



How can ‘Zero Deforestation’ policies accommodate the rights and livelihoods of local communities and indigenous peoples? Lessons from the field.

Marcus Colchester, Patrick Anderson, John Nelson, Dico Luckyharto,
Messe Venant and Stephen Nounah¹



PT KPC oil palm plantation, Kapuas Hulu, West Kalimantan, Indonesia

Photo: Marcus Colchester



Forest Peoples Programme

1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK
tel: +44 (0)1608 652893 fax: +44 (0)1608 652878 info@forestpeoples.org www.forestpeoples.org

Paper prepared for presentation at the

**“2016 WORLD BANK CONFERENCE ON LAND AND POVERTY”
The World Bank - Washington DC, March 14-18, 2016**

Copyright 2016 by author(s). All rights reserved. Readers may make verbatim copies of this document for non-commercial purposes by any means, provided that this copyright notice appears on all such copies.

¹ All at Forest Peoples Programme: www.forestpeoples.org . Please address any queries or send any comments to marcus@forestpeoples.org

Abstract:

Global concern about climate change linked to deforestation has led major ‘brands’ to adopt ‘zero deforestation’ policies, leading oil palm producers and NGOs to develop land use planning methods to set-aside forests identified as ‘High Carbon Stock’ forests. Based on field studies in Cameroon and Indonesia, multi-stakeholder interviews and a literature review, this study finds that HCS was initially conceived without thought for communities’ needs. Uncertainty remains whether HCS forests should overlap community lands. HCS pilots reveal that companies are choosing to exclude areas identified as HCS forests from their final permits. Most parties agree that the HCS methods must identify and protect communities’ rights to their customary lands and only allocate lands as set-asides, plantations or smallholdings subject to their free, prior and informed consent, subsequent to community land use planning. Strong incentive packages are needed to compensate communities for managing and foregoing use of set-asides. Legal reforms are needed to secure communities’ land rights and provide legal security for set-asides. The study questions the HCS methods’ reliance on the land concession system. The HCS concept has not yet been adapted to suit smallholders. A deeper rethink of HCS is needed for it to be practically realized at scale in ways which secure rights, accommodate livelihoods and curb forest loss.

Key words

Zero Deforestation; High Carbon Stocks; Climate Change; Customary Rights; Free, Prior and Informed Consent; Tenure Reform; Palm Oil; Concessions.

In a state of nature no man can take my property from me without my consent: if he does, he deprives me of my liberty and makes me a slave.

James Otis, 1765 (cited in Linklater 2014:183)

1. Introduction

The rapid expansion of oil palm plantations in Southeast Asia in order to supply a growing global demand for edible oils, industrial lubricants and biofuels has given rise to global concern about the impacts of this trade on forests, biodiversity and local communities (FoE 2004; Wakker 2004; Colchester et alii 2006; Milieudéfensie 2007; Marti 2008). Despite repeated appeals, the governments of the two countries, Malaysia and Indonesia, which supply some 85% of the global trade in palm oil, have been very slow to take effective action to curb these impacts through regulation and legal reforms. Instead, they present the plantation sector as a vital contributor to national development, generating employment, foreign exchange and benefits for smallholders. Although it is clear that the palm oil trade has generated immense wealth for investors and plantation owners, at the local level the positive balance of benefits over costs is not obvious.² Among those negatively impacted, women have suffered disproportionately (Li 2015a). Indigenous peoples and local communities, whose customary territories and informally-held lands and forests have been taken for plantations over without their informed consent, have suffered the most (Colchester 2010; Li 2015b).³

This pattern of rapid expansion of large-scale plantations accompanied by social exploitation and environmental destruction has begun to repeat itself in Africa and Latin America, where governments are handing out large-scale, sometimes massive, permits to palm oil investors (often the same Asian companies), without environmental safeguards or protection of the rights of local communities (Colchester and Chao 2013; FPP 2015b).

Given the unwillingness of national governments to regulate and limit the negative impacts of this rapidly expanding sector, it has fallen to the palm oil industry itself, acting initially with environmental Non-Government Organisations (NGOs), to develop voluntary standards designed with the principal goals to: divert the palm oil frontier away from primary forests; ensure plantation companies set aside adequate areas to maintain or enhance 'High Conservation Values' (HCV) and; respect the rights of local communities and indigenous peoples to their customary lands and to give or withhold their free, prior and informed consent to plantations planned for their lands. The Roundtable on Sustainable Palm Oil (RSPO), set up in 2004 and which brings together investors, retailers, manufacturers, processors, producers and NGOs has adopted, and now twice revised, its Principles

² And is even contested at the national level (Rheins 2014; Edwards 2015).

³ Arguably, migrant labourers are the most exploited group in the palm oil sector, but the impoverishment of the landless rural poor in Indonesia and the Philippines means there are always more migrant workers prepared to accept jobs in the sector on the terms offered.

and Criteria (P&C) to embody standards which are claimed to ensure ‘certified sustainable palm oil’ (RSPO 2013). NGOs involved in the RSPO have since focused much of their efforts on making sure the RSPO standard is actually applied and enforced in practice (EIA 2015).⁴

However, since RSPO was set up, international concern about climate change has sharpened. As evidence grows that forest conversion and the drainage of peat swamps contribute massively to greenhouse gas emissions, pressure has mounted on the palm oil sector to take additional measures to halt any forest conversion for plantations and to avoid all areas of peat. Efforts to incorporate such measures into the RSPO P&C during the 2011-2013 revision were resisted by Malaysian and Indonesian growers, many of whom felt, with some justification, that they were being asked to take on additional costs and accept limits on their expansion plans while other actors in the ‘supply chain’ were not prepared to share the costs or pay a reasonable premium for ‘deforestation-free palm oil’.

Under heavy pressure from environmental campaigners, global ‘brands’ have however been insistent that they will not buy products that ‘embody deforestation’ or contribute to global warming. Consequently, since 2011-2012 there has been a proliferation of new standards and ‘tools’ aimed at going ‘beyond certification’ (Poynton 2015) and satisfying this market. A collaboration between Greenpeace, Golden Agri-Resources (GAR) and The Forest Trust evolved the concept of ‘High Carbon Stock Forests’, which in essence uses simple measurements of above-ground biomass to estimate the carbon content of vegetation and use this as a proxy for deciding what is not and what is a ‘forest’ and so what can and cannot be converted to oil palm (GAR 2012). GAR adopted a Forest Conservation Policy to apply this new approach to all its plantations in 2011 and the same was then taken up by its sister company Asia Pulp and Paper (APP) also under heavy pressure from Greenpeace to cease forest clearance. The ‘HCS Approach’ has since been formalized and adopted by a wider suite of players,⁵ including through the Palm Oil Innovation Group.⁶ In 2014, another group of palm oil companies, including the main Malaysian growers and Unilever, announced a ‘Sustainable Palm Oil Manifesto’ (SPOM) which also commits growers to halting deforestation and to developing a science-based definition of HCS developed through a wide-ranging review.⁷ This paper is based on a contribution to this wider study.⁸

⁴ Medan Statement:

<http://www.forestpeoples.org/sites/fpp/files/news/2012/11/Final%20Joint%20Statement%20of%20the%20Medan%20Conference%20on%20Landgrabbing%20and%20Palm%20Oil%20Plantations%20in%20Southeast%20Asia.pdf>

⁵ <http://highcarbonstock.org/>

⁶ <http://poig.org/>

⁷ <http://www.carbonstockstudy.com/HCS-Study/About-HCS-Study>

⁸ <http://www.carbonstockstudy.com/carbonstockstudy/files/75/752833e6-972c-4360-98b0-ef549f502af7.pdf>

This research was carried out by constructing and conducting a survey designed to identify and explore the views of stakeholders in relation to evolving industry commitments on local rights and livelihoods. This involved gathering the views of a range of stakeholders internationally and in selected case studies in Cameroon and Indonesia on these issues, particularly in relation to the possible impacts of the introduction of new regulations relating to High Carbon Stocks. In addition semi-structured interviews were conducted with a range of stakeholders at the national level in Cameroon and Indonesia.

In addition, in Cameroon and Indonesia, workshops were undertaken with communities in specific concessions first to explain what HCS is and to carry out training in participatory mapping. Participants were then asked to conceptualise how to carry out community land use planning, and discuss the possibilities and challenges of accommodating High Carbon Stock set asides on communities' customary lands.

1.1 Rationale

Previous action research carried out by Forest Peoples Programme and partners, including in Cameroon and Indonesia (Freudenthal, Lomax and Venant 2013; Colchester, Jiwan and Kleden 2014), already shows that where HCV and HCS land use planning is imposed without genuine participation and lands are reallocated as environmental set-asides without communities' involvement or respect for their rights and livelihoods, they may be ineffective or worse. This is because *inter alia*:

- Assessors and company managers will fail to understand: the extent of local communities' rights; how they make their livelihoods; and what rights and status are attached to certain lands and forests under customary systems of land ownership and use;
- Imposed classifications may cut across local systems of land use;
- Imposed set-asides and restrictions may violate customary rights, causing resentment or disputes with local users;
- Restrictions on use will either impoverish local people or displace their land use into other areas;
- Disrupted systems of land use are likely to become more unsustainable and place greater pressure on remaining resources, including both plantations and set-asides (Colchester, Anderson and Chao 2015).

For example, field studies of communities' experiences with HCVs, reveal that where communities' lands have been taken over for oil palm estates without adequate lands being set aside for local food security or their wider livelihoods, communities are obliged to expand their hunting, gathering and farming into areas companies had set aside for conservation. This is especially notable in situations where estates provide insecure or ill-paid employment, smallholder schemes are developed slowly or not at all, and where community lands are taken without (adequately informed) consent (Colchester et alii. 2006; Colchester and Jiwan 2006; Colchester, Wee, Wong and Jalong 2007; Colchester, Anderson, Jiwan, Andiko and Toh 2009; Colchester 2010; Colchester, Jiwan, Anderson, Darussamin and Kiky 2011; Colchester and Chao 2011; Colchester and Chao 2013).

2. Findings

This section summarises the findings from the international review (2.1), the national reviews in Indonesia (2.2) and Cameroon (2.3) and then the local level studies in in Ocean Departement, Cameroon (2.4) and Kapuas Hulu, Indonesia (2.5). In all, several hundred persons were engaged with to gather their views about HCS. It should be noted that individuals' knowledge and experience of the HCS varied greatly. While the review purposefully targeted those actors implicated in palm oil development or working with indigenous peoples and local communities, who were considered likely to have some awareness of HCS, some of those interviewed had little prior knowledge of HCS. This was especially the case in Cameroon, where the concept of 'Sustainable Palm Oil' is also relatively new. Most of those interviewed who did have prior knowledge of HCS tended to base their replies on what they knew of the 'High Carbon Stock Approach' initially developed by The Forest Trust and Greenpeace with Golden Agri-Resources and Asia Pulp and Paper. The more recent 'HCS+' method was only launched in December 2015 and has not yet been independently assessed in the field.⁹

2.1 International Review

Ensuring the HCS concept secures rights and livelihoods

Referring mainly to experiences with the 'HCS Approach', the majority of respondents felt that when HCS was first trialled not enough was done to secure livelihoods and respect community rights. One respondent felt that the reason for this is that the concept has been conceived from the top-down without the involvement of communities. Others noted that, initially at least, the HCS concept had not been thought through to accommodate the realities of forest farming and forest-based livelihoods or to take account of overlaps between community land use and concession allocations. Lack of implementation of agreed standards - especially those relating to participatory mapping, participatory HCV assessments, respect for customary rights and Free Prior and Informed Consent - compounded the problem. One company noted that it was hard to see why communities would ever accept the HCS Approach, as it only limited their livelihood options without apparently bringing them any direct benefits. Instead of asking how HCS could accommodate rights and livelihoods, the question should be: how could communities accommodate HCS?

To improve application of the HCS concept, most respondents agreed that stronger safeguards should be applied to secure rights and livelihoods. Measures should include proper application of the RSPO Principles and Criteria, adequate HCV and Social and Environmental Impact Assessments, especially in relation to HCVs 5& 6 which are meant to secure basic needs and cultural identity. Proper community mapping and measures to ensure land use agreements conditional on communities' free,

⁹ <http://www.carbonstockstudy.com/resource-centre/reports>

prior and informed consent would be needed. This would also imply wider landscape level land use planning. One anonymous respondent felt that *'land rights of HCS need to be further clarified to avoid legitimization of land appropriation in the name of conservation of carbon stocks.'* Another felt that the HCS approach could only be applied effectively if community land rights were already secure. An NGO noted that *'Often times... communities live carbon-neutral lives owing to traditional systems or long-established agri/forest systems. So if many companies wanted to protect HCS areas, leave them alone.'*

Legal considerations

Companies noted that while under Papua New Guinean, Malaysian and Gabonese laws there were no explicit legal requirements to secure HCVs and HCS, neither were there obstacles to setting aside lands for such ends. By contrast, in Indonesia, there are barriers to concessionaires leaving land 'idle' as HCV and HCS set-asides and it was necessary to therefore get local government agreement to establish such set-asides through application of the 'jurisdictional approach'. An indigenous respondent felt strongly that *'concessionaire-based HCV and HCS control, management and utilization is unacceptable and will create further 'green-grabbing' and reduce the extent and livelihoods of indigenous peoples and local communities.'*

Respondents had very diverse views about what livelihood activities should be allowed in areas defined as HCS. It was noted that the current HCS Approach is unclear about this. Some felt that all activities which convert forests should be prohibited, including farming, shifting cultivation, logging and mining. Others argued that no activities should be ruled out *a priori* as long as they were sustainable. On the other hand some companies and NGOs insisted that as one respondent put it *'communities should have the right to continue their land use that existed prior to HCS determination'*. The view was expressed by one company representative that:

HCS should not be defined as a new and separate category of protected lands. Carbon should be integrated into a single spatial plan along with HCV and FPIC where certain activities are permitted or encouraged and others are not. I cannot see a future where we make up rules solely to protect forest carbon at a local level without considering biodiversity and livelihoods.

It was noted that what was permitted would depend on who has control of forests and HCS areas. Customary rights should not be restricted but unfortunately in some countries, notably Malaysia, the law does not adequately recognize customary rights. Another respondent considered that all community lands should be excised from consideration as HCS in the first place. Greenpeace expressed the view that:

...any community activities are permissible that protect and do not undermine the ability of the forest to restore itself. So in the list this would mean collecting and gathering,

hunting, with the line being drawn at around extraction of timber for house construction. Any local use timber extraction would need considerable controls to ensure the forest wasn't further degraded. Livestock-raising, farming, shifting cultivation etc is currently outside of what would be termed HCS forest.

Respondents held broadly similar views about how to incentivize communities to cease using HCS areas including: collective titling of their lands; payments for environmental services or for REDD; compensation payments for lost opportunity costs and access to lands; provision of alternative lands; provision of infrastructure (notably roads), and health and education services; development of alternative livelihoods, including through smallholdings; being assured a co-management role in, or even full ownership of, HCV and HCS areas and; employment as forest guardians. The same incentives were suggested if communities were to be asked to relinquish their rights in lands but a number of respondents – both NGOs and companies - felt that it was preferable that communities not be asked to release land for HCS at all. Any schemes that required communities to curtail livelihoods or surrender their land should be subject to the development of an integrated land use plan and free, prior and informed consent.

