



GREEN
CLIMATE
FUND

Annex XIII (i) – Environmental and Social Assessment

GREEN CLIMATE FUND FUNDING PROPOSAL

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Environmental and Social Assessment

1 Introduction

1.1 Context and Purpose

The Green Climate Fund (**GCF**) has issued a request for proposals for the Pilot Programme for REDD-plus results-based payments (Decision B.18/07). In this context, the Indonesian government and United Nations Development Fund (**UNDP**), as GCF accredited entity, are submitting a funding proposal for REDD+ actions undertaken as part of Indonesia's REDD+ National Strategy (2012). A required element of the funding proposal is an Environmental and Social Assessment Report (**ESA**) that retroactively reviews one or more actions for which results-based payments are sought, in order to confirm that they were undertaken in a manner consistent with applicable GCF ESS standards. To be accredited to the GCF, accredited entities must demonstrate that their entity-level environmental and social safeguards are consistent with the GCF's safeguard framework.¹ Accredited Entities apply their own environmental and social safeguards to GCF-supported activities. Therefore, this ESA reviews retroactive compliance, with a focus on policy alignment, with the UNDP Social and Environmental Standards (**SES**).² The methodology for the assessment is further discussed below.

2 Methodology and Scope of Assessment

The ESA review of REDD+ actions focuses on whether the applicable project initiative to be reviewed contains adequate measures undertaken to identify, assess, and manage environmental and social risks and impacts. These environmental and social risks are those encompassed by the UNDP SES (which is fully coherent with GCF's Environmental and Social Standards). The analysis addresses project initiative alignment with the Cancun Safeguards and the application of the safeguards through policies, laws and regulations (**PLRs**) as established, which is the lens through which Indonesia defined its REDD+ safeguards approach, its first Summary of Information (**SOI**), and the design, implementation and further strengthening of its Safeguards Information System (**SIS**) for tracking and reporting of safeguards requirements.

The assessment includes an identification and assessment of the social and environmental impacts of two REDD+ initiatives/programs of Indonesia: the **Social Forestry initiative** (see Ministry of Environment and Forestry (**MoEF**) Decree 83 (2016))³ and the **Moratorium** (Instruction of the President (**Inpres**) of the Republic of Indonesia on the Termination of the Granting of New Permits and Perfecting Natural Primary Forest and Peatland Management No. 10 (2011); 10/2011, 6/2013, and 8/2015; and made permanent by the recent Inpres No. 5 (August 2019)).⁴ The assessment further looked at the processes for stakeholder identification, consultation and participation in these two initiatives and connected REDD-plus actions, and examined the existence and use of grievance redress mechanisms (**GRMs**) or analogous systems during the period of the actions leading to the emissions reductions justifying the Results Based Payments (**RBPs**) (being the period of 2014-2016), as well as any relevant actions designed and implemented in a gender responsive and inclusive manner.

In more detail, the GCF decision regarding the completion of the ESA covers the following:

¹ GCF's Environmental and Social Policy is available at <https://www.greenclimate.fund/safeguards/environment-social> and the GCF's interim environmental and social safeguards are available at https://www.greenclimate.fund/documents/20182/818273/1.7_-_Environmental_and_Social_Safeguards.pdf/e4419923-4c2d-450c-a714-0d4ad3cc77e6. GCF's Indigenous Peoples Policy is available at <https://www.greenclimate.fund/safeguards/indigenous-peoples>.

² UNDP's SES is available at: <http://www.undp.org/content/undp/en/home/accountability/social-and-environmental-responsibility/social-and-environmental-standards.html>.

³ As explained in Annex A, it its first mention of the Social Forestry Decree No. 83, this decree did not establish the Social Forestry initiative, prior to being codified in this single legislation, the foundations of community and village forest management was codified throughout various PLRs as far back as 1995. These were the foundation of the Social Forestry initiative in practice.

⁴ Prior Presidential Instructions (**Inpres**) were for an expressly limited time period, this final Inpres had no end date.

- i. *Due Diligence*: the AE, in collaboration with the Host Country (ies), will prepare an environmental and social assessment (ESA) report describing the extent to which the measures undertaken to identify, assess, and manage environmental and social risks and impacts, in the context of the REDD-plus proposal, were consistent with the requirements of the applicable GCF ESS standards. The Secretariat, in its second-level due diligence, will take such assessment into account as part of its overall consideration of the funding proposal against the scorecard. This, along with the country's own assessment of how the Cancun safeguards were addressed and respected during the REDD-plus activities, will provide the basis for recommending the proposal to the Board for approval.
- ii. *Stakeholder Engagement*: Description of stakeholder engagement will form part of the information provided by the countries through the UNFCCC summary of information as well as the ESA prepared by the AEs. The assessment by the AE described in section (i) shall include a description of how the stakeholders were identified, informed, and consulted and how they have participated in the activities. The description by the AE shall also include summaries of consultations highlighting the concerns and issues that were put forward by the stakeholders and how these were responded to.
- iii. *Grievance Redress*: The ESA will include a description of the grievance redress mechanisms, or analogous system whether established as part of the REDD-plus activities or as integral to the system of the country. The ESA will also specify how the mechanisms were accessed, the complaints that were received, and how these were resolved.

As noted above, this assessment is focused on the Moratorium and Social Forestry initiatives which together, contributed to the emission reduction (**ER**) results for which Indonesia is seeking payments. The assessment covers the policies, laws and regulations (**PLRs**) during a specific period of the initiatives' implementation (2014-2016), and highlights several key institutions and platforms facilitating implementation. Both initiatives continue to this day as important and recognized efforts for the protection of forest areas, conservation of prioritized ecosystems (i.e. peatlands), local population participation in forest management, and the equitable access to forest resources to respect rights, reduce poverty and conflict, and improve livelihoods. These initiatives have been implemented in the context of a broader applicable national policy on governance, sustainable rights-based development, conservation and restoration of forests and other ecosystems, and national strategies on biodiversity, climate change, gender, and more. This analysis has been carried out using a legal analysis matrix, which examines policy alignment, through the lens of the Cancun Safeguards, while ensuring the principles and standards of the UNDP SES. The applicable safeguards policies, as well as the way that the legal matrix includes the applicable polices of the UNDP SES, is provided below.

In addition to policy alignment, the ESA strives to give a snapshot of how these policies are applied at the project level, and how the alignment of these initiatives translates to the application of those policies. For this "project-level assessment", the representative projects –really initiatives-- of the Social Forestry and Moratorium have been chosen to assess alignment of the initiative's measures and supporting and surrounding REDD+ environment, particular in the context of the existing PLRs as assessed.

3 Assessment of Policy-Level Alignment for Period of Achievement of Results

Indonesia has a total land area of 187.75 million hectares (ha), with 93.95 million ha being forested and 93.80 million ha non-forested land. Forest cover in Indonesia is 120.7 million ha with .45 million ha (1%) managed by local communities while 42.2 million ha are allocated to timber concessions, industrial plantations and environmental services, and 40.5 million managed by the private sector.⁵ Within the forest areas 85.85 million ha (45.7%) are still forested and 34.54 million ha (18.4%) are non-forested land. Indonesia has the third largest area of rainforest in the

⁵ Social Forestry in Implementation in Indonesia, presentation by Director General of Social Forestry and Environmental Partnership, MoEF (2018).

world. It is estimated that forests contain 10% of the globe's plant and animal species and it is recognized internationally as one of the most important carbon sinks. The total human population under poverty in or around the forest areas is 10.2 million (36.73% of Indonesia's population under poverty).⁶ It is in this context that Indonesia's forest management policies have attracted not just national, but international attention. The two initiatives addressed by this ESA are core activities to address climate mitigation through reduced deforestation, while also seeking opportunities (as discussed below) to do more than no harm.

Before and after its independence up to the 1980s, Indonesia's forests were primarily controlled from the center. Use and access for local people to forest resources were limited and recognized local community management was largely unheard of with a rights-based system out of reach. Talk of community forest management rights was not commonplace or well-received. New reforms in a short span of time have allowed for greater democratization and decentralization of forest management, with devolution of powers down to the district and local community/Village head level, and increased participatory approaches to address land tenure conflicts and to reshape how conservation and sustainable development can be better achieved through the participation of local communities, Villages and indigenous peoples (Indonesia refers instead to "**Adat communities**"). This change in forest management approach resulting in sweeping reforms, is still a work in progress. While admittedly not yet perfected, new innovations in forest management thinking in the nation have permitted Indonesia to make great strides in achieving its REDD+ objectives, especially through decreasing deforestation and forest degradation and creating enabling environments and alternative livelihood opportunities to reduce poverty.

The Moratorium and Social Forestry initiatives studied for the period of 2014-2016 and contributing notably to Indonesia's reduced emissions have been made possible by these nascent reforms and measures. In their design and implementation, Indonesia has taken noteworthy steps not only to respect and address the social and environmental safeguards that apply to these REDD+ activities. Wherever possible, it has tried to move past a mere strategy of doing no harm, and strived to do good by looking for opportunities to improve the lives of those that depend upon forest resources, reducing poverty, and addressing conflict.

A. The Moratorium

Indonesia made a commitment in 2009 to reduce greenhouse gas emissions by 26% by 2020 or 41 percent if international assistance was forthcoming.⁷ It was determined that this could be largely achieved through reducing emissions from deforestation and peat land conversion. In order to improve governance over natural primary forests and peatlands to reduce emissions from deforestation and forest degradation, with the support of civil society, in 2011 a Presidential Instruction (Inpres) was issued ushering in the executive policy of postponing the issuance of new permits over natural primary forest and peatlands (the "**Moratorium**"). This Moratorium was extended on five occasions in 2011, 2013, 2015, 2017 and most recently made permanent in August of this year (also by popular demand). Areas exempt from the Moratorium included: "1. Principle permits from the Minister of Forestry issued before Inpres No. 10/2011; 2. Vital national development: Geothermal, oil and gas, electricity, Land for food sovereignty programs including rice, sugar cane, corn, sago and soybeans; 3. Extension of existing valid forest utilization and/or forest area use permits; and 4. Ecosystem restoration."⁸ The law does not yet extend to secondary natural forest areas.⁹ To facilitate governance around the Moratorium, there was established an "Indicative Map of the Termination of the Granting of New Permits" ("**Moratorium map**" or PIPPIB) (<http://webgis.dephut.go.id:8080/kemenhut/index.php?id/peta/pippib/61-pippib/330-indicative-moratorium-map-15th-rev>). PIPPIB data and information can be publicly accessed and downloaded from the website of the Ministry of Environment and Forestry: webgis.menlhk.go.id.

⁶ Ibid.

⁷ Safeguards Information System for REDD+ in Indonesia: Moving towards an Operational SIS-REDD+ DJPII, MOEF. p. 10 (2016).

⁸ Data and Information, Indonesian Forestry Thematic Mapping, MoEF, p. 13 (2018)

⁹ Ibid.

The original Moratorium Inpres expressly called on relevant government agencies to take specific measures to be coordinated by the Indonesian REDD+ Task Force under the Presidential Delivery Unit for Development Monitoring and Oversight (UKP4). These measures were aimed at improving in the issuance of permits when conversion of forests was at stake, accelerating the processes for revising spatial planning, and to encourage coordination and harmonization among ministerial and non-ministerial government offices on the matter of spatial data. The Moratorium has helped to promote increased cooperation among ministries, information sharing from the central to local levels (as elements of monitoring, forest management, and permit issuance needed improvement, along with greater transparency and coordination and measures to avoid fires). Over time, as improvements were seen as necessary, the August 2019 Presidential Instruction provided even greater details around the responsibilities of the various government ministries and units, and affirmed the need for periodic revision of the Moratorium map every six months, only after coordination with other ministerial and non-ministerial government institutions.

The demand for more information sharing across the ministries to ensure compliance with the Moratorium and other forest law enforcement and to increase transparency (across ministries and with the public), helped to feed demands to accelerate spatial planning and centralize the database for geospatial information. This contributed to the promotion of Indonesia's *One Map Policy* (see below).

The Moratorium's objectives of reducing emissions through no conversion of peatland and primary forests was dealt a setback in 2015 when massive fires burned large swaths of peatland. Nevertheless, the Moratorium, together with other national efforts (i.e. in some places the Moratorium increased prohibitions over areas already legally protected as conservation areas), Indonesia reported the initiative achieved a reduction of emissions during the period of 2013–2017 emission reductions of 48,978,427 t CO₂ eq annually (average of annual emissions) and 244,892,137 t CO₂ eq as the total for 2013–2017.¹⁰ The 2015 fires, often highlighted during the examination of the Moratorium achievements and failures, also led to Indonesia taking various steps to detect and prevent forest fires in the future (see Annex A, criteria F&G, for example, the systematic identification of "hot spots", the new Fire Risk System (FRS) (see: <http://kebakaranhutan.or.id>), and adoption of MoEF Regulation 32/2016 on Control of Forest and Land Fires).

B. Social Forestry Initiative

About 10% of Indonesia's forest are covered by the Social Forestry initiative (also referred to as the SF program). Social forestry emerged in the late 1970s during the International Forestry Congress held in Jakarta with the theme "Forest for People." In the beginning, with stakeholder support, the political commitment resulted in the dedication of approximately 2.5 million hectares for social forestry (community-based forestry). The intended granting of use and access rights to communities and greater partnerships in forest management initially had a slow uptake. However, since President Joko Widodo's administration took over in 2014, national development plans have advocated for mechanisms to increase forests under community-based management to 12.7 million hectares between 2015 and 2019. There is now an entire government machinery and set of supporting PLRs behind the initiative solidifying it as a fundamental and driving force behind Indonesia's forest management strategy.

Since its inception and continuing to this day, the Social Forestry initiative enjoyed wide support from both the Government and civil society as it has been seen as a way to question a prior status quo of State dominance over forest resources by prioritizing a discourse about rights of communities over those same resources. At its core, the initiative focuses on providing varying forms of land tenure security through granting forest resource use and/or

¹⁰ See UNFCCC technical team technical assessment report confirming Indonesia's emission reduction calculations, available at: https://unfccc.int/sites/default/files/resource/tatr1_2019_IDN.pdf.

access right to communities and Villages, rights to local community¹¹ participation in forest management; promoting community livelihoods; recognizing Adat (customary) forests and seeking to reduce poverty and land conflicts.

At present, the initiative is expressly a system of sustainable forest management. It is a system implemented in either State Forest Areas, Titled Forests (sometimes referred to as “private forests” and Adat Forests) in which license/permits are given to local communities as Village Forest, Community Forests, and Community Forest Plantations. In 2013 local communities under the initiative could also become parties to “Partnership Agreements” with other holders of interests in lands (i.e. those with business licenses to operate) (see Ministerial Regulation No. P.39/2013). Also, customary “Adat” communities could secure recognition for their lands (titles). These lands, in fulfillment of a 2013 Constitutional Court case in Indonesia, are then excised from what was previously included within the State Forest Area subject to Social Forestry licensing and agreements. The Adat community then manages the lands and resources as an “Adat Forest” (sometimes referred to as “Customary Forest”) according to the forest categorization assigned previously by the State.

Best described in Presidential Decree 88 (2017) regarding the Resolution of Control over Land in Forest Area:

“Social forestry is a system of sustainable forest management carried out within the area of state forest/titled forest/adat forest by local communities or adat communities as the main actor to increase their welfare and achieve balance between the environment and socio-cultural dynamics in the form of Village Forests (Hutan Desa), Community Forests (Hutan Kemasyarakatan), Community Plantation Forest (Hutan Tanaman Rakyat), Adat Forest (Hutan Adat) and Forestry Partnership (Kemitraan Kehutanan).”

As noted above, while the granting of Adat forest recognition (Hutan Adat) (Adat titles) under the Social Forestry initiative were underwhelming in the early years of the initiative reviewed (latest statistics show Hutan Adat is still small – currently in only 51 locations, covering 23,867ha. of the whole 12.7 million ha pledge of lands to Social Forestry),¹² as noted above, since 2014 there was an acceleration in the conclusion of recognitions, licenses and permits, and Partnership Agreements overall. As of November 2017, the Directorate General (DG) on Social Forestry and Environmental Partnerships at MoEF reported that 1.1. million hectares (just about 1% of the total Forest Estate (aka “State Forest Area”) was under some form of social forestry arrangement. Now that the initiative has been accelerated and lessons learned have begun to provoke reforms, this leaves some 11.5 million hectares to still place under some level of local community, Village and Adat community participation and where applicable, lead, in forest management.

To better achieve the acceleration of the Social Forestry initiative over the few years, in a multi-stakeholder process involving government and NGOs, the MoEF created the “Indicative Map of the Social Forestry Area (**PIAPs**)” (<http://geoportal.menlhk.go.id/arcgis/apps/webappviewer/index.html?id=004299e9f8f24d2d9aca1365904d18ed>), which shows those areas open to the initiative and therefore, applications for licenses, permits, Partnership Agreements, and Adat community land titles (the latter to then be excised from the State Forest Area. NGOs submitted their comments to the map through the Working Group for Social Forestry. The PIAPs is revised every six months and overall, it is meant to be a harmonization of maps generated by the MoEF as well as inputs from national, provincial and district / city governments, and other interested parties. It does not directly represent existing Adat (customary) forest as recognized or under claim (something that requires increased coordination with communities, civil society, and local/provincial governments that play a key role in such identifications). This has been a source of criticism and a challenge that the State has been addressing more directly through, among other, a nascent but promising commencement in the development of an Adat Forest Indicative Area Map of Adat forests

¹¹ “Local community” as defined in Indonesia’s legal and policy framework may include communities not yet recognized as Adat communities as well as local collectives of migrants and other marginalized minorities and groups. (See PLR, Annex A, Criteria C.1. Defining Indigenous Peoples and Members of Local Communities).

¹² National NGO Aliansi Masyarakat Adat Nusantara/ Alliance of Indigenous Peoples of the Archipelago (**AMAN**) representing Adat communities, claims 40 million hectares of forest area in Indonesia are Adat forests. See “Adat in Indonesian Land Law: A Promise for the Future or a Dead End?”, Adriaan Bedner & Yance Arizona, The Asian Pacific Journal of Anthropology (2019).

and prospective Adat Forests that can be read with the PIAPs and used by the Social Forestry teams to perform its due diligence and avoid tenure conflicts and the prejudice of rights around the processing of applications submitted for permits, leases, forest partnership agreements, and Adat titling (see below, see also Annex B “Indigenous Peoples”).

While addressing a recognized need to bring communities dependent on forest resources into the forest management schemes, the initiative is inherently based on the belief that communities, with increased support and the right incentives, could be even more effective forest managers and increase the conservation potential of these areas. A clear goal of the initiative is to have communities pursue alternative livelihood pursuits, and sustainable economic development and resource management as a form of improving their own wellbeing. It consists of six complementary social forestry schemes, aiming different types of forests, different types or organization of forest users and for different uses.

In State Forest areas, the Social Forestry initiative provides for four (4) schemes: (*i*) *Hutan kemasyarakatan* (HKM) (community-based forest) which engage local communities in the management of state forests; *Hutan desa* (HD) (village forest) involving the management of production or protection forests by village institutions; *Hutan tanaman rakyat* (HTR) (community plantation/timber forest or people’s plantation) which are community based plantations to supply raw materials to the pulp and paper industry; and lastly, *Kehutanan Kemitraan* (partnerships) in which, by agreement, these are collaboration on forest management between local communities and state-owned and private enterprises with existing rights to those forests.

Two (2) other schemes are not in State Forest areas, but titled areas. First, the Social Forestry initiative provides a path forward for recognition of *Hutan adat* (Adat forest) recognizing the rights of use of forestland by Adat communities for sociocultural, spiritual, ecological, and economic purposes. If such lands are found to have existed before the forest designation by the State, these lands are excised from the State Forest Area, as they are considered to be “titled land” (titled to the Adat community). While Adat forests are recognized, and they are transferred out of the State Forest Area where applicable, the ownership of the forests does not change. As part of the application process, the Adat community must accept and respect the forest designation (production, conservation, or protection), recognizing the continued role of the State in this respect. This continues to be an area of active reform and recognized space for improvement to further align with applicable social and environmental safeguards. Second, there are *Hutan rakyat* (people’s forest) which are privately-owned smallholder forest for income generation.

The Government of Indonesia (**Gol**) approaches to both the Moratorium and Social Forestry initiatives is further strengthened by engagements with Government and non-Government stakeholders, including: the original development of Indonesia’s National REDD+ Strategy (involving seven national and regional stakeholder consultations with over 300 experts representing 200 organizations); the 2011-2015 multi-stakeholder process to develop the REDD+ safeguards implementation (**SIS-REDD+**) --including the 2013 adoption of a multi-stakeholder developed Principles, Criteria and Indicators (**PC&Is**) and “Safeguards Implementation Tool (**APPs**) and Assessment Procedures for using Safeguards Implementation (**APPs**)”, each of the three efforts providing for the participation of REDD+ actors from the community to district, provincial, regional and national levels. Also, participatory and inclusive were the development of the National Forest Reference Emission Level (**FREL**) for Deforestation and the Nationally Determined Contribution, both playing a foundational role in the monitoring and achievement of REDD+ targets, including those of the Moratorium and Social Forestry initiatives. Furthermore, it can be said that both initiatives were responses to overwhelming stakeholder calls for participatory forest management and the prohibition on concession areas key to carbon storage (forests and peatlands). With the SIS-REDD+ and MoEF national GRM platforms online, the Gol has also increased the amount of information that is available to stakeholders desiring transparency and increased information, including about safeguard compliance, impact assessments and annual performance reports, as well as the number and category of complaints filed and resolved related to REDD+ activities. The DG has begun work with the Adat forest maps created by AMAN and has invited others to inform its Adat Forest Indicative Area Map. This is also a stakeholder outreach that is welcome and deserving of increased support and resources.

Furthermore, as detailed in the two Annexes to this ESA report¹³, during the review period of 2014-2016, stakeholders have various mechanisms to access justice. Among others, a national grievance redress mechanism (GRM) was available to stakeholders per *Regulation of the Minister of Environment Number 9 of 2010 concerning Procedures for Complaints and Handling of Complaints due to Alleged Pollution and / or Environmental Damage*. This mechanism was available to stakeholders to resolve grievances not only related to forest destruction, environmental damage and pollution, but also land tenure disputes and utilization of cultural patrimony, among others. In fact, MoEF reports that there were 222 complaints received related to land tenure in the Forest Area and Adat forests in the period from 2016 to May 2018. The DG on Social Forestry and Environmental Partnership provided in its latest performance report as well, providing that in 2015 and 2016 alone, conflicts were resolved covering 2,775,010 ha of land.

In 2017, a new web-based platform for this national mechanism GRMs (hosted by the MoEF) allows stakeholders to file complaints online for no cost, track the same, and view information about complaints as of 2017. This has increased access to potentially affected stakeholders going forward. In the future, a project level grievance mechanism will require development, as is required by the UNDP SES and as being done by the Emissions Reduction Project for East Kalimantan (as an example). The project level GRM does not necessarily require the invention of new systems, but it will require thoughtful consideration of how potential claimants can access the existing national GRMs through local/project level personnel and systems. This requires procedures to ensure that they may seek grievance redress at that local level, but know that their complaint and its progress will be trackable, consistent in processes provided for by law, and link to the national GRM system so that lessons can be learned, and where escalation beyond local actors is preferred or deemed necessary, there is national-local internal coherence. The increased attention on GRM, including the 2017 adoption of Presidential Decree No. 88 on the Settlement of Conflicts over Forest Lands, is an essential component to effectuating a national recognition that increasing the reduction in emissions means not avoiding conflict forest areas, but resolving those conflicts to improve effective forest management.

Neither project had affirmative activities aimed specifically at addressing gender equity or the advancement of the rights, equality, and interests of women. The Social Forestry regulations of 2016 did affirm the beneficiaries were “entitled...to get fair treatment on the basis of gender or other forms.” Consistent with the National Medium-Term Development Plan (RPJMM) of 2015-2019, neither initiative precluded or prohibited benefits from accruing to women nor discouraged inclusive participation (including in stakeholder events). Where collectives were the beneficiaries, women may have been a part, but they were not targeted by the initiatives. All access to benefits and outreach and capacity building efforts were equitably available. However, affirmative actions to “mainstream” gender equity in the two initiatives consistent with Presidential Instruction Number 9 Year 2000 on Gender Mainstreaming in National Development were not notably present. What social impact data was collected, there is no evidence that it was disaggregated by gender. While there is no evidence of direct harms to women and girls caused by either initiatives, it is acknowledge that both initiatives in their continuation can better mainstream and implement a gender equity strategy in the future –especially when considering for example, alternative livelihood options that might suit women’s needs, alternative no deforestation free economies to which women may contribute, equitable benefit sharing in the context of the Forest Partnership Agreements, and increased participation in decision-making related to land management plans and the overall governance of the local projects based on the Social Forestry initiative.

In both cases, the MoEF is the principal agency mandated by law to control, regulate, manage, and administer forest resources. Consequently, it is the primary actor responsible for implementation of the Social Forestry initiative (and the Moratorium)

¹³ See in particular Annex B, “Stakeholders have access to effective grievance redress mechanism or process” (providing statistics of grievances resolved, and Annex A, B.2.4, Access to Justice, “PLRs provide dispute resolution mechanisms to address disputes at all levels (describe these).”

3.1 UNDP SES

UNDP's Social and Environmental Standards (**SES**) objectives are to: (i) strengthen the social and environmental outcomes of Programmes and Projects; (ii) avoid adverse impacts to people and the environment; (iii) minimize, mitigate, and manage adverse impacts where avoidance is not possible; (iv) strengthen UNDP and partner capacities for managing social and environmental risks; and (v) ensure full and effective stakeholder engagement, including through a mechanism to respond to complaints from project-affected people.

The SES include three overarching principles (human rights, gender equality and environmental sustainability) and seven project-level standards that specify key requirements for projects that may present potentially significant adverse impacts across various issue areas: Biodiversity Conservation and Sustainable Natural Resource Management, Climate Change Mitigation and Adaptation, Community Health, Safety and Working Conditions, Cultural Heritage, Displacement and Resettlement, Indigenous Peoples, and Pollution Prevention and Resource Efficiency.¹⁴

Application of the SES principles and standards is supported by a set of procedural requirements that comprise the SES Policy Delivery Process, namely screening, assessment, and management of risks; stakeholder engagement and response; access to information; and monitoring, reporting and compliance.

3.2 Comparison with key objectives of UNDP SES

In light of the scope of the work and objectives of the Moratorium and Social Forestry initiatives and in the context of the enabling environment provided by the larger REDD+ programming, a PLR analysis was conducted, to determine the extent of consistency with the objectives and requirements of the UNDP SES – how the initiatives would *address* the applicable social and environmental safeguards. To achieve this, and as described in section 4 below, a set of matrices were created to better assess Indonesia's legal framework to determine if its PLRs are aligned with the principles of the UNDP SES (and consequently the Cancun Safeguards), including its respect for Applicable Law.¹⁵ This collective PLR Matrix is found at Annex A.

Additionally, the two initiatives have been compared with the key objectives of the UNDP SES, through a targeted project environmental and social compliance alignment review, which also seeks to identify potential consistency with the UNDP SES and areas needing improvement. This review looks at how the initiative, in practice, *respected* the applicable social and environmental safeguards. The matrix provided for this alignment review can be found at Annex B. Where opportunities for strengthening and improvement have been identified, examples of potential measures to achieve that progress are suggested. The ESA also sought to identify where other relevant measures as well as applicable PLRs might apply more generally to REDD+ activities (not specific to these two initiatives). For example, the Social Forestry and Moratorium initiative do not have their own project-level GRM, but its resulting licenses and Partnership Agreements do include dispute resolution provisions. Also, analogous national GRMs and land tenure dispute mechanisms were available to stakeholders during the review period not necessarily through the project, but through the larger REDD+ and national PLR framework. Through the combined findings of the two annexes, the ESA also sought to identify whether other relevant applicable standards and/or regulations may apply or may be emerging as pending bills and initiatives. This ESA focuses on PLRs and uses the public reporting and third-party evaluations already available regarding the implementation of the two initiatives to assess practice so as to reflect the UNFCCC approach to “address and respect” safeguards. The ESA therefore attempts to cover both safeguard consistency with respect to PLRs, while also highlighting alignment in terms of the application of those

¹⁴ UNDP's Social and Environmental Standards are *available at* <http://www.undp.org/content/undp/en/home/operations/social-and-environmental-sustainability-in-undp/SES.html>.

¹⁵ “Applicable law” means national law and obligations under international law, whichever is the higher standard (see p. 6, par. 3 of the SES overarching principles and polices that applies to the forthcoming RBP. See also p. 37, requirement 4 of the SES requiring that “UNDP will ensure that social and environmental assessments for Projects involving indigenous peoples include an assessment of their substantive rights, as affirmed in Applicable Law.”).

PLRs and creation and performance of institutions that can enhance alignment and consistency with the SES and Cancun Safeguards.

UNDP SES' specific screening questions related to key thematic areas (as applied through attachment 1 of its Social and Environmental Screening Procedures (**SESP**)¹⁶) are intended to assess the risks and benefits of a project. The questions, however, do not *expressly* prompt an assessment of the relevant aspects of a country's PLR framework and its capacity to fulfil SES principles and requirements. This assessment, however, is necessary to provide the full context within which to answer the SESP screening questions should both of these initiatives continue to be pursued (presumably the stated intention of Indonesia).

4 Policy, Law and Regulation Alignment Review

As noted above, attached at **Annex A** is the "*Matrix for the Social Forestry and Moratorium initiatives of Indonesia: Policy, Law and Regulations Analysis alignment with UNDP SES Standards and Cancún Safeguards*" (**PLR Analysis**).

A number of prior PLR assessments had been performed in the context of Indonesia's REDD+ programming, including in the context of the development of the SIS-REDD+, the development of national PC&Is for social and environmental safeguard monitoring and assessment, and for the new Forest Carbon Partnership Facility financing of the proposed ER programs in East Kalimantan. The PLR work for this ESA relied on information gathered and conclusions reached by these prior PLR reviews, while also independently verifying significant portions of this work through direct analysis of laws. PLRs that were translated in whole or part to English for the review during this ESA process are listed at the end of Annex A. This ESA process focused on national PLRs, but it must be highlighted that there are numerous regional, provincial PLRs that, consistent with their national counterparts, may also contribute significantly to Indonesia's compliance with the Cancun Safeguards, and UNDP SES. These were not examined as part of this analysis.

The above stated, ultimately this PLR review determined that during the 2014 - 2016 the two initiatives whose contributions to ER underlay the RBP request before the GCF, were carried out in the context of a substantial set of policies, laws and regulations aligned with most of the principles and standards of UNDP SES (and consequently the Cancun Safeguards). Where shortcomings existed (for instance in terms of weaknesses in social impact monitoring and with respect to the full rights of Adat communities), these have been identified in the attached as requiring future improvement and it is acknowledged that the GoI, both during and after the ESA review period, have already begun to address these areas for advancement.

5 Project Alignment Review

Complementing the PLR Analysis, the **Project Alignment Review** assesses the extent to which the implementation of project activities (in the context of the applicable PLR framework) was consistent with the UNDP SES (and consequently, the Cancun Safeguards). Where lessons can be learned to strengthen future REDD+ activities, it is expected that the GoI will incorporate avoidance and mitigation measures into the relevant Environmental and Social Management Frameworks and Plans (**ESMF/ESMP**) for the future RBP project to be advanced before the GCF.

For the Project Alignment Review, the following were considered:

- documentation of the initiatives carrying evidence of integration of applicable safeguard issues;
- reports describing with stakeholder engagements as related to the initiatives;
- monitoring reports as required by the mandate and agreements related to the initiatives or more generally REDD+ activities;

¹⁶ The SESP is available at <http://www.undp.org/content/undp/en/home/librarypage/operations1/undp-social-and-environmental-screening-procedure.html>.

- environmental and social impact studies of the initiatives;
- documents detailing and disaggregating project beneficiaries for the initiatives;
- third party analysis of the initiatives where available;
- tracking of grievances received and addressed in the context of the initiatives; and
- informational briefings on the initiatives available to the public and used for stakeholder outreach.

Attached at **Annex B** is the “*Project Alignment Review for the Social Forestry and Moratorium initiatives of Indonesia*.” It contains a set of analytical matrices which lists key indicators to assess consistency with each of the UNDP principles and requirement provided for each of the SES thematic issues (i.e. indigenous peoples, biodiversity, resettlement, cultural heritage, etc.). Following those indicators are examples of activities and measures demonstrating the strength in the alignment and areas where improvement could be desired.

The above stated, ultimately this Project Alignment review determined that during the 2014 - 2016 the two initiatives whose results are in part underlying the RBP request, implemented a substantial set of activities and measures aligned with most of the principles and standards of the UNDP SES (and consequently the Cancun Safeguards). Where shortcomings existed (for instance, lack of transparency/stakeholder participation in the revisions of the Moratorium indicative map during ESA review period, overlaps of the Social Forestry map with claimed or existing Adat lands, or absence of a mechanism to transition community and Village licenses and permits to full Adat titles), these have been identified in the attached (and to some extent below, see Conclusions), as requiring future improvement and it is acknowledged that the GoI, both during and after the ESA review period, has already begun to address several of these areas for advancement. Consequently, if applicable, examples are identified of measures taken by Indonesia after the review period to address these areas of desired improvement, along with references to other national REDD+ activities that already directed their attentions to these opportunities for strengthening.

6 Conclusion and Recommendations

Social Forestry

The *Social Forestry initiative* was and continues to be a bold program that represents a fundamental change in how forest management is conceived in Indonesia and elsewhere in the hemisphere. It recognizes the indispensable and pivotal role that Adat communities and other forest-dependent communities and Villages play in the conservation, protection and sustainable development of the world’s forests. It recognizes that a national agenda for climate change adaptation and mitigation is possible not in spite of the rights and demands of local communities, Villages and Adat communities, but because of them. In principle, the Social Forestry has begun to address how the national capacity to meet its climate change goals were limited by years of unresolved conflicts over land tenure security and marginalization, rather than inclusion of local populations in forest management. While acknowledging how far it still must go in creating the full enabling environment for it to meet its desired targets, a student of the political and economic history of Indonesia and South East Asia in context must acknowledge the significance of the nation’s efforts as materialized through this initiative, and as such, the space to allow it to make continued progress in meeting both its targets and full on consistency with applicable social and environmental safeguards.

As noted above, the Social Forestry initiative had a slow start. As with most dramatic changes over a short time to a fundamental vision of a nation, it could be argued that the strength of these new commitments may have overshadowed and outpaced the full scale of the enabling environment, including the political will at all levels of government, their institutional capacities, and the nation’s underlying PLR framework. However, since President Joko Widodo’s administration took over in 2014, the initiative was rejuvenated with the call to increase forests under community-based management to 12.7 million hectares between 2015 and 2019.

During the ESA review period and since 2017, based on stakeholder input and the Government’s own monitoring of impacts and achievements to date, the GoI has sought to advance on addressing a number of the challenges and areas marked for improvement and strengthening. This has included, among others:

- simplifying procedures to secure community and Village licenses and permits;
- in a participatory manner, designing a social and environmental safeguards monitoring framework in a multi-stakeholder setting (the SIS-REDD+, PC&Is and APPS tool, along with the FREL);
- increasing the number of and strengthening local FMUs and local Working Groups that support communities, Villages and Adat communities in accessing the initiative's arrangements and promised benefits, and fulfilling their respective responsibilities under the Social Forestry arrangements;
- adopting a new mechanism to resolve specific land tenure disputes where control of land is alleged by a party either before or after the State's forest designation;
- complementing the above mechanism, adopting new PLRs to begin to respond to the Constitutional Court's decision regarding customary (Adat) lands as Adat forests and not State Forest Areas (more to go regarding "ownership" rights, recognition of Adat community legal personality, free prior and informed consent protocols consistent with international law, and compensation modalities);
- establishing a monitoring program for compliance with social and environmental safeguards (SIS-REDD+) and an online platform for national GRMS;
- the activity of the DG of Social Forestry to create an Adat Forest Indicative Area Map to use in parallel with the initiatives base indicative map (PIAPs) (begun as a practice and now required by law); and
- nascent but promising efforts to simplify and expedite the recognition of Adat communities via Head of Local Government decrees, a necessary precondition to recognition of Adat community lands

All of the above, and more, are signs that the government of Indonesia seeks to continue making improvements to enabling environment (institutionally, budgetarily and via its PLR framework) to ensure that the Social Forestry initiative can realize its full potential and go even further to provide for the rights of local communities, Villages and Adat communities, improve forest management and livelihoods, and reducing poverty and land conflict.

In terms of empirical evidence of the initiative's worth in terms of environmental objectives, the government has kept track of how many hectares have been placed under one of the many arrangements of the initiative, permits, license, partnership agreements, Adat titles. The government has also monitored overall forest cover and emission data, though deeper dives into the impacts on biodiversity of the areas within the Social Forestry ambit may need further work. Moreover, while the social impacts of the initiative were not centralized during the ESA review period to the same degree as the environmental impacts, they are now being systematized through the SIS-REDD+ and the national GRM system (created and piloted since 2012/13, codified and online in 2017). Through the SIS-REDD+ and planned revisions to the PC&Is, future expectations can include providing disaggregated data as between different categories of populations, rights-holders, and gender.

Where the gathering centralization of impacts (other than forest cover and emission data) was sparser than preferred, in the public domain, there is notable evidence that the Social Forestry initiative had positive social impacts. There is a collection of anecdotal evidence demonstrating where communities, Villages and Adat communities have improved their situation through access to the Social Forestry initiative. For example, according to the initiative itself, to name a few, there are the:

- Village Forest: Bentang Pesisir Padang Tikar in the District Kubu Raya of West Borneo where participation in the agroforestry trade increased the Village's farm sales per month and therefore the monthly income of participants;
- Community Forest: Sinar Jawa, in the District Tanggamus-Lampung where the initiative provided electricity to 20 households (60 people);
- Village Forest: Manjau Desa Laman Satong in the District Ketapang-West Borneo which engaged in a bottled water system, reportedly achieved sustainable forest management through patrol activities, and

received ecosystem service payments which were distributed widely, including to Village Forest Conservation and economic development, for public health, and to customary/Adat institutions; and

- Village Forest : Kalibiru in the District Kulon Progo-Special Region of Yogyakarta where the Village contributed to tripling ecotourism in the area between the 2014-2016 period as well as achieving sustainable natural resources (as not exploitation was permitted in the area) and improving the welfare of members of forest-farmer groups and the local community to which they belong.¹⁷

Anecdotes aside, the strengthening of the social impact monitoring and reporting is envisioned for the immediate future. This will build on the multi-stakeholder work done to create the SIS-REDD+, PC&Is and the APPS tools (collectively immortalized in regulations in the last year of the ESA review period and currently the subject of three pilots). There are also new efforts of the Social Forestry initiative to engage academic institutions in a more systematic and formal way so that they can assist with the monitoring of the initiative's ability to achieve its social objectives, as well as the strengthening of Forest Management Units to bolster its local contributions to the monitoring effort.

