

Beyond Carbon:



Rights-based Safeguard
Principles in Law

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Introduction

Safeguards are nothing new in human rights and environmental protection policies. In many international instruments safeguards have become a tradition, developed in such a way as to encourage state or non-state actors to adhere to specified standards.

In the context of REDD (Reducing Emissions from Deforestation and Forest Degradation), safeguards have re-emerged to ensure that REDD schemes do not harm nearby communities or the forest areas they aim to conserve. Various parties have submitted proposals for safeguards based either on their own experiences, or on prevailing legislation.

The rights-based safeguards contained in this concise report have been adapted from legally binding national and international legal principles. The safeguards here are not invented but are already provided for in existing nationally and internationally applicable legislation. This report once again wishes to articulate these principles to ensure that REDD discussions do not focus only on forests but also on rights issues, governance, justice, and environmental integrity. The safeguards presented in this publication are all based on rights.

Many people, including the organisation initiating this report, believe that by accommodating community rights, REDD will also encourage the settlement of the most fundamental problems underlying forest management in Indonesia.

Finally, we hope this report can provide benefits and contribute to the preparation of the REDD policy framework currently being prepared by the Government of Indonesia. We hope that these REDD policies will be sensitive to the fundamental problems underlying forest management in Indonesia. Happy reading!

HuMa Association

Asep Yunan Firdaus

Executive Coordinator

Why Safeguards are Important

Background

Safeguards are intended to prevent policies, programmes and projects from contradicting their own objectives. The aim of climate change mitigation and adaptation programs are to protect all the Earth's inhabitants from the serious threats posed by climate change. Consequently, such program should protect and treat all individuals with consideration for their human rights and guard them against the threats resulting from climate change. Safeguards ensure both mitigation and adaptation activities truly address these purposes.

The safeguards described here are social safeguards designed by the Civil Society Network for Climate Justice to become a framework for climate change mitigation and adaptation in general, and REDD in particular. They take the form of considerations for accepting, operationalising, and monitoring and evaluating REDD. These safeguards are designed not only as tools for inclusion in on-going REDD programs, but also as principles to be used from the outset, when REDD is still under consideration.

The following sections present a number of key aspects that form the basis for the safeguards. These are the aims of safeguards, rights-based safeguards, and the way to read these safeguards.

The aims of safeguards

- a. To ensure that people's sovereignty over the governance and management of natural resources is accepted and respected in accordance with the Constitution
- a. To ensure that all policies or projects relating to natural resources, including efforts to overcome climate change, accord with the principles of people's sovereignty, justice and environmental sustainability.

Rights-based safeguards

The coming of REDD has raised many issues which need consideration. In places where REDD initiatives will be developed, especially in developing countries, and specifically in some parts of Indonesia, the rights aspect is as important or even more important than the success of the REDD project itself. There are two reasons for this: Firstly, in many of these places, rights have frequently been disregarded in the past, and this disregard has often been accompanied by intimidation and violence. In the case of forest allocation in Indonesia, the government has evicted communities from areas established as conservation or concession areas. Subsequently, concession holders limited communities' rights over forests. REDD programs should reflect on these experiences and on the disregard for people in past and even current forest exploitation policies. Since REDD aims to save humankind, it should make people in and around forests a priority. The most appropriate approach for respecting people is a rights-based one.

Secondly, there are a number of indications that REDD remains entrenched in past policy regimes and laws that position communities in and around forests as mere on-lookers of the exploitation of their own natural resources. Current plantation and mining expansion policies in forest areas have left communities feeling bitter. Their customary and communal lands have been taken over or polluted by expansive company operations legitimised by state policies. Further, in the name of state forests, the government unilaterally set aside forest areas for various purposes without consulting the people living in or around them. In these places, communities have no legal way to manage the areas they live in, despite proof that their management systems are far more sustainable than the government's. Looking at various regulations and policies, it is clear that in order to give communities living in and around forests a significant role in their management, a rights-based approach must be put to the fore.

Based on the two reasons above, human rights were the basis for designing these safeguards. Safeguards support the growing efforts to fulfil human rights from a number of angles; including climate change mitigation projects, especially REDD.

The way to read these safeguards

Four aspects are described as frameworks for each safeguard:

First - the rationale behind the safeguard; whether it has a historical or sociological basis and supports the cessation of the poor forest control and management of the past.

Second – the elaboration of principles that constitute a reflection of historical and sociological reasons. These principles are important preconditions for the fulfilment of safeguards prior to, during and following REDD evaluation. If these principles are not considered, REDD could repeat past forest management mistakes and even strengthen policies and regulations that disregard forest rights and conservation.

Third - legal foundations and normative references supporting the safeguard. Normative references extend from international and national laws to multilateral agreement support institutions. These foundations should be the basis not only because they exist, but because they are binding. For national laws, in particular, the existence of various pieces of legislation that support a safeguard must be abided by in efforts to realise REDD as they have already been passed and are legally binding.

Fourth – mechanisms for raising objections. This issue is outlined in Part III specifically as space provided for ensuring the fulfilment of the safeguard principles. In submitting an objection, the party who feels their rights have not been protected, or have been violated by a REDD project can submit a complaint to the project initiator or the relevant government institution.

Rights-based Safeguards

Part 2

1. The basic right to information

1.1. Explanation

Information has become one of the most fundamental requirements in determining the quality of community participation in decision-making processes. Without clear and valid information, neither policy makers nor the communities participating in a REDD activity or similar forest project will be able to make decisions optimally. It is the responsibility of government and activity initiators to provide information in the context of planning an activity. Information must be given to everything relating to a REDD project or similar mechanism.

The right to information as part of the procedural guarantees drawn from international principles and recognized in various international instruments¹, should ideally be a pillar in planning, implementing and evaluating a REDD project. Government willingness to provide information to communities relating to the implementation of REDD still appears problematic. Several cases discovered during field activities by civil society forum in a number of regions show that villagers have had absolutely no information at all relating to REDD.

¹ Known principles relating to information access are Principle 10 of the 1992 Rio Declaration on Environment and Development, and the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("Aarhus Convention"). Even though Indonesia is not party to the Aarhus Convention, the values it contains have also been laid out in almost all international environmental conventions.

The fundamental question is, why does the right to information became crucial in the implementation of REDD? As a scheme which will affect people's livelihoods, REDD will have many impacts (both positive and negative) on communities living in and around forests. Every stakeholder requires complete, timely and accurate information in order to participate in making decisions regarding natural resources management. With information available, communities in or around forest areas can hopefully provide input to or control each stage of a decision-making process relating to their interests. Without sufficient information, communities will not be able to participate fully in any decision-making process.

In the context of REDD, the right to information is vital as a social safeguard. Incidents that have occurred in some regions in Indonesia, with communities unaware of REDD activities in their areas must not be allowed to happen again. The government, as the responsible party, has an obligation to provide a system for channelling information to communities. Similarly, the activity's initiators must also be responsible for providing and disseminating information, particularly in their working areas, so that communities can be made aware of any development project planned for their area, and become actively involved in its decision-making processes.

