Review of Legal and Policy Frameworks for REDD+ (Reducing Emissions from Deforestation and Forest Degradation) Implementation in Myanmar

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ACRONYMS AND ABBREVIATIONS

CFE: Community Forest Enterprises
CSO: Civil Society Organization
DICA: Directorate of Investment and Company Administration
EAO: Ethnic Armed Organization
EIA: Environmental Impact Assessment
FAB: Farmland Administration Body
FAO: Food and Agricultural Organization of the United Nations
FD: Forestry Department
FLEG: Forest Law Enforcement, Governance and Trade
GAD: Government Administration Department
IEE: Initial Environmental Examination
KNU: Karen National Union
LUC: Land Use Certificate
MIC: Myanmar Investment Commission
MOALI: Ministry of Agriculture and Livestock
MOC: Ministry of Construction
MOD: Ministry of Defense
MOEA: Ministry of Ethnic Affairs
MOEE: Ministry of Electricity and Energy
MOHA: Ministry of Home Affairs
MONREC: Ministry of Natural Resources, Environment, and Conservation
MOPF: Ministry of Planning and Finance
NCA: National Ceasefire Agreement
NEP: National Environmental Policy
NESC: National Environmental Conservation and Climate Change Central Committee
NGO: Non-governmental Organization
NLD: National League for Democracy
NLUC: National Land Use Council
NLUP: National Land Use Policy
OMM: One-map Myanmar
PAMs: Policies and Measures
PLRs: Policies, laws and regulations
REDD+: Reducing Emissions from Deforestation and Forest Degradation, plus conservation, sustainable management of forests, and enhancement of forest carbon stocks
VFV: Vacant, Fallow, Virgin Land
VFVLC: Vacant, Fallow and Virgin Land Committee
WCS: Wildlife Conservation Society
WWF: World Wildlife Fund
CHAPTER 1: INTRODUCTION

INTRODUCTION

The process of identifying REDD+ Policies and Measures (PAMs) commenced with the study of drivers of deforestation and forest degradation and barriers to forest enhancement. This resulted in the identification of key drivers of deforestation and of an initial 58 PAMs to address these drivers. The 58 PAMs have been further refined, elaborated and reduced in number through a consultative process.

Following this, an analysis of policies, laws and regulations (PLR’s) related to the draft REDD+ PAMs took place with the intention cross checking the PAMs against the current PLRs of relevant sectoral institutions. Through this exercise it is expected to develop an understanding of how the PAMs may be integrated into existing policy, legal and institutional framework.

1.1 NATIONAL CONTEXT

Myanmar has many of the legal hallmarks of a country emerging from decades of military rule. Multiple laws are in place that different governments enacted at different times. Some of Myanmar’s most important laws date back to the 1800s colonial period; other relevant laws are only a year old and their implementation has not yet been truly tested; meanwhile there is a host of key laws currently under lengthy review and amendment processes. On a case-by-case basis, national laws may mandate conflicting outcomes on the ground with no clear framework for dispute resolution or on which laws or ministries take precedence. In particular, risks and safeguards related to land tenure, land classification, public participation, and indigenous peoples are covered by a patchwork of institutions without clear mandates and a fragmented and confusing landscape of laws, regulations and standards.

The legal and policy formulation and implementation process is also marked by unpredictable timeframes, making genuine engagement difficult.

1.2 METHODOLOGY

A range of sources have been used to collect information for the analysis and recommendations of this report. This includes but is not limited to (1) desktop review of the PLR framework; and (2) key informant interviews. These results were then reviewed and clarified during three National workshops held in Nay Pyi Taw. These workshops were attended by civil society organizations (CSO) and key government departments involved in decision making related to activities and impacts associated with REDD+ activities.

Stakeholder interviews were conducted with various non-governmental organizations (NGOs), CSOs and government representatives. For each phase of consultations, an interview questionnaire was developed primarily aimed at understanding gaps and challenges associated with PAMs and PLR, indigenous and customary rights, and mechanisms and/or structures that exist to receive and manage formal and informal grievances evident in Myanmar. This also included barriers associated with implementing a grievance redress mechanism.
A total of Three national workshops were conducted in Nay Pyi Taw, to confirm and clarify the results from the desktop review and the interviews. Each workshop was designed based on promoting active participation form the audience in order to collect their inputs and recommendations to inform the draft intermediate reports.

Limitations and challenges to this assignment

**Competing priorities of key institutions as a result of the National Strategy for REDD+ and finalization of the Readiness phase**
Availability of key stakeholders proved to be a challenge and deterrent to obtaining the information needed to sense check the desktop review. Most of the senior personnel within the related Ministries crucial to the PLR study were either overseas or had other meetings or activities to attend.

**Contention from certain stakeholders that were not satisfied with the REDD+ process**
Consultations with key stakeholders uncovered a level of dissatisfaction with REDD+ due to poor transparency associated with developing the National Strategy and PAMs. As a result, impacting the level of engagement conducted and current and future support of REDD+.

**Lack of representation of ethnic armed organizations in the consultation process of REDD+**
Ethnic armed organizations (EAO) were not represented during the key informant interviews as well as national level workshop consultations. As a result, perceptions and opinions obtained are not fully representative of key groups that would be affected by REDD+. 
CHAPTER 2: LEGAL, POLICY AND REGULATORY ISSUES

Myanmar has many of the legal hallmarks of a country emerging from decades of military rule. Multiple laws are in place that different governments enacted at different times.

Some of Myanmar’s most important laws date back to the 1800s colonial period; other relevant laws are only a year old and their implementation has not yet been truly tested; meanwhile there is a host of key laws currently under lengthy review and amendment processes. On a case-by-case basis, national laws may mandate conflicting outcomes on the ground with no clear framework for dispute resolution or on which laws or ministries take precedence. In particular, risks and safeguards related to land tenure, land classification, public participation, and indigenous peoples are covered by a patchwork of institutions without clear mandates and a fragmented and confusing landscape of laws, regulations and standards.

The legal and policy formulation and implementation process is also marked by unpredictable timeframes, making genuine engagement difficult.

The rights to land and resources are critical to development of REDD+ in Myanmar in several ways:

- The body of laws relating to land includes laws dating back to the colonial period, and has resulted in a complex system under which many stakeholders do not enjoy clear rights;
- Perceived injustices relating to land and resources underlie most, if not all of the ethnic conflicts that affect much of the forested land of Myanmar;
- Due to “silod” policy development processes, there are contradictory and conflicting sector policies related to land;
- Many policies are dated, and do not reflect people-centric governance that underlies modern approaches to natural resource issues;
- In many government agencies, staff have not received training in democratic governance principles, and human resources may be inadequate to deliver agency mandates.
- Addressing and respecting the Cancun Safeguards requires a solid PLR environment

Each of these issues is analyzed further below, leading to a series of recommendations that are summarized in the following chapter.

2.1 WEAK LAND AND RESOURCE TENURE RIGHTS

In the lowlands of Myanmar, the British administration applied the Land Acquisition Act (1894), which outlines when and how the government may acquire lands from private rights holders. In most upland areas, which enjoyed a degree of autonomy, the Act did not apply – in effect granting de facto recognition of the customary way of life of those ethnic groups in the uplands.

This de facto recognition of distinct land and resource tenure arrangements was overturned first by the Constitution of 1947, Article 30 of which states that “The State is the ultimate owner of all lands” (reconfirmed in the 2008 Constitution), and subsequently by the Land Nationalization Act (1953), which re-affirms the state as the ultimate owner of all lands, including the uplands.
The impact of these legal instruments, subsequently reinforced by other laws such as the Forest Law of 1992 and VFV Land Law of 2012 is that virtually all rural stakeholders can only claim to be “tenants” of the land and are therefore subject to alienation of those rights by the State.

The **Farmland Law** of 2012 does provide a significant degree of tenure security, since farmers can apply for indefinite land use certificates (LUC’s). The rights covered by LUC’s include the right of possession, and the right to sell, mortgage, lease, exchange and gift, in whole or in part. However, the constraints imposed by LUC’s include not changing the originally cultivated crop without permission, and not allowing any part of the farmland to lie fallow. Effectively, this excludes most land under customary land tenure, or seasonal cultivation from securing LUC’s.

This disproportionately impacts ethnic communities, since their customary systems, including shifting cultivation, violate these conditions. Furthermore, farmers face problems with lack of information about the LUC process, and there are reports of the need to pay bribes and extra sums of money and discrimination against ethnic minorities.1 2

The **Vacant, Fallow and Virgin Land (VFV) Law** of 2012 provides the counterpoint to the Farmland Law. Virgin land is defined to be “wild land and wild forest land ... on which cultivation has never been done, not even once ... [and can include] forest reserve ... which has been legally nullified for the purposes of doing business of agriculture... and other businesses permitted by the Government.” But vacant and fallow land includes “land on which agriculture ... business can be carried out and which was tenanted in the past and abandoned for various reasons”. Thus, shifting cultivation land can, and is categorized as VFV land, and is subject to the terms and conditions of the VFV Land Law, which includes the issuance of permits for “agriculture; livestock breeding; mineral production; [or] other lawful businesses permitted by the Government to “investors” or government departments. Rights to cultivate land categorized as ‘vacant, fallow or virgin’ (VFV Land) can be allocated by the VFV Central Committee under the VFV Land Law.

