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# THE DARK SIDE OF GREEN GROWTH

Human Rights Impacts of Weak Governance in Indonesia's Forestry Sector



**The Dark Side of Green Growth**  
Human Rights Impacts of Weak Governance in  
Indonesia's Forestry Sector

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## The Dark Side of Green Growth

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# Map of Indonesia



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## Summary

Even as Indonesia promotes its forestry sector as a model of equitable and environmentally sustainable economic development, or green growth, corruption and mismanagement continue to plague the sector, with serious consequences for human rights.

This report, an update of the 2009 Human Rights Watch report *Wild Money*, documents the persistence of illegal logging, weak governance, and lack of accountability in Indonesia's forestry sector, and provides a new estimate of the costs. Using government and industry data, and applying industry standard methodology, we estimate that illegal logging and forest sector mismanagement resulted in losses to state coffers of more than US\$7 billion between 2007 and 2011.

While Indonesia has recently introduced important reforms to address some of these concerns, the realization of these efforts continues to fall short. Significantly, we found that losses have increased, not declined, in recent years. In 2011 alone, losses totaled more than \$2 billion—a figure that exceeds the government's entire health budget for that year, undermining the state's ability to provide basic services to its population. The losses are a graphic illustration of how governance failures undermine fundamental human rights and jeopardize the sustainability of forest use and global efforts to combat climate change.

Indonesian authorities have routinely violated the rights of forest-dependent communities in allocating land use and setting forest industry concession boundaries. These rights include community rights under domestic law to meaningful consultation and fair compensation for loss of access to land and forests; the rights of indigenous peoples under international law to control communal land and natural resources; and internationally recognized rights to security of person, non-interference with privacy, family, and home, and the peaceful enjoyment of possessions. Mismanagement and corruption associated with forestry and agricultural concessions also fuel land conflicts, sometimes violent, between companies and local communities.

Rather than address the underlying causes of these disputes, the government has instead recently passed a flurry of legal instruments—laws, ministerial regulations, presidential decrees, and Memorandums of Understanding (MOUs) that focus on broadening the scope

of military involvement to address conflicts and contain vaguely defined “national security threats.” The return to a “security approach” to social conflict is a step backward for Indonesia, which had been making progress weaning its military from the pervasive internal security role it played under former President Suharto’s New Order government. The timing of these retrograde measures is particularly worrying as the 2014 elections approach. Pressure on candidates and political parties to raise money for campaigns through natural resource extraction may further increase land conflicts.

Failures of governance relevant to the forest sector also include: unwarranted restrictions on access to information about forest concessions and land claims, with only rare accountability for those who threaten or intimidate civil society activists; and inadequate oversight of the police and military, which in several documented cases have been implicated in violence and abuses against local communities.

The impact of weak governance on human rights is likely to be compounded by plans to dramatically expand pulp (for paper production) and oil palm plantations, as laid out in Indonesia’s “Economic Masterplan” (known locally as MP3EI). While the government promotes the expansion of these sectors as an essential element of its green growth strategy, the establishment of such plantations to date has in fact led to the clearing of natural forest and has increased both greenhouse gas emissions and pressures on land. Until governance issues are addressed, such pressures can be expected to lead to new violent land disputes and new abuses.

Indonesia’s problems in the forestry sector also have international implications. Donors should ensure that weaknesses in the implementation of reforms and the rule of law are addressed. In particular, Indonesia is a key player in global climate change mitigation strategies because it has vast natural wealth in forests that act as carbon sinks for the global climate, and because it suffers from rampant deforestation, particularly of forests on carbon-rich peat soils. These high-emission land use practices have made Indonesia one of the world’s leaders in greenhouse gas emissions.

Another key role Indonesia plays in the global climate is as the largest producer of palm oil, a major source of biofuel. Demand for biofuels has spiked in recent years as governments around the world seek to reduce their carbon emissions by decreasing their use of high carbon fossil fuels. Although aimed at reducing emissions, the clearing of natural forests

to make way for oil palm plantations—ironically to produce these ‘low carbon’ biofuels—is actually one of Indonesia’s largest sources of emissions. The smog produced when these forests are burned to make way for plantations drifts regularly to Indonesia’s neighbors’ air space, threatening health, interrupting air travel, and straining diplomatic ties. Regardless of how much the international community invests, if weak governance in the forestry and plantation sectors is not adequately addressed, Indonesia risks failing to deliver on its ambitious public commitments to reduce carbon emissions while also exacerbating human rights problems.

Recent government reforms have begun to address some of these issues, but they have not gone far enough. Since 2009, Indonesia has passed a Freedom of Information Law and established an audit system to verify the legality of harvested timber. However, the effectiveness of these reforms has been hampered by persistent weaknesses in the implementation and enforcement of regulations and the contradictory nature of other laws.

A prime example of the inadequacy of the government’s reforms is its weak enforcement of Indonesian law affecting community rights to land and forests. The new timber legality verification system does not adequately protect communities from abuses in the forestry sector. Further, a lack of transparency continues to hamper the effectiveness of reforms. Although civil society has a legal mandate to conduct oversight of the Ministry of Forestry’s timber verification system, lack of government compliance with transparency regulations undermines this role. Two years after freedom of information legislation entered into force, implementation by government institutions is still poor and police frequently fail to enforce court rulings requiring information disclosures. In addition, the State Intelligence Law passed in October 2011 increased opacity by classifying important information from the natural resource sectors as exempt from disclosure requirements in order to protect the country’s “national economic interest.”

Citizen oversight is under threat from Indonesia’s criminal defamation laws and a new regulation that can be used to exert undue control over the funding and activities of civil society. Together, these laws impose criminal penalties for undefined “misuse” of public information, and provide the government with broad powers to interfere with groups deemed to pose a danger to the “national interest.” They impose restrictions on civil society and freedom of association in violation of international law. They also threaten freedom of speech by enabling the government to intimidate and silence those individuals

or organizations who attempt to scrutinize government officials and corporations benefitting from the country's natural assets.

A vibrant civil society with access to information on the government's use of public assets such as natural resources is crucial for an accountable government that protects human rights as well as the environment. Addressing governance weaknesses that inhibit civic participation is essential for reforms to be effective. These steps are also necessary for Indonesia to address unsustainable land uses, increase the collection of state revenues for public welfare, and meet its international human rights obligations. Improving transparency and accountability is critical to stem the toll of agrarian violence plaguing the nation's rural poor and to ensure that citizens can speak out without fear of reprisal.

**Addendum:** While this report was in press, a landmark ruling by the constitutional court found that the provision of the 1999 Forestry Law that includes customary territories within state forest to be unconstitutional. The court's decision, in response to a petition by the National Alliance of Indigenous Communities (AMAN), explicitly rebuked the Ministry of Forestry for its disenfranchisement of customary communities by allocating their lands as concessions to logging and plantation companies. This ruling represents a significant and laudable shift toward the correction of decades of injustice. However, this ruling's implementation requires the mapping and registering these lands and the negotiation of their removal from existing concessions, steps that in the current context of weak governance represent a minefield of opportunities for continued corruption and disenfranchisement that could lead to increased conflicts. The need for participation, transparency, oversight, and accountability is more critical than ever to ensure the implementation of this long-awaited step toward fulfillment of human rights in the forest sector.

# Key Recommendations

## To the Indonesian Government

- Amend the timber verification system to include assessment of government and company compliance with laws protecting local land rights and compensation agreements.
- Fully implement and enforce the Freedom of Information Act. Timber legality certificates should be withheld until civil society monitors have received all necessary information to conduct oversight and their complaints have been addressed by the auditors.
- Amend Internal Affairs regulation 33/2012 to remove vague and undue restrictions on NGO mandate, activities, and funding. Endorse similar revisions to the draft law on NGOs currently pending before parliament.

## To Forest Sector and Plantation Businesses, Including Their Supply Chains

- Engage with local NGOs to design and institute transparent and meaningful grievance procedures for affected communities.
- Carry out robust due diligence on the human rights impacts of proposed forest ventures to avoid involvement in ventures with potentially harmful impact on the human rights of affected communities, including the allocation of concessions on land under pre-existing claim by communities.

## To Donor Governments and International Financial Institutions

- Insist on demonstrable compliance by the Ministry of Forestry and auditors with requirements that the ministry disclose necessary information to independent monitors of the timber audit system.
- Press Indonesia to adopt new timber legality criteria requiring assessment of whether:
  - (a) The timber operation is on an area that was legally allocated under Indonesian law, including by removing lands under prior existing claims by communities, and
  - (b) Communities were adequately consulted and paid fair compensation by the company, as required by law.

## Methodology

This report is based on Human Rights Watch research in Indonesia in February, March, and December 2012, and February 2013, and on phone interviews, desk research, and extensive data analysis between April 2012 and July 2013.

We interviewed analysts, civil society advocates, journalists, and donors with expertise in forestry, climate change, and governance. Human Rights Watch researchers discussed with all interviewees the purpose of the interview, its voluntary nature, the ways the information would be used, and that no compensation would be provided for participating.

We collected Indonesian government and industry data on wood production and consumption, wood imports and exports, forest revenues, health statistics, and budget information, as well as independent analysis of this data from various experts. We also collected forestry production and trade data from the United Nations Food and Agriculture Organization (FAO), the Indonesian Pulp & Paper Association (APKI), and the International Tropical Timber Organization (ITTO).

Our quantitative analyses (see Appendix A) and results were externally peer-reviewed by three experts in Indonesian timber supply and forestry finance, who preferred to remain anonymous to avoid possible retaliation by government officials.

Due to the sensitive nature of our inquiries into corruption and its impacts on failed governance, and the government backlash against critics documented in this report, some of the identities of individuals with whom we spoke have been withheld to protect them from possible retaliation.

# The Costs of Illegal Logging and Forest Mismanagement: Updated Findings

In our 2009 report *Wild Money: The Human Rights Consequences of Corruption in Indonesia's Forest Sector*, Human Rights Watch calculated that the Indonesian government lost at least \$1.8 billion in 2006 from uncollected forestry fees due to illegal logging and mismanagement in the forestry sector.<sup>1</sup> We used industry and government data to estimate losses in fees from timber cut without proper permits, from government use of artificially low “market” prices in calculating royalties (an unacknowledged subsidy to timber companies),<sup>2</sup> and from assessed but uncollected fees.<sup>3</sup>

In an update of these analyses using industry and government figures from 2007-2011 (Figure 1; see Appendix A for a complete discussion of the methodology), we now find that, after an initial decline,<sup>4</sup> losses from illegal logging and weak governance reached more than \$2 billion in 2011 (the most recent year for which data are available). In the five years since *Wild Money* was released, we estimate that state losses from the forestry sector totaled more than \$7 billion.<sup>5</sup>

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<sup>1</sup> Human Rights Watch, *Wild Money: The Human Rights Consequences of Corruption in Indonesia's Forest Sector*, December 2009, <http://www.hrw.org/reports/2009/12/01/wild-money-o>.

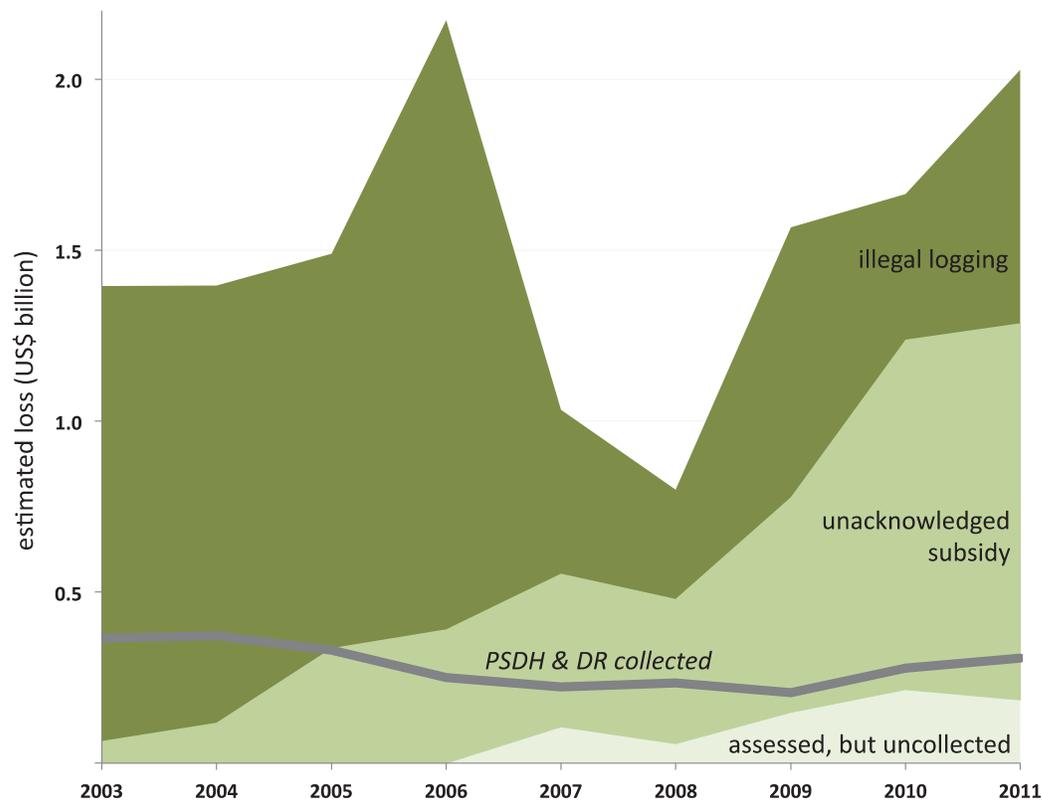
<sup>2</sup> This was a point subsequently acknowledged by the Research and Development Division of the Indonesian Ministry of Forestry, who argue in their Policy Brief No. 5 that artificially low index prices cause large losses in government revenue by depressing royalty payments. Ministry of Forestry, “Evaluation of Natural Forest Timber PSDH Rates” (“Evaluasi Tarif PSDH Kayu Hutan Alam,”), Policy Brief, vol. 5, no. 5, 2011.

<sup>3</sup> As just one illustration of this loss, Indonesian Corruption Watch examined audits for 2009 by the Supreme Auditing Body (*Badan Pemerikasa Keuangan*, BPK) and found that in the province of Riau alone, the government lost some \$240 million in uncollected forestry taxes in that year. “Kerugian Negara dari Sektor Kehutanan Triliunan,” *HukumOnline*, May 20, 2010, <http://www.hukumonline.com/berita/baca/lt4bdbadf3be1do/kerugian-negara-dari-sektor-kehutanan-triliunan> (accessed April 22, 2013).

<sup>4</sup> As explained in *Wild Money*, Human Rights Watch believes, and sector experts concur, that government reports of a sudden increase in timber production from pulp plantations that produced this dip in losses are unreliable because the area of plantation reported as having been planted was insufficient to yield such large timber volumes. Human Rights Watch, *Wild Money: The Human Rights Consequences of Corruption in Indonesia's Forest Sector*, pp. 4-5; Louis Verchot, et al., *Reducing Forest Emissions in Indonesia* (Bogor: CIFOR, 2010), [http://www.cifor.org/publications/pdf\\_files/Books/BVerchoto101.pdf](http://www.cifor.org/publications/pdf_files/Books/BVerchoto101.pdf) (accessed April 22, 2013), p.6. We further note that nearly half of the country's total reported timber production was from sources the Ministry of Forestry categorized simply as “other” in their Annual Report for 2011. Ministry of Forestry, “Forestry Statistics of Indonesia 2011” (“Statistik Kehutanan Indonesia 2011”), ISBN : 979-606-073-6, [http://www.dephut.go.id/files/Statistik\\_kehutanan\\_2011.pdf](http://www.dephut.go.id/files/Statistik_kehutanan_2011.pdf) (accessed March 6, 2013), Table IV.6.1.

<sup>5</sup> In 2009, the Ministries of Forestry and Trade took initial steps to decrease the loss of government revenue, only to be met with strong resistance from industry that resulted in these reforms being rolled back just a few months later. The Ministry of Forestry issued two regulations imposing a timber replacement fee (*Pengantian Nilai Tegakan*, PNT) designed to recover some of the value of natural assets lost when forests are cleared by private companies. Timber Utilization Permit Regulations P.65/Menhut-

**Figure 1: Government Forestry Revenue Lost to Mismanagement and Corruption**



PSDH = Timber Royalty Fee, DR = Reforestation Fee

Data source: Indonesian Pulp and Paper Association. Annual reports from International Tropical Timber Organization, and Indonesian Ministry of Forestry.

Not only are the losses staggering in their magnitude, they are stunning in comparison to the low level of forestry fees actually collected from the extraction of the nation’s public forest assets. For 2011, for example, the Ministry of Forestry reported collecting only 62

II/2009 (“Peraturan Tentang Izin Pemanfaatan Kayu”); and the revised regulation, Timber Utilization Permit Regulations P.14/Menhut-II/2011 (“Peraturan Tentang Izin Pemanfaatan Kayu”). However, in November 2011, the Association of Indonesian Forest Concessionaires (APHI) petitioned the Supreme Court for a judicial review. APHI, “Letter 41/PR/XI/41 P/HUM/TH.2011,” November 4, 2011, on file with Human Rights Watch. The court overturned the regulation. *Letjend. (Purn.) Sugiono vs. Menteri Kehutanan Republik Indonesia*, Supreme Court of Indonesia, Case No. 41 P/HUM/2011, Supreme Court Decision No. 41, September 2, 2012, <http://putusan.mahkamahagung.go.id/putusan/ad62979bb410792df243ba6fbd8ee4a> (accessed April 22, 2013). Further, in March 2012, the Ministry of Trade increased the index prices that form the basis for calculating the timber royalty fee (*Provisi Sumber Daya Hutan*, PSDH) so that these indices more closely match actual timber prices on the domestic market. However, APHI again opposed this increase in fees and the Ministry of Trade backed down and issued a new regulation (Per.MenDag 22/M-Dag/PER/4/2012) that revised the index prices back to their 2007 values. Amendment to the Regulation of the Minister of Trade No. 12/M-Dag/PER/3/2012 (“Perubahan Atas Peraturan Menteri Perdagangan Nomor 12/M-Dag/PER/3/2012 Tentang Penetapan Harga Patokan Hasil Hutan Untuk Penghitungan Provisi Sumber Daya Hutan”), <http://www.kemendag.go.id/files/regulasi/2012/04/Permendag%20No.%2022%20Tahun%202012.pdf> (accessed April 22, 2013).

percent of the PSDH/DR fees we calculate should have been assessed based on the reported timber production.<sup>6</sup>

While the losses illustrated in Figure 1 are striking, this calculation is actually conservative because it does not include lost royalties from:

- Timber smuggled out of the country, which is thought to be large;
- Timber sold illegally by any of the vast number of small sawmills,<sup>7</sup> which are not included in the ministry's annual report, but are thought to be numerous<sup>8</sup>, and;
- Exports that were under-valued so as to avoid tax (transfer pricing).

We are not alone in our assessment of the untenable losses of forestry fees. Other estimates of the financial toll of corruption and mismanagement in the forestry sector confirm large losses caused by weak governance, and indicate that additional losses make the problem much worse than our estimates suggest. For example, according to a 2010 study by the government's Anti-Corruption Commission (*Komisi Pemberantasan Korupsi*, KPK), mining permits issued illegally by the government to companies working in state forest areas in the four provinces of Kalimantan alone led to the loss of \$1.8 billion in government revenues annually. The KPK has also noted that there is rarely any legal accountability for such violations.<sup>9</sup> By any measure, the financial costs of poor governance in the forestry sector are enormous.

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<sup>6</sup> This contributes to our calculation of the 2011 losses by almost \$200 million. One possible explanation for the incomplete collection rate is that companies may be benefiting from artificially low exchange rates when paying timber royalties. In 2005 the former Minister of Forestry noted that large state revenue losses resulted from the Ministry of Finance's practice of allowing companies to pay the reforestation royalty (which is due in US dollars) in rupiah at a set exchange rate of only Rp2500 per US dollar, whereas the market exchange rate has not been below Rp7,000 since 1998. "Menteri Kehutanan: Kurs Dana Reboisasi Versi Depkeu Merugikan Negara," *Tempo (Indonesia)*, January 26, 2005, <http://www.tempo.co/read/news/2005/01/26/05655492/Menteri-Kehutanan-Kurs-Dana-Reboisasi-Versi-Depkeu-Merugikan> (accessed April 22, 2013).