¹⁷ Social Forestry in Implementation in Indonesia, presentation by Director General of Social Forestry and Environmental Partnership, MoEF (2018).

The Moratorium

The Moratorium was in principle, introduced to have immediate protection effect over large swaths of national primary forests and peatlands. In principle, the objectives of the Moratorium cannot be simpler: avoid deforestation by prohibiting incursion and exploitation through permitting and concessioning. This in turn should also have positive impacts on the daily lives of those local communities that depend on the forest for their physical and cultural survival. Like the Social Forestry initiative, where there are weaknesses in implementation, the support of stakeholders for enforceable and steady protection of these important carbon storage ecosystems remains, and therefore the initiative warrants continued latitude to achieve greater perfection.

The above accepted, this ESA would be remiss if it did not acknowledge several common criticisms of the Moratorium. For instance, the institutional capacity at the national and local level to monitor and conduct law enforcement found it challenging to catch up to the Moratorium commitments, especially given that the Inpres does not have the same binding effect as a law or regulation. Also, while the Moratorium itself was overwhelmingly called for by stakeholder and it is argued that there was increased stakeholder participation in the original Moratorium map from its creation until May of 2018, the map has been revised at least thirteen times, eight times between the ESA period of 2014 and 2017. Hectares were excised from the map to allow for greater exploitation permitted by the Moratorium's exceptions. That said, hectares of lands were also added into the Moratorium Map area. The current map covers approximately 66,287,067 ha.¹⁸ These revisions during the ESA period of review reportedly were done with little stakeholder transparency and public participation, and in the apparent absence of clear criteria for deciding upon each excision or addition. Others also criticize the government for not making the moratorium stronger through regulation or legislation, having greater enforcement authority than a Presidential instruction. There is also the question of whether the Moratorium is realizing its full potential as long as there is no closing of the gaps with respect to the conversion exceptions that are allowed by the instruction (described above). Others have argued that its effectiveness is hard to truly decipher alone given that over 70% of the same area is already protected by other regulation.¹⁹ The counter to this, of course, is that the Moratorium was instrumental in doubling down on the protections already provided in these areas and there are no government reports that say the Moratorium caused harms.

In the context of its analysis and conclusion, this ESA did in fact consider whether it could be said that either initiative resulted in harms to the environment or peoples, especially as a result of any level of non-alignment with the SES and the Cancun Safeguards. The analysis concludes that some harms (many potentially reversible) may have occurred in the context of the Social Forestry initiative, particularly to Adat rights, but that the State has begun to take measures to achieve greater respect for these rights going forward and to strengthen avoidance and mitigation measure in efforts to accelerate and strengthen the initiative in the context of new activities contemplated under its RBP project.

In terms of the Social Forestry initiative and potential harms, first one has to observe that the potential benefits of the Social Forestry initiative are significant: protection of forests and biodiversity, reduction of emissions as a consequence, improved more participatory forest management, promotion of alternative livelihoods for local communities and reduction of poverty, Villages and Adat communities, respect for their land, culture and governance rights, empowerment of their respective institution; protection and respect for the contributions of local wisdom and traditional knowledge, and reduction of poverty for so many populations living in and around these forest areas. A number of examples of those benefits realized, were offered above.

In this context, just like most climate change/REDD+ initiatives, harms to the environment were still possible. Harms to the environment were possible if community timber plantations and the delivery and or harvesting/gathering of

¹⁸ Data and Information, Indonesian Forestry Thematic Mapping, MoEF, p. 15 (2018).

¹⁹ "1 million hectares burned inside the area of the forests and peatland moratorium, Greenpeace analysis shows", Greenpeace, (2019) available at: <https://www.greenpeace.org/southeastasia/press/2834/one-million-hectares-of-forest-burned-inside-forests-moratorium-area-greenpeace-analysis-show/>

other Social Forestry products (non-timber, including environmental services, ecotourism and products like honey, crabs, Gaharu sprays and oils, coffee, etc) were to be done in a non-sustainable way. For instance, harms could occur in the case of timber plantations, if these plantations result in deforestation of indigenous species only to plant new invasive species, or if agricultural endeavors mean the legal or even illegal use of harmful pesticides. This said, the pervading goal of the initiative was to achieve reduced deforestation and economic sustainability in the context of forest management. This ESA review did not uncover evidence of these potential environmental harms on any scale being identified and quantified in public reports generated by MoEF to date.

In terms of harms to people, since the 2013 Constitutional ruling, the Government has begun adopting a number of new PLRs and practices to avoid and mitigate such harms, especially given that the intent of the Social Forestry is to increase the recognition of rights to communities, and not prejudice them. For example, when local communities and Village secure licenses or permits which recognize rights of use and access, these may include improper restrictions on the collective's rights to engage in traditional practices in those lands (*cutting down a tree to make a canoe or traditional dwelling*). The GRM, however, provided a mechanism for communities to raise and resolve these concerns. Also, there is no transitional mechanism in law, or seemingly contemplated within the Social Forestry initiative, for if and when these collectives want to seek full Adat title over those forest areas, if applicable. The indicative Social Forestry map does not provide information about existing (titled) or claimed Adat forests, so overlaps are possible. If rights are granted to non-Adat communities (i.e. a local farm cooperative that does not belong to a recognized/or yet to be recognized Adat communities), it is not clear how the Adat community's rights would later be reconciled through future land restitution and/or other compensation). Similarly, there is no process to establish if entities with private business licenses who may enter into Forest Partnership Agreements with communities and Villages, even received these licenses properly (i.e. if Adat lands are in question, with free, prior and informed consent (FPIC)). While free, prior and informed consent is recognized by Indonesia's National REDD+ Strategy and the newly developed SIS-REDD+ (as seen in its PC&Is), there is little evidence as to how or if it has been applied in the context of Social Forestry –at least pursuant to an established procedure and in accordance with Applicable Law.²⁰ The pilot work on SIS-REDD+ may tell us more soon. Furthermore, the property rights of Adat communities are conditioned on provincial or district government recognitions of their "existence" as an Adat people.²¹ Prior to the ESA review period, the 2007 and 2014 reports of the UN Committee on the Elimination of Racial Discrimination and the UN Committee on Social, Economic and Cultural Rights (CESCR) called upon Indonesia to improve this system and provide as a safeguard the principle of self-identification.²² Recognizing that accelerating titling to Adat communities means facilitating easier recognition of their juridical (legal) personality as an Adat community, the DG of Social Forestry has begun drafting regulation templates that districts can use to issue their recognitions for Adat communities. The DG also has offered technical and legal support to any district willing to

²⁰ The GoI sustains that due to their interpretation of the definition of indigenous people, implementing FPIC following international laws can be challenging. This must be reconciled to avoid risks of non-alignment with the SES and Cancun Safeguards applicable to the future RBP. This reconciliation would work to apply FPIC while recognizing that consistent with Applicable Law, property rights (including of Adat communities) are not absolute, may be modified in the name of public/national interests. Applicable law provides clear thresholds/requirements which must be met when Adat property rights will be restricted.

²¹ Constitutionally, and according to the Forestry Law, this "existence" must also be found to be in "accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia and shall be regulated by law." Provincial and district governments also may have conflicts of interest with exercising this authority, for example, an area open to a private business license which can yield greater profits to that government.

²² *Concluding observations of the Committee on the Elimination of Racial Discrimination Indonesia*, para. 15, CERD/C/IDN/CO/3 par. 15 (August 2007) (The Committee notes that the State party recognizes the existence of indigenous peoples on its territory, while using several terms to designate them. It is concerned, however, that under domestic law these peoples are recognized "as long as they remain in existence", without appropriate safeguards guaranteeing respect for the fundamental principle of self-identification in the determination of indigenous peoples (arts. 2 and 5); Concluding observations [of the CESCR] on the initial report of Indonesia, EC.12/IDN/CO/1, par. 38 (June 20014) ("Committee urges the State party to expedite the adoption of the draft law on the rights of Masyarakat Hukum Adat and ensure that it: (a) Defines *Masyarakat Hukum Adat* and provides for the principle of self-identification, including the possibility to self-identify as indigenous peoples").

adopt this umbrella regulations making possible Head of Local Government decrees of recognition (a lower governing unit but presumably easier than securing the “perda”). This is a clear opportunity to respond to UN committee concerns.

The above concerns have been documented by academics, civil society groups, and UN human rights bodies and in many respects, acknowledged by the Government. Prior to the ESA review period, in 2014 the CESCR expressed concern “at the absence of an effective legal protection framework of the rights of Masyarakat Hukum Adat [MHA/Adat communities] due to inconsistencies in relevant legislative provisions.”²³ Much of the new PLRs developed by Indonesia during the ESA review period and after the 2013 Constitutional Court decision have strived to be responsive to this recommendation as well as several of the international observations (referenced above). Further multi-stakeholder analysis, including with the technical support of UN international experts on indigenous rights can help to identify what remains to be harmonized and provided for going forward (including in the context of the debates on the Land Bill and Bill of Adat Communities’ Rights still pending before the legislator). In 2017, in its report to the UN Human Rights Committee for its Universal Periodic Review, the GoI acknowledged that the “the draft law on MHA is already included in the 2015–2019 National Legislation Priority.”

As noted above, the State is aware of these matters and has begun to address them through changes in practice, new activities, and modifications and adoptions of new laws. More needs to be done, but the overall goals of the Social Forestry initiative and political will of the GoI as indicated to date to address these opportunities for improvement, warrant the time and space to do so. As the DG of Social Forestry and Environmental Partnership stated in a presentation in June of this year during Asia-Pacific Forestry Week 2019 “Many challenges still exist so why we need work in smart ways [sic]”. The potential for great good with the Social Forestry initiative exists. The next phase of its acceleration must meet the challenge of realizing that potential while taking further concrete measures to avoid and mitigate potential harms.

In terms of the Moratorium and potential harms, one has to recall that the Moratorium has the sole purpose of reducing emissions by stopping resource concessions in the areas of primary natural forest and peatlands covered by the Presidential Instruction and its indicative map. As such, its stated purpose is to do no harm to these environments crucial for carbon capture. Unless it can be statistically proven that the leakage of deforestation and peatland destruction increased since the Moratorium such that there was a net loss, it is hard to argue that the Moratorium caused harm environmentally, even if its full targets were not yet realized.

In terms of social impacts, though areas within the Moratorium may include Adat community lands without their prior consultation or consent, and presumably such communities would also not be able to secure State permits for certain natural resource use otherwise recognized as under their ownership and control, the Moratorium does not directly speak to the rights of local communities, Villages or Adat peoples. However, it is reasonable to presume that where prohibitions on the intrusions of others and the exploitation or destruction of their forests exist –this undoubtedly creates an enabling environment for these collectives to flourish based on their own development priorities, governance over their area through control and administration of their forest resources, and the reach of their local institutions unchallenged by third parties and resource competition.

It could be argued that areas within the primary natural forest and peatlands that have been expressly exempt from the Moratorium (such as exiting permits or areas to be used for food sovereignty, see above) can still result in permitting/concessioning and deforestation of resources needed by (perhaps even belonging to) local communities, Villages and Adat lands. Nevertheless, it is reasonable to find that the harms (even potential violations of rights) posed by these existing Inpres exemptions and excisions from the Moratorium can result in deforestation and biodiversity loss as well as restricted access to resources for collectives. However, arguably these activities existed before the Moratorium. At present, this ESA review has not seen public reports of harms caused by the Moratorium

²³ EC.12/IDN/CO/1, par. 38 (June 20014).

alone. In the future, if it is established that the Moratorium reinforced these harms, or “but for” the Moratorium these harms would not have occurred, then modifications to the initiative should be reconsidered.

In the context of the above, this Environmental and Social Assessment (ESA) Report concludes that at their core, the Social Forestry Initiative and the Moratorium had a substantial set of underlying PLRs and project measures and activities that were aligned with most of the principles and standards of the UNDP SES and consequently the Cancun Safeguards. Demonstrating progressive improvement throughout the review period, collectively the two initiatives sought to protect forests and biodiversity from deforestation and degradation and respect the rights of communities, Villages and Adat communities to participate in forest management, provide for their livelihoods, and empower their own institutions by: directly prohibiting third parties from securing exploitation rights in the lands upon which they depend for their physical and cultural survival; guarantying rights of use, access, participation and/or land titles over Adat Forests; and improving forest management and governance. In each case, through the exclusion in whole or part of those that might otherwise seek economic exploitation of the forest resources, greater swaths of forests were protected and an enabling environment was initiated for forest dependent communities to be included, rather than marginalized from the management of their forests.

This ESA concludes that these two initiatives were carried out in the context of a substantial set of policies, laws and regulations, activities and measures aligned with most of the principles and standards of UNDP SES (and consequently the Cancun Safeguards). It is an acknowledgement that on their face, both initiatives had the combined pure purpose of protecting forests and peatlands and recognizing local community rights to equitably benefit from, and participate (in some cases lead) in forest management. Civil society and in large part, the Government of Indonesia, have highlighted that these initiatives have not yet met their stated goals and targets and more needs to be done to work smart. Documenting the progressive improvements in implementation that have occurred in just a short period of time (including during the ESA review period) and observing that the continued multi-stakeholder support for both of these initiatives remains strong, this ESA review concludes that these two initiatives warrants the latitude needed for all parties to keep improving the project’s delivery and alignment with applicable social and environmental standards. Having seen the planned RBP project (components and activities) and its accompanying Environmental and Social Management Framework (ESMF), this ESA concludes that it is possible for the both initiatives to fully realize their potential through the transparent, participatory, and well-funded application of the PLR reforms and mitigation measures indicated by this report (and its annexes) and the robust ESMF that was informed by this report and will be verified (and improved if necessary) by a comprehensive Environmental and Social Impact Assessment. In this context, both initiatives can be implemented in full alignment with the UNDP SES and consequently, the Cancun Safeguards.

**Annex A: Matrix for the Social Forestry and Moratorium initiatives of Indonesia:
Policy, Law and Regulations Analysis alignment with
UNDP SES Standards and Cancún Safeguards¹
(as of 27 October 2019)**

| SAFEGUARD A <i>Actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements</i> | |
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| Criteria A.1. Complement or be Consistent with the Objectives of National Forest Programmes | |
| Diagnostic Question: to what extent do PLRs require consistency with the objectives of national forest programmes? | |
| Indicator PLRs clearly define what the national forest programme(s) is/are and requires that steps are taken to ensure that any new policy/initiative is consistent with (or at least does not contradict) existing policies/programmes). | Explanation (identify articles/provisions) (not an exhaustive reference to all relevant PLRs) The anchor of Indonesia's forest policy is the Forestry Law, Law No. 41 (1999) . The preamble of the Forest Law makes clear that the forests of Indonesia are "assets controlled by the State" ("under the state's control for the people's maximum benefit" (Art. 4(1)) which are to be "managed and utilized" in an "optimal way" so as to support its capacity to be "sustainably maintained in a wise, transparent, professional and accountable manner" and "be capable of accommodating the dynamics of community aspirations and participation, customary and cultural, as well as social values in accordance with national legal norms". <i>The Forestry Law makes clear that all existing laws related to forestry remain effective "if not contradictory to this Law"</i> (Art. 82). The Instruction of the President of the Republic of Indonesia (INPRES) on the Termination of the Granting of New Permits and Perfecting Natural Primary Forest and Peatland Management (INPRES No. 10/2011, No. 6/2013, No. 8/2015, No. 6/2017 and made permanent (by the removal of a term limitation) by the recent INPRES No. 5 (August 2019) (collectively "the Moratorium") terminates the granting of new permits for natural primary forests and peatland within conservation, production and protection forests and at its onset, makes clear that it applies to |

¹ All English translations of Indonesian policies, laws and regulations in this matrix is unofficial, see Indonesian original as needed.

| | <p>the MoEF, Minister of Home Affairs, Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency, Minister of Agriculture, Minister of Public Works. and Public Housing, Cabinet Secretary, Head of Geospatial Information Agency, all Governors and all Regents/Mayors. While only an Instruction (not a decree, regulation nor Law) it does lack the force of a law so legally there are no consequences if violated and ministries not named (like the Ministry of Mineral Resources) are not necessarily incentivized to follow the moratorium. (Earlier moratoriums -Instructions 10/2011, 6/2013, and 8/2015) also did not mention the Ministry of Agriculture).</p> <p>To further guide national forest management policies, Indonesia signed the National Action Plan for Reducing Greenhouse Gas Emissions (RAN-GRK) in 2011, which was built on the National Action Plan on Climate Change signed four years earlier, and lead to the finalization of the REDD+ National Strategy.</p> <p>All of the above is consistent with Indonesia's duties and obligations under international conventions and agreements, including the UNFCCC and the Convention on Biological Diversity.</p> |
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| Safeguard A | |
| Criteria A.2. Complement or be Consistent with the Objectives of Relevant International Conventions and Agreements | |
| <p>Diagnostic Question: to what extent do PLRs require consistency with objectives of relevant international conventions and agreements, and this is applicable to the forestry sector?</p> | |
| Indicators | Explanation (identify articles/provisions) |
| Number of relevant of international agreements that the country is Party to* | <p>Among others, Indonesia has ratified, acceded to, or accepted the application of the following international agreements and instruments:</p> <p>Convention on the Rights of the Child, Nov. 20,</p> |

| | |
|---|--|
| <p><i>(Including HR and environmental/biodiversity conventions)</i></p> | <p>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Discrimination Against Women, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights Convention on the Elimination of All Forms of Racial Discrimination Convention on the Political Rights of Women Convention on the Prevention of Discrimination on the Basis of Race, Religion, or Belief; and Protection of Minorities Freedom of Association and Protection of the Right to Organise Convention Right to Organise and Collective Bargaining Convention United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)</p> <p>Indonesia is also party to various International Labour Organisation (“ILO”) and other international organization sponsored conventions, albeit not ILO 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries. For example,</p> <p>Convention concerning Forced or Compulsory Labour Convention on Equal Remuneration Convention Convention on Abolition of Forced Labour Convention Convention Concerning Discrimination in Respect of Employment and Occupation, Convention on the Rights of Persons with Disabilities, Marrakesh Agreement Establishing the World Trade Organization Convention on the Rights of All Migrant Workers and Members of Their Families, Convention Concerning Minimum Age for Admission to Employment</p> <p>Indonesia has ratified international treaties on climate change including:</p> <p>Convention on Biological Diversity Convention for the Safeguarding of Intangible Cultural Heritage UNESCO Man and Biosphere Program (MAB) World Heritage Convention Convention on the International Trade of Endangered Species of Wild Fauna and Flora (CITES)</p> |
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| | <p>Ramsar Convention (the Convention on Wetlands of International Importance as Waterfowl Habitant)</p> <p>United Nations Framework Convention on Climate Change - Decision 1/CP.16</p> |
| How the national legal framework incorporates international law | <p>Unlike other States, the Constitution does not address the role of international law in the hierarchy of the nation's laws, but Article 11(2) and (3) of the Constitution provides that "When creating international agreements that give rise to consequences that are broad and fundamental to the life of the people, create financial burdens for the State and/or require amendments to legislation or the enactment of new legislation, the President must obtain the agreement of the National Parliament. Further provisions on international agreements are to be regulated by statute.). International treaties have no effect, no application nationally, unless they are first incorporated into domestic norms via an Indonesia legal instrument.</p> <p>Law concerning international accords (No. 24/2000), however, does provide greater clarity on the matter. As one commentator aptly describes "International laws and treaties are not directly applicable in the domestic sphere in Indonesia. To have effect in Indonesia, an international law or treaty must be enacted in domestic law. Certain types of treaties must be ratified through enactment of a law (Article 10, Law No. 24 of 2000). This applies to treaties pertaining to: Politics, peace, defence and national security. Change of territory or determination of territorial boundaries. Sovereignty or sovereign rights. Human rights and environment. Formation of new legal norms. Loans or foreign grants." (<i>Legal systems in Indonesia: overview</i> by Leoni G I Silitonga, Sianti Candra, and Hanim Hamzah, Roosdiono & Partners (2018). Also, Article 11 of the law provides that a Presidential decree can also effectuate the enactment into domestic law of an international treaty.</p> <p>See also the 1998 Human Rights Charter that was expanded and reformulated into norms through Law No. 39 Year 1999 Concerning Human Rights. In Law No. 39 its preamble provides "d. whereas as a member of the United Nations, the nation of Indonesia has a moral and legal responsibility to respect, execute, and uphold the Universal Declaration on Human Rights promulgated by the United Nations, and several other international instruments concerning human rights ratified by the Republic of Indonesia;" and then in Art. 67 it says that "Everyone within the territory of the Republic of Indonesia is required to comply with Indonesian legislation and Indonesian Law, including unwritten law and</p> |

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| | <p><i>international law</i> concerning human rights ratified by Indonesia.” (Emphasis added) The law then goes on to articulate the human rights affirmed in the UN Bill of Human Rights. The law further affirms at Art. 71 addressing “Government Duties and Obligations” that “[t]he government shall respect, protect, uphold and promote human rights as laid down in this Act, other legislation, and <i>international law</i> concerning human rights ratified by the Republic of Indonesia.” (Emphasis added)</p> <p>The above stated, Indonesia’s REDD+ National Strategy, however, recognizes that as a part of conflict resolution related to forest tenure and management, the State and REDD+ implementers are to “[f]ormulate alternative models for natural resource related conflict resolution based on the fulfilment of human rights <i>as stipulated in international human rights conventions and national legal instruments that have adopted human rights principles.</i>” (Emphasis added).</p> |
| The current hierarchy of laws (the status of international agreement within the legal framework) | <p>See directly above, unlike other States, the Constitution does not address the role of international law in the hierarchy of the nation’s laws (as reflected in Article 11(2) and (3) of the Constitution). However, Law No. 12 of 2011 on Laws and Regulations Making does provided at Art. 7(1) that the hierarchy of laws is as follows:</p> <p>Constitution People Consultative Assembly's Decision Law/Government Regulation in lieu of Law Government Regulation Presidential Regulation Provincial Government Regulation District Government Regulation</p> <p>As mentioned earlier, Law No. 24 of 2000 regulates how international law is adopted in the domestic sphere. Therefore, the place of a particular convention or other international agreement in the hierarchy of law is in accordance with the way it is enacted. When it is adopted in the level of Law it takes the hierarchy of that Law and when it is enacted through a Presidential Decree, it takes that place of the hierarchy of a decree. Other way to adopt international law is by absorbing it in the laws and regulations. its place in the hierarchy will depend on the level it is absorbed (i.e. how human rights are</p> |

| | absorbed in Law No. 39 concerning Human Rights (with each human right and fundamental freedom articulated in its own article). |
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| SAFEGUARD B | |
| <i>Transparent and effective national forest governance structures, taking into account national legislation and sovereignty</i> | |
| Criteria B.1.Transparency | |
| Sub-Criteria B.1.1. Right of Access to Information | |
| Diagnostic Question: To what extent do PLRs guarantee the right to access to information? | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs recognise the right to access to information | <p>Article 28F of the Constitution provides that “[e]ach person has the right to communication and to acquiring information for his own and his social environment's development, as well as the right to seek, obtain, possess, store, process, and spread information via all kinds of channels available”</p> <p>Presidential Decree 16/2015 on Ministry of Environment and Forestry, Article 53, provides that each organizational unit leader of MoEF has to “implement a government internal control system in each environment to realize the implementation of public accountability mechanisms through the preparation of integrated planning, implementation, and performance reporting.”</p> <p>Per the Forestry Law, “[a]ll forest planning is to be done in a way that is “transparent, accountable, participatory manner and taking regional peculiarity and aspirations into account.” (Art.11).</p> <p>Decree Number 83/Menlhk/Setjen/Kum.1/10/2016 on Social Forestry (2016)(“Decree No. 83 on Social Forestry”) elaborating the Social Forestry initiative, states at Article 3 that the management</p> |

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| | <p>of Social Forestry is to observe the principles of “justice, sustainability, legal certainty, participatory, and <i>accountability</i>”.</p> <p>As this is the first mention of Decree No. 83, and the decree is referenced throughout this annex, and given that the review period was 2014-2016, it is explained here that while Decree No. 83 was adopted in 2016, this decree did not invent social forestry, but arguably put under a single piece of legislation the enabling PLRs already holding up the Social Forestry programme for over a decade and a half. Social Forestry was an established process, long before the 2016 Regulation. It in fact pre-dated the 1999 Forestry Law. For instance, the guideline for social forestry was already issued in 1995 through Minister of Forestry Decree No 622 of 1995 on Guideline for Community Forestry. The acknowledgement of local community involvement is then restated in the 1999 Forestry Law (Article 5 and 17). Indeed, Indonesia already had village forests prior to the 2016 Regulation. With Social Forestry already underway in Indonesia, the decree merely strengthened and harmonized into a single instrument prior PLRs that addressed community and village forest management, and created the enabling environment for the Social Forestry initiative, including the 1995 Decree no. 622, the 1999 Forestry Law, and Government Regulation No. 6/2007 concerning Forest Management and Preparation of Forest Management Plans, and Forest Utilization as amended by Government Regulation No. 3/2008 concerning Amendments to Government Regulation No. 6/2007 concerning Forest Management and Preparation of Forest Management Plans, and Utilization Forests have been stipulated Minister of Forestry Regulation Number P.55 / Menhut II / 2011 concerning Procedures for Application for Business Permit for Timber Forest Product Utilization in Community Forest Plantation in Plantation Forests as amended by Forestry Minister Regulation Number P.31 / Menhut-II / 2013 concerning Amendment to Minister of Forestry Regulation Number P.55 / Menhut-II / 2011 concerning Procedures for Application for Business Permit for Timber Forest Product Utilization in Community Forest Plantation in Plantation Forest, Minister of Forestry Regulation Number P.88 / Menhut-II / 2014 concerning Community Forests, Minister of Forestry Regulation Number P.89 / Menhut II / 2014 concerning Village Forests, and Regulations Minister of Forestry Number P.39 / MenhutII / 2013 concerning Empowerment of Local Communities through Forestry Partnerships.</p> <p>The Social Forestry (SF) initiative and the Moratorium each are based on indicative maps. For the SF initiative this map is called the Indicative Map of the Social Forestry Area (PIAPS) (see Decree</p> |
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| | <p>No. 83 on Social Forestry, Art. 1(16)). For the Moratorium the map is called the Indicative Map of the Termination of the Granting of new Permits (Art. 3, Instruction No. 5 (2019 is the latest version)). Each has been originally elaborated and subsequently revised. The Moratorium indicative map is supposed to be revised based on a. the “results of field physical condition survey[s]; b. spatial changes; changes in spatial layout; c. current land cover data and information, d. input from the community, and e. updated licensing data.” (See Article 7 of the Ministerial Decree SK.2312/Menhut-VII/IPSDH/2015 (PIPIB) establishing the indicative map revision of the postponement of the issuance of new licenses). The Indicative Map of the Social Forestry Area (PIAPs) is based on “a. harmonization of maps owned by the Ministry of Environment and Forestry with maps owned by non-governmental organizations and other sources; and b. consultation with the provincial government, district / city government, and related parties” (art. 5(2)) and revisions of the map are supposed to account for “a. area of utilization permit or permit for the use of forest area that has expired, or the permit has been revoked or whose area has been surrendered by the permit holder to the Government; and / or b. the area of application for HPHD, IUPHKm or IUPHHKHTR which is outside the PIAPS.”</p> <p>The Indonesian government has not made publicly available the full the maps of oil palm companies' concessions, known as HGUs (detailing boundaries, who the holder is, kind of commodity, legal status etc.), a year after the nation's highest court ordered it to do so in the interests of transparency, per Supreme Court Decision No. 121 K//TUN/2017 (6 March 2017).</p> <p>The One Map Policy (Decree of the Republic of Indonesia Number 9 of 2016 on Accelerating One Map Policy through use of 1:50.000 Scale) is being pursued and further strengthened by Law 4/2011 which gives the Geospatial Information Agency the mandate to work with the Presidential Delivery Unit for Development Monitoring and Oversight and take the lead in developing the single reference map and defines “openness” in the law as “the establishment of GI is intended to be utilized by many parties by providing easy access to the society to obtain GI.” The objective of this policy is to create a single 1: 50,000 scale map that can serve as a standard geospatial reference, based on a single standard, a single database, and a single geoportal. The use of one map that various ministries, regional and district governments, and other actors can access will help to increase transparency, and the sharing and comparison of information across multiple users. <i>At present, it is not legislated that</i></p> |
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| | <p><i>this One Map will be made accessible to the public, but the civil society advocacy for this accessibility is significant and it will need to be explored further.</i></p> <p>See also Law No. 14 of 2008 concerning openness of Public Information (State Gazette of the Republic of Indonesia Number 61 of 2008) ("Law No. 14 (2008)"). The existence of Public Information Openness Act is very important as it establishes (1) every person's right to obtain Information; (2) the Public Body's obligation to provide and to serve information requests in a quick, timely, inexpensive/proportional and uncomplicated manner; (3) the fact that (3) exemptions are strict and limited and applies balancing the public interest to ensure accountability of the use of public funds; (5) the guarantee of passive (based on request) and proactive public access to information; (6) the existence of an Information Commissioner at the national and local levels to assist public institution in implementing the Law as well as providing access to justice (by the means of independent administrative appeal) for dispute on public access to information, (6) criminal sanctions for those who violate public access to information. (This law has since been further regulated by Regulation No 61 Of 2010, National Information Commissioner No 1 and 2 of 2010, No 1 of 2013, and No 1 of 2017).</p> <p>See also Regulation of the Minister of Forestry Number P.7 / Menhut-II / 2011 concerning Public Information Services in the Environment of the Ministry of Forestry (State Gazette of the Republic of Indonesia of 2011 Number 53) ("MoEF Reg. No. P.7"). This regulation recognizes that "information transparency in the Ministry of Forestry is a facility to optimize public monitoring upon the implementation of forestry development and to accelerate the achievement of sustainable forest management" and establishes that the "Public information service of the Ministry of Forestry is implemented by the Centre of Public Relations of the Ministry of Forestry." (Art. 14).</p> |
| PLRs provide a definition of 'information' (held by public authorities/accessible to the public) | MoEF Reg. No P.7 (2011) provides at Article 1 that "information" means "explanations, statements, ideas and signs that contains the value, meaning and messages, having the data, facts and explanations that can be seen, heard, and read, and prepared in a variety of packaging and |

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| | <p>format in accordance with the development of information technology and communication, either electronic or non-electronic” and “public information” is “information being generated, stored, managed, sent and/or received by certain public body in relation to the implementer and the implementation of State and/or implementers and the implementation of other public bodies, as well as other information related to public interest.”</p> <p>MoEF Ministerial Decree 71/2017 on National Registry on Climate Change, has since been adopted and its article 1(15) now provides that “Public Information is information that is generated, stored, managed, sent or received by a public body relating to the administration of the state and / or the administration of other public and public with the Law on public openness and other information relating to public interests.”</p> |
| PLRs require the active distribution of information | <p>MoEF Reg. No. P.7 (2011) provides that public information is provided and published periodically (i.e. accessible without request), including: a. General information about the Ministry of Forestry; b. Forestry Statistics; c. Financial report of the Ministry that has been audited by the Audit Board of Indonesia (BPK RI); d. State Property Report that is administered by the Ministry of Forestry that has been audited by the BPK; e. Performance Accountability Report of the Ministry of Forestry; f. Work Plan of the Ministry of Forestry.” (Article 7). At Articles 8 and 9 there are also detailed lists of information that is provided to the public immediately (like information about hot spots for fires, actual forest fires, and information about natural disasters, such as volcanic activity in forest areas, floods, landslides” etc.(and information provided “at any time” such as “Forestry Plans and Policy, among others Long Term Development Plan”, forest cover, “change o forest cover, socio-economic conditions of forest...utilization and use of forest areas”, as well as the “uses of forest areas among others are for mining and infrastructure development” etc.)</p> <p>The lack of a single map of land-use claims and internal borders in Indonesia has been identified as an obstacle to sustainable development. The One Map Policy (Decree of the Republic of Indonesia Number 9 of 2016 on Accelerating One Map Policy through use of 1:50.000 Scale) is being pursued. The objective of this policy is to create a single 1: 50,000 scale map that can serve as a standard geospatial reference, based on a single standard, a single database, and a single geoportal.</p> |

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| | <p>The use of one map that various ministries, regional and district governments, and other actors can access will help to increase transparency, and the sharing and comparison of information across multiple users. At present, it is not legislated that this One Map will be made accessible to the public, but the civil society advocacy for this accessibility is significant and it will need to be explored further. And it is intended for active distribution throughout the government bodies relying on such spatial maps for decision-making.</p> <p>See also relies to the above “PLRs recognise the right to access to information”.</p> |
| PLRs guarantee passive access to information (access to information on request) | <p>MoEF Reg. No. P.7 (2011), Chapter V provides the “Information Application and Service” procedures by which a member of the public can solicit information and it is serviced by the MoEF and Articles 16 and 17 explain the rights and obligations of the applicant as well as the service provider.</p> <p>The One Map Policy is intended to provide select stakeholders with access to information without having to ask, this includes about existing and new land use licenses and permits.</p> <p>Since the review period, a 2017 Supreme Court decision, interpreting and applying Law No. 14 of 2008 ordered the Government (specifically the Minister of Agrarian and Spatial Planning) to make publicly available maps and related documents on plantation companies operating in the country, was based on a denial by the government of an NGO written request for this information. It is reported that the Government has said that before this can be done, a mechanism has to be in place to regulate how the public can access the information, likely for payment. This mechanism, presumably a regulation as well, is pending (<i>Note:</i> The Law No. 14 orders public institutions to develop technical regulations to clarify what information is considered exempted under the law. This limitation is, however, subject to judicial assessment. To implement the law, the Ministry of Agriculture has adopted MoAR No. 32 of 2011 and its amendment No. 25 of 2016 on Management of Public Access to Information.).</p> <p>At present, the GoI has developed, apart from the SIS-REDD+ system, no less than 10 portals/information systems that facilitate the sharing of information between the national and</p> |

| | sub-national governments as well as local communities. These are each listed in Indonesia's most recent Summary of Information (SOI). |
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| Safeguard B | |
| Criteria B.1. Transparency | |
| Sub-Criteria B.1.2. Institutions to Ensure Access and Distribution of Information | |
| Diagnostic Question: To what extent does the legal framework require public institutions to ensure the access and distribution of information? | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs create dedicated institutions for distribution of information | With respect to Social Forestry and the Moratorium, the MoEF is ultimately responsible for matters of transparency and public information related to REDD+ activities. Each of the directorates within the ministry have their respective mandates, some related to information distribution. Within the SF initiative, the Head of PPTKH Acceleration Team periodically submits reports and developments of the implementation of resolution of control over land in forest area to the President once every 6 (six) months or when otherwise needed. (Decree No. 83 on Social Forestry , Art. 17). The Directorate General of Social Forestry and Environmental Partnership is also required to annually produce a performance report made available on its website. |
| PLRs create a central registry for gathering information related to forest management | National Registry System (SRN) on Climate Change has been operationalized since 2016 and collects information on all activities undertaken in support of climate change adaptation and mitigation and committed to presenting this information in a way that is transparent and understandable. It is a substantial effort to prevent duplication, overlap, double reporting and double counting, as well as prevent the un-synchronization between action (for adaptation and mitigation). The system intended to register all actions and related supports in order to acknowledge and identify each action related to climate change mitigation and adaptation (Per Ministerial Decree 71/2017 on National Registry , the system now has a web-based platform. |

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| | <p>MoEF Ministerial Decree 70/2017 on REDD+ Procedures, Art. 13(3) providing that the SRN includes data and information at the national and sub-national level including: "a. FREL / FRL; b. results MRV; c. implementation safeguards; d. funding; e. supporting activities; and f. contribution to achievement NDC."</p> <p>Guidance for MRV of REDD+ is part of the Ministerial Regulation on REDD+ (Ministerial Decree 70/2017) and in line with the Ministerial Regulation on MRV (Ministerial Decree 72/2017).</p> <p>The National Forest Monitoring System (NFMS) has been developed and is operational. – The NFMS used during the period of review was an enhancement of the initial National Forest Inventory (NFI) program that has been in place since 1986. A number of regulations related to evaluation, reporting, and verification of reductions in carbon emission levels have been promulgated. A National Inventory System for Greenhouse Gas Emissions (Sistem Inventarisasi Gas Rumah Kaca Nasional, SIGN-SMART) has been developed and is operational.</p> <p>See also additional PLRs subsequently adopted: Ministry of Agrarian and Spatial Plan/Head of National Land Agency No. 6/2018 concerning a Complete and Systematic Land Registration (PTSL); MoEF Regulation No. P.71/Menlhk/Setjen/Kum.1/12/2017 on Guidelines on Inventory and Reporting on GHG Emissions.</p> <p>There is also the SIGN-SMART Sistem Inventarisasi Gas Rumah Kaca Nasional, Sederhana, Mudah, Akurat, Ringkas, Transparan (National Greenhouse Gas Inventory System – Simple, Easy, Accurate, Compact, Transparent). The Presidential Regulation no. 71/2011 mandates development of annual GHG inventory report to be published periodically. Each ministry/agency involved has been assigned a specific unit in their institution to implement the national GHG Inventory within its sector by making its own emission estimations. Through this web-based system, data on the activities of relevant agencies, including from sub-national level, can be delivered to the MoEF for validation, so that the GHG gather the annual GHG inventory report.</p> |
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| | <p>The System for Providing Information on REDD+ Safeguards Implementation (SIS REDD+ platform) has been developed since 2013. It is operational in three provinces (East Kalimantan, Jambi, and West Kalimantan). Also, through a multi-stakeholder process, Principles, Criteria and Indicators for each of the Cancun Safeguards were established, along with various assessment tools, including the "Safeguards Implementation Tool (APPS) and Assessment Procedures for using Safeguards Implementation (APPs) based decision in COP-16 Safeguards Implementation System (SIS) ReDD+ Indonesia annexed to REDD+ regulations of the MoEF (No. 70/MENLHK/SETJEN/KUM.1/12/2017). MoEF Reg. No. P.70 was adopted in 2017 but the SIS REDD+ has been developed since 2013 and operational throughout the review period. The APPs provides Forest Management Units with a template for gathering information about safeguard implementation in REDD+ programming.</p> <p>See also description of One Map Policy above.</p> |
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| PLRs provide clear procedures for request/access to information | As noted above, MoEF Reg. No. P.7 (2011) , Chapter V provides the “Information Application and Service” procedures by which a member of the public can solicit information and it is serviced by the MoEF and Articles 16 and 17 explain the rights and obligations of the applicant as well as the service provider |
| Safeguard B | |
| Criteria B.1. Transparency | |
| Sub-Criteria B.1.3. Accountability | |
| Diagnostic Question 1: To what extent do PLRs promote fiscal transparency in the forest sector? | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs require that independently audited reports must be prepared showing clearly how public funds have been used by the forest agency | Presidential Decree of the Republic of Indonesia Number 16 of 2015 on Ministry of Environment and Forestry , Article 36 provides for the MoEF's Inspectorate General which is tasked with “carrying out internal supervision within” the MoEF which includes auditing, reviewing, evaluating, monitoring (and where necessary supervising) MoEF performance and finances. |

