



The Forests Dialogue

Field Dialogue on Free, Prior and Informed Consent 12–15 October, 2010 | Pekanbaru, Riau, Indonesia Co-Chairs' Summary Report

by Marcus Colchester, Minnie Degawan, James Griffiths and Avi Mahaningtyas

The Forests Dialogue, Kemitraan, Scale Up and Forest Peoples Programme held a four day field dialogue on Free, Prior and Informed Consent in Pekanbaru, Riau Province on the island of Sumatra in Indonesia. The dialogue brought together over 80 participants from a great variety of backgrounds including indigenous peoples, representatives of local communities, non-governmental organisations, international financial institutions, government agencies and the private sector. The meeting was the first in a planned series of field dialogues which have the main aim of exploring how in practice government agencies, commercial enterprises and non-government organizations should respect the right of indigenous peoples and local communities to give or withhold their free, prior and informed consent, as expressed through their own freely chosen representative organisations, to activities that may affect their rights. The series of field dialogues was preceded by the preparation of a Scoping Paper¹ and the holding of a Scoping Dialogue in Yale in April 2010.² The field dialogue included visits to three locations in Riau Province including a community affected by transmigration and oil palm plantations, a community whose customary lands have been seriously impacted by pulpwood plantations developed by State-licensed companies and another community whose customary lands are now slated for further plantation development and a possible carbon sequestration project to reduce emissions of green house gases from deforestation and forest degradation, also by State-licensed companies. A common feature for all visits was the additional complications generated by 3rd party interventions into already conflicted consultation processes—in particular in Teluk Meranti which was the site of an intense dispute between the pulp and paper sector and local and global campaigning and conservation organizations. The field visits were followed by an intensive two days of discussions to draw lessons from the field visits and from participants' wider experiences.

BACKGROUND AND LEGAL FRAMEWORK

Free, Prior and Informed Consent has become a recognised principle of international law, which ensures that developers enjoy a “social licence to operate” and do not impose their plans by force on communities to their detriment. Previous TFD

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dialogue streams, notably on Intensively Managed Planted Forests, REDD Finance and Investing in Locally Controlled Forests, have all affirmed the need for companies and government to respect this right. However, while the right to FPIC has been widely accepted, the practicalities of how this right is respected have received less attention. Accordingly, TFD has embarked on a series of dialogues to seek to elucidate practical lessons for those seeking to respect this right.

The Republic of Indonesia was chosen as the site to host the first field dialogue for a number of reasons, because: it retains extensive areas of forests; there are notable obstacles in law and policy to observe the right to FPIC; the country is piloting REDD schemes which are seeking to respect the right to FPIC; and because there have been long term efforts by indigenous peoples’ organisations, NGOs and companies to work with communities and get their right to FPIC respected.³ It was thus felt that Indonesia was a suitable location both to teach and to learn practical lessons about FPIC.

The 17,000 islands which make up the Republic of Indonesia have a total population of 240 million people, who speak over 500 languages, and make Indonesia the world’s fourth most populous country. Despite experiencing one of the world’s highest rates of deforestation, driven by industrial logging, plantations and clearance for agriculture linked to planned and spontaneous resettlement, the country still retains extensive forest cover. With a total land area of 192 million hectares, no less than 70% of the country is legally classified as “forest.” Although only 12% of this “forest” has been gazetted—a process which is meant to determine whether or not the forestlands are encumbered with rights—all these forests are treated as if they were State Forest Areas. The 60–90 million people who live in these areas enjoy few rights according to the way the forestry laws are applied.

Despite provisions in the Constitution and the law and the ratification of international human rights treaties, all of which protect the rights of citizens and indigenous peoples, customary land rights in Indonesia are treated as weak usufructs on State lands which must give way to State-sanctioned development plans. The reality is that less than 40% of all land holdings in Indonesia are titled. Forestry laws make even weaker provisions to secure community rights and although the laws provide for a variety of community or village leaseholds in State Forest Areas, less than 0.2% of forests are allocated to communities. In the same way, during the 1970s a uniform administrative system was imposed across Indonesia which meant that village level customary institutions lost their authority and legal personality. Indigenous peoples and rural communities are thus very vulnerable to development impositions as they lack both State protection of their rights and well-rooted customary institutions. Land and forest conflicts between unprotected communities and State-licensed companies are prevalent throughout the country.

