

## **Oil Palm Expansion in South East Asia: an overview<sup>1</sup>**

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### **Introduction**

Palm oil is a ubiquitous commodity. It is a basic ingredient of much of the processed food we commonly eat. It is the most widely used oil in cosmetics and household cleaners. Globally its use is increasing massively. Palm oil is also in the news: its detractors point to well researched evidence that careless development of oil palm is destroying forests, drying out peat-swamps, wiping out endangered species, polluting air and waterways, driving climate change, dispossessing indigenous peoples and immiserating the rural poor. The World Bank has been so troubled by the way the palm oil sector has been evolving that, between 2009 and 2011, it suspended all funding for palm oil projects worldwide, while it reviewed its experiences and re-thought how it should engage in the sector to ensure good outcomes.

Recognition of these problems has also come from the industry itself, which, driven by consumer concern, has admitted that production methods must change and which has set up the Roundtable on Sustainable Palm Oil by which companies operating through approved methods can be assessed and certified. The RSPO aims to divert the palm oil frontier away from primary forests and areas of high conservation value and it proscribes land-grabbing, insisting that all lands must only be acquired with respect for the rights of local communities and indigenous peoples, including respect for their right to give or withhold consent to land purchases or leases.

To date, most attention has focused on the two major palm oil exporting countries, Malaysia and Indonesia, which between them

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<sup>1</sup> This is the introductory chapter of “Oil Palm Expansion in South East Asia: Trends and Implications for Local Communities and Indigenous Peoples. (FPP & SawitWatch 2011).

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supply over 80% of the global market. Papua New Guinea, the third main exporter, has also received quite a bit of attention. But what is happening elsewhere in South East Asia? Is palm oil expansion having the same impacts there? Are these countries experiencing similar land grabs and social conflicts or are indigenous peoples and small farmers benefiting there? What can we learn from these other countries? How can we help civil society in these other countries engage with the industry and limit or reduce the negative effects?

This publication is an initial output of a project being undertaken to help answer these questions. As a collaboration of the Forest Peoples Programme, SawitWatch, the Samdhana Institute and Centre for People and Forests, all of which are partners and collaborators of the Rights and Resources Initiative, the project has sought to consolidate the available information from Indonesia, Malaysia and Papua New Guinea and supplement that with new research from Thailand, Cambodia, Vietnam and the Philippines, as well as the wider literature.

### *Methods and limitations*

This study results from the first year of this collaborative project, which aims, first, to assess how the palm oil sector is expanding in South East Asia and, second, to help civil society groups engage with the industry to restrain destructive developments and ensure outcomes favourable to people and forests, based on a respect for local people's rights, livelihoods and ways of living. During the first year, our efforts have focused on collecting information about the main trends in the palm oil sector in South East Asia, discussing problems and prospects and planning appropriate means of engagement in the future. Four national case studies were commissioned, which comprise the central chapters of this report, on Thailand, Cambodia, Vietnam and the Philippines and two workshops were convened to discuss the preliminary findings and analyse trends and solutions. The first workshop hosted by the Centre for People and Forests in Bangkok included participants from these countries but also from Indonesia, Malaysia and Papua New Guinea, at which participants were able to highlight the trends and challenges in their countries. A second workshop was then held in Bayanga village, just south of Cagayan de Oro on the island of

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Mindanao in the Philippines, hosted by the Samdhana Institute, which looked in detail at the current situation in the Philippines.<sup>3</sup>

The resulting report thus represents a snapshot of what we have been able to discern about the palm oil sector by these means. Time and budgetary limitations did not allow detailed field studies of locales except in the Philippines. In Thailand, we were not able to identify either a body of national research or independent NGO perspectives about land tenure issues in the areas where palm oil is expanding. In Cambodia, there is a lack of official data about land allocations. In Vietnam, where oil palm has yet to be developed, the implications of expansion for communities are, obviously, not yet clear. Despite these limitations we feel confident that the considerable body of information that we have been able to assemble is already sufficiently robust so that clear trends and problems can be identified and important conclusions can already be drawn about how the sector should be steered to minimise negative impacts. Meanwhile, the project itself is continuing.

*Market trends*

Rising global demand for edible oils remains the main factor driving up palm oil prices on the international commodity markets and this is encouraging further investment, stimulating trades in palm oil companies on the stock exchanges and accelerating land acquisition.

