WHO DECIDES?

Community Consent and Land Use: An Indonesian Case Study

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EXECUTIVE SUMMARY

In the past two years there have been a number of high-profile land-conflict cases in Sumatra, Indonesia, that have led to injuries and fatalities. These disputes were in Mesuji, Muarotebo, Pulau Padang and more recently in Ogan Ilir.

A number of campaign groups including Greenpeace and Friends of the Earth International seized upon these disputes, exploiting them to protest against private sector investments in agriculture and forestry across Sumatra. Beheadings were even reported to the media, and later found false.

While Indonesia already has both legal and regulatory mechanisms for dealing with land disputes, Western activists have instead demanded that customary landowners should have the right of "free, prior and informed consent" (FPIC).

An analysis of the reported land disputes shows that allegations that land management by the private sector were the cause of the disputes is for the most part wrong. There are local dispute settlement systems capable of solving these problems. External influence, connected to international activists, appeared to be the leading agent in fomenting the disputes.

'Free, prior and informed consent' has become a campaign goal of environmental campaigners in recent years. The FPIC narrative for environmental campaigners is simple: the private sector is engaging in projects that adversely impact on local communities. The solution is to ensure local people exercise FPIC before large-scale projects are commenced.

There are two major problems with this. First, the FPIC concept is not based on legal norms; its application has been extended beyond the original meaning in the UN Declaration on the Rights of Indigenous Peoples.

Second, FPIC is alien to established systems of governance and dispute settlement in the countries in which it is promoted. It is more alien than the private sector actors that campaign groups seek to blame.

The FPIC concept was given status in 2007 in a UN Declaration on the Rights of Indigenous People. There is no practical or internationally agreed definition for FPIC. That remains the case.

Despite this, a number of groups are calling for FPIC to be a central guideline in any arrangement to provide technical assistance in the REDD (reducing emissions from deforestation and forest degradation) programs being developed as an offshoot of the United Nations climate change negotiations.

The recognition of FPIC for indigenous communities is based on the understanding that customary frameworks exist within these communities, and that these legal frameworks should be recognised by states when allocating land and natural resources for other developments.

While FPIC for indigenous populations has since become standard in aid programs, most institutions recognise its limitations in the field, in particular that unanimity among all communities is impracticable.

Environmental campaign activists such as Greenpeace and WWF have taken FPIC In a different direction. They want FPIC to apply to all resource projects, not only for indigenous groups, but also all local and "affected" communities.

Applying FPIC to broader 'affected communities' has important adverse implications for undermining the rule of law. The implication of the Greenpeace-WWF model is that established land tenure and property rights within legal frameworks should be disregarded, and made subordinate to an over-arching concept of FPIC that would sit over the top of existing legal frameworks.

This would seem to have more to do with halting development projects altogether by disrupting operations and increasing perceptions of risks associated with these projects.

This deployment of FPIC by Greenpeace and other groups is both disingenuous and destructive. It undermines efforts of indigenous communities worldwide that are genuinely seeking to establish tenure claims. It also undermines economic development in these countries by increasing legal uncertainty, further weakening the rule of law and existing tenure regimes.

This report demonstrates that the complexities of land tenure in Indonesia cannot be over-simplified. Almost two decades of reform processes have yielded some results, specifically the establishment of dispute investigation and resolution procedures, as well as a broader political acknowledgement that tenure reform is a necessity for Indonesia.

There is a case to ensure better for indigenous communities

who operate outside the normal frame modern society. It needs to be rooted in a system which creates enduring property rights, the foundation of effective strategies to raise living standards in poor communities.

Responsible governments in developing countries should decide how that is to be achieved, not activist groups funded by interests outside those countries whose primary concern is not to raise living standards but impose their view of how societies in developing countries should progress.

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Acronyms and Abbreviations

APRIL	Asia Pacific Resource International Holding Limited
BAL	Basic Agriculture Law
BFL	Basic Forestry Law
BPN	Badan Pertanahan Nasional / National Land Agency
CBD	Convention on Biological Diversity
ENGO	Environmental Non-Government Organisation
FPIC	Free, prior and informed consent
ha	Hectare
HPH	Hak Pengusahaan Hutan / Selective Forestry Concession
HTI	Hutan Tanaman Industri / Industrial Forestry Concession
HTR	Hutan Tanaman Rakyat / Community Forestry Concession
IFC	International Finance Corporation
ILO	International Labor Organization
Komnas HAM	Komisi Nasional Hak Asasi Manusia
LAJ	Lestari Asri Jaya
LAP	World Bank Land Administration Project
RAPP	Riau Andalan Pulp and Paper
REDD	Reduced emissions from deforestation and forest degradation
SIL	Silva Inhutani Lampung
STR	Serikat Tani Riau
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNFCCC	United Nations Framework Convention on Climate Change
UN-REDD	United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation

1. INTRODUCTION – WHAT IS FPIC?

Public debate over sustainable development has recently been dominated by what many campaign groups refer to as 'land-grabbing'. Underlying this have been calls for the implementation of 'free, prior and informed consent' for indigenous groups and local communities. However, definitions for these concepts are problematic.

There is no clear or agreed definition for 'land-grabbing'. The general narrative that has been established by campaign groups is that large, often foreign, commercial investments for agriculture resource projects and in some cases conservation projects are acquiring large tracts of arable or forested land. According to critics, this results in negative social, economic and environmental impacts including: [1]

- Displacement of local populations (indigenous or otherwise) and violation of human rights;
- Decreased economic security for local populations, who are deprived of access to resources;
- Decreased food security for the broader (national or regional) population;
- Increased levels of deforestation – and therefore greater carbon emissions;
- Increased levels of environmental degradation.

The situations described by campaign groups vary greatly between different social and national contexts. At the core of the claims of land-grabbing is the notion that the acquisition of land for any project requires the free, prior and informed consent (FPIC) of communities affected by the project. There are two key points dealt with in this chapter: definitions of FPIC, and what constitutes an affected community.

1.1 INTERNATIONAL DEFINITIONS OF FPIC

There is no universally accepted definition of FPIC and its application.[2] FPIC has, however, been established as a norm in the areas of indigenous rights, labor rights and biodiversity protection. FPIC relates almost solely to the rights of indigenous peoples in these contexts. FPIC references in the work of the United Nations Declaration on the Rights of Indigenous People (UNDRIP), the International Labour Organisation (ILO), and the Convention on Biological Diversity (CBD) are to indigenous populations. Similarly, the United Nations Development Group in 2008 published the Guidelines on Indigenous Peoples' Issues, which addresses FPIC in this context.

