

DTE

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New investment law is not pro-poor

The Indonesian parliament passed a new investment law in March, despite strong civil society opposition and despite much concern over its implications.

Several years in the making, Indonesia's new investment law, *UU Penanaman Modal 2007*, is aimed at reinvigorating investment in the Indonesian economy, creating jobs and reducing poverty. Those at least were the goals highlighted by President Susilo Bambang Yudhoyono (SBY) when committing his administration to promoting a new law. In a 2005 keynote speech to the Indonesia Global Investment Forum in New York, the president argued that the country needed to attract investors in order to create jobs and halve the poverty rate by 2009. He said Indonesia needed US\$426 billion worth of investment to make the 6.6% growth target possible each year until 2009¹.

"Because of its impact on job-creation, we see private investment, especially foreign direct investment, as necessary for the conquest of poverty. It is the key factor to human development. Every job created by an investment lifts an individual from extreme poverty and redeems her dignity. That is why we are determined to make foreign investments the engine of our economic growth." (Investment Forum speech, 19/Sep/05)

President SBY's push to increase foreign investment has been a constant feature of his term so far. Since the economic collapse of 1997-8, investment confidence has been low in Indonesia and the business community has complained of the lack of legal certainty, red tape, slow approval procedures and corruption. Whether the international business community has got all it wanted in the new law is doubtful but, if the associated government regulations follow along as planned, it will have made a lot of gains. These include tax breaks, a simpler procedure for starting up businesses, greater flexibility to

move funds around, the employment of foreign staff and longer land use, building and other permits.

What does all this mean for ordinary people? More government revenues to spend on health and education? More jobs? A more highly-skilled workforce? Better infrastructure in remote areas? Maybe some of these things in some places for some people. But the new law also has the potential to do a great amount of damage to communities and their environments. Civil society organisations argue that the incentives offered to attract investments are not balanced by equal responsibilities for the investors or businesses, thus creating the potential for a 'race-to-the-bottom' as far as accountability standards are concerned. Where investors gain, especially in terms of access to land, facilities and finance, communities may well lose out - leading to an increase, rather than a reduction, in poverty. In rural areas, it is feared, the law will continue an already entrenched pattern of natural resources theft, human rights violations, environmental degradation and loss of livelihoods for communities whose resource rights are not adequately recognised under Indonesian law.

Main concerns

The new law replaces laws on foreign and domestic investment (No. 1, 1967 and No. 6, 1968). To be made fully operational, several other laws - including the Companies Bill and the Agrarian Law - need to be passed or revised. The following features of the law have prompted particular concern among civil society organisations, including peasants

groups and labour and women's organisations:

Land: there is serious concern that the law will perpetuate conflicts over land, by making it easier for investors to acquire land and by creating a huge jump in the length of time that companies can control large areas of land. Protestors point out that the leases, now up to 95 years, are longer even than during Dutch colonial times. The Indonesian Peasants' Union says this shows the President's promises of pro-poor agrarian reform and revitalisation of agriculture are empty words. Oil palm is one sector which has seen massive expansion in recent years, accompanied by land conflicts, evictions and loss of land for local communities, including indigenous groups, as well large-scale forest destruction. Much more expansion is planned, partly driven by the increasing demand for biofuels. The new law will assist this expansion and make it more difficult for local people to

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defend their resources, livelihoods and economic independence (see *DTE 72:1* for more background on oil palm and biofuels). The following lease rights used by investors are extended under the new law:

- ♦ Right of cultivation/exploitation (*HGU*): this is the right acquired by companies investing in the agricultural and fisheries sector, such as plantation developers. Under the previous arrangements, the lease was up to 35 years and could be extended for maximum of a further 25 years. Under the new law, the *HGU* lease is for an initial 60 years, extendable for a further 35 years.
- ♦ Right to use (and construct) buildings (*HGB*): needed by investors for building agricultural processing plants, pulp mills, ore processing facilities etc. Previously, these leases were for a maximum of 50 years, but under the new law the initial period is 50 years, with the option to extend for another 30 years.
- ♦ Right of use (*Hak Pakai*): another form of land lease which can be acquired by investors. Previously the length of the lease was determined by local administrations, but it is now available for a maximum period of 70 years².

Failure to protect economic & social rights or deal with poverty: the new law conflicts with the Indonesian Constitution, argues an NGO coalition of 29 organisations set up to reject the bill. The constitution obliges the state to control and use Indonesia's land, waters and the natural riches they contain for the greatest benefit of the people. Since the new law permits 100%-owned foreign companies to exploit Indonesia's resources³, to pay reduced levels of taxes, to use foreign staff and to transfer profits and capital overseas, the greatest benefit of the people is not being served.

The new law also runs counter to the constitution's commitment to 'economic democracy' and self-sufficiency. NGOs say the

new law instead reinforces economic imperialism by rich countries, by laying out a red carpet for investors and selling the country's assets to corporations. Among the items on offer to investing companies are tax incentives for those with projects in rural or border areas (the highly controversial extractive and plantation sectors spring to mind) and projects that have the capacity to create a lot of jobs, along with reduced import duties on capital machinery and raw materials and reduced building and land taxes. Companies will have greater flexibility in bringing in foreign staff if skills are not available locally, and a guarantee that the government will not nationalise their industries. All sectors, except the defence industries, are open for foreign investors: foreign and local companies now have equal status.

The law also fails to take into account the emphasis on the protection of the public's rights in several international instruments such as the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention on the Rights of the Child, as well as the aims of the Millennium Development Goals to eradicate poverty, all of which Indonesia has signed up to. A statement issued by the coalition argues that previous laws, including those on foreign investment, have failed to address poverty, currently standing at 110 million people living on less than US\$2 per day. The NGOs argue that more private investment in public services, such as water, will worsen poverty and have a disproportionate impact on women and children, as well as turning citizens, who have the right to protection, into consumers who can only buy services if they can afford to.

Transparency and participation: there was no real public debate about the contents of the bill and no public consultation during

the drafting process. However, the World Bank had substantial influence (see below). Other bodies that were involved in consultations include the Indonesian Chamber of Commerce, The National Economic Recovery Committee, the Centre for Strategic and International Studies (CSIS) and the International Business Chamber (the umbrella organisation for business organisations for foreign nationals).

The NGO Business Watch Indonesia is calling for much greater civil society participation in and monitoring of the drafting of flanking laws upon which the investment law depends if it is to be fully operational. These include laws which cover agriculture, land use, environmental protection, companies and funds repatriation. Crucial decisions which may limit or - at worst - expand the scope of the new investment law are to be made before these laws are finalised by 2009.

Foreign investment in Indonesia

Foreign investment levels fell to US\$5.976 billion (876 projects) during 2006, a 32.9% drop from US\$8.914 billion in 2005 (909 projects), according to data issued by the Foreign Investment Coordinating Board (BKPM)⁴. Metals, machinery and electronics projects attracted most investment (86 projects worth US\$955.2 million), followed by the paper and printing sectors (16 projects worth US\$747 million). Most investment went to West Java, followed by Jakarta, then Riau, Banten and East Kalimantan provinces. The number of people employed in FDI projects increased by 32.56% from 2005, with 206,945 more people getting jobs. Approvals for FDI projects, as opposed to actual inflows, increased by 15% to \$15.6 billion in 2006.

Britain remains one of Indonesia's biggest investors, ranking second to Japan for cumulative investment. Total investment from the UK could be more than US\$20 billion, according to the British Embassy in Jakarta. US\$11 billion is concentrated in the oil and gas sector, of which the oil multinational, BP, accounts for US\$6 billion. BP's investment has recently been focused on the huge Tangguh gas project in Bintuni Bay, West Papua (see page 4 for an update on this highly controversial development).

(Source: *Indonesia Matters*, 26/Jan/07; *Detikfinance* 24/Jan/07; <http://www.indonesiamatters.com/1066/2006-fdi/> accessed 8/5/07; <http://www.britishembassy.gov.uk/>, accessed 21/Mar/07.)



Demonstration against Indonesia's biggest investor, Freeport-Rio Tinto, Jakarta 2006 (Igor O'Neill)

Debt: Indonesia's mining advocacy network, JATAM, has highlighted the link between investment and debt: attracting investors means improving Indonesia's ageing infrastructure, which requires foreign loans, increasing the national debt. President SBY's attempt to attract private investment into public infrastructure projects has not proven successful to date (see DTE 69:3).

Demonstrations

The level of concern in Indonesia about the potential impacts of the law led to several protests in the weeks leading up to the bill's passage through parliament. The Civil Society Coalition to Reject the Bill said the new law would help foreign investors' efforts to drain Indonesia's natural resources and exploit the country's manpower for low wages.

In Jakarta, protesters filled the courtyard of the National Investment Agency (BKPM) on Jalan Gatot Subroto, one of the capital's main thoroughfares. Eleven groups were represented at the protest, including women's groups, anti-debt, youth and environmental groups, peasants and labour unions. The protesters said the new law would add to the list of violations of economic, social and cultural rights by the state and by corporations.

In the Central Java city of Solo, student and NGO protesters declared their rejection of the law, highlighting dangers for national sovereignty, people's rights and conditions for workers and farmers.

On March 28th, activists from the national peasants' union, FSP, interrupted a parliamentary committee meeting to discuss the bill by throwing leaflets opposing the bill from the public gallery.

