


Reality-check on carrying out HCV assessment and FPIC

Case study of palm oil company PT Agrowiratoma in West Kalimantan, Indonesia



This case was chosen as it supposedly showed the positive impact of RSPO procedures from which useful lessons could be learnt, however the investigation showed that the reality was more complex yet the lessons remain valuable.

Where

Palm oil producer PT Agrowiratama is located in Sambas regency, in the North West of the province of West Kalimantan, one of four Indonesian provinces on the Indonesian side of Borneo. West Kalimantan covers an area of 147,307 km² and had a population of close to 4.5 million in 2010. Sambas covers roughly 6400 km² and has a population of around half a million. The area is primarily populated by Melaya and indigenous Dayak groups.

The peat swamp forest of West Kalimantan covers 1.7 million ha and is one of the largest natural ecosystems in the Indonesian rainforest. Most of this forest has been disturbed due to logging and conversion of the land for palm oil plantations and other agricultural purposes, such as rubber, coffee and pineapple plantations. In 2007-2008 27% of deforestation was ascribed to oil palm, including 40% of all peat land deforestation.

Who

PT Agrowiratama is a subsidiary of the Musim Mas group, one of Indonesia's biggest producers in the vegetable oil refining and soap manufacturing industries, with plantations in north, west and south Sumatra, and west and central Kalimantan. Musim Mas was the first company to join the RSPO in 2004. PT Agrowiratama is one of Musim Mas' four estates in Sambas District Kalimantan, which together cover an area of 30,000 ha, of which PT Agrowiratama covers 9000 ha. PT Agrowiratama is one of the first companies in Indonesia to go

through the RSPO's New Plantings Procedure (NPP), which was adopted in 2010. The purpose of the procedure is to ensure that companies immediately start the right way and do not clear primary forests or areas with High Conservation Value (HCV), or take over land without consent. In line with the NPP requirements, the company posted information about its planned expansion in Sambas in early 2011. The company then excised around 1,000 ha of land from their concession for local communities inhabiting the area; a measure celebrated by NGOs as an example of the effectiveness of the procedure and the responsiveness of the company. The company is said to have shown that they are inclined to obtain the documentation and permits necessary to clear and use land. They have themselves stated that they encountered difficulties in reaching the local communities.

What

The expansion of palm oil plantations has forced many small-scale farmers off their land, decreasing opportunities for small-scale

agricultural production and thereby harming food security in the region. Local communities have opposed oil palm for several years, even before Musim Mas began investing in the area. A great source of discontent for the locals is the fact the palm oil company is using land that they see as historically belonging to them. In addition to this conflict there are ongoing conflicting land claims between the local communities working and living on the land, and an elite family with ancestral link to the Sultan of Sambas, the ahli waris, who informed the company that they owned the lands. This claim was based on a letter dating from 1905. Members of this family made a settlement with the company, but the settlement concerned areas of land that were also claimed by villagers. Interestingly, the ahli waris only started to claim the land after the company was acquiring land in the region. Furthermore, this family did not pay taxes over the land, something that the local communities claiming the same land had done for years.



Map 1: West Kalimantan (Source: Google Maps)

In 2010, the company invited various local village leaders to visit their operation, as part of their socialisation (or CSR) program. After this the Mekar Jayan community held an informal plebiscite of villagers, and found the majority opposed to palm oil development. They protested their inclusion in the project without their agreement. The local government promised to look into the unclear administrative boundaries between the villages. This was however done without considering the extent of village farmland and other uses of land. As a result, there were a number of issues that remained unresolved, including contested and overlapping land claims, and lack of clarity among community members over the legal validity of different actors' claim to land.

Overall, socialisation activities have been very rare, and not inclusive. In one effort to socialize their project the company invited village heads to a meeting. No other community members were informed or invited to this meeting. The former village head of Mekar Jaya stated that there were representatives of the company, government, police and the ahli waris. They were told that if they were not willing to sign a plasma agreement, there was no point in attending the meeting. In Indonesia the "nucleus-plasma ownership model" is often used in palm oil production. Smallholders hand over 80% of their land to the concession holding palm oil company, in return for program participation. These farmers then have to buy oil palm seeds, fertilizer, nursery material and technical assistance in order to be able to take part in the agro-industrial program. The high costs related to these investments have led many into debt. Furthermore, farmers become highly dependent on these companies.

