

# The context of REDD+ in Indonesia

Drivers, agents and institutions

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# Abbreviations

3E	Effectiveness, efficiency, equity
AMAN	Aliansi Masyarakat Adat Nusantara (Indonesian Customary Community Alliance)
APBD	Anggaran Pendapatan dan Belanja Daerah (Regional Budget)
APBN	Anggaran Pendapatan dan Belanja Negara (National State Budget)
APHI	Asosiasi Pengusaha Hutan Indonesia (Indonesian Association for Forest Concession Holders)
APL	Area penggunaan lain (other land use)
AMDAL	Analisis Mengenai Dampak Lingkungan (Environmental Impact Assessment)
AusAID	Australian Agency for International Development
Bakosurtanal	Badan Koordinasi Survei dan Pemetaan Nasional (National Coordinating Agency for Surveys and Mapping)
BAPI	Biodiversity Action Plan for Indonesia
Bappenas	Badan Perencanaan Pembangunan Nasional (National Development Planning Agency)
BAU	Business as usual
BKPRN	National Spatial Planning Coordination Agency
BPN	Badan Pertanahan Nasional (National Land Agency)
BPS	Badan Pusat Statistik (Central Statistics Agency)
CDM	Clean Development Mechanism
CIFOR	Center for International Forestry Research
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COP	Conference of the Parties
CSF	Civil Society Forum for Climate Justice
CPO	Crude Palm Oil
CSO	Civil Society Organisation
DBH	Revenue-Sharing Funds
DBH SDA	Natural Resources Revenue-Sharing Funds
DKN	Dewan Kehutanan Nasional (National Forestry Council)
DNPI	Dewan Nasional Perubahan Iklim (National Climate Change Council)
DPR	House of Representatives
DR	Dana Reboisasi (Reforestation Fund)
EIA	Environmental Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
FCPF	Forest Carbon Partnership Facility (World Bank)
FFI	Fauna & Flora International
FIP	Forest Investment Programme
FLEGT	Forest Law Enforcement, Governance and Trade
FORDA	Forest Research and Development Agency (Ministry of Forestry)
FPIC	Free Prior and Informed Consent
FWI	Forest Watch Indonesia

GAPKI	Gabungan Pengusaha Kelapa Sawit Indonesia (Indonesian Palm Oil Association)
GCS	Global Comparative Study
GFW	Global Forest Watch
GHG	Greenhouse gas: Gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation. The Kyoto Protocol lists 6 types of GHG whose emissions must be regulated/reduced: Carbon dioxide ( $CO_2$ ), nitrous oxide ( $N_2O$ ), methane ( $CH_4$ ), sulphur hexafluoride ( $SF_6$ ), perfluorocarbon (PFC) and hydrofluorocarbon (HFC)
GERHAN	Gerakan Rehabilitasi Lahan (National Movement for Forest and Land Rehabilitation)
HGU	hak guna usaha (land use permit)
HPH	hak pengusahaan hutan (forest concession right)
HPHH	hak pemungutan hasil hutan (forest harvest rights)
НРК	hutan produksi yang dapat dikonversi (convertible production forest)
HTI	hutan tanaman industri (industrial timber plantation)
HTR	hutan tanaman rakyat (community-based plantation forest)
IBSAP	Indonesian Biodiversity Strategy and Action Plan
ICCSR	Indonesia Climate Change Sectoral Roadmap
ICCTF	Indonesian Climate Change Trust Fund
ICEL	Indonesian Center for Environmental Law
IFCA	Indonesia Forest Climate Alliance
IHPH	Forest Enterprise Concession Fees
IMF	International Monetary Fund
IMM	Indicative Moratorium Map
IPKH	Industri Pengolahan Kayu Hulu (Upstream Wood Processing Industry)
INCAS	Indonesia National Carbon Accounting System
IPHHK	Forest Timber Product Extraction Permit
IPPK	Forest Use Permit
IPK	Ijin Pemanfaatan Kayu (timber use permit)
ITTO	International Tropical Timber Organization
IUPHHK-HA	Permit for Forest Timber Extraction from Natural Forest
JICA	Japan International Cooperation Agency
KAN	Komisi Akreditasi Nasional (National Accreditation Committee)
KPH	Kesatuan Pengelolaan Hutan (Forest Management Unit)
КРК	Komisi Pemberantasan Korupsi (Corruption Eradication Commission)
KFCP	Kalimantan Forests and Climate Partnership
KLHS	Kajian Lingkungan Hidup Strategis (Strategic Environment Analysis)
LAPAN	Lembaga Penerbangan dan Antariksa Nasional (National Space Agency)
LEI	Lembaga Ekolabel Indonesia (Indonesian Eco-labeling Institute)
LHC	Laporan Hasil Cruising (cruising result report)
LIPI	Lembaga Ilmu Pengetahuan Indonesia (Indonesian Institute of Sciences)
LoI	Letter of Intent (Indonesia–Norway)
LUCF	Land Use Change and Forestry
LULUCF	Land Use, Land Use Change and Forestry
MFP	Multi-stakeholder Forestry Programme

MIFEE	Merauke Food and Energy Estate
MoE	Ministry of Environment (Indonesian Government)
MoF	Ministry of Forestry (Indonesian Government)
MoU	Memorandum of Understanding
MPRS	Provisional People's Consultative Assembly
MRV	Monitoring, Reporting and Verification
NCAS	National Carbon Accounting System
NFI	National Forest Inventory
NGO	Non-Governmental Organisation
NRM	Natural Resource Management
PAD	Pendapatan Asli Daerah (Regional Own-Source Revenue)
Permenhut	Peraturan Menteri Kehutanan (Ministry of Forestry Regulation)
PES	Payment for Environmental Services
PfA	Proposal for Action
PNBP	Total Non-Tax State Revenue
РОКЈА	Working Group (Kelompok Kerja)
POKJA PI	Working Group on Climate Change
PPATK	Financial Intelligence Unit
РРКН	State Forest Lease -Use
PSDH	Provisi Sumber Daya Hutan (Volume-Based Tax on Timber Harvesting/'Forest Resource
	Rent Provision')
RAD-GRK	Regional Action Plan to Reduce Greenhouse Gas Emissions
RAN	Rencana Aksi Nasional (National Action Plan)
RAN-GRK	National Action Plan to Reduce Greenhouse Gas Emissions
REDD+	Reducing emissions from deforestation and forest degradation and enhancing forest carbon stocks
REL	Reference Emissions Level
RIKEN	Rencana Induk Konservasi Energi Nasional (National Energy Conservation Plan)
RKT	Annual Logging Schedules
RPJMD	Rencana Pembangunan Jangka Menengah Daerah (Medium-term Regional Development Plan)
RPJMN	National Medium-Term Development Plan (Indonesia)
RPJPD	Rencana Pembangunan Jangka Panjang Daerah (Long-term Regional Development Plan)
RPJPN	Rencana Pembangunan Jangka Panjang Nasional (Long-term National Development Plan)
RPJPN	National Long-Term Development Plan 2005–2025
R-Plan	Readiness Plan
R-PP	Readiness Preparation Proposal
RPPLH	Management and Protection Plan for the Environment
RSPO	Roundtable on Sustainable Palm Oil
RTRW	Rencana Tata Ruang Wilayah (Spatial Plan)
RTRWP	Rencana Tata Ruang Wilayah Provinsi (Provincial Spatial Plan)
Satgas PMH	Satuan Tugas Pemberantasan Mafia Hukum (Anti Judicial Mafia Task Force)
SFM	Sustainable Forest Management

SIS	Safeguard Information System
SNC	Second National Communication
SVLK	Sistem Verifikasi Legalitas Kayu (Timber Legality Verification Standards)
TGHK	Tata Guna Hutan Kesepakatan (Forest Land Use by Consensus)
TLAS	Timber Legality Assurance System
TNC	The Nature Conservancy
TPTI	Tebang Pilih Tanam Indonesia (Selective Logging and Planting System of Indonesia)
UKL-UPL	Environmental Management and Monitoring Document (Upaya Kelola Lingkungan-Upaya Pemantauan Lingkungan)
UKP4	Unit Kerja Presiden bidang Pengawasan dan Pengendalian Pembangunan (President's Work Unit for Supervision and Management of Development)
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UN-REDD	United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries
UUPPLH	Law No. 32 on Environmental Protection and Management (Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup)
VER	Verified emissions reduction
VPA	Voluntary Partnership Agreement
Walhi	Indonesian Forum for Environment
WWF	World Wide Fund for Nature
WTO	World Trade Organization

### **Glossary of Indonesian terms**

hak ulayat	customary land rights
hutan adat	customary forest
hutan desa	village forest
hutan hak	privately owned forest
hutan rakyat	community forest
hutan tanaman	plantation forest
hutan ulayat	customary forest
kawasan hutan	forest area
peta paduserasi	reconciled maps
tanah ulayat	customary land

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### **Executive summary**

This country profile reviews the drivers of deforestation and forest degradation, sets out the institutional, political and economic environment within which REDD+ is being implemented in Indonesia, and documents the process of national REDD+ policy development during the period 2007–2011. There are clearly contextual challenges that need to be addressed in order to create the enabling conditions for REDD+ and to improve the governance of Indonesia's forests more broadly.

The Government of Indonesia is committed at national and international levels to addressing the challenges of climate change and to using forest carbon offsets to consolidate its forestry sector reforms. Indonesia has pledged to reduce its emissions from land use, land use change and forestry (LULUCF) by at least 26% by 2020. One way the country plans to meet this target is by reducing its emissions from deforestation and forest degradation through the REDD+ mechanism, which offers the potential for innovative and stable forms of financing for local governments and community-based resource management.

Although recent data suggest a slight declining trend, deforestation rates over the past three decades have been high: 2.7% per year in Sumatra and 1.3% in Kalimantan during the period 2000-2010. Activities that directly contribute to deforestation and forest degradation include conversion of forests to other uses such as agriculture and mining, illegal logging, and forest and land fires, the latter often associated with drained peatlands. These activities are driven by, among others, high demand for forest-based products in both domestic and international markets and weak governance systems at national and subnational levels. Forest cover decline is also associated with natural population growth and demographic change such as that resulting from transmigration programmes.

Ultimately, deforestation is intricately linked to the structure of the Indonesian economy, which continues to be dependent on the extraction of natural resources. This dependence has shaped the political economy and institutional landscape of the country. The issues are systemic, expansive and complex, and include capacity constraints and poor governance of land use–related institutions, unclear spatial planning processes, and frequent land and resource tenure conflicts.

To achieve further progress with the formulation and implementation of efficient, effective and equitable REDD+ in Indonesia, a number of obstacles have to be overcome, as follows.

## Clarifying land tenure and aligning legal frameworks

Of Indonesia's entire landmass, more than 70% (or some 130 million ha) comes under the purview of the Ministry of Forestry. The Forestry Law clearly assigns these lands as state forest areas (kawasan *hutan*); the same law also indicates that these areas must be gazetted and established as state forest areas (kawasan hutan). However, to date, only around 10% has been gazetted, with the result that multiple interpretations of the laws are applied. Although officially state lands, many of these areas are inhabited by local and indigenous peoples claiming customary rights, or have been allocated for large development activities, including oil palm plantations. This uncertain and unclear tenure has been counterproductive in promoting sustainable forest management.

Moreover, the legal framework under which forestry activities operate encompasses both specific, sectoral laws and regulations (e.g. those regulating forestry, agriculture and mining) and more general, crosscutting legislation (e.g. decentralisation, finance and spatial planning). This has led to inconsistencies, contradictions, uncertainty and inefficiency, and encourages corrupt practices as multiple legal frameworks create opportunities for rent-seeking behaviour. With REDD+ introducing a new value for forests (i.e. carbon) – and hence another layer of additional claims to land by various groups of actors – the need to clarify land tenure and legal frameworks to improve land use planning is now even greater.

# Protecting the rights of forest-dependent communities and vulnerable groups

REDD+ policies and projects present new risks for forest-dependent communities and for vulnerable groups such as indigenous peoples. For example, customary rights may not be respected because of land speculation by investors; communities may get locked into unfavourable legal agreements, unaware of the risks involved; or double standards may be applied as community rights are restricted to subsistence use, while rights for commercial extraction continue to be awarded to corporate and government elites. Furthermore, the concentration of REDD+ incentives in particular areas may create perverse effects such as increased in-migration and agrarian conflicts.

A range of measures will be needed to mitigate these risks during the design and implementation of REDD+ projects. These could include: clarifying ownership and legal rights to benefit from carbon; improving access to simplified information on REDD+ in local languages; defining how revenues will be channelled to forest-dependent communities; securing effective redress and dispute resolution mechanisms; prioritising the broader development interests of local communities and governments rather than the interests of carbon investors; and introducing creative approaches to community-based monitoring.

### Sectoral focus

Ministerial programmes tend to be compartmentalised and narrowly focused on sectoral objectives, partly because bureaucratic performance is assessed against sector-based targets. Similarly, there are no sectoral links in the budgeting process, which means that sectoral laws and regulations often do not refer to laws and regulations beyond their sector, despite their relevance. Consequently, there is often a lack of coordination among ministries that are otherwise closely related. This presents an important challenge for REDD+, because while forest management in Indonesia essentially falls under the jurisdiction of the Ministry of Forestry, the underlying drivers of deforestation are often related to the Ministries of Agriculture, Mining and Energy, Trade, Finance and Development. To date, there has been limited success in establishing cross-sectoral coordinating structures and institutions: they exist, but either remain ineffective or encounter 'resistance' from sectoral ministries.

# Decentralisation process and local governance

Indonesia's central government has played a dominant political and administrative role throughout most of the country's history. The major reforms following the 1997–98 economic and political crises included provisions to transfer the authority for natural resource management to the regions. However, the way in which the decentralisation process has taken shape has involved a considerable degree of uncertainty and contradiction. For example, local autonomy is often interpreted as if there were no hierarchical linkages between levels of government. As a result, many local regulations conflict with higher-level policies and laws, while increased decision-making powers and the quest for locally generated revenues have led to indiscriminate licensing for inappropriate forest conversion. Weak local governments are often characterised by non-transparent decision-making processes, incidences of corruption involving local leaders, poor law enforcement and ineffective accountability mechanisms.

The Government of Indonesia has made considerable progress in addressing these broad governance challenges, and the media and civil society now enjoy much greater freedom and promote greater transparency and participation in decision-making. In particular, the establishment of the moratorium on new forest permits in May 2011 represents an additional step towards the reduction of emissions through avoided deforestation and degradation. Nevertheless, a number of substantial challenges remain if REDD+ in Indonesia is to be effective, efficient and equitable.

### Introduction

REDD+ is a scheme developed to provide incentives to reduce greenhouse gas emissions by decreasing degradation to forests and forest cover by adopting a sustainable forest management approach and increasing the roles of conservation and carbon stocks from forests in developing countries. The scheme was agreed at the 13th climate change conference (United Nations Framework Convention on Climate Change Conference of the Parties; COP 13) in Bali in December 2007. The Indonesian government's commitment to implementing this scheme was made apparent in a statement on the international stage by President Susilo Bambang Yudhoyono, who declared that Indonesia would reduce its greenhouse gas (GHG) emissions by 26% of 'business as usual' emission levels by 2020 through self-funding, or by 41% with international help. The Government of Indonesia has already taken steps to carry out REDD+ activities, including working with a number of partners in various fields and institutions. One of these partners is the Government of Norway, with which Indonesia has signed a Letter of Intent (LoI) to develop demonstration activities, a National Action Plan on Greenhouse Gases, and a National REDD+ Strategy.

The aim of this country profile is to provide an objective picture of conditions within the forestry and related sectors in relation to REDD+ implementation. It is part of the Global Comparative Study (GCS) on REDD+ undertaken by the Center for International Forestry Research (CIFOR). The policy component of the GCS involves compiling profiles of 12 countries – Bolivia, Brazil, Burkina Faso, Cameroon, Democratic Republic of Congo, Indonesia, Mozambique, Nepal, Papua New Guinea, Peru, Tanzania and Vietnam – as a way of understanding the context in which REDD+ policies and processes emerge. The aim of these country profiles is to inform decision-makers, practitioners and donors of opportunities and challenges in implementing a REDD+ mechanism, in order to support evidence-based REDD+ decision-making processes.

The Indonesian country profile grew over a period of more than two years, and could not have been completed without the support of many others. It is based on the GCS Component 1 methodological framework and the country profile guidelines prepared by Brockhaus *et al.* (2012).

This paper is divided into five chapters. The first chapter describes Indonesia's forest area and forest cover as well as the ongoing deforestation and forest degradation and their drivers. Chapter 2 discusses the institutional environment and distributional aspects of forest management. Chapter 3 looks at the political economy of deforestation and forest degradation. Chapter 4 explains institutional developments in REDD+ and the policy environment. Chapter 5 examines the potential implications of REDD+ for Indonesia in terms of efficiency, effectiveness and equity (3Es). Concluding the report is Chapter 6.

### **1. Indonesia's forests** Cover, forest types, changing land use, deforestation and degradation

Indonesia is one of the world's most forested countries with a wide variety of forest types, including lowland, montane and seasonal forests. These forests are rich in biodiversity and, unsurprisingly, are an important livelihood source for a great number of people. Somewhere between 6 million and 30 million Indonesians are estimated to be directly dependent on forests (Sunderlin et al. 2000). As Indonesia is a developing country, the government is highly dependent on the forestry sector, as well as on forestry-related sectors such as agriculture, estate crops and mining, for the nation's development. Consequently, during Indonesia's history, its forests have been continually exploited, meaning deforestation and forest degradation have been inevitable.

The condition of Indonesia's forests during recent years is discussed in this chapter, along with the causes of deforestation and forest degradation. However, given the variety of definitions used for 'forest' and the number of institutions and techniques involved in data collection, it is very difficult to determine which data are the most valid for establishing the actual area of forest in Indonesia. The same problems apply in determining figures for the rate and extent of deforestation and forest degradation. Also presented in this chapter is information on the current potential for Indonesia's forests as a medium for climate change mitigation. The data and information used in this chapter have been sourced mostly from government documents, from research organisations or from earlier research, and from interviews with competent authorities.

# 1.1 Overview of forests, state forests and changes in forests and forest areas in Indonesia

Law No. 41/1999 on Forestry (the Forestry Law) defines 'forest' as 'an integrated ecosystem within a landscape containing biological resources, dominated by trees in harmony with its natural environment inseparable from one another' (Article 1). The Forestry Law further defines a 'forest area' as a particular area designated and/or stipulated by the government to be retained as permanent forest. The Forestry Law essentially regulates 'forest areas' rather than 'forest'. It is important to note, too, that in reality, the Ministry of Forestry calculates forest area based on the size of the administrative areas or areas designated as 'forest areas', irrespective of whether or not these areas actually have trees on them; as such, some 'forest areas' may not have any forest.

Official Ministry of Forestry data state that Indonesia had 133 694 685.18 ha of forest area in 2008 (MoF 2009a: 4), and that three years earlier (2005), it had 123 459 513 ha (MoF 2006a). Although on paper, this appears to show an increase in forest area in Indonesia, the change in figures is actually due to the use of different measurement methods in these years (FWI 2008). It is important to note that the data available do not cover forested regions managed by local people (private forest) outside the governmentdesignated forest areas.

The latest data (2010) from the Directorate General of Planology under the Ministry of Forestry are different again. The Directorate General's calculations put Indonesia's land area at 187.670 million ha, comprising 133.514 million ha of forest areas and 54.157 million ha of other land use areas (areal penggunaan lain; APL). In total, the area of land with forest cover is 98.559 million ha, whereas the area of land without forest cover is 89.032 million ha (recall that, as explained above, legally designated 'forests areas' may not have forest cover); data are not available for 79 900 ha. Forest area with forest cover accounts for 91.098 million ha (48.54% of Indonesia's landmass), and forest area without forest cover accounts for 42.365 million ha (22.72% of Indonesia's landmass); data are unavailable for 50 300 ha of the forest area (0.02% of the country's landmass). The area of forest cover in APLs is 7.461 million ha (3.98% of Indonesia's landmass), and 46.666 million ha (24.89% of Indonesia's total landmass) of APLs are unforested; data are unavailable for 29 600 ha of APLs (0.18% of Indonesia's landmass) (MoF 2011a).

Data on Indonesia's forest area collected by other organisations, including the Food and Agriculture Organization of the UN (FAO) and Global Forest Watch/Forest Watch Indonesia (GFW/FWI), differ again (Table 1). FAO stated that Indonesia had 88.495 million ha of forest in 2005 (FAO 2006), whereas GFW/FWI put the figure at 83.655 million ha (FWI 2008).

The probable causes of the discrepancies in these data are differences in: (1) the definitions of forest (Media Indonesia 2010); (2) the forest classifications; and (3) the data analysis methods (FWI/GFW 2002). As stated above, 'forest' is defined in Indonesian law (Forestry Law, Article 1) as 'an integrated ecosystem within a landscape containing biological resources, dominated by trees in harmony with its natural environment inseparable from one another'. By contrast, FAO (2006) defines forest as 'land spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than 10 percent, or trees able to reach these thresholds in situ'. Furthermore, the Indonesian government classifies areas as 'forested' and 'unforested' (MoF 2009a), whereas FAO divides areas into 'forest', 'other woodland', 'other land' and 'other land with tree cover' (FAO 2006). The upshot of these different classifications is that the government's calculations are higher; they include forest that FAO would define as 'other woodland'.

The primary reference data in this report are those issued by the Ministry of Forestry, complemented by other sources of data to obtain a holistic

#### Table 1. Comparison of the area of forest and forest land based on Ministry of Forestry, FAO and FWI calculations ('000 ha)

Year	MoF	FAO	GFW/FWI
1985	119 701	-	117 192
1990	100 000	116 567	-
1997	-	-	95 628
2000	108 578	97 852	93 924
2003	105 182	-	93 925
2005	123 459	88 495	83 655
2009	133 453	-	88 170
2010	133 514	94 432	-

Source: FAO (2006, 2010), FWI/GFW (2002), FWI (2008, 2011), MoF (2001, 2004, 2006, 2010, 2011a)

understanding while capturing the range of perspectives of Indonesian forestry.

Under Indonesia's Forestry Law, forest areas are divided according to their functions: (1) production forest – forest with the primary function of producing forest products; (2) protection forest forest with the primary function of protecting life support systems to regulate water, prevent flooding, control erosion, prevent seawater intrusion and maintain soil fertility; and (3) conservation forest forest with specific characteristics and the primary function of conserving plant and wildlife biodiversity and their ecosystems. Production forest is categorised further into permanent production forest (in which the whole area is allocated to the production of forest products), limited production forest (in which only part of the area is allocated to the production of forest products) and convertible production forest (which is reserved for other land uses). The areas of each of these forest types in 2005 and 2008 are shown in Table 2.

These data show that the area allocated as production forest exceeds the total area allocated as conservation and protection forest. This shows that utilisation of forest as a development resource has been and continues to be an important element of Indonesian forestry.

As their names suggest, protection forest and conservation forest are aimed at protecting and conserving ecosystems and their ecological functions. In practice, however, other activities such as mining can take place in these types of forest. The Ministry of Forestry has the authority to establish which state forest areas can be used for non-forestry activities (e.g. mining) through the issue of lease-use permits, some of which apply to protection and conservation forests. Lease-use permits in forest areas are regulated by Government Regulation No. 24/2010 on Use of Forest Areas, which superseded the guidelines for granting lease-use permits in Ministry of Forestry Regulation No. P.64/Menhut-II/2006.

This regulatory framework is one of the factors contributing to deforestation and forest degradation in Indonesia. Indonesian law defines 'deforestation' as a permanent change from a forested to a nonforested area caused by human activity (Article 1(10), Ministry of Forestry Regulation No. P.30/Menhut-II/2009 on Procedures for Reducing Emissions

Forest type	2005	2008
	(million ha)	(million ha)
Conservation forest	20.080	19.908
Protection forest	31.782	31.604
Limited production forest	21.717	22.502
Permanent production forest	35.813	36.649
Convertible production forest	14.057	22.795
Designated function	0.007	0.233
Total	123.459ª	133.694ª

Table 2. Comparison of forest area by type, 2005and 2008

a Based on rounded number

Source: MoF (2006, 2009a)

from Deforestation and Forest Degradation). The same regulation defines 'degradation' as a reduction in the quantity of forest cover and carbon stock over a certain period caused by human activity (Article 1(11)).

The reported rates of deforestation in Indonesia vary from year to year. During 1985-1997, the reported average annual deforestation rate was 1.87 million ha (MoF 2000). This figure increased sharply to 3.51 million ha annually for 1997-2000 (MoF 2005). For 2000–2005, the reported figure fell again to 1.08 million ha per year, only to rise for the 2003–2006 period, when it was reported at 1.17 million ha annually (MoF 2009b). Another estimate suggests that Indonesia experienced overall forest cover decline of 1% per year between 2000 and 2010, during which period Sumatra experienced the highest annual rate of forest cover decline of 2.7%, followed by Kalimantan at 1.3% (Miettinen et al. 2011). Based on these historical data, Indonesia's deforestation rate is estimated to be around 1.125 million ha annually, with the average degradation caused by logging estimated at 0.626 million ha a year (Bappenas 2010b). However, in some areas, such as in Java, forest cover has reportedly increased, by as much as 4% per year between 2000 and 2010 (Miettinen et al. 2011). Similarly, the area of community forest (hutan rakyat) in Java and Madura reportedly increased from 1 900 797 ha to 2 585 014 ha between 1990 and 2008, or by about 36% (MoF 2009c).

Indonesia covers only 1.3% of the world's landmass, but it is home to 11% of the world's plant species, 10% of mammal species and 16% of bird species; most of these are found in Indonesia's forests in Papua, Kalimantan and Sulawesi (FWI/GFW 2001). According to FAO, the total forest vegetation in Indonesia produces more than 14 billion tonnes of biomass, equivalent to approximately 20% of the biomass in all of Africa's tropical forests (FWI/ GFW 2002). This biomass is estimated to store roughly 3.5 billion tonnes of carbon (Bappenas 2010b). However, despite the importance of this biological wealth, about 20-30% of Indonesia's biodiversity is lost every year (MoE 2008). The loss is particularly notable with regard to large mammals. For example, in a 15-year period (1992-2007), the elephant population fell by 35% from 3000-5000 to only 2400–2800. Orangutan populations decreased by 1–1.5% a year in Sumatra and 1.5–2% in Kalimantan because of forest habitat loss; current population estimates for orangutan in Sumatra and Kalimantan are 6667 and 54 567, respectively (MoE 2007b). The Javan tiger has been extinct since 1930 and the Bali tiger since 1970. Only 400-500 Sumatran tigers remain in five national parks in Sumatra (FWI/GFW 2001). Sumatran and Javan rhinos are categorised as critically endangered in the International Union for the Conservation of Nature (IUCN) list. Several factors influence the loss of biodiversity: loss of forest habitat for rare wildlife, illegal hunting, and trading caused by poverty or general lack of understanding of the importance of wildlife protection.

### 1.2 Causes of changes in forest cover

'Changes in forest cover' refers to changes resulting from deforestation, both planned and unplanned, or from forest degradation. Planned deforestation generally constitutes government-planned changes in forest area function in the interests of estate crop, agricultural or housing development, conducted legitimately in accordance with the law. Unplanned deforestation refers to deforestation through illegal activities. Forest degradation may be due to legal or illegal activities, such as illegal harvesting and timber theft. Degradation due to illegal logging leaves areas vulnerable to further deforestation, because degraded forest is easier to clear.

Forest and land fires constitute another cause of deforestation in Indonesia. Although natural forest

fires (with no human involvement) are generally followed by natural regeneration, in reality, many forest and land fires are started as a means of clearing land for agricultural activities, both large and small scale (e.g. see Applegate *et al.* 2001).

### 1.2.1 Changes in forest area allocation and function

Forest loss in Indonesia often occurs when the forest area is reallocated or its function changed so that the land may be used for some other purpose. Changes in allocation occur when the forest is released for non-forestry needs such as estate crops and the area can no longer be categorised as forest area or forest. Changes in function include, for instance, when a forest area changes from protection to production forest, while remaining a forest area. In the context of deforestation, the change in function from production forest to convertible production forest is an example of planned deforestation.

Ministry of Forestry data show the area of forestland converted for agriculture and estate crops has continued to increase (Table 3). The area covered by government decrees regarding forest release reached about 4.5 million ha in 2002, increasing to 4.7 million ha in 2007 and then 4.9 million ha in 2010 (MoF 2009a, 2011b). Note that 70% of Indonesia's land area is categorised as forest area (*kawasan hutan*) (Table 2), of which 12% is set aside for future conversion. This indicates that some of the deforestation occurring in Indonesia was planned for the purposes of development.

However, the official data in Table 3 give only part of the picture of actual forest land use change. In reality, many forest areas have been allocated for other activities (for instance, see Tempo Interaktif 2011; also see Chapter 2). Other data show that, up until mid-2010, regional governments in Sumatra, Kalimantan and Sulawesi had proposed land use changes on 16.5 million ha of forest.<sup>1</sup>

According to baseline and mitigation scenarios prepared by the Ministry of Forestry Working Group for 16 years into the Future (2009–2025), if the government fails to address the causes of deforestation and degradation, then planned deforestation will reach 10 272 000 ha by 2025, and unplanned deforestation 8 772 000 ha. Degradation caused by legal harvesting will reach 21 202 000 ha and illegal exploitation 29 758 000 ha (MoF 2010a).

### Oil palm

During the past two decades, conversion to oil palm estates has been the dominant change in forest allocation. High palm oil prices and rising global demand for crude palm oil (CPO) have encouraged massive oil palm expansion, as evidenced by the continual increase in the area of land converted for oil palm estates. According to Sawit Watch data, oil palm estates covered 1 652 301 ha in 1989; this area rose to 3 805 113 ha in the 1993–1994 period, and to 8 204 524 ha in 1998 (Sawit Watch 2009). According to the Ministry of Agriculture database, the area of oil palm estates, both large and small, grew every year to reach a total of 7 007 867 ha in 2008 and 8 430 026 million ha in 2010 (MoA, 2010a).

Growing global interest in renewable energy, and hence in biofuels as an alternative energy source, has also encouraged changes in forest land use, at least at the policy level. In 2006, projections by the Indonesia National Biofuels Team estimated that 10.25 million ha of land would be needed to meet the 2015 national biofuels target (Media Riset 2007).

With land availability in the current oil palm centres of Kalimantan and Sumatra becoming more limited, expansion is planned for Papua (AFP 2008). The government has issued a number of regulations and policies to accelerate this programme. Preconditions were developed in 2004 with the enactment of Law No. 18/2004 on Estate Crops, which introduced 35-year land use permits (hak guna usaha; HGU) for estate crops in an effort to attract foreign investment. Subsequently, in 2006, the government issued Presidential Decree No. 5/2006 on National Energy Policy and Presidential Instruction No. 1/2006 on Provision and Use of Biofuels as Alternative Fuels. Supporting these instructions in 2007 was Ministry of Agriculture Regulation No. 26/Permentan/OT.140/2/2007, which stated that twice the usual 100 000 ha area of land could be allocated for oil palm estates in Papua. This regulation was followed by Ministry of Forestry Regulation No. P.22/Menhut-II/2009, which provides the legal

<sup>1</sup> Ministry of Forestry data quoted from an annex to a presentation by Hariadi Kartodihardjo (Bogor Agricultural University), *Upaya penyelesaian konflik tata ruang terkait dengan kawasan hutan negara*, Jakarta, 9 August 2010.

No. Province		Year					
	-	Up to	o 2002	20	007	20	010
		Land Unit	Area (ha)	Land Unit	Area (ha)	Land Unit	Area (ha)
1	Aceh	60	265 744	60	265 744	60	265 744
2	North Sumatra	26	139 657	27	139 998	28	142 762
3	West Sumatra	26	134 886	28	157 956	28	157 956
4	Riau	123	1 521 531	128	1 564 061	127	1 509 820
5	Riau Archipelago	4	47 799	4	47 799	5	48 498
6	Jambi	44	345 776	44	345 776	44	345 776
7	South Sumatra	11	73 459	15	125 395	23	170 245
8	Bengkulu	12	57 581	12	57 581	12	57 581
9	Lampung	7	76 099	8	83 964	8	83 964
10	West Nusa Tenggara	3	847	3	847	3	846
11	West Kalimantan	8	110 234	8	110 234	12	139 223
12	Central Kalimantan	51	549 642	55	619 868	55	624 872
13	South Kalimantan	17	199 654	17	199 654	18	209 130
14	East Kalimantan	57	489 595	59	510 580	58	492 943
15	North Sulawesi	2	8 888	2	8 888	1	2 000
16	Gorontalo	-	-	-	-	1	6 888
17	Central Sulawesi	8	72 805	8	72 805	8	72 805
18	Southeast Sulawesi	3	7 862	3	7 862	3	7 862
19	West Sulawesi	-	-	1	6 722	14	103 777
20	South Sulawesi	15	84 936	15	84 936	3	4 584
21	Maluku	12	11 518	13	13 767	12	12 658
22	North Maluku	7	9 963	8	29 772	9	43 014
23	Papua	12	254 436	13	286 982	11	315 608
24	West Papua	-	-	-	-	6	83 200
	Total	508	4 462 916	531	4 741 194	549	4 901 759

Table 3. Area under forest release decrees for estate crops, 2003–2010

Source: MoF (2008, 2011b)

basis for oil palm companies to own estates of up to 100 000 ha and 200 000 ha in Papua.

Companies responded swiftly to these policies and undertook large-scale expansion in various parts of Indonesia. The recent expansion in Papua exemplifies the magnitude of the plans to clear forest for oil palm estates. According to Ministry of Forestry data, by 2010, the central government had issued permits in principle (*ijin prinsip*) and forest area release decrees for estates, mostly oil palm, for a total area of 9.13 million ha (AFP 2008). According to Sawit Watch (2009), the area is nearly three times that, with expansion reaching 26.7 million ha in 2009, with plans to clear a further 2.8 million ha in Papua for oil palm.

### Mining

Another sector that requires forest to be cleared is mining. Given the area involved, the effects of mining on forests may be underestimated, especially when compared with agriculture and estate crops. According to Ministry of Forestry data (MoF 2009a), lease-use permits for mining covered only around 344 000 ha up until 2008. In reality, however, mining in forest areas covers a much larger area, because many mining operations, including those authorised by regional government permits, do not actually operate under lease-use permits (see Chapter 2). In addition, there are many small-scale illegal mining operations in forest areas (Resosudarmo et al. 2009). These two factors obscure the real impact of mining on forest cover. Furthermore, many mining operations are established in conservation areas or protection forest - which should be protected - because rich mineral ores have been found in those areas. Although the Forestry Law prohibits open-cast mining in protection forest, at least 13 companies had secured operating permits for almost 850 000 ha of land in protected areas before the law was passed and were made exceptions so that they could continue their operations (Annex to Presidential Decree No. 41/2004). In addition to their direct impacts on forest cover, mining activities have frequently led to environmental degradation and social conflict (Resosudarmo et al. 2009).

Other economic activities directly resulting in deforestation include road building, settlements and aquaculture development. For example, the province of East Kalimantan proposes, in its Provincial Spatial Plan (RTRWP), to convert 1.3 million ha of forestland to other uses, which has been earmarked for, among other uses, the development of agriculture and oil palm plantation. Similarly, West Kalimantan proposes to convert 1.9 million ha (Kompas 2010a).

# 1.2.2 Illegal logging and forest fires Illegal logging

During the past decade, illegal logging has constituted one of the greatest deforestation threats through the forest degradation it causes. Degraded forest is easier to clear, and thus degradation can ultimately lead to deforestation. For example, unguarded logged-over forest areas – former HPH (forest concession rights) concessions, for instance – have less dense tree stands and thus are easily cleared and subsequently converted to farmland or plantations.

In Sumatra and Kalimantan – the regions of Indonesia with the highest levels of deforestation and degradation – illegal logging has been rife in all types of forest (permanent production forest, convertible production forest, protection forest, conservation forest and non-forest areas) through various *modi operandi*, ranging from felling (Casson and Setyarso 2006), to transporting and distributing wood, to law enforcement processes (ICEL 2006).

Illegal logging *modi operandi* differ between conservation/protection and production forests. In conservation and protection forest, illegal logging takes place without permits (Kompas 2010b). In active production forest, it usually occurs through permit violations, logging outside designated felling blocks, felling in excess of permitted targets, clearing of logging roads outside concession areas and cutting down trees in advance of logging schedules (Kompas 2010b). Inactive or abandoned concession areas also tend to attract illegal logging activities. In addition, illegal logging occurs through unlicensed and licensed mining activities that violate procedures or the terms of their permits (Kompas 2010b).

The granting of industrial timber plantation (HTI) permits for pristine natural forest is another driver of forest degradation. In the 1990s, the government began a programme on HTIs for pulp and paper (Resosudarmo 2004). The government then established 1.4 million ha of HTIs in 1995, 1.8 million ha in 2000 and 2.3 million ha in 2003, with plans to have 10.5 million ha of HTI by 2030. Initially, pulp and paper plants relied on natural forests; however, the ever-increasing distances from the plants to natural forest encouraged the industry to establish HTIs to maintain supply. According to data from 2007, raw material requirements for pulp and paper were 30 million m<sup>3</sup>, but HTIs could provide only 28% of this amount (FWI 2009). The remainder was supplied from natural forest timber and illegal wood (FWI 2009).

Legal provisions are in place to strictly limit the establishment of HTIs to unproductive production forest. If these were applied properly and enforced, they would prevent HTIs from being opened in intact forest.<sup>2</sup> However, in 2008, the rule limiting HTI development to 'unproductive production

<sup>2</sup> Article 5, Government Regulation No. 7/1990 on Industrial Timber Plantation Concessions; Article 38(3), Government Regulation No. 6/2007 on Forest Systems and the Formulation of Forest Management and Use.

Vegetation type	Area (ha)					
	Sumatra	Java	Kalimantan	Sulawesi	Papua	Total
Montane forest	_	_	213 194	_	100 000	313 194
Lowland forest	383 000	25 000	2 690 880	200 000	300 000	3 598 880
Peat swamp forest	624 000	-	1 100 000	-	400 000	2 124 000
Scrub and dry grass	263 000	25 000	375 000	-	100 000	763 000
HTI	72 000	-	883 988	-	-	955 988
Estate crops	60 000	-	382 509	1 000	3 000	446 509
Agriculture	669 000	50 000	2 481 808	199 000	97 000	3 496 808
Total	2 071 000	100 000	7 914 185	400 000	900 000	11 698 379

#### Table 4. Areas burned in forest and land fires, 1997–1998

Source: Tacconi (2003)

forest' was amended to 'prioritised in unproductive production forest'. Consequently, although the clearing of forest for HTIs in areas of intact forest could be categorised as illegal logging until 2008, the 2008 change in legislation encouraged the establishment of HTIs in pristine natural forest (Article 38, Government Regulation No. 3/2008). HTI development has thus become a cause of deforestation when: (1) it is linked to the reduction of natural forest cover; and (2) forest is cut down for wood, but an HTI is not immediately established.

Other illegal logging *modi operandi* involve timber transport and distribution processes. These may involve falsifying documents, changing wood species and volume, smuggling high-value wood by concealing it under cheaper species and altering the destination, names and ships' flags (ICEL 2006: 18–19; see also Kompas 2010g).

Every stage can involve corruption, collusion and nepotism. Law enforcers either ignore violations, or are complicit in them; for example, they may use erroneous and confusing forest maps to aid the defendants or apply legal provisions that weaken the cases against illegal loggers (ICEL 2006: 21–22).

Clearing of forested areas takes place not only within designated state forest areas but also outside, in areas known as 'other land use areas' (*areal penggunaan lain*; APL).<sup>3</sup> One *modus operandi* in such areas is to

apply for an estate crop permit, clear the wood and then fail to establish an oil palm estate.<sup>4</sup> Exacerbating this practice is Ministry of Forestry Circular No. SE.9/Menhut-VI/2009 on Volume of Timber Stands in Lease Use Forest Areas or in APLs Subject to Allocation Permits, which states that an IPK (timber use permit) is not required for a production capacity of less than 50 m<sup>3</sup>. Specifically, the circular states:

In the case of a forest lease use area or APL subject to allocation permits having forest stands with timber volume making it uneconomical to request an IPK, the permit holder does not require a Forest Timber Use Permit to cut down trees when: (a) a potential IPK location, based on the outcomes of a 100% intensity report, has timber volume of logs above 30 cm in diameter of less than 50 m<sup>3</sup>, (b) fees are paid to the state for the timber felled.

Although no longer receiving much attention in the mass media, illegal logging continues across Indonesia, including in Sumatra, Kalimantan and Papua, either with inappropriate permits or with no permits at all.<sup>5</sup>

#### **Forest fires**

In 1997–1998, forest and land fires broke out in 23 provinces in Indonesia, burning a total of 11 million ha (MoE 1998, Tacconi 2003; see Table 4). The fires during that period were primarily caused by

<sup>3</sup> E-mail interview with Yuyun Kurniawan (Yayasan Titian, West Kalimantan), 19 February 2010.

<sup>4</sup> E-mail interview with Yuyun Kurniawan (Yayasan Titian, West Kalimantan), 19 February 2010.

<sup>5</sup> E-mail interview with Yuyun Kurniawan (Yayasan Titian, West Kalimantan), 19 February 2010.

increases in the clearing and burning of peatlands for conversion to estate crops and HTIs.

Some research concludes that the primary cause of the forest and land fires was human activity influenced by social, economic and political conditions, such as investment patterns and forestry sector mismanagement (Applegate *et al.* 2001, Dennis *et al.* 2005). For example, satellite images of the massive forest fires in 2002, which devastated 35 496 ha, show that they broke out in regions covered with imperata grass or scrub, in HTI and former HPH concession areas (MoF 2002). The unclear status of former HPH and HTI land encouraged third parties to use the critical land, sometimes burning it off – a cheap and easy method – to support their land rights claims.

Large-scale land clearance by burning was encouraged via government policies issued in the early 1980s.<sup>6</sup> These policies provided a legal basis for the conversion of natural forest, releasing forest for estate crops, agriculture, fisheries and food security, as well as establishing HTIs, thus encouraging conversion of forest through the burning of grassland, scrubland, fallow land and wetlands (Violleta *et al.* 2008).

Indonesia still lacks a comprehensive system for managing forest fires, despite government regulations prohibiting the use of fire to clear land (e.g. Director General PHKA Decree No. 152/Kpts/ DJ-VI/1997, Ministry of Forestry Decree No. 107/ Kpts-II/1999, Government Regulation No. 4/2001 on Management of Environmental Degradation and/or Pollution linked to Forest or Land Fires). The government has also established the Forest and Land Fire Management Centre (Pusdalkarhutla) and the Forest and Land Fire Management Unit (Satlakdalkarhutla), as well as a national coordination team for managing forest and land fires. Nevertheless, forest and land fires continue to be a problem every year (Table 5), particularly in the provinces of Riau, West Kalimantan, Jambi and Central Kalimantan, partly because of non-existent or inadequate prevention plans, systematic management plans, human resources, budgets and equipment.

Year	Forest area burned (ha)
1999	44 090
2000	3 016
2001	14 329
2002	35 496
2003	3 545
2004	3 343
2005	5 501
2006	4 140
2007	6 974
2008	6 793

Table 5. Area of forest fires in Indonesia, 1999–2007

Source: Ministry of Forestry (2009b)

Although avoiding peat fires – peat fires being a large contributor to emissions from Indonesia (Table 10 and 11) – would be an important measure in the country's mitigation efforts, no apparent systematic efforts are being made in a policy context to resolve this fundamental problem. Indeed, Indonesia's forest fire prevention policies contain no systematic forest fire resolution provisions; as such, they operate only in the short term and fail to address the root causes of the problem (Violleta *et al.* 2008).

With the exception of the massive forest fires of 1997/1998, the area lost to forest and peatland fire may seem small compared with that lost to land use change. However, the forest fires that break out in Indonesia every year, due to weak institutions, poor management or natural factors, have serious environmental, health and economic impacts. Smoke haze, for instance, disrupts daily activities and causes health problems, not only in Indonesia, but also in other Southeast Asian nations (e.g. see Lohman *et al.* 2007). In addition, as most of the land and forest burned is on peatland, the fires result in enormous volumes of GHG emissions.

