

German Government Development Assistance and the Indigenous Peoples of Indonesian Borneo

Policy Briefing

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Key Points

Under International Human Rights Law, Indigenous Peoples have rights to their customary lands and territories, self-determination, exercise their customary law and give or withhold their Free, Prior and Informed Consent to measures that may affect their rights.

The German Government has ratified ILO Convention 169 to uphold these rights all around the world and both the Ministry of Development Assistance (BMZ) and the German Technical Assistance Agency (GIZ) have clear policies on how these rights must be upheld in overseas aid programmes.

The Indonesian Constitution also upholds these rights and, although a framing law on Indigenous Peoples' rights is lacking, existing regulations allow them to prove their existence to regional governments, get recognition of their territories and register their customary forests.

The provincial government in West Kalimantan already recognises the existence of indigenous peoples and has recognised customary territories and forests. In Kapuas Hulu District some 800,000 ha of indigenous lands have already been mapped and one customary forest has been recognised.

Although GIZ's joint projects with the local governments in Kapuas Hulu, related to land use planning, conservation, and sustainable commodity production, overlap Dayak peoples' lands, field investigations show that no measures have been undertaken to advance recognition of their rights.

Local NGOs and Indigenous Peoples' organisations have called on BMZ to revise its approach so that its projects uphold, instead of marginalise, indigenous peoples in line with international human rights law and German Government policies, and build on the initiatives of the local governments and the efforts of the self-determining Dayak peoples.

Inter-governmental and bilateral development agencies providing funds and technical assistance to developing countries have to tread a delicate path. On the one hand, they should uphold their own standards and due diligence, on the other hand, they need to respect host government laws, priorities, and policies. 'Country-led' development assistance is what most aspire to but when countries' laws and procedures fail to respect human rights and uphold international conventions, then development agencies' 'safeguard policies' are designed to ensure that, at the least, their interventions 'do no harm'.²



Dayak systems of land use include upland rice farming, agroforestry, forest foraging and animal husbandry

During the Suharto era, the gap between international standards related to indigenous peoples and Indonesian government policies was very wide. Indonesia's policies sought coercive cultural change, required forced sedentarisation of dispersed and mobile peoples, and encouraged the take-over of indigenous peoples' territories by natural resource-based enterprises without taking account of customary rights. The aim was to 'modernise' the diverse peoples of the archipelago, by force if necessary, and mould them to conform to the national identity and development path.³ Many of the international development agencies, including the World Bank, set aside their own policies and allowed their financing to be used to pursue the Indonesian Government's ethnocidal approach, generating an international controversy when this double-dealing was spotted by NGOs.⁴

Since *reformasi*, the Indonesian Government's policies towards indigenous peoples have been moderated,⁵ the Constitutional Court has upheld indigenous peoples' customary rights and new regulations have been put in place which, while onerous, allow indigenous peoples to be recognised and their rights to their territories, lands and 'customary forests' to be better protected. These changes reflect, to a limited degree, the major changes in international human rights laws which now uphold indigenous peoples' rights, replacing 20th century integrationism with 21st century multi-culturalism and self-determined development.

To what extent has the German Government's development assistance programme in Indonesia kept pace with these changes? This report summarises the findings of a collaborative engagement by NGOs to examine the way Germany's Technical Cooperation Agency (GIZ) is dealing with indigenous peoples in Indonesian Borneo, with a focus on West Kalimantan.⁶



Marcus
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Most Malay villages in Kapuas Hulu are sited on river banks.

Indigenous Peoples' rights in international law

The past fifty years have seen major advances in international law regarding the rights of indigenous peoples. The question of their status under international law has been sharpened ever since 1966 when the United Nations adopted the twin International Covenants on Civil and Political Rights and on Economic Social and Cultural Rights. In shared Article 1 of these Covenants, the United Nations affirmed:

(1) *All peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

(2) *All peoples may, for their own ends, freely dispose of their natural wealth and resources... In no case may a people be deprived of its own means of subsistence.*

Building on a history of concern for the exploitation of 'native peoples' in the 1920s, the International Labour Organisation adopted Convention 107 in 1957 on Indigenous and Tribal Populations in Independent Countries. The Convention upheld these 'populations' rights to customary lands which was framed by the expectation that such peoples needed protection for so long as they had not been integrated into the national mainstream. The Convention was revised as Convention 169 on Tribal and Indigenous Peoples in 1989. While the Convention explicitly avoided ruling on whether such peoples enjoyed the right to self-determination it did emphasise their right to maintain their identities, to self-governance, to pursue a self-chosen development path and to choose how they be represented. The Convention also upholds their rights to exercise their customary law, to own and control their lands and territories based on custom, in accordance with the legal doctrine of 'aboriginal rights'. The Convention also upholds their right to the restitution of their lands 'wherever possible', or otherwise the provision of equivalent land for the land lost. Importantly, the Convention also places an obligation on States to seek to obtain their Free, Prior and Informed Consent.

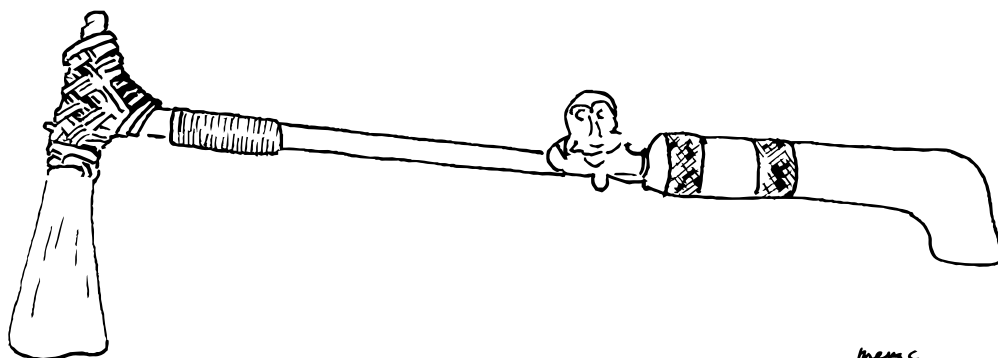
ILO's Convention 111 on Discrimination in Employment and Occupation, also has importance for indigenous peoples, as it protects

their traditional occupations, such as shifting cultivation and forest use, which are directly dependent on communities maintaining rights to their lands and forests.⁷

Meanwhile, parallel developments in human rights law advanced in the United Nations. Ever since 1977, when representatives of the indigenous peoples of North America approached the United Nations Decolonization Committee to renegotiate their treaty rights with the USA, the UN has devoted close attention to the question of what rights indigenous peoples do enjoy under international human rights law. Although the UN did not permit indigenous peoples to pursue their claim through the Decolonization Committee, it did commission several investigations into the status of indigenous peoples worldwide including a general study on their situation and status,⁸ and, later, a specific study on the status of treaties.⁹

The initial study led to the setting up of a Working Group on Indigenous Populations, which after ten years of hearing evidence on standards and recent developments, elaborated an initial draft of what eventually became, after two decades of negotiations, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The 2007, UNDRIP, as agreed by the vast majority of States party to the General Assembly, enshrines the rights of indigenous peoples to self-determination, albeit within the framework of existing States. It upholds their rights to: the ownership and control of the customary lands, territories and natural resources they have traditionally owned, occupied or otherwise used; exercise their customary law; represent themselves through their own institutions; give or withhold their Free, Prior and Informed Consent to measures that may affect their rights; control and share benefits from their traditional knowledge and; restitution and remedy, especially of their lands and territories.