Since the revival of parliamentary democracy in the late 1990s, the legislature has acknowledged the need to revise the land and natural resource laws to secure commu-



I-r: Co-chair Avi Mahaningtyas and Wicaksono Saroca

nities’ rights and avoid land conflicts. A strong social movement has also emerged calling for reforms and the Indonesian President has also agreed that the country needs to develop a law to protect indigenous peoples’ rights. A draft indigenous rights bill is currently in the early phases of being considered by the legislature. Some recent laws, for example on Small Island Development (27/2007) and Environmental Protection (32/2009), also require respect for indigenous peoples’ rights but the Basic Agrarian Law of 1960 and the Basic Forestry Law of 2001 remain unamended.

These legal and institutional realities place natural resource-based private sector companies in an awkward situation. The formal legal processes which grant them access to forests, lands and other natural resources have tended to ignore the rights and interests of citizens. Yet the companies know that, if they override community rights and views, costly conflicts may ensue which can affect their productivity, their reputations, their access to global markets and their profits. The more progressive companies are thus seeking to go beyond the law and find ways of developing better relations with local communities and indigenous peoples, including accepting standards which require them to respect the right to Free, Prior and Informed Consent (FPIC).



Amity Doolittle

In the past five years, there have been a number of important efforts to respect the right to FPIC in Indonesia including through voluntary certification procedures such as those of the Forest Stewardship Council and the Roundtable on Sustainable Palm Oil, and through a project in three provinces run by the national indigenous peoples organisation (AMAN—*Aliansi Masyarakat Adat Nusantara*), with help from the Forest Peoples Programme and the national participatory mapping network (JKPP). Support for FPIC has also been an outcome of complaints against oil palm operations filed by NGOs and indigenous peoples’ organisations with the International Finance Corporation’s (IFC) Compliance Advisor Ombudsman. New initiatives are now also underway to respect the right to FPIC in REDD projects. The field visits undertaken as part of this dialogue were purposefully selected to illustrate a variety of such situations.



Community residents

FIELD VISITS

Riau Province, where the meeting took place, has experienced one of the fastest rates of deforestation in Indonesia. Logging (much of it illegal), the establishment of new pulpwood and oil palm plantations, and agricultural expansion have been the main direct causes of forest destruction and this expansion is moving down from the inland mineral soils into the coastal swamp forests which are underlain by deep peat deposits.⁴ According to recent studies, forest clearance and peatland drainage make Indonesia one of the world’s greatest emitter of greenhouse gases.⁵

Dialogue participants divided into three groups in order to visit three very different local situations where community lands had been allocated by the government for private sector-led development schemes. Two of the sites visited, Pangean and Lubuk Jering,



Dr. Rukmantara

FIG 1: MAP OF TFD FIELD TRIPS IN RIAU, INDONESIA



are communities where there had been serious conflicts between plantation companies and local communities over land, but intensive efforts had been made to resolve the disputes. The third site of Teluk Meranti involved a plantation company which had committed itself to engage with a community respecting their right to FPIC and where efforts were being made to sequester carbon stores in natural forest and peatlands.

The Pangean community, some four and a half hours by bus south of the Provincial capital, Pekanbaru, claims to be one of the oldest communities in Riau and dates back some 600 years. It used to be part of the lowland expansion zone of the highland kingdom of the Minangkabau people (*Minang Rantau Kuantan*) and consequently the people's culture has been strongly influenced by Minang traditions. The community retains the custom that each clan is led by a chief (*penghulu*) and each kindred is represented by its own leader (*ninik mamak*). The *penghulu* continue to regulate marriages between clan members, although these rules are not so strictly enforced as in the past. Under customary law the collectively owned lands are held by the entire community as *ulayat* (communal land) and people acquire rights to use *ulayat* lands with the permission of the *penghulu*. Such lands cannot be sold to outsiders but only leased to other parties for their use.