Shifting cultivators, who are overwhelmingly from ethnic minorities, thus have no land tenure security if their land is classified as VFV Land, which is almost inevitable. Although paragraph 52 (b) of the VFV Law provides for ensuring that local stakeholders are not unfairly or unjustly dealt with if there is sound evidence that the land had long been the cultivated lands of the stakeholders, there is no definition of what constitute “sound evidence”, and few examples of this paragraph being acted upon. The **Farmland Rules (2012)**3 outline a process for farmers to apply to MOALI to convert VFV land to Farmland, but there is no corollary process outlined in the VFV Rules, and as this process requires accessing the Union level Central VFV Committee, it is practically out of reach for community-level farmers.

Under these circumstances, it is not surprising that the VFV Law is viewed as being a mechanism for “land grabbing” by the government. Similarly, the **Forest Law** can be viewed in the same way. The Law of 1992 permitted the Minister of MONREC to establish a Forest Reserve by appointing a Forest Settlement Officer, whose role was to inquire into the affected rights of the public and to carry out demarcation of the reserved forest and, “after consideration of the report”, publish a notification constituting a reserved forest. The new Forest Law, passed in 2018, describes essentially the same process, except that a committee is formed under the lead of the Forest Settlement Officer, including community

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1 Namati, *Evidence is not enough to secure land rights in Myanmar*, 2017.
2 Transnational Institute, February 2015, Linking Women and Land in Myanmar. Recognizing Gender in the National Land Use Policy.
3 Farmland Rules (2012), Section 35.
representatives and technical experts. Neither the old nor the new law specify that the notification process would be terminated in the event that rights were found to be adversely affected, nor that the [free, prior and informed] consent of the affected communities is required. Thus, rural communities view the Forest Law also as a mechanism for government land grabbing.

Recognizing past injustices in the process of registration of reserve forest, in 2010 the Forest Department started to de-gazette land that had more than 50 households living or working on it. The land was de-gazetted from reserved forest to settlement land, which falls under the purview of the General Administration Department (GAD) of MOHA. The final step for land users to gain secure tenure would then be additional re-classification of land on which they are cultivating as farmland; but it is unclear whether this final step as taken place in any cases.

There are some provisions for communities practicing traditional cultivation systems to gain some degree of tenure security. For example, the Community Forestry Instructions (2016) allow for the designation of forest land “traditionally managed by the local community” as a Community Forest, at the discretion of local forestry officials. Similarly, the new Biodiversity Conservation and Protected Areas Law (2018) recognizes a new category of protected area – “Local Community Protected Areas”, which may be recognized by the Director General of the Forest Department, with the approval of MONREC. However, the (draft) Rules supporting the new Law are deficient in a number of ways. Firstly, the process for securing free, prior and informed consent from the communities affected is potentially subject to manipulation (i.e., not free), but more significantly the Rules anticipate a Forest Officer or Park Warden delegated by the Director General shall supervise the Supervisory Body established for a Local Community Protected Area, which can obviously be interpreted to mean that the land is now under the authority of the Forest Department.

The risks posed by these legal documents is exacerbated by the fact that Cadastral maps in Myanmar are severely outdated. A third to a half of the rural population do not have formal land rights or documentation, even though they may have a legitimate “legalizable” claim to the land they live and work on. The OneMap Myanmar project, which receives technical support through Swiss Cooperation, seeks to create an online open access spatial data platform on land. This project is closely related to REDD+ implementation as it looks at any type of land including farm land, forest land and Vacant, Fallow and Virgin land. This project will hopefully bring a meaningful understanding of land mapping and record precisely land areas. The project will help to develop a centralized land data management system in addition to influencing decisions regarding new laws and regulations.

The major opportunity to rectify the current situation is presented through The National Land Use Policy, which was finalized in 2016 after two years of intensive and inclusive consultations and is the most progressive document in recognizing customary use rights. Among others, the Policy stipulates that the process of land use planning (to be carried out by newly established Land Use Committees) should be conducted in a participatory manner and protect all land use rights, whether they are registered or not registered. It further requires that any proposed changes in land use should be made based on an

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4 One Map Myanmar (OMM) is supported through technical and financial inputs from the Swiss Center for Development and Environment. OMM is supporting three working groups of the NLUC with policy and capacity development. Specifically it is working to promote Consistency of land records, maps and land registration systems among all Union level ministries and departments; Ensuring the stakeholders access and use to precise and correct information; Production of precise boundary maps, land types and land classification systems in order to undertake the registration of legal rights, conflict reduction and resolution in relation to land use, land allocation and land use change; and in development of long term land use plan in accordance with National Land Use Policy, apply the amendment from the proposed land use plan and maps.
understanding of their potential impacts on existing livelihoods, land use and land tenure rights. The status of the National Land Use Policy under the incoming NLD administration was unclear for some time, until the establishment in January 2018 of the National Land Use Council (NLUC), whose mandate is to implement the objectives of the NLUP and to draft a new National Land Law and regulations to resolve the fragmented legal framework related to land. Chaired by Vice President II, the NLUC includes representatives from the country’s most powerful ministries. The establishment of the NLUC is a promising development, though at the same time it adds additional uncertainty to the legal and policy framework governing land, natural resources, and related investments in Myanmar. Some laws already under revision in Parliament by the time the NLUC formed include: a new Land Acquisition Law; amendments to the Vacant, Fallow, Virgin Land Law; and amendments to the Farmland Law.

Recommendations:
➢ The provision of secure tenure of land and resources is central to a REDD+ programme that can achieve significant and sustainable emissions reductions. Therefore, the focus of the REDD+ Programme should include:
   • Accelerate the implementation of the National Land Use Policy, especially with regard to the recognition of customary land tenure; in the interim, design REDD+ PAMs to avoid negative impacts on groups without documented land rights; To increase efficient allocation of suitable land for different uses, which will promote sustainable economic development.
   • Suitable mechanisms to compensate local stakeholders in the case of use restrictions or prohibitions of use affecting their rights should be developed, setting up a fair and transparent process that takes into account the needs of vulnerable groups.
   • Support to the development of new Forest Rules that address weaknesses and gaps in the Forest Law of 2018,
   • Support to the development of Biodiversity Conservation and Protected Areas Rule that address weaknesses and gaps in the Biodiversity Conservation and Protected Areas Law of 2018;
➢ The REDD+ Programme should also support recognition of land under customary tenure through registration as community forests or Local Community Protected Areas (the latter subject to the BCPA Rules being satisfactorily developed);
➢ Related to this, the REDD+ Programme should also investigate the potential for land under customary tenure being recognized as an “other” category of reserve forest, under the jurisdiction of the community.
➢ Support development of policies to protect small (local) farmer livelihoods to encourage small farmers in their agricultural activities (access to market / economic activities for sustainable practices)

2.2 CEASEFIRE AGREEMENTS AND PARALLEL LAND MANAGEMENT SYSTEMS

Post-independence Myanmar was envisioned to be a “Union” of multiple nation-states that had never previously been fully unified. The British colonial administration made a clear distinction between lowland

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5 NLUC members are MONREC, MOHA, Ministry of Defense (MOD), MOALI, Ministry of Transport and Communication (MOTC), Ministry of Electricity and Energy (MOEE), MOPF, MOC, Union Attorney General’s Office, and Chief Ministers of State/Regional Governments
6 There are at least two competing versions of a new Land Acquisition Law being considered behind closed doors, though only one has been released publicly.
areas, and the ethnically complex and less economically attractive upland areas of the country. British administration in the lowlands was progressively centralized, limiting the authority of local power-holders, whereas in the uplands, local leaders were allowed considerable autonomy in return for tax payments.

Reflecting these arrangements, post-independence priorities for the different ethnic groups diverged significantly. The result was that grievances related to the first constitution saw the country descend into war in 1948, its first year of independence. Subsequently, through 49 years of military rule, armed conflict continued in Myanmar’s non-Bamar regions, as successive regimes further centralized all functions of government, and ethnic armed actors established autonomous enclaves in their areas.

During this period, a bewildering series of ceasefire agreements – some bilateral, others multi-lateral; some with the Union government, others with state or regional governments - were reached, and mostly subsequently broken. In 2015, the Thein Sein government signed a “National Ceasefire Agreement” (NCA) with, initially, eight Ethnic Armed Organizations (EAO’s), with two more signing later. The NCA seeks to achieve a negotiated settlement between the government of Myanmar and non-state EAO’s and consists of seven chapters covering the terms of ceasefires, their implementation and monitoring, and the roadmap for political dialogue and peace.

In the context of REDD+, Article 25 (Chapter 6: Future Tasks) is of special importance since it acknowledges that EAO’s have been responsible for development in their areas, and commits:

“We [Union government and EAO’s] shall carry out the following programs and projects in coordination with each other in said areas:
... (2) Environmental conservation”

To some extent the NCA conflicts with Myanmar’s current domestic law and constitutional framework and practice, since the recognition of authority of EAOs to administer development, environment, and security matters in their areas is inconsistent with the centralized vision of the 2008 Constitution. Nevertheless, the NCA has been presented as a binding legal agreement by its signatories, including ratification by the Myanmar Parliament. Moreover, there is a long history of parallel governance systems being established in ethnic-controlled or mixed-control areas. For example, the Karen National Union (KNU), has its own investment permitting/licensing systems as well as land use policy, and forest policy.

