

**Request for Consideration of the Situation of
Indigenous Peoples in Kalimantan, Indonesia, under
the United Nations Committee on the Elimination of
Racial Discrimination's Urgent Action and Early
Warning Procedures**

**Committee on the Elimination of Racial Discrimination
Seventy-First Session
30 July – 18 August 2007**

Submitted by

Perkumpulan Sawit Watch

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Archipelago)**

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**Perkumpulan Untuk Pembaharuan Hukum Berbasis Masyarakat dan
Ekologis/HuMA (Association for Community- and Ecologically-based Legal
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Institut Dayakologi

Forest Peoples Programme

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Executive Summary

This request for the consideration of the situation of indigenous peoples in Kalimantan, Indonesia under the Committee on the Elimination of Racial Discrimination's urgent action and early warning procedures is respectfully submitted by 12 Indonesian organizations, including the national and regional indigenous peoples' organizations, and one international NGO (see list of submitting organizations below).

This request is submitted in relation to Indonesia's advanced plans to establish oil palm plantations over some 850 kilometers along the Indonesia-Malaysia border in Kalimantan as part of the Kalimantan Border Oil Palm Mega-Project. This area is part of the traditionally owned territories of the indigenous peoples of this region. The project will cause irreparable harm to indigenous peoples' territories, their traditional means of subsistence, and their cultural, territorial and physical integrity. Indeed, it is no exaggeration to say that an intrusion of this magnitude threatens indigenous peoples' very survival. In 2007, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and two Special Rapporteurs appointed by the UN Permanent Forum on Indigenous Issues reached the same alarming conclusion.

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Palm oil production requires the clear-cutting of indigenous peoples' forests in order to establish monocrop plantations, thereby destroying the ecosystems that indigenous peoples have depended on for millennia. Experience with existing and extensive oil palm plantations in other parts of Indonesia conclusively demonstrates that indigenous peoples' property and other rights are disregarded, their right to consent is not respected, some are displaced, and they are left with no alternative but to become *de facto* bonded labourers gathering oil palm fruit for the companies that manage the plantations.

More generally, discrimination against indigenous peoples is prevalent in the management of forests and forestland in Indonesia. Protected forests, conservation forests and mining sites are designated by the government alone, without participation by indigenous peoples' communities, despite the fact that indigenous peoples are the only groups that have been occupying, utilizing, interacting with and depending on the given forest land/resources since time immemorial.

While Indonesia's legislation does recognize indigenous peoples and to a certain extent delegates authority to them to manage forests, these forests are nonetheless legally classified as state-owned forests and indigenous peoples are denied any meaningful rights in relation thereto. The designation of indigenous peoples' territories as state forests means that the state retains ultimate control over the land, with numerous implications for indigenous peoples. For example, when the state needs land for logging concessions or oil palm plantations, it simply converts land to these uses on the basis that the land is 'part of the state's forests' and is being used for 'the sake of the nation'.

Discrimination against indigenous peoples is also entrenched in Indonesia's Constitution. Article 4(3) of the Indonesian constitution provides that "... The State cares for indigenous peoples' rights as long as such rights exist and are recognized and are not in direct contradiction to national interests." In other words, indigenous peoples' rights will be respected only to the extent that the State has formally recognized such rights – in the case of property rights this normally done by the issuance of formal title, which is a prerequisite to demonstrating property rights under Indonesian law – and even then only to the extent that the State does not choose to classify their rights as subordinate to the national interest. In practice, many indigenous peoples do not hold formal title to their traditional lands, territories and resources, precisely because the State has failed to recognize their ownership and other rights and to secure these rights by issuing title deeds. The State therefore does

...many indigenous peoples do not hold formal title to their traditional lands, territories and resources, precisely because the State has failed to recognize their ownership and other rights

not need to comply with the legal requirements (basic due process and compensation) pertaining to expropriation of land in the national interest in the case of indigenous peoples; it may take indigenous peoples' lands at will and for any reason.

The situation described herein fully meets the criteria for consideration under the Committee's early warning and urgent action procedures and typifies the presence of a serious, massive and persistent pattern of racial discrimination against the indigenous peoples of Indonesia. Massive expansion of palm oil plantations, coupled with the ongoing and continuous effects of existing plantation and the presence of racially discriminatory laws, including the absence of effective means of recourse at the domestic level, is a

situation "requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention" and to reduce the risk of further racial discrimination. There is also a strong likelihood of significant displacement of indigenous persons "resulting from a pattern of racial discrimination or encroachment on the lands of minority communities," and a substantial threat of immediate and irreparable harm to indigenous peoples in the affected area.

For these reasons, we hereby respectfully request that the Committee:

- (a) Considers the situation described herein under its early warning and urgent action procedure at its 71st session to be held in August 2007.
- (b) Recommends that Indonesia not proceed with the Kalimantan Border Oil Palm Mega-Project or other oil palm plantation projects affecting indigenous peoples in Kalimantan, at least until such time as it has legally recognized and secured their ownership rights in and to their traditional lands, territories and resources and obtained their free, prior and informed consent to any development thereon.
- (c) Recommends that Indonesia remedy the massive and ongoing rights violations occurring in existing oil palm plantations.
- (d) Recommends that Indonesia adopts legislative, administrative and other measures to give full effect to the rights of indigenous peoples, including by amending existing laws, and that it does so with indigenous peoples full and free participation through their own freely chosen representatives.
- (e) Draws the attention of the UN Secretary General, Human Rights Council, the Permanent Forum on Indigenous Issues and the Office of the High Commissioner for Human Rights to the serious and urgent situation affecting the indigenous peoples in Kalimantan and other parts of Indonesia.

Submitting Organizations

- **Perkumpulan Sawit Watch** is an Indonesian Non-Government Organisation concerned with adverse negative social and environmental impacts of oil palm plantation development in Indonesia. It is active in 17 provinces where oil palm plantations are being developed in Indonesia. **Address:** Jl. Sempur Kaler No. 28, Bogor 16129, tel: +62 251 352171/fax: +62 251 352047, e-mail: info@sawitwatch.or.id, website: www.sawitwatch.or.id
- **Aliansi Masyarakat Adat Nusantara/AMAN (Indigenous People Alliance of the Archipelago)** is an indigenous peoples' organisation that represents indigenous peoples from the whole of the Republic of Indonesia. The Alliance is aimed to be an organisation for indigenous peoples to struggle for their existence and rights inherited with it as well as to struggle for sovereignty in running their lives and in managing their natural resources. AMAN's main working areas are 1] Indigenous organization, networking and customary institutions development; 2] Indigenous rights advocacy and legal defense; 3] strengthening customary-based economic system; 4] strengthening indigenous women; and, 5] education for indigenous youth. **Address:** Jl. B No. 4, RT/RW 001/006, Komp. Rawa Bambu I, Pasar Minggu, Jakarta Selatan, Indonesia, tel/fax:+62-21-7802771, e-mail: rumahaman@cbn.net.id
- **Aliansi Masyarakat Adat Kalimantan Barat (Indigenous Peoples' Alliance of West Kalimantan)/AMAN Kalbar** is one of the provincial offices of Indigenous Peoples' Alliance of the Archipelago (AMAN) in West Kalimantan. Until October 2006 AMAN Kalbar has been directly working with its registered members of 106 indigenous communities, covering up to 247,000 persons. These communities live in 9 districts in West Kalimantan: Ketapang, Pontianak, Sanggau, Sintang, Bengkayang, Landak, Sekadau, Melawi, and Kapuas Hulu, and are mainly Dayak. **Address:** Jl. Budi Utomo, No.03, Siantan Hulu, Pontianak Utara 78241, Kalimantan Barat, Tel/fax: +62 561 885264/885211, e-mail: amakalbar@ptk.centrin.net.id
- **Lembaga Studi dan Advokasi Masyarakat/ELSAM (The Institute for Policy Research and Advocacy)**, established in August 1993, works to encourage and promote effective mechanisms of accountability for gross human rights violations; and to promote resolution of past human rights violations through revealing the truth, usage of sanction, and reparation, and; to establish acknowledgeable, democratic and sustainable association. **Address:** Jl. Siaga II No 31, Pasar Minggu, Jakarta 12510, tel: +62 (21) 7972662/fax: +62 (21) 79192519, e-mail: elsam@nusa.or.id, web: www.elsam.or.id
- **Wahana Lingkungan Hidup Indonesia/WALHI (Friends of The Earth Indonesia)** is the largest forum of non-governmental and community-based organisations in Indonesia. It is represented in 25 provinces and has over 438 member organisations (as of June 2004). It stands for social transformation, peoples sovereignty, and sustainability of life and livelihoods. WALHI works to defend Indonesia's natural world and local communities from injustice carried out in the name of economic development. **Address:** Jl. Tegal Parang Utara No.14 Jakarta 12790, Indonesia, tel +62 21 7919 33 63-88 [fax] +62 21 794 1673, e-mail: info@walhi.or.id

- **Perkumpulan Untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis/HuMA (Association for Community and Ecologically-based Legal Reform)**, founded in 2001, was established by individuals who have long experience and a clear position regarding the importance of community and ecological-based law reform on issues related to land and other natural resources. **Address:** Jl. Jati Agung No. 8, Jati Padang – Pasar Minggu, Jakarta 12540, Indonesia, tel: +62(21)78845871, fax: +62(21)7806959, e-mail: huma@huma.or.id and huma@cbn.net.id
- **Yayasan Padi Indonesia** is a non-governmental organisation concerned with the process of development (agriculture, forestry, fishery, and plantation) based on the principles of sustainability of natural resources and environment. **Address:** Jl. Komplek Perumahan Dokter Balikpapan Tengah BPP, Belakang Puskip Rt.24 No.87 Mekarsari Balikpapan Tengah 76122, tel/fax: +62 542-443284/542- 426118, e-mail: padi_ind@indo.net.id
- **Lembaga Gemawan (Lembaga Pengembangan Masyarakat Swandiri/The Institution of Swandiri Society Empowerment)** is the result of a long going process of reflection of some students' activists to contribute to the immediate needs toward social transformation. Lembaga Gemawan was founded to transform the idea of social transformation into actual social movements. It is also developed to empower the local community as the silent majority of social-political-economical society. **Address:** Jl. Dr. Wahidin, Gg. Batas Pandang Komp. Kelapa Hijau No. 18 Pontianak, tel/fax: +62 561 586891, e-mail: gemawan_borneo@telkom.net
- **Lembaga Bela Banua Talino** (the Institute for Community Legal Resources Empowerment) was established in 1993 and aims to address various issues and problems of local regulations and policies towards effective recognition and protections of the rights of local communities and indigenous peoples have been proved could not guaranty better conditions of economic, social and politics aspects. **Address:** Jl Budi Utomo, Komplek Bumi Indah Khatulistiwa, Blok A/3, Siantan Hulu, Pontianak 78241, Kalimantan Barat – Indonesia, tel. +62 561 885623 fax. +62 561 884566, e-mail: lbbt@ptk.centrin.net.id
- **Institut Dayakologi** is an active community-based organization which primarily aims to revitalize and restore the cultural identity of the Dayak communities in Kalimantan through research, advocacy, publication and other activities. The Institute promotes the awareness of the Dayak people on their cultural integrity, land rights, intellectual property rights, etc. **Address:** Jl. Budi Utomo Blok A 3 No. 3-4, Pontianak 78241, +62 561- 884 567/+62 561-8831 735, e-mail: i.dayakologi@ptk.centrin.net.id
- **Forest Peoples Programme (UK)** is an international NGO, founded in 1990, which supports the rights of forest peoples. It aims to secure the rights of indigenous and other peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies. **Address:** 1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK. Tel: (44) 01608 652893, Fax: (44) 01608 652878, e-mail: info@forespeoples.org

I. INTRODUCTION

1. The government of Indonesia plans to establish massive oil palm plantations in an area stretching 850 km in Kalimantan along the Indonesia-Malaysia border.¹ This area covers partially or fully the ancestral territory of 1-1.4 million Dayak indigenous people.² They have not been involved in decision-making about these plantations and their consent has neither been sought nor obtained.³ Both the scale and the nature of these plantations threaten imminent and irreparable harm to indigenous peoples. That this is the case is amply demonstrated by the impact of existing oil palm plantations on indigenous peoples in other parts of Indonesia and around the world.⁴

2. This report explains and details the fact that, despite great strides made in transparency and democratisation in recent years, discrimination against indigenous peoples in Indonesia remains pervasive and institutionalized. The massive expansion of oil palm plantations in Kalimantan is emblematic of this discrimination and threatens the survival of the affected indigenous peoples. In May 2007, Mr. Rodolfo Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, reached the same conclusion when he identified plantations in Indonesia as placing indigenous peoples “on the verge of completely losing their traditional territories and thus of disappearing as distinct peoples.”⁵

3. The United Nations Permanent Forum on Indigenous Issues (UNPFII) has also acknowledged the severity of the situation created by oil palm plantations in Indonesia. Prompted by interventions about the situation in Indonesia, in 2006, the PFII took the unusual step of appointing two of its members to be Special Rapporteurs charged with writing a working paper on the impact of plantations on indigenous peoples (this working paper is annexed hereto in Annex B). The working paper noted that the Indonesian government announced new plans, “under the Kalimantan Border

¹ ‘Government plans world's largest oil palm plantations’, *The Jakarta Post*, 18 July 2005 and; ‘President’s Visit to China: China to invest US\$7.5 billions’, *The Media Indonesia*, 30 June 2005.

² *The Kalimantan Border Oil Palm Mega Project*, Friends of the Earth Netherlands and the Swedish Society for Nature Conservation (SSNC), April 2006, at p. 11 (stating that “Due to its isolation, the Kalimantan border area is fairly sparsely populated. The total population in the border area is estimated at some 300,000 inhabitants, mostly from Dayak origin. In West Kalimantan, the population density is 27/km²; in East Kalimantan 13 people per km²”). Available at: http://www.orangutans-sos.org/downloads/palm_oil_mega_project.pdf

³ *Id.* at p. 13 (stating that “communities are generally unaware of the government’s plans for the border area up to date. Of those that are aware of the project, many univocally oppose any oil palm development in their areas;”) and, at Box 3, p. 13-15, containing a list of complaints submitted by some of the affected indigenous communities.

⁴ See, among others, V. Tauli-Corpuz and P. Tamang, *Oil Palm and Other Commercial Tree Plantations, Mono-cropping: Impacts on Indigenous Peoples’ Land Tenure and Resource Management Systems and Livelihoods*, UN Permanent Forum on Indigenous Issues Working Paper, E/C.19/2007/CRP.6, para. 33 (hereinafter “UNPFII Working Paper”). Available at: http://www.un.org/esa/socdev/unpfii/en/session_sixth.html; *Promised Land: Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples*, Sawit Watch, Forest Peoples Programme, ICRAF and HuMA, 2006. Available at: http://www.forestpeoples.org/documents/prv_sector/oil_palm/promised_land_eng.pdf and; *Ghosts on Our Own Land: Indonesian Oil Palm Smallholders and the Roundtable on Sustainable Palm Oil*, Sawit Watch and Forest Peoples Programme, 2006 (hereinafter “Ghosts on our own Land”). Available at: http://www.forestpeoples.org/documents/asia_pacific/bases/indonesia.shtml

⁵ R. Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Oral Statement to the UN Permanent Forum on Indigenous Issues Sixth Session*, 21 May 2007, at p. 3. Available at: http://www.un.org/esa/socdev/unpfii/documents/6session_SR_statement_asia_en.doc

Oil Palm Mega-Project (April 2006), to convert an additional 3 million hectares in Borneo, of which 2 million will be in the border of Kalimantan and Malaysia. ... [T]he area deemed suitable for oil palm includes forests used by thousands of people who depend on them for their livelihoods.”⁶ In addition to listing the typical rights violations associated with large-scale plantations on indigenous peoples’ territories,⁷ the working paper also concluded that oil palm plantations come

with serious social and environmental costs which adversely impact on indigenous peoples, forest-dwellers and the tropical rainforests. Out of the 216 million people in Indonesia it is estimated that 100 million, of which 40 million are indigenous peoples, depend mainly on forests and natural resource goods and services. Large areas of forest lands traditionally used by indigenous peoples have already been expropriated.⁸

4. The imminent threat posed by the massive expansion of oil palm plantations into indigenous peoples’ territories in Kalimantan is further compounded and aggravated because Indonesia’s laws do not provide adequate and effective protection for the rights of indigenous peoples. Indeed, indigenous peoples’ very existence has yet to be fully recognized in national law. Article 18B of the Constitution, for instance, recognizes “traditional communities along with their traditional customary rights” but only to the extent that doing so is deemed consistent with, *inter alia*, national development priorities.⁹ This equivocal recognition is further compromised by the application of Law No. 5 of 1979 on Village Government. This law subordinated indigenous peoples’ traditional authorities, institutions, and laws to an imposed and unified Javanese village administration system that severely limits and in some cases negates the exercise of indigenous peoples’ rights. This law has since been replaced by Law No. 32 of 2004 on Regional Government which retains the discriminatory subordination of local *adat* to Javanese customary institutions. Other laws also deny or severely restrict indigenous peoples’ rights and livelihoods, most notably, for the purposes of this report, Law No. 41 of 1999 on Forestry and Law No. 18 of 2004 on Plantations.

5. The situation described herein fully meets the criteria for consideration under the Committee’s early warning and urgent action procedures and typifies the existence of a serious, massive and persistent pattern of racial discrimination against the indigenous peoples of Kalimantan. Massive expansion of oil palm plantations, coupled with the ongoing and continuous effects of existing plantations and the presence of racially discriminatory laws, including the absence of effective means of recourse at the domestic level, is a situation “requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention” and to reduce the risk of further racial discrimination.¹⁰

⁶ UNPFII Working Paper, at para. 20.

⁷ *Id.* at para. 33.

⁸ *Id.* at para. 23.

⁹ Article 18B(2) reads that “The State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.”

