

Upholding Human Rights in Jurisdictional Approaches

Some emerging lessons

Briefing June 2020 | Marcus Colchester, Emil Kleden, Djayu Sukma, Norman Jiwan, Hannah Storey and Lourdes Barragán Alvarado¹

Key Points

1. Potential strength of Jurisdictional Approach

Jurisdictional Approaches (JA) should include local government agencies with authority to clarify rights and tenure, resolve disputes and enforce sustainability requirements.

2. Review covers 4 different areas

We studied 3 JA in Borneo (Sabah, Malaysia, and Seruyan and Kapuas Hulu, Indonesia) and 1 in the Ecuadorian Amazon - through literature review, field visits, workshops and interviews.

3. Human rights challenges are significant

In all cases existing laws and administrative practices do not recognise customary rights fully or at all. Plantations have been imposed without prior attention to rights leading to numerous land conflicts, most notably in Indonesia.

4. JA advance understanding of human rights challenges

By their existence, JA have drawn attention to land disputes, human rights abuses and wider challenges to sustainability and helped focus governance on addressing them.

5. Multi-stakeholder governance improves JA quality

Where there has been multi-stakeholder governance, greater attention has been focused on land rights, conflict resolution and the need for participation, but in all cases forest peoples' direct participation needs strengthening.

6. New local laws will be needed to enforce standards

The more advanced JA already recognise that upholding human rights in line with international standards will require local legislation but enforcement remains a puzzle.

The quest for environmental conservation and sustainable commodity production at scale has led to a very large number of efforts worldwide to promote various forms of integrated land use planning and management.² Some of these planning initiatives are referred to as 'landscape' projects, often led by consortia of local and international NGOs or involving multiple stakeholders.

From a human rights perspective, these non-State initiatives suffer the major shortcoming that they 'cannot overcome disparities in power or entrenched interests nor can they substitute for institutions with authority to establish and legitimise property and resource rights.'³ Here we contrast such 'landscape approaches' with 'jurisdictional approaches' in which local governments of sub-national jurisdictions seek to implement land use planning and management regimes, established by multi-stakeholder participation, that includes the State as a key actor and authority.

As a detailed review has made clear, one of the key principles for a successful 'jurisdictional approach' is that it must have a clear mechanism for clarifying rights and responsibilities. Such a mechanism must provide: accepted rules on resource access and land use in order to shape social and conservation outcomes as a basis for good management; access to a fair justice system which allows for conflict resolution and recourse, and; clarification of conflicting claims and an accepted system for arbitration, justice, and reconciliation.⁴

This briefing summarises our review of how four 'Jurisdictional Approaches' in Malaysia, Indonesia and Ecuador have handled this challenge - focused mainly but not exclusively on the production of palm oil. Do they address the key human rights requirements for sustainability? Do they provide security of tenure to indigenous peoples and local communities and uphold their rights to give or withhold their Free, Prior and Informed Consent? Do they have effective mechanisms to address and resolve disputes? Do they have participatory governance mechanisms? Do they provide credible means to enforce agreed standards impartially on all users and protect rightsholders? We examine the progress being made and make recommendations on what further needs to be done to ensure compatibility with international human rights norms.



Human rights and sustainable commodity production

Internationally recognised human rights are all those rights set out in the UN Declaration of Human Rights, the various UN human rights treaties, regional human rights instruments and ILO Conventions, and elucidated in international human rights courts and treaty bodies, including on the rights of indigenous peoples, women and children, workers and migrants. Whereas governments have an obligation to protect rights, companies are required to respect them and provide remedy in the case of violations. Those most important to jurisdictional initiatives promoting sustainable commodity production in tropical forests relate to the rights of indigenous peoples and other local communities, women and children, small-holders and workers. This study focuses on the following rights to:

- Territories, lands and resources of indigenous peoples and local communities with customary rights;
- Self-governance and self-representation;
- Free, Prior and Informed Consent (FPIC);
- Remedy;
- Protection of human rights and environmental defenders;
- Healthy environment.

Roundtable on Sustainable Palm Oil

RSPO is a multi-stakeholder membership organisation that has a voluntary system for the certification of sustainable palm oil against an agreed standard set out in its Principles and Criteria (P&C).⁵ Key requirements of the RSPO standards which this review examines⁶ include:

- Recognition of the legal and customary rights of indigenous peoples and local communities;
- Land acquisition subject to the right of indigenous peoples, local communities and other users to give or withhold their Free, Prior and Informed Consent (FPIC);
- Representation through self-chosen representatives;
- Mutually agreed mechanisms for resolving disputes;
- Mechanisms to provide protection and anonymity to human rights defenders, whistle-blowers, complainants and community spokespersons;
- Measures to accommodate communities' rights, livelihoods and local food security in High Conservation Value and High Carbon Stock land use plans;
- Independent mechanisms for the adjudication of complaints and appeals.

