

# Progress and Recommendations for the Design of a National REDD+ Safeguards for Mexico



*The full and effective participation of local communities living in the forests and respect for their rights and knowledge are fundamental to the success of REDD+.*

## Key Messages

- Under international agreements on climate change, countries participating in the REDD+ mechanism should have a Safeguards Information System (SIS) to report how they apply the safeguards under the Cancun Agreements.
- The Mexico REDD+ Alliance and the National Forestry Commission recognize that a reporting mechanism is not sufficient to guarantee the effectiveness of REDD+ in Mexico. Therefore, we propose a more comprehensive system, called a National Safeguards System (NSS), to anticipate, avoid, mitigate, monitor, and respond to potential negative impacts of REDD+ at different scales.
- This system is based on the existing legal, institutional, and compliance framework and generates information for various donors, in addition to the UNFCCC. This will give the country greater control, cost-efficiency and flexibility to comply with international safeguards for REDD+.
- To build this system, it is necessary to define national objectives on safeguards, analyze and strengthen the existing legal, institutional, and implementation frameworks in the country and link the national and subnational levels in its implementation.

## Introduction

One of the critical elements for the success of REDD+ is the implementation of social and environmental safeguards. These safeguards were created to reduce the risk of negative impacts and promote the generation of benefits for biodiversity, ecosystem services, and the communities living in the forests. Under the United Nations Framework Convention on Climate Change (UNFCCC), REDD+ safeguards were established in the Cancun Agreements. They state that the countries participating in the REDD+ mechanism must respect and address seven safeguards in the implementation of their activities and have a Safeguards Information System (SIS) to report their application to the UNFCCC.

The government of Mexico has adopted the UNFCCC safeguards as fundamental principles in its National Strategy for REDD+ (ENAREDD+) and, with the support of the Mexico REDD+

### WHAT ARE SAFEGUARDS FOR REDD+?

Safeguards are principles or conditions that must be respected so that people and the environment are not harmed by, but rather benefit from REDD+.

Alliance, has led the development of a conceptual framework for the design of a National Safeguards System (NSS), an analysis of the applicable national and international legal framework, and a roadmap to advance the design and implementation of this system. This document summarizes the results of that work.

### International obligations related to REDD+ safeguards

In 2010, the Cancun Agreements of the Conference of the Parties to the UNFCCC established a set of safeguards that must be addressed and respected by countries participating in the REDD+ mechanism. In order to receive funding and payments for results, countries must report to the UNFCCC how the safeguards are being addressed and respected at all stages of the development and implementation of their REDD+ actions and policies through a Safeguards Information System (SIS). In a subsequent agreement known as the Warsaw Framework on REDD+ (2013), countries are also required to provide a summary of the information generated by the SIS in their national communications after initiation of REDD+ activities.

It is important to note that the UNFCCC safeguards are general guidelines that must be met in accordance with national legislation, international obligations, and country-specific circumstances, and there is not yet a guide that details the information that must be provided. Therefore, it is the responsibility of national governments to interpret the safeguards of the UNFCCC in accordance with their legal framework, and to strengthen their legal, institutional, and implementation framework and create mechanisms for monitoring and reporting in order to comply with international agreements on REDD+ and to fully participate in this mechanism.

### Conceptual Framework for the Design of a National Safeguards System for Mexico

To address the REDD+ safeguards consistently across territorial levels, government institutions, and funding sources, and in accordance with the country's legal, institutional, and implementation framework, the government of Mexico plans to

establish a National Safeguards System (NSS). Unlike a SIS, the NSS will not only inform the UNFCCC about compliance with the safeguards, it will also be responsible for coordination and efforts to meet the requirements of the various sources of REDD+ finance that the country receives and ensure that safeguards are applied effectively and consistently within the country. In addition, the NSS is country-led, harnessing and building on the existing legal and institutional structures, strengthening them to comply with international safeguards approach. Thus, the NSS defines the safeguards to be applied to all policies and REDD+ actions in Mexico and how they will be addressed, monitored, and reported to ensure compliance at the national and subnational levels. Thus, the NSS is proposed as a key mechanism for ensuring that REDD+ benefit forests and communities while reducing the emissions.

### Elements of the National Safeguards System

The NSS consists of three interrelated elements: the legal framework, institutional framework, and compliance framework. These elements, as mentioned above, are based on existing national frameworks. The legal framework includes laws, policies, and regulations that define and protect the safeguards, as well as programs and plans that contribute to their implementation. It is a critical element of the NSS and supports the institutional and compliance frameworks. The institutional framework includes the responsible institutions or institutional arrangements for implementing and monitoring safeguards defined by the legal framework.

