A REVIEW OF LAND TENURE ISSUES IN INDONESIA AND OPTIONS FOR THE FUTURE

FAO INDONESIA REPORT

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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS
JAKARTA, 2020
CONTENTS

ACKNOWLEDGEMENTS .......................................................................................................................... vi
ABBREVIATIONS AND ACRONYMS ...................................................................................................... vii
EXECUTIVE SUMMARY .......................................................................................................................... ix
  Overview ..................................................................................................................................................... ix
  Assessing current laws and policy against the VGGT .................................................................................. x
  Legal and policy framework ...................................................................................................................... xi
  Recognising and securing legitimate rights ................................................................................................ xii
  Progress with Implementation .................................................................................................................. xiii
  Land inequality .......................................................................................................................................... xiv
  Land conflict ........................................................................................................................................... xiv
  Gender and women’s land rights ............................................................................................................... xiv
  Conclusions ............................................................................................................................................. xv

A road map: ‘land governance for equitable development’ ......................................................................... xvi

1. INTRODUCTION ........................................................................................................................................ 1

2. THE VGGT AND RELATED FRAMEWORKS ....................................................................................... 1

3. INDONESIA AND LAND ISSUES TODAY .......................................................................................... 6
  3.1 Land and natural resources .................................................................................................................. 7

4. CURRENT LEGAL AND POLICY FRAMEWORK IN INDONESIA ..................................................... 11
  4.1 The Constitution and Basic Agrarian Law (BAL) ................................................................................... 11
  4.2 A multiplicity of land laws and regulations ........................................................................................... 14
  4.3 Gender and women’s rights over land ................................................................................................... 15
  4.4 Implications of the Basic Agrarian Law and adat for land administration ........................................... 16

5. INSTITUTIONAL CONTEXT ..................................................................................................................... 17
  5.1 Land and natural resources governance ............................................................................................... 18
  5.2 Administrative and political decentralisation ......................................................................................... 19
  5.3 Capacity and procedural questions ....................................................................................................... 20
  5.4 Villages ................................................................................................................................................ 21

6. SECURING LAND RIGHTS FOR SMALLHOLDERS AND COMMUNITIES ...................................... 21
  6.1 Smallholders and titling ....................................................................................................................... 21
  6.1.1 Impact – lessons from other countries .............................................................................................. 23
  6.2 Customary adat and local communities ............................................................................................... 26

7. IMPLEMENTING ADAT AND LAND REFORM MEASURES .............................................................. 29
  7.1 Progress with tenure reforms and social forestry .................................................................................. 31
  7.2 Conflicts over land ............................................................................................................................... 35
  7.2 Land inequality ................................................................................................................................... 36
  7.3 An alternative scenario ......................................................................................................................... 37
  7.4 Summary ............................................................................................................................................ 38
8. ALIGNMENT WITH THE VGGT ......................................................................................................................... 39
  8.1 The recognition and enjoyment of 'legitimate tenure' .................................................................................. 42
  8.2 Gender and women’s rights ....................................................................................................................... 43
  8.3 Youth ....................................................................................................................................................... 46
  8.4 Rule of law ................................................................................................................................................ 46
  8.5 A holistic view of land governance ........................................................................................................... 46
  8.6 A land administration rather than land governance focus ......................................................................... 47
9. A NEW LAND LAW ..................................................................................................................................... 48
  9.1 Key questions .......................................................................................................................................... 49
10. LOOKING AHEAD ....................................................................................................................................... 50
11. CONCLUSIONS .......................................................................................................................................... 54
    11.1 Pointers to a road map for a VGGT-aligned governance programme .................................................. 55
BIBLIOGRAPHY ..................................................................................................................................................... 57
TABLES

Table 1  Land area and type of use ................................................................. 7
Table 2  Productive agricultural land in 2018 ...................................................... 8
Table 3  Different forest function within State Forest area ..................................... 8
Table 4  Area and category of farm households .................................................. 9
Table 5  Performance categories in the enterprise programme .................................. 33
Table 6  Status of social forestry and TORA programmes ..................................... 34
Table 7  Progress of complaints handling of tenure conflicts up to October 2019 .......... 36
ACKNOWLEDGEMENTS

This publication was prepared by Christopher Tanner, Mokoro Senior Land Tenure Expert, with contributions from Marianna Bicchieri, Land Tenure Officer at FAO Regional Office for Asia and the Pacific, Peter Nijhoff, Land Tenure Intern at FAO Indonesia and Elisabeth Daley, Mokoro Senior Land and Gender Expert. The publication was developed under the technical supervision of Marianna Bicchieri.

The FAO Representative in Indonesia, Stephen Rudgard, and his staff provided support throughout the assignment. Alfa Simarangkir, Programme Officer, accompanied meetings and organized the work plan for both in-country missions.

Mohamad Shohibuddin, FAO National Consultant from Bogor Agricultural University, provided invaluable background information, accompanied the first in-country mission, and facilitating the organization of the Focus Group Meeting during the first mission.

Comments and suggestions were gratefully received from Stephen Rudgard, Ageng Herianto, Assistant FAO Representative (Programme) and Adam Gerrand, Forestry Officer at FAO Indonesia, to whom FAO wishes to express its deep appreciation.

Many other colleagues and people not listed above provided important insights, experience and valuable advice and support during the preparation of this report.
### ABBREVIATIONS AND ACRONYMS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AMAN</td>
<td>Indigenous Peoples Alliance of the Archipelago (Aliansi Masyarakat Adat Nusantara)</td>
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<tr>
<td>BAL</td>
<td>Basic Agrarian Law of 1960</td>
</tr>
<tr>
<td>BAPPENAS</td>
<td>Ministry of National Development Planning</td>
</tr>
<tr>
<td>BIG</td>
<td>Geospatial Information Agency (Badan Informasi Geospasial)</td>
</tr>
<tr>
<td>BPS</td>
<td>Statistics Indonesia (Badan Pusat Statistik)</td>
</tr>
<tr>
<td>CFS</td>
<td>United Nations Committee on World Food Security</td>
</tr>
<tr>
<td>CFS-RAI</td>
<td>Principles for Responsible Investment in Agriculture and Food Systems</td>
</tr>
<tr>
<td>CIFOR</td>
<td>Centre for International Forestry Research</td>
</tr>
<tr>
<td>CMEA</td>
<td>Coordinating Ministry for Economic Affairs</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
</tr>
<tr>
<td>DFAT</td>
<td>Department for Foreign Affairs and Trade (Australian Government)</td>
</tr>
<tr>
<td>DFID</td>
<td>Department for International Development (UK Government)</td>
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<tr>
<td>FAO</td>
<td>Food and Agriculture Organization of the United Nations</td>
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<tr>
<td>FPIC</td>
<td>Free, prior and informed consent</td>
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<td>GHG</td>
<td>Greenhouse gases</td>
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<td>GOI</td>
<td>Government of Indonesia</td>
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<tr>
<td>HuMa</td>
<td>Association for Community and Ecology-Based Law Reform</td>
</tr>
<tr>
<td>ISPO</td>
<td>Indonesian Standard for Sustainable Palm Oil</td>
</tr>
<tr>
<td>JKPP</td>
<td>Indonesian Community Mapping Network</td>
</tr>
<tr>
<td>KPA</td>
<td>Consortium of Agrarian Reform (agrarian and women’s rights NGO)</td>
</tr>
<tr>
<td>LIMS</td>
<td>Land Information Management System</td>
</tr>
<tr>
<td>LPA</td>
<td>Legal and Policy Assessment</td>
</tr>
<tr>
<td>MAASSP</td>
<td>Ministry for Agrarian Affairs and Spatial Planning</td>
</tr>
<tr>
<td>MOEF</td>
<td>Ministry for Environment and Forestry</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>PTSL</td>
<td>Systematic and Complete Titling Programme</td>
</tr>
<tr>
<td>RMI</td>
<td>Indonesian Institute for Forest &amp; Environment</td>
</tr>
<tr>
<td>TA</td>
<td>Technical Assistance</td>
</tr>
<tr>
<td>TOR</td>
<td>Terms of Reference</td>
</tr>
<tr>
<td>TORA</td>
<td>Agrarian Reform Programme (Tanah Objek Reformasi Agraria)</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>VGGT</td>
<td>Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security</td>
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EXECUTIVE SUMMARY

Overview

E.1 Indonesia is a huge country with abundant natural resources, including one of the world’s most important reserves of tropical forest. Its total land area is over 191 million hectares, of which 63 percent (120.6 million hectares) is State forest. The rest is divided between productive agricultural land (19 percent) and urban land (18 percent), although agricultural development and continuing urban growth are pushing into forested areas.

E.2 The forest area is in turn subdivided into Production Forest (Hutan Produksi) which covers 68.8 million hectares (57 percent of forest area); Protection Forest (Hutan Lindung) covering 29.7 million hectares (25 percent); and Conservation Forest (Hutan Konservasi) which occupies 22.1 million hectares (18 percent).

E.3 The country is culturally and religiously diverse. Islam predominates across Java and Sumatera. Balinese Hinduism is dominant in Bali, while areas such as Northern Sulawesi are largely Christian. Some ‘1 000 various ethnic and sub-ethnic groups with their own cultures and tradition… [living] in forests, mountains and coastal areas… on their ancestral land and water. … they believe the earth is a common property that has to be protected for its ‘sustainability’ and use traditional resource management practices’ (RMI, 2019a:3).

E.4 The country is also globally significant due to its biodiversity, ecological services and carbon storage: approximately 10 percent of Indonesia’s land area is peatland, which stores an immense amount of carbon when left alone and undrained (Hooijer et al., 2011).

E.5 Indonesia is the largest economy and only G20 member in Southeast Asia. Over the last 30 years, GDP has nearly quadrupled from over USD 794 billion in 1990 to USD 3.046 trillion (2010 constant prices), with notable improvements in living standards and social indicators. Infant and maternal mortality rates decreased from 68 per 1 000 births in 1971 to 24 per 1 000 births in 2017; and from 390 per 100 000 live births in 1991 to 305 per 100 000 live births in 2015, respectively (World Bank, 2018a). There has also been a major transformation of the economy with agricultural sectors decreasing in relation to manufacturing and services. But although poverty rates have fallen in rural and urban areas, the benefits of growth are still shared by relatively few citizens. In a recent ‘Roadmap of SDGs in Indonesia’ the GOI calls for a ‘more inclusive development agenda in the future so all Indonesian people could contribute to and benefit from economic development’ (BAPPENAS, 2019).

E.6 This call for a new agenda is particularly important in rural and forest areas. Forestry and agriculture account for some 34 percent of GDP (MAASP, 2018; World Bank 2018a) with the GOI focusing on working with large commercial enterprises. However, this approach has had serious environmental and social consequences, especially for forest communities. Alarming rates of forest cover loss and severe degradation of primary forests also impact at national and global level, leading to one of the world’s highest rates of deforestation (MOEF 2018). While it has moved to G20 status and made progress with social indicators, Indonesia is keen to improve its land governance and address these social and environmental issues.

1 GOI official agricultural statistics 2018.
The GOI policy reforms are addressing these problems. These include a 2011 moratorium on new forest concessions recently being declared as ‘permanent’ over 63 million hectares of forest by President Joko Widodo. Other agrarian priorities are safeguarding national food security; addressing rural poverty; achieving an efficient agriculture sector with less land fragmentation; promoting the sustainable use of Productive Forests; and strengthening environmental conservation. Gender equality is also an issue. Women playing a greater role as decision makers and economic stakeholders with secure resource rights will have important positive impacts on economic, environmental and social indicators and is key to achieving the SDGs.

Assessing current laws and policy against the VGGT

The FAO Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) were developed to assist states facing complex development and resource governance challenges. In this document, the legal and policy framework for land in Indonesia is assessed against the VGGT before looking at the measures in place to bring the country further into line with its key principles. It ends with proposals for a ‘Road Map’ to address tenure issues entitled ‘Land Governance for Equitable Development’.

The last decade has seen a shift from seeing ‘the land question’ solely in terms of ‘land-grabbing’ and land reform, towards ‘responsible governance’ of tenure within a participatory and sustainable development model that respects local rights and needs while also contributing to national goals. This approach implies that all rights holders are fully involved in developing policies and decisions affecting their land (local people as well as investors and the State are active stakeholders with a voice in what happens to their land and resources).

