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Examining support for the rights of Indigenous Peoples and local communities in the context of REDD+ in Indonesia

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Summary

- This flyer presents findings on research examining ten criteria regarding the level of support for Indigenous People and local community (IPLC) rights in the context of REDD+ in Indonesia.
- Indonesia has been involved in REDD+ from the outset and has developed various instruments to support its implementation, including a safeguards information system (SIS) that includes social safeguards recognizing the rights of IPLCs.
- IPLC rights are mentioned in different implementing regulations in piecemeal fashion, e.g., aspects of free, prior and informed consent in regulations on access to information or protection of human rights. In contrast, rights to land and forest tenure are much more comprehensive, e.g., through schemes under the Social Forestry programme.
- The implementation of safeguards for REDD+ and other forest-based initiatives must engage customary (adat) communities and respect their rights, knowledge and participation, as highlighted in Indonesia's updated nationally determined contribution (NDC).

This flyer is part of a series on REDD+ safeguards, focusing on the rights and social inclusion concerns of the women and men of the Indigenous Peoples and local communities (IPLCs) that steward the forests where climate solutions are implemented.

Flyers provide lessons for application in different national contexts, present evidence for decision makers and practitioners to consider the implications and benefits of supporting the rights of IPLCs, and contribute to the participation of IPLC representatives in discussions on and monitoring of safeguards.

Introduction

As the framework for reducing emissions from deforestation and forest degradation and enhancing forest carbon stocks (REDD+) moves to results-based payments, there is a need to re-examine safeguards. At the 2010 Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) in Cancun, seven safeguard principles for the implementation of REDD+ were adopted, including two that address Indigenous Peoples and local communities (IPLCs). The Cancun safeguards mandate that countries interpret these principles, deferring to national law in deciding what counts as 'respect' or 'participation' for IPLCs.

Scholars and practitioners have been concerned about REDD+'s potential impact on the rights of IPLCs from early on (Sarmiento Barletti and Larson 2017). Without proper guidelines, the application and operationalization of REDD+ safeguards varies between countries, with different impacts on IPLC rights (Jodoin 2017). Indeed, the national interpretation and roll out of safeguards is framed by country-specific legal interpretations of relevant rights, adherence to international agreements on the rights of IPLCs, and different political and economic priorities. Concerns over safeguards focus on the need to expand rights recognition and to bridge gaps in access to recognized rights, including to land and resources as well as to participation (Savaresi 2013; Wallbott 2014).

The introduction of voluntary standards has provided an opportunity for guidelines that are more supportive of IPLC rights than national interpretations of the Cancun principles. This transition is important in countries where IPLCs experience discrimination. However, there is considerable variation in standards (Sarmiento Barletti et al. 2021). Whilst some standards motivate countries to increase their support for the rights of IPLCs by tying results-based payments to evidence of 'doing good' or in a few cases of 'doing better', others set a lower bar of 'doing no harm' (Lofts et al. 2021).

Given the specificity of national safeguards interpretation processes, this flyer presents the results of a review of legal documents and interviews with legal specialists in Indonesia to understand the level of support for IPLC rights in law and policy in the context of REDD+ (Table 1). Further analysis will set out the voluntary standards that Indonesia's legal system already abides by, as well as the reforms that would be needed to comply with more stringent options. We aim to clarify the interplay between different standards that may not align, yet are deployed for the same activities within the country. Outputs will support REDD+ actors in navigating the range of criteria, indicators and rules, and integrating them into their national implementation frameworks and reporting processes for coherent safeguards operationalization.

What is in the table?