The third element is the compliance framework formed by the dispute resolution mechanisms, monitoring, reporting, and tracking of non-compliance. These mechanisms are managed by the institutions responsible for the implementation of the legal framework. The mechanisms for monitoring and reporting are used to demonstrate that the safeguards are being applied effectively, design measures to mitigate negative social and environmental impacts and promote positive impacts, and evaluate the effectiveness of these measures. The conflict resolution mechanisms may be judicial, administrative, or

## UNFCCC REDD+ SAFEGUARDS

When undertaking REDD+ activities, the following safeguards should be promoted and supported:

- a** That actions complement or are consistent with the objectives of national forest program and relevant international conventions and agreements;
- b** Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;
- c** Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;
- d** The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities;
- e** That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;
- f** Actions to address the risks of reversals;
- g** Actions to reduce displacement of emissions.

negotiation bodies and should also receive and manage suggestions for the continuous improvement of the NSS. Finally, the non-compliance mechanisms may be judicial or administrative and initiate when individuals or organizations do not comply with the legal framework of the safeguards. All of the compliance mechanisms should build on existing systems, be consistent with the guidelines and requirements of the UNFCCC, find synergies with national initiatives and international obligations, and develop appropriate indicators.

### ADVANTAGES OF A NATIONAL SAFEGUARDS SYSTEM (NSS) VERSUS A SAFEGUARDS INFORMATION SYSTEM (SIS)

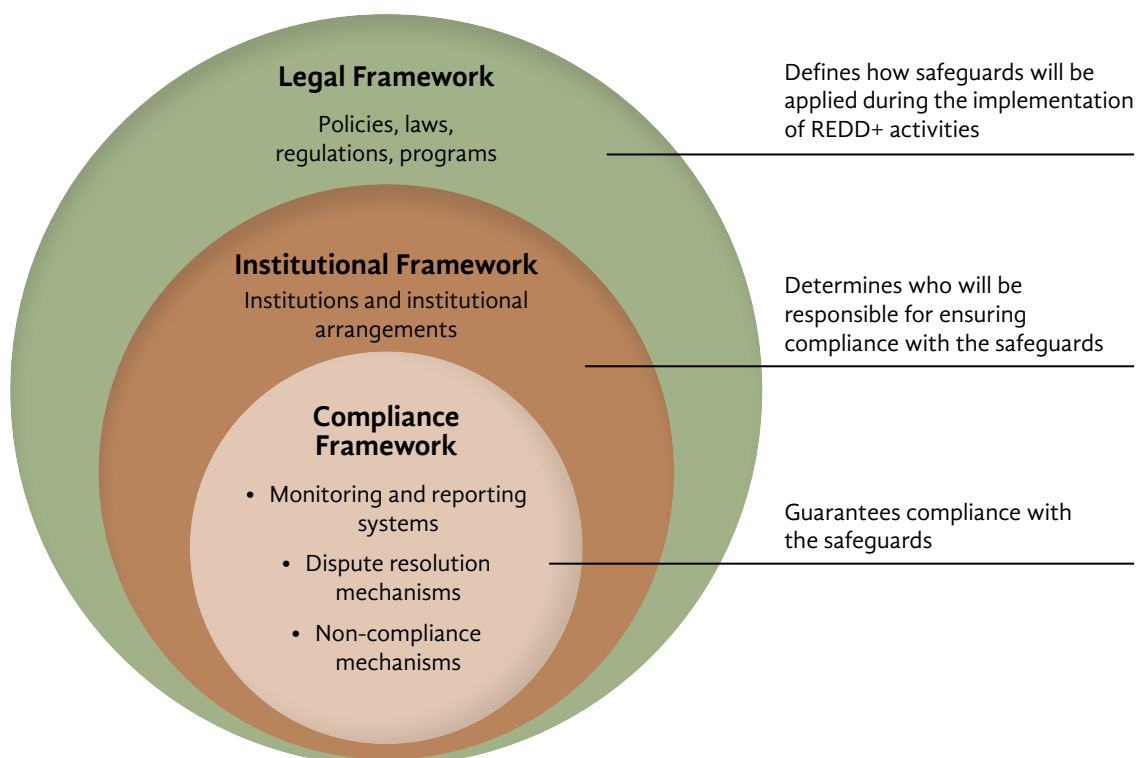
- **Greater control by the country** to define what safeguards to apply and what activities will be subject to compliance with these safeguards
- **Increased cost-efficiency and respect for national sovereignty** due to the consolidation of various international requirements under a single system based on existing national institutional and legal frameworks
- **Responds better to the national context** and reflects the specific circumstances of the country in terms of opportunities and challenges for the application of safeguards
- **Greater flexibility** to integrate the needs of new programs and agreements, improving implementation time and making the country more attractive to investors and donors