¹⁰ *Prevention of Racial Discrimination, including early warning and urgent procedures: working paper adopted by the Committee on the Elimination of Racial Discrimination.* UN Doc. A/48/18,

6. There is also a strong likelihood of significant displacement of indigenous persons “resulting from a pattern of racial discrimination or encroachment on the lands of minority communities,” and a substantial threat of immediate and irreparable harm to indigenous peoples in the affected area.¹¹ The Chairperson of the UNPFII, for instance, states that although “there are few statistics showing how many people are at risk of losing their lands” in the Kalimantan provinces of Indonesia the UN has estimated that around 5 million indigenous persons face economic, cultural or land displacement because of biofuel crop expansion.¹² This situation demands urgent and additional international attention.

II. INDIGENOUS PEOPLES IN INDONESIA

7. AMAN, the national indigenous peoples’ organization of Indonesia, defines indigenous peoples as groups of people having a historical continuity that developed in a given geographical area, and having their own values, ideologies, and economic, cultural, and social systems, as well as territories.¹³ Indonesian laws use various terms to refer to the peoples who self-identify as indigenous, such as *masyarakat suku terasing* (alien tribal communities), *masyarakat tertinggal* (neglected communities), *masyarakat terpencil* (remote communities), *masyarakat hukum adat* (customary law communities) and, more simply, *masyarakat adat* (communities governed by custom).

8. While there are no census data on the number of persons who self-identify as indigenous or who may be otherwise defined as such, many studies have used a rough estimate of between 35-95 million indigenous people, while some have gone as high as 120 million.¹⁴ Of this, 45-60 million live on land legally classified as public forest.¹⁵ Indigenous peoples in Kalimantan account for approximately 45% of the total population of Kalimantan, or just over 5 million persons.¹⁶ All indigenous persons in Kalimantan are potentially indirectly affected by the proposed oil palm plantation

...the UN says 5 million people face economic, cultural or land displacement in Kalimantan

Annex III, para. 8-9. Available at:

http://www.ohchr.org/english/bodies/cerd/docs/A_48_18_Annex_III_English.pdf

¹¹ *Id.*

¹² The figure of 5 million provided by the UN refers to the entire Dayak indigenous population in the Kalimantan provinces. ‘Biofuels displace Indigenous Peoples’, *Associated Press*, 15 May 2007. Available at: <http://news.mongabay.com/2007/0516-indigenous.html>

¹³ AMAN’s Congress Decision No. 01/KMAN/1999

¹⁴ O. Lynch, *Whither the People?* World Resources Institute, Washington DC, 1991; C. Zerner, *Indigenous Forest-Dwelling Communities in Indonesia’s Outer Islands: Livelihoods, Rights and Environmental Management Institutions in the Era of Industrial Forest Exploitation*, Paper for the World Bank Forest Sector Review, World Bank, Washington DC, 1992; World Agroforestry Centre, 2005, *Facilitating Agroforestry Development through Land and Tree Tenure Reforms in Indonesia*, ICRAF SE Asia Working Paper No 2, Bogor, 2005.

¹⁵ R. Stone & C. D’Andrea, *Tropical Forests and the Human Spirit: Journeys to the brink of hope*. University of California Press, Berkeley and Los Angeles, 2001, at p. 125.

¹⁶ Population statistics for Kalimantan are not divided according to ethnicity, and official government records of the number of Dayak indigenous persons are not available. The most current government census statistics give the total population of Kalimantan at 12,176,936 persons. Using an estimate of 45% Dayak, this provides a total population for indigenous persons of 5,479,621 persons. Sources: Department of Home Affairs, Ministry of Home Affairs (Sumber: Departemen Dalam Negeri Republik Indonesia, Data Wilayah Adm Pemerintahan.pdf)

project and other large-scale investments in biofuel expansion, as recognized by the UN.¹⁷ In the areas of the Kalimantan provinces covered by the Kalimantan Border Oil Palm Mega-Project there are between 1 – 1.4 million indigenous persons who will be affected by the proposed 1.8 million hectare oil palm plantations.¹⁸

9. The Indonesian archipelago contains 120.35 million hectares of forest, which is the largest forest area in South East Asia and the world's third largest after the Amazon and Congo Basins. The forests have been categorised as Production Forests (58.25 million hectares), Protected Forests (33.52 million hectares), Conservation Forests (20.5 million hectares) and non-forestry development reserved forests/Conversion Forests (8.08 million hectares).¹⁹ Indigenous peoples have lived in these vast forests for millennia and their cultures and lives are inextricably related to their forests and the maintenance of their profound and multi-dimensional relationships therewith.

10. 'The forest is our mother, our breast milk,' say the indigenous people of Paser in East Kalimantan. It is in the forest that their existence is reflected through oral history and traditional knowledge and through well-defined and detailed customary tenure regimes by which all indigenous peoples delineate their traditional territories. In relation to forest management, customary laws are designed to ensure sustainability and communal well-being. Such customary forest laws commonly govern ownership (individual, collective, communal), designation (forest use) and other aspects related to human interaction with forests. That is why, under customary laws, forests had been free from outside intervention, including that of local and regional businesses.²⁰ Sacred sites, which serve as focal points for spiritual life, are generally located in forests. Thus, forest management is accompanied by spiritual elements in the form of religious ceremonies.

The forest is our mother, our breast milk

11. That indigenous peoples in Kalimantan are dependent on the existence and health of their traditional forest estates is amply illustrated by an UN Food and Agriculture Organization study. This study explains that

¹⁷ See footnote 12

¹⁸ For the purposes of this report, 'directly affected' is used to refer to people who are likely to be relocated from their lands, or have some part of their traditional territories and resources appropriated by the government or companies for the proposed plantations. All indigenous persons living in the 7 districts in West Kalimantan, 1 district in Central Kalimantan and 4 districts in East Kalimantan which form part of the current proposed plantations are considered directly affected. The total population of these districts (indigenous and non-indigenous) is 1.5-2 million persons, of whom an estimated 70% are indigenous. *Monographic data of villages and distribution of populations within areas of 100 km from border with Malaysia*, Central Statistics Agency, Government of Indonesia, 2005.

¹⁹ UN Food and Agricultural Organization, *Information and Analysis for Sustainable Forest Management: Linking National and International Efforts in South Asia and Southeast Asia*, Bangkok, Thailand 2002. Available at: <http://www.fao.org/docrep/005/AC778E/AC778E11.htm>

²⁰ See, *Seven Spells-Seven Curses: Reflection of the 10th Years of SHK Movement*, John Bamba, downloaded on 8 July 2006 from http://www.kpshk.org/index.php?option=com_content&task=view&id=57&Itemid=2

comparing four different aspects of the four communities: population, land use, production and land tenure. This comparison reveals that indigenous people contribute little to population growth in East Kalimantan; that each farm family needs from 15 to 40 ha of land to practice a sustainable form of agroforestry that will include maintenance of extensive areas of humid tropical rainforest; that the traditional system, though characterised by low rice yields, actually produces a great deal (including timber, non-timber forest products, a great variety of foods and medicines) and has important conservation functions; and that land tenure needs to be clarified and formalised.²¹

12. Large-scale oil palm plantations however deny and ultimately destroy indigenous peoples' relations with their forests and their customary tenure and resource management systems and institutions. Because forest biodiversity is completely destroyed by mono-crop, industrial palm plantations, a large percentage of indigenous peoples' traditional food sources are also destroyed leading to substantial levels of food insecurity. Rotational farming is not possible because there is no natural forest left to fertilize the poor rainforest soils which in turn permits the planting of crops. Under such circumstances, traditional rites also cannot take place at forest-based sacred sites as these sites are destroyed when the land is cleared for the plantations.

III. OIL PALM PLANTATIONS AND INDIGENOUS PEOPLES' RIGHTS

13. Global studies into the impacts of oil palm plantations on indigenous peoples have revealed that in addition to violating fundamental rights to land and security over their means of subsistence, such plantations have a wide variety of direct and indirect impacts causing devastation to indigenous peoples' communities. One immediate and common outcome of the imposition of such plantations is increases in social conflicts between indigenous peoples and state-owned and private corporations, with corporations sometimes resorting to the use of both state and non-state force.²² Such violence directly threatens the personal security of indigenous people and their communities.

14. Cumulative impacts on communities involve serious health problems, including increasing malnutrition and increased mortality; changes in disease ecology resulting in high incidences of diseases; and increase of rates of sexually-transmitted diseases due to prostitution in plantation or logging estates. Also noted are the increased instances of exploitative and discriminatory working conditions, high rates of injury among forest and plantation workers; creation of dependency resulting in exploitative relations and corrupt patron-client relations between forestry officials and indigenous peoples. Such plantations have commonly been accompanied by a breakdown of traditional social structures, introduction of new inequalities,

²¹ C. Pierce Colfer, *Shifting Cultivators of Indonesia: Marauders or Managers of the Forest?* UN FAO, 1993. Available at: http://www.fao.org/docrep/006/u9030e/U9030E01.htm#P20_3622

²² *Sustaining Economic Growth, Rural Livelihoods and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia*, World Bank, December 2006 p. 2. Available at <http://siteresources.worldbank.org/INTINDONESIA/Resources/Publication/280016-1152870963030/IDForestStrategy.pdf?resourceurlname=IDForestStrategy.pdf>

undermining customary laws, social support networks and systems of land management.²³

15. The preceding is well documented and has already occurred in existing oil palm plantations in Kalimantan.²⁴ World Bank studies into the forestry sector in Indonesia, for instance, clearly reveal that government policies of supporting the expansion of timber and oil palm plantations have “marginalized and alienated forest-dependent communities and indigenous peoples from traditional lands and uses, through denial of rights and access” and that such denials have been “backed by force.”²⁵

16. Where plantations have been established on their lands, indigenous peoples are often forced to become smallholders²⁶ on their own lands, in situations that are tantamount to debt bondage in many cases, producing oil palm fruit for the companies that control their lands and debts.²⁷ The typical arrangement is that oil palm plantation companies provide technical assistance and seed stock, fertilisers and pesticides. The smallholders are then required to repay the monetary equivalent with interest. Many are simply unable to do so – and incur further debt over time – and they are thus in permanent debt to the companies and forced to provide their labour in exchange on a permanent basis.²⁸

17. These same impacts and violations of internationally guaranteed rights are expected to occur in the massive expansion of plantations into indigenous peoples’ territories in West and East Kalimantan provinces either under the Kalimantan Border Oil Palm Mega-Project, or any similar government-sponsored investment in oil palm plantations, and which is the focus of this report and discussed in greater detail below.

IV: PERSISTENT VIOLATIONS OF INDIGENOUS PEOPLES' RIGHTS IN KALIMANTAN

18. Violations of the basic rights of the indigenous peoples of Kalimantan have long been an aspect of their relationship with the Indonesia government, particularly in the agrarian, forestry and mining sectors.²⁹ This was acknowledged by the

²³ See, UNPFII Working Paper, *supra*, para. 33.

²⁴ See, for instance, *Indonesian Path Towards Sustainable Energy: A Case Study of Developing Palm Oil as Biomass in Indonesia*, KEHATI, INRISE, Sawit Watch, Bogor Agricultural Institute, Both Ends, 2006, p. 26 (describing extensive social conflicts caused by oil palm cultivation). Available at: http://www.bothends.org/strategic/061211_Biomass%20case%20study%20Indonesia.pdf

²⁵ *Sustaining Economic Growth*, World Bank, December 2006, *supra*, p. 2. See, also, *Ghosts on Our Own Land*, *supra*.

²⁶ The Roundtable on Sustainable Palm Oil defines ‘Smallholders’ as family-based enterprises producing palm oil from less than 50 ha of land.

²⁷ See, *inter alia*, ‘Palm oil doesn’t have to be bad for the environment’, 4 April 2007. Available at http://news.mongabay.com/2007/0404-oil_palm.html; ‘The Impact of Palm Oil in Borneo’, June 2007. Available at: http://www.mongabay.com/borneo/borneo_oil_palm.html; *Ghosts on Our Own Land*, *supra*

²⁸ *Id.* See, also, *Inter alia*, S. Vermeulen & N. Goad, *Towards Better Practices in Smallholder Palm Oil Production*, Natural Resources Issues Series No. 5. International Institute for Environment and Development, London, 2006. Available at: <http://www.iied.org/pubs/pdf/full/13533IIED.pdf>

²⁹ See, *Without Remedy: Human Rights Abuse and Indonesia’s Pulp and Paper Industry*, Human Rights Watch Report: Indonesia, Vol. 15, No. 1(C), Jan. 2003. Available at:

President of Indonesia on 10 August 2006, when he accepted that indigenous peoples' rights have often been sacrificed for national development.³⁰ These violations are particularly evident in relation to indigenous peoples' rights to own and control their traditional territories and resources, their right to be secure in their means of subsistence, and the right to participate in and consent to activities that may affect them. The vast majority of indigenous territories enjoy no effective legal protection and protection in fact is almost non-existent. As a 2005 Asian Development Bank Institute paper explains,

Forests are central to the economic livelihoods of the societies surrounding them. In Indonesia, the government often treats the indigenous people or forest villagers living in and close to the forests in the outer islands (like the Dayak of Kalimantan) as if they do not exist.³¹

19. Among other things, indigenous peoples in the Kalimantan provinces have suffered for decades from the central government's '*transmigrasi*' policy under which millions of people were moved from high population density areas in Indonesia to low population density areas. Throughout *transmigrasi*, indigenous peoples saw their lands alienated and claimed by new settlers, and violent clashes have continued between settlers and indigenous peoples until today. Long term impacts of the *transmigrasi* programme include alienation of indigenous peoples from their lands, population pressures and inter-communal conflicts. The World Bank, in its review of the *transmigrasi* programmes that it directly supported, recognized, for example, that "there was a major negative and probably irreversible impact on indigenous peoples," and it withdrew funding in the late 1990s.³²

20. One of the lasting consequences of the *transmigrasi* era is the rise in population in Kalimantan. East and West Kalimantan had a combined population of less than 3 million people in 1971 - by 2000 this population had increased to 6.5 million people as a direct consequence of government sponsored transmigration and associated family migration³³. In West Kalimantan, this population growth resulted in huge increases in the number of smallholder oil palm holdings and in East Kalimantan

<http://www.hrw.org/reports/2003/indon0103/index.htm#TopOfPage>; *Indonesia: Grave Human Rights Violations in Wasior, Papua*, Amnesty International Report ASA 21/032/2002, 26 September 2002. Available at: <http://web.amnesty.org/library/Index/engasa210322002>; C. Ballard, *Human Rights and the Mining Sector in Indonesia*. International Institute for Environment and Development: London, 2001. Available at:

http://www.iied.org/mmsd/mmsd_pdfs/indonesia_hr_baseline.pdf; and, D. Hyndman, *Ancestral Forests and the Mountain of Gold: Indigenous Peoples and Mining in Indonesia*. Boulder, Colorado and London: Westview Press 1994.

³⁰ 'President Admits Indigenous People Mistreated', *Jakarta Post*, 10 August 2006 (see Annex B for full text).

³¹ Y. Maunati, *Sharing the Fruit of Forestry Products: Indigenous Peoples and their Incomes in the Forestry Sector in East Kalimantan, Indonesia*. Asian Development Bank Institute, Discussion Paper No. 24, 2005, at p. 9 (hereinafter "Sharing the Fruit"). Available at: http://www.adbi.org/files/2005.02_dp24_forestry_sector_indonesia.pdf

³² World Bank, *Indonesia Transmigration Program: a Review of Five Bank-Supported Projects*, Operations and Evaluation Department, Country Specific Sector Review 12988, April 1994: <http://wbIn0018.worldbank.org/oed/oeddoclib.nsf/4e0750259652bf5885256808006a000d/777331d4d0b6239c852567f5005ce5e2?OpenDocument>

³³ Population statistics here are sourced from Badan Pusat Statistik (BPS-Statistics Indonesia), an independent agency reporting to the President. Precise statistics are 2,753,733 individuals in 1971 and 6,489,318 in 2000 for East and West Kalimantan. Full statistics available at: <http://www.bps.go.id/sector/population/table1.shtml>

many of the new settlers have been absorbed into large scale oil palm plantations. Transmigration is directly responsible for indigenous peoples in Kalimantan losing a large percentage of their traditional lands – a situation that has yet to be adequately assessed by the State let alone repaired – both due to the influx of migrants and to the logging and establishment of plantations that followed.³⁴

21. The historical threats of population transfer, logging concessions and the associated land alienation are compounded now by the expansion of oil palm plantations. As explained by the above-quoted Asian Development Bank Institute paper,

By the 1980s the golden age of logging was over. Since then we have seen the expansion of large scale plantations for export crops. These have had drastic implications for the Dayak. It is known that the Dayak rely on forest products, such as honey, eaglewood (*gaharu*), and rattan. They now face problems in maintaining their traditional livelihoods. Logging concessions and timber estates have led to the expulsion of the Dayak from their lands and their environment has been destroyed.³⁵

22. The Dayak and other indigenous peoples now stand to lose a large percentage of their remaining land base to the Kalimantan Border Oil Palm Mega-Project and other similar government-sponsored investments in oil palm plantations. Further development of oil palm plantations will also increase the presence of transmigrants in indigenous areas as new plantations workers are brought in, exacerbating existing land conflicts.

V. INDONESIA IS IN THE ADVANCED STAGES OF ESTABLISHING MASSIVE PALM OIL PLANTATIONS IN INDIGENOUS PEOPLES' TRADITIONAL TERRITORIES IN KALIMANTAN

23. According to its law, Indonesia acceded to the International Convention on the Elimination of All Forms of Racial Discrimination in 1999 because it believed that this Convention provided an important mechanism for ensuring equality before the law and in order prohibit and abolish all forms of racial discrimination.³⁶ This notwithstanding, Indonesia's current laws and practice discriminate against indigenous peoples. As explained in the next section, these laws fail to provide adequate protection for, *inter alia*, indigenous peoples' rights to own and control their traditional territories and their right to consent to activities that affect them.³⁷

³⁴ *Sharing the Fruit, supra*, at p. 9 (explaining that "The issue of forced settlement is also linked to accusations that the Dayak destroy the forest through their practice of slash and burn agriculture. However, it should be noted that the government's assessment of the facts here is somewhat questionable given that the New Order government encouraged timber companies to destroy the forest while at the same time resettling the Dayak into compounds").