#### 1.2.3 Swidden agriculture

It should be recognised that, to a certain degree, local communities also contribute to the rate of forest degradation. According to FWI data, at least between 1985 and 1997, the expansion of small-scale agriculture was responsible for 4 million ha of forest being lost – more than 20% of the total forest loss (FWI/GFW 2001). The slash-and-burn methods used further reduced the area of forest, and the

<sup>6</sup> For instance, Minister of Agriculture Decree No. 764/Kpts/ Um/1980 on Releasing Forest for Estate Crops, Agriculture, Fisheries and Food Security; Minister of Agriculture Decree No. 680/Kpts/Um/8/1981; Ministry of Forestry Decree No. 417/ II/1986 on Industrial Timber Plantations.

government consequently issued several regulations prohibiting swidden agriculture and burning. However, in practice, no adequate alternatives, skills or technologies were provided to allow shifting farmers to settle, nor were adequate incentives offered for those farmers who might have wanted to settle. This oversight rendered these regulations ineffective.

Swidden agriculture has become less prevalent in areas such as Kalimantan, partly because communities have turned to planting tree crops and seasonal crops. Not only are these commodities more profitable, but continuous farming of land without leaving it fallow helps to strengthen informal recognition of land rights.

# **1.3 Underlying drivers of deforestation and forest degradation**

Many factors contribute towards the acceleration of the rates of deforestation and forest degradation: development and economic interests; community reliance on natural resources; population growth and its ramifications; strong market demand for timber and timber products; the strong demand and high prices for estate crop and mining commodities; unclear tenure; political interests; and poor governance and forest resource management (e.g. Sunderlin and Resosudarmo 1996, FWI/GFW 2002).

### 1.3.1 Development interests and a natural resources-reliant economy

A driver of deforestation and forest degradation is that various parties have an interest in securing the greatest possible benefits from forest resources (see Chapter 3). The interests of central and regional governments, forestry business people, domestic and foreign mining and estate crops companies that clear forest land, communities that depend on forest and other resources for their daily needs, and international financial institutions are intertwined, resulting in mutual dependence. The Government of Indonesia, at both central and regional levels, has an interest in securing development funds and uses forest resources to support these needs.

# **1.3.2** Gap between timber demand and supply

Global demand and high prices for timber have encouraged the government to formulate policies allowing for intensive timber harvesting.<sup>7</sup> According to Pearce and Brown (1994: 11), high demand and poor forest management are major causes of illegal logging in Indonesia. Examples of poor forest management by the government include complicated and expensive permit processes, high levels of corruption and weak supervision. Various pieces of research have confirmed the high international and domestic demand for cheap timber (e.g. Luttrell et al. 2011; Scotland 2000). For example, to meet the need for roundwood, given the efficiency of existing machinery and the capacity of forests to provide legal wood, around 70% of the wood would have to come from illegal sources (Larsen 2002). The same applies to the overseas demand for cheap timber, particularly from the USA, Europe, Japan and China, which are estimated to receive 33 million m<sup>3</sup> annually (ICEL 2006: 2). The Environmental Investigation Agency estimates that in 1999, Europe imported 10 million m<sup>3</sup> of wood, half of which was thought to have come from illegal sources; the value was estimated at US\$1.5 billion (Newman 2004). The huge gap between consumption/demand and legal supply is an ongoing problem that has yet to be resolved (Human Rights Watch 2009). According to Hariadi Kartodihardjo, Forest Policy Professor at Bogor Agricultural University, the main cause of forest degradation linked to timber supply and demand is the unclear and uncertain availability of timber supply caused by weak forest concession and forest management policies. With weak forest management institutions, forests become 'open access', allowing illegal activities to flourish.8

Another driver of illegal logging is the high cost of operating legally compared with the costs and risks associated with illegal operations (Santosa 2003: 8). Consequently, it appears that illegal logging has become the more economical option when it comes to meeting needs and reducing costs in fulfilling timber demand. Official Ministry of Forestry records show that during 2003–2006, Indonesia supplied around 20 million m<sup>3</sup> of wood annually, while domestic consumption, including plywood and pulp, was more than 50 million m<sup>3</sup> a year – a discrepancy of 150% between wood supply and demand (Human Rights Watch 2009). Several estimates of the supply– demand gap are presented in Table 6.

<sup>7</sup> Interview with Hariadi Kartodihardjo (Bogor Agricultural University), September 2010.

<sup>8</sup> Interview with Hariadi Kartodihardjo (Bogor Agricultural University), 6 October 2010.

lssues	Scotland <i>et al</i> . (1999)	Brown <i>et al</i> . (2005)	Manurung <i>et al</i> . (2007)	Tacconi (2007)	Human Rights Watch (2009)
Extent of supply– demand gap (million m <sup>3</sup> )	41.2–56.6	25–30	4.0-42.2	19.1–24.0	20.0-45.0

Table 6. Estimates of the timber :	supply-demand gap
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Source: Dermawan et al. (2010)

The gap between supply and demand has encouraged some business people to turn to illegal logging (Brockhaus *et al.* 2012) by, for instance, logging outside their schedules or concession areas. It should be recognised, however, that some timber companies do follow principles of sustainable production. For example, some HPHs and several HTI management units have obtained LEI (Indonesian Eco-labeling Institute) certification for the management of their areas and operations.<sup>9</sup>

#### 1.3.3 Market demand

Demand for Indonesian forest products such as pulp continues to rise (Table 7).

Indonesia also supplies palm oil (Table 8) and coal (Table 9) to the world market. Indonesia is the world's largest palm oil producer (Sheil *et al.* 2009, Jakarta Globe 2011a) and the fifth largest coal producer after China, the USA, Australia and India (tambangnews.com 2010).

The high price of palm oil and rising global demand for CPO have encouraged massive expansion of oil palm estates, as explained above. Similarly, coal production is rising year on year. As most coal is mined from open-cast mines located in forest areas, increases in coal production have meant more forest being cleared (also see Chapter 2).

### 1.3.4 Local politics and governance

Local political dynamics are another factor driving conversion of forestland for oil palm estates and mining. This trend emerged with the introduction of decentralisation/regional autonomy. Local politicians use forests as a means of gathering

Table 7. Pulp volume and exports, 1997–2008

	Volume (tonnes)	Value (million USD)
1997	1 186 000	489
1998	1 656 000	690
1999	1 180 100	475
2000	1 333 700	710
2001	1 700 602	564
2002	2 245 180	707
2003	2 375 244	791
2004	1 676 962	589
2005	2 552 966	933
2006	2 811 624	1 124
2007	2 437 372	1 066
2008	2 615 776	1 422

Source: MoF (2009b), Data Consult (2003)

campaign funds for regional elections.<sup>10</sup> Indeed, deforestation rates are affected by local elections, with illegal logging increasing rapidly just before regional elections (Burgess et al. 2011). There are several probable explanations for this. One is that regional officials 'allow' or turn a blind eye to logging in order to secure campaign funding support. Another possibility is that officials deliberately relax supervision in protection and conservation forests as a way of boosting their popularity and attracting voters. In convertible production forests, logging and clear-cutting increase during and immediately after regional elections. Given the intense, ongoing interest in the development of oil palm estates, other possible explanations for the increase in clear-cutting in convertible production forests are that a successful candidate allows these activities in return for favours

<sup>9</sup> Interview with Hariadi Kartodihardjo (Bogor Agricultural University), 6 October 2010.

<sup>10</sup> Interview with field investigation staff from the SawitWatch Indonesia Campaign and Public Education Department,8 June 2010; name withheld at the interviewee's request.

	2005	2006	2007	2008	2009	2010 (to August)
Palm oil export value ('000 USD)	3 756 284	4 817 642	7 868 639	12 375 569	10 367 621	7 304 504
Palm oil price (USD/mt) <sup>a</sup>	385	421	688	949	683	845
Production volume (mt)	9 756 582	11 443 330	11 436 975	13 040 642	15 179 533	8 644 383

#### Table 8. Palm oil volume and export value, 2005–2010

a mt: metric tonnes

Source: Ministry of Trade (2010)

Table 9. Coal production and exports, 2000–2010

Year	Production (tonnes)	Consumption (tonnes)	Exports (tonnes)
2000	84 806 684	22 617 669	42 226 879
2001	82 673 055	26 761 282	65 362 293
2002	104 207 634	31 218 922	74 387 950
2003	0	29 065 109	84 305 154
2004	0	34 967 096	93 653 818
2005	0	41 306 052	107 332 261
2006	179 580 407	38 705 184	103 564 022
2007	178 790 755	30 798 098	101 108 015
2008	194 391 850	48 956 095	140 940 558
2009	226 170 443	38 273 222	152 924 098
2010ª	156 629 929	48 382 625	160 639 091
Total	1 207 250 760	391 051 359	1 126 444 142

a Provisional figures

Source: Ministry of Energy and Mineral Resources (2010)

following the campaign, or uses them to boost profits after winning.

A common *modus operandi* involves regional electoral candidates being given shares in certain oil palm companies in their jurisdictions, so that when they are elected and take office, they will help facilitate permits for the conversion of forest areas.<sup>11</sup> This has been made possible by regional leaders (governors, district heads, mayors) having the right to submit proposals to change the status of production forest to areas for other uses (APL), which allows for the establishment of estate crops; this is stipulated specifically in Article 7 (which allows status changes

for convertible production forests (HPK)) of Ministry of Forestry Decree No. 70/Kpts-II/2001 concerning the Designation of Forested Areas and Status and Function Changes, as amended by Ministry of Forestry Decree No. 48/Kpts-II/2004.

This policy is also embodied in Article 8 of Government Regulation No. 10/2010 on Procedures for Changing Allocation and Function of Forest Areas, which provides local politicians with the opportunity to propose forest conversion; forest conversion to other uses is often a source of funds to further their political ambitions. Furthermore, since the introduction of regional autonomy/ decentralisation, regional elected leaders have had the authority to issue permits for estate crop and mining businesses. Article 17 of Law No. 18/2004 on Estate Crops states that estate crop permits may be issued by governors for areas spanning multiple districts/municipalities and by district heads/mayors for areas within a single district or municipality (see Chapter 2 for more details). The mining sector also provides opportunities for elected officials to use their position to draw 'rent' from businesses involved in natural resources exploitation; anecdotal evidence suggests that a mining business person must be willing to spend up to one billion rupiah to secure a mining permit.<sup>12</sup>

These forms of collusion and corruption arise from the combination of common interests among government elites and business people and the absence of proper forest management, which makes it easier for parties wishing to exploit forests for their own gain. Forest management procedures are discussed in more detail in Chapter 2. Forestry sector corruption can occur at any stage, from

<sup>11</sup> Interview with field investigation staff from the SawitWatch Indonesia Campaign and Public Education Department,8 June 2010; name withheld at the interviewee's request.

<sup>12</sup> Interview with undisclosed government official, 29 June 2010.

permit issue to market sales, with a variety of *modi operandi* in place. These include bribing district heads, mayors and provincial forestry office staff to secure recommendations for submitting concession applications, paying bribes to secure documents for routine operations, laundering wood by allowing companies to plan logging in excess of the volumes permitted in their concessions (this provides opportunities for illegal wood from other sources to be mixed with legal timber), creating fictional cruising reports (*Laporan Hasil Cruising*; LHC), manipulating the categories of harvested wood to avoid the higher government levies imposed on better-quality wood, and bribing officials to change the function of a certain forest area.

Such violations have resulted in major economic losses to the state. Losses arise from, for example, the practices of basing tax payments on manipulated market prices and exchange rates and of failing to make and/or manipulating the calculations of Forest Resource Rent Provision (PSDH) and Reforestation Fund (DR) payments (Human Rights Watch 2009). Using data on industries' log consumption from the International Tropical Timber Organization (ITTO), Human Rights Watch (2009) estimated that, between 2003 and 2006, Indonesia's losses from non-payment of taxes were valued at more than US\$2 billion, from illegal logging at US\$1.3 billion, from lost or manipulated royalties at US\$563 million and from illegal transfer pricing at US\$138 million. Data released by the Ministry of Forestry put the value of the average annual losses from illegal logging at US\$630 million and invisible subsidies at US\$332 million (Human Rights Watch 2009). Similarly, Indonesia's Corruption Eradication Commission (Komisi Pemberantasan Korupsi; KPK) has uncovered numerous violations in the forestry sector, which have resulted in major loss of government revenue (KPK 2010a). In addition to upstream collusion in permitting processes and determining the forest area function, collusion occurs frequently in law enforcement processes; this is discussed further in Chapter 2.

To put these figures into perspective, note that losses associated with corruption in the oil, gas and mining sectors were also high. Between 2000 and 2008, losses from the oil and gas sector were US\$4 billion a year (Kompas 2009). Similarly, the KPK reported state losses of US\$1.8 billion a year from coal mining activities alone (KPK 2010a), much of which was associated with mining permits issued by local governments (Kompas 2011a).

Weak forest management institutions are another root cause of the high levels of deforestation and forest degradation in Indonesia. Weaknesses are present at all levels, including among forest management systems, forest management organisations and the individuals employed in the forestry sector (Bappenas 2010b). In the forest management system, limited resources and poor management of forestry data and information create difficulties for institutions responsible for forestry in demarcating state forest boundaries; hence, the exact locations and areas of forests remain uncertain. Another systemic weakness appears in the permit processes, which fail to apply principles of transparency and accountability adequately. The high number of overlapping permits in forest areas can be attributed in part to opaque permit processes and limited access to traceable permit data. In addition, unclear authority over state forests, particularly in terms of central versus regional government authority, have rendered forests 'open access' and vulnerable to encroachment or theft. Forest management units (kesatuan pengelolaan hutan; KPH) have yet to be established, although mandated by the Forestry Law. Exacerbating factors are the poor monitoring and evaluation mechanisms and law enforcement (Bappenas 2010b). Under such conditions, deforestation and degradation are inevitable.

With management at the organisational level putting more emphasis on administrative details, forest management institutions are increasingly working to achieve their administrative targets; they are using their entire budget, for instance, and are submitting reports on time. However, substantive issues, such as whether the use of budget funds has helped achieve targets effectively and efficiently or has benefited ecological efforts or community welfare, have received much less attention (Bappenas 2010b). Another management factor underlying deforestation and degradation is the inadequacy of competence, capacity, qualifications, knowledge, integrity and leadership capacity at the level of individual managers (Bappenas 2010b).

Effective forest management also requires coordination with institutions outside the forestry sector, such as those responsible for spatial planning, estate crops, housing, mining and environmental protection. Weak coordination between these sectors in terms of planning and monitoring has contributed to forest degradation. The lack of coordination is apparent, for instance, in the variations in figures for forest and non-forest areas from one institution to another. For example, Directorate General of Forestry Planology data put the total area of APLs at approximately 54 million ha (MoF 2011a), whereas data from the Central Statistics Agency (BPS) indicate that the current area of agricultural land is around 69 million ha. Such discrepancies in the data may indicate that many forest areas have become agricultural land without the necessary permits from the Ministry of Forestry (Bappenas 2010b).

### **1.3.5** Economic dependence on other countries

Since the New Order era (under Suharto's presidency, 1966–1998), the Government of Indonesia's dependence on foreign aid – particularly for development and keeping the economy's wheels running – has forced it to submit to conditions imposed by other countries and international financial institutions, which have had the effect of accelerating deforestation and forest and land degradation (e.g. see FWI/GFW 2002). This is discussed in more detail in Chapter 3.

### 1.3.6 Tenure

The lack of clarity surrounding tenure rights and forest boundaries also drives deforestation and forest degradation. In 2007, for instance, the Ministry of Forestry and the BPS stated that 16 760 (52.60%) of 31 864 villages throughout Indonesia were located in forest areas (MoF and BPS 2007). This figure had fallen to 9103 (23.60%) by 2009 (MoF and BPS 2009). In terms of area, the BPS predicted that, in 2010, 22.5–24.4 million ha was subject to conflicts as a result of unclear boundaries between villages and state forests (MoF and BPS 2009). The issue of unclear tenure over land and forest has yet to be resolved. This is discussed in more detail in Chapter 2.

### 1.3.7 Population growth and transmigration

Population growth is another cause of deforestation in Indonesia. Data from each of Indonesia's provinces show an inversely proportional relationship between population density and forest cover. One study shows that for every 1% increase in population, forest cover shrinks by approximately 0.3% (Sunderlin and Resosudarmo 1996). Population growth in a particular region also leads to planned deforestation. The Indonesian government's transmigration programme, aimed at more even population distribution and ethnic interaction, has had a marked impact on forest cover in Indonesia. By December 2010, the Ministry of Forestry had released 1.56 million ha of forest area to meet the needs of the transmigration programme, of which 609 477 ha (across 440 locations) comes under in-principle release permits, and 956 672 ha (across 256 locations) comes under decrees authorising their release (MoF 2011b).

### 1.4 Mitigation potential

The high rates of deforestation and forest degradation have reduced the capacity of Indonesia's forests to absorb carbon. In addition, the country's 21 million ha of peatlands has the potential to release huge volumes of carbon and GHGs. A recent assessment suggests that, between 2000 and 2006, Indonesia's peatland GHG emissions from fire, peat oxidation and loss of aboveground biomass through deforestation amounted to an average of 903 000 Gg  $CO_2$  annually (Bappenas 2009a). Ministry for Environment data show that in 2004, Indonesia's total emissions excluding the forestry sector were 654 162 Gg, and 1 711 443 Gg if the forestry sector is included (Table 10).

Other estimates suggest even higher emission levels. Indonesia's National Climate Change Council (DNPI) estimates Indonesia's 2005 emission level at 2.1 Gt  $CO_2e$ , increasing 1.9% annually to reach 2.5 Gt  $CO_2e$  in 2020 and 3.3 Gt  $CO_2e$  in 2030 (see Table 11).<sup>13</sup>

The calculations above indicate that Indonesia can make an important contribution towards arresting the global rate of GHG emissions. Furthermore, the Government of Indonesia has committed to a reduction of 26% of 'business as usual' emissions by 2020. Three documents are currently in place

<sup>13</sup> Others, however, argue that emissions from forests are 'carbon-neutral' (Rusli 2011).

	2000	2001	2002	2003	2004	2005
Energy	-	348 331	352 246	364 925	384 668	395 990
Industry	34 197	45 545	33 076	35 073	36 242	37 036
Agriculture	75 419	77 501	77 030	79 829	77 863	80 179
Waste	151 578	153 299	154 334	154 874	155 390	155 609
LUCF <sup>a</sup>	649 254	560 546	1 287 495	345 489	617 280	-
Peat fires	172 000	194 000	678 000	246 000	440 000	451 000
Total with LUCF	1 415 998	1 379 222	2 584 181	1 226 191	1 711 443	1 119 814 + LUCF
Total without LUCF	594 738	624 676	618 686	634 701	654 162	668 814 + LUCF

#### Table 10. Greenhouse gas emissions by sector (Gg), 2000–2005

a LUCF: land use change and forestry

Source: Ministry of Environment (2009)

Table 11. Estimates	s of emission	reductions for	or various sectors
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	Estimated emissions 2030	Emission reduction potential	Activities
LULUCFª	670 Mt (21%)	1 200 Mt	Preventing deforestation, SFM <sup>b</sup> , reforestation
Peatlands	970 Mt (30%)	566 Mt	Fire prevention, water management
Electricity generation	810 Mt (25%)	225 Mt	Bioenergy, geothermal and hydro power generation
Agriculture	150 Mt (5%)	106 Mt	Water management and nutrition in rice farming
Transport	440 Mt (13%)	87 Mt	Improved combustion
Oil and gas	105 Mt (3%)	61 Mt	Downstream energy efficiency
Buildings	75 Mt (2%)	43 Mt	Improved energy efficiency
Cement	401 Mt (1%)	13 Mt	Clinker substitution

a LULUCF: land use, land use change and forestry

b SFM: sustainable forest management

Source: DNPI (2010)

or being finalised that will serve as guidelines for achieving this commitment: the Indonesia Climate Change Sectoral Roadmap (ICCSR), the National Action Plan to Reduce Greenhouse Gas Emissions (RAN-GRK) and the National REDD+ Strategy. The ICCSR shows that the forestry sector is targeting the following areas to support this target: (1) reforestation/rehabilitation; (2) planting for production (HTI and HTR (*hutan tanaman rakyat* or community-based plantation forest); and (3) the development of KPHs (Bappenas 2009b: 49). As seen in the Second National Communication (SNC) to the UNFCCC, these three main activities were developed by considering technical feasibility and budgets, and forestry sector mitigation scenarios were established by calculating the most efficient choices in terms of cost and sustainability (Bappenas 2009b). The scenario thus considered the cheapest and most sustainable was the scenario which focuses on the development of HTIs and KPHs (Bappenas 2009b: 53). However, research by Verchot *et al.* (2010) found that emission reduction efforts that rely on HTI development will struggle to achieve their desired targets: a more important and effective means of reducing GHG emissions is to prevent the deforestation of existing forests. The RAN-GRK, released in September 2011, sets out the activities that will be pursued to reach the 26% and 41% emission reduction targets. These revolve around five major sectors: agriculture; forestry and peatlands; energy and transport; industry; and waste management.

In addition, since 2010, the government has been preparing its National REDD+ Strategy. The process has involved several iterations of drafts that are accessible to the public. However, at the time of writing (mid-2012), the government had not formally released the strategy. Chapter 4 elaborates on the most recent version of the strategy. That Indonesia's forestry sector has huge mitigation potential is obvious. However, consistency is vital when applying the range of programmes related to climate change and forestry sector planning. Furthermore, the monitoring and evaluation of these programmes must be conducted transparently and accountability maintained. Strong institutions are critical for thorough reform of the forestry sector and natural resource management and for the consequent mitigation of climate change.

# 2. Institutional, environmental and distributional aspects

Following the descriptions of deforestation and forest degradation in Indonesia and their underlying causes in Chapter 1, Chapter 2 presents more in-depth discussions on aspects of forest management and arrangements relating to REDD+, such as land tenure and carbon issues.

### 2.1 Governance in the forest margins

## 2.1.1 Broader context: Global governance aspects and international agreements

As a country with large expanses of tropical forest cover, Indonesia plays an active role in forestryrelated international forums as well as bilateral and multilateral agreements. They include:

- United Nations Forum on Forests (UNFF; see Rusli and Justianto 2007)
- UNFCCC
- Convention on Biological Diversity (CBD)
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
- FLEG and FLEGT (Forest Law Enforcement Governance and Trade).

### United Nations Forum on Forests (UNFF)<sup>14</sup>

Indonesia became an active member of the UNFF with its establishment in 2000 (Rusli and Justianto 2007). The UNFF was preceded by the Intergovernmental Panel on Forests (1995–1997) and later the Intergovernmental Forum on Forests (1997–2000).<sup>15</sup> The UNFF is considered successful as an international forum partly because it produced the Non-Legally Binding Instrument on All Types of Forests in its seventh meeting in 2007.<sup>16</sup> This document is considered important because it was the first time countries agreed on the principle of sustainable forest management (SFM).<sup>17</sup> It was expected to play an important role in international cooperation and in building national action plans for reducing deforestation and degradation, promoting sustainable livelihoods and alleviating poverty among forest-dependent communities.

In line with the UNFF agreement, the Government of Indonesia introduced five priority programmes in 2002 (Ministry of Forestry Decree No. 7501/Kpts-II/2002 on 5 (Five) Priority Policies in the Forestry Sector in the National Development Programme): eradicating illegal logging; controlling forest fires; restructuring the forestry sector; rehabilitating and conserving forest resources and promoting reforestation; and decentralising forest management (UNFF 2003). To realise these programmes, Indonesia has adopted the social forestry approach, as a way of simultaneously achieving SFM objectives and community prosperity (Rusli and Justianto 2007: 6).

In a report to the UNFF in 2003, the Government of Indonesia stated that Indonesia's voluntary commitment to the UNFF, which took the form of a Proposal for Action (PfA), was essential for initiating these five priority programmes.<sup>18</sup> The PfA was subsequently translated into the National Forestry Programme (NFP),<sup>19</sup> for which preparations began in 1999.<sup>20</sup> The NFP emphasised a participatory, holistic approach to forest management based on partnerships between various stakeholders aimed not only at forest conservation, but also at community prosperity (MoF 2006b). The government also stated that a national forestry programme incorporating

<sup>14</sup> The UNFF is a forum within the UN and includes all UN member states. See www.un.org/esa/forests/about.html.

<sup>15</sup> See also 'About UNFF: history and milestones of international forest policy': www.un.org/esa/forests/about-history.html.

<sup>16</sup> However, see Humphreys (2003) for a different perspective on the extent to which UNFF has been considered 'successful'.

<sup>17</sup> www.un.org/esa/forests/about.html.

<sup>18</sup> National Report to the Fourth Session of the UNFF: www. un.org/esa/forests/pdf/national\_reports/unff4/indonesia.pdf.

<sup>19</sup> See the Ministry of Forestry report to the 5th UNFF meeting in New York, 16–27 May 2005, www.dephut.go.id/ INFORMASI/UMUM/KLN/UNFF/About\_UNFF\_5th.htm.

<sup>20</sup> For the establishment of the NFP in Indonesia, see www. dephut.go.id/index.php?q=id/node/1038; also see the National Forestry Statement: http://nfp-indonesia.org/download/ PKN%20Book\_V3.pdf.

the above approaches had existed before the internationally agreed PfA or NFP were conceived (MoF 2006b). To support this statement, the government offered the examples of its Forest Land Use by Consensus (*Tata Guna Hutan Kesepakatan*; TGHK) mechanism, based on a 1982 Ministry of Forestry Regulation, and multi-stakeholder forums held across Indonesia (MoF 2006b).

In its final report at the 5<sup>th</sup> UNFF session in 2004 (UNFF 2004), Indonesia relayed its progress including programmes agreed with the UK, China and Japan to stop illegal timber sales through trade mechanisms and a preliminary Memorandum of Understanding (MoU) with the EU in the framework of the FLEG programme.<sup>21</sup> Indonesia also reported its participatory and transparent processes in preparing national strategies to address the main causes of deforestation, citing community-based forest management as an example.

#### United Nations Framework Convention on Climate Change (UNFCCC)

Indonesia signed the UNFCCC in June 1992 and ratified it two years later through Law No. 6/1994 on Ratification of the UNFCCC (FORDA 2009). Since 1995, countries that have already ratified the convention meet every year through Conferences of the Parties (COP) to implement the framework. One outcome, the Kyoto Protocol, was established in the COP of 1997; Indonesia ratified it the following year (FORDA 2009). In 2007, Indonesia hosted COP 13 in Bali, and was instrumental in putting REDD onto the international climate change agenda. At COP 13, Indonesia launched a consolidated report on a broad REDD+ roadmap prepared by the Indonesian Forest Climate Alliance (IFCA).

### United Nations Convention on Biological Diversity (CBD)

Indonesia ratified the CBD with Law No. 5/1994, and now has various pieces of legislation on the management of its biodiversity. Government programmes for Indonesia's implementation of the CBD are found in the Indonesian Biodiversity Strategy and Action Plan (IBSAP), which established the following five targets for applying the CBD (Bappenas 2007).

- 1. Encourage changes in the attitude and behaviour of government officials, Indonesian society and related sectors to care more about the protection and benefits of biodiversity for the nation and people of Indonesia.
- 2. Apply technology and knowledge-based input and local wisdom.
- 3. Implement sustainable protection and use of Indonesia's biodiversity.
- 4. Strengthen institutions and legislation on biodiversity in Indonesia.
- 5. Resolve any natural resources conflicts that arise.

However, IBSAP is non-legally binding in nature and it offers no programmes directly linked to efforts for reducing deforestation levels; rather, it is directed more towards collecting data on biodiversity (Bappenas 2004). As shown in Chapter 1, Indonesia's biodiversity is under extreme threat from deforestation and forest degradation. Therefore, the IBSAP document should have incorporated a programme for reducing deforestation and forest degradation as contributory factors to biodiversity loss (Saleh 2005).

The Indonesian government's approach towards its CBD obligations provides an example of how its good intentions with regard to environmental management have not been supported by adequate concerted efforts to improve the infrastructure, capacity and governance needed to realise its international commitments. One example is the government's commitment to protect biodiversity, as laid out in the CBD, as its policies exist on paper only. The Biodiversity Action Plan for Indonesia (BAPI), subsequently revamped in 2003 as the IBSAP – the blueprints for realising the government's commitments under the CBD - do not appear to form the basis for development planning generally, and environmental management in particular (Kartodihardjo and Jhamtani 2006: 88). This is due mainly to weak supporting regulations and law enforcement, and the rent-seeking and rent-seizing behaviour of government officials (Kartodihardjo and Jhamtani 2006: 89). The rent-seeking and -seizing behaviour of bureaucrats appeared even during the

<sup>21</sup> Collaborative agreements were signed with Japan in June 2003, the UK in April 2002 and China in December 2002. See www.dephan.go.id/modules.php?name=News&file=article&s id=4235. This commitment constitutes a follow-up to the Bali Declaration (FELG) in December 2001. However, some reports show that the implementation of this MoU is hampered by many obstacles and requires revision (www.indonesianembassychina.org/id/relations.html.

IBSAP preparation process, during which huge funding support was secured from international financial institutions. The securing of unnecessary foreign loans or assistance in the form of funding or policy intervention continues because of rent-seeking bureaucrats. This behaviour has not only weakened implementation of CBD and IBSAP commitments, but has also opened the way for multinational financial institutions to influence Indonesian policymaking and development agendas.

### Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

CITES, an international agreement with implications for forest management, was ratified by the Government of Indonesia through Presidential Decree No. 43/1978, signed on 15 December 1978. CITES was subsequently adopted into national law through Law No. 5/1990 on Conservation of Biological Resources and their Ecosystems, and then Government Regulation No. 8/1999 on Use of Flora and Fauna Species, which further regulated the institutional aspects of implementing CITES in Indonesia.<sup>22</sup> Later, the Ministry of Forestry, as the managing authority, issued Decree No. 104/Kpts-II/2003 appointing the Directorate General of Forest Protection and Nature Conservation as the Managing Authority in accordance with the CITES mandate.

CITES obliges ratifying countries to have national regulations, quotas and mechanisms for controlling the extraction of wild flora and fauna and for monitoring their trade. Indonesia has yet to meet many of its obligations. Indeed, the CITES Secretariat even threatened Indonesia with a total trade ban as it considered the country to have inadequate national regulations to support its implementation of CITES (Saleh 2005). There are multiple problems hampering CITES implementation in Indonesia, including poorly educated people in remote areas having little understanding of the importance of conserving endangered plants and animals, despite those communities themselves being highly dependent on nature and wildlife (Saleh 2005). The high demand for plants and wildlife is another factor encouraging the wildlife trade (Soehartono and

Mardiastuti 2002). However, the government does not have the resources to inform the public of the importance of conserving endangered flora and fauna or monitoring illegal trade (Soehartono and Mardiastuti 2002).

Indonesia's geography creates another problem: it has 17 international airports and thousands of seaports varying from small fishing harbours to large international seaports. Many of these ports have easy access to neighbouring countries, which facilitates the illegal trade or smuggling of species regulated by CITES. This problem is also linked to the quality of human resources in the port authorities. Officials' lack of understanding of CITES and its underlying regulations is a challenge in itself. In 1995, the CITES Secretariat helped the Management Authority (Ministry of Forestry) provide training to relevant agencies (customs and excise, quarantine officials, the police, Ministry of Foreign Affairs, Department of Trade, etc.). However, training ceased in 1998 because of a lack of funds (Soehartono and Mardiastuti 2002).

Changes of officials, particularly in Management Authority circles, have been another problem in implementing CITES. In the 11 years leading up to 2003, the government had eight changes of CITES Management Authority directors. Consequently, officials did not have enough time to come to properly understand the convention (Soehartono and Mardiastuti 2002). A technical problem is the lack of proper scientific data, meaning quotas are not based on the data required by CITES. This problem is closely linked to the limitations of the Scientific Authority in collecting data on traded flora and fauna (Saleh 2005).

Nevertheless, implementation of CITES has improved in Indonesia during recent years (Saleh 2005). Thanks to CITES, a number of species (Javan rhino, Sumatran rhino and Sumatran tiger) are being protected from extinction. In addition, CITES has provided a framework for the sustainable use of wildlife resources in the trading of swiftlet nests and Asian arowana fish (Soehartono and Mardiastuti 2002). CITES has also improved the government's political will to create legal instruments that protect Indonesian wildlife, including Government Regulation No. 6/1999 on Forest Enterprises and Extraction of Forest Products from Production Forests and Government Regulation No. 8/1999

<sup>22</sup> Article 65 of Government Regulation No. 8/1999 states that the Management Authority for the conservation of flora and fauna is the Ministry of Forestry. The Scientific Authority is LIPI (Indonesian Institute of Sciences).

on Use of Wild Flora and Fauna (Soehartono and Mardiastuti 2002). Improved implementation of CITES is also apparent in the greater opportunity for public involvement in wildlife protection. This aspect was evident in recent government efforts during CITES COP preparations to elicit input from stakeholders regarding the government's position in negotiations (Saleh 2005). In terms of community involvement, the role of NGOs has gained increasing recognition and they are working with the Scientific Authority (Indonesian Institute of Sciences; LIPI) in establishing quotas for traded flora and fauna species (Soehartono and Mardiastuti 2002).

### Forest Law Enforcement Governance and Trade (FLEGT)

FLEGT involves bilateral cooperation between countries with tropical forests and the EU to reduce the level of illegal logging. The bilateral cooperation takes the form of a Voluntary Partnership Agreement (VPA) with each member state, tailored to each country's specific conditions, although some parts of the agreement are more or less the same for all countries. All partner states must agree on the definition of legality and have (or commit to developing) reliable legal and administrative structures with adequate systems for verifying that the wood they export is from legal sources.<sup>23</sup> At one point, one problem under discussion concerned the discrepancies between the government's Timber Legality Verification System (SVLK) and the EU's view of the FLEGT Timber Legality Assurance System (TLAS) (MoF 2010b). The Ministry of Forestry has issued two regulations on timber legality: Ministry of Forestry Regulation No. 39/2009 on Standards and Guidelines for Evaluating Performance in Sustainable Production Forest Management and Verifying the Legality of Permit Holders' Wood, and Director General of Forestry Production Management Regulation No. P.6/IV-Set/2009 on Standards and Guidelines for Evaluating Performance in Sustainable Production Forest Management and Verifying the Legality of Wood. These two regulations were issued in June 2009; the Ministry of Forestry is still in the process of making concerned parties aware of their content and implications.

During the negotiations for the VPA, the two parties agreed to implement the European Commission–

Indonesia FLEGT Support Project. In line with FLEGT,<sup>24</sup> the five-year project (1 March 2006–28 February 2011) constituted EU technical assistance for Indonesia to improve forest management to make it ready to apply the VPA. Although the VPA has received much criticism, the FLEGT programme has made several achievements; for instance, an online payment system has been tested for timber concessions exceeding 50 000 ha, allowing companies' production and timber payments to be seen at the same time. This transparent system, when applied, can reduce corruption surrounding PSDH and DR payments, because the online system can be cross-checked not only by various levels of government but also by the public (Human Rights Watch 2009: 76-77).

Two working groups were set up to help accelerate the FLEGT-VPA negotiation process between Indonesia and the EU, as agreed after the first FLEGT-VPA negotiation in Jakarta on 29–30 March 2007 (MoF 2009d) the Ministry of Forestry followed up on the agreement by establishing a working group to accelerate the finalisation of standards for timber legality<sup>25</sup> and one on capacity building.<sup>26</sup> An additional aim of the two working groups, chaired by the Director General of Forest Production Development, is to support forestry governance.

In March 2010, the third working group meeting was held between delegates from Indonesia and the EU in the framework of FLEGT-VPA. During the

<sup>23</sup> For a concise description of FLEGT, see www.dephut.go.id/ INFORMASI/UMUM/KLN/FLEGTbriefsIND210904.pdf.

<sup>24 &#</sup>x27;Background to FLEGT': http://www.euflegt.efi.int/portal/ home/vpa\_countries/in\_asia/indonesia/

FLEGT activities are: (1) to support improved governance and capacity building in timber producing countries; (2) to build voluntary partnerships with timber-producing countries to prevent illegal timber production (current types of production covering the whole world are logs, sawnwood, plywood, and veneers) for markets in the EU; (3) to strive for the EU to reduce its consumption of illegal wood and stop investments by institutions in the EU supporting illegal logging.

<sup>25</sup> The timber standards working group is chaired by the Director of Distribution and Forest Product Levies. Its main tasks are to accelerate finalisation of the timber legality standards process, not only in the interest of negotiations with the EU, but also for other countries that consume Indonesian wood and wood products.

<sup>26</sup> The capacity building working group is chaired by the Ministry of Forestry Head of Education and Training. Its main tasks are to prepare capacity-building needs analyses for implementing timber legality standards along with the FLEGT-VPA negotiation process, which will be applied in three phases: during negotiations, when the agreement is signed and when the results of negotiations are fully operational.

meeting, Indonesia reported developments in its timber legality system as regulated under Ministry of Forestry Regulation No. P.38/Menhut-II/2009, and the EU delegation presented a new due diligence regulation that it hoped would be agreed upon during EU negotiations at the end of 2010; the regulation obliges EU timber traders to take steps to minimise the risk of illegal timber being traded in the EU, and would result in substantial profits on timber products from countries that hold a VPA. In relation to the future of the FLEGT-VPA, Indonesia and the EU have agreed to increase cooperation in developing the legal foundations for the VPA and both parties have reiterated their commitment to make a preliminary conclusion to negotiations (GOI and EU 2010).

In May 2011, the VPA between Indonesia and the EU was finally signed. At this stage, it is still too early to draw firm conclusions about the impacts of the FLEGT-VPA. However, mechanisms such as the SVLK or VPA have the potential to address some of the governance aspects that have implications for REDD+ implementation (Luttrell *et al.* 2011).

### Influence of the global economic system on the forestry sector

The global economic system also shapes and influences Indonesia's environmental and natural resource management laws and policies. The main actors in this system – international financial institutions and traders such as the World Trade Organization (WTO), the World Bank and the International Monetary Fund (IMF) – have had a considerable influence on the establishment of laws in developing countries.

This influence became apparent in the forestry sector during 1998–2003, when Indonesia was undergoing economic restructuring by the IMF. The forestry policy packets issued under pressure from the IMF in the January 1998 Letter of Intent (LoI) included: reducing export taxes on logs, sawnwood and rattan; removing all forms of regulation on plywood marketing; introducing tenders for granting forestry concessions; and reducing the conversion of natural forests (Kartodihardjo and Jhamtani 2006: 31). These programmes clearly demonstrated the role of international financial institutions in domestic forestry policy.

# 2.1.2 Governance in areas under serious threat of deforestation and forest degradation

Following the examination of the potential of international legal frameworks to influence nationallevel forest management in Indonesia, this section discusses national management by looking at laws and practices, particularly in regions under serious threat of deforestation and forest degradation.

As discussed in Chapter 1, the main direct causes of deforestation and forest degradation in Indonesia are changes in forest land use, legal and illegal logging, and forest fires. An overarching cause of deforestation and forest degradation is weak forest management. Many factors have contributed towards weak forest management, including (1) inconsistent and sometimes contradictory pieces of legislation; (2) forestry decentralisation deviating from its original aims; (3) incomplete demarcation of forest boundaries; (4) closed and corrupt permit processes; (5) weak government capacity to supervise permit processes; (6) lack of clear forest management at the lowest levels; (7) weak law enforcement and corruption; and (8) a lack of community participation in forestry sector decision-making.

#### **Inconsistent legislation**

Forest management is affected not only by the regulatory frameworks governing the forestry sector, but also by those governing other sectors. Important laws and regulations affecting forest management, either directly or indirectly, include Law No. 41 on Forestry, Law No. 22 on Regional Governance (often called the Regional Autonomy Law; later replaced by Law No. 32/2004), Law No. 18/2004 on Estate Crops, Law No. 4/2009 on Mineral and Coal Mining, Law No. 32 on the Environment and Law No. 26/2007 on Spatial Planning. These pieces of legislation are sometimes inconsistent, and even contradictory, which affects their implementation. This discordance has led to overlapping regulations, unclear authority and opportunities to find loopholes. Furthermore, sometimes laws even contradict themselves, potentially leading to conflicting interpretations.

An example of discordance between pieces of legislation appears in regard to the supervision of state forests, where the authority to apply administrative sanctions for infringements remains unclear. At present, the Minister of Forestry, who is responsible for state forests, has no authority to impose administrative sanctions for violations in state forests if permits were issued within another sector, such as mining or estate crops.

Another example is linked to an agriculture regulation that gives regional heads the authority to grant estate crop permits.<sup>27</sup> This complicates the issue of control, and ultimately law enforcement, over the permits issued by regional governments. Another frequent source of confusion is the unclear legal status of state forests due to ambiguities in the legislation. This is discussed in more detail later in this chapter.

However, irrespective of the system and legislationrelated problems, there have also been cases where the Ministry of Forestry responded inconsistently to problems related to permit applications. Cases have occurred where the ministry should have taken action against administrative infringements, but in fact the revoked permits were 'whitewashed' and reissued (Nagara 2009: 17).

Problems with legislation also arise in the context of land use. Changes in the spatial planning regime with Law No. 26/2007 should ideally have improved stakeholders' adherence to established spatial plans, given that it contains clear statements on the leading sectors and intersectoral communication forums in land use planning. However, in reality, relevant institutions frequently ignore spatial plans because they operate within their own legal frameworks, which are often not aligned with each other. The Ministry of Energy and Mineral Resources, for instance, has authority to determine mining areas (Law No. 4/2009), the Ministry of Forestry has Law No. 41/1999, the Ministry of Agriculture has Law No. 18/2004, and the Ministry for Environment has authority in determining eco-regions under Law No.

32/2009.<sup>28</sup> The result is a form of sectoral egotism with regard to land use and spatial planning.

This problem becomes increasingly complex when linked to the relationship between the central and regional governments in the context of decentralisation, as explained in the following sections. The legal framework that should be coordinated through spatial planning instruments regulated under the Spatial Planning Law - and which was prepared with reference to capacity and environmental carrying-capacity limitations in the Environment Law - is in fact impotent at the implementation level. This has arisen partly because of the failure of legislative techniques to strictly apply the same instruments and terms for all laws. Consequently, parties that are acting for their own gain, that do not understand the policies or that are restricted to narrow sectoral viewpoints will ultimately interpret and implement rules according to their own preference, and without coordinating with other sectors.

#### Issues linked to decentralisation

With the introduction of regional autonomy, regional governments assumed responsibility for other sectors affecting forests such as estate crops and mining – and most regional government policies are geared towards increasing regional own-source revenue

<sup>27</sup> Article 17(5) of Law No. 18/2004 on Estate Crops in conjunction with the Annex on Agriculture and Food Security in Government Regulation No. 38/2007 on Division of Governance between Central and District/Municipal Government.

The new spatial planning regime was marked by the 28 promulgation of Law No. 26/2007 on Spatial Planning. New concepts in this law include imposing legal sanctions against those issuing permits that contravene spatial plans and clarifying leading sectors in land use with the establishment of a National Spatial Planning Coordination Agency (BKPRN) chaired by the Coordinating Minister for Economic Affairs and the Technical Implementation Team chaired by the Minister of Public Works. Nevertheless, these breakthroughs have not removed sectoral egotism among ministeries that feel they have the same authority under their respective laws (the legislative hierarchy in Indonesia does not apply the concept of umbrella laws, so the Spatial Planning Law cannot be made to prevail over sectoral laws). This problem came to the fore after Law No. 32/2009 on Environmental Protection and Management (UUPPLH) mandated Strategic Living Environment Analyses (KLHS) as the basis for spatial planning in addition to considerations of environmental carrying capacity. The tendency for sectors to reject integration of social planning and the UUPPLH emerged in the response from the Ministry of Energy and Mineral Resources during a public hearing between the DPR and three ministries (Energy and Mineral Resources, Forestry and Environment) held in February 2010. Basing resources on ecoregions could potentially lead to overlaps in authority with the Ministry of Energy and Mineral Resources, whose authority is based on the Mineral Coal Mining Law.

(pendapatan asli daerah; PAD) (Resosudarmo et al. 2006). Legislation has yet to effectively regulate the division of authority between central and regional governments and the supervision of regional administrations, and this feature is exploited in the context of forest use. It is quite common for regional governments to have issued numerous estate crop and mining permits in state forests without first securing the appropriate permit from the Ministry of Forestry: local governments have issued permits covering 5 million and 7 million ha for estate crops and mining, respectively, without following proper procedures (MoF 2011c). The government's minimal capacity to act on such permit violations means that the practice has become increasingly widespread. Various problems are also linked to the division of authority for forest management between central and regional governments; for example, there is no clear supervision system regarding regional governments' obligation to report to the central government on forest conditions within their jurisdictions, including revenue from forests (Resosudarmo et al. 2006: 12-13).<sup>29</sup> Problems related to decentralisation are discussed in more detail below.

