

Assault on the Commons

Deforestation and the Denial of Forest Peoples' Rights in Indonesia



Community sago forests being cleared for business in West Papua/Greenpeace



Marcus Colchester, Patrick Anderson and Sophie Chao

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Acronyms

ADB	Asian Development Bank
AMAN	Indigenous Peoples’ Alliance of the Archipelago
APL	Agricultural Lands of No Determined Use
APP	Asia Pulp and Paper
APRIL	Asia Pacific Resources International
BAL	Basic Agrarian Law
BFL	Basic Forestry Law
BPN	National Land Agency
CIFOR	Center for International Forestry Research
CPO	Crude Palm Oil
DEPSOS	Department of Social Affairs
DfID	Department for International Development
DPKAT	Directorate for the Empowerment of Remote Communities Governed by Custom
DPR	Peoples’ Representative Council
DPRD	Regional Legislative Council
FAO	Food and Agriculture Organisation
FCP	Forest Conservation Policy
FKKM	Communication Forum on People’s Forestry
FPP	Forest Peoples Programme
FSC	Forest Stewardship Council
GAR	Golden AgriResources
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (previously GTZ)
HCS	High Carbon Stock
HCVA	High Conservation Value Area
HGU	Business Use Right
HkM	Community-Based Forests
HTI	Industrial Tree Plantation Concession
ICEDAW	International Convention on the Elimination of All Forms of Racial Discrimination against Women
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICRAF	World Agroforestry Centre

ILO 169	International Labour Organisation Convention 169 on Indigenous and Tribal Peoples
IMA	Indonesian Mining Association
IMF	International Monetary Fund
ISPO	Indonesian Sustainable Palm Oil
ITTO	International Tropical Timber Organisation
IUCN	International Union for the Conservation of Nature
JDSN	National Spatial Data Network
JKPP	Indonesian Network for Participatory Mapping
KKN	Corruption, Collusion and Nepotism
KPA	Consortium for Agrarian Reform
KPK	Corruption Eradication Commission
LEI	Indonesian Ecolabelling Institute
MIFEE	Merauke Integrated Food and Energy Estate
MP3EI	Master Plan for Acceleration and Expansion of Indonesia's Economic Development
PHBM	Collaborative Forest Management Program
PIR	Nucleus Estate and Smallholder Scheme
POIG	Palm Oil Innovation Group
PPHMA	Draft Law on the Recognition and Protection of the Rights of Indigenous Peoples
PROLEGNAS	Programme Schedule for National Legal Reform
PT KPC	PT Karya Prima Cipta
PT WKS	PT Wira Karya Sakti
RANHAM	National Human Rights Plan of Action
RGE	Royal Golden Eagle Group
RSPO	Roundtable on Sustainable Palm Oil
RSPO NPP	RSPO New Plantings Procedure
RSPO P&C	RSPO Principles & Criteria
SAC	Stakeholder Advisory Committee
SFMP	Sustainable Forest Management Policy
SKEPHI	Secretariat for Forest Conservation in Indonesia
SOP	Standard Operational Procedure
SVLK	Indonesian Timber Legality Assurance System
UKP4	Presidential Working Unit for Supervision and Management of Development
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNREDD	United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation
UPR	Universal Period Review
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WPR	Community Mining Zone
WRI	World Resources Institute
WUP	Mining Business Zone

Executive Summary

An unresolved struggle, between centralised State control of lands and resources and countervailing assertions of community rights, has deep historical roots in Indonesia. On the one hand, centralising tendencies can be traced back to the rise of pre-colonial coastal entrepot states and inland agrarian kingdoms, which asserted proprietary rights over all lands and forests under their control. The Dutch took over these claims and sought to assert jurisdiction over all but privately owned lands in the whole archipelago, both to encourage the commercial development of plantations and the 'scientific' management of forests. The independent Republic of Indonesia through its Constitution then asserted its controlling power over all natural resources in the national interest and developed land and forestry laws which subordinate community rights to national development. The land law explicitly prevents customary rights-holders from opposing large-scale forest clearance.

On the other hand, long-term efforts to defend the rights of local communities and the autonomy of peoples have been equally marked. During the pre-colonial era, forest peoples, who occupied the majority of what is now Indonesia, defended their autonomy 'beyond the Raja's fence'. The imposition of colonial land and forestry laws sparked local resistance and were strongly questioned by Dutch lawyers and administrators who advocated recognition of customary rights. At independence respect for *adat* (custom) was made a central element in Indonesia's identity, also affirmed by the Constitution. This dichotomy continued after independence in the battle of wills between Vice President Hatta and President Sukarno, with Hatta championing his vision of modern Indonesia as a democratic, community-based confederation pursuing self-determined development and Sukarno seeking to forge a centralised Nation State with enough ardour to challenge what he saw as the neo-colonialism (*nekolim*) of the Western Powers.

When Suharto seized power, he harnessed Sukarno's centralised State bureaucracy to the goals of free market capitalism. All opposition was violently purged through mass killings and imprisonment. His technocratic government dedicated itself to encouraging State and private foreign investment and rapid economic growth, based on a rapid exploitation of natural resources, with minimum respect for customary rights, while ignoring human rights abuses and environmental impacts. After the lean years of Sukarno's rule, western investors flooded back into the country. The lack of democratic checks and balances, transparency and accountability meant that corruption and cronyism pervaded the whole system and community rights were freely trampled. Rural communities, cowed by the terror of 1966 and an ever present military, were unable to speak out or silenced when they tried. After the fall of Suharto, governments sought to decentralise State power but, for the most part, did not change the laws which excluded people from having rights to their lands, forests and fisheries. Consequently, deeply entrenched patrimonial traditions and a culture of graft and preferment, meant that, on balance, over the last 15 years decentralisation has increased pressure on natural resources and continued to deny the rights of local communities.

The forests and forest peoples of Indonesia have borne the brunt of this unbalanced model of national development. Since 1900, the country has lost over half of its forests and deforestation is now proceeding at an estimated two million hectares per year, twice the rate of loss of a decade ago. Almost all of these forests are the traditional lands of local communities and indigenous peoples. Their lands continue to be taken over with scant regard for their rights by transmigration, logging, timber estates and palm oil plantations and other agribusiness investments. International commodity markets also drive this process. The lack of serious land reforms outside the forests and the lack of protection of forest peoples' rights have meant that millions of landless migrants have also been moving in on their traditional lands. The proliferation of thousands of land conflicts between communities and companies has provoked the emergence of more radical agrarian movements intent on land occupation by force.

This sustained 'assault on the commons', which is simultaneously an environmental crisis, has stimulated the emergence of a national movement for the restoration of rights and justice to local communities and indigenous peoples. It has also triggered national and international policy reforms designed to introduce a

more balanced model of development. Policy debates, whether about land administration, forest policy, climate change, timber legality, human rights, sustainable palm oil or protected areas, have all been led to realise that changes must be made that secure community rights, resolve land disputes, curb the hand-out of concessions to business, expose and eradicate corruption, provide access to justice and uphold rule of law.

Full commodity supply chain traceability is needed in which environmental protections are matched with comprehensive protections of human rights. Such accountability should equally apply to investors. Widespread and effective compliance with certification standards will depend on respect for human rights, good governance, transparency, accountability, rule of law and access to justice. Community capacity building is needed to support the recognition of forest peoples' rights, including through mapping of customary lands, and the registration and recognition of these rights by Indonesian governments. The right of forest peoples to give or withhold their Free, Prior and Informed Consent (FPIC) must be respected and independently monitored, including the right to choose their own representatives, and to impartial information and expert advice on planned developments affecting their lands and livelihoods. Community-based forest management, conservation and development must be incorporated in government policies and programmes, to give ownership of these initiatives to rights-holders, who know the forest best. Finally, conflict resolution mechanisms and access to remedy and the restitution of rights must be developed in concert with affected communities and effectively enforced and monitored.

Part I: National Situation Analysis

The peopling of the Archipelago

Reconstructions of migrations based on genetic evidence suggest that modern humans, having left Africa and moved along the coasts of southern Asia, reached Southeast Asia between 50,000 to 60,000 years ago.¹ At the time, Sumatra, Borneo, Java and Bali were part of peninsular Southeast Asia.² Their direct descendants are most evident in the eastern parts of the archipelago. Later waves of migration may have come from further north down through peninsular Southeast Asia.³ However, linguistic and cultural evidence shows that speakers of Austronesian languages, who may have been the first to introduce farming and 'neolithic' technologies, migrated into the area through Taiwan to the Philippines some 5,000 years ago, from where they, or their cultures at least, fanned out across the islands,⁴ absorbing or displacing prior residents through processes yet to be guessed at, most especially in the western part of the archipelago.⁵ Today, those so-called Melanesian and Austronesian peoples who find themselves in the Republic of Indonesia, number more than 240 million persons and speak some 500 distinct languages.⁶

These peoples must have included able sailors and navigators from very early times.⁷ There is evidence of sustained commerce between the islands from the 7th century BC.⁸ Wider trade links soon extended to India, the Middle East and Africa, and to Indochina and China. These trades were not just exchanges of the products of the empires of east and west but were supplemented by the local riches of seas and forests – sea cucumbers, dried fish, pearls, birds' nests, poisons, drugs, medicines, resins, dyes, basts, rattans, bezoar stones, horns, wood products, gold and ivories - gathered for the global trade by forest peoples and seafarers, who thereby provided the economic underpinnings to the power of local coastal rulers.⁹ By the 7th century of the present era, coastal trading entrepot states, such as Malayo, and later Sriwijaya, had emerged as powerful coastal kingdoms in their own right, well-known as centres of Buddhist learning.¹⁰ If their main wealth and power came from their domination of global commerce, they were also reliant on extensive networks of more local trade, which criss-crossed both the interior of the islands to yield a cornucopia of forest exotica and the waterways between the myriad of small islands, from which the riches of the sea were harvested. In this sense, the interior and sea peoples have 'never' been 'isolated'.¹¹



Map of Indonesia

(Source: http://www.lib.utexas.edu/maps/middle_east_and_asia/indonesia_pol_2002.jpg)

Although the archaeology of the larger islands' interiors remains relatively unexplored, current evidence suggests that inland, agrarian kingdoms, such as those in Java and Sumatra (like Minangkabau), emerged relatively late compared to the much earlier coastal trading polities.¹² These inland kingdoms were built on much more intensive systems of land use and on hierarchical social relations strong enough to enforce obedience and to extract rents and tax from their tributary peasant subjects. The rajas asserted their powers over these domains by claiming centralised control of all lands and rents and then devolving control to more local client potentates.¹³ The rulers of these kingdoms bolstered their authority, especially in the Javanese uplands, by adopting notions of divine kingship introduced by Brahmin priests from India, thus infusing the language with a rich vocabulary of mysticism, honour and deference derived from Sanskrit.¹⁴

The upland kingdoms relied on the development of extensive areas cleared of forests for permanent irrigated and rain-fed farming.¹⁵ They also claimed exclusive dominion over the intervening forests.¹⁶ With these prominent exceptions, which may have been more widespread and extensive than we now think, the great majority of the islands remained covered in dense tropical rainforests, in which local chieftaincies and less centralised 'tribes' developed their distinctive ways of relating to their forests, rivers and mountains. These societies, while largely autonomous were closely involved in regional commerce, in forest products, slaves, and a wide range of goods from afar – most notably metal tools, sacred daggers (*kris*), prized gongs, Chinese ceramics and valued cloths – and these trade links also introduced religious ideas and social norms from distant worlds which were sometimes locally adopted.¹⁷

From what we can conjecture, based on our limited knowledge of early history and the form of these societies as they came into contact with Chinese, and much later European, chroniclers, most of these peoples¹⁸ – even many of those in the forested interiors – were quite hierarchical and practised their own forms of slavery. Yet the forest peoples, at least, jealously guarded their independence from the coastal kingdoms, maintained their own systems of belief, defended their lands against their neighbours, traded in slaves and guarded their trade routes.¹⁹

All these societies, whether organised as kingdoms or as freer-living forest peoples and ‘sea-gypsies’, must have had their own notions of rights and justice but, with a few exceptions, these are now hard to discern, overlain as they are by later cultural norms from Islam and the west. Anthony Reid suggests, based on a deep reading of the origins of the word *merdeka*, that the very notion of freedom in Indonesian societies evolved as a response to the region’s history of slavery and hierarchy.²⁰ What is more obvious is that, current, dominant notions of rights (*hak*), justice (*keadilan*), custom (*adat*), law (*hukum*), court (*mahkamah*) and judge (*hakim*) are expressed in a vocabulary derived from Arabic. Cognate terms now prevail in most of the Austronesian languages of the archipelago. On Java, the oppressed peasantry expressed their dreams of justice through a millenarian myth of the Just King (*Ratu Adil*), who would unseat current corrupt powers and bring in an era of fairness and opportunity.²¹

From the 15th century, through a slow process of cultural transformation, which continues today,²² ‘animist’,²³ Buddhist and Hindu beliefs and cultural practices were gradually overlain, assimilated or displaced by Islam.²⁴ Islam became the religion of the ruling families of the coastal and upland kingdoms in the western parts of the archipelago and then, more slowly, became the main professed faith of those they directly ruled, even if underlain by previous beliefs. In the coastal areas, Islamic rulers began to identify themselves as Malay, while still using a term derived from Sanskrit to refer to their dominions (*kerajaan*).

Mostly these Malay kingdoms were established on the coasts and lower rivers where their taxable subjects lived, mainly from fishing and wet rice cultivation. But in some areas, such as near the top of the Kapuas River in West Kalimantan and on the middle Mahakam River in East Kalimantan, where there were extensive swamps, lakes and fisheries far inland, the Malay *kerajaan* also intruded their rule and the local people along the rivers gradually adopted Islam and were considered to have ‘become Malay’ (*masuk melayu*). The *kerajaan* were mainly concerned to tax the trade and extract rent but they also asserted dominion over fisheries, forests and farmland.²⁵

For the most part, however, the forest peoples kept themselves ‘outside the Raja’s fence’ and maintained their independence.²⁶ In these areas, lands and forests were owned and controlled as collective territories, by villages or clusters of villages, were farmed by families with heritable rights, which extended over their forest fallows, and were defended with vigour.²⁷ Most of these peoples were to retain their autonomy and their extensive forests right into the 20th Century.

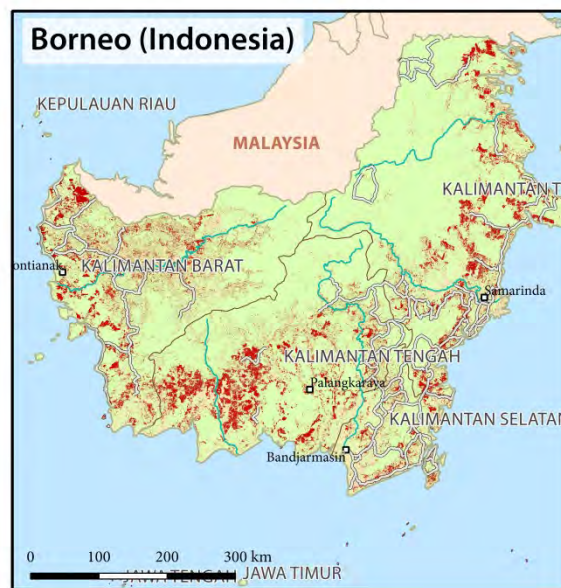
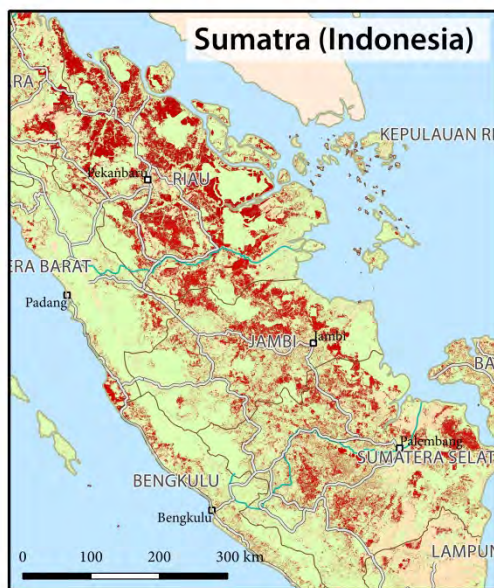
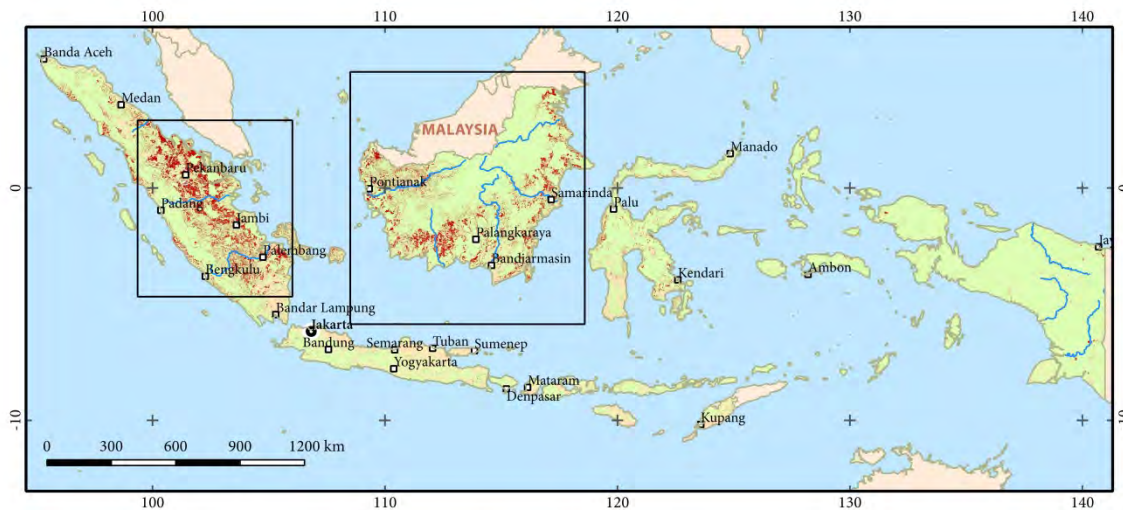
Outline of the history of deforestation in Indonesia

Indonesia, considered to have once been almost entirely forested, contains a wide variety of very different forest types, including lowland rainforest, swamp forest, peatland forest, mangroves, dry tropical forests, montane forests, savannah forests, heath forests, and dry deciduous forests. These forests are not only home today to some 80 – 95 million people with very different ways of life²⁸ but are stunningly biologically diverse. As *Down to Earth* notes:

Indonesia is one of the biologically richest countries. Although it only occupies 1.3% of the world’s land area, some 17% of species on earth are found there. Its forests contain 11% of the world’s plant species, 12% of mammal species, 15% of reptiles and amphibians and 17% of birds. Borneo alone has at least 3,000 species of trees; over 2,000 species of orchids and 1,000 species of ferns: over a third of these plants are unique to the island. Over 1,400 species of birds have been recorded in Indonesia; 420 species are endemic. One reason for this high biodiversity is that Indonesia lies on the Wallace line at the junction of two major biogeographical zones. To the west of Bali, including the island of Borneo, species are similar to those occurring in mainland Asia; to the east of Bali, flora and fauna typical of Australia are found such as eucalyptus trees and marsupials.²⁹

At the beginning of the twentieth century, forests still covered 170 million hectares or 84 per cent of the land area of the Indonesian archipelago. During the first half of the twentieth century, Dutch businesses cleared forests to establish plantations of sugar, rubber, teak, coffee, tea and palm oil, although the total area was

relatively small. In 1939, Dutch colonial records estimated that industrial plantations covered about 2.5 million hectares.³⁰ High rates of deforestation and forest degradation began in the 1970s with the issuance of logging licenses covering tens of millions of hectares, and forest conversion permits whereby lands were allocated to agricultural development and settlements. Forest cover decreased from 128 million hectares in 1990 to 99 million hectares in 2005.³¹



Deforestation in Indonesia 2000 – 2012



Legend

- Capital City
- City
- Major Roads
- Administrative Boundary
- Forest Loss 2000-2012
- Forest Cover

GIS Sources – Tree Cover and Forest Loss: Hansen/UMD/Google/USGS/NASA
Roads, Country Boundaries & Cities: Natural Earth

Date: May 2014

Projection: WGS 85 - EPSG



Vital statistics

Total area: 191,900,000 hectares

Total population: 246,900,000

Number of forest dwellers: 80,000,000 – 95,000,000

Number of indigenous peoples: 30,000,000 – 70,000,000

Total forest area (as of 2013): 131,300,000 million hectares

% of forest land under State-recognised customary tenure: less than 1%

Deforestation rate: doubled from 1 million ha per year in 2000 – 2003 to around 2 million ha per year between 2011 - 2013

