



**INDIGENOUS PEOPLES PLANNING
FRAMEWORK (IPPF) DOCUMENT**

**MINISTRY OF ENVIRONMENT AND
FORESTRY**

EAST KALIMANTAN PROVINCE

REPUBLIC OF INDONESIA

SEPTEMBER 2019

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LIST OF ACRONYMS

BP	Bank Procedure
BPS	Badan Pusat Statistik (Central Bureau of Statistics)
BPSKL	Badan Perhutanan Sosial dan Kemitraan Lingkungan (Social Forestry and Environmental Partnership Body)
COP	Convention on the Parties
DPMPD	Dinas Pemberdayaan Masyarakat dan Pemerintahan Desa (Community Empowerment and Village Government Agency)
ER	Emission Reducing
ERP	Emissions Reduction Program
ERPD	Emission Reduction Project Document
ESMF	Environmental and Social Management Framework
FCPF-CF	Forest Carbon Partnership Facility – Carbon Fund
FGRM	Feedback, Grievance Redress Mechanism
FMU	Forest Management Unit
FPIC	Free, Prior and Informed Consultation
IPP	Indigenous People Plan
IPPF	Indigenous Peoples Planning Framework
IPs	Indigenous Peoples
NGO	Non-Governmental Organization
OP	Operational Policy
REDD+	Reducing Emissions from Deforestation and Forest Degradation
SESA	Social and Environmental Strategic Assessment

1.0 INTRODUCTION

Reducing Emissions from Deforestation and Forest Degradation (REDD+) is a low carbon development incentive mechanism which is expected to address both social justice and environmental sustainability. REDD+ implementation requires a robust safeguards mechanism to avoid and if not feasible, minimize and compensate, negative impacts arising from its implementation. Implementation of a Safeguards Framework under REDD+ is a global agreement reached as an outcome of the Conference of the Parties (COP) to the United Nations Climate Change Convention in 2010.

The World Bank Safeguards encompass many aspects for the management of environmental and social risks under the ER Program. The concept of safeguarding REDD+ covers a variety of issues, including the transparency of national forest management structures, inclusive participation of various parties, including vulnerable groups, respect for the knowledge and rights of Indigenous Peoples and local communities, conservation of biodiversity and natural forests, emission displacement and reversals, and equitable benefit sharing.

To strengthen the management of risks and impacts on Indigenous Peoples, the Government of Indonesia (GoI) has prepared an Indigenous Peoples Planning Framework (IPPF), which sets out relevant requirements for engagement and consultations as well as measures to address potential risks and impacts on these groups.

1.1 PURPOSE OF THE FRAMEWORK

The World Bank's Operational Policy 4.10 on Indigenous Peoples is triggered due to the presence of communities that qualify as Indigenous Peoples as per-the World Bank's policy in the Emissions Reductions Program (ERP) accounting area. The IPPF has therefore been prepared to address risks associated with access restrictions and claims on land and natural resources resulting from improved forest management. The framework has been prepared to provide operational guidance to OP 4.10 under the Program.

This framework provides guidance to the ERP implementing agencies to engage in an inclusive and participatory process to ensure that the rights and aspirations of Indigenous Peoples affected by the ERP implementation are respected. By doing so, it is expected that long-term sustainability of the ERP can be enhanced through broad community participation and ownership.

Under the World Bank OP 4.10 on Indigenous Peoples, the GoI is required to engage a process of Free, Prior, and Informed consultations for the implementation of activities that affect Indigenous Peoples. The ERP will seek to ascertain that broad community support to activities that may affect Indigenous Peoples has been obtained. Such consultation processes will also equally apply to other vulnerable groups who may not necessarily identify themselves and/or meet the requirements of *indigenous peoples* under the GoI's framework but qualify for policy coverage under OP 4.10. Such a rationale was adopted to recognize the diversity and complexity of socio, cultural, and traditional characteristics, vulnerability, and relationships with land and natural resources amongst communities within the ERP accounting areas.

A framework approach has been adopted since the exact locations and activities, along with their potential risks and impacts will only be known at the ERP implementation stage. Understanding these circumstances and given that risk assessments during the SESA phase may change, the framework has therefore been prepared to serve the following purposes:

1. to lay out a process to ensure free, prior, and informed consultations for activities that affect Indigenous Peoples within the ERP accounting areas;
2. to set out risk mitigation measures to avoid potentially adverse effects on these communities and ensure that they have opportunities to equitably share the Program's benefits. If such impact avoidance is not feasible, to establish measures to minimize, mitigate or compensate for such effects;
3. In relation to Component 1 of the ERP, the IPPF sets out a road map for dispute resolution and recognition of customary rights.

In light of the above, the proposed road map under the IPPF is built on the following processes:

- Stakeholder engagement and disclosure of information about ERP interventions as well as the consequences that may affect indigenous peoples. This step is designed to generate responses and feedback from the communities, particularly those who may be affected;
- Map the responses according to the key issues identified in SESA (and stated in the ERPD) to identify their relevance to safeguards mechanism (specifically the IPPF);
- Focus on responses and key issues specific on the customary rights (livelihood, religious, and cultural aspects);
- Elaborating the IPPF into Indigenous Peoples Plans (IPPs) to address concern from customary people and to ensure that their rights and livelihood, religious and cultural values are recognized and respected once specific sites have been determined; and
- Provide technical support and advice for the development of Provincial/District Regulations advice for regulation or decree at provincial/district level as a formal recognition of indigenous peoples. This step maybe done by Forestry agency and/or Community Empowerment and Village Government Service through Indigenous Peoples Committee, and supported by NGOs (e.g., Yayasan Bioma, AMAN, or member of the East Kalimantan Working Group on the Acceleration of Social Forestry) active in promoting recognition of indigenous peoples and their customary rights.

On the basis of this IPPF, an Indigenous Peoples Plan (IPP) will be prepared at the program level during the ERP implementation stage once the exact locations and activities have been confirmed. This IPP will set out the above measures and specific time-bound action plans and resources that the Program entities are required to abide by.

The Gol is a signatory of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) where Free, Prior and Informed Consent (FPIC) is required when the Program affects Indigenous Peoples. The scope of its application is described in this framework. The Indonesian Constitution recognizes the rights of customary communities. In addition, several laws such as Law No. 5/1960 on Agrarian Law, Law No. 41/1999 on Forestry, Law No. 27/2007 on the management of coastal and small islands and Law No. 32/2009 on the environmental protection and management explicitly refer to the term *Masyarakat Hukum Adat*. The Constitutional Court confirmed the constitutional rights of Indigenous Peoples over their lands and territories in May 2013, including their collective rights over traditional forests and lands.

The application of the framework will remain the responsibility of the implementing agencies under coordination and oversight from the Provincial Secretary (SEKDA) at the Provincial Level and DG Social Forestry and Environmental Partnership MoEF at the national level. Further institutional arrangements are elaborated in Chapter 1.0. This IPPF will form the basis for ERP monitoring as well as the evaluation of how the Program responds and manages risks related to the Indigenous Peoples covered under the framework.

1.2 PROJECT DESCRIPTION

The ERP was developed through a participative process involving all relevant stakeholders. Stakeholders in East Kalimantan helped identify the local drivers of deforestation, which guided the selection of the ER activities proposed by the Program. The proposed ERP is also closely linked to Indonesia's and East Kalimantan's REDD+ plans which are the outcome of a comprehensive consultation process. The Benefit Sharing Mechanism (BSM) that will be designed through a consultative process and the SESA, will seek to strengthen local stakeholder engagement, including potentially affected communities. The ERP is developing a comprehensive Indigenous Peoples Planning Framework (IPPF). Significant portions of the ERP will rely on the commitment of local stakeholders to adopt sustainable management practices, make consultations and outreach a necessary and integral part of the program.

The activities of the ERP are aligned with East Kalimantan's Green Development plans and associated policies and will ensure long-term impact and reduce the risk of future reversal of the ER Program. In addition, as Indonesia's first jurisdictional REDD+ program, the ERP will help in accelerating the national REDD+ program, supporting future emission reductions beyond the accounting area.

Nonetheless, the ERP is an ambitious effort that seeks to address the highly complex underlying drivers of deforestation and that will require significant stakeholder support and coordination across sectors. As a hedge against future reversals the ERP will deposit 26% of Emissions Reductions delivered to the Carbon Fund in a buffer.

The ERP will support a combination of enabling conditions and promotion of sustainable management practices that will directly address the drivers of emissions resulting from sectoral activities including mining, timber plantations, estate crops, subsistence agriculture, aquaculture, natural and human-induced fires, and unsustainable logging practices. The activities are grouped under five components:

- Component 1: Improving Land Governance;
- Component 2: Strengthening Government Capacity for Forest and Land Management;
- Component 3: Reducing Deforestation Linked to Over logging, timber plantation and Oil Palm Expansion;
- Component 4: Reducing Encroachment by Providing Sustainable Livelihood Alternatives; and
- Component 5: Program Management and Monitoring.

Further description of the ERP and its components and sub-components can be found in the ERPD Chapter 4.3.

1.3 SCOPE OF THE APPLICATION

The IPPF covers all Indigenous Peoples and vulnerable communities as characterized by OP 4.10, irrespective of formal recognition by the GoI. The following identification measure under OP 4.10 to address potential risks and protect the rights of these groups shall apply. The scope of the measures required under the IPPF is defined based on the nature of risks and impacts and specific provisions may be required depending on the nature of the anticipated impacts. These are described in the following sections.

1.3.1 Identification Criteria

The term “Indigenous Peoples” refers to groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process. In Indonesia there is a wide range of communities that would qualify as such communities, although the majority of these communities has yet to be formally recognized by the GoI.

OP 4.10 applies the following characteristics in varying degrees:

- a. Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
- b. Collective attachment¹ to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;
- c. Customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
- d. An indigenous language, often different from the official language of the country or region.

2.0 **AGROUPTHATHASLOSTCOLLECTIVEATTACHMENTTOGEOGRAPHICALLYDISTINCTHABITATSORANCESTRALTERRITORIESIN THEIRPAREA BECAUSE OF FORCED SEVERANCE² REMAINS ELIGIBLE FOR COVERAGE UNDER THE POLICY. FURTHER SCREENING AT AN ACTIVITY LEVEL USING THE ABOVE CRITERIA BY RESPECTIVE IMPLEMENTING AGENCIES WILL BE REQUIRED AS PART OF THE IPPF DURING THE ERP IMPLEMENTATION PHASE (SEE CHAPTER**

¹ Collective attachment” means that for generations there has been a physical presence in and economic ties to lands and territories traditionally owned, or customarily used or occupied, by the group concerned, including areas that hold special significance for it, such as sacred sites. “Collective attachment” also refers to the attachment of transhumant/nomadic groups to the territory they use on a seasonal or cyclical basis.

² Forced severance” refers to loss of collective attachment to geographically distinct habitats or ancestral territories occurring within the concerned group members’ lifetime because of conflict, government resettlement programs, dispossession from their lands, natural calamities, or incorporation of such territories into an urban area. For purposes of this policy, “urban area” normally means a city or a large town, and takes into account all of the following characteristics, no single one of which is definitive: (a) the legal designation of the area as urban under domestic law; (b) high population density; and (c) high proportion of non-agricultural economic activities relative to agricultural activities

IMPLEMENTATION ARRANGMENTS^{1.0}).

In the context of Indonesia, Indigenous Peoples are known as *Masyarakat Adat*. In Indonesia legal context, Indigenous Peoples area referred as *Masyarakat Hukum Adat*. The latter term, emphasizing the distinct customary laws of such communities, is mostly used in laws and government regulations, including the Indonesian Constitution. Indonesian law defines *Masyarakat Hukum Adat* as these groups as having a collective attachment to a territory due to the ties to the origin of ancestors, strong relationships with the environment, and the existence of a customary normative system that regulates economic, political, social and legal institutions. The existence of *Masyarakat Hukum Adat* is generally recognized by other groups through the acceptance and respect for the existence, and all the rights and identities attached to them. However, formal recognition by the state as *Masyarakat Hukum Adat* is required before their tenure and other associated rights are recognized. List of laws that regulate the *Masyarakat Hukum Adat* are as follows:

- **Law No. 41/1999 on Forestry** recognizes the existence of customary forests and identifies indigenous peoples as the collective owners of such forests. The law states that the state recognizes the existence of indigenous peoples as long as they still exist. customary forests shall be released from the state forest when their collective owners still exist and are legally recognized by their regional government.
- **Law No. 32/2009 on Environmental Protection and Management** defines *Masyarakat Adat* as community groups that have traditionally settled in certain geographical areas due to ties to ancestral origins, strong relationships with the environment, and the existence of a value system that determines economic, political, social, and legal institutions. This law also stipulates a procedure for the determination of a *Masyarakat Adat*.
- **Law No. 39/2014 on Estates Crops** states that *Masyarakat Hukum Adat* are customary rights holders, including rights to land. Due compensation must be provided in alignment with the Indonesian Law no.2/2012 on land acquisition for public interests. The existence of these communities must be legally recognized by the state.
- **Law No. 6/2014 on Village Government** stated that establishment of village government should consider local *adat* systems and provides the possibilities for villages to register as *adat* village. The establishment of a village government must respect the socio-cultural values and customs and maintain and preserve traditional values.
- **Law No. 23/2014 on Local Government** defined *Masyarakat Adat* as a group of people who have long settled in certain geographical areas of Indonesia and have collective ties to ancestral origins, strong relationships with land, territory, natural resources, customary government institutions, and customary law in its customary territory in accordance with the provisions of the legislation.
- **Law No. 1/2014 amending Law No. 27/2007 on the Management of Coastal Area and Isles** regulates the authority of *Masyarakat Adat* in utilizing the space and resources of coastal waters and small island waters in the area of customary law communities by customary law communities.

Based on the above regulations, the characteristics of *Masyarakat Hukum Adat* are people who have distinctive characteristics, live harmoniously in groups based on their customary law, have ties to ancestral origins and / or similar living areas, there are strong relationships with land and the

environment (including forests), as well as a system of norms governing economic institutions, politics, socio-culture, law and using one region for generations.

Gol's (i.e., District's) recognition on indigenous peoples as *Masyarakat Hukum Adat* can provide a legal basis for strengthening the roles of these communities as beneficiaries within the ERP. The process to obtain legal recognition requires identification, verification, validation, and defining of a specific community. These steps are necessary to ensuring that this community fits the category as *Masyarakat Hukum Adat*. The consequences of this legal recognition include recognition of customary rights; including land rights, economic and social rights.

Acknowledging potential constraints that *Masyarakat Adat* may potentially face with regards to obtaining legal recognition through the sub-national and central government processes, the Program will allow village level recognition for these communities to be able to obtain the ERP's benefits. This approach is expected to enable broader participation of these groups.

