

# Serving multiple regimes – reflection on the gaps and synergies between impact assessment for national regulations and international lenders requirements in Indonesia

**Andrew Sembel and Lucy Mitchell, PhD**

*AECOM Indonesia*

# About us



- Andrew Sembel
  - Environmental
    - Impact Assessment and Permitting
    - EHS Management
    - Remediation
  - Brown and green fields
  - Risk assessment
  - Lender representation



- Lucy Mitchell, BA (AS), Ph. D
  - Social Development
    - Culture and indigenous peoples
    - Local economics and livelihoods
    - Stakeholder engagement
  - Complex projects
  - Safeguard processes
  - Leveraging partnerships





# Presentation Objectives

- 1** **Discuss and share experiences from Indonesia** on the gaps and synergies between impact assessments for national regulations and international lender requirements
- 2** **Draw on examples** from various sectors and financing contexts
- 3** **Share some experience and approaches** which may encourage further learning and commitment to best practice in impact assessment and mitigation



# What do we mean by regimes?

National government laws and regulations

Environmental management and protection  
Environmental permitting regulations  
CSR obligations under local laws  
Land acquisition

International lenders policies and requirements

Asian Development Bank Safeguard Policy Statement  
IFC Performance Standards  
World Bank Environmental and Social Framework (ESF)  
Equator Principles III, OECD Common Approaches

Standards, conventions, and declarations

World Bank Group EHS Industry Sector Guidelines  
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal  
Ramsar Convention on Wetlands of International Importance

