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Vol. 15, No. 1 (C) – January 2003

What could we do? Nobody said no to the [security] ‘apparatus’ (aparatus) in those days. We often heard about people being arrested or just disappearing. So when they came here wearing their guns, we just kept our mouths shut.

—Villager from Mandigangin

## **WITHOUT REMEDY: Human Rights Abuse and Indonesia’s Pulp and Paper Industry**

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## WITHOUT REMEDY:

### Human Rights Abuse and Indonesia's Pulp and Paper Industry

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## I. SUMMARY

*We all ran inside but Jais didn't make it in time. They caught up to him and he turned to face them [the company militia]. They immediately clubbed him in the mouth, knocking out some of his teeth. It spun his head back and sprayed blood on the wall in front of the house. You can still see [the blood stains].*

—Resident of Mandiangin, Riau province, recounting the attack on his village by civilian militias in the employ of the Arara Abadi pulp plantation.

The massive pulp and paper industry located in Riau province on the island of Sumatra, Indonesia has received increasing international attention. The industry is economically imperiled – with debts of more than U.S.\$20 billion – and is decimating wide swathes of Sumatra's lowland tropical forests, some of the most biologically diverse and formerly among the most extensive in the world. Yet even in the current climate of increasing international attention to corporate responsibility, relatively little attention has been paid to persistent violations of the rights of local communities who live within Riau's forest concessions, peoples whose livelihood has depended on the forests for generations.

This report documents these violations, and highlights the ways that disregard for rights has facilitated the unsound forestry practices that have produced today's deepening cycle of economic crisis and rampant deforestation. It concludes that addressing human rights violations should be an essential part of efforts to reform the pulp and paper sector by the Indonesian government, key players in the industry, and concerned members of the international financial community.

The vast plantations supplying Asia Pulp & Paper (APP)—Indonesia's largest paper producer and owner of one of the largest stand-alone pulp mills in the world—were established in Riau during the 1980s and 90s largely on land unlawfully seized from indigenous Malay and Sakai communities, without due process and with little or no compensation. These land seizures took place under intimidation by armed police and military agents. Expansion of wood-processing capacity beyond what plantations could supply, in turn, led to wholesale destruction of forests—an outcome which, together with companies' hiring of employees from outside the province, has been devastating to the livelihood of forest-dependent communities.

Since President Soeharto was forced from office by economic crisis and unprecedented public protest in 1998, members of previously powerless communities have begun to openly protest the loss of their land and livelihoods. Frustrated with a dysfunctional justice system and the persistent unresponsiveness of the state to their complaints, villagers have protested, in many cases obstructing company operations in order to get the company's and government's attention. These community protests most commonly include harvesting of plantation trees, land reoccupation, charging "tolls" for use of village roads, or setting up road blockades, and at times have included seizure of company vehicles and equipment. Such actions have been met with violent attacks by organized mobs of hundreds of club-wielding company enforcers, trained by and sometimes accompanied by state police.

This report details three cases of attacks on protesting villagers by security forces of Arara Abadi, APP's primary pulp supplier and sister company (both are owned by parent conglomerate Sinar Mas Group). In all three cases, Indonesian police, who trained the civilian security force and were present during the attacks, were complicit in the attacks. Out of hundreds of assailants, moreover, Human Rights Watch is aware of only two who were brought to trial, and those two, convicted of assault and battery, were released for time served (only thirty days).

Human Rights Watch does not condone illegal actions by community members and recognizes the company's obligation to protect personnel and property. The use of excessive force by company-funded militias, however, cannot be justified as a response to community protests, even where those protests themselves include illegal actions. The acquiescence of state security forces and, sometimes, their direct assistance in the militia attacks,

moreover, has meant that villagers have no recourse for the violations. Impunity for those responsible for beatings is directly fueling this cycle of vigilante justice.

The attacks described in this report are only the latest turn in a vicious circle in which environmental depredation and human rights violations have gone hand in hand in Riau. In order to appreciate how this scenario of violence developed and the wide scope of its occurrence, it is essential to understand the history of the development of forest sector and financial policies in Indonesia. Community disputes against Arara Abadi are rooted in routine seizures of community lands during Soeharto's "New Order" administration. Community members say that they were afraid to protest, because those who resisted "government projects" (as commercial operations were often represented to local communities) were frequently arrested or beaten by an unaccountable military and police who served as corporate protection, and who were also direct beneficiaries of and partners in forest businesses. Soeharto used the award of forest concessions as a means of consolidating political power and prioritized industrial uses of resources over subsistence and the claims of local communities—practices that engendered deep resentments that continue to simmer even under post-Soeharto "reform" administrations.

Government reforms have not yet made a difference on the ground, despite numerous promising commitments. The forest ministry under the post-Soeharto administrations of Presidents Abdurrahman Wahid and Megawati Sukarnoputri has engaged in dialog with international donors, scientists, and civil society organizations, and has promised to take action against rampant illegal loggers, clarify forest tenure, and link financial restructuring of heavily indebted companies to downsizing production capacity to balance wood industry output with the legal wood supply. However, progress toward implementation of these reforms remains exceeding slow and fitful, hampered by lack of political will and repeated top staff reshuffles. Meanwhile, land and resource conflicts between local communities, forest companies, and illegal loggers continue—a recipe for further violence.

To effectively address the violations described in this report, it is not enough for the government to curb militia activity and end impunity, though these are essential steps that can and should be taken immediately. It is also vital that the government take longer term measures to strengthen the independence of the judiciary and create a mechanism by which indigenous land claims, which are recognized in the Indonesian constitution, can be effectively addressed. Although indigenous community rights to land are explicitly recognized by the Indonesian constitution and forestry regulations require the consultation and fair compensation of communities whose land is required for the advancement of the "common good," there is no legal mechanism for recognizing indigenous land rights by which people might effectively raise their claims. Many state officials and business leaders continue to operate on the mistaken belief that, in the absence of written title, local communities have no legal or legitimate claims.

For the abuses to end, moreover, the pulp and paper industry and international financial sector must be cognizant of and take steps to address human rights violations associated with the industry. Following environmentalist campaigns and boycotts against APP's buyers in the U.K., some dialog has occurred between activists and company staff on how to improve APP's operations. However, at present, these proposals do not adequately address human rights concerns, focusing instead on wood supply issues. APP should insist on and fully cooperate with Indonesian government efforts to ensure accountability for past acts of violence, and require that abuses are avoided in areas of future plantation expansion, including ensuring that subcontractors who supply wood to APP are not violating human rights.

With no rights protections in place, economic pressures could well heighten tensions between industry and local residents in the coming months, as APP expands its plantation area almost two-fold. Financial pressures to expand output are higher than ever. In March 2001, APP failed to make payments on its massive U.S.\$13.9 billion debt; it has avoided liquidation of its assets because of continued support and forbearance from government restructuring agencies. Meanwhile, many of APP's foreign creditors are in litigation against APP to be repaid, thereby creating considerable pressure on the operations to generate substantial profits rapidly. The huge cost of the mill and the debt burden accumulated through rapid expansion of production capacity have made APP "too big to fail"—

creating extraordinary financial and legal pressure to continue operations at current levels regardless of ecological or social costs, creating a risk that expedient methods that could violate rights may be used to ensure the slim profit margin.

APP/Sinar Mas Group has argued that expansion of its wood sources will reduce local discontent and it has begun establishing what it calls “joint ventures” that in some cases will include community cooperatives. While a positive step toward broader distribution of benefits from the forest, without a commitment to ensure that human rights are not violated, these arrangements will not in themselves be sufficient to curb the abuses.

Practices of international lenders have also contributed to the problem. Forestry analysts have convincingly argued that heavy borrowing by APP to increase capacity was based on the assumption—accepted by international lenders in part because they did not adequately consider the social or environmental impacts of the operations—that repayment would be possible because of APP’s access to an unlimited supply of cheap wood from Sumatra’s natural forests and pulp wood plantations. In effect, production expansion in the past was based on the assumption that local communities would continue to be powerless and without a voice. Today, as local struggles over land and timber increase, expansion rests on the assumption that APP/SMG can distance themselves from social conflict while continuing to reap the benefits of an artificially cheap wood supply. The international financial community should recognize that this assumption is not valid and assess the real risks that social conflict and rights abuses pose to the operations in which they invest. Investors should, therefore, institute rigorous assessment of rights into their due diligence procedures.

The cases of abuse detailed in this report have broader significance than pulp and paper or Riau. Although APP officials and local police maintain that the clashes between company security and surrounding communities are being “blown out of proportion,” the scenario of resource competition, unsettled land claims and social conflict, corporate violations of community rights, and an unresponsive and corrupt state is a pervasive problem throughout the forest sector and economic stability in Indonesia more generally. Local communities in resource rich areas remain plagued by poverty, and members of such communities increasingly are speaking out. In response, private sector actors, often with assistance or acquiescence of law enforcement authorities, increasingly are relying on civilian militias, “youth brigades,” hired gangs, and vigilantes of various types. Immediate state action to investigate past abuses and curb militia and vigilante activity is imperative to protect all parties from abuse.

This report is based on six weeks of field research conducted by Human Rights Watch in January and February 2002. Investigators visited five villages spread over three areas of Arara Abadi’s concession in three separate districts of Riau province (Siak, Pelalawan, and Kampar) to interview victims and witnesses. In addition to villagers living inside Arara Abadi’s concessions, researchers interviewed company staff at headquarters and field offices of APP and Arara Abadi, as well as at the competing mill Riau Andalan Pulp and Paper. Researchers also met with local forestry and police officials (including provincial police and anti-riot Mobile Brigade, or Brimob, officers), a variety of non-governmental organizations (NGOs), journalists, economists, forest scientists, private security firms, and local political figures. This was supplemented by follow-up interviews from March to June 2002 with experts on forestry and governance.

## II. RECOMMENDATIONS

### To the Indonesian Government

#### *On civilian militias and state security forces:*

- Take immediate action to investigate and prosecute those involved in incidents of violence involving the pulp and paper industry and local communities, as documented in this report.
- Discontinue the practice of creating and training private militias and armed groups. Investigate and punish privately organized militia and vigilantes who violate human rights.
- Clarify guidelines for police role in company operations, using the U.S. State Dept/U.K. Foreign Affairs Voluntary Guidelines on Security and Human Rights as a framework (a copy of the guidelines is attached as Appendix A).
- Complete a transparent audit of military businesses, and prepare a feasible plan for how military funding can be brought on-budget within the next five years;
- Improve civilian oversight of police. Such initiatives might include establishing civilian review boards to monitor police actions and multi-stakeholder civilian safety boards that involve civilian administrators, police, and community members chaired by a trained facilitator to address security and crime problems. An independent “Rural Security Desk” could be staffed with NGO and community monitors for communication of information regarding violations by police, company security, and private militia groups to the appropriate authorities, including civilian administrations and police.

#### *On land tenure and forestry reform:*

- Take firm steps to fulfill commitments made to the International Monetary Fund (IMF) and the Consultative Group on Indonesia (CGI, a multilateral and bilateral donors advisory forum convened by the World Bank) to address tenure disputes on State Forest land. Such steps would include the reclassification of State Forest illegally established on indigenous territory, support for implementation of legislation providing for communal titling for indigenous groups, and a transparent titling process with a built-in appeals process through an independent land claims board/ombudsman.
- Support the adoption of the natural resource management bill stipulated under the People's Consultative Assembly Decree TAP MPR No IX/2001. The bill requires government authorities to secure permission from local people before granting exploitation permits and guarantees the rights of local tribes to manage their ancestral lands.
- Actively support establishment of third party monitoring of illegal logging.
- Ratify the International Labor Organization's Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (a copy of which is attached as Appendix B) and adopt legislation to enshrine its provisions in domestic law.

### To Asia Pulp & Paper/Sinar Mas Group Forestry (APP/SMG)

#### *On company security:*

- Take immediate action to investigate those alleged to be involved in human rights abuses. Where appropriate, discipline or dismiss employees found to be responsible for human rights abuse. Urge the appropriate authorities to investigate violations by police and private security personnel acting at company behest.
- Establish and enforce performance standards for company security and engagement with state security forces, and undertake a pro-active risk assessment of social conflict and human rights conditions as part of future security arrangements for both present and future expansions, using the U.S./U.K. Voluntary Principles as foundation.

### ***On land claims and community relations:***

- Immediately undertake rigorous, transparent, and independent audits of land claims and social impacts of all operations. Remove conflicts of interest by ensuring that auditors have no personal or professional association with the corporations in question, the corporations do not interfere with the audit work plan, access to operations to be audited, or the audit report. Those interviewed should be independently chosen by the auditor, not APP/SMG staff, and village visits and interviews should be undertaken independently without APP/SMG staff present. Social impact auditors should have human rights expertise, and part of the output of the audit should be recommendations on how to ensure that human rights violations will not occur in the future in association with APP/SMG operations or suppliers.
- Establish a regular forum for dialog with communities and NGOs.
- In the case of existing company land holdings, establish representative community involvement in development project decision-making and the delivery of benefits. Use payments to individuals (or so-called “family settlements”) solely to resolve disputed individual claims to land; such payments should not be used as a substitute for investigation of crimes or as a means of satisfying company obligations to provide community development assistance. Take immediate steps to address compensation disputes for seized land. Establish independent, transparent ombudsman and clear mechanism for complaints and dispute mediation.
- In the case of planned future expansions, ensure that all wood suppliers are not complicit in human rights abuses and meet international legal standards regarding property rights. Pro-actively address land tenure and participation, establish human rights oversight on joint ventures.
- Join the U.N. Global Compact on corporate responsibility (see Appendix B) and establish clear mechanisms for implementation and monitoring of its principles.

### **To Multilateral and Bilateral Donors**

- Take strong leadership to press for reforms to protect human rights: at the twelfth Consultative Group on Indonesia meeting on January 22, 2003, send a clear message that immediate steps must be taken to ensure forest industries are not complicit in human rights abuses, including:
  1. comprehensive audits of military and police business, and meaningful efforts to bring military and police spending on-budget,
  2. an independent timber monitoring body with authority to influence the revocation of operating permits,
  3. an independent registration board/ombudsman for titling of indigenous communal land claims.
  4. an end to government support and training of civilian militias, both formal and informal, and prosecution of those guilty of human rights abuse.
- In order to assist the Indonesian government in meeting these commitments, donors should consider funding independent timber monitoring initiatives and indigenous land registration boards/ombudsmen, as well as contributing to capacity building measures for these institutions.
- Reforms should be cross-sectoral so as not to be counter-productive: for example, donors should send unequivocal signals to the Ministries of Finance, Trade, and Forestry that restructuring of indebted forest industries should be conditioned on reducing production capacity to balance with the currently available, legal wood supply.

### **To Private Financial Institutions**

- Undertake rigorous due diligence to ensure that companies in which investments are made do not violate international human rights law. If abuses are alleged in the corporations in which institutions have invested, private financial institutions should use urge the companies to take action on these cases.

### III. NEW ORDER FORESTRY POLICY AND THE ROOTS OF THE CRISIS

Natural resources are central to economic, political, and social struggles throughout the Indonesian archipelago, and have therefore long served as landscapes in and over which violence and repression have been waged. Forests in particular have played a leading role in these struggles and as such are critical points of inquiry into rural violence, especially in the forest rich countryside of Riau.

The Sumatran province of Riau is one of the nation's richest in natural resources (largely oil and forests),<sup>1</sup> and is under heavy extractive pressure. Attractive to investors for its close proximity to Singapore and Malaysia, Riau is home to the world's two largest stand-alone pulp and paper operations, which together control 580,000 hectares of pulp plantation and consume almost 20 million cubic meters (m<sup>3</sup>) of wood annually,<sup>2</sup> or 91 percent of Indonesia's total annual sustainable cut (the volume of wood legally harvested each year for use by all Indonesia's wood-based industries).<sup>3</sup> In addition, Riau has the nation's largest petroleum concession<sup>4</sup> and the largest area of land designated for conversion to oil palm<sup>5</sup>—extractive industries all primarily controlled by wealthy elites from outside the province. Together with the nation's fourth-largest area of logging concessions (6 million hectares), these resource industries control nearly all of Riau's 9.5 million hectares of land area.<sup>6</sup> (See Riau land use map in Map 1).

A major contention of this report is that rights abuses and deforestation in Riau today stem from policies set in motion more than a decade ago, under President Soeharto's New Order government, and from continuing conflicts of interest from the involvement in forest business of the very state actors charged with management and enforcement of forest laws. New Order policies permitted seizures of local land for commercial forestry operations—in which government actors often had a stake—the lack of respect for indigenous rights, and the lack of enforcement of forestry and investment laws. These factors all encouraged unsustainable forest use by corporate entities. The low level of regulation and the neglect of local rights to land and resources have, in effect, acted as subsidies to the forest industry by granting cheap and largely unregulated access to vast areas of timber-rich forest, making production costs in Riau among the lowest in the world.<sup>7</sup> Although such policies gave the industry a competitive advantage, poor regulation of the industry by the Indonesian government, and of the

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<sup>1</sup> Sometimes even seemingly mundane natural resources have greatly influenced political events. Recently an unlikely resource has been the subject of intense struggle—not gold or oil or luxury hardwoods, but sand. Sand mining for construction and fill has become big business and a large illegal sector has flourished. Sand exports to Singapore for the construction of its new off-shore airport have exploded in recent years leading to uncontrolled mining. Many speculate business interests in sand mining are behind the push to establish the islands off Riau's coast as a separate province. "Menyalip Pesta di Tikungan," *Gatra*, July 27, 2002.

<sup>2</sup> Christopher Barr, *Banking on Sustainability: Structural Adjustment and Forestry Reform in Post-Suharto Indonesia* (Washington, D.C.: World Wide Fund for Nature [WWF-International], and the Center for International Forestry Research [CIFOR], 2001).

<sup>3</sup> Mulyadi AT, Ministry of Forestry and Estate Crops-U.K. Tropical Forest Management Programme, "Pasokan dan Permintaan Kayu Bulat di Indonesia" ("Roundwood Supply and Demand in Indonesia"), presented at the World Bank sponsored Post-CGI meeting on forestry entitled "Removing the Constraints," Jakarta, January 26, 2000. <http://lnweb18.worldbank.org/eap/eap.nsf/680c5352d463b70a852567c900770e56/ea9457a51d38757885256877006124a4?OpenDocument> (retrieved November 4, 2002).

<sup>4</sup> 32,000 km<sup>2</sup> (3.2 million hectares, or roughly one-third the total area of the province). Caltex produces more than 50 percent of Indonesia's oil production, valued at roughly U.S.\$8 billion annually, making it one of the country's largest income sources.

<sup>5</sup> Just over one million hectares had been approved for licenses in 1999. Department of Estate Crops, *Data Statistik Perkebunan Provinsi Riau 1999* (Pekanbaru, Riau: Dinas Perkebunan, 2000).

<sup>6</sup> There is some overlap in oil palm and logging concession areas because forest is first logged and then converted to oil palm.

<sup>7</sup> Barr, *Banking on Sustainability*.

banking sector that financed it, ultimately led to dramatic over-expansion of capacity and to a disastrous corporate debt crisis.<sup>8</sup> This financial pressure, in turn, has further driven the cycle of deforestation and rights abuse.

This chapter unravels this complex chain of events by first detailing the scope of the national problem of forest loss and its consequences for people dependent on forests for livelihoods. It then provides a detailed look at the genesis of the crisis in New Order policies and the role of the Indonesian military in the forestry sector. Then the chapter moves to an historical overview of the growth of the forest industry, and the nature and scope of APP operations, highlighting its facilities in Riau. The following chapter examines the ways in which, despite some useful initiatives, post-Soeharto “Reform Era” policies have made little headway, and in some respects have worsened the situation by bailing out indebted corporations without conditioning such bailouts on improved human rights and environmental practices. Perceived economic imperatives have increasingly brought tensions between local communities and the forestry industry to a boiling point, with little relief in sight.

### **The Loss of Indonesia’s Natural Forests: What’s at Stake**

Indonesia has the world’s third largest expanse of forest (exceeded only by Brazil and Congo), valued for its biodiversity conservation value, its potential for generating foreign exchange, and its role in local cultures and subsistence livelihoods. Second only to petroleum for the largest contribution to the national economy,<sup>9</sup> forest control was throughout Soeharto’s 32-year autocratic rule (known as “the New Order”) both the means to and reward of state power. Timber-rich forests were parceled out as logging and plantation concessions to Soeharto’s family, friends, and business partners, as well as to key members of the military and political elite in order to secure their loyalty. Those who controlled the forests controlled enormous wealth and influence.

But the forests have a different meaning for Indonesia’s rural populations. The loss of these forests has been devastating to the majority of Indonesia’s population, which is rural,<sup>10</sup> poor,<sup>11</sup> and dependent on forests for livelihood.<sup>12</sup> These populations also ascribe forests great cultural value. The majority of indigenous farmers in what are commonly called the Outer Islands—the islands outside the densely populated islands of Java, Bali, and Madura—practice a mixed subsistence and commercial cultivation of dryland (swidden) rice and tree crops.<sup>13</sup> In addition, various forest products are harvested for sale and home consumption including rattan, honey, resins, edible leaves and fruits, wild game, and fish.<sup>14</sup> An estimated seven million people in Sumatra and Kalimantan

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<sup>8</sup> Ibid.; David Brown, “Forgive Us Our Debts: Manipulation of IBRA by Indonesian Forest and Plantation Debtors; The Latest Chapter in Indonesia’s Rentier Economy,” draft consultant’s report to CIFOR (copy on file at Human Rights Watch), Bogor, Indonesia, January 7, 2002.

<sup>9</sup> In 2001, oil and gas exports brought some U.S.\$12 billion, forest product exports (including pulp and paper, plywood and sawnwood, but not oil palm) brought U.S.\$5.3 billion. Bank of Indonesia, 2002, [http://www.bi.go.id/bank\\_indonesia2-utama/data\\_statistik/data.asp?head=7](http://www.bi.go.id/bank_indonesia2-utama/data_statistik/data.asp?head=7) (retrieved October 3, 2002).

<sup>10</sup> In his presentation to the 2001 Consultative Group on Indonesia (CGI), the vice president of the World Bank for the East Asian Area and Pacific, Jamal-ud-din Kassum, noted that in 1999 the World Bank estimated that 65 percent of the population, or 120 million people, lived on U.S.\$2 a day or less and that over 27 percent lived on less than U.S.\$1. “Flight from Poverty,” *Jakarta Post*, November 14, 2001.

<sup>11</sup> Mark Baird, Indonesia country director for the World Bank, “Farewell Remarks to the Jakarta Foreign Correspondents’ Club,” Jakarta, August 27, 2002, [http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/082702-MB-JFCC/\\$File/MB-JFCC+Remarks.pdf](http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/082702-MB-JFCC/$File/MB-JFCC+Remarks.pdf) (retrieved October 3, 2002).

<sup>12</sup> World Bank, “Removing the Constraints: Background on Forests” presented at the World Bank sponsored Post-CGI meeting on forestry, Jakarta, January 26, 2000, <http://lnweb18.worldbank.org/eap/eap.nsf/680c5352d463b70a852567c900770e56/ea9457a51d38757885256877006124a4?OpenDocument> (retrieved November 4, 2002).

<sup>13</sup> Swidden cultivation is no-till, non-mechanized form of agriculture, which uses no fertilizers, herbicides, or pesticides. After one to three years, the field is allowed to lie fallow, to regenerate tree cover and soil fertility and interrupt pest reproduction cycles. As practiced in Indonesia, fruit or rubber trees are commonly planted interspersed in the natural forest regenerating on fallow plots.

<sup>14</sup> Far from being minor economic contributions, nationwide smallholder forest management provides approximately 80 percent of rubber, 80-90 percent of marketed fruits, at least 80 percent of the *damar* resin (from the tree *Shorea javanica* for use as an incense, and cosmetic and paint additive), and significant quantities of the tree-crop exports coconut, cinnamon,

depend on income from rubber gardens that spread across approximately 2.5 million hectares. In Sumatra alone, about four million hectares are managed by local people as various kinds of agro-forests (i.e. multiple-species orchards mixed with natural regrowth) without any outside assistance.<sup>15</sup>

Although they do not possess written titles, indigenous communities understand this traditional form of management as imparting customary (*adat*) property rights, which are specifically recognized in Article 18 of Indonesia's Constitution.<sup>16</sup> President Soeharto, however, had other plans for these vast and lucrative tracts of timber-rich forests that, because they were not under formal private title, were considered "unowned." The New Order "development" agenda was powered by unsustainable forest extraction and founded on the state seizure without due process or meaningful compensation of over 90 percent of the total land area of the Outer Islands as "state forest." Thick stands of tropical forests that have grown over many generations and are rich in plant and animal biodiversity were logged for timber and replaced by vast plantation monocultures of fast-growing exotic species, planted in straight rows and cleared of all understory plants.

Expanded production of the forest industry beyond what even the huge plantations could supply and has driven further plantation expansion into natural forest. Critics, among them the World Bank and other members of the donor forum Consultative Group on Indonesia (CGI), have charged that this over-expansion of the pulp industry has also driven illegal logging, much of it in timber-rich national parks and protected forests.<sup>17</sup>

The pace of forest loss is extraordinary, now at 2 million hectares annually, an area half the size of Switzerland<sup>18</sup>. According to World Bank estimates, if current conditions persist all lowland dry forest in Sumatra will be gone by 2005.<sup>19</sup> To put these estimates in perspective, the United States Agency for International Development (USAID) used these figures to calculate that *every minute* an area the size of six soccer fields is deforested in Indonesia. From the illegal timber cut in that minute, the Indonesian Government loses U.S.\$1300 in foregone revenues

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clove, nutmeg, coffee, pepper, and candlenut. G. Michon, H. deForesta, and A. Kusworo, eds., *Complex Agroforests of Indonesia* (Bogor, Indonesia: International Center for Research on Agro-Forestry, 2001).

<sup>15</sup> H. deForesta, A. Kusworo G. Michon, and W.A. Djamiko, eds., *Agro-forest Khas Indonesia: Sebuah Sumbangan Masyarakat Masyarakat* (Bogor, Indonesia: International Center for Research on Agro-Forestry, 2000).

<sup>16</sup> The Official Explanation of the 1945 Constitution, Chapter IV, Article 18, Section 2 reads "[T]here are roughly 250 types of self-governing villages (*Zelfbesturende landschappen*) and native communities (*volksgemeenschappen*) such as *desa* on Java and Bali, *negri* in Minangkabau and *dusun* and *marga* in Palembang and so on. These areas have their own indigenous organizational structures (*susunan asli*) and because of them can be construed as areas with special attributes (*dareah yang bersifat istimewa*). The State of the Republic of Indonesia respect the status of these special areas and all the state regulations concerning them shall heed the original hereditary rights (*hak-hak asal-usul*) of these areas." As amended in August 2000, article 18, paragraph b now reads, "The state shall acknowledge and respect traditional societies along with their customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law."

<sup>17</sup> Mulyadi AT, Ministry of Forestry and Estate Crops-U.K. Tropical Forest Management Programme, "Pasokan dan Permintaan Kayu Bulat di Indonesia"; and World Bank, "Indonesia: Environment and Natural Resource Management in a Time of Crisis," Jakarta, 2001. See also "Illegal Logging Accounts for Two Thirds of Indonesian Log Output," *Asia Pulse/Antara*, April 23, 2002, which quotes Directors of the Indonesian Association of Forestry Companies (APHI) as confirming these estimates.

<sup>18</sup> Derek Holmes, "Deforestation in Indonesia: A Review of the Situation in 1999," consultant's report to the World Bank (copy on file at Human Rights Watch), Jakarta, January 2000. See also Thomas Walton, Senior Environmental Specialist at the World Bank in Jakarta, "Is There a Future for Indonesia's Forests?" *International Herald Tribune*, January 25, 2000, <http://lnweb18.worldbank.org/eap/eap.nsf/680c5352d463b70a852567c900770e56/ddda2de588081cf585256877007f02c5?OpenDocument> (retrieved November 4, 2002). For an explanation of data sources and methodologies used to estimate deforestation rates, see Global Forest Watch, *Indonesia: The State of the Forest* (Washington D.C.: World Resources Institute, 2002).

<sup>19</sup> World Bank, *Indonesia: Environment and Natural Resource Management in a Time of Transition* (Washington, D.C.: The World Bank Group, 2001).

(more than three average Indonesian families earn in a year), and a few business conglomerates and elite families earn U.S.\$24,000.<sup>20</sup>

The impacts of rapid and extensive forest loss are wide-ranging. Scientists have long established the severe environmental consequences of large-scale forest loss, including the loss of unique biodiversity, increased flooding and drought, decline of water quantity and quality, and increased forest fires that pollute the air with toxic fumes, ash, and greenhouse gases.<sup>21</sup> But while this litany of environmental ills is by now familiar, the toll of deforestation on human rights has been little discussed, yet can be equally devastating. Over-capacity of forestry industry and the wood supply gap have driven the rapid loss of Indonesia's forest to both legal and illegal logging operations. As in lucrative illegal sectors everywhere, gang networks have developed, acting as extortionists and protectors of the trade and waging violence against those who would interfere. In Indonesia, this illicit sector and the violence around it frequently have clear links to government actors.<sup>22</sup>

But it is not only the country's illegal sector that threatens the livelihoods and safety of local communities. Indeed, the unchecked boom in demand for wood by the expanding Indonesian forest industry will continue to drive the seizure of land and resources for new concessions, in addition acting as a sink for wood from illicit sources. As long as this is the case, there will continue to be protests, and without some redress for grievances or accountability of security forces, whether private or state organized, violence against protestors is likely to continue unabated.

The products of this scenario are not only violence and environmental destruction, but also barriers to economic growth and an adequate standard of living for members of forest communities. If forest dependent livelihoods are replaced by an unsustainable industry, there will be few economic alternatives after the forest is gone. The World Bank predicts that if current conditions persist, lowland dry forest in the nation's major timber producing areas of Sumatra and Kalimantan will be gone in five to ten years.<sup>23</sup> Mark Baird, Indonesia Country Director for the World Bank, noted pointedly at the East Asia Ministers' Conference on Forest Law Enforcement and Governance:

Social stability and a well-functioning legal system loom large among the conditions that attract foreign investors. Persistent, uncontrolled forest crime, particularly in forms that attract adverse publicity like massive forest fires or logging in national parks, is a symptom of social conflict and

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<sup>20</sup> Personal communication, Tim Brown, chief of Party, USAID funded Natural Resources Management Project. These comparisons are based on a conservative estimate of the annual cut (both legal and illegal) of sixty million cubic meters (m<sup>3</sup>) of wood, and an annual deforestation rate of two million hectares, both figures presented at the World Bank sponsored forestry meeting of the Post-CGI meeting, January 26, 2000. One hectare (ha) = 10,000m<sup>2</sup> or 2.47 acres, or roughly the size of a soccer field. One cubic meter of timber is about the size and height of an average desk.

<sup>21</sup> See also, researchers' reports at the 2001 Post-CGI Meeting hosted by the World Bank in Jakarta, entitled "Removing the Constraints," January 26, 2000, <http://lnweb18.worldbank.org/eap/eap.nsf/680c5352d463b70a852567c900770e56/ea9457a51d38757885256877006124a4?OpenDocument> (retrieved on October 3, 2002).

<sup>22</sup> Suropto, *Menguak Tabir Perjuangan Suropto* (Jakarta: Aksara Karunia, 2001); Environmental Investigation Agency and Telapak Indonesia, "Timber Trafficking: Illegal Logging in Indonesia, South East Asia and International Consumption of Illegally Sourced Timber," Jakarta, September 2001; Environmental Investigation Agency and Telapak Indonesia, "Illegal Logging in Tanjung Puting National Park: An Update," Jakarta, July 2000; Environmental Investigation Agency and Telapak Indonesia, "The Final Cut: Illegal Logging in Indonesia's Orangutan Parks," Jakarta, August 1999; World Wildlife Fund Indonesia, "Report of Survey on the Land Clearing by PT. RAPP (Baserah Sector) and Log Movement," unpublished manuscript (copy on file at Human Rights Watch), August 4, 2001; and Lesley McCulloch, "TriFungsi: Soldiers in Business," presented at the International Conference on Soldiers in Business, Jakarta, October 17-19, 2000, <http://www.bicc.de/budget/events/milbus/confpapers/mcculloch.pdf> (retrieved October 3, 2002).

<sup>23</sup> Holmes, "Deforestation in Indonesia."

failed rule of law. It will drive away foreign investment-- and that is a serious constraint on economic development indeed.<sup>24</sup>

Ironically, the loss of forests, land, and livelihoods all transpired under state policies that were ostensibly aimed at supporting economic growth for all Indonesian citizens. Soeharto's public vision of "*pembangunan*" or development (literally an "awakening" of a modern Indonesia) was, like that of most newly industrializing nations, one of economic prosperity powered by rapid extraction of natural resources. However, in practice, this agenda took a back seat to, and was ultimately endangered by, Soeharto's implicit objective of consolidating power through political patronage, in which he also made shrewd use of lucrative natural resources. Although Soeharto resigned from office in 1998, Indonesia's people and environment continue to suffer the consequences of this lack of good governance and rule of law in state forest and financial policies.

### New Order Forest Policy

Indonesia's vast and lucrative forests were essential tools in achieving the New Order government's goals of centralizing power and revenue. Tapping the economic-- and consequently, the political-- value of forests headed Soeharto's agenda after he seized power in 1965. Following the isolationism and political experiments of Indonesia's first President Sukarno, the nation's economy was in shambles. Soeharto saw the vast timber-rich forests of Sumatra and other Outer Islands as a way to not only jump start the economy but also to consolidate his political power through economic patronage.<sup>25</sup> In addition, Soeharto used billions of dollars from the government's "Reforestation Fund" (collected from timber companies but not returned to the national budget for reforestation) as discretionary funds to bankroll his own non-forest development agendas in order to avoid formal budget debates.<sup>26</sup> Among the first laws Soeharto passed were basic laws on forestry,<sup>27</sup> foreign investment,<sup>28</sup> and domestic investment<sup>29</sup>—an indication of the central role that investment in forestry was to play under "the Father of Development" (*Bapak Pembangunan*), as Soeharto aspired to be called during his New Order administration.

Such land was classified as "state forest,"<sup>30</sup> a vast area that included more than 75 percent (143 million hectares) of Indonesia's total land area, and 90 percent of land area on the Outer Islands, much of it under traditional claim.

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<sup>24</sup> Mark Baird, "Forest Crime as a Constraint to Economic Development in East Asia," presented at the Forest Leadership and Law Enforcement Conference, Bali, September 2001, [http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/FLEG\\_S8-2/\\$File/8+2+Mark+Baird+-+Indonesia,+WB.pdf](http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/FLEG_S8-2/$File/8+2+Mark+Baird+-+Indonesia,+WB.pdf) (retrieved October 3, 2002).

<sup>25</sup> Christopher Barr, "Discipline and Accumulate: State Practice and Elite Consolidation in Indonesia's Timber Sector, 1967-1998," MSc thesis (copy on file at Human Rights Watch), Cornell University, 1998; Nancy Peluso, *Rich Forests, Poor People: Resource Control and Resistance in Java* (Berkeley, California: University of California Press, 1995); and The Center for International Environmental Law and the Indonesian Institute for Research and Community Advocacy (ELSAM), *Whose Natural Resources? Whose Common Good?* (Jakarta, Indonesia: ELSAM, 2002).

