

## COMPARISON BETWEEN COUNTRY SAFEGUARD SYSTEMS (CSS) OF INDONESIA AND ADB SAFEGUARD POLICY STATEMENT (SPS) – Involuntary Resettlement Safeguards

This is a translation and update of the assessment of the ADB's March 2017 Assessment of Indonesia's Country System Safeguards with a focus on Involuntary Resettlement Safeguards, from "Kajian Perbandingan Perlindungan Lingkungan Hidup dan Sosial Antara Sistem Perlindungan Negara Indonesia Dengan Bank Pembangunan Multilateral (Studi atas hasil evaluasi sistem perlindungan negara Indonesia oleh Konsultan Bank Pembangunan Asia" by Lembaga Studi dan Advokasi Masyarakat (ELSAM), Indonesia Legal Resource Center (ILRC), The Ecological Justice, TuK Indonesia, Wahana Lingkungan Hidup Indonesia (WALHI), WALHI Sulawesi Selatan, WALHI Jawa Barat, Yayasan Pusaka, DebtWATCH, The Institute for National and Democratic Studies (INDIES), Ulu Foundation, 2017, 93 pages.

### 4.2 Involuntary Resettlement

#### (1) ADB Policies for Involuntary Resettlement

*Involuntary Resettlement* in this document is translated as "*Pemukiman Kembali Secara Tidak Sukarela*". This translation is a euphemism for forced displacement or in everyday language known as eviction. However, in the document that is related to this forced displacement issue, the translation used is "*orang-orang yang terpindahkan*" [literally, people who accidentally got displaced], (see matrix) the use of prefix "*ter*" refers to the verb that means "accidentally", like in the following sentence, "*Buku Ani terbawa oleh Amir*", it means that Amir has accidentally brought Ani's book. In the context of this resettlement, this is not an accidental act committed by the state, it is a deliberate attempt and must be planned. The term "displaced" is more precise because as a passive verb, citizen/population becomes the object of displacement or resettlement by the state.

The ADB in its safeguard admitted that involuntary resettlement has serious impact on the rights of the displaced persons. Experiences shows that involuntary resettlement will create serious economic, social and environmental risks if it's not controlled: production system would collapse; people would face impoverishment because they lost their productive assets or income sources; involuntarily displaced to an environment where they are less likely able to use their productive skills, and have to deal with fierce competition for obtaining resources; social institution and social network may be weakened; kinship group spreads out; cultural identity, traditional authority and potential for mutual assistance would also be lessened or diminished, and the vulnerable group, women and people without land titles would suffer the most.

Therefore, the ADB makes a concerted effort to avoid involuntary resettlement; minimizes it by looking for alternative projects and plans; requires an improvement or at least rehabilitation of the livelihood for resettled persons in a real value to the level prior the project; specific focus to the vulnerable groups, women and people without

land titles, set requirements that resettlement process should improve the living standard of the affected poor people, women and other vulnerable groups. These policies are set forth in the protection measures that provide broad outlines concerning requirements that shall be fulfilled by a debtor/client in implementing the safeguard for involuntary resettlement in the projects supported by the ADB.

These requirements discuss the objective, implementation scope, underline requirements to conduct social impact assessment and resettlement planning process, develop social impact assessment report and resettlement planning documents, review land acquisition negotiations, disclose information and involve in consultation, establish a mechanism for complaint handling, and monitoring – with specific focus on vulnerable groups and women – as well as reporting on resettlement.

**Scope and triggers:** The protection measures for involuntary resettlement includes physical displacement (relocation, loss of lands or residences) and economic displacement (loss of lands, assets, access to assets, and source of income or livelihood) due to (i) involuntary land acquisition, or (ii) involuntary limitation to land use or access to protected parks and protected areas set by the laws. These measures cover *all* of those displacements without differentiating whether these involuntary lost and limitations are partial, permanent or temporary (or the displaced persons have or don't have any proof on land titles). Furthermore, these protection measures are set forth in the 12 Policies Principles as follows:

#### **Policy Principles:**

1. Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.<sup>1</sup> [N.B. Mistranslation?]
2. Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns.
2. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.
3. Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for

<sup>1</sup>Seems there is another mistranslation. English version: “including gender analysis, especially related to the risks and impact of eviction (*penggusuran*).” This safeguard is titled as “Involuntary Resettlement Safeguards”. The impacts and risks referred to are the risks and impacts of involuntary resettlement, i.e. *penggusuran*.

<p>assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.</p> <ol style="list-style-type: none"> <li>4. Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.</li> <li>5. Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.</li> <li>6. Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.</li> <li>7. Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.</li> <li>8. Prepare a<sup>2</sup> resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule..</li> <li>9. Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.</li> <li>10. Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.</li> <li>11. Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.</li> <li>12. Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.</li> </ol>	
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The findings of Equivalence Assessment carried out by ADB consultants for this forced displacement stated that:

*“For resettlement, the equivalence level is quite strong. Indonesian CSS is fully equivalent with 31 out of 36 key elements (86%) and in 8 out of 12 ADB policy*

<sup>2</sup> Translation? English version: “Prepare a resettlement plan”. It means “*Menyusun sebuah rencana...* (developing a plan)”

*principles. The remaining gaps can be bridged through administrative measures without legislative process.” Page 23, para 60, Consultation Draft March 2017*

However, according to detailed analysis, it is clear that the Indonesian CSS is not equivalent to the ADB SPS, both from a legal perspective or implementation perspectives. It is also based on the weaknesses in Land Procurement for Public Interests, which includes:

1. **Land expropriation by the State or Private Business Entity.** Presidential Decree No. 148 of 2015 on land acquisition for public interest, is the fourth amendment of Presidential Decree No. 71 of 2012 on Land Procurement Implementation for the Development in Public Interest. These provisions gradually allowed private business entities which require land to act on behalf of the state. Various amendments towards this Government Regulation (PP) are not in favor of legal certainty or respect to the land owners in reaching an agreement, but instead to facilitate the expropriation of land by the State, and it is also allowed the private parties that work on a joint project with the State to own similar right with that of the State through the process of transaction, trade, or other ways agreed between the entitled parties and the private business entities.
2. **“Grievance Mechanism” that is unacceptable.** For grievance towards the plan for determining the location of development which is handled by the governor will be conducted within three work days at the most (previously was 14 work days) after the grievance is accepted. Three-days are inadequate to assess public grievance against the location of development. Whereas the determination of location by the governor is carried out within seven work days at the most, (there was no time limit previously) since reaching the agreement with the community or since the refusal of grievance submitted by the objecting parties. It means that within maximum of ten days, determination for the location of development must be issued. This is also clearly stipulated in Article 41 paragraph (2) that *“If the period concerned has ended and location determination has not yet issued, then the location determination will be considered to have been approved.”* Although before the determination of location a “public consultation” would be held, it is nonetheless, showcasing an arbitrary form of the State against its citizen.
3. **Provision of Compensation.** In Indonesia, the provision of compensation can take form in: (a). money; (b). substituted land; (c). resettlement; (d). shareholding; or (e). other formats agreed by the two parties. Compares to ADB requirements, there are no priorities to replace land with land and in general, the people were not offered with lands. It is stipulated in the Presidential Decree (Perpres) that the provision of compensation shall be done within seven work days at the most (there was no time limit before) since the determination of compensation formats by the land procurement organizer. This *Perpres* also reiterates that land procurement for development undertaken by the private business entities will be directly conducted through transaction, trade, or other ways agreed between the entitled parties and the private business entity. For compensation in the form of money, it shall be done by the institution that requires land based on the validation from the implementing head of land procurement or the appointed officer. The validation shall take place in maximum of three work days (there was no time limit before) since the release of report on compensation format agreement. The appraisal is measured per parcel of

land, but usually is not based on its substitute value, and it shall include: (a). land; (b). space above and below the ground; (c) buildings; (d) plants; and (e) objects related to the land; and/or (f) other losses that can be appraised. However, in the practice, due to imbalance relationship between the State and its citizen, force the citizen to accept the compensation as such, including if one disagrees. For instance, if land conflict occurs, the company is allowed to “entrust” an amount of “compensation” at the District Court, although the format and amount of that “compensation” has not been approved yet by the community. Once the fund is entrusted to the Court, despite for instance, the amount or form of compensation is not approved by the community (for example, farmers seek for substitute land instead of a sum of money that is insufficient to buy an equal value of the original land), despite the absent of community decision to bring the case to the court which usually is not in the favor of the poor, and although there are no ruling yet from the court concerning the public claim, “the compensation” would still be considered “paid” and, although the community has not taking any compensation yet, the company has the right to take over the lands, evict the land owners and proceed their projects; despite the disagreement from the land owners concerning the amount or type of compensation and have not received any compensation as yet. After entrusting the compensation fund, the process of land expropriation has been legally conducted.