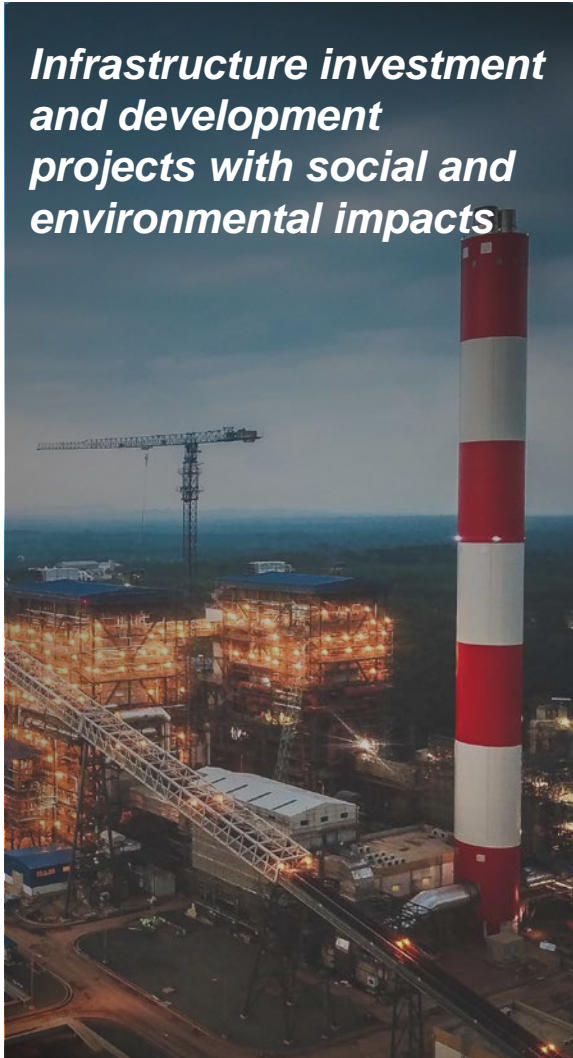
Voluntary association and norms

Voluntary Principles on Security and Human Rights  
FSC, RSPO, RTSS



# What types of projects are typically affected by multiple regimes?

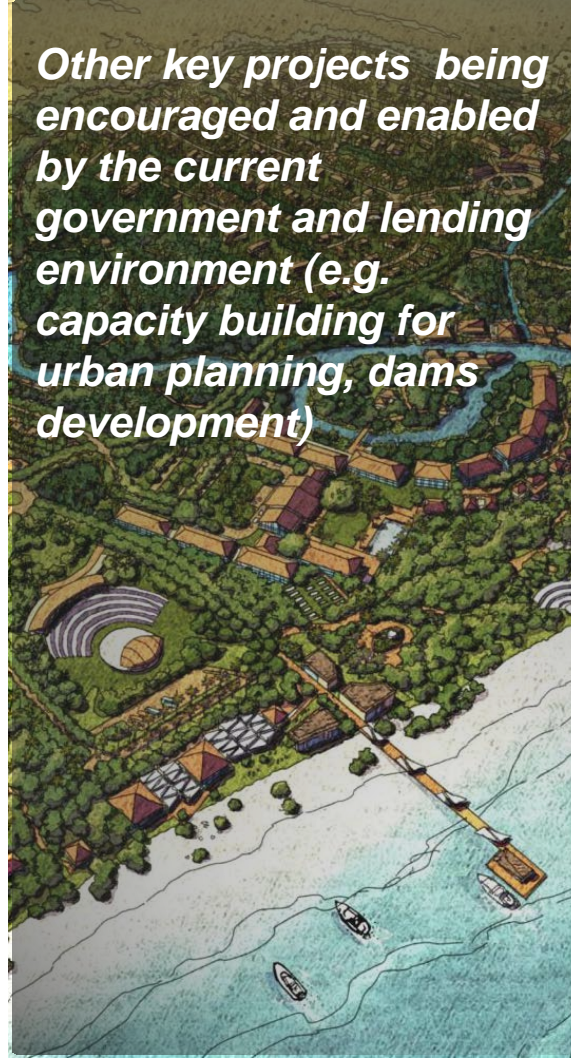
*Infrastructure investment and development projects with social and environmental impacts*



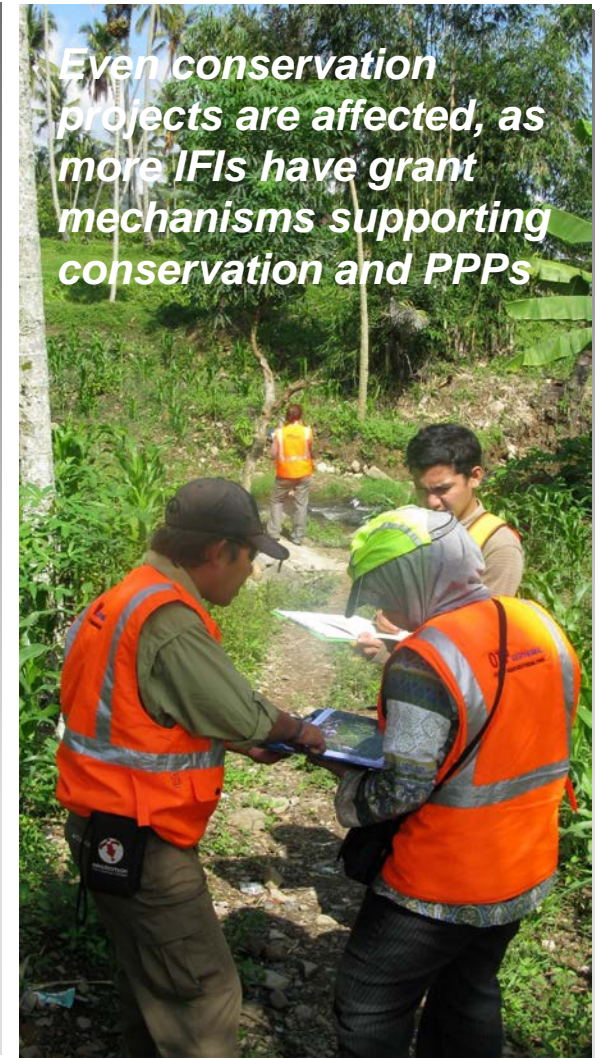
*Examples from our experience: power plants, ports, railways, airports, toll roads, windfarms, waste management/WTE*



*Other key projects being encouraged and enabled by the current government and lending environment (e.g. capacity building for urban planning, dams development)*



*Even conservation projects are affected, as more IFIs have grant mechanisms supporting conservation and PPPs*



# Gaps and Opportunities

- Today we want to reflect on:

What do these 'regimes' have in common?



