Safeguards Roadmap for Vietnam’s National REDD+ Action Programme

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Tokyo, 4-5 Dec 2013
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ROADMAP RATIONALE
Rationale for a Safeguards Roadmap – addressing the safeguards challenge

• **Multiple safeguards frameworks**
  – UNFCCC Cancun safeguards
  – Multi-lateral REDD+ readiness assistance
  – Bilateral readiness assistance

• **Challenges**
  – Uncertainty over international climate change negotiations
  – Countries dealing with multiple safeguard frameworks
  – Limited capacities inside government; outside government to deal with safeguards
  – Co-ordination of a country-led safeguard response
Roadmap – a contribution to the solution

• **Objective**

  “Provide recommendations on all aspects related to the REDD+ safeguards in Vietnam, which are consistent with national regulations, capacities and circumstances, as well as UNFCCC REDD+ requirements and guidelines”

• **To achieve this objective, roadmap:**

  – Gives consideration to all relevant UNFCCC decisions and guidance to frame the recommendations

  – Presents a comprehensive identification and analysis of Vietnam’s national legal framework in relation to the Cancun safeguards and associated requirements
Roadmap – a contribution to the National REDD+ Action Programme (NRAP)

• June 2012 the Prime Minister approved the NRAP for 2011-2020

• Key Tasks (2011- 2015)
  – “Improvement of the legal system and technical guidance for implementing REDD+ activities”

• Key Tasks (2016 – 2020)
  – “Further performing the legal framework for implementing REDD+ on the basis of practical requirements as well as the provisions of the law of Vietnam and the international practices”

• Solutions
  – “[improving] the legal framework by reviewing and supplementing the existing legal framework and formulating legal documents on...safeguard measures...in accordance with the applicable laws of Vietnam and international agreements Vietnam has signed”
Roadmap – expected outcomes

• Expected outcomes
  – An identification of all relevant UNFCCC decisions and guidance that inform a country led approach to safeguards
  – An identification and detailed analysis of Vietnam’s legal framework that could be used to support the operationalization of the Cancun safeguards.
  – An identification of options and recommendations to address identified gaps in the legal framework

• Roadmap does not provide a practical assessment of the legal framework

• Serves as a:
  – Communications ‘tool’ (Permitting GoV to articulate level of ‘compliance’)
  – Essential analytical first step (Basis for country approach to REDD+ safeguards)
METHODS
A conceptual framework for a country safeguards system (CSS)

• The CSS is not presented in the roadmap as a competing safeguard framework nor as a model for Vietnam to adopt

• The CSS is presented and utilized in this roadmap to provide a:
  – Comprehensive conceptual framework to identify the various optional elements that a country could consider as part of a national safeguards response (‘map’ aspects of the roadmap)
  – A step-wise process of moving from the broad statements of principle that constitute the Cancun safeguards to an operational response in country (‘road’ aspects of the roadmap)
Elements of a Country safeguard system
Legal gap analysis methodology

- To **identify** and **analyse** Vietnam’s legal framework in relation to the Cancun safeguards, utilized a revised framework of interpretation drawn exclusively from Cancun safeguards language.

- Differs from version 1.0 roadmap that drew on UN-REDD, WB, REDD+ SES safeguard frameworks.

- Revised roadmap carried out a new identification of PLRs based on revised interpretative framework. It now includes 30 forestry PLRs and 30 non-forestry PLRs.

- A new analytical matrix was developed with a revised set of principles and criteria against the Cancun safeguards language, and that includes set of indicators and diagnostic questions.
## Analytical matrix utilized

<table>
<thead>
<tr>
<th>Criteria B.1. Transparency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-Criteria B.1.1. Right of Access to Information¹</td>
</tr>
</tbody>
</table>

**Diagnostic Question:** To what extent do PLRs guarantee the right to access to information?

<table>
<thead>
<tr>
<th>Indicators</th>
<th>Mark accordingly</th>
<th>Explanation (identify articles/provisions)/Gaps identified</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLRs recognise the right to access to information</td>
<td></td>
<td></td>
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<tr>
<td>PLRs provide a definition of ‘information’</td>
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<tr>
<td>PLRs require the active distribution of information</td>
<td></td>
<td></td>
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<tr>
<td>PLRs require/guarantee passive access to information</td>
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</tbody>
</table>
FINDINGS
Legal gap analysis findings

• Vietnam is largely consistent with Cancun safeguards language
  – Against the majority of interpretation criteria and indicators
  – 60 identified PLRs (forestry and non-forestry) could support the effective implementation of the Cancun safeguards

• Analysis doesn’t assess practical implementation/effectiveness
Main Gaps- Cancun Safeguard B

1. Access to information

- The legal framework recognises the right of access to information in several PLRs either explicitly or implicitly, including providing a definition of information, the methods, forms, formalities and procedures for securing this right.