1.2. Key principles

To guarantee protection of communities' right of access to information, safeguard provisions should not only accommodate general elements, but also a fundamental principle of guaranteeing access. This fundamental principle can be seen from various related principles contained in existing safeguard provisions, such as² :

1. **Appropriateness** and completeness of information; ensuring that it covers all information relating to the proposed REDD project. In this context, the information given must be complete and address the nature of all potential impacts, both positive and negative, of the REDD scheme. In addition, information must also be valid and presented in language clear to the relevant stakeholders, and the time frame for providing information must be clear.
2. **Information accessibility** for local communities living in or around forest areas where REDD projects will be carried out. This accessibility covers accessibility in terms of cost and ease of access for local communities.
3. **Clear criteria of information restriction**, sometimes there are exceptions in terms of providing public access to information. There

² These principles are summarized from various sources, one of which is the principles used by The Access Initiative (www.theaccessinitiative.com)

should be clear and transparent regulations on what information is restricted and why. Communities should have the right to question such exceptions through a review mechanism conducted by a conflict resolution institution. This will be explained in the closing section.

4. **Institutions and available information systems** must make it easy for communities to obtain information. The government should have a system supported by competent human resources able to meet a community's information needs, so that relaying information is not merely an additional duty, but an integral part of the framework for implementing a REDD activity.
5. **Justice and equality** must be fulfilled in relaying information to all stakeholders (especially communities in and around forests) including women, children, the poor and minorities.

These points could be developed into a set of more detailed principles. But as key principles, these basic points form a reference points for determining whether a safeguard has fulfilled the fundamental principle of providing complete information to a community.

1.3. National laws

The right to information is a constitutional right of every Indonesian citizen guaranteed by Article 28 F of the 1945 Constitution, which states that

Every person has the right to communicate and get information to develop their personal and social environment, as well as the right to search, secure, own, store, process and deliver information by using all available channels.

The article demonstrates how every Indonesian citizen has an equal right to access public information. This guarantee is further strengthened in Law No.14/2008 on Public Information Transparency. The law explains in more detail how people's basic right to information can be fulfilled.

This law includes a general provision for people to secure information. The basic aim of this law is to guarantee people's right to secure information relating to policy-making processes. People's information rights include the right to see and be acquainted with public information, attend meetings open to the public to secure public information, secure a copy of information, and disseminate public information (Article 4 (2)). These guarantees are strengthened by a

community's right to file a complaint with the court if it encounters difficulties when submitting a request for information (Article 4 (4)). The definition of public information is:

“Information produced, stored, processed, sent and/or received, by a public entity which relates to the affairs of state and/or other public agencies in accordance with this law, and other information relating to public interests” (Article 1).

In the context of REDD, the public information transparency law provides a legal basis for communities to secure information relating to planning and implementation. The Law also regulates the nature of information that every public entity is obliged to provide (Article 11). One form information public entities are required to provide is that relating to project plans (Article 11 (1) d). Therefore, this law provides the legal basis for communities that require information on the planning of a REDD project in a particular region.

There are also other regulations relating to forest management that guarantee the right to information. However, there are still several notes in these regulations. These are as follows:

Legislation	Provisions
Law No. 32/ 2009 on Environmental Management and Protection	This law gives people the basic right to access information. Article 62 (2) states that the Information systems must be formulated in an integrated and coordinated manner and be published for the public Article 65 (2) stipulates that every person has the right to get environmental education, and access to information , participation and justice in fulfilling the right to a good and healthy environment
Law No. 41/1999 on Forestry	Provisions regarding public rights in this law relate to information in Article 68 (2) a which states that communities can be informed about plans for forest allocation, forest resources utilisation, and forestry information Paragraph (2) b states that communities can provide information, input and considerations for forest development
Law No. 7/2004 on Water Resources	This law provides more details about the development of an information management system. Unfortunately, this is not confirmed as an obligation. Interestingly, this Law also mandates the allocation of funding for information systems as one of the costs involved in water resources management. ³

³ Article 77 of Law No. 7/2004 on Water Resources

<p>Law No. 18/2004 on Plantations</p>	<p>In this law, the right to information is linked to the objectives and principles for estate crop activities in Indonesia. Article 2 states that Plantations are developed on the principles of utilisation and sustainability, integration, transparency and justice.</p> <p>Its elucidation states that what is meant by the principle of transparency is that plantation management is carried out with regard for community aspirations and is supported with an information service accessible to the public. This provides a strong foundation for the right to information at the community level.</p>
<p>Law No. 26/2007 on Spatial Planning</p>	<p>This Law lays out the obligations of central, provincial, district and municipal governments in disseminating information relating to spatial planning⁴. In addition, provisions on the right to information in this law also include the provision of information to communities on spatial planning as part of any spatial planning development.⁵</p>
<p>Law No. 39/1999 on Human Rights</p>	<p>As the regulation underpinning human rights, this law outlines the right to information in Article 14, which states that</p> <p>(1) Every person has the right to communicate and get information needed to develop their personal and social environment.</p> <p>(2) Every person has the right to search, get, own, store, process and deliver information by using all available channels.</p>

2. The procedural right to participate

2.1. Explanation

Decision-making processes in a democratic framework need to consider the various aspirations and interests already existing and growing within a community. The people have a basic right to participate in development processes, including decision making. Participation is one of the preconditions for good governance, and means providing opportunities to all stakeholders to participate in every stage of a policy or activity, from planning, decision making, implementation, up to evaluation. Therefore, participation allows everyone the opportunity for self-determination in a framework of REDD.

In REDD implementation, communities living in and around forests have an unconditional right to determine whether or not their home can be a REDD implementation area. To provide genuine space for

4 Articles 9, 10, 11 (5) of Law No. 26/2007 on Spatial Planning
5 Article 13 (2) of Law No. 26/2007 on Spatial Planning

communities to participate in REDD planning and implementation processes, attention must be paid to the fact that effective participation is determined by community access at all stages of a decision making process. Attention should also be paid to the diversity of groups within a community, particularly marginal groups, as well as access to quality information. By this logic, access to participate is a significant factor in the quality of decision making and influence on the environment.

Using this logic, decision-making processes should consider power relationships in the process of participation. Gaventa (2006) saw the need to examine the space, the place and diverse forms of power manifest in the participatory process.

1. Spaces for participation

Spaces are seen as opportunities, moments and channels. Marginalised people can act to potentially affect policies, discourses, decisions and relationships that affect their lives and interests. But the space does not present itself as a space, but a battle between various interests. Therefore, spaces must be shaped and defined by the community itself so as to identify those interests and rights affected by such policies.

2. Place and level of participation

The place of participation is not only related to the local context but also influenced by and related to the national and global context. Therefore, participation is only possible in a measurable way, if based on an understanding of local, national and global contexts. These three arenas affect the actors who participate, including people whose interests are affected.

3. The forms and visibility of power across spaces and places.

Breadth of participation is shaped by various powers that can be divided into three forms, visible power, hidden power and invisible power. Visible power is shaped by formal rules, structures, power, institutions and decision-making processes. Strategies for changing this form of power are to encourage changes in policy. While the powers that store neatly hidden political agendas can only be disarmed by empowering poor and vulnerable communities. The third form of power plays a role in shaping awareness of meaning and determining what is acceptable and what is rejected in the public consciousness. This form of power, although formed in a rather long process, has a very strong and pervasive effect on a person's behaviour. Therefore, the strategy for coping with this form of power is through deep and systematic education.

In implementing REDD, public participation is essential where communities have control over the management of natural resources and the ability to determine their own destiny. From various cases in Indonesia, community participation in the context of forest management remains minimal. Permit procedures in the forestry sector allow no space for communities to decide whether a concession is granted. Consequently, a safeguard policy is necessary in order to guarantee fulfilment of this right to participation.

