

# An Uneven Path Toward Rights and REDD+ in Indonesia

Chip Fay and Ho-Ming So Denduangrudee

## Abstract

This paper examines the impact on indigenous peoples of a landmark agreement between Indonesia and Norway. The 2010 pact centers on incentives and rewards for Reducing Emissions from Deforestation and forest Degradation (REDD+). Initially, the concerns raised by the global “No Rights No REDD+” campaign by indigenous communities and other civil society actors influenced the Indonesian government led-processes. Indonesian indigenous peoples and civil society voiced concerns that payments for performance for the reduction of land-based emissions and a potential global carbon market would further entrench business-as-usual incentives and undermine indigenous rights in the landscapes where REDD+ activities would take place. This study reviews the development of Indonesia’s commitments to REDD+ and related institutional frameworks. The authors submit that the integration of Indonesia’s reform agenda driven by REDD+ opened political space for strategic advocacy by indigenous peoples to mainstream their demands for the recognition of their collective rights over traditional territories. Simultaneously, a weak carbon market and related delays on the ground of implementation of REDD+ projects have meant that neither the direct benefits nor the expected harms have fully materialized.

**Keywords:** REDD+, Indonesia, deforestation, climate change, economic development, indigenous peoples, human rights, public policy, political economy

## **An Uneven Path Toward Rights and REDD+ in Indonesia**

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## **Preface**

By William Savedoff

This study was commissioned as part of a project to assess the effects of implementing REDD+ programs on indigenous peoples who live in or near tropical forests. It complements other evidence and case studies to see whether concerns that REDD+ programs would harm indigenous peoples have materialized.

The study describes Indonesia's slow but important progress toward acknowledging the need both to preserve its tropical forests and to protect the rights of its indigenous peoples. When REDD+ programs were taking shape in 2007 and 2008, many indigenous groups opposed them. They feared that the Indonesian government would treat carbon stocks in forests as simply one more commercial resource to be extracted from the forests without regard to the peoples who live there. These fears were well-grounded in a country that had for decades treated forests as the State's exclusive preserve for economic exploitation by favored interests and with no consideration for the claims of indigenous peoples. Indeed, the Ministry of Forestry's initial regulations for carbon stocks envisioned concessions—much like those for logging—which made no mention of the rights or interests of indigenous peoples.

Since then, two parallel movements have changed the tenor of political discourse in favor of forest preservation and indigenous rights. First, indigenous peoples in Indonesia have organized and mobilized to claim their rights through domestic channels—such as direct lobbying, elections, and the courts – and international channels—like appeals to UN anti-discriminatory agencies. Second, climate change negotiations and programs to reduce deforestation have adopted language concerning indigenous peoples' rights and explicitly require consultation in the design of policies and programs. Indonesia's commitment to international climate negotiations and its bilateral agreements have therefore given indigenous peoples opportunities to pressure the Indonesian government for greater participation in national policy setting and local land use decisions. The confluence of these two movements has led to a number of important changes to legislation, court decisions, and policies regarding forests and indigenous rights. While deforestation in Indonesia continues and indigenous rights are still being violated, progress being made, at least for the time being, can be traced to the complementarities between REDD+ and the growing political mobilization of indigenous peoples.

# 1. Introduction

This paper examines the impact on indigenous peoples of a landmark agreement between Indonesia and Norway. The 2010 pact centers on incentives and rewards for Reducing Emissions from Deforestation and forest Degradation (REDD+). Initially, the concerns raised by the global “No Rights No REDD+” campaign by indigenous communities and other civil society actors influenced the Indonesian government led-processes. Indonesian indigenous peoples and civil society voiced concerns that payments for performance for the reduction of land-based emissions and a potential global carbon market would further entrench business-as-usual incentives and undermine indigenous rights in the landscapes where REDD+ activities would take place. This study reviews the development of Indonesia’s commitments to REDD+ and related institutional frameworks. The authors submit that the integration of Indonesia’s reform agenda driven by REDD+ opened political space for strategic advocacy by indigenous peoples to mainstream their demands for the recognition of their collective rights over traditional territories. Simultaneously, a weak carbon market and related delays on the ground of implementation of REDD+ projects have meant that neither the direct benefits nor expected harms have fully materialized.

This study begins by setting the context for REDD+ in Indonesia. It then briefly describes methods used and proceeds with a historical account of the political and institutional development of Indonesia’s REDD+ framework. The section that follows focuses on Indonesia’s indigenous peoples, their story of disenfranchisement, their political organizing, engagement in the REDD+ process and what they have gained to date. Chronologically, this section overlaps somewhat with the previous section but from an indigenous perspective. The roles of civil society groups in this process is also included and a summary and conclusion are offered.

This study relies primarily on government and civil society documents generated during the period covered, a broader literature review, examination of relevant law and policies, and interviews. It also integrates the authors’ participant observations through their respective work.<sup>1</sup>

## 2. Indonesian Context for REDD+

Indonesia contains one of the world’s largest areas of natural tropical forest (only the Amazon and Congo Basin are larger) and is home to some of the world’s highest rates of

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deforestation, making it among the world's largest emitters of land-based greenhouse gases (GHG). Indonesian forests equate to more than 14 billion tons of biomass, storing roughly 3.5 billion tons of carbon. The land-use sector dominates GHG emissions in Indonesia, making up just over 60 percent of the country's total GHG emissions (Sari 2007).

Forest conversion in Indonesia has been driven predominantly by plantation expansion for tree fiber to make paper and pulp and for oil palm. Logging concessions, smallholder agriculture, and mining are additional drivers. Similar to the debate around whether or not indigenous peoples exist in Indonesia, the challenges and inequities in land use and deforestation are fueled by a lack of clarity in definition, data collection, and public access. Deforestation rates in Indonesia are also difficult to calculate accurately due to government definitions of what constitutes deforestation. Official government policy does not include the conversion of natural forest to timber plantations as deforestation. Up-to-date accurate and official data on the loss of natural forests are not publicly available. Global Forest Watch (GFW) reports that between 2001 and 2016, Indonesia lost 23.1 million hectares of tree cover.<sup>2</sup> This loss is equal to 14.3 percent of the area's tree cover in 2000, and equivalent to 2.32Gt of CO<sub>2</sub> emissions. But 2017 data recently released by GFW shows a 60 percent reduction in the rate of tree cover loss as compared to the previous year. Primary forest loss in protected areas and peatlands saw a decline of 88 percent between 2016 and 2017. This unexpected and encouraging finding may be due in part to improved government implementation of a national moratorium on the conversion of primary forests, an additional moratorium on drainage and conversion of peat forests and improved management of protected areas. Weather also played a likely role since 2017 saw far more rain resulting in fewer forest fire incidents.<sup>3</sup>

While the 2017 data is encouraging, it is part of an historical pattern of widespread and extensive deforestation. A University of Maryland study found that in 2012 alone, Indonesia lost 840,000 hectares of forest, more than double what was lost in Brazil that same year.<sup>4</sup> In 2015, the Global Fire Emissions database recorded close to 100,000 forest fires in Indonesia. During a particular 26-day period in September of the same year, Indonesia exceeded parallel emissions by the entire US economy, or the annual CO<sub>2</sub> emissions of Germany (World Resources Institute 2015). Forests in Indonesia continue to be centrally managed in accordance with national government policy of forest area delineation. In most cases, the process of designation is more administrative than ecological. Currently, 131 million hectares are designated by government as permanent forest area where only forests, planted or natural, can exist. This means close to 70 percent of Indonesia's land base is under the

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<sup>2</sup> Global Forest Watch measures tree cover regardless of whether those trees are part of a planted forest or a natural forest, making it difficult to determine an accurate measure of “wall to wall” conversion of natural tropical forests in Indonesia.

<sup>3</sup> Hidayah Hamzah, et al. 2018. “Deforestation in Indonesia Drops 60 Percent in 2017, But Much Still Needs to be Done.” World Resources Institute. August 19. <https://wri-indonesia.org/en/blog/indonesias-deforestation-dropped-60-percent-2017-theres-more-to-do>

<sup>4</sup> Belinda Arunarwati Margono, et al. 2014. “Primary forest cover loss in Indonesia over 2000–2012” *Nature Climate Change*, 4:730–735. <https://www.nature.com/articles/nclimate2277>

jurisdiction of the Ministry of Environment and Forestry (MoEF, formerly the Ministry of Forestry, which merged with the Ministry of Environment in 2015). In 2016, Government data identified just over 38,000 villages within Indonesia's forest zone. These village boundaries overlap with numerous logging and timber plantation concessions resulting in widespread conflict between local people, the government and/or forest industry.