A substantial body of jurisprudence has also been developed by the various bodies of the United Nations which oversee the implementation of the International Covenants and Conventions. These provide a great deal of guidance on how the human rights of indigenous peoples should be applied in practice.¹⁰



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Mixed wet rice and rubber cultivation, Kapuas Hulu.

German Government Policy towards Indigenous Peoples

The German Government has a strong policy to uphold human rights, domestically, in its foreign relations and specifically with regard to Indigenous Peoples. In Article 1 of its ['Basic Law'](#), Germany has committed itself to 'inviolable and inalienable [human rights](#)' as 'the basis of every community, of peace and of justice **in the world.**' The Government states that 'it takes this obligation seriously, at home and in its relations with other states. [The protection and strengthening of human rights](#) play a **particular role in the context of foreign policy and international relations**, as systematic human rights violations are often the first step towards conflicts and crises'. Moreover, 'as a member of the Council of Europe, Germany works with partners in the [European Union](#) and the [United Nations](#) to protect and improve human rights standards **around the world**'.¹¹ (emphasis added)

German Development Assistance is overseen by the Federal Ministry for Economic Cooperation and Development (BMZ),¹² which, in conformity with the Basic Law, has a strongly articulated commitment to uphold human rights. According to BMZ's policies: 'Human Rights are a guiding principle for German Development Policy'. Moreover, recognising that structural exclusion has had and continues to undermine the rights of indigenous peoples, BMZ's policy notes that 'protecting the human rights of indigenous peoples on all continents remains a challenge for the future...' BMZ avers that 'conflicts over natural resources can only be resolved and sustainable development achieved if indigenous peoples are directly involved in decisions which affect them' and 'active participation of indigenous peoples in public life is one of the rights enshrined in ILO Convention 169 and is essential for the realisation of their human rights.' To achieve such conflict resolution and ensure effective participation 'the principle of Free, Prior and Informed Consent must be adhered to in the planning of measures which may affect indigenous peoples and local communities'.¹³

In response to criticism of the implementation of its policy on human rights, BMZ insists that its human rights policy is intended to benefit 'structurally disadvantaged' groups such as indigenous peoples. Furthermore, to ensure it is responsive to concerns BMZ notes that it is 'reviewing its complaints procedure to ensure it is suitable, including for indigenous peoples'.¹⁴

When the German Government ratified ILO Convention 169 in 2021, it issued a joint statement with the ILO which noted that 'Germany supports international efforts to protect, respect and implement the rights of indigenous and tribal peoples and improve their living and working conditions in the countries where they live'. The statement continued 'Germany's ratification also constitutes a sign of solidarity with these groups, whose role is crucial for the achievement of the sustainable development goals (SDGs), particularly SDGs 10 (reduction of inequalities) and 16 (peace, justice and strong institutions)'. In a Statement to the media the Federal Minister of Labour and Social Affairs explained:

*Indigenous peoples, whose very existence is under threat all over the world, are often excluded from the political, economic and cultural life of their countries... Germany is thus expressly affirming its commitment to the Convention's objectives.*¹⁵

Germany has two main agencies to implement its bilateral development assistance through the provision of credit or grants for agreed projects through its financial assistance agency (KfW)¹⁶ and the provision of personnel and budgets to implement projects on the ground through its technical assistance agency (GIZ)¹⁷. GIZ has its own human rights policy in which it notes that:

*GIZ stands for human rights. In line with our Corporate Principles, we recognise human rights as a particular area of responsibility for GIZ... We work around the globe to help people improve their living conditions, making a substantial contribution to promoting and fulfilling human rights in the political, civil, economic, social and cultural spheres... We work to counteract risks in order to prevent or minimise any unintended adverse impacts on human rights as a result of our activities.*¹⁸

In its wider portfolio of projects, GIZ has a number of initiatives specifically aimed at supporting indigenous peoples such as the project titled 'Living lands: Promoting human rights for traditional peoples and communities in Brazil'¹⁹ and more widely a project 'Promoting protection and sustainable management of indigenous areas in the Amazon'²⁰

In Brazil and Colombia, it also has a project called 'REDD Early Movers (REM) Indigenous benefit sharing' and it has similar initiatives to support indigenous peoples in the Philippines and other countries.²¹

GIZ has also developed a 'Guiding framework: human rights in biodiversity conservation' which explicitly upholds Indigenous Peoples' self-determination, their collective rights, access to lands territories and resources, consultation and Free, Prior and Informed Consent.²² Importantly, this policy notes that:

*[E]ven in country contexts where no relevant national legal frameworks are in place, or where ILO Convention No. 169 has not been ratified, the aforementioned two covenants [ICESCR and ICCPR] still have a binding legal effect... our advisory services will also focus on working towards the involvement of indigenous peoples, even if the partner country has no such requirements, if such requirements are inadequate, or if partner governments do not recognise indigenous peoples as such in their country. In our project-specific activities, we will ensure that indigenous peoples are appropriately involved.*²³(emphasis added)

In comparison with the policies of most other development agencies, German policy commitments to uphold the rights of indigenous peoples are among the best.²⁴

Indigenous Peoples' rights in Indonesian Constitutional and Statutory Law

As a member of the United Nations, the Republic of Indonesia is subject to the UN Charter and UN Declaration on Human Rights and the other key instruments in the Bill of Rights, notably the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, both of which Indonesia has ratified. Indonesia has also ratified the UN Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Elimination of Discrimination against Women, the UN Convention on the Rights of the Child and the UN Convention against Torture. Indonesia also voted in favour of the adoption of the UN Declaration on the Rights of Indigenous Peoples at the UN General Assembly and now plays a prominent role in the UN Human Rights Council, currently in representation of the Asia-Pacific Region from 2024-2026. Indonesia has also ratified ILO Convention 111, one of the core labour conventions. All this provides a strong basis for insisting that Government-to-Government agreements with Indonesia should invoke and uphold human rights including the rights of indigenous peoples.

