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WATCH

# “Why Our Land?”

Oil Palm Expansion in Indonesia Risks Peatlands and Livelihoods

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Peatlands and Livelihoods

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## Oil Palm Expansion in Indonesia Risks Peatlands and Livelihoods

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## Summary

Peatlands are the largest terrestrial carbon store on earth, storing more carbon than all other vegetation types in the world combined. But once peatland is destroyed it releases carbon dioxide, a major greenhouse gas driving climate change, into the atmosphere. Worldwide, damaged peatlands are a major source of greenhouse gas emissions, annually releasing almost six percent of global anthropogenic CO<sub>2</sub> emissions. The protection of peatlands is therefore a key component of global efforts to address the climate crisis.

Peatlands in Indonesia store an estimated 80 billion tons of carbon, equivalent to approximately 5 percent of all carbon stored in soil globally. At one time, Indonesia housed approximately 50 percent of the world's total tropical peatlands, but that is rapidly diminishing as large-scale cultivation of these lands for oil palm plantations increases.

The Indonesian government promotes increased production of palm oil—the edible vegetable oil derived from the fruit of oil palm trees—but does not ensure that domestic companies involved in various stages of palm oil production—from oil palm cultivation to refinery—comply with national law, and with the national palm oil certification mechanism. The government has failed to abide by its obligations regarding human rights and climate change and introduce effective regulatory oversight over domestic companies.

Oil palm plantations are expanding in Indonesia, undermining the rights to an adequate standard of living, property, and other human rights of rural communities living on or near land converted to use for oil palm plantations. This has fostered hundreds of land conflicts, including in communities formed over decades-old government-sponsored transmigration (trans-country resettlement).

The harm of expanding oil palm plantations does not just impact the people in these communities. The lack of protection of land rights of local communities who use the peatland for their livelihoods while leaving it largely intact, allows large-scale commercial agriculture to contribute to serious harms to the global climate. As peatland is converted to use in commercial agriculture, Indonesia is permitting the widescale destruction of one

of the most important carbon sinks in the world, hampering efforts to reduce carbon emissions to avert the worst-case outcomes of global climate change.

Indonesia's transmigration program is one of the largest population resettlement schemes in the world, moving millions of families from densely populated to less-densely populated islands throughout the Indonesian archipelago. Many of these families resettled in forests, including forested peatlands. Over time, the government has granted concessions for oil palm and other plantations in these same areas. Some of these plantations have expanded into community areas with minimal or no consultation or compensation, impacting communities' access to land and the environment they depend on for their livelihood, resulting in economic hardship and a long-running struggle between communities and the palm oil industry.

Most Indonesians who migrate through the government-sponsored transmigration program receive ownership rights to the lands they settle, including farmland. However, Indonesia overall has poor land governance: rules on land acquisition and tenure are weak; national planning on land use is poor; the processes and structures through which authorities make, implement, and enforce decisions on access to land and land use, and manage competing stakeholder interests, are non-transparent.

Human Rights Watch's earlier research demonstrated that weak governance in Indonesia has facilitated violations of the rights of Indigenous peoples, giving priority to business interests. This report shows that transmigrant and settler communities, despite an affirmation of land rights by the government, are also losing land and their source of livelihood to these commercial plantations, and how this affects their human rights to property, an adequate standard of living, and to an effective remedy. The report also shows that business and government actors have sought to intimidate community members who resist plantations expanding into their land or contest their loss of land. Law enforcement authorities prosecute their actions and those of land rights activists as criminal offenses.

This report is based on interviews with more than 90 residents of 3 transmigrant and settler communities, Seruat Dua, Mengkalang Jambu and Olak Olak, in Kubu Raya regency, West Kalimantan province, as well as with lawyers and representatives of nongovernmental organizations (NGOs) working on land and agrarian reform in Indonesia.

The research is in companion to the September 2019 Human Rights Watch report, *“When We Lost the Forest, We Lost Everything”: Oil Palm Plantations and Rights Violations in Indonesia*, co-authored with Masyarakat Adat Nusantara (AMAN), Indonesia’s largest Indigenous rights organization.

Human Rights Watch investigated the development and operation of oil palm plantations on peatlands in Seruat Dua, Mengkalang Jambu, and Olak Olak. All plantations under investigation were owned by one company, PT Sintang Raya, which began operating in 2008, and has subsequently expanded encompassing land that belongs to and is used by members of these communities. PT Sintang Raya is a mid-size company with a mix of national and foreign ownership and a considerable supply chain. Human Rights Watch highlighted the case of PT Sintang Raya because it depicts the broader upheaval wrought on affected communities by long-running conflicts between companies and rural communities, and the Indonesian government’s failure to protect the rights of these communities. The authorities have done very little to mediate and resolve disputes, or enforce lawsuits affirming the ownership of land by community members.

Land related conflicts are pervasive in Indonesia, most have histories that span over decades without being resolved by the government. Settlers and transmigrants in these communities have lived and farmed the area since the 1930s and 1950s, respectively. Some community members who were resettled there were also allotted land by the government. They, among other settlers, told Human Rights Watch that they believed their farmland had been incorporated in the company’s “right-to-exploit” permit (Hak Guna Usaha, or HGU), a type of agricultural commercial lease, without being consulted by the government or the company and with little or no compensation. Residents also believed that PT Sintang Raya’s plantations and the company’s draining of peatland has direct repercussions on their lives due to increased salinity of their freshwater sources and soil, resulting in poor crop production and difficulties accessing non-brackish and safe drinking water.

West Kalimantan has peatland estimated to measure around 1.7 million hectares, which is about 29 percent of the total area of the province. According to these estimates, peatlands in West Kalimantan store about 3.6 million tons of carbon. The drainage and clearing required for oil palm cultivation has been the primary cause of deforestation—cutting and removal of natural forests—and biodiversity loss in the area, and releases huge amounts of CO<sub>2</sub> into the atmosphere, causes peat subsidence, and makes the soil susceptible to fires and floods.

Human Rights Watch, for more than a decade, has raised the alarm that Indonesia's poor land and forestry management has severe global implications. In particular, Indonesia is a key player in global climate change mitigation strategies because it has vast natural wealth in forests, including forested peatlands, that act as carbon sinks, and because it suffers from rampant deforestation, particularly of forests growing on carbon-rich peat soils. Indonesia's high-emission land-use practices have contributed to making Indonesia one of the world's top greenhouse gas emitters.

As the world's largest producer of palm oil, Indonesia's clearing of natural forests, including forested peatlands, to make way for oil palm plantations is one of Indonesia's largest sources of emissions. In addition to contributing to the climate crisis, the smog produced when these forests are burned to make way for plantations drifts regularly to Indonesia's neighboring countries, threatening the health of local communities. If weak governance in the forestry and plantation sectors is not adequately addressed, Indonesia risks failing to deliver on its domestic and international commitments to significantly reduce greenhouse gas emissions while also exacerbating human rights problems.

The government's palm oil certification standard (Indonesian Sustainable Palm Oil, or ISPO), which aims to support commitments to reduce greenhouse gas emissions and improve sustainability, among others, has failed to ensure that oil palm companies, like PT Sintang, do not harm communities and aggravate land disputes. However, the ISPO has weak sanctions and accountability provisions and no grievance resolution mechanism.

The Indonesian government is a party to core international human rights treaties that provide standards and protects the rights to property, an adequate standard of living, participation, and an effective remedy, among others. Indonesia is a signatory of the United Nations Framework Convention on Climate Change (UNFCCC) and of the 2015 Paris Agreement on Climate Change. In line with the obligations under this framework, Indonesia has set a national action plan on climate, committing to reduce emissions by 29 percent from the business-as-usual scenario by 2030, or 41 percent conditional on international assistance. But in recent years the government has come under national and international criticism for not pledging to more ambitious commitments to reduce its greenhouse gas emissions under the Paris Agreement. Importantly, Indonesia has also faced criticism for its poor enforcement of regulations aimed at managing and preventing damage to peatlands including through fires and smoke haze, making it virtually

impossible to meet their goals. Furthermore, the government continues to promote increased productivity in the oil palm sector, without effectively ensuring that plantations do not continue to expand on and convert natural forests and peat areas.

Not only does the Indonesian government have an affirmative obligation to take effective measures to prevent and redress climate change impacts, it also has a duty to respect and protect fundamental freedoms, as well as to prevent business enterprises from interfering with rural communities' rights to property and an adequate standard of living. And the government needs to ensure that victims of human rights abuses can access effective judicial and nonjudicial remedies.

Business enterprises, in this case palm oil companies, have not respected national laws, including consulting and compensating holders of land rights. They should fulfill their responsibility to respect human rights, even when governments fail to mandate this or monitor compliance. International brands and retailers whose products use palm oil and its derivatives also have the responsibility to respect human rights throughout their supply chain. These companies should bolster traceability of their palm oil and ensure that what they source is not causing, contributing to, or linked with ongoing human rights abuses and environmental degradation.

# Recommendations

## To the Government of Indonesia

- **The Ministry of Environment and Forestry, Ministry of Agrarian and Spatial Planning/National Land Agency, and Ministry of Agriculture** should coordinate and generate detailed land use maps that are accessible to the public, distinguishing agricultural and silvicultural production areas (plantations and smallholders) from conservation or restoration areas and natural forests, including natural peatlands.
- **The Indonesian Parliament**, working with relevant government ministries and civil society organization, should provide legislative guidance clarifying what citizen participation in the land acquisition process i.e., meaningful consultation during permitting (e.g., location; environment, or AMDAL; “right-to-exploit,” or HGU; and other permits) procedures that require community involvement in land transfer processes.

## To the Ministry of Agrarian and Spatial Planning/National Land Agency

- Provide clear instructions for reforming customary land registration procedures to ensure transparency and participation of communities and civil society groups, and create a functional grievance resolution mechanism accessible to the rural poor for resolution of individual and community land claims.
- Ensure that local communities are consulted before issuance of location and HGU permits to companies. Require that women, including in rural areas, participate in and benefit from rural development, including in decision making related to land allocation and transfers, and plasma agreements.
- Work in conjunction with the Presidential National Agrarian Reform Team, to investigate and sanction any palm oil company that fails to meaningfully consult and compensate affected communities. Take decisive action to mediate and resolve land disputes within a time-bound manner.

## To the Ministry of Agriculture, including the Indonesian Sustainable Palm Oil (ISPO)

- Make available adequate financial and technical resources to effectively monitor compliance of oil palm companies and plantations with national laws.
- Institute effective government mechanisms for meaningful conflict management and grievance procedures for affected communities, as well as third-party monitoring mechanisms for palm oil operations. These measures should also be included in the Indonesian Sustainable Palm Oil (ISPO) initiative's mandatory requirements.
- Incorporate international human rights standards about sustainability that protect community rights and the environment into the ISPO regulation, including its Principles and Criteria.
  - Explicitly include guidelines on protecting natural and secondary forests, including peatlands, in the ISPO Principles and Criteria.
  - Revise the ISPO regulation, including the Principles and Criteria, to require traceability of palm oil as a prerequisite for certification.
  - Incorporate effective independent monitoring and enforcement mechanisms into the ISPO regulation, complete with penalties and incentives, to ensure that businesses that do not comply are appropriately penalized, and compliant businesses are rewarded.
  - Require companies to measure their direct and indirect greenhouse gas emissions resulting from their operations, set targets for reducing them in line with the Paris Agreement goals, and publicly report on their progress to meet these targets.
- Clarify legal requirements and incorporate clear and transparent legal standards into the ISPO certification audits:
  - Publish clear guidelines and assessment norms on conducting ISPO audits, complaints and appeals, dispute resolution, public disclosure, and monitoring.
  - Ensure assessment norms verify company compliance with laws protecting local land rights, including government “right-to-exploit” permitting (HGU) procedures that require community involvement in land transfer processes.
  - Ensure that company policies and practices on social and environmental sustainability are effective in preventing harm, rather than simply surveying whether plans are in place without regard to their actual impact.

- Implement compensation agreements, including community plantation (plasma) agreements, with affected villages.
- Strengthen the transparency of the Indonesian Sustainable Palm Oil (ISPO) certification by:
  - Creating clear guidelines for civil society participation throughout the auditing process—from designing the audit, gathering information, post-audit-finding briefings, as well as sharing of findings. This should include full cooperation with civil society monitors such as Jaringan Pemantau Independen Kehutanan (Independent Forest Monitoring) and Konsorium Pembaruan Agraria, including by providing adequate information to enable civil society monitors to conduct oversight and participate meaningfully in the audit.
  - Creating grievance resolution mechanisms for affected communities and stakeholders to challenge certifications already issued, reassess the certifications issued by an independent body, and publish the outcomes of such challenges.
  - Publish all ISPO audits and certifications issued.
- Raise awareness and provide training on alternatives to traditional slash-and-burn techniques used by rural subsistence farmers rather than arresting and prosecuting small-scale burning.

### **To the National Police**

- Ensure law enforcement related to land disputes is impartial and transparent.
- Develop internal guidelines for handling land-related disputes between local communities, and state or private companies, including oil palm plantations.
- Refer rural subsistence farmers who have been found using traditional slash-and-burn techniques to agricultural extension services to receive training on alternatives to traditional slash-and-burn techniques rather than to prosecute them.

### **To PT Sintang Raya and Other Indonesian Oil Palm Plantation Businesses**

- Comply with obligations under Indonesian law to adequately consult with affected local communities on land acquisition, and social and environmental impacts

- before establishing or expanding operations. Ensure their meaningful participation, and provide them with fair compensation, as required by law.
- Carry out human rights due diligence assessments of proposed palm ventures to identify potentially harmful impacts. Only proceed if human rights impacts can be adequately mitigated to avoid harm to affected communities.
  - Do not proceed with developing oil palm plantations on land that has pre-existing land claims until those claims are resolved.
  - Regularly publish the results of human rights due diligence efforts, including:
    - human rights risks and adverse impacts of operations identified (including on the local environment and the contribution to climate change);
    - the range of measures taken to address them;
    - methods to ensure appropriate remedies; and
    - the results and effectiveness of these measures.
  - Engage with local NGOs to design and institute transparent, effective, meaningful, and accessible grievance procedures for affected communities.
  - Publicly disclose the names, locations, and other important information of other entities in their value chain to better facilitate grievance procedures for those adversely impacted.

## **To All Companies, Local and International, Sourcing Palm Oil from Indonesia**

- Make traceability a key part of the company's human rights due diligence processes and publish the names, addresses, and other relevant details of the palm oil plantations that are part of the company's supply chain.
- Recognize the serious limitations of ISPO certification for palm oil and its credibility, and bolster palm oil plantation workers' and communities' access to effective grievance resolution mechanisms, including anti-retaliation. Engage with local NGOs to design and develop such accessible, effective grievance procedures.
- Regularly publish the company's overall human rights risk analysis, prevention, and mitigation measures, as well as measures used to assess impacts of these measures. In particular, ensure that the company's risk assessments address the human rights risks associated with palm oil sourcing, specifically land rights, livelihood, and environmental risks.
  - Develop a suppliers' code of conduct to identify and assess human rights and environmental risks and impacts of palm oil company actions and

omissions, in their plantation and refinery operations and in business relationships, including their global value chains.

- This identification and assessment of human rights and environmental risks should cover all the activities of businesses, including examining practices that cause or contribute to adverse environmental and other impacts, or impacts that may be directly linked to operations, products, or services through business relationships.

## **To Donor Governments, the European Union, and Other International Bodies**

- Actively support governance reforms for the Ministry of Agrarian and Spatial Planning, Ministry of Environment and Forestry, and Ministry of Agriculture, including the ISPO certification scheme, that better protect human rights of those impacted by oil palm cultivation, including related to the environment and climate change, traceability and human rights and environmental due diligence requirements for palm oil and its derivatives.
- Urge the Indonesian authorities to adopt all necessary reforms and policies as listed above.
- Negotiate and ensure that robust and enforceable human rights and sustainable development provisions are included in all bilateral trade deals with Indonesia.
- Introduce mandatory human rights and environmental due diligence legislation that applies to the global value chains of international companies, including their sourcing of raw materials such as palm oil.
- Enact due diligence laws that prevent deforestation in the supply chains of forest risk commodities, such as palm oil.

## **To International Financial Institutions, the United Nations, and Other International Aid Agencies**

- Press for results on specific governance reforms, including the current moratorium on oil palm permits and the moratorium on new land use on primary forests and peatlands.
- Include the protection of peatlands alongside forests in all relevant intergovernmental agreements relating to climate change, geodiversity, and biodiversity.

## Methodology

This report is based on research conducted by Human Rights Watch between March and September 2018 in West Kalimantan, Indonesia, and follow-up interviews and consultations from September to December 2020 via virtual platforms. Human Rights Watch researchers visited Seruat Dua, Mengkalang Jambu and Olak Olak, Kubu Raya Regency, West Kalimantan in April and May 2018. Human Rights Watch also conducted interviews with nongovernmental organization (NGO) representatives, academics, and lawyers in Jakarta, Bogor, and Pontianak between February 2018 and March 2021.

The research focused on oil palm plantations and the impact on transmigrant communities living in peatlands. We were assisted by a local consultant and representatives of an NGO in Pontianak, West Kalimantan. The research is a companion product to a Human Rights Watch report published in September 2019, *“When We Lost the Forest, We Lost Everything: Oil Palm Plantations and Rights Violations in Indonesia*, co-authored with Masyarakat Adat Nusantara (AMAN), Indonesia’s largest Indigenous rights organization.<sup>1</sup>

Researchers conducted interviews with over 90 residents of transmigrant communities in Kubu Raya, legal aid lawyers, and NGO representatives working on land and agrarian reform in Indonesia. Eight interviews were conducted in groups of three to ten people; all others were individual interviews. All interviews, except a handful with national NGO representatives and academics, were conducted in Indonesian, working with women interpreters. No children were interviewed for the research.

Residents who were interviewed did not receive any compensation for participating in the research. Respondents were informed of the purpose of the interview, its voluntary nature, and the ways in which the data would be used. They were told they could decline to answer questions or could end the interview at any time. They orally consented to be interviewed.

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<sup>1</sup> Human Rights Watch and Aliansi Masyarakat Adat Nusantara (AMAN), *“When We Lost the Forest, We Lost Everything”: Oil Palm Plantations and Rights Violations in Indonesia*, September 2019, <https://www.hrw.org/report/2019/09/22/when-we-lost-forest-we-lost-everything/oil-palm-plantations-and-rights-violations>.

In February 2021, Human Rights Watch sent letters via email and courier, explaining our research and a list of questions requesting information to PT Sintang Raya. The company did not respond to our letter. In May 2021, Human Rights Watch emailed, faxed, and couriered another letter to both PT Sintang Raya and its parent companies, PT Miwon Indonesia Tbk and Daesang Corporation, explaining our findings and including a list of questions. At writing, PT Sintang Raya and its parent companies have not responded.

In February 2021, Human Rights Watch sent letters via email and couriered to local government offices in West Kalimantan, including Environment and Forestry Office, Office of Agriculture, Regional Office of the National Land Agency, Chief of Police, and the Governor's Office. Human Rights Watch also emailed and couriered letters to the Ministry of Agriculture, the Ministry of Environment and Forestry, and the Ministry of Agrarian and Spatial Planning in Jakarta. Human Rights Watch has not received a response from these government offices.

Researchers reviewed primary data sources, including laws, ministerial regulations, court decisions, and other legal documents related to the communities investigated in West Kalimantan. Human Rights Watch analyzed satellite imagery, maps, and peatland data of Kubu Raya regency to monitor deforestation, peatland occurrence and degradation, and plantation expansion into Seruat Dua, Mengkalang Jambu, and Olak Olak villages. Human Rights Watch also reviewed secondary data sources including scientific journal articles on climate change and peatland degradation, reports from NGOs and research institutes, and media publications to corroborate the findings.

The report uses pseudonyms for some individuals whom Human Rights Watch interviewed to protect their privacy. In some cases, further identifying details have been withheld to prevent possible reprisals.

## Description of Communities

Seruat Dua, Mengkalang Jambu and Olak Olak in Kubu Raya regency in West Kalimantan are farming and fishing communities, cultivating mainly food crops such as rice and vegetables for their families' use and coconuts, which are processed into *copra* (coconut sugar) or oil and sold in Kubu and Pontianak. The communities also depend on harvesting crabs, fish, and prawns for food and income. They are a mix of voluntary settlers that

arrived in the 1930s and transmigrants resettled through a government program in the 1950s. The tenurial arrangements depend on the status of the family. Most transmigrants have formal documentation of property rights to their land, including farmland, while most voluntary settlers do not, and therefore manage land through customary systems.

Almost the entire Kubu Raya area is lowlands and swamps with a wealth of flora and fauna in a mangrove ecosystem. Peatland distribution data from Peatland Restoration Agency (Badan Restorasi Gambut-BRG), an online government platform for peatland restoration monitoring, shows that much of the total area of Kubu Raya regency is peat with depth more than three meters.<sup>2</sup>

### *Seruat Dua*

Seruat Dua is a beautiful village along an inlet linked to the Kapuas River and lined with mature and sprawling mangroves and coconut trees. According to Statistik Indonesia, Seruat Dua has a total population of 1,753 people including children.<sup>3</sup> The area of Seruat Dua village is about 7,750 hectares.<sup>4</sup> It is located near the coast in the Kubu Raya regency, West Kalimantan, which is experiencing one of the highest rates of deforestation in the world mostly due to oil palm. It also contains some of the world's most extensive tropical peatlands. According to peatland distribution estimates from JAMRUT KALBAR (Peat Society Network of West Kalimantan), about 2,060 hectares or 40 percent of the total area of Seruat Dua is peatland. Seruat Dua is divided into four parts each led by a Rukun Warga (RW). The four divisions are: Parit H. Abdurrahman, Parit Haji Husein, Parit Longkader and Parit Surabaya.