World Bank involvement

The pro-investor flavour of the new law is not surprising, given President SBY's belief in the need to attract inward investment. What may not be so obvious is the key role that the World Bank Group played in preparing the law. The Bank's involvement started in late 2004, when senior Bank staff from the Jakarta office held meetings with the newly elected president's coordinating minister for the economy, Aburizal Bakrie (of Sidoarjo mudflow notoriety). According to the Bank, an advisory team was formed to assist Bakrie, who had been given the task of guiding the process of reforming national investment policy. A more formal project ran from July 2005 to March 2006, to assist with preparing the new investment law, with developing an investment promotion agency and with the provision of information on best practice for incentives for investors.

The team's activities were extensive, including commenting on drafts of the law and implementing regulations on incentives; providing working papers and policy notes, preparation and discussion of

'drafting guidelines' for the law's implementing regulations and participation in meetings. A report on the project hints at the sensitivities surrounding Bank involvement. It says that providing drafting guidelines "avoids the situation in which the WBG is seen to be drafting legislation directly". Yet the purpose of the project appears to be just that. The report claims the project was successful in having an impact on the form of the draft law submitted to parliament as well as "indications of significant influence on the form and content of a number of the implementing regulations (Presidential decrees)".

Such interventions, which inevitably promote the Bank's ideas on how international business should be done, can

Protests against UK government intervention

In the weeks before the law was passed, after the Indonesian parliament had once again failed to agree on the bill, Lord Powell of Bayswater, a crossbench peer in the UK's upper house paid a visit to Indonesia as envoy of Prime Minister Tony Blair. As a one-time advisor to former prime minister Margaret Thatcher, and as an international businessman with interests in Indonesia, Lord Powell's approach to the investment bill was not in doubt. After meeting vice-president Jusuf Kalla, he said he hoped parliament would pass the law and that it would be "a tremendous encouragement to foreign investors."

Indonesian civil society organisations highlighting the dangers of the bill saw this as a blatant and very unwelcome attempt to intervene in Indonesia's law-making process. A statement by 28 organisations, dated March 15th, urged the British and other European governments not to intervene in Indonesia's law-making processes and not to place further burdens on people impoverished by policies imposed by Indonesia's creditor countries in the past.

Lord Powell's business interests in Indonesia are through the Jardine Matheson Group, a Bermuda-incorporated company with extensive business holdings throughout Asia. In Indonesia these include motor manufacturing group Astra, a company which is also involved in mining contracting and oil palm plantations.

(Source: <http://www.matheson.co.uk/> accessed 27/Mar/07, <http://www.iiss.org/governance/the-council/lord-powell-of-bayswater>, 21/Mar/07; Speech by Lord Powell of Bayswater for Indonesian Global Investment Forum: 8-9 September 2005.)

only deepen the sense among Indonesia's marginalised population that their government is conspiring with the interests of global capital, as represented by the international financial institutions, rather than working to protect the poor.

(Source: Keynote Address Susilo Bambang Yudhoyono at the Indonesia Global Investment Forum, New York, 15/Sep/05 at <http://www.ekon.go.id/v3/content/view/226/62/> accessed 27 Mar 2007; *Tempo Interaktif* 13/Mar/07; *Tempo Magazine* No.31/Vii/Apr 03-09, 2007; JATAM 12/Feb/07; *Jakarta Post* 27/Mar/07; *Position Paper, Civil Society Coalition to Reject the Investment Bill*, 11/Mar/07; *The Preparation of a new Investment Law and related Implementing Regulations in Indonesia, A report on the World Bank Group's contributions*, May 2006, from www.worldbank.org; *Xinhua* 15/Mar/07. Thanks for additional insights are due to Business Watch Indonesia.)

Notes:

1. This level of growth is not likely to be achieved. Latest figures from the Indonesian Statistics Bureau show growth at 5.97% over the past year.
2. Soewito Suhardiman Eddymurthy Kardono, Indonesia: Indonesian Mining 2006, 21 July 2006, Mondaq, <http://www.mondaq.com/article.asp?articleid=41340&lastestnews=1>, accessed 8/May/07; *Jakarta Post* 23/Mar/07
3. Apart from protected sectors related to national defence. Pertamina, the state-owned oil company, has also had an obligatory interest in foreign-owned oil companies protected.
4. The BKPM figures are based on permanent licences issued to certain sectors (excluding oil and gas, banking, mining and some other sectors) and do not reflect actual inflows. UNCTAD puts the figure for actual FDI inflows for 2005 figure at US\$5.260 billion - see www.unctad.org, a major increase on the 2004 figure of US\$1,896. No figure is available for 2006 at time of writing. ♦

FDI information

Business Watch Indonesia has published a booklet (in Indonesian and English) on EU investment, entitled *Investment in Indonesia, its development and impact*. Contact bwi@watchbusiness.org for more details.

For more background on FDI in Indonesia, see DTE 69 (a special issue on FDI) and DTE's factsheet on FDI in <http://www.dte.gn.apc.org/ffdi1.htm> (English) and <http://www.dte.gn.apc.org/fifdi.htm> (Indonesian).

BP in West Papua

Tanggung - adapting to the West Papuan context?

It has been two years since Down to Earth's last detailed report on BP's huge Tangguh gas project in Bintuni Bay, West Papua. Surprisingly little has changed.

From BP's point of view much has changed at Tangguh - the project is now well into its construction phase (70% complete as of March 2007) and is due to go 'onstream' in 2008. However, the same issues, the same concerns, the same doubts keep surfacing. How can this mega-project possibly fit into the realities of West Papuan life? How can it not result eventually in major environmental degradation? What real chance is there for Papuan communities to feel they are part of the project? What real chance is there for Papuans to benefit - and feel that they are benefiting - from the profits of this enterprise?

These issues can be summed up with the following words: incongruity, degradation, disempowerment and degeneration. 'Incongruity' because there is little to no chance that this 21st century production site will sit easily alongside the lives of those whose fishing and agriculture-based livelihoods have remained relatively unchanged for hundreds of years. 'Degradation' because, apart from local Papuans' perception that the land, their inheritance, is being sucked out from under them, it is unlikely that the comings and goings of LNG tankers and other vessels at the newly constructed dock, or the projected pumping of significant quantities of CO₂ into the atmosphere, to name just two issues, will result in good news for the environment. 'Disempowerment' because, no matter how many consultations and studies are done, Papuans know that they are not in control of this enterprise. 'Degeneration' because the quality of life of those people living in the immediate vicinity of the Tangguh 'facilities', when considered holistically, cannot be said to have improved with the arrival of BP.

While Tangguh's promoters point to community support, development schemes, economic growth and tax revenues, there are continuing signs from the ground that the project is creating discontent among at least part of the local population. Revenues from the Tangguh project will no doubt bring development to Indonesia and West Papua, but at what cost? And is it really the development that local people want and

need? The fact remains that BP's Tangguh project is now well on the way to becoming a reality, and a significant one, in the life of West Papua, Indonesia and the region. It is important to recognise this reality, to monitor developments at Tangguh as closely as possible and to ensure that critical views are not drowned in the flood of pro-project information put out by BP and its backers both in and outside Indonesia.

Papuan and Indonesian civil society - attitudes to Tangguh

At the Tangguh Independent Advisory Panel (TIAP) meeting in London in April 2007, panel member Senator George Mitchell maintained that local support for the project was strong, that there was greater support now than five years ago and that the "further away from the project, the greater the protest". This view, by the chair of a body set up by BP, shows that perceptions of attitudes towards Tangguh vary according to what information is received and - in Senator Mitchell's case perhaps, what people want to hear. Down to Earth continues to receive a different message from the communities that are affected by and/or have an interest in this project: one of increasing discomfort and growing disillusionment. Indeed, not all members of TIAP, were so fulsome in their assertions about BP's reception in Bintuni Bay. Reverend Herman Saud, the panel's only Papuan member, talked about jealousies amongst the local people, the risk of those feelings being exploited by outside parties, creating divisions and resentment.

Two Manokwari-based NGOs have spoken out recently on this issue: Perdu on claims by communities living on the northern shore of Bintuni Bay relating to ownership of gas resources, recognition of customary rights, profit sharing and supervision; and LP3BH on the increased militarisation of the region.

BP's efforts to implement a significant social programme - based around health and education - in the Bintuni Bay area appear to be reaping some rewards. There is also a significant number of local Papuans

currently employed during the construction phase of the project. Both these factors have no doubt increased some local community incomes in the short term, but persistent underlying problems are revealed when the project is looked at in the wider and longer-term perspective.

One outspoken critic of the Tangguh project is the Rev. Socratez Sofyan Yoman, President of the Union of Baptist churches in Papua. He has repeatedly criticised BP and Tangguh, placing the project firmly in the context of the wider political aspirations of ethnic Papuans. Such public criticism is remarkable, given the difficulties and risks associated with speaking out against a system of government that is perceived by many in Papua to be unfair, discriminatory and imposed from afar.

In Indonesia itself, there is relatively little knowledge of the Tangguh project beyond government circles and the intellectual and NGO community. Certainly, until revenues start flowing, interest in Tangguh will remain small and there is little pressure on the Indonesian authorities to monitor opinion and ensure transparency. Ambassador Sabam Siagian, TIAP's Indonesian member, has argued that it is important for BP to work with the national press in Indonesia as a way of educating Indonesian public opinion.

