

REDD+ Alert: How the World Bank's jurisdictional REDD+ pilot in East Kalimantan discriminates against indigenous peoples

Policy Briefing

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Key Points

1. Despite promises to transform the land and forestry sector, the REDD+ Jurisdictional pilot in East Kalimantan (EK-JERP), funded by the World Bank, is not fulfilling its commitment to safeguard the rights of indigenous peoples. These failures weaken the credibility, transparency, and integrity of the World Bank's Carbon Fund climate financing initiatives.
2. The design and implementation of the EK-JERP has marginalized Dayak Bahau indigenous peoples and failed to uphold their right to Free, Prior and Informed Consent (FPIC) or enabled them to meaningfully participate in the program.
3. The EK-JERP's Benefit Sharing Plan requires that indigenous peoples have legal personality to be eligible to receive program benefits. This plan gives undue deference to national governments to decide who should receive benefits and ignores the independent responsibility of the World Bank to respect indigenous peoples' rights.
4. Indonesia continues to require indigenous peoples' "existence" to be officially certified by District and/or Provincial governments via decrees or regulations in order to access and secure legal rights and protections. The East Kalimantan Provincial government has legally recognised a handful of indigenous peoples across the Province, despite recognition being a core component of the EK-JERP.
5. In Mahakam Ulu district, regulations to recognise indigenous peoples have existed since 2018. Dayak Bahau indigenous peoples have made repeated attempts to have their existence legally recognised during this period; however, the district government has consistently stalled and delayed their efforts.
6. These failings became the subject of a complaint to the World Bank Grievance Redress Service in March 2024. The complaint brought compelling evidence of the discriminatory and debilitating obstacles the Dayak Bahau of Long Isun face to recognise and secure their customary rights. The uncertainty over their legal rights exacerbates the risk of future conflict and the dispossession of their ancestral lands.
7. Following the submission of the complaint, the Indonesian government has made repeated efforts to intimidate and threaten the Dayak Bahau of Long Isun to consent to the EK-JERP. The GRS has failed to adequately address the risk of reprisal, in accordance with the World Bank's zero-tolerance policy.
8. To effectively safeguard the rights of East Kalimantan's indigenous peoples and their agency in protecting forests, a systemic response is required from the World Bank that addresses the lack of formal recognition of indigenous peoples' customary rights to land.

Summary

The East Kalimantan Jurisdictional Emissions Reduction Program (EK-JERP) is the first of World Bank's Forest Carbon Partnership Facility-Carbon Fund (FCPF-CF) pilots in Indonesia and lays the blueprint as to how Results-Based Climate Finance initiatives will be rolled out across the archipelago. The experience of the Dayak Bahau underscores the risk the pilot may be entrenching and aggravating Indonesia's impairment and nullification of indigenous peoples' rights.



Since 2018, Long Isun's spiritual leader, Kristina Yeq, has been a steadfast advocate for the community's recognition. Unfortunately, the government has stalled this vital process while actively promoting the World Bank's EK-JERP, which purports to accelerate the recognition of indigenous rights.

This briefing provides a critical analysis as to why in its current form, the EK-JERP discriminates against indigenous peoples and does not respect their rights. One key pillar of the program, the Benefit Sharing Plan (BSP), which establishes the eligibility criteria for being a beneficiary of the EK-JERP, for example, acts as an inadequate mechanism for communities to access program benefits. Evidence of the efforts of the Dayak Bahau of Long Isun to gain recognition as an indigenous peoples demonstrates the serious challenges to achieving rights recognition in East Kalimantan, one of the central components of the EK-JERP.

The failure of the EK-JERP to uphold indigenous peoples' rights became the subject of a complaint to the World Bank's Grievance Redress Service, filed by the Dayak Bahau, which requested that the EK-JERP act as a catalyst for law and policy reform and acceleration of land titling and realization of self-governance rights. Since its submission, the Indonesian State has compounded rights violations, threatening and intimidating the Dayak Bahau of Long Isun and its advocates to (1) withdraw the complaint and (2) consent to the EK-JERP. The increased risk of reprisal has, to date, not been adequately addressed by the GRS and more resolute action by the World Bank is required to remedy these violations.



The sun sets over Dayak Bahau ancestral lands in Mahakam Ulu district, East Kalimantan, Indonesia



Consultation with the Dayak Bahau indigenous peoples of Long Isun

REDD+ and The Forest Carbon Partnership Facility (FCPF) Carbon Fund

Recognizing the invaluable role of forests in the fight against climate change, states and the international community established a framework known as Reducing Emissions from Deforestation and Forest Degradation (REDD+) to encourage countries to sustainably manage their forests and enhance carbon stocks by offering financial rewards or results-based payments (RBPs) for verified emission reductions¹. RBPs were proposed to incentivize countries to meet their Nationally Determined Contributions under the 2015 Paris Agreement.²

The Forest Carbon Partnership Facility (FCPF) broadly shares the same agenda as REDD+,³ providing States with “incentives for efforts to reduce emissions while protecting forests, conserving biodiversity, and improving the livelihoods of indigenous peoples and local communities.”⁴ In 2008, the FCPF’s Carbon Fund was set up to pay for emission reductions from REDD+ programs and deliver them to Carbon Fund Participants⁵.