Nearly all respondents saw little possibility for companies policing HCS areas and restricting use unless such areas had been ceded through a procedure that ensured community engagement in land use planning and FPIC and after any restrictions on use had been properly compensated for. Only if there were new government regulations regulating such areas could enforcement work but this would nevertheless generate conflicts and be unlikely to be effective. The corollary is that HCS areas will only be respected by communities if they receive positive incentives to manage and maintain such areas.

Respondents were concerned that legally imposed HCS areas might negatively impact communities. As one noted: *'I am slightly worried how the HCS approach works in practice. Who owns and manages these HCS areas? Are the communities being disenfranchised as an intrinsic outcome of utilizing this approach?'* Imposition of exclusionary approaches would result in serious human rights abuse, land loss and food insecurity and diminished livelihoods. After listing these risks one respondent asked: *'will the proponents of HCS be held responsible and accountable for the impacts on the community?'*

Respondents noted a variety of legal options in different countries to secure HCS areas as community controlled areas for example through recognition of customary rights or collective title, individual titling, recognition as 'village forests' (*hutan desa*) or as restoration concessions (Indonesia), as wildlife management areas (PNG). In Brazil, there are legal options for securing all kinds of citizens' lands as individuals, collectives, indigenous reserves or extractive reserves.

Improved planning to accommodate HCS, rights and livelihoods in palm oil sector

Securing livelihoods in the context of allocating lands for oil palm plantations and set-asides could be done by adequate HCV 5&6 assessments, combined with participatory mapping, integrated land use planning and FPIC, but uncertainty exists about whether the HCV 5 definition is open enough to secure adequate lands for farming and shifting cultivation and how communities and those working with them can really make good predictions of future community land needs given often fast-changing economies and livelihood systems, material demands and values. One company operating in Malaysia and Indonesia estimates community land needs at 6.25 ha/ family. Another company in PNG considers communities to be likely, over time, to convert forestlands within one hour's walk of any new roads.

Depriving communities of access to lands through their allocation to plantations, HCV and HCS is bound to be controversial. As one certification body put it: *'A village without lands is like sugar without sweetness'*. While some respondents felt that a 'land for land' provision might satisfy some communities, others felt that the development benefits of plantations were already enough of an alternative as long as smallholder programmes were viable and extensive enough. One company noted that if people are not left enough lands for their livelihoods they will either be forced to migrate or, more likely, will clear HCV and HCS areas. On the other hand, another company held the view that communities will have to give up their extensive systems of land use, intensify their economies on less land and modernize their lifestyles. Still others felt that land sharing was more appropriate while one respondent felt that the concession model was intrinsically at odds with community rights and livelihoods and alternative approaches would be required if oil palm was to ever benefit people.

In the light of these considerations, respondents then expressed quite cautious views about further palm oil expansion. One company expressed the view that while in Malaysia and Indonesia there should be no further expansion and instead the focus should be on yield improvements, *'highly forested nations with low historic rates of deforestation / degradation, have a right to choose their own path of development which may include plantations as a driver of economic growth, employment and rural development'*. At the least, more comprehensive land use planning should be carried out by government with the involvement of all stakeholders, with stronger planning efforts being undertaken by governments to secure rights and allocate adequate lands for community needs to ensure local food security.

It was noted that current NGO campaigns are only targeting some of the larger companies and yet the majority of forest clearance goes unchallenged: only government regulation and legally enforceable standards would ensure adequate performance by all companies. Another respondent suggested

making market access conditional on respect for rights and livelihoods. The concern was expressed that while it seemed obvious that in Southeast Asia at least, intensification of production on existing estates is the only way forwards, the HCS concept is actually being used to legitimize further expansion and in the end the HCS concept might have an overall negative impact. One certification body concluded that, so long as the company concession model continues, more social conflicts are inevitable and the need was now to shift to a smallholder-based approach. However others noted that although individual small-holders only clear small areas of forest, collectively their impact can be quite marked, as in parts of Sumatra, yet adapting the HCS approach to smallholders has not yet been thought through. Reflected one company:

Traditional communities around the world have been facing many challenges during their development history. I hope we don't create an extra and unfair one with HCS.

2.2 National Review in Indonesia

To date in Indonesia, publicity has only been given to two companies actually pioneering the 'HCS Approach' in practice: Golden Agri-Resources in the palm oil sector and Asia Pulp and Paper in the pulpwood sector.

As at the international level, interviewees in Indonesia had a very wide range of views about the implications of HCS for communities' rights and livelihoods. These varied depending as much on individuals' understanding of HCS methods as on their personal or institutional priorities. Answers to the questionnaire also depended on whether they were referring to how HCS *should* be applied, in their view, how they thought it was originally conceived or how they thought it was actually being applied.

HCS is seen by some interviewees as a tool to legitimize business practices and which is mainly aimed at conserving eco-systems. In their view, the HCS tool is, or can only be, supportive of communities insofar as it is complemented by effective recognition of rights and FPIC. Some respondents felt that HCS, as originally deployed, did not accommodate rights and livelihoods and did not require respect for right and livelihoods or communities' right to give or withhold their free, prior and informed consent to imposed land use plans.

Interviewees had very mixed views about what kinds of land use should be allowed in areas defined as HCS. Conservation and environmental organizations tended to insist that while sustainable land use should be allowed to continue, activities like mining, logging, and forest farming ('*anything involving conversion*') should not be permitted. On the other hand, community supporters tended to insist that communities' rights to decide what happens on their lands should be respected and their livelihoods

should come first. Food security should be assured through community land use planning while agreement on any set-asides to secure HCS areas must ensure community benefits.

The same dichotomy is discernible in response to the question of how to incentivize communities to accept HCS on their land and surrender their rights to their lands for set-asides. On the one hand, community advocates insisted that communities should be compensated for any lost uses - *'the company must pay'* – and they should not have to surrender HCV and HCS areas but rather these should be owned and controlled by the communities. Alternatively, communities should be able to rent rather than sell their lands or should get shares in the company and their livelihoods assured. Environmental NGOs emphasised that communities should be 'given' opportunities to use forests for NTFP extraction and provided compensation through CSR. One consultancy questioned the legitimacy of community land claims, emphasized the legality of concessions and so questioned communities' right to any compensation.

Interviewees were sharply divided over whether companies could 'prevent' communities from using HCS areas. One conservation organization did advocate CSR and employing local people as eco-guards in order to compensate people for lost access and to police compliance but most agreed that 'fortress conservation' would not work. If people were to be denied access to land, then they must be provided with alternative lands of equivalent extent. All such arrangements should be subject to FPIC and allow the option of community control and management through customary systems.

It was generally agreed that legal options to secure HCS areas, inside areas defined as Business Use Permits (HGU), are not currently available. (However, companies developing pulp wood concessions do have the discretion to set aside areas for conservation in timber plantation permits (HTI)). The view was expressed that if the HCS system is ever to work, then legal reforms will be necessary to provide companies with adequate security and incentives for long term management of HCS set-asides. It was also agreed by nearly all parties, that imposition of such tenures could be harmful for communities, and likely to provoke conflict or create 'rural refugees', and would be seen as intensified 'land grabbing'. The need for FPIC was thus strongly insisted on by many. However, apart from local legislative acts (PERDA), no current regulations were identified which provide options to secure community control of areas as HCS, although it was noted that a progressive reading of the Basic Agrarian Law does not rule out the development of regulations allowing such tenures.

Efforts to secure livelihoods will require respect for customary lands, FPIC, community land use planning, land for land guarantees and secure tenures. Further land conflicts are predicted unless alternatives provide adequate compensation, livelihoods and jobs and access to lands for basic needs and food security.

In the light of the above, the general view expressed is that further expansion of palm oil should only happen once and if, community tenures are secured, voluntary standards are honoured, conflicts are first resolved and environmental values protected. Most NGOs feel that only once the government has adopted laws and policies that secure community rights and provide a workable framework for companies and communities to manage HCV and HCS areas could expansion become benign. However, one NGO was of the view that oil palm expansion does not bring communities any benefits and all further permitting should be halted. Another was of the view that a change of approach was needed: *'companies must see that they are guests on indigenous peoples' and local communities' lands'*. The law must be upheld, corruption must end and transparency must be achieved.

2.2 National Review in Cameroon

The national review in Cameroon was carried out through face to face interviews with nine individuals from NGOs and the Cameroonian government. The majority of interviewees were unfamiliar with the HCS concept, having much more familiarity with land use planning in the context of protected areas, HCVs, extractive industries, REDD+ projects and timber exploitation rather than oil palm plantations.

Interviewees were mainly of the view that the HCS concept would impose limitations on the rights and livelihoods of indigenous peoples and local communities, so they would be unlikely to encourage the use of the concept, as it would probably reduce their scope for making a living and lead to repression. It seemed to them that the HCS concept, insofar as it had been practised to date, inadequately safeguards people's interests and, accordingly, it should be reformulated to that end. There was a lack of knowledge about the extent to which national laws allowed areas within concessions to be conserved as HCV and HCS.

NGOs had the view that all community activities except mining should be allowed in areas defined as HCS and that the HCS concept should only be imposed if adequate lands and resources were assured for local communities to pursue their daily activities. Indeed, communities would only be likely to cede lands to HCS if their wider rights and livelihoods were assured. However, there was a great deal of scepticism about how real such assurances could be in the light of the generally negative experiences of communities with imposed conservation schemes and the propensity of government to prioritise both industrial development and protected areas at the expense of communities.

Government agents however noted that, in reality, protected areas had served to cushion communities from even worse impacts. HCV and HCS areas might in the same way provide more room for communities' livelihoods, especially for hunters and gatherers, as long as these activities were not

banned. However they did concede that Bantu farmers would likely be restricted and there would therefore be a need to compensate their losses by promoting alternative economic activities such as commerce, livestock rearing and raising poultry.

Once asked how businesses could persuade communities to cease using areas considered to be HCS, the majority of stakeholders became more radical in their views and considered that HCS was on the whole unfavourable to communities and some did not deign to reply to the question. NGOs felt that, given the current legal framework, any means of legalizing and protecting HCS areas would lead to land being formally titled to the State and this would inevitably prohibit community access or seriously limit communities' freedoms and make them more vulnerable to being criminalized for pursuing their use of and access to resources. Legalising HCS areas would extinguish communities' customary rights.

The alternative option of letting communities themselves control and manage HCS areas is not a possibility for which Cameroon has yet legislated. Consequently, the perceived risk is that once areas have been set aside for HCV and HCS there would be no areas left for communities' traditional activities.

Further palm oil expansion seems inevitable given the economic ambitions of the State, but according to the NGOs, every effort needs to be made to minimise the impacts on the communities' livelihoods. This should be achieved by ensuring:

- concessionaires respect communities' customary use areas;
- community development in terms of employment and provision of infrastructure;
- open dialogue between the communities and the companies and;
- effective and mandatory benefit sharing (*cahiers de charge*).

Overall, NGOs in Cameroon do not see the establishment of HCS areas as a good thing as it is likely to restrict local communities' activities in concession areas. Government policy currently favours actions to reduce deforestation and forest degradation (REDD) as, according to the Ministry of Environment and Conservation, any emission reductions are likely to generate matching funds. Although the government has adopted FPIC guidelines for implementing REDD+ projects, in line with World Bank requirements, the general view is that the government would not allow communities to block carbon sequestration projects as these are deemed to be in the national and global interest (WWF, GIZ, CED 2015).

2.4 Local level review in Cameroon

In April 2015, FPP conducted a series of farm and community visits communities in Ocean Departement, Cameroon of Bassa (Bantu-speaking) forest villages who have a strong focus on forest farming and associated Bagyeli (so-called ‘Pygmies’), who have traditionally depended on hunting and gathering, in the region targeted for palm oil development by a company referred to as Biopalm (see Map 5 below).¹⁰ The region is currently experiencing a boom in government and investor interest, driven in large part by international finance for mining and infrastructure development and facilitated by government plans to develop a new deep water port 40 km south of Kribi (the provincial capital).

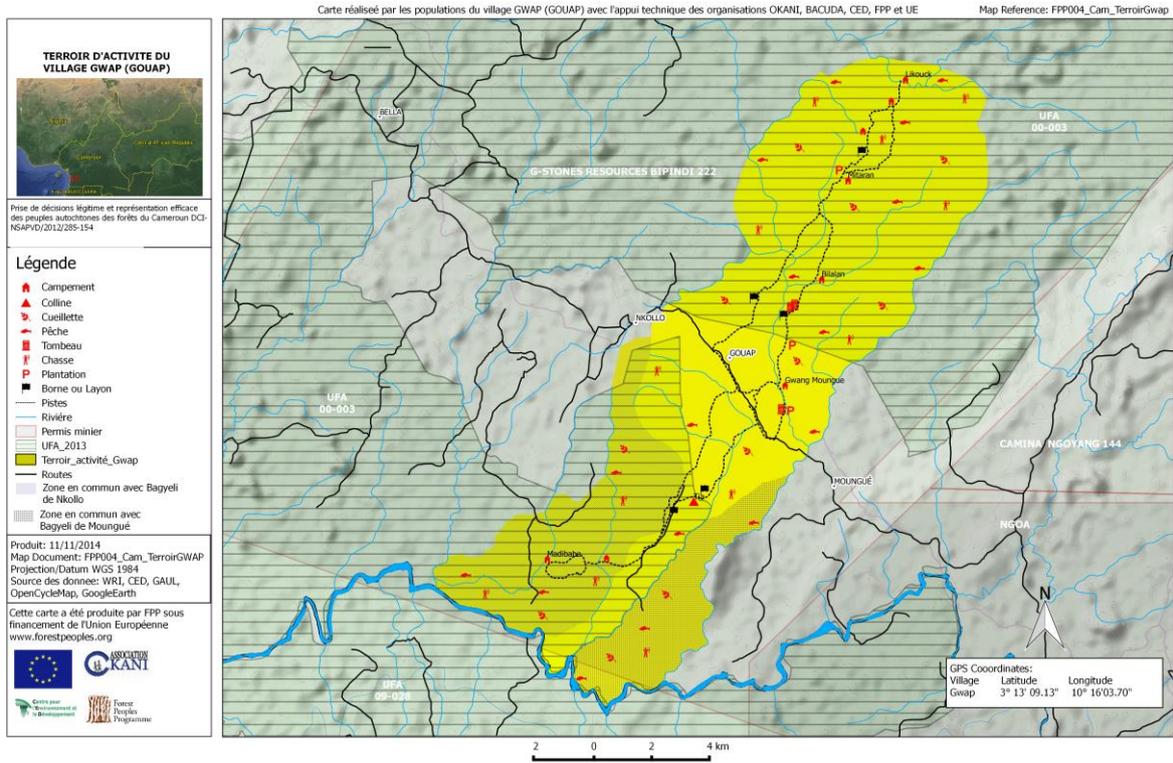
Most Bassa land is still managed in the traditional way, the focus being on subsistence agriculture based on rotational forest farming by family groups, who intercrop a variety of local vegetables, maize, plantains, manioc and other root crops. After use, farms revert to forest fallows before being cleared again after 6-10 years. Sacred forests are also said to be set aside for initiation ceremonies, while more extensive ‘forest reserves’ are held by different families and clans for future expansion. More distant forest zones are open to everyone for hunting (although Bagyeli use them the most). Community spokespersons emphasised that they rely heavily on forest products including for constructional materials, fuel wood, medicines and fruits, and are aware that healthy forest is very important for their long-term livelihoods. In recent years, Bassa have begun establishing sizable (2-4 ha) private plantations of rubber, palm and cocoa. The Bagyeli have recently begun to develop their own farms in order to reduce reliance on selling their labour to the Bassa.