RSPO's vision is to 'transform the markets by making sustainable palm oil the norm.'⁷ Although it is estimated that some 90% of globally traded palm oil passes through RSPO members in its long trajectory from plantation to consumer, to date only about 19% of globally traded palm oil is RSPO certified. One of the main reasons for this gap between RSPO's potential and current performance is that many palm oil producers are not members of RSPO, notably smaller national companies and medium- and small-scale producers. Thus, although they sell oil palm fruits or crude palm oil to RSPO members, they do not seek to comply with RSPO's P&C.

Jurisdictional Certification was thus adopted by the RSPO as one means to effect this transition to scale by entering into agreements with sub-national governments to help them apply the RSPO standard and thus substantially increase the volumes of certifiable palm oil production for sale on discerning international markets.⁸ After extensive consultations, RSPO is currently finalising a system for jurisdictional certification which it anticipates being adopted by its membership at its next General Assembly and thus accepted for implementation.⁹ The case studies undertaken by FPP and summarised in this briefing were designed primarily to inform that process and to share wider lessons with local and global discussions on jurisdictional and sustainable landscape approaches.

Local governments aspiring to apply voluntary standards to commodity producers in their jurisdictions face some major challenges. The first is that, as not all local producers subscribe to these voluntary standards, legislation may be required to make them mandatory and enforceable. A legal 'gap analysis' is thus a first step to see if and where national or local laws fall short of market requirements, for example as represented by the RSPO P&C.¹⁰ The next major challenge is to develop local governance systems that can: generate multi-stakeholder consensus; incentivise reforms in land use and production; encourage and enforce the mandatory standard; verify compliance and; handle grievances. Only with these elements in place will credible outcomes be possible.



Lessons from the field

To investigate how these jurisdictional initiatives are upholding human rights, Forest Peoples Programme has worked with local NGOs and other relevant organisations in four very different jurisdictions to seek to learn lessons and encourage rights-based approaches. The four cases are: the Jurisdictional Certification initiative in Sabah State in Eastern Malaysia; the green commodities jurisdictional programme being carried out by the government of Kapuas Hulu District, West Kalimantan, Indonesia with support from the German Ministry of Technical Cooperation (BMZ); the Jurisdictional Certification initiative in Seruyan District, Central Kalimantan, Indonesia and; the Jurisdictional Certification initiative in Ecuadorian Amazonia. The three certification initiatives are promoted by the RSPO as pilot Jurisdictional Approaches, while the German-funded JA programme in West Kalimantan forms part of a broader forest and climate protection initiative.

Each initiative has its own trajectory and has been developed autonomously without much direct coordination with the others. Yet, all have an eye to complying with international expectations, as set out in international agreements such as the UN Framework Convention on Climate Change and the related programme for Reduced Emissions from Deforestation and Forest Degradation (REDD+) and in market demands for sustainable commodities as set out in large brand's pledges to achieve 'No Deforestation, No Peat and No Exploitation' and certification standards such as RSPO P&C.

In 2015, the Government of the East Malaysian State of Sabah (North Borneo) announced its commitment to achieve jurisdictional certification by 2025 of all palm oil production in line with the RSPO standard.

The initiative was largely driven by the leadership of the Sabah Forestry Department at that time with the technical support of the RSPO Secretariat and Forever Sabah, a local non-profit initiative. Since then, the jurisdictional initiative has received what amounts to substantial financial support from a variety of sources and for different aspects of the work including the State of Sabah, RSPO, AAK, Unilever, Moore Foundation, Packard Foundation, UNEP, WWF and HSBC as well as in-kind contributions from several organisations and individuals. The initiative is coordinated by a Jurisdictional Certification Steering Committee (JCSC), membership of which is comprised equally of Government agencies, private sector companies and NGOs, with the RSPO Secretariat and Forever Sabah acting as technical advisors.

Key findings

The JA process in Sabah is quite far advanced in comparison with the other JA pilots surveyed. The initiative has State-level Government endorsement and the multi-stakeholder JCSC ensures the involvement of civil society and the private sector. Efforts have been made to involve social NGOs and indigenous peoples' organisations. Currently a strong outreach is being made to smallholders many of whom are also from indigenous communities.