The community claims it still has copies of the title deed granted to it by the Dutch which recognised their land rights. In 1981, the community was among a number of villages in the area whose lands were targeted by the central government for Transmigration. Further lands were taken over for Transmigrants in 1986–1987, with 10% of transmigration places being assigned to locals. All settlers, including the locals, were given titles to their agricultural lands and house plots. The community notes that all this was done contrary to customary law and without the authorisation of their *penghulu*.

Since the transmigration programme was proving economically unsuccessful, in 1996 the government decided to allocate the area for palm oil development and it began the process of licensing the area to the recently established company, PT Citra Sarana (PT CRS). This process took three years, before planting started in 1998–1989. Under the agreement with the government, PT CRS was given rights



Co-chair James Griffiths

to develop 24,440 hectares, of which 70% were to be transmigrant smallholders and an additional 30% was granted to establish a nucleus estate.

The community of Pangean, where a large part of the nucleus estate was to be established on their remaining *ulayat* land, objected to the arrangement and took their concerns up with the local government. However this was ineffective. In 2004–2005 PT CRS was acquired by the Wilmar Group, but at first the local staff refused to address the communities’ concerns. In 2008 the community appealed to the NGO, Scale Up, for support and Scale Up arranged for a meeting between community representatives and Wilmar at the annual meeting of the Roundtable on Sustainable Palm Oil (RSPO), of which Wilmar is a member. At this forum Wilmar, which was under pressure from NGOs through a complaint they had made to the IFC’s Compliance Advisor Ombudsman, agreed to negotiate with the community and both parties agreed that Scale Up should mediate in line with RSPO Principles and Criteria, which require land acquisition with respect for FPIC and mutually agreed dispute resolution.



Signing of the agreement between the community of Pangean and Wilmar

During 2009–2010 there were some 40 meetings between the community of Pangean represented by its *penghulu* and other village leaders and Wilmar. At the same time Wilmar contracted an independent survey which confirmed that the villagers were long term occupants of the disputed lands. The area of overlap between the concession area and *ulayat* lands was established through participatory mapping and in October 2010 an agreement was signed between the community and Wilmar in which the community accepted Wilmar’s wider operations while Wilmar agreed to relinquish 147 hectares of the area slated to be its nucleus estate, as smallholdings for community use. Wilmar appreciates that the community had to make compromises on its customary rights to find an agreement. The agreement was witnessed by local government and notarised by a local lawyer.



Patrick Anderson

For its part the community noted that Wilmar was only one of 13 companies with licences to operate on its lands of which only two including Wilmar had negotiated agreements with the community. The community noted that most companies have operated in bad faith and with impunity as the government does not recognize *ulayat* and promotes private sector led development. The community noted that given the choice they would have preferred to develop their lands with rubber but as they also prize harmony they had chosen to resolve their affairs amicably and maintain good relations with the companies and government. The importance of now getting the agreement between the company and community endorsed by the district and provincial government was seen as a priority. Some community members are sceptical that this will be achieved as this would imply government recognition of *ulayat* rights.



Lumber barge on a river bordered by acacia and palm oil plantations

The second site visited was that of Lubuk Jering in Siak District some three hours by bus north east of Pekanbaru, where a large part of the local Melayu people’s lands and forests is overlapped by concessions granted to PT RAPP, the local subsidiary of the Singapore-based pulp and paper giant, APRIL, which had secured concessions for some 159,500