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| | <p>Government Regulation No. 45 Year 2013 on Implementation Procedure for Regional Revenue and Expenditure Budget, Article 176: Ministers/Head of Institutions as Budget Users and Minister of Finance as State General Treasurer conducts an integrated State Budget administrative system to fulfil an execution of State Budget that is transparent and can be accounted for.</p> <p>Government Regulation 46/2017 on Economic Instrument for Environment, Art. 2 (a) The Environmental Economics Instrument aims to: a. guarantee accountability and legal structuring in the implementation of environmental protection and management. ... d. Build and encourage public and international trust in the management of Environmental Funding.</p> <p>As this is the first reference to Regulation 46/2017 –a regulation very important in terms of environmental services and related issues of transparency, accountability and good governance in Indonesia and referred to several times below –and in light of the period of the ESA review (2014-2016)-- it is important to highlight that this 2017 regulation is not the first PLR to treat this matter. The area of forestry, environmental services had already been acknowledged in the 1999 Forestry Law. Environmental services from the forestry sector was previously being technically regulated in the Government Regulation No 6 of 2007 on Forest Management and The Development of Forest Management Plan and The Use of Forest Area. Further, in relation to carbon, it is regulated in Minister of Forestry Regulation No. 36 of 2009 on Carbon Sequestration and Storage in Production and Protected Forest that rely on the environmental services clauses in the 2007 Government Regulation. The 1999 Forestry Law and the two implementing regulations refer further to the principle of utilisation, sustainability, orientation for the people, justice, togetherness, openness and holistic management of forest (Article 2 of 1999 Forestry Law).</p> <p>Presidential Regulation, No. 77/2018 on Management of Environmental Funds, Art. 1(2) provides that “Management of environmental funds as stated in paragraph (1) is done according to the principles of: a. transparency; b. efficiency; c. effectiveness; d. proportionality; and e. accountability.”</p> <p>Also, since 2014, MOEF has developed a “budget tagging system and marking exercise” for climate finances aimed at tracking government expenditures for climate change purposes. The two initiatives</p> |
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| | involved 6 key ministries, including MoEF and the Ministry of Agriculture, Ministry of Energy and Mineral Resources, Ministry of Transport, Ministry of Industry, and Ministry of Public Works and Housing. On a voluntary basis each tagged and marked their budgets to generate data for the ESA review period of 2014-2016. |
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| Diagnostic Question 2: To what extent do PLRs adequately address corruption in the forest sector? | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs provide clear measures to address corruption in the forest sector (including a definition of corruption) | <p>The MoEF together with relevant law enforcement institutions (the Police, the Attorney General, the Financial Transaction Report and Analysis Centre and the Financial Services Authority) are committed to multi-door law enforcement, where simultaneous charges are brought for violations of two or more of the following laws: the Corruption Eradication Act (Undang-undang Republik Indonesia No. 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi), the Money Laundering Crime Act (Undang-Undang Republik Indonesia No. 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang), the Conservation Act (Undang-Undang Republik Indonesia No. 5 Tahun 1990 tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya.) and the Forestry Act.</p> <p>Indonesia's National Development Plan for 2015 to 2019 reiterates the status of Indonesia as a sovereign, independent and principled nation based on mutual cooperation. It has nine priority agendas one of which is strengthening and implementing Indonesia's commitment to reforming its law enforcement and other systems to ensure that they are free of corruption, trustworthy, and in keeping with the dignity of the nation for national development. The MoEF is directly involved in implementing this agenda item.</p> <p>Indonesia has a "Corruption Court" established by Law No. 46 of 2009 concerning Criminal Corruption Courts. Article 5 provides for the court and it is the only court with the authority in Indonesia to decide criminal corruption cases.</p> <p>Consultant is not aware of any definition of "corruption" in the forest sector. In addition to the applicability of the laws described directly below to the forest sector, the Government of Indonesia</p> |

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| | (GoI) has put in a number of measures to decrease corruption through improved transparency, auditing, monitoring, and reporting. (Documented in other parts of this Annex). |
| PLRs foresee penalties against acts of corruption | According to the Government's "State of Indonesia's Forest (2018)" report, penalties for corruption do exist. The report provides "The Ministry of Environment and Forestry together with relevant law enforcement institutions (the Police, the Attorney General, the Financial Transaction Report and Analysis Centre and the Financial Services Authority) are committed to multi-door law enforcement, where simultaneous charges are brought for violations of two or more of the following laws: the Corruption Eradication Act, the Money Laundering Crime Act, the Conservation Act and the Forestry Act. This strengthens the deterrent effect of Indonesian forest law enforcement." (p. 42). |
| PLRs create independent agencies mandated to fight corruption and with faculties to investigate corruption allegations | The MoEF has established the rule of law in its internal institutions to eradicate corruption, and is now implementing charter audits in the Ministry's offices, erecting efficient internal controls, and soliciting and receiving public complaints. (Source: <i>State of Indonesia's Forest Report</i> (2018)). The Anti-Corruption Commission has also established the GN SDA or Gerakan Nasional Penyelamatan Sumber Daya Alam (National Movement on Natural Resources Rescue). One of the sectors in GN SDA is forestry: https://acch.kpk.go.id/id/gn-sda-kehutanan . Also, important to highlight is the role of the Human Rights Commission and Ombudsman. The HR Commission was first established through a Presidential Decree No 50 of 1993 and then strengthened in the Law on Human Rights (39 of 1999) . The Commission has always been actively involved in natural resources conflicts and in their annual reports this type of conflict falls under right on welfare (land conflicts) or rights to a healthy environment. The Ombudsman was first introduced in through Presidential Decree No 44 of 2000 and then strengthened through Law No 2 of 2018 on Ombudsman. <i>The nature of these two institutions is to focus on the maladministration of public institutions as well as land conflict.</i> |
| PLRs provides codes of conduct governing the engagement and behaviour of public servants | Law No. 5 of 2014 on Civil Servant Apparatus (Aparatur Sipil Negara - ASN) provides specific rules concerning code of conduct of public servant. It also establishes a national commission (Komisi ASN) to oversee implementation of the rules. |
| Safeguard B | |

| Criteria B.2. Effective National Forest Governance | |
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| Sub-Criteria B.2.1: Clear Land Tenure Rights | |
| Diagnostic Question: To what extent do PLRs recognise and protect different types of forests tenure (ownership and access)? | |
| Indicators | <p>Explanation (identify articles/provisions)</p> <p>PLRs recognise different types of rights over forest land and forest resources (Statutory and customary ownership, use rights)</p> <p>The Forestry Law provides that a forest is “an integral a unit of ecosystem in the form of lands containing biological resources, dominated by trees in their natural environment.” (Art. 1) While emphasizing that “according to their status, forests shall be categorized as state forest and titled forest” (Art. 5), the law then provides that forests have three functions: conservation, protection and production. (Art 6). It defines “State forest” (“Forest located on land bearing no ownership rights”); “titled forest” (“forest located on land bearing ownership rights”); and “communal forest” which are forests located in an area of a communal law community”. The law goes on to designate and defined “production forest”, “preserved forest”, “conservation forest”, “natural reserve forest” and ‘natural conservation forest area. <i>Notably, the Forest Law does *not* provide a definition of primary or secondary forests or “natural forest” despite its pervasive use in the Presidential Instructions for the Moratorium which makes reference to the ban of new permits and concessions in “primary natural forests” and peatlands. (note: the Forestry law does refer to “natural reserve forests” and “natural conservation forests.”</i></p> <p>Article 4 of Decree No. 83 on Social Forestry further provides for village forest; community forestry; Community Forest Plantation; forestry partnership; and customary forest. More detail is as follows:</p> <p><u>Within State Forests</u></p> <p><i>Hutan Kemasyarakatan/HKm (community forests)</i></p> <p>The legal basis for HKm includes the Forestry Law No. 41/1999, further elaborated in MoEF regulations No.6/2007 and No. 83/2016. HKm is aimed at enabling community empowerment through community groups. Permits are valid for 35 years and are renewable. Permit holders/community groups are only allowed to harvest Non-Timber Forest Products (NTFPs) if permits are issued in the protection forest zone. Timber extraction is only allowed in the production forest zone.</p> <p><i>Hutan Tanaman Rakyat/HTR (community timber plantations)</i></p> |

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| | <p>The legal basis for HTR is the Government Regulation No. 6/2007 (amended through the Government Regulation No. 3/2008 and MoEF Regulation No. 23/2007 (amended through MOEF Regulation No. 83/2016). HTR is aimed at supporting community groups who work in the timber-based industries. Community groups who have received a HTR license can develop forest plantations and can harvest the timber.</p> <p><i>Hutan Desa/HD (village forests)</i></p> <p>The legal basis for a village forest is the Forestry Law 41/1999, followed by a ministerial regulation of MoEF Decree No. 83/2016 to elaborate the process and institutional arrangements. This scheme enables state-sponsored community empowerment through village-based institutions. Permits for village forests can be issued for forest estates classified as production and protection forests and are valid for 35 years. If permits are issued in the protection forest zone, use of forest resources is limited to NFTPs and other environmental services, such as ecotourism. Timber harvesting is allowed in the production forest zone.</p> <p><u>Adat Forest (Hutan Adat)</u> <i>(customary forests within the territories of Adat communities)</i></p> <p>Constitutional Court Ruling No. 35/2013 recognized ownership rights of forestland to customary communities within their Adat forest (Hutan adat). Adat forest (also known as “customary forests”) are not to be considered within State Forest and per the ruling. Consequently, “control of forests by the state still heed the rights of adat law communities”. However, referring to the Forest Law Article 5(3) providing for the following: “Government shall determine the status of forests as intended in paragraph (1) and paragraph (2); and customary forests shall be determined insofar as they exist in reality and their existence is recognised.”</p> <p>According to the ruling, customary forest (Hutan Adat) is the most significant forest scheme as it recognizes customary territory and offers the most expansive rights over land and forest resources to Adat communities and represents land ownership. In the case of Adat lands, the rights are held by the communities in perpetuity. The other social forestry schemes only grant temporary user and management rights over forestland, but the land ownership remains with the State Forest.</p> |
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| | <p>Per the 2013 decision, the prior practice per the Forestry Law of including customary lands into the State Forest Areas was deemed unconstitutional. The line between customary rights and formal rights/those already titled and recognized in law – is now being addressed. Presidential Decree of the Republic of Indonesia, Number 88 of 2017 on Settlement of Conflicts over Forest land is one response to this decision. (Explained below)</p> <p>The mapping to date of State Forest Area, the Indicative Map of the Social Forestry Area map produced per Decree No. 83 on Social Forestry (PIAPs) does not designate where there are existing or claimed Adat forests. However, most recently (though not during the period of this ESA coverage), MoEF Regulation No. 21/2019 on Adat Forest and Titled Forest provides at Article 1(13) that an “Adat Forest and Adat Forest Indicative Area Map is a map that illustrates the location of Adat Forests and prospective Adat Forests based on attached maps from Regional Regulations or other Regional Products of Law on the territories of Adat Communities.” Article 17 then provides for the establishment of the Adat Forest Indicative Area Map “gradually and is cumulative”.</p> <p>Constitutional Court Decision MK 45/2011 also found that State Forest Area boundaries are only valid if these have been formally gazetted- a process that needs to consider existing individual as well as communal rights. The ruling found that only 14 percent of the State Forest Area had been gazetted according to the required procedures. In December 2013, the MoEF issued an important follow-up regulation to the Constitutional Court rulings.</p> <p>Also, in 2013 (before being codified in 2017), the Government issued its “Principles, Criteria and Indicators for a System for Providing Information on REDD+ Safeguards Implementation (SIS-REDD+) in Indonesia” and includes the following definition of “tenure” to include “Socially defined agreements held by individuals or groups, <i>recognized by legal statutes or customary practice</i>, regarding the ‘bundle of rights and duties’ of ownership, holding, access and/or usage of a particular land unit or the associated resources there within (such as individual trees, plant species, water, minerals, etc.) (Source: World Conservation Union (IUCN). Glossary definitions as provided on IUCN website).”</p> |
| PLRs provide clear legal procedures for the recognition of land (and forest land) tenure rights (related are the responses to dispute resolution mechanisms available for | Decree No. 83 on Social Forestry provides procedures for Villages and local communities to apply for SF licenses and be part of Forest Partnerships. These can be found at Articles 8 through 48 of the decree. These are application for the granting of management and access rights, <i>not</i> ownership rights. Article 50 of the Decree does not provide for procedures for customary communities to secure |

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| <p>stakeholders, see below B.2.4, Access to Justice, "PLRs provide dispute resolution mechanisms to address disputes at all levels (describe these)".</p> | <p>recognition of their Adat customary lands (rights forests). The Decree merely says that this process is governed by MoEF Regulation Number P.32 / Menlhk-Setjen / 2015 concerning Private Forests and "[p]rocedures for verification and validation of private forest are regulated by a regulation of the Director General." Regulation No. P.32 is no longer valid and it was replaced by MoEF Regulation No. 21 (see directly below). (Also note: Partnership Agreements were added to the Social Forestry initiative back in 2013 via Ministerial Regulation No. P39/2013).</p> <p>MoEF Regulation No. 21/2019 on Adat Forest and Titled Forest, however, does set out the procedures for communities to apply for recognition of customary forests. Article 2(2) states that "The purpose of the regulation of Adat Forest and Titled Forest is for holders of Adat Forests and State Forests to receive recognition, protection and incentives from the Government in looking after their forests in a sustainable way according to space and time." 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. The regulation's Appendix 1 provides a "Format of Adat Forest Establishment Application Letter" which is the application for titling. There is no express request that the Adat community detail its traditional and actual use and occupation, a requirement to establish the right to recognition of their lands, resources and territories, but there is a general request in section 6(1) for information about the "A(6). Profile of Adat Community including: History, Social, Economy and Culture of Adat Community including local wisdom" and B(3) says "Area status: State forest area / Other Usage Area *" –these inputs may be striving to secure the information necessary for a determination of rights. The application in practice is still unclear. There is also a request for agreement to the category of the forest, section B(5) says "Agreed function of adat forest object: Conservation Forest/Production Forest/Protection Forest *".</p> <p>Also, Presidential Decree No. 88 (2017) on the Settlement of Conflicts over Forest land is arguably a grievance redress mechanism (GRM) but it also allows a party that can allege control and use over a forest area, the right to apply for settlement of a land tenure dispute, and one of the remedies is the award of a certification of title. As such, it is also a procedure for securing recognition of a property</p> |
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| | <p>interest. Adat communities can be an applying party and if they can demonstrate the control and use BEFORE the forest area in question was designated and categorized (i.e. conservation, protection, production), their lands can be excised from the State Forest Area (borders are changed) and a certification of title is issued. The mechanism provides that only recognized Adat communities can file applications and they have to have actual control and use of the forest lands subject to the application, as well as control and use before the forest designation was made. This would exclude communities or Villages that cannot get that recognition as an Adat community and also those that perhaps have lost control or use of the lands due to incursions of third parties, with or without license, permits or other authorizations of a level of government. (See Articles 1(2), 5(1), 6(5) and 7). A condition of the issued title, the Adat community must accept the forest categorization already provided for the area. (Art. 29(1)). This can arguably limit their ownership, use and administration rights over the Adat forest under international law applicable to Indonesia if restrictions are not consistent with the communities' own development priorities and exercise of their cultural rights.</p> <p>Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency No. 10/2016 on Procedures to Establish the Communal Land Rights of Adat Communities and Local Communities in Special Areas</p> |
| PLRs establish fair procedures to govern the expropriation of forest land by the state. No forced evictions, allowing evictions only in exceptional circumstances meeting lawful criteria | <p>Article 68 of the Forestry Law provides for compensation to communities losing "access" to their forests and to "ownership" as the consequence of its designation as forest area, in accordance with the prevailing laws and regulations."</p> <p>Law No. 39 Year 1999 - Concerning Human Rights provides in Article 37 that "(1) The right to ownership of a property in the public interest shall not be revoked, except with the restoration of fair, proper and adequate compensation, based on prevailing legislation. (2) In the event that in the public interest a property must be destroyed or abandoned, either permanently or temporarily, compensation shall be paid in accordance with prevailing legislation, unless otherwise decreed."</p> <p>Indonesia has endorsed UNDRIP which provides at Article 10 that "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."</p> |

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| | Presidential Decree No. 88 (2017) on the Settlement of Conflicts over Forest land does provide for circumstances of resettlement where parties alleging to control and utilize lands after the forest area was appointed. (Arts. 8 -9). In such cases where the forest category was one of protection and conservation, resettlement is an option. The regulation says that if this is the option chosen: resettlement, the MoEF resolves it according to statutory and regulatory provisions (Art. 25). The regulation further says that funds to achieve the resettlement must come out of the regional government in question. (Art. 25). |
| PLRs provide clear land titling and registration procedures. These are accessible (not cost prohibitive) | Presidential Decree No. 88 (2017) on the Settlement of Conflicts over Forest land can result in the granting of use and access rights, and rights to participate in forest management, as well as the eventual titling of Adat lands –all of which require registration. The same decree provides that the costs are born by the State and regional governments (Art. 33). |
| PLRs ensure that any displacement activities carried out in fully participatory manner. | <p>As noted where resettlement is done per Decree No. 88 Settlement of Conflicts over Forest land (above) this is done per statutory and regulatory provisions.</p> <p>UNDRIP, Art. 10 requires that “no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”</p> <p>The UNDP SES, applicable to this project, would also require application of Standard 5 “Displacement and Resettlement” which requires such full participation.</p> |
| PLRs seek to avoid, and where avoidance is not possible, minimize and mitigate physical or economic displacement from land or resource acquisition or restrictions on land or resource use | There is no specific PLR that addresses this, but overall where improved livelihoods is the goal of the Social Forestry initiative and the Moratorium is to prohibit further concessions and permitting, it is clear that neither physical or economic displacement is intended. |
| PLRs ensure that livelihoods of any displaced persons enhanced or at least restored through compensation at full replacement costs and other assistance. | The UNDP SES , applicable to this project, would also require application of Standard 5 “Displacement and Resettlement” which requires the application of a Livelihoods Action Plan in the event of any whole or partial economic displacement (such as through the limitation in access or use of natural resources). More generally, compensation is also required where adverse social and environmental harms occur (such as displacement). |
| Safeguard B | |

| Criteria B.2. Effective National Forest Governance Sub-Criteria B.2.2: Equitable Distribution of Benefits | |
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| Diagnostic question 1: to what extent do PLRs recognise and protect the fair distribution of benefits? | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs guarantee the right to fair distribution of benefits arising from the use of forest resources (including environmental services) | <p>The Indonesia National REDD+ Strategy defines a framework and pillars which define stakeholder involvement and inclusion achieve through, among other, "Ensure equitable benefit sharing". It goes on to say (see. 2.2.2.1) that the National REDD+ Agency must "Ensure effective funding services and fair benefit distribution for parties running REDD+ programs/projects/activities in accordance with the integrity requirements for REDD+ implementation systems". In section 2.2.5.4 (Benefit Sharing) of the strategy, it says that "fair distribution of benefits are based on", among others: "All parties with rights over the area of the REDD+ program/project/activity location have the right to payment. Systems and mechanisms for benefit sharing must be transparent and accountable to prevent misallocation of benefits", and mechanisms are in place for both individuals and collectives to secure benefits, thereby accounting for groups/communities, not just private sector individuals.</p> <p>Decree No. 83 on Social Forestry appears to recognize that communities and villages may need extra help to equitably access the benefits of the SF initiative (lacking certain capacities to prepare the materials to make a successful application). Throughout its application procedures, the decree provides for a "Social Forestry Acceleration Working Group" (PPS Working Group) that assists in the facilitation and verification of social forestry acceleration activities. (see, among others, Arts. 1(22), 8(5), 9(2), 10(3), 14(3), 19(3)) which is charged with assisting in the improvement of applications by helping to complete the respective administrative requirements.)</p> <p>Another important piece of legislation is the Local Government Act No. 22 of 1999. The law provides provincial governments, district governments, state enterprises and communities to manage production forests (one of the three categories of forests in Indonesia). The law also provides that local communities have the right to benefit from the environmental quality of the forests.</p> <p>Presidential Regulation No 45 of 2016 establish Agrarian Reform as national priority programs and empowerment at the local level for 40% for the poorest in the poor village community.</p> |

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| | <p>The government has taken serious steps to facilitate the emergence of a new environmental services sector. Regulations have been issued, such as for tourism services in the forest (2013), micro hydropower (2014), the utilization of conservation areas (2014-2015), geothermal power (2015), social forestry businesses (2016) and non-timber forest products (2017).</p> <p>Per Regulation from the Directorate General of Social Forestry and Environmental Partnership of the MoEF (No. P.14(2016)) a Social Forestry Taskforce was established with taskforce entities located within key provinces. To increase access to the benefits of the Social Forestry initiative, the taskforce has the charge, among others, to socialize the initiatives and to assist communities, Villages and Adat communities in their respective application processes to secure licenses, permits, partnership agreements and land recognitions.</p> |
| PLRs regulate benefit sharing arrangements (contracts, covenants, agreements) | <p>Decree No. 83 on Social Forestry provides that where Partnership Agreements are entered into and providing for “cooperation between the local community and the forest manager, the holder of a forest utilization / forest service business permit, a lease-to-use forest area permit, or the holder of a forest product primary industry business permit”. Art. 46(3) provides what must be included in the body of the cooperation agreement between the two parties, including “activity costs, party responsibilities, and descriptions of how the parties will share the results of their partnership.”</p> <p>Presidential Regulation, No. 77/2018 on Management of Environmental Funds, Art. 7(1) & (2) provides that “(1) Management of environmental funds is done through contract/agreement. (2) Contract/agreement as stated in paragraph (1) must at least include: a. identity of the parties; b. allotment of fund usage; c. type of activity that will be conducted; d. amount of fund; e. duration of activity; and f. type of investment instrument agreed upon by the parties.”</p> |
| Safeguard B | |
| Criteria B.2. Effective National Forest Governance | |
| Sub-Criteria B.2.3: Gender equity | |
| Diagnostic Question: To what extent do PLRs promote and protect gender equity? | |

| Indicators | Explanation (identify articles/provisions) |
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| <p>PLRs promote and enhance gender equity and women's empowerment, especially with regards to benefit sharing, participation, and land tenure</p> | <p>Per Law No. 7 (1984), Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination Against Women. It did so, however with the follow explanation and limitations: "The provisions in this Convention shall not affect the principles and provisions in national regulations which contain the principle of equal rights between men and women as an actualization of Indonesia's legal system which we already view as being well or better and more suitable to the aspirations of the Indonesian nation. Meanwhile, in its implementation, the provisions of this Convention must be adjusted to the order of life in society which contains cultural values, customary values, and religious norms which still apply and are widely followed by the Indonesian people. Pancasila as the nation's view of life and the Constitution of 1945 as the national source of law give assurance and guarantee that the implementation of the provisions of this Convention aligns with the order of life that is intended by the Indonesian nation."</p> <p>Article 58(1)(h) of Decree No. 83 on Social Forestry provides that all holders of licensing rights for Village Forests, Community Forests, and Community Forest Plantations are "entitled...to get fair treatment <i>on the basis of gender</i> or other forms."</p> <p>Presidential Instruction Number 9 Year 2000 on Gender Mainstreaming in National Development calls on Government officials at the national, regional and district level to "Implement gender mainstreaming to ensure the execution of planning, drafting, implementation, and evaluation of national development policies and programs with a gender perspective according to respective task fields and functions, and authorities"; "Earnestly pay attention to the Guide to Gender Mainstreaming in National Development as attached in this Presidential Instruction as a reference in implementing gender mainstreaming"; calls upon the State Minister of Women Empowerment to "(1) Give technical assistance to government agencies and institutions in Central and Regional level in implementing gender mainstreaming. And (2) Report the result of gender mainstreaming implementation to the President."</p> <p>Law No. 39 Year 1999 - Concerning Human Rights provides at Art. 1 (3) that "Discrimination means all limitations, affronts or ostracism, both direct and indirect, on grounds of differences in religion, ethnicity, race, group, faction, social status, economic status, sex, language, or political belief, that results in the degradation, aberration, or eradication of recognition, execution, or application of human rights</p> |

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| | <p>and basic freedoms in political, economic, legal, social, cultural, or any other aspects of life." (Emphasis added). Section 9 of this law entitled "Women's Rights" affirming that women's rights are human rights. Equity in benefit sharing and participation with respect to land tenure are not included, but there is an assurance that women's views are to be "adequately represented" in the political system. The law has advanced since Law 39.</p> <p>The National Medium-Term Development Plan (RPJMM) of 2015-2019 contains a number of provisions related to gender equity, the following are just a few related to no discrimination, equity in the work force, gender equality in reaching MDGs, women participation in decision-making:</p> <p><i>-Chapter 2, General Conditions, 2.1 Background</i>, "the vision of national development is to actualize an INDONESIA THAT IS INDEPENDENT, FORWARD, JUST, AND PROSPEROUS. JUST: meaning no boundaries/discrimination in any form, be it between individuals, genders, or regions." ..."The mission related to gender is to "Realize equitable development and being just by increasing regional development; decreasing the overall social gap by increasing inclination towards the people and currently weak groups and areas/regions; drastically overcoming poverty and unemployment; providing equal access for the people to various social services as well as economic facilities and infrastructure; and abolishing discrimination in various aspects, including gender."</p> <p>...</p> <p><i>-Chapter 3, Strategic Environment, 3.3 Demographic Bonus</i>, the strategic policy related to gender is included as part of Economy and Labor. The policy is: "Increasing the participation of women in the labor forces."</p> <p>...</p> <p><i>-Chapter 3, Strategic Environment, 3.4 Post-2015 Agenda and Climate Change</i>, "Several focus points in the SDGs which will give an important color in the Post-2015 Development Agenda are that: (i) human development such as poverty, hunger, malnutrition, health, education, and gender equality that color the MDGs will be continued. In relation to his, there is a new focus that answers a recent global trend, which is the problem of gap, be it within a certain country or among countries. Moreover, the problem of gender and children, not only girls but also boys..."</p> <p>...</p> <p><i>-Chapter 6, National Development Agenda. 6.2 Building a Clean, Effective, Democratic and Trusted Government Administration, 6.2.2 Increasing the Role and Representation of Women in Politics and</i></p> |
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| | <i>Development</i> , "The target that shall be achieved is an increase in the quality of life and the role of women in various fields of development and an increase in the representation of women in politics including in the decision-making process in executive, legislative and judicial institutions." |
| PLRs address gender discrimination | <i>See above</i> |
| PLRs require public institutions to raise awareness on gender equity (through programmes for gender sensitisation, focal points, etc.) | <p>A number of provisions in National Medium-Term Development Plan (RPJMM) of 2015-2019 address the issue of raising awareness about gender issues within and outside institutions, such as:</p> <p>-<i>Chapter 6, National Development Agenda, 6.2 Building a Clean, Effective, Democratic and Trusted Government Administration, 6.2.2 Increasing the Role and Representation of Women in Politics and Development</i>, in its "Policy Direction and Strategy" discusses "[i]ncreasing the understanding and commitment of development actors on the importance of integrating a gender perspective in various phases, processes, and fields of development, in national as well as regional level" and then provides for "[i]ncreasing society and the business world's understanding on the importance of gender equality."</p> <p>-<i>Chapter 6, National Development Agenda, 6.4 Strengthening the State's Presence in System Reformation and Corruption-Free, Dignified and Trusted Law Enforcement, 6.4.6 Protecting Women, Children, and Marginal Groups</i>, includes in its "Policy Direction and Strategy" calls for "[i]ncreasing the understanding of the government, society, and businesses on acts of violence, exploitation, desertion and other wrongdoings against children and women and socio-cultural values that protect children and women from various acts of violence" as well as "[i]ncreasing the capacity of institutions geared towards the protection of children and women from various acts of violence and other wrongdoings, through:"</p> |

| Safeguard B |
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| Criteria B.2. Effective National Forest Governance Sub-Criteria B.2.4: Adequate Access to Justice |
| Diagnostic Question: To what extent do the PLRs guarantee adequate access to justice in the context of forest management? |

| Indicators | Explanation (identify articles/provisions) |
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| PLRs recognise the right to access to justice | <p>The Forest Law provides for access to justice. Under Art. 71 communities can file class actions against forest management contrary to the prevailing laws and regulations where there is “forest destruction harmful to community life.” Organizations in the field of forestry also have a right to file class action suits. Where out of court settlements are provided for by the Forestry Law for civil suits, criminal matters must be settled in a court of law. (Art. 75).</p> <p>Government Regulation No. 3 of 2002 concerning Compensation, Restitution, and Rehabilitation on Victim of Grave Human Rights Violation (requiring further analysis).</p> |
| PLRs provide dispute resolution mechanisms to address disputes at all levels (describe these) | <p>Indonesia has a Human Rights Court established by Law No. 26 of 2000 concerning Human Rights Courts. It has jurisdiction to resolve cases of grave violations of human rights, such as genocide and crimes against humanity.</p> <p>Indonesia also has an Administrative Court established by Law No. 8 of 1986 concerning State Administrative Court amended by Law No. 5 of 2002, and with jurisdiction to cover challenges to administrative decisions, such as a decision by the MoEF.</p> <p>Presidential Instruction 99 related to the resolution of land tenure conflicts—each adopted in 2017</p> <p>Law on Public Services, No. 25 (2009) provided that all government agencies need to have a grievance mechanism.</p> <p>Also, during the period of this ESA review (2014-2016) there was Regulation of the Minister of Environment Number 9 of 2010 concerning Procedures for Complaints and Handling of Complaints due to Alleged Pollution and / or Environmental Damage. Complaints related to pollution, and environmental damage can be addressed by this mechanism, as well as issues of overall forest degradation, land tenure disputes, uses of cultural patrimony and knowledge and more. This mechanism is further described in the ESA Cover Report. Toward the end of the ESA review period, this 2010 regulation was subsequently replaced by MoEF Reg. P.22 / MENLHK / SETJEN / SET.1 (March 2017) on Procedures for Management of Complaints for Pollution and / or Environment Damage and / or Forest Damage. At this time, the complaint system under Regulation No. 9 was put into an online format, expanding access.</p> <p>This 2017 regulation provides for the establishment of a complaint mechanism. The Regulation says that “for protection and management of the environment and forests, everyone has the right and role to make complaints as</p> |

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| | <p>a result of alleged pollution and / or environmental damage and / or forest destruction". The regulation defines "environmental pollution", "forest destruction" and "environmental damage" all in terms that trace the harm to an act of humans. (Art. 1) The regulation commits to establish a mechanism that is "fast", "simple", "accountable", "participatory" and "transparent". (Art. 4) More specifically, the complaints covered by the regulation consist of:</p> <ul style="list-style-type: none"> a. businesses and / or activities that do not have or are not in accordance with permits in the environmental and / or forestry sector; b. environmental pollution and / or damage; c. forest destruction; d. B3 waste management which is not in accordance with the provisions of the legislation; e. illegal logging; f. forest and land burning; g. forest encroachment; h. poaching, distribution and trade in illegal plants and animals; i. tenure conflicts in forest areas; j. utilization of genetic resources and traditional knowledge; and / or k. other businesses and / or activities that are in conflict with the laws and regulations in the field of environment, forestry, or conservation of living natural resources and their ecosystems. (Art. 5). <p>Demonstrating access to justice at all national, regional and local levels, the regulation envisions that several actors would be responsible for receiving and managing complaints including: "a. Ministry; b. Environmental and / or forestry institutions at the provincial level; c. Environmental agencies at the district / city level; and d. Forest Management Unit." (Art. 6). The regulation defines the complaint jurisdiction of each of these entities. Some of the jurisdictions overlap and in some case, competency arises because a lower entity was "not managed in accordance with statutory provisions." (Art. 7). For instance, if the "Responsible Agency does not manage the complaint within 10 (ten) working days after the complaint is declared complete, the complainant can submit the complaint to the Responsible Agency at a higher government level." (Art. 16)</p> <p>The mechanism has a direct attention to environmental harms, but this indirectly would address social harms resulting from environmental damage, degradation and destruction and those arising from tenure conflicts and appropriation of traditional knowledge. The tenure conflicts, per the regulation, are forwarded to "the Responsible Agency shall forward the complaint to the forest area tenure conflict management team within a period of no later than 5 (five) working days after the complaint is declared complete" (Art. 14). Presumably this is a reference to the authorities of the Team for Acceleration of Resolution of Control over Land in Forest Rea (PPTKH Acceleration Team),</p> |
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| | <p>the PPTKH Implementation Team, and the TKH Inventory and Verification Team of Control over Land in Forest Areas. Each of these are established by Presidential Decree No. 88 (2017) on the Settlement of Conflicts over Forest land and perform their work in accordance with the guidance and procedures outlined by said regulation.</p> <p>See also Ministry of Environment and Forestry Regulation No. P.84/Menlhk-Setjen/2015 concerning Tenurial Conflict Management within Forest Area (PPTKH). This regulation was enacted to support settlements of land occupancies, including conflicts within forest areas, by way of a joint taskforce involving ATR/BPN, MoEF, and MoHA under coordination of the Coordinating Ministry of Economic Affairs (CMEA).</p> <p>Further conflict resolution mechanisms available during the review period include the following:</p> <p>Law No 7 of 2012 on Social Conflict Management along with its technical regulation, in Government Regulation No 2 of 2015, which encourage the use of local wisdom as one of the measures to avoid social conflicts. The conflicts cover by this framework includes conflicts that come from natural resources dispute. See also Minister of Environment and Forestry Regulation No 84 of 2015 on Resolution of Tenurial Conflicts.</p> <p>Minister of Environment and Forestry No 84 of 2015 concerning conflict management related to right to forest area using the instrument of RATA (Rapid Land Tenure Assessment) and AGATA (Analysis of Dispute Style) to be resolved through 6 schemes of social forestry: Village Forest, Community Forest, Hutan Tanaman Rakyat, Partnership (conservation and forest businesses), Adat Forest, Hutan Rakyat.</p> <p>There were also other grievances mechanism operative during the ESA review period and available to the public: the National Commission on Human Rights and Ombudsman. The HR Commission was first established through a Presidential Decree No 50 of 1993 and then strengthened in the Law on Human Rights (39 of 1999). The Commission has always been actively involved in natural resources conflicts and in their annual reports this type of conflict falls under right on welfare (land conflicts) or rights to a healthy environment. The Ombudsman was first introduced in through Presidential Decree No 44 of 2000 and then strengthened through Law No 2 of 2018 on Ombudsman. The nature of these two institutions is to focus on the maladministration of public institutions as well as land conflict.</p> |
| PLRs provide mechanisms for resolving disputes that are not cost prohibitive (legal aid, access to legal services and other support for the poor) | See section directly above. The online mechanisms and grievance mechanisms to the government agencies were not fee based. |

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| PLRs provide access to appeals | Neither the MoEF Reg. No. 22 nor Presidential Instruction 88 (Settlement of Conflicts over Forest land) deny a complainant access to any other grievance mechanism available, such as the national court system. MoEF Reg. No. 22 does have an “escalation” mechanism, if you will, in that while defining who “Responsible Parties” may be to receive and resolve complaints at the national, provincial and local level (see above), it describes each one’s competency (jurisdiction) but then goes on to provide that the competency of a Responsible Party may arise because a lower entity (also a Responsible Party) had a complaint that it did “not managed in accordance with statutory provisions.” (Art. 7). For instance, if the “Responsible Agency does not manage the complaint within 10 (ten) working days after the complaint is declared complete, the complainant can submit the complaint to the Responsible Agency at a higher government level.” So it does not say “if you are unsatisfied with the resolution, you can appeal to a higher government level”, but if you can establish that in resolving the case the lower Complaint Post did not follow the rules, you can appeal to the Responsible Party above. In terms of Presidential Instruction 88, in the case of a “decision to change forest area borders, once the party is notified, within 30 days of the decision being announced, he/she/they may propose an objection to the MoEF regarding the resolution. The proposal is then submitted to the relevant regent/mayor. The MoEF Minister has the sole discretion to accept or reject the objection. (See Art. 27). |
| PLRs provide special consideration for vulnerable groups in guaranteeing their right to access to justice | <p>International treaties and instruments to which Indonesia is a party or otherwise endorses, speak to this issue. For instance, Art. 13(2) of UNDRIP provides that “States shall... ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.”</p> <p>As noted above, MoEF Regulation No. 22 provides for support if a complainant has difficulty filing a complaint. Also, the mechanism for filing the complaint (while all of the information needs to be provided), it can be done in many ways that make the system more accessible to vulnerable groups, likely marginalized, living in remote areas, possibly unable to read or access an online system.). Per the regulations, complaints can be filed in many ways, through walking into a Complaint Post office and orally telling your complaint to an officer who can help file it, through formal application in writing, emails, social media, a letter, fax, “short message”, phone calls, etc. (Art. 10). Also given that some of these vulnerable stakeholders may face threats, attacks and other reprisals, in order to protect the complainant, the Responsible Agency is required to keep the information related to the complainant confidential.” (Art. 28).</p> |

| Safeguard B | |
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| Criteria B.2. Effective National Forest Governance Sub-Criteria B.2.5: Integration of Social, Economic and Environmental Considerations into policy-making | |
| Diagnostic Question: To what extent do PLRs require/promote the integration of social, economic and environmental considerations in forest management? | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs require that policy-making takes into consideration their potential environmental impacts (including environmental impact assessments prior to their implementation) | <p>MoEF Ministerial Decree 70/2017 on REDD+ Procedures, Art. 1(7) lays this foundation and need for impact assessments by defining "Sustainable Forest Management" as "forest management based on a balance of economic, ecological and social."</p> <p>Law No. 32/2009 concerning Environmental Management and Protection. For the government executing agency (National and Regional level), this Law requires a Strategic Environmental Assessment, that will guide regional spatial planning for development. This Law also requires any development program by the private sector to implement proper environmental and social considerations including environmental assessment, management planning and monitoring. Specifically, Art. 1(10) provides: "Strategic Environmental Assessment hereinafter abbreviated to KLHS shall be a series of systematic, comprehensive and participatory analyses to ascertain that the principles of sustainable development have become a basis and been integrated into the development of a region and/or policy, plan and/or program.”"</p> <p>Environmental and social assessments are conducted through the SEA and AMDAL process in accordance with MoEF Regulation No. P.69 of 2019 and the Ministry of Environment Regulation No. 5 Year 2012 on business activities mandatory to have AMDAL (Environmental Impact Assessment/<i>Analisis Mengenai Dampak Lingkungan</i>). The assessment is also regulated by Government Regulation No. 27 Year 2012 concerning Environmental Permit, where each business and/or activity (project) plan mandates an Environmental Permit if an AMDAL or UKL-UPL assessment is required. (Consultant has not seen this regulation yet. This is extracted from from ESMF of E. Kalimantan ERPD project doc.)</p> |