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<sup>2</sup> Peatland Restoration Information and Monitoring System (PRIMS, Badan Restorasi Gambut-BRG), interactive map, <https://en.primis.brg.go.id/platform?q=eyJiYXNlbWFwIjoiz3JleV9iYXNlbWFwiZXhoZW50IjpbMTA3LjYzNzI5NTMyMjY1NjI2LC0xLjA5OTUyNDA1NDI5Njg3NTEsMTEsLjM4OTEyNjM3NzMoMzc2LDAuMzU4OTEwMDA0Mjk2ODcoOTRdLCJyYXllci6W3siaWQiOiIzOCIsInN1YmxheWVyljpbXXoseyJpZCI6IjQoliwic3VibGF5ZXliOltcfV19> (accessed August 4, 2020).

<sup>3</sup> BPS-Statistics of Kubu Raya Regency (Badan Pusat Statistik Kabupaten Kubu Raya, BPS), "Kubu Sub-district in Numbers 2020" ("Kecamatan Kubu Dalam Angka 2020"), 2020, p. 11, <https://kuburayakab.bps.go.id/publication/2020/09/28/72707445eb5311910b681f43/kecamatan-kubu-dalam-angka-2020.html> (accessed April 12, 2021).

<sup>4</sup> *Ibid.*, p. 3.

### *Mengkalang Jambu*<sup>5</sup>

Mangkalang Jambu village land consists of a mixture of peatland, swamps and tidal flats and has an area of about 6,200 hectares. PT Sintang Raya operates a plantation in the area that covers part of the village land. Approximately 3,500 hectares (56 percent of total village area) of the village is peatland, of which 29 percent—over 1,000 hectares—is in PT Sintang Raya’s Plantation concession. The remaining approximately 2,700 hectares (44 percent) of the village area is mangrove. According to a 2014 Ministry of Forestry decree, 40 percent of Mengkalang Jambu village is protected forest and other use areas.<sup>6</sup>

According to an Rukun Tetangga (RT), a neighborhood head in Mengkalang Jambu, based on 2015 estimates 137 families (700 individuals) were affected by the conflict over land rights between the community and PT Sintang Raya.<sup>7</sup> Settler families in Mengkalang Jambu can trace their history in the area as far back as 1935. The community in Mengkalang Jambu village consists of several ethnicities, including Malays, Javanese, and Bugis.

### *Olak Olak*<sup>8</sup>

Olak Olak is a transmigration village, with the first transmigrants from the island of Java arriving in 1957.<sup>9</sup> More Javanese transmigrants arrived between 1969 and 1997. The government provided transmigrants certificates over two hectares of land, on which transmigrants mostly planted rice, other food crops, and coconuts. With a total area of about 5,568 hectares, Olak Olak is the second largest village in Kubu Raya regency. About 331 hectares (6 percent of the total village area) is mangrove along the Kapuas River. It has an estimated total population of 4,860 (over 1,250 households). Oil palm plantations owned by PT Sintang Raya (PT SR) and PT Cipta Tumbuhumbuh (PT CTB) take up approximately 76 percent of the total village area. The remaining area outside the

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<sup>5</sup> Peatland Restoration Agency (Badan Restorasi Gambut), “Village Profile Mengkalang Jambu, Kubu District, Kubu Raya Regency, West Kalimantan Province” (“Profil Desa Mengkalang Jambu, Kecamatan Kubu, Kabupaten Kubu Raya, Provinsi Kalimantan Barat”), 2018, <http://brg.go.id/wp-content/uploads/2019/03/FIX-Kalbar-Kubu-Raya-Kubu-Desa-Mengkalang-Jambu.pdf> (accessed September 20, 2020).

<sup>6</sup> Ibid. The state controls about 3,000 hectares (ha) of land in Mengkalang Jambu Village, West Kalimantan, or 49 percent of the entire village area. This area is a protected forest area established by the state through Minister of Forestry Decree Number 733 / Menhut-II / 2014 of 2014 concerning Forest Area and Provincial Water Conservation in West Kalimantan.

<sup>7</sup> Human Rights Watch Interview with Arief, community leader, Mengkalang Jambu, West Kalimantan, May 5, 2018.

<sup>8</sup> Peatland Restoration Agency (Badan Restorasi Gambut), “Village Profile Olak Olak, Kubu District, Kubu Raya Regency, West Kalimantan Province” (“Profil Desa Olak Olak Kubu, Kecamatan Kubu, Kabupaten Kubu Raya, Provinsi Kalimantan Barat”), 2018. <http://brg.go.id/wp-content/uploads/2019/03/Kalbar-Kubu-Raya-Kubu-Desa-Olak-Olak-Kubu.pdf> (accessed September 20, 2020).

<sup>9</sup> Andang Firmansyah, Superman Superman, Galuh Bayuardi, “Pengalaman Transmigrasi Di Indonesia (Studi di Desa Olak-Olak, Kecamatan Kubu, Kabupaten Kubu Raya),” *Jurnal HISTORIA*, vol. 6, no. 2 (2018), doi:10.24127/hj.v6i2.1086.

plantation concessions is used by residents for housing, a mixture of gardens and rice fields, and mangrove. Approximately 4,831 hectares (87 percent of the total village area) is degraded peatland due to clearing, draining for expansion and exploitation for oil palm plantations.<sup>10</sup> Peatland fires in 2015 due to excessive drainage exacerbated the decline of flora and fauna population in Olak Olak Kubu village.

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<sup>10</sup> Peatland Restoration Agency (Badan Restorasi Gambut), Badan Restorasi Gambut. "Village Profile Olak Olak, Kubu District, Kubu Raya Regency, West Kalimantan Province" ("Profil Desa Olak Olak Kubu, Kecamatan Kubu, Kabupaten Kubu Raya, Provinsi Kalimantan Barat").

# I. Background

The Indonesian government promotes policies aimed at economic development, but which in practice, undercut the property rights, right to livelihood, and other human rights of rural communities living on or near land converted to use for oil palm plantations. As peatland is converted to use in commercial agriculture, Indonesia is permitting the widescale destruction of one of the most important carbon sinks in the world, hampering efforts to reduce carbon emissions to avert the worst-case outcomes of climate change.

The decades-long transmigration program to relocate tens of millions of people to less densely populated areas has been rife with criticism related to environmental degradation and conflict between Indigenous peoples and transmigrant communities. The government of Indonesia has also encouraged wide-scale production of palm oil by large commercial farmers and allocated plantation concessions overlapping with land claimed by Indigenous peoples and transmigrant settlements. While the government touts the transmigration program and palm oil production-related policies as key to economic progress and poverty reduction, it has left people with insecure tenure over land they depend on for survival. Without proper oversight and rights enforcement, competing interests between Indigenous peoples, transmigrant communities, and businesses over land and forests have led to conflicts and resulted in severe rights abuses. The disputed lands of forests and peatlands are important in absorbing carbon dioxide released from the burning of fossil fuels.

## Indonesia's Transmigration Program

Indonesia's transmigration program, or *Transmigrasi*, is one of the largest population resettlement schemes in the world.<sup>11</sup> The transmigration policy has focused on moving

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<sup>11</sup> Rebecca Elmhirst, "A Javanese Diaspora? Gender and Identity Politics in Indonesia's Transmigration Resettlement Program," *Women's Studies International Forum*, vol. 23, no. 4 (2000), pp. 487–500, accessed January 21, 2021, doi:10.1016/S0277-5395(00)00108-4; and Rachel Weaving, "Transmigration in Indonesia," World Bank Operations Evaluation Department Briefing Report, September 1994, <http://documents.worldbank.org/curated/en/187401468042260249/Transmigration-in-Indonesia> (accessed April 12, 2021); and Independent Evaluation Group, "Indonesia - The transmigration program in perspective," World Bank country study, July 1988, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/353671468771708841/indonesia-the-transmigration-program-in-perspective> (accessed May 2, 2021).

Indonesians from the densely populated islands of Java, Madura, Bali and—since 1973—Lombok, to the less densely populated outer-islands, mainly Sumatra, Kalimantan, Sulawesi, and more recently Papua.<sup>12</sup> Though resettled by government schemes, transmigrant families struggle with tenure insecurity and land disputes with Indigenous peoples and business enterprises.

This state-sponsored dispersal of poor, mainly Javanese farmers, has created migrant communities in uneasy coexistence with the original inhabitants in places such as Sumatra, Kalimantan, Sulawesi, and Irian Jaya (now called Papua and West Papua).<sup>13</sup> Some critics of the program claim that transmigrants threaten Indigenous culture and “further destabilize already troubled areas”<sup>14</sup> and in 1985 the program was labeled “the World Bank’s most irresponsible project” by Survival International because of its impact on deforestation and human rights.<sup>15</sup>

The transmigration program still exists today.<sup>16</sup> Indonesia’s then vice president, Jusuf Kalla, during the opening of the National Transmigration Coordination Meeting in Jakarta in August 2019, touted the program as one that has advanced the country and increases

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<sup>12</sup> Indonesia Law on Transmigration No 15/1997 (update on Law Number 3/1972 on Basic Provisions of Transmigration); for history and overview see Ton Van Der Wijst, “Transmigration in Indonesia: An Evaluation of a Population Redistribution Policy,” *Population Research and Policy Review*, vol. 4, no. 1 (1985): pp. 1–30. An archipelago made up of 17,508 islands between the Indian Ocean and the Pacific Ocean, Indonesia has the fourth largest population in the world, an estimated 253,609,643 in 2014. See Embassy of the Republic of Indonesia, “Facts and Figures,” <https://www.embassyofindonesia.org/index.php/basic-facts/> (accessed January 21, 2021). Population distribution has always been highly concentrated on the island of Java, which is one of the most densely populated places on earth.

<sup>13</sup> Elmhirst, “A Javanese Diaspora? Gender and Identity Politics in Indonesia’s Transmigration Resettlement Program,” *Women’s Studies International Forum*, p. 487.

<sup>14</sup> “West Papua: Indonesian Transmigration Program Further Marginalizes the Indigenous Population,” Unrepresented Nations & Peoples Organization, November 6, 2014, <https://unpo.org/article/17676> (accessed October 2, 2020).

<sup>15</sup> Philip M. Fearnside, “Transmigration in Indonesia: Lessons from Its Environmental and Social Impacts,” *Environmental Management*, vol. 21, no. 4 (1997): pp. 553–570, doi:10.1007/s002679900049. In 1986, transmigration was singled out by a consortium of 14 environmental groups as one of the “Fatal Five”—the five projects chosen as illustrations of inadequate environmental safeguards in World Bank lending procedures. The other four include the Polonoroeste Project in Brazil, the Three Gorges Dam in China, the Narmada Dams in India, and the Livestock III project in Botswana. See also; “Human Rights Watch, East Timor Alert: Stop Transmigration!,” Human Rights Watch news release, September 20, 1999, <https://www.hrw.org/news/1999/09/20/east-timor-alert-stop-transmigration>.

<sup>16</sup> The *Jakarta Post* reported in May 2017 that the government of Indonesia “has allocated 600,000 hectares of lands as part of a transmigration program for people who want to move from crowded cities and towns to remote agricultural areas.” See “Indonesia prepares 600,000 ha land for transmigration,” *Jakarta Post*, May 5, 2017, <https://www.thejakartapost.com/news/2017/05/05/indonesia-prepares-600000-ha-land-for-transmigration.html> (accessed April 12, 2021).

agricultural productivity by combining the different skills of migrants and local residents.<sup>17</sup> The government launched a new wave of the program in December 2019 as stipulated in its 2020-2024 Medium-Term National Development Plan, aiming to develop 52 transmigration sites into new cities.<sup>18</sup>

## Land Rights for Transmigrants

Transmigrants are assigned to schemes or clusters in designated areas and with formal documentation establishing ownership rights.<sup>19</sup> Most transmigrant families have titles (*hak milik*) to their plots of land, but the majority of the other settler farmers not formally part of the program and in the fringe areas do not. Typically, each household received two hectares of land consisting of three parcels: *lahan usaha 1* (land for agricultural use; LU1, 0.75 hectares), *lahan usaha 2* (LU2, 1 hectares), and 0.25 hectares for the yard including the house and the house garden.<sup>20</sup>

Land and houses are allotted by lottery. The program also includes areas for community buildings (school, church, mosque, temple, cemetery, village offices, etc.), as well as an area of reserve land called *tanah restan*, mostly consisting of remaining forest. Critics argue that “the granting of land certification for transmigrants is not clearly defined” and that it “does not contain preventive and repressive legal protections for both transmigrants and local communities in land certification to prevent future legal issues.”<sup>21</sup> In practice, the government has granted land concessions to businesses overlapping with

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<sup>17</sup> “Transmigrasi, Berhasil Sejahterakan Pendatang dan Penduduk Lokal,” *Tempo.co*, August 1, 2019, <https://bisnis.tempo.co/read/1231146/transmigrasi-berhasil-sejahterakan-pendatang-dan-penduduk-lokal> (accessed October 2, 2020).

<sup>18</sup> “Indonesia’s Transmigration Program Moves More People Outside Java, But They Remain Poor,” *Jakarta Post*, December 25, 2019, <https://www.thejakartapost.com/news/2019/12/25/indonesias-transmigration-program-moves-more-people-outside-java-but-they-remain-poor.html> (accessed April 12, 2021).

<sup>19</sup> See Arif Rudy, Arif Firmansyah Ade, and Khoiriah Siti. “Evaluation of Indonesian Transmigration Law According to Land Certification for Transmigrants,” *Journal of Law, Policy and Globalization*, vol. 66 (2017): pp. 55-59, citing Law on Transmigration No. 15/1997, Pasal 24; amended by Law No. 29/2009. According to Rudy et al. analysis, land intended for transmigrants is granted with the status of property right certificate. Accordingly, title to land as referred to in paragraph (7) of the law shall be given no later than 5 years since the placement of the SP concerned. Article 31, paragraph (1) prohibits transfer of land allocated to transmigrants as part of SP-Pugar until after 15 years from the date of placement. The amended law says the same but no mention of land certification.

<sup>20</sup> Michael Hoppe and Heiko Faust, “Transmigration and Integration in Indonesia: Impacts on Resource Use in the Napu Valley, Central-Sulawesi,” Research Project on Stability of Rain Forest Margins (STORMA) Discussion Paper Series Sub-program A on Social and Economic Dynamics in Rain Forest Margins No. 13 (January 2004), p. 8, <http://webdoc.sub.gwdg.de/ebook/serien/yo/STORMA/SDP13.pdf> (accessed September 16, 2020).

<sup>21</sup> See Rudy, Ade, and Siti, “Evaluation of Indonesian Transmigration Law According to Land Certification for Transmigrants,” p. 55.

land allotted to transmigrant communities. When the company does not consult and compensate locals or carry out an environment and social impact assessment, this has resulted in conflict.

## Indonesia as the Top Palm Oil Producer

Indonesia is the world's largest palm oil producer and exporter. Much of this palm oil is produced in Riau, Kalimantan, and Sumatera, places that have historically been focus areas for relocation in the transmigration program. In 2019, the country produced more than 50 million tons of crude palm oil (CPO), more than half of the world's total production and more than double the production of Malaysia, the second largest producer.<sup>22</sup> In 2019, Indonesia's main export markets of palm oil are China (6 million tons), India (4.8 million tons), and the European Union (4.6 million).<sup>23</sup>

Indonesia's palm oil production is projected to grow in the coming years, propelled by the global demand for oleochemicals (chemical compound derived industrially from animal or vegetable oil or fats) and biodiesel.<sup>24</sup> While the EU announced it would cap all palm oil imports for biofuel at 2019 levels until 2023, and a total phase-out by 2030, new export destinations in Africa and North America are opening up.<sup>25</sup>

Previous reporting by Human Rights Watch and others has highlighted that weak laws, exacerbated by poor government oversight, have enabled oil palm plantation companies to trample on the human rights of two Indigenous communities in West Kalimantan and

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<sup>22</sup> Indonesian Palm Oil Association (Gabungan Pengusaha Kelapa Sawit Indonesia, GAPKI), "The Reflection on Palm Oil Industry in 2019 and Prospect for 2020," May 2020, <https://gapki.id/en/news/18425/the-reflection-on-palm-oil-industry-in-2019-and-prospect-for-2020> (accessed September 17, 2020); "Palm Oil Production by Country in 1000 MT [Metric Tons]," Index Mundi, <https://www.indexmundi.com/agriculture/?commodity=palm-oil> (accessed November 5, 2018).

<sup>23</sup> GAPKI, "The Reflection on Palm Oil Industry in 2019 and Prospect for 2020."

<sup>24</sup> See, for example, United States Department of Agriculture, Foreign Agricultural Service, "Indonesia: Oilseeds and Product Update," GAIN report No. ID1821, July 2018, <https://www.fas.usda.gov/data/indonesia-oilseeds-and-products-update-10> (accessed April 12, 2021), p. 2.

<sup>25</sup> GAPKI, "The Reflection on Palm Oil Industry in 2019 and Prospect for 2020"; Philip Blenkinsop, "EU Singles Out Palm Oil for Removal from Transport Fuel," *Reuters*, March 13, 2019, <https://www.reuters.com/article/us-eu-biofuels/eu-singles-out-palm-oil-for-removal-from-transport-fuel-idUSKBN1QU1G9> (accessed April 12, 2021); "Palm Oil is not a Green Fuel, Says EU," Transport and Environment, April 16, 2019, <https://www.transportenvironment.org/news/palm-oil-not-green-fuel-says-eu> (accessed April 12, 2021).

Jambi provinces.<sup>26</sup> In 2019, a government investigation found that 3.1 million hectares, or about 19 percent of the country's total oil palm plantations, are operating without valid government permits in forest areas.<sup>27</sup>

### Number of Oil Palm-Related Land Disputes

Comprehensive and up-to-date official data on land conflicts is hard to obtain.

Ombudsman Republik Indonesia, an independent government body that investigates complaints of maladministration, received 450 reports of land-related conflicts nationwide, with 163 conflicts implicating oil palm plantations in 2017. Conflicts involving oil palm plantations comprised the highest number of conflicts across all sectors in 2016 and 2017. In 2018, it recorded more than 1,000 land complaints by communities, including Indigenous people, against companies.

In 2017, Konsorsium Pembaruan Agraria (Consortium for Agrarian Reform), a coalition of 153 peoples' (peasants, Indigenous, women, fisherfolk, and urban poor) organizations, documented about 659 "agrarian conflicts" (disputes related to land) across the country, affecting more than 650,000 households. It recorded 410 agrarian conflicts in 2018 and 279 in 2019. Their reporting states that though there has been a steady decline of new conflicts "extraordinary levels of brutality, occurred [...] as a consequence of agrarian conflicts, [by] government officials." This was evident in the escalation of violence in handling land disputes in 2019: 14 deaths and 211 assaults, and 258 people arrested for defending their land.

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<sup>26</sup> Human Rights Watch and AMAN, "*When We Lost the Forest, We Lost Everything*" *Oil Palm Plantations and Rights Violations in Indonesia*; Friends of the Earth, LifeMosaic, Sawit Watch, "Losing Ground: The Human Rights Impacts of Oil Palm Plantations Expansion in Indonesia," February 2008. <https://www.foei.org/wp-content/uploads/2014/08/losingground.pdf> (accessed April 12, 2021); and Agus Adrianto, Heru Komarudin and Pablo Pacheco, "Expansion of Oil Palm Plantations in Indonesia's Frontier: Problems of Externalities and the Future of Local and Indigenous Communities," *Land*, vol 8, no. 4 (2019), accessed April 12, 2021 <https://www.cifor.org/knowledge/publication/7260>.

<sup>27</sup> Eko Listiyorini and Yoga Rusmana, "Indonesia Finds One-Fifth of Palm Oil Plantations Are Illegal," *Bloomberg*, October 10, 2019, <https://www.bloomberg.com/news/articles/2019-10-10/indonesia-finds-one-fifth-of-palm-oil-plantations-are-illegal> (accessed April 12, 2021).

## Large-Scale Draining of Indonesia's Peatlands for Palm Oil

Peatlands are a type of wetland that occurs in almost every country on the globe, storing vast amounts of carbon.<sup>28</sup> In fact, peatlands are the largest natural terrestrial carbon store; containing more carbon than all vegetation in the world combined.<sup>29</sup> Weak government action and inaction due to a lack of political will and other competing interests, particularly from the business sector, mean that globally this unique ecosystem has been overexploited and damaged by drainage, agricultural conversion, burning, and mining for fuel. This exploitation has released into the atmosphere huge amounts of greenhouse gases, including carbon dioxide (CO<sub>2</sub>), from centuries of carbon stored within peat soils. Further drainage of peatlands will make meeting the 1.5 degrees Celsius goal of the Paris Agreement impossible.<sup>30</sup>

Peatlands in Indonesia store an estimated 80 billion tons of carbon equivalent to approximately five percent of all global soil carbon. Estimates vary, but approximately 13 to 21 million hectares of peatland cover parts of the Indonesian provinces of Kalimantan, Sumatra, and Papua.<sup>31</sup> Peatland covers approximately 29 percent of West Kalimantan, with an area estimated by Wetlands International to measure around 1.7 million hectares. According to these estimates, peatlands in West Kalimantan store 3.6 billion tons of

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<sup>28</sup> UN Environment Programme, "Peatlands Store Twice as Much Carbon as All the World's Forests," February 1, 2019, <https://www.unenvironment.org/news-and-stories/story/peatlands-store-twice-much-carbon-all-worlds-forests> (accessed April 12, 2021); Jens Leifeld, Chloe Wüst-Galley, and Susan Page, "Intact and managed peatland soils as a source and sink of GHGs from 1850 to 2100," *Nature Climate Change*, vol. 9 (December 2019): pp. 945–947; Julie Loisel, Angela V. Gallego-Sala, Matthew J. Amesbury, et al., "Expert assessment of future vulnerability of the global peatland carbon sink," *Nature Climate Change*, vol. 11 (2021): pp. 70–77 (2021); and Global Peatlands Initiative, "What is Peat and Where is it found," <http://www.globalpeatlands.org/> (accessed April 12, 2021); Peat is partially decayed plant material that accumulates under water-logged conditions over thousands of years. Peatlands in their natural state are wet organic soils formed over thousands of years from plant remains. Wet peat is vital for carbon sequestration: it prevents the built-up carbon matter from decomposing, in turn keeping carbon locked away from the atmosphere. Peatlands differ based on the percentage of organic matter and thickness of the organic layers. See Roundtable on Sustainable Palm Oil (RSPO), "The Challenges of Growing Oil Palm on Peatlands," October 30, 2017, <https://rspo.org/news-and-events/news/the-challenges-of-growing-oil-palm-on-peatlands> (accessed April 12, 2021).

