

# PT REA Kaltim Plantations and the Dayak and Kutai peoples of Kutai Kartanegara and Tabang, East Kalimantan

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## Area in question

The province of East Kalimantan is the second largest Indonesian province and is located on the east of Borneo island. It is composed of four administrative cities, nine districts (*kapupaten*), 1,347 villages (*kampung*) and 122 sub-districts (*kecamatan*). In 2005, the population of East Kalimantan was 2.8 million with a population density of 11.22 per square kilometre, relatively evenly distributed between coastal areas and the interior. Six ecosystems are to be found in the region: karst landscapes, peat marsh, mangrove, natural re-growth forest (*hutan kerangas*), flatland dipterocarp forest and humid forest. 162 rivers run through the province, covering an area of 241,000 square kilometres and a distance of 12,060 kilometres, interlinking the seventeen lakes in the province and taking source in the mountainous ranges at the borders of Kalimantan, Sarawak and Sabah. The province of East Kalimantan is also home to a remarkable wealth of biodiversity, with over 3,000 types of trees, 1,000 types of fern, 133 mammal species and 11 primate species identified. 60% of Kalimantan's mammals are found in East Kalimantan.

East Kalimantan attracts significant domestic and national investment due to the lucrative potential of its natural resources. In the forestry sector, 8.1 million ha of forest have been acquired by timber companies (93 HPH and 25 HTI). In the mining sector, over 67 coal mining agreements (PKP2B) have been signed and just under 500 mining issues have been issued across the province to various companies, covering a total area of 3.08 million ha. In Kutai Kartanegara district alone (where PT REA Kaltim

Plantations is located), oil, natural gas and coal mining represent over 77% of the local economy,<sup>1</sup> with a foreign investment total of over \$68,000,000 in 2010.<sup>2</sup>

The development of plantations on Non Forest Cultivation Areas (*Kawasan Budidaya Non Kehutanan* - KBNK) in East Kalimantan based on the agreed East Kalimantan Spatial Plan cover an area of around 6,520,622.73 ha. 1.2 million ha of land have been allocated with plantation business permits (*izin usaha perkebunan* – IUP) for large scale oil palm plantations, of which 392,605.22 ha have been leased

■ *'Fallen oil palm fruit are the life force of the company': signpost in PT REA Kaltim Plantations concession / Sophie Chao*



as Business Use Rights (*Hak Guna Usaha* – HGU). Expansion since 2005 has been relentless, with an increase of 30% in the last seven years, and a further 4.7 million ha projected for conversion by 2025.<sup>3</sup> All existing large-scale oil palm estates are controlled and operated by approximately 330 companies. Based on data released by the Plantations Office of East Kalimantan Province in 2010 and by the Central Bureau of Statistics of East Kalimantan in 2011, the total area of oil palm plantations in Kutai regency in 2010 was 123,673 ha, of which 109,460 ha are operated by private sector companies. In 2010 the total area of plasma across Kutai's oil palm plantations was 14,188 ha.<sup>4</sup>

A range of negative ecological and social impacts have resulted from the ill-regulated acquisition of land for natural resource exploitation in East Kalimantan. These include a deforestation rate of 300,000 ha a year, increasingly frequent flooding and landslides, as well as serious water and air pollution. A large proportion of Kutai Kartanegara's forest cover was also severely burnt during the 1982-83 and 1997-98 forest fires.<sup>5</sup> Illegal land clearance for timber collection led to the cancellation of 146 location permits for a total area of 2.5 million ha by the provincial government by 2002.<sup>6</sup> Land conflicts between local communities and companies have been compounded by conflict between and within communities, as a result of indiscriminate land allocation to private sector investors without due recognition of local communities' rights to land under regional laws.

Kutai Kartanegara district, where the PT REA Kaltim Plantations concession is located, is one of the richest districts in East Kalimantan, with an annual revenue in 2012 predicted at 6.5 trillion rupiah.<sup>7</sup> It covers an area of 27,263.10 km<sup>2</sup> and is divided into eighteen sub-districts and 225 villages with a total population of 626,286. Kutai Kartanegara district borders Malinau district in the north, North Penajam Paser district in the south, West Kutai district to the west, and East Kutai, Kota Bontang and

Selat Makassar district to the east. From the 1970s onwards, a large portion of timber produced by Kalimantan originated from today's Kutai Kartanegara (particularly commercial species such as Meranti, Keruing and Agathis) and were transported down the Mahakam river.<sup>8</sup> Although rich in natural resources, particularly forestland and gold and coal deposits, the revenues from the growing exploitation of these natural resources remain unevenly distributed by the central government and rates of poverty among the local population are high, compounded by limited infrastructural development, even in the case in Kutai Kartanegara, where most of the physical infrastructure and industrial facilities established in the original district of Kutai formerly existed.

### **History, peoples and customary land tenure**

East Kalimantan is the former location of the oldest Hindu kingdom in Indonesia, Kutai, whose history is usually divided into two periods: the early Kutai Martadipura phase (circa 350–400 AD) and the later Kutai Kartanegara phase (beginning circa 1300 AD).<sup>9</sup> The existence of the Kutai Martadipura kingdom is attested to by seven stone pillars, or *yūpa* (sacrificial posts), found in Kutai, Kaman Estuary, near the Mahakam river, bearing an inscription in the Pallava script.<sup>10</sup> Kutai was later a tributary of the Javanese kingdom of Majapahit in the late thirteenth to sixteenth centuries.

The Sultanate of Kutai Kartanegara was established in the region of Tepian Batu or Kutai Lama, the capital of which was Tenggarong on the Mahakam river, upstream of Samarinda, the modern capital of East Kalimantan province. Kutai Kartanegara was later merged with Kutai Martadipura as the kingdom of Kutai Kartanegara Ing Martadipura. The attack on Makassar on the island of Sulawesi by the Dutch East India company in 1667, which led to the downfall of the Bugis kingdom

of Gowa, triggered a migration of Bugis communities to Kutai, where the Kutai Sultan allowed them to settle in Kampung Melantai, later developed (largely by the Bugis) into the town of Samarinda.<sup>11</sup> The arrival of the Bugis also marked the beginnings of intensified Islamic influence in East Kalimantan, with the first Islamic ruler being instated in 1732.

The first Dutch visitor to the Kutai Sultanate is reported to have arrived in 1635 and signed a trade treaty with the Sultan, although it was only from 1844 onward that the Sultanate of Kutai came to be regarded as a(n unruly) protectorate of the Dutch East Indies under the Dutch Borneo Southern and Eastern Division (*Bornero's Zuider- en Ooster-Afdeling*).<sup>12</sup> Nearly a century later, with the invasion of the Japanese, the Kutai Sultanate was acknowledged as the 'Kooti kingdom', subject to the Japanese Emperor.<sup>13</sup> Three years later in 1945, Kutai joined the East Kalimantan Federation and became part of the United Republic of Indonesia in 1949. In 1959, the Kutai Special Region (*Daerah Istimewa Kutai*), represented by Sultan A.M. Parikesit, was abolished and, in line with Law No.27 of 1959, the region was divided into three second-level regencies: Kutai Kartanegara Regency, West Kutai Regency and East Kutai Regency, all of which became districts (*kabupaten*) in November 1999 in accordance with Law No.47/99.<sup>14</sup>

## Peoples

The population of East Kalimantan is a highly heterogeneous mix of indigenous Dayak (including Dayak Kenyah and Dayak Tunjung) and Kutai, and other migrant ethnic groups such as Javanese, Chinese, Banjar, Bugis and Malays. In Kutai Kartanegara, over three quarters of the population inhabit the rural areas, mostly close to the Mahakam river and its tributaries, on which they continue to depend largely for transportation and economic activities. Altogether, some

eighty separate regional languages and dialects are spoken in East Kalimantan.<sup>15</sup> The traditional language of the region is referred to as Tanggarong Kutai Malay, which belongs to the Austronesian language family and is part of the Sunda–Sulawesi languages branch, together with Malay and Iban as well as Buginese. Other local languages spoken upstream include Kenyah and Kayan.

The Dayaks, who are now mostly Christian, tend to inhabit villages close to or within forested areas, and depend principally on shifting agriculture and the collection of products from the forest. The Dayak in East Kalimantan have been classed into nine large sub-groups: the Kenyah, the Bahaus (further sub-divided into the Busang, Bahau Sas and Bahau Modang) the Kayan, the Benuaq, Tunjung, Ohen, Bentian, Punan and Lon Dayeu. Urban and coastal parts of rural East Kalimantan are primarily occupied by the Kutai, as well as Bugis, Banjar, Chinese, Javanese, Balinese, Batak, Minangkabau, Madurese and other incoming ethnic groups. The Kutai, descendants of the Kutai Sultanate, are predominantly Muslim and have tended to dominate local bureaucracies from the provincial to the district levels, and sometimes down to the village level, even where the population is majority Dayak. The Bugis of south Sulawesi are the second largest ethnic group in East Kalimantan (after the Javanese) and have historically dominated economic activities in the region, particularly through trade.<sup>16</sup>

While the Dayak and Kutai are officially recognised as the 'natives' of East Kalimantan, various ethnic groups have co-existed in the region since long before the Dutch colonial period. Under the Kutai Sultanate, for example, Dayak, Bugis and Chinese were active in the ruling administration, and this multi-ethnic power sharing was continued throughout the Dutch colonial period. However, decades of State-sponsored transmigration programmes, as well as what is perceived by locals as the process of 'Javanisation' of the region

has created ethnic segregations as well as inter-ethnic competition over land, natural resources, and political representation and voice. The Dayak of the rural and forested interior, in particular have lost out heavily to the Kutai and newcomers such as the Bugis, Javanese and others.<sup>17</sup>

While inter-ethnic tensions have been reported within the concession, particularly in relation to land rights,<sup>18</sup> the sensitivity of the issue and the short period of fieldwork for this observation exercise made it difficult to ascertain this from the field. A number of discussions with community members revealed a notable distinction made by Kutai people between themselves and other ethnic groups, such as the Dayak, particularly in relation to religious affiliation and culture, such as burial practices and sacred sites.

#### Land tenure

Land was customary held collectively by the Dayak peoples and inherited evenly among children. Swidden agriculture was practised as well as rice paddy cultivation, complemented by the gathering of forest products and fishing for consumption and trade.<sup>19</sup> The clearing of unclaimed primary forest gave rights of use in perpetuity to the clearer, but rights to land could be customarily transferred from original rights-holders to others usually in return for a 'goodwill payment' or 'token of appreciation' (*tali asih*). Land clearance in the forest required permission from *adat* leaders, particularly where this was carried out close to ancestral graves and other sacred sites. Since the arrival of timber and oil palm companies, however, land is increasingly held on an individual basis, even among the Dayak, with several community members selling part of their land to incomers from other parts of Indonesia. However, the individualisation of tenure has not been accompanied by the formal affirmation of these rights. Most communities do not hold Land Statement Letters (*surat pernyataan tanah* – SPT), let alone land titles.

The lack of recognition of customary rights to land in law was pointed out by several community members as a root cause of today's disintegration of the communal land tenure system they traditionally practiced, and the allocation of concessions to private sector companies (timber and oil palm) without consultation with, or the consent of, the communities who have customarily owned, occupied and used these lands for their livelihoods.

The approach of the government is not pro-people enough with regards to these investment projects. Our understanding is that both the timber company and the oil palm plantation are present in our villages because of government approval. But this approval itself does not reflect or take into consideration the communities' land rights. (statement from village head of Kembang Jenggut, reiterated by village head of Perdana Village and various community members)

We don't really know if we have customary lands today any more, in the way we used to define it. There are no lands where the State's intervention is not felt, or where we have complete discretion in managing our land collectively. (community member)

Many of us Dayak have sold our land to incomers, such as the Javanese. But we should not do that, because then we will really have nothing left. (Philipus Njang, Pulau Pinang)

The gradual disintegration of customary laws and the practice of *musyawarah*, or village consultations, as a means of collective decision-making and consent-seeking, were also pointed out as a causal factor of the loss of customary lands by the communities.