**(1) Comparison of the Result of Equivalency Assessment for Forced Displacement / Eviction between ADB and Reality**

4.2 Civil Society Analysis of the ADB Consultants' Equivalence and Acceptability Assessments for Involuntary Resettlement in Indonesia

A detailed analysis shows that clearly Indonesia's CSS for involuntary resettlement is NOT EQUIVALENT to ADB SPS requirements. This can be seen from the overview below:

No	Objectives, Scope and Triggers, and Policy Principles	Level of Equivalence		Comment / Explanation
		ADB	Reality	
	<b>Objectives</b>			
	Objectives: To <b>avoid involuntary resettlement [pemukiman kembali tidak dengan sukarela<sup>58</sup>] wherever possible</b> ; to <b>minimize involuntary resettlement</b> by exploring project and design alternatives; to <b>enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels</b> ; and to <b>improve the standards of living of the displaced poor</b> and other vulnerable groups.	"Broadly aligned"	Not Equivalent	<p>Indonesian laws (Undang-Undang – UU), provide no mitigation hierarchy which begins with the primary point, that is "avoid involuntary resettlement wherever possible".</p> <p>According to the ADB's CSS analysis:  ADB: "(iii) Policy Principle 7, Key Element 1. "Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets." The Indonesian legal framework does not provide for resettlement assistance for displaced persons."<sup>59</sup> [Indonesian version: "Kerangka Hukum Indonesia tidak memberikan bantuan untuk orang-orang yang terpindahkan yang tidak memiliki hak atas tanah."]</p> <p>[Editorial Note: This lack of equivalency with a core ADB safeguard represents an extraordinary threat to Indonesian citizens because the majority of Indonesian citizens, and the vast majority of the poor, do not possess land titles.]</p> <p>ADB: "28. With regard to the practice of "land clearing" (also referred to as forced eviction, this is the act of moving unauthorized/illegal occupants—including long-term occupants from a piece of land or area, such as agriculture land, farm land, forest land, or otherwise) who have occupied the land for a period of time. These persons without land rights are also called squatters.<sup>34</sup> The provisions of Law 2 of 2012 on land acquisition for development of public use do not apply to squatters, since the land is already owned by an entity that needs the land for a project. ... Article 4 of Law 51 of 1960 stipulates that illegal occupants must move any objects on the occupied land and leave the land on their own resources—meaning that they must bear all costs related to the movement of their belongings. Article 6 of Law 51 stipulates that illegal occupants could be charged with "criminal offense." As such, all "illegal occupants" are not entitled any assistance, transitional support, and other assistance."<sup>60</sup></p> <p>ADB: "The Indonesian legal framework contains no clear provision for including an income and livelihood strategy for displaced persons in the resettlement plan." <sup>61</sup></p>

<sup>58</sup>Kemungkinan lebih akurat bahwa "involuntary resettlement" diterjemahkan "penggusuran" dari pada "pemukiman kembali tidak dengan sukarela". Di "kajian" ini, para konsultan ADB rupanya merasa bebas merubah istilah2 yang dipakai secara resmi oleh di dokumen safeguards ADB resmi, yaitu "Pernyataan Kebijakan tentang Upaya Perlindungan" yaitu versi Bahasa Indonesia dari ADB Safeguards Policy Statement (SPS) yang resmi diterbitkan oleh ADB dan yang ditemukan di website ADB sejak 2009.

<sup>59</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28

<sup>60</sup>ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 28

				<p>“The Indonesian legal framework does not provide for comparable access to employment and production opportunities..”<sup>62</sup></p> <p>“The Indonesian legal framework does not require monitoring of land acquisition / resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved..”<sup>63</sup></p> <p>ADB: “Law 2 of 2012 and its implementing regulations do not stipulates on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved.”<sup>64</sup></p> <p>ADB: ‘There is weak delivery of social action/livelihood restoration programs for the entitled parties considered vulnerable and severely affected..’<sup>65</sup></p> <p>ADB: “There is a lack of relocation assistance to physically displaced persons.”<sup>66</sup></p> <p>ADB: “there is no monitoring and evaluation of land acquisition outcome and impacts of living standard of displaced persons.”<sup>67</sup></p> <p>ADB: The following are issues identified with the LARPs: “</p> <ul style="list-style-type: none"> <li>•Lack of differentiation of socioeconomic impacts among categories of affected people, in particular, with respect to vulnerable groups and gender;</li> <li>• Inconsistent criteria applied to land valuation;</li> <li>• Inadequate provision for source of funding for compensation; and</li> <li>• Lack of adequate details on assistance offered for livelihood restoration. <sup>68</sup></li> </ul> <p>In addition, the ADB requires <b>independent documentation</b> of the proses of negotiation and agreement regarding land which must involve “external parties”, but in Indonesia the transaction is merely “agreed to”/overseen by a government employee/civil servant, a “Pejabat Pebuat Akta Tanah” [Land Deed Making Official] who cannot be considered to be an independent “external party”.</p>
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<sup>61</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28

<sup>62</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28

<sup>63</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28

<sup>64</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 35

<sup>65</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 20, para 56

<sup>66</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 20, para 56

<sup>67</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 20, para 56

<sup>68</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 22, para 58

				ADB: “26. With respect to ADB’s specification that “the borrower/client will engage an independent external party to document the negotiation and settlement processes” (SPS Appendix 3, paragraph 25), Indonesia’s CSS require that every land transaction must be approved by a Land Deed Making Official (Pejabat Pembuat Akta Tanah), who fills the role of professional third party.” <sup>69</sup>
	<b>Scope and Triggers</b>			
	Upaya perlindungan pemukiman kembali tidak dengan sukarela <b>mencakup pemindahan secara fisik</b> (relokasi, hilangnya tanah lahan tempat tinggal atau hilangnya hunian) dan pemindahan yang <b>bersifat ekonomi</b> (hilangnya lahan, aset, akses atas aset, sumber penghasilan atau mata pencaharian) karena (i) pembebasan lahan tidak dengan sukarela, atau (ii) pembatasan tidak dengan sukarela terhadap penggunaan lahan atau akses ke taman-taman dan kawasan lindung yang ditetapkan secara hukum. Upaya ini <b>mencakup semua pemindahan</b> tersebut, tanpa membedakan apakah kehilangan dan pembatasan tidak dengan sukarela tersebut bersifat parsial, permanen atau sementara	Aligned	Not Equivalent	<p>According to ADB’s CSS analysis:</p> <p>“(iii) Policy Principle 7, Key Element 1. “Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.” The Indonesian legal framework does not provide for resettlement assistance for displaced persons.”<sup>59</sup> [Indonesian version: “Kerangka Hukum Indonesia tidak memberikan bantuan untuk orang-orang yang terpindahkan yang tidak memiliki hak atas tanah.”].<sup>70</sup></p> <p>ADB: “There is a lack of relocation assistance to physically displaced persons.”<sup>66</sup></p> <p>ADB: “there is no monitoring and evaluation of land acquisition outcome and impacts of living standard of displaced persons.”<sup>67</sup></p> <p>ADB: “14. Law 2 of 2012 requires detailed analysis of the risks and impacts to affected communities; it does not explicitly discuss the need for analysis of affects to particular community groups (such as vulnerable groups). As such, it does not specifically require gender analysis.”<sup>73</sup></p> <p>All of the field study cases which were analysed in Appendices 8 – 11 in the ADB assessment also prove that there is a complete lack of any analysis regarding gender issues, impacts on women or monitoring of the fate of the women impacted by the projects in the four sectors that were analysed, including the Energy Sector and the Water Sector.</p>
1	Policy Principle 1		Not Equivalent	
1.1	Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks	Full	Not Equivalent	<p>Failure to identify impacts and risks for vulnerable groups, for those without proof of land ownership (land certificates) and gender issues.</p> <p>ADB “(iii) Policy Principle 7, Key Element 1. “Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.” The Indonesian legal framework does not provide for resettlement assistance for displaced persons.”<sup>59</sup> [Indonesian version: “Kerangka Hukum Indonesia tidak memberikan bantuan untuk orang-orang yang terpindahkan yang tidak memiliki hak atas tanah.”].”<sup>74</sup></p> <p>ADB: “Law 2 of 2012 and its implementing regulations do not stipulate on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved.”<sup>64</sup></p> <p>ADB: “The Indonesian legal framework does not require monitoring of land acquisition/resettlement impacts to the</p>



				livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved.” <sup>75</sup>
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<sup>69</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 26

<sup>70</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

<sup>71</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 20, para 56

<sup>72</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 20, para 56

<sup>73</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards,, para 14, hal 8