<sup>26</sup> William Ascher, "From Oil to Timber: The Political Economy of Off-Budget Development Financing in Indonesia," *Indonesia* 65: 37- 61, 1998. While most of the reforestation money went to pulp and paper concessionaires as subsidies, a significant portion of it was misallocated for non-forestry project, including the 1997 Southeast Asia Games in Jakarta. Bob Hasan also received Rp250 billion (U.S.\$100 million) of reforestation funds to establish a pulp mill. The interest on the loan was 4 percent below commercial banks, which would allow him to make a large profit simply by depositing the money in a bank. Another dubious use of Rp500 billion of reforestation funds was the ill-conceived 'One Million Hectare Project' to clear-cut natural forest and covert the infertile and highly flammable peat soils into rice fields, a scheme that resulted in massive forest fires in 1997. In 1994, Soeharto ordered an interest-free loan of Rp400 billion (U.S.\$185 million) from the fund for then Technology Minister BJ Habibie's state-owned aircraft manufacturer to help it develop a commuter jet. In 1997, the Forestry Minister denied reforestation money had gone into Soeharto son's doomed 'national car' project (funded by state banks), but added that it could at any time if the president wished it. "Mega Queries Use of Reforestation Fund," *Laksamana.net*, January 24, 2002.

<sup>27</sup> Basic Law on Forestry (*Undang-Undang Pokok Kehutanan*) No. 5/1965

<sup>28</sup> Forest Investment Law (*Undang-Undang Penanaman Modal Asing*) No. 1/1967

<sup>29</sup> Domestic Investment Law (*Undang-Undang Penanaman Modal Domestik*) No. 1 /1968

<sup>30</sup> The term "state forest" indicated more of state intention of control than of the actual presence of trees since it is specifically defined in the 1967 Basic Forestry Law as "land, with or without forest (*berhutan atau tidak berhutan*), that is

As state forest, the law designated over one hundred million hectares for logging or ‘conversion’ to plantation (i.e., clear-cutting and replanting in monocultures of pulp or other estate crops). The Indonesian government then issued concessions to companies that gave them rights to the land recognized under the law.

A map of state forest classifications for Riau province (Map 1) demonstrates the tiny fraction of total land area (largely confined to urban areas) that is not classified as “state forest. This map gives a clear visual illustration of the degree to which local livelihoods have been hemmed in. The vast majority of the province, as state forest, is under state control.

### State Security’s Stake in the Forest Sector

Agents of the state security apparatus have been some of the prime beneficiaries of the state forestry policies that enabled the wholesale seizure of land claimed by local communities. The military played a leading role in the New Order’s consolidation and maintenance of state power, as well as holding business interests in the nation’s economy, setting up a fundamental conflict of interest within the very legal system that should be responsible for regulating the industry. There is evidence that, in some sectors at least, the level of military and police business involvement has not noticeably ebbed since the end of the New Order.<sup>31</sup> However, much of the military involvement in the sector is hidden because the linkages are often between particular timber concessions or mills and local military commanders. These associations are not apparent in company documents, but are nevertheless very important to the local operations of the mill or concession in question.

Since the beginning of Soeharto’s rule, agents of the military have been deeply involved in commercial forestry as concession holders, business partners, and enforcers for forest companies, as well as as financial backers and protectors of illegal loggers. Vast concessions were granted to generals in the late 1960s and early 1970s, an effective means of consolidating their political support for Soeharto’s new administration. Additionally, involvement in business was seen as a way to make up for insufficient military budgets and salaries; senior officers’ institutional and individual involvement in business was not only permitted but encouraged. Indeed, knowledgeable sources, among them the former Minister of Defense, have estimated the military’s off-budget income is 65-75 percent of their total budget, and the amount of military budget “leaking” to individuals is 65 percent.<sup>32</sup> Over sixty-two million hectares of forest were handed out on a non-bidding basis to fifty-one conglomerates and state forest companies with ties to the military and the Soeharto family.<sup>33</sup>

As military officials lacked the capital or expertise to establish logging operations, they entered into partnerships with investors, primarily through opaque “charitable foundations” (*yayasan*)<sup>34</sup>, limited liability corporations, cooperatives, or holding companies controlled by military interests.<sup>35</sup> In 1995, over one million hectares of logging concessions were held by companies owned entirely by the Army’s *yayasan*.<sup>36</sup> This does not include

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declared by the state to be forest” (article 1, section 4). State forest is further classified according to its designated “function” (*fungsi*) as “limited production forest,” “production forest,” “conversion forest” (for clear-cutting and “conversion to non-forest uses,” such as plantation), “protected forest,” and “conservation forest.”

<sup>31</sup> McCulloch observes that the military has justified its role in maintaining security through direct involvement in politics as a legitimate “*dwi fungsi*,” or dual function. Actually, McCulloch argues, the military plays a “*tri fungsi*” through its additional central role in business. McCulloch, “TriFungsi: Soldiers in Business.”

<sup>32</sup> McCulloch’s personal interviews with former Minister of Defense Juwono Sudarsono. McCulloch, “TriFungsi: Soldiers in Business.”

<sup>33</sup> David Brown, “Addicted to Rent: Corporate and Spatial Distribution of Forest Resources in Indonesia,” Indonesia U.K. Tropical Forestry Management Programme: Jakarta, September 1999, [http://www.geocities.com/davidbrown\\_id/Atr\\_main.html](http://www.geocities.com/davidbrown_id/Atr_main.html) (retrieved October 3, 2002).

<sup>34</sup> Ostensibly to fund the “welfare” of soldiers, *yayasan* in reality fund all manner of military projects, as well as being a source of personal gain for military elite.

<sup>35</sup> Examples of military foundations with business interests have been documented by McCulloch in the forestry sector, including logging, plywood mills and pulpwood and plywood plantations. See Lesley McCulloch, “TriFungsi: Soldiers in Business.”

<sup>36</sup> Brown, “Addicted to Rent.”

companies with minority military ownership or operating without legal permits and concessions. The contribution of military capital to these ventures was typically minimal, but the yayasan “charities” nevertheless received large shares. The military’s contribution was not financial but political capital needed to gain access to forest land and pressure national government officials to provide advantageous state investment policies.<sup>37</sup>

At a local level, the military and police also routinely acted as private enforcers for companies, both quashing protests and hiring themselves out to companies for “land acquisition” from local communities. In Riau, Brimob police have often acted to violently quell local protests against companies. In October 1997, police attacked demonstrators from the village of Delik, who were protesting land seizures for the construction of Riau’s second massive pulp and paper mill, Riau Andalan Pulp & Paper. Police fired on demonstrators who were blocking the construction of a road, wounding two and arresting one of the community organizers, the outspoken journalist Marganti Malanoe.<sup>38</sup> Malanoe was sentenced to three years in prison for provocation and sabotage.<sup>39</sup> Another example from Riau is the oil palm concession PT Tor Ganda in Rokanhulu district, which in 1996 cleared over 10,000 hectares of forest and local rubber gardens, reportedly without any permits. Press accounts and community activists reported that in 1999, when local people from the villages of Mahato and Dalo-Dalo protested the loss of their land, they were attacked by thugs and local police, who burned down 100 houses in three villages and fired on protestors killing one and injuring thirty.<sup>40</sup>

The military and police continue to have good economic reasons for protecting the forest industry, and little has been done under the post-Soeharto administrations to improve accountability of state security or their formal and informal involvement in forest business. Indonesia’s current President Megawati’s close contacts with military have proven to be obstacles to reform, compromising attempts to improve accountability for human rights abuses, most notably in her choice for military leadership of individuals formerly within Soeharto’s inner circle,<sup>41</sup> and in

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<sup>37</sup> Christopher Barr, “Bob Hasan, the Rise of Apkindo, and the Shifting Dynamics of Control in Indonesia’s Timber Sector,” *Indonesia* 65: 1-36, 1998.

<sup>38</sup> Marganti Manaloe, *Penjaraku: Ironi Penegakan Hak Asasi* (Pekanbaru, Riau: Opsi, 2001).

<sup>39</sup> Surat Dakwaan Nomor Reg Perkara PMD/BKN/EPK/1/1/1998.

<sup>40</sup> Human Rights Watch interviews with community activists, Pekanbaru, Riau, January 21, 2002; and “Meningkat, Pengungsi dari Tembusai,” *Media Indonesia*, October 28, 1999. In December 1999, frustrated by the lack of government action on their complaints about the attacks and land seizures by PT Tor Ganda, local residents retaliated by burning down the offices of the sub-district head (camat) and police station (Mapolsek). See “Kasus Pembakaran Kantor Camat, Mapolsek di Tembusai: Belum Ada Yang Jadi Tersangka,” *Suara Kita*, December 15, 1999; and “Warga Tembusai bersembunyi di Hutan,” *Media Indonesia*, December 20, 1999. In March 2000, the community set up a blockade of PT Tor Ganda oil palm trucks in Bukit Harapan over unresolved land disputes. See *Riau Pos*, March 28, 2000. In 2001, villagers began to charge Tor Ganda company trucks a “village tax” of Rp5 million a month to use their roads, which the company director called “pure extortion.” See *Antara*, May 20, 2001, cited in Lesley Potter and Simon Badcock, “The Effect of Indonesia’s Decentralization on Forests and Estate Crops: Case Study of Riau Province, the Original Districts of Kampar and Indragiri Hulu,” CIFOR, Bogor, Indonesia, September 18, 2001, p. 80, [http://www.cifor.cgiar.org/publications/pdf\\_files/Books/Cases\\_percent206-7.pdf](http://www.cifor.cgiar.org/publications/pdf_files/Books/Cases_percent206-7.pdf) (retrieved November 4, 2002).

<sup>41</sup> Maj. Gen. Sjafrie Sjamsoeddin, appointed the new Indonesian Military (TNI) spokesman, was implicated in the death of three student protestors at Trisakti in 1998. See Tiarna Siboro, “Sjafrie installed as TNI spokesperson amid controversy,” *Jakarta Post*, March 5, 2002. Former commander of Soeharto’s presidential guard, Gen. Endriartono Sutarto was appointed as head of the armed forces amid allegation of his involvement in arming East Timor militias. See “Questions on New Commander,” *Laksamana.net*, May 15, 2002, [http://www.laksamana.net/vnews.cfm?ncat=2&news\\_id=2722](http://www.laksamana.net/vnews.cfm?ncat=2&news_id=2722) (retrieved November 4, 2002). Brigadier General Sriyanto was appointed as head of army special forces although he has been alleged to have been involved in a number of human rights cases, including the attacks on Jakarta protestors in 1998, arming of militias in East Timor, and the Tanjung Priok riots. See “New Kopassus Chief No Stranger to Abuses,” *Laksamana.net*, July 1, 2002, [http://www.laksamana.net/vnews.cfm?ncat=48&news\\_id=3095](http://www.laksamana.net/vnews.cfm?ncat=48&news_id=3095) (retrieved November 4, 2002). Three of the generals also directly implicated in the East Timor massacres have been reassigned to other areas of separatist conflict; Maj. Gen. Adam Damiri was reassigned to Aceh. See Lindsay Murdoch, “Timor Hard Man Takes over Aceh,” *The Age*, March 27, 2001. Maj. Gen. Mahidin Simbolon was reassigned to Papua, and Major General Hendropriyono was appointed Indonesia’s intelligence chief-- both generals allegedly played an important role in relation to intelligence aspects of the TNI’s militia operation. See James Dunn, UNTAET’s expert on crimes against humanity in East Timor, 2000-2001, “The Indonesian Tribunal: A Matter

the deeply flawed East Timor human rights tribunals.<sup>42</sup> Human rights advocates suggest that the failure to make military business ventures and operating budgets transparent is one of the key stumbling blocks to both increasing accountability and reducing armed conflict in resource rich areas such as Aceh, Papua, Maluku, and Poso.<sup>43</sup>

After decades of protection by state security, many forms of illegal logging have flourished, both for export to Singapore and Malaysia and to satisfy ever increasing domestic demand. Common forms are logging in protected areas and national parks, and logging without valid permits or outside of the permitted area. Involvement in illegal sectors has been a long-standing strategy for augmenting the military budget as well as individual fortunes, especially through the mining and forestry sectors. According to well-placed observers and undercover investigators, agents of the military, as well as police and local government officials, act as both as financial backers and protectors at all stages of illegal logging operations including log extraction, transport and processing. This pervasive involvement has been well documented in the protected forests of Aceh<sup>44</sup> and Central Kalimantan.<sup>45</sup> In Riau, World Wide Fund for Nature (WWF) and the U.K.'s Department for International Development (DFID) have done numerous undercover investigations of illegal logging and sawmills around protected areas. In 1998, DFID documented 23 illegal sawmills around Riau's Bukit Tiga Puluh National Park, of which the report documented twelve had military backing, one had police and five had forestry department backing.<sup>46</sup>

This widespread government involvement in illegal logging was openly acknowledged by former Director General of Forestry Suripto, who claims to have received death threats for his efforts to curtail military and official involvement in illegal logging and was ultimately removed from his post, many observers believe for his actions against forest corruption.<sup>47</sup> Suripto handed over to the Attorney General's Office and National Police

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of Justice or Political Diversion?" August 17, 2002, <http://www.etan.org/et2002c/august/18-24/18itribunl.htm> (retrieved on October 3, 2002). See also the website "Masters of Terror" for a complete set of profiles of the key suspects in the 1999 destruction of East Timor, <http://yayasanhak.minihub.org/mot/SortByAlpha.htm> (retrieved November 25, 2002).

<sup>42</sup> Tim Dodd, "Megawati and the Military: Too Close for Comfort," *Australian Financial Review*, July 23, 2002; Human Rights Watch, "The Indonesian Military and Ongoing Abuses," background briefing, July 31, 2002; and Human Rights Watch, "Indonesia Verdict Confirms Justice Elusive for East Timor Crimes," press release, August 15, 2002. See also, International Crisis Group, "The Implications of the Timor Trials," Jakarta/Brussels, May 8, 2002 and International Crisis Group, "Resuming U.S.-Indonesia Military Ties," Jakarta/Brussels, May 21, 2002.

<sup>43</sup> Munir, "The Stagnation of Reforms in Indonesia's Armed Forces," International Forum on Indonesian Development (INFID) position paper (copy on file at Human Rights Watch), July 2002; and Human Rights Watch, "The Indonesian Military and Ongoing Abuses" Press Backgrounder, July 31, 2002. See also, International Crisis Group, "Resuming U.S.-Indonesia Military Ties," Jakarta/Brussels, May 21, 2002.

<sup>44</sup> Lesley McCulloch, "TriFungsi: Soldiers in Business"; John McCarthy, "'Wild Logging': The Rise and Fall of Logging Networks and Biodiversity Conservation on Sumatra's Frontier," CIFOR Occasional Paper 31, Bogor, Indonesia, 2000, [http://www.cifor.cgiar.org/publications/pdf\\_files/OccPapers/OP-31.pdf](http://www.cifor.cgiar.org/publications/pdf_files/OccPapers/OP-31.pdf) (retrieved November 4, 2002).

<sup>45</sup> Environmental Investigation Agency and Telapak Indonesia, "Timber Trafficking: Illegal Logging in Indonesia, South East Asia and International Consumption of Illegally Sourced Timber," Jakarta, September 2001; and Environmental Investigation Agency and Telapak Indonesia, "Illegal Logging in Tanjung Putting National Park: An Update," Jakarta, July 2000.

<sup>46</sup> World Wildlife Fund Indonesia, "Report of Survey on the Land Clearing by PT. RAPP (Baserah Sector) and Log Movement," unpublished manuscript (copy on file at Human Rights Watch), August 4, 2001. See also, World Wide Fund for Nature and Department for International Development (DFID), "Laporan Perkembangan Sawmill Di Wilayah Selatan Taman Nasional Bukit Tigapuluh & Di Sekitar Area KPHP Pasir Mayang," Unpublished report (copy on file at Human Rights Watch), Indonesia-U.K. Tropical Forest Management Programme, Jakarta, Indonesia, 1998.

<sup>47</sup> Lesley McCulloch, "TriFungsi: Soldiers in Business"; and Suripto, *Menguak Tabir Perjuangan Suripto*. It is widely believed that Forestry Minister Nur Mumudi was removed for refusing to remove Suripto from his post as director general. His successor, Marzuki Usman, fired Suripto as one of his first orders of business, but not after Suripto had deposited information regarding corruption charges against Pangestu and Tutut. Suripto was fired the following week. Former President Wahid also alleged that Suripto had been colluding with military special forces (Kopassus) to topple him, and charged Suripto with treason—an accusation for which he later apologized when Suripto filed defamation counter-charges. "PR Suripto buat dua Marzuki," *Detik.com*, March 23, 2001, <http://www.detik.com/peristiwa/2001/03/23/2001323-085445.shtml> (retrieved November 4, 2002); "Official locked horns with big timber and lost," *Chicago Tribune*, July 7, 2001; "Why was the Forestry Minister Axed?" *Laksamana.net*, March 23, 2001, [http://www.laksamana.net/vnews.cfm?news\\_id=734](http://www.laksamana.net/vnews.cfm?news_id=734)

evidence alleging corruption by major business tycoons and 18 illegal logging syndicates. Among those implicated were timber boss and Soeharto crony Prajogo Pangestu and Soeharto's daughter Siti Hardijanti "Tutut" Rukmana. Suropto alleged that they had been involved, among other things, in fraud and misallocation of reforestation funds (for having over-estimated the amount of land reforested in order to get more reforestation money), tax evasion, and deliberate burning of land for plantations in violation of no-burn legislation. No formal charges or prosecutions have resulted.<sup>48</sup>

The Indonesian government has at least nominally recognized the economic importance of getting military spending on-budget in its commitment in the January 20, 2000 Letter of Intent (LOI) to the IMF, which states:

Any funds remaining outside the budget will be subject to annual audit. In addition, we have instructed the State Audit Board (BPKP) that any future internal audits of financial operations of all government agencies take full account of all extra-budgetary sources of support. This will begin in 2000 and will include the military.<sup>49</sup>

This commitment also provides the IMF with clear responsibility to press for meaningful action on military off-budget business activity. By 2001, the LOI stated that the government agencies had "been audited as previously envisaged" including eight military foundations and one state police foundation.<sup>50</sup> The letter continues, "The implementation of corrective actions in all cases will be publicized on a regular basis." However, in June 2002, IMF representatives told Human Rights Watch and a delegation of Indonesian activists that the IMF had not asked to see the audit, were unaware of progress on corrective actions, and did not know if the audit, carried out by a state agency, would be made public.<sup>51</sup>

### **The Indonesian Pulp and Paper Boom**

The heavy involvement of the military and lack of regulation meant that Indonesia's burgeoning forestry industry was free to make quick use of the vast timber-rich forests of the Outer Islands. Although the rise of forest industries under Soeharto was meteoric, with Indonesia becoming one of the world's largest exporters of tropical wood products, it was, however, unsustainable-- both in human and ecological terms.

Although the Dutch colonial government began intensely logging teak forests and establishing teak plantations on Java as early as the seventeenth century, wide-scale commercial logging and forest plantation agriculture did not begin until the late 1960s. Since that time, nearly half of Indonesia's forest has been logged and the annual deforestation rate has been on the rise. As described above, New Order policies encouraged political patronage and the rapid conversion of forest to cash, and in this sense were extraordinarily successful.

The rapid growth of Indonesia's forest industry has been characterized by the serial development of sub-industries of raw logs, plywood, and pulp and paper, in that order. The first forest industry to boom was the timber industry of the early 1970s, which was granted more than 30 percent of the total national land area as logging concessions issued on a discretionary (non-bidding) basis, largely to business conglomerates made up of Soeharto's family, business partners, and political and military allies. There was little scrutiny of the economic feasibility of these

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(retrieved November 4, 2002); "Kosa Kata Baru Politik Indonesia: Dinurmamudikan," *Radio Nederland*, March 20, 2001; "Apa Sebenarnya Akar Permasalahan antara Suropto dan Gus Dur?" *Radio Nederland*, May 5, 2001; "Minister Says He Was Fired for Defying Wahid's Order to Sack Aide," *Agence France Presse*, March 16, 2001; and "Forestry Minister Discloses President's Reasons for Firing Him," *Antara*, March 16, 2001.

<sup>48</sup> Information also submitted by Suropto implicated (but never resulted in formal charges) Texmaco chairman Marimuti Sinavasan, Gajah Tunggal group Chairman Syamsul Nursalim, and Soeharto's half brother Probosutedjo. "Documents on Alleged Graft by Prajogo Submitted," *Jakarta Post*, April 19, 2001.

<sup>49</sup> Letter of Intent from Indonesian government to the IMF, January 20, 2000, paragraph 31.

<sup>50</sup> Two from the Ministry of Defense, three from the army, and one each from the TNI headquarters, navy, and air force. Letter of Intent from Indonesian government to the IMF, August 27, 2001, Paragraph 34.

<sup>51</sup> Human Rights Watch and International Forum on Indonesian Development (INFID) meeting with IMF representatives Stephen Schwartz (Deputy Division Chief, Asia Pacific Department), Andrea Richter (Economist, Indonesia Program), and Sanjaya Panth (Senior Economist), Washington, D.C., June 18, 2002.

commercial operations, nor their management of public resources. By the late 1970s, Indonesia became the world's largest exporter of tropical timber, more than Latin America and Africa combined,<sup>52</sup> with log exports generating U.S.\$1.5 billion a year—profits largely controlled by just 64 family conglomerates.<sup>53</sup>

In the following decade, business elites turned their attention from raw logs to the development of value-added wood products industry in order to capture more profit. By the late 1980s Indonesian forestry became another world leader—this time in tropical plywood, producing 79 percent of the global supply. The success of the domestic plywood industry, however, was ensured by government policies that proved to be economically, ecologically, and socially ruinous. Government regulations accompanying the log export ban as well as subsidies for logging companies that also developed processing units ensured that timber concessions and the plywood processing industry were both dominated by a handful of major producers, while a horizontal monopoly over marketing and exports of plywood was established by Soeharto's close friend and business associate Mohammad 'Bob' Hasan and his plywood cartel APKINDO.<sup>54</sup> An export ban artificially depressed the price of domestic timber, ensuring the plywood industry's access to cheap wood, and aiding the over-capacity that led to the increased pace of logging and further seizure of local lands.

Many analysts, including the World Bank, see this surge in over-production in Indonesia's forest industries as the main driver of illegal logging, and therefore have argued that the policies encouraging industry expansion in fact had perverse effects on forests, forest dependent people, and economic sustainability in the forest sector.<sup>55</sup> A 1999 report from the U.S. Embassy in Jakarta frankly expressed what has long been common knowledge about New Order forestry,

Inefficient but favored companies with deep pockets and political influence ran their operations with little or no regulatory oversight. Trees were harvested as quickly and cheaply as possible with few environmental safeguards. Illegal logging flourished with the complicity of local officials.<sup>56</sup>

In the late 1980s, the pulp and paper industry began to take off, also catalyzed by large government subsidies, most notably zero-interest loans from the Reforestation Fund, which kept production costs among the lowest in the world.<sup>57</sup> From 1988 to 2001, pulp production expanded tenfold from 606,000 to 6.1 million tons per year. Paper production expanded sevenfold from 1.2 million to 8.3 million tons per year during the same period. In 2001, pulp and paper became the largest income generator in the forestry sector, at 50 percent of the nation's forestry exports.<sup>58</sup>

Although promoted as the means to establish a sustainable forest industry, the rapidly expanding plantation sector has devastated Indonesia's natural forests and local access to forests. With the rapid growth of the pulp and paper

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<sup>52</sup> M. Gillis, "Indonesia: Public Policy, Resource Management and the Tropical forest," in R. Repetto and M. Gillis, eds., *Public Policies and the Misuse of Forest Resources* (Cambridge, U.K.: Cambridge University Press, 1988).

<sup>53</sup> Brown, "Addicted to Rent."

<sup>54</sup> Barr, "Bob Hasan, The Rise of Apkindo."

<sup>55</sup> The IMF clearly recognized the damaging effects of these subsidies and market controls, and required that they be removed by the end of the year in the January 15, 1998, Letter of Intent and Memorandum of Financial Policies from the Indonesian government. See also, World Bank, *Indonesia: Environment and Natural Resource Management in a Time of Transition* (Washington, D.C.: World Bank, 2001).

<sup>56</sup> This report was issued long after the end of Soeharto's New Order (March 10, 1999). U.S. Embassy Economics Section, "If a Tree Falls in the Forest, Who Has the Export Rights? Indonesia Forestry Regulations 1999," <http://www.usembassyjakarta.org/econ/forestreg.html> (retrieved October 3, 2002).

<sup>57</sup> Production costs are estimated to be U.S.\$200 per ton of wood, a fraction of what it costs to produce pulp in North America, which leads world production. This is because of cheap access to wood, government subsidies (including start up capital and gasoline subsidies) and tax holidays, cheap labor, and close proximity and low transportation costs to important Asian markets.

<sup>58</sup> U.S.\$3.5 billion in foreign exchange.

industry, effective wood demand has also skyrocketed from 3 million m<sup>3</sup> annually in 1990 to 30 million m<sup>3</sup> in 2002.<sup>59</sup> Yet, the majority of this wood continues to come from clearing natural forests, not sustainable plantations. From 1988-2000 only 10 percent of the 120 million m<sup>3</sup> wood used for pulp came from plantations.<sup>60</sup>

### **APP's Increasing Demand for Wood**

Sinar Mas Group's Asia Pulp & Paper, as the nation's largest producer, has been the leader of this extraordinary growth processing half the country's pulp and a quarter of its paper.<sup>61</sup> With current total annual pulp capacity of 2.3 million metric tons, and paper and packaging capacity of 5.7 million metric tons, APP ranks number one in non-Japan Asia and tenth in world production, behind only such giants as International Paper, Enso, Georgia Pacific and UPM Kymmene.<sup>62</sup> Headquartered in Singapore, APP currently has 16 manufacturing facilities in Indonesia and China and markets its products in more than 65 countries on six continents.<sup>63</sup> APP's Indah Kiat mill in Perawang, Riau is one of the two largest stand-alone paper mills in the world.<sup>64</sup> On its own, Indah Kiat has a production capacity of 2 million tons of pulp and 1.5 million tons of paper annually, having grown rapidly from just 120,000 tons in 1989.<sup>65</sup>

The wood fiber for the Indah Kiat mill is supplied by Arara Abadi, also a subsidiary of the Sinar Mas Group. Arara Abadi has one of Indonesia's largest pulpwood plantations, controlling a concession of 300,000 hectares in Riau. The transfer of rights to community land without due process or fair and prompt compensation is a major factor contributing to disputes and violence between Arara Abadi and the surrounding communities.

Provincial regulations in place even at the time of the plantation concession's initial establishment require that lands used for community farming and rubber production be excised from a concession's working area.<sup>66</sup> A survey was conducted last year in the sub-district of Bunut (Pelalawan district, where the villages of Betung, Angkasa and Belam Merah are located)<sup>67</sup> by a multi-stakeholder team including representatives from local government, non governmental organizations, local community leaders, and Arara Abadi, to determine the amount of land inside the concession claimed by local communities. While only a tiny portion of the entire concession, the survey found that some 20,000 hectares of Arara Abadi's concession were under community

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<sup>59</sup> Based on installed capacity. N. Scotland, A. Frasier and N. Jewel, "Roundwood Supply and Demand in the Forest Sector in Indonesia," unpublished manuscript, Indonesia-U.K. Tropical Forest Management Program (ITFMP), 1999. See also, Neil Scotland, "Indonesian country paper on illegal logging," paper prepared for the World Bank-WWF Workshop on Control of Illegal Logging in East Asia (copy on file at Human Rights Watch), Jakarta, August 28, 2000. The sawmill industry has also over-expanded and is by far the largest consumer of wood, roughly seventy million m<sup>3</sup> annually, also mainly from illegal sources. Large, valuable trees are selectively sold to plywood mills and the remaining smaller, defective or undesirable timber is sold to pulp mills—a combined effect that completely clear-cuts the forest.

<sup>60</sup> Barr, *Banking on Sustainability*.

<sup>61</sup> Diarmid O'Sullivan, "Indonesia: Tempting but not without Risks," *Financial Times*, Industry Surveys, World Paper and Pulp, <http://specials.ft.com/ln/fts-surveys/industry/sc7bbe.htm> (retrieved October 3, 2002).

<sup>62</sup> APP's website <http://www.asiapulppaper.com/content/aboutranking.asp?menu=1&smenu=2> (retrieved November 25, 2002).

<sup>63</sup> Asia Pulp & Paper (APP), <http://www.asiapulppaper.com/content/about.asp?menu=1> (retrieved October 3, 2002); and press release emailed to Human Rights Watch from APP/Sinar Mas Group on June 19, 2002 (copy on file at Human Rights Watch).

<sup>64</sup> Riau Andalan Pulp & Paper (RAPP), owned by Tanoto family conglomerate Raja Garuda Mas, is also located in Riau and is one of APP's main competitors. RAPP is tied with Indah Kiat for the world's largest stand-alone pulp mill. RAPP is wholly-owned by Singapore-based holding company APRIL (Asia Pulp Resources International, Ltd).

<sup>65</sup> Barr, *Banking on Sustainability*.

<sup>66</sup> "If within the concession area there is land that is privately owned, village land, village gardens, or rice fields that are worked by a third party, this land must be excised from the working area of the plantation. If this land is required for the plantation Arara Abadi must settle the matter with all relevant parties and according to prevailing law." Ministry of Forestry Decree SK No. 743 /KPTS-II/1996 (article 4, paragraph 1).

<sup>67</sup> The survey did not even cover the entire sub-district; only fourteen villages were included. Tim Teknis Klarifikasi Penyelesaian Masalah PT Arara Abadi Dengan Masyarakat Petalangan, "Laporan Pelaksanaan Hasil Pengecekan Tata Batas Areal HPHTI PT Arara Abadi," unpublished survey report, Kantor Bupati Pelalawan, Riau, August 1, 2001..

claim. The fact that a comprehensive and systematic survey of land ownership had never been undertaken is an indication of the government's failure to enforce existing rights: Indonesian law requires that land under third party claim be excised from forest concessions.

Arara Abadi's own records show that 113,595 hectares of its concession have been claimed by local communities. Although it asserts that half of these cases have already been settled, it acknowledges that 57,000 hectares remain under dispute. It gives no details regarding the settlements or the exact location of the claims, however, so it is impossible to cross check whether these claims overlap with those found by the multi-stakeholder team.<sup>68</sup>

APP officials insist, as do provincial police, that Arara Abadi was issued a legal concession by the Indonesian government, and because local residents did not have any formal title to the land, they have no legal rights.<sup>69</sup> Arara Abadi's Director admitted that most of their security problems were not from "illegal logging" as many representatives repeatedly insisted, but from traditional land claims from local people.

Actually most of our security problems are from local communities. They have what they call *hak ulayat* [customary rights]. Reform has stimulated their sense of ownership and people have begun to be more brave to make their claims even though they have no legal documents. Sometimes we get a mediator from the local government, but compensation is frequently too expensive.<sup>70</sup>

These comments are revealing on several points. First, they make clear that the imprecise term "illegal logging" is frequently used to obscure community land claims and make legitimate grievances that need to be negotiated appear as criminal activity. This was a factor in both the Angkasa/Belam Merah and Mandiangin conflicts described above. Second, the observation that reform has made communities "more brave" to press their claims is an indication of the extent to which they were cowed by intimidation in the past. Third, the official's comments underscore the second-class status of indigenous rights, even though they are recognized by law. The Arara Abadi official clearly recognizes that communities possess customary rights,<sup>71</sup> but implies that ultimately the expense of the compensation is what determines whether these rights will be recognized or not.

Even though Indonesia recognizes customary rights in its constitution, there is no formal process for local people to press land claims. Faced with unresponsive and unaccountable company staff and local administrations, communities may try to take their case to court, but the depth of the corruption and the requirement of bribes makes this an impractical avenue for seeking impartial justice for impoverished local people. In fact, companies themselves complain that corrupt courts at times order them to pay compensation to illegitimate claimants. In his June 2002 review of the Indonesian court system, the U.N. Special Rapporteur on the Independence of Judges and Lawyers, Param Kumaraswamy, concluded with shock that he "did not realize that it [corruption] would be so endemic."<sup>72</sup> This assessment is corroborated by a detailed research report on the judicial system by the independent government watchdog Indonesian Corruption Watch that documents corruption and bribe-taking at all levels of the judicial process.<sup>73</sup>

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<sup>68</sup> "Land Ownership Disputes" (Rekapitulasi Masalah Lahan di Areal HPHTI PT Arara Abadi Distrik), cited in AMEC Simons Forest Industry Consulting, "APP Pulp Mills & Sinar Mas Group Forestry Companies: Preliminary Wood Supply Assessment," Document 2111 B1754aD10, October 12, 2001, p. 32.

<sup>69</sup> Human Rights Watch interviews with APP and Arara Abadi central staff, Tangerang, February 13, 2002; with APP/Indah Kiat and Arara Abadi field staff, Indah Kiat mill site, Perawang, Riau, February 14, 2002.

<sup>70</sup> Human Rights Watch interview with Soebardjo, Director of Arara Abadi, Jakarta, February 13, 2002 (interview conducted in English).

<sup>71</sup> He even expressly terms the rights "hak ulayat," which is the term used to recognize and title customary rights in the Basic Agrarian Law No. 5/1960 (one of the first laws passed after Independence). Unclaimed land was assumed to be under state ownership. However, the implementing regulations for the law were never passed and the law has had little effect in practice, as most communities were never made aware that such rights could be titled.

<sup>72</sup> Derwin Pereira, "U.N. Condemns Indonesia's Justice," *Straits Times*, July 23, 2002.

<sup>73</sup> "Lifting the Lid on the Judicial 'Mafia'," Indonesian Corruption Watch, Jakarta, 2002.

Unable to obtain title and shut out of the justice system, local people have few ways to make their complaints heard, and informal complaints taken directly to local officials are frequently dismissed by authorities, further alienating local communities. As one high ranking provincial police official put it bluntly,

OK, maybe it happens sometimes that land is taken without compensation. But if there are no physical letters of ownership, then they have no rights at all. And most of them have no titles. How could they? So they deserve nothing.<sup>74</sup>

This vast area of land under Arara Abadi was not only removed from local control but clear-cut of its natural forest, which was traditionally used by surrounding communities for local farming and the collection of forest products, including economically and culturally valuable honey trees in natural forest reserves, whose ownership is passed down for generations. Community orchards of fruit and rubber trees were also cleared. The large expanse of land under pulp concession, in addition to logging and oil palm concessions—has left little land on which to pursue traditional forest-based livelihoods (See provincial map showing extent of concession areas in Map 1). Government regulations require that all village sites and fields must be excised from concession working area, and that no concession plantings are permitted within 1.5 km of villages or roads.<sup>75</sup> Yet the acacia trees are commonly planted right up to the edge of roads and, in some villages, right up to the back doors of villagers' homes. One man complained, "If we want to build an outhouse, we have to cut down an acacia tree."<sup>76</sup>

However, APP's debt-fuelled expansion has produced a supply for wood fiber that outstrips the supply of acacia plantation and the available natural forest on Arara Abadi's concession, forcing APP to buy from clear-cut natural forest outside its already massive concession.<sup>77</sup> APP acknowledges its dependence on clearing natural forest to feed its mill: figures supplied by APP/Sinar Mas Group to Human Rights Watch report that the Indah Kiat mill in Perawang currently uses such wood to satisfy 65 percent of its wood demand—a total of 9.8 million tons annually—at present, 25 percent of which comes from outside their concession (although critics suggest it is closer to 50 percent).<sup>78</sup>

Arara Abadi's concession currently covers six districts. At the time of its issue in the late 1980s, this was one of the largest concessions in Indonesia. Yet in October 2001, Arara Abadi announced its intention to further expand its area of operations by two-thirds logging an additional 190,000 hectares of natural forest in the next five years, to supply the increased capacity of the Indah Kiat Riau mill. This expansion is to be carried out through "joint ventures" with unspecified partners and under unspecified conditions. Further, in order to meet increased demand under the expanded production capacity, APP/Sinar Mas Group plans in the next five years to double the size of natural forest it has cleared for plantation.<sup>79</sup>

At present, there is a perverse economic incentive for APP and pulp mills throughout Indonesia to continue to over-expand their capacity and their reliance on clearing natural forest. Likewise, there are strong financial pressures from the huge costs of the mill and debt incurred from a wide array of creditors (some of whom were pursuing repayment through litigation against APP as of this writing in September 2002)<sup>80</sup> to continue to cut

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<sup>74</sup> Human Rights interview with a high ranking provincial police officer, February 19, 2002.

