. According to a Working Paper, good forest governance may finally lead towards respecting the right to livelihoods and poverty reduction.

In order to meet UNFCCC REDD+ Safeguard (b), we recommend countries assess the state of their own national forest governance in order to identify weaknesses and gaps. In doing so, they can take into consideration SPS’ objectives and provisions to analyse how these address different issues and assess their utility in their own contexts. In this way, they will be able to develop a specific action plan to strengthen their own legal frameworks, regulations and capacities which could enhance countries’ ownership of projects and reduce transaction costs.

(i) Appropriate Legal Framework

Before providing assistance for forestry projects, the Bank ensures that an adequate legal framework to control illegal logging is placed in the country. Countries should take this into consideration as they start to assess their own legal and policy frameworks relating to forests.

Countries should take note of ADB’s relevant provision which contributes to the implementation of UNFCCC REDD+ Safeguard (b) and other relevant forest governance processes (i.e. FLEGT). When assessing their own legal and policy frameworks, we recommend countries to focus on specific issues such as land tenure, distribution of benefits, enforcement, gender and grievances mechanisms to ensure these are addressed and regulated in order to meet UNFCCC Safeguard (b).

Clear Land Tenure Rights

The provision of long-term security of tenure for reforestation, plantation or forest management projects is recognised as an imperative to secure proper maintenance and protection of the forest in the ADB’s Policy on Forestry. This policy recommends that land tenure and potential land use conflicts should be recognised and resolved before any forestry project is implemented. Furthermore, it also declares that land tenure arrangements enable current and future forest dwellers to have an economic stake in forests and provide an incentive to use and manage forests sustainably. Accordingly, the Bank will “encourage and assist DMCs [developing member countries] to establish proper land use policies (...). The Bank will, prior to financing any forestry project, carry out social assessments and necessary social design studies (...) to examine the degree to which customary land rights and land tenure of relevant forest-dwelling and/or forest-dependent communities are satisfactory, and to design and agree upon, with borrowers [countries], necessary steps to rectify significant shortcomings in these...”

formally implemented by the Bank. However, we assume that including the term in its latest draft, reflects the vision and approach the Bank may be considering in future forests projects.

805 See Table 1
806 ADB, Policy on Forestry, p. 6.
807 ADB, Policy on Forestry, p. 6.
Although the term ‘satisfactory’ is not defined, in our interpretation this provision would amount to a requirement to clarify land tenure before a project can begin. This is backed by the fact that according to the same policy, the Bank will finance studies on land tenure structure, including customary rights, and offer training support to staff of appropriate agencies to develop their skills in carrying out improved tenurial arrangements.

For projects that involve resettlement, the SPS mandates countries to describe land acquisition processes and legal arrangements to regularize tenure and transfer titles to resettled persons. For projects that “involve activities contingent on establishing legally recognized rights to lands and territories traditionally owned or customarily used or occupied”, legal recognition is required before project implementation. However, it is not clear what is meant by ADB by this type of projects. In this way, some examples or criteria would be useful to identify them. Certainly, REDD+ projects could fall under this category, since there would be a necessity to legally recognize or, at the very least clarify, customary rights to identify potential beneficiaries of the mechanism.

We recommend countries follow, to the extent possible, ADB’s provisions regarding land tenure as they seek to implement UNFCCC REDD+ Safeguard (b). Nevertheless, countries need to establish clear land-tenure rights, which include developing land tenure structures that recognise customary rights and rights of forest-dependent communities. It is essential for countries to identify potential land uses conflicts as early as possible and before REDD+ actions and activities are implemented. If addressing them in a comprehensive way is not possible before the implementation of REDD+ activities and actions, countries should develop work plans with clear timeframes. Finally, countries should take advantage of the technical support that development agencies (such as the ADB) may provide to develop suitable legal frameworks, if they do not have enough capacities and resources to do so. Technical support could also help develop public officers’ skills for land tenure management and arrangements.

Equitable Distribution of Benefits

For ADB-financed projects that result in displacement of people, countries must provide benefits to them and the communities that will host them. Moreover, the SPS establishes that culturally, social and economic benefits must be foreseen in ADB-assisted projects when they impact indigenous peoples.

However, the ADB is silent regarding potential benefits that could arise in forest-related projects (such as REDD+) where ‘forest-dwellers’ or local ‘forest dependent communities’ may be involved.

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809 ADB, Policy on Forestry, p. 13.
810 ADB, Policy on Forestry, p. 13.
811 ADB, SPS, p. 53.
812 As further explained in the analysis of UNFCCC Safeguard (c) and stated by the SPS, p. 59-60.
813 ADB, SPS, p. 17.
814 See the ‘Benefit-Sharing’ section under UNFCCC REDD+ Safeguard (c).
Is important to note that ADB is silent regarding potential benefits that could arise from REDD+ where indigenous peoples, ‘forest-dwellers’ or local ‘forest dependent communities’ may be involved. In order to meet UNFCCC REDD+ Safeguard (b), it is important for countries to understand that not only indigenous peoples may be the ones affected or the only beneficiaries of forest projects. In this sense, they need to establish measures to allow different groups (including women, the elderly and the poor) to access benefits—monetary or non-monetary—that may arise from REDD+ to the extent that they may also be contributing to reduce emissions from deforestation. Countries also need to take into account that in the context of REDD+, benefit sharing is inextricably linked to other issues that need to be resolved such as land tenure clarification and security. Without starting to elucidate and adopt positions on these matters, it will be more difficult to identify not only what benefits are communities entitled to, but also who will be entitled to receive them.

Gender and Equality

ADB’s Strategy 2020 identifies gender equity as a driver of change that will promote inclusive economic growth and allow countries to face regional development challenges. Likewise, inclusion of gender equity considerations in ADB operations and projects is widely mentioned throughout the ADB’s policies.

Firstly, the ADB has a specific policy on Gender and Development, which adopts gender mainstreaming as a key strategy to promote gender equity and women’s empowerment. This requires gender concerns to be treated as a “cross-cutting theme influencing all social and economic processes.” It also explicitly calls for integration of gender considerations into all aspects of ADB operations at all stages of the project cycle, including identification, preparation, implementation, and monitoring and evaluation. The Gender and Development Policy aims to reduce gender disparities by providing assistance, conducting gender analysis, exploring opportunities to address emerging issues for women, and promoting awareness of the Policy’s objectives and implementation.

Gender considerations are also reflected in the SPS, which requires consultation processes to be “gender inclusive and responsive.” Specifically, the SPS mandates inclusion of gender issues, perspectives and impacts in environmental assessments, resettlement plans and indigenous plans. Moreover, social impact assessments must be undertaken with a gender-sensitive approach and contain gender-disaggregated information. Capacity development and grievance mechanisms must also be gender inclusive and responsive.

Furthermore, the Policy on Forestry mandates countries to assess, prior to financing any forestry project, the role of women in resource and production in order “to identify constraints facing women to ensure appropriate levels of beneficiary consultation/participation at all stages of project

819 ADB, SPS, p. 10,
820 ADB, SPS, p. 16-18.
821 ADB, SPS, p. 47, 57.
822 ADB, SPS, p. 18.
identification, preparation, and implementation; and to design and agree upon, with borrowers [countries], necessary activities in this regard.”

It is important to note that the term ‘gender’ is not used in the Forestry Policy, which only refers to ‘women’.

To meet UNFCCC REDD+ Safeguard (b), countries need to acknowledge that gender refers to “socially constructed roles, rights and responsibilities ascribed to men and women and the relationship and distribution of power between them”, which reflects in different dimensions. Therefore, they need to pay particular attention to the role they both play in sustainable forest management and the importance to address any gender disparities in the design and implementation of REDD+. In fact, countries need to recognize that forest degradation has a strong socio-political dimension which is also structured by gender. We recommend countries utilise the ADB’s approach to mainstream gender by including any gender concerns as a cross-cutting issue at all stages of REDD+ implementation. In doing so, countries need to acknowledge that gender mainstreaming “is not an end in itself but a means to achieve the goal of gender equality.” Additionally, countries may also consider requesting assistance for conducting national gender analysis, exploring opportunities to address emerging issues for women and raise awareness on gender inequalities and concerns. Finally, it is essential for countries to ensure that any REDD+ consultations, decision-making and benefit sharing processes are implemented in a gender-sensitive way.

(ii) Appropriate Institutional Frameworks

Similar to the provisions regarding legal frameworks, the ADB requires countries to provide information on their institutional frameworks in their environmental assessments. For instance, countries’ Environmental Assessment and Review Frameworks (EARF) must analyse the adequacy of their institutional capacity in implementing national laws and ADB requirements. They also need to identify capacity development needs.

For projects that involve resettlement, countries are required to outline in their Resettlement Frameworks (RF) institutional responsibilities and provide a comprehensive assessment of institutional capacity and resource capability for preparing, implementing, and monitoring resettlement activities. Countries also need to include additional measures necessary to enhance institutional capacity and organizational procedures for delivering entitlements for resettlement activities. For projects that impact indigenous peoples, countries are expected to provide the institutional framework applicable to

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824 ‘Gender’ is mentioned though in the Forestry Policy Working Paper, which states that “crosscutting safeguard policies such as gender, indigenous people, and environment should always be fully applied when implementing the forest strategy (Forestry Policy - Working paper, p. 29).
826 UN-REDD, supra, note 74, p. 1.
827 UN-REDD, supra, note 74, p. 1.
828 ADB, SPS, p. 41.
829 ADB, SPS, p. 70.
830 ADB, SPS, p. 70.
831 ADB, SPS, p. 73.
832 ADB, SPS, p. 73.
indigenous peoples in project context in their Indigenous Peoples Plan (IPP), and measures needed to strengthen the technical capacity of government institutions to address indigenous peoples’ issues. Countries must also provide measures to strengthen, technical capacity of indigenous peoples’ organizations in the project area to enable them to represent affected indigenous peoples more effectively. Equally, Indigenous Peoples Plans (IPPFs) should describe institutional arrangements, including capacity building where necessary, for screening and categorization, social impact assessment and preparation of (IPPs) and monitoring.

From the information provided in the IPPs or IPPFs, the ADB carries out an overall assessment of the country’s institutional capacity and resource capability for implementing their legal frameworks and deal with resettlement activities and indigenous peoples’ issues. The information provided also allows the Bank to identify capacity development needs to address them.

In order to meet UNFCCC Safeguard (b), we recommend countries utilize ADB’s requirements as guidance to assess their institutional and governance frameworks. When doing so, we recommend countries to identify both strengths and weaknesses and consider how these impact/affect specific issues such as land tenure, distribution of benefits, enforcement, gender considerations and grievance mechanisms. This institutional ‘self-assessment’ should allow countries to carefully plan how to address needs and improve their capacity to enforce forest-related laws and ultimately enhance forest governance. Finally, countries should take advantage of the technical support that developing agencies and institutions (such as the ADB) may provide to improve their institutional capacities.

(iii) Participation in Decision-Making Processes that Affect the Environment

While the ADB does not explicitly recognise a ‘right to participate’ in decision-making processes that affect the environment, it recognises participation as a central element to achieving the SPS objectives. Participation is sought by carrying out prior and informed “meaningful consultation” before and during project implementation. However, it is not clear from the SPS how participation and consultation ultimately influence environmental decision making.

Nevertheless, the Policy on Forestry mandates that the ADB will:

“assist DMCs [developing member countries] in developing and strengthening mechanisms by which public consultation on forestry issues can be facilitated and forest-dwelling and/or forest-dependent communities can be involved in land use decisions related to forest lands – the potential role of NGO’s, elected local bodies, educational organizations, village revenues officials, school teachers, and other relevant bodies in this context will be encouraged.”

833 ADB, SPS, p. 63, 73 and 75.
834 ADB, SPS, p. 64.
835 ADB, SPS, p. 70.
836 Which is defined under the analysis of UNFCCC Safeguard (d).
837 ADB, Policy on Forestry, p. 16.
In implementing measures to meet UNFCCC Safeguard (b), countries may wish to analyse the extent to which the ADB's SPS provisions on participation and “meaningful consultation” are useful in their own contexts. We consider it is very appropriate that the ADB foresees that forest-dwelling and/or forest-dependent communities should be involved in public consultation mechanisms for land-use decisions. However, we recommend countries go further and establish how participation and consultation processes will effectively influence decision making and/or provide criteria on how the results of consultation processes are ultimately integrated (or not) in decision-making processes. Therefore, we suggest countries to adopt similar provisions given that land use decisions are central for implementing REDD+ strategies. Finally, countries should take advantage of the technical support that developing agencies and institutions (such as the ADB) may provide to improve their institutional capacities.

(iv) Adequate Access to Justice

SPS provisions on the environment, indigenous peoples and involuntary resettlement require countries to establish and maintain a grievance redress mechanism to receive and facilitate resolution of affected peoples’ concerns and grievances about the social and environmental performance of the project. According to the SPS, grievances mechanisms should address affected peoples’ concerns and complaints promptly, using an understandable and transparent process that is gender responsive, culturally appropriate, and readily accessible to all segments of the affected people.

As previously noted, the ADB also has an Accountability Mechanism Policy which operates as a last resort to i) respond to problems of local peoples affected by ADB assisted-projects and ii) to resolve allegations of non-compliance with ADB policies that arise during project implementation. The mechanism has a double function: it serves as a problem solving and compliance review tool. The problem solving function “assists people directly, materially, and adversely affected by specific problems caused by ADB-assisted projects.” The compliance review function aims to investigate “alleged ADB’s non-compliance with its operational policies and procedures in any ADB-assisted project in the course of the formulation, processing, or implementation of the project that directly, materially, and adversely affects local people.”

It is important to note that both functions are confined to ADB-related issues on ADB-assisted projects. In fact, according to the Accountability Mechanism Policy, the problem solving function will not “interfere in the internal matters of any developing country member (DMC) and will not mediate between the complainants and local authorities.” For the compliance review function, the Accountability Mechanism Policy establishes that “it will not take place regarding actions that are responsibility of other parties unless the conduct of these other parties is directly relevant to an assessment of ADB’s compliance with its operational policies and procedures.” In case it is concluded that ADB’s noncompliance caused direct and material harm, ADB management staff will propose re-

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838 Participation will be further and fully analysed under Safeguard (d).
839 ADB, SPS, p. 22.
840 The term “ADB-assisted project” refers to a project financed or to be financed, or administered or to be administered, by ADB and covers both sovereign and non-sovereign operations (ADB Accountability Mechanism Policy, p. 28).
841 ADB, Accountability Mechanism Policy, p. 3.
842 ADB, Accountability Mechanism Policy, p. 25.
843 ADB, Accountability Mechanism Policy, p. 30.
We recommend countries follow the Bank’s provisions on the establishment of grievance mechanisms for REDD+/forest initiatives that are gender responsive, culturally appropriate, and readily accessible to all segments of the affected people. Additionally, they could implement mechanisms to solve problems arisen from the implementation of REDD+/forest initiatives and compliance review functions. These should include consultative dialogue, information sharing and mediation to enhance accountability. However, countries would need to pay particular attention to the role they will play for the implementation of REDD+ activities and actions under their jurisdictions. We consider countries should not adopt ADB’s position of “not interfering” in internal matters and not mediating between complainants and local authorities, particularly in cases of project level actions. In fact, countries would need to play a leading role and have specific functions for national REDD+ implementation.

Moreover, we recommend countries to establish clear rules of responsibility and their own accountability mechanisms to address conflicts/problems of local people arisen from the implementation of forest initiatives/REDD+ and mechanisms to verify compliance of the rules established. In doing so, it is important that countries are clear on their own role regarding REDD+ /forest initiatives which will be linked to the elements mentioned in this section (access to information, institutions to ensure access and distribution to information and promoting awareness on access to information). Finally, grievance mechanisms specifically designed for REDD+/forest initiatives should not be an obstacle to access the country’s general judicial or administrative remedies.

(v) Integration of Social, Economic and Environmental Considerations and Cross-Sectoral Coordination

The ADB’s Policy on Forestry establishes that the Bank’s support for population control and poverty reduction, particularly in rural and forested areas, will take specific account of effects on conservation and sustainable forest resource management. In this way, the ADB’s approach to the forestry sector should be “multisectoral, and operations in such other sectors as agriculture, energy, industry, and infrastructure should be obliged to consider the implications of their actions on forest resources.”

Consequently, any forest sector lending should be based on a strong sectoral analysis, assessment and dialogue in order to integrate sector aims and objectives with wider economic and environmental concerns in Master Plans for Forestry Development (MPFDs).

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844 ADB, Accountability Mechanism Policy, p. 36.
845 ADB, SPS, p. 34, 50 and 58.
847 ADB, Policy on Forestry, p. 12.
848 ADB, Policy on Forestry, p. 17.
Additionally, the ADB’s Operation Manual on Incorporation of Social Dimensions into ADB Operations mandates countries to carry out an Initial Poverty and Social Analysis (IPSA) to identify key social issues (including participation, gender, involuntary resettlement, presence of indigenous peoples, labour, affordability and other risks or vulnerabilities)\(^{849}\) and design measures to maximize the social benefits and avoid or minimize the social risks in a participatory manner.\(^{850}\) Moreover, environmental considerations within the SPS require countries to apply a precautionary approach for the use, development and management of renewable natural resources.\(^{851}\)

We consider that these provisions are very pertinent to meet UNFCCC REDD+ Safeguard (b). Indeed, promoting dialogue and trans-sectoral involvement for forestry development is an adequate way to ensure sustainable management of forests is not undermined by other national policies and strategies implemented in the countries. It is apparently clear from the standpoint of the ADB’s safeguards that efforts to sustainably manage forests may be compromised if other sectors or national policies do not take them into consideration. However, the ADB does not provide any guidance on how countries may enhance or strengthen inter-ministerial communication or cooperation (including consultations).

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\(^{849}\) As it was mentioned in the section titled ‘Identification of relevant Stakeholders’ under UNFCCC Safeguard (d).

\(^{850}\) Operations Manual on Incorporation of Social Dimensions into ADB operations, p. 2.

\(^{851}\) ADB, SPS, p. 16.
Consistency with UNFCCC REDD+ Safeguard (c)

Summary of Findings for Safeguard (c)

While the ADB provides useful criteria for defining ‘indigenous peoples’, the terms ‘local communities’ and indigenous peoples’ ‘knowledge’ are not defined. Additionally, the ADB’s safeguards on indigenous peoples neither acknowledge any specific binding international human rights, nor include explicit provisions regarding discrimination and self-determination. However, the ADB’s policies do address in a general way the importance of respecting human rights and maintaining cultural identities, practices and habitats. Moreover, they provide adequate provisions and considerations regarding legal recognition and respect for customary land tenure.

Regarding procedural rights, the ADB foresees participation through ‘prior and informed meaningful consultation’. However, the ADB only requires consent from indigenous peoples for a few specific cases. Finally, the ADB’s provisions on benefits require countries to ensure they are equitably shared in a culturally appropriate manner.

1. Defining Indigenous Peoples, Members of Local Communities and Knowledge

(i) Defining Indigenous Peoples and Local Communities

The ADB’s SPS recognizes that there is no universally accepted definition of ‘indigenous peoples’. As such, the term is used in a generic sense to refer to a:

“distinct, vulnerable, social and cultural group that possesses the following characteristics in varying degrees: (i) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (ii) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (iii) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (iv) a distinct language, often different from the official language of the country or region.”

The SPS also states that in considering these characteristics, “national legislation, customary law, and any international conventions to which the country is a party will be taken into account.” Moreover, the definition may include groups that have lost “collective attachment to geographically distinct habitats or ancestral territories in the project area because of forced severance.”

The ADB’s safeguards on indigenous peoples are triggered if a project would directly or indirectly affect their dignity, human rights, livelihood systems, culture, territories or natural or cultural resources that they own, use, occupy, or claim as their ancestral domain.

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852 ADB, SPS, p. 56. Additionally the SPS Annex 3 states that other groups referred as “indigenous ethnic minorities”, “indigenous cultural communities”, “aboriginals”, “hill tribes”, “minority nationalities”, “scheduled tribes” or “tribal groups” may also be considered “indigenous peoples” if they meet the characteristics indicated.
853 ADB, SPS, p. 56.
854 ADB, SPS, p. 56.
855 ADB, SPS, p. 56.
In contrast, a specific definition of ‘local communities’ is not found within the SPS, despite the fact that it is used generically throughout its text. From the use given to the term, it may be interpreted that local communities may also constitute “indigenous peoples”. However, there is no explicit recognition that indigenous peoples may be referred to as ‘local communities’.

It is interesting to note that the Forestry Policy does not refer to ‘indigenous peoples’ but instead uses the terms ‘forest-dependent communities’, ‘forest-dwelling communities’ and ‘recent-forest dependent encroachers’. While no definitions are given to these terms, the policy recognises that “any future forest development strategy must recognize and duly support the identity, culture and rights of all such communities.” However, the ADB does not further elaborate on this nor specifies what rights are these communities entitled to.

Taking into consideration relevant and applicable laws, we recommend countries to define, according to their own circumstances, the content of the terms “indigenous peoples” and “local communities”. In doing so, they may consider the criteria and terminology provided by ADB regarding indigenous peoples and forest-related communities. This would allow them to define the rights these groups are entitled to according to international agreements and their own national legislation. It is important to consider that the UNFCCC REDD+ Safeguard (c) explicitly mentions local communities. Therefore, countries would need to define whether they are given the same rights, similar rights or different rights afforded to indigenous peoples.

(ii) Respecting ‘Knowledge’

The SPS recognises that indigenous peoples may be particularly vulnerable when an ADB financed project or activity includes the commercial development of their cultural resources and knowledge. Therefore, in order to decide whether to proceed with a project involving commercial development of cultural resources or knowledge, the country must seek the consent of affected indigenous people’s communities. However, the policy is silent regarding projects that may impact their cultural knowledge which could be distinguished from commercial development.

In general terms, ‘consent’ is understood by the SPS as the collective expression of ‘broad community support’ which may exist “even if some individuals or groups object to the project activities.” For the commercial development of knowledge, the country will ensure that affected communities are informed of:

“(i) their rights to such resources under statutory and customary law; (ii) the scope and nature of the proposed commercial development and the parties interested or in-

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856 I.e., it is used when defining the term “critical habitat”, when indicating that “development processes in the region have altered the roles and responsibilities of public and private entities, civil society, and local communities” (ADB, SPS, p.2), or when pointing out who should be consulted when ADB project activities are located within a legally protected area (ADB, SPS, p. 36).
857 ADB, Policy on Forestry, p. 11.
858 See section on “local communities” in our document titled “A Guide to Understanding and Implementing the UNFCCC Safeguards”.
859 ADB, SPS, p. 60.
860 ADB, SPS, p. 60. We will provide the full definition of consent given by ADB in the section “Free, prior, informed consent”, under UNFCCC Safeguard (d).
volved in such development; and (iii) the potential effects of such development on Indigenous Peoples’ livelihoods, environment, and use of such resources.”

Additionally, the SPS establishes that countries may ask the ADB to provide financial assistance towards efforts to preserve and respect indigenous knowledge, including strengthening intellectual property rights.

We agree with the ADB’s perception that indigenous peoples may be particular vulnerable when commercial development of knowledge is sought. Therefore, consent should be mandatory in these cases. However, we consider ADB’s way of defining consent as ‘broad support’ is vague, and does not comport with international standards of ‘consent’ required by FPIC.

To meet UNFCCC REDD+ Safeguard (c) we recommend countries clarify what consent means, and how and in which cases it should be sought. Moreover, we recommend the adoption of a definition of traditional/cultural or indigenous knowledge and implement mechanisms to protect them according to their relevant and applicable international law. Finally, we suggest they take advantage of the financial assistance development agencies and institutions may provide to develop mechanisms and strengthen their legal frameworks to protect indigenous peoples knowledge, including assessing the feasibility and convenience of utilising intellectual property rights to do so.

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

One of the objectives of the SPS is to:

“design and implement projects in a way that fosters full respect for their [indigenous peoples’] identity, dignity, human rights, livelihood systems, and cultural uniqueness as defined by the indigenous peoples themselves so that they (i) receive culturally appropriate social and economic benefits, (ii) do not suffer adverse impacts as a result of projects, and (iii) can participate actively in projects that affect them.”

In order to comply with UNFCCC REDD+ Safeguard (c), countries need to take into account relevant international human rights and obligations regarding indigenous peoples’ rights and knowledge. Particularly relevant are the right to exercise traditional livelihoods, self-determination, rights associated with culture, benefit-sharing, rights surrounding collective land and cultural inheritance. In doing so, they also need to take customary laws into account if applicable.

(i) Non-discrimination

The SPS does not explicitly include any provision regarding the right to protect indigenous peoples or local communities from discrimination during the development of ADB’s projects or activities. Fur-
thermore, there is no explicit requirement or support for countries to avoid discrimination in the development of ADB projects or activities. However, the SPS states that its safeguards are understood to, *inter alia*, protect “the rights of those likely to be affected or marginalized by the development process.”\(^{864}\)

In order to meet UNFCCC REDD+ Safeguard (c), we recommend countries to ensure their domestic legal frameworks are not only in accordance with human rights, but specifically address non-discrimination and acknowledge different lifestyles as those pertaining to indigenous peoples and respect their rights. They should also seek to avoid discriminatory actions based on ethnicity or culture and implement existing international agreements and conventions relevant to indigenous peoples, including those not legally binding (such as UNDRIP). This will allow them to provide a comprehensive recognition and protection of indigenous peoples’ rights, guarantee non-discrimination and effectively implement UNFCCC REDD+ Safeguard (c). Countries need to be particular cautious and ensure that indigenous peoples are not left apart when implementing REDD+ activities or actions. After all, the ultimate aim of UNFCCC REDD+ Safeguard (c) is to protect those who are likely to be affected or marginalized when actions or activities take place in the territories they occupy.

(ii) Self-determination

Although the ADB does not recognise or promote the right to self-determination *per se*, the SPS recognises indigenous peoples’ right to “direct the course of their own development.”\(^ {865}\) Accordingly, the SPS foresees the obligation to obtain their consent for some specific activities “where indigenous peoples are deemed to be particularly vulnerable,”\(^ {866}\) such as: commercial development of their cultural resources and knowledge;\(^ {867}\) relocation from their traditional or customary lands; and commercial development of natural resources within customary lands.\(^ {868}\)

It is important to note though that while the right to ‘self-determination’ includes the ability to direct the course of one’s own development; it also entails other components not addressed by the ADB. In fact, the ADB does not elaborate what should be understood by ‘development’ nor considers the different dimensions (economic, social, and cultural) it encompasses. The right to self-determination also entails the ability of indigenous peoples to dispose of their natural wealth and resources. Additionally, it also involves their right to autonomy regarding their internal affairs including their distinct political, social, cultural, legal and economic structures.