The UNDRIP states that: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."[3]

The declaration also includes stipulates that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources."[4]

It should be noted that UNDRIP is not a legally binding declaration. It does, however, play a symbolic role in international policymaking. It also makes specific reference to the State as they key actor in relation to indigenous communities, not the private sector or other groups.

With regards to the communities affected, there is no universal definition of 'indigenous peoples' that FPIC necessarily applies to. There are, however, practical approaches that are discussed below.

1.2 NATIONAL DEFINITIONS OF FPIC

There are no domestic legal instruments that specifically recognise the international application of FPIC as outlined. Several legal jurisdictions have instruments in place that require consent processes to be followed. These include:

- Australia – consent for resource development in certain areas must be obtained in through statutory indigenous-controlled Land Councils;[5]
- The Philippines – The Indigenous Peoples Rights Act recognises the right of free, prior and informed consent of indigenous peoples for all activities affecting their lands and territories;[6]
- Aotearoa-New Zealand – the Crown Minerals Act 1991 provides special protection for Maori sacred land, as defined by the Te Ture Whenua Maori Act 1993[7]

1. J Cf. Greenpeace (2011). Briefing: Special-purpose agricultural and business leases in Papua New Guinea. Accessed at http://www.greenpeace.org/australia/Global/australia/11-076%20PNG%20Press%20Briefing_smaller_F-1.pdf
2. Colchester, Marcus (2010). Free, Prior and Informed Consent: Making FPIC work for forests and peoples. Research Paper July 2010. TFD Publication Number 11. Scoping paper prepared for TFD's FPIC Initiative.
3. United Nations General Assembly (2007), United Nations Declaration on the Rights of Indigenous Peoples, Article 19.
4. United Nations General Assembly (2007), Article 32.1.
5. Cf. Commission On Human Rights (2005). Sub-Commission on the Promotion and Protection of Human Rights Working Group on Indigenous Populations; Twenty-third session18-22 July 2005. Item 5 (b) of the provisional agenda. STANDARD-SETTING: LEGAL COMMENTARY ON THE CONCEPT OF FREE, PRIOR AND INFORMED CONSENT. The document refers specifically to: Aboriginal Lands Rights (Northern Territory) Act 1976, Pt. IV; Aboriginal Lands Rights Act 1983 (NSW), sec. 45(5); Aboriginal Land Act 1991 (Qld), sec. 42;, and Torres Strait Islander Land Act 1991 (Qld), sec. 80; Mineral Resources Act 1989 (Qld), sec. 54; Mineral Resources Development Act 1995 (Tas), Pt. 7, and; Aboriginal Land (Jervis Bay Territory) Act 1986 (Cth), sec. 43, 52A(1), (2)
6. Ibid.
7. Ibid.

1.3 WORKING DEFINITIONS OF FPIC IN DEVELOPMENT INSTITUTIONS

International development organisations such as the World Bank and the International Finance Corporation (IFC) have developed policies relating to both FPIC and indigenous peoples for their financing operations and policy interventions in developing countries.

The World Bank policy on Indigenous Peoples informs the IFC policy with regards to definitions of indigenous peoples. For the World Bank, indigenous peoples:

"refers to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:

(a) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;

(b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;

(c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and

(d) an indigenous language, often different from the official language of the country or region."[8]

The IFC sets out a process to achieve FPIC:

FPIC … will be established through good faith negotiation between the client and the Affected Communities of Indigenous Peoples. The client will document: (i) the mutually accepted process between the client and Affected Communities of Indigenous Peoples, and (ii) evidence of agreement between the parties as the outcome of the negotiations. FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree.[9]

Private sector actors have been encouraged to follow the IFC prescriptions through voluntary initiatives such as the Equator Principles. However it is the state, rather than the private sector, that can only ultimately apply FPIC; ownership of land or resources is generally determined by state laws and administrative decisions, not the private sector itself.

1.4 ENGO DEFINITIONS OF FPIC

Some campaign organisations, such as the Forest Peoples' Program, recognise that establishing FPIC definitions is problematic and that the process is still in its infancy.[11] This is in line with the view held by many indigenous groups and working groups within multilateral organisations.

However, there has been a concerted effort by environmental organisations to both promote and broaden the definition of FPIC with regards to resource projects.

The ENGO position advocated by groups such as Greenpeace and Rainforest Action Network is that FPIC is required for all large-scale commercial operations operating in forests, and that FPIC is required not only for indigenous groups, but also 'forest dependent' communities.[12]

The deployment of FPIC by ENGOs has been problematic for the following reasons:

- Definition – Definitions of FPIC are already problematic; a broad application of FPIC across projects with no processes in place adds to the problem;
- Motivation – Environmental and conservation campaign groups are by definition interested in conservation first, and the economic or social wellbeing of indigenous communities second;
- Definition of community – ENGOs such as WWF have called for FPIC definitions to be expanded to include broader affected communities, such as 'forest dependent' communities. This has been further reflected in forest certification schemes such as the FSC (Forestry Stewardship Council) where WWF has lobbied for an expansive definition of what constitutes an affected community.
- Private sector implementation – ENGO deployment of FPIC has concentrated on having private sector organisations – rather than states – apply FPIC. As mentioned above, it is the state that ultimately determines resource or land allocations, not the private sector.

The ENGO deployment of FPIC has the potential to undermine the development of indigenous communities by placing unworkable barriers on investment in resource projects.

Campaign organisations have used FPIC as a means to put the brakes on or halt completely development projects in poor countries. This is consistent with Greenpeace's broader

8. World Bank (2005), Policy on Indigenous People, OP 4.10, accessed at: http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20553653~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html
9. International Finance Corporation (2012), Guidance Note 7: Indigenous Peoples, pp7
10. Colchester, op. cit.
11. UN-REDD Programme (2011). UN-REDD Programme Guidelines on Free, Prior and Informed Consent
12. CF. Greenpeace (2008). Model Timber Procurement Policy Statement. Greenpeace Australia. Accessed at http://www.greenpeace.org/new-zealand/PageFiles/111638/model-procurement-policy.pdf and Rainforest Action Network (2011). Keep Slave Labour Out of US Grocery Stores. Accessed at http://understory.ran.org/2011/06/23/cargill-keep-slave-labor-out-of-us-grocery-stores/

objection to any large-scale economic activity in forest areas, whether for forestry, agriculture or mining.