The table lists ten criteria regarding Indonesia's legal system's support for the rights of IPLCs. The criteria are: (1) recognizes historically under-represented groups; (2) aligns with the Cancun safeguards; (3) recognizes gender and/or women's concerns; (4) recognizes the rights of IPLCs under international law; (5) recognizes land and resource rights for IPLCs; (6) recognizes community carbon rights; (7) recognizes the right of IPLCs to free, prior and informed consent (FPIC); (8) requires formal benefit sharing mechanisms; (9) requires formal grievance mechanisms; and (10) includes provisions for monitoring, reporting and verification (MRV) for rights and social inclusion concerns. We rated each criterion based on whether it aligned with Indonesia's laws fully (yes), in a partial way for those that only met some aspects of the criterion (partial), or not at all (no). The table also includes references to legal documents and reports that were reviewed for this flyer. The table and its companion text build on interviews with two Indonesian legal specialists.

Indonesia: The state of support for IPLC rights in the context of REDD+

Indonesia's legal system does not recognize Indigenous Peoples as per international conventions, as it recognizes all Indonesians – except for those of Chinese ethnicity – as indigenous (IWGIA 2021; Simamarta and Sasmitha 2021). Instead, Indonesia's legal system recognizes customary communities (*masyarakat adat*), as groups "of people who have been living in a specific area for generations because of an ancestral connection and special relationship with the environment, and because of traditions that regulate economic, political and social arrangements and laws" (Law No. 32/2009). Indonesia has a population of approximately 260 million people, of which 70 million are considered customary peoples (IWGIA and AMAN 2021). Local and traditional communities are also recognized (Law No. 1/2014¹). Indonesia is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), but not to ILO Indigenous and Tribal Peoples Convention No. 169 (ILO169).

Indonesia has been at the forefront of REDD+ development (Novyanza et al. 2020). Although the country's interpretation of the Cancun safeguards was presented in its safeguards information system (SIS) in 2017,² REDD+ implementation has

1 Amendment to Law No. 27 of 2007 on the Management of Coastal Area and Isles
2 Ministry of Environment and Forestry Regulation No. 70/2017 on Procedures for Implementing REDD+, Role of Conservation, Sustainable Management of Forest and Enhancement of Forest Carbon Stocks

Table 1. A summary of legal documents and interviews to understand Indonesia's support for rights of IPLCs