I regret that we could not use our customary laws back then to face the company, and claim our rights to land based on our laws. We did not have the opportunity to write them down, as we should have done, because if we had, we could have used them as the justification for our claims to land in the face of the company. We should have been given the opportunity to use our laws in defending our rights. (community member)

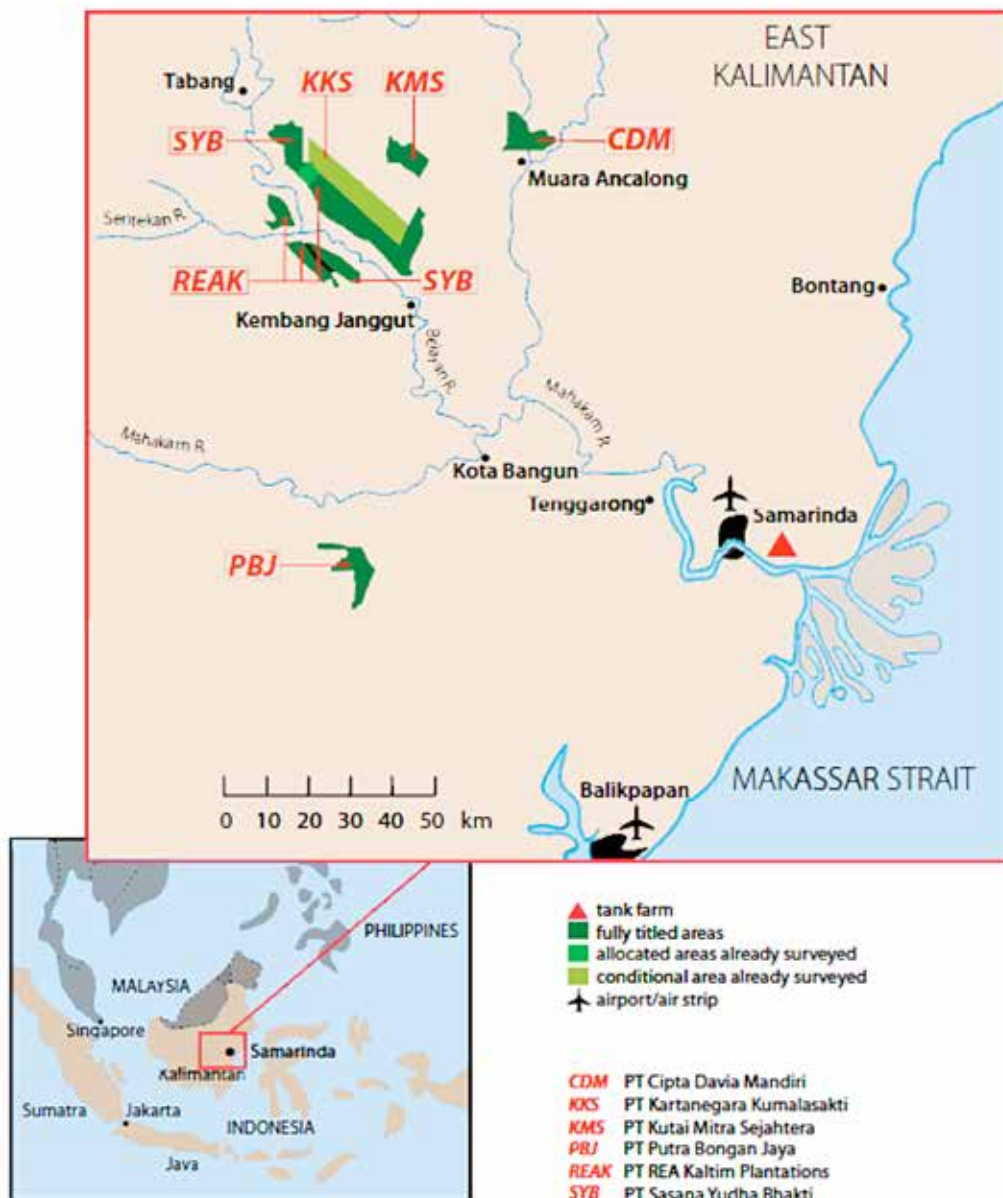
## PT REA Kaltim Plantations' operations

PT REA Kaltim Plantations is located primarily in Kembang Janggut sub-district of Kutai Kartanegara district (138 kilometres west of the capital of East Kalimantan, Samarinda) with a smaller part located in Tabang sub-district. It is one of six oil palm concessions in East Kalimantan owned by REA Holdings PLC, a British company listed on the London Stock Exchange. REA Holdings PLC finds its origins in a London-based plantation agency house called The Rubber Estate Agency Limited (hence REA), established in 1906, and is reportedly one of the first British companies set up for the purpose of financing the acquisition of rubber estates and of acting as secretaries

and agents of rubber and other plantation companies.<sup>20</sup>

In 1989, the group set up an office in East Kalimantan and commenced negotiations to obtain a land concession. By 1991, provisional allocation of a suitable site for planting had been obtained on land formerly part of a concession operated by timber company PT Limbang Ganesa under a Forest Product Harvesting Permit for Industrial Timber Estates (*Hak Pengusahaan Hutan Tanaman Industri - HPHTI*).<sup>21</sup> In 1992,

■ Location of REA Holdings PLC oil palm concessions in East Kalimantan. (Source: REA Holdings PLC Annual Report 2011)



the first nurseries were established, and planting began in 1994.<sup>22</sup> PT REA Kaltim Plantations joined the RSPO in 2007.

As of 31<sup>st</sup> December 2011, the REA group held agricultural land allocations in East Kalimantan totalling 97,698 ha of which 70,584 ha were fully titled. 30,106 ha are held by PT REA Kaltim Plantations.<sup>23</sup> The land allocations comprise a core area on either side of the Belayan river (PT REA Kaltim Plantations, the group's principal operating subsidiary) together with satellite areas located within reasonable proximity of the core area. The operations produce Crude Palm Oil (CPO), Palm Kernel (PK) and Palm Kernel Oil (PKO). As of 31<sup>st</sup> December 2011, the areas planted with oil palms or in course of development amounted to 37,084 ha of which 25,415 ha were mature.<sup>24</sup>

The group intends to plant oil palms on all suitable undeveloped land available to the group (other than areas set aside by the group for conservation) in accordance with the RSPO New Plantings Procedure (NPP).<sup>25</sup> In addition to oil palm plantations, REA Holdings PLC has also acquired rights with respect to three coal concessions in

East Kalimantan (Liburdinding, Muser and Kota Bangun) where it is developing an open cast coal mining operation.

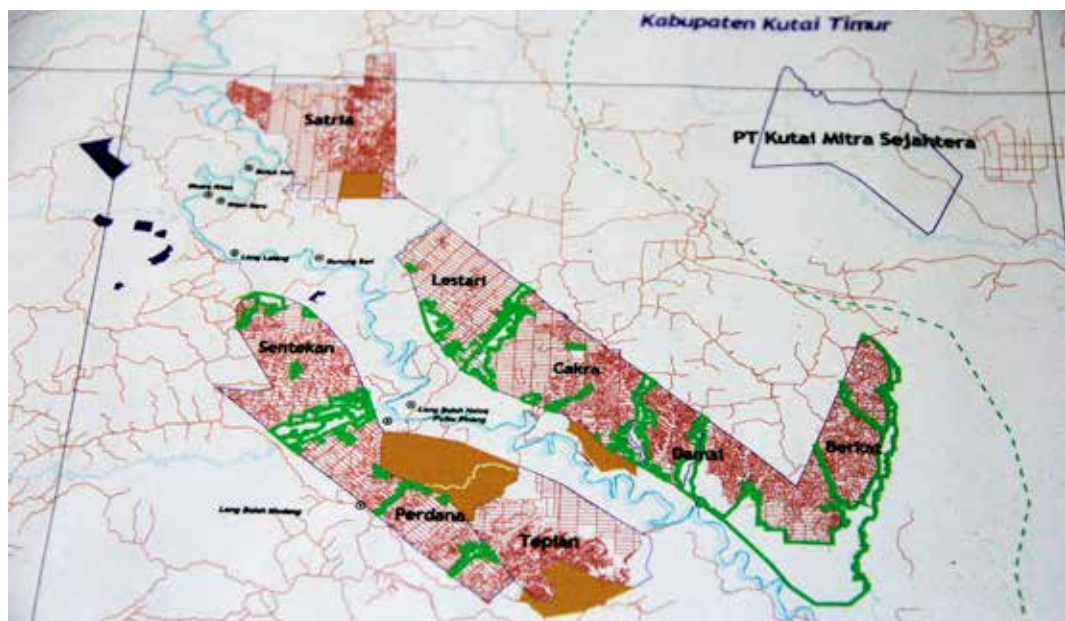
PT REA Kaltim Plantations is composed of two mills (PO1 Perdana POM and PO2 Cakra POM), a supply base of six estates, a Plasma Scheme and an Independent Smallholders Scheme, or PPM (Program Pemberdayaan Masyarakat Desa).<sup>26</sup> The six estates of the PT REA Kaltim Plantations concession are: Perdana (3,850 ha planted), Lestari (3,849 ha planted), Sentekan (4,008 ha planted), Cakra (4,675 ha planted), Damai (2,005 ha planted) and Berkat (4,460 ha planted).

	Total area (hectares)
PT REA Kaltim Plantations	30,106
Conservation areas	5,363
Plasma scheme	1,905 <sup>27</sup>
PPM scheme	1,561 <sup>28</sup>

There are nine villages within the PT REA Kaltim Plantations concession as follow:<sup>29</sup>

1. Long Beleh Haloq
2. Long Beleh Modang
3. Muai
4. Pulau Pinang
5. Perdana
6. Bukit Layang
7. Kelekat
8. Kembang Jenggut
9. Long Lalang

■ Location of PT REA Kaltim Plantations estates, conservation areas and plasma





■ Location of villages in PT REA Kaltim Plantations based on GPS coordinates provided in CUC Audit<sup>39</sup>

While the company informed the NGO consortium of nine villages within the company's HGU (and the RSPO audit by Control Union Certifications (CUC) lists seven), community members affirm that many more have at least part of their lands within the concession. Those listed by community members are: Kembang Jenggut, Hambau<sup>30</sup>, Kelekat, Bukit Layang, Muai, Perdana,<sup>31</sup> Pulau Pinang, Long Belah Haloq, Kenohon,<sup>32</sup> Gunung Sari,<sup>33</sup> Long Lalung, Ritan Baru,<sup>34</sup> Muara Ritan,<sup>35</sup> and Beluksen.<sup>36</sup> However, these claims are difficult to ascertain as there is no definitive map of the village boundaries at present.<sup>37</sup> Conservation areas and riparian zones amount to around 20% of the total landholding and are under the management of a conservation department called REA Kon (from *konservasi* in bahasa Indonesia).

Crude palm oil and crude palm kernel oil produced by the REA group's oil mills are transferred by road tankers to nearby loading points on the Belayan river and from there downstream by purpose built barge. The group has its own transshipment terminal on the Mahakam river (of which the Belayan river is a tributary) downstream of the port of Samarinda. Crude oil and crude palm kernel oil are stored here pending delivery to buyers at international destinations or elsewhere in the Indonesian archipelago.<sup>38</sup>

PT REA Kaltim Plantations received RSPO certification in 2011, following a pre-assessment in December 2010 and a certification assessment on 28<sup>th</sup> February – 4<sup>th</sup> March 2011.<sup>40</sup> The auditors recommended RSPO certification on the basis that PT REA Kaltim Plantations 'demonstrated compliance with all RSPO criteria for which noncompliance would result in a major non-conformity being raised and which would have prevented a certification decision being possible'.<sup>41</sup> Three minor non-compliances and two observations were identified, in relation to Criteria 4.7.5<sup>42</sup>, 6.2.3<sup>43</sup> and 1.3.6.<sup>44</sup>

#### Legal status of PT REA Kaltim Plantations

PT REA Kaltim Plantations obtained its location permit (*izin lokasi*) in 1991 (10/BPN-16/UM-06/III/1991) and the REA Group currently holds a land bank of almost 98,000 ha. The group has obtained five HGU land titles as follow:

- No 01/95, 6<sup>th</sup> September 1995 (Perdana).
- No 02/95, 6<sup>th</sup> September 1995 (Sentekan),

No 03/95, 6<sup>th</sup> September 1995 (Lestari).  
No 01/98, 10<sup>th</sup> January 1998 (Damai and Berkat).  
No 02/99, 26<sup>th</sup> August 1999 (Cakra).