<sup>74</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017hal 10, para 28

				ADB:” 14. Law 2 of 2012 requires detailed analysis of the risks and impacts to affected communities; it does not explicitly discuss the need for analysis of affects to particular community groups (such as vulnerable groups). As such, it does not specifically require gender analysis.” <sup>76</sup>
1.2	Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.  Menentukan cakupan perencanaan pemukiman kembali melalui satu survei dan/atau sensus tentang orang-orang yang <b>terpindahkan</b> [tergusur], termasuk analisis gender, terutama yang berkaitan dengan dampak dan risiko pemukiman kembali. <sup>77</sup>	Full	Not Equivalent	Land Acquisition Planning is implemented merely on the basis of initial data collection regarding land and parties with proof (certificates) of land ownership.  There is no requirement to conduct a survey/census specifically about vulnerable groups or a gender analysis.  There is a failure to identify the impacts on and risks to vulnerable groups, to people without land certificates or to assess gender issues.  ADB: “(iii) Policy Principle 7, Key Element 1. ‘Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.’ The Indonesian legal framework does not provide for resettlement assistance for displaced persons.” <sup>59</sup> [Indonesian version: “Kerangka Hukum Indonesia tidak memberikan bantuan untuk orang-orang yang terpindahkan yang tidak memiliki hak atas tanah.”]. <sup>78</sup>  ADB: “The Indonesian legal framework does not require monitoring of land acquisition/resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved.” <sup>79</sup>  ADB:” 14. Law 2 of 2012 requires detailed analysis of the risks and impacts to affected communities; it does not explicitly discuss the need for analysis of affects to particular community groups (such as vulnerable groups). As such, it does not specifically require gender analysis.” <sup>80</sup>
2	Policy Principle 2	Full	Not Equivalent	Indonesian requirements for Public Consultation are not equivalent with the ADB SPS requirement for “meaningful consultation”, including the required 120 day public comment period required prior to decision-making regarding a project with significant impacts.
2.1	Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations.	Full	Not Equivalent	The Indonesian Law on Land Acquisition only requires what is called “public consultation” with those individuals whose lands will be taken and not consultation with the local community, and this does not involve non-governmental organizations. The implementation of these “consultations” does not meet the standard of “meaningful consultation” and is usually merely a form of “socialization” about the fact that a decision has already been made that a project will be implemented and that the project is good for the community, which is then pressured to accept the project, which has already been decided upon. ADB DEFINITION OF MEANINGFUL CONSULTATION: “Meaningful Consultation. A process that (i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation or coercion; (iv) is gender inclusive and

				responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.
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<sup>75</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

<sup>76</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 14, hal 8

<sup>77</sup> Sekali lagi ada “masalah” dengan penerjemahan yang merubah makna istilah dalam dokumen “kajian” ini dari konsultan ADB. Di dokumen safeguards ADB resmi, yaitu “Pernyataan Kebijakan tentang Upaya Perlindungan” dari ADB dalam versi Bahasa Indonesia yang diterbitkan oleh ADB dan yang ditemukan di website ADB sejak 2009 di halaman 22, istilah “displaced persons” diterjemahkan “orang-orang yang tergusur”. Tetapi, rupanya “konsultan ADB” merasa bebas sekali lagi merubah istilah dengan cara yang jelas merubah artinya dan mengganti istilah “terpindahkan” untuk istilah “tergusur.” Versi original di dokumen asli adalah “1. Menyaring proyek sejak awal untuk mengidentifikasi dampak dan risiko terjadinya pemukiman kembali tidak dengan sukarela di masa lalu, saat ini dan di masa mendatang. Menentukan cakupan perencanaan pemukiman kembali melalui satu survei dan/atau sensus tentang orang-orang yang tergusur, termasuk analisis gender, terutama yang berkaitan dengan dampak dan risiko pemukiman kembali.”

<sup>78</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

<sup>79</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

<sup>80</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 14, hal 8

2.2	Inform <b>all displaced persons</b> of their entitlements and resettlement options.	Full	Not Equivalent	<p>ADB “(iii) Policy Principle 7, Key Element 1. “Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.’ The Indonesian legal framework does not provide for resettlement assistance for displaced persons.”<sup>59</sup> [Indonesian version: “Kerangka Hukum Indonesia tidak memberikan bantuan untuk orang-orang yang terpindahkan yang tidak memiliki hak atas tanah.”].”<sup>81</sup></p> <p>Thus, “all displaced persons” -- including specifically those without land title (majority of the poor) -- likely will not have a right to entitlements and will not be informed. Given the failure to ensure a gender-sensitive approach, with gender-disaggregated data, 50% of affected persons (women) will likely neither be informed of nor receive entitlements or shape the determination of viable resettlement options that protect their livelihoods.</p> <p>No requirement for “meaningful consultation.”</p>
2.3	Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs	Full	Not Equivalent	<p>ADB: " The Indonesian legal framework does not require monitoring of land acquisition/resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved.” <sup>82</sup></p> <p>ADB: “Law of 2012 does not state specifically on consultation at planning stage... Article 19 of Law 2 of 2012 stipulates that public consultation of the planned development is carried out to obtain the agreement on the planned development location...The Law 2 of 2012 and its implementing regulations do not stipulate on participation of entitled parties in monitoring and evaluation of resettlement program.”<sup>83</sup></p> <p>Editorial note: The “consultation” mentioned is apparently meant to obtain “agreement” from affected communities on the already “planned development location”. This is not a meaningful consultation to seek public input to determine the location of a proposed project if the location is already planned.] There is no stipulation of any monitoring or evaluation of the resettlement program, nor any monitoring of the fate of those displaced from their lands and livelihoods.</p>

2.4	Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations.	Full	Not Equivalent	<p>There is no requirement to “pay particular attention to the needs of vulnerable groups”.</p> <p>Those who may be involved are “those with rights” (“yang berhak”), in the sense that they have formal proof of land title (certificate). Those without land titles are usually considered illegal “squatters”, even though they may have occupied the land for decades and thus derived rights.</p> <p>This is not required by law, and field studies, including ADB’s own case studies in Appendices 8 – 11, find a very clear track record that this does not happen under Indonesia’s CSS.</p>
2.5	Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons’ concerns.	Full	Not Equivalent	<p><b>Land Expropriation: Completely Insufficient Grievance Mechanism.</b> Objections by landowners to the seizing of their lands must be made to the Governor who then has a maximum of three working days from the receipt of objections to consider the objections. If an objection is not acted upon by the Governor within three days or is rejected by the Governor during that period, the determination of the project location will be implemented by the Governor within seven work days. This is grossly inadequate and demonstrates the arbitrariness of the government’s approach to citizen concerns about their land rights. A period of three days is completely inadequate to fully assess an objection to the seizure of lands by affected citizens. (NB. This period formerly was 14 days, also grossly inadequate, and was recently shortened to three days.)</p>
2.6	Support the social and cultural institutions of displaced persons and their host population.	Full	Not Equivalent	<p>ADB: “The legal framework also does not require integration of resettled persons into their host communities and does not extend project benefits to host communities.”<sup>84</sup></p>
2.7	Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase	Full	Not Equivalent	<p>There is no “social preparation phase” mandated for highly complex and sensitive risks related to involuntary resettlement.</p>

<sup>81</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

<sup>82</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

<sup>83</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 16.

<sup>84</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, hal 10, para 28

3	Policy Principle 3	Full	Not Equivalent	
3.1	<p>Improve, or at least restore, the livelihoods of <b>all</b> displaced persons through <b>land-based resettlement strategies when affected livelihoods are land based</b> where possible, or <b>cash compensation at replacement value</b> for land when the loss of land does not undermine livelihoods.</p> <p>NOTE: The Indonesian version of the CSS assessment features a translation “error” here which eliminates the word “all” so that the requirements appears to be to “restore the livelihoods of displaced persons” instead of “restore the livelihoods of <b>all</b> displaced persons”.</p> <p>This is of vital importance given the lack of requirements under CSS to restore livelihoods of displaced persons without land title.</p> <p>Meningkatkan, atau paling tidak memulihkan, kehidupan <b>[SEMUA]</b><sup>84</sup> orang-orang yang <b>terpindahkan [dipindahkan]</b><sup>85</sup> melalui strategi pemukiman kembali <b>sedapat mungkin berbasis lahan jika mata pencaharian orang-orang yang terkena dampak berbasis lahan</b> atau memberikan ganti rugi uang tunai <b>sesuai dengan nilai penggantian jikakehilangan lahan</b></p>	Full	Not Equivalent	<p>The Indonesian legal system does not require that resettlement must be land based where possible when affected livelihoods are land-based.</p> <p>The types of compensation, by law are: (a). cash; (b) land; (c) replacement housing; (d). shareholding; or (e). other forms agreed upon by both parties.</p> <p>In general, land as compensation is not at all prioritized.</p> <p>The Indonesian legal system does not aim to “improve, or at least restore, the livelihoods of all displaced persons” and there is no requirement that vulnerable groups, women and those without formal title to their lands (normally the poor have no land titles) must be guaranteed livelihood improvement after resettlement/eviction.</p> <p>According to the field research conducted by the ADB (which was not made public at the time of the Fake Consultation in Jakarta and Makassar), “often” the budget for compensation was truly insufficient to pay compensation, the necessary data on property to be assessed is incomplete, the assessors are not competent, the vast majority of assessors are located in Jakarta and not in other regions, there are problems with compensation for people without land title. In addition, the ADB found that there is no monitoring of impacts of land acquisition on affected people and disclosure of monitoring reports on land acquisition is not required.</p> <p>ADB<sup>86</sup>: “Table A.10.2: Summary of issues in the land acquisition process” including:</p> <ul style="list-style-type: none"> <li>• <b>Poor to moderate quality of most land acquisition plan documents</b> because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility</li> <li>• <b>Incomplete data on land acquisition objects</b>, including remaining land</li> <li>• <b>Most appraisers’ lack of knowledge</b> on land acquisition law and regulations</li> <li>• Limited number of appraisers and geographical concentration in Java [“hampir semua penilai berada di pulau Jawa”]</li> <li>• <b>Budget allocation is often less than necessary to pay compensation</b></li> <li>• Inconsistency in providing <b>compensation and assistance for non-land rights holders</b></li> <li>• <b>Monitoring does not cover land acquisition impacts to the affected persons/entitled parties</b></li> <li>• <b>Disclosure of land acquisition report is not required”</b></li> </ul>

	tidak mengurangi penghidupan mereka			
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<sup>84</sup>Versi Bahasa Indonesia ini menghilangkan kata “semua” dari prinsip2 kebijakan. Safeguards ADB mensyaratkan bahwa SEMUA ORANG-ORANG YANG DIPINDAHKAN” harus ada peningkatan atau pemulihan penghidupan. Versi asli (Bahasa Inggris) ADB Safeguards Policy Statement mewajibkan: “Improve, or at least restore, the livelihoods of **all displaced persons** through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.” Hal 17.ADB, Safeguard Policy Statement, 2009.