The World Bank-managed Fund has faced criticism for insufficient consultation with forest communities and weak rights protections. The FCPF charter was later amended to require that Emission Reduction Programs (ERPs) “comply with the World Bank’s Operational Policies and Procedures”, mandating respect for indigenous rights under both national and “applicable international obligations”.⁶

World Bank safeguards for indigenous peoples do not require Free, Prior and Informed Consent as established by international human rights laws but instead require “a process of free, prior, and informed consultations with the affected Indigenous Peoples’ communities at each stage of the project, and particularly during project preparation, to fully identify their views and ascertain their broad community support for the project”.⁷ Within this framework, “transparent stakeholder consultations” are meant to provide the basis “to deliver emission reductions”.⁸ REDD+ safeguards (SIS REDD+), however, are explicit in stating: “FPIC must be obtained prior to project implementation from customary communities and local communities”⁹ and ERP documents repeatedly reference “Free Prior and Informed Consent” in “national systems to safeguard the program”.¹⁰

Indonesia’s Readiness Plan (R-Plan), which outlines the specific actions needed to prepare a country to effectively participate in FCPF program and determines future national REDD+ strategies,¹¹ did ‘not even mention indigenous peoples’ or provide an indication that Indonesia intends to respect indigenous peoples’ rights in relation to REDD+¹², in clear violation of the FCPF Charter’s requirements.¹³ Instead, Indonesia’s submissions to the FCPF were based on ‘a default position that indigenous peoples must accept [REDD+] activities in their traditional territories’¹⁴, where indigenous peoples can be “REDD[+] implementers” once and



East Kalimantan Province is divided into seven districts, including Mahakam Ulu

if they have some form of State-recognised “forest use rights or, in cases where they do not, these groups may be involved in monitoring...”¹⁵

The failure to respect indigenous peoples’ rights in Indonesia’s engagement with the World Bank was noted by the United Nations Committee on the Elimination of Racial Discrimination,¹⁶ and brought to the attention of the FCPF directly.¹⁷ Despite these shortcomings, Indonesia was deemed ‘ready’ (i.e. with its REDD+ strategy, baseline and monitoring framework, and safeguards) and able to submit ERPs to the FCPF for approval¹⁸.

In 2015, East Kalimantan was selected as a pilot FCPF province and started its readiness phase in 2016.¹⁹ In 2019, having satisfied the REDD+ Readiness Phase, East Kalimantan was the first province deemed eligible for the FCPF Carbon Fund. The Fund agreed to pay Indonesia for carrying out East Kalimantan’s ERP, which was closely linked to the Province’s REDD+ Strategy and Regional Action Plan for Reducing Greenhouse Gas Emissions²⁰, through an Emission Reduction Purchase Agreements (ERPs) – an agreement between Indonesia and the World Bank.

In November 2020, Indonesia and the World Bank signed the ERPA for the East Kalimantan Emissions Reduction Program (EK-JERP) for US\$110 million,²¹ with a first payment of US\$20.9 million in November 2022.²² The project will conclude in December 2025, with the final payment contingent on verified CO₂ emission reductions.

The East Kalimantan Jurisdictional Emissions Reduction Program (EK-JERP)

Prior to the approval of the EK-JERP, the failings of Indonesian government representatives to respect traditional institutional structures and consult indigenous peoples directly was brought to the World Bank’s attention.²³ These concerns were also identified in the REDD+ Readiness Self-Assessment for Indonesia, submitted to the FCPF in 2017, which noted: “wider participation by specific groups ... is still needed” and that “the quality of consultation and engagement [with indigenous peoples] needs to be improved”.²⁴

Field work conducted by civil society organisations Perkumpulan Nurani Perempuan (PNP) and Forest Peoples Programme (FPP) in 2023, in consultation with affected Dayak indigenous peoples, found that the EK-JERP continues to fall short of its intended goals, failing to fully comply with international human rights standards and adequately address the challenges identified in the REDD+ Readiness Phase. Testimonies from village government officials and indigenous peoples customary representatives on the EK-JERP’s consultation processes indicate that its development and implementation did not respect their rights. The

development of the program was done without informing Dayak Bahau indigenous peoples, let alone involving their meaningful participation.

Since the project’s inception, village government officials have been invited to three consultations over a six-year period – the first in 2019 introduced the EK-JERP, the second in 2023 attempted to socialise (*socialisasi*) the EK-JERP project in line with its FPIC obligations. In both meetings the information shared by EK-JERP staff was overly technical and not culturally appropriate, and the top-down nature of consultations prevented any meaningful participation by the Dayak Bahau.²⁵ Participants left both meetings uncertain of the rationale for the consultation.

The Dayak Bahau submitted a complaint to the World Bank in March 2024, alleging that the FPIC consultations were not designed to meaningfully engage indigenous peoples but were merely superficial exercises in participation. A few months later, they declined to attend a third proposed consultation in August 2024, fearing that their presence would be interpreted as consent for the project.²⁶

Indigenous Peoples in East Kalimantan

Dayak indigenous peoples have lived in the interior of the island of Borneo (both in Malaysian Borneo and Indonesian Borneo – commonly referred to as Kalimantan) since time immemorial. There is no single Dayak entity and hardly any people claim Dayak as its original name. Instead, there are hundreds of Dayak ethnic groups across the island.²⁷ Dayak, a word of uncertain origin, emerged as a catch-all term for the indigenous peoples of Borneo and is now widely accepted.²⁸

In East Kalimantan, the third largest province in Indonesia, there are broadly four main Dayak ethnic groups – the Apo Kayan, Punan, Barito (or Ot Danum) and Basap – which include various sub-groups,²⁹ each with its own, specific ethnonym(s), distinctive language (or dialect), culture, and traditions. The World Bank itself admits that most of the areas where its EK-JERP will be implemented “already have customary designations” and “are mostly Dayak and Malay communities”;³⁰ however, very few (<0.02%) have been legally recognised.

To date, across the province only four indigenous peoples (*Masyarakat Hukum Adat/ MHA*) have obtained titles to their customary lands, over a meagre 11,878 hectares of the “around 1 million [hectares]” of land with “customary designations” even though regional regulations have existed since 2015.³¹ One of the principal hurdles to recognition is the onerous, burdensome, and costly procedures which are put on indigenous peoples to achieve recognition.



A Dayak Bahau man in traditional dress during the annual rice harvest customary celebration, *Hudog*.



Dayak Bahau interviewees described the EK-JERP consultations as “incoherent, unclear, and confusing”



Ibu Doq and Ibu Yeq, two Dayak Bahau indigenous women, during a recent consultation. Indonesia recognises and respects indigenous peoples' customary rights 'as long as they still exist'. This requires indigenous peoples to engage in a cumbersome, onerous recognition procedures. The Dayak Bahau first applied for recognition in 2018 and are still awaiting the evaluation of their proposal.

