

Promised Land
Palm Oil and Land Acquisition in Indonesia:
Implications for Local Communities and Indigenous Peoples

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Executive Summary

Growing Concerns, Growing Markets, Loss of Forests, Social Impacts

International concern has been growing about the impacts of the continuing expansion of oil palm plantations. The spread of oil palm has been blamed for extensive forest destruction, uncontrolled forest fires, loss of precious wild species and the undermining of environmental services. Yet already in Indonesia some 5 million people are involved in estates and mills as labourers or their families and as many again are tied to large estates as smallholders. Palm oil has major social as well as environmental impacts.

World markets for edible oils are set to double in the next twenty years, implying a doubling of the area under oil palm if market share is maintained. New markets for 'biofuels' also provide scope for increased palm oil sales. Indonesia's national development plans are designed to secure it a large share of these markets.

Palm Oil Expansion in Indonesia is Accelerating

Indonesia is also one of the world's most populous and rural countries, with a total population of 220 million people, of whom between 60 and 90 million people make a livelihood from areas classified 'State Forest Areas', which cover some 70% of the national land area. A large proportion of the rural people regulate their affairs through custom and are referred to as 'people governed by custom' (*masyarakat adat*) – referred to as 'indigenous peoples' in international law.

Oil palm expansion has major implications for rural Indonesians. It implies a major reallocation of land and resources, dramatic changes to vegetation and local ecosystems, substantial investment and new infrastructures, movements of people and settlements, major transformations of local and international trade and requires the intervention of multiple government agencies. Done right, palm oil should generate wealth and employment for local communities. Done wrong, oil palm estates can lead to land alienation, loss of livelihoods, social conflicts, exploitative labour relations and degraded ecosystems.

Indonesia now has some 6 million hectares of land under oil palm and has cleared three times as much, some 18 million hectares of forests, in the name of oil palm expansion, mainly so speculators can get access to the timber. Existing regional development plans have already allotted a further 20 million hectares for oil palm plantations, mainly in Sumatra, Kalimantan, Sulawesi and West Papua, and new plans are currently under discussion to establish the world's largest palm oil plantation of 1.8 million hectares in the heart of Borneo.

Multidisciplinary Study of the Impacts on Local Communities in Three Provinces

Where is the land for this massive planned expansion of oil palm to come from? Who are the current owners of this land? How do companies acquire such lands? What are

the implications for indigenous peoples and local communities of this major reallocation of lands and forests?

This investigation was designed to answer such questions.

Between July 2005 and September 2006, the Indonesian NGO, Sawit Watch which monitors the Indonesian palm oil sector, the international human rights organisation, Forest Peoples Programme, in collaboration with lawyers from the Indonesian human rights organisation, HuMA, and land tenure specialists from the World Agroforestry Centre (ICRAF), carried out an intensive, multi-disciplinary study of the legal and institutional processes of land acquisition for oil palm plantings in Indonesia with a focus on the rights of local communities and indigenous peoples. The work, which was carried out in close coordination with local NGOs and community organisations, included extensive field studies and interviews, as well as background legal documentation and research.

Local Realities and National Frameworks

The research looked into the way land had been or was being acquired by six companies operating in West Lampung district in Lampung Province (Sumatra), Sanggau district in West Kalimantan Province (Borneo) and West Pasaman district in West Sumatra Province. During the field studies detailed interviews were carried out with local community leaders and members, government officials at local and provincial levels, Non-Governmental Organisations, researchers, company personnel, university researchers and professors, and members of the local legislatures. The research was also framed by the coming into being of the Roundtable on Sustainable Palm Oil (RSPO), an industry-led initiative, involving conservation organisations and social justice groups, that aims to reform the way palm oil plantations are developed, in accordance with international norms and standards.

