
RECOMMENDATIONS FOR ADDRESSING THE UNFCCC REDD+ SAFEGUARDS IN GHANA: IDENTIFICATION AND ASSESSMENT OF THE RELEVANT LEGAL FRAMEWORK

This report is a working document to be shared with relevant stakeholders to gather further written feedback and inputs.

Clement Kojo Akapame
Nana Tawiah Okyir

With technical inputs from Climate Law and Policy (CLP)

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This consultancy is part of a 3-year (2016-2018) project funded by the **International Climate Initiative of BMUB**. The project, named **Operationalising National Safeguard Requirements for Results-based Payments from REDD+**, aims to assist the governments of Ghana, Vietnam and Peru to meet multiple safeguard requirements and be eligible for results-based payments. This will be achieved at the national level through facilitating country-led approaches for operationalising safeguards and developing safeguard information systems (SIS), and at the subnational level through mainstreaming of safeguards into low-emissions development planning and piloting participatory forest monitoring approaches.

The present consultancy supports the work in Ghana, which is led by SNV Ghana and KASA Ghana, with technical support from Climate Law and Policy (CLP). As a key initial step and input for the design of a country approach to safeguards, National legal consultants were hired to identify and assess how Ghana's legal framework could be used to operationalise the United Nations Framework on Convention on Climate Change (UNFCCC) REDD+ Safeguards that was adopted in Cancun, Mexico, and identify recommendations to address relevant gaps and weaknesses.

Using a robust methodological framework and tools developed by CLP and adapted to the Ghanaian context, legal consultants identified and assessed the parts of Ghana's legal framework that are most relevant to the Cancun Safeguards in order to:

- Clearly identify the aspects of the legal framework that recognise, regulate, protect or promote the rights and obligations embodied in the Cancun safeguards.
- Identify gaps and weaknesses in the present legal framework in relation to the Cancun safeguards.

1. INTRODUCTION

The Government of Ghana is a recipient of Forest Carbon Partnership Facility (FCPF) funding for readiness preparation, and as part of its REDD+ approach, is seeking to obtain results-based payments from both the FCPF Carbon Fund and from a future REDD+ mechanism operationalised under the Green Climate Fund (GCF) (which serves as the UNFCCC's financial entity).¹ This means that it has committed to meet both the UNFCCC and FCPF safeguard requirements. In order to comply with these multiple international safeguard requirements, Ghana is adopting a **Country Approach to Safeguards (CAS)**, which is a general term used to describe the coordinated processes undertaken by countries to meet multiple safeguard requirements for REDD+, both under the UNFCCC and other relevant initiatives and institutions (such as the FCPF).

It is now generally considered by most countries that identifying, assessing, and strengthening existing governance arrangements for safeguards (e.g. Policies, Laws and Regulations (PLRs), institutional frameworks, information systems, etc.) provides a useful framework through which they can address and respect the Cancun safeguards throughout the implementation of their REDD+ actions. Such an assessment can also serve to inform the Strategic Environment and Social Assessment/ Environmental and Social Management Framework (SESA/ESMF) processes undertaken under the FCPF.

The legal frameworks of most countries already protect and regulate many of the rights and objectives enshrined in the Cancun safeguards. However, the precise way in which these general rights and duties are spelt out will likely differ from country to country. The analysis of the legal framework is therefore considered a crucial step to be able to interpret or explain how the broad rights and duties embodied in the Cancun safeguards text are reflected in the country. This is useful as the resulting 'country-specific interpretation or explanation' of the Cancun safeguards can be used as a more precise and tailored substantive 'standard' to ensure and report on the extent to which consistency with the Cancun safeguards is being ensured during REDD+ implementation.

OBJECTIVES

This report presents the findings of the analysis of Ghana's relevant legal framework, and has the following objectives:

a) To identify and analyse the aspects of Ghana's legal framework that are relevant to the Cancun safeguards

The aim is to identify and understand what are the national and international legal obligations (e.g. policies, laws and regulations -PLRs), that can be relied on in Ghana to ensure that REDD+ is implemented in a manner consistent with the Cancun safeguards (and reported as such). The analysis also provides the basis to help interpret the broad objectives/principles embodied in the Cancun safeguards and explain how they are reflected in the country context. The country's specific safeguards (i.e. specific enforceable rights and duties) are therefore determined **based on the existing legal obligations** of the country.

b) To provide recommendations to address identified gaps or weaknesses

While the assessment of the legal framework helps to anchor the Cancun safeguards to the domestic legal framework, gaps may nevertheless be identified between the two. This report aims to identify these gaps and to propose possible measures that could be taken to address identified gaps in the PLRs.

¹ UNFCCC Decision 1/CP.16 paragraph 102

METHODOLOGY

The key methodological steps for developing this report included:

- 1) Identification of relevant and applicable international and national legal framework
- 2) Analysis (on paper and in practice) of the identified relevant and applicable international and national legal framework
- 3) Developing recommendations for addressing gaps and weaknesses

For a detailed explanation of the methodology used to prepare this legal analysis and report, please refer to Annex 1.

The current iteration of the report is a working draft and will be subjected to a series of reviews by relevant stakeholders, whose inputs will serve to strengthen the report.

A list of relevant people will be determined by the Forestry Commission and SNV Ghana.

HOW TO NAVIGATE THIS DOCUMENT?

The next section provides tables that summarise the findings identified in the analysis of the legal framework. These tables are structured according to the framework used for the analysis, which reflects key elements and components of the Cancun Safeguards (presented as ‘criteria’ in the table below) based on international best practice².

The information is presented in the following manner:

- Column 1 Findings:
 - On Paper: this section of the table highlights the extent to which Ghana’s legal framework is aligned with the relevant component/criteria of the Cancun safeguards.
 - In Practice: this section of the table highlights how the aspects of Ghana’s legal framework that are deemed to be consistent with the Cancun safeguards identified above (on paper) are actually being implemented in practice.
- Column 2 Gaps or weaknesses:
 - On Paper: this section of the table highlights aspects of Ghana’s legal framework (if any) that appear to conflict with the Cancun safeguards (on paper). This section also highlights instances where the criteria are not addressed by the legal framework.
 - In Practice: this section of the table highlights instances where although the legal framework may be consistent with the safeguard criteria on paper, in practice these are not effectively implemented.
- Column 3 Recommendations: these are intended to suggest measures to improve the consistency of the legal framework with the Cancun safeguards on paper or in practice. Recommendations are divided into:
 - On paper, which provides suggestions on how gaps or weaknesses could be addressed through legal or policy reforms/developments.
 - In practice, suggestions of measures or actions that could be carried out by relevant government authorities (e.g. institutional strengthening).

² See Annex 1 with methodology for further detail on elements of the Cancun safeguards

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2. SUMMARY RESULTS OF THE ANALYSIS OF GHANA'S POLICIES, LAWS AND REGULATIONS

SYNTHESIS OF THE ANALYSIS OF SAFEGUARD (A)

UNFCCC REDD+ safeguard (A):

“That action complements or is consistent with the objectives of national forest programmes and relevant international conventions and agreements;”

CRITERIA A.1. COMPLEMENT OR CONSISTENT WITH OBJECTIVES OF NATIONAL FOREST PROGRAMMES

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <p>In Ghana's Legal Framework³, there is an implied duty for all stakeholders to ensure consistency with national forest programmes.</p> <hr/> <p>In practice (how these PLRs are implemented):</p> <p>To a large extent, these provisions are general in nature, the implication of which is that there may be room for manoeuvrability in implementation by various organs of State. There is also the additional problem of the near lack of cooperation and communication among these organs of State, which sometimes manifests in</p>	<p>In relation to the PLRs on paper:</p> <p>n/a</p> <hr/> <p>In practice:</p> <p>The inadequacy of resources, both human and financial, as well as the absence of clear-cut legal provisions means that the duty to ensure consistency across sectoral policies is not always respected in practice</p> <p>In practice, there have been instances where policies or programmes have been inconsistent and gone against environmental and forest programmes, for</p>	<p>On how to address the gaps on paper</p> <p>It is recommended that in the legislation, a duty should be placed on the Ministry and Forestry Commission to ensure that all future plans, policies and administrative procedures be in conformity with the approved programmes.</p> <p>In that regard, we recommend that in the drafting of a consolidated forest and Wildlife legislation, a provision be inserted that requires consistency as far as possible, of all forest plans, policies and programmes. The provision should also address procedures for addressing inconsistencies.</p>

³ The Legal Framework allows to meet this indicator through a combination of the Constitution and the Ghana Forest and Wildlife Policy. Article 2 of the Constitution provides that A person who alleges that (a) an enactment or anything contained in or done under the authority of that or any other enactment, or (b) any act or omission of any person, is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect. Article 36(9) of the Constitution provides that the State shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek cooperation with other States and bodies for purposes of protecting the wider international environment for mankind and 41(k) to protect and safeguard the environment. Article 269(1) of the Constitution provides for the establishment of a Forestry Commission while articles 36(9) and 41(k) makes it mandatory for the government and citizens, respectively, to safeguard and protect the forest. Section 2 (1) Forestry Commission Act, 1999 (Act 571); (1) The Commission is responsible for the regulation of the utilisation of forest and wildlife resources, the conservation and management of those resources and the co-ordination of policies related to them.

<p>duplication of tasks, and in some extreme cases, difficulty in achieving the objectives. However, the foregoing do not take away from the fact that these provisions actually provide the compass for the management of forests and forest resources in Ghana, and that they, to a large extent, are in line with the REDD+ Strategy.</p> <p>In practice, policies take their source from the Act and thus to a large extent there are consistencies with the National forest programme.</p> <p>In practice, CSOs play an important role in ensuring consistency.</p>	<p>example with the case of mining exploration being done in protected areas.⁴</p>	<p>Further, we recommend that an Act of Parliament be passed to domesticate the International treaty on Climate change. The proposed legislation should have provisions that align with and are consistent to all existing plans and programmes in Ghana on the subject.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>Ensuring consistency with national forest programmes is a function of coordination and enforcement among the agencies and departments responsible for the implementation of programmes. Future legislation should require coordination among the various sectors and agencies. Future legislation should also expressly require monitoring and evaluation to enable the measurement of consistency with the national forest programmes.</p> <p>It is also recommended that a national REDD+ strategy and a plantation strategy should be developed and implemented.</p>
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⁴ Feedback gathered from stakeholders at Ghana's safeguards sub-working group meeting at the Forestry Commission in Accra on 26/10/2016

CRITERIA A.2. COMPLEMENT OR CONSISTENT WITH RELEVANT INTERNATIONAL CONVENTIONS AND AGREEMENTS

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> International Law is incorporated into the domestic legal system by Parliamentary ratification through an Act of Parliament or by a resolution of Parliament⁵ The Constitution is the supreme law⁶, followed by Acts of Parliaments and Subsidiary Legislations in that order⁷. <hr/> <p>In practice:</p> <p>Although the constitution requires ratification before international law becomes applicable in Ghana, the courts⁸ have indicated that they will apply and consider yet-to-be-ratified treaties by reason of the international customary law principle of State practice.</p> <p>In practice, from the forest managers' perspective, most of the laws appear to be inspired by international conventions and agreements that Ghana is Party to. Particularly</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> n/a <hr/> <p>In practice:</p> <p>The process for ratification of treaty agreements is more cumbersome than the passage of subsidiary legislation. In consequence, there are several treaties to which Ghana is a party, that are yet to be ratified by Parliament.</p> <p>Moreover, there is no practice of due diligence to ensure that new PLRs are consistent with these International agreements and existing PLRs.</p> <p>In practice, also, there are situations where there is uncertainty as to which international agreement is applicable in the country and the extent of the application.</p>	<p>On how to address the gaps on paper: N/A</p> <p>n/a</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>It is recommended that a framework be provided either by the Legislature or the Office of the Attorney General to ensure the publicity of ratified international conventions and agreements and the extent of their applicability in the Ghanaian domestic legal system.</p> <p>That a framework be in place to ensure that existing PLRs are brought into conformity with international agreements and also that new PLRs actually reflect the ratified international agreements.</p>

⁵ Constitution of the Republic of Ghana, 1992, Article 75

⁶ Constitution, Article 1 Clause 2

⁷ Constitution, Article 11 (1) (b) (1) and Article 75 (2) (a). Republic v. High Court Commercial Division Accra, Ex parte Attorney General (Interested Parties NML Capital Ltd and the Republic of Argentina) (Civil motion, No. J5/10/20113, 20th June 2013) Unreported

⁸ Republic v. High Court Commercial Division Accra, Ex parte Attorney General (Interested Parties NML Capital Ltd and the Republic of Argentina) (Civil motion, No. J5/10/20113, 20th June 2013) Unreported.

<p>L.1 2184.</p> <p>In practice international law is implemented in Ghana due to the importance of the international development agenda in the country. Indeed, Ghana is keen to show its good will to donors and international development initiatives that will often require to ensure consistency with IL (ex: FIP, FCPF). ⁹</p>		
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⁹ Feedback gathered from stakeholders at Ghana's safeguards sub-working group meeting at the Forestry Commission in Accra on 26/10/2016

SYNTHESIS OF THE ANALYSIS OF SAFEGUARD (B)

UNFCCC REDD+ safeguard (B):

“Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;”

CRITERIA B.1 TRANSPARENCY

SUB-CRITERIA B.1.1 RIGHT OF ACCESS TO INFORMATION

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> Ghana’s Constitution¹⁰ makes provisions that allow every person within Ghana to have access to public information. The Administration of Lands¹¹ Act and Environmental Assessment Regulations¹², provide for the dissemination of information on forestry events, issues and trends, but is also silent as to the mode of dissemination. The Environmental Assessment Regulations¹³ also mandates the 	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> The right to access information in Ghana, as provided for in the Constitution¹⁶, is recognised¹⁷ although it is not an absolute right¹⁸. Ghana’s Legal Framework contains limited provisions that define information. These are limited to certain activities within the forest/natural resource/land sector.^{19 20} Ghana’s Legal Framework contains provisions²¹ that require the active dissemination of information, but these are only applicable to specific activities rather than a general duty to 	<p>On how to address the gaps on paper:</p> <p>A clear definition to be provided in legislation providing the definition of information as a public good and providing a duty on public actors to provide definition upon request.</p> <p>It is also recommended that a public agency be mandated to ensure that public information is readily made available upon request.</p> <p>In the legislation to address access to information, it is recommended that framework law on access to information be adopted, which includes a clear process for requesting</p>

¹⁰ Constitution, Article 21 (1)(f)

¹¹ Administration of Lands Act, 1962 (Act 123), Section 10 (2)

¹² Environmental Assessment Regulation (1999), Regulation 28 L.I 1652

¹³ The Environmental Assessment Regulations, Regulation 28

¹⁶ Constitution, Article 21(1)(f)

¹⁷ Constitution, Article 21 (1)(f)

¹⁸ Articles 12 and 21 of the Constitution provide restrictions on the exercise of fundamental human rights in Ghana. Primarily the restrictions are for the public interest and for the enjoyment of rights of others.