The progression of Indonesia's policy and institutional approaches to reducing deforestation has been inconsistent since democratization in 1998. As a legacy of decades of authoritarian rule, the Indonesian land use model has been based upon patronage capitalism. The Ministry of Forestry, the government entity charged with managing the National Forest Estate, historically favored partnerships with private sector companies owned by friends of political leadership. These focused on heavy extraction of the nation's abundant natural resources. Despite a constitution that guarantees the rights of indigenous peoples, these rights have been historically ignored. In many cases, local resistance was met with state-sanctioned violence and criminalization.<sup>5</sup>

From the perspective of the national government, while Indonesia is a signatory to the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), it retains the official position that internationally accepted standards for self-identification and determination of indigenous peoples are not applicable to the archipelago on the basis that all Indonesians are indigenous (Kline 2013). Yet, Indonesian legislation and policies have a long history of recognizing distinct communities that adhere to international definitions of indigenous peoples.

This case study uses the term "indigenous peoples" as equivalent to the Indonesian terms *Masyarakat Adat* and *Masyarakat Hukum Adat*. Both terms are used by indigenous communities, civil society, and the Indonesian government to mean self-identified communities organized around traditional governance and legal systems based upon communal territorial ownership and management. These rights are collective and non-transferable, as distinct from local communities and individuals who do not choose to identify as customary (*adat*), and whose natural resource management approaches and government issued tenure instruments are time bound, and often premised on individual access. This distinction is particularly important within the developing framework of rights recognition in Indonesia's National Forest Estate (*kawasan hutan*) where, to date, time bound, and conditional rights have been awarded to forest concessions and—to a far lesser degree—cooperatives through the community forestry program. Indigenous forest management areas (*hutan adat*) are also premised on government recognition and administration of collective local rights. These rights are neither time bound nor conditional.

A 2014 World Bank report identified nearly 25 million hectares of forest area under dispute making up about one fifth of the forest area and involving many thousands of villages

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<sup>5</sup> See: Fay, Chip and Denduangrudee, Ho-Ming So. "Emerging Options for the Recognition and Protection of Indigenous Community Rights in Indonesia." In *Land and Development in Indonesia: Searching for the Peoples Sovereignty*, John McCarthy, Kathryn Robinson, editors

(World Bank 2015). In 2015, the government's National Commission for Human Rights carried out numerous local consultations and research on conflict within the forest zone. The commission highlighted that the then Ministry of Forestry gave little recognition to the status and existence of indigenous communities and their territorial rights and that this resulted in arbitrary inclusion of indigenous territories into various forest use designations. Local communities continue to suffer from the issuance of licenses to logging concessions and other large-scale commercial ventures. According to the report, the commission, in 2014, received close to 2500 formal complaints concerning land disputes inside the National Forest Estate. When researchers from AMAN overlaid community-created maps of their territories, 81 percent of these overlapped with the forest zone.

As the global climate change conversation gained urgency, Indonesia's position in the world as a leading land-based greenhouse gas emitter attracted significant global interest. In 2010, following high level commitments by the Government of Indonesia (GoI) to reduce emissions from land use and land use change, the Government of Norway (GoN) came forward to provide support through a bilateral agreement consistent with the objectives being negotiated under the UNFCCC. Indonesia and Norway signed a Letter of Intent (LoI) that outlined a one billion dollar, three-phased partnership designed to create a performance-based system for reducing deforestation.

The Norway partnership began with a preparation phase to support the Government of Indonesia to create a policy framework for REDD+. This included steps such as the creation of a REDD+ strategy, establishment of a national REDD+ Agency that reported directly to the President, an independent system for measurement, evaluation and verification of emission reductions, and a government funding mechanism for REDD+ activities and projects. Phase II was designed to be transformational and demonstrate proof of concept impacts on the ground. The final phase was projected to be a system for payment for performance, or payments for reducing emissions by reducing deforestation.<sup>6</sup>

The LoI and a subsequent Joint Concept Note provided more detail on the sequential, three-phased approach.<sup>7</sup> However, in reality, political challenges have led to significant variances in implementation. From the start, there was substantial backroom opposition from those that benefitted from business-as-usual, particularly the politically powerful and well-resourced

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<sup>6</sup> For a summary and overview of the progression of perspectives, see Down to Earth. (2008, November, No. 79). *The Pressure for REDD*. <https://tinyurl.com/y7c44vhc> and Redd Monitor. (2010 July). "We Want to Change this Threat to an Opportunity: Interview with Abdon Nababan and Mina Setra." <https://tinyurl.com/y72ca3ab>

<sup>7</sup> In May 2010, Norway and Indonesia entered into an ambitious climate and forest partnership aimed at assisting Indonesia to reduce land based emissions from deforestation and degradation of forests and peatlands:

<https://www.regjeringen.no/contentassets/78ef00f5b01148e2973dca203463caee/letter-of-intent-indonesia-norway.pdf>

This Letter of Intent was followed by a more detailed Joint Concept Note in December 2010: [https://www.regjeringen.no/contentassets/78ef00f5b01148e2973dca203463caee/jcn\\_indonesia\\_norway\\_redd\\_partnership\\_2010.pdf](https://www.regjeringen.no/contentassets/78ef00f5b01148e2973dca203463caee/jcn_indonesia_norway_redd_partnership_2010.pdf)

forest industries and oil palm plantation sectors.<sup>8</sup> While REDD+ had the potential to reinforce existing corporate strongholds on forest governance and land use, Indonesian's REDD+ agenda has, in fact, been implemented with inclusiveness and a commitment to public consultation. The government process for developing a national REDD+ agenda encouraged broad civil society representation and welcomed media coverage to ensure transparency and accountability. This provided an opening to address historical injustices against indigenous communities whose territories have been taken over by forest industries, palm oil plantations and mining concessions.

It is important to note that, over the last decade, community resistance and organized civil society advocacy and support had been strengthening as a response to industry and business-as-usual practices independent of REDD+. However, Indonesia's REDD+ agenda opened political space to broaden a constituency base to push for reform. When the impact of Indonesia's unsustainable practices began to be measured in terms of climate change, national and international attention to Indonesia's forest challenges increased substantially. This integrated, cross-sectoral understanding of the drivers of land-based emissions, brought the forest debate beyond the forest sector and into the mainstream political dialogue on Indonesia's development pathway. It became increasingly apparent to the public how opaque government data and management of natural resources had been to date. These discussions led to calls, including from other government agencies, for the Ministry of Forestry to be more transparent and accountable. Indigenous communities, their organizations, and civil society supporters gained a wider audience throughout Indonesia and in the international arena. They found new and unexpected allies in government and a higher profile at international venues that added leverage to national advocacy efforts. Opportunities for funding of advocacy efforts also increased.

### **3. Indonesia's REDD+ Policy and Institutional Development, 2008–2017<sup>9</sup>**

In 2006, the UK Government released a report led by Nicholas Stern on the economics of climate change (see table 1).<sup>10</sup> It garnered significant public attention and galvanized global discourse and debate on climate change. This led to progress in characterizing and improving measurements of emissions levels and in scenario building that included the need for more rapid development of on-the-ground solutions. The global scientific community moved rapidly to refine and develop new methods for the measurement of GHG emissions, including timetables for their projected accelerated impact and baselines to measure

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<sup>8</sup> "Indonesia's forest moratorium: A stepping stone to better forest governance?"

[https://www.cifor.org/publications/pdf\\_files/WPapers/WP-76Murdiyarto.pdf](https://www.cifor.org/publications/pdf_files/WPapers/WP-76Murdiyarto.pdf)

<sup>9</sup> For a more comprehensive treatment of REDD+ policy development in Indonesia see Jodoin, 2017.

<sup>10</sup> *The Stern Review on the Economics of Climate Change* was prepared for the British government in 2006 by a group led by Nicholas Stern, who was chair of the Centre for Climate Change Economics and Policy (CCCEP) at Leeds University and LSE. The report identified reducing deforestation as one of four key elements of any climate change mitigation strategy.

intervention effectiveness. But the process of organizing social and political responses to implement these methods lagged behind.

Indonesia began exploring issues fundamental to REDD as early as 2007, when the Ministry of Forestry, with support from international donors, convened a group of land-use, remote sensing and climate experts and created the Indonesia Forests Climate Alliance (IFCA). IFCA's initial work centered on preparing Indonesia for the December 2007 Bali Conference of Parties of the UNFCCC. An IFCA consolidation report was prepared on the key issues relating to REDD, although individual products were not published. The reports covered five challenges:

- Setting emissions reference levels or baselines
- Emissions reduction strategies
- Monitoring emissions reductions
- REDD market and financing questions
- Payment distribution mechanisms

This body of work informed the nascent national REDD+ process. It was during the lead up to the Bali meeting that global research demonstrated Indonesia to be the world's third largest emitter of greenhouse gases, after China and the United States. Indonesia was also the largest emitter of CO<sub>2</sub> from "agriculture forestry and other land use" (AFOLU) due to the clearing and burning of millions of hectares of forests and peatlands. The drainage and agricultural development of peatlands alone accounts for almost half of Indonesia's total emissions but provides a small fraction GDP.