Based on VGGT principles, six questions have guided the assessment of the current situation:

- Do they ensure the ‘enjoyment of legitimate tenure rights’ including customary rights?
- Does it ‘promote and facilitate the full realization of tenure rights’?
- Does it ensure ample stakeholder participation, not only in the definition of policy and programmes, but also in their full and effective implementation?
- Does it ensure women and men have equal access to and rights over land and resources?
- Does it ensure the rule of law guarantees a transparent, rule-based approach applicable to all, irrespective of power, wealth, influence, gender and cultural background?
- Is land governance treated holistically with land and natural resources intrinsically linked, with important implications for the natural resources rights of those living on the land?

The first question that needs to be addressed is what constitutes ‘legitimate tenure rights’\(^2\). The nature of participation is also important: is it simply an ‘after the event’ consultation with local people after new policies and programmes have been designed by others, or are local people closely involved

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\(^2\) Legitimate tenure includes not only those tenure rights formally recognized by national law, but also those rights that, while not currently protected by law are considered to be socially legitimate in local societies. Thus, ‘legitimate tenure rights’ can have legal legitimacy (legitimate through the law; legally recognized) and/or social legitimacy (legitimate through broad social acceptance even without legal recognition) (FAO, 2009).
with the development and implementation of these policies and programmes, and do they gain from them socially and economically?

E.12 The rule of law and transparency are key to ensuring that local rights are respected and that relevant laws are applied in practice and respected by all sides. This is critical when outsiders seek access to the land and natural resources that local people depend upon for their livelihoods. Apart from the VGGT, other global norms and standards for responsible investment are also important: the Principles for Responsible Investment in Agriculture and Food Systems - CFS-RAI (CFS, 2014); and the concept of ‘free, prior and informed consent’ – FPIC (FAO, 2014).

Legal and policy framework

E.13 Article 33 of the 1945 Constitution sets the fundamental principles for land governance today:

- The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.

- The organization of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy (emphasis added).

E.14 The 1960 Basic Agrarian Law later replaced the concepts and procedures of the inherited colonial land administration with a genuinely Indonesian model which recognised customary or adat norms and institutions, while incorporating certain elements of ‘western’ land governance. The BAL is still ‘the’ national Land Law, with a host of subsidiary laws and regulations since developed to implement it in practice. Early governments driven by the imperative to promote national development through growth and wealth accumulation bypassed its customary provisions and adopted specific measures centred around the notion of state ‘powers’ and control over land. These essentially gave the State a de facto proprietary right over all land and especially the forest areas, and the consequent right to allocate these resources to private sector and state firms through concessions.

E.15 The resulting body of legislation is huge and complex, with over 570 laws and regulations and other instruments dealing with land and related government processes (ILC 2019). An equally complex institutional structure has developed over the decades to implement this legal and policy maze, but with two key line ministries managing different parts of the country: the Ministry for Agrarian Affairs and Spatial Planning (MAASP) looks after all non-forest areas; and the Ministry of the Environment and Forests (MOEF) looks after forest areas.

E.16 Some observers comment that the BAL and underlying constitutional provisions may have ‘acknowledged the existence of customary laws [but] the government failed to formulate and implement instruments necessary to institutionalise customary tenure systems’ (Siscawati et al., 2017:4). With the advent of more democratic government and decentralisation of the apparatus of the State in the late 1990s, the whole question of local and adat rights began to emerge as a key social and political challenge for the GOI. A vibrant and still growing civil society has emerged to defend

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3 See the main report for a representative list of the key laws and instruments.
adat principles and rights and to demand an alternative and more equitable and sustainable model of development.

**Recognising and securing legitimate rights**

E.17 Private and State firms have enjoyed legitimate legally attributed rights over huge areas for many decades, mainly in the form of renewable state leases. However, the security of smallholder and local community (especially adat) rights has been largely overlooked until quite recently.

E.18 A landmark event for local rights was the 2012 Constitutional Court decision 35/2012 recognising the existence of adat communities and their ownership rights over what had always been considered as ‘State Forest’ held by the GOI under its constitutional ‘powers’. GOI policy has since begun to shift markedly, at least in formal terms, to include measures to recognise adat communities, devolve forest land to them with full registered title, initiate a land reform programme (TORA in Bahasa), and expand and develop a social forestry programme where villages are given licences and long leases to use and manage the forests they live in and depend upon.

E.19 Alongside these measures, the GOI has also been implementing the Systematic and Complete Titling Programme (PTSL in Bahasa) as part of the One Map programme run through the MAASP. The objective of the current programme is to title 23 million parcels of land, including some four million hectares of land degazetted as forest and made available to smallholders.

E.20 The Social Forestry (SF) programme is a clear GOI response to overcoming the poverty and livelihoods impact of land allocations to the private sector over previous decades. The SF programme was defined by the State as ‘a system of management of forests (on either state forest or private forestland) that involves local communities with the goal to improve their wellbeing and realize sustainable forestry’ (Forestry Law 19/2004, Hakim et al., 2010). The MOEF confirmed that at the start of the SF programme in 2010, 98 percent of allocations of Productive Forest went to the private sector, covering 43 million hectares, leaving just two percent or about 0.4 million hectares for ‘the people’. The MOEF is frank about the result: ‘This is why poverty has occurred…’.

E.21 In 2014, the new Government of President Joko Widodo continued the GOI commitment to the existing SF programme and established the goal of releasing 12.7 million hectares of state-forest area for utilization under five currently existing SF schemes. This was given further emphasis when the General Directorate for Social Forestry was created in the MOEF in 2015.

E.22 The TORA land reform aims to distribute nine million hectares to smallholders, including 4.5 million hectares of legalized land and 4.5 million hectares redistributed from state forest concessions and plantation areas.

E.23 The third progressive change is the recognition of adat communities and the formal transfer of forest ownership to them once they have been mapped, demarcated and registered. However, this process is complex and almost totally under the control of provincial and district (Regency) governments. There is a long list of bureaucratic and documentary requirements, and the process of securing the necessary local regulation (Perda) is subject to political pressures and can take many years. This process is easier in some areas where adat leaders are active in local government, but even here their influence is not always beneficial to the communities they represent. Nonetheless,

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4 Meeting with the Director General for Social Forestry.
with the help of national and local CSOs such as the Indigenous Peoples Alliance of the Archipelago (AMAN), the Indonesian Institute for Forest and Environment (RMI) and the Perkumpulan Hukum dan Masyarakat (HuMa), many communities have initiated the process of seeking recognition and acquiring rights over what the Constitutional Court has declared as ‘their’ forests.

Progress with Implementation

E.24 All these measures and the new regulations put in place to facilitate them point to an important and progressive shift in official land governance policy. However, progress on the ground has been very slow. Table E 1 shows the limited progress in the two official GOI programmes.

<table>
<thead>
<tr>
<th>Table E 1 - Status of social forestry and TORA programmes</th>
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<tbody>
<tr>
<td><strong>Social forestry programme</strong></td>
</tr>
<tr>
<td>12.7 million hectares consisting of:</td>
</tr>
<tr>
<td>• Social forestry schemes allocated through user-permits to communities for a given period of time</td>
</tr>
<tr>
<td>• Customary forests given to communities with title after Constitutional Court Ruling No 35</td>
</tr>
<tr>
<td></td>
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<td></td>
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<tr>
<td></td>
</tr>
<tr>
<td><strong>Agrarian reform programme (TORA)</strong></td>
</tr>
<tr>
<td>9 million hectares consisting of:</td>
</tr>
<tr>
<td>• 4.5 million hectares of legalized land</td>
</tr>
<tr>
<td>• 4.5 million hectares of redistributed land (4.1 million hectares from State Forest; 0.4 million hectares from plantation areas)</td>
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</table>

Sources: RMI 2019a, citing MOEF 2018 and various CSO sources.

E.25 Data from other sources reveal very little progress in the third area, recognising adat communities and their land. According to Simarmata (2019), the ‘formalisation of customary land rights...has been hindered by inconsistent laws and regulations and resistance from bureaucrats and corporations’. AMAN estimates that just 30 000 hectares of forest have reached the final stage of full certification of transferred ownership in the name of the adat community. This picture is confirmed in official data cited in the State of Indonesia’s Forests 2018 (MOEF, 2018). A total of 24 378 hectares of state forest are in various stages of identification, ranging from being in the pipeline to certification (some 10 500 hectares) to being in the process of identification and verification as adat forests. The areas are very small: the largest is 6 212 hectares, and the smallest just 31 hectares. Most fall in the 100 to 500 hectares band (MOEF, 2018:92/93).
E.26 A 2018 study of adat community recognition (RMI, 2019a) in seven locations revealed that customary communities who applied and gained recognition in state-forest said they had immense trouble navigating the complex and extremely bureaucratic legal framework. The process of securing a perda involves up to 13 steps and can take up to three years. Communities receive no help from local government and rely upon CSOs such as AMAN, RMI and HuMa that have limited resources to assist the many thousands of adat communities.

Land inequality

E.27 While the absolute numbers of rural households may be declining, and there is evidence that between 2003 and 2013 the average agricultural plot in the countryside increased from 0.35 hectares to 0.86 hectares (Sunito, 2019), closer analysis of the 2013 data reveals that nearly 55 percent of farmer households have less than 0.5 hectares of land and over 85 percent occupy two hectares or less (Table E 2). Furthermore, ‘rich’ households with over five hectares account for just 2.3 percent of all households but occupy some 23 percent of the total area occupied.

<table>
<thead>
<tr>
<th>Land area (ha)</th>
<th>Farmer households N million</th>
<th>%</th>
<th>Total land occupied (ha) Million ha</th>
<th>%</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landless</td>
<td>0.62</td>
<td>2.37</td>
<td>-</td>
<td>-</td>
<td>Landless</td>
</tr>
<tr>
<td>0 – 0.49</td>
<td>14.32</td>
<td>54.78</td>
<td>2.67</td>
<td>11.9</td>
<td>Small</td>
</tr>
<tr>
<td>0.50 – 1.99</td>
<td>8.04</td>
<td>30.76</td>
<td>7.58</td>
<td>33.79</td>
<td>Intermediate</td>
</tr>
<tr>
<td>2.00 – 4.99</td>
<td>2.57</td>
<td>9.8</td>
<td>7.11</td>
<td>31.69</td>
<td>Upper intermediate</td>
</tr>
<tr>
<td>5.00 – 9.99</td>
<td>0.46</td>
<td>1.8</td>
<td>2.88</td>
<td>12.83</td>
<td>Rich</td>
</tr>
<tr>
<td>&gt; 10</td>
<td>0.13</td>
<td>0.5</td>
<td>2.19</td>
<td>9.76</td>
<td>Rich</td>
</tr>
<tr>
<td>TOTAL</td>
<td>26.14</td>
<td>100</td>
<td>22.43</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

Source: Sunito, 2019, based on 2013 data.

Land conflict

E.28 A 2012 GOI White Paper on Land Policy (GOI 2012) referenced press reports of over 14 000 land disputes in 2011 (although official Land Agency figures the following year give a much lower figure of 7 000). Accurately assessing conflict is a huge challenge, and measures that are now in place to achieve this are fragmented and contradictory.

E.29 However, the MOEF Social Forestry Directorate data on land conflicts in State Forests suggest that the SF programme is having some impact on the incidence of new conflicts. This is encouraging and underlines the benefits of more inclusive and socially aware land governance. The private sector also has a lot to gain. Recent data gathered from five case studies of private companies showed that between 51 and 88 percent of their operational and investment costs could be attributed to dealing with and resolving conflicts (Daemeter Consulting, 2016).

Gender and women’s land rights

E.30 The Indonesian National Medium-Term Development Plan 2015–2019 includes measures to promote and support gender equality, but progress has been limited. Gender mainstreaming in ministerial strategic planning documents for 2015–2019 is inadequate, with the only ‘gender’ action being the collection of sex-disaggregated data with no further gender analysis undertaken (FAO,
2019). Yet Indonesian women are crucial to agriculture, animal husbandry and fisheries. In 2013, they made up about 40 percent of farmers and agricultural labourers yet owned just 20 percent of land. Despite being the backbone of a key economic sector, they are marginalized and have little access to financial resources, knowledge and technology to improve crop yields and improve livelihoods (FAO, 2019).

E.31 Women’s land rights have, however, long been recognised as a key factor for promoting more equitable development and achieving social and economic goals (proven with the MDGs and now central to the SDGs). Addressing gender inequality increases agricultural performance in all countries (FAO, 2011). The development of an effective and culturally sensitive gender policy leading to practical programmes is a priority issue for the GOI land governance strategy.