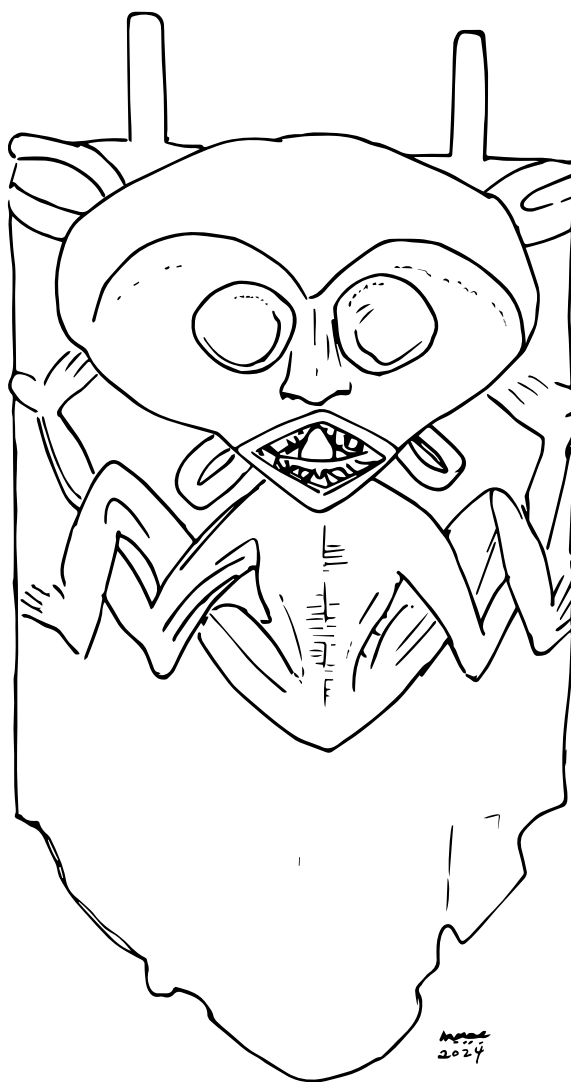
The UN treaty bodies have repeatedly expressed concern about the continuing delays in the Indonesian legislature to pass a long-promised framework law protecting the rights of indigenous peoples. In successive reviews of Indonesia's compliance with its international obligations, the UN treaty bodies have insisted on the importance of Indonesia recognising and protecting the rights of indigenous peoples to their customary lands, and on the need for Free, Prior and Informed Consent before their lands and natural resources are taken over for national development. The treaty bodies have raised these concerns with respect to plans to develop extensive oil palm plantations along the Indonesian border with Malaysia in Kalimantan, on the Merauke Industrial Food and Energy Estates programme in Papua, on the impact of sugar plantations on the indigenous peoples of Aru Island and on the way indigenous peoples' rights were not being addressed in initiatives to Reduce Deforestation and Forest Degradation (REDD+).²⁵

These shortcomings in the way Indonesia fails to protect the rights of indigenous peoples in line with its international obligations, are also anomalous in view of the fact that the Indonesian constitution, as revised in 2000, expressly upholds the rights of 'indigenous peoples' (*masyarakat hukum adat* - MHA) 'so long as they still exist' and in line with 'progress and civilization'. Moreover, Law 39 of 1999 on Human Rights expressly requires the State to uphold international human rights laws ratified by Indonesia. Indonesia also has a National Plan to implement Human Rights, including with respect to indigenous peoples.²⁶ The need for a framework law to protect indigenous peoples' and local communities' rights in lands was highlighted by the Legislative Act of the People's Consultative Assembly on 2001 (TAP MPR IX/2001) which, after an exhaustive review of the situation on the ground and in the law, instructed the legislature to pass laws to regularise such land rights.²⁷ The Government-appointed Human Rights Commission has also issued a detailed report, again based on detailed enquiries in the field, calling on the Government to recognise the communal rights of indigenous peoples in forests.²⁸ Yet the long-promised Framework Law on Indigenous Peoples' Rights has remained stuck in the House of Representatives for almost 15 years, despite being regularly listed as a priority bill for consideration in successive governments' national legislative programmes (PROLEGNAS).

In 2012 the Constitutional Court gave a decisive ruling that indeed indigenous peoples, 'so long as they still exist', do have rights to their territories and forests, and that such customary forests are not part of State Forest Areas. Accordingly, after some prevarication and delay, and in the absence of a framework law, the Government agreed an interim

process,²⁹ by which regional governments, at either provincial or district levels, can recognise that indigenous peoples exist through local legislative acts (PERDA) and can then pass decrees (SK) recognising the rights of specific indigenous peoples to their territories (*wilayah*). Where these *wilayah* overlap areas classed as forests these should then be designated by the Ministry of Environment and Forestry as customary forests (*hutan adat*). Such customary forests should then be excised from State Forest Areas and be reclassified as being part of 'Rights Forests' (*Hutan Hak*).

Despite these advances, the great majority of forests in Indonesia are still classed as State Forest Areas, with only 221,000 ha of customary forests having been recognised by August 2023, out of a total forest estate of 126 m ha.³⁰ Consequently forestry permits in State Forest Areas continue to be handed out without respecting indigenous peoples' customary rights and without any prior consultation. Likewise in non-forest areas initial permits (*Ijin Lokasi* and IUP) for the developing of agribusiness concessions are issued without customary rights being considered, while for companies to acquire permits to actually establish plantations (HGU), the businesses have to first persuade communities to surrender their lands, a procedure which effectively extinguishes their customary rights in perpetuity. Consequently, there are 1000s of land conflicts all over Indonesia between companies and local communities, who realise they have been cheated of their rights, often by false promises. This process of marginalization and dispossession continues.³¹



Indigenous Peoples' rights in West Kalimantan and Kapuas Hulu

The indigenous peoples of Borneo, today referred to collectively as Dayak, have inhabited the island for several thousand years and comprise several hundred distinct peoples speaking different languages of the Austronesian language group.³² They continue to make up about 35% of the population of West Kalimantan (see Map 1) and claim customary rights to a large part of the province. Another 34% of the population identify as Malay (*Melayu*), many of whom are descendants of Dayak peoples who have converted to Islam since the 15th century.³³ Many of the Malay communities also claim customary rights in land, some in accordance with the customary law of their Dayak ancestors, others as their inheritance under the customs of the Malay sultanates, which were abolished after independence.