Under the Bassa’s traditional system, sale of land to ‘visitors’ is not an option but it can be lent out. Such lands continue to form part of the community’s traditional area, and annual tributes by these visitors to community leaders reconfirming these arrangements are generally expected (although this tradition is beginning to erode). When these ‘visitors’ or their progeny leave the area, it is understood that they cede their rights to the lands, which revert to common use under the aegis of the chief.

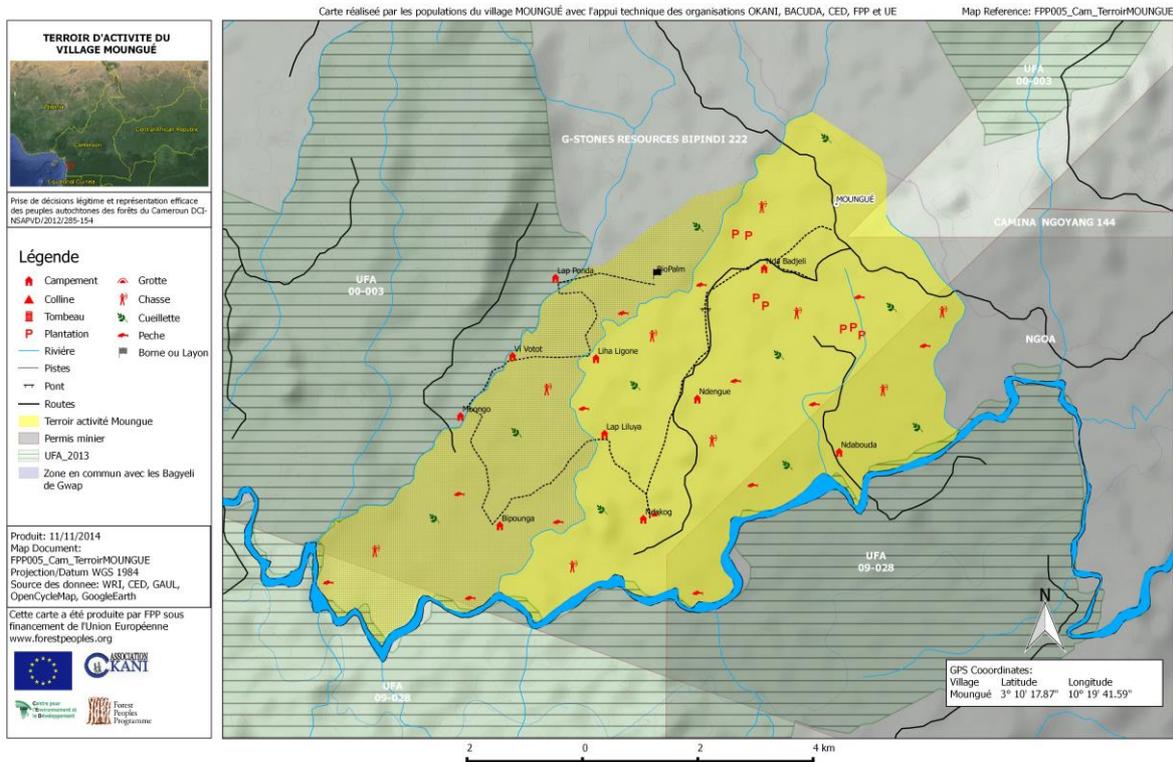
Interviews and workshops revealed that, with one exception, not even government-recognized community leaders had been informed by BioPalm of its plans. Land surveys had been carried out to mark out the concession boundaries with concrete pillars on community lands without prior consultation. The leaders had only learned of the project through local newspapers while the findings of the legally required EIA had not been shared. Having visited neighbouring palm oil development

¹⁰ Biopalm is a majority-owned subsidiary of the RSPO member Geoff Palms itself linked to the Siva Group of companies registered in Chennai, India (ProFundo 2015). In late 2015, BioPalm apparently withdrew from Cameroon. For more details of the findings from the field <http://www.carbonstockstudy.com/carbonstockstudy/files/75/752833e6-972c-4360-98b0-ef549f502af7.pdf>

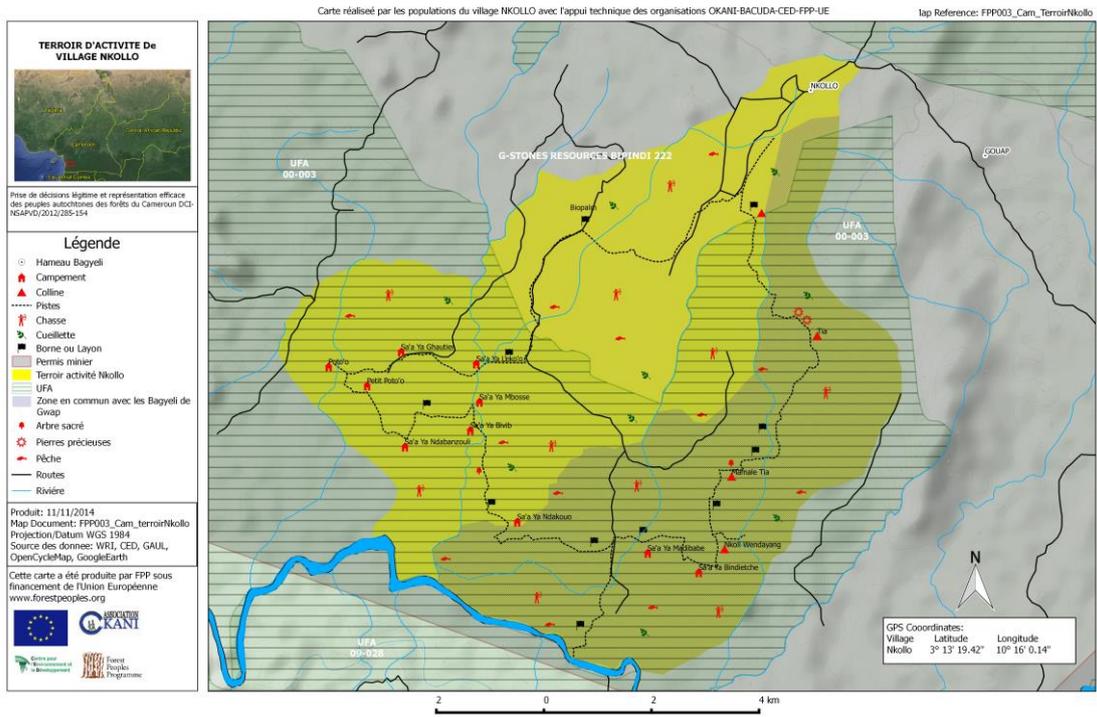
Map 1: The customary area of Gwap (Gouap) village



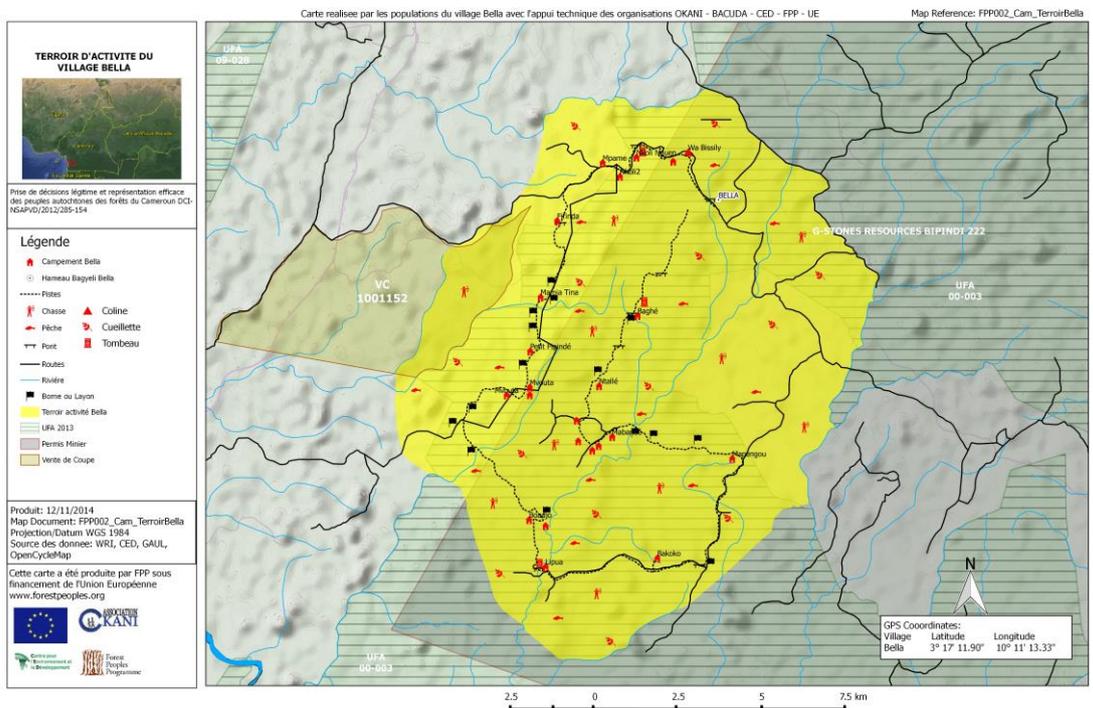
Map 2: The customary area of Moungue village



Map 3: The customary area of Nkollo village

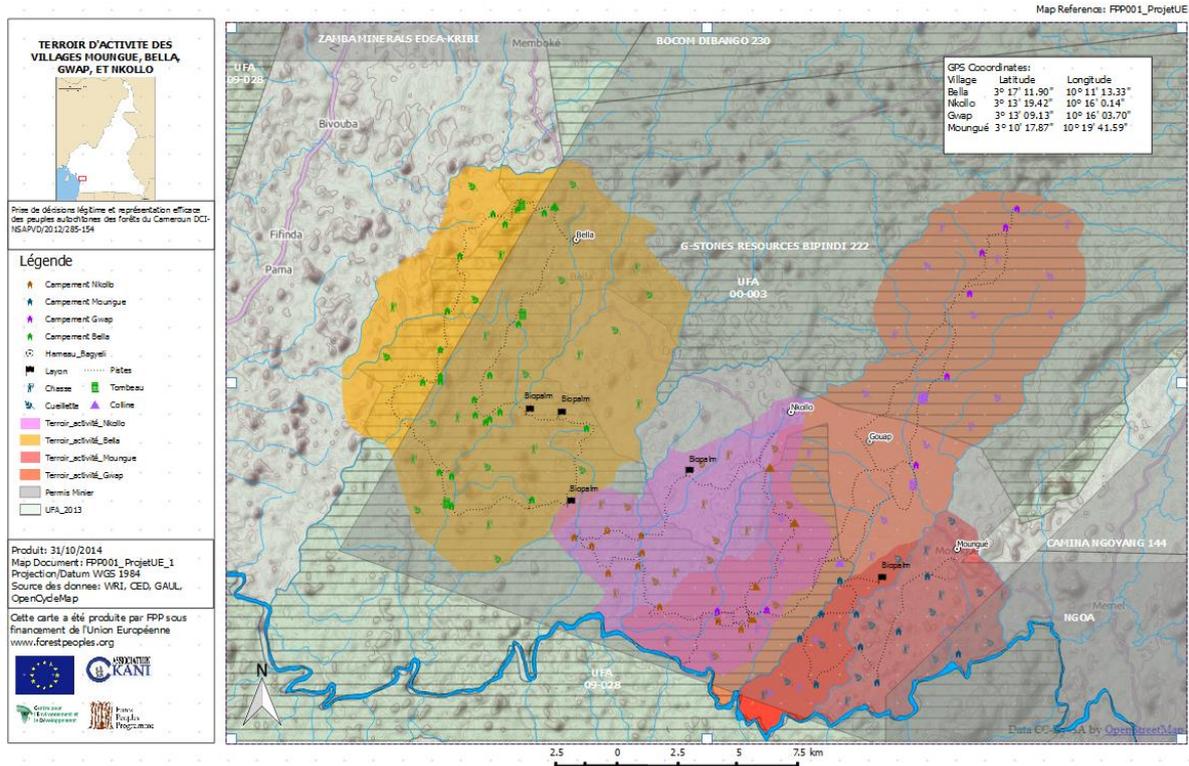


Map 4: The customary area of Bella village



These maps were developed with the communities through a long term engagement by FPP and local partners with funds from the European Union., are the property of the communities and included here for illustrative purposes.

Map 5: The customary areas of the four villages implicated by Biopalm’s concession



areas, the majority of the communities’ members seem convinced that industrial plantations would deliver few benefits while the costs of losing their land to Biopalm would be huge, and permanent. *‘We are unified that we will not give Biopalm our lands’* their leaders noted in one workshop. They also realise that once the palm oil company managed to get established on the ground, *‘poverty will lead some of us to cede small parts of our lands to them, and eventually we will lose them all.’* Bagyeli interviewed during the survey were even more outspoken: *We do not want Biopalm, it will finish us off here. If they take all that (forest land), we, the Bagyeli, will have to leave, where will we go? How will we live?’*

The HCS concept: new and innovative, but irrelevant?

The community consultations found that the HCS concept was a completely new idea to the Bassa and Bagyeli. While the importance of forest conservation was obvious to both, most could not understand why we were discussing forest preservation in the context of a palm plantation development plan that would, as they understood it, lead to massive deforestation. There was also much skepticism about whether companies in Cameroon would ever adhere to voluntary standards.