### Community perspectives

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The NGO consortium visited five villages (Hambau, Kembang Jenggut, Muai, Perdana and Pulau Pinang) in Kembang Jenggut sub-district within the PT REA Kaltim Plantations concession.<sup>45</sup> These villages are located along the Belayan riverbanks and the tributaries of Sentekan and Lurah. During the visits, the NGO consortium interviewed community members as well as village representatives, including village heads, political party representatives and heads of village households (RT – *rukun tetangga*). It was not possible to visit all the villages in the concession due to time constraints and poor road conditions during the rainy season.

With regards to Free, Prior and Informed Consent (FPIC) in the early stages of the company's operations (early 90s), it appears that information conveyed to communities was limited to statements by the company of its intention to develop an oil palm plantation in the area, and an invitation to some (not all) villages to join the PPMD scheme, and later the plasma scheme in 2007. A number of community members confirmed that the company has since then taken measures to develop the villages' infrastructure (eg provision of generators, drinkable water, building of clinics, mosques, churches and schools, and building and maintaining roads) for which they are grateful. Some of the village heads interviewed held copies of maps, plasma agreements and compensation receipts from the company, but the majority of community members did not possess or had not seen copies of these documents. High Conservation Area Assessments (HCVAs) and Social Impact Assessments (SIA) were not held by any community members interviewed. A notable complaint on the part of several was that the company tended to rely on the village head and the

village team to convey information to the wider community, but that this was not being realised in practice.

While community perspectives were varied, the overall findings show that most communities do not object to the presence of PT REA Kaltim Plantations and do not feel that their access to land and resources have been significantly affected by its activities. The main grievances expressed were the lack of realisation of promised plasma, unpaid compensation for land lost, and lack of information from the company regarding their activities and communities' right to FPIC. A number of protests have taken place as a result of unfulfilled promises of plasma and compensation – a 25 day road block had just ended on the first day of the observation assessment.

From community statements, it appears that while a process to realise communities' rights to FPIC in the earlier stages was lacking, a number of initiatives have been taken by the company since then to benefit the local communities within the concession. Local communities expressed hope that they could continue to benefit from the company's presence, in particular through the realisation of plasma. Improved communication channels (without reliance on the village head and village team alone) were pointed out as a key area for improvement in relations between communities and the company.<sup>46</sup> On a less positive note, it was apparent that *sosialisai* and communication in general is not evenly carried out in all the villages within the concession, leading to confusion and a degree of frustration for those which have been offered fewer opportunities and less development support.

### FPIC in the early years

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In 1992 – 1993, PT REA Kaltim Plantations began identification of lands suitable for cultivation, a process which was accompanied by the identification of existing land owners and users. This



process of identification was carried out with the direct and ongoing involvement of governmental bodies at the levels of the district, sub-district and village. Land release teams (*tim pembebasan lahan*) and negotiation teams were formed in each village by the village level government in order to facilitate the process of land identification and release, as well as to demarcate boundaries and collect evidence of land ownership and use, such as in the form of land titles. The historical context of the time (the New Order) implied that the role of the government in the identification of land was dominant, from the level of the province, district, sub-district and village, and only after that, to the level of the communities and individuals involved.<sup>47</sup>

*Sosialisasi*<sup>48</sup> was only carried out once in 1992 - 1993, after which the company carried out land measurement and clearing on communities' lands, accompanied by the payment of compensation for land, and sometimes crops.<sup>49</sup> *Sosialisasi* at this point consisted of the company explaining its project of developing an oil palm plantation, as well as making a number of promises to communities, such as the opening up of cultivation land, employment opportunities, village development and empowerment, and so forth. Agreements made, and notes of the *sosialisasi* meeting were given to the village head, who was in turn responsible for sharing these documents with the wider community.

Payment of compensation (*tali asih*) was facilitated by government officials, in line with the company's Standard Operating Procedures (SOP) on compensation payment, and paid directly to the village head, who, as village representative, was responsible for distributing the money to individual households. Official reports were kept of compensation payments, accompanied by photographs and formalised through local government council meetings (*jajaran muspika/musyawaharah pimpinan kecamatan*).

The village of Perdana, inhabited by 439 households (1,360 individuals) of various

ethnic groups (Javanese, Bugis, Kutai, Toraja, Chinese and Flores) was the first village contacted by PT REA Kaltim Plantations when it arrived in the area to open up its oil palm plantation in 1991.<sup>50</sup> Land clearing began in Perdana as early as 1993 – 1994.<sup>51</sup> An oil palm nursery was reportedly then set up on the land of Perdana. However, consequent expansion of the company's land to the current 3,946 ha was said to have been carried out without consultation or communication with the community.<sup>52</sup>

Even at the time, we were not sure how PT REA obtained the land from us. All we know is that they arrived and told us that this was to be their HGU. This was at the time of the New Order, so the government took a lot of decisions in our place. PT REA Kaltim Plantations' nursery was established on community-owned crop gardens and fields. After that, the company expanded its area into forest within our customary land. (Village head, Pak Kasmani)

In Hambau village,<sup>53</sup> community members interviewed did not recall participating in any *sosialisasi* activities carried out by PT REA Kaltim Plantations in 1992 when they first arrived in the area. The first contact established with the company was in 2006 – 2007, when PT REA began clearing land within the village's area (*wilayah desa*), in some cases without prior warning. Land clearing with heavy machinery was reportedly carried out up to the shores of Hiran, Kenohon, Lurah and Hapai rivers.<sup>54</sup>

PT REA took some of my land, which I had planted with rubber trees. The trees were already pretty tall, there were around 300 of them, and they were destroyed. I was too scared to say anything because I knew that BRIMOB [military mobile brigade] was around. I couldn't take my case to the company, or anyone else, because my trees were the evidence, and they had been destroyed. (Pak Ridwan<sup>55</sup>)

Some of us found out that our land had been cleared in the morning when we went to our paddy fields and gardens. To us, the grabbing of our land without warning is the most outstanding problem. (community member)

The company states that *sosialisasi* was not carried out in Hambau as it is not part of the company's HGU. The mapping being carried out by Muspika survey team to produce a definitive map will confirm at a later stage which villages have rights to land within the PT REA HGU. The company has stated that if the map shows that Hambau does have village land within the company's HGU then they will need to adjust plasma allocation accordingly.

In Kembang Jenggut, a village to the south-east of the PT REA concession inhabited by around 986 households, around 500 ha of land were reportedly taken by PT REA Kaltim Plantations without prior warning or consultation. In 2006–2007, compensation for lost land was offered (600,000 Rp per ha) but communities protested as this did not include the cost of lost crops and fruit trees on the land taken by the company.

An interview with 68-year old RT1<sup>56</sup> head Philipus Njang from another village, Pulau Pinang, inhabited mainly by Dayak Tunjung, confirmed that there too, very little, if any, *sosialisasi*, had been carried out in the 1990s.<sup>57</sup> In Muai, a village inhabited by around 1000 households of various ethnic groups (Bugis, Kutai, Dayak), community members reported that the company representatives who first visited the village asked the community to sell their land to them and get plasma in exchange.<sup>58</sup>

They took seven hectares of my family's land without compensation. Before that, we were free to use our land as paddy fields and gardens. How can we manage our customary lands if they are taken by PT REA? (Pak Wahidu)

In Kembang Jenggut,<sup>59</sup> the village head, Pak Aslan,<sup>60</sup> confirmed that the consent of communities was not sought at the time, rather the company announced its intentions to the communities, as well as potential benefits that could be gained by local communities from the development of oil palm plantations. No community members were aware of maps or participatory social surveys carried out at the time. The lack of identification

of clear borders of the concession at this early stage was also pointed out as a major cause of conflicting land claims (as well as occasional opportunism) by different communities and within communities.<sup>61</sup>

Without maps, it is like we are blind. (Pak Ridwan)

Our customary rights have never been accounted for in the form of maps. (Pak Aslan)

One of our demands is to re-measure and re-demarcate the boundaries of customary land and of the concession. (Pak Aslan)

We don't really know where the borders of the concession are, so we don't know how much of our land falls within the concession.

To date, it appears that most communities are unaware of the legal status of the company's operations, including in relation to the location and terms of the five HGUs obtained by PT REA Kaltim Plantations. Most community members are not clear as to the nature of PT REA Kaltim's operation, its organisational structure, and the terms of its operations on their customary lands. Many pointed out that it would be better if the allocation of permits was done in collaboration, or at least in consultation, with potentially affected local communities. In response to this point, the company states that all allocations of land for development for oil palm went through the (Environmental Impact Analysis (AMDAL) process and that a Panitia B process was also done before HGU titles are obtained, which are community approvals of the intended projects. However, it is reported that most of the village elders have either passed away or migrated to the towns, taking their understanding and information on these developments along with them.

#### Compensation

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Most community members in Hambau have yet to be compensated for the land they claim to have lost to the company four or five

years ago and they were unaware of whether the company has a SOP for compensation payment. They are also unsure who to turn to with their claims, as government bodies approached have failed to respond.

The provincial government closes its ears to our claims. No investigations have been carried out in the field to verify our claims either. (community member)

The community of Kembang Jenggut was also in protest at the time of writing over lack of compensation for land and crops lost to the company seven years ago. They demanded 15 billion rupiah from the company, the equivalent of lost income from the land lost over seven years, a sum that they then decreased to 10 billion rupiah.

In Muai village, compensation and the realisation of plasma were the main demands from protesters. 3.5 million rupiah had reportedly been promised by the company to the village in an oral agreement but never given. Now, the community is asking for fifteen million rupiah, which they report is in line with the value of the land they have lost. Furthermore, certain community members reported that some compensation was claimed as already paid by the company, but that they had never seen receipts or the money itself.

Maybe the village team or the cooperative have the receipts, but the point is we don't know, and we don't know where the money is.<sup>62</sup> (Pak Wahidu)

The Muspika survey team is currently working on determining which claims of outstanding land compensation are valid and which are spurious.

#### Plasma scheme

According to company representatives interviewed, the plasma scheme implemented by the company is a One Roof Management Partnership (*Kemitraan Manajemen Satu Atap*), for which a Plasma

Department has been set up by the company. The responsibilities of the department are to provide training to plasma scheme members via two cooperatives: Kahat Bersatu (for Pulau Pinang, Perdana and Bukit Layang) and Etam Bersatu (for Kelekat). According to the CUC audit, the plasma is managed and developed by a 'plasma team' appointed by the company. The first plasma areas were planted in 2009 and are planned to come into production in 2012. The target is to develop an area of 4,700 ha which is equivalent to 20% of the HGU area.

Interviews in various villages revealed that most are keen to benefit from the presence of PT REA in the form of plasma. Some villages were offered plasma by the company in 2007 and 2008 and hold signed agreements with PT REA Kaltim Plantations (such as Perdana, Kelekat and Pulau Pinang). But other communities have complained that they had to take the initiative to approach the company and request plasma, rather than the company informing them of the possibility of benefiting from their activities through the plasma scheme.

