

TESTING THE LAW

Carbon, Crime and Impunity in
Indonesia's Plantation Sector



ACKNOWLEDGEMENTS

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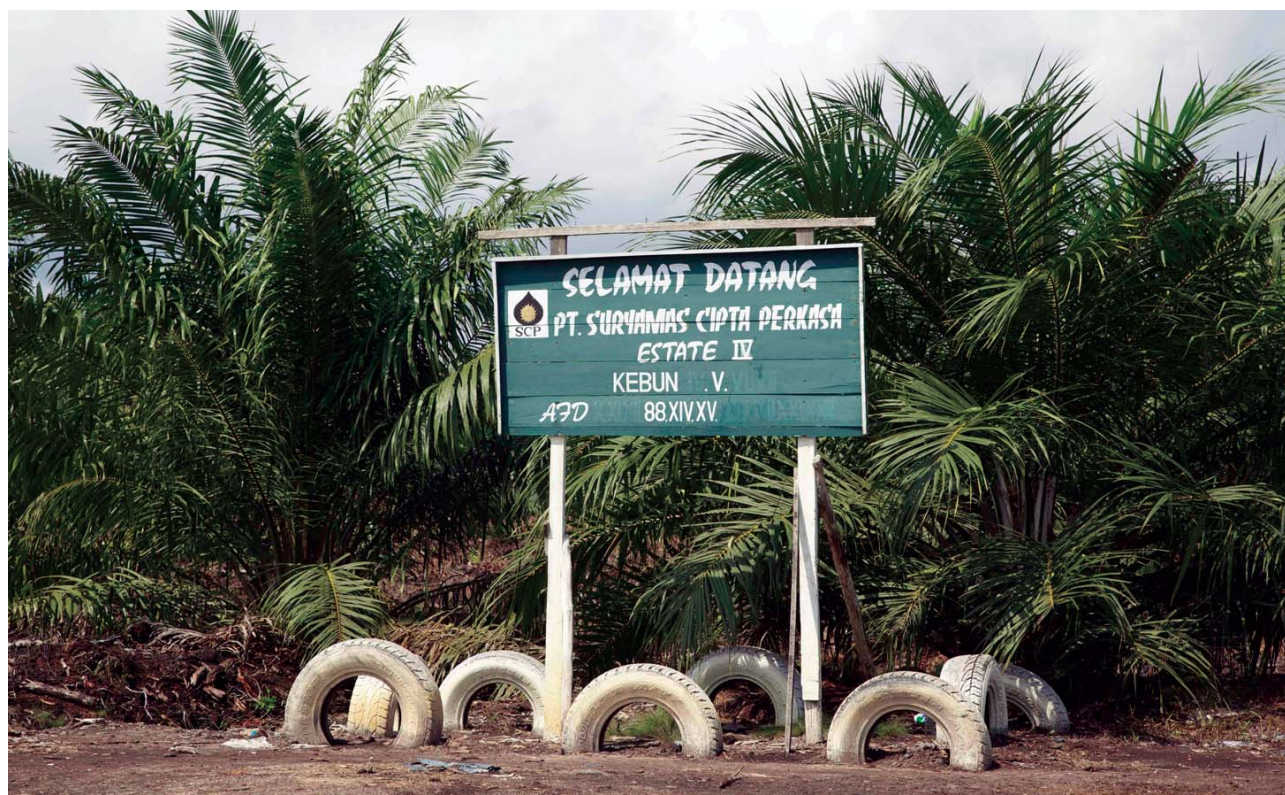
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FRONT & BACK COVER:
Oil palms planted in peat in PT SCP's concession. © EIA

BELOW:
Welcome sign in PT SCP's illegal concession.

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INTRODUCTION

In March 2012 the Environmental Investigation Agency (EIA) and Telapak submitted a dossier of evidence to a range of authorities in Indonesia which detailed how an oil palm plantation company in Central Kalimantan had broken numerous laws governing land allocation, access to resources and environmental management.

The crimes committed by PT Suryamas Cipta Perkasa (PT SCP) have directly resulted in the conversion of more than 23,000 hectares (ha) of peatland and peat swamp forest, destroying the livelihoods of local communities, the habitat of hundreds of endangered orangutans, and generating millions of tonnes of carbon emissions.