There are no examples so far of Article 25 being implemented in practice. However, a policy decision that REDD+ will be implemented at a national scale (Myanmar’s initial Forest Reference Emissions Level and draft National REDD+ Strategy) has already been made, meaning that REDD+ PAMs should be implemented wherever the relevant drivers occur.

The conflict between a centralized vision engendered by the 2008 Constitution and a more devolved vision of the NCA is seen in questions related to whether the Union Forest Policy applies throughout the territory of Myanmar, or whether EAO Forest Policies (where they exist) apply. Similarly, there are multiple processes for registration of community forests or protected areas in territory controlled by the Union government and that of some EAO’s. Since the overall goals for forest management (conservation and

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7 Joliffe, K. 2015. Ethnic Armed Conflict and Territorial Administration in Myanmar. The Asia Foundation
8 International Human Rights Law Clinic, Legal Opinion regarding abuses against civilians in non-ceasefire areas as potential violations of the Myanmar Nationwide Ceasefire Agreement, (Harvard University: Harvard), 2016.
10 http://karennationalunion.net/index.php/burma/departments/forestry
sustainable management) do not fundamentally differ between the Union government and most EAO’s, any differences in policies or procedures should be largely superficial. However, this is not helped by the differing vintages of the policies (Union government Forest Policy: 1995; KNU Forest Policy: 2018).

The future return of internally displaced persons from the ongoing conflict presents additional challenges. The Natural Disaster Management Law (2013) includes violence and armed insurgencies as “natural disasters” and compels the Myanmar government to take steps to restore livelihoods and environment of those affected. Though this law has not yet (to our knowledge) been used in Myanmar to advocate for land rights for IPs, it is possible that at some point it could be used in this way. Amongst other social priorities for the distribution of genuinely vacant land is land redistribution to “landless” individuals—a core part of the NLD’s 2015 campaign promise.

REDD+ has the potential to serve as a catalyst for strengthening implementation of the NCA, through coordinated implementation of relevant PAMs between the Myanmar government and EAOs that are parties to the NCA.

**Recommendations:**
- The extent to which Union government and EAO Forest Policies and community forest and protected area registration processes differ should be analyzed to serve as a basis for harmonization of the policy and regulatory documents
- Opportunities to seek initial collaboration on PAM implementation in favourable conditions and circumstances can serve to build trust and confidence, leading to strengthening of interim arrangements for parallel or coordinated environmental management, security, and justice.

**2.3 OVERLAPPING MANDATES AND CONFLICTING POLICIES MAKE LAND USE PLANING DIFFICULT**

As for most other countries, government functions in Myanmar are heavily “siloed”, with relatively little horizontal communication across agencies. There are over 30 laws governing land use in Myanmar with more than 20 different government departments responsible for land administration. There are many competing interests for the distribution of land, which the government has to some extent tried to arbitrate through a rigid (though outdated) land classification system. This phenomenon has previously been reported in another analysis commissioned by the UN-REDD Programme: the “Institutional and context analysis: Engagement of key government agencies in REDD+ in Myanmar” (August 2016). The key findings of that analysis that are pertinent here are:

> Ministries are all formed in a hierarchical system with many layers of management procedures. Not all ministries have the vertical system from central to local level ...

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11 2013 Natural Disaster Law: 3d) conserve and restore the environment affected by natural disasters; e) provide...livelihood programmes in order to bring about better living conditions for victims. And 5f) leading for the systematic implementation for rehabilitation and reconstruction works by identifying the steps in order to resume agricultural, economic, and livelihood activities...

Horizontal structure. For each department and even from individual staff perspective, rules and regulations are sometimes specific for a particular ministry and not well integrated with other sectors. Hence, collaboration with other sectors tends not to be an attractive alternative and it implies moving into a field where unfamiliar rules and regulations apply. Career options are also mainly open within the same agency and cross-sectorial competence is generally not a merit ... From the point of view of departments driving collaboration projects, like in the case of the Forest Department in REDD+, this makes collaboration with other departments difficult. The issue is severely exacerbated by the fact that technical staff is not necessarily selected for technical meetings and those assigned to policy meetings are not necessarily empowered to make policy decisions.

... The rotation system within ministries impedes the building of long-term collaboration. Uncertainty about which unit they would be moved to is prevalent, as the mechanism of rotation does not work in a transparent manner. Staff would not know when and why he/she should be moved to another department. The decision is normally made by an internal personnel committee in each department and ministry. Therefore, it is difficult to develop a base for collaboration between departments built on personal relations.

Vertical structure: Interviewees often refer to the seniors in their agency as people to decide and delegate on which tasks should be given to whom and it is clear that power is concentrated in the hands of high-ranking managers. Hence, decisions about the institution's direction, policy, personnel decisions, planning, financial and other important matters are always made by the highest-ranking leaders. Decision-making is based on rank rather than competence. Hence, if for instance a director is absent, the deputy will not make decisions. Instead, a director from another department will be called in as decision-maker ...

Such decision-making mechanisms at all levels, from Union to local/township level, slow down public management and tend to allocate work rather than responsibilities to the staff. The latter is particularly detrimental to horizontal cross-sector collaboration. The staff take no risk and always look to their seniors for all decisions ... Agency activities are ‘silied’ and staff and leadership makes few or no attempts to seek cooperation outside the department in which they are operating. This in turn rests on an institutional culture in which staff do not see cooperation as an opportunity, they are not encouraged by senior staff to seek solutions outside their departments and hence, we can conclude that in the prevalent institutional culture and with the present incentives in place, cross-sectoral collaboration has less value than other institutional concerns.

There are numerous examples that illustrate the contradictions and ambiguities that arise from “silied” policy making. For example, the Forest Policy (1995) identifies shifting cultivation as an improper land use practice, the National Land Use Policy (2016) identifies it as a legitimate land use practice from of customary livelihood perspective that should be respected. Revisions to the Community Forestry Instructions in 2016 represent a hybrid view, in that they removed some of the restrictions on shifting cultivation, in order to protect customary land rights and protect community decision-making on land use, and allocation, and opened a legal avenue for community forest management and commercialization.

Other symptoms of the problem include:
Under the *Myanmar Investment Law* (2016) the Myanmar Investment Commission (MIC) has an important role to play in setting policies that incentivize certain types of investment. MIC Notification 3/2017 and MIC 13/2017 lay out ‘Promoted sectors’ and ‘promoted geographies’. Investments in these areas receive tax benefits. Promoted sectors currently include thirty agricultural and four plantation/conservation forest related activities. The least developed geographies prioritized for investment, include 14 townships in Kachin State, seven each in Kayah and Kayin, nine in Chin, 35 in Sagaing Region, four in Tanintharyi, five in Bago, 13 in Magway, two each in Mandalay and Mon, 17 in Rakhine, 42 in Shan and 10 in Ayeyarwady. There is no indication that environmental or conservation priorities were taken into account when identifying these areas or prioritized sectors; for example, Kachin, Tanintharyi, Chin, and Sagaing have the largest remaining intact forest in Myanmar and prioritizing them for agricultural investment may not be conducive to the conservation of these forests.13

Management of land acquisition falls under the mandates of the MOALI, MONREC and MOHA, with varying degrees of coordination at union, state/region, district and township levels. Broadly, MOALI maintains the land registry, through conducting land surveys, providing LUCs, and maintaining all land records. At the union level, MOALI also chairs the Farmland Administration Bodies (FAB), which, under the 2012 *Farmland Law*, have authority in designating lands as farmland. MONREC reviews all Environmental and Social Impact Assessments (ESIAs) for management and mitigation of land acquisition impacts. It also manages forest land and community use rights in protected areas.14

The GAD under MOHA is a member of the Vacant, Fallow and Virgin Land Committee (VFVLC) at the Union level, which has decision-making power in designating land as “unused”. GAD has branches at the state/region, district and township levels. At the district and township levels, GAD convenes and chairs the land compensation committee, which is responsible for determining compensation during land acquisition. The *Vacant, Fallow and Virgin Land Law* (2012) regulates concessions on land designated as vacant, fallow or virgin by the government. A company awarded a concession has a certain amount of time to use the land or it is meant to revert to the government. Section 16b of the law states that “in order to avoid damage to the forest land managed by the government, and in order to avoid damage to natural habitats, the Committee must... request remarks from the Ministry of Conservation and Forestry and other relevant ministries.” However, the weight that these remarks and advice may have is not clear, unless the land use arises to the level that requires an EIA assessment in accordance with the *EIA Procedures* (2015).15 An additional complexity related to VFV land is that land is under the management of MOALI but the trees are under the management of the Forest Department. Paragraph 10 a (i) of the Vacant, Fallow and Virgin Land Law establishes ceilings on the size of concessions that can be granted – 5,000 acres per concession for agricultural uses, which may be extended once 75% of the land has been planted up to a maximum of 50,000 acres. These limits were reduced to 3,000 acres at a time and 30,000 acres maximum through the Law Amending the

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13 *Losing a Jewel—Rapid Declines in Myanmar’s Intact Forests from 2002-2014* (FLEGT in Myanmar), 2016.
14 Restrictions on land use in protected areas are governed by the 1992 Forest Law, the 1995 Forest Rules and the Community Forest Instructions (CFIs) (revised in 2016).
15 According to Chapter 3(c) of the EIA Procedure, the Department shall decide in accordance with Annex I “Categorization of Economic Activities for Assessment Purposes” and article 25 and 28 in order to designate the project as i) an EIA Type Project ii) an IEE type project iii) a non IEE or EIA Type Project, and therefore not required to undertake any environmental assessment. An unofficial translation of the EIA Procedure and Annex I can be found: [http://www.myanmar-responsiblebusiness.org/resources/environmental-impact-assessment-procedures.html](http://www.myanmar-responsiblebusiness.org/resources/environmental-impact-assessment-procedures.html) (Accessed: 13 May 2018).
Vacant, Fallow and Virgin Lands Management Law of 2018. There are examples of these limits being ignored\(^\text{16}\).