	Rating	Detail	Source
(1) Historically under-represented groups recognized by law	Yes	Indonesia's legal system recognizes customary communities (masyarakat adat), local communities and traditional communities. The 1945 constitution recognizes and respects their customary rights (Articles 18 B and 28 I). Several more recent regulations provide definitions for customary communities, including the Environmental Law (Law No. 32/3009) and Forestry Law (Law No. 41/1999). In addition, local communities and traditional communities have been addressed in Law No. 1/2014; the amendment to Law No. 27/2007 on Management of Coastal Areas and Isles, though their definitions are partial to a coastal context.	https://www.refworld.org/docid/46af43f12.html https://www.forestpeoples.org/sites/default/files/news/2013/05/Constitutional_Court_Ruling_Indonesia_16_May_2013_English.pdf http://extwprlegs1.fao.org/docs/pdf/ins36649.pdf https://www.fao.org/faolex/results/details/en/c/LEX-FAOC139269/
(2) Cancun safeguards/SIS	Yes	Indonesia first developed its safeguards information system (SIS) in 2011 with support from the Forests and Climate Change Programme (FORCLIME). The development of SIS followed a multistakeholder process and analysis of existing safeguard-related instruments in Indonesia. This resulted in seven principles, 17 criteria and 32 indicators, which are intended to guide REDD+ implementers in conducting self-assessments and reporting their safeguard implementation. SIS REDD+ has been tested in Jambi and East Kalimantan provinces.	https://www.forclime.org/index.php/en/more-news/30-2016/690-new-publication-on-sis-redd-operationalization-in-indonesia
(3) Gender/women's concerns	Yes	Indonesia has no specific law regarding women's rights. Nevertheless, it is a signatory to CEDAW 1984, while Article 27 of the 1945 Constitution stresses that all citizens have equal status before the law. In addition, gender issues have been mainstreamed in the national long-term development plan (RPJMN) for 2005–2025. In 2010, gender responsive budget tagging was piloted in seven ministries. In 2011, the Ministry of Forestry issued Ministerial Regulation P. 65/2011 on Guidelines for Gender Responsive Planning and Budgeting, which was then amended by Ministerial Regulation P.31/2017 on Guidance for the Implementation of Gender Mainstreaming in the Environment and Forestry Sectors.	https://forestsnews.cifor.org/65987/forest-tenure-reforms-in-indonesia-could-open-door-to-greater-gender-equality?fnl=en https://www.id.undp.org/content/indonesia/en/home/gender-equality.html https://www.id.undp.org/content/indonesia/en/home/library/others/12292021.html
(4) IPLC rights under international law	Partial	Indonesia is a signatory to UNDRIP, but has not ratified ILO Convention No. 169 as the government deems the convention's definition of Indigenous Peoples inappropriate to the Indonesian context.	https://www.iwgia.org/en/indonesia.html
(5) Land and resource rights	Yes	As per Constitutional Court Decision No. 35/PUU-X/2012, customary forests, which had previously been categorized as state forest, are now recognized as being collectively owned by customary communities. In 2016, Indonesia committed to distribute 12.7 million ha of forest land to communities under five Social Forestry programme schemes: community forestry, village forest, partnership, community plantation forest and customary forest. The first four schemes involve granting usufruct rights to community groups for periods of 35 years which can be renewed, whereas customary forest involves granting full ownership rights to the recognized customary groups. Local community and customary groups can apply for social forestry permits by following different requirements. To be eligible, a customary community must have a regulation issued at the subnational level recognizing its existence as a customary community. However, progress in recognition has not been uniform across the country, as it depends on subnational governments, some of which have made more progress than others. By 2022, the Social Forestry programme had distributed 5 million ha of forests to local and customary groups.	http://pkps.menlhk.go.id/regulasi/read/42 http://pskl.menlhk.go.id/berita/420-hingga-1-agustus-2022,-capaian-perhutanan-sosial-tembus-5-juta-hektar.html
(6) Community carbon rights	Partial	As per new Presidential Regulation No. 98/2021, carbon rights will be held by the state but communities will access the benefits from carbon emission reductions. Further regulations related to community participation in carbon economic value activities are still to be introduced.	https://peraturan.bpk.go.id/Home/Details/187122/perpres-no-98-tahun-2021