Conclusions

E.32 National-level macro-goals have intersected, and continue to intersect, with powerful economic interests that have gained access to land through concessions. This model has contributed to the growth and wealth creation that moved Indonesia into the G20 and improved its poverty and social indicators. The GOI is understandably reluctant to risk undermining an apparently successful strategy, especially with its strong commitment to achieving the SDGs. Yet population growth, persistent poverty and the alarming environmental consequences of the development model pursued so far demand new policies and a new GOI response. The adat land rights held by customary communities, especially in areas now classified as state forest, and access to land for individual poor small farmers, have also emerged in recent years as key issues with important political as well as social and economic dimensions.

E.33 Gender and women’s rights over land and natural resources are big challenges where strong patriarchal traditions dominate and entrenched cultural norms prevent women from participating in development decisions and programmes that address their tenure security.

E.34 The legal framework that has been developed on the basis of the 1960 Basic Agrarian Law (BAL) is complex with an institutional structure to match. State control over land and natural resources has resulted in a development model where adat principles have been set aside in favour of concessions to investors that generate growth and foreign exchange. The rights of millions of smallholders and communities across the landscape have also remained unregistered and insecure, vulnerable to capture by private sector and state-backed projects promoted in the national interest.

E.35 Nevertheless, the GOI is committed to integrating VGGT principles into land governance policy and programmes. The 2012 Constitutional Court ruling is a turning point in recognising the legitimate tenure rights of millions of citizens in adat communities and villages across the country. New GOI programmes aim to secure the land rights of millions of smallholders and address land equality.

E.36 These measures and recent presidential statements indicate a positive window for aligning land governance with the VGGT, building on current activities and policy and legislative changes. The objective is to balance the interests of private sector firms that remain central to the GOI macro-economic and social goals with the legitimate rights of smallholders and customary communities. A ‘balanced dualism’ approach within a unifying and simplified legal framework can formalise linkages between customary and State land governance and provide ‘a range of registration choices that…reflect the tremendous regional diversity in Indonesia’ (Fitzpatrick, 1997, emphasis added).
E.37 Several programmes already provide a good starting point. As well as the measures indicated above, the Village Empowerment programme of the Ministry for Villages, Disadvantaged Areas and Transmigration identifies village territories and works with local people to improve and consolidate land use regulated by local custom and practices. The Inti Plasma and kemitraan company-community partnership schemes also foster more inclusive investment that brings commercial firms and small farmers together in agreements to spread the benefits of oil-palm, logging and forest-product activities.

E.38 Recent ministerial statements from MAASP indicate that new Land Law under development will now be subject to greater public consultation before a final Land Bill is presented to Parliament during 2020. There is clear interest in working with communities to consolidate their many small land parcels and achieve a more efficient and higher yielding agriculture that both benefits local people and contributes to national food security and economic growth goals. Success, albeit limited, with the programmes mentioned above, points to a more inclusive future approach.

A road map: ‘land governance for equitable development’

E.39 The positive window above suggests a land governance system with a stronger focus on progressive policy goals that still allow private sector investors and others to secure the land they need for their projects. This road map would support a policy shift towards devolving not just rights, but also key aspects of control over land and natural resources to sub-district and community level. This requires the recognition and registration of individual and collective land rights at local level, and the devolution of key land management and land-governance functions to community structures.

E.40 The private sector should be involved in this process. The objective is not to exclude or limit private investment, but to ensure that it enhances local livelihoods rather than undermining them. The policy of the GOI could also ensure that private investment uses resources sustainably and begins to reverse the nefarious environmental consequences of the old development model.

E.41 Starting points could include getting more information on the impact of the titling programme and how to ensure that smallholders genuinely benefit from it, as well as supporting pilot activities that build upon the positive elements of the SF and village-focused programmes. Developing an effective gender equality policy and programme is also an area that is central to the VGGT. Building on existing community-based initiatives and developing new approaches that can be implemented across the country can pay handsome dividends.

E.42 There is much to build on already in Indonesia, in both GOI and civil society experience and programmes. Smallholder tenure is being secured through the PTSL and one map programmes, while SF and adat recognition creates a base for community involvement in development decision making and land governance. A tentative list of activities to address the issues outlined above could include:

- Study of land titling impact, looking at poverty impacts, potential for exacerbating distress sales and land consolidation, access to credit and investment by poorer households, and land use changes; this includes a review of lessons learned in other countries;
- Development – together with GOI and civil society partners – of a gender-equitable and women’s land rights policy and programme, with an appropriate implementation strategy;
A trial community mapping delimitation programme combined with a project to consolidate individual parcels and promote a village or community-based production of new high value crops, in a range of selected forest and non-forest areas; this could involve the establishment of farmer field schools and using enhanced tenure rights to gain access to credit and marketing support;

A pilot twin-track training programme for local government teams and NGO/community leaders on inclusive land governance and development, and which also integrates the gender training developed in the gender component above; this would be implemented in districts where the community mapping and land consolidation projects are being implemented.

E.43 With regard to the development of a new Land Law, the assessment supports the need for new legislation to update and consolidate older regulations and bring the overall body of land legislation into line with more recent developments such as the 2012 Constitutional Court ruling. It should also reflect the stated GOI policy to develop a more inclusive development model that respects local rights and works with communities and small farmers as well as large firms.

E.44 A series of recommendations regarding the structure and content of a new Land Law is presented below:

- Simplify and clarify the process of adat recognition – or verification – including provisions for mapping communities and transferring their forest ownership and other land rights within their delimited borders. Civil society understands this and can play a useful role.

- The adat recognition process is the only form of legally endorsed collectively held land right that is currently recognised and regulated. The few communities that have navigated a way through this process can provide lessons. However, the law should consider including a more generic ‘local community’ with adat communities as a key sub-category. This will facilitate a more devolved form of land governance across the country, with implementing regulations developed through the trials proposed in the Road Map.

- More regulatory clarity and detail for community and village mapping is needed. Good models are available from other countries; recent ‘fit for purpose’ approaches use modern handheld digital technology and remote imaging techniques. Indonesia itself has also acquired expertise within civil society and MAASP/BPN through the One Map and other bilaterally supported programmes.

- A pilot programme in community mapping and some form of farm plot consolidation can develop methodologies and inform legislators as they develop the regulations for implementing a new Land Law. Such an approach is in line with GOI priorities to maintain food production and export earnings by not introducing radical reforms too quickly. Support expressed by the Minister of MAASP is a positive sign towards developing and implementing such a pilot programme.

- Much more is needed on the content of rights held by adat communities and other conventional rights. The State retains considerable intervening powers and, even with title tenure security, secure rights are still a less than certain concept for many people as the State and its partners look for land for new infrastructure and investment projects. Other issues are the use of rights as collateral (especially adat rights), and the regulatory framework for transferring a right to third parties through sale or lease.
A new law must recognise the pluralistic legal reality of the country within a unifying, single
legal framework. The concept of ‘balanced dualism’ captures this well; the recognition and
mapping of collective rights across the country, at a far greater scale than is currently
happening, and the delegation of land governance functions to local-level (community and
village) institutions is one way of doing this.

Fundamentally for ‘enjoying rights’ and managing a changing agrarian landscape, the law
must detail how external interests (the state, investors) interact with all those at local level
with ‘legitimate tenure rights’, whether collective or individual. This requires regulations
outlining how negotiations take place, who represents communities, what rights each party
has to legal and professional support, and who pays for the process.

A further key element of community/external investor negotiation is the legal status and
content of the resulting agreements (contracts), including the rights and obligations of all
parties involved. Central to this point is the confidence that all parties have in the rule of
law and the ability to defend their rights in an appropriate forum.

The law should provide for a modern and efficient land administration system, but this
should not be its central purpose. Issues of process – how things are done and the
relations between land users – are essential for the system to work, and to maintain the
credibility and relevance of any new land rights database.

It is also important to provide for bringing collective rights – adat or otherwise – onto the
cadastre, both to protect them and to provide a clear platform upon which to structure and
guide future interactions between external interests and local people.

To ensure that the new cadastre and LIMS do not rapidly become obsolete as land rights
change hands or are subdivided and inherited, there must be incentives for the poor, in
particular, to update their land rights information over time. This will include more than just
technical provisions about how to update rights: questions of tax and fee exemptions for
the poorest land users also come into the picture, as well as the accessibility of the relevant
land administration services.

Greater attention is needed on women’s land rights and the cultural and other constraints
that prevent women from benefitting from programmes like the PTSL and stop them from
participating in land governance decisions. Clear assertions of the equal rights of women
to access and own land are needed.

Given the importance and relevance of adat norms and practices recognised in the BAL
and still central to national cultural identity, the gender policy in the Road Map requires
sensitive and appropriate legal measures that promote alignment with higher level
constitutional principles that safeguard gender equality while ensuring a legitimate respect
for custom and cultural practices.

The new law could include proposals for conflict and dispute resolution (such as a system
of land courts) that begins with mediation and local level mechanisms that are already
handling the vast majority of local small-scale land disputes. Given the reality of legal
pluralism across most of Indonesia, the law could also include provisions that integrate the
many different adat norms and practices into the judicial process, particularly in the lower,
local levels of the judiciary.
E.45 A new law containing all the above will represent a radical departure from previous legislation and require accompanying regulations and legal instruments as well as other measures to create institutions that are capable of implementing it. Resolving the present contradictions between central and local governments will also be essential, as is creating necessary capacity at local, Regency and community/village level. All this requires substantial public investment in reformed services and capacity building at Provincial and Regency level.
1. **INTRODUCTION**

1. Indonesia is a key country in the global debate about good land governance and large-scale commercial agriculture, and faces a range of land governance issues: the use of large areas of land for food and cash crop production while also respecting local rights and livelihoods; finding enough land for a still rapidly growing rural population; recognising and integrating customary or adat peoples\(^5\) and their respective land governance structures into the wider framework of the modern state; and conserving and managing internationally important forest ecosystems and biodiversity. These challenges are found in many different countries around the world. The assessment is therefore important not just for the Government of Indonesia (GOI) but also as a contribution to global discussions about land governance and sustainable development.

2. The document begins with a brief overview of the Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and related international frameworks such as the Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI) and Free, Prior and Informed Consent (FPIC). An overview of Indonesia today includes the intersect between social and demographic issues and land and natural resources, before the document moves on to the legal and policy framework and a discussion of the institutional structure. The document then looks at the status of implementation of different national programmes in terms of their targets and achievements to date.

3. The legal and policy framework and existing measures are then assessed against the VGGT, followed by a discussion of how things might move forward. The document ends with conclusions and pointers to a ‘road map’ for getting to a land governance system that is more aligned with the VGGT.

2. **THE VGGT AND RELATED FRAMEWORKS**

4. This assessment is set against the framework of the VGGT, which provides globally recognized principles for the responsible governance of tenure over land and other natural resources. Indonesia took part in the process that led to the endorsement of the VGGT by the UN Committee on World Food Security (CFS) in 2012.

5. Globally, the last decade has seen a shift away from regarding ‘the land question’ solely in terms of ‘land-grabbing’ or debates over different kinds of land reform, towards seeing ‘responsible governance’ of tenure at the heart of a more participatory and sustainable development model. This new paradigm looks for shared and inclusive solutions to the complex challenge of reconciling the different needs of different kinds of land user and producer. At the same time, the challenges faced by governments are fully recognized, as they manage whole societies and economies, not just their smallholder farmers and other land users.

6. The key element to note here is that the VGGT approach to the governance of tenure is essentially holistic, seeing land and natural resources in the much wider context of national development strategies. In this context, tenure should be looked at from two complementary standpoints:

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\(^5\) The existence of distinct ‘indigenous’ peoples is not officially recognized in Indonesia. The term *adat* is used to cover customary and other religious or culturally based communities with strong historical ties to specific territories and which still follow distinct cultural and/or religious practices when it comes to internal organization and local governance, including land. The terms ‘customary’ and ‘*adat*’ are therefore used throughout this report.
• Recognising, respecting and protecting existing rights over land and resources;
• Promoting a responsible governance approach that *includes* existing rights holders in the development of policies and decisions affecting their land (i.e. they are seen as active stakeholders with a voice in what happens to their land and resources).

7. These complementary perspectives expand out into five general principles which focus on: the recognition of legitimate tenure rights and their full enjoyment by rights holders; the rule of law and access to justice to protect rights; and the prevention of tenure disputes, tenure-related violence, and corruption (see Box below).

### Five core principles of the VGGT

States adhering to the VGGT should:

1. **Recognise and respect all legitimate tenure right holders and their rights.** They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.