Indigenous Territory Registered Group

In addition, there are vulnerable communities that may not qualify under the Gol's framework as *Masyarakat Hukum Adat* but do meet the policy criteria under OP 4.10. Identification of these groups will continue as part of the screening processes during the ERP implementation. One reference that will be used to screen the presence of Indigenous Peoples is indicative area of indigenous peoples in Indonesia (decree by DGSFEP MoEF) and Study by Forestry Faculty Universitas Mulawarman (Sulistioadi, *et al.*, 2017) on the Identification of High Conservation Value Areas (KBKT) on Landscape Scale in East Kalimantan Province. The ERP need to ensure that the site locations are registered in the indicative map of indigenous peoples, which is determined by MoEF.

2.1.1 Free, Prior and Informed Consent

Free, prior, and informed consent through meaningful consultations will be required to all ERP activities affecting Indigenous Peoples and local communities. Consent will need to be obtained through consultation processes to secure a "social license" to operate and ownership, and by doing so, enhance sustainability of the Program. Consent refers to a collection of expressions by the affected communities, through individuals, and/or their recognized representatives, in support of the project. There may be broad consent even if some individuals or groups object to the project³. Customary decision-making processes shall be followed under the condition that these are inclusive (in terms of participation of vulnerable people and women).

All implementing agencies will be required to engage in a process of meaningful consultations leading to consent prior to the implementation of interventions that may affect indigenous peoples. Specific measures to address impacts must also be consulted to enable mutual understanding and consensus. Consensus resulted from the consultation process may be further developed into consent. Collective "approval" resulting from these consultation processes are a prerequisite for involvement of local communities within the ERP.

The usual platform for consultations is part of the Social Impact Assessment, and the scope of the consultations required will vary depending on the specific project and the nature of effects to be addressed. The methodology used will depend on the type of communities affected by the specific

³ Objections by some members of the affected communities will not necessarily negate ERP.

project (e.g., their vulnerability, language and ongoing interactions with the dominant society or neighboring communities). The consultation process needs to ensure:

- Indigenous peoples and/or *local communities* in the accounting area are not coerced, pressured or intimidated in their choices of development;
- Indigenous peoples' consent is to be sought sufficiently in advance of any authorization or commencement of activities and respect is shown to time requirements for consultations and consensus processes (further processes to obtain such consent is further described in section 4.1.3; and
- Indigenous peoples affected have full information about the scope and impacts of the proposed development activities on their lands, resources and well-being. Information should be provided on the nature, size, pace, reversibility and scope of any proposed sub-project or activity; the purpose of the subproject and its duration; locality and areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the sub-project may entail. This process may include the option of withholding consent.

Where there is broad support from affected indigenous communities concerned to participate in the Program, respective implementing agencies should ensure the following are in place:

- a. Documented evidence of Free, Prior, and Informed Consent as well as measures taken to avoid and minimize risks and adverse impacts to environment and socio-cultural aspects. This will be in the form of written agreements with authorized community representatives;
- b. Action plan and recommendations for Free, Prior, and Informed Consent during project implementation, monitoring, and evaluation; and
- c. Any formal agreements reached with affected communities and/or their representative institutions.

Arrangements for consultations should be carefully considered and tailored to the project context, the anticipated impacts and the context of the local communities. Consultations should be conducted in the ethnic language(s) when needed and sufficient lead time (minimum two weeks) should be given to ensure that all affected ethnic minority communities are able to participate in consultations fully informed of the project(s). Consultation approaches may include:

- Community meetings, both with the community as a whole and with sub-groups;
- Focus group discussions and participatory planning exercises;
- Distribution of project information in both full format (project documents, assessment reports, etc.), simplified formats such as posters and brochures, and audio-visual material using local languages;
- Identification of contact persons within the communities (some training may be appropriate to enhance their ability to engage meaningfully in the consultation process);
- Involvement of the affected IPs' communities, the Indigenous Peoples Organizations (IPOs) if any, and other local civil society organizations (CSOs) identified by the affected IP communities; and

- Opportunities for consultation at each stage of project preparation and implementation.

FPIC is carried out by July to October 2019. Procedures for free, prior and informed consent as defined under the ERP are provided in sub-section 5.1.2.

2.1.2 Indigenous Peoples Plan (IPP)

An activity-level screening will be carried out during the ERP implementation to identify

- Presence of Indigenous Peoples. This includes assessment of the legal status of the land;
- The nature of their relationships with land and resources, as well as impacts to livelihood;
- Existing claims to lands and natural resources; and
- Associated risks, particularly with regards to access restrictions and livelihoods impacts.

An IPP will be developed at the Program level to address these aspects and will cover specific measures to:

- Ensure that Indigenous Peoples affected by the project receive culturally appropriate social and economic benefits. This will be further detailed in the ERP's Benefit Sharing Mechanism (BSM) and;
- Ensure that adverse effects on Indigenous peoples are avoided, minimized, mitigated and/or compensated.

Since the ERP activities may have implications on Indigenous Peoples claims and access to lands and related natural resources, the IPP shall take into considerations the following elements:

- The customary rights of Indigenous Peoples, both collectively and individually, pertaining to lands or territories that they traditionally owned, or customarily used or occupied, and where access to natural resources is vital to the sustainability of their cultures and livelihoods;
- The need to protect such lands and resources against illegal intrusion or encroachment;
- The cultural and spiritual values that Indigenous Peoples attribute to such lands and resources;
- Indigenous Peoples natural resource management practices and the long-term sustainability of such practices.

Under sub-component 1.3 on support for the recognition of adat land, the ERP seeks to support *indigenous peoples* who wish to seek formal recognition of customary rights by the Gol. When indigenous territories are inside a forest area, they can propose *hutan adat* (customary forest) rights.

Wherever possible, The ERP nevertheless aims to accommodate communities in applying for such rights. Other social forestry schemes, including village forests (*Hutan Desa*), community forests (*Hutan Kemasyarakatan*), community-based timber plantations (*Hutan Tanaman Rakyat*), private forests (*hutan rakyat*), and forestry partnerships (*kemitraan kehutanan*), grant user rights over forestlands for a limited period of time with land ownership remaining with the State. Such schemes provide alternative options to formalize land tenure of other forest dependent communities who may not qualify under the Gol's framework for the recognition of adat rights or to those who may opt not to identify themselves as *indigenous peoples*.

A strategy to facilitate such tenure recognition will be developed as part of an IPP during ERP implementation.

2.2 APPROACH AND PRINCIPLES

The approach for the ERP as guided by the IPPF will take into considerations the nature and extent of potential risks and impacts on the Indigenous People. Mitigation measures developed under this program will be proportionate to the anticipated risks and impacts and to the extent possible, will be mainstreamed as part of the design of activities to reduce deforestation and forest degradation.

The East Kalimantan government will ensure that necessary consultations and FPIC (with scope defined in section 4.1.3) will be carried out prior to the start of activities, in the language and location of the affected communities. The result of the consultation will be documented in the ERP progress reports.

The key objective of the IPPF is to realize benefit enhancement and avoidance of negative impacts. If not feasible, the IPPF seeks to ensure that relevant measures to minimize potential impacts are in place prior to the start of any activities. Such an endeavor will need to be made in consultation with affected communities.

The land tenure situation of Indigenous Peoples is often insecure, given that these communities' traditional territories are usually located inside areas designated as Forest Estate or plantation concessions. As a result, many communities are socio-economically marginalized and dependent on outside support to voice grievances and claim rights. Their economic, social and legal status often restricts their ability to defend their rights to lands, natural resources, and territories. Such obstacles may restrict them from participating in and benefiting from the Program. At the same time, the GoI recognizes that Indigenous Peoples play a crucial role in sustainable natural resource management and the protection of forests. Therefore, their potential contribution to realize the objectives of the ERP shall not be disregarded. Risks anticipated from the ERP may include restriction of access to land and/or forest due to increased protection of forest area. Risks screening in the Process Framework is designed to identify the types and nature of potential impacts (risks). Moreover, the Process Framework provides consideration of alternatives consisting of avoidance, mitigation and offset strategy. Impacts on livelihood and other values need to be clearly understood through the FPIC process. Consequently, offset strategy (if required) needs to be formulated in consultation and consent from the respective communities.

In the consultation processes, social assessments, and preparation of an IPP, the following key principles shall prevail:

- a. The Program's implementing agencies shall seek to ensure that ERP implementation fully respects the dignity, customary practices, human rights, economies and cultures rights of Indigenous peoples;
- b. The Program shall endeavor to maintain and protect Indigenous Peoples and access to land and natural resources;
- c. The Program shall establish an appropriate gender and inter-generationally inclusive framework that provides opportunities for consultations at each stage of the Program preparation and implementation;

- d. The Program shall use consultation methods appropriate to the social and cultural values of the affected Indigenous Peoples, including the language used and their local circumstances, and in designing these methods, places special considerations to the concerns of Indigenous women, youth and children and their access to development opportunities and benefits of the Program;
- e. The Program shall seek to provide affected indigenous peoples with relevant information about the activities/projects under the ERP, including an assessment of potential risks and adverse impacts on them, in a culturally and socially appropriate manner at each stage of preparation and implementation of such activities/projects.

The ERP seeks to promote and support participation of Indigenous Peoples and addresses the need to ensure awareness of rights and responsibilities. For ERP components that are related to: (a) activities that depend on establishing legally recognized rights to land and territories that are traditionally owned or used or customarily controlled, or (b) acquisition and/or access restrictions to such land and territories, an IPP will incorporate mitigation measures to facilitate legal recognition of such ownership, occupation or usage in accordance with the applicable laws and regulations (further described in Chapter 1.0).

3.0 RISK ASSESSMENT

This section provides an assessment of relevant risks and potential impacts on Indigenous Peoples. An overview of Indigenous Peoples in Indonesia, and particularly in East Kalimantan is presented to set the context for the analysis. A further in-depth analysis is presented in the SESA.

3.1 INDIGENOUS PEOPLES IN EAST KALIMANTAN

Indonesia is an ethnically diverse country comprised of numerous ethnic groups with distinct cultures and traditions. While the Gol generally considers all Indonesians to be equally indigenous, it does distinguish communities with the same ancestral lineages who inhabit a certain geographical area and have a distinctive set of ideological, economic, political, cultural and social systems and values. In Bahasa Indonesia these groups are referred to as *Masyarakat Adat* or *Masyarakat Hukum Adat*. The latter term, more commonly used in Indonesian laws and regulations than *Masyarakat Adat*, emphasizes the distinct customary laws and institutions of such communities.

The existence of *Masyarakat Hukum Adat* is recognized by the Constitution, namely in Article 18 and its explanatory memorandum. It states that with regard to regulating self-governing regions and *Masyarakat Hukum Adat*, the government needs to respect the ancestral rights of those polities. After the 2002 amendment of the Constitution, recognition of the existence of *Masyarakat Hukum Adat* was provided in Article 18 B Para. 2 and Article 28 I Para. 3.

The criteria for identification of *Masyarakat Hukum Adat* and *adat* land rights are stipulated in Indonesian legislation such as the Agrarian Law (Law No. 5/1960), Forestry Law (Law No. 41/1999), the Village Law (Law No. 6/2014) and several ministerial regulations, most notably Minister of Home Affairs Regulation 54/2014. An assessment of how such criteria respond to the World Bank's OP 4.10 will be provided as part of the gap analysis (section 3.2).

Indonesia's largest Indigenous Peoples organization, the Indigenous Peoples Alliance of the Archipelago (*Aliansi Masyarakat Adat Nusantara* or AMAN), defines Indigenous Peoples as a group of people who have lived on their ancestral land for generations, have sovereignty over the land and natural wealth within their customary territories, where *Adat* (customary) law and institutions govern the social, political and economic aspects of the community concerned. Essentially, the definition of *Masyarakat Hukum Adat* under Indonesian law (for instance Forestry Law No. 41/1999) is similar to AMAN's definition of Indigenous Peoples/*Masyarakat Adat*. Both stress the presence of customary law and customary institutions as defining features of such communities.

East Kalimantan Province has a population of 3.5 million (2016) and is home to a large variety of ethnic groups. The majority of these are classified under the common banner of Dayak, a broad term referring to the various indigenous tribal societies inhabiting the upstream areas of Kalimantan. There are broadly four main Dayak ethnic groups in East Kalimantan – the Apo Kayan, Punan, Ot Danum and Basap. Each of these can be divided into a number of sub-groups, which live across the province (see Table 1). Most Dayak groups still maintain their distinct collective identities, preserve their own language (besides Bahasa Indonesia), and depend on agricultural subsistence for livelihoods. (e.g. swidden agriculture). In addition to Dayak groups, East Kalimantan is also home to several Malay communities (Kutai, Berau, Paser, Bajo) that would likely qualify as indigeneous people. There are also large groups of Javanese, Chinese, Banjar, Bugis, and other ethnics groups from outside Kalimantan. Bugis and Malays, who are mostly Muslims, dominate the south and most of the coastal areas; the north and northwest are home to Christian minorities and indigenous peoples.

Dayak groups were traditionally swidden agriculture or hunting societies governed by customary institutions. Swidden agriculture occurred predominantly in secondary forests with a long history of land use, hence these farming methods were relatively sustainable. For centuries Dayak communities have engaged in complex systems of sustainable management of forest, deploying traditional knowledge to cultivate a high number of resources on relatively small area of land (Crevello, 2003; 2004).

Cropping systems and rotational cycles on land plots varied per group. For many Dayak communities - for example the Benuaq - hunting in natural forests was a primary source of livelihood. Other groups like the Kenyah have a long tradition of growing taro and non-irrigated rice in swamp areas. However, in recent decades, many Dayak communities have adopted other farming methods and have moved to more permanent settlements, due to demographic shifts as a result of previous government programs, population mobility and growth. Irreversible change caused by the mining and logging industries left a permanent mark on Dayak traditions. In addition, the rapid conversion of forests into large rubber and oil palm plantations has made traditional farming practices impossible in many areas.

A number of Dayak communities in East Kalimantan nevertheless still practice traditional farming methods near forested areas. At present, *umaq* (non-irrigated rice) is still grown by some Dayak communities, while hunting and the collection of non-timber forest products (NTFP's) – i.e. honey, wax, nuts and bird nests - also persist (worldagroforestry, 2004). Moreover, *simpukng* (indigenous forest gardens) are still of importance in traditional farming systems, although the mining and logging industries threaten their existence. *Simpukng* are collectively managed secondary forests where Dayak communities plant fruits, rattan, bamboo and timber. They are either owned by families or communally owned by larger communities. The use of these forests is subject to customary rules. These rules regulate the gender division of labor and also serve to prevent over-exploitation of forests (Mulyoutami et al, 2009).

In addition to the World Bank Operational Policies, the Forest Carbon Partnership Facility (FCPF) Charter requires FCPF activities to take into account the need of Indigenous Peoples to participate in the Program, and to respect the rights of Indigenous Peoples under national law and applicable international obligations. As mentioned above, it is expected that Indigenous Peoples in East Kalimantan will be among the main beneficiaries of the Program. Given their long traditions of sustainable forest management it is encouraged that such communities will play an important role in the implementation of the Program. As part of the Benefit-Sharing Arrangement, the process of stakeholder participation will be seen in the decision-making process on the basis of consensus among all implementer representatives including Indigenous Peoples, both as part of the village government and as an independent entity (*Masyarakat Adat*). The performance of village communities and Indigenous Peoples who have not been formally recognized will be taken into account through the performance of the village government. For holders of social forestry permits and *indigenous peoples* who have obtained legal recognition (either at village level or district level), performance will be calculated as the performance of holders of social forestry or *adat* rights. Performance is measured based on historical emission baselines in each program implementing unit, based on legal rights over certain land/area or legal rights over the utilization of the area. In case requested, the ERP will furthermore help communities with securing *adat* land rights by facilitating the legal procedures set forth below in section 3.1.