	Rating	Detail	Source
(7) Free, prior and informed consent	Partial	There is no legal framework for FPIC in Indonesia. However, different aspects of FPIC (e.g., participation, transparency or access to information) can be found in human rights law and several laws and regulations, such as Article 26 (2) of Law No. 32/2009 on Environmental Protection; Article 68 (2) B of Law No. 41/1999 on Forestry; and Minister of Environment and Forestry Regulation No. 2/2021 on Peatland Restoration Activities. FPIC has been implemented voluntarily in Indonesia following sustainable certification standards (e.g., RSPO) or Indonesia's Timber Legality Assurance System. Nevertheless, FPIC following international (UNDRIP) principles has not been implemented. A fundamental pillar for practicing FPIC is having clear and recognized rights. Many forest communities have yet to secure such recognition (only 60,000 out of 1 million ha targeted). Hence if rights are not clear, people are not free to agree, and FPIC cannot be fully effective.	http://extwprlegs1.fao.org/docs/pdf/ins97643.pdf http://extwprlegs1.fao.org/docs/pdf/ins36649.pdf http://pkgppkl.menlhk.go.id/v0/wp-content/uploads/2018/10/Regulation-of-Minister-EF_Number16_year-of-2017.pdf
(8) Formal benefit sharing mechanism	Partial	A formal benefit sharing mechanism has been designed but is not yet in operation. A specific national-level institution called the Environmental Fund Management Agency (BLU-BPDLH) was established in 2019 to manage funding for environmental and emissions reduction programmes. In the context of the Emissions Reduction Payment Agreement (ERPA) with the FCPF carbon fund, benefits will be allocated to incentivize governments and other beneficiaries (private sector actors and local communities, or social forestry groups and smallholders) for their efforts in reducing emissions, and to reward customary communities for their historical forest protection.	http://simlit.puspajak.org/files/other/FCPF_Benefit_Sharing_Plan_draft1_6_FINAL_GoI_29042020.pdf
(9) Formal grievance mechanism	Yes	A formal grievance mechanism has been developed based on existing systems of grievance redress that exist at village, provincial and national levels. Different mechanisms apply depending on the type of grievance, which can be received by the Ministry of Environment and Forestry and other enforcement agencies, as well as by village and provincial institutions. The reporting of grievances will be linked to the national safeguards information system (SIS).	https://www.forestcarbonpartnership.org/system/files/documents/ERPD_Indonesia%20FINAL%20VERSION_MAY_2019.pdf . Last accessed on August 7, 2021
(10) MRV of social/ rights concerns	Partial	The monitoring, reporting and verification component of REDD+ also covers safeguard implementation. For this purpose, the government has developed tools to measure safeguard implementation (<i>alat penilai pelaksanaan safeguard</i>). However, the reporting of safeguards does not require much specificity or a qualitative assessment.	http://ditjenppi.menlhk.go.id/reddplus/images/adminppi/dokumen/pedoman_mrv_redd.pdf . http://182.253.224.163/assets/lampiran/lampiran_5d1317bbbbc2_2019-06-26_13-59-07.pdf

also followed a variety of voluntary safeguards standards (e.g., Plan Vivo) and guidelines introduced by multilateral funding institutions (e.g., the World Bank's Forest Carbon Partnership Facility). Furthermore, Indonesia's NDC recognizes the importance of engaging communities, respecting their knowledge and rights, and increasing their participation in the country's Social Forestry programme.

Article 27 of Indonesia's 1945 Constitution states that "all citizens have equal status before the law", which provides the legal basis for women's rights in Indonesia (Siscawati 2020). Indonesia is also a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and has thus agreed to the elimination of discrimination and equal treatment in land and agrarian reform and land resettlement schemes (Siscawati 2020). Gender is mainstreamed in the national long-term development plan for 2005–2025; gender responsive budget tagging was introduced and piloted in seven ministries

in 2010 (UNDP 2021); and the Ministry of Forestry issued guidelines for gender responsive planning and budgeting a year later (Siscawati 2020). Additionally, Presidential Instruction No. 9/2020 on Gender Mainstreaming in National Development requires all government agencies and ministries to issue regulations that incorporate gender equality and women's empowerment (Siscawati 2020). It also requires national and subnational governments to incorporate gender issues in planning, implementation, monitoring and evaluation of national development policy. However, challenges remain regarding women's rights. These include how to operationalize gender equality regulations, how to address cultural norms blocking women from participating in decision making on climate change mitigation and adaptation, and the need to rethink programmes and capacity development activities that only target men as heads of households (Arwida et al. 2016; Liswanti et al. 2020).

Indonesia recognizes customary or communal tenure rights to land and forests, supported by a Constitutional Court decision (No. 35/PUU-X/2012 of May 2013) that customary forests would no longer be recognized as state forests. Indigenous organizations such as Aliansi Masyarakat Adat Nusantara (AMAN) and allied NGOs working on tenure issues have played a central role in placing customary tenure rights issues into national and subnational governments' agendas. Rights have also been transferred to forest dependent communities under the Social Forestry programme through the community forestry (*Hutan Kemasyarakatan*), village forest (*Hutan Desa*), community plantation forest (*Hutan Tanaman Rakyat*), partnership (*Kemitraan*) and customary forest (*Hutan Adat*) schemes set out in Minister of Environment and Forestry Regulation No. 9/2021. One of the legal specialists interviewed for this research noted that progress in the issuance of district regulations – the main step in gaining customary forest recognition from the state – has not been uniform as some provinces are more advanced in this regard than others.