The different dimensions of development (economic, social, and cultural), the ability of indigenous peoples to dispose of their natural wealth and resources and the right to autonomy for their internal affairs) need to be recognised and further considered and guaranteed by countries when developing, implementing and monitoring REDD+ actions and activities. Countries also need to identify

\(^{864}\) ADB, SPS, p. 4.
\(^{865}\) ADB, SPS, p. 10.
\(^{866}\) ADB, SPS, p. 10.
\(^{867}\) As previously noted in the section ‘Respecting knowledge’ above.
\(^{868}\) ADB, SPS, p. 10. We will analyse the SPS provisions on consent more in depth in the section “Free, prior and informed consent” under UNFCCC Safeguard (d).
those cases where REDD+ actions or activities may undermine the right of indigenous peoples to their own self-determination and therefore require consent from them to be developed. In identifying those cases, countries may consider those required by ADB and add additional cases according to their own circumstances and legislation.

(iii) Rights Associated with Culture

The SPS declares that the policy requirements will safeguard the rights of indigenous peoples to “maintain, sustain, and preserve their cultural identities, practices, and habitats and that projects affecting them will take the necessary measures to protect them.” The SPS also requires countries to pay particular attention to “cultural and spiritual values that the Indigenous Peoples attribute to such lands and resources” when carrying out Social Impact Assessments (SIA) and preparing IPPs. Resettlement Plans (RP) involving indigenous peoples need to be compatible with their cultural preferences. As it has been previously mentioned, consent is required for the commercial development of knowledge.

We agree with ADB’s SPS approach in the sense that the policy aims to preserve the cultural identity and practices of indigenous peoples. Therefore, we suggest countries to follow these objectives and integrate them in relevant REDD+ actions and/or activities. However, ADB does not explicitly recognise the cultural rights of indigenous peoples per se nor specifies what “pay particular attention” means. Consequently, we recommend countries to recognise and protect the indigenous people and local communities rights associated with culture in their legal frameworks. As far as possible, countries should aim to identify what are those rights or elements protected under “cultural rights” according to their own contexts. For instance, they should consider respect for their identity, language, customs, traditions, rituals, cultural institutions, cultural sites and assets, among others. We suggest that countries adopt measures to guarantee these are respected when developing, implementing and monitoring REDD+ actions and activities.

(iv) Collective Land Tenure

The ADB’s SPS recognises the close ties and relationships between indigenous peoples and land, forests, water, wildlife and other natural resources they occupy and/or utilise in their daily activities. When determining that a project is likely to impact indigenous peoples, the ADB will require the country to:

“pay particular attention to (i) the customary rights of the Indigenous Peoples, both individual and collective, pertaining to ancestral domains, lands, or territories that they traditionally own or customarily use or occupy, and where access to natural resources is vital to the sustainability of their cultures and livelihood systems; (ii) the

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869 We will analyse the concept of consent when analysing UNFCCC Safeguard (d).
870 ADB, SPS, p. 55.
871 ADB, SPS, p. 59.
872 See sections ‘Respecting Knowledge’ and ‘Self-determination’ above.
873 ADB, SPS, p. 59.
874 To do so, an early screening is carried out by ADB in order to determine presence of indigenous peoples in the area of interest to develop a project or a collective attachment to it. After initial screening, a “culturally appropriate and gender-sensitive” social impact assessment is undertaken to assess potential project impacts and an Indigenous Peoples Plan (IPP) is prepared (ADB, SPS, p. 18).
need to protect such ancestral domains, lands, and resources against illegal intrusion or encroachment; (...) (iv) the Indigenous Peoples’ natural resources management practices and the long-term sustainability of such practices; and (v) the need to rehabilitate the livelihood systems of Indigenous Peoples who have been evicted from their lands.”

Moreover, the SPS specifies that if the project involves activities that are “contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, the borrower [country] will integrate an action plan for the legal recognition of customary rights in the IPP.” The legal recognition may be either a “(i) full legal recognition of existing customary land tenure systems of Indigenous Peoples, or (ii) conversion of customary usage rights to communal and/or individual ownership rights.” Furthermore, according to the SPS, countries can request support from the ADB to provide financial assistance to strengthen their legal frameworks in order to legally recognise customary or traditional land tenure. Additionally, the Forestry Policy mentions that from the Bank’s experience it is essential to recognise and resolve any land tenure and potential land use conflicts before a forestry project is implemented in order to ensure minimum disruption of traditional forest use.

We consider that these provisions are aligned with the objectives of UNFCCC REDD+ Safeguard (c) since they seek to grant full legal recognition of customary land tenure to indigenous peoples. As previously noted, REDD+ actions and activities could be identified to require a legal recognition (or at least clarification) of the customary land tenure.

We recommend countries to take into consideration these provisions and recommend they work on their land use planning in order to determine where indigenous peoples are located and establish what rights need to be recognised. Furthermore, we recommend countries to take advantage of the assistance they can get from development agencies to strengthen/adjust their domestic legislations to establish legal recognition of customary land use.

(v) Benefit-Sharing

One of the main objectives included in the SPS for indigenous peoples is that they receive culturally appropriate social and economic benefits. To reach this goal, the SPS recommends countries to identify culturally and gender appropriate, inter-generationally inclusive benefits after ‘meaningful consultation’. It also encourages countries considering what indigenous peoples prefer regarding project benefits. In this way, the SPS promotes culturally appropriate and gender inclusive sharing of benefits. It is important to note though that ‘meaningful consultation’ does not necessarily mean ‘participation’. In fact, in order to ensure indigenous peoples receive culturally appropriate benefits, they should jointly explore alternatives with countries through a collaborative inclusive multi-stakeholder process.

875 ADB, SPS, p. 59.
876 ADB, SPS, p. 59.
877 ADB, SPS, p. 59-60.
878 ADB, SPS, p. 61.
879 ADB, Policy on Forestry, p. 6.
880 ADB, SPS, p. 18. We will address the issue of “meaningful consultation” more in depth when analysing UNFCCC Safeguard (d).
881 ADB, SPS, p. 18.
For those projects/activities that seek commercial development of cultural resources and knowledge, the IPP will include arrangements to “ensure that indigenous peoples receive an equitable share of the benefits to be derived.” The same applies to projects that involve commercial development of natural resources (mineral, hydrocarbons, forests, water, hunting or fishing grounds) in areas traditionally occupied by indigenous peoples. Benefits derived from the project, have to be “at least equal to or higher than that of any other affected landowners.”

To implement UNFCCC REDD+ Safeguard (c), we recommend countries take into consideration the SPS provisions (regarding culturally appropriateness, and equitable sharing of benefits derived from the commercial development of natural resources and knowledge), when regulating benefit-sharing aspects for indigenous peoples. In doing so, countries need to include minimum conditions for the sharing of benefits in their legal frameworks and pay particular attention on how intellectual property rights may regulate the commercial use of knowledge. However, in order to be able to distribute (or even discuss) benefits derived from REDD+ implementation, we suggest countries determine who is ‘eligible’ to receive them or at least discuss the criteria to identify potential ‘beneficiaries’. Otherwise, it would be very difficult to negotiate any benefit-sharing if it is not clear who is entitled to receive benefits. To do so, countries would probably have to resolve any current land-tenure issues taking place in the territories where REDD+ actions are intended to be developed. In this way, they may be able to establish rules for entitlement and ways of sharing benefits derived from REDD+.

(vi) Procedural Rights

The ADB recognises participation of indigenous peoples as central to the achievement of safeguard policy objectives and necessary at every stage of the Bank’s financed-projects. Participation is achieved through prior, informed and ‘meaningful consultation’ with indigenous peoples. The IPP needs to include specific mechanisms that will be adopted by the country for consultation and participation purposes as well as disclosure arrangements. It also includes “measures to establish culturally appropriate and gender-sensitive grievance redress mechanisms for affected indigenous peoples.”

Consent is acknowledged by the ADB, but, as it has been previously noted, it is required for specific cases only. Adequate implementation of procedural rights is intended to ensure full and effective participation of indigenous peoples. They entail disclosure of information in a culturally appropriate manner and require adequate consultation and recourse mechanisms, as well as free, prior, informed consent (FPIC).

A detailed analysis of procedural rights is provided in the next section that analyses consistency with UNFCCC REDD+ Safeguard (d).

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882 ADB, SPS, p. 61.
883 ADB, SPS, p. 61.
884 We will address the concept of “meaningful consultation” when analysing UNFCCC Safeguard (d).
885 ADB, SPS, p. 74.
886 ADB, SPS, p. 75.
887 As noted in the section of ‘Self-determination’ above (ADB, SPS, p. 60).
888 Refer to the FPIC section in our document titled “A Guide to Understanding and Implementing the UNFCCC Safeguards”.

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Consistency with UNFCCC REDD+ Safeguard (d)

Summary of Findings

Consultation and participation are sought through ‘prior informed meaningful consultation’. Consent is understood as ‘broad community support’ required for specific cases only. However, ADB does not mention that consent has to be prior and informed. Furthermore, ADB foresees that the broad support (or ‘consent’) may be provided either by individuals and/or their recognised representatives, which would not be in accordance with international law in the sense that it establishes that consent must be carried out through indigenous peoples’ representatives and own procedures. Accordingly, ADB’s provisions on consent cannot be equated to what is strictly established by international law for FPIC and to meet UNFCCC REDD+ Safeguard (d).

1. Recognition and Implementation of Procedural Rights

Consultation and participation are identified by the ADB as central to the achievement of the safeguards policy objectives and are sought through prior informed meaningful consultation. During consultations, information is sought to be distributed in a “timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected people”.

It is important for countries to be aware that while consultation may be a useful means towards participation, it does not necessarily entail full and effective participation as required by UNFCCC REDD+ Safeguard (d).

2. Creating an Enabling Environment for an Effective Participation

(i) Identification of Relevant Stakeholders

The SPS does not utilise the terms ‘stakeholders’ or ‘relevant stakeholders’ but instead uses ‘affected people’ to describe “people who may be beneficially or adversely affected by a project or program assisted by the Asian Development Bank.” For projects that involve resettlement, the SPS uses the term ‘displaced persons’ to refer to:

“Those who are physically displaced (because of relocation, loss of residential land, or loss of shelter) and/or economically displaced (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.”

The Forestry Policy talks about impacts that projects may have on both ‘beneficiaries’ and ‘non-beneficiaries’, and refers to ‘affected communities’, ‘people affected’, ‘affected populations’ and ‘affected forest-dependent communities’, indistinctly.

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889 Defined in the section titled “implementing participatory mechanisms” below.
890 ADB, SPS, p.16,17 and 18.
891 ADB, Public Communications Policy, p.v.
892 ADB, SPS, Glossary.
However, it is worth noting that ADB’s SPS distinguishes ‘affected people’ and ‘displaced persons’ from ‘other stakeholders’ (such as governments, NGO’s, and local organizations). While both groups may be under the category of ‘stakeholders’ under the SPS, the ADB highlights certain groups such as “women, children, the poor and indigenous peoples” as particularly vulnerable. Accordingly, the majority of measures to be adopted under the SPS are intended to attend their concerns.

As previously noted, in order to identify those who may be beneficially or adversely affected by a project, ADB’s Operations Manual on Incorporation of Social Dimensions into ADB Operations, mandates that an IPSA must be undertaken to identify key social issues (such as participation, gender, involuntary resettlement, indigenous peoples, labour, affordability and other risks and/or vulnerabilities) for all loan and grant-based investment projects and programs.

The SPS mandates countries to undertake early screening processes to define, identify and enumerate the people and communities to be affected, including specific impacts on the poor, indigenous/ethnic minorities and other vulnerable groups for projects that may involve involuntary resettlement or may directly or indirectly affect indigenous peoples. Early screening of relevant stakeholders is aimed to involve them in meaningful participation throughout the project cycle.

To meet UNFCCC REDD+ Safeguard (d), countries may find ADB’s provisions on stakeholders useful to establish who should be considered a ‘relevant stakeholder’ For instance; countries may undertake screening processes and social analysis as early as possible. However, ADB does not provide specific criteria or principles that must be taken into consideration when identifying those who may be ‘beneficially’ or ‘adversely’ affected. Therefore, countries need to establish certain criteria and principles to guide the identification of stakeholders and impact determination. In doing so, they need to be aware that depending on the location, nature and magnitude of the REDD+ action or activity to be implemented, stakeholders may include directly affected groups such as indigenous peoples and indirectly affected ones such as relevant NGOs and government authorities. Only by adequately identifying stakeholders, countries will be able to establish suitable and tailored measures according to their own characteristics and circumstances.

(ii) Providing Access to Information

As previously mentioned the ADB expressly recognises the right to information and utilises its website as the primary vehicle for disclosure of information. During the preparation of project documentation, the ADB assists countries to ensure that relevant information (whether positive or negative) about social and environmental safeguard issues is made available "in a timely manner, in an accessible place, and in a form and language(s) understandable to affected people and to other stakeholders, including the general public, so they can provide meaningful inputs into project design and implementation."

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893 See section titled ‘Integration of social, economic and environmental considerations and cross-sectoral coordination’ under UNFCCC Safeguard (b).
895 ADB, SPS, p. 51.
896 See analysis of the sections ‘Right to Access to Information’ and ‘Institutions to ensure access and distribution to information’ under UNFCCC Safeguard (b).
897 ADB, SPS, p. 19-20.
The SPS Operations Manual establishes that the ADB’s project team assesses, through due diligence and review processes, how the country has met or will meet the information disclosure requirements outlined by the SPS. Furthermore, the project team advises the country that information disclosure processes must be documented and appropriately reflected in the Environmental Impact Assessment (EIA), Initial Environmental Examination (IEE), RP, and/or IPP. Upon submission of the documents by the country, the operations department of the ADB reviews them to confirm that (i) relevant information on potential project impacts and mitigation measures, has been made available in a cultural appropriate manner and that (ii) information disclosure requirements during project implementation are appropriately specified.898

We recommend countries to adopt policies/procedures or to include in their legal frameworks provisions that guarantee stakeholders access to information. For instance, and following ADB’s provisions, countries could establish specific information that is required to be made available to the public. Information sharing must take into consideration the large array of stakeholders and not only those directly impacted by REDD+. Accordingly, they need to include culturally appropriated ways for disseminating information.

Moreover, countries could also take advantage of development or aid agencies to assess whether their information disclosure requirements are adequate to stakeholders. Finally and according to our recommendations on the right to access information899, countries should share information regarding REDD+ actions and activities under maximum disclosure principles, good faith and very limited and narrow exceptions.

(iii) Implementing Participatory Mechanisms

As pointed out before, participation under the SPS is embodied through the carrying out prior and informed ‘meaningful consultation’. Meaningful consultation is understood as a process that:

“(i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.”900

The ADB requires the country to carry out meaningful consultation processes with affected people and communities in the implementation of all three safeguards policies (environmental, involuntary resettlement and indigenous peoples) as follows:

i) For projects having environmental impacts: Countries need to carry out meaningful consultation with affected people and facilitate their informed participation. They also need to

899 See section on UNFCCC REDD+ Safeguard (b).
900 ADB, SPS, p. 20.
ensure women’s participation in consultation and involve stakeholders, including affected people and concerned non-governmental organizations, early in the project preparation process, and ensure that their views and concerns are made known to and understood by decision makers and taken into account. Finally, they also need to continue consultations with stakeholders throughout project implementation as necessary to address issues related to environmental assessment.  

**ii) For projects that involve involuntary resettlement:** Countries need to carry out meaningful consultations with affected people, host communities, and concerned non-governmental organizations. Additionally, they are also required to inform all displaced people of their entitlements and resettlement options and ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. In doing so, they need to pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, indigenous peoples, and those without legal title to land. Participation of these groups needs to be ensured during these consultations. Finally, where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.

**iii) For projects that affect indigenous peoples:** Countries need to undertake meaningful consultations with affected indigenous peoples communities and concerned indigenous peoples organizations to solicit their participation (i) in designing, implementing, and monitoring measures to avoid adverse impacts or, when avoidance is not possible, to minimize, mitigate, or compensate for such effects; and (ii) in tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner. To enhance indigenous peoples’ active participation, projects affecting them will provide for culturally appropriate and gender inclusive capacity development.

It is important to note that these requirements apply directly to the country that is responsible for carrying out these processes. Accordingly, the ADB will assess the country’s commitment and capacity to do so. If the ADB concludes that the country lacks adequate capacity to carry out the consultation processes as foreseen in the SPS, the project will include components and activities to build that capacity.

As it has been previously highlighted and despite of SPS’ provisions on meaningful consultation, the policy does not provide any criteria or clarity on how the results of consultation processes are ultimately integrated (or not) into the decision-making processes. This is left to the country to establish it at its own discretion.

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901 ADB, SPS, p. 16.
902 ADB, SPS, p. 17.
903 ADB, SPS, p. 18.
904 ADB, SPS, p. 21.
905 ADB, SPS, p. 21
906 See section titled ‘Participation in decision-making process that affect the environment’ under UNFCCC REDD+ Safeguard (b).
907 The country needs to summarize concerns raised and how these have been addressed in project design (ADB, SPS, p. 42, 52 and 64).
We consider that ADB provides detailed and adequate requirements on how consultation processes must take place. Therefore, we recommend countries to follow them or build upon them according to their own needs and contexts to meet UNFCCC Safeguard (d). However, it is essential for countries to communicate stakeholders how consultations results will be analysed and integrated (or not) in the decision making process. Additionally, countries should ensure that local communities and other relevant stakeholders are able to participate fully and effectively through appropriate mechanisms and processes.

(iv) Conflict Resolution Mechanisms

As already acknowledged, the ADB has an Accountability Mechanism Policy to resolve problems on issues related to ADB-assisted projects and allegations of non-compliance with ADB policies. The ADB also requires countries to establish grievance redress mechanisms that must include procedures that are accessible to indigenous peoples. Provisions in the SPS for grievance redress mechanisms are broad and non-prescriptive which leaves countries with open discretion to design them.

Countries should be aware that both ADB’s conflict resolution mechanisms would apply in case stakeholders have been denied public participation or access to information regarding projects’ activities and decisions. Having conflict resolutions mechanisms are a key component to ensure full and effective participation. Countries need to be aware that having such mechanisms requires procedural and institutional capacity in order to be able to attend any concerns or complaints that may arise. Grievance mechanisms must be culturally and gender appropriate in every context, especially when indigenous peoples are involved. In this way, we recommend that in order to meet UNFCCC REDD+ Safeguard (d), countries should ensure they have capacity to attend such concerns/complaints (which may be supported by administrative and judicial systems) and take into consideration that any mechanism established needs to consider the particular characteristics of the stakeholders they are intended to listen.

3. Effective Participation of Indigenous Peoples and Local Communities

(i) Creating an Enabling Environment

In order to ensure REDD+/forest initiatives are implemented in a successful way, it is essential to anticipate what specific needs and conditions need to be met for this to occur. For ADB-assisted projects, an initial screening process of the project area takes place as early as possible, followed by a culturally appropriate and gender-sensitive SIA in order to assess potential project impacts.

908 In the section on ‘Accountability’ under UNFCCC Safeguard (b).
909 In fact, the Accountability Mechanism Policy does not require complainant’s “good-faith efforts to solve problems with project-level grievance redress mechanisms as a precondition for their access to the accountability mechanism. However, complainants are encouraged to first address their problems with the project-level grievance redress mechanism to facilitate prompt solving on the ground”. (ADB, Accountability Mechanism Policy, p. 29).
910 ADB, SPS, p. 18.
The SIA provides an initial overview of the issues that will have to be addressed during the project implementation by the country. Accordingly, countries need to provide in the IPP measures to strengthen the social, legal and technical capabilities of i) government institutions to address indigenous peoples issues in the project area and ii) indigenous peoples organizations in the project area to enable them to represent the affected indigenous peoples more effectively.\textsuperscript{911}

Moreover, countries also need to provide in their IPPs the institutional arrangements responsibilities and mechanisms for carrying out the various measures of the plan. They also need to describe the process they will carry out to include the participation of relevant local organisations and NGOs for the implementation of the measures foreseen in the IPP.

\begin{boxedminipage}{0.95\textwidth}
In order to meet UNFCCC REDD+ Safeguard (d), we recommend countries establish procedures to create an enabling environment for the implementation of REDD+ actions for both indigenous peoples and local communities. In doing so, they may find the ADB provisions described above useful. Certainly, undertaking social impacts assessments and identifying capacity building measures for both government institutions and indigenous people’s organisations will enhance their abilities to address the issues identified and to propose and apply measures of the IPP.

(ii) Free, Prior and Informed Consent

As previously noted, ‘meaningful consultation’ is the baseline to ensure ‘consent’ which is understood by the SPS as:

“A collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for the project activities. Such broad community support may exist even if some individuals or groups object to the project activities.”\textsuperscript{912}

As also previously noted,\textsuperscript{913} consent is sought in specific cases only, “where indigenous peoples groups are deemed to be particularly vulnerable according to the Bank: i) commercial development of the cultural resources and knowledge (...); ii) physical relocation (...) from traditional or customary lands; and iii) commercial development of natural resources within customary lands under use that would impact the livelihoods or on cultural, ceremonial, or spiritual uses of the lands that define the identity and community of indigenous peoples.”\textsuperscript{914}

The country is required by the SPS to ascertain the affected indigenous peoples communities provide their broad support to the project activities. Where such broad community support exists, the IPP will clearly document the consultation process.\textsuperscript{915} The ADB will review the country’s documentation of the engagement process, and in addition, through its own investigation, will “assure itself that broad community support for the project activities has been demonstrated by the affected Indigenous Peo-

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{911} ADB, SPS, p. 65.
  \item \textsuperscript{912} ADB, SPS, p. 10.
  \item \textsuperscript{913} See sections on the ‘Rights associated with culture’ and ‘Procedural Rights’ under the analysis UNFCCC Safeguard (c).
  \item \textsuperscript{914} ADB, SPS, p. 10.
  \item \textsuperscript{915} ADB, SPS, p. 20.
\end{itemize}
\end{footnotesize}
Moreover, and according to the SPS, the ADB “will not finance the project if such broad community support does not exist.”

While there is an explicit reference to the term ‘consent’ in ADB policies, we consider its definition is very vague. For instance, it is not clear what is meant by ‘broad community support’, neither what should be understood by ‘some individuals’ when referring that consent may be achieved even if ‘some individuals’ object the project. Under this provision, what would be the minimum percentage of the peoples consulted to consider consent has been achieved despite ‘some individuals’ reject it? Furthermore, could ‘broad support’ mean that indigenous peoples accept the majority of the terms of the project but reject the rest? And finally, is ‘support’ being ultimately equated to consent as understood by international law? These are some questions that arise from the SPS that would need to be clarified in order to understand how consent is applied and achieved under the Bank’s provisions. Additionally, it is important to note that ADB’s approach to consent lacks of fundamental aspects that must be acknowledged when seeking for consent: that it must be free and prior to the development of any project that may affect indigenous peoples.

While it is positive that the SPS foresees that consent must be sought, its applicability is limited and restricted to certain specific cases. The policy is silent regarding the possibility of extending them to other cases or aspects of cases if the country considers it is deemed necessary and/or is not included in its national legislation or regulations. In addition, the requirement to document the consultation and engagement process as well as the obligation of the Bank to ensure that broad community support for the project activities has been achieved by arranging appropriate investigations, seems very adequate to confirm consultation and participatory processes (but not consent as understood under international law) have taken place.

To meet UNFCCC REDD+ Safeguard (d), we recommend countries to work on their own definition and interpretation of consent in accordance to applicable international law and declarations, such as ILO 169 and UNDRIP to be clear on the implications of consent in their jurisdictions. In doing so, they cannot forget that consent must be prior to project development and given in a free and informed manner and through indigenous peoples representatives and their own mechanisms and procedures. Finally, we also recommend countries be clear on which specific cases should FPIC apply in accordance with applicable international legal obligations. However, they also need to envisage other cases where FPIC may be deemed necessary under certain new circumstances. To do so, countries would need to establish certain criteria and requirements to be considered that would allow them to broaden the scope of the application of FPIC.

916 ADB, SPS, p. 20.
917 ADB, SPS, p. 20.
918 ADB also does not explicitly mentioning that consent has to be ‘informed’. However, given that information regarding the document needs to be shared with all relevant stakeholders, including indigenous peoples, it can be considered that the requirement of ‘informed consent’ is met.
### Consistency with UNFCCC REDD+ Safeguard (e)

#### Summary of Findings

<table>
<thead>
<tr>
<th>ADB does not provide a definition for the term “natural forest” <em>per se</em> and there are no explicit provisions that prohibit conversion of forests. However, some relevant provisions would only apply if a project contributes ‘significantly’ to deforestation or degradation. Moreover, the Bank foresees the possibility that deforestation or degradation may be ‘inevitable’ in some cases. Countries are required to assess the significance of project impacts and risks on biodiversity and to be committed to preserve it. However, there are no explicit provisions to integrate biodiversity in cross-sectoral policies. Nevertheless the ADB’s policies recognise that forests have significant economic, environmental and social values.</th>
</tr>
</thead>
</table>

1. **No Conversion of Natural Forests**
   
   (i) **Defining Natural Forest**

ADB does not define ‘natural forests’.\(^9^{19}\) However, it does provide a definition for the terms ‘forests’ and ‘old-growth forests’, which is widely used in its Forestry Policy.\(^9^{20}\) The policy understands ‘forests’ to mean, “an ecosystem with a minimum of 10 percent crown cover of trees and/or bamboos, generally associated with wild flora, fauna, and natural soil conditions and not subject to agriculture.”\(^9^{21}\) In turn, ‘old-growth forests’ are defined as:

> 
> "A relatively intact forest characterized by a large number of species of trees, shrubs and climbers that has remained unmodified by external interventions (human or natural) over a prolonged period of time. This includes both tropical forests as well as temperate forests; frequently referred to as primary forests."\(^9^{22}\)

It may be possible to interpret old-growth forests as an equivalent to ‘natural forests’\(^9^{23}\). As we can see though, some aspects of the definitions such as “relatively intact”, “large number” or “prolonged period of time” are ambiguous and subject to interpretation. It is important for countries to understand that the way these terms are understood could expand or narrow the scope and extent of the protection provided according to what constitutes “natural”. Other definitions provided by the ADB include ‘natural habitats’\(^9^{24}\) which provides elements that could be useful/considered by countries to define what constitutes ‘natural forests’.