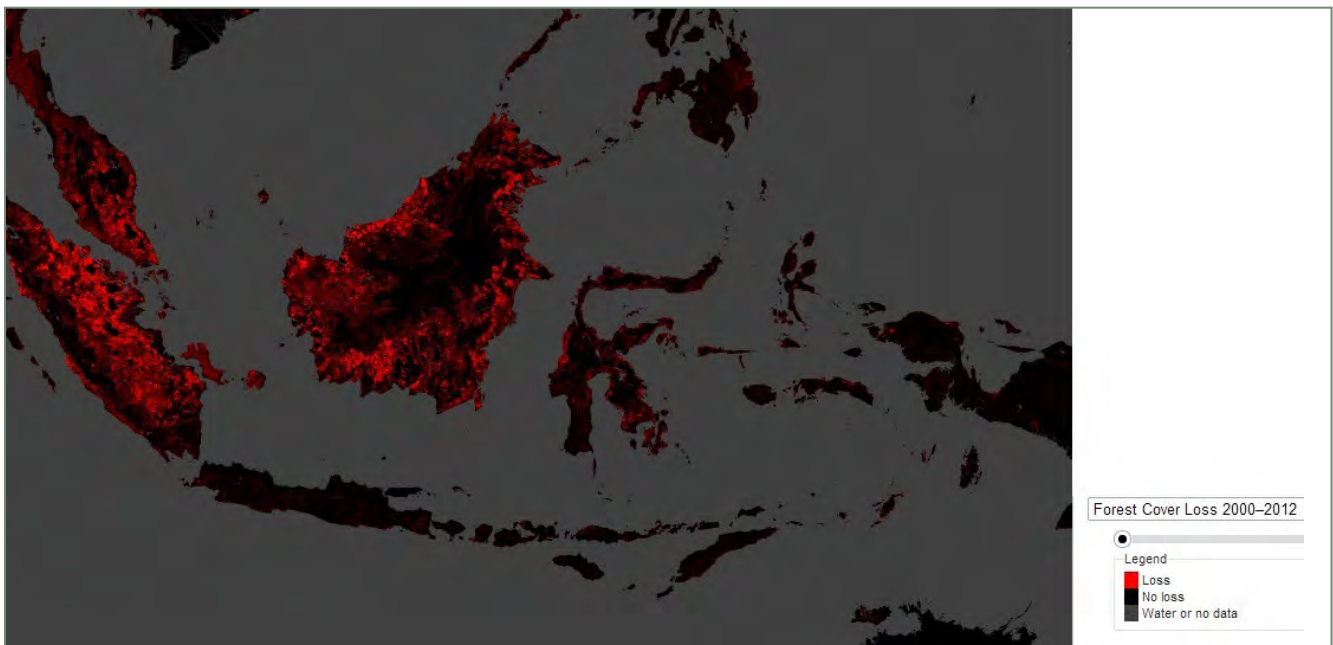
GDP per capita 2013: 3,509 USD

UNDP Human Development Index 2013: 0.629 (121 out of 187 countries and territories)

Main direct drivers of deforestation: logging, oil palm and pulpwood plantations

Current trends and country analysis of direct and indirect drivers of deforestation

Recent analysis of satellite imagery shows that the rate of deforestation in Indonesia doubled between 2000 to 2012 from one to two million hectares annual loss.³² This increase has taken place despite the Indonesian Government's recent efforts to rein in deforestation through a moratorium on the issuance of new forestry licenses in 65 million hectares of primary forests and peatlands, applied since mid-2011. The national forestry ministry disputes the increased rate of loss, claiming that deforestation has been reduced to about half a million hectares annually, although this figure is based on the forest zone, which excludes large areas of forest and tree cover, and does not classify conversion of natural forests to *Acacia* plantations as deforestation.³³



Forest cover loss in Indonesia 2000 – 2012

(Source: <http://earthenginepartners.appspot.com/science-2013-global-forest>)

Direct causes

The palm oil industry has been named as the leading cause of deforestation in Indonesia today, responsible for one quarter of forest loss recognised by the government between 2009 and 2011.³⁴ Oil palm plantations presently cover ten million hectares.³⁵ Taking a different approach but using similar data sets, another recent study shows that about 45% of forest loss in Indonesia between 2000 and 2010 occurred in existing industrial concessions of which the greatest loss of forest was the result of pulpwood concessions, then logging concessions, then oil palm concessions, then mixed concessions and finally mining concessions.³⁶ The pulpwood industry is also

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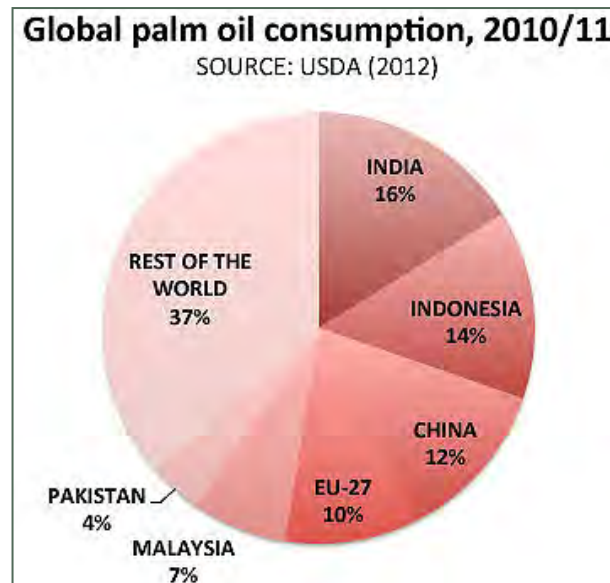
An example of the impact on local communities of forestry concessions is the industrial tree plantation concession (HTI) of PT Wira Karya Sakti (WKS), in Jambi, Sumatra. The first license for WKS was issued to parent company Asia Pulp and Paper (APP) in 1996 for the establishment of industrial pulpwood plantations covering 78,000 hectares. By 2004, WKS's concession had expanded to 294,000 hectares. In 2013, APP adopted a Forest Conservation Policy that commits the company to respect community rights, including the right of affected communities to give or withhold their Free, Prior and Informed Consent to project developments, and to negotiate with WKS to settle disputes over lands. APP surveyed the extent of community impacts in its WKS concession, and found that more than one hundred villages, with customary lands covering more than 40,000 hectares, had been negatively affected by WKS's operations. The Senyerang community, one of the hundred villages affected by WKS's operations, had been actively resisting the takeover of their forests and gardens since the late 1990's. Protests by the Senyerang villagers against their farms being bulldozed had been met with arrests and violence, including the killing of one villager, shot in the head by police as he protested the loss of his lands.⁴¹ Negotiations in 2013 between WKS and the Senyerang village led to an agreement covering 4,000 hectares, about half of the customary lands of the village⁴². Under the agreement, 1,000 hectares of the WKS concession could be used by the community for the establishment of rubber gardens, and the company would pay an annual benefit sharing fee of about \$15 per hectare to the community for 3,000 hectares of Acacia within its concession. This is the first negotiated settlement between a HTI company and an affected community, although it still falls a long way short of full recognition of customary rights in land. In 2014, APP will seek to begin negotiations with some of the other 100 villages affected by WKS.

The use of force and intimidation are also common in the acquisition of lands for oil palm, and the national lands agency has recorded more than three thousand cases of land conflicts in the oil palm sector.⁴³ A study by FPP and Indonesian NGOs in 2013 found that even oil palm companies that are members of the Roundtable on Sustainable Palm Oil (RSPO), which requires companies to respect the rights of indigenous peoples and local communities, were acquiring land without the consent of resident communities, and were failing to resolve long standing disputes with communities concerning access to lands and forests.⁴⁴

International trade and consumption as drivers of deforestation

Growing demand for edible palm oil in Europe, India, China and also domestically within Indonesia itself, have made Indonesia the global leader in oil palm plantations and Crude Palm Oil (CPO) production (Obidzinski 2013). Three quarters of Indonesia's palm oil is destined for export, and export taxes constitute a growing source of government revenues. The largest palm oil consumers in Europe are the UK, the Netherlands, Germany, Italy, Spain and Finland. Palm oil imports into Europe for use as biofuel increased more than three-fold since 2006, raising concerns that renewable fuels targets may be contributing to deforestation, displacing marginalised communities, and driving greenhouse gas emissions in Indonesia (Butler 2013). New E.U. policies mandate that at least ten percent of the European fuel market for transport be met by renewable energy sources by 2020, suggesting that this trend is set to continue and intensify. Beyond Europe, however, most palm oil is being consumed in Asia where consumers have to date shown little preference for environmental and social standards for sustainable production.

Indonesia supplies a third of all producer-country exports of tropical timber - second only to Malaysia. It is also the world's leading exporter of pulp, paper, and furniture based on tropical timber, excluding rubber wood. A significant amount of this is reported to be the product of illegal logging – in 2003, for instance, the Indonesian government itself accepted that just under 90% of its timber production was probably illegal (update with latest data from EIA/FERN report). Japan alone imported 40% of Indonesia's timber exports during most of the 1990s and remains the world's largest consumer of tropical timber. Malaysia, which imports some 10% of Indonesia's timber exports, has for several years imported 10 times as much timber from Indonesia as Indonesia declares that it exports to Malaysia. China is also responsible for driving Indonesia's illegal log exports, to feed its export-oriented processing industry which is largely dependent on cheap tropical logs. The EU imports around 10% of Indonesia's timber exports, mainly in the form of plywood (globaltimber.org.uk).



Source: <http://news.mongabay.com/2012/0619-frying-the-forest.html>

Part II: Legal and Political Underpinnings

In my community our understanding is that we have rights to our land and the natural resources both above and below the land. Everything up to sky belongs to us. Several laws and policies have classified our forests as State forests and the minerals as property of the State. We don't see it like that. I have hair on my arm, on my skin. Both are mine. I also own the flesh and bones beneath. They are also mine. No one has the right to take me apart. But the policy has cut these things apart and thus has cut us into pieces. We want the land back whole.

Pak Nazarius

Colonial land laws

The initial interest of the European colonial powers who intruded into the region from the early 16th century was to profit from and control regional trade, especially in spices.⁴⁵ Portuguese colonists made little effort to control lands and forests inland from their trading factories and while the early Dutch asserted their authority over large areas they sought to rule by indirect means. Beyond Batavia (present-day Jakarta) and the immediate areas around their other principal settlements, until the 19th century, the Dutch made little effort to reform Javanese and Sumatran land tenures, even where they implanted officials to direct the local rulers and guide the trade.⁴⁶

However, after the French took over Dutch sovereignty of Java as a result of the Napoleonic conquests in Europe, British traders and officials in Penang, Singapore and Calcutta soon found an excuse to intervene, drawn as much by the mineral prospects of Belitun Island as the riches of Java itself. And, once they had overcome French and Dutch resistance, instead of copying the Dutch, the British set in train a much more aggressive and interventionist approach that included military conquest, the elimination of uncooperative native elites, a reform of the land tenure system and a more efficient system for extracting rents.⁴⁷

A colonial view of Javanese land tenure⁴⁸

According the British Deputy Quarter-Master General Major Thorn who took part in the Conquest of Java, under the Javanese system:

the actual proprietary right in the soil was originally vested solely in the sovereign. The first clearers of the soil became entitled to no more real property in the land which had been in a manner created by their labour, than to a claim on the state for peaceable possession, so long as they and their heirs should punctually pay to the sovereign a due share of the produce...

He explained how the ruler's land was allocated down an extractive hierarchy through the nobility, to the Tumangong, the Bupatis and in turn to the Mantri-desa, who then extracted tax from the Bakal:

who is vested with authority over the cultivators, to whom he allots land or deprives them of it as he thinks proper.... by this plan of settlement, the interests of the body of the people are entirely at the disposal of a numerous set of chiefs, who exercised over them a gradation of arbitrary oppression, and exposed them to a variety of injustices. In fact, the people seem to exist merely for the benefit of their chiefs.... It has been calculated that in some eastern provinces a husbandman... derives from the fruits of his tillage only one fourteenth part for himself and his family; so greedy are the Chiefs with their numerous dependants, and lazy superintendents, all of whom the cottager is obliged to feed.

During their short period of rule, as part of these reforms, the British revised the system of land administration, imposing on Java a uniform system of districts, sub-districts and administrative villages that Suharto was later to impose on the whole of Indonesia almost 170 years later. The British justification for all these interventions was that the Javanese system was unproductive and unjust and they sought to impose a system that would yield more profit to the colonial power, provide more security to farmers and thin out the unproductive, ceremonial elite who lived off the work of the peasants.⁴⁹

The returning Dutch maintained the more profitable aspects of the British reforms but continued their policy of indirect rule on all the Outer Islands, a policy they only departed from in the conquest of Aceh and in a few other locations in the 20th century. The Dutch further developed their plural legal system, whereby commercial and European affairs were subject to Dutch law, while native affairs were subject to existing customary and religious laws and authorities. However, as the Dutch began to increase investment in agriculture, notably sugar for export, they also asserted more aggressively their authority in land matters.⁵⁰

In 1870, the Dutch declared all lands which had no legal owner, to be 'domain' lands owned by the colonial state.⁵¹ While this may have marked a continuum in sovereign power over land in Java and some other *kerajaan*, it implied a massive rupture with tradition in most other parts where rights in land derived from occupation and use were controlled and sanctioned by customary law. Repeated attempts by the Dutch to extend the 'domain' concept to the Outer Islands were, thus, strongly resisted by local people, notably in West Sumatra, and so the law was never extensively applied outside Java.⁵²

***Hak ulayat*: the collective ‘right of allocation’⁵³**

A key concept in the legal discussion of Indonesian tenure is the *adat* concept of *hak ulayat*.⁵⁴ The term was translated by the Dutch legal scholars Van Vollenhoven as meaning the ‘right of disposal’⁵⁵ and Ter Haar as ‘sovereignty’.⁵⁶ It has also been translated as meaning the ‘right of avail’,⁵⁷ while Burns has translated it as meaning the ‘right of allocation’.⁵⁸ The truth is that *adat* regimes generically known as *hak ulayat* probably imply all these things in different contexts and the difficulties in translation of the term reflect the difference there is between indigenous customary law concepts and western law. Like the English Common law concept of ‘Aboriginal Title’, *hak ulayat* derives from custom and precedes any act of the State.⁵⁹

Under very many of the customary regimes prevalent throughout the Indonesian archipelago, land is considered to ‘belong’ to the community as a collective, though it may not be ‘owned’ by it in accordance with western ideas of land as an alienable, private property. The community enjoys the right, subject to its customary rules, to ‘allocate’ land within the collective territory to members of the group for their long-term stewardship, or to outsiders for their temporary use. Lands allocated to community members are, in many societies, heritable and even alienable **within** the group but most commonly may not be alienated to outsiders.⁶⁰ When such lands are abandoned, remain unclaimed, or have no heirs, they revert to the collective. *Hak ulayat* can also be seen as a bundle of rights and, besides implying rights of access to and to use natural resources, also confers rights to regulate land for use and conservation, supervise the relationships between persons and the land, regulate transfers and the inheritance of land and other resources, as well as the right of representation of the community in relations with outsiders.⁶¹ *Hak ulayat* thus implies a much **greater** proprietary relationship with the land than the western concept of ‘ownership’, but in modern international law usage corresponds to a substantial degree with such concepts as ‘Aboriginal title’, or an inalienable, freehold, or the collective right to territory.⁶² As Wright notes: ‘*Hak ulayat* is the historical and philosophical cradle of *adat* land rights...’

The ‘domain’ law did however spur the efforts of colonial lawyers of the ‘Leiden school’, led by the eminent academician Kornelis van Vollenhoven, to understand and validate customary law (*adat*).⁶⁴ The ‘Leiden school’ carried out detailed studies of customary laws and sought to find consistent patterns in the diversity of local realities. They discerned 19 different customary law regions in Indonesia substantially on the basis of different customs related to land. Notwithstanding their emphasis on these differences, these lawyers also generalised that a defining aspect of *adat* law was the principle of the ‘right of allocation’. According to these studies, in Indonesia land was not **owned** in the western sense, but it **belonged** to the community. Under *adat*, land could not be bought or sold, but the community allocated land to community members to use and inherit and the land could, temporarily, be allocated to outsiders to use. The Western concept of inalienable, collective freehold comes somewhere near this notion.⁶⁵

The Dutch also formalised customary law in codes, and instituted courts and appellate courts to administer *adat* and adjudicate disputes, and their policy of indirect rule through *adat* institutions and subject to *adat* law continued during the short period of Japanese rule, although in theory a unified judiciary was introduced.⁶⁶

However, notwithstanding the acceptance by the Dutch of *adat*, they also introduced laws and regulations that allowed the alienation of customary lands for commercial plantations, which triggered bitter conflicts over land in some areas. In West Sumatra, these land disputes led to the Government accepting that companies given land concessions should negotiate with community chiefs (*penghulu*) before developing their lands but the pressure on leaders to relinquish lands was strong. By 1938, there were 2.5 million hectares of land in the Dutch East Indies under the control of 2,400 plantation companies, most of them part of enormous cartels or conglomerates.⁶⁷ This colonial legacy, whereby commercial concessions are favoured over customary rights in land, remains to this day a fundamental obstacle to a just and sustainable development process in Indonesia.

Colonial forestry

The Dutch first formalised a western system of forest management in Java at the beginning of the 19th century. Under this system, teak forests were arrogated to the colonial State. With questionable legality, forests were assigned to the jurisdiction of an office of the administration, forest lots were parcelled up and the rights of local communities were denied or restricted.⁶⁸ Under the influence of wider colonial programmes based on European notions of ‘scientific forestry’, and convinced that native systems of land use were wasteful and destructive, between 1865 and 1920 colonial foresters imposed progressively stricter Forestry laws designed not just to exclude communities but also to restrict the damage of commercial agricultural schemes. Under these laws, different regulations were applied to forests on State lands and trees on private lands, and different restrictions and taxes imposed on cutting timber for sale and for subsistence use. As natural forests began to deplete, the forest service adopted replanting regimes to maintain stock and placed further restrictions on villagers’ land use.⁶⁹

The annexation of land and forest on such a scale in Java, which was then home to nearly one third of Indonesia’s population, could not come about without major social repercussions, resistance and repression. Laws, detailed regulations and punishment regimes proliferated, while methods for controlling peasant labour in the forest industries became more involuted.⁷⁰

From the mid-1870s onwards, the Dutch began to experiment with the *taungya* system that was being applied by the British in Burma to quell tribal rebellions against timber exploitation there.⁷¹ Under this system, referred to as *tumpang sari* in Javanese, peasants were permitted to interplant their crops between teak saplings for a couple of years, until the saplings grew too tall and shaded out the crops. By the 1920s, over 94% of teak on Java was being planted using this system and the pattern has continued to the present day.⁷² The system endured into the independence era. By 1990, some 800,000 hectares of Java were under teak plantations. The people of the associated forest villages made a living through mixed economies in which *tumpang sari* played a part but they made up only a small proportion of the estimated 21 million people who were living in the 6,000 forest villages that occupied the 23% of Java (3 million hectares) designated as forest land.⁷³

During the 20th century efforts were made by the Dutch to apply these forestry laws to the Outer Islands (those areas beyond Java and Madura), asserting their authority to do so based on the ‘domain’ law, but the approach continued to be contested. On the one hand, ‘liberals’ who supported the rapid opening up of land for plantations favoured the State’s claims to ‘domain’ over all lands that were not private property, but they did not want all the areas thus arrogated to the State to then be set aside as Forest Reserves. On the other hand, ‘conservatives’, following the arguments of Van Vollenhoven, asserted the validity of *adat* rights. As evidence, they noted the frequency of costly conflicts spurred by resentment to the forestry laws. An Agrarian Commission concluded in 1930 that the ‘domain’ law should be abolished. The argument continued for another five years but in the end the ‘domain’ law was not extended to the Outer Islands.⁷⁴

Post-colonial legal evolution

Indonesia came to independence through a bitterly fought war, first against the British, to whom the Americans delegated the task of accepting the Japanese surrender, and then the Dutch, to whom the British gave back the troublesome territory with alacrity.⁷⁵ The revolutionary period was the crucible for new ideas from which the identity of the new nation was forged.⁷⁶ The founders of the independent nation agreed that the exploitative laws favouring foreign businesses should be abolished and they affirmed the centrality of *adat* in the identity of the new nation.⁷⁷ Indeed, Mohammad Hatta, the 1st Vice President of Indonesia promoted a vision of Indonesia as a democratic nation founded on the autonomy of self-governing communities such as the *Nagari* of his own Minangkabau people.⁷⁸ He became a strong critic of President Sukarno’s ‘Guided Democracy’ and associated centralism and championed a bottom up model of economic development based on Cooperatives. However, Sukarno’s autocratic style prevailed and Hatta was imprisoned.⁷⁹

Sukarno, for his part, was riding a tiger, seeking to reconcile three major forces - communist nationalism, religious conservatism and military authoritarianism, all three of which thought they represented the true spirit of independence - while facing down the largely hostile western powers who feared the consequences of his left-wing sympathies.⁸⁰ Historians tend to analyse this struggle in ideological and urban terms, but contest over lands and natural resources, so vital to the rural poor who made up the majority of the population and who had been impoverished by the war years, also defined the process. In many rural areas, the spirit of liberation and assertion of rights which pervaded the revolutionary independence movement, fuelled by the exhortations of the Indonesian Communist Party, gave rise to a militant land reform movement, that triggered rural violence against land owners and religious authorities in areas as far apart as Java, Sumatra and Sulawesi.⁸¹

The controlling power of the State and agrarian reform

To meet the needs of the nation and in line with Sukarno's anti-colonial, non-aligned posture, the 1945 Constitution introduced the legal principal that the State had a controlling right (*hak menguasai Negara*) over all the country's natural resources. Firmly articulated in the 1967 Mining Law and echoed in Article 2 of the 1960 Basic Agrarian Law, the principle grants the State authority to regulate, operate, classify, utilise, reserve and preserve natural resources for the benefit of the people, including deciding on and regulating the legal relations between people and natural resources.⁸²

Although the new Constitution implied a major rupture with the colonial past in the way lands and natural resources should be used and allocated, actual legal changes took a long time to be introduced into law. It was not until 1960 that the Indonesian Government enacted *Undang-Undang Pokok Agraria No. 5/1960*, the Basic Agrarian Law (BAL). This was the first national law on land to be enacted after independence in 1945 and it remains the framing law on land to this day.⁸³ The law sought to overturn the legal dualism of the Dutch, whereby Indonesians and other 'orientals' were governed by customary law, while westerners and commercial transactions were governed by 'positive' laws, based on Roman-Dutch legal precedents. In place of this dualism, which was seen as paternalistic and colonial, the BAL attempted to affirm a single system of law based on *adat*.⁸⁴

The law was designed to be consistent with the 1945 Constitution and with the Socialist development model espoused by Sukarno's programme of 'Guided Democracy'. It also sought to respond to the demands from the landless and land-poor rural masses for the redistribution of lands and thus affirmed that all land was to have a 'social function'. Accordingly, the law imposed land ceilings, provided for the expropriation of idle lands, and annulled some of the previous land laws inherited from the Dutch. The law also implicitly revoked the colonial proscription on the alienation of *adat* lands.⁸⁵

Despite the rhetoric of conformity with *adat*, the extent to which the BAL actually secures customary tenures is extremely ambiguous. Article 5 of BAL specifically states that:

Adat law applies to the earth/land, water and the air as long as it does not contradict national and State interests, based on national unity and Indonesian socialism, and also the other related regulations within this Law and others, all with respect to the religious laws.⁸⁶

The intent of the BAL was thus to subordinate *adat* to the national interest and the State.⁸⁷

As noted, the main form of tenure found among forest-dwelling indigenous peoples in Indonesia is that referred to by the catch-all term *hak ulayat* (see above). Contrary to indigenous views, under the BAL this right is interpreted as a right pertaining to State lands, an interpretation reaffirmed in Government Regulation No 24 of 1997 Regarding Land Registration. This interpretation is based on Article 33 (3) of the Constitution which, as noted above, gives the State the right to control natural resources. In effect, the combination of the Constitution and BAL reintroduced the concept of State 'domain', but now lands were to be entrusted to the new socialist republic for the benefit of the people, instead of to the colonial state which had managed resources to benefit the colonial power.