<sup>29</sup> International Union on the Conservation of Nature, "Issues Briefs: Peatlands and Climate Change," <https://www.iucn.org/resources/issues-briefs/peatlands-and-climate-change> (accessed April 12, 2021). The area covered by near natural peatland worldwide (3 million km<sup>2</sup>) sequesters 0.37 gigatonnes of carbon a year.

<sup>30</sup> Florian Humpenoder, Kristine Karstens, Hermann Lotze-Campen, Jens Leifeld, Lorenzo Menichetti, Alexandra Barthelmes, and Alexander Popp, "Peatland Protection and Restoration are Key for Climate Change Mitigation," *Environmental Research Letters*, vol. 15, no. 10 (October 2021).

<sup>31</sup> In Indonesia, peatlands cover 20.6 million hectares, which is 10.8 percent of the national land mass. Wetlands International, "Peatland Treasures," <https://indonesia.wetlands.org/our-approach/peatland-treasures/#read-more> (accessed April 12, 2021). The Indonesian peat land and swamp is estimated about 13 million hectares. See Sustainable Management of Peatland Forests in Southeast Asia, "Indonesia," <http://www.aseanpeat.net/index.cfm?&menuid=68> (accessed January 21, 2021).

carbon. In 2020, the Indonesia Palm Oil Association (Gabungan Pengusaha Kelapa Sawit Indonesia, GAPKI) estimates Indonesia has about 15 million hectares of peatland, mostly in Sumatra and Kalimantan, with about 25 percent, 4 million hectares, that has been converted into industrial forests and agricultural plantations through land concessions to companies.<sup>32</sup> The total area of peatland within concessions, including areas that are unplanted, is potentially much larger.

GAPKI and government agencies such as the Indonesia Sustainable Palm Oil (ISPO) have a primary aim to increase palm oil production, including on peatland, and GAPKI claims this can be done “sustainably.”<sup>33</sup> Yet, the drainage required for large-scale cultivation of oil palms on peatland has serious environmental and climate impacts that go far beyond the plantation, like high CO<sub>2</sub> emissions from peat oxidation, the land subsides, and makes the soil susceptible to fires and floods. Existing regulations are inadequate, coupled with very limited enforcement, to ensure sustainable and human rights-abiding practices within the industry.

Worldwide, degraded peatlands, through clearing and drainage, are a major source of greenhouse gas emissions, annually releasing almost 6 percent of global anthropogenic—or an estimated 1.3 gigatons—of CO<sub>2</sub> emissions annually.<sup>34</sup> The clearing of peatland for land use, land use change, and forestry (LULUCF), and the associated drainage, has been the primary cause of deforestation, biodiversity loss, and peatland subsidence in Indonesia.<sup>35</sup>

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<sup>32</sup> GAPKI, “Reading ‘Cinderella Story’ In Peat Lands Use For Oil Palm,” July 2020, <https://gapki.id/en/news/18886/reading-cinderella-story-in-peatlands-use-for-oil-palm> (accessed April 12, 2021).

<sup>33</sup> Ibid.; see also, GAPKI, “Don’t Paint Peat Lands with the Same Brush,” July 2020. <https://gapki.id/en/news/18851/dont-paint-peat-lands-with-the-same-brush> (accessed April 12, 2021).

<sup>34</sup> International Union on the Conservation of Nature “Issues Briefs: Peatlands and Climate Change.”

<sup>35</sup> Global Forest Watch, “Fires,” <https://fires.globalforestwatch.org/about/docs/Infographic-WRI-Forest-v1.o.pdf>; International Fund for Agriculture (IFAD), Global Environment Facility, “Sustainable Management of Peatland Ecosystems in Indonesia (SMPEI) Final Project Design Report,” 2016, <https://www.thegef.org/project/sustainable-management-peatland-ecosystems-indonesia-smpei> (accessed April 13, 2021), p. xi, para. 3; and OECD Environmental Performance Reviews, “OECD Green Growth Policy Review of Indonesia 2019,” <https://www.oecd-ilibrary.org/sites/5679efba-en/index.html?itemId=/content/component/5679efba-en&mimeType=text/html> (accessed January 21, 2021). Drainage of peatland results in drying out of peat swamps; increases susceptibility to fire; and disrupts the regulation and maintenance of hydrological balance in dry and wet seasons, which is critical to preventing floods and providing water supply to surrounding areas. The drying out of peatlands due to drainage has made peat forests extremely susceptible to fire; which is further exacerbated by El Nino drought effects; and CIFOR, Kristell Hergoualc’h, Rachel Carmenta, Stibniati Atmadja, Christopher Martius, Daniel Murdiyarso, and Herry Purnomo, “Managing peatlands in Indonesia Challenges and opportunities for local and global communities,” Center for International Forestry Research info brief, February 2018, [http://www.cifor.org/publications/pdf\\_files/infobrief/6449-infobrief.pdf](http://www.cifor.org/publications/pdf_files/infobrief/6449-infobrief.pdf) (accessed April 12, 2021).

Cultivation of oil palm on peatland has direct global significance on climate change resulting from high greenhouse gas emissions, but also considerable local impacts, including from peat soil subsidence, consequent flooding, and productivity loss, and alteration of water flows/hydrology. The drainage required for oil palm cultivation causes peat oxidation and makes the soil more susceptible to fires and floods.<sup>36</sup> Plantation hydrology extends and affects hydrology of the surrounding areas, which is why the impact of drainage can be felt up to five kilometers (3.1 miles) from a plantation boundary and can trigger fires outside of the plantation.<sup>37</sup> In addition to the release of stored carbon, the drainage of peatlands also turns them into hotspots for fires that can contribute to air pollution and alarming spikes in a variety of greenhouse gases being emitted, with CO<sub>2</sub> emissions being the biggest concern.<sup>38</sup> With clearing, draining and burning to replace native peat ecosystems with oil palm, the land subsides and is more prone to flooding, in the case of the communities we researched, by salty sea water.<sup>39</sup>

According to peatland distribution data from Peatland Restoration Agency (Badan Restorasi Gambut, BRG), a government agency for peatland restoration monitoring, much of the total area of Kubu Raya regency is peat with depth more than three meters. Indonesian law restricts companies from planting on peat that is more than 3 meters (9.8 feet) deep, but the law is routinely flouted, and enforcement is difficult.<sup>40</sup> A lack of

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<sup>36</sup> Roundtable on Sustainable Palm Oil (RSPO), “The Challenges of Growing Oil Palm on Peatlands.”

<sup>37</sup> Ibid.

<sup>38</sup> Impacts of Intergovernmental Panel on Climate Change (IPCC), “Chapter 3: Impacts of 1.5C global warming on natural and human systems,” in “Special Report: Global Warming of 1.5 C,” October 2018, <https://www.ipcc.ch/sr15/chapter/chapter-3/> (accessed March 1, 2021); Shannon N. Koplitz, et al., “Public Health Impacts of the Severe Haze in Equatorial Asia in September-October 2015: Demonstration of a new framework for informing fire management strategies to reduce downwind smoke exposure,” *Environmental Research Letters*, vol. 11, no. 9 (2016), accessed April 13, 2021, doi:10.1088/1748-9326/11/9/094023; Roundtable on Sustainable Palm Oil (RSPO), “The Challenges of Growing Oil Palm on Peatlands.”

<sup>39</sup> Roundtable on Sustainable Palm Oil (RSPO), “The Challenges of Growing Oil Palm on Peatlands.”

<sup>40</sup> Ministry of Environment and Forestry, Regulation No. P.10/MENLHK/SETJEN/KUM.1/3/2019 on Determination, and Management of Peat Done Peaks Based on Peat Hydrological Unity, art. 4 and 8, <https://www.rimbawan.net/2019/04/permenlhk-nomor-p10-tahun-2019-tentang.html>; Law No. 32/2009 on Protection and Management of Environment; Presidential Decree No. 32/1990 on the Management of Protected Areas; PP. No 47/1997 on Spatial Planning; Peter Hadfield, “Large ecological cost as peat removed for palm oil,” *The Science Show, ABC National Radio, Australia*, November 26, 2016,

<https://www.abc.net.au/radionational/programs/scienceshow/large-ecological-cost-as-peat-removed-for-palm-oil/8058716> (accessed April 13, 2021); Jukka Miettinen, Aljosja Hooijer, Ronald Vernimmen, Soo Chin Liew, and Susan E. Page, “From carbon sink to carbon source: extensive peat oxidation in insular Southeast Asia since 1990,” *Environmental Research Letters*, vol. 12, no. 2 (2017), accessed April 13, 2021, doi:10.1088/1748-9326/aa5b6f; Susan E. Page and A. Hooijer. “In the line of fire: the peatlands of Southeast Asia,” *Philosophical Transactions of the Royal Society B: Biological Sciences*, vol. 371, no. 1696 (2016), accessed April 13, 2021, doi: 10.1098/rstb.2015.0176; Jukka Miettinen, Chenghua Shi, Soo Chin Liew, “Land cover distribution in the peatlands of Peninsular Malaysia, Sumatra and Borneo in 2015 with changes

definitive mapping on distribution of peatland and depth constrains an adequate understanding of where non-compliant large-scale cultivation is taking place on peatlands in Indonesia. JAMRUT KALBAR (Peat Society Network of West Kalimantan) data shows that about 2,060 hectares or 40 percent of the total area of Seruat Dua is peat.

## Government and Industry’s Insufficient Efforts to Address Environmental Risks of Oil Palm Plantations

Over the last two decades, the Indonesian government has taken some steps to reduce deforestation<sup>41</sup> and curb degradation of peatland. Many regulations have been put in place to manage the use of peat areas.<sup>42</sup> In 2016, as part of its nationally determined contribution (NDC), a pledge to cut emissions under the Paris Agreement, Indonesia’s President Joko Widodo, known as Jokowi, set up the BRG to restore about two million hectares of partially degraded peatland, and banned the use of fire in clearing peat

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since 1990,” *Global Ecology and Conservation*, vol. 6 (2016): pp. 67–78; Jukka Miettinen, Aljosja Hooijer, Chenghua Shi, Daniel Tollenaar, Ronald Vernimmen, Soo Chin Liew, Chris Malins, and Susan E. Page, “Extent of industrial plantations on Southeast Asian peatlands in 2010 with analysis of historical expansion and future projections,” *Global Change Biology Bioenergy*, vol. 4, no. 6 (2012): pp. 908–18, accessed April 13, 2021, doi:10.1111/j.1757-1707.2012.01172.x.

<sup>41</sup> Apriza Pinandita, “Indonesia to receive \$56 million from Norway for reducing emissions,” *The Jakarta Post*, May 22, 2020, <https://www.thejakartapost.com/news/2020/05/22/indonesia-to-receive-56-million-from-norway-for-reducing-emissions.html> (accessed April 13, 2021); Mikaela Weisse and Elizabeth Dow Goldman, “We Lost a Football Pitch of Primary Rainforest Every 6 Seconds in 2019,” World Resources Institute, June 2, 2020, <https://www.wri.org/blog/2020/06/global-tree-cover-loss-data-2019> (accessed April 13, 2021). In 2019, Indonesia lost 324,000 hectares of primary forest but the loss decreased by 5 percent compared to 2018, marking the third year in a row of lower levels of loss.

<sup>42</sup> Government Regulation No. 57 of 2016, Amendments to Government Regulation Number 71 of 2014 concerning Protection and Management of Peat Ecosystems; Government Regulation No. 71 of 2014, Protection and Management of Peat Ecosystems; Presidential Decree of the Republic of Indonesia Number 32 of 1990, Protected Area Management; Presidential Regulation No. 1 of 2016, Peatland Restoration Agency; Presidential Instruction Number 8 of 2015, Postponement of Granting of New Permits and Improving Management of Primary Natural Forests and Peatlands; Presidential Instruction of the Republic of Indonesia Number 11 of 2015, Improving Forest and Land Fire Control; Regulation of the Head of the Peatland Restoration Agency Number: P.1 / BRG-KB / 2017, Technical Guidelines for Distribution of Government Assistance to Local Governments or Communities Scope of the Peat Restoration Agency (‘PP71’); Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number: P. 12 / Menlhk-II / 2015, Industrial Plantation Forest Development; Decree of the Head of the Peatland Restoration Agency, Regarding the Establishment of a Peat Ecosystem Restoration Monitoring System; Decree of the Head of the Peatland Restoration Agency, Regarding the Establishment of the Main Performance Indicators for BRG in 2018, <https://brg.go.id/produk-hukum/> (accessed September 22, 2020)

areas.<sup>43</sup> The agency is mandated to coordinate restoration of partially degraded peatlands in seven provinces under the supervision of the Ministry of Environment and Forestry.<sup>44</sup>

Yet, despite this broad mandate, BRG has no authority to initiate restoration on peatlands within any concession, including industrial forestry and oil palm concessions, and provides technical support only when the concession holder is willing to work with the agency to restore partially degraded peatland. For example, BRG signed a memorandum of understanding with the Olak Olak and Mengkalang Jambu communities to assist in restoring degraded peatland in the area.<sup>45</sup> However, BRG would have to solicit buy-in from PT Sintang Raya to restore peatland within its concession. By 2018, BRG had restored less than 12 percent of about 1.7 million hectares of peatland on concession land compared to 87 percent restoration of 890,000 hectares of peatland located on non-concession land.<sup>46</sup>

In 2019, President Jokowi made permanent a longstanding moratorium on clearing primary forests, including forested peatlands with an aim to curb deforestation and peatland

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<sup>43</sup> Republic of Indonesia, “First Nationally Determined Contribution,” November 2016, [https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Indonesia%20First/First%20NDC%20Indonesia\\_submitted%20to%20UNFCCC%20Set\\_November%20%202016.pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Indonesia%20First/First%20NDC%20Indonesia_submitted%20to%20UNFCCC%20Set_November%20%202016.pdf) (accessed March 1, 2021); Moratorium of New Permits and Finalization of Management for Primary Forest and Peatland (Presidential Instruction No. 10/2011; No. 6/2013 and 2015). This Presidential Instruction covers a moratorium on new licenses for two years and other instructions aimed at reducing GHG emissions, e.g. halting drainage and development on peatlands; Approval of the Indonesian National Peatland Regulation (PP71) in September 2014 and establishment of a Peatland Restoration Agency. PP71 specifies the designation, assessment, and mapping of peatland hydrological units (PHU) as a key regulatory and planning tool for sustainable peatlands management by 2018. And established the Directorate for Peatland Degradation Control in Ministry of Environment and Forestry in June 2015; The government called on the United National Environment Programme and its partners to establish The Global Peatlands Initiative. See: “Working as one: how Indonesia came together for its peatlands and forests,” UN Environment Programme, June 4, 2019, <https://www.unenvironment.org/news-and-stories/story/working-one-how-indonesia-came-together-its-peatlands-and-forests> (accessed April 24, 2021). Indonesia is one of four countries in the ASEAN Peatland Forests Project (APFP). See “About PFP,” Sustainable Management of Peatland Forests in Southeast Asia,” undated, <http://www.aseanpeat.net/index.cfm?&menuid=38> (accessed April 24, 2021).

<sup>44</sup> A. Muh. Ibnu Aquil, “Plan to Dissolve Peatland Restoration Agency Raised Concerns,” *The Jakarta Post*, July 17, 2020, <https://www.thejakartapost.com/news/2020/07/16/plan-to-dissolve-peatland-restoration-agency-raised-concerns.html> (accessed October 26, 2020). BRG provides technical assistance to concession holders attempting restoration on 1.7 million hectares of peatlands that are in concession areas (1.2 million hectares in forestry concession areas and 550,000 hectares in plantation concession areas). The agency has more flexibility to directly coordinate and facilitate restoration with local officials, NGOs, and residents on 890,000 hectares of peatland located on non-concession.

<sup>45</sup> Badan Restorasi Gambut, Kemitraan Partnership, Jaringan Kerja Pemetaan Partisipatif, and Epistema Institute, “Profil Desa Mengkalang Jambu, Kecamatan Kubu, Kabupaten Kubu Raya, Provinsi Kalimantan Barat. PROGRAM DESA PEDULI Gambut Badan Restorasi Gambut, Deputi Bidang Edukasi, Sosialisasi, Partisipasi Dan Kemitraan, 2018. <http://brg.go.id/wp-content/uploads/2019/03/FIX-Kalbar-Kubu-Raya-Kubu-Desa-Mengkalang-Jambu.pdf> (accessed September 20, 2020); Profil Desa Olak Olak Kubu, Kecamatan Kubu, Kabupaten Kubu Raya, Provinsi Kalimantan Barat. PROGRAM DESA PEDULI Gambut Badan Restorasi Gambut, Deputi Bidang Edukasi, Sosialisasi, Partisipasi Dan Kemitraan, 2018. <http://brg.go.id/wp-content/uploads/2019/03/Kalbar-Kubu-Raya-Kubu-Desa-Olak-Olak-Kubu.pdf> (accessed September 20, 2020).

<sup>46</sup> Ibid.

degradation.<sup>47</sup> However, the moratorium has wide loopholes: millions of hectares of primary forests have been removed from protection since the first ban in 2011 due to a re-categorization of forests by the government; and the moratorium excludes areas that already had in-principle permits in 2011, such as for oil palm, even if they were in primary forests.<sup>48</sup> The country has an abundance of regulations related to forests, agriculture, and the environment. However, regulatory loopholes, poor oversight, and the government's interest in promoting increased production of oil palm for domestic and foreign markets mean that the government struggles to coordinate between the provinces and national government, enforce its own laws and sanction noncompliance.<sup>49</sup>

Meanwhile, Indonesia's greenhouse gas emissions continue to rise and the government has failed to set adequate reduction targets.<sup>50</sup> Climate Action Tracker, an independent think tank tracking government climate action, rates Indonesia's emission reduction targets in its 2016 NDC as "Highly Insufficient," and "not at all consistent with holding warming to below 2°C let alone with the Paris Agreement's stronger 1.5°C limit." The government is in the process of drafting a new NDC.<sup>51</sup>

## Palm Oil Certification

The Indonesian government has a palm oil industry certification mechanism, the Indonesian Sustainable Palm Oil (ISPO), which combines a number of laws that govern

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<sup>47</sup> Presidential Instruction (INPRES) on the Termination of the Granting of New Permits and Perfecting Natural Primary Forest and Peatland Management No. 5 of 2019; "Indonesia President Makes Moratorium on Forest Clearance Permanent," *Reuters*, August 8, 2019, <https://www.reuters.com/article/us-indonesia-environment-forest/indonesia-president-makes-moratorium-on-forest-clearance-permanent-idUSKCN1UY14P> (accessed September 22, 2020).

<sup>48</sup> "Indonesia's Moratorium on Clearing Forests and Peatlands Now Permanent – But Excludes Vast Areas," Environment Investigation Agency news release, August 16, 2019, <https://eia-international.org/news/indonesias-moratorium-on-clearing-forests-and-peatlands-now-permanent-but-excludes-vast-areas/> (accessed September 22, 2020). Eight million hectares of primary forest (18 percent of the country's total), including over six million hectares in Papua, and 10 million ha of peatland (67 percent of the total).

<sup>49</sup> Human Rights Watch and AMAN, "*When We Lost the Forest, We Lost Everything*": *Oil Palm Plantations and Rights Violations in Indonesia*"; "Indonesia: New Law Hurts Workers, Indigenous Groups," Human Rights Watch news release, October 15, 2020, <https://www.hrw.org/news/2020/10/15/indonesia-new-law-hurts-workers-indigenous-groups>, "One Million Hectares Burned Inside Forest Moratorium Area, Greenpeace Analysis Shows," Greenpeace Southeast Asia news release, August 8, 2019, <https://www.greenpeace.org/southeastasia/press/2834/one-million-hectares-of-forest-burned-inside-forests-moratorium-area-greenpeace-analysis-show/> (accessed September 22, 2020).

<sup>50</sup> "Indonesia," Climate Action Tracker, <https://climateactiontracker.org/countries/indonesia/> (accessed October 28, 2020).

<sup>51</sup> *Ibid.*

environmental management, land acquisition, and oil palm cultivation.<sup>52</sup> The certification mechanism aims to improve the competitiveness of Indonesian palm oil in the global market, support commitments to reduce greenhouse gas emissions, and improve sustainability.<sup>53</sup> ISPO accredits oil palm plantations that comply with Indonesian local laws and principles of social responsibility, conservation management, including protecting primary forest and peatland, but despite their climate commitments, does not explicitly prohibit clearing natural (both primary and secondary) forests or peatland for plantations.<sup>54</sup> It has no guideline requiring plantations to resolve land-related disputes with Indigenous peoples or local communities. The ISPO certification is mandatory for all large oil palm plantation business actors in Indonesia with compliance dates and requirements varying on size of operations.<sup>55</sup> Government authorities can downgrade and revoke the business license of plantation companies that are not ISPO certified. In practice, amid a lack of effective monitoring and enforcement, there is little evidence that the government sanctions plantations that have not obtained the required certification.<sup>56</sup> Experts have criticized the ISPO for its inadequate environmental protections, neglecting human rights, weak monitoring and oversight, lack of a community grievance resolution

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<sup>52</sup> “Presidential Regulation on ISPO of March 2020” (“Peraturan Presiden Republik Indonesia Nomor 44 Tahun 2020 Tentang Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia”), Ministry of Agriculture, March 18, 2020, <http://ditjenbun.pertanian.go.id/peraturan-presiden-republik-indonesia-nomor-44-tahun-2020/> (accessed March 1, 2020).