The deployment of the term by ENGOs also potentially undermines development objectives of indigenous communities by applying what was a product of debates about indigenous development to the community at large.

The deployment of the term also undermines existing process and tenure rights systems in place in many countries, by advocating an all-encompassing, undefined process for the allocation of land and resources that can potentially undermine the rule of law as it applies to ordinary (non-indigenous) citizens.

This would result in an increase in the number of people with no legal standing that could potentially veto resource projects. This would potentially undermine the rule of law in these countries, and, rather than strengthening land tenure in developing countries, it would undermine it further. This would create greater uncertainty over proper rights, which would have a negative impact on development outcomes – as discussed in the next chapter.

2.FPIC IN THE CONTEXT OF REDD

FPIC has gained prominence within frameworks for Reduced Emissions from Deforestation and Forest Degradation (REDD). FPIC is being seriously considered under the policy framework for UN-REDD, a joint program being administered by the United Nations Environment Programme.

2.1 BACKGROUND

There have been calls by campaign groups for FPIC to be included in international agreements on REDD (reduced emissions from deforestation and forest degradation).

REDD was first proposed under the United Nations Framework Convention on Climate Change (UNFCCC) in 2005. The basic premise of REDD was this: an international carbon pricing mechanism could be used to value the carbon in stored in standing forests; this would give developing countries an incentive to leave forests standing, reduce carbon emissions and provide income for forest-dependent communities.

REDD was originally presented as a simple solution. However, seven years of negotiations, analysis and pilot testing have effectively discredited the scientific and economic basis of REDD. First, an international carbon pricing mechanism through an international agreement on climate change is not in prospect; second, emissions from deforestation are approximately 50 per cent of original estimates;[13] third, the carbon-based value of standing forests is unable to compete with other land uses such as agriculture or mining;[14] fourth, there are no current examples of local communities receiving payments from 'carbon conservation' through multilateral channels.[15] It should also be noted that international law enforcement organisations have highlighted a high risk of fraud associated with unregulated private-sector carbon conservation projects.[16]

Despite this, REDD is still being negotiated within the UNFCCC framework, and REDD projects are also being implemented under the auspices of the UN-REDD, a collaborative program between the UN Environmental Programme, the UN Development Programme and the United Nations Food and Agriculture Organization. UN-REDD is currently being implemented in 16 countries, including Indonesia.[17]

Within both the UNFCCC and under UN-REDD there have been calls by campaign groups to include FPIC within either negotiated agreements or guidelines for project activity respectively.

2.2 FPIC UNDER THE UNFCCC

In 2011 under the UNFCCC, countries agreed to implement 'safeguards' for REDD policy approaches and incentives for reduced deforestation. The agreement stated that any activities should, in simple terms, provide social, economic and environmental benefits, and that they should be driven by national development priorities.

The agreement also stated that any activities should have "respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws," and that there should be the "full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities."

There was not, however, an agreement that FPIC should be a part of the process.

2.3 FPIC UNDER UN-REDD

The UN-REDD program has developed draft guidelines for the implementation of REDD projects under its auspices.[18] The guidelines are not yet operational and will only apply to UN-REDD projects. The guidelines appear to require further clarification of which groups the guidelines apply to, and the appropriateness of the guidelines for specific legal frameworks.

International legal norms on indigenous groups have been reasonably well-developed through the United Nations Declaration on the Rights of Indigenous People. These have been applied at the practical level through institutions such as the International Finance Corporation.[19] However, the UN-REDD principles diverge from these norms; the UN-REDD guidelines refer to 'local communities' or 'forest dependent communities that have customary and/or legal rights to the resource'.

13. Nancy L. Harris, Sandra Brown, Stephen C. Hagen, Sassan S. Saatchi, Silvia Petrova, William Salas, Matthew C. Hansen, Peter V. Potapov, and Alexander Lotsch. 'Baseline Map of Carbon Emissions from Deforestation in Tropical Regions'. Science 22 June 2012: 1573-1576.
14. Irawan, S., Tacconi, L., Ring, I., 2011, Stakeholders' incentives for land-use change and REDD+: the case of Indonesia. Working Paper #2, Asia Pacific Network for Environmental Governance, The Australian National University.
15. This also applies more broadly to payments for environmental services (PES), which have not materialised on a large scale, despite repeated attempts to place and economic value on environmental traits. CF. Landell-Mills, N., and Porras, I.T. (2002) "Silver bullet or fool's gold? A global review of markets for forest environmental services and their impact on the poor", Instruments for Sustainable Private Sector Forestry. London: IIED
16 Vidal, John. 2009. "UN's forest protection scheme at risk from organized crime, experts warn." Guardian.co.uk, 5 October 2009.
17 Countries with UN-REDD National Programmes: Bolivia, Cambodia, Democratic Republic of the Congo (DRC), Ecuador, Indonesia, Nigeria, Panama, Papua New Guinea, Paraguay, the Philippines, Republic of Congo, Solomon Islands, Sri Lanka, Tanzania, Viet Nam and Zambia. Other partner countries: Argentina, Bangladesh, Benin, Bhutan, Cameroon, Central African Republic, Chile, Colombia, Costa Rica, Ethiopia, Gabon, Ghana, Guatemala, Guyana, Honduras, Ivory Coast, Kenya, Malaysia, Mexico, Mongolia, Myanmar, Nepal, Pakistan, Peru, South Sudan, Sudan, Suriname and Uganda.
18. UN-REDD (2011). UN-REDD Programme Guidelines on Free, Prior and Informed Consent. UN-REDD Secretariat, Geneva, Switzerland.
19. International Finance Corporation (2012). Performance Standard 7: Indigenous Peoples. International Finance Corporation, Washington DC.

It effectively calls for FPIC principles to apply to this broader group – not just indigenous communities – and also calls for project partners (i.e. implementing governments) to seek FPIC from these groups.

The guidelines also state that "communal property rights based on traditional use, culture, and customary laws must be respected whether or not they are explicitly recognized by the national government."

However, it is the role of national governments to ensure that any lands allocated for resource projects or conservation areas should not conflict with existing tenure claims from indigenous communities or otherwise.

There are clear legislative and regulatory channels for indigenous and/or customary tenure claims in Indonesia, particularly at the village and provincial level (see next chapter), from recognition of customary claims to dispute resolution. The current dispute resolution mechanisms also recognise the complex nature of tenure claims in Indonesia and the diverse range of stakeholders, whether indigenous or local communities or the private sector.