**Table 1. Timeline for REDD+ and indigenous rights in Indonesia**

<b>Year</b>	<b>Event</b>
<b>2006</b>	<ul style="list-style-type: none"> <li>• The UK government released a report led by Nicholas Stern on the economics of climate change</li> </ul>
<b>2007</b>	<ul style="list-style-type: none"> <li>• Bali Climate Change Conference</li> </ul>
<b>2008</b>	<ul style="list-style-type: none"> <li>• President Yudhoyono creates the National Climate Change Council</li> <li>• Ministry of Forestry Regulation #68 on REDD+ projects</li> <li>• Publication, <i>Seeing 'RED'? 'Avoided deforestation' and the rights of Indigenous Peoples and local communities</i>, released by the Forest Peoples Programme</li> <li>• Ministry of Forestry creates the Indonesia Forest Climate Alliance (IFCA) and Consolidated Report on Reducing Emissions from Deforestation and Forest Degradation in Indonesia released</li> <li>• Indonesia's first Ecosystem Restoration license issued (PT Harapan)</li> </ul>
<b>2009</b>	<ul style="list-style-type: none"> <li>• National Climate Change Council releases comprehensive report on greenhouse gas emissions that identifies peat lands and Indonesia's forests as providing the largest opportunities for reductions</li> <li>• Ministry of Forestry Regulation # 30 Requirements for forest industry emissions reduction</li> <li>• Ministry of Forestry Regulation # 36, REDD+ Licensing Procedures</li> <li>• G-20 President Yudhoyono states Indonesia's ambitious emissions reduction targets at G-20 meeting in Pittsburg USA</li> <li>• United Nations Climate Change Conference, Copenhagen COP</li> <li>• AMAN joined hands with nine Indonesian CSOs and the Forest Peoples Program to submit a detailed "Request for further consideration of the situation of Indigenous Peoples in the Republic of Indonesia under the early warning and urgent action procedures" to the United Nations Committee on the Elimination of Racial Discrimination (CERD). This submission focus on Indonesia's evolving REDD policy framework and the threat new policies pose to indigenous peoples</li> </ul>
<b>2010</b>	<ul style="list-style-type: none"> <li>• Indonesia and Norway sign ambitious Letter of Intent on combating land-based emissions</li> <li>• Indonesia and Norway release Joint Concept Note that provides more detailed targets for the Letter of Intent</li> </ul>
<b>2011</b>	<ul style="list-style-type: none"> <li>• President Yudhoyono creates Presidential Task Force on REDD+</li> <li>• Moratorium put in place on new forest conversion licenses in primary forests and peatland</li> <li>• Indonesia passes Law No. 4 on Geospatial Information (UU4/2011) "One Map" Process becomes official</li> </ul>
<b>2012</b>	<ul style="list-style-type: none"> <li>• Indigenous Peoples Alliance of the Archipelago (AMAN) and local Indigenous Elders file case in the Constitutional Court to nullify provision in 1999 Forest Law that stipulates that indigenous forests fall within the State Forest Designation and no private rights can be attached to those lands</li> </ul>
<b>2013</b>	<ul style="list-style-type: none"> <li>• AMAN and Elders win Constitutional Court Challenge (MK 35), Indigenous Forests are declared private collective lands and forest</li> </ul>
<b>2014</b>	<ul style="list-style-type: none"> <li>• Vice President Boediono launches the "National Program of Recognition and Protection of Indigenous and Tribal Peoples under the REDD + Program" (PPMHA).</li> </ul>

	<ul style="list-style-type: none"> <li>• Joko Widodo (Jokowi) becomes Indonesia's seventh President</li> </ul>
<b>2015</b>	<ul style="list-style-type: none"> <li>• President Jokowi merges the REDD+ Agency with the Ministry of Environment and Forestry, Directorate for Climate Change Oversight Established</li> </ul>
<b>2016</b>	<ul style="list-style-type: none"> <li>• President Jokowi issues nine Indigenous Forests where collective rights have been recognized by local legislation</li> <li>• Collective Rights Regulation for Indigenous Communities issued by the Agrarian and Spatial Planning Ministry (Permen 10/16)</li> <li>• Presidential Regulation 9/2016 signed for the acceleration of the "One Map Policy"</li> </ul>
<b>2017</b>	<ul style="list-style-type: none"> <li>• Dedicated Grant Mechanism Indonesia (DGMI) established to support indigenous peoples and other local communities</li> </ul>

In December 2007, Indonesia hosted the 13<sup>th</sup> session of the Conference of the Parties (COP) to the UNFCCC and the 3<sup>rd</sup> session of the COP that served as the Meeting of the Parties to the Kyoto Protocol. The conference brought together more than 10,000 participants from more than 180 countries. The resulting Bali Road Map includes the Bali Action Plan, which launched a new, comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action, with the aim of reaching an agreed outcome and adopting a decision at COP15 to be hosted by Denmark.<sup>11</sup>

COP13 in Bali underscored the need for action to reduce emissions from deforestation in developing countries, with the action plan referencing five eligible activities for what became known as REDD+: reducing emissions from deforestation and degradation “plus” sustainable management of forests, conservation of forest carbon stocks and enhancement of forest carbon stocks.

REDD+ in Indonesia gained attention as a potential “win-win” solution, where a market mechanism would enable substantial monetary flows from developed economies and, eventually, the private sector to enable Indonesia to reduce deforestation and secure old growth forests and carbon rich peatlands. But this initial optimism proved unrealistic. The general failure in Copenhagen during the COP15 in 2009 proved to be a significant setback and a market-based REDD+ did not emerge. Subsequently, Indonesian government officials outside the Ministry of Forestry participating in the global climate dialogue began early in the process to recognize that Indonesia’s efforts to reduce CO<sub>2</sub> emissions from forest clearing and the drainage and burning of peat soils required fundamental changes in the way Indonesia managed these high carbon areas. Leading Indonesian conservationists and policy makers such as Agus Purnomo—former head of WWF Indonesia and a Presidential Advisor for the Environment—and Dr. Kuntoro Mangkusubroto, leader of the Presidential Unit for Governmental Effectiveness with a track record for implementing successful complex reform agendas, spoke clearly at the early stages of this process about the need to address the difficult issues of forest governance and to avoid the process becoming overly technical and depend solely on market mechanisms.

A National Council on Climate Change (DNPI) was established in 2008 through presidential decree. DNPI was an inter-ministerial body responsible for advising and overseeing the implementation of all government climate change adaptation and mitigation policies. The role of indigenous communities in managing forest was prominent in DNPI documents. The council had eight working groups that focused on various aspects of climate change adaptation and mitigation, technology transfer, finance, forestry and post-Kyoto aims. The members of DNPI working groups came from both government institutions and nongovernment entities such as universities and the private sector. In August 2009, DNPI released a comprehensive report on greenhouse gas emissions that identified peatlands and

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<sup>11</sup> <https://unfccc.int/process/conferences/pastconferences/bali-climate-change-conference-december-2007/statements-and-resources/Bali-Road-Map-Documents>

Indonesia's forests as providing the largest opportunities for reductions.<sup>12</sup> Translating these opportunities into tangible realities would prove more difficult.

In 2009, President Yudhoyono made a high-profile global emissions reduction commitment on behalf of the Government of Indonesia at the G20 meeting held in Pittsburgh, Pennsylvania, USA. Indonesia would deliver a 26 percent GHG reduction commitment from business-as-usual emissions by 2020, or a 41 percent GHG reduction by 2020 with international assistance. It was the first and largest absolute reduction commitment made by any developing country. Based largely on this commitment, the governments of Norway and Indonesia embarked on a major bilateral partnership in May 2010, framed by a Letter of Intent (LoI) and subsequent Joint Concept Notes (JCNs) that provided programmatic details to the Indonesia-Norway REDD+ partnership.

### **Indonesian-Norway Partnership and Indigenous Peoples**

Specific to Indigenous rights, the LoI stated that “all relevant stakeholders, including indigenous peoples, local communities and civil society, subject to national legislation, and, where applicable, international instruments, will have the opportunity of full and effective participation in REDD+ planning and implementation.”<sup>13</sup> This created an opportunity to mainstream indigenous rights using a combination of international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as well Indonesian laws that clearly point to the need, obligation, and legal basis for the recognition and protection of indigenous rights.