<sup>75</sup> Ministry of Forestry Decree SK No. 743 /KPTS-II/1996, District Regulation Surat Bupati Kampar November 21, 1989.

<sup>76</sup> Aliansi Peduli Pelalawan (APPEL), *Prahara Abadi? Buku Putih Peristiwa Penyerangan Massal Karyawan Pam Swakarsa PT Arara Abadi*, (Pekanbaru, Riau: APPEL, May 2001).

<sup>77</sup> Barr, *Banking on Sustainability*.

<sup>78</sup> Ibid.

<sup>79</sup> Human Rights Watch interviews with APP and SMG staff in Jakarta and Perawang, February 13-14, 2002. See also AMEC Simons Forestry Consulting, "APP Pulp Mills & Sinar Mas Group Forestry Companies: Preliminary Wood Supply Assessment," Document 2111 B1754aD10, October 12, 2001.

<sup>80</sup> "Secured creditors file suit against APP, asset sell-off could follow," Paperloop.com monthly report, September 25, 2002, [http://www.convertingloop.com/news\\_info/converting\\_month.shtml](http://www.convertingloop.com/news_info/converting_month.shtml) (retrieved September 30, 2002)

corners and increase production, regardless of the human rights or environmental consequences. Such perverse incentives, especially in the absence of effective rule of law, will continue to threaten local community members' rights.

#### IV. MISSED OPPORTUNITIES FOR REFORM

Many analysts believe that failures of governance were an important reason that Indonesia was one of the countries worst hit by the 1997 Asian economic crisis.<sup>81</sup> As a result of the crisis, the Indonesian rupiah lost 70 percent of its value in just five months, inflation rose to 80 percent, and the number of people living below the poverty line rose to over 60 percent.<sup>82</sup> Coupled with these events, public perception that the Soeharto government was rife with "corruption, cronyism, and nepotism"--as a popular protest slogan put it--was an important source of pressure that eventually forced Soeharto's resignation in May 1998. Despite high expectations for reform following Soeharto's departure, however, the root causes of the crisis, including failures of law enforcement and governance that facilitate rights abuses, have not been addressed. In important respects, the response of post-Soeharto administrations has only tightened the vise on communities in Riau.

This chapter looks first at how the process of bank restructuring after the economic crisis continued to create strong incentives for over-expansion of forest industries. It then examines post-Soeharto reforms, with special attention to the effects of the massive project of fiscal and administrative decentralization on forests and forest communities. While post-Soeharto administrations have taken many promising steps toward reform, the translation of these opportunities into meaningful change has thus far remained elusive due to flagging political will and lack of attention to rights protections. Little has been done to address community anger rooted in the economic injustices bequeathed by Soeharto.

The collapse of the Indonesian economy in 1997 and 98 was closely watched by investors throughout the world, but its impact on the well-being of the nation's rural communities was not as carefully monitored. Forest companies that became deeply indebted due to poor governance and weak financial due diligence leveraged their borrowing on expanding production capacity. The more indebted they became, the more these companies needed to maintain high-volume, low cost operations to stave off financial collapse. This financial pressure led to rapidly

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<sup>81</sup> While the immediate cause that led to the collapse of regional currencies and economies in 1997 was the rapid flight of foreign capital, financial analysts widely concur that among the primary roots of Indonesia's economic collapse were fundamental structural vulnerabilities created by speculative excesses, poor financial risk management, heavy reliance on foreign lending that were all enabled and indeed encouraged by corruption, weak governance and inadequate regulation of the banking system. Among these analysts are Indonesian economist and now state minister for national development planning, Kwik Kian Gie, American economist Paul Krugman, the International Monetary Funds (IMF) and World Bank's own economists, and former Coordinating Minister of Finance Rizal Ramli. See "The Domsayers whose voices went unheeded," *Straits Times*, March 23, 1998; Mari Pangestu and Maggir Habir, "Boom, Bust and Restructuring of Indonesian Banks," IMF Working WP02/66, Washington, D.C., April 2002; "IMF Factsheet: IMF Response to the Asian Crisis," International Monetary Fund, January 17, 1999, <http://www.imf.org/external/np/exr/facts/asia.htm> (retrieved on October 3, 2002); "Combating Corruption is Key to Indonesia's Economic Recovery, World Bank Advises," World Bank Press Release No. 99/1947/EAP, September 19, 1998, <http://www.worldbank.org/html/extdr/extme/1947.htm> (retrieved November 4, 2002); "Recovery from the Asian Crisis: The IMF Role," IMF staff, June 23, 2000, <http://www.imf.org/external/np/exr/ib/2000/062300.htm> (retrieved October 3, 2002); and Jonathan Pincus and Rizal Ramli, "Indonesia: From Showcase to Basketcase," *Cambridge Journal of Economics* 22 (6): 723-34, 1998.

<sup>82</sup> Figures cited by James Wolfensohn, in his address to the 1998 World Bank/IMF annual meetings. He cites the estimate before 1997 as 11 percent, but this figure has been quite controversial. Dr. Jeffrey Winters, a professor of political science at Northwestern University, was a USAID consultant during the early 1990s and reports that the earlier official poverty estimates were a pure government fabrication and that the real figures were substantially higher. He further alleges that the international donor institutions had full knowledge of this but repeated the government's estimates nonetheless. See Marcus Brauchli and Jay Solomon, "Speak No Evil: Was the World Bank Part of Indonesia's Problem?" *Asian Wall Street Journal*, June 15, 1998. In his 1998 speech, even Wolfensohn admitted that the 11 percent estimate was based on a poverty line defined at those who earned U.S.\$1 a day, which obscured those who earned just \$1.25 a day.

expanded operations that, in the absence of government oversight and adequate law enforcement, contributed to continuing environmental degradation and abuses of the rights of local populations.

### After the “Miracle”: Bank Restructuring and Forests

*A major lesson of the East Asian economic crisis of 1997-98 is that high growth without good governance, at both the government and corporate levels, can lead directly to a national crisis. New Order Indonesia did not lack for growth, but as a patrimonial state, it lacked an institutional framework capable of ensuring that private ends would not compromise the interests of the larger society.*

—The World Bank (emphasis added), 2001<sup>83</sup>

During the 1980s and ‘90s, Indonesia’s economy grew at a rate of 7-10 percent a year, making it one the celebrated Asian “Tiger” economies. That all changed in August of 1997. Following the collapse of the Thai baht, there was a flight of foreign investment from the region and a flurry of currency speculation. The “contagion” of investor panic and currency decline spread to Indonesia and the value of the Indonesian rupiah began its freefall and the economy contracted by 14 percent. Unemployment rose to almost 20 percent. For those lucky enough to still be working, real wages declined by 35 percent while food prices increased by 115 percent.<sup>84</sup>

In response to the economic crisis and the collapsed banking system, in early 1998 the IMF helped establish the Indonesian Bank Restructuring Agency (IBRA) with the aim of liquidating, merging or recapitalizing failing banks and selling off assets of debtor corporations worth Rp600 trillion in order to recover liquidity loaned to failing banks in 1997 and reduce domestic debt. IBRA, whose mandate is due to expire in 2004, has been plagued with controversy and leadership changes<sup>85</sup> due to the slow progress on asset sales, the low recovery rate (10-20 percent), and charges of collusion with influential debtors, many of them holding major forestry operations, to allow them extended repayment schedules, debt reductions, or to re-acquire assets at discounted prices.<sup>86</sup>

Many analysts have compellingly demonstrated that bad debts, mismanagement, and poor corporate governance were and continue to be rampant in the forestry sector.<sup>87</sup> Of the U.S.\$51.5 billion in private debt owed to IBRA in 2000, some U.S.\$3.1 billion was in loans to the forestry industry, more than half of which was non-performing.<sup>88</sup>

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<sup>83</sup> World Bank, *Indonesia: Environment and Natural Resources in a Time of Transition* (Washington, D.C.: The World Bank Group, 2001).

<sup>84</sup> World Bank, *Indonesia in Crisis: A Macro-Economic Update* (Washington, D.C.: The World Bank Group, 1998).

<sup>85</sup> There have been seven chairmen in four years.

<sup>86</sup> M. Taufiqurohman, Ronny Fibri, Agus Hidayat, and Iwan Setiawan, “The Big Fish Never Lose,” *Tempo*, January 28, 2002. Press reports allege that former President Abdurahman Wahid even instructed Attorney General Marzuki Darusman to delay prosecution of prominent tycoon debtors Texmaco Group chairman Marimutu Sinivasan, Barito Pacific Group chairman Prajogo Pangestu, and the chairman of the Gadjah Tunggal Group, Syamsul Nursalim, on the grounds that these businesses employed thousands of workers and were needed to aid economic recovery. “Inequality before the Law,” *Jakarta Post*, October 21, 2001.

<sup>87</sup> Christopher Barr, David Brown, Anne Casson, and David Kaimowitz, “Corporate Debt and Indonesian Forestry Sector,” in *Which Way Forward? People, Forests and Policymaking in Indonesia*, Carol J. Pierce Colfer, and Ida Aju Pradnja Resosudarmo, eds., (Washington, D.C.: Resources for the Future Press, 2002); Barr, “Profits on Paper” in *Banking on Sustainability*; Brown, “Addicted to Rent” and “Forgive Us Our Debts”; Scotland, Frasier and Jewel, “Roundwood Supply and Demand”; Casson, “The Hesitant Boom: Indonesia’s Oil Palm Sub-Sector in an Era of Economic Crisis and Political Change,” occasional paper No. 29 (Bogor, Indonesia: Center for International Forestry Research, June 2000); Stephanie Fried and Titi Soentoro, “ECA Finance in Indonesia: Ecological Destruction and Corruption” Environmental Defense and Bioforum, Occasional Paper 2, Washington, D.C., December 1, 2000; and Haike Mainhardt, “IMF Intervention in Indonesia: Undermining Macroeconomic Stability and Sustainable Development by Perpetuating Deforestation,” WWF Macroeconomics Program Office, Washington, D.C., August 2001.

<sup>88</sup> Brown, “Addicted to Rent”; and Barr, Brown, Casson and Kaimowitz, “Corporate Debt” estimate that 70 percent of this debt is held by only ten large conglomerates. These same conglomerates were further calculated to be responsible for U.S.\$2.4 billion in domestic non-performing loans and U.S.\$15 billion in foreign debt.

In addition to domestic debts, Indonesian pulp and paper producers owe U.S.\$17 billion in foreign debt. Of that debt, 85 percent is owed by Sinar Mas (U.S.\$12 billion) and Raja Garuda Mas (U.S.\$1.6 billion), which operate the nation's two largest pulp and paper operations, both located in Riau.<sup>89</sup>

This bad debt accumulated since 1998 is largely the result of inadequate due diligence on the costs and risks of the projects. As a rule, this view of risk was due to banks' assumption that the government would cover any losses. Since 1998, the government has been required by the IMF to issue blanket guarantees to all banks to maintain public confidence in the banking system in order to prevent a run on bank deposits, although even before 1998 there was an implicit understanding that the government would cover bad loans, since the debtors had influence in the government and banking sectors. This understanding was a clear case of "moral hazard" in which risks were not assumed by the debtors, thereby encouraging risky behavior rather than punishing it.<sup>90</sup>

The lack of due diligence is reflected in the repeated government recapitalization of seven domestic banks controlled or created by conglomerates.<sup>91</sup> Of these recapitalized banks, six were conglomerate-owned banks with links to major forestry companies. A prime example of this dynamic is Bank International Indonesia (BII), controlled by the conglomerate Sinar Mas, which also controls APP. BII has been recapitalized through "rights issues," in which the bank issues more shares in order to raise capital. These shares, in the absence of other interested buyers, were mainly bought by the Indonesian government for Rp21 trillion, or U.S.\$2 billion, even though the bank held U.S.\$1.2 billion in non-performing loans to Sinar Mas' own subsidiaries, U.S.\$1 billion of which is owed by APP.<sup>92</sup> In effect, the bank was lending to its own indebted affiliates (who then defaulted on these loans) while the government, as the principal purchaser of its new debt, was effectively guaranteeing these loans.

IBRA and the IMF recently approved a new "rights issue" for BII at U.S.\$535 million, although the government admitted the likelihood was high that it will again be the sole buyer of these shares, as it was in the last rights issue in 2001 worth U.S.\$1.5 billion. The government, with the IMF's help, is covering loans that Sinar Mas loaned to itself and then failed to repay. In absence of IBRA or IMF oversight that will ensure change of ownership,<sup>93</sup> banks may be recapitalized and corporate assets sold at a discount price of 10-30 percent of their value, allowing old owners to then buy them back and liquidate 70-90 percent of their debt for free.<sup>94</sup>

As the primary buyer in BII rights issues, the government now holds 80 percent of the shares in the bank, and remains reluctant to shut it down. The government has consistently argued that to let BII bank fail would cost more money than recapitalization because the government would have to reimburse depositors for their lost savings. But the facts suggest otherwise. Indonesian financial analyst Drajat Wibowo, who opposes the new rights issue, criticizes this view. Drajat points out that in 1999, when the first recapitalization took place, the deposits

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<sup>89</sup> Barr, Brown, Casson and Kaimowitz "Corporate Debt"; Barr, *Banking on Sustainability*.

<sup>90</sup> Marzuki Usman, former head of the Capital Market Supervisory Board (Bapepam), "RI Banking System: Rewarding the Bad Guys," *Jakarta Post*, July 24, 2002. See also Mari Pangestu and Manggi Habir, "Boom, Bust, and Restructuring of Indonesian Banks," IMF Working Paper, Jakarta, April 2002. The government has announced a plan to lift the guarantee by February 2004, in what news magazine *Tempo* termed "Finance Minister Boediono's most valuable present to the Indonesian people," and replace it with a savings guarantee scheme modeled on the U.S. Federal Deposit Insurance Corporation (FDIC) for accounts less than Rp100 million. "Changing the Bedclothes," *Tempo*, August 5, 2002.

<sup>91</sup> Indonesian Bank Restructuring Agency (IBRA), Monthly Report no 11, February 2001. <http://www.bppn.go.id> (retrieved October 3, 2002).

<sup>92</sup> Tom Wright and I Made Senatana, "Foreign Creditors Call for Independent APP Management," *Dow Jones Newswire*, June 24, 2002.

<sup>93</sup> Official regulations do prohibit old owners from buying back their non-performing loans at a discount, but most analysts agree that there is little that would prevent such sales if a third party is used. "Sharkbait?" *Tempo*, July 30, 2002.

<sup>94</sup> See also, M. Taufiqurohman, Leanika Tanjung and Rian Suryalibrata, "Party Time for the Rich," *Tempo*, July 23, 2002; Dadan Wijaksana, "Bad Debtors May Benefit from IBRA Loan Auction," *Jakarta Post*, July 15, 2002; Timothy Mapes, "IBRA Unit Halts Sales On Fine From Regulator --- Decision Crimps Indonesia's Reform Plans," *Asia Wall Street Journal*, June 5, 2002.

were then worth only Rp13 trillion; by 2001 the government spent Rp21 trillion and spent another Rp5.4 trillion in the new rights issue in July 2002.<sup>95</sup> Since the government repeatedly recapitalizes BII, the costs continue to increase.

Meanwhile, funds to recapitalize failing banks totaled some U.S.\$64 billion of public debt (borrowed from IMF and domestic bond issues), the largest amount spent for bank bailouts by any country in the world.<sup>96</sup> CLSA (a unit of the Credit Lyonnais financial services group) estimated that Indonesia's public debt amounted to *109.1 percent of its GDP* last year, up from 23 percent in 1996, before the financial crisis struck.<sup>97</sup> It is estimated that in 1999/2000 approximately 44 percent of the state budget was spent on servicing these debts, and that in 2004 this percentage would rise to over 55 percent.<sup>98</sup> In addition to draining the state budget that could be spent on public services, looming maturity of a large proportion of these debts in 2003-2004 threatens further economic crisis. The World Bank warned in a 200 report to foreign governments providing loans to Indonesia that the country's high level of state debt and debt service was "not just a product of the instability that Indonesia has experienced over the last four years – it is now a potential cause of economic instability as well."

### **APP's Over-production and Debt**

The expansion of production capacity of Indonesia's pulp and paper sector during the last decade was funded by debt. Some U.S.\$12 billion was raised through direct capital loans or bond offerings on the North American and European markets-- investments that in many cases proved to be a bad gamble.<sup>99</sup>

Burdened with a debt of some U.S.\$13.9 billion, APP is a prominent example of such reckless speculation. To finance its expanding operations and to continue servicing interest payments on previous debts, APP began accumulating large amounts of foreign debt during the 1990s from a wide array of North American, European, and Asian financial institutions, a strategy that continued to prove successful even after the economic crisis. However, APP's strategy of incurring more debt to service previous debt unraveled in the late 1990s when maturing loans came due and global paper prices plummeted.<sup>100</sup> In addition, APP's debt was largely from offshore sources, and dollar-denominated loans became very expensive to service after the crash of the rupiah. APP needed almost U.S.\$1 billion just to pay the interest on its obligations—an amount equal to half of the annual interest on Indonesia's total national debt in 1997.

Investor enthusiasm soured in March 2001 when APP suspended payments on its debt.<sup>101</sup> On July 5, 2001 APP shares were delisted from the New York Stock Exchange (NYSE).<sup>102</sup> Stock value declined from U.S.\$16.25 a share in September 1997 to just 8 U.S. cents by the close of 2001. Headlines on APP in financial magazines that

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<sup>95</sup> Dadan Wijaksana, "Experts Criticize IBRA's Plan on BII's Rights Issue," *Jakarta Post*, May 15, 2002; and M. Taufiqurohman, Agus S. Riyanto and Rian Suryalibrata, "Red Carpet for Lousy Performers," *Tempo*, May 4, 2002..

<sup>96</sup> U.S.\$13 billion of this liquidity was misallocated by banks for expansion or speculation on the rupiah.

<sup>97</sup> "In Asia, Indonesia Looks Most Vulnerable to Argentine-Style Crisis," *International Herald Tribune*, January 15, 2002.

<sup>98</sup> Bert Hoffmann, Senior Economist at the World Bank Indonesia, "Issues in Indonesia's Budget Management," DFID workshop for the Indonesian Department of Defense, Jakarta, February 26-27, 2000, [http://lnweb18.worldbank.org/eap/eap.nsf/Attachments/BH-022702/\\$File/BH-022702.pdf](http://lnweb18.worldbank.org/eap/eap.nsf/Attachments/BH-022702/$File/BH-022702.pdf) (retrieved November 4, 2002).

<sup>99</sup> Barr, *Banking on Sustainability*.

<sup>100</sup> Ibid. Industry analysts say that the 40 percent price dip in 2000/2001 was in part (together with U.S. economic downturn) due to the "aggressive" overcapacity of competing pulp companies APP and APRIL (*Ausnews Pulp & Paper Yearbook 2001*, Hobart, Tasmania: Ausnews Intelligence Service). See also Prime Sarmiento, "Aggressive Sales Of APP Pulp Drag Market Lower – Sources," *Dow Jones Newswires*, May 4, 2001.

<sup>101</sup> APP never officially filed for bankruptcy, but it stopped all payment on dollar denominated debt and declared a debt moratorium. In April 2001, Standard & Poor gave it a "D" rating, signifying default. See "Asia's Worst Deal," *Business Week*, August 13, 2001.

<sup>102</sup> A company is "delisted," or has its stocks removed from trading on the NYSE, when it falls below a threshold stock price of U.S.\$1 per share. See "NYSE Suspends Trading in Asia Pulp & Paper Company Ltd. and Moves to Remove from the List," <http://www.nyse.com/press/NT00042766.html> (retrieved November 21, 2002) and "NYSE 2001 Fact book," [www.nyse.com/pdfs/2001\\_factbook\\_04.pdf](http://www.nyse.com/pdfs/2001_factbook_04.pdf) (retrieved November 21, 2002).

in October 2000 trumpeted APP's investment potential as "Junk to Gold" shifted to "Asia's Worst Deal" in August 2001.<sup>103</sup>

APP's spectacular implosion demonstrates that significant financial risks were overlooked and continue to be neglected by all involved—by APP, their investors and insurers, the Indonesian regulators, by international donors. Like other embattled pulp and paper operations in Indonesia, these risks include the high potential for social conflict around the mills operations. APP and the other forestry sector conglomerates have overlooked this risk because they had no motivation to do otherwise, assured that they would avoid bearing the majority of that financial and legal responsibility.

### **"Reform" and The Forest Sector**

The fall of Soeharto in May 1998 heralded across-the-board governmental reform (*reformasi*) and the end of "collusion, corruption and nepotism." This sudden and dramatic change in prevailing political rhetoric brought encouraging shifts toward more democratic resource management. Multilateral lending institutions publicly acknowledged the unacceptable burdens that corruption placed on the nation's economy, and indeed blamed the 'crony capitalism' of the Soeharto government for the crisis. Further, some of Indonesia's leading international donors also finally admitted that the Soeharto-era corruption had impoverished forest resources with little return to the communities or the local governments where the forests were felled, and publicly drew attention to the risk to future economic growth this reckless use of forests posed.<sup>104</sup>

With the change of government came public demand for reform and more equal distribution of control over riches produced by resource extraction. Riau was one of the most egregious examples of the imbalance in revenues. The province is one the country's highest contributors to GDP and supplies 60 percent of the nation's oil production, yet has over 40 percent of its population living below the poverty line<sup>105</sup>-- a facts that have fueled a small but vocal secession movement.<sup>106</sup> This pressure for reform, especially following East Timor's referendum,<sup>107</sup> at last forced some changes in the highly centralized state bureaucracy. Transition President B.J. Habibie signed into law administrative and fiscal decentralization (Laws No.22/1999 and 25/1999),<sup>108</sup> which in theory makes the districts

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<sup>103</sup> Abe De Ramos, "From Junk to Gold," *Corporate Finance*, October 2000; and Michael Shari, "Asia's Worst Deal," *Business Week*, August 31, 2001.

<sup>104</sup> See Consultative Group on Indonesia (CGI) meetings 2000- 2002, including the January 2000 Post-CGI meeting hosted by the World Bank entitled "Removing the Constraints," which was specifically devoted to forestry reform; Letter of Intent from Indonesian government to the IMF, January 1999; Ministry of Forestry statement to the CGI, February 1, 2000. Much of the initial impetus for forestry reform following the fall of Soeharto can be attributed to engagement of the IMF and CGI in the forest sector through conditionalities for the U.S.\$43 billion emergency loan and subsequent multilateral and bilateral lending. In addition, the World Bank hosted a Post-CGI seminar on January 26, 2000 entitled "Removing the Constraints," which brought together a broad range of stakeholders from government (including representatives of the ministries of forestry, finance, trade, and planning) as well as representatives from civil society organizations, academic institutions and the bilateral and multilateral donor communities to discuss forest sector reforms. Following the seminar the Indonesian government agreed to create an Inter-Departmental Committee on Forest (IDCF) to formulate a national forest policy and address eight of the most pressing issues discussed at the seminar, including coordinated action against illegal loggers, especially within national parks; downsizing the forest industry to balance demand with legally available wood supply; closure of heavily indebted wood industries under the control of the Indonesian Bank Restructuring Agency (IBRA); and linking debt write-off with capacity reduction. But progress to date on these commitments has been very slow.

<sup>105</sup> "Riau Termiskin di Indonesia," *Riau Pos*, March 10, 1999; and "Pembangunan SDM," *Riau Pos*, April 9, 1999.

<sup>106</sup> "Kedaulatan Riau Dideklarasikan: Riau Merdeka Menyusul," *Riau Pos*, March 16, 1999; and Governor H.E. Saleh Djasit, "A View from the Provinces: Riau," presentation to the U.S.-Indonesian Society, Washington, D.C., September 18, 2001.

<sup>107</sup> A U.N. sponsored referendum on independence from Indonesia was held in August 1999 in which the East Timorese voted overwhelmingly for independence. When the results were announced, loyalist militias, suspected to have been organized and armed by the Indonesian military, began massacring the local population and razing the capital city of Dili. U.N. Peacekeepers finally arrived on September 20, 1999.

<sup>108</sup> First mandated by parliament in 1998 (Tap MPR No XV/MPR/1998 of Fiscal and Administrative Decentralization) following Soeharto's resignation.

essentially self-governing in all but a few key areas.<sup>109</sup> The new laws also empowered districts to issue resource use permits previously issued by central ministries and to receive 15 percent of oil, 30 percent of natural gas, and 80 percent of mining, fishing, and forestry net after-tax revenues from natural resource enterprises within their territories.<sup>110</sup>

But democracy in management to date has been spottily implemented, and some policy changes have actually exacerbated pressure on forests. Intended to provide equity and sustainability, decentralization and “reform” have instead produced a complicated scramble for resources, between not only the central and district administrations, but also among those claiming to represent “local” interests. In addition, new administrative provinces and district have rapidly multiplied, with the total number of provinces growing from 26 to 33, and the number of districts to 390 since decentralization was implemented in January 2001. Riau alone increased its number of districts from six to fifteen. Control over valuable natural resources frequently plays a central role in the redrawing of new administrative boundaries, as officials try to narrow control over resource use and income, for example in South Sulawesi around the INCO nickel mine, in Northern Maluku around a gold mine, the islands off Riau around lucrative industry development on the free trade zone of Batam and sand exports to Singapore.<sup>111</sup> This scenario, set in the context of dysfunctional and corrupt law enforcement and judicial systems, has increased violent struggle to control resources in the countryside.

The decentralization laws were formally implemented beginning January 1, 2001, offering great democratic promise as the first chance since independence (and for some regions since the colonial period) for local administrations to have a say in governing their own affairs. But there was little planning for the ambitious administrative changes that were promised. After 56 years of a centralized state, the massive task of building district administrative infrastructure, developing capacity of civil servants and bureaucracies to manage new resources, and transferring over two million civil servants from central offices to the districts left many local administrations floundering in their new-found authority and responsibility. There is no oversight of local regulations or budgets and many local governments took the opportunity to pass laws that allowed them to levy large taxes on investments, to convert illegal products (including timber harvested from indigenous lands or national parks) into “legal” simply by paying a district tax.<sup>112</sup> National level regulations, such as those for conservation of forest resources were locally dismissed as no longer binding under district autonomy.

The incomplete implementation of reforms has led to much uncertainty and confusion over jurisdictions and has led many in the central government to call for recentralization. In fact, as this report was being prepared, legislation was passed that would re-centralize many aspects of forestry permitting and conservation planning<sup>113</sup> and bills were introduced that would grant the President the power to dissolve local parliaments and repeal local legislation.<sup>114</sup> The reasons for this retrenchment are diverse. Fervent nationalists in government, President Megawati among them, have voiced concern over decentralization as a potential engine of “too much ethnic

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<sup>109</sup> Policies still controlled by the central government are foreign policy, national security, judiciary, fiscal policy, and religion.

<sup>110</sup> Some areas receiving special autonomy packages, such as Papua and Aceh, which will receive a higher percentage (70 percent of oil and gas revenue) in an attempt to quell separatist movements.

<sup>111</sup> Christopher Duncan, “The Aftermath of Civil War,” *Inside Indonesia*, January 2002; and “Menyalip Pesta di Tikungan,” *Gatra*, July 27, 2002.

<sup>112</sup> McCarthy, “Wild Logging.” Another form of laundering illegal wood is for the logging bosses to bribe the police or forestry department to “confiscate” illegal wood, which is then “auctioned off” through a unfair bidding process, allowing the owners to receive all the necessary permits and papers for their illegally harvested wood at a low price. Global Forest Watch, *Indonesia: State of the Forest*.

<sup>113</sup> Governmental Decree PP 34/ 2002 on Forest Planning and Utilization

<sup>114</sup> “Tokoh Riau Tolak Revisi UU Otda,” *Riau Mandiri*, February 5, 2002; “Revisi UU Otda No 22 th 99 Bahayakan Daerah,” *Riau Mandiri*, February 5, 2002,

pride” and a disintegration of national unity.<sup>115</sup> Industry supporters voice concern that the increased taxation and legal uncertainty under decentralization is bad for investment, while environmentalists worry the lack of law enforcement and the need to generate local income will lead to rapid depletion of natural resources. Such critiques stem from the fact that decentralization as implemented often seems to have replaced an opaque and unaccountable central administration in Jakarta with many smaller ones closer to home. To date, decentralization has failed to provide solutions to lack of meaningful political participation (at both the local and national levels) and the persistent absence of meaningful rule of law.

Riau province is a case in point. With its relatively small population (5 million) and its wealth of natural resources, Riau generally is seen as a one of the big “winners” under decentralization. Although some provinces without natural resources have suffered under the new financial responsibilities for their administrations and reduced income from the center, Riau-- now able to access 15 percent of oil and 80 percent of forest revenues, causing annual provincial income in the first year to jump from Rp185 billion (U.S.\$19.9 million) to Rp3.98 trillion--is portrayed by some analysts as “another Brunei.”<sup>116</sup> Indeed, IMF and World Bank data showed “Per Capita Total Revenue Capacity” for Riau as the second highest in the country (behind only East Kalimantan).<sup>117</sup>

But evidence of this new income is hard to come by in Riau’s countryside. The increased income has not yet noticeably improved services or the capacity of local administrations. Decentralization has not yet improved the province’s ruined roads, under-funded schools and hospitals. While investment in natural resource extraction is booming, Human Rights Watch investigators observed simple wood shacks, without electricity or running water, dotting the edges of vast plantations of oil palm and acacia, and line the network of oil pipelines that run throughout the province, sometimes through people’s front yards.

On the other hand, decentralization has had a rapid and significant impact on local forests—and not for the good.<sup>118</sup> Administrative incapacity, a desperate need for funds, and local corruption have led to a sharp increase in issuance of new permits to clear forests. The authority to issue timber extraction licenses and plantation permits has been delegated to regional district heads (*Bupati*), but some confusion remains regarding how large an area the district may license. As a result, many districts are simply permitting all areas, and sometimes giving permits to more than one party. Forestry experts charge that confused jurisdictions and lack of adequate surveying frequently results in overlapping permits and conflicts over who will have control over the forests.<sup>119</sup> In fact, Forest Department data show that the number of licenses approved for forest clearing far exceeds the amount of forest actually designated for conversion, by 2.5 million hectares in Sumatra alone.<sup>120</sup>

In addition, in 2000 the Ministry of Forestry issued a moratorium on “forest conversion” (clear cutting for conversion to plantation) to fulfill requirements to the IMF<sup>121</sup> and as a commitment to other donors at the CGI.<sup>122</sup>

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<sup>115</sup> “Unity in danger, Mega warns,” *Jakarta Post*, October 30, 2001. Indeed, this was the reason that administrative powers under autonomy were given to the district, rather than the provinces, which might be powerful enough and with enough regional ethnic identity to attempt to secede.

<sup>116</sup> Sadanand Dhume, “A Windfall for Riau,” *Far Eastern Economic Review*, February 21, 2002.

<sup>117</sup> “Ehtishad Ahmad and Bert Hofman, “Indonesia: Decentralization—Opportunities and Risks,” IMF and World Bank, Jakarta, March 2000.

<sup>118</sup> Lesley Potter and Simon Badcock, “The Effect of Indonesia’s Decentralization on Forests and Estate Crops: Case Study of Riau Province, the Original Districts of Kampar and Indragiri Hulu,” CIFOR, Bogor, Indonesia, September 18, 2001, [http://www.cifor.cgiar.org/publications/pdf\\_files/Books/Cases percent206-7.pdf](http://www.cifor.cgiar.org/publications/pdf_files/Books/Cases%20percent206-7.pdf) (retrieved November 4, 2002).

<sup>119</sup> Derek Holmes, “Deforestation in Indonesia: A Review of the Situation in 1999,” Jakarta, World Bank, January 2000; H. Kartodihardjo and A. Supriyono, “The Impact of Sectoral Development on Natural Forest Conversion and Degradation: The case of Timber and Tree Crop Plantations in Indonesia,” CIFOR Occasional Paper No. 26 (E).; Global Forest Watch, *Indonesia: The State of the Forest*.

<sup>120</sup> Global Forest Watch, *Indonesia: State of the Forest*.

<sup>121</sup> Memorandum of Financial Policies (MEFP), January 15, 1998, paragraph 50. “To strengthen overall environmental sustainability, the government will draft and establish implementation rules for the new environmental law by March 1998. In addition, government will review and raise stumpage fees, auction concessions, lengthen the concession period, and allow

However, implementation of the moratorium has been complicated by contention between district and central governments over the division of authority over forests. District local officials claim that the moratorium is technically no longer applicable under decentralization as the districts now have regulatory authority over forests, while the Ministry still maintains that the moratorium should be enforced.<sup>123</sup> As a result, the moratorium remains in force but has had little effect on the pace of clear-cutting.

As currently implemented, therefore, decentralization has actually worked against the rhetoric of improved participation and sustainability of resource use. As noted above, many in the central government as well as industry supporters are calling for repeal of many local promulgated laws, the revision of autonomy laws and the re-centralization of many aspects of government, particularly forestry.<sup>124</sup> Those in the provinces tend to portray these moves as “New Order tactics” to repeal decentralization altogether and regain control of valuable resources and economic benefits.<sup>125</sup> How these forces will play out is unclear, but forestry researchers have argued that whether or not Riau’s forests have a future depends in no small extent on the activities of APP and RAPP, whose huge wood demands are seemingly beyond the control of any regional administration, especially one that is new and inexperienced.<sup>126</sup>

In the post-Soeharto period, companies operating in Indonesia have promoted various forms of “community forestry”—including local participation through “outgrower schemes” or “joint ventures”—as the answer for conflict-ridden logging operations. These new reforms offer communities the opportunity to participate in forest enterprise by forming village co-operatives (see Chapter V). These ventures offer the potential for more equitable forest management and in fact have allowed a few segments of the community to receive some benefits from forest extraction. However, the practice has not involved the full recognition of local land rights and has not resolved overlapping claims to forests.<sup>127</sup> In the absence of rights protections and meaningful forms of representation, “community” forestry projects have not necessarily resulted in more equitable participation in forest management or recognition of community land rights. Village headmen and opportunistic middlemen have frequently quietly negotiated private deals with entrepreneurs to sell community land and keep the profits.<sup>128</sup>

In addition, there has been little oversight of the joint projects, as the arrangement seems to rest on the faulty assumption that involvement with (imprecisely defined) “local” people will somehow inherently guarantee

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transferability by June 1998, and will implement performance bonds and reduce land conversion targets to environmentally sustainable levels by the end of 1998.”

<sup>122</sup> The Consultative Group on Indonesia (CGI) as the name suggests, is a consultative body and does not place conditions on the government. However, each individual donor identifies its own conditions for loans. The IMF is a member of the CGI but does not pledge at the CGI as it loans money to the Bank of Indonesia, not to the government.

<sup>123</sup> The districts’ claims have been countered by the recently promulgated Government Decree 34/2002 on Forest Planning and Utilization, which recentralized much of the permitting process and the authority for designation of lands for conservation and protection. However, without effective law enforcement, there will be little way for the central Ministry to reassert its control

<sup>124</sup> Legislation that would grant Presidential powers to dissolve local parliaments was proposed but defeated due to outcry in the provinces. Santi W.E. Soekanto, “Regional autonomy—a double standard set in motion?” *Jakarta Post*, December 27, 2001; and “Autonomy—what Jakarta giveth, Jakarta taketh away,” *Jakarta Post*, December 31, 2001.