³⁵ *Id.* at p. 11.

³⁶ Considerations a, b and c of Law No. 29 of 1999 (by which Indonesia's Parliament assented to be bound by the Convention).

³⁷ See, *General Recommendation XXIII (51) concerning Indigenous Peoples*. Adopted at the Committee's 1235th meeting, 18 August 1997. UN Doc. CERD/C/51/Misc.13/Rev.4.

Indigenous peoples' territories may simply be issued in concession to concessionaires on the basis of a unilateral declaration of public interest and indigenous peoples have no means of recourse to challenge such decisions.

24. Indonesia's failure to provide indigenous peoples with meaningful legal guarantees is further aggravated by grave, persistent and pervasive violations of indigenous peoples' rights in practice. Such violations are especially pronounced and entrenched with respect to extractive industries and agro-industry. Indeed, this present report has been filed precisely because Indonesia plans a massive expansion of oil palm plantations into indigenous peoples' territories in Kalimantan under the highly controversial Kalimantan Border Oil Palm Mega-Project.³⁸ This project will be implemented in the first place by taking and converting indigenous peoples' traditional forestlands into oil palm plantations, which will then be vested in multinational and domestic companies through the issuance of long-term leasehold rights.

25. Indigenous peoples, as has happened elsewhere in Indonesia, will either be forced to move or to become smallholders harvesting oil palm fruits for the companies that hold the plantations. They will lose their traditional means of subsistence and become wage labourers and indebted farmers working for the companies that have assumed control of their ancestral lands. In short, they will suffer irreparable harm to their basic rights and well-being to such an extent that their survival as distinct cultural entities will be severely threatened. This situation both demands and compels urgent international attention and oversight.

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26. Under the Kalimantan Border Oil Palm Mega-Project some 18 separate oil palm plantations have been proposed each with an average size of 100,000 hectares.³⁹ Based on the projected costs of the most westerly of these plantations being established by the para-statal plantation company, PT Perkebunan Nusantara, it is estimated that an investment of around US\$ 8.6 billion is being sought to implement the overall scheme.⁴⁰

27. The Kalimantan Border Oil Palm Mega-Project was announced in the context of a series of two visits to China by the President of the Republic of Indonesia. Although official contracts have yet to be announced, newspaper articles reveal that

³⁸ For strong criticism of the project, see, *inter alia*, *The Kalimantan Border Oil Palm Mega Project*, Friends of the Earth Netherlands and the Swedish Society for Nature Conservation (SSNC), April 2006; Media Indonesia. 2005. *Kunjungan Presiden ke China: China Investasi US\$7,5 Miliar*. 30 June; Obidzinski, Krystof, Agus Andrianto and Chandra Wijaya, *Timber Smuggling in Indonesia, critical or overstated problem?: forest governance lessons from Kalimantan*, Bogor, Indonesia, Centre for International Forestry Research (CIFOR), September 2006. p. 8, 10-12. Available at: http://www.cifor.cgiar.org/publications/pdf_files/Books/BObidzinski0601.pdf

³⁹ *Pembangunan Kawasan Perbatasan Melalui Pembangunan Perkebunan Kelapa Sawit di Propinsi Kalimantan Barat, Konsorsium*, PT Perkebunan Nusantara 1-XIV (Persero), Jakarta, 2005.

⁴⁰ *China Daily* (Beijing) 26 April 2005; *Bisnis Indonesia* (Jakarta) 9 August 2005; *Antara* (Jakarta) 9 August 2005.

Chinese, Singaporean, Malaysian, as well as Indonesian para-statal and private companies have all been encouraged to invest in the scheme. Those said to be interested include the Artha Graha group, which has links with the Indonesian army retirement welfare fund, Yayasan Kartika Ekta Paksi, the Sampoerna group, both of Indonesia, the Indonesian para-statal group PT Perkebunan Nusantara, the China Development Bank and the Chinese state-owned conglomerate, CITIC, working with the Indonesian Sinar Mas Group, and Golden-Agri Resources of Singapore.⁴¹

28. To further promote the project the Government held meetings with interested investors, as well as with concerned parliamentarians and research organisations, throughout 2005 and 2006. In a seminar organized by the Land Planning Department (Bappenas) in early 2006, to which research organizations and institutes, NGOs and some 11 different government agencies were invited, significantly different views on the feasibility of the planning oil palm plantation expansion programme were presented, yet plans are moving forward to convert land for this purpose.⁴² Despite disagreement from within the government on the feasibility of this programme, strong external protests and lack of consent by indigenous peoples, both the central government and district governments in Lundu in West Kalimantan and Malinau in East Kalimantan are pressing ahead with the project.⁴³

29. The number of people directly affected by forced resettlement out of the Kalimantan Border Oil Palm Mega-Project area will depend on the final territory covered by the plantations. However, for the 1.8 million hectare area currently being proposed, an estimated 300,000 individuals would be moved from their traditional lands and territories to allow the plantations to go ahead⁴⁴ and between 1 – 1.4 million indigenous persons would otherwise be directly affected.⁴⁵ Flow-on effects to communities and peoples living near the plantations would greatly increase this number of affected people.

30. The large-scale clearance of forests in the centre of Borneo's watersheds also has worrying implications for forest ecosystems and rivers, and the indigenous peoples and other downstream residents whose livelihoods depend on these healthy forests. Detailed studies show how logging and conversion to oil palm plantations are the main causes of the massive rate of forest loss in Indonesian Borneo.⁴⁶ West Kalimantan, for instance, lost more than 56% of its forests between 1985 and 2001.

⁴¹ Chinese Consortium Eyes Business in Indonesia's Palm Oil Sector, *Antara*, 25 April 2005; Chinese Investors eye RI palm oil sector, *Jakarta Post*, 9 June 2005; Kadin to Help Expand Oil Palm Plantations in Indonesia, *Antara*, 10 June 2005; Artha Graha, Sampoerna Cooperate with Chinese Investors in Agrobusiness, *Antara*, 18 July 2005; RI inks US\$7.5 bn in deals with China, *Jakarta Post*, 30 July 2005; China Bangun Kebun Sawit Senilai US\$8 miliar, *Bisnis Indonesia*, 9 August 2005; China Plans Oil Palm Plantations in Kalimantan, *Antara*, 9 August 2005; Ambalat is Ours, *Tempo*, 16-22 August 2005.

⁴² Dep-II/Bappenas/23 Januari 2006 (23rd January 2006) available at <http://www.bappenas.go.id/> in Bahasa Indonesia.

⁴³ Government seeks new land for border project, *Jakarta Post*, 8 May 2006.

⁴⁴ *The Kalimantan Border Oil Palm Mega Project*, Friends of the Earth Netherlands and the Swedish Society for Nature Conservation (SSNC), April 2006, *supra*, p. 11.

⁴⁵ *Monographic data of villages and distribution of populations within areas of 100 km from border with Malaysia*, Central Statistics Agency, Government of Indonesia, 2006. See footnote 16 for explanation of the term 'directly affected'.

⁴⁶ The World Bank identifies timber for pulp and oil palm plantations as the main cause for deforestation and the single largest cause for massive expansion in agricultural areas. See *Sustaining Economic Growth, Rural Livelihoods and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia*, World Bank, December 2006, *supra*, p. 30.

Scientists predict that widespread effects will cascade throughout the region's ecosystems, causing faunal populations, especially of carnivores, ungulates and primates, to decline precipitously and even cause local species extinctions.⁴⁷ Many of these animals are a fundamental source of protein in indigenous peoples' diet.

31. There has not been any process to consult indigenous peoples' organisations to ensure their rights and interests are accommodated for either the Kalimantan Border Oil Palm Mega-Project or for the wider programme of oil palm expansion nationally. Objections raised so far by a coalition of local, national and international indigenous peoples' organizations, environmental and human rights NGOs, research organisations, and donor agencies, members of Regional House of Representatives (DPD), university student organisations and associations, and the Ministry of Forestry have not resulted in a serious review of the Mega-Project or other plantation expansion plans.⁴⁸

32. Field surveys carried out in West and East Kalimantan during 2005 and 2006 show that plantations continue to be developed in both provinces without respect for the rights of indigenous peoples, with minimal compensation for losses and accompanied by intimidation and harassment of community members when they object to the takeover of their lands.⁴⁹ A similar pattern has also been documented for other parts of Indonesia, with the result that conflicts between communities and plantation companies are widespread.⁵⁰

33. The Kalimantan Border Oil Palm Mega-Project will result in the relocation of some 300,000 indigenous people from their ancestral territories, and directly cause irreparable harm to millions. It will permanently render their traditional territories unusable for anything but cultivation of oil palm and destroy their traditional way of life. There is thus an imminent and severe threat to their ability to survive as distinct peoples and to exercise their international guaranteed rights. They will be faced with two options: leave their ancestral lands and relocate elsewhere or enter into relationships that are tantamount to bonded labour with the companies that have acquired control over their traditional lands. That this will come to pass is amply demonstrated by the experience in the existing oil palm plantations that have been established on indigenous peoples' lands elsewhere in Kalimantan and in Indonesia more generally. As discussed below, Indonesia's laws do not provide effective protection to indigenous peoples, a fact that has been acknowledged by no less than the President of the country.⁵¹ They are defenceless and in urgent need of international attention.

⁴⁷ LM Curran, et al., Lowland Forest Loss in Protected Areas of Indonesian Borneo, *Science* Vol. 303 (No.5660):1000-1003 2004; see, also, World's largest oil palm plantation could spell disaster for upland forests of Indonesian Borneo – WWF, Press Release WWF International, Gland, 10 August 2005.

⁴⁸ See, raised responses against the proposed border project, <http://www.samarinda.go.id/node/8273> or <http://www.kaltimpost.web.id/berita/index.asp?Berita=ProKaltim&id=152966> - Tolak Perkebunan Sawit di Perbatasan, forestry students of Mulawarman University, East Kalimantan, <http://dte.gn.apc.org/68ioi2.htm> Border Mega-project, *Down to Earth* Nr. 68 February 2006, Ministry of Forestry rejects oil palm in border areas – no conversion of forest for plantations, <http://www.rspo.org/PDF/Projects/STF/Deklarasi%20Serikat%20Petani%20Kelapa%20Sawit.pdf>

⁴⁹ *Promised Land: Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples*, 2006, *supra*, and; *Ghosts on Our Own Land*, *supra*.

⁵⁰ *Id.*

⁵¹ 'President Admits Indigenous People Mistreated', *Jakarta Post*, 10 August 2006 (see Annex B for full text).

VI. INDONESIA LAW DISCRIMINATES AGAINST INDIGENOUS PEOPLES

A. The Constitution

34. Article 18 of Indonesia's 1945 Constitution recognized the existence of indigenous peoples by stating that there were 250 regions in Indonesia governed by customary and/or tribal administration systems (*zelfbesturende, volksgemeenschappen* – self-administering communities). This article was amended in 1992 to include a new Article 18B, which, in sub-paragraph 2, provides that the State recognizes and respects “traditional communities” and their traditional, customary rights provided that they have not been assimilated (“they still exist;” a decision made by the State) and provided that the exercise of these rights is consistent with the development priorities of the unitary state of Indonesia (a decision also made by the State).⁵² The criteria on which a community is judged to 'still exist' include recognition as such by local government, further undermining the principle of self-identification, and the final determination is made by the State.⁵³ The State, by law, thus determines which peoples benefit from the protection of Article 18B and which do not.⁵⁴

35. Indonesia's Constitution vests ownership and exclusive management rights in the State. In this respect, Article 35 provides that

1. Economic matters are managed as common efforts based on family principles.
2. Productive activities related to natural resources, which have importance to the State and significance for the livelihood of the Indonesian people, will be managed exclusively by the State.
3. The land, water and natural resources are under the control of the State and should be utilized for the maximum welfare of the Indonesian people.
4. The national economic system should be conducted in accordance with the following principles: togetherness, equitable efficiency, sustainability, environmental friendliness, independence, and balancing progress and national economic unity.
5. The implementation of this article will be regulated by further laws.

36. Exclusive State ownership and control is somewhat tempered by Article 28I(3) of the Constitution which specifically protects the rights of traditional communities,

⁵² *Promised Land: Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples*, 2006, *supra*.

⁵³ *Id.* The five relevant criteria are “(1) adat communities still organize themselves exclusively under customary association (*rechtsgemeinschaft*); (2) the presence of structured customary institutions; (3) the presence of a clear legal territory of adat communities; (4) adat communities still practice their daily activities according to the existing adat law and institutions; and (5) the local government has recognised the existence of such adat communities in accordance with any local regulation on such a recognition.” (See explanatory notes to Plantation Law 18, Annex C)

⁵⁴ See I Nyoman Nurjaya, *Proses Pemiskinan Di Sektor Hutan Dan Sumberdaya Alam: Perspektif Politik Hukum (Impoverishment in forestry and natural resource sector: Legal Political Perspective)* in the Report of ‘Masyarakat Adat Dalam Mengelola Sumber Daya Alam’ (Indigenous Peoples in Natural Resources Management); compilation of presentations and discussions held by Kelompok Diskusi Adat Indonesia (KEDAI). Available at: <http://www.worldagroforestrycentre.org/sea/Publications/Files/book/BK0025-04.PDF>

although it does not specify what those rights are and is also subject to the power of the State to simply not recognize the existence of indigenous peoples pursuant to Article 18B(2) of the Constitution. Article 28I(3) provides that “The cultural identity and the rights of traditional societies shall be respected in accordance with this age of progress and human civilisation”, thereby restricting acknowledgement of the rights of indigenous peoples according to principles of 'progress and civilisation' which are not defined. The same assimilationist and restrictive language that is present in Article 18B is thus also present in Article 28I(3). This language is also in the laws discussed below

37. The Committee on the Elimination of Racial Discrimination has previously admonished that such legal provisions, including those contained in Article 35 of Indonesia’s Constitution, must be understood and exercised consistently with the rights of indigenous peoples.⁵⁵ Similarly, and addressing an analogous provision to that extant in Indonesian law, the Inter-American Commission on Human Rights has held that invocations of the public interest must be viewed within the context of effective protection for indigenous peoples’ land and resource rights and the provision of effective judicial remedies to assert and defend those rights (all of which are manifestly absent in Indonesian law).⁵⁶

B. The Basic Agrarian Law

38. The Basic Agrarian Law (BAL) of 1960 accords with the preceding Constitutional provisions. It seeks to reconcile rights to natural resources under customary law, commonly referred to as *ulayat* rights, with inherited colonial legal concepts related to land. Article 3 of the BAL thus states that: “... *ulayat* rights and other similar rights of customary law communities should be recognised, as long as these communities really exist, and [the exercise of these rights] is consistent with national and State interests, based on the principle of national unity, and is not in contradiction with this law and higher regulations.” Likewise, Article 5 of the BAL states that: “Customary law applies to the earth, water and air as long as it does not contradict national and State interests, based on national unity and Indonesian socialism, and also other related provisions of this law, in accordance with religious principles.”

39. These provisions limit the right of indigenous peoples to the point that they become essentially meaningless. In the context of the massive development of oil palm plantations, for example, the State simply can convert customary lands into plantation lands thus negating indigenous peoples’ rights.⁵⁷ Some companies

⁵⁵ *Inter alia, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname*, UN Doc. CERD/C/64/CO/9/Rev.2, 12 March 2004, at para. 11.

⁵⁶ *Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans (Suriname)*, 2 March 2006, at para. 241-42 (stating that the public interest doctrine “substantially limit[s] the fundamental rights of the indigenous and Maroon peoples to their land *ab initio*, in favor of an eventual interest of the State that might compete with those rights. What is more, according to Suriname’s laws, mining, forestry, and other activities classified as being in the general interest are exempted from the requirement to respect customary rights. In practice, the classification of an activity as being in the “general interest” is not actionable and constitutes a political issue that cannot be challenged in the Courts. What this does in effect is to remove land issues from the domain of judicial protection”).

⁵⁷ W. Wright, *Final Report on the Review of the Basic Agrarian Law 1960*. Indonesia: Land Administration Project. World Bank, Jakarta, 1999. Available at: www.worldbank.org; World

compensate indigenous peoples, others do not; however, this compensation is usually only paid for the loss of fruit trees rather than for the traditional lands, resources and livelihoods that are lost when the land is taken, and consent to land appropriation is not sought.

40. Although the Basic Agrarian Law provides the State with an unusual degree of control over all land tenures, much greater security of tenure is afforded to (non-indigenous) citizens granted individual property and use rights (*hak milik* and *hak pakai* respectively) or to corporations granted long-term, renewable leaseholds for establishing plantations or constructing plants (*hak guna usaha* and *hak guna bangunan* respectively). Whereas regulations, procedures and institutions exist to issue and regulate such tenures, none such exist for the recognition, registration or protection of indigenous peoples' collective tenures based on customary law (*hak ulayat*).⁵⁸

41. The preceding remains the situation despite the adoption of National Assembly Decree (TAP/MPR) No. IX/2001 on Agrarian Reform and Natural Resource Management six years ago, which called for a reform of the laws relating to forests, lands and natural resources in order to deal with the persistent land conflicts throughout the archipelago.⁵⁹ Article 4 of this decree includes among its goals: "implementing social, conservation and ecological functions in line with the local socio-cultural conditions" and "recognizing, respecting and protecting the rights of indigenous peoples and the diverse national cultures over agrarian/natural resources." Although implementation of this decree remains part of the current parliament's legal reform programme, it has not yet been given legal effect.⁶⁰

C. The 1999 Forestry Act

42. Law No. 41 of 1999 on Forestry grants almost absolute authority to the State to govern and regulate all matters related to forests and their products irrespective of whether the forest lands in question are the traditional territories of indigenous peoples. The Law does contain some recognition of limited rights vested in indigenous peoples to manage forests, but only if such forests are designated as 'state forest'. Such a designation in turn authorizes the State to convert the forests to other uses, for example, to issue them to concessionaires on grounds that they are part of "the state forest" and that such conversion is for "the sake of the nation".