<sup>85</sup> Konsultan ADB meruba (lagi) istilah yang ada di dokumen ADB dan mengganti istilah “dipindahkan” dengan “terpindahkan”. Versi asli: “Meningkatkan, atau paling tidak memulihkan, penghidupan orang-orang yang dipindahkan melalui  
(i) strategi pemukiman kembali sedapat mungkin berbasis lahan jika mata pencaharian orang-orang yang terkena dampak berbasis lahan atau memberikan ganti rugi uang tunai sesuai dengan nilai penggantian jikakehilangan lahan tidak mengurangi penghidupan mereka, (ii) segera memberikan ganti rugi atas aset dengan akses atas aset yang bernilai setara atau lebih tinggi, (iii) segera memberikan penggantian secara penuh untuk aset-aset yang tidak bisa dipulihkan, dan (iv) tambahan penghasilan dan layanan melalui skema pembagian manfaat jika memungkinkan,ADB, Pernyataan Kebijakan tentang Upaya Perlindungan, 2009.

<sup>86</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 10: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak SecaraSukarela, Tabel A.10.2

			<p>ADB: “The problem in Indonesia is not only in terms of quantity of the appraisers, but also of the distribution of appraisers. More than 80% of appraisers are in Jakarta and surrounding cities (Jakarta-Bogor- Depok-Tangerang-Bekasi or Jabodetabek).”<sup>88</sup></p> <p>ADB<sup>88</sup>: “the technical guidance and template for the identification of land acquisition objects for compensation needs to be improved to capture the loss of business, profession change, moving cost, and other relocation assistances.”</p> <p>ADB case studies document the the fact that, in the Water Sector case examined by the ADB, apparently the “Land Acquisition and Resettlement Plan” was implemented, except for the “compensation” part, with a lack of “special attention to vulnerable people” identified as a “weakness” with <i>no “Nominative List” of assets, buildings, plants or trees produced</i>”. All “substantive work on land acquisition and resettlement” was “outsourced to consultants” and the only indicator used by the official “Task Force for land acquisition” was the “percentage of land acquired for the project”. There are no indicators or monitoring regarding the welfare of project-affected people.</p> <p><b>Water Resource Sector: Karian Multipurpose Dam Project:</b><sup>89</sup>  “there is no legal mandate to establish a specific safeguard unit at Balai level. All substantive work on land acquisition and resettlement is outsourced to consultants..” ... “The indicator used for the outputs of the Task Force for land acquisition is <b>the percentage of land that has been acquired</b> for the project. To date, the LARP [Land Acquisition and Resettlement Plan] <sup>90</sup> for the quarry and its access roads has been implemented, <b>but compensation is still pending.</b>”</p> <p>“20. One weakness identified in the planning stage was the <b>lack of special attention to vulnerable people.</b>”<sup>91</sup></p> <p>“29. To date, <b>no nominative lists (Daftar Nominatif<sup>9</sup>) have been produced...</b>”<sup>92</sup>  Footnote 9 for this sentence states:  “9 Daftar Nominatif is the <b>detailed information</b> of the entitled parties which includes: <b>location, area, and status of affected assets/land acquisition objects; area and type of buildings; type of use of affected assets; plants/trees and other objects related</b> to the land. The assigned task force of the Land Acquisition Committee lead by the regional MASP/NLA collects these data.”</p>
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<sup>87</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 10: Pengkajian Kesetaraan Perlindungan Pemukiman Kembali Tidak Secara Sukarela, Tabel A.10.2

<sup>88</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 10: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 58

<sup>89</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 11: Acceptability Assessment for Involuntary Resettlement by Sector, para 7,9

<sup>90</sup> Masalah translation lagi. Versi asli, Bahasa Inggris adalah “LARP”, yaitu Land Acquisition and Resettlement Plan, i.e. Rencana Pengadaan Tanah dan Pemindahan/Pengurusan bukan Dokumen Perencanaan Pengadaan Tanah. Bukan “Dokumen” yang dilaksanakan tetapi “Rencana” pengurusan yang dilaksanakan, tetapi tanpa kompensasi karena “tertunda”.

<sup>91</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 11: Acceptability Assessment for Involuntary Resettlement by Sector, para 20

<sup>92</sup> Yet another translation “problem” where the Indonesian translation materially changes the meaning of the sentence. The original sentence in the English language version is: “To date, no nominative lists (Daftar Nominatif) have been produced”. In the Indonesian translation, the word “no” was eliminated and, instead, the phrase “telah dibuat” (“have already been made”) was inserted, leading to a completely opposite meaning – i.e. “Nominative lists have already been made.”



				<p>ADB: “31. Results Stage. As the project was in the Implementation Stage at the time of writing, there are no results to assess at this time.”<sup>3</sup></p> <p>ADB:” C. Outputs</p> <p>35. Land Acquisition and Resettlement Plan Document. The LARP documents assessed were for the quarry on the Geblegan Mountain and the improvement of access road from the quarry to the Karian Dam. Two other LARPs for the Karian Dam Project were still under preparation at the time this report was written. The action plan for the Geblegan LARP is scheduled from 2016 to 2019 (3 years). The existing LARP documents showed that the subproject was fully consistent with spatial planning and the development plans. It described the activities, location, LARP methodology, and data on the land to be acquired and on the owners of the land. <b>However, there was no discussion of socioeconomic impacts in particular with respect to vulnerable groups and gender in the document;</b> the socio-economic survey was carried out on all affected persons equally.”<sup>4</sup></p> <p>“E. Review of Institutional Capacity among Key Sector Agencies”</p> <p>ADB<sup>93</sup>: 1. Ministry of Public Work and Housing (MPWH)</p> <p>65. There are two directorates general under the MPWH which have specific unit for social safeguards, namely the Directorate General of Water Resources (DGWR) and Directorate General of Highways (DGH) or Direktorat Jenderal Bina Marga (Dirjen Bina Marga). While at the <b>Directorate General of Human Settlement (DGHS) and Directorate General of Housing (DGS), there is no dedicated sub-directorate for safeguards.”</b></p> <p>ADB<sup>94</sup>: Directorate General for Water Resources,“</p> <p>“72. At local level, the Balai Besars of DGWR have adequate number of competent staff, who mainly focus on technical/sector aspects. The number of staff assigned <b>specifically to social safeguards is, however, very limited. The social safeguards issues are handled by</b> the Satker or <b>project manager (PPK)</b>, who is also responsible for overall project and may <b>not pay detailed and dedicated attention to the substantive issues related to land acquisition/involuntary resettlement.</b> Moreover, in some Balai Besars there are <b>only 2–3 staff assigned to land acquisition despite a rather large number of projects for which land acquisition/ involuntary resettlement needs to be timely and adequately developed and implemented.</b></p> <p><b>TIDAK SECARA SUKARELA [PENGUSURAN/ PEMINDAHAN]<sup>96</sup> harus dikembangkan dandilaksanakan dengan tepat waktu dan memadai.”</b></p> <p>ADB<sup>97</sup>: “Ditjen SDA tidak memiliki pedoman upaya perlindungan spesifik sendiri.”</p>
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<sup>3 89</sup>ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 11: Acceptability Assessment for Involuntary Resettlement by Sector, para 31

<sup>4 89</sup>ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 11: Acceptability Assessment for Involuntary Resettlement by Sector, para 35

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<sup>93</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 10: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 65

<sup>94</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 10: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 72

<sup>95</sup> Masalah translation lagi: versi asli Bahasa Inggris “involuntary resettlement”, bukan “resettlement” saja. Istilah “involuntary” dihilangkan dalam translation .

<sup>96</sup> Masalah translation lagi: versi asli Bahasa Inggris “involuntary resettlement”, bukan “resettlement” saja. Istilah “involuntary” dihilangkan dalam translation .