<sup>7</sup> Sawmills with production of less than 6,000 cubic meters per year are not included in the Ministry of Forestry's annual reports.

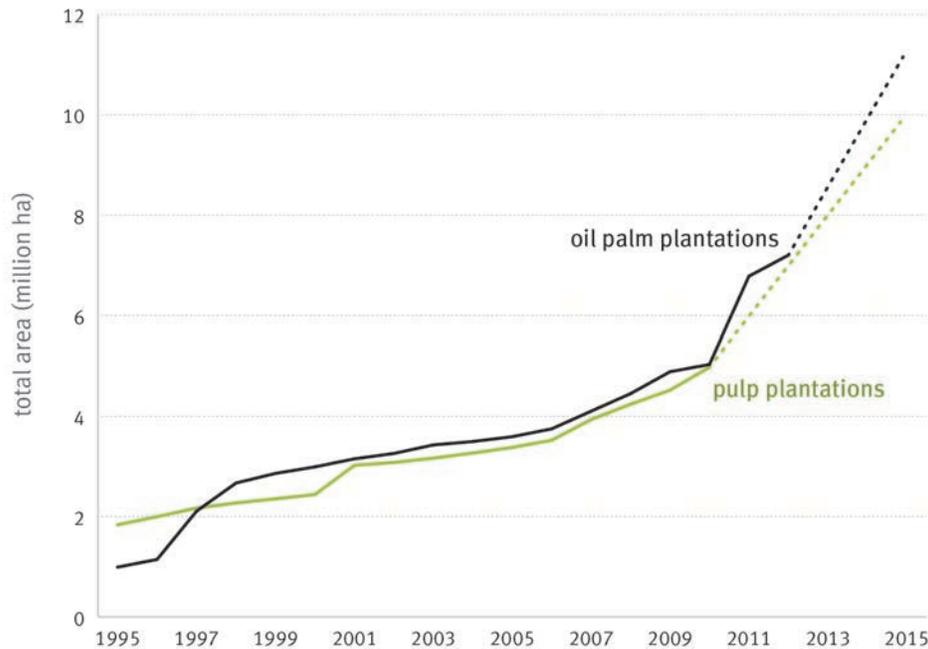
<sup>8</sup> Human Rights Watch interviews with timber-sector experts from donor agencies and academic institutions, Jakarta, March 2012. For example, the UN Food and Agriculture Organization (FAO) reported roundwood production in 2011 at 118 million cubic meters, whereas the 2011 Annual Report of the Ministry of Forestry reported (Buku Statistik 2011) roundwood use by mills with capacity of greater than 6,000 cubic meters per year to be only 47 million cubic meters, suggesting that these large mills account for less than 40 percent of total timber production. FAO, "FAOSTAT-Forestry Database," undated, <http://faostat.fao.org/site/626/DesktopDefault.aspx?PageID=626#ancor> (accessed May 24, 2013); and Ministry of Forestry, "Indonesian Forestry Statistics Year Book 2011" ("Buku Statistik Kehutanan Indonesia Tahun 2011"), July 2012, [http://www.dephut.go.id/files/BUKu%20Statistik%20Juli%202012\\_terbaru.pdf](http://www.dephut.go.id/files/BUKu%20Statistik%20Juli%202012_terbaru.pdf) (accessed April 22, 2013).

<sup>9</sup> Anti-Corruption Commission (*Komisi Pemberantasan Korupsi*, KPK), "Matriks Temuan dan Saran Perbaikan Kajian Sistem Perencanaan dan Pengelolaan Kawasan Hutan pada Ditjen Planologi Kehutanan Kementerian Kehutanan," 2010,

## Background: Indonesia's Green Growth Agenda

The huge losses in Indonesia's forestry sector are not a result of inattention by government. The government has made forestry one of its key sustainability sectors, promoting a green growth agenda as part of a nationwide economic plan, the Masterplan for Acceleration and Expansion of Indonesia's Economic Development (MP3EI in its Indonesian acronym). The plan aims to stimulate economic growth for poverty reduction, especially for rural populations. As part of this strategy, however, the government is expanding oil palm and pulp plantations at a rapid rate (Figure 2 charts recent growth in this sector). Much of this expansion is taking place in standing forests and areas claimed by local communities as part of their traditional territories. In practice, Indonesia's inclusive, sustainable, green growth agenda is in fact implemented at a significant cost both to the country's biodiverse forests and to the livelihoods of poor rural communities.

**Figure 2: Expansion of Indonesian Oil Palm & Pulp Plantations**



**Data Source:** Indonesian Statistics Agency 2010 (oil palm data), Directorate General for Plantations 2012 and Ministry of Forestry 2010 (pulp data). Dotted lines represent planned expansions.

[http://www.kemitraan.or.id/uploads\\_file/20130131073930.Pemberantasan%20Kejahatan%20Hutan%20Setengah%20Hati.pdf](http://www.kemitraan.or.id/uploads_file/20130131073930.Pemberantasan%20Kejahatan%20Hutan%20Setengah%20Hati.pdf) (accessed April 22, 2013) pp. 88-91; "Paparan Hasil Kajian KPK tentang Kehutanan," KPK press release, December 3, 2010.

## Logging Forests to Establish Pulp Plantations

Once a world leader in the production of tropical plywood and veneers made from abundant large diameter trees, Indonesia's forestry sector is now dominated by the paper industry, which is able to make use of smaller sized trees and otherwise non-marketable species. In the mid-1990s, large pulp mills were built well ahead of the establishment of plantations capable of supplying adequate supplies of wood, meaning the industry has been dependent on illegal cutting of natural forests to meet its wood demand.<sup>10</sup> Despite the shortage of legal timber, rather than reducing capacity, as nongovernmental organizations (NGOs) and international donors have urged,<sup>11</sup> the industry is implementing plans to nearly double current mill capacity by 2015.<sup>12</sup> Even if the rate of tree planting is as high as the government now claims, industry experts continue to raise serious doubts that it will be adequate to meet expanded demand.<sup>13</sup>

The impacts of this demand-led plantation expansion on communities and forests are profound and long lasting. Plantations require the complete and permanent conversion of forest to a monoculture crop, with significant impacts on the local economy and subsistence patterns, as well as on forest biodiversity.<sup>14</sup> Indonesian government statistics document that in 2010 over 9,000 villages were located within state forests and 71 percent

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<sup>10</sup> Among other factors, the lack of a wood-tracing mechanism, the ready availability of illegal timber, and the virtual absence of enforcement meant there was little incentive to establish plantations when fiber could be more cheaply acquired from illicit sources. Christopher Barr, *Banking on Sustainability: Structural adjustment and forestry reform in post-Suharto Indonesia*, (Bogor: CIFOR/WWF, 2001), [http://www.cifor.org/publications/pdf\\_files/books/profits.pdf](http://www.cifor.org/publications/pdf_files/books/profits.pdf) (accessed April 22, 2013).

<sup>11</sup> World Bank, "Sustaining Economic Growth, Rural Livelihoods, and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia," December 2006, [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/08/08/000112742\\_20070808171951/Rendered/PDF/392450REVISED01DWBForestOptions.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/08/08/000112742_20070808171951/Rendered/PDF/392450REVISED01DWBForestOptions.pdf) (accessed April 22, 2013); Multi-stakeholder Forestry Programme (MFP), *Policy Brief: Timber Industry revitalization in Indonesia in the first quarter of the 21st century*, (Jakarta: DFID, 2006); Barr, *Banking on Sustainability*.

<sup>12</sup> An increase from 5 million tons annually. Krystof Obidzinski and Ahmad Dermawan, "New round of pulp and paper expansion in Indonesia: What do we know and what do we need to know?" post to "Forest News" (blog), CIFOR, May 30, 2011, <http://blog.cifor.org/2905/new-round-of-pulp-and-paper-expansion-in-indonesia-what-do-we-know-and-what-do-we-need-to-know/#.UF5y60jGNSU> (accessed April 22, 2012).

<sup>13</sup> Ibid. For an explanation of obstacles to pulp plantation "joint ventures" with smallholders, see also Krystof Obidzinski and Ahmad Dermawan, "Smallholder Timber Plantation Development: What's Preventing Progress?," *International Forestry Review*, vol. 12, no. 4 (2010), pp. 339-348.

<sup>14</sup> Sheil, et al., *Impacts and Opportunities of Oil Palm in South East Asia: What do we know and what do we need to know?*, (Bogor: CIFOR, 2009), <http://www.cifor.org/online-library/browse/view-publication/publication/2792.html> (accessed April 22, 2013).

of them depend on the forest for their livelihoods.<sup>15</sup> In 2006, the World Bank estimated that some 10 million of the 36 million poorest Indonesians depended directly on Indonesia's forests for livelihood.<sup>16</sup>

Local communities protest the loss of forests on land that they claim and which they depend on for their livelihoods. However, their protests often fall on deaf ears. One dramatic example came in January 2012 when a group of about 50 farmers from an area of Sumatra slated to be cleared for a pulp plantation occupied the national parliament grounds and sewed their mouths shut to protest lack of consultation. Still not satisfied that their complaints had been addressed by the government, some of the farmers later threatened self-immolation if their lands were not removed from the plantation concession.<sup>17</sup>

## Logging Forests to Produce 'Green' Biofuels

Another significant threat to Indonesia's forests and the communities that live in or near them is the expansion of oil palm plantations. Indonesia, already the world's largest producer of palm oil, producing some 25 million metric tons annually, plans to increase production even further (see Figure 2 above).<sup>18</sup> The Economic Masterplan sets forth ambitious targets for new private company and state investments in the sector, including through creation of new oil palm 'development zones' in Sumatra and Kalimantan.<sup>19</sup>

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<sup>15</sup> Central Agency on Statistics, "2010 Population Census" ("Sensus Penduduk 2010,") <http://sp2010.bps.go.id/> (accessed April 22, 2013).

<sup>16</sup> World Bank, "Sustaining Economic Growth, Rural Livelihoods, and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia," December 2006, [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/08/08/000112742\\_20070808171951/Rendered/PDF/392450REVISEDolDWBForestOptions.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/08/08/000112742_20070808171951/Rendered/PDF/392450REVISEDolDWBForestOptions.pdf) (accessed April 22, 2013).

<sup>17</sup> Human Rights Watch interviews with *Konsorium untuk Pembaruan Agraria* (KPA) and the Society for Community and Ecologically Based Law Reform (HuMa), Jakarta, March 2012; "Jahit Mulut, Perjuangan Pulau Padang," *Kompas*, December 21, 2011, <http://megapolitan.kompas.com/read/2011/12/21/05373320/Jahit.Mulut.Perjuangan.Warga.Pulau.Padang> (accessed April 22, 2013).

<sup>18</sup> United States Department of Agriculture (USDA) Global Agricultural Information Network (GAIN), "Indonesia: Oilseeds and Products Annual," April 11, 2012, [http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Oilseeds%20and%20Products%20Annual\\_Jakarta\\_Indonesia\\_4-12-2012.pdf](http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Oilseeds%20and%20Products%20Annual_Jakarta_Indonesia_4-12-2012.pdf), (accessed Sept 21, 2012).

<sup>19</sup> Coordinating Ministry for Economic Affairs, Ministry of National Development Planning/National Development Planning Agency, "Masterplan: Acceleration and Expansion of Indonesia's Economic Development 2011-2025," 2011, [http://www.ekon.go.id/media/filemanager/2011/07/06/m/p/mp3ei-english\\_final.pdf](http://www.ekon.go.id/media/filemanager/2011/07/06/m/p/mp3ei-english_final.pdf) (accessed April 22, 2013).

The sector is also expanding due to increased global demand for ‘green’ biofuels derived from plant material such as palm oil.<sup>20</sup> In recent years, demand has spiked as countries, including Indonesia,<sup>21</sup> introduce mandatory biofuel targets in order to reduce carbon emissions.<sup>22</sup> The World Bank estimates that Indonesia’s target for domestic biofuel consumption alone would require an additional 1.4 million hectares of oil palm plantations.<sup>23</sup>

However, even as the oil palm sector booms in Indonesia, governance and oversight of the sector are in question. In 2011, Indonesia withdrew from the voluntary international palm oil certification system, the Roundtable on Sustainable Palm Oil (RSPO), which conducts third party audits of social and environmental standards, including mechanisms to avoid social conflict.<sup>24</sup> Indonesia now uses its own mechanism, the Indonesian Sustainable Palm Oil (ISPO).<sup>25</sup> ISPO certification will reportedly be mandatory by the end of 2014, but the criteria have not yet been made public so it is not known what social and environmental standards will be included, or how rigorous their enforcement will be. It is also not yet clear how far down the supply chain compliance will extend. Finally, unlike the RSPO, the ISPO does not have a grievance mechanism for complaints or oversight by local communities and civil society.<sup>26</sup>

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<sup>20</sup> Biofuels are intended to be a sustainable response to climate change and a means for countries to meet their emission targets by replacing the high carbon emissions associated with burning fossil fuels.

<sup>21</sup> An additional driver of oil palm expansion is the increased demand created by Indonesia’s 2006 National Energy Policy, which contained a target of 5 percent of its domestic fuel consumption to be met by biofuel by 2025. President of the Republic of Indonesia, “National Energy Policy, Presidential Regulation No 5/2006,” January 25, 2006, <http://faolex.fao.org/docs/pdf/ins64284.pdf> (accessed April 22, 2013.)

<sup>22</sup> For example, India and the EU have mandatory targets of 20 and 10 percent respectively of all fuel use to be derived from biofuel by 2020, and China has a mandatory target of 15 percent for transportation by 2020. FAO, *The State of Food and Agriculture 2008, Biofuels: Prospects, Risks and Opportunities*, (Rome: FAO, 2008), <http://www.fao.org/docrep/011/i0100e/i0100e00.htm> (accessed April 22, 2013), p.29.

<sup>23</sup> A. Sari et al., *Indonesia and Climate Change: Working Paper on Current Status & Policies* (Jakarta: World Bank, PEACE & DFID, 2007); K. Obidzinski, et al., “Environmental and social impacts of oil palm plantations and their implications for biofuel production in Indonesia,” *Ecology and Society*, vol. 17, no. 1, art. 25 (2012), <http://www.ecologyandsociety.org/vol17/iss1/art25/> (accessed April 22, 2013); United Nations Environment Programme (UNEP), “Towards Sustainable Production and Use of Resources: Assessing Biofuels,” [http://www.unep.org/PDF/Assessing\\_Biofuels.pdf](http://www.unep.org/PDF/Assessing_Biofuels.pdf) (accessed April 22, 2013).

<sup>24</sup> The Roundtable on Sustainable Palm Oil (RSPO) aims to “develop, implement, verify, assure and periodically review credible global standards” for the entire supply chain of environmentally and socially sustainable palm oil through open engagement with stakeholders. RSPO, “Principles and Criteria for Sustainable Palm Oil Production: Indicators and Guidance,” October 2007, [www.rspo.org/files/resource\\_centre/RSPO%20Principles%20&%20Criteria%20Document.pdf](http://www.rspo.org/files/resource_centre/RSPO%20Principles%20&%20Criteria%20Document.pdf) (accessed April 22, 2013).

<sup>25</sup> Indonesian Sustainable Palm Oil (ISPO), “ISPO,” March 15, 2013, [www.ispo-org.or.id/](http://www.ispo-org.or.id/) (accessed March 28, 2013).

<sup>26</sup> Joint Fact-Finding Team, “Joint Fact-Finding Team Report” (“Laporan Tim Gabungan Pencari Fakta”), January 2012, on file with Human Rights Watch, pp. 114, 122. The Joint Fact-Finding Team on the Mesuji cases noted not only the lack of grievance mechanisms in the ISPO but the lack of social safeguards and sanctions in the Basic Plantations Law. The RSPO grievance procedure involves a five-member panel made up of stakeholders, including a representative from an environmental NGO

As in the pulp sector, the rapid increase in demand for palm oil coupled with weak governance has led to increased disputes among officials, companies, and local communities, many of which have turned violent. These conflicts serve as a warning to the international community that promoting biofuels without adequate oversight of how those fuels are produced risks exacerbating human rights abuses.

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and a social NGO. RSPO, "Grievance Handling," undated, [http://www.rspo.org/en/grievance\\_handling](http://www.rspo.org/en/grievance_handling) (accessed April 22, 2013).

## Human Rights Impacts of Weak Forest Sector Governance

“Good governance” is often defined as decision making and implementation of processes that ensure accountability, equity, efficiency, and environmental sustainability. Good governance enables countries to meet development goals and uphold the rule of law.<sup>27</sup> Respect for human rights is an essential component of good governance. Human Rights Watch has shown in a variety of countries that weak governance not only undermines sustainable economic growth, poverty reduction, and natural resource use, but also the protection and fulfillment of human rights.<sup>28</sup>

Weak governance of Indonesia’s forestry sector is a case in point. This chapter details the human rights consequences such as: loss of revenue that could be funding urgently needed public services, including critical health services for communities that live in or near forests; corruption; impunity; and attacks on civil society watchdogs. The consequences also include ambiguous and overlapping land claims, the violent disputes that too often ensue, and the government’s increasing willingness to use the military to address agrarian conflict.

### Revenue Loss and the Right to Health

As shown in *Wild Money*, as well as in prior Human Rights Watch reports on Angola<sup>29</sup> and Equatorial Guinea,<sup>30</sup> mismanagement and corruption in natural resource sectors like forestry deprive government coffers of billions of dollars that could go to desperately needed, underfunded public services, including services such as health care that directly

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<sup>27</sup> United Nations Development Programme (UNDP), *Good Governance and Sustainable Human Development: A UN Policy Document*, (New York: UNDP, 1994); OECD Development Assistance Committee, *Final Report of the Ad Hoc Committee on Participatory Development and Good Governance*, (Paris: OECD DAC, 1997).

<sup>28</sup> Human Rights Watch, *Some Transparency, No Accountability: The Use of Oil Revenue in Angola and its Impact on Human Rights*, vol. 16, no. 1 (A), January 2004, <http://www.hrw.org/reports/2004/01/12/some-transparency-no-accountability-o>; Human Rights Watch, *Transparency and Accountability in Angola: an Update*, April 2010, <http://www.hrw.org/reports/2010/04/13/transparency-and-accountability-angola-o>; Human Rights Watch, *Well Oiled: Oil and Human Rights in Equatorial Guinea*, July 2009, <http://www.hrw.org/reports/2009/07/09/well-oiled-o>.

<sup>29</sup> Human Rights Watch, *Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human Rights*; Human Rights Watch, *Transparency and Accountability in Angola: an Update*.

<sup>30</sup> Human Rights Watch, *Well Oiled: Oil and Human Rights in Equatorial Guinea*.

advance economic and social rights.<sup>31</sup> Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) requires that states “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” including “creation of the conditions which would assure to all medical service.” The UN Committee on Economic, Social, and Cultural Rights, the authoritative interpretive body for the ICESCR, states that this right also is understood to include “requiring measures to improve child and maternal health, sexual health and reproductive health services, including access to family planning, pre and postnatal care, emergency obstetric services and access to information, as well as resources necessary to act on that information.”<sup>32</sup> The committee further states that, “a violation of the obligation to fulfill” these requirements can occur when there is “insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to health.”<sup>33</sup>

Human Rights Watch does not as a general matter make prescriptive recommendations on how governments should weigh competing funding priorities. However, gross mismanagement and theft of public assets contributes to the diversion of resources away from the realization of human rights. Here, funds the state could use to improve public welfare and advance Indonesia’s obligations to progressively realize economic and social rights continue instead to be siphoned off to enrich a handful of individuals or needlessly lost through mismanagement.<sup>34</sup>

Indonesia’s economy has experienced strong growth since 2001.<sup>35</sup> Even so, Indonesia continues to lag other countries on important development indicators. On the UN Human Development Index (HDI)—a multidimensional measure of long and healthy life, access to education, and decent living conditions—Indonesia has made little progress relative to the

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<sup>31</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), 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* Jan. 3, 1976. Indonesia ratified the ICESCR in 2006.