World Bank Grievance Redress Service complaint

The process by which consultations with indigenous peoples in East Kalimantan were conducted by program representatives became the subject of a complaint to the World Bank Grievance Redress Service (GRS), submitted in March 2024. Dayak Bahau participants described EK-JERP consultations as “incoherent, unclear, and confusing”, asserting that their participation was “perfunctory”³²; failed to meet the necessary standards to “ensure that affected communities have complete understanding of the project impacts”; and did not allow for their meaningful participation in “decision making that affect them”³³. The World Bank, in response, noted that as of April 2024, “consultations [were] held in approximately 150 out of 441 villages listed as beneficiaries under the EK-JERP’s [Benefit Sharing Plan]”³⁴.

These “consultations as part of the [FPIC] mechanism of the [EK-JERP]”, however, were carried out “within one month” across five districts and “were done by delivering information on [EK-JERP] ... followed by a question and answer session with the village community and ending with the signing of a report of socialization”³⁵. According to program documents, indigenous peoples’ “agreement to participate” appears to be interpreted as an understanding that indigenous peoples agreed to “the program implementation, including safeguards, [Feedback and Grievance Mechanism], benefit sharing mechanisms, and reporting mechanisms”³⁶.

Subsequent studies of REDD+ safeguards under the EK-JERP noted that the “absence of regulatory frameworks on FPIC [has led] to widely different interpretations of how to carry it out”³⁷ to the extent that the EK-JERP monitoring report found “some vulnerable groups, such as ... [indigenous peoples] ... were not optimally engaged”, which it later redefined as “not actively participating”³⁸.

is a determination that is dependent on the discretion of the local government and legislature.⁴⁴ EK-JERP acknowledges that indigenous peoples “who are not legally recognized or currently in the process of obtaining legal recognition may have limited access to participate in and benefit from the program.”⁴⁵

Non-indigenous communities and persons, however, are not required to be formally recognized or accredited “to be eligible in receiving the benefit from the ER Program”.⁴⁶ The requirement for indigenous peoples “to have their adat [customary] claims recognized by the district” in order to be eligible “presents barriers for these communities from accessing equal benefits compared to other communities who have been formally recognized.”⁴⁷

The BSP acknowledges that one of the principal risks to implementation is the “political processes for communities to gain such recognition”⁴⁸. Even though regulations exist for recognition of indigenous peoples in East Kalimantan⁴⁹, and these regulations are cited “as [the] community basis to be an [EK-JERP] beneficiary”⁵⁰, their lack of implementation act as an **exclusionary measure with discriminatory effect** pertaining to indigenous peoples’ ability to participate in the program. This lack of implementation discriminates against indigenous peoples whose “existence” has not been recognised, representing a clear violation of REDD+ safeguards⁵¹ which require “no discrimination against any group whatsoever ... in the implementation of REDD+”⁵².

International human rights law unambiguously holds “that respect for and protection of the private property of indigenous peoples on their territories ... is mandated by the fundamental principle of non-discrimination....”⁵³. The failure to recognize and protect indigenous peoples’ property rights “would create an inequality that is utterly antithetical to the principles and to the purposes” of human rights law⁵⁴. Indonesian law as currently structured systematically discriminates against indigenous peoples.

It is well-known that Indonesia has done nothing to date to operationalize the 2012 judgement of the Constitutional Court that affirms that indigenous lands are not state forests. The government has not, for example, amended or repealed the plethora of laws that contradict its main holding, nor adopted a framework law on the rights of indigenous peoples (a bill has been languishing in the legislature for over a decade



At the time of writing, the District Adat Law Community Committee has yet to provide a public evaluation of Long Isun’s application to be recognised as an indigenous peoples despite repeated petitions to policy makers including the District Head of Mahakam Ulu, Mr. Bonifasius Belawan Geh (centre)

now).⁵⁵ This is the case despite consistent and multiple recommendations to do so by international human rights treaty bodies.

Advocates for the program cite the development of “provincial regulations on how to identify indigenous communities” and the recognition of four indigenous peoples across the Province as evidence of progress⁵⁶. This, however, fails to acknowledge that many of the district governments within East Kalimantan Province have not followed through on the process to actually recognise the indigenous peoples in their jurisdictions.⁵⁷ The inadequate legal framework to protect indigenous peoples’ rights is exacerbated by the failure to properly enforce the few laws in place that do recognize indigenous peoples’ rights.⁵⁸

When concerns that the EK-JERP risks violating the fundamental principle of **non-discrimination** were brought to the attention of the World Bank in 2024, the GRS did note that “the BSP ... has brought up some uncertainties, including regarding community eligibility”⁵⁹. However, to date, the Bank has not adequately addressed the fact that current eligibility requirements discriminate against indigenous peoples.



Dayak Bahau ancestral lands have been allocated to logging and palm oil companies without their consent. Recognizing indigenous peoples' rights is essential for them to halt the destruction of the forests on which they depend for these resources.



A meeting concerning Long Isun's indigenous peoples recognition proposal is hijacked by EK-JERP staff who carry out a "socialization program" without the prior agreement of the community.

The Dayak Bahau of Long Isun: Delayed recognition

In March 2024, the Dayak Bahau indigenous peoples of Long Isun, Mahakam Ulu district (East Kalimantan), brought compelling evidence of the discriminatory and debilitating obstacles to recognising and securing their customary rights to the World Bank Grievance Redress Services (GRS). The Dayak Bahau argued that the uncertainty over their legal rights exacerbates the risk of future conflict and the dispossession of their ancestral lands.

Despite the EK-JERP acknowledging the "important role [of District Governments] in the recognition of *adat* territories"⁶⁰, and identifying Mahakam Ulu as a 'key' district "to develop *hutan adat* (customary forests)"⁶¹, the experience of the Dayak Bahau underscores the persistent, entrenched and systemic barriers that indigenous peoples face when seeking to secure their land rights.