In Hambau, for example, community members were confused as to why plasma was not offered to them by the company, and why the community has had to request it from the company after finding out what it consisted of through their own channels of information. No *sosialisasi* activities were reportedly carried out and most community members found out about plasma in 2012 through their own means (including from legal sources such as regulation Permentan 26/2007).

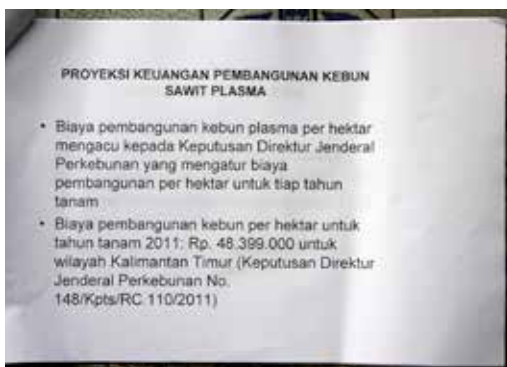
PT REA began operating in 1994, but plasma only started this year, and not in our village. We already have plasma with PT PTS [a neighbouring oil palm company] and they are much more recent, so we don't understand. How come we have to look for information on our own and demand for our rights to be realised? (Pak Ridwan)

With regards to plasma, the company states that under the regulations applicable prior to 2007, they were not obliged to provide



■ Village head of Kembang Jenggut shows the agreement between PT REA Kaltim Plantations and Kembang Jenggut for the realisation of plasma / Carlo Nainggolan

approached the company to request plasma, after finding out about it from other villages who were protesting against the company for failing to implement it.



■ Detailed information about the plasma scheme was only conveyed to Kembang Jenggut in June 2012 / Carlo Nainggolan

The situation was reversed. It should be PT REA who approaches us as this is their responsibility. (Pak Aslan)

plasma for the villages owning land within the concession as these areas were developed prior to 2007. However, the company reports having offered communities with access to land the opportunity to become involved in a different smallholder scheme through their PPMD programme, but that there was only limited uptake of this offer.

Likewise, the village head of Kembang Jenggut states that the community

According to the village head, 500 ha of plasma, in the form of a *kemitraan* agreement, was promised to the community in 2006, but has not been realised to this day. Under the agreement, the community would be provided with seeds, fertilisers, pesticides and so forth for the planting of oil palm. An examination of two agreements with Kembang Jenggut, held by the village head, however, show that the plasma agreement does not have legal weight as yet, as the company has, so far, only 'promised to help the community of Kembang Jenggut in plasma plantations'. The same commitment was made in two consecutive agreements (17<sup>th</sup> April 2006 and 9<sup>th</sup> March 2007). Details on the nature of the plasma scheme (eg duration, location of plasma, status of the land upon expiry of the HGU and so forth) have not been included in these agreements to date, and it appears that the community is wrongly interpreting these documents as formal plasma contracts, upon which they are

basing their claims. Information-sharing on plasma was only carried out in 2012, according to the village head, and confirmed by a document detailing the nature and terms of the one-roof management plasma scheme, dated 28<sup>th</sup> June 2012. The village head was unaware of where the plasma land would be located; a map has reportedly been produced following a land identification process in 2012, but he did not have a copy.

In some villages (Kembang Jenggut and Muai in particular), it appears that collective *sosialisasi* with the communities was only implemented around 2007, when the company introduced the plasma scheme. Since then, however, very little consultation and contact have reportedly been undertaken.

*Sosialisasi* happened at first, a few times, but we have no idea what's happened since then. It hasn't really been an iterative process. (Pak Wahidu)

The situation in the village of Pulau Pinang was by far the most encouraging in terms of realisation of plasma. According to one community member (and head of RT1), two ha had been received by most community members, as well as help in the form of seedlings and training. The plasma MoUs held by community members of Pulau Pinang have been signed by the Bank of East Kalimantan as the lender and financier of the plasma development and the cooperative as the representative (legal entity) of the farmers, as well as the company as the guarantor (*avalis*). The MoUs clearly state the development cost for each hectare of land as 39 million rupiah (with yearly variations) due to fluctuating costs of land clearing, seed purchase, maintenance, fertilisers, pesticides, and so forth. Under the MoU, the farmers are to settle their debts by monthly installments in the form of deductions from their earnings, over a period of 15 years.

Perdana has not taken part in any protests, and the general impression given was that the community is happy with the presence of PT REA as they are able to benefit economically from it.

We can get three to six million rupiah per month from two hectares, which is enough to live off and support our children to go to school. We have never fought with PT REA. They have brought us a lot of development support too, such as clinics, which are free for PT REA staff and workers, as well as their families. Most of us here are employed by PT REA at different levels, or are part of the plasma scheme. (Pak Philipus Njang)

In Muai, the PPMD scheme also appears to be well accepted by local communities. In this scheme, community members are provided with seeds, fertilisers and pesticides by the company, and have written contracts according to which they sell their fruit to PT REA via a cooperative (Belayan Sejahtera). The cooperative has grown from 33 farmers to over 180 in the last few years, and it keeps copies of all receipts, contracts and payments on behalf of its members.

Also on a positive note, a significant amount of community development support has been provided by PT REA Kaltim Plantations to a number of villages, including Pulau Pinang, Perdana and Muai, in the form of generators, clean water, clinics and schools.<sup>63</sup> Electricity is also provided by the company to Pulau Pinang for free between 5 pm and 6 am. While the community of Hambau stated that very little development aid had been provided by the company compared to other villages (and this was confirmed by the company).

#### Access to information

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A main complaint on the part of community members in all villages visited was the lack of information provided to them by the company regarding its operations, and regarding community members' rights – to compensation, to plasma and to FPIC. Improved channels of communication was a recommendation made by all six communities interviewed.

In Hambau, for example, community members stated that they had to look for such

information on their own through channels other than company representatives. Limited information sharing by the village head and involved *adat* leaders was also reported.

Maybe the company communicates with the village head and other high level functionaries at the village level, but they don't communicate with us [the community]. We are not sure who we should blame for the problems; the company, or our own representatives. (community member)

We found out about Permentan 26/2007 from listening to the media, from watching television, from ear to mouth. The information we have about this, and other aspects of the company's operations, are extremely minimal. We have heard about the RSPO, but not from the company. I only found out what HGU, plasma and INTI are from a friend who works at PT REA, and he told me that this was confidential information to be kept secret. I'm not sure if that is true or not. And that was in 2010. (Pak Ridwan)

We blame our ignorance and lack of education for not knowing about our rights. (community member)

It's like we've just woken up to realise that we have rights. (community member)

We are still not brave enough because we are unsure of our rights, but we are becoming braver. (community member)

The establishment of village teams (*tim desa*), village border teams (*tim batas desa*), plasma teams (*tim plasma*) and discussion teams (*tim perundingan*, also known as Tim 42 in Kembang Jenggut) to act as intermediaries between the company and communities was seen as problematic by many community members for a number of reasons. First, many were unsure who the members of the village team were in the first place, as this had not been socialised to them. Second, several people complained that the village team was only activated when problems arose, rather than playing an ongoing monitoring role. Third, information was not always being communicated by the teams to the

wider community in due time, particularly information about the implementation of the plasma scheme. As such, it was reported that communication channels with PT REA needed to be both increased and better monitored by the company to make sure full community involvement was achieved.

The teams have to be more pro-active in contacting us and communicating with us. Otherwise, our impression is that the company behind them is stone faced and stone eared to our demands (*bermukakan tembok, bertelingakan batu*). (Pak Aslan)

Sometimes, when the company meets with our representatives, they take them to Samarinda or Tenggarong for the meetings, which is a problem for the rest of the community who are not present. (Pak Muhammad Lukman)

With regards to documentation, in two villages, the village heads were in possession of a number of relevant documents, including maps and plasma contracts (Kembang Jenggut and Perdana). These include maps of the concession estate boundaries, border demarcation agreements on conservation areas in Kembang Jenggut, a map of land classification from the Ministry of Forestry, an agreement for the establishment of a village team from 2006, and various agreements on payment of compensation for land lost. However, most community members did not know about or have copies of HCVA, Environmental and Social Impact Assessment (ESIA), AMDAL or maps produced by the government or the company. None of the community members interviewed had heard of FPIC.

In one village (Muai), it was reported that the community had been involved in participatory mapping with PT REA, but that this map was to be used to identify land for clearing, not customary rights or plasma. No community members interviewed were aware of any SOPs of the company in relation to the recognition and demarcation of customary lands, conflict resolution mechanisms or multi-stakeholder communication mechanisms.

The administrative map produced by the Forestry Office had reportedly not been shared by the village government, or actively used to help the rights of communities to land to be recognised in practice. The provincial National Land Agency has reportedly mapped the customary land of Kembang Jenggut within the PT REA Kaltim Plantations concession, but community members reported that they have not received copies of this map.

Without maps, we are unclear of the boundaries of the concession, and how our own customary lands fit within that. Even though we know that some of our land has been taken, we cannot base our claims on concrete maps, and that makes it very difficult for us. (Pak Ridwan)

Communities need to know their rights. The company and the community must engage in dialogue so that the company can know the needs and aspirations of the community, as well as why the land matters to them. And this must be a reciprocal process for things to go forward in a way that respects rights. (Pak Aslan)

Several community members also complained of a lack of information imparted to them by the company and the government regarding their rights under national law. Several saw this as the responsibility of both parties.

We don't understand the laws, so we don't understand our rights. We cannot really voice our views because we lack information. Only now we are beginning to get information through our own means, and becoming braver to open our mouths. (Pak Ridwan)

The government knows the laws but we don't know our rights under these laws. To be honest, we feel that the New Order regime is still ongoing on our lands. (Pak Ridwan)

In Kembang Jenggut, several community members were confused as to the location and extent of the company's HGU, and as to whether plasma land should be within or outside it. A particular complaint has already been raised by the village of Kembang

Jenggut at the level of the Plantations Office and the District Secretary over this issue, and the community is in negotiation with the company over clarification of the area and boundaries of customary land of Kembang Jenggut within the PT REA Kaltim Plantations concession.

Only one village (Perdana) had heard of the RSPO from company representatives, but the term FPIC was unknown to all community members interviewed.<sup>64</sup> Lack of knowledge of RSPO among plasma and PPMD scheme stakeholders was also identified as a non-compliance in the CUC report.

Another problem raised by communities (Hambau and Kembang Jenggut) in relation to communication channels with PT REA Kaltim Plantations was the frequent change in staff and company representatives, leading to confusion as to who to turn to when problems arose, and delays in response on the part of the company as new staff needed time to get to terms with ongoing issues.

Sometimes we feel we are getting somewhere with one representative, and our problems are being resolved, but then the staff change, and we have to repeat the whole story again. It makes the process longer. (Pak Aslan)

This problem was also raised by community members of Perdana, who noted that, frequently, agreements signed between the community and the company were signed by the company representative involved, but not stamped with the company's

■ *Meeting with village representatives in Perdana / Agus Wiyanto*



official stamp. As a result, on a number of occasions, changes of staff meant that these agreements were no longer acknowledged by the company, as they were signed in the name of past management staff. A demand of the community was thus to formalise agreements and contracts by formalising them with use of the company chop (stamp), rather than signatures alone. In relation to this point, the company states that it now has a company policy in place that all agreements and contracts have to be approved and signed by the President Director.

### Protests

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A number of protests over unresolved plasma and compensation were reported by community members within the PT REA Kaltim Plantations concession. These include a protest at one of the company's mills in May 2004 by Muai village<sup>65</sup> (causing the temporary shutdown of its operations) and in 2011 by Ritan Baru and Gunung Sari community members due to pollution of the river by company waste effluents.<sup>66</sup> At the time of writing, three villages (Long Beleh Modang, Muai and Kembang Jenggut) had blocked five company roads within the concession in protest for 25 days, ending the blockade on 8<sup>th</sup> July 2012.<sup>67</sup> PT REA Kaltim Plantations has reportedly agreed to offer compensation in the amount of 70 million rupiah to the protesting communities, but there was no formal agreement for this at the time of writing.