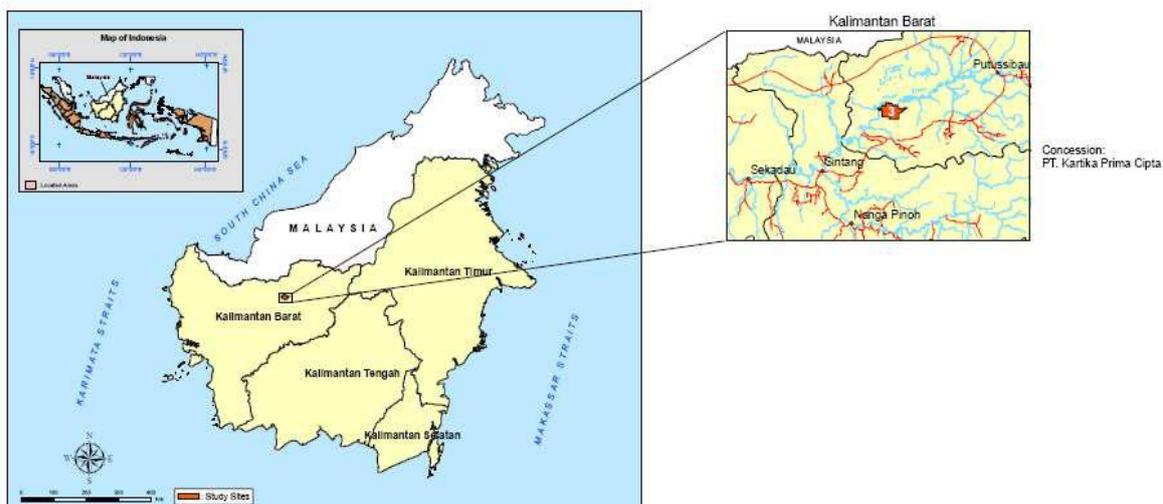
Paramount in most people’s thinking about the HCS concept was the need for them to keep the fields they use to cover their basic livelihood needs **plus** reserve lands to cover the needs of expanding families and for their children and grandchildren to use. Both Bassa and Bagyeli cited the need to

preserve forest in order to maintain their access to game and NTFPs. The only way they understood the HCS approach might help them would be if it kept the palm oil company off of their lands but they did not see this as a possibility, since accepting HCS in the first place would naturally be associated with the company operating on their lands. When posed the question of what they thought about the whole concept of HCS and carbon set-asides, the loudest retort came from one older and respected Bassa community member: ‘*This makes no sense.*’

3.5 Local level review in Indonesia

The field review in Indonesia was carried out with communities in Kapuas Hulu in West Kalimantan, whose lands have been included in the provisional concession area allocated to Golden Agri-Resources’ (GAR) subsidiary PT Kartika Prima Cipta (PT KPC). The research built on previous extensive work in the area, carried out by Forest Peoples Programme and local partners, which has already been published as a detailed report (Colchester, Jiwan and Kleden 2014) and in the form of a substantial complaint to the RSPO.¹¹ These exposed major problems both in terms of GAR’s non-compliance with RSPO standards, with which the RSPO Complaints Panel has concurred,¹² and in the way the HCS concept itself was being applied.

Map 6: Location of PT KPC in Kapuas Hulu, West Kalimantan (Indonesian Borneo)



Source: GAR 2012

The main objectives of the further field review were to clarify how the framing procedural requirements of the RSPO could be implemented to the satisfaction of the communities, to gather their views of the HCS concept and to explore options for community-level land use planning, the idea being to strengthen the extent to which communities could really be informed when assenting to proposed land use plans in line with their right to FPIC. The field review was carried out between 16th

¹¹ <http://www.rspo.org/members/complaints/status-of-complaints/view/75>

¹² <http://www.forestpeoples.org/topics/palm-oil-rspo/news/2015/05/golden-agri-s-wings-clipped-rspo-west-kalimantan>

and 27th February 2015 by means of: a meeting with NGOs in the Provincial capital, Pontianak; three district level meetings in Semitau and Sejiram; interviews with the leaders of affected communities; several community meetings in the villages of Semitau, Suhaid, Mensusai, Kenabak and Kerangas and; interviews with staff of PT KPC and The Forests Trust. Follow up meetings were also held with staff of GAR in Jakarta, Singapore, Kuala Lumpur and London. The preliminary findings were also presented to the SPOM Technical Committee in Kuala Lumpur in April and further discussed at the Workshop on Integrating HCV, HCS and FPIC held in Bogor in June (Colchester 2015).¹³

Context:

There are two sets of communities in the PT KPC concession area: Malay fisherfolk, who live mainly along the river banks, many in populous townships, and make extensive use of the very productive fisheries in the seasonally flooded swamp forests and lakes to the north and; Mayan Dayak who live mainly inland and for the most part engage in rotational forest farming, small-scale vegetable marketing and rubber tapping. Both groups have recently adopted fish-farming of exotic aquarium fish (*arwana*). Both peoples, and this upriver region as a whole, have been linked to a regional trade in fish and a global trade in forest products for several hundred years. What is new about palm oil is not so much that it introduces a market but rather that it submits communities to the State-corporate land concession system.

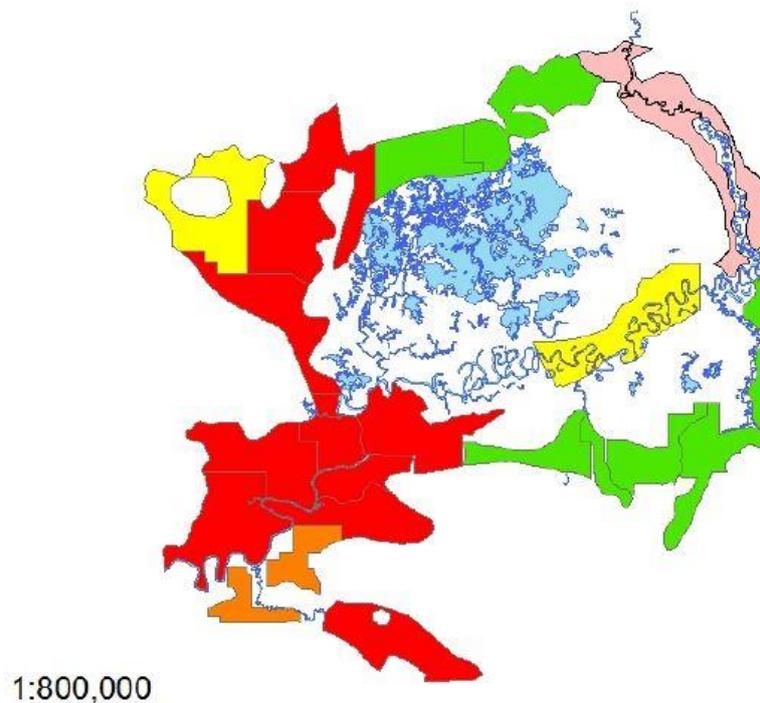
The two groups have substantially different systems of land use and correspondingly distinct systems of land ownership. The Dayak have very clearly defined notions of customary collective territories, within which individuals or families gain rights to land by opening them up and cultivating them. These rights in land are heritable equally by male and female children. Under custom, land transfers of family lands do occur, with the agreement of the individuals and subject to the oversight of the collective, but sales of lands outside the local group do not occur. Dayak commenced their involvement in the global market in rubber in the early 20th century and a strengthening of the notion that individuals have transferrable rights in land is now discernible but still subject to collective oversight. With few exceptions, there was no land market prior to the hand out of oil palm concessions in the 21st century.

Malay systems of land tenure are in a rapid phase of change. Prior to the extension of Dutch rule into the area at the close of the 19th century, the Malay communities were subject to the authority of local 'sultanates' (*kerajaan*) and access to land seems to have been regulated by customary systems subject to the authority of the *raja*. The *kerajaan* were however abolished by the Dutch who then imposed direct rule on this upland area in the early 20th century (Harwell 2000). Our research so far has found

¹³ See also: <http://highcarbonstock.org/hcs-approach-steering-group-holds-technical-workshop-on-integrating-hcs-hcv-and-fpic/>

no detailed studies which explain how Malay fisherfolk and farmers in the area regulated their rights in lands and fisheries during the Dutch period. Based on a very small number of interviews with local people, it seems that, after independence, Malay fisherfolk began to be regulated by the local administration and today fishing lots are auctioned by the local government. However, there appears to have been a negligible engagement by the National Land Bureau to regularise Malay farmers' access to land. Instead lands have been opened up by Malay community members for rubber, farming, fruit crops and fish ponds either informally ('open access') or with letters of agreement from village heads. Some areas are still subject to claim by descendants of the families of the raja (*tanah ahli waris*). There is a need for much more research into Malay tenures. (Much more has been documented about the land tenure systems of Malay peoples in Sumatra (Wee 1985, 2002; Porath 2000; Reid 2001; Li 2001; Benjamin and Chou 2002; Effendy 2003; McCarthy 2005; Chou 2010)).

Map 7: Palm oil concessions issued in a ring around Danau Sentarum National Park



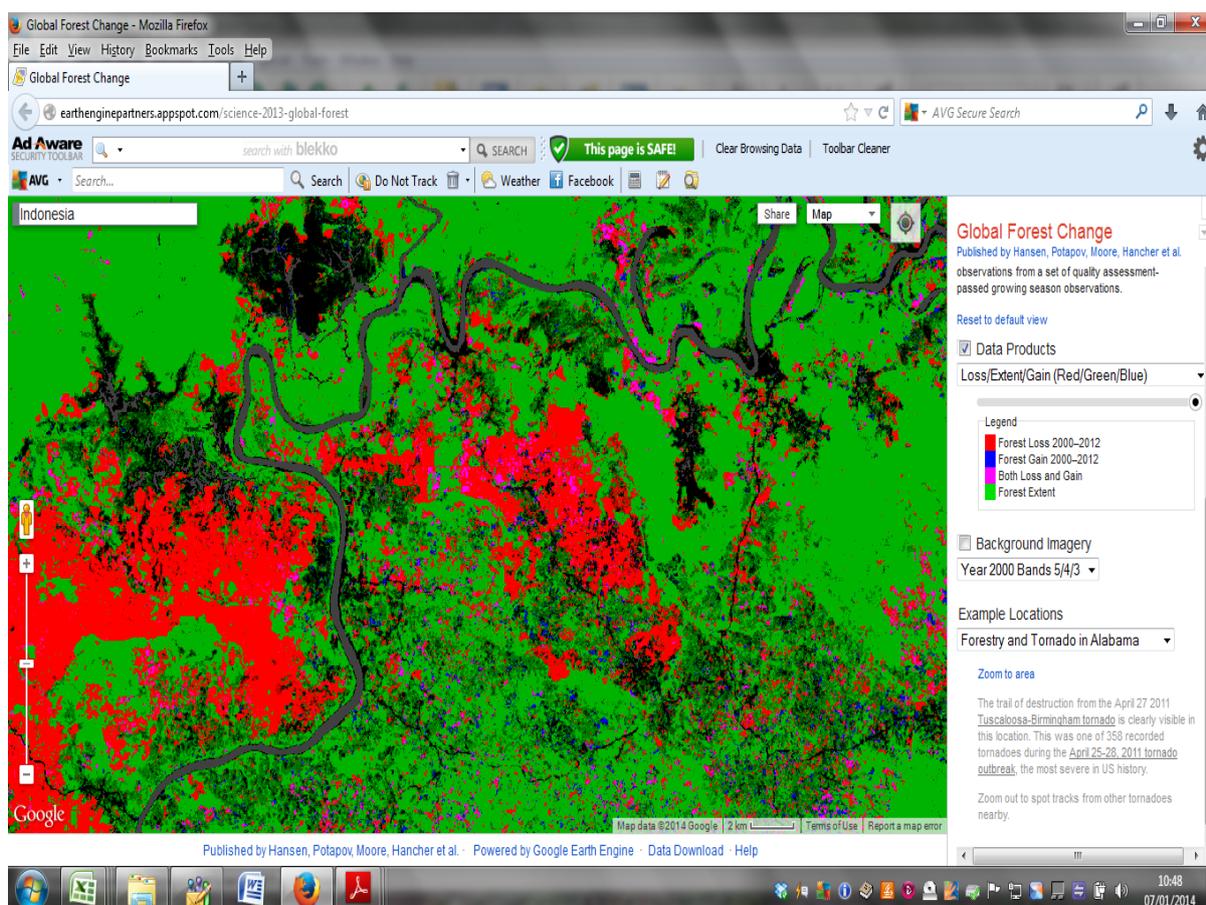
The Crucible for HCS

Singapore-based Golden-Agri Resources (GAR), through its majority-owned Indonesian, conglomerate, Sinar Mas Agro Research and Technology Tbk. (SMART), was one of a number of major palm oil businesses to acquire permits in Kapuas Hulu when the area was opened up to development after decentralization, in the early 21st century. The group was one of the founding members of the Roundtable on Sustainable Palm Oil and also held the chairmanship of the Indonesian Palm Oil Association (GAPKI).¹⁴

¹⁴ The Sinar Mas Group includes palm oil production, processing, refining and trade, timber plantations and pulp and paper mills, banking, real estate and retail. The head of the family which built up and controls the

The area of lakes, forests and farmlands is considered a globally important centre of biodiversity and the seasonally inundated forests and underlying deep peat soils also constitute a significant carbon reservoir. Some of the area has been set aside as the Danau Sentarum National Park. In 2007, one of GAR subsidiaries, PT Kartika Prima Cipta, acquired a 20,000 ha provisional concession (*izin lokasi*), just south of the protected area and began to acquire lands from the local Malay and Dayak communities and shortly thereafter commenced land clearance.

Map 8: Forest loss and KPC palms



Screenshot from the University of Maryland's deforestation maps, showing forest loss in KPC palm oil concession, south of the Kapuas River, since 2000. Outside the palm development forest loss and forest regrowth, mainly caused by shifting cultivation and rubber gardens, more or less balance out.

In 2009, Greenpeace drew international attention to the rapid forest clearance and peat drainage being carried out by KPC and other GAR subsidiaries and called on Unilever and Nestle to halt buying palm oil from SMART. After verifying the clearance, Unilever announced it would suspend purchases and pressure mounted on Nestle to follow suit. In response to this pressure from Greenpeace and major buyers, and after taking advice from The Forest Trust (TFT), GAR announced it would halt forest and

company, Eka Tjipta Widjaja has a personal wealth estimated at US\$8.4 billion in 2013:
<http://www.thejakartapost.com/news/2013/09/17/sinar-mas-owner-ri-s-richest-man-again-bloomberg-finds.html>

peat land clearance. Intense negotiations then followed between GAR, TFT and Greenpeace first to agree a Forest Conservation Policy and then agree a definition and method for determining what kind of 'forest' should not be cleared. This gave birth to the concept of High Carbon Stock Forest, which began to be trialed first in KPC and later in other SMART concessions, then with Asia Pulp and Paper in Sumatra, in Liberia with Golden Veroleum Limited and in Papua New Guinea with New Britain Palm Oil. As lessons were learned, the HCS method has since gradually evolved into what is today referred to as the High Carbon Stock Approach (HCS Steering Committee 2015).

Social performance of KPC

Encouraged by Greenpeace and with the agreement of GAR, an independent review of the social performance of the HCS pilot in PT KPC was carried out jointly by Forest Peoples Programme and TUK-Indonesia in 2013. The study exposed major social problems including evident violations of the RSPO standard by PT KPC. The company was acquiring lands without first carrying out participatory mapping, without allowing communities to choose how they were represented in negotiations and without informing people of the legal implications of land release documents. Instead, lands were being acquired from customary rights-holders on an individual basis, without explaining the terms of the land cessions and without providing them with copies of the agreements they signed. People had the impression they were just being paid for land clearance and that the land could be returned to them after 30 years if they were not satisfied with the company's performance. In fact they were signing agreements which surrendered their lands in perpetuity, the concession license was potentially renewable for as long as 120 years and on the expiry of the company lease, lands would revert to the State not the communities.