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Country	CPO export (metric tons)	CPO import	Total CPO production	World ranking in CPO production
<b>Indonesia</b>	14.8 million	21,000	19.7 million	1
<b>Malaysia</b>	13.84 million	1.047 million	17.4 million	2
<b>PNG</b>	405,000	5,000	425,000	6
<b>Thailand</b>	500,000	1,000	1.4 million	3
<b>Philippines</b>	n/a	10,000	70,000	16
<b>Cambodia</b>	n/a	n/a	n/a	n/a
<b>Vietnam</b>	n/a	480,000	n/a	n/a

*Table 1: CPO exports, imports and total production in 2008<sup>4</sup>*

Palm oil accounts for a third of the total 130 million tons per year of vegetable oil globally traded per year.<sup>5</sup> Total global production of palm oil is estimated at over 45 million tons, with Indonesia and Malaysia as the major world producers and exporters.<sup>6</sup> Major markets for the growing palm oil industry are Europe, India, Pakistan and China for edible use, with demand in the USA now rising rapidly.

Investment in palm oil expansion is also being stimulated by import substitution policies in countries currently reliant on global markets for imports of edible oils such as the Philippines, India and Vietnam and for countries hoping to reduce dependence on imported fossil fuels with biodiesel. With the global bio-fuel industry estimated to double between 2007 and 2017, as the fastest growing segment in global commercial agriculture<sup>7</sup>, both Indonesia and Malaysia have introduced policies to develop a bio-diesel industry both as domestic energy source as well as for export and targets producing 6 million tons of palm oil each year.<sup>8</sup> Cambodia's Office of the Council of Ministers has also initiated a bio-energy promotion plan which points strongly to the further expansion of oil palm plantations in the near future.

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*Planting trends*

<b>Country</b>	<b>Plantation area (hectares)</b>	<b>Planned expansion (hectares)</b>	<b>Patterns of production</b>
<b>Malaysia</b>	4.6 million	60,000-100,000/year mainly in Sabah and Sarawak	State-mediated leaseholds on State or customary lands. Large estates with most smallholders (SH) in schemes; few independents (10%)
<b>Indonesia</b>	9.4 million	10-20 million+	State-mediated leases for large estates on State lands. SH 40% area, half in schemes linked to estates and half independent
<b>PNG</b>	0.5 million	2 million – 5 million	Mainly “associated” smallholders schemes (90%), though SABLs and Nucleus Estate Model
<b>Thailand</b>	644,000	80,000/year	Mainly independent smallholders (70%)
<b>Cambodia</b>	118,000	n/a	Mainly large estates through ELC mechanism
<b>Philippines</b>	46,608	Potential for 304,350	Leaseback schemes and outgrower agreements between cooperatives and agribusinesses
<b>Vietnam</b>	650	70,000-100,000 by 2015	Experimental only

*Table 2: Oil palm plantation areas and production patterns*

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South East Asia is experiencing an expansion and intensification in the conversion of forest and swidden land to oil palm plantations. Optimal land to production ratio is achieved through oil palm monocultures over extensive areas of land, usually accompanied by the building of processing mills and roads for crop transport purposes. There are 4.6 million ha of oil palm plantations in Malaysia and most expansion is now occurring in Sabah and Sarawak. Land is now growing scarce: by 2002, expansion in Peninsular Malaysia was down to the last 340,000 ha of conversion forest.<sup>9</sup> Despite this, the Sarawak government plans to double the area under oil palm with a target of 60,000-100,000 ha per year on customary lands. The mode of expansion is in the form of large estates with most smallholders in schemes with State-mediated leaseholds on State or customary land.<sup>10</sup> Only 10% are independent smallholders.

Oil palm plantations are estimated at 9.4 million ha in Indonesia, where the most vigorous expansion is underway. Native land owners surrender their land to the State to be developed by private companies, usually but not always, with associated schemes for smallholders. Approximately 600,000 ha are cleared each year and expansion is relentless in Sumatra, Kalimantan, Sulawesi and West Papua and is now increasing on small islands such as Siberut, Halmahera and Yamdena.

Papua New Guinea's oil palm plantations cover around 500,000 ha and are located in West New Britain, Oro, Milne Bay and New Ireland. Recently, there has been a rapid spread of areas set aside for plantations through apparently fraudulent 'special agricultural and business leases' (SABLs) covering 5.6 million ha of customary lands without due negotiation with the traditional owners.

Cambodia's oil palm plantations, covering 118,000 ha, have expanded as large estates over substantial areas of so-called 'vacant' land in forested regions through the issuance of Economic Land Concession (ELC) whereby large allocations of state private land are granted to private companies in the name of large scale agricultural investment. Communities with informal or customary rights in these areas have been pushed aside.

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In contrast, large estates are rare in Thailand. The smallscale character of the Thai palm oil and oil palm industry allows a broader distribution of rents than might be the case in countries where a few big companies dominate the industry and individual land ownership is limited. Plantations cover 644,000 ha in total; farmers owning less than 50 ha manage approximately 70% of the total area planted with oil palm, and the majority are independent smallholders.

Oil palm plantations in the Philippines occupy 46,608 ha, representing a 160% increase in plantation area in the span of just four years. This suggests the Philippines may soon emerge as a key player in the palm oil industry of South East Asia. Expansion is projected in Leyte and Samar while aggressive expansion is already underway in Maguindanao, North Cotabato, Davao and Misamis Oriental. Production is organised in the form of leaseback schemes between Agrarian Reform Beneficiaries (ARBs) and agribusinesses, and outgrower agreements between farmers and agribusinesses.