➢ Different levels of government authorities have the mandate to assess and approve investments, depending on the amount, type, and nationality (foreign or national) of the investor. Under the Myanmar Investment Law (2016) there is also a role for MIC to play in approving land concessions and leases.

*Chapter 2.3) Investment permit will be required for a) if it is made in [various sectors, including] extractive/natural resources ... sectors [and has an expected value exceeding $20 million ... c) it is made in a border region or conflict affected area by Foreign Investors or by Myanmar investors with expected value >$1 million ... e) conducted across the States or Regions f) more than 1000 acres of land if agricultural investment g) more than 100 acres of land if non-agricultural purposes...*

➢ Regional and state Investment Committees can assess and accept Land Rights Authorization applications under US$5 million, as outlined in Directorate of Investment and Company Administration (DICA) notification 25/2017. The Committees are required to consult with related departments and organizations, check that key information is included, and applicants must also submit: the draft of an agreement for leasing out the land or building, proof of land/ building ownership; an approval from relevant regional/ state government departments or bodies for the change in land use required by the investment project.

➢ The Myanmar Investment Rules' (2017) further complicates the situation (Section 132):

*If the type of land which does not locate in a designated zone, does not match with the primary objective of the proposed Investment, the recommendations of the relevant State or Region Authority shall be obtained...The relevant Region or State Authority deems that it is appropriate to carry out the proposed investment on such land, it may grant the Investor Land Rights Authorization even though the type of land does not match with the primary objective of the proposed investment. Such grant shall not be regarded as exemption from the obligations of relevant laws.*

The “relevant Region or State Authority” is unclear. If it is interpreted to be the State/Regional Investment Committees, MONREC and MOALI-led planning processes will be undermined. If the rules are instead interpreted to be that the Ministries are the “relevant authorities,” retaining decision-making powers about conversion of land type, then this rule is unclear about which law the concession must follow—that of the original land type or that of the new classification.

This disjointed legal and policy space is further compounded by a variety of other political and political economy factors. Though the country is now ostensibly led by a civilian, democratically elected government, the Military retains control over the Constitution, 25% of Parliament, and key Ministries, such as the Ministry of Border Affairs and the Ministry of Home Affairs, which through its General Administration Department, is the government’s primary interface with communities. At the same time, the country is undergoing a process of devolution, as first outlined by the 2008 Constitution, and

reinforced through a 2015 Amendment to the Constitution, which gives further rights and responsibilities to the Regional and State Governments.

**Approaches to resolve the issues**

At the policy level, the government recognized these competing mandates and confusion as far back as the 1995 **Forest Policy**, which highlights “The ex-sectorial policy conflicts often occur because of inadequate consultation between responsible agencies like agriculture, mining, etc. as little or no effort has been made for harmonization of policies which have significant interfaces.” However, no progress has been made since then to streamline policies related to natural resource and land use. For example, the **National Environmental Policy (NEP)** (2018) aims to mainstream environmental and social impact management into the policy agenda for key sectors such as electricity and energy, agriculture, fisheries, mining and forestry. For these sectors, it gives MONREC the mandate to regulate cross-sectoral issues, like biodiversity, resource management, and land. However, MONREC’s mandate is in conflict with the new National Land Council, which is meant to have the mandate of land use. It is also unclear at this stage how strong of a regulatory role MONREC will have on these issues, especially over conversion between land types, which may open up or close space for conservation and environmental uses.

In the context of climate change, the **Myanmar Climate Change Strategy and Action Plan (MCCSAP) 2016-2030** led to the creation of the “National Environmental Conservation and Climate Change Central Committee” (NE5C), chaired by the Vice President of the Government of Myanmar and supported by six sub-committees, including a sub-committee on climate mitigation and adaptation. NE5C’s roles are:

- Provide overall policy guidance throughout the implementation of the MCCSAP, and
- Coordinate the policy inputs from the different Ministries
- Monitor the overall progress of the MCCSAP

These are obviously somewhat limiting, and there is a lack of consensus on the extent to which the NE5C approves documents such as those related to the Warsaw Framework on REDD+.

The MCCSAP itself is also limited in its objectives:

- To increase the adaptive capacity of vulnerable communities and sectors so that they are resilient to the adverse impacts of climate change, and
- To create and maximize use of opportunities for potential sectors to pursue a low carbon development pathway by ensuring development benefits to communities and all economic sectors.

These are supported by six priority action areas: a) integrating climate change into development policies and plans; b) establishing institutional arrangements to plan and implement responses to climate change; c) establishing financial mechanisms to mobilize and allocate resources for investment in climate smart initiatives; d) increasing access to technology; e) building awareness and capacity to respond to climate change; and f) promoting multi-stakeholder partnerships to support investment in climate smart initiatives.

REDD+ being inherently cross-sectoral and requiring multi-stakeholder cohesion, a National REDD+ Taskforce has been established with the support of the UN-REDD Programme. With membership from four ministries, environmental CSO’s, indigenous peoples’ organizations and private sector entities, the primary role of the Taskforce is to provide policy advice and to enhance coordination among stakeholders.
However, members of the Taskforce are mid-level personnel, which limits its capacity to take policy decisions.

**Recommendations:**
- The National REDD+ Taskforce should establish a relationship with the NE5C, so that issues requiring policy decisions, especially those related to coordination across government agencies, can be addressed;
- Given the limited impact of the MCCSAP in promoting greater coordination across ministries, consideration should be given to the development and passage of a Climate Change Law. Annex 1 provides a list of countries with climate change laws – some of these can be used to develop the structure and content of a climate change law relevant to Myanmar.

2.4 **AGING POLICIES DO NOT REFLECT PEOPLE-CENTRIC GOALS FOR NATURAL RESOURCE GOVERNANCE**

The Union Forest Policy dates from 1995. The Union Environmental Policy dates from 1994 (although a revised policy is currently before parliament).

These policy documents therefore date from a time when modern “people-centric” natural resource management goals were not widely adopted. This is reflected, for example, in the 10-year District Forest Management Plans (there are 63 such plans, nation-wide), which place most emphasis on production with relatively little attention to social needs of local communities.
Developing effective forest policy - A guide", provides guidance on what constitutes a forest policy and the circumstances under which it should be amended. The Box below highlights that policies should be general to be able to adapt to differing conditions, in contrast with laws, which must be specific.

<table>
<thead>
<tr>
<th>Main differences between forest policy and forest law</th>
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<tbody>
<tr>
<td>Forest policy</td>
</tr>
<tr>
<td>Can be adopted and amended through different</td>
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<tr>
<td>procedures and by different bodies, according to</td>
</tr>
<tr>
<td>each specific situation</td>
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<tr>
<td>Non-legally binding</td>
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<tr>
<td>Provides guidance by specifying visions, goals and</td>
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<tr>
<td>how to reach them</td>
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<tr>
<td>Can be general so it can be adapted to meet</td>
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<tr>
<td>different and changing circumstances</td>
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<tr>
<td></td>
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<tr>
<td>Soft mechanisms to deal with non-compliance</td>
</tr>
<tr>
<td>Amended by those bodies that adopt the policy,</td>
</tr>
<tr>
<td>through their respective procedures</td>
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</tbody>
</table>

Circumstances under which policy changes should be considered include:

- A shift in the wider policies of a country or a new administration with different priorities. It is often a new party in power, leading policy-makers or government officials who are willing to review and reform current policies.
- A review or anecdotal evidence revealing that formal and ad hoc policies are mismatched with realities on the ground.
- Natural crises such as floods, economic turmoil or conflicts over forest use, which call attention to specific problems.
- The threat of losing authority over certain matters .... Include[ing] climate change
- International commitments and the funding opportunities associated with them... include[ing] the United Nations Framework Convention on Climate Change

Obviously, several of these conditions apply in the case of Myanmar. Furthermore, a new Forest Law has been passed in 2018, and Rules in support of this law will shortly be developed. Whereas the 1995 Forest Policy post-dated the previous Forest Law (1992), it is not relevant to the new Forest Law. Thus, all indications are that a revision of Forest Policy is essential.