Uninformed of these realities, many individuals had surrendered their lands at nugatory rates of between US\$20 and US\$50 per hectare on the promise that roads would be developed, jobs provided, schools and health posts upgraded and they would get ready-planted smallholdings at the rate of 2 ha for every 10 ha surrendered. Few of those relinquishing their lands understood that the smallholder scheme would be run by the company and would be burdened by a substantial debt that would need to be paid off. Returns to those who had surrendered lands were thus long in coming. Even where communities had very clearly rejected palm, they complained of being under heavy pressure from company staff to release lands and land brokers were repeatedly approaching individuals in the community to sell their lands, seeding community divisions and ill-feeling.

The review also found that the HCV assessment had been done very late and had not assessed HCV 5&6. Consequently inadequate areas had been set aside for community livelihoods. Furthermore, as a result of the late imposition of set-asides as HCV 1-4 and then HCS, which had almost halved the area apportioned to smallholdings, communities had become resentful of these imposed land-use

categories which had been marked out on the landscape without their consent. In Suhaid, there had been protests and demonstrations, quelled by police, against the company and the unfairness of the smallholder scheme. In Mantan, there had also been a demonstration against the HCV assessor. In Mensusai, Greenpeace staff had been detained and heavily fined by the communities under customary law for entering community lands and making HCS measurements without community consent. The land grabbing by the company had triggered unresolved land disputes between the villages of Mantan and Kerangas. Malay communities in Marsedan, Suhaid and Tanjung were concerned about the impacts of polluted run-off on their fisheries, which were the mainstay of their economies (For details see Colchester, Jiwan and Kleden 2014).

Efforts to resolve these problems ensued. A series of meetings between FPP and GAR in which GAR promised to remedy non-compliances were not followed up by action on the ground, leading FPP to publish its findings in early 2014. An internal 'Risk Assessment' by TFT apparently revealed that the problems in PT KPC were general throughout SMART's 400,000 ha of land holdings.¹⁵ In October 2014, FPP felt obliged to file a formal complaint to the RSPO when, notwithstanding all these revelations and slow progress on the ground, GAR sought to further expand its plantings in 18 concessions.¹⁶ In May 2015, the RSPO Complaints Panel upheld FPP's complaint, noted apparent non-compliance with the RSPO Principles and Criteria, and ruled that GAR could not acquire or clear any more land until the complaint had been resolved.¹⁷ TFT also suspended GAR's membership citing lack of progress carrying out agreed actions. The ruling, coming soon after GAR had issued a US\$500 million bond-offering on the Singapore stock exchange,¹⁸ generated considerable press interest.¹⁹ GAR has now undertaken to remedy past non-compliances and is developing a detailed action plan but it remains to be seen if these will be implemented on the ground and on what scale.²⁰

HCS and participatory mapping

The details of GAR's non-compliances with RSPO's requirements - not respecting customary rights and not ensuring lands are only acquired with communities' free, prior and informed consent - are not addressed further in this report. What does need emphasizing is that the company's failure to respect rights and ensure FPIC has seriously undermined both GAR's expansion plans and measures to secure HCS (Nedejla and Lim 2015).

¹⁵ This report has not been made publicly available.

¹⁶ <http://www.forestpeoples.org/topics/responsible-finance/news/2015/04/golden-agri-resources-still-violation-rspo-standards>

¹⁷ <http://www.rspo.org/members/complaints/status-of-complaints/view/75>

¹⁸ <http://www.forestpeoples.org/topics/agribusiness/news/2015/04/golden-agri-resources-gar-bond-offering-briefing-banks-and-potentia>

¹⁹ Eg: <http://www.eco-business.com/news/rspo-orders-golden-agri-to-stop-new-palm-oil-development/>

²⁰ For updates see www.forestpeoples.org

Central to any efforts to reconcile HCS, HCV and plantation plans with community rights and livelihoods, is participatory land use planning, a first step towards which is participatory mapping. In PT KPC, the company had omitted this procedure and efforts by TFT to make good this deficiency were initially blocked by the communities who were concerned this would just legitimize further land-take by the company. Further efforts to carry out the mapping were blocked by local government and the breakthrough only came in late 2014 when the government realized it needed maps of village boundaries to comply with the new Village Law (*Undang-Undang Desa 6/2014*).

As explained by the sub-district head of Suhaid, the law allocates a village development budget to each village, to qualify for which they must submit statistics about village numbers, including the number of poor people, maps showing the boundaries of each administrative village and estimates of the extent of the village area. With the first round of these village grants coming available in mid-2015, there was an urgency to carry out the mapping. Accordingly, at the time of the field survey, village boundary mapping was being hurriedly undertaken, four of which were assisted by TFT on behalf of GAR, as these communities' lands overlapped PT KPC's *Izin Lokasi*.

Village leaders in the four villages explained that this mapping was not really the participatory mapping of community land use required by RSPO for HCV assessments and to ascertain the extent of customary lands. What was being mapped were just the administrative boundaries to comply with the new law. Nevertheless, interviews in the villages revealed that, by and large, because these villages have long been in their present locations and a few knowledgeable villagers had been recruited to accompany the mapping teams, the boundaries of villages' customary territories (*wilayah adat*) and the administrative village boundaries were substantially the same.

Towards Community Land Use Planning

The satellites seem to show we are in an empty area. So we should make clear that there are communities here. We people who belong to the communities are not seen by the satellites.

Secretary of Seberuang Village, 23rd February 2015

According to TFT and GAR, more detailed mapping of community land-use is now planned. In the workshops, community representatives explained that they still mistrusted the intentions of both GAR and TFT in developing these maps, which they feared would be used to take over their lands for planting palm and establishing set-asides. Interviewees explained that although they don't really understand the purpose of HCV and HCS, they had experience of the Danau Sentarum National Park, which had been imposed without consultation and prevented them having access to the resources therein. However, during the workshop one or two communities did agree to make independent maps with FPP and local partner NGOs and these exercises are now underway with efforts being made to

fill in the maps with the features of significance to communities – main crop areas, reserved forests, sacred sites, watershed forests, graveyards etc.²¹

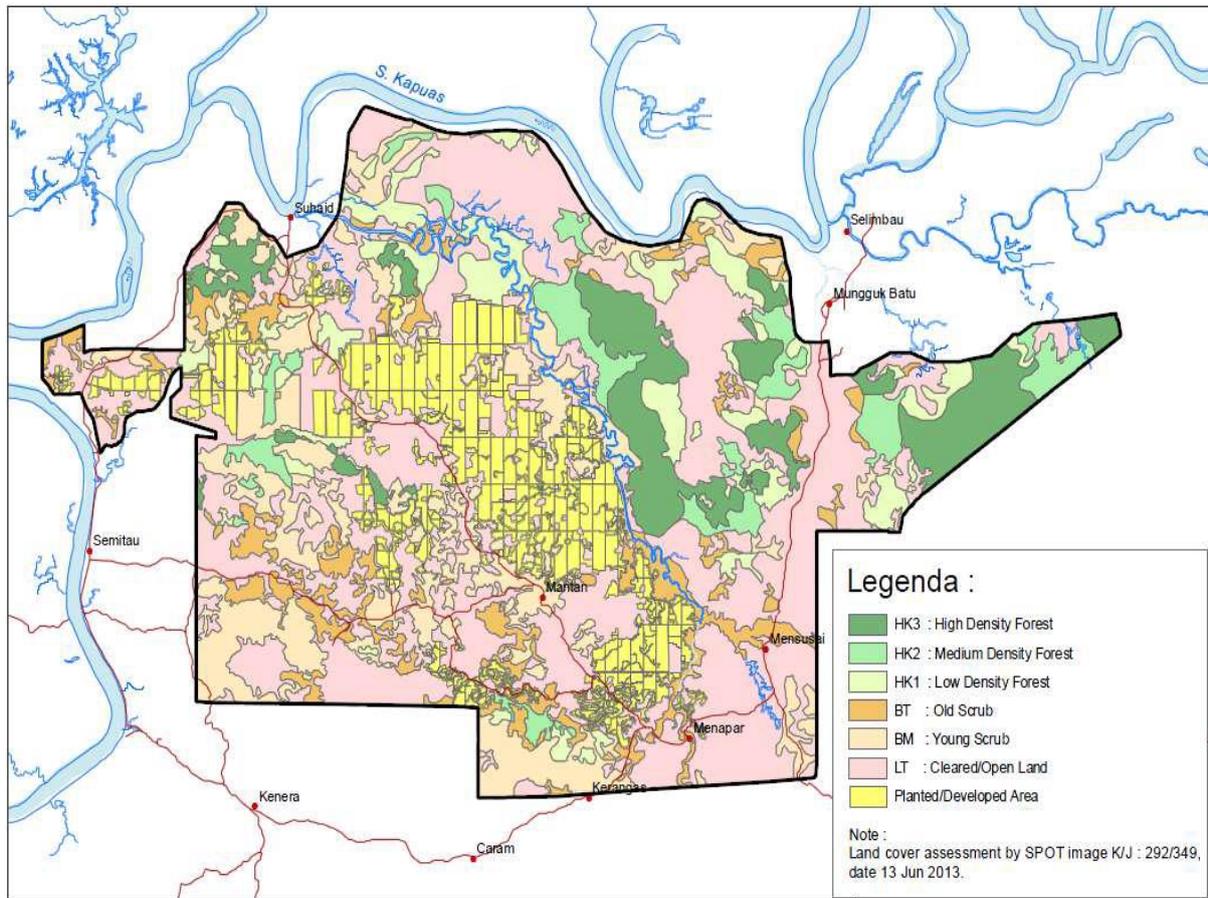
In discussions, community members explained their own systems for land use planning, which rely on their intimate knowledge of the locale. Actually, they explained, Dayak do not measure the extent of their farms based on their area but rather on the basis of their yield and the amount of grain needed to sow them.²² Some community members nevertheless made educated guesses at the extent of their farmlands suggesting that an average family clears between 0.3 and 0.6 ha per year. Farms are used for one or two years, depending on the soil quality (older regrowth forests and old rubber gardens have much stronger soils and tend to allow two years of rice cropping). After one or two years of cropping, farms are then left to revert to forest over 6 to 10 years or more. These figures if accurate suggest that each family needs to maintain up to 6 hectares of lands apt for shifting cultivation to sustain its farming system and maintain local food security. This raises the questions: how much of the land in the area is considered suitable for shifting cultivation and how much other land does a community need to maintain its other livelihood activities at present and into the future?

The short field survey does not allow us to answer this question with any precision. But our interviews in the village of Kerangas, which is the one that seems to have gone furthest in thinking through its land needs and which neighbouring villages admit is a ‘poor’ village with a limited land base, perhaps teaches some lessons. The headman notes that the administrative village has 112 families, while on the basis of the boundary maps done by TFT and the local administration, it seems the village territory encompasses some 2,910 hectares. The village is one that has refused palm arguing that its land base is too limited, the shifting cultivation cycles are already too short and what land is left is already allocated either as a ‘sacred’ watershed forests from where the village gets its drinking and bathing waters, as hunting and gathering grounds and as rubber gardens. If these rough figures can be taken as a guide, they suggest that each Mayan Dayak family ‘needs’ a minimum of 25 hectares to maintain its current mixed economy and way of life. Much more detailed mapping and field reviews would be needed to verify if these ballpark figures are meaningful. Factoring in the needs of future generations, estimating the extent to which people will stay on the land and making allowance for future choices of crops and livelihoods, and the vagaries of the market, renders all such plans even more approximate.

²¹ These community mapping pilots are being undertaken with funding for FPP from the Ford Foundation with the help of WALHI-KalBar and LinkAR-Borneo.

²² The same was true in Europe until private rights in land became the norm and land markets emerged (Linklater 2014).

Map 9: HCS areas in PT KPC *Izin Lokasi*



Source: Greenpeace, TFT and GAR 2013

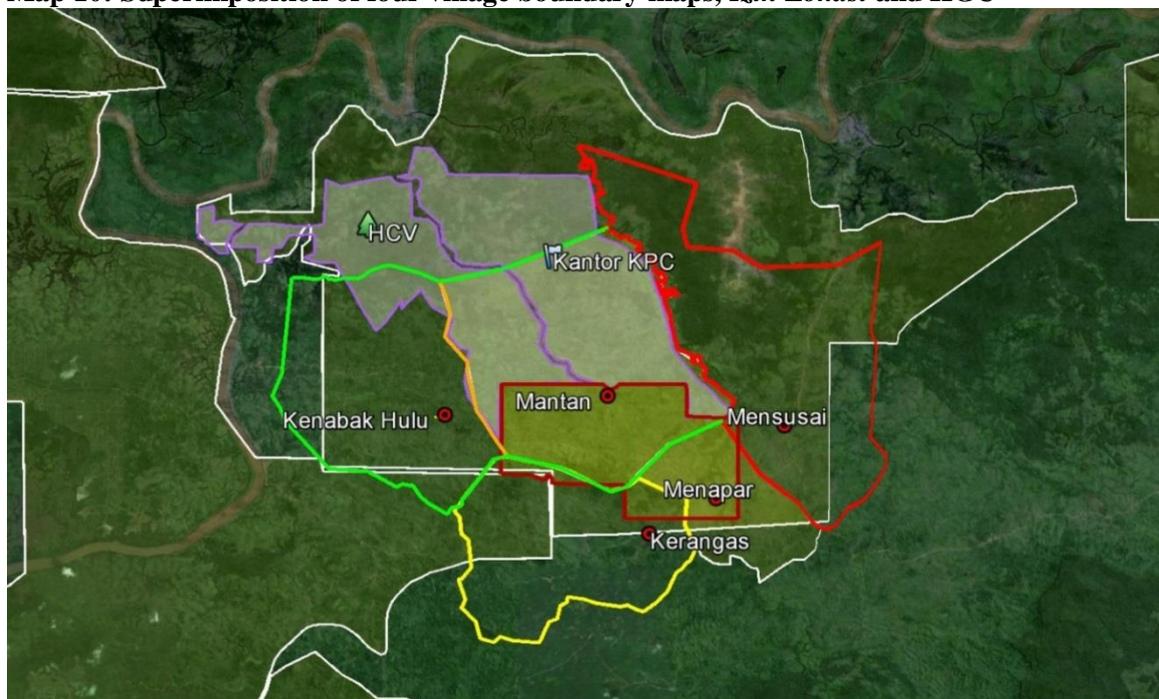
HCS and the permitting system

Under the 1960 Basic Agrarian Law and the Plantation Act, most recently revised in 2014, and their implementing laws and regulations, companies seeking to lease lands for plantations over 1,000 ha in extent must go through a complex procedure of permitting over several years. The two most relevant to this study are the three-year provisional location permit (*Izin Lokasi*) and the definitive Business Use Permit (*Hak Guna Usaha* - HGU), which is initially granted for 35 years and can be extended three times for a total period of 120 years (For details see Colchester et alii 2006).