The LoI design also provides significant space for independent participation by indigenous peoples both in implementation and monitoring. The three-phased approach clearly highlighted the need for fundamental and significant governance reforms to successfully implement any payment-for-performance scheme linked to changing practices around land use.

The long-term success of the Indonesian-Norwegian partnership would be highly dependent upon institutional innovation, momentum, and political traction for what would be an ambitious effort for governance reforms during Phase 1. President Yudhoyono appointed Dr. Kuntoro Mangkusubroto as the head of the independent task force to execute the commitments under Phase 1. Mangkusubroto was also head of a special unit within the executive tasked with monitoring and evaluating overall governance responsiveness and key presidential agendas. His appointment to lead REDD+ execution was interpreted by political observers and conservationists as an indicator that this agenda was a presidential priority. Civil society and indigenous groups saw the appointment of a proven reformist as a

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<sup>12</sup> On file with the authors; the DNPI website is now inactive.

<sup>13</sup> “Letter of Intent between the Government of the Kingdom of Norway and the Government of the Republic of Indonesia.” Indonesia: *The REDD Desk*.  
<https://theredddesk.org/countries/initiatives/letter-intent-between-government-kingdom-norway-and-government-republic>

potential opening for integrating rights-based approaches into a sector that had staunchly resisted change. The notion that REDD+ could be implemented with adherence to human rights in Indonesia—a positive response to the global “No rights No REDD” campaign—began to take hold.

The 2010 Joint Concept Note (JCN) provided more detail as well as key performance indicators for the partnership and made explicit references to the need for broad-based participation in implementation.

Key objectives of the JCN included:

- Preparation for the establishment of a National REDD+ Agency
- A two-year moratorium on forest and peatland concessions
- Establishing the initial design for an independent monitoring, reporting, and verification (MRV) institution
- Developing a funding instrument appropriate for financing activities for Phase I that operates to the satisfaction of Indonesian authorities, and is managed according to established international standards
- The development and implementation of a National REDD+ Strategy that addresses key drivers of forest and peatland related emission

A key performance indicator was that the strategy “follows a transparent, inclusive, credible, and institutionalized consultative process with all key stakeholders including representatives from indigenous peoples (*masyarakat adat*), local communities, Indonesian universities, the private sector, civil society, and selected Indonesian and international research institutions.”<sup>14</sup> The Government of Norway also released a public announcement soon after the signing of the JCN that stated that:

Representatives of Indigenous Peoples and local communities will take part both in the planning and implementation of Indonesia’s REDD+ strategy as well as the institution that will manage the funds. Currently, insecure land tenure gives Indigenous Peoples and local communities little incentive to contribute to sustainable management of forest, especially when concessions for mining, logging, pulp and paper or palm oil plantations are awarded on land inhabited and used by Indigenous Peoples and local communities without recognition of traditional land rights and without compensation.<sup>15</sup>

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<sup>14</sup> Indonesia-Norway Partnership Joint Concept Note. (12 March 2010).

[https://www.regjeringen.no/contentassets/78ef00f5b01148e2973dca203463caee/jcn\\_indonesia\\_norway\\_redd\\_partnership\\_2010.pdf](https://www.regjeringen.no/contentassets/78ef00f5b01148e2973dca203463caee/jcn_indonesia_norway_redd_partnership_2010.pdf)

<sup>15</sup> The Norway-Indonesia Partnership Frequently Asked Questions. (31 May 2010) could originally be found at: [http://www.norway.or.id/Norway\\_in\\_Indonesia/Environment/-FAQ-Norway-Indonesia-REDD-Partnership-/](http://www.norway.or.id/Norway_in_Indonesia/Environment/-FAQ-Norway-Indonesia-REDD-Partnership-/) It appears to have been removed from that official site, but can still be found at: <http://forestindustries.eu/de/content/norway-indonesian-redd-partnership-faq>

While the language in both the LoI and the JCN are strong on public participation, it still falls short of international legal language and standards for the recognition of the rights of indigenous peoples.

Despite these limitations, the appointment of Kuntoro Mangkusubroto brought tentative optimism that REDD+ could open space for greater recognition of indigenous rights. Civil society organizations, AMAN, and local and international research institutes took the stipulations outlined within the JCN as a foundation for advocating for full public consultations in government efforts to meet all objectives, and particularly in the formulation of a national REDD+ strategy.

Indonesia's commitments proved to be politically ambitious. There was significant push back from the Ministry of Forestry and business-as-usual allies in what was perceived as an agenda to undermine its jurisdiction. Beyond this, there was disagreement on what institutional set up and individual leadership would give the REDD+ agenda the best chance at success. The agenda's prioritization by the President also made it highly reliant on executive support for execution. These factors combined to extend the preparation phase longer than anticipated. Indonesia's GHG emission reduction commitments met significant resistance from the business community and a vigorous national debate emerged in the media over the social and economic impact of the proposed moratorium. Yet, measurable indicators of progress at the time did come in the form of Presidential actions that created political space for reforms in forest management. The most important of these was the creation of the Presidential Task Force on REDD+ (SATGAS REDD+), the body headed by Kuntoro. The task force was comprised of representatives from all relevant ministries and related government bodies to attempt to garner buy-in. It was supported by six technical working groups focusing on: (1) the creation of a REDD agency, (2) the creation of an MRV institution, (3) the selection of a pilot province, (4) the development of a national REDD strategy, (5) the design of a funding instrument, and (6) communication and stakeholder involvement. The SATGAS REDD+ was mandated to "take appropriate measures to address land tenure conflicts," the "establishment of a degraded lands database" (and plans for viable economic activities in those landscapes), as well as to set in motion "enforcement of existing laws against illegal logging and trade in timber related forest crimes and to set up a special unit to tackle this problem."

The highest priority working group during this period was for the design and implementation of a moratorium intended to temporarily halt the issuance of new plantation permits in natural forests and peatlands. This was particularly important for Indonesia's indigenous communities since large areas of existing and future plantations occupy or would occupy indigenous lands. Designed to be ready to implement at the start of 2011, the moratorium received the most public attention of any of the elements of the Letter of Intent. A particular challenge was the lack of a centralized database on agricultural concessions, especially for oil palm, since plantation licensing is initiated at the district level. An effective moratorium required both a clear understanding and clear definitions of the landscapes covered by the moratorium (accurate definitions of natural forests/primary and secondary) as well as a workable database on existing licenses and where they are in the licensing process chain.

The design of the moratorium came in the form of a Presidential Instruction (*Inpres*). Of all the actions taken within the LoI process, the content of this decree was arguably the most important of all indicators by which to determine whether business as usual practices were to be challenged in a meaningful way. The process unfolded dramatically. Forest industry, agribusiness (primarily oil palm) and the mining industry lobbied heavily for a Presidential Decree that would allow for sufficient loopholes so as to not meaningfully challenge the status quo. The Ministry of Forestry, although fully represented within the Presidential Task Force on REDD, quietly drafted their own version of this decree and sent it directly to the President for consideration. The content of that version was clear in its intention to reduce areas eligible under the moratorium to a point where it would be rendered ineffective. The Presidential Task Force produced a more detailed draft that covered a far wider area. After acrimonious debates between the many members of the Task Force and the Ministry of Forestry, the moratorium signed by the President was a compromise between the two. It does not include all natural forests as the Indonesian government had agreed to in the LoI, but only old-growth or primary forests. This left tens of millions of hectares of secondary forests, most of them falling within indigenous territories, open for new licenses for conversion to plantations for paper and pulp or oil palm.

An additional and pivotal action taken by the government of Indonesia within the framework of the LoI came in August 2013 when the President created the REDD+ Management Agency, the first cabinet-level government institution in the world to be mandated to address land-based emissions. The agency took over from the Presidential Task Force with a mandate to help the President coordinate, facilitate, monitor, supervise and control the REDD+ process in Indonesia. This included:

- Supporting the implementation of the national REDD strategy
- Supporting the implementation of provincial level REDD strategies
- Legal review of licensing
- Forest fire prevention and management
- Facilitating processes to protect the legal rights of indigenous communities,
- Developing an independent funding mechanism for REDD activities,
- Organizing the monitoring reporting and verification (MRV) process
- Conflict resolution in protected areas

Heru Prasetyo, a senior staff person under Kuntoro's Presidential Task Force, was appointed to head the agency. With international support, particularly from the government of Norway, a strong commitment from the president and an ambitious agenda, the agency staffed up and led the government's efforts to reduce land-based emissions.

Over the next two years the REDD+ agency strengthened, and expanded relationships established by the Presidential Task Force. It became a nexus for land and forest management reform, attracting partnerships with reform-minded individuals and institutions both locally and abroad, including continued support from the United Nations Development Program and other UN agencies (with funding from the Norwegian government).