The purpose of the dossier was to provide the authorities with sufficient evidence to prompt a criminal investigation, while notifying the Government of Indonesia (GoI) that EIA/Telapak would make public its response to evidence of clear-cut crime.

During meetings in May and June 2012 with the key recipients of the dossier, a worrying picture emerged of a bureaucracy struggling to enforce its own laws. Although the Government's investigation into PT SCP's activities is ongoing, the limited progress to date demonstrates that clear procedures to examine and prosecute blatant legal violations are not in place. Further, EIA/Telapak have encountered a continued lack of understanding of key environmental legislation and low levels of will at the kabupaten (regency) level to properly prosecute the case.

This briefing outlines the evidence gathered by EIA/Telapak during an investigation into the activities of PT SCP – much of which was detailed in the dossier – and the response of the authorities to the dossier. It illustrates the involvement of regency officials in facilitating illegal forest conversion, and of officials at other levels of government in recognising that crimes had been committed but failing to act decisively.

It paints a picture of a bureaucracy in which illegality is publicly acknowledged but not punished in accordance with the law; a bureaucracy prioritising the continuing operation of plantations over law enforcement.

The impact of PT SCP's concession on local livelihoods and biodiversity has been considerable, but the significance of the case is manifest far beyond the boundaries of the concession. The misguided and often illegal conversion of peatlands and forests to agricultural use is the principal reason Indonesia has become the world's third-largest greenhouse gas (GHG) emitter¹ – an ignominious position President Susilo Bambang Yudhoyono has pledged to address.²

In excess of \$1 billion dollars has been pledged by the international community to support the country's strategy for Reducing Emissions from Deforestation and Forest Degradation (REDD+) through a range of governance reforms.³ Protecting peatlands from plantation expansion forms a core part of that strategy.⁴

The case of PT SCP lays bare the fact that these reforms cannot succeed without the foundation of effective law enforcement. Allowing PT SCP to continue to reap the lucrative, illicit returns from its plantation sends a strong message out that it is open season on Indonesia's peatlands. There remains no disincentive to illegal plantation expansion.

Four months after receiving the dossier, and four months after elected officials admitted publicly that the company was operating illegally, palm oil trucks continue to make the long overnight journey from the concession to PT SCP's mill in Sampit. For the time being, the interests of a well-connected plantation company appear to be more important than Indonesia's laws and the President's much-vaunted commitment to reducing emissions.



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TOP:
Drainage canals and oil palms on former peat swamp forest lands in PT SCP's concession.

ABOVE:
Letter from EIA/Telapak to the Chief of Police in Pulang Pisau, dated 19th March 2012.

“The case lays bare the fact that reforms cannot succeed without the foundation of effective law enforcement.”

KALIMANTAN CRIME FILES

BELOW:

Illegal forest clearance in oil palm concessions in (from top to bottom) Kapuas, Kotawaringin Timur and Katingan regencies between May and October 2011.



During the past decade, large-scale land acquisition in Indonesia's Central Kalimantan province has been characterised by widespread illegality, to the extent that failure to abide by the law is now the norm.

The extent of "non-procedural" land use was exposed by a GoI taskforce in February 2011, which revealed that only 20 per cent of plantation companies in the province had received permission from the Ministry of Forestry (MoF) to operate in the area under its jurisdiction. Some 92 per cent of all plantation and mining companies had committed some form of permit violation. The MoF placed the losses to the state at Rp. 158.5 trillion (\$17.54 billion).⁵

This lack of legal compliance coincides with a period during which the province experienced historically high levels of plantation expansion; during the 10 years to 2009, the plantation area grew at an annual rate of 13 per cent.⁶

This has resulted in massive levels of unchecked deforestation in areas designated for other uses,⁷ and the degradation of huge areas of carbon-rich peatland.⁸ It is this form of development that has led Indonesia to its position as the world's third highest emitter of GHGs; by 2005, the degradation and burning of peatland accounted for 38 per cent of Indonesia's emissions, at a conservative estimate, in addition to 35 per cent from land use, land use change and forestry.⁹

Other key elements in the land acquisition process, governing the sectoral tax regime and environmental management, are routinely flouted. By 2012, approximately two-thirds of mining and plantation companies in Indonesian Borneo, including Central Kalimantan and the neighbouring provinces of East, South and West Kalimantan, were operating without legally required environmental and social impact assessments (AMDAL).¹⁰