How important are the differences?



What are some of the differences?



How can we navigate them?





# Gaps and opportunities

- Common Ground
- Points of difference
- Navigating the challenges



# Common Ground

- What do these '**regimes**' have in common?
- Gap analyses are the typical media to address this
- Higher level systems analysis
  - Examples of resources:
    - (draft) joint IFIs (WB-ADB) on 'strengthening country systems' – Indonesia specific
    - Paris Declaration and agreement to harmonize - global
    - UNEP Review of International Finance Standards as they relate to Sustainable Devt (2017)
- Project level analyses
  - For example: comparing lenders' policy/guidelines with a sectoral regulation
  - Examples: EIA laws, water allocation laws, energy and emissions
  - Areas of commonalities: ESIA, screening, baseline data required, parameters, and processes



# Points of Difference (problematics?)

- Often the “big buckets” are the same...but the devil is in the details - differences are where the dilemmas arise!
- What are some of the differences between national and international requirements?
  - Requirements for seasonal data
  - Different parameters to be included in baseline or monitored
    - Water and groundwater quality (thresholds, mitigation responses)
    - GHG analysis at project footprint level
    - Ambient air and emissions (for example, dioxin and furans)
    - Resettlement (census, compensation and restitution requirements, GRM)
  - Public consultation requirements
    - whereas Indonesian Env law (32/2009) says 10 days comments period, lenders typically require longer disclosure of draft ESIA's;
    - written submissions are rare in Indonesian ESIA; final documents not required to incorporate or demonstrate how public input has been accommodated or affected design/mitigation plans

# Points of Difference (problematics?) - continued

- Emerging sectors without clear legislation
- Absence of regulations at local level, or no implementing guidelines to help interpret national regulation
  - on buffer zone requirement for waste management facility in cities where none have previously been built (waste to energy, borrow from geothermal to find parallels and parameters that could be applied by logic if not by regulation, wind farm project)
  - On footprint and area of impact / area of influence
  - On associated facilities
- Differences between lenders' definitions and interpretations

**Table 1 Comparison between AMDAL Process and ESIA Process**

| Indonesian AMDAL    | International ESIA                       | Specific Comparison  |
|---------------------|--|--|
| Public Consultation | 1 <sup>st</sup> Public Consultation (PC) | PC in ESIA process requires the involvement and participation of affected communities, especially the poor and vulnerable. While PC in AMDAL process does not requires involvement and participation of affected communities in specific group.  |
| Baseline Study      | Baseline Study                           | Referring to the IFI's Environmental, Health and Safety (EHS) Guidelines, baseline study in ESIA process requires two seasons data collection to assess the dynamic environment (i.e. 24 hours ambient air quality, 48 hours ambient noise level, surface water quality, etc.) as baseline information prior to assessing the impact of Project. While baseline study in AMDAL process does not requires baseline study in specific season.<br><br>In addition, ESIA process requires more intensive consultation with affected communities including the poor and vulnerable during baseline stage. |
| Impact Assessment   | Impact Assessment                        | ESIA assess the commutative impacts and un-planned events, while AMDAL does not assess both issues in detailed.  |
| RKL & RPL           | ESAP                                     | ESAP in ESIA document will include mitigation plan for specific issues such as Livelihood Restoration Plan, Stakeholder Engagement Plan, Biodiversity Action Plan, etc., while RKL-RPL of AMDAL does not include the mitigation plan for those issues in detailed.   |