<sup>53</sup> Indonesian Sustainable Palm Oil, “ISPO,” <http://www.ispo-org.or.id/index.php?lang=en> (accessed January 16, 2019).

<sup>54</sup> Hans Nicholas Jong, “Indonesia aims for sustainability certification for oil palm smallholders,” *Mongabay*, April 29, 2020, <https://news.mongabay.com/2020/04/indonesia-aims-for-sustainability-certification-for-oil-palm-smallholders/> (accessed October 26, 2020); Nia Kurniawati Hidayat, Astrid Offermans, and Pieter Glasbergen, “Sustainable Palm Oil as a Public Responsibility? On the Governance Capacity of Indonesian Standard for Sustainable Palm Oil (ISPO),” *Agriculture and Human Values*, vol. 35 (2018): pp. 223–242, Conflicting rules within ISPO rules e.g. ISPO point 2.2.1.4 based on Regulation of Ministry of Agriculture No. 14/2009: “plantation companies who cultivate palm oil in peat land should pay attention to the characteristic of the peatland to eliminate the environmental damage,” conflicts with ISPO point 3 about: “protection to the utilization of primary forest and peat land areas.” ISPO principles also conflict with other laws such as *Surat Edaran* Ministry of Environment and Forest about moratorium on peat land clearance, November 3, 2015.

<sup>55</sup> Regulation of the Minister of Agriculture concerning the Indonesian Sustainable Palm Oil (ISPO) Certification System, No. 11 / Permentan / OT.140 // 3/2015, art. 4 (1), art. 6 (2), art. 7 (3), and art. 8 (3). In practice there is no evidence that the government sanctions plantations that have not obtained the required certification.

<sup>56</sup> Greetje Schouten and Verena Bitzer, “The emergence of Southern standards in agricultural value chains: A new trend in sustainability governance?” *Ecological Economics*, vol. 120, issue C (2015): pp. 175-184; and Hans Nicholas Jong, “Indonesia aims for sustainability certification for oil palm smallholders,” *Mongabay*; and Human Rights Watch and AMAN, *When We Lost the Forest, We Lost Everything: Oil Palm Plantations and Rights Violations in Indonesia*.

mechanism, and poor enforcement.<sup>57</sup> ISPO has been unfavorably compared to the Roundtable on Sustainable Palm Oil (RSPO), a global palm oil certification standard.<sup>58</sup>

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<sup>57</sup> Nia Kurniawati Hidayat, Astrid Offermans, and Pieter Glasbergen. 2018. Sustainable Palm Oil as a Public Responsibility? On the Governance Capacity of Indonesian Standard for Sustainable Palm Oil (ISPO). *Agriculture and Human Values* 35(1), pp. 223–242. <https://link.springer.com/article/10.1007/s10460-017-9816-6> (accessed October 26, 2020); Forest Peoples Programme “A comparison of Leading Palm Oil Certification Standards,” November 22, 2017, <http://www.forestpeoples.org/en/responsible-finance-palm-oil-rspo/report/2017/comparison-leading-palm-oil-certification-standards> (accessed February 11, 2019), Forest Peoples Programme categorized ISPO as the weakest standard out of seven in upholding basic land rights and customary rights.; Profundo, “External Concern on the ISPO and RSPO Certification Schemes,” January 21, 2018, [https://www.foeeurope.org/sites/default/files/eu-us\\_trade\\_deal/2018/report\\_profundo\\_rspo\\_ispo\\_external\\_concerns\\_feb2018.pdf](https://www.foeeurope.org/sites/default/files/eu-us_trade_deal/2018/report_profundo_rspo_ispo_external_concerns_feb2018.pdf) (accessed January 16, 2019); “Backtracking on reform: how Indonesia’s Government is weakening its palm oil standards,” Environmental Investigation Agency news release, February 8, 2018, <https://eia-international.org/backtracking-reform-indonesias-government-weakening-palm-oil-standards/> (accessed January 16, 2019).

<sup>58</sup> Ministry of Agriculture of the Republic of Indonesia, Secretariat of ISPO and RSPO, *Joint Study on the Similarities and Differences of the ISPO and the RSPO Certification Systems*, [https://www.undp.org/content/dam/gp-commodities/docs/ISPO-RSPO%20Joint%20Study\\_English\\_N%208%20for%20screen.pdf/](https://www.undp.org/content/dam/gp-commodities/docs/ISPO-RSPO%20Joint%20Study_English_N%208%20for%20screen.pdf/)

## **II. Findings: Abuses against Transmigrant Communities in Kubu Raya Regency, West Kalimantan**

The Indonesian government has allocated plantation concessions on land over which transmigrant villages have land tenure rights,<sup>59</sup> violating their right to property, and creating conflicts between plantations and farmers. The various government agencies involved have also failed to provide adequate oversight of companies' compliance with required procedures to obtain government permits and authorizations. Palm oil companies have taken part in expropriations of land from villagers without consultation, and without replacement land and adequate compensation, a violation of the right to property. Community members who have tried to enforce their rights have been intimidated by the police arresting and jailing key individuals, and imposing a heavy police presence in villages in an apparent effort to deter resistance. The investigations that Human Rights Watch carried out at PT Sintang Raya plantations are illustrative of these broader issues.

Human Rights Watch researched the operations of oil palm company PT Sintang Raya, on peatlands in Kubu Raya Regency, West Kalimantan. The company has plantations in multiple villages across the regency, including Seruat Dua, Mengkalang Jambu and Olak Olak. These oil palm plantations first started operations between 2004 and 2007, subsequently expanded, and continue operating today.

As detailed below, we found that PT Sintang Raya's operations have not followed domestic law and have taken over land owned by transmigrants and used by settler communities without adequate consultation or compensation, and government agencies have not ensured that all communities' complaints are remedied. PT Sintang Raya failed to adequately consult communities prior to obtaining a "right-to-exploit permit" (Hak Guna Usaha, or HGU) from the government permitting it to establish a plantation on the land; the company established its plantations on their farmlands, resulting in loss of livelihoods; and the plantation's operations have contributed to environmental degradation such as increased pests and salination of their surface waters and soil, impacting crop yields and food security.

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<sup>59</sup> Pontianak Administrative Judgment Number: 36/G/2011/PTUN.PTK, August 9, 2021, in conjunction with Jakarta High Administrative Court Number: 22/B/2013/PT.TUN.JKT in conjunction with Supreme Court Judgment Number: 550 K/TUN/2013, February 27, 2014, and Number 152 PK/TUN/2015, which affirm PT Sintang Raya's HG overlapped several locals' land title.

The transmigrant and settler communities are still grappling with serious impacts of the operations on their rights to property, adequate standard of living, participation, and an effective remedy. The rights of activists and community human rights defenders working on land issues have also come under assault. Civil society organizations and community members say the local police have intimidated them when they peacefully protest the plantation expanding into their farmland. They allege the police have used any ensuing altercation to justify officers' raiding homes, harassing, and arresting villagers in these communities. The losses, especially to transmigrant women, have been ignored. The government has failed to enforce a court judgment affecting all three areas,<sup>60</sup> ensure that the dispute between the company and these communities is resolved and the company takes effective steps to mitigate any harm caused by its operations in the area.

## **Palm Plantation Company: PT Sintang Raya in Kubu Raya**

In 2004, the government granted PT Sintang Raya a location permit covering over 20,000 hectares in Kubu Raya, including land that transmigrant and voluntary settler communities considered theirs, and a plantation business permit (IUP).<sup>61</sup> In 2007, PT Sintang Raya started clearing the land, including forests in the area, and it obtained an environment permit (AMDAL) in 2008.<sup>62</sup> In 2009, the National Land Agency granted the company an HGU permit for over 11,000 hectares of land.<sup>63</sup> An HGU is a government permit granting the right to exploit a specific area of land for a period generally no longer than 25 years, but up to 35 years for a business that needs a longer time, and can be renewed.

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<sup>60</sup> Ibid.

<sup>61</sup> PT Sintang Raya is a large-scale oil palm plantation company established in 2002 with the deed of establishment number 26 dated March 22, 2002 and renewed in 2007 with number 12 dated December 5, 2007. In 2004 the company obtained a location permit covering 20,000 hectares, 2009 HGU. Company Location Permit: No. 400/02-IL/2004, issued March 24, 2004 and extended in 2007, No. 25 of 2007 No.503/0457 / II / Bappeda (April 1, 2004); Plantation Business License: No. 03/0457/II-Bappeda, issued April 01, 2004.

<sup>62</sup> Kalimantan Legal Aid Association (PBHK), *Maintain Position in Kubu Raya PT. Sintang Raya Do Everything* April 27, 2016. <https://www.pbhk.org/pertahankan-posisi-di-kubu-raya-pt-sintang-raya-lakukan-segala-cara/> (accessed December 16, 2019); Institute for Policy Analysis of Conflict (IPAC), "Anatomy of an Indonesia Oil Palm Conflict," IPAC Report No. 31, August 31, 2016, [http://file.understandingconflict.org/file/2016/08/IPAC\\_Report\\_31\\_Oil\\_Palm.pdf](http://file.understandingconflict.org/file/2016/08/IPAC_Report_31_Oil_Palm.pdf) (accessed December 16, 2019), p. 7.

<sup>63</sup> Permit number HGU 04/2009 dated June 5, 2009 covering 11,129.9 ha located in Seruat Dual Village, Seruat III, Mengkalang Jambu, Mengkalang Guntung, Sui Selamat, Sui Ambawang, and Dabong Village.

On November 11, 2009, PT Sintang Raya became a joint venture with PT Miwon Agro Kencana Sakti (PT Miwon Indonesia Tbk), which is a subsidiary of South Korea-based Daesang Corporation.<sup>64</sup> In a letter PT Sintang Raya sent to RSPO regarding alleged human rights violations related to their operations in Kubu Raya, PT Sintang Raya clarified that their operations were no longer affiliated with the Miwon conglomerate.<sup>65</sup> PT Miwon Indonesia's website shows that the companies are affiliated. By March 2016 PT Sintang Raya had planted 9,300 hectares of its 11,000 hectare land concession; and used an additional 556 hectares to build roads, buildings, irrigation channels and other infrastructure.<sup>66</sup> PT Sintang Raya is not a member of the RSPO, but has the required certification from the ISPO.<sup>67</sup>

The Kalimantan Legal Aid Association (Perkumpulan Bantuan Hukum Kalimantan, or PBHK) said that the land granted by the government to PT Sintang Raya in 2009 cuts across seven farming communities—Seruat Dua, Seruat III, Mengkalang Jambu, Mengkalang Guntung, Sui Selamat, Sui Ambawang, and Dabong Village.<sup>68</sup> With the issuance of the of PT Sintang Raya's HGU, the company has expanded its plantation and milling operation across all of these villages and into an eighth, Olak Olak.<sup>69</sup>

The communities have used formal channels to protest and resist the expansion of the company and contest incorporation of their farmland in the company's HGU, reporting to regency and provincial authorities and filing lawsuits against PT Sintang Raya, as well as informally through demonstrations and networking with NGOs.

Indonesia has various laws and regulations requiring companies to consult during the initial phase of acquiring government permits with communities that their operations will

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<sup>64</sup> Through the joint venture permit (Izin Perseroan Terbatas Penanaman Modal Asing Nomor 232/V/PMA/2009), a majority stake in PT Sintang Raya was acquired by PT Miwon Agro Kencana Sakti, part of the Miwon Group Indonesia which in turn is a subsidiary of the Daesang Corporation Ltd from Korea Selatan, operating in the food sector; Winon website – CSR, Sintang Raya Cup, October 7, 2013. [http://www.miwon.co.id/csr/detail\\_csr2.php?dat=5&hasil=&jj=&hal=1&id=MTkz&idkat=NQ==](http://www.miwon.co.id/csr/detail_csr2.php?dat=5&hasil=&jj=&hal=1&id=MTkz&idkat=NQ==) accessed December 16, 2019). Daesang Corporation, About Company – Global Network. <https://www.daesang.com/en/company/network/global.jsp> (accessed December 16, 2019), Daesang Corporation is an international company operating principally in the food sector with offices across Southeast Asia, Russia, Netherlands, and the United States.

<sup>65</sup> On October 20, 2015, PT Sintang Raya sent a clarification to the RSPO that it does not have any links with Miwon Commercial Co. Ltd. <https://www.rspo.org/publications/download/7b7dced1ef2f9c9> (accessed December 16, 2019).

<sup>66</sup> IPAC, "Anatomy of an Indonesian Oil Palm Conflict," p. 24.

<sup>67</sup> Indonesia Sustainable Palm Oil (ISPO) certification no. 390, audited by PT. Mutu Indonesia Strategis Berkelanjutan between December 7 and 11, 2015, on file with Human Rights Watch.

<sup>68</sup> Human Rights Watch interview with Eka Amirza of PBHK, Pontianak, West Kalimantan, April 23, 2018.

<sup>69</sup> Memo from LinkAR Borneo, on file with Human Rights Watch.

potentially affect.<sup>70</sup> In practice there is minimal government oversight regarding the conduct of company consultations, if they happen at all.<sup>71</sup>

Under Indonesian law, companies must compensate rights-holders' loss of land and their ability to benefit from it. The 1999 Law of Forestry and 2014 Law of Plantations require that permit-holders pay compensation for a community's loss of access to land to new forestry and agricultural projects.<sup>72</sup> The law governing the process of acquiring a plantation permit also states that the authorizing official should verify that the company has planned to establish a "community plantation" (or "plasma"), or provides other productive business opportunities for local communities.<sup>73</sup> The "community plantation" is a partnership scheme in which the company establishes a plantation for the community of at least 20 percent of the total land size the company cultivates. This partnership aims to benefit residents, including those displaced through credits, profit sharing, and other agreed forms of funding.<sup>74</sup>

In 2020 Human Rights Watch wrote to PT Sintang Raya seeking information about its operation, human rights risk assessments, and risk-prevention, mitigation, and

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<sup>70</sup> Agrarian Minister/Head of the National Land Agency Regulation on Location Permits, No. 14 of 2018, art. 21. The repealed regulation on Location Permit No. 2 of 1999, referred to consultation in art. 4, and in art. 6(5). Consultation required before application for location permit; Government Regulation concerning Environmental Permits, no. 27 of 2012, Law of Environmental Protection and Management, No. 32 of 2009, art. 26(4), and Environment Ministry Regulation No. 8 of 2006. Consultation required before application for environment permit (AMDAL); Law No. 39 of 2014 on Plantations (Law of Plantations), art. 12(1-2), (formerly Law of Plantations, no. 18 of 2004, art. 9 (2)). And consult during the process of obtaining a plantation permit. See also, Ministry of Agriculture of the Republic of Indonesia, Secretariat of Indonesian Sustainable Palm Oil (ISPO) and Roundtable on Sustainable Palm Oil (RSPO), *Joint Study on the Similarities and Differences of the ISPO and the RSPO Certification Systems* (Jakarta: Ministry of Agriculture of the Republic of Indonesia, Secretariat of Indonesian Sustainable Palm Oil (ISPO) and Roundtable on Sustainable Palm Oil (RSPO), 2015), pp. 48, 51-52, [https://www.undp.org/content/dam/gp-commodities/docs/ISPO-RSPO%20Joint%20Study\\_English\\_N%208%20for%20screen.pdf](https://www.undp.org/content/dam/gp-commodities/docs/ISPO-RSPO%20Joint%20Study_English_N%208%20for%20screen.pdf) (accessed January 16, 2019). The paper outlines the legal framework and community consultation requirements in detail.

<sup>71</sup> Human Rights Watch and AMAN, "*When We Lost the Forest, We Lost Everything*": *Oil Palm Plantations and Rights Violations in Indonesia*; McCarthy, J. and Zen, Z., "Regulating the oil palm boom: assessing the effectiveness of environmental governance approaches to agro-industrial pollution in Indonesia," *Law & Policy*, vol. 32, no. 1 (2010): pp.153-179; and Jelsma, I., Schoneveld, G.C., Zoomers, A. and Van Westen, A.C.M., "Unpacking Indonesia's independent oil palm smallholders: An actor-disaggregated approach to identifying environmental and social performance challenges" *Land Use Policy*, vol. 69 (2017): pp. 281-297.

<sup>72</sup> Law No. 41 of 1999 on Forestry (Law of Forestry), art. 68(3). Law of Plantations, 2014, art. 12(1).

<sup>73</sup> Law of Plantations, 2014, art. 58 (formerly Law on Plantations, No. 18 of 2004, art. 22) read with Regulation of Minister of Agriculture concerning Plantation Business License Guidelines, No. 98/Permentan/OT.140/9/2013, ("Permentan No. 98/2013"). Under the law, when a plantation procures a right to exploit permit before 2007, authorities should verify whether they cooperated with any previous community plantation schemes or provide alternative productive business opportunities to local communities.

<sup>74</sup> Law of Plantations, 2014, art. 58(2).

remediation, and again in 2021 to share our findings and with questions. At writing, the company has not responded.

## Disregard for Land Rights of Transmigration Communities

The Indonesian government and PT Sintang Raya, in approving and developing plantations where transmigration communities have established land rights, are in effect arbitrarily taking land that farmers depend on for their livelihood. International human rights law and standards require that states only pursue involuntary land acquisitions after consultation with impacted communities, the payment of adequate compensation—ideally through provision of equivalent replacement land—and assistance to communities to restore basic services and their livelihoods. Communities that lose land should have access to a grievance resolution mechanism to resolve complaints.<sup>75</sup>

In this case, Human Rights Watch research indicates that PT Sintang Raya did not respect the rights of these transmigrant and settler communities by failing to consult with them prior to establishing their plantations, and failing to provide adequate compensation, including equivalent replacement land. PT Sintang Raya has offered no or minimal assistance to these communities to help them restore their livelihoods, and has not established any grievance resolution mechanism for communities to challenge their loss of land.

### *Inadequate Consultation and Compensation (Seruat Dua and Mengkalang Jambu)*

Human Rights Watch’s research found that PT Sintang Raya failed to adequately consult with communities prior to obtaining the HGU and other permits, as required by Indonesian law, including by failing to conduct a baseline social and environmental assessment, and disseminate information about its planned activities.

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<sup>75</sup> Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (UN Guiding Principles on Business and Human Rights), 2011, [https://www.ohchr.org/documents/publications/GuidingprinciplesBusinessshr\\_eN.pdf](https://www.ohchr.org/documents/publications/GuidingprinciplesBusinessshr_eN.pdf) (accessed April 24, 2021); UN Habitat and Office of the United Nations High Commissioner for Human Rights, *Forced Evictions Fact Sheet No. 25/Rev. 1* (New York and Geneva: United Nations, 2014): pp. 30-33, <https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf> (accessed March 16, 2021); International Finance Corporation (IFC) Performance Standard 5 on Land Acquisition and Involuntary Resettlement 2021; Asian Development Bank. Involuntary Resettlement. <https://www.adb.org/who-we-are/safeguards/involuntary-resettlement> (accessed March 16, 2021).

Human Rights Watch interviewed 42 residents of Seruat Dua and Mengkalang Jambu about their community's engagement with PT Sintang Raya before and after PT Sintang Raya obtained its permits. All 42 said that the government did not consult them at all before granting PT Sintang Raya the permits, and that, while the company provided some information, it did not consult as required by law with residents of Seruat Dua and Mengkalang Jambu, and had no interaction at all with Olak Olak residents. Residents in all three villages said that they had received little or no compensation for the loss of farmland and livelihood.<sup>76</sup>

Residents in Seruat Dua said that PT Sintang Raya made its first appearance in 2008. They said they were surprised that year to see company workers clearing trees and planting oil palms on land close to their village.<sup>77</sup> When the workers got close to the community's farmlands, villagers went out en masse and blocked the heavy equipment being used to clear the land. Adiratna, a 48-year-old woman in Seruat Dua, said:

It's hard for me to remember the exact year the company came. We just realized after a while that there was a company, and it was expanding. I remember that we all went to the land (where company was clearing) to block the company and we have been blocking ever since. We built huts on our farmland to let (PT Sintang Raya) know that people live here and use the land.<sup>78</sup>

Adiratna and other residents said their community leaders went to the police and local officials in Kubu town, to ask why the company was planting on their land.<sup>79</sup>

"More than 100 people, including people from other villages, went to [PT Sintang Raya] to complain," Adiratna said. "[PT Sintang Raya] didn't talk to me, but they took my land. We complained. We even went to regency authorities in Kubu. We reported to the *bupati*

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<sup>76</sup> See, for example, Human Rights Watch interviews with Adiratna, Seruat Dua, April 26, 2018 and Majid, Seruat Dua, April 30, 2018, Ahmad and Arief, Mengkalang Jambu, May 5, 2018.

<sup>77</sup> Human Rights Watch group interview with 10 residents, Seruat Dua, April 25, 2018.

<sup>78</sup> Human Rights Watch interview with Adiratna, Seruat Dua, April 26, 2018.

<sup>79</sup> Ibid.