<sup>125</sup> Tiarna Siboro and A’an Suryanan, “Councilors reject autonomy revision,” *Jakarta Post*, January 31, 2002; “Daerah Tidak Ingin UU Otda Direvisi,” *Riau Mandiri*, February 6, 2002; “Pemerintah Pusat Ingin Kembali Sistem Sentralisasi,” *Riau Mandiri*, February 7, 2002. The stakes are obviously high, especially in resource-rich provinces, as illustrated by the fistfight that broke out on the national parliament floor during a debate over the role of regional representatives. Bambang Nurbianto, “Brawl brings spotlight on regional representatives faction,” *Jakarta Post*, November 3, 2001.

<sup>126</sup> Potter and Badcock. “The Effect of Indonesia’s Decentralization.”

<sup>127</sup> CIEL and ELSAM, *Whose Resources?*

<sup>128</sup> Reed Wadley, “Community Co-operatives, Illegal Logging, and Regional Autonomy: Empowerment and Impoverishment in the Borderlands of West Kalimantan, Indonesia,” presentation (copy on file at Human Rights Watch) at the conference on Resource Tenure, Forest Management, and Conflict Resolution, Australian National University, Canberra, April 9-11, 2001; McCarthy, “Wild Logging”; “Forests and Regional Autonomy: All in the Hands of the Regents,” *Tempo*, July 24, 2001; and “Land disputes disruptive, confusing in Irian Jaya,” *Jakarta Post*, November 10, 2001.

environmental sustainability and social equity. However, many of these projects have simply repeated the mistakes of decentralization by devolving some opportunity to elites without ensuring any protections, participation, or equity. Without such safeguards, “joint ventures” ultimately may become a convenient means for company and state officials to sidestep responsibility for both sustainable management of forests and social conflicts by claiming it is not their problem. This “decentralization of responsibility” is similar to the wider trend in law enforcement to use “civilian security,” which has led to discipline problems, violence, and an attempt to avoid responsibility for abuses.<sup>129</sup>

### **An Epidemic of Community Protest**

Since the fall of the New Order, local communities that lost their land and have felt excluded from employment opportunities have begun to protest. It is difficult to systematically quantify the cases on a national scale, but estimates from both industry and community activists indicate the scope of the problem. The Indonesian Forest Industry Association (APHI) estimated that 53 logging concessions in Papua, Sulawesi, Sumatra and Kalimantan were forced to stop operations in 2000 due to conflicts with local people.<sup>130</sup> Global Forest Watch surveyed Indonesian newspapers from 1997-98 to estimate that there were some 4000 cases of conflicts between communities and forest industry at that time, concentrated in the areas of logging and conversion to plantation (See Map 4), particularly in the provinces of Riau and Central Kalimantan where this activity is most concentrated.

In another study, activists from The Agrarian Reform Consortium (KPA) compiled reports on attacks on local farmers or activists from nineteen provincial field offices in 1998-1999 to estimate that agrarian conflicts with companies or the state had resulted in 18 deaths, beatings of 190 people, 44 shootings, 12 kidnappings, 775 arrests, 275 houses burnt, 307,109 hectares of local gardens and rice fields burnt, 2578 people terrorized or intimidated, 14 “disappearances”, and one rape. KPA activists used these reports to further estimate that during this period the plantation sector (both forest plantations and estate crops such as oil palm) produce by far the most social conflict with local communities, and have the most frequent involvement of the military or police in intimidation or violence.<sup>131</sup> This assertion is borne out by a separate study, in which the Indonesian environmental organization LATIN compiled reports of conflicts between local communities and forest companies in Kalimantan *alone* to estimate that during 1990- 1999 there were 8741 cases of violence and intimidation of community members in relation to logging concessions, 5757 in relation to pulpwood and timber plantations, 3907 in relation to state-owned plantations, and 405 on oil palm or other estate plantations.<sup>132</sup>

The specific data from these studies cannot be corroborated by Human Rights Watch, but are cited here as an indication that the conflict around forest industry and rural communities is serious, frequent, and geographically widespread.

Protests are particularly common around the pulp and paper industry, and center on very similar complaints throughout the country. Local communities complain that they have suffered from:

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<sup>129</sup> Police-organized militia clashed with student protestors during the 1998 special session of the parliament. “Civilian guards pose threat in Indonesia says rights group,” Human Rights Watch press release, November 10, 1998. These militia have frequently have been accused of violence and extortion against Jakarta street vendors, pedicab drivers, residents of squatter settlements, and recent immigrants from outlying areas who have no Jakarta ID card. “Public furious at Tramtib’s violence, demand changes,” *Jakarta Post*, January 26, 2002. In addition, gangs of thugs attacked communities protesting oil palm plantations in Riau. “Meningkat, Pengungsi dari Tembusai,” *Media Indonesia*, October 28, 1999; and Muhammed Saleh, “Awat Konflik Etnis di Tanah Melayu,” *Forum Keadilan*, Edition 15, July 28, 2002.

<sup>130</sup> Indonesian Forest Industry Association (APHI), “Darurat: Konflik Sosial,” *Majalah Hutan Indonesia* (7): March 2001

<sup>131</sup> Dianto Bachriadi, “Kekerasan dalam Persoalan Agraria dan Relevansi Tututan Dijalankannya Pembaruan Agraria di Indonesia Pasca Orde Baru,” unpublished manuscript (on file at Human Rights Watch), Jakarta, Konsorinum Pembaruan Agraria (KPA), 2000.

<sup>132</sup> “Community Forest System Managements (SHK) in Indonesia,” *Voices from the Forest*, August 2000, <http://www.ntfp.org/voices/voices3/contents3.html> (accessed July 8, 2002).

- Loss of land under intimidation from state security, with no recourse or state response to complaints, while compensation (if any) is paid to corrupt village or district leaders;
- Environmental degradation, including deforestation and pollution or depletion of local water supply;
- Lack of access to employment opportunities, low wages and insecure employment terms;
- Bad faith bargaining during dispute resolution, lack of transparency;
- No access to benefits from resource extraction activities, community development programs undertaken without proper community consultation;
- Violations of rights to freedom of expression, assembly, and association when protests are suppressed, frequently with violence.

As an indication of the scope of community resistance to massive pulp industry in Riau alone, a sample of local newspapers in the last few years illustrates how widespread such actions are throughout the province (see also the following chapter for national examples):

- May 1999: Dispute over timber rights led to a community blockade of Arara Abadi road in Beringin, Siak District. (*Utusan* May 1, 1999). Human Rights Watch interviews with community leaders in Beringin (February 3, 2002) reported that this blockade also resulted in an attack by some 300 club-wielding Arara Abadi security guards:

They chased people who were at the blockade point and threatened to kill everyone. They smashed windows of houses. They beat several people at the post with wooden clubs--One person was beaten in the head until he was bloody, and someone in the crowds of the company employees gave him some first aid. The *Pam Swakarsa* [company militia] were not wearing uniforms, but everyone knew them because they had seen them at the company before. What's more, one of the senior field managers from the camp in Perawang was there directing the action.<sup>133</sup>

- April 1999: Land dispute led to a community blockade of Riau Andalan Pulp and Paper (RAPP) trucks, District Kampar, Langgam. (*Riau Pos*, April 19, 1999).
- August 1999: Land dispute and broken company promises to provide community development led to community blockade of Arara Abadi's road in Kampar District, Palangkalan Kuras. (*Riau Pos*, August 27, 1999).
- June 2000: Land dispute led to community members' illegal harvest of acacia trees planted by Arara Abadi on contested land in Cemerlang, Minas district. (*Riau Pos*, June 3, 2000).
- October 2000: Land dispute led to a community blockade of RAPP logging trucks, in District Kuansing, sector Cerenti (*Pekanbaru Pos*, October 15, 2000).
- July 2001: Land dispute led to community blockade of twenty RAPP trucks in Kuantan Tengah subdistrict, sector Cerenti. (*Riau Pos* July 27, 2001)
- February 2001: Land dispute led Pantiacermin village cooperative to cut timber on land claimed by Arara Abadi. Several hundred of Arara Abadi's company security arrested 60 loggers, who were later released as they were reported to have valid permits. The loggers claim to have been beaten by the security guards. Arara Abadi denied the attack. (*Riau Pos* February 26, 2001).

Such conflicts appear to have increased in frequency with increasing economic pressures, but are by no means new. The same combination of intimidation, military economic intrigue, absence of effective law enforcement, impunity for rights violators, and unchecked industrial expansion that have produced such a volatile mix in Riau have long been present in other regions home to major pulp and paper operations. One infamous example is that of Indorayon (PT Inti Indorayon Utama), a pulp, paper, and rayon mill owned by another giant family

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<sup>133</sup> Human Rights Watch interview with village leader and several other witnesses, Beringin, February 3, 2002.

conglomerate, Raja Garuda Mas.<sup>134</sup> In 1984, Indorayon received the initial license for its Porsea mill in North Sumatra. Community discontent began, as in other contexts, following seizure of community land for the plantation without compensation. The agricultural livelihoods of women were especially affected. On February 1, 1990, ten elderly local women in the village of Sugapa, North Sumatra were arrested and sentenced to six months in prison for destroying plantation eucalyptus trees in order to plant food crops on what they considered to be their ancestral land. Locals claimed that Indorayon had illegally appropriated their land by colluding with local sub-district and village heads, who illegally sold 62 families' land.<sup>135</sup>

Protests arose around further complaints about air and water pollution from the mill, and became increasingly exacerbated until local people began blockading roads to the plant in May 1998. In March 1999, local activists from environmental NGO WALHI who were following the protests closely, reported that the police were called in to quell the protests--seven people were shot by police, one died instantly; 90 were allegedly abducted and tortured or otherwise mistreated, one of whom later died in hospital from injuries, 2 "disappeared" and are presumed dead, five remain blinded or crippled from injuries; 7 had their homes or shops vandalized.<sup>136</sup> Four employees were subsequently kidnapped, 3 of whom were killed.<sup>137</sup> Finally public outcry forced transition President Habibie to close the mill until a transparent audit of its operations and relations with local communities could be conducted.<sup>138</sup>

Although the audit was never completed, the large corporate debt of the conglomerate Raja Garuda Mas has created pressure to reopen the plant. Regional activists have complained, and community protests and Human Rights Watch interviews with private security analysts confirm, that the company has done little to address community complaints, and that more conflict is therefore highly likely.<sup>139</sup> In the past, local communities vowed that if the state forced the reopening of the mill, "Any truck passing will be stoned and maybe burned. This is war."<sup>140</sup> At this writing, Indonesian human rights lawyers reported that Brimob and military had arrested 21 protestors against the plant's reopening and 500 had fled the area, fearing violence.<sup>141</sup>

These brief sketches are intended not to provide a detailed analysis of these specific conflicts but rather to illustrate the national scope and striking similarity in the way these plantations have operated in relation to local communities, the complaints they have engendered in the community, and the protests and violence that has inevitably resulted. This lawlessness lends itself to the intervention of protection rackets and provocateurs, who allegedly incite people to protest or commit vandalism and then demand money from the company (see Chapter

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<sup>134</sup> Indorayon was formerly majority owned by Singapore-based holding company Asia Pacific Resources International Limited (APRIL), but in 1999 APRIL divested its shares in the troubled mill to its parent conglomerate Raja Garuda Mas. See APRIL's website <http://www.april.com.sg/news0712-1998.htm> (retrieved November 25, 2002). Like APP, APRIL is also heavily indebted and also owns a mill in Riau (RAPP) that has been the object of community protests, though not to the degree of APP or Indorayon. Land disputes in Delik village, Riau in 1997, led to clash in which police opened fire on a peaceful demonstration, killing one local farmer. One activist was arrested in the confrontation and jailed for five years for incitement against the government. Marganti Manaloe, *Penjaraku: Ironi Penegakan Hak Asasi* (Pekanbaru, Riau: Opsi, 2001).

<sup>135</sup> "The IIU Case: Pulp and Paper versus the People," *Ekonesia* 4: 2, August 1990.

<sup>136</sup> Wahana Lingkungan Lestari Indonesia (WALHI), "Daftar Korban Kekerasan Aparat Militer Damalm Aksi Menutnut Ditututnya PT IIU, July – November 1998," unpublished document (copy on file at Human Rights Watch), Medan, 1998.

<sup>137</sup> Richard Borsuk, "Toba Pulp to Dismantle Rayon Plant," *Asian Wall Street Journal*, July 5, 2002.

<sup>138</sup> "Government Suspends Indorayon operation," *Jakarta Post*, March 20, 1999.

<sup>139</sup> Human Rights Watch interviews with Northern Sumatra environmental activist, Jakarta, February 19, 2002; with private security expert, Jakarta, February 11, 2002.

<sup>140</sup> Tom Bannikoff, "Old Troubles, New Rules," *AsiaWeek*, November 13, 1998; Apriadi Gunawan, "Indonesian decision to permit Indorayon to reopen sparks protests," *Jakarta Post*, May 29, 2002; and "Over 5000 protest the reopening of Indorayon," *Jakarta Post*, June 11, 2002.

<sup>141</sup> "16 protesters held, 500 flee over Indonesian plan to reopen pulp plant," *Agence France Presse*, November 24, 2002.

VI below).<sup>142</sup> These developments affect not only the general state of law and order and the expanding cycles of violence in Indonesia, but also contribute to crackdowns on activists as “provocateurs” and the suppression of legitimate forms of protest.

There have been many positive changes since the end of Soeharto’s rule that have brought new opportunities for respect for indigenous land rights and equity in participation in forest management, as well as more sound management. However, to date these opportunities have yet to be adequately capitalized upon to bring about meaningful reform. Indeed, the situation in many ways is more dangerous for forest dependent people than ever before.

### **Arara Abadi’s Private Security Arrangements**

Increasing social conflict and failures of law enforcement have made company private security forces a crucial part of maintaining control over operations. Arara Abadi’s private security forces are called *Pam Swakarsa* (*Pasukan Pengamanan Swakarsa*, literally “Voluntary Security Troops”-- although they are paid, not volunteers)<sup>143</sup> or *PamHut* (*Pengamanan Hutan*, literally, “Forest Security”). They are paid company employees, but have close ties to local police. Arara Abadi representatives themselves told Human Rights Watch that *Pam Swakarsa* received training from police. APP has also provided significant in-kind benefits to local police. APP staff told Human Rights Watch that APP had funded the new police station in Perawang (the largest town in the newly established district of Siak, where the Indah Kiat mill is located),<sup>144</sup> and officials from Brimob special mobile police force<sup>145</sup> reported that APP had paid for new Brimob barracks and other facilities in the provincial capital of Pekanbaru.<sup>146</sup> Local police and Brimob periodically patrol together with *Pam Swakarsa* and provide back up.<sup>147</sup>

In the cases in the following chapter, witnesses reported that police were present and did not intervene to stop the attacks. In some cases, police even encouraged the actions of the *Pam Swakarsa*; in one instance, an officer held a gun to one of the protesters’ heads. Arara Abadi Security and Risk Management directors told Human Rights Watch that the *Pam Swakarsa* have no guidelines for the use of force or accountability procedures.<sup>148</sup> This lack of accountability makes the security guards little more than paid thugs. Without accountability or state regulation, it

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<sup>142</sup> Human Rights Watch interviews with private security firms in Jakarta, January 28, 2002, February 11, 2002; in Pekanbaru Riau, February 7, 2002; in Pangkalan Kerinci Riau, February 15, 2002.

<sup>143</sup> *Pam Swakarsa* is a term that came into wide circulation as the name for civilian security units formed by the police to protect special parliamentary sessions in Jakarta, but is now often used generically for civilian security.

<sup>144</sup> Human Rights Watch interviews with Indah Kiat and Arara Abadi field staff, Perawang mill site, February 15, 2002.

<sup>145</sup> Brimob, the Mobile Police Brigade, is the elite police special force trained to mobilize quickly to deal with emergencies and especially mass demonstrations and riots. Although the police were administratively separated from the armed forces in 1999 in an attempt to civilianize the police force, since that time, Brimob has become the military arm of the police and has earned itself a reputation, particularly in Papua and Aceh, as the most brutal security force in the country. Brimob has been implicated in extra-judicial executions, torture, disappearances, and collective punishment in addition to violent suppression of freedoms of expression, assembly and association. See Human Rights Watch, “The War in Aceh,” *A Human Rights Watch Report*, vol. 13 no. 4 (C), August 2001; and “Violence and Political Impasse in Papua,” *A Human Rights Watch Report*, vol. 13 no. 2 (C), July 2001.

<sup>146</sup> Human Rights Watch interview with Brimob Assistant to the Commissioner, Pekanbaru, February 19, 2002.

<sup>147</sup> However, APP officials complained to Human Rights Watch that the police were frequently unresponsive to their requests for assistance. Human Rights Watch interviews with APP and Arara Abadi central staff, Tangerang, February 13, 2002; with APP/Indah Kiat and Arara Abadi field staff, Indah Kiat mill site, Perawang, Riau, February 14, 2002.

<sup>148</sup> Human Rights Watch interviews with Tumpal S. and Rasyim N.A. (Director and Deputy Director of Arara Abadi Security and Risk Management Division), Perawang, Riau, February 14, 2002. Mark Werren (leader of the APP/SMG Sustainability Task Force, and the representative who most often meets with foreign NGOs and journalists) first told Human Rights Watch that the *Pam Swakarsa* were not armed, but when pressed further replied, “Well, maybe they have makeshift batons of some sort.” Rasyim N.A. also initially denied that the *Pam Swakarsa* were armed in any way but when pressed admitted that they carried “only rattan canes for self-defense.” Press photos of Arara Abadi *Pam Swakarsa* (*Riau Pos*, February 6, 2002, p. 17, on file at Human Rights Watch) verify the large clubs that villagers had described.

is unsurprising that these company security forces have been used to attack communities with disputes against the company, and have done so with almost complete impunity.

APP/Sinar Mas Group and Arara Abadi are not unique, however, in these private security arrangements and their association with the police, in their means of seizing local lands, nor in the rising unrest around their operations. Rather, APP is representative of what has been common practice and its effects in the sector as a whole for some time. However, the focus of this report on APP and Arara Abadi is due to the string of organized attacks on communities by persons hired by Arara Abadi, which Human Rights Watch believes is the likely outcome if these practices are left unchecked by the government. Concern is also raised by the inattention to the problem by the company even after widespread public and media attention to the attacks, and the potential for more conflict as APP increases its wood demand and area for plantation.

Neither are the villages investigated for this report exceptional—they come from different areas of Arara Abadi's concession and are of two different indigenous ethnic groups, Sakai and Petalangan Malay. Like many of the villages who found themselves and their gardens enclosed within Arara Abadi's concession, they were intimidated into giving up their land with little or no compensation. When they protested, they were ignored by both the company and the government until they took measures to blockade roads or fell concession trees and were subsequently attacked by company *Pam Swakarsa* security forces. Similar conflicts have occurred not only throughout Riau, but throughout Indonesia. This report illustrates the high costs of misguided national and international polices on forests and the rights of local people.

## V. HUMAN RIGHTS ABUSES

*The Pam Swakarsa were running around swinging their clubs like they had lost their minds (membabi buta). We were terrified, and just ran for our lives.*

—Villager from Mandiangin

This chapter looks at abuses in three communities in two different districts within Riau province— Mandiangin, Angkasa/Belam Merah, and Betung. It begins with firsthand accounts of state intimidation and company deception at the time of the initial land seizures for Arara Abadi plantations, a decade or more ago. It then gives detailed eyewitness and victims' accounts of company militia attacks on these communities in the past two years, after residents became frustrated with state unresponsiveness and began to more assertively press their grievances against the company.

### **Land Seizures and Intimidation by State Security Forces**

Starting in the late 1980s, Arara Abadi, in conjunction with state security forces, used tactics that residents claimed were based on intimidation and deception to gain access to land at minimal cost. Villagers told Human Rights Watch that they were either frightened and gave up their land or they were deceived into thinking that they were only loaning the land to the company for a brief period of time.

The village of Mandiangin (in the Siak district, Minas sub-district) is populated by indigenous Sakai and Malay families,<sup>149</sup> who before the arrival of the plantation made their livelihood by swidden rice farming, tapping rubber

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<sup>149</sup> The Sakai and Malay are both indigenous to the area and villagers say they have long intermarried. It is sometimes difficult to discern a person's Sakai heritage, as many children of mixed marriages sense the stigma attached to Sakai ethnicity as "backward" and are therefore reluctant to admit Sakai roots. Villages are now hemmed in by pulp and oil palm plantations, and since their establishment, Mandiangin has also experienced demographic change as many settlers from other parts of Sumatra and Java came looking for work as day laborers. These migrants provide the company with a captured labor force that can be easily and cheaply managed as they are dependent on the company. In addition, such a labor force can be mobilized against indigenous claims because they aren't tied to land, and are in desperate need of jobs. One village leader estimates the indigenous inhabitants now make up only about 70 of the total 330 households in Mandiangin. Indigenous

(which is coagulated, rolled into sheets and sold), and the collection of forest products, including rattan and various tropical fruits (both for sale and for household use).<sup>150</sup>

Mandiingin residents recall that in the late 1980s Arara Abadi first arrived in their village to announce their plans to establish an acacia plantation on the land where local residents had made their homes and livelihoods for generations. Indigenous leaders report that thousands of hectares of community land were seized under intimidation from armed police and military, and without any compensation.<sup>151</sup> Human Rights Watch interviews with a variety of pulp and paper representatives,<sup>152</sup> police officials,<sup>153</sup> and villagers<sup>154</sup> confirmed that meetings between communities and company managers during the New Order period were routinely “mediated” by local government representatives, or MUSPIKA,<sup>155</sup> including police and military representatives, who came to village meetings wearing their sidearms.

Villagers uniformly report that they felt such “consultations” were intended to intimidate them into accepting the project, particularly because of the presence of state security forces. Under the New Order administration, this type of “consultative consensus” (*musyawarah*) involving the police and military was a standard method of ensuring commercial projects met with no resistance. When asked if they protested when their land was taken away for Arara Abadi pulp plantations, one man replied,

What could we do? Nobody said no to the [security] ‘apparatus’ (*aparat*) in those days. We often heard about people being arrested or just disappearing. So when they came here wearing their guns, we just kept our mouths shut.<sup>156</sup>

In the district of Pelalawan, indigenous Malay villagers fared only slightly better, losing their land through what they describe as a series of deceptions. Villagers report that in 1991, when company representatives first arrived to announce the establishment of a plantation on community land, Arara Abadi told them that the concession was part of a “government program” and that the company would only borrow the land for one rotation (eight years, from planting to harvest). Community members reported that, following the harvest of the trees, the company promised that the land would be returned to community use. Villagers told Human Rights Watch that it was standard practice that compensation was paid only for rubber trees lost to clear the land for acacia trees (but not for land) and that compensation was set at Rp1000-1500/tree (roughly forty U.S. cents at that time). Even this small amount was only paid to a portion of the community. Again, villagers reported being intimidated by the presence of armed police and military so they dared not object during these meetings with company representatives.<sup>157</sup>

One villager described the consequences:

This forest was previously used for farming, hunting, and collecting rattan, fruits, timber from the forest and fishing in the streams. Now the forest is gone, there are no animals to hunt. The

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leaders report that the settlers did not participate in the logging, the blockade, nor were they the subjects of the attacks. Due to limited time and Human Rights Watch intention to interview victims of the attacks, only indigenous residents were interviewed.

<sup>150</sup> In the more distant past, Sakai traditionally did not farm rice, but depended on hunting and gathering forest produce in a large expanse of forest territory.

<sup>151</sup> Human Rights Watch interviews with villagers, Mandiingin, January 24, 2002.

<sup>152</sup> Human Rights Watch interviews with APP/SMG staff, Jakarta, February 13, 2002; with Indah Kiat and Arara Abadi staff, Perawang, Riau, February 14, 2002; with Riau Andalan Pulp and Paper staff, Pangkalan Kerinci, Riau, February 15, 2002.

<sup>153</sup> Human Rights Watch interviews with provincial police officers, Pekanbaru, Riau, February 21, 2002; with provincial special Mobile Brigade Police (Brimob), Landogoday (Assistant to the Commissioner), Pekanbaru, Riau, February 21, 2002.

<sup>154</sup> Human Rights Watch interviews with villagers, Mandiingin, January 24, 2002; Angkasa, January 22, February 17, 2002; Betung January 22, 2002; Beringin February 3, 2002.

<sup>155</sup> *Musyawarah Pimpinan Kecamatan*

<sup>156</sup> Human Rights Watch interviews with villagers, Mandiingin, January 24, 2002.

<sup>157</sup> Human Rights Watch interviews with villagers, Angkasa, January 22, 2002; Betung, January 22, 2002.

streams have no more fish because they are polluted by mud and the chemicals they use on the plantation. Frequently when it rains the river smells of chemicals and a lot of fish die. We use wells now for drinking water...but we had to pay for them ourselves. They have given us nothing.

Now all we can do is work as loggers or day laborers on the logging concessions or plantations near here—it's only unskilled labor. Women get Rp10,000 (U.S.\$1) per day and men get Rp15,000 (\$1.50, for the same work), for 10 hours of work. But they only pay us once a month, and they cut our wages by 10 percent--for 'income tax,' they say...<sup>158</sup>

In addition to their marginalization through the loss of their land and livelihoods, local people rarely were able to secure alternative employment at the plantation and mill. According to villagers, these jobs, even the unskilled labor positions, usually went to the migrants who came looking for work. This left locals with few alternatives. One village leader put it this way:

Only a few people have even one or two hectares left for farming. We have none left to give as inheritance to our children. Many people have migrated to Malaysia to look for work, work as coolies (day laborers) on the oil palm plantations, or try to get jobs at the factory...But they never hire us, they hire mostly people from elsewhere to work even the lowest unskilled jobs because they say we have no training or are uneducated. But they won't train us, so how can we have skills? If we can get work there, it is only the lowest wage jobs. We have no capital to open any small business or a shop and no bank will loan us money.<sup>159</sup>

Even under post-Soeharto "reform" administrations, local people's fears have continued to be well-founded. As this report was being prepared, for example, villagers elsewhere in Riau refused to give up their land to one of APP's suppliers,<sup>160</sup> pulpwood plantation PT Rimba Rokan Lestari, and were subsequently attacked by thugs and had their houses destroyed by uniformed Brimob police and members of an ethnic Malay militia called "Laskar Melayu." On June 27, 2002, Sihombing and Miswan, two men from Muda village (which is composed primarily of ethnic Bataks, immigrants from North Sumatra) in the sub-district of Manau Duri, were returning from the Mandau subdistrict head's office following an unsuccessful negotiation with the company, when they were seized by six unknown men in a car. Sihombing managed to escape, but Miswan was abducted, bound and blind-folded. He was badly beaten, stabbed, and had both his ears cut off before he was left bleeding in a ditch on the plantation. Miswan reported that during his attack his assailants had threatened, "you're from Muda, huh. You think you're really something. We'll finish you off. You all just keep acting up, and one by one, we'll kill you all."<sup>161</sup>

The losses experienced by communities who have their land seized are not just economic, and the fears are not just of violence. One elderly traditional leader who mediates village disputes and considers himself responsible for community well-being in Angkasa, a village bordering the Arara Abadi concession in the district of Pelalawan, expressed his despair for the future well-being of the community. The experience with Arara Abadi has meant not only loss of land but more fundamentally a loss of trust—not only in the company, he said, but in each other, and in their hopes for law and justice:

What will happen to us? We will become just thieves and gangsters and prostitutes. Before, we used *gotong royong* [mutual self help] to assist each other. When people made agreements

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<sup>158</sup> Human Rights Watch interviews with villagers, Mandiangin, January 24, 2002.

<sup>159</sup> Human Rights Watch interviews with villagers, Angkasa, January 22, 2002; February 17, 2002.

<sup>160</sup> Rimba Rokan Lestari is controlled by the large timber company, Surya Dumai, whose 2000 Annual Report (on file at Human Rights Watch) lists Indah Kiat Pulp & Paper as a "purchaser" and Rimba Rokan Lestari as a "related party."

<sup>161</sup> Muhammed Saleh, "Awat Konflik Etnis di Tanah Melayu," *Forum Keadilan*, Edition 15, July 28, 2002.

between one another, we considered it agreed. Now everyone distrusts everyone else, and there is no feeling that law or rights have any meaning.<sup>162</sup>

Given the desperate situation these now-devastated communities find themselves in, their requests are remarkably humble and reasonable. One community leader in Mandiangin asked simply that the company treat them more transparently and fairly:

We want a more honest partnership and communication with the company. It's ok for them to work here. We don't want to ask them to leave. It's not that we don't believe in development. But we want a share. We don't have any way to make a living now because they took all our land-- our inheritance for our children-- and left us with nothing.<sup>163</sup>

### **Protests and Community Action**

Since the fall of Soeharto, rural communities throughout Indonesia have begun to more actively press their claims against companies that have seized local land and destroyed local resources. However, people quickly discovered that little had changed in the responsiveness of government to community grievances. Villagers began to abandon the *demo*, or demonstration, as a form of protest and turned to *aksi*, or community direct action, as the cases below describe.

As APP was increasingly pinched by debt crisis and creditor demands, and plantation field operations faced increasing community demands and resistance to company control over land and timber—actions that the company portrays as criminal—Arara Abadi turned to violent intimidation, or what the company terms “a show of force” in order to “secure” their concession.<sup>164</sup> In what eyewitnesses describe as remarkably similar and well-organized attacks in November 2000 and February 2001, hundreds of Arara Abadi enforcers armed with clubs attacked three villages with disputes against the company, beating scores of residents, injuring nine seriously, and abducting 63. The crowd arrived in company trucks, accompanied by an ambulance and uniformed police. Eyewitnesses reported that known Arara Abadi field managers were present and directing the attack.

Human Rights Watch explicitly sought out APP and Arara Abadi's perspective on these attacks and the company's operations. Human Rights Watch investigators met with APP staff on two occasions, once with senior staff in the central office in Jakarta,<sup>165</sup> once in Perawang with field managers from Indah Kiat and Arara Abadi.<sup>166</sup> While the central staff offered little specific information on the attacks, the field staff in Perawang abruptly cut the meeting short when the discussion turned to specifics related to the attacks and operations of security personnel. However, Arara Abadi staff and security representatives provided Human Rights Watch with a cursory “incident report” (see case studies below for excerpts). No subsequent information was provided, although Human Rights Watch requested clarifications on three separate occasions.<sup>167</sup>

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<sup>162</sup> Human Rights Watch interviews with villagers, Angkasa, January 22, 2002.

<sup>163</sup> Human Rights Watch interviews with villagers, Mandiangin, January 24, 2002.

<sup>164</sup> APP/Sinar Mas Group statement to Human Rights Watch, February 20, 2002 (see Appendix C).

<sup>165</sup> Human Rights Watch interviews with Mark Werren (Director, Sinar Mas Group Forestry Support Audit), Soebardjo (Director Arara Abadi), AK Agarwal (Vice Director Indah Kiat mill), Tangerang, February 13, 2002; with field staff Mulyadi Gani (director, partnership division Arara Abadi), Tumpal S. (director of Arara Abadi's security and risk management division), Rasyim NA (deputy director of security and risk management division), Stephanus Andrianto (Arara Abadi public relations division), Hasan (senior director of the Indah Kiat mill), Yunus (public relations division for the mill), Mr. Hong (technical division from the mill).

<sup>166</sup> February 14, 2002.

<sup>167</sup> March 25, 2002; April 29, 2002; May 20, 2002.

## Mandiangin

Indigenous villagers in Mandiangin lost much of their land as a result of state intervention. Residents, being left with little alternative livelihood, have struggled to regain access to forests and have met with deception, inaction, and violence.

In early 2000, community leaders in Mandiangin negotiated the return of a large section of uncleared land, to be set aside for subsistence community use (in local terminology, this is called making the land “status quo”), with the stipulation that neither side could log it.<sup>168</sup> Local residents report that only a few months afterwards, Arara Abadi started logging anyway. Community leaders went in person to complain to the company and to the sub-district head, but the trees kept falling. Local people said they felt they had few alternatives to stop the logging or to gain access any benefits from rapidly disappearing the forest, so some residents (the descendents of original residents, not the recent migrants) decided they would begin logging themselves in order to get some benefit from the loss of the forest. The company responded quickly to what they labeled as “wood theft” and confiscated the wood. “We complained to the company and the sub-district head,” said one of the village leaders, “but there was no result.” He continued:

So we became hopeless and frustrated because we didn’t know what else to do to get someone to pay attention to us. So (in late October or November 2000) we blocked the road for five days and confiscated some of their trucks. We even kept a list of the ones we had and their license plates, so they couldn’t accuse us later of stealing or damaging the vehicles. We weren’t violent— We let the drivers go and we didn’t break anything or hurt any one. We only wanted to force them to address our problem.<sup>169</sup>

On November 21, 2000, at around 3:00 P.M., local people, including women and children, were still returning home from the mosque after Friday prayers. Some 17 trucks (many of which witnesses recognized as company trucks since they drove past the village several times a day) and an ambulance arrived abruptly in Mandiangin bearing several hundred company employees and at least one known company field manager (Jensen Ko), who eyewitnesses said appeared to be directing the attack. Witnesses say about 200 people wore black uniforms that said “*Pam Swakarsa* PT Arara Abadi” (“Civilian Militia of Arara Abadi Ltd.”), some of whom they recognized as company employees. Some twenty people wore hoods to cover their faces, “like ninja.” Without warning or a word to anyone, the *Pam Swakarsa* began chasing and beating people with wooden clubs and metal pipes. The crowd of company militia also turned over the village guard post, destroyed furniture and smashed windows. One witness recalled, “The *Pam Swakarsa* were just running around swinging their clubs like they had lost their minds [*membabi buta*, literally “like blind pigs”]. We were terrified, and just ran for our lives.”<sup>170</sup>

Some people fled to their houses and locked the doors. Others managed to escape into the woods behind their houses. Those who were caught by the *Pam Swakarsa* were hit on the head or back, or in the face if they tried to defend themselves. One victim, struck on the back of the head as he ran and had to have eight stitches.

Four people were hospitalized with seriously injuries: Teran (age 33), Ramlidan (age 40), Noro (age 23)—all originally from Mandiangin—and M. Jais (age 27), who was only visiting Mandiangin and was not involved in the logging. One witness recounted:

We all ran inside but Jais didn’t make it in time. They caught up to him and he turned to face the *Pam Swakarsa*. They immediately clubbed him in the mouth, knocking out some of his teeth. It

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<sup>168</sup> A copy of this agreement is on file at Human Rights Watch.

<sup>169</sup> Human Rights Watch interviews with villagers, Mandiangin, January 24, 2002. Human Rights Watch has a copy of this list on file.