### Advances in the Development of a National Safeguards System for Mexico

Mexico is committed to integrating UNFCCC safeguards in their national REDD+ process and has made significant progress towards meeting international requirements in this area. The proposed framework defines the development of a NSS in six phases. This section defines each stage, highlights Mexico's progress, and provides recommendations going forward. Note that the dissemination of information, capacity building, and social participation are critical elements of each. The steps are:

- 1. Define the objectives of REDD+ safeguards:** It is necessary to develop a national interpretation of the content and application of safeguards under the UNFCCC according to the national legal framework. Mexico has made progress here in adopting the UNFCCC safeguards in the ENAREDD+ and through reforms to the General Law for Sustainable Forest Development (LGDFS) which recognize that policies for conservation and enhancement of ecosystem services must comply with safeguards in international agreements and treaties. However, Mexico still needs to clarify the meaning of the UNFCCC safeguards within the country's legal, institutional, and implementation framework and establish a national definition or interpretation thereof. The analysis of the legal framework (mentioned below) will be useful for constructing this definition or interpretation. Moreover, it is necessary to operationalize the safeguards provided for in Article 134bis of the LGDFS.
- 2. Identify and analyze the legal, institutional and national compliance framework:** This analysis should identify the contributions and gaps of each framework in relation to the implementation of REDD+ safeguards. Currently, the analysis of the legal framework has been completed and the

### ELEMENTS OF A NATIONAL SAFEGUARDS SYSTEM



analyses of the institutional and compliance frameworks are in development. The main findings and recommendations for strengthening the legal framework are described in the following table. Recommendations for institutional and compliance derived from the analysis of the legal framework frameworks are also included.

3. **Develop an action plan:** This plan defines the lines of action and specific measures to be undertaken by the country to strengthen its legal, institutional, and compliance framework for REDD+ safeguards. Toward this end, the Mexico REDD+ Alliance supported the National Forestry Commission (CONAFOR) to conduct dialogues among agencies that may have an important role in the monitoring and implementation of the safeguards with the aim of achieving an inter-institutional agreement to support the development of this plan and specify the distribution of responsibilities and budget for implementation.
4. **Implement the action plan:** This step involves the implementation of measures to strengthen the legal, institutional, and compliance frameworks, such as the enactment or amendment of laws and the establishment or strengthening of institutions and mechanisms within the compliance framework.
5. **Link the national and sub-national level:** Aligning the legal, institutional and compliance frameworks at the national and sub-national level is critical. The federal level should provide general guidelines to support the NSS development process at the sub-national (state and local) level. Based on an analysis of the institutions at the national and subnational levels, appropriate institutional arrangements will be developed to link both levels, particularly in terms of monitoring, reporting, accountability, non-compliance, feedback, and resolution of complaints and disputes.
6. **Evaluate periodically the NSS:** The system must provide measures to be evaluated and should continually incorporate improvements and adapt to new international requirements.

### Analysis of Legal, Institutional, and Compliance Framework for REDD+ Safeguards in Mexico

In 2013, the Mexico REDD+ Alliance supported the implementation of a detailed analysis of the consistency between the Mexican legal framework (laws, regulations, and policies) and the UNFCCC safeguards. This study also yielded information about the legal basis of the institutional framework and context of compliance with safeguards.

Overall, the study shows that the country has a strong legal framework consistent with the safeguards defined by the UNFCCC, providing the necessary basis for recognition and implementation. However, gaps remain around the safeguards related to the compatibility with international agreements; access of local communities to information; regulation of indigenous rights, participation, and gender equity; and the no-conversion of natural forests.

Similarly, the legal basis for the institutional framework for the oversight and implementation of the safeguards is considered robust because it provides clear mandates for administrative units to carry out activities related to forest management and monitoring, indigenous rights, biodiversity protection, and access to justice and transparency. The biggest gap is the lack of allocation of institutional mandates and responsibilities for the effective implementation of the right to public participation in environmental decisions.

Finally, the analysis of the legal basis for the compliance framework notes that Mexico has effective monitoring and reporting mechanisms to be considered in the design of NSS. Clear mandates, authority, and power to enforce the law exist, and the analysis did not find gaps in the access to justice, but did identify gaps in the application of the laws.