[regent], police, and still they did nothing,” she explained.<sup>80</sup> Other community members shared similar recollections.<sup>81</sup>

Residents said that in 2010 government officials, including the police, finally organized a meeting with community leaders and representatives from PT Sintang Raya.<sup>82</sup> Abdul Majid, a 42-year-old man from Seruat Dua, said:

When police and officials held a meeting with the company in 2010, I attended. The company (PT Sintang Raya representatives) said “We have all required permits from the government, you can get 10 lawyers to sue, and we will be waiting for that.” There was no discussion about compensation or anything else.<sup>83</sup>

The looming expansion of the plantation, lack of relevant information about extent of concession or environmental impacts, incessant pressures from company representatives to sell land, and the fear of losing the possibility of any compensation resulted in rampant distrust, and exacerbated tensions within the community. Many residents said family members had pressured them to sign documents about which they knew little—documents they now realize might have “released their land,” that is, sold it to the company. Amisha, a 45-year-old woman in the community, said:

I trusted my relative. He works in the community relations division at the company (PT Sintang Raya). He told me my land is useless, if you don’t sell you lose everything. He said they (the company) will pay 80 million rupiah (US\$5,670) for my 280 *patok* (literally “stake”). I gave him my ID card. The company had already planted oil palm on part of my land. But I never received any money. When I realized that the company wanted to expand into more land I refused and asked my relative to return my ID.<sup>84</sup>

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<sup>80</sup> Ibid.

<sup>81</sup> Human Rights Watch interviews with Madjid, Rateh, Feriah, Amisha, Elok, Angkasa, Seruat Dua, April 25, 2018.

<sup>82</sup> Human Rights Watch interviews with Madjid, Seruat Dua, April 25, 2018; and Ahmad, Mengkaleng Jambu, May 5, 2018.

<sup>83</sup> Human Rights Watch interview with Madjid, Seruat Dua, April 25, 2018.

<sup>84</sup> Human Rights Watch interview with Amisha, Seruat Dua, April 26, 2018.

Some family members who residents believe were affiliated with the company took social and identification numbers of other family members and sold family land to the company, and in some cases the land they sold was not theirs and did not belong to their family. Angkasa, a 46-year-old woman said, “It’s not about if you gave your ID card or not, the land is sold.”<sup>85</sup>

Abdul Majid said, “The company [PT Sintang Raya] uses people we trust. They say your land is already in the company’s HGU, give me your social and ID numbers, and I will tell the company to pay properly.” He added, “The company showed us a document with social numbers of families in our village, this has the names of all the children, they could say everyone accepts that they take our land.”<sup>86</sup>

Residents in Seruat Dua said that they had organized to sign a petition protesting the company’s expansion, but later found out that the document was being used by the company as permission to “release the land.” Amisha said: “When we gave our fingerprint, we thought it was [on a petition] opposing the company .... [Later] I was told that the document I put my fingerprint on was to release the land, not oppose the company. It was a trick.”<sup>87</sup>

Several kilometers away in Mengkalang Jambu, residents said that in 2005 the company engaged in “socialization” of their operations (literally, “*sosialisas*”—a term used to describe informing people about and seeking acceptance for a decision or policy), a common practice in “company-community negotiations.”<sup>88</sup> Residents who participated in these discussions, however, said that PT Sintang Raya did not give them information about the company’s obtaining an HGU, or the potential adverse impacts its operations might have on the community or the environment, nor did the company initiate a discussion on mitigating these harms.

Residents said the company told them the main purpose of the sosialisasi was to inform the residents that the company had obtained an HGU, giving the company the right to exploit or cultivate the land. There was limited opportunity to voice dissent and none for

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<sup>85</sup> Human Rights Watch interview with Angkasa, Seruat Dua, April 26, 2018

<sup>86</sup> Human Rights Watch interview with Abdul Majid, Seruat Dua, April 25, 2018.

<sup>87</sup> Human Rights Watch interview with Amisha, Seruat Dua, April 26, 2018.

<sup>88</sup> Rebecca Elmhirst, Mia Siscawati, Bimbika Sijapati Basnett, and Dian Ekowati, “Gender and generation in engagements with oil palm in East Kalimantan, Indonesia: insights from feminist political ecology,” *The Journal of Peasant Studies*, vol. 44, no. 6 (2017): pp. 1,135-1,157, doi:10.1080/03066150.2017.1337002.

negotiation about provision of alternative land or compensation. Ahmad, a 39-year-old activist, said: “During sosialisasi they [PT Sintang Raya] said ‘this is the HGU. HGU means ownership.’ How can the government give ownership without talking to us?”<sup>89</sup>

Residents said that company representatives did not discuss whether community members would be relocated, whether and how they would receive compensation, and did not offer to establish a community oil palm plantation (plasma) to ensure that the community would benefit from the production.<sup>90</sup> Providing information and awareness-raising are valid steps towards full participation, but when a company does not provide residents a meaningful opportunity to share their opinions or gives their opinions no real consideration, the company is not fulfilling its human rights due diligence responsibilities.<sup>91</sup>

According to residents, PT Sintang Raya also failed to give the communities information about plantation boundaries, vital for allowing community members to understand the extent of the concession and how much of their land was within the plantation borders. None of the residents Human Rights Watch interviewed in either Seruat Dua or Mengkalang Jambu, including village leaders who had participated in discussions with company representatives in 2005, 2008, or 2010, knew the exact location of the plantation boundary in their area.

Residents said they did not have precise information about the forested peatland the government had permitted the company to use, how the company would use it, and the consequences for their lives and livelihood. Most feared that the PT Sintang Raya concession included land belonging to the community and its members and that the plantations would eventually enclose their villages and their small plots of land, which they depend on. For example, Aninda, a 32-year-old mother from Mengkalang Jambu, said,

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<sup>89</sup> Human Rights Watch interview with Ahmad, Mengkalang Jambu, May 5, 2018.

<sup>90</sup> Plasma agreements spell out a partnership scheme by which an oil palm plantation allocates one-fifth of its total land concession for a community plantation. This is required by law in a bid to ensure profit-sharing, that is, communities benefit from these plantations through training, supplies of agricultural inputs, a guaranteed buyer of the oil palm fruit, and eventual title to the land.

<sup>91</sup> See UN Guiding Principles on Business and Human Rights, principle 18 (“In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: ... Involve meaningful consultation with potentially affected groups and other relevant stakeholders.”) See also Sherry R. Arnstein, “A ladder of citizen participation,” *Journal of the American Institute of planners*, vol. 35, no. 4 (1969): pp. 216-224.

“I don’t understand what HGU means. Everyone is scared that their land would be in the HGU [...]. We are scared that land might be taken with company expansion.”<sup>92</sup>

In Seruat Dua, residents said that village leaders requested that the company show them the borders of its HGU, but the village still had no clarity on the extent of the plantation’s formal borders. Amisha, a 47-year-old mother of two, recalled an incident in November 2009 when Seruat Dua village leaders requested that PT Sintang Raya show and mark its borders:

Two village leaders went to Sintang Raya to ask for a clear border. They (the company’s leaders) put wooden markers, but the next day the markers were not in the same place—they had been moved. Rumor in the village has it that the company has land up to the ocean. This house will also be claimed by them.<sup>93</sup>

Residents said that in 2015 after they had won a lawsuit against the company (discussed below), the company told 43 families in Mengkalang Jambu to pick up letters acknowledging that their land was in PT Sintang Raya’s plantation HGU and confirmed the provision of compensation. Ahmad, a 41-year-old community activist, said:

I don’t understand why these 43 families (got letters) when there are 137 families (in Mengkalang Jambu). Paying 43 families for 120 hectares. They [the company] said they paid 6 people for 30 hectares, 10 million Rupiah (\$678) per hectare. The 6 don’t live here, but they had inherited the land.<sup>94</sup>

The community members, including some of those who could receive compensation, rejected the arrangement. Arief said, “Mr. Nasir [the company’s human relations officer] said that only 43 people’s land is in the HGU. My community is not accepting that! There should be equal relocation.”<sup>95</sup>

Community representatives went to the company and told them that 137 families and 700 people from the last census in 2015 were affected and requested that all of the families be

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<sup>92</sup> Human Rights Watch interview with Aninda, Mengkalang Jambu, May 6, 2018.

<sup>93</sup> Human Rights Watch Interview with Amisha, Seruat Dua, April 26, 2018.

<sup>94</sup> Human Rights Watch interview with Ahmad, Mengkalang Jambu, May 5, 2018.

<sup>95</sup> Human Rights Watch interview with Arief, Mengkalang Jambu, May 5, 2018.

compensated.<sup>96</sup> But they say that the company never responded to their request and has not provided any further compensation. Mengkalang Jambu's rukun warga, the village administrator, said that perhaps 43 families were selected by the company because "maybe the 43 families are closest to the plantation, but I'm not sure."<sup>97</sup>

In both communities, residents said that all meaningful engagement with PT Sintang Raya was initiated by community members through protests and demonstrations. Both men and women experienced the results of a murky socialisasi process, but women faced a deeper layer of exclusion. All the women that Human Rights Watch interviewed said they had been excluded from discussions with representatives of PT Sintang Raya and government officials, limiting their access to information and participation in a process that directly affects them.<sup>98</sup>

Residents said that they are unaware of any company formal grievance resolution mechanism and that when they report problems to the company's community relations officers nothing is done about it. Arief, a 33-year-old rukun tetangga, a neighborhood official, said, "We have gone to the company many times and talked to Mr. Nasir—community relations person of the company—to ask how come our land is in the company's HGU."<sup>99</sup> They said they have not received a satisfactory response. Human Rights Watch asked the company about its grievance resolution mechanisms, but did not get a response.

### *Loss of Land Without Effective Redress (Olak Olak)*

Human Rights Watch research found that in Olak Olak, PT Sintang Raya did not carry out adequate human rights due diligence to clarify tenurial rights over land that families claimed when the company acquired the land from another oil palm plantation company, PT Cipta Tumbuh Berkembang (CTB). This acquisition was done without consulting the

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<sup>96</sup> Ibid.

<sup>97</sup> Human Rights Watch interview with Rukun Warga, Mengkalang Jambu, May 5, 2018.

<sup>98</sup> See, for example, Human Rights Interview with Adiratna, Seruat Dua, April 26, 2018; and Aninda, Mengkalang Jambu, May 6, 2018.

<sup>99</sup> Human Rights Watch Interview with Arief, Mengkalang Jambu, May 5, 2018.

families whose land would be impacted.<sup>100</sup> PT Sintang Raya did not set up an effective grievance resolution mechanism to resolve any complaints community members might have about that land, including “legacy” issues from PT CTB. The company has also failed to carry out a court judgment to return land to local villagers in Olak Olak.

The UN Guiding Principles on Business and Human Rights direct business enterprises to put in place a human rights due diligence process to identify, prevent, mitigate, and account for how they address their actual and potential adverse impacts on human rights.<sup>101</sup> The UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests specifically calls for such due diligence with respect to “adverse impacts on human rights and legitimate tenure rights.”<sup>102</sup>

In 2011, residents from Olak Olak and other villages that disputed PT Sintang Raya’s HGU took steps to reclaim their land. They contested the government’s issuance of PT Sintang Raya’s operating permit in court and their petition was successful.<sup>103</sup>

In 2012 the Pontianak State Administrative Court, based on the 2011 lawsuit, cancelled PT Sintang Raya’s HGU.<sup>104</sup> Subsequent appeals by PT Sintang Raya in 2013 and 2015 were

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<sup>100</sup> Residents said that in 2002, PT Cipta Tumbuh Berkembang (CTB) agreed to transfer 801 hectares of land to PT Sintang Raya. The villagers who told Human Rights Watch that their land was included in the land transfer said they were not consulted by either company. Many villagers said their *plasma* and lease agreements with PT CTB did not transfer their ownership rights to PT CTB. They said PT Sintang Raya did not recognize the agreement the villagers had made with PT CTB in 2008 and thus their legitimate claims to their land. They said PT Singtang Raya claimed that community members had no right to make this agreement since the company had already obtained a location permit in 2004 and HGU over the land in 2009.

<sup>101</sup> UN Guiding Principles on Business and Human Rights, principles 15(b) and 17.

<sup>102</sup> The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) states that, “Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts ..., provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, ... where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights.” Food and Agriculture Organization of the United Nations (FAO), *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (Rome: FAO, 2012), <http://www.fao.org/3/i2801e/i2801e.pdf> (accessed May 2, 2021).

<sup>103</sup> Kalimantan Legal Aid Association (Perkumpulan Bantuan Hukum Kalimantan - PBHK). 2016. Pertahankan Posisi Di Kubu Raya PT. Sintang Raya Lakukan Segala Cara. <http://www.pbhk.org/pertahankan-posisi-di-kubu-raya-pt-sintang-raya-lakukan-segala-cara/>

<sup>104</sup> Andi Fachrizal, and Aseanty Pahlevi, “Against Palm Oil Companies, Citizens’ Struggle Has Good Fruit” (“Melawan Perusahaan Sawit, Perjuangan Warga Seruat Berbuah Manis”), *Mongabay*, May 6, 2014, <https://www.mongabay.co.id/2014/05/06/melawan-perusahaan-sawit-perjuangan-warga-seruat-berbuah-manis/> (accessed September 20, 2020).

unsuccessful.<sup>105</sup> In 2014, the Supreme Court of Indonesia affirmed that PT Sintang Raya should exclude land belonging to the households who brought the suit, from its concession.<sup>106</sup> In 2016, a lawyer representing PT Sintang Raya was quoted acknowledging that the Supreme Court had ordered the company to release land to the villagers.<sup>107</sup> But the company has backtracked since then and still contests the communities' claim over the land. The Ministry of Agrarian and Spatial Planning/National Land Agency (BPN) has also failed to enforce the court judgment.

Wahyu Setiawan, head of Agrarian Reform Movement West Kalimantan (AGRA) said:

In the case of PT Sintang Raya, though there is already a verdict by the Supreme Court it still operates as if it [the verdict] is only a meaningless piece of paper. The regent at the time, Rusman Ali, said in public that the company must carry out the court ruling but it hasn't. Legally, we have done all that we can.<sup>108</sup>

Residents said they have filed reports to multiple government agencies and officials to enforce the court decision, but the government has done little to mediate and resolve the ongoing dispute. Arif R. said, "How can the state be run by a company? I have been resisting from beginning to the end and I'm tired. The state should be protecting us."<sup>109</sup>

The villagers continue to protest PT Sintang Raya acquiring their land and have made numerous attempts to reclaim the land. PT Sintang Raya has responded to some of these

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<sup>105</sup> Kalimantan Legal Aid Association (Perkumpulan Bantuan Hukum Kalimantan - PBHK), *Pertahankan Posisi Di Kubu Raya PT. Sintang Raya Lakukan Segala Cara*,

April 27, 2016. <https://www.pbhk.org/pertahankan-posisi-di-kubu-raya-pt-sintang-raya-lakukan-segala-cara/> (accessed December 16, 2019); Andi Fachrizal, and Aseanty Pahlevi, "Against Palm Oil Companies, Citizens' Struggle Has Good Fruit" ("Melawan Perusahaan Sawit, Perjuangan Warga Seruat Berbuah Manis"), *Mongabay*, May 6, 2014, <https://www.mongabay.co.id/2014/05/06/melawan-perusahaan-sawit-perjuangan-warga-seruat-berbuah-manis/> (accessed September 20, 2020).

<sup>106</sup> Andi Fachrizal and Aseanty Pahlevi, "Against Palm Oil Companies, Citizens' Struggle Has Good Fruit" ("Melawan Perusahaan Sawit, Perjuangan Warga Seruat Berbuah Manis"), *Mongabay*, May 6, 2014, <https://www.mongabay.co.id/2014/05/06/melawan-perusahaan-sawit-perjuangan-warga-seruat-berbuah-manis/> (accessed September 20, 2020).

<sup>107</sup> Severianus Endin, "Indoneisa: Villages Allege Police Link in Dispute with Palm Oil Firm," *BenarNews*, August 8, 2016, <https://www.benarnews.org/english/news/indonesian/palm-protest-08032016171549.html> (accessed April 24, 2021).

<sup>108</sup> Human Rights Watch telephone interview with Wahyu Setiawan, head of AGRA West Kalimantan, March 11, 2021.

<sup>109</sup> Human Rights Watch interview with Arif R., Olak olak, April 29, 2018.

attempts by making complaints to the police, seeking their arrest.<sup>110</sup> In an attempt to reclaim the land in 2016, community members harvested palm fruit bunches from the section of the plantation they say overlaps with their land. The company filed a complaint accusing the residents of theft and the police raided the village, made mass arrests, and caused many fearing arrest to flee the village.<sup>111</sup> Wahyu Setiawan said, “There were more than 300 police and BriMob [mobile brigade] present, 26 villagers were arrested, and more than 100 were named as suspects.”<sup>112</sup>

### **Government Lacks Coordination in Resolving Land Disputes**

There are more than 1,000 government offices with overlapping jurisdictions responsible for dispute resolution at national and local levels in Indonesia. The top five national institutions with local offices in each province include the National Forestry Council (DKN), a multi-stakeholder advisory body of the Ministry of Forestry established in 2009 with a unit focused on mediating land conflicts; the Director General of Social Forestry and Environment Partnership, which can appoint a certified mediator; the Ministry of Agrarian and Spatial Planning/National Land Agency ATR/BPN, which has a section that deals with land conflicts, but has limited influence over forests, including forested peatlands; the National Commission on Human Rights (Komnas HAM); and the courts, which are heavily relied on for dispute resolution. However, courts typically rule based on formal documentation establishing ownership, which most rural farmers do not have. About 63 percent of land in Indonesia is designated as forest, restricting formal ownership by rural Indonesians.<sup>113</sup> Communities also face an astronomical task enforcing favorable court decisions, which usually hinges on the national land agency (PBN) acting to return the land to the community.

Communities struggling to resolve land conflicts with businesses or government have found a lack of coordination among ministries a major impediment to resolving them.

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<sup>110</sup> IPAC, “Anatomy of an Indonesian Oil Palm Conflict,” pp. 20-22.

<sup>111</sup> See subsection on “Harassment, Arrests and Prosecution of Protesters and Land Rights Activists” below.

<sup>112</sup> Human Rights Watch telephone interview with Wahyu Setiawan, head of AGRA West Kalimantan, March 11, 2021.

<sup>113</sup> Adriaan Bedner, “Indonesian Land Law: Integration at Last? And for Whom,” in *Land and Development in Indonesia: Searching for the People’s Sovereignty*, ed. John McCarthy and Kathryn Robinson (Singapore: ISEAS-Yusof Ishak Institute, 2016): pp. 63-88.

The institutions tasked with mediating land conflicts have not been successful in curbing or resolving them. Many of the land conflicts undergoing mediation are the result of poor enforcement of laws or partial government officials within these institutions. These same officials are unlikely to be able to impartially resolve the problems they created. Civil society organizations, as well as Komnas HAM, are advocating for a Presidential Work Unit for Agrarian Conflict Resolution that would be housed in the Office of the President and would consolidate the multiple dispute resolution forums to settle land disputes expeditiously.

## Economic Displacement and Deprivation of Livelihood

Human Rights Watch research found that PT Sintang Raya's disregard of the communities' tenurial rights has led to loss of access to farmland and forests, and loss of livelihood opportunities, resulting in increases in poverty and food insecurity, which may pose a threat to life and health, and to the wellbeing of communities.<sup>114</sup>

These communities are in remote and hard-to-reach areas where livelihoods are largely subsistence-based. Many residents in Seruat Dua, Mengkalang Jambu, and Olak Olak told Human Rights Watch that the expansion of PT Sintang Raya's oil palm plantation in the area has resulted in less land for food crops. These families said that they have lost access to farmland and rice paddy fields with inadequate consultation, minimal or no compensation, and alleged coercion and intimidation from government and company officials. And many others fear a similar fate soon.

Residents from the three villages said that PT Sintang Raya's expansion into their farmland and surrounding forest deprived them of access to their farmland. It has reduced the space available to them for growing food crops in backyard gardens, leaving them less to eat or sell for money, and forcing them to purchase additional food using money previously reserved for other household necessities. Adiratna, a 46-year-old woman, in Seruat Dua village, said:

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<sup>114</sup> Human Rights Watch and AMAN, "When We Lost the Forest, We Lost Everything:" Oil Palm Plantations and Rights Violations in Indonesia.

Before the company took my farmland, I planted banana, corn, pineapple, sweet potatoes, cassava and coco yams. Now I buy three big coco yams for 10,000 rupiah (\$0.68). I used to plant corn there—corn was cheap then. Now it's expensive and I plant less corn. I cannot calculate how much money I'm losing now.<sup>115</sup>

Many residents in Seruat Dua and Mengkalang Jambu said that a lack of clarity over the borders between their villages and PT Sintang Raya, coupled with what they perceived as intimidation from company security and police from Kubu, caused them to stop cultivating on huge areas of their farmland. Adiratna said:

I can't work on my land because they (PT Sintang Raya) put an excavator nearby. They put out the fire when I clear and burn my land. People tell me that my land is in the company's HGU, from 180 *patok* I'm down to less than 30 *patok*. I can't plant anything.<sup>116</sup>

Residents and NGO representatives said that neither the government nor the company has proposed alternative land to replace the land families have lost.<sup>117</sup> One resident from Olak Olak said that her family received benefits from the community plantation scheme (plasma), but she had little knowledge on the location, size, the person in charge, what revenues are paid to the community, and their distribution among the residents.<sup>118</sup> Another resident acknowledged the plasma arrangement, but said the benefit payments were infrequent.<sup>119</sup> None of the residents interviewed in Seruat Dua and Mengkalang Jambu had any knowledge of a plasma plantation for their communities.

Residents without farmland have less autonomy over what and how much they plant, which results in less earnings. Budiwati, a 55-year-old woman in Olak Olak who manages a small business selling food and household supplies, said:

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<sup>115</sup> Human Rights Watch interview with Adiratna, Seruat Dua, April 26, 2018.

<sup>116</sup> Ibid.