2.2. Key principles

The level of participation, as described by Arnstein shows that participatory processes can be easily ‘manipulated’. Many responses illustrate that people think participation equals socialisation, whereas the differences are fundamental and ideological. To guarantee that participation is not misinterpreted, principles are needed to ensure that the participation carried out is real participation. Such principles include:

- 1. Capacity and awareness to participate.** Participation can only work if it operates in a space that is not only equal but can also be understood as an opportunity, or a moment, and if a channel is created by the awareness of stakeholders to change or maintain what already exists or should exist. Thus, participation is not from the top (top down) but is created from the bottom (bottom up). Therefore, participation is not a gift but an inherent right of the community.
- 2. Clarity on the steps and procedures involved in participation** is important as a basis for REDD implementation. Without clear procedures for participation, communities in and around forests will not know what they should do when a REDD project is proposed in their area. Clarity is also important in implementing legal guarantees currently in various pieces of legislation linked to forest management. This clarity also covers matters relating to who can and should be included in the participatory process, the steps involved, the decision-making process, and provisions for any differences between participatory decisions and actual implementation.
- 3. A participatory process that does not burden communities** in and around forests. Meaning that the people can easily access the process in terms of cost or physical access. Activity initiators must be able to facilitate an easy, cheap and trusted participatory process. REDD will in all likelihood be implemented in remote and inaccessible regions. There government must play an active role in reaching communities in such areas, so that they will not be burdened by taking part in participatory processes.

4. **Equality in participatory processes** must be ensured. Equality means that participation is not just a luxury afforded to certain parties (local elites or specific groups within the community). Everyone has the same right to participate and express their needs as part of any decision-making process, so participatory processes should include all parties: men, women, old people and children.
5. **A system for documenting the participatory process** will be highly influential as a record of proceedings. This will be very useful for providing guidance should a conflict or objection arise later on during the REDD programme. The documentation will be the main reference for seeing how the programme was planned and discussed at its outset. This will of course be an essential point of reference point for all parties, and ensure that the government, activity initiators and community all have the same foundation for argument.
6. **Clarity over final policy decisions** is necessary as a measure for gauging that participation has been genuine. When communities participate, they hope their aspirations can be reflected in the final decision, and if they are not, then there must be clear and concise reasons for them not being accommodated. Therefore, the clarity of the final decision should be one of the principle elements for safeguarding public participation, so that the community has clear information on whether its aspirations have been reflected in the decision, and if not, there are clear reasons why.
7. **The availability of infrastructure to accommodate participatory processes** is vital bearing in mind that participatory processes will not work without a strong support system. The government is obliged to provide an effective system for supporting participation. This, of course, includes sufficient human resources capacity for carrying out participatory processes.

2.3. National laws

In national laws, the term ‘public participation’ is no longer a foreign concept. The recognition of people’s basic right to participate is even a constitutional right under Article 28 C (2) of the 1945 Constitution.

Nevertheless, such legal guarantees are often just rhetorical. One research study states that Indonesia has a strong legal foundation for public participation, but is weak in its implementation⁶. What needs to be considered is how available legal guarantees can be maximised in terms of implementation. Regulations relating to forest management in Indonesia providing legal guarantees over participatory process are shown in the following table.

⁶ Opening the access to close inequality (ICEL, 2007)

Legislation	Provisions
<p>Law No. 32/2009 on Environmental Management and Protection</p>	<p>This law acknowledges access to participation in environmental protection and management. Article 65 acknowledges and guarantees communities' rights of participation through the submission of objections and input on a planned business and/or activity (Article 65 (3)). In the context of REDD, this role is very important for communities, because with this provision, they have the right to agree, or disagree with a REDD activity.</p>
<p>Law No. 41/1999 on Forestry</p>	<p>Provisions in this law are very general in nature in regulating community participation. Provisions in Chapter 10, specifically Article 70 state that</p> <p>(1) Communities shall participate in forestry development.</p> <p>(2) The government shall be obliged to encourage public participation through various activities in the forestry sector.</p>
<p>Law No. 7/2004 on Water Resources</p>	<p>This law guarantees community access to decision making processes, where Article 11 states</p> <p>Water resources management as referred to in paragraph (2) shall be conducted by involving community and company participation as much as possible.</p> <p>This law then further regulates a community's right to participate, as its foundations are democratic and based on the principle of (the considerations section of the law)</p>
<p>Law No. 18/2004 on Plantations</p>	<p>In a plantations context, planning is built upon principles of transparency and accountability. Article 8 states that plantation planning, as referred to in Article 6 and 7 must be measured, feasible, realistic, and beneficial and must be conducted in a participatory, integrated, transparent and accountable manner.</p>
<p>Law No. 26/2007 on Spatial Planning</p>	<p>The spatial planning law provides guarantees for communities to participate in decision-making processes. Article 65 affords communities the opportunity to participate in planning and land use.</p>
<p>Law No. 39/1999 On Human Rights</p>	<p>Provisions guaranteeing community participation rights in this law are contained in Article 15 which states that 'Every person has the right to develop himself by individually and collectively protecting his rights, in the interests of developing his society, nation, and state.'</p> <p>Essentially the article guarantees all Indonesian citizens the right to state opinions freely.</p>

3. Benefit sharing

3.1. Explanation

Benefit sharing in a forestry context is not a new thing; however, in the context of genetic resources, discussions and talks on benefit sharing have been far more concrete. The Convention on Biodiversity provides an opportunity for forest-dwelling and local communities to secure benefits from forests' genetic resources. Similar discussions have taken place in the sphere of climate change; where, through REDD, communities are offered economic benefits from the forest they preserve.

As an incentive mechanism⁷, REDD will eventually bring benefits for certain parties, so there is potential for confusion in the sharing of benefits. The main issue in this case will be justice in benefit sharing. The benefits here are not only financial, but are also linked to development and certainty over the sustainability of forest-dwelling lifestyles.

Constitutionally, improving people's welfare and the livelihoods of communities living in and around forests is an obligation of the state. Therefore, safeguards in the context of benefit sharing are also a vital for ensuring that all benefits derived from the implementation of REDD, or other forestry schemes, support the constitutional rights of communities living in or around state forests. Indonesia, as a country with approximately 70 million members of customary communities living in or near state forests⁸ should think how to position policies for safeguarding their rights.

3.2. Key principles

Below are some of the principles that can be used to look at safeguard provisions linked to benefit sharing⁹.

- 1. Potential costs, benefits and risks arising from REDD implementation must be analysed by involving relevant stakeholders from all levels.** In implementing REDD, some risks and benefits will arise. All aspects need to be considered from the outset by involving all stakeholders and communities that will be affected by its positive and negative impacts.
- 2. Full and effective participation from all stakeholders, including vulnerable groups, in discussing decision-making processes and mechanisms for equitable distribution to communities.** Processes

⁷ REDD, Reducing Emissions from Deforestation and Forest Degradation, is an incentive mechanism

⁸ Indonesia Rejects Indigenous Group Rights Declaration Draft, www.tempointeraktif.com (downloaded 6 May 2010)

⁹ Principle draft developed by CCBA

for determining both distribution and decision-making mechanisms must be independent, transparent and free from discrimination. As these mechanisms will be applied in the community, any decision should be made by all parties in the group.