UN REDD is arguably the only international multilateral fora where FPIC is being considered seriously beyond indigenous peoples. Any adoption or implementation of binding FPIC principles within this forum will to an extent normalise whatever is agreed within these fora. This will have direct and indirect implications for national legal frameworks relating to land tenure. The remainder of the report examines the implications of FPIC in relation to land tenure in Indonesia.

3. LAND TENURE AND FPIC IN INDONESIA

Land tenure in Indonesia is vastly complex. It is hindered by jurisdictional overlaps as well as conflicting legislation and regulation. It is further complicated by demographics and domestic migration, which has led to conflicts between communities and ethnic or social groups. The resulting policy environment is one that is open to exploitation by civil society and business groups alike.

3.1 BACKGROUND

The Indonesian legal system is based on Roman-Dutch law, Islamic law and customary (adat) law. Dutch colonisation during the 350 years preceding the end of World War II left a legacy of Dutch colonial law. Some colonial legislation still applies today.

After Indonesian independence in 1945, Indonesian authorities began creating a national legal system, which is the dominant legal system. Islamic law applies only in civil matters. Adat or customary law is an additional layer in the legal framework, though it is administered at district or village level. Adat law makes departures from state in laws relating to marriage, inheritances, land law and delict.

While adat law can be either statutory or non-statutory, it should be noted that adat law is predominantly non-statutory.[20]

Land administration in Indonesia is extraordinarily complex with an estimated 572- plus laws, regulations, and other documents relating to land and formal government processes.[21]

Under the colonial system, land laws were governed at once by both the colonial civil code, and rights based on adat law. The 1960 Basic Agrarian Law (BAL) was introduced to overcome this dual system of administration.

The law revoked all prior regulations relating to land, soil and water and effectively gives control of all lands to the State. It also recognised adat law, subject to implementing regulation, but subjugated adat law to national and state interests.

The BAL recognised six different types of land rights: ownership (Hak milik); exploitation (Hak guna usaha); building (Hak guna bangunan); use (Hak pakai); lease (Hak sewa); opening-up land (Hak membuka tanah); forestry or forest management (Hak memungut hasil hutan). Hak ulayat (or adat legal land rights) is informally recognised, subject to State legislation or regulations, but it is not registrable alongside other forms of tenure.

Problems were encountered when implementing regulations of the BAL failed to materialize; or, when regulations were drafted, they contradicted or overlapped adat laws. As a result, the Government has recognised customary land provided that the following criteria are present:

- Land under the ownership of a recognised adat community;
- Land with defined and understood boundaries; and
- The community is recognised and functioning under adat law principles.

In practical terms, the validity of indigenous or customary tenure by local communities is determined at the district level and by district-level laws.

3.2 LAND TITLING

There are an estimated 80 million parcels of land in the country, but in the 45 years since registration of land rights was established under the Basic Agrarian Law, only 30 million of these have been registered.[22]

The recording of land rights takes place either through private conveyancing or through the registration of deeds. Private conveyancing of titles is unregulated and informal. However, private conveyancing is considered a legal form of transfer under adat law, based on the exchange of currency (rather than central registration). Conveyancing requires witnessing by two people. The informal nature of private conveyancing creates significant risk of fraud; there is no central register to assess the validity of title documents.

Formal conveyancing takes place through the registration of titles deeds at the National Land Office. The registration of deeds is a negative system, i.e. the object of the system is not to create a comprehensive land registry, but to ensure that overlapping claims do not occur and that the property rights of legitimate owners are upheld.

20. ASEAN Law Association (2005), 'Indonesian Legal System', Legal Systems in ASEAN, Ed. Prof. Dr. Paulus E. Lotulung, SH and Susanti Adi Nugroho, SH., MH
21. Hamid Yusuf. Land Administration System In Indonesia. 17th AVA Congress Siem Reap, Cambodia
22. World Bank (2003b) Indonesia - Land Management Policy Development Program. Updated Project Information Document, Report No AB414. Updated 3 October. Washington, World Bank

3.3 TENURE ON FORESTED LAND

Around 70 per cent of Indonesian land is under the control of the Ministry of Forests, which is classified as forested land and therefore falls under the Basic Forestry Law (BFL), as opposed to the BAL.

There are no rights in state forest areas (Kawasan hutan) under the BFL. No individual or customary property rights can be registered on land classified as forests. Instead, commercial utilisation permits are granted for forest land, such as HPH concessions (selective forestry concessions), HTI (plantation concessions), HTR (community forest concessions). The utilisation permits do not grant property rights, but utilisation rights. On forested land – as with agricultural land – authorities register separate rights for ownership, cultivation, building, use, and management.

Adat communities can apply for HTR rights through a documentation process. The Government will allocate HTR concessions for social or village forestry once the adat community is recognised as functioning by provincial authorities. This is then passed to the Ministry of Forestry, which will approve adat or customary forest use within the HTR concession. This does not, however, provide for customary rights over land; communities are subject to the same legal constraints as private sector actors or individuals.

3.4 CUSTOMARY TENURE PRACTICES IN INDONESIA

NGOs have generally demanded that all tenure should revert to customary tenure in Indonesia. This has has been a common call in environmental campaigns against agriculture, forestry and mining in Indonesia.

Customary tenure practices differ between communities. The key decision-making point in most customary access decisions is often the village chief or village elders.

Clear definition of communities, land that falls under communities (formal or informal) and therefore customary tenure is further complicated by current and historic high levels of domestic migration.

Despite claims that customary forestry and farming practices are sustainable, there are a number of land-use practices used by local communities that are ultimately unsustainable. These include:

- Fire - The use of cultivation or fire to establish tenure is still often practiced in Indonesia. As adat communities are often unaware of either forest land classifications or pre-existing (legal) land claims, this can and has resulted in large-scale forest fire outbreaks. The 1997 South East Asian haze event was arguably primarily caused by the use of fire to establish customary tenure.[23]
- Encroachment into conservation areas – The encroachment of local communities into national park and conservation areas in Indonesian has been well-documented by the Indonesian Government and by NGOs operating in Indonesia. Almost one-third of Tesso Nilo National Park and two-thirds on Bukit Tigapuluh have been either deforested, logged or encroached by local communities. Encroachment within and adjacent to the park boundary is significant. Inside the territory most recently added to the Protected Area, encroachment was estimated to have doubled between 2005 and 2006 (from 18,000 ha to 35,600 ha).
- Illegal logging – While large commercial operations are occasionally blamed for so-called illegal logging, there is a large number of small-scale operations run by local communities that are illegal under Indonesian forest laws. One of the reasons this has occurred is that populations that existed in forests prior to the drawing up of the national forest estate were effectively ignored during the classification of these lands.