43. That the State may take indigenous lands and issue them to concessionaires by invoking the national interest is explicitly provided for in Article 4(3), which states that "... the State still cares for the rights of indigenous peoples, as long as such rights do exist and are recognized and are in line with the national interests." The term 'recognized' requires that the State has explicitly and positively granted legal recognition to the rights in question, normally through the issuance of some form of

Bank, 2004, *Land Management and Policy Development Project: Project Appraisal Document, Report No: 28178-IND*, Washington DC.

⁵⁸ J. Wallace, A.P. Parlindungan, and A.S. Hutagalung, S. Arie, *Indonesian Land Law and Tenures – Issues in Land Rights*. Land Administration Project. Government of the Republic of Indonesia, National Planning Agency and National Land Agency, Jakarta, 1997; and, W. Wright, *id.*

⁵⁹ For connections between conflicts and insecure tenure, see, also, *Growing Conflict and Unrest in Indonesian Forests: a summary paper*, USAID and ARD, Burlington, 2004.

⁶⁰ World Agroforestry Centre, *Facilitating Agroforestry Development through Land and Tree Tenure Reforms in Indonesia*, ICRAF SE Asia Working Paper No 2, Bogor, 2005, at p. 33.

title deed. In most cases, indigenous peoples' rights are not recognized precisely because the State has not issued title deeds.

D. The 2004 Plantation Act

44. The government of Indonesia considers that the 2004 Plantation Act (see Annex C for the full text), which provides a legal basis for developing plantation crops such as oil palm, is fully consistent with and implements Article 35(3) of the Constitution, which stipulates that "land, water and all the resources found therein are controlled by the state and shall be exploited for the maximum benefit of the people."

45. This law fails to provide meaningful protections for indigenous peoples. The promulgation of the Act was met with great concern from indigenous peoples and civil society in Indonesia, as it was viewed as perpetuating deficient treatment of indigenous peoples' rights and indeed compounding these deficiencies.⁶¹ In particular, the Act requires only that indigenous peoples' 'interests' need be considered, rather than respected, the requirement that rights be already formally 'recognized' is still present, and the overriding national interest exception continues to negate indigenous peoples' rights. Moreover, paragraph 7 of the law's general explanatory note, states that:

Use permits for estate crops shall take the interests of indigenous peoples (or *ulayat* rights) into consideration, as long as such rights do exist and are recognized and are not in direct contradiction to higher-level laws and regulations and the national interests. To ensure fair ownership, control, tenure and utilization, regulations shall be established on the maximum and minimum size of land for plantations.

46. SawitWatch has documented over one hundred separate conflicts between local communities and palm oil companies throughout Indonesia. The main causes of disputes are land conflicts, allocations of small-holdings, repressive police actions, low pay and pricing.⁶² In 2004, prior to the introduction of the Act, 143 cases of conflict were recorded in that year. By 2006 this number had swollen to over 500 active cases of conflict over land appropriated for plantations. The implementation of the Act has seen harassment and intimidation increase, with the use of Articles 20 and 47, among others, to intimidate indigenous peoples' communities. Article 20 provides for the use of private and state security forces in the 'protection' of plantation areas once lease hold has been granted:

Plantation business actors shall perform plantation business safety that is coordinated with the security people and can ask assistance from the surrounding community.

Article 47 details the punishments for 'use of plantation land without permission', and in combination with Article 20 has created an atmosphere of intimidation and fear.

⁶¹ "DPR approves Plantation Bill", *gatraonline*, Jakarta, 12 July 2004 13:28. See also "Plantation Regional Bill is considered to ignore farmers: 40 reclaiming cases in Central Java," *suaramerdeka.com*, Monday, February 14, 2005

⁶² See Sawit Watch database tracking active conflicts. An example of a protest letter outlining indigenous peoples' objections to the proposed plantations is provided in Annex D.

47. Article 9(2) of the Plantation Act states “the applicant of the rights shall carry out consultation with customary law communities of the customary land right-holder and person of right-holder to the land, in order to obtain an agreement on the transfer of the land, and its compensation.” This provision could be read proactively as requiring agreement or consent from indigenous peoples to the use of their lands. However, in practice, this Article is interpreted to require only agreement as to the level of compensation, not consent to the transfer of the land, and if such agreement can not be reached then the land may still be appropriated 'for the sake of the nation'. Such concerns have led to a request for judicial review of the Plantation Act in March 2005, on which no decision has yet been taken.⁶³ While this case is still pending, the government has stated that the Act may be reviewed in the context of wider legislative review between now and 2009.

48. In conclusion, Indonesia’s laws and practice are inconsistent with its obligations pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination and indigenous peoples’ rights are neither adequately guaranteed by law nor are they adequately protected in practice. That this is the situation in Indonesia was acknowledged by no less than its President in August 2006, when he stated that indigenous peoples “had often been sacrificed for the sake of development, as powerful business interests seek to exploit natural resources,” and that one of the reasons that this had occurred was because indigenous peoples’ rights were not recognized and protected by a specific law.⁶⁴ At that same time, the President also stated that he would propose a law to protect the rights of indigenous peoples. This welcome and encouraging statement has yet to be given effect however almost one year later, and, as typified by the Kalimantan Border Oil Palm Mega-Project, indigenous peoples continue to face severe threats to their rights and survival.

VII. REQUEST

49. In light of the preceding, the submitting organizations request that the Committee take the necessary measures to assist Indonesia to fully recognize and protect the rights of the indigenous peoples subject to its jurisdiction, especially those indigenous peoples in Kalimantan, who are threatened with imminent and irreparable harm by the expansion of oil palm plantations.

50. For these reasons, we hereby respectfully request that the Committee:

- (a) Considers the situation described herein under its early warning and urgent action procedure at its 71st session to be held in August 2007.
- (b) Recommends that Indonesia not proceed with the Kalimantan Border Oil Palm Mega-Project or other oil palm plantation projects affecting indigenous peoples in East and West Kalimantan, at least until such time as it has legally recognized and secured their ownership rights in and to

⁶³ See, *Request for Judicial Review of Law No. 18 Year 2004 on the Government’s Stipulation to Replace Law No. 1 Year 2004 on Changes in Law No. 41 Year 1999 on Forestry into Law*, 1 March 2005, p. 11

⁶⁴ ‘President Admits Indigenous People Mistreated’, *Jakarta Post*, 10 August 2006 (see Annex B for full text).

their traditional lands, territories and resources and obtained their free, prior and informed consent.

- (c) Recommends that Indonesia remedy the massive and ongoing rights violations occurring in existing palm oil plantations.
- (d) Recommends that Indonesia adopts legislative, administrative and other measures to give full effect to the rights of indigenous peoples, including by amending existing laws, and that it does so with indigenous peoples' full and free participation through their own freely chosen representatives.
- (e) Draws the attention of the UN Secretary General, Human Rights Council, the Permanent Forum on Indigenous Issues and the Office of the High Commissioner for Human Rights to the serious and urgent situation affecting the indigenous peoples in West and East Kalimantan.

VIII. ANNEXES

- A. 'President Admits Indigenous People Mistreated', *Jakarta Post*, 10 August 2006
- B. *Oil Palm and Other Commercial Tree Plantations, Mono-cropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods*, UN Permanent Forum on Indigenous Issues Working Paper, E/C.19/2007/CRP.6
- C. Plantations Act 2004
- D. Summary translations of selected protests by indigenous peoples against proposed expansion of oil palm plantations in Kalimantan

ANNEX A: President admits indigenous people mistreated

President admits indigenous people mistreated

Tony Hotland
The Jakarta Post/Jakarta

President Susilo Bambang Yudhoyono paid homage to Indonesia's indigenous people Wednesday and said he would propose a law to provide them special protection.

In an event to mark the International Day of the World's Indigenous People in Jakarta, the President said indigenous people "have shown their wisdom in the use and preservation of natural resources".

Yudhoyono admitted that the rights of original inhabitants have often been sacrificed for the sake of development, as powerful business interests seek to exploit natural resources.

"I am calling on all government officials at the central and local administrations to take into account the interests of these people in designing and executing development programs," he said.

Yudhoyono said the government should learn from indigenous people who have devised ways to use natural resources without causing environmental destruction.

"And that is unlike what we see now. We must ensure that land use and environmental arrangements are carried out according to traditional values, to prevent excessive exploitation," he said.

The President said one reason the rights of original inhabitants were often overlooked was the absence of a law specifically addressing the issue.

He said he would propose a bill to detail the rights and roles of indigenous people, and to require local administrations to take them into account in carrying out development.

Projects like the Freeport gold and copper mine in Papua province have long been a target of critics, who say there has been little

effort to preserve the environment or improve the lives of indigenous people there. They charge most of the money generated from the mine has gone to the American company and the Indonesian government.

Similar cases have taken place throughout the country. Indigenous people have lost their traditional land and livelihoods to business interests backed by government forces.

Indonesia has yet to ratify the International Labor Organization (ILO) Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries.

While the country has no specific law on indigenous people, they are protected under broader laws such as the one concerning human rights.

Jakarta Post 10 Aug.

ANNEX B

E/C.19/2007/CRP.6

7 May 2007

English only

Permanent Forum on Indigenous Issues

Sixth session

New York, 14-25 May 2007

**Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on
Indigenous Peoples' Land Tenure and Resource Management Systems and
Livelihoods.**

Victoria Tauli-Corpuz and Parshuram Tamang

This paper aims to raise awareness and initiate debate on the impact of commercial tree plantations and monocropping on indigenous peoples' lands and communities. This paper was prepared in response to Recommendation 31 of the 5th Session of the United Nations Permanent Forum (UNPFII) which stated:

“The Permanent Forum appoints Victoria Tauli-Corpuz and Parshuram Tamang as Special Rapporteurs charged with preparing a working paper, without financial implications, in cooperation with indigenous peoples organizations, Governments and other relevant institutions, on palm oil development, commercial tree plantations and mono-cropping and on their impacts on indigenous peoples' land tenure and resource management systems and livelihoods.”

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Introduction

1. According to latest estimates, between the years 2000 and 2005, the net forest loss was 7.3 million hectares per year or 20,000 hectares per day. The Intergovernmental Panel on Forests (the predecessor of the United Nations Forum on Forests) identified that among the underlying causes of deforestation and forest degradation, was the failure of governments and other institutions to recognize and respect the rights of indigenous peoples and other forest-dependent peoples in regards to their territorial lands, forests and other resources, as well as the issue of government policies that substitute forests with industrial tree plantations.ⁱ

2. The areas that are converted into monocropping industrial plantations are forests and it is inevitable that these two issues are also addressed in this paper; eventhough the purpose of this paper is to identify issues around oil palm and other commercial tree plantations. Linking the logging of natural forests and plantations, however, does not mean that the two rapporteurs (authors of this paper) agree with the concept that plantations are forests. The two rapporteurs are of the view that there should be a clear distinction between tree plantations and natural forests (primary and secondary).ⁱⁱ

3. The history and cycle of plantation development begins by the granting of forest areas as concession areas, the next stage is the clearing or destruction of forests and then followed by the establishment of plantations. As these plantations are meant to produce crops for the market, they are logged after a short period and planting begins all over again. In both these processes indigenous peoples are either evicted from these forests areas, or their access to the forests is curtailed, and a few people are absorbed as seasonal workers.

4. For forest-dependent indigenous peoples, the forest is the basis of their sustenance and subsistence forms part of their profound symbiotic relationship with the forest, for millennia, which shaped their societies, their worldviews, knowledge, cultures, spirituality and values. Hence, the evolved strict spiritual and customary laws and sophisticated land tenure, mostly under communal ownership, and resource management systems that both ensures their needs are met and that forests are protected from destruction. The maintenance of the integrity of the forests is crucial for indigenous peoples as it represents the past, present, and future aspects of how to live in mutual reciprocity among themselves and with nature.

5. This paper draws on important reports by various United Nations (UN) bodies and Non-Government Organizations (NGOs) and as well as the conclusions reached during visits by some members of the UNPFII to countries where large-scale industrial plantations on indigenous peoples' territories exist.ⁱⁱⁱ

Overview of indigenous peoples' experiences with logging and large scale monocropping plantations

6. Social conflicts associated with large-scale industrial logging (both legal and illegal) and monocropping plantations are basically conflicts about who has the right to own, use and manage the forests. The main protagonists are indigenous peoples versus the state and its machineries (military and police forces, departments of forestry, environment, mining, agriculture, local governments, etc.), the logging, plantation or carbon trading companies and sometimes even NGOs. Land rights remains one of the most contested and violated rights of indigenous peoples. In her report, Daes highlighted the failures on the part of the states to recognize indigenous peoples' land rights; the persistence of discriminatory laws and policies; the failure to enforce or implement laws; the expropriation of lands in the name of development; the allotment of sacred and cultural sites to individuals and/or failure to recognize and respect indigenous peoples' control of their territories.^{iv}

7. There are many factual accounts on how indigenous peoples were dispossessed of their lands during the colonial era as well as the present. The doctrine of discovery, policies of extinguishment, plenary power doctrine and several doctrines of dispossession (e.g. *terra*

nullius), were used to justify the occupation of indigenous peoples' lands by colonizers.^v One example is the Regalian Doctrine or *jura regalia*. "The term "jura regalia" refers to royal rights, or those rights which the King has by virtue of his prerogatives. The principle of "eminent domain" has been used by colonial governments and continues to be used by post-colonial governments to legitimize the taking or expropriation of indigenous peoples' lands and resources.

8. In several countries there are doctrines and laws which recognize the rights of indigenous peoples to their traditional lands and territories. Unfortunately these also contain killer clauses or are systematically weakened in the name of national development by subsequent interpretations or amendments to these acts. Others are simply extinguished. Some examples are the Native Customary Rights (NCR) as contained in the Sarawak Land Code (1958) in Malaysia and the Native Title Act of Australia of 1993 and the 1997 Indigenous Peoples' Rights Act of the Philippines.^{vi}

9. The continuing existence, application and development of legislation that are similar to the doctrines of dispossession are seen to be racist and discriminatory and partly explains why many indigenous peoples remain extremely marginalized and politically oppressed. Another factor is the colonial and post-colonial development strategy of integrating indigenous economies into the domestic and global market. National economic development has been the favored argument used to justify the taking of indigenous lands for logging, plantations, oil, gas and mineral extraction.

10. Large-scale plantation economies form part of the story of the erosion and appropriation of indigenous peoples' subsistence base and territories and the alteration of their indigenous land tenure systems.^{vii} The reports of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, has indicated that the loss of lands of indigenous peoples occurred through colonization, nationalization and privatization of their lands.^{viii}

11. In the 1980s the neo-liberal Washington Consensus development model emphasized trade liberalization and export-led growth, financial market liberalization and financial capital mobility, fiscal and monetary austerity, privatization and labor market flexibility. Multilateral financial institutions, including some United Nation bodies, bilateral donors and the private sector all worked together to facilitate the liberalization of investment, trade and finance policies of developing countries which jumpstarted the conversion of forests into industrial plantations. As large-scale monoculture plantations became an integral part of the economic growth strategy of most countries, rampant expropriation or taking of indigenous lands occurred. Forestry programs which included expansion of plantations were planned and implemented through the support of multilateral financial institutions like the World Bank, the Asian Development Bank and United Nations agencies and programmes such as Food and Agriculture Organization (FAO) and United Nations Development Programme (UNDP).

12. An example of such forestry programmes is the Tropical Forestry Action Plan (TFAP) which was initiated by the World Bank together with UNDP, FAO and the World Resources Institute (WRI) in 1985. The TFAP proposed the expansion of plantations to meet the global demand for wood products and introduced the intensification of 'sustained yield' forestry for national development and to halt deforestation. The TFAP has increased the pulp and paper industry's market 5 times over the past 40 years. It played a key role in promoting monocropping plantations of conifers, eucalyptus and acacia trees in tropical forests. Since 1998, over 100 million hectares of primary forests have been converted into industrial tree plantations.^{ix} It has been the subject of intense criticism because, aside from being a major cause of deforestation, it failed to include indigenous peoples, local communities and civil society in the formulation and implementation and consequently their rights, needs and perspectives were overlooked. The TFAP also provided technical solutions to problems which

were political in nature however, it reinforced existing power relations and as a result, the poor which in many cases were indigenous peoples, remained poor and powerless.^x

13. The lack of understanding of the holistic world views and ways of life of indigenous peoples and other forest-dependent peoples was identified in the December 1996 at the “International Meeting of Indigenous and Other Forest-dependent Peoples on the Management, Conservation and Sustainable Development of all Types of Forests” as an exacerbating factor for deforestation. An outcome of this process was the Leticia Declaration which outlined the underlying causes of deforestation (changing forests into other land uses) and forest degradation (deterioration of forest quality).^{xi}

14. The International Panel on Forests cites, among others, discriminatory international trade, trade distorting policies, structural adjustment programmes (SAPs), external debt, market distortions and market failure, perverse subsidies, undervaluation of wood and non-wood forest products, and poorly regulated investments as the international underlying causes of deforestation.

15. FAO developed the official definition of ‘forests’ which declares that “forest includes natural forests and forest plantations. It is used to refer to land with a tree canopy cover of more than 10 percent and area of more than 0.5 ha.”^{xii} On this basis, the definition established two categories of forests: natural forests and plantation forests. Many NGOs and indigenous peoples contest this definition and insist that there should be a clear distinction between forests and plantations. They do not accept that plantations are forests. The only thing in common between the two is the fact that both have trees. Other than that, they are two totally different systems. A forest is a complex, self-regenerating system, encompassing soil, water, microclimate, energy, and a wide variety of plants and animals in a mutual relationship. Plantations, on the other hand, have one or a few species of trees/crops (often alien), planted in homogenous blocks of the same age. Plantation trees are much closer to industrial agricultural crops than to forests (as usually understood) or a traditional agricultural field.

16. This distinction is important because including plantations as forests is accepting that this is a forest ecosystem, which clearly it is not, secondly, this obscures the real rate of deforestation, and thirdly, it virtually casts a blind eye to the adverse social and environmental impacts of plantations, especially on indigenous peoples. Therefore, it has been recommended that “natural forests” be simply called forests (primary and secondary) and “forest plantations” be called tree plantations.