¹⁹ The Administration of Lands Act, 1962, Section 10.

²⁰ The Environmental Assessment Regulations, Regulation 28

<p>Environmental Protection Agency to make Gazette publications of codes of practice, standards and guidelines in respect of matters relating to the protection of the environment.</p>	<p>share information relevant to policy development, decision-making and policy implementation.</p>	<p>access to the information, including by more vulnerable persons such as rural communities.</p>
<p>In practice</p> <p>Due to a recent high court decision, information can be accessed by an application to the High Court.¹⁴</p> <p>The Forest and Wildlife Policy¹⁵ requires the relevant agencies to manage and update a forest information database in order to provide the basis for the effective monitoring of a sustainable forest management. Access to this information is granted, subject to certain restrictions as are necessary in a democratic society.</p>	<p>In practice:</p> <p>The request for information would typically be benchmarked against what is considered to be the best interest of the Country with respect to the release of such information to the public.</p> <p>In practice, although public officials may be inclined to provide information, it is mostly on a need to know basis and often subject to superior clearance, which is often discretionary.</p> <p>In practice also, while the 2012 Forest and Wildlife Policy requires a forest database to be put in place, this is yet to be done.</p>	<p>An individual should be appointed by the FC to process and handle applications for access to information.</p> <p>On how to address the gaps from the PLR's implementation:</p> <p>It is recommended that clear administrative procedures be adopted and made public as to the processes that citizens will have to go through to access public information from relevant sectors. This procedure should provide also for timelines and a structured process of redress for dissatisfied applicants.</p>

SUB-CRITERIA B.1.2 INSTITUTIONS TO ENSURE ACCESS AND DISTRIBUTION OF INFORMATION

²¹ Administration of Lands Act, 1962 (Act 123), Section 10 (2); Regulation 28 Environmental Assessment Regulation (1999) L.I 1652; Ghana Forest and Wildlife Policy, 2012:Strategic Direction 5.1.1(c and f) and Strategic Direction 5.2.1(d) of Policy Objective 4 (pp 29-30) *Strategic Direction 5.2.1(b)*.

¹⁴ Loland Sagoe-Moses and Others v. Attorney General 2016: The judgement reads "[the applicants] seek to ensure probity and accountability in the use and application of public funds. And, in so doing, the Applicants assert, in the application, their fundamental human right to information connected with the bus branding contract." Other arguments for the applicants include that they were asserting this right not in the public interest, but *in relation to themselves*; and that "it is not the law that in the absence of a freedom of information legislation, a person in Ghana is bereft of the right to information".

¹⁵ Ghana Forest and Wildlife Policy, 2012: Strategic Direction 5.1.1(c and f) and Strategic Direction 5.2.1(d) of Policy Objective 4 (pp 29-30) *Strategic Direction 5.1.1(c and f)* c) Update forest information database to monitor sustainable forest management and establish forest and wildlife research funds which research and academic institutions, as well as civil society can access.

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> Although there are no dedicated institutions for the dissemination of information, there are Constitutional bodies like the National Commission for Civic Education that is charged with educating the citizenry in all matters of public interest, which would naturally include forestry issues. Also a good source of information in the country is the Ghana Statistical Service²². Although there is no central registry for gathering information related to forest management, the Environmental Assessment Regulations²³ include provisions for the documentation of all Environmental Impact Assessment ordered by it, which is held centrally by the EPA. There are provisions in legislation including the Environmental Protection Agency Act²⁴ that indicate that agency personnel can request certain public information from others for the general public good. Additionally, the public can 	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> The Legal Framework in Ghana currently does not create a dedicated institution for the dissemination of information. Ghanaian laws do not provide for a Central Registry for gathering information related to forest management. PLRs do not provide any clear procedures for requesting or accessing information. <hr/> <p>In practice:</p> <p>In practice requests made to the statistical service or the EPA are not common. This is thought to be because people lack awareness that they can request such information and that the EPA is under duty to provide same when requested.</p>	<p>On how to address the gaps on paper:</p> <p>A requirement in law mandating an agency of state to disseminate and make public information particularly relating to the environment and natural resources.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>Existing agencies that already have some mandate to disseminate information should be further required under law to publicize the kind of public information they hold so as to make the public aware of their availability and subsequently request them.</p>

²² Constitution, Article 85

²³ Environmental Assessment Regulation 24 (2) (3) (4) ; Regulation 25:(1) (2)

²⁴ EPA Act, 1994, Section 27

use the court processes to request/access such information.²⁵

In practice (how these PLRs are implemented):

In practice, the statistics service provides information it has on request and many times publishes such information. Regarding the EPA, the practice is that most information requested under section 27 of the EPA Act is provided

The Forest and Wildlife Policy of 2012 provides evidence of an intention by government to setup a forest information database, which, when implemented will be the central registry on forest related issues. This central registry will have information on the types of permit, as well as their management regime, among others. Presently the Legality Assurance System – the audit framework for the grant of a FLEGT License is expected to have some of this information.

²⁵ Loland Sagoe-Moses and Others v. Attorney General, 2016.

SUB-CRITERIA B.1.3 PROMOTING PUBLIC AWARENESS ON ACCESS TO INFORMATION

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> Although PLRs do not specifically require government agencies to promote the right of access to information, the broad mandate of the National Commission for Civic Education in its enabling Act,²⁶ provides for the education of the public on a broad range of matters and the Commission on Human Rights and Administrative Justice Act²⁷ provides for public education on human rights and freedoms. <hr/> <p>In practice (how these PLRs are implemented):</p> <p>n/a</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> There are no strict and precise regulations requiring public institutions to provide information that explains the laws, regulations and processes related to forest management in an easily understandable language for forest users Although there are provisions in the law²⁸ that require certain government institutions to initiate and pursue formal and non-formal education programmes for the creation of public awareness on the environment, there are no indications that there is a mandate on public institutions to explain the laws and processes involved in forest management in a language that is easily understood by stakeholders. <hr/> <p>In practice:</p> <p>In practice, the dissemination function of both the National Commission on Civic Education and the Commission on Human Rights and Administrative Justice have been limited to issues of human rights and good</p>	<p>On how to address the gaps on paper:</p> <p>As indicated above, one critical way to address this gap is to place a duty on a public institution to ensure public awareness of access to information, a framework for accessing that information and to provide remedies where they breach that duty.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>Measures should be targeted towards ensuring that the public know of the availability of information, and that they can easily access them at little or very minimal (administrative) costs.</p>

²⁶ National Commission on Civic Education Act, 1993 (Act 452)

²⁷ Commission on Human Rights and Administrative Justice Act, 1993 (Act 456): Section 7 (1)(g)

²⁸ Environmental Protection Agency Act, 1994 (Act 490): Section 2 (l), (m), and (p)

	<p>political governance, to the detriment of other issues including natural resources governance and environmental sustainability</p> <p>Due to absence of a legislative framework on access to information, there have been very few campaigns targeted on the right to information and how to access public information.</p>	
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SUB-CRITERIA B.1.4 ACCOUNTABILITY

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> Institutions or agencies for promoting public transparency are adequately provided for within the Legal framework of Ghana^{29 30 31} A number of Acts of Parliaments³² provide clear measures for addressing corruption generally, with a few of them aimed specifically at the forest sector. The Constitution³³ recognises the need for the national budget to be laid before parliament not later than one month 	<p>In relation to the PLRs on paper:</p> <p>There is no clear legal definition of what amounts to corruption in Ghana.</p> <hr/> <p>In practice:</p> <p>One can make the argument as to whether the period of one month before the end of the preceding financial year would afford parliament enough time to deliberate on the budget proposal.</p> <p>In practice, although there are elaborate provisions</p>	<p>On how to address the gaps on paper:</p> <p>Future legislations should address issues like what actually constitutes corruption, and prescribe more stringent punitive measures for persons found to have breached such laws. Additionally, public agencies that are charged with the responsibility of ensuring accountability should be placed on an additional duty to make their findings from corruption investigations public, in order to deter others from abusing their offices.</p> <p>The prescribed penalty units, which are at best, practically non-deterrent, should be reviewed in line with the gravity of</p>

²⁹ Constitution, Article 187 (1), (2), (6), (7) and (8)

³⁰ Audit Service Act, 2000 (Act 584): Sections 13 and 23

³¹ Internal Audit Agency Act, 2003 (Act 658): Section 3(1) and (2)

³² Economic and Organised Crime Office Act, 2010 (Act 804) and Commission on Human Rights and Administrative Justice Act, 1993 Act 456

³³ Constitution, Article 179 (1) and (2)(a)

<p>before the end of the financial year, following which it is made public. Moreover, the Budget is prepared with Public inputs at the district and regional levels before finalization and laying in parliament.</p> <ul style="list-style-type: none"> • The Audit Service Agency Act³⁴ requires that reports are prepared to show how public funds are used by the Forestry Commission or other agencies. These reports are then independently audited by the Audit service Agency. • PLRs are clear on the penalties prescribed for acts of corruption.³⁵ • The PLRs create an independent agency mandated to fight corruption and investigate allegations³⁶ of corruption. • The Constitution³⁷ clearly outlines a code of conduct to be followed by persons in public offices. A public officer, by these provisions, is barred from acts that puts him/her in a position where his/her personal interests conflict or is likely to conflict with the performance of his duties, for instance. <hr/> <p>In practice (how these PLRs are</p>	<p>for ensuring public transparency, there seems to be a high level of corruption in the public sector,³⁸ which is also fuelled by the lack of access to public information.</p> <p>Primarily also because the agencies charged with ensuring transparency and reducing corruption are not under duty to make the findings of their investigations public.</p> <p>In practice, the penalties provided are not strict enough to serve as deterrent measures, the implication of which is that they do not operate to curb acts of corruption.</p>	<p>these offences. This will, in our opinion, ensure that corruption is reduced to the barest minimum.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>A practice that allows for the publication, say, on a quarterly or bi-annual basis, of all information relating to the income and expenditure of public bodies, as well as information on the progress recorded by these agencies in the same period. These progress reports should be benchmarked against the targets set by these agencies for the same period.</p>
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³⁴ Audit Service Act, 2000 (Act 584): Section 11

³⁵ Criminal Offences Act, 1960 (Act 29), Section 239(1), Section 179C and Section 296(5)

³⁶ The Commission on Human Rights and Administrative Justice (CHRAJ) is provided for by Constitution, Articles 218(a), (b) and (e) and 287; and Act 456, 1993. The Economic and organized Crime office is provided for in Act 804 of 2010.

³⁷ Constitution, Articles 284 and 41(f)

³⁸ http://www.transparency.org/files/content/corruptionqas/271_Corruption_and_anti_corruption_in_Ghana.pdf

<p>implemented):</p> <p>The Forestry Commission complements the public transparency process by ensuring that the Commission keeps books of accounts and proper records in relation to them in a form prescribed by the Auditor General, and that these books of account are made available to the Auditor General for audit purposes within three months after the end of each financial year.</p>		
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CRITERIA B.2 EFFECTIVE NATIONAL FOREST GOVERNANCE

SUB-CRITERIA B.2.1 CLEAR LAND TENURE RIGHTS

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> The Legal Framework in Ghana recognises the different types of rights over forestlands, including statutory and customary ownership³⁹ and user rights. The Constitution⁴⁰ provides that all public lands are vested in the President for and on behalf of the people, but it also points 	<p>In relation to the PLRs on paper:</p> <p>Land user rights are not clearly spelt out in legislation.</p> <hr/> <p>In practice:</p> <p>In practice, there is lack of clarity in land tenure rights occasioned by the conflict between statutory</p>	<p>On how to address the gaps on paper:</p> <p>A recommendation that the legal regime (primarily the Land laws) are amended to ensure that customary land rights are registrable, same as statutory land rights. This should be preceded by a clear ascertainment and documentation of the process for acquiring land rights under the various customs operating in Ghana.</p> <p>In the alternative, the drafting of a new Lands Bill should</p>

³⁹ Constitution, Article 267(1)

⁴⁰ Constitution, Articles 257 (1) (4) and 267 (1) (3) (5)

<p>out that stool lands are vested, not in the president, but in the Stool, for and on behalf of his subjects.⁴¹</p> <ul style="list-style-type: none"> • Even though there are a bundle of rights over land on forests resources, the ownership by way of control and management of the resources is vested in the President, since forest resources are natural resources. However, such ownership respect customary user rights of entry⁴² which does not conflict with the control and management of the resource. • Land Tenure and its accompanying rights are both regulated by Statue and Custom.⁴³ • A combination of constitutional and statutory provisions ensures that not only are the victims of expropriation adequately compensated, but that the processes and procedures for ensuring proper compensation are provided. ⁴⁴ • The procedures and processes to be followed in order to acquire title to land, including forestlands in Ghana are clear, accessible and enforceable⁴⁵ 	<p>and customary lands tenure rights.</p> <p>In practice the process to acquire title is long, cumbersome and unduly expensive thus providing a thriving breeding ground for middlemen and fraudsters.</p> <p>Also in practice, statutory and customary claims overlap particularly in instances of compulsory acquisition under articles 20 and 257 of the 1992 Constitution.</p> <p>A recent study⁴⁷ on Women in Forest revealed that many women do not have equal access to land and benefits of the land nationwide as compared to men.</p>	<p>provide the provision requiring the registration of all land rights in the country.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>A legal framework to reconcile Statutory rights with customary rights, primarily through the negotiations and signing of Social responsibility agreement.</p>
<p>In practice (how these PLRs are</p>		

⁴¹ Ollennu, N. A. (1962). Principles of Customary Land Law in Ghana, London, Staples Printers

⁴² Forest Act, 1927 (CAP 157) Section 17 2012: (1) (2) (3) (4) (5) (6) (7); Forest and Wildlife Policy Strategic Direction 1.5.1;

⁴³ National Land Policy 1999, 4.3 (a) (f) (j)

⁴⁴ Constitution, Article 20, 20(1)(a); Administration of Lands Act, 1962, Section 10 (Act 123)

⁴⁵ Conveyancing Act, Section 1

⁴⁷ Study commissioned by ClientEarth, UK in 2013-2014 on Women's rights in forest law; legislative review and recommendations for the law reform in Ghana.

