Draft clarification of the UNFCCC REDD+ Safeguards in accordance with PNG's national context and circumstances

Objective and scope

This document aims to provide a preliminary and indicative clarification of the United Nations Framework Convention on Climate Change (UNFCCC) REDD+ safeguards in accordance with PNG's national context.

The purpose of the clarification is to specify how the principles/objectives encompassed in the UNFCCC REDD+ safeguards translate into concrete rights and obligations in the context of PNG. In other words, the clarification is expected to contextualize the general principles outlined in the UNFCCC REDD+ safeguards into specific principles and objectives that are to be followed and promoted in the context of the implementation of REDD+ in PNG, and which are anchored in the country's Policies Laws and Regulations (PLRs).

It is important to note the clarification itself does not determine how such PLRs will be used/applied to ensure the REDD+ actions are carried out in consistency with the safeguard, nor is the clarification a gap analysis of the PLRs.

Determining how the PLRs will be used/applied to ensure the REDD+ actions are carried out in consistency with the safeguards is considered in the next phase, a process which will be based on the country's clarification of the UNFCCC REDD+ safeguards, and the assessment of potential risks and benefits of the proposed REDD+ actions and the findings of the PLR assessment in PNG.

Background: Why is this important?

Parties to the UNFCCC agreed to a set of seven broad principles that are expected to be applied in accordance with national context and circumstances. In the final series of decisions on REDD+, agreed in Paris at COP 21, Parties to the UNFCCC developed some further guidance “on ensuring transparency, consistency, comprehensiveness and effectiveness when informing on how all the safeguards referred to in decision 1/CP.16, appendix I, are being addressed and respected.”

As part of this guidance, the COP “strongly encourages” developing country Parties, when providing the summary of information on how the Cancun Safeguards are being addressed and respected, to include, inter alia: “A description of each safeguard in accordance with national circumstances.”

A description of each safeguard in accordance with national circumstances can be achieved by identifying the various rights and obligations that are embodied in the Cancun safeguards, and

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1 UNFCCC Decision 17/CP.21, see also UN-REDD brief on summaries of information
2 Ibid, paragraph 5(b) see also UN-REDD brief on summaries of information for further analysis
examining how these are reflected in the specific country context. Studies have already been undertaken to identify/unpack these rights and obligations as reflected under international law,3 but the national circumstances are particular to each country. It is also important that the description be the result of a shared or ‘common’ understanding among different stakeholder constituencies within a country, so as to facilitate their implementation.

The clarification of the UNFCCC REDD+ Safeguards in accordance with national circumstances is an essential element of a Country Approach to Safeguards (CAS)4 for two reasons:

- It is one of the foundations of the Safeguard Information System (SIS) as it is key to determining the 'information needs' (i.e. types of information that are to be gathered by the SIS); and
- It is central to the preparation of the summary of information, as it helps to determine the information that should be provided to the UNFCCC to demonstrate how the safeguards are being addressed and respected.

Methodology

This document offers a clear and concise clarification of each of the UNFCCC REDD+ safeguards in light of PNG's national circumstances. This document was developed according to the following steps:

1. Based on the findings of the PLR gap analysis of PNG and other relevant inputs5, the language of each of the UNFCCC REDD+ safeguards was unpacked to identify the 'core interpretative elements' for each of the UNFCCC REDD+ safeguards
2. Once the core elements were determined for each safeguard, the findings of the PLR gap analysis were synthesised to provide a legal basis for each of these core elements (i.e. how they are anchored to the 'relevant' PLRs).
3. Considering the combined core elements per safeguard, an overall and narrative clarification of each safeguards was developed.

Structure of this Document

The document is structured in tabular format, and in relation to each of the seven UNFCCC REDD+ safeguards:

1. The first column identifies the 'core clarifying elements' for each of the UNFCCC REDD+ safeguards. When relevant, a footnote is provided to highlight the correspondence with the Principles, Criteria and Indicators developed in 2014.
2. The second column (‘legal basis’ ) identifies and justifies how each of the core elements are recognized, protected or promoted by the relevant PLRs in the country. It is important to note

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this information does not determine 'how' such PLRs will be used/applied to ensure the REDD+ actions are carried out in consistency with the safeguard.