<sup>32</sup> UN Committee on Economic, Social, and Cultural Rights (CESCR), “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights,” General Comment No. 14 (2000), E/C.12/2000/4, November 8, 2000, para. 14.

<sup>33</sup> *Ibid.*, para. 52.

<sup>34</sup> ICESCR, art. 2(1) (“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to *achieving progressively the full realization* of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”) (emphasis added).

<sup>35</sup> World Bank, “Data, GDP growth (annual %),” undated, <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG> (accessed May 27, 2013).

rest of the world over the past decade. Indonesia still ranks in the bottom 40 percent of all countries in HDI, below comparable Asian neighbors as well as other emerging economies.<sup>36</sup>

World Bank data also illustrates the disparity between delivery of public services and Indonesia's overall economic growth, noting that, "public services remain inadequate by middle income standards. Indonesia is also doing poorly in a number of health and infrastructure related indicators, and as a result, may fail to reach some Millennium Development Goals (MDG) targets."<sup>37</sup>

One significant factor in failing to meet MDG targets in health is the lack of access to doctors in rural areas. One government official, Tono Rustiano, the planning and development director of the state-owned health insurance body PT Askes, acknowledged the inadequacy of health care in rural areas, saying,

People's welfare is one of the indicators of an independent nation, and health reflects welfare. Because of the uneven distribution of doctors, not all people have access to healthcare.... There is only a small number of general practitioners in remote areas, not to mention specialists. Most doctors choose to work in Java. How will residents of remote areas enjoy access to healthcare when there are no doctors?<sup>38</sup>

The chairman of the Indonesian Doctors Association (IDI), Zainal Abidin, has argued that low salaries for doctors working in rural areas, which he estimates to be only slightly above the minimum wage, is one important reason for this uneven distribution.<sup>39</sup> Echoing this concern, Nova Riyanti Yusuf, a member of the Parliamentary Commission VIII on health, called on local governments to increase funding to raise the minimum standard for doctors' salaries.<sup>40</sup>

In particular, Indonesia's most recently reported maternal mortality rate (MMR) of 228 (per 100,000 live births) is among the highest in Southeast Asia. Although some progress has

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<sup>36</sup> UN Development Program (UNDP), "Human Development Report 2013, The Rise of the South: Human Progress in a Diverse World," 2013, <http://hdr.undp.org/en/reports/global/hdr2013/> (accessed April 23, 2013). According to the UNDP 2012 calculations, health deprivation was by far the most important contributor to the Indonesia's multidimensional poverty index.

<sup>37</sup> World Bank Group, "Indonesia Overview," undated, <http://www.worldbank.org/en/country/indonesia/overview> (accessed April 23, 2012).

<sup>38</sup> "Doctor Shortage Seen as Hurdle to Health Care Problem," *Jakarta Post*, May 24, 2013.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

been made in reducing maternal mortality, Indonesia is well off-track from reaching its MDG target of 102 deaths (per 100,000 live births).<sup>41</sup> Health experts have attributed Indonesia's persistently high maternal mortality rate largely to lack of affordable access to hospitals and emergency obstetric care.<sup>42</sup> For example, since our 2009 report, Indonesia has not significantly increased its spending on health, still only 1 percent of its GDP, an amount equal to half the investment of its regional neighbors and a third of other middle income countries.<sup>43</sup>

As a result of this under spending, rural areas are particularly underserved in terms of access to doctors and hospitals, with 65 percent of all doctors located in Java, increasing the rate of maternal mortality among rural women.<sup>44</sup> Children are also at risk. Recent government data shows the national infant mortality rate is 34 per 1,000 births, significantly higher than the MDG target of 23 per 1,000.<sup>45</sup>

Other important determinants of health and contributors to decent living conditions continue to be inadequate given Indonesia's economic growth. For example, government data reported in 2011 that only 43 percent of the population had sustainable access to an "improved" water source, far off track from the MDG target of 68.87 percent.<sup>46</sup> In fact, the percentage of the urban population with access to improved water sources actually declined from 51 percent in 1993 to 41 percent in 2010. Likewise, only 39 percent of rural households had access to improved sanitation, significantly short of the 56 percent MDG target.<sup>47</sup>

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<sup>41</sup> Indonesia does not track MMR at a subnational level, but experts report that disparities are significant due to disproportionate access to health facilities in rural areas. World Bank, "...and then she died": Indonesian Maternal Health Assessment," February 2010, <https://openknowledge.worldbank.org/handle/10986/2837> (accessed April 23, 2013); Statistics Indonesia (*Badan Pusat Statistik*, BPS), "2007 Indonesia Demographic and Health Survey (IDHS)," 2007, [http://www.measuredhs.com/pubs/pdf/FR218/FR218\[27August2010\].pdf](http://www.measuredhs.com/pubs/pdf/FR218/FR218[27August2010].pdf) (accessed April 23, 2013), p. 216; Ministry of National Development Planning/National Development Planning Agency (*Badan Perencanaan dan Pembangunan Nasional*, BAPPENAS), "Report on the Achievements of Millennium Development Goals, 2011," 2012, <http://www.undp.or.id/pubs/docs/Report%20on%20the%20Achievement%20of%20the%20MDGs%20in%20Indonesia%202011.pdf> (accessed April 23, 2013) p. 55.

<sup>42</sup> World Bank, "...and then she died": Indonesian Maternal Health Assessment," February 2010; World Bank, "Spending for Development: Making the Most of Indonesia's New Opportunities," 2008, <https://openknowledge.worldbank.org/handle/10986/6347>; World Bank, "Investing in Indonesia's Health: Challenges and Opportunities for Future Public Spending, Health Public Expenditure Review 2008," June 2008, <http://siteresources.worldbank.org/HEALTHNUTRITIONANDPOPULATION/Resources/Peer-Reviewed-Publications/HPEREnglishFinal.pdf> (accessed April 23, 2013).

<sup>43</sup> World Bank, "World Development Indicators 2011," 2011, <http://data.worldbank.org> (accessed January 20, 2013).

<sup>44</sup> World Bank, "...and then she died": Indonesian Maternal Health Assessment," February 2010.

<sup>45</sup> BAPPENAS, "Report on the Achievements of Millennium Development Goals, 2011," 2012, p. 6, 47.

<sup>46</sup> BAPPENAS, "Report on the Achievements of Millennium Development Goals, 2011," 2012, p. 12.

<sup>47</sup> *Ibid.*, p. 12.

The needless, large-scale losses from corruption and mismanagement in lucrative natural resource sectors, therefore, have significant opportunity costs to poverty reduction and advancing social, economic, and cultural rights. If the more than \$2 billion of revenue lost in Indonesia's forestry sector in 2011 had been collected, these revenues could have doubled the national health budget for that year, with clear benefit to public welfare. Funds desperately needed for essential services that could have assisted Indonesia in meeting its MDG targets, often instead went to companies logging illegally and corrupt officials.

Money alone, of course, will not lead to improved health indicators without policy reforms to ensure that health investments serve the needs of the poor, especially rural women disproportionately affected by lack of health care.<sup>48</sup> Given the broader problem of weak governance in Indonesia, the lack of accountability, inefficiency, and regressive spending are likely to dampen the impact of increased spending on overall health indicators.<sup>49</sup>

The rural poor in Indonesia bear the brunt of the loss of the nation's forestlands to plantation expansion. This data on human welfare shows that Indonesia's rural poor also have yet to adequately share in the revenues their forests generate—hardly the vision of “people's prosperity” and “inclusive growth” the government promotes as its top priority.<sup>50</sup>

## Transparency and Government Oversight

The ability of citizens to hold their government accountable depends in large part on their access to relevant information on the use of public resources.

The Indonesian government's failure to provide adequate information about its use of public funds undermines Indonesian citizens' ability to enjoy their right to information as enshrined in the International Covenant on Civil and Political Rights (ICCPR), which states, “Everyone shall have the right to freedom of expression; this right shall include freedom to

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<sup>48</sup> World Bank, “‘...and then she died’: Indonesian Maternal Health Assessment,” February 2010.

<sup>49</sup> World Bank, “Investing in Indonesia's Health: Challenges and Opportunities for Future Public Spending, Health Public Expenditure Review 2008,” June 2008.

<sup>50</sup> “SBY's Inaugural Speech: The Text,” *Jakarta Globe*, October 20, 2009, <http://www.thejakartaglobe.com/home/sbys-inaugural-speech-the-text/336551> (accessed April 23, 2013).

seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>51</sup> According to the UN Human Rights Committee, which provides authoritative interpretations of the ICCPR, in its general comment on the right to freedom of expression:

To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.... Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.<sup>52</sup>

The continued lack of access to public information is a significant factor affecting governance in Indonesia’s forestry sector. For example, none of the following is publicly available: information related to the location of individual forestry concessions, land use zone changes, and competing concessions from mining and agriculture; data from individual forestry operations on annual timber production and use; and revenue figures. The lack of transparency stands as a fundamental barrier to civilian oversight and fuels abuses such as land grabbing and associated violence, as well as undermining anti-corruption measures and the sound management of Indonesia’s forests.

Indonesia’s much-anticipated Law on Transparency of Public Information was passed in 2008 and entered into force in 2010. While its passage should have marked a significant shift toward government openness, assessments conducted in 2012 by the National Information Commission (*Komisi Informasi Pusat*, KIP) and Indonesian NGOs have found that state agencies regularly fail to acknowledge or respond slowly to requests for

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<sup>51</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, 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, art. 19(2.) Indonesia ratified the ICCPR in 2006.

<sup>52</sup> UN Human Rights Committee, General Comment No. 34: Article 19: Freedoms of opinion and expression, September 12, 2011, CCPR/C/GC/34, art. 19.

information, and in many cases reject requests in an arbitrary and possibly illegal manner.<sup>53</sup> Some of these problems are due to a lack of capacity, but KIP and NGO reports claim the lack of response is also due to a lack of will. For example, in public remarks to a conference on the challenges to freedom of information, a representative from the national police headquarters specifically noted the persistent “culture” of secrecy among police officials as a significant obstacle to implementation of the law.<sup>54</sup>

The KIP, established under the Freedom of Information Law, is the government statutory body mandated to oversee disputes related to information requests. But it lacks enforcement authority. When a complaint is filed, the KIP has often ruled in favor of disclosure but its ruling goes unenforced.<sup>55</sup> There is no method to compel disclosure even when the KIP orders it.

In addition to these implementation problems, the law contains vague provisions for criminal penalties for the undefined “unlawful use” of public information.<sup>56</sup> The law provides no exception for leaking information for the public good, for example relating to human rights violations or corruption. Sanctions include up to one year in prison and could

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<sup>53</sup> Kristian Erdianto et al., “Implementation of the Right to Information: An Assessment of Three Indonesian Public Authorities,” *Center for Law and Democracy (CLD) and Yayasan 28*, 2012, <http://www.law-democracy.org/wp-content/uploads/2010/07/Buku-UU-KIP-eng.pdf> (accessed April 23, 2013). See also the joint study by CLD and the AJI in testing implementation of the Freedom of Information Law. Out of a total of 224 requests, information was only granted in 104 of them, representing just 46 percent. CLD, “Indonesia: Large RTI Requesting Exercise Leads to Key Recommendations,” April 10, 2012, <http://www.law-democracy.org/live/indonesia-large-rti-requesting-exercise-leads-to-key-recommendations> (accessed April 23, 2013). See also a 2011 study of 68 police offices in 10 districts including national police headquarters undertaken by KontraS that found that 68 percent of requests went unacknowledged. Even for information that should be proactively made accessible (e.g., through website updates or reports), 54 percent of requests went unacknowledged. KontraS, “Public Monitoring Report—Police 2011” (“Laporan Pemantauan Keterbukaan Informasi Publik—POLRI 2011,”), 2011, <http://kontras.org/data/laporan%20pemantauan%20kontras.pdf> (accessed April 23, 2013).

<sup>54</sup> Gen. Saud Nasution, Head of the Public Relations Division of National Police Headquarters, “Celebrating two years of freedom of information: reflections and challenges ahead,” Conference hosted by CLD and Indonesian Center for Environmental Law (ICEL), March 5, 2012, Jakarta.

<sup>55</sup> This lack of enforcement has occurred even when a further complaint is filed in court, as was the case in a suit by the Pattiro Institute in which the Supreme Court ordered the Ministry of Energy and Mining to disclose the requested documents related to revenue from the Cepu oil block in Central and East Java. As yet, the ruling has gone unenforced. Human Rights Watch interviews with Pattiro Institute, staff from the President’s Delivery Unit on Development Implementation and Monitoring (UKP4), Indonesia’s Extractive Industry Transparency Initiative (IEITI), Jakarta, February-March 2012. See also similar examples of KIP disclosure orders that were ignored by the National Police and the Ministry of Education, Kristian Erdianto et al., “Implementation of the Right to Information: An Assessment of Three Indonesian Public Authorities,” *Yayasan 28*, 2012, pp. 13-14.

<sup>56</sup> Public Information Law, No. 14 of 2008 (“Undang-undang 14/2008 tentang Keterbukaan Informasi Publik”), art. 51.

have a chilling effect on civil society organizations, journalists, and bloggers who seek to investigate and publicize government misdeeds.<sup>57</sup>

Another troubling step backwards was a 2010 decision by the Supreme Audit Body (*Badan Pemerikasa Keuangan*, BPK) to remove all audits of state revenues from its website. This is a significant blow to forest sector oversight as these audits regularly exposed the inadequate collection of forest taxes.<sup>58</sup>

An additional blow to transparency and accountability was the passage in October 2011 of the controversial State Intelligence Law.<sup>59</sup> In contrast to the Freedom of Information Law, which presumes information can be disclosed unless proven to be harmful, the State Intelligence Law lays out broad and undefined categories of “state intelligence” that may not be disclosed. These categories broadly include information that “causes harm to the national economy” and that reveals the value of the nation’s natural resources.<sup>60</sup> The vagueness and overbreadth of the law, as well as its apparent inconsistency with the Freedom of Information Law, creates ambiguities that favor government secrecy.<sup>61</sup> Moreover, the law criminalizes leaks of information by “any person” and stipulates sanctions of up to 10 years in prison and a fine of up to \$55,000, allowing no exception for information leaked in the public interest such as information relating to human rights abuse or corruption.<sup>62</sup> This language conceivably could be used to prosecute journalists and environmental or human rights activists who publish information about government abuses.<sup>63</sup>

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<sup>57</sup> Ibid.

<sup>58</sup> Many BPK audits have been damning, including exposing incomplete tax assessment and collection, as well as misallocation of tax revenues. Human Rights Watch, *Wild Money*, p. 30, for an example of the BPK’s revealing audits of forestry taxation from West Kalimantan.

<sup>59</sup> State Intelligence Law, No. 17 of 2011 (“Undang-Undang Republik Indonesia Nomor 17 Tahun 2011 Intelijen Negara”), November 7, 2011, [http://www.bin.go.id/uu\\_intelijen](http://www.bin.go.id/uu_intelijen) (accessed June 30, 2013).

<sup>60</sup> Ibid., art. 25.2, 3.

<sup>61</sup> “Indonesia: Repeal New Intelligence Law,” Human Rights Watch news release, October 26, 2011, <http://www.hrw.org/news/2011/10/26/indonesia-repeal-new-intelligence-law>.

<sup>62</sup> Ibid., art. 44.

<sup>63</sup> “Indonesia: Repeal New Intelligence Law,” Human Rights Watch news release, October 26, 2011, <http://www.hrw.org/news/2011/10/26/indonesia-repeal-new-intelligence-law>.

## Backlash against Civil Society Critics

At the same time that the Indonesian government has failed to comply with transparency requirements, it has also created new legal avenues for cracking down on activists, critics, and others who seek to conduct oversight of government and company behavior in the forest sector.

Further, in addition to Indonesia's defamation laws, which have long been used to criminalize dissent by civil society, Indonesia's National Parliament, with apparent approval from the executive, is attempting to add new weapons to the arsenal through new legislation targeting NGOs.<sup>64</sup> This chapter explores these new measures and their impacts on rights.

Many NGOs are reluctant to openly criticize government officials or powerful forestry and plantation companies for fear of backlash, whether in the form of legal prosecution or, as illustrated below, intimidation by company security forces that act as private militias.<sup>65</sup> The environment of retaliation against civil society critics presents a serious threat not only to government accountability, but to freedom of expression more broadly. One notable example outlined below is the reprisal against the environmental organization Greenpeace for its scrutiny of the forestry sector.

In the latter half of 2011, the Indonesian government began revising its NGO Law,<sup>66</sup> which was originally enacted under President Suharto as a tool for controlling and at times disbanding NGOs, particularly those deemed critical of the government.<sup>67</sup>

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<sup>64</sup> Human Rights Watch, *Turning Critics into Criminals: The Human Rights Consequences of Criminal Defamation Law in Indonesia*, May 4, 2010, <http://www.hrw.org/reports/2010/05/04/turning-critics-criminals-o>.

<sup>65</sup> Human Rights Watch interviews, Jakarta, March 2012.

<sup>66</sup> NGO Law No. 8 of 1985, ("Undang-undang No 8 1985 tentang Organisasi Kemasyarakatan"), [http://hukum.unsrat.ac.id/uu/uu\\_8\\_1985.htm](http://hukum.unsrat.ac.id/uu/uu_8_1985.htm) (accessed April 25, 2013).

<sup>67</sup> "Indonesia: Repeal New Intelligence Law," Human Rights Watch news release, October 26, 2011, <http://www.hrw.org/news/2011/10/26/indonesia-repeal-new-intelligence-law>.

## *Crackdown on Critics: Greenpeace Indonesia*

Beginning in 2009, the environmental organization Greenpeace Indonesia<sup>68</sup> began a global campaign against Sinar Mas, one of the largest conglomerates in Indonesia, because of the negative impact on Indonesian forests and orangutan habitats of Sinar Mas oil palm and pulp plantation operations.<sup>69</sup> Several major buyers subsequently suspended or cancelled multimillion dollar contracts.<sup>70</sup>

In response to this campaign, several militant Islamist groups in Indonesia began publicly denouncing Greenpeace as *haram* (forbidden by Islam).<sup>71</sup> Beginning in July 2011, some 100 members of the Forum Betawi Rempug (FBR), a group nominally formed for the empowerment of the Betawi ethnic group of inner city Jakarta but frequently involved in gang violence and turf battles, noisily blockaded the Greenpeace office. Not long after the FBR blockade, a rival group, the Front Pembela Islam (FPI), began calling for the expulsion of Greenpeace from the country for its allegedly *haram* and “illegal” activities.<sup>72</sup> These accusations were echoed in a 2012 protest by yet another Islamist group, whose leader exhorted the crowd to apprehend and detain a foreign Greenpeace staff member identified by name.<sup>73</sup> On November 1,

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<sup>68</sup> According to Greenpeace International’s website, “Greenpeace is a global environmental organisation, consisting of Greenpeace International (Stichting Greenpeace Council) in Amsterdam, and 28 national and regional offices around the world, providing a presence in over 40 countries. These national/regional offices are independent in carrying out global campaign strategies within the local context they operate within, and in seeking the necessary financial support from donors to fund this work.” Greenpeace International, “Greenpeace Structure and Organization,” April 15, 2011, <http://www.greenpeace.org/international/en/about/how-is-greenpeace-structured> (accessed April 7, 2013). Greenpeace Indonesia’s leaders are Indonesian nationals, as are the vast majority of its staff.

<sup>69</sup> The campaign focused on increasing public pressure on the buyers of Sinar Mas products and highlighted the impact of palm oil and pulp plantations on forest habitat of orangutans. One particularly evocative ad spoof showed a harried office worker taking a break by biting into a KitKat chocolate bar, which turned out to be a bloody orangutan finger. Greenpeace, “Kit Kat: give the orangutan a break,” March 17, 2010, <http://www.greenpeace.org.uk/blog/forests/kit-kat-give-orang-utan-break-20100317> (accessed June 30, 2013).