Another way of looking at it is that the law now implies that the collective *adat* ‘right of allocation’, which under custom was entrusted to local customary institutions, is now entrusted to the State itself as the ultimate holder of collective rights for the whole people of Indonesia. The combination of the 1945 Constitution and 1960 BAL implies a massive transfer of power to control lands and resources from the local to the national level. The implications for indigenous peoples are dire. Article 3 of the BAL thus explicitly states:

In view of the provisions contained in paragraphs (1) and (2) of Article 2, the implementation of *ulayat* rights and other similar rights of *adat*-law communities – as long as such communities in reality exist – shall be such that it is consistent with the nation’s interests and the interests of the State based on national unity and shall not contradict the laws and regulation of higher levels.

The General Elucidation of the BAL further notes:

It would not be justifiable for an *adat* community... to reject a plan of large-scale clearing of forests on an on-going basis, which is required for the implementation of projects for food production or relocation of people. Experience shows that regional development is impeded by problems related to *hak ulayat*. The interests of the *adat* community should be subordinated to the broader interests of the nation and of the State and the implementation of *hak ulayat* should also be consistent with the broader interests.⁸⁸

The Indonesian Government has thus been extremely reluctant to tolerate, let alone effectively ‘recognise and respect’ *hak ulayat*. Instead, the emphasis of the BAL is on the provision of individual ownership and the issuance of temporary leases to other corporate groups for development while recognition of collective rights is ‘tokenistic and superficial’. The World Bank’s conclusion is that, in effect, *hak ulayat* is ‘not recognised in juridical terms’.⁸⁹

It is a remarkable fact that this law, which was designed to implement land reforms in conformity with a State Socialist vision of national development, still remains on the Statute books. The law provides for a system of tenures that are complex, insecure, encourage use and not ownership and which, as the World Bank notes, ‘are continually liable to forfeiture to the State, usually without just compensation... [Moreover] there is little or no protection of the rights of indigenous peoples.’⁹⁰

In an attempt to rectify this latter deficiency, in 1999 a Regulation of the National Land Agency, titled *Concerning Guidelines for the Settlement of Hak Ulayat Issues of the Adat Community* was passed proposing a mechanism for the registration of *hak ulayat*. Article 5(1), providing for the Regional Government to investigate and determine whether *ulayat* exists with the participation of *adat* law experts, the *adat* law community, NGOs and other institutions involved in the management of natural resources. Under Article 2(1) the Guidelines recommend that such lands shall be drawn cartographically on the land registration base map ‘if possible by drawing the boundaries and recording them in the land register.’ Implementation of these Guidelines would then require the enactment of Regional Government regulations before they can be applied in practice, however the Regulation does not provide legal security of any rights. World Bank legal expert Warren Wright notes ‘the regulation is neither adequate in itself to deal with the problems of *hak ulayat* nor does it apply to forest areas which are outside the jurisdiction of the National Land Agency...’⁹¹ Indeed Budi Harsono, an acknowledged expert on the BAL, argues that the BAL is instrumental in restructuring *adat* communities, obliging them to abandon collective land use patterns and adopt individualised land entitlements.⁹²

Forestry law

With the development of new mechanised logging techniques in the 1960s, pressure on forests had meanwhile intensified. To regularise a chaotic exploitation of the forests, mainly by senior military officials, in 1967 the Suharto Government promulgated Act No 5, *Undang-Undang Pokok tentang Kehutanan*, the Basic Forestry Law (BFL). The BFL radically redefined the property rights of the tens of millions of Indonesians living in areas that were to be classified as ‘State Forest’. BFL had the aim of promoting a rapid process of national development based on the exploitation of natural resources by facilitating the access of large companies to forests.⁹³

During the 1970s, an administrative convention developed by which all lands classified as forests would be administered by the Ministry of Forestry according to the BFL, while all other lands would be subject to the BAL to be administered by National Land Agency (BPN). To this day, the Ministry of Forestry thus assumes that the BAL does not apply in forests, an interpretation that appears to have no legal basis.⁹⁴

Under the BFL forests are divided into two categories: ‘proprietary forests’ (*hutan hak*), notionally those areas of forests where land titles have already been secured, and ‘State forest areas’ (*kawasan hutan negara*), where property rights are not recognised. Forest peoples claiming *adat* rights, such as *hak ulayat*, find their lands subsumed into the latter areas. The degree to which *adat* communities may continue to exercise their rights varies with the classification of the forest. Rights in ‘Conversion Forests’ are effectively extinguished through the clearance of natural forests in the national interest and the land is transferred to the jurisdiction of BPN under the BAL. In ‘Production Forests’ traditional rights to hunt and gather may be exercised relatively freely, but only the minor and incidental usages are permitted in ‘Protection Forests’.⁹⁵

However, while recognising the existence of *adat* rights, in line with the BAL, the BFL treats these as weak rights of usufruct, and explicitly subordinates them to the national interest: logging and timber estates. Article 7 of the BFL thus notes: ‘Implementation of *ulayat* rights should not hinder the fulfilment of the aims of this Act’, a point reiterated in Article 17. This charge is further clarified in Implementing Regulation No 21 of 1971, *Concerning the Right of Forest Exploitation and the Right to Harvest Forest Products* which stipulates in Article 6(1): ‘the rights of *adat* law communities and their members to extract forest products... shall be arranged in a proper manner so as not to interfere with the implementation of forest utilisation’.⁹⁶

Between the 1970s and early 1990s, international development agencies, such as DfID, GTZ and the World Bank invested heavily in promoting a technocratic process of zoning Indonesia’s forests. The justification of this zoning was to ‘rationalise’ forest use. Forests were thus mapped and categorised first broadly into ‘protection forests’, ‘production forests’ and ‘conversion forests’ and then into various sub-categories, depending largely on biological criteria with no reference to the livelihoods or land use systems of the resident peoples. Far from curbing forest loss, however, the process merely legitimated the government’s approach, which was to ignore the existence and rights of forest dwellers, while promoting logging, transmigration and large-scale plantations on community lands. NGOs protested but were rebuffed.⁹⁷ Consultants’ reports which flagged these same concerns were buried.⁹⁸ Summarising this era, ICRAF researchers commented:

In the early 1980s, in what could be considered one of the largest land grabs in history, the government implemented a forest zonation system that classified most of the Outer Islands as forestlands. Seventy-eight percent of Indonesia, or more than 140 million hectares were placed under the responsibility of the Department of Forestry and Estate Crops. This included over 90% of the outer islands. Estimates place as many as 65 million people living within these areas. According to the Department of Forestry, the creation of the State forest zone nullified local *adat* rights, making thousands of communities invisible to the forest management planning process and squatters on their ancestral lands. As a result, logging concessions, timber plantations, protected areas, and government-sponsored migration schemes have been directly overlaid on millions of hectares of community lands, causing widespread conflict. Yet, in fact for many local people, traditional law, or *hukum adat*, still governs natural resource management practices.⁹⁹

The BFL was hastily revised in 1999, as part of IMF conditionality to refinance the rupiah that had been virtually bankrupted by the Asian Financial Crisis, and as a response to the pressure from civil society to provide for the rights of forest peoples. The new law disappointed many. Rather than clearly recognising peoples’ rights in forests and strengthening provisions for community forestry, the law instead opened the forests to (easily captured) logging cooperatives, while ‘customary forests’ (*hutan adat*), mentioned for the first time, were defined as State forests in which there was no proprietary right (see overleaf).

Development policy

Following the fall of Sukarno and the seizure of power by Suharto, Indonesia was directed down a path of accelerated development. A new cadre of US-trained Indonesian technocrats were given free rein to open up the economy to foreign investment and encourage rapid land development, which was to be in the national interest and break the poverty which Sukarno's policies of anti-*nekolim* and *konfrontasi* were blamed for having provoked. Ambitious five year plans (*Pelita*) were elaborated setting targets for State-directed development. The economy did start to grow and many Indonesians did welcome the immediate benefits, even if these came at the expense of the enjoyment of their civil and political rights.

However, the narrow focus of this approach was startling. As Indonesia's first environment Minister was later to admit:

When we Indonesians started to formulate our development policies in 1966-1967, there was little mention of environmental issues anywhere in the world: in particular there was little mention of the links between development and the environment. Accordingly, when we drew up a national development plan in 1968, our focus was solely on economic development.¹⁰⁰

There was a much darker side to the new regime. In the aftermath of the 1965 seizure of power, an even more dramatic reversal was to sweep the countryside, putting an end to redistributive agrarian reforms. The new military government set in motion a violent purge of communist party cadres, academic sympathisers and rebel military supporters – assisted by lists of suspects furnished by western intelligence agencies. Whether intentionally provoked or not,¹⁰¹ the purge spiralled out of control in rural areas leading to mass killings of anything between a half and one million people, as rural landlords and their clients, religious leaders and squads of militant believers who supported them, vented their fury on those who had sought agrarian reforms or had allegedly espoused communism or atheism.¹⁰²

Local administration and legal personality

The 1945 Constitution in Article 18 had formally recognised the existence of customary institutions, referring not only to the *kerajaan* but also to other self-governing areas under custom. However, in practice, first under Sukarno and then under Suharto, all these self-governing institutions were progressively abolished. It was not until a revised Constitution was adopted in 2002, and the laws abolishing customary institutions declared unconstitutional, that customary institutions were again affirmed. Article 18b(2) of the 2002 Constitution now clearly notes:

The state recognises and respects customary law communities with their traditional rights, as long as they still exist and accord with community development and the principles of the Unitary State of Republic of Indonesia, as regulated by law.

This followed more than 30 years in which customary institutions had been totally replaced by an administrative system that was imposed right down to sub-village (hamlet) level, under the 1979 Village Administration Act.¹⁰³ One of the important impacts of the Village Administration Act was that it subordinated all villages to a single common bureaucratic structure that was imposed throughout Indonesia. Villages were often regrouped and were all renamed by the Javanese term *desa*. Each *desa* was run by a village head (*kepala desa*) who was placed under the control of the head (*camat*) of the sub-district (*kecamatan*), in turn appointed by the head (*bupati*) of each district. These changes led to widespread protests and demands for repeal of the Act.¹⁰⁴

The dictatorship, however, would not tolerate such opposition. Instead it built on military practices born in the war of independence to encourage 'total people's defence'. Under a doctrine of *dwi fungsi*, or dual function, by which the military faced down both external and internal threats, army units were placed in every sub-district (*koramil*), even right down to village level (*babinsa*).¹⁰⁵ This profoundly affected the culture of communities previously used to ordering their own affairs through customary laws and customary institutions.

Social policy towards forest peoples

Ever since the 1928 Youth Congress, when the demand for national independence was first clearly articulated, the Indonesian project of nation building has aimed at uniting its diverse peoples into a single cultural identity. Although a national policy of cultural tolerance was explicit in the national slogan 'Unity in Diversity', during the era of 'Guided Democracy' (1956-1965) and especially during the 'New Order' era (1966-1998), a centralised programme of cultural assimilation got underway.

National policies promoted the gradual development of rural communities through three stages of social evolution from 'traditional' (*swadaya*) communities, through a second phase of 'transitional' (*swakarya*) communities, with the goal of creating 'developed' (*swasembada*) villages of the third category. Membership of a mainstream monotheist religion was a requirement of citizenship and conformity to the doctrines of *pancasila* (the five principles) obligatory.¹⁰⁶

The diverse customary communities of the archipelago were perceived as posing a serious challenge to this programme of national integration. Living as they did as 'tribes' (*suku suku*) outside the purview of the administration, they were conceived as dwelling in 'pre-villages' outside the official classification of village types. Accordingly, under the Basic Stipulation on Social Welfare (No. 6/1974), the State expressed an obligation to handle the 'national problem' of these 'isolated and alien peoples' (*masyarakat terasing*) and under Presidential Decree No. 45 of 1974, this task was entrusted to the Department of Social Affairs (DEPSOS).¹⁰⁷ DEPSOS officially described these communities as being comprised of '*people who are isolated and have a limited capacity to communicate with other more advanced groups, resulting in their having backward attitudes...*'¹⁰⁸ DEPSOS set out its integrationist programme in startlingly ethnocentric terms:

The Indonesian Government has been and is of the resolve to transform the societal status of said isolated communities, so that these communities will become normal communities, as well developed as, and on a par with, the rest of Indonesian society.¹⁰⁹

To this end DEPSOS implanted community development programmes aimed at: promoting monotheistic religions; building 'awareness and understanding of the State and Government'; ensuring participation in national development, 'raising their capacity for rational thinking'; increasing economic productivity; 'developing and nurturing their aesthetic concepts and values... in tune with the values of Indonesian society'; 'guiding and inducing [them]... to settle in an area with government administration'.¹¹⁰ In line with this programme of social engineering, traditional religions were proscribed, customary religious paraphernalia burned, traditions of tattooing and ritual practices prohibited, longhouses torched, and shifting cultivation banned.

A central plank of the national programme of cultural integration was the obligatory resettlement of dispersed and isolated communities into larger centralised villages under close government supervision. Some of these villages were resettled and then targeted for development by DEPSOS itself, while others were inserted into larger settlements made up of landless settlers resettled from Java and Madura onto the customary lands of the peoples of the 'Outer Islands' in the government's Transmigration Programme (see below). Still others were incorporated as members of the labour force of palm oil and rubber plantations established in 'conversion forests'.¹¹¹ Furthermore, because DEPSOS had only a limited capacity to reach all these communities, the Ministry of Forestry¹¹² itself carried out an extensive programme of resettlement of forest dwellers, targeting the 6 million people it estimated were engaged in shifting cultivation, in order to give unimpeded access to forests to large-scale logging operations. The explicit aim of this programme was to prevent shifting cultivation, prevent the loss of valuable timber through non-commercial logging and provide unskilled labour to the logging industry.¹¹³

Minister of Home Affairs Regulation 11/1984 and Instruction 17/1989 concerning Development and Assistance to Customary Law Communities in the Regions (*Pembinaan Masyarakat Hukum Adat di Daerah*), instructed Provincial governors and district heads (*Bupati*) to make inventories of the customary institutions in need of restructuring and to provide the resources to so change them. Field studies by Indonesian scholars show that

the consequences of these interventions were to undermine the authority of traditional leaders and ‘emasculate’ customary institutions.¹¹⁴

Despite criticism of the programme both inside and outside Indonesia, these policies continued to be applied right through the 1980s and 1990s. The policy of DEPSOS was restated in little changed terms in the Minister of Social Affairs’ Decree No 5/1994 at which time the government was estimating that 1.5 million, or 300,000 households, fell into its category of ‘*masyarakat terasing*’.¹¹⁵ Of these, some 160,000 people had already been resettled by DEPSOS, while a further 1 million were still thought to require the agency’s attention.¹¹⁶ Likewise the policy of the Ministry of Forestry and Plantations to resettle forest dwelling peoples, who were officially renamed *masyarakat adat* in 1993,¹¹⁷ also continued.

During the latter years of the Suharto era, DEPSOS’ programme changed somewhat¹¹⁸ and by the early 2000s, the administration was prepared to admit that the old approach was unduly uniform, with the same methods being applied to communities from West Sumatra to West Papua. The highly centralised budget and lack of scope for participatory methods meant that the role of local government in this programme was restricted to implementation, which was in reality severely limited. The ‘site manager’, ‘social worker’ and ‘community representative’ who were assigned to each resettlement community had no control of budgets and were only given their own houses and a single motorcycle as means towards implementing their assistance programmes.

During the era of *reformasi*, a gradual rethink of national policy towards indigenous peoples has become apparent, although the process has been severely disrupted both by political decentralisation and by institutional reshuffling in the capital. In 1999, DEPSOS was dissolved and most of the staff retrenched.

Just prior to the dissolution of DEPSOS, a new Presidential Decree was passed on *Establishing the Social Welfare of Remote Communities governed by Custom* (Keputusan Menteri Sosial 97/HUK/1999) which articulated a revised policy towards, and a new name for, the target group ‘isolated customary communities’ (*Komunitas Adat Terpencil*).¹¹⁹ The government estimated their numbers at some 1.3 million, in total, of whom about 80% live in State forests.¹²⁰

According to the Decree, these ‘remote’ communities are those with ‘a local and dispersed character that have not been involved in social, economic or political networks or services’. They live in small, homogenous secluded communities, have kinship based social rules, are geographically isolated and hard to reach, generally have a subsistence economy, a simple technology, with a high dependence on the environment and natural resources (Article 1). The main aim of the policy is to ‘empower the remote communities governed by custom in all aspects of life and living so that they can live normally – physically, mentally and socially – and so that they can play an active role in development, in which activities are carried out with very deep concern for local traditions’ (Article 2).

However, the subsequent dissolution of DEPSOS severely limited the government’s capacity to implement the new policy. Retrenched staff sought employment in other government departments or in the newly established provincial and district administrations. Equipment, offices and local funds were likewise appropriated by these decentralised agencies, which, in most cases have not re-established any local bureaux charged with indigenous affairs. Social programmes have often got low priority in the newly established regional administrations, which are preoccupied with revenue generation and economic development.

DEPSOS was restored in 2001 and a renamed ‘Directorate for the Empowerment of Remote Communities Governed by Custom’ (DPKAT) was re-established within it. A flurry of new publications and handbooks set out the new vision of the Directorate.¹²¹ In early 2002, a new Ministerial Decree was passed setting out *Operational Guidelines for the Empowerment of Remote Communities governed by Custom*. The guidelines note the importance of respecting human rights and responsibilities in line with the five principles of the nation (*pancasila*). Empowerment is interpreted as ‘meaning giving a mandate and trust to the local community

to determine its own destiny and select the form of development according to its own needs, and through the provision of sanctuary, capacity-building, advancement, consultation and advocacy'. In DEPSOS' view, however, 'the low quality of religious life and understanding, and their orientation towards the past, traditions, customs and systems of belief can be an obstacle to the process of change in remote communities governed by custom'. A further obstacle is that sometimes 'the social-cultural values of the communities contradict those of society in general and the development process itself'.¹²²

Neither the decrees nor the accompanying handbooks make any mention of land rights but a draft set of *Technical Guidelines for Efforts to Protect Remote Communities governed by Custom* does note the importance of respecting these peoples' rights to security, meaning that 'in their dwellings, nobody can be disturbed by anyone trespassing on their inhabited place or home without the consent of the inhabitant'. The Technical Guidelines also highlight as problems the takeover of customary lands as protection forest, national parks, conservation areas and logging concessions and the fact that collective land rights have not been regularised.¹²³

Transmigration and regional development

Transmigration was a policy begun in the Dutch era, whereby 'surplus people' from Java were resettled on the 'underpopulated' Outer Islands to spur land development and provide a labour force for expanding plantations. The project continued under Sukarno, the priority being to provide lands for retired soldiers and veterans of the independence struggle. As land reforms on Java faltered due to lack of will and resistance by larger land owners and religious leaders, transmigration was seen as a safety valve against rural dissent in Java and as a way of furthering the government's goals of national integration.

In the 1970s, with Suharto's more friendly policy towards western powers, international development finance began to pour into Indonesia and the Transmigration programme was stepped up. With the help of the World Bank, ADB, FAO and UNDP, as well as German, British, US and Japanese bilateral agencies, millions of landless and land-poor families from Java and Madura, and later, Bali, Lombok and Flores, were resettled onto the traditional lands of forest peoples of the other islands, without the least consideration being given to their prior rights to their customary lands and forests. Conflicts were common and serious problems resulted for the host communities, who were either shunted aside or brought into the transmigration process itself. In line with the social policy described above, the forcible integration of 'backward' indigenous peoples into settlements dominated by members of 'more advanced' communities, was the explicit goal of this social engineering, whereby the goals of development, nation building and the eradication of 'wasteful and backward' ways of life – especially shifting cultivation – could be achieved together.¹²⁴

While it is true that many transmigrants did make livelihood gains from the process, many settlements failed to fulfil aid agencies' development goals even in their own terms. Soils were unsuitable, planning inadequate, technical support weak and extension services under-resourced. Many migrants, unable to make a living on the two hectare plots they had been given, took up shifting cultivation themselves and moved into the surrounding forests, often intensifying conflict with the customary owners. The environmental consequences of Transmigration are often underplayed in analyses of deforestation. Yet by 1992, the Government was itself admitting that Transmigration had become the major cause of forest loss.¹²⁵

Sustained criticism of the programme by international NGOs and some local activists brave enough to speak out against the military, led to an ending of most international support for the programme. While agencies like the UNDP pulled out altogether,¹²⁶ the World Bank switched to funding 'second stage development', seeking to rehabilitate failed sites by encouraging the development of tree crops such as oil palm.