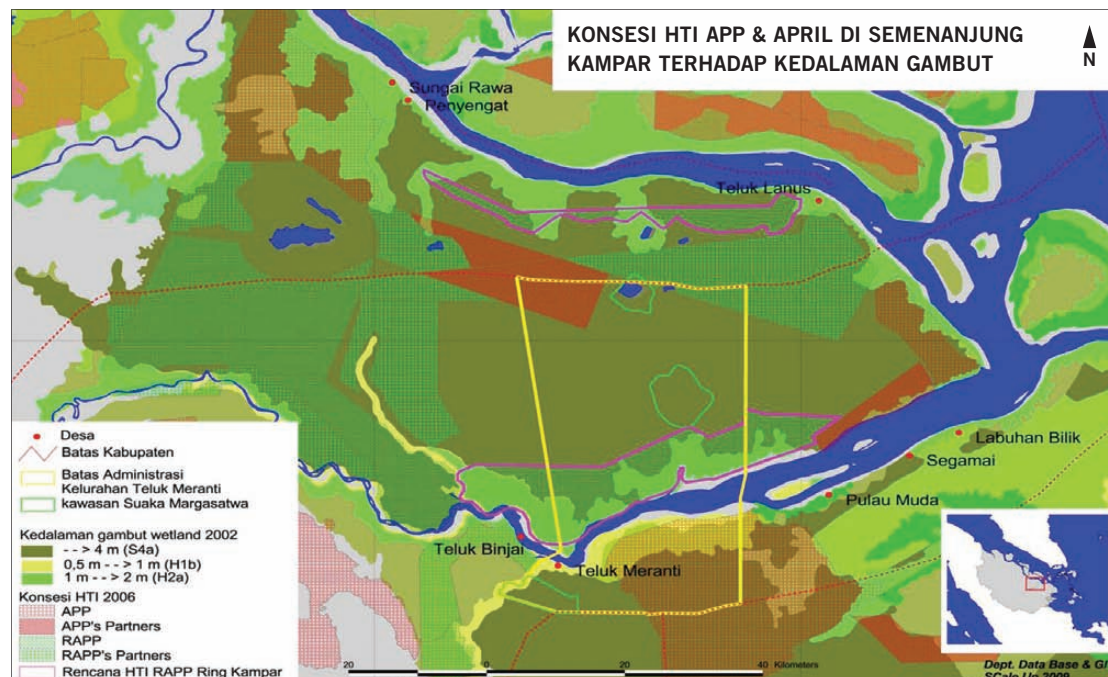
hectares. The company secured one part of the community's lands in 1997 and a second amount in 2006. These community lands were previously used for rubber and fruit tree gardens, small oil palm plantations and dry land farming for vegetables and rice, as well as the gathering of forest products.

As in Pangean, it was the second concession, which was granted shortly before the fall of President Suharto in 1998 triggering a period of national reform when people expected their rights to be respected, which led to a dispute with the company. The community wrote a letter of protest to the company and the local government, staged street protests and mounted a blockade. The company for its part sent a warning letter to the community, denounced their actions in the press and reported community members for land occupations to the local government. The same year, 2006, the company received a local “ekolabel” certificate for its operations but this assessment stirred up further controversy and then triggered negotiations between the community and the company.

In late 2006, PT RAPP and the Lubuk Jering community invited Scale Up and an independent expert from the University of Indonesia to mediate the conflict between the company and the community. Independent academic assessments established that the community did indeed have long ties with the area. The community was given the space to choose its own negotiating team and take counsel from academic researchers on how it should deal with the company and to help them assess of the value of the compensatory development on offer.

Again it took about 8 months for an agreement to be reached whereby some lands were excised from the concessions for community use, while others were conceded to the company. Despite the successful negotiation, however, the agreement was never ratified by the district government and in late 2008 fresh elections of village level government officials occurred who repudiated the agreement. This has led to a setback in the implementation of the agreement.

FIG 2: MAP OF OVERLAP BETWEEN APRIL/APP AND TELUK MERANTI





Co-chair Marcus Colchester

The final site visited was the village of Teluk Meranti another Melayu community on the south bank of the Kampar river some five hours east of Pekanbaru by bus. The area is one of deep peat soils and the Kampar peninsula to the north includes some 700,000 hectares of peat swamp, 65% of which is still covered by natural forests although much of it has been degraded by logging. Some 27,000 people from 17 villages have rights which overlap the peninsula and whose livelihoods include fishing, hunting, resin collection, timber extraction, rattan collection and small-scale agriculture. Teluk Meranti is just one of these villages. In 2004, the APRIL subsidiary PT RAPP obtained permits to develop some 75,640 hectares of the Pelalawan sector of the Kampar peninsula as *Acacia* pulpwood plantations.