During the period of the *Izin Lokasi*, the company must negotiate with any local people to acquire any lands encumbered with use rights and once it has secured 51% of the area it may apply for a HGU, subject to numerous other conditions. In the case of PT KPC, it has held its lands as a 20,000 ha *Izin Lokasi* for 8 years (arguably illegally), has acquired rights to only about 5,000 ha and in 2014 filed an application for a HGU of 5,238 ha. TFT and Greenpeace worked with GAR in 2011-2013 to define the area of HCS and concluded that there are about 5,600 ha of HCS forests within the *Izin Lokasi* (see Map 9 above).

Since 2013 and after consulting the communities, FPP has been insisting that the company must recognize and map customary lands and, where the communities refuse palm, must be careful to excise such communities' lands from the final concession. The legal reason is that a HGU can only be granted on unencumbered State lands. Issuance of a HGU has the effect of extinguishing (rendering void) any residual rights in land. GAR has complied with this demand and so filed for its reduced HGU, and the corresponding block for smallholdings to the south of it, only in the areas of land surrendered by the villages of Suhaid, Tanjung, Mantan and Menapar. The lands of Mensusai, Kerangas and Kenabak Hulu as well as remaining areas of Selimbau, Tanjung, Suhaid and Marsedan have been excised (Map 10).

Map 10: Superimposition of four village boundary maps, *Izin Lokasi* and HGU

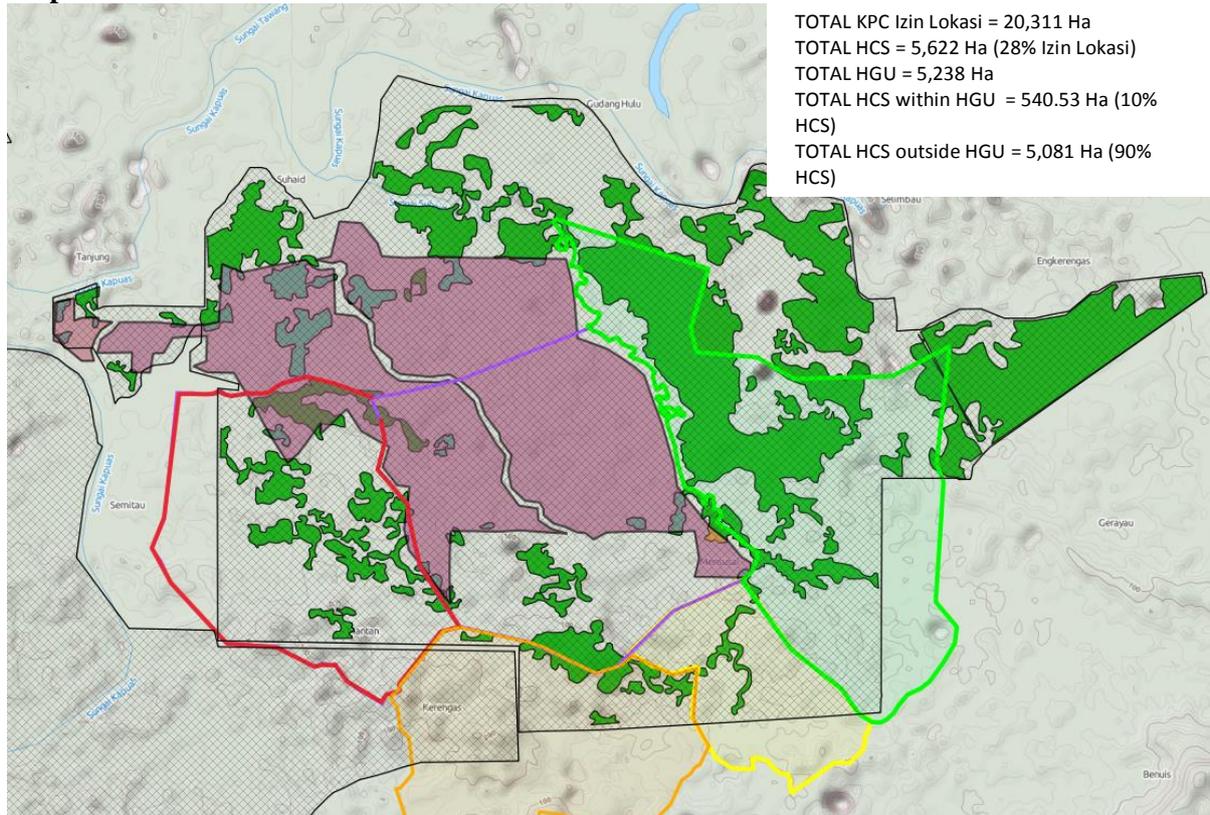


GAR-PT KPC has excised the lands of the villages which have withheld their consent from its long term lease (HGU).
Source: trace of government maps made by FPP mapping team

The fact that in Indonesia permitting occurs in stages and that, to avoid extinguishing community rights, community lands must be excised from HGU has important implications for forest conservation. As Map 11 (below) illustrates, 90% of the HCS forests identified in the *Izin Lokasi* by the GAR, TFT and Greenpeace team ended up outside the company's permit and thus jurisdiction. Who will end up owning and controlling these areas, given that at present the district and national governments do not recognize the customary rights of these communities? Who will be incentivized to manage the forests? The communities are clear that it is they who have maintained these forests up to now, who value them and can look after them into the future. But are their rights secure? As Pak Jahan, the headman of Kenabak Hulu, asked the workshop rhetorically.

If we insist that we don't want to give up our land, can our lands then be protected?

Map 11: HCS and HGU



3. Conclusions

HCS is an alien concept. It is from the sky. It is from somewhere but imposed on peoples without giving them the chance to defend their territories (peatlands, forests, wetlands) which have been the real HCS and HCV areas since time immemorial. Why then should HCS and HCV be conserved by land acquisition and imposed concession models that replace their livelihoods and undermine the future generations of these peoples?

The HCS system cannot accommodate the rights and livelihoods of local communities and indigenous peoples without first changing the legal framework of plantation governance regime from large-scale, private concessions of land, forest and resource control that have been proven extremely conflictual, and encouraged rampant corruption and abuse of human rights.

Norman Jiwan, Transformasi untuk Keadilan - Indonesia

The HCS method is conceived as a tool for large-scale plantation companies who gain access to extensive areas of land as concessions or titles. Using the HCS method these companies can identify the areas that should not be cleared and set them aside and manage them to maintain their forest cover and soils. By applying this method, it is anticipated, companies can verifiably claim their products are 'deforestation free'.

The underlying assumptions of the HCS method need to be spelled out. Its viability assumes:

- Companies have legitimate rights to their concession areas
- There are no competing claims or users in these areas

- The companies can secure and control the full extent of their concessions
- The companies will choose to keep all the areas of conservation value (HCV and HCS) within their concessions and manage them.

This study shows that all these assumptions are questionable. The legality of company concessions are disputed. Most of these areas are owned and occupied by indigenous peoples and local communities under customary law or through informal tenures. Companies do not have agreements with the communities' members to manage the set-asides and have trouble controlling local access and use of lands, forests and resources. Companies applying the HCS Approach are choosing to exclude HCS and HCV areas from their concessions.

The PT KPC case study shows that around 90% of the HCS areas identified by GAR, TFT and Greenpeace in the company's initial concession were not included in the final permit area. Most of the HCS areas so excluded are on the lands of communities that are declining to surrender their lands to oil palm. The communities want to maintain control of these forests themselves. TFT reports a similar situation in the concession of Golden Veroleum Limited in Liberia.²³

In December 2015, the High Carbon Stocks Science Study of the Sustainable Palm Oil Manifesto launched its final report which sets out a method for identifying and securing High Carbon Stock areas, as part of a system for ensuring 'carbon neutrality' in palm oil production.²⁴ Learning from the problems encountered by the HCS Approach,²⁵ the so-called 'HCS+' method advocates stronger adherence to FPIC requirements, enhanced land use planning procedures to ensure local food security, and a new tool for monitoring changes in local communities' socio-economic conditions. Although the report notes the need for legal reforms and jurisdictional approaches to secure rights, land management and ensure land use planning at scale, like the HCS Approach, the HCS+ method is designed for, and relies on, the perpetuation of the concession system. It provides incentives for companies to manage HCS set-asides by encouraging them to offset the carbon sequestered in regenerating forests (and that captured by oil palm plantations on degraded lands) against any carbon losses from forest clearance and so achieve carbon neutrality, as calculated for a 25 year period. Controversially, it also allows companies to offset carbon losses entailed by forest clearance in one concession with carbon sequestered by both plantations and by regenerating forests in other concessions held by the same company.

²³ Workshop on Integrating HCS, HCV and FPIC, Novotel, Bogor, June 2015. <http://highcarbonstock.org/hcs-approach-steering-group-holds-technical-workshop-on-integrating-hcs-hcv-and-fpic/>

²⁴ <http://www.carbonstockstudy.com/hcs-study/about-hcs-study>

²⁵ <http://highcarbonstock.org/>

3.1 Recognizing rights

Under international law, indigenous peoples have rights to the lands, territories and other resources they have traditionally owned, occupied or otherwise used. They also have rights to self-determination, to exercise their customary law and represent themselves through their own self-chosen organisations. These rights give rise to the derivative right, or principle, that such peoples have the collective right to give or withhold their free, prior and informed consent to measures that may affect their rights (FPIC) (Doyle 2015). These rights in land are very broad and have been interpreted as extending to include seasonal and mobile forms of livelihood such as pastoralism, hunting, trapping, fishing, foraging and use of wetlands and marine areas (MacKay 2006, 2009, 2011, 2013, 2015). Of particular relevance to this study, such rights also embrace areas of shifting cultivation and this right has been asserted not just in reference to the rights of indigenous peoples but, through the provision of the International Labour Organisation's Convention 111 on the Protection of Employment which requires protection of 'traditional occupations' (ILO 2007), to the rights of all those practicing shifting cultivation (Aryal and Kerhoff 2008; AIPP 2014).²⁶ The UN's Special Rapporteur on the Right to Food has strongly emphasised the need for governments to protect, and businesses to respect, communities' land rights and ensure local food security (de Schutter 2009, 2012). Rights to customary lands and informal tenures and to FPIC are likewise upheld by the FAO in its Voluntary Guidelines on the Governance of Tenure to Lands, Fisheries and Forests (FAO 2012; Colchester and Chao 2013b). These same rights have been incorporated into the Principles and Criteria of the Roundtable on Sustainable Palm Oil and extended to all local communities and land users (RSPO 2015 (in press)).

The HCS+ method gives strong emphasis to the need to respect FPIC and, consistent with international law, is clear that human rights protections cannot be traded off for development gains. However, the method encourages companies to achieve carbon neutral palm oil development by offsetting the carbon sequestration achieved by plantations, especially on degraded land, and from protecting forests, against the carbon emissions resulting from land and forest clearance, without due consideration of whether this is legal or practicable in terms of community rights and livelihoods. In practical terms it seems likely there will be serious challenges reconciling the interests and rights of communities in different locales (even within single concessions), as decisions in one locale will likely have immediate implications for the rights and interests of communities, making consent processes inherently complicated. In addition, it is legally questionable whether concessionaires do have the right to effect such, albeit non-monetized, carbon trading, as international human rights treaties have noted that it is indigenous peoples not concessionaires that have right to carbon assets in their customary forests (CERD 2009).

²⁶ Recent studies suggest as many as 500 million people practice shifting cultivation in SE Asia (Dressler et alii. 2015).

For their part, proponents of the alternative High Carbon Stocks Approach have likewise recognized the need to uphold communities' rights to FPIC and to their customary lands (HCS Steering Committee 2015), although the practical details of how this be implemented remain to be determined and agreed.²⁷ With very few exceptions all the interviewees who participated in this study endorse these principles. The main challenges that arise then concern the degree to which developers scrupulously adhere to these principles and to what extent plantation development models and national laws are compatible with these rights.

3.2 Accommodating livelihoods

Practically, it is clear that the current land use planning tools meant to secure adequate lands for community livelihoods in palm oil development areas are not working where the communities lack secure rights in land under national law. Apart from the fact that participatory mapping is too often not carried out by the companies and ESIA and HCV assessments are highly abbreviated, the current guidance, toolkits and the definition of HCV 5 & 6 are too limited to ensure that farmlands and even shifting cultivation areas are secured (HCVRN 2014).

The national and international surveys carried out for this study strongly affirm the need for improved land use planning. One of the principle conclusions from this study is therefore that a strong collaborative effort is needed to develop an agile but effective method for taking stock of community land use systems, livelihood needs and development options, so that the real implications of any land use changes, whether for palm, HCV and HCS, can be assessed. This information can then inform communities about whether and, if so how much, they should agree to allocate land to palm and associated set asides.

The field discussions and interviews also elucidate some of the basic tools that can be deployed to help communities carry out such 'community land use planning'. These include:

- Land tenure surveys to ensure a reasonable level of shared understanding of community systems of land ownership, transfer, inheritance and regulation;
- Participatory mapping to determine, geographically, the extent of areas subject to customary rights and the amounts of lands under different forms of ownership and use;
- Community workshops and sharing to develop such land use plans through inclusive involvement of all community members, taking care to ensure the engagement of groups often marginalized from decision-making whether on grounds of gender, status or ethnicity;
- Planning to be based on a time frame that encompasses the needs of future generations commensurate with the license period of the oil palm plantations;

²⁷ <http://highcarbonstock.org/hcs-approach-steering-group-holds-technical-workshop-on-integrating-hcs-hcv-and-fpic/>

- Agreement of new norms and community-level regulations to ensure agreed land use plans are adhered to;
- Community based monitoring.

There are three main deficiencies in the HCS system as evolved to date. The first is that HCS proponents are unclear exactly how definitions of HCS forests do or do not overlap community areas.

The current HCS Approach Toolkit states that:

...areas which are part of an active subsistence food production cycle to meet the food security needs of local customary communities are enclaved from consideration as HCS forest (or for plantation development) (HCS Steering Committee 2015:78).

This would seem to imply that customary use areas important for livelihoods would **not** be considered HCS forests. However, the same Toolkit also notes that communities may be asked to relinquish rights to HCS subject to FPIC (HCS Steering Committee 2015:36), especially areas which are just used for gathering, if not for farms, gardens and agroforestry (Ibid:55). The Toolkit furthermore notes:

*Areas of community land that are identified as having HCS forest will be proposed for conservation as part of the integrated conservation plan for the concession. They will require FPIC negotiations and the support and participation of the communities to achieve conservation (similar to areas of HCV). Thus local communities with customary rights have the right to say no to their forest lands becoming a conservation area. **However the forest areas remain categorised as HCS forest** (HCS Steering Committee 201:79 emphasis added).*

and goes on to state:

If FPIC is not achieved and the customary land owners do not want their lands to be part of the conservation areas, then these areas are not marked as in the conservation area. However, they remain as HCS forest as far as the company is concerned (Ibid:88).