In 1994, the Bank completed a review of its involvement in the first three phases of transmigration. The review provided shocking evidence that, exactly as the campaigners had alleged 10 years previously, the Bank's projects had had 'major negative and probably irreversible impacts' on some indigenous groups and

had been pursued contrary to Bank policies and even contrary to the advice of project staff. By then it was too late, in terms of the World Bank's procedures to change projects or to address the problems faced by these peoples, as the projects had long been 'closed'. The World Bank board also rejected the idea (proposed by one startled Board member) that the Bank fund a remedial project to try to restore the affected groups' livelihoods. Notwithstanding, Transmigration itself continued but, as international funding gradually dried up, the Ministry of Transmigration struggled to meet its ambitious targets and after the financial crisis of 1997 numbers of families actually moved fell to an all-time low. By 2001, during the revisionist period of President Abdurrahman Wahid, it seemed as though the programme might cease altogether.¹²⁷

However, with the return to power of an ex-general, a more muscular model of development was again espoused. President Susilo Bambang Yudhoyono has encouraged the Ministry of Transmigration to adopt a bolder approach which envisages Integrated Self-sustaining Townships (*Kota Terpadu Mandiri*). These would combine transmigration settlements with food crops, timber estates and mines but give them supportive local townships to stimulate local markets and provide a wider range of goods and services to otherwise isolated settlements.¹²⁸

Forestry

The model of centrally-controlled 'scientific' forestry promoted by the Dutch and continued by the Ministry of Forests, has favoured the promotion of large-scale logging and timber processing. Customary rights were severely restricted and forest communities resettled. Some 600 very large logging concessions were handed out throughout the archipelago from the late 1960s to the 1980s, starting with Sumatra and then progressing through Kalimantan, Sulawesi, Nusa Tenggara, the Moluccas and finally West Papua and Papua. Despite clear evidence that most of this extraction was being carried out in highly destructive ways, international agencies such as the FAO, ITTO, World Bank and IUCN lent their support to the promotion of this model of forestry. They presumed that technical improvements in forestry practice would somehow hold in check problems that in fact derived from the political economy of logging.¹²⁹ DfID was to try this same approach in the 1990s, but was eventually forced to admit failure.¹³⁰ By contrast, from 1987 onwards, Indonesian NGOs, such as SKEPHI, in alliance with other South East Asian NGOs, began calling for a regional moratorium on logging.¹³¹

In the 1990s, as forest resources began to deplete to the extent of threatening the supply base of a domestic timber processing industry that had built up rapidly following a log export ban imposed in the 1970s, government policy shifted to the promotion of timber estates. Theoretically these were to be established on already degraded forestlands and were designed to lessen the pressure on natural forests, but the measures again ignored the interests of local communities. In practice, as NGOs predicted,¹³² the majority of these plantations were established by first clear-cutting natural forests, and the planting came too late to supply the mills, which relied on fibre from further clearance of natural forests while the timber estates matured.

International capital flooded in to fund the huge pulp and paper ventures that sprang up, meaning that the demand for fibre grew far faster than the trees in the new plantations.¹³³ By the end of the 1990s, Indonesia's forests, which foresters optimistically believed could yield some 22 million cubic metres of timber per year on a sustained yield basis – a calculation again made without regard for local livelihoods, were actually supplying more than three times that volume to sawmills, plywood factories and pulpmills. Today this problem of overcapacity remains unaddressed. By 2000, it was conservatively estimated that 65% of this timber was being illegally extracted.¹³⁴ All this has been achieved by the systematic denial of the rights of local communities.

Of course the industry did have its benefits. It generated employment for hundreds of thousands of Indonesians, a trade worth several billion dollars, a substantial proportion of Indonesia's foreign exchange and brought enormous wealth to a few hundred tycoons. In the context of a patrimonial political system that was dominated for over thirty years by a dictator,¹³⁵ this approach to forestry has also entrenched rent-seeking behaviours within the Ministry and contributed to Indonesia being considered one of the world's most corrupt countries. By the end of the 1990s, the Forest Department, which claimed jurisdiction over 70% of the country and nigh

90% of the ‘outer islands’, had expanded into a powerful institution with over 40,000 employees. Few of these staff had and still do not have any training in community forestry or customary livelihoods. Those promoting an alternative approach to forestry, which gives priority to the needs, rights and livelihoods of local communities, thus face huge barriers, erected and defended by these vested interests in government, in parliament and in the private sector, all of whom benefit from the current regime. They also confront the mind-set of conventional ‘scientific forestry’, the training for which is largely science-based and deals only lightly with social issues.

Political economy of forestry

A study published by CIFOR in 2006¹³⁶ exposed how in Indonesia, logging operations have been structured around power networks based on patronage since the earliest records, and over time have become an ingrained element in the country’s economic and political life. As the timber trade has expanded and pressure on forests intensified, the extent and penetration of these networks has also increased. The imposition of forestry laws in colonial Java in the 1860s, on the ‘outer islands’ in the 1930s and in independent Indonesia in the 1970s, made such operations ‘illegal’, but could not curtail them, as key elements in the local hierarchies depended on them for personal income and revenues. Already by the 1930s, ‘illegal’ networks had emerged, at the top of which were timber firms and large-scale traders that secured profit-sharing agreements with the sultans. Chinese and Malay middlemen implemented the logging contracts by hiring local community and migrant loggers to cut agreed quantities of timber in the forest in exchange for advances in cash or kind.¹³⁷

Following Indonesia’s independence in 1945, these networks intensified their operations and widened to include local government officials and members of the security apparatus. The scale of these ‘illegal’ and quasi-legal operations also increased dramatically. During the 1950s and early 1960s, timber sales became an important means for political parties to amass funds and attract new members, including members of local government.¹³⁸ In the late 1960s and 1970s, the ‘New Order’ government under President Suharto perfected a system of governance based on patronage financed with illegal revenues, of which the timber sales were an important part.¹³⁹ Simultaneous cutbacks in the centralised funding of the security forces’ budgets and increasingly close ties between the military and the ruling party¹⁴⁰ meant that timber operations became important to the revenue stream of the armed forces and thus vital to the maintenance of the political status quo. These ‘illegal’ arrangements were later given a greater appearance of legality with the passing of the 1967 Basic Forestry Law, which facilitated the handing out of large, capital-intensive logging concessions—often to top military leaders and Indonesian Chinese loggers—while eliminating the small-scale operations that had characterised the earlier phases of the industry and leading to the exclusion of local communities from forests.¹⁴¹ Within this regime, illegal logging proliferated as the politically protected concessionaires had little incentive to follow regulations, and the close ties between the forestry ministry and the concessionaires meant that forestry officials had little incentive to enforce them.

The influential role of the military both in national politics and in the forestry sector continued to distort forest governance even after the fall of Suharto in 1998. According to a detailed review by Marcus Mietzner:

The armed forces maintained a relatively privileged position in social and political life, enjoying impunity from legal investigations and continuing their practice of self-financing through the TNIs territorial structure.¹⁴²

Because of the military’s all pervasive presence in village, district and provincial level administration, army officers had been able to build up a massive portfolio of lucrative business ventures including in security services, illegal activities such as smuggling, prostitution, illegal logging, protection rackets and control of other natural resource companies, as well as manufacturing.¹⁴³

Following the fall of Suharto, Presidential efforts to curb the undue influence and budgetary independence of the military were weak under President Habibie, were foiled by the military itself when attempted by

President Wahid, and were virtually absent under President Megawati.¹⁴⁴ When the Government began to seek accountability of these enterprises, they were able to inventorise 1,520 different military-owned businesses,¹⁴⁵ although the military were able to sell off many assets without reporting them to the authorities, avoiding the transfer of proceeds to the state coffers and recycling profits to military personnel under the guise of 'educational' funds. Government efforts to take over the militaries' enterprises were also contested with the military insisting that only 6 or 7 of the businesses identified should be transferred to the State.¹⁴⁶

Under President Yudhoyono, the Government claims to have made more progress in reducing army dependence on off-budget funding from business enterprises 'from 70 per cent in the early 2000s to approximately 20 per cent in the early 2010s'¹⁴⁷ but, so far, President Yudhoyono has made no effort to reform the territorial command structure.¹⁴⁸

Also during the 'reform' period since the fall of Suharto, the central government has sought to widen its political support by granting greater autonomy to the regions. As part of these reforms, the government initiated a policy of decentralising authority over forests to the provincial and district levels, permitting them to issue 10,000 ha and 100 ha concessions, respectively, thereby reinvigorating the political pattern of logging that the large-scale concession system from the 1970s to the 1990s had partly eclipsed. Small-scale concessions proliferated as the newly empowered local government leaders sought both to secure revenue for the administration and to position themselves personally at the centre of lucrative patronage networks. These small-scale concessions, however, were also rife with illegalities in the form of procurement of licences, under-reporting of production, manipulation of annual work plans, tax evasion, bribery and smuggling.¹⁴⁹

Agribusiness

As noted, during the later colonial period the Dutch had promoted extensive plantations of cash crops both for the internal market and for export. The programme had faltered during the Sukarno era. Some foreign owned plantations were expropriated and nationalised industries were starved of capital and expertise. Forest clearance slowed. However, following Suharto's seizure of power, international development agencies began to support new plantation schemes. Notably, during the 1970s, the World Bank provided considerable funding for Nucleus Estate and Smallholder Schemes (known as *Perkebunan Inti Plasma* (PIR) in Indonesia), often supplied with labourers and smallholders under the Transmigration scheme.¹⁵⁰ Gradually hundreds of thousands and later millions of hectares of forest peoples' customary lands were taken over, without any compensation, and their extensive forests cleared and turned into huge agribusiness schemes, especially of oil palm but also cocoa, sugar and other crops.¹⁵¹ After 1993, the Government encouraged private sector expansion in the palm oil sector and the industry began to lift off. From 250,000 ha in 1978, the planted area increased to nearly 3 million hectares by 1998, had reached about 5 million hectares in 2005 and now tops 10 million hectares. It is estimated that a further 20 million hectares are already slated for development as oil palm, in provincial development plans and provisional permits.

These schemes benefit from the legal framework outlined above. Deprived of secure land rights, communities are unable to refuse the imposition of these schemes which are seen as national plans of public benefit. During the Suharto era lands were taken by force. Since *Reformasi* as communities have become more aware of their rights and emboldened to speak out they have been able to exact some compensation for permanently giving up lands but at nugatory rates, as low as US\$20 per hectare and more usually in 2013 around US\$70 per hectare.

Where they have had any say in the matter at all, most communities surrendering lands to these schemes consider themselves to be leasing their lands to incoming companies, in conformity with customary norms. However, the companies insist that communities are surrendering their rights in perpetuity. Indeed, under the BAL, a business use permit (HGU) is not valid until the lands are cleared of other rights as the National Land Bureau is required to ensure that HGU are only issued on vacant State Land. Moreover, also under the BAL, when a HGU expires (plantations can be extended for a full term of 120 years from first issuance), the land reverts to the State and not the community.¹⁵²



Oil palm seedlings prepared for planting, Kutai Kartanegara, East Kalimantan/Sophie Chao

Communities have many other grievances against the oil palm plantations which have been extensively documented by NGOs.¹⁵³ Acquisition of lands for estates and smallholder schemes violates the rights of indigenous peoples to their property. Their lands are being taken from them without due payment and without remedy. In addition, their right to give or withhold their free, prior and informed consent for these proposed developments is being violated. The dramatic changes in local landscapes and ecosystems - including the loss of game, fish, lands, forests, as well as water for drinking, cooking and bathing - in turn have major consequences and deprive people of their customary livelihoods and means of subsistence, undermining local food security.

The research also details the worsening situation of women, as their livelihoods, cultures and economic circumstances are transformed. The reports note that whereas under some systems of customary law, lands may be held by women (as among the Minangkabau in West Sumatra) or equally by men and women (as among most Dayak peoples in Borneo), when community members receive formal land titles as smallholders these are vested in male heads of households. The marginalisation of women has been cited as a cause of the increased instances of prostitution in oil palm areas.¹⁵⁴ According to the Indonesian Ministry of Women's Empowerment, the impact of oil palm plantations on rural women can include: an increase in time and effort to carry out domestic chores through the loss of access to clean and adequate water and fuel wood and an increase in medical costs due to loss of access to medicinal plants obtained from gardens and forests; loss of food and income from home gardens and cropping areas; loss of indigenous knowledge and socio-cultural systems; and an increase in domestic violence against women and children due to increased social and economic stresses.¹⁵⁵

In particular, smallholders also complain of serious problems in the way they participate in land holding schemes. According to several field surveys, as well as the testimony of farmers at numerous meetings of the Roundtable on Sustainable Palm Oil, smallholders in Indonesia suffer from: monopsonistic relations with local mills; unfair allocation of smallholdings; untransparent processes of land titling; high and manipulated debts; and unfair pricing. Farmers speak emotively of being 'ghosts on our own land' because of the endless cycle of debt they are trapped in.¹⁵⁶ These problems are common, though not universal, and amount to the extraction of 'forced labour' – a 'contemporary form of slavery'.¹⁵⁷ Recent studies by researchers from the Australian National University show growing disparities between rich and poor in smallholder areas especially in Sumatra.¹⁵⁸

Since the judiciary is notoriously corrupt and the land laws so weak, few communities feel confident of a fair hearing in the courts. Consequently, denied other remedies, many communities have been driven to protest the take-over of their lands through direct actions such as demonstrations, occupations of company offices, public protests outside government offices, petitions and blockades of company roads. Others have protested by stealing fruits from palms on estates and selling them to other mills. There have also been incidents of attacks on company properties such as buildings and machinery. The Indonesian palm oil monitoring NGO, SawitWatch, has identified 630 land disputes between palm oil companies and local communities in Indonesia as a whole.¹⁵⁹ However, the actual number of disputes may be much higher than this. According to the *Badan Pertanahan Nasional* (the National Land Bureau) there are currently some 3,500 land disputes related to palm oil in Indonesia.¹⁶⁰



Community member walks through plasma oil palm plantations in Wilmar concession, PT Agro Nusa Investama, West Kalimantan/Sophie Chao

What is ‘deforestation’ and who is ‘deforesting’?

A significant obstacle to halting deforestation in Indonesia is the lack of clarity over who is deforesting what, with the result being the ongoing criminalisation of indigenous peoples and local communities as agents of deforestation and threats to forest preservation initiatives. This remains a widespread view among scientists and intellectual groups, despite the fact that customary practices, such as shifting cultivation, have in fact been proven highly sustainable, provided of course that communities have access to sufficient areas of land to maintain fallow cycles.

Likewise, the definition of deforestation remains debated – what scope or scale does this assume? Deforestation of what, and for what purpose? How should middle-scale plantations be differentiated from large-scale concessions and also *hutan desa* in legislation? The politicised nature of the term has encouraged some to opt instead for ‘forest degradation’, which it can be argued better reflects the deterioration in the general conditions and functions of a forest (both environmental and social) rather than just a reduction in forest area per se.

(See Mulyoutami et al 2011).

Impacts on rights, livelihoods and biodiversity

All this has had major significance for the peoples and forests of Indonesia. Those peoples whose ways of life are most attuned to living on the land and looking after forests are just those whose rights are least secure. It is estimated that in Indonesia less than 40% of land holdings are titled¹⁶¹ and in the outer islands the figure is more like 20%.¹⁶² In remoter rural areas, the figure is even lower. A very rough estimate suggests some 90 million rural people in Indonesia secure access to lands only through informal or customary tenures. Provisions for collective titles are even weaker, although some Provinces – Aceh, West Sumatra, West Papua and Papua - have begun developing laws, regulations and procedures to make it possible. This means that local communities are virtually defenceless when outsiders, be they powerful business interests or richer, better connected farmers, seek to develop their lands. Local authorities can allocate communities' lands to outsiders without ever visiting the areas or informing the people, and usually do so.

In areas that have been classed as forests the situation is in some ways even worse. Not only do the communities lack any land titles, as by administrative tradition the BPN does not administer such areas, but the forestry laws further restrict their use rights. Until recently, it was almost unheard of for forestry officials to consult local communities before logging licences or plantation concessions were imposed on their lands and forests.

During the reform period, sustained pressure on the Ministry of Forests to change the way they dealt with local people began to have some effect in the last decade. Having only ever regarded forest peoples as illegal forest destroyers, by 2006, the Forestry Department was estimating that there were at least 49 million people living in the State forest zone, whom they distinguished into three groups, customary law communities, long-term residents who no longer used custom to organise their lives and recent migrants. Following intensive discussion with civil society groups organised in the Working Group Tenure, in 2005 the Forestry Department recognised widespread conflicts in the forest zone over land, forest management permits (logging and plantations) and conservation which were exacerbated by the fact that the Government does not recognise traditional knowledge and had no procedure to regulate and appropriately control timber production by customary communities. Given the large numbers of people within the forest zone and the impossibility of removing these people, the senior forester in the Working Group recommended that laws and policies be revised to provide appropriate rights so communities could use and manage forest resources under untransferrable titles. There would however he argued continue to be a need for the Department of Forests to retain forests under its jurisdiction in order to maintain and enhance forest functions.¹⁶³



Unfulfilled promises from oil palm companies and land grabbing without the Free, Prior and Informed Consent of local communities is a cause of social unrest, conflict, blockades and protests in many concessions, including Wilmar-owned PT Mustika Sembuluh, Central Kalimantan/Sophie Chao

Part III: Community Alternatives

The emergence of a civil society critique

The political climate of the 1980s and early 1990s gave very little space to NGOs to criticise government. It was only with the fall of Suharto in 1998 that NGOs were able to have an overtly reformist agenda and gain mainstream development agency funds to further such approaches. For all these reasons, the movement to promote community-based alternatives to forestry in Indonesia got off to a slow start.¹⁶⁴ The larger NGOs, those which absorbed the majority of overseas funding available to civil society groups, chose to work within government programmes while promoting participatory approaches. Others, with a more Gandhian ethic, worked to 'empower' local communities without addressing policy issues. A third much smaller but more visible sector, only loosely linked to local actors, also secured overseas grants but relied on the protection of more progressive elements within government to criticise government policies. They also used informal networking and the creation of 'forums' to front their more outspoken statements and critical findings.¹⁶⁵ However, only a handful of environmental and human rights activists felt brave enough to speak out in open opposition to the government.

In early 1980, ten Jakarta-based environmental, consumer and human rights organisations established the Indonesian Environmental Forum (WALHI), which had grown to represent over 300 organisations in all of Indonesia's 27 provinces by the early 1990s. WALHI Spin-off networks and research and education groups included SKEPHI (on forest conservation), Konphalindo, LATIN, Sejati (on ecology and indigenous cultures) and Pelangi (on climate change and sustainable development policy). Dozens of regional and provincial community action organisations with strong orientations toward local environmental issues that sprang up in the 1980s joined WALHI's network. While WALHI clearly identified poverty and lack of legal protection for land rights of poor peasants in Java and indigenous communities in the Outer Islands as causes of environmental degradation, issues of social justice were often subsumed in WALHI's broader programs of environmental protection and sound management.¹⁶⁶

By contrast, social justice and injustice were always at the forefront of SKEPHI's agenda, its orientation being toward 'people as part of nature conservation', anchored in the belief that 'the problems of ecosystem cannot be separated from the problems of the community system (social, economic, political and cultural)'.¹⁶⁷ SKEPHI emphasised the importance of social transformation for forest conservation and its network included several of Indonesia's more daring rural community groups as well as urban-based activists. Drawing on concepts that reflected the long history of rural organising in Indonesia, as well as principles of rural resistance movements in areas as distant as India, West Africa and Brazil, SKEPHI sought to address the need to overcome the paralysing effects of marginalisation by unlocking the inherent strengths within communities themselves by raising consciousness about the soundness of community members' own experiences and skills, and locally-based traditions of action and organisation. The early 1990s leadership at SKEPHI wanted to build an organisation that would be immune to the 'middle class syndrome', eschewing expediciencies of a newly-respectable and well-heeled environmental movement that hesitated to create disturbances for which there would be retributions 'from above'.

During the 1990s, two far-sighted aid programmes in particular, helped to build up civil society capacity to rethink issues of conservation, deforestation, community rights and justice. USAID funded the Biodiversity Support Programme, which in Indonesia provided critical support for community mapping, legal analysis, alternative livelihood strategies and community-based conservation. It generated a network of NGOs linked together as KEMALA, later to become an NGO in its own right. Then just after *Reformasi*, DfID funded a three year project, the Multi-stakeholder Forestry Programme, which built on the BSP's foundations and provided funds that stimulated civil society engagement with the Ministry of Forestry and other agencies charged with natural resource management at national, provincial and local levels.

The Communication Forum on People's Forestry (FKKM) emerged in 1997 as an attempt to create an inclusive forum which could stimulate dialogue among all the various 'stakeholders' concerned with community forestry. During early 1998, FKKM members tried to lobby the World Bank and IMF to introduce conditionalities into their economic rescue package that would favour community forestry. The results were hugely disappointing. Furthermore, FKKM's mobilisation as a forestry reform think tank when Habibie and then Wahid took over the Presidency and announced a period of reform brought expectations that a new Forestry Act could now accommodate community forestry. The 2001 Forestry Act was, however, reformed in a way very much counter to the Forum's proposals and led to much demoralisation among members. While the Forum was successful in spreading awareness about community forestry, it was hampered by a lack of strong links with the grassroots, although it had success in securing community rights through the creation of the new social forestry permit system HkM, as applied in the WATALA/ICRAF project in Sumberjaya in Lampung (Southern Sumatra). This initiative was appreciated by other FKKM members as a breakthrough and FKKM facilitated farmer to farmer sharing of this experience with other provinces.

The Consortium for Supporting Community-based Forest System Management also got going in 1997 although it had evolved informally as a means of sharing experiences among a number of NGOs testing pilot projects in community forestry over the previous three years. Emphasising the importance of an ecosystem, rather than a timber centric approach to community forestry, the network opposed the HkM permit process and instead advocated a more radical reform which would value the importance of local knowledge, customary institutions, community control over forests and tenure reform. However, KpSHK has also acknowledged that a single solution approach to community forestry was probably inappropriate, given the differences in forest management of diverse groups including indigenous peoples but also migrant farmers and displaced peasants.

Also during the mid-1990s, a vigorous NGO movement for the mapping of community land claims and land use systems established itself in Indonesia. The mappers in Indonesia were able to form a network for participatory community mapping (JKPP), which has helped share the skills, lessons and experiences quite widely but unevenly across the archipelago. Participatory mapping has proved to be a powerful tool in the hands of community activists and has allowed them to engage in dialogue with NGOs, local government and the private sector to secure some measure of recognition of their customary rights – for example in spatial planning (as in West Kalimantan), for a special decree recognising *damar* forests (as in Krui in Lampung), and for the appropriate zoning and redelineation of village land and protected areas (as in Kayan Mentarang in East Kalimantan).¹⁶⁸ Maps have strengthened communities' resolve to press for a recognition of collective rights to their lands, which may yet provide a useful basis for community forestry once government policies, nationally and locally, provide mechanisms for recognition.