3. **Policy and guidelines to conduct benefit sharing must be developed, agreed upon and disseminated within the community and to other actors involved.** Any agreement on a benefit sharing mechanism should be disseminated among the community once as it has been decided to ensure that every member of the community understands the rules that have been agreed together.
4. **Administrative procedures for managing funds or other benefits relating to distribution must be effective and efficient in terms of time and cost.** Administration procedures frequently require a long chain of bureaucracy, which ultimately complicates everything. Therefore, it is necessary to ensure that any benefit sharing mechanism must have an effective and efficient chain of administration that does not complicate matters for stakeholders.
5. **Benefit sharing schemes must include the availability of transparent and affordable conflict resolution and objection submission mechanisms.** Disputes are often encountered in the implementation of benefit sharing. Therefore, it is important when building a benefit sharing mechanism to ensure that the scheme also includes mechanisms for handling disputes between community members and raising objections.
6. **Mechanisms for monitoring benefit sharing need to be established at the national and regional levels.** Benefit sharing will be linked to financial and monetary matters, so its implementation will be closely aligned to a financial mechanism which will require a clear framework for accountability. Therefore, any benefit sharing scheme must ensure it has procedures for monitoring benefit sharing distribution.
7. **Benefit sharing reporting and evaluation mechanisms need to involve all stakeholders.** Reports on implementation must be an integral part of the overall benefit sharing process. This reporting must be conducted transparently and be open to public nationally and locally and involve all stakeholders.

The principles above are not fixed in the context of developing benefit sharing schemes, and additions can certainly be made. These principles still constitute minimum principles in gauging the readiness of safeguard policies in Indonesia.

3.3. National laws

In general, regulations stipulate that the benefits secured from natural resources will be state revenue. However, Indonesia's constitution guarantees that the state should manage revenue in a way that considers the welfare of all Indonesian citizens. Article 33 (3) of the constitution states that

The earth and waters and the natural riches contained therein should be controlled by the State and be made use of for the greatest possible prosperity of the people.

If such constitutional guarantees can be applied in the context of sharing benefits from natural resources, it will provide a legal foundation for the state (government) to give the largest share of benefits derived from natural resources to the people.

4. The right to forest resources

4.1. Rationale

State forests are the source of livelihoods for people living in and around them.¹⁰ In remote areas in Papua and Kalimantan, as well as other forested areas, the forest provides for communities' basic needs. Daily needs are gathered from the forest, as are the raw materials for more modern economic activities such as the trading of rattan, honey and agarwood. A high level of forest dependency means the economies of communities living in and around forests are based on the forest's carrying capacity. The loss of forests and access to forests will result in those communities' main livelihood source being severed.¹¹ This will impact upon the fulfilment of their basic needs and threaten their right to live.

4.2. Key principles

- 1. Recognition of tenurial rights.** Before or while REDD is being implemented; the laws, policies or guidelines of the state and project initiators relating to forests and state forests recognise the rights of communities living in and around forests to govern¹² the forests they have controlled for generations.
- 2. Simple and fee-free procedures.** Laws and policies acknowledging community forest rights are easy to comprehend, and presented in language or forms that are easy to understand. In addition, the ac-

¹⁰ Asung Uluk, Made Sudana, Eva Wollenberg, Dayak People's Dependency of The Forest Surrounding Kayan Mentarang National Park, CIFOR, 2001

¹¹ Ngakan Putu Oka and Amran Achmad, *Kontribusi Hasil Hutan Bukan Kayu Terhadap Penghidupan Masyarakat Hutan: A case study in Pampli Hamlet, North Luwu District, Hasanuddin University Faculty of Agriculture and Forestry*

¹² This stems from the freedom to determine forest allocation, including land use, boundaries and forest functions, to implement provisions and evaluate them independently. Therefore governance is different from management and utilisation.

knowledge process is free of charge.

3. **Benefit sharing** - recognition of rights must be reflected in benefit sharing. Before or while REDD is being implemented, the laws, policies or guidelines of the state and project initiators relating to forests and state forests recognise the rights of communities living in and around forests to secure benefits from state forests.
4. **Not bound by formal procedures.** The acknowledgement of rights is based on empirical facts proven by the community controlling the state forest and not a formal requirement like a licensing procedure or the stages in recognition that may form barriers to fulfilling community rights over natural resources.

4.3. Legal foundation

In both international and national laws, the protection of community rights has been regulated through the appreciation of human rights and safeguards. With specific reference to applications from developing countries to donor states, the Paris Declaration also stresses effectiveness in applying aid through a number of actions, including strengthening policies on tenurial rights and environmental impact assessments. REDD, as scheme relating to funding should submit to this declaration.

1. International laws

Legislation	Provisions
<p>Convention on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966.</p> <p>Ratified in Indonesia through Law NO. 11/2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights</p>	<p>The convention stresses everyone’s right to sources of wealth and natural resources and such rights not being disregarded for any reason.</p> <p>Article 1 Section 2: All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.</p> <p>Article 25 Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.</p>

<p>United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), September 2007</p> <p>Indonesia is also a signatory to this declaration</p>	<p>This declaration emphasises the acknowledgement of indigenous/traditional people’s rights over territories, land, identities, their way of life and their history.</p> <p>Article 2 Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.</p> <p>Article 3 Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.</p> <p>Article 4 Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.</p> <p>Article 26</p> <ol style="list-style-type: none"> 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.
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<p>Paris Declaration on Aid Effectiveness, 2005</p>	<p>The Paris Declaration is a reference for donor countries. One of its objectives is to encourage the effective use of funds by considering environmental protection policies and the ownership rights of indigenous peoples.</p> <p>..... We are encouraged that many donors and partner countries are making aid effectiveness a high priority, and we reaffirm our commitment to accelerate progress in implementation, especially in the following areas:</p> <p>.... Defining measures and standards of performance and accountability of partner country systems in public financial management, procurement, fiduciary safeguards and environmental assessments, in line with broadly accepted good practices and their quick and widespread application.....</p>
<p>Ministers' Statement on September 4th 2008 "Accra Agenda for Action to accelerate and deepen implementation of the Paris Declaration on Aid Effectiveness"</p> <p>Indonesia is also a signatory to this statement</p>	<p>The Ministers' Statement supports accelerated implementation of the Paris Declaration and is supported by developing countries. Its content includes support for the Paris Declaration's commitment to respect for human rights, vulnerable groups, the poor, and children being a major basis of funding.</p> <p>3. We need to achieve much more if all countries are to meet the Millennium Development Goals (MDGs). Aid is only one part of the development picture. Democracy, economic growth, social progress, and care for the environment are the prime engines of development in all countries. Addressing inequalities of income and opportunity within countries and between states is essential to global progress. Gender equality, respect for human rights, and environmental sustainability are cornerstones for achieving enduring impact on the lives and potential of poor women, men, and children. It is vital that all our policies address these issues in a more systematic and coherent way.</p> <p>11. Without addressing these obstacles to faster progress, we will fall short of our commitments and miss opportunities to improve the livelihoods of the most vulnerable people in the world. Therefore, we are reaffirming the commitments we made in the Paris Declaration and, in this Accra Agenda for Action, are agreeing on concrete and evaluable actions to accelerate progress to meet those commitments by 2010. We commit to continuing efforts in monitoring and evaluation that will assess whether we have achieved the commitments we agreed in the Paris Declaration and the Accra Agenda for Action, and to what extent aid effectiveness is improving and generating greater development impact.</p>

2. National laws

Communities' forest resource rights are an integral part of their constitutional human rights, and must not be subject to arbitrary seizure. Indonesia's spatial planning law even stipulates that spatial planning must pay attention to socio-cultural potential, environmental conservation and empowerment as well as the protection of local cultural heritage. REDD must not ignore the constitutional rights of communities in and around state forests.