In sum the HCS concept, as conceived so far, will be imposed on landscapes and shape land use decisions whether communities agree or not, whether they accept palm or not, and whether or not these areas overlap their customary rights. It is this imposed aspect of the HCS concept that has triggered the most skepticism of those consulted in this survey including interviewees from companies, communities and NGOs.

The second weakness that comes out clearly from the survey is that, if HCS areas are to be imposed on community areas, there is as yet no agreement on what kinds of land use communities would be allowed to maintain in such areas. Yet it is exactly such information that needs to be unambiguously made clear to communities if their well-founded skepticism of using the concept is to be overcome.

The third and related deficiency in both the HCS and HCV systems to date is that neither offer any clear additional benefits to communities to accept set-asides on their lands. Proponents suggest that

communities setting aside lands for HCS should receive payments for environmental services and / or reduced emissions from halting deforestation, or greater benefits from palm oil development and associated benefit-sharing and employment. However, no required procedures have yet been developed which would assure communities that they would receive such benefits if they accept HCS and HCV set-asides on their lands.

3.3 Managing HCS set-asides

As noted, the HCS concept has been accepted by palm oil producer companies as a way of meeting buyer demands for palm oil that does not ‘embody deforestation’. By avoiding clearance of HCS forest areas companies can claim to be ‘deforestation free’. However, the early pilots in Indonesia (PT KPC) and Liberia (GVL) suggest that companies will meet this requirement not by managing HCS forest areas within their concessions but by excising them. In KPC no less than 90% of the ‘HCS forests’ ended up outside the area embraced by the provisional permit. This same problem had been noted for the HCV concept in 2009 (Colchester, Anderson, Jiwan, Andiko and Toh 2009).

Who then will look after these ‘HCS forests’? The major risk is that these excised areas will be allocated by the government to other palm oil companies, perhaps ones less concerned to meet the demands of discerning buyers.

The opportunity is that that the majority of these ‘HCS forests’ are on community lands and it is these same communities that have refused palm and who have maintained the areas to date. The need is now to help these communities secure their rights to their lands and livelihoods and incentivize sustainable customary use.

3.4 Legal and administrative frameworks

The possibilities for palm oil development and the HCS system reinforcing or undermining community rights and livelihoods depends substantially on the national legal framework and administrative system of the country concerned. In some countries, such as Brazil and Papua New Guinea (PNG), laws are in place to secure indigenous peoples’ territories, local community lands and customary rights. In such circumstances, companies must either secure lands where there are no conflicting claims in lands and forests (Brazil) or get communities’ consent to lease or rent them areas of customary lands (PNG). Brazilian laws also require developers with land titles that overlap forests not to clear at least 50 or 80% of their land titles.

The situations in many other countries are much more challenging. Not only are communities’ rights often insecure and unprotected but governments hand out concessions over community lands without consultation let alone consent. The process almost inevitably puts communities in collision with

companies and the proliferation of land conflicts is a visible result. The Biopalm and PT KPC case studies summarized above and the national legal reviews in Cameroon (Perram 2015) and Indonesia (Stenly, Arizona and Syahrani 2015) exemplify a very common set of problems. These conditions create very difficult circumstances for the HCS system to work. Most of the interviewees and questionnaire respondents explicitly recognized this challenge and noted that providing legal recognition of community rights would be an important condition for making the approach workable.

An inherent contradiction in the HCS concept thus emerges from this study. The HCS concept has emerged as an additional element designed to strengthen **voluntary** approaches to curbing the negative impacts of commodity supply chains. These approaches have emerged exactly because governments are failing to adequately regulate industries and protect citizens' rights. Yet the comments of many proponents affirm that the HCS concept cannot be successfully implanted without legal reforms to secure both community rights and company set-asides. A number of interviewees also point out the need for effective government action and regulation above the concession level noting that decision-making at the plantation level is unlikely to be an effective way of ensuring sound land use planning.

The HCS Approach Steering Committee is exploring the adoption of a 'landscape approach' but the experience of previous essays in this approach need to be heeded. As Jeff Sayer and colleagues concluded after a wide-ranging review, the main shortcoming of the 'landscape approach' is that while it can be used to envisage better land management plans, it cannot ensure the implementation of such plans for lack of engagement by those with jurisdiction in the areas in question. As Sayer et alii (2014:1) note:

Landscape approaches do not provide silver bullet solutions... nor do they provide an operational framework for large-scale land management... Landscape approaches cannot overcome disparities in power or entrenched interests nor can they substitute for institutions with authority to establish and legitimise property and resource rights.

The lesson is to adopt a 'jurisdictional approach' to land use planning which means engaging with local (and higher level) government and seeking to strengthen the authority of local communities and other players in the landscape with a long term interest in sustainability. This may provide the basis for securing the rights of local communities and indigenous peoples and thus providing them with the long term incentives they need to look after their ancestral lands and resources (cf Fishbein and Lee 2015).²⁸

²⁸ See also: <http://www.rspo.org/news-and-events/news/central-kalimantan-announces-jurisdictional-certification-for-sustainable-palm-oil>

3.5 Verification, challenge and redress

An important element of all credible voluntary standards is that they include mechanisms by which company compliance is independently verified. Where there are compliance failures, companies are then issued ‘corrective action requests’ or even refused certification by accredited certification bodies tasked with assessing compliance. These systems are also made accountable by providing mechanisms by which other parties can challenge poor performance through filing complaints either against the companies or the certification bodies, or even against those charged with governance of the system. These elements are critical to the credibility of independent schemes.

So far, the HCS concept has emerged independently of palm oil certification, or even as an alternative to it (Poynton 2015). Although the RSPO is now looking into the option of including HCS in an interim higher standard being referred to as ‘RSPO Next’, to date only the Palm Oil Innovation Group (POIG) has yet developed a scheme for verifying the performance of companies which are using the HCS concept and POIG itself so far lacks an independent mechanism for handling complaints.

Yet if communities’ rights and livelihoods are to be assured, one of the most critical elements of a scheme is that they can access credible mechanisms by which they can hold companies to account, enforce the standard and provide redress. In the PT KPC case, this option has been provided by the RSPO’s complaints system but only for violations of the RSPO’s principles and criteria not for the additional HCS element itself.

If the HCS concept is to be applied effectively then credible mechanisms for accountability, challenge and redress must be developed.

3.6 Beyond the concession model

Ever since the beginning of the global trade in palm oil in West Africa in the early 19th century, it has generated serious conflicts between competing communities and chieftaincies (Robinson, Gallagher and Denny 1965). The trade was expanded into Central Africa later in the 19th through recourse to the imposition of the concession system and exploitative labour relations (van Reybrouck 2014:126-7). This concession system was set up by colonial powers as a means of taking over the lands of ‘native’ peoples to produce commodities for global markets, as such it has always been inherently conflictual, has deepened patrimonial political systems and collusive relations between business and the State (Birmingham and Martin 1985; Stoler 1985; Pourtier 1989; Bryant 1997; Dauvergne 1997; Parker 2011; Reid (1979) 2014).

Both the HCS Approach and the HCS+ system are predicated on the continuance of the concession system, Although concessions are now being handed out by independent governments and often managed by local or regional companies, they still embody the same power relations between concessionaires and local people, whose lands are taken into concessions often without any consultation let alone with their consent (Li 2015b).

A number of analysts have shown how these power relations almost inevitably skew decision-making to favour the larger more powerful players at the expense of local communities, small-holders and workers. Economic anthropologist Tania Li refers to this as ‘infrastructural violence’, inherent in the monopolistic relations introduced by the concession system in Indonesia (Ibid.). Social anthropologist Afrizal notes how even when companies agree to conflict resolution, these structural power imbalances weaken the bargaining power of communities. NGOs can only help counterbalance such forces through dedicated engagement with the communities, leveraged by international campaigns (Afrizal 2015). Reviewing community experiences with large-scale land acquisitions in sub-Saharan Africa, researcher George Schoneveld (2014: 6-7) of CIFOR concludes:

Due to the widespread desperation for ‘development’, there is a very real risk that, even when well informed, many communities will be easily swayed into relinquishing their landholdings. In such cases, FPIC will only serve to legitimize land alienation. Moreover, in the context of common pool resources, what constitutes a ‘community’ and ‘community consent’ is a fuzzy concept; communities are not homogeneous and consist of social hierarchies with layers of rights that could have substantial bearing on consensus-forming processes. Therefore, a ‘shared will’ will unlikely be an outcome of FPIC. The widespread deference to chiefly authority and subordination of minority groups brings numerous additional complications to operationalizing and formalizing FPIC. Hence, FPIC should not be used as the sole determinant for evaluating the legitimacy and social viability of land alienation, as is currently often the case. Additional safeguards are necessary to ensure that projects do not compromise food and income security or disproportionately disadvantage specific stakeholder groups (emphasis added).

Forest Peoples Programme and partners’ detailed review of community experiences with free, prior and informed consent in the palm oil sector reaches similar conclusions. Only with governance reforms, transparency and formal recognition of customary rights through legal reforms can palm oil development be expected to favour community interests (Colchester and Chao 2013).

The extensive socio-economic studies carried out as part of the HCS Science Study revealed that exceptionally, when, as in the FELDA scheme in Peninsula Malaysia, palm oil is developed as a smallholder crop, with large family landholdings, secure tenures, subsidised credit, State-financed infrastructures, and a strong extension service, it was quite successful at raising landless or land-poor farmers out of poverty. However, the survey had to conclude that there was no general correlation

between palm oil development and poverty alleviation, as too many other variables intervene to skew benefits in favour of corporations and elites at the expense of indigenous peoples and the rural poor.²⁹

Many of the respondents to the questionnaire accept that the HCS concept will only work if there are legal reforms that can first secure communities' rights and provide them with incentives to manage lands themselves for long term sustainability. This means that the concession system itself becomes outdated as either companies will have to rent, lease or purchase lands from communities on the open market or they will just offer to buy communities' produce if they can be encouraged to become smallholders.

To date neither of the HCS system has been re-conceptualised to suit smallholder production systems. The current HCS Approach requires detailed, quite costly field surveys that are beyond the means of the great majority of small producers, even if organized as groups. The HCS+ method relies on even more costly LiDAR surveys, which smallholder groups cannot afford. There remains a real risk that 'zero deforestation' requirements and HCS systems become a further barrier to smallholders gaining access to markets.³⁰

²⁹ <http://www.carbonstockstudy.com/hcs-study/about-hcs-study>

³⁰ It is now 10 years since the RSPO adopted its Principles and Criteria but it has yet to develop a workable system by which independent smallholders can comply with RSPO requirements on HCV.

References

- Action Aid, 2015, *Caught in the Net: How 'Net Zero Emissions' will delay real climate action and drive land grabs*. Briefing. http://www.actionaid.org/sites/files/actionaid/caught_in_the_net_actionaid.pdf
- Afrizal, 2015, Third-Party Interventions in Terminating Oil Palm Plantation Conflicts in Indonesia: a structural analysis. *Sojourn: Journal of Social Issues in Southeast Asia* 30(1):141-172.
- Asia Indigenous Peoples Pact, 2014, *Shifting Cultivation, Livelihood and Food Security: new and old challenges for indigenous peoples in Asia*, Chiang Mai.
- Aryal, K.P. and E.E. Kerkhoff, 2008, *The right to practice shifting cultivation as a traditional occupation in Nepal: a case study to apply ILO Conventions Nos 111 (Employment and Occupation) and 169 (Indigenous and Tribal Peoples)*, International Labour Organisation, Geneva.
- Benjamin, Geoffrey and Cynthia Chou (Eds.), 2002, *Tribal Communities in the Malay World: historical, cultural and social perspectives*, Institute of Southeast Asia Studies, Singapore.
- Birmingham, David, and Phyllis M. Martin (Eds.), 1983, *History of Central Africa*. Vol 2, Longman, London.
- Bryant, Raymond, 1997, *The Political Ecology of Forestry in Burma 1824-1994*, University of Hawaii Press, Honolulu.
- CERD 2009, Letter from the United Nations Committee on the Elimination of Racial Discrimination to the Government of Indonesia, 28th September 2009: <http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2010/11/indonesian-government-requested-cerd-safeguard-ind>
- Chao, Sophie and Marcus Colchester (eds.), 2012, *Human Rights and Agribusiness: Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform*, KOMNASHAM, Forest Peoples Programme and SawitWatch, Bogor.
- Chou, Cynthia, 2010, *The Orang Suku Laut of Riau, Indonesia: the inalienable gift of territory*, Routledge, London.
- CLUA, 2014, A brief analysis on the legal framework for the protection and conservation of High Conservation Value (HCV) and High Carbon Stock (HCS) areas, ms.
- Colchester, Marcus, Norman Jiwan, Andiko, Martua Sirait, Asep Yunan Firdaus, A. Surambo and Herbert Pane, 2006, *Promised Land: Palm Oil and Land Acquisition in Indonesia – Implications for Local Communities and Indigenous Peoples*. Forest Peoples Programme, Sawit Watch, HuMA and ICRAF, Bogor.
- Colchester, Marcus, and Norman Jiwan, 2006, *Ghosts on our own land: oil palm smallholders in Indonesia and the Roundtable on Sustainable Palm Oil*. Forest Peoples Programme and SawitWatch, Bogor.
- Colchester, Marcus, Wee Aik Pang, Wong Meng Chuo and Thomas Jalong, 2007, *Land is Life: Land Rights and Palm Oil Development in Sarawak*. Forest Peoples Programme and SawitWatch, Bogor. *Tanah Menyara Hidup: hah-hak tanah dan pengembangan perladangan kelapa sawit di Sarawak*. Forest Peoples Programme and SawitWatch, Bogor (translated from the English by Carol Yong Ooi Lin). Forest Peoples Programme and SawitWatch, Bogor.
- Colchester, Marcus, Patrick Anderson, Norman Jiwan, Andiko and Su Mei Toh, 2009, *HCV and the RSPO: report of an independent investigation into the effectiveness of the application of High Conservation Value zoning in palm oil development in Indonesia*. Forest Peoples Programme, HuMA, SawitWatch and Wild Asia, Moreton-in-Marsh
- Colchester, Marcus, 2010, *Palm Oil and Indigenous Peoples of South East Asia: land acquisition, human rights violations and indigenous peoples on the palm oil frontier*, Forest Peoples Programme, Moreton-in-Marsh and International Land Coalition, Rome.

Colchester, Marcus, Norman Jiwan, Patrick Anderson, Asril Darussamin and Andi Kiky, 2011, *Securing High Conservation Values in Central Kalimantan: Report of the Field Investigation in Central Kalimantan of the RSPO Ad Hoc Working Group on High Conservation Values in Indonesia*. Roundtable on Sustainable Palm Oil, Kuala Lumpur.

Colchester, Marcus, and Sophie Chao (eds.), 2011, *Oil Palm Expansion in South East Asia: trends and implications for local communities and indigenous peoples*, SawitWatch and Forest Peoples Programme, Bogor.