Major plantation holding companies stand accused of clearing forest in Central Kalimantan without Timber Utilisation Permits (IPK), circumventing a process which provides an inventory of timber stands in a concession and taxes the proceeds of their commercial exploitation.¹¹

To date, this lack of compliance has gone unpunished. Sections of the Government have taken tentative steps towards law enforcement, most notably the Anti Judicial Mafia Taskforce which led an investigation into abuse of the sector within Central Kalimantan.¹² Equally, after a tough new Law on Environmental Management and Protection was introduced to criminalise abuse of the AMDAL system in 2009, the rhetoric of senior officials suggested a new era of enforcement of long-standing legal requirements had finally arrived.¹³

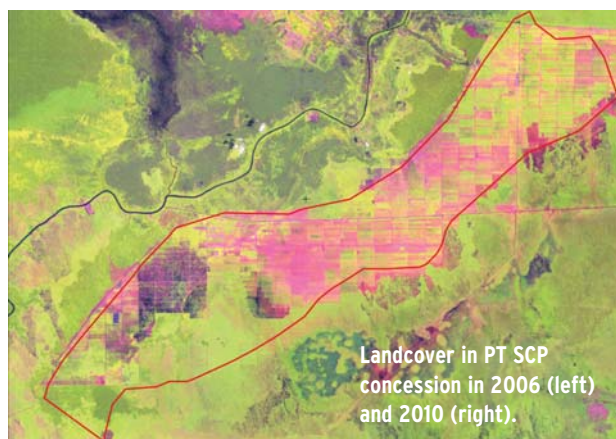
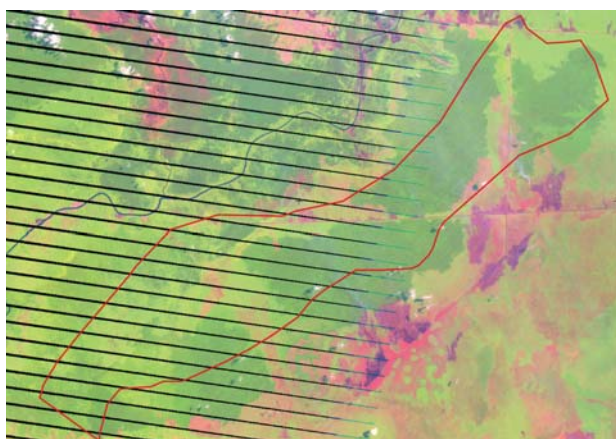
Despite this, hundreds of plantation companies continue to operate illegally, openly, and, in many cases, with the involvement of regency governments.

The prosecution of crimes relating to violation of spatial plans has been complicated by conflicting, unharmonised plans, and potentially exacerbated by a recent Constitutional Court decision.¹⁴ Yet other laws violated, not least the 2009 Law on Environmental Management and Protection, include sanctions which could and should be enforced if Indonesia is to prevent future illegal plantation expansion and deliver on its emissions reduction targets.

If Indonesia is to send a clear message that forest criminals are accountable under the law, the prosecution of plantation companies that shamelessly violate Indonesia's laws needs to start somewhere, and now.

During investigations into a number of illegal plantation companies in Central Kalimantan, PT SCP emerged as the clearest and most egregious case. The evidence EIA/Telapak delivered to the GoI in March 2012 presents a clear test of it's ability to enforce the law.

THE DOSSIER



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In January 2007, the Bupati (elected regency head) of Pulang Pisau (Pulpis) regency issued a plantation business permit (Izin Usaha Perkebunan/IUP) covering 20,000ha to PT SCP, a part of the BEST Group [see box].¹⁵

Throughout late 2011, in the course of investigations into Central Kalimantan's plantation sector, EIA/Telapak gathered a range of documents relating to the concession that had been produced by the Government and the BEST Group. By analysing these and satellite data, in conjunction with a review of the legislative framework, EIA/Telapak were able to establish how and when PT SCP appeared to have broken a range of laws and regulations.

Further evidence was gathered in May 2012 through fieldwork in the concession and interviews with members of the local community.