#### Incomplete demarcation of forest boundaries

Interpretations of what, exactly, constitutes 'state forests' differ. As explained above, this can be attributed largely to ambiguities and inconsistencies in the legislation, especially with respect to the process for legally defining an area as state forest. Article 1(3) of the Forestry Law defines state forests as 'certain areas designated and/or established by the government to be maintained as permanent forest' – a definition that appears to indicate that an area can become a state forest simply by being designated as such.

However, apparently contradictory meanings are found in other provisions in the same law and its implementing regulation (Government Regulation No. 44/2004 on Forestry Planning). Article 14 of the Forestry Law states that the designation of an area as state forest is made legal when it is gazetted; Article 15 explains that state forest gazetting involves: (1) designating the area of state forest; (2) setting the state forest boundaries; (3) mapping the state forest; and (4) establishing the state forest. The clarification of Article 15 states that 'state forest designation' is a preparatory activity for state forest gazetting, and includes:

- 1. making designation maps providing direction on boundary demarcation
- 2. installing temporary boundary markers
- 3. digging boundary trenches in disturbed locations
- 4. announcing the planned forest area boundaries, particularly for areas bordering privately owned land

From these provisions, it is clear that 'state forest designation' is only a preparatory activity, and can also be defined as temporary designation of a particular area that will be established as a state forest. This temporary designation is then followed by boundary demarcation, which establishes more definite borders for the area that will ultimately be established as a state forest. Reinforcing this provision is Article 17 of Government Regulation No. 44/2004, which describes forest designation as a preliminary step in the process of determining a particular area as a state forest. That is, simply being 'designated' as state forest.

Therefore, if a party outside the Ministry of Forestry – a district government, for instance – issues a permit for an area that was recently designated as state forest, it could employ this interpretation of 'designation' to insist that the permit issued was not actually for a state forest. At the same time, under Article 1 of the Forestry Law, the Ministry of Forestry could interpret it differently, arguing that the area is indeed state forest. The result of these possible differences in combination with ineffective forest management has been the numerous awards of permits allowing activities in forested areas across the country.<sup>30</sup>

At the time of writing, the Ministry of Forestry had yet to complete the gazetting process nationally in accordance with the Forestry Law and Government Regulation No. 44/2004. Only 10.65% of the 133 694 685 ha of 'state forest' has been gazetted; the remainder is still in the process of boundary demarcation, rendering an interpretation that these

<sup>29</sup> The Minister of Forestry also complained that regional governments did not respond to requests for reports on permits issued for state forests.

<sup>30</sup> In Central Kalimantan, for instance, the Integrated Team found no less than 5 million ha of concessions in state forests without appropriate permits from the Ministry of Forestry (Integrated Team Preliminary Report 2010).
areas have been 'designated' as state forests, but have yet to be legally established/gazetted as state forests.

Boundary demarcation is another part of the gazetting process that has been completed for only a small portion of state forests, meaning that rights relating to those areas remain unclear (Contreras-Hermosilla and Fay 2005: 20). In the provinces of Central Kalimantan and Riau, where the process of reconciling conflicting maps is incomplete, the Forest Land Use by Consensus (TGHK)<sup>31</sup> mechanism is still used to identify forests. This creates a serious problem in determining whether areas are legally state forests.

The TGHK, originally introduced in 1982, classified 141 774 427 ha of Indonesia's land mass (or about 74% of the total) as forest area (kawasan hutan) using a 1:500 000 scale map (Resosudarmo et al. 2011), an approach that confirms that the TGHK was macro in scale and indicative in nature. Province-level maps were drawn and agreed upon by governors through consensus, and then endorsed by the Ministry of Forestry (Resosudarmo 2011a). Given the lack of data and the extensive area concerned, the mapping was largely a desk exercise that failed to consider the real conditions and so ignored communities living in the forested areas, along with their customary rights and systems (Resosudarmo 2011a). Nevertheless, the TGHK became a reference for land use planning and activities in forested regions.

About a decade later, the government created Law 24/1992 on Spatial Planning, which required provinces to prepare Provincial Spatial Plans (RTRWP; Resosudarmo 2011a). Numerous inconsistencies between the TGHK and RTRWP have emerged. For example, the RTRWPs changed the classification of many areas defined as forest in the TGHK. The government, aware of these inconsistencies, began efforts to align the two systems by reconciling the maps (*peta paduserasi*) in 1997 (Brockhaus *et al.* 2012). This process has been challenging and therefore has been delayed. The central government continues to refer to the TGHK in allocating land-based activities, while local governments tend to refer to their proposed

RTRWPs; the result is overlapping land uses (Resosudarmo 2011a).

### Lack of clear forest managers at the lowest level

Forest management, which constitutes a manifestation of forest control, is fully the government's responsibility (Forestry Law, Article 4). In practice, the Ministry of Forestry as manager must work with a range of parties, including regional governments, the private sector and communities, to achieve SFM. However, one important aspect detracting from forest management in Indonesia is the lack of managers at the lowest level, with the exception of a small number in conservation forest regions (e.g. national park managers). Consequently, forests have become in effect *terra nullius*, and cases of encroachment and other violations are difficult to detect until they have already spread and become entrenched.

### Closed and corruption-ridden permit processes

The processes of issuing permits for forest management and distributing revenue from forests are fraught with corruption, and permits that contravene forest allocation rules and legislation are not uncommon (Human Rights Watch 2009: 25–30). There is evidence of corrupt practices in the processes not only of issuing permits but also of supervising those with the authority to grant permits, as well as judicial mafia practices in law enforcement regarding the abuse of authority in permit processes (Anti Judicial Mafia Task Force 2010).

Exacerbating the problem of corruption in processes is the absence of clear and strict rules on administrative penalties for abuse of authority in granting permits, as in Article 111 of Law No. 32/2009 on Environmental Management and Article 73 of Law No. 26/2007 on Spatial Planning.

The lack of transparent and open permit issuance processes facilitates corruption. For example, although companies are obliged to conduct an environmental impact assessment (AMDAL) before they can be granted a forest product use permit, in practice AMDAL are frequently prepared improperly. In some cases, for instance, companies merely copy the content of AMDALs from other regions without involving the communities concerned in the AMDAL commissions (also see the section below on community participation and Awiati *et al.* 2006:

<sup>31</sup> The TGHK was replaced by RTRWs based on reconciliation mechanisms in accordance with the provisions of Law No. 24/1992 on Spatial Planning amended by Law No. 26/2007 on Spatial Planning.

90–93). Similar issues arise in other sectors linked to forestry, such as estate crops and mining. Officials often turn a blind eye to these practices in return for informal financial incentives.

### Weak government capacity to supervise concession operations

The lack of capacity and resources to monitor all the forests in Indonesia has been identified (Palmer 2001, Smith *et al.* 2003). The result, as one interviewee observed, is that the government is forced to rely on unverified company reports. In such cases, for example, companies can log in excess of the amounts permitted under their Annual Logging Schedules (RKT).<sup>32</sup> The government's capacity to monitor borders that are vulnerable to illegal timber smuggling is also weak (Human Rights Watch 2009).

### Weak and corrupt law enforcement

Corruption among law enforcement agencies is a known problem in the forestry sector (Santosa and Khatarina 2010). The Anti Judicial Mafia Task Force has identified various *modi operandi* in law enforcement processes, which begin even when a breach of the law has only just been identified (through bribes and personal relationships with the 'backing' of law enforcement authorities) and continue through every stage of the justice process (from investigation through to court verdict), and even in prisons (Anti Judicial Mafia Task Force 2010). The numerous root causes of corrupt law enforcement include weak leadership and low salaries and allowances for law enforcement officers.<sup>33</sup>

### Community participation in forestry sector decision-making

Transparency and participation are essential for effective public supervision, but these have yet to be implemented properly. Legal provisions guaranteeing community participation in legislation are inconsistent. For example, the Forestry Law only provides very general guarantees for community participation (Article 70). Spatial planning legislation, by contrast, does provide stronger guarantees, as assessed based on the arrangements for community participation in policymaking and planning (including changing forest allocation and function) as well as permit issuance processes in state forests.

Community participation in drafting legislation and policy is regulated by Law No. 10/2004 on Procedures for Making Legislation. However, community participation is normative in nature and greatly restricted<sup>34</sup> and is not accompanied by adequate operational rules. This constitutes an obstacle for communities seeking to participate and affects decisions when making legislation. Nevertheless, there have been cases where community policy advocacy influenced policymaking. For instance, during investigations into illegal logging, lobbying by NGOs Telapak and EIA encouraged the release of Presidential Instruction No. 4/2005 on Eradication of Illegal Logging in State Forests and Distribution of Illegal Timber in All Regions of the Republic of Indonesia.<sup>35</sup>

In forest planning processes, Article 19(2) of Government Regulation No. 44/2004 states that the boundary demarcation stage covers inventorying activities and the resolution of the rights of third parties along the boundary of the state forest. Formally, therefore, this provides communities, including customary communities, with a forum in which they can assert their customary land rights. However, this provision is not accompanied by operational provisions for community participation in forest planning processes. Similarly, there are no provisions for penalties when such planning processes fail to involve communities. A further difficulty for customary communities in claiming customary forest is that the relevant requirements and procedures that have to be followed are complex. To date, no customary forest claim has been approved, so areas that receive legal status as village forests (hutan desa) actually refer to customary lands.<sup>36</sup>

<sup>32</sup> Indonesian Center for Environmental Law interview with an anonymous NGO activist from Kalimantan, Jakarta, 20 May 2010.

<sup>33</sup> Indonesian Center for Environmental Law interviewwith an anonymous NGO activist from Kalimantan, Jakarta,20 May 2010.

<sup>34</sup> Article 53 provides that communities have the right to give verbal or written input on draft laws and draft regional regulations.

<sup>35</sup> Interview with Christian Purba, Executive Director of Telapak, and Rino Subagiyo, Executive Director of ICEL, 20 April 2010.

<sup>36</sup> Under the Forestry Law, customary forest can be established if the customary community still exists and its presence is acknowledged. Its presence can be recognised if (1) it is still in the form of a community; (2) it has customary institutions governed by traditions; (3) it has a clear region where customary law applies; (4) it has rules and regulations that are still adhered to and a customary court; and (5) it still gathers forest products from the nearby forest to meet daily needs. A customary forest that has been classified as village forest is the Lubuk Beringin Village Forest in Bungo District, Jambi, which was established based on Ministry of Forestry Decree No. SK.109/Menhut-II/2009.

Status of RTRW regulations	Province	District	Municipality
Undergoing revision	0	20	5
Governor recommendation process	0	2	3
Discussion in BKPRN	0	14	11
Ongoing process on forestry resolution and improvement in the region	20	248	39
RTRW regional regulations	13	114	35
Total	33	398	93
Substantive approval progress	100%	91%	79.6%
RTRW regional regulations progress	39.4%	28.6%	37.6%

#### Table 12. Status of RTRWs in Indonesia, June 2012

Source: Directorate General of Spatial Planning (2012)

Better arrangements are in place for community participation in processes for changing forest allocation and function (in Government Regulation No. 10/2010 on Procedures for Changing State Forest Allocation and Function), because they can be linked to spatial planning arrangements in Law No. 26/2007 on Spatial Planning. Government Regulation 10/2010 says that changes in state forest allocation and function at the province level must be integrated with the Spatial Plan (RTRW) process (Article 30(2)). Regarding the preparation of RTRWs, Law No. 26/2007 states that community participation in spatial planning includes the preparation of spatial plans, use of land and land use control (Article 65(2)). The mechanics of community participation are also regulated quite technically and adequately in Government Regulation No. 15/2010 on Spatial Planning, which grants communities access to justice through mechanisms entitling them to claim compensation for losses due to land use change, and to demand the revocation of permits and cessation of development that does not adhere to a spatial plan. The obligation to involve communities in the preparation of RTRWs under Government Regulation No. 15/2010 also makes it possible to combat illegal actions using Article 1365 of the Civil Code as long as such losses can be proved to be the result of failure to comply with a provision.<sup>37</sup> This legislation has yet to be used in relation to the RTRW preparation process itself, which has been greatly delayed because of overlapping land uses. By early June 2012, only 13 provinces had produced regulations on their RTRWs (Table 12), and in practice, communities continue to struggle to access draft RTRWs and their supporting documents.

Community participation in permit processes is regulated in general terms in Chapter X of the Forestry Law, but without any supporting operational rules. One of the documents required to obtain a permit for a business enterprise and/or certain activity is an environmental impact assessment (AMDAL)<sup>38</sup> linked to forestry. The AMDAL is an important instrument for assessing the extent of community participation/involvement. The preparation of AMDALs is regulated under Article 33 of Government Regulation No. 27/1999 on AMDAL, in which community participation is a central feature.<sup>39</sup>

However, the process of AMDALs rarely reflects the reality, especially with respect to community involvement. One problem is that the AMDAL Commission's decision-making process is closed,

<sup>37</sup> Article 1365 BW states: 'For any act that violates the law and incurs losses on others, the perpetrator is obliged to compensate those losses.'

<sup>38</sup> Article 6 of Government Regulation No. 6/2007 on Forest Systems and the Formulation of Forest Management and Use explains that forest use and related activities that can change landscapes and affect the environment require an AMDAL. Estate crops are an example of activities requiring an AMDAL to secure a permit.

<sup>39</sup> Article 33 of Government Regulation No. 27/1999 states: '(1) Any business and/or activity as referred to in Article 3, paragraph (2), must be made known to the community before preparing an AMDAL. (2) Announcements as referred to in paragraph 1 are made by institutions responsible and initiators. (3) Within 30 (thirty) working days of the planned business and/or activity being announced as referred to in paragraph (1), the communities concerned have the right to submit suggestions, opinions, and responses on the planned business and/or activity. (4) Suggestions, opinions and responses as referred to in paragraph 3 are submitted in writing to the relevant authority. (5) Suggestions, opinions and responses as referred to in paragraph 3 must be considered and reviewed within the environmental impact analysis. (6) Procedures and forms of announcements as referred to paragraph (1), and procedures for submitting suggestions, opinions and responses as referred to in paragraph 3 are established by the head of the institution tasked with managing environmental impacts.'

which prevents communities from participating in the process.<sup>40</sup> Another problem is that the community members selected to join the AMDAL Commission may not reflect or represent the community likely to be affected by the pertinent activity.<sup>41</sup> Because the RTRW preparation and permit processes take place at a far remove from the communities, especially forest-dependent or customary communities that may be directly affected, in practice those communities can almost never participate unless *ad hoc* project or NGO initiatives are in place. Multi-stakeholder forestry was an example of a project that sought to involve local communities in decision-making processes (Yuliani 2006).

As the process of issuing permits involves economic interests, which often push aside social interests such as community involvement, proper AMDAL procedures are frequently ignored by both applicant companies and officials. Ultimately, AMDALs become no more than documents to fulfil formal requirements. A study by the Indonesian Center for Environmental Law (ICEL) on the application of Bapedal (Badan Pengendalian Dampak Lingkungan Hidup; Environment Impact Agency) Head Decree No. 08/2000 on Community Involvement in AMDAL Processes found that community participation requirements tend to be met only by permit applicants with large amounts of capital (Awiati et al. 2006: 93). Requirements under Bapedal Head Decree No. 08/2000 make AMDAL procedures expensive, and the decree has only marginally improved community involvement. Further, communities' lack of knowledge and permit applicants' insensitivity render consultations meaningless, and communities are frequently excluded when final decisions are made.

The government recently issued Law No. 14/2008 on Public Access to Information, which, if implemented properly, could facilitate effective community participation in policymaking processes. This law incorporates the principle of, and mechanisms for, public access to information managed by the state. However, many state institutions have said they are not ready to implement the law properly. Constraints include the absence of effective information and documentation systems, and the poor understanding among officials in public institutions of the public's legal right to access information.

### 2.1.3 Implications for REDD+

Forest management in Indonesia suffers from multiple fundamental weaknesses in a range of areas, including in licensing rules, institutions and capacity, and law enforcement. However, for REDD+ to succeed – that is, for deforestation and forest degradation to be reduced and maintained at agreed levels – effective forest management is critical. In this context, there is no guarantee that REDD+ will be able to bring fundamental changes. Furthermore, in the absence of a basic plan for reforming forest management, it seems unlikely that the implementation of REDD+ alone will engender any substantial change in the way forests are managed.

One necessary fundamental change is for legislation to fully integrate the principles of good governance into the processes for issuing permits. Possibilities include introducing strict provisions regarding permit processes, regulating responsibilities and introducing and enforcing sanctions for officials found guilty of committing intentional errors when issuing permits. Legislative provisions should be supplemented by mechanisms to streamline and integrate licensing processes. The responsibilities for central and regional authorities should be made clear, all processes should be oriented towards achieving sustainable forestry and sanctions should be imposed for any violations. In addition, clear, transparent and firm supervision mechanisms are required. Thorough bureaucratic reform, including systematic efforts to eradicate corruption within law enforcement institutions, is also essential. If these preconditions are not carried out, then objective licensing processes and law enforcement will be hard to achieve.

Failure to accomplish such fundamental changes will compromise attempts to reduce levels of deforestation and forest degradation in real terms. Consequently, co-benefits from REDD+ such as biodiversity protection and additional income for communities living in REDD+ forest areas cannot be expected. Worse still, REDD+ could potentially have negative effects by reducing access to forest resources among those depending on and living in the forest,

<sup>40</sup> A concern is that community involvement will only become a means for legitimising AMDAL recommendations.

<sup>41</sup> Community members who become members of AMDAL commissions are often village heads or people chosen by the company.

without their real consent. Any economic benefits that communities receive from REDD+ credits will not only be directly linked to revenue sharing in the REDD+ schemes themselves, but will also be closely tied to governance. If corruption continues to undermine permit processes and law enforcement, it will be difficult for communities to secure the rights associated with benefit-sharing schemes.

## 2.2 Decentralisation and revenue sharing

In line with decentralisation and devolution paradigms across the world, in 1998 the Government of Indonesia began to implement forestry decentralisation comprehensively. This was marked by the release of Government Regulation No. 62/1998 on the delegation of Forestry Governance to Regional Governments, which delegated to the districts the authority to carry out rehabilitation and reforestation activities, soil and water conservation, protection forest management, extensions and small-scale community forest activities. However, although this regulation indicated the central government's intention to institute decentralisation in the forestry sector, it actually had the effect of burdening regional heads with greater obligations and increased expenditures (Awiati et al. 2006: 75-79).

The push for decentralisation began following the fall of the New Order regime, when regions began to voice demands for a greater share of natural resources–derived benefits. In January 1999, the government issued Regulation No. 6/1999 on Forest Enterprises and Extraction of Forest Products from Production Forests, which granted district heads and governors the authority to issue timber extraction permits for areas of up to 100 ha and 10 000 ha, respectively.<sup>42</sup>

In May, this policy was reinforced by Ministry of Forestry and Estate Crops Decree No. 310/ Kpts-II/1999 on Guidelines for Issuing Forest Product Extraction Permits, Ministry of Forestry and Estate Crops Decree No. 317/Kpts-II/1999 on Forest Product Extraction Permits for Customary Communities in Production Forest Areas, and Ministry of Forestry and Estate Crops Decree No. 318/Kpts-II/1999 on Community Participation in Forest Enterprises. The aim of these policies was to give local communities the opportunity to manage their forest resources through cooperatives and other community ventures and to secure the economic benefits they had been denied during the New Order era (see Chapter 3), as part of decentralisation and regional autonomy.

In the same year, Law No. 22/1999 on Regional Governance and Law No. 25/1999 on Fiscal Balancing between Central and Regional Governments, better known as the regional autonomy laws, were passed. With the exception of a few strategic arrangements, Law No. 22 shifted authority to district and municipal heads (see Resosudarmo 2004, 2007; Barr *et al.* 2006; Resosudarmo *et al.* 2006; Moeliono *et al.* 2009), and Law No. 25 provided for the distribution of benefits from natural resources between central and regional governments. Soon after these policies were released, district heads in several regions began granting forest product exploitation permits for wood in its various forms.<sup>43</sup>

Despite the permits being intended for small-scale operations, logging with heavy equipment took place across areas far in excess of 100 ha. In addition, some people or groups were granted multiple permits simultaneously, effectively allowing concessions of thousands of hectares. Importantly, these permits issued by district heads paid no attention whatsoever to ecological or sustainable logging principles. This was in contrast to the large-scale concessions granted by the central government, which obliged HPH concession holders to follow the Indonesian Selective Cutting and Planting (TPTI) system.<sup>44</sup> Although many concessions did not fully adhere to the TPTI, the guidelines were nevertheless in place. The results were indiscriminate logging in many forested regions and severe forest degradation (Resosudarmo 2004, 2007; Barr et al. 2006).

<sup>42</sup> The authority of governors to grant permits for up to 10 000 ha was not followed up by a ministerial decree as provided for in this regulation.

<sup>43</sup> These included forest harvest right permits (HPHH), forest timber product extraction permits (IPHHK) or forest use permits (IPPK), depending on the region and type of forest. Despite having different names, these permits were essentially the same, frequently exceeding 100 ha, using heavy machinery and completely disregarding ecological principles and sustainable logging systems.

<sup>44</sup> Although many companies failed to practise TPTI properly, there were at least legally binding guidelines and sanctions in place.

Communities had neither the technological capacity nor the capital to carry out logging on what were effectively large areas, nor could they use heavy machinery like the HPH concessionaires. Consequently, only timber companies or those with large amounts of capital could take advantage of this policy, which they did by various means, including collecting wood from communities and securing timber use permits on their behalf. Communities saw very little of the profits generated by such logging activities; what they did receive took the form of fees paid by the companies that carried out the logging - in amounts much smaller than the profits secured by companies or capital investors (Resosudarmo 2004, 2007; Barr et al. 2006). Consequently, the objective of these policies for communities to have the chance to enjoy the proceeds from forests was not fully realised.

In an attempt to put an end to district heads' incorrect implementation of the law, and the consequent negative effects, in April the following year, the government released Ministry of Forestry Decree No. 084/Kpts-II/2000 on Deferment of the Implementation of Ministry of Forestry and Estate Crops Decree No. 310/Kpts-II/1999 on Guidelines for Issuing Forest Product Extraction Permits. However, district heads ignored the decree and continued to grant 'small-scale' permits. In November that year, in the lead-up to the effective enactment of the regional autonomy law, the Ministry of Forestry issued Ministry of Forestry Decree No. 05.1/Kpts-II/2000 on Criteria and Standards for Forest Product Use Permits and Forest Product Extraction Permits in Natural Production Forests. This regulation gave district heads greater authority to issue forest use permits, effectively allowing them to grant permits for logging areas of up to 50 000 ha. This additional authority gave district heads the opportunity to grant even more logging permits, and for huge areas of forest. As a result, until 2002, thousands of 'small-scale' permits were issued in Kalimantan and logging in the region spiralled out of control. Some of these permits were even granted for forests already subject to HPH concessions from the Minister of Forestry (Resosudarmo 2007).

In February 2002, the central government tried to stop district heads from issuing permits through Ministry of Forestry Decree No. 541/Kpts-II/2002 Revoking Ministry of Forestry Decree No. 05.1/ Kpts-II/2000 on Criteria and Standards for Forest

Product Use Permits and Forest Product Extraction Permits in Natural Production Forests. Once again, district heads failed to heed the new decree and continued issuing permits. Many district heads resisted on the grounds that, according to TAP MPR No. III/MPR/2000 (People's Consultative Assembly provision), ministerial decrees were no longer part of the legal hierarchy in Indonesia (Awiati et al. 2006). In June 2002, Government Regulation No. 34/2002 on Forestry Systems and the Planning of the Management and Use of Forested Areas was issued. This regulation stated explicitly that timberharvesting permits for commercial purposes could only be granted by the Minister of Forestry. As this government regulation superseded regional regulations in the Indonesian legislative hierarchy, it was a more effective instrument for reducing district heads' authority. In reality, however, some district heads persisted in issuing small-scale permits until 2004 (Resosudarmo 2007). In Papua, small-scale permits (called Kopermas) were still being issued up until 2005.

With various issues arising, including rather less than harmonious relations between the centre and the regions, Law No. 22/1999 was replaced by Law No. 32/2004 on Regional Government. This law reaffirms the hierarchical relationship between the centre and regions. Although provinces and districts do remain autonomous, provinces also serve decentralised functions.

Ideally, the main aims of decentralisation were to increase local political participation and to allow decisions to be made at the local level by those with a better understanding of local situations and needs. However, pressure to carry out decentralisation was undeniably based on regions' wishes to secure the economic benefits from managing forest resources as well.<sup>45</sup> One rationale often given by district governments for issuing numerous timber-harvesting permits, rather than siding with communities, was the need to secure regional own-source revenue (PAD) (Resosudarmo 2007).

<sup>45</sup> During the early stages of decentralisation, many district governments reaped profits from issuing timber use permits. One was South Barito District, South Kalimantan, where PAD (regional own-source revenue) increased by 228% in 2000. In West Kutai District, East Kalimantan, the district government issued 223 licences for timber use spanning 22 300 ha of forest, for which it collected US\$37 300. See Rumboko and Hakim (2003).

#### **Revenue sharing**

In accordance with Law No. 25/1999 on Fiscal Balancing between Central and Regional Government and its replacement Law No. 33/2004, funding for routine activities and regional development is derived from four sources: balancing funds, PAD, loans and other sources. Balancing funds,<sup>46</sup> which constitute one component of regional funding, consist of general allocation funds,<sup>47</sup> special allocation funds<sup>48</sup> and revenue-sharing funds.<sup>49</sup> General allocation funds are used to finance routine expenditure such as civil servants' salaries. Special allocation funds are used to finance particular activities such as repairs to watersheds and education projects. Revenue-sharing funds and PAD can be used for various purposes, particularly development activities. This section gives a brief analysis of revenue-sharing funds (DBH), specifically Natural Resources Revenue-Sharing Funds (DBH SDA).

Since the enactment of the fiscal balancing law, the distribution of DBH between the centre and regions has been much more transparent than it was during the New Order era. In addition, regions secure a larger share than before. DBH are sourced from tax and natural resources from the forestry, general mining, fisheries, oil drilling, natural gas drilling and geothermal sectors.<sup>50</sup> Balancing funds from forest resources originate from revenue secured from Forest Concession Fees (IHPH), Forest Resource Rent Provision (PSDH) and Reforestation Funds (DR). The IHPH is a one-time area-based fee paid at the time the timber concession contract is initially issued. The PSDH is a volume-based royalty on each cubic metre of timber harvested. The DR is a volume-based fee on each cubic metre of timber harvested. The DR was originally introduced as a bond to support reforestation and forest rehabilitation activities and

50 Law No. 33/2004, Article 11(1) and (3).

later was restructured as a non-refundable forest levy. The DR usually yields the largest amount by far. Districts can use their share of IHPH and PSDH revenue for regional development, whereas any DR revenue must be used only for forest and land rehabilitation. The central government's share of DR (60%) is used to finance national forest and land rehabilitation programmes, and regions use their share (40%) for forest and land rehabilitation within their jurisdictions. Table 13 illustrates the distribution of revenue from natural resources to central, provincial and district/municipal governments.

During the New Order period, as mentioned above, less revenue from natural resources was allocated to the regions than in the regional autonomy era, and calculations and distribution were not transparent. Since the release of Law No. 25/1999, and its replacement Law No. 33/2004, the share of revenue from each type of natural resource has become clear. However, a few problems remain, especially because calculation processes are not completely transparent. For revenue from forest resources, problems frequently arise in relation to regional revenue calculations (Resosudarmo 2007). District/ municipal governments must check their revenue from forestry activities against data from the ministry to ensure they receive shares commensurate with the contributions from forestry activities in their region. The protracted calculation process results in delayed distribution/transfer of DBH to district treasuries and funds often tend to accumulate at the end of the year. Such delays disrupt planning and the optimal use of funds in the regions (Resosudarmo 2007). This in turn engenders dissatisfaction among regional governments and opens the door for regional governments to collude with certain individuals in ministries known as 'brokers' so they can secure advance information on their revenues (Resosudarmo 2007); regional governments tend to believe that informal interaction with brokers can influence regional revenue calculations (Resosudarmo 2007).

Factors encouraging erroneous or careless use of forestry-derived funds include the lack of effective formal and informal (public) accountability mechanisms and the absence of any link between performance and the flow of funds from forest resources earnings from the centre to the regions. For instance, following regional autonomy, a district with a large area of forest and active forestry activities could secure billions of rupiah annually through DR,

<sup>46</sup> Balancing funds are funds sourced from the APBN allocated to districts to fund regional decentralisation needs. See Article 1(19) of Law No. 332004 on Fiscal Balancing between Central and Regional Governments.

<sup>47</sup> General allocation funds are allocated from the APBN with the aim of levelling up districts' financial capacity to fund their requirements for decentralisation (Article 1(21), Law No. 33/2004).

<sup>48</sup> Special allocation funds are allocated from the APBN to certain districts with the aim of helping them fund special activities in the district in accordance with national priorities (Article 1(23), Law No. 33/2004).

<sup>49</sup> Revenue-sharing funds are allocated from the APBN to districts based on a percentage figure for funding regional requirements for decentralisation.

Sector	Revenue source	Percentage share (%)			
	_	Central government	Provincial government	Producer district/ municipality	Other districts/ municipalities in the province
Forestry	IHPH	20	16	64	_
	PSDH	20	16	32	32
	DR	60	-	40	_
Mining	Fixed levies (land rent)	20	16	64	-
	Exploration and exploitation royalties	20	16	32	32
Fisheries	Fisheries enterprise levies	20	-	80	
	Fisheries levies	20	-	80	
Oil		84.5	3.1	6.2	6.2
			(0.1 for APD)	(0.2 for APD)	(0.2 for APD)
Natural gas		69.5	6.1 (0.1 for APD)	12.2 (0.2 for APD)	12.2 (0.2 for APD)
Geothermal	Deposits for government	20	16	32	32
	Fixed levies and production	20	16	32	32

### Table 13. Revenue sharing from natural resources

Note: APD = Elementary Education Budget

Source: Resosudarmo et al. (2006, 2007); Law No. 33/2004 on Fiscal Balancing between Central and Regional Government

despite rehabilitating very little forest or land. Almost all districts in East Kalimantan, for instance, have failed in their forest and land rehabilitation activities (Resosudarmo 2007). The same situation is apparent in many districts throughout Indonesia (Barr *et al.* 2009). During the New Order era, DR was even used for funding non-forestry activities and thus failed to support the development of HTIs (Resosudarmo *et al.* 2006; Barr *et al.* 2009).

Ideally, decentralisation should align policymaking more closely with the needs of local communities, and the distribution of funds should help regional governments when planning targets for regional state budget (APBD) revenue and its use for development in the region. However, forestry violations have proliferated because of the lack of capacity among government apparatus to manage the complexities of regional autonomy, ineffective accountability processes including weak supervision and law enforcement in relation to governance violations, and the lack of forest managers at the lowest level. In addition, irregularities involving PSDH and DR have resulted in losses to the state. Misappropriation of PSDH and DR funds has been an integral part of the tug-of-war between central and regional governments over authority to manage the forestry sector. This was apparent in cases in West Kalimantan, for instance, where PSDH and DR funds were not deposited with the state treasury, but into district government bank accounts.<sup>51</sup>

## The effects of decentralisation and other economic sectors on forestry

Decentralisation in the forestry sector cannot be separated from decentralisation in other related sectors, with the extension of authority over the estate crops and mining sectors to regional governments. Law No. 18/2004 on Estate Crops

<sup>51</sup> Case review of PSDH/DR in West Kalimantan by the Borneo Peoples' Anti Corruption Commission (KONTAK) in August 2005. http://www.kontakrakyatborneo.blogspot.com/ [30 April 2012]

and Law No. 4/2009 on Mineral and Coal Mining provide regional heads with the authority to issue plantation and mining permits. Regional heads may only grant such permits for areas outside state forests. For areas inside state forests, the Ministry of Forestry must first release the forest for other uses or grant a use-lease permit. Nevertheless, in reality, many permits have been granted in state forests without the knowledge of the Ministry of Forestry. Reasons for this include regional governments' lack of accurate data and maps, use of different maps and data by different institutions, use of a jurisdictional spatial plan not yet approved by the central government, unclear boundary demarcation and failure of regional governments to refer to central regulations.

As explained above, the economic motives underlying decentralisation have led to high levels of forest degradation. With the unclear status of state forests on the one hand and the need to accelerate development on the other, regional governments sometimes chose to issue permits for non-forestry development in forest areas in contravention of the law. Increased PAD, though generally the basis by which regional governments evaluate their success, effectively creates a threat for nature conservation. As a result, regional governments use their authority to grant permits for activities that can increase forest degradation and deforestation rates (e.g. estate crop development and mining), with little concern for the environmental and social consequences.

Legal provisions linked to permits tend to be complicated and inchoate, leaving loopholes for unscrupulous parties to exploit. For example, permits are granted before changes in state forest allocation are issued, or are granted for areas that are not convertible production forests. Opportunities for digressions are exacerbated by the segregation of sectors (estate crops, mining or other non-forestry development activities) and permits for state forest use. Consequently, an enterprise operating in a forest area could hold a legitimate sectoral enterprise permit, but not have a permit to operate in the forest.

### The mining sector

The mining sector also has played a major role in forest degradation in Indonesia. Under the more open policies of decentralisation, and with increasing prices for mining commodities, mining operations proliferated. During the period between the enactment of Law No. 11/1967 on Basic Mining Provisions and regional autonomy in 1999, there were only around 650 mining concessions. However, with regional governments authorised to grant permits (Article 37 of Law No. 4/2009), the number increased to its current figure in excess of 8000, not including illegal mining operations (Widagdo 2010). The mining activities of greatest concern are those in Kalimantan, where mining is occurring not only in production forests but also on agricultural land and even in conservation forests, which should not be degraded at all.

As an illustration, in East Kalimantan, mining operations are underway in the area of Mulawarman University Tropical Forest Research Centre, which is within the Bukit Soeharto State Forest. There are 19 mining concession companies with permits from the Kutai Kartanegara District Government, 12 of which hold a total of 1156 ha of concessions that overlap the Mulawarman University forest (Kompas 2010c). In South Kalimantan, mining operations have encroached on the Meratus Mountain Range Protection Forest (Kompas 2010d); of the 299 mining concessions in the Meratus Protection Forest, only one has a state forest lease-use permit from the Ministry of Forestry. According to Kompas (2010d), from 2003 to 2009, there were 2047 mining concessions in Kalimantan. The same source showed that coal-mining concessions in East Kalimantan cover an area of 3.1 million ha. The area of concessions in Kutai Kartanegara is 1.2 million ha, or more than half of the district's area of 2 million ha.

The Ministry of Forestry has the authority to establish which state forests can be used for non-forestry activities, such as mining, through state forest lease-use permits for mining activities. Arrangements for state forest lease-use permits are set out in Government Regulation No. 24/2010 on Use of Forest Areas, which superseded the earlier Ministry of Forestry Regulation No. P.64/Menhut-II/2006. According to the Ministry of Forestry, as reported in the media, from 2005 to 2010 it issued 199 state forest lease-use (PPKH) permits to mine coal, gold, nickel, iron ore, asphalt, oil and gas, geothermal power and marble, for areas totalling almost 153 000 ha. The ministry also agreed in principle to 390 exploitation permits on more than 327 000 ha and issued 187 exploration permits for coal, gold, nickel, iron ore, asphalt, oil and gas and geothermal power, on areas of more than 1 200 000 ha (Tempo Interaktif 2010). These data show that

2000-2009

most of the mining concessions in Kalimantan, and on other islands, have yet to obtain state forest lease-use permits.

### The estate crops sector

As explained in Chapter 1, the estate crops sector, particularly oil palm, is one of the major sectors encroaching onto forestland. The industry has steadily grown in terms of both area and production (Table 14).

Since Law No. 18/2004 on Estate Crops was passed, many regional heads have issued permits for oil palm estates without referring to the TGHK (as none of the forested regions has had its spatial plan approved by the central government) and with little in the way of ecological considerations. Changes in state forest allocation for estate crops, including oil palm, even occurred in areas that should not have been converted, such as protected areas and national parks (Sawit Watch 2009). These forests were designated as protected or conserved because they are water catchment areas, have high levels of biodiversity or have steep gradients (and thus their use would endanger surrounding ecosystems).

The fact that such areas should not have become oil palm estates without allocation change permission being secured from the Minister of Forestry through a Ministry of Forestry Decree on State Forest Release (Article 25 of Government Regulation No. 10/2010) indicates that the conversion can be deemed illegal forest encroachment and subject to criminal proceedings under the Forestry Law (Article 50).

#### 2.2.1 Implications for REDD+

As shown previous discussion, a number of concerns are related to decentralisation: there is discordance between central and regional policies; policy priorities emphasise natural resources–based regional development; forest cover is under growing threat from development sectors outside the forestry sector due to the increase in regional authority; and problems exist with the distribution and use of the proceeds from forest resources.

The decentralisation conditions described have implications for the implementation of REDD+. Regional autonomy places everyday forest management under REDD+ in the hands of district and municipal governments (certainly, it is difficult to expect activities in state forests to be supervised

Year Unit	Area Ha	<b>Production tonnes</b>
2000	4 158 079	7 000 507
2001	4 713 435	8 396 472
2002	5 067 058	9 622 344
2003	5 283 557	10 440 834
2004	5 284 723	10 830 389
2005	5 453 817	11 861 615
2006	6 594 914	17 350 848
2007	6 766 836	17 664 725
2008	7 363 847	17 539 788
2009	8 248 328	19 324 293
2010	8 430 026	19 760 011

Table 14. Oil palm plantation area and production,

Source: Ministry of Agriculture (2010b)

on a national scale). However, it is clear that regional governments have encouraged deforestation and forest degradation through their policies.<sup>52</sup> The proper implementation of REDD+, therefore, will require improvements to legislation, stricter supervision by the central government – particularly in law enforcement – and institutionalisation of good governance.

# 2.3 Indigenous rights and rights to carbon, land and trees

### 2.3.1 Indigenous rights

The issue of indigenous rights to land and resources in state forests remains unresolved. Although the rights of indigenous communities are legally recognised, in reality state control of forests negates such rights. Indonesia has various provisions at the national level that recognise the rights of customary communities. However, at the level of international commitment, the Government of Indonesia, as is the case with most countries, limits recognition of indigenous rights, particularly those relating to the self-determination contained in Indonesia's

<sup>52</sup> Of course, not all regional governments intentionally caused deforestation and forest degradation. Other parties, including the central government, have also contributed to the current state of deforestation and forest degradation.

ratification of Article 1 of the International Covenant on Economic, Social and Cultural Rights.<sup>53</sup>

Indonesia has not ratified International Labour Organization (ILO) Convention No. 169 (Indigenous and Tribal Peoples Convention), which is the main instrument for protecting the rights of indigenous communities. However, Indonesia has ratified the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), a non-binding document that requests parties to show moral and political commitment to respecting the principles in the declaration.

## Recognition of customary community rights in Indonesian law

Recognition of community rights within Indonesia's national legal framework is quite strong. Article 18B(2) of the second amendment to the 1945 Constitution states:

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

Further, Article 28I(3) of the 1945 Constitution states:

Traditional community cultural identity and rights are respected in concord with developments in time and civilisation.

At the procedural level, these rights are reinforced by Article 51(1) of Law No. 24/2003 on the Constitutional Court, which gives customary law communities legal standing to submit petitions to the Constitutional Court. Customary law communities are thus given the same legal standing as every Indonesian citizen, public or private legal entity, or state institution also recognised as an applicant by the Constitutional Court.

Various other pieces of legislation contain provisions recognising the rights and status of indigenous communities. The Basic Agrarian Law No. 5/1960 contains a provision relating to one of the most important aspects of customary community rights linked to their life space, namely *hak ulayat* (customary land rights), as laid out in Article 3:

Considering the provisions in Article 1 and Article 2, the implementation of *hak ulayat* and similar customary law community constructs by customary law communities, in so far as they still exist, should be in accordance with national and state interests based on a united people, and not contravene any higher laws or regulations.

Another acknowledgement is found in BPN (Badan Pertanahan Nasional/National Land Agency) Head Regulation No. 5/1999 on Guidelines for Resolving Rights Issues for Customary Law Communities, which sets out further details regarding legal requirements for customary communities. This is important because of difficulties determining which communities qualify as minority native communities (Bloch 2001). Article 1 of the BPN Head Regulation states:

- a. *Hak ulayat* and similar customary law community constructs (hereinafter called customary rights) are rights that according to customary law are enjoyed by a specified customary community to a specified territory that is the everyday environment of its members to exploit the profit of its natural resources, including land, in the aforementioned territory, for the benefit of their survival and daily needs, which are made clear by physical and spiritual relations of descent between the aforementioned customary law community and said territory.
- c. A customary law community is a group of people united by a customary law structure as equal members of that legal community through a communal place of residence through descent.

### Article 2(2) states:

*Hak ulayat* of customary law communities is still considered to exist if:

a. A group of people is encountered who still feel united through a customary law structure as equal members of a specified

<sup>53</sup> See the Annex to Law No. 11/2005 on Ratification of the International Convention on Economic, Social, and Cultural Rights: 'With reference to Article 1 of the International Covenant on Economic, Social and Cultural Rights, the Government of [the] Republic of Indonesia declares that, consistent with the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, and the relevant paragraph of the Vienna Declaration and Program of Action of 1993, the words "the right of self-determination" appearing in this article do not apply to a section of people within a sovereign independent state and cannot be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states.' See also http:// treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\_ no=IV-3&chapter=4&lang=en.

community, who recognise the rules of said community and apply these in daily life.

- b. Specified customary land is encountered which is the daily environment of the members of said law community and the area where the necessities for their daily lives are obtained.
- c. A customary law structure is encountered regarding the administration, authority and usage of the ulayat land this is in effect and observed by the members of said law community.

These provisions do not specifically regulate the government's obligation to inventory or recognise the existence of customary law communities. Consequently, in practice, regional governments neglect to fulfil such obligations for technical reasons (Sumardjono 2008: 171).

The Basic Agrarian Law establishes the status of customary land as a separate entity that stands alongside state land and privately owned land (by an individual or legal entity); by contrast, however, the Forestry Law - the prevailing instrument governing state forests - acknowledges customary forest, as long as it does not contradict national interests, while still considering it state forest (Safitri 2010). Therefore, as the protection and recognition of forest-dwelling customary community rights come under state forests, recognition of customary forest is extremely weak and dependent on the state's needs in that forest. Furthermore, as arrangements linked to the acknowledgement of customary forests in the Forestry Law do not oblige the government to issue decisions on customary forests if requirements for the existence of a customary forest are not fulfilled, claims for recognition of customary forest can be rejected.54

### 2.3.2 Tenure

### Carbon tenure

Issues relating to carbon tenure are covered by several regulations, in particular Articles 25 and 33 of Government Regulation No. 6/2007 on Forest Systems and the Formulation of Forest Management and Use, which states that carbon capture or sequestration is a form of use of a forest's environmental services.<sup>55</sup> From this regulation, it appears that those with carbon tenure are those who have the right over use of environmental services through carbon capture and/or sequestration efforts.<sup>56</sup>

In line with the principle of state control over state forests (discussed further in the next section), carbon tenure in state forests is limited to right of enterprise and does not entail right of ownership.<sup>57</sup> Nevertheless, as is the case with the use of forest products by extraction businesses, the benefits of this enterprise, in this case captured or sequestered carbon, can be sold to other parties.

Further arrangements on procedures for securing carbon capture and/or sequestration permits are provided in Ministry of Forestry Regulation No. P.36/Menhut-II/2009 on Procedures for Licensing of Commercial Use of Carbon Sequestration and/ or Storage in Production and Protected Forests. This regulation provides (Article 5) that those entitled to carbon tenure in areas subject to permits are those that: (1) hold forest timber concessions for natural, plantation or community plantation forests; (2) hold use permits for protection forests or community forests; or (3) are village forest managers. In areas not subject to permits, individuals, cooperatives and other businesses operating in agriculture, estate crops or forestry may also submit proposals for carbon capture and/or sequestration enterprises (Article 7).

As with other forest product use or extraction permits, business permits regulate the distribution of benefits from carbon capture and/or sequestration. Annex III of Ministry of Forestry Regulation No.

<sup>54</sup> See also the discussion on Government Regulation No. 21/1970 in the following section on 'Tenure and state forests'.