\(^9^{19}\) Defined by our document titled “A Guide to Understanding and Implementing the UNFCCC Safeguards” as a “naturally regenerated forest of native species, where there are no clearly visible indications of human activities and the ecological processes are not significantly disturbed.

\(^9^{20}\) It is important to note that the current ADB Policy on Forestry dates from 1995, which makes it the oldest ADB policies analysed in this study. Although there is a Forest Policy Working P (dated 2003), the ADB is currently under a process to develop a new forest sector policy.

\(^9^{21}\) ADB, Policy on Forestry, p. 34.

\(^9^{22}\) ADB, Policy on Forestry, p. 35.

\(^9^{23}\) The World Bank defines “natural forest” as forest lands and associated waterways where the ecosystem’s biological communities are formed largely by native plant and animal species and where human activity has not essentially modified the area’s primary ecological functions.”[World Bank, Operational Policy 4.36, Annex A, para (b)].

\(^9^{24}\) Understood as “Land and water areas where the biological communities are formed largely by native plant and animal species, and where human activity has not essentially modified the area’s primary ecological functions”. (ADB, SPS, p. 35).
We recommend countries define the terms “forest” and “natural forest” as a first step towards determining what needs to be protected—and not converted—according to UNFCCC REDD+ Safeguard (e). Definitions should be based on sound science and the specific geographical conditions of the country. Countries may also take into consideration the multiple definitions provided by the ADB in order to determine if they could be useful for their own definitions of the terms, but should avoid having ambiguous terms.

(ii) Prohibiting of Conversion of Natural Forest

While any commercial logging or the purchase of logging equipment for use in primary tropical moist forests or old-growth forests is listed as a prohibited investment activity by the SPS, there are no explicit provisions in the ADB policies that prohibit conversion of natural forests.

Nevertheless, the Forestry Policy states that the ADB will not support construction of roads or any commercial logging in old-growth forests. Moreover, the policy also states that ADB will not finance any “rural infrastructure or other public investment project that contributes significantly, directly or indirectly, to deforestation or to the degradation and depletion of forests.” If however, such deforestation or degradation becomes inevitable, the Bank will “insist upon a compensatory mechanism to reforest or rehabilitate equivalent areas as appropriate in full consultation with affected communities.”

The term ‘significantly’ is not defined by the Forestry Policy. However, the SPS refers to and defines the term ‘significant conversion’ of natural habitats. In fact, it states that “the project will not significantly convert or degrade natural habitats unless there are no available alternatives, the overall benefits outweigh the costs (including environmental costs) and any conversion or degradation is appropriately mitigated.” ‘Significant conversion’ is understood by the SPS as:

“(i) The elimination or severe diminution of the integrity of a habitat caused by a major, long-term change in land or water use; or (ii) the modification of a habitat that substantially reduces the habitat’s ability to maintain viable populations of its native species.”

The definition of this term however, relies at the same time on the interpretation of what is meant by “severe diminution of the integrity of a habitat” and this can lead to discretionary decisions. In any case and what is relevant for the purposes of this analysis, is that there are specific conditions and requirements under which conversion or degradation may in fact take place in natural habitats. This is

925 ADB, SPS, p. 76.
926 The policy however, defines deforestation as “the clearing of forests and the conversion of land to nonforest uses” (ADB, Policy on Forestry, p. 34).
927 ADB, Policy on Forestry, p. 13 and 15.
928 ADB, Policy on Forestry, p. 13.
929 ADB, Policy on Forestry, p. 13.
930 ADB, SPS, p. 35.
931 Significant conversion may include, for example, “land clearing; replacement of natural vegetation (for example, by crops or tree plantations); permanent flooding (by a reservoir for instance); drainage, dredging, filling, or canalization of wetlands; or surface mining” (ADB, SPS, p. 35).
932 Including “critical habitats” (see ‘Identifying natural forests and biodiversity’ below).
reinsured by the provisions of the Forestry Policy that foresee the possibility to deforest or degrade forests if it is “inevitable”. Having no criteria on whom and how this would be determined opens the possibility to apply this as the rule more than as an exception.

In order to implement UNFCCC REDD+ Safeguard (e), it is essential that countries understand that UNFCCC REDD+ Safeguard (e) explicitly forbids the conversion of natural forests. In this sense, countries may follow ADB’s provision on the prohibition to build roads or allow any commercial logging in “old growth-forests” (which as we previously discussed may be considered equivalent to “natural forests”). Nevertheless, countries need to be particularly careful regarding the convenience to adopt ADB’s provisions on “inevitable” deforestation or degradation, or the definition of “significant conversion”.

In fact, as it has been pointed out, ADB’s provisions foresee the possibility to deforest or degrade forests if they are considered inevitable or justified (although no criterion is provided to determine when deforestation would outweigh conservation). ADB adopts the ambiguous term of “severe diminution” to define “significant conversion” which relies on further interpretation to understand the real scope of the term. These provisions may undermine countries efforts to effectively implement UNFCCC REDD+ Safeguard (e), which states REDD+ actions must not be used to convert natural forests without distinction of conversion of critical habitats and non-critical habitats.

We recommend countries avoid ambiguous terms and provisions and on the contrary, adopt actions to incentivize the protection and conservation of natural forests including their ecosystem services, when implementing REDD+ actions.

2. Protection and Conservation of Natural Forests and Ecosystem Services

   (i) Identifying Natural Forests and Biodiversity

There are no specific provisions in the ADB’s Policy on Forestry for identifying natural forests and biodiversity. Nevertheless, the SPS establishes an obligation on the country to include an ‘Environmental Baseline Data’ to describe the relevant physical, biological and socioeconomic conditions within the study area (area of interest to develop a project) as part of the EIA.

Additionally, recognising that forests play a vital role in maintaining biodiversity values, the country is required to assess the significance of project impacts and risks to biodiversity and natural resources as an integral part of the environmental assessment process. The assessment will focus on the major threats to biodiversity (including destruction of habitat and introduction of invasive alien species and unsustainable use of natural resources). On this point, countries may find useful considering the definition of ‘critical habitats’ provided by the ADB to identify actions to avoid impacts and risks to biodiversity.

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933 Defined in section ‘Identifying natural forests and biodiversity’ below.
934 ADB, SPS, p. 41.
935 ADB, SPS, p. 12.
936 Defined by the SPS as the “variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems”. (ADB, SPS, p. 34).
937 ADB, SPS, p. 34.
938 Understood as “a subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value, including habitat required for the survival of critically endangered or endangered species; areas having special
To meet the requirements of UNFCCC REDD+ Safeguard (e), we recommend countries to adopt a similar provision as ADB regarding the identification of natural forests and biodiversity (by developing a baseline data). Accordingly, they should explicitly include the requirement to identify/map areas with natural forests and/or biodiversity (according to their own definitions of the term) as part of their readiness processes for REDD+ implementation. Furthermore, countries may also include identification of risks and threats that any REDD+ activities may pose on biodiversity and natural resources. Additionally, countries may choose to include any particular rights or concessions granted on the identified areas that may also represent a risk or threat to biodiversity or at least represent conflicting interests. By including this type of data, countries will have relevant information for decision-making regarding the implementation of REDD+ in the country.

To carry out broader biodiversity identification activities, including identification of risks and threats, countries may take advantage of the financial support and technical assistance developing institutions such as ADB may provide.

(ii) Implementing Measures to Protect Biodiversity

The Forestry Policy foresees the following measures to protect biodiversity: i) “biodiversity conservation must be an integral component and criterion in the setting of timber concessions and in the design and management of logging systems and regulations”; ii) the ADB will ensure that governments are committed to the preservation of old-growth forests and biodiversity before providing assistance to the countries; iii) the ADB will also “encourage mixed plantations rather than the monoculture of single species with appropriate matching of species with specific site conditions”; iv) that the Bank will pursue cooperative programs involving NGOs in order to facilitate delivery of low-cost, small-scale projects to promote biodiversity and other conservation-related projects; and v) that the Bank will facilitate access to funds from the Global Environmental Facility to finance projects on conservation and promotion of biodiversity.

For instance, the SPS establishes that no project activity will be implemented in these areas unless: “there are no measurable adverse impacts, or likelihood of such which could impair its high biodiversity value or the ability to function; the project is not anticipated to lead to a reduction in the population of any recognized endangered or critically endangered species or a loss in area of the habitat concerned such that the persistence of a viable and representative host ecosystem be compromised and unless any lesser impacts are mitigated.” (ADB, Policy on Forestry, p. 35).

ADB, Policy on Forestry, p. 17.
ADB, Policy on Forestry, p. 19.
ADB, Policy on Forestry, p. 16.
ADB, Policy on Forestry, p. 21.
ADB, Policy on Forestry, p. 21.
Furthermore, the SPS states that the country will need to identify measures to avoid, minimize, or mitigate potentially adverse impacts and risks and, propose, as a last resort, compensatory measures, such as biodiversity offsets, to achieve no net loss or a net gain of the affected biodiversity.\textsuperscript{945}

Moreover, the SPS also explicitly establishes that the country “will not intentionally introduce any new alien species\textsuperscript{946} unless carried out in accordance with the existing regulatory framework for such introduction (…) or unless the introduction is subject to a risk assessment (as part of the environmental assessment) to determine the potential for invasive behaviour. Under no circumstances must species known to be invasive be introduced into new environments.\textsuperscript{947} The country will undertake assessment of the possibility of accidental or unintended introduction of such invasive alien species and identify measures to minimize the potential for release”\textsuperscript{948}.

It is worth mentioning that the SPS foresees the possibility of protecting biodiversity in habitats that have already been altered. In fact, the SPS states that “where the natural habitat has apparently been altered, through the introduction of alien species of plants and animals, the country will exercise care to minimize any further conversion or degradation of such habitat, and will (…) identify opportunities to enhance habitat and protect and conserve biodiversity as part of project operations”.\textsuperscript{949}

While there are some provisions and measures provided by ADB regarding the protection of biodiversity, they are either very general or broad (biodiversity must be a ‘component’ or ‘criterion’ for the setting of concessions or ADB considering the ‘commitment’ of governments to preserve old-growth forests and biodiversity) or rely in the country’s legal frameworks or direct actions.

We recommend countries ensure adequate provisions to protect biodiversity are foreseen in their legal frameworks, including specific measures to protect it. These provisions could take into consideration what is required by the ADB (measures to avoid, minimize, or mitigate potentially adverse impacts and risks). However, countries need to be particularly cautious when deciding to apply a net loss/gain approach in their own particular contexts. Again, they need to be very alert when/if dealing with alien species and have appropriate regulatory frameworks that establish proper procedures to introduce and manage them.

Following ADB’s provision, countries could also identify habitats that have already been altered and seek to minimize any further conversion or degradation. As far as possible, they should identify opportunities to enhance them, protect and conserve biodiversity, including those financed by ADB.

(iii) Supporting Conservation Research and Awareness-Raising

According to the Forestry Policy, the Bank will support policy and technical research studies to implement comprehensive forestry development programs at the country level.\textsuperscript{950} It will also promote

\textsuperscript{945} ADB, SPS, p. 34.
\textsuperscript{946} Understood as the “species not currently established in the country or region of the project” (SPS, p. 36).
\textsuperscript{947} ADB, SPS, p. 36.
\textsuperscript{948} ADB, SPS, p. 36.
\textsuperscript{949} ADB, SPS, p. 35.
\textsuperscript{950} ADB, Policy on Forestry, p. 14.
“transferring scientific knowledge and technology (...) organizing training programs and other means as appropriate.” 951

While there are no specific provisions to support conservation awareness per se, the ADB’s policies on access to information and information sharing during the projects cycle may raise awareness and trigger capacity building processes on conservation of forests and biodiversity.

We recommend countries to include capacity building, research and awareness-raising components in their REDD+ strategies, supported by institutions such as the ADB. These are key elements that will allow countries to develop practical tools to protect natural forests and biodiversity.

(iv) Integration of Biodiversity in Cross-Sectoral Policies

There are no explicit ADB provisions requiring cross-sectoral integration of biodiversity into other policies. However, there are some provisions on the need to have a multi-sectoral approach when developing forestry projects. Also, on the necessity to develop forestry investment projects on the basis of a strong sectoral analysis and on an assessment of sectoral policies objectives. 952

Countries need to ensure environmental concerns (especially regarding forests and biodiversity) are taken into consideration for decision-making processes. Therefore, we recommend countries adopt an integral vision of the role of forests and biodiversity in REDD+ processes and, more broadly, in development strategies.

(v) Enhancement of Other Benefits

The Forestry Policy is guided by the principle that forests have “significant economic, environmental and social values for each DMC. Therefore, the Bank’s policies and strategies need to take into consideration the multiple and complementary functions and uses of forests.” 953 While it is positive that the ADB explicitly recognises the social values of forests, the provision does not require countries to enhance them while implementing ADB assisted projects.

In order to meet UNFCCC REDD+ Safeguard (e), we recommend countries to recognise that conservation of forests may bring benefits of various kinds (not only environmental but also social and economic) and develop strategies to achieve them when implementing REDD+ actions.

952 Referred to in the analysis of the section ‘Integration of social, economic and environmental considerations and cross-sectoral coordination under Safeguard (b).
953 ADB, Policy on Forestry, p. 15.
Consistency with UNFCCC REDD+ Safeguard (f) & (g)

Summary of Findings

Both countries and ADB staff are required to propose and implement monitoring measures, and to submit periodic monitoring reports of the projects being implemented. However, ADB policies do not address greenhouse emissions monitoring and much less how to monitor emissions reductions derived from deforestation or degradation.

ADB provisions on recognition of customary land tenure, resettlement and transboundary assessments of risks are of particular relevance to leakage. However, ADB provisions on participation (particularly meaningful consultation and consent) as well as recognition that deforestation and degradation may be ‘inevitable’ in some cases, may increase the risk of displacements or reversals.

1. Monitoring and Assessment

As previously noted a majority of procedural requirements and obligations established by the ADB’s policies implementation are the responsibility of the countries. However, for monitoring purposes, both the country and the ADB have their own separate roles and responsibilities. In fact, countries are required to propose and implement monitoring measures for each project depending on the particular risks and impacts identified, and to submit periodic monitoring reports on their implementation performance to the ADB. The ADB oversees the country monitoring (such as site visits, supervision missions, monitoring reports reviewing, work with countries to rectify any safeguard compliance failures) on an on-going basis. The ADB issues a project completion report assessing if safeguards plans have been achieved.

It is important to note that for projects that involve involuntary resettlement and that impact indigenous peoples, countries are required to include specific arrangements for the participation of affected people in the preparation and validation of monitoring and evaluation reports in their RPS and IPPs. Similarly, for ADB-financed forestry operations, “the Bank will take steps to make forestry supervision more intensive and systematic,” including “strong review missions with adequate technical staff, increasing the duration and frequency of review missions, appropriate and timely follow-up of the findings of reviews and improved environmental project monitoring with appropriate local participation.” Despite that monitoring involves local participation, these provisions are more related to the environmental aspects of projects than to the social aspects.

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954 See section ‘Implementing participatory mechanisms” under UNFCCC Safeguard (d).
955 See the same SPS however, the current policies and operational procedures mix instructions to ADB staff with requirements for countries in one place, often making the boundaries of responsibilities and accountabilities unclear. Therefore, greater coherence and full clarity of their policy principles, requirements for countries, and internal implementation procedures would help ADB staff and countries better understand what needs to be done to achieve the objectives of safeguard policies, as well as their differentiated roles and responsibilities in enhancing the quality of development outcomes. (ADB, SPS, 8).
956 ADB, SPS, p. 21.
957 ADB, SPS, p. 21. Monitoring Measures are to be included in the EIA, the Resettlement Plan and the Indigenous Peoples Plan according to the nature and characteristics of each project.
958 ADB, SPS, p. 21-22.
959 ADB, SPS, p. 54 and 64.
960 ADB, Forestry Policy, p. 20.
Credibility of REDD+ will depend on the capacity to monitor and ultimately demonstrate that forest cover has been protected, and that emissions reductions accomplished. Furthermore, frequent monitoring will allow assessing if emissions reductions remain in time.

It is essential that countries promote forest-dependent community participation in the adoption of monitoring strategies to guarantee permanence of emissions reductions. This may strengthen community ‘ownership’ on REDD+ strategies and projects, promote social benefits, and contribute to build a stronger public acceptance of REDD+.

2. Measures to Avoid Reversals and Displacement

(i) General Measures

The ADB requires the country to apply a precautionary approach to the use, development, and management of renewable natural resources. The SPS also requires countries to avoid, minimize or control the “intensity or load of pollutant emissions and discharges, including direct and indirect greenhouse gases emissions.” However, this requirement is laid out in a very general way and no further details on how to minimise or control emissions are provided. Nevertheless, the SPS further states that countries will promote the reduction of project-related anthropogenic greenhouse gas emissions and that they will quantify direct and indirect emissions derived from the project implementation. This reference to ‘indirect emissions’ could be easily interpreted as leakage emissions resulting from REDD+ actions.

Furthermore, the country is required to conduct quantification and monitoring of greenhouse gas emissions annually in accordance with internationally recognized methodologies. Finally, the country will also evaluate technically and financially feasible and cost-effective options to reduce or offset project-related greenhouse gas emissions during project design and operation.

The Forestry Policy Working Paper also identifies that there is a growing interest in the use of forests to sequester carbon. However, it recognises that there are several practical, technical, and institutional issues that need to be addressed before it can be applied in most DMCs. Nevertheless, the Working Paper does not provide further provisions, considerations or steps that could be taken towards solving them.

As a general measure to avoid the reversals and displacement of emissions, countries should seek to effectively implement provisions covered by the UNFCCC REDD+ Safeguards (a) through (e). In fact, complying with international and national obligations, enhancing participatory and transparent for-
est governance and ensuring biodiversity protection will contribute to ensuring emission reductions are lasting. Hence, a successful implementation of REDD+ would be accomplished.

(ii) Measures to Tackle Reversals

Among relevant considerations for ensuring permanence of emissions reductions is clarity over land tenure, along with full and effective participation of relevant stakeholders, respect for rights and access to effective remedies. These are likely to promote public acceptance of REDD+ actions and activities. Furthermore, countries need to ensure that forest laws are enforced—otherwise emissions reductions will not be realised.

To avoid reversals of emissions reductions and prevent leakage, countries need to identify and address current or potential drivers of deforestation in order to ensure that efforts result in lasting emission reductions and removals.

The ADB requires assessing potential climate change impacts as part of the environmental assessment, although no specific criteria or details are provided on how to do so.

Countries may follow this provision and elaborate how climate change should be addressed when implementing REDD+ actions. In fact, permanence may not just be affected by human actions but also by natural environmental factors, such as climate change itself. For instance, some ecosystems may be less resilient to effects from climate change because of degradation. In this sense, integrating climate change considerations in REDD+ planning is essential to ensure permanence of emissions reductions and leakage prevention. To do so, it would be useful for countries to have official information regarding the state of their forests (in terms of degradation or deforestation) and to identify potential risks that could increase because of climate change.

It is also important to note that there is not much experience on how to assess reversals of emissions reductions so countries would need to pay particular attention on developing strategies and methodologies to do so as projects are developed according to specific circumstances.

(iii) Measures to Tackle Displacement

Displacement of emission reductions may be associated to physical displacement (relocation, loss of residential land, loss of shelter) or economic displacement (loss of land, assets, access to assets, income sources, means of livelihoods). According to the SPS, displaced persons must be informed on their entitlements and resettlement options. Moreover, the SPS states that where involuntary resettlement impacts and risks are deemed highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.

968 ADB, SPS, p. 16.
969 ADB, SPS, p. 17.
A very important issue to consider when displacement and resettlements processes take place is the legal status of the land that displaced peoples were occupying. The ADB requires countries to ensure that “displaced people without titles to land or any recognizable legal rights to land are eligible for resettlement assistance or compensation for loss of non-land assets.”

Because many forest-dwelling communities do not have formal legal titles to land, countries need to ensure displaced people receive compensation even if they do not hold legal entitlements to the land they were occupying before displacement. This may assist in avoiding leakage in areas where displaced persons are relocated (if they are properly compensated and offered alternative livelihoods). In order to ensure that leakage does not occur in line with UNFCCC REDD+ Safeguard (g), countries may follow ADB’s provision that requires countries to ensure that both formal as well as non-formal rights are recognised in any resettlement plan and receive appropriate support. This should be done through a clear, transparent and participatory process for recognising tenure rights, including customary and traditional rights and establishing clear substantive and procedural criteria for compensating affected persons. We also recommend that countries develop clear and protective legal frameworks for instances where involuntary resettlement occurs, in order to ensure that all affected people are provided with opportunities equivalent to what they had before displacement. This will ensure that forest livelihoods are maintained, the risk of leakage is minimised, and that international human rights are respected.

Additionally and as mentioned above, to avoid reversals of emissions reductions and prevent leakage, countries need to identify and address current or potential drivers of deforestation in order to ensure that efforts result in lasting emission reductions and removals.

3. International Cooperation

In the particular context of REDD+, actions may result in displacement of emissions beyond national jurisdiction. The environmental safeguards in the SPS require countries to assess potential transboundary, global and cumulative effects, including climate change in their EIA. The assessment will identify “potential transboundary effects, such as air pollution, increased use or contamination of international waterways, as well as global impacts, such as emission of greenhouse gases and impacts on endangered species and habitats.”

Countries need to recognise that UNFCCC REDD+ Safeguard (g) may also apply to REDD+ actions carried out in their own jurisdictions, due to the potential for negative environmental and social impacts in bordering countries. Therefore, these impacts need to be considered when assessing the opportunities and risks associated with particular strategy options.

970 ADB, SPS, p. 17.
971 ADB, SPS, p. 16.
972 ADB, SPS, p. 31.
Summary of Recommendations for Ensuring Consistency between ADB and UNFCCC REDD+ Safeguards

UNFCCC REDD+ Safeguard (a)

1. Countries need to ensure their national REDD+ programmes are consistent with their national forestry objectives in accordance to their national plans and legislation.

2. Countries also need to guarantee that their international obligations (regarding environmental, human rights and indigenous people’s issues) are fulfilled during all activities linked to REDD+ and all REDD+ phases. To do so, it is important that countries not only ratify international agreements, but also develop national laws and regulations to put them in practice.

UNFCCC REDD+ Safeguard (b)

1. Recognition of the right of access to information under maximum disclosure principles, good faith and very limited and narrow exceptions within national legislations is essential to ensure effective implementation of UNFCCC REDD+ Safeguard (b). However, recognition is not enough as countries would need to raise awareness of the right of access to information and develop appropriate mechanisms (regulations, policies and procedures) to apply the right in practice.

2. Countries must consider the special circumstances of the different array of stakeholders when deciding the means, processes and mechanisms to share information, which may include a two-stage appeals process. In any case they must be culturally appropriate, easily understood and available. To achieve adequate information sharing, countries may also need to strengthen their institutional capacities including training government staff to permanently support vulnerable stakeholders such as indigenous peoples.

3. Countries should assess the state of their own national forest governance in order to identify weaknesses and gaps. When doing so, we recommend countries to consider how specific issues such as land tenure, institutional capacity, sharing of benefits, enforcement, gender and grievances mechanisms are addressed and regulated. In this way, they will be able to develop a specific action plan to strengthen their own legal frameworks which could enhance countries’ ownership of REDD+.

4. We suggest countries follow, to the extent possible, ADB’s provisions regarding land tenure. Countries need to establish clear land-tenure rights, which include developing land tenure structures that recognise customary rights and rights of forest-dependent communities. It is essential for countries to identify as early as possible and prior to the implementation of REDD+ actions and activities any potential land uses conflicts. If addressing them in a comprehensive way is not possible before the implementation of REDD+ actions or activities, countries need to develop work plans with timeframes to do so.

5. It is important for countries to acknowledge that not only indigenous peoples may be the ones affected or the only beneficiaries of forest projects. In fact, they need to establish measures to allow different groups (including women, the elderly and the poor) to access benefits independently from any special category they may hold under law. Countries also need to take into account that in the context of REDD+, benefit sharing is inextricably linked to other issues that need to be resolved such as land tenure.

6. Additionally, countries need to understand the role women and men play in sustainable forest
management and the importance to address any gender disparities REDD+ actions or activities could bring during their implementation. Countries may follow ADB’s approach to mainstream gender by including any gender concerns as a cross-cutting issue at all stages of the project cycle (including consultations, decision-making and benefit sharing).

7. In implementing measures to meet UNFCCC REDD+ Safeguard (b), countries need to establish how participation and consultation processes will effectively influence decision making and/or provide criteria on how the results of consultation processes are ultimately integrated (or not) in final project documents or decision-making processes. We suggest countries ensure the inclusion of indigenous peoples, forest-dwelling and/or forest-dependent communities in public consultation mechanisms for land-use decisions given that land use decisions are central for implementing REDD+ actions and activities.

8. Countries need to design and implement clear rules of responsibility and their own accountability mechanisms to address conflicts/problems of relevant stakeholders arisen from the implementation of REDD+/forest initiatives to verify compliance of the rules established. Accordingly, we recommend countries to establish grievance mechanisms for REDD+ actions and activities that are gender responsive, culturally appropriate, and readily accessible to all segments of the affected people.

9. We recommend countries to develop appropriate means to ensure permanent communication takes place among sectors. Additionally, countries may want to consider integrating a requirement to take into account economic, social, and environmental aspects for decision-making processes that impact forests in their legal frameworks.

10. Countries should take advantage of the technical support that developing agencies and institutions (such as the ADB) may provide to improve their institutional capacities, help them to develop suitable legal frameworks and develop public officers’ skills for land tenure management and arrangements. Assistance may also include support for conducting national gender analysis, exploring opportunities to address emerging issues for women and raise awareness on gender inequalities and concerns.

UNFCCC REDD+ Safeguard (c)

1. Taking into consideration relevant and applicable laws, countries need to define, according to their own circumstances, the content of the terms “indigenous peoples”, “local communities” and traditional/cultural or indigenous knowledge. This would allow them to establish what rights these groups are entitled to according to relevant and applicable international agreements and their own national legislation, and what type of protection should traditional knowledge receive.