Table 1 East Kalimantan communities that can potentially be categorized as Indigenous Peoples and their distribution.

Ethnic	Location	IPs
1. Hukum Adat Melayu Group		
1.1. Banjar	Samarinda, Balikpapan, Paser, Kutai Kartanegara	-
1.2. Kutai	Kutai Kartanegara, Kutai Timur, Kutai Barat	Kutai (Puak Pantun, Puak Malanti, Puak Punang, Puak Puak Pahuq, Puak Tulur Dijangkat)
1.3. Berau	Berau	Berau-Berayu (Benawa)
1.4. Bajo	Paser, Penajam Paser Utara, Kutai Kartanegara, Berau	Bajao
2. Adat Dayak Group		
2.1. Barito (Ot Danum) Group	Paser	Paser (Pematang, Kendilo, Adang, Telake, Bura Mato)
	Penajam Paser Utara	Paser Balik
	Kutai Barat	Benuaq, Tunjung, Bentian, Lawangan, Teboyan, Bakumpai
2.2. Apokayan Group	Berau	Gaay/ Segai, Kenyah
	Kutai Timur	Wehea, Kenyah, Kayan, Modang
	Kutai Kartanegara	Modang, Kayan, Kenyah
	Kutai Barat	Bahau
	Mahakam Ulu	Bahau, Kenyah, Aoheng, Kayaan, Seputan
2.3. Punan Group	Berau	Punan Kelay, Punan Segah,
	Kutai Timur	Punan Long Sep/Muara Su
	Kutai Kartanegara	Punan Beketan, Punan Lisum, Punan Aput
	Mahakam Ulu	Punan Kuhi/Merah, Punan Buhang, Punan Murung, Bukot
2.4. Kelompok Basap	Berau	Basap Teluk Sumbang , Basap Inaran, Basap Dumaring (Lepau Benyiur), Basap tarmuwan, Basap Semurut, Basap Jamban-Tulian, Basap Biatan, Basap Suaran
	Kutai Timur	Basap Bengalon, Basap Sekerat, Basap Kaliorang, Basap Menubar, Basap Karangan, Lebo (Lebu)
	Kutai Kartanegara	Basap Jonggon, Kutai Lawas

3.2 RURAL ECONOMY AND LIVELIHOODS

Population density in East Kalimantan is 27.13 people/km², and around 6.11% of East Kalimantan's population was classified as poor in 2016. The distribution of poverty is skewed towards rural areas

where 10.1% of the population was classified as poor, compared to 4% of the urban population. Such figures suggest a higher poverty rate amongst Indigenous Peoples and/or *Masyarakat Adat* who are likely to occupy forest and rural lands.

The coastal area of East Kalimantan serves as centers for trade and government, and has attracted migrants, both from other islands in Indonesia, as well as from outside Indonesia. Some settlers live and settle in the coastal areas of East Kalimantan and along its major rivers. Large migrant groups include Javanese, Buginese and Banjarese. The upland is home to rich forest natural resources, which have long been the main source of livelihoods and wellbeing of the local ethnic minorities. These population groups have inhabited these areas for generations and consist of various Dayak, and Kutai communities. Most of the latter groups meet the characteristic of Indigenous Peoples' under OP 4.10. Since the 1950s many Dayak groups have also migrated downstream in search of economic opportunities, or as a result of government resettlement programs. This implies that Dayak groups now also commonly reside in downstream areas, where some engage in more sedentary farming such as irrigated rice cultivation.

The population of East Kalimantan has increased significantly in recent years. This can be seen from the data of 2010, 2014, and 2016. The total population in 2010 amounted to 3,047,479 people, which increased to 3,351,432 people in 2014, and further increased to 3,501,232 in 2016. The population has grown by 15 percent from 2010 and 2016. The highest growth was experienced in East Kutai district with an annual growth rate of 4.40 percent, while other regency/cities had annual growth rates of between 0.64-2.97 percent.

Based on contribution of economic sectors to Gross Domestic Product (Macro Economy), the economic structure⁴ of East Kalimantan Province consists of:

- Mining and excavation (44.91%);
- Industry and processing (20.72%);
- Others (13.43%);
- Construction (8.26%);
- Agriculture, forestry, and fisheries (7.62%); and
- Wholesale, retail, car and motorcycle repair (5.06%).

This structure suggests that the mining and excavation sector is of major importance to the economy of East Kalimantan Province, while agriculture, forestry and fishery only contribute 7.62% combined. Mining is identified as a driver of deforestation in East Kalimantan, yet it is the largest contributor to the provincial economy. Therefore, the context of mining as a driver of deforestation needs to be explored for further intervention by the ERP.

At the micro-economic level, most villagers engage in the agriculture sector. Agriculture is also seen as a driver of deforestation in the ERP. However, different groups practice different methods of agriculture with varying levels of sustainability. Research suggests that in East Kalimantan, the traditional swidden agriculture methods practiced by Indigenous peoples in secondary forest areas hardly caused deforestation, while more recently adopted forms of intensive agriculture such as pepper and oil palm

⁴ Based on statistics of East Kalimantan Province 2015, outlined in the Medium Term Development Plan 2013-2018.

cultivation are far less sustainable (Mulyoutami et al, 2009; world agroforestry, 2004; Kartawinata et al, 1984; Inouhe and Lahije, 1990).

The economic significance of agriculture is indicated by the Terms of Trade (*Nilai Tukar Petani*)⁵ that reflects economic strength of the villagers (i.e., farmers). The terms of Trade are compiled in Table 2.

Table 2 Terms of Trade (*Nilai Tukar Petani*) within agriculture sub-sector⁶.

No	Commodities	Terms of Trade		Changes
		2014	2015	
1	Food crop	96.41	95.29	-1.12
2	Horticulture	96.65	93.28	-3.37
3	Community estate plantation	102.24	102.99	0.75
4	Livestock	104.02	102.79	-1.23
5	Fisheries	101.46	98.38	-3.07
	Cumulative Terms of Trade	99.93	98.61	-1.32

This table shows a trend of decreasing farmer's Terms of Trade. Food crop and horticulture show values less than 100 which suggests deficit in farmers' income. This fact reflects that there will be an increase in farmer's dependency on agricultural resources to compensate for this deficit. Although there is no guarantee that further agricultural exploitation can overcome this deficit, intensification may be conducted by these farmers to meet this deficit. Additionally, farmers may need to optimize income from the forestry sub-sector. Therefore, an increase in dependency on forestry sector (timber and non-timber forest products) can be anticipated.

Food security is part of the targets within the medium-term development plan (RPJMD) 2018-2023. Achievements on food security are presented in Table 3.

Table 3 Targets and achievements on food security in East Kalimantan Province.

No	Targets	Annual Target	Achievements (2012-2016 annual average)	
			2016 annual average)	% achievements
1	Ratio of food fulfillment (rice)	72%	54%	75%
2	Rice production	438.135 tons	421,359 tons	96%
3	Food availability in all areas	82.41%	79.26%	96%
4	Productivity of prime agriculture commodities	4.06 ton / ha	4.43 ton/ha	109%
5	Numbers of agriculture facilitators	877	823	94%
6	Numbers of fishery facilitators	67	104	155%
	Overall Achievements			104%

⁵ Terms of Trade of 100 is considered as a break event point. Values below 100 indicates deficit in farmers economic capacity.

⁶ Based on Medium Term Development Plan (RPJMD) East Kalimantan Province 2013-2018

Table 3 shows the overall achievements of over 100% on provincial development targets relevant with food security. This suggests that East Kalimantan Province enjoys a strong food security compared to other provinces. The productivity of prime agriculture commodities suggest that the strength of food security relies on this sector. Access to technical assistance (provided by agriculture facilitators) seem sufficient at 94% of the targeted 877 facilitators.

Other aspects relevant with livelihoods are access to markets and access to financial assistance or banking. Access to markets relies on the transportation sector to ensure that products can be delivered in a cost-efficient manner, and the value in the market chain is proportionally distributed. In 2015 the ratio of road to area is 111.72 km / 1000 km². This is below the national standard of 115 km road / 1000 km². This condition is exemplified by the fact that 15 sub-districts in East Kalimantan Province are not connected to sufficient road infrastructure (only 56.73% of the road is in good condition). Transporting goods to and from these sub-districts is therefore costly. The condition that causes the price of goods to be relatively more expensive compared to other areas. There is a risk of decreasing Terms of Trade in these areas.

The numbers of financial institutions (banks) increased from 386 in 2010 to 666 in 2015 (14% increase every year). The composition of financial institutions in East Kalimantan consists mainly of government banks (252 units), followed by private banks (213 units) and provincial banks (141 units). The remaining (10 units) are foreign banks. Relevant issues with ERP may include the lack of credit and/or collateral of villagers/rural communities to apply for financial assistance; and the lack of bank representatives in remote areas.

Issues relevant with livelihood aspects and the ERP are summarized in Table 4.

Table 4 Summary of livelihoods issues covering relevant aspects of ER.

Livelihoods sources	Summary of Issues	Relevance to ERP	Potential Risks
Income from timber harvesting	Most of the profits go to the license holders/ private companies	The needs to increase community involvement in managing forest areas (e.g., social forestry)	Lack of capacity on best management practices (e.g., HCV, PHPL, RIL) among local communities and license holders
NTFPs	Not yet optimized for income	Potential source of alternative livelihood	Cost for production and transport may be higher in remote areas. This would create a competitive disadvantages in the market
Agriculture	Decreased economic capacities among farmers/lack of available agricultural land	Agriculture intensification and improving aquaculture to support economic capacities	Costs of production and transport may be higher in remote areas. This would create a competitive disadvantages in the market; Lack of capacities to ensure best practices (i.e., environmentally friendly practices)

Livelihoods sources	Summary of Issues	Relevance to ERP	Potential Risks
Access to financial support	Lack of credibility or collateral to be eligible for bank loans	Green banking and benefit sharing mechanism that ensures receipt of financial support to local communities / Indigenous Peoples participating in ERP	Inaccurate business planning that causes loss for community ventures; Constraints and delay in loan repayment (installment)

3.3 INDIGENOUS LAND AND RESOURCE TENURE

Based on recent assessments, the land area managed by customary communities in East Kalimantan covers around 1 million ha, or almost 8 percent of East Kalimantan’s land cover (Sulistioadi, *et al.*, 2017). Local communities in East Kalimantan manage land areas for settlement, cultivation, and for social facilities and worship. Local land-uses include the collection of non-timber forest products such as traditional medicine, *damar* resin and rattan and various forms of agroforestry systems. Such land use systems can preserve important forest functions, including biodiversity and sequestration of greenhouse gases (van Noordwijk *et al.* 2012, Tata *et al.* 2008). Culturally important areas also include burial areas, springs, and ancestral territories.

The type of land ownership claim depends on the history of each community. Most communities own land on the basis of customary tenure, but as they often lack formal written evidence in the form of land ownership certificates, such tenure is rarely recognized by the state. It is impossible for communities living in State Forest areas to obtain land ownership certificates as such rights only pertain to land under the jurisdiction of the Ministry of Agrarian Spatial Planning/National Land Agency (MoATR/BPN), not the MoEF. Even if land is located outside of the State Forest area, obtaining land ownership certificates is often a lengthy and expensive process; hence most people in rural areas lack such titles. For many *indigenous peoples* instead, physical evidence of community ownership plays an important role in customary tenure and serves to prove communal or individual ownership at the local level. Recognized physical evidence can be an orchard (having various local names, such as *Lembo, Rondong/Kutai, Munaant/Tunjung, Simpukng/Benuaq*) or previous evidence of use in other forms. In case a land ownership certificate is absent, semi-formal documents are also often used to prove ownership beyond the local level, either in court or in village disputes. Examples of semi-formal evidence are land certificates from village heads and letters of declaration of release of land rights from heads of sub-districts or notaries.

Lack of formal recognition of customary tenure of Indigenous Peoples has led to the overlap of commercial land use licenses with customary lands and often resulted in conflict or dispossession, or both. The MoEF’s Law Enforcement Agency (Gakkum) lists three ongoing disputes between local communities and companies in East Kalimantan. This number however does not capture the scale of overlapping land claims. According to a recent analysis 34% of the land claimed by communities as customary territory is located within areas that have been allocated to private companies for estate crop production, forest management, or mining (Sulistioadi, *et al.*, 2017). The resulting land access regimes are often the outcome of negotiated processes, where lack of formalized rights often places customary communities at a disadvantage to large concession holders.

Table 5 Initial identification of customary land in East Kalimantan

Land use designation	Customary Land (ha)	
No Permit – Non-Forest	48,300	5%
Protection forest	374,558	37%
Natural Forest Concession	262,632	26%
Timber Plantation	4,475	0%
No Permit - Forest area	194,452	19%
Conservation area	4,905	0%
Estate crops	52,891	5%
Social forestry	51,558	5%
Mining	26,924	3%
Total	1,020,696	100%

Source: Sulistioadi, et al. 2017

3.4 POTENTIAL RISKS AND IMPACTS

The ERP is located in East Kalimantan Province area, which consists of seven districts, three cities, 103 sub-districts, 1,026 villages, 20 Forest Management Units (FMU), and six conservation forest areas. It includes concessions for plantations, monoculture timber plantations, mining, logging, ecosystem restoration, and social forestry. East Kalimantan Province is the third largest province in Indonesia, covering 6.6% of the total territory of the country.

Project affected communities are located in rural areas, both inside and outside of Forest Areas. Based on the recent study conducted by Sulistioadi, *et.al.* (2017), the land areas claimed by the *indigenous peoples* cover around 1 million hectares. These communities managed the land for settlements, planting, social facilities, and worship.

The analysis provided in the SESA also identified overlapping areas between *Adat* land and forest and estate crops concessions (Palm Oil), which suggests potential risks such as tenurial conflicts and access restrictions following improved forest management.

The Program's FGRM will mainstream such community-based conflict handling, particularly in the context of tenurial conflict settlements. Such an approach is expected to promote collective consensus and dialogue and hence, avoid unintended risks, such as conflict escalation or community tension.

Risks related to Indigenous Peoples potentially stem from slow recognition of *Adat* tenure rights due to overlapping claims, existing conflicts, lack of legal evidence, and political processes for communities to gain such recognition, which may potentially exclude some communities from the Program benefits. In response to such risks, the BSP seeks to manage access barriers through a contractual mechanism which allows village-level recognition as a pre-requisite for accessing benefits (instead of through district regulations and/or land titles being issued, which the current regulatory regime requires). The Project's IPPF also provides guidance for Free, Prior and Informed consultations and management of adverse risks potentially affecting Indigenous Peoples. While it is acknowledged that such a contractual mechanism may reduce access barriers at the Project level, requirements for legal recognition for *Adat* communities may still present barriers for these communities from accessing equal benefits compared to other communities who have been formally recognized.