Legislation	Provisions
<p>Law No. 39/1999 on Human Rights</p>	<p>The Human Rights Law was a milestone of human rights protection in Indonesia. One of its emphases is that people's inherent rights must not be taken away.</p> <p>Article 36</p> <p>(1) Every person has the right to own property, both alone and in association with others, for the development of himself, his family, nation, and society through lawful means.</p> <p>(2) No person shall be subjected to arbitrary or unlawful seizure of his property.</p>
<p>Law No. 26/2007 on Spatial Planning</p>	<p>Article 6</p> <p>(1) Spatial planning must be applied with attention to:</p> <ul style="list-style-type: none"> a. physical conditions in disaster prone regions of the Republic of Indonesia; b. natural resources potential, human resources, and man-made resources; economic, social, cultural, political, legal conditions, security and defence, the environment, and also science and technology. <p>Article 17</p> <p>Paragraph 4: The allocation of protected areas and cultivation areas as stipulated in Article (3) include the allocation of space for environmental, social, cultural and economic activities and defence and security.</p> <p>Article 48</p> <p>(1) Spatial planning in rural areas is directed towards:</p> <ul style="list-style-type: none"> a. empowering rural people; b. maintaining the quality of the local environment and the areas it supports; c. conservation of natural resources; d. conservation of local cultural heritage; e. maintaining permanent food crop regions for food security; and f. maintaining a balance between rural and urban development.

5. Rights over values and customs relating to the forest

5.1. Rationale

The forest has a cultural significance for most communities living in and around them. The forest can be a sacred place where rituals are held, and can be the basis of values determining patterns of production and consumption. Prohibitions from cutting down large numbers of trees constitute a value formed by respect for forest sustainability. Meanwhile, the determination of a forest's function, and the value of a forest stand laid out in local rules shows an evaluation beyond mere economic calculation. For communities in and around state forests, cultural values and norms are very much determined by their relationship with the forest. Restricting or removing rights over state forests will immediately eradicate their cultures.

5.2. Key principles

1. Laws, policies or guidelines of the state and project initiators relating to forests and state forests recognise and protect community values and norms
2. Laws, policies or guidelines of the state and project initiators relating to forests and state forests support and strengthen community values and norms that support the sustainability of forests and state forests.

5.3. Legal foundations

Many international and national laws and regulations contain articles acknowledging and respecting indigenous or local peoples' rights to cultural expression. In relation to forest regions, many research findings show that forests not only serve an economic function for the community, but also have social and cultural value.¹³ Consequently, forest-related schemes including REDD must protect and reinforce these functions.

1. International laws

Name	Provisions
Convention on Economic and Social Cultural Rights. Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966 Ratified in Indonesia through Law No. 11/2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights	Article 1 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

13 Asung Uluk, Made Sudana and Eva Wollenberg, 2001: 57-78 and Attachment 1

<p>UNESCO Universal Declaration on Cultural Diversity adopted by the General Conference of UNESCO at its thirty-first session on 2 November 2001</p>	<p>Article 1 Cultural diversity: the common heritage of humanity Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations.</p> <p>Article 3 Cultural diversity as a factor in development. Cultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence</p>
<p>International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>Adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21 December 1965. Entry into force 4 January 1969</p> <p>Ratified in Indonesia through Law No. 29/1999 on Ratification of the International Covenant on the Eradication of Any Form of Racial Discrimination, 1965</p>	<p>Article 7 States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.</p>
<p>UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities</p> <p>Adopted by General Assembly Resolution 47/135 of 18 December 1992</p>	<p>Article 2</p> <ol style="list-style-type: none"> Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

<p>United Nations Declaration on the Rights of Indigenous Peoples, adopted by General Assembly Resolution 61/295 of 13 September 2007</p>	<p>Article 11 Indigenous peoples have the right to practice and revitalise their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.</p> <p>Article 31 Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.</p> <p>In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.</p>
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2. National laws

National laws also recognise indigenous peoples' rights over customary norms and values. According to some regulations, the state must protect customary community rights by recognising and considering the existence of such rights in policies and development projects.

Name	Provisions
<p>Law No. 39/1999 on Human Rights</p>	<p>Article 6 Paragraph 2. Cultural identities of customary communities, including their communal land rights are protected</p> <p>Article 72 The duties and responsibilities of the government as referred to in Article 71 include measures towards effective implementation in law, politics, economics, social and cultural aspects, state security, and other areas.</p>

<p>Law No. 32/2009 on Environmental Protection and Management</p>	<p>Article 7 (2) Eco-region area establishment referred to in paragraph (1) is applied by considering the similarities of :</p> <ul style="list-style-type: none"> a. landscape characteristics; b. watershed areas; c. climate; d. flora and fauna; e. social culture; f. economy; g. societal institutions; and h. environmental inventory outcomes <p>Article 23:</p> <p>(1) Criteria for businesses and/or activities with crucial impacts and obliged to conduct environmental impact analyses consisting of:</p> <ul style="list-style-type: none"> a. .. b. c. process and activities which can affect the natural environment, artificial environment, and the social and cultural environment <p>General Explanation</p> <p>Number 2: ...environmental management must provide economic, social and cultural benefits and undertaken based on the principles of caution, environmental democracy, decentralisation, and recognition and respect for local and environmental wisdom...</p>
<p>Law No. 26/2007 on Spatial Planning</p>	<p>Article 6 (1) Spatial planning must be applied with attention to:</p> <ul style="list-style-type: none"> c. physical conditions in disaster prone regions of the Republic of Indonesia; d. natural resources potential, human resources, and man-made resources; economic, social, cultural, political, legal conditions, security and defence, the environment, and also science and technology. <p>Article 17 Paragraph 4: The allocation of protected areas and cultivation areas as stipulated in Article (3) include the allocation of space for environmental, social, cultural and economic activities and defence and security.</p> <p>Article 48 (1) Spatial planning in rural areas is directed towards:</p> <ul style="list-style-type: none"> g. empowering rural people; h. maintaining the quality of the local environment and the areas it supports; i. conservation of natural resources; j. conservation of local cultural heritage; k. maintaining permanent food crop regions for food security; and l. maintaining balance between rural and urban development.

6. Rights to compensation and environmental restoration

6.1. Rationale

Communities living in and around state forests are highly forest dependent. Therefore, in many cases where forest access is limited or closed due to forest degradation and destruction, it is these communities that suffer most. First, the carrying capacity of their forest food source diminishes or even disappears altogether. Second, the forest's role in forming and defining their culture is no longer adequate and even vanishes. Third, they are forced to find other alternative livelihood sources and cultures since their interaction with the forest is prohibited or limited. Environmental restoration must be undertaken and compensation paid for benefits lost as a result of certain policies or projects.

6.2. Key principles

1. State policies and laws are available that guarantee the sustainability of forest functions, especially for communities living in and around state forests, and to restore forests degraded by past development patterns.
2. Policies are available that restore the rights of communities in or around state forests which were systematically taken over by the policies, programmes or projects of the government or other parties in the past.
3. New policies or projects in state forests provide instruments that ensure no limitation of rights or eviction of communities living in or around state forests.