2. **Safeguard legitimate tenure rights against threats and infringements.** They should protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.

3. **Promote and facilitate the enjoyment of legitimate tenure rights.** They should take active measures to promote and facilitate the full realisation of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.

4. **Provide access to justice to deal with infringements of legitimate tenure rights.** They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, *just compensation* where tenure rights are taken for public purposes.

5. **Prevent tenure disputes, violent conflicts and corruption.** They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavour to prevent corruption in all forms, at all levels, and in all settings.

(VGGT, para 3A)

8. These general principles are then followed by ten implementation principles:

1. **Human dignity:** recognizing the inherent dignity and the *equal and inalienable human rights of all individuals*.

2. **Non-discrimination:** no one should be subject to discrimination under law and policies as well as in practice.

3. **Equity and justice:** recognizing that equality between individuals *may require acknowledging differences between individuals*, and taking positive action, including empowerment, in order to promote equitable tenure rights and access to land, fisheries and forests, for all, women and men, youth and vulnerable and traditionally marginalized people, *within the national context*.

4. **Gender equality:** ensure the equal right of women and men to the enjoyment of all human rights, *while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary*. States should ensure
that women and girls have equal tenure rights and access to land, fisheries and forests *independent of their civil and marital status.*

5. *Holistic and sustainable approach:* recognizing that natural resources and their uses are interconnected and adopting an *integrated and sustainable approach to their administration.*

6. *Consultation and participation:* engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, *prior to decisions being taken, and responding to their contributions;* taking into consideration existing *power imbalances between different parties* and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.

7. *Rule of law:* adopting a rules-based approach through laws that are *widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated,* and that are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.

8. *Transparency:* clearly defining and widely publicizing policies, laws and procedures *in applicable languages,* and widely publicizing decisions in applicable languages and in formats accessible to all.

9. *Accountability:* holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law.

10. *Continuous improvement:* states should improve mechanisms for *monitoring and analysis of tenure governance* in order to develop evidence-based programmes and secure ongoing improvements.

(VGGT, para 3B)

9. Key elements in this long list of principles suggest a series of questions for assessing a state’s current legal and policy framework, and any measures being put in place to implement new, more progressive policies and develop new land legislation:

- Do they ensure the ‘enjoyment of legitimate tenure rights’ including customary rights?
- Do they ‘promote and facilitate the full realization of tenure rights’?
- Do they ensure ample stakeholder participation, not only in the definition of policy and programmes, but also in their full and effective implementation?
- Do they ensure that women and men have equal access to and rights over land and resources?
- Do they ensure that the rule of law guarantees a transparent, rule-based approach applicable to all, irrespective of power, wealth, influence, gender and cultural background?
- Do they place land governance in a holistic context where land and the natural resources on it are intrinsically linked, with important implications for the natural resources rights of those living on the land?

10. One of the first things to establish in this context is what constitutes ‘legitimate tenure rights’, including both tenure rights that are formally recognized by national law, and tenure rights that, while not currently protected by law are considered to be socially legitimate in local societies. Thus, ‘legitimate tenure rights’ can have legal legitimacy (legitimate through the law; legally recognized)
and/or social legitimacy (legitimate through broad social acceptance even without legal recognition) (FAO, 2009).

11. This then leads on to an assessment of whether a particular state is putting in place measures to recognize and protect these rights, and to allow their holders to ‘enjoy them’ (i.e. use their rights to meet a range of social, cultural, livelihoods and economic needs). This question takes on special significance in a country such as Indonesia, with a complex pattern of customary or adat communities, set alongside and even overlapping millions of other more individualised rights held by smallholders, large and small private sector firms, and the State itself. What is being done to recognize and protect these rights, particularly those of the poorest segments of the population? And are the holders of these rights able to use them effectively, to ‘enjoy them’?

12. The issue of participation also merits close attention, in both the policy development and the implementational context. Very often, ‘participation’ can be dressed up as various forms of ‘after the event’ consultation when a new policy or project is discussed with local people who in fact have had relatively little say in how the policy or project was developed. In such cases local issues and other stakeholder needs rarely get fully integrated into new policies and projects. The timing, scope and intent of participation and its impact on land governance are important factors to consider.

13. Participation and the enjoyment of land rights, as well as the rule of law and transparency, also apply to the way in which different groups from outside local communities – however, these are defined – gain access to and use local land and natural resources. How these complex relationships are being handled, and what measures are being considered to improve this process, are also key elements to consider when assessing the situation of Indonesia against the VGGT principles.

14. In this context, two other internationally recognized approaches should be included when assessing where Indonesia sits in relation to new global norms and standards for responsible land tenure governance. These are the Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI) (CFS 2014); and the concept of ‘free, prior and informed consent’ (FPIC), covered by relevant FAO publications (FAO 2016).

15. Both focus on the specific issue of how to reconcile private sector demand for land for investment with the presence – in practically all cases – of long-standing resident populations with internationally recognized customary rights over land that are often based in customary governance systems. Such rights are nearly always unregistered and unsupported by any formal documentation, and thus do not appear on official maps and cadastral databases. They are then vulnerable to ‘capture’ by external interests, especially when states perceive these interests as being more able to bring supposedly ‘underused’ land into production and contribute to national economic growth objectives.

16. The CFS-RAI incorporates the FPIC approach and advocates for more inclusive, pro-poor investment models that start from the premise that existing rights need to be recognized, respected and protected. Existing land users should only give up their land through a process of open and well-informed consultation and negotiation between investors and the communities who occupy and use the land in question.

17. It is also appropriate to ask if local rights do in fact have to be identified and registered to enhance tenure and promote their better ‘enjoyment’. Where there is no external demand for land, including for state infrastructure or other projects, and local structures are governing land well using local custom and norms, it might be better, easier and probably cheaper, to simply recognize this situation and allow local structures to oversee and manage land and related rights. This would usually
require legislation that gives the local rights and institutions full legal legitimacy and a clearly defined role in the overall architecture of national land tenure governance.\(^6\)

18. Only when ‘development’ brings other interests into the picture – private or state – does it become necessary to identify and register these rights, making them visible to outside interests who may want land in these areas (Tanner and Bicchieri, 2014). At this point, existing rights including customary rights should be identified, recognized and brought onto formal registers and maps before any negotiations take place.\(^7\)

19. Measures to identify and register local rights ahead of new investment activities also raise the issue of costs. Where local rights have remained undisturbed and unregistered, the need or obligation to map and formalise them can take time and can be expensive. Who assumes these costs – the investor, the State, or the local community that is affected? Whatever the answer to this question, the issue of costs and time are often then seen by both governments and investors as obstacles to development. ‘National interest’ arguments or a view that local people are not using or properly developing a valuable national ‘asset’ productively can then serve to marginalise or bypass local rights, with nefarious consequences for local livelihoods and the environment.\(^8\)

20. It is precisely this kind of response that the VGGT are designed to prevent. At the same time, the VGGT recognize that states have development objectives and their governments have to operate in a complex world of competing interests and often unequal power relations. The VGGT framework and the related guidelines for responsible investment therefore incorporate both fundamental principles about rights and how the relations between state and stakeholders are managed, and the practical elements of land administration and how these are developed and adapted to ensure that principles are respected in practice. Moreover, they are not just aimed at governments – all stakeholders, whether investors, civil society or smallholder communities and adat peoples – can use them to safeguard their rights and to ensure a process of just, equitable and sustainable land-based development.

21. Finally, it is important to keep in mind the ‘holistic context’ of good governance and tenure. This applies not only to the link between land and the natural resources that exist on it, but also to the wider context of opportunities and constraints presented by the over-arching development strategy pursued by government, and other processes at work such as the scale and relative power of private investment. Secure tenure is not much use if it cannot be used at the very least to maintain existing livelihoods and quality of life. In principle, it should also facilitate improvements in both. But this depends on access to credit, markets, technical assistance, and other factors that will allow land right holders to develop robust livelihood strategies which respect and enhance their human rights, food security, and socio-cultural needs.

22. In states such as Indonesia with very large urban populations, the challenge is also to combine the search for the good governance of tenure with agrarian development strategies that intersect sustainably with the preservation and management of natural resources and respond to the demand for food and growth that will lift millions more out of poverty.

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\(^6\) See for example, the policy and legislative changes that took place in Mozambique in the mid-1990s, following such a path (Tanner 2002).

\(^7\) This approach is included in World Bank guidelines for involuntary resettlement (World Bank, 2004), where infrastructure and publicly-endorsed investment projects require resettling local populations.

\(^8\) See papers presented at the international conference on Global Land Grabbing at the Institute of Development Studies, University of Sussex, on 6-8 April 2011. Also Tanner, C. 2013. Large-scale land acquisitions and food security. Evidence on Demand, UK. 24 pp. [DOI: 10.12774/eod_hd037.feb2013.tanner].
3. INDONESIA AND LAND ISSUES TODAY

23. Indonesia has a population of nearly 270 million; this figure is projected to rise to as much as 360 million by 2050, depending on the projections used. Over 56 percent of the population live on the island of Java, where the capital Jakarta is also located. Java is one of the world’s most densely populated land masses. Space for agriculture is at a premium, with smallholders crammed onto plots with an average area of less than a hectare. With 11 cities having populations greater than one million, and the Jakarta metropolitan area now standing at over 30 million people, the challenge of producing food for a large and growing urban population is immense. Competition is intense between commercial agriculture producing in large quantities for the urban market and smallholders feeding themselves as well as supplying local markets.

24. The country is culturally and religiously extremely diverse. Islam predominates across the islands of Java and Sumatera. Most people in Bali, another populous island and favoured tourist destination, follow Balinese Hinduism, and other parts of the country such as Northern Sulawesi are largely Christian. Overall there are some ‘1 000 various ethnic and sub-ethnic groups with their own cultures and traditions’ (RMI, 2019a:3). Amongst these are an estimated 50-60 million people living in adat communities across the archipelago, who ‘live in forests, mountains and coastal areas. Some are nomadic, and some are sedentary, and they are engaged in gathering, rotational farming or shifting cultivation, agroforestry, fishing, small-scale plantations and mining for their subsistence needs. They traditionally live on their ancestral land and water. They depend on nature as they believe the earth is a common property that has to be protected for its sustainability. They have their own knowledge about how to manage nature’ (RMI, 2019a:3).

25. Over the last 30 years, GDP has nearly quadrupled from over USD 794 billion in 1990 to USD 3.046 trillion (at 2010 constant prices). This has been accompanied by a major transformation of the economy with the share of agricultural sectors decreasing markedly in relation to manufacturing and services sectors. GDP growth has remained around five percent with per capita income increasing by almost four percent annually. With progress in macroeconomic policies and structural reforms, Indonesia has improved in international rankings of competitiveness and the business environment; it is now 72nd in the World Bank’s Doing Business index (OECD, 2019a,b).

26. This progress has brought notable improvements in living standards. The commodity boom of the last decade almost halved the poverty rate by 2014, with 34 million people (14 percent of the population) living below the poverty line of USD 21 per month, with a further reduction in September 2018 to 9.66 percent and an improvement in the Gini coefficient on consumption down to 0.384 (Jakarta Post 2019a, citing official data). However, in 2014 65 million people (27 percent of the population) were living just above the poverty line in 2014 (World Bank, 2018a), and although poverty rates have fallen in rural and urban areas, the benefits of recent growth are still shared by relatively few citizens. This has led the GOI in a recent ‘Roadmap of SDGs in Indonesia’ to call for a ‘more inclusive development agenda in the future so all Indonesian people could contribute to and benefit from economic development’ (BAPPENAS, 2019).

27. The GOI is committed to providing everyone with the resources and social services they need to develop and maintain secure and healthy livelihoods. Significant progress has been made in recent

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9 Note that the GOI has recently confirmed that the national capital is to be relocated to Kalimantan, the Indonesian part of the island of Borneo.

10 http://worldpopulationreview.com/countries/indonesia-population/.
years to achieving middle-income country status, with Indonesia now in the G20 group of leading global economies. In 2015, the GOI was also able to declare that out of a total of eight Millennium Development Goals (MDG), 18 MDG targets and 67 MDG indicators, 49 had been achieved and the remaining 18 were well on their way to being realized (BAPPENAS, 2016). Infant and maternal mortality rates decreased significantly from 68 in 1971 to 24 per 1 000 births in 2017; and from 390 in 1991 to 305 per 100 000 live births in 2015, respectively; life expectancy has also improved from 64 years in 1996 to about 87.2 years in 2017, while the Total Fertility Rate is projected to be about 2.14 children in 2017, down from 5.6 in 1971 (BAPPENAS, 2019).