As this briefing will show, the investigation has provided credible evidence that in its five years of operating PT SCP has illegally drained thousands of hectares of peatland, cleared thousands of hectares of forest, annexed community lands and destroyed orangutan habitat. In the lifetime of its concession, PT SCP could illegally generate millions of tonnes of carbon emissions.¹⁶

The dossier presented to the GoI in March – backed up by supporting evidence – outlined non-compliance with prevailing laws by both PT SCP and Indonesian officials, and listed the relevant sanctions the legal offences attract. A summary of the dossier follows. It can be accessed in full online at www.eia-international.org.

Summary of non-compliance with prevailing legislation relating to PT SCP

Non-compliance by Government of Indonesia authorities:

- Issuing plantation business permit (IUP) without approved Environmental Impact Assessment (AMDAL);
- Failure to enforce laws, preventing state losses and environmental damage, while aware of ongoing clearance/cultivation by PT SCP in the absence of AMDAL, forest release letter and possibly Timber Utilisation Permit (IPK).

Non-compliance by PT SCP:

- Obtaining IUP without approved AMDAL;
- Clearing and cultivating in forest area without forest area release letter from the Minister of Forestry;
- Clearing forest without IPK or with illegitimately issued IPK;
- Operating without AMDAL in breach of Law 32 of 2009 on Protection and Management of the Environment;
- Clearing and cultivating deep peat (>3m deep);
- Operating outside concession boundaries;
- Failing to mitigate risk of fire during land clearing.

BEST practice

The BEST Group, privately owned by the Indonesian Tjajadi family, boasts activities “across the archipelago” and exports cooking oil directly to Asia, Africa, the Middle East and Europe. It admits to owning “about 50,000 ha of oil palm plantations in Central Kalimantan”,¹⁷ although its true holdings are closer to 175,000ha, making it one of the largest landowners in the province.¹⁸ It also owns processing and exporting facilities in Java and Sumatra.

In 2008, an investigation by the Supreme Audit Agency found that a BEST Group company had illegally cleared more than 2,500 ha of forest inside Tanjung Puting National Park, in the west of Central Kalimantan, in the course of establishing a plantation.¹⁹

More recently, permits held by the BEST Group for inactive concessions in deep peat on the border of the National Park have delayed the progress of a high-profile REDD+ demonstration project.²⁰

The Group plays a niche role in the market, making up supply shortfalls for large commodity traders cheaply and at short notice. Major buyers of its oil palm products include global trading groups Mewah Oleo, Pacific Interlink, Cargill International and Bunge.²¹



LEGAL VIOLATIONS

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TOP:

Drainage canal in PT SCP concession.

ABOVE:

Overlay of concession on peat depth maps, indicating much of the concession falls on peat 4-8m deep.

OBTAINING IUP WITHOUT AMDAL

The IUP, required by all active plantation companies, can only be issued after a range of criteria has been met, including approval of an AMDAL by the provincial or regency AMDAL commission.²²

The AMDAL consists of a series of steps through which consultants can establish the environmental and social impacts of a plantation, and develop a management plan to mitigate such impacts on an ongoing basis.

Government officials admitted publicly in 2012 that PT SCP's AMDAL had still not been approved.²³ At the time the IUP was issued the act was illegal, but the prevailing law included no criminal sanctions. However, the law was subsequently replaced with an act that made PT SCP's ongoing operations punishable [see next page].

OPERATING IN DEEP PEAT

Overlaying a map of PT SCP's concession boundary with peat depth maps used by the MoF²⁴ indicates that approximately 22,000ha of the concession falls within an area of peat at least 4m deep. [left]

Another study of the concession area in 2007 found that 4,475ha of the concession was on peat with a depth in excess of 3m; a further 5,610ha was between 2m and 3m deep.²⁵

The use of peat deeper than 3m for cultivating palm oil is banned by two presidential decrees and two ministerial decrees.²⁶

OPERATING WITHOUT FOREST RELEASE PERMISSION

If a concession falls within the designated Forest Zone (kawasan hutan), a company must obtain permission from the Minister of Forestry to "release" it from the zone prior to clearing or cultivation. This process allows oversight of spatial planning and ensures, on paper, that only areas designated for conversion are released for plantations. Operating in the Forest Zone constitutes a violation of Law 41 of 1999 on Forestry and is punishable by up to 10 years in jail.²⁷

A database issued by the MoF in June 2011 indicated that the concession has not been released from the Forest Zone.²⁸ Further, in May 2011 the MoF released a decree changing the status of areas of the Forest Zone in Central Kalimantan,²⁹ affirming its position that the area remained within the Forest Zone.