2. To meet UNFCCC REDD+ Safeguard (c), we recommend countries to be clear on what ‘consent means’ and entails, and how and it what cases it should be sought.

3. In order to comply with UNFCCC REDD+ Safeguard (c), countries need to take into account relevant international human rights and obligations regarding indigenous peoples’ rights and knowledge. Particularly relevant to knowledge protection are the respect and implementation of rights regarding the right to exercise traditional livelihoods, self-determination, rights associated with culture, benefit-sharing, rights surrounding collective land and cultural inheritance. In doing so, they also need to take customary laws into account if applicable. Specifically, countries need to ensure their domestic legal frameworks are not only in accordance with
human rights, but specifically address non-discrimination and acknowledge different lifestyles as those pertaining to indigenous communities and respect their rights. They should also seek to avoid discriminatory actions based on ethnicity or culture and implement existing international agreements and conventions relevant to indigenous peoples, including those not legally binding (such as UNDRIP). This will allow them to provide a comprehensive recognition and protection of indigenous peoples’ rights, guarantee non-discrimination.

4. We also recommend countries to recognise the collective right to self-determination, which is linked to the ability of indigenous peoples to pursue economic, social and cultural development and to dispose of their natural wealth and resources. It also entails their right to autonomy regarding their internal affairs including their distinct political, social, cultural, legal and economic structures. These aspects need to be recognised and further considered and guaranteed by countries when developing, implementing and monitoring REDD+ activities. In this sense, countries need to identify those cases where projects or activities may undermine the right of indigenous peoples to their own self-determination and therefore require consent from them to be developed. In this task it is essential that countries are clear on what consent means, entails, when it is required and how it should be achieved in the country according to their own circumstances and legislation.

5. We recommend countries to recognise and protect the indigenous peoples’ rights associated with culture in order to preserve their cultural identity and practices in their legal frameworks. As far as possible, countries should aim to identify what are those rights or elements protected under “cultural rights” according to their own contexts. For instance, they should consider respect for their identity, language, customs, traditions, rituals, cultural institutions, cultural sites, assets, among other. Additionally, we suggest countries to adopt specific measures to guarantee these are respected when developing, implementing and monitoring REDD+ actions.

6. We recommend countries to legally recognise customary rights (or at least clarify them). To do so, countries need to work on their land use planning in order to identify where indigenous peoples are located and establish what rights need to be recognised.

7. Regarding benefit-sharing, countries need to include minimum conditions for the sharing of benefits in their legal frameworks and pay particular attention on how intellectual property rights will regulate the commercial use of knowledge. In doing so, we suggest countries to determine who is “eligible” to receive them or at least discuss the criteria to identify potential ‘beneficiaries’. Otherwise, it would be very difficult to negotiate any benefit-sharing if it is not clear who is entitled to receive benefits. To do so, countries would probably have to resolve any current land-tenure issues taking place in the territories where REDD+ actions are intended to be implemented. In this way, they may be able to establish rules for entitlement and ways of sharing benefits derived from REDD+ actions. Distribution of benefits should aim to be culturally appropriate and equitable.

8. In order to be consistent with UNFCCC REDD+ Safeguard (c), we recommend countries to consider ADB’s provisions on procedural rights regarding meaningful consultation and disclosure of information, and assess their applicability in their own contexts. Regarding FPIC however, countries should note that ADB only requires it in specific cases. Countries extend FPIC to the cases where the mechanism should be required in consistency with relevant and applicable international law. Furthermore, they would also need to reflect on how grievance and redress mechanisms should be structured according to their own contexts given that ADB does not provide any specific criteria, guidance or elements to be considered for implementing them.
9. We suggest countries take advantage of the financial assistance development agencies and institutions may provide to develop mechanisms and strengthen their legal frameworks to protect indigenous peoples’ knowledge, including assessing the feasibility and convenience of utilising intellectual property rights to do so. They may also request support to strengthen/adjust their domestic legislations to establish legal recognition of customary land use.

**UNFCCC REDD+ Safeguard (d)**

1. To meet UNFCCC REDD+ Safeguard (d), it is essential for countries to identify who are the relevant stakeholders in the context of REDD+. Therefore, countries need to establish certain criteria and principles to guide the identification of relevant stakeholders. They would also need to establish certain methodologies and procedures (such as early screening processes and social analysis) to do so. Countries need to be aware that depending on the nature and magnitude of the REDD+ actions or activities to be implemented, stakeholders may include directly affected groups such as indigenous peoples and indirectly affected ones such as relevant NGOs and local government authorities. Only by adequately identifying stakeholders, countries will be able to establish suitable and tailored measures according to their own characteristics and circumstances.

2. We also recommend countries to adopt policies/procedures or to include in their legal systems provisions that guarantee stakeholders access to information. Information sharing must take into consideration the large array of stakeholders that may be directly or indirectly impacted by REDD+, so that they include culturally appropriate ways for distributing it. Information sharing also needs to take place under maximum disclosure principles, good faith and very limited and narrow exceptions. Moreover, countries could also take advantage of development or aid agencies to assess whether their information disclosure requirements are adequate to stakeholders.

3. Countries need to establish appropriate participation processes according to the stakeholders involved in REDD+ actions and activities. ADB provides detailed and adequate requirements on how participation processes must be carried out (considering needs of vulnerable groups, ensuring participation for designing, implementing and monitoring projects). We recommend countries to follow them or build upon them according to their own needs and contexts to meet UNFCCC REDD+ Safeguard (d). However, it is essential for countries to communicate stakeholders how consultations results will be analysed and integrated (or not) in decision making processes.

4. Moreover, countries need to acknowledge that conflict resolutions mechanisms are a key component to ensure full and effective participation. Countries need to be aware that those mechanisms require procedural and institutional capacity, in order to be able to attend any concerns or complaints that may arise. In addition, they also need to consider that grievance mechanisms must be culturally and gender appropriate in every context, especially when indigenous peoples are involved. In this way, we recommend countries they ensure they have the capacity to do so and take into consideration that any mechanism established needs to consider the special cultural characteristics of the stakeholders they are intended to attend.

5. In order to meet UNFCCC REDD+ Safeguard (d), we recommend countries establish procedures to create an enabling environment for the implementation of REDD+/forest initiatives. This could be achieved by undertaking social impacts assessments and identifying capacity building measures for both government institutions and indigenous people’s organisations to enhance
their abilities to address the issues identified and to propose and apply measures to be implemented during REDD+ actions and activities.

6. Additionally, we recommend countries to consider the principles for indigenous peoples stated in ADB’s SPS, which can be useful according to their own particular contexts. In fact, undertaking social impacts assessments, avoiding displacement and implementing continued consultation processes, certainly creates a proper space of dialogue between indigenous peoples and REDD+ implementers. Nevertheless, countries need to carefully develop specific timeframes for these activities, be sure indigenous peoples are aware of their rights and take advantage of the assistance organizations may provide to strengthen their capacities to implement these activities.

7. Finally, to meet UNFCCC REDD+ Safeguard (d), we recommend countries to work on their own definition and interpretation of ‘consent’ in accordance to applicable international law and declarations, such as ILO 169 and UNDRIP to be clear on the implications of consent in their jurisdictions. In doing so, countries should be aware that consent must be prior to the implementation of actions or activities, and given in a free and informed manner and through indigenous peoples representatives and their own mechanisms and procedures. Finally, countries should also be clear on what specific cases should FPIC apply in consistency with relevant and applicable international law.

UNFCCC REDD+ Safeguard (e)

1. We recommend countries define the terms “forest” and “natural forest” as this is the first step towards determining what needs to be protected and not converted according to UNFCCC REDD+ Safeguard (e). Definitions should be based on sound science and the specific geographical conditions of the country. Countries may also take into consideration the multiple definitions provided by the ADB in order to determine if they could be useful for their own definitions of the terms but should avoid having ambiguous terms.

2. Moreover, it is essential that countries understand that UNFCCC REDD+ Safeguard (e) explicitly forbids the conversion of natural forests without allowing for a distinction between the conversion of critical habitats and non-critical habitats. In this sense, countries should aim to avoid ambiguous terms and provisions which may undermine the mandate under UNFCCC REDD+ Safeguard (e) and on the contrary, adopt actions to incentivize the protection and conservation of natural forests including their ecosystem services, when implementing the REDD+.

3. Additionally, we recommend countries to adopt mechanisms to identify natural forests and biodiversity. Accordingly, they should explicitly include the requirement to identify/map areas with natural forests and/or biodiversity (according to their own definitions of the term) as part of their readiness processes for REDD+ implementation. Furthermore, countries may also include identification of risks and threats that any REDD+ actions may pose on biodiversity and natural resources. Furthermore, countries may map/identify any particular rights or concessions granted on the identified areas that may also represent a risk or threat to biodiversity or at least represent conflicting interests. By including this type of data, countries will have relevant information for decision-making regarding the implementation of REDD+ in the country.

4. We recommend countries ensure adequate provisions to protect biodiversity are foreseen in their legal frameworks including specific measures to protect it. These provisions could take into consideration what is required by the ADB (measures to avoid, minimize, or mitigate potentially adverse impacts and risks). However, countries need to be particularly cautious when
deciding to apply a net loss/gain approach in their own particular contexts. Again, they need to be very alert when/if dealing with alien species and have appropriate regulatory frameworks that establish proper procedures to introduce and manage them.

5. Likewise, countries need to ensure environmental concerns (especially regarding forests and biodiversity) are taken into consideration for decision-making processes. Therefore, we recommend countries to do so in order to have an integral vision of the role of forests and biodiversity in REDD+ and, more broadly, in development strategies. Additionally, we recommend countries to recognise that conservation of forests may bring benefits of various kinds (not only environmental but also social and economic) and develop strategies to achieve them when implementing REDD+ activities.

6. Finally, we recommend countries to take advantage of the financial support and technical assistance institutions such as ADB may provide for the identification of risks and threats that may harm forests and biodiversity. They should also include capacity building, research and awareness-raising components in development projects. In this way they could develop practical tools to protect natural forests and biodiversity.

UNFCCC REDD+ Safeguards (f) & (g)

1. In order to implement UNFCCC REDD+ Safeguards (f) and (g), it is essential that countries adopt proper monitoring strategies to guarantee permanence of emissions reductions and the inclusion of forest-dependent communities’ participation. This may strengthen community “ownership” on REDD+, contributing to build a stronger public acceptance.

2. As a general measure to avoid reversals and displacement of emissions, countries should pay particular attention to meet the provisions covered by the UNFCCC REDD+ Safeguards (a) through (e). In fact, complying with international and national obligations, enhancing participatory and transparent forest governance and ensuring biodiversity protection will contribute to ensure equitable outcomes derived from REDD+.

3. To avoid any reversals of emissions reductions and prevent leakage, countries need to identify and address current or potential drivers of deforestation in order to ensure that efforts result in lasting emission reductions and removals. Countries may also need to assess potential climate change impacts as part of their environmental assessments and elaborate how climate change should be addressed when implementing REDD+ actions. In this sense, integrating climate change considerations in REDD+ planning is essential to ensure permanence of emissions reductions and leakage prevention. To do so, it would be useful for countries to have official information regarding the state of their forests (in terms of degradation or deforestation) and to identify potential risks that could increase because of climate change.

4. With the aim to ensure that displacement of emissions does not occur, and therefore meet UNFCCC REDD+ Safeguard (g), countries may follow ADB’s provision that require countries to ensure that both formal as well as non-formal rights are recognised in any resettlement plan and receive appropriate support. This should be done through a clear, transparent and participatory process for recognising tenure rights; including customary and traditional rights and establishing clear substantive and procedural criteria for compensating affected persons. We also recommend that countries develop clear and protective legal frameworks for instances where involuntary resettlement occur, in order to ensure that all affected people are provided with opportunities equivalent to what they had before displacement. This will ensure that for-
est livelihoods are maintained, the risk of leakage is minimised, and that international human rights are respected.

5. Finally, to meet UNFCCC REDD+ Safeguard (g) countries need to consider transboundary risks of displacement of emissions into bordering countries when implementing REDD+ projects or strategies.
Annex VI: Analysis of the UN-REDD Programme Safeguards

Background on the UN-REDD Programme

UN-REDD is a collaboration between the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP) and the Food Agriculture Organisation (FAO) as part of the ‘One UN’ approach – coherence and consolidation of UN activities and an improvement in the effectiveness of the UN to reduce ineffectiveness and inefficiency, duplication and policy incoherence – with each agency assuming responsibility for individual work areas. The UN-REDD Programme was launched in 2008 and began with nine countries and currently (as of March 2013) supports activities in 16 countries, with a total budget of $67.3 million.973

According to UN-REDD Framework Document, the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme) was established in order to “generate the requisite transfer flow of resources to significantly reduce global emissions from deforestation and forest degradation.”974 The updated UN-REDD programme strategy for 2011-2015 defines its focus as “supporting countries to develop and implement their REDD+ strategies efficiently, effectively and equitably so as to speed up their REDD+ readiness and sustainably transform their land-use and forest management.”975

The Programme has identified six interlinked thematic work areas as priorities to support the national readiness process, focusing on building capacity and providing technical support. These areas are:976

- Measuring, reporting and verification (MRV) and monitoring
- National REDD+ governance
- Engagement of indigenous peoples, local communities and other relevant stakeholders
- Multiple benefits of Forests and REDD+
- Transparent, equitable and accountable management of REDD+ payments
- Sector transformation

In its support to the national REDD+ readiness processes (related to the six aforementioned work areas), UN-REDD has two principle modalities: (1) direct support to the design and implementation of national programmes; and (2) complementary global and regional-level activities.977

National-level support is divided into two categories:

- **Targeted support**: this will consist of in-depth, country-specific support delivered through national programmes according to the six identified priority work areas;978 and

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• **National Programmes (NPs):** Through NPs the UN-REDD Programme supports governments to prepare national REDD+ strategies, build monitoring systems, engage stakeholders and assess multiple benefits.979

In response to the Policy Board980 request, the UN-REDD Programme uses a harmonised Readiness Preparation Proposal (R-PP) template when requesting Policy Board approval of a funding allocation for a new NP. The R-PP is designed to assist a country prepare itself for involvement in REDD+, under either the Forest Carbon Partnership Fund (FCPF) or the UN-REDD Programme.981

Building on the framework presented in the R-PP, the National Programme Document (NPD) describes the UN-REDD Programme’s contribution to implementation of the R-PP and to the national REDD+ readiness process, and according to UN-REDD: “It provides the vehicle through which the Participating UN Organisations provide financial and technical support to achieve these results.”982

The harmonized UN-REDD and FCPF R-PP template states that the applicable safeguards for UN-REDD National Programme Documents are the Social and Environmental Principles and Criteria (SEPC), which must be applied by using the Benefits and Risks Tool (BeRT).983 The proposed application of the SEPC is for: 1) assisting countries in formulating national REDD+ programmes and initiatives for which they seek UN-REDD support; 2) reviewing national programmes prior to submission for a UN-REDD Policy Board decision on funding; and 3) assessing national programme delivery.

It must be noted that the SEPC are not conditionalities for the distribution of readiness funding. Once an R-PP/NPD has been prepared it must be validated nationally by a multi stakeholder group including relevant government agencies, the UN Resident Coordinator (UN RC), civil society (working on forest, natural resources, rural development etc.), the private sector and representatives of indigenous peoples.984 Once the R-PP/NPD is validated nationally, it is submitted to the UN-REDD Secretariat who reviews the documents based on the following criteria:

- Extent of ownership of the R-PP/NPD by government and non-government stakeholders
- Level of consultation, participation and engagement
- Programme effectiveness, coherence with country strategies and other relevant initiatives, and cost-efficiency
- Management of risks and likelihood of success
- Consistency with the UN-REDD Programme Strategy
- Compliance with UN-REDD Programme operational guidance and the Harmonised R-PP Template.

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979 UN-REDD, Handbook for National Programmes and Other National-Level Activities, p. 7.
980 The Policy Board governs the UN-REDD Programme and is responsible for oversight and strategic direction. The Policy Board decides on fund allocation for national and global programmes from the UN-REDD Programme Fund and is composed of representatives from member countries (three from each regional constituency), the three largest donors to the UNDP Multi-Partner Trust Fund (MPTF), civil society organisations, indigenous peoples, FAO, UNDP and UNEP. UN-REDD, Handbook for National Programmes and Other National-Level Activities, p.4.
981 UN-REDD, Handbook for National Programmes and Other National-Level Activities, p.12.
984 UN-REDD, Handbook for National Programmes and Other National-Level Activities, p.17.
Documents/Policies Used For the Analysis

[Please note that we have only reviewed the documents from UN-REDD programme we have identified as directly relevant to safeguards implementation. We have not reviewed or analysed several documents (tools/guidelines/methodologies) relevant and applicable to support the UN-REDD programme's safeguards implementation, that are mentioned by UN-REDD but are either inaccessible or have not yet been publically released, including: (1) LEG-REDD+ (only found concept note dated December 2012), (2) Guidelines on Strengthening/Establishing National-Level Grievance mechanisms (not available, still under development as stated in FPIC guidelines), (3) Framework for assessing and monitoring forest governance, and (4) the Draft manual on collection of forest governance data.]

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<th>Table 1: UN-REDD Document Relevant to REDD+ activities</th>
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<tr>
<td><strong>Document</strong></td>
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<tr>
<td>1. UN-REDD Programme Framework Document June 2008</td>
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<td>2. UN-REDD Programme Strategy 2011 - 2015 document</td>
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<td>3. Un-REDD Programme Rules of Procedure and Operational Guidelines</td>
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<td>4. UN-REDD Programme Handbook for National Programmes and Other National-Level Activities</td>
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<td>5. Social and Environmental Principles and Criteria (SEPC)</td>
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<td>6. SEPC – Benefit and Risks Tool (SEPC-BeRT)</td>
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<td>7. Joint Guidelines on Stakeholder Engagement</td>
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<td>8. Guidelines on Free, Prior and Informed Consent (FPIC)</td>
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<td>9. Readiness Preparation Proposal (R-PP) template (with guidelines)</td>
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<td>10. Guidance on conducting REDD+ Corruption Risk Assessments</td>
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<td>9. Legal Companion to the UN-REDD Programme Guidelines on Free Prior and Informed Consent (FPIC)</td>
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<tr>
<td>10. Draft Guidelines for Monitoring the Impacts of REDD+ on Biodiversity and</td>
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Ecosystems Services on biodiversity and ecosystem services

11. Draft annotated guide to useful resources for monitoring the impacts of REDD+ on biodiversity and ecosystem services

The annotated guidelines are intended to supplement the general recommendations made in the draft Guidelines for Monitoring the Impacts of REDD+ on Biodiversity and Ecosystem Services, by indicating resources that: a) provide basic information on biodiversity and ecosystem services, b) provide guidance on monitoring these, and c) some useful tools that can help with the first two issues.

Mechanisms that Support the Implementation of the UNFCCC REDD+ Safeguards

Social and Environmental Principles and Criteria

The UN-REDD Programme Social and Environmental Principles and Criteria (SEPC) consist of broad principles, within which more detailed criteria describe important issues to be considered when developing and implementing REDD+ policies and activities. The principles and criteria draw from and were developed specifically to be coherent with the guidance provided by the Cancun agreement, and draw from existing literature on safeguards, standards and certification. The SEPC represent a human rights based approach to UN-REDD’s programming and intends to support existing UN conventions, treaties and declarations and be consistent with UN agencies’ policies and procedures as well as other multilateral agreements.

The principles are overarching statements about the achievement of a desired outcome (e.g. “apply norms of democratic governance”). The criteria are the conditions that need to be met by UN-REDD Programme funded activities to contribute to the achievement of the principle. The SEPC provide a guiding framework to support countries in developing national approaches to REDD+ safeguards in line with the UNFCCC and to address social and environmental issues in UN-REDD funded activities. The SEPC can be applied: in the formulation of national UN-REDD programmes, in the review of national programme documents and in the application of the planning, monitoring and reporting framework that guides national programme implementation.

SEPC Benefits and Risk Tool (BeRT)

The BeRT was developed to help apply and elaborate on the concepts contained in the SEPC. Its aim is to assist national REDD+ working groups to develop national programmes in accordance with the SEPC, in order to minimize the risks and enhance the multiple benefits from readiness activities. The tool asks a series of questions under each criterion to assist in identifying the issues to be addressed in UN-REDD supported programmes. The tool also points to linkages between the SEPC, relevant Multilateral


986 For example, UNDP’s Environmental Sustainability and Climate Change prescriptive policy, UNEP’s Framework for Ecosystems Management, and FAO’s Environment and Social Impact Assessment.

987 UN-REDD, SEPC, p.3.

988 UN-REDD, SEPC, p.4.
Agreements and other UN-REDD Programme policies and Operational Guidance.

Participatory Governance Assessments for REDD+

The purpose of the Participatory Governance Assessments (PGAs) is to provide a framework for a participatory process at the country level to conduct governance assessments for information sharing on how safeguards are promoted, addressed and respected in a systematic manner. UN-REDD's Participatory Governance Assessments are pilots that aim to build on UNDP's Global Programme on Democratic Assessments, complemented by FAO's experience in data collection and monitoring in the forest sector. The objective of the PGAs is to identify governance challenges and provide responses to overcome them. The PGAs are structured into four main components:

- Identifying and convening relevant stakeholders and participants
- Defining targets and indicators for prioritised areas of concentration
- Analysis of governance structures and systems to inform recommendations for policy reform and
- Training and capacity development – targeting both the demand and supply side of accountability.

Experience from the pilots carried out will inform the development of guidance notes on the approach and a manual on data collection, as well as lessons learned for distribution among UN-REDD countries which have not yet undertaken a PGA.

Guidance on Conducting REDD+ Corruption Risk Assessments

The UN-REDD Programme has developed the current voluntary Guidance on REDD+ Corruption Risk Assessment (REDD+ CRA) to support countries in identifying corruption risks in REDD+ country programmes and in developing systems and capacities to mitigate those risks. The results of the assessment will form the base for designing, implementing and monitoring the existence and effectiveness of anti-corruption measures.

As countries implementing REDD+ readiness activities are working to meet the provisions of the UNFCCC Cancun Agreements and the Durban Outcome on safeguards and safeguard information sys-

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989 UN-REDD, SEPC, p.4.
991 UN-REDD, PGAs for REDD+, p. 2.
992 This includes identifying and convening participants representing the government, civil society, local forest-dependent communities and indigenous peoples, as well as media and academia. UN-REDD, PGAs for REDD+, p.5.
993 Once the participants have been identified and the management structure is in place, the areas of prioritisation (human rights, anti-corruption, forest law enforcement, sustainable forest management, land tenure issues etc.) must be discussed and chosen. Based on this discussion, participants must agree on targets and on a framework of indicators, as well as how the necessary data will be collected and by whom, including an assessment of existing data sources and identification of gaps. UN-REDD, PGAs for REDD+, p.5.
994 The participants will analyse the current governance structures and systems in place to identify shortcomings and obstacles to democratic governance as well as opportunities for improvements. UN-REDD, PGAs for REDD+, p.6.
995 This involves building the capacity of non-state actors and government officials both to provide and demand relevant information on the agreed indicators from the PGAs processed. UN-REDD, PGAs for REDD+, p.6.
997 UN-REDD, PGAs for REDD+, p.6.
tems, the REDD+ CRA can feed into their efforts to build a safeguards system. The REDD+ CRA can help to provide information on the principles and criteria defined in the UN-REDD Social and Environmental Principles and Criteria, developed to assist countries in developing country safeguards for REDD+.

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Analysis of the UN-REDD Safeguards

Consistency with UNFCCC REDD+ Safeguard (a)

Summary of findings for Safeguard (a)

According to the UN-REDD SEPC, REDD+ activities should be consistent with national forest programmes, however they also require REDD+ activities to be consistent with national development strategies, which could potentially lead to conflict between policy choices as development strategies may not be compatible with the objectives of REDD+.

The SEPC also aims to assist countries to meet their commitments under international law. This includes a duty to identify relevant international, national and local laws and comply with them in the design and implementation of their national REDD+ programme.

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

Principle 4 of the UN-REDD SEPC recognises the need to “Contribute to low carbon, climate -resilient sustainable development policy, consistent with national development strategies, and national forest programmes.”

Criterion 17 of Principle 4 also requires countries to “ensure consistency with...other environmental and natural resource management policy objectives, national forest programmes and international commitments on the environment.”

This element of the SEPC almost matches the language of the UNFCCC REDD+ Safeguards, with the addition that REDD+ actions should also be consistent with national development strategies. This is understandable, however, it is unclear from this guidance document what weight is given between development considerations and the objective of REDD+. This leaves the door open to decisions based on national development strategies (for example to clear natural forests for monoculture plantations such as soya or palm oil) at the cost of REDD+.

We recommend that countries take the above into consideration and evaluate instances where the national development strategy potentially goes against the objectives of REDD+ (as it could be a driver for leakage or reversals) and make policy choices that maximise the efficiency and sustainability of REDD+ actions.

2. Complement or Consistent with Relevant International Conventions and Agreements

The SEPC “draw on, are consistent with, and seek to help countries meet their commitment to UN conventions, treaties and declarations...other multilateral agreements...and when applicable the decisions taken in their COPs/MOPs”. The UN-REDD SEPC can therefore be understood as recognising the threshold set by the UNFCCC REDD+ Safeguards in terms of their requirement that countries’ interna-

999 UN-REDD, SEPC, p. 6.
1000 UN-REDD, SEPC, p.6.
1001 UN-REDD, SEPC, p. 2.
tional law commitments should be identified and respected. This includes compliance with international environmental and human rights commitments, including instruments that protect indigenous peoples’ rights.\textsuperscript{1002}

Principle 4 of the UN-REDD SEPC also aims to contribute to low carbon sustainable development policy “consistent with commitments under international conventions and agreements.”\textsuperscript{1003} Additionally, Criterion 6 of Principle 1 requires countries to “promote and support the rule of law.”\textsuperscript{1004} According to the BeRT, specific actions to help implement Criterion 6 include: the identification of relevant international, national and local laws, and specifies that the design and implementation of the REDD+ programme should comply with these laws.

We recommend that countries seeking to meet the UNFCCC REDD+ Safeguards use the international conventions and agreements provided in the SEPC document as a starting point for compiling a comprehensive list of international conventions and agreements relevant to REDD+.