|   |                                 |   |
|---|---------------------------------|---|
| Evaluation by AMDAL 2 <sup>nd</sup> Public Consultation Committee |                                 | ESIA process requires specific PC with affected communities including the poor and vulnerable to agree the Project commitments in mitigating Project impacts. Project roles in leading the consultation and ensure participation of all affected groups is essential, with adequate expert assistance to facilitate the consultation meeting.<br><br>Meanwhile evaluation in AMDAL process requires input from affected communities' representatives during the evaluation meeting. |
| Approval Process  | Draft Final for Lenders' Review | AMDAL approval Process carried by the environmental authority of local government. While, ESIA document will be reviewed by the Lenders prior to public discloser   |
| Final Report  | Public disclosure               | Lenders will disclose ESIA document in their website not later than 30 days prior to Lenders' Board Approval or 60 days prior to signing the Project commitment.<br><br>Note: the cut of date for public disclosure might be different among the IFIs.  |

\* Table above was extracted from a particular project document and is included here as indicative of gap analysis purpose only



| Environmental Element  | Potential Project Impact   | Warrants Impact Assessment |       |
|------------------------|--|----------------------------|-------|
|                        |  | ESIA                       | AMDAL |
| Terrestrial Biota      | Site clearing activities will remove significant amounts of vegetation, which services as local ecosystem support, however the area is highly disturbed and there is little evidence of remnant ecosystem on the site footprint.   | ✓                          | ✓     |
| Aquatic Ecology        | The project is in near vicinity of water body systems which probably act as breeding grounds and could be impacted by sediment run-off if it were to occur.  | ✓                          | ✓     |
|                        | The operational Phase of the project will involve water cooling which has the potential to alter stream temperatures.  | ✓                          | ✗     |
| Traffic and Transport  | Existing roads in the vicinity of the site will not support project traffic on the project will need to construct <u>purpose built</u> roads for construction and operation.   | ✓                          | ✓     |
|                        | Construction phase activities are likely to increase traffic on local roads and will warrant traffic and transport plan  | ✓                          | ✓     |
| Waste Management       | Construction phase will generate significant amount of vegetation waste and spoils that will need to be managed.   | ✓                          | ✓     |
|                        | Construction and operational phase will generate various waste streams associated with both the workforce and operational maintenance activities, these will warrant an appropriate waste management plan.   | ✓                          | ✓     |
|                        | Operational phase will generate significant amounts of ash, with potential downstream use as a by-product. The ash management plan will have an impact on design of infrastructure for containment and handling and the management of leachates and run-offs. This will also trigger Indonesian legislation. | ✓                          | ✓     |
| GHG and Climate Change | The project will require a greenhouse gas assessment. Indonesian legislation does not extend to the requirement for offsets, which do not necessarily need to be considered as part of the international ESIA.   | ✓                          | ✗     |
| Visual Impact          | The project will have significant visual impact in an area which is already significantly impacted by other industrial activities. International ESIA will require simple <u>viewscape</u> analysis, however it is likely that the existing visual aesthetic values will be considered to be low.            | ✓                          | ✗     |
|                        | There is the potential for night-time light spill from the project in both construction and operation phases.  | ✓                          | ✗     |
| Land Acquisition       | The project will acquire land from local landowners, whose ownership status is likely only to be recognised at local village level. International standards will require the presentation of a LARAP and associated documentation of compensation activities.  | ✓                          | ✓     |
| Community Displacement | Social impact assessment will require a description of physical displacement and outcomes for affected parties.  | ✓                          | ✓     |