6.3. Legal foundation

1. International laws

International laws regulate the obligation of every country to protect people from all forms of discrimination including exploitative patterns of development. A frequent occurrence is discrimination against groups considered to be of lower economic status or social class with the dumping of environmental waste. Therefore, all forms of pollution or environmental damage must be prevented from harming or destroying vulnerable groups.

Legislation	Provisions
<p>International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>Adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969, in accordance with Article 19</p> <p>Ratified in Indonesia through Law No. 29/1999 on the Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965</p>	<p>Article 5</p> <p>In compliance with the fundamental obligations laid down in Article 2 of this Convention, State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:</p> <p>(a) The right to equal treatment before the tribunals and all other organs administering justice;</p>

2. National laws

Most national laws have adopted compensation concepts. This concept constitutes a form of respect for a persons rights which are violated for an interest deemed to be greater. Essentially, such rights cannot be revoked. Legislation regulating protection and compensation for rights taken away includes the following:

Name	Provisions
<p>Law No. 41/1999 on Forestry</p>	<p>Article 68</p> <p>Paragraph:</p> <p>Communities within and surrounding a forest shall have the right to receive compensation for the loss of access to the surrounding forest, due to its designation as a state forest, in accordance with prevailing laws and regulations</p> <p>Every person has the right to receive compensation for loss of property, due to its designation as a state forest, in accordance with prevailing laws and regulations.</p>

Article 13

- (2) Control of pollution and/or environmental damage as referred to in paragraph (1) includes:
- a. prevention;
 - b. management; and
 - c. recovery

Article 15

- (1) The government and regional governments are obliged to prepare Strategic Environmental Assessments (KLHS) to ensure that the principle of sustainable development is the basis for, and is integrated into the a region's development and/or policies, plans, and/or programmes.
- (2) The government and regional governments are obliged to implement the KLHS as referred to in Article (1) in preparing or evaluating:
- a. spatial plans including their detailed plans, long-term development plans and national, provincial, district and municipal medium-term development plans; and
 - b. policies, plans, and/or programmes with the potential to cause impacts on, and/or risks to the environment.

Article 53

- (1) Any person polluting and/or damaging the environment is obliged to rectify that pollution and/or environmental damage.
- (2) The environmental pollution and/or damage rectification as referred to in paragraph (1) shall be done by:
- a. providing warning information on the pollution and/or environmental damage to the people;
 - b. isolating the pollution and/or environmental damage;
 - c. stopping the source of pollution and/or environmental damage; and/or
 - d. any other means in accordance with scientific and technological developments.

Article 54

- (1) Any person polluting and/or damaging the environment is obliged to rectify the functions of the environment.
- (2) Environmental function rectification as referred to in paragraph (1) shall be done by:
- a. stopping the source of pollution and/or environmental damage cleaning pollutants;
 - b. remediation;
 - c. rehabilitation;
 - d. restoration; and/or any other means in accordance with scientific and technological developments.

Article 87

- (1) Any person responsible for a company and/or activity which illegally pollutes or damages the environment and causes loss to others or the environment; are obliged to pay for any claims/damages and/or conducting certain actions.

7. The right to determine/decline free prior and informed consent (FPIC)

7.1. Rationale

Natural forests constitute unique ecosystems with extraordinary potential, both for the communities living in and around them and the global community. For local and/or customary communities forests function as aquifers, as ecological buffer zones, as farming land, as places where flora and fauna flourish, and as places providing their food and shelter needs. Long before the Republic of Indonesia was established, customary communities were living in, and dependent on the forest, so any plans to utilise forests in the national interest must consider the implications on the continued existence of customary communities.

The issue above is clearly regulated under a principle known as Free Prior and Informed Consent (FPIC)¹⁴ which simply put means communities' right to information before a development programme or project is implemented in their region, and freedom to agree or disagree without any pressure. In other words, a community's right to determine what kind of development activities they allow to take place on their land (UN 2005).

FPIC is not a one-off process, but a continuing one that begins when a project is proposed and continues up until it ends. This means that any project activity affecting the community must go through the FPIC process. The community has a right to veto when determining whether or not it agrees to a development project. If not, then the project proposal or implementation must be stopped or a solution found so that the project does not diminish or take away the community's rights. Herein are the fundamental differences between FPIC and public consultation.

7.2. Key principles

1. Free - a state of freedom without coercion. This means an agreement can only be reached as a result of a number of free choices for the community. The general principle in law is that an agreement is considered illegal when secured through or under coercion or manipulation (see Article 1320 of Civil Law Code). In addition, even where there is no adequate legal provision or policy, a mechanism must still

¹⁴ UN (2005) UN Workshop on Free, Prior and Informed Consent: An Overview of the Principle of Free, Prior and Informed Consent and Indigenous Peoples in International and Domestic Law and Practices, Presented by Tamang P, January 2005, [online]: www.un.org/esa/socdev/unpfii/documents/workshop_FPIC_tamang.doc

be established for ensuring an agreement is reached through a free process.

2. **Prior** means before a certain project or activity is allowed by the government, it must secure the consent of the community. There must be a clear timeframe to ensure the parties affected have sufficient time to comprehend any information received, to request additional information or clarification from the project’s initiators, seek advice or expert opinions, and determine or negotiate the situation they experience. Discussions with parties that may be affected must take place before the government and project initiators decide on plans to be undertaken.
3. **Informed** relates to transparent and extensive information about the causes and effects of the project. The information referred to is correct and sufficient information. This means the project initiators provide information on all project details, including: its pros and cons, type, the scale and scope of activities, people likely to be involved in project operations (sponsors or financiers, local people, researchers, etc). In delivering this information, the provider must use simple, language that is easy for the affected community to understand. In addition, information must also be relayed at appropriate times, not changed unilaterally, but agreed by the people in locations potentially affected by the project. The phases of the information giving process must also be clear.
4. **Consent** means agreement provided by the community itself. The potentially affected community must be consulted and be allowed to participate in all aspects of the project (preliminary studies, planning, implementation, monitoring and closure). Agreement is given by an authority with the right so to do, and local laws must be followed in reaching an agreement. No less importantly, FPIC must be documented and legally binding.¹⁵

7.3. Legal foundations

1. International Law

Regulation	Provisions
Convention on Biological Diversity, Rio De Janeiro, 1992 Ratified in Indonesia through Law No. 5/1994	Article 15 paragraph 5 Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party

¹⁵ www.un.org, ibid. See also Marcus Colchester, 2006

<p>Convention on Economic and Social Cultural Rights.</p> <p>Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966</p> <p>Ratified in Indonesia through Law No. 11/2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights</p>	<p>Article 1</p> <ol style="list-style-type: none"> 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.
<p>International Covenant on Civil and Political Rights</p> <p>Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) on 16 December 1966</p> <p>Ratified in Indonesia with Law No.12/2005</p>	<p>Article 1</p> <ol style="list-style-type: none"> 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.
<p>United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), September 2007.</p> <p>Indonesia has signed this declaration</p>	<p>Article 10</p> <p>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>