Map 1: Indicative map of Dayak language distribution in Indonesian Borneo.
Source: Institut Dayakologi

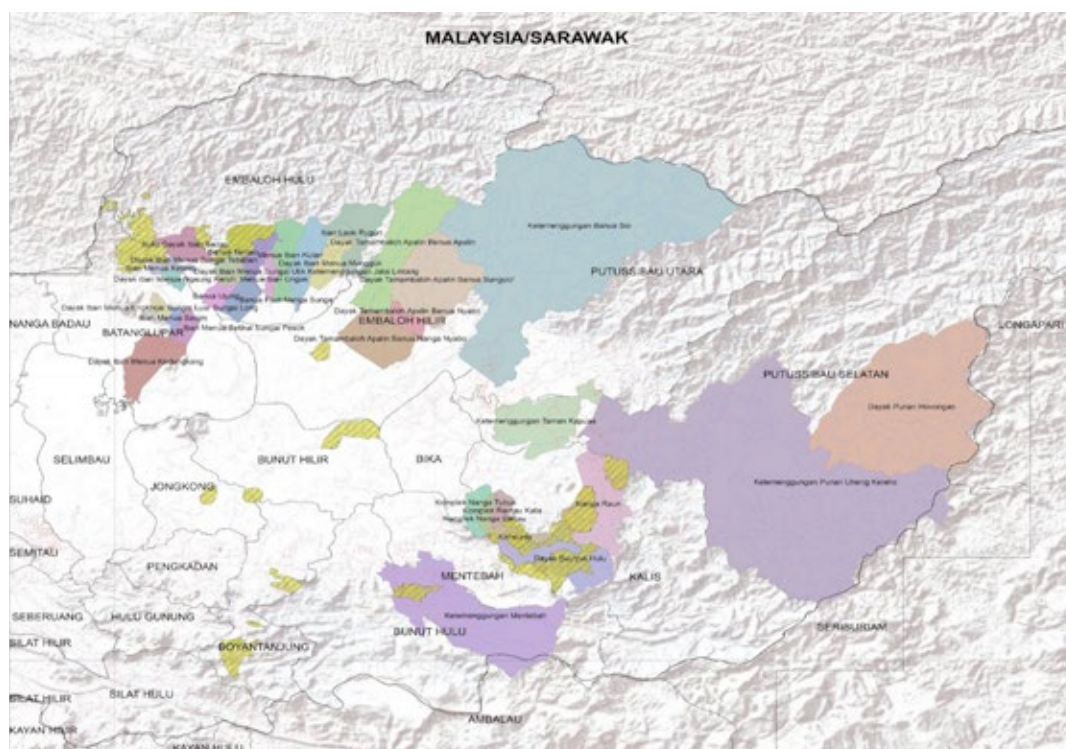
The Provincial Chapter in West Kalimantan of the National Indigenous Peoples' Organisation (AMAN),³⁴ notes that about 8.2 million hectares (m ha) of the province is now classed as forest including almost 2 m ha handed out by the government as forestry concessions for logging (IUPHHK) and pulp-and-paper plantations (HTI).³⁵ In addition there are some 4.5 m ha of oil palm concessions (HGU) and almost 900,000 ha of legalised mines. According to AMAN KalBar, the process of confiscation of customary territories still continues and the overall development policy of the State is not yet in favour of traditional communities. Due to the lack of a national law on indigenous peoples, as noted above, in West Kalimantan there is still uncertainty in the law about the location and extent of indigenous peoples' traditional territories, resulting in extensive overlaps between State Forests, land and forest concessions and indigenous peoples' customary rights.

Number Kode	Legend	Nama Subseksi	Number Kode	Legend	Nama Subseksi	Number Kode	Legend	Nama Subseksi
001		ANGAN	052		KENJAL	102		PUNAN
002		BADAT	053		KENYLU	103		PUNTI
003		BAKAT	054		KEPUAS	104		RANDU
004		BALANTIATN	055		KERABAT	105		RANGA
005		BANYADU'	056		KERAMAY	106		RANTAWAN
006		BANYUKE	057		KETOR	107		REMBAY
007		BARAI	058		KETUNGAU	108		SALAKO
008		BATU ENTAWA'	059		KETUNGAU SESAE'	109		SAM
009		BAYA	060		KODATN	110		SANE
010		BEGINCI	061		KOMAN	111		SANGKUP
011		BEHE	062		KONYEH	112		SAPATOI
012		BENAWAS	063		KOWOTN	113		SAWAI
013		BI SOMU	064		KRID	114		SEBARU'
014		BIHAK	065		KUBITN	115		SEBERUANG
015		BUPUNG	066		LAMANTAWA	116		SEKAJANG
016		BUGAU	067		LAU'	117		SEKAPAT
017		BUKET	068		LAUR	118		SEKUBANG
018		BUKIT TALAGA	069		LAYA	119		SEKUIJAM
019		BUTOK	070		LEBANG	120		SELAWE
020		DAIT	071		LEMANDAU	121		SELIBONG
021		DARO'	072		LIBOY	122		SENANGKATN
022		DEGA	073		LIMBAI	123		SENGKUNANG
023		DISA	074		LINOH	124		SERITOK
024		DOSATN	075		MAHAP	125		SIKUNO
025		ELLA	076		MALI	126		SILATH MUNTAK
026		ENSILAT	077		MAYAN	127		SIMPAKNG
027		ENTEBANG	078		MAYAU	128		SISANG
028		GERAI	079		MELAPOI	129		SONTAS
029		GERUNGGANG	080		MENTEBAH	130		SUAI
030		GOLIK	081		MENTERAP KABUT	131		SUM
031		GOONEH	082		MENTERAP SEKADO	132		SURU'
032		GUN	083		MENTUKA'	133		SURUH
033		HISUN	084		MUALANG	134		SUTI
034		IBAN	085		MUARA	135		TABA
035		INGGAR SILAT	086		MUDU'	136		TADIETN
036		JAGOI	087		NAHAYA'	137		TAMAMBALO
037		JALAI	088		NANGA	138		TAMAN
038		JANGKANG	089		NYADUPM	139		TAMAN SEKADO
039		JAWATN	090		ORULUNG DA'AN	140		TAMENG
040		JOKA'	091		PANU	141		TAWA
041		KALIS	092		PANGIN	142		"
042		KANAYATH	093		PAKTU	143		TERANG
043		KANCINGO	094		PAPAK	144		TEREBAH
044		KANTU'	095		PAUS	145		TENGGON
045		KAYAAN	096		PAWATN	146		TINYING
046		KAYAN	097		PAYA'	147		TOBAK
047		KAYONG	098		PESAGUAN	148		TOLA'
048		KEBAHAN	099		POMPAKNG	149		ULU SEKADO
049		KELIAS	100		PRUNA'	150		UNDU
050		KENDAWANGAN	101		PRUWAN	151		LUJ DANUM
051		KENELES						