According to a number of community members, these protests have had a cumulative effect, as other villages gain awareness of their unfulfilled rights.

One protest triggers another, as communities begin to realise that they can also claim plasma land and compensation for the land they've lost. (Pak Ridwan)

However, it appears that the communities have no intention of taking more drastic measures to bring their complaints to the company, as they generally hope that problems can be

resolved peacefully, and that they can benefit from the company's presence.

We don't want the company to shut down. We just want to be able to share the benefits with them, and see the promises made to us realised. When we protested, BRIMOB and the police came and told us not to cause any problems. We told them that this is not what we are trying to achieve. (Pak Wahidu)

Interestingly, a number of community members (in Hambau, Perdana and Pulau Pinang) did acknowledge that, while they do not want the company to leave the area, they also realised that they have become near completely dependent on its presence and on the economic opportunities that it may bring. According to representatives of PT REA Kaltim Plantations interviewed, approximately 1,500 people from surrounding villages work for them, with approximately 5,000 dependents. However, although they are benefiting from employment opportunities, several community members described this dependence as a result of changes to land use that were beyond their control.

We might not be discontented with the company's presence, and we are offered jobs, but the question is, do we really have a choice? And were we really ever given a choice? We don't have much land left to manage on our own. So we may support the company, but not really out of choice. There is no more forest, and no more land, so we have to look to the company as a source of income. (community member)

### **Customary rights and FPIC: The role of the government and the company**

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#### The government

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Government representatives from the Kukar National Land Agency and the Forestry and Plantations Office interviewed in Tenggarong maintained that PT REA Kaltim Plantations' operations and legal conformance were satisfactory, and that economic opportunities provided to



local communities by the company were welcomed by the latter. Outstanding issues to be resolved, they note, were ‘problems, not conflicts’, and although the representatives acknowledged that conflicts had arisen in the past, they affirmed that the company had taken all necessary measures to remedy community grievances and provide compensation where legitimate claims were made.<sup>68</sup>

The responsibilities of PT REA Kaltim from our point of view have been completed. The PPMD scheme has been realised. PT REA Kaltim is a good company. (Head of Forestry and Plantations Office, Kukar)

PT REA Kaltim does not have any outstanding responsibilities, as it has already implemented all its responsibilities. (Pak Sandi, BPN Office, Tenggarong)

However, it is interesting to note that the lack of involvement and initiative taken by the district government and relevant State agencies in terms of conflict resolution and mediation between the communities and the company was highlighted by several community members. One of them, for example, stated that, ‘instead of acting as a bridge between both parties, the local government is not maximising its authority, and is instead positioning itself as ‘goalkeeper’ rather than ‘team player.’ Similar comments were made with regards to the Local Parliament of Kukar District, who was said to ‘absorb the aspirations of the communities but not represent them in action’. On an encouraging note, it is reported that in June 2012, the Regent stated that his office would assist in dispute resolution and arbitration where necessary.

Numerous complaints with regards to unrealised plasma and unpaid compensation have been submitted by community members to the National Land Agency, the local Parliament and the Plantations and Forestry Offices, with very little response and no action. Discontent with the government’s lack of initiative and role in pushing for the realisation of promised plasma led to

protests at the district government’s office by community members of Tukung Ritan and Ritan Baru on 28<sup>th</sup> February 2012, prompting the regent’s representative to promise to convey the communities’ wishes to the Regent himself.<sup>69</sup>

It was acknowledged by staff of the National Land Agency and the Forestry and Plantations Office that Kukar Regency lacks local regulations relating to conflict and dispute resolution. BPN relies instead on the Regulation of the National Land Agency Head No. 3 of 2011 on the Management, Assessment and Handling of Land Cases (*Peraturan Kepala Badan Pertanahan Nasional Tentang Pengelolaan, Pengkajian dan Penanganan Kasus Pertanahan No. 3/2011*). Conflict resolution mechanisms have, to date, taken the form of ‘ad hoc’ teams which are set up when and where the need arises, and relative to the nature of the conflict and the sector in question.

While a number of mapping activities have been carried out with the involvement of the National Land Agency Central and Sub-district Offices, the Plantations Office (Dinas Perkebunan), the Agriculture Office (Dinas Pertanian), the Forestry Office (Dinas Kehutanan) and PT REA Kaltim Plantations itself,<sup>70</sup> these have focused on the demarcation of HGUs, of conservation areas and of the boundaries of the concession, and not customary lands. While representatives of the National Land Agency recognised that mapping customary lands would help avoid further land conflicts and overlapping claims, they also stated that community members did not need to participate in mapping activities, and that it was enough for the outcomes of the mapping to be socialised to them afterwards. Representatives of the Kutai Kartanegara Forestry and Plantation Agency confirmed there are, to date, no Regional Government Regulations (Perda) for the protection of village community lands or customary lands.

Communities don’t need to participate further than *sosialisasi*. They don’t need to participate in mapping, or HCV assessments.

Finally, with regards to FPIC, while some government representatives interviewed reported not being aware of its meaning, others clearly equated FPIC with '*sosialisasi* by the company and the government to the people'. Similar statements were made with regards to the issuance of HGU, which, representatives stated, only required *sosialisasi* after the permits had been issued, to explain their purpose and terms to the communities. The notion of FPIC as a right, to be protected and realised through an iterative process of consultation, negotiation and dialogue, was deemed an over-statement by the government representatives interviewed.

*Sosialisasi* is only needed when a company starts to operate in an area, when the company and the government tell the people what they plan to do with the land. (Pak Sandi)

It is also interesting to note that the government representatives interviewed were not aware of the RSPO, of the Principles & Criteria, of PT REA Kaltim Plantations' membership to the RSPO, or of its recent certification.

#### PT REA Kaltim Plantations

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The early stages of PT REA Kaltim Plantations' interaction with the local communities living within the concession appear to have consisted of information-sharing on the economic and social benefits of oil palm development, rather than consideration for the right of the communities to give or withhold their consent to the project development on their customary lands. In many ways, the measures taken since to recognise and support local communities' rights can be seen as a means of remedying this earlier lack of recognition of FPIC.

According to company representatives, local communities within the targeted concession area were identified and contacted via the village heads and sub-district head.<sup>71</sup> In 1994 – 1995 (ie three

years after PT REA first identified the concession site but prior to the opening of land), information-sharing (*sosialisasi*) in the form of a main stakeholder meeting was held in Samarinda, and a number of follow-up meetings at the sub-district and village level, to which the main community representatives were reportedly invited. It was also around this time that village teams were formed by the company, involving community representatives such as village heads and *adat* leaders. Responsibility was given to this team to convey information from the company to the wider community. With the village team, the borders of the concession were demarcated and compensation for land lost by the community paid. According to company representatives, *sosialisasi* consisted of informing the communities that PT REA Kaltim Plantations was planning to open up an oil palm plantation in the area. The company also informed the communities that they would benefit from employment opportunities with the development of the oil palm plantation.

According to company representatives, most communities supported the land clearing process at the time. Planting was carried out in stages after the acquisition of the location permit in 1993 – 1994 and is ongoing to date. The PPMD scheme was first implemented in 1994, according to company representatives interviewed.<sup>72</sup> A specific Department was set up by PT REA Kaltim to manage the PPMD scheme, including *sosialisasi* of the concept and identification of community lands available to implement it. The first PPMD schemes were carried out in Pulau Pinang and Long Beleh Modang. The company provided these villages with managerial and technical support via an established cooperative, including the provision of oil palm seeds, fertilisers and pesticides, the costs of which were to be repaid by community members five years after planting, in the form of a percentage from the harvest reaped. According to the company representatives, local community members approached the company and offered up their land

to the scheme, upon which the company provided them with material and training support. The one-roof management plasma scheme began in 2008, at which point new applications for the PPMD scheme were no longer taken.

The early period thus saw a focus on the PPMD scheme rather than plasma, as PT REA Kaltim, holding the status of foreign investor (Penanaman Modal Asing – PMA), was not under legal obligation to implement plasma. Plasma was first implemented around 2008 in certain villages, following the release of Regulation No. 26/PERMENTAN/OT.140 / 2/2007 on Guidelines for the Licensing of Plantations by the Ministry of Agriculture.

*Sosialisasi* of plasma is reportedly ongoing since 2008 in all nine villages, with contracts signed on an individual basis with villagers and kept by the cooperatives. Loans with the bank are managed by the cooperative as well, and its members are chosen by the village itself. The company has also set up a Plasma Department with a Head of Plasma, all of whom are company staff. Company representatives acknowledged that only a limited amount of plasma had been realised to date, and stated that they were in the process of looking for land to open up the remaining areas of plasma. A contract for additional land is close to being finalised with neighbouring REA Holdings PLC concession PT KKS (Kartanegara Kumala Sakti), to be allocated to plasma for the local communities in PT REA Kaltim Plantations.

The main documents and notes of meetings between the company and communities are given to the village team who is responsible for providing these documents to community members should they request them. While meetings with community members only occur when a problem arises (rather than as a routine procedure), the company ensures that third party representatives are present as far as possible (this includes local NGOs such as Laskar, Komando and GMP). The company also strives as far as possible to

resolve problems through negotiation and dialogue, seeing legal proceedings as a last resort, as they know that the communities will be placed in a weak bargaining position and that a win-win outcome is not possible.

We opt for negotiation and mediation for conflict resolution. We want to resolve issues peacefully.  
(Pak Murali)

While private security guards are hired by PT REA Kaltim Plantations to ensure the security of the concession and company personnel, and the mobile police brigade (BRIMOB) have entered the concession when protests and demonstrations by the communities took place, it was reported that they have never encountered serious problems in the field, and no serious conflicts have occurred with local communities. A conflict resolution mechanism has also been developed by the company and socialised to the village teams.

The company has carried out two Environmental Impact Assessments (EIAs; in 1995 and 2000) and one HCV assessment was carried out by consultant company Tropenbos. The conservation area within the concession is managed by a team of specialists in three divisions: Biodiversity Division, Ecosystem Services Division and Community Development Division. Local community members were reportedly compensated for land which is now located within the conservation area but there are still some areas within the conservation areas where land compensation has not yet been completed. The AMDAL of 1992 was socialised at the time, and a revised version of 13<sup>th</sup> June 2011 is now being used. The company also holds an Environmental Work Plan (*rencana kerja lingkungan* – RKL) and an Environmental Management Plan (*rencana pengelolaan lingkungan* – RPL) as part of the full AMDAL.

The company fully supports a dedicated conservation department (REA Kon) which consists of eight permanent members of staff, the majority of which have extensive experience of working for conservation

organisations. The REA Kon staff also work closely with many organisations including the Indonesian Institute of Sciences (LIPI), Universitas Mulawarman (UMUL) in Samarinda, Singapore Botanical Garden, international consultants and university researchers. Local communities are allowed to access the conservation areas for their daily needs (eg gathering non-wood forest products such as vegetables, fruit and fish) as well as engage in limited agriculture at the borders of the conservation areas, but are encouraged by the company to protect and conserve it as far as possible through *sosialisasi* and educational activities.

If the communities have interests in the conservation area, we are prepared to enclave parts of it for them, but till now we have not had any demands of the sort. In fact, the communities are not fully dependent on these areas, only very minimally, and no one was living in those areas before. (Pak Murali)

PT REA Kaltim Plantations has set up a Community Development programme, headed by a Community Development Manager, which is implemented and monitored by a team member permanently based in a number of villages (Muai, Long Mahli, Long Beleh Haloq, Long Beleh Modang, Pulau Pinang, Perdana, Kembang Jenggut, Kelekat and Bukit Layang). According to company representatives, the Community Development Programme is going very well and communities feel they can approach the team with their requests easily. Community development programmes include the provision of electricity (free in some villages) and clean water, the building of schools and clinics and generators.