<sup>70</sup> “Nestle Drops Indonesia’s Sinar Mas As Palm Oil Supplier,” *Palm Oil HQ*, March 18, 2010, [www.palmoilhq.com/PalmOilNews/nestle-drops-indonesias-sinar-mas-as-palm-oil-supplier/](http://www.palmoilhq.com/PalmOilNews/nestle-drops-indonesias-sinar-mas-as-palm-oil-supplier/) (accessed April 23, 2013); “Burger King Drops Palm Oil Company,” AFP, September 20, 2010, <http://www.mnn.com/earth-matters/wilderness-resources/stories/burger-king-drops-palm-oil-company> (accessed April 23, 2013); “Carrefour and Kraft Add To Sinar Mas Group’s Woes,” AFP, Reuters, and *Jakarta Globe*, July 6, 2010, [www.thejakartaglobe.com/business/carrefour-and-kraft-add-to-sinar-mas-groups-woes/384511](http://www.thejakartaglobe.com/business/carrefour-and-kraft-add-to-sinar-mas-groups-woes/384511) (accessed April 23, 2013); Unilever PLC, “Unilever takes stance against deforestation,” 2009, [www.unilever.com/mediacentre/pressreleases/2009/Unilevertakesstanceagainstdeforestation.aspx](http://www.unilever.com/mediacentre/pressreleases/2009/Unilevertakesstanceagainstdeforestation.aspx) (accessed April 23, 2013); Unilever PLC, “Working with Suppliers,” undated, [www.unilever.com/sustainable-living/sustainable-sourcing/palmoil/suppliers/index.aspx](http://www.unilever.com/sustainable-living/sustainable-sourcing/palmoil/suppliers/index.aspx) (accessed April 23, 2013).

<sup>71</sup> “*Haram*” is an Arabic term for anything that is sinful or forbidden by Islam. The accusations were taken almost verbatim from two books, *Revealing Greenpeace’s Lies*, and *1001 Reasons Greenpeace is Haram*. S. Hidayatullah, *Revealing Greenpeace’s Lies* (Jakarta: Yayasan Silaturahmi Wartawan Otonomi, Foundation for the Islamic Brotherhood of Independent Journalists, 2011); S. Hidayatullah, *1001 Reasons Greenpeace is Haram*, (Jakarta: Yayasan Silaturahmi Wartawan Otonomi, Foundation for the Islamic Brotherhood of Independent Journalists, 2010). These books, launched with press conferences attended by national politicians, assert that Greenpeace violates Islamic law by receiving funding from a Dutch foundation that receives lottery funds, which the books’ author considered to be a form of gambling and therefore haram. The books also allege Greenpeace is a “foreign organization” waging a “black campaign” against Indonesian business at the bidding of foreign political and economic interests and corporate competitors.

<sup>72</sup> “FPI adds Voice to Threats against Greenpeace,” *Jakarta Globe*, August 3, 2011, <http://www.thejakartaglobe.com/nvIRONMENT/fpi-add-voice-to-threats-against-greenpeace/456867> (accessed April 23, 2013).

<sup>73</sup> Human Rights Watch interview with Greenpeace, Jakarta, February 9, 2013.

2012, a student protest featured a speaker who reportedly made threats, including that “next time we will throw the dead bodies of the people working for Greenpeace over the fence.”<sup>74</sup>

Around the time that the protests started, immigration officials began focusing on Greenpeace’s international ties and its “destabilizing” activities. In October 2011, immigration officials denied the director of Greenpeace’s UK office, John Sauven, entry into Indonesia even though he had been issued a valid business visa from the Indonesian embassy in London, had contacted the embassy prior to leaving when online news sources reported that he had been denied a visa, and had been told by embassy officials that he was not on any blacklist. Days later, immigration officials attempted to deport another visiting Greenpeace-UK staff member, Andy Tait. Tait had already entered Indonesia and was travelling on a valid business visa, intending to tour an area of Sumatra being cleared for pulp plantation by suppliers to Sinar Mas’s Asia Pulp & Paper mill. Tait was presented with a deportation order but refused to comply as the order contained no official stamp, and was issued with an incorrect name, birthdate, and passport number. However, a few days later, as he waited in the airport immigration line to depart the country, Tait was intercepted, questioned by officials, and officially deported.<sup>75</sup>

On November 2011, the Jakarta city government served Greenpeace with an eviction notice and threatened to seal its doors on the grounds that its offices violated zoning regulations prohibiting commercial establishments in the Kemang neighborhood of south Jakarta. Greenpeace conceded that the neighborhood is zoned for residential use, but pointed out that the entire neighborhood is a bustling commercial center of office buildings, restaurants, shops, salons, garages, clinics, and pharmacies.<sup>76</sup>

At this writing, tensions between Greenpeace and Asia Pulp & Paper have cooled and pressure from the Indonesian government has also subsided. In February 2013, Asia Pulp & Paper announced ambitious environmental and social commitments to end deforestation and resolve land conflicts with communities on all their existing and future plantation operations.<sup>77</sup> Greenpeace Indonesia appeared on stage during this announcement to publicly commend the leaders of APP and has taken an active role in monitoring the new commitments. Since this agreement, Greenpeace security staff report that there have been no further actions against Greenpeace.<sup>78</sup> In fact, Greenpeace’s boat *The Rainbow Warrior*, barred from entering Indonesian waters in 2010, made a campaign tour of Indonesia in June 2013. President Yudhuyono was on hand to visit the boat when it landed in Jakarta, saying, “I invite Greenpeace to partner with Indonesia with the aim of providing criticism and to correct us if there are things that are not yet right.”<sup>79</sup>

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<sup>74</sup> Ibid.

<sup>75</sup> Human Rights Watch interviews with Greenpeace, Jakarta, March 1 and 12, 2012.

<sup>76</sup> Ibid.

<sup>77</sup> “Asia Pulp and Paper Commits to Immediate Halt to Forest Clearance,” February 5, 2013, <http://www.asiapulppaper.com/news-media/press-releases/asia-pulp-paper-group-app-commits-immediate-halt-all-natural-forest> (accessed June 17, 2013).

<sup>78</sup> Ibid.

<sup>79</sup> “Environmental NGOs Are Friends, Not Foes: SBY,” *Jakarta Globe*, June 10, 2013.

Some legislators and members of the current administration have argued that such controls should remain in place or be strengthened in order to “rein in” foreign organizations and those perceived as promoting foreign agendas due to their international funding and critique of government policy and Indonesian business. House of Representatives Deputy Speaker Anis Matta of the Prosperous Justice Party (*Partai Keadilan Sejahtera*, PKS) agreed to evaluate foreign-funded NGOs, saying, “We need to control [the NGOs] as part of efforts to maintain the sovereignty of the country.”<sup>80</sup> On October 8, 2011, the Ministry of Home Affairs said it would prioritize the evaluation of Greenpeace Indonesia’s presence in the country. On December 21, 2011, President Susilo Bambang Yudhoyono publicly admonished foreign NGOs to “stay away” from domestic affairs and specifically cautioned environmental NGOs not to “tear the country apart” by criticizing the government’s forest and oil palm plantation policies, which he argued provided needed jobs and economic growth.<sup>81</sup> Many Indonesian NGOs interviewed by Human Rights Watch expressed the view that the high-profile targeting of Greenpeace was intended as a threat to all would-be critics.

The NGO bill contains a number of problematic provisions. These provisions include requirements that NGOs “shall have objectives to achieve the objectives of the state,”<sup>82</sup> and “shall not be permitted to disrupt the stability and unity” of the country or “disrupt diplomatic relationships.”<sup>83</sup> The bill identifies sanctions for such activities that include disbanding of the organization.<sup>84</sup>

While the controversial bill stalled in heated parliamentary debate, the Ministry of Home Affairs issued its own draconian regulation allowing not only the ministry but also governors, district regents (*bupatis*), and mayors to revoke an NGO’s permit for “disrupting stability and unity.”<sup>85</sup>

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<sup>80</sup> “Govt to get tough on ‘untransparent’ foreign-funded NGOs,” *Jakarta Post*, September 10, 2011.

<sup>81</sup> “SBY tells foreign NGOs: ‘back off domestic affairs,’” *Jakarta Post*, December 12, 2011.

<sup>82</sup> Draft NGO law, art. 5(f).

<sup>83</sup> *Ibid.*, art. 41 (b) and (e).

<sup>84</sup> *Ibid.*, art. 52.7.

<sup>85</sup> Ministry of Home Affairs Regulation No. 33 of 2012 (“Peraturan Menteri Dalam Negeri Republik Indonesia Nomor 33 Tahun 2012 Tentang Pedoman Pendaftaran Organisasi Kemasyarakatan Di Lingkungan Kementerian Dalam Negeri Dan Pemerintah Daerah”).

Meanwhile, Indonesia's new State Intelligence Law goes even further by granting the National Intelligence Bureau (*Badan Intelijen Negara*, BIN) the authority to engage in efforts "to prevent and/or to fight any effort, work, intelligence activity, and/or opponents that may be harmful to national interests and national security."<sup>86</sup> Such efforts by BIN may include wiretapping, inspection of financial transactions, and other investigations of those who are deemed to pose a threat to national security, including to food, energy, natural resources, or the environment.<sup>87</sup> A "threat" is very broadly defined as any activity, domestic or abroad, that is "judged to endanger the safety, security, sovereignty, or territorial integrity of the unitary state, or its national interests in all respects including ideology, politics, economics, sociology, culture, defense or security."<sup>88</sup> "Opponent" is likewise loosely defined as any "party from inside and outside the country engaged in effort, work, activities and action that may be detrimental to national interest and national stability."<sup>89</sup> These catch-all definitions and overreaching authority echo all too familiar New Order tactics used in to surveil, harass, and imprison students, political opponents, and human rights activists.<sup>90</sup>

States have a duty to ensure that activities of NGOs do not endanger public safety, are in compliance with the law, and that their funding is from legal sources. But to be compatible with international law, any restrictions on the rights to freedom of expression and association must be proportionate, necessary for a democratic society, and pursue a legitimate aim. Regulations that unduly restrict the activity or funding of NGOs, either explicitly or through overly broad language, simply because the NGO conducts oversight or exposes weaknesses in governance, is an unlawful interference with free expression and association.<sup>91</sup>

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<sup>86</sup> State Intelligence Law, No. 17 of 2011 ("Undang-Undang Republik Indonesia Nomor 17 Tahun 2011 Intelijen Negara"), art. 6.

<sup>87</sup> *Ibid.*, art. 31.a.

<sup>88</sup> *Ibid.*, art. 1.4.

<sup>89</sup> *Ibid.*, art. 1.8.

<sup>90</sup> "Indonesia: Repeal New Intelligence Law," Human Rights Watch news release, October 26, 2011.

<sup>91</sup> See, e.g., Human Rights Committee, General Comment No. 34 on article 19, Freedom of Opinion and Expression, September 12, 2011, CCPR/C/GC/34, para. 22. "Restrictions must be 'provided by law'; they may only be imposed for one of the grounds set out in [article 19(3) of the ICCPR]; and they must conform to the strict tests of necessity and proportionality."

## Tenure Disputes, Lost Livelihoods, and Violence

The plantation sector's increasing demand for land and the weak recognition of local land rights have resulted in widespread agrarian conflicts in Indonesia. While such conflicts have long accompanied industrial forestry and agriculture operations in the country, they appear to be increasing in number and intensity with rising pressure on land.<sup>92</sup> Major contributors to the tension are: overlapping claims between plantation companies and local communities, weak enforcement of company compensation agreements with communities, and misconduct by plantation security guards, police, and military personnel.<sup>93</sup>

Overlapping claims to land and natural resources are in large part due to the failure of government agencies and authorities, at both central and local levels, to adequately coordinate their policies and actions to ensure that the land is not encumbered by other rights claims before issuing concessions.<sup>94</sup> Ambiguities in the law and their weak enforcement have created ample opportunity for companies to interpret the requirements loosely and even act in bad faith in their engagement with local communities.<sup>95</sup> Where agreements between companies and communities exist, they are often violated with impunity, and bitterness over the loss of land and inadequate or absent compensation has led to violent clashes between communities and companies, as the cases below demonstrate.

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<sup>92</sup> Konsortium Pembaruan Agraria (KPA), "A Year of Land Grabbing and Violence Against Communities: 2011 Annual Report" ("Tahun Perampasan Tanah dan Kekerasan terhadap Rakyat: Laporan Akhir Tahun 2011"), December 2011, [http://www.kpa.or.id/wp-content/uploads/2011/12/Laporan-Akhir-Tahun-KPA-Tahun-2011\\_Release-27-Desember-2011.pdf](http://www.kpa.or.id/wp-content/uploads/2011/12/Laporan-Akhir-Tahun-KPA-Tahun-2011_Release-27-Desember-2011.pdf) (accessed June 30, 2011); Scale Up, "Notes on Natural Resource Conflict in Riau during 2011" ("Catatan Konflik Sumber Daya Alam di Riau Sepanjang Tahun 2011," 2012, <http://scaleup.or.id/publikasi-akhirhn/Catatan%20KONFLIK%20SDA%202011.pdf> (accessed June 30, 2013).

<sup>93</sup> Forest Peoples Programme, HuMa, Sawit Watch, "Human rights abuses and land conflicts in the PT Asiatic Persada concession in Jambi: Report of an independent investigation into land disputes and forced evictions in a palm oil estate," November 18, 2011, <http://www.forestpeoples.org/topics/palm-oil-rspo/publication/2011/human-rights-abuses-and-land-conflicts-pt-asiatic-persada-conc> (accessed April 23, 2013); Ahmad Zazali, *Agrarian Conflict and the Importance of Tenure Reform in Indonesia*, (Pekanbaru: Scale Up, 2012).

<sup>94</sup> Human Rights Watch interviews with Andiko, director of HuMa, Jakarta, March 7, 2012, and Iwan Nurdin, Deputy Secretary General of KPA, Jakarta, March 8, 2012, Abetnego Tarigan, director of Sawit Watch; Forest Peoples Programme, HuMa, Sawit Watch, "Human rights abuses and land conflicts in the PT Asiatic Persada concession in Jambi: Report of an independent investigation into land disputes and forced evictions in a palm oil estate," November 2011; Ahmad Zazali, *Agrarian Conflict and the Importance of Tenure Reform in Indonesia*; Martua Sirait, *Indigenous Communities and Oil Palm Expansion in West Kalimantan*, (The Hague: Cordaid, 2009); Fidelis Satriastanti, "Villagers and Pulp Firm Face off Over Padang Island," *Jakarta Post*, January 19, 2012, <http://www.thejakartaglobe.com/nvironment/indonesian-villagers-and-pulp-firm-face-off-over-padang-island/492195> (accessed April 23, 2013).

<sup>95</sup> Human Rights Watch interview with Iwan Nurdin, deputy director of KPA, Jakarta, March 8, 2012; Murki Friatna, Campaigns Director of Wahana Lingkungan Hidup Indonesia (Walhi), Jakarta, March 9, 2012; Human Rights Watch, *Without Remedy: Human Rights Abuses and Indonesia's Pulp and Paper Industry*, vol. 15, no. 1(C), January 2003, <http://www.hrw.org/reports/2003/indono103/>.

Quantifying the number of such disputes is difficult, but even rough estimates suggest they are widespread.<sup>96</sup> President Yudhoyono's office told the press that the president had received reports of 8,495 agrarian conflicts for 2012 alone, of which 2,002 were "likely to erupt into violence."<sup>97</sup> In Sumatra in particular, where the majority of pulp and oil palm plantations are located, land disputes have frequently turned violent.<sup>98</sup> One common catalyst is displacement of residents by armed security forces and the destruction of homes, fields, and possessions by company security backed up by or ignored by state police. Another flashpoint is when residents, frustrated with the lack of compliance with compensation agreements, respond by harvesting palm fruit or timber from company-planted trees, setting up blockades, or reoccupying concession land, and then suffer retaliatory attacks or punitive actions by company or state security forces.

Three high-profile cases of land conflicts, summarized below, illustrate how failures of governance and accountability in the plantation sector can contribute to the problem, allowing disputes to fester until they explode into violence. The discussion that follows is based largely on the findings of a Joint Fact-Finding Team established by the government to look into three incidents in pulp and oil palm plantations in southern Sumatra in 2011-2012 that left nine people dead.<sup>99</sup> The team, which included both government and NGO members<sup>100</sup>, made two separate field visits to review available evidence and conduct interviews with witnesses and participants, including community members, company staff, government officials, and medical staff who treated the wounded.<sup>101</sup> Although never publicly released, a copy of the team's final 146-page report containing detailed findings

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<sup>96</sup> Some NGOs reported that they have documentation of hundreds of natural resource conflicts in western Indonesia alone in 2011. KPA, "A Year of Land Grabbing and Violence Against Communities: 2011 Annual Report" ("Tahun Perampasan Tanah dan Kekerasan terhadap Rakyat: Laporan Akhir Tahun 2011"); Scale Up, "Notes on Natural Resource Conflict in Riau during 2011" ("Catatan Konflik Sumber Daya Alam di Riau Sepanjang Tahun 2011").

<sup>97</sup> "South Sumatra Shooting Puts Government in Cross Hairs," *Jakarta Globe*, July 30, 2012.

<sup>98</sup> For example, since 2000, on average 77 percent of Indonesia's timber plantations were in Sumatra, according to Ministry of Forestry Annual Reports 1997-2011.

<sup>99</sup> Joint Fact-Finding Team, "Joint Fact-Finding Team Report" ("Laporan Tim Gabungan Pencari Fakta").

<sup>100</sup> The report describes the membership of the joint team as follows: Advisors: Djoko Suyanto, Coordinating Minister for Legal, Political and Security Affairs; Ifdhal Kasim, director of the National Human Rights Commission. Director: Denny Indrayana, deputy minister, Ministry of Law and Human Rights. Secretary: Endro Agung, deputy coordinator, national security section, Coordinating Ministry for Political, Legal, and Security Affairs. Members: Agus Mulyono, expert staff, Ministry of Forestry; H.S. Tisnanta, law professor, Lampung University; Ichsan Malik, graduate studies professor, University of Indonesia; Indriaswati Dyah Saptaningrum, director of Elsam, a human rights NGO based in Jakarta; Mas Achmad Santosa, of the Task Force to Eradicate Judicial Mafia; Sulistiyo Ishak, of National Police headquarters, later replaced by Bambang Suparsono, expert staff in the office of the chief of National Police.

<sup>101</sup> Ibid; Human Rights Watch interview with Indriaswati Dyah Saptaningrum, member of the Joint Fact-Finding Team, Jakarta, February 14, 2013.

of fact, analysis, and recommendations was obtained by Human Rights Watch. We contacted the companies implicated in these cases as well as national police for their perspective but they did not respond to our queries.<sup>102</sup>

In their overall assessment of the cases, the team concluded that the three conflicts were caused by:

1. Lack of transparency in the process by which land is made available by local governments for concessionaires;
2. Lack of clarity about the boundaries of land use and ownership rights;
3. Lack of adequate compensation to local people for land they cede to concessionaires; and
4. Violations of legal requirements relating to environmental and social impact assessments and environmental management.<sup>103</sup>

The report also describes how state officials and security forces intimidated local communities into agreeing to compensation agreements,<sup>104</sup> and notes that, in one case, plantation companies made inappropriate payments to local governments for permits.<sup>105</sup>

Further, the Joint Fact-Finding Team concluded that company payments to police forces, including the paramilitary mobile brigade police (*Brigade Mobil*, Brimob), and to the armed forces (*Tentara Nasional Indonesia*, TNI) created the “potential to endanger the neutrality and professionalism” of state security forces.<sup>106</sup> For example, while local residents in one instance were arrested and convicted for “poaching” palm fruit planted by the community on plantation concession land, plantation companies that ignored government directives went unpunished.<sup>107</sup>

Further, the team found that regulations on the use of force and the rules of engagement “were not yet optimally harnessed” in field operations by state security forces, and there

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<sup>102</sup> Human Rights Watch correspondence with PT Sumber Wangi Alam; PT Silva Inhutani Lampung; PT Barat Selatan Makmur Investindo; and Brigjen. Boy Rafli Amar, Public Relations Bureau Chief, Mabes POLRI is available in Appendix B of this report.

<sup>103</sup> Joint Fact-Finding Team, “Joint Fact-Finding Team Report” (“Laporan Tim Gabungan Pencari Fakta”), p. 16.