Colonial and current laws and land administration practises in Sabah do not effectively recognise indigenous peoples' customary rights to their collective territories but rather to individual land holdings. The process of land registration is also heavily backlogged. As a result, there are numerous land disputes between indigenous peoples and companies, and also with protected areas which overlap customary territories. The Sabah JA recognises the need to address tenure insecurity and recognise customary rights but is currently focused on speeding up the individual titling of the farmlands of local communities and smallholders. A detailed survey shows that only 36% of smallholders have land titles. The National Human Rights Commission recommends resolution of land disputes and recognition of customary rights as a priority and the national indigenous peoples' network, JOAS, calls for recognition in line with the UN Declaration on the Rights of Indigenous Peoples. It is not yet clear how the JA will address indigenous peoples' territorial rights.

An advanced draft for the right to FPIC has already been developed in Sabah which draws substantially on the RSPO FPIC Guide.¹² Some elements of the Guide are still under development including clarification of: the right of communities to choose their own representatives; which entities have responsibility to enter into FPIC-based agreements; which entity which verifies fair play in reaching FPIC agreements and; how violations of the right to FPIC will be addressed in cases where communities' lands and territories were taken without their consent.

The key question that remains to be addressed is how the requirements of the FPIC Guide, and other key RSPO requirements that are not yet part of Sabah law, will be enforced on all oil palm producers in the State. This matter is currently the subject of discussion between the JCSC and the Sabah Ministry of Law and Native Affairs. Sabah is also yet to develop an independent mechanism for handling grievances and complaints and so assuring remedy for those whose rights have been violated.

A key element of the RSPO P&C is that it requires producers to avoid clearance of natural forests and areas containing the six High Conservation Values.¹³ In Sabah, indicative mapping of HCV 1-4 has already been carried out but methods are yet to be clarified for how finer-grained land use maps will be developed and agreed between developers and communities, especially to accommodate communities' basic needs (HCV 5) and areas critical to their cultural identity (HCV 6).¹⁴

Recommendations

The Sabah JA needs to develop clear procedures by which the full extent of indigenous peoples' land and territorial rights will be recognised where these have not yet been legally titled. Provisions are needed both for speeded up titling of individual land claims and recognition of collective and territorial rights.

The next version of the FPIC Guide and related SOPs should include clear requirements, fully in line with the RSPO P&C, that clarify how self-representation will be achieved in the Sabah context, with clear language encouraging inclusive processes to involve women, youth and elders.

Likewise, the Guide needs to be adjusted to make clearer the relationship between the communities, the responsible agency and the developers in the negotiation and oversight of FPIC-based agreements

A workable methodology is needed to explain who will be responsible for fine-grained HCV-HCS assessments in areas where further palm oil development is contemplated and this needs to be integrated with the Sabah FPIC Guide to ensure affected communities' rights to FPIC is exercised in the development of these land use plans.

Legislation will be then required to make any RSPO requirements including FPIC, that go beyond the requirements of statutory law, legally enforceable and a mechanism needs to be established, with authority over all producers, that will handle disputes and provide remediation, notably for lands taken without consent.

Central Kalimantan Province on the southern coast of Indonesian Borneo has been undertaking legal reforms in accordance with international human rights laws and the standards of the Roundtable on Sustainable Palm Oil (RSPO) for over 10 years.

Decrees by the Governor have required: adherence to the High Conservation Value system – which goes beyond what planters are required to protect under national law – and; the provision of smallholdings to local communities by oil palm investors, equivalent to 20% of their planted estates. The Province has also embarked on a process of registering a hierarchy of customary leaders and providing preliminary recognition of customary rights areas.

In the district of Seruyan, the district government plans to go further and bring all the palm oil producers into compliance with the RSPO Principles and Criteria (P&C). For a district that has over 320,000 ha of oil palm this is a big challenge. The initiative is being supported by RSPO, UN Environment Programme, Unilever and by Inobu (Inovasi Bumi), an independent non-profit research organisation.¹⁶ Many of the bigger plantation companies operating in the district are already RSPO members, including Wilmar, Sinar Mas and Goodhope. However, some of the other large companies in the district, have controversial reputations – having cleared large areas of forest, planted extensively on peat, and destroyed large areas of orangutan habitat.

One of the key targets of Seruyan's jurisdictional approach is to encourage the certification and sale of Certified Sustainable Palm Oil (CSPO) by the district's smallholders, who include both indigenous people and settlers. The two main challenges that the smallholders face is demonstrating the legality of their land holdings and showing that they are complying with the RSPO's requirements for setting aside areas of High Conservation Value and High Carbon Stock forests.