Emil Kleden

In 2007, the APRIL group publicly committed itself to uphold the right to FPIC and at the same time the company made public its plans to implant a comprehensive land management scheme for the entire peninsula whereby a ring of *Acacia* plantations would be established to supply fibre to the company's paper mills while the core area of the peninsula would be secured as a carbon pool for possible REDD payments. APRIL approached NGOs to get them to endorse this plan and ensure that a process which respected the right to FPIC was carried through.

In June 2009, PT RAPP finally secured rights to develop a further 43,000 hectares of *Acacia* plantations of which 27,107 hectares overlap the lands of the community of Teluk Meranti according to a participatory mapping exercise carried out jointly by the Teluk Meranti community and Scale Up. However, NGO surveys in May 2009 showed that none of the communities on the peninsular had been consulted by PT RAPP about its plans, much less had they given their consent. In June 2009, the community of Teluk Meranti sent a letter to PT RAPP signed by most of the community's leaders rejecting the company's plans. The tense situation was compounded by the launch of an active campaign led by Greenpeace against the current activities and future development plans on the Kampar Peninsular of the pulp and paper sector.



Anwar Ibrahim

In response to the rejection by the community, RAPP invited the community to meet and review its development plan. The company offered to establish gardens for the community, and agreed that if there was evidence that the community had been using the area for agriculture, that it would pay compensation.

The Teluk Meranti community was divided in its response to the company's plans and offer. In late 2009, based on the consensus of a village-wide meeting, the community formed a team with 49 members representing every interest group in the village and gave the team the mandate to monitor the operations of PT RAPP, and to meet with PT RAPP to discuss the company's plans. Members of the community who wanted to make an agreement with PT RAPP formed a team with 11 members to negotiate with PT RAPP.

In early 2010 the two teams were disbanded by the local government, and a new team with 40 members was created, based on a decree from the sub-district (Kecamatan),



Local residents lead a tour of the acacia plantations in Lubuk Jering

with a mandate to negotiate with PT RAPP. In response, the Teluk Meranti community formed a new group, Kampar Peninsula Rescue Society Forum (FMPSK), to gather opinions from the community and give input to Team 40.

FMPSK requested PT RAPP that negotiations between Team 40 and RAPP be held in Teluk Meranti, as previous negotiations with the community took place far from the village, and community members felt excluded from the negotiations. FMPSK also asked that PT RAPP provide all its licensing documents to the community, and requested that Team 40 be allowed to engage third parties to provide advice to the community. According to some community spokespersons these three conditions were, however, ignored by PT RAPP in negotiations with Team 40 in June and July 2010. Team 40 worked hard to negotiate a deal with PT RAPP but community opposition remains, in part due to the fact that some feel that requests from FMPSK were not respected. According to PT RAPP, community support for the role of FMPSK was divided, with some feeling their input was impeding and slowing down negotiations. PT RAPP also claimed that they did take this input into consideration.

PT RAPP and a majority of Team 40 reached an agreement on 30th July 2010, with the main points being: that PT RAPP will establish 2,300 hectares of community rubber gardens (two hectares for every household); where lands had already been used for farming by community, the company will pay compensation or withdraw from those areas; PT RAPP will contribute to a community development fund every year; PT RAPP will pay a fee to the community for felling natural forests (the level of payment is yet to be negotiated); PT RAPP will develop a community forest area based on lands that the community provides. At the time of the field visit relations between those who had negotiated this agreement and those opposed to it were still raw. Participants during the field visit noted that there were unclear grievance mechanisms and arrangements for conflict resolution.

The field dialogue and field visits had the support and endorsement of the Office of the Governor of Riau Province as well as the companies involved, we are grateful for this support. The government made it a condition of this dialogue that all field visits be accompanied by plain clothes police officers to ensure security.