<sup>97</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 10: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 74

				<p>ADB<sup>98</sup>: Directorate General Bina Marga [Roads] “81. Staff of the land acquisition division at DG Bina Marga have good knowledge and experiences in land acquisition. However, this division only covers toll road projects and <b>does not serve land acquisition for national highways projects</b> managed by the DG Bina Marga and UPT/Balai Besar. The staff of the sub – directorate of Environment and Road Safety have good knowledge of environment safeguards, <b>yet less of land acquisition</b>. The staff responsible for projects at DGH sector/thematic directorates has good capacity in technical matters</p> <p>(engineering), but its <b>capacity in safeguards is limited.</b>”</p> <p><b>“83. ... However, since most land acquisition/involuntary resettlement for the highway projects are handled and financed by local governments using their own budget, further assessment to the capacity and commitment of local government in handling social safeguard need to be strengthened.”</b></p> <p>ADB<sup>99</sup>, “84. Directorate General of Human Settlement (DG Cipta Karya)</p> <p>84. The capacity of the Directorate General of Human Settlement (DGHS – DG Cipta Kaya) is rated “weak”. There is no dedicated safeguard unit at the DGHS.”</p>
3.2	<p>Improve, or at least restore, the livelihoods of <b>all</b> displaced persons</p> <p>through <b>prompt</b> replacement of assets with access to assets of equal or higher value.</p> <p>[Note: The Indonesian translation in the ADB’s CSS assessment eliminated the words “all” and “prompt” from the above requirement.] <b>100 101 102</b></p>	Full	Not Equivalent	<p>There is no requirement to “improve or at least restore the livelihoods of all displaced persons”; and not “all” who are resettled will be treated, for example those who, like the majority of Indonesians, and the vast majority of the poor, do not have “land certificates”.</p> <p>The requirement for compensation is not “replacement of assets with access to assets of equal or higher value”.</p> <p>The requirement for “prompt replacement” is circumvented with the increasingly prevalent strategy of placing a sum of money in an escrow account at a district court, despite no agreement with a community regarding resettlement, no meaningful public input into the location/siting of a project, no agreement regarding asset valuation or method (i.e. land for land versus cash), or amount of compensation. With the desposit funds of funds in an escrow account, despite the lack of “prompt” compensation to affected communities <i>prior to resettlement</i>, forced evictions can then occur with forcible resettlement in the absence of receipt of compensation by affected communities.</p> <p>See additional information above.</p>

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<sup>98</sup>ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 10: Acceptabilty Assessment for Involuntary Resettlement Safeguards, para 81, 83

<sup>99</sup>ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 10: Acceptabilty Assessment for Involuntary Resettlement Safeguards, para 84

<sup>100</sup>Versi Bahasa Indonesia ini menghilangkan kata “semua” dari prinsip2 kebijakan. Op cit. “Meningkatkan atau setidaknya memulihkan, mata pencarianorang yang **terpindahkan[dipindahkan]** dengan memberikan ganti rugi atas aset dengan akses atas aset yang bernilai setara atau lebih tinggi,

<sup>101</sup> Konsultan ADB meruba (lagi) istilah yang ada di dokumen ADB dan mengganti istilah “dipindahkan” dengan “terpindahkan.” Op cit.

<sup>102</sup>Versi Bahasa Indonesia dari para konsultan ADB menghilangkan kata “segera” dan, demikian, sangat merubah artinya syarat ADB ini. Ganti rugi harus SEGERA diberi, mnt SPS ADB.

3.3	<p>Improve, or at least restore, the livelihoods of all displaced persons through prompt compensation at full replacement cost for assets that cannot be restored.</p> <p>[Note: The Indonesian translation in the ADB's CSS assessment eliminated the words "all" and "prompt" from the above requirement.] 100 101 102</p>	Full	Not Equivalent	<p>There is no requirement to "improve or at least restore the livelihoods of all displaced persons"; and not "all" who are resettled will be treated, for example those who, like the majority of Indonesians, and the vast majority of the poor, do not have "land certificates".</p> <p>The requirement for compensation is not "replacement of assets with access to assets of equal or higher value".</p> <p>The requirement for "prompt replacement" is circumvented with the increasingly prevalent strategy of placing a sum of money in an escrow account at a district court, despite no agreement with a community regarding resettlement, no meaningful public input into the location/siting of a project, no agreement regarding asset valuation or method (i.e. land for land versus cash), or amount of compensation. With the desposit funds of funds in an escrow account, despite the lack of "prompt" compensation to affected communities <i>prior to resettlement</i>, forced evictions can then occur with forcible resettlement in the absence of receipt of compensation by affected communities.</p> <p>See additional information above.</p>
3.4	<p>Improve, or at least restore, the livelihoods of all displaced persons through additional revenues and services through benefit sharing schemes, where possible.</p> <p>Note: The Indonesian translation in the ADB's CSS assessment eliminated the word "all" from the above requirement.]</p>	Full	Not Equivalent	<p>There is no requirement to "improve or at least restore the livelihoods of all displaced persons"; and not "all" who are resettled will be treated, for example those who, like the majority of Indonesians, and the vast majority of the poor, do not have "land certificates".</p> <p>The requirement for compensation is not "replacement of assets with access to assets of equal or higher value".</p> <p>See additional information above.</p>
4	Prinsip Kebijakan 4	Partial	Not Equivalent	

4.1	Provide physically and economically displaced persons with needed assistance, including, if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities. Integrate resettled persons economically and socially into their host communities, and extend project benefits to host communities	Partial	Not Equivalent	<p>ADB: " The Indonesian legal framework does not provide for comparable access to employment and production opportunities. The legal framework also does not require integration of resettled persons into their host communities and does not extend project benefits to host communities."<sup>107</sup></p> <p>ADB: "22. Law 2 of 2012 and Presidential Regulation 71 of 2012 regulate on resettlement, however, they do not contain specific language regarding the issues of securing tenure to land ensuring better housing for displaced people at resettlement sites, and public facilities as stipulated by Law 1 of 2011. Both land acquisition law and housing and settlement law do not stipulate on integration of resettled people in the host community and extension of project benefit to host communities.</p> <p>23. The laws and regulations states on resettlement support, yet it is limited to support for housing and settlement area development and moving cost, but does not include transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities."<sup>108</sup></p>
4.2	Provide physically and economically displaced persons with transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities.	Partial	Not Equivalent	" Under the Indonesian CSS, transitional support is limited to housing and settlement area development." <sup>5</sup>

<sup>103</sup>Versi Bahasa Indonesia ini menghilangkan kata "semua" dari prinsip2 kebijakan. Op cit.

<sup>104</sup> Konsultan ADB meruba (lagi) istilah yang ada di dokumen ADB dan mengganti istilah "dipindahkan" dengan "terpindahkan". Op cit.

<sup>105</sup>Versi Bahasa Indonesia ini menghilangkan kata "semua" dari prinsip2 kebijakan. Op cit.

<sup>106</sup> Konsultan ADB meruba (lagi) istilah yang ada di dokumen ADB dan mengganti istilah "dipindahkan" dengan "terpindahkan." Op cit.

<sup>107</sup>ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 10.

<sup>108</sup>ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 22.

<sup>5</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 10.

4.3	Provide physically and economically displaced persons with civic infrastructure and community services, as required.	Full	Not Equivalent	<p>Transitional assistance does not cover all of the transition costs. There is no specific analysis required regarding the needs of vulnerable populations, those without land titles, women, etc, to ensure that they receive transitional assistance.</p> <p>"Under the Indonesian CSS, transitional support is limited to housing and settlement area development." <sup>6</sup></p>
5	Policy Principle 5	Full	Not Equivalent	<p>ADB: " The Indonesian legal framework <b>does not provide for comparable access to employment and production opportunities.</b>" <sup>109</sup> ADB CSS Assessment, pg 10, para 28</p> <p>ADB's consultants correctly identify the fact that the Land Law 2 of 2012, the law generally used to seize lands for projects "does not specifically address the restoration of living standards of the poor and other vulnerable displaced persons" as required by the ADB (and WB, IFC etc.). Case studies by the ADB in appendices 8 – 11 of this CSS Assessment and many other studies prove that, in fact, not only is there a near-complete lack of attention to livelihood restoration or improvement associated with involuntary/forced resettlement, but there is no specific attention paid to "vulnerable displaced persons" and women, making up at least 50% of affected populations, in general.</p> <p>The ADB consultants attempt to cover up this massive lack of equivalence by referring to vague statutes including those which declare platitudes such as "Everyone has the right to just support and protection from an objective impartial judiciary" "all members of vulnerable groups.... are entitled to greater protection of human rights" etc. In this case, a 1999 law on human rights which ADB consultants claim would ensure livelihood restoration and livelihood improvement for the poor and vulnerable.</p> <p>However, as the ADB (and many other) case studies (and lawsuits brought by forcibly displaced impoverished communities) demonstrate, livelihood restoration and improvement for vulnerable evictees is not considered, nor monitored at all.</p> <p>This sort of spurious argument – citing vague regulations which are obviously not implemented – while ignoring field-based evidence of very clear track record of a resounding failure (refusal) to ensure livelihood restoration and livelihood improvement for the poor and vulnerable who are victims of landgrabbing or "land acquisition" – is a hallmark of this entire CSS assessment, rendering it not fit for purpose, a failed assessment featuring a refusal to clearly and independently assess the track record of the client.</p>

<sup>6</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 10.