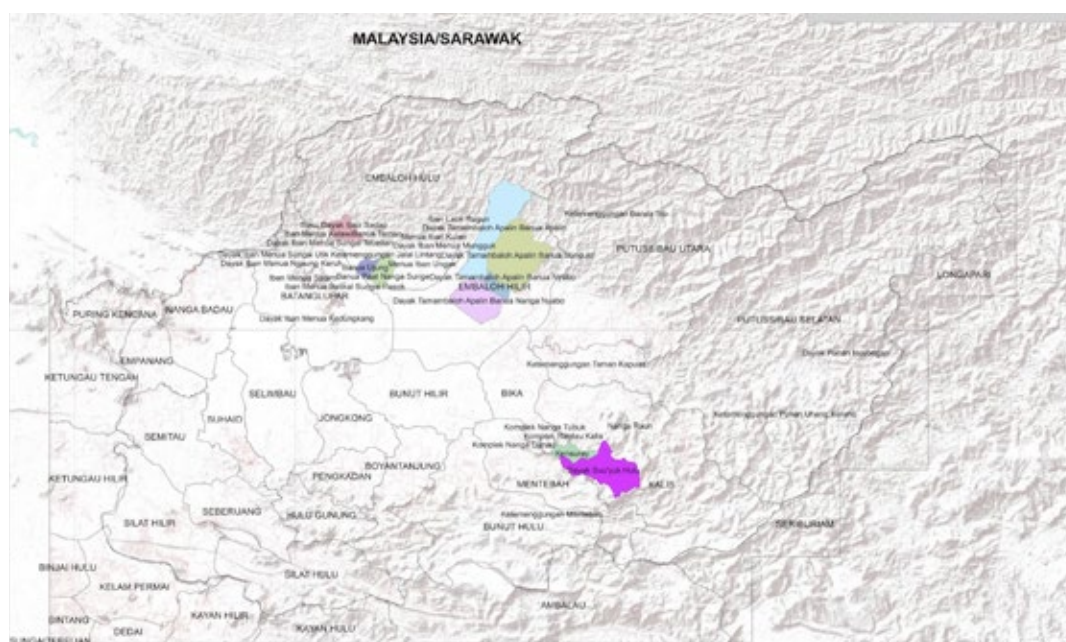
The provincial and district governments continue to develop land use plans and allocate concessions without regard for indigenous peoples' pre-existing rights, and indigenous peoples are still being criminalized for managing their traditional territories notably by the application of a policy which disallows the traditional practice of clearing farmland by burning. Substantial areas have also been taken over by Transmigration projects.³⁶ The result is that there are numerous conflicts between the communities and companies, including oil palm and pulp-and-paper plantations. A new threat they now face comes from a planned National Strategic Project (PSN) to construct a nuclear power plant in Bengkayang District by 2025.³⁷

Notwithstanding the lack of a national framework to speed up the recognition of indigenous peoples' customary lands, by dint of sustained advocacy and engagement with local governments, AMAN KalBar and its 184 community members, have already persuaded 8 of the 11 districts of West Kalimantan to pass local laws (PERDA) recognising the existence of indigenous peoples there. Based on these PERDA, there have been 40 Regents' Decrees recognising indigenous peoples' territorial rights over some 628,550 ha and consequently, in response to specific claims, the Ministry of Environment and Forestry have defined 20 'customary forests' in West Kalimantan totalling 50,712 ha. Further extension of this process of recognition is now being facilitated through an MoU between the West Kalimantan Provincial Government and AMAN KalBar for the 'Acceleration of Recognition of Indigenous Peoples in West Kalimantan'.³⁸

Specifically in Kapuas Hulu District, which is where, until recently, GIZ has focused many of its projects, the District Government has already passed a PERDA recognising the existence of indigenous peoples³⁹ and the Ministry for Environment and Forestry has already decreed the existence of one customary forest of 9,480 ha, in Sungai Utik, a community of Iban Dayaks. Yet, this is only the beginning. The local NGO Lanting Borneo notes that, based on the participatory mapping that has been carried out by the communities themselves with local NGO assistance, to date some 807,000 ha of indigenous peoples' territories have already been surveyed (see Map 2). Of these areas, 384,000 ha have already been registered as customary territories by the local authorities through formal decision letters (SK) signed by the regent (see Map 3), while the rest are in earlier stages of this process. Meanwhile more community mapping continues. Furthermore, 15 communities have filed claims for customary forests (*hutan adat*) to almost 62,000 ha, where their territories overlap areas classed as Forest Areas.⁴⁰



Map 2: Surveyed Territorial Claims in Kapuas Hulu
Source: Lanting Borneo



Map 3: Registered Territories in Kapuas Hulu
Source: Lanting Borneo



Consultation workshop with Dayak Iban indigenous women, *Menua Jalai Lintang* (Kulan Longhouse (11/12/2020))

Community experiences with GIZ projects in Kapuas Hulu

The German Technical Assistance agency, GIZ, which has been working in Indonesia since 1975, began a government to government collaboration in a joint programme titled FORCLIME in Kapuas Hulu in 2010, focused on forest policy review, REDD+, sustainable forest management, promotion of a 'Green Economy', Capacity Building, and Protected Area Management.⁴¹ In 2016, as part of the FORCLIME project, GIZ and the Kapuas Hulu district government initiated a 'jurisdictional supply chain initiative',⁴² on behalf of the German Ministry for Development Assistance (BMZ) with financial support from the financial assistance agency (KfW). The aim was to build up 'deforestation-free supply chains of various commodities from Kapuas Hulu District to Germany' with a focus on palm oil and rubber. The programme was also expressly designed to resolve conflicts, promote sustainable livelihoods and carry out district-wide mapping of high conservation value and high carbon stocks.⁴³ The goal was to facilitate the certification of commodities by Sustainable Agriculture Standards of Rainforest Alliance, RSPO and FSC.

According to local NGOs and community representatives interviewed as part of this research, the project suffered a number of serious deficiencies, including that the initiative did not uphold the Dayak peoples' customary rights to their lands and forests; had not effectively implemented a procedure to respect the Free, Prior and Informed Consent of indigenous peoples; did not provide a mechanism for the participation of indigenous peoples in decision-making; was not preceded by a social impact assessment; had not shared information effectively with the affected communities; had not addressed land conflicts between communities and large-scale commodity producers and; only considered forest clearance in State Forest Areas as 'deforestation', thus ignoring the extensive forest clearance being carried out in agricultural concessions for industrial plantations.⁴⁴