<sup>55</sup> These provisions were subsequently elaborated upon in three regulations directly related to REDD+: (1) P. 68/Menhut-II/2008 on the Establishment of Demonstration Activities for Reducing Carbon Emissions from Deforestation and Forest Degradation; (2) Ministry of Forestry Regulation No. 30/Menhut-II/2009 on Mechanisms for Reducing Emissions from Deforestation and Forest Degradation; and (3) Ministry of Forestry Regulation No. 36/Menhut-II/2009 on Permit Procedures for Carbon Sequestration and/or Storage Enterprises in Production Forests and Protection Forests.

<sup>56</sup> Articles 25 and 33 from Government Regulation No. 6/2007 explain that the use of environmental services in protection and production forests can include: (a) use of water flow services; (b) water use; (c) ecotourism; (d) biodiversity protection; (e) environmental safety and protection; or (f) carbon capture and/or sequestration.

<sup>57</sup> Tenure, according to Ostrom (1990), must at least cover rights to access, to withdraw the right from others, to manage and to exclude others from these activities.

P.36/Menhut-II/2009 states that the benefits of carbon capture and/or sequestration are to be distributed not only to the state (in the form of non-tax state revenue) (Article 17), but also to surrounding communities. It is not clear, however, whether this scheme will ultimately be implemented, because of questions raised about whether such a benefit-sharing scheme can be regulated by a ministerial decree rather than a higher government regulation and whether it should be issued by the Ministry of Finance or the Ministry of Forestry.

Customary communities' clear dependence on formal control schemes over projects recognised by the state restricts their opportunities to participate in available mechanisms for becoming carbon owners; for example, they are subject to decrees on the establishment of forest management units and on customary forest managers. As a consequence, they are currently unable to secure the relevant recognition because of the lack of technical rules for customary forest determination processes mandated by the Forestry Law.

Ministry of Forestry Regulation No. P.36/Menhut-II/2009 does contain arrangements for customary communities under a customary forest scheme. However, there are at least two problems in the distribution model established by this regulation in relation to local/customary community control over land. First, a thorough examination of forest allocation maps shows that almost all forest has been parcelled for other uses and the interests of other parties (Steni 2009). This means that the 70% benefit scheme for customary communities from customary forests is difficult to apply in practice. Second, many areas under IUPHHK-HA (permit for forest timber extraction from natural forest) and other permits conflict with community claims (Steni 2009). Applying formal legal logic, it is likely that it will mostly be the business people that have clear legal status under national law and hence not the customary communities - which have always struggled to articulate themselves and maintain their customary lands - that will secure the benefits.

Generally, existing tenure rules refer to legislation with minimal recognition of local or customary community rights. Thus, the potential involvement of customary/local communities in REDD+ planning, implementation and benefit sharing is likely to be much smaller than that of other actors.

### **Tenure and state forests**

In Indonesia, arrangements for forests are generally separate from those for land use (Moniaga 2007: 178). Forest land use is regulated by the Forestry Law, whereas areas outside forest regions come under the Basic Agrarian Law. Harmonisation of rules for the two land types is to occur within the RTRW.

As there are two different regimes, there are also two different approaches to acknowledging the rights of customary communities (see Dunlop 2009 for a comprehensive review on tenure and customary rights in Indonesia). In non-forest areas regulated under the Basic Agrarian Law, recognition of such rights is stronger – at least in legislation. Recognition of customary rights is not as strong in forestry legislation.

Under the Constitution, arrangements for both types of land are the same; that is, Article 33(3) of the 1945 Constitution authorises the state to control natural resources and use them for the benefit of the people. However, the individual laws interpret this authority differently. Article 2(2) of Basic Agrarian Law says Article 33 of the Constitution provides the state with the authority to:

- a. regulate and take care of the allocation, use, availability and maintenance of earth, water and space
- b. regulate and determine legal relationships between people and earth, water and space
- c. regulate and determine legal relationships between people and legal actions tied to earth, water and space.

Under the Basic Agrarian Law, the definition of 'controlled' by the state does not have the same meaning as 'owned' in civil law.<sup>58</sup> The state's right to control is the same right to regulate the three items listed in Article 2(2) of the Basic Agrarian Law. State authority based on the state's right to control these sources of wealth is conceptualised as public in nature, that is, it concerns the authority to regulate, but not the authority to control physically what is personal in nature (Harsono 2003: 233).

The Constitutional Court has also interpreted the state's right to control under Article 33(3) of the 1945 Constitution in several reviews of laws that refer to the provision. In its review of Law

<sup>58</sup> General explanation II/2 of the Basic Agrarian Law.

No. 20/2002 on Electric Power, the Constitutional Court stated that the words 'controlled by the state' should encompass the meaning of state control in a broader context, which is sourced and originates from the concept of the people's sovereignty over sources of wealth, including collective public ownership of these sources.<sup>59</sup>

However, the Basic Agrarian Law's interpretation of Article 33(3) of the 1945 Constitution has not been fully applied in the management of natural resources, including in the forestry sector. Since the original enactment of the Forestry Law (originally Law No. 5/1967), the application of the Basic Agrarian Law has been restricted to areas outside state forests, meaning it has no jurisdiction over the 70% of Indonesia's landmass constituting state forest (Moniaga 2007: 177). This restriction can be explained through three aspects. First is the consideration that the Forestry Law is lex specialis (specialist law) as opposed to the lex generalis (general law) Basic Agrarian Law. In accordance with the principle of *lex specialis derogat generalis*, specific laws prevail over more general laws. Second, the relationship between the Basic Agrarian Law and the Forestry Law is a continuation of the relationship between Agrarische Wet (Agraria Law) and Boschordonantie (Forestry Ordinance), which were introduced during the colonial era -Indonesia's current tenure structure is inseparable from past patterns of land and natural resources control.<sup>60</sup> Third, this dualism is linked to New Order politics, which prioritised economic growth (Moniaga 2007: 179).

This dualism leads to legal issues and two opposing viewpoints relating to customary land tenure in state forests. There are at least two fundamental issues in forests with traditional land rights: the issue of recognition of customary rights, and problems linked to the use of customary forest (Sumardjono 2008).

Despite the recognition of customary rights in the Basic Agrarian Law, since the enactment of Law No. 5/1967 on Forestry (replaced by Law No. 41/1999), questions have arisen on the existence of customary rights in forest regions. The Basic Agrarian Law recognises three entities in relation to land status: *tanah negara* (state land), *tanah hak* (privately owned land) and *tanah ulayat* (customary land), whereas the current Forestry Law recognises only two forest status entities (Article 5(1)): *hutan negara* (state forest)<sup>61</sup> and *hutan hak* (privately owned forest).<sup>62</sup> *Hutan adat* (customary forest) is considered state forest in a customary law region (Article 1(6)).

According to Harsono (2003: 200), the inclusion of customary community forests in the category of state forest does not negate the customary rights of those communities to secure benefits from those forests. Therefore, customary communities have the right to use and manage forests, but not to own them (Cotula and Mayers 2009: 42). In reality, when Government Regulation No. 21/1970 on Forest Concessions and Forest Product Extraction was passed as the implementing regulation for Law No. 5/1967 (the original Forestry Law), the rights of customary communities to use and manage forests based on their traditions became increasingly limited. Article 6 of Government Regulation No. 21/1970 states that 'the implementation of the rights of customary communities and their members to extract forest products based on customary law, if they still exist, should be kept in order so as not to disrupt forest utilisation'. Under the pretext of protecting public safety, the regulation froze community rights to extract forest products in concession areas where operations were taking place (Article 6(3)). If the government regulation definition of putting in order the implementation of customary community rights was related to the granting of forest concessions to companies on their customary land, then this approach contradicted the acknowledgement of customary community rights contained in the Basic Agrarian Law, particularly when it froze or negated a community's right to gather forest products on its customary land (Harsono 2003: 201).<sup>63</sup>

<sup>59</sup> Constitutional Court, Verdict No. 001/021/022/ PUU-I/2003, State Gazette No. 102/2004 p. 334.

<sup>60</sup> For a historical background to these patterns, see Contreras-Hermosilla and Fay (2005) or Kasim and Suhendar (1996).

<sup>61</sup> State forests are forests on land not subject to land rights (Article 1(4)).

<sup>62</sup> Privately owned forests are forests on land subject to land rights (Article 1(5)).

<sup>63</sup> During the New Order era, Presidential Instruction No. 1/1976 on Synchronisation of Agrarian Duties with Forestry, Mining, Transmigration, and Public Works included provisions on compensation for customary communities: '... if a required area of land is controlled by a customary community or individual by legitimate right, then the forest concession holder must pay compensation to the right holder, in order to request that right, by following procedures established under prevailing agrarian legislation.'

Although Law No. 41/1999 on Forestry, which replaced Law No. 5/1967, did include developments in policies regarding the relations between customary communities and forests, it remained half-hearted (Harsono 2003: 203). This is apparent in the way that its chapter on customary communities does not mention customary rights in its provisions or clarification. The Forestry Law does not refer to forests on customary land (tanah ulayat) as customary forests (hutan ulayat); rather, it states that hutan adat (customary forest)<sup>64</sup> constitutes a state forest. Consequently, the Forestry Law fails to recognise the existence of customary forest other than state forest or privately owned forest (hutan hak) (Soemardjono 2008: 172). However, in an apparent inconsistency, Article 67 of the Forestry Law provides for the existence of customary rights. If customary forests are not recognised as entities in their own right separate from state and privately owned forests, then arguably they need no further regulation (Soemardjono 2008: 173).

Customary forest schemes do not include any scope for the recognition of customary communities' rights over forests because of the absence of rules regulating procedures for registering customary forests. The Guguk customary community forest in Jambi, Sumatra, is a rare example of a customary forest being given legal recognition by the district head, albeit after a painfully long process. The Guguk customary community forest was established through Merangin District Head Decree No. 287/2003 on Establishing Bukit Tapanggang as Guguk Customary Community Forest, Sungai Manau Subdistrict, Merangin District (see also Steni 2009: 5–6).<sup>65</sup>

In a recent development, an Integrated Team (tasked with making changes in state forest allocation and function in the context of changes to RTRWPs) inventoried village and customary areas inside forests.<sup>66</sup> The team, set up by the Minister of Forestry under Article 19 of the Forestry Law, proposed that village and customary land be released from state forests. Its information suggests that 22.4–22.5 million ha of forest is either claimed as customary forest or claimed by customary communities, villages or hamlets (19 420 villages in 32 provinces).<sup>67</sup> At the time of writing, the Integrated Team's proposal was still awaiting approval from the DPR (House of Representatives), as required by Article 19 of the Forestry Law.<sup>68</sup>

# 2.4 Changes in state forest allocation and function

In forest regions, forest management, forest status, and changes to that status come under the authority of the central government (Article 4(2)(b) of the Forestry Law). Procedures for changes in state forest allocation and function are set out in Government Regulation No. 10/2010. This regulation states (Article 2) that changes in forest allocation and function are to be made to meet the demands of national development dynamics and the aspirations of society, that changes should be made considering optimisation of function distribution and sustainable benefits from the forest, and that the area of forest being retained must be sufficiently large and covering at least 30% of the region.

Government Regulation No. 10/2010 differentiates between change in allocation and change in function (Article 1(13) and (14)): change in allocation refers to a state forest no longer being a state forest; change in function refers to the function (e.g. production, protection, conservation) of part of a state forest, or an entire state forest, being changed to another function. Any change in state forest allocation or function must be preceded by integrated research conducted by competent government institutions with the Scientific Authority, in collaboration with other related parties (Articles 1(19), 2 and 5).In addition, where changes may have potentially important and far-reaching impacts and strategic significance, the government must consider societal

<sup>64</sup> *Hutan ulayat* and *hutan adat* both refer to customary forests, but the Forestry Law uses the term *adat*, not *ulayat*. *Ulayat* is usually used in Sumatra, whereas *adat* is used across Indonesia.

<sup>65</sup> Guguk Village Customary Forest: www.wg-tenure.org/ html/wartavw.php?id=50. The Guguk Village customary community received a CBFM (Community-Based Forest Management) award in 2006 from the Ministry of Forestry; also see http://www.dephut.go.id/index.php?q=id/node/2629.

<sup>66</sup> Personal communication with Hariadi Kartodihardjo (Bogor Agricultural University), 10 August 2010.

<sup>67</sup> Data obtained from BPS and Ministry of Forestry, 2007, as quoted by Hariadi Kartodihardjo in 'Efforts to resolve land use conflicts in state forests', paper presented at a seminar held by the Directorate General of Forestry Planology and the National Forestry Council, 9 August 2010.

<sup>68</sup> Josi Khatarina interview with Hariadi Kartodihardjo, 24 October 2010.

aspirations and secure approval from the DPR (Article 14).

Under Government Regulation No. 10/2010, changes in state forest allocation and function are made through mechanisms of partial change or through mechanisms of change for provinces (Article 6), with processes integrated into RTRWP (Provincial Spatial Development Plan) revision processes (Article 30(2)). 'Partial changes' in state forest allocation are conducted by exchanging limited production forests and permanent production forests with replacement land outside a state forest (i.e. land swaps) (Articles 7 and 10) or through a mechanism for releasing convertible production forests (Articles 1(16), 7 and 19). Such exchanges (for which replacement land must be provided) may take place to support permanent development interests outside the forestry sector that have to use state forests, to remove enclaves to facilitate state forest management, and to improve state forest boundaries (Article 11).

Land swaps can be an effective means of optimising degraded areas inside state forests by exchanging them for areas with good forest cover. That is, through land swaps, degraded land is allocated for non-forestry land uses, and forest ecosystems get replacement land with better forest functions. Theoretically, land swaps are more efficient and effective than rehabilitating degraded forest or clearing forested APL land for development activities. However, this regulation (No. 10/2010) does not specifically require either that the land swapped from inside a forest area be degraded or that the replacement land be in its natural state with the same ecosystems. Under poor management conditions, this mitigation opportunity may have the opposite effect, by creating opportunities for land swaps that actually encourage degradation of Indonesia's forests.

### 2.5 Forest-related conflicts

An analysis of reports by six national news media outlets (Kompas, Tempo, Bisnis Indonesia, Media Indonesia, the Indonesian Forest Business Association and Antara) and one local newspaper (Kaltim Post in East Kalimantan) reveals that the frequency of forest-related conflicts increased sharply following the fall of the New Order regime, especially during the transition period in 2000 (Wulan and Yasmi 2004). According to a World Bank report (2000), these conflicts were associated with people's discontent over the inequitable distribution of benefits and were associated with the social consequences of past (New Order) development patterns. In 2000, the incidence of forest-related conflicts increased 11-fold on the previous year (Wulan and Yasmi 2004). Of the 359 conflicts recorded at the national level, 39% occurred in HTI areas, 27% in HPH concessions and 34% in conservation areas (Wulan and Yasmi 2004). The frequency of forest-related conflicts during 1997– 2003 is shown in Figure 1.

Factors contributing to forest-related conflicts can be classified into five main categories: boundary disputes, timber theft, forest encroachment, environmental degradation, and changing land use. Of these, conflicts most frequently arose where parts of concession or protected areas overlapped community agricultural land, thus limiting communities' access to benefits from forests (World Bank 2000). Forest management conflicts also arose between the central and regional governments following decentralisation because of contradictory regional and central policies.

Conflicts related to forest and land use continue to occur (Yasmi *et al.* 2012). For example, Scale Up, a local NGO based in Riau, reported that in 2010 alone, conflicts between communities and forestryrelated companies arose in at least 42 locations across the province, over an area of more than 300 000 ha (Scale Up 2011). Most of these began before 2010, and nearly 70% occurred in production forests, 8% occurred in protection or conservation forests, and the remainder pertained to non-forestland.

Another example is that of a conflict in East Kalimantan between five villages of indigenous Dayak and a logging concession (Yasmi et al. 2012). In the early 1980s, a concession was granted to a company in an area that overlapped with community territory. The company did not employ any community members. It destroyed trees and the community graveyard. Under the centralised and authoritarian political system of that time, the company could operate without any resistance from the community. Struggles did not emerge until after the collapse of the Suharto regime in 1998. However, the conflict was not immediately resolved; the company refused community demands and tensions intensified. The community pressured and threatened the company, ultimately forcing it to halt its operations. Despite a series of negotiations involving



## Figure 1. Frequency of forest-related conflicts, 1997–2003

Source: Wulan et al. (2004)

local police, local government and traditional leaders, the conflict persisted. Only after two decades was the conflict resolved with the signing of an MoU on joint forest management with a benefit-sharing arrangement (Yasmi *et al.* 2012).

### Conflict resolution management in the past

Research by CIFOR and FWI in 2004 showed that there have been no comprehensive efforts directed towards resolving conflicts in the forestry sector. During the New Order period, forestry conflicts were resolved, to maintain stability and security, through force and/or village development programmes.

During the *Reformasi* period (post-1998), the hasty decentralisation process led to ambiguity, triggering latent conflicts and stimulating new ones. During this period, forestry sector conflict resolution tended to involve compensation payments by HPH/HTI concession companies. Such payments helped resolve conflicts to a certain extent because they eased communities' anger. However, this approach has failed to resolve the threat of latent conflicts arising from the root cause – the loss of communities' and/ or customary communities' rights (Wulan *et al.* 2004). Legal channels are still the least used means for resolving conflicts in the forestry sector because of communities' low levels of trust of the judicial system (Wulan *et al.* 2004).

# 3. The political economy of deforestation and forest degradation in Indonesia

The political economy of a country very much determines how that country manages its natural resources. Indonesia, as a developing country with abundant natural resources, has employed its natural riches, including forests, as a means of development. Consequently, discussions on deforestation and forest degradation in Indonesia are inseparable from Indonesia's political economic context. Where the previous chapters looked at the condition of forests and the causes of deforestation and forest degradation, this section discusses the political economic policies in Indonesia underlying these causes. To provide a complete picture, this section begins with an overview of Indonesia's political economic policies in forestry and other related fields during the Soekarno period (Independence-mid-1960s), New Order (mid-1960s-1998) and Reformasi (post-1998) periods. The subsequent section discusses political economic conditions and law enforcement in Indonesia, in relation to forestry. The chapter closes with a discussion of REDD+ in the current context of Indonesia's political economy.

# 3.1 History of deforestation and forest degradation in Indonesia

An examination of Indonesian political economic policies issued by the Soekarno, New Order and post-New Order (1998–present) governments can explain why deforestation and forest degradation continue to the present day. From the 1960s until 1982, logs were the main product, but during the period from 1982 to the early 1990s, the focus shifted to processing wood for the plywood industry. Since the 1990s, government forestry policy has focused on the pulp and paper industry.

### 1960s to late 1982

Indonesian government policy under President Soekarno was to make the forestry sector a provider of development funds with a target of US\$52.5 million a year for the sector. To support this target, the government issued various pieces of legislation, ranging from laws to ministerial decrees, granting itself the authority to manage forests and forest resources and to establish state companies. The Provisional People's Consultative Assembly (MPRS) gave its support to the government target by issuing an MPRS Decree (Kartodihardjo and Jhamtani 2006: 21–22). The Soekarno government, through its state-owned forestry company (Perhutani), worked with foreign companies, but bore losses of US\$10 million, because the policy was implemented without adequate knowledge of the value of forest resources (Sumitro *in* Barr *et al.* in Kartodihardjo and Jhamtani 2006).

In 1967, during the period of transition to the New Order, in consideration of the economic and developmental slump, the government issued Law No. 1/1967 on Foreign Investment. This law later became the legal basis for the New Order government's large-scale timber exploitation (Effendi and Dewi 2004: 3).

At the time the New Order government under President Suharto took over, Indonesia was experiencing an economic crisis with a 14% budget deficit, inflation at 635% (Hiariej 2005) and US\$2.1 billion in national debt (Chalmers and Hadiz 1997; see also Thee 2005). Consequently, the Suharto government turned to forests and other natural resources to generate capital for economic recovery. The era was characterised by the following: excessive large-scale timber exploitation through permits to support massive wood-processing industries; perception of natural production forests as renewable resources; use of large-scale permits as political economic instruments for development; foreign and domestic capital involvement in timber concessions; granting of timber enterprise permits through an application mechanism only; highly centralised timber enterprise licensing processes; monopolistic and corrupt practices; and emergence of forestry business conglomerates based on bureaucratic and commercial power (Effendi and Dewi 2004: 4).

During this era, the government issued various pieces of legislation legitimising the exploitation of natural resources by domestic and international companies without any consideration of the ecological or social impacts. For instance, the government issued Basic

Forestry Law No. 5/1967 as the foundation for the use of 143 million ha of forest - or almost threequarters of Indonesia's land area – by granting HPH concessions to large-scale investors who worked with the military, politicians and bureaucrats with close ties to President Suharto (Effendi and Dewi 2004). This New Order policy to open large-scale concessions was issued following the failure of small-scale logging concessions, which produced millions of cubic metres of very low-quality wood. Furthermore, supply times were unpredictable because the transport of timber out of forests was highly dependent on the rivers having enough water to be navigable. This made consumers, particularly Japanese companies, feel they were losing money (Obidzinski et al. 2006).

From 1967 to 1980, the government granted HPH concessions without tender procedures to 519 HPH companies for a total area of 53 million ha (Effendi and Dewi 2004). These companies would routinely exceed the logging allocations declared in their Annual Logging Schedules (RKT) and frequently cut down trees outside their concession areas (Effendi and Dewi 2004). In addition, groups of illegal loggers ran operations inside state forests and HPH concession areas. Several modi operandi were used in illegal logging, including extracting wood on the pretext of clearing the forest to establish HTIs, transmigration sites, estate crop plantations and/or roads, but without those developments actually taking place. To transport and distribute the wood, the use of incomplete, illegitimate or forged Timber Legitimacy Certificates was common (ICEL 2006: 17-22).

In 1968, the government reinforced the direction of its forestry policy with the enactment of Law No. 6/1968 on Domestic Investment stipulating that the origins of capital invested in forest enterprises would be subject to neither examination nor tax (Article 9). As time passed, the New Order political line became more monopolistic. Government Regulation No. 21/1970 on Forest Concession Rights and Forest Product Extraction Permits stipulated that forest concession (HPH) holders were obliged to have their own timber-processing industries or have links to such operations. However, this policy was not fully implemented in practice as almost all timber was exported to meet international demand. Accordingly, in 1980, the government issued a prohibition on wood exports, which allowed the

integration of Indonesia's upstream and downstream forestry sectors. In practice, 'monopoly rights' on upstream and downstream businesses were granted to conglomerates owned by cronies close to the power base (Effendi and Dewi 2004).

In addition, from 1975, with the issue of Presidential Decree No. 18/1975 on the HPH forest concession policy, the government had enforced the transfer of foreign company shares so that national companies would hold 51% in mixed ventures. At the time, the government set highly favourable conditions for businesses, which were required only to submit application forms provided by the Ministry of Forestry and identify areas of forest that they fancied.

### 1982 to the 1990s

With the door closed for exports and a policy to integrate upstream and downstream forestry sectors in place, Indonesia led the world plywood market in the 1980s and was in the top 10 plywood-producing countries. By the mid-1990s, 10 conglomerates controlled 228 HPHs, covering 27 million ha of production forest or 45% of the 60 million ha of forest allocated for HPHs. These conglomerates owned 48 of the 132 plywood companies with 40% of the national panel-wood production capacity (Effendi and Dewi 2004).

### 1990 to 1998

Approaching the 1990s, in addition to encouraging growth of the plywood industry, the government began to encourage the development of the pulp and paper industry. During this period, pulp production rose from 606 000 tonnes in 1988 to 6.1 million tonnes in 2001, and production in the paper industry rose from 1.2 million to 8.3 million tonnes. In 1999, the pulp and paper industry contributed US\$2.65 billion, more than 50% of Indonesia's total forest product exports (Bank Indonesia *in* Barr 2000).

Another New Order government project with a major impact on forests was the one-million-hectare peatland mega-project in Central Kalimantan to support Indonesia's food security. The project was developed without following proper planning principles and had major negative environmental, social and economic impacts. By the time the project was stopped in 1999 because it was deemed a failure, the government had already built a 4400-km network of canals, which reduced the peat swamps' capacity to absorb water; this led to increased forest fires during the dry season and floods in the rainy season. The canals also encouraged illegal logging because they provided a means to transport the timber out of the forest (Noor and Sarwani 2004).

### Post-1998 (Reformasi)

When President Suharto finally stepped down in May 1998, Indonesia was undergoing an economic and political crisis and sought assistance from other countries in the Consultative Group on Indonesia and international financial institutions such as the IMF and the World Bank for its recovery. This gave these other countries and international financial institutions the opportunity to impose their agendas, which had the effect of actually encouraging forest degradation. The IMF, for instance, in a 1998 Letter of Intent (LoI), required the renewal of forestry policies, including applying resources rent tax, allowing foreign investment to come freely, reducing export tax on logs by 10%, reducing tax on sawn timber by 10% and removing all forms of plywood marketing regulation. The World Bank also proposed conditions requiring the renewal of forestry policies and institutions such as introducing transparency in forestry development, formulating new policies and, in the long term, applying new forestry development paradigms: justice and democracy in forest resource management for the welfare of communities based on natural resources and ecosystem conservation (Kartodihardjo and Jhamtani 2006: 33). However, the political chaos at the time made it difficult for the government to carry out many of the initiatives detailed in these commitments. The Minister of Forestry at the time even stated that the targets in agreements with the international financial institutions were highly unrealistic (FWI/ GFW 2001). The technical recommendations from these institutions failed to resolve forestry problems, because the increase in forest degradation was due more to institutional weaknesses, such as unaligned legislation, weak organisational capacity of forestry organisations and conflicts of interest between government institutions and other parties (Kartodihardjo and Jhamtani 2006: 30-36, 87-99).

The *Reformasi* era gave rise to new threats to Indonesia's forests in the form of regional autonomy policies, which devolved authority for forest management to provincial and district governments (see Chapter 2 for a detailed discussion). However, this surrendering of authority was not accompanied by clear division of authority and responsibilities between central, provincial and district governments.

The devolution of forestry authority to regional heads without clear responsibilities between levels of government and without effective accountability mechanisms, including monitoring and law enforcement, encouraged increasingly rapid deforestation rates. As explained in Chapter 2, Government Regulation No. 6/1999 on Forest Enterprises and Extraction of Forest Products from Production Forests, Ministry of Forestry and Estate Crops Decree No. 310/Kpts-II/1999 on Guidelines for Issuing Forest Product Extraction Permits, Law No. 22/1999 on Regional Governance (often called the Regional Autonomy Law), and Ministry of Forestry Decree No. 5/2000 on Criteria and Standards for Forest Product Use Permits and Forest Product Extraction Permits in Natural Production Forests encouraged thousands of small-scale logging permits to be issued (Barr et al. 2006). As an example, in 1999–2002, Sintang District in West Kalimantan Province issued 944 HPHH (small-scale forest harvesting rights) permits.<sup>69</sup> In the granting of these permits and the logging activities they allowed, no considerations whatsoever were paid to forest conservation principles (Barr et al. 2006).

This situation encouraged regional governments to exploit their forest resources to increase their PAD, which remains the benchmark for gauging the success of regional administrations, and has resulted in high rates of deforestation. With the revocation of Ministry of Forestry and Estate Crops Decree No. 310/Kpts-II/1999 three years later, and the issue of Government Regulation No. 34/2002 on Forestry Systems and the Planning of the Management and Use of Forested Areas, deforestation in 2002– 2003 (Barr *et al.* 2006) caused by forestry sector mismanagement in the name of regional autonomy showed a tendency to fall.

However, it must also be noted that, since 1998, government policies and programmes geared towards SFM have emerged. For example, according to a policy brief issued by FORDA (2011), the

<sup>69</sup> Interview with Yuyun Kurniawan, forestry sector researcher from Yayasan Titian in West Kalimantan, 2009.

following forestry programmes have been initiated or implemented.

- Forest carbon conservation strategy
  - Establishment of protected forest/ conservation areas
  - By 2009, the area designated for conservation totalled 22.8 million ha, a substantial increase from the 1996 area of 9.67 million ha.
  - Development of improved silviculture and harvesting methods
  - Carbon sequestration increment strategy
    - National movement for forest and land rehabilitation (Gerhan), with 5 million ha of land targeted.
    - Development of HTI
    - The Ministry of Forestry reports that, by 2010, 3.65 million ha of HTI had been established.
    - Agroforestry
    - By the end of 2010, the Ministry of Forestry recorded more than 120 000 ha of agroforestry establishments.
    - Reforestation
    - The reforestation programme covers 708 400 ha, according to Ministry of Forestry data in 2011, with most of the trees planted in critical land not exploited but prioritised for soil conservation.
    - Community-based plantation forests (*hutan tanaman rakyat*; HTR)
    - HTRs are plantation forests established in production forest, developed by individuals or cooperatives. The aim of HTRs is to improve the potential and quality of production forest through silviculture techniques that will guarantee forest resource sustainability. Each community is usually provided with 5–15 ha per household. The target is to have 5.4 million ha of HTR by 2015.
    - Community forest (*hutan rakyat*)
    - Community forest is developed on private lands. There are approximately 2 million ha of community forests in Java.
    - Tree-planting movement
    - The Ministry of Forestry initiated the national planting programme in 2007, with a target of planting about 79 million trees

in the same year and 100 million in 2008. This programme has reportedly exceeded the target. In 2009, the policy of 'one man, one tree' was promoted; in 2010, the target was 1 billion trees.

# 3.2 Deforestation and forest degradation in the context of current political, economic and judicial policies

### 3.2.1 Political economic policy

Deforestation and forest degradation persist to this day. As with previous governments, the current administration continues to rely on natural resources to finance development. Timber is extracted from forests, and some forests are converted to timber plantations and estate crops to support the pulp and paper or palm oil industries, as well as their downstream industries, so that the government may secure earnings. The government also relies on revenue from the mining sector, with mining companies frequently operating in state forests and thus driving more deforestation and forest degradation.

The government policy of relying on natural resources to support development is apparent from the finance note for the 2010 state budget. The document shows that in 2006, natural resources contributed 73.9% of total non-tax state revenue (PNBP) (Table 15). Furthermore, natural resources contributed around 30% to gross domestic product (GDP) and the forestry sector contributed 2.4% (MoFa 2009b). Earnings from the natural resource sector are shown in Table 15.

As shown, forestry revenue fell by an average of 10.7% from 2005 to 2008. Nevertheless, in 2008, forestry revenue totalled IDR 2.3 trillion, an increase of IDR 0.2 trillion or 9.5% from the realised revenue for 2007, with the Reforestation Fund (DR)<sup>70</sup> generating IDR 1.6 trillion in 2008 as opposed to IDR 1.4 trillion the previous year. Revenue from other forestry sources (Forest Enterprise Concession Fees (IHPH) and Forest Resource Rent Provision (PSDH)) totalled IDR 0.1 trillion and IDR 0.6

<sup>70</sup> The reforestation fund (*Dana Reboisasi*) is a national forest fund financed by contributions paid by forest concessionaires; contributions are determining according to the volume of harvested timbers (Barr *et al.* 2010).

	2005	2006	2007	2008	2009	2010
	(Realised)	(Realised)	(Realised)	(Realised)	(Realised)	(APBN-P) <sup>a</sup>
Oil and gas revenue	103.8	158.1	124.8	211.6	125.7	151.7
Oil	72.8	125.1	93.6	169	90.0	112.5
Natural gas	30.9	32.9	31.2	42.6	35.7	39.2
Non-oil and gas revenue	6.7	9.4	8.1	12.8	13.2	13.0
Mining	3.2	6.8	5.9	9.5	10.4	9.7
Forestry	3.2	2.4	2.1	2.3	2.3	2.9
Fisheries	0.3	0.2	0.1	0.1	0.1	0.2
Geothermal power	0	0	0	0.9	0.4	0.2
I. Natural resources revenue	110.5	167.5	132.9	224.4	139	164.7
II. Government share of profits from state-owned enterprises	12.8	21.5	23.2	29.1	26.0	29.5
III. Other non-tax state earnings	23.6	38	56.9	63.3	53.8	43.5
IV. Public Service Agency (Badan Layanan Umum) earnings	0	0	2.1	3.7	8.4	9.5
Non-tax state revenue	146.9	227	215.1	320.5	227.2	247.2

Table 15. Non-tax state revenue and earnings from natural resources, 2005–2009 (trillion IDR)

a APBN-P: Anggaran Pendapatan dan Belanja Negara-Perubahan/State Income and Expenditure Budget-Changes

Source: Ministry of Finance (2011)

trillion, respectively, in 2008. In 2009, forestry revenue remained steady at IDR 2.3 trillion. In comparison, data released by the National Forestry Council show that in 2008, the forestry sector contributed only 0.99% of GDP or around IDR 16.848 billion (DKN 2009).

It is worth noting that, despite official revenue from this sector contributing only 2.4% of GDP (MoFa 2003), earnings from other sectors that depend on the forestry sector, such as the pulp and paper industry or mines and plantations in forest areas, are considerable. Export earnings from the pulp and paper industry, for instance, were US\$4.1 billion in 2010 or IDR 36.9 trillion (BI 2012).

The state continues to intensify efforts to boost mining sector revenue even though this comes at the expense of forests. Revenue from mining increased by an average of 53.7% a year from 2005 to 2008. In 2008, it reached IDR 9.5 trillion, an increase of IDR 3.6 trillion or 61.8% on 2007. The main factor driving this increase was greater production of major mining commodities (see Chapter 1) and its implications for forests.

High market demand encouraged the government to continue to expand monoculture estate crops. As a result, estate crop sector production increased from year to year. Rubber production, for instance, rose from 332 570 tonnes in 1998 to 613 487 tonnes in 2008. Palm oil experienced a similarly significant rise; in 1998, Indonesian palm oil production was 4 585 846 tonnes, reaching 11 623 822 tonnes in 2008, while palms produced 917 169 seeds in 1998, rising to 2 646 577 in 2008 (also see Table 8) (BPS 2010a). According to Kartodihardjo and Jhamtani (2006), the monoculture commodity concept is indicative of the Indonesian government's adherence to a sectoral approach. That is, commodities that were selling well were chosen to dominate production processes and thus had to be produced in accordance with certain volume, quality and time specifications. Consequently, those implementing the policy were willing to use all means available to alter natural landscapes and their biodiversity, and change land

use allocation to produce in-demand commodities (Kartodihardjo and Jhamtani 2006).

Dependence on natural resources has given rise to policies that encourage investment and activities in sectors linked to natural resources. Following are some such policies.

- 1. Tax breaks. In 2008, the government issued a legal instrument granting tax breaks for investors in certain fields (including forestry) and in certain regions: Government Regulation No. 1/2007, which was revised by Government Regulation No. 62/2008 on Amendments to Government Regulation No. 1/2007 on Income Tax Facilities for Investment in Certain Businesses in Particular Regions. The regulation (Article 2) provides 30% tax breaks on net earnings from the amount invested for six years, or 5% each year. The Minister of Industry announced in 2009 that the regulation would be revised to include forest products, cement, foods, farming produce, pulp and paper, chemicals, shipyards and metals (Bisnis Indonesia 2009).
- 2. Mining permits in protection forests. In 2008, the government issued Government Regulation No. 2/2008 on Types and Tariffs on Non-Tax State Revenue (PNBP) Originating from State Forests for Development Interests Outside Forestry, which included the use of protection forest for open-cast mining. Permitting open-cast mining in protection forests reflects a clear tendency to prioritise economic interests over environmental and ecological conservation concerns.
- 3. Development of food estates and energy estates. Government Regulation No. 18/2010 on Crop Cultivation Enterprises provides for food estate regions; integrated food-production zones covering agriculture, estate crops and livestock in large, flat regions are granted fiscal and nonfiscal concessions (special economic regions). As a first step, the government established Merauke District as a potential food estate development region because it has 1.6 million ha of flat land (Merauke Food and Energy Estate, or MIFEE; Setiawan 2010). However, these policies are dubious as pure food security policies, bearing in mind that almost half of the areas given concessions are for HTI (Obidzinski et al. 2012). This government regulation allows investors, including foreign investors, to invest in and

control up to 10 000 ha for a 35-year period, with the possibility of a first extension of a further 35 years and a second of 25 years. It further allows for the government to grant fiscal incentives for infrastructure development schemes included in the investment cost, income tax breaks, tax holidays, reduced development tax, regional tax/retribution breaks and exemption from value-added tax, as well as customs and excise incentives such as deferment of import duties, exemption from tariffs and lower import duties. Nonfiscal incentives include simplified permit and immigration processes.

- 4. Biofuel development. This programme was launched in 2006 with the release of Presidential Instruction No. 1/2006 on the Provision and Use of Biofuels as Alternative Fuels. To implement the programme, the government set up the National Biofuels Team. The biofuel programme was welcomed by businesses, which showed their interest in investing in the sector in oil palm, maize, cassava, sugarcane and castor oil. However, the programme has not run as quickly as expected, partly because of unsupportive market incentives. For example, the price of biofuel in the domestic market cannot compete with palm oil in the form of cooking oil.<sup>71</sup>
- 5. Clearing land for oil palm. To support the biofuel development programme and because of relatively high CPO prices on the world market, in 2007 the Minister of Agriculture issued Regulation No. 26/Permentan/OT.140/2/2007, which states that twice the usual 100 000 ha of land could be allocated for oil palm estates in Papua Province (Guerin 2007). According to one report, Papuan community land could even be leased for 35 years for IDR 15 000-450 000 per hectare (EIA/Telapak 2009). This Minister of Agriculture regulation was followed by Ministry of Forestry Decree No. P.22/Menhut-II/2009, which provides the legal basis for oil palm companies to own up to 100 000 ha or 200 000 ha in Papua (AFP 2008). The very low rents and compensation have led to problems of fairness and threatened the livelihoods of communities to whose forests the decrees applied. Evidence of

<sup>71</sup> Personal communication with oil palm industry practitioner, October 2010.

this is the amount of the opportunity costs lost for land 'pawned' as oil palm estate for 35 years.

It is apparent from this analysis of the policy environment that the government continues to rely on the exploitation of natural resources for revenue. Although the sectors do not appear directly linked, estate crops and mining depend on, and affect the condition of, forests. Consequently, it has frequently been proposed that earnings from these two sectors be calculated as forestry sector contributions.

### Table 16. Cases of forestry crime registered with the Ministry of Forestry, 2005–2009

Year	Cases brought to court	Verdict reached	Trial process ongoing
2005	949	331	373
2006	2 034	371	1 199
2007	685	202	364
2008	316	62	163
2009	243	61	109

Source: Summary of cases registered with the Ministry of Forestry (2010), unpublished

### 3.2.2 Law enforcement

Government policy is not supported by adequate law enforcement. Official records of economic benefits derived from the exploitation of forest resources show that a significant portion is often embezzled, manipulated or lost as a result of illegal practices. Estimates of losses from these practices vary greatly, however. M.S. Kaban, a former forestry minister, once said state losses from illegal logging in the forestry sector totalled IDR 30 trillion a year, or around IDR 2.5 trillion a month. Indonesia Corruption Watch (ICW) estimated state losses resulting from corruption in the forestry sector between 2003 and 2008 to be around IDR 14.13 trillion.<sup>72</sup> Corruption in permit issuance processes is a major contributor to this huge sum. Corruption takes several forms: giving bribes to secure recommendation letters from district offices, district heads or mayors and provincial offices to submit provisional concession permits; including 'operational expenditure' for field supervisors for management plans and cruising reports (LHC) or determining wood stocks, which may include unexplained 'entertainment' costs; and paying bribes to secure documents for routine operations (see also Chapter 1) (Harwell and Blundell 2009).

Although laws on forestry crime are in place, the government cannot fully enforce them. Ministry of Forestry data for 2005–2009 on registered cases involving illegal logging, encroachment, flora and fauna theft, illegal mining and burning provide evidence of this shortcoming: every year, more cases are still awaiting trial or still in the trial process than have reached verdicts (Table 16). This shows that bringing the perpetrators of these crimes to justice is not an easy task.

ICW data provide a reference for reviewing shortcomings in handling cases that go to court. According to ICW, of 205 verdicts during 2005-2008, only 17.24% resulted in the mastermind being found guilty and sentenced; overall, 137 (66.83%) defendants were found not guilty, 44 (21.46%) were sentenced to a jail term of less than 1 year, 14 (6.83%) received a jail term of 1-2 years, and 10 (4.88%) were sentenced to more than 2 years.<sup>73</sup> The Attorney General's 2008 annual report showed that 92 cases of illegal logging had reached sentencing following appeal, with sentences of less than 1 year in 24 cases, 1-2 years in 19 cases, 3-5 years in five cases, 6–10 years in eight cases and more than 10 years in no cases. The defendant was released without sentence in 36 cases. No defendants were sentenced to life imprisonment or death. Even with these sentencing rates, in reality, the masterminds behind illegal logging are rarely brought to court, because the Forestry Law contains numerous loopholes that allow the main perpetrators behind illegal logging to escape justice. Sentences that are actually handed down are lenient and thus create no deterrent at all. The numbers recorded in the REDD+ National Strategy September 23, 2010 draft report were higher, as shown in Figure 2.

The low numbers of prosecutions and guilty verdicts indicate that the Forestry Law, as the main legal

<sup>72</sup> www.antikorupsi.org/antikorupsi/?q=content/16595/ kpk-harus-mempimpin-pemberantasan-korupsi-dan-mafiakehutanan.

<sup>73</sup> Indonesian Corruption Watch (ICW), 2008. KPK harus memimpin pemberantasan korupsi dan mafia kehutanan; http://m.antikorupsi.org/?q=content/16595/kpk-harusmempimpin-pemberantasan-korupsi-dan-mafia-kehutanan.



Figure 2. Court verdicts in forestry cases Source: Bappenas 2010b

apparatus for managing forests, contains weaknesses in its implementation, quite apart from factors such as the integrity and morality of the law enforcers themselves. The penalties for violations of the Forestry Law do not serve as effective deterrents<sup>74</sup> for perpetrators and send the wrong message to the public, resulting in frequent violations of laws pertaining to state forests.

Forestry crime law enforcement is inadequate because the authorities either have insufficient knowledge of laws other than the Forestry Law, or are reluctant to apply them, even though laws such as the Anti-Money Laundering Law, the Anti-Corruption Law and the Environmental Management and Protection Law could be used to bring the perpetrators of forestry crime to justice (ICEL 2006).

The government is currently making efforts to improve law enforcement performance in the forestry sector. The KPK recently successfully used the Anti-Corruption Law in a high-profile case involving abuse of authority in granting forest concessions. In that case, a district head in Riau Province was found guilty of corruption in granting forest concessions in contravention of regulations; he was sentenced to 11 years in prison and fined IDR 500 million (Tempo 2008). Similarly, the KPK arrested another district head, also in Riau Province, for corruption associated with the granting of forestry permits (Kompas 2011b).

Even the highest levels of government have acknowledged there are judicial mafia practices in illegal logging; therefore, in 2009, President Yudhoyono set up the Anti Judicial Mafia Task Force (Satuan Tugas Pemberantasan Mafia Hukum, or Satgas PMH), entrusting it with the eradication of such practices. The Satgas PMH is still in the process of tracing and verifying complaints from the public. Judicial mafia practices themselves are difficult to prove, despite their indications being felt very strongly.

Notably, there are signs of a shift towards improved law enforcement policies in the forestry sector. A recent initiative came from the Minister of Forestry, who set up a joint team after visiting East Kalimantan and seeing for himself the level of forest destruction in the region. The joint team is made up of representatives from the Ministry of Forestry, prosecutors, the police, the KPK and Satgas PMH (Detiknews 2010). At the time of this visit, the minister also announced that there were at least 160 cases of forestry crime – unlicensed clearing of forest for estates and mining – awaiting legal proceedings (Kompas 2010f).

As a follow up, the Ministry of Forestry and Satgas PMH formed a working group (POKJA) comprising representatives from the Ministry of Forestry,

<sup>74</sup> There are two types of deterrence effect: general deterrence and specific deterrence. General deterrence emphasises deterrents that can be 'shown' to the public in the hope that no one else will do the same thing, thus preventing repetition of a crime. Specific deterrence, by contrast, stresses the deterrent received by the perpetrator in the hope that he or she will not commit crimes again in the future (Keel 2010).

Satgas PMH and the President's Working Unit for Development Supervision and Control (UKP4), tasked with preparing ministerial meetings to discuss the extent of violations in state forests and propose comprehensive solutions.<sup>75</sup> Specifically, the POKJA team is tasked with studying and proposing solutions to issues in one province (a modelling approach) and identifying the policy changes that have led to such violations. The POKJA was to finish its duties at the end of November 2010. The plan was for the POKJA's recommendations to become a Cabinet programme, the implementation of which would be monitored by UKP4, which houses the REDD+ Task Force (see Chapter 4).