<p>implemented):</p> <p>PLRs also recognise private forestland ownership. In terms of user rights, the prevalent user rights are the allodial and usufruct interests, as well as licenses, as attested to by a preponderance of case law⁴⁶</p>		
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SUB-CRITERIA B.2.2 EQUITABLE DISTRIBUTION OF BENEFITS

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> The Legal framework in Ghana caters for a regime of a right to fair distribution of benefits arising from the use of forest resources. In some instances, the amount to be paid and who the beneficiaries of such payments are, have been clearly stipulated.⁴⁸ Benefit sharing of forest resources is catered for by a combination of legal instruments in Ghana, consisting of the Constitution and Acts of Parliament. These provisions cover 	<p>In relation to the PLRs on paper:</p> <p>The categories of beneficiaries spelt out in the relevant legislation are broad (see constitution) and therefore subject to elite capture.</p> <hr/> <p>In practice:</p> <p>In practice, the actual owners of the lands, that is, the chiefs on behalf of the communities, are not in direct control of the resources that flow therefrom, the effect of which is that the</p>	<p>On how to address the gaps on paper:</p> <p>Future legislations may contemplate a situation where monies due to communities whose lands have been compulsorily acquired, are paid directly to the heads of these communities instead of the present regimes where such monies are being paid to the Administrator of Stool Lands, who is in the employment of the government. Obviously, such legislation would also provide for a means of ensuring that all such monies are properly accounted for.</p> <p>A flexible and inclusive benefit-sharing model should be developed. This model should contemplate a structure for</p>

⁴⁶ The Supreme Court also describe the usufruct as “a species of ownership co-existent and simultaneous with the stool’s absolute ownership.” This was held in *Awuah v. Adututu* (1987-88 2 GLR 191 C.A.). *Kofi v. Sesu* (1948) D.C. (Land) 48-51, 91] Jackson J. “The custom of Abusa is that in exchange for the permission to cultivate the land, the tenant will pay to his landlord 1/3 of the profit made by him. *Sasu v. Asamani* (1949) D.C. (Land) 48-51, 133 Quarshie-Idun J., also stated that, “Abusa implies that the owner of the land is entitled to be paid a third share of the proceeds accruing from the whole farm cultivated by another” In the case of *Vietor v. Hammond* (1938) D.C. (Land), it was held that, “An abusa tenancy was attachable but since the judgement debt was private, the tenancy could not be seized and sold in execution”.

⁴⁸ Constitution, Article 267 (6)

<p>contracts, as well as all the allowable covenants and agreements regarding the rights. ⁴⁹</p> <ul style="list-style-type: none"> Also supporting the benefits sharing regime in Ghana is the Head of Family (Accountability) Act⁵⁰, which ensures that where benefits have been paid to family head for members of the family, the family may call the head to account and ensure that the benefits are received by family members. <hr/> <p>In practice (how these PLRs are implemented):</p> <p>The Ghana Forest and Wildlife Policy⁵¹ shows the intention of the Government to strengthen this position by recognizing the need for the enactment of the necessary legislations and regulations to facilitate and enhance local participation and control through decentralization of forestry operations at the district level. In pursuance of this, government will... enact the legislation that will enable communities and individuals to benefit from trees on their farms and fallow lands, provide off reserves tree tenure security, grant authority to legally dispose of resources and allocate better proportions of benefits accruing from resource management to community members individually or collectively.</p> <p>In practice, the communities do not directly benefit and determine the use of the distributed revenue</p>	<p>resources are hardly ever used for the benefit of its real owners.</p> <p>This is however, without prejudice to constitutional provisions, particularly those on compulsory acquisition in articles 20 and 257, as well as the compensation regimes in the Administration of Lands Act. the combination of which, on paper, makes adequate compensatory plans for communities so affected.</p>	<p>potential dispute resolution. One of such models could be a Co-Benefit sharing scheme, which is a non-monetary benefits sharing scheme, the aim of which is to take adequate care of issues that bother on alternative livelihoods for forest community dwellers.</p> <p>It is imperative that such a scheme is provided with financial support to ensure its viability, as well as a good governance structure to ensure proper accountability.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>There is a need for the regime of resource ownership to be clearly defined so as to make room for the proper management of these resources. In effect, the chiefs, who are the custodians of community lands, should be placed in actual charge of those lands, and where the government compulsorily acquires such lands, compensation to the extent spelt out in the Constitution and the Administration of Lands Act should be fully complied with.</p>
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⁴⁹ Constitution, Article 267 (1) and (2); Timber Resource Management Act, 1998 (Act 547): Sections 4 (1) (2) (3) and 8

⁵⁰ Head of Family (Accountability) Act, 1985 (PNDCL 114)

⁵¹ Ghana Forest and wildlife Policy, 2012: Policy Strategy 4.1.1(b) of Strategic Direction 4.1 (p. 27)

under article 267 because the institutions that receive these revenues are not obliged to account for the use of these revenues.		
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SUB-CRITERIA B.2.3 GENDER AND EQUALITY

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> There is a general prohibition in the Constitution⁵² and the Ghanaian legal framework⁵³ on discrimination, including discrimination on grounds of gender. This prohibition has further been enhanced with the development of the 2012 National Gender Policy which aims at mainstreaming gender equality concerns into the national development processes, by improving the social, legal, civic, political, economic and socio-cultural conditions of the people of Ghana. It also seeks to empower the vulnerable groups particularly women, children, and people with special needs such as persons with disabilities and the marginalized. 	<p>In relation to the PLRs on paper:</p> <p>n/a</p> <hr/> <p>In practice:</p> <p>One of the key outcomes of the Report on the Roadmap to Mainstreaming Gender Considerations into Ghana's REDD+ Programmes, which is the agreement to mainstream women into all activities in Ghana's forests management, is indicative of the fact that, despite the constitutional provisions, gender equality in the forest/land tenure arrangement is not guaranteed. The Policy highlights the disparity between the requirements under the constitution to ensure gender equality and the practise on the ground. However, the policy envisages the passage of legislation to bridge the gap.</p>	<p>On how to address the gaps on paper:</p> <p>Provide an enabling legislation that directly addresses gender in all aspects of national life, including environmental governance.</p> <p>Such legislation should clearly place a duty on public actors to ensure full implementation, as well as remedies for failure to comply with the legislation.</p> <p>These contemplated legislations must be made in specific terms and not in general terms as is presently the case with constitutional provisions on gender equality in Chapter 5 of the Constitution. The provisions should also spell out the measures that would be taken against persons who are liable for breach.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>Critical to the implementation of any PLR on gender and</p>

⁵² Constitution, Article 17.

⁵³ Labour Act 2003 (Act 651), Section 87.

<p>In practice (how these PLRs are implemented):</p> <p>The combination of the effects of certain provisions⁵⁴ in the National Gender Policy and the Report of the Meeting on the Roadmap to Mainstreaming Gender Considerations into Ghana's REDD+ Programme are that some institutions like the Ministry for Gender⁵⁵ or the Forestry Commission are charged with the responsibility to raise awareness on Gender equality through some relevant programmes. These intendments will invariably support that gender is taken into consideration in the sharing of benefit, participation and land tenure arrangements.</p>	<p>In practice, due to customary practices women do not have the same rights as men when it comes to the holding of land rights.</p>	<p>equality is the need to address socio-cultural biases and circumstances of the Ghanaian people. Unfortunately, however, it would appear that a lot cannot be done until there are specific laws that are targeted at ensuring gender equality in all spheres of life</p>
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SUB-CRITERIA B.2.4 ADEQUATE ACCESS TO JUSTICE

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> The right to access to justice is an entrenched provision of the Constitution⁵⁶, and this reflects its importance and pride of place in the gamut of rights in Ghana. The PLRs therefore recognize this right. These rights are enforceable by the courts in Ghana. Through a Court system that comprises both 	<p>In relation to the PLRs on paper:</p> <p>n/a</p> <hr/> <p>In practice:</p> <p>In practice, access to justice is affected by undue delay and high costs. The cost includes</p>	<p>On how to address the gaps on paper:</p> <p>n/a</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>A concerted attempt to erase the perception of corruption</p>

⁵⁴ National Gender Policy 2016 5.2.5 Policy Commitment 5;

⁵⁵ The Ministry of Gender, Children & Social Protection (MoGCSP), established by the Civil Services (Ministries) Instrument, E.I. 1 of 2013 dated 18th January 2013.

⁵⁶ Constitution, Article 19(1) and Article 294 (1) and (4)

<p>the inferior and superior courts, with clear cut directions regarding the rights of, and procedures for appeal, as well as a traditional system of adjudication through the National and Regional Houses of Chiefs, and an Alternative Dispute Resolution (ADR) system, Ghana's legal framework provides effective dispute resolution mechanisms capable of addressing all forms of disputes at all levels.</p> <ul style="list-style-type: none"> • PLRs⁵⁷ in Ghana have, through the Legal Aids Scheme, made provisions for the poor to have access to legal services and other forms of legal support. The Legal Aids Scheme Act, which serves as the implementing instrument for this constitutional provision, states that a person shall be entitled to legal aid if he/she earns the government minimum wage or desires legal representation in criminal or civil matters relating to land etc, and if in the opinion of the Legal Aids Board, such a person requires legal aid⁵⁸. Additionally, the lower courts as well as the National and Regional Houses of Chiefs and the system of Customary Arbitration also provide fairly less costly avenues for justice. • Constitutional provisions in Ghana guarantee access to remedies. Every person has the right to approach the Supreme Court if he thinks that an enactment or an act or omission contravenes the constitution, following which the Supreme Court would give judgment in his 	<p>the cost of engaging legal counsel and also of paying the required fees to commence and maintain an action in court.</p> <p>Although the Legal Aid Scheme exists, it does not cover all districts in the country and it is understaffed and underfunded. The Scheme is thus unable to provide for all who require their services and in some instances some persons are required to support the cost of their litigation.</p> <p>There is also a general mistrust of the justice system leading, in some cases, to apathy amongst the people. The mistrust is often created by a perception of corruption and delays in the system.</p>	<p>in the justice delivery system and the encouragement of the use of ADR.</p> <p>Well-resourced legal Aid Centres nationwide to reduce the cost of access to justice and the burden of payment for legal fees.</p> <p>Measures at codifying the customary laws of the various ethnic nationalities in Ghana should be intensified, as this is capable of promoting the customary arbitration process, with which people in the local communities are expected to be more conversant and comfortable, not also forgetting its relative cheaper costs.</p>
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⁵⁷ Legal Aid Scheme Act, 1997 (Act 542), Section 5

⁵⁸ Legal Aid Scheme Act, 1997 (Act 542), Section 5

<p>favour if it so finds. The Constitution also makes it mandatory for the party whom judgment has been given against to obey the directions of the court, failing which a high crime punishable by a term of imprisonment not exceeding ten years, would be deemed to have been committed.⁵⁹</p> <hr/> <p>In practice (how these PLRs are implemented):</p> <p>The High Court may also issue such orders or directions in the nature of <i>habeas corpus</i>, <i>certiorari</i>, <i>mandamus</i>, <i>prohibition</i> and <i>quo warranto</i> as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person concerned is entitled.</p>		
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SUB-CRITERIA B.2.5 INTEGRATION OF SOCIAL, ECONOMIC AND ENVIRONMENTAL CONSIDERATIONS

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> Constitutional provisions mandate the government and citizens to take 	<p>In relation to the PLRs on paper:</p> <p>n/a</p>	<p>On how to address the gaps on paper:</p> <p>Future legislations should review the power of the Minister to hold the final say in the approval of an Environmental Impact Assessment, particularly in consideration of the fact</p>

⁵⁹ Constitution, Article 2, (1) (2) (3) (4) (5)

<p>necessary steps towards the protection and safeguarding of the environment⁶⁰, and provisions in the Environmental Protection Agency Act⁶¹, which require that an Environmental Impact Assessment (EIA) must be prepared by all entities that are embarking on projects that are likely to impact the environment.</p> <ul style="list-style-type: none"> • The requirements of regular monitoring and review of environmental considerations of any undertaking are captured in the Environmental Protection Agency Act, wherein it provides for the appointment of Environmental Protection Inspectors, whose tasks include the entering of premises for the purpose of ensuring compliance with the law regulating their activities. 	<p>In practice:</p> <p>Although the logging manual of the Forestry Commission (FC) requires that loggers undertake EIAs, the practice seems to be that rarely are EIAs undertaken in relations to forest logging and use.</p>	<p>that these ministers are mainly politicians who may not be well versed with the technical skills to make such decisions.</p> <p>Alternatively, these powers may be retained by them, but should be exercised in a committee headed by him, but that consists of technical experts, so as to ensure that the required inputs for an informed decision are guaranteed.</p> <p>The present legislation make provisions for penalties and terms of imprisonment for contractors who, as a result of the adverse effect that their projects may have on the environment, are asked to discontinue, but fail to continue. These measures in their current state are incapable of deterring such contractors and should be accordingly reviewed.</p>
<p>In practice (how these PLRs are implemented):</p> <p>In practice, there appears to be a disconnect between the provisions requiring integration of environmental concerns in development primarily because of logistical challenges being faced by the state bodies charged with ensuring this.</p> <p>The practice is also that there appear not to be full compliance with the requirements of an</p>		<p>On how to address the gaps from the PLR's implementation:</p> <p>The EPA and the other agencies should ensure that the requirements of the logging manual are religiously implemented, as this would ensure that the EIA requirements are duly catered for.</p>

⁶⁰ Constitution, Article 36(9) and Article 41(k)

⁶¹ EPA Act, 1994 (Act 490) Section 12

<p>Environmental Impact Assessment, which are supposed to be a precondition for the award of licences for the commencement of environmental projects.</p> <p>The power of the Minister to also set aside the decision of the EPA in instances where a contractor is denied an environmental permit also stifles this process.</p>		
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SUB-CRITERIA B.2.6 CROSS-SECTORIAL COORDINATION

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <p>n/a</p> <hr/> <p>In practice (how these PLRs are implemented):</p> <p>The Ghana Forest and Wildlife Policy, 2012⁶² shows an intent by the Government to promote inter-sectoral collaboration among relevant Ministries, Departments and Agencies concerned with the sustainable management of the forest ecosystem, to generate and share information to improve forest policy and management⁶³ by involving all stakeholders in</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> There are no laws within the legal framework in Ghana that define a concrete mechanism to support and encourage coordination in forest matters. There are no laws within the legal framework in Ghana that define an effective mechanism for information sharing across different sectors and levels of government for forest management. <hr/> <p>In practice:</p> <p>In practice, although there are no legal requirements for inter-sectoral collaboration, the attempts to do</p>	<p>On how to address the gaps on paper:</p> <p>The creation of an Inter-ministerial taskforce to deal with the issue of illegal mining.</p> <p>Future legislations should contemplate a framework that ensure cooperation and coordination among all relevant ministries and parastatals</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p>

⁶² Ghana Forest and Wildlife Policy, 2012, Policy Strategy 1.1.2 of Strategic Direction 1.1(p.15)

⁶³ Ghana Forest and Wildlife Policy, 2012: Policy Strategy 5.1.1 (f) of Strategic Direction 5.1 (p 30)

<p>forest management planning, policy formulation and decision making.</p> <p>There is an inter-ministerial taskforce to deal with the issue of illegal mining. This taskforce is coordinated by the Ministry of Lands and Natural Resources with support from the Ministries of Interior and Local Government.</p>	<p>so which is limited to the good will of the collaborating sector and thus affecting its effect.</p>	
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DRAFT

SYNTHESIS OF THE ANALYSIS OF SAFEGUARD (C)

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;”

CRITERIA C.1 DEFINING INDIGENOUS PEOPLES AND MEMBERS OF LOCAL COMMUNITIES

It is important to highlight under this safeguard that Ghanaian laws do not recognize the concept of ‘indigenous people’ as understood in International Law, as there are no ‘indigenous peoples’ in Ghana.