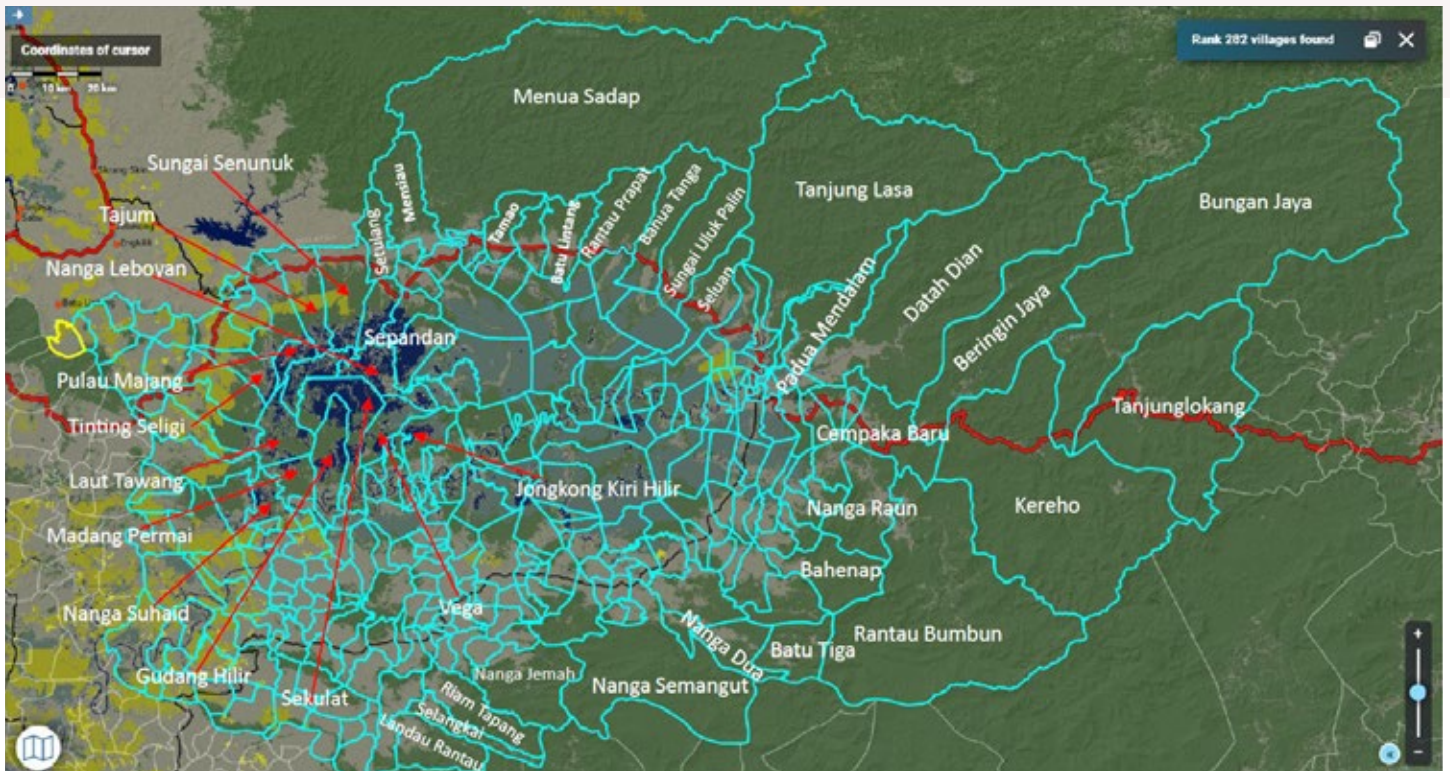
Local NGOs working in Kapuas Hulu were also aggrieved that the project was not making use of their long-term participatory mapping work with indigenous communities. In May 2018, a consortium of NGOs, wrote to GIZ expressing concerns about these weaknesses in the design and implementation of the project.⁴⁵ Although the NGOs concerns were treated as a formal complaint by GIZ, they led to no discernible change in GIZ's projects.

In 2019, the jurisdictional supply chain initiative announced a Biosphere Reserve Management Project in the area surrounding the Danau Sentarum National Park but the available project documents did not make clear how indigenous peoples' rights to lands and livelihoods would be respected, while letters of enquiry to the project proponents about this matter received

no response. Also in 2019, GIZ contracted the High Conservation Value Network (HCVN) and Daemeter Consulting to carry out indicative HCV mapping in the district based on remote sensing. FPP and local NGOs immediately raised concerns with Daemeter and HCVN about how this 'HCV Screening' would take into account Dayak rights and livelihoods. The screening system was adjusted accordingly (and see below).⁴⁶

In 2020, the NGOs published specific recommendations to GIZ on how it should adjust its programme in accordance with indigenous peoples' rights. They called on GIZ to: explicitly uphold indigenous peoples' and local communities' rights to their customary lands and territories, including in areas currently classed as State Forest Areas; verify the extent of customary rights areas through culturally appropriate consultations and participatory mapping, making duly credited use of the existing maps developed by the communities and NGOs; recognise these community-owned areas in line with the local legislative act which recognises the existence of indigenous peoples in the district; prevent the imposition of land use options, commodity production systems or protected area management regimes on their customary lands without these peoples' FPIC; ensure that land disputes are resolved through restitution of rights where industrial concessions and land use regimes have been imposed without respect for customary rights and FPIC; share widely information about the project with all the communities implicated; introduce systems of decision-making that effectively involve communities and NGOs in project planning; make sure that indicative HCV and / or HCS maps are followed up with FPIC-based procedures to ensure communities' rights and livelihoods are accommodated in any actual land use plans that are then developed.⁴⁷

Seemingly, the FORCLIME project came to an end in Kapuas Hulu and shifted its focus to East Kalimantan⁴⁸ and to Sulawesi and West Papua. In Papua and West Papua, GIZ explains that the project now seeks to adhere to an FPIC-based methodology and in Sulawesi the project works with indigenous women to promote traditional knowledge and customary resource management.⁴⁹ In Kapuas Hulu, FORCLIME was replaced with new projects titled SASCI and SASCI+ (*Sustainable Agricultural Supply Chains in Indonesia* (SASCI) and *Sustainability and value added in agricultural supply chains* (SASCI+)), aimed at promoting deforestation-free supply chains of agricultural commodities. As presented by GIZ, SASCI+ has the objectives of strengthening the capacities of smallholder farmers, increasing their productivity and the sustainability of production, improving their livelihoods and integrating them into international supply chains.⁵⁰ Although the projects initially sought to link smallholders in



Map 4: Dayak and Malay village areas in and around the Danau Sentarum Biosphere Reserve

Kapuas Hulu to both the Roundtable on Sustainable Palm Oil and the Indonesian Sustainable Palm Oil certification systems, in the end the project has focused just on linking smallholder rubber farmers to the German tyre company, Continental AG, while taking steps to demonstrate zero deforestation in their holdings and associated farming.⁵¹