				<p>ADB: “24. Full equivalence. Law 2 of 2012 <b>does not specifically address the restoration of living standards of poor and other vulnerable displaced persons.</b> However relevant provisions are made in Law 39 of 1999 on Human Rights. Article 5 states that (1) everyone is recognized as an individual with the right to demand and obtain equal treatment and protection before the law as befits his or her human dignity; (2) everyone has the right to just support and protection from an objective, impartial judiciary; and (3) all members of vulnerable groups in society, such as children, the poor, and the disabled, are entitled to <u>greater protection of human rights</u>.<sup>27</sup>”<sup>110</sup></p>
5.1	<p><b>Improve</b> the standards of living of the <b>displaced poor and other vulnerable groups, including women</b>, to at least national minimum standard.</p>	Full	Not Equivalent	<p>ADB: " The Indonesian legal framework does not require monitoring of land acquisition/resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved." <sup>82</sup></p> <p>“The Indonesian legal framework does not provide for comparable access to employment and production opportunities..”<sup>62</sup></p> <p>“The Indonesian legal framework does not require monitoring of land acquisition / resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved..”<sup>63</sup></p> <p>ADB: “Law 2 of 2012 and its implementing regulations do not stipulate on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved.”<sup>64</sup></p> <p>ADB: ‘There is weak delivery of social action/livelihood restoration programs for the entitled parties considered vulnerable and severely affected..’<sup>65</sup></p> <p>ADB: “There is a lack of relocation assistance to physically displaced persons.”<sup>66</sup></p> <p>ADB: “there is no monitoring and evaluation of land acquisition outcome and impacts of living standard of displaced persons.”<sup>67</sup></p> <p>ADB: ““(iii) Policy Principle 7, Key Element 1. “Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.” The Indonesian legal framework does not provide for resettlement assistancefor displaced persons.”<sup>59</sup></p> <p>ADB:” 14. Law 2 of 2012 requires detailed analysis of the risks and impacts to affected communities; it does not explicitly</p>



				<p>discuss the need for analysis of affects to particular community groups (such as vulnerable groups). As such, it does not specifically require gender analysis.”<sup>73</sup></p> <p>All of the field study cases which were analysed in Appendices 8 – 11 in the ADB assessment also prove that there is a complete lack of any analysis regarding gender issues, impacts on women or monitoring of the fate of the women impacted by the projects in the four sectors that were analysed, including the Energy Sector and the Water Sector.</p> <p><sup>59</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28</p> <p><sup>61</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28</p> <p><sup>62</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28</p> <p><sup>63</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28</p> <p><sup>64</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards, para 35</p> <p><sup>65</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 20, para 56</p> <p><sup>66</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 20, para 56</p> <p><sup>67</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, para 28, hal 20, para 56</p> <p><sup>73</sup> ADB, Country Safeguards Review: Indonesian Consultation Draft, March 2017, Appendix 6: Equivalence Assessment for Involuntary Resettlement Safeguards,, para 14, hal 8</p>
5.2	In rural areas provide them with legal and affordable access to land and resources.	Full	Not Equivalent	See above, section 5.1
5.3	In urban areas provide them with appropriate income sources, and legal and affordable access to adequate housing.	Full	Not Equivalent	<p>See above, section 5.1.</p> <p>See also, the Bukit Duri eviction case where the courts ruled in favor of the evictees, indicating that their (relatively slim) rights had been violated and which is briefly mentioned (i.e. a statement, without describing the case, that the government plans to appeal the case). The violent attacks against impoverished evictees are not clearly described, in the study on the urban sector. For example, <a href="http://www.thejakartapost.com/news/2017/01/06/court-ruling-proves-bukit-duri-eviction-inhumane-agus.html">http://www.thejakartapost.com/news/2017/01/06/court-ruling-proves-bukit-duri-eviction-inhumane-agus.html</a></p>
6	Policy Principle 6	Full	Not Equivalent	

			lent	
6.1	Develop procedures in a transparent, consistent and equitable if land acquisition is based on negotiated settlement.	Full	Not Equivalent	<p>ADB SPS requires that there must be <b>documentation by an independent external third party</b> of the process of negotiation over land and any settlement, but <b>Indonesian CSS does not require an independent external third party</b> but merely requires that each land transaction must be “approved” by a government official, the “Land Deed Making Official” who cannot in any sense be considered an “independent external third party” given the government’s prominent role in land seizures for projects. ADB consultants claim that this government official is “independent” and a “third party” despite substantial government role, including use of force, determination of compensation, facilitation of “compensation” being placed in escrow, granting of project permits, etc. in land seizures/land acquisition, including as documented in the ADB’s CSS studies in Appendices 8 – 11.</p> <p>ADB: “26. With respect to ADB’s specification that “the borrower/client will engage <b>an independent external party to document the negotiation</b> and settlement processes” (SPS Appendix 3, paragraph 25), Indonesia’s CSS require that every land transaction must be approved by <b>a Land Deed Making Official (Pejabat Pembuat Akta Tanah), who fills the role of professional third party.</b>”<sup>111</sup></p> <p>The ADB consultants blame “misunderstandings” by landowners about the “valuation criteria” for their assets as the source of land disputes. However, unlike the ADB (and WB, IFC), which require compensation of land for land, and compensation at <i>replacement</i> value of property, Indonesia’s CSS does not require either of these. Clearly disputes would arise when landowners dependent on land-based activities for their livelihoods (farmers, fishpond owners, etc.) are not provided with replacement land and where compensation less than the replacement value of assets is offered. The ADB consultants do not examine these normal causes of disputes over land and landgrabbing practices facilitated by the government and private sector. Again, this report is not fit for purpose and fails to accurately describe the track record of the client’s CSS.</p> <p>ADB: “• There are an insufficient number of personnel to conduct land measurement and survey at the MASP/NLA regional offices. The valuation process in cases with multiple land parcels takes longer than required (more than 30 days) due to incomplete data for valuation and non-availability of independent appraisers. There are instances when <b>landowners misunderstand valuation criteria, which often leads to disputes.</b>” ADB CSS Evaluation, Page 20 para 56<sup>7</sup></p>

<sup>109</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, hal 10, para 28.

<sup>110</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 24.

<sup>7</sup> ADB, Indonesian Country System Review, March 2017, pg 10, para 56

6.2	Ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.	FULL	Not Equivalent	See all comments above, including in earlier sections. "ADB: "There is weak delivery of social action/livelihood restoration programs for the entitled parties considered vulnerable and severely affected.."65 ADB CSS Review para 56
7	Policy Principle 7	Partial	Not Equivalent	The lack of equivalence with this principal represents an extraordinary threat to the majority of Indonesian citizens because the majority of Indonesian citizens, and the vast majority of vulnerable groups including the poor, women, Indigenous Peoples and others do not possess proof of land ownership, land certificates, etc. This extraordinary problem and failure to recognize the rights of the majority of the population without written land certificates means that involuntary resettlement represents and extraordinary threat of impoverishment for vulnerable populations. The lack of equivalence with this core principle violates the primary safeguard requirements of the ADB, WB, IFC et al since it leads to direct impoverishment of the poorest and most vulnerable members of society.
7.1	Ensure displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.	Partial	Not Equivalent	See above. The lack of equivalence with this core principle violates the primary safeguard requirements of the ADB, WB, IFC et al since it leads to direct impoverishment of the poorest and most vulnerable members of society.  ADB: "ADB: "(iii) Policy Principle 7, Key Element 1. "Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets." The <b>Indonesian legal framework does not provide for resettlement assistance for displaced persons.</b> "59112 [Indonesian version: "Kerangka Hukum Indonesia tidak memberikan bantuan untuk orang-orang yang terpindahkan yang tidak memiliki hak atas tanah."  ADB: "28. With regard to the practice of "land clearing" (also referred to as forced eviction, this is the act of moving unauthorized/illegal occupants—including long-term occupants—from a piece of land or area, such as agriculture land, farm land, forest land, or otherwise) who have occupied the land for a period of time. <b>These persons without land rights are also called squatters.</b> 34 The provisions of Law 2 of 2012 on land acquisition for development of public use <b>do not apply to squatters</b> , since the land is already owned by an entity that needs the land for a project. ...Article 5 (3) provides that during the land clearing process, the entitled party must initially manage deliberation with the parties concerned. The procedure for such, however, is not well regulated, but requires the landowner/holder to obtain a permit from relevant government offices. Article 4 of Law 51 of 1960 stipulates that <b>illegal occupants must move any objects on the occupied land and leave the land on their own resources—meaning that they must bear all costs related to the movement of their belongings.</b> Article 6 of Law 51 stipulates that <b>illegal occupants could be charged with "criminal offense."</b> As such, all "illegal occupants" are not entitled any assistance, transitional support, and other assistance."113