3. The third and final column presents a narrative clarification for each UNFCCC REDD+ safeguard, considering the combined 'core clarifying elements'.
UNFCCC REDD+ Safeguard A: ‘That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements’

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<thead>
<tr>
<th>Core elements</th>
<th>Legal basis</th>
<th>Narrative Clarification</th>
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<tbody>
<tr>
<td>1. The REDD+ strategy is consistent with the objectives of national forest programmes</td>
<td>The legal framework in PNG sets out clear objectives for its forest programmes under the National Constitution(^6), the Forestry Act 1991(^8) and key National Policies such as the Vision 2050(^9).</td>
<td>&quot;The REDD+ Strategy is designed in compliance with the objectives of national forest programmes, and consistent to the provisions of the relevant treaties and international conventions PNG is Party to”</td>
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national law by either a Constitutional Law or an Act of the Parliament.\textsuperscript{14}

Despite the fact that international law is ‘non-justiciable’ within the jurisdiction of PNG’s legal framework the Constitution does ‘bind’ PNG to the specific instrument once it is ratified.\textsuperscript{15} This denotes a certain commitment on PNG’s part to ensure compliance with its terms and provisions although not strictly enforceable.

UNFCCC REDD+ Safeguard B: ‘Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;’

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<td>1. Right to access information is recognized and protected in the context of the implementation of the REDD+ strategy \textsuperscript{16}</td>
<td>The Right to Freedom of Information is a qualified right under the National Constitution of PNG.\textsuperscript{17} The National Constitution\textsuperscript{18} interprets ‘Information’ as ‘official documents’. The Constitution\textsuperscript{19} establishes procedures by which citizens may obtain access to official information.</td>
<td>&quot;Transparency and effectiveness of forest governance structures, including the right to access to information, accountability, access to justice and the recognition and protection of land use rights are promoted and regulated in the scope of the application of the...&quot;</td>
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\textsuperscript{14} An example of this is seen in the enactment of the \textit{Climate Change Management Act of 2015} which gave legal effect to the UNFCCC and all subsequent and relevant COP agreements which is now enforceable in PNG.

\textsuperscript{15} National Forest Development Guidelines, Section F – this refers to Climate Change Initiatives under UNFCCC and mention specific reference to REDD+ under Clause (F.2(i)(e) as a possible activity to be included within their forestry mandate.

\textsuperscript{16} 4.3 Adequate information about the REDD+ programme is publicly available.

\textsuperscript{17} Section 51 of the National Constitution.

\textsuperscript{18} Section 51 of the \textit{National Constitution}.

\textsuperscript{19} Section 51 (3) of the National Constitution.
### 2. Accountability is guaranteed in the context of the implementation of the REDD+ strategy

<table>
<thead>
<tr>
<th>All Government agencies are subject to Financial and Accounting/Auditing processes enforced through institutions designated for this purpose. These institutions have been given their mandate by either an Act of Parliament or the Constitution of PNG.</th>
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<tr>
<td>National REDD+ strategy through the relevant PLRs of the country.</td>
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### 3. Right to access justice is recognized and protected in the context of the implementation of the REDD+ strategy

<table>
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<tr>
<th>The Constitution of PNG recognizes the Right to the Protection of the Law for all citizens ‘directly affected’. This legal framework also provides for dispute resolution mechanisms at all levels of government (especially in relation to customary land or natural resources). They are also not cost prohibitive. Public Law offices are established to assist citizens incapable of accessing legal services and other support. A process of appeal is also provided as part of the traditional legal system and is prescribed within individual sector specific Acts. Remedies for breaches of rights are also afforded under both Acts and subordinate laws but they are not clearly prescribed. There are also specific courts and ADR mechanisms provided to enforce the rights of access to justice for all customary land owners/local communities vulnerable to unfair/unjust business practices.</th>
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| 4. Rights over forest land are recognized and protected in the context of the implementation of the REDD+ strategy\(^\text{28}\) | The Constitution, Land and forestry legislation guarantee clear land tenure rights to customary landowners and recognizes the extent of these rights in relation to forest resources.\(^\text{29}\) It also provides the basis for just compensation to be awarded in the event of development and acquisition of land/resources from them\(^\text{30}\) and applies to both statutory and customary ownership, use rights.