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| PLRs require EIAs of investment projects (forestry sector, infrastructure) | <p>Law No. 32/2009 concerning Environmental Management and Protection. For the government executing agency (National and Regional level), this Law requires a Strategic Environmental Assessment, that will guide regional spatial planning for development. This Law also requires any development program by the private sector to implement proper environmental and social considerations including environmental assessment, management planning and monitoring.</p> |
| PLRs require regular monitoring of social economic and environmental impacts of policy implementation | <p>A national Monitoring, Reporting and Verification (MRV) system on climate change mitigation specific for land-based sector supported by the National Forest Monitoring System (NFMS) has also been developed since 2015. The national MRV system is now having legal basis through the enactment of the Ministerial Regulations No. 70/2017 on REDD+ procedure and No. 72/2017 on MRV system. In addition, the Ministerial Regulation No 71/2017 on National Registry System (SRN) has been authorized to complete the requirement of MRV system. This system addresses MRV of forest cover and biomass and Greenhouse Gas (GHG) Emissions. <u>This MRV system does not monitor or assess social impacts of REDD+ programming</u>.</p> <p>The MoEF Regulation No 18/2015 gives authority for forest resource monitoring to the Directorate General of Forestry Planning and Environmental Arrangement (Ditjen PKTL), while authority for MRV is within the Directorate General of Climate Change (Direktorat Jenderal Pengendalian Perubahan Iklim/Ditjen PPI). Those two institutions are independent to each other but need to share and integrate the MRV tasks. Also, a unit called the Directorate of Forest Resources Inventory and Monitoring (IPSDH, in Indonesian) was established under the Ditjen PKTL of MoEF to manage the NFMS. The PSDH has four sub-units to perform distinctive tasks and responsibilities, i.e: (a) forest inventory, (b) forest monitoring, (c) forest mapping and (d) spatial data networking.</p> <p>See also MoEF Ministerial Decree 70/2017 on REDD+ Procedures, Article 22, providing that "The Director General as the National Focal Point is responsible for carrying out monitoring and evaluation of the implementation REDD+." All results of monitoring and assessments are reported to the Minister of MoEF. Also, Annex IIB. Provides the "Procedures for Measuring, Reporting and Verification (MRV) For REDD+" outline the roles of the national and sub-national entities involved in collecting data and verifying the same. Article 11(3) "Reporting the implementation of REDD + at the Sub-National level is carried out by REDD+ implementers..."</p> |

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| | <p>MoEF also has developed tools for assessing the level of Climate Change vulnerability at the village level called SIDIK (Sistem Informasi Data Indeks Kerentanan – Vulnerability Index Information System). Where the level of vulnerability is determined by the indicators that affect exposure, sensitivity and adaptive capacity of the village.</p> <p>The Moratorium (Art. 7) says that the “Cabinet Secretary conducts monitoring of the implementation of this Presidential Instruction and reports the findings to the President” but does not provide any more explicit monitoring instructions of social and environmental impacts. Decree No. 83 on the SF initiative provides at Article 54 that “The activities of HPHD, IUPHKm, IUPHHK-HTR, Forestry and Customary Forest Partnership activities are monitored by Pedamping / Pokja PPS or by the head of KPH.”</p> <p>According to Ministry of Forestry Regulation No. P. 20 / Menhut-II / 2012 regarding the Management of Forest Carbon, Art. 9(2)(b) provides that all forest carbon implementers must “Monitor, evaluate and regularly report results of forest carbon management activities to the Minister”. Such implementers include various permit holders including a. Permit holders for utilization of timber products from natural forest; b. Permit holders for utilization of forest timber products from plantation; c. Permit holders for utilization of forest timber products from ecosystem restoration; d. Permit holder s for utilization of forest timber products from community plantation forests; e. Permit holders for utilization of community forest; f. Permit holders of village forest management; g. Permit holders for utilization of non- timber forest products; h. Holders of business licenses for the provision of natural tourism facilities / services; i. Permit holders for utilization of environmental services; i. Permit holders for utilization of forest products / forest areas / services environment in protected forests; k. Conservation forest manager; l. Manager of production forest management unit; m. Manager of protected forest management unit; n. Customary forest manager; o. Rights forest manager / owner. According to Art. 11, the MoEF (formerly the Ministry of Forestry) “is obliged to conduct guidance, supervision, control monitoring, evaluation, and supervision of implementation forest carbon activities.”</p> <p>Article 59 of Decree No. 83 on Social Forestry requires Villages and Communities granted licenses under the SF initiative to “compile Village Forest Management Plans, Business Work Plans, and Annual Work Plans, and submit implementation reports to the rights giver or permit.”</p> <p>The monitoring of social, economic and environmental impacts is also done against the Cancun Safeguards through the mechanisms established to populate the SIS-REDD+ platform, as explained in sub-section B.1.2.</p> |
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| PLRs address potential adverse risks to communities and workers from construction and other interventions, including measures to prevent or minimize health risks and spread of infectious diseases | Presidential Regulation No. 16 Year 2018 on Procurement of Goods and Services , Article 68: paragraph (1): Procurement of Goods/Services are done by heeding to sustainability aspects. Paragraph (2): sustainability aspects as stated in paragraph (1) consists of: a. economic aspect including production cost of the good/service as long as the age of that good/service; b. social aspect including <i>empowerment of small businesses, guarantee of fair working conditions, empowerment of local communities/businesses, equality, and diversity</i> ; and c. environmental aspect including <i>decrease of negative impacts on health, air quality, soil quality, water quality, and using natural resources according to statutory and regulatory provisions</i> . |
| PLRs promote non-discrimination, equal opportunity and fair treatment of workers, and prohibit the use of forced labour or child labour, consistent with relevant ILO conventions. | <p>Article 28D(2) of the Constitution provides that "Every person is entitled to an occupation as well as to get income and a fair and proper treatment in labor relations".</p> <p>Indonesia is also party to various International Labour Organisation ("ILO") and other international organization sponsored conventions, albeit not ILO 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries. For example,</p> <p>Convention concerning Forced or Compulsory Labour Convention on Equal Remuneration Convention Convention on Abolition of Forced Labour Convention Convention Concerning Discrimination in Respect of Employment and Occupation, Convention on the Rights of Persons with Disabilities, Marrakesh Agreement Establishing the World Trade Organization Convention on the Rights of All Migrant Workers and Members of Their Families, Convention Concerning Minimum Age for Admission to Employment</p> |
| Safeguard B | |
| Criteria B.2. Effective National Forest Governance | |
| Sub-Criteria B.2.6: Cross-Sectoral Coordination | |
| <p>Diagnostic Question: to what extent do PLRs require/promote effective coordination between various agencies that play a role in forest management?</p> | |

| Indicators | |
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| <p>PLRs define concrete mechanisms to support and encourage coordination (inter-ministerial committees, working groups, cross cutting teams, etc.)</p> | <p>The Forestry Law, Art. 4, establishes a number of directorates under the umbrella of the MoEF allowing for an increased coordination over a broad array of key elements to forest management including: Directorate Generals of the Ministry of Environment and Forestry, including the Directorate General of Forestry Planology and Environmental Administration (DJPKTL); the Directorate General of Climate Change (DJPPI); the Directorate General of Pollution and Environmental Destruction Prevention (DJPPKL); the Directorate General of Natural Resources and Ecosystem Conservation (DKSDEA); the Directorate General of Sustainable Production Forest Management (DJPPL), the Directorate General of Forest and Environmental Law Enforcement (DJPPLHK); Directorate General of Social Forestry and Environmental Partnership (DPSKL); and the Directorate General of Management of Watersheds and Protection Forests (DJPDAHL). The Secretariat General of the Ministry of Environment and Forestry (Secretariat General of MoEF) and Data and Information Center (Pusdatin) provided coordination support.</p> <p>Also, the “Basic Forestry Law enables forest management through Kesatuan Pengelolaan Hutan (forest management units (FMUs/KPHs)), which are responsible for developing, implementing, and/or overseeing site level forest governance and management—including preparing participatory plans, enforcing forest regulations such as forest fire control and other illegal practices, and negotiating with local communities on issues such as land use rights and forest access. FMUs are under the authority of subnational governments, increasing accountability to local stakeholders. In 2007, the government passed legislation to prioritize FMUs and safeguard the public function of forests. This resulted in the formation of 600 FMUs over the whole forest estate. BAPPENAS informed the MOEF that the budget is conditional on achieving FMU implementation targets—a requirement referred to as “no KPH no budget.” The transition to a decentralized management regime for forests remains central to the mission of the new MOEF. A priority of the National Medium Term Development Plan 2015-2019 (RPJMN is to have 340 FMU operational by 2020).” (Per Sector Assessment (Summary): Agriculture, Natural Resources, and Rural Development (Forestry Subsector) –based on the Government of Indonesia, Forest Investment Plan for Indonesia, 2012. Jakarta (https://www-cif.climateinvestmentfunds.org/sites/default/files/meeting-documents/fip_6_indonesia_0_0.pdf)</p> <p>Presidential Regulation No. 16/2016 stipulates that the mandate for coordination of climate change governance and implementation of the Climate Change Convention at national level is assigned to the Directorate General of Climate Change, MoEF. Moreover, through the MoEF Decree No. Ref. S. 210 /MenLHK-II/2015 dated 18 May 2015, the MoEF has designated the Director General of Climate Change (Director General) as the National Focal</p> |

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| | <p>Point (NFP) for the United Nations Framework Convention on Climate Change (UNFCCC). Simultaneously, the Decree also appointed Director General of Climate Change as the NFP to the Kyoto Protocol and the Paris Agreement to the UNFCCC.</p> <p>At sub national level, local governments contribute significantly in REDD+ implementation. Each of the eleven REDD+ pilot provinces, have set up an Ad-Hoc REDD+ institution to coordinate REDD+ activities in the province, taking the form of a Working Group, a Task Force, or a Commission. These ad hoc institutions are intended to count with multi-stakeholder membership consisting of representatives of local governments and other related stakeholders, including local NGOs and academia/universities representatives.</p> <p>The lack of a single map of land-use claims and internal borders in Indonesia has been identified as an obstacle to sustainable development. The One Map Policy (Decree of the Republic of Indonesia Number 9 of 2016 on Accelerating One Map Policy through use of 1:50.000 Scale) is further strengthened by Law 4/2011 which gives the Geospatial Information Agency the mandate to work with the Presidential Delivery Unit for Development Monitoring and Oversight and take the lead in developing the single reference map. The objective of this policy is to create a single 1: 50,000 scale map that can serve as a standard geospatial reference, based on a single standard, a single database, and a single geoportal. The use of one map that various ministries, regional and district governments, and other actors can access will help to increase transparency, and the sharing and comparison of information across multiple users. When completed, this will be the first time that one government agency will have a single source upon which to base decision-making, strategic planning, reporting etc.</p> <p>The MoEF Regulation No 18/2015 gives authority for forest resource monitoring to the Directorate General of Forestry Planning and Environmental Arrangement (Ditjen PKTL), while authority for MRV is within the Directorate General of Climate Change (Direktorat Jenderal Pengendalian Perubahan Iklim/Ditjen PPI). Those two institutions are independent to each other but need to share and integrate the MRV tasks.</p> <p>According to Indonesia's latest Statement of Information, MoUs were also signed with local governments to develop sustainable management of landscape at the sub national level are established. Also, to facilitate sharing of information between national and sub-national government bodies and the public, GoI has established no less than 10 portals/information systems on climate change.</p> |
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| | Memorandum of Understanding (MoU) with local government to develop sustainable management of landscape at sub national level established. |
| PLRs define effective mechanisms for information sharing across different sectors and levels of government for forest management | <p>The One Map Policy (Decree of the Republic of Indonesia Number 9 of 2016 on Accelerating One Map Policy through use of 1:50.000 Scale). The One Map will enable Indonesia as a nation to move several large strides closer to good resource governance, as it will show the geo-spatial locations of all sites of current and future resource exploitation which have been awarded at all levels of government -- including but not limited to natural forest timber concessions, Industrial Plantation Forests, oil palm plantations, mining licenses and contracts of work, and oil & gas production sharing contracts -- and the extent to which these overlap with one another.</p> <p>Presidential Decree No. 16 on the Ministry of Environment and Forestry of 2015, Article 45, provides that the MoEF's "Expert Staff in the Relationship between Central and Regional Institutions has the task of providing recommendations on strategic issues to the Minister in relation to the field of relations between central and regional institutions."</p> <p>Law No. 26/2007 concerning Spatial Planning. It amends Law No. 24/1992 (Spatial Planning Act) in the context of decentralization, urbanization, and other factors. It grants authority over spatial planning to provincial governments (pemerintah provinsi) and district governments (pemerintah kabupaten and pemerintah Kota). Provision of this authority is not stipulated within previous spatial planning laws. It also provides some new ways for enhancing development control including zoning, planning permits, implementation of incentives and disincentives, including administration and criminal sanction. Law No. 26/2007 also acknowledges the importance of public participation in spatial planning.</p> <p>Per the Forestry Law, forest management is done at the level of the province, regency/municipality, and forest management units and the units "implemented by taking into account: land characteristics, forest types, forest functions, conditions of river basin area, social community and cultural aspect, economy and regional community institutions, including customary law and Governmental administrative boundaries" (Art. 17). The Forest Law provides at Art. 54 that the "Government, in cooperation with private sectors and communities shall publish results of forestry research and development and develop an information and service system for the results thereof." The law also provides that Government and Regional governments, along with Community and individuals shall participate in forestry supervision." (Art. 60).</p> |

| SAFEGUARD C <i>Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations general assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples</i> | |
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| Criteria C.1. Defining Indigenous Peoples and Members of Local Communities | |
| Diagnostic Question 1: Do PLRs define who are indigenous peoples and local communities? | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs clearly define or provide clear criteria for defining who are indigenous people and this definition/these criteria is/are consistent with international law | <p>Law No. 32/2009 on Environmental Protection and Management does not specifically define <i>Masyarakat Adat</i> (customary law communities) but it does define "Traditional Community" per Article 1(31) as a "group of communities living traditionally in a specific geographic area because of binding in origin of ancestor, strong relations with the environment as well as system of values determining economic, political, social and legal structures."</p> <p>MoEF Regulation No. P.84/Menlhk-Setjen/2015 concerning Tenurial Conflict Management within Forest Area (PPTKH), provides at Art. 1(4) that an "Adat Community" "is a group of people that have been living in a certain geographical area for generations because of a bond to ancestral origins, a strong connection to the environment, and a value system that determines economic, political, social, and legal institutions."</p> <p>Minister of Home Affairs Decree No. 52 (2014) on Guidelines for the Recognition and Protection of Adat Communities, Art. 1 does further provide that "1. Adat Community is citizens of Indonesia that have distinct characteristics, live harmoniously in groups according to their adat law, are bound to the origins of their ancestors or a sameness of residence, have a strong connection with the land and the environment, and among them exists a value system that determines economic, political, social, cultural and legal institutions and hereditarily make use of one particular territory."</p> <p>In 2013 (before being codified in 2017), the Government issued its "Principles, Criteria and Indicators for a System for Providing Information on REDD+ Safeguards Implementation (SIS-REDD+) in Indonesia". These PC&Is include a definition section in which it defines "Indigenous Peoples" as: "People and groups of people that can be identified or characterized as follows:</p> |

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| | <ul style="list-style-type: none"> • The key characteristic or criterion is self-identification as indigenous peoples at the individual level and acceptance by the community as their member • Historical continuity with pre-colonial and/or pre-settler societies • Strong link to territories and surrounding natural resources • Distinct social, economic or political systems • Distinct language, culture and beliefs • Form non-dominant groups of society • Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities. • On signing the UN Declaration on the Rights of Indigenous Peoples, Indonesia's Ministry of Foreign Affairs has clarified that the concept of "indigenous peoples" in Indonesia must be interpreted on the basis that almost all Indonesians (with the exception of ethnic Chinese) are considered indigenous and thus entitled to the same rights. (Principles, Criteria and Indicators for a System for Providing Information on REDD+ Safeguards Implementation (SIS-REDD+) in Indonesia (2013)) <p><i>(Source: Adapted from United Nations Permanent Forum on Indigenous, Factsheet 'Who are indigenous peoples' October 2007; United Nations Development Group, 'Guidelines on Indigenous Peoples' Issues' United Nations 2009, United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007).</i></p> <p>An interpretation of this condition on the application of UNDRIP in Indonesia is that the nation sees there is a duty to provide special protection to indigenous communities to protect their way of living, as long as they still practising that specific way of living. Once this distinct way of live has disappeared, there is no need for that protection (see para 3.13.2 p. 77 of Constitutional Court decision 35/2012, also consistent with PLR language speaking about the continued existence of the Adat community as preconditions to recognition (see related discussion at C.3.4 "PLRs recognise collective forest ownership/use/management rights of indigenous peoples and/or local communities")</p> <p>There is a draft law on Adat Communities which defines an "masyarakat adat" (Adat community) as "a group of people that have been living for generations in a certain geographical area, has a sameness of ancestry and/or dwelling area, cultural identity, adat law, strong relationship with land and the environment, and a value system that determines economic, political, social, cultural, and legal institutions."</p> |
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| | <p>UNDRIP which was endorsed by Indonesia preferred not to offer a definition, and many accepted definitions of indigenous peoples speaks to self-identification as a fundamental criterion. This is not expressly recognized in Indonesia law but where present, it is subject to verification and validation by a verification team (<i>Tim Masyarakat Hukum Adat</i>) established by district heads. In Indonesia there is a wide range of communities that would qualify as Masyarakat Adat (per the definition of the laws referenced above as well as the definitions widely accepted internationally). However, the majority of these communities have yet to be formally recognized by the GoI. This formal recognition must be done by the State –and by law, per a regional or district regulation-- before their tenure and other associated rights (like their juridical personality) are recognized. This can delay securing effective protection for these lands.</p> |
| PLRs clearly define who are local communities | <p>In 2013, before being codified in 2017, the Government issued its “Principles, Criteria and Indicators for a System for Providing Information on REDD+ Safeguards Implementation (SIS-REDD+) in Indonesia” and includes the following definition of “local community” as “Communities of any size that are in or adjacent to the Management Unit, and also those that are close enough to have a significant impact on the economy or the environmental values of the Management Unit or to have their economies, rights or environments significantly affected by the management activities or the biophysical aspects of the Management Unit (Source: FSC 2011).”</p> <p>Decree No. 83 on Social Forestry, Art. 1(14) defines “local community” as “a social unit consisting of citizens of the Republic of Indonesia who live in the vicinity of a forest area as evidenced by an Identity Card or who resides in a State forest area, proven by having a social community in the form of a history of cultivating a forest area and depending on the forest and its activities can affect the forest ecosystem.”</p> |
| Safeguard C | |
| Criteria C.2.: Definition of traditional knowledge of indigenous peoples and local communities | |
| Diagnostic Question: To what extent do PLRs define what constitutes traditional knowledge of indigenous peoples and local communities? | |
| Indicators | Explanation (identify articles/provisions) |

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| <p>PLRs define traditional knowledge of indigenous peoples</p> | <p>Indonesia is a signatory to the Convention on Biological Diversity which provides at Article 8(j) provides that: "Each contracting Party shall, as far as possible and as appropriate: Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices".</p> <p>MoEF Regulation No. 21/2019 on Adat Forest and Titled Forest provides at Article 1(12) that "Traditional Knowledge is part of Local Wisdom which is a knowledge substance resulting from intellectual activities in a traditional context, skills, innovation, and practices from Adat Community and local community that includes a way of life based on tradition, both written and unwritten, passed on from one generation to the next, related to the protection and management of the environment and natural resources in a sustainable way."</p> <p>The CBD defines traditional knowledge as "Traditional knowledge refers to the knowledge, innovations and practices of indigenous and local communities around the world. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is transmitted orally from generation to generation. It tends to be collectively owned and takes the form of stories, songs, folklore, proverbs, cultural values, beliefs, rituals, community laws, local language, and agricultural practices, including the development of plant species and animal breeds. Traditional knowledge is mainly of a practical nature, particularly in such fields as agriculture, fisheries, health, horticulture, and forestry. (see https://www.cbd.int/doc/publications/8j-brochure-en.pdf)</p> <p>In 2013, before being codified in 2017, the Government issued its "Principles, Criteria and Indicators for a System for Providing Information on REDD+ Safeguards Implementation (SIS-REDD+) in Indonesia" and includes the following definition of "traditional knowledge" as "The long-standing traditions and practices of certain regional, indigenous, or local communities. Traditional knowledge also encompasses the wisdom, knowledge, and teachings of these communities. In many cases, traditional knowledge has been orally passed for generations from person to person. Some forms of traditional knowledge are expressed through stories, legends, folklore, rituals, songs, and even laws.</p> <p>Other forms of traditional knowledge are expressed through different means (Source:Acharya, Deepak and Shrivastava Anshu 2008)."</p> |
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| PLRs define traditional knowledge of local communities | Decree No. 83 on Social Forestry does suggest that traditional knowledge should be wisdom recognized by the respective community's traditional authorities. Article 52(4) states: "Utilization of timber forest products and / or non-timber forest products and / or environmental services in customary forests <i>based on local wisdom / traditional knowledge that is recognized and approved by traditional institutions</i> ". |
| PLRs protect/regulate traditional knowledge of local communities and indigenous peoples | <p>International treaties and instruments ratified, acceded to, or supported by Indonesia protect traditional knowledge of local communities and Adat communities (i.e. Convention on Biological Diversity, (8(j)) (cited above) and UNDRIP (Art. 31); CERD (per <i>General Recommendation XXIII</i> interpretation of Article 5 related to culture and traditional practices).</p> <p>Decree No. 83 on Social Forestry provides recognition of the important contribution that traditional knowledge of communities can make. Article 52(4) states: "Utilization of timber forest products and / or non-timber forest products and / or environmental services in customary forests <i>based on local wisdom / traditional knowledge that is recognized and approved by traditional institutions</i>". Article 52(5) provides that "Compilation of Village Forest Management Plans or Business Work Plans of IUPHKm and IUPHHKHTR holders or drafting cooperation agreement or <i>composing the use of traditional knowledge</i> can be assisted by Pokja PPS or local forestry instructor. Article 55(2) of the decree further refers to: "Guidelines for technical guidance on local wisdom / traditional knowledge are further regulated by Regulation of the Director General." Article 58(1)(b) also provides that holders of licenses to Village Forests Community Forests, and Community Forest Plantations are entitled to manage and utilize these forests "in accordance with local wisdom including integrated farming systems."</p> <p>MoEF Regulation No. 34/2017 on Acknowledgement and Protection of local wisdom in natural resource management. The content seeks to identify where and what local wisdom exist, scope, how to acknowledge and protect, roles and responsibilities of the owner and those who wants to access this local wisdom and cost. It is the role of the Minister, governor, or the regent representative to facilitate the process for inventory, verification and validation of the local wisdom. The inventory process is multi-stakeholder and includes Adat institutions/bodies.</p> <p>MoEF Reg. P.22 / MENLHK / SETJEN / SET.1 (March 2017) on Procedures for Management of Complaints for Pollution and / or Environment Damage and / or Forest Damage establishes grounds for a complaint if there is "utilization of genetic resources and traditional knowledge" (Art. 5(j)).</p> |

| | <p>Regulation No. 57 OF 2016 on Amendment to Government Regulation No. 71 of 2014 on Ecosystem Protection and Management Peat provides that Indonesia's "Plan for the Protection and Management of Peat Ecosystems" "must pay attention to", among others : ... e. local wisdom; f. community aspirations..." (Art. 17(2)).</p> <p>Law No 7 of 2012 on Social Conflict Management along with its technical regulation, in Government Regulation No 2 of 2015, which encourage the use of local wisdom as one of the measures to avoid social conflicts. The conflicts cover by this framework includes conflicts that come from natural resources dispute.</p> |
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| Safeguard C | |
| Criteria C.3. Recognition and Implementation of Rights in Accordance with International Law | |
| Sub-criteria C.3.1.: Non-Discrimination | |
| <p>Diagnostic Question: to what extent do PLRs recognise and protect the right to non-discrimination of indigenous peoples and local communities in accordance with international law?</p> | |
| Indicators | Explanation (identify articles/provisions)/Gaps identified |
| PLRs recognise and protect the right of indigenous peoples and local communities to non-discrimination in accordance with ILO 169 and UNDRIP (if applicable) | <p>The Constitution provides at Article 27 that (1) All citizens shall have equal status before the law and the government and hold without exemption the law and the government in esteem." Article 28B(2) further provides that "[e]very child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination." Its Article 28I(2) also provides that "[e]very person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment." Specifically, subsection 3 of the same article provides that "[t]he cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations."</p> <p>1998 Human Rights Charter was expanded and reformulated into norms through Law No. 39 Year 1999 concerning Human Rights. Art. 1 (3) of Law No. 30 provides that "Discrimination means all limitations, affronts or ostracism, both direct and indirect, on grounds of differences in religion, <i>ethnicity, race, group, faction, social status, economic status, sex, language, or political belief</i>, that results in the degradation, aberration, or eradication of</p> |

recognition, execution, or application of human rights and basic freedoms in political, economic, legal, social, cultural, or any other aspects of life.” (emphasis added).

Indonesia has not ratified ILO 169 or its predecessor ILO 107. Indonesia endorsed **UNDRIP** in 2007.

The following should also be read in accordance with the description of **PLRs at B.2.1 “Clear Land Tenure Rights”** (above).

Before an Adat community can have their lands titled so as to permit the receipt of a social forest license, the community’s existence must first be recognized. That is, Indonesia has to recognize that they exist, and therefore have the juridical (legal) personality to hold the title. This is not a requirement that a private individual has. The recognition of a customary people’s “existence” is left to the discretion of a local government law: either through a regional regulation (e.g., a *District Perda* per the **Forestry Law** which provides that the “confirmation of the existence and abolishment of a customary law community” is to be stipulated by a Regional regulation.” (Art. 67(2))), or through a district head/governor decree (*Keputusan Kepala Daerah*) per **Ministerial Regulation of the Minister of Home Affairs No. 52/2014 concerning Guidelines on the Recognition and Protection of Masyarakat Hukum Adat**. According to **Annex 1, National Inquiry on the Rights of Indigenous Peoples**, p. 14. very few indigenous peoples have gained official recognition. In practice, local governments do not give recognition and some even expressly deny the existence of certain indigenous peoples.” The UN Committee on Economic, Social and Cultural Rights (CESCR) and UN Committee on the Elimination of Racial Discrimination have strongly urged the Government to improve this system of recognition of Adat community legal personality and in doing so, including the right to self-identification. (See **Concluding observations of the Committee on the Elimination of Racial Discrimination Indonesia, para. 15, CERD/C/IDN/CO/3, par. 15 (August 2007); Concluding observations [of the CESCR] on the initial report of Indonesia, EC.12/IDN/CO/1, par. 38 (June 20014)**).

There are **two draft bills** that are yet to be legislated and remain pending before the Indonesian legislator, including Land Bill and Bill of Adat Communities’ Rights. In its 2014 Concluding Observations on Indonesia, the CESCR urged Indonesia to “expedite the adoption of the draft law on the rights of Masyarakat Hukum Adat [Adat communities].” (**EC.12/IDN/CO/1, par. 38 (June 20014)**).

Sub-national Ministerial Decrees related to Adat Forests are issued at five provinces and six districts, including:
(i) SK.6737/menlhk-pskl/kum.1/12/2016; (ii) Sk.6738/menlhk-pskl/kum.1/12/2016; (iii) SK.6739/menlhk-

| | pskl/kum.1/12/2016; (iv) SK.6740/menlhk-pskl/kum.1/12/2016; (v) SK.6743/menlhk-pskl/kum.1/12/2016; (vi) SK.6744/menlhk-pskl/kum.1/12/2016; (vii) SK.6744/menlhk-pskl/kum.1/12/2016 |
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| Safeguard C | |
| Criteria C.3. Recognition and Implementation of Rights in Accordance with International Law | |
| Sub-criteria C.3.2.: Self-Determination | |
| <p>Diagnostic Question: To what extent do the PLRs recognise and protect the right to self-determination of indigenous peoples and local communities in accordance with international law?</p> | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs recognise and protect indigenous peoples and local communities' right to self-determination in accordance with ILO 169 and UNDRIP (if applicable) | <p>Law No. 39 Year 1999 concerning Human Rights. Article 6 of Law No. 30 provides that "(1) In the interests of upholding human rights, the differences and needs of indigenous peoples must be taken into consideration and protected by the law, the public and the Government. (2) The cultural identity of indigenous peoples, including indigenous land rights, must be upheld, in accordance with the development of the times."</p> <p>Indonesia has endorsed UNDRIP –each of which recognize the rights of Adat communities to self-determination. The various components to the rights of self-determination are further affirmed by additional international instruments ratified by Indonesia.</p> <p>Decree No. 83 on Social Forestry provides certain management and use rights to Villages and local communities –some of these communities are Adat communities which lack recognition of their collective as an Adat community, and hence, do not have titles to their traditional lands as of yet. This said, it can be argued that the use and access rights, and the path to Adat forest recognition does facilitate self-determination by removing the threat of third-party incursions in the areas subject to the license. Without the fear of concessions and resource exploitation of others, these collectives (per their own wisdom, as recognized under the Decree) can pursue priorities in social, economic and environmental development. Furthermore, the decree makes repeated reference to Village institutions and leaders and their role in apply for rights, as well as the head of community groups.</p> |

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| | <p>Under the Social Forestry initiative, Adat Community self-determination is enhanced for the same reasons as stated above for Villages and communities, however, Adat Community self-determination, however, would be limited until they were recognized as Adat communities and then until their Adat forest secured recognition (i.e. via MoEF Decree No. 21 or Decree No. 88). Once there is recognition of the Adat forests, self-determination rights to determine their own development priorities would be limited to those priorities made possible by the forest categorization (protection, conservation, production) that attached to their recognized Adat Forest. (For instance, MOEF Decree No 88 on Settlement of Conflicts over Forest land provides that in the applications for Adat Forest recognition, the community must expressly accept this designation).</p> <p>If Adat communities were not consulted and/or did not give their consent <i>before</i> the categorization of their forests or before the granting of a license or permit to a non-Adat community over their traditional lands (such as a business permit to a farming cooperative), this could be inconsistent with the rights to self-determination or property rights of these collectives. (This would be the case regardless of whether the Adat community has its legal personality recognized or not by a local or provincial resolution and regardless of whether their forests have been titled or not). (But see, criteria D.3.2 below “PLRs recognise the right to FPIC in consistency with international law (if applicable)” speaking to criteria and indicators related to FPIC as part of SIS-REDD+). The practice of granting interests over forests that may belong to an Adat community, would be prohibited after Constitutional Court Decision No. 45/2011 given that this case provides that State Forest Area boundaries are only valid after being gazetted – a process that would require consideration of individual and community rights and presumably, conflict resolution. Consequently, during the ESA review period, the practices of issuing licenses in an area that has not gone through a conflict resolution to ensure it is free from competing claims would be considered illegal in Indonesia.</p> <p>Procedures used by the Social Forestry Acceleration Teams to resolve conflicts and settle land tenure disputes is a positive step to effectuating the right to self-determination. Also relevant is Law 39/2014 on Plantation Development, Article 12(1) states that, ‘in the case of land require for plantation businesses, companies must consult indigenous land rights holders to obtain agreement on the delivery of land and compensation’. Article 17(1) states that ‘The relevant authorities are prohibited from issuing plantation permits over the land of indigenous communities’. Article 55(b) states that “[Individuals are prohibited from] working, using,</p> |
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| | <p>occupying and /or controlling public land or the land of indigenous peoples for the purpose of conducting a plantation business". Article 103 states that "Any officer who issues a plantation permit over land with indigenous rights holders [...] shall be punished with imprisonment of five years or a fine of IDR 5 billion." The distinction here is between Adat community land title holders and communities or Villages with a property right under applicable law, but absent a formal title.</p> |
| PLRs recognise traditional decision-making structures (including dispute resolution mechanisms, if applicable) | <p>Decree No. 83 on Social Forestry provides repeated reference to Village institutions and leaders and their role in apply for rights, as well as the head of community groups.</p> <p>Law No. 6 of 2014 on Villages. This law has enormous implications for the forestry sector by expanding the authority of villages to manage their own assets and natural resources, revenue and administration. It specifically reallocates a specific portion of the state budget to village administrations, providing all of Indonesia's villages with annual discretionary funding for making local improvements that support poverty alleviation, health, education and infrastructure development. Law 6/2014 on Villages gives local communities the opportunity to propose becoming an indigenous village (desa Adat), with substantial opportunities to self-govern based on traditional laws and customs. Article 76 makes specific reference to communal land (tanah ulayat) as a village asset if a village has been legally recognized as an Adat village by district or provincial legislation. (This law's implementing regulations is Government Regulation No 43 of 2014 and Government Regulation No 60 on Village Fund from the State Budget).</p> <p>The Forestry Law does provide that forest management is done at the level of the province, regency/municipality, and forest management units and the units "implemented by taking into account: land characteristics, forest types, forest functions, conditions of river basin area, social community and cultural aspect, economy and regional <i>community institutions, including customary law</i> and Governmental administrative boundaries" (Art. 17). Per the Forestry Law, the Government has the authority to stipulate the categories of forests (Arts. 14-15). The Government can stipulate forests for special purposes, including "religion and culture" and in such cases, the <i>management is delegated to the customary law community</i>. (Arts. 15 & 34)</p> <p>Relevant to this point is the recognition of their laws. Minister of Home Affairs Decree No. 52 (2014) on Guidelines for the Recognition and Protection of Adat Communities, Art. 3 also</p> |

| | <p>recognizes that “Adat Law is a set of norms or rules, both written or unwritten, that lives and applies to regulate human behavior that is sourced from the cultural values of the Indonesian people, is bequeathed hereditarily, is constantly obeyed and respected for justice and order of the people, and has legal consequences or sanctions.”</p> <p>UNDRIP further provides in its Art. 34 (“Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, <i>juridical systems or customs</i>, in accordance with international human rights standards.”). Also, Article 40 provides that “Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.”</p> |
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| Safeguard C | |
| Criteria C.3. Recognition and Implementation of Rights in Accordance with International Law | |
| Sub-criteria C.3.3.: Rights Associated with Culture | |
| <p>Diagnostic Question: To what extent do PLRs recognise and protect rights associated with culture of indigenous peoples and local communities in accordance with international law?</p> | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs protect indigenous peoples and local communities' rights associated with culture, including respect for customs and traditions | To the extent that the right to culture includes indigenous peoples and local communities' rights to land for Adat communities and local communities (defined to also include other marginalized populations that depend on the forests), see also PLRs at B.2.1 “PLRs recognise different types of rights over forest land and forest resources (Statutory and customary ownership, use rights)” and “Collective Land Tenure” below. |

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| | <p>There is no law exclusively on the rights of Adat communities (albeit two bills are in consideration), but the Constitution at Article 28I((3) provides that “[t]he cultural identities and rights of traditional communities are to be respected in conjunction with progressing times and civilization.”.</p> <p>Law 5/1960 on Basic Agrarian Principles (BAL). Recognizes Adat law as the guiding basis of Indonesian land law. However, the BAL restricts the application of Adat law and recognition of Adat law communities by subordinating these to the national interest.</p> <p>Decree No. 83 on Social Forestry does suggest that traditional knowledge should be wisdom recognized by the respective community's traditional authorities. Article 52(4) states: “Utilization of timber forest products and / or non-timber forest products and / or environmental services in customary forests <i>based on local wisdom / traditional knowledge that is recognized and approved by traditional institutions</i>”.</p> <p>Once Adat forests are recognized and titled, it is still the State that decides how to classify the forests in those lands, thereby the State (not the Adat communities define how the resources on those lands are used). In the application for an Adat forest (found in MoEF Decree No. 21), the community expressly agrees to the designation. During the review of spatial planning that takes place every five-years, stakeholders (including Adat communities) can ask for reconsideration of forest designations.</p> <p>Furthermore, Decree 83 on Social Forestry makes no reference to applications describing the local community or Village traditional and cultural uses of the land, nor does it have provisions that require accommodation of those practices. However, the Forestry Law provides that forest management is done at the level of the province, regency/municipality, and forest management units and the units “implemented by taking into account: land characteristics, forest types, forest functions, conditions of river basin area, <i>social community and cultural aspect</i>, economy and regional <i>community institutions, including customary law</i> and Governmental administrative boundaries” (Art. 17). (Emphasis added).</p> |
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| | <p>Law No. 11/2010 on Cultural Heritage: This law recognises 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. Such recognition arises from an Adat communities' rights to culture, self-determination, and right to property, among others.</p> <p>Also, see responses to Sub-criteria C.3.1, C.3.4 and B.2.1, first indicators in each related to customary land rights.</p> <p>Of course, indigenous peoples and local community rights to culture (including their right to land) and respect for their customs and traditions are well affirmed by numerous international treaties to which Indonesia is a party (i.e. ICCPR, Art.27, ICESCR, Art. 15(a), ICERD, Art. 5, UNDRIP) and a requirement of UNDP SES, Standard 6 on Indigenous Peoples, to be applicable to the future Results Based Payment project.</p> |
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| Safeguard C | |
| Criteria C.3. Recognition and Implementation of Rights in Accordance with International Law | |
| Sub-criteria C.3.4.: Collective Land Tenure | |
| <p>Diagnostic Question: To what extent do PLRs recognise and protect rights associated with land tenure of indigenous peoples and local communities in accordance with international law?</p> | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs recognise collective forest ownership/use/management rights of indigenous peoples and/or local communities | <p>Read together with the inputs at B.2.1 "PLRs recognise different types of rights over forest land and forest resources (Statutory and customary ownership, use rights)" and "Collective Land Tenure" below.</p> <p>Neither the SF initiative or Moratorium have express provisions in their respective legal instruments to ensure that their respective indicative maps protect Adat rights. For instance, the SF map does identify Adat customary lands under claim of title. And the Moratorium map would benefit from identifying Adat customary lands that could either be advantages from the protection of the</p> |

moratorium, or quite possibly be subject to FPIC if the Moratorium would in any way limit their own uses of the natural forests or peatlands. However, during the Moratorium, the REDD+ Task Force invited third parties to submit community maps and land use plans to better show where traditional territories were being claimed. Also, the **MoEF has adopted Decree No 312 in 2019** to require the generation of an indicative map for Adat customary forests. This is a new effort. The map currently has mapped over 492 thousand hectares of Adat forests and will be updated every three months.

The **Forestry Law No. 4[1] of 1999** forms the basis for social forestry schemes in Indonesia. Under these social forestry schemes, Villages and local communities obtain forest management licenses, but land ownership remains with the State. **Decree No. 83 on Social Forestry** "grants" management, access and use rights to Villages and local communities (see Articles 8 through 39), article 50 also recognizes that "(1) Indigenous and tribal peoples can apply for rights forests to be designated as private forest areas to the Minister", that "(2) Submission of customary forest as referred to in paragraph (1) refers to Regulation of the Minister of Environment and Forestry Number P.32 / Menlhk-Setjen / 2015 concerning Private Forests" and "(3) Procedures for verification and validation of private forest are regulated by a regulation of the Director General."