Based on the SESA document, potential risks and impacts on Indigenous peoples are summarized in Table 6

Table 6 Summary of risks to Indigenous peoples from the SESA.

Component/Sub-component	Risks	Responsible Agency
Improving land governance (component 1)	Resolve tenure conflicts and strengthen the recognition of indigenous peoples.	(1) FGRM under the DG of PSKL (2) DPMPD with Committee on indigenous Peoples (Provincial Regulation No 1/2015) (4) SIS-REDD+: Principle 1. Legal compliance and consistency with national forest programs - REDD+ activities shall comply with government regulations and nationally ratified international conventions/agreements and shall be consistent with the objectives of national forest programs.
Reducing Encroachment by Providing Sustainable Alternatives (component 5)	Loss of cultural identity may result from this Component. Sustainable alternatives may involve introduction of new livelihood strategies. This novel approach may override the existing cultural values (e.g., social forestry scheme may replace existing indigenous values or wisdom)	(1) Ministry of MOEF Reg. No. 83/2016 concerning Social Forestry (2) The DG of KSDAE Reg. No. P.6/2018 concerning Conservation Partnership (3) SIS-REDD+: Principle 3. Rights of indigenous and local communities (<i>Masyarakat Adat dan lokal</i>). REDD+ activities shall respect indigenous and local communities' rights through actions appropriate to the scale and context of implementation; Principle 5. Conservation of biodiversity, social and environmental services. REDD+ activities will include effective strategies that maintain, conserve or restore biodiversity and ecosystem services for social and environmental benefits.

3.5 CAPACITY ASSESSMENT FOR MANAGEMENT OF RISKS AND IMPACTS

The SESA has identified relevant agencies for ERP implementation. The capacities of each of these agencies for addressing anticipated risk and impacts are summarized in Table 7.

Table 7 Capacity of relevant agencies assessment⁷.

Responsible Agency	Capacity for Risk Management	Capacity Gaps
BPSKL (Social Forestry and Environmental Partnership Sub-national Office)	Free, Prior, and Informed Consultation processes, conflict resolution, social forestry implementation	Strengthening consultation capacities as well as processes for social forestry
Forestry Agency	FGRM, Forest resource management, socialization and community empowerment (through FMU)	Skills in conflict assessment and conflict resolution mechanism
Social Forestry Working Group	Free, Prior, and Informed Consultation processes, conflict resolution	Strengthening consultation capacities as well as approaches for community engagement, technical

⁷ To be further discussed. Capacity gaps need to be refined in a Capacity Building needs assessment

Responsible Agency	Capacity for Risk Management	Capacity Gaps
		support for recognition of indigenous peoples and assessments of their tenure, FGRM and conflict resolution
Community and Village Government empowerment Agencies (Provincial and District)	FGRM, Addressing vulnerable groups	Improving the approaches to increase Human Development Index, thus reducing dependency on forest resources
Provincial Environmental Agency	FGRM, ESMF Training, conflict resolution	Addressing cross-sectoral conflicts
DDPI (Regional Council of Climate Change)	FGRM, Free, Prior and Informed consultations, development of IPP, ESMP	Multi-stakeholder collaborations, including with private sectors
NGOs & Academics	FGRM, FPIC, Development of IPP, ESMP	Empowering community, Multi-stakeholder collaborations, including with private sectors
DG Climate Change Control	ERP Monitoring and evaluation	National to sub-national coordination, provisions of capacity building to sub-national stakeholders
P3SEKPI (Climate Change R&D)	ERP Monitoring and evaluation	National to sub-national coordination

4.0 RELEVANT LEGAL FRAMEWORK AND REGULATIONS

4.1 INDONESIAN REGULATIONS

The Gol acknowledges the presence of *Masyarakat Hukum Adat* and their rights, provided that these groups meet eligibility requirements and have obtained legal recognition from their provincial or district governments (further elaborated in the Minister of Home Affairs' Regulation No. 52/2014). Such legal recognition serves as a precondition for further recognition of land rights and natural resources within customary territories.

In May 2013 the Constitutional Court ruled that *Hutan Adat* are not part of the State forest (*hutan negara*). This Court decision modified *Hutan Adat* from falling under the category of state forest (*hutan negara*), to the category of private forest (*hutan hak*) This decision further implied that *Adat* forests, wherever legally recognized, would be assumed to be the collectively owned forests of Indigenous Peoples.

The Indonesian legal framework generally refers to Indigenous Peoples as *Masyarakat Hukum Adat* (*customary law communities*).⁸ Identification criteria of such communities and protection of their rights to land and natural resources can be found in various legislations.

The following Indonesia laws and regulation recognize the specific rights of IPs:

- Indonesian's Constitution Article 18(B) recognizes the rights of *Masyarakat Hukum Adat*;
- **Agrarian Law No. 5/1960:** Apart from defining types of land rights of private individuals and other entities, the law recognises land rights over customary territories (*hak ulayat*) and customary law (*adat* law) as long as it is not in conflict with the national interest;
- **Law No. 39/1999 on Human Rights:** Article 6 of the law states that the needs of *Masyarakat Hukum Adat* need to be recognised and protected by the law, society, and the government;
- **Law No. 6/2014 on Villages:** The law acknowledges the existence and rights of *Masyarakat Hukum Adat*. The communities can establish *adat* villages with their own institutional structures and authority although this law suffers from the lack of guiding regulations and institutional mandates to make such provisions operational. The Law grants a *desa adat* (customary village) the authority to conduct *adat*-based public administration;
- **Law No. 23/2014 on Local Government:** This Law recognizes the existence of *adat* institutions (*lembaga adat*) by giving them rights to "empowerment". Second, the Law determines that *adat* law is an additional rule for purposes such as village elections. Third, the Law makes *adat* or *adat* law the basis upon which to conduct local development, or as a parameter to measure social cohesiveness;

⁸ Relevant regulatory frameworks include Law No. 32/2009 on Environmental Protection and Management, Law No.41/ 1999 (further revised to Law No 19/2004) on Forestry, Law no 18/2013 on Prevention and Abolition of Forests Destructions, Presidential Instruction No 88/2017 on Land Tenure Settlements in Forest Areas, and Ministerial Regulation of the Ministry of Home Affairs No 52/2014 on the Guidelines for the Recognition and Protection of Adat Community and most recently the Presidential Regulation No 88/2017 on Land Tenure Settlements in Forest Areas.

- **Law No. 11/2010 on Cultural Heritage:** This law recognizes *Masyarakat Adat* as owners of their cultural heritage and grants them authority to manage it. The law requires observation and data collection on cultural heritage sites that may be affected by project activities; and
- **Forestry Law No. 41/1999:** Primarily, the law divides forests into different legal categories and provides criteria for the recognition of *Hutan Adat* rights. The law has been amended by Constitutional Court Decision No. 35/2012 which established that *adat* forests are not state forest area but collectively owned private land. The clarification of Article 67 (2) of Law 41/1999 lists five conditions, based on which the government will recognize a customary community as *Masyarakat Hukum Adat*:
 - In the people's daily life, it still is a communal society (*paguyuban*);
 - The community has *adat* institutions and *adat* leaders;
 - The community has clear boundaries;
 - The community has well-functioning customary law institutions, particularly an *adat* judicial system; and
 - The community still collects forest products for its subsistence.

Below the level of national laws, a number of ministerial regulations further define *Masyarakat Hukum Adat* and point out the legal procedures for the legal recognition of *Masyarakat Hukum Adat* and the recognition of *Hutan Adat* or other customary land rights. In the context of East Kalimantan, legal recognition is regulated by Provincial Regulation No. 1/2015 on the Guidelines for the Recognition of *Masyarakat Hukum Adat* in East Kalimantan.

Ministry of Home Affairs regulation (Permendagri) No. 52/2014 and East Kalimantan Regulation (Perda Kaltim) No. 1/2015, define *Masyarakat Adat* as follows:

- a. Customary law communities (*Masyarakat Hukum Adat*) are groups of Indonesian citizens who have distinctive characteristics, live in groups harmoniously according to their customary law, have ties to ancestral origins and or similarities in living, have strong relationships with land and the environment, and dispose of a distinct value system and economic, political, social, cultural, legal institutions⁹;
- b. Customary Territory (*Wilayah Adat*) is customary land in the form of land, water, and / or waters along with natural resources on top of it with certain boundaries, owned, and preserved for presence and future generations and utilized in a sustainable manner in order to meet the needs of the community as inheritance from their ancestors or ownership claims in the form of *ulayat* land or customary forests; and
- c. Customary Law is a set of norms or rules, both written and unwritten, that live and apply to regulate human behavior that are based on Indonesian cultural values, inherited from

⁹ Alternatively, The Minister of Agrarian Affairs/National Land Agency (Ministerial Regulation No. 10/2016) defines these communities as "groups of people bound by their customary law arrangements as members of a group allied by their place of residence or hereditary base."

generation to generation, which are always adhered to and respected for justice and public order and has legal consequences or sanctions.

Following Constitutional Court Decision No. 35/2012, several ministerial regulations were passed that provide further details on how the government can recognize *Masyarakat Hukum Adat* and their land rights. The central government (MoEF or MoATR/BPN) can only recognize *adat* land rights if there already is a regional form of government recognition. There are two options for the recognition of *Hutan Adat*:

- a. A regional regulation (*Peraturan Daerah* or *Perda*) as stipulated in Article 67 (2) of Forestry Law 41/1999; and
- b. A district head/governor decree (*Keputusan Kepala Daerah*). Ministerial Regulation of the Minister of Home Affairs No. 52/2014 concerning Guidelines on the Recognition and Protection of *Masyarakat Hukum Adat*, grants district heads/mayors the authority to issue a decree on recognition based on recommendations from special committees (*Panitia Masyarakat Hukum Adat kabupaten/kota*) (Article 6 (2)). These are appointed by the district head/mayor (Article 3 (1)). They consist of: the regional secretary, the regional working unit head, the district head of legal affairs and the sub-district head. Article 4 stipulates that the committee has the task to verify the identification, validation and determination of the *adat* law community involved.

After regional recognition has been realized, the following step for Indigenous Peoples to secure their *Hutan Adat* rights is recognition by the MoEF. The MoEF has issued a ministerial regulation on this procedure with regard to the recognition of *Hutan Adat* rights. This procedure only appertains to the State Forest and not to state land under the jurisdiction of the MoASP/BPN. MoEF Regulation 21/2019 concerning *Hutan Adat* and Titled Forests (*Hutan Hak*) regulates the procedural steps to be taken. A ministerial decree (*keputusan menteri*) can designate *Hutan Adat* and hence, release this forest from the state forest.

Article 5 of the Ministerial Regulation provides the following conditions for the Minister to recognize *adat* forests by ministerial decree:

- a. An *Adat* law community has been recognized by a regional government through a regional regulation. If the *Hutan Adat* is located outside of the state forest, a legal decision by a district head also suffices (instead of regional regulation);
- b. There is an *Adat* territory that is partly or wholly located inside a forest; and
- c. There is a formal request from an *Adat* law community to designate the *Adat* forest;

Besides *Hutan Adat* rights and the other Social Forestry schemes mentioned in Section 2.3, there are two other legal options available for communities to secure land rights in the Forest Estate:

- a. *Hak Komunal* (communal rights). This right pertains both to Forest Estate areas and state land (*tanah negara*) and was established in Ministerial Regulation No. 10/2016 concerning Procedures to Determine Communal Rights of *Masyarakat Hukum Adat* and Communities in a Specific Zone, by the Minister of ATR/BPN. The Ministerial Regulation provides the possibility for both *Masyarakat Hukum Adat* and other communities to obtain communal ownership rights in the Forest Estate or state land. It refers to these communities as 'communities in a Specific Zone' (*masyarakat dalam Kawasan Tertentu*). Special Zone refers to a Forest Area or to a plantation concession. For communities to obtain *hak komunal*, a request has to be filed with

their district heads. These shall then form an inventory team called Tim IP4T.¹⁰ After the Tim IP4T verifies the communal land right, the land in question shall be released either from the state forest or from the plantation concession. If the land is located inside a Forest Area, the Tim IP4T will hand over its results to the MoEF, which should then release the land from the Forest Area (Article 11). If the land is located inside a plantation concession, the holder of the concession rights shall be requested to exclude the plot of land from its concession (Article 13 (1) b). After the Tim IP4T has given its approval to the particular district head/governor, a district head decree or governor decree shall be issued, which shall then be sent to either the MoATR/BPN or MoEF (Article 18 (2)) who will be asked to exclude it from their jurisdiction.

- b. Land ownership certificate (*sertifikat atas tanah*). Presidential Regulation No. 88/2017 on Settling Land Tenure within Forest Estate Areas (PPTKH) put in place procedures to address issues related to land status and resource conflict within the Forest Estate (*kawasan hutan*). According to this regulation, individuals or communities can obtain land ownership certificates if they have cultivated a parcel of land located in the Forest Estate for more than 20 years (article 20 e). After inspection and verification, this land parcel shall then be released from the Forest Estate.

In East Kalimantan Province, only four indigenous peoples obtained legal recognition of *adat* land rights. These are the Hemaq Beniung, Kekau, and Hemaq Pasoq communities in Kutai Barat, through Kutai Barat Regulation No. 9/2014, and the Muluy community in Paser through the Bupati Paser Decree No. SK.413.3/2018.

4.2 LAND REFORM POLICIES AND OPTIONS TO SECURE LAND RIGHTS FOR INDIGENOUS PEOPLES

The government has initiated several measures to address disputes related to land ownership¹¹ such as the issuance of Presidential Decree No. 88/2017 on the settlement of forest tenure disputes. Presidential Decree No. 88/2017 was issued to address settlements of forest tenure disputes. In East Kalimantan there have been many attempts at resolving conflict through conciliation, mediation, and arbitration. Also, the provincial Forestry Office has established a Forest Conflict Resolution Desk, and the provincial Plantation Office has developed an Integrated Team to resolve plantation conflict.

At the national level, an important measure to settle existing disputes is the Gol's Agrarian Reform Program which covers 9 million hectares of land nationally. In the Agrarian Reform Program, the government targets legalizing land ownership plots of 4.5 million hectares and redistributing another 4.5 million hectares to specified citizens, such as small farmers. About half of this land is currently outside the Forest concession areas, and the other half is non-productive or non-forested land that will be released from the Forest concession.

Another option for securing land rights is through the existing social forestry mechanisms. MOEF Regulation No. 83/2016 on social forestry enables communities to access and sustainably use designated areas within the forest estate (mainly applies for production forest, but options are available

¹⁰ IP4T stands for *Inventarisasi Penguasaan, Pemilikan, Penggunaan dan Pemanfaatan Tanah* (Inventory of control, ownership, use and benefit of land).