OPERATING WITHOUT IPK

Prior to clearing a concession, plantation companies are legally required to carry out an inventory of timber stocks within it.³⁰ This inventory enables the regency government to issue a Timber Utilisation Permit allowing the commercial harvesting of the timber and payment of appropriate taxes.

In order to apply for an IPK, however, the area in question must first have been released from the Forest Zone. As the land remains in the Forest Zone, an IPK could not have legitimately been issued. Satellite analysis indicates that huge areas of forests, and the timber inside them, have been illegally cleared.

OPERATING OUTSIDE CONCESSION BOUNDARIES

Satellite data obtained by EIA/Telapak indicates that PT SCP cleared and planted up to 2km beyond the boundaries of its concession, constituting entirely illegal encroachment of the Forest Zone. [see satellite images on previous page]

FAILURE TO MITIGATE FIRE

Under Indonesia's 2004 Law on Plantations, using fire to clear land is a criminal offence that attracts a jail sentence. Similar, if reduced, sanctions can be applied to companies that fail to mitigate the risk of fire within their concessions, thereby negligently allowing fires to occur.³¹

Data obtained by EIA/Telapak indicates numerous "hotspots", or "active fire detections" within the borders of the PT SCP concession between January 1, 2007 and December 30, 2011, the period in which it was operational.³²

AN ENABLING ENVIRONMENT

For the past decade, the fundamental flaw in Indonesia's AMDAL framework has been the absence of sanctions for non-compliance.³³ It was in part for this reason that a new Law on Environmental Management and Protection was enacted in October 2009 (Law 32/2009), which included a range of criminal sanctions for companies not complying with the system.³⁴

Among the sanctions in Law 32/2009 is a jail term of between one and three years and a fine of between Rp. 1bn and Rp. 3bn for "any person" carrying out activities without a legally required AMDAL. This article is significant because the AMDAL is not simply a stage in the permit system, but also includes an ongoing management plan mitigating environmental impacts – in theory – throughout the lifetime of a concession.

The new law was followed by a two-year transitional period after which, in October 2011, it became fully effective. The interaction between the Government and PT SCP during and immediately after this period suggests that while there was initially political pressure to comply with the new law, it was not backed up by any intent to take action against non-compliance.

In March 2010 Teras Narang, the Governor of Central Kalimantan, wrote to the Bupati of Pulpis and other regencies under his jurisdiction, warning them specifically of the sanctions under Law 32/2009 for companies operating without approved AMDAL. Narang asked local officials to conduct an inventory of businesses without them.³⁵

The inventory compiled in Pulpis in April 2011 indicated that PT SCP still did not have an AMDAL.³⁶ It was circulated to the company by the Bupati the following month, with an instruction to report to the district Environment Agency no later than August to resolve the issue.³⁷ By late October, PT SCP had failed to comply with the instruction.³⁸

During the same period, regency officials including the Bupati were engaging with PT SCP to help solve an ongoing conflict with local communities [see following page] via a process of mediation. Regency and provincial officials were directly involved in meetings involving PT SCP staff,³⁹ culminating in a meeting in Jakarta on August 15, 2011 attended by the Bupati of Pulpis, Winarto Tjajadi and Roby Zulkarnaen, the owner and director of PT SCP respectively.⁴⁰

The meeting took place three months after the Bupati had written to the company management reminding

them that they faced prosecution over the illegal concession, and just two weeks before they missed the deadline for reporting to the Environment Agency.

Throughout the process, members of the community repeatedly questioned PT SCP's right to the land and the status of its permits,⁴¹ but the Government focused its efforts on arriving at a compensation package agreeable to both parties. PT SCP's AMDAL would or should have identified legitimate land rights claims in the concession and so the company's failure to fulfill the requirement contributed directly to the conflict.

After October 2011, the Government's failure to address the issue became a criminal matter. By knowingly allowing PT SCP to continue operating without an approved AMDAL, the Government was, in effect, allowing the ongoing commission of a crime.