Key findings

Most of the indigenous peoples and local communities in Seruyan District lack formal title to their lands. Where customary rights certificates (SKT Adat) have been awarded by customary authorities recognised by the Provincial Government, they are not registered in the National Land Bureau's land cadastre. Surveys by Inobu show that only 11% of smallholders have land titles and most of these are transmigrants and scheme smallholders.¹⁷ This lack of recognition means local communities and indigenous peoples are more vulnerable to expropriation for lack of demonstrable titles. Although the local government recognises this problem, no plans have yet been approved for providing land security to customary owners, although emphasis is being directed to regularising smallholdings.

According to the local government Plantations Department there are some 300 land conflicts in the district as a result of palm oil concessions being handed out without adequate consideration of local peoples' rights and livelihoods. To date only 2 of the 34 large palm oil companies in the district have fulfilled their legal obligation to provide smallholdings to local communities, which are meant to be equivalent to 20% of their estate – implying that even some RSPO members are not in compliance.

The local government realises that resolution of these land conflicts is a priority for the achievement of sustainable palm oil. It recognises that it must develop a legal basis for making RSPO norms enforceable on non-RSPO palm oil producers in the district. Accordingly, with the assistance of Inobu - and lately with advice from FPP and Indonesian NGO, Yayasan Masyarakat Kehutanan Lestari, and experienced lawyer from Saphir Associates – the government has been drafting four district head regulations (Peraturan Bupati) designed to resolve land conflicts and regularise company-community relations.

The first draft regulation establishes a process to register all the conflicts and document the nature of the disputes. The second draft regulation sets out a procedure to respect the right to Free, Prior and Informed Consent and by implication the underlying rights of communities. The third draft regulation provides for mediation of intractable disputes and the fourth provides a procedure for restitution and rehabilitation. These draft decrees are designed to provide the means for a legally enforceable, 'scaled up' and coordinated system for conflict resolution across the district.

Although a Jurisdictional Certification Working Group has been formed in Seruyan, with government and company involvement, it does not yet have a strong civil society presence nor established mechanisms to ensure the participation of community spokespersons and smallholders. Nor is there yet clarity in the local government about which agency will be authorised to enforce company observance of these regulations. It also remains unclear which agency or competent authorities will undertake the programme for rolling out the conflict resolution procedures, as the matters to be addressed in dispute resolution cut across the sectoral responsibilities of several line ministries including Environment and Forestry, Plantations, land administration (BPN) and home affairs.

Recommendations

During the latest workshop with the local government it was suggested that amendment of the drafts is advisable to ensure consistency with the 2018 version of the RSPO P&C, especially in order to ensure: that communities can choose how they are represented and to provide anonymity and protection of claimants in line with RSPO's requirements on Human Rights Defenders.

The most obvious remaining gaps between the RSPO P&C and current laws in operation in Seruyan with respect to rights include the absence of:

- Mechanism for recognising the extent of customary rights;
- Mechanism for filing and adjudicating complaints and appeals and then remedying violations;
- Clarification of the governance, incentives and enforcement systems that will require, encourage and oblige compliance with the RSPO standard;
- Procedures for involving communities in land use planning to ensure respect for their rights and livelihoods in the protection of HCVs and HCS forests;
- Multi-stakeholder jurisdictional entity involving men and women rights holders and small-scale producers.

Kapuas Hulu¹⁸

Kapuas Hulu, a district in the headwaters of the Kapuas river of West Kalimantan, declared itself to be ‘conservation’ district in 2003 in the expectation of getting international financial support for avoiding deforestation.

However, from 2006 onwards the district began giving out permits to clear extensive areas, including peatlands and forests, for oil palm plantations, which has led to the area becoming a test-bed for zero deforestation policies.¹⁹

The German Technical Assistance agency, GIZ, which has been working in Indonesia since 1975, began a government to government collaboration in a joint programme titled FORCLIME in Kapuas Hulu in 2010, focused on forest policy review, REDD+, sustainable forest management, promotion of a ‘Green Economy’, Capacity Building, and Protected Area Management.²⁰ In 2016, as part of the FORCLIME project, GIZ and the Kapuas Hulu district government initiated a ‘jurisdictional supply chain initiative’,²¹ on behalf of the German Ministry for Development Assistance (BMZ) with financial support from the financial assistance agency (KfW). The aim is to build up ‘deforestation-free supply chains of various commodities from Kapuas Hulu District to Germany’ with a focus on palm oil and rubber. The programme is also designed to resolve conflicts, promote sustainable livelihoods and carry out district-wide mapping of high conservation value and high carbon stocks.²² The goal is to facilitate the certification of commodities by Sustainable Agriculture Standards of Rainforest Alliance, RSPO and FSC.