17. The Millennium Development Goal (MDG) No. 7 on environmental sustainability has an indicator which is ‘the proportion of land area covered by forests.’(#25). Countries that have expanded the areas for tree plantations can claim that they are achieving Goal 7 even if plantations have nothing to do with environmental sustainability.

Oil palm plantations and indigenous peoples

18. Oil palm (*Elaeis guineensis*) is a native plant of West Africa which has been traditionally used as food, medicine, woven material and wine. Oil palm can be grown and harvested in an environmentally-friendly way as it has been in Western Africa with small-scale planters who undertake small scale diversified agro-forestry. At present, however, states, multilateral funding institutions, the private sector including the private banks along with bilateral donors and the UN, support and promote the large-scale agro-industrial model, as opposed to a small-scale one. Oil palm plantations have become one of the fastest growing monocropping plantations in the tropics not only of Africa, but also in Asia-Pacific, and Latin America and the Caribbean.

19. The main product of these plantations is palm oil (stearin) from the flesh of the oil palm fruit and from palm oil (olein) from the palm seed.^{xiii} In 1997 it was estimated that oil palm plantations occupy 6.5 million hectares and produced 17.5 million tonnes of palm oil and 2.1 million tonnes of palm kernel oil. By 2005, palm oil production reached 30 million tonnes and the area covered had already comprised 12 million hectares. Of this, 4 million hectares are in Malaysia and 5.3 million hectares in Indonesia.^{xiv}

20. Indonesia is experiencing the biggest rate of increase in terms of forests converted into oil palm plantations. In a period of 30 years (1967-1997) oil palm plantations have increased 20 times with 12 percent average annual increases in crude palm oil (CPO) production.^{xv} From 106,000 hectares in 1960 this has increased to 6 million hectares although there were around 18 million hectares of forests cleared purportedly for oil palm in 2006.^{xvi} It appears that loggers used oil palm plantations as a justification to harvest the timber. The government announced new plans, under the Kalimantan Border Oil Palm Mega-Project (April 2006), to convert an additional 3 million hectares in Borneo, of which 2 million will be in the border of Kalimantan and Malaysia. The rapporteurs of this report understands that the area deemed suitable for oil palm includes forests used by thousands of people who depend on them for their livelihoods.

21. The promoters of oil palm plantations claim that this will reduce unemployment, alleviate poverty and bring environmental benefits. To justify the loans given to oil palm plantation owners in the Ivory Coast and other countries a Director of the International Finance Corporation stated that oil palm plantations will generate more employment and higher living standards and promote environmentally sensitive agricultural production.^{xvii} All these claims are highly contested.

22. Clearly, the main reason for the dramatic expansion of oil palm plantations, notwithstanding their adverse impacts on people and the environment, is that these provide big profits to domestic and international plantation owners and investors. These mega-profits are ensured by cheap labour, low cost of sale or rent of land, ineffective environmental controls, high demand, support from multilateral and bilateral donors and a short growth cycle. In Malaysia, for example, palm oil export is one of its competitive edge in global trade and it has contributed to the economic growth of the country. In 2002 palm oil produced more than US\$2.1 billion in export revenue for Indonesia and \$3.8 billion for Malaysia.^{xviii} This sector also enjoys strong support of governments because the crop is mainly geared for the export market which generates foreign exchange. The increasing demand for biofuels and the need for carbon sinks plus the system of carbon emissions trading are the new incentives for further expanding oil palm plantations. It is now a favorite alternative energy source because of its high yield per hectare and low production costs.

23. It is without any doubt that the growth of the oil palm sub-sector has resulted into economic benefits, especially for the key players. However, it comes with serious social and environmental costs which adversely impact on indigenous peoples, forest-dwellers and the tropical rainforests. Out of the 216 million people in Indonesia it is estimated that 100 million, of which 40 million are indigenous peoples, depend mainly on forests and natural resource goods and services. Large areas of forest lands traditionally used by indigenous peoples have already been expropriated.

Emerging issues; biofuels, carbon sinks and carbon emissions trading

24. The recommendations adopted by the Climate Change Convention on global warming are a classic case of providing a solution to one specific problem while simultaneously creating a host of other problems. Expanding plantations for biofuels or energy crops and for carbon sinks are recreating and worsening the same problems faced by indigenous peoples with large-scale monocropping, agricultural and tree plantations. Indigenous peoples have, and

continue to engage with the Climate Change Convention processes but it is often very difficult to get their perspectives integrated in the final conclusions or the recommendations.

25. The most logical approach to halt carbon dioxide (CO₂) emissions is for countries, especially industrialized countries, to reduce their fossil fuel consumption and cut back on emissions drastically. These countries are targeted because of their disproportionate use of energy and because of the ‘carbon debt’ they owe to the south which has yet to be paid.^{xix}

26. The environmental justice approach which strikes at the underlying causes of global warming was defeated when the Convention took a more market-based approach as seen in the proposals of the Kyoto Protocol. Annex 1 countries (38 industrialized countries) pledged that by 2012 they will reduce their emissions by an average of 5.2 percent below the 1990 levels by buying “carbon credits” from less polluting countries or corporations and by investing in projects which “sequester” or “store” carbon. None of the three market-based “flexible mechanisms” tackle directly the physical root causes of global warming: the transfer of fossil fuels from underground, where they are effectively isolated from the atmosphere, to the air.

27. The flexible mechanisms allow Northern countries to avoid or delay reducing their greenhouse gas emissions. The Clean Development Mechanism (CDM) allows northern countries to finance projects in the South to mitigate climate change in return for credits which are banked and ultimately used to license continued pollution at home. Joint Implementation means that northern countries can finance projects aimed at mitigating climate change in other Northern (often Eastern European) and Southern countries, receiving credits accordingly.^{xx} With these in place, traders and bankers have started establishing carbon exchanges in those countries where major stock exchanges are based.

28. The European Union (EU) widely promotes the use of biofuels as an alternative energy source for transport. Its European Biofuels Directive (2003) has a target of 5.75% of transport fuel in Europe from biofuels by 2010 and 20 percent by 2020. President Bush on the other hand, stated in his State of the Nation speech in Feb. 2006 that by 2020, 30 percent of America’s cars will be running on bioethanol.

29. While USA and the EU farms are now extensively used to raise crops for biofuels there is still a huge supply gap to address the demands for biofuels. Malaysia, Indonesia, Colombia, Ecuador, Nigeria, Cote d’Ivoire, Papua New Guinea, among others, are rapidly expanding their oil-palm plantations to fill this gap. Malaysia and Indonesia are gearing to supply 20 percent of the market in Europe and have just announced that they will set aside 40 percent of their palm oil output for biodiesel. Brazil is aggressively expanding its sugarcane and soya plantations. Its sugarcane production is fast outpacing soya and it is now the largest bioethanol exporter, supplying around 50 percent of the world market. Argentina, together with Brazil are growing genetically-modified (GM) soya for biodiesel. Other traditional sugar producers like Guatemala, El Salvador, Pakistan, South Africa, Swaziland, the Philippines, are also rehabilitating their sugar plantations to compete in the world market.

30. Amidst all the hype about biofuels being environmentally sustainable, there are already studies done by scientists showing that large-scale biofuel production is an energy intensive and CO₂-emitting and polluting process. The energy balance of biofuels, which means the amount of energy required to produce one unit of biofuel compared to the energy contained in the same unit of biofuel, has been analysed and the results are not encouraging. The burning of the forests in Indonesia to prepare oil palm plantations, alone, clearly contributed to CO₂ emissions. The carbon that was safely stored in the forests is released through deforestation.

31. In the immediate past, indigenous peoples’ territories have been skimmed of their oil, gas and coal deposits in name of development. Now, in the name of saving the world from global

warming, their lands are again viewed as a means to providing solutions. The expansion of plantations for biofuels, the development of carbon sinks, and carbon emissions trading are exacerbating the earlier problems related to plantations which indigenous peoples are facing. Converting complex ecosystems to become monoculture carbon sinks and treating CO₂ emissions as a commodity which will be traded in the carbon market do not only lead to adverse social and environmental impacts, but also directly contradicts the basic worldviews and values of indigenous peoples who have used their resources and lands in a sustainable manner. The justification of trade in emissions consists of distorted technical, legal, economic and intellectual devices which perpetuate the inequalities in this world. Global warming which is a social and environmental problem has become a business endeavour which offers opportunities to gain new property rights, assets and openings for capital accumulation.^{xxi} There are several case studies that have been completed on the experiences of indigenous peoples in Costa Rica, Ecuador, Thailand, India, Brazil, and Uganda with projects which are established for emissions trading and it is another repeat in terms of taking over of indigenous peoples' lands.^{xxii}

32. During the 6th meeting of the Conference of Parties of the United Nations Framework Convention on Climate Change (UNFCCC) indigenous representatives from 22 countries released a statement rejecting the inclusion of forests in the CDM and calling for the establishment of a fund for indigenous peoples to address the impacts of climate change.^{xxiii} The World Bank has played an important role in promoting and supporting the concept of a carbon market.

Social and Environmental Impacts of Logging and Monocropping Plantations

33. The social and environmental impacts of logging and plantations on indigenous peoples' lands and territories, particularly in the developing countries, have been extensively documented in various literature and these show the following:^{xxiv} the denial of rights to lands , territories and resources, land alienation, forced evictions, the prevention of access and rights which have lead to a decline in the population of indigenous peoples, especially in isolated and remote territories' and the destruction of resource management systems. There has also been habitat loss that has lead to destruction of livelihoods, cultures and loss of traditional forest-related knowledge. There has been an increase in social conflicts between indigenous peoples and the state and private corporations (divisions are fostered by governments and corporations). There has been food insecurity, severe health problems, including increasing malnutrition and increased mortality; changes in disease ecology resulting in high incidences of diseases; increase of rates of sexually-transmitted diseases due to increasing prostitution in plantation or logging estates. There have been exploitative and discriminatory working conditions, high rates of injury among forest and plantation workers; creation of dependency resulting in exploitative relations and corrupt patron-client relations between forestry officials and indigenous peoples. There has been a breakdown of traditional social structures, introduction of new inequalities, undermining customary laws, social support networks and systems of land management. There have been internal conflicts over decision-making, resource allocation leading to further weakening of social cohesion and a shift in balance of power over forests away from forest dwellers which include indigenous peoples, towards logging and plantation industry, political and economic elites which reinforce political patronage and rent-seeking behaviour.

34. A classic picture which illustrates what happens when monocropping plantations is introduced into indigenous lands is the case of Aracruz Cellulose in Brazil. It was with the support of the military dictatorship that Aracruz Florestal (now Aracruz Cellulose) invaded the indigenous lands of the Tupinikim in 1967. It is now the world's largest producer of bleached eucalyptus pulp, recording an income of US\$685.9 million in 2005.^{xxv} The Tupinikim and Guarani peoples tried to reclaim their lands by self-delineation and re-occupying some parts of their lands. In January 2006, they were violently evicted by armed policemen from the lands they occupied. Aracruz bulldozers were used to destroy the villages.

On September 12, 2006 the National Indigenist Foundation (FUNAI) recommended to the Minister of Justice that he declare 11,009 hectares of Espiritu Santo as indigenous territories of the Tupinkim and Guarani.

35. A report released by FERN (a European forest alliance) entitled “Forest of Fear, the abuse of human rights in forest conflicts”^{xxvi} contains over 40 cases of human rights violations. The findings of this report and additional accounts are confirmed in reports of Human Rights Watch and Amnesty International, as well as those by the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.

36. A report published by Lancet Magazine on the health of indigenous peoples in Africa established that “Pygmy peoples’ health risks are changing as the central African forests, which are the basis for their traditional social structures, culture and hunter-gatherer economy, are being destroyed or expropriated by logging, farming, and conservation projects.”^{xxvii} This report further stated that in places where forest dietary resources have become scarce because of destructive logging and lack of other lands to raise food, malnutrition of children and pregnant women is occurring at a serious rate.

37. In his country mission reports, UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, alluded to the impact of development of forest plantations on Mapuche peoples’ land.^{xxviii} The situation of the uncontacted peoples or indigenous peoples in voluntary isolation has also been highlighted by the Special Rapporteur in his Ecuador Mission Report because they are being invaded not only by oil and mining companies but also by loggers and oil palm plantation owners.^{xxix}

38. Another example is that of the Benet people or the Ndorobo, the indigenous peoples who have occupied Mt. Elgon in Uganda, since time immemorial. This forest was gazetted as a Crown Forest in 1938, became a central forest reserve in 1968 and a national park in 1993. Because of this, the Ndorobo were evicted in 1983 and 1993. In 1994 the Uganda Wildlife Authority (UWA) and the Netherlands Forest Absorbing Carbon Dioxide Emissions Foundation (FACE), obtained a license from the Uganda government to plant trees in 25,000 hectares on the 211 kilometer long boundary of Mt. Elgon near the Kenyan border. A series of evictions took place again to protect the areas that were provided to the UWA-FACE project. The Ndorobo people filed a case against the Attorney General of Uganda and UWA for forcible eviction which is contrary to the 1995 Constitution which recognizes customary ownership.^{xxx}

39. Deforestation does not only affect the forest itself, but also the underground water. Deterioration in water quality has caused a decline in fish stocks and has affected aquatic biological diversity because indigenous animals and plant life are highly vulnerable to oxygen depletion, suspended particulate matter and a lack of light.

Responses and initiatives of indigenous peoples, NGOs and UN bodies

40. A common response among indigenous peoples, faced with the unilateral taking or expropriation of their lands by the state, is to physically resist logging, plantations, oil, gas and mineral projects at the local level. This is usually done by setting up human barricades and blockades to stop the entry of company vehicles, machines and land occupation acts. It does not come as a surprise that the conflict over lands mainly between indigenous peoples and the state and private sector, has been the central impetus for the emergence of indigenous peoples movements in most parts of the world. Road barricades set up by indigenous peoples’ in Sarawak and the land occupation and self-delineation activities by the Tupinikim and Guarani are just few examples of the countless other cases that have occurred since colonization. In many developing countries, the judicial process is so slow, the legal costs are way beyond the means of indigenous peoples and the links of corporations with political elites does not make it easy to sustain these actions.^{xxxi}

41. The local and national indigenous peoples' movements have become transnationalized into a global movement. This was a major focus of the work undertaken by the indigenous movement in the drafting of the UN Declaration on the Rights of Indigenous Peoples. It was adopted by the Human Rights Council on June 29, 2006 and it is now before the General Assembly. Indigenous representatives are hoping states will adopt the Draft Declaration in the General Assembly before the end of its 61st Session in 2007.^{xxxii}

42. Most of the work in regards to recognizing rights of indigenous peoples to their lands, territories and resources was within the now defunct Commission on Human Rights. It began with the 1971 ECOSOC resolution authorizing the Sub-Commission to undertake a study on the "Problem of Discrimination Against Indigenous Populations" (Martinez-Cobo Report). The designation of Erica-Irene Daes as the Special Rapporteur on indigenous land and resources is step forward. It has also authorized expert seminar workshops which tackled directly or indirectly the issues around plantations.^{xxxiii}

43. The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has visited 10 countries since his appointment in 2001. His reports contain analysis of the situation of the lands, territories and resources of indigenous peoples and several references to experiences of indigenous peoples in regards to logging and plantations. He also completed a thematic report on the "Impact of large-scale or major development projects on the human rights and fundamental freedoms of indigenous peoples and communities".^{xxxiv}

44. Within the past ten years there have been an increasing number of shadow reports and urgent alerts submitted to the Human Rights Treaty Bodies raising issues of discrimination and violation of basic human rights of indigenous peoples by some states which ratified the Conventions. Some of these have specific proposals addressed to the Permanent Forum.^{xxxv}

45. Indigenous peoples did not limit their engagement with the UN Human Rights System. They have also engaged with the Economic and Social Council and its subsidiary bodies. This started with the UN Conference on Environment and Development (UNCED, 1992) otherwise known as the Earth Summit or Rio Summit. The participation of various indigenous representatives ensured the adoption of Chapter 26 of Agenda 21 which is "Strengthening the role of indigenous and local communities in sustainable development". At Rio plus 10 in 2002, the indigenous delegation ensured that the "vital role of indigenous peoples in sustainable development" which was reaffirmed by the Johannesburg Declaration of the World Summit on Sustainable Development.

46. Indigenous peoples are engaged with the UNFF (UN Forum on Forests) since it is a key UN body mandated to "promote the management and sustainable development of all types of forests and to strengthen long-term political commitment to this end" of their traditional knowledge on forests and monitoring and reporting of the state of the forests.^{xxxvi} Civil society organizations, which included indigenous peoples, made an assessment of the UNFF processes and made suggestions on how to improve the work of this body and any other future intergovernmental process that will deal with forest issues at the global level.

47. The International Labour Organization (ILO) Convention 169 on Indigenous and Tribal Peoples contains important provisions which recognize the rights of indigenous peoples to control their natural resources in their collective capacity as peoples. ILO Convention 169 is now ratified by 19 countries, the latest of which are Spain and Nepal. The Inter-American Court of Human Rights (IACHR) of the Organization of American States has received several cases that covered many of the issues outlined in this report. One of its landmark cases was the *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*.^{xxxvii}

48. The FAO under its Land Tenure Service, commissioned a study titled “A Survey of Indigenous Land Tenure” undertaken by the Forest Peoples’ Programme in 2001. This very rich report contains a legal assessment of the recognition of indigenous land rights and includes relevant case studies.