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
On paper: <ul style="list-style-type: none"> The Constitution⁶⁴ of Ghana recognises the existence of local communities and acknowledges that these communities are governed by customary laws that are peculiar to them alone, which in essence would imply that no two local communities are governed by the same set of customary laws, even though there may be some level of similarities among some communities. 	In relation to the PLRs on paper: <p>The Ghanaian legal framework does not define ‘local communities’. The recognition accorded to persons in local communities in Ghana by the Constitution is to the extent of the recognition of their customs⁶⁷. Persons in local communities, though subjects of a stool, are ultimately under the control of the President of Ghana, and have no powers or right to self-determination, which is one of the key features of the international legal</p>	On how to address the gaps on paper: <p>n/a</p> <hr/> On how to address the gaps from the PLR's implementation: <p>n/a</p>

⁶⁴ Constitution, Article 11

⁶⁷ Constitution, Article 11. For the purposes of this article, “customary law” means the rules of law, which by custom are applicable to particular communities in Ghana.

<ul style="list-style-type: none"> • The customs and usages of communities are generally recognised by the Constitution in Article 11⁶⁵. • The Timber Resource Management Regulations⁶⁶ uses the term forest fringe communities and inhabitants, requiring they are consulted and Social Responsibility Agreement negotiated as part of the requirement for the grant of a timber utilization contract. <hr/> <p>In practice (how these PLRs are implemented):</p> <p>In practice, however, when the term community is used, it often refers to the inhabitants of a geographical area that is most and immediately affected by which ever activities is to be exploited and that most uses an existing resource.</p>	<p>conception of indigenous persons.</p> <hr/> <p>In practice:</p> <p>In practice communal rights and collective rights of local communities are recognised.</p>	
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CRITERIA C.2 DEFINITION OF TRADITIONAL KNOWLEDGE OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
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⁶⁵ Constitution, Article 11

⁶⁶ Timber Resources Management Regulation 2002 (L.I 1649): Section 13 (b) and the Timber Resources Management (Amendment) Regulation 2003, (L.I 1721) Section 14 (1) (v)

<p>On paper:</p> <ul style="list-style-type: none"> Constitutional provisions⁶⁸ refer to traditional knowledge of local communities without providing a definition. The Constitution does recognize that there are local communities in Ghana who are subjects of a Chief that rules over them on the basis of a set of customary laws, which as a matter of fact, continue to evolve⁶⁹. <hr/> <p>In practice (how these PLRs are implemented):</p> <p>Traditional authorities in Ghana are the custodians, interpreters and enforcers of customs and usages of local communities.</p> <p>Many Ghanaians are affected by these traditional knowledge systems and regulate their lives by such knowledge.</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> Constitutional provisions⁷⁰ refer to traditional knowledge of local communities, although no express definitions are provided. <hr/> <p>In practice:</p> <p>n/a</p>	<p>On how to address the gaps on paper:</p> <p>There is most likely a need to look at provisions in the Constitution that accords legal recognition to traditional local communities in the sense contemplated by some of the international agreements to which Ghana is a signatory. However, this is not a suggestion that the right of self-determination should be accorded to persons in these communities.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>n/a</p>
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CRITERIA C.3. RECOGNITION AND IMPLEMENTATION OF RIGHTS IN ACCORDANCE WITH INTERNATIONAL LAW

SUB-CRITERIA C.3.1 NON-DISCRIMINATION

⁶⁸ Constitution, Article 11

⁶⁹ Constitution, Article 11 and Article 272

⁷⁰ Constitution Article 11

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> The Constitution does not specifically apply to local communities on the question of discrimination. In article 17(1), it provides that a person shall not be discriminated against on grounds of gender, race, color, ethnic origin, religion, creed or social or economic status. <hr/> <p>In practice (how these PLRs are implemented):</p> <p>The PLRs in this regard are not implemented with any known bias as the justice delivery system is available to everyone within the territory of Ghana, irrespective of the person's ethnic nationality</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> No provisions are made in the laws regarding addressing and remediating any discrimination against local communities in Ghana. However, a careful reading of the Constitution⁷¹ would give an indication that where persons in local communities feel hard done by, they could approach the courts or any of the Houses of Chiefs to seek redress and obtain remedies. Persons in local communities can also take advantage of the system of Alternative Dispute Resolution and customary arbitration to seek redress from all wrongs. <hr/> <p>In practice:</p> <p>n/a</p>	<p>On how to address the gaps on paper:</p> <p>Although the constitution provides for non-discrimination on grounds of ethnic origin in Article 17, there may be a need for legislation that expressly state that local communities should not be discriminated against in all spheres of Ghanaian life, particularly in the use and benefits deriving from the use of resources in the local community.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>There is an increasing need on the part of the government and its agencies and organs to ensure that persons in local communities receive adequate education regarding their equal access rights to the justice delivery system, as well as encourage them to embrace the customary arbitration mechanism.</p>

SUB-CRITERIA C.3.2 SELF-DETERMINATION

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> Ghanaian laws make provisions for the 	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> The Ghanaian laws do not envisage self 	<p>On how to address the gaps on paper:</p> <p>n/a</p>

⁷¹ Constitution, Article 17

<p>establishment of a system of traditional decision making⁷², at the head of which is the National House of Chiefs, following which is the Regional House of Chiefs and Traditional Councils in that order. There are also customary arbitration processes which are typically presided over by a Chief⁷³, and whose findings are binding on the parties who willingly submit to the process. Aggrieved parties are however allowed to appeal the decision of the Customary arbitration to the High Court, while appeals on decisions of the National House of chiefs go straight to the Supreme Court.⁷⁴</p>	<p>determination for its local communities in the sense of self-governance, however traditional decision-making is recognised.</p>	<p>On how to address the gaps from the PLR's implementation:</p> <p>n/a</p>
<p>In practice (how these PLRs are implemented):</p> <p>n/a</p>	<p>In practice:</p> <p>This does not prevent the local communities from obeying the system and set of customary laws and practices by which they are governed.</p>	

SUB-CRITERIA C.3.3 RIGHTS ASSOCIATED WITH CULTURE

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
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⁷² Constitution, Chapter 22 and Chieftaincy Act, 2008 (Act 759).

⁷³ ADR Act, 2010 (Act 798), Part 3

⁷⁴ In the case of *Budu II v. Caesar and Others*, [1959] GLR 410.

<p>On paper:</p> <ul style="list-style-type: none"> • The Constitution⁷⁵ provides in general that every person is entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion. In essence therefore, PLRs respect and uphold the identity, customs traditions and institutions of communities. • In stating that the functions of the National House of Chiefs⁷⁶ shall include the progressive study, interpretation and codification of customary law...and compiling the customary laws and lines of succession applicable to each stool, PLRs promote the maintenance of cultural inheritance. <hr/> <p>In practice (how these PLRs are implemented):</p> <p>Customary practices in Ghana allow for the inheritance of cultural practices by present and future generations as a means of ensuring that these practices continue to remain relevant.</p> <p>In practice, there are national programmes including yearly regional and national cultural occasions where various customary practices</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> • This right associated with culture, including respect for identity, customs, traditions and institutions is not an absolute right because the same provision makes it clear that the enjoyment of the afore mentioned rights is subject to the provisions⁷⁷ of the Constitutions, which does not recognize a distinct right for local communities. <hr/> <p>In practice:</p> <p>n/a</p>	<p>On how to address the gaps on paper:</p> <p>The Constitutional provisions on cultural rights and practices in Article 26 are stated in general terms, the implication of which is that in the event of a breach, the best that a plaintiff can get is a declaration by a court that his cultural rights have been breached and nothing more.</p> <p>Accordingly, there is maybe a need for provisions to be made that ensure that persons who are in breach are made to face the consequences of such breach ,in the form of the infliction of certain punitive measures prescribed by law</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>n/a</p>
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⁷⁵ Constitution, Article 26(1)

⁷⁶ Constitution, Article 272 (a)

⁷⁷ Constitution, Article 26(2)

are celebrated and recognised.		
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SUB-CRITERIA C.3.4 COLLECTIVE TENURE RIGHTS

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> The Constitution provides for the collective ownership of timber rights by local communities. It states that all stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage.⁷⁸ The Timber Resource Management Act and its implementing Regulations make provisions for the recognition of a broad spectrum of socially legitimate tenure rights for forest dependent communities (mainly linked to timber and timber forest products).⁷⁹ While the former provides that no timber right shall be granted without the written authorization of the individual, group or owners concerned, the latter mandates the Chief Conservator of Forests to, in collaboration with the District 	<p>In relation to the PLRs on paper:</p> <p>Although the PLRs recognize the payment of revenues collected on behalf of the stools to be paid, these are paid to institutions and thus the communities and subjects of the stool do not necessarily receive direct benefits of the revenue collected.</p> <p>There is also an absence of a benefits sharing PLR that addresses all persons that need to benefit in all instances.</p> <hr/> <p>In practice:</p> <p>Although PLRs address the question of property which often is ownership in trust for people, the trustees often act as if they are also the beneficial owners and do not provide any</p>	<p>On how to address the gaps on paper:</p> <p>Future legislations may contemplate a situation where monies due to communities whose lands have been compulsorily acquired are paid directly to the heads of these communities instead of the present regimes where such monies are being paid to the Administrator of Stool Lands, who is in the employment of the government. Obviously, such legislation would also provide for a means of ensuring that all such monies are properly accounted for.</p> <p>A flexible and inclusive benefit-sharing model should be developed. This model should contemplate a structure for potential dispute resolution. One of such models could be a Co-Benefit sharing scheme, which is a non-monetary benefits sharing scheme, the aim of which is to take adequate care of issues that bother on alternative livelihoods.</p> <p>It is imperative that such a scheme is provided with financial</p>

⁷⁸ Constitution, Article 267 (1):

⁷⁹ Timber Resources Management Regulation 2002 (L.I 1649), Section 13 (b) and Section 14 (1) (v) of the Timber Resources Management (Amendment) Regulation 2003, (L.I 1721)

<p>Chief Executive, seek the written consent of the owners of the land where the land that has been proposed for the grant of a timber right, is not a public land or forest reserve.</p> <ul style="list-style-type: none"> A combination of constitutional and statutory provisions ensure that not only are the victims of expropriation adequately compensated, but that the processes and procedures for ensuring proper compensation are put in place⁸⁰. <hr/> <p>In practice (how these PLRs are implemented):</p> <p>In practice family lands are held by the Head of the family on behalf of, and in trust for members of the family in accordance with customary laws and usage.⁸¹</p>	<p>benefit to the real beneficial owners.</p>	<p>support to ensure its viability, as well as a good governance structure to ensure proper accountability.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>There is a need for the regime of resource ownership to be clearly defined so as to make room for the proper management of these resources. In effect, the chiefs, who are the custodians of community lands, should be placed in actual charge of those lands, and where the government compulsorily acquires such lands, compensation to extent spelt out in the Constitution and the Administration of Lands Act should be fully complied with.</p>
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SUB-CRITERIA C.3.5 BENEFIT-SHARING

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> Constitutional⁸² and Statutory⁸³ provisions combine to define the mechanisms for the sharing of the benefits arising out of the utilization of forest resources in a fair manner. The Constitution 	<p>In relation to the PLRs on paper:</p>	<p>On how to address the gaps on paper:</p> <p>A flexible and inclusive benefit-sharing model should be developed. This model should contemplate a structure for potential dispute resolution. One of such models could be a Co-Benefit sharing scheme, which is a non-monetary</p>

⁸⁰ Constitution, Articles 20, 257 and 267

⁸¹ Constitution, Article 267 (1): All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for, the subjects of the stool in accordance with customary law and usage

⁸² Constitution of the Republic of Ghana, Article 267

⁸³ Administration of Lands Act, 1963 (Act 123), Section 18 and 19

<p>in particular provides for the establishment of the Office of the Administrator of Stool Lands, before proceeding to allocate the percentages that would accrue to all stakeholders/parties to a land.</p> <ul style="list-style-type: none"> • The Mechanism referred to in the Constitution and Statutes also applies to local communities in Ghana. <hr/> <p>In practice (how these PLRs are implemented):</p> <p>The broad constitutional arrangements are in relation to natural forests. When it comes to non-natural forest, however, the practice is that benefits sharing is determined by contract, and not by the constitutional or statutory provisions.</p>	<p>In practice:</p> <p>In practice, Farmers, forest- adjacent communities and landowners (other than Stools) are left out of the benefit sharing arrangement.</p>	<p>benefits sharing scheme, the aim of which is to take adequate care of issues that bother on alternative livelihoods.</p> <p>It is imperative that such a scheme is provided with financial support to ensure its viability, as well as a good governance structure to ensure proper accountability.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>n/a</p>
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SYNTHESIS OF THE ANALYSIS OF SAFEGUARD (D)