Today, a large segment of Indonesia's environmental movement is committed to making the government take seriously its new role as protector of the environment by introducing liberal political institutions – a bureaucratic regulatory framework, and recognition of local and indigenous land rights, with an independent judiciary – into Indonesia's corporatist developmental State, and in so doing, reconstituting at least a significant corner of the basis of State legitimacy. More radical groups, and the local resistance movements of marginalised communities with whom they make common cause, define their actions in immediate terms of livelihood and survival, fighting to retain locally-based land and property rights – and the place-based ecological management systems in which they are embedded. Their tools are locally-initiated protests; stubborn refusal to be 'resettled' by the State's highly capitalised 'development' projects, and blockades. As a last resort, they have supported local communities to reclaim resources that have been taken from them through actions of symbolic resistance, including through re-occupation of customary land.

A main challenge that civil society organisations face in Indonesia is to establish effective two-way links with the communities. Most of the networks are donor driven and donor initiated, internal governance of networks is weak, the networks face a dilemma between benign dictatorship and consultativeness, many suffer structural problems and have never questioned the links between structure, participation and accountability,

and while Indonesian customary decision-making through consensus-building (*musyawarah*) helps build joint visions it can often allow individuals to dominate networks. Another lesson that has come out of the national experience is that to be effective, the community forestry movement will need to give much greater attention to tenure reform. The main issue that most rural communities are demanding is security of tenure. Indeed a network of networks has coalesced around this issue in the form of a working group pushing for a law that would put into effect the National Assembly resolution that instructs the legislature to radically reform land and forest tenure laws to respect community rights and institute an integrated procedure for just natural resource management (TAP MPR IX). This network has brought together the community forestry activists with the human rights and social justice organisations as well as AMAN and NGOs pressing for land reform like KPA and the RACA Institute.

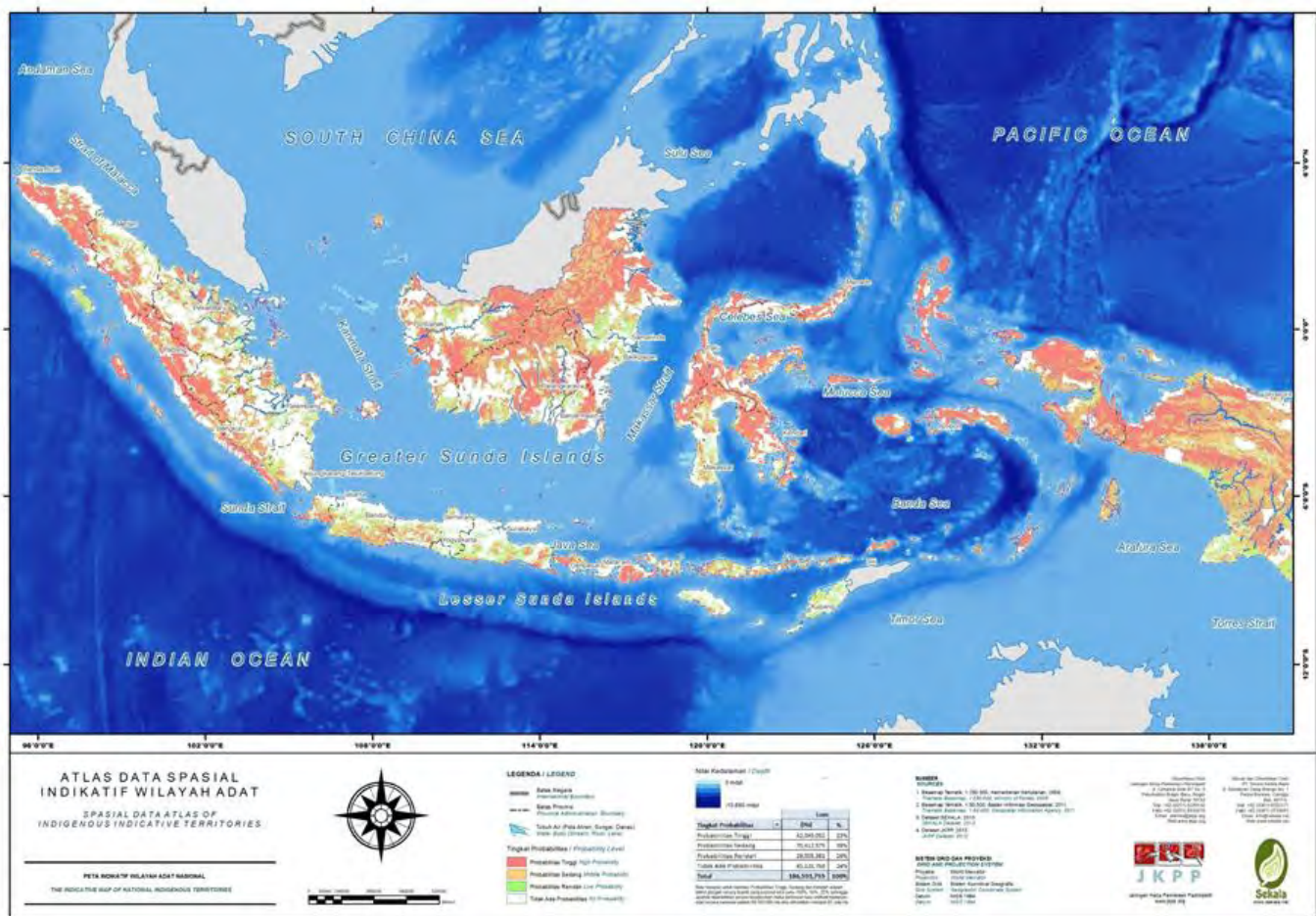
AMAN

In 1999, community activists held a historic congress in Jakarta establishing the *Aliansi Masyarakat Adat Nusantara* (AMAN – the alliance of peoples governed by custom of the archipelago). Building upon a process of mobilisation that began with the International Year of Indigenous People in 1993, the Congress marked the formal entry of *masyarakat adat* (people governed by custom) as one of several groups staking claims and seeking to redefine its place in the Indonesian nation as the political scene opened up after Suharto's long and repressive rule.¹⁶⁹ Claiming to represent some of the 60-120 million people who live in communities where custom is still respected, the Congress called for the recognition of community rights. AMAN issued a challenge to the reformists for a change in policy towards the country's marginalised communities. '*We will not recognise the State unless the State recognises us.*' Although land reform and the recognition of their right to self-governance are their central demands, AMAN is also demanding the reform of forestry and land tenure laws to ensure a restitution of customary rights to own, control and manage natural resources including forests as part of this demand for recognition.

AMAN and its supporters assert the fundamental rights of indigenous peoples as the grounds for securing rights to territories and resources threatened by forestry, plantation and mining interests backed by police and military intimidation. Their attempt to place the problems of *masyarakat adat* on the political agenda has been remarkably successful. Since its establishment, AMAN has been effective at raising its profile nationally and internationally. The existence of AMAN has obliged policy analysts and aid agencies to realise that the systematic exclusion of these millions of people from having secure rights is a central problem that has to be confronted if 'sustainable forest management' is to be achieved. Yet AMAN has shown that where communities own, or at least control, their lands and forests they can maintain and restore forest values.¹⁷⁰

One of AMAN's key activities has been to consolidate the efforts of indigenous communities who, with NGO support, have mapped several million hectares of customary land in Indonesia, as a way of clarifying the extent of customary rights and defending these areas from encroachment by palm oil, pulp and paper concessions. However, tens of millions of hectares of customary lands and forests are yet to be mapped, leaving communities vulnerable to land grabbing by companies for plantation expansion or other development projects. New mapping tools like GPS are being used to accelerate the process. AMAN plans to map 40 million hectares of customary forests by 2020.¹⁷¹ In 2014, working together with organisations such as JKPP, the national participatory mapping network, AMAN launched an indicative map of indigenous territories in Indonesia, with the expectation that this map will be incorporated in the National Spatial Data Network (Jaringan Data Spasial Nasional, JDSN) of Indonesia, and be key in the implementation of policies related to indigenous peoples, including the One Map Policy, Constitutional Court Decisions No. 35/PUU-X/2012 and No. 45/PUU-IX/2011 and the recently adopted Law on Villages (see overleaf).¹⁷²

PETA INDIKATIF WILAYAH ADAT



Indicative map of indigenous territories by Indonesia Network for Participatory Mapping (JKPP), AMAN), Simpul Pemetaan, SEKALA, UKP4, Ford Foundation and Samdhana Institute launched during the seminar on “Acceleration and Expansion of Indonesian Economic Development (MP3EI) and Living Space Sovereignty of Rural People of the Archipelago” in 2014.

(Source: http://www.aman.or.id/2014/01/29/indicative-map-of-indigenous-territories-launched/#.U0OSN_mSySp)

Community forestry

Despite unfavourable social and political climates, many communities in Indonesia have continued to retain some control over their forest resources under community-based forest management practices, known under a variety of terms throughout the archipelago, such as community forest (*hutan rakyat*), village forest (*hutan desa*), forest gardens (*kebun hutan*), and agroforestry areas (*wanatani*). Several forms of social and community forestry exist today in Indonesia. Eight of these are sponsored by the government and backed by policies and licenses. Of these, the two most common forms are Community-Based Forests and Village Forests. Community-Based Forests (*Hutan keMasyarakatan* or *HkM*) give farmer groups a 35-year license to manage select production or protection forests, with the ability to harvest forest products.

Village Forests (*Hutan Desa*) enable village-based institutions to obtain a 35-year license to manage and protect state forestlands that have not been assigned to other entities. Both require compliance with quite onerous institutional and forest management regulations. Indonesian communities also practise many other forms of self-organised forest management which can be grouped as Customary Forests and Community-Based Forest Systems. These have no clear, State policy framework to accommodate them, but numerous NGOs support them in the belief that community-initiated systems will be more closely linked to the users' needs than those developed by the government.¹⁷³

Some positive precedents in community forestry initiatives have taken place in recent years. Since 2010, village forests (*Hutan Desa*) have begun to be recognised, one of the first being in Sulawesi in 2010. With support from NGOs, villagers from three communities in Bantaeng district were awarded Village Forest Management Licenses, securing tenure over local forest lands for 35 years. Those forest resources will be managed by local village enterprise bodies (referred to as BUMDES) under Village Forest Management Regulations. Representatives from local communities, civil society organisations, and local and provincial government authorities have since worked together to draft a roadmap for a community-based Forest Management Unit in South Sulawesi, using Bantaeng district as a model. The formation of such units is one of the Ministry of Forestry's priority policies, designed to create myriad forest management models that respond to different landscapes across the country. Bantaeng's experience has been widely publicised locally and nationally, and the Ministry of Forestry has set targets for the expansion of the Village Forestry (2.5 million hectares by 2015). There is now significant interest and vast potential to scale up the model and its impacts across Indonesia.¹⁷⁴

Forest regeneration in Java

In Java, the nation's most populated island and subjected the longest to industrial plantation management, communities took the reform policies of the late 1990s as a signal that a more socially-inclusive forest management system was needed.¹⁷⁵ The hamlet (*dusun*) land management system of the Javanese is called *wono dusun*, a community resource unit that has multiple uses—agriculture, livestock raising and forestry, and exhibits many features that characterise intensive agroforestry such as ecological diversity, stratification, multiple use, ecological sustainability and greater economic stability.

Efforts to provide benefits to forest communities in Java began under the Dutch in the 1930s. After independence these programmes continued and experiments were made, encouraged by the Ford Foundation, to promote greater consideration of community views and needs. However, a critical review of these programmes carried out by ICRAF found that they were applied in a restricted number of areas, did not change the prevailing paternalistic style of management and brought only limited benefits to the few communities involved.¹⁷⁶ It was only in 1995, that the Ministry of Forestry was persuaded to issue a Ministerial Decree (SK 622/1995) which offered farmers the possibility of securing permits to harvest non-timber forest products from State Forest Areas.

In 1998, ICRAF joined with many others in founding the informal national community forestry forum (FKKM) to push the Ministry of Forestry, then under the progressive Minister Djammaluddin, to give greater scope for community forest management. The result was a significant advance. SK 677/1998 allowed the Ministry to grant local cooperatives a 35-year utilisation 'right' (*hak*) in production, protection and conservation areas. It was hoped that this provision would be incorporated and expanded in the revised Forestry Law the following year, with appointment of the first *reformasi* Minister of Forests. This was not to be. The omission of measures on community forestry in the 1999 Forestry Law (UU 41/1999) obliged the Ministry to issue a further Decree, SK 865/1999, later that year, whose main purpose was to bring HkM into line with the new law. However, the new Decree did not increase community control as had been hoped. Even the word 'right' in the previous decree was dropped in favour of 'permit' (*ijin*). In 2001, the Ministry issued a further Decree, SK 31/2001, which reduced community forestry permits to 25 years and excluded the option of issuing HkM permits in nature reserves. The decree did however, for the first time, allow communities to harvest timber. Although the government has a target of issuing HkM licenses for 2 million hectares, as of 2014,¹⁷⁷ the area under HkM permits nationally comprises only 46,500 hectares, less than 0.01% of the forest estate.¹⁷⁸

The Indonesian Communication Forum on Community Forestry (FKKM) was instrumental in bringing stakeholders together and emphasising the involvement of forest farmers in policy development and program implementation in Java. A positive example of this is the case of Wonosobo District in Central Java. Eager to utilise the new opportunities for reform, the Wonosobo Legislative Assembly opened up venues for discussing issues on land use conflict and forest plunder. In 1999, an official letter from the Central Perhutani Director (State Forestry Enterprise of Java) was circulated to district units ordering the adoption of collaborative forest

management as the new Perhutani management approach. A few progressive Perhutani middle-level managers in collaboration with NGOs including ARuPA through the Java Forest Forum (*Forum Hutan Jawa/FHW*) took this opportunity to propose a management approach centered on local communities. The result was the Collaborative Forest Management Program (PHBM) framework of 2000 which calls for greater local decision-making authority and greater profit sharing for local people. It led to the passing of a District Regulation on Community-Based Forest Management (Perda 22) in October 2001, a welcome development for villagers who had already started applying the traditional agroforestry techniques they used in lands classified as *hutan rakyat*, or people's forests.

In 1999, community-managed forests on Java generated 2.29 m³/ha/year of timber, three times more than the average annual productivity per hectare in Perhutani-managed state lands. Furthermore, staggered land use and continuous seasonal crop production with a variety of plants was being applied to buffer the communities' livelihoods against market fluctuations and provide them with subsistence products that could be harvested more immediately to meet daily needs. As a result, financial yield of the land became more stable and generated greater value for the communities than less diverse plots. Global Forest Watch estimated that forest cover in Java increased by almost 600,000 hectares—from 1.27 million hectares in 1985 to 1.87 million hectares in 1997, which it can be argued was mainly due to the spread of community agroforestry initiatives such as that of Wonosobo District.

The case of Wonosobo thus illustrates how community-managed forestry can allow for a reinforcement and formalisation of tenure and rights, the building of resilient and viable local economies, the management of resources by local communities for long-term prosperity, and their greater ability to manage the complex transition to a market economy, whilst maintaining their cultural identity and social structures.¹⁷⁹ Community forestry leases result in impressive livelihood gains, increased equity, evident improvement in farmers' sense of responsibility for land care, fewer bribes and better relations with the Forestry Ministry.

However, further reforms to simplify the system are necessary if it is to be extensively applied. Comparative studies of farmers where land conflict persists and community forestry tenures are lacking show that they have far lower incomes and enjoy much less land security, discernible in lower land values. Most community forestry specialists seem to agree that HkM is unlikely to become generalised unless the Ministry of Forestry becomes more convinced of the value of genuine community-based forest management and further legal and procedural reforms are introduced to simplify compliance requirements and give greater tenurial security to farmers.¹⁸⁰

Part IV: Prospects for Reform

Under colonialism Indonesia was colonised but the communities had their freedom. Under independence the country got its freedom but has colonised the communities. National reform must mean giving freedom to the customary communities if it is not to be a continuation of the Dictatorship.

Pak Nazarius.

Decentralisation – a false start

In 1997, Indonesia experienced a financial crisis as did many other Asian economies. The collapse of the Rupiah, the burden of national, corporate and private debts, and the sudden rise in the cost of living led to loud calls for President Suharto to resign. Sustained and escalating street protests, student occupations and a media campaign call for change from mid-1997 into 1998 led to President Suharto stepping down in May 1998, promising fresh elections. After a short transition period under President Suharto's nominated successor, President Habibie, multi-party elections were held in 1999 and Indonesia entered a period officially named '*Reformasi*' (National Reform).¹⁸¹

One of the main planks in the platform of those demanding *Reformasi* was decentralisation. Demands from the Provinces and district administrative regions for more autonomy, suppressed since the CIA-assisted rebellions of the 1950s,¹⁸² were too strong to resist. Social justice and environmental NGOs also hoped that decentralisation would usher in new hope for Indonesia's forests and provide scope for a new commitment to

a community-based economy,¹⁸³ First Vice-President Hatta's long cherished dream. Reform also opened up avenues for multi-stakeholder approaches to flourish in response to the release of central control and the need to manage the variety of interests over forestlands.

The new government responded by passing the 1999 Regional Autonomy Act,¹⁸⁴ which initiated a radical process of decentralisation in Indonesia. The Act specifically noted that the 1979 Village Administration Act was unconstitutional, failed to respect the rights of self-governing communities and should be replaced, thus re-opening the possibility for indigenous peoples to govern themselves according to customary law and customary institutions.

As Rikardo Simarmata has noted,¹⁸⁵ some district legislatures have responded to the Regional Autonomy Act by passing district regulations (*perda*) that recognise the existence of *desa*, *marga*, *huta*, *pekon*, *lembang*, *kampung*, and other local governance structures. For instance, the Toraja district legislature, in South Sulawesi Province, enacted a *perda* in 2001, reestablishing the traditional institution of the *lembang* as a self-governing authority.¹⁸⁶ Some district legislatures in Central Kalimantan province have likewise taken similar initiatives to recognise the customary authority of *kademangan*.

Moreover, although the Act emphasises autonomy at the district level, the West Sumatra provincial legislature enacted a law re-establishing *Nagari* as self-governing entities.¹⁸⁷ Some of these new laws explicitly confer on indigenous peoples the right to control their natural resources. The new laws in West Sumatra, for example, recognise *Nagari* control of *Nagari* territory, *Nagari* governance and *Nagari* 'properties'.¹⁸⁸

After being implemented for more than five years, Law No. 22 of 1999 was replaced by Law No. 32 of 2004 regarding Regional Autonomy. The new Law was passed hastily without real debate or prior evaluation of what had been achieved under the law it replaced. The new law somewhat restricts the scope for community self-governance and has been interpreted as an attempt to re-centralise government authority at the village level by subordinating the authority of village-level representative bodies (*Badan Perwakilan Desa*) to the village head (*Kepala Desa*), in turn clarifying that village heads are subject to the district Regent (*bupati*).¹⁸⁹ Under this revised law, the village head and village secretary again become civil servants, but it remains unclear how this law now relates to areas where the *desa* structure has been replaced by customary institutions.

However, the most immediate effect of decentralisation on the forests under the first phase of decentralisation was a very rapid intensification of medium-scale, largely unregulated logging. As noted, the new legal framework allowed districts heads (*bupati*) to issue logging permits for areas of up to 100 ha. without the need for clearance by the Department of Forestry in Jakarta. Consequently, there was a proliferation of small-scale licences ostensibly offered to provide benefits to local communities but which were usually captured by local elites. Decentralisation intensified existing illegal logging networks.¹⁹⁰ The Forestry Department sought to curb this trend and insisted that it retake control of the issuance of permits. These recentralisation efforts were strongly resented by local bureaucrats and politicians who had been able to secure revenue for their districts (and in some cases pocket substantial facilitation fees). Although, the Department of Forestry prevailed and this loophole was closed off, the tension between the centre and the regions for control over natural resource allocation continues.

Indeed this same tug of war over who controls natural resources is also being played out in the mining sector, as since decentralisation, mining permits have been handed out by local authorities. According to Government figures 10% of the more than 10,000 mining permits handed out in the ten years since decentralisation are legally questionable (see box on page 38).

Overhaul planned for mining

Amahl S. Azwar, *The Jakarta Post*, 2nd April 02 2013

Indonesia is mulling a game-changing policy to prevent local administrations from issuing excess and overlapping mining permits by expanding the central government's authority to grant concessions. The Energy and Mineral Resources Ministry's director general for minerals and coal, Thamrin Sihite, said on Monday that the plan called for permits only to be issued through a tender process. "We're basically adopting a similar mechanism that is applied in the oil and gas sector, in which blocks are openly offered by the government to prospective bidders," Thamrin said. "We're working to finish outlining mining zones that will be offered to potential investors by the end of this year."

The rationale behind the policy stems from messy management of permits by local governments that has caused legal uncertainty for investors due to the overlap and to over-exploitation of natural resources. While local administrations have sole authority to grant unlimited mining permits under existing law, more than half of 10,566 permits issued locally in the 10 years following regional decentralisation have been deemed legally problematic or unaccountable.

The mismanagement has led British miner Churchill Mining to file US\$2 billion arbitration claim against the government with the Washington-based International Center for Settlement of Investment Disputes last year on overlapping permits for its coal concessions in East Kalimantan. The Canadian Fraser Institute has labelled Indonesia as "the worst" among 10 least-attractive countries for the mining industry in a recent survey.

Indonesia, the world's largest exporter of thermal coal for power plants, nickel ore and tin, holds rich untapped mineral resources. US-based gold miner Freeport McMoran operates the world's biggest integrated gold mine in Papua, with a planned expansion in sight. Thamrin said that the government already had the legal basis to revise the permit system to improve the process and the investment climate, under the 2009 Mining Law. The law specifies that the government can develop a map categorising the nation's mining areas into mining business zones (WUPs), mining areas specified for local communities (WPRs) and the state reserve zones.