Land titling procedures are also established via respective legislation and involve the formation of land holding groups to govern them. Gender equality is recognized and guaranteed as part of these groups and relates to decision making processes over forest/land tenure arrangements and benefits |

\(^{28}\) 1.1 The REDD+ programme effectively identifies the different rights holders (statutory and customary) and their rights to lands, territories and resources relevant to the programme.

1.2 The REDD+ programme recognizes and respects both statutory and customary rights to lands, territories and resources which customary land owners or local communities have traditionally owned, occupied or otherwise used or acquired.

\(^{29}\) Under section 58 of the Forestry Act in relation to Forest Management Agreements and the 34 step process for establishing this.

\(^{30}\) Under section 53 of the Constitution.
UNFCCC REDD+ 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;

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</table>
| 1. The rights of customary landowners, local communities and vulnerable groups are promoted and protected in the context of the application of the REDD+ strategy, in consistency with relevant and applicable international conventions and treaties. | The National Constitution\(^{31}\) of PNG provides a standard criteria for defining who are ‘indigenous people’ in PNG which is consistent with international law. However, the term ‘indigenous people’ is not used in the Constitution or in relevant PLRs. This is replaced with the term ‘customary landowners.’ These definitions are elaborated further in Acts of Parliament which relate to land and natural resources.\(^{32}\) The legal framework also provides definitions for ‘local communities’. The rights promoted and protected, include:  
  1) **Non Discrimination**  
  • The PNG National Constitution\(^{34}\) obliges the Government, as the custodian of the people of PNG, to recognize and ‘uphold’ the Underlying Laws governing customs and traditions and the rights associated with them. These are also detailed and reinforced via specific Acts of Parliament.\(^{35}\) | "The recognition of, and respect for the rights of customary landowners, local communities and vulnerable groups in accordance to the relevant PLRs is applicable to the implementation of the National REDD+ Strategy; including the rights to non discrimination, traditional knowledge and culture, self determination, benefit sharing and collective tenure rights.” |

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\(^{31}\) 6.4 The REDD+ programme identifies and uses processes for effective resolution of grievances and disputes relating to the design, implementation and evaluation of the REDD+ programme, including disputes over rights to lands, territories and resources relating to the programme.

\(^{32}\) 6.5 The REDD+ programme ensures that rights holders and stakeholders have the information that they need about the REDD+ programme, provided in a culturally appropriate, gender sensitive and timely way, and the capacity to participate fully and effectively in programme design, implementation and evaluation.

\(^{33}\) The Land Act 1996, s. 2, Forestry Act 1991, s.2, Climate Change Management Act, 2015, s.3, Environment Act s.2 (defines customary rights).

\(^{34}\) Schedule 2.1(1)(b) of the National Constitution.

\(^{35}\) The Customs Recognition Act.
- This legal framework outlines all available means of ensuring there is sufficient remedy to address any discrimination shown towards customary landowners/groups.

2) Self Determination
- This is recognized in the National Constitution\textsuperscript{36} and also detailed within specific Acts of Parliament which are designed to facilitate and to recognize this right\textsuperscript{37} through the recognition of primary forms of traditional decision making structures like the ILGs.

3) Rights associated with culture
- The legal framework outlines a clear objective towards safeguarding customary landowner’s and local communities’ rights as they relate to culture and also indirectly includes a respect for their identity, customs, traditions and institutions. There is various legislation which promotes the need to maintain cultural inheritance through the establishment of the institutions and systems which support and facilitate its preservation.