All of these activities are circumscribed in law.

3.5 LAND REFORM IN INDONESIA

There has been long-term recognition domestically and internationally that land administration reform in Indonesia is vital to the country's prospects.[24]

Investment in agriculture, forestry and mining is subject to increased risk because of uncertainty over titles, regulations, procedures and adjudication.[25]

Land markets are highly inefficient and underdeveloped. Using land as collateral for investment has and continues to be problematic.

Informal ownership has and continues to fuel social conflicts between social groups, administrations and businesses.

A number of initiatives have attempted to tackle this:

- Establishment of the National Land Agency (BPN) in 1988 – BPN was tasked with specific responsibility for recognition, registration and administration of property rights and dealings;

23. Asian Development Bank and ASEAN (2001). Fire, Smoke and Haze: The ASEAN Response Strategy
24. Dowall, David E. and Michael Leaf. 1991. "The Price of Land for Housing in Jakarta", Urban Studies, October 1991 vol. 28 no. 5 707-722
25. World Bank (1994). Indonesia Land Administration Project – Staff Appraisal Document. World Bank, Washington DC.

- World Bank Land Administration Project (LAP) in 1994 – The World Bank funded LAP to: accelerate land titling and registration, strengthen the BPN, devise a long term policy for land management;
- World Bank Land Management and Policy Development Project in 2004 – continued the work of the LAP, but with added components on the development of a land information system and capacity building for local governments.[26]

Although the status quo is recognised as problematic and in need of institutional reform, reversion to customary tenure on large tracts of land would ultimately be problematic for Indonesia. Many NGOs claim that adat forest management would somehow solve Indonesia's environmental and social management problems.

The decentralisation process that took place following the Suharto era gives a clear example of the negative impacts of hastily implemented policy on a large scale.

During this period, the Ministry of Forestry issued a decree stating that previously cash-starved district administrations were permitted to issue timber utilisation permits for production and conversion forest areas of up to 1,000 ha. Ordinarily this was not permitted for areas where utilisation rights had been established. However, adat communities would be able to undertake these activities within existing forestry concessions.

Although the decree was issued, the implementing regulation was not. Subsequently, permits stretching into hundreds of thousands of hectares were issued with no regulatory oversight.

The decentralisation period is now recognised as the peak of both illegal logging and deforestation in Indonesia.

3.6 FPIC AND INDONESIAN LAW

The working definition of FPIC currently being promoted by civil society groups requires the free, prior and informed consent of communities that have the "customary and/or legal rights to the territory and/or resource in question".[27]

However, establishing who the legitimate holders of these rights are prior to the commencement of any development is arguably a greater challenge than obtaining FPIC itself.

As explained above, customary and legal tenure in Indonesia are linked. Indonesia's legal framework provides a mechanism for indigenous communities, customary tenure and land-use practices (on agricultural land) to be recognised under village and provincial jurisdictions. Forested land remains in the hands of the state, and there is no mechanism for tenure, customary or otherwise. But there are established legal processes for indigenous community and private-sector interests to obtain utilisation rights.

The negative registration for deeds places the onus on communities to establish tenure or utilisation rights themselves. This is particularly the case for non-indigenous and unofficial migrant communities. As with private companies, these communities have a legal responsibility to assess whether there are existing claims on the land they occupy or intend to occupy, and to comply with existing laws and regulations on resource utilisation. There is no reason that they should be considered above the law. These types of claims are explored in the case studies.

26. The project was original referred to as 'Indonesia Land Administration Project II'; Cf. World Bank (2000). Indonesia Land Admin Project II Project Information Document (Report No PID 8915). World Bank, Washington DC.

27. UN-REDD, op. cit.

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4. PROCESSES OF CONFLICT RESOLUTION IN INDONESIA

There have been a number of high-profile land-conflict cases in Indonesia that have led to injuries and fatalities. Activist organisations have been eager to blame the private sector and demand free, prior and informed consent for 'customary landowners'. However, Indonesia already has both legal and regulatory mechanisms for dealing with land disputes.

4.1 A LACK OF DEFINITION

Indonesia's national planning agency defines a land dispute as a "difference of opinion with regard to the authentication of land rights, grant of land rights and registration of land rights including conveyance and publication of rights to title." [28]

It further notes three points that lead to land disputes:

- unclear land certificate administration and/or land information system that induce the duplication of one land certificate given to multiple people,
- uneven land ownership distribution, and
- the legality of the land ownership.

The most common circumstances that give rise to land disputes are those when land is owned and registered but left unused for long periods of time. Local communities will then assume the land is vacant. Often this simply means that borders of titled land are encroached by existing local communities as they expand. This type of encroachment can take place between the same types of groups, e.g. communities or ethnic groups, or between different types of groups, e.g. private sector, government and local communities).

The popular representation of land disputes in Indonesia is a struggle between local communities which have had their property rights violated or land taken from them by another party.[29]

However, the situation is significantly more complex. Each of the elements in this scenario– the local community, the property rights and the dispossessing party – is not easily defined.

First, the 'local community' is not easily defined. Small communities that have laid claims to land are likely to be either an indigenous group that has claims to the land; groups that have laid claim to the area as part of an official transmigrasi program; unofficial domestic migrants that have laid claim to the local area.

The basis for these claims may be based on customary tenure, legal tenure and/or a combination of the two. Conflict may (and is likely to) exist between these groups.

Second, the property rights are not easily defined. The problems associated with land tenure in Indonesia were outlined in the previous chapter.

Third, 'dispossession' cannot simply be attributed to the private sector actor. The acquisition of property rights is the end result of a series of processes within legal institutions. The private sector does not simply take land where it sees fit; various levels of government designate lands for various purposes – among them use for private purposes.

As has been outlined in previous chapters, there is clear institutional conflict between central, provincial and local administrations. In addition, legal adjudications can put the legal system in conflict with the government.

There is sometimes little incentive for provincial governments or local-level governments to follow legal rulings. This can be exacerbated if the local or provincial government considers the ruling to be interference in local affairs from national administrations in Jakarta. In these cases, the lack of resources for policing and administration means that such rulings cannot be enforced.[30]

This can result in negative incomes for both communities and the private sector. Dispossessed local communities may resort to extreme actions to gain publicity when negative rulings are imposed. Similarly, a ruling in favour of a company that is unenforceable can make land assets worthless.