49. The World Bank revised their Operational Directive (OD) 4.20, now called Operational Policy (OP) 4.10 on Indigenous Peoples. In 2002, the World Bank also adopted a new policy on forests (OP 4.60) which indigenous peoples and NGOs view as a diminished version of the 1993 policy it replaced, which prevented the World Bank from funding projects that destroy primary moist forests. Another criticism is that it does not apply to other members of the World Bank Group, e.g. International Finance Corporation and the MIGA (Multilateral Investment Guarantee Agency) nor to structural and programmatic lending.^{xxxviii}

50. The World Bank has moved away from the mitigation and “do no harm” approach to “do good” and completed its own studies on the success of ethnodevelopment projects that it had supported. They funded an initial study that analyzed 28 successful cases of “indigenous development” in Latin America.^{xxxix}

51. Together with some environmental organizations, indigenous organizations also took part in processes which are initiated by the private sector. This includes the certification processes of the Forest Stewardship Council (FSC) and the Roundtable on Sustainable Palm Oil (RSPO) and Sawit Watch, incorporated in 2004 as an NGO under Swiss Civil Law. With great hesitation, some indigenous individuals, not only from Indonesia but also Malaysia, took part and contributed to the evolution of the RSPO Principles and Criteria (adopted in Nov. 2005) which include, among others, the compliance with ratified international law and the principles of free, prior and informed consent, and fair compensation.^{xl} The FSC Principles and Criteria which set standards for logging and plantations declares that companies must recognize indigenous peoples’ rights to their lands, to prior and informed consent regarding sacred sites if they are to qualify for ‘eco-labelling’.

52. A study conducted by Sawit Watch, Forest Peoples’ Programme, HuMA and ICRAF concluded that very few oil palm estates in Indonesia are likely to comply with the RSPO standards and that the rights of indigenous peoples still continue to be violated in the development of oil palm estates.^{xli}

53. Another initiative by the Friends of the Earth-Netherlands (Milieudefensie) jointly with Greenpeace-Netherlands and Indonesian NGOs, was a campaign to engage major Dutch banks involved in financing the oil palm industry. This included a research analysis of the Bank’s programs on forestry and investment and plantation policies in Indonesia. NGO campaigners determined that the central players in expanding oil palm plantations in Indonesia, Malaysia and Papua New Guinea are the foreign financial institutions from Europe, North America and East Asia. Thus, a joint campaign in 2001 targeted 5 Dutch banks: ABN Amro Bank, FMO, Fortis Bank, ING Bank and Rabobank.

54. The banks admitted that through their investments they contributed to the adverse environmental and social impacts of oil palm plantations in Southeast Asia. Subsequently, they established their Oil Palm and/or Forestry Investment Policies (Oct. 2001) that will guide them when providing finance to companies involved in this industry. They played key roles in establishing the RSPO. Other banks like Citigroup, JP Morgan and HSBC followed suit and established policy statements that at the minimum, their clients will respect relevant laws and international conventions in regards to maintaining High Conservation Value Forests and respecting the rights of indigenous and local communities.

Conclusion

55. There are positive developments and gains in terms of having indigenous peoples' rights recognized in national constitutions and laws in several countries. Laws and policies on indigenous land tenure now exist in countries in many parts of the world, although the nature of these are wide-ranging, from access rights to rights to own and control. Many countries in Latin America reformed their constitutions to acknowledge that they are multi-ethnic and multi-cultural countries and produced laws that recognize customary land rights and call for the demarcation of indigenous peoples' lands. Some of these countries ratified ILO Convention No. 169 on Indigenous and Tribal Peoples.

56. In Asia, the recognition of Native Customary Rights in Malaysia, the Indigenous Peoples' Rights Act of the Philippines, the Land Act 2001 of Cambodia, in varying degrees, guarantee some rights for indigenous peoples over their forests. In Asian countries where no such laws exist there are policies and projects in community-based watershed and forest management which include the recognition of some customary practices and indigenous land tenure systems. The 6th Schedule for Tribes in Northeast India recognizes collective land ownership. In the Pacific several countries, like Fiji and Papua New Guinea, already recognize customary land rights. In North America, Australia, New Zealand and the Arctic there are also varying degrees of recognition of indigenous people's rights to their forests.

57. In spite of the above, the eviction of indigenous peoples from their forests continues unabated. Thus, indigenous peoples carry on their campaigns for the recognition of their land and resource rights. The policies and laws pushed by the dominant neo-liberal economic development model trump those which protect indigenous peoples' rights to their lands, territories and resources. Several studies including one by the Inter-American Development Bank indicated that the policy of land privatization has led to measures which favor granting of individual property titles causing faster alienation of lands. In some instances, steps taken to achieve MDG Goal 1 (the halving of poverty by 2015), include logging, and conversion of forest lands into monocropping tree and agriculture plantations. Timber, plantation, hydrocarbon and mineral companies are all claiming that they will reduce poverty and provide jobs, although, as mentioned earlier, there is very little evidence to prove that poverty is being reduced.

58. There is much more political will, financial and technical support for macro-economic and structural reforms which intensify pressure on indigenous lands and resources and decrease the capacity of governments to regulate corporate behaviour. In addition, new financial mechanisms such as the Prototype Carbon Fund of the World Bank are set up to strengthen the carbon market and huge loans are provided to the private sector to expand biofuel production.

59. Meanwhile, funding and technical assistance to build the capacities of countries to implement their national laws which protect and respect indigenous peoples' rights to lands, territories and resources and their obligations to International Human Rights conventions and treaties are woefully inadequate. Land demarcation and land titles and ethnodevelopment projects are under funded.

60. There is a lot of scope for the studies undertaken by intergovernmental bodies and civil society organizations to influence policy at the national and global level. In fact, several of these are fed into the shadow reports or urgent alert submissions of indigenous organizations and NGOs to the Human Rights Treaty Bodies. There is now a growing body of jurisprudence developed by these bodies which further reinforce the need to protect the rights of indigenous peoples' to their lands, territories and resources, their right of self-determination and to free, prior and informed consent.

61. Furthermore, indigenous peoples are seeking redress through the courts for the unjust expropriation of their lands and to call for a stop to so-called development projects, such as logging and plantations until their rights to their traditional lands are established. Generally

the judgments are against indigenous peoples because of the apparent corrupt judicial systems. So while there are some indigenous peoples using the courts, the majority still refuse because of the utter lack of resources as well as lawyers to help them pursue their cases.

62. Programmes and projects which support traditional livelihoods of indigenous peoples such as those which promote and develop markets for non-timber forest products, natural resource management programmes among others, have also been set up with the help of technical advice and resources from intergovernmental bodies. Some of these are examples of good practice. However, these few models are not replicated, upscaled or effectively used for policy reforms.

63. We have also seen some of efforts of the private sector to establish bodies to address some of the issues raised by indigenous peoples and NGOs, such as Forest Stewardship Council, the Roundtable on Sustainable Palm Oil and the work of some private transnational banks to develop their own policies on how to deal with oil palm plantations.

Recommendations

64. In the light of what has been said so far, there are specific recommendations on what the Permanent Forum can do to help in addressing the issues of large-scale monocropping plantations.

65. Since this issue is a subset of how the rights of indigenous peoples to their lands, territories and resources are respected and protected, the recommendations of the Daes reports on land are all relevant and they should be considered by States, intergovernmental bodies and the Permanent Forum.

66. The Permanent Forum is mandated to coordinate and integrate activities related to indigenous issues within the UN. As this preliminary study indicates, there are several UN bodies, agencies and funds which have done work related to monocropping plantations. It is therefore important to circulate widely this working paper to IASG members and invite them to provide comments and additional information or data they may have on this issue. The contributions can include policies, projects and funding which are related to plantations and forestry. The Permanent Forum should disseminate widely all information on past and existing projects relevant to the issue, good practices in relation to the protection and respect of the rights of indigenous peoples' to their lands, territories and resources and lessons learned from programs and projects supporting self-determined development of indigenous peoples in general, and forestry and plantation projects, in particular.

67. Resources should be made available by the banks, the private sector and bilateral and multilateral donor agencies for the establishment of an independent body to monitor how policies relevant to indigenous peoples and lands, territories and resources are being implemented by the private sector, governments and intergovernmental bodies and to investigate complaints raised by indigenous peoples on logging and plantation operations taking place in their territories. This body can be under the auspices of the Permanent Forum, which can prepare its terms of reference and assist in selecting the membership (experts from governments, indigenous peoples, private sector, banks, NGOs and intergovernmental bodies). This body can prepare reports to be submitted on a regular basis to the Permanent Forum which would disseminate the results to multilateral development banks, international financial institutions and the Equator Banks.

68. This preliminary paper barely skims the surface of the issues at hand. The rapporteurs recommend therefore that a follow-up study be done for the next session of the Permanent Forum which will be undertaken by a Special Rapporteur appointed at this 6th Session. This follow-up study will gather more information from the governments, the logging and plantation sectors and their networks, indigenous peoples, NGOs and intergovernmental

bodies like the Climate Change Convention, the Convention on Biological Diversity and the UN Forum on Forests.

69. The Permanent Forum may wish to prepare a special report on “Indigenous Peoples and the Climate Change Convention” which will further amplify the issues raised in this paper such as impacts of biofuels, carbon sinks and carbon emissions trading, all of which may impact on indigenous peoples and their participation. The findings can be submitted at the next Conference of Parties of the UNFCCC.

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- i E/CN.17/IPF/1997/6. (1997) “Implementation of Forest Related Decisions of the United Nations Conference on Environment and Development at the national and international levels, including examination of sectoral and cross-sectoral linkages; Letter dated 15 Jan. 1997 from the Permanent Representatives of Colombia and Denmark to the UN Secretary General.”
- ii WRM (1992), *Rainforest Destruction: Causes, Effects and False Solutions*, WRM, Penang.
- iii Reports completed by the World Rainforest Movement and the Forest Peoples’ Programme and the working papers made by Erica-Irene Daes on “Indigenous peoples and their relationship to land” and “Indigenous Peoples’ Permanent Sovereignty Over Natural Resources” were extensively used. The reports of the UN Special Rapporteur, Rodolfo Stavenhagen provided important recent information. Several of his thematic and country mission reports referred to the violations of indigenous peoples’ rights by large-scale plantation and logging operations. Data gathered by Ms. Tauli-Corpuz in her visits to West Kalimantan (Indonesia), Cambodia, and in Mindanao (Philippines) and Ms. Nicolaisen, a government expert member of the Permanent Forum who visited Sarawak in Malaysia were likewise used.
- iv Marcus Colchester ed. (2001), *A Survey of Indigenous Land Tenure: A Report for the Land Tenure Service of the Food and Agriculture Organization*. www.forestpeoples.org. accessed 12 April 2007.
- v Document E/CN.4/Sub.2/2001/21 (Indigenous Peoples and their relationship to land), Daes discussed in great detail in Section 111 of her report a ‘Framework for the Analysis of Contemporary Problems Regarding Indigenous Land Rights’ which contains more elaborate discussions on doctrines of dispossession, extinguishment, etc.
- vi In Sarawak, around one fifth of the land is classified as Native Customary Rights however, these can be taken by the State to be given to timber or plantation companies. It has been amended several times and now the State Legislative Assembly has granted the Chief Minister powers to extinguish Native Customary Rights. The Native Title Amendment Act (1998) of Australia provided a number of means whereby the native title can be extinguished. The CERD ruled that this Act to be discriminatory. The Supreme Court of the US justified extinguishment in its ruling on the Tee-Hit-Ton Indians v. United States. With limited exceptions, the US can take or confiscate the land or property of an Indian tribe without due process of law and without just compensation. The legal doctrine which emerged from this case was used by Congress to justify its extinguishment the land rights and claims of 226 nations and tribes in Alaska through the Alaska Native Claims Settlement Act.
- vii Tides Center- Biodiversity Action Network (1999), *Addressing the Underlying Causes of Deforestation and Forest Degradation, Case Studies, Analysis and Policy Recommendations*, Biodiversity Action Network, Washington, D.C. p.33.
- viii UN General Assembly Document A/HRC/4/32/Add.3, 26 Feb. 2007, Mission to Kenya. Stavenhagen said “..the Maasai lost one third of their land through coercive treaties in 1904 and 1911 imposed by the colonial regime, and were allowed to retain only small amounts of marginal land in the Kenyan districts of Narok and Kajiado. In Laikipia District, 75 percent of the land still remains in hands of European owners...Settlement schemes, logging and charcoal production have put a severe strain on Kenya’s rich and varied forests, and have resulted in the loss of the traditional habitat of Kenya’s forest peoples, the indigenous hunters-gatherers such as the Awer, Ogiek, Sengwer, Watta and Yaaku. “
- ix WRM (1999), *Tree Plantations: Impacts and Struggles*. WRM Montevideo, p.18.
- x Marcus Colchester (1999). *Indigenous Peoples and the new ‘Global Vision’ on Forests: Implications and Prospects – Discussion Paper*. P.4. www.wrm.org.
- xi E/CN.17/IPF/1997/6 (1997) “Implementation of Forest Related Decisions of the United Nations Conference on Environment and Development at the national and international levels, including examination of sectoral and cross-sectoral linkages; Letter dated 15 Jan. 1997 from the Permanent Representatives of Colombia and Denmark to the UN Secretary General.”p.12.

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- xii FAO report "Global Forest Resources Assessment 2000" (FRA2000)
- xiii Palm oil to prosper in 2004. *Inform.*2004; 15 (6).355
- xiv See Statement presented by Rukka Sombolinggi of Aliansi Masyarakat Adat Nusantara (AMAN) during the 5th Session of the UN Permanent Forum on Indigenous Issues. See also WRM (2006), *Oil Palm, From Cosmetics to Biodiesel: Colonization Lives On*. World Rainforest Movement, Uruguay. p.1.
- xv Ann Casson, (1999) .The Hesitant Boom: Indonesia's Oil Palm Sub-Sector in an Era of Economic Crisis and Political Change CIFOR, Bogor.p.8.
- xvi Marcus Colchester, Norman Jiwan,et.al. (2006), *Promised Land, Palm Oil and Land Acquisition in Indonesia: Implications for Local Communities and Indigenous Peoples*, Forest Peoples' Programme, Perkumpulan Sawit Watch, Moreton-in-Marsh and Bogor.p.11. This report is the result of an intensive multi-disciplinary study carried out between July 2005 to Sept. 2006 by Sawit Watch, Forest Peoples' Programme, with lawyers from HuMA (Indonesian human rights organization) and land tenure specialists from the World Agroforestry Centre (ICRAF).
- xvii *Ibid.* p.3. see also Ellie Brown and Michael Jacobson (2005), *Cruel Oil: How palm oil harms health, rainforests and wildlife*. Center for Science and Public Interest (CSPI), Washington D.C. p. 4.
- xviii Ellie Brown and Michael Jacobson, p. 7.
- xix *Development Dialogue* (September 2006), *Carbon Trading; a critical conversation on climate change, privatization and power*.Dag Hammarskjöld Centre, Uppsala, p.19-20 in cooperation with Cornerhouse, U.K.
- xx Cornerhouse (2001), *Democracy or Carbocracy?*, Briefing 24. Cornerhouse, Dorset, U.K. <http://www.thecornerhouse.org.uk>
- xxi *Development Dialogue* (2006).p. 89
- xxii *Ibid.* pp. 219-309. In another article by Larry Lohman, "Shopping for Carbon, a new plantation economy," which is published by Cornerhouse (<http://www.thecornerhouse.org.uk>) describe some carbon forestry initiatives. The Electrical Generating Board of the Netherlands has concluded contracts with Malaysian Innoprise Corporation to plant dipterocarp trees on logged-over land in Sabah and has also worked in Ecuadorian Andes to plant thousands of hectares of pine and eucalyptus. Suncor Energy (an oil mining, refining and marketing firm based in Calgary, Canada) is entering into a contract with Southern Pacific Petroleum and Central Pacific Minerals in projects to plant more than 180,000 native trees in central Queensland to "offset" carbon dioxide emissions from future oil shale development. Federation Internationale de l'Automobile has arranged for 30,000 trees to be planted in Chiapas, Mexico on lands inhabited by highland Mayan Tojolobal and lowland Mayan Tzetzals, to "offset" the 5,500 tonnes of carbon emitted annually by Formula One car racing at a price of \$61,000 a year.
- xxiii WRM (2005), *Indigenous Peoples, their forests, struggles and rights*, WRM, Montevideo.p. 18-19.
- xxiv Marcus Colchester, et. al, (2006), *Forest Peoples, Customary Use and State Forests: the Case for Reform*. Forest Peoples' Program. Moreton-in-Marsh, p.4-5. <http://www.forestpeoples.org>, accessed in 18 April 2007.
- xxv *Annual Report 2006*, Council on Ethics for the Government Pension Fund-Global, Norway.p.63.
- xxvi WRM (2005), *Indigenous peoples, their forests, struggles and rights*. P.24-25.
- xxvii Nyang'ori Ohenjo, Ruth Willis, et.al. (2006), *Health of Indigenous People in Africa*, Lancet, London School of Hygiene and Tropical Medicine. London, p. 367-46.
- xxviii See para. 23 of Doc. E/CN.4/2004/80/Add.3, 17 November 2003. Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, on his mission to Chile (18 to 29 July 2003).p.10. The increased use of herbicides and pesticides applied from crop-spraying planes on plantations is affecting the health of indigenous people and has led to a break in the traditional food chain, the drying-up and pollution of rivers and springs, at considerable cost to their ichthyological (fishing) potential, and the disappearance of the rich and varied traditional fauna and flora which are vital to the survival of the Mapuche communities.
- xxix A/HRC/4/32/Add.2, 28 December 2006, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Addendum, Mission to Ecuador, Human Rights Council, Geneva. <http://www.ohchr.org>
- xxx *Development Dialogue* (2006) p.237-246. The FACE Foundation was established by the Board of Management of the Dutch Electricity Generating Companies to establish 150,000 hectares of tree plantations to compensate for emissions from a new 600 megawatt coal-fired electricity generation plant in the Netherlands. Since 2000, it has been producing and selling carbon credits from tree plantations as an independent non-profit organization.