Affirmations in the BSP that the EK-JERP will "prepare, implement, and enforce"⁶² customary rights to lands have not borne out in Mahakam Ulu where the Dayak Bahau have attempted to have their existence legally recognised since 2018. The district government has persistently stalled their legal recognition/status as indigenous peoples, rebutting petitions to various district and provincial government bodies.⁶³

The complaint alleged that the program's "expected outcome" that "[indigenous peoples] and their territories are recognised"⁶⁴ has not been realised in Long Isun. In response to the evidence presented by the Dayak Bahau of the obstacles they have faced to recognition, the GRS noted "the EK-JERP includes technical support to prepare necessary steps and documentation toward recognition" but that the World Bank's

role is "limited to facilitating the process towards [indigenous peoples'] recognition but cannot ensure the recognition itself, which depends on government decisions". The GRS cited the establishment of indigenous peoples "committees" and support for "participatory mapping" as evidence the World Bank was meeting its requirements under the EK-JERP⁶⁵. This response, however, fails to acknowledge that the regulations that can be used to recognise indigenous peoples' rights are being undermined by Provincial spatial plans and other regulations that allow these areas to be allocated to other interests.

In a similar vein, the Dayak Bahau asserted that the Bank has a responsibility not only to ensure that the EK-JERP does not cause, contribute to, or compound rights violations, but to act as a catalyst for law and policy reform and accelerate land titling and the realization of self-governance rights.⁶⁶ This is salient given the World Bank has been strongly urged to pay special attention to ensuring that indigenous peoples' land rights, including their right to the resources on and within their lands, are fully recognized and protected.⁶⁷ Since the complaint's submission, there has been a tacit acknowledgement that the EK-JERP has failed to meet the Bank's safeguards requirements. In May 2024, the 'Overall Risk Rating' of the project increased from "moderate" to "substantial", and risk categories "environment and social" and "stakeholders" increased from "substantial" to "high" risk.⁶⁸



During a scheduled meeting regarding Long Isun's recognition proposal, a banner was displayed reading "Socialization Program." Long Isun would not have consented to participate had they known the meeting would be framed as a Carbon Fund Community Socialization event.

Risk of Reprisal

The Indonesian State's reaction to the complaint has been extremely concerning, leading to further rights violations, exposing the failings of EK-JERP consultation practices, and raising doubts about REDD+'s claim that it "at a minimum, does not harm forest-dependent communities or the environment"⁶⁹.

Within days of the complaint submission, the complainants received veiled threats from a government representative, tasked with the acceleration of indigenous peoples' recognition with the EK-JERP: "if the government does not receive money from the World Bank, it cannot accelerate the [indigenous peoples' recognition] process in other districts. If the complaint were to be pursued and followed through, the funding, due to be received, to the whole province would be at risk of being withdrawn and [the complainants] would be at risk of being antagonised by all 10 districts for impeding the World Bank funding process and preventing the [indigenous peoples'] recognition process in these districts"⁷⁰.

Despite the GRS informing the complainants of the Bank's zero-tolerance policy against reprisal and intimidation⁷¹, during July and August 2024, various attempts were made by government bodies to coerce the Dayak Bahau of Long Isun to consent to the EK-JERP.

First, district authorities threatened to withhold village allocations for those who did not attend EK-JERP socialization consultations. Despite clear intimidation efforts, the Dayak Bahau refused to attend for fear their participation was misrepresented as consent. After being invited to meetings ostensibly related to their ongoing MHA recognition submission, Long Isun representatives were unexpectedly compelled to

participate in an FPIC socialization session. The invitation provided no clear indication of this agenda shift. The meeting concluded with village representatives coerced into signing consent documents for the EK-JERP.

The GRS described these actions as "untransparent scheduling," which breaches procedural fairness; however, the State's attempts to undermine customary decision-making and obstruct meaningful participation of indigenous peoples in the EK-JERP indicate a concerted effort to undermine good faith consultations. This contrasts with East Kalimantan government's public statements asserting participating "make an agreement ... without coercion from any party", as this defines which villages are included as program beneficiaries⁷².

In response, the Dayak Bahau, following internal discussions, felt compelled to issue a formal statement that they do not consent and choose to opt-out of the program. Despite the stated goals of the EK-JERP, the Dayak Bahau's experience confirms indigenous peoples' anxieties⁷³ that the Emission Reduction Program has entrenched the power and hegemony of forest authorities and impeded the recognition of customary rights.

These fears were confirmed when program staff⁷⁴ erected a sign on Long Isun's lands in September 2024, without their consent, which stated 'Forest Benefit Area' (*Kawasan Hutan Blok Pemanfaatan*). This bold attempt to categorise Long Isun's lands and impose the idea that this is an agreed benefit area, without prior consultation and meaningful participation of the broader Long Isun community, undermines the expression of Long Isun's customary rights and creates new barriers to their ongoing recognition process.



A 'Forest Benefit Area' sign was erected on Long Isun's lands without the prior consultation of the community.



The ancestral lands of the Dayak Bahau in Mahakam Ulu district

Carbon rights

Long Isun's complaint to the GRS poses larger questions surrounding who owns emissions reductions (ERs) or holds carbon rights and who has the right to transfer these assets.⁷⁵ As the FCPF itself has noted: "there is an unexpected convergence of interests between landowners, especially indigenous peoples, and carbon buyers, because both have a specific interest in *security of title*, to land and carbon respectively. If the landowner does not have security, it is impossible to establish security of the carbon."⁷⁶ Currently, however, in Indonesia, carbon rights are transferred from suppliers to buyers, with little reference to the rights of indigenous peoples,⁷⁷ and recent legislation, which regulates carbon trading and carbon pricing in the context of international and domestic markets, appear to embed the idea that "carbon rights" refer to the control of carbon by the state⁷⁸.

The FCPF's Carbon Fund requires the "Program Entity" - the EK-JERP - to demonstrate its ability to transfer the "full legal and beneficial title and exclusive right to [Emission Reductions] contracted for under the Emission Reductions Payment Agreement (ERPA)"⁷⁹, critically "while respecting the land and resource tenure rights of the potential rights-holders, including Indigenous Peoples (i.e. those holding legal and customary rights), in the accounting area"⁸⁰. This said, program documents appear to entrench the notion that the State has complete authority over the forest carbon on indigenous peoples' lands. Specifically, the signed Memorandum of Understanding (MoU) signed between the national and East Kalimantan government states "It is clear in the MoU that the Central Government manages and regulates the rights of carbon".⁸¹

While the State may argue that this aligns with the constitutional provision granting it sovereignty over natural resources to be controlled for the benefit of the people, the 2013 Constitutional Court ruling determined that customary forests of indigenous peoples should not be classified as part of 'State Forest Areas' (*Kawasan Hutan Negara*). This ruling establishes the legal basis for the reallocation of forest lands back to indigenous peoples, challenging the notion of state control over these resources, including the right to carbon.