The state of this progress is important, as tenure rights also determine carbon rights as stipulated by Minister of Forestry Regulation No. P.36/Menhut-III/2009 on Procedures for Licensing of Commercial Use of Carbon Sequestration and/or Storage in Production and Protection Forests. Although community rights to carbon are not specifically regulated by law, it can be interpreted that the communities that hold permits for social forestry will directly benefit from REDD+ benefit sharing schemes; this has already been the case in different Plan Vivo initiatives in Indonesia (DITJENPPI, 2016). The extent to which communities will be able to participate in carbon economic value activities³ – e.g., carbon trading, results-based payments, and carbon levy – will be clearer when the relevant implementing regulations are introduced.

Although there is no specific legal framework in Indonesia for free, prior and informed consent (FPIC) as per international agreements, it has been implemented as part of certification standards such as the Roundtable on Sustainable Palm Oil or Indonesia's Timber Legality Assurance System (*Sistem Verifikasi Legalitas Kayu*). The legal components of FPIC are addressed separately in different regulations, for instance, with respect to customary and local communities' rights, rights to access information, or protection of human rights. One of the specialists interviewed for this research noted that the only regulation that mentions FPIC as a process is one on peatland restoration activities.⁴

A formal feedback grievance and redress mechanism for REDD+ has been set up based on existing national systems at the village, provincial and national levels. This mechanism is connected to the measurement, reporting and evaluation (MRV) component for REDD+ through Indonesia's safeguards information system (SIS). MRV covers technical aspects such as carbon, but also the implementation of social safeguards. One of the interviewed specialists described safeguard reporting as a box ticking exercise as it lacks a qualitative component. For example, Indonesia's SIS includes a requirement that community rights are identified in a general sense, without specifics on what types of rights should be reported. Indonesia's safeguards implementation assessment tools include a requirement that safeguards participation is identified in a general sense without specific consideration of the history, or of ways to ensure peoples' voices, which could be obtained by storytelling from the communities using video, recordings, etc.

Indonesia has a formal benefit sharing mechanism that was developed with government organizations at different levels, private sector actors and community representatives. The Government of Indonesia has also established the Environmental Fund Management Agency (BLU-BPDLH) to manage funding from the Emission Reductions Payment Agreement (ERPA) with the Forest Carbon Partnership Facility (FCPF), and speed up the process. In addition, subnational benefit sharing mechanisms have been established in East Kalimantan and Jambi provinces. In East Kalimantan, for example, performance benefits will be distributed to government institutions (national and subnational), private sector actors and local and customary communities. These communities will also receive rewards for their efforts in maintaining zero or low deforestation rates (MoEF and GoEK 2020).

Despite progress, it remains to be seen how the legal framework on community rights in the context of REDD+ will be translated into action, and how it will address political challenges, given other interests in forests and land use in Indonesia. Further work is needed to ensure that safeguards are not just a formality, but rather are implemented to protect and respect the rights of communities and other marginalized groups across the country.

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3 See Presidential Regulation No. 98/2021 on the Implementation of Carbon Economic Value for Achieving Nationally Determined Contribution Targets and Controlling Greenhouse Gas Emissions in National Development

4 Ministry of Environment and Forestry Regulation No. 2/2021 on Devolution of Environment and Forestry Matters Regarding Peat Restoration Activities to Seven Governors. (Peraturan Menteri Lingkungan Hidup dan Kehutanan No.2/2021 tentang Penugasan Sebagian Urusan Pemerintahan Bidang Lingkungan Hidup dan Kehutanan Kepada 7 (Tujuh) Gubernur untuk Kegiatan Restorasi Gambut Tahun Anggaran 2021)

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