<sup>104</sup> *Ibid.*, p. 101.

<sup>105</sup> Referred to in the report as “recognition money” (“*uang recognitie*”). *Ibid.*, pp. 52-57, 102-105.

<sup>106</sup> *Ibid.*, p. 118.

<sup>107</sup> *Ibid.*, p. 73; “Tokoh Adat Megow Pak Dihukum 5 Bulan Penjara” *Tempo*, July 30 2012.

were indications of “deviations from/failure to apply” these regulations.<sup>108</sup> All of these shortcomings have their roots in failed governance in the forestry and agricultural sectors, as well as in local government and law enforcement.

*Case 1: Register 45, Mesuji District and PT Silva Inhutani Lampung*

On November 6, 2010, in an area known as ‘Register 45’ of the Mesuji District in Lampung province, provincial police reportedly shot dead one resident and wounded another while forcibly evicting families living inside the plantation concession of PT Silva Inhutani Lampung.<sup>109</sup> The Joint Fact-Finding Team found that the company had paid the uniformed policemen who participated in the raid and had provided police with food and equipment.<sup>110</sup> The team also examined video evidence that it said appeared to show a private security agent placing a machete into the hand of a resident already on the ground, having been shot during the displacement operation, as he lay dying from his wounds.<sup>111</sup> The joint team reported that the video also shows a man in a camouflage uniform identified as a member of the provincial police directing the private security agent to place the weapon into the hand of the dying man, seemingly to create false evidence that the police officer fired in self-defense.<sup>112</sup>

This forcible removal of residents was just the latest incident in a long, complex history of land conflict, displacement, and land speculation in and around Register 45 stretching back decades. The underlying issues have included displacement of locals to make way for oil palm and pulp plantations that use government resettled migrant laborers from more densely populated areas in Java during the 1980s and 1990s, as well as concessions elsewhere in Sumatra.<sup>113</sup>

Since around 2006, land claims have also been complicated by illegal land sales by local people to migrants recruited by middlemen and political actors taking advantage of

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<sup>108</sup> Joint Fact-Finding Team, “Joint Fact-Finding Team Report” (“Laporan Tim Gabungan Pencari Fakta”), p. 17.

<sup>109</sup> *Ibid.*, p. 37-38.

<sup>110</sup> *Ibid.*, p. 43.

<sup>111</sup> *Ibid.*, pp. 37-38. Human Rights Watch has not had the opportunity to view the video, but has seen still photos from it, which are included in the team’s final report. The report (*ibid.*, p. 31) says this footage is separate from the the video shown to the DPR by Maj. Gen. (ret.) Saurip Kadi and a local delegation that contained what appears to be doctored footage from southern Thailand.

<sup>112</sup> *Ibid.* Still photos from the video appear to support this conclusion.

<sup>113</sup> *Ibid.*, p. 33.

unclear land title for their own economic or political benefit.<sup>114</sup> The Joint Fact-Finding Team found that local land speculators and a number of “community foundations”—among them, Jakarta-based *Pembela Kesatuan Tanah Air* (PEKAT)—reportedly engaged in illegal land sales to migrants from Bali and Java.<sup>115</sup> However, the team’s investigations had little effect on slowing this activity, and unlawful settlement in Register 45 continues apace. Tensions are building, with new settlers vowing violent resistance should authorities attempt to remove them and locals threatening to take matters into their own hands should the “squatters” (*perambah*) be allowed to remain.<sup>116</sup>

The authorities’ failure to regulate land ownership and sale, much less enforce title and occupancy laws and remove lands under legitimate traditional claim from forest concessions, has led to the proliferation of competing claims to forests and land, providing dangerous opportunities to those who would intimidate and foment violence for personal gain.

### *Case 2: Sodong Village, Ogan Komering Ilir District (Mesuji Sub-district) and PT Sumber Wangi Alam (SWA)*

On April 21, 2011, violence broke out between local residents and the oil palm company PT Sumber Wangi Alam near Sodong in the Mesuji subdistrict of South Sumatra, across the provincial border from Register 45.<sup>117</sup> According to the Joint Fact-Finding Team, the oil palm plantation was established in 1997 on land claimed by the Sodong community. In compensation the company promised community members over 1,000 hectares of oil palm plots that they could manage themselves.<sup>118</sup> However, residents allege that 14 years after the plantation was established, they have only received some 300 hectares of oil palm plots.<sup>119</sup> Local officials reportedly convened 10 meetings between the two sides, which all ended without a resolution and with the government refusing to direct the company to comply with its original agreement with the community.<sup>120</sup>

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<sup>114</sup> Joint Fact-Finding Team, “Joint Fact-Finding Team Report” (“Laporan Tim Gabungan Pencari Fakta”), pp. 19-27, 29-31.

<sup>115</sup> *Ibid.*, pp. 26-27.

<sup>116</sup> “Mesuji: Masyarakat Pribumi Ingin Perambah Diusir,” *Lampung Post*, June 1, 2013, <http://lampost.co/berita/mesuji-masyarakat-pribumi-ingin-perambah-diusir> (accessed June 16, 2013).

<sup>117</sup> The name “Mesuji” occurs in both locations—one a sub-district (*kecamatan*) and the other a district (*kabupaten*)—the two incidents were widely confused and conflated into a single occurrence.

<sup>118</sup> Joint Fact-Finding Team, “Joint Fact-Finding Team Report” (“Laporan Tim Gabungan Pencari Fakta”), p. 70.

<sup>119</sup> *Ibid.*, p. 75.

<sup>120</sup> *Ibid.*, pp. 74-75.

Frustrated over the company's refusal to resolve their grievances and the government's inability to provide them with relief, some local residents allegedly began reoccupying land they had ceded to the plantation's concession, planting it with their own palm trees.<sup>121</sup> Tensions continued to rise as local police arrested locals who "poached" palm fruits they had grown on plantation concession lands while reportedly ignoring the company's continued planting on land claimed by local communities, even after local officials had placed a moratorium on further company activity on the disputed land.<sup>122</sup>

The breaking point appeared to be when the company failed to appear at a mediation meeting on April 17, 2011, a meeting that reportedly it had called.<sup>123</sup> On April 21, an altercation occurred when two local residents verbally reproached two security guards they encountered on patrol in the concession.<sup>124</sup> Violence broke out and in the melee, security guards allegedly killed the two residents, and one security guard later died from his wounds. News of the killings quickly spread, and a crowd of residents attacked a company field camp and allegedly killed two company staff and two security guards in retaliation.<sup>125</sup> The attackers reportedly displayed the severed heads and decapitated bodies of two security guards. Video footage purporting to show the aftermath of the carnage was posted online, though at least a portion of the footage appears to have been doctored.<sup>126</sup> According to a member of the Joint Fact-Finding Team, no prosecutions had resulted because the police were unable to identify suspects and witnesses to testify.<sup>127</sup>

### *Case 3: Tanjung Raya Sub-district, Mesuji District and PT Barat Selatan Makmur Investindo (BSMI)*

On November 10, 2011, another clash took place in the nearby Tanjung Raya subdistrict in Mesuji District, Lampung. According to the Joint Fact-Finding Team, the violence began

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<sup>121</sup> Ibid.

<sup>122</sup> Ibid., p 113.

<sup>123</sup> Ibid., p. 75.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid., pp. 78-79.

<sup>126</sup> Ibid.; "Humanity Crimes of Sodong Mesuji," December 25, 2011, video clip, YouTube, <http://www.youtube.com/watch?v=kqDTaKLoiVw> (accessed April 23, 2013). As noted above, this footage was shown in the DPR by some residents of Register 45, led by Maj. Gen. Saurip Kadi. There is reason to believe that at least a portion of the video was doctored because the video includes footage of a decapitation in which dialects from southern Thailand are audible, suggesting the footage was spliced in and had no relation to any Indonesian incident. Ulma Haryanto and Farouk Arnaz, "General Shrugs Off Threat of Charges for Mesuji Video," *Jakarta Globe*, January 9, 2012.

<sup>127</sup> Human Rights Watch interview with Indriaswati Dyah Saptaningrum, Jakarta, February 14, 2013.

after a group of residents began harvesting oil palm belonging to PT Barat Selatan Makmur Investindo (BSMI), alleging that the company had not paid full compensation to the community for some 5,000 of the 17,000 hectares that had been seized in 1997.<sup>128</sup> While some compensation had been assessed and paid, it was less than residents had been promised and came only after a coercive and opaque process in which there were indications that some local officials had been bribed.<sup>129</sup> Further, the company had allegedly not fully complied even with this partial and coerced agreement and failed to establish some 5,000 of the 7,000 hectares of community palm plots promised as part of the compensation package.<sup>130</sup>

In 2011, the community began to seek redress for these grievances from local government institutions and the courts. Finding no remedy, the residents protested in front of the local parliament.<sup>131</sup> In July 2011 many residents began harvesting palm fruit from the trees planted by the company on the land under dispute.<sup>132</sup> The company responded by hiring marines from the Indonesian armed forces to serve as private security to patrol the plantation.<sup>133</sup> Beginning in September 2011, faced with demonstrations on the concession, the company requested additional assistance from Brimob paramilitary police, who supplied up to 382 personnel at any one time.<sup>134</sup>

According to findings by the Joint Fact-Finding Team, the conflict came to a head on November 10, 2011, when a local farmer was shot dead and seven more were wounded. The confrontation was precipitated by a rumor that a local resident was being detained by company security, which caused a crowd of about 300, some armed with sharp weapons, to demand his release.<sup>135</sup> A heated discussion ensued that allegedly resulted in a member of Brimob firing rubber bullets toward the crowd, further enraging them.<sup>136</sup> The crowd then

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<sup>128</sup> Ibid., pp. 51-52.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid., pp. 52-53.

<sup>132</sup> Ibid., p. 53.

<sup>133</sup> Ibid. The Joint Fact-Finding Team notes that this engagement was in contravention of the 2004 national military law (Undang-undang 34/2004) that requires the national police to be the requesting party of military deployment. Ibid., p. 100.

<sup>134</sup> Ibid., p. 106.

<sup>135</sup> Ibid., p. 60.

<sup>136</sup> Ibid.

allegedly stormed the camp and the palm fruit processing plant, burning buildings and destroying equipment.<sup>137</sup>

Witnesses interviewed by the Joint Fact-Finding Team reported that when some 60 local sub-district police and military reinforcements arrived several hours later, their vehicles were cut off by residents on two motorcycles who brandished sharp weapons.<sup>138</sup> Witnesses said that shots were fired from the top of the police vehicle, reportedly without orders to do so from the police commander and without firing warning shots or attempting to deploy non-lethal deterrents such as tear gas.<sup>139</sup> Eight people were shot, one fatally from a head wound.<sup>140</sup>

## A More Prominent Role for the Military?

The Indonesian government's response to agrarian violence, even high-profile incidents such as those recounted here, has been slow and insufficient. The formation of the Joint Fact-Finding Team came months after the incidents occurred (and in the case of Register 45 some two years later) and only following public outcry after a delegation of residents from Register 45 raised a complaint before the national parliament.<sup>141</sup> Further, although the Joint Fact-Finding Team's report was detailed, the report was never publicly released. Some members reported that with the spotlight off the cases, there has been little government follow-through on the team's recommendations.<sup>142</sup>

The recommendations included:

- A review of the legality of concession permits, especially where concession permits overlap with community claims;
- Establishment of an independent body to address and monitor agrarian conflicts;
- and

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<sup>137</sup> Ibid.

<sup>138</sup> Ibid., p. 61.

<sup>139</sup> Ibid., pp. 61, 107.

<sup>140</sup> Ibid., p. 61.

<sup>141</sup> Ezra Sihite, et al., "Indonesian Farmers Shock Lawmakers With Alleged Massacres," *Jakarta Globe*, December 12, 2012, <http://www.thejakartaglobe.com/home/indonesian-farmers-shock-lawmakers-with-alleged-massacres/484738> (accessed April 23, 2013).

<sup>142</sup> Ibid.

- Implementation of the 2001 constitutional court directive to undertake a nationwide legal review of community land rights.<sup>143</sup>

A January 2013 progress report by a monitoring team established by the Coordinating Ministry for Political, Legal, and Security Affairs to follow up on the cases confirmed that there has been no government action on any of these recommendations.<sup>144</sup>

The Joint Fact-Finding Team’s work resulted in criminal charges against a local resident for his role in illegal land sales that allegedly triggered the violence in Register 45, but there has been no criminal accountability for state security forces for their role in the violence or in illegal land sales.<sup>145</sup> Indonesian police and soldiers typically are subject to internal measures such as simple warnings, delay of promotions, short suspensions without pay, or reassignment—none of which are made public.<sup>146</sup> In the case of the shootings of nine local residents in Register 45 and at the BSMI field offices, the alleged perpetrators in the provincial police and Brimob have not been criminally charged but have received internal disciplinary measures such as written reprimand, demotion, and 14 days “special assignment” in the brig.<sup>147</sup>

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<sup>143</sup> Joint Fact-Finding Team, “Joint Fact-Finding Team Report” (“Laporan Tim Gabungan Pencari Fakta”), pp. 124-125; Human Rights Watch interview with Indriaswati Dyah Saptaningrum, February 14, 2013.

<sup>144</sup> “Laporan Tim Terpadu Tindak Lanjut Dan Monitoring Penanganan Kasus Mesuji, Desember 2012,” January 2013, on file with Human Rights Watch.

<sup>145</sup> Joint Fact-Finding Team, “Joint Fact-Finding Team Report” (“Laporan Tim Gabungan Pencari Fakta”). In addition to the incidents described here, journalists have reported on several incidents of police firing on protestors resulting from unresolved land disputes between local communities and natural resource companies. “Watchdogs criticize Brimob shooting in Ogan Ilir,” *Jakarta Post*, July 28, 2012, <http://www.thejakartapost.com/news/2012/07/28/watchdogs-criticize-brimob-s-shooting-og-an-ilir.html> (accessed April 23, 2013); “Bima protesters shot from close range,” *Jakarta Post*, December 28, 2011, <http://www.thejakartapost.com/news/2011/12/28/bima-protesters-shot-close-range.html> (accessed April 23, 2013); Bagus BT Saragih, “NGOs demand justice in farmer shooting case,” *Jakarta Post*, June 10, 2010, <http://www.thejakartapost.com/news/2010/06/10/ngos-demand-justice-farmer-shooting-case.html>; Markus Junianto Sihaloho and Farouk Arnaz, “Activists Demand Probe Into Fatal Shooting of Farmer by Police in Jambi,” *Jakarta Globe*, November 9, 2010, <http://www.thejakartaglobe.com/news/activists-demand-probe-into-fatal-shooting-of-farmer-by-police-in-jambi/405815> (April 23, 2013).

<sup>146</sup> Fitri, Ezra Sihite, and Farouk Arnaz, “Indonesia Police Officers Get 3 Days Detention for Bima Shootings,” *Jakarta Globe*, January 5, 2012, <http://www.thejakartaglobe.com/home/indonesia-police-officers-get-3-days-detention-for-bima-beatings/489410> (accessed April 24, 2013); Rizal Harahap, “Police shoot five residents in land dispute in Riau,” *Jakarta Post*, April 23, 2012, <http://www.thejakartapost.com/news/2012/02/03/police-shoot-five-residents-land-dispute-riau.html> (accessed April 23, 2013); ICG, “Indonesia: The Deadly Cost of Poor Policing,” Asia Report No 218, February 16, 2012, <http://www.crisisgroup.org/en/regions/asia/south-east-asia/indonesia/218-indonesia-the-deadly-cost-of-poor-policing.aspx> (accessed April 23, 2013).

<sup>147</sup> “Laporan Tim Terpadu Tindak Lanjut Dan Monitoring Penanganan Kasus Mesuji, Desember 2012,” January 2013, p. 14, 17.

More fundamentally, actions the government has taken have been largely reactive rather than proactive. Belated responses by the government have been a result of public pressure around a handful of individual cases—rather than to prevent violence by stepping up efforts to monitor and address land conflicts throughout the country and systematically address root causes, including the weak and corrupt process of allocating concessions, and negotiating and enforcing compensation agreements. Neglect of the causes of conflict is problematic because although the incidents outlined above captured national attention, similar, if less dramatic, land disputes are widespread and often turn violent.<sup>148</sup>

The most noteworthy new steps that the government has taken related to social conflict have focused on a security approach that actually risks worsening tensions rather than lessening them. Since 2012, new and proposed laws, ministerial regulations, presidential decrees, and Memorandums of Understanding (MOUs) between the military and the police and relevant ministries have emphasized an increased role for the military in containing conflict. The 2012 Social Conflict Resolution Law, which specifically encompasses conflicts between communities and natural resource companies,<sup>149</sup> empowers district heads and mayors to declare states of emergency and request the deployment of the armed forces to control conflicts,<sup>150</sup> in apparent violation of the national laws regulating the police<sup>151</sup> and military.<sup>152</sup>

Further, a presidential decree on national security issued on January 28, 2013, gives local officials power to call for military involvement—without approval of the president, parliament, or national police—in cases of vaguely defined threats to “national security.”<sup>153</sup> An MOU between the police and military issued the following day claims to decrease response time and encourage “synergies” between the two institutions. Although the text of the MOU has

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<sup>148</sup> KPA, “A Year of Land Grabbing and Violence Against Communities: 2011 Annual Report” (“Tahun Perampasan Tanah dan Kekerasan terhadap Rakyat: Laporan Akhir Tahun 2011”); Scale Up, “Notes on Natural Resource Conflict in Riau during 2011” (“Catatan Konflik Sumber Daya Alam di Riau Sepanjang Tahun 2011”).

<sup>149</sup> Social Conflict Resolution Law, No. 7 of 2012, (“Undang-undang 7/2012 tentang Penanganan Konflik Sosial”) <http://ngada.org/uu7-2012.htm> (accessed April 25, 2013), art. 5(d).

<sup>150</sup> *Ibid.*, arts. 16, 33.

<sup>151</sup> Law No. 2 of 2002 on the National Police, art. 41.1, which provides that the involvement of the TNI should be managed by government regulation. “In the course of carrying out security duties, the Indonesian National Police may request the assistance of the military through a issuance of a government regulation.” Law on the National Police, No. 2 of 2002, (“Undang-undang Republik Indonesia Nomor 2 tahun 2002 tentang Kepolisian”), art. 41.1.

<sup>152</sup> Law No. 34 of 2004, in articles 7 and 20, states that, except in cases of war, the deployment of the TNI to support local governments and public order should be arranged by a separate law and therefore must be approved by parliament. Law on the Indonesian National Armed Forces, No. 34 of 2004, (“Undang-undang Republik Indonesia Nomor 34 tahun 2004 Tentang Tentara Nasional Indonesia”), <http://ngada.org/uu34-2004bt.htm> (accessed April 25, 2013).

<sup>153</sup> Presidential Order on National Security, No. 2 of 2013.

not been made public, army chief Adm. Agus Suhartono asserted in a press conference that, “Every time a military commander thinks that he needs to deploy his troops to an area that *has a potential* for conflict, he will be able to do so” (emphasis added).<sup>154</sup> Specifically related to forestry, a 2011 MOU between the Ministry of Forestry and the armed forces is also notable as it allows for direct funding by the Ministry of Forestry to the armed forces for “forest protection” operations, a move that may lead to further violence.<sup>155</sup>

Taken together, this new legislation raises serious concerns of a reassertion of military authority in civilian affairs. Human Rights Watch believes that, except during instances of a genuine state of emergency, the military should not be involved in domestic policing. Side payments from companies to security forces should always be prohibited. The involvement of military or police in private security activities exacerbates the potential for human rights violations because of the absence of transparency and civilian oversight.<sup>156</sup>

## Failure to Protect Local Residents’ Land Rights

Many communities in Indonesia affected by forest concessions have state-issued certificates (*surat keterangan tanah*, SKT)<sup>157</sup> recognizing their communal rights to forest lands. In addition, some of these communities qualify as indigenous peoples with rights to land and natural resources well supported by international law, including by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which Indonesia is a party,<sup>158</sup> and the UN Declaration on the Rights of Indigenous Peoples.<sup>159</sup>

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<sup>154</sup> Ina Parlina and Margareth S. Aritonang, “Indonesian military, police join forces to deal with unrest,” *Jakarta Post*, January 30, 2013, <http://www.asianewsnet.net/Indonesian-military-police-join-forces-to-deal-wit-42134.html> (accessed April 23, 2013).