BMZ has a clear policy for upholding human rights in its overseas programmes which includes respect for Free, Prior and Informed Consent, upholding the UN Declaration on the Rights of Indigenous Peoples and working directly with indigenous peoples in decision-making to avoid conflicts. BMZ’s strategy emphasises that participant State agencies are duty-bearers tasked with protection of human rights.²³

Findings

As in much of Indonesia, the majority of the indigenous Dayak peoples and Malay fisherfolk of Kapuas Hulu District lack official titles to their lands. Instead, lands are acquired, inherited and transferred according to long established customary laws. Large concessions have thus been handed out by the government to logging, palm oil and other companies without taking communities’ prior rights into account. This has resulted in numerous land conflicts. However, in 2018, the local legislature passed a legislative act (PERDA) which in line with the constitution recognises the existence of customary law communities in the district and the government recognised part of one Dayak community’s lands as a ‘customary forest’ (hutan adat).²⁴

Although FORCLIME’s jurisdictional supply chain initiative is meant to be guided by a multi-stakeholder platform that includes civil society groups, the project has encountered problems ensuring human rights are protected, respected and, where violated, remedied. According to local NGOs and community representatives interviewed as part of this research, the project suffers a number of serious deficiencies, including that the initiative:

- does not uphold the Dayak peoples’ customary rights to their lands and forests;
- has not effectively implemented a procedure to respect the Free, Prior and Informed Consent of indigenous peoples;
- does not provide a mechanism for the participation of indigenous peoples in decision-making;
- was not preceded by a social impact assessment;
- has not shared information effectively with the affected communities;
- has not addressed land conflicts between communities and large-scale commodity producers;

- only considers forest clearance in State Forest Areas as deforestation thus ignoring the extensive forest clearance being carried out in agricultural concessions being cleared for industrial plantations.

Local NGOs working in Kapuas Hulu are also aggrieved that the project is not making use of their long-term participatory mapping work with indigenous communities by which some 270,000 hectares of indigenous territories in the district have already been clearly geo-located.

In May 2018, a consortium of NGOs, wrote to GIZ expressing concerns about these weaknesses in the design and implementation of the project.²⁵ In subsequent meetings GIZ has noted that, as this is a government to government project, it is obliged to work within the laws and policy framework of the local host government, leaving unclear how it can simultaneously comply with its human rights obligations as set out in BMZ’s human rights strategy and binding social safeguards for German development assistance.

In 2019, the jurisdictional initiative announced a Biosphere Reserve Management Project in the area surrounding the Danau Sentarum National Park but the available project documents again do not make clear how rights to lands and livelihoods will be respected. Also in 2019, GIZ contracted the HCV Resource Network and Daemeter Consulting to carry out indicative HCV mapping in the district based on remote sensing. It remains unclear whether this process can be used to encourage the government to pay more attention to the need to secure communities’ rights by attending to their basic needs (HCV5) and areas critical to their cultural identity (HCV6).

Recommendations

In order to comply with BMZ’s strategic commitment to uphold human rights, as well as Indonesia’s obligations under ratified international human rights treaties, the GIZ-KfW-FORCLIME jurisdictional supply chain initiative needs to be revised in order to:

- explicitly uphold indigenous peoples’ and local communities’ rights to their customary lands and territories, including in areas currently classed as State Forest Areas;
- verify the extent of customary rights areas through culturally appropriate consultations and participatory mapping making duly credited use of the existing maps developed by the communities and NGOs;
- recognise these community-owned areas in line with the local legislative act;
- prevent the imposition of land use options, commodity production systems or protected area management regimes imposed on their customary lands without these peoples’ FPIC;
- ensure that land disputes are resolved through restitution of rights where industrial concessions and land use regimes have been imposed without respect for customary rights and FPIC;
- share widely information about the project with all the communities implicated;
- introduce systems of decision-making that effectively involve communities and NGOs in project planning;
- make sure that indicative HCV and / or HCS maps are followed up with FPIC-based procedures to ensure communities’ rights and livelihoods are accommodated in any actual land use plans that are then developed.

Palm oil has become a significant product in Ecuador starting with trial plantations in the lowlands along the Pacific coast in the 1950s and then expanding into the Amazonian area on the other side of the Andes from the 1980s.