UNFCCC REDD+ safeguard (D):

“The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities;”

CRITERIA D.1 DEFINITION AND REGULATION MEANINGFUL FULL AND EFFECTIVE PARTICIPATION

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> The Constitution recognises and guarantees generally, the public's right to participate in policy making.⁸⁴ This general right has been applied in the decision-making process in the forestry sector. The PLRs recognize a defined system of public participation in the context of Environmental Impact Assessments through the instrumentality of Public Hearings, which gives all stakeholders on a forest land the right to determine the use to which their land is being put⁸⁵. <hr/> <p>In practice (how these PLRs are implemented):</p> <p>There is a general right of effective</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> The constitution does not define the procedure for this participation and international law procedures have not been domesticated on this issue The laws provide for public participation but do not clarify how these views are to be reflected in the final outcomes/decisions. <hr/> <p>In practice:</p> <p>The EIAs have become mere formality where many people are of the opinion that the permits will invariably be granted. Linked to this is the fear of victimization for speaking out during EIA public hearing.</p> <p>Also many people are not interested in pursuing the EIA as it is thought of as anti-development of the</p>	<p>On how to address the gaps on paper:</p> <p>A review of the powers of the Minister under section 13 of the EPA Act, 1994 to ensure that he shall take into account, recommendations made by a committee consisting of persons with technical knowledge in environmental projects and their effects on the environments to ensure that the requirements of an EIA is strictly complied with at all times.</p> <p>It is also recommended that a comprehensive legislation should be enacted to fully and completely operationalize the 2012 Forest and Wildlife Policy.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>The Environmental Protection Agency must be firm and always insist on satisfactory EIAs before the award of environmental permits. Additionally, the Minister's power to override that of the EPA in the award of an environmental</p>

⁸⁴Constitution, Article 37. (2), Article 35 (6)(d), Article 240 (2), Article 125 (2)

⁸⁵ Timber Resources Management Act, 1998 (Act 547), Section 4 (2) and Section 5(1); Environmental Assessment Regulation 1999, Section 17(1)

<p>participation in development processes. The Ministry of Lands and Natural Resources (MLNR) and Civil Society Organisations (CSOs) have over the years, used the rights as a basis to demand to participate in decision-making in the forestry sector.</p> <p>The Ghana Forest and Wildlife Policy⁸⁶, shows an intention on the part of the Government, to improve participation by suggesting the enactment of the necessary legislation and regulations to facilitate and enhance local participation and control through decentralization of forestry operations at the district level.</p>	<p>economy or human livelihood.</p> <p>In practice, stakeholders are not giving prior information and time before the engagement, emphasising the point of mere formalities.</p> <p>There is also the fact that the documents are written in languages that are not easy to understand, coupled with the fact that the illiteracy rate is quite high</p>	<p>permit should be exercised in a fair and conscientious manner, and not arbitrarily or capriciously.</p>
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CRITERIA D.2 CREATING AN ENABLING ENVIRONMENT FOR AN EFFECTIVE PARTICIPATION.

SUB-CRITERIA D.2.1 IDENTIFICATION OF RELEVANT STAKEHOLDERS

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> The Legal Framework makes provisions for the stakeholders' participation in decision making processes as far the Constitution⁸⁷, Regulations 	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> There are no provisions that require that an assessment of the relevant stakeholders shall be conducted prior to the decision-making 	<p>On how to address the gaps on paper:</p> <p>legislation clearly requiring an identification/mapping of relevant stakeholders prior to the decision-making process.</p>

⁸⁶ Ghana Forest and Wildlife Policy⁸⁶, 2012: Policy Strategy 4.1.1(a) of Strategic Direction 4.1 (p. 26)

⁸⁷ Constitution, Article 35(6) (d)

<p>5 and 17 of the Timber Resources Management (Legality Licensing) Regulations⁸⁸ and Environmental Assessment Regulations⁸⁹ respectively, are concerned.</p> <ul style="list-style-type: none"> • The Legal Framework not only makes provisions for Stakeholder participation, but takes it a step further by defining who these stakeholders are, per the Timber Resource Management Regulations⁹⁰, the Timber Resources Management (Legality Licensing) Regulations and the Environmental Assessments Regulations. • PLRs in Ghana provide for the engagement or representation of local communities in the relevant forest decision making processes⁹¹. <hr/> <p>In practice (how these PLRs are implemented):</p> <p>In practice also, CSOs operating in communities mobilize the communities and assist them to decipher the issues when the communities are being engaged as stakeholders.</p>	<p>process.</p> <hr/> <p>In practice:</p> <p>Since there is no requirement to assess relevant stakeholders, the need for identification and inclusion is often not considered.</p>	<p>On how to address the gaps from the PLR's implementation:</p>
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⁸⁸ Timber Resources Management (Legality Licensing) Regulations 5(1)

⁸⁹ Environmental Assessment Regulations (1) (3)

⁹⁰ Timber Resources Management (Legality Licensing) Regulations 2 and 3

⁹¹ Timber Resources Management (Legality Licensing) Regulations 2 and 3; Timber Resources Management Regulation 2002 (L.I 1649) Section 13 (b); Timber Resources Management (Amendment) Regulation 2003, (L.I 1721) Section 14 (1) (v)

SUB-CRITERIA D.2.2 PROVIDING ACCESS TO INFORMATION

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <p>The type of information to be provided in environmental decision making processes are clearly defined by PLRs.⁹²</p> <hr/> <p>In practice (how these PLRs are implemented):</p> <p>Although there is clarity of information as indicated above, there is still problems as to the availability of the information and access of the public to them.</p> <p>it was expected that a Right to Information Bill would have addressed these challenges. The Bill was however withdrawn by the government in October 2016.</p> <p>In mandating the applicant, before submitting an Environmental Impact Assessment, to give notice of the proposed undertaking to the relevant Ministries, government departments and organisations and the relevant Metropolitan, Municipal or District Assembly;</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> • PLRs indicate the type of information to take into account but does nothing in terms of defining a timely manner for the distribution of the relevant information. • PLRs regulate access to relevant information⁹⁴ but do not require the access to be free of charge. • The PLRs only define the manner in which the information is to be disseminated but says nothing about a culturally appropriate manner of distributing the relevant information. • There are provisions that guarantee access to information but none that stipulates what is to be done in the event that such rights are denied. <hr/> <p>In practice:</p> <p>In practice, the person requesting the information may have to pay for the administrative costs of providing such information, which is usually a token.</p>	<p>On how to address the gaps on paper:</p> <p>A review of the laws, particularly on EIAs, to ensure that reasonable timelines are given for the distribution of relevant information. Such legislation should also contemplate a regime where the diverse cultural and educational backgrounds of all stakeholders are taken into consideration, as this would ensure that the information is understood and useful to all parties.</p> <p>A clear definition to be provided in legislation providing the definition of information as a public good and providing a duty on public actors to provide definition upon request.</p> <p>It is also recommended that a public agency be mandated to ensure that public information is readily made available upon request.</p> <p>.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>A dedicated desk should be established by the FC to process</p>

⁹² Environmental Assessment Regulations, 1999 (L.I 1652) Regulation 9 and 12

⁹⁴ Environmental Assessment Regulations, 1999 (L.I 1652) Regulation 15

advertise in at least one national newspaper and a newspaper, if any, circulating in the locality where the proposed undertaking is to be situated; and make available for inspection by the general public in the locality of the proposed undertaking, copies of the scoping report, per the Environmental Assessment Regulations ⁹³ , PLRs appear to be regulating the access to relevant information free of charge.		and handle applications for access to information
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SUB-CRITERIA D.2.3 IMPLEMENTING PARTICIPATORY MECHANISMS

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> PLRs highlight that in the context of Environmental Impact Assessments, Public Hearings must be held⁹⁵ PLRs define clear timeframes for decision making.⁹⁶ <hr/> <p>In practice (how these PLRs are implemented):</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> The PLRs do not define the processes/mechanisms for public participation in general. However, there are instances where some PLRs outline the responsibilities and processes for public participation.⁹⁹ The Environmental Assessment Regulations provides that the panel shall hear such persons and bodies that will make submissions to it; shall consider all submissions made to it and make its 	<p>On how to address the gaps on paper:</p> <p>There appear to be a need for a review of the legislation to include time frame within which reports are made and submitted, as well as the processes and mechanisms for public participation.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>Stakeholders have suggested the need to develop a</p>

⁹³ Environmental Assessment Regulations, 1999 (L.I 1652), Regulation 15

⁹⁵ Environmental Assessment Regulations (LI 1652), Regulation 17

⁹⁶ Environmental Assessment Regulations, 1999 (L.I 1652), Regulation 12

⁹⁹ Timber Resources Management Regulations, 1998 (L.I 1649), Regulation 2; VPA between Ghana and European Union 2009, Article 16 sub (2)

<p>PLRs do not require the documentation of the public participation process. However, the expectation is that in practice, such meetings will take minutes of proceedings, which would typically be documented</p> <p>The Voluntary Partnership Policy Document⁹⁷, one of the key principles of the Forest law Enforcement Governance and Voluntary Partnership Programme is to involve civil society in law making and in participatory forest management with the aim of improving forest governance, enforcement mechanisms, and tackling corruption; stimulate forest law reforms and ensure that truly sustainable forest management is in place.</p> <p>It is the belief that in practice, once such a body is constituted, it would be given a time frame within which to submit its input.</p> <p>The Voluntary Partnership Agreement (VPA) in its implementation, mandates the creation of a Multi Stakeholder Implementation Committee⁹⁸.</p> <p>To complement these, the Forest Law Enforcement and Voluntary Partnership Policy Document, one of the key principles of the</p>	<p>recommendations in writing to the Agency within a period of not less than 15 days from the date it starts hearing representations. This represents the time frame for the final outcome, but says nothing about the timeframe for the submission of inputs.</p> <ul style="list-style-type: none"> • The PLRs have no mechanisms to address matters bothering on the accountability of inputs. • PLRs do not require the documentation of the public participation process. • PLRs do not make provisions for a dedicated platform or consultative body that allows for open inclusive and regular multi stakeholder engagement on forest related issues. • The Legal Framework¹⁰⁰ provides that the panel shall hear such persons and bodies that will make submissions to it; shall consider all submissions made to it and make its recommendations in writing to the Agency within a period of not less than 15 days from the date it starts hearing representations. The laws¹⁰¹ also provide that the team representing the owners of the subject matter land and those around it shall conduct the field inspection to determine the suitability of the land for the grant of timber rights and shall estimate the quality, quantity and value of timber on the land; 	<p>framework for participation, building on existing experiences and processes like KASA, on existing NGO coalitions..¹⁰³</p>
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⁹⁷ VPA, Article 16

⁹⁸ VPA, Article 16

¹⁰⁰ Environmental Assessment regulations, 1999 (L.I 1652), Regulation 12

¹⁰¹ Timber Resources Assessment Regulations, 1998 (L.I 1649), Regulation 2

¹⁰³ Feedback gathered from stakeholders at Ghana's safeguards sub-working group meeting at the Forestry Commission in Accra on 26/10/2016

Forest law Enforcement Governance and Voluntary Partnership Programme is to involve civil society in law making and in participatory forest management with the aim of improving forest governance, enforcement mechanisms, and tackling corruption; stimulate forest law reforms and ensure that truly sustainable forest management is in place.	<p>and any special peculiarities of the land.</p> <hr/> <p>In practice:</p> <p>In practice, there have been complaints from communities on representatives not representing the views of the group, or on lack of information for those who are being consulted.¹⁰²</p>	
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SUB-CRITERIA D.2.4 ACCESS TO JUSTICE/CONFLICT RESOLUTION MECHANISMS IN ENVIRONMENTAL DECISION MAKING

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> The Constitution¹⁰⁴ makes provisions for a Court system, with the Supreme Court at the apex of the system, also serving as the court of final appeal. There are also the Court of Appeal and the High Court/Regional Tribunals to complete the superior courts component of the judicial system. The Circuit Courts and District Courts make up the inferior courts component. A right of appeal lie as of right from the inferior courts to the High Courts¹⁰⁵, which 	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> PLRs do not define cases that would give rise to access to justice in the context of environmental decision making processes. However, the thinking is that all cases bothering on environmental decision making processes that contravene the relevant laws would qualify. PLRs in Ghana do not directly define the process of access to justice in the context of environmental decision making. However, one would think that it's the same process involved in access to justice in all spheres of life where the aggrieved party approaches a court and 	<p>On how to address the gaps on paper:</p> <p>Reform ADR legislation to include environmental matters.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>N/a</p>

¹⁰² Feedback gathered from stakeholders at Ghana's safeguards sub-working group meeting at the Forestry Commission in Accra on 26/10/2016

¹⁰⁴ Constitution, Article 126

¹⁰⁵ Courts Act, 1993 (Act 459), Section 21(1)

<p>has supervisory jurisdiction over these courts¹⁰⁶. Matters from the High Court would travel through the Court of Appeal to the Supreme Court. Aggrieved parties in matters decided at the Regional House of Chiefs can appeal to the National House of Chiefs, and thereafter to the Supreme Court. Matters decided at a Customary Arbitration for which a party is not satisfied, is appealed to the High Court.</p> <hr/> <p>In practice (how these PLRs are implemented):</p> <p>Traditionally in Ghana, the National and Regional Houses of Chiefs take care of disputes in the local communities, in addition to a system of customary arbitration. However, it requires the voluntary submission of the parties for the decision of customary arbitration to be binding.</p> <p>With the establishment of the legal aid scheme regime and the tradition court system, including customary arbitration, one can make an argument in support of the fact that the cost of access to justice are not prohibitive.</p> <p>Also, in as much as there are no rules on exactly when judgements should be delivered, it is expected that they are delivered not too</p>	<p>makes a statement of claim, which the accused party is expected to respond to within a specified period of time.¹⁰⁷</p> <ul style="list-style-type: none"> • There are no laws requiring that rulings be delivered in a timely fashion. • The law provides for periods within which an appeal must be instituted, but does not say when such an appeal should be decided. For instance, the Court of Appeal Rules states that an appeal shall not be brought after the expiration of twenty-one days, in the case of an appeal against an interlocutory decision; or three months, in the case of an appeal against a final decision unless the Court below or the Appeal Court extends the time. <hr/> <p>In practice:</p> <p>The point must be made however that the Alternative Dispute Resolution Act excludes environmental matters from cases over which it can exercise jurisdiction.</p> <p>This has raised a significant issue and a technical committee of the Forestry Commission has sent proposals for amendment to the section that prohibits this.</p>	
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¹⁰⁶ Constitution, Article 141