As oil palm has only recently been introduced in Vietnam, it remains at the experimental stages of (non-commercial) plantation and production. Plantation is in the form of small parcels amounting to 650 ha. Available land is scarce due to the existing large scale production of other cash crops: rice; coffee; cashew nuts; rubber. However, plans to develop bio-oils are being considered as an option by the Vietnamese government as part of the 'Development of bio-fuels for the year 2015: vision to 2025' project (2007) with a projected 70,000 – 100,000 ha of plantations to be established by 2015.

The expansion of oil palm plantations is rapidly becoming a global phenomenon. In India, plantations are projected to reach 1 million ha in the next five years, from 130,000 ha at present.<sup>11</sup> Plantations are expanding in Nigeria, Ghana, Côte d'Ivoire, Congo, Guinea, DRC, Cameroon and Sierra Leone along with smaller areas in Benin, Burundi, Cameroon, the Central African Republic, Equatorial Guinea, Gabon, Gambia, Guinea Bissau, Liberia, Senegal, Tanzania, Togo and Uganda.<sup>12</sup> In Latin America, industrial-scale cultivation of oil palm is spreading in Ecuador, Colombia, Honduras, Costa Rica, Venezuela, Brazil, Peru Guatemala, the Dominican Republic, Nicaragua and Mexico.<sup>13</sup>

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*Environmental impacts*

The environmental impact of large scale oil palm plantations includes the tremendous loss of biodiversity, increase in Green House Gas emissions, massive deforestation, soil nutrient depletion, drought and desertification and water pollution from toxic waste. Paradoxically, palm oil is often promoted by governments of South East Asian palm oil producing countries as part of their climate change mitigation efforts as a source of renewable energy, despite growing evidence that palm oil is far from green, particularly due to the opening up of carbon-rich forests' peatlands to establish plantations.<sup>14</sup>

In Indonesia, the clearing of forest for oil palm plantation has caused devastating forest fires,<sup>15</sup> while in Thailand, it has been blamed for a horrific landslide that killed at least forty people in April 2011.<sup>16</sup> In Sarawak (Malaysia), PNG and Sumatra (Indonesia), oil palm plantations have contributed to severe pollution of local rivers, threatening both the livelihoods and physical well-being of local inhabitants.<sup>17</sup> In PNG, Cambodia and Indonesia, a worrying pattern is being witnessed whereby palm oil companies exploit their right to land for plantations to engage in illegal logging beyond their concession areas, at times encroaching onto conservation zones. In Indonesia, it is estimated that up to 12 million ha of land have been allocated to oil palm and deforested, but not planted, suggesting that many companies use palm oil schemes to obtain access to timber without the need for forest management plans.<sup>18</sup>

Nearly half of South East Asian oil palm plantations are created on some kind of primary or secondary forest land.<sup>19</sup> However, active implementation and consistent monitoring of environmental safeguards have generally failed to accompany the rapid expansion of oil palm plantations. Environmental Impact Assessments (EIAs) in Cambodia and Malaysia, for example, have been routinely neglected or superficially carried out, and their credibility further questioned by the lack of transparency of the monitoring process and outcomes.<sup>20</sup>

### *Land tenure and land security*

A convergence of global crises (financial, environmental, energy, food) in recent years has contributed to a dramatic reevaluation of and rush to 'grab' land, especially land located in the global South.<sup>21</sup> Locally, land-grabbing takes many forms and is normally associated with a lack of security faced by smallholders confronted with more powerful non-local interests employing various means to usurp rights to land previously owned or used by locals. This lack of security may be due to absence of clear and legally enforceable rights over landed property, or to tenancy arrangements that allow landlords to resume land, or to state claims to ownership of land under de facto occupation or use by local smallholders who face alienation in favour of large scale corporate interests.<sup>22</sup>

In the Philippines, 'leasebacks' between Agrarian Reform Beneficiaries (ARBs) and agribusiness firms, and outgrower agreements between farmers and agribusiness companies have been heavily criticised as being inimical to the rights and interests of small farmers. Some of the grievances reported by collectives include the lack of financial support to the farmer-beneficiaries, the vulnerability of smallholders to leaseback schemes from which they receive low rent, and unfulfilled promises of employment and other benefits. As a result, many of the farmers who enter such schemes remain impoverished while having abdicated access to and control of their lands.