Constitution of 1945 as amended in 1999, 2000, 201, 2002, Article 18B(2) (Constitution) does provide that the "The State recognises and respects traditional communities along with their traditional customary rights" but these rights are recognized and respected only "*as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.*" This could be read with 28I(3) providing that "(3) The cultural identities and rights of traditional communities are to be respected *in conjunction with progressing times and civilization.*"

This conditionality of customary rights appears to be incorporated into the **Forestry Law 41/1999, Article 5(3)(2) (Forestry Law)** which says that these rights are recognized and respected "in line with the evolution of society." There is no jurisprudence on what this means in practice or how it is applied consistently with the State's duty under international law to recognize the pre-existing rights of Adat communities to their juridical personality. The Forestry Law further follows the Constitution. Article 5 of the law provides that "State forest..can be in the form of customary forest" and that the "[g]overnment shall determine the status of forests...and customary forests shall be determined *insofar as they exist in reality and their existence is recognised.*" This means that property rights

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| | <p>(rights to recognition of their Adat forests) are recognized, but only conditionally – if they are recognized first as an Adat community. The law provides that “Customary law community, <i>insofar as it exist and is recognised</i>, shall be entitled to conduct the following activities: a. Collecting forest products for daily needs of concerned communities; b. Conducting forest management based on prevailing customary laws which are not contradictory to laws; and c. Being empowered for improving their welfare.” The rights, therefore, are first based on whether the Adat community is recognized to exist and if later they no longer exist, their human rights to their lands (and forests) devolve back to the State.</p> <p>Also, Article 33(2)&(3) of the Constitution also vests control over forests in the State (“(2) Production sectors that are vital to the state and that affect the livelihood of a considerable part of the population are to be controlled by the state”, (3) The land and the waters as well as the natural riches therein are to be controlled by the state to be exploited to the greatest benefit of the people”). As adopted, the Forestry Law provides that lands designated as State Forest areas under the sovereignty of the State and therefore at its discretion, open for Social Forestry licensing, include customary lands. In fact, State Forest Areas (when designated) precludes individual or communal property rights. If land is burden by a title it will be a Titled Forest or an Adat forest.</p> <p>However, as noted above, Case No.35/PUU-X/20 (May 16, 2013) of the Constitutional Court declared that this part of the Forestry Law is unconstitutional saying that Adat Forests could not be considered as State Forests. The Court found that if Adat communities can demonstrate valid claims to forest areas, the rights to these areas shall be transferred to them, excluding these areas from state land and making them Adat forests (Hutan Adat). The ruling allows for the collective ownership of forests by Adat communities. These areas remain under customary communal ownership and cannot be sold. The Forest Law is considered amended by the ruling, which is “legally binding”.</p> <p>The government has begun to adopt new PLRs to account for this 2013 decision. For instance, in MoEF Regulation No. P.32 / MENLHK / SETJEN / KUM.1 / 3/2016 on Control of Forest and Land Fire, Art. 1(6) notably contained the definition of customary forests with the removal of “state”, defining such forests as “Customary Forest” is forest that is within the territory of a customary law community.” This regulation was replaced by Ministry of Environment and Forestry Regulation No. 21/2019 on Adat Forest and Titled Forest, setting out the procedures for communities to apply for recognition of their Adat (customary) forests.</p> |
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| | <p>Also instrumental during the review period to address land tenure are the following: Minister of Environment and Forestry Regulation No 84 of 2015 on Resolution of Tenurial Conflicts; Law No 7 of 2012 on Social Conflict Management along with its technical regulation, in Government Regulation No 2 of 2015, which encourage the use of local wisdom as one of the measures to avoid social conflicts. The conflicts cover in this stream of legal framework include conflicts that come from natural resources dispute.</p> <p>Also, Minister of Agrarian and Spatial Layout Regulation No 10 of 2016 on Procedure of the Stipulation of Communal Rights on Adat Communities Land (related to recognitions given to Adat communities, cooperatives, farmers organisations in the area of plantations and forestry) and Minister of Environment and Forestry No 32 of 2015 on Adat Forest (not as part of State Forest but belong to Adat Communities). And Minister of Environment and Forestry No 84 of 2015 concerning conflict management related to right to forest area using the instrument of RATA (Rapid Land Tenure Assessment) and AGATA (Analysis of Dispute Style) to be resolved through 6 schemes of social forestry: Village Forest, Community Forest, Hutan Tanaman Rakyat, Partnership (conservation and forest businesses), Adat Forest, Hutan Rakyat.</p> <p>Also relevant, is Presidential Decree of the Republic of Indonesia, Number 88 of 2017 on Settlement of Conflicts over Forest land which affirms that "State Forest is forest that is on land that <i>is not encumbered with land rights.</i>" This is contrary to what the Forest Law (Art. 1(7)) previously provided prior to the Constitutional Court amendment, that "customary forests are state forests located in the areas of custom-based communities."</p> <p>Also adopted post 2013 is the Joint Ministerial Regulations of the Ministry of Home Affairs (Number 79 of 2014), the MoEF (PB.3/MENHUT-II/2014), the Ministry of Public Works (17.PRT/M/2014), and the National Land Agency (8/SKB/X/2014) concerning the resolution of land claims within the State Forest Area. These regulations call for the establishment of dedicated teams at the province and district levels for registering various claims and land uses within the State Forest Area. These teams are known by their Indonesian acronym, IP4T Team and include representatives from BPN, forestry, other relevant government agencies, local representatives of Adat law communities, and NGOs. See also, Regulation of the Ministry for Agraria and Spatial</p> |
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| | <p>Planning Number 10 of 2016 concerning the registration of Communal Adat Land Rights on Adat Law Community Land within the State Forest Area.</p> <p>See also Minister of Home Affairs regulation number 52 of 2014 concerning guidelines for the recognition and protection of Adat Law Communities. These guidelines place the responsibility for the recognition and protection of Adat Law Communities with the provincial and district governments which are required to form Adat Law Community Committees.</p> <p>See also Ministry of Environment and Forestry Regulation No. P.84/Menlhk-Setjen/2015 concerning Tenurial Conflict Management within Forest Area (PPTKH). This regulation was enacted to support settlements of land occupancies, including conflicts within forest areas, by way of a joint taskforce involving ATR/BPN, MoEF, and MoHA under coordination of the Coordinating Ministry of Economic Affairs (CMEA). See its more detailed description above.</p> <p>Also relevant, Law 39/2014 on Plantation Development, Article 12(1) states that, 'in the case of land require for plantation businesses, companies must consult indigenous land rights holders to obtain agreement on the delivery of land and compensation'. Article 17(1) states that 'The relevant authorities are prohibited from issuing plantation permits over the land of indigenous communities'. Article 55(b) states that "[Individuals are prohibited from] working, using, occupying and /or controlling public land or the land of indigenous peoples for the purpose of conducting a plantation business". Article 103 states that "Any officer who issues a plantation permit over land with indigenous rights holders [...] shall be punished with imprisonment of five years or a fine of IDR 5 billion."</p> <p>See also section B.2.4 "Adequate Access to Justice" above, discussion of Presidential Decree No. 88 (2017) on the Settlement of Conflicts over Forest land.</p> |
| PLRs establish transparent and fair procedures to address circumstances where rights need to be extinguished or diminished | <p>Article 28H(4) of the Constitution provides that "[e]ach person has the right to own private property and such ownership shall not be appropriated arbitrarily by whomsoever."</p> <p>Law No. 39 Year 1999 - Concerning Human Rights provides in Article 37 that "(1) The right to ownership of a property in the public interest shall not be revoked, except with the restoration of fair, proper and adequate compensation, based on prevailing legislation. (2) In the event that in the</p> |

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| | <p>public interest a property must be destroyed or abandoned, either permanently or temporarily, compensation shall be paid in accordance with prevailing legislation, unless otherwise decreed."</p> <p>Article 68 of the Forestry Law provides for compensation to communities losing "access" to their forests and to "ownership" as the consequence of its designation as forest area, <i>in accordance with the prevailing laws and regulations.</i>" However, Art. 67 also provides that the "[c]onfirmation of the existence and abolishment of a customary law community as intended in paragraph (1) shall be stipulated in Regional Regulation" thereby recognizing the role of local regulation (not national regulations or laws) in abolishing a community.</p> <p>Law No. 39/2014 on Plantation Development 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.</p> <p>Any rights to compensation for infringements of property rights first requires that the community be recognized as an Adat community by local regulation.</p> <p>Decree No. 83 on Social Forestry, Article 57 only provides for the deletion of management and access rights granted to Villages and local communities over Village Forests, Community Forests, and Community Plantation Plantations. As not mentioned, the presumption is that under the SF initiative, once recognized, Adat community rights are not meant to be extinguished/deleted. Where the "abolition of rights or permits" are deleted, no "fair and transparent procedures" are stipulated in the decree itself. The decree does provide that "In the event holders of Village Forest Management Rights, Utilization Business License, and Business License for Timber Forest Product Utilization in Community Plantation Forest (HPHD, IUPHKm, and IUPHKK-HTR) commit violations or fail to fulfill their obligations, they can be subject to administrative sanctions." (Art. 53(3)). It is not expressly clarified if such sanctions can include the revocation of the ownership or use rights (which, if concerning an Adat community yet to be recognized, could be considered an extinguishment), but these can include simple cases of permit terms expiring or where sanctions were imposed on the rights holders. In all cases, the grantor of the right or permit (essentially the</p> |
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| | <p>State) must first evaluate the decision. It does not say how or based on what criteria this evaluation is done.</p> <p>Presidential Decree No. 88 (2017) on the Settlement of Conflicts over Forest land provides for circumstances in which specific provisions on when it is determined that land alleged to be controlled or utilized by a party (individual, institution, social/religious institution, Adat community) AFTER the land was appointed a forest area (see Arts. 8-13).</p> |
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| Safeguard C | |
| Criteria C.3. Recognition and Implementation of Rights in Accordance with International Law | |
| Sub-criteria C.3.5: Benefit-Sharing | |
| <p>Diagnostic Question: To what extent do PLRs recognise and protect benefit-sharing arrangements specific to indigenous peoples and local communities in accordance with international law?</p> | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs define mechanisms for equitable sharing of the benefits (specific to indigenous peoples/local communities) arising out of the utilisation of forest resources and the utilisation of traditional forest-related knowledge | <p>Since 2015, the Government has launched an Equitable Economy (Ekonomi Pemerataan) policy to reduce inequality. The agrarian reform (Tanah Obyek Reforma Agraria, or TORA) and social forestry programs are an integral component of this Equitable Economy policy, being intended to ensure the availability of land for members of local communities and/or Adat communities.</p> <p>Per Decree No. 83 on Social Forestry, its first preambular paragraph makes it clear that its objectives are to "reduce poverty, unemployment and inequality in management/utilization of forest areas, social forestry activities..."</p> |
| SAFEGUARD D | |
| <i>The full and effective participation of the interested parties, in particular the indigenous peoples and local communities</i> | |
| Criteria D.1.: Definition and Regulation Meaningful Full and Effective Participation | |

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| <p>Diagnostic Question: To what extent do PLRs guarantee effective public participation in forest related policymaking?</p> | |
| <p>Indicators</p> <p>PLRs recognise the right to public participation in decision-making (policy process and/or development projects)</p> | <p>Explanation (identify articles/provisions)</p> <p>Law No. 26/2007 concerning Spatial Planning. acknowledges the importance of public participation in spatial planning.</p> <p>Decree No. 83 on Social Forestry states at Article 3 that the management of Social Forestry is to observe the principles of “justice, sustainability, legal certainty, <i>participatory</i>; and accountability”</p> <p>“Specific articles in the Basic Forestry Law ensure sufficient participation for communities, either local or customary. To cite some: (i) the government is obliged to encourage people’s participation in various forestry activities and to achieve this participation with the assistance of a stakeholder forum (to this end, the National Forestry Council was formed); (ii) customary law communities, as long as they exist and are recognized, have the right to collect forest products for daily needs, undertake forest management under customary laws (that do not contradict national laws), and be empowered to improve their welfare; (iii) communities can use forest and forest products and be informed about plans for forest allocation, forest product utilization, and forestry information; (iv) communities have the right to compensation for losing access to forests following their designation as forest area, in accordance with prevailing laws and regulations; and (v) communities are obliged to participate in maintaining and preventing forest areas from disturbance and damage, and can seek assistance and guidance in this from third parties. (Per Sector Assessment (Summary): Agriculture, Natural Resources, and Rural Development (Forestry Subsector) –based on the Government of Indonesia, Forest Investment Plan for Indonesia, 2012. Jakarta (https://www-cif.climateinvestmentfunds.org/sites/default/files/meeting-documents/fip_6_indonesia_0_0.pdf)</p> <p>For policy level, the instrument is Strategic Environmental Assessment (SEI) (Kajian Lingkungan Hidup Strategis) and for the activity level it is the Environmental Impact Assessment (EIA) and Environmental Licenses. These two instruments are applicable in all sectors, including forestry, agriculture, and mining.</p> |

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| | <p>EIA and Environmental licenses are provided for Environmental Law as well as other sectoral Laws as part of licensing requirements. SIA is required under the 2009 Environmental Law as part of policy making process.</p> <p>EIA is a well-established instrument (already introduced in 1982 Environmental Law), while SIA is a newer instrument (Law No. 32/2009 on Environmental Protection and Management) The public participation aspect is also well established in the EIA process. The enabling provision was in the Law No. 23 of 1997 on Environmental Management, which is then replaced by the Law No. 32 referenced above. The detail technical regulation was firstly regulated in the Head of Environmental Impact Management Agency No. 8 of 2000 on Guideline for Public Participation Mechanism on EIA, and it is then replaced by Ministry of Environment Regulation No. 17 of 2012 on Public Participation Mechanism on EIA and Environmental Licenses).</p> <p>Among all, the PLRs define and guarantee:</p> <ol style="list-style-type: none"> 1. Right of public to be informed and participate in the decision-making process at activity; 2. Public (potentially impacted and environmental groups) should be part of the decision-making process. The Laws introduce EIA Commission (ad hoc, based on activities) to assist governmental authority to make informed decision. The public has a seat in the commission and all their input should be recorded. 3. Communities representative's obligations to maintain communication with the community he/she represents. 4. Clear process for public authorities to carry out consultation. Details timeline and how the plan of activities should be publicized, etc. 5. Disclosure on the reason for decision. <p>The right to refuse a project is embedded in the authority of the public authorities to issue or not issue a license. <i>This authority is then delegated to EIA Commission, in which potentially impacted communities are represented</i>. Per law, since communities are part of the decision-making team, they can use that right to reject an activity. The EIA is the instrument to decide whether a license can be granted or not.</p> |
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| | <p>As noted above, FMUs and local governments take lead roles in developing long and short-term forest management plans which are stipulated to include economic, social and environmental/ecological information. This information presumably comes from local data collection, but the PLRs have no express instructions for FMUs to involve local peoples in planning or decision-making processes. (<i>Source: An Analysis of Long-Term Forest Management Plans of Forest Management Units in Sumatra, Indonesia (2018)</i>).</p> |
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| Safeguard D | |
| Criteria D.2.: Creating an Enabling Environment for an Effective Participation | |
| Sub-criteria D.2.1.: Identification of Relevant Stakeholders | |
| <p>Diagnostic Question: To what extent do PLRs identify or require the identification of relevant stakeholders in the decision-making process?</p> | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs require a mapping of relevant stakeholders prior to consultations | <p>The Forestry Act requires that “[a]ll forest planning is to be done in a way that is “transparent, accountable, participatory manner and taking regional peculiarity and aspirations into account: (Art.11). There is no express recognition of a mapping exercise.</p> <p>In Indonesia’s National REDD+ Strategy it contains a section 2.2.5.1. entitled “Interaction and Strategies for Stakeholder Participation” and it provides that one strategy to facilitate public participation in REDD+ is “the “[...]identification and mapping of stakeholders, including an understanding of who among them will be most affected either positively or negatively.”</p> |
| PLRs define relevant stakeholders that should participate in the decision-making process | <p>In 2013, before being codified in 2017, the Government issued its “Principles, Criteria and Indicators for a System for Providing Information on REDD+ Safeguards Implementation (SIS-REDD+) in Indonesia” and includes the following definition of “stakeholder” as “Any person, group of persons or entity that is or is likely to be subject to the effects of the activities of the REDD+ Unit. Examples include but are not restricted to (for example in the case of downstream landowners), persons, groups of persons or entities located in the neighbourhood of the REDD+ Unit.”.</p> <p>Law No. 39 Year 1999 - Concerning Human Rights provides at Chapter VIII “Public Participation” that “[a]ll people, groups, political organizations, community organizations, and</p> |

| | self-reliant organizations and other non-government organizations, have the right to participate in protecting, upholding and promoting human rights.” (Art. 100). |
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| PLRs require engagement/representation of local communities and/or indigenous peoples in relevant forest decision making processes | <p>In terms of participation, Art. 70 of the Forest Law provides that “(1) Community shall take part in the forestry development. (2) Government shall be obligated to encourage community participation through various effective and efficient forestry activities.”</p> <p>That Indonesia National REDD+ Strategy specifically provides for respect for FPIC though until January of 2018 when MoEF Regulation P.70 (2017) was promulgated (providing for the SIS-REDD+ and the principles, criteria and indicators related to, among others,FPIC), this was not expressly provided for in law. Section 2.2.5.2(1) on FPIC says “[t]he application of this protocol involves consultation with the relevant indigenous peoples, local communities, and other members of the public affected by the implementation of REDD+ programs/projects/activities.” (See also Criteria D.3.2 below “PLRs recognise the right to FPIC in consistency with international law (if applicable)” speaking to criteria and indicators related to FPIC as part of SIS-REDD+. (Notably, while P.70 was not promulgated until 2017, there was a release of the principles, criteria and indicators in 2013)).</p> |
| Safeguard D | |
| Criteria D.2.: Creating an Enabling Environment for an Effective Participation | |
| Sub-criteria D.2.2. Providing Access to Information | |
| <p>Diagnostic Question: to what extent do PLRs require and regulate the provision of relevant and appropriate information as part of the consultation process?</p> | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs clearly define the types of information that should be provided during consultations | As noted above, while not written specifically in terms of what information is provided for an active consultation process, MoEF Reg. No. P.7 does provide at Articles 8 and 9 detailed lists of information that is provided to the public immediately (like information about hot spots for fires, actual forest fires, and information about natural disasters, such as volcanic activity in forest areas, floods, landslides” etc.) and information provided “at any time” such as “Forestry Plans and Policy, among others Long Term Development Plan”, forest cover, “change o forest cover, socio- |

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| | <p>economic conditions of forest...utilization and use of forest areas", as well as the "uses of forest areas among others are for mining and infrastructure development" etc.)</p> <p>The Indonesia National REDD+ Strategy, section 2.2.5.2, speaks to FPIC and says only the following "Consultation is based on complete, balanced, honest, unbiased, and easily understood information concerning the alternatives and choices existing for the public within the implementation of REDD+ activities, along with the consequences of each alternative choice. This information is meant to create leeway for broad consensus, with all parties having access to existing opportunities."</p> <p>Also, as noted in response to Criteria D.3.2 below "PLRs recognise the right to FPIC in consistency with international law (if applicable)" speaking to criteria and indicators related to FPIC as part of SIS-REDD+), The MoEF Reg. P.70 providing for the SIS-REDD+, and its related PC&Is " Note that because Principle 1 of the PC&Is requires respect/compliance with international law, the elements of FPIC regarding information disclosure would need to apply. For instance, see UNREDD+ Guidance on FPIC. (The PC&Is were released in 2013 and known to all prior to codification in 2017).</p> <p>(See also references above to the SIA and EIA processes. Discussed at D.2.1)</p> |
| PLRs require the distribution of information in a timely manner (prior to consultations) | See directly above. |
| Safeguard D | |
| Criteria D.2.: Creating an Enabling Environment for an Effective Participation | |
| Sub-criteria D.2.3: Appropriate Participatory Mechanisms | |
| <p>Diagnostic Question: to what extent do PLRs define a clear and meaningful process/mechanism for public participation in environmental decision-making?</p> | |

| Indicators | Explanation (identify articles/provisions) |
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| PLRs define a clear process for public authorities to carry out consultations (institutional responsibilities, procedural guidelines, time-frames) | (See above discussions a D.2.1 and D.2.2) |
| PLRs define the process for addressing inputs received from the consultations | (See above discussions a D.2.1 and D.2.2) |
| PLRs regulate how public authorities should react if consultations are overwhelmingly negative (right to refuse a policy/project) | (See above discussions a D.2.1 and D.2.2) |
| PLRs require disclosure of how public input was reflected into the final decision | (See above discussions a D.2.1 and D.2.2) In addition, Article 7 (4) of the Law No 14 of 2008 on Public Access to Information specifically oblige public institution to make written consideration (reasoning) for each policy in order to fulfil public access to information. |
| Safeguard D | |
| Criteria D.2.: Creating an Enabling Environment for an Effective Participation | |
| Sub-criteria D.2.4. Access to Justice/Conflict Resolution Mechanisms in Environmental Decision Making | |
| Diagnostic Question: to what extent do PLRs require and regulate access to justice in environmental decision making processes? | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs clearly define/create dispute resolution mechanisms relevant to environmental | Refer to responses at B.2.4 "Adequate Access to Justice" (above). |

| decision making (related are the responses to dispute resolution mechanisms available for stakeholders, see below B.2.4, Access to Justice, "PLRs provide dispute resolution mechanisms to address disputes at all levels (describe these)". | <p>See <i>Ministry of Environment and Forestry Regulation No. P.84/Menlhk-Setjen/2015 concerning Tenurial Conflict Management within Forest Area (PPTKH)</i>. This regulation was enacted to support settlements of land occupancies, including conflicts within forest areas, by way of a joint taskforce involving ATR/BPN, MoEF, and MoHA under coordination of the Coordinating Ministry of Economic Affairs (CMEA).</p> <p>Ministry of Environment and Forestry No. P.22 Year 2017 regarding Management of Grievances related to Indications of Pollution and/or Environmental Damage and/or Harm to Forests.</p> <p>See MoEF Reg. P.22 / MENLHK / SETJEN / SET.1 (March 2017) on Procedures for Management of Complaints for Pollution and / or Environment Damage and / or Forest Damage which defines at Article 5 the various infractions that can be brought through the complaint mechanism established by the regulation. Any number of them could involve environmental decision-making. (See section B.2.4 above).</p> |
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| PLRs require disclosure of how public input was reflected into the final decision | Article 7 (4) of the Law No 14 of 2008 on Public Access to Information specifically obliges public institution to make written consideration (reasoning) for each policy in order to fulfil public access to information. |
| Safeguard D | |
| Criteria D.3. Effective Participation of Indigenous Peoples and Local Communities | |
| Sub-criteria D.3.1. Creating an Enabling Environment | |
| <p>Diagnostic Question: to what extent do PLRs create an enabling environment for the meaningful participation of indigenous peoples and local communities?</p> | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs include specific provisions that require engagement/representation of local communities and/or indigenous peoples in relevant forest decision making processes | That Indonesia National REDD+ Strategy expressly provides for free, prior and informed. Section 2.2.5.2(1) on FPIC says "[t]he application of this protocol involves consultation with the relevant indigenous peoples, local communities, and other members of the public affected by the implementation of REDD+ programs/projects/activities. (See also Criteria D.3.2 below |

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| | <p>"PLRs recognise the right to FPIC in consistency with international law (if applicable)" speaking to criteria and indicators related to FPIC as part of SIS-REDD+).</p> <p>Presidential Decree Of The Republic Of Indonesia Number 16 Of 2015 On Ministry Of Environment And Forestry, Article 30 provides for MoEF's Directorate General of Social Forestry and Environmental Partnerships which "has the task of carrying out the formulation and implementation of policies in the field of increasing community participation in forest management, handling of customary forests, and environmental partnerships." This includes formulating and implementing policies, norms, standards and criteria in "the field of managing forest management conflicts, patterning social forestry areas, increasing community capacity in forest management, handling tenure and customary forests as well as public communication and community participation in environmental protection and management" (Art. 30).</p> <p>As noted above, from 2013 to 2015 Forest Management Units (FMUs) formulate ten-year long-term and short-term annual forest management plans (P.6/Menhut-2009). The Directorate General of Planning at the Ministry of Forestry is charged with providing technical guidance for the formulation of these plans (No. P.5/VII-WP3H/2012). These plans, as stipulated, are to include economic, social and environmental/ecological information. From 2015 on, the long-term forest management plans were to be formulated by provincial governments with the FMUs being assigned the work (see No P.64 Menlhk-setjen 2015). The participation of local communities in the design, implementation and associated decision-making around these management plans is not <i>expressly</i> stipulated in the above referenced legislation.</p> <p>(See above discussions a D.2.1 and D.2.2)</p> |
| PLRs define a culturally appropriate manner to distribute relevant information (non-technical, accessible) | The Social Forestry Task Force (SF Taskforce) was established per Regulation from the Directorate General of Social Forestry and Environmental Partnership of the MoEF (No. P.14(2016)) . These are multi-stakeholder bodies that exist at the provincial level and, among other tasks, is charged with socializing the Social Forestry initiative at the community, Village and Adat level.; facilitating community and Village applications for the five categories of Social Forestry benefits; observing the PIAPS (indicative mapping of the Social Forestry area), institutional capacity building, expanding and marketing Social Forestry enterprises, facilitating |

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| | <p>conflicts related to tenure and Hutan Adat (Adat (customary) forests) in accordance with existing laws, and following various communication and reporting protocols.</p> <p>(See above discussions a D.2.1 and D.2.2)</p> |
| PLRs require the incorporation of traditional/community structures for decision-making processes | <p>Law No. 6 of 2014 on Villages. This law has enormous implications for the forestry sector by expanding the authority of villages to manage their own assets and natural resources, revenue and administration. It specifically reallocates a specific portion of the state budget to village administrations, providing all of Indonesia's villages with annual discretionary funding for making local improvements that support poverty alleviation, health, education and infrastructure development.</p> <p>As noted above, in Decree 83 on Social Forestry, the Village governing institutions, Village heads, and Community institutions are recognized as having the authority to make applications for the various arrangements provided for under the Social Forestry initiative.</p> <p>Decree No. 83 on Social Forestry does provide that in order to apply for a Village Forest permit, the application has to be submitted by one or several Village institutions –which are defined as a Village Cooperative or other “local Village owned entity”. The application an explanation of “village regulations on the formation of village institutions or customary rules or regulations on indigenous peoples regarding the formation of traditional institutions known to the village head / lurah” and proof of a “village head's decision on the organizational structure of village institutions, village cooperatives or village-owned enterprises”. (Article 8). Presumably, within this process there is certain respect shown for the decision-making authority of the Village head and these respective Village institutions. It is not expressly clear from the regulation itself, if it is verified that the village institutions have the authority of the collective/the Village to negotiate and contract regarding the rights of the larger collective. This is the same issue that arises for applications for Community Forests and Community Forest Plantations. The former requires an application from the head of community groups, chairman of the joint forest farmer group, a chairman of a cooperative. (Art. 19). In the case of the Community Forest Plantation, the application can be filed by various forest farmer groups or cooperatives. (Art. 30). To the extent that either the Villages or local communities applying for these forests permits and licenses have traditional governing structures or other governing structures acting according to customary laws with respect to the the rights of the collective, the law is unclear in its express terms, what</p> |

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| | <p>role they play (can they say “yes” or “no”) to groups of farmers, or cooperatives, or village institutions etc. asking for rights over the land of the collective.</p> <p>Indonesia has also ratified, acceded to, or endorsed a number of international treaties and instruments that require the State to recognize the governance structures of the Adat communities and their decision-making mechanisms (i.e. ICERD, UNDRIP).</p> <p>While FPIC is provided for in Indonesia’s REDD+ National Strategy, there was no PLR that expressly provided for it until MoEF Regulation No. 70 (2017) []. Consequently, the appropriate recognition that it be carried out in accordance with the norms, values and customs of the relevant collective and as negotiated with the institutions and representatives designated by the people themselves was expressly absent from the national laws applicable to the Social Forestry project or Moratorium. In any case, in the National Strategy it does make clear in subsection 2.2.5.2(3). “Implementation of the Principles of Free, Prior, and Informed Consent (FPIC)” that “Effective and fully participative <i>consultation</i> involves indigenous and local communities in every step and process that affects them either directly or indirectly. The participation of indigenous peoples can be done <i>through their traditional authorities, or through representative organizations selected on the basis of traditional systems adhered to by the given indigenous community</i>”. (Emphasis added). <i>The Social Forestry law does not expressly require a verification that those applying for the permits, licenses and partnership agreements are those authorities or representatives selected on the basis of traditional systems by the community itself.</i></p> |
| PLRs provide technical or financial assistance to strengthen the capacities of local communities and indigenous peoples to participate in environmental decision making | <p>UNDRIP, which has Indonesia’s support and is incorporated by reference into UNDP’s SES, Art. 29 Provides that “1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.” Also, Article 39 provides that “Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.” Such rights include those expressed in Articles 10(2), 11(2), 15, 17, 18, 19, 28(1), 29(2), 30, 32, 36 and 38 addressing rights to Adat communities’ (including Villages and local communities claiming, but not yet recognized as Adat communities)’ effective participation, consultation and consent.</p> |

| | <p>As note above in Sub-section B.2.2 above, Decree No. 83 on Social Forestry establishes specialized PPS Working Groups to facilitate community and village application processes for licenses and more. For instance, in Article 61(1)&(2), the decree provides, "(1) The Government and regional governments facilitate HPHD Holders, IUPHKm, IUPHHK-HTR, Forestry Partnerships and Customary Forest Stakeholders. (2) Facilitation as referred to in paragraph (2) includes facilitation at the proposal stage of the application, institutional strengthening, capacity building including business management, formation of cooperatives, boundaries of work areas, preparation of village forest management plans, business work plans, and annual work plans, forms of forestry partnership activities, financing, post-harvest, business development and market access".</p> |
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| Safeguard D | |
| Criteria D.3. Effective Participation of Indigenous Peoples and Local Communities | |
| Sub-criteria D.3.2.: Free, Prior and Informed Consent | |
| <p>Diagnostic Question: to what extent do PLRs recognise and regulate the right to FPIC in consistency with relevant international law?</p> | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs recognise the right to FPIC in consistency with international law (if applicable) | <p>While Indonesia has endorsed UNDRIP affirming the right to FPIC as well as ratified a number of international treaties also affirming this right, prior to January of 2018, there was no domestic law or regulation that affirmed free, prior and informed consent nor defined a procedure for the same. (<i>Also, there was nothing in the Social Forestry initiative or Moratorium underlying PLRs that expressly provided for FPIC.</i>)</p> <p>What existed during the period of review referring expressly to FPIC, was just the Indonesia National REDD+ Strategy. In subsection 2.2.2.2 related to "Land Tenure Reform", the strategy provides that "Certainty of land tenure" will be pursued through: ..."3. Harmonization and revision of natural resources management regulations and policies to ensure the principle and processes of Free, Prior, and Informed Consent (FPIC) are internalized in the issuance of all</p> |

permits for the exploitation of natural resources.” Further, in subsection 2.2.5.2. “Implementation of the Principles of Free, Prior, and Informed Consent (FPIC)”, the strategy refers to “Consultation” “Consent” and “FPIC Consultation”. A close read shows that there seems may be a conflation of “consultation” and “consent”. FPIC is a product of a good faith consultation, but it does come with the requirement of an agreement (even if that agreement says that consent was given or withheld, and with conditions). This is not made express and it is slightly concerning *if in implementation* the reference to the fact that it says “*Consultation aims to achieve broad consensus or the specific agreement of the indigenous and local communities potentially affected*” means that some showing of broad community support is consent. Also, subsection 2.2.5.2 provides that “[t]he participation of indigenous peoples **can** be done through their traditional authorities, or through representative organizations selected on the basis of traditional systems adhered to by the given indigenous community”. This may be an issue of translation, but if not, it should be clear that this deference to community authorities is not an option (“can”), but rather a requirement (“must”) under international law.

MoEF. Reg. P.70 (12/2017) described and established the SIS-REDD+ monitoring system to demonstrate compliance with the Cancun Safeguards. As explained in this annex, along with this SIS-REDD+ there is included a definition of Principles, Criteria and Indicators (PC&Is) to facilitate the monitoring. As related to FPIC, this regulation provides in its Attachment III-A, the following: “Principle 3 provides in for the “Rights of Indigenous Peoples and Local Communities: REDD+ activities must respect the rights of indigenous peoples and local communities through actions that are appropriate to the scale and context of their implementation.” Criteria 3.2 states “[a]pplied at the site level, REDD+ preparation activities must include the process of obtaining free, prior and informed consent (FPIC) from indigenous and local communities affected before the REDD + activities begin.” Also, Indicator(s) 3.2.1 require “[a]vailability of documentation of the consultation process that shows efforts, suitability of the scale of activities and intensity of activities to obtain [a]pproval on the basis of free, prior and informed consent (FPIC) from indigenous and local communities potentially affected by REDD + activities.”

MoEF Reg. P.70 is very positive as long as in practice it will mean FPIC *to secure consent* in the manner consistent with the community’s decision-making mechanism (which can be via a majority decision of community members, or a decision by a designated leader or a select group

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| | <p>of elders, etc).. However, if this means that under the strategy, and then under the SIS-REDD+, FPIC can be satisfied if there is <i>only</i> “Free, prior, and informed <i>consultation</i>” which can be obtained if someone merely documents what appears to be “broad community support” –this would not be consistent with international law and with Principle 1 of the SIS-REDD+ requiring compliance with Indonesia’s duties and obligations under international law to which it is a party. (This is also related to Cancun Safeguard A). (Recall that in 2013 an earlier version of the PC&Is was also released, it just was not codified until 2017).</p> <p>Law 39/2014 on Plantation Development, Article 12(1), however, does state that, ‘in the case of land require for plantation businesses, companies must <i>consult</i> indigenous land rights holders to obtain agreement on the delivery of land and compensation’.</p> <p>Also, while Decree No. 83 on Social Forestry does not mention community consent, it must be highlighted that participation in the SF initiative is voluntary. Licenses are issued upon requests from the respective communities and villages, including farm cooperatives and groups of farmers within those communities and villages. There is no specific requirement for the heads of these collectives to demonstrate that they are making decisions and acting upon the consensus of their communities.</p> |
| PLRs prohibit relocation of indigenous peoples without FPIC and only after just and fair compensation, with option of return where possible. | <p>The Indonesian Civil Code provides at Article 1365 that “every illegal act, which causes damage to third party and punish the party at fault to pay the damage caused.” Article 1243 of the same law lists type of damages or compensation that a person at fault might have to pay, including costs, damages, lost profits, and compensation based on what is fair and just so as to put the offended party in the position they were before the harm.</p> <p>Article 68 of the Forestry Law does provide for compensation to communities losing “access” to their forests and to “ownership” as the consequence of its designation as forest area, in accordance with the prevailing laws and regulations.”</p> <p>There is no law that otherwise expressly says that there will be no relocation without FPIC and just and fair compensation, and an option of return, however, per Presidential Decree No. 88</p> |

| | <p>(2017) on the Settlement of Conflicts over Forest land lands claimed under the control and utilization by an Adat community before the forest designation occurs, are simply excised from the State forest area boundary (hence, they are not relocated). However, the same decree, would provide resettlement if the party (if it was an Adat community) claimed control and use of the land AFTER the designation. (Arts. 8 and 9 involving conservation and protection areas).</p> <p>Per acceptance of UNDRIP and ratification of the ICCPR, ICERD and other international treaties, this is a duty and obligation of Indonesia, but if not articulated in its domestic norms, presumably under the Constitution (see above), Indonesia does not consider it binding/applicable.</p> |
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| PLRs regulate the right to FPIC in consistency with international law, especially ILO 169 (if applicable) | See comments directly above in this subsection. Recall that Indonesia has not ratified ILO 169 , though it has ratified numerous other international instruments that have recognized the right to FPIC within the corners of its rights as affirmed and the duties and obligations of States that have become parties to those instruments. |
| SAFEGUARD E | |
| <p><i>That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits</i></p> | |
| <p>Criteria E.1.: No Conversion of Natural Forests</p> <p>Sub-criteria E.1.1. Defining Natural Forest, Biological Diversity and Ecosystem Services</p> | |
| <p>Diagnostic Question: to what extent do PLRs define the term natural forests, biological diversity and ecosystem services?</p> | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs provide a clear definition for the term natural forests (or primary, untouched forests) | Article 1 of the Forestry Law recognizes three categories of forests: Production Forest (divided into Convertible Production Forest and Limited Production Forest); Protection Forest; and Conservation Forest. The Act further classifies forests into Primary dryland forest and Secondary dryland forest; Primary swamp forest and Secondary swamp forest; Primary mangrove forests and Secondary mangrove forest. |

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| PLRs clearly distinguish between plantations and natural forests | <p>While the <i>Forestry Law</i> does not specifically mention plantations, but other laws and regulations do. For instance, MoEF Regulation No. P.32 / MENLHK / SETJEN / KUM.1 / 3/2016 on Control of Forest and Land Fire, provides in Art. 1 (18-20) definitions for Industrial Plantation Forest, Community Plantation Forests, and Rehabilitation Plantation Forest –each plantation in a production forests aimed at “increasing the potential and quality of production forests by applying silviculture”, in the case of “plantation forests” to “meet the needs of raw materials for forest product industry”, in the case of Community Plantation Forests “to ensure the preservation of forest resources” and in the case of Rehabilitation Plantation Forest “to maintain the carrying capacity, productivity and its role as a buffer system. Also, Decree No. 83 of Social Forestry Art. 1(4) clearly provides for “community plantation forest.”</p> |
| PLRs provide a clear definition for the term biological diversity in accordance with relevant international law (especially CBD) | <p>In 2013, before being codified in 2017, the Government issued its “Principles, Criteria and Indicators for a System for Providing Information on REDD+ Safeguards Implementation (SIS-REDD+) in Indonesia” and includes the following definition of “biological diversity”: “The variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species and of ecosystems (Source: Convention on Biological Diversity 1992, Article 2).” The definition is a direct restatement of the CBD convention.</p> <p>In 1993, the National Development Planning Agency produced the Biodiversity Strategy and Action Plan for Indonesia (BAPI). The document was published prior to CBD ratification in 1994. The BAPI prioritized <i>in situ</i> conservation measures, both inside and outside protected areas, as well as <i>ex situ</i> conservation. In 2003, a second document titled the “Indonesian Biodiversity Strategy and Action Plan (IBSAP)” was developed with a focus on achieving five goals: 1) to encourage changes in attitude and behavior of Indonesian individuals and society, as well as in existing institutions and legal instruments, so as to increase concern about conservation and utilization of biodiversity, for the welfare of the community, in harmony with national laws and international conventions; 2) to apply scientific and technological inputs, and local wisdom; 3) <u>to implement balanced conservation and sustainable use of biodiversity</u>; 4) to strengthen institutions and law enforcement; and 5) to resolve conflicts over natural resources.”</p> |