¹⁰⁷ Adjei-Ampofo (No.1) v. Accra Metropolitan Assembly & Attorney-General (No.1) [2007-2008] SCGLR 611

long after the closing of the case. Judges have been heard to have received queries from the office of the Chief Justice for delayed decisions		
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CRITERIA D.3 EFFECTIVE PARTICIPATION OF INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

SUB-CRITERIA D.3.1 CREATING AN ENABLING ENVIRONMENT

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> PLRs provide dispute resolution mechanisms that are equitable, transparent, accountable, independent, confidential and affordable (or free) and that respect customary justice systems¹⁰⁸ Traditionally, Ghana has the National and Regional Houses of Chiefs that take care of disputes in the local communities, in addition to a system of customary arbitration¹⁰⁹ <hr/> <p>In practice (how these PLRs are</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> The PLRs make provisions for public participation but are silent on the incorporation of culturally sensitive traditional and community structures for decision making processes that are relevant to the forest sector. <hr/> <p>In practice:</p> <p>Although local people define their own internal rules through a system of customary rules evolution and codifications, it is not the case that these rules would necessarily be considered in forest related decision</p>	<p>On how to address the gaps on paper:</p> <p>N/a</p> <hr/> <p>On how to address the gaps from the PLR's implementation: N/a</p>

¹⁰⁸ The Constitution makes provisions for a Court system, with the Supreme Court at the apex of the system, also serving as the court of final appeal. There are also the Court of Appeal and the High Court/Regional Tribunals to complete the superior courts component of the judicial system. The Circuit Courts and District Courts make up the inferior courts component.

¹⁰⁹ Constitution, Chapter 22; ADR Act, 2010(Act 798), Part Three

<p>implemented):</p> <p>The Forest and Wildlife Policy of Ghana¹¹⁰ makes provision for the building of the capacities of institutions, including community enterprises as part of ensuring good governance in the management of timber resources.</p>	<p>making processes.</p>	
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SUB-CRITERIA D.2.5 FREE, PRIOR AND INFORMED CONSENT

N/A The Ghanaian laws do not regulate the right to FPIC in consistency with international laws, including ILO 169. As a matter of fact, this is not even applicable because Ghana has neither signed not ratified ILO 169

¹¹⁰ Forest and Wildlife Policy, 2012, Paragraph 3.2.8 and 5.7.8

SYNTHESIS OF THE ANALYSIS OF SAFEGUARD (E)

UNFCCC REDD+ safeguard (E):

“That 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 benefit;”

CRITERIA E.1 NO CONVERSION OF NATURAL FORESTS

SUB-CRITERIA E.1.1 DEFINING NATURAL FOREST, BIOLOGICAL DIVERSITY AND ECOSYSTEM SERVICES

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
On paper: <ul style="list-style-type: none">PLRs provide a clear definition for the term biological diversity in accordance with relevant international law¹¹¹.The Wetland Management (RAMSAR SITE) Regulations provides a definition for	In relation to the PLRs on paper: <ul style="list-style-type: none">The Laws ¹¹³provide no clear definition of the term natural forests that do not allow for monoculture plantations. Forests or natural forests are not concepts that have been defined within Ghanaian laws. In Ghana, forests are	On how to address the gaps on paper: <p>Future Parliamentary enactments should include a clear definition of natural forests that do not lend themselves to monoculture plantation</p> <p>Stakeholders in the forestry sector should ensure that they</p>

¹¹¹ While the Traditional Medicine Practice Act, 2000 (Act 575), Section 42 defines Biodiversity as living things of varied nature, the National Biodiversity Strategy for Ghana provides a more elaborate definition in line with Article 2 of the Convention on Biodiversity: the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystem.

¹¹³ Forests Act, Section 2, Section 10, Section 17; Forest Plantation Development Fund Act, Section 22; Traditional Medicine Practice Act, Section 42;

<p>ecosystem. It defines the ecosystem as a dynamic complex of plant, animal and micro- organism communities and their non-living environment interacting as a functional unit¹¹².</p>	<p>categorized into Forest Reserves with naturally occurring or planted trees, Off Reserves resources and Protected areas¹¹⁴.</p> <ul style="list-style-type: none"> • Although the Forest Plantation Development Funds Act¹¹⁵ defines a plantation as including a project undertaken with financial assistance from the Forest Plantation Development Fund, there are no other definitions for forests, and hence no distinction made in the laws between the two concepts except for the fact that forest are normally considered as naturally occurring as opposed to plantations. 	<p>develop policies that would form the basis of new enactments for this sector and that such policy briefs should contain a definition of these terms, and the rationale for so defining them</p>
<p>In practice (how these PLRs are implemented):</p>	<p>In practice:</p> <p>Although there is no legal definition of natural forest, in practice, the FC and stakeholders consider forests that have come about without any man made efforts as natural forest and recognize them as such.</p> <p>The implementation of this PLRs might be subject to the preference of the stakeholder at every point in time, hence giving rise to a high likelihood that they would simply pick and choose which of the definitions suit them. However, the courts are likely to be mindful of that which would be in the best interest of the State, while interpreting these provisions.</p>	<p>On how to address the gaps from the PLR's implementation:</p>

¹¹² Wetland Management (RAMSAR SITE) Regulations, Regulation 10

¹¹⁴ Trees and Timber Act, 1974 (NRCD 273), Sections 12-15

¹¹⁵ Forest Plantation Development Fund Act, Section 22

SUB-CRITERIA E.1.2 PROHIBITING THE CONVERSION OF NATURAL FORESTS

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> From the Constitutional Provisions¹¹⁶ requiring that appropriate steps are taken to protect and safeguard the environment by both the government and the citizens, through the requirements for an Environmental Impact Assessment¹¹⁷ by applicants interested in undertakings that could adversely affect the environments, to the regulations aimed at preventing the waste of trees or timber in an area outside a forest reserve, as well as those mandating the Minister to keep each protected area under review and laws regulating farming in protected areas, one would successfully argue that the legal 	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> There are no clear-cut provisions in the laws in the sense of direct mandates regarding the conversion of natural forests. Ghanaian law does not provide prohibition on conversion of forests. A forest reserve is an area demarcated for logging. Protected Areas are not. Depending on the permit, it is the FC or MLNR with parliamentary ratification that leads to grant of permit. In Ghana, there is the salvage permit which is granted by the FC. This permit is granted for the logging of trees with economic value in the path of development. The FC has defined development to include converting land for agricultural purposes. 	<p>On how to address the gaps on paper:</p> <p>Legislation that expressly prohibits forest conversion should be canvassed and enacted in future. Such legislation should also spell out in clear terms, reasonable punitive measures that would deter their breach.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>One recommendation would be to reinforce the protective role of protected areas, by committing more staff and resources.</p>

¹¹⁶ Constitution, Article 36(9)

¹¹⁷ Environmental Assessment Regulations, 1999 (L.I 1652), Regulation 1

<p>framework has put in place adequate controls on forest conversion. But there is no explicit prohibition of the conversion of forests.</p> <hr/> <p>In practice</p> <p>Before any environmental project is approved, the sponsor must submit an environmental impact assessment, and even after the project has commenced, continues to submit a yearly report of the project, the aim of which is to ensure conformity with the terms of the project as contained in the environmental permit.</p> <p>In practice, FC monitors forest projects every 10 years through inventories¹¹⁸.</p>	<p>In practice:</p> <p>It can be deduced from the functions of the Forestry Commission¹¹⁹, especially the one that relates to the regulation of the utilisation of wildlife resources, that there are efforts aimed towards the conservation and management of those resources and the coordination of policies relating to them¹²⁰. The Forest Protection Act¹²¹ complements this position, particularly with respect to forest reserve.</p>	
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CRITERIA E.2 PROTECTION AND CONSERVATION OF NATURAL FORESTS AND BIODIVERSITY

SUB-CRITERIA E.2.1 IDENTIFYING NATURAL FORESTS AND BIODIVERSITY

Findings (how the relevant legal framework	Gap(s)	Recommendations
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¹¹⁸ SWG meeting

¹¹⁹ Forestry Commission Act, 1999 (Act 571), Section 2(1) (2) (b)

¹²⁰ Forestry Commission Act, 1999 (Act 571), section (1)

¹²¹ Forests Protection Act, 1974 (NRCD 243), Section 2

addresses the safeguard component)		
<p>On paper: n/a</p> <hr/> <p>In practice:</p> <p>In practical terms, the operationalization of the Forest Act ensures that the limits of the subject matter land are set forth and that the situation of the land which constitutes the forest reserve, and all rights affecting the forest reserve are accounted for¹²². The development of management plans for forest reserves also includes a component of mapping the area under reservation.</p> <p>The provisions in the RAMSAR SITE Regulations¹²³ provides that the Wildlife Officer is authorized to demarcate certain portions of the RAMSAR SITE as a core area for the effective management of the ecosystem within the RAMSAR SITE, is indicative of an implied mandate for the mapping of biodiversity within the ambits of Ghanaian laws.</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> There are no laws mandating the authorities to carry out a mapping of natural forests in these exact terms. However, the Forests Act¹²⁴ empowers the President to constitute a land as a forest reserve in respect of which the Commissioner have described the limits recommended for reservation as a forest reserve. Just like the mapping of natural forests, there is no direct legislation ordering the mapping of biodiversity. There are no provisions on forest inventories as a whole in the Ghanaian Legal Framework. <hr/> <p>In practice:</p>	<p>On how to address the gaps on paper:</p> <p>There is a need for the laws to be expanded to make provision for the mapping of natural forests</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>Provisions mandating the mapping of biodiversity should be enacted by Parliament</p> <p>Stakeholders in this sector must lobby Parliament to ensure that the policy provisions in the National Biodiversity Strategy and Action plan regarding the need to map and inventory forest reserves and resources are enacted into law.</p>

¹²² Forest Act, 1927 (CAP 157): Section 2

¹²³ Wetland Management (Ramsar Sites) Regulations, 1999 (LI 1659), Regulation 3

¹²⁴ Forest Act, 1927 (CAP 157), Section 2

SUB-CRITERIA E.2.2 IMPLEMENTING MEASURES TO PROTECT BIODIVERSITY AND NATURAL FORESTS

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> The laws provide safeguards to ensure that forest areas are protected¹²⁵. Moreover, the Trees and Timber Act¹²⁶ forbids the waste of trees and timber in an area that is outside a forest reserve, and also enjoins the Minister to keep each protected area under constant review. The measures put in place for ensuring the protection of forest cater for threats to flora and fauna, particularly when flora and fauna is defined and understood¹²⁷ within the context of the Convention on Biodiversity. Since flora and fauna extends beyond the forests, we also look to the RAMSAR SITE¹²⁸ Regulations on Wetlands Management to complement the position of the Forest Act. The Timber Resource Management Act¹²⁹ makes provisions that mandate the Minister to, on the recommendation of the Forestry Commission, makes regulations that prescribe species of trees that are considered as 	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> Ghanaian law does not have a legal definition of natural forest. Although the laws make provisions for the protection of endangered species, it is notoriously quiet on the regulation or control of the marketing and trade in those species. In essence, PLRs do not regulate/control the marketing and trade of endangered species. This stance also takes into account the requirements imposed by the FLEGT-VPA on the export of illegally logged timber because illegally logged timber do not necessarily fall within the category of endangered species. Ghanaian laws may not have expressly made provisions regarding the planting of invasive species, but the Forest Plantation Development Fund Act¹³² provides for the facilitating of best practices for optimum timber plantation establishment and management, which, in our opinion, will 	<p>On how to address the gaps on paper:</p> <p>Ghana's commitment under the FLEGT-VPA agreement is indicative of the country's resolve to discourage trade in endangered and threatened species of timber. We recommend that this provisions should form the basis of a new enactment in this regards</p> <p>There is a need for the regulations to take care of the planting of invasion species because of the adverse effect that they have on other species of trees in the forest. The provision on the facilitation of best practices encapsulated in the Forest Plantation Development Fund Act is grossly inadequate.</p> <p>The enactment of laws that require the integration of biodiversity issues, especially at the local level, including the implementation of activities established for in-situ, invasive alien species, agricultural biodiversity and traditional knowledge.</p> <p>Legislation to address the on-going encroachment of biodiversity hotspots in Ghana and stiff penalties for</p>

¹²⁵ Trees and Timber Act 1974, (NRCD 273), Section 14 and 15; Forests Protection Act, 1974 (NRCD 243), Section 2

¹²⁶ Trees and Timber Act, 1974(NRCD 273), Section 12

¹²⁷ Forests Protection Act, 1974 (NRCD 243): Section 2_(1) A

¹²⁸ Wetland Management (RAMSAR SITE) Regulations, 1999 (LI 1659): Regulations 6 (a) (b) (c) (d) (e) and 7