The table in the next page shows in more detail the level of consistency between the Mexican legal framework for the definition, implementation, and enforcement of REDD+ safeguards and the UNFCCC safeguards, as well as recommendations to strengthen this framework.



Photo: Rodrigo Fernández

*Under an international REDD+ mechanism, the National Safeguards System should include measures to prevent leakage of emissions and ensure the permanence of forest carbon stocks.*

## SUMMARY OF THE RESULTS OF THE ANALYSIS OF MEXICO'S LEGAL FRAMEWORK IN RELATION TO THE UNFCCC SAFEGUARDS

Safeguard	Consistency of the legal framework with the safeguard	Gaps in the legal framework and its implementation	Recommendations
a) Consistency with National forestry programs and international agreements	Establishes that the state forestry programs should be consistent with national policy and provides for the respect of international agreements	Gaps in terms of references to relevant international treaties; inconsistency and lack of coordination between programs affecting the same territory; lack of knowledge of relevant international agreements between actors in government and civil society	<ol style="list-style-type: none"> <li>1. Identify in the ENAREDD+ Mexico's legal obligations in terms of safeguards derived from relevant international agreements</li> <li>2. Assign CONAFOR as the entity responsible for ensuring that the objectives of national forest programs are compatible with REDD+</li> </ol>
b) Transparency and effectiveness in forest governance	Establishes an adequate institutional and compliance framework. Recognizes, protects, and provides for measures relating to: access to information; transparency; property rights; fair and equitable sharing of benefits; ownership of carbon; gender equity; right to participate in some processes related to forests; interagency coordination	Lack of provisions to facilitate local communities' access to information; ineffective prevention of corruption in the forestry sector; problems of access to benefits among landholders without property rights; lack of guidelines on the distribution of profits; provisions on gender equality are not fully implemented; access to justice is not guaranteed in practice; institutional coordination does not work in practice	<ol style="list-style-type: none"> <li>3. Take action to disseminate and simplify the process of access to information and provide information in accessible languages for local communities and indigenous groups</li> <li>4. Propose mechanisms for informal landholders to access REDD+ incentives</li> <li>5. Clarify the distribution of benefits from forest carbon in the ENAREDD+</li> <li>6. Strengthen institutional capacities and powers to fully implement the legislation on gender equality</li> <li>7. Take measures, coordinated by the National Commission for the Development of Indigenous Peoples (CDI), to facilitate access to justice for local communities and indigenous groups</li> </ol>
c) Respect for the knowledge and rights of indigenous peoples and local communities	Recognizes the autonomy of peoples to preserve their knowledge; integrates indigenous rights recognized by international law applicable to Mexico, including: self-determination, non-discrimination, collective property, equitable distribution of benefits, rights over traditionally-used resources	It does not provide a clear definition of "indigenous peoples", "local communities", "traditional knowledge." No laws or mechanisms to operationalize the rights of indigenous peoples and local communities and respect for customs. Gaps in the recognition of legitimate ownership of land by indigenous peoples	<ol style="list-style-type: none"> <li>8. Adopt a legal definition of "local communities" and "traditional knowledge" consistent with the relevant and applicable international law (see Convention on Biological Diversity and UNDRIP)</li> <li>9. Operationalize the guarantee provided by Art. 2 of the Constitution and/or new legislation protecting the rights of indigenous peoples and local communities</li> <li>10. Evaluate the possibility of including a provision in the LGDFS on respecting the manners and customs and promoting knowledge and appreciation of the uses and customs in the areas where REDD+ is implemented</li> <li>11. Develop federal guidelines and state protocols governing the equitable distribution of REDD+ benefits between indigenous peoples and local communities</li> <li>12. Expand the powers of existing institutions or create new institutions to ensure respect for the rights of indigenous peoples and local communities</li> <li>13. Include the CDI in the Interministerial Commission on Climate Change (CICC)</li> </ol>