PROBLEM ANALYSIS

The field visits and discussions brought out clearly that one of the root problems preventing companies from respecting communities' rights to FPIC was the lack of clarity in Indonesian law of communities' rights in land. Not only are customary rights not recognised in practice but the legal framework itself does not provide for effective means by which land rights can be recognised. Most communities in agricultural lands are considered to be on State land and as noted almost all forests are classed as State Forest Areas. As a result State agencies are granting leaseholds to palm oil companies on agricultural lands and to forestry companies in State Forests without taking community rights or views into account.

In addition communities have difficulties representing themselves through their own institutions. The government-imposed uniform administrative system which controls communities right down to the hamlet level has marginalised customary systems of representation. The field visits and discussions also brought out the fact that sometimes the representatives who serve in these imposed institutions



Mina Susana Setra

are manipulated by outsiders either through bribery or other inducements, or by manipulations of local elections. In both Lubuk Jering and Teluk Meranti, divisions had been opened up between many or a majority of community members and the formal village leadership. The lack of consensus and unity in the villages was exacerbated by customary gender and class inequities. Where negotiations between village leaders and outside companies had taken place there was a challenge to ensure the accountability of negotiating teams to village members.

The situation is exacerbated by the fact that the Indonesian government agencies have unclear responsibilities to address these issues. Not only do they develop land use plans without taking local communities' systems of land use and livelihood into account but decisions about land use allocations to the private sector are made without community participation. The common experience in Indonesia is that the government leaves it to companies to deliver basic services to communities and expects them to sort out conflicts with the communities.



Fisherman from the Teluk Meranti community

Confusions about rights in land and who should have a say in land use decisions are exacerbated by the fact that in recent decades and also historically there has been extensive migration in Indonesia. The Pangean case showed how a Melayu community had lost the majority of its lands to a state sponsored colonisation project which had brought in settlers from Java. Whereas these “transmigrants” had been allocated land titles to their individual plots of land, the local community’s ancestral rights, even to their remaining land areas were unrecognised by the State. By contrast, in Lubuk Jering, the extensive settlement on village lands has mostly been by spontaneous settlers who enjoy the backing of district and village level politicians seeking to expand their constituencies. It is these settlers and outside interests which have blocked legal acceptance of the agreement forged between the local community and APRIL. While FPIC is asserted as a collective right of indigenous peoples, a rights-based approach must also respect the rights of other persons including settlers and migrants. There is a need for greater clarification of how these wider rights relate to FPIC.



Mubariq Ahmad

TOWARDS SOLUTIONS

The discussion brought out how a narrow attention to the right to FPIC may not be useful to either communities or companies. For FPIC to be meaningful, rights to land, to representation, and livelihood also need to be recognised. The dialogue also queried how REDD and Payment for Ecosystem Services projects can be developed in conformity with the right to FPIC unless there is legal clarity about rights over carbon and ecosystem services.

Participants emphasised the need to recognise the importance of other values such as livelihoods, identities, survival and environmental health. For development to be real for



Nando Kasim

peoples and nations, these wider issues also need to be addressed in planning and negotiation. FPIC is not a stand-alone right, observation of which can substitute for addressing the other rights and values of importance to local people. As one participant noted: *“At the moment the whole system is collapsing. FPIC is like the pillar which holds up the roof but for it not to fall there is a need for other support and for foundations.”*

A strong conclusion from the discussions is that all parties require further capacity building to allow them to engage with each other in well-prepared and informed ways. This is as much true of government agencies, at various levels, as it is of companies and communities. To date in Indonesia, the “FPIC approach” has largely been applied post-facto to address the numerous land conflicts that have arisen from company leaseholds being granted on community lands without consultation. This is understandable given that the country is still dealing with the legacy of thirty years of single party dictatorship.

However, the meeting felt that follow up work in Indonesia should give stronger emphasis to the importance of the “prior” aspect of FPIC as a way of avoiding further conflict by ensuring that real agreements are achieved prior to government permits and company operations. For this to be meaningful to communities, it is essential that companies accept the peoples’ right to say “no” or “yes” to proposals, or to negotiate amended proposals that make them acceptable and ensure better outcomes. Whereas it was recognised that the Indonesian practice of “socialization” (*sosialisasi*) of development plans was quite general, whereby government or company officials would hold public meetings to inform people of their plans, effective FPIC requires that much more information be given to communities so they can meaningfully engage with companies.