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| | <p>Government Regulation 46/2017 on Economic Instrument for Environment, Art. 1(8) also provides that "Environmental services are the benefits of ecosystems and the environment for humans and the sustainability of life which includes providing natural resources, regulating nature and the environment, supporting natural processes, and preservation of cultural values."</p> <p>Indonesia is a signatory to the CBD which defines biodiversity as "<i>"Biological diversity"</i> means the variability among living organisms from all sources including, <i>inter alia</i>, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems."</p> |
| PLRs provide clearly define the term ecosystem services in accordance with relevant international law | <p>In 2013, before being codified in 2017, the Government issued its "Principles, Criteria and Indicators for a System for Providing Information on REDD+ Safeguards Implementation (SIS-REDD+) in Indonesia" and includes the following definition of "ecosystem service" as "The benefits people obtain from ecosystems. These include: a. provisioning services such as food, forest products and water; b. regulating services such as regulation of floods, drought, land degradation, air quality, climate and disease; c. supporting services such as soil formation and nutrient cycling; d. and cultural services and cultural values such as recreational, spiritual, religious and other non-material benefits."</p> <p>This is consistent with the definition provided by the Millennium Ecosystem Assessment which defines "ecosystem services" as "<i>"the benefits people derive from ecosystems". Besides provisioning services or goods like food, wood and other raw materials, plants, animals, fungi and micro-organisms provide essential regulating services such as pollination of crops, prevention of soil erosion and water purification, and a vast array of cultural services, like recreation and a sense of place.</i>"</p> |
| Safeguard E | |
| Criteria E.1.: No Conversion of Natural Forests Sub-criteria E.1.2. Prohibiting the Conversion of Natural Forests | |
| Diagnostic Question: do PLRs prohibit the conversion of natural forests? | |

| Indicators | Explanation (identify articles/provisions) |
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| PLRs clearly prohibit the conversion of natural forests to other land-uses, or other types of forests (such as plantations) | <p>The Moratorium on concessions and licensing in primary forests and peatlands essentially prohibits conversion of natural forests to other land uses. The ban includes a prohibition of drainage channels resulting in dry peat, burning of peatlands, and/or other activities that result in the destruction of peat ecosystems. In line with that, law enforcement in relation to peatland management is being continuously applied in the ground. That said, the same law does include exemptions that still allow for resource exploitation in these primary natural forests and peatlands (and of course does not cover secondary natural forest).</p> <p>However, Article 1 of the Forestry Law, does include the category of "Production Forest" which is divided into "Convertible Production Forest" and "Limited Production Forest"). The former is "a segment of the production forest that could be released for conversion (i.e. clearing) for agricultural and plantation purposes." Hence, the law does permit conversion of certain Production Forests. Also, the law does provide for IUPHHKHA -Business Permit for Timber Forest Product Utilization - Natural Forest (Izin Usaha Pemanfaatan Hasil Hutan Kayu - Hutan Alam) which allow sustainable logging in natural forests. In East Kalimantan, it is calculated that the total remaining <i>natural forest</i> area inside concessions is about 4.1 million hectares. Consequently, conversion in natural forests is still occurring.</p> |
| If conversion is not prohibited, PLRs set controls on conversion in both public and private forests, through environmental impact assessments and mitigation. | <p>The Moratorium is one big mitigation measure prohibiting most permitting and concessioning in primary natural forests.</p> <p>The Social Forestry (MoEF Decree No. 83) support to Community Timber Plantations, for example, but all endeavors arising from Social Forestry are to be sustainable.</p> |
| Safeguard E | |
| Criteria E.2. Protection and Conservation of Natural Forests and Biodiversity | |
| Sub-criteria E.2.1. Identifying Natural Forests and Biodiversity | |
| Diagnostic Question: do PLRs promote or require the identification/mapping of natural forests and biological diversity? | |

| PLRs require mapping of natural forests (i.e. development and updating of natural forests inventories this could be part of a broader NFI) and biodiversity (including ecosystem services) | As noted throughout this Annex, Indonesia maps its forest and biodiversity in various ways, including, among others: there is a forest cover map, a FREL map, and indicative Moratorium map, an indicative Social Forestry Map, a "One Map" that is being developed, a Land Cover Map, a Critical Land Map (Peta Lahan Kritis), the map for the Identification of Land for Agrarian Reform (Identifikasi Tanah Obyek Reforma Agraria, TORA), a Map of Potential Forest Resources (Peta Potensi Hutan). As described by the Government in "The State of Indonesia's Forest (2018)" "With advances in remote sensing technologies, since 2011, the monitoring of forest resources has been conducted on a yearly basis, with the process involving the preparation of land cover maps derived from the interpretation of medium resolution satellite images" (p. 23). |
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| Safeguard E | |
| Criteria E.2. Protection and Conservation of Natural Forests and Biodiversity | |
| Sub-criteria E.2.2: Measures to Protect Biodiversity and Natural Forests | |
| Diagnostic Question: Do PLRs regulate the protection of biodiversity and natural forests? | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs contain provisions for the protection of natural forest areas | <p>Presidential Decree of the Republic of Indonesia No. 16 of 2015 on Ministry of Environment and Forestry, Art. 13, as a directorate of MoEF, the Directorate General of Conservation of Natural Resources and Ecosystems has the task of carrying out the formulation and implementation of policies in the field of conservation management of natural resources and their ecosystems, including the protection of forest parks in Indonesia. Also, Art. 18, as a separate directorate of MoEF, the Directorate General of Conservation of Natural Resources and Ecosystems has the task of carrying out the formulation and implementation of policies in the field of conservation management of natural resources and their ecosystems, including the protection of forest parks in Indonesia...Also, the Directorate General of Sustainable Production Forest Management carries out functions that include the (i) formulation of policies in the field</p> |

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| | <p>of organizing the fostering of the business of natural forest, (ii) implementing policies in the field of providing guidance for the unitary management of natural forest businesses, (iii) drafting norms, standards, procedures and criteria in the field of providing guidance for the unitary management of natural forest, (iv) implementing technical guidance and supervising the implementation of the affairs of the management of natural forest businesses, and (v) carrying out evaluation and reporting on the fostering of the unit for managing natural forest.</p> <p>The Moratorium is specifically designed to cease granting of new permits for resource exploitation in primary natural forests and peatlands. The Instruction does contain a number of exceptions, however, that continue to permit utilization and usage of the designated primary natural forests and peatlands for “1. Principle permits from the Minister of Forestry issued before Inpres No. 10/2011; 2. Vital national development: • Geothermal, oil and gas, electricity • Land for food sovereignty programs including rice, sugar cane, corn, sago and soybeans; 3. Extension of existing valid forest utilization and/or forest area use permits; and 4. Ecosystem restoration. The law does not yet extend to secondary natural forest areas.” (<i>Data and Information, Indonesian Forestry Thematic Mapping</i>, MoEF (2018)</p> <p>In the case of the Social Forestry initiative, as noted above, there are limitations to its protections. For instance, even within the areas covered by licenses, Decree No. 83 on Social Forestry states that “in the case of the Social Forestry area or in the proposed Social Forestry there have been oil palm plantations since this regulation was enacted, it is permissible for 12 (twelve) years from the time of planting and among the oil palm trees a minimum of 100 (one hundred) trees per hectare is planted.”. (See. Article 65(h).</p> <p>Substantial natural forest areas under the Moratorium protection are also under the protection of other laws, such as Conservation Areas as designated under Law No 41/1999.</p> |
| PLRs contains provisions for the protection of biodiversity (BD strategy, creation of protected areas etc.) | The Forestry Law , Art. 1(9) provides for “Conservation forest” which is “a forest area with certain specific characteristics, having the main function of preserving the diversity of flora and fauna as well as their ecosystems.” The conservation forest areas are further categorized into Sanctuary Reserve Areas (Kawasan Suaka Alam, KSA9) (whose main function preserving bio diversity plant and animal as well as an ecosystem); and Nature Conservation Areas (Kawasan Pelestarian Alam, KPA10) (specific terrestrial or marine area whose main function is to preserve |

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| | <p>diversity of plant and animal species, as well as to provide a sustainable utilization of living resources and their ecosystems.); KSA consist of Strict Nature Reserves¹¹ (Cagar Alam, CA) (having a characteristic set of plants, animals and ecosystems, which must be protected and allowed to develop naturally); and Wildlife Sanctuaries¹² (Suaka Margasatwa, SM) (reserve area having a high value of species diversity and/or a unique animal species, in which habitat management may be conducted, in order to assure their continue and existence). Meanwhile, KPA consist of National Parks¹³ (Taman Nasional, TN), Nature Recreation Parks¹⁴ (Taman Wisata Alam, TWA), and Grand Forest Parks¹⁵ (Taman Hutan Raya, Tahura). KSA/KPA can be terrestrial or marine.</p> <p>See also Law Number 5 of 1990 concerning Conservation of Living Natural Resources and Ecosystems (State Gazette of the Republic of Indonesia of 1990 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 3419).</p> <p>Ministry of Forestry Regulation No. P. 20 / Menhut-II / 2012 regarding the Management of Forest Carbon, Art. 3(2)(d) “Forest carbon activities can be in the form of storage and / or carbon Sequestration, which consists of: ...d. <i>Biodiversity protection...</i>”</p> <p>Art. 61(4) of Decree No. 83 on SF specifically provides that the “government facilitates forest / land rehabilitation programs / activities, soil and water conservation, <i>biodiversity conservation</i>, conservation-based community empowerment, sustainable forest management certification and/or timber legality certification.”</p> |
| PLRs contain provisions for the protection of endangered species | <p>Laws and regulations are in place on protection of forest, threatened and endangered species at the national and provincial levels. Indonesia has established targets to increase the populations of 25 endangered species listed on the International Union for the Conservation of Nature (IUCN) Red List of Threatened Species by at least 10 percent from a baseline population levels recorded in 2013. The MoEF has followed this up with a roadmap for the achievement of these targets, see Keputusan Dirjen KSDAE No. 180/IV-KKH/2015 tentang Penetapan 25 Species Satwa Terancam Punah Prioritas untuk Ditingkatkan Populasinya Sebesar 10 percent pada Tahun 2015-2019.</p> <p>Of course, as a signatory to the Convention on Biological Diversity, Indonesia further commits to the conservation of genetic resources by preserving sensitive ecosystems, restoring degraded</p> |

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| | <p>ecosystems, and adopting legislation that would protect plants and animal species that are deemed endangered.</p> |
| PLRs define clear penalties for non-compliance with the above measures | <p>The Forest Law lists a series of prohibited activities in the forests (i.e. illegal cultivation and occupation, encroachment, felling of trees with specific radius or distances, removing plant and wildlife species without prior approval, possessing forest products without a legal document) (Art. 50); authorizes specific forest police to patrol the forests, prepare reports, investigate, detain suspects etc. (Art. 51). Financial penalties and imprisonment for crimes are specifically listed in its Article 78.</p> <p>Law No. 18 of 2013 on the Prevention and Eradication of Forest Degradation. This law strengthens law enforcement by providing additional legal certainty and defining the penalties for those engaged in forest destruction. It clearly defines which activities are banned, on the part of individuals and organized groups who perform logging activities, as well as organizations involved in the illegal timber trade and officials engaged in the falsification of permits.</p> |
| PLRs promote sound environmental management and sustainable use of public/private forests (preparation of management plans, guidelines, process) | <p>For sustainable management of landscapes, there are Memorandum of Understanding (MoU) with local government to develop sustainable management of landscape at sub national level are established.</p> <p>From 2013 to 2015 Forest Management Units (FMUs) formulate ten-year long-term and short-term annual forest management plans (P.6/Menhut-2009). The Directorate General of Planning at the Ministry of Forestry is charged with providing technical guidance for the formulation of these plans (No. P.5/VII-WP3H/2012). <i>These plans, as stipulated, are to include economic, social and environmental/ecological information.</i> From 2015 on, the long-term forest management plans were to be formulated by provincial governments with the FMUs being assigned the work (see No P.64 Menlhk-setjen 2015).</p> <p>FMUs are a national priority and stipulated in the National Medium-Term Development Plan (RPJMN) and the MoEF's Strategic Plan (RENSTRA).</p> |

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| | <p>See also Government Regulation No. 6/2007 concerning Forest Management and Preparation of Forest Management Plans, and Forest Utilization</p> <p>Article 59 of Decree No. 83 on Social Forestry requires Villages and Communities granted licenses under the SF initiative to “compile Village Forest Management Plans, Business Work Plans, and Annual Work Plans, and submit implementation reports to the rights giver or permit.”</p> |
| PLRs regulate industry-specific sustainable resource production/management practices applied, including credible certification systems where appropriate PLRs regulate sustainable practices supported for small-scale producers | <p>The Forest Law provides for a number of licenses that allow for sustainable use of use. Articles 26 thru 29 of the law addresses the granting of business licenses for area utilisation, environmental services and collection of non-timber forest products in preservation forests to individuals, cooperatives, Indonesian private companies, and State or regional government-owned companies. An assortment of the same actors can also receive business licenses for production forests for the utilization of its area, environmental services, utilisation of timber and non-timber forest products, and collection of timber and non-timber forest products.</p> <p>The Government has taken a number of far-reaching measures to minimize unsustainable or illegal forest production practices. Indonesia has a mandatory national system for the certification of forest sustainability known as PHPL. It also has a national chain of custody system which ensures the legality of timber (SVLK) which in turn has allowed Indonesia to be the first nation in the world to successfully complete a legal timber trade agreement with the EU. Details regarding SVLK may be seen in the SIPUHH online system. For example, see Ministerial Decree Number P.30/Menlhk/Setjen/Phpl.3/3/2016 on Assessment for Performance of Sustainable Production Forest Management and Verification of Timber Legality – a regime for the Timber Legality Verification System, hereinafter abbreviated as SVLK outlining a policy that mandates all forest concession holders to obtain forest sustainable management certification, to ensure they apply sustainable management practices.</p> <p>See also Ministerial Decree Number P.46/Menlhk-Setjen/2015 on Guideline on Post Audit for Timber Forest Product Utilization and Timber Utilization Licences, providing for a framework by which holders of IUPHHK and / or IPK are subject to audits, audit reports and provides for sanctions if violations of the conditions and requirements of the licenses.</p> |

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| | <p>Government Regulation 46/2017 on Economic Instrument for Environment, Part IV provides, among others, for an “Environmentally Friendly Label System”.</p> <p>Another example, MoEF, Regulation P.40 /MENLHK/SETJEN /KUM.1/6/2017 regarding Government Facilitation on Industrial Plantation Forests is intended to protect and manage the peat ecosystem. For those Industrial Plantation Forests (HTI) located in the peat ecosystem that do not perform well, licenses may be revoked, or adjustments may be made in order protect peat ecosystem protection functions (Fungsi Lindung Ekosistem Gambut or FLEG).</p> |
| PLRs require the monitoring and evaluation management forests (M&E of implementation of management plans) | <p>To assist in monitoring and management of forest areas, regulations related to forestry thematic mapping include the following:</p> <ul style="list-style-type: none"> • Regulation of the Director General of Forestry Planning and Environmental Governance No. P.6/PKTL/SETDIT/KUM.1/11/2017 on Technical Guidelines of Depiction and Presentation of Environmental and Forestry Maps • Regulation of the Director General of Forestry Planning and Environmental Governance No. P.3/PKTL/IPSDH/PLA.1/2017 on Guidelines for Implementation of Natural Primary Forest Surveys for the Verification of the Indicative Map for the Suspension of the Issuance of New Permits (PIPPIB) • Regulation of the Director General of Forestry Planning No. P.1/VII-IPSDH/2015, on Guidelines for Land Cover Monitoring. |
| Safeguard E | |
| Criteria E.2. Protection and Conservation of Natural Forests and Biodiversity | |
| Sub-criteria E.2.3: Supporting Conservation Research and Awareness-Raising | |
| Diagnostic Question: do PLRs support/promote conservation research and awareness raising over forest and biological diversity protection? | |
| Indicators | Explanation (identify articles/provisions)/Gaps identified |

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| PLRs promote conservation research for science-based biodiversity conservation | <p>MoEF Ministerial Decree 70/2017 on REDD+ Procedures, Article 4(c)(3) provides for research and development to support REDD+ activities.</p> <p>Law No. 32/2009 concerning Environmental Protection and Management mandates strategic environmental research.</p> <p>As a signatory to the CBD, Indonesia is required to “promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources.”. (Art. 12(c)).</p> |
| PLRs promote the implementation of programmes that aim to improve public knowledge of the value of biodiversity | See Indonesia Biodiversity Strategy and Action Plan (2015-2020) |

Safeguard E

Criteria E.2. Protection and Conservation of Natural Forests and Biodiversity

Sub-criteria E.2.4: Integration of Biodiversity in Cross-Sectoral Policies

Diagnostic Question: Do PLRs require/promote the integration of biodiversity consideration in cross-sectoral policies?

| Indicators | Explanation (identify articles/provisions) |
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| PLRs require the consideration and measuring of the possible impacts of forest and land use policies on biodiversity | (further analysis needed) |
| PLRs provide clear guidance on how to assess trade-offs between development (livelihoods, infrastructure, food production) and biodiversity (including modification/cancellation of the policy if potential impacts are too high) | The Moratorium does contain clear guidance on how to revise the Moratorium Map so as to indicate there is a dedicated assessment of trade-offs, particularly where the revisions might mean excising lands from the Moratorium for further permits and concessions. The Moratorium provides for the growing of strategic crops to address “national food” security, but no criteria for selecting those crops (only an indicative list: “rice, sugar cane, corn sago, soy, and singkong”). (Article 2). |

| Safeguard E | |
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| Criteria E.2. Protection and Conservation of Natural Forests and Biodiversity | |
| Sub-criteria E.2.5: Enhancement of Other (non-carbon) Benefits | |
| Diagnostic Question: do PLRs promote the enhancement of multiple benefits? | |
| Indicators | Explanation (identify articles/provisions) |
| PLRs seek to maintain and increase the ecological, biological, climatic, socio-cultural, and economic contributions of forest resources | Indonesia's Biodiversity Action Plan for 2003-2020 could be divided into five main themes, namely: (1) development of community and individual capacity to manage the biodiversity; (2) development of resource, technology and local wisdom; (3) increase the conservation and rehabilitation of biodiversity; (4) increase the institution capacity and policy instrument; and (5) increase the capacity to solve the conflict. (Section 3.2.6). |
| PLRs regulate access to, and fair and equitable sharing of benefits derived from forest biological resources (non-timber forest products) | The Social Forestry Initiative , by law, contemplates community timber plantations in production forests, and also encourages non-timber forest products through other access and use rights to communities, villages and Adat communities permitting non-timber forest product activities. |
| PLRs promote the development of alternative livelihood in forests (eco-tourism, agroforestry) | The SF initiative is specifically aimed at promoting alternative livelihoods away from destructive forest management practices. Its Decree No. 83 on Article 43(1) it provides that the "area of forestry partnership between the forest manager or permit holder and the local community is determined with the following provisions... b. areas that have potential and are a source of livelihood for the local community...d. in utilization zones, traditional zones and rehabilitation zones in national parks or utilization blocks in nature tourism parks and grand forest parks." There are numerous examples within the program of communities being supported in tourism initiatives, the growing of sustainable agricultural products, and the commercialization of non-timber products. |
| SAFEGUARD F & G <i>Actions to address the risks of reversals and reduce displacement of emissions</i> | |
| Criteria F&G.1: Monitoring and Assessment | |

| Diagnostic Question: to what extent do PLRs require regular monitoring and measurement of risks to forest permanence | |
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| Indicators | Explanation (identify articles/provisions) |
| PLRs require the development of detailed land use and forest inventories (forest cover, forest cover change), monitoring of land-use and land-use change (including monitoring system) | <p>See Regulation of the Minister of Forestry Number P.30 / MenhutII / 2014 concerning Periodic Comprehensive Forest Inventory and Work Plans on Utilization of Timber Forest Products (State Gazette of the Republic of Indonesia of 2014 Number 687)</p> <p>Decree Number P.28/Menlhk/Setjen/Kum.1/2/2016 on Geospatial Information Network within the Ministry of Environment And Forestry has the objective of "facilitate[ing] the dissemination of geospatial information, it is necessary to optimize the geospatial information network by involving all work units that manage geospatial information" and according to Art. 3 "Geospatial Information, hereinafter abbreviated IG, is a DG which has been processed so that it can be used as a tool in the formulation of policies, decision making, and / or implementation of activities related to earth space."</p> <p>The Ministry Regulation No 18/2015 gives authority for forest resource monitoring to the Directorate General of Forestry Planning and Environmental Arrangement (Ditjen PKTL), while authority for MRV is within the Directorate General of Climate Change (Direktorat Jenderal Pengendalian Perubahan Iklim/Ditjen PPI). Those two institutions are independent to each other but need to share and integrate the MRV tasks. Also, a unit called the Directorate of Forest Resources Inventory and Monitoring (IPSDH, in Indonesian) was established under the Ditjen PKTL of MoEF to manage the NFMS. The PSDH has four sub-units to perform distinctive tasks and responsibilities, i.e: (a) forest inventory, (b) forest monitoring, (c) forest mapping and (d) spatial data networking.</p> <p>Decree No. 83 on Social Forestry provides that the Village, Community, and Community Forest Plantation licenses are valid for a period of 35 years but during this period they are evaluated every 5 years (Arts. 53(1) & (3)). If the holders of these licenses are in violation or fail to fulfil their obligations, they are subject to sanctions. The decree does not specifically say what these obligations are but based on the objectives, the assumption is that these evaluations will look at impacts.</p> |

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| PLRs require monitoring of entire forest product supply chain | This is under the SLVK and the FLEGT commitments. There will also be voluntary monitoring of the VC for those pursuing FSC and LEI (Indonesia Ecosystem Labelling) which are voluntary certification schemes.] |
| PLRs provide law enforcement bodies with adequate mandates, resources and expertise to conduct routine monitoring | See section above B.1.3 “Diagnostic Question 2: To what extent do PLRs adequately address corruption in the forest sector?” related to corruption and penalties for environmental crimes. |
| PLRs require regular monitoring and reporting on social and environmental impacts of forest programmes | This has been addressed above. See also MoEF Ministerial REGULATION No P.72 / MENLHK / SETJEN / KUM.1 / 12/2017 regarding Guidelines for Implementing Measurement, Reporting and Verification of Action and Climate Control Resources focuses on the reduction of greenhouse gases. As such, MRV is done per an agreed baseline on emissions. It is not a law that provides for MRV of social impacts. |

Safeguard F & G

Criteria F&G.2: Measures to Tackle Reversals and Displacement

Diagnostic Question: to what extent do PLRs aim to minimise the risks related to deforestation and forest degradation?

| Indicators | Explanation (identify articles/provisions) |
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| PLRs promote sustainable utilisation and conservation of forests and other relevant resources | Article 1 of Decree No. 83 on Social Forestry expressly states that it is “a system of <i>sustainable</i> forest management implemented in state forest areas or customary forests / customary forests implemented by local communities or customary law communities as the main actors to improve their welfare, environmental balance and social cultural dynamics in the form of Village Forests, Community Forests , Community Plantation Forest, Community Forest, Customary Forest and Forestry Partnership.” In the same article forest utilization is described as Forest Utilization is “an activity to utilize forest area in the form of timber and non-timber forest products through nurseries, planting, maintenance, harvesting, processing, and marketing <i>based on the principle of forest sustainability</i> , social and environment and / or in the form of utilization of environmental services through among others ecotourism services, water management |

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| | <p>services, biodiversity services, carbon sequestration / storage services.” In its Article 3 it clarifies: “Management of Social Forestry by observing the principles of: ... Sustainability...” Art. 61(4) specifically provides that the “government facilitates forest / land rehabilitation programs / activities, soil and water conservation, biodiversity conservation, conservation-based community empowerment, <i>sustainable</i> forest management certification and / or timber legality certification.”</p> <p>See Regulation of the Minister of Forestry Number P.85 / MenhutII / 2014 concerning Procedures for Cooperation in Nature Reserve Areas and Nature Conservation Areas (State Gazette of the Republic of Indonesia of 2014 Number 1446).</p> |
| PLRs require adverse impacts (direct and indirect) to natural resources, biodiversity, ecosystem services are identified, assessed, mitigated and managed | <p>See provisions above related to environmental assessments.</p> <p>Also Law No 32 of 2009 and Law No 5 of 1990 on Conservation and Law No 26 of 2007 on Spatial Plan requires that mitigations measures on environmental and social impacts are embedded into the natural resources licensing procedure.</p> <p>See also Government Regulation No 71 of 2014 on Protection and Management of Peatland Ecosystem requires Strategic Environmental Study</p> <p>The UNDP SES and SESP procedures applicable to REDD+ projects implemented in Indonesia where the UNDP is the accredited entity, do provide for such due diligence, mitigation and management.</p> |
| PLRs implement effective law enforcement to combat and eradicate illegal forest-related practices | <p>Law No. 18 of 2013 on the Prevention and Eradication of Forest Degradation. This law strengthens law enforcement by providing additional legal certainty and defining the penalties for those engaged in forest destruction. It clearly defines which activities are banned, on the part of individuals and organized groups who perform logging activities, as well as organizations involved in the illegal timber trade and officials engaged in the falsification of permits.</p> <p>Minister of Forestry Regulation Number P.39 / MenhutII / 2008 concerning Procedures for Imposing Administrative Sanctions Against Holders of Forest Utilization Permits</p> |

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| | <p>(State Gazette of the Republic of Indonesia Tahun 2008 Number 14) (which regulates the procedures for imposing administrative sanctions to license holders in the fields of production forest utilization, administration of timber forest products and PNBP (non-tax state revenue) payment obligations.);</p> <p>Presidential Decree of the Republic of Indonesia Number 16 Of 2015 on Ministry of Environment and Forestry, Arts. 33-34 providing for MoEF's Directorate General of Environmental and Forestry Law Enforcement which "has the task of carrying out the formulation and implementation of policies in the field of reducing disturbances, threats and violations of environmental and forestry laws" and specifically formulates and implements policies and standards, procedures and criteria "in the field of organizing prevention, supervision, security, handling complaints, investigations, application of administrative, civil and criminal law in the realm of the environment and forestry, as well as the support of environmental and forestry law enforcement operations", conducts evaluation and reporting on the implementation of policies and standards, and is in charge of the administration of the administration of the Directorate General of Enforcement.</p> <p>Indonesia was the first ASEAN country to sign a Voluntary Partnership Agreement with the EU as part of its efforts on the European Union's Forest Law Enforcement Governance and Trade in 2014.</p> <p>While only an Instruction, the Moratorium lacked the force of a law so legally there are no consequences if violated and ministries not named (like the Ministry of Mineral Resources) are not necessarily incentivized to follow the moratorium. (Earlier moratoriums -Instructions 10/2011, 6/2013, and 8/2015) also did not mention the Ministry of Agriculture). No entity is specifically mentioned as being responsible for the enforcement of the law, but several ministries and government officials are listed as having various expectations within its competencies.</p> <p>REDD+ is a key component of the National Action Plan to Reduce GHG Emissions (RAN GRK), with six relevant strategies, including the enhancement of the protection of forest from fires <i>and illegal logging</i>, and improve sustainable forest management.</p> |
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| PLRs seek to detect and reduce forest fires and other disturbances | <p>Presidential Instruction 11/2015 on enhancing forest and land fire control and MoEF mandates all level of governments to develop land and forest fire management system at their jurisdictions and implement sanctions for business players who do not implement fire management within the area under their jurisdictions.</p> <p>See also MoEF Regulation 32/2016 on Control of Forest and Land Fires enacted to transform forest and land fire management from the focus on ‘suppression’ to ‘prevention’, through improved land use governance, law enforcement and more inclusive community participation. The Decree discusses the roles and responsibilities of different entities from the national to community and village level and including permit holders, including, for instance: the National Task Force for Handling Forest and Land Fires, the Forest Fire Control Core Team, Fire Concerned Communities, Forest Fire Control Supporting Team and Village Facilitating teams working together from the local to national to prevent fires.</p> <p>Minister of Agriculture Regulation No. 5/2018 on Land Clearance and Management for Plantation Without Burning details a policy that mandates all estate crop concession holders to maintain environmental sustainability and not using fire for land clearing and land management</p> <p>One of the intentions of the Moratorium, now a permanent ban, is to ensure that fires can be reduced in the Moratorium area, if only due to the decrease in natural resource exploitation in those areas which might make the forests more vulnerable to deliberate clearings of land by fire (i.e. for agricultural use) and by identifying through robust monitoring “hotspots”.</p> <p>Regulation No. 57 OF 2016 on Amendment to Government Regulation No. 71 of 2014 on Ecosystem Protection and Management Peat, was enacted in part as a response to the damage due to forest and land fires in 2015. Article 22 provides for “Prevention of damage to Peat Ecosystems” done by “a. preparing technical regulations; b. early detection system development; c. strengthening government institutions and community resilience; d. increasing public legal awareness; and / or e. securing fire-prone and ex-fire areas.” Elements of the early detection system is then developed, including “a. the installation of instant and continuous air quality monitoring equipment and the use of various early detection technologies; b. processing</p> |
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| | <p>information from various sources including public reports; and c. notifying the public of potential land and forest fires.”</p> <p>Supreme Court decision of July 2019 finding that government officials committed unlawful acts resulting in environmental damages as related to destructive forest fires in West and Central Kalimantan and several other provinces. As a result, the high court ordered the government to “to issue and implement seven government regulations under the umbrella of existing laws including the Environment Law of 2009”: to issue and implement seven government regulations related assessments of environmental damage caused by fires and review of permits held by companies whose plantation concessions experienced fires, as a first step to determining possible criminal charges. The Government was also ordered to create a roadmap for forest fire mitigation and emergency handling; and a plan to compensate victims of fires (including free access to medication and establishment of specialized hospital care). (See https://www.greenpeace.org/southeastasia/press/2830/president-jokowi-must-accept-fires-verdict-and-show-he-is-serious-about-ending-forest-fires-and-peoples-suffering/)</p> <p>REDD+ is a key component of the National Action Plan to Reduce GHG Emissions (RAN GRK), with six relevant strategies, including the enhancement of the protection of forest <i>from fires and illegal logging</i>, and improve sustainable forest management.</p> |
| PLRs promote alternative livelihoods and income diversification from forest management | See responses above to E.2.5 above . |
| PLRs seek to avoid, minimize and mitigate risks posed to human health and the environment from pollutants, wastes, and hazardous materials | <p>Presidential Decree Of The Republic Of Indonesia Number 16 Of 2015 On Ministry Of Environment And Forestry, Article 21, The Directorate General of Pollution and Environmental Damage Control has the “task of carrying out the formulation and implementation of policies in the field of pollution control and environmental damage” and formulating and implementing policies and standards for the “prevention, mitigation and recovery of pollution and / or damage to peat, coastal and marine areas, water and air media, and open access land” (Art. 22)</p> <p>There are several regulations about fertilizer and pesticide http://psp.pertanian.go.id/index.php/page/publikasi/72. To consultant's knowledge, there is</p> |

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| | <p>no regulation specifically for the use of pesticides in Community Timber Plantations arising from a Social Forestry initiative for example. However, Ministry of Agriculture Regulation No. 39/Permentan/SR.330/7/2015 on Pesticide Registration regulates the use of pesticides in general. According to Article 6 paragraph (2) of this Regulation, the pesticides that are banned are: Pesticide Formulations that are included in class Ia and class Ib according to World Health Organization (WHO)'s classification; Active Substances and/or Additive Substances that have carcinogenic effects (category I and IIa based on the classification of International Agency for Research on Cancer (IARC)), mutagenic and teratogenic based on the Food and Agriculture Organization (FAO) and WHO; Active Substances and/or Additive Substances that cause resistance to medicine on humans; and Active Substances and/or Additive Substances that are included in the new POPs (Persistent Organic Pollutants) classification based on the Stockholm Convention. Apart from those banned pesticides, the Pesticide Commission decides which pesticides may be used and which may not, and to what extent. In this context, risks should be minimized, but there is no environmental or social impact assessments of harms resulting from pesticides indirectly/directly linked with the Social forestry initiative or Moratorium.</p> <p>Government Regulation 46/2017 on Economic Instrument for Environment, Part III provides for a "Pollution and / or Environmental Damage and Recovery Management Fund" which is to ensure the "a. availability of funds for the prevention of pollution and / or environmental damage and the restoration of environmental functions", including mitigation efforts designed to "a. provid[e] information on pollution warnings and / or environmental damage to the public; b. isolate[e].. pollution and / or environmental damage; and [cease]... sources of pollution and / or environmental damage..."</p> <p>See also directly indicator directly above, related to avoiding haze from forest fires.</p> |
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PLRs that were translated into English and made available for review during this ESA process

| NATIONAL PLRS |
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| Constitution of the Republic of Indonesia (1945) |
| Act 4/2011 on Geospatial information |
| Presidential Decree 94/2011 on agency for Geospatial Information (Badan Informasi Geospasial/BIG) |
| Government Regulation 8/2013 on Spatial Mapping Accuracy |
| Presidential Decree 27/2014 on national geospatial information network |
| Presidential Decree 9/2016 on accelerating one map policy through use of 1:50 000 scale |
| MoEF Ministerial Decree 28/2016 on geospatial information network within the MoEF |
| Presidency Instruction 11/2011 on halting new licenses over natural forest and peat land (Moratorium); which is extended and renewed into Presidency Instruction 6/2013; 8/2015; 6/2017 |
| Ministerial Decree SK.2312/Menhut-VII/IPS DH/2015 (PIPIB) |
| MoEF Ministerial Decree 46/2015 on Guideline on Post Audit for Timber Forest Product Utilization and Timber Utilization Licenses |
| MoEF Ministerial Decree 30/2016 on assessment for performance of Sustainable Production Forest Management and Verification of Timber Legality |
| Government Regulation 1/2016 on establishing Peat Restoration Agency (Badan Restorasi Gambut/BRG) perpres |
| Government Regulation 71/2014 on protection and management of peat ecosystems |
| Government Regulation 57/2016 on amendment of government regulation 71/2014 |
| MoEF Ministerial Decree 16/2017 on technical guidelines for peat ecosystem recovery |
| MoEF Ministerial Decree 17/2017 on amendment of MoEF Ministerial Decree 12/2015 on establishing Industrial Plantation Forest |
| MoEF Ministerial Decree 83/2016 on Social Forestry |
| MoEF Ministerial Decree 39/2017 on social forestry within Perhutani (Indonesian Forest Enterprise) |
| Law 6/2014 on Villages |
| English translation of each category of license issued through the SF program (includes the partnership agreements) |
| Government regulation 104/2015 on procedure for forestland and function alteration |
| Presidential Decree 88/2017 on Settlement of Conflicts over Forest land |
| Ministerial Decree 180/2017 on Indicative map for Land Allocation/Agrarian Reform (Tanah Objek Reforma Agraria) |
| Ministerial Regulation on Rights Forest, Peraturan Menteri LHK No, P32/Menlhk-Setjen/2015 tentang Hutan Hak (<i>Rights Forest</i>) |

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| MoEF Regulation No. 3 of 2015 concerning titled forest. |
| Presidential Decree (Keppres) No. 111/1999 concerning Development of Isolated Indigenous Community (KAT) |
| Regulation of the Minister of Land Agency and Spatial Development No. 9/2015 on the Procedures to Establish the Land Communal rights on the MHA Land and Community Living in the Special Area (non-forest estates) |
| MoEF Regulation No. 21/2019 on Adat Forest and Titled Forest. |
| Ministry of Home Affairs No. 54/2014 |
| Regulation 62/Men hut-11/2013 further defined the responsibilities and methods for the demarcation of the State Forest Area and for the recognition of land rights of Adat communities |
| Regulation of the Ministry for Agrarian and Spatial Planning No. 10 of 2016 concerning the registration of Communal Adat Land Rights on Adat Law Community land within the State Forest Area |
| Minister of Home Affairs Regulation No. 52 of 2014 concerning guidelines for the recognition and protection of Adat law communities. |
| Presidential Decree No. 186 of 2014 on Social Empowerment of Remote Indigenous Communities (KAT) |
| PMA/KBPN N.5/1999 on the Guideline for dispute settlement on the problems of customary rights: it is applied only to land that is controlled by government agencies, legal entities or individuals |
| Regulation No. 9/2015 concerning Procedures for Determination of Communal Land Rights of Indigenous Peoples and Local Communities in Specific Region |
| Presidential Instruction 11/2015 on enhancing forest and land fire control |
| MoEF Ministerial Decree 32/2016 on forest and lands fire management |
| Accordance with mandate of Indonesia National Act No. 32/2009 on Environmental Protection and Management |
| Government Regulation 46/2017 on Economic Instrument for Environment |
| MoEF Ministerial Decree 20/2012 on forest carbon management |
| Presidential Decree 16/2015 on Ministry of Environment and Forestry |
| MoEF Ministerial Decree 18/2015 on organization and governance |
| MoEF Ministerial Decree 70/2017 on REDD+ Procedures |
| MoEF Ministerial Decree 71/2017 on National Registry on Climate Change |
| MoEF Ministerial Decree 72/2017 on Guideline for MRV of Action and Support |
| MoEF Ministerial Decree 73/2017 on Guideline for GHG Inventory |
| MoEF Regulation No. P.22 on Grievance Management Mechanism of Presumptive Pollution and/or Environment Destruction and/or Deforestation and Forest Degradation |
| MoEF Regulation No. P.84/Menlhk-Setjen/2015 concerning Tenurial Conflict Management within Forest Area (PPTKH) |

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| MoEF based on Decree No. 24/Menhut-II/2015 on the Establishment of a Team for Addressing Environmental and Forestry-Related Grievances |
| Presidential Instruction No. 9/2000 on Gender Mainstreaming in National Development |
| Law 7/1984 to ratify the Committee on the Elimination of Discrimination against Women (CEDAW) |
| Ministry of Forestry Regulation 65/2011 on Guidelines of Gender Responsive Planning and Budgeting in the field of Forestry |
| Forestry Law No. 41/1999 |
| Government Regulation No. 56 (2010) concerning Supervisory Procedure to Eliminate Race and Ethnic Discrimination. |
| Government Regulation (PP) No. 46 (2016) concerning Guidelines on Implementing Strategic Environmental Assessment |
| MoEF Regulation No. P.69 of 2019 regarding social and environmental assessments |
| Government Regulation No 74 (2012) on Public Finance Service (BLU), which regulate the establishment of BLU |
| Government Regulation No 45 (2013) on Implementation Procedure for Regional Revenue and Expenditure Budget |
| Presidential Regulation No 16 (2018) on Procurement of Goods and Services |
| Presidential Regulation No 77 (2018) on Management of Environmental Funds |
| Article 16 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles |
| Act Number 32 of 2009 on Environmental Protection and Management |
| Law 1 of 2104 |
| Law 27 of 2007 |
| Law 39 of 1999 on Human Rights |
| Joint Ministerial Regulations of the Ministry of Home Affairs (Number 79 of 2014), the MoEF (PB.3/MENHUT-II/2014), the Ministry of Public Works (17.PRT/M/2014), and the National Land Agency (8/SKB/X/2014) concerning the resolution of land claims within the State Forest Area. |
| Constitutional Court case, Dec. MK 45/2011 |
| The decision of Constitutional Court 35/2012 on Customary Law |
| National Medium-Term Development Plan (RPJMN) of 2015–2019 |
| Indonesia's National REDD+ Strategy |
| Indonesia's REDD+ Action Plan |
| National Medium-Term Development Plan (RPJMN) of 2015–2019 |
| Indonesia Biodiversity Strategy and Action Plan (IBSAP) of 2015-2020 |