<sup>155</sup> Memorandum of Understanding, P.3/V-Set of 2011, (“Peraturan Dir. Jen. Bina Pengelolaan Daerah Aliran Sungai Dan Perhutanan Sosial Nomor P.3/V-Set/2011 Tentang Petunjuk Pelaksanaan Rehabilitasi Hutan Di Kawasan Hutan Konservasi Secara Swakelola Yang Dikerjasamakan Dengan Tentara Nasional Indonesia, Kementerian Kehutanan RI”), [www.dephut.go.id/files/p.3\\_v\\_2011\\_o.pdf](http://www.dephut.go.id/files/p.3_v_2011_o.pdf) (accessed April 24, 2013).

<sup>156</sup> Human Rights Watch, *Too High a Price: The Human Rights Costs of the Indonesian Military’s Economic Activities*, June 2006, <http://www.hrw.org/reports/2006/06/20/too-high-price> pp. 45-48.

<sup>157</sup> Joint Fact-Finding Team, “Joint Fact-Finding Team Report” (“Laporan Tim Gabungan Pencari Fakta”), pp. 21-22.

<sup>158</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969. Indonesia ratified the ICERD in 1999.

<sup>159</sup> Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/47/1 (2007), art. 8(2) (“States shall provide effective mechanisms for prevention of, and redress for: ... (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources”); International Labor Organization (ILO), Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169), 72 ILO Official Bull. 59, *entered into force* Sept. 5, 1991.

In its General Recommendation No. 23 on indigenous peoples, the Committee on the Elimination of Racial Discrimination stated that states should:

Recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation.<sup>160</sup>

Indonesia's enforcement of affected communities' usufruct rights and its recognition of indigenous rights, however, are weak both in law and in practice. These shortcomings have contributed to land disputes and violent conflicts for decades. Nowhere are these lack of protections greater than in the forestry and plantation sectors. For instance in 2007, in response to a complaint from NGOs regarding lack of consultation with communities affected by large-scale plantations, the UN Committee on the Elimination of Racial Discrimination (CERD) called on Indonesia to "review its laws ... as well as the way they are interpreted and implemented in practice to ensure that they respect the rights of indigenous people to possess, develop, control, and use their communal lands."<sup>161</sup>

Although the Indonesian constitution recognizes the customary rights (*hak-hak asal-usul*) of traditional communities, including land rights, sectoral laws such as the 1999 Revised Forestry Law and the 2004 Plantations Law provide little protection.<sup>162</sup> For example, the Plantations Law requires that a local regulation first be passed recognizing that the indigenous (*adat*) community is able to demonstrate that it in fact "exists" before its rights

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<sup>160</sup> Committee on the Elimination of Racial Discrimination (CERD), General Recommendation Number 23 on Indigenous Peoples, 51<sup>st</sup> session, 1997, para. 5.

<sup>161</sup> See CERD, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Indonesia, August 15, 2007, CERD/C/IDN/CO/3 para. 17, para. 17.

<sup>162</sup> Constitution of the Republic of Indonesia, arts. 18B, 28.H and 28L ("The State recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.") See also Basic Agrarian Law Number 5 of 1960, arts. 3 and 5, which recognize communal customary rights (*hak ulayat*), albeit as a form of usufruct rights and subject to the "national interest."

to consultation and compensation by plantation companies can be recognized.<sup>163</sup> The process required to obtain such a local regulation is so complex and expensive that only a handful of communities have been successful.<sup>164</sup>

The Revised Forestry Law and its implementing regulations include what appear to be positive protections. The law requires that affected local communities, regardless of whether they identify as indigenous, are consulted; that companies undertake a social impact assessment before undertaking projects; and that companies pay compensation for a community's loss of land to new forestry and agricultural projects.<sup>165</sup> However, the specific requirements for "consultation" and "compensation" are left undefined, and in practice there is little government oversight on whether requirements have been adequately met.<sup>166</sup> Social impact assessments, when undertaken at all, are largely a box-ticking exercise with little community participation.<sup>167</sup>

Regardless of existing indigenous rights, the government claims authority over forests, including the right to issue concession permits on land that it considers "unencumbered by proprietary rights."<sup>168</sup> However, the Ministry of Forestry has only completed the formal process of mapping boundaries ("gazettement") of some 12 percent of forestland, leaving the remaining 88 percent under ambiguous legal ownership.<sup>169</sup> While local communities claim property rights in much of the ungazetted land, the Ministry of Forestry continues to contravene the forestry law and ignore those rights by issuing concessions to private

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<sup>163</sup> Plantations Law, No. 18 of 2004, art. 9.2. Reportedly only four indigenous communities have done so. Martua Sirait, *Indigenous Communities and Oil Palm Expansion in West Kalimantan*, (The Hague: Cordaid, 2009). See, Joint Fact-Finding Team, "Joint Fact-Finding Team Report" ("Laporan Tim Gabungan Pencari Fakta"), p. 115, for an explanation of relevant regulations governing the procedures for certifying that land for plantation concessions is without pre-existing claims and for a summary of the requirements for compensation when such claims exist.

<sup>164</sup> Human Rights interviews with Andiko, HuMa, Jakarta, June 9, 2013; Kasmita Widodo, director of the Participatory Mapping Working Group (*Jaringan Kerja Pemetaan Partisipatif*), Bogor, June 3, 2013.

<sup>165</sup> National Forestry Law, No. 41 of 1999, art. 68.3-4. The law uses the term *musyawarah*, which has the connotation of reaching a consensus agreement but historically has been used by the government as notification rather than negotiation.

<sup>166</sup> Human Rights Watch, *Without Remedy*; Marcus Colchester, et al. "Promised Land: Palm Oil and Land Acquisition in Indonesia, Implications for Local Communities and Indigenous Peoples," FPP, Perkumpulan Sawit Watch, HuMa and the World Agroforestry Centre, 2006, <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/promisedlandeng.pdf> (accessed April 23, 2013).

<sup>167</sup> M. Colchester, et al, "Promised Land."

<sup>168</sup> National Forestry Law, No. 41 of 1999, art. 1(4), 6.

<sup>169</sup> The gazettement process includes identifying the boundaries of specific areas of forest, depending on ownership and land use, mapping these areas, "ground-truthing" the designations (involving local consultations with other claimants), physically demarcating the areas, issuing a specific decision that confirms due process has been followed, and finally recording the decision in the official gazette.

companies on such land.<sup>170</sup> In May 2013 the constitutional court decision found the practice to be in violation of the constitution.

In recognition of the role of unclear land rights in rising agrarian conflict, the People's Consultative Assembly (MPR), Indonesia's upper house of parliament, passed an act in 2001 directing the House of Representatives (*Dewan Perwakilan Rakyat*, DPR), the lower house of parliament, to review natural resource laws in order to strengthen community rights and thereby address conflicts.<sup>171</sup> More than a decade later, this review has yet to take place. Likewise, a draft law on indigenous rights has been stuck in the House's legislative committee for several years.

A tentative sign of progress came in July 2011, when the head of the President's Delivery Unit for Development Monitoring and Oversight (UKP4), Kuntoro Mangkusubroto, publicly underlined the importance of implementing the People's Consultative Assembly's 2001 directive, saying: "The formal state administration for land rights, access, and security must make accommodations for informal rights and practices accepted by local customs," and called for the implementation of integrated mapping and registration of customary lands.<sup>172</sup> Although a step in the right direction, it remains to be seen if the government has the political will to devise a clear, coordinated, time-bound plan for moving forward on the MPR's legislative directive to protect these rights.<sup>173</sup>

Recognition of customary rights in itself, moreover, will be no panacea without a transparent and accountable mechanism for adjudicating individual land claims. The Register 45 case demonstrates that unscrupulous actors at both national and local levels have taken advantage of the current confusion around land rights by encouraging

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<sup>170</sup> C. Fay, M. Sirait, A. Kusworo, "Getting the boundaries right: Indonesia's Urgent Need to Redefine its Forest Estate," Working Paper No. 25, *Southeast Asia Policy Research*, 2000, <http://forestclimatecenter.org/files/2000%20Getting%20The%20Boundaries%20Right%20Indonesia-5%20Urgent%20Need%20to%20Redefine%20its%20Forest%20Estate.PDF> (accessed April 23, 2013).

<sup>171</sup> People's Consultative Assembly (*Majelis Permusyawaratan Rakyat Republik Indonesia*, MPR-RI), Provisions on Agrarian Reform and Natural Resource Management ("Ketetapan Tentang Pembaruan Agraria Dan Pengelolaan Sumberdaya Alam"), TAP IX/MPR/2001, [http://hukum.unsrat.ac.id/uu/mpr\\_9\\_01.htm](http://hukum.unsrat.ac.id/uu/mpr_9_01.htm) (accessed April 25, 2013).

<sup>172</sup> Kuntoro Mangkusubroto, Address to the International Conference on Forest Tenure, Governance and Enterprise, Lombok, July 12, 2011.

<sup>173</sup> In contrast, see the cogent "Roadmap to Tenure Reform" authored by the civil society coalition. M. Safitri, et al., "Roadmap to Tenure Reform" ("Menuju Kepastian dan Keailan Tenural"), 2011, <http://www.forestpeoples.org/sites/fpp/files/publication/2012/01/naskahrevisi-peta-jalan-reformasi-tenurial-hutan-final-09112011.pdf> (accessed April 10, 2012).

migration, falsifying “indigenous” claims and engaging in land speculation. Without a credible means of distinguishing legitimate from specious claims, strengthening recognition of indigenous communal rights on its own could result in a boom in fraudulent claims and more violence.

## Flawed Attempts at Reform

Since Human Rights Watch published *Wild Money* in 2009, several safeguards have been developed to address the problems of weak governance in the forestry sector, including:

- “Legality legislation” in the United States and the European Union for timber imports has led to the establishment of a chain-of-custody system in Indonesia to track timber and verify certain aspects of legality;
- President Yudhoyono issued a decree declaring a moratorium on new licenses to clearcut primary forests and on forests on peat soils in order to establish plantations; and
- The Law on Access to Public Information entered into force.

Although these measures are important, the Indonesian government has yet to implement them effectively.

### Timber Chain of Custody

A major advance in improving transparency and legality in Indonesia’s timber sector has been the establishment of an accredited monitoring system (*sistem verifikasi legalitas kayu*, SVLK) to provide assurance that timber has not been harvested in violation of domestic laws and regulations.<sup>174</sup> Although discussions had been underway for many years, a primary motivation for finalizing the system was the new import requirements in the United States<sup>175</sup> and EU,<sup>176</sup> effective in 2008 and 2010, respectively, which prohibit illegally obtained timber. A further motivation has been the negotiation and signing of a Voluntary Partnership Agreement (VPA) between the EU and Indonesia that, once ratified, will require

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<sup>174</sup> Ministry of Forestry Regulation No. P68/Menhut-II/2011, (“Peraturan Menteri Kehutanan, P68/Menhut-II/2011”).

<sup>175</sup> The US Lacey Act (16 U.S.C. 3371 et seq.) was amended by the Food, Conservation, and Energy Act of 2008, effective May 22, 2008 (section 8204, Prevention of Illegal Logging Practices) to make it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken in violation of the laws of a US state or any foreign law that protects plants.

<sup>176</sup> Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010 obliges importers to: 1) prohibit the placing of illegally harvested timber products on the EU market; 2) exercise “due diligence”; and 3) facilitate the traceability of timber products by keeping records of their suppliers and customers. Timber Regulation, No. 995 of 2010, [http://ec.europa.eu/environment/forests/timber\\_regulation.htm](http://ec.europa.eu/environment/forests/timber_regulation.htm), (accessed September 26, 2012).

that all timber exported to the EU possess legality certificates.<sup>177</sup> Civil society groups have been closely involved in the development of both the VPA and SVLK regimes, a critical step forward in improving oversight of how forests are managed.

However, the new chain-of-custody system has so far fallen short. The VPA mandates that, in order to be eligible for export to the EU, Indonesian timber must be harvested and processed in compliance with, at a minimum, “legal tenure rights or rights to use land and resources that may be affected by timber harvesting.”<sup>178</sup>

The SVLK audit criteria Indonesia has put in place, however, do not guarantee such compliance. First, auditors are to assess only the legality of company practices (not government practices) and only in the previous year of operation. The audits will not ensure that permits are issued for lands without pre-existing community claims. This is a significant omission given that 88 percent of Indonesia’s forests are not gazetted and many permits are currently being issued where there are pre-existing land claims.<sup>179</sup> Second, the SVLK does not adequately monitor whether companies have violated local communities’ legal right to consultation, much less their free, prior, and informed consent. Third, the SVLK does not ensure that companies comply with laws that require communities be compensated for lost access to forestland and share in the benefits from logging.<sup>180</sup> Last, the auditor may issue the company a “pass” even if one or more criteria are still under verification at the close of the audit.<sup>181</sup> Most concerning, insiders worry that the leadership of some auditing companies has pressured auditors to overlook

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<sup>177</sup> “Joint Statement between the Minister of Forestry of The Republic of Indonesia and the European Commissioner for Trade on the Conclusion of the Negotiation for a FLEGT–VPA,” May 4, 2011, [http://www.euflegt.efi.int/portal/home/vpa\\_countries/in\\_asia/indonesia/indonesia\\_material/?did=251](http://www.euflegt.efi.int/portal/home/vpa_countries/in_asia/indonesia/indonesia_material/?did=251) (accessed April 23, 2013).

<sup>178</sup> Ministry of Forestry Regulation for the Legality Standard for the VPA, P.8/VI-BPPHH/2011, <http://www.dephut.go.id/index.php?q=id/node/8281> (accessed April 24, 2013), 2.1, 2.4, 2.5; and VPA Annex VIII, “Criteria for Assessing the Operationality of the Indonesian Timber Legality Assurance System,” (Final Draft, April 14, 2012), sec. 1.

<sup>179</sup> Ministry of Forestry Regulation for the Legality Standard for the VPA, P.8/VI-BPPHH/2011, Annex 2.1, 2.4, 2.5; VPA Annex II “Legality Standards” (Final Draft, April 14, 2011).

<sup>180</sup> Ministry of Forestry Regulation for the Legality Standard for the VPA, P.8/VI-BPPHH/2011, (“Standar dan Pedoman Pelaksanaan Penilaian Kinerja Pengelolaan Hutan Produksi Lestari dan Verifikasi Legalitas Kayu”), Annex 2.1, (“Standar Legalitas Kayu untuk Hutan Negara yang Dikelola Pemegang Ijin”).

<sup>181</sup> Ministry of Forestry Regulation for the Legality Standard for the VPA, P.8/VI-BPPHH/2011, Annex 3.3-9, (“Pedoman Pelaksanaan Verifikasi Legalitas Kayu Pada Pemegang IUIPHHK Dan IUI/TDI”).

shortcomings in order to issue SVLK legality (“V-Legal”) certificates, a practice that undermines the credibility of the entire system.<sup>182</sup>

Independent oversight of the audits also remains a significant problem. The SVLK mandates independent monitoring, creating an official role in the process for third parties (including civil society organizations, local community representatives, and individuals). While this is laudable, some members of the Independent Forest Monitors Network (*Jaringan Pemantau Independen Kehutanan*, JPIK) have criticized the auditors and the government for failing to share necessary information with them in a timely fashion.<sup>183</sup> As of June 2013, for example, while over 600 operations had been audited for legality, only 25 audits had been reviewed by independent monitors, and in 15 of those 25, independent monitors had lodged complaints with the auditor.<sup>184</sup> Monitors report that only 2 of these complaints were resolved satisfactorily, with one license being suspended and the other canceled.<sup>185</sup>

The third party monitors have specifically requested the revocation of legality permits for Asia Pulp & Paper (APP) and Asia Pacific Resources International (APRIL), two of the largest pulp and paper mills in the country, due to lack of transparency by the government and the auditors. JPIK voiced particular concern about what they saw as efforts by the auditor to hide failures of APP and APRIL to meet certain criteria.<sup>186</sup>

The monitors have also complained that the SVLK does not assess the legality of the government’s issuance of concession permits. This gap, they say, is evidenced by the fact that some companies certified not only as “legal” but as “sustainable” by the SVLK process in fact have been associated with “indications of corruption” by the Anti-Corruption Commission. This gap in SVLK criteria, say the monitors, represents a “significant handicap” that undermines the credibility of the certificates.<sup>187</sup>

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<sup>182</sup> Human Rights Watch interviews, Jakarta, February 2013; “JPIK Demands Revocation of APP & APRIL Group’s SVLK Certificate,” JPIK press release, February 27, 2013.

<sup>183</sup> Human Rights Watch interviews with members of JPIK, Jakarta and Bogor, Indonesia, March 2012; “JPIK Demands Revocation of APP & APRIL Group’s SVLK Certificate,” JPIK press release, February 27, 2013, <http://loggingoff.info/APPNGOresponse> (accessed April 24, 2013).

<sup>184</sup> Human Rights Watch email communication with JPIK, February 4, 2013.

<sup>185</sup> Human Rights Watch interviews with members of NGO independent monitoring network for the timber legality audit system (*Jaringan Pemantau Independen Kehutanan*, JPIK), Jakarta and Bogor, Indonesia, March 2012. Forest Law Enforcement, Governance and Trade (FLEGT) staff confirmed these figures to Human Rights Watch, Jakarta, June 6, 2013.

<sup>186</sup> Ibid.; “JPIK Demands Revocation of APP & APRIL Group’s SVLK Certificate,” JPIK press release, February 27, 2013.

<sup>187</sup> “JPIK Demands Revocation of APP & APRIL Group’s SVLK Certificate,” JPIK press release, February 27, 2013.

These critical shortcomings in independent oversight and in the legality criteria undermine the functioning of the SVLK and the legitimacy of legal verification. Indeed, these failures suggest that SVLK certificates may serve to provide a only thin veneer of “legality” to timber and paper products that are being produced in violation of the rights of members of affected communities.

## Moratorium on New Forest Clearing Permits

A second mechanism meant to encourage more sustainable forest management was enacted in exchange for a \$1 billion pledge from Norway to assist Indonesia with forest-related climate change mitigation. In May 2011, President Yudhoyono issued a Presidential Instruction announcing a two-year suspension of all new permits for the clear-cutting of previously unlogged forest and all forests on peat soils, pending enactment of appropriate governance reforms.<sup>188</sup> While a positive step,<sup>189</sup> the decree is fraught with problems in coverage, enforceability, and efficacy:

- The moratorium has no effect on large areas of forest already under logging permits<sup>190</sup> and those already “approved in principle.”<sup>191</sup>
- The Ministry of Agriculture and the Ministry of Energy and Mineral Resources are exempt as their projects are deemed “in the national interest.”
- The pulp sector, although bound by the logging moratorium, was omitted from the decree’s instructions related to governance reform targets.<sup>192</sup>

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<sup>188</sup> Presidential Instruction No. 10 of 2011 (“Instruksi Presiden Republik Indonesia Nomor 10 Tahun 2011,”), May 20, 2011, [http://www.kemendagri.go.id/media/documents/2011/09/19/i/n/inpres\\_no.10-2011.pdf](http://www.kemendagri.go.id/media/documents/2011/09/19/i/n/inpres_no.10-2011.pdf) (accessed April 24, 2013).

<sup>189</sup> For an in-depth analysis of the shortcomings of the moratorium and the governance needs, see D. Mudiyarso, et al. *Indonesia’s forest moratorium: A stepping stone to better governance? Working Paper 76* (Bogor: CIFOR. 2011), <http://www.cifor.org/online-library/browse/view-publication/publication/3561.html> (accessed April 24, 2013).

<sup>190</sup> In fact, the prospect of a moratorium itself seems to have created a rush to obtain permits. During the five-month delay before the signing of the Presidential Instruction, a flurry of permits were issued. D. Mudiyarso, et al., *Indonesia’s Forest Moratorium*, p.6.

<sup>191</sup> Including those issued under Regulation No. 24 of 2010, which permits logging concessions to be “borrowed and used” (*pinjam-pakai*) for mining activities in up to 10 percent of production forests.