Voluntary FPIC-based processes require that companies recognise customary rights in land, but, as noted, it is preferable that the government also recognises these rights. It was suggested that the burden of proof be shifted away from an assumption that communities have no rights in land unless they can prove otherwise, to the contrary, that they do have rights in land unless others can prove they do not. In the long run, it was proposed, it will be in companies’ interests that they help persuade the government of the need to regularise land tenure.

Observing the procedures used by companies to secure agreements in Indonesia and elsewhere, meeting participants emphasised the importance of leaving time and space for communities to freely reach their own decisions and not try to control the outcome. Observers stressed that FPIC is a right, and what is needed is clear guidance on what principles need to be observed to respect that right.

The cases in Riau also brought out the question of who pays for the negotiation. On the one hand, it was unreasonable to expect communities to pay for the costs of negotiations, both because they are not the proponents of the intervention and because they probably lack funds anyway. Yet the cases showed that frequently, where there has been a breakdown of trust and where there is a need for conflict mediation, independent mediators or facilitators are needed to bring the two parties together. If these are paid for by the companies they lose their neutrality.

Based on observations of FPIC-based processes both in Riau and elsewhere in the Southeast Asia region, participants noted that even where information has been provided and prior agreements freely reached, it was often unclear what exactly communities had agreed to in terms of recognition of their



Co-chair Minnie Degawan in the field

rights, the exact operations authorised, the benefits to be shared and the follow up engagements required during implementation. Because no plans ever run exactly as envisaged, there is a need for iterative engagement to sustain trust and ensure acceptable outcomes. There needs to be greater clarity about how such procedures will fit with peoples’ own decision-making processes.

Under ideal circumstances communities consult with all members and achieve consensus before entering into agreements. However, the reality is that many communities are class, caste and gender divided and, as noted, many communities now include numerous migrants who may observe different customs and have different expectations and values. Participants asked, what constitutes agreement if consensus is not achieved. It was suggested that all parties need to agree, in advance of a vote or decision, what mechanism the community will observe to ascertain whether there has been consent. It was noted that many indigenous peoples often do have internal regulations to resolve such disputes and it is only when outsiders take advantage and highlight differences that the internal rules break down and divisions are unnecessarily heightened. Likewise community engagement is needed to ensure that inclusive mechanisms involve marginalised sections of communities.



Group picture with Teluk Meranti community

All the same, it was noted, even where best efforts are made to ensure scrupulous respect for the right to FPIC, the unequal power relations between communities and large companies enjoying government support for their projects, means that a fully level playing field is hard to achieve.



Local mosque in historic Pangean Village, erected circa 1400 AD

While such dilemmas throw up questions that can’t be answered just by assertion of principles and rights, there was general consensus that it is in everyone’s best interest to avoid conflicts; that more time, better tools and more resources are needed to ensure respect for FPIC; and it is necessary that once agreements between communities and companies are reached these need to be secured through government endorsement. Otherwise, as in Lubuk Jering, these arrangements can unravel and further conflict will ensue.

However, whereas government endorsement of FPIC agreements is necessary, the experience in the Philippines warns of the pitfalls of over-detailed regulation which take much of the initiative for decision-making away from communities. Exactly because in the Philippines procedures for FPIC are formalised by law and subject to detailed regulations, so FPIC processes have been captured and controlled by State agencies making them vulnerable to corruption. The view was expressed that the same might easily happen in Indonesia where licensing processes are very often abused by officials for rent-seeking. Respect for the right to FPIC should be mandatory and in accordance with countries’ international obligations under human rights treaties but just as FPIC is an expression of the right to self-determination so it should allow room for peoples to control decision-making processes about their lands and wider rights.



Norman Jiwan

It was generally accepted by the meeting that, given the weak recognition of rights in Indonesian law, companies need to go beyond what Indonesian law requires to meet international standards. In seeking to build trust based relationships, which respect for the right to FPIC can enhance, companies were anxious to avoid benefit-sharing arrangements turning into dependency.