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- ^{xxx} WRM and Forest Monitor (1998), High Stakes, the need to control transnational logging corporations, A Malaysian Case Study. <http://www.forestpeoples.org>, accessed 11 March 2007
- ^{xxxii} The UN Declaration contains a cluster of articles from Article 25 to 32 on lands, territories and resources and the traditional knowledge. These range from the right of indigenous peoples to maintain their spiritual relationship with their lands, territories and resources (25), an article explicitly stating that indigenous peoples have rights to the lands, territories, resources they traditionally owned and occupied or otherwise used or acquired (26), to their right to determine and develop priorities and strategies for the development and use of their lands, territories and resources and calling on states to obtain the free, prior and informed consent of indigenous peoples before they can approve projects affecting the these lands and resources.(32). Article 10 calls on states not to subject indigenous peoples to forced removal from their lands and territories without their free, prior and informed consent.
- ^{xxxiii} These include the OHCHR-sponsored “Expert Seminar on Practical Experiences Regarding Indigenous Land Rights and Claims” in 1994 and the “Indigenous Peoples’ Permanent Sovereignty over Natural Resources and on Their Relationship to Land” held in 2006.
- ^{xxxiv} UN Document E/CN.4/2003/90 , 21 January 2003
- ^{xxxv} Formal Request to Initiate an Urgent Action Procedure to Avoid Immediate and Irreparable Harm, Submitted to CERD, 29 June 2006. <http://www.ochchr.org> and <http://www.forestpeoples.org>
- ^{xxxvi} Briefing note by the International Alliance of Indigenous and Tribal Peoples of Tropical Forests, FERN and the Forest Peoples’ Programme, 4th Session of the UN Forum on Forests, 3-4 May 2004, <http://www.forestpeoples.org> and www.fern.org.
- ^{xxxvii} James Anaya, Indigenous Peoples and International Law (2nd Edition,2004), Oxford University Press. p.142.
- ^{xxxviii} Marcus Colchester (2006), Broken Promises,p.4
- ^{xxxix} Ibid, p.84
- ^{xl} Marcus Colchester, Norman Jiwan,et.al (2005). Promised Land.
- ^{xli} Ibid. executive summary.

ANNEX C: Plantations Law 18 and selected excerpts of the explanatory notes

**The Law of the Republic of Indonesia
Number 18 Year 2004
On
Plantations**

[Unofficial translation]

With the mercy of God, the one and only God
The President of the Republic of Indonesia

Considering:

- a. That the earth, water and all the natural wealth within as the gift and mercy from God, the one and only God, which are granted to the Indonesian people are enormous potential for the development of the national economy including the development of plantations in order to realize the wealth and prosperity of Indonesian people according to the justice as written in the Constitution of the Indonesian Republic in the year of 1945;
- b. That in order to realize both the wealth and prosperity of the people in accordance to justice, the sustainability of plantations have to be guaranteed and their functions as well as roles have to be improved;
- c. That plantations as one way of managing natural resources have to be conducted, carefully planned, open, integrated, professional and full of responsibility;
- d. That the rules of the existing law have not been able to be entirely used as the base for the implementation of plantations which are in line with the development of strategic environment;
- e. That it was due to the above consideration that plantations need to be further regulated in a particular law.

Referring to: Article 20, Article 21, and Article 33 of the Constitution of the Indonesian Republic, the year of 1945;

Based on the agreement of both
The Indonesian Legislative Assembly
And
The President of Indonesian Republic

Hereby DETERMINED:

Establishing : THE LAW ON PLANTATIONS

**CHAPTER I
GENERAL RULES
Part One
The Definition**

Article 1

In this Law, what is meant by:

1. Plantations are all activities that cultivate particular plants on the land and/or other growing media in a suitable ecosystem, market not only goods but also services as the yield of the above plants by referring to science and technology in order to realize the prosperity for both the agents of plantation activities and the society.
2. Particular plants are seasonal plants and/or yearly plants which are determined as plantation plants due to their types and the aims of the cultivation.
3. A Plantation Business is a kind of business producing goods and/or services of plantations.
4. The agent of plantation business is the farmer and plantation companies managing plantation businesses.
5. The Farmer is an Indonesian citizen running plantation business whose business scale does not reach a specific scale.
6. The plantation company is an Indonesian citizen agent conducting plantation business or a corporate body which is established according to the Indonesian law and located in Indonesia, which manages a plantation business on a specific scale.
7. The Specific scale is a plantation business which is based on the total area of land, the kinds of plants grown, the technology, labor, capital, and/or factory capacity which has to have a business permit.
8. The processing industry of plantation products is an activity for handling and processing applied to plantation plant products so as to reach a higher added value.
9. The plantation products are all goods and services derived from plantations, which consists of main products, by products, derivation products, and other products.
10. The plantation agribusiness is a business approach which has many systems including the sub-systems of production, processing, marketing system, and supporting service.
11. The government is the central government.
12. The province is the provincial government.
13. Regency or city is the local government in the regencies/cities.
14. The Minister is the minister whose duty and responsibility are in the plantation.

Part Two Principles, Purposes and Functions

Article 2

Plantation is carried out based on the principles of beneficiary, sustainability, integration, togetherness, openness, and justice.

Article 3

Plantations are established in order:

- a. to increase the income of the society;
- b. to increase the income of the country;
- c. to increase the foreign exchange of the country;
- d. to provide job opportunities;
- e. to increase the productivity, additional value, and competition power;
- f. to fulfill the needs for consumption and the domestic raw materials; and
- g. to optimize the management of natural resources in a sustainable manner.

Article 4

The plantation has several functions related to:

- a. economy; namely, to increase the welfare and prosperity of the people, and to strengthen the structure of both regional and national economy;
- b. ecologic; namely, to improve the conservation of land and water, carbon absorption, oxygen supplier, and supporter of preservation areas; and
- c. social-cultural; namely, to gather and unity the nation.

Part Three The Scopes

Article 5

The scope of plantation arrangement includes:

- a. planning;
- b. utilizing the land;
- c. empowering and managing businesses;
- d. processing and marketing the yields/products;
- e. researching and developing;
- f. developing natural resources;
- g. financing; and
- h. guiding and controlling

CHAPTER II PLANTATION PLANNING

Article 6

1. The plantation planning is aimed to give direction, guidelines, and control in order to reach the purpose of establishing the plantation as stated in article 3.
2. The plantation planning comprises national planning, provincial planning, regional / city planning.
3. The plantation planning as mentioned in article 2 is conducted by the central government, provinces, and regencies/cities by taking the society interest into account.

Article 7

1. The plantation planning as discussed in Article 6 is performed based on:
 - a. national development planning
 - b. regional layout planning
 - c. the suitability between the land and the weather, and the availability of land for plantation activity
 - d. the performance of plantation development;
 - e. the advancement of science and technology;
 - f. social and culture;
 - g. environment;
 - h. people's interests;
 - i. market; and
 - j. regional aspiration, yet supporting the unity of people and nation.
2. The plantation planning includes:
 - a. Area
 - b. plantations' plants
 - c. human resources
 - d. Institutions

- e. the relationship and integration of both upstream and downstream
- f. infrastructure and device
- g. Finance

Article 8

The plantation planning as mentioned in article 6 and article 7 has to be measurable, performable, realistic, and advantageous; besides, it has to be conducted in a participative, integrated, open and accountable way.

CHAPTER III THE UTILIZATION OF LAND FOR PLANTATION ACTIVITIES

Article 9

- (1) In order to run a plantation business, and according to the interest, the agent of plantation activity can be given the right upon the land needed for this plantation business in the form of proprietary rights, concession rights, and/or using right according to the rules of the law.
- (2) The land needed is the land belongs to the society, customary or traditional land, which, in fact, still exists, proceed the right given as mentioned in article (1), the applicant of the right has to conduct a discussion with the indigenous people holding the customary right upon the land in order to obtain an agreement on the utilization of the land and its fee.

Article 10

- (1) The utilization of land for plantation activity and the maximum and minimum total area are determined by the Minister; whereas the extension on the land right is determined by the institutions which have the authority in the land affairs.
- (2) In determining the maximum and minimum total area as discussed in verse (1), the Minister refers to the guidance on the kinds of plants, the availability of suitable land in line with the agro climate, capital, factory capacities, the level of population, business development pattern, geographical condition, as well as technological advances.
- (3) It is forbidden to transfer the right upon the plantation business land which can cause a business unit unable to reach the minimum total area as written in verse (1).
- (4) The transfer of the right upon the land as mentioned in verse (3) is declared to be illegal and therefore, cannot be registered.

Article 11

- (1) The concession right for plantation activities is given for the period of maximally 35 (thirty five) years.
- (2) The period referred in verse (1) based on the plea of the right holder is given an extension for the period of maximally 25 (twenty five) years by the institution that has an authority in the land affairs provided that the agent of the plantation activity has, according to the Minister, fulfilled all the obligation and carried out the plantation management in line with the technical regulations determined.
- (3) After the period of extension as mentioned in verse (2) ends, based on the plea of the ex-right holder, new concession right can be given for the period of the one determined in verse (1) and other determined requirements as written in verse (2).

Article 12

The Minister can suggest to the institution having authority in the land affairs to confiscate the concession right mentioned in Article 9 verse 1 if, according to the judgment of the Minister, the concession right is not well utilized as the plans required and is neglected for 3 years consecutively since it was given.

CHAPTER IV

THE EMPOWERMENT AND MANAGEMENT OF PLANTATION BUSINESS

Part One

The agent of Plantation Business

Article 13

- (1) The plantation business is able to be conducted in all areas throughout Indonesia by the plantation business agents, not only farmers but also plantation's company.
- (2) Foreign corporate body or a foreign nationality that perform plantation activity is obliged to work together with other plantation agents by forming an Indonesian corporate body.
- (3) Foreign corporate body or a foreign nationality that break the rules mentioned in verse (2) will be given sanction; namely, the prohibition to establish a plantation business.

Article 14

- (1) In the case of the transfer of the corporate body ownership of plantation business agent which is not yet open and/or a bankruptcy of the foreign corporate body, there must be suggestion and consideration from the Minister.
- (2) The advice and consideration as mentioned in verse 1 is based on the national interest.

Part Two

Types and Permit of Plantation Business

Article 15

- (1) Plantation business consists of business of plantation crop cultivation and/or business of plantation crop processing industries.
- (2) Business of plantation crop cultivation as stated in point (1) is a series of activities of pre-cultivation, cultivation, plant maintenance, harvesting, and sorting.
- (3) Business of plantation crop processing industries as stated in point (1) is processing activities of raw materials originating from plantation crops in order to give some added value.
- (4) Plantation crop processing industries are processing of plantation crops whose raw materials cannot be separated from the business of plantation crop cultivation due to their nature and characteristics, such as sugar and sugar cane, black tea and green tea, as extraction of palm oil.
- (5) The Government Regulation shall regulate the performance or reduction of business types of plantation crop processing industries as stated in point (4).

Article 16

The Minister shall regulate the types of plantation crops in the business of plantation crop cultivation as stated in Article (15) point (1).

Article 17

- (1) Every individual performing the business of plantation crop cultivation with a specific size of land and/or business of plantation crop processing industries with a specific factory capacity must possess a permit for their plantation businesses.
- (2) The duty to get a business permit for their plantation businesses as stated in point (1) is exempted for plantation workers.
- (3) The Minister shall determine a specific size of land for the business of plantation crop cultivation and a specific factory capacity for the businesses of plantation crop processing industries as stated in point (1) depending on the types of plants, technology, manpower, and capital.
- (4) The business of plantation crop processing industries must be able to ensure the availability of raw materials by cultivating plantation crops by themselves, establishing a partnership with plantation workers, plantation enterprises, and/or raw materials from other natural sources.
- (5) The Governor shall be the person holding the authority to issue the permit of plantation business as stated in point (1) for the cross-regency regions and the Mayor for the regency area.
- (6) Any individual running plantation business and the ones who have got the permit of the plantation business must submit a report of their business development regularly for at least once a year to the one giving the permit as stated in point (5).
- (7) Further regulations regarding prerequisites and rules of permit issuance for the plantation business as stated in point (1) and point (2) and the report on the business development as stated in point (6) as determined by the Minister.

Part Three

Empowerment of Plantation Business

Article 18

- (1) The Government – both at the province and regency - together with the actor of plantation business and other related institutions, executes the empowerment of plantation harvest.
- (2) The empowerment as stated in point (1) includes:
 - a. Facilitating the funding sources or capital;
 - b. Preventing cost administration that is inappropriate with the regulations;
 - c. Facilitating the export implementation of plantation crops;
 - d. Putting the priority for the domestic harvest of plantation crops to supply domestic need for plantation crops consumption and industrial raw materials.
 - e. Managing the income and expenses of plantation products, and/or;
 - f. Facilitating accessibility of knowledge and technology and information.

Article 19

- (1) The Government – at the province or regency – encourages and facilitates the empowerment of plantation workers, their cooperatives, and their associations based on the plantation crops they cultivate for the development of plantation agribusiness.
- (2) In order to establish synergy among entrepreneurs of plantation agribusiness, the Government shall encourage and facilitate the establishment of commodity association that acts as a place to develop plantation crop strategic commodity for all the individuals responsible for the sustainability of the plantation.

Article 20

Plantation business actors shall perform plantation business safety that is coordinated with the security people and can ask assistance from the surrounding community.

Article 21

Each individual is prohibited to perform any action that can result in the damage of the plantation and/or other assets, use of plantation land without any permit and/or any other actions that can disrupt the plantation activities.

Part Four Partnership in Plantation Business

Article 22

- (1) A plantation enterprise shall establish a partnership on the basis of mutual profit, mutual respect, shared responsibilities, strengthening both parties, and interdependency with the plantation, the workers, and the community surrounding the plantation.
- (2) The partnership in plantation business as stated in point (1) can be in the form of a partnership in supplying production facilities, joint production, processing and marketing, transportation, operations, stockholding ownership, and other supporting services.
- (3) The Minister shall outline further regulations regarding the types of partnership in plantation business as stated in point (2).

Part Five Plantation Development Zone

Article 23

- (1) Plantation business is run in integration and in conjunction with the plantation agribusiness by using the approach of the plantation development zone.
- (2) In plantation development zone as stated in point (1) the business actor can perform business diversification
- (3) Further regulations concerning the plantation development zone as stated in point (1) are regulated by the Government Regulations.

Part Six

Protection of Geographical Regions Producing Products Specific to Reserved Areas

Article 24

- (1) The sustainability of geographical regions producing typical plantation crops are protected as a geographic indication.
- (2) Geographic regions whose sustainability has been decided to be protected as a geographic indication are not allowed to change their functions.
- (3) Every individual or institution acting against the regulation as stipulated in point (2) shall be charged with sanction, which requires the region to be converted back its original function.
- (4) Further regulations regarding geographic regions as stated on points (1) and (2) include the types of plantation crops and their relations with specific flavor of the plantation crops and regulations regarding the borders of the regions as outlined in the Government Regulation.

Part Seven Sustainability of Environment Function

Article 25

- (1) Any individual of plantation business must maintain the sustainability of environment function and prevent the plantation from destroying.
- (2) To prevent destruction of environment function as stated in point (1), before obtaining the permit for plantation business, the plantation must:
 - a. make an analysis regarding environment impact or any attempt to manage environment and to monitor environment;
 - b. possess an analysis and risk management for those who use its genetic engineering products;
 - c. make a statement on its ability to provide facilities, services, and adequate emergency system to anticipate the possibility of fire when opening and/or managing the land.
- (3) To maintain the sustainability of environment, the function of environment, and prevent it from destruction and overcome the destruction as stated in point (1) after gaining the permit of plantation business, the plantation business enterprise is bound to apply analysis on environment impact and environment management and make attempt environment monitoring and/or analysis and risk management of the environment as well as monitoring its application.
- (4) The application for business permit of any plantation enterprise not meeting the requirement as stated in point (2) is rejected.
- (5) The business permit of any plantation enterprise having obtained a permit for plantation business but not applying environment impact analysis or not performing environment management and environment monitoring as stated in point (3) is made invalid.

Article 26

Any entrepreneur of plantation business is not allowed to open and/or manage its land by burning it, which can result in pollution and destruction of environment.

Chapter Five

Managing and Marketing Plantation Products

Part One

Processing Industrial Business of Plantation Products

Article 27

- (1) Processing Industrial Business of plantation products is performed to gain added value through system implementation and plantation agribusiness activities.
- (2) Government – at the province and regency – organizes improvement activities to develop processing industrial business of plantation products to give maximum added value.
- (3) Processing industrial business of plantation products can be performed within or outside the plantation development zone, and integrated with plantation cultivation business.
- (4) Further regulations regarding improvement and integrity industrial business of plantation product processing, which runs cultivation business of plantation crops as stated in points (2) and (3) are stipulated by the Government Regulation.

Article 28

- (1) To achieve business result of competitive plantation processing industries, the Government apply a system of product quality for processed plantation products

and guidelines of good and proper plantation product processing industries in line with the development of science and technology.

- (2) The Government shall issue regulations regarding application, improvement, and monitoring of the system of processed plantation product quality and guidelines for plantation product processing industries.

Article 29

Plantation Product Processing Industries are regulated based on the regulations in the areas of industry, except for the points regulated in this regulation.

Part Two Marketing Plantation Products

Article 30

- (1) The agent of plantation business, marketing association, commodity association, other institutions, and/or the people work together in conducting market information, promotion, and growing marketing centers not only inside but also outside the countries.
- (2) The government, the provinces and regencies/cities facilitate the cooperation among the plantation business agents, marketing association, commodity association, other institutions, and/or the people as written in verse (1).

Article 31

Every plantation business agent, when conducting processing, circulating, and/or marketing his plantation product is forbidden to:

- a. counterfeit the quality and/or the package of plantation products
- b. use supporting material for processing; and /or
- c. mix the plantation products with other foreign objects or materials; which can threaten the health and safety of human, disturb the function of environment, and/or cause an unhealthy business competition.

Article 32

Every plantation business agent is forbidden to promote the plantation business products which mislead consumers.

Article 33

Every plantation business agent is forbidden to hold the plantation business products obtained from plunder, and/or theft.

Article 34

The marketing of plantation industry products can be conducted based on the rules in the law of trade field.

CHAPTER VI PLANTATION RESEARCH AND DEVELOPMENT

Article 35

The purpose of plantation research and development is to produce both science and technology required in the development of plantation business so that it is significantly competitive and environmentally friendly by appreciating the traditional and local cultures.