In Cambodia, contracts for ELCs ostensibly do not violate the land and use rights of peasants since ELC contracts are meant to be only granted on state private land.<sup>23</sup> However, the categorisation of areas as state public and private land does not reflect reality. Existing Economic Land Concessions regularly encompass households' paddies, fields, grazing land, water and forest resources.<sup>24</sup> Moreover, although state, public and private property are differentiated in the 2001 Land Law, villagers can legally be evicted for ELCs or private investment interests. Since there is no public information on what exactly state public land is, it is difficult for the occupier to question the state's claims that they are living on state property.<sup>25</sup> The ambiguous nature of state land and the convenient transferability of state public land (such as forested, fallow, or non-

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private lands) to state private land facilitates land grabbing in rural Cambodia.

In PNG, lands held and managed under custom are regularly quoted as covering the vast majority of the country's land mass, 97% being the usually accepted figure. However, there are ways in which these lands can and have been alienated in fact, if not in law.<sup>26</sup> The Land Act (1996) allows long-term leases to be issued by the government over customary lands through a lease-leaseback process defined under the Land Act (1996) for periods of up to 99 years and the recipient of these leases can be non-indigenous companies.<sup>27</sup> Lack of clarity in the law about negotiation processes and the legal personality of landowner groups, coupled with the fact that many groups have little experience with the cash economy, have allowed plantation developers to manipulate landowners through bribery, through creating non-representative associations, and through making (often unfulfilled) promises of careful land management and provision of services.<sup>28</sup>

Between July 2003 and January 2011, almost 5 million ha of customary land (11 percent of PNG's total land area) were passed into the hands of national and foreign corporate entities through the 'lease-leaseback scheme' or SABL.<sup>29</sup> Another prevalent land tenure model in PNG is the Nucleus Estate model with a 'parent' palm oil company, predominantly foreign-owned. Under such a scheme, growers are organised into Village Oil Palm (VOP) and Leaseholders. VOPs are operated by landowners in their own customary lands. Leaseholders lease land from other landowners for the plantings. This model has been criticised as an 'out sourcing' exercise for palm oil companies to increase supply and profitability for their mills whilst sharing the costs and risks associated with this kind of industry with growers.

Finally, as a burgeoning palm oil producing country, Vietnam presents a worrying case in terms of land tenure mechanisms and the lack of land security provided to local inhabitants.<sup>30</sup> The complex nature of land laws is a serious obstacle to local people's ability to understand and act upon their rights as well as seek redress in instances of rights violations.<sup>31</sup> The system of normative legal documents for forest management, for example, is subject to

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frequent changes. The Land Law of 1993 has not been evenly implemented and varies largely across regions. Most problematically for indigenous peoples who have traditionally relied on and used land on a communal basis, the Civil Code 2005 does not recognise the community as subject of a civil legal relationship although legislation provides for common ownership by the community.

It is still too early to observe how palm oil plantation development for commercial purposes will affect Vietnamese local communities and indigenous peoples, but the experiences of other South East Asian countries provide only too clear an indicator of how unsuitable land tenure systems and the lack of land security for local inhabitants can undermine their livelihoods and customary rights to land when companies seek to acquire extensive areas of land for crops such as oil palm.

#### *Human rights standards and realities*

The forested regions of South East Asia are home to a large number of indigenous peoples and a remarkable diversity of ethnic groups. International human rights regimes have made major advances in recent years to clarify the rights of indigenous peoples in international law. The current consensus about indigenous peoples' rights, which evolved through standard-setting work at the International Labour Organisation and the United Nations Human Rights Commission and its various sub-commissions, has also been reflected in the jurisprudence of bodies set up to review the implementation of the various human rights treaties that many States have ratified. The resulting norms have been consolidated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which was adopted by vote at the General Assembly in 2007.

Among the key rights relevant to this article are the rights of indigenous peoples to the lands, territories and natural resources that they have traditionally owned, occupied or otherwise used, and the right to give or withhold their free, prior and informed consent (FPIC) expressed through their own representative institutions to measures that may affect their rights. In addition, the Declaration,

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among other existing international treaties, emphasises the importance of free, prior and informed consent of indigenous peoples to activities planned on their lands:

Article 32(2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their *free and informed consent prior to* the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources. (emphasis added)

Despite this, a common trend in palm oil producing South East Asian countries is the frequent, if not naturalised, neglect or misinterpretation of local inhabitants' right to FPIC. Of particular relevance in the case of oil palm development is the violation of rights of indigenous people in relation to their rights to land and land use, particularly since many of the areas where palm plantations are established are forested areas that have been inhabited by indigenous communities for generations according to customary laws and are of central importance to their culture, sense of identity and survival as a community. Even worse, land used or targeted for oil palm expansion is commonly claimed by the State as vacant, idle or degraded land, when in fact most of these areas are existing agricultural lands and indigenous customary lands, encumbered by customary rights and central to local communities' livelihoods and socio-cultural identities.<sup>32</sup>

The customary land rights of indigenous peoples in Sabah and Sarawak (Malaysia) remain unrecognised by the government, compounded with a lack of transparency in processes of land concession allocation and in land and forest governance frameworks and the fact that Native Customary Rights (NCR) are interpreted by the government as weak usufructuary rights on State lands.<sup>33</sup> In Indonesia, customary rights to land are recognised by the Indonesian Constitution but ineffectively secured and protected by other laws and implementing regulations. The Basic Forestry Law of 1967 and the revised Forestry Law of 1999 claim State ownership over all

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forests in Indonesia without sufficient consideration of customary rights and local traditions.