¹¹ Since Indonesia's reform period, the issue of land rights and land distribution has taken a central place in dialogues related to addressing inequalities and rural poverty. At a conference on forest tenure in Lombok in July 2011, the Gol announced its intention to prioritize the needs of its forest communities, to "recognize, respect and protect Adat rights," and to tackle the lack of coordination across government agencies in addressing forest tenure policies. President Widodo has stated that land reform is a pillar of the national development program.

for protected forest as well). To get such access, communities first require a decree from their district government and second a social forestry license from MoEF. This license entitles groups (organized as forest farmers group or *Kelompok Tani Hutan – KTH*) to manage a certain forest area and receive benefits from planted timber and non-timber forest products. This mechanism is guided by the indicative maps for social forestry allocations (*Peta Indikatif Alokasi Perhutanan Sosial - PIAPS*).

Also part of the Gol Agrarian Reform program is the planned process of formally recognizing Customary Forest (*Hutan Adat*) throughout the archipelago. In May 2013, the Constitutional Court issued a landmark ruling (No. 35/2012) deciding that *Hutan Adat* would no longer be administered as state forests (*hutan negara*) but were to become collectively owned by *Masyarakat Adat* as private forest (*hutan hak*). The MoEF has established a working group to follow up on this decision and enacted several implementing ministerial regulations to clarify the procedure of *Hutan Adat* recognition.

In practice however, the realization of *Hutan Adat* rights is politically complex and usually involves a lengthy process. Only those communities formally recognized as *Masyarakat Hukum Adat* can obtain *Hutan Adat* rights. In order to qualify as such, communities must meet a number of defining characteristics, which include the existence of a traditional communal territory, well-functioning traditional institutions and the existence of a clear leadership hierarchy.¹² Before the MoEF can transfer *Hutan Adat* rights to communities, *Masyarakat Hukum Adat* need to be recognized by their regional governments, either at the level of district or province.¹³ This means that it is up to the regional authorities to decide on recognition.

Following up on Constitutional Court Decision No.35/2012, the East Kalimantan Government has issued a Provincial Regulation on the Guidelines for the Recognition of *Masyarakat Hukum Adat* in East Kalimantan (Provincial Regulation No. 1/2015). This regulation authorizes the district heads/mayors to form special committees, who are tasked to identify *Masyarakat Hukum Adat*. These committees may recommend a district head or mayor to recognize *Masyarakat Hukum Adat* through a district head/mayor decree (Art. 11 (2)). In case their traditional territory extends over multiple districts, the governor is authorized to recognize *Adat* land rights by a governor decree (Art. 11 (3)).

So far, however, only four East Kalimantan communities have been recognized as *Masyarakat Hukum Adat* through this procedure. This includes a 49 ha *Hutan Adat* area in Hemaq Beniung village, a *Hutan Adat* in Kekau covering 4,026 ha, and a customary territory (*wilayah adat*) in Muluy in which covers 7,803 ha. The total *adat* area that is officially recognized is currently 11,878 ha.

As mentioned in Section 1.3, an alternative model for communities to secure forest rights is social forestry. Social forestry licenses are agreements between the government and communities on accessing and using areas within the Forest Estates for specified purposes. The main social forestry schemes are Community Forests (*Hutan Kemasyarakatan* or HKm), Village Forests (*Hutan Desa* or HD), and Community Plantation Forests (*Hutan Tanaman Rakyat* or HTR) and partnerships (*Kemitraan*):

- The HKm social forestry program was first initiated in 2001 as part of the post-Suharto reform period. Its current legal basis is provided in Ministerial Regulation No. 88/2014 of the Minister of Environment and Forestry. With an HKm permit, farmer groups can continue to farm on state

¹² Stipulated in the elucidation of Article 67 of Forestry Law No. 41/1999

¹³ Article 6 of Ministerial Regulation no. 32/2015 of the Minister of MoEF on Private Forest Rights (*Hutan Hak*).

forestland in exchange for supporting sustainable forest management and protecting environmental services.

- Village Forests (*Hutan Desa*, or HD) are based on Ministerial Regulation No. 89/2014 of the Minister of Environment and Forestry. Villages can apply for permits to manage nearby forest areas, with a focus on sustainable forest management and the application of customary management practices. While villagers are allowed to harvest timber trees, the focus is on natural forest management and small-scale agroforestry.
- The Community Plantation Forest (HTR) model was developed in 2007 to allow and encourage communities to develop timber plantations in the Forest Estate, in order to help address the supply shortfall of sustainable timber. The procedure to apply for a Community Plantation Forest concession is stipulated in Ministerial Regulation No. 55/2011 of the Minister of Forestry (now MoEF). Concessions can be allocated directly to households, to partnerships between households and other entities, and to private and public companies that agree to develop the plantation and transfer it to the local community. Plantations can consist of main timber species, with up to 30% of the area dedicated to other woody species, and with intercropping with annual plants possible in the first two to three years of plantation establishment. An important element of the HTR scheme is the offer of long-term subsidized financing through a public service delivery unit that is managed by the MoEF.
- The *Kemitraan Kehutanan* program was established through Ministerial Regulation No. 39/2013 of the Minister of Forestry (now MoEF). It requires companies (state-owned or private) with forest concessions to provide access rights to local communities. Generally, local communities get the right to harvest non-timber forest products, while the companies maintain the rights to timber. The purpose of this scheme is to facilitate collaboration between forest-based companies and community groups in the management of forest resources, and to facilitate state-sponsored community empowerment in forest estate areas in which the government has issued licenses for companies to carry out logging or to establish timber plantations.
- *Hutan adat* or customary forests are forests in indigenous territories. According to AMAN, the current area of customary forest is 64% of the total of 7.4 million hectares of customary land mapped by AMAN. The recognition of *Hutan Adat* is currently on two agendas, namely Social Forestry under the Ministry of Environment and Forestry (MoEF) and Agrarian Reform under the Ministry of Agrarian Spatial Planning/National Land Agency (ATR/BPN).

Table 8 Distribution of Social Forestry Schemes in East Kalimantan (ha).

District	Social Forestry (hectares)					Total
	Community Plantation Forest	Community Forest	Village Forest	Customary Forest	Forest Partnership	
Balikpapan	-	1,400	-	-	-	1,400
Berau	1,096	-	68,126	-	225	69,447
Kutai Barat	989	-	8,405	49	-	9,443
Kutai Kartanegara	1,501	-	-	-	1,147	2,648
Kutai Timur	4,058	590	21,023	-	3,846	29,517

Mahakam Hulu	-	28,380	-	96	2,934
Paser	-		-	-	0
Grand Total	7,644	1,990	125,934	49	5,314

At the provincial level, there are several additional regulations relevant for the rights of Indigenous Peoples. The Government of East Kalimantan has issued Provincial Regulation No. 15/2008 on Long Term Development Plans, Provincial Regulation No. 1/2014 on the Protection and Management of the Environment, Provincial Regulation No. 1/2016 on Spatial Planning, and Provincial Regulation No. 26/2017 on Sustainable Plantations. Indigenous Peoples' rights are recognized in the Provincial Regulation on Spatial Planning, while the earlier mentioned Provincial Regulation No. 1/2015 on Guidelines for the Identification and Recognition of Indigenous Peoples in East Kalimantan provides further procedural details on how recognition can be realized. In the effort to prevent forest and land fires, The Provincial Government has also issued Provincial Regulation No. 5/2009 on the Control of Forest Fires.

Directions for regional development programs, including the land-based sectors, are contained in the Provincial Regulation on the Medium-Term Development Plan, which is issued every five years; and in the Governor Regulation on the Annual Government Work Plan; and in the Provincial Regulation on Provincial Revenue and Expenditure Budget, which is issued annually.

The Governor of East Kalimantan has issued Governor Regulation No. 17/2015 in conjunction with Governor Regulation No. 1/2018. The regulations put additional requirements on plantation companies to commit to manage high conservation value areas, to involve local communities and to support regional economic development and food security. The regulation has suspended the issuance of permits for new coal mining and has placed additional requirements on companies that want to extend their permits. In the forestry sector, the regulations prohibit the issuance of new permits to log natural forests. On the other hand, the regulation endorses the issuance of permits for ecosystem restoration. By inhibiting the extraction of natural forests for timber production as well as mining and by putting more requirements related to environmental sustainability and social inclusiveness, the regulations are expected to support the ERP in East Kalimantan.

Governor also has issued Governor Regulation No. 34/2018 on Social Forestry. Currently, a Governor's Regulation on Forest Fire and Land Prevention are also being prepared. Especially for Forest Management Units, the Governor has established the Implementing Unit of Forest Management Unit through Governor Regulation No. 39/2019 and Governor Regulation No. 19/2012 *jo* 55/2018 for the Long-term Forestry Plan.

The authority on planning in the forestry sector, including forest utilization blocks and boundaries, is under the MoEF. Whereas the implementation of forest management is conducted by the provincial government through FMUs, which are under the supervision of the provincial Forestry Service. An exception applies to conservation forests where the management of the forest is under MoEF. The authority for licensing, including in registering the customary forests, is under the MoEF. In this regard, FMUs support the identification of customary forests. The legal definition of Forest Utilization Blocks is stipulated in the Ministerial Regulation of MoEF No P.64/MENLHK-SETJEN/2015.

4.3 GAP ASSESSMENT

The ERP will be financed by World Bank and implemented by the Gol. All funding activities of World Bank are subject to World Bank environmental and social standards and the specific developmental concepts. These standards are laid out in the World Bank Operational Policies (OPs) and Bank Procedures (BPs).

The WB's Operational Policy 4.10 (Indigenous Peoples) requires that special planning measures be established to protect the interests of Indigenous Peoples with a social and cultural identity distinct from the dominant society that are vulnerable and at risk of being disadvantaged in the development process.

The Policy defines that Indigenous Peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics:

- Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
- Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;
- Customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
- An indigenous language, often different from the official language of the country or region.

Identification of Indigenous Peoples in the current country system uses similar characteristics as described above. The Indonesian legal regulatory frameworks generally refer such communities as “*Masyarakat Hukum Adat*” (Customary Law Communities) or “*Masyarakat Adat*” (or Adat Communities). The Gol acknowledges the presence of these communities and their rights, provided that groups meet these and other eligibility requirements (further elaborated in the Ministry of Home Affairs’ regulation No. 52/2014). Their existence must subsequently be legally recognized (i.e., through district regulations/decrees) before their land claims and rights can be processed for further legal recognition. This district recognition process sets the initial condition for subsequent recognition processes, including land rights.

Table 9 Comparison between the World Bank and Government of Indonesia Criteria on Indigenous People.

Characteristics of Indigenous Peoples based on OP 4.10	Gol’s Framework ¹	Assessment
Vulnerable due to distinct circumstances and dependence on land and natural resources	Applies to a sub-set of <i>Masyarakat Adat</i> categorized as Isolated Adat Communities (or known as KAT/ <i>Komunitas Adat Terpencil</i>)	Vulnerability is not a determining factor to identify <i>Masyarakat Adat</i> or their land rights and other rights that follow, but rather serves one of the targeting criteria for social assistance and development programs.
Self-identification and recognized by others	In the process of gaining legal recognition from the government, self-identification as <i>Adat</i> is subject to verification and validation by a verification team (Tim Masyarakat Hukum Adat) established by district heads. As part of such verification	The current guideline is set out in the Ministerial Regulation of Home Affairs No. 52/2014 which governs recognition of <i>Adat</i> community existence. This process is often understood as the first step for subsequent land right recognition.

Characteristics of Indigenous Peoples based on OP 4.10	Gol's Framework ¹	Assessment
	process, community's concerned need to be recognized by others backed with evidences for such recognition.	Self-identification remains a center piece of OP 4.10, but this principle is not reflected in the Gol framework. Secondly, recognition by others does not represent legal recognition from the government, which may represent a gap.
Collective attachment to geographically distinct habitats or ancestral territories and its natural resources	Collective attachment as per OP 4.10 is further defined into: <ul style="list-style-type: none"> ▪ Living in groups, in the form of associations (<i>paguyuban/rechsgemeenschap</i>); ▪ Adherence to customary law that has a clear jurisdiction and specific customary law court/process; ▪ Maintenance of ancestral connection; ▪ Strong connection with land and environment, especially for daily life sustenance; and ▪ Occupation in a certain territory for generations. 	Equivalent
Customary cultural, economic, social, or political institutions separate from those of the dominant society and culture.	Specific/distinct economics, politics, social and cultural value systems that are still practiced and respected	Equivalent
An indigenous language, often different from the official language of the country or region	Not specified/required for legal recognition	The widespread use of Bahasa Indonesia as a lingua franca has contributed to gradual erosion of local languages and dialects. Since Indigenous language is not a requirement, the current Gol's frameworks may have a broader coverage for their application in comparison to OP 4.10.
A group that has lost "collective attachment to geographically distinct habitats or ancestral territories in the project area due to forced severance.	Not specified	The current frameworks for <i>Adat</i> communities are tied to land and resource claims, which may consequently present barriers for communities with no ancestral/territorial claims from being recognized as <i>Adat</i> communities.

¹ In accordance to the relevant Law that stipulates *adat* community: (a) Law No 32/2009 on Environmental Protection and Management; (b) Law No 19/2004 on Forestry, (c) Law No 18/2013 on Prevention and Abolition of Forests Destruction; (d) Ministerial Regulation of the Ministry of Home Affairs No 52/2014 on the Guidelines for the Recognition and Protection of *Adat* Community, (e) Presidential Regulation No. 88/2017 on Land Tenure Settlements in Forest Areas.

As a prerequisite for Project approval, OP 4.10 requires the borrower to conduct free, prior and informed consultations with potentially affected indigenous peoples and to establish a pattern of broad community support for the Project and its objectives. It is important to note that the OP 4.10 refers to social groups and communities, and not to individuals. The primary objectives of OP 4.10 are:

- To ensure that such groups are afforded meaningful opportunities to participate in planning project activities that affects them;
- To ensure that opportunities to provide such groups with culturally appropriate benefits are considered; and
- To ensure that any project impacts that adversely affect them are avoided or otherwise minimized and mitigated.

Indonesian law generally provides a framework that allows for the recognition of the rights of Indigenous Peoples to culture, education, vocational training, health, environment, land, agriculture, water resources, infrastructure, justice, tourism and industry, mines and energy. However, there are no decrees, sub-decrees or procedures for specific safeguards to protect the interests of Indigenous Peoples, other than those related to land or forestry. Indonesian Land Law recognizes the right of Indigenous Peoples to own immovable property – their land – as the collective holders of rights. In practice, the procedure to formalize such rights entails a long process. While Indonesia’s laws and regulations related to Indigenous Peoples largely accommodate the World Bank’s OP4.10, the actual implementation of the legal framework is to a large extent dependent on decisions from governments at the regional level.

In addition, there is no detailed framework or operating procedure to facilitate full implementation of consultations in the national system. The IPPF, therefore, has been prepared on the basis of the World Bank’s OP 4.10 to set out the clear mechanism for conducting free, prior, and informed consultations. Furthermore, this framework will be aligned with procedures for commissioning social assessments and preparing an Indigenous Peoples Plan if activities are assessed to potentially generate adverse impacts on indigenous peoples

Clear mechanisms for free, prior and informed consultation in order to establish broad support of the Project from the indigenous communities are outlined in this IPPF, along with procedures for conducting social assessment and preparing an Indigenous Peoples plan. During implementation, a Feedback and Grievance Redress Mechanism (FGRM) be established at the program level so that every affected community can express their voice, complaints, concerns or dissatisfaction about the Program and thus enables Program entities to identify systemic issues and address them.