Furthermore, the KPK reviewed the Ministry of Forestry's regulations and policies to assess whether they contain provisions that provide loopholes that allow corruption to take place. Their findings suggest that some forestry policies contribute to weak legal certainty in forest areas (KPK 2010a). Similarly, the KPK's review of the planning and management of forests within the ministry's Directorate General of Planology identified several areas that could facilitate corruption because of uncertainty in rights and investment, a weak regulatory framework, and lack of management at the ground level (KPK 2010a, 2010b).

### 3.3 REDD+ in the context of Indonesia's political economy and law enforcement

In view of the direction of development policy in Indonesia, REDD+ should be applied extremely cautiously and critically. The high market demand for forestry, estate crop and mining commodities will greatly influence the direction of political and economic policies, which tend to be exploitative of natural resources. Nevertheless, it is understandable if the government continues to rely on earnings from natural resources sectors, given that Indonesia is still in the development stage. In this context, the use of natural resources as a source of development funding should be carried out as wisely as possible, with natural resource exploitation being based on conservation principles and aligned with protection efforts. Many parties – including the Government of Indonesia – feel that REDD+ is a potentially effective way to protect forests and reduce the impacts of climate change. Optimists feel that, as a new mechanism, REDD+ is worth trying, as Indonesia has vast areas of forest and will reap huge benefits; that is, REDD+ could not only help save forests, but also help Indonesia secure financial benefits from carbon trading. In this view, REDD+ constitutes an option for providing a source of development funding without destroying forests.

However, REDD+ has its sceptics too, who have strong arguments. Such scepticism stems from the persistence of the numerous forestry issues in Indonesia. It is not clear how REDD+ can resolve these issues: there are still many overlapping regulations; permit processes and forest management in general are far from being transparent; there are high levels of corruption and collusion; and forestry law enforcement is inadequate (Dermawan *et al.* 2011).

Nevertheless, the progress of the National REDD+ Strategy, whose contributors are striving to address fundamental problems and create a distance from 'business as usual', and the evidence of the government's commitment in establishing a REDD+ Task Force under the UKP4, are contributing to an atmosphere positive towards REDD+.

Another issue influencing the debate on whether REDD+ should be introduced is that of equity between high-emitter and low-emitter countries. Several parties, among them NGOs, civil society organisations and individuals in government institutions, feel REDD+ will be ineffective in mitigating climate change if high-emitter countries fail to lower their emission levels. This line of thinking holds that it is unfair for forest-owning countries to be obliged to maintain their forests (a source of development funds) to absorb carbon while high-emitter countries can continue to emit and continue their own development. In this debate, the issue of who will benefit most from REDD+ comes to the fore: will it be developed countries, which are generally high emitters, or forest-owning countries such as Indonesia?

Justice issues also arise in terms of who will receive the money from carbon trading under REDD+ schemes: will it be the government, or the businesses

<sup>75</sup> Ministerial Decree No. 478/Menhut-II/2010.

running the REDD+ programmes? Following this is the issue of benefit sharing, not only in financial terms, but also in terms of management and use rights encompassing REDD+ project developers and forest-dwelling communities who depend on forests for their livelihoods.

Bearing in mind the potential benefits and losses that could arise from REDD+, introduction of

the mechanism in Indonesia should be treated very cautiously. In the context of an economy that continues to rely on natural resources as a source of funding for development, a political environment that still requires improvement with regard to good governance, and a justice system that features ineffective and corrupt law enforcement, in-depth studies, caution and wisdom are essential.

# **4. The REDD+ policy environment** Actors, policy events and policy processes

# 4.1 The broader climate change policy context

In the lead-up to UNFCCC COP 13 in Bali in 2007, Indonesia launched a National Action Plan (Rencana Aksi Nasional; RAN), which serves as a reference for all sectors in preparing policies related to climate change. The action plan covers activities for climate change adaptation and mitigation in several sectors (forestry, agriculture, land conversion and energy). As the action plan is a working document, the government will evaluate it continuously to improve its effectiveness (MoE 2007a: 18).

However, the action plan is not the only policy document in the context of climate change in Indonesia. In December 2007, the Indonesian National Development Planning Agency (Badan Perencanaan Pembangunan Nasional; Bappenas) released 'The national development plan: Indonesia's response to climate change', which is often referred to as the 'Yellow Book' (*Buku Kuning*). This policy document, revised in July 2008, aimed to enhance and support the implementation of the Medium-term National Development Plan (RPJMN) for 2004–2009 in light of climate change, and provide input on the plan for 2010–2014 (Bappenas 2009b: 2).

Subsequently, in December 2009, in collaboration with various sectoral institutions and experts/ academics, Bappenas developed the Indonesian Climate Change Sectoral Roadmap (ICCSR), which aimed to elaborate on the two documents above and accelerate the implementation of related sectors' programmes for addressing climate change. The ICCSR has a 20-year timeframe (2010–2029), divided into four implementation phases, and focuses on the 2010–2014 RPJMN (Bappenas 2009b). In the ICCSR, mitigation is perceived as involving five sectors – energy, industry, forestry, transport and waste management – and adaptation involves four sectors – agriculture, marine and fisheries, water resources and health.

The ICCSR will be included in the national planning scheme through the 2010 RPJMN, and will become

an operational document through the national state budget (APBN). At the regional level, the ICCSR will be included in regional planning documents (RPJMD) derived from the RPJMN, following regional risk assessments, and will eventually become operational APBDs (Bappenas 2010a; Figure 3 and Figure 4).

### 4.1.1 Mitigation programmes

Indonesia has voluntarily committed to mitigating climate change by reducing its GHG emissions by 26% by 2020 and 41% by 2050 (MoE 2009). This commitment was first announced by President Yudhoyono during the G20 meeting on 25 September 2009. In the run-up to UNFCCC COP 15 in Copenhagen in 2009, the Ministry for Environment issued a Second National Communication (SNC) as mandated in Article 12.1 of the UNFCCC.<sup>76</sup> Through this SNC, the Government of Indonesia reaffirmed its commitment to reducing emissions in line with the President's declaration. The SNC is also intended as a medium for reporting information on emissions and GHG reductions, and for detailing measures for implementing the convention. Included in the document are measures the government planned to take to reduce emissions in meeting its commitment. The Indonesian submission to UNFCCC following UNFCCC COP 15 in Copenhagen, dated 19 January 2010, reiterated these measures.

Although Indonesia's emission reduction target, as announced by the President in 2009, presents Indonesia as a pioneer in climate change mitigation, the commitment came as a surprise to many parties in Indonesia, who see it as creating considerable responsibility and an onerous mandate, particularly for policymakers and relevant sectors.

The target set by the President will be calculated based on a 'business as usual' scenario, under which Indonesia's emissions are projected to reach 2.95 Gt

<sup>76</sup> Each UNFCCC signatory state is obliged to establish a National Communication, as mandated by Article 12.1 of the UNFCCC.



### Figure 3. Links between the Climate Change Roadmap and development planning

Note:				
RPJPN:	Rencana Pembangunan Jangka Panjang Nasional (Long-term National Development Plan)			
RPJMN:	Rencana Pembangunan Jangka Menengah Nasional (Medium-term National Development Plan)			
RKP:	Rencana Kerja Pemerintah (Government Work Plan)			
APBN:	Anggaran Pendapatan dan Belanja Negara (National State Budget)			
RPJPD:	Rencana Pembangunan Jangka Panjang Daerah (Long-term Regional Development Plan)			
RPJMD:	Rencana Pembangunan Jangka Menengah Daerah (Medium-term Regional Development Plan)			
RKPD:	Rencana Kerja Pemerintah Daerah (Regional Government Work Plan)			
APBD:	Anggaran Pendapatan dan Belanja Daerah (Regional Budget)			
RENSTRA SKPD:	Rencana Strategis Satuan Kerja Pemerintah Daerah (Regional Government Work Unit Strategic Plan)			
RENJA SKPD:	Rencana Kerja Satuan Kerja Pemerintah Daerah (Regional Government Work Unit Work Plan)			
RENSTRA K/L:	Rencana Strategis Kementerian/Lembaga (Ministerial/Institutional Strategic Plan)			
RENJA K/L:	Rencana Kerja Kementerian/Lembaga (Ministerial/Institutional Work Plan)			
Source: Bappenas (2009b: 3)				



Figure 4. Links between the Climate Change Roadmap and national policy

Note: RPJM: Rencana Pembangunan Jangka Menengah (Mid Term Development Plan), RAN-GRK: Rencana Aksi Nasional-Gas Rumah Kaca (National Action Plan – Greenhouse Gases), ICCTF: Indonesia Climate Change Trust Fund

Source: Ministry of Environment (2009)

by 2020 (MoE 2009). Based on this projection, of the 26% emission reduction target, the forestry sector is responsible for 14%, with the remaining 12% the responsibility of other sectors (MoE 2009).

Discussions on baselines are ongoing. Furthermore, the priorities of government institutions differ with regard to which sectors to target for emission reductions. According to the Bappenas ICCSR, the sectors prioritised for mitigation are energy, industry, forestry, transport and waste management. By contrast, the SNC prioritises energy, forestry, agriculture (rice farming and livestock) and waste management. A comparison of the two documents shows that the ICCSR provides more detailed guidelines for mitigation measures. The two documents were developed by different institutions using different processes, and each has a different function: the ICCSR to complement the RPJM, and the SNC as a reporting mechanism to the UNFCCC.

Government energy and forestry sector mitigation efforts carried out in reference to the SNC and having a direct impact on REDD+ are listed in the following discussion. The SNC serves as a reference, because it contains reports on completed and ongoing measures undertaken by Indonesia in relation to climate change mitigation and adaptation.

### Energy

The Ministry of Energy and Mineral Resources has set out two strategies for ensuring domestic energy supply: energy reserves without energy conservation ('business as usual') and energy reserves with energy conservation (National Energy Conservation Plan/Rencana Induk Konservasi Energi Nasional; RIKEN). Both scenarios are laid out in the national energy management blueprint (2006) and energy outlook (2006–2030). The national energy policy has its foundation in Presidential Decree No. 5/2006 on National Energy Policy.

Several energy sector activities are related either directly or indirectly to the forestry sector. In the SNC, it is apparent that coal remains the government's choice for electricity generation, despite it stating that coal will be used as raw material through fluidised-bed coal combustion.<sup>77</sup> The choice to use coal will affect not only the resulting emissions, but also the existence of forests as carbon sinks. The use of fluidised-bed coal combustion only addresses emission reductions from burning coal; it fails to address the problems of environmental

<sup>77</sup> This method processes coal through gasification and evaporation to reduce emissions from burning coal.

degradation and deforestation resulting from coal mining in state forest areas (Greenpeace 2008).

The government is also planning a biofuel expansion programme for private vehicles, because the use of biofuels as an alternative fuel is considered a means of reducing emissions from vehicles (Prihandana 2008: 34). However, biofuel production requires the cultivation of commodities used as feedstock for biofuels, such as oil palm, corn and jatropha. Consequently, meeting the increasing demand for biofuel will require the allocation of more land for feedstock production – and some of the land the Indonesian government has allocated for biofuel expansion is inside state forest areas (e.g. as discussed earlier, much of the land for oil palm estate expansion is located within such areas). Seen from this viewpoint, biofuel production will have a negative impact on the sustainability of forests and forest ecosystems.

Of the mitigation choices available, the government has not developed a renewable energy option. Renewable energy (i.e. solar and wind energy) are said to have huge potential in Indonesia (Greenpeace 2009), but it is too early to gauge their success there. Plans contained in the 2006–2010 national energy management blueprint stated that solar energy would be developed in 2010 with an 80 MW capacity at an investment cost of US\$329 million. Wind farm development was planned to begin in 2016 with cumulative power of 0.2 GW and an investment cost of US\$316 million. It appears, however, that these plans will not be realised anytime soon. One government energy sector policy that is in line with climate change mitigation is the development of geothermal energy.

### Forestry

The SNC contains projections of changes in carbon stock from biomass content from 1990 to 2030. These projections were based on historical trends for carbon stock and biomass content as well as land rehabilitation (Boer 2001 in MoE 2009). According to these estimates, in the absence of mitigation efforts, carbon stock will continue to fall until 2030. Raising carbon stock to 1990 levels might be achieved through two means: (1) land rehabilitation through reforestation, afforestation, planting production forest and biomass energy planting; and (2) restoration of production forest through enrichment planting. Also included in the SNC are plans to reduce illegal logging by 43% and shifting agriculture by 17% from historical levels (i.e. 1990) (MoE 2009). Table 17 shows the government's programmes for the forestry sector for achieving its emission reduction target.

Table 17 illustrates that, to reduce emissions, the government needs to emphasise conservation and planting activities – including HTIs (industrial timber plantations) and HTR (community plantation forests) – by prioritising SFM mechanisms in managing forests. Two aspects in particular should be noted here. The first point is management: given the slow growth of HTIs to date (see Chapter 1), the notion of relying on this sector for emission reductions raises issues in itself. Second, as research has shown, preventing deforestation in the first place is a more effective means for reducing emissions; this includes maintaining forest cover in secondary forests and non-state forest areas (Verchot *et al.* 2010).

The Government of Indonesia, through the Ministry of Forestry, is receiving international support in improving forest management. Bilateral projects in place include the following: the Forest Governance and Multistakeholder Forestry Programme (2007–2010), with the British Government; the Forestry-Climate Change Project in Central and East Kalimantan (2009–2016); Technical Cooperation Supporting Implementation of the Ministry of Forestry's Strategic Plan (2008–2011); technical cooperation in implementing the Heart of Borneo Initiative (Malaysia, Indonesia, Brunei Darussalam) (2008–2011); the Kalimantan Forests and Climate Partnership (KFCP) (2009–2012), with Australia; and the Korea-Indonesia Joint Programme on Adaptation and Mitigation of Climate Change in Forestry through A/R CDM and other Related Mechanisms (2008-2012).

As of June 2012, some of these programmes had been completed or were underway; for example, the KFCP project in Central Kalimantan is preparing infrastructure for REDD+ and is well advanced in community engagement, and the UN-REDD programme (see Section 4.2.2) had selected Central Sulawesi as its pilot province. In February 2011, the Governor of Central Sulawesi established a working group on REDD+. As of the last quarter of 2011, the process of preparing Central Sulawesi for REDD+

Programme	۔ Cumulative area in million ha (CO, captured/sequestered in million ton/ha)				
	2007–2009	2010-2014	2014–2020	2021-2025	2025–2030
Sink enhancement					
Forest plantation					
HTI (Hutan	3.6	7.5	8.4	9.3	9.7
Tanaman Industri)	(105.5)	(219.75)	(246.12)	(272.8)	(284.2)
HTR (Hutan	3.6	5.6	7.3	9.0	9.8
Tanaman Rakyat)	(105.5)	(164.1)	(213.9)	(263.7)	(287.1)
HR (Hutan Rakyat)	2.0	4.6	6.3	8	8
	(58.6)	(134.8)	(184.6)	(234.4)	(234.4)
Gerhan (Gerakan rehabilitasi lahan)	1.68				
Intensive silviculture	0.25	0.75	1.50	2.00	2.50
Planting of 1 million trees	0.003	0.1	0.2	0.3	0.4
Forest rehabilitation					
Protection forest	0.5	1.6	3.3	5.0	7.6
	(373.5)	(2 347.2)	(4 841.1)	(7 335.0)	(11 149.2)
Conservation	0.5	2.5	3.8	5.0	6.3
forest	(733.5)	(3 667.5)	(5 574.6)	(7 335.0)	(9 242.1)
<b>Emission reduction</b>	is:				
Management and i	improvement of na	atural forest			
Production	23.12	23.23	23.12	23.23	23.23
forest (HPH)	(3.39)	(3.39)	(3.39)	(3.39)	(3.39)
Protection forest	13.39	15.15	17.27	19.39	21.77
	(19 643.1)	(22 225.0)	(25 335.1)	(28 445.1)	(31 936.5)
Conservation	10.24	16.16	18.28	20.39	20.64
forest	(15 022.1)	(23 706.7)	(26 816.7)	(29 912.1)	(30 278.8)

Table 17.	Planned Indonesian	government forestry	/ programmes as o	f 2009
		ge.e	, p. e g	. =

Source: MOE 2009

demonstration was ongoing; the process includes preparing for REDD+ policy; monitoring, reporting and verification (MRV); and communicating REDD+ (*sosialisasi*) to communities, as well as establishing the criteria and indicators for the selection of the district (for the pilot project).<sup>78</sup>

Another ongoing collaboration receiving broad attention, but not mentioned in the SNC, is the REDD+ preparedness programme under the Letter of Intent (LoI) between the governments of Indonesia and Norway. Under the plan agreed by the two countries, Norway pledges to support Indonesia's efforts to reduce emissions from the forestry sector through REDD+ with funds of US\$1 billion. However, this assistance will be based on performance evaluations: Indonesia must demonstrate effectiveness in reducing deforestation and meet other conditions for Norway to provide support.

As noted above, the SNC reports not only on actions Indonesia has already taken, but also on activities it has planned, as shown in the matrix above

<sup>78</sup> Personal communication between Ida Aju P. Resosudarmo and Ngakan Putu Oka , Hasanuddin University (UNHAS), 13 October 2011.

(Table 17). As most of these plans are ongoing, their success has yet to be gauged officially. It should be noted, however, that no implementation strategies are apparent for these plans. Although such activities recur in Ministry of Forestry plans, their potential or real success in reducing deforestation rates and restoring forest is debatable.<sup>79</sup> Strategies that address the obstacles arising in realising these plans must be developed.

### Agriculture

The agriculture sector contributed 80 179 Gg of greenhouse gases in 2005, an increase on 2004 (77 863 Gg) (MoE 2009). These figures are much lower than those for the forestry sector, as a combination of LUCF (land use change and forestry) and peat fires contributed 1 057 280 Gg of GHG. The main contributors to emissions from agriculture are rice cultivation and livestock (methane gas). The government has developed several mitigation scenarios for agriculture, six of which relate to rice cultivation: (1) intermittent irrigation; (2) fertiliser supplement; (3) use of low-methane rice varieties; (4) a combination of 1 and 2; (5) a combination of 1, 2 and 3; and (6) scenario 5 with the addition of applying silica (MoE 2009: 31).

Scenarios for mitigation in the livestock sector include improving fodder quality, giving supplements to livestock, introducing long-term breeding programmes and bioenergy development through utilisation of the methane gas. The bioenergy option is in line with the government's alternative energy programme and is expected to reduce methane gas emissions by 80%.

These scenarios are still projections calculated by the government, which has yet to select any particular option for reducing emissions from the agriculture sector. Calculations of these mitigation scenarios are references for reducing Indonesia's emissions in accordance with its commitment to the UNFCCC.

### 4.1.2 Adaptation programmes

No major activities for adaptation appear in official government documents relating to climate change. As described below, the SNC assesses Indonesia's level of vulnerability and the ICCSR describes several activities planned in the context of adaptation, but no reports of adaptation activities as communicated by the government through official documentation have been identified.

In the SNC, the Government of Indonesia does not specifically mention any adaptation activities it has undertaken. Rather, adaptation is described more in relation to potential impacts on Indonesia and threats to vulnerable communities. The SNC lists the sectors and areas deemed vulnerable and requiring attention in adaptation activities: health, fisheries, agriculture, coastal regions, water resources and forests. Reducing deforestation and forest degradation are not seen as adaptation efforts. This appears to be an oversight given the large numbers of poor and vulnerable forest-dependent communities: when such communities begin to feel the financial and economic effects of climate change, they turn to forests to meet their basic needs.<sup>80</sup>

The ICCSR lists the following sectors as important for inclusion in climate change adaptation scenarios: water, marine affairs and fisheries, agriculture and health. Furthermore, the roadmap links the water and agriculture sector to forestry in its adaptation programmes. For example, the adaptation programme for the water sector prioritises water resource conservation, which has positive consequences for efforts to protect forests in watersheds. In the agriculture sector, one of the adaptation efforts involves expanding agricultural land on mineral soils. Although the ICCSR states that this activity will take place on non-forested land or outside peatland areas, data such as that presented in Chapter 1 indicate a tendency for estate crop development to take place in state forest areas. As implementation of plans in the ICCSR has yet to be reviewed, no data on adaptation efforts in Indonesia can be presented beyond the planning documents.

## 4.1.3 State institution responsibility in the context of climate change

Responsibility for policy and programmes related to climate change is distributed among several state institutions, including the National Development

<sup>79</sup> Personal communication with Hariadi Kartodihardjo (Bogor Agricultural University), June 2010.

<sup>80</sup> Presentation by Zenzi Aekido, Director of Walhi Bengkulu, *Pergeseran periode pada siklus komponen dalam ekosistem biota pesisir dan terrestrial* on 22 April 2010; the presentation showed that intense pressures have led coastal communities to clear forestland.

Planning Agency (Bappenas), the National Climate Change Council (Dewan Nasional Perubahan Iklim; DNPI) and DNPI member ministries, namely the Ministries of Forestry, Energy and Mineral Resources, Agriculture, Transport, Public Works, Finance, Environment and Foreign Affairs. An important development was the establishment of the REDD+ Task Force, an *ad hoc* institution linked to the institutionalisation of REDD+.

The role of **Bappenas** is to mainstream climate change into national development plans. Bappenas prepared the Indonesian Climate Change Sectoral Roadmap (ICCSR) (Bappenas 2009b: 3) and, before that, 'The national development plan: Indonesia's response to climate change' (the 'Yellow Book', or *Buku Kuning*), which was a presentation of the National Action Plan on Climate Change (RAN PI).

The DNPI, which was established in 2008 through Presidential Decree No. 46/2008 on a National Climate Change Council, is the national focal point for the UNFCCC. The President of Indonesia chairs the DNPI; deputy chairs are the Coordinating Ministers for Public Welfare and Economic Affairs. Members of the DNPI are 18 government heads (Article 4): the Secretary of State, the Cabinet Secretariat, the Minister for Environment, the Minister of Finance, the Minister of Home Affairs, the Minister of Foreign Affairs, the Minister of Energy and Mineral Resources, the Minister of Forestry, the Minister of Agriculture, the Minister of Industry, the Minister of Public Works, the Minister for National Development Planning/Head of Bappenas, the Minister of Marine Affairs and Fisheries, the Minister of Trade, the Minister for Research and Technology, the Minister of Transport, the Minister of Health and the Head of the Indonesian Meteorological and Geophysics Agency (Badan Meteorologi dan Geofisika; BMG). The daily activities of the DNPI are led by its Executive Head, Rachmat Witoelar; although he was Minister for Environment at the time of his appointment, he was appointed based on his personal capacity and not on his ministerial capacity.

The functions and authority of the DNPI, as set out in Presidential Decree No. 46/2008 (Article 3), are:

- a. to formulate national climate change control policies, strategies, programmes and activities
- b. to coordinate the implementation of climate change control activities, which comprise

adaptation, mitigation, technology transfer and funding

- c. to formulate policy on arrangements for carbon trading mechanisms and procedures
- d. to monitor and evaluate the implementation of climate change control policies
- e. to empower Indonesia in encouraging developed countries to be more responsible in tackling climate change.

In addition, each government institution is tasked with developing climate change adaptation and mitigation programmes for its sector. For example, the Ministry of Forestry has established the **Ministry of Forestry Climate Change Working Group** (POKJA PI; SK.64/Menhut-II/2010 on the Establishment of a Ministry of Forestry Climate Change Working Group). The tasks of the working group are to:

- 1. provide input for the Minister of Forestry on climate change mitigation and adaptation policies, strategies, programmes and activities
- 2. assist the Minister of Forestry in implementing adaptation, mitigation and technology transfer in the Ministry of Forestry
- assist the Minister of Forestry in evaluating policies on climate change adaptation, mitigation and technology transfer in the Ministry of Forestry
- 4. manage data and information on climate change adaptation, mitigation and technology transfer activities in the Ministry of Forestry
- 5. assist the Minister of Forestry in evaluating proposals from third parties regarding the implementation of climate change adaptation, mitigation and technology transfer policies in the Ministry of Forestry, which include the Clean Development Mechanism (CDM) and reducing emissions from deforestation and forest degradation (REDD).

One of the working group's most important contributions has been to the development of the draft National REDD+ Strategy. It has also developed a website (http://pi-kehutanan.org/index.php/ main/home).

In addition to the planning and coordinating institutions for climate change, Indonesia has also set up a national funding institution called the Indonesian Climate Change Trust Fund (ICCTF). This institution was established in 2009 with a mandate to channel international aid for climate change mitigation and adaptation efforts. The need to establish an agency for managing climate change aid was identified at COP 13 in Bali in 2007. Since then, several commitments have been pledged, but, in the absence of a managing institution, many commitments went unrealised. At the time, one proposal was to use existing government institutions to manage climate change funds; however, given the large sums involved and the multisectoral nature of the funding, it was deemed that the proposal was inappropriate and that a dedicated agency was needed. Consequently, Bappenas initiated the establishment of the ICCTF, whose members are government institutions with interests in climate change. The ICCTF was launched by the Minister of National Development Planning and the Minister of Finance on 14 September 2009. It has yet to function effectively, although by November 2011 it had reportedly managed to attract some US\$15 million (Indrastiti 2011).

The role of the Ministry of Finance in issuing fiscal policy also has some bearing on climate change funding. In November 2009, the ministry issued a document titled 'Economic and fiscal policy strategies for climate change mitigation in Indonesia', better known as the Green Paper. The Green Paper provides direction for fiscal strategies and policies relating to achieving Indonesia's 26% emission reduction target (MoFa 2009a). The document sets out four fiscal strategies, one each for the energy sector, LUCF, international carbon funding and institutional development (MoFa 2009a). As of June 2012, no concrete implementation of these strategies was apparent.

Before the REDD+ Task Force was established in September 2010, implementation of the LoI was delegated to three institutions: Bappenas, the Ministry of Forestry and UKP4, under the coordination of Coordinating Minister for Economic Affairs. Bappenas was responsible for developing the National REDD+ Strategy, the Ministry of Forestry for selecting demonstration provinces, and UKP4 for developing a REDD+ agency, a funding mechanism and an MRV system.

The **REDD+ Task Force** was then established based on Presidential Decree No. 19/2010. The

REDD+ Task Force is an *ad hoc* agency tasked with institutionalising coordination between the various bodies involved in REDD+. The task force was established in response to the LoI between the governments of Indonesia and Norway. However, the REDD+ Task Force's output was not limited to the activities under the LoI. The presidential decree describes the task force's six main tasks as follows:

- a. ensure the development of a National REDD+ Strategy and a National Action Plan to Reduce Greenhouse Gas Emissions (RAN GRK)
- b. prepare the establishment of REDD+ institutions
- c. prepare instruments and mechanisms for REDD+ funding
- d. prepare the establishment of an independent and reliable REDD+ MRV (monitoring, reporting and verification) agency
- e. develop criteria for selecting pilot provinces and ensuring their preparedness; and
- f. implement other activities relating to preparing implementation of the LoI with the Government of Norway.

The task force comprised a chair, a secretary and nine members representing Bappenas, the Ministry of Forestry, the Ministry of Finance, the State Ministry for Environment, the National Land Agency (BPN), the Secretariats of the Cabinet and Presidential Office, and UKP4.

The task force established a technical team, whose members are from these government institutions and civil society organisations (CSOs); its tasks are to bring strong technical knowledge and content; provide input as recommendations to the task force; and liaise with represented ministries and institutions. The main working areas of the technical team are:

- REDD+ strategy (BPN, Ministry of Forestry, Ministry for Environment, DNPI, Bappenas, CSOs)
- 2. REDD+ agency, governance and LoI (Ministry for Environment, Ministry of Forestry, DNPI, Cabinet Secretariat, CSOs)
- 3. funding instruments (Ministry for Environment, DNPI, Ministry of Finance, Bappenas, CSOs)
- 4. MRV and moratorium on issuing forestry permits under the LoI (BPN, Ministry for Environment, Ministry of Forestry, National Space Agency (LAPAN), National Coordinating

Agency for Surveys and Mapping/Bakosurtanal, DNPI, CSOs)

- 5. multi-stakeholder processes (Ministry for Environment, presidential staff, DNPI, Bappenas, CSOs)
- 6. demonstration provinces (BPN, Ministry for Environment, Ministry of Forestry, CSOs).

A consideration in selecting the parties involved in each working area was that their specific knowledge backgrounds would ensure they could provide the technical team with meaningful input and direction according to their areas of expertise. One of the most important aspects of the working areas is their link to the development of the National REDD+ Strategy. The national strategy is a vital document as it is expected to become the reference for REDD+ implementation in Indonesia, as well as for any strategies and decisions made.

The participation of civil society took the form of membership on the steering committee and on the writing committee during Bappenas' development of the draft National REDD+ Strategy. Other community participation occurred through regional consultations in seven regions.

The duty period of the REDD+ Task Force ended on 30 June 2011. The task force mandate was subsequently reiterated by Presidential Decree No. 25/2011, on 8 September 2011. UKP4 chair Kuntoro Mangkusubroto continued as chair of the task force, and Agus Purnomo, Special Advisor to the President on Climate Change, is its secretary, replacing Heru Prasetyo, who was the secretary during the first term of the task force.

Other REDD+ Task Force members are:

- 1. Anny Ratnawati (Ministry of Finance)
- 2. Lukita Dinarsyah Tuwo (Bappenas)
- 3. Bayu Krisnamukti (Ministry of Agriculture)
- 4. Joyo Winoto (National Land Agency)
- 5. Hadi Daryanto (Ministry of Forestry)
- 6. Arief Yuwono (State Ministry for Environment)
- 7. Agus Sumartono (Cabinet Secretariat)
- 8. Evita Legowo (Ministry of Energy and Mineral Resources)
- 9. Heru Prasetyo (UKP4)

The REDD+ Task Force is responsible for implementing the LoI between the Governments of

Indonesia and Norway and for continuing to ensure the coordination of all activities related to REDD+. It reports directly to the President, and is tasked with:

- setting up the REDD+ agency
- coordinating the preparation of the National REDD+ Strategy
- setting up the funding instruments and mechanisms for REDD+
- establishing independent and reliable MRV for REDD+
- implementing REDD+ activities in the first pilot province and developing criteria for selecting subsequent pilot provinces
- monitoring the implementation of Presidential Instruction No. 10/2011 regarding the suspension of new concession permits (moratorium) and improving good governance of primary forest and peatlands in Indonesia.

The REDD+ Task Force is authorised to:

- coordinate activities undertaken by the ministries/institutions and relevant local government bodies
- set up a strategy, policy development and priority setting, and to monitor activities related to the implementation of Norwegian LoI
- receive, manage, use and coordinate international assistance, either financial or in another form, related to REDD+, in accordance with Indonesia laws and regulations
- work with third parties to execute the LoI, including appointing consultants and financial institutions
- obtain information and technical support in executing the assignments from relevant ministries/institutions, local government bodies and other relevant parties.

This task force will continue its assignment until the REDD+ agency is established, which should be no later than 31 December 2012 (Article 9, Presidential Decree No. 25/2011).

### 4.1.4 Clean Development Mechanism (CDM)

Indonesia has been implementing the CDM since 2005, with the establishment of a National Commission on a Clean Development Mechanism (Komnas MPB) as the designated national authority through Minister for Environment Decree No. 206/2005 on a National Commission for the
Clean Development Mechanism. According to the Komnas MPB website, as of November 2009, 104 projects had been registered, 25 were registered under the CDM Executive Board and six had received Certified Emission Reduction status (IGES 2011). However, no CDM projects in the forestry sector (afforestation/reforestation; A/R) have been implemented. According to the UNFCCC website, progress has been slow for the CDM in the forestry sector worldwide; as of February 2011, only 14 afforestation/reforestation activities had been registered in the UNFCCC.

There are several flaws in the implementation of the CDM in Indonesia, including aspects of monitoring and project approval.<sup>81</sup> One of the problems lies with Komnas MPB's function as the designated national authority for the CDM in Indonesia. According to the ministerial decree, the tasks and functions of Komnas MPB are to:

- provide approval for CDM project proposals submitted by project proponents based on sustainable development criteria and indicators and on the opinion of the technical team, supported by input from experts and/or other relevant stakeholders if necessary
- 2. track the status of project documents in the CDM Executive Board against CDM project documents already approved by Komnas MPB
- 3. monitor and evaluate the performance of CDM projects already approved by Komnas MPB
- 4. submit annual reports on project activities to the UNFCCC Secretariat.

The monitoring function is not working properly in relation to the implementation of CDM projects. To date, Komnas MPB's function in CDM projects has been administrative only; it has yet to take over determining whether projects have been implemented in accordance with planning. Furthermore, approval mechanisms for certain CDM projects also remain unclear.<sup>82</sup> Similar criticisms of the CDM have arisen at the international level; flaws were identified in the evaluations of five large companies in Europe (company details were not mentioned), revealing a need for greater transparency in evaluation procedures (Ecoperiodicals.com 2010).

### 4.1.5 Lessons learned from the CDM for REDD+ implementation

At the time of writing, REDD+ activities in Indonesia were still in the preliminary stages (see Section 4.2). However, a number of lessons can be learned from international mitigation efforts and Indonesia's efforts to reduce emissions in the context of REDD.

- 1. More systematic development is required in relation to funding mechanisms for climate change mitigation.
- 2. Attention should be paid to synergy and coordination across all sectors in response to climate change in implementing REDD+. As with CDM implementation in Indonesia, many gaps are apparent in coordination between the central and regional levels, and between government institutions.
- 3. Institutions implementing REDD+ can learn from evaluations and critiques of designated national authorities developed for the CDM.
- 4. Although public participation has an essential role in CDM implementation, it still seems weak.<sup>83</sup> This lesson should be reflected in REDD+ implementation, which should be based on free, prior and informed consent (FPIC) as a part of any participatory process, because REDD+ projects directly affect forest-dwelling communities' access to forest.
- 5. Weak arrangements in the CDM linked to additionality resulted in low carbon prices; consequently, the scheme only benefits large companies with cheap credit (emission reduction credit) (Pearson and Loong 2003). Additionality refers to the emission reductions/carbon capture additional to what would have occurred without CDM/REDD+; without stringent rules regarding additionality, CDM activities cannot become effective solutions for reducing emissions.
- 6. Offset mechanisms in the CDM and other schemes have proved unable to reduce global emissions (Böhm and Dabhi 2010). This lesson

<sup>81</sup> Telephone interview with Yuyun Ismawati from Bali Fokus (an organisation closely involved in the CDM in the waste disposal sector), August 2010.

<sup>82</sup> Telephone interview with Yuyun Ismawati from Bali Fokus (an organisation closely involved in the CDM in the waste disposal sector), 20 April 2010.

<sup>83</sup> A letter sent by CDM Watch (a Germany-based CDM observer organisation) dated 7 May 2010, emphasising the need for effective and efficient community participation mechanisms: www.cdm-watch.org/wordpress/wp-content/uploads/2010/05/ cdm-watch-unsolicited-letter-on-effective-means-for-public-participation\_7-may-2010.pdf.

should be reflected in REDD+, so that it can genuinely reduce global emissions.

 Complicated bureaucratic processes in CDM implementation create huge opportunities for misuse. Political processes in the CDM mechanism tend to be complicated and protracted.<sup>84</sup>

As Indonesia has yet to apply the REDD+ mechanism fully, REDD+ activities in Indonesia are not yet official UNFCCC schemes; rather, they are in the preparedness stage. By March 2010, over 30 pilot REDD+ projects, in various stages of development, were being initiated in Indonesia (Atmadja *et al.* 2010; Sekala Forest Climate Center 2012). Based on information provided by the secretary of the Ministry of Forestry Climate Change Working Group on 30 March 2010, there are eight demonstration activities in Central Kalimantan, East Kalimantan, East Java, West Nusa Tenggara and Jambi, all of which were at the planning or implementation stages at that time.<sup>85</sup>

Workshops held by the Civil Society Forum for Climate Justice (CSF) in the provinces of Central Kalimantan, Jambi and Aceh provide valuable lessons for REDD+.<sup>86</sup> There is an indication that community knowledge of and participation in REDD+ are extremely limited, and there are concerns that REDD+ implementation may trigger fresh conflicts.<sup>87</sup> This would make it difficult for REDD to achieve its objectives of reducing deforestation and improving community welfare via incentive schemes.

## 4.2 REDD policy actors, events and policy process

#### 4.2.1 REDD+ actors

The REDD+ actors in Indonesia can be grouped into four main categories: government, communities living in and around forest areas, NGOs and the private sector. Each group plays its own role in the preparation and implementation of future REDD+ activities (see the matrix in Table 18).

In Table 18, the actors are differentiated by five points: actor type, role, position, knowledge and other remarks. The 'actor' column defines the institution or group that is a stakeholder in REDD+. The 'roles' column describes the actor's activities in the context of REDD+, including its authority in REDD+ implementation. The 'position' column defines the actor's principles and attitudes towards REDD+. The 'knowledge' column discusses the level of understanding each actor has of REDD+ (the intention is to show the actors' knowledge of REDD+, but not of other areas, in order to restrict discussion to the topic of REDD+).

#### 4.2.2 The REDD+ institutionalisation process

The institutionalisation process for a future REDD+ mechanism was moving rapidly in Indonesia even before COP 13 in Bali. Since 2007, the Ministry of Forestry has been concentrating on plans to implement REDD+ schemes in Indonesia, and released a policy setting out the implementation stages and a related timeline: a preparedness phase (2007), transition/pilot activities (2008–2012) and full implementation (2012 - depending on a COP decision). To prepare for REDD discussions in Bali, the Ministry of Forestry established the Indonesian Forest Climate Alliance (IFCA), which was supported by donor countries, various government agencies, academics, the private sector and civil society.<sup>88</sup> IFCA emerged as a result of consultations between the Forestry Research and Development Agency (FORDA) – a research agency under the Ministry of Forestry – and various parties regarding the formulation of a framework reference for IFCA. Important events relating to REDD+ in Indonesia are presented in Figure 5.

IFCA was responsible for undertaking a study to assess what preparation was needed for the implementation of REDD (as it then was). It was anticipated that IFCA would synergise all efforts and initiatives that targeted, or that would contribute towards, reducing emissions from deforestation and forest degradation in Indonesia. In effect, IFCA was

<sup>84</sup> Interview with Yuyun Ismawati from Bali Fokus, 20 April 2010.

<sup>85</sup> Interview with Nur Masripatin, secretary of the Ministry of Forestry Climate Change Working Group, 30 March 2010.

<sup>86</sup> At the time of writing, Central Kalimantan, Jambi and Aceh were the priority provinces for REDD+ implementation.

<sup>87</sup> Minutes of workshops held by the Civil Society Forum (CSF) in three provinces, in 2009.

<sup>88</sup> IFCA was established before the ICCTF, with the support of the World Bank, the UK, Germany and Australia. See www. dephut.go.id/INFORMASI/LITBANG/IFCA/Pengantar.htm.

Actor	Roles	Position	Knowledge	Other remarks
Government (central and regional)	Decision-making Policy development Activity implementation	Although the government's position on REDD+ policy is dominated by the forestry sector, other sectors, such as agriculture, also play important roles, particularly with regard to estate crop expansion and peatland management outside forest areas. Therefore, the government should not place the onus for REDD+ implementation only on the forestry sector.	Regional and central governments have different knowledge capacity. Although the central government generally has a better understanding than regional governments, the situation should not be generalised because each region has a different level of knowledge.	Governance is one of the most decisive factors in success. Governance and knowledge gaps remain the underlying problem in this regard. The sectoral differences between government institutions also lead to different understandings of REDD+, because of the different interests of each sector (e.g. public works, agriculture, energy and mineral resources).
Communities living in and around forests	Depend on their access to forests Have become a part of forest ecosystems. Hold in-depth local knowledge	Community involvement remains weak in the context of forest management because of a weak legal foundation for promoting community use rights.	Communities' knowledge of REDD+ varies. For example, communities assisted by certain NGOs have a better understanding than those that have not received such assistance. Most forest communities still have no understanding of various issues relating to REDD+.	Communities are important for the success of REDD+. A project will not be successful without ensuring any affected communities' proper agreement on and clear understanding of REDD+ issues. A UNFCCC decision during COP 16 requires that REDD+ implementation take into account the interests of communities living in and around forest areas.
NGOs	Provide input for effective and efficient implementation of REDD Provide data on conditions on the ground May act as REDD+ executing agencies Provide critical perspectives on REDD+ implementation	The position of each organisation differs. Organisations that will benefit from REDD+ tend to take the same position as the government. These organisations tend to be confident that REDD+ will succeed, and offer suggestions for improvement to support this success. Other organisations tend to be critical and question the capacity of REDD+ to resolve the problem of	NGOs tend to have adequate knowledge, although this should not be generalised as some organisations may view REDD+ as their main focus. Some NGOs may come to advise the government on policy. Although REDD+ is a new concept, NGOs have the necessary knowledge and information to describe REDD+ relatively clearly.	The government sometimes uses, as a reference, information on REDD+ supplied by NGOs. Some NGOs (e.g. FFI, TNC and WWF) have become government partners in policymaking. With the information they have, some NGOs (e.g. Walhi, AMAN and HuMa) criticise government policy on REDD+.

climate change.

Table 18. Roles, positions and knowledge of REDD+ actor groups

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Actor	Roles	Position	Knowledge	Other remarks
Actor Private sector	Roles Project developers and beneficiaries of carbon credits Can act as traders/ brokers or proponents of REDD+ activities The broker role in REDD+ will be considerable, particularly when REDD+ opportunities open at the regional/ local level. The proponent role will be substantial in	Private actors have an interest, as both brokers and proponents, in maximising REDD+ opportunities in addressing climate change through carbon credits. However, a stable business environment is essential for the sustainability of this group's activities.	Rnowledge Private actors have a good understanding of REDD+. Those directly involved in REDD+ projects are involved in REDD+ discussions and policy processes. As REDD+ will have a positive impact on the private sector, appropriate knowledge and information will benefit companies.	Other remarks This group's interest is to derive profits from selling carbon credits.
	will be substantial in implementing future RFDD+ offset schemes.			

expected to bring together government, business, civil society and international community efforts in realising SFM, and thus ultimately contribute towards the stabilisation of the climate.<sup>89</sup>

The study was conducted by experts from the Ministry of Forestry, drawing on internal discussions at the ministry and regional consultations in Papua and Aceh. Its objectives were to: (1) analyse available data on carbon stock and land conversion; (2) prioritise activities for addressing the drivers of deforestation and degradation; and (3) look at mechanisms for including REDD schemes in the carbon market, and challenges in terms of policy and formal law (IFCA 2007). Results of the study later became the main focus of REDD discussions during COP 13. IFCA has since been superseded by the Working Group on Climate Change (POKJA PI) in the Ministry of Forestry.<sup>90</sup>

The Bali Action Plan was a decision made at COP 13. The government, through the Ministry of Forestry, used this momentum to launch REDD in Indonesia (Detiknews 2007a). This demonstration of the government's position reflected its commitment to implementing REDD. The government followed this up with several REDD-related regulations (discussed in Section 4.2.3).

#### **UN-REDD and FCPF**

In 2009, the Government of Indonesia joined two international initiatives that support REDD+ readiness activities: the UN-REDD Programme and the Forest Carbon Partnership Facility (FCPF) managed by the World Bank. In the same year, Indonesia submitted a proposal for implementing a preparedness programme with support from the UN-REDD<sup>91</sup> Programme and the FCPF (FCPF 2009).

The activities Indonesia included in its proposal to UN-REDD were planned to start in October 2009 and be completed in May 2011, with a proposed budget of US\$5 664 200. Three main activities were emphasised in the proposal (UNREDD 2009):

- strengthening national and regional multistakeholder involvement to align programmes implemented at the national and regional levels
- 2. harmonising supply chains by stressing MRV of reference emission levels (RELs)
- 3. institutional capacity building for institutions related to REDD activities.

<sup>89</sup> Mengenal Indonesia Forest Climate Alliance (IFCA) www. dephut.go.id/INFORMASI/LITBANG/IFCA/Pengantar.htm. [30 April 2012]

<sup>90</sup> The continuation of IFCA activities by this working group has not been announced officially.