4.2 HIGH LEVELS OF INFORMAL DISPUTE RESOLUTION

Disputes – of all kinds - in Indonesia are resolved through both formal and informal channels. Approximately 30 per cent of all disputes are resolved formally, i.e. through police (28 per

28. Harsono, B. (November, 1996). The land dispute resolution according to rules in Basic Agrarian Law. Paper presented at the Basic Agrarian Law XXXVI Anniversary Conference, The State Minister of Agrarian Affairs/Head of the National Land Agency Office, Jakarta, Indonesia.
29. Cf. Jason Tedjaksukmana, 'Land Wars: Indonesia Unrest Shows Risks of Resource-Led Growth'. Time, February 19 2012. Accessed at http://www.time.com/time/world/article/0,8599,2106967,00.html#ixzz29QZMuBB7
30. Cf. International Crisis Group (2012). Indonesia: Defying the State, Asia Briefing No 138. International Crisi Group, Brussels.
31. Karrie McLaughlin and Ari Perdana (2010). Conflict and Dispute Resolution in Indonesia: Information from the 2006 Governance and Decentralization Survey. Indonesian Social Development Paper No. 16. World Bank, Jakarta and Washington.

cent) and prosecutors/courts (2 per cent). The vast majority of disputes are resolved through an informal system of village-level officials, informal leaders and family and friends.[31]

Land disputes follow a similar pattern. The majority of land disputes in Indonesia are not reported. The Wold Bank notes that small land disputes (of which there are many) are likely to be addressed by informal resolution among village-level officials. Incidents that become violent will necessitate police involvement.

However, informal channels are used for the majority of cases. A World Bank survey has noted that police are part of resolution processes in around 16 per cent of all land conflicts across Indonesia. Percentages were lower in Sumatra (12 per cent), Java (11 per cent) and Kalimantan (12 per cent). In Sulawesi, the percentage is much higher at around 33 per cent.[32]

The significant problem with informal resolution of land disputes relates to its recognition under Indonesian law. An intra-village or even inter-village dispute may be resolved by community leaders. However, the resolution of this dispute through adat law will not always be recognised under Indonesian law. Additionally, the informal resolution is also unlikely to take into account formal titles that may already exist on the disputed land.

The Indonesian government has encouraged alternative dispute resolution mechanisms that are regulated.[33] The national planning agency has also developed and implemented programs such as land dispute settlement operations (Operasi tuntas sengketa) and land dispute investigation operations (Operasi sidik sengketa).

4.3 CIVIL SOCIETY APPROACHES

Civil society groups – particularly Western environmental campaign groups – appear to have been reluctant to either engage or acknowledge these processes in Indonesia, particularly in the context of REDD.

There have been a number of reasons for this. The first is because the tenure claims of many indigenous people in Indonesia (and elsewhere in the world) are in conservation and protection areas, placing the conservation movement[34] at loggerheads with indigenous movements. The second is because cash crops will pay higher returns to smallholder farmers than income generation from conservation. [35] The third is because of the sheer complexity of competing tenure claims in Indonesia (explored above) and the complexity and ambiguities of Indonesian law.

Subsequently, it is easy for campaign groups to make simplistic, negative claims about behaviour of the private sector that only relates to a small number of land disputes. This achieves a de facto conservation outcome (delays to agricultural, mining or forestry projects) by increasing regulatory or compliance costs and operational risk, rather than a social and economic outcome (establishment of secure tenure for local communities).

This narrative creates a policy environment in which campaign groups can push for the private sector – particularly financial institutions – to become the proxy agent for land-use decisions. While this may be appropriate for jurisdictions where property rights are robust (e.g. private conservation on private lands in the US or Australia), introducing the private sector as a possible decision maker over land use is likely to cloud the policymaking environment. This is particularly the case where – as in Indonesia – alternative dispute resolution mechanisms are specifically being promoted to address these problems.

4.4 MISUSE OF FPIC TO RESOLVE DISPUTES

FPIC has been advocated by environmental groups as a means of ensuring access to land or forest resources for local communities, thereby ending land disputes. The approach to FPIC to date has been one where the private sector must gain the consent of communities to undertake resource projects. However, as noted above, disputes often occur horizontally; it is simply not the case that land disputes or conflicts only occur between the private sector and local communities.

Key to FPIC is the assumption that land tenure systems (customary or legal) operate effectively and that tenure within these systems is relatively static. In countries such as Indonesia it must be recognised that land tenure is dynamic.

FPIC is therefore no guarantee of zero competing land claims in Indonesia. The complexity of the land tenure system and the lack of maintained land registers mean that there is no guarantee that competing claims do not emerge over time from other communities or private sector actors.

Rather than a top-down set of principles to be adhered to, FPIC should be used as a policy instrument once other fundamentals – e.g. functioning land registries, effective titling systems – are in place.

For governments, FPIC can only be considered as useful once the appropriate policy measures related to land tenure (customary or otherwise) are in place.

For the private sector, FPIC should be best used as a voluntary risk management tool that is part of a broader stakeholder mapping process.

Indonesia's existing policy instruments should be the basis for addressing indigenous and local communities' tenure claims in Indonesia. Its implementation may be flawed, but imposing a top-down approach such as FPIC will not solve the fundamental need for broader tenure reform; nor will it end competing land claims.

32. Ibid.
33. Mas Achmad Santosa (2003). Development of Alternative Dispute Resolution (ADR) in Indonesia. ADEAN Law Association, Indonesia. Accessed at http://www.aseanlawassociation.org/docs/w4_indo.pdf
34. Moira Moelionon and Edy Purwanto. A Park in Crisis: Local Governance and National Policy. Proceedings of the 12th Biennial Conference of the International Association for the Study of Commons. Accessed at http://iasc2008.glos.ac.uk/
35. Landell-Mills, N., and Porras, I.T. (2002) "Silver bullet or fool's gold? A global review of markets for forest environmental services and their impact on the poor", Instruments for Sustainable Private Sector Forestry. London: IIED

Throughout 2010 to 2012, widespread publicity was given to land disputes across Sumatra. A number of campaign groups including Greenpeace and Friends of the Earth International seized upon these disputes, exploiting them to protest against private sector investments in agriculture and forestry across Sumatra. High-profile disputes took place in Mesuji, Muarotebo, Pulau Padang and more recently in Ogan Ilir.