5.0 IMPLEMENTATION ARRANGMENTS

This Chapter outlines key processes under the IPPF, followed by the proposed institutional arrangement and monitoring and evaluation for the IPPF implementation.

5.1 PHASED IMPLEMENTATION OF THE IPPF

The IPPF adopts a staged approach to the implementation of key provisions under the IPPF. The SESA developed under the ERP sets the context for the application of OP 4.10 and provides a broad picture of relevant risks and opportunities for indigenous peoples. Ground-truthing/field verification, further consultations, and development of necessary action plans will be carried out once specific investments and locations are known. Relevant risk mitigation measures will respond to, and be proportionate to, the nature and level of risks identified during implementation.

5.1.1 Site Screening

Site screening will commence in consultations with representatives of affected indigenous peoples, their leaders and recognized institutions. This process will also seek participation of women and Indigenous youth and other vulnerable segments of the target communities.

Such screening is aimed to identify the presence of indigenous peoples, including their tenure characteristics and existing claims in areas where specific activities will be implemented, as well as relevant safeguards risks and communities' acceptance to the Program. The results of the screening will inform potential risks before their participation in activities is sought.

The scope of such identification is presented in Chapter 1, sub-section 1.3.1 on Identification Criteria. Key steps are outlined as follows:

- a. Prior to the ERP implementation, preliminary screening was conducted through the SESA process. Relevant safeguards teams with support from Persons-in-Charge (PICs) at the provincial and district levels will be required to verify and validate the analysis provided in the SESA and create an overlay analysis of Indigenous Peoples in the target areas based on existing maps and database (i.e. Adat maps from MOEF, Unmul, AMAN¹⁴ and/or BRWA¹⁵). Based on this verification/validation and identification of risks, the safeguards teams/PICs will determine whether ground-truthing/field verification will be required. These PICs will ideally be selected from relevant agencies, such as the Village Community Empowerment Agency (DPMD) and/or Provincial Forestry Service. Necessary capacity strengthening on the implementation of this framework has been detailed in the ESMF (Section 5.5).
- b. In the event that such field verification is required, an initial notification will be communicated to representatives of Indigenous peoples concerned, describing the purpose and approach of the screening process. Participation will seek to ensure inclusive participation of affected communities to discuss the Program, as well as risks and opportunities. This process is further guided in Section 5.1.2 on Free, Prior, and Informed consultations;
- c. If deemed necessary, the Provincial SEKDA will mobilize relevant experts to carry out further social assessments in collaboration with representatives from village governments, local

¹⁴ Indigenous Peoples Alliance of the Archipelago (or known as AMAN) is a community organization consisting of independent members of Adat communities across Indonesia

¹⁵ BRWA is a non-governmental organization the registration of Indigenous territories.

customary institutions, and civil society organizations (CSOs) as relevant. This process is further guided in Section 5.1.3 on Social Assessment; and

- d. Each stage of the screening process will be duly documented, including key concerns and risks observed during the ground-truthing/field verification.

5.1.2 Securing Free, Prior and Informed Consent (FPIC)

The ERP will adopt full consultations and stakeholder participation for all the Components. During project screening (project area selection process) communities, village heads, customary leaders, and local authorities are consulted about benefits and potential impacts. A Social Assessment will be conducted within target areas where potential impacts on the communities and their land and other resources are identified.

As part of the ERP implementation, the Gol will ensure that the program seeks to ensure Free, Prior and Informed Consent (FPIC) for ERP activities that may impact on forest dependent peoples, including Indigenous Peoples and/or *Masyarakat Adat*. FPIC represents a sequential process as a result from free, prior and informed consultations required under OP 4.10 and these consultations shall precede any activities under the Program that may impact these communities.

As such, the IPPF requires the ER Program Entities to evaluate the circumstances and nature of the forest-dependent community, including Indigenous peoples in question, on a case by case basis, through a robust risk assessment, and secure FPIC from these communities whose rights to lands and natural resources may be significantly implicated as a result of the Program.

A series of consultations both in the form of public consultation meetings and informal consultations will be conducted prior to implementation of specific interventions under the ERP. These consultations will assess whether there is broad support from the communities or rejection. Decisions to proceed with activity implementation will be made based on these consultation and engagement processes.

Prior information and early notices will be provided to village governments as well as local authorities ahead of consultations to enable participation of village representatives. The PMU will send notices to the communities informing them that the respective focal person and local authorities will seek consultation to seek support for the project intervention and to determine the potential positive and negative impacts from the project. The notice will request that representatives of farmers, women's associations, and village leaders attend.

During the consultation, the community leaders and other participants will present their views with regards to the proposed activities. During the consultation, detailed procedures would determine the potential positive and negative impacts under the ERP on a village-by-village basis. In addition, a conflict resolution system would be defined, through an established grievance mechanism, to ensure affected people have a process for lodging grievances (particularly for land acquisition). If a beneficiary community includes ethnic minority communities, their representatives will be included in the conflict resolution mechanisms. This will be done to ensure and community involvement and culturally appropriate decision-making processes.

In the process, free, prior and informed consultations will be undertaken in a language spoken by, and location convenient for, potentially affected Indigenous Peoples. The views of Indigenous Peoples are to be taken into account during implementation of the ERP, while respecting their current practices, beliefs and cultural preferences. Provincial Community Empowerment and Village Government Agency

(or DPMPD at East Kalimantan Province) is responsible to conduct these consultations with affected Indigenous Peoples communities. The outcome of the consultations will be documented in the periodic reports and submitted to the DDPI, DGCC MoEF, and World Bank for review.

In view of obtaining the FPIC through a series of consultation processes, consistent with the UN REDD+ Program, FPIC is defined as follows:

Free: Free refers to a consent given voluntarily and absent of “coercion, intimidation or manipulation.” Free refers to a process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed:

- a. Stakeholders determine process, timeline and decision-making structure;
- b. Information is transparently and objectively offered at stakeholders’ request;
- c. Process is free from coercion, bias, conditions, bribery or rewards;
- d. Meetings and decisions take place at locations and times and in languages and formats determined by the stakeholders; and
- e. All community members are free to participate regardless of gender, age or standing.

Prior: Prior means “consent is sought sufficiently in advance of any authorization or commencement of activities.” Prior refers to a period of time in advance of an activity or process when consent should be sought, as well as the period between when consent is sought and when consent is given or withheld. Prior means at the “early stages of a development or investment plan, not only when the need arises to obtain approval from the community.”

- a. Prior implies that time is provided to understand, access, and analyze information on the proposed activity. The amount of time required will depend on the decision-making processes of the rights-holders;
- b. Information must be provided before activities can be initiated, at the beginning or initiation of an activity, process or phase of implementation, including conceptualization, design, proposal, information, execution, and following evaluation; and
- c. The decision-making timeline established by the rights-holders must be respected, as it reflects the time needed to understand, analyze, and evaluate the activities under consideration in accordance with their own customs.

Informed: Informed refers mainly to the nature of the engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process. Information should:

- a. Be accessible, clear, consistent, accurate, constant, and transparent;
- b. Be delivered in appropriate language and culturally appropriate format (including radio, video, graphics, documentaries, photos, oral presentations);
- c. Be objective, covering both the positive and negative potential of REDD+ activities and consequences of giving or withholding consent;
- d. Be complete, covering the spectrum of potential social, financial, political, cultural, environmental impacts, including scientific information with access to original sources in appropriate language;
- e. Be delivered in a manner that strengthens and does not erode indigenous or local cultures;
- f. Be delivered by culturally appropriate personnel, in culturally appropriate locations, and include capacity building of indigenous or local trainers;
- g. Be delivered with sufficient time to be understood and verified;
- h. Reach the most remote, rural communities, women and the marginalized; and

- i. Be provided on an ongoing and continuous basis throughout the FPIC process.

Consent: Consent refers to the collective decision made by the rights-holders and reached through the customary decision-making processes of the affected peoples or communities. Consent must be sought and granted or withheld according to the unique formal or informal political-administrative dynamic of each community. Consent represents:

- a. A freely given decision that may be a “Yes” or a “No,” including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges;
- b. A collective decision determined by the affected peoples (e.g. consensus, majority, etc.) in accordance with their own customs and traditions;
- c. The expression of rights (to self-determination, lands, resources and territories, culture); and
- d. Given or withheld in phases, over specific periods of time for distinct stages or phases of REDD+. It is not a one-off process.

While the objective of consultation processes shall be to reach broad community support, which represents consent between the relevant parties, this does not mean that all FPIC processes will carry veto rights of certain individuals or rights holders in question. At the core of FPIC is the right of the peoples concerned to choose to engage, negotiate and decide to grant or withhold consent, as well as the acknowledgement that under certain circumstances, it must be accepted that the ERP will not proceed and/or that engagement must be ceased if the affected peoples decide that they do not want to commence or continue with negotiations or if they decide to withhold their consent to specific Program activities.

Effective Free, Prior, Informed Consultations are built upon two-way processes that should:

- a. Involve members of affected communities and their recognized representative bodies and organizations in good faith;
- b. Capture the views and concerns of men, women and vulnerable community segments including the elderly, youth, displaced persons, children, people with special needs, etc. about impacts, mitigation mechanisms, and benefits where appropriate. If necessary, separate forums or engagements need to be conducted based on their preferences;
- c. Begin early in the process of identification of environmental and social risks and impacts and continue on an ongoing basis as risks and impacts arise;
- d. Be based on the prior disclosure and dissemination/socialization of relevant, transparent, objective, meaningful, and easily accessible information that is in a culturally appropriate language(s) and format and is understandable to affected communities. In designing consultation methods and use of media, special attention needs to be paid to include the concerns of Indigenous women, youth, and children and their access to development opportunities and benefits;
- e. Focus on inclusive engagement on those directly affected than those not directly affected;
- f. Ensure that the consultation processes are free of external manipulation, interference, coercion and/or intimidation. The ways the consultations are designed should create enabling environments for meaningful participation, where applicable. In addition to the language(s) and media used, the timing, venues, participation composition need to be carefully thought through to ensure everyone could express their views without repercussions; and
- g. Be documented.

Where there is broad support from Indigenous peoples to participate in the project, relevant implementing agencies, with oversight from safeguards team/PICs at the provincial and district levels should ensure the following are in place:

- a. Documented evidence of Free, Prior, Informed Consultations as well as measures taken to avoid and minimize risks and adverse impacts to environment and socio-cultural aspects. This will be in the form of written agreements with authorized community representatives;
- b. Action plan and recommendations for Free, Prior, Informed Consultations during project implementation, monitoring, and evaluation; and
- c. Any formal agreements reached with affected communities and/or their representative institutions.

To ensure that Free, Prior, Informed Consultations can be ascertained, it is also required to determine whether:

- a. The level of engagement in a way that enables informed participation of communities is acceptable; and
- b. The level of support and dissent among communities for the project is taken into account into decision making and development of mitigation measures.

The process above is an integral part of the ERP implementation and therefore, continues after its completion. During implementation of the ERP, an updated social assessment shall also be carried out to monitor the positive and negative impacts of the project and obtain feedback from the project-affected people. Based on the outcome of the social assessment, further measures shall be taken to ensure full benefits and mitigation of the negative impacts envisaged. If necessary, additional activities for institutional strengthening and capacity building of Indigenous Peoples communities living within the project area shall be carried out. If unexpected impacts are significant, the IPP and/or RAP or Plan of Action (PoA) may need to be updated to respond to emerging risks and impacts.

5.1.3 Social Assessment

An assessment of the ERP's implications on Indigenous peoples was made as part of the SESA process. An overview of the analysis is presented in Chapter 2.

At the activity level, Provincial and District DPMPD will assess the need for an activity-specific social assessment. Such decisions will be informed by risks levels on the basis of screening results.

The assessment is expected to provide a more informed understanding and analysis of risks as well as opportunities through which mitigation measures can be tailored to specific contexts and needs. Both qualitative and quantitative data will inform the assessment, including baseline information on the demographic, social, cultural, and political characteristics of the affected Indigenous peoples, the land and territories that they have traditionally owned or customarily used or occupied, and the natural resources on which they depend.

DPMPD will engage DDPI to carry out this assessment. Main areas to be covered include:

- a. Nature of vulnerability and attachments to land and natural resources;
- b. Specific risks and potential adverse impacts as a result of ERP implementation (both direct, indirect, and cumulative impacts as specified in the ESMF);
- c. Level of community acceptance to the activities and/or initiatives supported by the Program;

- d. Analysis of relevant stakeholders, either who will be impacted or who have interest to the activities in question and the elaboration of a culturally appropriate process for consulting with the Indigenous peoples at each stage of activity preparation and implementation;
- e. Opportunities to enhance participation of the communities concerned as well as benefits of the ERP; and
- f. Approach to participation, including specific measures to promote participation and inclusion of vulnerable groups into the Program;

The approach and engagement with affected communities for the social assessment purposes are guided by the principles of free, prior and informed consultations and FPIC (Section 5.1.2).

5.1.4 Indigenous Peoples Plan (IPP)

At the program-level, an IPP will be developed by MoEF and East Kalimantan Government, based on screening and consultations with the target communities once specific activities and locations are known. At the program level, the IPP, as guided by the IPPF, will serve as a strategic road-map for the inclusion of Indigenous peoples in the Program and development of measures that address potential risks and adverse impacts, as well as community concerns and aspirations.

This program-level IPP will also detail specific arrangements for:

- Benefit sharing arrangements for Indigenous peoples which will draw from the ERP's Benefit Sharing Plan (BSP); and
- Handling of customary tenure, which guides the support provided to promote tenure recognition for Indigenous peoples.

Further action plans which will address specific risks and impacts at an activity level will be developed by the respective implementing agencies, with supervision and technical support from SEKDA to safeguards specialists.

The IPP is prepared in a flexible and pragmatic manner and its level of detail varies depending on the specific activities and nature of risks. For activities where the social assessment indicates that Indigenous peoples are the sole or the overwhelming majority of direct beneficiaries, a separate IPP is not required and the elements of an IPP should be mainstreamed as part of the design of ERP activities. Key components of an IPP cover:

- a. Social assessment summary, including key findings and observations from the screening process;
- b. Summary of consultations, including documentation of consultation processes, evidence of broad community support and FPIC in circumstances where such consent is required (see Chapter 1 on the scope);
- c. Proposed mitigation measures and time-bound action plans, including measures to foster community participation and enhance the ERP benefits;
- d. Estimation of costs, resources and technical support required, including specific expertise to address risks; and

- e. Feedback and Grievance Redress Mechanism (FGRM). This will be further discussed in Appendix 7 of the ESMF.

Safeguards specialists at the Provincial SEKDA will provide technical oversight to the development of a Program-level IPP, which will be reviewed and cleared by MoEF and the World Bank during ERP implementation.