Colchester, Marcus and Sophie Chao (Eds.), 2013, *Conflict or Consent? The Oil Palm Sector at a Crossroads*, Forest Peoples Programme, Moreton-in-Marsh:

<http://www.forestpeoples.org/sites/fpp/files/publication/2013/11/conflict-or-consentenglishlowres.pdf>

Colchester, Marcus and Sophie Chao, 2013b, *Respecting Free, Prior and Informed Consent – Practical Guidance for Governments, Companies, NGOs, Indigenous Peoples and Local Communities in relation to land acquisition*, Food and Agriculture Organisation, Rome.

Colchester, Marcus, Norman Jiwan and Emilola Kleden, 2014, *Independent review of the social impacts of Golden Agri Resources' Forest Conservation Policy in Kapuas Hulu District, West Kalimantan*. Available at:

<http://www.forestpeoples.org/sites/fpp/files/publication/2014/01/pt-kpc-report-january-2014final.pdf>

Colchester, Marcus, Patrick Anderson and Sophie Chao, 2015, 'Respecting community rights to their lands and to free, prior and informed consent in the High Carbon Stocks Approach', In: TFT, GAR, GP, 2015, *The High Carbon Stocks Approach Toolkit 1.0*, The Forest Trust, Gland:11-23. http://highcarbonstock.org/wp-content/uploads/2015/04/HCS-Approach-Toolkit_Full-version.pdf

Colchester, Marcus, 2015, *Briefing Note for Technical Workshop on Integrating High Conservation Values, the High Carbon Stock Approach and Free, Prior and Informed Consent: Social Perspectives*.

<http://highcarbonstock.org/wp-content/uploads/2015/06/FPP-Briefing-Note-for-HCV-HCS-FPIC-Workshop-with-references.pdf>

Cotula, Lorenzo, 2015, Property in a shrinking planet: fault lines in international human rights and investment law. *International Journal of Law in Context*, 11, pp 113-134 doi:10.1017/S1744552315000026

Cultural Survival, 2015, Upholding Indigenous Rights is Good Business, *Cultural Survival Quarterly* 38(1) Special Issue.

Daemeter, 2014, Towards Deforestation-Free Palm Oil in Indonesia: Implementation Challenges on HCV and HCS, IBCSD, ms.

de Schutter, Olivier, 2009, *Large-Scale Land Acquisitions and Leases: A Set of Core Principles and Measures to Address the Human Rights Challenge*. <http://www.oecd.org/site/swacmali2010/44031283.pdf>.

de Schutter, Olivier, 2012, 'Opening Remarks' In: Chao and Colchester (eds), 2012, *Human Rights and Agribusiness: Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform*:8-32.

Dauvergne, Peter, 1997, *Shadows in the forests: Japan and the tropical timber trade in Southeast Asia*. MIT Press, Los Angeles .

Doyle, Cathal, 2015, *Indigenous Peoples, Title to Territory, Rights and Resources: the transformative role of free, prior and informed consent*, Routledge, London.

Dressler, Wolfram *et alii*, 2015, *Examining how long fallow swidden systems impact upon livelihood and ecosystem services outcomes compared with alternative land-uses in the uplands of Southeast Asia*, Working Paper 174, CIFOR, Bogor.

- Dwyer, Michael, 2015, Trying to follow the money: possibilities and limits of investor transparency in Southeast Asia's rush for 'available' land, Working Paper for CIFOR and USAID, Bogor.
- Edwards, Ryan, 2015, *Palm Oil and Poverty in Indonesia*, Australian National University, Ph. D Seminar, April 2015.
- EIA, 2015, *Who Watches the Watchmen?*, Environmental Investigation Agency, London.
- EIA and CIEL, nd, *A Rights-based Approach to Land Use in a Future Climate Agreement: policy and implementation framework*, Washington DC.
- Ewers, Kirsten, 2015, Policy Brief on the Research of Codification and Registration of Customary Communal Tenure in Myanmar: recommendation based on action research in Chin and Shan States in 2013 & 2014, ms.
- Effendy, Tenas, 1997, Petalangan Society and Changes in Riau, In: Cynthia Chou and Wil Derks (Eds.), *Riau in transition* Wil Derks Bijdragen tot de Taal, Land en Volkerkund 153 No 4: 630-647.
- FAO, 2012, *Voluntary Guidelines for the Responsible Governance of Tenure of Lands, Fisheries and Forests in the Context of National Food Security*, Food and Agriculture Organisation, Rome:
<http://www.fao.org/docrep/016/i2801e/i2801e.pdf>
- Fishbein, Greg, and Donna Lee, 2015, *Early Lessons from Jurisdictional REDD+ and Low Emissions Development Programs*, World Bank, Washington DC.
<http://www.nature.org/media/climatechange/REDD+ LED Programs.pdf>
- FoE, 2004, *Greasy Palms: Palm Oil, the Environment and Big Business*, London.
- Freudenthal, Emmanuel, Tom Lomax and Messe Venant, 2013, 'The BioPalm oil palm project: a case study in the Departement of Ocean, Cameroon' In: Marcus Colchester and Sophie Chao (Eds.), 2013, *Conflict or Consent? The palm oil sector at a crossroads*, Forest Peoples Programme. Moreton in Marsh,
<http://www.forestpeoples.org/conflictorsent> : 337-354.
- FSC, 2014, Exploring the feasibility of carbon storage as a High Conservation Value, ms.
- Forest Peoples Programme, 2015a, *Information and data on status and trends in traditional occupations: outcomes of a rapid assessment*, Moreton-in-Marsh, England.
- Forest Peoples Programme, 2015b, *Hollow Promises: an FPIC assessment of Golden Veroleum and Golden Agri-Resource's palm oil project in south east Liberia*, Moreton-in-Marsh, England.
- GAR, 2012, *High Carbon Stock Forest Study Report: defining and identifying high carbon stock forest areas for possible conservation*, GAR and SMART in collaboration with The Forest Trust and Greenpeace: page 26.
- Harwell, Emily, 2000, *The Un-Natural History of Culture: Ethnicity, Tradition, and Territorial Conflicts in West Kalimantan, Indonesia, 1800-1997*, Ph.D., Yale.
- HCVRN, 2014, Recommendations to improve the identification, management and monitoring of High Conservation Values 5 & 6, Workshop Report April 29th – May 1st, 2014, MJ Grand Hotel, Accra, Ghana:
<https://www.hcvnetwork.org/resources/2014-hcv-5-6-workshop-report>
- Institute for ECOSOC Rights, 2013, Oil Palm Industry and Human Rights: a case study on oil palm corporations in Central Kalimantan, ms.
- International Labour Organisation, 2007, *Eliminating discrimination against Indigenous and Tribal peoples in employment and occupation – A guide to ILO Convention no. 111*, ILO, Geneva.

Li, Tania Murray, 2001, Masyarakat Adat and Difference and the Limits of Recognition in Indonesia's Forest Zone, *Modern South East Asian Studies* 35: 645-676

Li, Tania Murray, 2015a, *Social Impacts of Palm Oil in Indonesia: a gendered perspective from West Kalimantan*, CIFOR, Bogor

Li, Tania Murray, 2015b, *Infrastructural violence and the monopoly system in Indonesia's oil palm plantation zone*, presentation to CIRAD, Montpellier, <http://www.msh-m.tv/spip.php?article642>

Linklater, Andro, 2014 (2015), *Owning the Earth: the transforming history of land ownership*, Bloomsbury, London.

MacKay, Fergus 2005 *Indigenous Peoples and United Nations Human Rights Treaty Bodies: A Compilation of Treaty Body Jurisprudence*. Volume I: 1993 – 2004. Forest Peoples Programme.

<http://www.forestpeoples.org/sites/fpp/files/publication/2010/09/unjurisprudencecompsept05eng.pdf>

MacKay, Fergus 2006 *Indigenous Peoples and United Nations Human Rights Treaty Bodies: A Compilation of Treaty Body Jurisprudence*. Volume II: 2005-2006. Forest Peoples Programme.

<http://www.forestpeoples.org/sites/fpp/files/publication/2010/09/unjurisprudencecompvol206eng.pdf>

MacKay, Fergus 2009 *Indigenous Peoples and United Nations Human Rights Treaty Bodies - A Compilation of UN Treaty Body Jurisprudence and the Recommendations of the Human Rights Council*. Volume III: 2007-2008. Forest Peoples Programme.

<http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/unjurisprudencecompvol30708eng.pdf>

MacKay, Fergus 2011 *Indigenous peoples and United Nations human rights bodies Volume IV 2009-2010 - A compilation of UN treaty body jurisprudence and the recommendations of the Human Rights Council*. Forest Peoples Programme.

<http://www.forestpeoples.org/sites/fpp/files/publication/2011/02/ips-and-human-rights-bodies-jurisprudence-2009-2010.pdf>

MacKay, Fergus 2013 *Indigenous Peoples and United Nations Human Rights Bodies - A Compilation of UN Treaty Body Jurisprudence and the Recommendations of the Human Rights Council*. Volume V: 2011-2012.

Forest Peoples Programme. <http://www.forestpeoples.org/sites/fpp/files/publication/2013/01/cos-2011-12.pdf>

Mackay, Fergus, 2015, *Indigenous Peoples and United Nations Human Rights Bodies - A Compilation of UN Treaty Body Jurisprudence, the Reports of the Special Procedures of the Human Rights Council and the Advice of the Expert Mechanism on the Rights of Indigenous Peoples*. Volume VI: 2013-2014. Forest Peoples Programme.

<http://www.forestpeoples.org/sites/fpp/files/publication/2015/06/cos-2013-14.pdf>

McCarthy, John, 2005, Between Adat and the State: Institutional Arrangements in Sumatra's Forest Frontiers, *Human Ecology* 33:57-82.

Marti, Serge, 2008, *Losing Ground: the human rights impacts of oil palm plantation expansion in Indonesia*, SawitWatch, Life Mosaic and Friend of the Earth UK, London.

Milieudefensie, Lembaga Gemawan and KONTAK Rakyat Borneo, 2007, *Policy, Practice, Pride and Prejudice: Review of legal, environmental and social practices of oil palm plantation companies of the Wilmar Group in Sambas District, West Kalimantan (Indonesia)*, Milieudefensie (Friends of the Earth Netherlands), Amsterdam.

Nejedlá, Jana, and Pi Li Lim, 2015, The importance of community engagement in the HCS Approach: a case study of PT KPC In: HCS Approach Steering Group Eds., *The HCS Approach Tool Kit Version 1.0*, Kuala Lumpur: 24-27.

OECD, 2015, *FAO-OECD Guidance for Responsible Agricultural Supply Chain*, draft for comment January 2015. Ms.

- Parker, Matthew, 2012, *The Sugar Barons: family, corruption, empire and war*, Windmill Books, London.
- Perram, Anouska, 2015, Institutional Framework Governing the Palm Oil Sector in Cameroon: a report on the laws, regulations and practices, Ms.
- Persson, Martin, Sabine Henders and Thomas Kastner, 2014, *Trading Forests: Quantifying Contribution of Global Commodity Markets to Emissions from Tropical Deforestation*, Center for Global Development Climate and Forest Paper Series #8, Working Paper 384 October 2014.
- Pourtier, Roland, 1989, *Le Gabon: L'Etat et Developpement*, L'Harmattan, Paris.
- Poynton, Scott, 2015, *Beyond Certification*, The Forests Trust, Gland.
- ProFundo, 2015, Foreign land acquisitions in Cameroon: international linkages and financial flows. A research paper for Forest Peoples Programme, Ms.
- Rainforest Alliance, 2015, Rainforest Alliance's Position on Halting Deforestation and Achieving Sustainability in Agricultural and Forestry Supply Chains, ms.
- Reid, Anthony, (1979) 2014, *The Blood of the People: Revolution and the End of Traditional Rule in Northern Sumatra*, Oxford University Press, Oxford.
- Reid, Anthony, 2001, Understanding Melayu as a Source for Diverse Modern Identities, *Journal of Southeast Asian Studies* 32(3): 295-313.
- Robinson, Ronald, John Gallagher and Alice Denny, 1965, *Africa and the Victorians: the official mind of imperialism*, MacMillan and Co., London.
- Porath, Nathan, 2000, The Re-appropriation of Sakai Land: The Case of A shrine in Riau, Indonesia, In: Allen Abramson and Dimitrios Theodossopoulos (Eds.) *Land, Law and Environment: Mythical Land and Legal Boundaries*, Pluto Press, London.
- Rhein, Matthias, 2014, *Industrial Oil Palm Development - Liberia's Path to Sustained Economic Development and Shared Prosperity? Lessons from the East*, Rights and Resources Initiative, Washington DC.
- RSPO, 2013, Principles and Criteria for Sustainable Palm Oil, Kuala Lumpur.
- RSPO, 2015, *Free, Prior and Informed Consent and the RSPO: a Guide for Members*, RSPO.
- Sayer, Jeffrey, Chris Margules, Agni Klintuni Boedhihartono, Allan Dale, Terry Sunderland, Jatna Supriatna and Ria Saryanthi, 2014, Landscape approaches; what are the pre-conditions for success? *Sustain Sci* DOI 10.1007/s11625-014-0281-5
- Schoneveld, George C., 2014, *Governing large-scale farmland investments in sub-Saharan Africa: challenges and ways forward*, CIFOR Info-briefs No. 72. http://www.cifor.org/publications/pdf_files/infobrief/4560-infobrief.pdf
- Shantiko, Bayuni, Emily Fripp, Tina Taufiqoh, Calentinus Heri and Yves Laumonier, 2014, *Socio-economic considerations for land use planning: the case of Kapuas Hulu, West Kalimantan*, Working Paper 171, CIFOR, Bogor.
- Shoreman-Ouimet, Eleanor and Helen Kopnina, 2015, Reconciling ecological and social justice to promote biodiversity conservation, *Biological Conservation* 184:320-326.

Steni, Bernadinus, Yance Arizona and Gita Syahrani, 2015, Community Rights and Environmental Protection in the Laws and Regulations of Indonesia, Ms.

Stoler, Laura Ann, 1985, *Capitalism and Confrontation in Sumatra's Plantation Belt 1870-1979*, University of Michigan, Ann Arbor.

Timmer, Jaap, 2010, Being seen like the state: emulation of legal culture in customary labor and land tenure arrangements in East Kalimantan, Indonesia, *American Ethnologist* 37(4):703-712.

TNI, 2015, Political Brief on the Principles of Responsible Investment in Agriculture and Food Systems, Transnational Institute,

United Nations Development Programme, 2014, *Social and Environmental Standards*, New York.

Van Reybrouck, David, 2014, Congo: the epic history of a people, Fourth Estate, London.

Wakker, Eric, 2004, *Greasy Palms: the social and ecological impacts of large-scale oil palm plantation development in Southeast Asia*, FoE, London.

Wee, Vivienne, 1985, Melayu Hierarchies of Being in Riau, PhD thesis, Australian National University.

Wee, Vivienne, 2002, Ethno-Nationalism in Process: Ethnicity, Atavism and Indigenism in Riau, Indonesia, *Pacific Review* 15: 497-516.

WWF, GIZ, CED, 2015, *Directives Nationales pour l'obtention d'un Consentement Libre, Informé et Préalable (CLIP) dans le cadre du REDD+ au Cameroun*, (with introduction by Ministry of Social Affairs). Ms.