Article 36

- (1) The research and development of plantation can be performed by individuals, universities, and government and/or private development and research agencies and other development research institutes.
- (2) Individuals, universities, government and/or private development and research agencies, and other research and development agencies as stated in point (1) can establish a partnership with:
 - a. Similar research and development agents;
 - b. Agent of plantation business;
 - c. Association of plantation commodities;
 - d. Related organization; and/or
 - e. Foreign research and development for plantations.
- (3) The Government – at the province and regency – and/or agent of plantation business in a special circumstance provides facilities to support the improvement of capability of research and development agents to master and develop science and technology of plantation.
- (4) The Government – at the province and regency – encourages the business agents of plantations either as an individual or as a group to establish a research and development unit of plantation or establish a partnership among business agents, research and development executors, and universities.
- (5) Individuals of foreign citizens and/or foreign research and development institutes that are going to conduct research and development for plantations are required to obtain from relevant government institution based on the regulation.
- (6) With its policy, the Government – at the province and regency – motivates foreign plantation agents to perform technology transfer.

Article 37

- (1) The Government – at the province and regency – facilitates research and development agents, plantation business agents and society to publish and develop information service system for research and development results for plantations, by valuing the intellectual property rights based on the regulations.
- (2) The Government provides protection over intellectual property rights for invention results for science and technology for the plantation.

Chapter VII

Human Resource Development for the Plantation

Article 38

- (1) Human resource development for the plantation is implemented through an improvement on the quality of education and training, extension, and/or other development methods to increase skills, professionalisms, interdependency, and dedication.
- (2) Human resource development for plantations include officials and all business agents of the plantations either in terms of individuals or groups.

Article 39

The central government, provinces and regencies /cities as well as plantation business agents, individually or cooperatively, carry out education, trainings and guide human resources in the plantation.

Article 40

Plantation extension is performed by regencies/cities and plantation business agent individually or cooperatively.

Article 41

The guidance and standard for guidance, education and training, extension, and other development method as written in article 38 verse 1 is further determined by the Minister.

CHAPTER VIII FINANCING PLANTATION BUSINESS

Article 42

- (1) The finance of plantation business derives from plantation business agents, society, funding institutions inside and outside the countries, the government, provinces, and regencies/cities
- (2) The government supports and facilitates the formation of plantation financial institutions in line with the need and characteristic of plantation business.
- (3) The finance that comes from the government, provinces, and regencies/cities as written in verse (1) is mainly spent for plantation.

Article 43

- (1) The government, provinces, and regencies/cities as well as the plantation business agents gather some fund so as to improve human resources, research and development, and plantation promotion.
- (2) Further determination about this fund gathering as written in verse (1) is determined by government regulations.

CHAPTER IX THE GUIDANCE AND MONITORING OF PLANTATION BUSINESS

Article 44

- (1) The guidance and monitoring of plantation business is performed by the government, provinces and regencies/cities in accordance with the rules of the law.
- (2) Further rules on both guidance and monitoring of plantation business as written in verse (1) are determined by the Minister.

CHAPTER X INVESTIGATION

Article 45

- (1) Apart from the investigator from the Police department of the Republic of Indonesia, specific civil servants whose duties and responsibilities are in the area of plantations are also given special responsibilities as state investigators as stated in the Constitution regarding Criminal Law, to perform investigating activities in the area of plantations.
- (2) State investigators as stated in point (1) are responsible for:
 - a. Conducting an examination based on truthful report or a report related to criminal acts in the plantations;
 - b. Calling individuals to present their statements for hearing and to be investigated as suspects or witnesses related to criminal acts in the plantations;

- c. Conducting examination over individuals or institutions that are suspected to have performed a criminal act in plantations;
 - d. Checking identities of individuals being in the plantation development zone;
 - e. Searching and taking proofs of evidence related to plantations;
 - f. gathering information and proofs from individuals or institutions in relation to criminal acts in plantations;
 - g. Preparing and signing the agendas; and
 - h. Dismissing investigation if there is no adequate proofs of criminal acts related to plantations.
- (3) State investigators as stated in point (1) announce the commencement of investigation and report the results of the investigation to the general prosecutors through the Officials from the Police Department of the Republic of Indonesia.

CHAPTER XI CRIMINAL REGULATIONS

Article 46

- (1) Any individual cultivating plantation crop intentionally in a certain size of area and/or plantation crop processing industries with specific capacity and not possessing business permit of plantation business as stated in Article 17 point (1) is sent to trial with the maximum period to be jailed for 5 (five) years and fined at the maximum of IDR 2,000,000,000,000.
- (2) Any individual carelessly performing cultivation business of plantation crops in a certain size of area and/or plantation product processing industries with certain capacity and not possessing business permit of plantation business as stated in Article 17 point (1) is sent to trial with the possibility of being jailed for the maximum of 2 (two) years and 6 (six) months and of being fined for the maximum of IDR 1,000,000,000

Article 47

- (1) Any individual intentionally break the law by performing activities leading to destruction of plantation and/or other assets, using plantation land without any permit and/or other actions that lead to the disruption of plantation activities as stated in Article 21 shall be sent to trial with the maximum parole of 5 (five) years and fined with the maximum of IDR 5,000,000,000
- (2) Any individual carelessly perform activities leading to destruction of plantation and/or other assets, using plantation land without permit and/or other actions leading to the disruption of plantation activities as stated in Article 21 shall be sent to trial with the maximum parole of 2 (two) years and 6 (six) months and fined with the maximum of IDR 2,500,000,000

Article 48

- (1) Any individual intentionally open and/or manage land by burning, which leads to polluting and destructing the function of environment as stated in Article 26 shall be sent to trial with the maximum period in jail of 10 (ten) years and fined at the maximum of IDR 10,000,000,000
- (2) If the criminal act as stated in point (1) causes people's death or injured badly, the individual can be sent to trial with the maximum parole of 15 (fifteen) years and fined at the maximum of IDR 15,000,000,000

Article 49

- (1) Any individual carelessly opens and/or manages land by burning, which leads to polluting and destructing the functions of environment as stated in Article 26 is sent to trial with the maximum parole of 3 (three) years and fined at the maximum of IDR 3,000,000,000
- (2) If the criminal act as stated in point (1) results in people's death or injured heavily, the individual shall be sent to trial with the maximum parole of 5 (five) years and fined at the maximum of IDR 5,000,000,000

Article 50

- (1) Any individual performing management, distribution, and/or marketing plantation products intentionally break the law by:
 - a. faking the quality and/or packaging of plantation products;
 - b. using material aids for plantation product processing industries; and/or
 - c. mixing plantation products with materials or other materials;that can endanger the health and safety of human beings, destroy the functions of environment, and/or creating unhealthy business competition, as stated in Article 31 shall be sent to trial with the maximum parole of 5 (five) years and fined at the maximum of IDR 2,000,000,000
- (2) Any individual performing management, distribution and./or marketing plantation products carelessly break the regulations by:
 - a. faking the quality and/or packaging of plantation products;
 - b. using material aids for plantation product processing industries; and/or
 - c. mixing plantation products with materials or other materials;that can endanger the health and safety of human beings, destroy the functions of environment, and/or creating unhealthy business competition, as stated in Article 31 shall be sent to trial with the maximum parole of 2 (two) years and fined at the maximum of IDR 1,000,000,000

Article 51

- (1) Any individual intentionally breaking the regulation by advertising the plantation products, which results in misleading consumers as stated in Article 32 shall be sent to trial with the maximum parole of 5 (five) years and fined at the maximum of IDR 2,000,000,000
- (2) Any individual carelessly breaking the regulation by advertising the plantation products, which results in misleading consumers as stated in Article 32 shall be sent to trial with the maximum parole of 2 (two) years and fined at the maximum of IDR 1,000,000,000

Article 52

Any individual intentionally breaking the regulations by illegally accumulating plantation products obtained from robbery and/or stealing as stated in Article 33 shall be sent to trial with the maximum parole of 7 (seven) years and fined at the maximum of IDR 2,000,000,000

Article 53

All items as the results of criminal acts and/or equipment including transporting facilities used to perform criminal acts as stated in Article 46, 47, 48, 49, 50, 51, and 52 can be taken away and/or destroyed by the state based on the regulations.

CHAPTER XII CHANGING REGULATION

Article 54

With this constitution being made effective, all implementation rules and regulations for the existing plantation continue to be valid as long as the contents are not contradictory or not replaced with a new regulation based on this constitution.

Article 55

Except for the land rights given, the plantation enterprise having managed plantations not in line with the Constitution is given 3 (three) years' time to make necessary adaptations since this Constitution is made effective.

CHAPTER XIII THE CLOSING RULES

Article 56

This law is implemented on the date of enactment.

In order to make all people aware of it, it is commanded to publish this law in the Government official Gazette of Indonesian Republic

Legalized in Jakarta

On August, 11, 2004

The president of Indonesian Republic

signed

MEGAWATI SOEKARNOPUTRI

Enacted in Jakarta

On August, 11,2004

THE SECRETARY OF INDONESIAN REPUBLIC

THE GOVERNMENT OFFICIAL GAZETTE OF INDONESIAN REPUBLIC

YEAR 2004 NUMBER 85

THE EXPLANATION OF THE LAW OF INDONESIAN REPUBLIC NUMBER 18 YEAR 2004 ON PLANTATION

1. GENERAL

[paragraph 7]

The distribution of right upon the land used for plantation activities has to consider indigenous people, and traditional law, provided that in reality the land still exists, and the rules are not against the higher law and the national interest. In order to guarantee the ownership, authorization, usage and utilization of land in accordance with justice, there is a need to determine the rules on the limit of maximum and minimum total area, and the usage of land for plantation business. In order to maintain the efficiency of plantation authorization, the transfer of the right upon the land being used is prohibited. Due to the technology innovation, plantation management including seedling business is able to utilize growing media other than land; for instance, hydroponics and tissue culture media.

Article 9

Paragraph 1

The extension of proprietary right is conducted by the officers who have the authority upon the plea of the farmer.

The extension of using concession right is carried out by the authorized officers upon the state land base on the plea of plantation companies.

The extension of construction concession right is performed by authorized officers upon the plea of plantation business agents if it is needed in their plantation area.

The extension of utilization right is carried out by the authorized officers upon the state land in accordance with its function.

Paragraph 2

The indigenous people who are still, in fact, alive, if they fulfill the following:

- a. The society is still in the form of an informal group or “paguyuban” (rechtsgemeinschaft);
- b. There is an institution in the form of custom officer board;
- c. There is a clear traditional law area;
- d. There is a rules and law officers, especially traditional justice which is still obliged and respected;
- e. There is an affirmation in the form of regional rules.

ANNEX D

Summary translations of selected protests by indigenous peoples against proposed expansion of oil palm plantations in Kalimantan

Provided by SawitWatch

1. Malinau, East Kalimantan

On 12 January 2006, the Foundation for Protection and Development of the Dayak Punan in Malinau (*Lembaga Pemerhati dan Pemberdayaan Dayak Punan Malinau, LP3M*) issued a statement on oil palm in which it recommended to the government:

1. To stop the million hectare project for the exploitation of large-scale oil palm plantations in East Kalimantan and other large-scale oil palm projects;
2. To recognise traditional community rights over ancestral lands;
3. To fulfil of the district head's commitment to develop a Conservation District in Malinau, as committed by him at a workshop in 2006;
4. To not issue any new permits for the opening of land for large scale oil palm in Malinau;
5. To revive the traditional farming systems which do not harm the ecosystem, and to proactively facilitate market access for rattan and other Non-Timber Forest Products;
6. To support Non-governmental organizations (NGOs) and Credit Unions who support community development;
7. To start an action program for means of production that are environmentally friendly and that protect water sources, traditional medicines from NTFPs and the traditional cultural practices;
8. To undertake efforts to protect the forests of Kalimantan, for they are the source of oxygen for all mankind.

2. Semunying Jaya, Bengkayan District, West Kalimantan

The indigenous community of Semunying Jaya is outraged with oil palm expansion. Their customary rights land is part of a 20,000 oil palm plantation concession owned by PT Ledo Lestari under the Duta Palma Group from Riau. The community of Semunying Jaya had not been consulted about the project, nor had they given their permission for the operation. Furthermore, the company started operations without a Land Clearing Permit (IPK), without an Environmental Impact Statement (AMDAL), without a Forest Use Licence (PKH) and without an Operation Permit (HGU).

However, it was the community that got into trouble when, out of anger with the project, they confiscated a Komatsu excavator and six STIHL chainsaws on December 12, 2005. Their action resulted in the detention of 2 villagers between 30 January and 7 February 2006.

On February 19, 2006, the Semunying community issued statement, signed by 229 villagers, to President Yudhoyono, 23 other government officials and PT Ledo Lestari:

“We the indigenous Dayak community of Semunying Jaya call upon you to respect the sovereignty of our land, the protection of our water and forest resources as we inform you that we still refuse any oil palm plantation in our area, in whatever form or shape it may be for the following reasons:

1. The oil palm plantation deceived the community of Dayak indigenous people in Semunying Jaya village, Jagoi sub-district, Bengkayang district provincy West Kalimantan;

2. Two of our community members have been arrested by the Bengkayang police;
3. Oil palm does not suit the way of life and culture;
4. We would not be free to sell any Fresh Fruit Bunches, as the company would control a local monopoly;
5. Last, we oppose oil palm because it will result in the loss of our land, the loss of our forests, increased flooding and conflicts between communities.

3. Melingkat, Sintang District, West Kalimantan

On November 12th 2005, the *adat* leaders of Melingkat simply compiled a statement that they “strongly oppose all oil palm plantations, in whatever form they may appear”.

4. Sungai Antu, Sintang District, West Kalimantan

On October 30, 2005 the village leaders of Sungai Antu reinforced an earlier statement dating of January 2005 in which they committed, with strength, “to stop any oil palm companies entering their area” for the following reasons:

1. Oil palm will destroy our source of water, which is now still clean and healthy;
2. Oil palm will destroy our traditional agricultural practises, specifically locust attacks will occur which surely have their origin in the oil palm estates;
3. Oil palm does not suit the vision of the people in the sub-district of Ketungau Hulu, and specifically not that of the Adat Bugau community.

5. Sanjan Emberas, Pandan Sembuan village, Sanggau District, West Kalimantan

In 1985-1986, the State Plantation Corporation PTPN XIII opened an oil palm plantation in Pandan Sembuan village. Ever since, relations between the company and community have been tense. A statement, signed by 52 villagers of Sanjan Emberas, calls upon the company to:

1. Compensate crops lost during conversion;
2. Compensate the harvest for the farmers who have not yet received their plasma between 1989 and 2004;
3. Compensate the cost for court attendance for in total 32 times between 1994-1999;
4. Hand over the *plasma* (smallholder) units to the farmers who have not yet received them;
5. Hand over the *inti* unit (the corporate owned plantation) back to the community;
6. Restore the pride of those villagers who were intimidated by the company.

6. Lubuk Tapang, Sintang District, West Kalimantan

The community of Lubuk Tapang issued a statement signed by 304 villagers:

1. Our area already has enough problems, that is why we do not want oil palm in our area;
2. If oil palm enters Lubuk Tapang, then we will not hesitate to destroy it;
3. The only company that is allowed to enter our area is a natural rubber company.

7. Muakan village, Sintang District, West Kalimantan

On behalf of 1,005 villagers, the village leaders of Muakan and Sungai Enteli Pedian came out with a statement against oil palm in their area in 2005. They argue that:

1. The forest and environment must be well tended;
2. It is better to grow local rubber varieties, durian gardens, vegetables and other local products;
3. Don't allow companies undermine the traditional *adat* practises;

4. Stop the entry of oil palm plantations as they will only bring disaster to the traditional *adat* communities;
5. Villagers of Muakan and Sungai Enteli Padian will stop any company that does not respect the wishes of the indigenous community in the area.

8. Dayak Penguungan Niut, Landak and Bengkayang Districts, West Kalimantan

On May 29, 2005, the village leaders of the Dayak Penguungan Niut, representing 10 villages from Landak District and 1 village from Bengkayang District, declared:

1. Stop the expansion of oil palm in our area because we want development without destroying the environment;
2. Stop logging, tree plantations, mining and other land clearing that destroys our resources in our area;
3. Stop gambling, hard drinking, drugs because it is undermining our community;
4. The government and companies must uphold and respect our rights to natural resources;
5. Consult us if there are economic development options for sustainable natural resource use;
6. We call upon the district governments of Landak and Bengkayang to address our urgent need for education and health care, electricity, bridges and *formost* a road. These are all required to develop the economic potential in our area.
7. Conduct truly participative mapping of our area so as to sustain our natural resources;
8. For our own prosperity's sake, we will become members of the credit union.
9. Last, we strongly call for the retraction of Presidential Regulation No. 36/2005 which proposes the abolishment of land rights for the sake of national development.

9. Empunak village, Sintang District, West Kalimantan

In a letter to the Head of Sintang District, dated 30 October 2005, the community of Empunak village outlines their vision and desires in an utterly disarming manner:

“We discussed the oil palm issue, and found that oil palm is unacceptable to the community of Empunak. They wish to grow rubber, rice and vegetables as they have successfully done until now. We hope that hereby we can move forward for now and the future. We do not have time to have many meetings on these issues as we need to tend our fields and assure that our community has homes to live in. That's all we hope for.”

10. Sungai Bala Indigenous People of Sungsong, Bunut, and Jangka Riam of Sekadau Hulu sub-district, Sekadau district, West Kalimantan, Indonesia refuse PT. Bintang Sawit Lestari because (1) it enters without permission and without respect for the customary rights of the community, (2) In 2004, PT BSL promised to the community to build roads and electricity but this has not yet happened, (3) the community is disturbed to find that the are required to surrender 7.5 hectares of land per family just to receive back 2 hectares of oil palm; (4) The company started operations before the community held its land opening ceremony; (5) the company divides cohesion amongsts community members – who want to stop and who support palm oil.

11. Rejection of the Serikat Petani Kelapa Sawit (SPKS) or Oil Palm Farmers Union of West Kalimantan (Sanggau district) and SPKS Kalimantan Timur (Paser district). SPKS in both province declare in the 11th point ‘Reject the expansion of oil palm plantations all along the Indonesia – Malaysia border’.