<sup>117</sup> Human Rights Watch interview with Agus Sutomo, former Executive Director of LinkAR-Borneo. Pontianak, West Kalimantan, April 30, 2018.

<sup>118</sup> Human Rights Watch interviews with Annisa, Olak Olak, April 28, 2018.

<sup>119</sup> Human Rights Watch interview with Aulia, Olak Olak, April 29, 2018.

I don't know whether to blame the village leader or company, but life is different now. Before I could plant—not a lot—but enough. Now life is hard. For women who don't have land now, it's hard. A woman like that can't plant and sell to make money. If you don't have money, you can't buy from my kiosk. I can't give you a loan.<sup>120</sup>

Most residents that Human Rights Watch interviewed said that without farmland they must rely on employment at PT Sintang Raya's plantation. According to Budiwati, older residents and women who did not have land to grow food and could not obtain employment on the plantation faced extreme hardship in providing nutritious meals for their families.<sup>121</sup>

Aulia, a 58-year-old mother of 6 with 5 grandchildren in Olak Olak, said:

On the land we have left we plant rice. We got seven bags this harvest, not enough for all of us. The company won't employ my husband (because he is old). All we have is the rice that we grow. Not enough to feed all these children and grandchildren—to give them breakfast, lunch, and dinner. If there is no rice, I dig up cassava. I must be creative to feed this whole house.<sup>122</sup>

Many residents acknowledged that the PT Sintang Raya's plantation had created employment within their communities. But they said that they object to having no other options to sustain their families. They also assert that PT Sintang Raya's employment terms are unfair, with daily work targets that are unattainable. For some, employment means putting the whole family to work, including children, to meet company targets though only one family member might be employed on the plantation. Bethari, a 44-year-old woman with an 8-month-old infant in Olak Olak, said, "My husband works at the plantation. His sons and I must help him make the target. I help with the baby, I can't leave her at home."<sup>123</sup>

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<sup>120</sup> Human Rights Watch interview with Budiwati, Olak Olak, April 29, 2018.

<sup>121</sup> Ibid.

<sup>122</sup> Human Rights Watch interview with Aulia, Olak Olak, April 29, 2018.

<sup>123</sup> Human Rights Watch interview with Bethari, Olak Olak, April 28, 2018.

### Employment for Women, but at a High Cost

Due to land scarcity and loss of livelihoods, many women in Kubu Raya have turned to the plantations for employment to supplement their household income and pay school-related expenses for their children. In all the communities Human Rights Watch visited in Kubu Raya, women could get jobs on PT Sintang Raya's plantations. Many did not consider the work, which was very hard, to be a choice but a necessity.

Bulan, a 42-year-old woman in Mengkalang Jambu, said:

Before (PT Sintang Raya) we had coconuts and I had extensive land where I planted pineapples, vegetables, and corn. Now I have no choice, I had to go to the plantation and get work. I switched from being a farmer-owner to a laborer.

I wake up at 4 a.m. to clean the house and cook for the morning. I go to work at 6 a.m., cut grass till noon. I come home, cook lunch, and work on my garden collecting coconuts and *pinang* (betel nut). I take a break only at night. I'm so busy that I can't make coconut oil (for cooking). Now I have to buy cooking oil.<sup>124</sup>

Other women whose families have no land to farm and whose husbands can't find work on the plantation work longer hours, usually until 6 p.m., to make additional income. Aninda, a 30-year-old woman in Mengkalang Jambu, said:

Most people are jobless. Before (they lost their land to PT Sintang Raya) they worked their own land. Now, if you can't find employment on the plantation you have nothing to do. Because we have no land and need money, we must work for PT Sintang Raya. If we had our own land, I would work on it. I wouldn't need to handle the pressure of

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<sup>124</sup> Human Rights Watch interview with Bulan, Mengkalang Jambu, May 6, 2018.

losing money or being sacked if I fall sick. The money I got from coconuts was sufficient for me.<sup>125</sup>

### *Increased Pests and Saltwater Intrusion Decrease Crop Yield*

Human Rights Watch research suggests that PT Sintang Raya has not identified and mitigated the impact of its operations on the local environment. Community members reported increased pests and saltwater intrusions negatively affecting farming and crop yields in the area and contributing to heightened food insecurity for their families.

Several residents in Seruat Dua and Mengkalang Jambu said that since PT Sintang Raya's plantations were established near their villages, coconut palm trees, their main cash crop, have been increasingly attacked by Rhinoceros beetles, which research shows are common on palm plantations.<sup>126</sup> Citra, 40-year-old woman who had lived in Mengkalang Jambu for 15 years, said that she used to have 1,000 coconut trees on 450 patok of land.<sup>127</sup> Between 2003 and 2009, she said there were nearly no pest attacks on her coconut trees. Over the course of nine years since the oil palm plantation started operating about a kilometer away, increasingly her coconuts fell to pest attacks. She lost over 950 trees in 9 coconut seasons. "Now I have only three trees left," she said in May 2018. "The beetles are eating up the coconut trees as we speak."<sup>128</sup>

Aninda, a 30-year-old woman from Mengkalang Jambu, said, "Now there are more beetles, they eat the coconut we plant, they eat the flowers of the coconut, and our harvest is less. We used to have over 10,000 coconut trees, because of the beetles we have only a few hundred left."<sup>129</sup>

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<sup>125</sup> Human Rights Watch interview with Aminda, Mengkalang Jambu, May 6, 2018.

<sup>126</sup> Kalidas P, "Pest Problems of Oil Palm and Management Strategies for Sustainability," *Agrotechnology*, special issue 11 (2012), accessed September 20, 2020, doi:10.4172/2168-9881.S11-001.

<sup>127</sup> Human Rights Watch interview with Citra, Mengkalang Jambu, May 6, 2018.

<sup>128</sup> Ibid.

<sup>129</sup> Human Rights Watch interview with Aninda, Mengkalang Jambu, May 6, 2018.

Arthropods such as beetles are the most common predators in palm plantations; mammals and birds are a close second and third.<sup>130</sup> Common pests attracted to palm plantations are the rhinoceros beetles, leaf web worms, psychids, slug caterpillars, scales, and mealybugs.<sup>131</sup> These pests can cause extensive damage to oil palm and coconut palm trees. Community members do not have the information or the pesticides to manage pest infestations resulting in devastating impacts on their coconut farms.

Many residents also said that they had experienced an increased rodent population over six years in areas adjacent to plantations. They said that these rodents decimate rice fields. Bats and rodents are common in agricultural habitats in Southeast Asia,<sup>132</sup> but the propensity for a concentration of pests is higher with monoculture, the farming of a single crop.<sup>133</sup> Diah, a 48-year-old woman whose family has been cultivating rice in Olak Olak since they moved to the area in 1957, said that before the oil palm plantations began operating in 2012, the family harvested enough rice each year to feed their extended family. However, some years after the oil palm plantation started, the family's ability to farm was drastically altered due to a rat infestation, resulting in a significantly lower yield of rice annually. "My sister told me to give up my paddy. She told me to not bother planting rice because the company will plant nearby, and pests will come."<sup>134</sup>

Human Rights Watch is unaware of any publicly available studies of the environmental impact of PT Sintang Raya's operations in Kubu Raya and across the affected communities. None of the residents interviewed across the three villages had received information on possible environmental impacts of PT Sintang Raya's plantation operations from the company or government officials as required by law.<sup>135</sup> Human Rights Watch queried PT Sintang Raya about possible links between their oil palm plantation and increased pest

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<sup>130</sup> Nuradilah Denan, et. al., "Predation of potential insect pests in oil palm plantations, rubber tree plantations, and fruit orchards," *Ecology and Evolution*, vol. 10, no. 3 (January 2020): pp. 654-661, accessed September 20, 2020, doi:10.1002/ece3.5856; Fuad Nurdiansyah, et. al., "Biological control in Indonesian oil palm potentially enhanced by landscape context," *Agriculture, Ecosystems & Environment*, vol. 232 (2016): pp. 141- 149.

<sup>131</sup> Kalidas P, "Pest Problems of Oil Palm and Management Strategies for Sustainability," *Agrotechnology*, special issue 11 (2012), accessed September 20, 2020, doi:10.4172/2168-9881.S11-001.; Nuradilah Denan, et. al., "Predation of potential insect pests in oil palm plantations, rubber tree plantations, and fruit orchards," *Ecology and Evolution*, vol. 10, no. 2 (January 2020): pp. 654-661.

<sup>132</sup> Ibid.

<sup>133</sup> Muhamad Syafiq, et. al., "Responses of tropical fruit bats to monoculture and polyculture farming in oil palm smallholdings," *Acta Oecologica*, vol. 74, 2016: pp. 11- 18.

<sup>134</sup> Human Rights Watch interview with Diah, Olak olak, April 28, 2018.

<sup>135</sup> Law No. 23/1997 on Environmental Management, the community has the right to environmental information.

and rodent infestations, but have not received a reply. Residents, based on their many years living in the area, expressed their concerns about what appeared to them to be the effect of large-scale oil palm cultivation on the environment and their livelihoods.

A few residents in Seruat Dua said the community experienced more frequent saltwater intrusion in the dry season resulting in poor crop yield. The village is in a tidal zone and has been experiencing salty water in freshwater wells and the rivers as the peatland subsides.<sup>136</sup> Residents said that they have experienced increase soil salinity due to frequent saltwater intrusions, which has resulted in reduced rice and vegetable production.<sup>137</sup>

Abdul Majid, a community leader and activist, said:

Before the plantation, the water in the river was not salty. Now, it's usually salty from the sea. Salty water enters the farming areas, enters the rice paddies. The salty water is bad for rice. ... Our community mobilized calling for a dam 20 kilometers from the sea to prevent salt water from flowing into the river, but the company (PT Sintang Raya) does not agree.<sup>138</sup>

In 2009, residents of Seruat Dua had appealed to the bupati of Kubu Raya, the heads of the Regency (Kabupaten) Environmental Office, the Forestry and Plantation Office, and the Regional Planning Office expressing concern that PT Sintang Raya's clearing of the land would affect the soil quality of their farmland and its productivity.<sup>139</sup> Residents have not seen evidence that action was taken by the authorities since more than a decade later the plantation operation is still expanding in the area.

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<sup>136</sup> Lisa G. Chambers, Havalend E. Steinmuller, and Joshua L. Breithaupt, "Toward a mechanistic understanding of 'peat collapse' and its potential contribution to coastal wetland loss," *Ecology*, vol. 100, no. 7 (2019). Henk Wösten, Aljosja Hooijer, Christian Siderius, Dipa Satriadi Rais, Aswandi Idris, and John Rieley, "Tropical Peatland water management modelling of the Air Hitam Laut catchment in Indonesia," *International Journal of River Basin Management* (2010):, pp. 233-244, doi:10.1080/15715124.2006.9635293.

<sup>137</sup> Human Rights Watch interview with Adiratna and Amisha, April 26, 2018; and Abdul Majid, April 30, 2018.

<sup>138</sup> Human Rights Watch interview with Abdul Majid, Seruat Dua, April 30, 2018.

<sup>139</sup> IPAC, "An Anatomy of an Indonesian Oil Palm Conflict," pp. 9-10,

## Harassment, Arrests and Prosecutions of Protesters and Land Rights

### Activists

Government authorities have harassed and threatened community members who have demonstrated against plantations' expansion, carrying out mass arrests, arbitrary detentions, and abusive prosecutions. Residents who spoke to Human Rights Watch allege that the police show partiality toward protecting the operations of PT Sintang Raya without a similar government response to enforce a court decision ordering reclamation of their land from the company.

All residents interviewed in Seruat Dua, Mengkalang Jambu, and Olak Olak said various police units from the district, regency, or province had threatened them and their communities each time they protested PT Sintang Raya's oil palm plantation expansion into their farmland. Dewi, 62, said, "Before the company came, I never saw the police here. If you wanted to see the police you go to the city [Pontianak]. Now the police are frequently here, threatening me and my family." She said that police presence created an environment where the community felt intimidated.<sup>140</sup>

In 2016, Olak Olak community members organized to protest and demand that PT Sintang Raya return the land it had taken for plantations and comply with the recent Supreme Court decision. The police arrested many residents and arbitrarily detained them for demonstrating.<sup>141</sup> Hundreds of others fearing arrest fled to neighboring villages and Pontianak city.<sup>142</sup> Aulia, a 58-year-old woman, said, "In 2016, three to four trucks of police

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<sup>140</sup> Human Rights Watch interview with Dewi, Olak Olak, April 27, 2018.

<sup>141</sup> A police statement alleges that a policeman was beaten in 2016 in Olak Olak during a protest. Later the police arrested 10 villagers. See Jauhari Fatria, "PT Sintang Raya: Investors Want Security Certainty in Investing," *Kalbar Online*, July 25, 2016. <https://www.kalbaronline.com/2016/07/25/pt-sintang-raya-investor-inginkan-kepastian-keamanan-dalam-berinvestasi/> (accessed March 10, 2021).

<sup>142</sup> Severianus Endin, "Hundreds leave homes in palm oil conflict," *The Jakarta Post*, August 2, 2016. <http://www.thejakartapost.com/news/2016/08/02/hundreds-leave-home-palm-oil-conflict.html> (accessed April 24, 2021); Slamet Ardiansyah, "Land conflict with the company, residents are afraid to return home," *Rappler*, August 3, 2016. <https://www.rappler.com/indonesia/141832-konflik-lahan-dengan-perusahaan-ratusan-warga-kalbar-takut-kembali-ke-rumah> (accessed April 24, 2021); Aseanty Pahlevi, "Afraid of being Arrested, Kubu Raya Residents 'Evacuate' to Komnas HAM" ("Takut Ditangkap, Warga Kubu Raya 'Mengungsi' ke Komnas HAM"), *Tempo.co*, August 1, 2016, <https://nasional.tempo.co/read/792309/takut-ditangkap-warga-kubu-raya-mengungsi-ke-komnas-ham/full&view=ok> (accessed April 24, 2021).

with guns came to the village. They arrested sixty men, including my two sons who have two children. They were held for two months and then released.”<sup>143</sup>

The *Jakarta Post* reported that PT Sintang Raya had “accused several residents of stealing oil palm fruit and allegedly paid police to secure the area and make arrests. The company’s harsh measures frightened locals, many of whom took shelter at the local office of the National Commission on Human Rights (Komnas HAM).”<sup>144</sup> About 47 residents, including children, slept for about 2 weeks at the Komnas HAM office, afraid that they would be arrested if they went back home.<sup>145</sup> The head of Komnas HAM West Kalimantan, Nelly Yusnita, said, “Several people ran out of their villages and stayed at Komnas HAM office. ... The root of the problem is a series of incidents. The villagers didn’t flee to our office out of nowhere and for no reason.”<sup>146</sup>

In 2017, Komnas HAM West Kalimantan held separate meetings with the affected community members and PT Sintang Raya. Officials from the West Kalimantan provincial government and Kubu Raya regency government also attended the meetings.<sup>147</sup> Komnas HAM’s intervention did not resolve the community’s grievances or abate the tension between the communities and PT Sintang Raya. Nelly Yusnita said in 2021:

Komnas HAM issued recommendations (in 2016). Technically, the file has been taken over by the regency government through its plantation agency to monitor and support (the villagers). I don’t have any updates on the matter as it is with the regency government. Villagers can file another complaint for Komnas HAM to follow up on implementation of its recommendations.<sup>148</sup>

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<sup>143</sup> Human Rights Watch interview with Aulia, Olak Olak, April 29, 2018.

<sup>144</sup> Severianus Endi, “Residents flee as company asks police to make arrests,” *The Jakarta Post*, August 8, 2016, <https://www.thejakartapost.com/news/2016/08/08/residents-flee-company-asks-police-make-arrests.html> (accessed September 20, 2020); Endi, “Hundreds Leave Home in Palm Oil Conflict,” *The Jakarta Post*.

<sup>145</sup> Ibid.

<sup>146</sup> Human Rights Watch telephone interview with Nelly Yusnita, Head of Komnas HAM West Kalimantan, March 4, 2021.

<sup>147</sup> “Resolving Land Polemic, West Kalimantan Provincial Government Holds Meetings” (“Selesaikan Polemik Lahan, Pemprov Kalbar Gelar Pertemuan”), *The Tanjungpura Times*, October 15, 2017, <http://thetanjungpuratimes.com/2017/10/15/selesaikan-polemik-lahan-pemprov-kalbar-gelar-pertemuan/> (accessed April 24, 2021).

<sup>148</sup> Human Rights Watch telephone interview with Nelly Yusnita, Head of Komnas HAM West Kalimantan, March 4, 2021.

In February 2018, after a series of protests against PT Sintang Raya’s operations in Olak Olak, six plainclothes police officers arrested and jailed Kawan Ayub, the local chair of the Alliance of Agrarian Reform Movement (*Aliansi Gerakan Reforma Agraria*, AGRA), at midnight while he was in Pontianak.<sup>149</sup> The police charged him with theft after PT Sintang Raya accused him of stealing fertilizer from their stores, though he does not work on the plantation and does not have access to their facility. The police later added another charge of theft of oil palm fruits. He was formally charged, and detained for about a year before being released.<sup>150</sup>

While community members who openly protest the company’s operations face harassment, arbitrary arrest, and abusive prosecution, their families may suffer serious emotional, psychological, and financial consequences. Roekato, Ayub’s wife and mother of two children, said in 2018:

I don’t know what happened to my husband. I just heard that he was taken by police from the AGRA office in Pontianak. No one talked to him for over a week. He was detained on February 23, 2018. I went to Pontianak to see him about two weeks after he was arrested. The transport is very expensive, and I don’t have that kind of money. Paying 400,000 rupiah (\$28) for transport is expensive. ... He has been gone two months and three days. I’m very sad about it. I’m frightened. I must pay for the house, my daughter’s school needs, repair the motorbike, and daily living. I work as a weigher 24 hours, 1 day a week, weighing palm that has been brought in. I make 300,000 rupiah [\$20] for the one day’s work. The next load comes in 20 days—that is when I will work again. I can’t find money like my husband use to. I can’t pay for food and my daughter’s school. I ask for help from my friends and family, but it is not enough.<sup>151</sup>

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<sup>149</sup> Human Rights Watch interview with Agus Sutomo, former Executive Director of LinkAR-Borneo, Pontianak, West Kalimantan. April 30, 2018. See also “AGRA strongly condemns the illegal arrest of Comrade Ayub, Chairperson of the Olak Olak village branch of AGRA, West Kalimantan,” AGRA press release, February 24, 2018, <https://ilps.info/en/2018/03/01/agra-strongly-condemns-the-illegal-arrest-of-comrade-ayub-chairperson-of-the-olak-olak-village-branch-of-agra-west-kalimantan/> (accessed May 2, 2021); “Free Ayub the Agrarian Fighter,” change.org Petition, <https://www.change.org/p/joko-widodo-free-ayub-the-agrarian-fighter> (accessed May 2, 2021).

<sup>150</sup> Human Rights Watch telephone interview with Agus Sutomo, former Executive Director of LinkAR Borneo, February 26, 2021.

<sup>151</sup> Human Rights Watch interview with Roekato, Olak Olak, April 27, 2018.

Roekato, with the help of AGRA, traveled to Jakarta to report to Komnas HAM. “Komnas HAM said they will investigate the matter,” she said. “But I don’t have a phone to call them and find out what they have done for him... Many villagers are afraid, and they give up their claim to their land. Many have stopped fighting for the land since they work for the company. Some of the people fighting for the land are too old to work in the plantation and have no land or other source of revenue.”<sup>152</sup>

Residents from the three villages said the arrests and prosecutions of their friends and family had created a climate of fear of retaliation, accompanied by the authorities’ unwillingness to take legal action against the company for their unlawful confiscations of land. Wahyu Setiawan, head of AGRA West Kalimantan, said, “The villagers are traumatized. The arrests were so sudden. Some of them were at night, such as Pak Ayub who was cornered and nabbed at night. Some whom the police dragged away by force later fell ill. This created trauma among the villagers.”<sup>153</sup>

The frequent presence of security forces and the arrests have instilled fear in residents living in Olak Olak and villages near PT Sintang Raya’s oil palm plantation.<sup>154</sup> Accurately or not, residents perceived the arrests and charges against individuals as retaliation for their efforts to fight for their land rights. When Human Rights Watch asked Dewi about her sons and grandchildren who were arrested in 2016 after protesting the company’s expansion into their farmland, she responded that, “I’m afraid that I’ll talk to you and any day the police will come and arrest me like they did to my neighbors.”<sup>155</sup> Diah said, “My husband is unemployed. I work as hard as I can, my children need an education. I have one hectare [in concession]. Even if I knew where the one hectare is, I’m too scared to harvest there. Since Ayub was arrested I got scared and don’t want anything to do with it.”<sup>156</sup> Budiwati said, “Fighting against the company [PT Sintang Raya] is useless, they have the police and other people who will come to your house.”<sup>157</sup>

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<sup>152</sup> Ibid.

<sup>153</sup> Human Rights Watch telephone interview with Wahyu Setiawan, head of AGRA West Kalimantan, March 11, 2021.

<sup>154</sup> Endi, “Residents flee as company asks police to make arrests,” *The Jakarta Post*.

<sup>155</sup> Human Rights Watch interview with Dewi, Olak Olak, April 28, 2018.

<sup>156</sup> Human Rights Watch interview with Diah, Olak Olak, April 28, 2018.

<sup>157</sup> Human Rights Watch interview with Budiwati, Olak Olak, April 29, 2018.