The Ecuadorian Amazon Jurisdictional Certification (CJAE) was initiated in 2017, was provided with a multi-stakeholder oversight body in 2018 and started effective implementation in 2019. CJAE is led by PROAmazonía²⁷ and is supported by GEF and Green Climate Fund through the UNDP under its REDD+ and Green Commodities Programme. Currently CJAE focuses on the two Amazonian provinces that have experienced intensive petroleum exploitation, which has generated substantial revenue for the nation but left the indigenous peoples and local communities immiserated.

Key Findings

Ecuadorian laws do provide mechanisms for the recognition of customary rights including indigenous peoples' territories, which once titled are protected as inalienable, un-transferrable and un-mortgageable collective properties. Similarly, an agrarian reform procedure allows for the individual titling of lands for colonists. Large properties can also be acquired through a State administered procedure. In reality, however the land frontier is not well regulated. Many indigenous territories lack recognition and there are numerous land conflicts due to invasions and land trafficking. This is causing growing pressure on indigenous territories from settlers and when members of communities sell their lands to palm oil plantation companies. In the focal provinces of Orellana and Sucumbíos two large companies control about 40% of the palm oil plantations.

Ecuador has a National Consultation Guide for the Implementation of REDD+ Actions in Collective Lands and Territories, which sets out the requirements and the process for a local version of FPIC. However, to date, the Guide has not been adapted and applied to the CJAE pilot. The Guide also omits any requirements for communities that do not yet have property titles or legal recognition of their lands.

The REDD+ safeguards framework includes a trial Complaints Mechanism that is currently being tested. The mechanism is designed to channel the concerns of affected parties to the REDD+ programme decision-makers, to establish rapid response mechanisms and reduce or prevent major conflicts derived from its implementation. Given that the CJAE pilot project is one of the activities of PROAmazonía and the REDD + programme, the proposed mechanism should be open to all the actors in the oil palm chain involved in the certification process. However, as yet, no particular analysis has been carried out to check its suitability against the RSPO standard.

The highest governance body of this Jurisdictional Approach pilot programme is the Sustainable Palm Oil Inter-Institutional Monitoring Committee (CISPS), which, despite being structured to have balanced representation of government, private sector and civil society, currently lacks effective involvement of social representatives.

At the time of the field investigation (November 2019), Ecuador was yet to initiate a National Interpretation, which would logically include a gap analysis comparing the requirements of Ecuadorian laws and regulations with the RSPO P&C. This task remains to be carried out.

Recommendations

It is essential that the State guarantees land tenure security for the indigenous peoples and local communities and takes steps to prevent further land invasions and illegal land speculation. Specifically, the CJAE project should support land and territory regularization processes for indigenous communities in the project's area of influence, as it has planned for small palm producers.

The CJAE project should also develop mechanisms for indigenous peoples and local communities to exercise their right to Free, Prior and Informed Consent in line with RSPO requirements.

The multi-stakeholder governance mechanism should include representatives of affected groups including indigenous and Afro peoples and small producer unions, in order to balance the membership in relation to the government agencies and large companies. Oversight mechanisms should be established to agree norms for jurisdictional certification in the Amazon, especially on issues such as land rights, FPIC, resolution of disputes and the operation of the Complaints Mechanism.

Once the Complaints Mechanism is set up, it needs to be separated from the governance body to avoid any conflict of interest and guarantee its independence. Awareness raising will then be needed so affected parties can make use of the mechanism to raise concerns and settle disputes.

The National Interpretation process must be inclusive and involve key actors in the region and in the field of human rights and gender from the outset. This will require a prior process of explanation with adequate material of the RSPO P&C and how the standard is applied on the ground. In the context of increasing violence, attacks and harassment of environmental and human rights defenders in Latin America, the ratification of the Escazú Agreement, which is currently under analysis in the National Assembly, will be key.²⁸



Emerging lessons: some conclusions

The four case studies show how different the initiatives all are in terms of their institutional framing, scale, intents and results. Despite these differences, some lessons do emerge.