 <sup>91</sup> Mengenal Indonesia Forest Climate Alliance (IFCA)
 www.un-redd.org/UNREDDProgramme/Country
 Actions/Indonesia/tabid/987/language/en-US/Default.aspx.
 [30 April 2012]

December 2011 COP17 in Durban	11 ecree No. 25/2011: Task Force to velopment of REDD+ Agency + Task Force and Central Kalimantan ecree No. 61/2011: National Plan to mission (RAN GRK)	Jan-Apr 2011 Continued bilateral cooperation,	eg. GIZ, KOICA, AUSAID and civil society participants (Partnership for Governance Reform, Civil Society Climate Forum)	m-Feb 2011 oratorium of forest conversion due 1 Jan but d not happen; Lobbying, public and policy scussion on types of forest covered by moratorium	2011	<b>eb 2011</b> Series of workshops and consultations no safecuards led by NGOs	Mar-Apr 2011 Rewriting of RFDD+ National Strategy	30/une 2011 End of EFDD Tack Envisor	August 2011 Final Draft of REDD+ National Strategy	<b>011</b> intial Instruction 10/2011, inium on granting of new licences and improvement iral primary forest and peatland governance
	September 20 - Presidential C institutional de - MoU of REDD - Presidential C Reduce GHG E	November/December 2010 COP16 in Cancun	May 2010 Signing of Letter of Intent between Norway and Indonesia; USD 1 billion Diedeed conditional on performance	<i>arch</i> 2010 M Annesia and Australia direnship: Sumatera	2010	September 2010 Presidential Decree 9/2010; REDD+ task force	September 2010 Draft of REDD+ National Strategy	December 2010 Central Kalimantan selected as the mint province for innlamentation	of the Indonesia-Norway partnership	May 2 Preside Morato
	28 December 2009 COP15 in Copenhagen ań 25 September 2009	Commitment of the President of Indonesia amme to reduce emissions by 25% or up to 41% at G20 Meeting. Pittsburgh	May 2009 Min. of Forestry Decree 30/2009 on REDD mechanism procedures	February 2009 Mustralia-Indonesia Bilateral Cooperation: Inc Kalimantan Forest-Climate Partnership pa	2009	September 2009 Indonesia Climate Change Trust Fund (ICCTF)- BAPENAS	November 2009 Submission Indonesia Second National Communication (SNC) to UNECCC	<i>January 2009</i> Law 4/2009 on Mineral and Coal mining	February 2009 Min. of Agriculture Decree 14/2009 on Peat for oil palm plantation	<b>May 2009</b> Min. of Forestry Decree 36/2009 on Licencing procedures of projects on carbon sequestration and/or storage in production and protected forest
	December 20 COP14 in Pozn	September 2008 Launch of UN-REDD Progr February 2008	Government Regulation 2/2008: Non tax state revenue from forest area utilization	July 2008 Indonesia National Council on Climate Change (DNPI)	2008	December 2008 Min. of Forestry Regulation 68/2008 on REDD	Demonstration Activities			
			December 2007 COP13 in Bali December 2007	Launch of World Bank's Forest Carbon Partnership Facility September 2007 Forest 11 meeting in New York	2007	June 2007 Goverment Regulation 6/2007 On Forest Administration.	rotest management, riaming and Forest Utilization July 2007	Indonesian Forest Climate Alliance (IFCA)		

Figure 5. Timeline of important events related to REDD+ policymaking processes in Indonesia

After the UN-REDD policy board approved the US\$5.6 million funding, Indonesia launched the programme at the 'UN-REDD Inception Workshop' on 30–31 March 2010 (UN-REDD 2010).

The programme aims to achieve the following three outcomes at the national, provincial and district levels, respectively:

- 1. strengthened multi-stakeholder participation and consensus at national level
- 2. successful, demonstrable establishment of a REL, MRV and fair payment systems based on the national REDD architecture
- 3. development of sufficient capacity to implement REDD at decentralised levels.

UN-REDD Programme Indonesia formed partnerships with several related institutions, including the REDD+ Task Force, Bappenas, the DNPI and the DKN (Dewan Kehutanan Nasional/ National Forestry Council). The programme's activities include contributing to training programmes in climate change and REDD+. The programme also provides practical support for government agencies implementing activities related to REDD+, including the REDD+ Task Force.

In addition, UN-REDD Programme Indonesia supported Bappenas in developing the draft National REDD+ Strategy by facilitating the participation of multiple stakeholders. This included organising national- and regional-level focus group discussions and consultations with relevant government institutions, civil society, academia and the private sector.<sup>92</sup>

Another way in which the UN-REDD Programme has supported Indonesia has been through building MRV capacity. For example, it facilitated meetings and consultations to further develop a National Forest Inventory (NFI) as a part of an MRV system; compiled historical data on emissions from forests in Central Sulawesi for 2000–2009; facilitated consultations regarding institutions for MRV, RELs and a benefit-sharing system; and, in cooperation with the DKN, developed FPIC materials and guidelines.

Indonesia's R-PP (Readiness Preparation Proposal) submission to the FCPF was reviewed by the Technical Advisory Panel, resubmitted and ultimately discussed by the FCPF committee in June 2009. Along with two other countries, Indonesia was able to access funding to the value of US\$3.6 million to implement activities under its R-PP (IGES 2010).<sup>93</sup>

Despite the above indications that UN-REDD and the FCPF have been actively involved in the REDD+ process in Indonesia, some observers claimed that these two programmes have had limited influence, at least up to 2010 (IGES 2010), and that the Ministry of Forestry has retained strong control over REDD+ development and, consequently, the REDD+ readiness strategy.

In developing its regulations and programmes, the Government of Indonesia held meetings with various stakeholders. For example, public consultations were held on 17 July 2008 and 25 March 2009,94 to discuss a planned Minister of Forestry Decree on Mechanisms for Reducing Emissions from Deforestation and Forest Degradation. Those attending the 25 March meeting came from various backgrounds and were invited to make presentations. Common questions arising in the presentations concerned the outcomes of input from the previous meeting; arrangements regarding customary communities; integration of REDD+ into non-timber forest use mechanisms; and benefit sharing.95 Another consultation was held on 20 May 2009 to prepare for involvement in the UN-REDD Programme<sup>96</sup>. The meeting was attended by representatives from 10 civil society and customary community organisations. At the end of the meeting, it was agreed that the process would be a starting point for cooperation and consolidation between civil society and customary community representatives and the government in the context of UN-REDD

<sup>92</sup> UN-REDD Programme News. Indonesia's National REDD+ Strategy: UN-REDD Indonesia is collaborating with the National Development Planning Agency (BAPPENAS) to conduct an intesive multi-stakeholder consultation process that will produce the world's first fully participatory National REDD+ Strategy. 12 September 2010. www.un-redd.org/ Newsletter12/Indonesia\_National\_REDD\_Strategy/tabid/5533/ Default.aspx.

<sup>93</sup> For a summary of Indonesia's REDD+ Readiness Activities slated for financing through the FCPF, see www.dephut. go.id/files/Website\_FCPF\_Definition%20of%20activities\_ FINAL25Juni2010.pdf.

<sup>94</sup> www.dephut.go.id/INFORMASI/LITBANG/ IFCA/ifca.htm.

<sup>95</sup> This is a summary of several presentations at the meeting on 25 March 2009 (further details are in the next section).

<sup>96</sup> Pertemuan konsultasi UNREDD-NJP - CSO, Bogor, 20 Mei 2009. http://www.docstoc.com/docs/12378317/ UNREDD-Indonesia [30 April 2012]

activities, and that consultation would evolve into participation.

Such efforts demonstrate that the government has endeavoured to involve a range of stakeholders in REDD+ processes. However, given the frequent political-economic compromises required in making laws and policy, such endeavours do not necessarily mean that those involved are representative of all stakeholders or that all stakeholders' aspirations will be accommodated in the resulting regulation or programme.

### Letter of Intent (LoI) between Norway and Indonesia

The failure of parties at COP 15 to reach agreement on GHG emission reductions and REDD+ is likely to delay REDD+ processes in several countries. This is expected not to be the case in Indonesia, however, because of its initiative in seeking bilateral opportunities related to REDD+; the most prominent of these is the agreement with Government of Norway.

The governments of Indonesia and Norway signed a Letter of Intent (LoI) in Oslo in May 2010. The LoI declares Norway's intention to support Indonesia in preparing and implementing REDD+, with funding to the value of US\$1 billion, if Indonesia meets certain predetermined conditions. Implementation of activities set out in the LoI involves three main phases: the preparation phase (started May 2010); transformation phase (from January 2011 until the end of 2013) and the contribution to verified emission reductions phase (from 2014 onwards). Each phase comprises specific activities, as described in Table 19.

The LoI has had the effect of accelerating programme preparation processes and REDD+ climate change mitigation policy in Indonesia. Based on the LoI, the President established the REDD+ Task Force (see Section 4.1.3 for details on the task force's duties), and the government is currently preparing the National REDD+ Strategy.

#### Presidential Instruction No. 10/2011

In response to the LoI, on 20 May 2011, the government issued a presidential instruction (not legislation but a form of policy statement<sup>97</sup>):

Presidential Instruction No. 10/2011, regarding the Moratorium on Granting New Licences and Improvement of Natural Primary Forest and Peatland Governance. Basically, the instruction requests that no licences pertaining to primary forests and peatlands be issued for two years - with four exceptions: where the in-principle permit was already in the process of being issued; where a project is of vital national importance with regard to food and energy security, such as geothermal activity and land conversion for paddy and sugarcane fields; extensions of forest use licences so long as the applicant's business licence is valid; and ecosystem restoration activities. As the title of the instruction indicates, the President also requested improvement of governance during the suspension period. Such improvements in governance were instructed to be directed towards the process of granting lease-use permits and IUPHHK-HA, management of critical land, the use of environmental permits to acquire permits for primary forest and peatland, and the acceleration of RTRW map consolidation based on the Indicative Moratorium Map (IMM) to be issued by the Ministry of Forestry.98 The instruction was addressed to eight ministries and agencies and local governments, with its implementation to be monitored by UKP4 or by the chairman of the agency tasked specifically with managing REDD+.99

Criticisms of the presidential instruction concern the area protected during the suspension period and the measures requiring operationalisation during the suspension period, among others.

The first main criticism of the presidential instruction concerns its scope; that is, whether the moratorium applies to both primary and secondary forests – a difficult issue during the negotiations shaping the final instrument (Simamora 2011a).

According to REDD+ Task Force data on primary and secondary forests (contained in the Draft National REDD+ Strategy, predating the release of Presidential Instruction No. 10/2011), the area initially expected to be protected by the moratorium was 64 million ha of primary forest and about 32 million ha of peatlands, with a further 36 million

<sup>97</sup> All forms of regulations in Indonesia are governed by Law No. 10/2004 on Procedures for Drafting Laws.

<sup>98</sup> Dictum 3(e), Presidential Instruction No. 10/2011 on Moratorium on Granting of New Licences and Improvement of Natural Primary Forest and Peatland Governance.

<sup>99</sup> Presidential Instruction No. 10/2011 on Moratorium on Granting of New Licences and Improvement of Natural Primary Forest and Peatland Governance.

Phase	Activity
Preparation phase	<ul> <li>Development of a National REDD+ Strategy following consultation</li> <li>Establishment of a REDD+ institution that reports directly to the President</li> <li>Selection of funding instruments</li> <li>Formulation of MRV framework</li> <li>Selection of demonstration provinces</li> </ul>
Transformation phase	<ul> <li>Funding instruments operational (Jan. 2011)</li> <li>First (2011) and second (2012) demonstration province programmes launched</li> <li>Two-year moratorium on issuing new permits for natural and peat forest conversion in place</li> <li>Database of degraded forest land built</li> <li>Two-tier MRV system operational</li> </ul>
Contribution to verified     emission reductions phase	<ul> <li>Further implementation of REDD+ strategy and programmes at the national level</li> <li>Monitoring, review and verification of REDD+ programmes by an independent MRV institution</li> <li>Report to UNFCCC on emissions from forest and peatland</li> </ul>

Table 19. Phases of implementation of activities set out in the Lol

ha protected if secondary forest were included – which it ultimately was not. However, following changes to the initial calculations, the Ministry of Forestry announced that the area protected would be 55 million ha of primary forest and 17 million ha of peatlands (Simamora 2011b). By contrast, calculations by a CSO show that in fact only 47 million ha of primary forest would be protected;<sup>100</sup> of this area, 38 million ha is already protected, as it is in conservation and protection forest areas that are subject to existing regulations.<sup>101</sup> The extent of the differences in calculated areas can be attributed to differences in data and in definitions of primary and secondary forest between the Ministry of Environment and Ministry of Forestry.

Based on Murdiyarso *et al.* (2011), the additional area that is now protected by the moratorium is about 22.5 million ha, consisting of 7.2 million ha of primary forest, 11.2 million ha of peatlands and 4.1 million ha outside these two categories.

The second criticism concerns the scope of governance reform, with claims that many aspects fundamental to the management of forests and peatlands have not been included, even though the suspension period was intended to create a hiatus that would make it possible to disentangle and fix the fundamental problems. Obvious omissions from the presidential instruction include: revision of the legal framework to reduce corruption and develop a system of incentives and disincentives; governance reform throughout the entire forestry sector; acceleration of the development of KPHs; and the development of social security system and environmental safeguards. Furthermore, the moratorium period should have been used for implementing activities set out in the (draft) National REDD+ Strategy. For further details on the draft, see Section 4.2.2. Failure to include these items in the instruction creates a disconnect between the moratorium period and the requirements for improved forest management in general, and preparation for REDD+ implementation in particular.

Nevertheless, the moratorium period and the items in the presidential instruction can still be used creatively to address existing problems. For example, strengthening governance in relation to lease-use permits and IUPHHK requires settling a crucial issue in forest governance: unclear forest boundaries. However, the moratorium period is too short to

<sup>100</sup> Walhi Media Briefing, 'Inpres No. 10/2011: "Lanjutkan" Penghancuran Hutan'. http://www.walhi.or.id/id/download/ doc\_download/29-inpres-no102011.html [30 July 2012] Also see FAO (2010).

<sup>101</sup> Walhi media briefing, titled 'Inpres No. 10/2011: "Lanjutkan" Penghancuran Hutan'. http://www.walhi.or.id/ id/download/doc\_download/29-inpres-no102011.html [30 July 2012]

complete this, because forest areas are currently being demarcated at a rate of 3000–4000 km/year, even with the employment of several innovations as assessed by Baplan (Directorate General for Planology of the Ministry of Forestry),<sup>102</sup> although the area requiring attention is 25 000 km. That is, at the current rate, demarcation will take at least six years to complete, unless major financial and human resources are added. It should be noted that, according to the Ministry of Forestry Strategic Plan 2010–2014, demarcation of the 25 000 km is scheduled for completion by 2014.<sup>103</sup>

The debates shaping the formulation of the presidential instruction revealed different points of view regarding the future policy among the various ministries and government agencies concerned (Investor Daily Indonesia 2011, Simamora 2011a). The main points of contention were the authority granted to the REDD+ Task Force or the new agency to be responsible for REDD+ (Media Indonesia 2011a), and the forest area covered by the moratorium; that is, whether it would cover secondary as well as primary forest (politikindonesia.com 2011).

The debate continued with the release of the instruction. Civil society tended to regard it as too 'soft', having bent too much to the demands of the private sector, and claimed it would be a failure in terms of addressing deforestation and forest degradation (Gatra 2011).<sup>104</sup> On the other side of the debate, GAPKI (Gabungan Pengusaha Kelapa Sawit Indonesia; Indonesian Palm Oil Association) criticised the presidential instruction as creating uncertainty in the business climate (Jakarta Globe 2011b). However, the business community had clearly had input on the instruction, as evidenced in a statement by the Indonesian Association for Forest Concession Holders (Asosiasi Pengusaha Hutan Indonesia; APHI) expressing satisfaction with the final document as it was very close to its original proposal (Media Indonesia 2011b, Suara Karya 2011).

To discharge its duty regarding the Indicative Moratorium Map (IMM), about a month after the presidential instruction, the Minister of Forestry revised the IMM through Minister of Forestry Decree No. SK-323/Menhut-II/2011 on Indicative Map of Suspension on New Licences for Forest Use, Forest Area Use and Changes in Forest Area and Other Land Use Allocation. The ministerial decree elaborates on the presidential instruction, and, among other points, states that the only types of licence that will not be issued during the suspension period are licences for timber product use, timber product harvest, forest area use, and changes in forest area allocation, with the exception of changes needed for provincial spatial planning (Dictum 5). There are many other types of licences available in the forestry sector<sup>105</sup> that are apparently exempt from the suspension, including licences to use environmental services and non-timber forest products.<sup>106</sup> On the one hand, these exclusions might be considered appropriate because activities under these two licences do not contribute to deforestation and forest degradation and are in line with the objectives of forest protection. On the other hand, any such exemption might be viewed as a violation of the presidential instruction. Furthermore, as the licence types were defined in a decree issued by the Minister of Forestry, licences issued by other sectors, such as mining and estate crop licences, are also exempt. These areas are outside the authority of the Ministry of Forestry, although, by suspending the issue of licences such as IPKH (Industri Pengolahan Kayu Hulu; Upstream Wood Processing Industry) and for forest area allocation changes, the Minister of Forestry decree could have the knock-on effect of suspending licences for new mining and plantation activities inside forest areas. However, the rules in the Ministry of Forestry decree could be interpreted as allowing mining and estate crop licences for 'other land use' areas (APL) to continue to be granted if the applicant has already secured permission from the relevant regional head to use the designated site,<sup>107</sup> which is clearly not the intention of the presidential instruction. This indicates a need for clearer

<sup>102</sup> Interview with Hariadi Kartodihardjo (Bogor Agricultural University) based on discussion with BAPLAN, 29 July 2011.

<sup>103</sup> Appendix to Minister of Forestry No. P.08/Menhut-II/2010 on Ministry of Forestry Strategic Plan 2010–2014.

<sup>104</sup> See also 'Briefing paper of civil society coalition to rescue Indonesian forest and global climate', www.walhi. or.id/id/ruang-media/siaran-pers/928-pepesan-kosong-inprespenundaan-izin-baru.

<sup>105</sup> PP.6/2007 on Forest and Forest Management Planning and Use of Forest and PP.24/2010 on the Use of Forest Area.

<sup>106</sup> Dicta 1 and 3 of Presidential Instruction No. 10/2011 refer to 'the suspension of the issuance of new licences in primary forests and peatlands'.

<sup>107</sup> Dictum 3(1) of Presidential Instruction No. 10/2011 only orders the regional heads not to grant permits for a new location in a forest area or APL.

regulation by other ministries involved – namely the Ministries of Energy and Mineral Resources and Agriculture – but this is not included in the presidential instruction. This oversight could have a major impact in the field, if parties perceive that it is sufficient that they operate certain activities under a mining or estate crop licence, with the authority of the head of the region, based on the law of regional autonomy.<sup>108</sup> If this is the case, the expected moratorium would ultimately have no real effects. Furthermore, as the presidential instruction is not legislation, there are no legal penalties for failure to adhere to it (Murdiyarso *et al.* 2011).

Of course, the moratorium should not be seen as the sole means by which Indonesia plans to achieve its short-term emission reduction target. Despite its limitations in time and scope, the moratorium could have the effect of facilitating improvements in forest governance by encouraging the development of a coordination process, data collection, possible new regulations and other supporting steps such as identification of gaps in data and regulations, setting of criteria and indicators of success in implementation and landscape governance planning (Murdivarso et al. 2011). One important factor that will affect the success of the moratorium is the IMM. As Murdiyarso et al. (2011) noted, the map could be improved in terms of its transparency if recent maps of concession and forest designation were made publicly available; in addition, greater participation in the process could be achieved during reconciliation of spatial plans at provincial and district levels, which will necessitate periodic revisions of the IMM. The moratorium should be viewed primarily as a policy process in order to create the enabling conditions (especially in terms of improved forest and peatland governance) that are prerequisite for a low-carbon development path and successful implementation of REDD+ (Murdiyarso et al. 2011).

#### Selection of Central Kalimantan as a pilot province

In late 2010, Central Kalimantan was selected as a pilot province for REDD+ implementation. Shortly after Presidential Instruction No. 10/2011 was issued, however, an area of forest amounting to

1 168 656 ha in Central Kalimantan was released via a Minister of Forestry decree.<sup>109</sup> At that time, the RTRW had not been completed because a small portion of the forest area proposed for release was deemed strategic in nature and thus its use required approval from the House of Representatives.<sup>110</sup> This process shows that formally approved forest decline can continue despite national designation of an area as a pilot province. Various REDD+-related activities are underway in the pilot area.<sup>111</sup> Some civil society groups, however, claim that, despite the activities, no significant changes have occurred since Central Kalimantan was selected as the pilot province; they have also complained about not being substantively involved in policymaking processes.<sup>112</sup> Central Kalimantan had in place a REDD+ Regional Commission and a Regional Council on Climate Change even before it was selected as a pilot province,<sup>113</sup> although these institutions have been criticised for being ineffective in efforts to implement REDD+.114 The Governor of Central Kalimantan recently issued a decree on a regional strategy for REDD+ implementation (Kalimantan News 2012), but no MRV system has been established in the province. Currently facilitating the process in Central Kalimantan is the Central Kalimantan REDD+ Supporting Office, which was formed by the REDD+ Task Force in cooperation with the governor of Central Kalimantan.<sup>115</sup>

#### Memorandum of Understanding between the REDD+ Task Force and Central Kalimantan Provincial Government

An MoU between the REDD+ Task Force and the Central Kalimantan Province, in which they agree

111 For some examples, see http:// reddplussupportingofficekalteng.wordpress.com/.

115 http://reddplussupportingofficekalteng.wordpress.com/.

<sup>108</sup> This is the interpretation presented by Firman Subagyo, Deputy Chairman of Commission IV of the House of Representatives, at the meeting of the Ombudsman of the Republic of Indonesia concerning the settlement of the Central Kalimantan RTRW. Attendees at the meeting included representatives from the PMH Task Force, the Ministry of Forestry Integrated Team for Central Kalimantan, Attorney General's Office, Police and the Ministry of Forestry (Ombudsman's Office, 14 July 2011).

<sup>109</sup> Minister of Forestry Decree No. 292/Menhut-II/2011 on Changes of Allocation and Functions of Forest Areas of Central Kalimantan Province.

<sup>110</sup> According to Minister of Forestry Decree No. 292/ Menhut-II/2011, the House of Representatives must give approval for areas of more than 236 939 ha.

<sup>112</sup> Interview with Arie Tompas, Director of Central Kalimantan Walhi, 4 August 2011.

<sup>113</sup> The REDD Regional Commission was established through Governor Decree No. 188.44/152/2010 on the Establishment of the Regional Commission for Reducing Emissions and Activities of Deforestation and Forest Degradation (REDD) and Peatlands. The DDPI (Dewan Daerah Perubahan Iklim/Climate Change Regional Council) was established through Governor Decree No. 188.44/153/2010 on the Establishment of DDPI.

<sup>114</sup> Interview with Arie Tompas, Director of Central Kalimantan Walhi, 4 August 2011.

to work together in implementing the REDD+ pilot project, was signed on 16 September 2011, by Kuntoro Mangkusubroto (chair of the task force) and Central Kalimantan Governor Teras Narang.

It is expected that, through the MoU, REDD+ activities in Central Kalimantan will be aligned with the National REDD+ Strategy, and that the MoU will form the basis for cooperation between the provincial and central governments in implementing and monitoring REDD+ activities.

The scope of the MoU covers the implementation and monitoring of the National REDD+ Strategy and Regional REDD+ Strategy, which involve:

- development of and improvements to institutions and processes required to prepare Central Kalimantan for full implementation of the REDD+ programme
- development of and improvements to various policies and regulations at the local level, which are needed to create a legal framework for REDD+ implementation in Central Kalimantan
- strategic development of activities needed for REDD+ implementation
- a shift in paradigm and working culture across all elements of relevant stakeholders in Central Kalimantan as required for the successful implementation of REDD+
- involvement of stakeholders in REDD+ planning, implementation and monitoring processes.

#### The National REDD+ Strategy

Since August 2010, Indonesia has invested considerable effort in formulating its National REDD+ Strategy (see Section 4.1.3). Bappenas, which was originally tasked with developing this strategy with support from a dedicated team and UN-REDD, delivered the first draft on 23 September 2010, after incorporating input from relevant stakeholders. This draft was later used as material for regional consultations in seven regions (North Sumatra, South Sumatra, Java, West Nusa Tenggara, Kalimantan, Sulawesi and Papua) during October– November; these series of consultations closed with a meeting of international and national experts in Bali from 30 October to 2 November 2010. A second draft (November 2010) was subsequently produced.

After its establishment, the REDD+ Task Force took over responsibility for preparing the national strategy. At some point, two versions of the draft National REDD+ Strategy were prepared, one each by Bappenas and the Ministry of Forestry, and submitted to the REDD+ Task Force. Initially, the draft was expected to be finalised by the end of 2010, in line with the deadline set in the LoI between the governments of Indonesia and Norway. However, key stakeholders could not agree on which strategy to use. The draft National REDD+ Strategy was subsequently redeveloped in March–April 2011, with a team comprising academics, researchers and representatives of CSOs and donor agencies. This final draft of National REDD+ Strategy was made public for comments in August 2011. As of early June 2012, the National REDD+ Strategy had yet to be formalised.

The most recent draft National REDD+ Strategy (August 2011) is the result of major revisions since November 2010. Overall, the current draft is more comprehensive and detailed than the November 2010 version, which was deemed too general and too focused on the international discussion on REDD+ and climate change. By contrast, the current draft is focused more on achieving national commitments contributing to international agreements, and it is much more closely linked to REDD+ and the forestry sector, while still considering other related sectors; it also contains more detail on the guidelines and the basics of implementation, as well as on related issues included in the previous draft, such as FPIC, safeguards, benefit sharing and tenure.

The objectives of this National REDD+ Strategy (REDD+ Task Force 2011), as described in the final draft, are as follows:

- 1. Support efforts to meet the commitment made by the Indonesian President to use the forestry sector to achieve an emission reduction target of 26% below the 2020 projection based on a business-as-usual (BAU) scenario.
- 2. Follow up the Bali Action Plan, Copenhagen Accord and UNFCCC decisions from COP 16 in Cancun.
- 3. Prepare effective institutional and management systems to implement the REDD+ programme. Such systems must ensure that any emission reductions can be measured, reported and verified, and must be supported by an accountable funding instrument.
- 4. Build the basis of and provide guidance for an integrated management and regulation system for management of REDD+ implementation by community groups, the private sector, CSOs and local government.

- 5. Support sustainable development objectives through approaches based on the perspectives of the local communities, including women and vulnerable groups, most likely to be affected by REDD+, so that the scheme can benefit all groups equitably and stimulate a sense of ownership among communities.
- 6. Build participatory processes and systematic and consolidated approaches that support Indonesia's efforts for natural forest conservation in the context of land value changes and dynamic commodity prices.
- 7. Provide references for investment by stakeholders at all scales for the use of forest and peatland for forest and/or agricultural products and ecosystem services, including the storage of carbon stock.

The most recent draft of the National REDD+ Strategy is organised in six chapters, as follows: Chapter 1: Explains the background and the

- Chapter 1: Describes land use inside and outside
- forest area; trends in deforestation and forest degradation and their main causes; general emissions trends; and land use sectors Assesses the potential and opportunity for the development of a REDD+

programme

Chapter 3: Sets out Indonesia's commitment to reducing emissions Provides an in-depth explanation of Indonesia's commitment to reforming its spatial planning and forest management, as the two most influential factors in the strategy's architecture

Explains the vision, mission, objective, scope, target and advantages of developing REDD+, its synergy with other programmes developed in response to climate change mitigation, and land use policy

Includes a guarantee that the objective of biological diversity conservation will be integrated into REDD+ programme development, given that it could have a higher value than carbon itself

Chapter 4: Sets out the main framework of the strategy – conceptualised as five pillars – and details the path for necessary system development (see below for more information on the five pillars). Explains infrastructure development, preparation of preconditions and enabling conditions, development of institutional capacity, professionalism and technological capacity (e.g. software)

Sets priorities for tasks by three new Chapter 5: institutions to be established (REDD+ managing body, REDD+ funding partnership and REDD+ MRV institution) as part of the action plan to develop the necessary institutional infrastructure and capacity Sets out the entire process and timeline for developing REDD+ programme support, given as requiring 2-3 years for planning, initiation, institution establishment, infrastructure preparation, learning and capacity development, with the full implementation of REDD+ in Indonesia scheduled to begin in 2014 Describes REDD+ in the pilot province and offers lessons on real issues that will be encountered and that will require solutions

Chapter 6: Stresses the importance of the involvement of stakeholders at multiple levels, which must be carried out gradually to ensure MRV effectiveness, funding instrument efficiency and equity in benefit sharing Highlights the requirement for alignment between REDD+ institutional architecture and the national mitigation

strategy for low-carbon economic development Establishes an expectation that the

REDD+ institution itself will be ready in 2011 and fully operational by the end of 2013

Reiterates the need for policy reform to support REDD+ implementation, and notes that such reform will require reviews of the existing regulatory framework, especially with regard to spatial planning and tenure rights (recognised as a chronic issue in Indonesia requiring immediate action to enable REDD+ implementation of REDD+), as well as the identification and repeal of any regulations or licensing rules that create opportunities for corruption Points out that lessons learned from pilot projects and interactions with global and local communities need to be considered to prevent the repetition of mistakes and to enhance the chances of success

Given that most LULUCF emissions in Indonesia are due to deforestation and degradation of forest and peatlands, the focus of this strategy is on efforts to improve the management of forest and peatlands, with the main objective to reduce deforestation and degradation. Therefore, REDD+ implementation in Indonesia aims to achieve the following: (1) reducing rates of deforestation; (2) reducing forest degradation; (3) enhancing conservation; and (4) enhancing carbon stock. During public consultations conducted by Bappenas in seven regions in late 2010, the major causes of deforestation and forest degradation were identified as (1) ineffective spatial planning and weak tenure systems; (2) ineffective forest management; and (3) weak governance and law enforcement.

These three causes must be addressed if Indonesia is to meet its commitment of reduction in emissions of 26% below the 2020 projection based on a BAU scenario. The National REDD+ Strategy architecture is based on the following five pillars: (1) development of REDD+ management institutions, funding instruments and MRV system; (2) development of related laws and supporting regulations; (3) planning of strategic programmes; (4) shift in paradigm and working culture towards inclusive participation by community groups, including women and vulnerable communities, in developing policy, programmes and protocols; and (5) effective involvement of the community through implementation of FPIC, safeguards and fair and transparent benefit-sharing processes. The National REDD+ Strategy is an integral part of Indonesia's sustainable development strategy, which is designed to achieve low carbon economic development through four development strategy pathways: pro-growth, pro-jobs, pro-poor and pro-environment.

These pillars are translated into various activities in the draft, as follows (See Table 20).

- 1. Establish REDD+ institutions
  - The general framework of institutions for REDD+ has four levels: international, national, subnational and programmes/projects/activities. The institutions to be developed are REDD+

management institutions, funding instruments and the MRV system.

- 2. Review and strengthen policies and regulations Regulatory areas to be reviewed include spatial management and use, land tenure, forest and peatland management, forest monitoring and law enforcement, two-year forestry licence suspension (including licence consolidation) and conflict resolution.
- 3. Planning of strategic programmes Programmes that come under this pillar concern sustainable landscape management, economic system of sustainable natural resources use, conservation and rehabilitation.
- 4. Shift in paradigm and working culture This pillar comprises activities concerning the strengthening of forestry sector management, national 'Indonesia's Forest Preservation' campaign and development of activities through the 'Forest of the Year' programme.
- 5. Stakeholder involvement Activities concern developing strategies for interaction and stakeholder involvement and implementing FPIC principles, safeguards and benefit sharing.

The National REDD+ Strategy is part of the RAN-GRK, which is based on the ICCSR. The ICCSR provides direction for mitigation activities in all sectors. For the forestry sector, the ICCSR is implemented via the National-Level Forestry Plan (RKTN 2011–2030). The RKTN articulates various activities required to implement REDD+ as per the National REDD+ Strategy. Therefore, the RAN-GRK and National REDD+ Strategy cannot be separated, because they both translate the ICCSR.

As with other strategic documents, the National REDD+ Strategy serves as a guideline, or a reference for REDD+ implementation; as such, it is rather general and needs further elaboration in a technical document – the REDD+ National Action Plan (RAN REDD+), which is to be adopted into Government Working Plans (RKP). RAN REDD+ will be further translated into Local REDD+ Action Plans (RAD REDD+). The Local REDD+ Strategy (Strada) will be substantially linked to the National REDD+ Strategy, so that national-level plans can be implemented in the field. Similarly, the RAN GRK will be translated into Local Greenhouse Gas Action Plans (RAD-GRK).

National REDD+	Implementation period					
Strategy	Phase 1 (2011–2012)	Phase 2 (2012–2014)	Phase 3 (2014 onwards)			
Establish REDD+ institutions	<ul> <li>Develop National REDD+ Strategy</li> <li>Design REDD+ institution, funding instrument and independent MRV framework</li> <li>Determine coverage of the moratorium</li> <li>Select pilot provinces</li> </ul>	<ul> <li>Found REDD+ institution</li> <li>Establish funding instrument</li> <li>Establish MRV system</li> <li>Establish the first and the second pilot province programmes (2011 and 2012)</li> <li>Build capacity and work instruments</li> <li>Finalise laws and legislative preconditions</li> </ul>	<ul> <li>Fully implement REDD+ system</li> <li>Continue emission reduction programme</li> <li>Deliver programme for independent monitoring and verification</li> <li>Operate MRV system based on UNFCCC standards</li> <li>Verify emissions against UNFCCC reference level</li> <li>Carry out payments based on verified emission reductions (VER)</li> </ul>			
Review and strengthen policies and regulations	<ul> <li>Review the legal framework</li> <li>Improve law enforcement an</li> <li>Review the legal framework</li> <li>private sector</li> </ul>	for land rights and accelerate imp nd preventing corruption of and determine incentives and,	olementation of spatial planning /or disincentives for the			
		<ul> <li>Determine the legal framework maps for the determination</li> <li>Conduct studies of forest and conflict resolution</li> <li>Suspend the release of new licences for forest and peatland areas for two years</li> </ul>	ork for synchronising data and of spatial planning and licences d land use licences and			
Planning of strate	gic programmes					
1. Sustainable landscape management	<ul> <li>Carry out landscape/eco-reg</li> <li>Increase sustainable alternat</li> <li>Accelerate organisation and</li> <li>Institute forest and land fire of</li> <li>Finalise the pilot province spatial plan</li> </ul>	<ul> <li>ion/multifunctional river catchm</li> <li>ive employment</li> <li>operationalisation of forest mana</li> <li>control and prevention processes</li> <li>Determine and map <i>adat</i></li> <li>regions and other local</li> <li>community areas</li> <li>Finalise spatial plans</li> <li>of eight other forested</li> <li>provinces</li> <li>Identify specific areas and</li> <li>finalise preparations for</li> <li>land swaps</li> </ul>	ent planning and management agement units (KPHs) s • Implement land swaps • Finalise spatial plans for all other provinces			
2. Economic system for sustainable use of natural resources	<ul> <li>Enhance sustainable alternat</li> <li>Accelerate sustainable forest</li> <li>Improve productivity of agrid</li> <li>Implement environmentally</li> <li>Promote high value-added destated of the sustainable of the su</li></ul>	tive employment (local economic management practices culture and estate crops friendly mining practices lownstream industries	c development)			
3. Conservation and rehabilitation	<ul> <li>Enforce rules governing prot</li> <li>Control forest and peatland o</li> <li>Carry out forest restoration a</li> </ul>	ected areas conversion Ind peat rehabilitation activities • Enforce and strengthen man and peatland	agement of protected forest			

 Table 20. Strategic steps towards effective implementation of REDD+

continued on next page

National REDD+	Implementation period					
Strategy	Phase 1 (2011–2012)	Phase 2 (2012–2014)	Phase 3 (2014 onwards)			
Shift in paradigm and working culture	<ul> <li>Strengthen forestry sec</li> <li>Carry out activities for t</li> <li>Develop incentive activ</li> </ul>	tor management he national 'Indonesia's Forest Pre ities through the 'Forest of the Yea	eservation' campaign ar' programme			
Stakeholder involvement	Ensure interaction betw adat/local communities	nsure interaction between stakeholder groups (regional government, private sector, NGC ndat/local communities and international sphere)				
	Develop social and environment safeguards					
	Develop equitable system for benefit sharing					

#### Table 20. Continued

Source: REDD+ Task Force (2011: 85)

#### National Action Plan to reduce Greenhouse Gas Emissions (RAN-GRK)

On 20 September 2011, President Yudhoyono signed Presidential Decree No. 61/2011 on the National Action Plan to Reduce Greenhouse Gas Emissions (RAN-GRK). The decree was intended to serve as a reference document for related ministries and heads of institutions in planning and conducting activities directly and indirectly related to GHG emission reductions tailored to national circumstances such as development targets. Activities listed in the decree are categorised by sector: agriculture; forestry and peatlands; energy and transport; industry; waste management; and other supporting activities. The Coordinating Minister of Economy is tasked with overseeing and monitoring the implementation of the activities. It is also expected that other stakeholders will reference the document in their planned emission reduction measures.

At the local level, RAN-GRK provides guidance for local government in developing Regional Action Plans to Reduce GHG Emissions (RAD-GRK), which are adapted to each province's development priorities. RAD-GRKs are to be established within 12 months of the date of the decree. The Minister of Home Affairs, with the support of Bappenas and the Ministry of Environment, will oversee and coordinate the preparation of the RAD-GRKs. Under the decree, Bappenas is tasked with preparing guidelines for preparing the RAD-GRKs, to be disseminated within three months of the date of the decree.

The decree states that the RAN-GRK is to undergo periodic review, and is to be modified as necessary according to changes in national needs and international dynamics. Bappenas will lead the review process, with results of the reviews submitted, at least once a year, to the Coordinating Ministry for Economy, with copies sent to the Coordinating Minister for the People's Welfare.

Each sector included in the RAN-GRK is advised of its expected contribution to the overall GHG emission reduction target of 26%/41%, as follows:

- Agriculture: 0.008 Gt CO<sub>2</sub>e (26%) and 0.011 Gt CO<sub>2</sub>e (41%)
- Forestry and Peatlands: 0.672 Gt  $CO_2e$  (26%) and 1.039 Gt  $CO_2e$  (41%)
- Energy and Transport: 0.038 Gt CO<sub>2</sub>e (26%) and 0.056 Gt CO<sub>2</sub>e (41%)
- Industry: 0.001 Gt CO<sub>2</sub>e (26%) and 0.005 Gt CO<sub>2</sub>e (41%)
- Waste Management: 0.048 Gt CO<sub>2</sub>e (26%) and 0.078 Gt CO<sub>2</sub>e (41%)

Various funding sources will be channelled to support the implementation of the RAN-GRK; these include the APBN and APBDs, as well as other legitimate sources and non-binding funding sources as permitted under Indonesian legislation.

Some questions have arisen with regard to the definition and the target for emission reduction in the RAN-GRK. The definition of 'greenhouse gases' (gas rumah kaca; GRK) is given as 'gas yang terkandung dalam atmosfer baik alami maupun antropogenik, yang menyerap dan memancarkan kembali radiasi inframerah (atmospheric gas, whether natural or anthropogenic, that absorbs and re-emits infrared radiation)'. That is, emissions are defined as including not only anthropogenic gases but also natural gases (such as volcanic, water evaporation, etc.).

#### Responses to the outcomes of COP 16 in Cancun

At the start of 2011, the Indonesian government began to translate the decisions made at COP 16 in Cancun into the national context (Masripatin 2011). This involved the following activities:

- launch of a stakeholder consultation process for developing Indonesia's SIS/ISS (Safeguard Information System) on 21 March 2011
- response to an invitation from the Subsidiary Body for Scientific and Technological Advice (SBSTA)
- submission to the UNFCCC Secretariat of views on modalities for developing RELs/RLs and the MRV system
- creation of guidance for the development of the SIS/ISS
- preparation of a joint ASEAN submission (all ASEAN member states) to the UNFCCC on the same issues.

Similarly, in the same year, a series of consultations involving civil society and other stakeholders focusing on environmental and social safeguards were held (Figure 6).

#### **Further policy development**

Two additional roadmaps related to REDD+ are being constructed. The aim of the first roadmap is to reform governance in areas involved in REDD+. The first step planned in the creation of the roadmap was a participatory study to assess the readiness of local governments to implement REDD+ programmes, primarily in connection to plans to select a pilot province election for phase II.<sup>116</sup> The study was conducted by the UN Development Programme (UNDP), with the results expected to be of use to various parties, including the Ministry of Forestry, UKP4 and Bappenas.<sup>117</sup> WRI, in collaboration with several other CSOs in Indonesia, is assessing the design and similar governance patterns (with the scope restricted to forest governance).<sup>118</sup> The main difference between the two studies is that the UNDP assessment framework incorporates assessment of the readiness of REDD+ institutions, which is not included in the WRI assessment framework.

The second roadmap is for the construction of an MRV system for forestry by the Ministry of Forestry with UN-REDD support. Development of the roadmap began with the identification of activities carried out by various parties to form an MRV system. This was followed by an analysis of the roles that the Ministry of Forestry (represented by the Directorate General of Planology) must assume when preparing carbon accounting for the MRV system for forest areas.<sup>119</sup> The roadmap was scheduled for completion in September/October 2011 with the action plan set out in the roadmap to be completed by the end of 2012.<sup>120</sup> It is further expected that, in 2013, a baseline will be set and MRV systems and institutions to implement MRV in forest areas will become operational.<sup>121</sup>

#### 4.2.3 REDD legal framework

By the end of 2011, when Indonesia was in the REDD+ preparation phase, the government had issued three technical ministerial regulations governing REDD+ implementation. Consequently, Indonesia came to be considered one of the most progressive countries in terms of REDD+ legislation. Details of the three regulations are given in this section.

Minister of Forestry Regulation No. P.68/Menhut-II/2008 on the Establishment of Demonstration Activities for Reducing Carbon Emissions from Deforestation and Forest Degradation

<sup>116</sup> The study was planned to be implemented in 10 provinces: Aceh, Riau, Jambi, South Sumatra, East Kalimantan, Central Kalimantan, West Kalimantan, Central Sulawesi, Papua and West Papua; see the presentation by Irman G. Lanti (Assistant Country Director/UNDP Head of the Democratic Governance Unit) at the Regional Consultation on Participatory Governance Assessment in Palu, 29 July 2011.

<sup>117</sup> Presentation by Irman G. Lanti (Assistant Country Director/UNDP Head of the Democratic Governance Unit) at the Regional Consultation on Participatory Governance Assessment (PGA) in Palu, 29 July 2011.

<sup>118</sup> Governance of Forests Initiative, a global network led by WRI with the Indonesian Center for Environmental Law (ICEL), Sekala, HuMA, and Forest Watch Indonesia (FWI), among others: www.wri.org/project/governance-offorests-initiative.

<sup>119</sup> Presentation by the Team for Developing the MRV Roadmap (Dr M. Bruce, Prof. Saleh, I. Nengah S. Jaya) on the MRV Roadmap, Braja Mustika Hotel Bogor, West Java, 4 July 2011.

<sup>120</sup> Presentation by the Team for Developing the MRV Roadmap (Dr M. Bruce, Prof. Saleh, I. Nengah S. Jaya) on the MRV Roadmap, Braja Mustika Hotel Bogor, West Java, 4 July 2011.

<sup>121</sup> Presentation by the Team for Developing the MRV Roadmap (Dr M. Bruce, Prof. Saleh, I. Nengah S. Jaya) on the MRV Roadmap, Braja Mustika Hotel Bogor, West Java, 4 July 2011.



**Figure 6.** Elements in translating REDD+ guidance and safeguards in COP 16 decisions into the national context Source: Masripatin (2011)

This regulation governs implementation procedures for REDD+ demonstration activities in Indonesia. Provisions in the regulation outline mechanisms for submitting applications. The first section explains the stages involved in the application process. Applications are made by including area location maps, stating the type, duration and value of activities, and detailing risk management and revenue allocation. The regulation requires that all applications to conduct demonstration activities be assessed by the Ministry of Forestry Climate Change Working Group (POKJA PI). Under the regulation, the role of the working group is to provide recommendations to the minister in evaluating planned activities. If the working group approves an application, the minister will issue an approval setting out:

- 1. the designated area and extent of the demonstration activities
- 2. the timeframe of activities, up to a maximum duration of five years
- 3. provisions relating to risk and revenue distribution.

This regulation contains no provisions on community rights in relation to the implementation of demonstration activities and, overall, provides no clarity as to the context for demonstration activities. Consequently, there is a possibility of conflicts arising between project proponents and communities vis-à-vis the socio-cultural conditions in certain designated areas.

However, this regulation is not final, as several provisions require further regulation by the minister. For example, the criteria for determining areas for demonstration activities require a further ministerial decree, which has yet to be issued.