Annex B: Project Alignment Review for the Social Forestry and Moratorium initiatives of Indonesia
(as of 27 October 2019)

Indonesia's **Social Forestry initiative** granting management and use rights to Villages and local communities, as well as participation in Forest Partnership Agreements and a path to Adat **communities'** forest recognition, and Indonesia's **Moratorium** halting new licenses over primary natural forest and peat land since 2011 (and recently made permanent in August of this year), are consistent with Indonesia's National REDD+ Strategy - including the goals of diminishing poverty, resolving land conflicts, improving community livelihoods, and reducing emissions through avoided deforestation and degradation. The nation's Ministry of Environment and Forestry (**MEF**) is responsible for both initiatives.

| Review Indicators | Alignment Review | Evaluation / Recommendations |
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| Human Rights | | |
| <i>Key objective: Support universal respect for, and observance of, human rights and fundamental freedoms for all</i> | | |
| <ul style="list-style-type: none"> ▪ Measures in place to uphold human rights principles of accountability and rule of law, participation and inclusion, and equality and non-discrimination ▪ No activities undertaken that may contribute to violations of a State's human rights obligations and the core international human rights treaties | <ul style="list-style-type: none"> ▪ The Social Forestry initiative has as its main objective to provide rights over forests to Village and local communities (many of which are Adat communities not yet recognized, as well as other marginalized communities). These include rights of management and access to forest resources, forest management participation, and eventually recognition of Adat titles. Stakeholders broadly participated in the development of principles, criteria and indicators to be used to monitor and report on project implementation compliance with Cancun Safeguards. Villages, local communities and Adat communities are equally eligible under the initiative, albeit Adat communities must first be recognized by local governments. The program is voluntary, and not imposed on these populations –respecting their rights to choose their own development path. The initiative is an ambitious one aiming to include, rather than exclude local communities and otherwise marginalized populations in national forest management. ▪ The Social Forestry initiative --buttressed by various national PLRs related to community and Village involvement in forest management and then further clarified into a single decree in 2016-- provides a path for the recognition of Adat Forests (sometimes referred to as "Customary Forests"), provided Adat acceptance of the forest categorization assigned by the States – subject to change during five-year periodic review of spatial planning. Title to Adat forests is provided, but underlying ownership of the forest remains with the State. | <p>There is notable positive alignment with UNDP SES, with areas identified for improvement</p> <ul style="list-style-type: none"> ▪ The Directorate General (DG) of Social Forestry and Environmental Partnership has now begun an Adat Forest indicative Area Map to "illustrate the locations of Adat Forests and prospective Adat Forests." This has been provided for by MoEF Decree No. 21 (2019). This process and its widespread application to avoid the prejudice of the rights of collectives should be accelerated. ▪ The elaboration of a clear free, prior and informed consent protocol needs to be completed immediately and done consistent with Applicable Law. The UN-REDD FPIC guideline and the SES Standard #6 on Indigenous Peoples and operational guidelines can serve as good starting places. This should be a protocol that applies to all REDD+ activities, including the Social Forestry initiative and as applicable, the Moratorium. Based on the FPIC standard in SES #6, it will apply to all government entities and actors working with their consent or acquiescence, including the FMU as well as private actors. Where private actors will conduct operations needing consent, the Government may seek that private actor's help to secure FPIC, but only with full Government cooperation and |

| Review Indicators | Alignment Review | Evaluation / Recommendations |
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| | <ul style="list-style-type: none"> ▪ Adat Forest recognition is pre-conditioned on local recognition of the community as an Adat community (i.e. recognition of their legal personality –the right to hold rights and enforce them) This provides continuing challenges to the titling of Adat Forests given that this first recognition is left to the provinces and local governments that move slow and apply processes and criteria that could be considered inconsistent with international law. ▪ There is no discrimination between men or women who wish to join the initiative (for example, a male or female farmer seeking to participate in a request for community plantation forests). If there is discrimination, it is not driven by the program and State, but based on local custom of the people in terms of the role of women in land use and management. ▪ Licenses and permits are granted over State Forest Areas. Given that the Indicative Map of the Social Forestry Area (PIAPS), contains areas of State Forest Area (per MoEF Decree No. 83) and does not fully reflect the Adat (customary) forest(titled or claimed), it can be the case that rights to use and access are granted over Adat forests without their FPIC or in a way that might prejudice the community's future right to secure full Adat titles to their lands in the future. (i.e. something more than a use right.) The transition from a permit or license (or if applicable, the revocation of an existing permit or license to a non-Adat holder) is not expressly provided for in the PLRs or in procedures to provide for full Adat forest rights. This can result in prejudice to Adat community land rights. ▪ In terms of accountability, parties to Social Forestry licenses and Partnership Agreements must report regularly on their implementation. Sanctions are imposed where there are violations of agreements, per decree. ▪ The Forest Management Units (FMUs) and the Social Forestry initiatives' efforts to allow local organizations to assist communities and Villages in their application processes, has increased accessibility. | <p>oversight as it is a duty of the State, not delegable without oversight, and clear procedures</p> <ul style="list-style-type: none"> ▪ The DG's new efforts to systematize through a umbrella regulation at the district level, how local communities or villages are legally recognized as Adat communities'. This is a good step in the right direction. This includes the DG's offer of technical assistance to accelerate such recognitions, paving the way for traditional territory recognition as the next step. It may also be possible to honor the Constitutional provisions on this matter (18B) and provide for national recognition based on a national law. In either case, resolution of this issue needs to respect that international law provides that Adat communities have the right to juridical personality. The State must affirm that right and the UN human rights bodies have said that this should be done in a way that protects Adat communities' rights to self-identification (see relevant sections of ESA cover report). |
| Gender Equality and Women's Empowerment | | |
| <i>Key objective: Promote gender equality and women's empowerment</i> | | |

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| <ul style="list-style-type: none"> ▪ Activity does not discriminate against women or girls or reinforce gender-based discrimination ▪ Activity designed in gender responsive manner (e.g. address both women's and men's needs, interests and concerns) ▪ Equitable access to opportunities, benefits, and resources ▪ Meaningful and equitable participation of women and men | <ul style="list-style-type: none"> ▪ Neither project had affirmative activities aimed at the matter of gender equity or the advancement of the rights, equality, and interests of women. The Social Forestry regulations of 2016 did affirm the beneficiaries were “entitled...to get fair treatment on the basis of gender or other forms.” Consistent with the National Medium-Term Development Plan (RPJMM) of 2015-2019, neither initiative precluded or prohibited benefits from accruing to women nor discouraged inclusive participation (including in stakeholder events). However, affirmative actions to “mainstream” gender equity in the two initiatives consistent with Presidential Instruction Number 9 Year 2000 on Gender Mainstreaming in National Development were not notably present. What social impact data was collected, there is no evidence that it was disaggregated by gender. ▪ Most licenses are applied for by leaders of Villages and communities, but in cases where individuals need to be listed as beneficiaries or requestors of the license (per requirements of Decree 83 on Social Forestry), there is no express provision that these individuals need to be of a specific gender. Where Partnership Agreements are entered into to work with communities to manage particular lands, these too make no specifications regarding gender. <ul style="list-style-type: none"> ▪ The problem, however, was more endemic: less women in Indonesia being community or cooperative leaders was not directly addressed (i.e. no affirmative measures in place to target women title holders or participation in leaders), and consequently, though not intended, statistics would inevitably show more beneficiaries being men. ▪ Also, given that many licenses (also Partnership Agreements) were entered into by collectives, the matter of men and women was somewhat moot as the license was held by a collective entity (not a single man or woman). ▪ All briefings and capacity sessions carried out by FMUs and government representatives were provided without discrimination as to participants being men or women. ▪ The Moratorium benefits are enjoyed without discrimination by all members of the Villages, local communities, and Adat communities living in and around the moratorium areas that | <p>There is notable positive alignment with UNDP SES, with areas identified for improvement</p> <ul style="list-style-type: none"> ▪ There is no evidence of direct harms to women and girls in the implementation of the two initiatives. The initiatives were not designed to discriminate or exclude by gender. However, cultural norms might have resulted indirectly in exclusions. ▪ Opportunities for improvement are available. For example, in the future the Social Forestry initiative can consider alternative livelihood options that might suit women's needs, benefit sharing in Forest Partnership Agreements, and participation and decision-making related to land management plans and the overall governance of the projects. <ul style="list-style-type: none"> ▪ Information on the implementation of the Moratorium and Social Forestry initiative, should include more disaggregated data by gender in the future. ▪ Future application of the SIS-REDD+, the PCIs, the APPS tool, and in general, any articulation of future social impact monitoring should consider gender elements, recalling that women often use natural resources and are impacted by changes in natural resource uses in manners that are different than men. |

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| | <p>benefit from a ban that excludes new permits and concessions in the forests upon which they depend for their livelihoods and cultural identity.</p> <ul style="list-style-type: none"> ▪ The multi-stakeholder-developed Principles, Criteria and Indicators (PC&I) are preliminarily responsive to gender equity issues. ▪ The FMUs are specifically charged with empowering the communities by assisting in application processes for licenses, development of management plans, and building capacity to fulfill responsibilities assigned to them in licenses or Partnership Agreements. There is no discrimination in this capacity and assistance based on gender. | |
| Social and Environmental Assessment and Management | | |
| <i>Key objective: Potential social and environmental risks and impacts are identified, assessed and managed, and monitored</i> | | |
| <ul style="list-style-type: none"> ▪ Systematic process in place to identify, assess, mitigate and manage potential social and environmental risks and impacts ▪ Assessment and management conducted in manner proportionate to significance of risks ▪ Impact mitigation measures follow mitigation hierarchy ▪ Mitigation measures monitored in manner proportionate to risks and corrective actions are taken as required | <ul style="list-style-type: none"> ▪ During the period in question, end of 2014, the GoI combined two ministries to two ministries to establish the Ministry of Environment and Forestry (MoEF), which has also been tasked to absorb the roles and responsibilities of the previous, REDD+ Agency and the National Council for Climate Change (DNPI). REDD+ processes are now coordinated under one roof at the REDD+ Division in the Directorate General of Climate Change at MoEF. This includes developing and implementing policies to monitor the performance of the Social Forestry initiatives, identifying risks, avoiding, mitigating and remediating harms. The same will be needed for the Moratorium, though perhaps under the DG Forestry Planning and Environmental Management. ▪ The Social Forestry Initiative did not have a specific mechanism in place to monitor social and environmental impacts other than the existing national mechanisms for monitoring emissions and forest cover. CSOs and academics, however, have done ad-hoc monitoring on their own and produced several reports and analysis. Also, the Safeguard Information System was in place during the review period (see below) which addressed early gathering of impacts even though not codified yet (to occur in 2017). | <p>There is notable positive alignment with UNDP SES, with areas identified for improvement, especially in terms of monitoring social impacts.</p> <ul style="list-style-type: none"> ▪ There is a recognized need to increased training for FMUs and REDD+ implementers as to how to use the PC&Is and the APPS tool to collect and upload implementation details and descriptive and document evidence of compliance with the Cancun Safeguards. To date, there are approximately 531 FMUs officially established nationwide, covering a total area of about 84 million hectares, representing nearly the entirety of the forest estate. ▪ With the SIS-REDD+ platform online, there is a recognition that increased attention is needed to (1) ensure that there is a working mechanisms to not only analyze the information received but connect those to real time modifications or introductions of new mitigation and avoidance measures as needed; and (2) increase its online connections to other central registries and internal monitoring systems within Indonesia. ▪ Future Social Forestry licensing and permit could benefit from a prior requirement to discuss |

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| | <ul style="list-style-type: none"> ▪ A robust and transparent National Forest Monitoring System (NFMS), however, was established, which is the enhancement of the initial National Forest Inventory (NFI) program that had been in place since 1986. The current NFMS provides comprehensive data on forest resources which consist of satellite-based forest mapping (initial NFMS), national forest inventory (initial NFI) as well as forest and land fires (burn scar data sets), which all are regularly updated and presented in accurate, transparent and credible ways. NFMS online access is at http://webgis.menlhk.go.id:8080/klhk/home/mapview. ▪ Indonesia developed its national forest baseline (FREL). It was submitted to UNFCCC Secretariat in 2015 and it was officially accepted by the UNFCCC Secretariat in January of 2016. ▪ A national MRV system on climate change mitigation specific for land-based sector that supported by the NFMS has also been developed since 2015. The system now has a legal basis via MoEF Regulation No. 70/2017 on REDD+ procedure and No. 72/2017 on MRV system. The MRV is limited to mitigation of GHG in forestry and peatland, agriculture, energy, transport, IPPU and waste sectors. <i>The MRV, however, does not monitor and assess social impacts.</i> ▪ Also, Indonesia established a web-based platform named Indonesian Emission Factor Data Base (Indonesian EFDB). The Platform manages the compilation of information on carbon stocks and emission factors from various detailed land cover classes from existing research done in Indonesia. The idea is to allow broader participation of carbon stock data reporting. <ul style="list-style-type: none"> ▪ National GHG Inventory System (web platform) exists. (Presidential Regulation Number 71 of 2011 concerning Implementation of National Greenhouse Gas Inventory. ▪ Specific areas, namely PAA (Performance Assessment Area, or National REDD+ Performance (WPK in Indonesian) where REDD+ activities will be measured, reported and verified, were also been introduced. ▪ The National Registry System (SRN) on Climate Change has been operational since 2016, and now under Ministerial Decree 71/2017 on National Registry, it is a web-based platform intended to, among other things: collect data on actions and resources for the implementation of climate change adaptation | <p>between the parties, and document and as needed, all potential risks and mitigation measures, and the responsibilities of the parties regarding the same. At present, the licenses and permits generally just speak of the community or Village's duty to "protect their area from environmental destruction and pollution" and the right to "protection from disturbances of environmental destruction and pollution or the unilateral acquisition by another party".</p> <ul style="list-style-type: none"> ▪ Recognizing that the monitoring of social impacts needed improvement, in 2018 the DG of Social Forestry contracted with university exerts to do impact assessments beyond the impacts on GHG emissions. Systematizing the social monitoring via the SIS system as well as the potential adoption of new regulations or policies and leveraging the expertise of academics and NGOs to contribute to such impact analysis is suggested going forward. ▪ The requirements to conduct ESIA, SESA, and ESMF's identify, assess, mitigate and manage risks and corrective measures have been incorporated into the national safeguard framework. |

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| | <p>and mitigation; and document activities and resources on adaptation and mitigation of climate change, including the contribution made by multiple actors (ministries/government institutions, local government, business community and civil society organization), all while making public data and information on documented measures.</p> <ul style="list-style-type: none"> ▪ MoEF also has developed tools for assessing the level of Climate Change vulnerability at the village level called SIDIK (Sistem Informasi Data Indeks Kerentanan – Vulnerability Index Information System). Where the level of vulnerability is determined by the indicators that affect exposure, sensitivity and adaptive capacity of the village. SIDIK has been used by local governments in developing adaptation action plans. ▪ Also, Indonesia's Forest Management Unit (FMU, or KPH) policy reflects a significant reform to the forest sector permitting. By April 2014, 120 model FMUs have been legally established. Work during the review period brought that number, at the close 2017 to 430 FMUs had been established. FMUs are responsible for the day to day management of forest units and are responsible for ensuring that forest management plans therein are implemented sustainably. These units are the local on-site forest managers in all protection, conservation and production forests. In coordination with local governments, carrying out responsibilities for boundary demarcation, forest inventories, maps, stakeholder engagement, and the development of short and long-term planning, <i>which includes risk identification, monitoring and avoidance/mitigation.</i> Problems, however, have been cited as to technical and economic resources limiting FMU capacity, as well as conflicts at times with authorities and competencies as between FMUs and local and district governments. Also, as of January 2018, only 129 long-term forest management plans for protection and production forests have been authorized by the appropriate MoEF Director General. This means only about 30% of FMUs have authorized plans. [Source: An Analysis of Long-Term Forest Management Plans of Forest Management Units in Sumatra, Indonesia (2018)] ▪ During the period of the Moratorium and Social Forestry initiative, there was a grievance redress mechanism (GRM) that | |

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| | <p>could forecast trends in potential social or environmental risks. (See section B.2.4 of Annex A). See GRM platform online http://pengaduan.menlhk.go.id/). According to the MoEF, "The number of complaints related to land tenure in the Forest Area and Adat forests handled by the Ministry of Environment and Forestry in the period from 2016 to May 2018 stood at 222. Of these, 77 cases were resolved; 107 are still in process; and 38 were returned to the complainant either because they lacked supporting documentation (13 cases) or because the conflict involved public lands outside the Forest Area or APL, (25 cases). The 183 cases that were either resolved or are still in process involved various types of cases." (<i>State of Indonesia's Forest 2018</i>, MoEF). The statistics from 2014 to 2015 were not readily available.</p> <ul style="list-style-type: none"> ▪ The Government of Indonesia, through then Ministry of Forestry's Centre for Standardisation and Environment (Pustanling), in 2011 embarked on a multi-stakeholder process to develop a Safeguards Information System (SIS) to provide information about REDD+ safeguards implementation (SIS-REDD+). This system was developed in 2013, subject to broad stakeholder participation in development, refinement and testing through the review period, and then codified in 2017. This information system includes the activities to collect, process, analyse, and present data and information about how the Cancun safeguards, were addressed and respected (hence, social and environmental impacts). ▪ Principles, Criteria, and Indicators (PC&Is) were first released in 2013 by the Government, then further developed during the review period in the above-mentioned multi-stakeholder process to be used by implementers of REDD+ activities to establish how they have addressed and respected the Cancun Safeguards during project implementation. These were codified in legislation in 2017. ▪ More generally, the Government of Indonesia has mainstreamed environmental and social risk mitigation measures through an interlinked process for the development of key safeguards instruments specific for REDD+ activities. <i>These instruments include, among others:</i> | |

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| | <p>a) the above-referenced REDD+ Safeguards Information System (known as SIS-REDD+) established during 2011 and 2015, pilots commenced, and become operational (which includes an online platform process to verify and analyze project compliance with safeguards so as to identify trends and needs for reforms and mitigation measures). Procedures are still unclear as to how the results of this monitoring and reporting will connect to real time changes in the project activities and implementation, but further piloting will make this clear.</p> <p>b) the national safeguards framework (known as PRISAI (Prinsip Kriteria Indikator Safeguards Indonesia)</p> <p>c) a process for conducting the ESIA, SESP and ESMF for pending ReDD+ activities; and</p> <p>d) the Safeguards Implementation Tool (APPS) and Assessment Procedures for using Safeguards Implementation (APPs) based decision in COP-16 Safeguards Implementation System (SIS) REDD+ Indonesia annexed to REDD+ regulations of the MoEF (No. 70/MENLHK/SETJEN/ KUM.1/12/2017).</p> <ul style="list-style-type: none"> ▪ Also, license holders under the Social Forestry Initiative were expected to report on the implementation of their responsibilities every five years. If there were violations, administrative sanctions or corrective actions were applicable. Also, field facilitators are guided to monitor two times a year (mid and end of year evaluations) ▪ Analysis has shown that the Social Forestry initiative has contributed not only to the conservation and sustainable resource management of these communities, but also projects related to ecotourism, the provision of ecosystem services, subsistence and commercial sustainable agricultural activities, and other initiatives improving the livelihoods of the people. ▪ As an example of identifying risks and mitigating/avoiding/remediating: Risks of forest fires were identified and “hotspots” within the Moratorium were mapped. Since the start of the Moratorium, numerous mitigation measures were put in place to avoid future fires. These included, for instance the Fire Risk System (FRS) (see: http://kebakaranhutan.or.id). | |

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| | <ul style="list-style-type: none"> ▪ <i>The above said, it has been recognized that the monitoring and verification tended to focus on the environmental objectives more than the social impacts.</i> | |
| Stakeholder Engagement | | |
| <i>Key objective: Promote effective stakeholder engagement throughout the project-cycle</i> | | |
| <ul style="list-style-type: none"> ▪ Stakeholders and engagement process identified ▪ Stakeholders, in particular project-affected groups, involved in planning, implementation, monitoring ▪ Vulnerable or disadvantaged groups identified and consulted ▪ Stakeholders views taken into account and considered in project design and implementation. | <ul style="list-style-type: none"> ▪ The drafting of the National REDD+ Strategy was a multi-stakeholder engagement process. It was led by a seven-person drafting team with expertise on REDD+. This team was supported by a Working Group providing technical inputs – including members from universities, civil society, and the government. There was also a Steering Committee that helped to develop policy guidelines. Committee members were largely high government officials. To ensure stakeholder input further, seven regional consultations were convened to review the first draft of the strategy. This included inputs from local government officials, civil society, Adat communities, as well as the private sector. These consultations covered 33 provinces. After receiving inputs from this first round of consultations, the Government then hosted a National Expert Meeting and International Consultation Meeting. Based on those final inputs, the Indonesia REDD+ Taskforce was established by Presidential Decree no. 19 (2010) and charged with finalizing the draft. (The REDD+ Taskforce has since been replaced by the DGCC's REDD+ Unit but when it was functioning, per Presidential Decree No. 25 of 2011, its members were only representatives of government ministries and offices) In total, to produce the strategy 300 experts representing some 200 stakeholders from national, regional and local entities and organizations in the context of the 7 regional and national consultations mentioned above, with 3 drafts emerging before its final adoption in 2012. In 2013 a coalition of 48 Indonesian NGOs called on the government to implement the strategy, demonstrating the support for its content as a way forward to meet REDD+ goals. | <p>There is notable positive alignment with UNDP SES, with areas identified for improvement particularly as to future revisions of the indicative maps (including the new Adat map) and the development of consultation and FPIC protocols.</p> <ul style="list-style-type: none"> ▪ Regarding participation, during consultations on the development of PC&Is to monitor and implement the demonstrate compliance with safeguards, it was recommended that a Multi-Stakeholder Forum or Institution (L/FMP) be established as necessary with members including representatives from the government, Adat communities, the private sector, NGOs, universities, and community leaders. L/FMP could serve as a point of communication and coordination between related agencies, provides regulatory recommendations, play a role in facilitating resolution of complaints where appropriate, and help to conduct awareness-raising and education programs. ▪ Regardless of the existence of the L/FMP in the future, an overall review of existing multi-stakeholder platforms to see which ones should be strengthened and supplemented would be recommended. <ul style="list-style-type: none"> ▪ Support should be designed and financed to encourage and empower Villages and communities to be leaders in planning, implementing and |

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| | <ul style="list-style-type: none"> ▪ At its core, Social forestry is system of forest management meant to be conducted in State and/or private forests with direct involvement of local communities as the primary partner or principle actor in activities aimed at promoting sustainable forest management. ▪ Other major national REDD+ mechanisms that are based on extensive consultation processes, and that are linked to the emission reduction/REDD+ activities such as the Moratorium and Social Forestry initiative, include: <ul style="list-style-type: none"> (i) The FREL, the SIS-REDD+, and the NDC. The National FREL is the result of a process involving a series of initial technical analyses followed by public multi-stakeholder consultation. (ii) The SIS-REDD+ consultation process was intensively carried out over the course of 2011 to 2012, involving multiple stakeholders, including community representatives. The consultative process resulted in several revisions to the initial design. (iii) The ongoing consultative process to develop the NDC began in 2015 and covered all 34 provinces. (iv) At the sub national, REDD+ institutions were established in 11 pilot Provinces in the form of a Working Group, Commission, or Task Force. (v) During 2011 to 2012 the development of the PC&Is for SIS-REDD+ was an inclusive process, punctuated by multi-stakeholder participation through three national workshops and 3 Focus Group Discussions. Nine public consultation events were conducted, including national workshops and focus group discussions, and a number of interviews with various stakeholders. ▪ Under the reporting process, SIS-REDD+ requires REDD+ implementers to independently assess and report safeguards implementation. This is intended to promote transparency and accountability from the site level. ▪ Also, Indonesia established a web-based platform named Indonesian Emission Factor Data Base (Indonesian EFDB). The Platform manages the compilation of information on carbon | <ul style="list-style-type: none"> monitoring activities on the lands upon which they have management, access, use, and ownership rights. This will likely include more support to FMUs, increased economic and technical capacity to concerned populations. ▪ It would be particularly important to ensure that there is stakeholder participation in governance and decision-making bodies as well – at the project level, or larger national REDD+ level (beyond mere advice and technical support). ▪ A REDD+ protocol for how and when good faith consultation and FPIC processes will take place for all REDD+ activities (including the Moratorium, the Social Forestry initiative and other future activities) consistent with the UNDP SES, Standard 6 on Indigenous Peoples and as such, applicable whenever an activity “ may affect the human rights, lands, natural resources, territories, and traditional livelihoods of indigenous peoples.” ▪ Until the above-stated is done, respect for Adat rights could be increased if the application and verification processes for Adat forest recognition required some validation that the community representative(s) who sign the application materials are chosen representatives based on a description of the governance structure and decision-making methods of the community. ▪ The revisions of the indicative maps should follow a transparent process with objective criteria and participation of relevant stakeholders. |

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| | <p>stocks and emission factors from various detailed land cover classes from existing research done in Indonesia. The idea is to allow broader participation of carbon stock data reporting from private and public sources</p> <ul style="list-style-type: none"> ▪ Social Forestry license holders must follow Utilization Work Plans when making forest management plans, and hence their involvement is primary. They also have to monitor so that they can report on implementation every 5 years. ▪ The Government recognized the overlap between land tenure security for Adat communities, local communities and Villages. Consequently, vulnerable, disadvantaged groups Adat communities and all forms of local communities (i.e. a migrant, group of non Adat smallholders, other marginalized forest dependent peoples) were identified as the stakeholder group to be targeted by the Social Forestry initiative so as to be beneficiaries. ▪ At sub national level, local governments contribute significantly in REDD+ implementation. Each of the eleven REDD+ pilot provinces, have set up an Ad-Hoc REDD+ institution to coordinate REDD+ activities in the province, taking the form of a Working Group, a Task Force, or a Commission. These ad hoc institutions are intended to count with multi-stakeholder membership consisting of representatives of local governments and other related stakeholders, including local NGOs and academia/universities representatives. ▪ Early versions of the Moratorium map and Social Forestry indicative map were said to have included stakeholder inputs. Subsequent revisions were highlighted as being less transparent. However, the Government has since requested greater inputs from civil society related to the Social Forestry indicative map, and there are activities already commenced to produce an indicative Adat Forest Indicative Area Map alongside with reconciling this new map with the Adat forest maps produced by renowned national NGO, AMAN. ▪ There is a level of due diligence and investigations, including communications with local stakeholders, applied by the Social Forestry teams when applications are received. Formal good faith consultation and FPIC processes, however, are not | |

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| | <p>expressly provided for in specific circumstances though one can see that where an Adat community, for instance, seeks recognition of their lands as an Adat Forest (see Appendices I, II, VII and IX of MoEF Decree No. 21 (2019), they must file an application saying they are “willing” for their “adat territory” to “be established as an Adat Forest with the function of Protection/Conservation/ Production.” There is no validation as to whether the community representative(s) who sign the application materials are chosen representatives as there is also no requirement to describe the governance structure and decision-making methods of the community.</p> | |
| <p><i>Key objective: Ensure stakeholders have access to relevant and timely information</i></p> <ul style="list-style-type: none"> ▪ Information on project opportunities and risks disclosed in timely, accessible, appropriate manner, language, form ▪ Environmental/social reviews and assessments disclosed | <ul style="list-style-type: none"> ▪ The SIS REDD+ online platform and the national MoEF GRM online platforms provides the public with access to critical documents –including social and environmental impact studies, the country Statements of Information, safeguard compliance information, and general information about the number and type of complaints being filed and resolved annually. ▪ FMUs, the Social Forestry teams, and other local actors have engaged local communities, Villages and existing/potential Adat communities to solicit their interest in the Social Forestry initiative and help them in preparing their materials in a culturally appropriate manner. ▪ There is no procedure for good faith consultations or FPIC processes so it is unclear what type of timely and culturally appropriate information is disclosed. ▪ As a form of monitoring is communication reach, the Social Forestry initiative tracks annually the “number of networks and partners (civil society organizations, business sector, higher education institutions, legislators through the environmental and forestry caucus, and other institutions) that partake in building natural resources and ecosystem and environmental rescue communities”. In 2015 the DG of SF reports 11 networks and partners engaged. In 2016, 27 networks. The SF also tracks how many “communication channels” it determines it has created to “increase access to information and people’s aspiration in developing social forestry and environmental partnership.” In 2015 the SF reported establishing 20 | <p>There is some positive level of alignment, consistent with key objectives of UNDP SES, though improvements are possible.</p> <ul style="list-style-type: none"> ▪ The online platforms where information is available to the public is being improved and strengthened continuously. As the SIS-REDD+ system is further piloted and perfected, the uploading and sharing of the information collected will further ensure greater timely and relevant information for public accessibility. This information should include all environmental and social reviews. ▪ Strengthening of the FMUs and the local governments in terms of resources and capacity to do outreach to the public and provide relevant information to likely beneficiaries will be a worthwhile activity. |

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| | <p>communication channels and in 2016 alone, 60 communication channels. (<i>Source, latest performance report of the DG of Social Forestry and Environmental Partnership</i>).</p> | |
| <p>Key objective: Ensure stakeholders may communicate project concerns</p> <ul style="list-style-type: none"> • Stakeholders have access to effective grievance redress mechanism or process | <ul style="list-style-type: none"> ▪ Partnership Agreements under the Social Forestry Initiative (by decree) are required to include dispute resolution provisions. A review of the licenses and permit templates, however, do not provide for a dispute resolution provision, only a reference to the fact that the older of the license and permit "receive support in the management of Village Forest as well as conflict resolution;". This is not the same as a dispute resolution provision. ▪ Establishing that grievances were being received and resolved, the DG of Social Forestry and Partnership compiles a mandatory annual performance report on the Social Forestry initiative and such reports are uploaded to their website. The latest report includes information from 2015-2018 related to cases received and settled (defined generally as when each party agrees to settle the case and have an agreed upon action plan). This report shows that in 2015 conflicts were resolved covering 318.054 Ha of land. In 2016, conflicts resolved covered 2.138.902 Ha of land. In 2017 the data was not yet provided, but in 2018 we saw conflict settlement covering 504.486 Ha. ▪ Stakeholders during the period of 2014-2016 did have access to several different forms of grievance mechanisms. Among others there was a Minister of Environment and Forestry Regulation No 84 of 2015 on Resolution of Tenurial Conflicts and access to complaint processes of Indonesia's Human Rights Commission and Ombudsman. See Annex A for a more thorough analysis of available mechanisms for stakeholders, (section B.2.4, Access to Justice, "PLRs provide dispute resolution mechanisms to address disputes at all levels"). ▪ Perhaps the most widely used was a national mechanism overseen by the Ministry of Environment per Regulation Number 9 of 2010 concerning Procedures for Complaints and Handling of Complaints due to Alleged Pollution and / or Environmental Damage as well as a 2009 Law on Public | <p>There is Good level alignment with UNDP SES, with areas identified for improvement.</p> <ul style="list-style-type: none"> ▪ The year 2017 brought three key advances for conflict resolution. First, the national grievance mechanisms was made more widely accessible through the online platform. Second, MoEF Regulation No. 22 related to environmental damage, environmental pollution and forest destruction was promulgated (replacing the 2010 law applicable during the review period). This codified the MoEF procedure and included grievances ranging from pollution, to forest encroachment, land tenure disputes and utilization of genetic resources and traditional knowledge.. Third, Presidential Decree No. 88 (2017) on the Resolution of Control over Lands in Forest Area was issued. ▪ As noted, the national MoEF mechanism has its own website available at http://pengaduan.menlhk.go.id/. On this webpage, clearly accessible with over 63,000 having accessed it, one can download a complaint form on the website and when submitted, the MoEF ensures that it is sent to the proper Responsible Party (which can be a number of entities national, regional and local) -each of which must have a Complaint Post and individuals assigned to receive, track, inform and investigate. On the website one can see the number of complaints received and resolved since 2017, as well as the category of the |

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| | <p>Services, No. providing that every government agency has a grievance mechanism..</p> <ul style="list-style-type: none"> ▪ In 2017 this national grievance mechanisms that MoEF was overseeing per Law No. 9 (see above) was put into an online platform. This mechanism was applicable to the Moratorium and Social Forestry initiatives, among others. This mechanism is further described in the attached ESA report and Annex A of the ESA. ▪ Forest Management Units, working with local NGOs and others, are also present to play a role in resolving overlapping claims and land tenure conflicts. ▪ A Road map on Law Reform was also established and according to Indonesia's last Statement of Information, Conflict Resolution was carried out in six (6) National Parks. ▪ More recently, one of the prevailing dispute resolution mechanisms, has been the Presidential Decree No. 88 (2017) on the Resolution of Control over Lands in Forest Area, assists in resolving land tenure conflicts. As noted in Annex A, the PLR analysis, one deficit is that only Adat communities that are recognized as Adat communities by local/regional decrees can access the mechanism and they have to establish they had control over the land before the forest designation –something that could be difficult if they have been displaced by third party incursions and exploitation of their lands, including by State consent or acquiescence. This presumably limits its application. | <p>complaint (i.e. related to environmental damage, forestry).</p> <ul style="list-style-type: none"> ▪ The Presidential Decree No. 88 (2017) on the Resolution of Control over Lands in Forest Area, assists in resolving land tenure conflicts but its application needs to permit <i>unrecognized</i> Adat communities to apply for land tenure conflict solutions, including those who may have lost physical control over their lands due to prior activities sanctioned explicitly or implicitly by the Government. Otherwise, access to conflict resolution depends on securing a highly political district or regional recognition of the community's legal personality as an Adat community (reinforcing a process that UN bodies have already said is inconsistent with Indonesia's international duties and obligations). ▪ A review of the effectiveness of these mechanisms should be done, including as against the UNGP's "effectiveness criteria" and the results need to feed into the multi-stakeholder process that will establish and development the "project level" GRM (still pending). The <i>project level GRM</i>, however, can be one that specifies how stakeholders have access to project level officials to apply to the already existing national GRM. All levels of GRM must be centrally tracked. ▪ Increased capacity via training, technical and economic resources to FMUs charged with identifying and addressing local conflicts. ▪ Ensuring that all short and long term planning documents as well as agreements arising in the context of the Social Forestry initiative, have dispute resolution provisions making clear how conflicts can be resolved amicably between the Government and the license/permit holder and as among other possibly affected stakeholders -- all in accordance with applicable law in rights-based |

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| | | <p>processes, providing for just and fair non-judicial mechanisms, escalating mechanisms that provides options and never prejudice stakeholder rights to use judicial and other mechanisms.</p> <ul style="list-style-type: none"> ▪ Developing consultation and FPIC procedures. ▪ Ensuring that the SIS-REDD+ has a directly link to the GRM mechanism so as to feed its lessons learned. ▪ Dedicated resources for conflict mapping and analysis; to identify early on potential grievances, and trends toward conflicts, and measures to prevent them. ▪ This mechanism should reflect the eight effectiveness criteria designed by the UN Guidelines on Business and Human Rights (widely accepted as measures of effectiveness for non-judicial grievance mechanisms). ▪ This mechanism should be widely publicized in a culturally appropriate manner. ▪ Increased support should be given by the Government to enhance and further empower the local dispute resolution mechanisms as among Villages, local communities, customary communities and neighbors. |
| Biodiversity and Sustainable Natural Resource Management | | |
| <i>Key objectives: Conserve biodiversity. Maintain and enhance benefits of ecosystem services</i> | | |
| <ul style="list-style-type: none"> ▪ Adverse impacts (direct and indirect) to natural resources, biodiversity, ecosystem services identified, assessed, mitigated and managed ▪ No conversion of natural forests ▪ No measurable adverse impacts to critical habitats ▪ Adverse impacts to other habitat types avoided, minimized and managed ▪ No reduction in endangered species ▪ No introduction of known invasive species | <ul style="list-style-type: none"> ▪ The requirements to conduct EIS, SESA and ESMF's to identify, assess, mitigate and manage risks and corrective measures to natural resources, biodiversity, and the ecosystem. ▪ Licenses such as the Community Forest Plantations and Partnership Agreements that cover production forests do permit conversion. ▪ The Moratorium expressly prohibits certain permits and concessions in primary natural forests and peatlands (hence, no conversion), but the exceptions to the Moratorium for various activities (like mineral exploitation or agriculture to address the | <p>There is notable positive alignment with UNDP SES, with areas identified for improvement particularly as related to monitoring environmental impacts beyond general forest cover and emission levels.</p> <ul style="list-style-type: none"> ▪ Where conversion is permitted, existing and future PLRs and project documents should expressly explain the narrow circumstances and conditions where it is permitted. |

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| | <p>nation's food sovereignty) would permit conversion in what would be Moratorium areas (some subsequently excised).</p> <ul style="list-style-type: none"> ▪ The Moratorium itself did not cause adverse impacts to critical habitats and species in the Moratorium area, only adverse harms would have been to possible areas of displacement –that is, third parties decided to deforest or get concessions in other areas, thereby causing adverse impacts. ▪ The government has introduced PLRs and practices to identify potential hotspots to avoid fires in peatland areas in particular. ▪ The SF licensing and Partnership Agreements are not governed by any regulations that require HCV or HCS assessments to determine habitats that may need preservation. However, many forest management plans are designed specifically to protect against such losses. ▪ Neither program assessed had programs intent on impacting species and biodiversity, however, the Social Forestry did include production forests and support to certain agricultural endeavors, which could have unintended habitat loss. Overall, however, the intention was to protect forests that housed these species. ▪ Neither the Social Forestry initiative nor Moratorium had programmes to support the introduction of native species. ▪ According to the Government there is a rehabilitation national movement implemented, including replanting on burnt area, degraded land, and firebreaks; and there are restoration programs implemented, including those are embedded in a livelihood programme. | <ul style="list-style-type: none"> ▪ HCV and HCA assessments should be taken into consideration in required social and environmental assessments. |
| <i>Key objective: Promote sustainable management of living natural resources (e.g., forestry, agriculture, livestock, fisheries)</i> | | |
| <ul style="list-style-type: none"> ▪ Ensure sustainable resource management that protects biodiversity and ecosystem services ▪ Appropriate industry-specific sustainable resource production/management practices applied, including credible certification systems where appropriate ▪ Sustainable practices supported for small-scale producers | <ul style="list-style-type: none"> ▪ Neither the Moratorium nor Social Forestry involved utilization of genetic resources. ▪ The Social Forestry initiative, by Presidential Instruction is expressly a system of sustainable forest management. ▪ Indonesia does have timber licensing programs which involve certification. ▪ Forest Management plans designed pursuant to the Social Forestry licenses are expected to be sustainable. FMUs and | There is good level of alignment, consistent with key objectives of UNDP SES, without significant shortcomings. |