|                                |  |   |   |
|--------------------------------|--|---|---|
|                                | places of worship etc.   |   |   |
| Cultural Heritage              | A cultural heritage survey of the area will need to be undertaken by <u>suitably</u> qualified surveyors.  | ✓ | ✓ |
| Socio-Cultural                 | A social cultural survey of the area will need to be undertaken to fully understand the interaction of the community with the local terrestrial resources.                         | ✓ | ✗ |
| Indigenous Peoples             | It is understood that there are no Indigenous Peoples impacted by the <u>project</u> but this will need to be verified.  | ✓ | ✓ |
| Public Health                  | Construction activities have the potential to have an impact on public health to the generation of dust and noise.   | ✓ | ✓ |
|                                | Potential air pollutants from the project can have public health effects.  | ✓ | ✓ |
|                                | The project does have the potential to interact with water sources, both ground and surface water currently used for domestic and potable purposes by the surrounding communities. | ✓ | ✓ |
|                                | Changes to road systems, community locations and access can have the potential to alter community access to public health facilities (both positive and negative).                 | ✓ | ✓ |
|                                | Influx of workers from outside the area has the potential to bring with <u>it</u> health concerns that will need to be managed.  | ✓ | ✓ |
| Labour rights                  | International ESIA will require that the project can demonstrate compliance with international protocols for the employment of labour.   | ✓ | ✗ |
| Occupational Health and Safety | International ESIA will require that the project can demonstrate compliance with international protocols for occupational health and safety.                                       | ✓ | ✗ |
| Cumulative impacts             | Project location is in an area where an existing coal fired power plant exist, cumulative impacts with already established need to be considered.                                  | ✓ | ✓ |
| <u>Stakeholder Engagement</u>  | An effective implementation of ESMS for the project require an extensive stakeholder engagement process  | ✓ | ✗ |

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Table 3-2 Emission Quality Standards (mg/m<sup>3</sup>) for ITF

| Parameters                                      | Indonesian Quality Standards |                | EU Directive (b) |
|---|------------------------------|----------------|------------------|
|   | Original (a)                 | Conversion (b) |                  |
| Particulates                                    | 120                          | 110            | 10               |
| NOx (Nitrogen Oxide)                            | 470                          | 431            | 200              |
| SO <sub>2</sub> (Sulfur Dioxide)                | 210                          | 192            | 50               |
| HCl (Hydrogen Chloride)                         | 10                           | 9              | 10               |
| Hg (Mercury)                                    | 3                            | 3              | 0.05             |
| Heavy Metals; Sb, As, Pb, Cr, Co, Cu, Mn, Ni, V | N/A                          | N/A            | 0.5              |
| CO (Carbon Monoxide)                            | 625                          | 573            | 50               |
| HF (Hydrogen Fluoride)                          | 2                            | 2              | 1                |
| Dioxin and furans                               | 0.1                          | 0.09           | 0.1              |
| Cd and Tl (Cadmium and Thallium)                | N/A                          | N/A            | 0.05             |
| Total Organic Compounds (TOC)                   | N/A                          | N/A            | 10               |

Source: *Water WtE Plant Feasibility Study (Fortum, 2017)*

Description:

- (a) N/A = Not Available (no quality standard). Original Indonesian quality standards are obtained from the Minister of Environment Regulation No. 70 of 2016 concerning Emissions Quality Standards for of Thermal Waste Processing Businesses and/or Activities. This quality standard applies to dry conditions, temperature 25 °C, pressure 1 atm, and 11% O<sub>2</sub>;
- (b) The EU Directive quality standard is obtained from the European Parliament and The Council Directive No 2010/75/EU, Annex VI. The quality standards of EU Directive and Indonesian converted standards apply to dry conditions, temperatures of 0 °C, pressure of 1 atm, and 11% O<sub>2</sub>.