The same month Narang held a meeting with the affected communities to discuss the conflict. While stating that its resolution fell outside his jurisdiction, he also said that the more important issue was PT SCP's legal status. *"If the permits are not complete it means the company cannot do anything yet because it has no right,"* he said.⁴² Narang ordered an investigation into the legal status of the concession, although his office had already been copied into correspondence showing clearly that it was operating illegally.⁴³

In March 2012, a provincial parliament (DPRD) committee held a formal inquiry into the community dispute. It emerged that PT SCP had again reneged on promised compensation payments, prompting the head of the committee to admit publicly that it was operating without a range of permits.⁴⁴

In summation, by this stage the illegal and criminal nature of PT SCP's operation was common knowledge at the highest levels of government in Central Kalimantan. The sanctions associated with those crimes had been made known to the company and circulated within government. Yet prior to the GoI's receipt of EIA/Telapak's dossier, there was no investigation under way and no suggestion of a prosecution.⁴⁵

The implications are considerable for Law 32/2009. In its first year in full force it is at risk of joining a long list of unenforced, ignored laws on Indonesia's statute book.

"If the permits are not complete it means the company cannot do anything yet because it has no right."

Teras Narang



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TOP:
Letter from PT SCP to the Government mediation team in September 2011.

ABOVE:
Letter from the Bupati of Pulpis to the management of PT SCP, and other companies, in May 2011 warning of the consequences of operating without an AMDAL.



UNSUSTAINABLE DEVELOPMENT

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TOP:
Housing for locals employed as hunters in PT SCP concession.

ABOVE:
Haji Asmadi, of Paduran Sebangau, with a map of his land annexed by PT SCP.

PT SCP's illegal plantation has had a devastating impact on the livelihoods of local communities and the fragile biodiversity remaining in Central Kalimantan.

The concession is situated in what is now known as the Ex-Mega Rice Project (EMRP) area, named after a disastrous attempt by former President Suharto to bring more than one million hectares of peatland under rice cultivation in the 1990s. Forest fires, exacerbated by rampant logging, peatland drainage and plantation expansion, have destroyed much of the forest that once covered the entire area.

A comprehensive analysis of satellite data indicated that in 2005, less than two years before PT SCP began clearing, the concession contained some of the last tracts of mixed peat swamp forest in Block C of the EMRP, which forms its western flank.⁴⁶ In May 2012, members of the local village of Paduran Sebangau confirmed the area remained forested before PT SCP began clearing and contained substantial stands of ramin, a species of valuable hardwood timber subject to a cutting ban under Indonesian law.⁴⁷

The endangered Bornean orangutan can be found in its greatest densities in peat swamp forests. A study published in 2010, based on fieldwork carried out in 2009, estimated that the patches of forest which then remained in PT SCP's concession could be home to more than 200 orangutans.⁴⁸ The study found that connecting these and other remaining fragments of orangutan habitat in Block C of the EMRP was necessary to ensure the viability of a population of some 600 individuals.

Not only has PT SCP irrevocably damaged this prospect, but, according to the community, it has paid people to hunt and kill orangutans within the concession to remove the threat they pose to young oil palms.⁴⁹

The forest and land supported a range of livelihood strategies for the residents of Paduran Sebangau. The failure to observe those rights has driven one-third of the village's residents to move away from the area in search of other opportunities, while the concession's labour force is composed largely of migrants.⁵⁰

PT SCP has repeatedly reneged on promises to deliver agreed compensation deals to the community, provoking the community to occupy government offices in Pulpis and to block the road into the concession in August 2011.⁵¹

The following month, more than four years after annexing the land, PT SCP agreed to pay Rp. 500,000 per hectare to landowners with "proven ownership papers from the competent authority",⁵² an irony given the parlous legal status of the company's tenure. Yet by 2012, the offer had yet again fallen to IDR 200,000, provoking the provincial parliamentary committee to chastise PT SCP for "toying with people's rights".⁵³ To date the compensation remains unpaid.

In 2008, a study warned presciently that the expansion of oil palm plantations would greatly increase the risk of flooding in the EMRP due to the subsidence of peat.⁵⁴ By 2012, canals dug by PT SCP had already led to the flooding of local villages.⁵⁵

THE COST OF CARBON

A comparison between PT SCP's plantation and the Kalimantan Forests and Climate Partnership (KFCP) REDD+ project provides a salutary lesson in the risks of allowing such illegal plantation expansion to continue.