After completing the map with assistance from local administrations, the government can seek its endorsement from the House of Representatives. The WUPs could then be offered to companies through a bidding process that would grant winners the rights to exploit resources and receive permits from local administration. "We expect to start with the new system next year," Thamrin said. The ministry's staff expert for the mining sector, Tabrani Alwi, said that the government would devise additional regulations to implement the bidding system. "Local leaders will also have a role during the bidding process, such as providing recommendations," Tabrani said, declining to elaborate.

Meanwhile, Indonesian Mining Association (IMA) deputy chairman Tony Wenas said that he was upbeat that the new plan would bring "healthy competition" to the industry. "However, there is question over the government's ability to provide accurate and sufficient data on coal and mineral reserves for the mining companies," he said, adding that the government lacked the capacity to determine seismic data for oil and gas reserves, causing confusion for energy companies. Tony said that he would prefer it if the central government took charge of the tender process and not the local administrations, even though the law also allowed them to manage the process. Indonesian Mining Business Association (Apemindo) executive director Ladjiman Damanik said that he welcomed the plan, claiming that it was similar to a bidding process introduced for geothermal areas to investors last year.

Mining sector think-tank ReforMiner Institute deputy director Komaidi Notonegoro said that the government had to ensure transparency during the tender process to prevent "brokers" from taking advantage of concessions.

Local politicians enjoy much greater authority over natural resources that are deemed to be outside of State Forest Areas. This is why local politicians have themselves resisted forest gazettelement, contested the legal extent of State Forests in the courts (see below) and why they push for the release of forest lands by the Department of Forestry. Once re-classed as agricultural lands of no determined use (APL), such areas can be handed out to agribusinesses for conversion to plantations. By doing so they can not only extract more tax for

their districts but can also potentially receive bribes and backhanders for their personal and political benefit. According to one detailed analysis of the politics of decentralisation by Vedi Hadiz, at the end of the 1980s, policy advocates had pushed for decentralisation, democratisation and multi-party politics as the way to promote free markets, increase transparency and accountability, and break the deadlock of autarky. They hoped that thereby a new political class would evolve representing the will of the electorate. As noted, liberal NGOs supported such reforms as a way of promoting local, more democratic alternatives to globalisation, closer to local people's wisdom and environmental prudence.

According to Hadiz, instead of ushering in a cleaned up political order that would promote efficient and more socially just capitalism, the process of decentralisation instead facilitated the proliferation of predatory elites, once dominant only in Jakarta, to populate every corner of the country. Decentralised Indonesia now has over 500 district and city polities. The result is that, at the local level, a strengthened and expanded political class has emerged who buy office through money politics and who furnish their ambitions and pay off their supporters with preferential access to State contracts and access to natural resources. The result has been to entrench rather than eradicate the KKN – corruption, collusion and nepotism - of the *Orde Baru*.

Such money politics consists of auctions of electoral candidacy by political parties which act as gatekeepers to power, outright vote buying, rigging of elections, media campaigns and, albeit mainly in the cities, pay offs to local gangsters (*preman*). Hadiz estimated that in 2011 getting elected as a district head (*Bupati*) requires a campaign 'war chest' of around US\$1.6 million, although the costs vary from place to place.¹⁹¹

Meanwhile the importance of rent-seeking through the concession system for access to forests and other natural resources has continued to be a mainstay of political party funding. As Marcus Mietzner has noted, since political parties receive little by way of State support to function, the flourishing of party political democracy has:

both justified and intensified the rent-seeking operations of parties. Most importantly they have also allowed the country's oligarchs to infiltrate Indonesian parties and use them for their personal advantage.¹⁹²

Party politics is thus being used by these entrepreneurs 'to advance their short term business strategies interests'.¹⁹³ These links between natural resource companies and political parties also mean that money politics have had an undue influence on legislative reform.¹⁹⁴

Human rights

The process of *Reformasi* and the revision of the Constitution led Indonesia to ratify 8 major human rights conventions: the Convention against Torture; the Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Right of the Child; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of Discrimination Against Women; the Convention on the Rights of People with Disabilities and; the International Convention on the Rights of Migrant Workers and their Families. In 2007 Indonesia voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples, and, in 2012, endorsed the UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, which provides practical guidance to States, civil society and private sector on responsible governance of tenure and constitutes a framework for policies, legislation and programmes. Indonesia has yet to sign ILO Convention 169 on Indigenous and Tribal Peoples.

Several UN treaty bodies have made recommendations to the Government of Indonesia towards the better protection and recognition of the rights of indigenous peoples and forest-dependent peoples. In its Concluding Observations in August 2007, the Committee on the Elimination of All Forms of Racial Discrimination (CERD) noted that in Indonesia, 'indigenous peoples' are only recognised under national laws 'as long as they remain in existence', 'without appropriate safeguards guaranteeing respect for the fundamental principle

of self-identification in the determination of indigenous peoples.’ The Committee encouraged Indonesia to ‘take into consideration the definitions of indigenous and tribal peoples as set out in ILO Convention No. 169 of 1989 on Indigenous and Tribal Peoples, and to envisage ratification of this instrument.’¹⁹⁵ In the same Observations, the Committee noted that:

the State party should amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernisation and economic and social development are defined in a participatory way, encompass world views and interests of all groups living on its territory, and are not used as a justification to override the rights of indigenous peoples. The State party should recognise and respect indigenous culture, history, language and way of life as an enrichment of the State’s cultural identity and provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics.

Under the ICERD Early Warning/Urgent Action and Follow Up Procedures, in March 2009 the Committee on the Elimination of All Forms of Racial Discrimination reiterated its concerns over the high number of conflicts arising each year throughout Indonesia between local communities and palm oil companies, in particular with regard to the lack of protection of indigenous peoples’ rights, and with specific reference to the case of the Kalimantan Border Oil Palm Mega-project. It noted that Indonesia continues to lack any effective legal means to recognise, secure and protect indigenous peoples’ rights to their lands, territories and resources.¹⁹⁶ The Committee urged Indonesia to ‘review its laws [...] as well as the way they are interpreted and implemented in practice, to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands.’¹⁹⁷

Also under the ICERD Early Warning/Urgent Action and Follow Up Procedures, reference was made in particular to the “Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation” (REDD) and the fact that the property rights of indigenous peoples over traditional lands were not appropriately taken into account in the formulation of the Forest Carbon Partnership Facility and the meaningful participation or consent of indigenous peoples was not secured.¹⁹⁸

In its Concluding Observations of July 2012, the Committee on the Elimination of All Forms of Racial Discrimination against Women (CEDAW) noted ‘The disadvantaged position of rural and indigenous women, which is characterised by poverty; their difficulties in accessing education and health and social services; and the existence of discrimination with respect to ownership and inheritance of land’¹⁹⁹ as well as ‘cases of violation of the rights of indigenous women to access their land, water and natural resources’.²⁰⁰ The Committee recommended that the Government ‘Implement effective measures to eliminate discrimination and violence [...] against [...] indigenous women; ensure their security and enhance their enjoyment of human rights and ensure access to land and natural resources for indigenous women, through all available means, including temporary special measures.’²⁰¹

The impacts of the Merauke Integrated Food and Energy (MIFEE) project in West Papua on the rights and livelihoods of the indigenous Malind peoples was brought to the attention of the United Nations through a Request for Consideration of the Situation of Indigenous Peoples in Merauke in July 2011 under the United Nations Committee on the Elimination of Racial Discrimination’s Urgent Action and Early Warning Procedures.²⁰² The report highlighted the extreme harm caused to indigenous Papuans by the Merauke Integrated Food and Energy Estate project (the MIFEE project) which is a State-initiated, agro-industrial mega-project that plans to encompass around 2.5 million hectares of traditional indigenous lands in the Merauke District. These harms include: violations of the right to food of the Malind peoples, restrictions on freedom of expression, lack of respect for their right to free, prior and informed consent, impoverishment due to unfulfilled promises of economic benefits, the ill-regulated grabbing of customary lands without due compensation, and disregard or co-optation of customary representatives and institutions.



The food security of the indigenous Malind of Merauke, Papua, and their future generations, is severely threatened by the large-scale conversion of their forests to agribusiness and timber concessions as part of the MIFEE project/Sophie Chao

UNCERD issued a formal communication to the Permanent Mission of Indonesia on 2nd September 2011,²⁰³ but Indonesia failed to respond to the communication, prompting civil society organisations to send a Request for Further Consideration under UNCERD's Urgent Action and Early Warning Procedures on 6th February 2012.²⁰⁴ A third submission to UNCERD was made in 2013,²⁰⁵ following which further recommendations were made to the government of Indonesia by the CERD Committee.²⁰⁶ At the time of writing, no response had been received from the Indonesian government to the recommendations made by the CERD Committee.

The United Nations Special Rapporteur on the Rights of Indigenous Peoples has also been called upon to urgently bring up the human rights violations associated with the MIFEE project to the government of Indonesia, most recently at the Asia Regional Consultation with the Special Rapporteur in Kuala Lumpur in March 2013.²⁰⁷ Prior to this, in his joint communication of 1 February 2012, the Special Rapporteur on the rights of indigenous peoples along with the Special Rapporteur on the right to food had already brought to the attention of the Government of Indonesia allegations concerning the human rights impacts of MIFEE. The Rapporteurs noted that Indonesia like other United Nations State Members who supported the Declaration, 'manifested their support for the Declaration's call for affirmative and concerted measures to address the disadvantaged conditions of indigenous peoples in accordance with the human rights principles elaborated upon in that instrument'.²⁰⁸

The Special Rapporteur on the rights of indigenous peoples further highlighted his recommendation made to Asian States in his report that they 'commit to recognising the rights of indigenous peoples as set out in international instruments, irrespective of the terminology used under national law and policy to identify these groups, and they should be guided by the manner in which these groups perceive and define themselves'.²⁰⁹ Both experts urged the South-East Asian Governments

to align – as a matter of urgency – their biofuels and investment policies with the need to respect land users' rights as detailed the voluntary guidelines on land tenure, as adopted by States this month in Rome within the Committee on World Food Security.²¹⁰

These recommendations echoed those issued by the UN General Assembly in response to Indonesia's Universal Period Review (UPR) in 2012, in which the Government had stated that while it: supports the promotion and protection of indigenous people worldwide...Indonesia, however, does not recognise the application of the indigenous peoples concept...in the country.'

The General Assembly's recommendations included ensuring the rights of indigenous peoples and local forest dependent peoples in law and practice, in particular regarding their rights to traditional lands, territories and resources, and extending an invitation to Special Rapporteur on the right to food and on the rights of indigenous peoples in order that they visit Indonesia, particularly the region of Papua.²¹¹

The post-1998 political transition in Indonesia has opened up a new chapter for the protection of human rights, in part being achieved through constitutional and legal reform. At the national level, the protection of rights is guaranteed through Law No. 39 of 1999 on Human Rights, which reiterates the rights enshrined in the Universal Declaration on Human Rights. Article 6 of the Law also states in relation to indigenous peoples that:

- (1) In the interests of upholding human rights, the differences and needs of indigenous peoples must be taken into consideration and protected by the law, the public and the Government.
- (2) The cultural identity of indigenous peoples, including indigenous land rights, must be upheld, in accordance with the development of the times.²¹²

The government's efforts to apply the principles of this Declaration are reflected in the establishment of the National Human Rights Plan of Action (RANHAM), initiated in 1998 and extending to 2014, that's goal is to promote respect, promotion, fulfilment, protection and enforcement of human rights in Indonesia, taking into account the religious values, morals, customs, culture, and security, and order in Indonesia, and makes reference to various binding and non-binding international human rights instruments.

Towards national legal reform

The endorsement of human rights in the revised Constitution, followed by the ratification of international human rights treaties also encouraged civil society groups to press for an overhaul of main laws relating to how the State controls land and natural resources. Through intense mobilisation and engagement with the National Assembly, a Legislative Act was passed in 2001, the so-called TAP MPR IX/2001 concerning Agrarian Reform and Natural Resource Management.

The decree acknowledged that agrarian and natural resources in Indonesia were being used unsustainably, that existing laws on land and natural resources overlap and contradict each other, that the agrarian regime is characterised by asymmetrical notions of proprietorship (ie domination of access to land by the State and the private sector) and that all this has led to serious social conflicts over natural resources.

The decree invoked as its underlying principles the need for: respect for human rights; the recognition of the rights of customary law communities (*masyarakat hukum adat*); and sustainability. The decree likewise stipulated the needs to respect national unity, while encouraging legal pluralism, the rule of law, social justice, democracy, gender equality, inter-sectoral linkages and coordination, balance between rights and responsibilities and decentralisation. The aim of the law was to provide a legal basis for fundamental land and natural resource reform aimed at resolving land and natural resource conflicts with the full engagement of the communities.

Accordingly, the decree mandated the Executive and the Parliament (DPR) to restructure tenurial rights and rights of use and access to natural resources and to reform the legal, regulatory and institutional frameworks governing agrarian and natural resource relations. It called for an integration of agrarian reform and natural resource management objectives. It also instructed the Executive to carry out a legal analysis of the current laws, develop implementation strategies for reform and lay the ground for effective application of these reforms through the empowerment of implementing institutions and the provision of adequate funds.

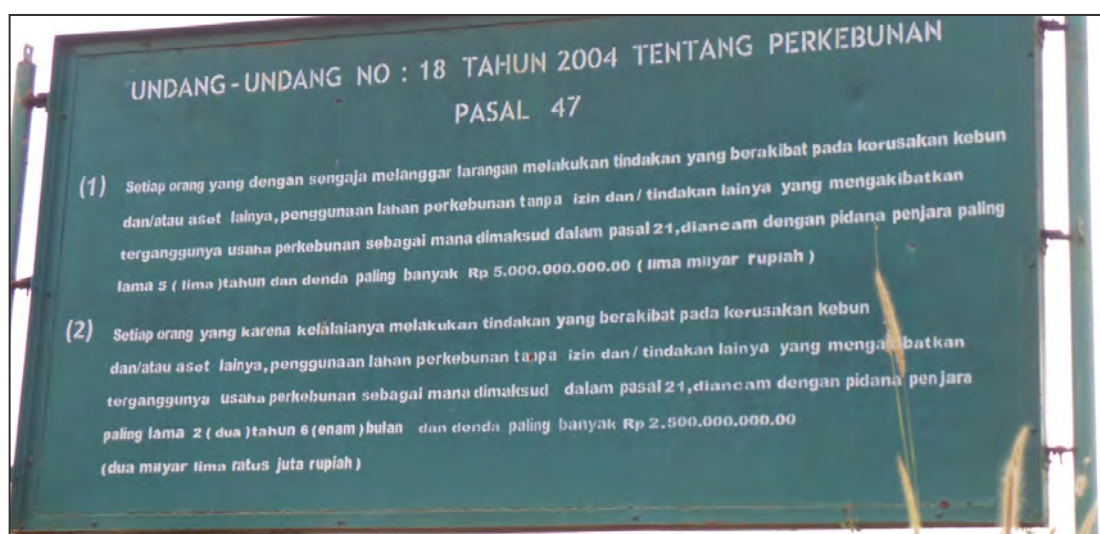
Unfortunately, since then, there has been very little action by the Executive to implement this Legislative Act, reflecting the extent to which the Executive is captured by political and business interests and is thus not obedient to Indonesia's highest legislative body. While concerned members of the national parliament (DPR) have been able to keep TAP MPR IX/2001 in the programme schedule for national legal reform (PROLEGNAS), the Act lacks strong champions in the parliament needed for it to get serious consideration.

Constitutional Court decisions

Frustrated by this lack of progress with the legislature, and realising that a root-and-branch reform process was over-ambitious, and given the resistance of vested interests, civil society groups have also sought to leverage reforms through the Constitutional Court. The Court, which was set up to enforce the revised Constitution, has heard several cases in which advocates have contested what they see as unjust and indeed un-Constitutional aspects of the natural resource laws, which prioritise central Government and business interests over citizens' and communities' rights.²¹³

In 2010, the Constitutional Court reviewed Law No. 27 of 2007 on the Management of Coastal Areas and Small Islands. Its decision required the government to undertake much greater consultation with local communities in the development of strategic plans, zoning and management plans for coastal areas and small islands. The Court asserted that the absence of participation of customary communities in such processes was tantamount to unequal treatment and was against the right to development as guaranteed in the Constitution.²¹⁴

In 2011, the Constitutional Court issued a decision based on review of Law No. 18 of 2004 on Plantations. The case was raised by NGOs concerned about the numerous instances of criminalisation of community members whose lands and livelihoods were being taken over by agribusinesses. Under the Plantations Act, Article 21, stated: *People are not allowed to disturb the plantation estate operations in the estate area which may upset the process of production.* Article 47 then classifies the people who do disturb plantation operations, as referred to in Article 21, as criminals, with a maximum prison sentence and/or fine. Three prominent NGOs, Elsam, SawitWatch and LBBT from West Kalimantan had tallied 2,357 criminal cases between 2007 and 2010 in which farmers in oil palm estates in Indonesia had been accused in court of such violations. In its decision, the Constitutional Court supported the recognition of indigenous rights to land and prohibited the application of these two articles, which discriminate against their rights in favour of plantation companies, pending research on the existence of *adat* law. It also judged that allegations of criminal conduct (such as illegal occupation) against indigenous peoples and local communities could only be made once comprehensive information on the history of land tenure of disputed lands had been carried out.²¹⁵



The Constitutional Court has revoked Articles 47 and 21 of the Plantations Act yet companies have yet to harmonise their practices with the Court's Decision, as exemplified by this panel which remains standing in formerly Wilmar-owned oil palm concession, PT Asiatic Persada, Jambi, in 2013/Sophie Chao

In 2012, in response to a case filed by the five district government heads from Central Kalimantan, the Court issued a judgment which revised the definition of 'Forest Areas' under Forestry Law 41 of 1999. It ruled that a 'Forest Area' (*kawasan hutan*) is an area that 'has been gazetted as forest' (instead of an area that 'has been gazetted and or categorised as forest' [the underlined words being deleted by the judgment]), thus stopping the longstanding process of the National Forestry Minister categorising areas as forests without the due process and involvement of district government required in forest gazettement. In doing so, the Court threw in doubt the legal status of some 88% of the areas considered to be under the jurisdiction of the Department of Forestry but which have yet to be gazetted.²¹⁶

The judgment drew on the work of ICRAF and collaborators who, in the 1990s, had carried out detailed reviews of the process of forest definition and classification to ascertain what tenurial options there were for promoting agro-forestry alternatives.²¹⁷ The research showed that only about 12% of the 130 million hectares of Indonesia classed as forests had been formally gazetted, a multi-step process requiring consultations down to the village level, and the agreement of District heads, as required under the Forestry Law.²¹⁸ This opens up the possibility that ungazetted forests could be reclassified either as farmlands (and thereby excised from the forest estate) or as '*hutan hak*' (forests burdened with rights), thereby offering the possibility of community-based or farmer-based natural resource management under more secure tenures than allowable in 'State Forest Areas'.²¹⁹

This particular challenge to the Constitutional Court was made by local politicians frustrated that almost all the land in their districts is classed as forest and therefore subject to central government control. In fact, ICRAF's previous studies had shown that the main reason that gazettement itself proceeds so slowly is exactly because local authorities, who under the gazettement procedure have to sign off the final agreement of forest designation (*Berita Acara Tata Batas*), are so reluctant to sign away such lands to Forestry Department control.²²⁰

Although this Constitutional Court decision has massive implications for Indonesia's forests and forest peoples, it has not been followed up on meaningfully. In particular, it remains unclear what implications the judgment has for the millions of hectares of forestry licences that have already been handed out to loggers and timber estates in ungazetted forests.²²¹

The most recent decision of the Constitutional Court relevant to forests and forest peoples, was issued in May 2013 in response to a petition filed by AMAN, in which it objected to the way the 1999 Forestry Act treats indigenous peoples' 'customary forests' as areas where indigenous peoples' have use-rights within State Forest Areas. In its decision, the Constitutional Court ruled that the customary forests of indigenous peoples should not be classed as falling in 'State Forest Areas'.²²²

While this historic judgment opens the way for a major reallocation of forests back to the indigenous peoples, who have long occupied them and looked after them, the conditional phrasing in the judgement also highlights continuing ambiguities about how the State relates to indigenous peoples. In the first place the judgment continues to invoke the Constitutional provision that indigenous peoples rights should be recognised 'as long as they still exist', which, as noted, gives the State discretion to deny such recognition. Second the judgment recognises that customary forests are areas of forest within traditional territories, but as we have seen, the State still lacks adequate procedures for defining such territories. Procedures now need to be developed for such recognition by the Government, consistent with international human rights norms.

Since the decision, AMAN has launched a civil society declaration to garner support for its message to the government: implement the Constitutional Court decision, settle conflicts related to customary forests and natural resources in the territories of indigenous peoples and map indigenous territories. AMAN also called for faster discussion and adoption of the Draft Law on the Recognition and Protection of the Rights of Indigenous Peoples (PPHMA) which is in the parliament's current legislative programme.²²³

The good news is that the Government's stance towards indigenous peoples has begun to change. For instance, in an important statement to an international meeting of some of the world's largest buyers of Indonesia's palm oil and paper-pulp in June 2013, Indonesian President, Susilo Bambang Yudhoyono, announced new steps to curb deforestation. Accepting responsibility for the worse than usual annual 'haze' from forest burning in plantations in Sumatra which has blighted the lives of residents of Singapore and South Malaysia (as well as Sumatra itself), the President linked the need for strengthened control of forests to the need to secure the rights of forest dependent communities and indigenous peoples.²²⁴ In a marked departure from the usual language of Indonesia's Ministry of Foreign Affairs, the President, speaking in English, referred explicitly to the country's 'Indigenous Peoples' - a term that the Government of Indonesia has usually avoided equating with the Indonesian term '*masyarakat adat*' (communities governed by custom).²²⁵

Voluntary approaches

The slow progress being made through legal reforms, combined with growing recognition of the responsibilities and role that the private sector can play in regulating and improving practices related to these issues, has given rise to standard-setting by the private sector to regulate commodity production and processing, so that it takes place in a way that respects rights, secures favourable and sustainable livelihoods and diverts pressure away from areas crucial to local livelihoods and of high conservation value.