<sup>170</sup> Human Rights Watch interviews with villagers, Mandiangin, January 24, 2002.

spun his head back and sprayed blood on the wall in front of the house. You can still see it [He takes investigators out front and points to a dark-colored splatter on the wall].<sup>171</sup>

Jais had returned home to a different village and was not available to be interviewed, but his friends who had also witnessed the attack reported that, months afterwards, his face was still disfigured and that he had coughed up blood for weeks. Some forty or fifty others were also assaulted, receiving lesser injuries. According to one person who had been at the scene:

They way they organized it was very strange. The *Pam Swakarsa* would beat people, and then someone else from the mob would come give you a little bit of first aid—but not real, complete first aid—not the kind that could heal you. Then they (the *Pam Swakarsa*) would just shout at you to ‘Run!’ ...and we did, as fast as we could, before they could hit us again. As I was running into the woods I heard someone shooting a gun. I thought I would be shot.<sup>172</sup>

It appears that the *Pam Swakarsa* came to the village expecting to use force: they brought supplies, medical staff, and an ambulance with them. Although no one was wounded by gunshots, victims believed the guns were an indication that police were present, although no one recalled seeing anyone in uniform. As one witness said, “We were too busy running to see where the shots had come from. They fired the shots to frighten us.”<sup>173</sup>

Witnesses recount that they stayed hidden in the woods for several days, terrified that the assailants would return. Some fled to other villages. Some said that they are still afraid to this day when unannounced groups of people arrive in their village. One victim told Human Rights Watch:

Even when your group arrived, my heart began to race because I didn’t know who you were. I thought, ‘What’s going to happen now? Are they coming back to kill us this time?’<sup>174</sup>

Arara Abadi made conflicting statements to Human Rights Watch regarding the attack. In our first contact, directors of Arara Abadi security told us that spontaneous violence occurred because “emotional” employees wished to have their trucks returned. Later, Arara Abadi officials prepared a cursory written “incident report,” apparently in response to our request for their version of events that portrayed the attack on Mandiangan this way:

It was necessary to return security and order to the work area (Block RKT 1999/2000) from illegal logging activity by perpetrators in Mandiangan, which had resulted in the seizure by Mandiangan residents of several company vehicles (± 33 trucks and 2 motorcycles) and 1 computer. To gain the release of the vehicles the company first tried persuasive/educative methods but these were not successful, so an approach that used a little “show of force” was undertaken by the drivers of the impounded trucks. Even this last effort did not produce the physical conflict or violence or destruction of community property, as it has been rumored.<sup>175</sup>

However, this denial that violence took place contradicts the statement made to Human Rights Watch by Arara Abadi’s field representative of security and risk management, “The employees became very emotional—seeing their trucks there and also because the community didn’t want to bargain. Some people got hurt. The company medical officers gave them first aid.”<sup>176</sup>

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<sup>171</sup> Human Rights Watch interviews with villagers, Mandiangan, January 24, 2002.

<sup>172</sup> Human Rights Watch interviews with villagers, Mandiangan, January 24, 2002.

<sup>173</sup> Human Rights Watch interviews with villagers, Mandiangan, January 24, 2002.

<sup>174</sup> Human Rights Watch interviews with villagers, Mandiangan, January 24, 2002.

<sup>175</sup> APP correspondence with Human Rights Watch February 20, 2002.

<sup>176</sup> Human Rights Watch interview with Arara Abadi staff at the Indah Kiat mill site, February 14, 2002.

Arara Abadi's report also stated that local residents had brought charges of wood theft and assault against the company in the district court in Bengkalis but had lost the case. While members of the community interviewed by Human Rights Watch said they made no subsequent settlement with Arara Abadi,<sup>177</sup> security directors for the company said that the dispute had been "settled."<sup>178</sup>

### **Angkasa and Belam Merah**

Like the villagers of Mandiangin, residents of Angkasa and Belam Merah lost their livelihoods when their land was seized, and so negotiated for some of that forest to be returned to their use. And like Mandiangin, local people said they became angry when the agreement was broken and the land was logged without any action by the government. When they attempted, as did the residents of Mandiangin, to secure benefits from the forest they claimed as their own, residents were attacked by the *Pam Swakarsa*, who labeled them "illegal loggers."

After having lost thousands of hectares of land to Arara Abadi in 1991, local villagers in the Pelalawan district claim they had little land left to make their livelihoods. Consequently, in 2000, the adjacent communities of Angkasa and Belam Merah asked that a small parcel of 264 hectares of land—which had been cleared and planted in acacia—be protected for community use and not logged. Indah Kiat and Arara Abadi agreed, and a formal document was signed by all parties and witnessed by a representative from the local police office (Polsec). However, in a move apparently designed to render the document useless, company and police representatives did not print their names beneath their signatures as is routinely done in such documents, and the signatures are illegible.<sup>179</sup>

Some months later, community members report that they noticed "outside contractors," among them agents of the local police, had begun logging the parcel and selling the wood to the Indah Kiat mill. Local people told Human Rights Watch they knew that Indah Kiat was the beneficiary and that police were involved because local police approached a local resident and asked to rent her truck at night to transport wood from the parcel to Indah Kiat's mill.<sup>180</sup>

As in Mandiangin, Angkasa and Belam Merah residents felt that because it seemed impossible to stop the company from logging, community members should also begin logging in order to receive some of the benefits from the forest resources that they claimed as their own. Community leaders said they even notified Arara Abadi of their intention, and it was agreed that the parcel could be logged as long as the wood was sold to Indah Kiat and the profits split evenly, at a price to be set later by Indah Kiat. One villager lamented, "But we were foolish, because we did not demand that they sign a paper. We just considered it agreed."<sup>181</sup>

But the price negotiations stalled, and meanwhile the contractors continued their logging operations on the "status quo" community land. Angry community members decided they would wait no longer and began their own logging operations (likely with an illegal permit bought from a timber middleman), but said they sold the wood

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<sup>177</sup> Human Rights Watch interviews with villagers, Mandiangin, January 24, 2002.

<sup>178</sup> Human Rights Watch interviews Human Rights Watch interviews with APP and Arara Abadi central staff, Tangerang, February 13, 2002.

<sup>179</sup> A copy is on file at Human Rights Watch.

<sup>180</sup> Human Rights Watch interviews with villagers, Angkasa, January 22, February 17, 2002; corroborated by press reports and local NGOs' and parliamentary fact finding missions: "Orang-orang Tersingkir dari Kampungnya," *Kompas*, August 10, 2001; the Anti Violence Coalition (Aliansi Kontra Kerkerasan, ANTRAS), "Laporan Tim Investigasi ANTRAS Terhadap Konflik Antara PT Arara Abadi dengan Masyarakat Betung dan Desa Belam Merah" and "Kronologis Kejadian Penyerbuan *Pam Swakarsa* PT Arara Abadi ke Desa Balam Merah, Angkasa, dan Desa Betung Pada Tanggal 2-3 Pebruauri 2001"; "Laporan Panitia Khusus Dewan Perwakilan Rakyat Daerah Provinsi Riau Tentang Kasus Selat Panjang (Desa Betung, Belam Merah dan Angkasa) dan Arara Abadi" Pekanbaru, June 2001"; Aliansi Peduli Pelalawan (APPEL), *Prahara Abadi? Buku Putih Peristiwa Penyerangan Massal Karyawan Pam Swakarsa PT Arara Abadi* (Pekanbaru, Riau: APPEL, May 2001); Lembaga Adat Petalangan (LAP), *Buku Putih Dosa-dosa PT Arara Abadi Terhadap Masyarakat Petalangan* (Pekanbaru, Riau: LAP, 2001).

<sup>181</sup> Human Rights Watch interviews with villagers Angkasa, January 22, 2002.

instead to Riau Andalan Pulp and Paper (RAPP), the competing mill. RAPP denies this allegation of buying “illegal” wood.<sup>182</sup>

As in Mandiangin, residents reported that Arara Abadi responded harshly to what they perceived as wood theft. On February 2, 2002 at 3:00 p.m., eyewitnesses say that club-wielding Arara Abadi *Pam Swakarsa* and armed Brimob police—also transported in company trucks and accompanied by a company ambulance as they were in the two other cases—arrived at the logging site where roughly 70 community members from Belam Merah and Angkasa were logging. Four known field managers from Arara Abadi (identified as Jensen Ko, Boy, Sitompel, Sembiring) and a fifth unidentified company manager were also present. The *Pam Swakarsa* immediately began chasing and beating the local loggers. The *Pam Swakarsa*, wearing red ties around their heads or arms to identify each other in the mayhem, detained 52 of the local people, while the rest escaped through the forest. The detainees were loaded into the trucks and taken to the plantation base camp, where they were held for several hours. Along the way, the convoy encountered six more locals traveling along the road near Sorek Dua village. These six were also beaten and abducted, although they had nothing to do with the logging.<sup>183</sup>

Victims reported that, at the camp the detainees were beaten again, and their money and personal effects were stolen by the *Pam Swakarsa*. At 9:00 p.m. that evening, they were taken to the Kampar district police office in Bangkinang for interrogation and to be charged with wood theft. Upon interrogation, the six who were uninvolved in the logging were released. Six detainees were seriously injured, with head wounds that were bleeding profusely, swollen faces and broken fingers. But they were not taken to a hospital or offered any first aid.<sup>184</sup>

The remaining 52 detainees were held at various police stations for five days but were not beaten further. Local community leaders and the local NGO APPEL organized a peaceful demonstration at the district head’s office and the district police office in Bangkinan (Kampar district). Some two hundred people were there, mostly from the local community but also a few from APPEL, to press for the release of the detainees. This resulted in Arara Abadi managers<sup>185</sup> writing a letter requesting the release of the detainees.<sup>186</sup> On February 7, 2001 NGO leaders finally secured the detainees’ release.<sup>187</sup>

Arara Abadi denies that there was any force used in the “arrests of illegal loggers”:

PAMHUT AA [Arara Abadi Forest Security], in the process of a routine patrol, surprised a group of community members who were logging acacia on PT AA concession... complete with evidence, among other things, several trucks, acacia logs, and village wood transport documents (SAKR) that included the names of the receiving industry. The 58 illegal loggers, who were from the villages of Belam Merah and Angkasa, were taken along with the evidence seized by PAMHUT AA directly to the Kampar district police office in Bangkinang and processed according to the relevant regulations and it was found that 52 people were implicated in the logging activity. At that time no violence occurred that resulting in serious injury, as it has been rumored.<sup>188</sup>

<sup>182</sup> “RAPP Bantah Beli Kayu Curian,” *Riau Pos*, February 9, 2001.

<sup>183</sup> Human Rights Watch interviews with villagers Angkasa, January 22, 2002; February 17, 2002; corroborated by fact finding investigations by community activist organizations APPEL, *Buku Putih*; ANTRAS, “Laporan Tim Investigasi ANTRAS”; LAP, *Buku Putih*; and the provincial parliament investigation report, “Laporan Panitia Khusus.”

<sup>184</sup> Human Rights Watch interviews with villagers Angkasa, January 22, 2002; February 17, 2002; corroborated by fact finding investigations by community activist organizations APPEL, *Buku Putih*; ANTRAS, “Laporan Tim Investigasi ANTRAS”; LAP, *Buku Putih*; and the provincial parliament investigation report, “Laporan Panitia Khusus.”

<sup>185</sup> Stanley, Jamharil and 3 other Arara Abadi managers.

<sup>186</sup> A copy of this document is on file at Human Rights Watch.

<sup>187</sup> Villagers reported that at this meeting Arara Abadi agreed to split the income from the trees on the status quo area 50/50. They reported that a representative from Arara Abadi community relations department, field managers and representatives from the Jakarta office were all present at this meeting, but there was no written statement.

<sup>188</sup> Statement from Arara Abadi, February 20, 2002 (See Appendix C).

## Betung

The underlying issues of land seizure, deception, and lack of compensation in Betung are similar to the other cases here, and indeed in Indonesia more generally. The method Betung villagers used to gain access to some of the benefits derived from their land was to charge a fee for trucks traveling through their village. Local residents say that although the amount paid by each driver was voluntary there was a “suggested donation” of Rp20,000 (U.S.\$2), but that they were satisfied if they were given Rp5000 (U.S.\$0.50). The important thing, they said, was that each company truck gave something back to the community.<sup>189</sup>

These informal “tolls,” frequently illegal, have become a common form of retribution throughout the country as local people attempt to make their land claims heard or to derive some benefit from the land that was seized from them (see Chapter Three for other examples). One village leader who had participated in establishing the “toll” posts (*ampang*) in Betung said that they wished to recoup money from the company because there was rising bitterness that the community had been excluded from any benefits of the plantation operations and had also never been properly compensated for land lost to the plantation. He expressed the general feeling of anger in the community that every day they watched the logs go by on the road through town, representing money leaving their village. Local leaders said they had notified the sub-district head of their intention to charge a fee from Arara Abadi company trucks for use toward community projects. They reportedly had received permission from the sub-district head to do so, but nevertheless Arara Abadi responded with violent attacks.<sup>190</sup>

Unchecked by the local government, the number of posts soon multiplied. One local man, Ta'in, set up his own post because he complained that he had not been paid for his work in widening the road from Betung to the base camp in Kundur (a salary that would have been Rp600,000/month, or U.S.\$60). Ta'in further alleged that the road expansion had destroyed some of his land and orchards, for which he was never compensated.<sup>191</sup> Eventually, in all there were eleven posts set up along the road for different community causes (for the mosque, young people's groups, the school, and so on), including Ta'in's own post and the community post sanctioned by local government.<sup>192</sup> The government, however, did nothing to prevent these posts from becoming means of extortion, or to control their numbers.

At approximately 1:30 p.m. on February 3, 2001, several hundred *Pam Swakarsa* traveling in twelve company trucks and accompanied by an ambulance attacked five men in the village, beating them severely with wooden clubs and taking them to the plantation camp. Residents believe that some of the victims were deliberately sought out for their involvement in disputes against the company-- one man, forty-year-old Sulin, was hauled from his own bed while he slept; another, Jasa, forty-three years old, was stopped on the road on his way home from Friday prayers. Three others were beaten simply because the crowd of Arara Abadi enforcers encountered them by coincidence. Two friends (Rasjid, thirty-four; Muktar, twenty-one) had the misfortune to be found at the house of a third man sought by the *Pam Swakarsa*. Another man (Ila, twenty) unknowingly tried to flag down the trucks in order to get a ride.<sup>193</sup>

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<sup>189</sup> Human Rights Watch interview with one of the victims, Betung, January 22, 2002.

<sup>190</sup> Human Rights Watch interview with one of the victims, Betung, January 22, 2002.

<sup>191</sup> Human Rights Watch interview with one of the victims, Betung, January 22, 2002; confirmed by fact finding investigations by community activist organizations APPEL, *Buku Putih*; ANTRAS, “Laporan Tim Investigasi ANTRAS”; LAP, *Buku Putih*.

<sup>192</sup> Human Rights Watch interview with one of the victims, Betung, January 22, 2002.

<sup>193</sup> Human Rights Watch interview with one of the victims, Betung, January 22, 2002, corroborated by fact finding investigations by community activist organizations APPEL, *Buku Putih*; LAP, *Buku Putih*; and press reports: “Families flee after attack by pulp and paper company,” *Detik*, February 5, 2001; “Ratusan Karyawan PT Arara Abadi Serbu Desa Betung,” *Riau Pos*, February 5, 2001; “Main Pentung Di Negeri Betung,” *Gatra*, February 17, 2001; “Serbu Desa, PT AA Panen Kecamatan,” *Riau Pos*, February 6, 2001.

As in the other attacks, witnesses reported that the company enforcers wore red strips of cloth tied around their heads and arms (a symbol of war in many places in Indonesia) in order to identify each other; some covered their faces with masks or hoods. There is an unconfirmed report that employees were threatened with being beaten and fired if they did not participate in the attack.<sup>194</sup> Also present were about six men carrying automatic rifles and/or pistols and wearing the boots and trousers of Brimob police special forces. The *Pam Swakarsa* traveled in trucks owned by Arara Abadi, which were already familiar to community members by the license plates and make.

They went first to Ta'in's (forty-three years old) house, where he had set up his own donation post. Although he was not at home, the crowd found Rasyid (thirty three) and Mukhtar (thirty) playing dominoes in his yard. More than ten *Pam Swakarsa* entered the house and began vandalizing it. They shouted, "Ta'in, we'll shoot you if you run!" Not finding Ta'in, the *Pam Swakarsa* turned their anger on Rasyid and Mukhtar and beat them with clubs, punching and kicking them, as the two begged for mercy, then hauled them into one of the trucks and continued on.<sup>195</sup>

They came next to Sulin's house. Although his wife begged them to leave, they burst into the house and dragged him out of his bed where he was having an afternoon nap. They dragged him into the yard where they beat him with clubs, leaving his face bloody and swollen and his eyes black and red. Staggering and bleeding from the blows, he was thrown into a separate truck, separated from the first two victims.<sup>196</sup> One Betung resident reported to Human Rights Watch that after the attack Sulin still had blurred vision and such psychological trauma that he was afraid of strangers and refused to leave his house, sleep, or walk to the latrine alone.<sup>197</sup>

The next victim was Jasa, a local religious leader. As he tried to defend himself, the *Pam Swakarsa* beat him with clubs and their fists, while his assailants repeatedly asked him where they could find Ta'in.<sup>198</sup> Once he was thrown in the truck, Jasa was beaten further, until a man with the style of boots and pants commonly worn by Brimob held a pistol to his head and asked, "Can you withstand this?" Jasa said that many of his assailants seemed drunk and he could smell alcohol on their breath. Beaten until he lost consciousness in the truck, Jasa survived with his eyes and face were swollen; his shirt and sarong were soaked with blood that was pouring from his nose.<sup>199</sup>

About one kilometer from the spot where they had abducted Jasa, the *Pam Swakarsa* encountered Ila (also called Dila) on the side of the road trying to flag a ride for his sister, who was delivering lunch to their father in the field. Without any provocation or warning, the truck stopped and the *Pam Swakarsa* got out and began to beat Ila with their clubs until he was bloody and unconscious. He was also thrown onto a separate truck.<sup>200</sup>

The five men were taken in separate vehicles to the plantation camp in Nilo and then to the district Arara Abadi office in Dundangan. After being there about forty-five minutes, about twenty of the *Pam Swakarsa* drove the men to the district police in Bangkinang. But the police refused to detain the men, because it was clear that they had beaten and were victims, not perpetrators, of a crime. One of the company employees reportedly flagged down a bus to Pekanbaru, and the five men were put on it. When they arrived in Pekanbaru, they went to seek help from a traditional leader who took them to a local hospital and reported to the police.<sup>201</sup>

Though the immediate target of the attack seems to have been those associated with the donation posts on the main road through the village where logging trucks transport wood, three out of the five victims had no

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<sup>194</sup> Human Rights Watch interview with one of the victims, Betung, January 22, 2002.

<sup>195</sup> APPEL, *Buku Putih*; ANTRAS, "Laporan Tim Investigasi ANTRAS"; LAP, *Buku Putih*.

<sup>196</sup> APPEL, *Buku Putih*; ANTRAS, "Laporan Tim Investigasi ANTRAS"; LAP, *Buku Putih*.

<sup>197</sup> Human Rights Watch interview with one of the victims, Betung, January 22, 2002.

<sup>198</sup> Human Rights Watch interview with one of the victims, Betung, January 22, 2002.

<sup>199</sup> APPEL, *Buku Putih*; LAP, *Buku Putih*.

<sup>200</sup> APPEL, *Buku Putih*; LAP, *Buku Putih*.

<sup>201</sup> APPEL, *Buku Putih*; LAP, *Buku Putih*.

connection to those posts. The attack thus served as a more general intimidation of locals making demands on the company.

Arara Abadi described the donation posts as means for collecting illegal taxes on the transport of pulpwood, which they allege had a “negative impact on the income” of the truck drivers. The incident report recounts the attack and company response this way:

Settlement of the problem by means of persuasion/ consultative consensus had been followed, and still the obstructions were still encountered, such that drivers and the field employees became fed up.

At the time of the operation to secure the road (3 Feb 2001), there occurred a spontaneous and accidental clash and violent excess caused by uncontrollable emotion such that several residents (5 people) of Betung fell victim. For all of these victims, represented by Jasa, there has already been a family settlement [an out of court agreement] in the form of heart soothing money, medicine, transport costs, compensation, etc. The demands made by Sulkanain (Ta'in) due to his loss from the destruction of his house were also settled by family means.<sup>202</sup>

In contrast to Mandiangin, the Angkasa/Belam Merah attack, coupled with the Betung attack the following day, provoked a great deal of public attention and outrage. Families of the detainees sought the release of their relatives and were reportedly unable to pay the bond that was set at Rp25 million.<sup>203</sup> Community members, student activists, and members of the Malay traditional leadership wrote formal letters of complaint and held protests at the district head's office, district police station, provincial parliament building, and the governor's office demanding accountability for the attacks in Betung and calling for the immediate release of the fifty two detainees held on illegal logging charges.<sup>204</sup> Activists from the APPEL community organization met with Arara Abadi officials<sup>205</sup> at the Kampar district police station and demanded that charges be dropped.<sup>206</sup> The detainees were finally released on February 8, 2002, after seven days, following a written guarantee provided by Zulmizan, the head of the activist group, but charges against the loggers were not dropped.

Activists continued to pressure for accountability for the assailants, illegal logging charges to be dropped, and for settlement of the underlying land disputes.<sup>207</sup> The activists wrote formal letters to the district head and provincial police, with copies also sent to President Wahid, the national parliament, the Minister of Forestry, The National Human Rights Commission, The Human Rights Organization against Victims of Violence and Disappearance (KONTRAS), Riau's speaker of the provincial parliament, provincial attorney general, provincial police commissioner, provincial military commanders.<sup>208</sup>

Community protests at government offices, pressure from activists, and media attention resulted in the temporary shut down of Arara Abadi operations.<sup>209</sup> While the attention forced some state action, even that has been cursory and has done little to address the injustices that underlie the ongoing conflict. The government officials met with Arara Abadi staff and community leaders, and activists reported that the company agreed to drop charges and

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<sup>202</sup> APP/Sinar Mas Group statement to Human Rights Watch, February 20, 2002 (see Appendix C).

<sup>203</sup> “Polda Didesak Usut Serbuan PT AA,” *Riau Pos*, February 6, 2001.

<sup>204</sup> Human Rights Watch interviews with APPEL activists January 18, 2002; January 19, 2002; January 22, 2002.

<sup>205</sup> Including Vice President Ian Machyar, Didi Harsa, Mulyadi Gani, Stanley, and Dominikus. “Operasional PT AA Dihentikan Sementara,” *Riau Pos*, February 6, 2002.

<sup>206</sup> Human Rights Watch interviews with APPEL activists, Pekanbaru, Riau, January 18, 2002, January 19, 2002, January 22, 2002; and “Belum ada Progres terhadap Tuntutan Kasus PT AA” *Riau Pos*, February 22, 2001.

<sup>207</sup> Human Rights Watch interviews with APPEL activists, Pekanbaru, Riau, January 18, 2002, January 19, 2002, January 22, 2002. “Masyarakat Tuntut Bebaskan 52 Warga,” *Riau Pos*, February 8, 2002. “Himaliri Sesalkan Sengeta PT AA,” *Riau Pos*, February 8, 2002.

<sup>208</sup> “APPEL Persoalkan Operasi PT AA,” *Riau Pos*, February 13, 2002.

<sup>209</sup> “Operasional PT AA Dihentikan Sementara,” *Riau Pos*, February 6, 2002.

suspend operations until land conflicts with surrounding communities could be resolved.<sup>210</sup> This agreement notwithstanding, community members report that no land conflicts were resolved and charges have not been dropped. The company denies ever having agreed to drop the charges, although it does not appear to be pursuing any further legal action against the loggers.<sup>211</sup> Indeed, one village leader reported that the police and company were using the continuing threat of charges to intimidate community members into keeping quiet about the attack and to stop making demands.<sup>212</sup>

### **Company Response: “Peace Treaties” and Payoffs**

Following the attack on Mandiingin there was little public pressure because the incident had not been well publicized. As a result, residents say there has been little noticeable attempt by the company to deal with the dispute or respond to the incident. In contrast, following back-to-back attacks in Betung and Angkasa/Belam Merah, the ensuing public outcry from activists and local communities created considerable pressure for Arara Abadi to address the incidents, which they did in two ways: “traditional peace treaties” and “family settlements.”

In Angkasa/Belam Merah, the company strategy was to hold traditional peace treaties in which each side was to agree that the matter was considered finished. In January 2002, local government, police, and military together with company managers held a “traditional peace ceremony” at the logging site, in which the company paid for an ox that was ritually slaughtered, and company employees apologized to community members from both Angkasa and Belam Merah. In exchange, local residents were asked to state publicly that they considered the matter settled and to promise that they would not make any more demands. In fact, members of the communities told Human Rights Watch they are reluctant to make any more demands related to the attack because the company has not dropped the criminal charges and is using that as insurance against further claims. But residents further said that the land claims and compensation issues that were the cause of the dispute remain unresolved and they intend to continue to press for satisfaction on those points. “They think the ceremony was the end of it all,” said one community member. “But nothing has changed.”<sup>213</sup>

In the Betung matter, the strategy pursued by Arara Abadi was to attempt to bury the issue by making payments to the victims of the beatings in what was termed “family settlements.” Jasa was the primary representative of the victims in meetings with the company and government and was a key witness against the police, as he had a gun held to his head. He was reportedly brought to Jakarta by company officials and offered money and a trip to Mecca to drop demands concerning the case. Jasa subsequently removed himself from the case because he claimed he was weary of being besieged by non-governmental groups trying to advocate on his behalf “but for their purposes.” Following his trip to Jakarta, the company reportedly paid Rp5 million (U.S.\$500) in compensation to each of the five victims.

While an attempt to make use of culturally appropriate methods of dispute resolution and agreement are positive steps, they should not be a substitute for prosecutions, where appropriate, and measures to address the underlying causes of conflict.

### **“Community Development”**

The perception on the part of local residents that Arara Abadi has not adequately met its legal obligations to provide development benefits,<sup>214</sup> has been a consistent source of community bitterness and dispute. These

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<sup>210</sup> A copy of the letter drafted following the meeting is on file at Human Rights Watch.

<sup>211</sup> APP/Sinar Mas Group correspondence with Human Rights Watch, February 20, 2002 (see Appendix C).

<sup>212</sup> Human Rights Watch interviews with villagers, Angkasa, January 22, 2002 and February 17, 2002.

<sup>213</sup> Human Rights Watch interviews with villagers, Angkasa, January 22, 2002. See also “PT AA dan Warga Berdamai,” *Riau Pos*, January 11, 2002.

<sup>214</sup> Decree of the Forestry Minister Numbers 690/1991, 170/1997, and No.610/Kpts/VI/1993 and Decree of Director General of Forest Utilization No.208/Kpts/IV-Set/1993. Since 1991, forest concessionaries have been required by law to contribute to the “general rural wealth and employment opportunities and village infrastructure” of local communities in and around the concession. A “Forest Community Development” plan (*Pembinaan Masyarakat Desa Hutan*) is a required component of the

disputes persist in part due to difficulty substantiating expenditures: at present, there are no systematic and independently audited accounts of where, when, and on what community development money has been spent.

Arara Abadi public relations staff provided Human Rights Watch with records showing that the company donated Rp3.1 billion, or U.S.\$314,000 to community programs for 45 villages in 2001 (programs are said to have included infrastructure, agriculture and small business, education and religion, social, cultural and village administration development). No details were provided regarding specific activities, dates, or recipients of these disbursements, so this figure could not be corroborated. APP did not respond to Human Rights Watch inquiries. The October 2001 AMEC Simons report, "Sustainable Wood Supply Assessment," provides "typical samples" (although no complete budget is provided and the process by which these "samples" were selected was unspecified) of Arara Abadi's Social Action Program expenditures amounting to roughly Rp5,500,000,000 (or U.S.\$550,000) from 1997-2001. The audit further comments that this represents about "10 percent of Arara Abadi's total program committed to date," which would make Arara Abadi's total five year budget some U.S.\$5.5 million. However, budget items were vague and impossible to corroborate: "renovation of schools and mosques, road development, district development loans, animal husbandry, vegetable crop development and management, training local government administration, fisheries and farming improvement."<sup>215</sup> While this amount is a significant expenditure, not only is there no means of corroborating the donations, there are no safeguards in place to ensure that in fact reached the community at all and was not diverted into the pockets of individuals. It should also be born in mind that contributions to community development are a required element of forestry industry operations.<sup>216</sup>

In contrast, one local NGO investigation reported that after a decade of Arara Abadi's operations on 68,000 hectares of community land in Pelalawan district, the affected communities had received only the following donations:

- *Kesuma village*. One thirty meter roll of carpet, twenty copies each of the Koran and Islamic prayer books, two manual typewriters, two wooden cupboards;
- *Betung village*. Honorarium for one teacher in the amount of Rp50,000/month, 10 school scholarships at Rp10,000/month;
- *Bagan Lagu village*. Thirty bags of cement and seven pieces of zinc roofing.<sup>217</sup>

Mandiingin villagers interviewed by Human Rights Watch complained that they have received no community donations of any kind from the company during the thirteen years of its operation on community land. Communities further charged, and local officials confirm,<sup>218</sup> that company promises to provide electricity generators, oil palm seedlings for alternative incomes, or build new schools or mosques frequently were unfulfilled, with no avenue of recourse for the communities.

Community members complain that while little has been offered to the affected communities, community resources that did exist have been damaged by company presence. In one community, for example, thousands of

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company's Forest Exploitation Work Plan (*Rencana Kerja Pengusahaan Hutan/ RKPH*), and without this document, the concessionaires' work plan would not be approved by the Ministry bureaucracy. These programs, called Village Leadership (*Bina Desa*) and Forest Community Development (*Pembangunan Masyarakat Desa Hutan, PMDH*), were most often interpreted by the concessionaires as helping villagers with physical infrastructure development (building or "rehabilitating" mosques, permanent--i.e. non-swidden--agriculture demonstration plots, schools, village administration, etc.). See Rita Lindayati, "The Role of Ideas and Institutions in Outer Islands' Social Forestry Policy Development," in Carol J. Pierce Colfer and Ida Aju Pradnja Resosudarmo, eds., *Which Way Forward: People, Forests and Policymaking in Indonesia* (Washington, D.C.: Resources for the Future, 2002).

<sup>215</sup> AMEC Simmons, "Preliminary Sustainable Wood Supply Assessment," October 12, 2001, p.29.

<sup>216</sup> See note 214 above.

<sup>217</sup> LAP, *Buku Putih*.

<sup>218</sup> Special Provincial Parliament Fact-finding Team report "Laporan Panitia Khusus Dewan Perwakilan Rakyat Daerah Provinsi Riau Tentang Kasus Selat Panjang (Desa Betung, Belam Merah dan Angkasa) dan Arara Abadi," June 2001.

economically valuable honey trees, although legally protected,<sup>219</sup> were destroyed by plantation loggers.<sup>220</sup> While some roads were built by the company, many local roads were ruined by the heavy traffic of company logging trucks, making travel slow and uncomfortable. In the village of Betung, the company used more community land, containing rice farms and rubber orchards, to widen the road to the plantation field camp, and as compensation gave each affected family nothing more than two sheets of zinc roofing.<sup>221</sup> Local residents said it was this final injustice that prompted them to stop waiting for the company to provide them with benefits, and set up their own posts along the road through the village to demand money directly from the plantation trucks.<sup>222</sup>

## VI. THE ROLE AND RESPONSIBILITY OF THE INDONESIAN GOVERNMENT: IMPUNITY

Governments have a right and responsibility to act to counter threats to public order, and companies have the right to protect property and personnel. Human Rights Watch recognizes the illegality of community actions to impound vehicles and blockade roads, as well as the increasingly volatile environment in which these incidents occurred. At the same time, state law enforcement and company security personnel have the responsibility to respect and protect human rights while pursuing the legitimate objective of maintaining security. In order to stem the tide of rural violence, this obligation is especially important in the increasingly emotional and conflict-ridden circumstances prevailing in the Riau countryside.

The violence and social conflict between Arara Abadi and local communities in Riau is not exceptional. Indeed, they are representative of a widespread problem that the state and corporations operating in Indonesia have done little to address. The costs of impunity and longstanding economic conflicts of interest have been the violation of rights of members of local communities, destruction of forests, and the economic and political marginalization of local people—conditions that have produced an epidemic of social conflict in rural Indonesia. State law enforcement that is unable or unwilling to address social conflict has led to the emergence of a variety of civilian "security" groups. Without effective rule of law, these groups have been uncontrolled and unaccountable for rights violations—in the end producing more violence and forest crimes, rather than quelling them. Further, the lawlessness prevailing in the Riau countryside has created an environment in which unscrupulous individuals engage in incitement, extortion, and protection rackets with impunity.

This chapter outlines the complicity of the Indonesian state in its failure to act to address rights abuses against member of forest dependent communities within Arara Abadi's concession, and puts this complicity into a broader national context of impunity that has implications for the rights and security of all in Indonesia.

### **The Indonesian Government's Failure to Prosecute**

Local police were frequently present during attacks by Arara Abadi hired thugs and took no steps to prevent violence, including physical assault, abduction, and other serious mistreatment of local community members. The close involvement of police with Arara Abadi company security in many cases makes them complicit in human rights abuses even when they do not directly participate in the attacks.

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<sup>219</sup> Governor's Decree SK Gub No. 118/IX/1972, September 18, 1972.

<sup>220</sup> These losses especially embittered local residents. One honey tree can reportedly produce one ton of honey every three months, and can be harvested up to four times a year. Under a regime of fines dictated by local customary law, Arara Abadi was fined Rp6.7 See APPEL, *Buku Putih*. Before this fine could be paid, Arara Abadi enforcers attacked Betung. According to Tenas Effendi (the traditional head of the Melayu community of Riau and the head of Kerapatan Majelis Kabupaten) and Zulmizan (the head of APPEL) the attack in Betung was not only intended to shut down the donation posts, but also seemed intended to scare and distract community members from making such a large monetary demand. "Polda Didesak Usut Serbuan PT AA," *Riau Pos*, February 6, 2001.

<sup>221</sup> APPEL, *Buku Putih*.

<sup>222</sup> Human Rights Watch interview with one of the victims, Betung, January 22, 2002.

The government's response to Arara Abadi's systematic attacks on communities has been woefully inadequate. Only after public outcry following the Angkasa/Belam Merah and Betung attacks did the government take any action, holding joint meetings with company staff and community members. The police also arrested two people on minor charges, but this was only two of the hundreds involved in attacks in which there was a police presence. As noted above, the two militiamen were tried for assault, sentenced to one month, and had their sentences suspended for time served.<sup>223</sup> One Arara Abadi field manager, Jensen Ko, whom eyewitnesses identified as directing attacks at both Betung and Angkasa, reportedly fled the country.<sup>224</sup>

The problems have continued even when cases were well publicized. After village leaders in Mandiangin reported the attack by Pam Swakarsa to the local police and the sub-district head without result, they raised the incident with the local media and sympathetic political leaders. Despite coverage in the press<sup>225</sup> and a formal complaint filed by a local lawyer, no serious effort was made by the authorities to investigate the case. Police officials interviewed by Human Rights Watch refused to answer questions regarding the incident. One high-ranking official, who declined to be named, voiced views that indicate the attitude taken by Riau law enforcement officers not only toward investigating these crimes, but towards protecting community welfare more generally, or investigating community members' claims:

People here are lazy... They want to have money but don't want to work. When it was "empty land" (*tanah kosong*) no one complained about compensation. Now that there are acacia and oil palm trees on it, everyone wants compensation.<sup>226</sup>

Police said the matter was considered closed. When questioned about whether the communities were satisfied with the resolution of the problem, a police official told Human Rights Watch they are tired of trying to intervene to settle the problem and made it plain that they had no intention of pursuing the matter further.