Table 4-7 Standard of Noise Level (dBA)

| Receptor                         | Indonesian Standard* | IFC** |       |
|----------------------------------|----------------------|-------|-------|
|                                  |                      | Day   | Night |
| Work Space                       |                      |       |       |
| Houses and Residential Areas     | 55                   | 55    | 45    |
| Trade and Services               | 70                   | 70    | 70    |
| Offices and Trade                | 65                   | 70    | 70    |
| Green Open Space                 | 50                   |       |       |
| Industry                         | 70                   | 70    | 70    |
| Government and Public Facilities | 60                   | 55    | 45    |
| Recreation                       | 70                   |       |       |
| Environment of Activity          |                      |       |       |
| Hospitals                        | 55                   |       |       |
| Schools                          | 55                   | 55    | 45    |
| Religious Buildings              | 55                   | 55    | 45    |
| Institutional                    |                      | 55    | 45    |

\*) Minister of Environment Decree No. 48 Year 1996 concerning Standard of Noise Level

\*\*\*) IFC General EHS Guidelines: Table 1.7 – Noise

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# Navigating the challenges

- How important are the differences and how can we navigate them?
- Mini Case Study Examples
  - Wind farm, on different national and international requirements related to migratory birds/ bats
  - Energy project, on multiple lenders related to IP interpretation
- Recommendations



## Case Examples – 1:

# Wind Farm on Bird and Bats Strikes

- Project description: 75 MW Wind farm in Indonesia, represents the first activity of such magnitude to exploit wind energy in Indonesia
- Environmental context: Operation of the wind turbines will interact with avian and bat species, typically wind turbines will be rotating to a height as low as 20 m from the ground.
- Biodiversity : Insufficient detail regarding the methodology used for bird and bat surveys, (when, where, how?); surveys with respect of bird species breeding/nesting/foraging in the area; expert opinion on bird migration from IBA to the coastal areas and potential impacts from the project
- Challenges: Degree of rigor required to satisfy Lenders (OPIC) verses national experience/expectation for this new sector
- Solution / lessons:  
Further baseline survey for birds and bats; ongoing adaptive management plan for bird and bat strikes



## Case Examples – 2:

# Multiple Lenders and Different Interpretations on Indigenous Peoples (IP)

- Project description: Combined Cycle power plant (300 MW) to be developed in a greenfield location; nearby coal fired plant; 40+ km pipeline; temporary river port to provide access for construction/equipment and water intake/outlet
- E & S context:
  - Oil palm plantation at plant site; pipeline to be laid on exiting easements and through plantations; some small river crossing and few biodiversity issues
  - Plant site: few landowners (<10); no villages or residents nearby; existing roads; Pipeline and towers: low density area, relatively clear ownership; no history of conflict; apparently homogenous ethnic
  - Wider area stakeholders include diverse ethnic groups, some vulnerable and poor but not due to (or affected by) project activities
- Challenges:
  - IFC applying all 4 criteria to define IP, whereas ADB and proponent apply judgement on area of origin, attachment and dependence on a territory and any particular vulnerabilities induced by or affected/exacerbated by the proposed project
- Solution / lessons:
  - Additional site visit and deep discussions including regional advisors
  - Additional assessment involving local experts, FGDs / documentation and
  - Negotiated wording in project documents to reflect different policy requirements



# Navigating the Challenges

- How important are the differences and how can we navigate them?  
Can be quite significant in terms of:
  - ✓ Scope
    - Results in impacts that can be better identified
  - ✓ Resources
    - Expertise, time and budgets for ‘additional’ process and documentation
- Recommended approaches focus on:
  - ✓ Early and transparent discussion of differences
  - ✓ Identifying areas of greatest risk – to EHS and reputation
  - ✓ Areas of ambiguity (look for parallels)
  - ✓ Capacity of teams on the ground – be realistic about what support/resources are required to bridge the differences



An aerial photograph of a city skyline at sunset. The sun is low on the horizon, creating a warm, golden glow over the city. The sky is filled with soft, wispy clouds. The city below is densely packed with buildings of various heights and styles. The AECOM logo is prominently displayed in the center of the image, with the tagline 'Imagine it. Delivered.' to its right.

TERIMA KASIH  
Thank you!

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Email: [andrew.sembel@aecom.com](mailto:andrew.sembel@aecom.com)