Public perceptions are key to the outcome of the project. 'Rumour' is much talked about in West Papua, for good reason. Communication within Papuan society happens in a very different way from western culture (and presumably BP's own institutional culture). For BP to overlook or discount this factor in the evaluation of its progress, would be a serious mistake, and, in the long run, would be detrimental to their business objectives.

Environmental monitoring

Given the increasing awareness of the likely impacts of climate change, it is surprising that building a Liquid Natural Gas (LNG) production facility in the middle of one of the most pristine environments in the world has not provoked more critical reaction from

NGOs and the public in Europe, North America and Australia. Experience in Papua has shown that such mega-projects not only have a history of damaging the environment and local ecology, but attract further development, which in turn inflicts more damage.

BP has tried to prevent this 'magnetism' effect, by limiting employment to Papuans, but it seems unlikely that the counter-measures will have the desired effect. Lord Hannay from TIAP pointed out that the system set up to discriminate in favour of employing Papuans was 'beyond the control of BP' and 'open to corruption'. (Papuan residency cards are issued through local government offices.) Consequently, the Indonesian perception of West Papua as the land of opportunity is further strengthened, drawing more migrants to West Papua and compounding the problems created under Suharto's massive transmigration programme.

Two other issues stand out. The first, highlighted by BP's 2006 environmental disaster in Alaska, points to the risks of a massive increase in shipping and other activity in and out of Bintuni Bay. In a recent

admission, BP America president Robert Malone admitted that cost-cutting within BP was a contributing factor to the oil spill in Prudhoe Bay, Alaska. There are continuing reports that lessons from this disaster are not being taken on board by BP management. Similarly, in its report on BP's Texas oil refinery explosion in 2005 (which killed 15 people), the US Chemical and Safety Board said that cost-cutting was a contributory factor. As reported in DTE 72, supertankers will regularly ferry LNG from West Papua and other marine traffic has already increased exponentially. Could BP or the Indonesian authorities respond to a major accident in Bintuni Bay?

The second issue is the question of carbon dioxide (CO₂) emissions and other waste products from the LNG production process. As BP itself has admitted, The Tangguh gas fields and the processing of LNG will release large quantities of CO₂ into the atmosphere. Estimates indicate that 12.5% of the Tangguh reservoir gas stream consists of CO₂, which will be released into the atmosphere unless a system of disposal is

found. Over the life of the project, this could represent at least 1.8 trillion cubic feet (Tcf) of CO₂. Currently, BP has no definite plans to counter these emissions. A system for 're-injecting' some of the CO₂ into the ground has yet to be acted upon. Similarly, the disposal of mud waste from drilling and of ships' ballast water and sediments is likely to prove environmentally damaging. The project has yet to sign up to best practice in all these fields.

BP has a programme to manage the local Sousa dolphin population and other marine mammals and is working with environmental organisations such as WWF and Conservation International, but it is unclear if these programmes will be effective or how they will integrate with the LNG facility. Indeed BP's Biodiversity Action Plan contains much that focuses on conservation, surveys and education, but not so much on the practicalities of reducing Tangguh's environmental impact. There is a legitimate concern that, if the monitoring is left in-house, Bintuni Bay may suffer a similar fate as Prudhoe Bay in Alaska, but without the infrastructure available to respond effectively.



Papuan activists boycott the London TIAP meeting, April 2007

(Photo: Kevin Mullen/Tapal)

Employment, social programmes and their effect on Papuan society

Apart from the social programmes, employment is likely to be the most significant factor in BP's immediate effect on Papuan society. Currently, there are up to 9,000 people working on the construction site, of which about 2,900 are Papuans, employed mainly in manual and unskilled jobs. This appears to be a positive contribution to the prosperity and development of life in the Bintuni Bay area. However, from 2008 onwards, the numbers being employed at the site will diminish and by 2010, there may be less than 100 Papuans employed at Tangguh. BP's projected figures on the percentage of Papuans in the future workforce are not impressive. BP is taking measures to try to train more Papuans for skilled positions in the production stage of this project, but the numbers are still low. When production starts in full, local residents of the Bintuni Bay area will see a massive high-tech operation shipping out their natural resource wealth with only a handful of Papuans apparently benefiting and engaged in the process. However much BP points to the large revenues that will flow to the Indonesian government, or even to West Papua itself, the local perception will be one of injustice. One exiled West Papuan activist, Benny Wenda of the UK Free West Papua Campaign, has described the process as 'the robber selling off the contents of my home'

In its 2007 report, TIAP encourages BP to do more on the employment of Papuans and to educate the local population about the 'demobilisation' process. Having

worked for a few years helping to build this facility, many local Papuans, especially men, will find themselves unemployed and back in their previous situation, warns the report. However, society in the Bintuni Bay area will have changed. A report by the Indonesian Mining Advocacy Network (JATAM) has already described the effects on the community of the arrival of BP in Bintuni Bay. For example, alcohol is being brought in on the ships arriving to build Tangguh, prompting increasing drunkenness and highlighting frustrations that exist (see *DTE* 65:3 and <http://dte.gn.apc.org/ctgper05.htm>). Concerns about 'demobilisation' prompted TIAP to recommend that BP contribute to re-training those people who will no longer be employed, in particular by putting resources into training on fishing and agriculture. It remains to be seen whether any such measures will be sufficient to cope with these changing realities and make inroads into perceptions of injustice.

With regard to the social programmes, BP has budgeted just over US\$58 million for the period 2005-10 for their entire programme (which includes funds for resettlement and security amongst other issues). Each 'directly affected village' will receive US\$30,000 per year for this period for 'community action programmes'. This seems like a substantial sum. However, with the subtraction of staff costs of over US\$20 million, the figure does not look quite so impressive. As with employment and 'demobilisation', the question remains what will happen after 2010? Will BP continue to finance social development in West Papua or will it consider its debt to have been paid off?

Security

For many Papuans, far more serious is the question of security and the consequences of the lure of resource wealth. Papuans know that trouble tends to come fast on the heels of the arrival of money-making enterprises. The experience of Freeport-Rio Tinto has shown this clearly (see separate report, page 12) and BP has tried to anticipate some of the problems. Tangguh's Integrated Community Based Security Programme (ICBS) is intended to offset the problems of its business being shown to be too closely associated with the Indonesian police and military. BP knows that the indigenous community are deeply suspicious of the Indonesian security forces because of their involvement in human rights violations and the perception that they are outsiders and part of a system alien to their way of life. The ICBS programme is based on a system of layers of private and public security, agreed procedures and human rights training that aims to avoid the use of the military for security purposes and promote better community relations. While the intentions may be good, the pressures on this system may, in the end, prove too great.

Already there are reports of an increased military and security presence in the Bintuni Bay area. LP3BH issued a statement in November 2006 highlighting this increased presence, pointing to the construction of a new military base (*Kodim*) and the fear of what this may mean for the local community. According to the statement, the construction of naval facilities is also underway in the bay, and personnel from various intelligence agencies are now present in Bintuni town, as part of the local administration. The group warns: "It is very likely that these agencies will be involved in all the activities taking place in the area of the LNG Tangguh Project, directly as well as indirectly".

The NGO calls on BP to pay attention to the impact and consequences for human rights in the Bintuni Bay area of these developments and of the use of military 'security advisors' within the Tangguh project area. At the London meeting, Reverend Saud from TIAP mentioned rumours of intelligence personnel and members of the army's special forces command, *Kopassus*, being active in the Bintuni area and the potential problems of any increased military presence. Many Papuans believe that, rather than ensuring security and stability, these forces are a provocative and highly intimidatory presence. This process of militarisation is widely seen as self-serving, in that it perpetuates conflict and therefore strengthens the hand of those who maintain that force and a hard-line solution is the only way for Indonesia to guard its interests in the region.

As is well-documented, the murky goings on between the military and Freeport-Rio Tinto include financial interests (see *DTE* 57:1). The Indonesian military relies on business activities for around 50 per cent of its income and often the line between legitimate and illegitimate business interests is blurred. Even putting aside the military's track record on human rights, there is a clear conflict of interest in having the power to control both the supply and demand in the business of internal security within Indonesia. Seen in this light, BP's efforts at steering clear of these pressures are commendable, but perhaps are naïve or involve a certain amount of wishful thinking.

The political and human rights context

BP's security dilemma makes it appropriate to consider more closely the wider context within which the company is operating.

One political issue that is definitely impinging on BP is the controversial creation of the new province of Irian Jaya Barat (provocatively now renamed 'West Papua'). Tangguh is located in the new province. Many Papuans are opposed to the division of Papua, and believe it to be unconstitutional as it was

not approved by the institutions set up under Special Autonomy provisions. Some see it as an attempt by the central government to divide and rule a region that is threatening to break away from Indonesia. Given the wealth of natural resources in Papua and revenues available to the central government, it remains unlikely that Jakarta will want to loosen its control. In its 2007 report, TIAP recommended that BP strengthens its ties with the new provincial administration in Manokwari and that more resources are directed at strengthening regional administrative structures. By following these recommendations, BP will be on dangerous ground because it will be drawn into close association with a regional and provincial government apparatus that has been initiated in controversial circumstances. Some proponents of independence for West Papua use a similar logic to argue against all of BP's dealings with the Indonesian government in West Papua, given the controversial circumstances surrounding the 1969 'Act of Free Choice' that led to West Papua's incorporation into Indonesia. By working with the Indonesian authorities, BP will become more and more involved in the ongoing political debate surrounding the status of West Papua. This latent conflict, as with all types of conflict, will eventually force those involved to take sides. If BP wants to promote a 'caring' image, it will need to show itself willing to exert its influence to ensure the system of government in West Papua is as fair as possible, even if this means arguing the case in Jakarta.