The paternalistic attitude toward villagers and the prioritizing of powerful economic interests over human rights remains prevalent today. One police official, for example, told Human Rights Watch that financial considerations took precedence over resolving the conflict:

"Satisfaction"—it's relative. The police are bored with trying to settle this—gathering together community leaders, holding discussions. Investors will not want to come here if you keep bringing up all these problems. Your [Human Rights Watch's] work is very damaging to this province. We have to progress, to develop. To do that, we need more business. We can't have all these communities and NGOs complaining all the time about indigenous rights and human rights violations. We consider this matter settled and closed. Don't drag it all up again. It creates an environment that is 'not conducive' [*tidak kondusif*, unstable, insecure]. Anyway, these are very small matters. They are not human rights violations.<sup>227</sup>

Instead of using the legal system or arbitration to address the land dispute, local authorities and APP/Sinar Mas Group have orchestrated "traditional peace ceremonies" with local communities. However, it is difficult to see how such efforts will be able to provide a lasting resolution to the dispute because the underlying land claims

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<sup>223</sup> Human Rights Watch interviews with villagers in Angkasa and Betung, January 22, 2002; with Yosuf Daeng (legal counsel for Arara Abadi), February 18, 2002; with provincial police and former district police chief, Pekanbaru, Riau, February 19, 2002.

<sup>224</sup> Human Rights Watch interview with villagers, Angkasa January 22, 2002.

<sup>225</sup> "Warga Mandiangin Gugat PT AA Rp2M," *Riau Pos*, November 21, 2000.

<sup>226</sup> Human Rights Interview with a provincial police official, Pekanbaru, Riau, February 19, 2002.

<sup>227</sup> Human Rights Interview with a provincial police official, Pekanbaru, Riau, February 19, 2002.

remain unresolved and, in the Angkasa/Belam Merah case, the charges against the loggers have not been dropped. The conduct of such ceremonies alone only leaves conflicts to fester for reemergence at a later date.<sup>228</sup>

### **The Roots of Impunity: Corruption**

Corruption is one of the main causes of impunity and an important contributor to increasing violence, economic marginalization, and environmental destruction. Corruption is not in itself a human rights violation, but it creates a climate in which impunity and human rights violations thrive. Official tolerance of corruption undermines economic and political security, and, ultimately, the legitimacy of states in the eyes of their citizens, as was the case for Soeharto's New Order. Soeharto's policy of using Indonesia's natural resources and banking system as a means of consolidating political power set up the economic conflicts of interest that have been the death knell of justice and rule of law. In the absence of rule of law, vigilantes and gangs thrive and threaten the rights of local communities as well as corporations. Indonesia is still suffering the effects of this Soeharto-era legacy: despite reform efforts, some of which have been described in this report, corruption remains rampant in Indonesia today.

The first casualty of corruption is freedom of information and the ability to investigate and expose wrongdoing. When government services are for sale, access to information threatens corrupt actors and is therefore kept tightly constrained. State data and statistics in the lucrative resource sectors, for example, on the number of logging permits issued, the names of concessionaires, and the location of licensed plots is extraordinarily difficult to obtain, and frequently is used as a commodity in itself—available for a price. For example, Human Rights Watch was initially denied access to data regarding logging permits by the Pekanbaru provincial forestry office's production department, on the grounds that human rights workers had no need for such information and investigations would only inflame local tensions. When investigators insisted that this was public information to which access could not lawfully be denied, department staff eventually begrudgingly produced a list of numbers. These data (on file at Human Rights Watch), however, appear to be falsified, as they replicated the same permit numbers, exact area and yield in multiple districts. Other attempts by Human Rights Watch to obtain provincial forest data were met with requests for "cigarette money."<sup>229</sup>

Corruption has also led to government failure to protect those who investigate and publicize human rights abuses and environmental crimes. Lack of free information flow, together with impunity, has made journalists, activists, and community members attempting to expose or protest illicit practices the vulnerable targets of threats and violence from paid thugs or state security acting as protectors. For example, during a field investigation of illegal logging trade in Central Kalimantan's Tanjung Puting National Park, activist Ruwindrijarto from the Indonesian environmental group Telapak and Faith Doherty from the U.K.-based Environmental Investigation Agency were kidnapped and beaten by employees and relatives of local parliamentarian and timber baron Abdul Rasyid. Ruwindrijarto had a gun held to his head and was threatened with death if they continued their investigations. After being held for several days, the two were released following pressure from the British Embassy, and they reported their plight to the police. However, to date, even following international attention to the incident, no legal action has been taken and Rasyid continues his timber trade.<sup>230</sup>

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<sup>228</sup> Such approaches to violence are a routine government response and have proven to be poor substitutes for legal accountability for crimes and active dispute resolution. Repeated communal clashes in Kalimantan were followed by such "traditional peace ceremonies" as a matter of practice. But locals say they that rather than resolving the conflict, these government performances were even more infuriating to those involved in the conflict as they were seen as a way of avoiding real action. Human Rights Watch, "Communal violence in West Kalimantan," *A Human Rights Watch Report*, vol. 9 no. 10 (C), December 1, 1997. Communal clashes in West Kalimantan have been a recurring problem, claiming hundreds of lives and displacing thousands.

<sup>229</sup> See also David Brown, "Secrecy in the Indonesian Forest Sector: A Researcher's Experience," in Global Forest Watch, *The State of the Forest: Indonesia*.

<sup>230</sup> Environmental Investigation Agency and Telapak Indonesia, "Illegal Logging in Tanjung Puting National Park," "Timber Trafficking," and "The Final Cut."

In November 2001, Abi Kusno Nachran—a local journalist who had been publishing investigations of suspected timber smuggling by Rasyid and who had provided data to the Minister of Forestry leading to the seizure of three Chinese-owned ships containing 25,000 m<sup>3</sup> of illegal timber—was attacked by machete-wielding thugs. The attackers severed four of his fingers and half of his thumb on one hand and nearly cut off his arm. Nachran had received three death threats prior to this attack, and continued to receive them even while in the hospital recovering from his injuries. Four suspects were detained in the case, but three escaped.<sup>231</sup> After being held for five months, the confiscated logs were released, after a letter was sent to the Foreign Affairs Department by the Head of Police Detectives Corps (*Reserse Polri*) and signed by his deputy, Brig.Gen. Trimada Dani. The letter stated that evidence was lacking on the three captains of the ships, and that there was no evidence that these ships had transported illegal logs. No charges have been filed in relation to the attacks on Nachran or on Doherty and Ruwindrijarto, or in relation to the illegal logging that they were investigating.<sup>232</sup>

In Riau, confidential non-governmental sources reported to Human Rights Watch four separate incidents in which four activists and a journalist who were investigating illegal logging were either threatened or beaten. These sources reported that in late 2001, environmental activists documenting illegal logging in the area of Tesso Nilo Protected Forest were pursued by knife wielding loggers and members of Pemuda Pancasila, a formal militia, organized by the former ruling party Golkar, that has been implicated in a wide variety of gang activity and violence.<sup>233</sup> On a separate occasion on October 16, 2000, a local journalist told activists that, while covering a story on illegal logging in Bukit Tiga Puluh National Park, he was discovered photographing illegal logs. The journalist claimed he was beaten and interrogated by loggers and told if he “wanted to stay alive” he would stop investigating the case. Similarly, in August 2001, a local NGO investigator who was documenting illegal logging in Bukit Tiga Puluh National Park was attacked and beaten, allegedly by three park guards and the head of a local logging operation.<sup>234</sup>

### Dysfunctional Courts

The involvement of lawyers and judges in corruption is devastating to the rule of law. In countries with corrupt police and court systems, there can be no certainty of equality before the law or confidence that any trial is impartial. Government watchdog Indonesia Corruption Watch has documented widespread corruption in the Indonesian courts from the lowest level to the highest judges.<sup>235</sup> Indonesian papers carry stories of “lawyers” who have no law degrees but whose primary qualification, as former members of the military or the political elite, appears to be their ability to influence judges.<sup>236</sup> These findings were confirmed by a review by U.N. Special Rapporteur for Independence of Judges and Lawyers, Param Kumaraswamy, who commented to the press that he was “shocked” by the extent of the corruption.

I didn't realize corruption was so endemic. Practically everyone with whom I discussed the matter admitted the prevalence of corruption in the administration of justice...it seeps right from the police, the prosecutors and to the courts.<sup>237</sup>

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<sup>231</sup> Marianne Kearney, “Timber Trader’s Thugs Did This To Him,” *Straits Times*, March 10, 2001, [http://www.ecologyasia.com/NewsArchives/Mar\\_2002/straitstimes.asia1.com.sg\\_asia\\_story\\_0,1870,107415,00.html](http://www.ecologyasia.com/NewsArchives/Mar_2002/straitstimes.asia1.com.sg_asia_story_0,1870,107415,00.html) (retrieved November 26, 2002).

<sup>232</sup> Environmental Investigation Agency, “Police Ignore Evidence of Illegal Logs,” press release, April 30, 2002.

<sup>233</sup> For more on Pemuda Pancasila, see Loren Ryter, “Pemuda Pancasila: The Last Loyalist Free Men of Soeharto’s New Order?” in Benedict R. O’G. Anderson, ed., *Violence and the State in Soeharto’s Indonesia* (Ithaca, N.Y.: Cornell University Press, 2001).

<sup>234</sup> “Anggota LSM KP2MI Dikeroyoki Jagawana,” *Riau Pos*, August 13, 2001.

<sup>235</sup> Indonesia Corruption Watch, “Lifting the Lid on Indonesia’s Judicial Mafia,” Jakarta, 2002.

<sup>236</sup> Robert Go, “Indonesia’s ‘Instant Lawyers,’” *Straits Times*, June 1, 2002.

<sup>237</sup> “U.N. Condemns Indonesia’s Justice,” *Straits Times*, July 23, 2002. Justice Minister Yusril Ihza Mahendra lashed out against what he portrayed as inappropriate U.N. political attack against the government and president, and said that Indonesia should not pay too much attention to foreign advice on how to reform their government. “Jakarta Minister slams U.N. judiciary investigator,” *Reuters*, July 23, 2002.

Indeed, even former Director General of Forestry Suropto's efforts to get prosecutors to bring charges for corruption in the lucrative forestry sector (including against the Soeharto family), described above, resulted in death threats and the loss of his job, but only one conviction.<sup>238</sup>

### Vigilantes and Militias

Frustrated by a state unresponsive to their complaints and unwilling to protect their well being, many in Indonesia have turned to vigilantism as a means of pursuing so-called "people's justice." Taken to the extreme, these "self-help" efforts frequently result in extra-judicial executions of those suspected of crimes, often with implicit police approval. For example, the police chief in Tangerang, a suburb of Jakarta, admitted that police had not detained anyone involved in a spate of vigilante attacks, saying:

We regret the actions of residents who take the law into their own hands. But such vigilantes bring positive results to our crime-busting efforts...If you were a police officer, what would you do if you found an angry mob beating up a criminal?<sup>239</sup>

Likewise, lack of police capacity or will to adequately protect civilians has led to an explosion of private security forces and state-organized militias. These groups are uniformed, armed with knives and clubs, and are trained by military or police. Nationally, they number in the hundreds of thousands. The militias were justified by then Minister of Defense and Commander of Armed Forces General Wiranto based on Law 20/1982 Concerning Basic Principles of National Defense and Security, which recognizes every citizen's right to defend the state.<sup>240</sup> Among the many formal militias established by the state are:

- Hansip (*Pertahanan Sipil*, Civilian Defense), under the Department of Home Affairs for "total security";<sup>241</sup>
- Wanra (*Pelawanan Rakyat*, People's Resistance), under the military command and ostensibly to control "external threats." Wanra was implicated in the post-referendum murderous riots that leveled East Timor's capital in 1999;<sup>242</sup>
- Kamra (*Keamanan Rakyat*, People's Security), under police command, for domestic conflicts;<sup>243</sup>

<sup>238</sup> Bob Hasan was sentenced to six years in prison for embezzlement of U.S.\$243 million in state funds though a fraudulent aerial mapping survey awarded eleven years ago. "Hasan's sentence triples," *Agence France Presse*, March 16, 2001.

<sup>239</sup> One newspaper reported that a local Jakarta hospital had recorded 103 people being burned to death in vigilante attacks in the first six months of 2000. Joko E.H. Anwar, "Reforms in Jakarta means license to kill," *Jakarta Post*, December 30, 2000. Another reported that nationwide reported deaths in vigilante attacks reached 216 in 2001, but that the actual number could be more than double that number. Emmy Fitri, "Street vigilantism continues," *Jakarta Post*, January 12, 2002. Other officially sanctioned vigilante groups in Central Java have lynched and beheaded strangers suspected of occult or criminal activity. "Lynch mobs rage in East Java after murder suspect's arrest," *Agence France Presse*, October 26, 199; and "Mob lynches four 'ninja' killers," *Straits Times*, October 28, 1998.

<sup>240</sup> Federation of American Scientists Intelligence Report, "Indonesia's Militias," <http://www.fas.org/irp/world/indonesia/militia.htm>, (retrieved October 3, 2002).

<sup>241</sup> The military provides Hansip's training and supplies units with their weaponry. Hansip platoons are established in each village, the members recruited from the village community. The system of Indonesia's National Defense and Security is based on "total people's defense and security" which means that the Armed Forces and the entire people are equally responsible for maintaining national security and defense. The Civil Defense Organization is responsible for matters concerning security and order and has to assist the people in village emergencies. Hansip is under the supervision of the district head and the governor of the province.

<sup>242</sup> Human Rights Watch, "Ban Arms Sales to Indonesia Unless Timor Militias Stopped," press release, August 17, 2000; "East Timor: Suspend Aid Until Militias Brought Under Control," press release, September 1, 1999; "East Timor: Stop Militia Violence," press release, July 6, 1999. See also Brendan Nicholson, "Documents Reveal Indon Terror Link," *The Age*, May 8, 1999.

<sup>243</sup> In late 1998 minister of defense and security General Wiranto proposed the formation of a civilian militia (Ratih) to help maintain order in the country. However, it did not materialize because it did not receive much support from some segments of the national leadership. Instead, Kamra, civilian paramilitary units, were recruited and trained by the Indonesian army to serve in police auxiliary units. Starting in February 1999 the Indonesian Army began training 40,000 unemployed youths as members of a Kamra to assist police. Each member of Kamra trained for at least trained for two weeks at an educational

- *Pam Swakarsa* (Civilian Volunteer Militia), described above;<sup>244</sup>
- Satpol PP (*Satuan Polisi Pramong Praja*), used to quell student demonstrations following the 2002 hike in gasoline prices in Riau;<sup>245</sup> and
- Kotib (*Kota Tertib*, Orderly City), Banpol (*Bantuan Polisi*, Police Assistants), and Potmas (*Potensi Masyarakat*, Public Order Recruits, literally “Community Potential”), used by Jakarta police to evict, harass and assault squatters, unlicensed street vendors, and pedicab drivers, and, ironically, in the city’s “anti-hoodlum campaign.”<sup>246</sup>

In addition, nearly all the major political parties have their own “security brigades” to protect political headquarters and interests<sup>247</sup> (but which also have expanded into “community protection”),<sup>248</sup> along with a number of student “security organizations” formed ostensibly to “secure the political process,” but who in practice are used to assault rival political groups and intimidate legislators. Lack of accountability has meant that these groups have been free to act with impunity.

Such lawlessness has left ample room for the formation and political manipulation of “religious” and “nationalist” militia with the explicit intent of engaging in violent conflict under the guise of “defense,” such as (now disbanded) Laskar Jihad, the Islamic militia involved in protracted religious conflict in Maluku, Poso (Central Sulawesi), and recently in Papua;<sup>249</sup> the Christian militias Laskar Kristus and Black Bats<sup>250</sup> in Maluku and Poso; Satgas Merah Putih in Papua claiming to defend Indonesian nationalism by waging violence against Papuan separatists;<sup>251</sup> the Jakartan gang Betawi Brotherhood Forum that was implicated in attacks on activists protesting the embezzlement of relief funds for flood victims and human rights organizations;<sup>252</sup> and a variety of Islamic vigilante groups who have raided nightclubs in Java to “enforce Islamic laws” but who have also been implicated in protection rackets in these same businesses.<sup>253</sup>

These circumstances have provided fertile ground for cycles of rural violence and, in some cases, ethnic conflict, as in Kalimantan, Papua, Maluku, and Poso. One such case was described in Chapter V above, in which ethnically

institution of the Indonesian Army in camps at military area base regiments, with a subsequent three to four months of training “on the job.” The civilians are armed with shields, batons, and handcuffs and are authorized to make arrests. The regulation used as the legal basis of the force is Presidential Decree No. 5/1978. After being laid off, the Kamra members later threatened to run amok. “Over 1000 Kamra Members Threaten To Run Amok,” *Jakarta Post*, December 19, 2000; “ABRI to start training 40,000 civilian militia,” *Jakarta Post*, December 24, 1998.

<sup>244</sup> The Pam Swakarsa voluntary militia does not have a clear command under civilian or military hierarchy, has no clear legal basis and received little training. In November 1998 ABRI recruited some 125,000 civilians to bolster the defense of the special legislative session preparing for the 1999 elections. Many of the volunteers were recruited from gangs notorious for violence, and were eventually withdrawn after numerous brawls with demonstrators. Panca Nugraha, “Pam Swakarsa—Solution or New Problem?” *Jakarta Post*, January 19, 2002.

<sup>245</sup> “Belum Sehari Dilantik, Lansung Tangani Demonstran,” *Riau Mandiri*, February 3, 2002.

<sup>246</sup> “100 Shanties Demolished in Teluk Gong,” *Jakarta Post*, June 24, 2002. Rendi A. Witular, “Jakarta Begins Door-to-Door ID Card Raids,” *Jakarta Post*, January 23, 2002; “Public furious at Tramtib’s violence, demand changes,” *Jakarta Post*, January 26, 2002. During a campaign to reduce in-migration to Jakarta civilian militias were involved in attacks against those believed to be non-Jakarta residents during house to house checks of Jakarta ID cards.

<sup>247</sup> Ainur R. Sophiaan, “Banser told to dump legacy of militarism, mob politics,” *Jakarta Post*, June 8, 2000; “More Harm than Good,” *Jakarta Post*, May 15, 2000; Derwin Pereira, “Muscle Politics in Indonesia,” *The Straits Times*, March 7, 1999.

<sup>248</sup> Jeremy Wagstaff, “Indonesia’s PDI Takes on Role of Police,” *Asian Wall Street Journal*, May 26, 1999; Vaudine England, “Militias adjust to free market,” *South China Morning Post*, November 11, 2001.

<sup>249</sup> Greg Fealy. “Inside the Laskar Jihad,” *Inside Indonesia*. January 2001.

<sup>250</sup> F.T. McCarthy. “Black Bats Strike Back,” *The Economist*, August 11, 2001.

<sup>251</sup> Michael Richardson, “Rights Activists Accuse Jakarta of Stoking Unrest in Irian Jaya,” *International Herald Tribune*, June 19, 2000.

<sup>252</sup> “Fifteen hospitalized after ‘rent-a-thug’ attack at KomNas Ham,” *Jakarta Post*, March 29, 2002; “Group attacks Indonesian rights protesters, 15 in hospital,” *Agence France-Presse*, March 29, 2002.

<sup>253</sup> “Islam Defenders Front: Rise to Power, Organization and Leadership,” *Laksamana.net*, October 13, 2001, [http://laksamana.net/vnews.cfm?ncat=19&news\\_id=1306](http://laksamana.net/vnews.cfm?ncat=19&news_id=1306) (retrieved November 4, 2002).

Batak communities resisting land seizures by APP's supplier plantation Rimba Rokan Lestari were attacked by "Laskar Melayu," an ethnic Malay gang. One Batak villager was also abducted and mutilated (a second escaped) by unknown thugs and told that his entire village would be killed if they did not cease resistance to the plantation.<sup>254</sup>

One representative of a private security firm offered this telling view of why there was an explosion of thugs-for-hire:

Sure, [the company he provides security for] has a formal contract with the police. But nearly all companies here do. And then the police may hire the Pam Swakarsa thugs. You can't depend on the police to protect you. And you have to understand that some of these mobs cannot be controlled any other way. Sometimes the police have legitimate fears for their own safety and they need help. People don't have confidence in the police to protect them. They are understaffed and under equipped and poorly trained...Buying thugs is effective and it's cheap. You can either pay a trained police officer a bunch of money or you can get a thug for a few hundred rupiah, a bus ride, and a box lunch. Which are you going to choose? Human rights is a Western answer to an Indonesian problem...sure, innocent people do get hurt and there should be some standards, but how is that *ever* going to happen when you have a justice system that doesn't work?<sup>255</sup>

### **Incitement and Extortion**

It is not only communities who suffer in the absence of rule of law, but companies as well. As transparency and accountability decrease, other parties emerge to present themselves as "mediators" in this vacuum.<sup>256</sup> These "mediators" take advantage of the emotionally charged atmosphere and lack of meaningful rule of law to incite violence as a means of extortion against the company. Another member of a private corporate security firm interviewed by Human Rights Watch explained it this way:

Let's say we promise we'll build a mosque or a school or something. What frequently happens is somebody—the *camat* (subdistrict head) or the *bupati* (district head) or someone—says 'just give us the money and we'll build the mosque.' But if we pay them, then the mosque doesn't get built. And then we get blamed for not fulfilling our promises. But if we say, "No. We said we'd build it, not give you the money,"—then they start telling everyone how greedy we are, how we have so much money and won't share any of it. And then the blockades go up. Because the person who wanted to get paid pays someone else—maybe the village headman—to get everyone upset. ...Anyway sometimes the person who 'mediates' these disputes will tell the community to set up a blockade and they will negotiate a payment...it's usually someone from the government—the *camat* or the police. So they go to the company get the settlement, maybe even ask for more than the community wanted, take a big chunk and send everyone home. Problem solved.

When asked if he knew this from personal experience, the security firm official explained:

Oh yes. I have personally seen it happen on more than one occasion. But when the company balks and doesn't want to pay, that's when the violence starts...[S]ometimes [the mediators] pay [community members] to be violent so they can drive up the settlement fee, or maybe the community just keeps their blockade up because they're already all worked up. Then it gets nasty...

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<sup>254</sup> Muhammed Saleh "Awat Konflik Etnis di Tanah Melayu," *Forum Keadilan*, Edition 15, July 28, 2002.

<sup>255</sup> Human Rights Watch interview, private security expert, Jakarta, January 28, 2002.

<sup>256</sup> Human Rights Watch interviews with Arara Abadi staff at the Indah Kiat mill site in Perawang, Riau, February 14, 2002.

This incitement increasingly involves gang networks that take advantage of the poor law enforcement.<sup>257</sup> The increasing role of extortionist mediators is obviously counterproductive to the cause of settling disputes and is increasingly dangerous to both the company and the local communities involved in the dispute. These false mediators are also dangerous to genuine NGO activists and community organizers, who are often portrayed by government and corporations as just such “provocateurs.”

The Indonesian state has failed to act to address rights concerns around Arara Abadi’s plantations and has further created an atmosphere of lawlessness and impunity that threatens stability and the rights of all residents of Indonesia, managers of corporations as well as communities. But when justice is for sale, it is the impoverished rural communities who are the most vulnerable, with little protection from violence and no legal remedy when the land and resources on which they depend for their livelihood are expropriated by the powerful.

## VII. INDIGENOUS LAND RIGHTS

*What could we do? Nobody said no to the [security] ‘apparatus’ (aparatus) in those days. We often heard about people being arrested or just disappearing. So when they came here wearing their guns, we just kept our mouths shut.*

—Villager from Mandigangin

Indigenous Malay and Sakai communities have had vast areas of constitutionally protected customary land seized for Arara Abadi’s pulp plantations, without due process and under intimidation by state actors. These seizures, although viewed by company representatives as the legal exercise of the rights granted to them by the state, were in violation of both international standards and constitutional provisions for indigenous property rights. Furthermore, the issuance of Arara Abadi’s concession is based on a flawed interpretation of “unowned land” that unlawfully permitted the designation of indigenous land as “state forest.” This fundamental problem of indigenous lands that have been inappropriately classified as “state forest” is one that must be addressed in order to stem the rising tide of violence around forest operations as well as to bring security to this economically important industry.

### **Indigenous Property Rights and International Law**

Governments are entitled to confiscate land for public purposes, if done according to law, with public participation, due process and adequate compensation. Indonesia’s designation of huge tracts of land as unowned and the subsequent transfer of land to business interests ignored pre-existing indigenous rights specifically recognized by the Constitution. Article 18 of the 1945 Constitution states: “The State of the Republic of Indonesia respect the status of self-governing villages (*Zelfbesturende landschappen*) and native communities (*volksgemeenschappen*) and all the state regulations concerning them shall heed the original hereditary rights (*hak-hak asal-usul*) of these areas.”

The Indonesian government has pursued policies on forest classification and use that violated constitutionally protected indigenous land rights and disadvantaged local communities in land ownership and their ability to pursue adequate livelihoods. Among those deeply affected have been the Sakai and Melayu indigenous people of Riau.

Property rights are protected by international law. The Universal Declaration of Human Rights, which is widely recognized as customary international law, states that “[e]veryone has the right to own property alone as well as in association with others.” Furthermore, “[n]o one shall be arbitrarily deprived of his property.”<sup>258</sup>

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<sup>257</sup> Human Rights Watch interviews with staff of various private security firms working in Riau and elsewhere in Indonesia, January 28, 2002, February 3, 2002, February 7, 2002, February 11, 2002, February 15, 2002.

<sup>258</sup> Universal Declaration of Human Rights, Article 17(2).

Indigenous land and resource rights under international law have been informed by contemporary understandings of cultural integrity and self-determination.<sup>259</sup> The U.N. Committee on the Elimination of Racial Discrimination in its General Recommendation on Indigenous Peoples, calls upon states parties to:

recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.<sup>260</sup>

The relationship between indigenous peoples and land and its legal implications is developed in the International Labor Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. ILO Convention No. 169 provides that governments shall respect the special importance for the cultures and spiritual values of indigenous peoples of their relationship with the lands they occupy or otherwise use.<sup>261</sup> Fundamental is the idea that indigenous peoples, through their traditional means of occupancy and use, are entitled to a continuing relationship with their land and its resources.<sup>262</sup>

Although Indonesia is not a party to ILO Convention No. 169, it provides important guidelines for addressing the rights of indigenous peoples to the land<sup>263</sup> and their “use, management and conservation” of their natural resources.<sup>264</sup> Article 14 states that:

The rights of ownership and possession of [indigenous peoples] over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.<sup>265</sup>

ILO Convention No. 169 calls upon governments to take steps as necessary to identify the lands of indigenous peoples and to guarantee effective protection of their rights of ownership and possession. Governments should also establish adequate procedures within the national legal system to resolve land claims by the peoples concerned.<sup>266</sup> Indigenous people must be consulted in development plans that will affect them and their lands directly.<sup>267</sup>

Convention No. 169 permits the relocation of indigenous peoples from the lands they occupy only when necessary and as an exceptional measure. Such a relocation must take place with “their free and informed consent” or, when their consent cannot be obtained, “only following appropriate procedures established by

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<sup>259</sup> See S. James Anaya, *Indigenous Peoples in International Law* (Oxford University Press: New York, 1996), p. 104-07.

<sup>260</sup> Indonesia has been a party to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) since 1999. Committee on the Elimination of Racial Discrimination, General Recommendation XXIII on Indigenous Peoples (Fifty-first session, 1997) U.N. Doc. A/52/18, annex V.

<sup>261</sup> Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, adopted June 27, 1989, 76<sup>th</sup> Session of the General Conference of the ILO, entry into force, Sept. 5, 1991, Art. 13(1).

<sup>262</sup> See Anaya, *Indigenous Peoples*, p. 106.

<sup>263</sup> ILO Convention No. 169, Art. 14.

<sup>264</sup> *Ibid.*, Art. 15.

<sup>265</sup> *Ibid.*, Art. 14(1).

<sup>266</sup> *Ibid.*, Art. 14(2)-(3).

<sup>267</sup> *Ibid.*, Article 7 (1) states, “the peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use...In addition, they shall participate in the formulation, implementation and evaluation of plans and programs for national and regional development which may affect them directly.”

national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.”<sup>268</sup> Those relocated are to receive full compensation for loss or injury. As soon as the grounds for the relocation ceases, indigenous peoples are entitled to return to their traditional lands. When this is not possible, they are to be provided with “lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development,” or compensation as they choose.<sup>269</sup>

Much of the current conflict over land rights in Indonesia, particularly with respect to indigenous communities, can be traced to Indonesian government seizures of constitutionally protected land. But this failure of the government to act in accordance with basic rights is not merely an historical wrong left unresolved. Despite greater international attention to the special rights of indigenous people to customary land and resource management rights, such abuses continue in the present. This is because of a failure by the government to create a mechanism whereby constitutionally protected indigenous land rights could be protected. During the New Order, “state forest” was designated on land that was untitled, yet there is no means by which land used by indigenous people can be titled or otherwise formally and legally recognized. The establishment of such a mechanism is a key element to addressing the systemic rural conflicts around commercial forestry operations, as well as other industries that operate on traditionally claimed land.

Further, land seizures were not only illegal according to international standards of indigenous rights and due process, but according to Indonesia’s own national law. Land seizures by Arara Abadi, like other commercial forest operations, took place based on the premise that, as state forest, concession rights could be legally granted by the state to corporate entities, while in fact the designation as “state forest” was in most cases unlawful as it violated basic forest regulations. Government data reveals that approximately two-thirds of the area the Department of Forestry claims as “state forest zone” has yet to be legally gazetted and is still unclassified. As a result, by the government’s own admission, only 68 percent of what the ministry considers state forest is legally under its putative jurisdiction.<sup>270</sup> Further, the 1999 Revised Forestry Law and its implementing regulations call into question the legality of even the remaining gazetted land: the new laws require that all local communities be informed of the creation of state forest in their village territories, and that community leaders must sign documents saying they were informed and that there were *no outstanding rights* to the area.<sup>271</sup> However, information about which areas have been gazetted is unavailable to local communities and it is widely known that in the past, most areas were gazetted by the Ministry of Forestry in the absence of community consent.<sup>272</sup> Finally, the 1999 Revised Basic Forest Law specifically defines state forest as “forest unencumbered by *land rights*,” and not “*untitled land*.”<sup>273</sup> Members of indigenous communities often have rights even when they currently lack legal title. Therefore, only a tiny fraction of land classified as state forest actually legally qualifies as such. A reassessment of State Forest classifications offers a critical entry point for resolving persistent conflicts between local communities, the government, and concessionaires.

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<sup>268</sup> Ibid., Art. 16.

<sup>269</sup> Ibid., Art. 16.

<sup>270</sup> The legal gazettement of the State Forest Zone is contingent on notification units (BATB) being signed by the Minister of Forestry. As of February 1999, the Ministry’s own Forest Inventory and Land Use Planning Unit (*Inventarisasi dan Tata Guna Hutan*, INTAG) documented that of the 2531 units identified during the 1984 classification process, only 1719 units have been signed, leaving 812 units still legally unclassified. Direktorat Inventarisasi dan Tata Guna Hutan (INTAG), unpublished internal progress report, cited in Chip Fay and Martua Sirait, “Getting the Boundaries Right: Indonesia’s Urgent Need to Redefine its Forest Estate,” unpublished manuscript, International Center for Agroforestry Research (ICRAF), Bogor, Indonesia, 2001, p.11.

<sup>271</sup> Ministerial Decree No 32/Kpts-II/2001 on the Criteria and Standards for Forest Area Classification.

<sup>272</sup> Chip Fay and Martua Sirait, “Getting the Boundaries Right.”

<sup>273</sup> Revised Basic Forestry Law, Article 1, Section 4; also Ministry of Forestry and Estate Crops Decree (SK) No. 32/2000, Article 5, Section 2, Paragraph b (emphasis added). The article does not use the word *hak milik*, which specifically indicates “ownership rights” (commonly interpreted to be equivalent to individual freehold property titles), but rather an unqualified *hak atas tanah*, which refers to the broader idea of “land rights.”

According to APP/Sinar Mas Group, the surrender of land to Arara Abadi by local communities took place voluntarily following consultation with local communities.<sup>274</sup> But mere “consultation” with local community members is not sufficient to satisfy the legal standards outlined above. As they have been most commonly undertaken in Indonesia, such “consultations” more closely resembled notifications, as they routinely occurred under intimidation, with an unrepresentative group of community members, and with no meaningful process for addressing dissent or negotiation of terms.

## VIII. THE ROLE AND RESPONSIBILITY OF ARARA ABADI, APP, AND THE SINAR MAS GROUP

Corporations are not directly regulated by international human rights law. However, it is widely recognized that corporations do have a responsibility to uphold human rights, environmental, and other standards during the course of their operations. The proliferation internationally of voluntary principles and codes of conduct reflects this trend. Among these agreements are: the International Labor Organization’s Tripartite Declaration of Principles for Multinational and Social Policy, the U.N. Global Compact, and the joint U.S. State Department and U.K. Foreign Office Voluntary Principles on Security and Human Rights.

Human Rights Watch believes that corporations have a clear responsibility to avoid complicity in human rights violations. Complicity occurs in several circumstances. First, corporations may themselves be solely responsible for acts of violence or other abuses that government authorities fail to address, constituting human rights abuse by state omission and corporate commission. Second, corporate actors may facilitate or directly participate in abuses alongside government agents, as when they rely on state or state-controlled security forces that commit human rights violations that benefit the company. Third, corporate actors, though not themselves involved in abuses, may benefit from the failure of government to enforce human rights standards, as they do, for example, when military or police acting as company security have violently quelled local protests.

Corporations have a responsibility to ensure that land acquisition takes place in a manner that complies with the law and that the affected communities are adequately consulted and compensated. To the extent that Arara Abadi obtained land without regard for indigenous land rights and other rights held by members of local communities, its actions violated international standards. Moreover, according to local residents, at the time of the initial land seizures Arara Abadi representatives misled a number of local communities about the scope of their operations, were unresponsive to community concerns, and Arara Abadi ultimately benefited from organized violence by their own personnel against local people who protested. Arara Abadi has also failed to provide information that would enable monitors to determine whether it has fulfilled the legal requirement that it contribute to surrounding community development and welfare.<sup>275</sup>

Arara Abadi and APP’s Indah Kiat mill are separate corporate entities. However, they are affiliates held by Sinar Mas Group, which has a fundamental obligation to see that its employees are not complicit in human rights abuses. Furthermore, Human Rights Watch believes that corporate entities that enter into contractual relationships with supplier companies have an obligation to demand and ensure that these suppliers also respect human rights. APP and Indah Kiat, therefore, in Human Rights Watch’s view, have a responsibility to ensure respect for human rights in the workplaces of their fiber suppliers and are complicit in these abuses when they fail to do so, particularly when APP/Indah Kiat directly benefits from these abuses.

Even though the most recent attacks created negative publicity and NGO pressure, APP/Sinar Mas Group has made little effort to ensure that human rights protections are in place. This raises serious concerns not only about

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<sup>274</sup> Human Rights Watch interview with Mark Werren (Director, Sinar Mas Group Forestry Support Audit), Jakarta, February 13, 2002.

<sup>275</sup> Decree of the Forestry Minister Numbers 690/1991, 170/1997, and No.610/Kpts/VI/1993 and Decree of Director General of Forest Utilization No.208/Kpts/IV-Set/1993. See note 213.

their present operations, but about the possibility of even wider human rights abuses given the expansion of operations currently in progress.

### **Arara Abadi's Company Security**

The handling of company security by Arara Abadi raises important human rights concerns. Although there are no binding human rights standards for corporations or the conduct of company security, the Voluntary Principles on Security and Human Rights in the Extractive Industries ("Voluntary Principles," see Appendix A) provide useful guidance into what is considered appropriate conduct by companies. These principles were developed by the governments of the United States and United Kingdom, several of the world's largest oil and mining companies, and human rights organizations, including Human Rights Watch. The Voluntary Principles recognize that adequate assessment of risk in the company's operating environment is "critical to the security of personnel, local communities and assets; the success of the Company's short and long-term operations; and to the promotion and protection of human rights." Among other things, this assessment should include consideration of the potential for violence; the human rights records of state security; rule of law and the capacity of the local prosecuting authority and judiciary to hold accountable those responsible for human rights abuses; and conflict analysis to identify and understand the root causes and nature of local conflicts and the potential for future conflicts.