#### Minister of Forestry Regulation No. 30/Menhut-II/2009 on Mechanisms for Reducing Emissions from Deforestation and Forest Degradation

This regulation provides a general reference for implementing REDD+, including criteria regarding which forest areas can be used for REDD+. The regulation identifies 12 forest areas that can become REDD sites: (1) timber concession areas in natural forests; (2) timber concession areas in plantation forests; (3) timber production areas in community forests; (4) timber production areas in community plantation forests; (5) ecosystem restoration timber forest production areas; (6) production forest management unit areas; (7) protection forest management unit areas; (8) conservation forest management unit areas; (9) conservation forests; (10) customary forests; (11) private forest; and (12) village forests.

The regulation governs activities by national and international entities. Practitioners from national entities can be managers of any of the 12 forest types listed; international entities may be governments, corporate bodies, organisations, foundations or individuals that provide funds for REDD+. The regulation emphasises that REDD+ activities will be closely linked to the presence of funding from international entities.

The regulation also stipulates requirements for submitting applications to conduct REDD+ activities, and it is apparent that REDD+ practitioners will experience difficulties in meeting the requirements. In the case of customary forests, for instance, one requirement is to produce a copy of a Ministry of Forestry decree acknowledging the existence of the customary community. However, in reality, procedures surrounding recognition of customary forests are far from simple, and Indonesian Customary Community Alliance (Aliansi Masyarakat Adat Nusantara; AMAN) records show that no customary community has yet secured such a decree or recognition from the state.<sup>122</sup>

Procedures and mechanisms for submitting applications for REDD+ activities are also set out in the regulation. Proponents must submit an application to conduct REDD+ activities to the minister demonstrating the satisfaction of predetermined prerequisites. The minister then submits the application to the 'REDD+ commission' for review. The regulation also sets out the criteria that the 'REDD+ commission' must follow in evaluating the feasibility of activities. Indicators include: (1) data and information; (2) biophysics and ecology; (3) threat to forest resources; (4) cultural, social and economic considerations; (5) economic feasibility; and (6) management. The minister is required to approve or reject the REDD+ application within 14 days of receipt. A REDD+ project may run for up to 30 years and is extendable. However, it is not clear in this regulation whether the institution referred to as the 'REDD+ commission' means the working group established under Minister of Forestry Regulation No. P.68/Menhut-II/2008 on Demonstration Activities.

Accompanying the regulation are six annexes, which provide more details on technical aspects of REDD implementation in the following areas:

- a. guidelines for regional governments on providing recommendations
- b. criteria for selecting REDD locations
- c. guidelines for preparing REDD implementation plans
- d. guidelines for evaluating REDD applications
- e. guidelines for determining RELs and monitoring and reporting of REDD activities
- f. guidelines for verifying REDD activities.

The issue of carbon credits (offsets) emerges clearly in this regulation, as shown by its provisions on rights and obligations. The stated rights of REDD+ practitioners are: (1) to receive payments for REDD+ implementation at the national level (national entities); (2) to possess and use REDD+ certificates (carbon credits) as proof of emission reductions; and (3) to trade REDD+ certificates in post-2012 REDD+ carbon trading. These provisions indicate that REDD+ in Indonesia – at least as it is presented in this ministerial regulation – has a strong market orientation.

Certificates as proof of emission reductions from REDD+ activities are secured following verification from an independent evaluation institution. However, the regulation does not identify the independent evaluator. It merely explains that the National Accreditation Committee (Komite Akreditasi Nasional; KAN) has the authority to establish accreditation for an evaluation institution. Therefore, the independent evaluator could be either a private or a government institution.

#### Minister of Forestry Regulation No. 36/Menhut-II/2009 on Permit Procedures for Carbon Sequestration and/or Storage Enterprises in Production Forests and Protection Forests

This regulation is linked to REDD+ but does not specifically govern it. Rather, its emphasis is more on environmental services–based enterprises, and not only emission reductions. The concept of payment for environmental services (PES) is more relevant to this regulation, as carbon sequestration services (RAP Karbon) and storage services (PAN Karbon) are its main emphasis. Despite stipulating that RAP and PAN activities can be implemented in production and protection forest areas, the regulation provides no detailed definitions of RAP and PAN activities, apart from stating that such activities constitute

<sup>122</sup> Data from Aliansi Masyarakat Adat Nusantara (AMAN), from an interview with Abdon Nababan, February 2011.

'types of environmental services utilisation in production and protection forests'. This definition provides no understanding whatsoever as to what RAP and PAN activities actually are. However, there is some description of what activities can be implemented as RAP and PAN activities. PAN activities including postponing logging, expanding conservation areas and applying harvest rotation. Thus, PAN activities aim at maintaining forest stands first and preparing them for carbon sequestration. RAP activities include planting and enlarging forest stands in particular forest areas. Thus, although RAP and PAN activities in this regulation are specific and different for production and protection forests, there are fundamental differences between such types of activities.

RAP and PAN activities can be implemented in areas either subject to or not subject to concession permits. The prerequisites and procedures for submitting applications differ for each of these area types. Authority over areas not subject to concession permits (HTIs, ecosystem restoration areas, community plantations, etc.) lies with the minister, governors and district heads or mayors, whereas authority over areas not subject to permits lies with the minister.

Although the concepts of carbon RAP and PAN appear to be different from REDD+, Article 4 of the regulation states that:

The implementation of carbon storage enterprises in reducing emissions from deforestation and forest degradation (REDD) schemes, and carbon sequestration enterprises in the clean development mechanism framework are regulated by separate Ministerial Decree.

Procedures for RAP and PAN activities are very similar to those for REDD+, for which activities are verified by an independent verification institution and result in emission reduction certificates that can be traded on the carbon market. The most fundamental difference, perhaps, is that RAP and PAN can only take place in production and protection forests, whereas REDD+ activities may be conducted in other forest types too.

#### **Objections to the regulations**

Many objections have arisen in response to government decisions regarding REDD+ activities, not only from civil society, but also from government agencies that feel excluded from regulation-drafting processes. During a focus group discussion facilitated by the Partnership for Governance Reform on 29 April 2010, the Ministry of Finance objected to Minister of Forestry Regulation No. 36/Menhut-II/2009 on the grounds that it should have been involved in formulating the provisions relating to the distribution of benefits between the government, communities and businesses. Fundamentally, the Ministry of Finance suggested that the Ministry of Forestry had overstepped its authority. According to Law No. 17/2003 on State Finance, the Department of Finance (now the Ministry of Finance) through the Minister of Finance has the authority to manage state finances (Article 6(2)). The law defines 'state finances' as referring to all of the state's rights and obligations that can be measured by money, and all things in the form of money or goods that can become state assets related to the application of those rights and obligations. Although ministers and heads of other institutions such as the Ministry of Forestry are given authority over certain aspects of state finances, that authority is as user and not as manager (Article 6(3)).

Therefore, in reference to this law, the Ministry of Forestry has no authority to regulate the distribution of benefits from REDD+ and/or carbon storage/ sequestration activities. This conflict demonstrates that intersectoral coordination and synchronisation remain a major challenge in Indonesia. Indeed, there are many instances of overlapping legislation, as is emerging in the context of REDD+ implementation.

Consequently, the Ministry of Forestry announced plans to revise the three regulations. However, by April 2011, no further developments on the planned revisions had been forthcoming.

### 4.2.4 Positions of civil society in debates over REDD+

REDD+ has been the subject of widespread debates ever since its inception at COP 13 in Bali, with discourse both for and against REDD+ voiced by various civil society groups.

Some civil society groups claim REDD will limit 'forest-owning' customary communities' access to forests. Another criticism is that, because of its focus on carbon trading, REDD+ will not resolve the underlying problem of development failure in the forestry sector. Several demonstrations protesting plans to implement REDD were held at the civil society forum at COP 13 (Detiknews 2007b). The CSF<sup>123</sup> has expressed the view that REDD+ will have a negative impact both on communities and on global efforts to reduce emissions, and that REDD+ fails to provide solutions to the fundamental problems underlying deforestation.

These are the main civil society objections to REDD+:

- REDD+, with its focus on carbon market schemes, will not provide solutions for reducing global emissions.
- The adoption of REDD+ in a mandatory scheme under the UNFCCC will relax pressure on developed countries to reduce their emissions, which should be the main agenda in a global emission reduction scheme.
- REDD+ will restrict access by customary communities to their forest homes.
- Oil palm estate and industrial timber plantation companies will secure double benefits but, ultimately, the forests will still not be saved.
- The original objective of REDD was not to prevent deforestation but to reduce emissions; as such, it is vulnerable to manipulation.
- Given that there are many gaps in governance, it is most important to improve the system: the government must take responsibility for improving governance systems before REDD+ can be implemented.<sup>124</sup>

Debates on the scope of REDD+ continued after COP 15 in Copenhagen when CSF published a public report on the Copenhagen Accord, called 'The failure of COP 15 and the failure of the salvation of mankind', on 28 December 2009. One of the points in the report relates to REDD+. Later, civil society groups got together with several Indonesian members of parliament to report on the failure of COP 15 (although the Government of Indonesia considered COP 15 a success). Finally, facilitated by House of Representatives Commission IV, another meeting was set up between civil society and a government delegation on 18 January 2010. One topic of the discussions was the inclusion of estate crops (*perkebunan*) in the definition of forest. Some parties felt that oil palm estates should also be categorised as production plantation forests and, therefore, subject to REDD+ schemes. Accordingly, the government expressed an intention to prepare technical regulations in which oil palm estates would be included as forest areas (Kontan 2010); in subsequent debates, however, intensity surrounding the proposal to include oil palm estates diminished.

Other points of contention are the recognition of customary communities, community participation and benefit sharing. The Indonesian Customary Community Alliance (Aliansi Masyarakat Adat Nusantara; AMAN) and Sawit Watch sent a letter to the FCPF<sup>125</sup> on 15 May 2009 urging the FCPF to pay attention to recommendations from the Indonesian National Commission on Human Rights (Komnas HAM), which holds the view that Indonesia has yet to implement the International Covenant on Civil and Political Rights. The CSF sent another letter on 19 July 2009 criticising the Readiness Plan (R-Plan) that the government had submitted to the FCPF Secretariat.<sup>126</sup>

Civil society groups take a range of stances regarding REDD+ (see Table 18). The CSF, as mentioned above, has adopted a critical position, as it tends to view REDD+ as an unnecessary priority for addressing climate change. This group is highly critical of the REDD+ carbon trading mechanism (carbon offsets) in particular, and holds the view that REDD+ is not the answer to the underlying problems in forestry. The group does not completely reject the idea of REDD+, but questions its effectiveness for climate change mitigation (CSF 2010). Among those on the other side of the debate are organisations dedicated to conservation issues. These organisations tend to consider REDD+ a valid mechanism for addressing climate change, and the best solution under the circumstances of the stagnant negotiations on mitigation efforts. Organisations in this group generally feel that REDD+ can create

<sup>123</sup> The Civil Society Forum (CSF) for Climate Justice comprises 30 civil society organisations: AMAN, HuMA, ICEL, Walhi, Jatam, KpSHK, Jangkar, RACA Institute, KEHATI, Down to Earth, Sawit Watch, KIARA, SBIS, TI Indonesia, Pelangi, StoS, FWI, IESR, IHSA, IPPHTI, IPF, IYF, KRKP, Latin, Nastri, Satu Dunia, Solidaritas Perempuan, Telapak and Kemala.

<sup>124</sup> Summarised from several civil society discussions, 2007–2010.

<sup>125</sup> www.forestcarbonpartnership.org/fcp/node/218.

<sup>126</sup> Letter from the CSF, dated 19 July 2009.

positive momentum for improving the condition of forests in forested countries, by providing an incentive mechanism for good forest management, preventing deforestation and degradation and curbing GHG emissions from the forestry sector. This group's position has its own dynamic. For example, the conservation organisation WWF was originally against including the forestry sector in the climate change forum, but it changed its stance in 2008 (Butler 2008).

As they hold a generally optimistic view of REDD+, organisations within this group have undertaken many REDD+ demonstration activities in Indonesia. Fauna & Flora International, for instance, is undertaking REDD+ activities in West Kalimantan and was facilitating a REDD+ project in Aceh. These activities have their basis in the agreement from COP 13, providing positive incentives for individuals or groups that prevent deforestation. However, they have also been hampered by overlapping land claims, which are basically problems of tenure (CSF 2010).

The opposing positions of the two main groups in civil society have created a singular dynamic in Indonesia. Nevertheless, those at all points along the spectrum are aware of the urgency of reforming many aspects of Indonesia's forestry sector. The fundamental point of difference on REDD+ between these two groups is related to the use of market mechanisms as a means of mitigating climate change.

#### 4.3 Consultations and multistakeholder processes

Involving communities in decision-making and planning is crucial for the success of REDD+. In Indonesia, for example, several meetings have been held to discuss the development of the R-PP, although the FCPF and R-PP were not the sole topics of all the meetings. An annex from the FCPF proposal that lists the meetings held since COP 13 in Bali in 2007 is reproduced in Table 21.

On paper, this long list of public consultations could be construed as progress; in reality, however, an ideal consultation process has yet to be achieved. Almost all of the government activities involved awarenessraising (*sosialisasi*) rather than two-way consultations in which communities could provide input on decision-making. Consultations facilitated by the Ministry of Forestry, for instance, frequently had very limited NGO involvement, and their input had no bearing on the substance of the final decision.

#### 4.3.1 Consultation processes for drafting Minister of Forestry regulations on REDD

One example of the failure of regulations to incorporate feedback from other parties is that of Minister of Forestry Regulation No. 30/2009 on REDD. Although stakeholders from several government institutions and international and national NGOs presented their input at a public consultation meeting held on 25 March 2008, their recommendations were not reflected in the final outcome.<sup>127</sup> Points of difference between the regulation and input from various institutions given at the meetings – AMAN, DNPI, DKN, CIFOR, TNC, AusAID, GTZ, the Ministry of Finance and APHI – are set out in Annex 1.

For example, AMAN commented on the absence of a rights-based approach in the draft of Minister of Forestry Regulation No. 30/2009, and made several recommendations regarding local community management. Nevertheless, the final regulation fails to promote community rights-based arrangements, and state ownership continues to dominate rights recognition procedures. The DNPI suggested that the draft be worded to consider intersectoral relationships, as ministries would be working closely together in implementing REDD; this aspect does not appear in the final regulation.

These examples demonstrate that even though the requirement for participatory processes in drafting the regulations was technically fulfilled, they did not necessarily affect the outcome, and no clear reasons for the acceptance or rejection of the recommendations have been made available.

CSOs have followed the various channels and processes available in relation to the development of REDD+ projects and forestry sector policies. Many

<sup>127</sup> There were suggestions to review and postpone the regulation, but this did not happen. During the public consultation in Jakarta on 25 March 2008, various stakeholders presented their recommendations, but these were not adequately reflected in the final regulation. The presentations in question and the final regulation are listed in an annex to this report.

No.	Location/Time/ Activities	Organising institution(s)	Participants	Scope/focus
1	Bogor (West Java) January Outreach seminar	Bogor Agricultural University	Government representatives, private sector, NGOs, university lecturers and students, research institutions	Post-COP 13 UNFCCC: response to the Bali Action Plan and COP decision on REDD
2	Samarinda, Berau, Balikpapan (East Kalimantan) January and March Stakeholder communication	Local governments, Ministry of Forestry, The Nature Conservancy (TNC), GTZ	Local government institutions, Ministry of Forestry, NGOs, universities and research institutions	Awareness raising on REDD progress post-COP 13 Facilitating the establishment of a working group on REDD+ in East Kalimantan
3	Jakarta February Outreach seminar	University of Indonesia	Government representatives, private sectors, NGOs, university lecturers and students, research institutions	Climate change issues in general REDD challenges and opportunities
4	Semarang (Central Java) April Outreach seminar	Religious leaders, Ministry of Forestry	Religious leaders, Ministry of Forestry representatives, local governments and other stakeholders	Impacts of climate change and religion Opportunities under climate change regimes
5	Sulawesi (all provinces) February–April Stakeholder consultation	NGOs, local governments, Ministry of Forestry	Government representatives, private sector, NGOs, universities and research institutions, local community groups	Awareness-raising and stakeholder consultations on preparing for REDD implementation, including IFCA study results and follow-up
6	Yogyakarta May Seminar	Gadjah Mada University, Ministry of Forestry	University lecturers and students	Tackling climate change issues in forestry in Indonesia
7	Pekanbaru (Riau) June Stakeholder consultation	NGOs, local government, Ministry of Forestry	Government representatives, private sector, NGOs, universities and research institutions, local community groups	Awareness-raising and stakeholder consultations on preparing for REDD implementation, including IFCA study results and follow-up
8	Jakarta July REDD conference	TNC Indonesia	All TNC offices, government representatives, private sector, NGOs, universities and research institutions, local community groups	Sharing lessons learned from initiatives relating to REDD
9	Jakarta July Stakeholder consultation	Ministry of Forestry	Government representatives, private sector, NGOs, universities and research institutions, local community groups, international partners	Stakeholder consultations on draft ministerial regulations (Permenhut) on REDD Draft Permenhut also posted on IFCA website (Ministry of Forestry website) before and after the consultation process Input/comments also solicited through email and other means

Table 21.	Meetings held	concerning the	development of	R-PPs
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of communication

No.	Location/Time/ Activities	Organising institution(s)	Participants	Scope/focus
10	Palangkaraya (Central Kalimantan) October Stakeholder consultation	Local government, Wetlands International	Government representatives, private sector, NGOs, universities and research institutions, local community groups, international partners (Australia–KFCP)	Awareness-raising regarding REDD progress Stakeholder consultations on draft regulation (Permenhut) on REDD by Ministry of Forestry representative Establishment of REDD working group in Central Kalimantan
11	Papua October Outreach workshop	Local government, Ministry of Forestry	Government representatives, private sector, NGOs, universities and research institutions, local community groups	Awareness-raising and stakeholder communication on REDD and A/R CDM
12	Bogor (West Java) November Training for Ministry of Forestry regional forest conservation officers	Ministry of Forestry	Ministry of Forestry regional forest conservation officers	Forest and climate change issues: adaptation and mitigation (including A/R CDM, REDD and other forest- based PES)
13	Jakarta and others Periodic workshops	Ministry of Forestry	Government representatives, private sector, NGOs, universities and research institutions (depending on the topic and focus of the workshop)	Development of Forest Resource Information System (FRIS) and National Carbon Accounting System (NCAS); Indonesia–Australia cooperation
14	Jakarta and others On request	Government institutions, others	Government representatives, private sector, NGOs, universities and research institutions, local communities, international partners (depending on the topic and focus of the event)	Facilitation by the Ministry of Forestry in the REDD workshops Awareness-raising Training and other activities (by WG-FCC/FORDA/IFCA Secretariat)
15	Jakarta Periodic Focus group discussions	Ministry of Finance	Related government institutions, private sector, NGOs, universities and research institutions	Financial aspects of climate change REDD
16	Jakarta and others Coordinating meetings for consultations	Related government institutions (Ministry of Forestry, Ministry of Environment, Ministry of Finance, Ministry of Forestry, Bappenas, other ministries), DNPI, international partners	Government representatives, private sector, NGOs, universities and research institutions, local community groups, international partners	All climate change issues Forestry as a national climate change strategic area REDD as one of the main focuses
17	Yogyakarta, Mataram (West Nusa Tenggara), Aceh, Papua, Jambi, Palangkaraya (Central Kalimantan), Palu (Central Sulawesi) and Bali	Bappenas, UN-REDD, partners	Local and central government representatives, private sector, NGOs, universities and research institutions, local communities, international partners	National REDD+ Strategy

#### Table 21. Continued

continued on next page

No.	Location/Time/ Activities	Organising institution(s)	Participants	Scope/focus
18	Jakarta	REDD+ Task Force	Government representatives, NGOs	National REDD+ Strategy MRV Institutions Financing Pilot provinces

Table 21. Continued

have at times issued statements and press releases on issues related to climate change, including REDD+ as a potential solution for climate change.

CSOs have also given feedback on proposals for various projects or programmes in Indonesia. The most concrete example was feedback given to the government and the World Bank on the Indonesian R-Plan formulation process under the FCPF programme. Comments from civil society included the following recommendations.

- The FCPF should consider the issue of governance by the Government of Indonesia; in ignoring this aspect, the FCPF is failing to acknowledge the fundamental underlying problem with forestry in Indonesia.
- Customary community rights, management areas and natural resources protected under the UNDRIP should be recognised and respected in the R-Plan preparation processes. Human safety and environmental sustainability should be put above economic interests.
- FPIC should be adopted as a fundamental principle in involving customary and local communities in the design, implementation and other management aspects of R-Plan development.

Recent developments suggest that the level of participation by stakeholders in some parts of the REDD+ policy process has increased, at least superficially. For example, systematic efforts were made to involve all stakeholders in drafting the National REDD+ Strategy through regional consultations and focus group discussions. Nevertheless, it is important to review the extent to which any input actually influences the final strategy document. The fact that civil society is included in the make-up of the technical team of the REDD+ Task Force demonstrates a more genuine effort to involve some segments of the public. However, it is important to examine carefully whether, in practice, this structure grants sufficient opportunity for communities to be involved in policymaking.

### 4.4 Future REDD+ policy options and processes

#### 4.4.1 Types of REDD+

In the most recent version of the National REDD+ Strategy, REDD+ is perceived as consisting of activities to reduce deforestation and degradation, as well as activities for SFM, conservation and carbon stock enhancement (REDD Task Force 2011). As of early December 2010, the sites for pilot projects had not been confirmed, but several had been proposed in Kalimantan and Papua, for later consideration by the REDD+ Task Force.<sup>128</sup>

On 30 December 2010, the REDD+ Task Force selected Central Kalimantan (from among nine provinces: Jambi, South Sumatra, Aceh, Riau, West Kalimantan, East Kalimantan, Central Kalimantan, Papua and West Papua; see also Section 4.2.2) as the pilot province for REDD+ activities, as part of the LoI between Indonesia and Norway. This decision was widely publicised in Indonesia through a media release from the REDD+ Task Force. In the release, the task force explained that Central Kalimantan had been chosen based on qualitative and quantitative considerations, as it has the third largest area of forest cover in Indonesia and is under major threat of deforestation, and the regional governments in Central Kalimantan were deemed to be committed to implementing REDD+. However, the decision did raise questions among various circles, particularly with regard to the selection criteria. One

<sup>128</sup> Agus Justianto from the Ministry of Forestry, at the Consultation of National and International Experts in the Development of a National REDD+ Strategy, Melia Bali, 31 October – 2 November 2010.

criticism was that a strong commitment by regional government is an insufficient factor for addressing the complexity of forestry problems in the province, and numerous hurdles remain, such as the difficulties surrounding completion of the Provincial Spatial Plan (RTRWP), despite strong commitment from the governor. Ultimately, the authority to select the pilot province lay with the President.

#### 4.4.2 Payment and distribution mechanisms

As shown, there are fundamental problems with forestry in Indonesia – such as management and defined forest area status – that must be solved first if REDD+ is to be successfully implemented. Once those problems have been properly addressed, the next step is to consider payment and distribution mechanisms for REDD+.

Minister of Forestry Regulation No. 30/2009 on REDD reiterates the need for REDD+ demonstration activities, capacity building, technology transfer and voluntary carbon trading to be carried out before any state parties submit decisions to the UNFCCC regarding REDD+ mechanisms at the international level (Article 22(1)). Article 22(3) states that funds for implementing REDD activities are to be sourced from all parties of the UNFCCC and other legitimate funding sources. Currently, funds available for REDD+ schemes in Indonesia come from grants and aid from other countries. The phrase 'legitimate funding sources' may also encompass other forms of funding, such as loans. For example, the World Bank's Forest Investment Programme (FIP) is a scheme with a debt component. Furthermore, the Government of Indonesia has received a US\$300 million loan from the Japan International Cooperation Agency (JICA) and a US\$300 million loan from Agence Française de Développement.<sup>129</sup> Recent developments show that one funding mechanism targeted by the Government of Indonesia up to 2020 includes grants open to funding from carbon markets, such as the voluntary carbon market scheme.130

Indonesia was selected for the FIP in March 2010, after several national assessments to identify investment opportunities such as ecosystem restoration, smallholder plantations, forest plantations, development of forest management units and SFM. Activities conducted as part of the FIP since then include a scoping mission in August 2010.

The distribution of benefits and compensation payments is regulated under Minister of Forestry Regulation No. 36/Menhut-II/2009 on Permit Procedures for Carbon Sequestration and/or Storage Enterprises in Production Forests and Protection Forests; its provisions on benefit distribution are shown in Table 22. As discussed in Section 4.2.3, there is some contention as to the legitimacy of the substance of this regulation with regard to financial payments.

Civil society has criticised the distribution arrangements, citing issues with benefit sharing (CSF 2010). It is worth noting that the benefit sharing is *not* in relation to activities called 'REDD', but for carbon sequestration and storage. Such programmes are similar to REDD+ but use different terminology, because there is currently no international agreement on REDD+.<sup>131</sup>

#### 4.4.3 Establishing RELs and MRV

The annex to Ministry of Forestry Regulation No. 30/2009 contains guidelines for determining Indonesia's reference emissions based on national and subnational levels and in REDD+ activity locations. It appears that Indonesia will be using a national framework for REDD+, with implementation at the subnational (provincial, district/municipal or management unit) level. The Ministry of Forestry is responsible for establishing the national REL; subnational reference emission levels are determined by the provincial, district or municipal governments and confirmed against the national level. At the REDD+ activity location level, the practitioner determines the REL and confirms it against the RELs at the national and subnational levels.

<sup>129 &#</sup>x27;ICW kecam utang ke Bank Dunia untuk perubahan iklim (ICW criticises debt to the World Bank for climate change)', 30 May 2010, Primair online, www.primaironline. com/berita/ekonomi/icw-kecam-utang-ke-bank-dunia-untukperubahan-iklim.

<sup>130</sup> Discussion during the Consultation of National and International Experts in the Development of a National REDD+ Strategy, Melia Bali, 31 October – 2 November 2010.

<sup>131</sup> Article 4 of the regulation states: 'The implementation of carbon storage enterprises in reducing emissions from deforestation and forest degradation (REDD) schemes, and carbon sequestration enterprises in the clean development mechanism framework *are regulated by separate Ministerial Decree* [emphasis added]'. This suggests there is an important separation between carbon sequestration and storage activities and REDD.

Type of right	Proportion due			
	Government	Community	Developer	
Community forest (hutan rakyat)	10%	70%	20%	
Customary forest (hutan adat)	10%	70%	20%	
Plantation forest (hutan tanaman)	20%	20%	60%	
Village forest ( <i>hutan desa</i> )	20%	50%	30%	
Community forest (hutan kemasyarakatan)	20%	50%	30%	
Natural forest timber concession (IUPHHK-HA)	20%	20%	60%	

Table 22.	Distribution of benefits from	n carbon sequestration and/or stora	ge enterprises in production and
protectio	n forests (Minister of Forestr	y Regulation No. 36/Menhut-II/2009)	-

Determination of RELs featured in the Indonesian R-PP submitted to the FCPF and in UN-REDD activity work plans. Several activities related to setting RELs have been proposed to ensure REDD+ readiness. Under UN-REDD, methodology reviews and stakeholder consultations are required in setting RELs. Activities supported by AusAID include capacity building for REL determination.

The stages for establishing RELs in Indonesia are shown in Figure 7.

This process is subject to ongoing debate, because the 26% emission reduction target declared by the President is based only on 2020 emissions.

The draft National REDD+ Strategy stated that the REL/baseline for the forestry sector in 2020 is 1.5 Gt  $CO_2e$ . This figure was derived from the estimated emissions of 2.95 Gt  $CO_2e$  for 2020 laid out in the SNC. However, this number will undergo further assessment and calibration (Bappenas 2010b).

Discussions on MRV are ongoing; the REDD+ Task Force is discussing the development of MRV in multi-stakeholder forums and, as of June 2012, was in the process of establishing the institutions for MRV.<sup>132</sup>

#### 4.4.4 Benefit sharing

The draft National REDD+ Strategy also touches on issues relating to the sharing of benefits and

responsibilities. Co-benefits are an important feature in carbon emission reduction schemes. Nevertheless, it remains unclear how co-benefits will be assessed in the planned framework; this is likely to become another point for attention, as several stakeholders have noted.<sup>133</sup>

It is important to consider that the more complicated and complex the systems developed for REDD+ are, the greater the burden for developing countries that are seeking to make a positive contribution to climate change mitigation efforts through forest conservation. The way that the complexity of CDM discouraged the development of afforestation/reforestation programmes should be kept in mind to ensure the establishment of a simple but accurate system.

#### 4.4.5 Proposed participatory mechanisms

The proposed participatory nature of REDD+ is most evident in mechanisms in the REDD+ Task Force. In particular, the structure of the multi-stakeholder technical team (set up to support the REDD+ Task Force; see Section 4.1.3) makes it apparent that civil society is involved in important decision-making processes relating to the institutionalisation of REDD+, including the development of the National REDD+ Strategy, MRV and financial management.

Plans to involve communities in the future are set out in the draft National REDD+ Strategy. The

<sup>132</sup> CIFOR facilitated a forum to discuss MRV with the REDD+ Task Force on 3 November 2010.

<sup>133</sup> One of the people who raised this issue was Anja Lillegraven, Programme Coordinator of the Southeast Asia Rainforest Foundation Norway. Several others have noted the need for a specific mechanism for evaluating the co-benefits of REDD+ schemes.



Figure 7. Stages for setting of RELs in Indonesia as of March 2010

Source: Sarsito (2010)

draft proposes introducing FPIC for community involvement, although it is unclear who will give consent or the principles involved. However, compared with earlier community participation patterns, these two recent developments are encouraging and are more appropriate to principles of good governance.

#### 4.4.6 Institutions and policy

It remains unclear what kind of institution will ultimately oversee REDD+ implementation in Indonesia. What is clear is that the process of establishing a multi-stakeholder institution is currently under the more structured coordination of the REDD+ Task Force, as discussed above. Aspects important for the effectiveness of this institution include that it will have sufficient authority to undertake its tasks, will be supported by an appropriate legal framework and will apply principles of good governance.<sup>134</sup>

As noted above, however, although the two important sectors relevant to REDD+, agriculture and mining, have representatives on the REDD+ Task Force, their involvement appears to be less effective than might be desired. Similarly, the Ministry of Home Affairs, as the party responsible for regional autonomy in Indonesia, should have greater involvement, given the subnational scale of REDD+.

<sup>134</sup> Heru Prasetyo, deputy chair of UKP4 and secretary of the REDD+ Task Force, Hotel Le Meredien, Jakarta, 30 December 2010.

#### 4.4.7 Lessons learned for policy

Lessons learned from demonstration activities have yet to be clearly addressed in the current structure of the REDD+ Task Force. Nevertheless, a preliminary step taken by UKP4 in establishing the task force was a focus group discussion with organisers of demonstration activities from various regions.<sup>135</sup> Bappenas took similar steps during the development of the early versions of the draft National REDD+ Strategy.<sup>136</sup> These examples demonstrate that some learning from demonstration activities is taking place, but has yet to be translated into practice. The technical team established by the REDD+ Task Force (see Section 4.1.3) is responsible for reviewing progress in pilot provinces using a nested modelling approach<sup>137</sup> for developing REDD+. The technical team should consider developing a structured mechanism to channel knowledge from pilot provinces in order to develop REDD+ on a national scale.

As previously mentioned, Central Kalimantan is the main demonstration area for REDD+ readiness in the framework of the LoI between Indonesia and Norway, and will be the site of various activities relating to REDD+.

<sup>135</sup> Institutional Workshop organised by the REDD+ Task Force, Hotel Le Meredien, Jakarta, 30 December 2010.

<sup>136</sup> Institutional Workshop organised by the REDD+ Task Force, Hotel Le Meredien, Jakarta, 30 December 2010.

<sup>137</sup> A nested approach is the application of a carbon accounting and monitoring framework at the national level, whereas the implementation of REDD is the task of regional government (Cortez *et al.* 2010).

# 5. Implications for the effectiveness, efficiency and equity of REDD+

This chapter discusses the implications of the issues discussed in the previous chapters (institutional, political and economic aspects, and the REDD+ policy process) from the point of view of effectiveness, efficiency and equity (the '3E'). The first section sets out the national policies and their implications for 3E in REDD+, and examines which policies motivate/facilitate or reduce deforestation and forest degradation. The second section assesses REDD+ in relation to 3E.

# 5.1 National policy, 3E and policy determination

This section analyses several key national policies that influence 3E and notes those policies that support 3E.

#### 5.1.1 National policy and 3E

As discussed in Chapter 1, there are three main drivers of deforestation and forest degradation in Indonesia: (1) shifts in the status of forested territory from one purpose to another, such as conversion of forestland to oil palm plantations, cultivation, mining, housing developments and other development activities; (2) illegal logging; and (3) the burning (clearing) of forests and brush. It is understood that not all deforestation can be avoided because of the real need for development and to support people's livelihoods. However, a large proportion of the deforestation and forest degradation occurring in Indonesia is unplanned or not properly planned. A close examination reveals that instances where deforestation was unplanned, or occurred because of poor planning, are rooted in wider-ranging issues. These problems include poor spatial planning; inadequate legal basis or law enforcement leading to legal uncertainty; and the ongoing issue of land tenure. In addition, effective forest management is lacking – which is, ultimately, the main, overarching cause of the high rates of deforestation and forest degradation in Indonesia.

These problems are directly related to government policy. As discussed in the previous chapters,

some government policies have been proven to have the potential to encourage deforestation or forest degradation, whereas others have the potential to reduce the rates of deforestation and forest degradation. Spatial planning, for example, can both facilitate and prevent deforestation and forest degradation, while law enforcement policies sometimes create opportunities for violations of the law. This applies to licensing policies in the forestry sector and land use policies that encourage the excessive award of large numbers of permits. Exacerbating the inappropriate policies is the lack of regulations establishing clear, legitimate and widely acknowledged land tenure, which could prevent the conflicts that often result in forest degradation and deforestation.

# 5.1.2 National policies with the potential to reduce rates of deforestation and forest degradation

The government has issued several national policies that, if applied properly, could prevent or curb deforestation and forest degradation. These policies are reflected in the environmental protection and management and spatial planning laws, and in other regulations concerning the rescinding of forestry use permits issued by regional administrations and the formation of forest management units at the operational level.

#### **Environmental management laws**

In 2009, Law No. 32 on Environmental Protection and Management (Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup, UUPPLH) was enacted. If applied in the full spirit of its intentions, this law could have the effect of preventing or curbing deforestation and forest degradation. That is, the protection and management of the living environment as contained in the UUPPLH represents an attempt to apply a comprehensive holistic approach to development activities from the initiation of planning through to implementation on the basis of various integrated legal and policy instruments. The UUPPLH requires the Ministry of Environment to inventory all natural resources through sectoral agencies as a basis for determining eco-regions. An 'eco-region' under the UUPPLH encompasses all aspects or characteristics of natural resources, ecosystems and geographical conditions, and all indigenous peoples and their cultures and customs.<sup>138</sup> This inventory and determination of eco-regions then forms the basis for guidelines for formulating an Environmental Protection and Management Plan (Rencana Pengelolaan dan Perlindungan Lingkungan Hidup; RPPLH), a plan for adaptation to and mitigation of climate change.<sup>139</sup> One step in the RPPLH is the Strategic Environment Analysis (Kajian Lingkungan Hidup Strategis; KLHS), which must take into consideration the scale of policies and projects in the eco-region.

The central government and regional administrations are required to complete a KLHS as part of the formulation and evaluation of the Long-term Development Plan (Rencana Pembangunan Jangka Panjang; RPJP) and Medium-term National Development Plan (Rencana Pembangunan Jangka Menengah Nasional; RPJMN), as well as provincial, district and municipal planning and policy formulation, for any programme that has the potential to have a negative impact on the environment, including the Spatial Plan (Rencana Tata Ruang dan Wilayah; RTRW). The purpose of the KLHS is to ensure that the principles of sustainable development become a basis for and are integrated into development policy, planning and programmes in any given region. If the results of the KLHS indicate that any development plan or programme exceeds the capacity of the environment to support or accommodate it, that plan or programme must be adjusted in line with the KLHS recommendations, and all activities exceeding acceptable environmental limits must be abandoned.

The KLHS is also used in determining the types of activities that will require an environmental impact assessment (AMDAL), depending on the project scale. The UUPPLH strengthens requirements for the AMDAL contained in the previous law by increasing accountability in completing the AMDAL, licensing AMDAL examiners, ensuring the verification and certification of all AMDAL documents, and setting out punitive measures for failure to adhere to the regulations on the AMDAL. Under the law, the AMDAL is established as a key requirement when applying for the environmental permits that are a prerequisite for receiving a business permit.<sup>140</sup> In turn, any business permit issued can be rescinded if the AMDAL is deemed, at any point, invalid.

The UUPPLH thus has the effect of strengthening the role of the AMDAL in the permit framework. It does this by integrating environmental permits into sectoral business permits, including those that apply for forested areas: if the environmental permit is rescinded, the related sectoral business permit will automatically be rendered invalid. Under the UUPPLH (Article 36(1)), an environmental permit can be issued only following the approval of an AMDAL or an Environmental Management and Monitoring Document (Upaya Kelola Lingkungan-Upaya Pemantauan Lingkungan; UKL-UPL). This law directly affects forestry businesses that require an AMDAL, such as HTIs; this has created the expectation that there will be fewer cases of missing AMDAL documentation or inadequately prepared or incomplete AMDALs. The integration of the environmental permit and business permits is also expected to eliminate the tendency among permit applicants to ignore the requirement for an environmental permit, which caused problems in the past.

The UUPPLH also reinforces administrative, civil and criminal regulations. For example, the UUPPLH sets out punitive measures (minimum to maximum penalties), expands the definition of evidence and criminalises any infringement of quality standards; it also incorporates elements of criminal law and corporate law. The UUPPLH also specifies punitive measures for officials found guilty of issuing sectoral business permits without first meeting the requirements for an environmental permit. Although these aspects potentially have the effect of motivating and improving law enforcement, they must be complemented by improvements in institutional and human resource support.

This package of environmental management and protection instruments and law enforcement provisions can be expected to have a positive effect on REDD+ implementation – if they are carried out properly. However, further implementing regulations

<sup>138</sup> Clarification of Article 2(h), UUPPLH.

<sup>139</sup> Article 6, UUPPLH.

<sup>140</sup> Environmental permits are a requirement for the issuance of business and activity permits': Article 40(1), UUPPLH.

will be required to ensure that the UUPPLH can actually fulfil its intended function.

Furthermore, the AMDAL process must involve public participation. If it does, then it will serve as an effective instrument for ensuring fairness in all decision-making in connection with issuing permits in the forestry sector, including in relation to REDD+. The UUPPLH is designed to make the permit issuance process more open and transparent. It also takes into consideration the question of emissions in connection with the issuance of environmental permits.

#### **Spatial planning**

Several provisions in Law No. 26/2007 on Spatial Planning are supportive of efforts to decrease the rate of deforestation. For example, the law stipulates that public participation must occur in an objective, rather than collusive, manner to ensure the greater public interest is considered. This law also sets out punitive measures for issuing permits that contravene its rules. If this law is properly enforced, then existing spatial planning instruments can become more effective in monitoring the development process, including for REDD+. However, this will depend on the public having the capacity to participate in the implementation, monitoring and enforcement of this law.

From the point of view of justice, public participation is an essential means of ensuring equitable access to policy processes by all parties that may be affected by REDD+. To be comprehensive, community groups must be involved from the initial stages of planning and the determination of forest borders through to the application of spatial planning instruments.

#### **Other policies**

As explained in Chapter 3, regional autonomy triggered a sharp acceleration in deforestation, as district heads were given the authority to issue smallscale forestry business permits.<sup>141</sup> As a result, in

the early years of autonomy, district heads in forest regions, including Kalimantan, issued hundreds of forest harvest right (hak pemungutan hasil hutan; HPHH) permits,<sup>142</sup> each of which covered no more than 100 ha.143 These permits were initially issued indiscriminately without adequate consideration of the ecological, environmental and social impacts; the result was widespread clearing and severe damage to tracts of forest across Kalimantan. Realising the effect of the law, the central government sought to undo it through further laws, such as Government Regulation No. 34/2002 concerning Forestry Systems and the Planning of the Management and Use of Forested Areas, which rescinded the rights of regional authorities to issue such permits. This move had the effect of lowering the rate of deforestation by almost 300%. It seems advisable to retain these policies now, at least until the political processes and management systems in the regions improve.

Policies that target illegal logging (which causes forest degradation that leads to deforestation) include the initiative to divide forested areas into KPHs; KPHs are categorised by function into three types: production, protection and conservation.<sup>144</sup> The aim of this policy is to facilitate more efficient and sustainable management of forests as appropriate for their function and allocation. The government has set a target of establishing 600 KPHs and 120 model KPHs by 2014, which means that 65% of state forest areas will come under KPH management (Lee et al. 2011). KPHs are expected not only to help resolve the problem of illegal logging, but also to serve as official partners for REDD+ projects. However, an analysis suggests that the KPHs may have limited capacity, hampering their ability to perform this function (Lee et al. 2011).

Other laws targeting illegal logging include the Forestry Law and the UUPPLH, which define the types of damage inflicted by illegal logging. Several regulations address the eradication of illegal logging and the protection of forests: Government Regulation No. 60/2009 in connection with Government Regulation No. 45/2004 concerning the Protection

<sup>141</sup> The authority of region heads to issue permits was based on Government Regulation No. 6/1999 on Forestry Business and the Harvesting of Forest Resources in Production Forests, Government Regulation No. 5/2000 on the Criteria and Standards for the Issuance of Permits for the Use of Forest Resources and Permits for the Use of Natural Resources in Forested Areas and Ministry of Forestry Decision Letter No. 310/1999 on Forest Resource Harvesting.

<sup>142</sup> For example, business permits for the use of forestry timber resources.

<sup>143</sup> For example, Sintang District, where 944 HPHH 100 permits were issued in 1999–2002.

<sup>144</sup> Government Regulation No. 6/2007 on Forest Systems and the Formulation of Forest Management and Use, amended by Government Regulation No. 3/2008.

of Forests, and Government Regulation No. 3/2008 in connection with Government Regulation No. 6/2007 on Forest Systems and the Formulation of Forest Management and Use. In addition, Presidential Instruction No. 4/2005 aims to enhance the effectiveness of efforts to eradicate illegal logging.

# 5.1.3 National policies with the potential to exacerbate deforestation and forest degradation

As mentioned, some policies have the effect of encouraging or facilitating deforestation and forest degradation, either directly or indirectly.

#### Spatial planning and land use policies

Although, as discussed above, proper enforcement of the Spatial Planning Law can lead to reductions in the rate of deforestation, especially where it is the result of planned deforestation/forest resource exploitation, in reality, the law can have the effect of promoting deforestation and forest degradation. This arises because spatial plans (RTRW) determine the borders of forest areas and, in the current construction, appear to be more favourable to the needs of sectors outside forestry; this is particularly apparent when RTRWs are compared with their predecessor, the Forest Land Use by Consensus (TGHK) system. The Forestry Law stipulates that at least 30% of the total watershed (Daerah Aliran Sungai, DAS), or of the total land area on a given island, must be designated/retained as forest area. Although the law states that the 30% rule should not be used as a justification to convert forests, the reality is different. As mentioned, regional autonomy has had the effect of worsening forest condition;<sup>145</sup> the expansion into frontier regions frequently requires the conversion of forestland for the development of infrastructure and facilities. A recent report indicates that 33 provinces suggested changes in the status of 16.4 million ha of forestland - despite the lack of clear and objective criteria for changing the category of forest areas - but the Integrated Team

approved changes for only 1.4 million ha.<sup>146</sup> This gap reflects the intense desire on the part of regional administrations to convert forestland to other uses. The final draft National REDD+ Strategy clearly acknowledges the importance of addressing this problem, by highlighting that ineffective spatial planning is a key issue that has led to deforestation and degradation.

#### Policies related to land tenure

As discussed in Chapter 2, policies related to land tenure are confused by conflicting provisions in the Basic Agrarian Law and the Forestry Law, which has adverse effects on forests. Disagreements over who should control and manage forests create a great deal of tension and not infrequently result in heated conflicts and destructive activity. The lack of formal recognition of customary peoples, their customary laws and their rights to participate in decision-making processes concerning natural resources in their customary territory weakens their ability to monitor and control what happens in their forests. On the other hand, there is also evidence of a production culture, that is, a tendency among rural populations to base their livelihoods on cultivation and harvesting of forest resources in their immediate environs. With the current rapid increase in population and the tendency towards a cash economy, the demand for land and natural resources is continuously increasing, which in turn provokes further damage to forests.