In Seruat Dua, residents described similar concerns. Abdul Majid, a 42-year-old man, said, “Out of nine villages, two village leaders were put in jail. The others got scared and put their signature on the document to enable PT Sintang Raya to renew its HGU with government.”<sup>158</sup> Abdul Majid also noted the 2013 arrest and detention of Bambang Sudaryanto, a former village leader in Pelita Hamlet, as another reason to fear opposing the company.<sup>159</sup>

Elok, a 45-year-old woman explained how powerless she felt when PT Sintang Raya cleared and planted palm trees on her land in April 2018:

(M)y friends told me, “Go quickly and see, the company is planting on your land.” I went there and there were small palm trees planted in my land. I’m so scared, I can’t pull it out because they will take me to the police. My husband planted boundary flowers, but they (PT Sintang Raya) kept planting palms. I reported to the RT (*rukun tetangga*, or village neighborhood official), the RW (*rukun warga*, or the village administrator) and other villagers but who can help?<sup>160</sup>

In Mengkalang Jambu, residents mentioned similar cases of security forces entering their village to curb any resistance to the plantation. Residents said that in 2010, contrary to an oral agreement of a fixed border negotiated between the company and the community in 2005, workers contracted by PT Sintang Raya started clearing land beyond the border.<sup>161</sup> After residents confronted the workers to stop them from clearing in their farmland, the police came to their village. “The next day, police arrived with long and short guns,” said Arief, a 35-year-old community leader. “While the company (PT Sintang Raya) equipment cleared our trees and crops next to the river, the police stood at the banks with their guns.”<sup>162</sup>

Other residents made similar assertions regarding the police’s involvement in the conflict between Mengkalang Jambu and PT Sintang Raya. Ahmad said:

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<sup>158</sup> Human Rights Watch interview with Abdul Majid, Seruat Dua, April 25, 2018.

<sup>159</sup> “Against Oil Palm Company Invasion, Land Rights Fighters Lost Hope” (“Melawan Invasi Perusahaan Sawit, Pejuang Hak Tanah Kehilangan Harapan”), *Suara Pemred*, July 15, 2020. <https://www.suarapemredkalbar.com/read/potret/15072020/melawan-invasi-perusahaan-sawit-pejuang-hak-tanah-kehilangan-harapan> (accessed July 22, 2020).

<sup>160</sup> Human Rights Watch interview with Elok, Seruat Dua, April 25, 2018.

<sup>161</sup> Human Rights Watch interviews in Mengkalang Jambu with Ahmad, Arief, and Bakti, May 5, 2018; Aninda, May 6, 2018.

<sup>162</sup> Human Rights Watch interview with Arief, Mengkalang Jambu, May 5, 2018.

Every time there is a problem the company (PT Sintang Raya) brings the police. Recently when PT Sintang Raya cleared and started planting, their workers were planting with police officers guarding them. The police have been here with guns more than 10 times—every time we protest, even when we put up a signpost the police come.<sup>163</sup>

Civil society representatives said in 2018 there had been increased arrests of community members, including Indigenous people and local activists protesting oil palm plantation operations in their villages.<sup>164</sup> The Konsorsium Pembaruan Agraria (KPA), a consortium of nongovernmental land rights organizations, alleged that the authorities and thugs hired by companies carried out intimidation and arbitrary arrests.<sup>165</sup> They said that government officials and businesses twisted existing laws to prosecute people deemed to threaten business-as-usual for oil palm plantations.<sup>166</sup>

Laws originally enacted to sanction corporations and curb deforestation have been used to prosecute Indigenous peoples and community leaders who protest the loss of their land or who resist the forcible taking of land they have lived on for decades.<sup>167</sup> Majid, an activist and community leader in Seruat Dua, said:

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<sup>163</sup> Human Rights Watch interview with Ahmad, Mengkalang Jambu, May 5, 2018

<sup>164</sup> Human Rights Watch interviews with Konsorium Pembaruan Agraria (KPA), Aliansi Masyarakat Adat Nusantara (AMAN), Aliansi Gerakan Reforma Agraria (AGRA), Link-AR Borneo, Sawit Watch, and Komunitas Konservasi Indonesia (WARSU); see, “Palm oil plantations linked to intimidation and criminalisation of community leaders in West Sumatra,” Forest Peoples Programme press release, December 4, 2018, <https://www.forestpeoples.org/en/agribusiness-palm-oil-rspo/press-release/2018/press-release-palm-oil-plantations-linked> (accessed October 15, 2020).

<sup>165</sup> Departemen Kampanye dan Manajemen Pengetahuan KPA, “Catahu 2017: Reforma Agraria di Bawah Bayang Investasi, Gaung Besar di Pinggiran Jalan,” 2017, [http://kpa.or.id/publikasi/baca/Laporan/25/Catatan\\_Akhir\\_Tahun\\_2017](http://kpa.or.id/publikasi/baca/Laporan/25/Catatan_Akhir_Tahun_2017) (accessed May 2, 2021).

<sup>166</sup> *Ibid.*, p. 18. See Law No. 41 of 1999 on Forestry Affairs, art. 49. Title or license holders will be responsible for forest fires in their working areas; art. 51. Grants certain forestry officials police authority; Law No. 2/2012 on Land Procurement; Law No. 18/2013 on Prevention and Eradication of Forest Destruction; and Law No. 39 of 2014 on Plantations, See Article 20 and Article 21 on the Act on Plantations. art. 20 of the Plantation Act, for example, asserts that plantation owners undertake plantation security that is coordinated with security forces and may involve the help of the surrounding community; art. 21 prohibits any person from vandalizing the plantation and/or other assets, using plantation land without permission and/or other actions that result in the disruption of the plantation business. This prohibition is accompanied by criminal sanctions for those who intentionally violate them with imprisonment of up to five years and a maximum fine of 5 billion rupiah. Unintentional violations are punished by imprisonment of up to two years and six months and a maximum fine of 2.5 billion rupiah.

<sup>167</sup> Michael Taylor, “Jailing of farmer who cut 20 trees spotlights Indonesia land conflicts,” *Reuters*, May 19, 2020, <https://news.trust.org/item/20200519100333-igkke> (accessed October 15, 2020). The 2013 Prevention and Eradication of Forest Destruction Law has become the primary tool used to prosecute land rights defenders.

One farmer in Pelita Jaya cleared and burned the grass on his farm. The company (PT Sintang Raya) called the police, and he was arrested. Later when he was released, he sold his land to the company. The owner of the neighboring farm immediately sold to the company, too. The neighbor was probably afraid that he could be next to have problems with the company. Another farmer in Seruat Dua was arrested when he burned his farm even though he had drainage borders. This has made everyone afraid that they could be arrested.<sup>168</sup>

PT Sintang Raya and the police have harassed and intimidated representatives from local nongovernmental organizations that seek to empower and provide legal support to these communities. NGO representatives from Lingkaran Advokasi dan Riset (Link-AR) said PT Sintang Raya intimidates their staff and representatives from other NGOs that come to talk with community members about their land dispute with the company.<sup>169</sup> Majid said, “They [PT Sintang Raya] report to the police when NGOs come to talk and organize us. They [PT Sintang Raya] say the NGOs cause unrest but we need the NGOs to help us understand what our rights are. We need help to negotiate with the company.”<sup>170</sup>

Rampant arbitrary arrests and abusive prosecutions of community members protesting loss of their land by business enterprises and the police can intimidate activists and rights defenders and their families, as well as the communities they represent. In 2020, a few arrests made national news: one journalist critical of the palm oil sector was arrested for visa violations, a blogger was prosecuted for defamation, and a local farmer was arrested for cutting down trees on land disputed by his community and a business enterprise.<sup>171</sup>

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<sup>168</sup> Human Rights Watch interview with Abdul Majid, Seruat Dua, April 25, 2018.

<sup>169</sup> Human Rights Watch interview with Agus Sutomo, former Executive Director of LinkAR-Borneo, Pontianak, West Kalimantan, April 30, 2018.

<sup>170</sup> Human Rights Watch interview with Abdul Majid, Seruat Dua, April 25, 2018.

<sup>171</sup> Dyaning Pangestika, “Indonesian Organizations Condemn Arrest of Mongabay Environmental Journalist,” *The Jakarta Post*, January 22, 2020, <https://www.thejakartapost.com/news/2020/01/22/indonesian-organizations-condemn-arrest-of-mongabay-environmental-journalist.html> (accessed October 15, 2020); “Indonesia: Blogger Held Over Land Dispute Report,” Human Rights Watch news release, May 16, 2020, <https://www.hrw.org/news/2020/05/16/indonesia-blogger-held-over-land-dispute-report#>; and Taylor, “Jailing of farmer who cut 20 trees spotlights Indonesia land conflicts,” Reuters.

## Key National Legal Processes and Responsibilities of Plantation Companies

Several Indonesian laws and regulations protect property and land rights.<sup>172</sup> And others lay out the permits required to acquire land and establish a plantation. Companies should make these applications to relevant local authorities and conduct environment and social impact assessments, which involve consultations with local communities expected to be impacted. However, new laws aimed at fostering investment in Indonesia will impact these processes, limiting public involvement and government oversight.<sup>173</sup>

### *Acquiring Permits*

In order to set up an oil palm plantation, Indonesian law requires that a company obtain a series of government permits from different departments. These include a location permit (*Izin Lokasi*),<sup>174</sup> which the governor or bupati is supposed to issue after reviewing the ownership and any competing rights over the land.

Before starting its plantation operations, the company should also conduct an environmental and social impact assessment (*Analisis Mengenai Dampak Lingkungan* or AMDAL) and receive an environment permit (*Izin Lingkungan*) from the district or provincial authorities<sup>175</sup>; a plantation permit (*Izin Usaha Perkebunan* or IUP) at the district or

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<sup>172</sup> Law Number 39/2014 on Plantation; Law Number 2/2012 on the provision of land for development in the public interests; Law Number 39/1999 recognizes property rights and land rights; and the Basic Agrarian Law (BAL) 5/1960.

<sup>173</sup> Hans Nicholas Jong, "Indonesia's Omnibus Law a 'Major Problem' for Environmental Protection," *Mongabay*, November 4, 2020, <https://news.mongabay.com/2020/11/indonesia-omnibus-law-global-investor-letter/> (accessed April 30, 2021); Hans Nicholas Jong "With New Law, Indonesia Gives Miners More Power and Fewer Obligations," *Mongabay*, May 13, 2020, <https://news.mongabay.com/2020/05/indonesia-mining-law-minerba-environment-pollution-coal/> (accessed May 2, 2021); Norman Harsono, "Explainer: New Rules in Revised Mining Law," *The Jakarta Post*, May 14, 2020, <https://www.thejakartapost.com/news/2020/05/14/explainer-new-rules-in-revised-mining-law.html> (accessed November 9, 2020).

<sup>174</sup> Agrarian Minister / Head of the National Land Agency Regulation on Location Permits, No. 2 of 1999, Replaced with Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency Regulation on Location Permits, No. 5 of 2015, replaced by Regulation on Location Permits, No. 14 of 2018, which sets out the procedures and requirements for obtaining Location Permits via an online submission system (OSS). The OSS simplifies the licensing procedure and could expedite the application process; and government regulation concerning implementation of spatial planning requests, No. 15 of 2010.

<sup>175</sup> Law of Environmental Protection and Management, No. 32 of 2009, art. 22. Every business and/or activity having substantial impact on the environment shall be obliged to have an Amdal; art. 26(1) initiators should involve communities; and (2) involvement of communities shall be based on principle of provision of information transparently and completely as well as shall be notified prior to the execution of the activity; and Government Regulation concerning Environmental Permits, No. 27 of 2012.

provincial level<sup>176</sup>; a forest conversion permit from Ministry of Forestry where the land assigned to the company overlaps with forests<sup>177</sup>; and finally, an HGU from the provincial land office.<sup>178</sup>

### *Duties to Consult Communities Prior to Acquiring Permits*

Various laws and regulations require companies to consult with affected communities as part of their application and prior to acquiring permits<sup>179</sup>:

- a) Before a location permit is issued<sup>180</sup>: The different stages of consultations include disseminating information about the project, collecting information on social and environmental baseline, and participation of affected communities in finding solutions to issues such as displacement.<sup>181</sup>
- b) Before a company obtains an environment permit and plantation permit: The environment and social impact assessment incorporates a community consultation.<sup>182</sup> If the community landowners and the company do not reach an agreement on solutions for social and environmental adverse impacts, the community may raise an objection with the AMDAL appraisal commission established by the relevant government official (minister, governor or regent).<sup>183</sup> Similarly, the company should conduct consultations as part of its plantation permit process.<sup>184</sup>

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<sup>176</sup> Law of Plantations, 2014, arts. 42-45; Ministry of Agriculture regulation No. 26 of 2007.

<sup>177</sup> For relevant forest release related regulations, see; “Risk Tool: Indonesia,” Forest Legality Initiative, <https://forestlegality.org/risk-tool/country/indonesia> (accessed May 2, 2021).

<sup>178</sup> Law of Basic Agrarian Principles, 1960, arts. 28-34; Government Regulation on the Right of Exploitation, the Right of Building and the Right of Use of Land, No. 40 of 1996.

<sup>179</sup> Ministry of Agriculture of the Republic of Indonesia, Secretariat of Indonesian Sustainable Palm Oil (ISPO) and Roundtable on Sustainable Palm Oil (RSPO), “Joint Study on the Similarities and Differences of the ISPO and the RSPO Certification Systems,” 2015, [https://www.undp.org/content/dam/gp-commodities/docs/ISPO-RSPO%20Joint%20Study\\_English\\_N%208%20for%20screen.pdf](https://www.undp.org/content/dam/gp-commodities/docs/ISPO-RSPO%20Joint%20Study_English_N%208%20for%20screen.pdf) (accessed January 16, 2019), pp. 48, 51-52. The paper outlines the legal framework and community consultation requirements in detail.

<sup>180</sup> Agrarian Minister/Head of the National Land Agency Regulation on Location Permits, No. 14 of 2018.

<sup>181</sup> *Ibid.*, art. 21. The repealed regulation on Location Permit No. 2 of 1999, referred to consultation in art. 4, and in art. 6(5).

<sup>182</sup> Government Regulation concerning Environmental Permits, 2012; Law of Environmental Protection, No. 32 of 2009; and Environment Ministry Regulation No. 8 of 2006.

<sup>183</sup> Law on Environmental Protection and Management, No. 32 of 2009, art. 26(4).

<sup>184</sup> Law of Plantations, 2014, art. 12, 1: (1) In the matter of land rights required for a plantation business in which there is existing communal customary land, the business owners must undertake a negotiation process with the customary community, which has communal rights to obtain an agreement on releasing of the land and the associated relevant points.

- c) Before a company obtains a “right to cultivate” permit: The company should consult the rights holders of land within Indigenous lands or other lands with identified owners, to reach an agreement on the transfer of the land and compensation.<sup>185</sup>

While these steps appear clear and straightforward, in practice there are gaps and minimal government oversight over the conduct of company consultations.<sup>186</sup>

Local nongovernmental experts and lawyers who have assisted hundreds of thousands of Indigenous people affected by oil palm plantations in almost all provinces of Indonesia, told Human Rights Watch there was barely any oversight over the manner companies complied with the consultation requirements under various laws.<sup>187</sup>

Community members have argued that in the past some government officials had bypassed important processes such as consultation during a land suitability survey (before a location permit is issued) or an AMDAL process (before a plantation permit or right-to-cultivate permit is issued) in issuing authorizations.<sup>188</sup> Local experts say that social impact assessments, when undertaken at all, are largely a box-ticking exercise with little community participation.<sup>189</sup> The 2020 Omnibus Law on Job Creation, which amends

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<sup>185</sup> Law of Plantations, 2014, art. 12(1-2), (formerly Law of Plantations, 2004, art. 9 (2)).

<sup>186</sup> John McCarthy and Zahari Zen, “Regulating the oil palm boom: assessing the effectiveness of environmental governance approaches to agro-industrial pollution in Indonesia,” *Law & Policy*, vol. 31, no. 1 (2010): pp.153-179; and Idsert Jelsma, et. al., “Unpacking Indonesia’s independent oil palm smallholders: An actor-disaggregated approach to identifying environmental and social performance challenges” *Land Use Policy*, vol. 69 (2017): pp. 281-297.

<sup>187</sup> Human Rights Watch interviews with Rukka Sombolinggi, secretary general, and Sinung Karto, human rights officer, AMAN, local NGO, May 2, 2018.

<sup>188</sup> The former Agrarian Minister/Head of National Land Agency Regulation on Location Permits, 1999, art. 8 requires that consultation with the community is done during a land suitability survey conducted by the company and relevant agencies to enable input from the community in relation to the planned investment in their land and the surroundings. The current Regulation on Location Permit, 2018 uses a single online process for multiple licensing procedures overseen by different relevant institutions, see “PP OSS [Online Single Submission] is Considered to Weaken the Obligatory Position of AMDAL,” (“PP OSS Dinilai Lemahkan Posisi Wajib AMDAL”), *HUKU*, May 15, 2019, <https://www.hukumonline.com/berita/baca/lt5cdc18e537f3c/pp-oss-dinilai-lemahan-posisi-wajib-amdal> (accessed May 16, 2019). Human Rights Watch interview with Agatha Anida, attorney at Agatha, Roslaini and Dunasta of the Indigenous Law Society, Pontianak, April 30, 2018. Human Rights Watch interviews with Rukka Sombolinggi, Secretary General, and Sinung Karto, Human Rights Officer, AMAN, local NGO, May 2, 2019.

<sup>189</sup> Basten Gokkon, “Indonesia to Strengthen Environmental Impact Assessments Through Process Review,” Mongabay, January 24, 2018, <https://news.mongabay.com/2018/01/indonesia-to-strengthen-environmental-impact-assessments-through-process-review/> (accessed April 29, 2019). The article cites Minister Siti Nurbaya Bakar, who acknowledged that the current AMDAL process has loopholes that companies exploit; Nikson Sinaga, “Alleged Forgery of Information and Reported AMDAL Signatures,” *Kompas*, January 17, 2019, <https://kompas.id/baca/nusantara/2019/01/17/dugaan-pemalsuan-keterangan-dan-tanda-tangan-amdal-dilaporkan/> (accessed May 2, 2021); “Amdal Corruption is a Source of Environmental

79 laws and repeals thousands of regulations, further weakens environmental standards by easing licensing requirements for environment permits (AMDAL), thus curtailing communities' and environmental experts' involvement in environmental impact assessments, accelerating licensing processes for businesses, and removing the requirement for parliamentary approval for releasing conservation forests for commercial use and relegating the decision making to the executive branch.<sup>190</sup>

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Damage: Review of Regulations Regarding Environmental Impact Analysis” (“Korupsi Amdal Sumber Kerusakan Lingkungan Kaji Ulang Regulasi Terkait Analisis Mengenai Dampak Lingkungan”), Kompas, September 26, 2017, <https://kompas.id/baca/humaniora/ilmu-pengetahuan-teknologi/2017/09/26/korupsi-amdal-sumber-kerusakan-lingkungan/> (accessed May 16, 2019).

<sup>190</sup> “Indonesia: New Law Hurts Workers, Indigenous Groups,” Human Rights Watch news release, October 15, 2020, <https://www.hrw.org/news/2020/10/15/indonesia-new-law-hurts-workers-indigenous-groups>; Cameron Grant, Philip Morgan, and Taybah Siddiqi, “Three Things Investors Need to Know About Indonesia’s New Omnibus Law,” Freshfields Bruckhaus Deringer, November 23, 2020, <https://transactions.freshfields.com/post/102gkmd/three-things-investors-need-to-know-about-indonesias-new-omnibus-law> (accessed April 30, 2021); Hans Nicholas Jong, “Indonesia’s Omnibus Law a ‘Major Problem’ for Environmental Protection,” Mongabay.

### III. Human Rights Obligations and Responsibilities

The Indonesian government is a party to core international human rights treaties that protect the rights to an adequate standard of living, property, participation, access to information, and to an effective remedy. And the principles of nondiscrimination and equality are fundamental to the exercise and enjoyment of these human rights.

Relevant treaties that Indonesia has ratified include the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>191</sup> International Covenant on Civil and Political Rights,<sup>192</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),<sup>193</sup> and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>194</sup> The Indonesian government's duty to respect, protect and fulfill human rights and fundamental freedoms includes those in relation to the activities by third parties, such as business enterprises. The government has an obligation to ensure that victims of human rights abuses can access effective judicial and non-judicial remedies.<sup>195</sup>

Business enterprises, in this case oil palm plantation companies, have a responsibility to respect human rights. Within the framework set out in the UN Guiding Principles on Business and Human Rights, as well as the UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), and the Committee on World Food Security's Principles for Responsible

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<sup>191</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Indonesia on February 23, 2006.

<sup>192</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Indonesia on February 23, 2006.

<sup>193</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by Indonesia on June 25, 1999.

<sup>194</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by Indonesia on September 13, 1984.

<sup>195</sup> UN Guiding Principles on Business and Human Rights; also adopted in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, endorsed by the Committee on World Food Security (guiding principle 3.2). See Food and Agriculture Organization of the United Nations (FAO), *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*.

Investment in Agriculture and Food Systems, (CFS-RAI),<sup>196</sup> business enterprises should not infringe on the human rights of others and should address adverse human rights impacts with which they are involved. Business enterprises should also carry out human rights due diligence, including engaging in meaningful consultation with potentially affected groups. They should ensure that individuals and communities adversely affected have access to effective grievance resolution mechanisms. Businesses should meet these responsibilities even when governments fail in their duty to mandate this or monitor compliance.