Partnerships with provincial governments evolved as did the agency's relationship with AMAN.

Perhaps most important, the Agency developed and implemented a strategy they termed "Beyond Carbon," which informed the REDD+ National Strategy and was explicit in the Agency's objectives and programmatic structure. Strategic programs included sustainable landscape management, sustainable economic systems for land utilization, empowering local economies, and mainstreaming development reforms.<sup>16</sup>

In an effort to address the complex problem of overlapping land use licenses issued by various Ministries and local governments, the Agency promoted the development of a "One Map Policy" (OMP). With strong support from the President, the One Map policy aims to create a single integrated database that will manage all information related to natural forests, forest lands, indigenous communities, mining, palm oil plantations, and other land-use licenses. The OMP is led by the National Geospatial Agency (BIG). Subsequently, the Jokowi administration would go on to prioritize the OMP and work towards its acceleration.

With such a broad mandate, it was predictable that the REDD+ agency would compete with other government institutions with overlapping responsibilities, particularly the Ministry of Forestry (MOF). While the MOF assigned staff to senior positions at the REDD+ agency, relationships between these two institutions were often strained. One arena where this tension played out was the World Bank's execution of its global Forest Carbon Partnership Facility (FCPF), also, in part, a Norwegian-backed initiative. Against the advice of several senior and international forestry experts, the Bank chose the Ministry of Forestry as the FCPF implementing agency.<sup>17</sup> While the global agendas were largely the same, in Indonesia, the FCPF became an MOF-led initiative whose program often overlapped and conflicted with the more reform-minded National REDD+ strategy as facilitated by the REDD+ Agency. This became particularly apparent in the limited attention paid to indigenous peoples' issues during the negotiations between Indonesia and the Bank over support through the FCPF. While the Bank worked to ensure that all social safeguards were met, the MOF performed poorly in its public consultation process. In May 2010, the Executive Director of HUMA, one of Indonesia's leading legal and environment NGOs, wrote the Bank detailing the weaknesses in the consultative process and the lack of attention the MOF was giving to the rights of indigenous peoples to free and prior informed consent for all activities carried out inside their territories. Having chosen the MOF as their government partner, the Bank found itself in the awkward position of supporting the creation of an MOF-led National REDD+ strategy that competed with and often contradicted the larger effort being carried out by the REDD+ Agency.

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<sup>16</sup> "REDD+ Management Agency: Operational Strategy 2014–2015," <https://www.forestcarbonpartnership.org/sites/fcp/files/2014/June/REDD%2B%20Agency%20Strategy.pdf>

<sup>17</sup> Personal communications.

In addition to bilateral and multilateral interest, the promise of a carbon market based on offsets attracted numerous private-sector players. Lack of government regulations, conflicting market signals, and general global confusion on how such a system would work separated what came to be known as the “Carbon Cowboys”<sup>18</sup> from those who sought to use REDD+ as a way to create incentives for conservation. It is important to note that little or no public financing became available to help develop a carbon market. Climate financing from Norway in Indonesia and elsewhere continues to prioritize addressing governance challenges at the “jurisdictional level,” which generally means provincial and/or district levels.

In what has become the only enduring instrument for private sector led forest conservation, the MOF, created an innovative production forest management instrument that came to be known as an Ecosystem Restoration Concession (ERC). Conservation organizations prioritized threatened lowland tropical forests in their proposals for ERCs, creating a private-sector enterprise for each proposed site. For the first time, production forests could be managed for restoration instead of logging. Ecosystem restoration involves efforts to return deforested, degraded or damaged production forest to their biological equilibrium. While not initially designed to respond to opportunities emerging within a global carbon market, conservation organizations, and soon after, private corporations, began to see the opportunity to obtain ERCs, protect the ecosystems, and profit from avoided emissions.

By the end of 2017 the government had issued 16 ERCs covering an area of just over 600,000 hectares. Yet, a viable business model has yet to emerge for these concessions since the contracts continue to be modeled on logging concessions where profit is based on timber extraction. Currently, ERCs are designed for assisted natural regeneration of natural production forests and logging is not allowed. Efforts by conservation organizations and forest management companies to improve the design have yet to succeed. Perhaps the most advanced of these is the Katingan Peatland Restoration and Conservation Project located in Central Kalimantan and operated by PT Rimba Makmur Utama (RMU).<sup>19</sup> RMU leadership have invested significant resources in establishing a state-of-the-art forest and peatland conservation approach that included the free and prior consent of local communities. The 160,000-hectare Katingan project has benefited from having very few communities within the concession due to the landscape being nearly entirely low productivity but high carbon peat soils. Public participation in the RMU approach is well documented and their experience on protecting fragile peat ecosystem from fire appears unprecedented in Indonesia. Other ERC concessions have not fared as well with some having poor relationships with communities inside and adjacent to their concessions.<sup>20</sup> While no public

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<sup>18</sup> A generally derogatory term used for opportunists who moved quickly in the emerging carbon market space making many promises and creating widespread and unrealized expectations among governments, local communities and some NGOs.

<sup>19</sup> <http://katinganproject.com/>

<sup>20</sup> One such example is the *Hutan Harapan* (forest of hope) project by PT REKI. For an overview of the conflict, “*Hutan Harapan Forest Conflict, Jambi, Indonesia.*” Environmental Justice Atlas. <https://ejatlas.org/conflict/reddconflict-in-jambi-indonesia> and “Harapan Rainforest conservation

documentation currently exists on the impact of ERCs on indigenous communities, it is likely that tension exists when the concession holder restricts community access to their customary forest areas.

In terms of law and policy, the most important developments during this period were a constitutional court decision that declared all Indigenous territories inside the forest estate to be private not public as written in the 1999 forestry law.<sup>21</sup> This major breakthrough was the result of a case filed by AMAN and its members and laid the foundation for private indigenous forests to be included in the government's social forestry program. Additionally, the Land Agency created a new category for the recognition of collective rights. It remains the most important titling opportunity for Indonesia's indigenous peoples. This framework allows for indigenous communities to organize themselves according to their traditional institutions and manage their collective rights in accordance with their traditional law. It also allows indigenous communities to proceed with their claims on lands where the state has already awarded rights to plantations, particularly oil palm.<sup>22</sup>

The Yudhoyono government's highest profile commitment to harmonize REDD+ efforts with the recognition of indigenous rights came on September 1, 2014. These efforts were directly linked to the strong rights agenda promised by the Indonesian-Norwegian partnership. With the REDD+ Agency championing a more inclusive governance and natural resource use agenda, Vice President Boediono launched the "National Program of Recognition and Protection of Indigenous and Tribal Peoples under the REDD + Program" (PPMHA). This was inaugurated at a meeting of indigenous leaders and support organizations at the Vice-Presidential Palace.

In his opening speech, Boediono stated,

This declaration is an important step as part of our long journey of struggle to place the role and position of indigenous peoples' communities into the national system of the unitary state of the Republic of Indonesia. Partial steps have been made by previous ministries and agencies, but it is important for us to coordinate all efforts more thoroughly and systematically. This national program is exactly what we all expect in achieving common goals. This step is a very tactical and strategic step in which each party takes a role in this cooperation.

At that event, then Secretary-General of AMAN, Abdon Nababan acknowledged that,

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project urged to respect Indigenous Peoples' rights." Forest Peoples' Programme.  
<https://www.forestPeoples.org/en/region/indonesia/news/2013/06/harapan-rainforest-conservation-project-urged-respect-forest-Peoples-r>

<sup>21</sup> MK 35/2013

<sup>22</sup> Minister of Agrarian Affairs and Spatial Planning / Head of National Land Agency of the Republic of Indonesia Regulation Number 10 Year 2016 on Procedures for the Establishment of Communal Land Rights for Customary Communities and Communities in Particular Areas

a long journey has been taken by indigenous and tribal Peoples to provide understanding and fight for their rights. We appreciate government efforts that have been consistent in providing a legal basis for indigenous peoples. The National Program is again a refreshing new point for indigenous and tribal Peoples to continue the struggle, as well as a reflection for them to increase capacity to manage natural resources according to local wisdom.

Nine ministries and agencies signed the PPMHA. These included the Coordinating Ministry for People's Welfare, Ministry of Environment, Ministry of Home Affairs, Ministry of Justice and Human Rights, Ministry of Forestry, National Land Agency, Geospatial Information Agency, National Human Rights Commission and REDD+ Agency. All ministers were present at the event.