2. National laws

Legislation	Provisions
Law No. 14/2008 on Public Information Transparency	<p>Article 9 of this law requires public entities to publish public six-monthly information periodicals. This information includes information about the public entity, its activities and performance, financial reports and other information regulated by law. This information should be disseminated by means easily accessed by, and in language understandable to the public.</p> <p>Article 11 of this law also obliges public entities to provide information to the public at all times listing all public information under their control, outcomes of decisions made by the public entity, and its considerations, all existing policies including supporting documents including predictions of annual expenditure and the public entity's agreements with third parties.</p>
Law No. 27/2007 on Coastal and Small Island Management	<p>Although this law does not regulate state forest, in its links to FPIC, its substance regulates several relevant aspects. Articles in the law state that in managing coastal areas and small islands, communities have rights to:</p> <ol style="list-style-type: none"> a. Obtain information on coastal and small island management; b. Submit reports and complaints to the authorities on losses incurred linked to the coastal and small island management; c. Voice objections to an already-announced management plan within a certain time-frame;
Law No. 41/1999 on Forestry	<p>In relation to forestry, communities have to room to provide input on forestry plans including project plans relating to state forests. Article 68 paragraph 2 states that communities can be informed about plans for forest allocation, forest product utilisation and forestry information; provide information, suggestions, and considerations for forest development; and undertake supervision of forestry development, either directly or indirectly.</p>

8. The right not to be terrorised, and to protection under the law

8.1. Rationale

In the constitution, every Indonesia citizen has the right to equal treatment before the law, including the right to obtain legal protection (Article 28 D of the 1945 Constitution). This is not always the case; however, as natural resource management remains extremely exploitative and results in environmental degradation. Corporations increasingly dominate government decisions and policies, and serious human rights violations continue. On 18 December 2008, for instance, around 500 officers from the Riau Police Mobile Brigade troops, the crime prevention unit and the Bengkalis District Police force stormed Suluk Bongkal Village in Riau province to evict residents they deemed to have illegally occupied an industrial plantation forest concession area belonging to PT Arara Abadi. The police acted excessively against villagers treating them like enemies of the state. Police officers burned down around 700 homes, killing two children, and arrested 58 people. Around 50 people have stayed in the forest around the village despite the state of psychological pressure, and around 400 others are scattered throughout the forest (WALHI, 2009). The above shows that 65 years after independence, there has been no change. Despite the constitution stressing equality before the law, the authorities still enact terror and violence on vulnerable groups, particularly in cases of natural resource conflict. It should be affirmed, categorically, that no party may use state authorities to terrorize or oppress, let alone commit violence against other parties.

8.2. Key principles

- a. A formal legal guarantee given by the State through its law enforcement authorities that community members who voice opinions and/or make decisions not in accordance with the wishes of the government shall not be criminalised
- a. Community members, either individuals or groups are free to voice their opinions in all decision-making processes relating to the planned project

8.3. Legal foundations

1. International laws

Legislation	Provisions
Universal Declaration of Human Rights	<p>UN Charter is currently the reference for all human rights concepts. One of the basic rights mentioned is the right not to be terrorised.</p> <p>Article 5: No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment.</p>
<p>International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966</p> <p>Ratified in Indonesia with Law No. 12/2005</p>	<p>This Covenant forbids every form of terror and any form of treatment denying human dignity.</p> <p>Article 7: No person shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment. No person shall be subjected, without their free consent, to medical or scientific experimentation.</p>

2. National laws

Legislation	Provisions
1945 Constitution	<p>Article 28 C paragraph (2) “Every person has the right to improve himself in fighting for the right to build his society, nation and country.</p> <p>Article 28 D paragraph (1) Every person has the right of recognition, guarantee, protection and fair legal certainty, and also equality before the law.</p> <p>Article 28 G paragraph (1) Every person has the right of protection of self, family, honour, dignity, and property under his power, and also reserves the right to feel secure and protected from fear or threat to do or not to do something which is a basic right.</p>

<p>Law No. 39/1999 on Human Rights</p>	<p>Article 17 Every person, without discrimination, has the right to justice by submitting applications, grievances, and charges, of a criminal, civil, and administrative nature, and to a hearing by an independent and impartial tribunal, according to legal procedure that guarantees a hearing by a just and fair judge allowing an objective and impartial verdict to be reached.</p> <p>Article 18 (1) Any person arrested, detained, or charged for a penal offence has the right to be presumed innocent until proven guilty according to law in a trial at which he has had all the guarantees necessary for his defence, according to prevailing law.</p> <p>Article 30 Every person has the right to security and protection against the threat of fear from any act or omission.</p> <p>Article 33 (1) Every person has the right to freedom from torture, or cruel, inhuman and degrading punishment or treatment. (2) Every person has the right to freedom from abduction and assassination.</p> <p>Article 34 No person shall be subject to arbitrary arrest, detention, torture or exile.</p> <p>Article 35 Every person has the right to live in a peaceful, safe and secure society and nation which fully respects, protects and executes human rights and obligations as set forth in the provisions in this law.</p> <p>Article 100 All people, groups, political organizations, community organizations, and self-reliant organizations and other non-government organizations, have the right to submit reports of human rights violations to the National Commission on Human Rights or other competent agency, in the interests of protecting, upholding and promoting human rights.</p>
<p>Law No. 32/2009 on Environmental Protection and Management</p>	<p>Article 66 Any person striving for the right to a good and healthy environment cannot be tried on criminal or civil charges.</p>

9. The right to a healthy environment

9.1. Rationale

Ecological disasters have shown a significant annual increase. In 2007 alone there were 205 disasters, while in 2008 the number increased to 359 occurrences. Local governments have paid considerable lip-service to combating these disasters but have yet to show any serious efforts to reduce or prevent them. Over the last 13 years, 6632 disasters have occurred (*BNPB, 2010*). This means a flood, drought, landslide, storm or fire occurs every day, or more than ten times a week¹⁶. The environmental NGO, WALHI calls this situation ‘Indonesia’s ecological emergency’¹⁷.

Environmental debate wrapped in ecological modernity and green developmentalism has been biased toward an environmental discourse for political and market interests, by marginalising communities with no economic or political power. In political ecology articles, it is very clear that open green space and environmental issues have instead been adopted and co-opted by capital owners and those in power.

9.2. Key principles

- a. Implementation of a Strategic Environmental Review at the preliminary project planning phase
- b. No change of ecological functions in areas related to hydrology, clean water sources, land structures, atmosphere and unique and vulnerable biodiversity.
- c. The government and project managers must guarantee the fulfilment of people’s basic rights before, during and after project implementation. If there are any violations of these basic rights, then project managers must restore those rights and be subject to heavy sanctions.

9.3. Legal foundations

1. International law

Legislation	Provisions
Rio Declaration on Environment and Development, 1992	Principle 1 Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

16 Press Statement: Cure Indonesia, WALHI, 5 April 2010

17 For more information see “DARURAT EKOLOGIS INDONESIA” Concept Paper: Indonesian ecological restoration towards the equitable and sustainable management of natural resources, WALHI, 2009

<p>Convention on Economic and Social Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966 Ratified in Indonesia through Law No. 11/2005 on Ratification of the International Covenant on Economic, Social and Cultural Rights</p>	<p>Article 12 1. State Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p>
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2. National laws

Legislation	Provisions
1945 Convention	<p>Article 28 H paragraph (1) "Everyone reserves the right to live in prosperity both physical and spiritual, to reside in and preserve a good and healthy environment and also the right to health services."</p>
Law No. 39/1999 on Human Rights	<p>Article 9 paragraph (3) Everyone reserves the right of a good and healthy environment</p>
Law No. 32/2009 on Environmental Protection and Management	<p>Article 15 Central and regional governments are obliged to create Strategic Environmental Reviews to ensure the principles of sustainable development become the basis for, and are integrated into a region's development policies, plans and programmes.</p> <p>Article 66 Any person striving for the right to a good and healthy environment cannot be tried on criminal or civil charges.</p>

Mechanisms for Raising Objections

Part 3

1. Introduction

There is always potential for irregularities in monitoring, reporting and verification processes, safeguard violations, and mistakes in reporting and verification due to errors, data collection limitations and methodologies, etc.