Without getting into the wider human rights picture in West Papua and widespread incidents of human rights violations (other NGOs have reported on this - for example, see Human Rights Watch's latest reports), it is enough to say that ethnic Papuans are living under a discriminatory regime. At the TIAP meeting in London, Reverend Saud said that "discrimination in Indonesia is very big". Although he stopped short of directly saying that discrimination was institutionalised, it was clear that he was articulating this concern. For West Papua and Papuans to feel some measure of control of their own futures, the issue of discrimination needs to be tackled and social mobility promoted.

The question of transparency is a good illustration of one such block to social change in Papua and therefore one of the serious challenges facing BP in its efforts to promote a clean and socially responsible image. Currently, BP and the government of Indonesia do not reveal the projected levels of revenue from the Tangguh project - this will start flowing once production starts and loans have been paid off. The figures are still only talked about in general terms: for example, BP talks about a figure of US\$12 billion revenue for Indonesia over the next 25

years. Transparency International, an international NGO campaigning on this issue, has argued that there is no reason why levels of confidential and non-confidential revenue generation cannot be revealed. Papuans will have no way of knowing whether they are receiving their full entitlement to a percentage of the Tangguh income unless there is complete transparency over the revenue figures. Indonesia is not yet a signatory of the Extractive Industries Transparency Initiative (EITI) which requires greater clarity on this. (BP itself is listed as an EITI 'supporter'.) Only through the publication of revenues generated and projected revenues can all those concerned be able to judge for themselves whether the distribution of resources is fair and just.

A world-class project?

In the introduction to BP's Sustainability Report 2006, Lord Browne, then BP's Chief Executive, talked about the company "caring for genuine sustainability", holding up the example of Tangguh, where BP was "working in a remote, environmentally sensitive area and requiring the greatest of care in integrating a large-scale construction process with the life of the local community." These are fine words and demand of everyone involved the strictest monitoring and appraisal procedures. The TIAP report 2007 and its recent stakeholder meetings should also reflect these high standards, given its supposed nature as an independent advisory body. There is a sense, however, of holding back the tide. The questions from the floor at the London meeting revealed the large

variety of concerns - and this is before production has begun. The meeting was boycotted by the Free West Papua Campaign, reflecting a growing sense of frustration with the project among many activists. BP has landed upon themselves some very high expectations, especially from the West Papuan indigenous community. They are looking for a solution to the ongoing sense of injustice at the hands of outsiders who for years have come to their land and subjugated it. If BP is truly looking for genuine sustainability, it must begin to recognise and deal with the political context it is working in. At present, there is little evidence of that being done.

This, perhaps, points to the key problem with Tangguh: leaving aside the arguments over environmental sustainability, it may just not be possible to develop a socially sustainable mega-project in Papua today, precisely because of the unfavourable political context, with its explosive mix of human rights violations by the security forces, discrimination against Papuans, deep frustration from a lack of significant political power, and, underlying it all, the denial of Papuans' right to self-determination.

The Jakarta government has failed to act on promises to work on a solution in Papua and real prospects for restarting the dialogue on Papua's future appear remote. Instead, Jakarta is continuing to assert its control by pressing ahead with Papua's division - with all the increased militarisation that involves.

In this context, what can BP hope to achieve - apart from the usual hefty profits for its shareholders? Yes, BP is undertaking

community development and social programmes and these should have some positive effects, and yes, the potential revenues from the project will undoubtedly benefit Indonesia and make more money available for development in West Papua. But militarisation, the potential for human rights violations, continuing local resentment over the land rights, resource rights and consent, plus a wider objection to BP as collaborator with an exploitative Jakarta government remain deep concerns.

The 'Tangguh test' continues: at the TIAP meeting David Clarkson, Tangguh's project manager declared BP's intention of becoming a "world class recognized model for an enterprise of this sort" and stated that the next two years will be critical in this process. Many questions follow: who will decide, after two, five, ten years and more, how successful or otherwise BP's efforts have been? Who will decide when the real Tangguh test ends and how it is assessed? And who will bear the consequences if Tangguh fails the test?

(Sources: *Up-date Tangguh*, March 2007, forwarded by Perdu; *STATEMENT BY LP3BH criticising the Situation and Human Rights Conditions in the Bintuni Bay District*, translated by TAPOL, received 5/Feb/07; *Houston Chronicle* 16/6/2007; *Times Online* 10/5/2007; <http://www.eitransparency.org/section/suppliers>; notes from the London TIAP meeting, April 17th 2007; TIAP 5th Report on Tangguh LNG project (CO₂ emissions and waste products), March 2007, letter to TIAP from UK Free West Papua Campaign)♦

(continued from page 8)

needs from what the land produces.

The villagers don't want to plant oil palm because they are not certain it will bring in enough money to guarantee the same level of prosperity. This is because oil palm is a crop that needs a lot of attention, special tools as well as fertilisers that are getting more expensive each year. In contrast, cultivating *sonor* rice, growing rubber, keeping buffalo and making rush mats don't involve many costs.

Opening more oil palm plantations here will destroy community land. And without their land, the villagers can't make ends meet. Once the land has been converted into oil palm plantations, today's prosperity will be nothing but a fond memory.

(Source: DTE interview with Mat Cutik, coordinator of Gerakan Perjuangan Atas Tanah Adat - GPATA; Ilham Khoiri dan BM Lukita G. Di Balik Hijaunya Kebun Sawit. *Kompas*, 25 Februari 2006, <https://www.kompas.com/kompas-cetak/0602/25/Fokus/2460758.htm>)♦



Talang Nangka village land: oil palm threatens *sonor* rice.

(Sawit Watch)

oil palm

Land and prosperity - notes from Talang Nangka village

The following report is based on an interview with Mat Cutik, Co-ordinator of Gerakan Perjuangan Atas Tanah Adat, an organisation set up to defend villagers' land from oil palm development.

"It all stems from the land: if we don't have land, how can the community prosper?" This was the point made by Mat Cutik (52), from Talang Nangka village, Ogan Komering Ilir district, in the province of South Sumatra.

Together with around 900 other families in the village, Mat Cutik is fighting to keep his land out of the hands of oil palm plantation companies PT Patri Agung Perdana and PT Persada Sawit Mas.

The Movement to Defend Customary Land Rights (GPHTA) was set up by local villagers in August 2005 as an umbrella organisation for people who refuse to accept oil palm plantations. For the Talang Nangka villagers, their land provides them with their living, and has done so for generations.

The majority of Talang Nangka villagers work the land according to the local *sonor* system, planting rice in the marshy areas during the dry season. One hectare of *sonor* rice can produce 300-400 cans (*kaleng*) of rice, the equivalent of three to four tonnes, but it is rare for villagers to produce this much in one year. Rice is grown mainly to supply the family's own needs and it is unusual for them to have any surplus to sell.

In the rainy season, *sonor* land can't be utilised for farming, but it can still be used

for catching fish, which is more often sold to provide cash income. Fishing rights are communal: anyone can take fish from the village *sonor* areas.

The land outside the marshy areas is used for rubber cultivation and for keeping buffalo. The community's rubber trees can produce 7-10 kg of raw rubber, which fetches Rp7000-Rp9000 (around US\$1.00) per kg at current prices. Rubber tapping only takes around six hours and is done from five in the morning until eleven, after which villagers can attend to other work.

Buffaloes are not only useful for ploughing and as a source of meat, but their *puan* (milk) is mixed with palm sugar and made into a sweet milk called *gula puan*, used for mixing with tea or coffee. It is sold for Rp35,000 (US\$4) per kilo, for additional income.

Another source of extra income comes from selling mats made from rushes that can be collected from the marshland. These are sold for Rp3,000 (US\$0.34) each.

It is clear to the community that their current farming system is able to fulfil their needs. Mat Cutik himself feels he is doing well as he can supply his family's basic

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The oil palm invasion

Massive expansion of oil palm plantations in Indonesia is being strongly opposed by many local communities and civil society organisations. The NGO network Sawit Watch reports 360 conflicts related to oil palm development up to 2006, and predicts that if expansion goes ahead, 20 million hectares of land will be devoted to oil palm, on top of the existing 6.4 million hectares.

The demand for palm oil for biofuel projects is forcing the pace of development: by 2010 the Indonesian government is planning to develop 5.25 million hectares of biofuel crops (oil palm, jatropha and cassava). Palm oil prices are rising month on month on international markets and Indonesian food prices are likely to increase as a result.

Much of the expansion - past and future - is on land classed as forest areas by the government, and much of this is traditionally owned and used by indigenous peoples, whose customary rights are typically given minimal or no recognition by the government and plantation companies.

There is widespread concern that the oil palm invasion will create even more conflict and human rights abuses, in addition to clearing forests and destroying peatlands, which will contribute further to global warming. Now that Indonesia has passed its new investment law, the plantation developers will have greater scope to access land and will have the legal right to stay there for as long as 95 years (see page 1).

For further background see DTE 72:1-3 and DTE 71: 5-9. Sawit Watch's two 2006 reports, *Promised Land: Palm Oil and Land Acquisition in Indonesia*, and *Ghosts on our own land: oil palm smallholders in Indonesia and the Roundtable on Sustainable Palm Oil*, are available in English and Indonesian from www.sawitwatch.or.id and www.forestpeoples.org.