5.1 MESUJI

Arguably the most prominent land dispute over the past two years took place in an area known as Register 45 in Mesuji District in Lampung. One fatality occurred when local populations clashed with security officers in late 2011.

The disputes were portrayed by some members of the media as a straightforward case of private sector interests – a plantation company PT Silva Inhutani Lampung (SIL) – running roughshod over local populations. To add to this, a number of claims were made that beheadings had taken place; however, video evidence of beheadings had been shown to be fabricated.

However, the clashes – particularly in Tuga Roda – have actually been the result of long-standing disputes over tenure rights to the land in the area.

A total of 43,100 ha had been granted to SIL in the Register 45. The land had originally been granted under Ministry of Forestry regulations in 1991.[36] SIL was given permission forest plantation development in 1997.[37]

Although the land was granted, SIL had not yet developed the land; it then became subject to widespread squatting. A number of squatter communities were evicted at various points between 1997 and 2007. This included a local community – the Megow Pak – which commenced encroaching upon the land in 2005, and were evicted in 2007. The Mesuji area was made into an autonomous regency in 2009. According to court testimony, an indigenous community leader of the Megow Pak tribe had commenced selling off plots of land for between USD500 and USD1000 per hectare.[38]

Subsequently a large number of domestic migrants from Bali and other Indonesian islands travelled to Mesuji to purchase land. These land transactions were found to be illegal; rights to the land had already been allocated to SIL. In addition, as indicated above, no tenure rights can be established on land classified as forest; the land belongs to the State. News reports indicate that more than 12,000 ha had sold or illegally occupied.

As the company was overwhelmed, it requested assistance from police and security forces to enforce its property rights. Similarly, squatters who believed they had purchased clear rights to the land, attempted to defend their property rights.

While activists such as Greenpeace have been keen to use Mesuji as an example of poor forest governance and blame the private sector for 'land grabbing',[39] the case has been shown to be significantly more complex. It should be noted that the community leader was eventually charged and convicted of fraud.[40]

5.2 MUAROTEBO

Early in 2012 it was widely reported in Indonesian media that a land conflict had emerged in Tebo regency in Jambi, Sumatra. The dispute was between PT Lestari Asri Jaya (PT LAJ) and local communities.

According to news reports, two local community members engaged in arson against the company. This resulted in one fatality and three injuries, including to a police officer.

The actions also resulted in the destruction of a number of motorcycles, heavy equipment and the theft of computer equipment and money.

However, details emerged that the arson and violent clashes were in fact caused by a number of external agitators, referred to in Indonesian news reports as anarchists. The suspects were later arrested outside of the province.

The incident followed disputes covering some 60,000 ha. The land in question had been earmarked for selective timber felling under a HPH permit. However, the forest areas had not been exploited since around 2006. PT LAJ acquired the rights to the land in 2010.

36. Keluar SK Menhut No. 688/Kpts-II/1991
37. SK No. 93/Kpts-II/1997
38. "Sidang Wan Mauli Dikawal FPI" in Lampung Post, May 18 2012.
39. Greenpeace (2012). Setahun Moratorium Hutan Perbaikan Tata Kelola Hutan Belum Terlihat Siaran Pers - 3 Mei, 2012
40. "Wan Mauli Divonis 5 Bulan Penjara" in Lampung Post, July 31 2012.

However, migrants form North Sumatra had purchased the land from local 'agents' who had on-sold small parcels of land for approximately USD100. Once PT LAJ attempted to commence activity on the land it discovered approximately 700 migrant households present on the land engaging in farming activity.

Mediation between relevant local communities, customary tenure representative groups, government departments (from national, provincial and regional levels) and police took place several months following the incident.

The mediation found that three migrant villages were established on the HPH land. This land was allegedly fraudulently sold to migrant groups by 'rogue' agents (oknum-oknum setempat). This had been occurring since approximately 2009; local authorities were alerted by local village chiefs in 2010, but no action was taken. During the mediation it also became apparent that the encroaching groups had purchased the land in good faith.

The mediation directed:

- the encroaching migrant groups to not engage in further land expansion;
- local villagers not to engage in any land dealings with migrant groups;
- local authorities to undertake an inventory of the encroaching village and villagers;
- the company to come to an agreement with local communities;
- local communities to propose a community forestry agreement to the Ministry of Forestry.[41]

In this case, it is not apparent that FPIC agreements could in any way have prevented the conflicts at Tebo.

Migrant communities had a claim to the land, but the claim was based on fraudulent behaviour by other contracting parties and therefore illegitimate.

In addition, FPIC undertaken at the time of the establishment of the forestry permits would not have registered the presence of the migrant communities. Similarly, companies cannot be expected to undertake FPIC activities every time a transfer of title is made; this would discourage an effective land market.

The Tebo incident is evidence of a tenure and titling system that does not work effectively – not a 'land grab' by the private sector.

5.3 OGAN ILIR

In 2012, there has been an ongoing dispute between a state-owned sugar plantation company, PTPN VII Cinta Manis, and local farming groups. Police were called in to assist managing the conflict after it was reported that local groups – described as 'anarchists' by Ogan Ilir – had committed acts of arson and looting.

In July of this year, clashes between the law enforcement officers and local communities resulted in the death of a 12-year-old boy and a number of injuries. Blame for the accidental shooting has been directed at police.

According to media reports, there have been disputes between local communities and Cinta Manis since 1982. Over the past two decades, appropriation of land by the company in the name of the state, an influx of workers under the transmigrasi program, as well as ongoing uncertainty over land tenure throughout the reformasi period have resulted in a build-up of resentement towards the company.

The Indonesian Human Rights Commission (Komnas HAM) has stated that the company controls around 20,000 ha of land, but only has harvest rights for around 6,500 ha of land.

Komnas HAM also recommended that the Indonesian planning agency re-map the boundaries of land available to Cinta Manis.[42]

Environmental campaign group Wahli – which has longstanding ties with the US-based Rainforest Action Network – has been an active advocate for Ogan Ilir residents since the fatality.

However, their involvement appears to have been opportunistic. There are no forested areas that can be considered critical in the 20,000 ha region. Wahli has generally avoided issues relating to peasant rights and generally focused on environmental laws and regulations.

It appears as though Indonesian NGOs are following the lead of Western environmental campaigners and re-cast themselves as social activists.