As the result, the reports and verifications produced might be unsatisfactory to certain parties; for example communities or other stakeholders over decisions not meeting safeguard guidelines.

In addition, verification decisions and pronouncements can be reviewed due to the possibility of malpractice; either by field reviewers or verification agencies. A review may also be triggered by a safeguard violation by a REDD practitioner after verification decisions and pronouncements have been published.

Consequently, to maintain the credibility of verification decisions by all related parties, the verification system needs to be supplemented with guidelines that can ensure the protection of community rights and the fulfilment of safeguards in REDD activities.

The opportunity to raise objections over verification decisions and pronouncements can bring about a transparent and equitable verification process.

2. Scope

The Objection Settlement Guidelines (OSG) are limited only to objections over Monitoring Reporting and Verification (MRV) in the implementation of REDD activities. The OSGs are not a part of MRV, but a mechanism for reviewing MRV, including MRV of safeguards.

The objective of guidelines on raising objections to monitoring, reporting and verification is to ensure verification process transparency by testing compliance to safeguards based on the experiences of stakeholders on the ground. Therefore, the process is also intended as means to control monitoring, reporting and verification processes on REDD activities, and to resolve disputes arising as a result of verification decisions and pronouncements made on REDD activities at various regional levels.

3. Objection Settlement Institution

An Objection Settlement Institution (LPK) is an institution formed and given a special mandate, by stakeholders in the verification system, to settle disputes arising in relation to verification decisions and pronouncements. The institution's existence constitutes a requirement of the verification system itself.

If necessary, the institution can request expert assistance, and in resolving cases, it can appoint a negotiator or set up an ad hoc group called an Objection Settlement Committee.

Further arrangements on the procedures for establishing an Objection Settlement Institution, appointing members and chair, funding and other technical operational matters relating to the roles of the institution are regulated through decisions by the institution itself.

4. Objection points

Objections are the manifestation of dissatisfaction, from any party, to decisions and pronouncements in reference to agreed REDD safeguard guidelines, and linked to compliance to social rights safeguards and biodiversity conservation.

Whenever there is an objection to a decision linked to compliance to safeguards in terms of:

- a. The way data was collected during monitoring;
- b. Facts and data presented in reports;
- c. Evaluations of safeguard fulfilment in REDD activities and their processes;
- d. Verification results and the distribution of benefits from verification decisions,

It will be re-verified under the supervision of an agreed independent verification institution.

In the case of objections linked to indications of irregularities or violations of safeguard principles and criteria committed by the REDD

activity' implementer, the LPK will select objections from those received regarding UM/UUK performance. The selection outcome will determine follow-up steps to be taken by LPK, either verification on the ground or as input for the supervision stage.

Nevertheless, objections cannot be directed towards a verification system already formulated by the verification institution, because the system is an embedded part of the verification itself.

5. Parties with the right to raise objections

Parties who may raise objections over verification decisions and pronouncements are as follows:

- a. Management units (UUK);
- b. Associations or organisations that constitute stakeholders;
- c. Government;
- d. Monitoring institutions;
- e. Communities

6. Procedures for resolving objections raised over verification decisions

These can be sorted into two groups of processes:

6.1. Filtering requirements for the objection submission process

- 6.1.1. Objections are delivered in writing to the LPK, and supplemented with supporting data
- 6.1.2. Objections submitted must:
 - a. Refer to evaluation stage and/or fulfilment of standard criteria and principles;
 - b. Be supported by new data/information not used in the evaluation process.
- 6.1.3. Objections are deemed relevant if:
 - a. The data and information provided are relevant
 - b. The data and information are provided by the relevant stakeholder
 - c. A relevant stakeholder is determined by accurate and relevant data and information
- 6.1.4. The LPK may reject an objection if it is considered irrelevant.

6.2. Objection settlement processes

The objection settlement process takes place in two stages: objection filtering, verification and approval; and verification decision review, and issuing a recommendation to the Development Licensing and Standards Commission.

7. Parties Involved in Objection Resolving Process

Three parties are involved in the objection settlement process:

7.1. The Objection Settlement Institution (LPK)

7.2. Monitoring institution¹⁸

A monitoring institution or whatever the stakeholders involved in it may call it, is a legal entity in the form of a regional stakeholder communication forum for testing the credibility of decisions and pronouncements from the verification process.

As such, the monitoring institution is a stakeholder in the verification system, and its existence is a logical consequence of the verification system developed.

In accordance with the functions expected of a monitoring institution, it can be established on the initiative of stakeholders in the region. In cases where no communication forum exists to play the expected role, then a monitoring institution is the moral obligation of the initiator of the verification process.

Institutionally, the monitoring institution lies outside the verification system. This means the views and input from the monitoring institution do not directly reflect the views and decisions of institutions involved in the verification process.

As the monitoring institution is independent from other institutions linked to the verification process, then its institutional system, work procedures, decision-making processes and membership criteria all come under its own authority, as stipulated monitoring institution guidelines.

Based on principles in the verification system, the stakeholders involved will determine reciprocal acknowledgement processes between institutions involved in verification processes and the monitoring.

¹⁸ For more detailed information on monitoring institutions see review institution guidelines

In more detail, the objectives of having a monitoring institution in the verification system are:

- a. To test recommendations from evaluations conducted by a verification institution;
- b. To provide a medium for the public to raise objections to evaluators' findings in the field if they differ from the experiences of the community;
- c. To provide communities with the opportunity to speak with the LPK and evaluation team to ascertain the rationale behind their recommendations to the evaluated management unit;
- d. To create maximum transparency in verification processes;
- e. To be a partner for institutions involved in the verification process, by, for example, being a vehicle for community input; electing the verification institution; and disseminating information relating to an ongoing verification process.

7.3. Objection Settlement Committees

An objection settlement committee is an *ad hoc* committee formed by the Objection Settlement Institution to resolve disputes over decisions and/or certain certification pronouncements.

Parties involved in evaluations of a management unit under dispute cannot be members of an objection settlement committee.

In accordance with the expected roles of an objection settlement committee, its membership needs to meet requirements for expertise and integrity and accountability.

The membership of an objection settlement committee should also meet the requirements laid out in guidelines, which stipulate the requirements and composition of a panel for addressing a disputed verification process.

8. Reports and recommendations

Reports and recommendations from the Objection Settlement Institution are responses to objections received after passing through the filtering-verification-approval of objections and review stages.

Conclusions from these stages are laid out in recommendations delivered to the Ministry of Forestry, donor country/organisation, the monitoring institution and other parties that have raised objections.

Possible recommendations might be for compensation, remedies, postponements or continuing to apply verification pronouncements (noting that the verified objection will become input for supervision during the following period).