The purposes of the study were to:

- Document the situation, views and recommendations of local communities and smallholders, who are involved in or affected by oil palm production;
- Assess the implications of the expanding Indonesian palm oil sector for local communities and indigenous peoples;
- Document the legal protections of customary institutions and customary rights;
- Understand in detail the legal steps by which companies acquire land for palm oil plantings in Indonesia;
- Assess the extent to which these laws are adhered to and effectively protect the interests and rights of communities and indigenous peoples;
- Ascertain if the RSPO standard suits the Indonesian reality and is considered applicable by local communities, government officials and companies;
- Make recommendations on how Indonesian policies, laws and procedures should be reformed to adequately protect indigenous peoples' and local communities' rights in line with the country's obligations under international law.

Laws Subordinate Weakly Protected Customary Rights to the 'National Interest'

The Indonesian Constitution respects the existence of customary law communities, acknowledges their right to be self-governing and recognises their customary rights in land. Indonesia has also ratified some key pieces of international law which protect the rights of indigenous peoples and local communities. However, other laws provide

only weak recognition of customary rights and allow government agencies a great deal of discretion in deciding whether to respect them or not.

Furthermore, the institutions of these customary law communities were severely weakened during the New Order (*Orde Baru*) when a uniform administrative structure was imposed throughout Indonesia down to the village level. Although Regional Autonomy laws have, since 1999, restored the possibility of customary authorities once again taking charge of village affairs, only in certain parts of Indonesia, such as in West Sumatra, have customary authorities in fact regained control of their areas.

A similar gap between legal principles and practice is found with respect to land rights. While laws recognise the rights of customary communities to their lands, ambiguously, procedures for titling such lands are absent, defective or rarely applied. Procedures for the titling of individual land holdings are also lag far behind the rate at which new land holdings are being created. A five-year-old National Assembly Decree (TAP MPR IX/2001), requiring reforms of forestry and agrarian laws, has yet to be put into effect.

Policies Favour Large-scale Plantation Development

On the other hand, the Constitution and laws of Indonesia recognise the right of the State to control and allocate natural resources for the benefit of the Indonesian people. The laws allow the reallocation of lands for State purposes and for private sector uses in accordance with national development plans. The result is that community rights are all too easily subordinated to private sector expansion.

A complex web of laws has evolved to promote plantation development. Although designed to ensure sound investment, coordinated planning, the public interest and the resolution of conflicting rights, these laws make little provision for community rights and interests. Too often the law treats what are in reality indigenous peoples' lands as State lands. These State lands are either considered to be unencumbered with rights or are allocated to companies through a process that strips communities of the few rights that the government does recognise. Indigenous peoples' rights are thus extinguished and the lands allocated to companies as 90-year leaseholds on State land.

Forest Conversion of Dubious Legality

In 1982, some 142 million hectares of Indonesia were designated as Forest Areas, of which some 30 million were then categorised as available for conversion. A procedure was then elaborated to consult local communities and authorities about the status of these areas before they could be delineated and gazetted, as State Forest Areas if unencumbered. To date only 12% of these Forest Areas has been properly gazetted as State Forest Areas. Legally, the remaining areas remain of uncertain status.

In practice, however, through administrative oversight, all forest areas are being treated as if they are owned by the state and many have then been released for conversion before being gazetted. This is legally problematic, as the areas may well be encumbered with rights and therefore the state should not be allocating them to third parties. Indeed, already 23 million hectares of forest areas have been converted to non forest zones, the majority in the name of conversion to oil palm plantations,

though only 6 million hectares have actually been planted. This process is still happening.

Although the Forestry Department has called for a moratorium on further conversion of forests this has been done through the weakest of all possible regulations, symptomatic of a long-term tussle between different Ministries seeking to control Indonesian land.

Case Studies Show Wide Differences in Provincial Interpretation of Laws

The research shows clearly how indigenous peoples in the six case study areas do enjoy rights to their territories and to self-governance through customary authorities, in accordance with customary law. Clearly identified groups control land as collectively owned areas (*tanah ulayat*) subject to well developed rules regulating land ownership, land transfer and group membership.