The Australian-run KFCP project was intended to trial "an innovative, market-oriented approach to financing and implementing measures for REDD".⁵⁶ When it was announced in 2007, it targeted the rehabilitation of 200,000ha of degraded peatland in the north of the EMRP, north-east of PT SCP's concession, leading to a reduction of 700m tonnes of GHG emissions over 30 years.⁵⁷

However, a recent study of the project found that by February 2012 the area of peat that would be re-flooded had been scaled back to just 25,000ha.⁵⁸ Additional funding needed for the project had not been forthcoming, and one-third of what had been pledged went towards "readiness" activities that lead to no tangible emissions reductions.

The KFCP project demonstrates the difficulties involved in rehabilitating degraded peatland. The restoration of

the EMRP has been a strategic priority for the GoI for several years and was given a legal basis by a Presidential Instruction (Inpres 2/2007) in 2007.⁵⁹ Yet it is costly, will take decades and has been beset by technical challenges.⁶⁰ The presence of some 10,000 people in communities that have developed livelihood strategies based on current conditions provides a further obstacle.⁶¹

The area drained by PT SCP, which began when the KFCP project was announced, is approximately the same size as the area that may now be re-flooded by the project. This serves as a warning that the gains hard-won through rehabilitating peatlands can be quickly undone by illegal plantation expansion.

The crimes committed by PT SCP have effectively written-off a substantial portion of any climate gains that might be made in the KFCP project before they have even occurred – highlighting how effective law enforcement may well present a cheaper, faster and more effective mode of doing REDD+ in Indonesia than isolated REDD+ demonstration projects.



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ABOVE:

River running black with peat in Kapuas, in the heart of the EMRP.

LOST IN SPACE

The harmonisation and revision of spatial plans is a key pillar of Indonesia's REDD+ strategy and is integral to ensuring that future plantation expansion is directed to more appropriate areas. The changing designation of the PT SCP concession during this process over the past five decades reflects the fact that the GoI has not developed a strategy to process or address illegal plantations.

The permits were initially issued to PT SCP on the basis of the 2003 Provincial Spatial Plan (RTRWP),⁶² which designated the concession as a Production Development Area that can be converted. In subsequent proposed revisions to the spatial plan, however, including those associated with Inpres 2/2007, the area was designated mostly as production forest, with a significant portion as a protected area. This was intended to protect both the peatland and the biodiversity it supported.

In May 2011, a Minister of Forestry decree reinforced this, designating 3,802ha of the concession as Protected

Forest (Hutan Lindung), 492ha of Nature Reserve (Kawasan Suaka Alam) and 18,887ha as Production Forest (Hutan Produksi).⁶³

In January 2012, the President issued another regulation⁶⁴ which his office said would make Borneo "the lungs of the world", yet again designating PT SCP's concession as production and protection forest.⁶⁵ By this stage, the entire concession had been cleared of forest cover.

The spatial plans released by the MoF and the President actually hold little if any legal sway as the process of legally enacting the provincial spatial plan continues. But attempts to designate thousands of hectares of oil palm as protected or even production forest, without any intent to revoke and reforest the concession, indicates how far out of touch the spatial planning process is with reality.



SK 292/Menhut-11/2011

ABOVE:

PT SCP's concession designated as Production Forest (yellow) and Protected Forest (green) in MoF spatial plans.

THE GOVERNMENT REACTION

“Serious issues have emerged that cast doubt on the investigative process.”

After receiving the EIA/Telapak dossier, the police in Pulpis launched an investigation into the case, led by Adjunct Commissioner Zepni Azka. At the time of publication, this investigation remains ongoing.

The MoF supported the investigation, writing to the provincial police to encourage the investigation of “evidence showing the existence of serious violations and illegality by PT SCP” and “the alleged involvement of Pulpis district officials who have unlawfully given permission to PT SCP”.⁶⁶

Independently, the Ministry of Environment (MoE) and REDD+ Taskforce have also held internal discussions as to how the case can be dealt with and have undertaken investigations.

Nonetheless, in dialogue between EIA/Telapak and several Government bodies, serious issues emerged which cast doubt on both the investigative process and the likelihood of a successful prosecution being brought.