Talang Nangka village, South Sumatra

(Sawit Watch)

forests

The Indonesian Timber Legality Verification Standard: words are not enough

After a long and tortuous process, the working group given the task of agreeing the final version of Legality Standard for Indonesian Timber has completed its work. What its impact will be on the ground, where Indonesia's forests are disappearing fast, remains to be seen.

The final draft of the Indonesian Timber Legality Verification Standard was officially handed over to the Forestry Department at the beginning of February 2007. The standard, which has taken several years to finalise, is considered by many civil society organisations as a positive achievement. This is because it goes some way to addressing the issue of local community rights - including indigenous peoples' rights - as well as legal recognition for timber produced from community or customary forests, while still being based on existing laws and regulations.

The standard was originally drafted as part of the follow-up to a 2002 agreement between Indonesia and the British government. This was then in effect superseded by the Action Plan on Forest Law Enforcement Governance and Trade (FLEGT), adopted by the European Union in 2003. Central to the FLEGT plan are the bilateral Voluntary Partnership Agreements (VPAs) aimed at preventing illegal timber from producer countries from entering the EU. The legality standard is an essential prerequisite for the VPA, to determine what can and what can't be classed as 'legal' timber, but will also be used as the basis for all Indonesian forestry legislation and agreements to control the illegal trade in logs with other countries. (For further background see DTE 67:13 and DTE 69:18 and for more details of Indonesia's VPA negotiations, see <http://www.illegal-logging.info>.)

It is not yet clear what legal form the standard will take - whether a presidential or ministerial decree, or a government regulation (PP).

The members of the multi-stakeholder working group on the legality standard (known in Indonesia as the *tim kecil*)* identified several key issues which needed to be followed up once the legality standard had been completed. These concern the institutions, mechanisms and procedures required for verifying timber legality, as well as for publishing the results of verifications. These issues were also raised at a public consultation held in Jakarta in January. It was agreed by the participants that the institution



Legal? Logs in North Sumatra (DTE)

given the job of implementing the standard should be independent and multi-party and should be given full authority by the government to carry out its mandate. It was also agreed that verification agencies (which must first go through an accreditation process) should work under the implementing institution, and that a dispute resolution institution should also be set up.

Internationally, the legality standard has been widely presented as evidence of Indonesia's good intentions and its efforts to tackle deforestation. At an international meeting on illegal logging at Chatham House in London in late January 2007, for example, the Indonesian government, represented by Dr Hadi Daryanto of the forestry department, sought to convince participants that the finalised standard would be speedily implemented in full, without any watering down of its content.

But progress towards following through the process so that the legality standard can be implemented in the field has been slow. At least three months have been wasted without any significant steps. The only recent development has been a forestry

ministry decree to appoint a steering committee with the task of setting up the necessary institutions for implementing the standard. The indications are that differences of opinion within the forestry department - evident earlier in the working group dynamics - have led to obstacles

Meanwhile, the reality on the ground is that deforestation caused by destructive logging continues apace: Greenpeace claims that Indonesia deserves to be listed in the Guinness Book of Records as the country with the highest rate of deforestation in the world, with 1.8 million hectares of forest destroyed each year between 2000-2005. This has been denied by forestry minister Kaban, although his predecessor had admitted in 2004 that deforestation was running at 2.5 million hectares per year.

Indonesia and the EU agreed on 8th January 2007 to start formal negotiations on a VPA. Indonesia hopes to conclude the VPA by the end of this year. The first steps towards integrating the new legality standard and associated institutional arrangements with EU requirements took place between EU and Indonesian officials in Jakarta from 29th-30th March.

The EU's overall goal is a licencing system that assures European purchasers that imported timber products are the result of legal operations in the partner country. A key element of this scheme is independent third-party monitoring. However, as the all-important EU Briefing Notes are currently drafted, there will be little opportunity for Indonesian CSOs to play any official part in this process.

Discussions between the EU and Indonesia have so far focused on how the EU can push forward the VPA initiative and support 'the positive work' in Indonesia. A five-year ECU 16.7 million FLEGT Support Project initiated by the EU in early 2006, with pilot projects in Jambi and Kalimantan, has already been widely criticised by Indonesian and international NGOs for poor planning, implementation and monitoring.

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CSOs take a stand on pulp

Civil society organisations concerned with the impacts of the pulp and paper industry and its fastwood plantations on people and forests have been discussing the basic demands to be made of industry and governments. Over the last five years, groups in North America followed by those in Europe have drawn up statements of agreed measures to transform the industry to direct their campaigning. Southern NGOs are now engaging in similar initiatives.

Members of twenty-five Indonesian CSOs held a meeting in January this year in Riau to draft the Common Vision presented below and plan to hold a strategic follow-up meeting later this year.

A COMMON VISION FOR CHANGES IN INDONESIA'S PULP AND PAPER INDUSTRY

Submitted and signed in Riau, Sumatra, 13th January 2007

A number of Indonesian NGOs and community organisations hereby express serious concerns about the sustainability of (the country's) natural forests. The conversion of tropical forest to industrial tree plantations (HTI) to supply the pulp and paper industry has surpassed the limits that the forests and humanity can bear. It is essential to save the remaining forests and protect local and indigenous peoples' rights in all the areas affected by pulpwood plantations and pulp and paper factories from unimaginable disaster. The use of forests to meet demand for raw materials from the pulp and paper industry in order to supply paper for international consumption has a terrible history of expropriating and violating communities' rights which has left its scars. We have seen how the workings of the market, facilitated by various government policies, have directly and indirectly brought about company

practices that damage peoples' livelihoods and the environment in general.

It cannot be denied that the pulp and paper industry provides substantial employment opportunities and government revenues at both the national and local level. However, it is patently obvious that the presence of this industry has far greater negative impacts on the surrounding community in the form of damage to the environment and society, including social conflicts and poverty.

These problems have arisen due to differences in perspectives about forest management and in the way the interests of different groups have been addressed. Concerned parties such as NGOs now have a shared vision on the reconstruction and transformation needed in the development of Indonesia's pulp and paper industry.

A number of points have been arisen as we have shared our experiences of organising advocacy and supporting affected communities through serious discussions about the pulp and paper industry. These have motivated us to take a stand together and to press for policy changes in order to stop all damaging practices and any further expansion of this industry. Over the next few years, we intend to monitor closely all

policy instruments and to press for changes or revisions in these, working together in our different ways.

Based on these experiences, we have drawn up this Common Vision for Changes in Indonesia's Pulp & Paper Industry which addresses policies, the industry and social conditions.

AIMS

To ensure that local and indigenous communities' rights and interests are respected and ecological priorities are protected in fulfilling demand for Indonesian paper.

OBJECTIVES

1. To intervene in policy changes at local, national and international level that promote the expansion of pulpwood plantations and the pulp and paper industry in Indonesia.
2. To extend recognition of local and indigenous communities' sustainable forest practices;
3. To close down pulp and paper factories that cause environmental pollution and damage communities' interests; to oppose the construction of new plants; and to stop the expansion of pulpwood plantations. ♦

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quality standards. The information, which was not passed on to the villagers using the wells, was contained in mine closure planning documents held by local government institutions and a handful of other people. It was revealed in 2004 by the joint investigation team whose findings prompted the criminal court case. The cause of the high arsenic levels in the wells has not been determined for certain, but there is speculation that it may be due to percolation through the arsenic-rich exposed mine workings, although test wells would need to be drilled to determine this. At the same time, local people suffering health problems have not been assisted as they deserve, according to a National Human Rights Commission monitoring team in 2005.

The book also describes how academics involved in some of the research had a history of paid work connected to the mine. It questions their neutrality and that of the research results. The book points to the media's role too, highlighting how Newmont's regular placement of advertisements and pro-company news in local mass media meant that local people no longer had access to thorough and balanced information.

(Source: Joint media release by WALHI, JATAM and ICEL 24/Apr/07; FoE International media advisory 24/Apr/07; Newmont news release at http://www.newmont.com/en/pdf/04-23-07_Buyat_Bay_Update.pdf; [\[dustri/070412_buyat_summary_li/\]\(http://www.walhi.or.id/kampanye/ceमार/industri/070412_buyat_summary_li/\)
The Indonesian language book, by Raja Siregar, is available for download at \[http://www.walhi.or.id/kampanye/ceमार/industri/070411_singkap_buyat_li/\]\(http://www.walhi.or.id/kampanye/ceमार/industri/070411_singkap_buyat_li/\); AP 21/May/07 \)](http://www.eng.walhi.or.id/kampanye/ceमार/in</p>
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See DTE 63:11 for a selected chronology of Newmont-related events. The Top Ten Key Findings, based on the Joint Investigation Technical Team report, 9 November 2004, are at http://www.walhi.or.id/eng/buyat_team_summary.

A 35-minute film, *Bye Bye Buyat*, which tells the tale of the affected community is available from WALHI or JATAM. Contact: info@walhi.or.id or jatam@jatam.org. ♦

mining

Newmont case verdict - blow for communities and environment

The decision of a North Sulawesi court to find the US-based mining company, Newmont, not guilty of polluting the environment is a huge disappointment for NGOs and communities who have been struggling for years to hold this multinational gold mining company to account.