\textsuperscript{1002} The SEPC seek to help countries meet their commitment to multilateral agreements, a number of which are specifically mentioned, including: the UN Framework Convention on Climate Change (UNFCCC); Convention on Biological Diversity (CBD); Non-Legally Binding Instrument on all Types of Forest (NLBI); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); International Labour Organization Convention 169 (ILO 169); UN Convention Against Corruption (UNCAC); UN Declaration on the Rights of Indigenous Peoples (UNDRIP); UN Convention on the Elimination of All Forms of Racial Discrimination (UNCERED); The Millennium Development Goals (MDGs), UN-REDD SEPC, p. 2.

\textsuperscript{1003} UN-REDD SEPC, p. 6.

\textsuperscript{1004} UN-REDD SEPC, p. 5.
Consistency with UNFCCC REDD+ Safeguard (b)

Summary of findings for Safeguard (b)

The UN-REDD programme aims to ensure transparency of national REDD+ activities by ensuring that countries provide adequate access to information surrounding these activities. This includes ensuring the existence of a national law on access to information, a clear disclosure policy on when and how often information will be made public, as well as appropriate institutions for managing the information and requests. There are however, a number of categories of information that are exempt from disclosure.

The other aspect of transparency is accountability, in particular the accountability of public institutions. The SEPC require countries to ensure the transparency of their public accounting systems, to ensure that internal controls exist and that fiscal spending is externally audited. The Programme provides additional guidance to countries in the form of a Corruption Risk Assessment tool.

In order to ensure the effectiveness of forest governance structures, UN-REDD requires countries to assess their land use and land use change drivers, forest-related laws and policies. Countries are also required to assess their institutional capacity, identify weaknesses and develop an implementation plan on how this capacity will be strengthened to deal with issues such as law enforcement and coordination of existing policy processes.

The national REDD+ programme should also include specific actions to ensure access to justice, particularly for marginalised and vulnerable stakeholders such as indigenous peoples and local communities, in accordance with international law. Although they are identified as a requirement, UN-REDD does not however provide guidance on the development of national level grievance mechanisms.

Another significant gap in the UN-REDD guidance is that, even though countries must develop an implementation plan to improve their domestic legal and institutional frameworks, the guidance documents fail to identify where the financial resources to improve these frameworks should come from.

1. Transparency

Principle 1 of the SEPC is that countries should “apply norms of democratic governance.” Criterion 1 and 3 of Principle 1 both relate to transparency.1005

   (i) A Right to Access Information

Criterion 3 of Principle 1 of the SEPC requires ensuring transparency and accessibility of information related to REDD+ activities. The SEPC BeRT elaborates on this requirement and includes the need for countries to identify whether they have a freedom of information law, what the disclosure policy is, and whether there are clear rules on when and how often information will be made public.1006

Although this guidance can be a useful checklist for ensuring the requirements surrounding the right of access to information are satisfied, the wording of the questions of the BeRT are still relatively broad.

1005 UN-REDD, SEPC, p. 5.
The BeRT refers to relevant resources such as the FAO/Chatham House Guidelines and to the UNDP Disclosure Policy for the provision of information on REDD+ governance (which gives detailed guidance on the types of information that should be made available\textsuperscript{1007}), but still lacks guiding principles such as those of maximum disclosure and good faith.\textsuperscript{1008} The UNDP disclosure policy also has many examples of exemptions from the right of access to information, for example, information that is deemed confidential and therefore not available to the public includes “information received from or sent to third parties, under an expectation of confidentiality.”\textsuperscript{1009} This essentially means that if a country applies the UNDP disclosure policy, any document sent to, or received from a third party that either the government or the third party does not want to disclose, can be labelled ‘confidential’. This is clearly not compatible with the principles of maximum disclosure and good faith.

We recommend that countries familiarise themselves with the scope and content of the right of access to information and its iteration under relevant and applicable international law\textsuperscript{1010} and if they have not already done so, to recognise it through national legislation. To meet UNFCCC REDD+ Safeguard (b), we recommend countries ensure their legal frameworks explicitly recognise the right to access to information (which involves seeking, receiving and imparting ideas and information) under maximum disclosure principles, good faith and very limited and narrow exceptions. We also recommend that countries base their disclosure policy on principles such as maximum disclosure and good faith,\textsuperscript{1011} with clear guidance as to the type of information that must be made available,\textsuperscript{1012} worded in a manner as to avoid exceptions from disclosure as much as possible.

(ii) Institutions to Ensure Access to and Distribution of Information

Criterion 3 of the UN-REDD SEPC specifies that States should ensure accessibility of information, including active dissemination. The SEPC BeRT requires countries to consider whether resources are allocated to provide and collect information in a timely and appropriate manner, as well as whether they have a system to record information requests and complaints.\textsuperscript{1013} Methodological guidance on how to carry out these activities is provided through the relevant resources cited above as well as guidance on who should be involved in sharing the information.

The SEPC BeRT provisions on Criterion 3 also require countries to consider whether they have ensured that information is accessible to all relevant stakeholders, including how information will be made available to the public. This includes ensuring appropriate means of communication for each rights holder and stakeholder group and the need to ensure there are specific provisions for providing information to vulnerable groups, including in culturally appropriate forms and resources to help them access information. There should also be a clear and accessible mechanism available to request information if it has not been actively disclosed.\textsuperscript{1014} It is important that countries consider all aspects of the

\textsuperscript{1008}FAO/Chatham House Guidelines.
\textsuperscript{1010}For more information, refer to ClientEarth’s “A guide to understanding and implementing the UNFCCC REDD+ Safeguards”
\textsuperscript{1011}For more information, refer to ClientEarth’s “A guide to understanding and implementing the UNFCCC REDD+ safeguards”
\textsuperscript{1012}For more information, refer to ClientEarth’s “A guide to understanding and implementing the UNFCCC REDD+ safeguards”
\textsuperscript{1013}See UN-REDD SEPC BeRT.
\textsuperscript{1014}See UN-REDD SEPC BeRT.
right to information when implementing the UNFCCC REDD+ Safeguards; this includes appropriate institutional capacity to store and disseminate information (including training and awareness-raising among officials), to address requests and grievances, and to ensure that information is available in culturally appropriate forms.

As stated above, the SEPC are meant to guide all UN-REDD funded activities, including the formulation of an R-PP. The SEPC should therefore be kept in mind when analysing the provisions of the R-PP template. Under the template, a national REDD working group, tasked with managing the REDD+ Readiness process is supposed to report, disclose and disseminate information in order to promote transparency and public outreach. The working group is expected to explain how this information will be disseminated in the R-PP. This requirement places an active obligation on the state to demonstrate how it intends to make relevant information publicly available.

A monitoring and evaluation framework should also be developed during R-PP implementation that countries can use to encourage efficient and transparent management of resources. It should “provide real time feedback to government and other stakeholders of how well the preparatory work towards REDD+ readiness is progressing.”

We recognise the importance of UN-REDD framework in order to ensure transparency at all stages, including the implementation of the R-PP itself. We encourage countries to take it into account.

(iii) Promoting Public Awareness on Access to Information

The SEPC BeRT suggests that there should be clear rules as to when and how often information will be made public. This relates to the need to ensure that information is actively disseminated but also that the public should be aware of this fact. The BeRT also suggests that methodologies should exist to determine who the relevant stakeholders are.

The SEPC BeRT provides for the active dissemination of information and identification of relevant stakeholders, but there is no mention of the duty to promote public awareness of the fact that information is in fact publicly available. Although the UN-REDD FCPF stakeholder guidelines require countries to promote “public awareness and information, education and communication campaigns” as a requirement for stakeholders to contribute to REDD+ strategies and policies, there is no specific re-

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1015 In the FCPF UN-REDD Harmonised R-PP template’s section on overarching guiding principles, the R-PP recommends that participating countries develop some form of cross-sectoral REDD+ working group. According to the R-PP template: “The working group composition and national REDD-plus management processes need to be cross-sectoral and engage relevant sectors and stakeholders. Some working groups described to date in R-PPs were dominated by a single agency and did not include other key agencies (e.g., agriculture, mining, transportation) and interest forest agency. FCPF experience in R-PP and UN-REDD experience in developing National Programmes has made clear that REDD-plus readiness requires cross-sectoral coordination within multiple government agencies. These need to include forestry and environmental authorities, land management authorities, finance ministries, sub-national government agencies, all of whom may have responsibility on some aspects of the process. In some countries, forestry and environment agencies have to learn to work more closely together and cooperatively with civil society and indigenous peoples, as all have competencies related to REDD-plus.” p. 8.

1016 FCPF UN-REDD, R-PP Template, Component 1a or 1b.

1017 FCPF UN-REDD, R-PP Template, Component 6, p. 67.

1018 UN-REDD, SEPC BeRT.

1019 UN-REDD FCPF, Stakeholder Engagement Guidelines, p.5
quirement to promote the right of access to information itself, or to provide guidance as to how information can be accessed; which falls short of the standard of UNFCCC REDD+ Safeguard (b).

We recommend that participating governments take active steps to ensure the public is aware that they have the right to access information, by taking appropriate measures to promote it all levels, especially among stakeholders that may be considered vulnerable. Accordingly, awareness must be promoted in culturally and appropriate means.

(iv) Accountability

The UN-REDD SEPC’s Principle 1 requires the application of norms of democratic governance, which also includes accountability. Criterion 1 requires the transparency and accountability of fiduciary and fund management systems linked to REDD+ activities. The BeRT identifies and suggests certain measures, including improving or ensuring the transparency of public accounting systems, reporting on fiscal activities in the forest sector, the need to ensure internal controls and external auditing of fiscal spending. These issues are also raised in the UN-REDD FCPF joint R-PP template.

Criterion 2 requires the legitimacy and accountability of all bodies representing relevant stakeholders. The SEPC BeRT provides additional information on what is required for accountability; this includes the existence of policies explaining organisational decision-making structures as well as principles that guide decision-making. There is also a general requirement that countries comply with international obligations, including the UN Convention Against Corruption and provisions to combat financial corruption, and countries are encouraged to “actively enforce the principles from these conventions.”

The Guidance on Conducting REDD+ Corruption Risk Assessment (REDD+ CRA) document provides additional substantive guidance on how governments can identify and tackle incidences of corruption in relation to REDD+. As well as identifying the forms and types of corruption, the REDD+ CRA provides a framework for analysis, with a risk matrix that covers the different phases of REDD+ and the different elements of a national REDD+ system. The REDD+ CRA also provides suggestions as to who should be involved in the process. According to UN-REDD, the objective of the CRA is to achieve “buy-in, ownership, transparency and accountability” and therefore requires the involvement of all relevant stakeholders. This includes relevant ministries and state agencies engaged in the REDD+ readiness process, sub-national or local authorities as well as private sectors relevant in drivers of deforestation and forest degradation. The CRA document acknowledges the need to ensure that not only the most influential organisations or persons are heard and therefore recognises the importance of including civil society and indigenous peoples’ groups, which include women’s groups, journalists, academics and forest communities etc.

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1020 UN-REDD SEPC, p. 5.
1021 FCPF UN-REDD, R-PP template, p.33 para. 4.
1022 UN-REDD SEPC BeRT, Criterion 2.
1023 UN-REDD, Guidance on CRAs for REDD+, p. 5.
1024 UN-REDD, Guidance on CRAs for REDD+, p. 9.
1025 UN-REDD, Guidance on CRAs for REDD+, p. 11.
1026 UN-REDD Guidance on CRAs for REDD+, p. 11.
1027 UN-REDD Guidance on CRAs for REDD+, p. 11.
The CRA document also details a stepwise methodology for carrying out a national CRA, to be led by a number of national consultants supported by technical advisors from the UN-REDD Programme, which includes:\textsuperscript{1028}

- An analysis of the current legal and policy provisions (including whether the country has signed and implemented the UN Convention Against Corruption) and practices to control corruption in the forestry sector and beyond, as well as previous corruption assessments.
- A stakeholder mapping, which should coordinate with any mapping taking place under other relevant governance assessment processes (so as to avoid duplication)
- A stakeholder survey and focus group discussions so as to evaluate how the national REDD+ strategy deals with transparency and accountability issues.
- Once the data has been gathered and analysed, a CRA report must be produced and endorsed by the relevant stakeholders, and its recommendations disseminated.

The REDD+ CRA document produced by UN-REDD is a useful framework for countries in identifying the national risks of corruption induced by REDD+ and outlines a participatory approach. We encourage countries to consider that this process will need to be supported by a strong national level grievance mechanism to ensure that the viewpoints of different stakeholders are adequately taken into account.\textsuperscript{1029}

2. Effective National Forest Governance Structures

(i) Appropriate Legal Frameworks

In the joint FCPF UN-REDD R-PP template, countries are required to complete an assessment of land use, land use change drivers and forest law, policy and governance. The assessment aims to identify how shortcomings in current land use, and forest law, policy and governance structures contribute to the drivers of deforestation and forest degradation. Considerations to be included in the R-PP assessment include whether policies and laws provide positive or perverse incentives that drive deforestation.\textsuperscript{1030}

In the R-PP, countries are requested to detail how these shortcomings will be addressed through their REDD+ strategy. Countries should make use of the tools provided in Annex 1 of the R-PP to inform on the assessment of their forest governance framework. In component 2 of the R-PP, the purpose is for the country “to set out credible and transparent institutional, economic, legal and governance arrangements” to enable implementation of its provisional REDD+ strategy options.

Although the UN-REDD documents help countries identify some key social and environmental issues that need to be dealt with as part of a national REDD+ strategy, we recommend that in order to ensure the proposed REDD+ strategy supports the effective implementation of UNFCCC REDD+ Safe-
guard (b), countries examine the coverage and effectiveness of their legal frameworks. When assessing their own legal and policy frameworks, we recommend countries to focus on specific issues such as land tenure, distribution of benefits, enforcement, gender and grievances mechanisms to ensure these are addressed and regulated in order to meet UNFCCC Safeguard (b). More detailed questions and considerations can be found in our guidance document A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards.

Clear Land Tenure Rights

The SEPC draw attention to the need to identify and protect stakeholder rights, including a clarification of land tenure, resources use rights and property rights, which are given special emphasis. The BeRT goes into much detail as to what is to be expected from countries, including an examination of their domestic legal system to identify whether the breadth of different forest tenure rights for indigenous people and other forest dependent communities are recognised and protected. This includes customary tenure systems, and potentially ownership of carbon rights.

The BeRT provides a checklist of questions for the national REDD+ programme, to identify whether measures have been taken to respect and promote the recognition and exercise of equitable land tenure and carbon rights by indigenous peoples and local communities. The BeRT also provides secondary resources to help support these analytical activities.

In addition, the R-PP template also requires that countries’ REDD+ implementation framework address land tenure, including clarifying:

- Who owns or uses forests under statutory or customary law;
- Whether there is regulatory or legal clarity on who owns carbon benefits generated by REDD-plus activities;
- Whether there is a relationship between carbon ownership and land tenure; and
- how any land tenure, or carbon ownership, issues that arise be resolved or mediated.

Although the R-PP provides some guidance on how to clarify land tenure, this focuses more on the identification of existing arrangements and the need to clarify the ownership of carbon rights rather than an explicit requirement that countries recognise customary land tenure.

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The SEPC on land tenure can support the analysis of countries domestic legal framework, and to map various land tenure rights including customary usage rights and collective ownership. Once identified, we recommend countries aim to clarify customary, traditional or uncertain land tenure rights situations. Clarification should take place in a manner consistent with those countries’ applicable international legal obligations, especially those relating to indigenous peoples’ rights. It is essential for countries to identify potential land uses conflicts as early as possible and before REDD+ actions and activities are implemented.

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1031 UN-REDD SEPC BeRT Criterion 7.
1032 UN-REDD SEPC BeRT Criterion 7.
1033 UN-REDD SEPC BeRT Criterion 7.
1034 UN-REDD FCPF, R-PP Template, p.40.
**Equitable Distribution of Benefits**

The UN-REDD SEPC also recognises the importance of laws to ensure “equitable and transparent benefit-sharing”, which countries must ensure are “effective.”\(^{1035}\) The BeRT details essential steps for ensuring that this Principle is complied with, including ensuring that effective laws and institutions are in place to govern the distribution of benefits within communities. The national REDD+ programme should also clearly identify what benefits from REDD+ will be shared and how they balance with costs. This includes the requirement that the indigenous peoples and local communities concerned have the right to determine the form benefits will take. The REDD+ programme should also clearly describe who is eligible to receive benefits from REDD+ or how this will be decided (most vulnerable or marginalised). The programme must also be clear on how these benefits will be shared; ideally this should be the result of an inclusive and transparent process involving indigenous peoples and local communities.\(^ {1036}\)

It is important for countries to note that the whole process of ensuring that equitable distribution of benefits occurs relies on the adequacy of local institutions for distributing such benefits locally. Additionally, it will be important for countries to avoid a one-size-fits-all approach during the design of such a national benefit sharing mechanism. It is not just the distribution of the benefits themselves that needs to be administered in a decentralised manner; discussions need to take place wherever beneficiaries are identified to ensure that they are able to define the form of the benefits to be received.

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The guidance on benefit-sharing provided under the UN-REDD Programme is comprehensive, and can be a useful basis to develop a national benefit-sharing policy or mechanism in line with UNFCCC REDD+ Safeguard (b).

In order to meet UNFCCC REDD+ Safeguard (b), it is important for countries to understand that not only indigenous peoples may be the ones affected or the only beneficiaries of forest projects. In this sense, they need to establish measures to allow different groups (including women, the elderly and the poor) to access benefits—monetary or non-monetary—that may arise from REDD+ to the extent that they may also be contributing to reduce emissions from deforestation. Countries also need to take into account that in the context of REDD+, benefit sharing is inextricably linked to other issues that need to be resolved such as land tenure clarification and security. Without starting to elucidate and adopt positions on these matters, it will be more difficult to identify not only what benefits are communities entitled to, but also who will be entitled to receive them.

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**Gender and Equality**

According to Criterion 8 of the SEPC, countries should promote and enhance gender equality, gender equity and women’s empowerment. The first step is for countries to ensure that they have ratified and are enforcing the Convention for the Elimination of Discrimination Against Women. This is to be complemented by domestic legislation and policies to address discrimination against women and promote gender equality. Of particular note are the methodological approaches recommended by the BeRT, including the importance of considering gender differentiated impacts in all aspects of programme design, including identifying whether and how the REDD+ programme could exacerbate risks for women.

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\(^{1035}\) UN-REDD, SEPC, Criterion 12.

\(^{1036}\) UN-REDD, SEPC BeRT, Criterion 12.
The programme should also use appropriate participatory approaches to ensure balanced gender representation in decision-making throughout design and implementation.

The measures identified in the SEPC BeRT in relation to gender and equality are a positive starting point, however, an important issue that has not been raised is how (if at all) the REDD+ programme can take steps to address gender discrimination if it has been identified within indigenous peoples and local communities’ social structures. In order to ensure the realisation of this UNFCCC REDD+ Safeguard (particularly in relation to equitable benefit-sharing and public participation in decision-making), we recommend that countries include gender as a category (or even sub-category) during the mapping and identification of particularly vulnerable groups, and to take extra care to ensure that they are not excluded from participatory processes or from the enjoyment of benefits arising from REDD+.

(ii) Appropriate Institutional Frameworks

Criterion 6 of Principle 1 recognises the importance of the rule of law, specifically in relation to institutional frameworks, the importance of national REDD+ programmes to ensure adequate institutional capacity for detection, and prevention capacities in relation to forest crimes.  

According to the R-PP template, institutional capacity should be assessed (including the effectiveness of law enforcement systems and how coordination of existing policy processes occurs, especially relating to land use decisions), and where weaknesses are identified, the country needs to develop an implementation plan on how to deal with these issues. Additionally, where appropriate, institutional capacity should be enhanced and recommendations for capacity building and training should be provided.

Importantly, however countries are required only to consider the issues mentioned above in their design and assessment of REDD+ strategy options. There is not necessarily a requirement to address these issues according to a set of minimum standards, merely to identify linkages between the identified strategy options and the key governance issues identified above. The R-PP template also does not emphasise the need for financial resources to improve institutional governance frameworks. While the R-PP calls for countries to input budget needs for every component of the R-PP, it does not ask them to outline short, medium- and long-term financial planning to achieve, for instance, more effective institutions or implementation and enforcement of laws in order to enhance forest governance.

Countries are also expected to develop their National Forest Monitoring System (NFMS) along with their Safeguards Information System (SIS). In doing so, countries should assess current institutional capacity to measure, report and verify greenhouse gas emission reductions, implementation of safeguards and other non-carbon priorities. The development of the SIS itself can support this endeavour by serving as a feedback mechanism for assessing and enhancing capacity over time.

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1037 UN-REDD SEPC BeRT Criterion 6.
1038 UN-REDD FCPF, R-PP Template, p. 32.
1039 UN-REDD FCPF, R-PP Template, p. 32.
The requirements and guidance provided in the UN-REDD documents are a good model on which countries can base their institutional gap analysis. When doing so, we recommend countries to identify both strengths and weaknesses and consider how these impact/affect specific issues such as land tenure, distribution of benefits, enforcement, gender considerations and grievance mechanisms. This institutional ‘self-assessment’ should allow countries to carefully plan how to address needs and improve their capacity to enforce forest-related laws and ultimately enhance forest governance. We additionally recommend countries to identify the financial resources needed to carry out these changes.

(iii) Participation in Decision-Making Processes that Affect the Environment

Criterion 4 of the SEPC requires the full and effective participation of relevant stakeholders in design, planning and implementation of REDD+ activities\(^\text{1040}\) (this issue will be further analysed under UNFCCC Safeguard (d)).

Both the R-PP template and the SEPC include requirements for public participation. The R-PP template suggests that the assessment of the forest governance framework be carried out through a multi-stakeholder process and that countries should “allow for meaningful participation of relevant stakeholders in analysing the governance situation, recommendations for policy reform, as well as identifying key indicators for potential inclusion in the monitoring system.”\(^\text{1041}\) Design of the NFMS and the SIS should be a participative, transparent and accessible process to affected stakeholders, as should monitoring and review. The R-PP Template also reminds countries to provide for enough financial resources to implement its Participation and Consultation Plan.

The R-PP template does not however define “meaningful participation” nor “relevant stakeholders.” Although not explicitly stated, it is assumed that countries preparing a UN-REDD R-PP should refer to the SEPC for the definitions of these terms. For a more detailed analysis on how UN-REDD deals with public participation, see our analysis of UNFCCC REDD+ Safeguard (d).

(iv) Adequate Access to Justice

At the global level, the UN-REDD Programme is in the process of developing an accountability mechanism that aims to address grievances from individuals and communities affected by the UN-REDD Programme.\(^\text{1042}\) The objective of the mechanism is, in part to provide access to processes that empower the rights and interests of vulnerable groups.

Potential remedies range from recommendations for improving implementation and bringing the programme back into compliance to the suspension of disbursements. No information is currently provided as to the decision-making process of this mechanism or on the rules on standing.

Criterion 6 of the SEPC (Principle 1) requires promotion and support of access to justice, more specifically, the national REDD+ programme should include specific actions to ensure access to justice within the programme implementation. Countries should identify key weaknesses (in relation to: legal protection, legal awareness, legal aid and counsel, adjudication, enforcement and civil society/parliamentary...
oversight) affecting access to justice in existing legal systems and new laws proposed under the REDD+ programme.\textsuperscript{1043} The national REDD+ programme should also propose approaches to improve access to legal systems and to justice, particularly for marginalised and vulnerable stakeholders such as indigenous peoples and local communities.\textsuperscript{1044}

Principle 2 of the SEPC deals with the need to respect and protect stakeholder rights in accordance with international obligations. Criterion 7 of Principle 2 of the SEPC requires countries to promote the recognition and exercise of the territories, land and resources rights of indigenous peoples, local communities and other vulnerable groups. According to the BeRT, this includes a requirement that the REDD+ programme includes provisions to improve access to legal systems for indigenous peoples, and local communities “where necessary.” However, it should be noted that the scope of Criterion 7 only includes the protection of rights to land, territories and resources (including carbon).

The elements of Access to Justice identified by the UN-REDD Programme are in line with the requirements of UNFCCC REDD+ Safeguard (b) under international law.\textsuperscript{1045} We recommend that countries follow the UN-REDD guidance when examining whether their domestic system provides adequate access to justice.

Moreover, in the event that the REDD+ programme poses resettlement risks not identified in the initial planning, the BeRT provides that under Criterion 10, countries should have a clear resettlement grievance procedure, which should be established according to best practice principles (Principle 1 Criterion 2).

Although the SEPC generally require the protection of stakeholder rights in accordance with international law, they only examine in detail the protection of rights associated with land. We recommend that in addition to addressing issues of access to justice, countries should take steps to officially recognise the rights of indigenous peoples and local communities in their domestic legal systems.

According to the R-PP template, feedback, grievance and redress mechanisms are a component of the country’s REDD+ management framework, and are required early on throughout Readiness planning and implementation.\textsuperscript{1046} Such a mechanism should establish particular connection with the country’s consultation process, and adhere to the principles and standards outlined in the UN-REDD Programme Guidelines on Free, Prior and Informed Consent (FPIC).\textsuperscript{1047}

However, as with the FCPF, the R-PP does not recommend linking the grievance and redress mechanism with the SIS. This could potentially deprive the SIS of its function as a mechanism for facilitating accountability, and ensuring respect and adherence to the safeguards. The SIS was not only designed as a tool to monitor performance against the safeguards. It is also intended to act as a mechanism for

\begin{footnotesize}
\begin{itemize}
  \item[1043] UN-REDD, SEPC BeRT, Criterion 6.
  \item[1044] UN-REDD, SEPC BeRT, Criterion 7
  \item[1045] For a more detailed examination of this element, see ClientEarth’s “guide to understanding and implementing the UNFCCC REDD+ safeguards’ PAGE
  \item[1046] UN-REDD FCPF, R-PP Template, component 1a, para 6, p .16.
  \item[1047] UN-REDD FCPF, R-PP Template, Component 1a.
\end{itemize}
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accountability, which can also incentivise improvement of performance on safeguards, and promote public acceptance.

According to the FPIC Guidelines, an effective grievance redress mechanism should “address concerns promptly and fairly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected stakeholders, and at no cost and without retribution or impeding other administrative or legal remedies.”