<sup>192</sup> Presidential decree No. 10 of 2011 notably makes no mention of reform in the notoriously opaque permitting process for the clearcut permits (*ijin pemanfatan kayu*, IPK) issued in part to clear natural forests for pulp and oil palm plantations. According to Ministry of Forestry data, in 2010, IPK permits accounted for more than six times more timber than the types of permit put on hold pending reform under the Instruction. In one indication of the scope of illegality in the oil palm sector, NGO investigators report that, of the 53 plantation companies registered in Central Kalimantan, only seven have Plantation Business Permits (IUP); at least 24 other plantations were in violation because they were registered only with district governments. Further, the report cites the head of district forestry department in Kotawaringin in Central Kalimantan as saying that illegal logging without IPK permits has been carried out by “almost all” palm oil companies in the district and that “in Kalimantan and Sumatra between 2000 and 2008 ... 20.1 percent [of forest loss] took place in areas in which clearing

- Presidential Instructions are not legally binding. Further, the Delivery Unit for Development Monitoring and Oversight (UKP4), the body responsible for implementation of this instruction, is an *ad hoc* body with no statutory enforcement authority, and the sanctions for violations are unclear.<sup>193</sup>

Nevertheless, with strong leadership from the UKP4, and against the strong objections of the palm oil sector, the president took a bold, positive step in May 2013 to renew the moratorium to provide two more years for reforms to be established. However, the UKP4 will reach the end of its mandate at the end of the current administration in 2014, and the support for the moratorium could suffer under subsequent administrations. Therefore, there is an urgent need to ensure that the reforms called for by the decree are defined with greater specificity and that progress is benchmarked before the ban is lifted.

## A Cause for Hope: the Anti-Corruption Commission

A nascent effort, spearheaded by the Anti-Corruption Commission (*Komisi Pemberantasan Korupsi*, KPK), holds the potential to address forest-sector corruption and mismanagement where other efforts have fallen short.

A 2010 investigation by the KPK found that the Ministry of Forestry failed to accurately map forests, land use, and concession boundaries, and did not fairly allocate use rights. The KPK found that these weaknesses were central causes of persistent corruption and lost government revenue, as well as high levels of deforestation.<sup>194</sup> The KPK concluded that these practices also led to disputes over land use rights.<sup>195</sup>

Further, the KPK's 2012 Integrity Survey found that the Ministry of Forestry scored lower than any other central government ministry, and the lowest scoring national public service

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is either prohibited or restricted." Telapak and the Environmental Investigation Agency, "Caught REDD handed: How Indonesia's Moratorium Was Violated on Day One and Norway Will Profit," 2011, [http://www.redd-monitor.org/wordpress/wp-content/uploads/2011/06/EIA\\_TELAPAK-Caught-REDD-Handed-FINAL.pdf](http://www.redd-monitor.org/wordpress/wp-content/uploads/2011/06/EIA_TELAPAK-Caught-REDD-Handed-FINAL.pdf), (accessed August 31, 2012).

<sup>193</sup> Within 11 days of the moratorium, the Forestry Ministry itself issued a decree (SK 292/Menhut II/2011) in defiance of the moratorium that re-zoned almost 1.2 million hectares of state forest as "land for other uses" (i.e., it opened the land for conversion to plantations).

<sup>194</sup> "Public Sector Integrity Survey Results for 2012" ("Hasil Survei Integritas Sektor Publik Tahun 2012"), KPK press release, December 11, 2012, <http://www.kpk.go.id/id/berita/siaran-pers/744-hasil-survei-integritas-sektor-publik-tahun-2012> (accessed April 23, 2013).

<sup>195</sup> "Paparan Hasil Kajian KPK tentang Kehutanan," KPK press release, December 3, 2010.

agencies were the Ministry of Forestry's agency for the rezoning of state forest land (necessary to obtain a forest conversion permit), and the land title registration and title transfer offices of the National Land Board.

As a result, the KPK developed a unit on the identification and coordination of legal and policy reforms to prevent corruption in natural resource sectors, with a special focus on forestry.<sup>196</sup> The KPK coordinated an MOU signed on March 11, 2013, by 16 government agencies to speed the formal mapping and allocation of state forest, a process that will require field investigation of pre-existing claims and public participation.<sup>197</sup>

Many have called for such action in the past, but the KPK has a statutory mandate, not only as a corruption enforcement body, but also as a corruption prevention body with authority to be involved in policy reform. This dual mandate bestows influence and could consolidate the political will critical to making this effort successful where others have failed.

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<sup>196</sup> Human Rights Watch interview with the KPK Unit for Institutional Coordination, Jakarta, December 10, 2012; "Public Sector Integrity Survey Results for 2012" ("Hasil Survei Integritas Sektor Publik Tahun 2012,") KPK press release, December 11, 2012.

<sup>197</sup> The agencies that signed the MOU are the Ministries of Internal Affairs; Law and Human Rights; Finance; Energy and Mines; Agriculture; Forestry; Public Works; Environment; and Planning, as well as the National Land Board, National Geospatial Information Board, and the National Human Rights Commission. "Memorandum of Understanding Joint Action Plan on the Acceleration of Indonesian Forest Conservation," ("Nota Kesepakatan Rencana Aksi Bersama tentang Percepatan Pengukuhan Kawasan Hutan Indonesia,") March 11, 2013.

## Conclusion and Recommendations

Indonesia's strong economy and natural wealth in forest and agricultural commodities provide resources that could be used to advance human rights and fight poverty. The country's natural assets also make it an important player in global climate change mitigation strategies. President Yudhoyono has made significant commitments in this regard. His administration has taken steps toward reform that, if implemented, would assist in safeguarding forests and human rights.

To date, however, these safeguards are not being adequately implemented and at the same time the government is pursuing green growth policies that increase pressure on forests and forest-dependent communities without adequate due process. A predictable consequence is that land disputes will continue to explode into violence. The government's recent trend toward a military approach to suppressing social conflict, moreover, is likely to be counterproductive, exacerbating rather than resolving tensions around land ownership, leading to new outbreaks of violence, and undermining progress toward democratic reform of the military.

A more prosaic but lasting impact is that until Indonesia addresses governance weaknesses outlined in this report, government coffers will continue to be deprived of substantial natural resource revenues that could be helping provide basic services such as urgently needed healthcare. And the lack of transparency and accountability will continue to undermine the vision of equitable and sustainable growth, even as the economy continues to boom.

### The Indonesian Government Should:

- Amend the timber verification system to include assessment of government and company compliance with laws protecting local land rights and compensation agreements. This would include complying with the May 2013 constitutional court ruling (35/PUU-X/2012) requiring that there be no competing claims on land allocated as concessions, and that traditional (*adat*) territories erroneously included in concessions be removed from these areas.

- Issue a Presidential Instruction to implement the May 2013 constitution court decision on excluding traditional territories from state forest and industrial concessions. It should include clear instructions for reforming customary land registration procedures to ensure transparency and participation of communities and civil society observers, and create a functional grievance mechanism accessible to the rural poor for resolution of individual land claims.
- Fully implement the Freedom of Information Act, including by enforcing decisions of the National Information Commission (KIP) and the courts, and by providing specialized trainings for natural resource ministries on the specific disclosure requirements for key information types that each ministry holds.
- Endorse amendments to the State Intelligence Law to ensure that disclosure of information in the public interest is not penalized, such as those related to human rights violations and corruption.
- Ensure that independent forest monitors receive the information they need to conduct oversight. Implement safeguards that prohibit timber legality audits from being finalized while complaints, including complaints of company or government failure to disclose required information, are pending.
- Support the Anti-Corruption Commission’s (KPK) natural resources unit, which is overseeing an interagency group focusing on reforming procedures for land use zoning changes and issuance of forest concession permits. Such support should include issuance of a presidential regulation that articulates the initiative’s interagency “umbrella” role in reducing corruption in natural resource sectors, especially in reforming the forest gazette process; helps ensure adequate funding; and protects the initiative from political interference.
- Prior to lifting the moratorium on new permits for clearing natural forest, establish and require measurable, adequate progress in achieving clear benchmarks for governance reform, including in the pulp, palm oil, and mining sectors. The reforms should include:
  - A public legal review of existing concession and timber harvest licenses;
  - Fulfillment of transparency requirements related to forest licenses, timber production, and timber revenues, in particular as needed for adequate oversight of legality audits; and

- Completion of an integrated and publicly accessible map of land use zones, concession areas, and traditional territorial claims.
- Clarify legal requirements and incorporate clear and transparent legal standards into the “accredited monitoring system” (SVLK) audits for:
  - Assessment of government and company compliance with laws protecting local land rights, and
  - Implementation of compensation agreements with affected communities.
- Clarify contradictory laws on community rights by issuing a regulation on the registration of communal land with the National Land Agency (BPN), and support passage of the bill on indigenous rights currently in the Legislative Committee of the National Parliament.
- Amend the Internal Affairs Regulation (PerMenDalagri No 33/2012) to remove vague and undue restrictions on NGO activities and funding. Specifically remove the requirement that NGOs adhere to the Pancasila philosophy as a condition of their license to operate. Restrictions on foreign funding should not extend or replicate existing regulations that ensure funds are from a legal source. Endorse similar revisions to the draft law on NGOs before parliament.
- Endorse amendments to the State Intelligence Law to precisely define, in accordance with international law, activities that constitute a threat that warrants surveillance. Such actions should require judicial oversight.

The business community also bears responsibility for respecting the human rights of the communities in which they operate.

### **Forestry Industries and Agricultural Plantation Companies Operating in Indonesia, and Their Supply Chains, Should:**

- Carry out robust due diligence on the human rights impacts of proposed forest ventures to avoid involvement in ventures with potentially harmful impact on the human rights of affected communities, including the allocation of concessions on land under pre-existing claim by communities.
- Institute 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.

- Strengthen the credibility of timber legality audits by cooperating fully, and insisting that auditors cooperate fully with civil society monitors such as JPIK, including by providing adequate information to enable monitors to conduct oversight and participate meaningfully in the audit.
- Develop transparent guidelines for the use of private security forces and the prevention and management of conflict with affected communities. The Voluntary Principles on Security and Human Rights developed by the extractive industry can serve as a useful model.<sup>198</sup>

Donor governments and international financial institutions should also actively support governance reforms that protect human rights, including those related to trade agreements, import requirements for forestry and agricultural products, and climate change.

### **The United States and the European Union, In Their Role Verifying Timber Legality, Should:**

- Support the digital mapping and registering of traditional territories and urge that, pursuant to the May 2013 constitutional court ruling, such territories be removed from existing forest concessions.
- Press Indonesia to adopt new timber legality criteria requiring assessment of whether:
  - (a) The timber operation is on an area that was legally allocated under Indonesian law, including by removing lands under prior existing claims by communities, and
  - (b) Communities were adequately consulted and paid fair compensation by the company, as required by law. Insist on demonstrable compliance by the Ministry of Forestry and auditors with disclosure requirements of necessary information to independent monitors of the timber audit system.

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<sup>198</sup> The Voluntary Principles on Security and Human Rights, undated, [http://www.voluntaryprinciples.org/files/voluntary\\_principles\\_english.pdf](http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf) (accessed March 28, 2013).

## **Norway, the World Bank, and Other Climate Change Funders, before Releasing Further Climate Change Funding to Indonesia, Should:**

- Press for clear performance on specific governance reforms, including in the oil palm, pulp and paper, and mining sectors, before the moratorium on new logging of primary forest is lifted.

# Appendices

## Appendix A: Methodology for Estimating Timber Revenue Loss

In this report, Human Rights Watch estimates only one part of the revenue lost to the government of Indonesia from the forestry sector: we estimate the loss in what the Ministry of Forestry (MoF) calls the major “non-tax state revenue” paid by industrial logging companies. Calculating the loss to the state from the entire forestry sector is not possible because there are no data on, for example,

- The amount of timber smuggled from Indonesia (which is thought to be large), or
- Production by small and medium sawmills (because production from producers of less than 6,000 cubic meters per year is not reported in the MoF’s annual reports), or
- Exports that were under-valued so as to avoid tax (transfer pricing).

We calculate only the losses from royalty fees (*Pajak Sumber Daya Hutan*, PSDH), reforestation fees (*Dana Reboisasi*, DR), and timber replacement fees (*Penggantian Nilai Tegakan*, PNT) from industrial forestry operations.<sup>199</sup> Nonetheless, these fees represent an average of 87 percent of the non-tax revenue that the MoF reported as collected between 2007-2011.<sup>200</sup>

In order to calculate the revenue lost from these three fees, we first had to estimate what the government *should have* charged for the wood harvested by the large, industrial timber sector in Indonesia. We do this in several steps.

### Step 1: Volume of Timber Harvested in Indonesia

First, we estimate the volume of timber harvested annually between 2003-2011 (the most recent data published by the MoF). Unfortunately, we do not know how much wood was

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<sup>199</sup> In our 2009 report, we also included revenue losses from by undervaluing timber exports (transfer pricing). For simplicity’s sake, we did not include that calculation here. Had we done so, it would have increased the losses by \$50 million in 2007, \$10 million in 2008; \$11 million in 2009; \$0 in 2010, and \$40 million in 2011.

<sup>200</sup> Ministry of Forestry, “Forestry Statistics of Indonesia 2011,” (“Statistik Kehutanan Indonesia 2011”), Table IX.1.1, “Non-Tax State Revenue to the Ministry of Forestry.”

actually harvested; we know only the MoF's reported annual totals of "log production" consumed by wood industries of more than 6,000 cubic meters per year.<sup>201</sup>

### **Step 2: Revenue Lost Through Subsidies on Royalty, Reforestation, and Replacement Fees**

Next, we calculated the PSDH royalty, which is assessed at 10 percent of the value of the wood harvested. While actual sales prices varied widely in Indonesia between 2003-2011,<sup>202</sup> the MoF calculated PSDH based on a "reference price" set by government regulation. These government rates provide the timber industry with a considerable subsidy given that the actual market value was likely much higher (see Figure 1).<sup>203</sup>

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<sup>201</sup> Ministry of Forestry, "Forestry Statistics of Indonesia 2011" ("Statistik Kehutanan Indonesia 2011"), Table IV.6.1, "Log Production Based on Source of Production."

<sup>202</sup> International Tropical Timber Organization (ITTO) provides monthly prices for the major tree species traded in Indonesia in its Market Information Service. ITTO, "Market Information Service," undated, [http://www.itto.int/mis\\_back\\_issues/](http://www.itto.int/mis_back_issues/) (accessed March 28, 2013).

<sup>203</sup> Ministry of Forestry, "Evaluation of Natural Forest Timber PSDH Rates" ("Evaluasi Tarif PSDH Kayu Hutan Alam"), Policy Brief, vol. 5, no. 5, 2011.

**Figure 1: Difference Between Government Reference Price and Actual Market Values in Indonesia**



Solid lines are domestic market prices in US dollars for meranti (the black line) and acacia (the gray line); dotted lines are government “reference prices” (converted to US dollars) for the two types of wood. (Source: reference price for timber = MoF Policy Brief No.5. 2011, and for acacia = Ministry of Trade regulations. Domestic price = annual average of market price reported from Indonesia in ITTO Market Information Service monthly reports.)

The deforestation fee (DR) varies with the species of timber and region of harvest as set by government regulation in 1999.<sup>204</sup> We used \$16 per cubic meter as an average value.<sup>205</sup> Plantations (or HTI in the Indonesian acronym) do not pay any reforestation fee for acacia and other species harvested.

<sup>204</sup> \$16 per cubic meter is the average DR provided in Table 1 of the Ministry of Forestry Policy Brief No. 5. Government Regulation No. 92 of 1999 on Second Revision of Regulation No. 59 of 1998 (“PP 92/1999 tentang Perubahan Kedua atas Peraturan Pemerintah Nomor 59 Tahun 1998 Tentang Tarif atas Jenis Penerimaan Negara Bukan Pajak yang Berlaku Pada Departemen Kehutanan dan Perkebunan”).

<sup>205</sup> Because there is not a reliable source of data for the price of acacia, we use the 2012 reference price for acacia given by MOF (\$77/m<sup>3</sup>) and back-calculated the change over time, assuming it followed the same trend as for meranti. While the price of timber does vary between regions, the \$16 DR fee is based on the ‘average’ per cubic meter DR charge for 2007-2009 reported in the MoF’s Table 1 in the Policy Brief No. 5. Ministry of Forestry, “Evaluation of Natural Forest Timber PSDH Rates” (“Evaluasi Tarif PSDH Kayu Hutan Alam,”), Policy Brief, vol. 5, no. 5, 2011.

In 2009 a new fee was introduced, the timber replacement fee (*Pajak Nilai Tegakan*, PNT), which was meant to compensate the state for the loss of timber assets when forests are cleared for plantations and other purposes. PNT is calculated as the value of the timber, less the DR and PSDH fees paid, less the cost of harvesting (which we assume to be \$30 per cubic meter).<sup>206</sup> However, once the operator deducts these costs, given the low “reference price” used by the MoF, the operator is unlikely to have to pay any PNT. (Indeed the MoF does not report any PNT revenue between 2009-2011.)<sup>207</sup> In reality, the actual market prices were likely much higher—we used \$140 per cubic meter as an average across all merchantable species that would be harvested during land clearing.<sup>208</sup> If the MoF had used actual market prices, then PNT would have been payable, and so we include it in our calculation of fees that should have been assessed (if no subsidy was used) for timber produced under IPK licenses (the Indonesian acronym for land clearing).

A note of caution regarding the methodology used for Step 2: our calculations likely underestimate—perhaps dramatically—the amount of fees that should be payable. As mentioned above, we do not have a record of the actual amount of wood harvested. We have only the aggregate “production” reported by the MoF. Further, we only assess PNT on timber reported from IPK licenses (and for land clearing for HTIs in 2011). While PNT is also due on timber from land cleared under other licenses (for example, clearing for mine sites), the MoF does not report this volume. It is likely that much of the ‘illegal’ supply (more than 54 million cubic meters between 2009-2011) may have come from land clearing, given all the plantation development during this period (Figure 2), and PNT would have been due on this timber, but we do not include any of this in our estimates of loss.

### **Step 3: Illegal Harvest**

In order to estimate the size of the illegal (or at least unreported) harvest, we compared the amount of timber the MoF reported as “produced” (plus the amount of roundwood imported by Indonesia) and compared this legal *supply* to the amount of wood (converted to the equivalent in raw logs) that industry and the MoF reported as being consumed to

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<sup>206</sup> We assume harvest costs are based on the costs allowed under Ministry of Forestry Regulation P.65/Menhut-II/2009.

<sup>207</sup> Ministry of Forestry, “Forestry Statistics of Indonesia 2011” (“Statistik Kehutanan Indonesia 2011”), Table IX.1.1, Non-Tax State Revenue to the Ministry of Forestry.

<sup>208</sup> US\$140 per cubic meter is based on an average timber value of 1,200,000 Rp per cubic meter in 2011. Ministry of Forestry, “Evaluation of Natural Forest Timber PSDH Rates” (“Evaluasi Tarif PSDH Kayu Hutan Alam”), Policy Brief, vol. 5, no. 5, 2011, Table 3.

make various forest products (including sawnwood; plywood and veneer; pulp and wood chips; particle, block and fibre board; and doweling, moulding and other woodworking), *i.e.*, wood *demand*.<sup>209</sup> We assumed that any excess demand over what the ministry reports as legally produced was met by wood from unreported and presumably illegal sources. Whatever the origin, we assumed that no fees for such wood went into state coffers (while bribes are often given to individual officials and termed “fees,” these fees go into the pocket of corrupt individuals rather than into the state budget).

#### **Step 4: Revenue Lost from Unreported Production**

In this step we assume that any unreported harvest to meet the excess demand was untaxed by the MoF. To estimate the losses, we calculated the amount the government could have collected had it reported the harvest and charged DR and PSDH at actual market rates.<sup>210</sup>

#### **Step 5: Assessed, but Uncollected Fees**

In the final step, we estimate the losses due to the government’s lack of ability to collect even the subsidized amount of fees that they should have assessed. We estimate this by subtracting the DR and PSDH that the Ministry of Forestry reported as collected from the fees we calculated it should have assessed applying its subsidized rates. The difference is the amount of assessed, but uncollected fees.