- Jurisdictional approaches are encouraging attention to be paid to international standards such as human rights law, development agency safeguards and voluntary certification;
- Discussions about land rights, FPIC, participatory land use planning and conflict resolution have all been triggered by these initiatives, whether by project proponents or critical NGOs;
- Ensuring early establishment of participatory mechanisms for genuine multi-stakeholder governance and inclusive planning is essential to ensure involvement of indigenous peoples and other community rights holders and their representative organisations;
- Mutually agreed procedures to address land conflicts and territorial disputes, including community land claims, are a core precondition for sustainability at the jurisdictional level;
- Effective grievance and redress mechanisms are necessary to ensure JA programmes are accountable to affected communities and rights-holders;
- Where the pilots are framed by voluntary certification systems, multi-stakeholder decision-making is further advanced, by contrast with the government-to-government initiative, which has been more top-down;
- The need for conformance with voluntary certification standards encourages a review of the deficiencies of national and local laws and administrative procedures, which are obstacles to sustainability and social justice;
- All three 'RSPO pilot' initiatives realise that achieving compliance with voluntary certification scheme standards by non-members of these schemes requires that they be made mandatory;
- While all the initiatives hope that market incentives, capacity building, discretionary funding and/or technical assistance will encourage adherence to higher standards ('carrots'), the more advanced initiatives are also explicit that sanctions for non-compliance ('sticks') will also be necessary to spur reform;
- Two of the pilots are thus already explicit that legal reforms will be required to make mandatory requirements enforceable;

In all cases, the biggest puzzle concerns the lack of clarity about which agencies will be empowered, and have sufficient political weight, to enforce standards, whether legally backed or not.