Overall, national-level progress towards the recognition of indigenous rights during the Yudhoyono administration was meaningful and measurable. Broad-based consultations with indigenous peoples across Indonesia took place during the development of the REDD+ strategy; several million hectares of indigenous territories were mapped by local communities and accepted by the REDD+ Agency; and the PPMHA provided a solid framework for the incoming government to build upon. A major constitutional court decision laid the groundwork for the recognition and management of indigenous forests; a collective land titling instrument was created; and broad-based consultations were held. Yet, little had actually been achieved at the community level. Government budgetary commitments for indigenous peoples continued to be low; collective titles remained unrealized; and even REDD+ funds from the Indonesia-Norway partnership rarely found their way to indigenous communities.

## **A New Administration**

On October 20, 2014, H. Joko Widodo (known popularly as “Jokowi”) became Indonesia’s seventh president. His election was widely seen as a watershed for Indonesian politics—a major shift away from elite control of the political system and towards a leadership that is aggressively explicit about its commitment to addressing inequities, weak government services and corruption. While pro-business, his government has made detailed commitments to sustainable forest management and improving the welfare and productive capacity of local people.<sup>23</sup> One of the president’s first actions was to combine the Environment and Forestry Ministries and appoint as Minister Siti Nurbaya, a career civil servant with a reputation of administrative competence, transparency and openness to nongovernmental inputs.

As a result of incorporating all land-use and climate related governance issues into a new Ministry of Environment and Forestry (MoEF), the Climate Change Council (DNPI) as well as REDD+ Agency were merged into a new Climate Change Directorate. Many climate

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<sup>23</sup> President Jokowi studied forestry and ran a furniture business that used wood from natural forests in Borneo as well as teak plantations on Java.

change activists including AMAN and key donors, viewed this as a step backwards and a loss of momentum. Progress in the REDD+ agenda has become more difficult since programs are now managed from a lower administrative level (within the MoEF).<sup>24</sup>

President Jokowi is also the first Indonesian leader to make recognition of local land rights, particularly indigenous territories, an explicit component of his governing strategy.<sup>25</sup> This is largely due to the effective advocacy of AMAN in the lead-up to the election, and the increasing significance of AMAN's membership as a voting constituency in elections.

The early period of the Jokowi administration saw efforts to increase collaboration among key ministries responsible for land administration and land and forest area management. Key amongst these was the establishment of a new Ministry of Agrarian Affairs and Spatial Planning (ATR) which is responsible not only for establishing and administering land rights but also zoning for development activities. The new ATR Minister created a programmatic framework for communal rights recognition in 2015.<sup>26</sup> This was the first time a communal rights tenure instrument had been created in Indonesia with individual land titles having, until then, been the only option. Regrettably, due in part to a cabinet reshuffle and a new ATR Minister, the collective rights recognition tenure instrument has yet to be implemented.

Progress on the ground on recognition of collective indigenous rights and management of forests within the permanent forest estate has emerged from the MoEF in the form of the recognition of "Indigenous Forests" (*Hutan Adat*). Indigenous forests, while legally private and collectively owned by indigenous communities, still fall within the jurisdiction of the Ministry of Environment and Forestry in terms of regulating their management.<sup>27</sup> While the collective recognition of indigenous territories by the Ministry of Agrarian Affairs and Spatial Planning has yet to gain traction, local government legislation that recognizes indigenous territories suffices to secure private collective rights and provides an entry point for local indigenous communities to collaborate with the Ministry of Environment and Forestry opportunities for community-based forest management. Accordingly, the "Indigenous Forest" category has become a key component of the Ministry of Environment Forestry Social Forestry.

At the end of 2016 and again in 2017—under pressure from local communities, AMAN and several civil society groups—the Minister of Environment and Forestry signed several

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<sup>24</sup> REDD+ and related emissions reduction action formerly implemented by the REDD+ Agency and the DNPI are now the responsibility of a single Climate Change Directorate, one of 13 directorates in the MoEF.

<sup>25</sup> "Visi – Misi – Program Aksi Ir. H. Joko Widodo – Drs. H.M. Jusuf Kalla: Pemilu Presiden dan Wakil Presiden Tahun 2014." Komisi Pemilihan Umum Republik Indonesia. [http://www.kpu.go.id/koleksigambar/Visi\\_Misi\\_JOKOWI-JK.pdf](http://www.kpu.go.id/koleksigambar/Visi_Misi_JOKOWI-JK.pdf)

<sup>26</sup> Ministerial Regulation Number 10 Year 2016 on Procedures for the Establishment of Communal Land Rights for Customary Communities and Communities in Particular Areas.

<sup>27</sup> Like many countries, government land use regulation extends to private lands.

decrees formally acknowledging and establishing Indigenous Forests inside indigenous territories that have been legally recognized through local government legislation.

While formally recognized Indigenous Forests still cover only small areas and the collective rights are recognized only by district level governments, those actions have established important precedents. Their establishment relies heavily on motivated local government responding to ramped up civil society pressure to respond to the demands of local communities to have indigenous forest areas formalized. Existing areas covered by the Indigenous Forest Classification vary in size from 39 hectares to 4600 hectares but legally similar arrangements are provided for each. Key amongst these stipulations is that each corresponding community has full management rights and responsibilities and that these cannot be sold by the current or future generations. However, utilization rights may be leased to other entities. The provisions also explicitly underscore that management activities must be in accordance with existing national laws and regulations to counter consistent and faulty criticism of indigenous tenure as opening up possibilities for greater exploitation. These decrees formalized recognition of indigenous forest and also recognized indigenous forests managed through traditional systems. The only time this had been done previously was the 1998 Ministry of forestry decree that recognized the indigenous forest management systems of Krui, Lampung (*Repong Damar*), a community-based forest management approach that continues today.

Particularly important in the Indigenous Forests decrees is the formalization of the West Java Kasepuhan Karang Indigenous Forest management system (*Tatali Parnanti*) since the lands of the Kasepuhan people have been designated as a National Park (*Gunung Halimun-Salak*). This is a rare example where the rights and traditional management systems of an indigenous community have been recognized within a National Park.<sup>28</sup> Given the large amount of indigenous territories across Indonesia that have been classified as protected areas, this is an important precedent. Of the 27 million hectares of forest area designated for conservation, Ministry data currently acknowledges 134 Indigenous territorial claims in 51 conservation areas across 20 provinces with a total area of 1.6 million hectares.<sup>29</sup> This data is based on maps the Ministry received from AMAN at the end of 2016 but represent only a small portion of the estimated area of indigenous territories that have been classified as conservation areas, particularly national parks.<sup>30</sup>

Government regulations still require local communities to prioritize conservation in national parks and other protected areas. Traditional forest management systems such as the *Tatali Paranti* inevitably include activities that are against the rules as set by park management and conservation law and policy. Examples of such rules include prohibition of timber extraction

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<sup>28</sup> The Orang Rimba, the indigenous community whose territory has been gazetted as a National Park (Bukit Dua Belas), have also negotiated access to portions of the national park based upon their traditional use patterns.

<sup>29</sup> Analisis Usulan Wilayah Adat dalam Kawasan Konservasi Direktorat Kawasan Konservasi dan Direktorat Pemolaan dan Informasi Konservasi Alam.

<sup>30</sup> Does not include Kayan Mentarang and Papua.

from natural forests and of planting fruit and other agroforestry species that are considered by park management to be exotic. Harmonization of these two management approaches requires guidelines for the management of *Hutan Adat* in all forest management categories of production and protection. To be effective, these guidelines need to be developed through public consultations and include reward mechanisms for indigenous communities who forego economic opportunities such as timber extraction and hunting.

An additional precedent came in 2017 when the Minister of Environment and Forestry signed a decree that recognizes and excises indigenous lands from a timber concession in North Sumatra. This concession, Toba Pulp Lestari, was given control over large areas of indigenous agroforestry systems by the then Ministry of Forestry in 1993. This led to years of conflict between the company and local communities. In August 2016, after months of local protests, the plantation company director agreed to voluntarily release, to indigenous communities, just over 5000 hectares of the 160,000-hectare concession. While this did not meet the full demands of the indigenous communities, it represents a victory for groups struggling to maintain control of lands that have been illegally awarded to plantations.<sup>31</sup>

Continued progress came in November 2017, when President Widodo signed a new Government Regulation on Environmental Economic Instruments as part of the implementing framework for Indonesia's 2009 law on Environmental Protection and Management. This is the legal foundation for the creation of a special climate fund to be managed by the Ministry of Finance and when completed, will represent one of the major commitments Indonesia made within the 2010 Letter of Intent with Norway. The fund will take the form of a public service agency, managed by the Ministry of Finance and designed to respond to the financing needs of all climate change mitigation activities, particularly REDD+. While long in coming, finalizing a REDD+ funding mechanism represents a major step forward since it not only can provide financial support for innovative approaches to reducing deforestation but also provides opportunities for local communities to gain direct access to development financing for land and forest management activities that reduce GHG emissions. While actual funding will not be available in the immediate future, indigenous organizations are optimistic that finally, government funding will support grassroots natural resource management and provide rewards for local protection of high carbon landscapes from outside encroachment.