¹²⁹ Timber Resource Management Act, 1998, Section 18 of Act 547

¹³² Forest Plantation Development Fund Act, 2000 (Act 583), Section

<p>depleted, threatened , endangered or economically extinct, specifying the conditions under which they may be felled. This legal provision cater for the requirement requesting the protection of endangered species of wood.</p> <ul style="list-style-type: none"> • The Constitutional Provisions¹³⁰ on the need to safeguard and protect the environment, as well as the provisions in the Environmental Protection Agency Act that lists the functions of the Agency to include the promotion of studies, research, surveys, analyses for the improvement of the protection of the environment and the maintenance of sound ecological ecosystem, as well as the promotion of effective planning in the management of the environment, are all pointers to the fact that Ghanaian PLRs promote sound environmental management and sustainable use of public forests. • The Constitutional provisions on the need for the government and all the persons in Ghana to safeguard and protect the environment, as well as the requirements in the Timber Resource Management Act stipulating that all applications for timber rights shall be accompanied by a harvesting plan prepared in accordance with the sustainable management of timber resources, are indicative of the fact that Ghanaian PLRs promote sound environmental management and sustainable 	<p>include regulations and policies that prohibit the planting of invasive species.</p> <ul style="list-style-type: none"> • The information captured on biodiversity in the EIA process is inadequate. The EIA application forms that are used do not elaborate extensively on the kind of information on biodiversity that indicates status and trends. <hr/> <p>In practice:</p> <p>In practice, the legal regime of EIAs that require that all matters affecting the environment be subject to EIA is not applied to the forest sector. However, the management plans that companies present to the FC are supposed to provide environmental impacts of the operation of the companies. These management plans are however not publicly accessible.</p>	<p>offending encroachers.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p> <p>Provide a mechanism to monitor biodiversity activities in Ghana.</p>
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¹³⁰ Constitution, Article 36(9)

<p>use of private forests.</p> <ul style="list-style-type: none"> • Under Ghanaian laws, there are clear provisions for the creation of a protected area forests. • The legal framework requires that all undertakings that could potentially negatively affect the environment be subject to EIA¹³¹ <hr/> <p>In practice (how these PLRs are implemented):</p> <p>Projects that are likely to have an impact on the flora and fauna must necessarily go through a process, which includes the submission of an environmental assessment of the effects of that project on the environment, and the eventual granting of an environmental permit where all the requirements have been duly satisfied. Additionally, upon commencement, where it becomes the case that the project is harmful to the environment, the EPA can come within the ambits of section 13 of the Act to bring the project to a halt. Act, and order the Act to either vary the project or stop it completely.</p> <p>In practice, special care is taken to ensure that the various species of trees within the jurisdiction of Ghana do not become extinct. Accordingly, in granting timber and all other permits, the Minister has an obligation to ensure that threatened and</p>		
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¹³¹ Environmental Protection Agency Act, 1994 (Act 490): Section 12

<p>endangered species are protected.</p> <p>In practice some information on biodiversity is included in the environmental impact assessments.</p> <p>In practice, Ghana has adopted since 2002, a National Biodiversity strategy and action plan, which is guiding government action. In the action plan government has committed among others to:</p> <ol style="list-style-type: none"> expand protection area system by inland and coastal wetland, fringe and riverine forests and sensitive areas. Intensify/strengthen human capacity in ecosystem management through long and short training courses, in- service training and review curriculum at the tertiary levels of training to take cognizance of ecosystem management approaches. Promote research in ecosystem management and protection. Ensure full and active participation of landowners, communities and other stakeholders in protected area management. Strengthen education and awareness creation at all levels of society especially among those whose life depend on forests. 		
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SUB-CRITERIA E.2.3 SUPPORTING CONSERVATION RESEARCH AND AWARENESS-RAISING

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> Under Ghanaian law¹³³, provisions have been made to promote and support the scientific and technical programmes that are relevant to the conservation and management of the forest natural resources, including monitoring and research <hr/> <p>In practice (how these PLRs are implemented):</p> <p>In practice, Ghana has adopted since 2002, a National Biodiversity strategy and action plan, which is guiding government action. In the</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> Apart from the Forest and Wildlife Policy¹³⁴, which recommends and update information database to monitor sustainable forest management and establish forest and wildlife research funds which research and academic institutions, as well as civil society can access, there are no direct provisions in Ghanaian laws with respect to the promotion of access to adequate technology and resources for monitoring of biodiversity and forests There are no legal provisions promoting training of field staff to conduct on the ground inspections on forest management. However, it is the expectation that the Forest 	<p>On how to address the gaps on paper:</p> <p>The ground works for capturing the requirement for the updating of information database to monitor sustainable forest management has already been done by the provisions in the Ghana Forest and Wildlife Act in that regards. What is left now is for Stakeholders to recommend same to parliament for enactment into law</p> <p>In as much as there is a general expectation that the forest inspection officer would be given periodic training, it would be more effective if there are regulations that mandate them to undertake such training, as well as other provisions that mandate the relevant agencies to ensure that these officers are trained as required.</p>

¹³³ Environmental Protection Agency Act, Section 2

¹³⁴ Ghana Forest and Wildlife Policy, 2012: Policy Strategy 5.1.1(c)

<p>action plan government has committed among others to:</p> <ul style="list-style-type: none"> f. Promote research in ecosystem management and protection. g. Strengthen education and awareness creation at all levels of society especially among those whose life depend on forests. 	<p>Inspection Officers contemplated by the Forests Protection Development Fund Act would be exposed to some training to enable them carry out their functions¹³⁵</p> <ul style="list-style-type: none"> • Speaking strictly on the basis of legally enforceable provisions, Ghanaian laws have made no direct provisions to promote the implementation of programmes aimed at improving public knowledge of the value of biodiversity. <hr/> <p>In practice:</p> <p>Despite the existence of a national action plan on biodiversity, there are high levels of encroachment on protected areas.</p> <p>Generally, knowledge and information on genetic diversity of various life forms and organisms existing in the country appears to be inadequate, incomplete and inaccurate.</p>	<p>The Ghana Forest and Wildlife Act has made recommendations to this effect, and we are of the opinion that they should be given the force of law by enactment into law.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p>
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SUB-CRITERIA E.2.4 INTEGRATION OF BIODIVERSITY IN CROSS-SECTORAL POLICIES

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
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¹³⁵ Forest Plantation Development Fund Act: Section 11

<p>On paper:</p> <ul style="list-style-type: none"> • Ghanaian laws require the consideration of biodiversity impacts in forest and land use policy setting processes, although there are no clear cut provisions to that effect¹³⁶ • The Ghana Forest and Wildlife Policy¹³⁷ recommends that steps be initiated to intensify public education on the links between natural resources, over exploitation, environmental degradation, and community poverty. <hr/> <p>In practice (how these PLRs are implemented):</p> <p>Projects under the Wetlands Regulation impliedly take into account, the impact of those projects on Ghana's biodiversity, the aim of which is for the authorities to refuse or modify projects that may adversely affect the country's biodiversity. Additionally, the Traditional Medicine Practice Act enjoins all practitioners to ensure the preservation of the country's biodiversity</p>	<p>In relation to the PLRs on paper:</p> <p>n/a</p> <hr/> <p>In practice:</p> <p>n/a</p>	<p>On how to address the gaps on paper:</p> <p>There should be a legislation that requires the integration of biodiversity issues, especially at the local level, including the implementation of activities established for in-situ, invasive alien species, agricultural biodiversity and traditional knowledge.</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p>
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¹³⁶ Land use and Spatial Act, 2016 (Act 925)

¹³⁷ Ghana Forest and Wildlife Policy 2012: Policy Strategy 5.2.1., Preamble paragraph 1.6

SUB-CRITERIA E.2.5 ENHANCEMENT OF OTHER BENEFITS

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> PLRs in Ghana seek to maintain and increase ecological, biological, climatic, socio-cultural and economic contributions of forest resources.¹³⁸ A fair and equitable benefit sharing regime on biological resources has been provided for under Ghanaian laws, the Constitution allocates shares to the Administrator of stool lands, the traditional authorities and District Assemblies, in respect of revenues derived from stool lands.¹³⁹ Ghana Forest and Wildlife Policy¹⁴⁰ promotes the development of viable forest and wildlife based industries and livelihoods, particularly in the value added processing of forest and wildlife resources that satisfy domestic and international demands for competitively priced quality products. The Policy, which presently has no force of law, can form the basis of the 	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> Ghanaian laws do not make any provisions for the promotion of alternative livelihoods in forests management. <hr/> <p>In practice:</p>	<p>On how to address the gaps on paper:</p> <p>Ghana Forest and Wildlife Policy¹⁴¹ promotes the development of viable forest and wildlife based industries and livelihoods, particularly in the value added processing of forest and wildlife resources that satisfy domestic and international demands for competitively priced quality products. The Policy, which presently has no force of law, can form the basis of the enactment of a law that caters for the alternative livelihoods of persons in these communities</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p>

¹³⁸ Environmental Protection Agency Act, Section 2

¹³⁹ Constitution, Article 267 (1) and (2)

¹⁴⁰ Ghana Forest and Wildlife Policy, 2012: Policy Strategy 1.1.3

¹⁴¹ Ghana Forest and Wildlife Policy, 2012: Policy Strategy 1.1.3

enactment of a law that caters for the alternative livelihoods of persons in these communities		
In practice (how these PLRs are implemented):		

SYNTHESIS OF THE ANALYSIS OF SAFEGUARDS (F) AND (G)

UNFCCC REDD+ safeguards (F) and (G):
“Actions to address the risks of reversals; Actions to reduce displacement of emissions.”

CRITERIA F&G.1 MONITORING AND ASSESSMENT

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
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<p>On paper:</p> <ul style="list-style-type: none"> • The Land Use and Spatial Planning Act 2016 contemplates a framework for the development of land use plan¹⁴². • The laws in Ghana also provide for the monitoring of the forest supply chain. The Timber Resource Management (Legality Licensing) Regulations¹⁴³ provides for the adoption of a wood tracking system that has been prescribed by the Forestry Commission. In fact, the law makes the point that a timber product is deemed illegal if it has not been checked in accordance with the wood tracking system. • The Land Use and Spatial Planning Act 2016 creates a framework for the classification of land uses, collection of data and revision and consolidation of the laws on land use and spatial planning, provide for sustainable development of land and human settlements through a decentralised planning system, ensure judicious use of land in order to improve quality of life, promote health and safety in respect of human settlements and to regulate national, regional, district and local spatial planning, and generally to 	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> • Although the Land Use and Spatial Planning Act 2016 provides a general framework for the development of land use plans, the Act is not Forest specific, and the focus is skewed more towards planning outside the forest areas. Moreover, the PLRs do not contain any provision that requires the monitoring of changes in forest cover. <hr/> <p>In practice:</p> <p>The Land Spatial Planning Act has only just received Presidential Accent, the implication of which is that it will require some time before any meaningful data on its implementation is gathered.</p>	<p>On how to address the gaps on paper:</p> <p>This gap could be addressed in a number of ways. The first is to ensure co-ordination between the various agencies of state that their roles cut across forest and forest resources, while the other would be by means of future legislations, where provisions that directly address the need for a process of inventory management would be made in clear terms</p> <p>There is a need for future enactments to contain provisions that places an obligation on all stakeholders to monitor changes in forest cover in Ghana</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p>
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¹⁴² Land Use and Spatial Planning Act 2016, Section 4 (a) and (x)

¹⁴³ Timber Resource Management (Legality Licensing) Regulations Regulation 13(6) (b of L.I 2184 OF 2012)

<p>provide for spatial aspects of socio economic development¹⁴⁴</p> <ul style="list-style-type: none"> • The legal framework¹⁴⁵ provides for the appointment of Environmental and Forest Protection Inspectors, but makes no mention of equipping law enforcement bodies with adequate resources and expertise to conduct routine monitoring. • The law¹⁴⁶ mandates a person that has been granted an environmental permit to submit an annual environmental report in respect of his undertaking after 12 months from the date of commencement of operation and after every 12 months thereafter to the Agency. <hr/> <p>In practice (how these PLRs are implemented):</p> <p>The EPA Act anticipates the need for a scientific approach and technical expertise for the effective management of the forest and its resources, and provides for it by mandating the Agency to, in consonance with the minister, develop and administer training programmes, the aim of which is to adequately equip its personnel with the requisite technical expertise for the management of the forest and its resources.</p>	
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¹⁴⁴ Land Use and Spatial Planning Act 2016, Sections 2 and 4

¹⁴⁵ Forests Protection Act, Section

¹⁴⁶ Environmental Assessment Regulations, 1999 (LI 1652), Regulation 25

CRITERIA F&G.2 MEASURES TO TACKLE REVERSALS AND DISPLACEMENT

Findings (how the relevant legal framework addresses the safeguard component)	Gap(s)	Recommendations
<p>On paper:</p> <ul style="list-style-type: none"> The Ghanaian legal framework provides for the sustainable utilization of forests and other relevant resources¹⁴⁷. Liabilities and compensation for actions that affect the conservation and management of forests have been taken care of within the laws¹⁴⁸. Ghanaian law includes provisions that address effective law enforcement procedures for combating illegal forest-related practices. The law¹⁴⁹ forbid persons from starting bushfires and compels entities responsible for the clearing and weeding of roadsides to ensure that those sites are kept free from bushfire hazards <hr/> <p>In practice (how these PLRs are</p>	<p>In relation to the PLRs on paper:</p> <ul style="list-style-type: none"> The present state of the PLRs does not make any provisions aimed at addressing the drivers of deforestation and forest degradation. That notwithstanding, the Ghana Forest and Wildlife Policy¹⁵⁰ recommends that steps be initiated to intensify public education on the links between natural resources, over exploitation, environmental degradation, and community poverty. Ghanaian PLRs make absolutely no provisions for alternative livelihoods for persons who are affected by the exploitation of forest resources in the communities where they live Ghanaian laws are completely silent on the measures that give any kind of access to forest resources and relevant markets that support the livelihood of indigenous persons. The laws do not provide for the promotion of access for local communities to forest resources 	<p>The intendment of the drafters of the Ghana Forest and Wildlife Policy should be taken into account in future enactments on Forest laws by Parliament. Clear and unambiguous provisions must be made to adequately address this gap, and measures of punishing offenders should be included in such enactments.</p> <p>The Ghana Forest and Wildlife Policy¹⁵¹ promotes the development of viable forest and wildlife based industries and livelihoods, particularly in the value added processing of forest and wildlife resources that satisfy domestic and international demand for competitively priced quality products. We recommend that this should be taken into account in future enactments.</p> <p>Future enactments can take a cue from the recommendation of the Ghana Forest and Wildlife Policy¹⁵² which promotes the development of viable forest and wildlife based industries and livelihoods, particularly in the value added processing of forest and wildlife resources that</p>

¹⁴⁷ Constitution, Article 35 (6) (d) and Article 41 (k).