The Manado Court in North Sulawesi - the province where the now-closed Ratatotok gold mine was located - came up with its verdict on April 24th. According to the company, "the court held that Buyat Bay was not polluted and that Newmont had been in compliance with all regulations and permits during its eight years of operation". However, three leading Indonesian environmental organisations questioned the legal basis for the court's decision.

The criminal case was launched against Newmont in August 2005. It was remarkable because it was the first of its kind brought by Indonesia's pro-investment government against an international mining company. A US\$134 million civil case, also brought by the government (the environment ministry), ended in November 2005 when Newmont agreed to pay US\$30 million. A US\$550 million lawsuit, brought against the company by a local NGO on behalf of Buyat Bay villagers, was settled out of court in 2005 (see DTE 67:1-3 for more on all three cases).

The prosecution's case was based on evidence published in 2004 by a joint government investigation team that high levels of arsenic and mercury from the mine's tailings were entering the food-chain. For eight years from production start-up in 1996, 2,000 tonnes of mining waste per day was dumped in the sea at Buyat Bay using the much-criticised submarine tailings disposal method, which is effectively outlawed in the US, Australia and Canada (see DTE 63:10 for more background on the findings).

Local people have long believed that the mine's waste dumping has affected local fish stocks, which form the basis for their livelihoods, and was responsible for several occasions when large amounts of fish were found floating dead on the water's surface. Villagers have also linked pollution from the mine to their own health problems. These health impacts include tumours, severe breathing difficulties and skin diseases, and have been sufficiently severe to prompt around 70 families to move out of the bay (see DTE 70:3).

Newmont's approach has been to deny any link between its operations and the health impacts - pointing the finger at the use of mercury by unlicensed mining operations in an adjacent, but separate catchment area to



Newmont's mine, North Sulawesi

Buyat Bay. The company also denies that substantial airborne emissions of mercury over several years had any negative impact on the bay or on local people's health. The emissions remained unreported until a *New York Times* journalist got hold of internal documents detailing them (see DTE 67:1 for further background). Head of PT Newmont Minahasa Raya, Richard Ness, has now filed a civil legal action against the *New York Times* in the Central Jakarta District Court for blackening his name.

NGOs criticise judgement, government to appeal

In a statement issued after the Manado court's verdict, WALHI, JATAM (Indonesia's Mining Advocacy Network) and ICEL (the Indonesian Centre for Environmental Law) criticised the verdict and the court proceedings leading up to it.

They said the judges ignored fundamental facts presented in the evidence. These included the high levels of heavy metals in the tailings dumped in Buyat Bay, plus breaches of legally enforceable environmental quality standards revealed in the company's own reports. They also ignored investigation results from the Central Forensic Laboratory

of the Indonesian National Police. The three NGOs urged the public prosecutor and the Indonesian government to submit an appeal to the Supreme Court. The government formally submitted appeal documents with the Manado court on 22 May. After Newmont submits its reply, the documents will be forwarded to Indonesia's supreme court in Jakarta.

Friends of the Earth International said the verdict was a major setback for environmental justice, and that the judgment had "shamefully ignored compelling evidence" presented by the government-convened Joint Investigative Team in 2004. Meena Raman, chair of FoE International, said the Indonesian justice system had missed an opportunity to hold Newmont to account. "Newmont is notorious for environmental malpractice at many of its operations around the world," she said. "Why should local communities bear the brunt of environmental pollution and loss of livelihoods while a multinational mining company walks away with the proceeds of the public's natural resources?"

Newmont's other operation in Indonesia, a copper and gold mine on Sumbawa Island, is much bigger than the Sulawesi mine, and also disposes its waste into the sea.

WALHI (Friends of the Earth Indonesia) launched its own lawsuit in March this year against Newmont and the Indonesian government at the South Jakarta District Court (further details from WALHI's website http://www.eng.walhi.or.id/kampanye/cemar/industri/070328_walhi_suitagainst_nmr_ip/)

New book points to drinking water contamination

At the time when attention was focused on marine pollution, the Buyat Bay community was not aware of high levels of heavy metals in their drinking water, according to a new book, published by WALHI in September last year.

An English-language excerpt from the book, *Exposing Buyat - Findings, Neglect and Collusion*, states that Newmont provided drinking water to Buyat Beach village which contained arsenic levels in excess of national as well as World Health Organisation water

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Strikes and book launch keep Freeport-Rio Tinto in the news

The giant copper and gold mine operated in West Papua by US-based mining company Freeport McMoran with substantial investment from the British multinational Rio Tinto has been under scrutiny once again.

The Freeport-Rio Tinto mine has been the subject of protests at local and national level in recent months. At the local level, thousands of Papuan workers at the mine went on strike for four days. Facing hundreds of military and police, they successfully demonstrated against discriminatory employment practices. Besides doubling their pay, the strikers won a commitment from the company's US headquarters to reform its Indonesian management and to consider sacking Armando Mahler, President Director of Freeport Indonesia, for failing to promote Papuan employment in the company and the welfare of Papuans living in the mine area. The company has also agreed to examine the feasibility of establishing a "Papuan affairs department".

At the national level, political figures - notably Amien Rais, a vocal critic of the company and former leader of the People's Consultative Assembly - came together in parliament on the 28th of March to help launch a new book, *Freeport: How the giant gold and copper mine colonized Indonesia*¹, and with it a new chapter in the campaign against the company's unjust practices. The public discussion under the banner "Does Indonesia have the courage to oppose colonisation by Freeport?" involved members of the Regional Representatives Council (DPD), parliamentarians from the special working group on Freeport, representatives of the Papuan student movement and NGOs including WALHI (Friends of the Earth Indonesia) and JATAM (the Indonesian Mining Advocacy Network).

The first two chapters in the *Freeport* book cover the history of Freeport McMoran and the joint plans by President Soeharto and the US corporation to exploit the massive copper and gold deposit. These mineral riches were part of the motivation for US and Indonesian collusion to acknowledge the sham 'Act of Free Choice' in 1969, rather than allow a post colonial transition to independent self-government for the Papuan people, as the Dutch colonialists had begun.

Chapter three covers environmental breaches and failures of law enforcement, and also takes a look at some of the economics of the Freeport mine, in terms of equity of distribution of income from the province's mineral wealth, and by attempting to quantify the environmental damage being wrought.



Arkilaus Baho of Front Pepera PB at public meeting, Jakarta (Igor O'Neill)

Poverty and riches

The book notes that in 2006 *Forbes* magazine listed Freeport-McMoRan Copper & Gold Inc. Chairman James Moffett as one of the world's top ten highest paid individuals. Moffett, together with Freeport CEO Richard Adkerson, received US\$77.3 million in salary, plus additional benefits worth US\$130 million. In the same year the average annual income of the poorest 50% of Mimika residents was one millionth of this sum, at US\$132. The company itself reported income of US\$4.1 billion in 2005 (Rp 38 trillion), four times the gross domestic product of Papua (Rp 9 trillion).

The development statistics quoted in the new book are fleshed out in a recent report in the *Jakarta Post* 'Poverty Watch' series. The article entitled 'Mimika community untouched by education, healthcare' paints a picture of persistent poverty in the district which hosts the leviathan Freeport mine. Outside the town of Timika, most people do not have access to clean water, proper housing or electricity for lighting. The article mentions local schools that have closed and

public health centres that barely function due to damaged buildings and equipment. District head M. Metulesi is quoted as saying "prospects of education and health are gloomy in Mimika regency and its remote districts"².

The *Freeport* book also presents calculations by environmental economists Greenomics Indonesia which estimate the environmental damage done by Freeport will require Rp 67 trillion (over US\$7.5 billion) to repair, double the Rp 36 trillion (US\$4.1 billion) the company claims it has contributed to the government over the fifteen years from 1992 to 2005.

The fifth chapter of the *Freeport* book surveys issues of corruption, payments to the military and human rights abuses in and around the mine. The book includes a seven page appendix detailing the names, dates and circumstances of the murder by security forces of 44 indigenous people from the Freeport mine area during the previous decade. It concludes with recommendations for action by the Indonesian government regarding the mine, which are reflected in a petition launched together with the book.

During the public discussion and book launch, mining analyst Kartubi identified Indonesia's mining Contract of Work system as a primary stumbling block in beneficial resource extraction, because it places the nation in a weak position compared to foreign mining companies. "This model is no longer used in the oil sector, it has been outmoded since the 1960s," said Kartubi, recommending that the system be scrapped. The analyst said the 2% royalties flowing from the Contract of Work system were insignificant for the country and especially for Papuan development.

During the discussion, an expert with a government background commented that there was no hard independent data on the natural resources being exploited by Freeport. Bearing in mind the government's weak capacity for oversight, this leaves the government to rely solely on the company's own reporting for its information.

Papuan activists also spoke out against the company during the public meeting. Arkilaus Baho, spokesperson for Papua-based Unified Front for West Papuan Struggle (Front Pepera PB) spoke of his recent visits to the villages surrounding the Freeport mine. "Freeport is hiding the fact that there are many illnesses in the local

community, particularly among those close to the Ajkwa River," he claimed. "They [the company] also buy members of the Provincial Legislative Council, journalists and the military in order that the voices of Papuan dissent are not heard," said Arkilaus.