A long boat moored in Long Isun village

Recommendations

1. Do not disburse the remaining tranche of the Carbon Fund of the FCPF until the complaint is resolved.
2. Present the complainants with a clear timeline of when the World Bank's plans to carry out the Benefit Sharing Plan verification and Safeguard compliance monitoring for further disbursement.
3. Ensure the integrity and effectiveness of the World Bank's accountability process and uphold its strict policy against any form of retaliation against affected peoples who raise concerns about World Bank projects.
4. Elevate Long Isun's complaint to the World Bank Inspection Panel. In accordance with Inspection Panel guidelines, carry out a risk of retaliation assessment, considering the information provided in this briefing, and conduct a site visit in accordance with its' guidelines on preventative measures⁸⁷.
5. Designate country-level FCPF IP focal points/advisory groups for effective engagement with indigenous peoples (incl. at the regional level), establishing effective communication channels between these focal points and FCPF, to monitor the implementation of the results of the consultations and dialogues as well as provide updates and recommendations to FCPF.
6. Increase financial resources for the FCPF Indigenous Peoples Capacity Building Program.
7. Provide a mechanism for direct access to the Carbon Fund for indigenous peoples in future jurisdictions in Indonesia.
8. Provide legal and technical support to the provincial government and the Ministry of Forestry and Environment (KLHK) in East Kalimantan to recognise the existence and territorial rights of indigenous peoples as part of the EnABLE project and EK-JERP.