BARRIERS TO JUSTICE

The provincial Environment Agency in Central Kalimantan admitted to EIA/Telapak that it did not know how to investigate or prosecute cases under Law 32 of 2009, despite two years of socialisation during the transitional period after the law was enacted.

The MoE held deputy ministerial-level meetings on the case. But while this was provided as an indication of intent, it does not suggest that clear procedures are in place to investigate and prosecute what is – in the case of PT SCP’s non-compliance with Law 32 of 2009 – a routine and well-documented crime.

The regency police did not have access to satellite data, which is integral to investigations concerning land use violations.

Officials expressed concern that if the investigation is not “complete” it will not be successfully prosecuted. This is despite the fact that an elected official has already openly stated that the company is operating illegally, documentary evidence supports those statements and letters from the Government to PT SCP lay out the sanctions associated with the crimes committed.

BUREAUCRATIC BOTTLENECKS

Communication between agencies and ministries appeared to be extremely limited. There had been no cooperation between the MoE and the MoF, to EIA/Telapak’s knowledge, despite the fact that the crimes committed fall across jurisdictions and inquiries were being held in parallel.

This is reflected by the fact that a number of different Government teams have now visited the concession to gather intelligence, without any tangible result and, apparently, without sharing evidence.

The REDD+ Taskforce has the capacity to oversee investigations, albeit passively, and encourage greater coordination. But it has no jurisdiction over the case and the legal basis for its involvement beyond the initial stages remains uncertain.

Government officials asked EIA/Telapak to obtain further Government documents on their behalf. Indonesia’s Public Information Disclosure Act should make such documents open to the public, but clearly even Government bodies still cannot readily access them, with worrying implications for transparency.

FRIENDS IN PLACES

As highlighted, the BEST Group has destroyed more than 2,500 ha of Tanjung Puting National Park. Comprehensive studies show that its latent, though apparently still valid, concessions on the western border of the Park cover deep peat areas. In Central Kalimantan it has far exceeded the limits on land holdings by plantation companies within one province.

Repeatedly, unprocedural and occasionally criminal acts by subsidiaries of the Group have gone unpunished. A culture of impunity pervades the way in which it conducts business in the province. Officials told EIA/Telapak that it enjoys protection from senior members of the GoI, raising further doubts over the prospect of an impartial and rigorous investigation.

To date, the management and owners of PT SCP are yet to face criminal charges. The lucrative returns from their crimes continue to flow.

RECOMMENDATIONS

The Government of Indonesia should:

- Ensure that the crimes committed by PT SCP are investigated fully and prosecuted in accordance with the law;
- Investigate the involvement of Government officials, particularly at the regency level, in facilitating the crimes committed by PT SCP and their failure to prevent PT SCP from operating;
- Facilitate greater communication between Ministries involved in the investigation of the case, with a view to establishing better working relationships in the investigation of crimes committed by plantation companies generally;
- Prioritise the prosecution of offences committed under Law 32 of 2009, as they are clear and documented, and such a prosecution will send a clear signal that the law will be enforced - in line with the draft REDD+ National Strategy and Government rhetoric;
- Investigate the commission of crimes in other concessions held by subsidiaries of PT BEST;
- Ensure that assets acquired by PT BEST through the commission of crimes are not retained by the company, including the use of the Money Laundering Law, Law 32/2009 and other relevant legislation;
- Take measures to reduce future emissions from PT SCP's concession while respecting the rights of local communities;

- Ensure that fair and equitable compensation is paid to members of local communities whose land was annexed by PT SCP.

Oil Palm buyers should:

- Cease sourcing crude palm oil from the BEST Group until the allegations of illegality are properly investigated.

REDD+ Donors Should:

- Urge the Government of Indonesia to ensure that PT SCP and any relevant government officials are prosecuted in accordance with the law in a timely manner;
- Monitor the Government of Indonesia's response to this test case;
- Link future REDD+ funding directly to measurable law enforcement improvements in the plantations and forestry sectors;
- Ensure law enforcement failings do not justify high carbon emissions baseline calculations in either REDD+ Pilot or Demonstration Projects, or in sub-national or national baselines;
- Ensure that Indonesia is not rewarded for forest sector law enforcement failings with carbon credit sales that justify continued emissions in other sectors or economies.

Land allegedly cleared by PT SCP using fire in 2009.



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