28. Gender equality is still a prominent issue, however. Women are generally considered to be disproportionately disadvantaged, with strong patriarchal cultures across all communities and religions keeping them in the background when it comes to decision-making and engaging with the outside world. Women living in rural areas, and particularly in already marginalized adat communities, bear the brunt of the drastic environmental changes outlined above, which exacerbate and increase already high levels of poverty (RMIb, 2019).

29. Indonesia is economically significant globally. It is the world’s largest producer and exporter of palm oil, generating an estimated USD 25 billion annually. It is the largest economy in Southeast Asia and the only G20 member in the region. The forestry and commercial agricultural sector (tobacco, rubber, and oil palm) account for roughly 34 percent of GDP (World Bank 2018a). The country is also significant at the global level because of its biodiversity, ecological services and carbon storage: approximately ten percent of Indonesia’s land area is peatlands, which store an immense amount of carbon when left alone and undrained (Hooijer et al., 2011).

30. However, Indonesia is also one of the world’s largest emitters of greenhouse gases (GHG), two thirds of which come from land conversion such as deforestation and drainage of peatlands for oil palm plantations, logging, mineral extraction, and urbanization (World Bank, 2018a). Alarming rates of forest cover loss and severe degradation of primary forests impact at national and global level, with one of the world’s highest rates of deforestation (MOEF 2018). Access to water is a serious problem. Thus, as it has moved to G20 status and made progress with social indicators, the GOI is prioritising measures to improve its environmental management and land governance to address these social and environmental issues.

### 3.1 Land and natural resources

31. Indonesia has abundant natural resources, including one of the world’s most important reserves of tropical forest. Its total land area is over 191 million hectares, of which 63 percent (120.6 million hectares) is State forest (Table 1). The rest is divided between productive agricultural land and urban land, although agricultural development and continuing urban growth are eating into forested areas.

<table>
<thead>
<tr>
<th>Land use</th>
<th>Size (ha)</th>
<th>% of total land</th>
</tr>
</thead>
<tbody>
<tr>
<td>State forest land</td>
<td>120 600 000</td>
<td>63</td>
</tr>
<tr>
<td>Productive agricultural land</td>
<td>36 743 522</td>
<td>19</td>
</tr>
<tr>
<td>Urban land</td>
<td>34 014 346</td>
<td>18</td>
</tr>
<tr>
<td><strong>Total land in Indonesia</strong></td>
<td><strong>191 357 868</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

32. Over 8 million hectares of productive agricultural land are used for rice production, with another 11.5 million for various forms of horticulture. Shifting cultivation of staples and other crops accounts for just over five million hectares. A significant area is ‘temporarily unused’, including fallow land and large areas that are not being productively used (Table 2).

<table>
<thead>
<tr>
<th>Land use for</th>
<th>Size (ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paddy field</td>
<td></td>
</tr>
<tr>
<td>Irrigated paddy field</td>
<td>4 782 642</td>
</tr>
<tr>
<td>Non-irrigated paddy field</td>
<td>3 405 091</td>
</tr>
<tr>
<td>Horticulture</td>
<td>11 539 826</td>
</tr>
<tr>
<td>Shifting cultivation</td>
<td>5 074 222</td>
</tr>
<tr>
<td>Temporarily unused land</td>
<td>11 941 741</td>
</tr>
<tr>
<td>TOTAL</td>
<td>36 743 522</td>
</tr>
</tbody>
</table>


33. Forest land is under the authority of the Ministry of Environment and Forestry (MOEF), and is divided into production forest, protected forest, and conservation forest (Table 3). Production forests are the largest category, accounting for 68.8 million hectares (57 percent of total forest area); local residents can extract forests products, but they are also the most vulnerable to conversion into plantation or non-forest use (MOEF 2018).

<table>
<thead>
<tr>
<th>Forest category</th>
<th>MOEF conditions for each category</th>
<th>Total coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production forest (Hutan Produksi)</td>
<td>Forest area intended to function as a means of yielding forest products</td>
<td>68.8 million ha (57% of forest area)</td>
</tr>
<tr>
<td>Protection forest (Hutan Lindung)</td>
<td>Forest area intended to function as a means of protecting life, buffer zones, systems of water management, prevent flooding, erosion, preventing brine water intrusion, and maintaining land fertility.</td>
<td>29.7 million ha (25% of forest area)</td>
</tr>
<tr>
<td>Conservation forest (Hutan Konservasi)</td>
<td>Forest area intended to function as a means of maintaining typical forest characteristics (primary forest cover); and maintaining biodiversity and the ecosystem in pristine state.</td>
<td>22.1 million ha (18% of forest area)</td>
</tr>
</tbody>
</table>

Source: MOEF 2018.

34. The GOI is clearly aware of the environmental implications of the development model that has evolved over the last decades. In 2011, a moratorium was introduced covering some 66 million hectares of primary forest and peatland. The moratorium has been renewed regularly as part of efforts to reduce emissions from fires linked to deforestation.

35. This picture also includes a huge social as well as environmental challenge, and the moratorium could also impact significantly on community engagement in forest management and conservation efforts. Some 33 percent of the country’s population relies on forestry, fisheries, agriculture and hunting to sustain their livelihoods. These people are also significantly poorer than the national average (and very specifically, much of this marginalization occurs in State forest areas where adat customary communities reside) (World Bank, 2018). For many years in fact, the GOI had been giving concession licences to commercial firms that ignored local land use, in areas where local communities lived and depended on the forest for their livelihoods. Some estimates are that by 2009, over 4 000 villages were located inside land allocated to forestry companies by the Ministry of Forestry (Siscawati et al., 2017:6). Unfortunately, and in spite of the moratorium, this trend appears to have continued. Thus, by 2015, 98 percent of ‘production forests’ (49 million hectares) had been allocated to investors,
leaving just two percent of some 0.4 million hectares, for local people, many of whom live in adat communities.¹¹

36. Land inequality amongst smallholders is also still a serious problem, in spite of evidence that the absolute numbers of rural households may be declining. According to 2014 Statistics Indonesia (BPS), the number of farmer households was 26.1 million, or 40.82 percent of the total number of Indonesian households. Between 2003 and 2013 this number decreased from 31.2 million to 26.1 million, with an apparent positive impact on land fragmentation: over the same period, the average tenure of agricultural land in the countryside increased from 0.35 hectares to 0.86 hectares (Sunito, 2019). Together with a significant reduction in the poverty rate, this appears to present an encouraging picture of rural economic conditions.

37. However, further analysis of the 2013 data also reveals that nearly 55 percent of farmer households have less than 0.5 hectares of land; and over 85 percent occupy two hectares or less. Furthermore, ‘rich’ households with over five hectares account for just 2.3 percent of all households but occupy some 23 percent of the area occupied by farm households (Table 4).

<table>
<thead>
<tr>
<th>Land area (ha)</th>
<th>Farmer households</th>
<th>Total land occupied (ha)</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N million</td>
<td>%</td>
<td>Million ha</td>
</tr>
<tr>
<td>Landless</td>
<td>0.62</td>
<td>2.37</td>
<td>-</td>
</tr>
<tr>
<td>0 – 0.49</td>
<td>14.32</td>
<td>54.78</td>
<td>2.67</td>
</tr>
<tr>
<td>0.50 – 1.99</td>
<td>8.04</td>
<td>30.76</td>
<td>7.58</td>
</tr>
<tr>
<td>2.00 – 4.99</td>
<td>2.57</td>
<td>9.8</td>
<td>7.11</td>
</tr>
<tr>
<td>5.00 – 9.99</td>
<td>0.46</td>
<td>1.8</td>
<td>2.88</td>
</tr>
<tr>
<td>&gt; 10</td>
<td>0.13</td>
<td>0.5</td>
<td>2.19</td>
</tr>
<tr>
<td>TOTAL</td>
<td>26.14</td>
<td>100</td>
<td>22.43</td>
</tr>
</tbody>
</table>

Source: Sunito 2019, based on 2013 data.

38. The situation is worst in Java, where the poorest category account for 76.1 percent of households, which has over 56 percent of all Indonesian rural households (Sunito, 2019).

39. Recent research confirms this picture of a highly unequal distribution of land, with Gini coefficient of 0.64 in 2013 for land held by smallholders (Sajogyo Institute 2018). The GOI recognizes this as a serious issue and aims to reduce the Gini coefficient for land and farm households to 0.4 with new land redistribution and other measures (discussed below).¹²

40. The other side of this question, however, is that many smallholders have benefitted from the expansion of crops such as oil palm. Where smallholders have managed to align with the palm oil industry (for example through the Inti Plasma scheme) they have seen incomes rise dramatically and millions have been lifted out of poverty (MOEF 2018). The kemitraan partnership programme also promotes formal working agreements between companies (state or privately-owned) and local communities with the objective of facilitating collaboration between the companies and community groups in the management of forest resources; and supporting state-sponsored community empowerment in State Forest areas where companies have been given licences to carry out logging or establish plantations. All companies are now required to implement the kemitraan programme (Siscawati et al., 2017:15).

41. The willingness of local people to partner up with firms and cut down ‘their’ forest to plant oil palm raises fears in some quarters that recognising local rights and devolving them to local

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¹¹ Direct communication, Directorate of Social Forestry, MOEF.
¹² Meeting with the Minister of Agrarian Affairs and Spatial Planning, November 2019. See also Sajogyo 2018.
management may simply expand the negative environmental impact of the palm oil boom of recent years. Yet key observers and CSOs agree that local adat communities who have depended upon the forests for generations are adept at using them sustainably with long-used local conservation knowledge and practices, and that recognition of local tenure and rights over forests will bring positive conservation results (Wright 2011; HuMa 2015; Siscawati et al., 2017).

42. The focus on commercial and plantation production has clearly impacted on poverty and inequality. The GOI is now open about the fact that this situation has been a direct cause of massive inequality and poverty that now requires addressing urgently. Indonesia is also committed to implementing the Sustainable Development Goals (SDGs) successfully by achieving its 2030 development agenda. The Presidential Regulation No 59/2017 has mandated BAPPENAS to provide a Roadmap for achieving the SDGs and these are now incorporated into several planning frameworks. However, the still rapid rise in population brings sharply into focus the link between social and food security issues and land governance.

43. BAPPENAS makes it very clear that a key priority of the GOI is to guarantee the food security of the population, and in this context a key concern is the conversion of existing agricultural land into ‘other use’ land, especially for urban and industrial development.13

44. A more democratic regime since the late 1990s has given rise to an active civil society that advocates in favour of recognising the customary rights of adat communities over large areas of what is now state forest. The State has long resisted claims from these communities that forest ownership and ‘control’ – hak milik, a key adat concept – should be devolved to them. In 2012, however, a landmark Constitutional Court ruling established that customary forests (hutan adat) do not belong to the State and ownership should be devolved to the communities.14 Since then, and with support from the President, regulations to recognize adat communities and devolve forest land to them have been passed. With support from national and local civil society organizations, hundreds of adat communities are seeking formal recognition with forest ownership.

45. Other tenure and land reform measures have been launched to secure the rights of millions of smallholders who are not in adat communities and to address extreme land inequality in some areas. The PTSL titling programme started in 2017 builds on earlier titling programmes and aims to register a further 23 million parcels of land. This will extend formal coverage to every single land parcel in Indonesia by 2025 (the total is estimated to be 162 million parcels), safeguarding the tenure security of millions of smallholders (World Bank, 2018b).

46. The Tanah Objek Reformasi Agraria (TORA) agrarian reform programme addresses land inequality by making state land available to smallholders. It aims to certify 4.5million hectares of land informally controlled by individual farmers and redistribute another 4.1 million hectares of state forest land and 0.4 million hectares of idle or abandoned land. In April 2017, the MOEF Decree No. 180 identified 4.8 million hectares of the State Forest Estate for reallocation through TORA (Resosudarmo et al., 2019). Since 2015, a new social forestry programme has also been distributing and formalizing state forest land to communities through permits or partnership arrangements (Resosudarmo et al., 2019).

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13 Statements made in meetings with BAPPENAS, June 2019.
14 This is discussed in more detail in the following section.
47. The GOI commitment to change has been restated at the highest level this year, with President Joko Widodo issuing a ‘Presidential Instruction’ to make the 2011 moratorium on new forest concessions permanent over an area of 63 million hectares (Reuters, 2019). This kind of statement raises hopes for big improvements in community engagement and, if effective, could also rank as one of the largest recent global decisions to increase the potential for improving conservation outcomes.