Endnotes

1. https://www.un-redd.org/sites/default/files/2021-10/UN-REDD%20ACADEMY_2018_2reduced.pdf
2. EDD+ and its implementation framework are firmly enshrined in Article 5 of the Paris Agreement, which urges parties to take action to conserve and enhance GHG sinks and reservoirs, including forests. Parties are encouraged to implement and support policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries (REDD+), including through results-based payments. The inclusion of REDD+ in the Paris Agreement is seen as providing the necessary political signal to mobilize much-needed action (and funding) around forests.
3. FCPF is a global partnership of government, business, civil society, and indigenous peoples that focuses on reducing deforestation and forest degradation emissions, conserving forest carbon stocks, implementing sustainable forest management, and increasing forest carbon stocks in national development.
4. <https://www.worldbank.org/en/programs/scale>
5. The term “buyers” in the context of the FCPF Carbon Fund refers to entities that purchase carbon credits generated through REDD+ projects, these may include: Governments to meet their emissions reduction targets under international agreements and ; Corporations to offset their own emissions and demonstrate their commitment to sustainability.
6. FCPF Charter, Operating Principles, 3.1(d)
7. World Bank, 2013, Indigenous Peoples. Operational Policy 4.10
8. <https://www.forestcarbonpartnership.org/system/files/documents/Report%20of%20the%20Indigenous%20Peoples%20Global%20Dialogue%20with%20the%20FCPF.pdf> p.51
9. Sistem Informasi Safeguards (SIS) REDD+ Indonesia, Criteria 3.2 “Penerapan Persetujuan Atas Dasar Informasi Awal Tanpa Paksaan (FPIC): Diterapkan pada tingkat tapak, kegiatan persiapan REDD+ harus mencakup proses untuk memperoleh Persetujuan Atas Dasar Informasi Awal Tanpa Paksaan (FPIC) dari masyarakat adat dan lokal. yang terkena dampak sebelum kegiatan REDD+ dimulai. [SVLK/PHPL: Prerequisite 1.5; FSC Principle 3 and 4].” <https://sisredd.menlhk.go.id/detail-safeguard/hak-hak-masyarakat-adat-dan-masyarakat-lokal>
10. See, for example, FCPF (2019) https://www.forestcarbonpartnership.org/system/files/documents/CF19%20a.%20Indonesia_ERPD_Overview_19th%20CF%20Meeting_V04_formated.pdf slide 10;
11. The FCPF consists of a Readiness fund and a Carbon Fund, The Readiness Fund is to support countries to develop and implement Readiness Plans (R-Plans) that will result in national REDD strategies and country systems for monitoring, measurement and verification of emission reductions from deforestation against a national reference baseline. Once a country is deemed ‘ready’ (i.e. with its REDD strategy, baseline and monitoring framework), it may submit ‘Emissions Reduction Programs (ERPs) to the Facility and if these are approved then its Carbon Fund will pay countries for their emission reduction programs through an Emission Reduction Program Agreements (ERPAs) – an agreement between the REDD Participants Country and the World Bank. “Indonesia’s R-Plan is intended to assist Indonesia in preparing for a future REDD regime”. <https://www.forestcarbonpartnership.org/system/files/documents/Indonesia%20R-PP%20Bank%20Assessment%20Note.pdf>
12. Draft Indonesian Readiness Plan, 16 October 2008. p. 18 (stating “Please refer to Table 1 (point 2(c) for explanation. Basically all groups listed in Table 1 will be involved in the consultations.”) However, Table 1 does not mention indigenous peoples.
13. AMAN (2009) https://www.forestcarbonpartnership.org/system/files/documents/AMAN_on_Indonesia_R-Plan_0.pdf “In particular we would like to draw attention to Principle 3.1(d) of the FCPF Charter, which requires that activities under the FCPF (this includes the elaboration of the R-PIN and R-PLAN) comply with the World Bank’s Operational Policies and Procedures, taking into account the need for effective participation of Forest-Dependent Indigenous Peoples and Forest Dwellers in decisions that may affect them, respecting their rights under national law and applicable international obligations”. The Charter requires that: “The operation of the Facility, including implementation of activities under Grant Agreements and Emission Reduction Programs, shall: ... Comply with the World Bank’s Operational Policies and
14. Procedures, taking into account the need for effective participation of forest dependent indigenous peoples and forest dwellers in decisions that may affect them, respecting their rights under national law and applicable international obligations.”
15. AMAN et.al, UN CERD submission (2009), para 14 <https://www.forestpeoples.org/sites/default/files/publication/2009/11/cerdindonesiaurgentactionjul09eng.pdf>
16. Forest Carbon Partnership Readiness-Plan Template, Working Draft 2, Government of Indonesia, May 2009, at p. 11. Available at: http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Indonesia_Rplan_May2009_0.pdf
17. Committee on the Elimination of Racial Discrimination expressed concern about a lack of respect for indigenous peoples’ property and other rights in forestry-related laws, specifically REDD+ regulations, adopted in 2009. See Letter of F-B. V. Dah, Chairperson, CERD, to Indonesian Permanent Mission to the United Nations, 28 September 2009. <http://www2.ohchr.org/english/bodies/cerd/early-warning.htm>
18. <https://www.forestcarbonpartnership.org/system/files/documents/Report%20of%20the%20Indigenous%20Peoples%20Global%20Dialogue%20with%20the%20FCPF.pdf> p.50 “In Indonesia ... some of the key concerns of indigenous peoples (for example, land tenure, recognition of indigenous peoples) were ignored in the consultations”.
19. The FCPF includes Readiness Mechanisms to improve the capacity of countries to implement and participate in REDD+ activities. In order for countries to be eligible to receive funding from the World Bank and donor countries, they need to submit Readiness Plan Idea Notes (R-PIN) to develop a Readiness Plan (R-Plan). The R-Plan further elaborates on the R-PIN and presents a more detailed and comprehensive strategy for realizing REDD+ at the national level. The R-Plan should consist of three parts: A national reference scenario of deforestation; a monitoring system for REDD+; and a national strategy for reducing deforestation and forest degradation. However, the World Bank also requires a participating country to properly address relevant issues in their R-Plans which include: Equitable benefit sharing; promotion of future large-scale positive incentives for REDD+; enhancement of livelihoods of local communities; carbon ownership; involvement of forest-dependent and indigenous communities; and conservation of biodiversity. See <https://www.mdpri.com/2071-1050/8/7/620>
20. CIFOR, REDD+ safeguards in Indonesia Lessons from East Kalimantan, September 2024 https://www.cifor-icraf.org/publications/pdf_files/infobrief/9231-Infobrief.pdf
21. <https://www.forestcarbonpartnership.org/system/files/documents/Indonesian%20ER-PIN%2020160429%20Final.pdf>
22. World Bank (2020) <https://documents1.worldbank.org/curated/en/8410616048632247/pdf/Disclosable-Version-of-the-ISR-ID-East-Kalimantan-Project-for-ER-Results-P166244-Sequence-No-01.pdf>
23. <https://www.worldbank.org/en/news/press-release/2022/11/08/indonesia-receives-first-payment-for-reducing-emissions-in-east-kalimantan>; “East Kalimantan is committed to reducing CO2 equivalent emissions by 22 metric tons by 2024, for results-based payments totalling USD110 million – of which USD20.9 million has already been received by the Government of Indonesia” see: <https://forestsnews.cifor.org/81338/are-community-rights-being-upheld-in-redd-safeguards-processes-and-landscapes-in-east-kalimantan?fnl=en>
24. See, for example, FCPF (2009) https://www.forestcarbonpartnership.org/system/files/documents/AMAN_on_Indonesia_R-Plan_0.pdf
25. REDD+ Readiness Self-Assessmnet for Indonesia submitted to FCPF, Republic of Indonesia (2017) <https://www.forestcarbonpartnership.org/system/files/documents/FCPF%20Indonesia%20R%20Package%20-%20Final%20revised%20July%202028%20version.pdf> p.26