APP and Arara Abadi have not signed the Voluntary Principles because sponsors of the document to date have not involved the pulp and paper industry. The forest industry, however, is an extractive industry and, as such, the principles provide relevant and useful guidance.

As detailed in this report, the companies have not taken actions necessary to protect the rights of members of local communities and, indeed, its actions have in many respects undermined the security of such communities. Human Rights Watch believes that APP and its sister company Arara Abadi have been complicit in human rights abuses. Arara Abadi benefited from attacks committed by its own employees acting as private vigilante forces. They also benefited from state security forces that intimidated, harassed, and assaulted villagers who opposed the company's operations and its acquisition of land.

The Voluntary Principles lay out guidelines for the conduct of private security personnel that include specific policies regarding respect for human rights and adherence to standards of conduct consistent with U.N. Principles on the Use of Force and Firearms by Law Enforcement Officials and the U.N. Code of Conduct for Law Enforcement Officials. Principles particularly relevant to the APP/Sinar Mas Group case include the following:

Private security should have policies regarding appropriate conduct and the local use of force (e.g., rules of engagement). Practice under these policies should be capable of being monitored by Companies or, where appropriate, by independent third parties. Such monitoring should encompass detailed investigations into allegations of abusive or unlawful acts; the availability of disciplinary measures sufficient to prevent and deter; and procedures for reporting allegations to relevant local law enforcement authorities when appropriate.

All allegations of human rights abuses by private security should be recorded. Credible allegations should be properly investigated. In those cases where allegations against private security providers are forwarded to the relevant law enforcement authorities, companies should actively monitor the status of investigations and press for their proper resolution.

Human Rights Watch recognizes the legitimate role of company security in protecting company property and personnel, but such security forces must act in accordance with local laws and regulations. Arara Abadi representatives told Human Rights Watch that it had no performance standards, no guidelines for the use of force, no accountability mechanisms in place, and that no investigation into those responsible for the attacks had been

conducted, as they were “unaware of who had been present at the time.”<sup>276</sup> In addition, an Arara Abadi representative told Human Rights Watch that there were no internal or external reports filed following the attacks.<sup>277</sup>

While weaknesses in Indonesian law and law enforcement can mean that rights violators pay little or no price for their actions, Human Rights Watch believes that corporations should not seek advantage in such shortcomings. Arara Abadi, for example, should report attacks occurring on its concessions, including those involving company personnel, to the relevant authorities and press for proper investigations to identify the perpetrators of abuses.

Although it has been a year or more since the attacks on communities described in this report, at this writing Arara Abadi still had not implemented performance standards for its security operations and personnel. Although Arara Abadi asserts that its employees acted spontaneously in each of the attacks,<sup>278</sup> it took no action to investigate the incidents, let alone hold accountable those responsible. Nor did it take any corrective measures to strengthen its internal safeguards that could prevent future problems.

### **Land Seizures and Joint Ventures**

Land rights, central to the livelihoods and culture of forest dependent peoples, are at the core of community grievances against Arara Abadi. Human Rights Watch believes that corporations have a responsibility to uphold these rights and to see that their suppliers do so as well. Land rights are of pressing relevance not only because of continued questions concerning the legality and legitimacy of the processes by which Arara Abadi obtained its concessions during the Soeharto era, but also because APP/Sinar Mas Group has publicly announced its intention to dramatically expand its operations in the next five years. At present there is no clear commitment that local rights will be adequately protected as these expansions go forward.

APP/ Sinar Mas Group currently holds concessions for 500,000 hectares in Riau and Jambi provinces.<sup>279</sup> But this large area has proven insufficient, in part because of the rapid increase in fiber demand for expanding production capacity. In addition, APP reports that only about 50 percent of the current concession was available for conversion to plantation due to land claims “and other problems.”<sup>280</sup> As noted above APP currently plans to double the area of plantation by 2007 through the use of “joint ventures” with community cooperatives and companies already holding permits, such as oil palm plantations, logging concessions, or other pulpwood plantations.

### **Audits and ISO Certification: No Guaranteed Protection of Rights**

APP/Sinar Mas Group often points to its environmental certifications and its recent “Sustainable Wood Supply Assessment” as evidence of its sound environmental and social performance. In particular, APP/Sinar Mas Group representatives point to ISO 9001 and ISO 14001 certifications as indications that it has received independent verification of its sound environmental and social record and as evidence of continual improvement in its practices.<sup>281</sup> Financial analysts by and large seem to tacitly accept this argument and have informed Human Rights Watch that investors and analysts normally assume, based on these external certifications, that there is no cause for concern over the company’s environmental or social impacts. One analyst said bluntly: “In order to be considered credible by many in the financial community, a report of [human rights violations] would have to explain how this could happen with these certificates in place.”<sup>282</sup>

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<sup>276</sup> Human Rights Watch interview with Mulyadi Gani, Maj. Gen. (Ret.) Tumpal S., and Rasyim N.A., Perawang, February 14, 2002; with Mark Werren, Jakarta, February 13, 2002.

<sup>277</sup> Human Rights Watch interview with Mulyadi Gani (Field Director, Joint Ventures Division, Arara Abadi), Perawang, February 14, 2002.

<sup>278</sup> APP/Sinar Mas Group communication to Human Rights Watch February 21, 2002.

<sup>279</sup> Human Rights Watch interview with Mark Werren, Jakarta, February 13, 2002.

<sup>280</sup> Ibid.

<sup>281</sup> Ibid.; and Human Rights Watch interview with Indah Kiat and Arara Abadi staff, Perawang, February 14, 2002.

<sup>282</sup> Human Rights Watch telephone interview with Singapore-based financial analyst, September 16, 2002.

Such statements reveal the widespread misunderstandings of the significance of ISO certification. ISO certification is designed to rationalize international trade by defining technical specifications and guidelines to ensure materials, products, and processes are applicable worldwide.<sup>283</sup> It is not designed to provide any other standards or criteria of performance. ISO 9000 series certificates are concerned with product quality control, and, as such, are not in any way relevant to either environmental or social impacts.

ISO 14001 certification is designed to verify that the organization has established an environmental management system to identify, measure, and monitor these environmental impacts to assist companies in continual improvement of these impacts. ISO 14001 does not set requirements for environmental performance; these are set internally by the company.<sup>284</sup> Nor does ISO 14001 verify that these internal objectives are met, only that there is an internal measurement and tracking system in place. Therefore, ISO 14001 certification is an indicator of internally generated management plans but is an inappropriate indicator of a company's actual environmental impact. Such certification is in no way an indication of social impact, as it does not have any required social component.

Finally, copies of these certification provided by APP/Sinar Mas Group to Human Rights Watch indicate that it is the mill—and not the plantations—that received these certifications, and they therefore have no relevance in assessing the environmental, social, and human rights impacts of Arara Abadi's forestry operations.

### **The Sustainable Wood Supply Assessment**

2001 was a troubled year for APP/Sinar Mas. News of attacks on community protests quickly reached the environmental NGO community that had already been long critical of APP. Shaken by APP's tumbling share prices, its default in March, and its de-listing from the New York Stock Exchange in July, financial analysts were scrambling to figure out what went wrong. Indeed in 2001, the coalescence of revelations about APP/Sinar Mas Group's financial, environmental, and social problems brought their Riau operations into the public spotlight. Nevertheless, unlike the financial and environmental problems, the human rights abuses associated with APP/Sinar Mas Group's operations have not elicited a response from APP/Sinar Mas, nor have they registered any apparent notice with the financial community.

APP/Sinar Mas Group's financial weaknesses have already been the focus of much public debate and pressure, both nationally and internationally. While many shareholders have suffered tremendous financial loss, many creditors are pursuing their cases in court. At the same time, questions from international research institutions and environmental groups about the sustainability of fiber to supply APP's mills have begun to come to the attention of the financial analysts and paper buyers. In November 2000, the Center for International Forestry Research (CIFOR) and the World Wide Fund for Nature (WWF) released a detailed study on Indonesia's pulp and paper industry.<sup>285</sup> This report documented the fact that the country's two largest pulp producers—APP's Indah Kiat and APRIL's Riau Andalan pulp mills—will fall well short of securing sustainable supplies of fiber from their groups' existing plantations, and will likely seek to clear large new areas of natural forest to meet their raw material needs. In June 2001, Friends of the Earth<sup>286</sup> launched an NGO campaign against APP for its role in rainforest

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<sup>283</sup> International Organization of Standards, <http://www.iso.ch/iso/en/ISOOnline.frontpage>, (retrieved October 3, 2002).

One example of ISO standards requires credit cards have a standard format and thickness so they can be used worldwide.

<sup>284</sup> Det Norske Veritas, one of the independent certifying bodies for ISO 14001, used by APP.

<http://www.dnv.com/certification/>, (retrieved October 3, 2002)

<sup>285</sup> Christopher Barr, "Profits on Paper: The Political Economy of Fiber, Finance, and Debt in Indonesia's Pulp and Paper Sector," draft report released by Center for International Forestry Research (CIFOR) and WWF's Macroeconomics Program Office, November 28, 2000. This report was later included as a chapter in Barr's *Banking on Sustainability*, published in October 2001.

<sup>286</sup> Edward Mathews and Jan Wilhelm Van Gelder, "Paper Tiger, Hidden Dragons," Friends of the Earth--England, Wales, Northern Ireland, London, 2001.

destruction, which, together with press coverage by London daily *The Guardian*<sup>287</sup> that alerted British paper consumers to the destruction of Indonesia's forests, resulted in one of the U.K.'s major paper suppliers, Robert Horn, temporarily suspending purchases from APP in August 2001. These efforts suddenly gained attention outside the environmental community because activists were able to link APP's financial collapse with the alleged unsustainability of its wood supply, making a strong case that in Indonesia's forest industries, the high pressure on forests is a financial as well as an environmental risk.

In response to the boycott and rising concern from buyers and environmentalists, APP/Sinar Mas Group commissioned an internal "Sustainable Wood Supply Assessment" from AMEC Simons Forest Industry Consulting in September 2001.<sup>288</sup> While this was a positive first step, the assessment was marred by questions from environmental organizations about the independence and scope of the assessment. The assessment is intended more as an internal review rather than an independent audit, and, as such, the scope of work, access to work sites, and output of report and recommendations were tightly regulated.

Further, although the stated scope of the assessment was to include "associated social and community impacts" of the wood supply, the assessment was woefully inadequate in addressing these concerns, even though there had been a great deal of press attention to attacks on communities earlier in 2001. None of the assessors had any specific social science or human rights expertise and made only cursory inquiries into the nature and extent of social impacts and disputes of the company.<sup>289</sup> Even the superficial treatment of social concerns in the report, however, included indications of the severity of conflict around APP/Sinar Mas Group's operations:

- "[I]t is highly possible that [local land] claims are going to increase in size, number and audaciousness." (p.20)
- "A total of over 57,000 ha of claims have been made on AA lands out of total of 300,000 ha. The existing level of claim disputes (19 percent) can have a large impact as the 57,000 ha has the potential to produce 1.2 million m<sup>3</sup> of Acacia pulpwood per year...If the number of successful claims increases it will have a severe impact on sustainable wood supply plans." (p.20)
- "One of the greatest challenges comes from factors concerning land control and tenure...Even though known to company personnel, the Auditor believes the extent of the risk to full sustainable wood supply realization has been underestimated." (p.16)
- "The detailed sustainable wood supply assessment should comprehensively address...the impact of current and future direct action/suppression policies and tactics on communities and other issues relating to human rights and international labor law." (p.20)

Phase II of the assessment is intended to provide further detail and make recommendations on how to address areas of concern from the preliminary assessment. After being delayed for many months Phase II was just getting off the ground as this report was being prepared, but there were signs of positive developments, such as the inclusion of a social impact reviewer and security analyst with social science training. The Scope of Work, although quite vague on details, does include a "risk assessment" of select examples of joint ventures with local

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<sup>287</sup> Paul Brown, Steven Morris, and John Aglionby, "Rainforests Hit By Paper Trail to UK," *The Guardian*, June 26, 2001; Paul Brown and John Aglionby, "British Money Fuels Cycle of Debt and Destruction," *The Guardian*, June 26, 2001; Steven Morris, "Offices, Schools, Hospitals at the End of Paper Tail from Diminishing Forests," *The Guardian*, June 26, 2001; John Aglionby, "Fishermen Driven to Illegal Logging As Pulp Factory Poisons River," *The Guardian*, June 26, 2001.

<sup>288</sup> See Sara Webb, "APP Orders Study to Gauge Damage to Environment," *Asian Wall Street Journal*, September 12, 2001; Sara Webb, "Audit Questions APP's Future Access to Cheap Wood," *Asian Wall Street Journal*, December 7, 2001.

<sup>289</sup> For example, a cursory conversation with a single fisherman encountered at the mill jetty was used to conclude that the productivity of fish stocks near the mill remains high and the environmental impact on the water quality is negligible (AMEC Simons, "Preliminary Assessment," p. 25). Likewise, a local leader who was "introduced to the auditor by a Indah Kiat public relations officer" concluded that it was not true that local people were not hired by the company, rather that "often a local candidate has an attitude problem which causes them to fail final selection." (AMEC Simons, "Preliminary Assessment," p 26).

communities, and will include land claims as an component of the assessment and recommendations relevant to social and community development research and recommendations.<sup>290</sup>

There are strong indications, however, that APP/Sinar Mas Group will not seriously consider land rights issues that underlie community grievances. When questioned about the role of social concerns in the audit, Mark Werren, the director of the forestry audit from APP/Sinar Mas Group, told Human Rights Watch, “We will be sensitive and firm. We have legal rights to the land and have to make a stand.”<sup>291</sup> While topics such as “Legal Rights and Enforcement Strategies,” “Illegal logging,” and “Stealing from SMG log stocks”—topics which are included in Phase II of the assessment—are clearly relevant to the security of the operations in an increasingly tense atmosphere, it is worrying that pro-active assessments of community claims, social conflict risks, and how best to institutionalize dispute resolution mechanisms appear to be absent from Phase II. It is especially disturbing that there is no clear indication that performance standards and accountability for security forces will be part of the implementation strategy.

## IX. THE ROLE AND RESPONSIBILITY OF THE INTERNATIONAL FINANCIAL COMMUNITY

Rural violence and environmental destruction in Riau are not unique within Indonesia and Indonesia is not unique in the developing world. In a number of other countries, international financial institutions have been involved in destructive commercial extraction of valuable resources, which has been associated with comparable problems of rights abuse and violent conflict, including Cambodia, the Democratic Republic of Congo, Liberia, Angola, Nigeria. In response, the international donor community has begun to pay explicit attention to social conflict and environmental issues around resource extraction and its importance to overall political and economic stability, and has accordingly taken steps to push reform in these areas. Human Rights Watch believes that the international community should act to address such issues in Riau as well: it has the responsibility as well as the opportunity to unequivocally press for the kind of on-the-ground progress in governance and accountability in the Indonesian forest sector that are necessary if further human rights abuses are to be avoided.

### Multi- and Bilateral Donor Institutions

Indonesia currently holds U.S.\$133 billion in external debt, U.S.\$79 billion of that in public debt, making it one of the world’s forty-four “severely indebted” countries.<sup>292</sup> As noted above, much of this money went to recapitalize mismanaged banks and forest corporations that were complicit in human rights violations. While the donor community has voiced concern over governance and rule of law in the economically important forest sector, they have failed to send a clear signal that protection of human rights—including a framework for enforcement of indigenous land rights and an end to impunity for perpetrators of violence against forest dependent communities—should be a priority for the Indonesian government.

Multilateral institutions, including multilateral donors such as the World Bank and International Monetary Fund (IMF), have recognized that lack of rule of law and destructive resource extraction are problems that fall within their mandates.<sup>293</sup> The IMF in particular, has publicly recognized the importance of the forest sector to

<sup>290</sup> However, reportedly, the sites for review are to be chosen by APP/Sinar Mas Group, not by the reviewers themselves.

<sup>291</sup> Human Rights Watch interview with Mark Werren, Jakarta, February 13, 2002.

<sup>292</sup> World Bank, 2002 Data and Statistics, <http://www.worldbank.org/data/countryclass/classgroups.htm> (retrieved October 3, 2002).

<sup>293</sup> Paulo Mauro, *Why worry about corruption?* (Washington, D.C.: The International Monetary Fund, 1997); Ved P. Ghandi, *The IMF and the Environment* (Washington, D.C.: IMF, 1998); and “Factsheet on the IMF and the Environment,” IMF, August 2, 2002, <http://www.imf.org/external/np/exr/facts/enviro.htm> (retrieved October 3, 2002). Rampant illegal activity in the forest sector is an economic drain on state resources. Over-exploitation of forests could compromise the viability of Indonesia’s forestry industry and balance of foreign trade, in the next five to ten years according to World Bank estimates of forest availability. At the same time, it will necessitate greater social expenditures as populations become more impoverished, and less self-sufficient in food and fuel production. These circumstances make a strong economic argument for IMF to use its influence to improve sustainability in the forest sector.

international trade and lending as well as the domestic economic outlook, and has noted the particular governance problems associated with the sector. In other countries including Cambodia, Bolivia, Solomon Islands, Surinam, Liberia, Cameroon, Cote d'Ivoire, Equatorial Guinea, and the Democratic Republic of Congo, circumstances in the forest sector similar to those described in this report have motivated the IMF, World Bank, and bilateral lenders to use their considerable influence to press for audits of timber companies, independent monitoring, freezing of new concessions, and governance changes in natural resource use in general, and the forestry sector specifically.<sup>294</sup> Indeed, in Liberia and the Democratic Republic of Congo, the role of illicit "conflict timber" in funding and perpetuating violence and instability motivated the U.N. Security Council to draft resolutions to restrict export of timber from those countries until it can be demonstrated that such exports do not fund or otherwise contribute to the continuation of conflict.<sup>295</sup>

In the case of Cambodia, the IMF and the Consultative Group donors took a strong position on governance in the forestry sector by tying non-humanitarian aid to benchmarks and commitments in forestry reform. Following the conditioning of non-humanitarian aid on such reforms, the Cambodian government established an independent timber monitoring body (including the non-governmental group Global Witness), agreed to a review of existing concessions, and issued a moratorium on new concession licenses and log exports. IMF support was renewed in early 1999, subject to authorities' compliance with prior commitments on forestry reforms.<sup>296</sup> The Asian Development Bank, however, described the Cambodian forestry sector as a "total system failure," and demanded the termination of concessions unless they produced social and environmental impact assessments and long-term forest management plans by September 30, 2001. None of the concessionaires achieved this deadline or achieved the required standards, and Cambodian Prime Minister Hun Sen declared a total suspension of logging beginning in January 2002.<sup>297</sup>

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<sup>294</sup> "Factsheet: IMF and the Environment"; "Review of the Fund's Experience in Governance Issues," IMF Policy Development and Review Department, March 28, 2001, <http://www.imf.org/external/np/gov/2001/eng/report.htm> (retrieved October 3, 2002).

<sup>295</sup> On the D.R. of Congo, see U.N. Security Council Addendum to the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo, November 1, 2001, which called for a review and renegotiation of concessions for extraction of timber, gold, diamonds, coltan, cobalt, and oil, and a moratorium on the trade and importing of these commodities originating in areas under control of foreign troops or rebel forces, and introduced the idea of sanctions should there be no progress in the exploitation of these resource sectors. On Liberia, UN Security Council Resolution No.1408, paragraph 10, adopted on May 6, 2002. In passing this resolution, the Security Council built on success in the Kimberley Process in tracking trade of so-called "conflict diamonds" to control the flow of this money to arms trade, and in bringing to international attention the role of illicit trade in directly contributing to violent conflict in the region and highlighted the responsibility of private sector actors to judiciously avoid supporting these abuses through their business operations. U.N. General Assembly Resolution A/RES/55/56 on conflict diamonds, <http://www.un.org/peace/africa/Diamond.html> (retrieved October 3, 2002).

<sup>296</sup> IMF Policy Development and Review Department, "A Review of the Fund's Experience in Governance Issues," <http://www.imf.org/external/np/gov/2001/eng/report.htm> (retrieved November 4, 2002). The IMF and Consultative Group based their view that firm action on reform was needed only due to the economic losses from uncollected taxes and fees from illegal logging, but overall effects of the illicit activities. The Policy review document states, "The logging activities undermined the implementation of environmentally sound and sustainable forest management. Notwithstanding generally good economic performance, the absence of good forestry policy was considered to put in doubt the medium term sustainability of the fiscal and external position...The incidents of corruption, in addition to threatening the successful implementation of the program, also put in doubt the purpose of the use of the Fund resources. Given the seriousness of the incidents, continued support would have damaged the credibility of the Fund." Well-placed observers told Human Rights Watch that while donor support was initially crucial in getting Cambodia's forestry reform program off the ground, in recent years flagging donor support for meaningful reforms has meant that the audits and monitoring have been largely cosmetic. See also, Michael Richardson, "Illegal logging topples Cambodia's Forests," *International Herald Tribune*, June 21, 2002. Global Witness has been contracted by the U.N. to undertake a scoping study in Cameroon to determine if a similar model for independent monitoring of forests would be applicable.

<sup>297</sup> Global Witness, "At long last Cambodia suspends all logging operations," press release, December 12, 2001.

The circumstances in Indonesia are even more severe than those in Cambodia that motivated the multi and bi-lateral donors to take strong steps to press for action on forest reforms. At U.S.\$5.6 billion in legal exports annually, the importance of the forestry sector to Indonesia's economy is clear, as is the widespread problem of government revenues lost to illegal logging. The World Bank has estimated that government income lost to illegal logging through uncollected taxes and fees amounts to some U.S.\$3.5 billion.<sup>298</sup> In addition, like Cambodia, Indonesian military involvement in illicit timber sectors has compromised the rule of law and increased violence and instability.

In Indonesia, however, reforms have been ineffective and there has been little progress in ending illegal logging and abuse of indigenous rights. A moratorium on converting natural forests to plantations remains in effect, yet donors have been silent on public announcements by APP and RAPP that they intend to double the size of their acacia plantations, which will require logging of natural forests. There has been no mention of how still unresolved land tenure disputes will be addressed or how the accountability of private security forces will be improved to avoid repeating the rights abuses of the past. Heavily indebted and over-producing forest industries continue to put pressure on forest resources and drive illegal logging, which continues unchecked even in national parks.

While many of Indonesia's lenders have voiced concern over the lack of progress on forest reforms, the European Union perhaps the most vocal among them, they have not insisted on compliance with social and environmental benchmarks, sending the unfortunate message that governance is not a priority. Aid from the E.U. makes up some 60 percent of all foreign aid to Indonesia's forestry sector,<sup>299</sup> and as such the EU bears particular responsibility to press for reforms. The EU has made strong statements to the CGI criticizing the Ministry of Forestry's lack of progress on reforms,<sup>300</sup> including the E.U.'s 2001 Pre-CGI statement:

In terms of results in the forests, which is the ultimate measure of achievements, there have been no tangible improvements. The rate of forest loss has not abated. The situation in the forests remains grave by any measure, and the donors remain seriously concerned.<sup>301</sup>

Such serious concern notwithstanding, lending to the forestry sector from CGI members is undiminished, draining the impact from any critical public statements. In fact, just days before the meeting took place in which they would deliver this stern reprimand, the EU itself announced a U.S.\$2 million loan to the forestry sector.

The World Bank has also taken a step in the wrong direction. At a time when social and environmental problems associated with the forestry sector seem to be increasing in Indonesia and a number of the heavily forested countries of the developing world, the World Bank has announced its intention to re-establish lending to the forest sector worldwide. The World Bank discontinued lending to commercial operations in moist tropical forests in 1991 following its own internal review, which revealed that its assistance projects had poor oversight and funds did not reduce deforestation.<sup>302</sup> Although the Bank admits few changes have been made since that time, it nevertheless asserts that restored lending is appropriate.<sup>303</sup>

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<sup>298</sup> World Commission on Forests and Sustainable Development, *Our Forests Our Future* (Cambridge, U.K.: Cambridge University Press, 1999). Arnoldo Contreras-Hermosilla, "Law Compliance in the Forest Sector: An Overview," Working Paper 37205, World Bank Institute, Washington, D.C., 2002.

<sup>299</sup> John Keating, Director of The E.U.-Indonesia Liaison Bureau in Jakarta, "New Hope for Indonesia's Forests," *Jakarta Post*, February 2, 2000.

<sup>300</sup> E.U. statements to the Paris Club in July 1999; to the tenth CGI in Tokyo, October 17, 2000; to the Interim CGI in Jakarta, April 23, 2001 (all on file at Human Rights Watch).

<sup>301</sup> E.U. Commission for the Interim CGI, "Policy Dialog for the Creation of a Conducive Environment for Sustainable Management of all Types of Forest in Indonesia," position paper presented the Interim CGI meeting in Jakarta, April 23, 2001 (on file at Human Rights Watch).

<sup>302</sup> World Bank Operations Evaluation Division, "Forestry: The World Bank's Experience," Washington, D.C., 1991. The World Bank's own assessment of its Country Assistance Programs found that from 1992-1999, 100 percent had unsatisfactory monitoring and evaluation. In stakeholder participation, 70 percent of the projects were found to be

A further mixed message from donors comes from the sectoral nature of reforms proposed by the IMF. Steps taken to reform forestry operations are not coordinated with the restructuring of banks and corporations overseen by Indonesian Bank Restructuring Agency (IBRA) and the Ministry of Finance, and different government bodies frequently work at cross-purposes. For example, as part of IMF and CGI-led reforms, the Ministry of Forestry committed to downsize the capacity of forest industries and shut down insolvent companies, while at the same time the Finance Ministry was working on recapitalizing indebted forest companies, clearing the way for further expansion. The IMF has a responsibility to send a clear message that they insist on meaningful outcomes and integrated targets across the ministries.

Given the existing precedents, the severity of the problems, and the significant amount of international lending to the Indonesian government and central bank, Human Rights Watch believes that the international donor community has a special responsibility as well as the opportunity to press for changes in governance in Indonesia's forestry sector and to build on existing precedents that they have set in other parts of the world.

## X. HUMAN RIGHTS AND ENVIRONMENTAL DEGRADATION

*They took our land and we have no way to make a living and nothing to leave our children. What will happen to us? We will become just thieves and gangsters and prostitutes. Before, we used gotong royong [mutual self-help] to assist each other. When people made agreements between one another, we considered it agreed. Now everyone distrusts everyone else, and there is no feeling that law or rights have any meaning.*

—Local village leader, Angkasa

Human Rights Watch's mandate is to protect and advance human rights, and our research and advocacy on environment and corporate responsibility is shaped by these concerns alone. We do not take a position on trade, development policy and lending, or sustainable forest management as such. Rather, we believe that the pursuit of these goals is deeply intertwined with human rights and therefore implies an obligation to avoid abuses.

The extraction of lucrative natural resources – such as oil, diamonds, gold, and timber – is often at the root of the world's most violent conflicts. Looting of valuable resources is a favored tactic of unaccountable governments to pursue power and fund violence. Democratic structures are undermined when governments can hold on to power through violence and patronage networks rather than being accountable to the population.<sup>304</sup>

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unsatisfactory. "A Revised Forest Strategy for the World Bank Group," draft for Public Comment May 14, 2002, Appendix 9.13,

[http://lnweb18.worldbank.org/ESSD/essdext.nsf/14DocByUnid/403A34FDD7B9E84A85256BD00077D91B/\\$FILE/ForestSectorStrategyEntireDocument.pdf](http://lnweb18.worldbank.org/ESSD/essdext.nsf/14DocByUnid/403A34FDD7B9E84A85256BD00077D91B/$FILE/ForestSectorStrategyEntireDocument.pdf) (retrieved October 3, 2002).

<sup>303</sup> World Bank, "A Revised Forest Strategy for the World Bank Group."

<sup>304</sup> See Human Rights Watch, "Landmark Indigenous Land Rights Case to Be Heard in Ratanakiri Court," press backgrounder, January 25, 2001; "The Oil Diagnostic in Angola: an Update" press backgrounder, March 1, 2001; "The International Monetary Fund's Staff Monitoring Program for Angola: The Human Rights Implications," press backgrounder, April 1, 2000; "The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities," *A Human Rights Watch Report*, vol. 22, no. 54, January 1999; and "The Three Gorges Dam in China: Forced Resettlement, Suppression of Dissent and Labor Rights Concerns," *A Human Rights Watch Report*, vol. 7, no. 2, February 1995. For more on oil, violence and religion in the Sudan, see International Crisis Group, "God, Oil and Country," Brussels, January 2002; and Amnesty International, "Sudan: The Human Price of Oil," London, May 2000. On diamonds and war in Angola, see Global Witness, "A Rough Trade," London, December 1998; and Partnership Africa Canada, "The Heart of the Matter: Diamonds, Sierra Leone and Human Security," January 2000. On violence around the logging industry in the Philippines, see Human Rights Watch, "The Philippines: Human Rights and Forest Management in the 1990s," *A Human Rights Watch Report*, vol. 8, no. 3 (C), April 1996. On relocations of indigenous villagers for the construction of the Narmada Dam in India, see Asia Watch (now Human Rights Watch/Asia), "Before the Deluge: Human Rights Abuses at India's

This report has highlighted one example of this nexus between natural resources and human rights. The Malay and Sakai peoples and other people in Riau who depend on forests for their livelihoods are in a precarious position today. Much of their land, long declared to be “state forest” without their informed consent and often without their knowledge, has been seized for forest industry and oil palm concessions, and their traditional livelihood is rapidly disappearing together with the forests. Meaningful legal redress is unavailable to these communities from the Indonesian judicial system. When they directly challenge company practices, they face unaccountable and often brutal militias. These attacks, however, are only the latest turn in a vicious cycle of environmental and social depredation.

The process of forest destruction under the massive pulp and paper sector in Riau has been intimately connected, both in cause and effect, with human rights abuse. The vulnerability and relative powerlessness of villagers today can be traced directly to denial of their civil and political rights at the time community lands were unilaterally designated state property and concessions were granted to large corporate interests affiliated with the Soeharto government. The deprivation of the rights of members of forest dependent communities has directly facilitated the over-expansion of the pulp and paper sector and the destruction of Riau’s forest cover. The wholesale destruction of forests, together with the hiring of employees from outside the province, in turn, has made seeking a livelihood increasingly difficult for the forest dependent communities—a violation of their economic and social rights.

Since the fall of Soeharto, changes that have accompanied the “Reform Era,” including greater freedom of expression and assembly and vastly improved election processes, have not yet led to any significant improvement. Because the Indonesian legal system remains weak and unresponsive, moreover, there is no end in sight to these abuses. In fact, under current conditions there is good reason to believe that the plight of members of forest-dependent communities will worsen and that deforestation will increase, recent government reform rhetoric notwithstanding. Indeed, because of the massive debt accumulated by the Indonesian forest industry—a perverse cycle in which companies borrowed heavily in international markets on the premise of low-cost expanded output, providing incentives for short sighted forest policies and further marginalization of local communities’ rights—there is a strong likelihood of increasing demand for wood and increasing pressure on community land and resource rights. Likewise, as long as private militias and timber gangs can attack with impunity anyone who resists, local residents and activists will continue to live in fear.

It is a truism that those physically closest to a devastated landscape are likely to feel most acutely the effects of that devastation. While there is no guarantee that local people will use resources wisely, when they are denied a role in management and see no possibility for receiving benefit for sound use of forest on lands they claim, there is increased likelihood of the kind of reckless race to log by both local loggers and large corporate interests that leads to wide-scale deforestation.

### **The Widespread Impact of Impunity**

Corruption and impunity lay the foundation for abuses of both human rights and the environment. But it is not only the forests and rights of local forest communities that are the casualties when impunity reigns.

Economic analyses including those by the World Bank and the IMF, have demonstrated that corruption carries high economic costs, crippling national economies through lost revenues and inefficiencies.<sup>305</sup> In Indonesia, estimates of government income lost to illegal logging in 2001 ranged from U.S.\$600 million to U.S.\$ 3.5

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Narmada Dam,” *A Human Rights Watch Report*, vol. 4, no. 15, June 1992. See also Michael Ross, “Extractive Sectors and the Poor,” Oxfam International, Boston, 2001.

<sup>305</sup> See for example Mauro, *Why worry about corruption?*; Vito Tanzi and Hamid Davoodi, *Roads to Nowhere: How Corruption in Public Investment Hurts Growth* (Washington, D.C.: IMF, 1998); IMF, *Good governance: The IMF’s Role* (Washington, D.C.: IMF, 1997); Thomas Wolf and Emine Gurgun, *Improving Governance and Fighting Corruption in the Baltic and CIS Countries: The Role of the IMF* (Washington, D.C.: IMF, 2000).

billion.<sup>306</sup> These inefficiencies have severe social effects. Misallocation and embezzlement of public funds and uncollected taxes and fees mean that less funds are available for social services such as health care, education, public housing, social security and welfare, as well as for reforming basic governance institutions such as electoral and justice systems.

Where there is no effective rule of law, companies are also likely to be vulnerable to extortion, destruction of property, and violence that threaten the security of their personnel and viability of their operations. Unaddressed, this will ultimately endanger Indonesia's economic future. As noted above, the World Bank has argued that lack of rule of law may drive away foreign investment and badly damage the country's economic recovery and future development.<sup>307</sup> In Indonesia, what seemed to be strong economic growth built on systemic violation of rights and unregulated and unsound resource management was exposed in 1997 as an impermanent illusion, not a "miracle."

Human Rights Watch believes that the nexus of rights abuse and environmental degradation identified in this report is not an aberration, and that respect for human rights should be recognized as a necessary component of sound, sustainable forestry policies everywhere. For the reasons outlined above, human rights and justice should be integrated, or "mainstreamed," into reform efforts directed at judicial institutions, financial oversight and regulatory bodies, and resource management agencies. This is not to suggest the dilution of specific forms of institutional expertise or mandates, but rather the increased awareness of a need for attention to human rights as a necessary part of improved governance.