Further field investigations with the communities in the project area, reveal some continuing problems with the way GIZ addresses indigenous peoples' rights in Kapuas Hulu. Although the main target communities of the initiative, now renamed 'Greening Agricultural Smallholder Supply Chains' (GRASS),⁵² are indigenous Dayaks, the joint project has not sought to encourage self-representation, ascertain the extent of their customary rights or go through a meaningful FPIC process. Community representatives express concerns that the project has not really been explained to the community as a whole but rather engaged with farmers individually. Even those involved noted that although they provided information of their land holdings to a technical service provider, Koltiva,⁵³ financed by Continental AG, they have not been provided with copies of the maps of their own lands that resulted, although these maps had been shared with the company. One of the imposed conditions of the project was that the smallholder rubber producers should refrain from continuing their traditional practice of shifting cultivation – which was considered to be tantamount to deforestation by GIZ, raising a question about why no effort has been made first to determine if these farms are in the communities' customary lands, part of the forest-fallow cycle and might even be sustainable in terms of forest management and carbon emission.⁵⁴

Communities in the Biosphere Reserve buffer zone were also concerned that the GIZ projects had only offered to help them acquire rights to Village Forests (*butan desa*), which are leaseholds in State Forest Areas allocated to villages and subject to the authority of the village government.⁵⁵ However, they note that the Kapuas Hulu district government has already recognised the Dayaks as indigenous peoples and accordingly the Ministry of Environment and Forestry has already agreed that one community has the right to a Customary Forest (*butan adat*), which are indigenous-owned forests excised in perpetuity from State Forest Areas and which form part of an indigenous territory. Yet such an option has never even been discussed with them.

Linking all these initiatives, GIZ has also worked with the Agricultural University of Bogor (IPB) to map the High Conservation Values and

High Carbon Stock forests in Kapuas Hulu as part of the Betung Kerihun - Danau Sentarum Biosphere Reserve⁵⁶ in tandem with a parallel initiative carried out in the area in and around the Lore Lindu Biosphere Reserve in Central Sulawesi.⁵⁷ Building on the Screening Initiative carried out with HCVN, the more recent GIZ-IPB assessments seek to identify where there are HCVs in these landscapes and then define which are 'Go' and 'No Go' zones where land clearance and development should or should not go ahead. Unfortunately, these land use planning maps ignore explicit caveats in the HCV Screening Guide which warn that:

Screening should be used in combination with site-level activities (e.g. field work, participatory mapping) and therefore results must not be used as a shortcut to by-pass local-level field work, consultation and FPIC that is necessary for a full land-use planning process or site-level HCV or HCV-HCSA assessment...

and that:

Therefore, the results of the HCV screening are insufficient and inappropriate as a basis for issuing specific recommendations on HCV management and monitoring for all six HCV categories or for finalising land use plans.⁵⁸

Reviewing these maps it is clear that GIZ land use plans for the Biosphere Reserves Core Zone and Buffer Zone did not recognise customary rights and made no real effort to determine which areas are crucial for communities' livelihoods (HCV 5) and cultural identity (HCV 6). Rather than carry out adequate FPIC at the community level to determine if they agreed or not with the way their areas were portrayed, GIZ explained that FPIC had been carried out through a workshop in the District capital, Putussibau, and one focus group discussion.

In sum, based on these field surveys, the local NGOs and some of the consulted communities remain very concerned that, despite past complaints and dialogues, GIZ projects in Kapuas Hulu: are not adopting a rights-based approach with regard to the indigenous peoples in the area; do not apply a meaningful approach to FPIC and; are not making use of the participatory mapping of customary territories made by the communities with NGO help. GIZ continues to engage very weakly with the local civil society organisations that have been working with the indigenous communities in Kapuas Hulu for almost two decades.

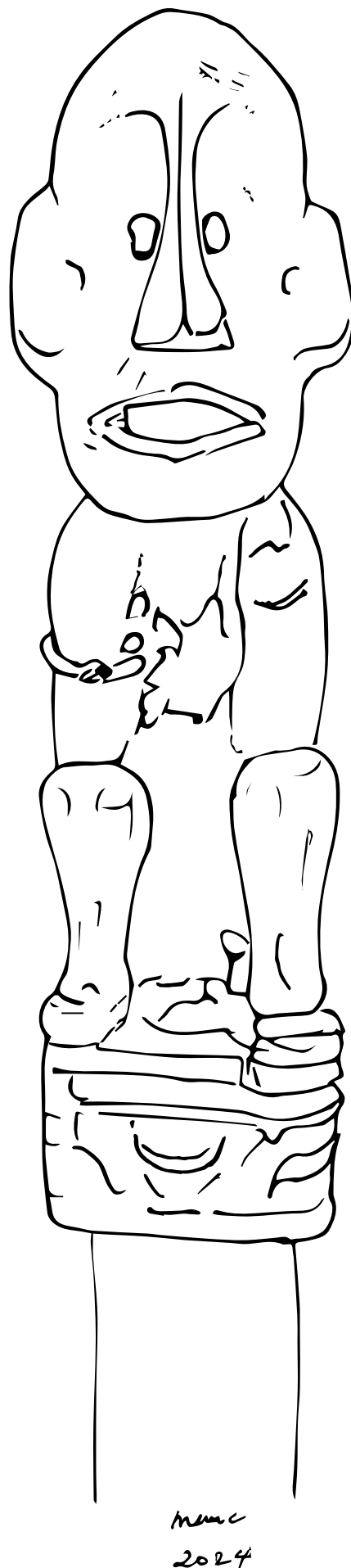
Analysis

Comparison of the policies of the German Government, BMZ and GIZ with what indigenous people say they are actually experiencing in GIZ technical assistance projects, reveals several shortcomings. Current GIZ projects in Kapuas Hulu are not dealing with local Dayak communities as the customary owners of their territories with rights to self-determination, FPIC and to self-representation. Contrary to the expressed BMZ policy with regard to indigenous peoples, GIZ projects are not addressing the 'structural exclusion' which overlooks customary rights in development planning. Nor are these projects designed to resolve conflicts over natural resources by directly involving indigenous peoples as rightsholders and ensuring their active participation in remediation efforts. Far from including measures to counteract the risks facing indigenous peoples, which GIZ's policies call for, NGOs feel that GIZ's cooperation projects are perpetuating the marginalization which indigenous peoples in Kapuas Hulu - and West Kalimantan in general - are experiencing. As one workshop participant explained, indigenous peoples want to be treated as the subjects, not the objects, of development interventions. All this is contrary to GIZ's expressed intention to ensure indigenous peoples are appropriately involved where partner governments are not adequately recognising their rights.