¹⁴⁸ Timber Operations (Government Participation) Act, 1972 (NRCD 139): Section 8(2), (3) and (4) (2); Forests Protection Act, 1974 (NRCD 243), Section 2; Trees and Timber Act, 1974 (NRCD 273): Section

¹⁴⁹ Control and Prevention of Bushfires Act, 1990 (PNDCL 229) Sections 1 and 9

¹⁵⁰ Ghana Forest and Wildlife Policy 2012: Policy Strategy 5.2.1, Preamble paragraph 1.6

¹⁵¹ Ghana Forest and Wildlife Policy¹⁵¹, 2012: Policy Strategy 1.1.3

¹⁵² Ghana Forest and Wildlife Policy¹⁵², 2012: Policy Strategy 1.1.3

<p>implemented):</p> <p>The combination of the Constitutional provisions on the sustainable exploitation of the Environment in line with Principles 2, 8 and 10 of the RIO Declaration of the Environmental and Development, in its Articles 36 and 41, and the EPA Act in its sections 12 and 13 on the requirement for an environmental impact assessment and enforcement, is supposed to ensure that no environmental project commences without the project sponsor first obtaining an environmental permit from the EPA.</p> <p>Additionally, upon commencement of the project, the monitoring mechanism kicks in, culminating in either a directive to make adjustments on the project or to stop it completely where it leads to an adverse effect on the environment.</p> <p>The Forest Officers are empowered to arrest offenders, and where any of the offences alleged against them is proved by the prosecution in a court of competent jurisdiction, the penalties that have been prescribed in the legislation that defines the offences are meted out on the offenders. Penalties typically range from fines to terms of imprisonment.</p> <p>The first level of enforcement is what is referred to as administrative enforcement, where the EPA has been empowered by</p>	<p>and relevant markets in order to support livelihoods and income diversification from forest management.</p> <ul style="list-style-type: none"> • Ghanaian laws on the forest and related resources make absolutely no provision for force majeure events • There are no provisions within Ghanaian laws that regulate MRV and information systems that report on how displacements are being addressed. • There are no PLRs that regulate relationship between project level, sub-level and national baselines and crediting. • Ghanaian laws are yet to be developed to cover issues bothering on the regulation of risk mitigation mechanisms like insurance bonds, guarantees, buffers and carbon pools. <hr/> <p>In practice:</p>	<p>satisfy domestic and international demand for competitively priced quality products.</p> <p>One way to deal with this lacuna is for efforts to be made, and quickly too, towards the enactment of laws to provide a framework within which force majeure events are catered for</p> <p>The importance of this criterion makes it a high ranking necessity for the relevant stakeholders to propose its inclusion in legislation to Parliament as soon as practicable</p> <p>Laws that regulate this criterion ought to be enacted without further delay. We are of the opinion that the relevant stakeholders must accelerate the process of initiating policies that would form the basis of a future enactment by Parliament</p> <hr/> <p>On how to address the gaps from the PLR's implementation:</p>
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<p>section 13 of its Act on enforcement to request the varying of the project or the complete stoppage of the same where, after commencement, it is shown that the project has an adverse effect on the environment. The next level of enforcement is the institution of civil or criminal proceedings against the offenders in line with the provisions of the relevant statutes.</p> <p>The laws take a hard stance on bushfires, and forbid it. It however recognises that there are instances where a bushfire might be difficult to avoid, like in instances where a road contractor has to clear a location. However, even in such instances, it would hold them responsible if such fires spread beyond the allowable limits. The law even punishes a company vicariously for bushfires committed by its employees.</p>		
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SCOPE OF THE ANALYSIS

The legal framework of a country is made up primarily of laws, policies and regulations (PLRs), as well as plans and programmes that can assist in implementing these PLRs. The PLRs and the plans/programmes of a country define what the country commits to promote and protect.

It is important to also consider under the scope of the identification, the relevant and applicable international agreements and conventions, on the environment, human rights and indigenous peoples. These, when adopted by a country, (when signed, ratified, or otherwise agreed to), are also considered to be part of the country's legal framework. Accordingly, international treaties may be: i) directly applied in whole or in part; ii) be implemented by enactment of new PLRs; or iii) implemented by revision of the current PLRs.

HOW THE LEGAL ANALYSIS WAS CONDUCTED

The key methodological steps included:

- 1) Identification of relevant and applicable international and national legal framework
- 2) Analysis of the identified relevant and applicable international and national legal framework
- 3) Development of recommendations for addressing gaps and weaknesses

1) Identification of relevant and applicable international and legal framework

In order to identify the relevant and applicable international and national legal framework in relation to the Cancun safeguards in Ghana, a framework of interpretation¹⁵³ of the Cancun safeguards was used (presented in the box below), along with the specific matrix. These were used as inputs to identify, which are the relevant aspects of the legal framework that are thematically relevant to each of the Cancun safeguards.

¹⁵³ Adapted from Rey, D., Roberts, J., Korwin, S., Rivera., & Ribet, U. (2013) *A Guide to Understanding and Implementing the UNFCCC*, ClientEarth, London, United Kingdom. Available from: <http://www.clientearth.org/reports/a-guide-to-understanding-and-implementing-unfccc-redd+-safeguards.pdf>

Cancun Safeguards Framework of Interpretation

This framework provides interpretations of the constituent elements of the Cancun safeguards based on international best practice and international law. For each Cancun safeguard we provide a brief summary and list its constituent elements.

Cancun Safeguard (a)

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

The indicative constituent elements of this safeguard are:

1. Consistency with objectives of national forest programmes and/or plans to combat deforestation and forest degradation
2. Consistency with objectives of relevant international conventions and agreements

Cancun Safeguard (b)

Safeguard (b) focuses on national forest governance structures, particularly with regards to 'transparency' and 'effectiveness'. Transparent governance structures are associated with a right of access to information, especially to vulnerable groups such as indigenous peoples and local communities, and with accountability.

Characteristics of effective governance structures generally include: laws and regulations relating to forest governance and sustainable use of forests, and enforcement of those laws; integration of social and environmental considerations, including human rights, in decision-making, public participation in decision making and related processes; clear rights of ownership and possession (land tenure) including for traditional and customary ownership; and fair and equitable benefit sharing arrangements. It is also associated with access to judicial or administrative procedures that can provide effective remedy for infringements of rights, and to resolve disputes, especially for indigenous peoples.

The indicative and illustrative constituent elements of this safeguard are:

1. Transparent National Forest Governance Structures
 - a. access to information
 - b. accountability
2. Effective national forest governance structures
 - a. land tenure
 - b. equitable distribution of benefits
 - c. gender equality
 - f. adequate access to justice
 - g. integration of social, economic and environmental considerations
 - h. cross-sectoral coordination

Cancun Safeguard (c)

Safeguard (c) focuses on the recognition and respect of the rights of indigenous peoples and local communities. In this way, REDD+ activities must be executed in accordance with relevant national and international laws and national circumstances—regarding both indigenous peoples and local communities. These rights are expected to apply both to the individual and the group as a whole,

and include, but are not restricted to: the respect for traditional knowledge; the respect and protection of rights regarding land tenure; self-determination; non-discrimination; benefit-sharing; participation; and Free, Prior and Informed Consent (FPIC).

The indicative and illustrative constituent elements of this safeguard are:

1. Definition/determination of indigenous peoples and local communities
3. Definition/determination of traditional knowledge
4. Recognition and implementation of rights in accordance with international law

Cancun Safeguard (d)

The interpretation of 'full and effective participation' is generally associated with the recognition and implementation of procedural rights (also known as access rights) such as access to information, participation, and justice in relation to decision-making processes. Due to the different identities, cultures, languages and institutions of indigenous peoples and local communities, ensuring their full and effective participation is, in some cases, associated with special procedures or measures, including Free, Prior and Informed Consent (FPIC).

The indicative and illustrative constituent elements of this safeguard are:

1. Regulation of full and effective participation
2. Enabling environment for an effective participation
 - a. identification of relevant stakeholders
 - b. access to information for decision making
 - c. participatory mechanisms
 - d. access to justice/conflict resolution mechanisms in decision making
 - e. free, prior and informed consent/consultation

Cancun Safeguard (e)

The overarching objective behind Safeguard (e) is that REDD+ actions must be 'consistent with the conservation of natural forests and biological diversity.' Specifically, REDD+ actions must not result in the conversion of natural forests and the protection of natural forests and their ecosystem services should be incentivised. It is generally understood that REDD+ actions should seek to contribute to the conservation of natural forest and biological diversity, which include: identification, mapping and monitoring of natural forests and biodiversity, measures to protect/conservate biodiversity; support for conservation research; awareness-raising; and integration of biodiversity concerns into other national sectors. Of particular importance for incentivising conservation, REDD+ activities should also seek to promote the enhancement of environmental and social benefits, such as environmental services and livelihoods.

The indicative and illustrative constituent elements of this safeguard are:

1. Non Conversion of natural forests
 - a. identification of natural forest, biological diversity and ecosystem services
 - b. Prohibiting conversion of natural forests
2. Protection and conservation of natural forests and biodiversity
 - a. identification or mapping of natural forests and biodiversity
 - b. measures to protect biodiversity and natural forests
 - c. conservation research and awareness-raising
 - d. integration of biodiversity in cross-sectoral policies
 - e. Enhancement of other benefits

Cancun Safeguards (f) & (g)

Safeguards (f) and (g) require countries to take action to ‘address the risks of reversals’, and to take actions to ‘reduce displacement of emissions’. These safeguards seek to ensure that emission reductions or removals are durable and real, i.e. the net benefit of an action will remain fixed for a long period (i.e. not be reversed, sometimes referred to as “permanence”), or that the activity has not shifted location—for example, an agent of deforestation moves to another location, but still causes the same amount of emissions (i.e. displaces the emissions, also referred to as “leakage”). Both of these concerns are sometimes managed through accounting rules.

Additionally, the social and environmental measures used to implement the other UNFCCC REDD+ Safeguards can be extremely relevant to Safeguards (f) and (g), in terms of reducing displacement, and the risks that forest emission reductions and removals are not lasting. Examples may include land tenure clarity, promotion of alternative livelihoods, sustainable use and management of forests, responsible planning, including REDD+ activities and/or objectives in development plans at national and subnational level, building awareness and strengthening institutional governance and regulatory frameworks, cross-sectoral coordination and integration, as well as ensuring participation and equitable sharing of sustainable benefits of REDD+.

The indicative and illustrative constituent elements of safeguards (f) and (g) are:

1. Monitoring and assessment
2. Measures to tackle reversal and displacements

On the basis of the interpretative criteria provided in that framework and the matrix, consultants identified the relevant and applicable international legal instruments and national legal framework according to their relevance and thematic resemblance to the Cancun Safeguards.

- a) **Identification of international law:** It is important to note that the identification of international law refers to the international and regional conventions and non-binding declarations. The identification of relevant international law is based on the ratification of the instrument in the case of a treaty or international agreement and adherence or vote for, in the case of international declarations.

- b) **Identification of national legal framework:** The identification of the relevant legal framework was carried out following the relevance and thematic resemblance with the Cancun Safeguards framework.

As an output to this step, consultants had a list of PLRs and international conventions and agreements relevant to each Cancun safeguard component.

2. Analysis of the identified relevant and applicable international and national legal framework




Once the legal framework was identified and confirmed, consultants went on to:

- a. Complete the matrix provided through desk based research
- b. Confirm findings through interviews with relevant stakeholders

a. Completing the matrix provided through desk based exercise

A matrix was developed to support the gap analysis/assessment. The matrix provides interpretative criteria in relation to the Cancun safeguards, and in cases in which the language of the Cancun safeguards language encompasses several issues that must be analysed separately, interpretative sub-criteria are provided. The interpretative criteria and sub-criteria have been drawn primarily from the Cancun safeguards framework from the document “A Guide to Understanding and Implementing the Cancun Safeguards”¹⁵⁴. See table below for an example of the matrix.

Each criteria and sub-criteria is accompanied by a diagnostic question and a set of indicators¹⁵⁵. The purpose of each diagnostic question is to help assess if and how the legal framework can support the safeguards implementation, and identify any potential gaps. To answer each diagnostic question the analyst should utilise the indicators provided. For each indicator, the analyst has the option to choose if:

	The instrument covers indicator
	Indicator is partially addressed by the instrument
	Indicator is not covered/addressed by the instrument

The interpretative criteria were adapted to the context of Ghana and therefore modified in the matrix. For example, as there are no ‘indigenous peoples’ in Ghana, some of the elements of safeguard D were modified.

In the matrix, consultants identify and explain how the legal provisions are considered in line with the Cancun Safeguards, and what gaps exist (are not addressed by the legal framework).

To see the completed matrix, please refer to Annex 2 of this report.

b. Confirming findings through interviews with relevant stakeholders

The findings documented in the matrix were then presented and complemented through semi-structured interviews and meetings with relevant stakeholders. In addition, through these interviews consultants

¹⁵⁴ Rey, D., et al. A Guide to Understanding and Implementing the Cancun Safeguards, (2013) ClientEarth, London, United Kingdom

¹⁵⁵ The diagnostic question and indicators have been developed using a combination of several relevant methodologies and frameworks, including the authors “A Guide to Understanding and Implementing the Cancun Safeguards” and the Governance of Forest Indicators of WRI (<http://www.wri.org/project/governance-of-forests-initiative>).

aimed to identify to what extent the identified legal provisions are duly implemented (i.e. if there are any problems in terms of implementation). When gaps in the 'implementation' of the legal provisions were identified through the interviews, consultants also gathered inputs from the stakeholders concerning recommendations for addressing these gaps. This information should be documented in the report above.

The table below presents the list of meetings and interviews conducted by consultants.

Ministry of Lands and Natural Resources	Abu Juam
Forestry Commission	Raphael Yeboah Michael Akowuah
International Union for the Conservation of Nature	Saadia Bobtoya Owusu Amofa
Environmental Protection Agency	Kinglsey Sey
Resource Trust	Joe Osei-Wusu
Legal Working Group	Made up of civil society actors in the forestry sector. 30 members present at the meeting
Safeguards sub-Working Group	Made up of government and civil society. 25 members present at the meeting

c. Recommendations for addressing gaps and weaknesses

Subsequent to gathering feedback on the completed methodological matrix, consultants went on to:

- a) summarise and systematise the findings and gaps in a technical paper (report above). The systematisation of the findings and gaps provides a clear "picture" of the current state of the relevant legal framework.
- b) identify appropriate recommendations for addressing gaps and weaknesses.