- Nevertheless, the above-mentioned issues do have some gaps, in particular regarding the right to a passive access to information.

- The 2013 Draft LEP and the 2013 Draft Law on Access to Information, (if adopted) will address most gaps identified
Main Gaps- Cancun Safeguard C

1. Definition/recognition of Indigenous Peoples
   • Legal framework does not define “indigenous peoples”; Vietnam uses the term “ethnic minority” instead
   • However, the legal framework does not provide a clear definition on ‘ethnic people’ or ‘ethnic minority’

2. Recognition of traditional knowledge
   • Limited recognition and regulation of traditional knowledge of ethnic minorities and local communities over forest resources

3. Collective land rights
   • Legal framework recognizes collective ownership of forests. However, there are several legal issues that undermine such recognition
   • Additionally, there is no legal recognition or protection of ethnic minorities’ **customary** collective rights to land and other natural resources
Main Gaps- Cancun Safeguard D

1. **Access to information to effectively participate in decision making**
   - Legal framework regulates access to information in terms of what, how and when information should be provided as well as aspects of accountability. Nevertheless, the above-mentioned issues have some gaps that need to be addressed in detail.
   - 2013 Draft LEP and the 2013 Draft Law on Access to Information, (if adopted) will address gaps identified

2. **Mechanisms to ensure full and effective participation**
   - The legal framework does not define or regulate clear processes/mechanisms for ensuring public participation in environmental decision-making processes

2. **Free, prior and informed consent**
   - Legal framework does not recognize nor regulate the right to Free Prior and Informed Consent (FPIC)
Main Gaps- Cancun Safeguard E

1. **Prohibiting the conversion of natural forests**
   - Circular 58/2999 of MARD does not prohibit the conversion of natural forests. Conversion is allowed with the permission of Government institutions or officials.

2. **Enhancement of other benefits**
   - The legal framework has limited provisions that seek to maintain ecological, biological, climatic, socio-cultural, and economic contributions of forest resources. They lack operational measures.
Main Gaps- Cancun Safeguard F and G

Note: these safeguards are largely technical in nature related to national and subnational carbon accounting mechanisms and should not be expected to be covered by PLRs

1. Measures to Tackle Reversals and Displacement
   • The legal framework contains several provisions that will support tackling the risks of reversals and displacement of emissions. However, the legal framework has limited provisions dealing with risk mitigation mechanisms

2. International Cooperation
   • The legal framework promotes international cooperation and coordination to reduce cross-border displacement of deforestation. However, the legal framework has limited provisions promoting international cooperation on law enforcement to combat illegal trade of forest products
RECOMMENDATIONS

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

B. Engage in on-going reformative agendas for specific policies, laws and regulations, to address identified gaps in the legal framework

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

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

B. Establish appropriate institutional arrangements of the emerging national REDD+ Fund with respect to safeguard provisions for the fund

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

A. Commission an assessment of the different elements comprising the compliance framework and their functionality in practice
   
   – Consider utilizing existing and relevant information and reporting systems to gather information on the Cancun safeguards implementation.
   
   – Consider the forthcoming requirements from the UNFCCC in terms of format and frequency for reporting on the Cancun safeguards.
   
   – Consider utilizing FCPF support and guidelines for the development of a GRM.
Conclusions

• Recognition of the primacy of the Cancun safeguards and by taking a country-led approach for meeting the UNFCCC safeguards constitutes a positive step by Vietnam which is consistent with UNFCCC requirements.

• Through a country-led approach Vietnam seeks to utilize its own domestic legal framework to operationalize the Cancun safeguards.

• The identification and detailed analysis of Vietnam’s legal framework demonstrated that Vietnam’s PLRs are largely consistent with the Cancun safeguards.

• However, specific legal gaps were identified and recommendations provided. These gap-filling recommendations should be sought to be addressed in order to ensure Vietnam’s legal framework is fully consistent with the Cancun safeguards.
Thank you!

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