1. Marcus Colchester, Senior Policy Advisor, marcus@forestpeoples.org and Hannah Storey, Project Officer, Forest Peoples Programme hannah@forestpeoples.org, Emil Kleden, Director and Djayu Sukma, Project Officer, Yayasan Masyarakat Kehutanan Lestari emil.ymkl@forestpeoples.org djayu.ymkl@forestpeoples.org, Norman Jiwan TUK-Indonesia normanjiwan@yahoo.com. This report draws on the sources cited and the work of numerous colleagues and collaborative institutions. We would like to recognise, in particular, the contributions of Tom Griffiths and Patrick Anderson Forest Peoples Programme; Javin Tan, RSPO; Thomas Jalong, JOAS; Cynthia Ong and colleagues, Forever Sabah; Bernadinus Steni and John Watt, Inobu. FPP would like to acknowledge the funding which made this work and report possible including Climate and Land Use Alliance, Ford Foundation and NICFI. The authors alone are responsible for the conclusions drawn.
2. Earth Innovation Institute, and, Jurisdictional Sustainability: a primer for practitioners.
3. Sayer et al, 2014, Landscape approaches; what are the pre-conditions for success? DOI 10.1007/s11625-014-0281-5
4. Sayer et alii, 2013, Ten principles for a landscape approach to reconciling agriculture, conservation, and other competing land uses, PNAS 110(21):8349–8356. www.pnas.org/cgi/doi/10.1073/pnas.1210595110
5. RSPO, 2018, Principles and Criteria for the Production of Sustainable Palm Oil. <https://rspo.org/resources/certification/rspo-principles-criteria-certification>
6. RSPO standards also include human rights provisions for ensuring fair deals for smallholders and workers, including migrant labour, women and children. Measures to ensure respect for these rights were not assessed in this review.
7. <https://rspo.org/about/our-organisation>
8. RSPO, 2020, Jurisdictional Certification Pilot Benchmark Study. <https://www.rspo.org/resources/archive/1025>
9. <https://rspo.org/news-and-events/covid-19/second-public-consultation-rspo-jurisdictional-approach-for-certification>
10. Several comparative reviews have confirmed the superiority of RSPO and the related Palm Oil Innovator Group's standards both in terms of their human rights requirements and wider environmental standards. Daemeter, 2014, A comparison of Leading Palm Oil Certification Standards Applied in Indonesia: Towards Defining Emerging Norms of Good Practice. http://daemeter.org/new/uploads/20140505064302.Daemeter_Comparison_of_Palm_Oil_Certification_Standards_FullReport_Eng.pdf Angus McInnes, 2017, A Comparison of Leading Forest Certification Standards, Forest Peoples Programme. <https://www.forestpeoples.org/en/responsible-finance-palm-oil-rspo/report/2017/comparison-leading-palm-oil-certification-standards>; State Secretariat for Economic Affairs of Switzerland (SECO), 2020, Benchmarking Study on Sustainability Standards for the Palm Oil Sector. <https://palmoelnetzwerk.ch/wp-content/uploads/2020/05/benchmarking-of-palm-oil-sustainability-standards-project-report.pdf>
11. Marcus Colchester, 2020, Preliminary findings from a Review of the Jurisdictional Approach initiative in Seruyan, Central Kalimantan, Indonesia <https://www.forestpeoples.org/en/jurisdictional-approaches/case-study-seruyan-indonesia>
12. RSPO, 2015, Free, Prior and Informed Consent: Guide for Members. <https://rspo.org/news-and-events/announcements/free-prior-and-informed-consent-guide-for-rspo-members-2015-endorsed>
13. <https://hcvnetwork.org/>
14. International agencies, donors and the State of Sabah have also invested substantial sums in a State-wide remote sensing of High Carbon Stocks, the data from which have yet to be integrated into the State's land use plans. Asner et al, 2017, Mapped above-ground carbon stocks to advance forest conservation and recovery in Malaysian Borneo. Biological Conservation 217: 289–310 <https://doi.org/10.1016/j.biocon.2017.10.020>
15. Marcus Colchester, Emil Kleden and Djayu Sukma, 2020, Preliminary Findings from a review of the Jurisdictional Approach Initiative in Seruyan, Central Kalimantan, Indonesia, Forest Peoples Programme and Yayasan Masyarakat Kehutanan Lestari. <https://www.forestpeoples.org/en/jurisdictional-approaches/case-study-sabah-malaysia>
16. <https://inobu.org/> See also: Inobu, 2015, Central Kalimantan: from sustainable palm oil towards sustainable jurisdictions.
17. Inobu, 2016, A Profile of Small-Scale Oil Palm Farmers and the Challenges of Farming Independently. <https://www.dropbox.com/s/0izcxk38mj82ry3/2016-10-Smallholder%20Report.pdf?dl=0>
18. Norman Jiwan, 2018, The Development of Deforestation Free Supply Chain Commodities and Implications for Rights, Livelihoods and Environment of the Forest Peoples in Kapuas Hulu District, West Kalimantan, Report for Forest Peoples Programme, April 2018.
19. Greenpeace, 2010, Caught Red-Handed: How Nestle's Use of Oil Palm is Having a Devastating Impact on Rainforest, the Climate and Orang Utans. <https://www.greenpeace.org/usa/research/caught-red-handed-how-nestle/>; Marcus Colchester, Norman Jiwan and Emilola Kleden, 2014, Independent review of the social impacts of Golden Agri Resources' Forest Conservation Policy in Kapuas Hulu District, West Kalimantan. Available at: <http://www.forestpeoples.org/sites/fpp/files/publication/2014/01/pt-kpc-report-january-2014final.pdf>
20. FORCLIME lacks a REDD+-required FPIC procedure: <http://www.reddprojectsdatabase.org/view/project.php?id=519>
21. Andreas Brede, 2018, The Jurisdictional Approach in Indonesia -an Example of implementation, Powerpoint presentation to the RSPO Roundtable, 6 November 2018, Bangkok
22. Franziska Rau and Gerhard Langenberger, 2019, Reaching zero deforestation in supply chains – why we need a jurisdictional approach Rural 21(4):9-11. <https://www.rural21.com/english/current-issue/detail/article/reaching-zero-deforestation-in-supply-chains-why-we-need-a-jurisdictional-approach.html>
23. BMZ, 2011, Human Rights in German Development Policy Strategy https://www.bmz.de/en/issues/allgemeine_menschenrechte/deutsche_entwicklungspolitik/The-BMZ-s-human-rights-strategy/index.html
24. Peraturan Daerah Nomor 13 Tahun 2018 tentang Perlindungan dan Pengakuan Masyarakat Hukum Adat <https://peraturan.bpk.go.id/Home/Details/105759/perda-kab-kapuas-hulu-no-13-tahun-2018> The Act does not yet give effective protection of rights. In 2019, two Dayak farmers were sentenced to 5 months imprisonment for controlled burning of fields on their customary lands.
25. Letter to GIZ 2nd May 2018 sent by AMAN KalBar, LinkAR-Borneo, Pancur kasih, WALHI-KalBar and FPP.
26. Lourdes Barragan Alvarado, 2020, Aspectos sociales en el proyecto piloto de Certificación Jurisdiccional de la Amazonía Ecuatoriana: una aproximación inicial, Report for Forest Peoples Programme. <https://www.forestpeoples.org/es/jurisdictional-approaches/case-study-ecuador> See also: http://bit.ly/CJAE_Nov19
27. <http://2sisdigital.com/proamazonia/inicio/que-es-proamazonia/>
28. Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf

Forest Peoples Programme

1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK

Tel: +44 (0)1608 652893 | info@forestpeoples.org | www.forestpeoples.org

Forest Peoples Programme is a company limited by guarantee (England & Wales) reg. no. 3868836, reg. office as above.

UK-registered charity number 1082158. It is also registered as a non-profit Stichting in the Netherlands.



This work is supported by funding from Norway's International Climate and Forest Initiative