Frequently, the rights and customary institutions of indigenous peoples are not recognised and lack legal personality. Where they do, State-recognised village-level institutions may operate in ways that favour State control and are hindered from independently representing the interests of communities.<sup>34</sup> In PNG, the right to FPIC has been severely undermined since spatial plans and permits for oil palm often do not take account of customary land rights. Local communities are rarely provided with enough or any information concerning prospective or established oil palm expansions to make an informed choice in the first place.

In the Malaysian State of Sarawak, plantation smallholders have no direct voice in the management of the schemes since the *Konsep Baru* prohibits direct negotiations between communities and investors and requires State agencies to mediate in matching community lands with companies. In Vietnam, it is reported that ethnic minorities have gained less security in land and forests than the national majority (*Kinh*).<sup>35</sup> The individualising of land tenure in the agrarian reforms has caused ethnic minorities to lose access to land in the vigorous land markets that ensued, as has been reported among the Hmong.<sup>36</sup> Customary land use rights have been restricted and customary benefit-sharing arrangements are not formally recognised under statutory law.

The most progressive law in South East Asia to recognise indigenous tenure is the Philippines Indigenous Peoples Rights Act of 1997 (IPRA), which allows for the titling of indigenous peoples' ancestral domains as inalienable communal properties.<sup>37</sup> IPRA offers indigenous peoples a way of securing ownership over their lands as divided into two categories; ancestral domains and ancestral lands. However, indigenous people in the Philippines are particularly vulnerable to oil palm expansion in upland so-called vacant forested areas which investors are now targeting, despite some of these areas being covered by Department of Environment and Natural Resources (DENR) tenure instruments and recognised on paper as indigenous peoples' ancestral domains.<sup>38</sup>

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Upland communities in Thailand face similar insecurities, as most of their lands are classed as forests and are considered off-limits to community ownership.<sup>39</sup> Owing to strong mobilisation of upland dwellers, there are calls for the regularisation of collective rights, and a Community Forest Bill now at least provides a limited contractual framework for participatory forest management and related rights of forestland access and use for local communities and indigenous peoples.<sup>40</sup> However, to date, oil palm has mainly expanded in lowland areas in the south of the country where the relative security of tenure afforded to rural peoples by successive land reforms has led to the emergence of a relatively independent small-holder based system of oil palm development more favourable to local people.

*Resistance and repression*

Where oil palm plantations and palm oil production are carried out without FPIC and on customary lands without concern for customary uses and forms of land tenure, resistance and opposition by local communities and indigenous people tend to arise. Such conflicts are emerging in Cambodia and the Philippines and on the rise in Indonesia and Malaysia, where local communities are adopting various approaches to voice their opposition to State-sanctioned land-grabbing. Techniques of collective opposition range from strikes, petitions to government and non-governmental agencies and blockades to physical and armed attacks.

In Indonesia, Malaysia, PNG, the Philippines and Cambodia, local communities have turned to legal action in local and national courts of appeal. In Indonesia, the Consortium for Agrarian Reform (KPA) reports plantation-related social conflicts account for over a third of land conflicts in the country. In 2010, SawitWatch recorded more than 663 communities in conflict with more than 172 companies, with 106 arrests as a result of these conflicts.<sup>41</sup> In the same year, the National Commission on Human Rights received reports of no less than 10 cases of conflict related to palm oil in Kalimantan alone, and the actual number of cases is reportedly much higher. The national land agency has registered some 3,500 on-going land conflicts related to oil palm plantations.

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Several of these cases have been dealt with through police or military intimidation and sometimes fatal physical attacks and shootings.<sup>42</sup> Likewise, in Cambodia, over 60% of ELCs are currently under conflict, some of these having lasted over 10 years. Village residents are routinely intimidated by armed security guards hired by concessionaires if they try to enter into forest and plantation areas, or protest against encroachment.<sup>43</sup> In several areas, the actions of armed guards have resulted in violence, injury and death of village residents.<sup>44</sup>

Opposition to abusive working conditions and tenurial contract violations by workers' unions has arisen in the Philippines in the form of strikes, legal appeals and court cases, some of which remain unresolved and have led to the temporary cessation of oil palm production and processing activities. Some of these cooperatives have already turned to NGOs and other support organisations nationally and internationally for support in their case against oil palm investing companies.