Responding to concerns about the evident gap between the German Government's policy on human rights and indigenous peoples and their actual practice on the ground, GIZ staff observe that their technical assistance projects are framed through negotiated collaboration agreements that are 'Government to Government' and are tied to specific activities and operational periods. GIZ cannot therefore unilaterally adjust their project activities without the involvement of their local and national government partners. Their main national government partner is BAPPENAS,⁵⁹ the national development planning agency, while their implementation agreements are with the district governments where the projects are to be carried out and with the relevant line Ministries, especially the Ministry of Environment and Forestry for projects in areas classed as Forests and the Ministry of Agriculture for projects in farmlands (APL). As such any involvement of NGOs requires host government agreement. GIZ is however open to dialogues with NGOs to explore ways forward.

The fact that apparently no action has been taken in response to the concerns raised with GIZ by the NGOs in 2018 does lead them to question GIZ's sincerity in saying it wishes to address indigenous peoples' concerns. Nevertheless, for their part, the NGOs and indigenous peoples' organisations active in Kapuas Hulu recommend that GIZ and the NGOs establish a dialogue and hold follow-up meetings with local and traditional communities and CSOs in Kapuas Hulu on how to go ahead with these projects taking account of the indigenous peoples' rights.

They demand that GIZ revise its projects so they respect, and encourage the recognition of, the rights of indigenous peoples to their customary territories. They ask GIZ to apply the principles of FPIC in every activity implemented in the field and prioritize a participatory role for the indigenous peoples in all activities. Where the communities request it, they should assist the communities to convert their Village Forests into Customary Forests. With respect to the rubber marketing project, community members should be provided with the maps that have been made of their holdings. With respect to the land use planning map using the HCV/HCSA system, developed by GIZ technicians, this should be revised to take account of the extensive areas where indigenous communities have customary rights which are crucial for their cultures (HCV 6), livelihoods (HCV 5), and the ecosystem services (HCV 4) that they depend on. It should be made imperative that any planned developments in 'go' areas should ascertain if there are indigenous peoples in these areas, map their customary rights and only go ahead with the Free, Prior and Informed Consent of the communities concerned after a transparent sharing of plans, permits, maps and intentions.



Gaps and opportunities

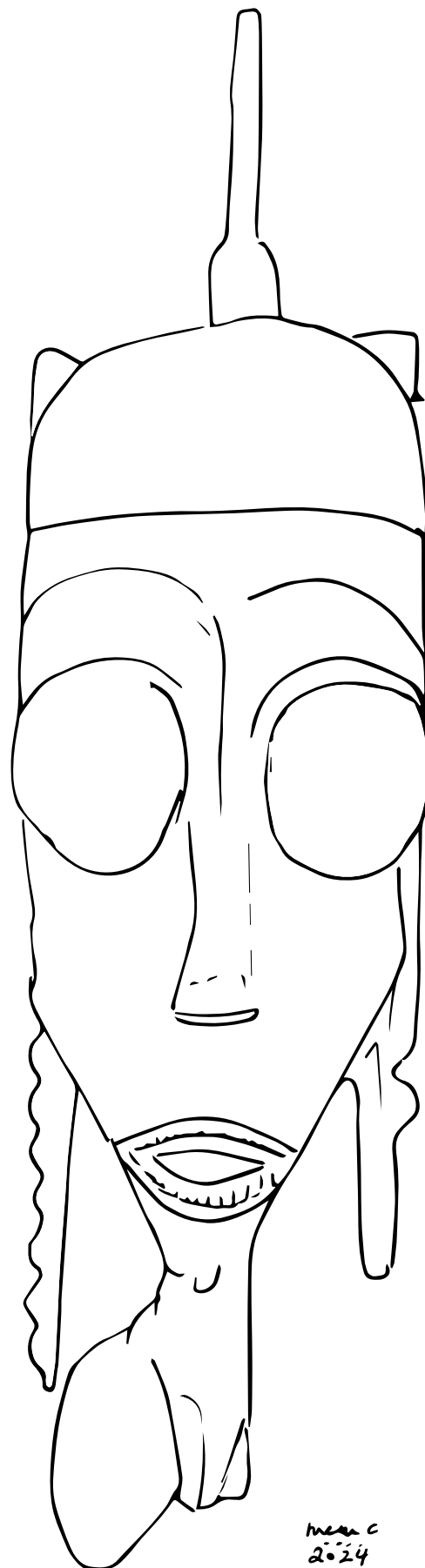
In line with their own policy commitments and taking account of the specific recommendations made by the local NGOs, GIZ and KfW's projects need to be reframed to fit the evolving framework in Indonesia which does provide, albeit onerous, routes to the recognition of indigenous peoples and to securing their rights to their lands, territories and forests. In Kapuas Hulu in particular, and in Kalimantan in general, local governments do now recognise the existence of indigenous peoples and have begun to formally recognise their customary territories and customary forests. In this context, it should be possible to revise the approach adopted by GIZ and KfW in its Government-to-Government projects so that these projects conform to German Government human rights policies.

The Ministry of Environment and Forestry has also committed itself to address customary rights and resolve conflicts. Its latest policy statement notes its 'reorientation of forest management from a wood-based to a sustainable forest ecosystem and community-based approaches' and its adoption of 'affirmative policies on the community access to forest utilization, on local and regional dispute resolution, as well as on the local community rights and forest use related conflict resolution for customary communities'.⁶⁰

At the same time the Ministry of Land Affairs and Spatial Planning which houses the National Land Agency (BPN) is also increasingly aware of the need to address customary rights. It notes that some 42,500 administrative villages are located in and around forests.⁶¹ Under the Governments 'Programme for the Acceleration of Agrarian Reform', measures are explicitly contemplated to ensure they are subjects of the programme. It notes that the main challenge it faces is the lack of good data on both which communities claim such rights and the areas they are claiming.⁶² In the case of Kapuas Hulu, as we have seen, there is in fact a good deal of relevant information to assist with the implementation of this programme.

The opportunity and the need exists for GIZ and KfW to reframe their programmes of technical cooperation and financial assistance in Kapuas Hulu - and indeed in Indonesia more widely - to counter the continuing marginalization of indigenous peoples. Like its programmes in support of indigenous peoples in the Amazon and the Philippines,⁶³ it should assist Indonesian government programmes which are aimed at recognising and securing customary rights. Projects need to be revised so that they give indigenous authorities a decisive voice in how GIZ's and KfW's Government-to-Government projects are implemented in indigenous peoples' territories. Such reframing would simultaneously counter the structural exclusion that indigenous peoples face, bring GIZ's technical cooperation programme and KfW's financial assistance into conformity with German Government policies and Indonesia's obligations under international law and provide a better basis for the sustainable development that BMZ seeks to achieve with its projects.

This reframing also needs to be extended into BMZ's wider suite of projects in other parts of Indonesia where there are also indigenous peoples, such as in Sumatra, Sulawesi, the Maluku and Papua.



Endnotes

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