However, the research shows that provinces vary greatly in the extent to which local governments accept the rights in land of local communities, despite operating within the same national legal framework. In West Kalimantan, customary land rights are given little recognition at the most being treated as ill-defined use rights on State lands. In Lampung, customary rights are accepted in court adjudications but the administration rarely recognizes community rights in land, preferring to issue individual titles to villagers. In West Sumatra, by contrast, the provincial government does recognise the collective land rights and jurisdiction of customary institutions as self-governing authorities (*Nagari*) and communities are treated as rights holders.

Serious Legal Abuses and Violations of Human Rights

The case studies reveal that local communities face serious problems and most are in conflict with companies over land. There is a widespread feeling that communities have been cheated of their lands, inveigled into agreements through false promises and denied a voice in decision-making. Among the many irregularities in the way lands have been acquired and held by companies, the most notable include the following:

- customary rights not recognised;
- plantations established without a government license;
- information not provided to communities;
- consensus agreements not negotiated;
- customary leaders manipulated into making forced sales;
- compensation payments not paid;
- promised benefits not provided;
- smallholders lands not allocated or developed;
- smallholders encumbered with unjustifiable debts;
- environmental impact studies carried out too late;
- lands not developed within the stipulated period;
- community resistance crushed through coercion and use of force;
- serious human rights abuses.

In effect the government is failing in its Constitutional duty to protect the rights of customary law communities. Even where government agencies facilitate negotiated transfers of community lands to companies, community leaders are being duped into signing agreements which they think entail temporary transfers of use rights, when the

government knows that they are actually agreeing to the extinguishment of their rights in land.

A Flawed Legal and Policy Framework

The research substantiates, in considerable detail, the oft-made claim that oil palm plantations have been established in Indonesia without respect for the rights of indigenous peoples and local communities. Yet, international standards, such as those set out in international law, elaborated in international jurisprudence, adopted in ‘best practice’ codes, consolidated in the United Nations’ Declaration on the Rights of Indigenous Peoples, and recently adopted by the Roundtable on Sustainable Palm Oil, do require respect for such rights. Indeed the Constitution of the Republic of Indonesia also requires respect for the rights of customary law communities.

The study reveals that the processes which nevertheless lead to these rights being violated in the development of oil palm estates result from:

- Contradictory laws, which fail to secure indigenous rights while encouraging land expropriation for commercial projects in the ‘national interest’;
- An absence of regulations, as a result of which procedures for the recognition of the collective land rights of customary law communities are unclear;
- Weak institutional capacity, both in the national land agencies and in the district bureaucracies, which makes recognition of customary rights difficult;
- National and regional policies and spatial planning processes which favour the conversion of *ulayat* lands and forests into oil palm plantations to increase national and district revenues.

Challenging Recommendations

In fact the National Assembly (MPR), the highest body in the legislature, has already recognised the need for an overhaul of Indonesian laws related to land and natural resources and, in particular, to custom. This study thus makes concrete suggestions about the main legal reforms necessary to give this effect by:

- Balancing the controlling right of the state with greater respect for community rights, so communities’ interests are secured in national development projects;
- Removing the impediments to the recognition of customary rights in the basic agrarian law, the forestry act and the plantation act;
- Reassessing the legal status of forests areas and conversion zones to determine which are actually the lands of communities;
- Developing a dedicated law for the protection of indigenous peoples to secure constitutional rights not yet secured by other laws;
- Adopting procedures requiring the free, prior and informed consent of customary law communities as a condition of permitting oil palm plantations on their lands.

Steps Towards Justice

The study recognises that these legal reforms will take some time to be passed and put into effect. In the interim, mechanisms need to be established to resolve existing conflicts between companies and communities, treating communities as land owners and negotiating for the restitution or compensation for lands that have been unfairly taken.

Just such mechanisms are indeed required by the RSPO standard. The findings of this study are that very few oil palm estates in Indonesia are likely to comply with the

RSPO standard, in the short term. Indeed the current policy and legal framework implants a process of land acquisition and estate development quite contrary to the RSPO standard. Indonesian laws and policies deny customary rights, encourage State-sanctioned land grabbing, and ignore the principle of free, prior and informed consent. If the current approach to estate development is not changed, there is a risk that 'unsustainable' Indonesian palm oil will be excluded from international markets.