In the event that access restrictions to legally designated parks and/or protected areas are envisaged as a result of implementation of specific activities, relevant implementing agencies will be required to engage in a process of free, prior and informed consultations to address risks along with their mitigation measures. The management of such risks will be addressed as guided under the Process Framework.

5.2 BENEFIT SHARING ARRANGEMENT FOR INDIGENOUS PEOPLES

Benefit sharing arrangements for communities identified as Indigenous, who may include *indigenous peoples* and local communities, will need to be provided as part of the Program Benefit Sharing Plan (provided as a standalone document), reflecting the consultative processes that have been conducted to date with Program stakeholders, including community representatives. Implementation of the Benefit Sharing Plan for Indigenous Peoples will be strengthened through a process of community consultations as well as village-level participatory planning. *Masyarakat Adat*, whose existence is not yet legally recognized through formal processes will be facilitated to obtain village-level recognition and hence, allow them to receive the Program’s benefits through village-level planning and budgeting processes,

In any case, affected and participating communities will be eligible to the Program’s benefits and early engagement. Socialization and awareness raising will be carried out in all target villages to ensure sufficient understanding of roles and responsibilities as well as the benefits of the Program, and hence, communities can make informed decisions about their participation in the program. An initial draft of the BSP has been produced for consultations by the Gol and is presented separately from the IPPF.

5.3 INSTITUTIONAL ARRANGEMENT

Overall coordination and technical oversight of the IPPF will remain under the purview of the Provincial SEKDA, in coordination with MoEF. The environmental and social safeguards specialists, who will be assigned to the Provincial SEKDA, will provide technical, advisory, and oversight support for the implementation of the IPPF.

Specific measures at the activity level will fall under the responsibility of relevant implementing agencies, as further elaborated in Table 10.

Table 10 Roles and Responsibilities for IPPF

Agency	Activity	Reporting line
Provincial Community Empowerment and Village Government Agency (DPMPD)	Training and facilitation support for the implementation of the IPPF and IPP (i.e., screening, consultations and FPIC, social assessments, complaint handling) for relevant agencies at the district level.	SEKDA
District Community Empowerment and Village Government Agency (DPMP <i>Kabupaten</i>)	Training and facilitation support for the implementation of the IPPF and IPP (i.e., screening, consultations, social assessments, complaint	Provincial DPMPD

	handling) for implementing agencies and village communities; and Ensure budget availability and resources for the implementation of the IPP at an activity level.	
Provincial Forestry Agency	Coordinating and establishing the Agency Work Plans by directing and providing guidance for the accuracy of achieving related IPP program objectives; Facilitating Forestry activities to synchronize programs, including programs related to IPP; and Fostering functional office groups according to their main tasks and functions for task optimization.	SEKDA
District Land Agency	Determination of the location of customary villages and Customary Land.	

Implementing district agencies, under coordination and guidance from the SEKDA at the district level, will report on the implementation of the IPPF/IPP to the Provincial SEKDA who will be responsible to review, follow-up on specific action items, and submit final progress reports to MoEF and the World Bank.

Overall progress and implementation of the IPPF/IPP will also be documented in the annual progress report on the ERP implementation. This will include key recommendations and proposed measures to address specific risks that emerge as a result from implementation of ERP activities.

5.4 MONITORING AND EVALUATION

The East Kalimantan Provincial Government under coordination from the SEKDA will provide regular monitoring and evaluation (M&E) of the implementation of the IPPF/IPP and progress of the planned activities. Relevant safeguards specialists at the provincial level and safeguards PICs at the district level will provide technical and advisory support and oversight for the M&E of the IPPF/IPP, the basis of the nature and risk levels, advice on arrangements, frequency, and approach for the M&E.

Relevant indicators of monitoring will include:

- a. Accuracy and adequacy of screening and social assessments;
- b. Adequacy and coverage of community engagement;
- c. Implementation of consultations and other processes to obtain broad community support and FPIC;
- d. Emerging risks, as well as changes of perceptions and concerns about the program;
- e. Adequacy of benefit sharing, tenure facilitation support and dispute resolution;
- f. Adequacy and responsiveness of complaint handling, socialization and awareness raising;
- g. Implementation of specific measures developed under the program-level IPP, and action items at the activity level;
- h. Adequacy and quality of technical and facilitation support, oversight processes; and

- i. Level of satisfaction of target indigenous peoples with the program;

In addition to IPPF/IPP implementation, the M&E arrangements will also be required to monitor the implementation of the BSP and how benefits are distributed to affected communities. This will also track the quality and adequacy of tenure facilitation support and dispute resolution provided by respective implementing agencies.

The result of the M&E will be documented in the ERP progress report, which will outline key recommendations and specific time-bound action items to strengthen the implementation of the IPPF.

As part of the project technical support, the World Bank will also periodically supervise the implementation of the IPPF and program-level IPP. Necessary technical support and expertise will be mobilized at the request of the GoI.

5.5 CONSULTATIONS AND DISCLOSURE OF THE INDIGENOUS PEOPLES PLAN

To ensure accessibility, consultations and disclosure of the IPPF and IPP will be delivered at the locations of the Program activities where there are indigenous peoples. IPPs will also be publicly disclosed on the Program's website. An IPP will be prepared upon identification of sub-project activities where Indigenous Peoples are present.

This IPPF was developed through an inclusive process involving various stakeholders in East Kalimantan. The consultation process has been ongoing since 2016 with recent consultations in May 2019 (see Table 11). Further consultations are necessary to promote inclusive participation of a broad range of stakeholders and enable their views and concerns to be addressed under the Program will be required as the program is being prepared. A summary of the full consultations can be found in Appendix A1.

Table 11 Stakeholder Consultations in East Kalimantan

Date, place	Topic and Participants	Concerns and Issues	Relevance to REDD+	Recommendations
20 – 23 May 2019, Samarinda and Balikpapan	EK-JERP provincial and district consultations	FGRM institutionalization is still in progress. Resettlement is currently not envisaged under the Program. Capacity building needs need to be clearly defined and relevant plans to be developed	Operationalization of the FGRM, capacity building for the ERP implementation, including safeguards	Intensive coordination and collaboration with district stakeholders, disclosure of the SESA, operationalization of FGRM along with addressing capacity building needs.
October 29 – 31, 2018 Balikpapan	Identification of Issue for SESA, ESMF, FGRM	IPPF needs to be developed because we need to know the size of area that claimed by IP. Kaltim has former study about land owned by indigenous people.	Starting to identify opportunities for indigenous people, starting with enclave as the place to live for indigenous people, so, this ERP is one of the	Need the breakthrough to accelerate the process of document preparation and get to the detail stage, so that all direction/procedural and factual matters

Date, place	Topic and Participants	Concerns and Issues	Relevance to REDD+	Recommendations
		All of this material could be arranging as road map in recognition process. To socialize program with IP, its needs to simplify context in informal version.	opportunities to strengthen local communities.	could be resolved in this document.
13 October 2018 Selyca Mulia	Discussion of FGRM with Provincial Secretariat	Currently, FGRM mechanism is addressed separately by sector (e.g., plantation, forestry)	ER Program requires accessible FGRM	Propose a centralised / one-roof FGRM administration to support ER Program
11 October 2018 Amaris Hotel	Indigenous people and grievance mechanism discussion with BIOMA	Definition of indigenous people, and existing regulations to support indigenous people (Perda No. 1/2015)	All REDD+ safeguards addresses indigenous people	Refer to Perda no 1/205 to develop IPPF Develop a consensus on Benefit Sharing mechanism to Indigenous People
10 October 2018 DDPI office	Introduction of SESA to DDPI – East Kalimantan	Introducing team and planned SESA, ESMF, and FGRM process for East Kalimantan	Part of coordination for REDD+ readiness (SESA & ESMF)	Conduct public consultation to disseminate result of SESA & ESMF
29 September 2018 Aston Balikpapan	Public Consultation regarding SESA, ESMF, FGRM, and IPPF	Regulatory framework to designate SES REDD Kaltim as the safeguard in East Kalimantan	ER Program requires definitive safeguard mechanism	Establish / strengthen regulatory framework for Safeguard, as well as for Benefit Sharing Mechanism Establish plan for district consultation with DDPI
26 February – 2 March 2018 Royal Hotel Bogor	Technical Mission – ERPD FCPF CF Document ERPD team, WB,	Indonesia SIS RED is more focussed on environmental aspects, require inclusion of social aspects	Development of safeguards to support REDD+ readiness	SIS as umbrella system for safeguards information system
14-15 September 2017 Samarinda	Writing Workshop for SESA, ESMF and FGRM GGGI, GIZ Forclime, TFCA, Fahutan Unmul, DDPI KALTIM, TNC, P3SEKPI KLHK, B2P2EHD and East Kalimantan Safeguards Team	To complement ERPD, require development of SESA, ESMF and FGRM documents to ensure implementation of safeguards	Development of safeguards to support REDD+ readiness	ESMF in a matrix form for ERP components and sub-components

Date, place	Topic and Participants	Concerns and Issues	Relevance to REDD+	Recommendations
13-14 February 2017	World Bank Mission: FCPF Carbon Fund Program Preparation and ERPD Development progress DDPI Kaltim, P3SEKPI, World Bank, TNC, East Kalimantan Government Institutions, Mulawarman University, WWF, B2P2EHD, GGGI, Norwegian Embassy, Aman Kaltim, GIZ - GELAMAI, CEBERES Ditjen Mitigasi PPI – KLHK	ERPD ESMF to be applied at National Level – East Kalimantan was not defined as target area East Kalimantan Safeguard already developed To date, SIS REDD+, PRISAI and REDD+ SES – REDD+ SES have been prepared, require comprehensive documentation for safeguards	ERPD Development for FCPF – REDD+ readiness	Continue preparations and ERPD development Future meetings planned to discuss safeguards requirements between DGCC, FORDIA and WB Draft ERPD expected in May 2017
7 October 2016 Horison Hotel, Samarinda	REDD+ Readiness Package Workshop – Self Assessment for East Kalimantan and Indonesia DGCC and key stakeholders		Self-Assessment for REDD+ Readiness	Self-assessment should be made at the national level for REDD+ readiness Issues on how to combine assessment of all regions To openly and truthfully assess current conditions and to improve gaps
15 August 2016 Samarinda	Additional Fund Meeting DGCC, P3SEKPI and key stakeholders	Budget allocation for ER program development – for each component	ER program budgeting to support REDD+ readiness	Put forward a table showing budget allocations for each component and sub-component
22-23 December 2015 Samarinda	Workshop on Land Based Emissions Reduction Program and Institutional Development for East Kalimantan Province TESD UNMUL, MSPG, Palm Oil Plantation Companies, TNC, Pokje Redd+ Berau, Dit. IGRK MPV, Ditjen PPI, P3SEKPI, GIZ Forclime, B2p2EHD, East Kalimantan Government Institutions, Mulawarman University, Balikpapan University, DDPI Kaltim,	Important issues for East Kalimantan: Tenurial, Forest Management, Increasing Community Welfare, Community Participation, Benefit Sharing Safeguards developed through REDD SES, PERISAI and SIS, Sharing of Core Program for Emissions Reduction at Berau	REDD+ readiness, ER disclosure and consultations	Require mapping of institutional roles and responsibilities for ER programs Select authority to enforce safeguards Avoid creating specific function for safeguards personnel by establishing safeguards responsibilities at each organization levels

Date, place	Topic and Participants	Concerns and Issues	Relevance to REDD+	Recommendations
	GIZ Forclime, Kepala Adat Wehea, NGOs			
19 November 2015 Balikpapan	Public Communication on Development of Emissions Reduction Program Idea Note (ERPIN) - FCPF B2P2EHD, Kawal Borneo, Aman Kaltim, DDPI Kaltim, P3E Kalimantan, P3SOSEKJAK PI, P3SEKPI, PUSPIJAK (SOSEKJAK PI), Kepala Adat Wehea, BIOMA, KPSHK, East Kalimantan Government Institutions, World Bank, IGRK – MPV, GIZ Forclime, NGOs, Mulawarman University, Pokja Redd+ Kaltim, GIZ GELAMAI, WWF, TNC,	ERPIN Indonesia approved at CF11 Political Commitment of East Kalimantan Government Safeguards developed (PRISAI and SIS)	REDD+ readiness, ER disclosure and consultation	Proposed programs for ER to be integrated into REDD+ in Indonesia Allowance for ER budget to continue to 2030 Institutional development required as there is lack of planning at village level MRV verification required Biodiversity Conservation regarded as Non-Carbon Benefit

Further consultations and disclosure of information about the Program as well as relevant measures to enhance participation and benefits will continue during ERP implementation and will be carried out in locations accessible to potentially affected Indigenous peoples as well as the broader communities such as village/village halls, village/village offices, District DPMPD Offices and Provincial DPMPD Offices. Initial consultations for Free, Prior and Informed Consent (FPIC) at the district level were undertaken from 18 July – 30 August 2019. Discussions revolved around the following themes: balancing emission reduction and village-level development opportunities, including economic development, use of village funds and supporting legal framework, types, timeline and eligibility of benefits, and the need to ensure coordination and technical support to villages to achieve emission reduction objectives. Documentation of these consultations is appended in Appendix A.2 of this document.

In the event of adverse impacts are envisaged, relevant mitigation plans, such as IPP, RAP will be prepared in consultation with affected communities. Relevant information in these management plans will be provided in Bahasa Indonesia and in local languages as relevant. The method and approach for consultations will seek to ensure that the processes are simple, accessible, and user-friendly, including the use of various media. At the site level, separate consultations for women and/or youth will be facilitated by taking into account their availability, facilitator preferences, and modes of delivery.

The final and consulted IPPF will be disclosed on the World Bank and MoEF's websites prior to the program's appraisal. A program-level IPP will similarly be disclosed on the World Bank and MoEF's websites prior to public consultations, and a final version will be disclosed prior to commencement of any activities which may have impacts on Indigenous peoples.

5.6 MONITORING, DOCUMENTING, AND REPORTING

This section describes the mechanisms and benchmarks appropriate to the project for monitoring and evaluating the implementation of the IPP. It also specifies arrangements for participation of affected Indigenous peoples in the preparation and validation of monitoring, and evaluation reports.

The East Kalimantan government will monitor the IPP implementation and report it in the annual report. World Bank Monitoring will periodically conduct reviews to ensuring that program that affected IPs provide benefits to them and IPPs are implemented.

Relevant indicators of monitoring will include:

- Overall process and consultations for Indigenous Peoples screening;
- Adequacy of complaints and monitoring processes;
- Acceptance of complaints and handling;
- Overall implementation of the IPP in addressing impacts; and
- The level of satisfaction of affected Indigenous Peoples in the overall program as well as in the implementation of impact management measures.

5.7 FEEDBACK AND GRIEVANCE REDRESS MECHANISM

A program-level Feedback and Grievance Redress Mechanism (FGRM) has been established under the ERP in two level, at national and sub national level. At the national level held by KLHK and sub national held by Vice Governor under ASPIRASI ETAM. The detailed description of the FGRM is provided in Annex 7 of the ESMF as a standalone document but is treated as part of the overall IPPF.