This lack of clarity and potential for conflict in connection with land tenure can potentially undermine the REDD+ programme. These factors also hamper efforts to achieve equity, because, as explained in Chapter 2, they hinder customary peoples' participation in REDD+. Furthermore, there are still no simple, inexpensive, user-friendly procedures to enable customary peoples to manage forested areas.<sup>147</sup>

<sup>145</sup> As of 2009, there were 530 districts/municipalities in Indonesia, up from 440 in December 2004. See www.depdagri. go.id/basis-data/2010/01/28/daftar-provinsi and http:// id.wikipedia.org/wiki/Jumlah\_wilayah\_administratif\_di\_ Indonesia.

<sup>146</sup> Integrated Team Data (2010) as cited by Hariadi Kartodihardjo (Bogor Agricultural University), in 'Efforts at resolving conflicts in spatial planning associated with state forests', Powerpoint presentation at a seminar titled 'Resolving conflicts in spatial planning within State Forests', Jakarta, 10 August 2010.

<sup>147</sup> For example, although the process for establishing village forests has a clear bureaucratic corridor, in reality, it involves a long, convoluted process that requires a great deal of time and money (personal communication with FFI on several occasions, 2010–2011).

#### General overview of forestry sector policies

The Forestry Law itself, along with its implementing regulations and other forestry rulings, also contributes to deforestation and forest degradation. For example, it provides leeway for the exploitation of natural forests that are still in good condition, as seen in the weak enforcement of the rule restricting the development of industrial forests to 'unproductive forest areas' (Forestry Law, clarification of Article 28(1)). Often, such shortcomings arise from differences in the implementing regulations. For example, Government Regulation No. 34/2002 on Forestry Systems and the Planning of the Management and Use of Forested Areas states that permits for HTIs are issued for land that has no forest cover, or only brush or grass (Article 30(3)); however, this directive was modified considerably by Government Regulation No. 3/2008, which amended Government Regulation No. 6/2007 on Forest Systems and the Formulation of Forest Management and Use, and states that 'unproductive production forests' should be 'prioritised' for development as HTIs, which opens up the possibility of creating these in other forested areas. The definition of 'unproductive forests' is even less clear in Government Regulation No. 3/2008. The clarification of Article 36(1)(c) states that 'what is meant by "unproductive production forests" is "the forests set aside by the Minister for the development of HTIs"". In other words, it removes the existence of any objective standard of what can be considered 'unproductive' land.

Furthermore, the Forestry Law leaves forests open to exploitation for other sectors, such as mining and plantations, as it does not set clear criteria for land status conversion, thus leading to multiple interpretations of its implementing regulations. For example, Ministry of Forestry Decree No. 70/Kpts-II/2001 concerning the Designation of Forested Areas and Status and Function Changes states that conservation forest can be released if its status is first changed to protection or production forest and then to miscellaneous/other use forest. However, Article 4 of the decree read in conjunction with Article 29 of Government Regulation No. 10/2010 on Procedures for Changing Allocation and Function of Forest Areas indicates that conservation forests can be converted into miscellaneous use forests through the direct approval of the House of Representatives, thus creating a channel for conservation forests to be reclassified as non-forestland.

#### Policies related to regional autonomy

As explained previously, the devolution of authority to regional administrations has increased the rate of deforestation and the level of forest degradation, due to excessive numbers of forestry permits being issued, without care for sound management principles, by provincial, regional and municipal administrations.

A similar trend is occurring in the plantation and mining sectors. Law No. 19/2004 on Estate Crops and Law No. 4/2009 on the Mining of Minerals and Coal explicitly endow regional officials with the authority to issue estate crop and mining permits. In addition, Government Regulation No. 38/2007 on the Division of Governmental Affairs and the Governance of Provinces, Regencies and Municipalities gives regional officials the authority to grant business permits. In essence, the devolution of law-making authority to regional officials has, in the absence of unambiguous laws, transparent processes, clearly defined powers and supervision, resulted in a mixed bag of rules and regulations and hence inappropriate and overlapping permits, such as the issuance of estate crop permits for forested areas. For example, only 67 of the 352 companies in the plantation sector have a permit for the conversion of forestland; only nine of the 615 companies active in the mining sector have a permit to use forest areas. Irregularities and infractions of the law are occurring across as much as 7 million ha of the 15 million ha of forests in Central Kalimantan (Anti Judicial Mafia Task Force 2011).

Furthermore, spatial planning policies, which grant authority to the regional level (by proposing RTRWs, which must be approved and endorsed by the central government), also often lead to planned deforestation, as described above.

Clearly, economic regional development remains the priority of local administrations. Plantations and mining sites contribute to PAD and facilitate the construction of infrastructure that in turn triggers further economic activities and creates jobs. In addition, issuing permits in the regions directly and indirectly increases political support for regional leaders and, at the same time, serves as a source of 'informal' income for regional officials of all levels.

Given the regional focus on the economy and development, REDD+ will be effective only if it compensates administrations and individuals for this

'opportunity cost' incurred because of the 'failure' of other economic activities (which REDD+ replaces). Regional administrations will have an incentive to implement REDD+ only as long as it proves economically advantageous. Their involvement will also require improvements in their capacity to monitor and evaluate REDD+ projects. Nevertheless, REDD+ does potentially create an opportunity for more equitable use and exploitation of forest resources, which will be realised if benefit-sharing mechanisms support the equitable distribution of benefits generated by REDD+ among the people living in and around forested areas. Also necessary is increased awareness of the plurality of social groups, in order to prevent benefits accruing only to the local elite, as occurred at the time of the introduction of regional autonomy.

#### Weak governance

A critical factor for the implementation of REDD+ is the governmental management system for natural resources, particularly forest resources. This governance system encompasses information, participation and justice within the decisionmaking process in the forestry sector, such as policy formulation and permit issuance, as well as aspects of the 'rule of law'.

In general, the Forestry Law and its implementing regulations fall short in terms of information, participation and justice - three core types of access - in both the permit issuance process and the formulation of forestry policies. The same pattern is seen in the related sectors of mining and estate crops. Although Law No. 14/2008 on Public Access to Information theoretically provides a normative assurance of access to information, including in the forestry sector, the law, which came into effect in 2010, has not been functioning optimally. Failure to fully safeguard these three core aspects of access ultimately leads to increases in the rates of deforestation and forest degradation from both planned and unplanned activities. For example, lack of access to information results in the issuance of overlapping permits. Lack of transparency in policy results in the inappropriate issuance of estate crop permits for forested areas designated for protection or use as permanent production sites. It is likely that the problem of overlapping permits would be alleviated if the public had full access to information on all permits issued. Access to information and ease of participation can enable the public, including the private sector, CSOs, NGOs and the press, to

ascertain whether permits have been issued for a particular location in line with existing regulations.

Weak enforcement of regulations mandating transparency and stakeholder participation lead to lack of public input on decisions pertaining to permit issuance; furthermore, members of the public are unable to monitor any infringements of the law or detect irregularities in permit issuance processes. The consequences include not only unavailability of accurate data – essential for informed decision-making – but also abuse of authority by policymakers. As long as these aspects are neglected, breaches of regulations with regard to both permit issuance processes and permit use will continue.

Factors undermining the rule of law can be attributed primarily to weak law enforcement, an element in the prevalence of corruption in the judicial system. This weakness has been addressed to some extent by the formation of the Anti Judicial Mafia Task Force, whose tasks include eliminating corrupt court practices in the forestry sector (Kompas 2010e, Tempo 2010). Another contributing factor is the prevalence of contradictions and overlaps in legislation. The weakness of governance systems, including laxity of the rule of law, will undermine the effectiveness and efficiency of REDD+. Furthermore, it will prevent the equitable distribution of the benefits from REDD+ to the public, even as it facilitates the advancement of those with access to authorities and policymakers. Clearly, governance, particularly with respect to management of forestry and natural resources, is a critical factor that will determine the success or failure of REDD+ in terms of its effectiveness, efficiency and equity.

#### 5.1.4 Policy alternatives

The final draft of the National REDD+ Strategy clearly acknowledges the importance of addressing many of the above problems; indeed, it emphasises that ineffective spatial planning is a key issue that has led to deforestation and degradation. As discussed in Section 4.2.2, one of the pillars of the strategy focuses on reviewing and strengthening policies and regulations, which encompasses those relevant to spatial planning. In addition, the strategy includes the strengthening of the Spatial Planning Coordinating Agency (BKPRN; Badan Koordinasi Penataan Ruang Nasional) and the acceleration of the establishments of KPHs. The efforts directed towards improved and more integrated spatial planning and land use can be strengthened further by linking national, provincial and district spatial planning with the currently *ad hoc* and localised activities related to participatory mapping of local community villages, which are underway in some of the villages in forested areas.

Uncertainty of tenure has been a core problem in many land use conflicts, and thus will have undesirable impacts on REDD+ implementation. Forest tenure (and the corresponding carbon rights) is associated with REDD+ rights and liabilities; as such, it will become an issue when REDD+ monies start to flow. Tenure reform, however, is unlikely to take place in the short term. Therefore, addressing the issue in small increments, such as granting village management rights to indigenous and local communities in a forest area, will strengthen the *de jure* rights of local communities; greater certainty in relation to tenure will reduce the potential for conflict and thus provide a more stable environment, which will support the effectiveness of REDD+.

The draft strategy also stresses the importance of good governance, participation and equity. In the REDD+ context in particular, the issues of FPIC and (financial and social) safeguards are highly relevant. Furthermore, because REDD+ will ultimately involve local communities, policies that are favourable both for the often marginalised indigenous communities and for certain social groups such as women, should be formulated.

## 5.2 Evaluation of the main aspects of REDD from the point of view of 3E

The previous chapters, particularly Chapter 4, explored the main issues in forestry and related sectors that will affect the implementation of REDD+. However, it must be acknowledged that appropriate government policies, if implemented as intended, could create the opportunity for optimal implementation of REDD+. This section expands on the challenges and opportunities for REDD+, with a particular focus on effectiveness, efficiency and equity.

#### 5.2.1 Challenges

The Indonesian government's policies, at least those included in the draft National REDD+ Strategy, are rooted in the intention of eliminating the underlying problems in forestry and land management, while incorporating social equity, which is core to the proper functioning of REDD+. However, proper implementation is sure to prove daunting, because there is a real need for development and economic growth and past experience has shown how difficult it can be to manage natural resources under the pressure of various interests. Furthermore, not only are there multiple challenges, but most of them are intertwined with or connected with one another. Among these complex challenges is the need for development.

#### The need for development

The main factor influencing the management of natural resources is the prioritisation of development embedded in Indonesia's status as a developing nation. Through its development policies, the government aims to achieve economic growth of 7% (pro-growth), to reduce the number of people living below the poverty line (pro-poor) and to improve the absorption of human resources into the job market (pro-jobs). Although a pro-environment stance has emerged recently, these three policy pillars remain the core focus. This focus is evident in the government's long-term and mid-term plans, in which the top priorities are education and health (Presidential Regulation No. 5/2010). Environmental problems arise because strategies to achieve development are still heavily dependent on the exploitation of natural resources. Even though the APBN lists the forestry sector as contributing only 1% of all state revenue, income from related activities such as mining has a direct influence on the level of deforestation and forest degradation in Indonesia.

The issue of development is closely linked to the need for land for both productive uses and residential purposes. This can be seen in government policies applied in the development of Papua for the Merauke Food and Energy Estate (MIFEE). As explained previously, the expansion into frontier regions, which is an integral part of development, also has a major impact on deforestation and forest degradation.

Thus, REDD+ will be effective insofar as it has adequate support from stakeholders, where the extent to which it can contribute to the local economy and livelihood is of primacy.

#### Unsustainable exploitation of natural resources

The detrimental impact of the heavy dependence of the state and the people on the exploitation of natural resources is intensified by the failure to integrate activities and operations. The segmented sectoral approach in place directly undermines the sustainability of the resource exploitation in forest areas, as seen in regional administrations' arbitrary provision of mining and plantation permits for forest areas outside of the proper channels and permit issuance protocols set out in the laws. In addition, the central government's weak supervision, monitoring and control of forest management results in practices in the forestry sector that contravene the principles of sustainability and conservation.

Instruments that should be applied in a coordinated manner to facilitate the integration of the various sectors, such as the RTRW, are still being applied in a segregated manner. For example, in Central Kalimantan, local governments are basing their land use decisions on Regional Regulation No. 8/2003 concerning Spatial Planning for the region of Central Kalimantan, whereas the Ministry of Forestry uses the Forest Land Use by Consensus.<sup>148</sup>

Although the paradigm of integrated natural resource use does exist on paper, it has yet to be applied or practised. An example of this is the AMDAL, whose function is to ensure the sustainable exploitation of natural resources without having a severe impact on the natural environment. In reality, officials responsible for issuing permits treat the AMDAL as a mere technical procedure; as a result, there have been cases in which the AMDAL was simply copied from other companies in other areas, with no official validation of the content, and other cases in which permits were issued without an AMDAL at all, even though it is a legal requirement.

The segmentation in natural resource management will undermine the effectiveness of REDD+ in reducing deforestation and forest degradation, because the Ministry of Forestry will have no control over activities in other sectors, even in the initial phase of permit issuance. For this reason, integrating the permit issuance process between sectors – that is, ensuring that all sectors follow the same rules and are aware of what the others are doing – is very important. Irregularities can be prevented by strengthening technical rules and raising policymakers' awareness of the need for sustainable development. Reform of the bureaucracy is also imperative because of legal ambiguity regarding the application of the inconsistent regulatory instruments and the failure of monitoring systems; these factors stem not only from poor awareness or understanding, but also from corruption – for need or for greed.

#### Decentralisation and regional autonomy

Several problems stemming from decentralisation can be attributed to the political aspects of regional autonomy. That is, the problems arise because of parties at both the central and the regional government levels pursuing their own interests, but without the checks and balances offered by adequate and effective public scrutiny and input, due to restrictions on civil society's power to engage in effective monitoring and control. Such political aspects have also resulted in different interpretations of forest and forest areas, as well as the jurisdiction and authority to grant or extinguish rights over them (Capistrano 2008). Politically, in Indonesia, the success of autonomy at the district/municipal level is measured from the ability of a given locality to bring in PAD (Barr et al. 2006: 67-69, Gunawan 2005: 6). To this end, during the early years of regional autonomy, many regions issued forestry permits as a way of generating as much local-origin income as possible. The regional administrations also became adept at devising and imposing all kinds of fees. The Home Affairs Ministry, in a review of regional regulations, discovered that many regional regulations concerned fees that conflict with the application of higher-level laws or regulations. As a result, during 2002–2009, the Home Affairs Ministry revoked 406 regional regulations pertaining to local fees.<sup>149</sup> In 2010, the Home Affairs Ministry recommended the revocation of a further 1000 or so regional regulations on taxes and fees (Republika 2010).

At the same time, there are no clear control criteria or mechanisms for evaluating the performance of either the central or regional governments in environmental (and forest) management.

Furthermore, the inharmonious, and at times antagonistic, relationship between the central government and regional administrations is a major obstacle for the effective implementation of REDD+, because of the conflicting needs and priorities of the central and local governments, the unclear division

<sup>148</sup> Laporan Tim Terpadu Paduserasi TGHK dan RTRWP Kalimantan Tengah, Ministry of Forestry, 2009.

<sup>149</sup> List of Ministry of Home Affairs Decisions on Revocation of Regional Regulations and KDH, 2002.
of authority and the absence of a transparent and effective accountability mechanism.

#### Corruption, collusion and nepotism

As stated above, governance remains weak in relation to access to information, participation and justice. Furthermore, attempts to improve law enforcement, such as the establishment of the Anti Judicial Mafia Task Force, have yet to yield the benefits envisaged. Failure to respect the rule of law at all levels will make REDD+ vulnerable to the corruption that currently characterises Indonesia's bureaucracy both at the centre and in the regions. Such governance failures will not only undermine REDD+ effectiveness, but also compromise its efficiency and equity.

Authority and responsibility for law enforcement lie with the central government. Weaknesses in the setup of regional autonomy will continue to be problematic as long as there is no clear accountability mechanism and policy overlaps allow ample leeway for local officials and the regional elite to pursue their own interests through corrupt practices. The prevalence of corruption, collusion and nepotism in law enforcement and the bureaucracy is facilitated by limitations on public participation and lack of transparency in policymaking processes. Until such aspects are addressed, irresponsible, self-serving policies that detract from the public's well-being and interests, including those concerning the use of forest resources, will continue to prevail.

### Monitoring, reporting and verification (MRV) capacity

Monitoring and reporting are the responsibility of the central government, while verification is generally the task of independent institutions. Overall, Indonesia currently lacks the necessary capacity for effective monitoring and reporting, although efforts have been made to instil capacity at the central government level. For example, Indonesia has developed the NFI (National Forest Inventory) and is building the INCAS (Indonesian National Carbon Accounting System). By contrast, regional administrations fall far short of requirements.<sup>150</sup> At this time, the MRV system and institutions are being developed (see Chapter 4). Furthermore, the monitoring and control capacity of civil society remains uneven and is limited to only certain groups or organisations.<sup>151</sup>

#### Spatial planning

Despite the need for clear boundaries for forest areas and spatial planning that is based on sustainable development, these factors are lacking. As of May 2012, only 13 provinces had approved spatial plans – and none of these provinces is rich in either natural resources or forest.<sup>152</sup> Furthermore, vast areas of forests have been proposed for reclassification as nonforestland because communities are living in these areas.<sup>153</sup> The completion of RTRWPs whose content has been synchronised with Ministry of Forestry data is a basic prerequisite for the establishment of clearly defined boundaries and legal status of land.

#### Tenure

The issue of land tenure needs immediate resolution because the protracted conflicts arising from the ongoing marginalisation and livelihood constraints for customary and forest-dwelling peoples tend to have negative impacts on forest resources. As discussed in Chapter 2, at the root of this problem are the ambiguities surrounding the legal recognition of customary peoples, which are a source of complaints and land claims. Even where a customary people's right to access forests is legally recognised, the practical application of this right is limited. As a result, customary peoples have restricted or poorly managed access to forests; this is particularly true in cases where more powerful interests are interested in these forests.

As these groups live in the forest and are very dependent on it, unresolved tenure issues will undermine REDD+. It is therefore imperative that tenure be defined clearly and firmly to ensure certainty of property rights and, in turn, equitable distribution of benefits. Resolving tenure

<sup>150</sup> From the various for uns for Regional Consultation on the Formulation of the National REDD+ Strategy, held in seven cities throughout Indonesia. This concern was to be referred to the central government in the expectation that it would lead to steps for improving the capacity of the regions.

<sup>151</sup> International organisations such as TNC and WWF usually have adequate capacity within demonstration activities programmes.

<sup>152</sup> Presentation by Directorate General on Spatial Systems, 2 February 2011.

<sup>153</sup> Personal communication with Hariadi Kartodihardjo (Bogor Agricultural University), concerning House of Representatives meeting to collect input on the suggestion to release approx. 24 million ha of forest because of the presence of local village and other communities there, June 2010.

issues requires an analysis and agreement process involving all parties concerned – especially local customary groups – with the aim of formulating and establishing fair policies, laws and regulations.

#### Financing

Indonesia has sought to support its climate change programmes by linking international financial resources to the national investment strategy. To that end, Indonesia set up the Indonesian Climate Change Trust Fund (ICCTF) under Bappenas in 2009. However, the ICCTF has not become the focal point for the coordination of climate change finance. Evidence of this is in the LoI between Indonesia and Norway, which requires that a new body be established to manage finances for the forestry sector; establishing such a body is a task of the REDD+ Task Force.<sup>154</sup> Another major challenge sure to arise during REDD+ implementation concerns the distribution of benefits generated by REDD+, to which the division and disbursement of compensation payments linked to the absorption and retention of carbon are central. Indonesia's management of income derived from natural resources, especially from forests (e.g. the distribution and use of DR funds), remains unsatisfactory, despite recent improvements (see Chapter 2). Furthermore, in the absence of a mechanism linking distribution and allocation of income from natural resources to performance, there is no incentive to perform well.

#### Vertical participation and coordination

The state's authority to determine the purpose, use, maintenance and even legal status of natural resources, all of which are enshrined in the 1945 Constitution, places it in a central position in natural resource management.

With regard to lower levels of government, vertical coordination between the central government and the regional administrations is poor and marked by several problems (as discussed previously), including in particular unclear division of authority, which ultimately kindles both latent conflicts and new disputes. Under these conditions, it is difficult to guarantee the effectiveness of REDD+.

As for public participation, the few laws that do consider public participation are general in character

and tend not to be implemented fully. Reform in this regard will involve clarifying the rights of local customary peoples and ensuring public participation and the equitable and fair distribution of benefits.

#### Horizontal coordination

The management of natural resources and their exploitation by the various sectors continues to be fragmented. This is particularly the case in the management of forests because of the range of stakeholders with an interest in their exploitation. Enabling this segmentation is the dissonance between regulations governing the same space. As explained above, conflicting and/or overlapping laws and regulations in the forestry, plantation and mining sectors have resulted in widespread changes in the designated function of forested areas that should not have otherwise been subject to permits.

Exacerbating the weaknesses in the regulatory framework is the way that each agency, body or official makes its own plans in line with its own duties and sectoral function, with little or no consideration of the interests of other sectors, communities or the environment. Differences in purpose, targets and planning lead to competing and/or overlapping plans and, ultimately, conflicts concerning use and authority.

To date, problems with coordination between sectors and agencies have been handled through *ad hoc* cross-sectoral approaches (e.g. the formation of the Integrated Team to supervise changes in the classification of specific areas from forest to nonforest). However, such institutions have inherent weaknesses because they are non-structural in nature and their members are not fully devoted to handling the issues because they do not constitute their core responsibility.

As REDD+ will depend on effective coordination with and between the Ministry of Finance and Bappenas, as well as other relevant ministries, ineffective horizontal coordination will undermine the scheme's effectiveness and efficiency.

# 5.2.2 Opportunities and potential Clear-cut leadership

The intent to integrate the REDD+ scheme into government policies is apparent in the steps taken

<sup>154</sup> Presentation by REDD+ Task Force at Institutional Workshop, held by REDD+ Task Force, at Hotel Le Meredien, Jakarta, 30 December 2010.

by the Yudhoyono administration, particularly the President's announcement of the commitment to reduce emissions voluntarily by 2020 by 26% on an individual basis or by 41% with international assistance. This formal commitment was reiterated in several forums. These statements of intent have formed the basis for various national-level efforts designed to meet the targets. The next step taken to directly accelerate the integration of REDD+ within the policy framework was the signing of the LoI with Norway on 26 May 2010. The LoI makes the UKP4 chair responsible for its implementation, which can be seen as a concrete step in establishing REDD+, because of the influence UKP4 wields due to its position in Second United Indonesia Cabinet (Kabinet Indonesia Bersatu II), which evaluates the performance of all ministries.

Another important step was the creation of the REDD+ Task Force (see Chapter 4). As it is chaired by the UKP4 chair and includes relevant deputy ministers and institutional leaders among its members, the REDD+ Task Force is a strong institution with the capacity to make strategic decisions.

### Active public engagement and growing press freedom

In general, educational levels in Indonesia remain low, with only 12.72 million people having attained a secondary or tertiary education (BPS 2010b). Nevertheless, CSOs are actively participating in REDD+ policymaking processes at both national and regional levels.

A motivating factor for this proactiveness is the trend towards the freedom of the press that emerged after the New Order era (von Luebke 2009); this freedom is attributable largely to the 1999 Press Law, which eliminated the government's control of the media via a system of issuing media licences. Although some problems remain, such as journalists being threatened with physical injury (Sudibyo 2010), in general, the press now has substantially greater independence and influence in decision-making and policymaking processes. Consequently, the media has greater capacity and potential to influence the protection and conservation of Indonesia's forests through the REDD+ programme.

The greater the public's concern about the faulty management of forests, the greater the opportunity to engage them in efforts for improving forest and natural resource management.

# Existing regulations that incorporate principles of sustainable development

As explained previously in this report, many current laws cover issues pertaining to sustainable development, including the Environmental Management and Protection Law, the Spatial Planning Law and the Public Access to Information Law; these combine to form a legal framework that helps to support sustainable forest management.

### The draft National REDD+ Strategy and the holistic management of forests

The draft National REDD+ Strategy identifies basic problems in the management of forests and forest resources, such as spatial planning, boundaries, tenure (property rights), law enforcement and the division of authority between central and regional administrations. As the strategy makes clear, resolution of these problems is a prerequisite for REDD+ implementation and forest management reform.

Should these core problems be resolved, REDD+ will be more likely to result in effective and efficient reduction of deforestation and forest degradation rates and hence of emissions. Addressing the problems will require a substantial outlay of funds and effort, including political action, but as long as these problems persist, it will be all but impossible to reduce deforestation and the accompanying emissions.

Despite the lack of international agreement on a REDD+ framework, as reflected in the outcomes of COP 17 in Durban (Nzunda and Mahuve 2011), the Government of Indonesia continues to pursue its efforts in mainstreaming REDD+. For example, in mid-2011, the life of the REDD+ Task Force was extended, the first revision of the Indicative Moratorium Map was issued and, in early 2012, Presidential Decree No. 3/2012 on Spatial Planning of Kalimantan was issued.<sup>155</sup> As of August 2011, the National REDD+ Strategy drafting process had been completed. However, as of early June 2012, the strategy had not been finalised and officially released.

Nevertheless, the steps taken to date indicate that government continues to view the REDD+ scheme as a viable option for reducing emissions from deforestation and forest degradation in Indonesia.

<sup>155</sup> The decree covers Kalimantan, of which 45% is forest ('lungs of the world'); part of it will be used to meet the needs of energy, mining and food production (see www.redd-indonesia.org).

### 6. Conclusion

This report reviews the drivers of deforestation and forest degradation, describes the institutional and political economic environment within which REDD+ is being implemented in Indonesia, and documents the process of national REDD+ policy development during the period 2007–2011. As shown, several contextual challenges need to be addressed to provide enabling conditions for REDD+. Attending to these very same issues is critical if the governance of Indonesia's forests is to be improved more broadly.

The Government of Indonesia is committed at national and international levels to addressing the challenges of climate change and to using forest carbon offsets to consolidate its forestry sector reforms. Indonesia has pledged to reduce its emissions from land use, land use change and forestry (LULUCF) by at least 26% by 2020. One way the country plans to meet this target is by reducing its emissions from deforestation and forest degradation, through the REDD+ mechanism. By implementing REDD+, Indonesia will become eligible to receive financial payments based on forest carbon credits. REDD+ offers the potential for innovative and stable forms of financing for local governments and community-based resource management. REDD+ could also assist in the distribution of benefits for community development aligned with national and local government policies.

In some parts of Indonesia, in particular in Java, forest cover has been shown to increase by up to 4% in the past decade. Despite a slight declining trend, however, deforestation rates in most parts of Indonesia remain alarmingly high. Recent evidence has confirmed net annual rates of deforestation of 2.7% in Sumatra and 1.3% in Kalimantan during the period 2000–2010. Activities that directly contribute to deforestation and forest degradation continue to occur. They include conversion of forests to other uses such as agriculture and mining, illegal logging, and forest and land fires, the latter often associated with drained peatland swamp forests. These are driven by, among others, the country's continued reliance on the extraction of natural resources, favourable markets and high demand for forestbased products in both domestic and international markets, and weak governance systems at national and subnational levels. Forest cover decline has also been associated with natural population growth and demographic change such as that resulting from transmigration programmes.

Deforestation is intricately linked to the structure of the Indonesian economy, which remains reliant on revenues from natural resources. This dependence has shaped the country's political economy and institutional landscape and, naturally, affects the forestry sector and, in turn, REDD+. The issues are systemic, expansive and complex, and include capacity constraints, poor governance of land use-related institutions, inchoate spatial planning processes and frequent land and resource tenure conflicts. These have been exacerbated by the decentralisation process, and the devolution of powers to local government including those related to generating local government revenues without at the same time enhancing the capacity of local governments to execute their new responsibilities.

Nevertheless, it must be acknowledged that the Government of Indonesia has made considerable progress in addressing these broad governance challenges. Many local and regional leaders, members of parliament and senior national bureaucrats found guilty of receiving bribes or of involvement in other corrupt practices have been brought to justice and imprisoned. Independent institutions to ensure better governance in both the public and the private sectors, such as the KPK and Financial Intelligence Unit (PPATK), have been established and granted considerable powers. An Anti-Money Laundering Law was promulgated in 2003 and revised in 2010. The media and civil society now enjoy much greater freedom than in the past and make an effective contribution towards securing greater transparency and public participation in decision-making.

The main issues that have been identified are discussed here.

### Enormous challenges to resolve basic property rights and clarify forest boundaries

Of Indonesia's entire land mass, more than 70% (or some 130 million ha) comes under the purview of the Ministry of Forestry. The Forestry Law clearly assigns these lands as forest areas (kawasan *hutan*); the same law also indicates that these areas must be gazetted and established as forest areas (kawasan hutan). To date, only around 10% has been gazetted, leading to multiple interpretations of these areas' legal status. Similarly, while such areas are state lands under the letter of the law, many are inhabited by local and indigenous peoples claiming customary rights, and have often been allocated for large development activities, including oil palm plantations. The uncertain and unclear tenure has been counterproductive in terms of promoting sustainable forest management.

REDD+ has created a new value for forests – carbon – which has added another layer of contestation as new and additional claims to land are being made by various groups of actors. This intensifies the need to strengthen efforts to improve land use planning, land swaps and land use optimisation by introducing incentives and appropriate land use planning; to promote the establishment of agricultural and timber plantations on degraded land classified as non-forest; to foster appropriate land use planning of peatlands; and to secure land tenure rights for local landowners and licence holders.

### Protecting the rights of forest-dependent communities and vulnerable groups

REDD+ policies and projects present new risks for forest-dependent communities and vulnerable groups such as indigenous peoples. Tenure uncertainties under REDD+ may entail risks that customary rights will not be respected because of land speculation by investors, resulting in loss of access to land and forest resources. Another risk is that communities may get locked in to unfavourable legal agreements, unaware that they may be subject to low returns, legal obligations, penalties and high technical requirements. There is also a risk of double standards being applied, as community rights are restricted to subsistence use while rights for commercial extraction continue to be awarded to outsiders from the private sector and local or national government elites. Furthermore, the concentration of REDD+ incentives in particular areas may create perverse effects such as increased in-migration and agrarian

conflicts. A number of measures will need to be adopted to mitigate these risks during the design and implementation of REDD+ projects. These include: seeking clarity with regard to all parties' ownership of and legal rights to benefit from carbon, to ensure security of contracts and the accurate prediction of returns; improving access to simplified information on REDD+ in local languages; defining how revenues will be channelled to forest-dependent communities in terms of the nature of the benefits, the beneficiaries and whether distribution should be equal or equitable; securing effective redress and dispute resolution mechanisms; giving particular attention to the broader development interests of the communities and local and national governments rather than the specific concerns of carbon investors; facilitating early 'benefit-sharing' mechanisms with forest-dependent communities during the design and development of each REDD+ project (e.g. field measurements for baseline carbon stock assessments, and other employment opportunities linked to forest demarcation, fire management and forest restoration activities); introducing creative approaches to community-based monitoring; and ensuring third party monitoring and verification of REDD+ financial flows to reduce corruption, which can disproportionately disadvantage the poor.

#### Multiple interpretations of legal frameworks by vested interest groups at national and subnational levels

The legal framework under which forestry activities operate encompasses both specific, sectoral laws and regulations and more general, cross-cutting legislation. In two provinces – Aceh and Papua – Special Autonomy Laws add a third dimension to this legal and regulatory complexity. Sectoral laws include those regulating forestry, agriculture and mining. Laws regulating cross-sectoral matters include decentralisation, finance, environment and spatial planning. The narrow objectives of sectoral laws and the general nature of cross-sectoral legislation have resulted in numerous inconsistencies and even contradictions. This creates uncertainty in terms of which laws to adhere to, leading to confusion, inefficiency and corrupt practices because the existence of multiple legal frameworks creates opportunities for rent-seeking behaviour.

#### Delays in issuing implementing regulations

In the Indonesian context, laws (*undang-undang*) are written to provide general guidelines or a

reference for a subject matter. To put laws into practice, more detailed instructions are required through implementing regulations. Currently, there are often major delays in drafting and issuing such instruments. This creates a 'vacuum' in the case of new laws or, in the case of amendments, results in the continued application of superseded laws. For instance, the implementing regulations for the Environmental Management and Protection Law are not yet in place. This void creates uncertainty with respect to the more specific guidelines that REDD+ projects or programmes must comply with and take into account in their operations. In addition, ministries are contesting the legality of some regulations, creating uncertainty and confusion and rendering the said regulations inoperable.

#### Sectoral focus

Partly because bureaucratic performance is assessed by targets achieved by sectors, ministerial programmes are compartmentalised and narrowly focused on sectoral objectives. Similarly, there are no sectoral links in the budgeting process. These are manifested in sectoral laws and regulations that often do not refer to laws and regulations beyond their sector, despite their relevance. The result is the severe and continuing problem of lack of coordination between relevant ministries. This presents an important challenge because some of these sectors play a major role in deforestation-related activities. However, to date, there has been limited success in attempts to create coordinating structures: they exist but either remain ineffective or meet with 'resistance' from sectoral ministries.

#### Decentralisation process and local governance

The central government has played a dominant political and administrative role throughout most of the country's history. Major reforms occurred following Indonesia's 1997-98 economic and political crises and the promulgation of two decentralisation laws in May 1999. The latter, which came into effect in January 2001, included provisions to transfer authority for natural resource management to regions but were riddled with uncertainties and contradictions. In addition to the uncertainty that stems from the inconsistent and narrowly focused regulatory framework, the way in which the decentralisation process has taken shape and is being implemented has complicated matters further. Local autonomy is interpreted as if there were no hierarchical linkages between and across

levels of government. Regional authorities have often issued local regulations that conflict with higherlevel policies and laws. Inconsistent legislation, increased decision-making powers in the regions and the quest for locally generated revenues have resulted in indiscriminate licensing to extract natural resources and inappropriate forest conversion. Local government electoral systems have been associated with corrupt and unsustainable natural resource management practices. Weak local governments are often characterised by non-transparent decisionmaking processes, incidences of corruption involving local leaders, poor law enforcement and ineffective accountability mechanisms.

# Challenges in implementing the forest moratorium

Presidential Instruction No. 10/2011, announcing a moratorium on forest permits, was issued on 20 May 2011. It aims to suspend the issuance of new licences for clearing forest and peatlands for two years to allow for better coordination, improved data collection and, potentially, new regulations. During the five months before the presidential instruction was issued, several influential actors sought to obtain new licences. Then, 11 days after the moratorium took effect, the Ministry of Forestry issued Ministerial Decree SK. 292/Menhut II/2011, which changed the status of almost 1.2 million ha of state forest in Central Kalimantan into non-forestland.

Although Indonesia's two-year moratorium on new concessions represents an important step towards meeting its voluntary commitment to reduce emissions, numerous issues concerning the area and status of land covered by the moratorium are unresolved (e.g. see Murdiyarso et al. 2011).In addition, the moratorium's exemptions for activities related to food and energy security (the Ministries of Agriculture and Energy and Mineral Resources are not included in the presidential instruction) has created new loopholes that may undermine the suspension of new licences. On the other hand, an Indicative Moratorium Map will be continuously updated by the Ministry of Forestry, and will provide an important tool for public scrutiny to further secure and possibly increase the area covered by the moratorium. As part of this process, the KPK is reviewing existing licence-holders for areas in Central Kalimantan for compliance with current laws and regulations.

# Opportunities to build on lessons learned from other forest governance reforms such as FLEGT

Initiatives to reduce illegal logging must form an integral part of any emission reduction strategy. REDD+ has the potential to help curb illegal logging activities by creating financial incentives to encourage compliance with the law, changes in behaviour and wider governance reforms. Mobilising REDD+ finance through either fund- or marketbased mechanisms will, however, require greater attention to issues such as credibility, traceability and attention to social and governance safeguards, and all activities must be subject to independent verification. Harnessing lessons learned from other forest governance reforms such as FLEGT will provide opportunities to generate accurate, complete and up-to-date datasets on, for example, land use and land cover changes; to strengthen datasharing mechanisms between agencies; to ensure an

effective separation of mandates for accreditation, standards-setting, MRV and registration; to explore the potential use of civil society monitors and public oversight mechanisms to strengthen the credibility of REDD+ processes; to develop - or comply with existing procedures for – independent REDD+ validation and verification systems; to undertake rigorous ex ante capacity assessments to build existing institutions; to ensure adequate buyin from the private sector; and to further define the roles and mandates of local and central government, particularly in terms of clarifying the rights and responsibilities related to REDD+. A key element will be to ensure that multi-stakeholder processes play a central role in REDD+ design and implementation, and that sufficient time is allocated to follow through with such processes; it is not possible to 'fast-track' processes of FPIC with regard to REDD+ (e.g. Dermawan et al. 2011, Luttrell et al. 2011).

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- Minister of Forestry Decree No. 292/Menhut-II/2011 on Changes of Allocation and Functions of Forest Areas of Central Kalimantan Province
- Minister of Forestry Decree No. SK-323/Menhut-II/2011 on Indicative Map of Suspension on New Licences for Forest Use, Forest Area Use and Forest Area and Other Land Use Allocation Changes
- Presidential Decree No. 41/2004 on the Licensing or Agreements in Mining Sectors within Forest Area dated 12 May 2004 (*Keputusan Presiden No. 41/2004 tentang Perizinan atau Perjanjian di Bidang Pertambangan yang berada di Kawasan Hutan*).
- Presidential Instruction No. 4/2005 on Eradication of Illegal Logging in State Forests and Distribution of Illegal Timber in All Regions of the Republic of Indonesia, dated 18 March 2005 (Instruksi Presiden No. 4 tahun 2005 tentang Pemberantasan penebangan kayu secara ilegal di kawasan hutan dan peredarannya di seluruh wilayah Republik Indonesia).
- Presidential Instruction No. 1/2006 on Provision and Use of Biofuels as Alternative Fuels, dated 25 January 2006 (*Instruksi Presiden No.*

1/2006 tentang Penyediaan dan Pemanfaatan Bahan Bakar Nabati (Biofuel) sebagai Bahan Bakar Lain).

- Presidential Decree No. 5/2006 on National Energy Policy dated 25 January 2006 (*Peraturan Presiden No. 5/2006 tentang Kebijakan Energi Nasional*)
- Presidential Decree No. 46/2008 on the National Climate Change Council (*Peraturan Presiden No. 46/2008 tentang Dewan Nasional Perubahan Iklim*).
- Presidential Decree No. 5/2010 on National Mid Term Development Plan Year 2010-2014 (*Peraturan Presiden No. 5/2010 tentang Rencana Pembangunan Jangka Menengah Nasional Tahun 2010-2014*)
- Presidential Decree No. 19/2010 on Establishment of a REDD+ Institution Preparations Task Force
- Presidential Instruction No. 10/ 2011 on Moratorium on Granting of New Licences and Improvement of Natural Primary Forest and Peatland Governance
- Presidential Decree No. 61/2011 on National Action Plan to Reduce GHG Emissions
- Regional Regulation No. 8/2003 on Spatial Planning Systems for the Region of Central Kalimantan Province (*Peraturan Daerah No. 8/2003 tentang Rencana Tata Ruang Wilayah Provinsi Kalimantan Tengah*).

### Annex 1. Comparisons between input/presentations from participants in public consultation on March 25, 2008 and the final (2009) version of the Minister of Forestry regulation on REDD

Input from presenter(s)		Final version			
		(Minister of Forestry Regulation No. 30/Kpts-II/2009)			
AM	MAN:				
1. 2.	The draft regulation is not based on rights holders, but still limited to stakeholders. This is also reflected in the structure of the REDD Commission in the draft. The draft's substance does not provide efforts to improve the rights of customary communities as rights holders	<ul> <li>In Article 8(1)(a), a 'stakeholder' rather than a 'rights holder' approach is still used. Article 8(1)(a) states that the relevant party must: 'possess a copy of Ministerial Decree designating it as the customary forest manager.'</li> <li>The regulation still considers customary forest to</li> </ul>			
3.	The draft ignores two important facts:	be state forest, rather than the other way around, as			
	<ul> <li>remaining natural forest is inside customary regions saved by local customary community institutions and laws.</li> </ul>	<ul> <li>customary communities had hoped.</li> <li>The regulation does not clearly explain mechanisms for resolving conflicts with customary communities.</li> </ul>			
	<ul> <li>areas subject to exploitation permits (IUPHH) are generally embroiled in conflicts with customary communities.</li> </ul>				
DN	PI				
1.	REDD mechanisms are required for areas outside state forests, involving the DNPI, the Ministry of Home Affairs and the Ministry for Environment.	<ul> <li>The regulation contains no provisions on REDD outside forest areas involving other sectors such as the DNPI, the Ministry of Home Affairs and the Ministry for</li> </ul>			
2.	An interdepartmental institution needs to be developed to manage carbon assets and provide REDD incentives.	<ul><li>Environment.</li><li>Similarly, there are no provisions on the development of an interdepartmental institution in the regulation.</li></ul>			
DK	N				
1.	A systematic understanding of REDD schemes is necessary to ensure that existing non-timber forest products and ecosystem services are considered.	<ul> <li>There are no explanations or provisions on existing non-timber forest products and ecosystem services and their links to REDD activities in the regulation.</li> </ul>			
2.	A systematic approach is not apparent in the draft regulation; the title flow, objectives, aims, locations, requirements and rules for transfer do not show good systematics.	<ul> <li>Article 4(2) states that a holder of an ecosystem restoration permit may implement REDD, but there is no further explanation as to whether or not REDD would become part of any ecosystem restoration</li> </ul>			
3.	We recommend not rushing the REDD regulation, to appear better prepared.	activities.			
CIF	OR				
1.	The definition of state forest is vague, particularly when linked to concessions. In addition, the forest definitions in Indonesia's submission to UNFCCC should be added.	<ul> <li>The definition of forest remains unchanged and there are no additions at all to the original draft, so the input on improving forest definitions was not accommodated.</li> </ul>			
2.	The scope of REDD should be broader than merely curbing deforestation and degradation, as it also relates to improving governance, sustainable forest management and community welfare.	<ul> <li>The regulation has accommodated the input to expand the scope of REDD.</li> </ul>			
3.	Many other regulations are not integrated (supported) by the draft regulation, so it will lead to uncertainty for other stakeholders.				

continued on next page

Input from presenter(s)		Final version		
		(Minister of Forestry Regulation No. 30/Kpts-II/2009)		
GTZ				
1.	There are several inconsistencies in the written definitions of REDD credits, REDD certificates and REDD incentives.	<ul> <li>The regulation does not clearly differentiate between REDD credits, REDD certificates and REDD incentives. In the decree, all three are considered as a series; REDD certificates can be exchanged as 'credits' by international entities and the sale is considered an incentive.</li> <li>The provisions provide no clear explanation of the fundamental challenges in the concept of 'carbon trading'.</li> </ul>		
2.	The definition of forest degradation does not cover reduced quality of forest composition.			
3.	The definition of forest is not the same as the definition in the UNFCCC framework.			
4.	The differences between objectives and aims in the draft are not clear.			
5.	Benefit sharing is not regulated clearly in the draft regulation.	<ul> <li>The definition of forest degradation remains unchanged from the original draft, and still does not cover reduced quality of forest composition.</li> </ul>		
		<ul> <li>The regulation has no provisions on incentive distribution.</li> </ul>		

*CIFOR Working Papers* contain preliminary or advance research results, significant to tropical forest issues, that need to be published in a timely manner. They are produced to inform and promote discussion. Their content has been internally reviewed but not undergone the lengthier process of external peer review.

This country profile reviews the drivers of deforestation and forest degradation in Indonesia, sets out the institutional, political and economic environment within which REDD+ is being implemented in Indonesia, and documents the process of national REDD+ policy development during the period 2007 – early 2012. While Indonesia is committed at the national and international level to addressing climate change through the forestry sector, there are clearly contextual challenges that need to be addressed to create the enabling conditions for REDD+. Some of the major issues include inconsistent legal frameworks, sectoral focus, unclear tenure, consequences of decentralisation, and weak local governance.

Despite these challenges, however, REDD+ opens up an opportunity for improvements in forest governance and, more broadly, in land use governance. More democratic political-economic processes in general, greater freedom of civil society and the press, and heightened awareness of environmental issues can help build support and solidify policies in this direction.

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