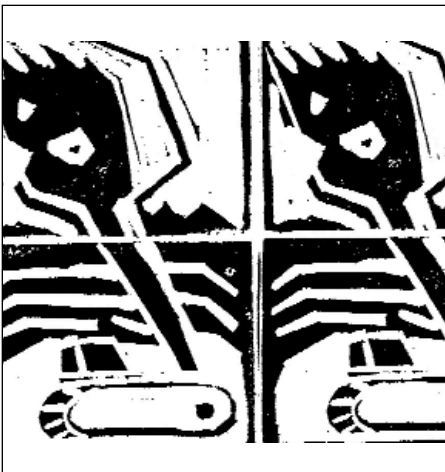
Seminar speaker Amien Rais urged President Susilo Bambang Yudhoyono to have the courage to cancel the Freeport Contract of Work, which he said was within his prerogative. He reminded the President that his position was the key to ending the impoverishment of Indonesia by foreign interests.

After the discussion, a petition was launched, calling for a Presidential Decree to form an independent panel to reevaluate the future of the Freeport mine, taking into account the rights of the indigenous community and investigating and prosecuting violations of environmental law and human rights abuses (see box). At the time of writing, the petition has secured around 600 signatures and is due to be presented to the government for action.

Notes:

1. Zen et al, *Freeport: How the giant gold and copper mine colonized Indonesia*, WALHI and JATAM 2006.

2. Markus Makur, 'Mimika community untouched by education, healthcare', *Jakarta Post*, May 16, 2007. ♦



(continued from page 9)

Nevertheless, members of the European Commission delegation in Jakarta, and European parliamentarians, have expressed the hope that the VPA between Indonesia and the European Union will be a model for other countries in the Southeast and East Asian regions. This underlines the important position of Indonesia and its natural resources. There is hope that the standard can become a tool to reduce the rate of deforestation and to create a precedent of 'good forestry governance' and eventually to build a good reputation for Indonesian

FREEPORT MINE PETITION TIME TO ACT BRAVELY AND JUSTLY: SAVE NATIONAL ASSETS AND SAVE THE PAPUAN PEOPLE!

The Freeport mine provides concrete evidence of the mismanagement of the mining sector in Indonesia. The nation's officials see gold only as a foreign exchange commodity which happens to be located on Papuan soil, not as a natural resource which has destructive power if exploited and which has impacts on people and the environment around it.

During its 40 years of operations, Freeport has not only damaged the mountain sites of Grasberg and Ertsberg, but altered the landscape over an area of 166 square kilometers in the Ajkwa river valley, polluted the Ajkwa river estuary, contaminated a number of species, and threatened groundwater with acid mine drainage.

Prosperity for the Papuan people is increasingly far from becoming a reality. In Freeport's area of operations, the majority of residents live below the poverty line, and are forced to scrounge a living from the remnant gold in Freeport's mine waste. The number of HIV/AIDS sufferers continue to rise at the nation's highest rate in the Freeport mining town of Timika.

Freeport still has not dealt with the problem of human rights violations relating to the pattern of behavior of Indonesian security forces, past and present, and future. Hundreds of people have suffered serious human rights violations, and have even died, without the matter being resolved. To this date there have not been any human rights violations that have been seriously followed up by the government - in fact the impression is that they have been deliberately neglected.

Meanwhile, from year to year Freeport continues to gouge profits from the biggest gold, copper and silver mine in the world. Freeport's top managers receive facilities, benefits and wages worth 1.5

million times the income of a Papuan resident of Timika. The conditions in the Timika area are like a tinderbox, there is no stability and no guarantee for the future of Papuans. There is one crisis after another, while Freeport continues to enjoy profits from its mine.

The government must immediately take real and measurable steps to solve the Freeport case. The mining activities of Freeport in Papua must be reevaluated. The President must immediately provide a mandate via a Presidential Decree to form an Independent Panel. This panel should be made up of experts in law, environment, social impacts, science, and human rights and must include local community representatives. The tasks for the panel should be as follows:

1. Undertake an assessment of all aspects of Freeport's mining operations, including environmental management, human rights abuses, and socioeconomic aspects.
2. Facilitate a full consultation with the indigenous community, especially those in the area of Freeport's operations, and with other stakeholders regarding the future of Freeport's mining operations.
3. Findings of legal breaches should be followed up with the responsible authorities. This includes violations of environmental law and human rights abuses.
4. Map out and investigate a number of scenarios for the future of Freeport, including the possibilities of early mine closure, altering rates of production, and mine waste management.

Jakarta, March 28, 2007 ♦

forestry. But it will become increasingly clear that without implementation by an independent and credible institution, the achievements of the legality standard will remain nothing more than text and will do nothing to stop forest destruction.

*Note: Yuyun Indradi, of Down to Earth, participated in the *tim kecil*, as a representative of the indigenous peoples' alliance, AMAN. (Source: *Rancangan Sistem Verifikasi Legalitas Kayu, Tim Kerja Pengembangan dan Perumusan Sistem Verifikasi Legalitas Kayu* at http://www.lei.or.id/indonesia/news_detail.ph

<http://www.kompas.com/ver1/Metropolitan/0703/16/092044.htm>; Kompas 5/May/07 at <http://www.kompas.com/ver1/Nusantara/0705/05/163610.htm> Reuters 4/May/07 at <http://www.planetark.org/dailynewsstory.cfm/newsid/41711/story.htm>)

Information on the Chatham House 25th January meeting on illegal logging can be seen at www.illegal-logging.info/. A new website, created by FERN in co-operation with local NGOs, is monitoring the FLEGT processes in producer countries - see www.loggingoff.info. ♦

*indigenous peoples***AMAN Congress III: towards democracy, prosperity and autonomy**

Some 1,500 indigenous representatives and their supporters - including DTE's staff - gathered in Pontianak, West Kalimantan, for the third AMAN Congress in March 2007 to discuss the priorities of the indigenous movement in Indonesia and to choose a new leadership. Abdon Nababan was elected General Secretary of AMAN (the Indigenous Peoples Alliance of the Archipelago) at a time when the organisation faces increased demands to improve the political power and economic well-being of its members.

The opening ceremony of AMAN's third congress took place on March 17th - the date declared National Indigenous Peoples' Day by AMAN's inaugural congress in Jakarta in 1999. Leaders of West Kalimantan's Dayak communities, as the indigenous hosts, held a traditional ceremony (*tolak bala*) intended to ensure not only the success of the congress, but also Indonesia's security at a time when the country seemed besieged with disasters - natural and man-made. Dayak dancers in traditional costumes greeted the long parade of other indigenous representatives from all over Indonesia to the main auditorium of Tanjungpura University where the four-day meeting was held.

Consolidating the movement

Like the previous AMAN congresses, the gathering in Pontianak was both the product of dialogue about pressing indigenous issues over the previous three years and an opportunity for exchanges of information and opinions between indigenous delegates from communities scattered throughout the Indonesian archipelago. It also enabled contact between AMAN members and the outgoing AMAN Council; between indigenous peoples and decision-makers, including members of political parties and local and national parliaments; between indigenous organisations from Indonesia and other countries; between community groups and supporting organisations from their own and different regions as well as from Jakarta and overseas; between villagers and NGOs and the media.

All day and through into the night, small groups of people sat outside the central hall discussing the results of the sessions and local and national issues - renewing old friendships and making new ones. The stands of organisations with displays, books and leaflets plus the stalls selling Dayak handicrafts, local products and T-shirts created the atmosphere of a local market.

The official theme of AMAN's third congress (KMAN III) was "to build a strong indigenous organisation to contribute to a democratic society which is both prosperous and independent". Its specific goals were to:



A R Mercer gives an opening speech at the third AMAN Congress, March 2007

(AMAN)

- ♦ improve AMAN's structure by strengthening the organisation at local level in the regions;
- ♦ increase indigenous peoples' political bargaining power in the context of regional autonomy;
- ♦ improve channels of communication within AMAN so that the organisation is more responsive to the communities which comprise its membership;
- ♦ draw up a realistic programme of work;
- ♦ increase public awareness at national level and throughout the regions of indigenous issues;
- ♦ push for the inclusion of indigenous issues in the national political agenda.

Each community organisation belonging to AMAN could be represented by one official delegate and each regional organisation two. Other members and non-members and representatives of other CSOs could attend the national congress, but were not allowed to speak or vote in formal sessions.

Stimulating discussion

The first day of KMAN III was a stimulating mixture of speeches and reflections on the direction of the indigenous movement, punctuated by dances representing all the

ethnic communities of West Kalimantan and several songs with political themes by the popular folk singer Franky.

Two international indigenous visitors, from Bangladesh and the Philippines made presentations. They also attended all the congress sessions and discussed issues with individuals participants through interpreters, thus enabling participants to learn from struggles in other countries and about using the UN system to promote indigenous rights.

The national government was represented by the minister for development of 'neglected regions', Syaifullah Yusuf, whose speech was followed by some lively questions and answers. The confidence and skill of indigenous delegates in questioning the minister was in marked contrast to the confrontational atmosphere at the first AMAN congress where a deeply shocked minister for agrarian affairs was confronted by a stream of protests from villagers who had been ignored or oppressed by the political mainstream for decades. This time the minister's somewhat bland, populist speech was well received, but more than one delegate commented cynically later that indigenous people have lower expectations of national politicians these days.

Arguably, since regional autonomy, politics at the provincial and district level rather than in Jakarta have dominated the agendas of most indigenous communities. The selection of Pontianak for the KMAN III venue enabled all participants and other visitors to witness for themselves the strength of the indigenous movement in West Kalimantan.