Conflict does not only occur between local communities and palm oil companies or the State. They also result from growing divisions within many local communities as a result of the untransparent negotiations by community leaders with companies without involving community member, as exemplified by numerous inter and intra-clan conflicts in PNG. Such disputes are now a major issue with more than 50% of court cases related to land. Conflicts between local communities and migrant plantation workers have also been reported in Indonesia, Malaysia, Cambodia and Thailand.

*Smallholders', workers' and women's rights*

The development of monopsonistic relations between smallholders and oil palm companies has led to widespread abuse and violation of their rights. Ambiguity regarding the value of their land and the terms of lease have led to numerous smallholders, and particularly indigenous peoples, selling their land for derisorily low prices and for undetermined periods of time. The conversion of former farmland to cash crop plantations forces smallholders into a cash-based economy in which their food security is diminished and their use of land restricted by the oil palm companies. When forced into

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dependency on the companies due to financial and technical constraints, smallholders are the first victims of fluctuating prices for crude palm oil (CPO) on international markets. Lacking the capital and liquidity to absorb production and market failures, they rapidly fall into debt.

As the case studies published below show, in Indonesia, Malaysia and Cambodia, subcontracted migrant workers, particularly vulnerable to work and human rights abuses, are being lured by companies with false promises of land and employment; when they do succeed in finding a job, they tend to be overworked and underpaid.<sup>45</sup> This is exacerbated by untransparent and delayed remuneration and the fact that workers are regularly charged extra fees for transport and debt repayment. Hiring and firing workers remains the prerogative of the companies.

Female plantation workers are particularly affected by the increased dependence on cash resulting from the decrease in agricultural land as men tend to receive and control cash income, as has been reported in Indonesia, the Philippines and PNG.<sup>46</sup> Rights of women to inherit land according to customary law in West Kalimantan have been narrowed by the 'household head' system of smallholder plot registration.<sup>47</sup> In the Philippines, collective titling of land to cooperatives has undermined the position of women in terms of decision-making and led to their exclusion from employment opportunities.

Those women who do find work on the plantations tend to be relegated to the status of sprayers of pesticides and fertilisers and are subject to severe health hazards posed by chemicals such as paraquat.<sup>48</sup> With the exception of Thailand, little training on the safe use and potential risks of these chemicals is made available to them, compounded with poor medical facilities, lack of suitable protective equipment and the weak or nonexistent implementation of safety regulations.<sup>49</sup> Finally, the pressure on women to provide for their families despite the conversion of traditional farmlands to oil palm plantations forces them to seek alternative sources of income as migrant workers. In Cambodia, Indonesia, PNG and the Philippines, prostitution is reportedly on the rise, leading to an increased

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prevalence of HIV/AIDS and other STDs among female plantation workers.

*Problems at the mill*

The processing of oil palm fruit bunches at the mill must be completed within 48 hours to guarantee the quality of the extracted oil. Smallholders are often dependent on the companies for transport to and from the certain mills which they are bound to by their contract, and are regularly charged for use of these facilities.<sup>50</sup>

The case of Thailand is an exception. In most cases Thai oil palm farmers act completely independently from the oil palm crushing mills and are not linked to mills by contracts or any other formal arrangements. In a few cases, farmer cooperatives have even managed to establish their own cooperative mill with government support. Since big plantations are rare, Thai oil mills strongly depend on purchasing FFB from independent oil palm growers, most of whom are smallholder farmers. This leaves the farmers and especially the intermediaries in a good bargaining position to achieve the highest possible price since they are free to decide where and to whom they sell their produce.

*Conflict and redress*

Central to any rights-based regime is the provision of means of redress to victims of abuses. This right includes an “awareness of rights by potential plaintiffs; access to legal counsel; active, unbiased policing; formal establishment of judicial, administrative, and other remedies; access to courts; an independent judiciary; just enforcement of penalties; and, not least of all, protection of plaintiffs and witnesses and of court officials, judges, and other State officials from intimidation and violence.”<sup>51</sup> Conversely, it is generally the lack of proper means of conflict resolution that is the most obvious reason that disputes escalate into conflicts.

In some countries, indigenous peoples’ rights are neither adequately guaranteed by law nor adequately protected in practice. Even when customary rights might be recognised in the Constitution, in national legislation and the UNDRIP, they may be relegated to a secondary position when overlapping with national environmental and land

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laws, as is generally the case for oil palm plantations. In general, the recognition of indigenous peoples' rights and/or the tenurial security of local communities remain weak. Further exacerbating this is the lack of respect for Court Rulings by companies, governments and State administrations, and the corruption that undermines the value of these legal mechanisms of redress.