<sup>111</sup> ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 26

8	<p>Policy Principle 8</p> <p>Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood, restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.</p>	Partial	Not Equivalent	<p>A core ADB (and WB, IFC etc.) safeguard requirement is livelihood restoration for all affected parties and livelihood improvement for the poor and vulnerable, including women, and those without land title. This is not a requirement of the Indonesian CSS.</p> <p>The consultants appear, once again, to have attempted to avoid the very clear conclusion that the lack of livelihood restoration/improvement, the lack of monitoring of impacts on affected communities render the CSS not equivalent to ADB requirements. In order to avoid the clear conclusion of “not equivalent”, they have divided up this principle in to pieces that they can seek “partial equivalence” for (i.e.that there will be some kind of plan, some kind of report and schedule). However, the contents of the plan and report do not meet ADB (or WB or IFC) requirements.</p> <p>For example, yes, there is an ADB requirement for a resettlement plan, but the requirement includes a plan for entitlements, including for those without land certificates (not a CSS requirement); for income and livelihood restoration for all (not a CSS requirement) , for an increase in livelihood/income for the vulnerable, including women (not a CSS requirement), a plan for monitoring the impact of land acquisition/resettlement on all displaced persons (not a CSS requirement).</p> <p>In addition, the ADB CSS assessment finds:</p> <p>ADB: “The Indonesian legal framework does not require monitoring of land acquisition/ resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved.”<sup>114</sup></p> <p>In the ADB CSS Case Studies the “Key Assessment Findings” regarding “Issues in the Land Acquisition Process” include:</p> <ul style="list-style-type: none"> <li>• Poor to moderate quality of most land acquisition plan documents because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility study..’ and “auditors’ findings (allegation of corruption).”<sup>115</sup></li> </ul>

8.1	Prepare a resettlement plan elaborating on displaced persons' entitlements.	Full	Not Equivalent	For example, yes, there is an ADB requirement for a resettlement plan, but the requirement includes a plan for entitlements, including for those without land certificates (not a CSS requirement); for income and livelihood restoration for all (not a CSS requirement) , for an increase in livelihood/income for the vulnerable, including women (not a CSS requirement), a plan for monitoring the impact of land acquisition/resettlement on all displaced persons (not a CSS requirement).
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<sup>112</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, hal 10, para 28.

<sup>113</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Appendix 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak Secara Sukarela, para 28

<sup>114</sup> ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, hal 10, para 28

<sup>115</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 10, KAJIAN AKSEPTABILITAS UNTUK UPAYA PERLINDUNGAN PEMUKIMAN KEMBALI TIDAK SECARA SUKARELA DILIHAT DARI INSTANSI HUKUM, para 45, Tabel A.10.1

8.2	Prepare a resettlement plan elaborating on the income and livelihood restoration strategy.	Partial	Not equivalent	<p>ADB: “The Indonesian legal framework does not provide for comparable access to employment and production opportunities..”<sup>62</sup></p> <p>ADB: “Law 2 of 2012 and its implementing regulations do not stipulates on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved.”<sup>64</sup></p> <p>ADB: ‘There is weak delivery of social action/livelihood restoration programs for the entitled parties considered vulnerable and severely affected..’<sup>65</sup></p> <p>ADB: ADB:“ The Indonesian legal framework contains no clear provision for including an income and livelihood strategy for displaced persons in the resettlement plan. ”<sup>61</sup>ADB CSS Review para 28</p>
8.3	Prepare a resettlement plan elaborating on the institutional arrangements and time bound implementation schedule.	Full	Not equivalent	<p>ADB: “the planning document does not include displaced person entitlements, institutional arrangement, monitoring and reporting framework...the income and livelihood strategy, monitoring and evaluation of land acquisition impacts to the income and livelihood of displaced persons are not clearly stipulated in the law and regulations..”<sup>117</sup></p>
8.4	Prepare a resettlement plan elaborating monitoring and reporting framework.	Full	Not equivalent	<p>ADB:“ The Indonesian legal framework contains no clear provision for including an income and livelihood strategy for displaced persons in the resettlement plan. ”<sup>61</sup>ADB CSS Review para 28;</p> <p>The track record provides clear evidence of the lack of equivalence.</p> <p>ADB: “the planning document does not include displaced person entitlements, institutional arrangement, monitoring and reporting framework...the income and livelihood strategy, monitoring and evaluation of land acquisition impacts to the income and livelihood of displaced persons are not clearly stipulated in the law and regulations..”<sup>119</sup></p>
8.5	Prepare a resettlement plan elaborating on the budget {“dan jadwal pelaksanaan terkait waktu”]	Full	Not equivalent	<p>There is no clear recognition of the rights of (the majority of Indonesia’s) citizens who do not have proof of land ownership (violation of ADB SPS requirements.) and ADB’s field work found that budget allocations for compensation were “often less than necessary to pay compensation”:</p> <p>ADB: “the planning document does not include displaced person entitlements, institutional arrangement, monitoring and reporting framework...the income and livelihood strategy, monitoring and evaluation of land acquisition impacts to the income and livelihood of displaced persons are not clearly stipulated in the law and regulations..”<sup>120</sup></p>

				<p>ADB<sup>86</sup>: “Table A.10.2: Summary of issues in the land acquisition process” including:</p> <ul style="list-style-type: none"> <li>• <b>Poor to moderate quality of most land acquisition plan documents</b> because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility</li> <li>• <b>Incomplete data on land acquisition objects</b>, including remaining land</li> <li>• <b>Budget allocation is often less than necessary to pay compensation</b></li> </ul>
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<sup>116</sup> Masalah translation lagi! Konsultan ADB meruba (lagi) istilah yang ada di dokumen ADB dan mengganti istilah “dipindahkan” dengan “terpindahkan”.Lihat versi asli, ADB, Pernyataan Kebijakan tentang Upaya Perlindungan, 2009. “Menyusun satu rencana pemukiman kembali yang merinci hak penduduk yang dipindahkan, strategi untuk memulihkan penghasilan dan penghidupan, pengaturan kelembagaan, kerangka kerja pemantauan dan pelaporan, anggaran dan jadwal pelaksanaan yang terikat waktu.”

<sup>117</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak SecaraSukarela, para 29

<sup>118</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017,hal 10, para 28.

<sup>119</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak SecaraSukarela, para 29

9	Policy Principle 9	Full	Not Equivalent	
9.1	Disclose a draft resettlement plan, including documentation of the consultation process in a <b>timely manner, before project appraisal</b> . The disclosed resettlement plan should be in an accessible place and a form and language(s) understandable to affected persons and other stakeholders.	Full	Not Equivalent	<p>Normally, there is only “socialization” to inform affected communities that the project will be located in their area, on their lands and that it is a good project that they must accept. Normally there is not any meaningful consultation process.</p> <p>In fact this current CSS assessment implemented by BAPPENAS is a perfect demonstration of the violation of meaningful consultation requirements of the ADB and the use of standard CSS practices to avoid meaningful consultation. This “assessment” process has been implemented for 3 years, drafts were available last year or earlier and the ADB requirement for access to information as early as possible was violated. Until now there has been no process of meaningful consultation according to ADB SPS requirements. Clearly CSS is not equivalent to ADB requirements.</p>
9.2	Disclose the final resettlement plan and its updates to affected persons and other stakeholders.	Full	Not Equivalent	<p>ADB’s own CSS field studies (Appendices 8 – 11, which were hidden from the public prior to the Fake Consultation in Jakarta and Makassar) found poor quality resettlement plans the hallmark of CSS. See above comments. Provision of poor quality plans which do not fulfill basic ADB safeguard requirements do not fulfill the equivalency requirement.</p> <p>For example:  ADB: “the planning document does not include displaced person entitlements, institutional arrangement, monitoring and reporting framework...the income and livelihood strategy, monitoring and evaluation of land acquisition impacts to the income and livelihood of displaced persons are not clearly stipulated in the law and regulations..”<sup>120</sup></p> <p>ADB<sup>86</sup>: “Table A.10.2: Summary of issues in the land acquisition process” including:</p> <ul style="list-style-type: none"> <li>• <b>Poor to moderate quality of most land acquisition plan documents</b> because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility</li> <li>• <b>Incomplete data on land acquisition objects</b>, including remaining land</li> </ul> <p><b>Budget allocation is often less than necessary to pay compensation</b></p>
10	Policy Principle 10	Full	Not Equivalent	



10.1	Conceive and execute involuntary resettlement as part of a development project or program.	Full	Not Equivalent	<p>There is no requirement nor track record of complete budgets being provided for resettlement, covering all costs of resettlement, including ADB-required transitional costs, support for those without land title and these costs are placed as a burden on those forcibly resettled.</p> <p>ADB: “There is a lack of relocation assistance to physically displaced persons.”<sup>66</sup></p> <p>ADB: “there is no monitoring and evaluation of land acquisition outcome and impacts of living standard of displaced persons.”<sup>67</sup></p> <p>ADB: “(iii) Policy Principle 7, Key Element 1. ‘Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.’ The Indonesian legal framework does not provide for resettlement assistance for displaced persons.”<sup>59</sup></p> <p>“Di CSS Indonesia, bantuan transisi terbatas pada perumahan dan pembangunan wilayah pemukiman baru.” ADB UUPN Hal 10, para 28</p>
10.2	Include the full costs of resettlement in the presentation of project’s costs and benefits.	Full	Not Equivalent	<p>All costs borne by those who are evicted, including transition costs, costs faced by those without title to land are not required to be entered in the budget.</p> <p>There is no requirement for funds for livelihood improvement or restoration and those evicted are burdened with the costs of their eviction/transition which are not covered in the budget. See above for details.</p> <p>ADB<sup>86</sup>: “Table A.10.2: Summary of issues in the land acquisition process” including:  <b>Poor to moderate quality of most land acquisition plan documents</b> because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility  <b>Incomplete data on land acquisition objects</b>, including remaining land  <b>Budget allocation is often less than necessary to pay compensation</b></p>
10.3	For projects with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.	Full	?	Unclear that there is any requirement for this.