Additionally, according to the R-PP template, grievance mechanisms should not be substitutes for legal or administrative systems or other public or civic mechanisms. They do not remove the right of complainants to take their grievances to other more formal recourse options. It may therefore still be up to the courts to enforce Indigenous peoples’ and local communities’ rights.

As mentioned above, the UN-REDD guidance is satisfactory in terms of assisting countries in identifying an acceptable standard for access to justice. We recommend that countries looking to ensure appropriate access to justice in line with the UNFCCC REDD+ Safeguards follow the UN-REDD guidance. Additionally, we recommend countries consider the opportunity to use the SIS not just as a monitoring and evaluation tool, but also as a means of providing accountability.

(v) Integration of Social, Economic and Environmental Considerations and Cross-Sectoral Coordination

The R-PP Template requires countries to carry out an assessment of the environmental and social impact of the activities planned as part of the REDD+ Strategy. According to the R-PP the assessment should give special consideration to livelihoods, rights (including those of Indigenous Peoples and other traditional forest-dependent communities), the special protection of vulnerable groups, biodiversity, cultural heritage, gender, institutional capacity assessment, etc. For UN-REDD countries, the tools developed to assist in this assessment are the SEPC and the BeRT. However, no guidance is given as to what relative weight should be given to these considerations.

Criterion 5 of the SEPC requires countries to promote coordination, efficiency and effectiveness among all agencies and implementing bodies relevant to REDD+. This includes the possible creation of an inter-ministerial coordination body or a REDD+ task force to help coordination and increase efficiency, the development of information-sharing systems and clear consultation cycles. The BeRT also refer to additional guidance documents such as a REDD-Net policy brief, which underlines the importance of involving non forestry sectors such as the mining, agriculture infrastructure and financial sectors to identify and address overlaps and conflicts between different sectoral policies.

1048 UN-REDD, FPIC Guidelines, p. 34.
1049 UN-REDD, R-PP Template, Component 1a p. 17.
1050 UN-REDD FCPF, R-PP Template, p. 37.
1051 UN-REDD FCPF, R-PP Template, p. 44.
1052 UN-REDD, SEPC BeRT, Criterion 5
1053 Graham, K., "Making REDD cross sectoral: why, how and what are the possible socio economic impacts?" Overseas Development Institute, (August 2011).
According to the recommendations included in the R-PP, the national body in charge of managing REDD+ readiness should be a coordinating body or cross-sectoral working group with diverse membership reflecting all relevant stakeholders. Furthermore, countries are encouraged to include national laws and policies from other sectors and international obligations within their initial assessments of their legal, policy and governance framework in preparation of their REDD+ Strategy.\textsuperscript{1054}

The coordination of all agencies and implementing bodies relevant to REDD+ as well as the creation of an inter-ministerial body is important in order able to understand the variety of interests and dynamics that constitute the drivers of deforestation, and address them strategically. We underline the importance of including ministries that may not be directly focused on forests but whose decisions impact on land use and land use change (such as mining and agriculture) within the scope of measures aimed at ensuring that REDD+ activities are environmentally, economically and socially sound.

Used in conjunction, the UN-REDD FCPF R-PP template and the UN-REDD SEPC contain specific guidance on how to ensure greater cross-sectoral coordination as part of the development and implementation of the national REDD+ strategy and should be followed. However, in terms of integrating social and environmental considerations into decision-making, although the UN-REDD Programme requires countries to assess the social and environmental risks posed by REDD+ activities and to design the REDD+ strategy including measures to mitigate any residual negative impacts,\textsuperscript{1055} there is no guidance to the relative weight that should be given to these measures.

We recommend that in addition to following the UN-REDD guidance on how to ensure greater cross-sectoral coordination, countries develop appropriate means to ensure permanent communication takes place among sectors. Communication, along with constant coordination, institutional strengthening and political will are key elements to achieving integrated approaches (that consider economic, environmental and social aspects) for forest governance and development. Additionally, countries may want to consider integrating a requirement to take into account economic, social, and environmental aspects for decision-making processes that impact forests in their legal frameworks. An obligation of this nature would force implementers of forest initiatives/REDD+ to assess any environmental and social risks which may lead not only to better decision-making, but also to align projects with countries’ national policies and objectives.

\textsuperscript{1054} UN-REDD FCPF, R-PP Template, p. 8 and Component 6, p. 62
\textsuperscript{1055} UN-REDD FCPF, R-PP Template, p. 37.
Consistency with UNFCCC REDD+ Safeguard (c)

Summary of findings for Safeguard (c)

The UN-REDD Programme generally recognises and promotes the rights of indigenous peoples and local communities throughout its operational supporting documents (in accordance with international obligations, notably ILO Convention No. 169 and UNDRIP) and recognises the need to respect and protect traditional knowledge. However neither ‘local communities’ nor ‘traditional knowledge’ are adequately defined.

Furthermore, the rights of indigenous peoples and local communities are in general adequately recognised under the UN-REDD guidance documents, including non-discrimination, self-determination, rights associated with culture, benefit-sharing and procedural rights such as FPIC. Although particular attention is given to the need for countries to analyse land tenure arrangements, the documents are not consistent in their requirement to clarify these arrangements.

The UN-REDD Programme recognises and promotes the rights of indigenous peoples and local communities as a priority throughout its programmes. In doing so, countries are strongly encouraged to follow the UN-REDD FCPF Joint Guidelines on Stakeholder Engagement (Joint Guidelines), as well as the UN-REDD Programme Guidelines on FPIC, a document developed specifically to enhance the role of indigenous peoples and local communities in stakeholder engagement.

The Joint Guidelines confirm that “both the FCPF and UN-REDD Programme recognize the importance and special status of indigenous peoples in terms of their historical and cultural connection to forests and are committed to applying specific policies to safeguard their rights and interests.”

1. Defining Indigenous Peoples, Local Communities and Knowledge

   (i) Indigenous Peoples and Local Communities

Indigenous Peoples

The UN-REDD Guidelines on FPIC provide guidance on identifying indigenous peoples, and point to Martinez Cobo’s Study of the Problem of Discrimination against Indigenous Populations as providing an early working definition still used by many today. The study provided that: “Indigenous communities, peoples and nations are those which have a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their

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1057 Which takes the Joint Guidelines one step further by outlining a normative, policy and operational framework for UN-REDD Programme countries to seek FPIC.
1058 UN-REDD FCPF, Guidelines on Stakeholder Engagement, p. 2
1059 UN-REDD, FPIC Guidelines, Annex I, pp. 36 - 37
ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”

The guidelines also note that no common international definition exists today but they acknowledge the attempts made in international law to outline the characteristics of indigenous peoples such as the ILO Convention No. 169 which recognises self-identification, as well as recognition by other groups as a distinct collectivity as a fundamental criterion.

We recommend that countries adopt a recognised definition of indigenous peoples and set parameters on who qualifies as part of such a group based on the international law identified above. The UN-REDD FPIC Guidelines are a good guide for countries seeking to define and identify indigenous peoples in accordance with international law, which we recommend they follow.

Local Communities

The UN-REDD Programme does not explicitly define local communities in its SEPC, Guidelines on Stakeholder Engagement, Guidelines on FPIC or R-PP template, though they are mentioned a number of times. The FPIC Guidelines do however refer to and define ‘forest dependent communities’ as “communities that would not satisfy the commonly accepted definition of indigenous peoples, irrespective of whether they themselves choose to identify themselves as such.”

Criterion 7 of the SEPC Principle 2 requires countries to respect and promote the recognition and exercise of the rights of indigenous peoples, but also those of local communities and other vulnerable and marginalised groups. The SEPC’s glossary of key terms identifies ‘other forest dependent communities’ as including “tribal groups, ethnic minorities and other forest dependent communities” and grants them the right to give or withhold their consent by extending the indigenous peoples’ right to FPIC.

As shall be seen in the section dealing with FPIC under UN-REDD below, the UN-REDD Programme Guidelines on FPIC go beyond the current status quo in international law and therefore the UNFCCC REDD+ Safeguards (which support the interpretation that FPIC is a procedural right, not a right to veto) and state that if FPIC is not obtained, the project must cease.

The Guidelines on Stakeholder Engagement also underline the importance of recognising “forest dependent and vulnerable groups...whether they are indigenous or not.” The following sections of the Guidelines however interchange the terms ‘local communities’, ‘communities’ and ‘indigenous peoples’.

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Although none of the UN-REDD policies adequately define local communities, the recurrent use of ‘forest-dependent communities’ in the updated FPIC Guidelines suggests that local communities could be included in this category, thus enjoying the same rights as indigenous peoples.

It is important to consider that the UNFCCC REDD+ Safeguard (c) explicitly mentions local communities. We recommend that countries develop or strengthen national legislation to clarify who are ‘local communities’ as well as what rights they enjoy, in order to be aligned with the UNFCCC REDD+ Safeguards, and provide recognition and protection to those stakeholders. Countries would need to define whether they are given the same rights, similar rights or different rights afforded to indigenous peoples.

(ii) Respecting ‘Knowledge’

The SEPC recognise the need for countries to respect and protect ‘traditional knowledge’, but it is not defined. The BeRT does however refer to the World Intellectual Property Organisation’s (WIPO) booklet on traditional knowledge.

According to the WIPO, traditional knowledge and traditional expression focuses on the use of knowledge, such as traditional technical know-how or traditional ecological, scientific, or medical knowledge. The word ‘use’ is meant to be understood as how knowledge is traditionally applied to activities such as agriculture and medicine and encompasses innovations, know-how, information, practices, skills and learning. These forms of knowledge can be associated with traditional cultural expressions, or expressions of folklore, such as songs, chants, narratives, motifs and designs.

While the WIPO definition is a good starting point, the CBD’s Tkarihwaiéri code of ethical conduct refers to a more holistic concept of traditional knowledge, with multi-dimensional characteristics, which include spatial (in that it can be territorially and locally based), cultural (in that it is rooted in the broader cultural traditions of a people) and temporal (evolves, adapts and transforms dynamically over time).
Although UN-REDD require countries to respect and protect traditional knowledge in general, the Programme does not define the term, instead referring to the WIPO’s definition. As seen above, the WIPO’s definition focuses on use of knowledge rather than the knowledge itself. Countries looking to protect traditional knowledge should take into account the complex links and interactions that exist between traditional knowledge, the locality in which the people or community resides and the broader cultural context. We recommend that countries refer to the CBD’s Tkarihwaieri code of ethical conduct for a more comprehensive definition.

Finally, we suggest they take advantage of the financial assistance development agencies and institutions may provide to develop mechanisms and strengthen their legal frameworks to protect indigenous peoples knowledge, including assessing the feasibility and convenience of utilising intellectual property rights to do so.

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

The SEPC, and particularly the FPIC Guidelines, recognise the importance of recognising the rights of indigenous and local communities.

(i) Non-Discrimination

Principle 2 of the UN-REDD SEPC recognises the need to respect and protect stakeholder rights in accordance with international obligations, of which respect for ILO Convention No. 169 and UNDRIP are cornerstones. The Principles refer explicitly to the need to protect the rights of the most vulnerable stakeholders. Criterion 7 of the SEPC Principle 2 requires countries to respect and promote the recognition and exercise of the rights of indigenous peoples, and also those of local communities and other vulnerable and marginalised groups. In addition, Criterion 12 of the SEPC requires countries to ensure that benefit sharing occurs in a manner that is ‘non-discriminatory’.

While the UN-REDD SEPC are drafted to take particular care when dealing with indigenous peoples and local communities, they stop short of articulating an explicit requirement of non-discrimination. The Joint Guidelines on Stakeholder Engagement state that “countries are expected to adhere to standards outlined in key relevant international instruments,” this includes the UN Committee on the Elimination of Racial Discrimination.

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1074 UN-REDD, SEPC, Criterion 7.
1075 UN-REDD, SEPC, Criterion 12.
1076 UN-REDD FCPF, Guidelines on Stakeholder Engagement, p. 2
In order to meet UNFCCC REDD+ Safeguard (c), we recommend countries ensure their domestic legal frameworks are not only in accordance with human rights, but specifically address non-discrimination and acknowledge different lifestyles as those pertaining to indigenous peoples and respect their rights. They should also seek to avoid discriminatory actions based on ethnicity or culture and implement existing international agreements and conventions relevant to indigenous peoples, including those not legally binding (such as UNDRIP).

(ii) Self-Determination

As stated above, Principle 2 of the SEPC requires countries to “respect and protect stakeholder rights in accordance with international obligations.” The SEPC reference the UN-REDD Programme Guidelines on Free, Prior and Informed Consent, which recognises that the duty to consult with indigenous peoples and obtain their free, prior and informed consent “is a corollary of a myriad of universally accepted human rights, including the right to self-determination...”

UN-REDD promotes that the right to self-determination through the recognition of international law. The different dimensions of development (economic, social, and cultural), the ability of indigenous peoples to dispose of their natural wealth and resources and the right to autonomy for their internal affairs need to be recognised and further considered and guaranteed by countries when developing, implementing and monitoring REDD+ actions and activities. Countries need to identify those cases where REDD+ actions or activities may undermine the right of indigenous peoples to their own self-determination and therefore require consent from them to be developed.

(iii) Rights Associated with Culture

Criterion 11 of the SEPC states that countries should “Respect...cultural heritage and practices.” According to the BeRT, the first step toward ensuring this is ratifying relevant international treaties on cultural heritage such as the UNESCO Convention for the safeguarding of intangible cultural heritage and the Convention on Biological diversity, and effectively enforcing them. Secondly, countries are required to assess whether their REDD+ programme is likely to significantly affect the cultural traditions of affected communities and whether the programme will result in physical interventions that would affect areas that have known physical or cultural significance to indigenous groups and other communities with settled recognized cultural claims. If this is the case, countries are required to obtain FPIC from those communities, and to reach clear agreements on rights of use.

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1078 We will analyse the concept of consent when analysing UNFCCC Safeguard (d).
1079 UN-REDD, SEPC, Criterion 11.
1080 UN-REDD, SEPC BeRT, Criterion 11.
We recommend that countries follow the UN-REDD guidance, both in terms of ratifying and implementing the relevant international instruments as well as carrying out the required assessments and where applicable, securing FPIC before proceeding with REDD+ activities. As far as possible, countries should aim to identify what are those rights or elements protected under “cultural rights” according to their own contexts. For instance, they should consider respect for their identity, language, customs, traditions, rituals, cultural institutions, cultural sites and assets, among others. We suggest that countries adopt measures to guarantee these are respected when developing, implementing and monitoring REDD+ actions and activities.

(iv) Collective Land Tenure

Criterion 7, Principle 2 of the SEPC requires countries to “respect and promote the recognition and exercise of the rights of indigenous peoples, local communities and other vulnerable and marginalised groups to land.” The BeRT requires countries to respect and promote indigenous and local communities’ rights to land territories and resources, including carbon. This means recognising collective forest ownership rights by communities, the different types of existing forest tenure rights and recognition of customary tenure systems.\(^\text{1081}\)

Criterion 10 requires that countries ensure that no involuntary resettlement occurs as a result of REDD+ activities, which includes the need to ensure that there are national and local land, compensation and resettlement policies, laws and guidelines that apply and their effectiveness must be ensured.

The UN-REDD’s FPIC Guidelines argue that communal property rights, based on traditional use, culture and customary laws must be respected whether or not they are explicitly recognised by the national government.\(^\text{1082}\) This means that even in the event that existing laws relating to indigenous peoples’ rights do not recognise customary rights, countries must respect them.

Under the R-PP template, countries are required to provide a thorough analysis of the legal rights to property and access to land, forests and related natural resources\(^\text{1083}\), but not specifically to indigenous and local community rights, this in apparent contradiction to the SEPC. We reiterate the importance of identifying and clarifying the rights of indigenous peoples and local communities, particularly in terms of land tenure as they represent some of the core requirements of both UNFCCC REDD+ Safeguards (b) and (c)\(^\text{1084}\) and the social as well as environmental benefits of REDD+ could potentially be undermined if these rights are not respected.

We therefore recommend countries take note of the above discrepancy between the SEPC and the R-PP, and that countries not only map land tenure arrangements but also recognise customary use and ownership rights to land and respect these rights throughout the development and implementation of REDD+ action and activities.

\(^\text{1081}\) UN-REDD, SEPC BeRT, Criterion 7.
\(^\text{1082}\) UN-REDD Programme Guidelines on Free Prior and Informed Consent December 2011 Draft for Comment p.11
\(^\text{1083}\) UN-REDD FCPF, R-PP Template, Component 2, p. 34
\(^\text{1084}\) For a more detailed examination of the requirement to clarify land tenure, refer to ClientEarth’s “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” p.45.
(v) Benefit-Sharing

As mentioned under UNFCCC REDD+ Safeguard (b), the UN-REDD SEPC recognise the importance of laws to ensure “equitable and transparent benefit-sharing”, which countries must ensure are “effective.” The BeRT details steps for ensuring that this Principle is complied with, including ensuring that effective laws and institutions are in place to govern the distribution of benefits within communities.

The national REDD+ programme should also clearly identify what benefits from REDD+ will be shared and how they balance with costs. This includes the requirement that the indigenous peoples and local communities concerned have the right to determine the form benefits will take. The REDD+ programme should also clearly describe who is eligible to receive benefits from REDD+ or how this will be decided (most vulnerable or marginalised). The programme must also be clear on how these benefits will be shared; ideally this should be the result of an inclusive and transparent process involving indigenous peoples and local communities.

Provisions of the UN-REDD Programme are comprehensive, and can be a useful basis to develop a national benefit-sharing policy or mechanism in line with UNFCCC REDD+ Safeguard (b). In doing so, countries need to include minimum conditions for the sharing of benefits in their legal frameworks and pay particular attention on how intellectual property rights may regulate the commercial use of knowledge. However, in order to be able to distribute (or even discuss) benefits derived from REDD+ implementation, we suggest countries determine who is ‘eligible’ to receive them or at least discuss the criteria to identify potential ‘beneficiaries’. Otherwise, it would be very difficult to negotiate any benefit-sharing if it is not clear who is entitled to receive benefits. To do so, countries would probably have to resolve any current land-tenure issues taking place in the territories where REDD+ actions are intended to be developed. In this way, they may be able to establish rules for entitlement and ways of sharing benefits derived from REDD+.

(vi) Procedural Rights

Although the UN-REDD programme does require that indigenous peoples and local communities’ procedural rights are respected including their rights to participation and FPIC, these shall be dealt with more in detail under UNFCCC REDD+ Safeguard (d).

As identified in the section on UNFCCC REDD+ Safeguard (b) although there are some general requirements in the SEPC concerning access to justice, there is very little guidance given for ensuring adequate access to justice specifically for indigenous peoples and local communities.

We recommend that countries make use of the UNDP Access to Justice Practice Note provided as a reference by the BeRT to begin an evaluation of their domestic justice system and identify opportunities for improving access (reducing cost barriers, capacity building) to justice for vulnerable stakeholders.

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1085 UN-REDD, SEPC, Criterion 12
1086 UN-REDD, SEPC BeRT, Criterion 12
Consistency with UNFCCC REDD+ Safeguard (d)

### Summary of findings

According to the SEPC, countries should ensure the full and effective participation of relevant stakeholders in design, planning and implementation of REDD+ activities, with particular attention to indigenous peoples, local communities and other vulnerable and marginalised groups. This means adhering to guiding principles such as identification of stakeholders and timely access to information, and that this information should be synthesised to ensure it is understood. Guidance is given as to the specific types of information that should be disseminated, and that it should be timely and in a culturally sensitive manner, in an accessible language and style.

UN-REDD requires that mechanisms for participation be developed with and approved by the relevant rights holders and stakeholder groups, with consultations tailored to the local context using socially and culturally appropriate methods. Countries carrying out consultations are also required to disseminate the findings of the consultations and describe how the outcomes of the consultation process will be incorporated into the REDD+ strategy.

In relation to the participation of indigenous peoples and local communities, UN-REDD acknowledges that a key component of their effective engagement is Free, Prior and Informed Consent (FPIC). The FPIC Guidelines are extremely comprehensive in describing the scope, content and application of FPIC in concordance with international law, applying this right to all ‘forest-dependent communities’ and even requiring that FPIC be obtained in relation to the national REDD+ strategy. The FPIC guidelines go beyond the current scope of international law recognising indigenous peoples’ and local communities’ right to grant or withhold consent to a project or measure, and in the event that consent is withheld, the project must cease.

### 1. Recognition and Implementation of Procedural Rights

Criterion 4 of the SEPC specifies that countries should ensure the full and effective participation of relevant stakeholders in design, planning and implementation of REDD+ activities, with particular attention to indigenous peoples, local communities and other vulnerable and marginalised groups.

According to its Guidelines on Stakeholder engagement, the UN-REDD Programme requires adherence to a number of procedural guarantees:

- The consultation process should include a broad range of relevant stakeholders at the national and local levels;
- Consultations should be premised on transparency and timely access to information. Consultations should facilitate dialogue, exchange of information and consensus building;
- Consultation with indigenous peoples must be carried out through their own existing processes and institutions;
- Special emphasis should be given to the issues of land tenure, resource-use rights and property rights; and
- Impartial, accessible and fair mechanisms for grievance, conflict resolution and redress must

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1088 UN-REDD FCPF, Guidelines on Stakeholder Engagement, p. 5
be established and accessible during the consultation process and throughout the implementation of REDD+ policies, measures and activities.

These principles are generally positive, and they recognise that the stakeholder engagement process should last throughout the implementation of REDD+ policies measures and activities. One concern is that the Guidelines on Stakeholder Engagement constantly refer to ‘consultation’, which as identified in our guidance document A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards, is not the same as ‘participation’. This shall be further analysed in the section below.

2. Creating an Enabling Environment for Participation

(i) Identification and Notification of Relevant Stakeholders

According to the BeRT, Criterion 4, countries must have a rigorous methodology in place to determine who the relevant stakeholders are. It also suggests that they should have procedures which enable interested parties to apply to be considered as relevant rights holders.  

The UN-REDD Programme provides a definition of different stakeholder types and how to identify who they are, which will enable countries to ensure they are allowing for the participation of all relevant stakeholders. The Guidelines on Stakeholder Engagement provide examples of relevant stakeholders that must be identified. These are:

- civil society organisations (CSOs),
- community-based organisations (CBOs),
- indigenous peoples’ organisations (IPOs),
- non-governmental organisations (NGOs) and institutions with extensive experience working with or representing indigenous peoples and/or forest dependent communities, bearing in mind that these do not replace proper indigenous representation.

Countries are advised to identify the stakeholders, verify that they are being represented, and to map indigenous peoples’ organisations to identify the appropriate representatives to partner with.

The Stakeholder Guidelines, whilst recognising other groups such as government agencies, formal and informal forest users and private sector agencies, have a particular focus on indigenous peoples and forest-dependent communities and their engagement in REDD+ activities. The FPIC Guidelines and Guidelines on Stakeholder Engagement provide countries with tools to identify indigenous peoples and relevant stakeholders to their REDD+ activities.

Under the Stakeholder Guidelines, governments are encouraged as a first step to map indigenous peoples’ and other indigenous communities’ organisations, authorities and institutions being aware of the likelihood of overlapping and possibly conflicting constituencies and interests. The Guidelines also note that the appropriate indigenous institutions to partner with may not be the traditional leaders, but those with the skills and knowledge to interact with the technical process and subsequently interact.

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1089 UN-REDD, SEPC BeRT, Criterion 4.
1090 UN-REDD FCPF, Guidelines on Stakeholder Engagement, p. 7.
1091 UN-REDD FCPF, Guidelines on Stakeholder Engagement, p. 7
with the traditional leaders and articulate their views. Countries are also encouraged to take into account groups that are marginalised within their own communities such as women and youth.

Once stakeholders are mapped and their concerns identified, these should then be addressed in a Consultation and Participation Plan (as outlined in the country’s R-PP).

As was seen in the case of the FCPF, under the UN-REDD programme, the stakeholder analysis should be conducted early on in order to develop a national REDD working group that reflects the diversity of all stakeholders. While the R-PP is being drafted countries must engage in early information sharing and dialogue with representative stakeholder groups, although community-level consultations are not necessarily required at this time. During this stage, views should be collected, and “the most critical information distributed and comments received during the outreach” should be fed into the drafting process for the R-PP. This means that the initial level of consultation does not require notification or initiation of dialogue with communities on the ground. While critical information in a general sense may be gathered, local information may be missed at this preliminary stage.

We feel that the provisions highlighted above leave an important gap, and we recommend that information sharing and capacity building be carried out as early as possible with all the identified local stakeholders rather than dealing exclusively with ‘representatives’ during the preliminary stages.

The R-PP Template recognises the failure to consult at the local level, explaining that talking about REDD+ in the abstract at the community level with Indigenous Peoples and other stakeholders can be very difficult, and may start premature discussions about payments. We contend that this is all the more reason to carry out capacity building and information-sharing as early on as possible in the process, and recommend that countries do so once they have carried out the mapping of relevant stakeholders.

It is important that countries think about participation at the earliest point possible, and if it is feasible to begin information sharing and promoting awareness at potentially affected local levels at the same time discussions are being initiated at the national level.

(ii) Providing Access to Information

The SEPC deal with the issue of dissemination of information rather broadly, requiring that there be “clear rules on when and how often information will be made public and adequate time for stakeholders to make responses to requests” (Criterion 3).

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1093 UN-REDD FCPF, Guidelines on Stakeholder Engagement, p. 1
1094 UN-REDD FCPF, R-PP Template, Component 1b, pp. 20-21; See also UN-REDD FCPF, Guidance on Stakeholder Engagement, p 7.
1095 UN-REDD FCPF, R-PP Template, component 1b, pp. 20-21
1096 UN-REDD FCPF, R-PP Template, component 1b, p 20.
The SEPC BeRT provide guidance as to how countries should ensure access to information, in terms of ensuring adequate resources for the task, as to the timing and methods of dissemination, and the requirement of clear rules regulating the process in order for stakeholders to be able to react.\textsuperscript{1097}

The BeRT also provides information as to the type of information countries should share, including about programme design, implementation and evaluation, social and environmental impact assessment, benefit-sharing, biodiversity and ecosystem services and rights to lands and resources and also requires them to provide information to potentially interested members of the public about how information will be made accessible to them.\textsuperscript{1098}

The UN-REDD Programme also supports access to information through its Stakeholder Guidelines with “the timely access to information, information dissemination at all levels and in a culturally sensitive manner as a pre-requisite to consultations.”\textsuperscript{1099} The communication and outreach methods identified by the Stakeholder Guidelines aim to ensure that adequate and timely information is provided to all stakeholders in an accessible language and style, and due to the technicality of the issues, information should be synthesised to ensure it is understood. Forms of communication include printed materials, electronic media, community radio and even local plays and drama.\textsuperscript{1100}

Read together, these guidance documents give a good indication of how information should be shared so that it is understood by all stakeholders, as well as the types of information that should be shared.