#### **Summary of Losses**

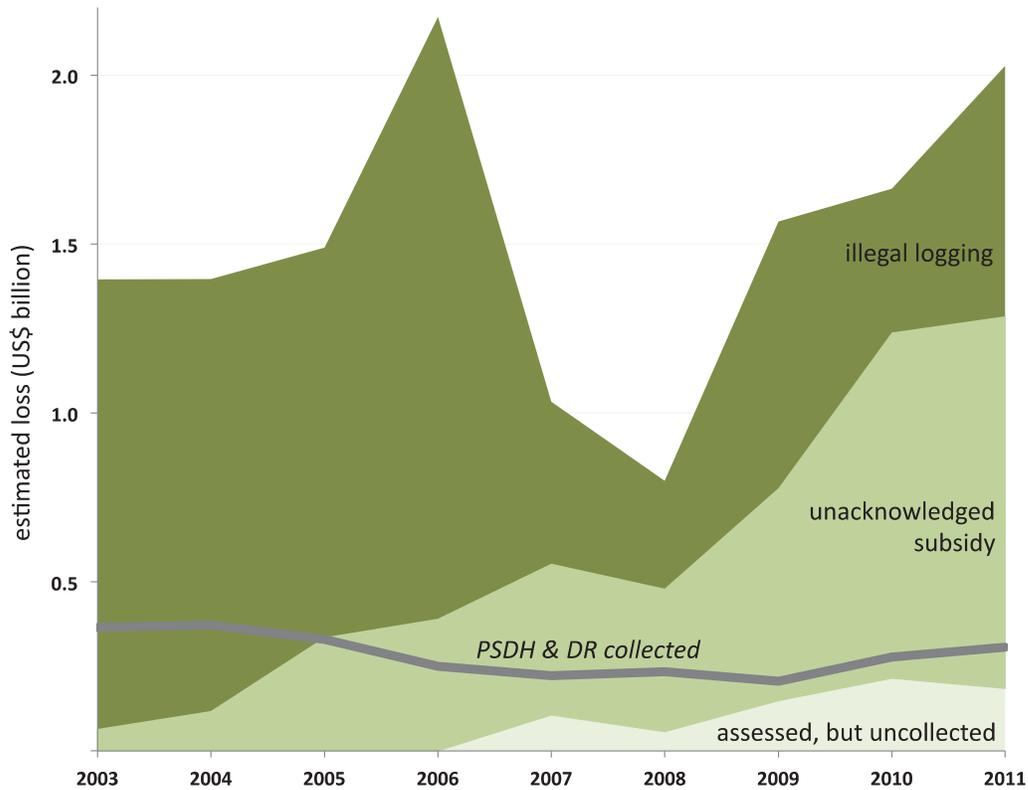
Our total estimate of the forest revenues lost to the Indonesian government (Figure 2) is the sum of the amount of fees uncollected on illegally harvested wood (using real timber prices), plus the subsidy incurred by undervaluing timber, plus the amount of assessed but royalties uncollected by the Ministry of Forestry.

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<sup>209</sup> To calculate “demand” we used a hierarchy of sources: we first used industry reports where available (though note that transparency on this issue in Indonesia is weak: while the plywood sector used to report production, they no longer do, and while the pulp sector stopped publishing annual reports in 2007, they have published summary production up to 2010). If industry data were not available, we used production reports from ITTO’s Annual Review and Assessment for the World Timber Situation. Finally, for products not covered above, we used production data in the MoF’s annual report (the most recent, Ministry of Forestry, “Forestry Statistics of Indonesia 2011” (“Statistik Kehutanan Indonesia 2011”), Table IV.6.3-8, “Log & Processed Wood Production.” Roundwood equivalent conversion rates were obtained from UNECE (for particle and block board), from Jakko Povry (a leading global forestry consulting firm) for pulp, and from the ITTO for other products.

<sup>210</sup> PNT was likely also due on much of this volume, but we do not include this in our estimates of loss because we do not know how much of the volume was from land clearing.

**Figure 2: Estimate of the Major Losses in Non-Tax Revenue from Industrial Logging = Loss Due to Royalties Evaded by Illegal Harvest + Subsidy from Undervaluing Legal Harvest + Losses from Assessed but Uncollected Royalties.**



Our calculation of lost revenue does *not* include losses due to the evasion of other minor forestry, corporate, and income taxes, and as noted above, it does not include losses due to unreported smuggling and the consumption of wood by small and medium sized sawmills, which may use even more timber than the industrial forestry sector.

## Appendix B: Correspondence

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January 2, 2013

Mr. Muhammad Akib  
Director  
PT Sumber Wangi Alam (SWA)  
Jl. Residen 2, Abdul Rozak Blok B No. 6  
Palembang  
South Sumatera

Cc: Mr. Agus Effendi, Attorney, PT SWA

Dear Mr. Akib,

Human Rights Watch is an international human rights organization that carries out research and advocacy in more than 90 countries around the world, including Indonesia. I am writing to express our concern over violence between PT Sumber Wangi Alam (PT SWA) and local communities in South Sumatra. In particular, we are preparing a report that deals in part with the incident that took place in the village of Sodong in the Mesuji District of South Sumatra on April 2011 and are writing to request information about these events and how your company is responding.

Human Rights Watch researchers visited Jakarta from February 27-March 14, 2012 and met with nongovernmental organizations including the Konsortium untuk Pembaruan Agraria, HuMa, Scale Up, Sawit Watch, and Walhi. As you may be aware, members of these organizations also sit on the Forest Conflict Desk of the Ministry of Forestry's National Forest Council (Dewan Kehutanan Nasional). These sources, together with media reports (for example in the Jakarta Post, December 30, 2011) have contributed to the following picture of the incident. We request your input on this description of the incident from your perspective.

Our sources allege that PT SWA acquired an oil palm operation that established oil palm plantation on community land without proper compensation. The compensation agreement is alleged to include the responsibility of the plantation to establish an area within the concession for the community to cultivate their own oil palm, but these community plots were reportedly never established. These sources further report that the community, frustrated by the company's failure to comply with the compensation agreement or to address their grievances, began harvesting palm fruit from company trees. Violence reportedly

broke out on April 21, 2011, when local residents harvesting fruit from palm trees planted by the company were confronted by security guards. In the melee, security guards allegedly killed two residents. There are some unconfirmed reports in the press from the victim's next of kin that the victims may also have had gunshot wounds. One of the security guards also later died from his wounds. Upon learning of the deaths, local residents allegedly attacked the company offices, killing two company staff and three security guards in retaliation, and publicly displayed the guards' severed heads and decapitated bodies.

To clarify our understanding of these events, we request your comment on the following specific questions:

- Do you dispute any of the facts of the incident as outlined above?
- Can you confirm that the victims from the community did indeed also suffer gunshot wounds?
- Have you seen or been given a copy of the report and/or findings of the Joint Fact Finding Team? If no, do you expect to be provided with this information?
- Do you have any contractual or informal agreements with local police or military including the provision of funds, food, accommodation, or other services and/or facilities in exchange for security? If so, please describe.
- Has your company taken any steps to respond to this incident? If so, please describe.
  - With regard to accountability of security personnel?
  - With regard to resolving the dispute with local community?
- Do you have any internal standards and policies guiding the performance of security staff and the use of police and/or military, and in protecting human rights? If so, please describe.

The purpose of our work in this area is to make recommendations to government, donors, and companies on how to resolve land disputes and prevent further outbreaks of violence, which are an ongoing threat to both the well-being and security of local residents as well as the peaceful operation of business.

If we receive your reply by January 23<sup>rd</sup>, we will be able to incorporate it into our report.

You may contact me by fax at (202) 612-4333 or by email.

Sincerely,



Arvind Ganesan  
Director, Business and Human Rights Division  
Human Rights Watch

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300 ; 917-591-3452

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January 2, 2012

Mr. Djunaini Nur  
Managing Director  
PT Silva Inhutani Lampung  
Wisma Budi  
Jl HR Rasuna Said Kav C-6, Lt 3, 8-9  
Setia Budi  
Jakarta 12940

Dear Mr. Nur,

Human Rights Watch is an international human rights organization that carries out research and advocacy in more than 90 countries around the world, including Indonesia. I am writing to express our concern over violence between PT Silva Inhutani Lampung and local communities in Lampung, and to request information about how your company is responding to this particular incident and steps you are taking to resolve community conflicts in ways that respect their rights and avoid further violence.

We are preparing a report that deals in part with the incident that took place in the area known as Register 45 of the Mesuji Regency in Lampung province. Our researchers visited Jakarta from February 27-March 14, 2012 and met with nongovernmental organizations including the Konsortium untuk Pembaruan Agraria, HuMa, Scale Up, and Walhi. As you may be aware, members of these organizations also sit on the Forest Conflict Desk of the Ministry of Forestry's National Forest Council (Dewan Kehutanan Nasional). These sources, together with media reports (for example in the Jakarta Post on December 30, 2011) have contributed to the following picture of the incident. We request your input on this description from your perspective.

Our understanding of the facts are that on November 6, 2010 provincial police acting as security at the request of pulp plantation PT Silva Inhutani Lampung allegedly shot dead one resident and injured another during the course of a joint operation with SIL and government forest rangers to displace a community living inside a concession, including destroying homes and agricultural fields. According to media reports, video footage shows a Pam Swakarsa (informal security militia) member, at the direction of a police officer, placing a machete in the hand of one

of the fatally wounded victims, at the direction of a police officer (Jakarta Globe, January 20, 2012).

To clarify our understanding of these events, we request your comment on the following specific questions:

- Do you dispute any of the facts as presented above?
- Have you seen the video referred to above, and if so can you confirm its authenticity and the accuracy of the allegation that the video appears to show a machete being placed in the hand of one of the victims?
- When did residents learn that their village was located inside of a concession granted to SIL? What prior notification was provided to the community of your intent to remove them and dismantle their homes?
- Have you seen or been given a copy of the report and/or findings of the Joint Fact Finding Team? If no, do you expect to be provided with this information?
- Do you have any contractual or informal agreements with local police or military including the provision of funds, food, accommodation, or other services and/or facilities in exchange for security? If so, please describe.
- Have any steps been taken to respond to this incident (If so, please describe)
  - With regard to accountability of security personnel?
  - With regard to resolving the dispute with local community?
- Do you have any internal standards and policies guiding the performance of security staff and the use of police and/or military, and in protecting human rights? If so, please describe them.

The purpose of our work in this area is to make recommendations to government, donors, and companies on how to resolve land disputes and prevent further outbreaks of violence, which are an ongoing threat to both the well-being and security of local residents as well as the peaceful operation of business.

If we receive your reply by January 23, we will be able to incorporate it into our report.

You may contact me by fax at (202) 612-4333 or by email.

Sincerely,



Arvind Ganesan  
Director, Business and Human Rights Division  
Human Rights Watch

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
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January 2, 2013

Mr. Tjandra Nursalim  
President Director  
PT Barat Selatan Makmur Investindo ()  
Niaga ROXIMAS Blok C-4/28  
Jalan K.H Hasyim Ashari  
Jakarta 10150

Dear Mr. Nursalim,

Human Rights Watch is an international human rights organization that carries out research and advocacy in more than 90 countries around the world, including Indonesia. I am writing to express our concern over violence between PT Barat Selatan Makmur Investindo and local communities in Lampung, and to request information about how your company is responding to this particular incident and any steps you are taking to resolve community conflicts in ways that respect their rights and avoid further violence.

We are preparing a preliminary report that deals in part with the incident that took place on November 10, 2011, in the Tanjung Raya district of Mesuji Regency, Lampung. Our researchers visited Jakarta from February 27- March 14, 2012 and met with NGOs including the Konsortium untuk Pembaruan Agraria, HuMa, Scale Up, Sawit Watch, and Walhi. As you may be aware, members of these organizations also sit on the Forest Conflict Desk of the Ministry of Forestry's National Forest Council (Dewan Kehutanan Nasional). These sources, together with media reports (for example in the Jakarta Post, Dec 30, 2011) have contributed to the following picture of the incident. We request your input on this description of the incident from your perspective.

During this incident, a local farmer was shot dead and seven more were wounded when over 100 paramilitary Mobile Brigade (Brimob) police officers, accompanied by soldiers (Tentara Nasional Indonesia, TNI Marinir), allegedly fired on a group of some dozens of residents who were converging on the concession headquarters of oil palm company PT Barat Selatan Makmur Investindo. The shootings reportedly occurred unexpectedly and without any warning shots being fired. The clash was allegedly set off after some residents began harvesting oil palm belonging to the company in retaliation for the seizure of community land without compensation.

To clarify our understanding of these events, we request your comment on the following specific questions:

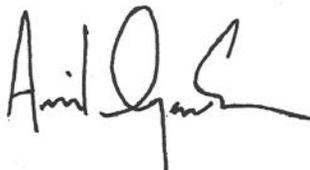
- Do you dispute any of the facts of the incident as described above?
- Have you seen or been given a copy of the report and/or findings of the Joint Fact Finding Team? If no, do you expect to be provided with this information?
- Do you have any contractual or informal agreements with local police or military including the provision of funds, food, accommodation, or other services and/or facilities in exchange for security? If so, please describe.
- Has your company taken any steps been taken to respond to this incident? If so, please describe.
  - With regard to accountability of security personnel?
  - With regard to resolving the dispute with local community?
- Do you have any internal standards and policies guiding the performance of security staff and the use of police and/or military, and in protecting human rights? If so, please describe them.

The purpose of our work in this area is to make recommendations to government, donors, and companies on how to resolve land disputes and prevent further outbreaks of violence, which are an ongoing threat to both the well-being and security of local residents as well as the peaceful operation of business.

If we receive your reply by January 23, we will be able to incorporate it into our report.

You may contact me by fax at (202) 612-4333 or by email.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arvind Ganesan', written in a cursive style.

Arvind Ganesan  
Director, Business and Human Rights Division  
Human Rights Watch

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300 ; 917-591-3452

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January 2, 2012

Brig. Gen. Boy Rafli Amar  
Public Relations Bureau Chief  
Mabes POLRI  
Jln. Trunojoyo No.3 Jakarta Selatan

Dear Brig. Gen. Amar,

Human Rights Watch is an international human rights organization that carries out research and advocacy in more than 90 countries around the world, including Indonesia. I am writing to express our concern over violence between plantation companies and local communities, and to request information about two specific incidents and the steps police are taking at a broader level to avoid further violence by its forces against citizens.

We are preparing a report that deals in part with violence that took place between plantation companies and communities in the Mesuji Regency of Lampung Province. Our researchers visited Jakarta from February 27- March 14, 2012, and met with nongovernmental organizations including the Konsortium untuk Pembaruan Agraria, HuMa, Scale Up, Sawit Watch, and Walhi. As you may be aware, members of these organizations also sit on the Forest Conflict Desk of the Ministry of Forestry's National Forest Council (Dewan Kehutanan Nasional). These sources, together with media reports (for example in the Jakarta Post, December 30, 2011; Antara, December 15, 2011), as well as noted by the letter dated January 12, 2012 to the Indonesian Ambassador from the United Nations Special Rapporteur on Extrajudicial Killings all agree on the following facts of these incidents.

The first incident occurred on November 6, 2010, in the area known as Register 45, when provincial police acting as private security forces (Pam Swakarsa) at the request of pulp plantation PT Silva Inhutani Lampung (PT SIL) allegedly shot dead one resident and injured another. The shootings were reported to have occurred on November 6, 2011 during a joint operation with PT SIL to displace a community living inside a concession, including destroying their homes and agricultural fields. The press reported that video footage (Jakarta Globe, January 20, 2012) allegedly shows a Pam Swakarsa member, at the direction of a police officer, placing a machete in the hands of an unarmed fatally injured resident. In a second incident, on November 10, 2011 in the

Tanjung Raya district, a local farmer was allegedly shot dead and seven more were wounded when over 100 paramilitary Mobile Brigade (Brimob) police officers, accompanied by soldiers (Tentara Nasional Indonesia, TNI Marinir), who were reported to have fired on a group of dozens of residents converging on the concession headquarters of oil palm company PT Barat Selatan Makmur InvestIndo. The shots were reported to have occurred unexpectedly, without any warning shots. According to our sources, the clash was set off after some residents began harvesting oil palm belonging to the company in retaliation for the seizure of community land without compensation.

While there was a Joint Fact Finding Team to investigate the incidents, the report and complete findings were never made public, and it is not clear what steps are being taken to address the team's recommendations. To clarify our understanding of these events and the police response, we request information regarding:

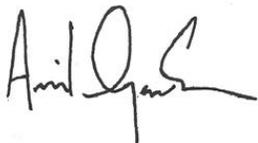
1. Details of progress in the investigations of these incidents. Specifically,
  - a. What charges have been laid related to these incidents? Have any of the accused been arrested? Have any cases gone to trial and if so what was the verdict and sentence?
  - b. Have any penalties been levied against police and/or Brimob personnel (either perpetrators or their commanders) involved in the shootings? If so, please indicate if the sanctions have been penal, disciplinary, or administrative and provide details of such sanctions.
2. What are the police procedures and standards for providing company security? Does the Lampung or South Sumatra police have such procedures and standards? Do you have any contractual or informal agreements with local police or military including the provision of funds, food, accommodation, or other services and/or facilities in exchange for security? If so, please describe.

The purpose of our work in this area is to make recommendations to government, donors, and companies on how to resolve land disputes and prevent further outbreaks of violence, which are an ongoing threat to both the well-being and security of local residents as well as the peaceful operation of business.

If we receive your reply by January 23<sup>rd</sup>, we will be able to incorporate it into our report.

You may contact me by fax at (202) 612-4333 or by email.

Sincerely,



Arvind Ganesan  
Director, Business and Human Rights Division  
Human Rights Watch

## Acknowledgments

This report was researched and written by Emily Harwell, with quantitative analysis provided by Arthur Blundell, both consultants for the Business and Human Rights Division of Human Rights Watch.

It was reviewed and edited by Arvind Ganesan, business and human rights director; Lisa Misol, business and human rights senior researcher; Jessica Evans, senior researcher/advocate for International Financial Institutions; Phelim Kine, deputy director, Asia Division; Andreas Harsono, Indonesia researcher; Richard Pearshouse, senior researcher, Health and Human Rights Division; James Ross, legal and policy director; and Joseph Saunders, deputy program director. Additional editorial and production assistance was provided by Darcy Milburn, senior associate. The report was prepared for publication by Grace Choi, publications director; and Fitzroy Hepkins, administrative manager.

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# THE DARK SIDE OF GREEN GROWTH

## Human Rights Impacts of Weak Governance in Indonesia's Forestry Sector

Corruption and mismanagement continue to plague Indonesia's forestry sector with serious consequences for human rights, the environment, and the economy. While Indonesia has recently introduced important reforms, such efforts have fallen far short of providing adequate human rights protections to forest-dependent communities.

*The Dark Side of Green Growth* details the scope of the problem. Between 2007 and 2011, losses in the forestry sector due to illegal logging and weak governance totaled more than US\$7 billion. These losses are particularly stark when viewed against Indonesia's disappointing progress on important human development indicators and human rights benchmarks. Funds that could be used to improve public welfare and social and economic rights are diverted to the pockets of a few individuals or needlessly lost through mismanagement. In 2011 alone, losses totaled more than \$2 billion—more than that year's entire national health budget.

An important pillar of Indonesia's 'green' economic growth strategy has been the rapid expansion of plantations for the production of palm oil and pulp for paper. The government's practice of issuing concessions on forestland claimed by communities, while failing to hold companies accountable for violating compensation agreements, has led to an escalation in land disputes. Rather than resolve conflict through a process that respects the rights at stake, the government has been increasingly willing to rely on the military to deal with land conflicts.

Human Rights Watch calls on Indonesian authorities to reform the timber verification system, better safeguard community land rights, and more actively combat mismanagement and corruption in the forestry sector, including through steps to improve transparency and independent monitoring of the sector.



*The village of Desa Sungai has lost its land and livelihood to a palm oil plantation. Singkil swamp rainforest, Aceh, Sumatra, Indonesia.*

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