Overall, PT REA Kaltim Plantations demonstrates a proactive stance towards accommodating and supporting the needs and demands of local communities, through a process of negotiation and dialogue, backed by concrete actions taken to this end.

Whatever their demands are, we will try to be of service to the communities. (Mbak Adriana)

The NGO consortium identified a number of unresolved compensation and plasma-related problems in the field, but nothing that could be justifiably termed 'conflict'. The efforts of the company to establish intermediary teams (eg village teams and plasma teams) at the village level as well as within the company organisation (eg Plasma Department, Community Development Programme) are indicative of an open and committed attitude towards fulfilling local communities' needs. PT REA Kaltim Plantations staff interviewed also demonstrated notable interest in understanding the perspectives of local communities as communicated to the NGO consortium with regards to their operations. They emphasised that support and advice from NGOs were desired as part of their efforts to improve their practices in the field.

We are ready to accept any criticisms to improve our future performance and strengthen our collaboration with other stakeholders. (Pak Murali)

Communities do not appear to be restricted in their access to land, including within the conservation areas, and no complaints were raised on this issue during community interviews. While plasma realisation and unpaid compensation remain outstanding issues, the company is aware of these demands and is working towards resolving them. Local communities in general support the presence of the company, and hope to gain the same benefits as the villages where plasma has been realised, such as Perdana and Pulau Pinang. Communication problems reported by certain community members appear to have more to do with lack of transmission of information internally by village representatives themselves (including village heads and village teams) to the community, rather than lack of effort on the part of the company to communicate with community-chosen representatives.

However, improvements to the process of respecting the right to FPIC are still needed. As noted earlier, the early stages of the company's interaction with local communities was more akin to negotiation

and compensation for lost land and rights, rather than a process seeking to obtain communities' consent. But even today, very few of the community members interviewed recall being involved in *sosialisasi*, either in the early years of the companies' operations or at later stages. The company representatives interviewed also found it difficult to explain what was meant by FPIC and how they were respecting this right in practice. They were also unable to clarify the difference between FPIC, *sosialisasi* and consultation, suggesting that FPIC as a right, and not a process, has not yet been fully acknowledged or scrutinised.

With regards to documentation, none of the community members interviewed had copies of documents such as AMDAL, the ESIA or the HCVA, or information on the HGUs obtained by the company. A major problem identified was the lack of participatory mapping of customary lands, a limitation recognised by both local communities and the company.

Different people lay claims to the same land, and this also causes inter and intra village conflicts. (Mbak Adriana)

Many problems would be resolved if we just had clear maps, with clear borders, that we were

involved in producing. (Pak Aslan, village head of Kembang Jenggut)

Some community members demand extravagant compensation for land which, it often turns out, is not theirs. In these cases, we feel like the victims. We feel like a tree that can be shaken to yield fruit (*pohon digoyang*). (Pak Murali)

Although this limitation was recognised by PT REA Kaltim Plantations representatives, and an indicator of Criterion 2.3 of the RSPO P&C refers to the mapping of recognised customary rights,<sup>73</sup> at the time of writing, the company did not appear to be planning to take measures to conduct participatory mapping, as they saw this as the responsibility of governmental bodies instead (but see endnote 37).

We do not want to take over the authority of the government. We can only facilitate a process of participatory mapping. (Mbak Adriana)

However, it is evident that the lack of clarity of customary land boundaries is a contributing factor to the unclear scope of individual and community rights to land, in

■ *RSPO Principles and Criteria posted outside Perdana Estate Division / Sophie Chao*



turn allowing for occasional opportunistic claims and duplicated compensation demands, particularly as the value of land increases.

In relation to plasma, the main problem identified is that while the company is working towards identifying land for this purpose, local communities are not being informed of this, and are therefore assuming that the company is not actively seeking to realise the plasma agreements in practice.<sup>74</sup> The procedural steps of the plasma scheme have apparently not been socialised to these communities, which, if done, would avoid a great deal of uncertainty and discontent on their part. And while conflict has not yet occurred to date, it can be anticipated that, if the company does not take measures to explain and inform communities on this issue, protests will multiply, with detrimental impacts on both the communities and the company's operations.

Finally, while PT REA Kaltim Plantations is visibly highly focused on conservation and the rehabilitation of formerly heavily

logged areas (and very successfully at that), company representatives interviewed (including environmental managers and staff), appeared less familiar with the concept of HCVs. Although the company has carried out an HCVA, HCV classifications are not used to demarcate conservation areas, which are instead called 'conservation areas' (*kawasan konservasi*). The company states that in its view, the concept of a High Conservation Value Area and a Conservation Area is the same – it is an area of natural habitat set-aside because it is considered to be of ecological, social or cultural value. The company is of the opinion that very few people understand what HCV 1, 2 or 3 mean so they have called these areas conservation areas because this is the terminology that both the company's general employees and local communities understand.

Local communities are allowed to plant fruit trees and carry out limited hunting, and no disputes with local communities over access to the conservation areas have been reported. According to company representatives interviewed, these conservation areas predate REA Holdings' membership of the RSPO, as do its conservation division, and as such they have not considered it necessary to set up HCV classifications in these areas

■ Meeting of NGO consortium and representatives of PT REA Kaltim Plantations at Perdana Estate / Carlo Nainggolan





for the reasons described above. It was also suggested that HCV classifications are more relevant to newly operating companies in order to ensure that conservation is taken into consideration in their practices and land use.

We did not set-aside conservation areas and start to manage these areas just to comply with the RSPO Principles and Criteria – it was something that we were already doing because we recognise that it is important. Communities have full access to the conservation zones. But what we do is provide education and training for them to promote sustainable use of these areas. (Sophie Persey)<sup>75</sup>

### Legal analysis

Legal irregularities identified in PT REA Kaltim Plantations' operations relate to the land acquisition process, the involvement of communities in the Environmental Impact Assessment, and the implementation of plasma.

With regards to the land acquisition process, according to Article 4 paragraph (4) Government Regulation No. 40 of 1996:<sup>76</sup>

in the event that the land applied for leasehold has plants and/or buildings owned by other parties whose existence is based on legitimate rights, the owners of those buildings and plants shall be given compensation which shall be charged to the new leasehold holder.

Article 1 point 1 of the Decree of the State Minister for Agrarian Affairs/the Head of National Land Agency No. 21 of 1994, states that:<sup>77</sup>

■ (left) Community members in the PPMD scheme receive seedlings, fertiliser and pesticides from PT REA Kaltim Plantations, to whom they sell their Fresh Fruit Bunches / Sophie Chao

■ (right) Between 20 and 35% of the PT REA Kaltim Plantations concession are demarcated as conservation areas / Sophie Chao

Acquisition of land is any activity intended to obtain land through transferring of rights over land or through transferring or relinquishment of rights over land for which compensation shall be given to the entitled.

This regulation distinguishes between two statuses of land ownership, namely State land obtained through transfer of rights, and entitled land obtained through transfer or relinquishment of rights with compensation. The procedures for land acquisition by the private sector under Article 2 of Decree of the State Minister for Agrarian Affairs/the Head of National Land Agency No. 21 of 1994<sup>78</sup> specify that:

Land acquisition shall be conducted *directly between companies and land owners or land right holders upon agreement.* (emphasis added)

Furthermore, in accordance with the provisions of Article 8 paragraph (1) of the Decree of the State Minister for Agrarian Affairs/Head of National Land Agency No. 2 of 2009:<sup>79</sup>

The permit holder is allowed to relinquish rights and interests of other parties from the concession *based on agreements with the right holders or the interested parties through purchase, compensation, land consolidation or other means*

## CUC audit of PT REA Kaltim Plantations

The RSPO certification audit of PT REA Kaltim Plantations was conducted on 28th February – 4th March 2011 by Control Union Certifications. While the NGO consortium relied on it to some degree in carrying out its observation in the field, information available from the audit was limited as ‘[t]he full and complete checklist contains some confidential information and is an extensive document used by the certification decision panel and certifier’. The version publicly available demonstrates a number of limitations which are worth noting.

First, important statistics, such as the total area of the concession, the total area of HGUs obtained by the company, the total area of PPMD and the number of villages within the concession, are absent. Maps provided are largely illegible, making identification of villages, plasma, PPMD and conservation areas near impossible. It was evident from field findings that not all villages had been identified in the audit, or visited, as part of the audit. The audit states that the eight RSPO Principles were only considered for one estate as it was deemed ‘not [then] necessary to consider them all again for each estate as many policies and SOPs were found to be applicable to all estates and to both mills’. The reliance on company documentation and examples from one estate out of six suggests that data obtained directly from the field with regards to the efficiency of the implementation in practice of company policies is lacking. Finally, one of the three identified non-conformances refers to Criterion 1.3.6, which is somewhat confusing, as there are only two Criteria (1.1 and 1.2) under Principle 1 of the RSPO P&C on Commitment to Transparency.

The ‘Summary of the findings by criteria’ section in particular is vague and lacking in

detailed examples and evidence for identified compliance. In many cases, the link between the Finding and the Summary evidence/ additional comments is ambiguous. An example of this is Criterion 2.2 (‘The right to use the land can be demonstrated, and is not legitimately contested by local communities with demonstrable rights’). For this criterion, one of the Findings is that ‘Land acquisition has been with free, prior and informed consent’. However, the evidence provided for this refers only to the HGU land titles obtained by the company, and the land titles and legal documents of the Cakra and Perdana mills. It is very unclear how these documents prove that an FPIC process has been carried out.

Another example is Criterion 2.3 (‘Use of the land for oil palm does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent’), where the Finding is that ‘customary rights were identified at the time of plantation development and a negotiation procedure took place for compensation’. It is highly questionable whether negotiation over compensation can be equated with the respect of local communities’ right to free, prior and informed consent. Rather than describing the process of consent-seeking, the evidence provided for this Finding is limited to a brief description of documents produced in the negotiation process, suggesting that the stage of seeking consent was directly replaced with negotiation over the terms of the pre-assumed relation between the company and the community. Overall, the right to Free, Prior and Informed Consent appears to have been treated dismissively, in line with the general lack of focus on the social dimension of the company’s operations and their impact on local communities.



in accordance with the existing regulations.  
(emphasis added)

In the case of PT REA Kaltim Plantations, *sosialisasi*, acquisition of land and compensation payment has frequently been implemented not primarily or directly with the rights holders and land owners but through governmental structures such as government officials at provincial, district, sub-district and village level. According to community members, these processes tended to involve village heads and formal representatives rather than community members themselves, as the rights holders to the customary land. A similar situation was reported in the identification of land owners, whereby the company relied on village officials to obtain information on who owned which parts of land, rather than approaching community members directly. Furthermore, documentation related to compensation, negotiations and agreements over land transfers have tended to be conveyed to village heads and the established teams, but not to the wider community. While it is expected that these representatives will inform the wider community, findings from the field suggest that a large number of community members remain unaware and uncertain as to compensation procedures and the outcomes of meetings between village representatives and the company.

The local government of East Kalimantan has set up a committee of nine members, known as the Land Acquisition Committee or Team 9, in line with Article 14 paragraph (3) of the Decree of the Head of National Land Agency of the Republic of Indonesia No.3 of 2007<sup>80</sup>, which is responsible for:

- a. providing explanations or dissemination to the villagers;
- b. conducting research on and inventories of parcels of land, buildings, plants and other objects related to land whose rights are going to be relinquished or transferred;
- c. conducting research on the legality of parcels of land whose rights are going to be relinquished or transferred and on the supporting documents;

- d. announcing the results of the researches and inventories referred to in b and c;
- e. holding discussions with land owners and government agencies that need land in order to determine forms and/or amount of compensation;
- f. determining amount of compensation for land whose rights shall be relinquished or transferred;
- g. witnessing the distribution of compensation to land owners;
- h. making official reports on relinquishment or transfer of rights;
- i. administering and documenting all land acquisition-related files and submitting them to government agencies needing land and the District/City Land Office; and
- j. reporting problems and providing opinions on land acquisition settlement to the Regent/Mayor or the Governor for Greater Jakarta Special Capital Region if consensus cannot be reached for decision making.