## Climate Change and Human Rights

In the context of climate change, Indonesia has specific obligations to protect human rights from environmental harm including by taking concrete steps to fulfill and increase its commitments to reduce greenhouse gas emissions under the 2015 Paris Agreement on Climate Change.<sup>197</sup> Indonesia has committed to reducing emissions by 29 percent from the business-as-usual scenario by 2030, or 41 percent with international assistance, but is not on track to meet these goals.<sup>198</sup> Not only is it home to globally significant but rapidly reducing carbon sinks, Indonesia is currently one of the world's biggest greenhouse gas emitters. Indonesia's continued clearing of natural forests, including forested peatlands, to make way for oil palm plantations is a large source of its total greenhouse gas emissions.<sup>199</sup>

In 2018, the UN Committee on Economic, Social and Cultural Rights warned states that “a failure to prevent foreseeable human rights harm caused by climate change, or a failure to

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<sup>196</sup> Committee on World Food Security, “Principles for Responsible Investment in Agriculture and Food Systems,” 2014, <http://www.fao.org/3/au866e/au866e.pdf> (accessed May 31, 2021).

<sup>197</sup> UN General Assembly, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, A/74/161, July 15, 2019, <https://undocs.org/en/A/74/161> (accessed May 3, 2021); UN Human Rights Council, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, A/HRC/25/53, December 30, 2013, <https://undocs.org/en/A/HRC/25/53> (accessed May 3, 2021); UN Framework Convention on Climate Change (1992). The Human Rights Committee has stated that fulfilling the obligation to respect and protect the right to life requires governments to take measures “to preserve the environment and protect it against harm, pollution and climate change ....” (Emphasis added). UN Human Rights Committee, General Comment No. 36, Article 6 of the International Covenant on Civil and Political Rights, on the right to life,” CPR/C/GC/36 (2018), [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf) (accessed May 3, 2021), para. 62.

<sup>198</sup> Republic of Indonesia, “First Nationally Determined Contribution,” November 2016, [https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Indonesia%20First/First%20NDC%20Indonesia\\_submitted%20to%20UNFCCC%20Set\\_November%20%202016.pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Indonesia%20First/First%20NDC%20Indonesia_submitted%20to%20UNFCCC%20Set_November%20%202016.pdf) (accessed March 1, 2021).

<sup>199</sup> Daisy Dunne, “The Carbon Brief Profile: Indonesia, Country Profiles,” Carbon Brief, <https://www.carbonbrief.org/the-carbon-brief-profile-indonesia> (accessed April 26, 2021), “Forests and Landscapes in Indonesia,” World Resources Institute, <https://www.wri.org/initiatives/forests-and-landscapes-indonesia> (accessed April 26, 2021).

mobilize the maximum available resources in an effort to do so, could constitute a breach” of their obligation to respect, protect and fulfil all human rights for all.<sup>200</sup> The committee also reminded governments that their human rights obligations under the ICESCR should guide them in the design and implementation of measures to address climate change.<sup>201</sup>

The Indonesian government has come under national and international criticism for not pledging to more ambitious commitments to reduce its greenhouse gas emissions under the Paris Agreement.<sup>202</sup> It has also been criticized for its poor enforcement of regulations aimed at managing or preventing fires and smoke haze.<sup>203</sup> Its continued efforts to promote increased productivity in the oil palm sector with a potential to expand on and convert peatlands into oil palm plantations has heightened concerns.<sup>204</sup> The poor land governance and related human rights abuses contribute to more peatlands being destroyed, making it even less likely for Indonesia to meet its current targets.

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<sup>200</sup> Committee on Economic, Social, and Cultural Rights, “Climate change and the International Covenant on Economic, Social, and Cultural Rights”, October 8, 2018. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E> (accessed May 3, 2021), para 6.

<sup>201</sup> *Ibid.*, para. 3.

<sup>202</sup> “Indonesia,” Climate Action Tracker, <https://climateactiontracker.org/countries/indonesia/> (accessed August 4, 2020); GreenPeace Indonesia, “Not Ambitious and Not Involving Communities, Updated 2020 Nationally Determined Contributions (NDCs) Indonesia 2020 Will Only Exacerbate the Disaster of the Climate Crisis” (“Tidak Ambisius dan Tidak Melibatkan Masyarakat, Updated Nationally Determined Contributions (NDCs) Indonesia 2020 Hanya Akan Memperburuk Bencana Krisis Iklim”), February 24, 2020, <https://www.greenpeace.org/indonesia/siaran-pers/4691/tidak-ambisius-dan-tidak-melibatkan-masyarakat-updated-nationally-determined-contributions-ndcs-indonesia-2020-hanya-akan-memperburuk-bencana-krisis-iklim/> (accessed August 8, 2020).

<sup>203</sup> Hans Nicholas Jong and Lusia Arumingtyas, “Indonesian Supreme Court strikes down regulation on peat protection,” *Mongabay*, November 2, 2017, <https://news.mongabay.com/2017/11/indonesian-supreme-court-strikes-down-regulation-on-peat-protection/> (accessed May 3, 2021). Indonesia’s Supreme Court quashed a ministerial regulation obliging forestry companies to relinquish and protect carbon-rich concessions in protected peat areas. The regulation was part of a package of new rules meant to prevent a recurrence of the annual fires that burn across Indonesia’s vast peat swamp zones. Businesses, labor unions and politicians had expressed concern over the regulation, saying that it would result in loss of productivity and massive layoffs. The government says the court ruling will not hamper the nation’s efforts to protect its peatlands.

<sup>204</sup> Nur Yasmin, “Indonesia Doubles Down on Its Palm Oil Commitment,” *Jakarta Globe*, October 31, 2019, <https://jakartaglobe.id/business/indonesia-doubles-down-on-its-palm-oil-commitment> (accessed May 3, 2021); Hans Nicholas Jong, “Indonesia won’t ‘sacrifice economy’ for more ambitious emissions cuts,” *Mongabay*, April 14, 2020, <https://news.mongabay.com/2020/04/indonesia-emissions-reduction-climate-carbon-economy-growth/> (accessed August 4, 2020).

## Right to Property and Prohibition of Arbitrary Dispossession

International law protects rights related to land and security of tenure, including the rights to property.<sup>205</sup> Everyone has the right to own property, alone as well as in association with others and no one shall be arbitrarily deprived of their property.<sup>206</sup> The right to property as enshrined in human rights instruments encompasses land and land use. No one shall be deprived of their property except in the public interest, in accordance with the law and upon payment of just compensation.<sup>207</sup>

Under Indonesian law, land designated for transmigration is granted with ownership rights.<sup>208</sup> Transmigrant communities that were resettled across Indonesia through the government program have a right to use and manage the land they were allocated as they see fit. The government should not allocate overlapping land concessions to oil palm businesses, as well as other agricultural and extractive operations.

Several human rights conventions also protect against discrimination, including on the basis of sex, with respect to property, and related to access to, use of and control over

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<sup>205</sup> For example, the Universal Declaration of Human Rights (UDHR) (a declaration whose provisions are considered reflective of customary international law). Article 17 states: “(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.” See also regional conventions to which Indonesia is not a state party: European Convention on Human Rights, article 1, protocol 1 “(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”; American Convention on Human Rights, article 21, “(1) Everyone has the right to the use and enjoyment of his property. ... (2) No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law”; African Charter on Human and Peoples’ Rights, article 14, “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

<sup>206</sup> Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 17. See also International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by Indonesia on June 25, 1999, art. 5(d)(v). ICERD upholds the enjoyment of civil rights, including “(v) The right to own property alone as well as in association with others.”

<sup>207</sup> European Convention on Human Rights, protocol No. 1, art. 1; American Convention on Human Rights, art. 21; African Charter on Human and Peoples’ Rights, art. 14.

<sup>208</sup> Indonesia law no. 15/1997 on Transmigration, art. 24 (update on Law No. 3/1972 on Basic Provisions of Transmigration), currently Law No. 29/2009. The certificate of title to land as referred to in paragraph (7) shall be given no later than 5 (five) years since the placement of the SP concerned. Article 31 Paragraph (1) regulates the period of prohibition of land alteration as follows: Land granted to Transmigrants and local residents who move to new settlements as part of SP-Pugar as referred to in Article 29 shall be non-transferable unless 15 (fifteen) years from the date of placement. See FX Sumarja, et. al., “Evaluation of Indonesian Transmigration Law According to Land Certification for Transmigrants,” *Sumarja*, vol. 66 (2017).

land.<sup>209</sup> Article 14(2)(g) of the Convention on the Elimination of All Forms of Discrimination against Women requires governments to “take all appropriate measures to eliminate discrimination against women in rural areas. ... and ensure to such women the right to equal treatment as men in land and agrarian reform.”<sup>210</sup> The Indonesia government should address and take necessary steps to prevent, diminish and eliminate the conditions and attitudes that cause or perpetuate substantive and de facto discrimination that restrict women participating in decision-making processes related to land within their communities.

## Right to an Adequate Standard of Living

The International Covenant on Economic, Social and Cultural Rights guarantees the right to secure one’s livelihood and an adequate standard of living.<sup>211</sup> The right to an adequate standard of living incorporates the right to available, accessible, and adequate food, the right to housing, and the right to water and sanitation, among other rights.<sup>212</sup> The community members’ loss of land, as well as environmental degradation attributed to increased pests and intrusion of saltwater, has undermined food security in these communities.

## Right to Participation

To best protect the right of every person now and in the future to live in an environment adequate for their health and wellbeing, states should ensure that the rights of access to information, public participation in decision-making, and access to justice in environmental matters.<sup>213</sup>

The lack of meaningful involvement by affected communities in decision-making over the allocation of their land to PT Sintang Raya and the expansion of the company’s operations in their area is in violation of their right to participation.<sup>214</sup>

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<sup>209</sup> ICERD, art. 5(d)(v); CEDAW, arts. 15 and 16.

<sup>210</sup> CEDAW, art. 14(2)(g)

<sup>211</sup> ICESCR, art. 11(1).

<sup>212</sup> The right to food is recognized under article 25 of the UDHR, and under article 11 of the ICESCR as interpreted by the UN Committee on Economic, Social and Cultural Rights, General Comment No. 12, Right to adequate food, (Twentieth session, 1999), U.N. Doc. E/C.12/1999/5 (1999).

<sup>213</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, June 25, 1988, art. 1

<sup>214</sup> CEDAW, art. 7; FAO, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, guiding principle 3B (6), guideline 9.9; Guiding principles on human rights impact

The right to participation concerns being involved in decision-making processes that affect the exercise of other rights, such as the right to an adequate standard of living.<sup>215</sup>

Violations of the right to participate can occur through “failure to take reasonable steps to facilitate participation, including by ensuring the right to access to information.”<sup>216</sup>

The UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation has described the right to participation as needing to be “active, free, and meaningful.” Active, free, and meaningful participation requires more than “token forms of participation,” such as “the mere sharing of information or superficial consultation.” Rather, “[s]tates have an obligation to invite participation and to create opportunities from the beginning of deliberations on a particular measure and before any decisions, even de facto decisions, have been taken.” Further, “[p]articipants must be involved in determining the terms of participation, the scope of issues and the questions to be addressed, their framing and sequencing, and rules of procedure.”<sup>217</sup>

United Nations treaty bodies, such as the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, and the Committee on the Elimination of Racial Discrimination, have recommended that states ensure consultation with affected communities, including in the following contexts:

- Prior to conducting development projects, exploitation of natural resources, and land acquisition and concession;<sup>218</sup>

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assessments of trade and investment agreements (A/HRC/19/59/Add.5), principle 4; Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge (A/HRC/13/33/Add.2), principles 1, 2, 10; Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I), paras. 38, 53, 55, 56 (e) and (i), 65.

<sup>215</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water, U.N. Doc. E/C.12/2002/11 (2003), para. 48.

<sup>216</sup> UN Human Rights Council, Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Common Violations of the Human Rights to Water and Sanitation, Catarina de Albuquerque, U.N. Doc. A/HRC/27/55, June 30, 2014, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/069/10/PDF/G1406910.pdf?OpenElement> (accessed May 3, 2021), para. 68.

<sup>217</sup> UN General Assembly, Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, U.N. Doc. A/69/213, July 31, 2014, paras. 18–31.

<sup>218</sup> Committee on Economic, Social and Cultural Rights, “Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations, E/C.12/KHM/CO/1, June 12, 2009, <https://undocs.org/en/E/C.12/KHM/CO/1> (accessed May 3, 2021), para. 16 and 30; Committee on Economic, Social and

- In the management of land and natural resources<sup>219</sup>;
- While developing legislation and mechanisms for land management;<sup>220</sup> and
- While solving and preventing land conflicts.<sup>221</sup>

Public participation in land-related decision-making processes can help ensure that the allocation and use of land will serve citizens' priorities and reduce the chance that the project will be derailed by corruption or private interests.

## Right of Access to Information

Information is a prerequisite for the exercise of various other rights, including the right to the highest attainable standard of physical and mental health, the right to participation, and the right to a healthy environment. The UN Human Rights Committee's General Comment No. 34 on article 19 of the ICCPR expressly articulates a right for access to information held by public bodies. The Human Rights Committee stated that in order to

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Cultural Rights, "Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations, Chad," E/C.12/TCD/CO/3, December 16, 2009, <https://undocs.org/E/C.12/TCD/CO/3> (accessed May 3, 2021), para. 28; Committee on Economic, Social and Cultural Rights, "Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations, Madagascar," E/C.12/MDG/CO/2, December 16, 2009, <https://undocs.org/E/C.12/MDG/CO/2> (accessed May 4, 2021), para. 12. and of the Committee on the Elimination of Racial Discrimination, "Consideration of reports submitted by States parties under article 9 of the Convention, Concluding Observations, Argentina, CERD/C/ARG/CO/19-20, March 29, 2010, <https://undocs.org/E/C.12/TCD/CO/3> (accessed May 3, 2021); Committee on the Elimination of Racial Discrimination, "Consideration of reports submitted by States parties under article 9 of the Convention, Concluding Observations, Chile, CERD/C/CHL/CO/15-18, September 7, 2009, <https://undocs.org/en/CERD/C/CHL/CO/15-18> (accessed May 3, 2021); and the Committee on the Elimination of Racial Discrimination, "Consideration of reports submitted by States parties under article 9 of the Convention, Concluding Observations, Congo," CERD/C/COG/CO/9, March 23, 2009, <https://undocs.org/CERD/C/COG/CO/9> (accessed May 3, 2021); and of the Human Rights Committee, "Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations, the United Republic of Tanzania, CCPR/C/TZA/CO/4, March 23, 2009, <https://undocs.org/CERD/C/COG/CO/9> (accessed May 3, 2021).

<sup>219</sup> Committee on Economic, Social and Cultural Rights, "Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations, Australia, E/C.12/AUS/CO/4, June 12, 2009, <https://undocs.org/en/E/C.12/AUS/CO/4> (accessed May 3, 2021); and of the Committee on the Elimination of Racial Discrimination, "Consideration of reports submitted by States parties under article 9 of the Convention, Concluding Observations, Congo," (CERD/C/COG/CO/9, March 23, 2009, <https://undocs.org/CERD/C/COG/CO/9> (accessed May 3, 2021).

<sup>220</sup> Committee on the Elimination of Racial Discrimination, "Consideration of reports submitted by States parties under article 9 of the Convention, Concluding Observations, Finland, CERD/C/FIN/CO/19, March 13, 2009, <https://undocs.org/CERD/C/FIN/CO/19> (accessed May 3, 2021); and Committee on the Elimination of Racial Discrimination, "Consideration of reports submitted by States parties under article 9 of the Convention, Concluding Observations, Suriname, CERD/C/SUR/CO/12, March 13, 2009, <https://undocs.org/en/CERD/C/SUR/CO/12> (accessed May 3, 2021).

<sup>221</sup> Committee on Economic, Social and Cultural Rights, "Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations, the Democratic Republic of the Congo, E/C.12/COD/CO/4, December 16, 2009, <https://undocs.org/E/C.12/COD/CO/4> (accessed May 3, 2021); and Committee on Economic, Social and Cultural Rights, "Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations, Finland, E/C.12/FIN/CO/5, January 16, 2008, <https://undocs.org/E/C.12/FIN/CO/5> (accessed May 3, 2021).

“give effect to the right of access to information, States parties should proactively put in the public domain government information of public interest,” ensuring access is easy, prompt, effective, and practical.<sup>222</sup>

## Rights to Freedom of Expression, Association, and Peaceful Assembly

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, to meet or assemble peacefully, freely to publish, impart or disseminate views, information and knowledge on all human rights and fundamental freedoms; and to study, form and hold opinions on the observance, both in the law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.

The Indonesian authorities have violated the rights of affected residents and local activists to protest against the loss of their land to oil palm plantation companies, infringing upon the rights to freedom of expression, association, and peaceful assembly,<sup>223</sup> and implicating protections against arbitrary arrest and detention, and right to a fair trial.<sup>224</sup>

Among those targeted have been human rights defenders, a term used to describe people who, individually or with others, act to promote or protect human rights.<sup>225</sup> Human rights defenders working on land issues are an essential element in the respect, protection and promotion of human rights.<sup>226</sup>

## Right to an Effective Remedy

Under the ICCPR, individuals whose human rights have been violated are entitled to access to effective remedies, such as courts or other grievance resolution mechanisms, and to be

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<sup>222</sup> UN Human Rights Committee, General Comment No. 34, Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34 (2011), paras. 18-19. The Human Rights Committee also noted that the right to information is addressed in other articles of the ICCPR, including arts. 17, 14, 2, and 10.

<sup>223</sup> See, ICCPR, arts. 19, 20, and 21.

<sup>224</sup> *Ibid.*, arts. 9 and 14.

<sup>225</sup> UN Office of the High Commissioner for Human Rights, Fact Sheet no. 29, “Human Rights Defenders: Protecting the Right to Defend Human Rights,” <https://www.ohchr.org/Documents/Publications/FactSheet29en.pdf> (accessed May 3, 2021), p. 2.

<sup>226</sup> UN Declaration on Human Rights Defenders, adopted March 8, 1999, General Assembly resolution 53/144, U.N. Doc A/RES/144, <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx> (accessed May 3, 2021, arts. 5 (a) and 6 (b) and (c).

granted adequate reparation for harm suffered as a consequence of such violations.<sup>227</sup> States have a duty to investigate alleged violations, and, if a crime has been committed, prosecute those who are responsible. The lack of an effective grievance resolution mechanism, coordination and the clear allocation of responsibilities among public authorities to deal with grievances and deliver remedies, or the presence of corruption, undermines access to justice and an effective remedy for people affected by land issues.<sup>228</sup>

Indonesia has a myriad of dispute resolution mechanisms at the national and local levels of governance. However, there is an incomprehensibly large number of land-related conflicts across the country between government, businesses, and local communities, including Indigenous peoples. In the case of PT Sintang Raya, even with a Supreme Court decision recognizing the rights of some community members to land that the company had cultivated, there was very little the community was able to do to enforce the decision.

The UN Guiding Principles on Business and Human Rights provide that businesses have a responsibility to exercise due diligence to identify their impact on human rights, avoid causing or contributing to human rights abuses through their operations, avoid complicity in abuses, and ensure that any abuses are remedied.<sup>229</sup>

Oil palm operations that directly impact families and their communities have a responsibility to respect the human rights of people living on the land they take title to.<sup>230</sup> Even in the absence of effective government oversight, these business operations should take effective steps to identify and mitigate the negative human rights impacts of their operations. In the cases Human Rights Watch documented, oil palm companies operated in violation of the human rights of affected communities within Indonesia's weak national

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<sup>227</sup> ICCPR, art. 2 (3). Everyone has the right to an effective remedy by the competent national tribunals for acts violating fundamental and human rights recognized by national or international law.

<sup>228</sup> See generally UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of December 16, 2005; see also UN Human Rights Committee, "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant," General Comment No. 31, CPR/C/21/Rev.1/Add. 1326 (2004).

<sup>229</sup> UN Commission on Human Rights, "Report of the Special Representative of the Secretary-General, Annex, I.A.1," March 2011, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (accessed July 6, 2017); Organisation for Economic Co-operation and Development (OECD)/FAO, *OECD-FAO Guidance for Responsible Agricultural Supply Chains* (Paris: OECD Publishing, 2016), <http://dx.doi.org/10.1787/9789264251052-en> (accessed September 21, 2017).

<sup>230</sup> UN Guiding Principles on Business and Human Rights.

and regulatory framework. The companies should make sure that affected families are adequately compensated and that compensation packages are developed in meaningful consultation with the people concerned.

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## “Why Our Land?”

### Oil Palm Expansion in Indonesia Risks Peatlands and Livelihoods

One of Indonesia’s major sources of greenhouse gas emissions and its greatest contributor to land disputes is the clearing of natural forests and peatlands for oil palm plantations. Weak land governance in Indonesia has facilitated palm oil companies’ encroachment on land claimed by transmigrant and settler communities, impacting their rights.

“Why Our Land?”: *Oil Palm Expansion in Indonesia Risks Peatlands and Livelihoods* depicts the broader upheaval wrought on rural communities by long-running conflicts with companies, the Indonesian government’s failure to protect community land rights, and the lack of adequate consultation, compensation, or remedy for loss of land and livelihood. The report is based on interviews with residents of three transmigrant and settler communities in Kubu Raya regency, West Kalimantan. Despite the government’s affirmation of land rights, these rural people are losing land and their livelihood to an expanding plantation, worsening poverty, food insecurity, and degrading peatland. Residents struggle to retain control over their land, while facing intimidation and harassment by local police. The authorities have done very little to mediate and resolve disputes, or enforce lawsuits affirming the community members’ ownership of land.

Human Rights Watch calls on the Indonesian government to strengthen land rights of rural communities and mediate to resolve land disputes and to monitor and mitigate environmental degradation of peatlands that impact the rights of local people and contribute to global climate change. The government should investigate and sanction any oil palm company that fails to meaningfully consult and compensate affected communities, and ensure companies comply with all environmental management laws.

*(above) Burned land next to an oil palm plantation after fires near Banjarmasin in South Kalimantan province, Indonesia, September 29, 2019.*

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*(front cover) A child carries palm kernels collected from the ground across a creek at an oil palm plantation in Sumatra, Indonesia, November 2017.*

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