4) Collective tenure rights
- PLRs recognize the collective rights of forest ownership in PNG through the establishment of ILGs as per the relevant legislation\textsuperscript{38} ILG’s are designed as a customary social unit to possess, manage and trade land.
- The National Constitution also recognizes the right to use their traditions\textsuperscript{39} to achieve this purpose and also provides for the

\textsuperscript{36} NGDP 5 and in particular sub principle (3) and (4) of the National Constitution.
\textsuperscript{37} The Land Groups Incorporations (Amendment) Act 2009
\textsuperscript{38} Section 2(b) and (c) of the Forestry Act 1991.
\textsuperscript{39} The Constitution, NGDP 5 Papua New Guinea Ways.
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<th>5) Benefit sharing</th>
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<td>• The legislative framework in PNG covers mechanisms required for the fair sharing of benefits derived from forest resources. Forestry legislation also establishes mechanisms by which customary landowners are able to be involved in forest industry activities and also directly benefit from them.</td>
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<tr>
<th>2. Traditional knowledge is recognized and protected in the context of the application of the REDD+ strategy</th>
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<td>Traditional knowledge has always been an aspect of customary law which is recognized under the Constitution.</td>
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40 6.3 The REDD+ programme builds on, respects, supports and protects rights holders' and stakeholders' traditional and other knowledge, skills, institutions and management systems including those of customary landowners and local communities.
### UNFCCC REDD+ Safeguard D: ‘The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision’

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<tbody>
<tr>
<td>1. The right to participate in the design and implementation of the REDD+ strategy is recognized and promoted.</td>
<td>The Relevant PLRs provide for equal opportunities for the participation of every citizen in the development process and also make it mandatory for customary resource owners and local communities to be present on decision making bodies concerning the use of forest resources. PLRs also make it mandatory for participation at the subnational level and comply with the basic elements of international law in the process. The responsibilities of all respective agencies in relation to public participation are defined within forestry and natural resource PLRs. Forestry regulations set out time-frames for inputs. There are also provisions which outline the process of providing inputs and receiving</td>
<td>“The right to participate, in particular for customary landowners, local communities and vulnerable groups, is recognized and promoted under the National REDD+ Strategy through the relevant PLRs of the country, which include the promotion of gender equality and the right to free, prior and informed consent.”</td>
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41 Principle 6: All relevant rights holders and stakeholders participate fully and effectively in the REDD+ programme. 6.1 The REDD+ programme identifies all rights holder and stakeholder groups and characterizes their rights and interests and their relevance to the REDD+ programme.

6.2 All relevant rights holder and stakeholder groups that want to be involved in REDD+ programme design, implementation, monitoring and evaluation are fully involved through culturally appropriate, gender sensitive and effective participation.

42 National Goals and Directive Principles, 2 and ss.37 and 55 of the National Constitution.

43 E.g., section 46 of the Forestry Act 1991 and representation of customary owners is seen in the National Forest Board, the Provincial Forest Management Committees (PFMCs) and through multi-stakeholder representation.

44 Participation by all key stakeholders is provided for under sections 98, 115 and 116 of the OLPLLG.

45 ILO Convention 169, Article 6 - 1. 2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

46 Example in Forestry - the responsibilities of the Board in initiating this process is defined under Regulation 83 (and specifically Form 80), in which a notice is expected to be drafted and sent to these respective stakeholders advising them to provide their views within a specified time. This process is also provided for Timber Permits and under some of the activities requiring Timber Authorities described in Regs. 160 – 168.
them but not ensuring they are taken into consideration and acted upon.\textsuperscript{47}

Environmental PLRs provide for access to justice through clear internal administrative processes\textsuperscript{48} and relate to disputes over environmental plans or impact assessments.\textsuperscript{49} Although there is no process of appeal provided, they allow for the option to pursue further legal remedies as well.\textsuperscript{50}

2. Customary landowners, local communities and vulnerable groups right to participate, including their Free, Prior and Informed Consent is recognized and promoted in the context of the application of the REDD+ Strategy\textsuperscript{51}

PLRs provide legally recognized traditional structures used by customary land owners to engage with corporations, government, and other stakeholders in activities concerning the utilization/development of their land or natural resources.\textsuperscript{52} This is also recognized and provided for within forestry, land and customary law.