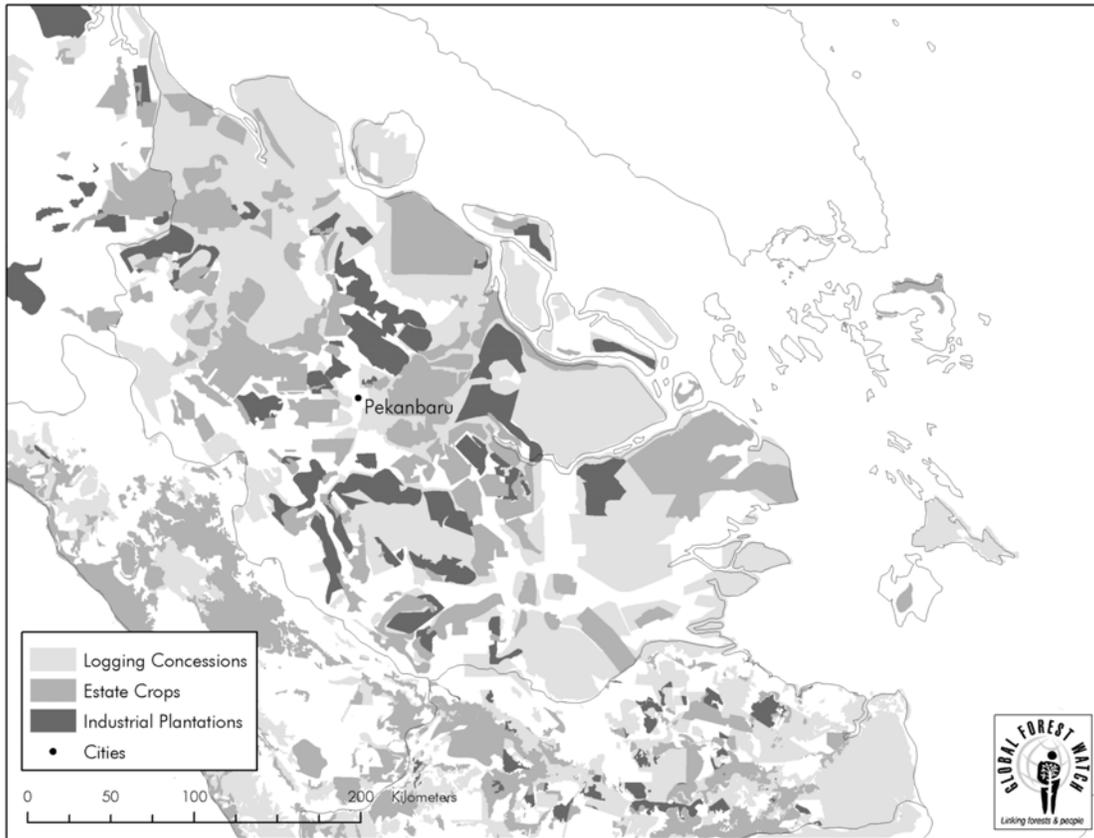
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<sup>306</sup> U.S.\$600 million estimate from Mark Baird, Indonesia country director for the World Bank, "Forest Crime as a Constraint to Economic Development in East Asia," presented at the Forest Leadership and Law Enforcement Conference, Bali, September 2001, [http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/FLEG\\_S8-2/\\$File/8+2+Mark+Baird+-+Indonesia,+WB.pdf](http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/FLEG_S8-2/$File/8+2+Mark+Baird+-+Indonesia,+WB.pdf) (retrieved October 3, 2002). The U.S.\$3.5 billion estimate comes from the World Commission on Forests and Sustainable Development, *Our Forests Our Future*. (Cambridge, U.K.: Cambridge University Press, 1999) and Arnoldo Contreras-Hermosilla, "Law Compliance in the Forest Sector: An Overview" Working Paper 3720, World Bank Institute, Washington, D.C., 2002.

<sup>307</sup> Baird, "Forest Crime."

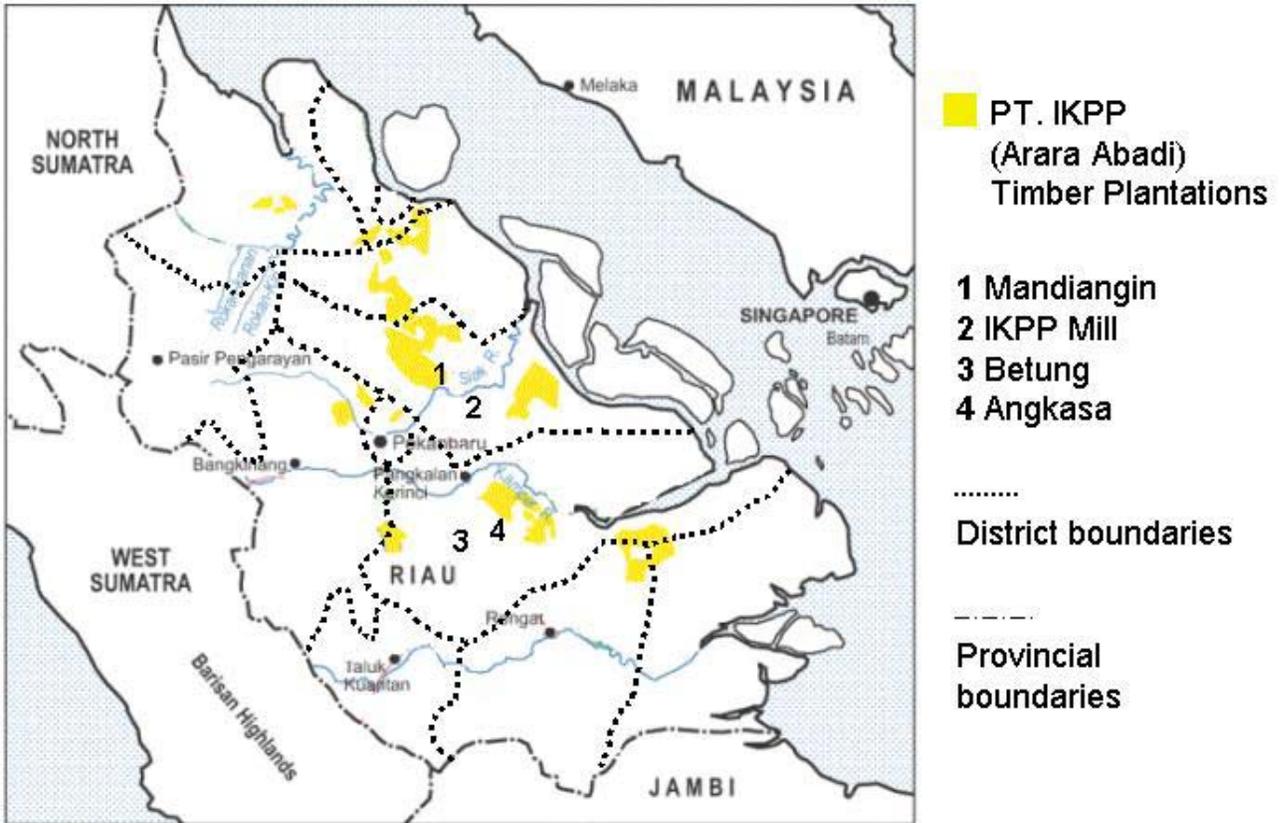
**MAP A:**

**Logging Concessions, Industrial Plantations, and Estate Crops in Riau Province**



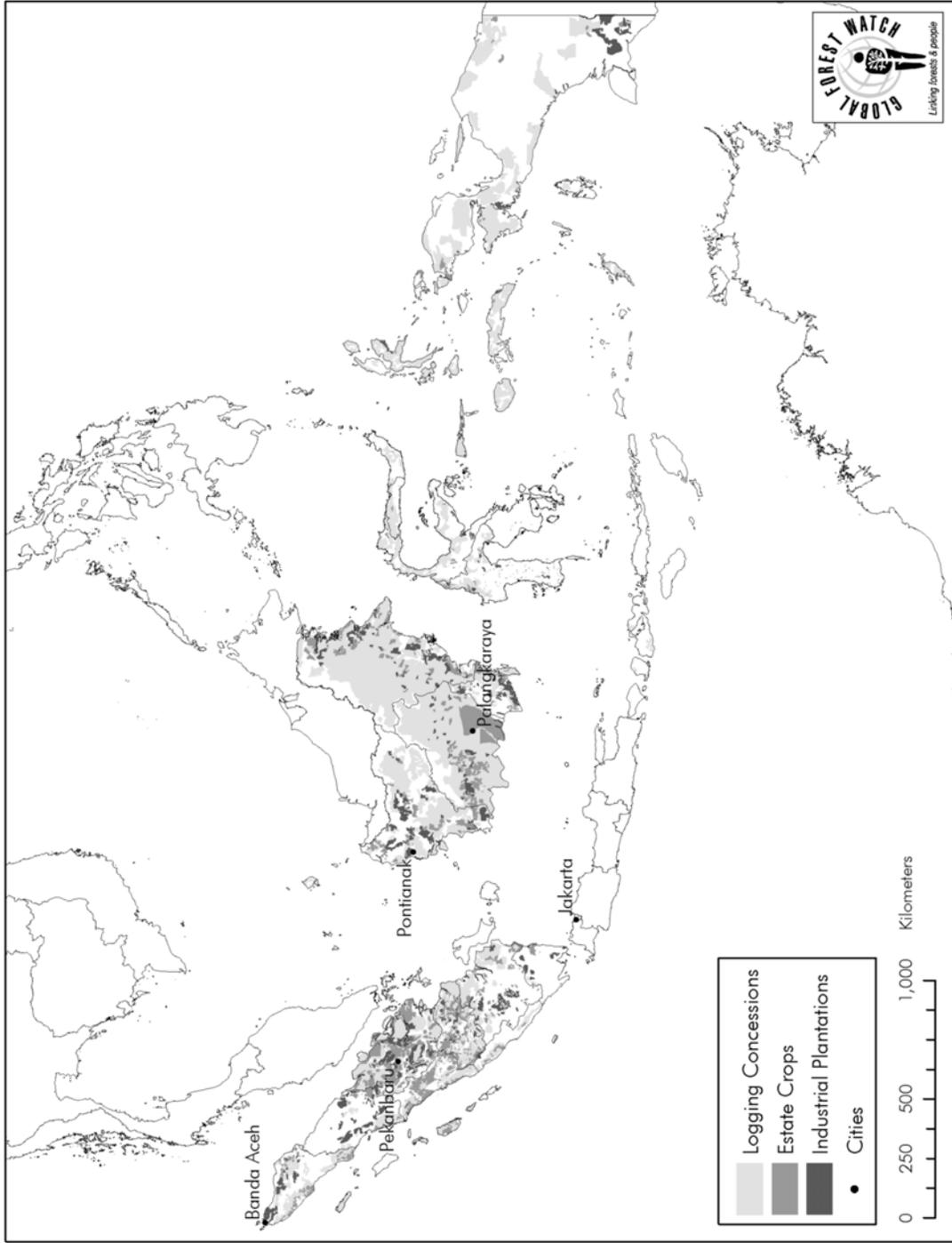
Data on industrial plantations, estate crops, and logging concessions come from the Government of Indonesia and the Food and Agriculture Organization of the United Nations, 1996.

**MAP B:  
 RIAU PROVINCE AND LOCATIONS OF ATTACKS ON VILLAGERS**



MAP C:

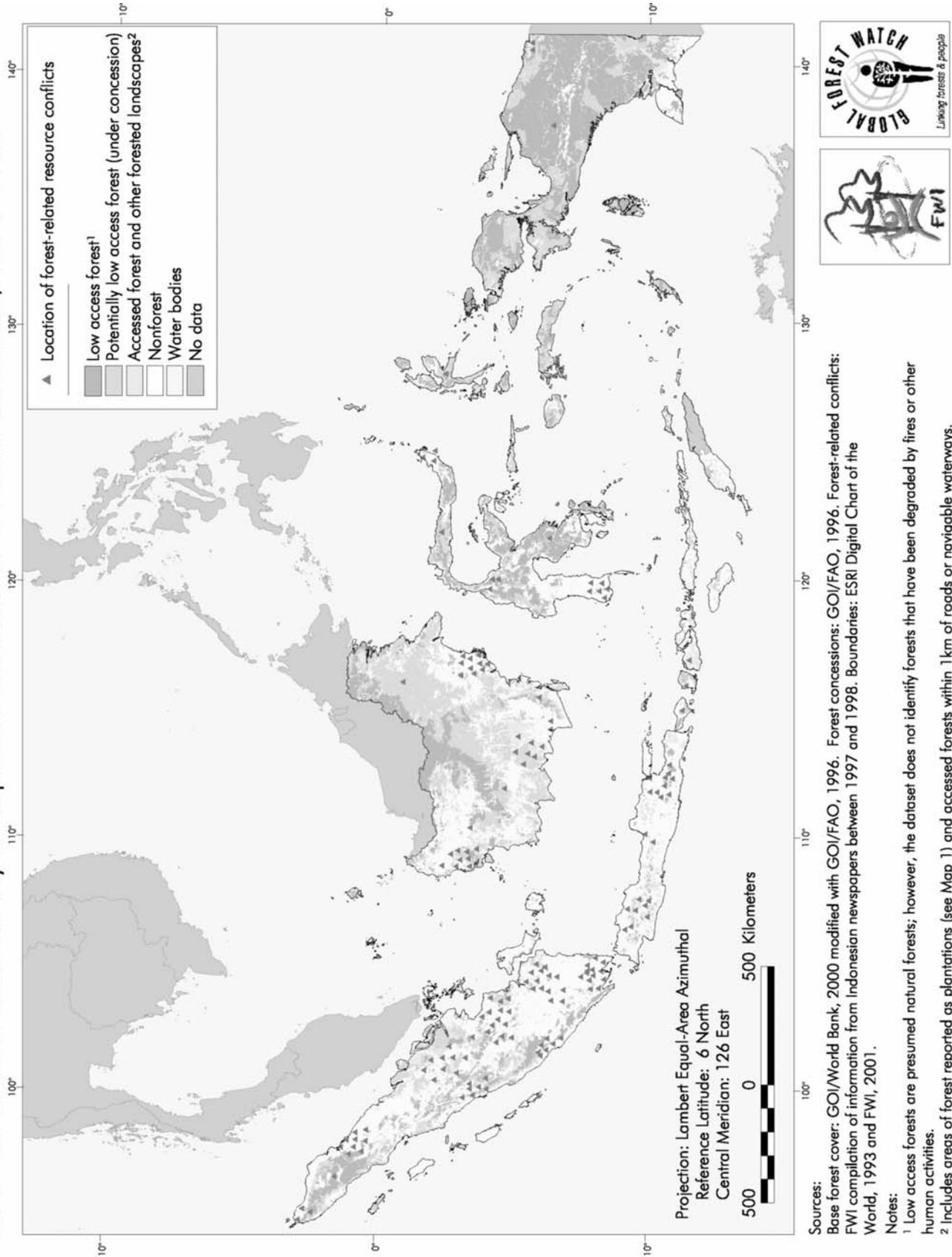
Logging Concessions, Industrial Plantations, and Estate Crops in Indonesia



Data on industrial plantations, estate crops, and logging concessions come from the Government of Indonesia and the Food and Agriculture Organization of the United Nations, 1996.

# MAP 13 Limited Data Survey of Reported Conflicts Over Forest Resources, 1997-1999

## MAP D:



## APPENDIX A: U.S. STATE DEPARTMENT / U.K. FOREIGN AFFAIRS VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS

Fact Sheet  
Bureau of Democracy, Human Rights, and Labor  
Washington, DC  
February 20, 2001

### Voluntary Principles On Security And Human Rights

Governments of the United States and the United Kingdom, companies in the extractive and energy sectors (“Companies”), and non-governmental organizations, all with an interest in human rights and corporate social responsibility, have engaged in a dialogue on security and human rights.

The participants recognize the importance of the promotion and protection of human rights throughout the world and the constructive role business and civil society -- including non-governmental organizations, labor/trade unions, and local communities -- can play in advancing these goals. Through this dialogue, the participants have developed the following set of voluntary principles to guide Companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms. Mindful of these goals, the participants agree to the importance of continuing this dialogue and keeping under review these principles to ensure their continuing relevance and efficacy.

*Acknowledging* that security is a fundamental need, shared by individuals, communities, businesses, and governments alike, and acknowledging the difficult security issues faced by Companies operating globally, we recognize that security and respect for human rights can and should be consistent;

*Understanding* that governments have the primary responsibility to promote and protect human rights and that all parties to a conflict are obliged to observe applicable international humanitarian law, we recognize that we share the common goal of promoting respect for human rights, particularly those set forth in the Universal Declaration of Human Rights, and international humanitarian law;

*Emphasizing* the importance of safeguarding the integrity of company personnel and property, Companies recognize a commitment to act in a manner consistent with the laws of the countries within which they are present, to be mindful of the highest applicable international standards, and to promote the observance of applicable international law enforcement principles (e.g., the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials), particularly with regard to the use of force;

*Taking note* of the effect that Companies' activities may have on local communities, we recognize the value of engaging with civil society and host and home governments to contribute to the welfare of the local community while mitigating any potential for conflict where possible;

*Understanding* that useful, credible information is a vital component of security and human rights, we recognize the importance of sharing and understanding our respective experiences regarding, *inter alia*, best security practices and procedures, country human rights situations, and public and private security, subject to confidentiality constraints;

*Acknowledging* that home governments and multilateral institutions may, on occasion, assist host governments with security sector reform, developing institutional capacities and strengthening the rule of law, we recognize the important role Companies and civil society can play in supporting these efforts;

We hereby express our support for the following voluntary principles regarding security and human rights in the extractive sector, which fall into three categories, risk assessment, relations with public security, and relations with private security:

## **RISK ASSESSMENT**

The ability to assess accurately risks present in a Company's operating environment is critical to the security of personnel, local communities and assets; the success of the Company's short and long-term operations; and to the promotion and protection of human rights. In some circumstances, this is relatively simple; in others, it is important to obtain extensive background information from different sources; monitoring and adapting to changing, complex political, economic, law enforcement, military and social situations; and maintaining productive relations with local communities and government officials.

The quality of complicated risk assessments is largely dependent on the assembling of regularly updated, credible information from a broad range of perspectives -- local and national governments, security firms, other companies, home governments, multilateral institutions, and civil society knowledgeable about local conditions. This information may be most effective when shared to the fullest extent possible (bearing in mind confidentiality considerations) between Companies, concerned civil society, and governments.

Bearing in mind these general principles, we recognize that accurate, effective risk assessments should consider the following factors:

- Identification of security risks. Security risks can result from political, economic, civil or social factors. Moreover, certain personnel and assets may be at greater risk than others. Identification of security risks allows a Company to take measures to minimize risk and to assess whether Company actions may heighten risk.
- Potential for violence. Depending on the environment, violence can be widespread or limited to particular regions, and it can develop with little or no warning. Civil society, home and host government representatives, and other sources should be consulted to identify risks presented by the potential for violence. Risk assessments should examine patterns of violence in areas of Company operations for educational, predictive, and preventative purposes.
- Human rights records. Risk assessments should consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security. Awareness of past abuses and allegations can help Companies to avoid recurrences as well as to promote accountability. Also, identification of the capability of the above entities to respond to situations of violence in a lawful manner (i.e., consistent with applicable international standards) allows Companies to develop appropriate measures in operating environments.
- Rule of law. Risk assessments should consider the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses and for those responsible for violations of international humanitarian law in a manner that respects the rights of the accused.
- Conflict analysis. Identification of and understanding the root causes and nature of local conflicts, as well as the level of adherence to human rights and international humanitarian law standards by key actors, can be instructive for the development of strategies for managing relations between the Company, local communities, Company employees and their unions, and host governments. Risk assessments should also consider the potential for future conflicts.

- Equipment transfers. Where Companies provide equipment (including lethal and non-lethal equipment) to public or private security, they should consider the risk of such transfers, any relevant export licensing requirements, and the feasibility of measures to mitigate foreseeable negative consequences, including adequate controls to prevent misappropriation or diversion of equipment which may lead to human rights abuses. In making risk assessments, companies should consider any relevant past incidents involving previous equipment transfers.

## **INTERACTIONS BETWEEN COMPANIES AND PUBLIC SECURITY**

Although governments have the primary role of maintaining law and order, security and respect for human rights, Companies have an interest in ensuring that actions taken by governments, particularly the actions of public security providers, are consistent with the protection and promotion of human rights. In cases where there is a need to supplement security provided by host governments, Companies may be required or expected to contribute to, or otherwise reimburse, the costs of protecting Company facilities and personnel borne by public security. While public security is expected to act in a manner consistent with local and national laws as well as with human rights standards and international humanitarian law, within this context abuses may nevertheless occur.

In an effort to reduce the risk of such abuses and to promote respect for human rights generally, we have identified the following voluntary principles to guide relationships between Companies and public security regarding security provided to Companies:

### **Security Arrangements**

- Companies should consult regularly with host governments and local communities about the impact of their security arrangements on those communities.
- Companies should communicate their policies regarding ethical conduct and human rights to public security providers, and express their desire that security be provided in a manner consistent with those policies by personnel with adequate and effective training.
- Companies should encourage host governments to permit making security arrangements transparent and accessible to the public, subject to any overriding safety and security concerns.

### **Deployment and Conduct**

- The primary role of public security should be to maintain the rule of law, including safeguarding human rights and deterring acts that threaten Company personnel and facilities. The type and number of public security forces deployed should be competent, appropriate and proportional to the threat.
- Equipment imports and exports should comply with all applicable law and regulations. Companies that provide equipment to public security should take all appropriate and lawful measures to mitigate any foreseeable negative consequences, including human rights abuses and violations of international humanitarian law.
- Companies should use their influence to promote the following principles with public security: (a) individuals credibly implicated in human rights abuses should not provide security services for Companies; (b) force should be used only when strictly necessary and to an extent proportional to the threat; and (c) the rights of individuals should not be violated while exercising the right to exercise freedom of association and peaceful assembly, the right to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

- In cases where physical force is used by public security, such incidents should be reported to the appropriate authorities and to the Company. Where force is used, medical aid should be provided to injured persons, including to offenders.

### **Consultation and Advice**

- Companies should hold structured meetings with public security on a regular basis to discuss security, human rights and related work-place safety issues. Companies should also consult regularly with other Companies, host and home governments, and civil society to discuss security and human rights. Where Companies operating in the same region have common concerns, they should consider collectively raising those concerns with the host and home governments.
- In their consultations with host governments, Companies should take all appropriate measures to promote observance of applicable international law enforcement principles, particularly those reflected in the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms.
- Companies should support efforts by governments, civil society and multilateral institutions to provide human rights training and education for public security as well as their efforts to strengthen state institutions to ensure accountability and respect for human rights.

### **Responses to Human Rights Abuses**

- Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate, Companies should urge investigation and that action be taken to prevent any recurrence.
- Companies should actively monitor the status of investigations and press for their proper resolution.
- Companies should, to the extent reasonable, monitor the use of equipment provided by the Company and to investigate properly situations in which such equipment is used in an inappropriate manner.
- Every effort should be made to ensure that information used as the basis for allegations of human rights abuses is credible and based on reliable evidence. The security and safety of sources should be protected. Additional or more accurate information that may alter previous allegations should be made available as appropriate to concerned parties.

## **INTERACTIONS BETWEEN COMPANIES AND PRIVATE SECURITY**

Where host governments are unable or unwilling to provide adequate security to protect a Company's personnel or assets, it may be necessary to engage private security providers as a complement to public security. In this context, private security may have to coordinate with state forces, (law enforcement, in particular) to carry weapons and to consider the defensive local use of force. Given the risks associated with such activities, we recognize the following voluntary principles to guide private security conduct:

- Private security should observe the policies of the contracting Company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; emerging best practices developed by industry, civil society, and governments; and promote the observance of international humanitarian law.

- Private security should maintain high levels of technical and professional proficiency, particularly with regard to the local use of force and firearms.
- Private security should act in a lawful manner. They should exercise restraint and caution in a manner consistent with applicable international guidelines regarding the local use of force, including the UN Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials, as well as with emerging best practices developed by Companies, civil society, and governments.
- Private security should have policies regarding appropriate conduct and the local use of force (e.g., rules of engagement). Practice under these policies should be capable of being monitored by Companies or, where appropriate, by independent third parties. Such monitoring should encompass detailed investigations into allegations of abusive or unlawful acts; the availability of disciplinary measures sufficient to prevent and deter; and procedures for reporting allegations to relevant local law enforcement authorities when appropriate.
- All allegations of human rights abuses by private security should be recorded. Credible allegations should be properly investigated. In those cases where allegations against private security providers are forwarded to the relevant law enforcement authorities, Companies should actively monitor the status of investigations and press for their proper resolution.
- Consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities. Companies should designate services, technology and equipment capable of offensive and defensive purposes as being for defensive use only.
- Private security should (a) not employ individuals credibly implicated in human rights abuses to provide security services; (b) use force only when strictly necessary and to an extent proportional to the threat; and (c) not violate the rights of individuals while exercising the right to exercise freedom of association and peaceful assembly, to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.
- In cases where physical force is used, private security should properly investigate and report the incident to the Company. Private security should refer the matter to local authorities and/or take disciplinary action where appropriate. Where force is used, medical aid should be provided to injured persons, including to offenders.
- Private security should maintain the confidentiality of information obtained as a result of its position as security provider, except where to do so would jeopardize the principles contained herein.

To minimize the risk that private security exceed their authority as providers of security, and to promote respect for human rights generally, we have developed the following additional voluntary principles and guidelines:

- Where appropriate, Companies should include the principles outlined above as contractual provisions in agreements with private security providers and ensure that private security personnel are adequately trained to respect the rights of employees and the local community. To the extent practicable, agreements between Companies and private security should require investigation of unlawful or abusive behavior and appropriate disciplinary action. Agreements should also permit termination of the relationship by Companies where there is credible evidence of unlawful or abusive behavior by private security personnel.

- Companies should consult and monitor private security providers to ensure they fulfill their obligation to provide security in a manner consistent with the principles outlined above. Where appropriate, Companies should seek to employ private security providers that are representative of the local population.
- Companies should review the background of private security they intend to employ, particularly with regard to the use of excessive force. Such reviews should include an assessment of previous services provided to the host government and whether these services raise concern about the private security firm's dual role as a private security provider and government contractor.
- Companies should consult with other Companies, home country officials, host country officials, and civil society regarding experiences with private security. Where appropriate and lawful, Companies should facilitate the exchange of information about unlawful activity and abuses committed by private security providers.

**Note:** First released on December 20, 2000

**APPENDIX B: THE INTERNATIONAL LABOR ORGANIZATION'S CONVENTION NO. 169  
CONCERNING INDIGENOUS AND TRIBAL PEOPLES IN INDEPENDENT COUNTRIES**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

adopts the twenty-seventh day of June of the year one thousand nine hundred and eighty-nine, the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989;

## Part I. General Policy

### Article 1

1. This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of pre 1400 nt state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

### Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

### Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

### Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.
3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

#### Article 5

In applying the provisions of this Convention:

- (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;
- (b) the integrity of the values, practices and institutions of these peoples shall be respected;
- (c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

#### Article 6

1. In applying the provisions of this Convention, governments shall:

- (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
- (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
- (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

#### Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

#### Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

#### Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

#### Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

#### Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

#### Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

## Part II. Land

### Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

### Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

### Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

### Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

#### Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

#### Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

#### Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to: (a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) the provision of the means required to promote the development of the lands which these peoples already possess.

### Part III. Recruitment and Conditions of Employment

#### Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(a) admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) equal remuneration for work of equal value;

(c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

(a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

#### Part IV. Vocational Training, Handicrafts and Rural Industries

##### Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training 1400 measures.

##### Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

## Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

## Part V. Social Security and Health

### Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

### Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

## Part VI. Education and Means of Communication

### Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

### Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

#### Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

#### Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

#### Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

#### Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

### Part VII. Contacts and Co-operation across Borders

#### Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

### Part VIII. Administration

## Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

(b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

## Part IX. General Provisions

### Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

### Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

## PART X. PROVISIONS

### Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

### Article 37

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

### Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

### Article 39

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

#### Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

#### Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

#### Article 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

#### Article 44

The English and French versions of the text of this Convention are equally authoritative.

## **APPENDIX C: TRANSLATION OF IKPP STATEMENT ON INCIDENTS OF VIOLENCE BETWEEN ARARA ABADI PLANTATION SECURITY FORCES AND LOCAL COMMUNITIES<sup>308</sup>**

### **1. (Angkasa) Case of the arrest of acacia loggers on PT Arara Abadi's plantation concession**

On Feb 2 2001, AA Forest Security (PAMHUT AA), in the process of a routine patrol, surprised a group of community members who were logging acacia on PT AA concession, District Sorek, Block RKT yr 200-2001, Location 96, 104, 105, 109 and 110, complete with evidence, among other things, several trucks, acacia logs, and village wood transport documents (SAKR) that included the names of the receiving industry.

The 58 illegal loggers, who were from the villages of Belam Merah and Angkasa, were taken along with the evidence seized by PAMHUT AA directly to the Kampar district police office in Bangkinang and processed according to the relevant regulations and it was found that 52 people were implicated in the logging activity.

At that time no violence occurred that resulting in serious injury, as it has been rumored.

At the current time, the illegal logging charges are still being processed by the Kampar district police.

In the meantime, APPEL [Aliansi Peduli Pelalawann The Pelalawan Alliance for Concern--a local NGO and community organization] demanded that the loggers be released and that AA drop the charges, but AA did not agree to those demands.

### **2. Violence against residents of Betung village**

For the purpose of securing company operations especially the transport of pulpwood from District Nilo to the IKPP mill in Perawang, which is frequently threatened by donation posts, which amounted to posts for collecting illegal taxes on the transport of pulpwood, PAMHUT AA endeavored to open the donation posts and secure the transport channels, which all this time had experienced many obstructions.

The disturbance to pulpwood transport had a negative impact on the income of the truck drivers and the food stall owners along the road. Settlement of the problem by means of persuasion/ consultative consensus had been followed, and still the obstructions were still encountered, such that drivers and the field employees became fed up.

At the time of the operation to secure the road (3 Feb 2001), there occurred a spontaneous and accidental clash and violent excess caused by uncontrollable emotion such that several residents (5 people) of Betung fell victim. For all of these victims, represented by Jasa, there has already been a "family" settlement [an out of court agreement] in the form of "heart soothing money", medicine, transport costs, compensation, etc.

The demands made by Sulkanain (Tain) due to his loss from the destruction of his house were also settled by "family means". Meanwhile those who had carried out the violence have been processed legally in the National Court in Bangkinang and these two were found guilty and were sentenced.

On March 3, 2001 following a call to arms undertaken by APPEL in Kerinci (Pelalawan District), APPEL and LAP [Traditional Melayu Petalangan Institute, Lembaga Adat Petalangan] made a blockade and seized several pulpwood trucks on the Sorek-Kerinci road near the Kampar River bridge.

The actions taken include:

- 54 trucks containing pulpwood were seized
- 1 truck was turned over and burned

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<sup>308</sup> Original on file with Human Rights Watch.

- “Sweeping” of the AA employees traveling along the Terentung Maruk (unclear printing)/Penkalan Kerinci road
- Injury to one of the employees such that he was hospitalized in the Awal Bros Hospital

The trucks were detained for roughly 1 week resulting in more loss of incomes for the field staff and obstructed the flow of pulpwood to the mill.

### **3. Case of [land]Claims in Mandiangin village**

Returning security and order to the work area (Block RKT 1999/2000 ) from illegal logging activity by perpetrators in Mandiangin that had resulted in the seizure by Mandiangin residents of several company vehicles (+\_ 33 trucks and 2 motorcycles) and 1 computer. To gain the release of the vehicles the company first attempted persuasive/educative methods but these were not successful so an approach using a little “show of force” by the drivers of the seized trucks was followed. Even this last effort did not produce the physical conflict or violence or destruction of community property, as it has been rumored.

Subsequently, they {residents of Mandiangin] pressed charges in the National Court in Bengkalis for the return of the wood that they had cut from AA’s concession, which in legal fact belongs to AA based on the RKT and IPK licenses that were legally issued by the Riau Provincial Forestry and Estate Crops Office. [The community lost the case]

### **4. Case of Securing Pantaicermin/Tapung**

On 22 Feb 2001 it was again discovered that there was logging and transport of acacia logs from the AA concession, Tapung district, which was being done by CV Biwatsu Oriental Semesta (BOS) and being protected behind documents under the name of village cooperative Dwikarya.

This case was reported to the provincial police (POLDA) and under interrogation the loggers admitted that they had received the logging license (IPK) from the district forestry office in Kampar under the name of Kopni Gotong Royong for the purposes of logging for CV BOS. In order to transport the wood for CV BOS they used a village wood transport license (SAKR) issued by the district forestry office to the village co-op Dwikarya.

Riau provincial police are still processing this case.

## ACKNOWLEDGEMENTS

This report was written by Emily Harwell, Alan R. Finberg Fellow in the Asia Division. Joseph Saunders, deputy Program director, and Cynthia Brown, Arvind Ganesan and Mike Jendrzeczyk edited the report. Jim Ross provided legal review. Sidney Jones and Chris Barr provided valuable comments. Production assistance was provided by Jonathan Horowitz, Patrick Minges, and Liz Weiss.

Although for their safety they cannot be named here, Human Rights Watch is deeply indebted to all those in Indonesia who were generous with their time and information in researching this report. Their collaboration made this document possible. In addition, we thank Global Forest Watch, World Resource Institute, Art Blundell, CIFOR, and Lesley Potter for help with maps.

Human Rights Watch is deeply grateful to the Richard and Rhoda Goldman Fund and the Ruben and Elisabeth Rausing Trust, which provided generous funding for the research and writing of this report.

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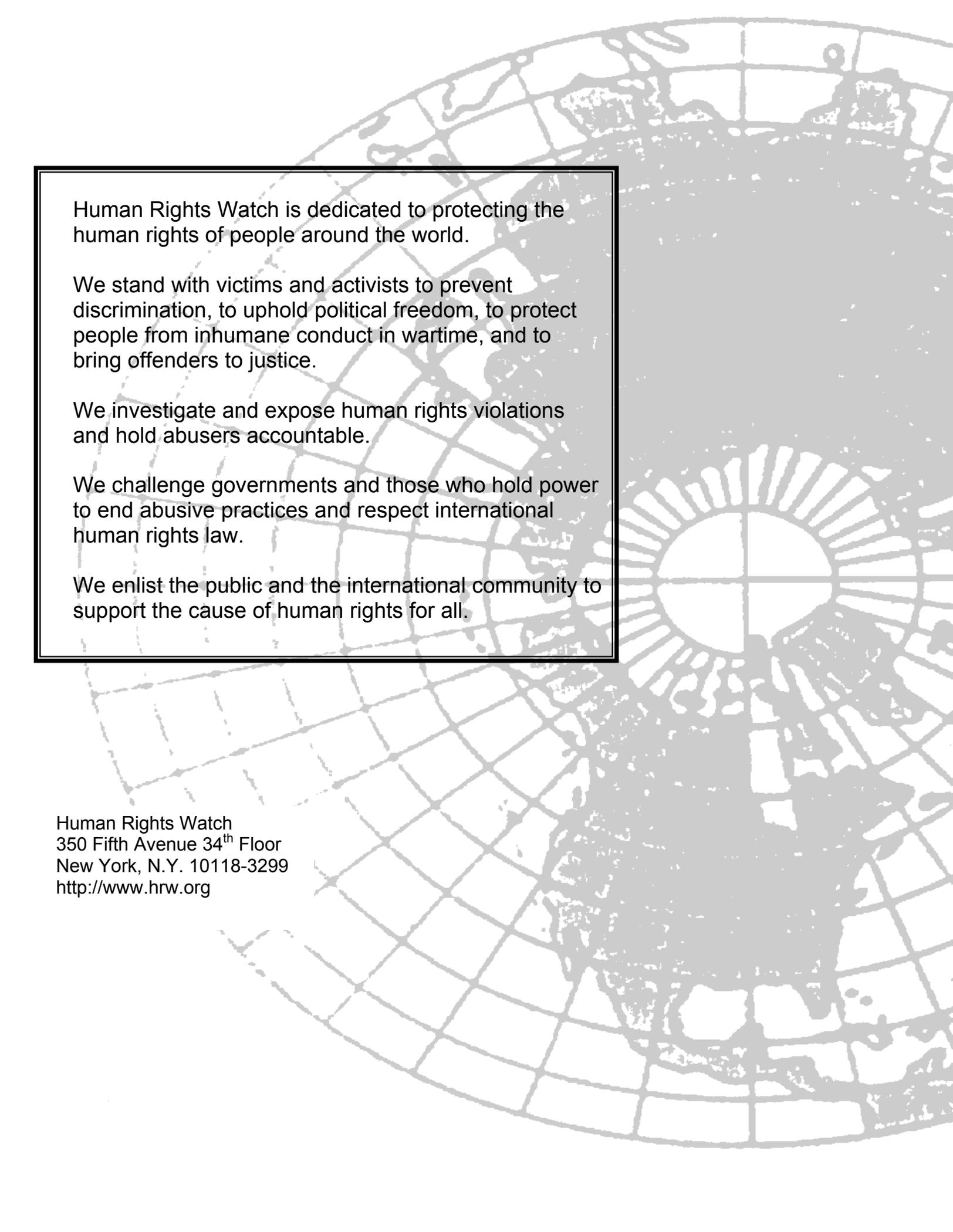
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