48. Yet the economic dimension of land governance policy must not be forgotten. All these programmes are intended to promote investment and sustainable land use by farmers on their own land and land leased to them by the State. Meanwhile, population growth is placing available land under increasing pressure. A concern to maintain economic growth and generate foreign exchange still drives GOI support for private sector commercial cash-crop agriculture; established firms have legitimate rights and interests and others look for new land in forest areas that are home to millions of people. Urban areas are encroaching on both forest and valuable farmland, and there is an increasingly acute problem of land fragmentation and sustainable land use as millions of small farmers struggle to maintain land-based livelihoods. Policy debates are influenced by powerful forces, while an active civil society is driving opposition to the practices of the past and demanding change. Add the impacts of climate change, and the GOI faces an increasingly urgent and complex land governance and development challenge.

49. New measures to recognize local and adat rights and to enhance tenure security for smallholders reveal how aware the GOI is of the challenge of land-related poverty. Progress is slow, however, especially when set against the sheer size of the country as shown in the tables above. And there has been relatively little research into real social or economic impacts of the titling and other more progressive programmes of recent years. A wide range of rights and social as well as economic and environmental priorities intersect around the good governance of tenure and natural resources. In the context of the VGGT, the formal recognition of customary adat forests has been a positive step towards recognising ‘legitimate rights’ that historically have been overlooked. However, this also introduces another layer of complexity into land governance. Verifying and formalising adat community rights is a complex process and brings new problems when it comes to managing the relationships between local adat communities and other land users (van der Muur, 2018). The challenge is to find a way to accommodate all these elements within a unifying and simplified national land policy and legal framework.

4. CURRENT LEGAL AND POLICY FRAMEWORK IN INDONESIA

4.1 The Constitution and Basic Agrarian Law (BAL)

50. Land policy in Indonesia is set against the over-arching pancasila philosophy established when Indonesia was founded as an independent state in 1945:

- Belief in Almighty God (Ketuhanan Yang Maha Esa),
- A just and civilized humanity (Kemanusiaan yang Adil dan Beradab),
- A unified Indonesia (Persatuan Indonesia),
- Democracy led by wisdom in a consensus or representatives (Kerakyatan yang dipimpin oleh Hikmat Kebijaksanaan dalam permusyawaratan/perwakilan),
- Social justice for all Indonesians (Keadilan Sosial bagi seluruh Rakyat Indonesia).
51. This philosophy is evident in Article 33 of the 1945 Constitution, which sets the foundation for all subsequent land legislation. While land, water and natural resources are 'under the powers of the State', the State must nevertheless ensure that these resources are to be used 'to the greatest benefit of the people' and the national economy is to be managed on the basis of 'economic democracy upholding the principles of togetherness, efficiency with justice' (see Box below on Article 33).

### Article 33 of the constitution

1. The economy shall be organized as a common endeavour based upon the principles of the family system.
2. Sectors of production which are important for the country and affect the life of the people shall be under the powers of the State.
3. The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.
4. The organization of the national economy shall be conducted on the basis of economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy.
5. Further provisions relating to the implementation of this article shall be regulated by law.

Source: ILO online.

52. After 1945, colonial laws and land administration concepts were used for several years. In 1960, the Basic Agrarian Law of 1960 (BAL) (UPA in Bahasa) sought to sweep away colonial land management and replace it with a unifying reassertion of Indonesian custom and practice as it related to land and natural resources governance. For its time, the BAL was an ambitious undertaking, recognising that ‘agrarian law is dualistic in nature, given that adat (customary) law is also effective in addition to the former [legal system] which is based on western law’. Even today, it stands out as a unifying framework that integrates customary or adat laws and practices into the national land governance architecture (see Box below).

### The Basic Agrarian Law as a unifying law

Before the BAL was enacted, Indonesian land law followed colonial legislation that separated land into different categories for Europeans, Native Indonesians, and Foreign Orientals.

This legislation divided the country into areas with distinct forms of land governance and administration. In areas for ‘Europeans’ (which included nationals living there), ‘western’ land management principles were introduced, including concepts of ownership and individual access and use. Land titles were issued by the colonial government that could be transacted and inherited.

The focus of ‘land administration’ was principally this ‘western’ section of the country. In the other areas, adat and other local custom and practices were respected and accepted as the way in which land and other areas of life were regulated and administered.

The BAL was unique in its time, as an attempt to bridge the gap between a recently independent Indonesia and pre-colonial land governance systems that continued to manage the ‘non-western’ parts of the country. The intention was to create a genuinely Indonesian land law and land governance system based in adat principles and which would unify the country.


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15 Preamble to the BAL, cited in Wright, 2011.
53. The BAL remains in force today as ‘the’ national Land Law and provides the fundamental framework for all land-related laws and regulations that have since been developed. Articles 1-15 lay out the policy fundamentals for land management, and following articles address technical land management questions. The BAL then provides the mandate for developing all subsequent implementing regulations.

54. Driven by an imperative to promote national development through growth and wealth accumulation, successive (authoritarian) governments opted for a more direct approach to development using the nation’s abundant natural wealth. This approach bypassed the customary provisions in the BAL, and as one researcher put it in 2011, ‘despite the fact that the BAL has been in existence for over 45 years, only a handful of implementing regulations have been introduced, none relating to adat specifically’ (Wright, 2011:126).

55. Although no land was nationalised in administrative areas, occupiers had to prove title before being integrated into the new registration system. Within the overall concept of the State acting as de facto ‘owner’ and ‘controller’ of all land resources in the name of the people, adat areas effectively became state land and were available for development through concessions and other forms of land use right. The BAL remained in place however, perhaps because it also offered a strong cultural and ideological message that could be translated into a political platform built around achieving a national development vision.

56. A review of the BAL carried out nearly 40 years after its approval (Fitzpatrick, 1997) provides important insight into its effectiveness and impact as a de facto instrument to facilitate and promote a state-driven national development model that persists to the present day. Rather than providing the country with a new unified legal framework incorporating fundamental adat principles, the BAL ‘helped to engender a vicious cycle in the process of development [where] developers and the bureaucracy eschew the uncertainties of dealing unregistered adat titles in favour of acquiring land at below-market prices through the arbitrary application (or sometimes non-application) of the laws on land acquisition’ (Fitzpatrick, 1997: 171). In other words, rather than face the challenge of a new law that implied a major devolution of power to local level and serious institutional reforms, the GOI of the day embraced the philosophy of the BAL as a cultural paradigm, while setting aside adat custom and practice and using other land management tools to pursue development goals. To quote a more recent assessment, ‘the BAL [and one might add, the basic constitutional provisions] allowed the central government to have supreme authority to regulate and manage land and natural resources as well as to determine property relations’ (Siscawati et al., 2017:4, comment added).

57. This conclusion was reached over twenty years ago, but elements of it still apply. And the reality is still that in spite of the BAL being ‘hailed for acknowledging the existence of customary laws … the government failed to formulate and implement instruments necessary to institutionalize customary tenure systems’ (Siscawati et al., 2017:4, emphasis added). Today it might be expected that the decentralisation and ‘shift in the locus of power to regional level’ that began after the fall of the authoritarian Suharto regime in 1998 (van der Muur, 2018:163) would have begun to change that. This change may, however, have impeded more recent progressive developments as local leaders continue to exercise their power to make deals with economic interests and override local rights (see below). And even with the more recent recognition of adat communities and moves to accommodate them within the land governance architecture of the country, in practice the state is still the driving force behind land management. With an ambitious social and economic growth agenda to implement, it is still counting on its long-standing relationship with private sector economic actors to drive the economy. This often means ensuring that they have access to the land they need for their projects.
4.2 A multiplicity of land laws and regulations

58. Following the provisions of the Constitution and the BAL, the State has enacted a vast number of laws and regulations covering land and natural resources. According to the International Land Coalition (ILC), there are an estimated 572 or more laws, regulations, and other documents relating to land and formal government processes in Indonesia (ILC, 2019).

59. The impression is of a new regulation being developed every time a new need or new issue emerges and requires a legal framework to regulate it and provide legitimacy. Different Ministries are able to pass ‘Ministerial Laws’ to implement their specific activities, creating tensions and overlap between their respective mandates and authority. The PTSL titling programme for example is entirely regulated by Ministerial laws passed by MAASP, while the new area of social forestry is governed by laws and regulations developed and approved by the MOEF. Other regulations address critical issues like time-limited concessions of land to the private sector or the requirement that concessions attribute 20 percent of their land to local farmers who are integrated into the subsequent plantation enterprise.

60. Other laws have been developed to respond to specific policy concerns of the GOI which are directly related to land governance but have huge significance for how land rights and land management are handled. A good example is Law 41/2009 covering Land for Sustainable Food. This law was developed to ‘restrain the rate of conversion of rice fields, especially with technical irrigation, so that [the land] can sustain national food security and Indonesia will always have agricultural land’ (BAPPENAS, 2015). Behind the passage of this law lies a growing concern with the conversion of agricultural land into urban land for housing and industrial development, a process that is poorly regulated and in dire need of comprehensive and updated legal reform.

61. The result of the passage of innumerable laws and regulations has been the emergence of a body of ‘land law’ that is both hugely complex and open to interpretation and discretionary application. This situation has been complicated in the decentralisation era by the requirement that provinces and Regencies must develop their own implementing laws to put new national legislation into effect. This has not always happened, with the result that national level laws seeking to modernise land management and promote progressive new policy are not being implemented in practice at local level.

62. More recently, new regulations and policy declarations have begun to open a pathway towards the practical realisation of the underlying principles of the BAL. These include:

- Ministerial Regulation 05/1999 - Customary Land Rights
- New Forestry Law 41/1999 - revoked and replaced the Basic Forestry Law 5/1967
- TAPMPR (People’s Advisory Assembly) 9/2001 – Agrarian Reform and Natural Resource Management
- MPR (People’s Advisory Assembly) Decree 5/2003 - Presidential Decree 34/2003

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16 World Bank, meeting October 2019.
17 BAPPENAS, Directorate of Spatial Planning, meeting October 2019. See Box below which discusses the implementation of this law in the context of local government decentralisation.
18 Statements in official meetings including BAPPENAS, and with other stakeholders.
19 Siscawati et al., 2017 provide a thorough review of forest-related legislation and reforms which has guided this analysis but to which readers are referred for a more detailed assessment of this specific topic.
• Presidential Regulation 10/2006 - provides for the then National Land Agency (now MAASP) to operate at 3 levels: national, regional and sectoral, principally in national land policies, land affairs technical policies, administration, surveying, registration mapping etc.

• Presidential Speech 2007 January 31

• Forest Regulations 6/2007 (revised as 3/2008) – establish the arrangements for partnerships (kemitraan) between companies with licences in state production forests and local communities

• Law 41/2009 - Land for Sustainable Farming

• Constitutional Court ruling of 35/2012 with regard to adat community ownership of forests

• Law 19/2013 - Law of Farmer and Fishermen Protection

• Village Law 6/2014 - recognized adat villages

• Joint Regulation 79/2014 – grants land rights to people who have been managing the land for over twenty years

• National Medium-Term Development Plan (2015-2019) – allocates 12.7 million hectares to local people including customary communities

• Ministerial Regulation of Title Forest 32/2015 – includes customary forest as well as title over land held by individuals and entities; defines the procedure to obtain a Licence of Title Forest (requires title from MAASP, local government recognition of adat peoples and their ancestral land, or recognition of title forest by the MOEF)

• Ministry Regulation 10/2016 - Customary Land Rights (replaces the Regulation 05/1999)

• Ministry Decree 83/2016 - Social Forestry Regulation

4.3 Gender and women's rights over land

63. The Agrarian Law No. 5/1960 recognizes individual land ownership and that women and men have equal rights to land ownership in order to utilize and derive benefits from land for themselves and their families. However, even if the law allows women to own land and to inherit it from parents, cultural and religious practices limit their rights and entitlements. For example, in Aceh, daughters are entitled to a lesser share of property than sons under provisions of Sharia Law (UNDP, 2017). The land owned by women through inheritance may go under the control of men as shared property when women enter into marriage.