According to community members, both the government and village land acquisition teams, which have always been directly involved in the dissemination and negotiation process between the company and the communities, have frequently failed to convey relevant information (particularly regarding compensation) to the wider community, and customary landowners report not having been given the freedom to take their own decision regarding whether and/or how their lands would be used by the company.

The land acquisition team acts as the liaison and intermediary between the land owners and the company and this appears to be in contradiction to the provision set forth in Article 2 paragraph (2) of the Decree of the State Minister for Agrarian Affairs/ the Head of National Land Agency No. 21 of 1994 on Land Acquisition Procedures for Companies in the Context of Capital Investment which states that:

*Land acquisition shall be conducted directly between companies and land owners or right holders of land upon agreement.* (emphasis added)

Furthermore, Article 1338 paragraph (1) of the Indonesian Civil Code states that:

All legally-concluded contracts shall apply as acts *to those who have concluded them.* (emphasis added)

When further analysed, the provisions of this article also provide freedom for the involved parties to:<sup>81</sup>

1. make or not to make an agreement;
2. enter into an agreement with anyone;
3. determine the agreement's content, implementation, and requirements;
4. determine the agreement's form, written or oral.

The provision of Article 1320 paragraph (1) of the Indonesian Civil Code<sup>82</sup> states that one of the requirements for the validity of consent is:

There must be consent of the individuals who bind themselves.

Information-sharing via village authorities and the established teams do not imply that communities were given the option to give their free, prior and informed consent to the company's investment plans on their customary lands, particularly when the content of *sosialisasi* appears to be informing the communities of the company's plans rather than seeking their consent.

With regards to the Environmental Impact Assessment (AMDAL), Article 22 paragraph (1) of Law of the Republic of Indonesia No. 32 of 2009 on Environmental Protection and Management<sup>83</sup> states:

Every business and/or activity plan having substantial impacts on the environment shall be obliged to have an EIA document.

Article 26 paragraph (2) further specifies that:<sup>84</sup>

*The involvement of communities* shall be based on the principle of provision of transparent and complete information prior to the execution of the activity. (emphasis added)

The purpose of this provision is to ensure that communities know, understand and are aware of potential impacts on their environment arising from the company's operations. While PT REA Kaltim claims to have conducted dissemination and consultations with the villagers with regards to the preparation of the company's EIA document, this was contradicted by the statements of most community members interviewed, including the village heads of Kembang Jenggut Village and Perdana Village, who stated that they had never seen PT REA Kaltim's EIA document. Community members interviewed report not knowing exactly what the team's activities were, that dissemination and consultation activities were (and continue to be) conducted primarily at the district and provincial towns, located away from the villages. It should be noted however that the company's AMDAL, issued in December 1998 (14 years ago), involved other village representatives than those present in the villages today.

Finally, with regards to plasma, company representatives interviewed stated that the company, as a foreign entity, was not under the obligation to provide plasma prior to 2007 when the Decree of the Minister of Agriculture No.26/PERMENTAN/OT.140/2/2007 was passed (ie non-retroactive legislation). However, Article 1 paragraph 6 of the Government Regulation No. 44 of 1997 states:<sup>85</sup>

What is meant by the partnership system is forms of partnership regulated in Law No. 5 of 1995 on Small-Scale Business.

This is further elaborated in Section 3 which states:<sup>86</sup>

In the nucleus-plasma system, large- and medium-scale businesses as the nucleus shall build and develop small-scale businesses which constitute their plasma with regard to:

- a. Provision and preparation of land;
- b. Provision of production facilities;
- c. Provision of technical guidance to business management and production;

- d. Acquisition, control and improvement of technology required;
- e. Financing, and
- f. Provision of other forms of assistance required for increased business efficiency and productivity

Similar partnerships in oil palm plantations have already been implemented since the late 1970s, for example, the Nucleus Estate and Smallholder Scheme (NES) program (1978 to 2001) the Prime Cooperative Credit for Members (KKPA) program which replaced the NES program (1995), and the One-Roof Management system through the Decree of the Minister of Agriculture No. 33/Permentan/OT.140.7/2006 on Plantation Development through Plantation Revitalisation Programme. The above regulations and precedents for plasma scheme implementation prior to 2007 show that the development of partnerships with local communities in the form of plasma is not solely stipulated by Article 11 of Decree of the Minister of Agriculture No. 26/PERMENTAN/OT.140/2/2007 on Guidelines to Plantation Business Licensing, and, on that basis, that communities therefore have the legitimate right to request plasma.

### **Limitations to the realisation of FPIC and tenure security**

#### **Representation and division**

The politics of *divide and rule*, or *divide et impera*, were commonly practiced by the Dutch colonial powers in Indonesia as a means of segregating ethnic groups and disrupting power relations among Indonesian elites, such as in the former sultanates and kingdoms. A particularly vivid example of this strategy and its destructive impacts was seen during the era of Enforcement Planting (*Cultuur Stelsel*), which saw the tearing apart of rural communities in Java and the disruption of their social ties and social organisation. Under *Cultuur Stelsel*, villages in Java were exploited to provide cheap land and abundant cheap labour<sup>87</sup> based on

*Agrarischewet* (1870) which stipulated that uncultivated lands or lands whose ownership could not be proven belonged to the State.

A similar phenomenon of dividing communities to access their lands was employed by a timber company (PT Limbang Ganesa) formerly operating in Kembang Janggut, according to local communities. PT REA Kaltim itself obtained a license to open its concession in the area on the grounds that it was State land, and that customary rights to land and natural resources were not recognised under national and provincial laws. Local communities, cornered into a ‘no choice’ position, found themselves with little option but to work with the company, either through the earlier PPMD scheme or the later plasma scheme.

One contributing factor to this situation has been the way in which the company has sought the consent of community members by approaching them on an individual basis, rather than a collective, community-wide basis. In the words of Njang, a community member of Pulau Pinang, ‘individuals were pressed by the situation and had to think of themselves over others in the absence of alternative ways to generate incomes except by joining the oil palm company.’

It was also reported that the pursuit of consent on an individual basis had weakened social ties among and within villages. At present, the communities appear divided rather than united, although a notable trend of ‘joining forces in protest’ is visible, as one village’s expression of discontent triggers similar demonstrations in other villages. At the same time, a certain degree of resentment was evident among communities who had been less favoured by the company in terms of social development and economic opportunities, such as plasma.

The politics of separation, and the inherent problem of who represents communities, is visible in the fact that individual agreements tend to override village-wide consultations

and discussions over issues such as plasma and land boundary demarcation. The term 'community', in the view of the company, thus appears to mean the sum of individuals who have made individual agreements with companies, rather than a group of people who have been consulted collectively on issues that are bound to have a collective impact, at least in terms of intra- and inter-community social and tenure relations. The issue of how individuals and communities are represented in an accountable and legitimate manner is at the heart of this question, as attested by several complaints over the legitimacy and transparency of current village heads. It can be argued that a village community, in the context of FPIC as a collective right, should be viewed as a single subject, an 'artificial man' or a socio-political unit, just as a company is an entity, i.e. a legal entity and person. A community is not merely the sum of its individuals but a separate unit that is more than the sum of its members, with its own identity and its own socio-cultural system. In this matter, the State has a very important role to play in affirming the status of communities as legal entities, not only in the context of governmental administration but also as a socio-cultural unit, with its collective rights, including that of FPIC.

While the steps taken by the company to allow local communities to benefit from their presence (such as in the form of plasma agreements, PPMD and social development initiatives) are laudable, and appreciated by the communities to the extent that they have been realised so far, findings from the field also suggest that the interaction between the company and the communities, since the 1990s, has been limited to consultation and negotiation over the terms of their relation, rather than respect for the right of local communities as stakeholders to give or withhold their consent. It is difficult, therefore, to assess the positive achievements of the company in the light of the lack of proper FPIC in the first place. However, given that respect for the right to FPIC is an iterative (and not a one-off) process, an examination of the development of the interaction between the company and

local communities is also relevant to the discussion over the obstacles still faced by the latter in terms of securing their land.

One of the main obstacles identified is the lack of information made available to local communities by the company via the different organisms established so far to this end. While information may be conveyed to the various teams, and to the village heads, it is clear that very little is then being conveyed to the wider community. Information on the RSPO, on the right to FPIC, on the legal status of the company's operations and permits, and on the details of the plasma scheme (for those who are still waiting for its realisation) are lacking, and this is probably the most significant reason for which problems and tensions still exist among and within communities.

A second obstacle has been the persistent lack of participatory mapping of customary lands since the 1990s, by either the company or the government. The lack of clear boundaries is also leading to occasional opportunism and false claims on the part of certain community members. Both they and the company admitted that many problems could be avoided by mapping customary lands jointly with the local communities, but the company has so far not planned to carry this out, assuming that this is the responsibility of the government and not their own. Interviews with government representatives on the other hand suggest that the participation of community members in mapping is not seen as relevant or important. The lack of understanding and recognition of FPIC by government representatives interviewed, and its frequent equation with *sosialisasi* (understood as the sharing of *a priori* decisions and intentions by the State and the company to the community as a one-way rather than two-way dialogue) further hinder the realisation of this right by the communities concerned.

A third limitation has been the uneven treatment of and opportunities given to local communities in the nine villages

within the concession. While it was not possible to ascertain whether this was causing inter-village conflict or tensions due to the sensitivity of the issue and the short period of time spent in the field, it can be argued that this may lead to such an outcome in the longer term, if villages receiving less opportunities fail to see their demands realised in the near future.

Finally, while the conservation practices of the company have to date not posed a problem to the local communities, the demarcation of the HCV categories identified in the HCVA on the ground could possibly help better reflect and cover the range of conservation priorities (and related social and/or economic values) shared by stakeholder groups and help maintain and/or enhance these values. The social dimension of HCVs (ie their importance to local communities) could be better reflected by a clearer demarcation of HCV 4 (areas that provide basic ecosystem services in critical situations), HCV 5 (areas fundamental to meeting basic needs of local communities) and HCV 6 (areas critical to local communities' traditional cultural identity).

## Recommendations

### Recommendations from the communities

The main recommendations expressed by the communities were as follow:

- Realisation of plasma scheme for communities who hold MoUs with PT REA Kaltim Plantations within a clear and well-defined time frame.
- Equal treatment of all villages within the concession in terms of plasma opportunities, compensation payment and community development initiatives.
- Compensation for land lost in the early 1990s, including compensation of crops planted at the time, and in some cases, the cumulative value of the land and crops since the time of acquisition by the company.
- Improved channels of communication for information-sharing by the company

and communities, to be activated on a routinely basis and not only when problems arise.

- Legal training for communities on their rights under national and international laws.
- Training facilitated by the company on the RSPO standards and on the right to FPIC.
- Greater transparency on the part of the company with regards to the legal status of its current and projected operations and expansion.
- Participatory mapping of customary lands and concession/HGU boundaries in order to clarify who is entitled to compensation for lost land.
- Improvement in the flow of information such that it is not solely restricted to the village heads and various teams but also conveyed to community members in an adequate, sufficient and timely manner.
- Provision of relevant documents to community members, particularly in relation to mapping, HGUs, Social and Environmental Impact Assessments, and the AMDAL.
- Development of a regional bylaw recognising and protecting customary rights to land.
- Action on the part of the regional parliament (*Dewan Perwakilan Rakyat Daerah - DPRD*) to resolve ongoing land disputes within the community, in collaboration with other relevant government bodies and the company.

### Recommendations from the company

The main recommendations expressed by the company were as follow:

- The regional government (*Pemerintah Daerah - Pemda*) to act as a bridge and third party facilitator for local communities and PT REA Kaltim Plantations in information dissemination, mapping and conflict resolution, based on the principle of transparency.
- Pemda to act as a third party arbitrator for local communities and PT REA Kaltim

Plantations in resolving land compensation and plasma dispute resolution, based on the principle of transparency.