One critically important area which largely lacks any official policy, aging or otherwise, is access to information. Having experienced a lengthy period of military dictatorship, attitudes towards information in Myanmar are extremely negative – which, of course, provides opportunities for corruption and contributes to a lack of accountability.
A Right to Information Bill was introduced in 2016, but did not pass\(^\text{17}\), meaning that presently there is no legal framework promoting access to information. An effective national REDD+ mechanism can only be built on a foundation of access to information, since fair and equitable sharing of benefits assumes that the information used in determining shares is available to all. While the development of a comprehensive environment of access to information is beyond the scope of the REDD+ Programme, the necessary conditions for REDD+ can and need to be developed independently.

**Recommendations:**

- A new Forest Policy should be developed, reflecting modern people-centric development priorities;
- Ideally in the context of a Climate Change Law (see above), or at least within a new Forest Policy, the guarantee of access to information on REDD+ (including performance, application of safeguards, amounts, sources and uses of REDD+ finance) must be incorporated. This has links to a REDD+ “grievance recourse mechanism” (see separate report);
- The Rules supporting the new Forest Law and Biodiversity Conservation and Protected Area Law should address gaps in the laws themselves and incorporate international best practice;

### 2.5 HUMAN RESOURCES OF GOVERNMENT AGENCIES LACK THE SKILLS FOR MODERN, DEMOCRATIC GOVERNANCE OF NATURAL RESOURCES

The Forest Department has more than 15,000 staff, nationwide, including over 550 “officers”, who have been trained to some level in forestry\(^\text{18}\). While younger graduates, especially those trained overseas, may have been exposed to modern concepts in natural resource management, most of the older, more senior staff have not only not been as exposed to such concepts, but have also worked for many years within a system that was focused mainly on forest production.

Under such circumstances, it is unrealistic to expect changes in law, policy or regulations to be reflected immediately in the capacities of staff to implement them. An example of this is seen in the changes to community forests. The Community Forest Instructions of 1995 were established for the “purposes of regaining environmental stability and addressing basic needs of local communities, active participation by the rural population is urgently needed to plant trees in barren lands and to reforest degraded areas.” Although the Instructions did provide for “... exploiting of forest products to obtain food supplies, consumer products and incomes”, they were clearly focused on the subsistence needs of local communities.

The revised Community Forestry Instructions of 2016 introduced the concept of Community Forest Enterprises (CFE’s), by which user groups “can produce forest products in the commercial scale, make value added and free trade.” The role of the Forest Department in supporting CFE’s includes:

- Capacity building of local communities by providing technical and socioeconomic trainings
- Development of community forest product-based business organizations
- Facilitation between producers and customers to secure markets

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\(^{17}\) [http://freeexpressionmyanmar.org/right-to-information-bill/](http://freeexpressionmyanmar.org/right-to-information-bill/)

\(^{18}\) [http://www.fao.org/3/a-az283e.pdf](http://www.fao.org/3/a-az283e.pdf)
➢ Assistance in formation of a national level association or networks through the formation of village, township, district and state/regional level associations or networks, in order to strengthen Community Forestry or Community Forest-based Enterprise
➢ Facilitation of mobilization of capital investment for Community Forestry
➢ Collaboration to get certification by international organizations for standardization, for wood and non-wood forest products and ecosystem services derived from Community Forests
➢ Operation of ecotourism through CFE’s.

Yet most support to Community Forests is delivered through District Forest Offices, which have neither the numbers of staff nor staff with the required capacities to provide this support.

Recommendations:
➢ Capacity building of institutions providing support to policy implementation needs to focus on introducing the necessary capacities (skills and knowledge) required to implement modern, people-centric policies. While this applies especially to institutions of the Union government, recognition that much forest land is under the de facto administration of other, ethnically-based institutions needs to be taken into account;
➢ In the spirit of multi-stakeholder cooperation in addressing climate change (e.g., MCCSAP Action Area # 6: “Promote multi-stakeholder partnerships to support investment in climate smart initiatives”) conditions need to be established to mobilize more non-governmental resources in support of policy implementation;

2.6 ADDRESSING AND RESPECTING THE CANCUN SAFEGUARDS

The degree to which the safeguards for REDD+ agreed under the UNFCCC are already addressed by existing PLRs in Myanmar needs to be considered. For each Cancun safeguard, the following information is provided:

• Overview of key PLRs that relevant to addressing the safeguard, and their main provisions;
• Assessment of whether the existing PLR framework a) fully covers all elements of the safeguard, and b) covers all possible types of REDD+ activities, or whether there are gaps in coverage;
• Recommendations resulting from a PLR review workshop.

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

Key PLRs and their provisions:
• The Basic Principles of the 1992 Forest Law require that the Law should be implemented in accordance with the government’s forestry and environmental conservation policy, as well as international agreements relating to the conservation of forests and of the environment. These principles should guide the work of all forest sector government institutions.
• The 1995 Forest Policy calls for the establishment of a Forest Policy Advisory Board under the Ministry in charge of Forestry (currently, MONREC), in order to review forest policy implementation and establish coordination with other sectors including harmonization at policy interfaces.

Gaps in information on the PLR framework:
No specific information gaps are identified for this safeguard.
Recommendations:

- Develop coordination mechanisms to ensure REDD+ PaMs are designed in line with the safeguard.
- Identify priority national policies/programmes and international agreements with which REDD+ PAMs should be aligned.

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

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

1) Whether the existing PLR framework is sufficient to ensure that REDD+ PaMs are implemented in a transparent and effective way; and

2) Whether REDD+ PaMs can strengthen the PLR framework and its implementation in order to enhance transparency and effectiveness in national forest governance.

Key PLRs and their provisions:

- **Access to information / transparency**: A number of Myanmar laws contain requirements on making specific types of information on land and forest management publicly available (e.g. the 1894 Land Acquisition Act in relation to land that is required for public purposes). Under certain conditions, there is also provision in the PLR framework for local stakeholders to request information; for example, they may ask the Land Records Department to provide them with information (including maps) on the status of land in which they have a recognized interest. The National Land Use Policy stipulates that all individuals, communities and organizations should have equal rights to access accurate and complete information related to land, and the One Map Myanmar initiative has been tasked with the development of a unified land data management system (including land cover data, land records, etc.) to enable this. There is currently no comprehensive law on the right to information, although a draft was produced in 2016.

- **Accountability**: Procedural requirements supporting accountability exist in relation to the granting of licences for the extraction of forest products by commercial enterprises (under the 2018 Forest Law), on approving changes in the status of land for the benefit of foreign investors (e.g. in order to allow conversion, under the 2017 Investment Rules), on due process relating to land conversion (under the 2012 VFV and Farmland Laws) and on conducting Environmental Impact Assessments (2015 EIA Procedure). The National Land Use Policy sets out procedures (including stakeholder consultation and investigation of existing land uses) for the land use planning process to be applied by the National Land Use Council and the subnational and local Land Use Committees, however these committees and the land use planning process itself are not yet operational. Community Forest User Groups can have their use certificate revoked if they fail to comply with the Forest Law, with the rules and obligations set out in their management plan or with their duties on record-keeping and reporting. There is no comprehensive legal framework on public procurement.

- **Land tenure**: The Farmland Law (2012) sets out how farmers can apply for land use certificates, giving them the right to cultivate the land with either seasonal or perennial crops. There is no corresponding process for the registration of customary land tenure or communal grazing and forest rights. Rights to cultivate land categorized as ‘vacant, fallow or virgin’ (VFV) Land can be allocated by the VFV Central Committee under the VFV Land Law. Rights to forest land can be given a legal status by obtaining a community forestry certificate under the Community Forestry Instructions (2016), while the establishment of plantations can be granted through permission under the Forest Law. The National Land Use Policy (2016) aims to harmonize land-related legislation; its objectives include strengthening
land tenure security for people in both urban and rural areas, and recognizing and protecting customary land tenure rights and procedures of the ethnic nationalities. However, the National Land Law foreseen under the policy has not yet been passed.

- **Cross-sectoral coordination**: because different categories of land in Myanmar come under the authority of different ministries and are defined and regulated in different laws, coordination across sectors is of particular importance to ensure consistency in governance. The 2012 VFV Land Management Rules require cross-sectoral consultation before applications to work VFV land are approved “in order to avoid damage to the forest land managed by the government, and in order to avoid damage to natural habitats”. The National Land Use Policy stipulates the establishment of the National Land Use Council, which is expected to take on a relevant coordinating role and over the long term work towards the harmonization of the legal framework on land use and the classification of land, but has only recently taken up its work. For coastal areas (where coordination in relation to the protection and management of mangrove forests is a key issue), some work has been carried out recently towards the development of a strategy for marine spatial planning, and a National Coastal and Marine Resources Management Committee has been set up.

- **Devolution**: Myanmar is currently undergoing a transition towards more devolved governance, and some responsibilities have been delegated to the recently formed state or region level governments. In some cases, this has led to ambiguities about the separation of roles in relation to control over natural resources. According to the 2017 Investment Rules, duties relating to the authorization of land rights can be assigned to a State or Regional Committee.

- **Preventing corruption**: The 2018 Forest Law makes provision for legal prosecution of any forestry staff members engaged in corruption or breaking the law. The 2013 Anti-Corruption Law further sets up a commission supported by working committees and working groups that is tasked with investigating and preventing cases of bribery.