In PNG, where land leasing processes have been manipulated, manufactured or falsely presented, there is no effective avenue for redress, thus allowing customary lands to be alienated for up to three generations while still classed as land held under custom. There is real and growing concern that the protections offered by the Land Act are insufficient for customary owners with little access to the national judicial system. In Cambodia, village residents have appealed to local, provincial and national authorities for help, which unfortunately has not been forthcoming. Instead, public officials have generally shown a bias in favour of companies and have attempted to intimidate village residents to stop making complaints.<sup>52</sup>

In the Malaysian State of Sarawak, over one hundred land disputes, many with palm oil companies have been taken to the local courts and some of these have been adjudicated in the higher courts. In a number of such cases in the higher courts, judges have upheld native peoples' land claims as consistent with the Malaysian Constitution and common law principles. Rather than recognising this, the Land Code in Sarawak has been amended several times in an effort to further frustrate indigenous peoples' land claims.<sup>53</sup>

Many cases related to land conflict and oil palm plantations end up backlogged in the courts for as long as fifteen to twenty years<sup>54</sup> obliging communities to invest time, money and energy to press cases through the civil courts.<sup>55</sup> Governments too have been slow in amending the laws in favour of indigenous peoples. Political connections and corruption continue to undermine attempts by local inhabitants to effectively utilise mechanisms of redress in the face of investors and State-sponsored companies.

### *Challenges with certification*

The Roundtable on Sustainable Palm Oil's (RSPO) standards for the certification of sustainable palm oil were adopted in 2005. The standard is designed to divert palm oil expansion away from primary forests and areas of high conservation value, requires the recognition of customary rights in land, obliges growers to only acquire lands with the free, prior and informed consent of prior rights-holders, makes it mandatory that operations respect the rights of workers', migrants' and women' and pay fair prices to smallholders.<sup>56</sup>

Originally developed mainly to suit large palm oil estates, the standards require detailed annual audits of mills and their supply bases as well as audits of the 'chain of custody' to ensure produce from uncertified plantings does not get accepted into the certified supply chains. However both the Indonesian and Malaysian governments have raised concerns that the voluntary standards of the RSPO are too high and they have instead pledged to develop mandatory national standards for each country.<sup>57</sup> NGOs, on the other hand, have complained that RSPO members are getting certified when their independent reviews suggest that the companies do not comply with the RSPO standards.<sup>58</sup>

Aware that the standards and procedures of the RSPO were ill suited to small-holders, the RSPO set up a Task Force on Smallholders which through several years of consultation has elaborated revised standards designed for both smallholders in schemes contractually linked to specific mills and for the group certification of independent smallholders. The standard for group certification have yet to be proven workable and there are a number of procedural steps that the RSPO has not yet worked out to make it possible for independent growers producing fruits to get certified for sustainable palm oils, while it is still unclear if and how the RSPO will provide means to make the onerous task of group organisation and certification affordable.<sup>59</sup> As the Thailand case study explores in greater detail, there are good reasons for concern that unless the barriers of cost and feasibility are somehow lowered, palm oil certification may actually end up excluding oil palm smallholders from global markets.

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*Conclusions and recommendations*

The palm oil sector worldwide is in a phase of rapid expansion. This expansion is being strongly challenged by national and international civil society organisations that have shown that indiscriminate land acquisition and land clearing for oil palm is leading to rapid habitat loss and species extinctions, alarming green-house gas emissions, the dispossession of indigenous peoples, and the immiseration of the rural poor.

Rising global demand for edible oils and biofuels, global trade, escalating commodity prices and surging international investment are among the main drivers of this expansion. But domestic considerations are also significant. National governments are promoting oil palm to meet rising domestic demand for edible oils, to reduce their countries' dependency on imported fossil fuels and to limit their loss of foreign exchange. Moreover, where the circumstances are favourable, small scale farmers themselves are choosing to plant oil palm as a lucrative crop.

The various countries assessed in this review have very different systems of land tenure and very diverse laws that are meant to regulate how lands are acquired by businesses. The countries also vary a great deal in the extent to which there is rule of law and people have access to justice.

The combination of similar drivers of expansion with different legal and land tenure contexts is thus generating quite different patterns in different countries and the consequences of oil palm expansion for local communities and indigenous peoples are thus also very varied. Comparison of these national experiences suggests that where, as in Thailand and Papua New Guinea, farmers' and indigenous peoples' lands are somewhat secure and where there is rule of law, oil palm tends to develop modestly as a small-holder crop with better outcomes for local people in terms of income, equity and livelihoods. In Thailand, indeed, mills have expanded faster than the crop, giving smallholders the advantage of being in a sellers' market.

However, where land rights are insecure or law enforcement weak, as in Cambodia, Sarawak and Indonesia then oil palm tends to be

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developed as very large company-owned estates or as small-holder schemes that provide little security for growers. Where mills are few and far between, smallholders are in a monopsonistic relationship with mills and have little leverage to bargain for better prices and secure fair treatment.

A familiar pattern in all areas where large estates are being established is that lands are being acquired with little respect for the customary rights of indigenous peoples or prior land use by other poorer sections. This is causing resentment and ensuing land conflicts, which in turn leads to the deployment of security forces and human rights abuses.