Forestry legislation\textsuperscript{53} provides for financial assistance to ensure that the ILGs are contributing effectively towards the management and development of the forest industry activities.

The National Constitution refers to Equality and Participation\textsuperscript{54} and reflects the intentions of the UNDRIP\textsuperscript{55} especially in relation to issues.

\textsuperscript{47} Section 88(c)(vi) & (vii) of the Forestry Act 1991 and Regulations 160, 162, 164, 166 and 168 and Form 165 of the Forestry Regulations 1998.

\textsuperscript{48} Section 14 of the Environment Planning Act.

\textsuperscript{49} Section 13(1) of the Environment Planning Act

\textsuperscript{50} Section 20 of the Environmental Planning Act, e.g., the commencement of proceedings for an injunction.

\textsuperscript{51} 6.3 The REDD+ programme builds on, respects, supports and protects rights holders’ and stakeholders’ traditional and other knowledge, skills, institutions and management systems including those of customary land owners and local communities. 1.3 The REDD+ programme requires the free, prior and informed consent of customary land owners and local communities for any activities affecting their rights to lands, territories and resources.

\textsuperscript{52} Incorporated Land Groups are created for this sole purpose under the Land Groups Incorporations (Amendment) Act 2009.


\textsuperscript{54} National Goals and Directive Principle 2 of the National Constitution.

\textsuperscript{55} UNDRIP - Article 10 “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.” Article 19 States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. Also applicable are Articles 28 and 32.
concerning the access to and use of customary land and resources for development purposes. It also provides for various guaranteed rights and freedoms\(^{56}\) which are core to ensuring compliance with the right to FPIC also embodied within relevant Acts of Parliament\(^{57}\) and specific national policies\(^{58}\) also in accordance with the ILO 169.

3. Gender equality is promoted and protected in the context of the implementation of the REDD+ strategy

The Constitution recognizes Gender Equality\(^{59}\) and the Right of women citizens to participate in all economic activities.\(^{60}\) This is further recognized and encouraged in specific PLRs at the national level.\(^{61}\)

Gender discrimination issues are also addressed within specific policies of the public service and applicable within all sectors. There are also dedicated public and private agencies established to implement this right and to raise awareness and implement policies on gender equality and discrimination in PNG.

\(^{56}\) Sections 32 – 56 of the National Constitution.

\(^{57}\) Forestry Act 1991, the Oil & Gas Act 1998, the Fauna (Protection and Control) Act and the Climate Change Management Act 2015.

\(^{58}\) Under Pillar 1 of the Protected Areas Policy and specifically mentioned in the CCDMP and the CCDA developed FPIC Guidelines for REDD+ Projects.

\(^{59}\) National Goals and Directive Principles 2, subsections (3) and (5).

\(^{60}\) This is stated specifically in section 55 of the Constitution in regards to the Right to Equality of Citizens.

**UNFCCC REDD+ Safeguard E:** That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits.

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<tr>
<td>1. REDD+ strategy is consistent with the conservation of natural forests and biological diversity&lt;sup&gt;62&lt;/sup&gt;</td>
<td>Relevant PLRs promote the conservation of natural forest and biological diversity as per the objectives of the Constitution and specifically through its planning process.&lt;sup&gt;63&lt;/sup&gt; Relevant PLRs mitigate threats imposed to flora and fauna species as per international law.&lt;sup&gt;64&lt;/sup&gt; This includes the protection of specific kinds of endangered wood species with measures to monitor and control the trade in these species also included, and the control and trade of endangered species.</td>
<td>&quot;REDD+ actions under the National REDD+ Strategy will promote the conservation of natural forests and biodiversity, the enhancement of social and environmental benefits, and will not result in the conversion of natural forests, in accordance with the relevant PLRs in the country.&quot;</td>
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<tr>
<td>2. REDD+ strategy will not incentivise the conversion of natural forests&lt;sup&gt;65&lt;/sup&gt;</td>
<td>Forestry Policy provide for background considerations&lt;sup&gt;66&lt;/sup&gt; in relation to forest conversion within FMA’s as well as outside of FMA’s.&lt;sup&gt;67&lt;/sup&gt; In addition, Environment and Forestry legislation set some degree of</td>
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<sup>62</sup> Principle 5: The REDD+ programme maintains and enhances biodiversity and ecosystem services.