On the other hand, the content and outcomes of meetings with the company were also not shared by the leaders with their communities, even though they were chosen to represent them. There was insufficient communication between village leaders and their communities, which meant that they lacked information that was provided to the leaders. Eventually community members effectively did not have a voice in the process. Over the years, land borders have been repeatedly redrawn, but never in accordance with the community's claims. The company has already started clearing land, despite conflicts being unresolved. Over 1000 households in the enclaved territory have unresolved land claims, and another 1000 within the concession.

Governmental actions- policy and legislation

Policies in Sambas are designed to attract maximum investment by companies that develop palm oil plantations, and the government is very successful in fulfilling this. It

has been claimed that close political and economic alliances between local government and palm oil investors have led to the exclusion and ignoring of the interests of the local communities. The company and local elites refer to those opposing the palm oil plans as 'provocateurs' and do not accept their right to organize and to FPIC.

The government does not know which land is cultivated and which is not. They expect the companies to do a survey to see if other user permits have been issued for the land they want to obtain. The companies can only obtain the permit that allows them to buy land from the local communities if this is proven to not be the case.

Land clearance permits (IUP) should only be issued by government officials after land acquisition had been completed. However, these are often handed out before land conflicts are dealt with.

Officially companies have to satisfy a number of other requirements in order to obtain a permit to use the land (HGU).



Photo: Palm oil factory on West Kalimantan: Source: www.cleanbiz.asia

Government officials have however admitted that plantations are often built before all permits have been received. Companies on the other hand assume that they have the right to clear and plant once they receive their IUP.

The government has stated that it lacks the capacity, skills, procedures and budget to deal with conflicts over competing land claims.

*The case study is a summary from one of the cases described in the 'Conflict or Consent?' FPIC in the Palm Oil Sector Case Study Series compiled by three Ecosystem Alliance partners, namely the organisations FPP, Sawit Watch and TUK Indonesia. Edt by Marcus Colchester and Sophie Chao / November 2013. This particular case was written up by: Marcus Colchester, Sophie Chao, Norman Jiwan, Andiko, Intan Cinditiara, Herma-wansyah and Emilola Kleden

For the reading about the case in more detail and for entire Study Series please go to. <http://www.forestpeoples.org/tags/conflict-or-consent-fpic-palm-oil-sector-case-study-series>

Recommendations

Recommendations from communities

- Conduct repeated and participatory mapping to identify, demarcate and measure land and land claims, as this was the key conflict with the company and the ahli waris.
- Clarification of the legal validities of the claims of the ahli waris. If not valid, the people of Mekar Jaya wish to enclave all of the town.
- Resolution of the land conflicts must be seen as the joint responsibility of governments and companies, either as facilitators or initiators.
- Return of land claimed by communities. No monetary restitution necessary.
- Monitoring and conservation of HCV sites should be done by companies, as communities lack capacity,
- Stop clearing of the land until conflicts were resolved in a way that is satisfactory to all parties involved.

Recommendations from government

- Provision of greater funds to enhance capacity to monitor and evaluate
- Company should submit its 3 monthly report that is part of HGU application
- Company should ensure that enclaved lands are free from competing claims
- Clarification of who claims land on basis of inheritance by company
- More weight should be given to the actual active use of land in claims
- Development of mechanisms for joint monitoring and management of HCVs by company and community, possibly endorsed by local legislation.
- Sharing of information in HCVs
- Company should provide training on the value of HCVs to the locals, whilst allowing them to continue customary agric practices.

Recommendations from company

- Government should act as bridge when disputes arise
- NGOs should cooperate with companies to shape communities' understanding of the activities by the companies, both positive and negative.
- Government should work on improved transparency and information sharing with companies and locals in relation to development programmes and policies.