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| <ul style="list-style-type: none"> ▪ Equitable benefit sharing arrangements reached for utilization of genetic resources | <p>working groups often work with the Villages and communities to develop these plans.</p> <ul style="list-style-type: none"> ▪ Per its most recent decree, the government vows to facilitate in the context of the Social Forestry initiative “forest / land rehabilitation programs / activities, soil and water conservation, biodiversity conservation, conservation-based community empowerment, sustainable forest management certification and / or timber legality certification.” ▪ The Social Forestry initiative supports small scale producer communities in the context of the licenses to Community Production Forests as well as for communities engaging in the use of non-timber products and the provision of ecosystem services, even tourism endeavors at the small scale. ▪ The DG of Social Forestry and Environmental Partnership reported in its last performance summary that 356 communities and 4,136 peoples are now participating in what they categorize as “[n]umber of natural resources and environmental rescue communities in river basins, lakes/water springs, karst, swamps, peatland, coastland, oceans, and small islands, communities around industry areas and settlements, and environmental communities in conservation areas.” | |
| Climate Change Mitigation and Adaptation | | |
| <p><i>Key objective: Ensure projects sensitive to climate change risks</i></p> <ul style="list-style-type: none"> ▪ Project components reviewed for sensitivity and vulnerability to potential climate change ▪ Social and gender risks and differentiated impacts related to climate change addressed | <ul style="list-style-type: none"> ▪ Data collected to date does not reveal that communities already subjected to impacts from climate change may experience an acceleration and/or intensification of such impacts due to the Moratorium or Social Forestry initiative. To the contrary, having greater protection from third party incursions, greater management and use rights, and supportive services to fulfill their responsibilities under their licenses and Partnership Agreements, presumably places them in a better position. ▪ The Moratorium has the goal of conserving forest as a form of climate change mitigation (i.e. carbon sequestration, reduction in emissions). ▪ The exceptions to the Moratorium and Social Forestry permitting resource extraction and forest destruction, and | <p>There is good level of alignment, consistent with key objectives of UNDP SES, without significant shortcomings.</p> |

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| | <p>licenses permitting conversion (Community Timber Plantations) may presumably continue to contribute to climate change to the extent that there is associated deforestation.</p> <ul style="list-style-type: none"> ▪ The measure related to fire protection have assisted with Climate Change vulnerabilities. ▪ Revisions to the Moratorium indicative map are based on a. the “results of field physical condition survey[s]; b. spatial changes; changes in spatial layout; c. current land cover data and information, d. input from the community, and e. updated licensing data.” Properly done, this would allow for review for sensitivities and vulnerabilities to climate change. ▪ MoEF also has developed tools for assessing the level of Climate Change vulnerability at the village level called SIDIK (Sistem Informasi Data Indeks Kerentanan – Vulnerability Index Information System). Where the level of vulnerability is determined by the indicators that affect exposure, sensitivity and adaptive capacity of the village. The Project can use this SIDIK to assess how project activities are addressing the climate change vulnerabilities of Villages and local communities. ▪ Another portal, ProKlim (http://proklim.menlhk.go.id) provides public information on various actions implemented by the communities at the village level which contribute to climate change mitigation and adaptation. The idea is to use this database to facilitate the strengthening of partnerships in forest management as well as identifying best practices. | |
| <p><i>Key objective: Reduce project-related GHG emissions</i></p> <ul style="list-style-type: none"> • Feasible alternatives considered and adopted for reducing project-related greenhouse gas emissions (GHGs) | <ul style="list-style-type: none"> ▪ There are statutory provisions to permit the revision of Social Forestry and Moratorium maps to better achieve the objectives of the initiative. | <p>There is good level of alignment, consistent with key objectives of UNDP SES, without significant shortcomings.</p> <ul style="list-style-type: none"> ▪ A multi-stakeholder body should consider whether the narrowing of the exceptions to the Moratorium application to natural primary forests and peatlands. ▪ The government placed into the Social Forestry a target of over 12 million hectares of land. These targets have not been met due to many challenges, but as such, opportunities have been limited for GHG emission reduction. A recognized acceleration |

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| | | is needed –this will require more staffing, strengthening of FMUs, more funds, and greater facilitation (and potential PLR reform) to facilitate land tenure conflict resolution, as well as Adat title recognition. |
| Community Health, Safety and Working Conditions | | |
| <p><i>Key objective: Avoid adverse health and safety impacts</i></p> <ul style="list-style-type: none"> ▪ Risks to communities and workers from construction and other interventions prevented or minimized and managed ▪ Measures adopted to prevent or minimize health risks and spread of infectious disease | <ul style="list-style-type: none"> ▪ The Social Forest initiative and Moratorium did not pose any known risks to communities or workers due to construction. There is no notable construction in these programmes. ▪ By decree the Partnership Agreements when written, must contain certain elements, including, among others: the objectives of the activity, its costs, the rights and obligations of the parties; benefit sharing, dispute resolution and sanctions. These elements should mitigate risks if elaborated well (understanding that communities and Villages may be without leverage or capacity in contract negotiation). ▪ There is nothing in the Moratorium or Social Forestry initiative that has suggested a need to take measures to prevent or minimize health risks. ▪ There is an early warning system (EWARS) for monitoring dengue, malaria, diarrhea, pneumonia and ILI. | <p>This UNDP SES on Community Health, Safety and Working Conditions does not apply in the case of these two projects (Social Forestry and the Moratorium). To the extent it does, there has been good level of alignment without any notable shortcomings.</p> |
| <p><i>Key objective: Respect and promote workers' rights</i></p> <ul style="list-style-type: none"> ▪ Measures in place to promote non-discrimination, equal opportunity and fair treatment of workers ▪ No use of forced labor or child labor, consistent with relevant ILO conventions | <ul style="list-style-type: none"> ▪ Neither the Moratorium nor Social Forestry initiative contemplates activities that would pose risks to workers' rights. | <ul style="list-style-type: none"> ▪ Same as above. |
| <p><i>Key objective: Provide safe and healthy working conditions</i></p> <ul style="list-style-type: none"> ▪ Measures adopted to ensure healthy and safe working conditions | <ul style="list-style-type: none"> ▪ Neither the Moratorium nor Social Forestry initiative pose any risks to safe and healthy working conditions. | <ul style="list-style-type: none"> ▪ Same as above. |
| Cultural Heritage | | |

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| <p><i>Key objective: Protect, manage, conserve cultural heritage</i></p> <ul style="list-style-type: none"> ▪ Cultural heritage protected from adverse risks and impacts ▪ Qualified experts utilized for risk management and conservation ▪ Chance find procedures in place | <ul style="list-style-type: none"> ▪ To the extent that the cultural heritage sites are found within the indicative map for the Moratorium area, they would be better protected than without the moratorium banning permits and concessions in those areas. Where exceptions exist in the Moratorium, presumably those activities were permitted before the Moratorium as well. Consequently, no risks were added by the moratorium, albeit they also were not mitigated either. ▪ The Social Forestry initiative does employ the use of Forest Management Units which count with various experts and the Village and community members often themselves are experts about the forests they depend on and can provide assistance for risk management and conservation. ▪ The above said, to the extent that Partnership Agreements, and various access and use rights are given to local communities or Villages that are not Adat communities (i.e. awaiting recognition) or otherwise communities without cultural heritage or knowledge of where such cultural heritage exists and warrants protection, it is possible that the licenses or partnership agreement can harm or prejudice Adat cultural heritage sites. There is nothing in the elements that must be provided for in the Partnership Agreements that speak to the issue of tangible or intangible assets. ▪ Chance find procedures are not discussed in the applicable PLRs, but in the context of Social Forestry licensing and requirements for land management plans, if cultural heritage sites are encountered the response would be managed by the Social Forestry Teams consistent with Applicable Law (particularly given Indonesia's ratification of such treaties as the Convention for the Safeguarding of Intangible Cultural Heritage and the World Heritage Convention and acceptance of UNDRIP). ▪ With respect to non-tangible cultural heritage like traditional knowledge or practices, the Social Forestry initiative does provide that the "utilization of timber forest products and / or non-timber forest products and / or environmental services in customary forests [is] based on local wisdom / traditional knowledge that is recognized and approved by traditional institutions", and that the "Compilation of Village Forest | <p>There is some positive level of alignment, consistent with key objectives of UNDP SES, with areas identified for improvement</p> <ul style="list-style-type: none"> ▪ A welcomed acknowledgment by the Government that more needed to be done with respect to cultural heritage came in the form of MoEF Regulation No. 34/2017 on Acknowledgement and Protection of local wisdom in natural resource management. The content seeks to identify where and what local wisdom exist, scope, how to acknowledge and protect, roles and responsibilities of the owner and those who wants to access this local wisdom and cost. It is the role of the Minister, governor, or the regent representative to facilitate the process for inventory, verification and validation of the local wisdom. The inventory process is multi-stakeholder and includes Adat institutions/bodies. ▪ Where adverse impacts to intangible cultural heritage (like traditional knowledge or practices) is possible, it is recommended that going forward the <i>licenses, Partnership Agreements and any corresponding forest management plans</i> be very specific about any possible limits or impacts to such heritage to ensure full informed consent and if any compensation is required. ▪ The due diligence investigations that accompany evaluation of Social Forestry applications should ask questions regarding the possibility of harms to cultural heritage. ▪ Including assessments of cultural impacts within the context of social impacts could also be beneficial going forward. If indicators for cultural impacts are not yet incorporated into those being developed for the National REDD+ AP, this too should be done. ▪ All restrictions to access or use of cultural heritage sites or on traditional practices would need |

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| | <p>Management Plans or Business Work Plans of IUPHKm and IUPHHKHTR holders or drafting cooperation agreement or <i>composing the use of traditional knowledge</i> can be assisted by Pokja PPS or local forestry instructor.” Also under Social Forestry, holders of licenses to Village Forests Community Forests, and Community Forest Plantations are entitled to manage and utilize these forests “in accordance with local wisdom including integrated farming systems.” To the extent that Villages and Communities first agree to apply for licenses, application of such wisdom and knowledge could be considered only voluntary.</p> <ul style="list-style-type: none"> ▪ Based on the above, the Social Forestry initiative aims at affirmatively using traditional knowledge and not limiting traditional practices, but rather to provide for their continuance as long as they were consistent with the restrictions to resource uses provided by the forest designations over which they have management and use rights. | <p>to be based on FPIC, subject to compensation, and expressly stated in the licenses, Partnership Agreements, and consent agreements provided by an Adat community to the application of the forest categorization to their newly recognized and titled lands.</p> |
| <p><i>Key objective: Promote equitable benefit sharing from utilization of cultural heritage</i></p> <ul style="list-style-type: none"> • Inform affected communities of rights and proceed only if good faith negotiations provide for fair and equitable benefit sharing [as related to cultural heritage] | | <p>There is some positive level of alignment, consistent with key objectives of UNDP SES, with areas identified for improvement</p> <ul style="list-style-type: none"> ▪ A welcomed development addressing the issue of consultation and consent needed for use of cultural heritage came in the form of “Safeguards Implementation Tool (APPS) and Assessment Procedures for using Safeguards Implementation (APPs) based decision in COP-16 Safeguards Implementation System (SIS) ReDD+ Indonesia annexed to REDD+ regulations of the MoEF (No. 70/MENLHK/SETJEN/ KUM.1/12/2017). This regulation expressly recognizing the requirement of FPIC. (Notably, the 2013 release of the Principles, Criteria and Indicators –later codified in 2017--also affirmed FPIC). ▪ Including assessments of cultural impacts within the context of social impacts could also be beneficial going forward. If indicators for cultural impacts are |

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| | | <p>not yet incorporated into those being developed for the National REDD+ AP, this too should be done.</p> <ul style="list-style-type: none"> ▪ Make clear in the development of consultation and FPIC protocols the requirements related to the informing communities of their rights, including as related to cultural heritage and the equitable sharing of benefits. ▪ Provide that all agreements affirmatively state that the benefits shared are deemed equitable by the parties, and such benefits should be expressly stated. |
| Displacement and Resettlement | | |
| <i>Key objectives: Avoid adverse impacts from land or resource acquisition or restrictions on land/resource use. Minimize adverse impacts where avoidance not possible.</i> | | |
| <ul style="list-style-type: none"> ▪ Measures in place to avoid, and where avoidance is not possible, minimize and mitigate physical or economic displacement from land or resource acquisition or restrictions on land or resource use ▪ Any displacement activities carried out in fully participatory manner | <ul style="list-style-type: none"> ▪ The Moratorium does not contemplate whole or partial physical or economic evictions or displacements. ▪ The Social Forestry initiative also does not contemplate whole or partial physical or economic evictions or displacements. Social Forestry licenses are opportunities for Villages and Communities to gain access and use of forest resources that may have been otherwise granted to others (the opposite of restricting use or access, even effectuating a form of partial displacement). However, any limitations or restrictions on access or use to natural resources to provide for the objectives of protection and conservation forests, could cause a whole or partial economic displacement if communities, Villages and Adat communities cannot adjust to such restrictions and their impact on their livelihoods and physical and cultural survival as a distinct community/peoples. ▪ If the displacement is an economic displacement, a process of consultation and consent is needed before arriving at the issuance of a license, or the affirmation of a Partnership Agreement. | <p>There is notable positive alignment with UNDP SES, with areas identified for improvement to avoid any future possibility of a partial economic displacement</p> <ul style="list-style-type: none"> ▪ A process of consultation and consent is needed before arriving at the issuance of a license, or the affirmation of a Partnership Agreement that might result in restrictions or limitations on natural resource access or use that may affect the physical and cultural survival of the collective, especially its livelihood. ▪ Agreements and licenses, as well as Adat titling processes, should make such limitations to access or use of natural resources and key matter of discussions with the collectives (prior to concluding agreements), and an express description in the related licenses or agreements. |
| <i>Key objective: Recognize and respect the prohibition on forced evictions</i> | | |

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| <ul style="list-style-type: none"> No forced evictions, allowing evictions only in exceptional circumstances meeting lawful criteria | <ul style="list-style-type: none"> While forced evictions were not a part of the Moratorium or Social Forestry initiatives, the 1999 Forestry Law and the 1999 Law No. 39 on Human Rights precluded such evictions without due process of law as well as just and fair compensation. Where licenses and permits for use and access are done without full knowledge of the existence of Adat forests or claims to Adat forests and/or without FPIC of the community claiming Adat rights, there is a risk of economic and physical displacement. In terms of where an Adat title is recognized only subject to acceptance of forest management plan related to the forest categorization that continues to apply, this is presumably done with consent of the community (the community files the application willingly), so not a forced eviction. | <p>There is good level of alignment, consistent with key objectives of UNDP SES, without significant shortcomings having been evident during the ESA Review.</p> <ul style="list-style-type: none"> Recommend that in the future monitoring of social impacts of REDD+ activities (via the SIS-REDD+), any narrow circumstances of whole or partial physical or economic eviction be examined for consistency with Applicable Law. Further notable is that the Government already affirmed the applicability of due process and compensation for resettlements that may arise in the context of the resolution of land disputes arising under Presidential Decree No. 88 (2017) on the Settlement of Conflicts over Forest Lands |
| <i>Key objective: Enhance or at least restore livelihoods of all displaced persons, and improve living standards of displaced poor and other vulnerable groups</i> | | |
| <ul style="list-style-type: none"> Livelihoods of any displaced persons enhanced or at least restored through compensation at full replacement costs and other assistance | <ul style="list-style-type: none"> There are no known reported incidents of livelihood protections due to communities because of a displacement. Where the Social Forestry initiative would require that communities, Villages and Adat communities abandon a livelihood for another that is deemed more sustainable, this is only done voluntarily. Consultant is not aware of a compensation mechanism being applied. | <p>There is good level of alignment, consistent with key objectives of UNDP SES, without significant shortcomings.</p> <ul style="list-style-type: none"> Application of the UNDP SES, Standard 5 on resettlement and evictions will help to identify and avoid and mitigate displacement risks and if displacement is unavoidable, provide for a Livelihood Action Plan. |
| Indigenous Peoples | | |
| <i>Key objective: Recognize and foster full respect for indigenous peoples' human rights</i> | | |
| <ul style="list-style-type: none"> Indigenous peoples' rights recognized and protected No actions supported that violate indigenous peoples' rights | <ul style="list-style-type: none"> Read together with the other indicators in this "Indigenous communities" section. The Moratorium area subject to prohibitions does not affirmatively infringe on the rights of indigenous peoples as it is the duty and obligation of the State to refrain from granting permits or concessions over lands that belong to indigenous/Adat communities. The Social Forestry framework recognizes the rights of ownership of customary (Adat) communities to their lands but as discussed in the PLR analysis at Annex A, to secure | <p>There is some positive alignment with UNDP SES, with a number of areas identified for required improvement. Some areas have already begun to be addressed.</p> <ul style="list-style-type: none"> The MoEF has already begun to address problems that could have been raised by prior versions of the SF indicative map. In 2019 the Directorate for Tenurial Conflict and Customary Forestry of the Directorate General (DG) for Social |

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| | <p>that recognition the community must first get recognition as an Adat community by a provincial or district resolution. These have been difficult to obtain, timely, and arguably not well-placed should the local government have conflicting interests in seeing lands and resources titled to Adat communities. In any case, once the recognition of the Adat community exists, the community can apply for recognition/titling of their Adat forest via MoEF Decree No. 21 (or apply for resolution of a land conflict under MoEF Decree 88 which can also result in an Adat forest recognition and excision from the so -called “forest area.” The Adat community must accept, however, that their forest will continue to carry the original forest categorization made by the State prior to its recognition as an Adat Forest (regardless of whether they participated or consented to that initial categorization). Indeed, the application for an Adat forest recognition, for example, requires an express (though willing) acceptance of this categorization. It is said, however, that every five years the spatial planning of forests are reviewed and, in this process,, an Adat community good request a change in the categorization. The decision is within the discretion of the MoEF.</p> <ul style="list-style-type: none"> ▪ The Social Forestry licensing is based on an indicative map (PIAPs) showing where there is State Forests Area over which the State has the rights to grant rights To the extent that the PIAPs still includes areas that overlap with Adat forests claimed but not yet recognized as such—and to the extent these areas are still licensed, permitted or subject to Partnership Agreements without the prior consent of the Adat communities, this would be a violation of human rights. This practice should be forbidden after Constitutional Court Decision No. 45/2011 providing that State Forest Area boundaries are only valid after being gazetted – a process that would require consideration of individual and community rights and presumably, conflict resolution. The practices of issuing licenses in the area that has not gone through a conflict resolution to ensure it is free from competing claims cannot be considered legal any longer. It is acknowledged, however, the gap at the implementation level. | <p>Forestry, MoEF, launched the production of an indicative map of Adat customary forests which can be used, at least, in parallel with the Social Forestry Map, if not used to modify or reform it. The map can also be used along with provincial and district spatial maps and consultations with local actors when verifications must be done upon receipt of applications under the Social Forestry framework. This map can also help with conflict resolution in the moment, and avoid future grievances due to overlapping claims. It would also be helpful during a gazetting and conflict resolution process.</p> <ul style="list-style-type: none"> ▪ Ensuring transparency, gazetting, stakeholder access to conflict resolution, and periodic social impact monitoring to ensure that potential and actual conflicts arising from overlapping claims are resolved <i>prior to</i> licensing, permitting, affirmation of partnership agreements, and even Adat forest recognitions is essential. <p>The SF map has currently documented 492 thousand hectares and is updated every three months. The breakdown is approximately 384.896 ha falling under State Forest and therefore only to be excised once recognized officially (titled); 68.935 ha under the non-forest area; and 19,150 ha already legalized recognized (titled) to Adat communities.</p> <p>An NGO, AMAN, has mapped over 9.3 million hectares of Adat customary forests and over 2/3 of those forests overlap with what is currently designated as State Forest Areas (i.e. open to any one of the SF arrangements). The task is to validate the AMAN findings, and reconcile the two mapping systems (to the extent their applicable methodologies are not consistent). Overall, the production of the indicative map of customary forests needs to be accelerated, transparent and participatory and the identification of Adat lands</p> |

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| | <ul style="list-style-type: none"> ▪ Also, to the extent that a group of farmers, private actors, a cooperative, joint forest farmer group or chairman of a cooperative, etc. seeks an arrangement under the Social Forestry program and the verification process prior to the award of rights does <i>not</i> include the FPIC given from the governance body of that collective (assuming such exists), this too can be a violation of rights depending on the circumstances) (i.e. if a local farmers group within a local community want to establish a plantation on the collective community's land, but does not have the consent of the community whereby their customary laws would so require, this could place the initiative in a vulnerable situation). ▪ "President Joko Widodo also recognized nine new Adat Forests, covering a total area of more than 13,000 hectares, at the State Palace on 30 December 2016. As of June 2018, there were 26 recognized Adat Forests across Indonesia, located in Jambi, Central Sulawesi, South Sulawesi, West Kalimantan, Banten, West Java and East Kalimantan provinces." (The State of Indonesia's Forest (2018), MoEF). As of May 27, 2019, there were 49 customary communities that had obtained recognition from the MoEF. (Source: https://www.mongabay.co.id/2019/05/29/kementerian-lingkungan-rilis-peta-indikatif-hutan-adat-dan-ubah-aturan/). ▪ To the extent that Adat forests, even after recognition, are subject to limitations on use by the Adat community (i.e. depending on the forest categorization applied by the State) ownership, use, access, management, and participation rights as affirmed by Indonesia's legal and policy framework (even the Social Forestry initiative) provide substantial protections. It would be a denial of the full rights of ownership of Adat communities if the Social Forestry and accompanying legal framework did not provide a way for a local community or Village to transition their use and access permits to a full Adat forest title if and when they are recognized as an Adat community. This does not seem expressly prohibited by the PLRs, but it also is not made clear in licenses, permits or Partnership Agreements that there is a reserved right to pursue claims for full recognition | <p>needs to inform the content of the Moratorium and SF indicative maps, as well as the One Map. This will provide for informed decision-making, increased protection for their lands, and greater Adat community participation in forest management.</p> <ul style="list-style-type: none"> ▪ There are also actions being taken to accelerate the recognition of communities as Adat communities, a prerequisite before seeking recognition of their traditional territories. Noted, approximately 454 of the 492 thousand hectares of Adat forests identified in the indicative map of the DG of Social Forestry are pending local recognition as Adat communities. Until this happens, the SF targets to increase recognition of Adat lands is aspirational. To accelerate this process, the DG initiated a National Working Group to expedite the gazetttement of Adat Forest (MoEF Decree No. 4/2018) (See also MoEF Regulation No. 21/2019 codifying the requirement of creating an Adat Forest and Titled Forest map). They have regular regional meetings to inform local governments that they apply lower standards/ requirements by only requiring Head of Local Government Decree instead of local government regulation to recognize the existence of the Adat community. In that context, they also reportedly begun producing draft regulation templates that districts can use to issue their recognitions for Adat communities. The idea is to promote that districts adopt one regulation as an umbrella regulation which can then be followed up by the Head of the District issuing a simple decree for each customary people. Local government officials that were invited during the regional meetings include district government secretary (the highest echelon for a civil servant at the provincial and district level) or Head of the Legal Office for this focal point. The DG for SF has |

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| | <p>of their Adat customary lands. This can dissuade collectives to pursue these Social Forestry relationships.</p> <ul style="list-style-type: none"> ▪ Furthermore, if licenses are granted to Villages and local communities over lands that are actually Adat community forests, albeit not yet recognized, there is a possible physical or economic displacement of those peoples, if only by restricting their use and access in favour of another. Notably, if later on the Adat forest is recognized, there is also risks to non-Adat communities that depended on these resources. As noted above, after the 2011 Constitutional Court requiring the gazetting of State Forest Area boundaries and now the application of conflict resolution and grievance mechanisms provided by PLRs put in place after 2013, the gap between what should be prohibited and what is done during actual implementation is smaller, reducing risks and chances of non-alignment. ▪ The Social Forestry initiative recognizes the rights of communities to apply their traditional wisdom and knowledge to matters of forest and resource management. | <p>offered technical and legal support to any district willing to issue this umbrella regulation making possible Head of Local Governments Decrees on Adat recognition (lower unit of government and presumably easier to achieve compare to the “Perda”). Indeed, if through the mandate of the Social Forestry initiative (and using the Adat indicative maps in development) the Government can designate vast areas as Adat Forests (using the criteria of self-identification provided for in the SIS-REDD+), and incorporate those designations into forest management plans and land use planning documents, this could provide protection even if the local resolution of the Adat community recognition is not yet in place (and also expedite the verification processes that will lead to these resolutions). The application of “self-identification” would also advance implementation of the recommendations of the UN CERD and UN CESR (see ESA cover report).</p> <ul style="list-style-type: none"> ▪ The DG of Social Forestry has also acknowledged that there is currently no procedure for transitioning a prior use and access license, or even the participation rights of a local community or Village pursuant to Forest Partnership Agreement, into a customary Adat titled. The DG Secretary of SF, however, has said that this transition is possible and that they would support this transition if this is what the community wants. What is needed now is for SF, together with MoEF, to issue a procedure for this transitioning and preferably, an express reservation of such ownership of Adat rights in the future. ▪ As noted above, a FPIC protocol needs to be established with some haste –applying to all REDD+ activities and especially making clear how FPIC will be applied in the process of the Social Forestry licensing, permitting and Forest Partnership Agreement context. |

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| | | <ul style="list-style-type: none"> ▪ New conflict resolution-related laws are also likely to contribute to the protection of indigenous rights (including Presidential Decree of the Republic of Indonesia, Number 88 of 2017 on Settlement of Conflicts over Forest land). ▪ Also, in 2017 there was the codification of the PC&Is released in 2013 via MoEF (No. 70/MENLHK/SETJEN/ KUM.1/12/2017 addressing monitoring and reporting of safeguards and affirming FPIC. |
| <p><i>Key objective: Ensure projects designed in partnership with full, effective indigenous peoples' participation, and securing FPIC where IP rights, lands, resources, territories of traditional livelihoods affected</i></p> | | |
| <ul style="list-style-type: none"> ▪ Culturally appropriate meaningful participation undertaken for all activities that affect indigenous peoples ▪ Free Prior and Informed Consent (FPIC) obtained for activities that affect the rights, interests, lands, resources, territories, traditional livelihoods of affected indigenous peoples ▪ No relocation of indigenous peoples without FPIC and only after just and fair compensation, with option of return where possible | <ul style="list-style-type: none"> ▪ Read together with the other indicators in this "Indigenous peoples" section. ▪ The Moratorium does not contemplate any activities that would require Adat community participation or FPIC. Though it is argued that many stakeholders, including local communities and Villages participated in the development of the first Moratorium indicative map. ▪ There is nothing in the Social Forestry PLR framework that specifically discusses Adat rights of participation in decision making that may impact their rights and interests, other than the actual decision of an Adat community to pursue an Adat forest title, or even the decision of a Village or local community (perhaps still awaiting an Adat community recognition) to voluntary choose to seek a Social Forestry permit or license or partnership agreement. ▪ The abovesaid, there is a level of due diligence and investigations, including communications with local stakeholders, applied by the Social Forestry teams when applications are received. While formalized good faith consultation and FPIC protocols are not expressly provided for in specific circumstances, one can see that where an Adat community, for instance, seeks recognition of their lands as an Adat Forest (see Appendices I, II, VII and IX of MoEF Decree No. 21 (2019), they must file an application saying they are "willing" for their "adat territory" to "be established as an Adat Forest | <p>There is some positive alignment with UNDP SES, with critical areas identified for required improvement, some of these areas have already begun to be addressed</p> <ul style="list-style-type: none"> ▪ Accelerate the gazetting of designated State Forest areas as required by the 2011 Constitutional Court decision (if not otherwise mapped) – making public awareness possible and giving local Adat communities the ability to raise overlapping claims. ▪ Strengthening clear community participation mechanisms, including FPIC in all land use management plans that may affect community interests and rights; and also in all Partnership Agreements or licenses arising from the Social Forestry initiative. ▪ Highlighting the positive step of the GoI to adopt MoEF (No. 70/MENLHK/SETJEN/ KUM.1/12/2017) addressing monitoring and reporting of safeguards (including indicators) and affirming FPIC. It is being piloted and the application of FPIC should be improved. ▪ Clear mechanisms for receiving, accepting, and incorporating community mapping data into spatial planning, eventually the One Maps would be useful. |

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| | <p>with the function of Protection/Conservation/ Production." It can be argued that this is an expression of voluntary consent. There is no validation as to whether the community representative(s) who sign the application materials are chosen representatives as there is also no requirement to describe the governance structure and decision-making methods of the community.</p> <ul style="list-style-type: none"> ▪ Adat communities, like local people and individual are able to participate in Environmental Impact Assessments and Strategic Environmental Assessments (SES) for programs and policies level decision. These two instruments are regulated in the environmental law and its implementing regulations (See Annex A, for example, Law No. 32/2009 provides that the SES is to be "a systematic, comprehensive and participatory analyses." ▪ While the National Strategy on REDD+ provides for respect for the rights to consultation and FPIC, there are no FPIC procedures in place, or prior known practice documenting FPIC prior to the granting of interests over what are Adat claimed lands. | <ul style="list-style-type: none"> ▪ General public access to the One Map is not currently legislated, but Article 42 and 43 of the Law on Geospatial Information does provide for public access to geospatial data. ▪ A REDD+ protocol for how and when good faith consultation and FPIC processes will take place for all REDD+ activities (including the Moratorium, the Social Forestry initiative and other future activities) consistent with the UNDP SES, Standard 6 on Indigenous Peoples and as such, applicable whenever an activity " may affect the human rights, lands, natural resources, territories, and traditional livelihoods of indigenous peoples." ▪ Until the above-stated is done, respect for Adat rights could be increased if the application and verification processes for Adat forest recognition required some validation that the community representative(s) who sign the application materials are chosen representatives based on a description of the governance structure and decision-making methods of the community. |
| <p><i>Key objective: Promote greater indigenous peoples' control and management of developments affecting their lands and resources, aligning with their visions and priorities</i></p> | | |
| <ul style="list-style-type: none"> • Measures recognize indigenous peoples' collective rights to own, use, develop, control lands, resources, territories they have traditionally owned, occupied, otherwise used or acquired | <ul style="list-style-type: none"> ▪ Read together with the other indicators in this "Indigenous peoples" section. ▪ The benefits gained by the Moratorium's prohibition on incursions through permits and concessions in designated area, to the extent that local populations/including Adat communities depend on these forest resources for their physical and cultural survival – these benefits and improved well-being are enhanced. ▪ The Moratorium does not directly speak to Adat communities' collective rights. Though areas within the Moratorium may include Adat community lands without their prior consultation or consent, and Adat communities would also not be able to secure permits for use of resources that should be recognized as under their ownership and control. Furthermore, areas within the primary natural forest and peatlands that have been expressly exempt from the | <p>There is some positive alignment with UNDP SES, with critical areas identified for required improvement, some of these areas have already begun to be addressed</p> <ul style="list-style-type: none"> ▪ The advances on the Adat indicative map are laudable but need to be accelerated. As mentioned above, the fact that this effort has been codified (therefore required) will help with this. Where it is expected that full Adat recognition will take more time (as evidenced by the rate of recognitions thus far), Indonesia needs to take measures to ensure that such rights are not prejudiced irreparably in the interim (such as reservations of such rights in licenses and agreements (and in law), procedures for transitioning access and use rights to Adat ownership rights, incorporation of community |

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| | <p>Moratorium (such as exiting permits or areas to be used for food sovereignty) can still result in permitting/concessioning and deforestation of Adat lands.</p> <ul style="list-style-type: none"> ▪ The above said, ▪ The harms (even potential violations of rights) posed by the existing exemptions and excisions from the Moratorium map, as permitted by its Presidential Instruction for various purposes that can result in deforestation and biodiversity loss – as well as restricted access to resources, arguably existed before the Moratorium was imposed. ▪ The indicative map for the State Forestry initiative is said to be one that was generated in a participatory manner, however, in accordance with law, not all State Forest Area boundaries have been gazetted and therefore allowing for local consultations and consideration of potentially existing tenure rights. Though, since 2013 the gazetting has been accelerated, | <p>mapping information in the indicative maps, and the application of FPIC processes where claimed Adat lands overlap intended license, permit and Forest Partnership agreements.</p> <ul style="list-style-type: none"> ▪ If not done yet, an assessment of how much of the current State Forest Area has been gazetted and where it was not, some form of retroactive process –at least of consultation with local stakeholders (including communities and Villages) needs to be done to see if any infringement of rights has taken place (particularly Adat rights) and if so, where excisions and if applicable, compensation are warranted. ▪ Provisions of Presidential Decree No. 88 (2017) on the Resolution of Control over Lands in Forest Area are positive step in the right direction, but should be reviewed for consistency with the UNDP SES and applicable law (i.e. those related to the requirement that only Adat communities can apply for land tenure conflict resolution and only if they can sustain proof of control of the subject lands prior to the forest designation). Also worth review is the practical application of Article 30 providing some form of interim protection measures to lands being adjudicated by the law. |
| <p><i>Key objective: Avoid adverse impacts, mitigate residual impacts, ensure just equitable benefits and opportunities in a culturally appropriate manner</i></p> <ul style="list-style-type: none"> ▪ Adverse impacts on indigenous peoples are avoided, and where avoidance is not possible, minimized and mitigated ▪ Measures in place to ensure equitable benefit sharing from project activities in culturally appropriate manner | | <p>▪ The Social Forestry initiative strives to include local communities, Villages and Adat communities (previously marginalized) in the management of forests throughout Indonesia. This includes a goal to ensure that they equitably benefit from the forest resources to improve their livelihoods in a manner that is determined and agreed to by the communities themselves. In 2015, 199.237 Ha of forests were placed under some form of management of these collectives. This also resulted in approximately 265 groups benefiting from social forestry licensing and partnership agreements. In 2016, 296.638,18 Ha of forests were placed under some form of management of these collectives, resulting in approximately</p> <p>There is some positive alignment with UNDP SES, with critical areas identified for required improvement, some of these areas have already begun to be addressed</p> <ul style="list-style-type: none"> ▪ While the PC&Is developed already between 2011 and 2012, include indicators related to local community and Adat communities' rights, more work on such indicators can help to identify early potential risks to Adat communities as well as other vulnerable and marginalized communities (i.e. migrants, non-Adat smallholders). |

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| | <p>1.797 groups benefiting from social forestry licensing and partnership agreements. In 2017, the data is largely the same as for 2016. In 2018, 1.264.156 Ha of forest lands were placed under some form of management by these collectives, with 2.657 groups benefiting from social forestry licensing and partnership agreements. (<i>Source, latest performance report of the DG of Social Forestry and Environmental Partnership</i>).</p> <ul style="list-style-type: none"> ▪ In the past the process for applying for designations and permits under the Social Forestry initiative was very difficult: the levels of review, application deliverables, bureaucracy, and technical requirements were difficult for local communities and Villages to overcome. While a number of these procedures have been reformed and streamline making the process simpler (comparatively) and therefore more accessible, the Forest Management Units (FMUs) have also played a critical role in increasing access for locals to the Social Forestry benefits. The FMUs provide support to local communities in the way of advice and services to assist them in satisfying the application procedures including in developing, monitoring, and implementing the forest management plans and operations under the responsibilities of Villages, local communities and Customary communities. This increases the granting of licenses to local communities and the benefits received by those communities, while also decreasing situations of communities being unable to fulfill their duties and responsibilities and either violating their agreements, or forcing them to engage other their parties for assistance (with less interest in their well-being or the forests). ▪ A number of local institutions for village forest ('hutan desa') in and around FMUs have been strengthened by awareness raising, training and legal advice. ▪ In addition to positioning FMUs to help with on the ground verifications; assist communities, Villages and Adat communities to apply for the permits and recognitions they seek, and to implement their responsibilities (including in the development of forest management plans); 29 of 34 provinces in Indonesia have Social Forestry Working Groups (consisting of NGOs, Local Government, Academics, donors, Local Champions) that are specifically charged to help with accelerating the | <ul style="list-style-type: none"> ▪ Measures should be taken at all government agencies that host a GRM (to be integrated into the existing MoEF National GRM) have knowledge of the rights of Adat communities so as to be able to adequately address conflicts. ▪ Overall greater need to focus not just on accelerating the issuance of permits and licensing but also to assisting the Villages and local communities in implementation thereafter (providing technical and economic resources). This will help to prevent harms to the peoples, but also reversion. ▪ Some research and studies on benefit sharing mechanism related to emission reduction measures from deforestation and forest degradation have been developed, involving local community at district level. Following up on the recommendations of this work and perhaps supporting further studies could be warranted. |

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| | <p>initiative, socializing it with communities (so local populations know of the opportunity, and to help do similar tasks as the FMUs, including conflict resolution where possible. This helps to increase access to the benefits of the initiative.</p> <ul style="list-style-type: none"> ▪ Criticisms have been raised that not all permit holders have reported livelihood improvements and economic gains for various reasons: land they were granted was not accessible (in remote areas); they did not understand the terms of the restrictions on use and access; lacked the capacity to capitalize on the resources in the area (human, technical, financial) -some even sold their lands to palm oil plantations years after receiving the permits; did not have access to infrastructure to market their non-timber products; etc. ▪ According to Indonesia's latest SOI, "Research and studies on the benefit sharing mechanism related to emission reduction measures from deforestation and forest degradation [were] developed, involving local community at district level." ▪ It is reported that MoEF developed agencies to assist social forestry enterprises with rights via capacity building and resources, but it has also been reported that the counselors these agencies provided have decreased in numbers between 2016 and 2018. | |
| <i>Key objective: Avoid/minimize adverse impacts on human health and environment from pollution</i> | | |
| <ul style="list-style-type: none"> ▪ Measures in place to avoid, minimize and mitigate risks posed to human health and the environment from pollutants, wastes, and hazardous materials ▪ Integrated Pest Management (IPM) approaches utilized to reduce reliance on synthetic pesticides. ▪ Least toxic effective pesticides utilized and pesticides handled per FAO Code of Conduct | <ul style="list-style-type: none"> ▪ No Moratorium activities posed risks to human health or the environment due to pollutants, wastes or hazardous materials, including Pesticides. ▪ The Social Forestry Initiative also does not intend to pose risks to human health or the environment due to pollutants, wastes or hazardous materials, including Pesticides. | <ul style="list-style-type: none"> ▪ The UNDP SES on Pollution Prevention and Resource Efficiency does not apply in the case of this project. |
| <i>Key objective: Promote more sustainable use of resources, including energy, land and water</i> | | |
| <ul style="list-style-type: none"> ▪ Feasible measures implemented to improve efficiency in consumption of inputs (e.g. raw materials, energy, water) | <ul style="list-style-type: none"> ▪ No Moratorium or Social Forestry initiative activities posed risks to efficient consumption of inputs | <ul style="list-style-type: none"> ▪ Same as above. |

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| <ul style="list-style-type: none"> <li data-bbox="90 241 671 305">▪ Use of water resources does not adversely impact others or sensitive ecosystems | | |