We recommend that countries follow the guidance provided by UN-REDD as to how they should share and provide access to information in order to ensure that relevant stakeholders have the opportunity to participate effectively. We additionally recommend countries to adopt policies/procedures or to include in their legal frameworks provisions that guarantee stakeholders access to information.

As identified under UNFCCC REDD+ Safeguard (b), the BeRT requires countries to develop a disclosure policy and suggests the UNDP policy, which as highlighted above grants wide discretion in terms of exceptions to disclosure.

We therefore also recommend that in the dissemination of information for the purposes of public participation, countries respect the principles of maximum disclosure and good faith and minimise exceptions to disclosure.

(iii) Implementing Participatory Mechanisms

The SEPC BeRT sets out a number of broad requirements for these types of mechanisms under Criterion 4, namely that they should be developed with and approved by the relevant rights holder and stakeholder groups, that consultations should be tailored to the local context using socially and culturally appropriate methods, and that consultations be conducted at mutually agreed locations.

\textsuperscript{1097} UN-REDD, SEPC BeRT Criterion 3
\textsuperscript{1098} UN-REDD, SEPC BeRT Criterion 3
\textsuperscript{1099} UN-REDD FCPF, Guidelines on Stakeholder Engagement, p. 5
\textsuperscript{1100} UN-REDD FCPF Guidelines on Stakeholder Engagement, p. 10
According to Criterion 4 SEPC, relevant stakeholders should also have access to sufficient resources to participate fully and effectively in the design, implementation and evaluation of the REDD+ programme and should have access to legal advice.\textsuperscript{1101}

The design of the stakeholder engagement mechanism as identified by the Guidelines on Stakeholder Engagement requires prior definition of the terms of the consultation; this includes informing all stakeholders of the following elements:\textsuperscript{1102}

- defining the issues to consult on (past and present forest policies, success/failure, proposed REDD+ strategy),
- the timelines and deadlines throughout the whole process,
- the agenda and process for determining consultation outcomes,
- the clarification of roles (which stakeholder groups should be represented and who should have decision-making authority),
- an understanding of capacity needs,
- deciding how the outcomes of the consultation will be documented and made publicly available.\textsuperscript{1103}

According to the R-PP template, the work plan for the SIS should also include mechanisms that establish independent monitoring involving civil society, indigenous peoples and other forest dwellers and stakeholders.\textsuperscript{1104}

Once the consultation is completed, the Stakeholder Guidelines state that the results should be analysed and disseminated, including a report of findings, acknowledgment of key issues raised, and a description of how the outcomes of the consultation process will be incorporated into the REDD+ strategy.\textsuperscript{1105} The Guidelines on Stakeholder Engagement, while providing that the findings of the consultation will “acknowledge the key issues raised” and describe, “how the outcomes of the consultation process will be incorporated into the REDD+ strategy.”\textsuperscript{1106}

The UN-REDD guidance on implementing participatory mechanisms is both comprehensive, and if properly implemented, can provide stakeholders with opportunities to participate, with countries required to specify how the outcomes of the consultation process are to be integrated into the REDD+ strategy.

We therefore recommend countries follow the UN-REDD guidance or build upon them according to their own needs and contexts to meet UNFCCC Safeguard (d). Is important countries provide stakeholders with the opportunity to provide inputs on a continuous basis and specify how these inputs are being integrated into the national REDD+ strategy, actions and activities.

\textsuperscript{1101} UN-REDD, SEPC, Criterion 4
\textsuperscript{1102} UN-REDD FCPF, Guidelines on Stakeholder Engagement, p. 10.
\textsuperscript{1103} UN-REDD FCPF, Guidance on Stakeholder Engagement, p. 9.
\textsuperscript{1104} UN-REDD FCPF, R-PP Template, Component 4b, p. 61
\textsuperscript{1105} UN-REDD FCPF, Guidance on Stakeholder Engagement, p. 11.
\textsuperscript{1106} UN-REDD FCPF, Guidance on Stakeholder Engagement, p. 11.
The FPIC Guidelines explore the degree to which decision-making authority is to be shared with vulnerable stakeholders, such as indigenous peoples. This shall be analysed in more detail in the following section on the participation of indigenous peoples and local communities.

(iv) Conflict Resolution Mechanisms

Whilst the requirement for establishing a grievance mechanism is acknowledged, with reference to the R-PP template,\textsuperscript{1107} the UN-REDD Programme does not provide guidelines for the development of national level grievance mechanism which would be essential to allow stakeholders to challenge decisions. According to the updated UN-REDD FPIC Guidelines, “to better support countries, the UN-REDD Programme is preparing a Guidance Note that will outline in more detail indicative principles and a methodology for strengthening and/or establishing national-level grievance mechanisms.”\textsuperscript{1108} As the updated FPIC Guidelines were released in January 2013, the Guidance Note for national-level grievance mechanisms appears to still be a work in progress.

We therefore recommend that governments do not rely on the UN-REDD guidance when developing grievance mechanisms in relation to participation. We also recommend that they clarify the rights of the relevant stakeholders in relation to challenging a decision.

Countries need to be aware that having such mechanisms requires procedural and institutional capacity in order to be able to attend any concerns or complaints that may arise. Grievance mechanisms must be culturally and gender appropriate in every context, especially when indigenous peoples are involved. In this way, we recommend that in order to meet UNFCCC REDD+ Safeguard (d), countries should ensure they have capacity to attend such concerns/complaints (which may be supported by administrative and judicial systems) and take into consideration that any mechanism established needs to consider the particular characteristics of the stakeholders they are intended to listen.

3. Effective Participation of Indigenous Peoples and Local Communities

(i) Creating an Enabling Environment

Criterion 4 of the UN-REDD SEPC requires countries to ensure the full and effective participation of relevant stakeholders in design, planning and implementation of REDD+ activities, “with particular attention to indigenous peoples, local communities and other vulnerable and marginalised groups.”\textsuperscript{1109} According to the SEPC BeRT, a fundamental enabling condition for the full and effective participation of indigenous peoples and local communities is the ratification and enforcement of key international instruments such as UNDRIP and ILO 169.\textsuperscript{1110} As well as ensuring that relevant indigenous and local community stakeholders enjoy substantive rights (to land, to carbon), these rights must be supported by policies or legislation that protect the procedural rights of these stakeholders in relation to development policies, such as rights to FPIC. Furthermore, mechanisms are needed in order to ensure that these procedural rights can be operationalized (such as forums for consultation and capacity building

\textsuperscript{1107} UN-REDD FCPF, Guidelines on Stakeholder Engagement, Annex 1 p. 14.
\textsuperscript{1108} UN-REDD, FPIC Guidelines, p.34
\textsuperscript{1109} UN-REDD, SEPC, Criterion 4
\textsuperscript{1110} UN-REDD, SEPC BeRT, Criterion 4
The scope and content of the right to FPIC, as it is understood by UN-REDD, is contained in its Programme Guidelines on Free, Prior and Informed Consent.\(^{1111}\)

The UN-REDD guidance on how to create an enabling environment for the effective participation of indigenous peoples, local communities and other vulnerable stakeholders in line with international law meets the standards of UNFCCC REDD+ Safeguard (d). We therefore recommend that countries follow this guidance.

(ii) Free, Prior and Informed Consent (FPIC)

The UN-REDD Programme specifies that a “key component of effective stakeholder engagement and consultation” is Free, Prior and Informed Consent (FPIC).\(^{1113}\)

The glossary of the SEPC provides that governments must obtain the FPIC of “directly or indirectly affected indigenous peoples, tribal groups, ethnic minorities and other forest dependent communities.”\(^{1114}\) In addition, the FPIC Guidelines state that “[these Guidelines] require States to evaluate the circumstances and nature of the forest-dependent community in question, on a case by case basis, through among others a rights-based analysis, and secure FPIC from communities that share common characteristics with indigenous peoples”\(^{1115}\) confirming that the UN-REDD Programme requirements of who FPIC applies to are broader than those under international law, which only requires FPIC in the case of indigenous peoples.\(^{1116}\)

As previously noted in the section on UNFCCC REDD+ Safeguard (c), we recommend that national legislation be developed to define the term ‘local communities’ and clarify that they enjoy the same rights as indigenous peoples due to their vulnerability to the negative consequences of REDD+ activities as per the UN-REDD Programme Guidelines on FPIC. The FPIC Guidelines appear to equate the term ‘forest-dependent communities’ with ‘local communities’, recognising their enjoyment of the same rights as ‘indigenous peoples’.

The UN-REDD FPIC Guidelines are also accompanied by a Legal Companion document\(^{1117}\) that lists the instances under international law where the obligation to ensure FPIC has been affirmed as legal requirement, which the FPIC Guidelines also explicitly recognise.\(^{1118}\)

The UN-REDD FPIC Guidelines aim to provide a normative, policy and operational framework for obtaining FPIC\(^{1119}\) and state that “FPIC applies to REDD+ regarding potential changes in resource uses that could significantly impact the substantive rights of indigenous peoples and, where relevant, other for-

\(^{1111}\) UN-REDD, SEPC BeRT, Criterion 4
\(^{1112}\) UN-REDD, FPIC Guidelines
\(^{1113}\) UN-REDD, FPIC Guidelines, p. 8
\(^{1114}\) UN-REDD SEPC, p.12
\(^{1115}\) UN-REDD, FPIC Guidelines, p. 7
\(^{1116}\) See ClientEarth’s “A guide to understanding and implementing the UNFCCC REDD+ Safeguards”
\(^{1118}\) UN-REDD, FPIC Guidelines, p.11
\(^{1119}\) UN-REDD, FPIC Guidelines, p. 10
est dependent communities. Under these circumstances, consistent with international human rights instruments and other treaty obligations, potentially impacted peoples have the right to participate in and consent to or withhold consent from a proposed action.”\textsuperscript{1120}

The FPIC Guidelines also define the conceptual elements of FPIC:

**Free** refers to “a consent given voluntarily and absent of coercion, intimidation or manipulation” and a “process that is self-directed by the community from whom consent is being sought.”\textsuperscript{1121}

**Prior** refers to “a period of time in advance of an activity or process when consent should be sought, as well as the period between when consent is sought and when consent is given and withheld” and at the “early stages of a development or investment plan, not only when the need arises to obtain approval from the community.”\textsuperscript{1122}

**Informed** refers mainly to the nature of the engagement and type of information that should be provided prior to seeking consent and also as part of the on-going process. The FPIC Guidelines provide a comprehensive list of requirements to ensure that countries satisfy this requirement, including guidance on the type of information to be provided,\textsuperscript{1123} the form of the communications\textsuperscript{1124} as well as the actors and fora.\textsuperscript{1125} The FPIC Guidelines also outline that each partner country, in consultation with the rights holders should develop an FPIC proposal that will outline, inter alia, “A timeline for the proposed consultation process to seek FPIC.”\textsuperscript{1126}

**Consent** refers to “the collective decision made by the rights-holders and reached through the customary decision-making processes of the affected peoples or communities.”\textsuperscript{1127} The FPIC Guidelines also provide that:

> “While the objective of consultation shall be to reach an agreement (consent) between relevant parties, this does not mean that all FPIC processes will lead to the consent of and approval by the rights-holders in question. At the core of FPIC is the right of the peoples concerned to choose to engage, negotiate and decide to grant or withhold consent, as well as the acknowledgment that under certain circumstances, it must be accepted that the project will not proceed and/or that engagement must be ceased if the affected people decide that they do not want to commence or continue with negotiations or if they decide to withhold their consent to the project.”\textsuperscript{1128}

This statement is extremely important as it goes beyond the current limited scope of FPIC under international law,\textsuperscript{1129} as it recognises that the implementation of a project is conditional on the FPIC of the

\begin{footnotesize}
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\item[1120] UN-REDD, FPIC Guidelines, p.18
\item[1121] UN-REDD, FPIC Guidelines p.18
\item[1122] UN-REDD, FPIC Guidelines p.19
\item[1123] Including the potential political, cultural, environmental impacts, and scientific information with access to the original sources in appropriate language. UN-REDD, FPIC Guidelines p. 19
\item[1124] Information must be delivered in appropriate language and culturally appropriate format (radio, video, graphics, documentaries, photos, oral presentations). UN-REDD, FPIC Guidelines p.19
\item[1125] Information should be delivered by culturally appropriate personnel, in culturally appropriate locations, and include capacity building of indigenous and local trainers. UN-REDD, FPIC Guidelines p.19
\item[1126] UN-REDD, FPIC Guidelines p.33
\item[1127] UN-REDD, FPIC Guidelines, p.20
\item[1128] UN-REDD, FPIC Guidelines, p.20
\item[1129] Which provides that FPIC does not grant indigenous peoples the right to veto a project or policy. See ClientEarth’s “A guide to understanding and implementing the UNFCCC REDD+ safeguards” PAGE
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\end{footnotesize}
relevant indigenous peoples or other forest-dependent communities. We support this and recommend that countries apply UN-REDD’s understanding of the scope of FPIC.

As well as detailing UN-REDD’s understanding of the scope and content of FPIC, the FPIC Guidelines also provide detailed guidance as to how the countries can integrate the FPIC process into their national REDD+ process. This is achieved in two ways:

- By detailing the steps that should be undertaken by countries when seeking FPIC in a community or territory.\textsuperscript{1130}
- By detailing the steps for ensuring that provisions for the application of FPIC are incorporated into the national REDD+ process.\textsuperscript{1131}

Steps that should be undertaken by countries when seeking FPIC in a community or territory include:

- A FPIC Scoping review, which will describe: the proposed policy or activity; the rights holders, their governance structures and how they wish to be engaged, including the institutions and individuals that are empowered to represent them; the legal status of the land and resources concerned, including the geographical area under customary use (including whether women have access); the impacts (social, cultural and environmental) of the proposed activity/policy; an assessment of the substantive rights of the people concerned as affirmed in domestic and international law that may be affected and resources allocated for seeking FPIC;\textsuperscript{1132} and

- A proposal that outlines the proposed process to seek FPIC, which includes the capacity needs of the National Implementing Partner and/or rights holders that need to be addressed before the FPIC process can take place; whether the process requires a facilitator; where and how the consultations will take place; a timeline for the proposed consultation process to seek FPIC; the appropriate language and media for information sharing and distribution; an outline of the traditional decision making process within the community and whether special measures have been adopted to ensure the participation of women and other vulnerable groups; the geographical territory and communities that the decision will cover; how FPIC will be given, recognised and recorded; the role of others in the process if any, (local government officials, UN agencies, donors, independent observers and other stakeholders); methods of verifying the process (including participatory monitoring arrangements); terms and frequency of review of the agreements to ensure that conditions are being upheld and the process for voicing complaints and seeking recourse on the FPIC process and proposed policy or activity.\textsuperscript{1133}

The FPIC Guidelines also provide guidance as to how countries could design a strategy to ensure that the application of FPIC is integrated into the national REDD+ process. This strategy will require the implementation of a number of activities at various stages of the design and implementation of the national REDD+ strategy. The stages identified in the FPIC Guidelines are:

- During the scoping and finalisation stages of the NPD and the formulation of the R-PP.\textsuperscript{1134}

\textsuperscript{\textsuperscript{1130} UN-REDD, FPIC Guidelines pp.32-33}
\textsuperscript{1131} UN-REDD, FPIC Guidelines, p.22
\textsuperscript{1132} UN-REDD, FPIC Guidelines, p.32
\textsuperscript{1133} UN-REDD, FPIC Guidelines, p.33
\textsuperscript{1134} According to the Guidelines, the NPD/R-PP should outline the national programme’s proposal to: map the substantive rights of indigenous peoples and where applicable forest-dependent communities, that may be affected by REDD+ activities and therefore require FPIC to protect said rights; carry out a rights holder mapping; determine the possible activities requiring FPIC (through rights-impact assessment); determine when FPIC should be sought; develop a national methodology for applying FPIC. UN-REDD, FPIC Guidelines, p.23
• during the implementation of the NPD;\textsuperscript{1135} and
• during the implementation of the national REDD+ strategy.\textsuperscript{1136}

In addition, the FPIC Guidelines analyse sources from international law, jurisprudence as well as the policies of a number of inter-governmental organisations to draft a list of when FPIC must be sought.\textsuperscript{1137} The UN-REDD Programme is also exploring a means to support the FPIC process and to identify potentially affected stakeholders through a Human Rights Impact Assessment.\textsuperscript{1138}

Finally, the FPIC Guidelines also state that rights-holders may choose to grant their consent on the basis of certain conditions (e.g. benefit-sharing). If these conditions are not met, the community has the right to review and either reaffirm or refuse consent, an option that may be invoked at any stage of programme implementation.\textsuperscript{1139}

Due to its focus on aiding in the implementation of the UNFCCC REDD+ Safeguards\textsuperscript{1140} the UN-REDD programme has carried out an analysis of the international law regarding FPIC. As stated above, the language in the FPIC Guidelines goes beyond the recognised scope of FPIC under international law, granting a right of veto to indigenous peoples and local communities in instances where their FPIC is required.

However, the language that the FPIC Guidelines use is inconsistent. Although in line with UNFCCC REDD+ Safeguard (d), the FPIC Guidelines acknowledge “the right of forest-dependent communities to effectively participate in the governance of their nations”\textsuperscript{1141} they suggest that there is a minimum threshold of compliance: “To ensure this, at a minimum the Guidelines require States to consult forest-dependent communities in good faith regarding matters that affect them with a view to agreement.”\textsuperscript{1142} This is different from the assertion that “potentially impacted peoples have the right to participate in and consent to or withhold consent from a proposed action.”\textsuperscript{1143}

In the absence of clarification, we recommend that countries apply the higher standard suggested by UN-REDD, namely that forest dependent communities (which includes indigenous peoples and local communities) should be able to give or withhold consent from a proposed action, up to and including the right to veto a project.

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\textsuperscript{1135} Including: undertaking the activities outlined above in the previous stage; incorporating the national FPIC methodology into the national REDD+ strategy; an official recognition in the national REDD+ strategy of the duty to obtain FPIC from indigenous peoples and applicable forest-dependent communities and consult and cooperating in good faith with the rights-holders concerned, through their own representative institutions in order to obtain their FPIC prior to finalising the national REDD+ strategy. UN-REDD, FPIC Guidelines, p.23
\textsuperscript{1136} Which requires the application of the national or sub-national FPIC Guidelines. UN-REDD, FPIC Guidelines, p.24
\textsuperscript{1137} Including in the case that the planned activity will involve relocation; involves the taking or damage of cultural, intellectual or religious property; if it involves legislative or administrative measures affecting the rights, lands or resources of indigenous peoples/forest-dependent communities; if it involves logging or mining on their lands or the development of agro-industrial plantations; if it involves any decisions that could affect their rights to their land; if it involves accessing to and/or making commercial use of traditional knowledge or natural resources; if the activity involves a benefit-sharing arrangement and whether the activity can have an impact on the continuance of the relationship of the indigenous people/forest-dependent community with their land or culture. UN-REDD, FPIC Guidelines, p.27
\textsuperscript{1138} UN-REDD, FPIC Guidelines, p.28
\textsuperscript{1139} UN-REDD, FPIC Guidelines, p.30
\textsuperscript{1140} UN-REDD, SEPC, p.3
\textsuperscript{1141} UN-REDD, FPIC Guidelines p.11
\textsuperscript{1142} UN-REDD, FPIC Guidelines p.11
\textsuperscript{1143} UN-REDD, FPIC Guidelines, p. 8
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Consistency with UNFCCC REDD+ Safeguard (e)

Summary of findings for Safeguard (e)

The UN-REDD guidance documents do not address UNFCCC REDD+ Safeguard (e) in a satisfactory manner. In addition to not adequately defining ‘natural forests’ and although it generally requires countries to avoid the conversion of natural forests, the guidance documents nevertheless anticipate that it still may occur and requires an assessment trade-offs between conversion of natural forests and the creation of new forests. This could potentially be interpreted as allowing the development of monoculture plantations (‘new forests’) as mitigation for the conversion of natural forests, so long as trade-offs have been assessed and alternatives explored.

Although the UNFCCC REDD+ Safeguards require countries to take steps to incentivise biodiversity conservation and ensure consistency with and contribution to national biodiversity conservation plans and policies, the SEPC tend to have a risk minimisation rather than incentivisation approach. Countries are required to develop policies or plans with targets for the maintenance and enhancement of biodiversity conservation, but there are also multiple mentions of trade-offs, where biodiversity should be “considered” but the priority appears to be given to carbon benefits.

Finally, the UN-REDD documents encourage countries to “promote sustainable livelihoods and poverty reduction” through equitable benefit sharing and generally enhancing the economic and social well being of relevant stakeholders. However, the guidance documents mainly suggest monitoring potential impacts and assessing risks to vulnerable stakeholders rather than making specific suggestions on how to actively enhance other benefits, as is required by UNFCCC REDD+ Safeguard (e).

1. No Conversion of Natural Forests

   (i) Defining ‘Natural Forests’

The SEPC use the term ‘natural forest’ synonymously with ‘naturally regenerated forest’, which is defined in the glossary as: a “forest predominantly composed of trees established through natural regeneration. This can include primary forest (no human induced activities) and other naturally regenerated forests (clear indication of human induced activities).”

This definition still leaves gaps because neither does it specify the circumstances under which forest restoration must take place nor is the term defined. There is also no definition for the term “other naturally regenerated forests (clear indication of human induced activities).”

We recommend countries define the terms “forest” and “natural forest” as this is the first step towards determining what needs to be protected -and not converted- according to UNFCCC REDD+ Safeguard (e). Definitions should be based on sound science and the specific geographical conditions of the country. Due to the gaps in the definitions provided in the UN-REDD guidance, we recom-

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1144 UN-REDD, SEPC, p 12
mend that countries adopt the FAO’s definition of ‘natural forests’ as it appears in the 2010 Global Forest Resources Assessment.1145

(ii) Prohibiting the Conversion of Natural Forests

The SEPC address this issue in Principle 5, which aims to protect natural forests from degradation and/or conversion. Criterion 18 specifically requires countries to ensure that REDD+ activities “do not cause the conversion of natural forest to planted forest, unless as a part of forest restoration.”1146

Although the SEPC state that there should be no conversion of natural forests, the BeRT anticipates that this may still occur and requires national REDD+ programmes to assess the potential carbon impacts of that conversion as well as trade-offs between conversion of natural forests and creation of new forests.1147

This could potentially create a loophole that allows the creation of “new forests” to mitigate for the conversion of natural forests. If this is the case, the UN-REDD SEPC contains a large loophole that does in fact allow for the conversion of natural forests, provided countries have “assessed trade-offs and explored alternatives.”1148 Criterion 22 only requires that countries consider “to what extent planted forests comprise a mix of planted species.”1149

The UNFCCC REDD+ Safeguards explicitly prohibit the conversion of natural forests in order to avoid the development of monoculture plantations with high carbon storage potential.1150 The UN-REDD guidance anticipates the possibility that conversion may occur and talks of trade-offs between conversion of natural forests and the creation of new forests.

We therefore recommend that countries not follow the UN-REDD guidance in this instance, and instead refer to the FAO definition of natural forests, and explicitly prohibit the conversion of natural forests.

2. Protection and Conservation of Natural Forests and Biological Diversity

UNFCCC REDD+ Safeguard (e) seeks to ensure that REDD+ actions incentivise the protection and conservation of natural forests and ecosystem services. In order to do this, countries should identify/map forest resources, including biodiversity; establish conservation areas; and promote conservation research and awareness.

(i) Identifying Natural Forests and Biodiversity

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1146 UN-REDD, SEPC, Criterion 18 p. 6
1147 UN-REDD, SEPC BeRT, Criterion 18
1148 UN-REDD, SEPC BeRT, Criterion 18
1149 UN-REDD, SEPC BeRT, Criterion 22
1150 For a more complete analysis of UNFCCC REDD+ Safeguard (e) according to international law, see ClientEarth’s “A guide to understanding and implementing the UNFCCC REDD+ Safeguards,” p.39.
According to the UN-REDD guidance, natural forests and biodiversity distribution must be mapped under Criterion 18, 19 (which requires minimisation of degradation of natural forests), 20 (avoid or minimise indirect land-use change impacts) and 21 (consider potential trade-offs and synergies between multiple functions of forests and the benefits they provide in land-use planning for REDD+).\footnote{1151 UN-REDD SEPC, p. 7.}

The UN-REDD Programme’s guidelines for monitoring the impacts of REDD+ on biodiversity and ecosystem services (Biodiversity Monitoring Guidelines)\footnote{1152 UN-REDD Programme, “Draft guidelines for monitoring the impacts of REDD+ on biodiversity and ecosystem services,” February 2011), available at http://www.unredd.net/index.php?option=com_docman&task=doc_download&gid=6802&Itemid=53, accessed 22 April 2013.} provide guidance to countries on how to design a mechanism for monitoring threats to biodiversity arising from REDD+ actions and activities. These Biodiversity Monitoring Guidelines are structured into three types of activities:

- Scoping;\footnote{1153 Which includes: identifying the types of REDD+ activities and how they will be implemented; identifying the potential benefits and harms to biodiversity and ecosystem services from these activities; identifying existing policy commitments related to the impacts of REDD+ on biodiversity and ecosystem services (such as National Biodiversity Strategies and Action Plans under the CBD) and articulating specific objectives for biodiversity and ecosystem services under REDD+ based on these commitments. UN-REDD, Biodiversity Monitoring Guidelines, pp.3-8.}
- Design;\footnote{1154 Which includes: consulting with stakeholders at key stages of the monitoring; selecting indicators to inform towards the selected objectives and ensuring the feasibility of such processes. UN-REDD, Biodiversity Monitoring Guidelines, pp. 9-12.}
- Implementation\footnote{1155 Implementation can be facilitated by: building upon existing monitoring activities; making use of REDD+ monitoring to gather data on the selected biodiversity and ecosystem service indicators; making use of remote sensing data to establish ecosystem scale indicators; recognising the role that communities can play in monitoring the impacts of REDD+ on biodiversity and ecosystems services and ensuring that the results of the monitoring are communicated in the right form to the appropriate audience. UN-REDD, Biodiversity Monitoring Guidelines, pp.13-17.}  

These guidelines complement SEPC criterion 18 (mapping forest biodiversity and distribution) by providing guidance for the monitoring of the impacts of REDD+ on biodiversity and ecosystem services. However as the Biodiversity Monitoring Guidelines themselves state “These guidelines are formulated at a generic level. They are not intended to provide detailed information on how to monitor the impacts of REDD+ on biodiversity and ecosystem services.”\footnote{1156 UN-REDD, Biodiversity Monitoring Guidelines, p.2.} As such, the Biodiversity Monitoring Guidelines refer to an additional document, An annotated guide to useful resources for monitoring the impacts of REDD+ on biodiversity and ecosystem services\footnote{1157 Doswald, N. and Dickson, B., “An annotated guide to useful resources for monitoring the impacts of REDD+ on biodiversity and ecosystem services. Draft. Prepared on behalf of the UN-REDD Programme.” 2010, UNEP World Conservation Monitoring Centre.} which lists useful resources for carrying out each of the three steps outlined in the Biodiversity Monitoring Guidelines, including the Millennium Ecosystem Assessment.