## SUMMARY OF THE RESULTS OF THE ANALYSIS OF MEXICO'S LEGAL FRAMEWORK IN RELATION TO THE UNFCCC SAFEGUARDS

Safeguard	Consistency of the legal framework with the safeguard	Gaps in the legal framework and its implementation	Recommendations
d) Full and effective participation of relevant stakeholders	Recognizes the right to participate in decision making processes and provides mechanisms for this; requires public distribution of information on forest management; recognizes the right to free, prior and informed consent (FPIC) on forest ecosystem services projects	Consultation or full, informed, timely and effective participation in environmental decision-making is not regulated; the operation of participatory mechanisms and the identification of stakeholders is not regulated; FPIC is not regulated; lack of mechanisms for access to justice in terms of the right to participate and to FPIC	<p>14. Adopt the legal rules and set institutional mandates on the right to consultation and the full and effective participation considering the guidelines of the relevant and applicable international law in Mexico</p> <p>15. Add provisions ensuring broad, timely, and culturally-appropriate access to information for environmental decision-making to the regulation of LFTAIPG or the institutional guidelines of CDI and CONAFOR</p> <p>16. Regulate the processes of consultation and participation in environmental decision making</p> <p>17. Take steps to ensure access to justice in the context of participation through legal advocacy, appeal, and grievance processes</p> <p>18. Reform LGDFS and/or adopt a regulation or institutional protocol to recognize the right to FPIC and operationalize it in accordance with the relevant and applicable international law in Mexico</p> <p>19. Strengthen and ensure the permanence of the Technical Advisory REDD+ (REDD+ CTC) and working groups of the CICC</p>
e) Consistency with the conservation of natural forests, biodiversity, and ecosystem services	Establishes controls for the conversion of natural forests to plantations; regulates and establishes penalties for the protection of natural forest areas and threatened biodiversity; establishes a National Information System on Biodiversity	Does not strictly prohibit the conversion of natural forests; does not define "biodiversity"	20. Perform the necessary legal reforms to prohibit the conversion of natural forests
f) Actions to reduce the risk of reversals	Requires updating forest inventories and land use, forest cover monitoring, control, supply chain of forest products and monitoring and reporting of environmental and social impacts; supports scientific and technical developments for forest management; promotes conservation and sustainable use of forests;	Does not promote independent forest monitoring; does not extensively discuss the major causes of deforestation and forest degradation; in practice there are significant gaps in terms of the provision of technical assistance for forestry	<p>21. Based on a national study, address all causes of deforestation and forest degradation in the ENAREDD+</p> <p>22. Take steps to secure land rights and clear and equitable sharing of the benefits of REDD+</p> <p>23. Build institutional capacity to address issues of reversals and leakage in programs for sustainable forest management and scientific development</p>
f) Actions to reduce the risk of displacement	regulates compensation for conservation activities and forest management; provides measures to combat illegal logging and forest fires		<p>24. Promote independent forest monitoring in the LGDFS to contribute to the transparency and legitimacy of the measurement, reporting, and verification of forest carbon</p> <p>25. Establish regular tests that track and distribute information on the classification and use of land</p> <p>26. Increase technical and scientific support for the conservation and management of natural resources</p>



Photo: Rodrigo Fernández

*The safeguards require that REDD+ actions and measures promote good forest governance and protect natural forests, biodiversity, and ecosystem services.*

## Conclusion

To participate in an international REDD+ mechanism, Mexico needs to establish a national system to provide information about how the UNFCCC safeguards are being addressed and respected in the country. Mexico has recognized the need for a National Safeguards System of (NSS) based on the existing legal, institutional, and compliance framework and a national definition of each safeguard to comply with the requirements of the UNFCCC and other funding sources. This paper presented a conceptual framework for the design of the NSS, relevant to

strengthening the legal, institutional and compliance frameworks and provided recommendations for advancing the construction of this system. With this, the Mexico REDD+ Alliance hopes to contribute to a national discussion about the design of a system for the proper observance, implementation, and reporting of REDD+ safeguards in Mexico.



Photo: Rane Cortez, TNC

Respect for local knowledge will help ensure REDD+ strategies achieve success on the ground.

## References

- Climate Law and Policy (2013). *Marco Conceptual para el Diseño de un Sistema Nacional de Salvaguardas REDD+ en México*. México: Alianza México REDD+.
- CMNUCC (2013). *Informe de la Conferencia de las Partes sobre su 19º período de sesiones, celebrado en Varsovia del 11 al 23 de noviembre de 2013*. FCCC/CP/2013/10/Add.1
- CMNUCC (2010). *Informe de la Conferencia de las Partes sobre su 16º período de sesiones, celebrado en Cancún del 29 de noviembre al 10 de diciembre de 2010*. FCCC/CP/2010/7/Add.1
- Rey, D., Rivera, L., Ribet, U. y Korwin, S. (2013). *Recomendaciones para el Diseño de un Sistema Nacional de Salvaguardas para REDD+ en México*. México: Alianza México REDD+.
- Rey, D., Rivera, L., Ribet, U. y Korwin, S. (2013). *Recomendaciones para la Implementación de Salvaguardas en México: Análisis del Marco Legal e Iniciativas Relevantes y Aplicables*. México: Alianza México REDD+.