26. Testimonies recorded from Dayak Bahau communities in the Upper Mahakam, Mahakam Ulu District, East Kalimantan Province, 2023-2024
27. <http://www.diva-portal.org/smash/get/diva2:844164/FULLTEXT01.pdf>
28. Victor King, The Peoples of Borneo, Cambridge: Blackwell Publishers, 1993
29. E.g. Barito: Paser (Pematang, Kendilo, Adang, Telake, Bura Mato) Paser Balik,
30. Ibid (SESA) p.8; p.100
31. Peraturan Daerah No.1/2015, Provincial Government of East Kalimantan, Republic of Indonesia, details the procedure by which indigenous peoples can be recognised in East Kalimantan.
32. See World Bank complaint (19 March 2024)
33. Emission Reductions Program Document (“ERDP”), Carbon Fund, Forest Carbon Partnership Facility, 2019 p.257
34. World Bank Indonesia Country Staff communication (April 2024)
35. <https://documents1.worldbank.org/curated/en/606071637039648180/pdf/Indonesia-East-Kalimantan-Project-for-Emissions-Reductions-Results-Benefit-Sharing-Plan.pdf> p.39-40
36. <https://documents1.worldbank.org/curated/en/606071637039648180/pdf/Indonesia-East-Kalimantan-Project-for-Emissions-Reductions-Results-Benefit-Sharing-Plan.pdf> p.39-40. The BSP lays out the EK-JERP’s interpretation of the FPIC process, which is defined in three stages - Stage 1: Socialization of the EK-JERP and FCPF Program; Stage 2: Confirmation of village participation and their consent to participate in the program and; Stage 3: Reporting of FPIC activities. see IPPF, <https://documents1.worldbank.org/curated/en/611641576148952432/pdf/Indigenous-Peoples-Planning-Framework.pdf> p.59
37. CIFOR (2024) https://www.cifor-icraf.org/publications/pdf_files/infobrief/9231-Infobrief.pdf
38. ER Monitoring Report (2022) https://www.forestcarbonpartnership.org/system/files/documents/indonesia_ermr_1 - ekjerp_11_october_2022_cl.pdf p.89 and p.100
39. <https://documents1.worldbank.org/curated/en/934171621490185436/pdf/Indonesia-East-Kalimantan-Project-for-Emission-Reductions-Results.pdf> para 35
40. World Bank, <https://documents1.worldbank.org/curated/en/982031625165001929/pdf/REDD-Benefits-Sharing-Plan.pdf>
41. <https://documents1.worldbank.org/curated/ar/448081589686617401/pdf/Appraisal-Project-Information-Document-Integrated-Safeguards-Data-Sheet-ID-East-Kalimantan-Project-for-ER-Results-P166244.pdf> p.12
42. Feliciano-Robles, F. 2024. Comparative study of carbon rights in the context of jurisdictional REDD+ – Case studies from Africa, Asia and the Pacific, and Latin America and the Caribbean. Rome, FAO. <https://doi.org/10.4060/cc9274en>
43. ERDP p.255
44. “The GoI acknowledges the presence of Adat Communities and their rights, provided that groups meet ... eligibility requirements ... Their existence must subsequently be legally recognized (i.e. through district regulations/decrees) before their land claims and rights can be processed for further legal recognition. This district recognition process sets the initial condition for subsequent recognition processes, including land rights.” See FCPF (2019) <https://www.forestcarbonpartnership.org/system/files/documents/Revised%20ERPD.pdf> “In May 2013 the Constitutional Court ruled that Adat forests are not part of the State forest (Kawasan Hutan). This Court decision modified the sub-classification of what was known as Forest Areas as: Titled Forests (Hutan Hak), and State Forests (including concessions, village forest programs as Hutan Desa, and Hutan Hak, those areas held by Adat communities). This decision further implied that Adat forests, wherever legally recognized, would be assumed to be the collectively owned forests of Indigenous Peoples and Adat communities i.e. part of the Titled Forests category and; Indigenous Peoples Planning Framework (“IPPF”) Document, Ministry of Environment and Forestry, East Kalimantan Province, Republic of Indonesia, 2019, p.10
45. ERDP p.255
46. ERDP p.255
47. World Bank, 2020 <https://documents1.worldbank.org/curated/ar/448081589686617401/pdf/Appraisal-Project-Information-Document-Integrated-Safeguards-Data-Sheet-ID-East-Kalimantan-Project-for-ER-Results-P166244.pdf>
48. Project Appraisal Document on an Emission Reduction Crediting Project from the Carbon Fund of the FCPF to the Republic of Indonesia, 2020 <https://documents1.worldbank.org/curated/en/934171621490185436/text/Indonesia-East-Kalimantan-Project-for-Emission-Reductions-Results.txt>
49. Provincial Regulation No. 1/2015 on the Guidelines for the Identification and Recognition of Masyarakat Hukum Adat in East Kalimantan
50. BSP, 2021 <https://documents1.worldbank.org/curated/en/606071637039648180/pdf/Indonesia-East-Kalimantan-Project-for-Emissions-Reductions-Results-Benefit-Sharing-Plan.pdf> p. 12 ; Strategic Environmental and Social Assessment (“SESA”), Ministry of Environment and Forestry, East Kalimantan Province, Republic of Indonesia, p.84 states the slow process of recognition may potentially exclude some communities from the [ERP] benefits”.
51. Safeguards Information System for Reducing Emissions from Deforestation and Forest Degradation (SIS-REDD+), Safeguard 3.3.1
52. 3.3.1a “Laporan/ dokumen yang menunjukkan tidak ada diskriminasi terhadap kelompok manapun atas akses terhadap sumberdaya alam, kapital dan pengetahuan dalam pelaksanaan REDD+” See <https://sisredd.menlhk.go.id/>
53. Case 12.053, Merits Report No. 40/04, Maya Indigenous Communities of the Toledo District, (Belize), Inter-Am.Com. H.R., 12 October 2004, para. 117.
54. Concurring Opinion of Judge Sergio Garcia Ramirez, Judgment on the Merits and Reparations in the Mayagna (Sumo) Awas Tingni Community Case, Inter-Am. Ct. H.R., para. 13.
55. See e.g., “When we lost the forest, we lost everything” Oil Palm Plantations and Rights Violations in Indonesia, Human Rights Watch Report (September 2019), p. 31-2 (stating that “The court decision prevents government authorities from issuing permits for land-based investments on adat forests without taking into account the rights of Indigenous people who live in and around it. However, six years after the decision was rendered, United Nations and other experts have found little implementation of the verdict”), https://www.hrw.org/sites/default/files/report_pdf/indonesia0919_web.pdf
56. See, for example, CIFOR (2023) <https://forestsnews.cifor.org/81338/are-community-rights-being-upheld-in-redd-safeguards-processes-and-landscapes-in-east-kalimantan?fnl=en>; LTS International (2018) <https://www.cimi.no/publications/file/6663-third-independent-review-of-the-indonesia-norway.pdf>
57. See Indra Nugraha, “Menanti Keseriusan Pemerintah Lindungi Masyarakat Adat”, Mongabay, 9 August 2022, <https://www.mongabay.co.id/2022/08/09/menanti-keseriusan-pemerintah-lindungi-masyarakat-adat/>
58. For example, although there are laws that can allow for recognition of indigenous lands, in practice, less than 15% of the known and already mapped indigenous territories have been recognized by the government. See The Indigenous Territory Registration Unit (Badan Registrasi Wilayah Adat or “BRWA”), a mapping agency created by the national indigenous peoples’ organization, Aliansi Masyarakat Adat Nusantara, and other NGOs in engaged in an ongoing effort to register and map indigenous territories throughout Indonesia. BRWA, “Pemerintah Masih Lemah Dalam Melindungi Hak Masyarakat Adat”, 17 March 2023, available at <https://www.brwa.or.id/news/read/561> (displaying an infographic showing that out of 1,243 indigenous non-forest territories mapped by the BRWA, 198 have received formal recognition by the government, and out of 1,095 forest territories, only 108 have received formal recognition by the government).
59. Minutes-Of-Meeting with Community and Civil Society Representatives on the East Kalimantan Jurisdictional Emission Reduction Program (EK-JERP), May 13, 2024
60. Emission Reductions Program Document (“ERDP”), Carbon Fund, Forest Carbon Partnership Facility, 2019 p.95
61. Strategic Environmental and Social Assessment (“SESA”), Ministry of Environment and Forestry, East Kalimantan Province, Republic of Indonesia, p.202
62. BSP, p.10