5.1 Biodiversity and ecosystem services potentially affected by the REDD+ program are identified, prioritized and mapped.

5.2 The REDD+ programme maintains and enhances the identified biodiversity and ecosystem services priorities.

63 The Constitution, NGDP 4(a) refers to the requirement to “manage, develop and protect the Nation’s forest resources and environment in such a way as to conserve and renew them as an asset for the succeeding generations.”

64 Convention on the International Trade in Endangered Species.

65 The REDD+ programme does not lead to the conversion or degradation of natural forests or other areas that are important for maintaining and enhancing the identified biodiversity and ecosystem service priorities.

66 Example, considerations such as whether an area is designated as production or protection forests under the Forestry Policy and Act. This includes ascertaining whether the area is ideal for potential timber harvesting or not (as per criteria listed under the PNG Logging Code of Practice). These are limited to areas proposed for FMA’s and TA’s/TP’s. The NFDG’s mention consideration of biodiversity in relation to the process of Forest Land Conversion.

67 Article M.1 of the National Forest Development Guidelines – Conversion of Forest Lands.
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| 3. | Enhancement of and the right to a fair distribution of benefits is recognized and protected in the context of the implementation of the REDD+ strategy.  
|   | Relevant PLRs take account of and address the ecological, biological, socio-cultural and economic contributions of forest resources via Acts of Parliament and through other forms of standards/guidelines and Certification processes. |
|   | Forestry PLR’s provide for adequate rights to fair distribution of benefits arising from the use of forest resources. Benefit Sharing arrangements are also clearly stipulated within the present broader legal framework of general natural resource sectors as well. |
UNFCCC REDD+ Safeguard (f) Actions to address the risks of reversals and (g) Actions to reduce displacement of emissions

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<td><strong>1. Addressing risks of reversals is required by the REDD+ strategy</strong></td>
<td>Relevant PLRs require updating land use and forest inventories for management and land use planning purposes and as a way of monitoring forest destruction. This is achieved through the “REDD+ Web Portal”, created through the joint collaboration of government and key international partners. Voluntary legality &amp; chain of custody verification schemes, chain of custody, and FSC Controlled Wood certification is also promoted in PNG.</td>
<td>&quot;Risks of reversals and displacement of emissions of the proposed REDD+ actions are addressed through relevant monitoring and assessment systems (e.g. MRV- specific measures and establishment of the National forest monitoring system)&quot;</td>
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<tr>
<td><strong>2. Addressing risks displacement of emissions is required by the REDD+ strategy</strong></td>
<td>PLRs in PNG include measures to address drivers of deforestation and forest degradation</td>
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<td></td>
<td>PLRs at the national and subnational level encourage alternative livelihoods for local communities and customary resource owners.</td>
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72 Section 53(2)(e) of the Climate Change Management Act 2015.
73 This is an all-encompassing tool using GIS and satellite imagery to monitor and distribute information on land classification, land use, forest cover and forest resources and areas suitable for afforestation, conservation and traditional/indigenous land use.
74 The key agencies involved in setting up this system are the PNGFA, CCDA and UNREDD.
75 These are the standards and certification processes used by the forest industry/private sector in PNG to verify the processing of timber including the SGS ITTO TLTV (Timber Legality and Timber Verification Standards).
76 These main drivers are: (i) subsistence clearing, (ii) timber harvesting, (iii) fire, (iv) plantation conversion and (v) mining, with the majority of change caused by the first two activities.
77 E.g the development of EcoForestry Guidelines as part of the National Forest Policy.