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

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

- Develop mechanisms to ensure that stakeholders are comprehensively informed about plans for REDD+.
- Accelerate the implementation of the National Land Use Policy, especially with regard to the recognition of customary land tenure; in the interim, design REDD+ PAMs to avoid negative impacts on groups without documented land rights.
- Strengthen cross-sectoral coordination and coordination between different levels of government on land use and fully operationalize the existing coordination bodies.
- Ensure that PAMs to improve law enforcement do not disproportionately affect vulnerable stakeholders.
- Identify options to address the capacity gaps and implementation constraints described above.

Safeguard c: Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples

Key PLRs and their provisions:

- **Definition of “indigenous peoples”**: A definition of indigenous people is provided in the 2015 EIA Procedure (“People with a social or cultural identity distinct from the dominant or mainstream society, which makes them vulnerable to being disadvantaged in the processes of development”). Other related terms used in the regulatory framework include “national races”, “ethnic nationalities” and “ethnic groups”. The first two of these are translations of the terms used in the 2008 Constitution, and refer to a list of the ethnic groups that are officially recognized in Myanmar. (The term therefore includes the majority Bamar ethnic group.) The term “ethnic groups” has been defined in the 2015 Ethnic Rights Protection Law as “ethnic groups who have resided continuously within the Republic of the Union of Myanmar, stipulating as the original State. In this expression, naturalized citizens and associate citizens are not included”. These terms are thus not synonymous with the definition of indigenous people as provided in the EIA Procedure, and are translated differently in Myanmar language. It is reported that some ethnic groups have questioned whether the term “indigenous peoples” should be applied to them. Workshop participants have also indicated that the definition of “ethnic groups” from the Ethnic Rights Protection Law is contentious, as ethnic groups may or may not be native (given e.g. the problem of displaced people), and that in their view it did not cover all necessary aspects of the concept.

- **Definition of “members of local communities”**: There is no explicit definition of “local communities” within the PLR framework. The 2016 Community Forestry Instructions specify that persons should live within around 5 miles from a given forest area in order to qualify for participation in a Forest User Group. The Instructions also set out a requirement that a person should have been resident in the area for a minimum of 5 years. Exceptions to both rules are possible depending on local conditions, especially where a forest area is traditionally managed by local people. A 5-year residency requirement is also included in the 2012 Ward / Village Tract Administration Law, if people want to access services available to local citizens. Given that stakeholders in Myanmar are familiar with such requirements, it may be useful to clarify explicitly whether a residency requirement would apply for the purposes of defining “members of local communities” in relation to REDD+ safeguards, and if yes, what it should be. Concerns have been raised
about a 5 year minimum requirement being too high in the context of Myanmar, especially in conflict-affected areas, as it might lead to exclusion of a large number of people.

• **Rights to land, territories and resources**: There is some protection of officially recognized land tenure rights (e.g. for holders of a land use certificate or other form of legal documentation) in procedures for the acquisition of land for a public purpose such as declaration of a protected public forest, reserved forest or protected area (under the Forest Law, and the 2018 Conservation of Biodiversity and Protected Areas, CBPA, Law) or as a precondition for an investment project (under the Land Acquisition Act and the Investment Rules). Procedures for settling grievances are provided in the Farmland Law (2012), VFV Land Law (2012) and to some degree in the Forest Law (1992) and the CBPA Law (2018). The Land Acquisition Act offers several options of compensation for persons with an interest in the land that has been acquired. The Farmland Rules, which regulate the work of farmland management committees, also allow for complaint cases to be made about decisions related to farmland, e.g. on the right to work a certain piece of land, and for compensation to be offered if farmland is requisitioned in the state or public interest under the Farmland Law.

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

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

A particularly difficult case is the question of customary rights for land users practicing shifting cultivation, as this practice does not receive consistent treatment under Myanmar’s PLR framework. The Farmland rules ban shifting cultivation, and the Forest Law and Forestry Policy, as well as a number of other PLRs such as the National Action Programme under the UNCCD, treat shifting cultivation as a threat to forests and the environment. At the same time, the National Land Use Policy recognizes it as a legitimate form of subsistence agriculture that should receive full consideration in the context of customary land tenure and use rights. It has been argued that the recently formed Ministry of Ethnic

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19 In some areas under the control of EAOs, land registration programmes have been carried out; the Union government may agree to recognize those (as has happened for example in the 2012 Myanmar-KNU ceasefire agreement).
Affairs could play a role in promoting the use rights of ethnic communities, but so far no related initiatives have been taken.

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

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

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

**Respect for traditional knowledge**: As described above, the World Bank safeguards procedures (which can be applied to meet the requirements of the EIA Procedure) ask for FPIC to be obtained where a project could affect critical cultural heritage of indigenous people or proposes to make use of cultural heritage, including knowledge. The 2015 Ethnic Rights Protection Law sets out the right of ethnic groups to preserve their cultural heritage, and gives the Ministry of Ethnic Affairs duties and powers to engage in development and preservation of culture and customs of ethnic groups. It also requires ethnic groups to be informed about major projects in their areas, and for coordination about these projects to take place. There are as yet no rules to implement this law. According to the 2017 Investment Law, business investments that may affect the traditional culture and customs of the ethnic groups within the Union should not be permitted, and all investors should respect and comply with the customs, traditions and traditional culture of the ethnic groups.
• **Right to benefit-sharing:** The National Land Use Policy asks for land-related laws to be amended so that persons affected by land acquisition receive the right to invest in the project for which the acquisition was made. No other relevant provisions have been identified.

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

**Recommendations:**
- Clarify whether the definition of “indigenous people” as provided by the EIA Procedure should be applied across all aspects of implementing the safeguard, or whether a new definition should be developed.
- Clarify the definition of “members of local communities”, especially with regard to a possible minimum residency requirement.
- Development of the National Land Law should be accelerated, and the situation of persons without land use certificates and traditional rights of ethnic groups should be addressed in the law.
- Suitable mechanisms to compensate local stakeholders in the case of use restrictions or prohibitions of use affecting their rights should be developed, setting up a fair and transparent process that takes into account the needs of vulnerable groups.
- An approach should be developed for the sharing of benefits from REDD+ with stakeholders, including indigenous people and local communities.
- Strengthen the provisions of the CFI by recognizing them in law, to increase their applicability outside of the forest sector.

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

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

**Key PLRs and their provisions:**
- **Definition of relevant stakeholders, and legitimacy and accountability of stakeholder representatives:** There is no definition in the PLR framework that would indicate who should be considered “relevant stakeholders” in the context of REDD+ actions. However, a stakeholder mapping for REDD+ has been conducted at the national level through the Technical Working Group on Stakeholder Engagement and Safeguards as part of preparations for the development of the National REDD+ Strategy. This could be used as a starting point to identify who should be involved in the planning and/or implementation of REDD+ PaMs, depending on the geographic scale at which they are aimed. Mechanisms for participation will likely need to be different for the planning and implementation of site-level interventions as compared to PaMs that are aimed at the national or subnational level. While direct participation of local stakeholders may be possible for site-level interventions, discussions at the national level may need to involve representatives selected through an appropriate mechanism. The currently available information suggests that there are no provisions in the PLR framework about how representatives of indigenous peoples and local communities should
be selected to ensure that they can legitimately speak on behalf of their stakeholder group. There are also no specified mechanisms to ensure that the representatives remain accountable to their group. Definitions of indigenous peoples and local communities have been discussed under safeguard c).

- Establishment of mechanisms or platforms to facilitate participatory processes during the design, planning, implementation and monitoring of REDD+ strategies and PaMs: No mechanisms or platforms specifically aimed at facilitating participation in REDD+ strategies or PaMs are mandated by existing PLRs. However, a number of platforms and working groups have been created at the national level as part of the readiness process (e.g. the REDD+ Task Force, the Technical Working Groups). For the subnational level, there are a number of existing structures and platforms that could potentially be used as a starting point, to avoid having to create new ones. For example, the interim arrangements set out by the National Ceasefire Agreement could offer a platform for engagement between the Union Government and EAOs. Building on the State/Region, district and local Land Use Committees mandated by the National Land Use Policy could also be a possibility, once these are established. According to the NLUP, the State/Region committees should include farmers’ representatives as well as representatives from all local ethnic nationalities, women, elders and relevant experts. The local level Land Use Committees will be tasked with conducting public consultation on proposed land use maps, and should therefore be in a good position to facilitate stakeholder participation. At the local level, the possibility to involve stakeholders through the recently established Township Planning and Implementation Committees, or where these do not yet exist, the Township Management Committees, could also be explored. Another option that has been mentioned by workshop participants are the Farmland Administration Bodies (FAB) which exist at the different administrative levels. However, the mandate of these bodies is focussed on Farmland, and broadening their remit might be difficult. Also, their composition is mainly made up of government officials and do not include elected stakeholder representatives except at the village tract level.

Gaps in information on the PLR framework:
No particular gaps in information have been identified for this safeguard.

Recommendations:
- Develop guidance for the identification of stakeholders and/or their representatives, and for stakeholder involvement in different types of REDD+ PAMs, respecting the principle of ‘self-identification’.