In addition, international climate funding managed by the World Bank in the form of the Forest Investment Program has included money for the creation of "Dedicated Grant Mechanisms (DGM)" in selected countries, including Indonesia where a \$10 million fund is governed semi-autonomously by representatives from indigenous and other local communities. Small grants from this fund support the mapping of indigenous territories and the enhancement of local livelihoods.

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<sup>31</sup> The implementation of this agreement continues to be problematic due to poor implementation.

## 4. Indigenous Peoples and REDD+ in Indonesia

Indigenous peoples' organizations in Indonesia, particularly AMAN, have grown in influence rapidly over the past 10 years. Their advocacy centers on obtaining full government recognition and protection of collective land rights and a halt to land grabbing by the forestry industry and agribusiness. As a result, the voices of these peoples have figured prominently in the national debate on rural development, human rights and subsequently in government efforts to reduce land-based GHG emissions.

Efforts to develop a legal framework for the recognition of the rights of indigenous peoples over their territories, as well as the general visibility of indigenous peoples in Indonesia's land use planning process, is a recent political and policy phenomenon. From 1967-1998, Indonesia was under the authoritarian rule of President Suharto. For Indonesia's indigenous peoples and local communities, it was an era of large-scale extraction of the nation's natural resource wealth under a regime of state management of the National Forest Estate—an administrative, non-ecologically based designation that gave the state *de facto* ownership and *de jure* management and use rights over approximately 70 percent of Indonesia's total land area. In almost all cases, the state treated territories within the jurisdiction of the National Forest Estate as uninhabited, granting use designations and permits on existing indigenous territories to government cronies and corporations for logging, mining, and various agribusinesses. Resistance by indigenous peoples was often met with state sanctioned violence and forced relocation.<sup>32</sup>

In 1998, the global financial crisis and the crash of the Indonesian Rupiah led to a wave of protest that forced the end of authoritarian rule and began the process of democratization and reform. In 1999, key indigenous leaders and activists that helped to bring about the end of Suharto's regime founded AMAN.

Over the past 20 years, AMAN and other civil society organizations (CSOs) have assisted hundreds of indigenous communities map their territories, currently covering just over 10 million hectares. The maps of 604 communities—with a total area of 7.4 million hectares—have already been submitted to relevant government institutions. AMAN has set a goal of mapping an additional 30 million hectares by 2020. AMAN has also identified that most of Indonesia's high carbon landscapes fall within these areas.<sup>33</sup>

Preliminary and conservative analysis presented by AMAN reveals that 36 percent of above ground carbon in Indonesia is found within the territories of indigenous communities. This

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<sup>32</sup> National Commission on Human Rights. National Inquiry on the Rights of Indigenous Peoples on the Territories inside the Forest Zone: Findings and Recommendations for Improvement in Law and Policies, Jan. 2015.

<sup>33</sup> Shivakumar Srinivas, Keith Clifford, Bell Kurnia, Toha Arifin Zaenal, and William Collier. "A Review of Indonesian Land-based Sectors with Particular Reference to Land Governance and Political Economy." Paper prepared for presentation at the Annual World Bank Conference on Land and Poverty, The World Bank - Washington DC, March 23-27, 2015.

is estimated to be approximately 24 Gt CO<sub>2</sub>. AMAN also estimates that an additional 26Gt CO<sub>2</sub> is found below peatlands, particularly in Indonesian Borneo and Papua.<sup>34</sup>

Despite significant progress in mobilizing and advocating for indigenous rights, and ample legal and policy space for collective territorial recognition, progress remains limited.

## **Civil Society Engagement and the Role of Indigenous Peoples in REDD+ Policy Development**

The political space created by the REDD+ agency allowed civil society environmental groups and AMAN to participate in the development of the National REDD+ Strategy as well as to use the agency as a sympathetic entry point to government.

Indonesia's civil society groups began strategic engagement on climate issues during the run-up to COP13 in Bali in December 2007. This led to the birth of the Indonesian Civil Society Forum on Climate Justice (CSF). Membership was open, with twenty-nine civil society organizations eventually being listed as members. From the outset, CSF aimed to be both a pressure group and center for information. It had the main intention of being involved in the negotiation and deliberation of national regulations on climate change.

In early May 2009, the Ministry of Forestry drafted national implementing REDD+ procedures. The most contentious issue concerned just who has proprietary rights over forest lands and resources, particularly carbon. The Ministry of Forestry position was to treat carbon as just another forest resource controlled by the Ministry and contracted out using a concession-like framework ignoring existing collective land rights on the ground. This added fuel to the fire of a broad-based coalition of civil society groups who framed their advocacy effort around "No Rights-No REDD." AMAN, in particular, expressed concern over what could potentially be yet another threat to indigenous communities inside and adjacent to forest areas.<sup>35</sup> An important analytical resource at the time, that informed the AMAN position, was a 2007 Forest Peoples Program paper on REDD that outlined numerous potential threats should REDD projects take hold on the ground based on a functional carbon market.<sup>36</sup> Primarily, AMAN expressed concern over the national government's approach to REDD projects if it were to be no different from the issuance of logging and timber concession licenses, each of which had emerged over the years as major threats to natural forests and indigenous forest management systems and livelihoods. Such fears materialized with the initial regulations from the Department of Forestry that made no

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<sup>34</sup> "Tropical Forest Carbon in Indigenous Peoples Territories: A Global Analysis." Environmental Defense Fund, Woods Hole Institute, December 2015.

<sup>35</sup> "In Indonesia, UN Committee concerned over forest Peoples' land rights under REDD." Rights and Resources Initiative. (25 March 2009). <https://rightsandresources.org/en/blog/in-indonesia-un-committee-concerned-over-forest-Peoples-land-rights-under-redd/#.WpNjXWbGyT8>

<sup>36</sup> Griffiths, Tom. *Seeing 'REDD'? Forests, Climate Change Mitigation and the Rights of Indigenous Peoples and Local Communities*. Forest Peoples Programme. (3 December 2008).

mention of the rights of local communities. The government's initial approach was indeed based on existing concession regulations.

In July 2009, AMAN joined hands with nine Indonesian CSOs and the Forest Peoples Program, an international human rights organization, to submit a detailed "request for further consideration of the situation of indigenous peoples in the Republic of Indonesia under the early warning and urgent action procedures" to the United Nations Committee on the Elimination of Racial Discrimination (CERD). This request was additional to earlier coalition submissions in July 2007 and February 2009 where the Committee's response was to directly caution the Indonesian government that it cannot disregard indigenous peoples' rights in relation to natural resource exploitation. These submissions concerned the government of Indonesia's violations of the human rights of indigenous peoples whereas the July 2009 submission added detail by focusing on Indonesia's evolving REDD policy framework and the threat new policies pose to indigenous peoples. The coalition's submission is the most comprehensive document that expresses CSO and AMAN concerns over the emerging REDD+ framework. It expressed serious concern that Indonesia's REDD policies and proposed climate change mitigation measures involving payments to national governments for halting or slowing rates of deforestation will lead to even greater government control over forest within indigenous territories and further marginalize local communities.

The main perceived threat was that, as in the case of national parks and watershed conservation areas, local access to forest area for hunting, small scale timber and non-timber extraction would be restricted throughout all forest areas further criminalizing the activities of local people.<sup>37</sup> The coalition emphasized that the potential for REDD activities to have severe impacts on indigenous peoples had been acknowledged by the Office of the High Commissioner for Human Rights, the Permanent Forum on Indigenous Issues, and by the UN REDD Programme. The Permanent Forum found that in 2008, if they are to avoid harm to indigenous peoples, REDD plans and projects must "respect rights to land, territories and resources, and the rights of self-determination and the free, prior and informed consent of the indigenous peoples concerned." The Office on Human Rights

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<sup>37</sup> "Further, in 2013, the Parliament adopted a Law on the Prevention and Eradication of Forest Destruction that criminalized Indigenous Peoples living within national parks, protected forests and wild life reservation. Between 2014 and 2015 only, a total of twelve Indigenous leaders have been put in jail for living in those areas while there have also been cases of burning and displacing indigenous villages. Few representative cases of violations of indigenous peoples' rights in the context of mining, logging and plantations and in the name of conservation, which were reported to AMAN after 2012 or have been unresolved since earlier are listed in Annex 1 and 2 respectively." From "Indigenous Peoples in Indonesia," submission by Alliansi Masyarakat Adat Nusantara (AMAN) to the United Nations Universal Periodic Review. [https://www.upr-info.org/sites/default/files/document/indonesia/session\\_27\\_-\\_may\\_2017/aman\\_upr27\\_idn\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/indonesia/session_27_-_may_2017/aman_upr27_idn_e_main.pdf)

For further details, see IWGIA's Indonesia profile. <https://www.iwgia.org/en/indonesia>

observed that “Indigenous communities fear expropriation of their lands and displacement” in connection with REDD initiatives.