64. The Marriage Law of 1974 stipulates that assets obtained during marriage should be categorized as joint assets belonging to both husband and wife. Nevertheless, given patriarchal ideas that only men can be the head of household, ownership of joint assets end up being vested in men (RMI, 2019b). In 2003, only one-third of certified land in Java was owned by women. Joint land ownership by spouses is rarely reflected in land titles certifications of ownership because of women’s low levels of education together with the patriarchal mindset that a man’s name should be on the certificate (FAO, 2019). In other words, Javanese women farmers are often not recognized as formal owners of the land on documents, although they have informal protection within Javanese culture. The Javanese language has a term for property ownership during marriage, gono-gini, and this concept is more influential in shaping family behaviour than official rules or Islamic ideas (FAO, 2019).
4.4 Implications of the Basic Agrarian Law and adat for land administration

65. Strictly speaking, neither the 1945 Constitution nor the BAL give ‘ownership’ of all land and natural resources to the State. The notion of ‘under the power of the State’ established in the Constitution is more aligned to the adat principle of hak milik, which is the closest that adat or customary law comes to a form of freehold or ownership. In this context, the State exercises a supreme right of control or management over all land and resources and must use this power to the maximum benefit of its citizens. This is similar to constitutional provisions in countries with a socialist legacy where land ‘belongs to the State’, but where the radical title vested in the state is conditioned by provisions to uphold democracy, safeguard the environment, guarantee access to land, and ensure justice, gender equality, and the well-being of all citizens.20

66. The exercising of this ‘power’ in Indonesia comes very close to ‘land belonging to the State’. Thus, the State has the ultimate right to manage and direct how land is used, including being able to appropriate land in the wider interests of the people and in the national interest. And in the specific context of Indonesia, where the huge area of forested land is officially designated as ‘State forest’, this gives the State and the Ministry responsible for the forest estate almost complete control over all aspects of land governance within these forest areas. Even ‘non-forest land’, however, is also ‘state land’ in the sense that the State is in the background as the ultimate arbiter and controller of the myriad of rights that exist.

67. In this context, the State (through the GOI) ‘assumes all reversions of land after private time-limited rights have expired; takes advantage of all opportunities to resume or take back land held [owned or ‘controlled’ by private individuals; and ‘owns’ everything above and below the surface of all private land other than what is necessary for the exercise of the right [held by the land user]’ (Mutaqin, 2012).21

68. The division of land between ‘state land’ and ‘private land’ also takes on a very specific characteristic insofar as the term ‘private’ does not imply outright ownership, but rather the existence of a private right over the land which the State, through its governmental agents, has allocated to the land occupant and user. Thus, there is:

- state land over which the right has been designated to a person or a legal entity; and
- unencumbered state land or state land without any user right attached to it.

69. Thus, ‘private land is land with a certain [private] right on it, either registered or not (yet)’ (Mutagin, 2012:4). Starting with the hak milik, which the State is able to attribute to land users through leases and similar devices, there is a hierarchy of rights over land that reflects the underlying adat principles of the BAL. The subsequent hierarchy of rights is perhaps best seen as continuum of rights emerging from official interpretations of adat in the BAL. It ranges from a form of freehold through to what are essentially administrative permissions to use or do certain things on land which is ‘controlled’ by someone else (either the State, a government agency, or perhaps an adat community). The hierarchy of rights is as follows:

- Hak Milik – control (the closest to a form of freehold ownership);

20 The Constitution of Mozambique, for example, establishes that land belongs to the State but also affirms the right of all citizens, men and women, to access and use land, and respect for all acquired rights. It also requires the state to ensure the well-being of the people through its various laws including those that regulate land access and use. This is not unlike the provisions in Article 33 being discussed here.
21 The author is a member of the Indonesian Community Mapping Network (JKPP).
• *Hak Pengelolaan* - land management (also a strong right, with elements of ownership);
• *Hak Guna Usaha* - cultivation only;
• *Hak Guna Bangunan* - building only;
• *Hak Pakai* - use only.

70. This hierarchy of rights moves almost seamlessly between forms of ownership to what are essentially planning consents to do certain things with the land one is given access to. With the exception of *hak milik*, all the other rights are temporary and subject to different periods of use. For example, the right of management given to concessions (and now to social forestry communities, see below), is for 35 years, renewable upon application and assessment by the GOI of meeting performance objectives.

71. Mutaqin (2012) also identifies two systems for recording land rights that are based in conventional western land management practice: (i) private conveyance and (ii) registration of deeds. Private conveyance is not regulated, but is accepted by the courts as an informal, but not illegal, process. This is based on the legal principle that the title is transferred at the time of payment in cash, registered or not. The passing of the documents agreeing to the transfer is done in private, usually witnessed by two persons.

72. Deed registration is the formally adopted system. A copy of all agreements that affect the ownership and possession of the land must be registered at the local Land Office, part of the vertical land administration system that is overseen by the MAASP.

73. The result of this hierarchy of different rights and registration systems, with lower use rights also being allocated to third parties by the holders of higher level ‘control’ rights, is a land administration system which is ‘a de facto planning control mechanism, but…a less than effective one’ (Mutaqin, 2012). This system creates a lot of space for administrative fiat in the managing and manipulating of different rights, and opportunities to extract fees rather than focusing on effective land use management. It also lends itself to manipulation and corruption.

### 5. INSTITUTIONAL CONTEXT

74. The institutional context for land governance has been shaped by two key factors. The first is the separation of the country into forest and non-forest areas. The second is the grafting of Indonesian concepts of land rights onto a landscape managed centrally to achieve economic growth and wealth creation, and the huge number of laws and regulations that have been developed at different levels of state legislative and executive institutions to manage this.

75. The resulting institutional structure for land and natural resources governance is very complex, with technical and political authority fragmented across different sectors. Decision-making and on-the-ground political authority are also exercised by provincial and district governments.

76. At national level, the key institutions are:

• Ministry of Agrarian Affairs and Spatial Planning (MAASP)
• Ministry of the Environment and Forestry (MOEF)
• Ministry of National Development Planning (BAPPENAS)
77. BAPPENAS and CMEA have important oversight and coordination roles and in principle are hierarchically superior to the various line ministries implementing land and natural resources policy. While BAPPENAS has a key role in overseeing development planning in a strategic context, with its own individual Directorates for issues like Agriculture and Spatial Planning, CMEA formally oversees and coordinates a series of key line ministries, including:

- Ministry of Finance
- Ministry of Industry
- Ministry of Trade
- Ministry of Agriculture
- Ministry of Manpower
- Ministry of Cooperation and Small & Medium Enterprises
- Ministry of State-Owned Enterprises
- Ministry of Public Works and People's Housing
- Ministry of Land and Spatial Planning
- Ministry of Environment and Forestry

78. Institutional rivalry is endemic, however, and important ministries such as Finance, and the MOEF which control a very large part of the country through its mandate over state forests, retain a large degree of autonomy and resist being 'coordinated'.

79. The Ministry of Home Affairs and the Ministry of Law and Justice also exercise important roles in land governance through their roles in public administration, the appraisal of new legislation and dispute resolution. The Ministry of Villages, Disadvantaged Regions, and Transmigration is also an important actor and potential partner in the context of land governance through its Community Empowerment programme that identifies village territories and works with local people to improve and consolidate land use regulated by local custom and practices.

5.1 Land and natural resources governance

80. MAASP has a mandate that covers the whole country. In reality, however, the division of the country into non-forest and forest land is reflected in a separation of land and natural resource governance powers and functions between MAASP and MOEF. Although the spatial planning and land administration functions of MAASP cover the whole country, in practice forest land that falls under the authority of MOEF cannot be formally subjected to land registration by MAASP unless the land is officially de-gazetted as state forest land. This institutional separation continues under a new government reorganization in October 2019.

81. MAASP is responsible for the PTSL mass titling programme, which is a continuation of a GOI initiative first launched in the 1990s. The BIG is responsible for implementing the GOI One Map programme, which is seeking to harmonise and update the host of maps and geospatial data that
either still dates from the colonial era, or has been produced by different line ministries. Also, within this context, CMEA has an important role in attempting to resolve land and map conflicts as the result of One Map Policy implementation.

82. The result of this historical legacy of many and conflicting maps and geospatial information has been a great deal of confusion over current land use and, in particular, the border between forest and non-forest land. This is an important question given the institutional separation of powers and authority between MAASP and the MOEF over non-forest and forest land respectively. This situation is exacerbated as illegal occupations and clearances achieved by starting fires deliberately to clear forest and then occupy the land for non-forest use.

83. MAASP is also overseeing the development of the ‘new Land Law’, putting it in a strong setting vis-à-vis the other institutional actors. However, once again the institutional separation note above is significant: key sectors, including the MOEF, are not taking part in this key ongoing activity.

84. In principle, BAPPENAS and CMEA have higher-level coordinating authority over both line ministries. However, this does not play out in practice and the more important ministries resist ‘being coordinated’. The MOEF especially has historically been very powerful politically given its authority and control over forests. Today, the importance of the timber industry has declined relative to new extractive industries such as coal, and the emergence of oil palm (an agricultural commodity). Nevertheless, the MOEF still retains its power and influence vis-à-vis other sectors, rooted in its earlier dominant national role.

5.2 Administrative and political decentralisation

85. Indonesia embarked on a major decentralization of its government and development planning in 2000. These reforms ‘gave greater authority, political power, and financial resources directly to regencies and municipalities, bypassing the provinces’ (Nasution, 2016). In fact, the decentralisation legislation devolves considerable authority to Provincial and District level. This apparent loosening of central control is presenting its own problems. There is evidence, cited by many experts and the CSOs consulted, that some Regents (Bupati, or District heads) are setting aside national frameworks and policy (including the Presidential Instructions regarding forest concessions) and are continuing to grant large concessions to private sector entities in spite of local opposition from adat communities and other stakeholders.

86. It is not clear at this stage what central government can do to control this situation. Budgetary control still resides with the central government and this does give the central GOI some power to rein in or influence the excesses of district leaders. Provinces and Regencies (Districts) are not able to raise their own revenue through taxation and this does impact the ability of decentralised governments to invest in social and other services and support private investment through the provision of infrastructure and other public goods.

87. A critical area in terms of land governance has been the devolving of responsibility for economic and spatial planning to the Regencies. Having traditionally been simply implementing agencies of

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22 World Bank, meeting in October 2019. The World Bank is supporting the GOI One Map programme which is addressing the need to harmonise maps produced by different sectors and produce updated maps at different levels of scale for national, provincial and local level spatial planning and land use management.
national policies and programs, most local governments have been poorly resourced and poorly prepared to do this, and many Regencies do not yet have spatial plans in place.\textsuperscript{23}

88. The Regency governments are where petitions are received from \textit{adat} communities seeking \textit{adat} recognition; they also issue the \textit{Perda} local regulation that these communities must have in order to request ownership over their respective forest territory to be transferred to them from MOEF. Thus, the process continues to be cumbersome and can take several years.

89. With large areas and resources under their control, yet institutionally and geographically separate from Jakarta, the politics and influence of regional elites can obstruct or distort these processes where political or economic interests may be affected. Coupled with the complex documentation and evidence required to support recognition, the process can take a very long time (see section 5.3 below).

90. Decentralisation does not always work against the \textit{adat} communities, however. In some areas, \textit{adat} leaders are in prominent positions and can make recognition flow faster. However, these leaders are equally susceptible to using their political power to further their own interests over those of the communities they represent (van der Muur, 2018). In non-forest areas, the \textit{Perda} regulation is not required and the process of recognition and transferring land rights to the \textit{adat} community also proceeds more quickly.\textsuperscript{24}

91. The other impact of decentralisation is that most national initiatives require provincial and Regency legislation to implement them. This can also take a great deal of time or simply does not happen; this again hampers implementation of land reform activities and other land-related legislation (see Box).

\begin{center}
\textbf{Implementation of the law ‘Land for Sustainable Food’}
\end{center}

Law 41/2009, Land for Sustainable Food, addresses a key GOI concern to ‘restrain the rate of conversion of rice fields…so that [the land] can sustain national food security and Indonesia will always have agricultural land’ (BAPPENAS 2015).

A 2015 report concludes that a lack of human resources and a failure to develop district-level regulations have held up implementation. Just one of nine surveyed districts has developed the required regulation, with farmer resistance, lack of district plans, poor technical guidance, and budget constraints also obstructing effective implementation.

Meanwhile, land conversion continues apace, driven by local interests. The report suggests it is best to re-coordinate at central level, passing control of the programme back to BAPPENAS.

Source: BAPPENAS 2015.