63. The Dayak Bahau have repeatedly attempted to engage with: (1) The District Head of Mahakam Ulu, Mr. Bonifasius Belawan Geh, (2) the Mahakam Ulu Head of the District House of Representatives, Novita Bulan (3) the Mahakam Ulu District Secretary, (previously) Johanes Avung and (currently) Stefanus Medang (4) the East Kalimantan Provincial Secretary, Sri Wahyuni, and (5) the Head of the East Kalimantan Provincial House of Representatives, Hasanuddin Mas'ud, amongst others.

64. Benefit Sharing Plan ("BSP"), Ministry of Environment and Forestry and Provincial Government of East Kalimantan, 2021, p.10

65. World Bank Indonesia Country Staff communication (April 2024) "In 2023, EK-ERP support resulted in the establishment of MHA committees in five districts and facilitated 29 Adat/Indigenous Communities across seven districts. This led to the preparation of 23 MHA submission documents, including those for the Ummaq Suling Adat Community of Long Isun Village. The EK_ERP has also supported participatory mapping in 24 villages."

66. See World Bank complaint 19/03/24

67. See E/C.19/2013/15, para. 14.

68. World Bank (2024) <https://documents1.worldbank.org/curated/en/099053124022083262/pdf/P16624410d6a610bc18ce41e9f5aeb6dc81.pdf>

69. Lofts K, Sarmiento Barletti JP and Larson AM. 2021. Lessons towards rights-responsive REDD+ safeguards from a literature review. Working Paper 280. Bogor, Indonesia: CIFOR.

70. Evidence provided in text messages of co-complainant

71. World Bank (2020) <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/world-bank-commitments-against-reprisals>

72. <https://dpmpd.kalimprov.go.id/artikel/dpmpd-gelar-penyegaran-tim-padiatapa-tahun-2023>

73. T. Griffiths (2009), 'Seeing REDD?' Forests, climate change mitigation and the rights of indigenous peoples and local communities, Forest Peoples Programme <https://unfccl.int/resource/docs/2012/smsn/ngo/242.pdf> p.26

74. Representatives from Batu Rook Protected Forest Management Unit (KPHL Unit XXII). FCPF documents note: "The introduction of Forest Management Units (KPHs) is intended to improve and further decentralize forest management ... the KPH program divides state forest land into discrete area units to be managed by dedicated local institutions that are staffed by forestry professionals. There are two types of FMUs: Production Forestry FMUs (KPHP) and Protection Forest FMUs (KPHL). A countrywide KPH system is firmly anchored in the forestry legal framework and in forestry development plans. the KPHs will be responsible for developing management plans, for overseeing license holders, and for monitoring land use activities, particularly in open access areas not under license." See https://www.forestcarbonpartnership.org/system/files/documents/ERPD_Indonesia%20FINAL%20VERSION_MAY_2019.pdf p.96

75. <https://www.forestpeoples.org/sites/fpp/files/publication/2011/10/central-kalimantan-briefing-2.pdf> p.3; "Emissions reductions (ERs) or carbon rights (CRs) are intangible assets created by legislative and contractual arrangements that arise from the storage of carbon in forests. They can be linked to tenure ownership rights or some kind of control of the land and trees, or it can be considered as a separate interest. While carbon rights might refer to the bundle of rights associated with the carbon stored or sequestered by forests which may have tenure implications (the landowner or rights holder owns the carbon), emissions reductions titles might be linked to the credits derived from REDD+ activities. In the context of jurisdictional REDD+ programmes, ERs and Removals (ERRs) are also the result of REDD+ policies and measures implementation, in line with UNFCCC Conference of the Parties. The term "Title to ERs" has been defined in the Methodological Framework (FCPF), referring to the "full legal and beneficial title and exclusive right to ERs contracted for under the Emission Reductions Payment Agreement (ERPA)." See <https://www.un-redd.org/sites/default/files/2022-12/cc2694en.pdf> p.6

76. <https://www.forestcarbonpartnership.org/system/files/documents/Report%20of%20the%20Indigenous%20Peoples%20Global%20Dialogue%20with%20the%20FCPF.pdf> p.54

77. https://www.cifor.org/publications/pdf_files/Infobrief/8867-Infobrief.pdf

78. See, for example, Regulation of the President of the Republic of Indonesia number 98 of 2021 on the implementation of carbon pricing to achieve the nationally determined contribution target and control over greenhouse gas emissions in the national development and ; Regulation of the Minister of Environment and Forestry of the Republic of Indonesia no. 21 of 2022 concerning procedure for implementation of carbon pricing.

79. FCPF Guidance Note on the Ability of Program Entity to Transfer Title to Emission Reductions (2018): https://www.forestcarbonpartnership.org/sites/fcp/files/2019/July/FCPF%20Guidance%20Note%20on%20the%20Ability%20of%20Program%20Entity%20to%20Transfer%20Title%20to%20Emission%20Reductions_2018.pdf

80. FCPF Carbon Fund, 2020, p. 28

81. ER Monitoring Report (2022) https://www.forestcarbonpartnership.org/system/files/documents/indonesia_ermr_1_-ekjerp_11_october_2022_cl.pdf

82. https://www.forestcarbonpartnership.org/system/files/documents/Indonesia%20ER-PIN%20September_12_resubmitted_edit_final.pdf

83. <https://projects.worldbank.org/en/projects-operations/project-detail/P180599>

84. World Bank <https://www.worldbank.org/en/topic/climatechange/brief/enabling-enhancing-access-to-benefits-while-lowering-emission>

85. World Bank, <https://documents1.worldbank.org/curated/en/982031625165001929/pdf/REDD-Benefits-Sharing-Plan.pdf>

86. Kemitraan, 2023 <https://kemitraan.or.id/en/program/enhancing-access-to-benefits-while-lowering-emissions-enable/>

87. https://www.inspectionpanel.org/sites/ip-ms8.extcc.com/files/documents/IPN%20Retaliation%20Guidelines_2018.pdf – "The Panel has stated that "any form of retaliation threatens the integrity of the World Bank's accountability process," and that "a fundamental premise of the Panel's function is that affected people can access it safely." <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/world-bank-commitments-against-reprisals>

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