The Forest Stewardship Council (FSC) is one such example in relation to the timber industry. The timber market has in recent years developed a growing awareness of responsible forestry practices, resulting in an increasing demand for FSC certified Indonesian timber. The total FSC certified forest area in Indonesia has more than doubled in the past two and a half years - from 833,000 hectares in January 2011 to 1,730,164 ha in February 2014. Some 196 chain of custody certificates have also been issued in Indonesia.²²⁶ In 2010, the FSC and the Indonesian Ecolabelling Institute (LEI), a non-profit organisation that develops forest certification systems for sustainable forest resource management in Indonesia, re-launched a collaborative project for responsible forest certification in Indonesia.²²⁷ Credit for increasing demand for FSC certified timber can also be given to The Borneo Initiative (TBI), which has supported several Indonesian forest concessions through the FSC certification process.²²⁸

This re-launch of FSC's programme in Indonesia follows a more problematic period when the dissonance between FSC's standard and what was legally possible in Indonesia caused the programme to falter.²²⁹ In October 2007, the Forest Stewardship Council (FSC) had to publicly disassociate itself from the Indonesian pulpwood giant Asia Pulp and Paper (APP) following substantial documentation of APP's involvement in environmentally and socially destructive forestry practices. In late 2012, APP approached FSC, stating that they had undergone fundamental changes and that they would therefore like to enter into a constructive dialogue on the possibility of renewed association with FSC.²³⁰ More recently in February 2013, APP announced a new Forest Conservation Policy, with one part focused on the complete adoption of the FSC Principles & Criteria for High Conservation Value Forests across its entire supply chain.²³¹ The group also announced its Sustainability Roadmap Vision 2020, with the target of completely eliminating all natural forest derived products in their entire supply chain by 2020.²³² Progress in the implementation of the Policy is underway, with High Conservation Value and High Carbon Stock assessments in progress, but the scope of the task ahead remains huge, and concrete impacts and remedy on the ground for affected communities, particularly those that are in conflict with the company over land and resources, have yet to be achieved.

Indonesia's other pulp and paper giant, Asia Pacific Resources International (APRIL), has also followed suit in developing a Sustainable Forest Management Policy (SFMP) according to which the group is to establish a moratorium on clearing in concessions where there has not been independent assessment of conservation values.²³³ The company and its long term supply partners are to complete plantation establishment by the end of 2014 and support a pilot study to help develop industry accepted methods for evaluating and protecting High Carbon Stock (HCS) forests and peatland areas. Earlier in 2013, a formal complaint was lodged with the FSC by Greenpeace, WWF Indonesia and the Rainforest Action Network against APRIL, which documented

continued large-scale deforestation activities, as well as social conflicts and human right violations by APRIL and other companies within the Royal Golden Eagle group (RGE) in Indonesia. In response, the FSC officially banned APRIL from using the FSC trademark to market its pulp and paper products and ended all association with the group pending a process of due diligence.²³⁴ This decision followed APRIL's decision to pull out of the FSC in relation to its 'Policy for Association', a move seen by the complainants as effectively pre-empting a formal FSC investigation of the APRIL's logging practices.²³⁵

APRIL's recent Policy may be a step in the right direction, but it is regrettably weak even on paper, given that it allows for APRIL to utilise wood from tropical forests in its mill until the end of 2019 and is limited in the scope of forests it will protect as it fails to cover APRIL's broad array of sister companies and suppliers. It is also rife with major policy gaps, including the restoration and preservation of natural forests and it contains large loopholes on the critical issues of human rights, peatland development and high conservation value forests.²³⁶ It thus remains to be seen whether this policy will lead to genuine changes in company practice, and how the Stakeholder Advisory Committee to be set up as part of the Policy will ensure transparency in its implementation.

Numerous companies operating in Indonesia (including 54 Indonesian growers) are members of the Roundtable on Sustainable Palm Oil (RSPO).²³⁷ The RSPO, a multi-stakeholder initiative with members from palm oil growers, processors, traders, financiers, goods manufacturers and retailers, and social and environmental NGOs, was created partly in response to markets which have been sensitised to reject products that entail environmental destruction and the abuse of human rights. The RSPO has thus developed standards for production, traceability, labelling, certification and the conduct of members against which members can be held accountable.²³⁸

These include the requirement on the part of member companies that they respect indigenous peoples' and local communities' legal and customary rights and only develop oil palm on their lands with their free, prior and informed consent. It also requires that companies identify, manage and monitor High Conservation Value (HCV) areas – defined as the critical social and environmental values in ecosystems and landscapes that long term multi-stakeholder processes have collectively identified as the key values to be conserved in the management of natural systems²³⁹ - within their concession area to the ends of protecting and enhancing these values. In addition, as of November 2005 the RSPO standard requires that new planting should not replace primary forest or any area containing one or more High Conservation Values. Under the RSPO's 'New Plantings Procedure' all RSPO members must announce on the RSPO website their intention to establish new plantings 30 days before land clearance starts with a published summary of the HCV assessment.²⁴⁰

Community views on the RSPO

The RSPO is just theory, not practice. We should all be around the same roundtable, but we are not.

Community member, Bangkal, Central Kalimantan

It's not enough that there is a mechanism in place. What matters is that the mechanism is effective. Also, the mechanism might be accepted by our leaders, but not by the rest of the community, so we have to be really careful when we talk about a mutually accepted mechanism. In some ways, this makes things easier for the company, because as long as they show they are making efforts towards resolving conflicts (genuinely or not), it is taken as a positive sign and enough to get certification.

Community member, Tanah Putih, Central Kalimantan

However, the extent to which RSPO companies are actually reforming their practices on the ground in line with the RSPO standard is highly questionable, as demonstrated by the findings of a detailed compilation of 17 case studies covering RSPO member concessions across 7 countries in Southeast Asia and Africa.²⁴¹ These studies reveal that while some RSPO member companies have adopted new standards and procedures, improved their practices on paper and even got some of their operations certified, on the ground not much has changed. Land grabs continue, land conflicts are escalating and too often palm oil companies, even RSPO members, pursue business as usual practices that violate community rights. Procedures to provide remedy for impacted communities are also deficient. In large part, these problems stem from unjust legal and governance frameworks which fail to protect local communities' and indigenous peoples' rights. Access to justice through the courts in Indonesia is absent or severely limited for rural communities. Corrupt and unfair land deals are all too prevalent. Even in communities where RSPO certification assessments have been carried out, few individuals understand what certification is; even fewer comprehend the standard in any detail; and almost none have the capacity, by themselves, to make use of the official RSPO complaints procedures.²⁴²

HCV assessments were found to often allocate very small areas to protect community livelihoods and identities (HCVs 5 and 6) and existing HCV Management systems routinely failed to secure the comprehension, let alone consent, of the affected communities. As a result, communities' basic needs cannot be fulfilled on the remaining land and resources base leading to poverty, malnutrition and ill-health as well as undesirable social and cultural loss. Shifting cultivation cycles are shortened implying erosion of biological diversity, weakened soils and increased erosion. Faced with unforeseen land shortages, farmers clear marginal lands or areas that have been set aside for other purposes. Land clearance may directly or indirectly affect other HCVs, for example where new farms are cleared in riparian forests, set aside to preserve water flow and quality (HCV 4), or peat soil areas, set aside to avoid high carbon emissions. Furthermore, hunting or farming may also intensify in areas set aside to conserve valued species, ecosystems and landscapes (HCV 1 to 3). Failure to take account of predictable population growth of local communities leads to scarcity and intensified use of resources. Impoverishment and resentment among communities as a result may lead to their pilfering fruits from estates or smallholdings, and the end outcome may degenerate into disputes between the company and the communities which spill over into damaging conflicts, legal suits, violence and destruction of property.²⁴³

A community perspective on HCVs

We cannot talk about High Conservation Values as a red dot on a map, or two red dots on a map, or three, or a hundred. The whole landscape is of high conservation value to us, because we have customary rights over the landscape, and a landscape cannot be broken down into little pieces, just like a flower, if you remove all its petals and scatter them about, is no longer a flower.

Our land is taken from us without our consent and without consultation, and then you ask us to tell us and help you identify which bits of it matter to us. Think about if it were your own body: which part of your body is a 'High Conservation Value'? Would you not say all of your body was? Now think about if I wring off your arm, singe your hair, cut off your fingers, and gouge out your eyes, and then ask you, which part of your damaged body is a 'High Conservation Value', would you not still say that it was all of great value to you, even if most of it has been destroyed? So it goes for our land and our rights.

Community member, Pondok Damar, Central Kalimantan

In 2013, the Palm Oil Innovation Group (POIG) was launched by concerned environmental and social NGOs as well as several palm oil producing companies, with the aim of demonstrating innovation in sustainable palm oil production through the development of new models and paradigms for best practices in the sector.²⁴⁴ The Group was initiated after the 2013 adoption by the RSPO of revised Principles and Criteria, which were deemed to be too weak in terms of new commitments to avoid deforestation, maintain carbon stocks, conserve biodiversity and improve social relations. The Group thus seeks to build on the RSPO standard through reinforcing and improving on it in an innovative manner.²⁴⁵

At the national level, another certification standard, Indonesian Sustainable Palm Oil (ISPO) was established in 2009.²⁴⁶ In contrast to the RSPO standard, ISPO is mandatory in nature, however it essentially only requires that palm oil companies comply with national laws and regulations in their operations. This approach of ‘certifying legality’ has been widely criticised by civil society organisations as lowering the standard of sustainability required of oil palm companies, giving precedence to national laws over international legal instruments, and being weak on human rights, land rights, local community development and transparency.²⁴⁷ In 2013, the RSPO and ISPO initiated a joint collaboration project which seeks to promote sustainable palm oil in Indonesia, the first step of which is a joint study to examine both voluntary international standards and mandatory national standards.²⁴⁸ Some hope this process will address some of these weaknesses in the ISPO standard.

In addition to RSPO membership, and largely in response to widespread criticism of their performance, a number of oil palm conglomerates have adopted their own policy statements on their commitments to social and environmental engagement. One such example is Golden Agri-Resources (GAR),²⁴⁹ the second largest integrated palm oil company in the world which cultivates approximately 463,400 hectares of oil palm plantations in Indonesia.²⁵⁰ In accordance with its Forest Conservation Policy,²⁵¹ GAR has agreed not to clear any more forests or areas of peat. They also committed themselves to develop a new policy by which they could zone their concessions for areas of High Carbon Stocks and then exclude them from future clearance.

However, a recent investigation into the implementation of HCS in pilot concession PT Kartika Prima Cipta (PT KPC) in Kapuas Hulu district, West Kalimantan, not only revealed a startling lack of respect for the right of local communities to give or withhold consent to KPC’s development plans, but also that the proposed set asides of High Carbon Stocks are deeply unpopular both with those communities refusing the company’s presence and with those that have pinned their hopes on oil palm. The imposed categorisation of forested lands based on carbon stocks, and placing these areas off limits to community use ignores the peoples’ own systems of land use, land ownership and land classification and thus limits their livelihoods and options for income generation. These shortcomings were reported to GAR on several occasions but both the company and the consultancies supporting it have been slow to take remedial action on the ground. The HCS methodology requires substantial refining, and extant rights violations need to be addressed and remedied: otherwise, the HCS approach will end up further restricting community access to land and opportunities for them to benefit economically from oil palm development where their free, prior and informed consent to this has been given.²⁵²

In 2013, following pressure from its customers, themselves exposed to campaigns by Greenpeace, Wilmar International, one of the largest agribusiness corporations in Asia – trading about 45% of globally traded palm oil²⁵³ – and prominent member of the RSPO since 2005, announced its own integrated No Deforestation, No Peat, No Exploitation Policy²⁵⁴ according to which the Group commits to protecting HCVs and HCSs; implementing a traceable sourcing policy for both its own plantations and third party suppliers; protecting forests, respecting human rights and enhancing community livelihoods. The announcement of these rather outstanding social and environmental commitments comes as a surprise to civil society organisations who have long documented the notoriously destructive impacts of Wilmar’s operations on the environment and on the livelihoods of indigenous peoples and local communities, as well as rampant human rights abuses which have included forced evictions and shootings.²⁵⁵ It remains to be seen how the group will be held to account in the implementation of its policy across its plantation sector, and whether commitments have been made with genuine intent for reform, or simply as a tokenistic means of responding to the pressure from buyers, and ‘catching up’ with other big players in the palm oil sector who have made similar commitments.



Outcry resulting from ongoing violations of the rights of indigenous peoples, local communities and labourers across Indonesia's oil palm plantations was the cause of protests in Medan at the RSPOs 11th Annual General Meeting/Sophie Chao

In sum, for the voluntary approach to succeed, the application of standards such as the RSPO must be tightened. Certification bodies must become more discerning. Supply chains must be made transparent and fully traceable. Complaints procedures and conflict resolution mechanisms urgently need strengthening. Traders and investors must get serious about which companies they will and will not deal with. And to address the underlying failures that lead to so much of the human rights abuses, governments must change the way they regulate the industry and adjust land tenure systems so communities are secure in their rights.

Whether or not voluntary standards and company policies will succeed in putting rights into agribusiness in Indonesia remains uncertain. What is clear is that the social acceptability of certification and company SOPs depends on the quality of the participation of affected communities and interested civil society groups, that leads to decisions in terms of agreeing to national standards, carrying out assessments, and dealing with complaints.²⁵⁶ Some proponents of certification now argue that international certification standards, such as those of the RSPO, are too high and it would be better to drop 'unrealistic' social and environmental principles and criteria and certify operations if they only comply with national laws and forestry regulation. Others argue for a step-wise approach, which starts with certifications of legality and then progressively requires adherence to social and environmental criteria. Such approaches are unlikely to gain much support from civil society in Indonesia since, given the current forestry laws, they amount to first condoning the extinguishment of customary rights and then later calling for their recognition. Indonesia's millions of forest-dwelling people have suffered enough. The alternative, favoured by community advocates, is for certification to continue focus on the need for compliance with the social aspects of voluntary standards, and for community forestry operations to be more widely supported until the concession and tenure regimes in the country are reformed.²⁵⁷

Reducing Emissions from Deforestation and Forest Degradation (REDD+)

In 2009, the Indonesian President committed Indonesia to "voluntarily reduce our greenhouse gas emissions by 26 percent from business-as-usual levels by 2020."²⁵⁸ Efforts were already underway in Indonesia to develop REDD+ pilots and readiness programmes. A National REDD+ strategy was developed in 2010 and 2011, based on consultations throughout Indonesia, and was released in 2012. The National Strategy, while

promoting low carbon development, requires project developers and local governments to respect the right of indigenous people and local communities to give or withhold their consent to REDD+ developments that will affect them. In this regard, the Strategy is stronger than forestry and agriculture laws and regulations, which routinely ignore and violate the rights of indigenous peoples and local communities.

In May 2011, Indonesia commenced a two year moratorium on the issuance of new forestry and agriculture concessions in 65 million hectares of primary forests and peatlands. The moratorium was subsequently extended until November 2014. Despite the commitment, Indonesia's level of deforestation remained high in 2012, (figures for 2013 are not yet available). The failure of the moratorium to reduce deforestation and emissions has been considered a result of its limited application - only primary and peat forests - and the fact that many millions of hectares of licenses for the establishment of oil palm and pulpwood concessions had already been issued before the moratorium came into effect.

The National REDD+ Agency was created in September 2013, based on a Presidential decree No. 62/2013. The Agency builds on the activities of the national working group on REDD+, which developed the REDD+ strategy and engaged widely with Indonesian society to develop approaches to reducing emissions. One of the key efforts of the working group was developing One Map, through cooperation with all relevant ministries to develop a common map of all government licenses and jurisdictions, including maps of community customary territories.

The Agency is now working closely with UKP4, the Presidential Working Unit for Supervision and Management of Development, on efforts to undertake the gazettment of Indonesia's forest estate. As noted, to date, only 12 per cent of Indonesia's forest area has been gazetted, despite the fact that licenses for industrial forestry and forest conversion have been issued over tens of millions of hectares of ungazetted forests. The gazettment initiative draws on the skills and responsibilities of a dozen ministries, as well as the close involvement of the provincial and district governments, the national commission for corruption eradication, and civil society groups. It remains unclear how or whether this gazettment process will accommodate the rights of forest peoples.

Meanwhile, a number of progressive initiatives on REDD+ are taking place at the provincial level. In West Sumatra, for instance, the Provincial REDD+ Strategy and Action Plan is promoting the concept of Nagari Forest for REDD+. Nagari is a traditional inter-village governance system of the Minangkabau people in West Sumatra. "Forest management by Nagari is based on traditional institutions and knowledge. In addition to preventing deforestation, Nagari forest management will also improve the economic well-being of Nagari community as well as resolving former forestry conflicts," said Rainal Daus, Project Manager with the NGO Warsi.²⁵⁹

To be successful, however, the REDD+ Agency will have to challenge national development plans that are based on short term exploitation and liquidation of forests.²⁶⁰ A case in point is the Master Plan for Acceleration and Expansion of Indonesia's Economic Development (Presidential Decree No. 88/2011) or MP3EI. The Master Plan threatens Indonesia's remaining forests and contradicts the emissions reduction commitments. "Both central and local government must end inconsistencies between efforts to save forests, including REDD+, and exploitative policies such as MP3EI" said Anggalia Putri, Climate Change Program Coordinator from the national human rights NGO, HuMa. "Without consistency of broader development policies, including of mining, plantation, and infrastructure sectors, REDD+ will float alone like an isolated island and most likely will eventually drown."²⁶¹ If national development plans fail to be harmonised with REDD+ initiatives, it is unlikely that REDD can act as a transitional institution towards broader and holistic sectoral land and forestry reform in Indonesia.

FLEGT-VPA and prospects for timber sector reform

In 2001, Indonesia started a dialogue with the EU and the US on Forest Legality, Governance and Trade. Over the coming decade, Indonesia and the EU negotiated a Voluntary Partnership Agreement, and Indonesia developed a legality standard for wood products that will be used to award certificates for wood that can enter the European market. The VPA was ratified by the European Commission and Parliament in 2014.

The legality (SVLK) standard is based on relevant Indonesian forestry laws, but despite the efforts of a number of Indonesian NGO's, the SVLK does not address the failure of the Indonesian Ministry of Forestry to determine which forests are burdened with rights before determining the forest zone and awarding licenses to forestry companies. The mandatory assessment and certification process will hopefully catch many illegal practices common in the forestry industry, but state's expropriation and licensing of industrial exploitation of community forests without community consent or compensation remains a glaring omission and will no doubt be challenged by NGOs in Indonesia and Europe as the VPA is implemented.

Many civil society groups consider that the SVLK as presently formulated will not be able to address the high levels of corruption that plague the forestry sector.

Anti-corruption efforts and the forestry and land-use sectors

In 2003, Indonesia was ranked as one of the ten most corrupt countries in the world. By 2013 it had shifted to the 60th most corrupt out of 175 countries surveyed.²⁶² That move up the global ranking came as a result of intensive and consistent efforts by Indonesian civil society and government to document, expose and prosecute endemic corruption. Without continuing efforts to fight corruption, including increased pressure on companies to abandon bribery and associated practices, reforms in the forestry and land use sectors to respect the rights of indigenous peoples will struggle to be implemented while discriminatory practices will continue on the ground.

The practice of rent seeking - government officials using their positions to extract payment for services – goes back at least to the Sultanates and their courts that preceded and overlapped with Dutch colonisation of Indonesia. The practice was maintained by the Dutch administration when appointing 'natives' to government positions; there was a common understanding that the meagre salaries of native bureaucrats would be complemented by them charging clients for their services.²⁶³

Indonesia's anti-corruption efforts go back to the 1950's, although the problem of low wages and low accountability for public servants remains to this day. In the late 1960's following widespread criticism of corruption in the New Order regime, a commission was appointed to investigate the issue. The report of the Commission of Four in 1970 noted that corruption was rampant but none of the cases it documented led to prosecutions.²⁶⁴

In 1999, police were given the power to investigate corruption, and in 2002, a law on anti-Corruption was passed by the national parliament, providing the legal basis to form the KPK, the Corruption Eradication Commission. The KPK was established in 2003, with the power to investigate and prosecute government officials for involvement in corruption, and to undertake efforts to prevent corruption through provision of public information and education campaigns.

These efforts built on the efforts of civil society groups, lawyers and journalists during the Suharto and reform eras, to research and document corrupt officials, exposing the corrosive effect of corruption on the rule of law, and advocating for legal reform.

The KPK is regarded as one of the most effective anti-corruption agencies in Asia, with the successful prosecution of more than one hundred state officials including District Regents, Provincial Governors and National Ministers. Its efforts have returned hundreds of millions of dollars in stolen assets to the state, and its prevention efforts around the nation promote good governance (transparency, participation and accountability) as a means to change the culture of corruption.

According to the KPK, the Forestry Ministry is the most corrupt institution in the country.²⁶⁵ The KPK found that companies obtaining logging permits through bribes were the most common form of corruption in the ministry. Government data shows that only 16 percent of logging permits that were issued by the ministry followed applicable regulations and met all environmental requirements prior to being issued.

Company officials from a number of oil palm companies operating in Indonesia have informed NGO's, off the record, that it is impossible to obtain permits for the conversion of forests to agricultural lands and for establishment of oil palm concessions without paying substantial bribes to officials at district and national levels.²⁶⁶ Although the voluntary industry standard RSPO, requires member companies to follow the law, attempts to get a specific reference in the standard to not paying bribes was vigorously rejected by industry members, and the suggested criteria on anti-corruption were thus not included when the RSPO standard was revised in 2013.