<sup>120</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Lampiran 6: Pengkajian Kesenjangan Upaya

11	Policy Principle 11	Full	Not Equivalent	
11.1	Pay compensation and provide other resettlement entitlements <b>before</b> physical or economic displacement.	Full	Not Equivalent	<p>The requirement for compensation is not “replacement of assets with access to assets of equal or higher value”.</p> <p>The requirement for “prompt” compensation is circumvented by the increasingly prevalent strategy where a project implementer places a sum of money in an escrow account at a district court, despite no agreement with the affected community regarding resettlement, no meaningful public input into the location/siting of a project, no agreement regarding asset valuation or method (i.e. land for land versus cash), or no agreement regarding the amount of compensation sufficient to provide for replacement of assets and transition costs. With the deposit funds of funds in an escrow account, despite the lack of any compensation made to affected communities <i>prior to resettlement</i>, forced evictions can then occur with forcible resettlement in the absence of receipt of compensation by affected communities.</p> <p>The ADB’s own case studies underscore this fact including that the compensation often does not occur prior to involuntary resettlement/displacement/eviction and budgets are often not large enough to cover actual costs borne by those evicted from their lands and houses.</p> <p>ADB<sup>86</sup>: “Table A.10.2: Summary of issues in the land acquisition process” including:</p> <ul style="list-style-type: none"> <li>• <b>Poor to moderate quality of most land acquisition plan documents</b> because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility</li> <li>• <b>Incomplete data on land acquisition objects</b>, including remaining land</li> <li>• <b>Budget allocation is often less than necessary to pay compensation”</b></li> </ul> <p>For example, <b>Water Resource Sector: Karian Multipurpose Dam Project:</b><sup>89</sup></p> <p>“there is no legal mandate to establish a specific safeguard unit at Balai level. All substantive work on land acquisition and resettlement is outsourced to consultants..” ... “The indicator used for the outputs of the Task Force for land acquisition is <b>the percentage of land that has been acquired</b> for the project. To date, the LARP [Land Acquisition and Resettlement Plan] <sup>90</sup> for the quarry and its access roads has been implemented, <b>but compensation is still pending.</b>”</p> <p>“20. One weakness identified in the planning stage was the <b>lack of special attention to</b></p>

				<p><b>vulnerable people.</b><sup>91</sup>”</p> <p>“29. To date, <b>no nominative lists (Daftar Nominatif<sup>9</sup>) have been produced...</b>”<sup>92</sup></p> <p>Footnote 9 for this sentence states:  “9 Daftar Nominatif is the <b>detailed information</b> of the entitled parties which includes: <b>location, area, and status of affected assets/land acquisition objects; area and type of buildings; type of use of affected assets; plants/trees and other objects related</b> to the land. The assigned task force of the Land Acquisition Committee lead by the regional MASP/NLA collects these data.”</p> <p>See information in sections above for details.</p>
11.2	Implement the resettlement plan under close supervision throughout project implementation.	Full	Not Equivalent	<p>ADB: “Law 2 of 2012 and its implementing regulations do not stipulates on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved.”<sup>64</sup></p> <p>ADB: ‘There is weak delivery of social action/livelihood restoration programs for the entitled parties considered vulnerable and severely affected..’<sup>65</sup></p> <p>ADB: “There is a lack of relocation assistance to physically displaced persons.”<sup>66</sup></p> <p>"The Indonesian legal framework does not require monitoring of land acquisition/resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved.. "ADB CSS assessment , para 28.</p>

12	Policy Principle 12	Partial	Not Equivalent	<p>There is no requirement to monitor the impact of eviction/resettlement on the people who have been evicted/resettled.</p> <p>ADB:  “Key Assessment Findings...”  • Poor to moderate quality of most land acquisition plan documents...no proper feasibility study.  ...  • Knowledge of government auditors on recent legal framework on land acquisition is still weak and this affects the auditors’ findings (allegation of corruption).  ...  Budget allocation is often less than necessary to pay compensation</p> <p>• Monitoring does not cover land acquisition impacts to the affected persons/entitled parties  • Disclosure of land acquisition report is not required” 121</p> <p>“ Temuan Kunci dari Kajian: ...</p> <p>• Pemantauan tidak mencakup dampak pengadaan tanah pada warga yang terkena dampak/ pihak yang berhak.  • Pengungkapan laporan pengadaan tanah tidak disyaratkan”121</p>
12.1	<p>Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the</p> <p>resettlement plan have been achieved by taking into account the baseline</p> <p>conditions and the results of resettlement monitoring.</p>	Penuh	Not Equivalent	<p>ADB: “Law 2 of 2012 and its implementing regulations do not stipulates on monitoring of the resettlement impacts on the standards of living of displaced persons and whether the objectives of the resettlement plan have been achieved” 122</p> <p>“UU No. 2/ 2012 dan peraturan pelaksanaannya tidak menetapkan tentang pemantauan dampak pemukiman kembali pada standar hidup orang-orang yang dipindahkan dan apakah tujuan dari rencana pemukiman kembali telah dicapai”122</p> <p>ADB: “39. Pemantauan dan Peninjauan. Berdasarkan UU No.2/2012, Kantor Tanah bertanggung jawab dalam memantau proses pengadaan tanah. Pemantauan dalam hal ini hanya mencakup proses pengadaan tanah termasuk pelaksanaan dan penyerahan hasil pengadaan tanah pada lembaga yang memerlukan tanah. Ruang lingkup <b>pemantauan tidak termasuk dampak pengadaan tanah untuk orang-orang yang terkena dampak atau pihak yang berhak</b>. Undang-undang tersebut <b>tidak mensyaratkan</b></p>

<sup>121</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi ADB CSS assessment, March 2017, Appendix 10, para 45 KAJIAN AKSEPTABILITAS UNTUK UPAYA PERLINDUNGAN PEMUKIMAN KEMBALI TIDAK SECARA SUKARELA DILIHAT DARI INSTANSI HUKUM, para 45

<sup>122</sup>ADB, Ulasan Upaya Perlindungan Negara: Draft Konsultasi Maret 2017, Appendix 6: Pengkajian Kesetaraan Upaya Perlindungan Pemukiman Kembali Tidak SecaraSukarela, para 35

				<p><b>pengungkapan laporan pemantauan pengadaan tanah.”<sup>123</sup></b></p> <p>ADB: “• Monitoring does not cover land acquisition impacts to the affected persons/entitled parties • Disclosure of land acquisition report is not required”</p> <p>"Kerangka Hukum Indonesia tidak mensyaratkan pemantauan dampak pengadaan tanah/ pemukiman kembali pada penghidupan dan standar hidup penduduk yang dipindahkan, dan tidak menangani apakah tujuan rencana pemukiman sudah dicapai."<sup>124</sup> ADB CSS para 28</p> <p>ADB: “The Indonesian legal framework does not require monitoring of land acquisition/resettlement impacts to the livelihoods and living standards of displaced persons and does address whether the objectives of the resettlement plan have been achieved.” <sup>124</sup> ADB CSS para 28</p> <p>"Pencapaian Hasil yang lemah dalam Aksi sosial /pemulihan mata pencaharian bagi pihak-pihak yang berhak dianggap rentan dan terkena dampak parah." ADB UUPN Hal 20 para 56</p>
12.2	Disclose Monitoring Reports	Full	Not Equivalent	<p>Tidak - karena CSS tidak mensyaratkan pemantauan dampak terhadap syarat2 yang diutamakan oleh ADB, termasuk dampak terhadap pihak rentan, perempuan, tingkat penghidupan, dll.</p> <p>ADB: “UU No. 2/ 2012 dan peraturan pelaksanaannya tidak menetapkan</p> <p>tentang pemantauan dampak pemukiman kembali pada standar hidup orang-orang yang dipindahkan dan apakah tujuan dari rencana pemukiman kembali</p>

Informal translation from Bahasa Indonesia & Update of ADB Resettlement Safeguards Matrix

				telah dicapai” <sup>125</sup>
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Dari kajian terinci dan dari bandingan matriks diatas CSS Indonesia untuk pemindahan paksa sangatjelas bahwa CSS Indonesia TIDAK SETARA dengan 12 prinsip kebijakan ADB.