Another unfortunate pattern that is observable from the country case studies is that palm oil production seems to be encouraging the employment of cheap labour with poor protections of workers' rights. Low wages for workers on estates are common in Indonesia and Cambodia. In Malaysia a very large proportion of the workforce are in fact migrants from Indonesia whose conditions have been the subject of bi-national investigations. There are also serious labour disputes on the estates in the Philippines. Even in Thailand, a large proportion of the labour force on smallholdings are not in fact the landowners but poor migrants, such as landless tribal people from the north of the country, as well as people from Burma and Cambodia.

The implications of these findings are clear. To ensure that oil palm only develops in beneficial ways, voluntary standards of organisations such as the Roundtable on Sustainable Palm Oil need to be backed up by national tenurial and governance reforms which make mandatory requirements that ensure local peoples' land rights really are respected and protected and workers' rights are secured. Without such protections, expansion is likely to benefit investors, traders and national elites at the expense of indigenous peoples, the rural poor and vulnerable ecosystems.

## **Endnotes**

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- <sup>1</sup> Director, Forest Peoples Programme
- <sup>2</sup> Assistant to the Director, Forest Peoples Programme
- <sup>3</sup> The project did not include Burma because the political situation there prevents independent scrutiny and we also excluded Laos and southern China because preliminary information suggests that the strongly seasonal climatic regimes in these countries do not suit large-scale palm oil cultivation.
- <sup>4</sup> Butler 2010.
- <sup>5</sup> WWF 2009.
- <sup>6</sup> Ravanera & Gorra 2011
- <sup>7</sup> UN 2009
- <sup>8</sup> Thoenes 2006.
- <sup>9</sup> Jomo et al 2004.
- <sup>10</sup> Vermeulen & Goad 2006.
- <sup>11</sup> Mishra & Parija 2011.
- <sup>12</sup> Carrere 2011.
- <sup>13</sup> WRM 2006.
- <sup>14</sup> Down To Earth 2011a, Tiominar B 2011.
- <sup>15</sup> Faryadi 2009
- <sup>16</sup> Pongphon Sarsamak 2011.
- <sup>17</sup> Tiominar 2011.
- <sup>18</sup> Borras & Franco 2011, Butler 2007.
- <sup>19</sup> WRM 2006.
- <sup>20</sup> Colchester et al 2007b.
- <sup>21</sup> World Bank 2010, Hall 2011.
- <sup>22</sup> Hirsch 2011:1-2, Borras & Franco 2011, Sikor & Lund 2009.
- <sup>23</sup> Oberndorf 2006.
- <sup>24</sup> Schneider 2011:11-12.
- <sup>25</sup> CHRAC 2009:67.
- <sup>26</sup> Filer 2011.
- <sup>27</sup> Department of Lands and Physical Planning, Papua New Guinea 2005.
- <sup>28</sup> Colchester 2004.
- <sup>29</sup> Hance 2011.
- <sup>30</sup> Nguyen et al 2008a.
- <sup>31</sup> USAID 2001.
- <sup>32</sup> Borras & Franco 2011.
- <sup>33</sup> Seng 2000, JOANGO Hutan 2006.
- <sup>34</sup> Sirait 2009.
- <sup>35</sup> Colchester & Fay 2007, Corlin 2004.
- <sup>36</sup> Corlin 2004.
- <sup>37</sup> Gorre et al 1997.

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<sup>38</sup> Borras et al 2011.

<sup>39</sup> *ibid.*:3.

<sup>40</sup> Vejjajiva 2008, Childress 2004, USDOS 2006, USDOS 2008, Liddle 2008

<sup>41</sup> Komnas HAM-SawitWatch 2010

<sup>42</sup> FPP 2011b.

<sup>43</sup> O'Keefe 2009.

<sup>44</sup> UNHCHR 2004.

<sup>45</sup> Mongabay 2008, Naro 2011, Tiominar 2011, Guttal 2006.

<sup>46</sup> WRM 2009.

<sup>47</sup> White J & B 2011.

<sup>48</sup> Smolker et al 2009.

<sup>49</sup> WRM 2006.

<sup>50</sup> Colchester & Jiwan 2006a.

<sup>51</sup> Colchester 2008:24.

<sup>52</sup> Guttal 2006.

<sup>53</sup> IDEAL 1999, Attorney General 2007.

<sup>54</sup> Colchester et al 2007a.

<sup>55</sup> *ibid.*:81.

<sup>56</sup> FPP 2008.

<sup>57</sup> Reuters 2011, Adnan H 2011, Jakarta Post 2011, DTE 2011b.

<sup>58</sup> The Economist 2010, Greenpeace 2008, Greenpeace 2007, Mongabay 2011.

<sup>59</sup> Colchester 2011.