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

This safeguard includes a particularly wide range of aspects, as it covers both environmental and social impacts of REDD+, and calls both for the achievement of benefits and the avoidance of harm. Not surprisingly, the largest number of benefits and risks identified during the assessment of proposed REDD+ PaMs for Myanmar’s National REDD+ Strategy relates to safeguard e). As it is impossible to foresee all possible impacts for all potential PaMs at this stage, the focus in assessing the PLR framework is on the general availability of procedures for the management of environmental and social impacts of REDD+ actions, on capacities for their implementation, as well as on selected priorities among the identified benefits and risks.
In order to identify PLRs that can help to ensure that REDD+ actions are aligned with safeguard e), it is useful to look at the different available mechanisms for managing the environmental and social impacts of land-related policies and measures. Options to support positive outcomes exist at various stages in the planning and implementation of REDD+ actions:

- **Location of PaMs**: the impacts of a PaM often depend on where it is implemented. For example, PaMs that reduce deforestation rates will be most beneficial for biodiversity in an area with forests of high conservation value, and PaMs that entail some environmental risks (such as setting up infrastructure for renewable energies) may be less harmful if located at some distance from remaining natural forests. Social benefits can often be increased by targeting PaMs towards areas with high poverty rates or with serious socio-economic or health problems resulting from environmental degradation.

- **Design of PaMs**: the details of how a PaM is implemented can determine the level of its positive or negative impacts. For example, applying good forestry or agricultural practice, setting suitable limits for resource extraction, facilitating the inclusion of vulnerable stakeholders, setting up structures for coordination with other sectors or ensuring that workers receive training on safe handling of equipment can all help to ensure that REDD+ actions deliver the best possible outcomes.

- **Implementation, monitoring and adaptive management of PaMs**: Once the planning stage has been completed, a key question is whether PaMs are actually implemented in line with the plan (e.g. whether any agreed risk mitigation measures are being applied). Monitoring the implementation and outcomes of a PaM can help to detect any deviations from the plan; it can also show if the desired impacts are being achieved, or if any adaptations in PaM design are needed.

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

**Key PLRs and their provisions:**

- **Definition of natural forest**: There is no definition of ‘natural forest’ in the PLRs that have been reviewed, although some use the term (e.g. the 2016 Community Forestry Instructions). According to the Forest Reference Level submission, the national codes to be used for land use/cover mapping do not distinguish between natural and planted forest. If no suitable definitions are available from other appropriate sources - such as technical documents relating to the forest inventory - it will be important to reach agreement on the criteria for identifying areas that hold natural forest (and are therefore, according to safeguard e).

- **Avoiding conversion of natural forest**: There are no legal provisions in Myanmar that would amount to a ban on converting natural forest to other uses, such as plantations. However, there are different kinds of approvals that may need to be obtained for the establishment of plantations, depending on:
  1) Whether the land in question is legally Forest Land or another land type (e.g. VFV land). Conversion of forest situated on Forest Land to a plantation would not require a change in the official land
classification. According to the Forest Law, plantations\textsuperscript{20} may be established on forest land or other land at the disposal of the government through the Director General of the Forest Department with the approval of the Minister. The 2016 Community Forestry Instructions allow establishment of community forests in “degraded natural forests where natural regeneration is difficult”, although this does not imply conversion of natural forest. On VFV land that is forested, MONREC is responsible for managing the trees, but MOALI remains responsible for the land. Where a conversion is planned on VFV land, the VFV Land Committee is in charge of assessing the proposal, and is tasked with undertaking consultation with relevant ministries including MONREC before the change is approved.

2) Whether the land in question is located within a protected area, in which case all questions related to land use are managed by MONREC\textsuperscript{21}.

3) Whether the planned change in land use meets the criteria for requiring an EIA, in which case an Environmental Compliance Certificate (ECC) is needed for the activity to go ahead. The authority for approving the findings of an EIA and issuing an ECC lies with MONREC.

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

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

- Avoiding negative impacts (and enhancing positive ones) of REDD+ actions on natural forests, carbon stocks, biodiversity and other ecosystem services:

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

For REDD+ PaMs that receive funding from external sources, environmental standards and risk mitigation procedures (including monitoring requirements) may apply through the procedures of the organizations through which the funding is channelled, e.g., the Operational Policies of the World Bank. It appears that few standards or guidelines have been issued in Myanmar to prescribe environment-friendly practices for REDD+ PaMs, although the Environmental Conservation Law provides MONREC with the powers to issue environmental quality standards and guidelines and propose economic incentives and conditions for sustainable development that is compatible with environmental conservation. Existing guidelines and standards that could be relevant for REDD+ include the Criteria

\textsuperscript{20} The types of plantations regulated under the Forest Law include: commercial plantations, industrial plantations, environmental conservation plantations, local supply plantations, village firewood plantations and other plantations.

\textsuperscript{21} Restrictions on land use in protected forest areas are governed by the 1992 Forest Law, the 1995 Forest Rules and the Community Forest Instructions (revised in 2016).
& Indicators for Sustainable Forest Management and the Reduced Impact Logging guidelines. There is currently no certification system for forest products or products from plantations that addresses environment-friendly management and harvesting practices.

- **Avoiding negative impacts (and enhancing positive ones) of REDD+ actions on economic and social well-being:** Much of the information described under the previous point applies here as well. Also, some of the provisions mentioned under safeguards c) and d), such as procedures for raising grievances, can help to ensure that social considerations are reflected in the planning and implementation of REDD+ PaMs.

With regard to the consideration of gender aspects in REDD+ PaMs, the National Land Use Policy outlines equal rights of men and women in decision-making and consultation on land use (including forestry). However, this part of the policy has not yet been operationalized, and concerns have been raised that although the Farmland Law, VFV Land Law and Forest Law are gender-neutral, women and men may not have the same opportunities to exercise or claim their rights under these laws. There may be further relevant components in Myanmar’s PLR framework, such as policies for social inclusion, labour and employment-related laws or regulatory measures initiated under the National Strategy for Rural Development and Poverty Reduction. However, the information collected for the PLR review did not reveal any provisions beyond those already described.

**Gaps in information on the PLR framework:**
Some of the information gaps raised for other safeguards are also relevant to safeguard e), especially those on procedures related to land use planning, including any standards within those procedures that could ensure land use planning leads to overall social and environmental benefits and avoid risks of elite capture and dominance of short-term economic interests.

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

- Identifying particularly sensitive natural areas or areas of high value for biodiversity, ecosystem services or carbon stocks, and protecting them from harmful land use practices (e.g. by considering them in forest management plans, land use plans, etc.) – the available information suggests that this is an area where the PLR framework is quite weak.
- Sustainable agricultural practices (e.g. with regard to soil conservation, limiting use of agrochemicals, maintaining genetic diversity of crops, etc.) and consideration of social inclusivity (e.g. women, poor farmers and those without land rights) and environmental aspects in the work of agricultural extension services
- Sustainable location, establishment and management of plantations (including choice of tree species, e.g. to avoid inadvertent introduction of invasives)
- Sustainable management of activities likely to be promoted as alternative livelihood strategies, e.g. ecotourism\(^\text{22}\), use of non-timber forest products

\(^{22}\) The 2018 Biodiversity and Protected Areas Law makes reference to prescribed regulations and Standard Operating Procedures for community-based tourism and ecotourism activities. It is not clear, however, whether these have already been developed.
• Addressing environmental impacts and impacts on access to land / livelihoods from different kinds of alternative energy sources including bioenergy
• Health and safety in relation to new practices that could be promoted by REDD+ PaMs, such as use of alternative sources of energy, community forestry activities or alternative practices in agriculture
• Preventing and managing conflicts related to land use planning, protected area management, processes for tenure recognition, etc.
• Promoting Corporate Social Responsibility measures and social standards in commercial agriculture and forestry operations
• Promoting socially responsible lending
• Promoting equal opportunities for women and men in government programmes.

Recommendations:
• Increase opportunities for women to participate in or benefit from REDD+ PAMs, e.g. screening of proposed PAMs for possible obstacles to the participation of women.
• PaMs that involve land use or management planning should be supported by capacity-building and transparency measures to ensure that environmental and social objectives are appropriately considered.
• Operationalize monitoring procedures for the social and environmental impacts of REDD+ PAMs.
• Develop a clear definition of natural forests.

Safeguard f: Actions to address the risks of reversals

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

Gaps in information on the PLR framework:
No PLRs have been identified that explicitly refer to reversals of REDD+ results. However, given the specificity of the topic and the fact that the system of rules and procedures for REDD+ in Myanmar is still under development, this is not a surprising result. There is also no information on whether any procedures exist for assessing and/or monitoring the long-term viability of proposed government strategies or programmes.

Recommendations:
• Assess risks of reversals into the design stage of REDD+ PAMS and develop approaches for detecting reversals through the National Forest Monitoring System.
• Where reversals are detected, the reasons should be analyzed so that the design and implementation of REDD+ PaMs can be improved over time based on lessons learned.
Safeguard g: Actions to reduce displacement of emissions

Key PLRs and their provisions:
- PLRs related to land use planning and establishment of protected areas, such as the National Land Use Policy, the Forest Law and the Biodiversity and Protected Areas Law, could provide a way to secure forest areas, including newly established forests, against indirect land use change.
- Initiatives to combat illegal logging, such as the development of a FLEGT-VPA or efforts to enhance cross-border cooperation on timber legality with China, can also help to reduce the risk of emissions displacement.