Although the UN-REDD documents require, and provide guidance on mapping and monitoring natural forests, biological diversity, ecosystems services, identifying priority areas and threats, they do not explicitly require the creation of protected areas or provide guidance on what to do once threats have been identified. Additionally, this guidance document only applies once countries begin implementing their national REDD+ strategy, and does not provide guidance on monitoring existing threats to biodiversity.
We therefore recommend that, in addition to following the UN-REDD guidance on monitoring natural forests and biodiversity, countries should identify past and current as well as future threats to biodiversity, and address the gaps in the UN-REDD guidance by identifying priority conservation areas and establish or maintaining protected areas.

(ii) Implementing Measures To Protect Biodiversity

Criterion 17 of the SEPC requires that countries ensure consistency with and contribution towards national biodiversity conservation policies. The BeRT requires that the extent to which REDD+ land requirements may conflict with other policies (such as biodiversity conservation) should be examined, although no guidance is provided as to how these conflicts should be addressed.

This lack of guidance is a significant gap in the UN-REDD documents in relation to UNFCCC REDD+ Safeguard (e). We recommend that countries develop guidance as to how decisions should be made in the event of overlapping interests (REDD+ land use and biodiversity conservation), and take active measures to incentivise the protection of biodiversity.

The wording of Principle 6 is that countries should “maintain and enhance the conservation of biodiversity and provision of ecosystem services.” The BeRT specifies under Criterion 22 that countries should develop policies or plans with targets for the maintenance and enhancement of ecosystem services and biodiversity conservation. Criterion 22 requires countries to assess how they will balance trade-offs. Criterion 24 also requires countries to avoid or minimise adverse impacts on non-forest biodiversity, which according to the BeRT mainly means assessment and the potential adjustment of the programme in the event of “significant adverse impacts” (which are not defined).

Although the SEPC have a general requirement that countries incentivise biodiversity conservation, no specific measures are suggested.

The language in the SEPC is largely one of trade-offs, where biodiversity should be considered, but the priority is carbon benefits. As such, the emphasis of the UN-REDD guidance does not comply with the standard of UNFCCC REDD+ Safeguard (e), which suggests that REDD+ actions should not be carried out at the cost of biodiversity.

We recommend that countries collaborate with their national working groups responsible for the implementation of the Convention on Biological Diversity to help identify priority conservation areas, protected areas and share expertise in terms of mapping biodiversity. This will make it easier to make decisions in the event of overlapping interests as certain forest areas should be off-limits due to their importance in terms of biodiversity. We also recommend countries ensure adequate provisions to protect biodiversity are foreseen in their legal frameworks including specific measures to protect it.

\[1158\] UN-REDD, SEPC, p. 6.

\[1159\] This could be done through the implementation of the Convention on Biological Diversity’s expanded programme of work on forest biological diversity, see [http://www.cbd.int/forest/pow.shtml](http://www.cbd.int/forest/pow.shtml) for details of activities that can be undertaken at the national level.
(iii) Support For Conservation Research and Awareness-Raising

No provisions in the UN-REDD documents exist that focus on support for conservation research and awareness-raising. Essential elements for incentivising conservation include public awareness of the issues and adequate scientific capacity.

We recommend countries to include capacity building, research and awareness-raising components in their REDD+ strategies. These are key elements that will allow countries to develop practical tools to protect natural forests and biodiversity.

(iv) Integration of Biodiversity Concerns in Cross-Sectoral Policies

Although Principle 1 encourages broad cross-departmental coordination, there are few provisions in the SEPC explicitly requiring the integration of biodiversity considerations in cross-sectoral policies. As seen above, there are a number of references to the need to consider the “trade-offs” between biodiversity and carbon benefits, but the emphasis seems to be identifying and justifying the trade-offs, rather than defining the circumstances under which considerations of biodiversity conservation will trump the carbon benefits. There are also no provisions to define measures to mitigate against biodiversity loss, such as the creation of protected areas. We recommend in this instance that consideration is given to existing work under national biodiversity strategies and action plan (NBSAP) in order identify potential measures to mitigate biodiversity loss.

In the R-PP, countries should consider “sustainability and integration with other sector policies and strategies including assessment of trade-offs across development goals or sectors, e.g. reduced biodiversity in surrounding lands.”

There is little guidance as to the weight that should be given to biodiversity; countries are merely required to consider the trade-offs between REDD+ activities and biodiversity. There is also a lack of guidance as to how to come to a decision if a conflict arises.

Countries need to ensure environmental concerns (especially regarding forests and biodiversity) are taken into consideration for decision-making processes. We recommend that countries develop policies explaining the importance of biodiversity and emphasise its importance in the perception of decision-makers. A good starting point for this is to look at the recommended measures under the CBD Expanded Programme of Work on Forests. This includes developing priority targets for forest biological diversity to be integrated into national sustainable development strategies, poverty reduction strategies and related non-forest programmes to ensure coherence with the national REDD+ programme.

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1160 UN-REDD FCPF R-PP Template, Component 2b, p.36.
1161 Under goal 2.3 of Element 2: Institutional and Socio-Economic enabling environment, The Expanded Programme of Work recommends activities such as carrying out public awareness campaigns at the local and national levels; promoting consumer awareness about sustainably produced forest products; developing awareness of the impact of forest-related production and consumption patterns on the loss of forest biological diversity. They also include the need to increase awareness of the value of forest biological diversity amongst public authorities and decision makers, forestry workers, owners of forest land, logging contractors and consulting firms. [http://www.cbd.int/forest/PE2.shtml](http://www.cbd.int/forest/PE2.shtml)
1162 CBD expanded work programme on forest biological diversity Programme Element 2: Institutional and Socio-Economic Enabling Environment. Goal 2.1 Paragraph 2.1.2
Enhancement of Other Benefits

Principle 3 of the SEPC aims to “promote sustainable livelihoods and poverty reduction,” through equitable benefit sharing among relevant stakeholders (Criterion 12) and more generally, by protecting and enhancing the economic and social well-being of relevant stakeholders (Criterion 13). The BeRT for Criterion 13 specifies the need to analyse the projected costs, potential revenues and other benefits and associated risks of the REDD+ programme for relevant stakeholders. Countries must also monitor impacts on vulnerable and marginalised people. Each REDD+ programme should have an objective to improve long-term economic, social and political well-being of indigenous peoples and local communities. However, this does not give rise to an obligation, and there are no examples provided as to how this could take place.

The UN-REDD Programme suggests that each REDD+ programme should aim to promote sustainable livelihoods, focusing particularly on the most vulnerable and marginalised groups but mainly provides guidance on how to monitor impacts, rather than provide examples of how to achieve this, other than through benefit-sharing.

In order to meet UNFCCC REDD+ Safeguard (e), we recommend countries to recognise that conservation of forests may bring benefits of various kinds (not only environmental but also social and economic) and develop strategies to achieve them when implementing REDD+ actions.

We recommend that countries not only focus on sharing benefits with project-affected groups and individuals, but also prioritise projects to enhance environmental and social benefits and encourage the development of alternative livelihoods. Such prioritisation can be achieved by developing priorities with forest-dependent local communities as well as indigenous peoples.

For examples, see ClientEarth’s “A guide to understanding and implementing the UNFCCC REDD+ Safeguards.”
Consistency with UNFCCC REDD+ Safeguards (f) and (g)

Summary of findings for Safeguards (f) and (g)

As the UN-REDD documents deal specifically with guidance for national REDD+ activities, there are numerous provisions relevant to UNFCCC Safeguards (f) and (g). This includes the requirement for countries to identify the main drivers of deforestation they face and develop their REDD+ strategy accordingly to overcome these challenges. The R-PP template provides guidance for countries to prepare their assessment of land use and land use change drivers. Countries are also required to complete risk assessments identifying key risks of reversals and displacement of emissions. In addition, they are also encouraged to develop plans to address these risks, and to identify other national climate change work streams that could support the reduction of these risks (such as NAPAs, NAMAs, forest planning).

There are also general requirements that countries ensure sustainable forest management and consistency with other sustainable development goals and avoid or minimise adverse impacts on non-forest eco-systems and biodiversity. International cooperation was also identified as an essential tool to help reduce the risks of leakage and reversals. Finally, UN-REDD aims to assist countries in developing their national carbon monitoring capacity and national forest reference emission levels.

1. Monitoring and Assessment

In the R-PP template, component 2a requires the assessment of land use, land use change drivers and forest law, policy and governance for the purpose of identifying “(2)...how shortcomings in current land use...contribute to the drivers of deforestation and forest degradation... The REDD-plus strategy should then be developed precisely to address the key deforestation and degradation drivers identified.”

By identifying the drivers of deforestation and forest degradation, countries will be greatly empowered to address a number of risks of reversals and displacement of emissions related to forest law, policy and governance such as illegal logging due to lack of enforcement of forest laws and deforestation due to lack of clarification of land tenure (agriculture). The Biodiversity Guidelines also provide assistance for ensuring the permanence of REDD+ activities as they offer both framework principles and additional guidance documentation for assessing the potential threats of REDD+ activities to biodiversity and ecosystem services. If improperly monitored the consequences of REDD+ activities could potentially include leakage of emissions (for example due to the need of local communities to resort to deforestation in the absence of the livelihoods provided by the affect biodiversity and ecosystem services).

The R-PP further aids countries in addressing UNFCCC REDD+ Safeguard (f) by providing guidelines for preparing an assessment of land use and land use change drivers.1165 The R-PP template addresses UNFCCC REDD+ Safeguards (f) and (g) by requesting countries to complete a risk assessment, which includes the risk of reversals and displacement of emissions. As above,

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1164 UN-REDD FCPF, R-PP Template, Component 2a: Assessment of Land Use, Land Use Change Drivers, Forest Law Policy and Governance, p. 32.
1165 UN-REDD FCPF, R-PP Template, Component 2a: Assessment of Land Use, Land Use Change Drivers, Forest Law Policy and Governance, p. 32.
UNFCCC REDD+ Safeguards (f) and (g) are quoted under component 2b, whereby countries are required to identify studies or anticipated activities which will consider and address these safeguards.\footnote{UN-REDD FCPF, R-PP Template, Component 2b: REDD-plus Strategy Options, p. 37 §7}

Component 3 of the R-PP refers to the development of a national forest reference emission level (REL), following decision 1/CP.16 of the UNFCCC.\footnote{United Nations Framework Convention on Climate Change, Decision 1/CP.16 FCCC/CP/2010/Add.1 [9th plenary meeting, 10-11 December 2010] para 71 (b)} MRV is one of the UN-REDD Programme strategy work areas and is recognised as the core monitoring challenge.\footnote{UN-REDD Programme Strategy 2011-2015, p. 8}

UN-REDD provides useful guidance for countries looking to monitor and assess drivers of deforestation and forest degradation as well as risks of leakage and reversals. We recommend countries follow this guidance.

We additionally encourage countries to promote forest-dependent community participation in the adoption of monitoring strategies to guarantee permanence of emissions reductions. This may strengthen community ‘ownership’ on REDD+ strategies and projects, promote social benefits, and contribute to build a stronger public acceptance of REDD+.

2. Measures to Avoid Reversals and Displacement

   (i) General Measures

   The UN-REDD documents contain a number of general references to sustainable forest management and sustainable development, as well as the need to prevent land degradation, conversion of natural forests, indirect land-use change, and impacts on non-forest ecosystems and biodiversity.

   They also require the clarification of rights associated to forest land, such as tenure and benefit sharing; ensuring public participation and tackling illegal logging as essential elements of the UN-REDD strategy.

   Due to the broad nature of these two safeguards, general measures that will contribute to their realisation are manifold. In fact, compliance with UNFCCC REDD+ Safeguards (a) to (e) will in some way or other contribute to the objectives of UNFCCC REDD+ Safeguards (f) and (g).

   As a general measure to avoid the reversals and displacement of emissions, countries should seek to effectively implement provisions covered by the UNFCCC REDD+ Safeguards (a) through (e). In fact, complying with international and national obligations, enhancing participatory and transparent forest governance and ensuring biodiversity protection will contribute to ensuring emission reductions are lasting. Hence, a successful implementation of REDD+ would be accomplished.

   (ii) Measures To Tackle Reversals
In the SEPC, the UN-REDD Programme attributes Principle 4 to UNFCCC Safeguard (f). Criterion 15 uses the language of UNFCCC REDD+ Safeguard, (f) stating that countries must “address the risk of reversals of REDD+ achievements” and ensure consistency with other sustainable development goals (Criterion 16). After identifying potential drivers of reversals, countries are encouraged to develop plans for addressing the identified gaps and identify other national climate change work-streams that could support the reduction in risks of reversals (such as NAPAs, NAMAs, forest planning).

Other than identifying the potential causes of reversals, the UN-REDD documents do not provide much guidance on the topic. While countries are required to limit reversals and to illustrate measures taken, no specific measures are suggested.

To avoid reversals of emissions reductions and prevent leakage, countries need to identify and address current or potential drivers of deforestation in order to ensure that efforts result in lasting emission reductions and removals.

Permanence may not just be affected by human actions but also by natural environmental factors, such as climate change itself. For instance, some ecosystems may be less resilient to effects from climate change because of degradation. In this sense, integrating climate change considerations in REDD+ planning is essential to ensure permanence of emissions reductions and leakage prevention. To do so, it would be useful for countries to have official information regarding the state of their forests (in terms of degradation or deforestation) and to identify potential risks that could increase because of climate change.

(iii) Measures To Tackle Displacements

The SEPC document links Principle 7 with UNFCCC REDD+ Safeguard (g). The Principle is a requirement that countries “Avoid or minimise adverse impacts on non-forest eco-system services and biodiversity.” The supporting criterion aim to address the direct and indirect impacts of REDD+ activities on carbon stocks; measures such as identifying the potential impacts of REDD+ activities on non-forest ecosystems. Countries are required to assess the potential for displacement of land-use as a result of REDD+ actions. The BeRT requires countries to develop provisions to adjust the REDD+ programme where significant adverse impacts are identified; one suggestion included in the additional material is the use of an adapted management approach.

There is however no guidance as to what is understood as constituting “severe adverse impacts.” Due to the lack of experience in relation to managing displacement of deforestation, UN-REDD has little guidance to provide.

We recommend that in addition to developing national strategies rather than allowing a piecemeal development of localised REDD+ projects, countries take steps to maximise their monitoring capacities in order to identify potential risks of domestic leakage and take steps to avoid them.

Because many forest-dwelling communities do not have formal legal titles to land, countries need to

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1169 UN-REDD, SEPC, Annex 1, p. 14
1170 UN-REDD SEPC BeRT, Criterion 15
1171 UN-REDD SEPC BeRT, Criterion 24
ensure displaced people receive compensation even if they do not hold legal entitlements to the land they were occupying before displacement. This may assist in avoiding leakage in areas where displaced persons are relocated (if they are properly compensated and offered alternative livelihoods). We therefore recommend that countries develop clear and protective legal frameworks for instances where involuntary resettlement occurs, in order to ensure that all affected people are provided with opportunities equivalent to what they had before displacement. This will ensure that forest livelihoods are maintained, the risk of leakage is minimised, and that international human rights are respected.

3. International Cooperation

International and regional cooperation are also essential tools to help reduce the risks of displacement. Under Criterion 24, countries are encouraged to identify potential drivers of international displacement (such as the need to import agricultural products to offset reductions in domestic production).

The UN-REDD Programme is well placed to support the creation of regional agreements to assist in the reduction of cross border displacement which could be introduced into their Global Programme strategy to assist countries in addressing secondary leakage in the longer term.
Summary of Recommendations for Ensuring Consistency between UN-REDD and UNFCCC REDD+ Safeguards

UNFCCC REDD+ Safeguard (a)

1. We recommend that countries develop their national REDD+ strategy so as to complement or be consistent with existing national forest programmes, and evaluate instances where the national development strategy potentially goes against the objectives of REDD+ in order to make policy choices that maximise the efficiency and sustainability of REDD+ actions.

2. We recommend that countries wishing to participate in UN-REDD and comply with the UNFCCC REDD+ Safeguards use the international conventions and agreements provided in the SEPC document as a basis for compiling a comprehensive list of international conventions and agreements relevant to REDD+.

UNFCCC REDD+ Safeguard (b)

1. We recommend that countries familiarise themselves with the scope and content of the right of access to information and its iteration under international law, and if they have not already done so, to recognise it through national legislation. We also recommend that countries base their disclosure policy on the principles of maximum disclosure and good faith.\footnote{1172}

2. We recommend that participating governments take active steps to ensure the public is aware that they have the right to access information, by taking appropriate measures such as holding workshops or training staff that will help in sharing the information, as well as providing clear information on where the data is available.

3. We encourage countries to utilise the UN-REDD CRA document as a guiding framework for identifying national risks of corruption induced by REDD+ and develop a strong grievance mechanisms to ensure accountability in a participatory manner.

4. Although the UN-REDD guidance helps countries identify some key social and environmental issues that need to be dealt with as part of a national REDD+ strategy, we recommend that countries examine their legal frameworks with the objectives of the UNFCCC REDD+ Safeguards in mind in order to identify gaps.\footnote{1173}

5. We recommend that countries examine the SEPC on land tenure to support their analysis of their domestic legal framework, and to map the various land tenure rights, including customary usage and ownership rights. Once identified, countries should aim to clarify customary, traditional or uncertain land tenure situations. Clarification should be undertaken in a manner consistent with applicable international obligations, especially those dealing with indigenous peoples’ rights.

\footnote{1172}{For more discussion on these principles, see ClientEarth’s “A guide to understanding and implementing the UNFCCC REDD+ safeguards.”}

\footnote{1173}{Countries can use the analysis in ClientEarth’s “A guide to understanding and implementing the UNFCCC REDD+ safeguards,” to assist in understanding the scope and content of the UNFCCC REDD+ Safeguards.}
6. We recommend that countries follow the UN-REDD Programme’s guidance on benefit-sharing as a basis for developing their national benefit-sharing policy or mechanism in line with the UNFCCC REDD+ Safeguards.

7. We recommend that countries include gender as a category during the mapping and identification of particularly vulnerable groups, and to take extra care to ensure that they are not excluded from participatory processes or from the enjoyment of benefits arising from REDD+.

8. We recommend that in addition to the analysis of their institutional framework with the objectives of the UNFCCC REDD+ Safeguards in mind, countries should commit to implementing the reforms necessary to address the identified gaps and governance needs and identify the financial resources needed to carry out these changes.

9. Although the UN-REDD guidance is satisfactory in terms of assisting countries in identifying an acceptable standard for access to justice in general, insufficient guidance is provided for the design of national level grievance mechanisms. Accordingly, we recommend countries to establish grievance mechanisms for REDD+ actions and activities that are gender responsive, culturally appropriate, and readily accessible to all segments of the affected people.

10. In addition to following the UN-REDD guidance on how to ensure greater cross-sectoral coordination, countries should be aware that the Programme does not provide adequate information in relation to integrating social, economic and environmental considerations in decision-making and as such should undertake policy discussions with the aim of determining what weight they should be given in relation to REDD+ activities.

UNFCCC REDD+ Safeguard (c)

1. We recommend that countries adopt a recognised definition of indigenous peoples and set parameters on who qualifies as part of such a group. The UN-REDD FPIC Guidelines are also a good source of criteria and are coherent with international law.

2. We recommend that countries develop or strengthen national legislation to clarify who are defined as ‘local communities’ as well as what rights they enjoy, in order to be aligned with the UNFCCC REDD+ Safeguards and provide recognition and protection to those stakeholders.

3. Although UN-REDD requires countries to respect and protect traditional knowledge in general, the guidance documents do not define the term, instead referring to the WIPO’s definition. Countries need to ensure their domestic legal frameworks are not only in accordance with human rights, but specifically address non-discrimination and acknowledge different lifestyles as those pertaining to indigenous communities and respect their rights. They should also seek to avoid discriminatory actions based on ethnicity or culture and implement existing international agreements and conventions relevant to indigenous peoples, including those not legally binding (such as UNDRIP). This will allow them to provide a comprehensive recognition and protection of indigenous peoples’ rights, guarantee non-discrimination.

4. We recommend that, in order to demonstrate that they are addressing UNFCCC REDD+ Safeguard (c), countries should identify how they are respecting the rights of indigenous people in the areas already identified under international law (UNDRIP and ILO 169) such as: non-discrimination, education, health, livelihood, self-determination, recognition of cultural
rights, rights to collective land, benefit sharing provisions for both physical resources and traditional knowledge as well as public participation in decision-making which affects them, including recognition of the right of FPIC, and creation of appropriate grievance mechanisms.

UNFCCC REDD+ Safeguard (d)

1. It is important that countries think about participation at the earliest point possible, and if it is feasible to begin information sharing and promoting awareness at potentially affected local levels at the same time discussions are being initiated at the national level.

2. We recommend that in the dissemination of information for the purposes of public participation should be carried out according to the principles of maximum disclosure and good faith and exceptions to disclosure should be minimised.

3. The UN-REDD guidance on implementing participatory mechanisms is both comprehensive, and if properly implemented, can provide stakeholders with opportunities to participate effectively. We therefore recommend that countries follow the UN-REDD guidance and provide stakeholders with the opportunity to provide inputs on a continuous basis and specify how these inputs are being integrated into the national REDD+ strategy.

4. We recommend that governments do not rely on the UN-REDD guidance when developing grievance mechanisms in relation to participation. We also recommend that they clarify the rights of the relevant stakeholders in relation to challenging a decision.

5. The UN-REDD guidance on how to create an enabling environment for the effective participation of indigenous peoples, local communities and other vulnerable stakeholders in line with international law meets the standards of UNFCCC REDD+ Safeguard (d). We therefore recommend that countries follow this guidance.

6. The UN-REDD guidance on FPIC are comprehensive in terms of how to implement it and go even beyond the current requirements under international law, endorsing the view that forest dependent communities (which includes indigenous peoples and local communities) should be able to give or withhold consent from a proposed action, up to and including the right to veto a project. We recommend that countries follow this guidance.

UNFCCC REDD+ Safeguard (e)

1. Due to the gaps in the definitions provided in the UN-REDD guidance, we recommend that countries adopt the FAO definition of natural forests, and not allow for the conversion of ‘natural forests’ nor mitigation for conversion in the form of high carbon monoculture plantations.

2. Due to the gaps identified in the UN-REDD guidance, in addition to following the guidance on monitoring natural forests and biodiversity, countries should identify past and current as well as future threats to biodiversity and address the gaps in the UN-REDD guidance by identifying priority conservation areas and establish or maintain protected areas.

3. The language of the UN-REDD documents is largely one of trade-offs, where biodiversity should be considered, but the priority is carbon benefits. This falls short of the standard of the UNFCCC REDD+ Safeguards, which require the enhancement and incentivisation of measures to conserve biodiversity. We therefore recommend that countries collaborate with their
national working groups responsible for the implementation of the Convention on Biological Diversity to help identify priority conservation areas, protected areas and share expertise in terms of mapping and protecting biodiversity.

4. We recommend that countries develop policies to support conservation research and awareness-raising.

5. We recommend that countries develop policies explaining the importance of biodiversity and emphasis its importance in the perception of decision-makers. We recommend that due to the lack of guidance under UN-REDD, countries can use the CBD’s expanded programme of work on forests as a starting point. This includes developing priority targets for forest biological diversity to be integrated into national sustainable development strategies, poverty reduction strategies and related non-forest programmes to ensure coherence with the national REDD+ programme.

6. We recommend that countries not only focus on sharing benefits with project-affected groups and individuals, but also prioritise projects to enhance environmental and social benefits and encourage the development of alternative livelihoods. Such prioritisation can be achieved by developing priorities with forest-dependent local communities as well as indigenous peoples.

UNFCCC Safeguard (f) and (g)

1. UN-REDD provides useful guidance for countries looking to monitor and assess drivers of deforestation and forest degradation as well as risks of leakage and reversals. We recommend that countries follow this guidance.

2. We recommend that in addition to the clarification of land tenure, development of benefit-sharing arrangements and full and effective public participation, countries take broad measures to encourage forest-related scientific research, but also sharing of forest related information in order to identify regional drivers and local leakage risks in order to address them more effectively.

3. While UN-REDD generally requires countries to limit reversals and illustrate measures taken, no specific measures are suggested. We recommend that countries adopt a precautionary approach to policy planning, where lack of scientific certainty should not be an excuse for adopting potentially destructive policies.

4. Due to the lack of experience in relation to managing the displacement of emissions from deforestation, UN-REDD provides little guidance. We recommend that in addition to developing national REDD+ strategies rather than allowing a piecemeal development of localised REDD+ projects, countries take steps to maximise their monitoring capacities in order to identify potential risks of domestic leakage and take steps to avoid them.

5. The UN-REDD Programme encourages countries to identify potential drivers of international displacement of emissions from deforestation, and is well placed to support the creation of regional agreements to assist in the reduction of cross border displacement which could be introduced into their Global Programme Strategy to assist countries in addressing secondary leakage in the longer term.
ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

As legal experts working in the public interest, we act to strengthen the work of our partner organisations. Our work covers climate change and energy system transformation, protection of oceans, biodiversity and forests, and environmental justice.

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