Local indigenous celebrities from the older generation gave the opening speeches at the congress: A.R. Mecer (one of founders of the community development institution Pancur Kasih and a member of the national parliament) and A. Nazarius (a leading member of the credit union movement and head of AMA Kalbar). Stefanus Masiun, one of the younger leading Dayaks, who recently stood as candidate for district head, headed the committee that organised this massive event.

Eleven day-long workshops were held as part of the congress, each focusing on an issue of key importance to indigenous communities. These included politics, economics, women, spatial planning, community-based forestry, oil palm plantations, environment, conservation, indigenous law and human rights. The aim was to enable participants to explore one problem in some depth, come up with possible solutions and draft strategies appropriate to the current social and political context. The outcomes formed part of the resolutions for AMAN's demands to the government (see box, next page) and the recommendations for AMAN's programme of work for the next five years.

The third day and fourth days were taken up with the formal business of the congress, starting with the reports to the membership from the outgoing AMAN Council. The meeting divided into three 'Commissions' to discuss and determine revisions to AMAN's statutes, priority activities for the coming period and congress' resolutions for government action. The commissions reported back and, after some discussion, AMAN delegates approved their decisions.

Matters of debate

The issue of AMAN's membership proved to be highly contentious - not surprisingly since it is intimately linked to questions about the organisation's structure, representation and the future direction of the indigenous movement.

Representation and decision-making had been problematic for AMAN from its early days. AMAN's most powerful body was its Council, but it proved expensive, time consuming and unwieldy to call all 54 members together when decisions had to be taken so this only met once a year. AMAN's secretariat and its Executive Secretary, who answered to the Council, had limited authority, which made it harder to respond quickly to the organisation's needs and to government initiatives.

AMAN's Executive Board 2007-12

Papua	Alex Sanggenafa
Maluku	Elisa Keisya
Bali & Nusa Tenggara	Dewa Nyoman Suardana (chair)
Java	Jajang Kurniawan
Sulawesi	Isjaya Kaladen
Kalimantan	Ariana
Sumatra	Hurun Nuh

In addition, both organisations and communities could be AMAN members. This created problems of representation because the dozens of local indigenous organisations were very diverse in their nature. Some, for example the North Sumatra group, BPRPI, pre-dated the establishment of AMAN by many years and were set up for their own specific purposes (see DTE 63:15 and 68:20). Others, such as AMA Riau, came into being more recently to bring together AMAN members in a certain geographical area. Moreover, some AMAN organisations considered all their members to belong to AMAN (whether or not they had been formally accepted), while others were only comprised of officially registered AMAN members.

Another question was whether, in order to be more effective politically, the indigenous movement in Indonesia should cooperate more closely with other pro-democracy groups that share similar interests - for example peasant farmer unions and urban poor associations. This would mean that other organisations, including NGOs and unions, and even individuals could become members of AMAN. Some consider that establishing an indigenous party is the only way to reverse the political marginalisation from which indigenous peoples have suffered for years. This is likely to become a matter for further debate as Indonesia's 2009 general elections draw closer.

One of the preparatory steps for KMAN III was to set up a small team to review AMAN's statutes. This drafted a new organisational structure and modus operandi which was presented at the final meeting of the 2003-7 AMAN Council, held the day before KMAN III started.



Dayak hosts welcome participants (DTE)

Decisions taken

The decision was taken that AMAN should have a Secretary General for a five-year period with much greater powers. A new Executive Board (*Pengurus Besar*) of seven members would be selected to represent the main regions while the AMAN Council itself would play more of an advisory role. Full council meetings would only be held every two years. In future, only indigenous communities are eligible to be AMAN members. These communities will form the basis of AMAN's new organisational structure, with representation in local indigenous organisations which will, in turn, be represented in regional organisations. There will be guidelines for the overall shape and functions of these local and regional organisations, and their powers and responsibilities.

Some regional organisations objected to the new structure. The Acehese indigenous organisation, JKMA, said it would leave AMAN and walked out of the congress after making an impassioned statement to the gathered assembly that the new system was too centralistic, hierarchical and more like a government body or a political party. Matheus Pilin, from the Pontianak-based organisation POR, which promotes political education, declared that AMAN had no intention of becoming a political party but would continue to take a political position on local and national issues in order to further the interests of the indigenous movement. The new structure would help to stimulate grass-roots initiatives so that more indigenous people engaged in politics at all levels. "It is vital that indigenous people become involved in political parties at the district and provincial levels in order to press for indigenous peoples' agendas at the national level," he explained.

AMAN members went on to select their representatives for the AMAN Council and the Executive Board for 2007-12. Finally, elections were held for AMAN's Secretary General, and were won by Abdon Nababan.

Abdon is not new to AMAN: he was Executive Secretary for the period 2000-2003. In his acceptance speech, he explained that he had only stood as a candidate because many AMAN members had asked him to return. Although his background is as an NGO person, he explained that he had always worked for the environment and indigenous communities and pledged to serve AMAN's members and the indigenous movement with all his heart.

It is early days yet for the new AMAN leadership, but within a week of taking up office Abdon had made it clear that he intends to get the younger generation of indigenous activists more closely involved in running AMAN and to pay more attention to empowering the regions in decision-making. He hopes the indigenous communities in Aceh will continue to work with AMAN and brushes aside concerns that the new style

structure will be rigid and prescriptive. "Exactly what form district and regional organisations will take will be up to the communities in that area. So, for example, indigenous communities belonging to AMAN in the mountainous region of mid-Sulawesi known as Tokalekaju might decide to set up a regional organisation that cuts across provincial boundaries", he said.

Challenges for the future

Under the leadership of Abdon, his predecessor Emil Kleden, and the first two AMAN Councils, this national indigenous alliance has come a long way since it was established in March 1999. During that period of interim government following the fall of Suharto, AMAN symbolised the prevalent spirit of downtrodden sectors of society who were demanding their place in a new, reformed Indonesia. Its original aim was to bring together fragmented communities that were struggling to maintain their cultures, livelihoods and access to natural resources and to represent the interests of indigenous peoples at national level.

In the intervening years, AMAN has been involved in successful consultations and lobbying for changes to legislation such as the ministerial decree on resolving conflicts over *adat* lands (No 5/1999), the 2001 decree issued by the People's Representative Assembly (TAP MPR IX) and the 2002 Amendment to the Constitution, and has played a major role in drafting the Indonesian Timber Legality Verification Standard (see page 9).

However, there is still a considerable way to go before Indonesia's indigenous people attain the goals of the third AMAN congress.

The political context is now very different from in 1999, with regional autonomy and direct elections of governors, district and even village heads as well as members of parliament and the president. But the heady atmosphere which prevailed in the late 1990s has dissipated; the demands for real reform have not been answered. The main political parties have largely maintained control and the economic paradigms remain

Indigenous demands to the Indonesian government

The third AMAN Congress approved the following resolutions from the workshops and commissions at the Pontianak meeting, 17-21st March 2007:

Press the government to:

- ♦ implement TAP MPR IX on the framework legislation to reform laws on land and natural resources;
- ♦ withdraw all licenses for logging, plantation and mining concessions issues on customary lands without indigenous consent;
- ♦ ratify ILO Convention 169 on indigenous rights;
- ♦ recognise and protect immediately indigenous rights as set out in the Indonesian Constitution (Clause 18b (2));
- ♦ stop all forms of violence against indigenous communities;
- ♦ remove all military institutions from indigenous lands and recognise indigenous communities' right to provide their own security;
- ♦ recognise *adat* laws and justices as part of national legal and justice systems;
- ♦ include aspects of indigenous culture in the national curriculum in schools;
- ♦ adopt measures that strengthen economies at the community level;
- ♦ revise the Basic Agrarian Law (No 5/1960) and local governments to introduce regulations to settle land disputes;
- ♦ carry out a judicial review of legislation on spatial planning and large scale plantations;
- ♦ recognise indigenous peoples' beliefs and not to discriminate against them;
- ♦ recognise and respect indigenous communities' rights to set the boundaries of their customary lands;
- ♦ promote the establishment of environmental groups in indigenous communities;
- ♦ stop the sale of commercially produced alcohol in Papua and the Indonesian archipelago;
- ♦ take action against agents who sell or broker indigenous lands;
- ♦ accelerate the provision of basic infrastructure to isolated parts of the country.

Source: Pontianak Post 21/Mar/07

the same. Despite President SBY's mission to promote good governance, corruption is still endemic throughout the political and business communities. There is continuing religious and ethnic sectarianism. 'Development' has marginalised many communities - around 110 million people are still living in poverty - and the majority of Indonesia's estimated 70 million indigenous peoples have incomes below the official poverty line.

Indonesia's indigenous movement now faces some tough choices. One option focuses on pushing for higher living standards for indigenous communities and more opportunity to participate in a democratic society in the pursuit of their rights. Another focuses on indigenous societies' unique cultural and historical legacy, with the risk that this could be misinterpreted as a return

to patrimonial and feudal local governance systems.

Any organisation must take account of changes in the social and political arena within which it operates. And, as with any organisation, which grows and matures, AMAN's relationships with its members and supporting organisations should not remain the same.

The challenge now is how to carry out the necessary transformations while retaining the integrity and ideals of the organisation.

(Sources: AMAN website <http://aman.or.id>; *Gaung AMAN* edition XXV, February 2007; *Kompas* 20/Mar/07; www.pontianakpost.com)♦

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