These bodies concluded that indigenous peoples require special attention to ensure that their rights are respected. The UN-REDD<sup>38</sup> concurred and formally incorporated the 2007 UN Declaration on the Rights of Indigenous Peoples into its operational policy instruments. It stated that the right to free, prior informed consent is “a fundamental policy and operational underpinning of the UN-REDD Programme.”<sup>39</sup> The CSO coalition stated that Indonesia’s approach stands in stark contrast to the positions adopted by these UN bodies.

The Committee also noted that Indonesia was in the process of adopting new laws that perpetuate provisions that are highly prejudicial to the exercise and enjoyment of indigenous peoples’ rights. For instance, it explained that “Indonesia’s 2008 Regulation on Implementation Procedures for Reducing Emissions from Deforestation’ reiterates Law 41 of 1999 on Forestry that appears to deny any proprietary rights to Indigenous Peoples in forests.”

The Committee communicated with the Indonesian government that it had received credible information demonstrating that Indonesia “continues to lack any effective legal means to recognize, secure and protect Indigenous Peoples’ rights to their lands, territories and resources.” It requested that Indonesia provide information on this and other issues. There is no record of the UN body receiving a response from the government of Indonesia.<sup>40</sup>

Yet, while most government ministries remained unresponsive, the national REDD+ Agency continued to be civil society’s most responsive point of contact and the government’s most committed voice promoting reform in business as usual practices concerning land and forest management. The agency’s effort to implement a far-reaching moratorium directly challenged the practices of specific plantations and prioritized increasing the role of Indonesia’s indigenous communities in the process of drafting the national REDD+ strategy. Perhaps most important, the agency agreed to become the government’s official custodian of the indigenous territorial mapping data created independently by AMAN and supporting partners. The turnover of 7.2 million hectares of community mapped territories to the REDD+ agency received significant attention in the media as well as other government agencies.<sup>41</sup> The rights and contributions of indigenous communities to the objectives of the agencies working groups also received broad attention as did the issue of Rights-Based REDD+ in the agency’s publications, press releases and public events.

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<sup>38</sup> The UN-REDD Programme supports nationally led REDD+ processes and promotes the informed and meaningful involvement of all stakeholders, including indigenous peoples and other forest-dependent communities, in national and international REDD+ implementation.

<sup>39</sup> *Operational Guidance: Engagement of Indigenous Peoples & other forest dependent communities, Working Draft*, UN REDD Programme, 23 March 2009, p. 7.

<sup>40</sup> Personal communication with staff from the Forest Peoples Programme.

<sup>41</sup> As of the end of 2017, the government has received 8.4 million hectares of customary territorial maps (5.6 million hectares of forest area and 1,757.811 hectares outside of forested areas).

Yet, civil society groups, particularly AMAN, lost confidence in the potential for reform at the national level when the REDD+ agency was merged into the MoEF. Mapping of indigenous territories continued and advocacy for legal recognition intensified at the local level with priority placed on passing district level legislation. At the national level, policy advocacy centered on the MoEF and the recognition of the forest management rights of indigenous communities. As a result, the MoEF stated ambitious social forestry targets for 2018 and made the indigenous forest management program an explicit priority.

## **5. Summary and Conclusions**

REDD+ in tropical landscapes, especially Indonesia, gained attention since it was initially based on a promise of substantial monetary flows from developed economies (eventually the private sector) into Indonesia to help reduce deforestation and secure high carbon landscapes, specifically old growth forests and carbon rich peatlands. Reality proved more complex and the initial concept of a market-based “REDD” has yet to be realized. This is due to both the lack of an anticipated carbon market as well as an underestimation of the governance challenges on the ground, including conflict over land rights. Early in the process, Indonesian government officials—particularly those at the REDD+ Agency participating in the global climate dialogue—began to recognize that Indonesia’s efforts to reduce CO<sub>2</sub> emissions from forest clearing and the drainage and burning of peat soils required fundamental changes in the way Indonesia managed high carbon areas. This led to the primary programmatic priority of the REDD+ Agency being described as “Beyond Carbon.”

The Agency worked to mainstream a paradigm shift in terrestrial natural resource management that included detailed inventories of licenses for forest conversion and legal challenges to the origins of those licenses. It also included directly addressing the need to resolve wide spread conflicts between local communities and plantation companies that are rooted in a lack of government recognition of the territorial rights of these communities and allowing licenses to be placed over their territories. All of this added up to an integrated rural development strategy that was based on sustainable forest and peatland management.

The REDD+ Agency’s “Beyond Carbon” strategy was difficult to implement at the national and provincial levels. The mainstreaming of the strategies, particularly their integration in district level planning, became this approach’s largest challenge. Cross-sectoral competition between government agencies as well as resistance from the paper and pulp and oil palm plantation conglomerates slowed the forest governance process significantly, placing the government’s effort to meet its greenhouse gas reductions commitment far behind schedule. Inter-sectoral and institutional collaboration was weak due to a lack of centralized leadership at the very top of government as well as insufficient and less than systematic dialogue between competing interests. Political leadership to shepherd this process through its difficult stages was uneven. This was in part due to the high level of ambition of this effort as well as a lack of appreciation among key parties of the difficulty of achieving fundamental reforms to forest and land governance. The importance of cross-sectoral and public/private collaborations cannot be over emphasized. For reforms that will lead to lower forest and land-based emissions to be successful requires a high-level level of leadership and

commitment to change from all involved. This “critical mass” for reform has yet to emerge in Indonesia.

Another central issue that emerged over the past several years is the controversial way Indonesia measures its national deforestation rates. The Ministry of Environment and Forestry’s reluctance to present accurate figures based on internationally accepted methodologies has become a major challenge in Indonesia and for the international community.

Reasons for optimism include Indonesia’s strong commitments within the UNFCCC process. These include explicit references to the need for indigenous communities to participate fully in Indonesia’s efforts to fulfill the country’s UNFCCC commitments; the emerging REDD+ funding mechanisms that can support community management of Indigenous Territories and high carbon landscapes; and the Ministry of Environment and Forestry’s recent commitments to expand areas recognized and managed as Indigenous Forests.

It is difficult to directly attribute the increased momentum and progress on recognizing indigenous people’s rights to the evolution of REDD+ policies and programs in Indonesia. Nevertheless, the progress which has occurred did coincide directly with a period of strong Indonesian engagement in the global effort to reduce land-based GHG emissions. The exponential growth in the number and extent of indigenous territories mapped and submitted to government; the funding available for those efforts; and the political space created by government to civil society to participate in the design and implementation of a national REDD+ strategy have been on the whole impressive.

The long journey from 2010 to 2018 outlined in this study (see table 1) can be characterized as a period of significant advances in the national debate around Indonesia's tropical forests and its indigenous communities. While the national profile of these issues is now high, actual change on the ground continues to be limited. Yet processes, programmatic frameworks, and funding mechanisms are now in place to advance efforts to broaden collective recognition of indigenous peoples’ territories and improve natural resource management and local livelihoods.

Prior to the advent of the Indonesian Norway partnership, local national and international awareness of the critical state of Indonesia's tropical forests and the violation of the rights of people who live near and around those forests was low. By the end of 2017, popular understanding of these issues has increased dramatically, as can be seen by the well-organized engagement of indigenous peoples in international and national REDD+ activities as well as in key Indonesian provinces and districts.

AMAN Deputy Director for public policy, Mina Setra said in a 2014 interview:

AMAN has been raising the issue of indigenous peoples’ rights nationally for some time with little success. It was only when the international community started talking about forests and REDD+ that we had the opportunity to show that we exist.

When talking about forest you cannot escape talking about people who have been living there nurturing the forest since even before Indonesia existed.<sup>42</sup>

Rather than emerging as a threat to indigenous peoples' control over their forests, indigenous organizations and other advocates in Indonesia have engaged critically in the REDD+ process by maximizing participation in consultative processes and continuing to take advantage of the political space that emerged from the Indonesia-Norway REDD+ partnership.

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<sup>42</sup> "A Surprising Indigenous View of REDD+, Mina Setra and Frances Seymour." CGD Podcast. (7 July 2014). <https://www.cgdev.org/blog/surprising-Indigenous-view-redd-mina-setra-and-frances-seymour>

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