FOLLOW UP

The meeting concluded that much further work needs to be done within Indonesia to ensure respect for communities' right to FPIC. This should include legal reforms in line with the requirements of international law to secure the rights of communities and indigenous peoples to their lands and forests and adjustments to the process for allocating concessions to the private sector. The fact that only 12% of forests have yet been gazetted actually provides scope for the recognition of rights. Customary rights and community systems of land use should also be recognised in spatial planning. On the other hand, it was pointed out that the current Constitutional and legal framework, as interpreted by the government, gives it a “controlling power” over natural resources to allocate them for the national benefit, places forests under the control of the Ministry of Forests where the Agrarian Law is not thought to apply and provides licences not rights to leaseholders. Other speakers emphasised that FPIC should not be seen as a right to veto and a block to national development, but on the contrary FPIC was underpinned by the right to development. It was suggested that efforts should be undertaken to help those government agencies, which will be responsible for implementing the new laws that require respect for indigenous peoples' rights, to develop regulations on FPIC.

These legal reforms might be long in coming. At the same time, much more needs to be done to share understanding of Free, Prior and Informed Consent in Indonesia especially with government agencies. Specifically, it was suggested that there should be a further dialogue about FPIC in Kalimantan with a focus on REDD to develop coherent national guidelines on how to respect the right to FPIC. So long as government agencies do not fulfil their roles to recognise and protect rights and to justly resolve disputes, there will be a continuing need for NGOs to act as mediators and facilitators. Community leaders had used the meeting with company managers to discuss next steps in their own locales to resolve disputes in accordance with respect for the right to FPIC and these now need follow up. In closing the meeting the host organisations noted that they would seek to follow through on these suggestions in the coming year.

Beyond Indonesia, TFD now plans to hold three further field dialogues on FPIC in 2011 and 2012 tentatively planned for the Democratic Republic of Congo, Honduras and New Zealand. TFD also anticipates distilling the main lessons learned from this series of dialogues into a practical tool kit that government agencies, commercial enterprises and non-governmental organizations can use to help ensure that they respect peoples' right to FPIC.

REFERENCE

- 1 Marcus Colchester, 2010, Free, Prior and Informed Consent: making FPIC work for forests and peoples, The Forests Dialogue and Forest Peoples Programme, New Haven: http://environment.yale.edu/tfd/uploads/TFD_FPIC_NewHaven_Co-ChairSummary.pdf

- 2 Marcus Colchester and Peter Gardiner, 2010, Scoping Dialogue on Free, Prior and Informed Consent, Co-Chairs' Summary Report, The Forests Dialogue, New Haven:
http://environment.yale.edu/tfd/uploads/TFD_FPIC_NewHaven_Co-ChairSummary.pdf
- 3 Some of these experiences are summarised in the briefing paper prepared for this meeting: Marcus Colchester, Patrick Anderson and Ahmad Zazali, 2010, Field Dialogue on Free, Prior and Informed Consent: Briefing Paper, The Forests Dialogue, New Haven.
http://environment.yale.edu/tfd/uploads/TFD_FPIC_Indonesia_BriefingPaper.pdf
- 4 For useful maps illustrating this process see:
<http://www.greenpeace.org.uk/files/maps/indonesia/index.html>
- 5 Assessments of the contribution of deforestation to GHG emissions are highly variable. See for example: <http://www.newscientist.com/article/dn19817-deforestation-not-so-important-for-climate-change.html?DCMP=OTC-rss&nsref=climate-change>

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FURTHER READING AND INFORMATION

Meeting summaries and materials from all the dialogues in TFD's FPIC series are available on our website.

The full set of materials (21 files) relating to the Pekanbaru meeting are available at: <http://environment.yale.edu/tfd/dialogue/free-prior-and-informed-consent/free-prior-and-informed-consent-indonesia-field-dialogue/>.

For more information about The Forests Dialogue, please see www.theforestdialogue.org; about Kemitraan please see www.kemitraan.or.id; about Forest Peoples Programme please see www.forestpeoples.org and; about Scale Up please see www.scaleup.or.id.

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