- NGOs to collaborate with PT REA Kaltim Plantations and local communities to facilitate two-way communication and information sharing.
- Greater transparency on the part of the government with regards to emerging policies, laws and regulations, in particular in relation to development and natural resource exploitation.
- Closer collaboration with government bodies, from the village level to the provincial level, to impart information to local communities regarding their legal and human rights, as well as with regards to the implementation of plasma.
- Further efforts on the part of village heads to convey information obtained in their interactions with the company to the wider community, in order to avoid misunderstandings and tensions within communities.

#### Recommendations from State agencies

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One recommendation made by interviewed government representatives from the National Land Agency was the development of regulations at the district level in Kukar in relation to conflict resolution outside of the formal court system. A draft decree on Settling Land Disputes Outside the Court for Kukar (*Rancangan Peraturan Bupati Kukar Tentang Penyelesaian Sengketa Lahan Diluar Peradilan*) was being developed at the time of writing.

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15. Oosterman & Wanabakti 1999: 5.
16. Ju Lan & Gastardo-Conaco 2004: 27 – 46.
17. Ibid.
18. Sawit Watch & Walhi Kaltim 2012.
19. Brookfield *et al.* 1995.
20. REA Holdings PLC (nd)a.
21. Interview with PT REA Kaltim Plantations representatives, Perdana Estate Main Division Office, 11<sup>th</sup> July 2012; Interview with Kukar National Land Agency and the Forestry and Plantations Office, 11<sup>th</sup> July 2012.
22. Interview with PT REA Management, 11<sup>th</sup> July 2012.
23. REA Holdings PLC 2011: 5.
24. Ibid.
25. Interview with PT REA Management, 11<sup>th</sup> July 2012.
26. A third palm oil mill was under construction at the time of writing.
27. REA Holdings PLC 2011: 10. Note: 900 ha of plasma have been planted in Pulau Pinang. Data on plasma in other villages was not available.
28. REA Holdings PLC 2011: 32.
29. When PT REA Kaltim Plantations was first established in 1992-1993, there were eight villages within the concession, some of which were then further sub-divided into new villages, such as the villages of Pulau Pinang and Long Beleh Haloq.

30. The company states that Hambau does not have any land within the REA Kaltim HGU. In the past there was a dispute between Kembang Janggut and Hambau because both villages claimed the same area of land within the REA Kaltim Berkas Estate. The Camat was called to settle this dispute and he ruled that Hambau did not have any village land within the Berkas estate area.
31. Perdana also includes Ketano within its administrative borders, as Ketano has no village head.
32. Kenohon also includes Modang within its administrative borders, as Modang has no village head. Kembang Janggut, Hambau, Kelekat, Bukit Layang, Muai, Perdana, Pulau Pinang, Long Beleh Haloq and Kenohon are in Kembang Janggut sub-district. A further two villages in Kembang Janggut sub-district are not within the concession but sell their oil palm fruit to PT REA Kaltim (Luasako and Genting Tanah).
33. The company states that Gunung Sari, Ritan Baru and Beluksen own land within one of REA Holdings' subsidiaries, PT SYB but not in PT REA Kaltim Plantations.
34. Ritan Baru includes Tukung Ritan village.
35. The company states that Muara Ritan owns land within PT PU but not PT REA Kaltim Plantations.
36. Gunung Sari, Long Lalung, Ritan Baru, Muara Ritan and Beluksen are in Tabang sub-district.
37. According to the company, a survey team (Muspika) is currently in the process of trying to produce an accurate village boundary map.
38. REA Holdings PLC (nd)b.
39. It was not possible to identify the villages within the concession from the maps provided in the CUC audit as they are largely illegible.
40. Control Union Certifications 2011: 8.
41. Ibid.: 18.
42. Criterion 4.7 An occupational health and safety plan is documented, effectively communicated and implemented.
43. Criterion 2.3 There are open and transparent methods for communication and consultation between growers and/or millers, local communities and other affected or interested parties.
44. It is unclear what 1.3.6 refers to, as there are only 2 criteria (1.1 and 1.2) under Principle 1 of the RSPO P&C on Commitment to Transparency (including in the Indonesian National Interpretation of the P&C).
45. It should be noted here that while community members of Hambau claim some of their lands lie within the PT REA Kaltim Plantations concession, the company states the village has no land within their HGU.
46. This confirms the non-conformity raised in the RSPO audit of PT REA Kaltim Plantations and recommendation that '[T]he company must review the lines of communication and put into place clear systems to ensure communities' aspirations and concerns reach the appropriate level of management and [are] dealt with accordingly.' Company representatives stated that the Community Development Department (ComDev), already established at the time of the audit, was playing a key role in this respect, but it was not clear from the company's response how they had sought to remedy the non-conformity since the audit in March 2011.
47. Interview with PT REA Kaltim Plantations representatives, Perdana Estate Main Division Office, 11<sup>th</sup> July 2012.
48. See Glossary for an explanation of the term *sosialisasi*.
49. *Sosialisasi* was carried out somewhat later, in 1998, for the villages located in Damai estate.
50. Interview with village head of Perdana (Pak Kasmani), head representative of BPD (Pak Pitoyo), member of BPD (Syainuddin), Head of Management of Village Government of Perdana (Pak Joni) and village government member (Pak Ali Syafaat), 9<sup>th</sup> July 2012.
51. At the time, Perdana was a hamlet (*dusun*) of Long Beleh Haloq and became a village (*desa*) in 2008.
52. A number of community members were confused by this figure, as the total area of Perdana is only 3,678 ha (inclusive of residential areas and homesteads), and thus they are not clear where the extra land is located.
53. Interview in Hambau, 7<sup>th</sup> July 2012. A small portion of Hambau is located within the PT REA Kaltim Plantations concession, while the majority of its land is located within the 4,000 ha concession of Malaysian oil palm company PT TPS (Tunas Prima Sejahtera), which began operating in 2008 and today employs a large number of community members (reportedly around 80%).
54. This information was confirmed by the village head of Kembang Janggut.
55. Pak Ridwan is Secretary of the PAN (Partai Amanat Nasional) in Hambau village and staff of PT Tunas Prima Sejahtera (a subsidiary of Malaysian company Asia Pacific Land Berhad) with professional links with the Regional Parliament (*Dewan Perwakilan Rakyat Daerah - DPRD*) of Tenggarong.
56. RT, or *Rukun Tetangga*, is a village level classification of households.
57. Interview with RT1 head Philipus Njang, Pulau Pinang, 11<sup>th</sup> July 2012.
58. Interview with community members Pak Wahidu, Ibu Epi and Pak Muhammad Lukam, Muai, 9<sup>th</sup> July 2012.
59. Interview with village head of Kembang Janggut (Pak Aslan), 8<sup>th</sup> July 2012. The village head of Kembang Janggut stated that around 5,000 ha of land in Kembang Janggut was part of the PT REA Kaltim concession, in accordance with a decision of the village team in 2006 – 2007.
60. Pak Aslan became village head on 4<sup>th</sup> April



2008. He is a member of the Golkar political party and supported the political campaign of the election of the former District Head (*bupati*) of Kutai Kartanegara.
61. The company confirmed that no participatory maps of customary lands had yet been produced, by them or by government bodies.
  62. One of the problems faced by Muai in terms of representation and communication with PT REA is that their village head does not live in Muai itself but in Hambau. According to community members interviewed, the village head rarely visits Muai and is not aware of the problems faced by the community, so many choose instead to go to the Village Secretary, or straight to the sub-district, with their complaints.
  63. The village head of Perdana, for example, reported that the company had provided funds for the building of a mosque (50 million rupiah) and for educational facilities (12.5 million rupiah). Community members themselves acknowledged that Perdana had received more benefits from the company than any other village, in terms of compensation, employment opportunities and social development ('we are the golden child of PT REA' – Pak Pitoyo). Further information on community development initiatives are available in the company's Community Development Report, but the NGO consortium were unable to access this document.
  64. In Hambau, a community member found out about the RSPO through interviews with the NGO consortium and sought the team the next day with a printed copy of the P&C, which he read out loud, and asked to be explained to him, so he could share the information with the rest of his community.
  65. According to contacts in Hambau, the community of Muai was protesting because PT REA Kaltim Plantations' concession was stretching 'right up to our backyards'.
  66. A case of water pollution due to mill effluents in 2004 was confirmed by company representatives and the PT REA Kaltim Plantations auditors. The company however affirms that conflicts were over land and compensation and not over water pollution.
  67. The location of the protest was referred to by community members as 'kilometer enam' (kilometer 6).
  68. National Land Agency representatives stated they were not aware of more recent conflicts as PT REA Kaltim Plantations had not yet submitted its second semester report.
  69. Koran Kaltim 2012.
  70. Interview with Pak Sandi, HGU and administrative staff, and Pak Hardiono, mapping and land use staff, National Land Agency Office, Tenggarong, 11<sup>th</sup> July 2012. NOTE: Further government body representatives were not available for interview due to the occurrence of a large flood in Samboja.
  71. Interview with PT REA Kaltim Plantations representatives, Perdana Estate Main Division Office, 11<sup>th</sup> July 2012.
  72. A discrepancy in dates was identified with the CUC audit, which states that PPMD was first implemented in 2002 and closed to new members in 2008 when PLASMA was introduced.
  73. Criterion 2.3 Use of the land for oil palm does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent.  
Indicators: Maps of an appropriate scale showing extent of recognised customary rights (Criteria 2.3, 7.5 and 7.6) [...] Guidance: [...] Where customary rights areas are unclear these are best established through participatory mapping exercises involving affected and neighbouring communities.
  74. With regards to plasma, representatives of the Kutai Kartanegara Forestry and Plantations Office also recognised that there were still ongoing problems in Kembang Janggut, and that these resulted from miscommunication between the community and the company ('The community protested in June 2012 because the company failed to inform the community that they were still looking for land for the plasma scheme. Because the communities do not know this, they protest.' - Pak Marli.)
  75. Interview with Sophie Persey, REA Holdings PLC Sustainability Manager, London. 6<sup>th</sup> August 2012.
  76. Government Regulation No.40 of 1996 on Business Use Permit (*Hak Guna Usaha*), Building Use Permit (*Hak Guna Bangunan*) and Land Use Permit (*Hak Pakai Atas Tanah*), Article 4 paragraph (4).
  77. Decree of the State Minister for Agrarian Affairs/the Head of National Land Agency No. 21 of 1994 on Land Acquisition Procedures for Companies in the Context of Capital Investment, Article 1 point 1.
  78. Decree of the State Minister for Agrarian Affairs/the Head of National Land Agency No. 21 of 1994 on Land Acquisition Procedures for Companies in the Context of Capital Investment, Article 2.
  79. Decree of the State Minister for Agrarian Affairs/the Head of National Land Agency No. 2 of 2009 on Location Permit, Article, Article 8.
  80. Decree of the Head of National Land Agency No. 3 of 2007 dated 21 May 2007 on Provisions on Land Acquisition for Development for Public Interests, amended from President's Decree No. 36 of 2005 on Provision of Land Acquisition for Development for Public Interests, Article 14 paragraph (3), dated 21 May 2007.
  81. Yahya Harahap 1996: 29.
  82. Kitab Undang-Undang Hukum Perdata (*Burgerlijk Wetboek voor Indonesie*), Staatsblat Tahun 1847, Nomor 23.

83. Law of the Republic of Indonesia No. 32 of 2009 on Environmental Protection and Management, Article 22 paragraph (1).
84. Law of the Republic of Indonesia No. 32 of 2009 on Environmental Protection and Management, Article 26 paragraph (2).
85. Government Regulation No. 44 of 1997 on Partnership, Article 1 number 6.
86. Government Regulation No. 44 of 1997 on Partnership, Article 3.
87. Wolf 1990: 334 cited in Mulyanto 2012: 31.