In the context of the IPPF, relevant measures will be incorporated under the FGRM to ensure that affected Indigenous Peoples and local communities are aware of their rights, as well as ensure that the system established under the Program is accessible and free of charge.

At the beginning of the ERP implementation, grievance redress committees will be established at community, districts, and provincial levels, by capitalizing on the existing structures and systems. A focal point for the FGRM will be appointed at each of the implementing agency. These focal points will communicate and coordinate with relevant safeguards specialist at SEKDA and safeguards PICs at the district government on a regular basis. A procedure and system to enable such communication, coordination, and troubleshooting in the event of emerging risks will be established as part of the technical support for the ERP implementation.

Such arrangements are expected to ensure that a robust system is in place to help resolve any grievances to or complaints that may occur during the ERP implementation. The ERP will provide training and technical support to strengthen these existing structures and assigned representatives to enable them effectively to deal with possible grievances, and inquiries that may arise during the ERP implementation. Table 12 outlines the key roles and responsibilities at each level of the IPP system.

Table 12 The Sub-National Agencies and Organizations involved in the Implementation of the East Kalimantan ERP.

Agency	Status	Role
Vice Governor	Executing Agency at Province Level	<ul style="list-style-type: none"> Responsible for Implementation and achievement of ERP in the Province A member of Steering Committee
Provincial Community Empowerment and Village Government Agency (DPMPD)	Implementing Agency at Province level	<ul style="list-style-type: none"> ERP implementation Leading consultation processes within their respective jurisdictions
The Regional Council on Climate Change (DDPI)	Advisory	<ul style="list-style-type: none"> Providing advice and inputs to local government in relation to ERP A Member of Steering Committee
East Kalimantan Environment Service (<i>Dinas Lingkungan Hidup</i>)	Implementing agency	<ul style="list-style-type: none"> Local responsibility for FREL and MMR ERP implementation
Provincial Planning Board (BAPPEDA) East Kalimantan Province	Coordinative implementation at provincial level	<ul style="list-style-type: none"> Coordinate all activities done by OPD in relation to ERP
Development Partners (Province, and District/City)	Partner	<ul style="list-style-type: none"> Provide supporting funds and technical advice to DDPI or District/City Government
University/NGOs (Province, and District/City)	Partner	<ul style="list-style-type: none"> Provide scientific supports and facilitation to DDPI and District/City Government A Member of Steering Committee (observer)
District/City Secretary	Executing Agency at District/City Level and Field Site	<ul style="list-style-type: none"> Responsible for Implementation and achievement of ERP in the District and Field Site
BAPPEDA District/City	Coordinative implementation at district/city level and field site	<ul style="list-style-type: none"> Coordinate all activities done by OPD in relation to ERP at District/City level
OPD District/City	Implementing Agencies	<ul style="list-style-type: none"> Implementing ERP at District/City and Field Site
Village Government	Implementing Agencies	<ul style="list-style-type: none"> Implementing ERP at District/City and Field Site

5.8 BUDGET AND RESOURCES

All relevant costs and resources will be the responsibility of the implementing agencies. The SEKDA will ensure that such costs and resources are available and mobilized proportionate to the nature and risk levels.

Overall costs of the IPP implementation including management of access restriction and support to alternative livelihoods cannot be determined at this stage, since the number of people who might be affected, as well as the when or where, remains unknown, as does the nature, extent and scale of the risks and impacts. However, it is anticipated that the budget requirements will include budget for training and technical support for capacity development. Training and capacity building programs for provincial government in East Kalimantan may consist of three batches of training in the Province with an

estimated cost of USD 15,000 x 3 trainings = USD 45,000¹⁶. Training programs will cover the overall ESMF roll out, and also the Resettlement Planning Framework (RPF)/Process Framework (PF) for access restrictions, FGRM, and IPPF.

¹⁶ to be further detailed, this should also reflect the costs for relevant specialists in the PMU/SEKDA, and other travels for technical support, mentoring, supervision

6.0 IPPF ACTION PLANS

This chapter outlines necessary action items that the MoEF and East Kalimantan Government have committed to deliver to ensure that a robust system is in place to address risks and impacts on Indigenous peoples. Discussions are ongoing, so most of the responsibilities and timeline will be further discussed in program design. Summary of the actions related to the IPPF are provided in Table 13.

Table 13 Actions, responsibility, and timeline for the IPPF.

Action	Responsibility	Timeline
District and village consultations on the ERP and relevant mitigation measures	DGCC and DDPI	On-going and will be maintained during ERP implementation
Assignment of focal points at provincial and district levels	To be discussed, but possibly organized by Bappeda	During readiness phase and will be maintained following ERPA signing
Training and awareness raising on key requirements and processes under the IPPF	To be discussed, but possibly organized by Provincial Environment and/or Forestry Agency	On-going
Establishment of FGRM committees	Ongoing process under Governor Regulation making process	Following ERPA signing
Training of local dispute mediators	DGCC and DGLE (tbc), with support from the safeguards team	Following ERPA signing

APPENDICES



Appendix A1

**Outline of Indigenous Peoples
Plan**



OUTLINE OF AN INDIGENOUS PEOPLES PLAN

This outline is part of the World Bank Safeguard requirements. An indigenous peoples (IPs) plan is required for all projects with impacts on IPs. Its level of detail and comprehensiveness is commensurate with the significance of potential impacts on IPs. The substantive aspects of this outline guide the preparation of an Indigenous Peoples Plan (IPP), although not necessarily in the order shown.

- A. Executive Summary of the Indigenous Peoples Plan This section concisely describes the critical facts, significant findings, and recommended actions.
- B. Description of the Project This section provides a general description of the project; discusses project components and activities that may bring impacts on IPs; and identify project area.
- C. Social Impact Assessment

This section:

- i. Reviews the legal and institutional framework applicable to IPs in project context.
- ii. Provides baseline information on the demographic, social, cultural, and political characteristics of the affected IP communities; the land and territories that they have traditionally owned or customarily used or occupied; and the natural resources on which they depend.
- iii. Identifies key project stakeholders and elaborate a culturally appropriate and gender-sensitive process for meaningful consultation with IPs at each stage of project preparation and implementation, taking the review and baseline information into account.
- iv. Assesses, based on meaningful consultation with the affected IPs communities, and the potential adverse and positive effects of the project. Critical to the determination of potential adverse impacts is a gender-sensitive analysis of the relative vulnerability of, and risks to, the affected IPs communities given their particular circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to those available to other social groups in the communities, regions, or national societies in which they live.
- v. Includes a gender-sensitive assessment of the affected IPs perceptions about the project and its impact on their social, economic, and cultural status.
- vi. Identifies and recommends, based on meaningful consultation with the affected IPs communities, the measures necessary to avoid adverse effects or, if such measures are not possible, identifies measures to minimize, mitigate, and/or compensate for such effects and to ensure that IPs receive culturally appropriate benefits under the project.

D. Information Disclosure, Consultation and Participation

This section

- (i) Describes the information disclosure, consultation and participation process with the affected IPs communities that can be carried out during project preparation;

- (ii) Summarizes their comments on the results of the social impact assessment and identifies concerns raised during consultation and how these have been addressed in project design;
- (iii) In the case of project activities requiring broad community support, documents the process and outcome of consultations with affected IPs communities and any agreement resulting from such consultations for the project activities and safeguard measures addressing the impacts of such activities;
- (iv) Describes consultation and participation mechanisms to be used during implementation to ensure IPs participation during implementation; and
- (v) Confirms disclosure of the draft and final to the affected IPs communities.

E. Beneficial Measures

This section specifies the measures to ensure that I P s receive social and economic benefits that are culturally appropriate, and gender responsive.

F. Mitigative Measures

This section specifies the measures to avoid adverse impacts on IPs; and where the avoidance is impossible, specifies the measures to minimize, mitigate and compensate for identified unavoidable adverse impacts for each affected IPs group.

G. Capacity Building

This section provides measures to strengthen the social, legal, and technical capabilities of (a) government institutions to address IPs issues in the project area; and (b) IPs organizations in the project area to enable them to represent the affected IPs more effectively.

H. Grievance Redress Mechanism

This section describes the procedures to redress grievances by affected IPs communities. It also explains how the procedures are accessible to IPs and culturally appropriate and gender sensitive.

I. Monitoring, Reporting and Evaluation

This section describes the mechanisms and benchmarks appropriate to the project for monitoring and evaluating the implementation of the IPP. It also specifies arrangements for participation of affected IPs in the preparation and validation of monitoring, and evaluation reports.

J. Institutional Arrangement

This section describes institutional arrangement responsibilities and mechanisms for carrying out the various measures of the IPP. It also describes the process of including relevant local organizations and/or NGOs in carrying out the measures of the IPP.

K. Budget and Financing

This section provides an itemized budget for all activities described in the IPP.

Appendix A2

Minutes of Public Consultations for Free, Prior and Informed Consent (FPIC)

Public Consultation for Free Prior Informed Consent (FPIC) of the East Kalimantan FCPF-CF Program

Information delivered to participants is:

a) Presentation on the implementation of FPIC

An explanation of what FPIC is, why it is important to be carried out, how the process will be carried out, and how the mechanism for expressing consent.

b) Emission Reduction Program

A description of what is the driver of deforestation and degradation, what are the actions to address them, how the program will be implemented, where the program will be carried out, and who will implement it.

c) Social and Environmental Safeguards

Explain the social and environmental safeguards, standards from the UNFCCC and the World Bank, important issues related to social and environment, impacts that may be caused, how to mitigate impacts, and monitoring frameworks.

d) Benefit Sharing Mechanism

Explain what benefits will be received, who are the beneficiaries, how financial benefits will be distributed, how to obtain financial benefits, as well as the proportion of benefits and how to calculate in general.

e) Measurement, Monitoring and Reporting

Explain how to measure emissions, how monitoring will be carried out, what needs to be reported, and reporting mechanisms and report validation.

f) Feedback Grievance Redress Mechanism (FGRM)

Explain the mechanism for feedback and complaint handling, the FGRM channel, the grievance channel at the village level, and the institution that receives complaints.

Summary of Public Consultation at District Level

Location / Date	Participants	Responses
Kutai Kartanegara and Kutai Timur <i>Tenggarong</i> , 18 July 2019	105 participants (90 men, 19 women) <ul style="list-style-type: none"> • Provincial Government: 16 persons • District Government: 8 persons • Village Government: 61 persons • Adat Institutions: 1 person • Development Partners: 11 persons 	<ul style="list-style-type: none"> • To achieve the target, what steps to be taken by the government in East Kalimantan, including engaging with district heads who still have the authority to issue permits? • What activities in the emission reduction program which can be implemented at the village level directly? • Participants from villages with mangrove forests mentioned that there are fish ponds that are no longer productive and yet have not been involved in mangrove planting activities. Discussions were around how these ponds can be restored to reduce emissions and create economic benefits for the village

Location / Date	Participants	Responses
	<ul style="list-style-type: none"> • University: 3 persons • Village Technical Assistance: 4 persons 	<ul style="list-style-type: none"> • What activities should be budgeted or carried out at the village level using village funds? • What types of collaboration will be supported at both the district and village/site levels to support ERP implementation? • This program is expected to be implemented at the site level and provide benefits to the community in a tangible manner • Clear legal framework is required to enable villages to use village funds
<p>Kutai Barat and Mahakam Ulu</p> <p><i>Sendawar, 21 August 2019</i></p>	<p>100 participants (86 men, 14 women)</p> <ul style="list-style-type: none"> • Provincial Government: 15 persons • District Government: 16 persons • Village Government: 57 people • Adat Institutions: 2 persons • Development Partners: 6 persons • Village Technical Assistance: 4 persons 	<ul style="list-style-type: none"> • The village is located within forest areas and hence, this ERP is well received. The village has also taken an initiative to issue village regulations related to land clearing procedures, noting the prolonged dry seasons in the area. • There are clear expectations from villages to benefit from this program. • In the distribution of incentives, clarifications on eligibility criteria were requested (i.e. whether only registered villages are eligible, or would the program be more open to also cover non-registered villages?) • Discussions on how to engage communities to reduce illegal logging • Rewards and punishment for forest conservation and whether program benefits can be guaranteed under the ERP • Monitoring and reporting of environmental conservation: clear procedures and roles and responsibilities will be required.
<p>Berau</p> <p><i>Tanjung Redeb, 27 August 2019</i></p>	<p>95 participants (85 men, 10 women)</p> <ul style="list-style-type: none"> • Provincial Government: 13 persons • District Government: 19 persons • Village Government: 54 people • Adat Institutions: 2 persons • Development Partners: 5 persons 	<ul style="list-style-type: none"> • Criteria and assessments on the selection of 150 Climate Villages and whether conflicts were factored in during the determination process? • What are the criteria for participation in the ERP? • Proportional allocation of ERP benefits and whether this has been consulted with respective districts • The proportion of ERP benefits that are earmarked for communities. The larger allocation will influence communities' interest to participate. • While activities under the ERP are part of the on-going programs, issues arise when forestry permits are issued since this will limit district government interventions in the concession areas.

Location / Date	Participants	Responses
	<ul style="list-style-type: none"> • Village Technical Assistance: 2 persons 	<ul style="list-style-type: none"> • The program is supported as this will involve the communities. • Incentive mechanisms for villages and how these will be distributed? • Village communities involvement in emission reduction activities and how to promote their participation? • How to engage and encourage partnership with private companies/investors (i.e. there are currently 3 investors in one of the villages consulted) • How can the ERP be in sync with commercial investments to address emission reduction? • Which incentives will be received and when will these be received?
<p>Balikpapan, Penajam Paser Utara, Paser</p> <p><i>Tanah Grogot, 30 August 2019</i></p>	<p>95 participants (86 men, 14 women)</p> <ul style="list-style-type: none"> • Provincial Government: 13 persons • District Government: 28 persons • Village Government: 37 people • Adat Institutions: 2 persons • Development Partners: 7 persons • Village Technical Assistance: 3 persons 	<ul style="list-style-type: none"> • The ERP is well received however the program is being prepared only when the forests have been degraded. • There are expectations that the ERP will halt illegal logging activities • Partnership and engagement with Adat communities will be critical to ensure broad participation and buy-in. • Implications on the capital move • The timeline for the incentives since ER activities have been carried out to date. DDPI is expected to assist with data collection. • Whether derivative regulations by district governments be needed to support the ERP? • Incentives for ERP and how these will be consulted. • How will the spatial planning process be undertaken? This requires coordination with the district, provincial and national level governments, acknowledging some of the target areas are in the IUP and APL areas. • What indicators have been agreed for the incentives? • Further meetings and consultations will need to be held at the village level to provide understanding to the village communities as a whole

FPIC at the village level will be undertaken in all 150 priority villages in seven districts and one city. The FPIC consists of three stages, including:

- Stage 1: Socialization to the village community related to the FCPF Program, Social and Environmental Safeguards, Benefit Sharing Mechanism, FGRM, as well as Measurement, Monitoring and Reporting
- Stage 2: Confirming village participation and their consent to participate in the FCPF-Carbon Fund program
- Compilation and reporting of FCPF-Carbon Fund FPIC activities

Community engagement, including consultations to revisit FPIC will be continued during the ERP implementation.