The corruption trial of the former Governor of Riau, Rusli Zainal, took place in February 2014 with the prosecutors seeking a sentence of 17 years in jail for the illegal issuance of logging permits issued between 2001 and 2006 in Riau's Pelalawan district, Sumatra. The former Regent of Pelalawan District, Tengku Azmun Jaafar, was convicted of corruption in the issuance of the same forestry plantation permits in 2008 and jailed for 11 years.²⁶⁷ At Jaafar's trial, evidence was presented of 15 corporations that had provided bribes to facilitate the issuance of permits. No prosecutions of these companies, however, have followed in the subsequent six years, and the pulpwood plantation permits that the companies obtained through corrupt practices are still valid.²⁶⁸

In 2013, Human Rights Watch released a report titled, *Human Rights Impacts of Weak Governance in Indonesia's Forestry Sector*, and submitted the report to Indonesia's Corruption Eradication Commission (KPK) in Jakarta. One key finding of the report is that Indonesia's new timber legality certification system, incorporated into the EU-Indonesia trade agreement, is inadequate to address the pervasive land rights violations and corruption that have plagued the forestry sector.²⁶⁹

For the anti-corruption efforts to seriously challenge corruption in the forestry sector, the KPK will have to prosecute leading companies in the pulpwood and oil palm sectors that have bribed government officials, leading to jail terms for directors and forfeiture of licenses obtained through bribery.

Part V: Conclusions and Recommendations

This brief history of Indonesia's forests and forest peoples reveals how deforestation has been at the same time an assault on the 'commons', the collectively-managed territories of Indonesia's indigenous peoples. Prior to the imposition of State laws and policies, the majority of Indonesia's forests were owned and controlled by forest-dwelling peoples who managed these areas according to customary laws. They still assert these rights to this day. The forests were not 'isolated' but were part of an extensive regional trading system which for thousands of years included a wealth of forest products.

However, colonial and then post-colonial governments have progressively weakened customary institutions and rights to land and resources, and instead handed over these forests to investors supplying major global commodity markets with timber, foodcrops, fibre, biofuels and minerals. They have also used these forests as a safety valve to resettle farmers made landless by inequitable agrarian policies on the central islands.

As a direct result of this erosion of forest peoples' rights and aggressive policies facilitating forest and land grabs, since 1900 Indonesia has lost half of its forests and despite promises of reform is still losing forests at between 1 and 2 million hectares a year. The consequences for forest peoples have been severe and their resistance to expropriation and destruction of their forests most obviously expressed in terms of thousands of forest and land conflicts, which have sometimes turned violent.

Even while this devastating process continues there is good evidence that alternatives can work. Resin farmers able to assert their rights to lands in Sumatra have maintained their rich forests. Customary law communities resisting logging, oil palm and pulp and paper have retained more forests in their territories, slowing the rate of forest loss. Upland farmers in Java have overseen widespread restoration of forests on once denuded hills. Where communities successfully assert their rights, deforestation can be slowed or even reversed.

It is important to emphasise that this analysis of the real causes of deforestation is not new. For example, twelve years ago the NGO, Indonesian Forest Watch, in a joint publication with the WRI and Global ForestWatch, noted:

Deforestation in Indonesia is largely the result of a corrupt political and economic system that regarded natural resources, especially forests, as a source of revenue to be exploited for political ends and personal gain. The country's growing wood-processing and plantation crop industries proved lucrative over the years, and their profitability was used by the Suharto regime as a means to reward and control friends, family and potential allies... Indonesia today is a major producer of logs, sawnwood, plywood, woodpulp and paper, as well as palm oil, rubber and cocoa. This economic development was achieved with virtually no regard for the sustainable management of forests or the rights of local people.²⁷⁰

At a policy level, the main progress that can be pointed to since this assessment was made is that, today, the Indonesian Government shares much of this analysis and is now quite explicit about the underlying causes of this rapid rate of forest loss and the consequences of peatland clearance. For example, in its statement to the 'Rio +20' UN Conference on Sustainable Development in 2012, the Indonesian Government noted:

... we are all aware of the complex and interrelated causes of deforestation. In Indonesia, however, it comes down to increasing global consumption of pulp and paper and palm oil and the clearing of land for domestic food crops. On peat land, the causes have mainly been peat fires and peat decomposition... Emissions from these two sectors are of global significance and they account for about the same amount that Germany releases every year (0.77Gt).²⁷¹

The Government also recognises that this situation is impelled by a process of industrial land- grabbing which is marginalising the rural poor especially forest peoples. It notes:

Deforestation and forest degradation are strongly linked to the broader issue of land ownership. A green economy based on forest resources must solve existing land-related conflicts, establish forest zones, ensure land certainty for indigenous and local people and accelerate the implementation of land reform including land distribution and redistribution. Indonesia believes that equitable land ownership and access to land would likely increase both agricultural productivity and environmental awareness as we already observe when green practices are introduced on small farms.²⁷²

Given that the direct and underlying causes of deforestation have long been recognised and the government has openly recognised the need for reforms, the question arises what is actually blocking them. The answer lies in the political economy whereby those who benefit from the current system of inequitable and corrupt land allocations block efforts to change laws and regulations, introduce new policies, secure rights and administer justice.

The challenge that faces Indonesia, in making a transition to an accountable and equitable society where natural resource exploitation is both sustainable and really does benefit local livelihoods and national society

rather than elites is one facing many resource rich nations. As leading Russian sociologist, Simon Kordonsky, notes of his own country:

Russia has always been a resource society. It is not a society structured like yours in the West. The state feeds itself off natural resources, which are then distributed, either as subsidies or as rights to control rents by the Kremlin. The power of the state is the power to direct these flows, politics is competition to divert these flows – so what looks like corruption isn't corruption, in the sense of it being a defect in the system, it is the nature of the system itself.²⁷³

A multi-pronged, multi-stakeholder and multi-level approach must be adopted to address deforestation and provide redress for the violations of the rights of those forest peoples and local communities affected by ill-regulated land conversion and resource exploitation. The following serves as a non-exhaustive list of recommendations to this end.

- **Moratorium on new licenses:** The Government of Indonesia should transform the current moratorium on the issuance of new development licenses in primary forests and peat lands, which expires in November 2014, into a moratorium on the issuance of new licenses in all forest areas until, by proposed concession or district, the rights of forest peoples over their customary forests have been determined and respected, conflict resolution mechanisms have been established and low carbon development options are prioritised. A comprehensive review of forestry and agriculture licences that have already been 'approved in principle' should also be conducted, evaluating the proposed licence areas in regard to the above conditions as well indications of corruption in the initial licencing process. The licence review and subsequent license issuance should be transparent and based on broad participation of rights holders and stakeholders.
- **Review of existing concessions:** The Government of Indonesia should review all current forestry and agriculture industry concessions to determine which overlap with customary forest areas. Where concessions lack an agreement with affected communities based on their free, prior and informed consent, the concession licenses should be suspended pending agreement with each affected community on a pathway for the resolution of land conflicts and restitution of community lands, in accordance with international human rights standards and relevant voluntary standards.
- **Implementation of TAP MPR IX/2001:** National laws and implementing regulations relating to lands and forests, including but not limited to the BFL and the BAL, must be revised to be in line with TAP MPR IX. This process should be based on broad public participation, especially with forest peoples and their support organisations.
- **Customary land mapping:** Governments must support the participatory mapping by local communities of their customary territories and the resulting maps must be given legal recognition and respected in permit allocation processes.
- **Spatial planning:** Spatial planning regulations and policies must take full account of the rights and systems of land use of the indigenous peoples and local communities, and obtain their Free, Prior and Informed Consent prior to any land conversion or forest gazettement.
- **FPIC:** The right of indigenous peoples to give or withhold their Free, Prior and Informed Consent must be given stronger recognition under Indonesian law, including in laws and regulations relating to land allocation, acquisition and licencing. Awareness-raising and training on FPIC, land rights, voluntary standards and the international human rights framework protecting the rights of indigenous peoples and local communities should be undertaken for the private sector itself, from the senior to the field levels, to ensure consistency in understanding and implementation of these norms.

- **CERD recommendations:** The government of Indonesia must respond to the CERD's recommendations regarding the impacts of the MIFEE project in Merauke, Papua, and take urgent action to address and remedy human rights violations, land grabbing and the threats to food security of the Malind people.
- **Constitutional Court Decision on *hutan adat*:** Legislation and regulation must be developed to put into practice the Constitutional Court Decision on *hutan adat* so that adat communities can rapidly and effectively secure their rights in forests. Awareness-raising activities on the Decision itself are needed so that its findings are understood by private sector investors who already have or are planning to acquire lands.
- **Participation of local communities and indigenous peoples:** The right of indigenous peoples and local communities to choose their own representatives in interactions with the State and the private sector must be fully respected. Consultations with communities should take place with the participation of the wider community, in line with the collective land rights and decision-making practices of forest communities. The self-chosen institutions of forest communities should be respected and where sought, given legal personality.
- **'Land users':** A broader discussion on the types and forms of 'land users' rights' must take place, involving a broad range of rights-holders and stakeholders, including communities, transmigrants, the government, the private sector, civil society and conservation agencies. The rights of communities and farmers living outside forests should be considered as well as those of forest-dwelling communities. Likewise, government, private sector, NGOs and local communities must engage in a discussion on what deforestation and forest degradation mean in practice, who are the primary agents of this deforestation and how sustainable customary practices can be improved towards better forest preservation, rather than treated as threats to the environment. Examples of successful community-based forest management and associated customary practices, traditions and laws should be documented and disseminated, and where appropriate used as precedents for scaling up.
- **Monitoring of company operations:** Rigorous monitoring and evaluation of private sector policies and performance in relation to certification norms must be carried out independently and with the active and full participation of affected local communities in full transparency and with credible options for remedy and redress where such policies and standards have been violated.
- **Role of NGOs:** NGOs must continue to support capacity-building of local communities with regards to their rights under local, national and international law, land acquisition processes, access to remedy and justice, and access to information without intimidation and coercion.
- **Solidarity networks:** Local communities and their support organisations should join forces and form solidarity networks at regional and national levels and also more widely in Southeast Asia and at the international level, with other affected communities and organisations, to push for greater grassroots accountability and due diligence of the State and the private sector, the implementation of their respective commitments and obligations, the protection of local communities' rights, the raising of complaints where these have been violated, and the sharing of lessons learned and experiences across the globe.

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Endnotes

- 1 Oppenheimer 2003.
- 2 Wallace 1890.
- 3 Munoz 2006.
- 4 Bellwood 2006; Munoz 2006.
- 5 Anthropologists are at pains to distinguish between actual migrations, genetic flows and cultural diffusion, though these processes are, sometimes, related and so, too-often, confused.
- 6 Alcorn & Royo 2000.
- 7 Humans must have crossed from Sundaland to Wallacea 50,000 years ago (Dunbar 2010; Munoz 2006). Austronesian speakers reached Madagascar 2000 years ago. Malagasy is most closely related to languages now spoken in southern Borneo (Kumar 2012)
- 8 Harrison 1959; Tarling 1999; Munoz 2006.
- 9 Andaya 2008.
- 10 I Tsing 2006.
- 11 De Beere & McDermott 1989.
- 12 Reid 1999, 2005.
- 13 Thorn 1815 [2004].
- 14 Ricklefs 2008; Wolters 1999.
- 15 Reid 2005.
- 16 Peluso 1992.
- 17 Metcalf 2010; Warren 2007; Schiller 1997.
- 18 Exceptions would include the Penan, Iban and Bidayuh peoples of Borneo and the hunting and gathering peoples of the other islands.
- 19 Andaya 2008; Milner 2011, Reid 1999; Ricklefs 2008; Metcalf 2010; Rousseau 1990; Volkman 1985.
- 20 Reid 1983, 2011.
- 21 Hannigan 2012; Glendinning 2014.
- 22 Beatty 2009.
- 23 A most unsatisfactory term commonly used, and seemingly unavoidable, to refer to all the thousands of systems of belief which are not considered 'world religions'.
- 24 Ricklefs 2008, Reid 1988, 1993; Milner 2011.
- 25 Harwell 2000.
- 26 Metcalf 2010.
- 27 Dove 1985a; Sellato 1994; Sercombe & Sellato 2007.
- 28 Chao 2013.
- 29 Chidley 2002:4.
- 30 FWI, WRI and GFW 2002.
- 31 Finlayson 2011.
- 32 Hansen 2013.
- 33 Butler 2014.
- 34 Greenpeace 2013a.
- 35 The national ministry for agriculture gives the area of oil palm plantations in 2012 as 9.6 million hectares, an increase of 6.5 per cent (or 600,000 hectares), on 2011. At this rate, oil palm plantations will reach 20 million hectares in 2023 (Kementerian Pertanian Republik Indonesia 2012).
- 36 Abood et al forthcoming.
- 37 Jakarta Post 2011.
- 38 DfID et al 2007.
- 39 Dewan Nasional Perubahan Iklim Indonesia 2010.
- 40 Mangkusubroto 2011.
- 41 Persatuan Petani Jambi 2013.
- 42 Eyes on the Forest 2014.
- 43 Colchester 2010.
- 44 FPP & TUK INDONESIA 2013.
- 45 Milton 1999.
- 46 Stockdale 1811.
- 47 Hannigan 2012.
- 48 Thorn 1815 [2004].
- 49 Thorn 1815.
- 50 Fauzi 2011.
- 51 Peluso 1992; Poffenberger 2000.

Colchester et al 2006: 52-53.
 Taken from Colchester et al 2003.
Hak ulayat is not a term held in common by all peoples in Indonesia. It derives from the Minangkabau of Sumatra and has since been used as a generic term in *Bahasa Indonesia* (the Indonesian common tongue) to apply to indigenous concepts of collective rights in land in all parts of Indonesia. Concepts that correspond to the Minangkabau concept of *hak ulayat* are found widely throughout the archipelago. It is now a legal category (see also Burns 1999:92 for a discussion).
 In Holleman 1981.
 Ter Haar cited in Wright 1999.
 Burns 1999:19.
 Burns 1989.
 Ihromi 1999.
 Burns 1989:9.
 von Benda-Beckman 1999.
 Culhane 1998; Mackay 2004.
 Wright 1999:18. In a recent study the Centre for International Environment Law has characterised these Indonesian customary tenures as forms of ‘community-based property rights’ (Lynch & Harwell 2002).
 Holleman 1981; Hooker 1978.
 AMAN, FPP & ICRAF 2003.
 Lev 2000:41-3.
 Colchester et al. 2006:53.
 Peluso 1992:45.
 Galudra & Sirait 2009.
 Peluso 1992.
 Bryant 1997.
 Peluso 1992:63-64.
 Poffenberger 1990:220.
 Galudra & Sirait 2009.
 Poulgrain 1998 (2014); White 2004.
 Reid 2011.
 Hooker 1978: 2-3; Burns 1989; Lev 2000:37, 46. See also Colchester et al 2003: 110-111.
 See also Afrizal 2007.
 Rose 2010.
 Legge 1972.
 Anderson 1983, Volkman 1985; Bigalke 2005.
 Abrar 1999.
 Moniaga 1991.
 Barber & Churchill 1987:15-16; Moniaga 1991.
 Barber & Churchill 1987:17; Wright 1999:12-13.
 Moniaga 1991:11. Belief in one God is a requirement of Indonesian citizenship and Indonesian law only recognises five religions – Islam, Catholicism, Protestantism, Buddhism and Judaism. (Hinduism, prevalent on Bali, was only recognised by Presidential Decree in 1962). The basis for *adat* in indigenous religious belief is thus weakened not strengthened by this provision.
 Hooker 1978:114.
 Cited in Wright 1999:84.
 Wright 1999:85.
 Wright 1999:iii-iv.
 Wright 1999:88.
 Budi Harsono cited in Wallace et al 1997: 6.3.
 Moniaga 1991:14.
 Previous analyses have assumed that the BAL does not apply in ‘forests’ (eg Barber & Churchill 1987:120) but there appears to be no legal basis for this limitation of the BAL.
 Barber & Churchill 1987:35.
 ADB 2001; Zerner 1990:27; Barber & Churchill 1987.
 Colchester 1986 a, b.
 Barber & Churchill 1987; Zerner 1990, 1992.
 Fay, Sirait & Kusworo 2000.
 Salim 2005.
 Historians still contest who was really instrumental in sanctioning all these acts of violence, though the role of the military, some religious authorities and western intelligence agencies is gradually being made plain (Roosa 2006).
 Roosa 2006, Beatty 2012. See also *The Act of Killing* which can be viewed at:
<http://www.youtube.com/watch?v=3tLIqotj7Y>

103 Law No. 5 of 1979 on Village Administration, better known as UUPD.
 104 Yando 2000.
 105 Budiardjo 1986.
 106 Colchester 1986a.
 107 Colchester 1986a:91.
 108 Colchester 1995:63; cf Colchester 1986a.
 109 DEPSOS, Internal Memorandum 24 October 1975 cited in Colchester 1986a:93.
 110 Persoon 1985.
 111 Colchester 1986b.
 112 And before its creation, the Ministry of Agriculture.
 113 Colchester 1986a; Safitri & Bosko 2001:17.
 114 Roedy 1996 and Rahail 1996 cited in Colchester, Sirait & Wijardjo 2003.
 115 Safitri & Bosko 2001:16.
 116 Li 1999.
 117 Safitri & Bosko 2001:17.
 118 Li 1999.
 119 The term *terpencil* literally means ‘made remote’, ‘isolated’ or ‘desolated’ and carries connotations of backwardness, of
 being removed from civilised life. ‘Cut off’ might be a better gloss.
 120 Interview with Drs. M. Natsir AB, Drs Afrinaldi MSi., Pino Kasubdit PSDM, DPKAT, 15 May 2002. DEPSOS 2001a
 provide a breakdown by province and *kabupaten*, giving a total of 1,159,000 in the 23 provinces where ‘social mapping’
 has been carried out.
 121 Badan 2000; DEPSOS 2001a, 2001b, 2001c, 2002a.
 122 DEPSOS 2002b.
 123 DEPSOS 2002b.
 124 Colchester 1986 a, 1986b, 1986c.
 125 Dick 1991.
 126 Colchester 1987.
 127 Adhiati & Bobsein 2001.
 128 Kementerian Transmigrasi Republik Indonesia 2007.
 129 Colchester 1990; Colchester & Lohmann 1990; Dauvergne 1997, 2001.
 130 DfID 1999.
 131 WRM 1989.
 132 DTE 1991.
 133 Carrere & Lohmann 1996; Barr 2002.
 134 DfID 1999; FWI, WRI, GFW 2002; DTE 2002.
 135 Robison 1986.
 136 Colchester et al 2006.
 137 Obidzinski & Sembiring 2003:4-6.
 138 Obidzinski & Sembiring 2003:6-7.
 139 Elson 2001.
 140 Crouch 1978.
 141 Obidzinski & Sembiring 2003:7-8.
 142 Mietzner 2009:361.
 143 Human Rights Watch 2006; Mietzner 2009. See especially page 315.
 144 Mietzner 2009.
 145 Human Rights Watch 2006.
 146 Mietzner 2009 See especially page 308.
 147 Mietzner 2013:233.
 148 Mietzner 2009.
 149 Obidzinski and Sembiring 2003:10-11.
 150 Otten 1986.
 151 Colchester et al 2006.
 152 In West Sumatra a law has been passed which allows for HGU lands to revert to the community but this has yet to be
 implemented.
 153 Afrizal 2007; and see FoE, Life Mosaic & SawitWatch 2008 and Colchester 2010 for summaries of this extensive
 literature.
 154 Ibid.
 155 Powerpoint presentation to a National Meeting on the Macro Effects of Biofuels by Dr. Ir. Hertomo Heroe of the
 Indonesian Ministry for Woman’s Empowerment, 12 August 2009, Jakarta.
 156 Colchester & Jiwan 2006. These issues have been repeatedly brought to light through the public meetings of the Task
 Force on Smallholders of the Roundtable on Sustainable Palm Oils and see www.rspo.org

157 ILO Conventions No. 29 on Forced Labour (1930) and No. 105 on Abolition of Forced Labour;
<http://www.hri.ca/fortherecord2000/vol1/slavery.htm> accessed 27 March 2007;
<http://www.ohchr.org/english/about/publications/docs/fs14.htm> accessed 27 March 2007.
 158 Law 2010.
 159 Jakarta Post, 1st July 2010.
 160 Presentation made by BPN to the RSPO in Kuala Lumpur on 1st November 2009.
 161 World Bank 2000:3.
 162 Murray Li 2007.
 163 Santoso 2006.
 164 Colchester 2002.
 165 Eldridge 1990:503-536.
 166 Mayer & Lipschutz (eds) 1996.
 167 SKEPHI 1990.
 168 Colchester 2000; Eghenter 2000; Alcorn & Royo (eds) 2000.
 169 Murray Li 2001.
 170 Kleden et al 2009.
 171 The Guardian 2014.
 172 AMAN 2014.
 173 See also Safitri 2012.
 174 RECOFTC (nd).
 175 Lembaga ARuPA Yayasan Koling and Asia Forest Network 2004.
 176 Bratamihardja et al 2005.
 177 Prasetyo 2014.
 178 Ibid.
 179 Elson 2012.
 180 Colchester et al 2005.
 181 O'Rourke 2002.
 182 Kahin & Kahin 1995.
 183 FWI & GFW 2002: 66.
 184 Law No. 22 of 1999 on Local Governance.
 185 Simarmata 2002.
 186 District Regulation No. 2 of 2001 on Lembang Governance, later on replaced by District Regulation No. 5 of 2004.
 187 Provincial Regulation No. 9 of 2001 on *Nagari* Governance.
 188 Provincial Regulation No. 9 of 2001 on *Nagari* Governance, Articles 3, 4 and 7. The term that is used here is not 'right' but 'property'. Similarly, Law No. 22 of 1999 refers to 'village property' (*kekayaan desa*) (Article 107 clause 1). This term is also found in Government Regulation PP No. 76 of 2001.
 189 Andiko 2005b.
 190 Obidzinsky and Sembiring 2003; Colchester et al 2006.
 191 Hadiz 2011.
 192 Mietzner 2013:222.
 193 *ibid*:224.
 194 *ibid*:228.
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