41. Cf. Menhut Jambi (2012). "Pembahasan Lanjutan Penanganan Konflik Lahan Antara Kelompok Yang Mengatasnamakan Ahli Waris Sultan Thaha Di Areal IUPHHK-HTI PT. Lestari Asri Jaya Di Kabupaten Tebo" and "Pembahasan Penanganan Konflik Lahan Antara Kelompok Patokan 55 Di Areal Iuphhk-Hti Pt. Lestari Asri Jaya Di Kabupaten Tebo". Accessed at: http://infokehutanan.jambiprov.go.id/?v=news&id=173 and http://infokehutanan.jambiprov.go.id/?v=news&id=170.

42. Cf. Ansyor (2012). "BPN told to remeasure land to prevent conflict" in Jakarta Post, August 6 2012.

5.4 PULAU PADANG

The small island of Pulau Padang lies off the east coast of Sumatra on the Kampar Peninsula. Parts of Pulau Padang have been earmarked for plantation development by Indonesia's central government. The development is to be undertaken by Riau Andalan Pulp and Paper (PT RAPP).

RAPP's forest utilisation rights on Pulau Padang date back to 2004 when they were approved by the Ministry of Forestry.

The campaign against RAPP's operations on Kampar date back to 2005. The claims in 2005 made by Western-backed NGO Jikalahari are entirely related to environmental regulation. There were no claims made relating to social impacts or land use.

In 2008 a slightly different campaign emerged against the plantation development. The campaign claims to be undertaken on behalf of the local farming community on Pulau Padang. The campaign has been backed largely by the Serikat Tani Riau (the Riau Farmers' Union), which has strong institutional ties to Indonesian NGO Walhi. STI also has institutional links to the Partai Rakyat Demokratik, Indonesia's social democratic party.

The most recent campaigns against the company have made the broader claim that RAPP the company should have gained FPIC from the communities, that the operations will encroach upon land 'owned' by local farmers and that operations will have indirect environmental impacts the livelihoods of local communities.

There are, however, several problems with these claims made against RAPP.

First, summaries of events published by Indonesian NGO Scale Up indicate that the project was agreed to by village leaders, acting on behalf of local communities. However, campaigners have also claimed that a large number of farmers have rejected the decisions taken by village leaders. However, this in itself contradicts what is best described as customary law, where village leaders are instilled with a degree of authority to negotiate on behalf of their communities.

Second, it is not possible for local communities to 'own' land that has been designated as forest land under Indonesian law. Communities can make applications for community forest licenses on forest land. Agricultural activities must be undertaken on agricultural land. And community forestry activity on the land without official permission could be considered illegal.

Third, the company is required to undertake environmental impact assessments under Indonesian law. These were undertaken in 2006; a further five studies were undertaken between 2006 and 2011.

There is a clear difference between the protests at Pulau Padang and other land disputes across Indonesia that have been arguably more contentious and more violent. The difference is that the lands that are apparently in dispute have been a target for environmentalists for almost a decade. Environmental campaigners appear to have aligned themselves with a local community for the sheer purposes of blocking development activities – not for a genuine desire to assist local communities.

6. CONCLUSIONS AND RECOMMENDATIONS

The analysis and case studies in this report provide a picture of Western environmental campaigners misusing a social and economic problem as a means to achieving an environmental or conservation outcome.

The means to achieve this – FPIC – have been systematically distorted and over-simplified by Western campaigners.

The distortion is that there exists a robust and agreed framework on land tenure that can be applied not only to indigenous communities, but also to affected communities more broadly. The over-simplification is that FPIC can simply be applied as a one-size-fits-all blanket solution for tenurial conflicts in many countries, including Indonesia.

This report has demonstrated that the complexities of land tenure in Indonesia cannot be over-simplified. Almost two decades of reform processes have yielded some results, specifically the establishment of dispute investigation and resolution procedures, as well as a broader political acknowledgement that tenure reform is a necessity for Indonesia.

With this in mind, World Growth makes the following recommendations for NGOs and the private sector regarding FPIC in Indonesia:

For NGOs and the private sector:

Policies on land tenure should be guided by

- the national initiatives that have been implemented by Indonesia's agencies, such as the National Land Administration (BPN);
- official rulings within Indonesia's legal system;
- alternative dispute resolution mechanisms that are supported by national government.

Any policies developed on FPIC by NGOs and the private sector must:

- ensure that they are in line with internationally agreed norms on indigenous rights within intergovernmental forums as opposed to attempting to apply FPIC to broader communities;
- ensure that the definitions of indigenous communities are in line with nationally legislated definitions;
- recognise that FPIC for indigenous is only a means of risk management that should be part of a broader stakeholder mapping exercise in relation to development projects;
- defer to national legislation and regulation as necessary;
- recognise that indigenous, local and national development must take priority over the socio-economic, environmental or political goals of international groups;

General recommendations are:

- Recognition that FPIC frameworks are still very much a work in progress;
- Recognition that FPIC is at this stage voluntary and should not take the place of the rule of law in democracies such as Indonesia;
- Recognition that FPIC is not a one-size-fits-all solution to tenure conflict and is simply a means of implementing broader land reforms if or when indigenous rights are taken into account.

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About World Growth

World Growth is a non-governmental organization established with an educational and charitable mission to expand the education, information and other resources available to disadvantaged populations to improve their health and economic welfare. At World Growth, we embrace and celebrate the new age of globalization and the power of free trade to eradicate poverty and improve living conditions for people in the developing world.

Our Philosophy

World Growth believes that helping the developing world realize its full potential is one of the great moral aims for those of us fortunate to live in the wealthy developed world. We also believe that a misdiagnosis of what ails the underdeveloped world has yielded policy prescriptions that have been useless or even harmful to the world's 'bottom billion.'

World Growth believes that there is enormous untapped human and economic potential around the world. In order to unlock that potential, and allow the poorest of the world's poor a better life, it is necessary to realize changes in institutions and policies that promote growth.

Instead of aid and handouts, what the populations of developing countries need are social and political institutions and infrastructure that foster productive economic activity and generate robust economic growth. These include, but are not limited to, property rights and protections, the rule of law, free markets, open trade, government accountability and transparency.

For too long, well-meaning governments, aid agencies and others have promoted policies that fail to address the true roblems that afflict poor societies. As a result, too many people around the globe remained locked in pre-modern conditions where their talents and inherent capacities are shackled.

The people of the developing world are fully capable of helping themselves to a more prosperous existence. The path to prosperity does not begin with handouts from the West. Instead it requires identifying the genuine obstacles to growth and highlighting paths to reform that will yield sustainable and lasting change.

GPO Box 2372
Melbourne VIC 3001
Australia

www.worldgrowth.org