Gaps in information on the PLR framework:
No PLRs have been identified that explicitly refer to displacement of greenhouse gas emissions. This may partly be due to the fact that climate change-related policies in Myanmar are still fairly young.

Recommendations:
- Incorporate an assessment of risks of emissions displacement into the design stage of REDD+ PAMs, and approaches for detecting occurrence of displacement through the National Forest Monitoring System should be developed.
- Lessons learned from cases where emissions displacement is detected should be reflected in the design of future Policies and Measures.
### CHAPTER 3: SUMMARY OF RECOMMENDATIONS

<table>
<thead>
<tr>
<th>No.</th>
<th>Theme</th>
<th>Recommendation</th>
<th>Timeframe/Responsibility</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Weak Land and Resource Tenure Rights</td>
<td>The provision of secure tenure of land and resources is central to a REDD+ programme that can achieve significant and sustainable emissions reductions. Therefore, the focus of the REDD+ Programme should include:</td>
<td>5-10 years; Land Use Council lead, MOEA</td>
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<td></td>
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<td>a) Accelerate the implementation of the National Land Use Policy, especially with regard to the recognition of customary land tenure; in the interim, design REDD+ PAMs to avoid negative impacts on groups without documented land rights; To increase efficient allocation of suitable land for different uses, which will promote sustainable economic development.</td>
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<td>b) Suitable mechanisms to compensate local stakeholders in the case of use restrictions or prohibitions of use affecting their rights should be developed, setting up a fair and transparent process that takes into account the needs of vulnerable groups.</td>
<td>2-5 years; MONREC, MOALI, MOPF, MOHA</td>
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<td>c) Support to the development of new Forest Rules that address weaknesses and gaps in the Forest Law of 2018,</td>
<td>1 year; FD, FAO, Land-core Group, UN-REDD</td>
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<td>d) Support to the development of Biodiversity Conservation and Protected Areas Rule that address weaknesses and gaps in the Biodiversity Conservation and Protected Areas Law of 2018</td>
<td>1 year; FD, WCS, WWF, UN-REDD</td>
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<td>2</td>
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<td>The REDD+ Programme should also support recognition of land under customary tenure through registration as community forests or Local Community Protected Areas (the latter subject to the BCPA Rules being satisfactorily developed);</td>
<td>1-2 years; FD, UN-REDD, MOEA</td>
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<td>3</td>
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<td>Related to this, the REDD+ Programme should also investigate the potential for land under customary tenure being recognized as an “other” category of reserve forest, under the jurisdiction of the community.</td>
<td>1 year; FD, UN-REDD</td>
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<td>4</td>
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<td>Support development of policies to protect small (local) farmer livelihoods to encourage small farmers in their agricultural activities (access to market / economic activities for sustainable practices)</td>
<td>2-5 years, MOALI, MOPF</td>
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<td>5</td>
<td>Ceasefire Agreements and Parallel Land Management Systems</td>
<td>The extent to which Union government and EAO Forest Policies and community forest and protected area registration processes differ should be analyzed to serve as a basis for harmonization of the policy and regulatory documents</td>
<td>1 year; UN-REDD</td>
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<td>6</td>
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<td>Opportunities to seek initial collaboration on PAM implementation in favourable conditions and circumstances can serve to build trust and confidence, leading to strengthening of interim arrangements for</td>
<td>1-2 years; FD, UN-REDD</td>
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<td>7</td>
<td>Overlapping Mandates and Conflicting Policies make Land Use Planning difficult</td>
<td>The National REDD+ Taskforce should establish a relationship with the NE5C, so that issues requiring policy decisions, especially those related to coordination across government agencies, can be addressed; 1 year; UN-REDD</td>
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<td>8</td>
<td></td>
<td>Given the limited impact of the MCCSAP in promoting greater coordination across ministries, consideration should be given to the development and passage of a Climate Change Law. 5-10 years; MONREC, UAGO</td>
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<td>9</td>
<td></td>
<td>A new Forest Policy should be developed, reflecting modern people-centric development priorities; 2-5 years; FD</td>
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<td>10</td>
<td>Aging Policies do not Reflect People-Centric Goals for Natural Resource Governance</td>
<td>Ideally in the context of a Climate Change Law (see above), or at least within a new Forest Policy, the guarantee of access to information on REDD+ (including performance, application of safeguards, amounts, sources and uses of REDD+ finance) must be incorporated; 4-8 years; UAGO, MOHA</td>
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<td>11</td>
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<td>The Rules supporting the new Forest Law and Biodiversity Conservation and Protected Area Law should address gaps in the laws themselves and incorporate international best practice; 1 year; FD, WCS, WWF, UN-REDD</td>
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<td>12</td>
<td>Human Resources of Government Agencies Lack the Skills for Modern, Democratic Governance of Natural Resources</td>
<td>Capacity building of institutions providing support to policy implementation needs to focus on introducing the necessary capacities (skills and knowledge) required to implement modern, people-centric policies. While this applies especially to institutions of the Union government, recognition that much forest land is under the de facto administration of other, ethnically-based institutions needs to be taken into account; 2-5 years; MONREC, MOHA</td>
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<td>13</td>
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<td>In the spirit of multi-stakeholder cooperation in addressing climate change (e.g., MCCSAP Action Area # 6: “Promote multi-stakeholder partnerships to support investment in climate smart initiatives”) conditions need to be established to mobilize more non-governmental resources in support of policy implementation; 2-5 years; MONREC, MOHA</td>
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<td>14</td>
<td></td>
<td>Identify priority national policies/programmes and international agreements with which REDD+ PAMs should be aligned. 6 months; MONREC</td>
<td></td>
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<td>15</td>
<td>Addressing and Respecting the Cancun Safeguards</td>
<td>Next steps to support the implementation of safeguard b) could include the following:  o Develop mechanisms to ensure that stakeholders are comprehensively informed about plans for REDD+.  o Accelerate the implementation of the National Land Use Policy, especially with regard to the recognition of customary land tenure; in the interim, design REDD+ PAMs to avoid negative impacts on groups without documented land rights  o Strengthen cross-sectoral coordination and coordination between different levels of government on land use and fully operationalize the existing coordination bodies 1 year; MONREC</td>
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<td>No.</td>
<td>Task Description</td>
<td>Timeframe</td>
<td>Responsible Authority</td>
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<td>16</td>
<td>Ensure that PAMs to improve law enforcement do not disproportionately affect vulnerable stakeholders. Identify options to address the capacity gaps and implementation constraints described above.</td>
<td>1 year; MOEA</td>
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<td>17</td>
<td>Clarify whether the definition of “indigenous people” as provided by the EIA Procedure should be applied across all aspects of implementing the safeguard, or whether a new definition should be developed.</td>
<td>1 year; MOHA</td>
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<td>18</td>
<td>Identify options to address the capacity gaps and implementation constraints described above. Development of the National Land Law should be accelerated, and the situation of persons without land use certificates and traditional rights of ethnic groups should be addressed in the law.</td>
<td>3 years; NLUC</td>
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<td>Suitable mechanisms to compensate local stakeholders in the case of use restrictions or prohibitions of use affecting their rights should be developed, setting up a fair and transparent process that takes into account the needs of vulnerable groups.</td>
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<td>An approach should be developed for the sharing of benefits from REDD+ with stakeholders, including indigenous people and local communities.</td>
<td>3 years; MONREC, MOEA, MOHA, MOPF</td>
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<td>25</td>
<td>Strengthen the provisions of the CFI by recognizing them in law, to increase their applicability outside of the forest sector.</td>
<td>1 year; MONREC</td>
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<td>Develop guidance for the identification of stakeholders and/or their representatives, and for stakeholder involvement in different types of REDD+ PAMs, respecting the principle of ‘self-identification’.</td>
<td>1 year; UN-REDD</td>
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<td>Increase opportunities for women to participate in or benefit from REDD+ PAMs, e.g. screening of proposed PAMs for possible obstacles to the participation of women.</td>
<td>1 year; UN-REDD</td>
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<td>28</td>
<td>Operationalize monitoring procedures for the social and environmental impacts of REDD+ PAMs.</td>
<td>2 years; MONREC</td>
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<td>29</td>
<td>Develop a clear definition of natural forests.</td>
<td>6 months; MONREC</td>
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<td>30</td>
<td>Assess risks of reversals into the design stage of REDD+ PAMs and develop approaches for detecting reversals through the National Forest Monitoring System.</td>
<td>2 years; MONREC</td>
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<td>31</td>
<td>Where reversals are detected, the reasons should be analyzed so that the design and implementation of REDD+ PAMs can be improved over time based on lessons learned.</td>
<td>As required</td>
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<td>32</td>
<td>Incorporate an assessment of risks of emissions displacement into the design stage of REDD+ PAMs, and approaches for detecting occurrence of displacement through the National Forest Monitoring System should be developed.</td>
<td>2 years; MONREC</td>
<td></td>
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