5.3 \textbf{Capacity and procedural questions}

92. The complex hierarchy of rights and the frequent involvement of several institutions in most land-related decisions has resulted in administrative procedures that are extremely complex and time consuming.

\textsuperscript{23} Meetings and telephone interviews.

\textsuperscript{24} RMI. Meeting, October 2019.
93. Administrative and technical capacity is relatively strong at national level, but it changes dramatically the further down one goes. All the institutions and experts consulted for this assessment confirm that the capacity to implement land-related tasks and oversight functions is very weak at local level. This applies equally to the vertical, centrally managed hierarchy of the Land Administration, and to Regency and sub-Regency institutions charged with a range of planning and land governance tasks at local level. Capacity also varies tremendously between different Provinces and Regencies, with Java normally presenting far higher capacity compared with more remote Provinces and Regencies.

94. Beyond capacity concerns are also questions of guidance and orientation regarding new policies and programmes. One leading NGO made the comment that many local government officials have little idea about what to do when it comes to implementing new programmes. Against this, however, is the more positive and practical view expressed by one informant, that ‘the lower down you go the less ideological, more practical people are’, adding that this especially applies to awareness of social and cultural issues.

5.4 Villages

95. The village is the smallest administrative unit of the country. There are many tens of thousands of villages across the country, covering a huge range of cultural and agro-ecological contexts and with many distinct forms of social and internal organization. The Ministry responsible for villages is the Ministry of Villages, Disadvantaged Regions, and Transmigration. A Village Law was passed in 2014 which created a new Village Fund for community and local development. According to a recent national news report, ‘since 2014, the government has allocated a total of Rp 187 trillion for 73,670 villages to empower and kick-start economic activities in each of the country’s smallest administrative units’.25

96. As well as the Village Fund, the Ministry has implemented the National Programme for Community Empowerment in Village Law. This programme covers many areas of village life and includes questions of land use and local governance. Gender and the rights of women are also covered. An essential component of this programme is to identify what a village is in practice in terms of its internal governance and leadership structures, and the land it occupies and uses. This in turn involves the development of participatory mapping methodologies, in collaboration with the One Map programme at MAASP.

6. SECURING LAND RIGHTS FOR SMALLHOLDERS AND COMMUNITIES

6.1 Smallholders and titling

97. The principal measure for securing the rights of millions of smallholders in the non-forest areas of the country is the PTSL, or massive titling programme, set within the Programme for Accelerated Agrarian Reform. There are an estimated 162 million land parcels in Indonesia and the GOI has been implementing a titling programme for many years now with support from the World Bank and other partners. The present phase aims to complete the titling process with a further 23 million parcels titled and registered.

25 Jakarta Post, 2019b.
98. This process is set within the GOI Medium-Term Development Plan for 2015-2019, which includes targets for mapping the entire country at a scale of 1:5000, the TORA agrarian reform programme and forest boundary demarcation. Within the TORA, the goal is to foster community forest partnerships within an area of 12.7 million hectares and release 4.1 million hectares of state forest for non-forest use, allocated to smallholders.

99. Both MAASP and the MOEF are involved in this programme. MOEF is carrying out a participatory mapping process within the context of the Social Forestry programme, to regularize land rights for forest communities, resolve disputes and establish the basis for community-based development through its Enterprise project (World Bank, 2018a; MOEF direct communication). The MAASP will register 23 million land titles in including the 4.1 million hectares released from the forest area through a phased programme over several years.

100. The main operational component of the programme to date is the One Map component, implemented with MAASP and BIG. This is working in seven provinces (but not North Kalimantan). A principal characteristic of the selected areas is that they are all prone to fire (with a fire assessment showing a clear link between tenure and fire risk, especially on forest margins).

101. One Map is focusing on legalizing the 23 million land parcels, with the World Bank supporting mapping and registration while the GOI supports the certification of the surveyed and adjudicated land. It is covering smallholder, community and forested land.

102. The programme includes a safeguard that ensures that rights are protected where customary systems exist, starting with collectively held rights and putting in place mitigation plans such as identifying and registering the boundary of the communities. The plan is to then leave the identification and registration of the internal individual rights of households until later and that this will be done by the communities themselves with support from the programme.

103. It should not be assumed that everyone wants their individual rights to be registered; some communities and people prefer to have family-based rights identified and registered. The corresponding certification would then have all family member names on the documentation. Community mapping techniques are central to this process and the GOI is developing methods to streamline the community process in collaboration with private sector surveying firms. There is also a significant community mapping capacity in the NGO sector; however, it is not clear from the information so far available to what extent there is any collaboration between civil society organizations and the MAASP programme.

104. Community mapping or delimitation has also been developed and used in other countries where participatory mapping and the use of remote imagery have provided relatively cost-effective methodologies for establishing the boundaries of a collectively held land right. Local institutions within the communities are then empowered by law to manage the internal individual and family-held rights following their respective customary norms and practices.

105. As already mentioned, the 23 million target is part of the longer term GOI goal to register all parcels of land in the country. This programme dates back to at least the 1990s (Fitzpatrick, 1997),

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26 World Bank meeting, October 2019.
27 See for example Tanner et al., 2009, which details community land rights delimitation in Mozambique.
and the current project is designed to accelerate the process and put in place a system where titling can continue on a year-by-year basis.

106. The target under the present One Map process is:

- 2016/17 - 5 million
- 2017/18 - 7 million
- 2018/19 - 9 million
- 2020 onwards - 10 million per year

6.1.1 Impact – lessons from other countries

107. To date there has been very little work done on the impact of the titling programme in Indonesia. However, this kind of massive titling programme is being implemented in several countries, notably in Rwanda and Ethiopia, and some impact study information is available that can inform the GOI and provide pointers to future policy and supporting interventions to enhance social and economic impacts and safeguard against risks such as land concentration and distress selling of land that acquires new value with formal title.

108. In Rwanda, between 2009 and 2013, the Land Tenure Regularization Programme (LTRP) established a system for regularising land ownership and identifying and registering more than 10.3 million land parcels. It is anticipated that the resulting cadastre of property ownership will underpin economic growth and contribute to long-term social stability. In terms of cost, the programme managed to bring the cost to around USD 7 per title. The rights of women and vulnerable groups (the elderly and infirm) have been key objectives. Ninety-two percent of land certificates registered included the name of a woman, either as a co-title holder with her husband or partner, or as a title holder in her own right.  

109. In Ethiopia, the Government launched a land titling programme in the early 2000s in response to the catastrophic famines that were partially attributed to the prevailing land tenure regime at the time. The first phase resulted in what became known as the ‘Green Book’, a physical record of land occupation and holding rights established through a participatory adjudication methodology using trained ‘para-surveyors’ working with local communities and their leaders.

110. A second phase ‘Second level titling programme’ was later launched with support from several cooperation partners and sought to provide title for some 14.5 million parcels of land occupied by smallholders. Again, the question of gender and the rights of women have been a priority, ensuring that the names of both husband and wife appear on title documents and that women-headed households also secure title in the name of the women right holders.

111. Both of these projects have been evaluated for their impact. In the case of Rwanda, an impact evaluation of social and economic impacts was carried out in late 2018. The Government hopes that the LTRP will impact on rural poverty by facilitating access to credit and enhancing investment, and

29 OPM/Mokoro, 2019.
will also impact on land fragmentation through creating an effective land market and encouraging a more rational use of land. The findings of this study were mixed and are summarised below:

- There is no evidence that the LTRP has directly led to rural poverty reduction in Rwanda, with social protection programmes having a more direct impact. However, the LTRP has provided a necessary platform and framework for the reduction of poverty.
- While agricultural development initiatives have made some contribution to higher production and incomes, only modest overall economic progress has been built on this platform so far in the rural sector.
- Tenure regularisation and the provision of titles have not, overall, led to increased investment in agriculture, although the land titling system is a necessary foundation for the investment growth that is taking place, most notably in off-farm activities and in the urban sector.
- The LTRP has increased access to credit (and therefore investment) but most notably among higher-income groups and for larger-scale commercial investment. For lower-income groups, titling on its own does not necessarily promote access to credit for poor households: other factors are important, such as the willingness to lend and borrow, ability to repay, the availability of investment opportunities, understanding about credit systems and the accessibility and efficiency of lending institutions.
- With regard to tenure patterns and fragmentation, the LTRP has so far had modest impact, with people still resorting to informal transactions and unreported subdivision of small plots to circumvent the official prohibition of plots smaller than half a hectare. In fact, average parcel size has continued to fall.
- The programme has contributed to a more formalised land market that is more amenable to investors from outside local areas who are attracted by the tenure guarantees that the LTRP now offers. In this sense the LTRP has made the market more viable and it does facilitate investor access.
- For the poorest, distress sales of land remain a reality and the LTRP and emerging land market facilitates them by making it easier for private sector or external buyers to engage with poorer land holders. There are also signs of ‘distress borrowing’ among poorer households that are using titles to raise credit for household social costs like schoolbooks and uniforms instead of productive investment.
- Because LTR does not directly reduce poverty, it does not directly diminish the hardships that often drive poor people to dispose of their assets, including land.

Overall, the LTRP is likely to accelerate land consolidation and slow fragmentation. It will be essential for the poor to be assisted with using their titles to secure access to credit or enter into agreements with investors that may not require them to give up their land rights. Nevertheless, the reality is that preliminary signs suggest the LTRP will concentrate land ownership in fewer, richer hands. The impact on land fragmentation and agricultural efficiency may be in line with Government plans for the sector, but the poverty impact depends very much in how the wider development strategy – based in urban services and light industry – is able to provide secure livelihoods for those who sell their land and leave the rural areas.

In Ethiopia, a 2017 USAID-funded study assessed the impact of the land certification programme (Persha et al., 2017). The study looks at the differences between households that participated in the first level process which did not deliver full certification in the new official land
database and the second level certification process where title documents and full registration are achieved (this second level process is more in line with what is being carried out in the PTSL/One Map context).

114. Overall, the evaluation found ‘small, positive, and potentially important impacts on household access to credit and on indicators of female empowerment’ with ‘little evidence for household impacts for indicators related to tenure security, land disputes, land rental activity, or soil and water conservation’ (Persha et al., 2017:2).

115. There were some ‘small but important additional impacts of the second-level process on households for some development outcomes. Small but significant increases due to second-level certification were found for: credit access, tenure security, and increased involvement of women in land-related decision-making and land possession. The evaluation results also suggest that positive second-level certification impacts on certain credit-related, tenure security and female empowerment outcomes tend to be smaller for households located in more isolated [villages], and for households with much larger than average landholdings’ (Persha et al., 2017:20).

116. The study found that surveying alone is not sufficient to generate positive tenure security or household economic impacts. Receiving the full documentation and being formally registered may turn out to be more significant, although the evaluation was unable to say if other factors such as household perceptions of the certification process and what it brings for them are significant. This would seem to match the Rwanda conclusion that titling in itself is not sufficient to produce the social and economic impacts expected of such a programme.

117. Second level certification does appear to have encouraged access to credit especially for male-headed households, but in general very few surveyed households obtained credit for farming purposes. The authors note that ‘This is not surprising given that: a) land may not formally be used as collateral for lending in Ethiopia (though leasehold rights may be used as collateral for lending); and b) commercial lending to small enterprises in Ethiopia is extremely limited’ (Persha et al., 2017:18).

118. Other legal constraints on leasing and the marketing of land have meant that the second level certification has not produced a notable impact on land rentals. Impact on land sales was not directly investigated in the study. On a more positive note the study concludes by saying that ‘there are likely to be broader potential benefits from the program that extend beyond the scope and issues focused on by this evaluation’ (Persha et al., 2017:21).

119. Elsewhere in Africa, other evaluations of titling programmes point again to a mixed picture, with the titling itself encouraging private sector incursions into local areas as land values increase and local farmers may be more inclined to sell their land. The existence of systems that are more recognizable to external investors, with formal government documents proving ownership and systems to register any change in ownership, also encourage investors who may otherwise be more wary of engaging with communities that traditionally have no formal documentation of their customarily acquired land rights (see for example Action Aid, 2015).
6.2 Customary adat and local communities

As mentioned above, the core feature of the BAL pertaining to customary tenure is that it recognized all customary or adat forms of land occupation and use, and the customary institutions that regulate and manage them. Nevertheless, the BAL suggested that rights originating from ‘adat law shall be regulated by Government Regulation’ (Article 22). In practical terms, this article has hindered the legal recognition of customary rights, as subsequent regulations to enable the practical enjoyment of such rights have not been passed until recently.

120. The assertion of adat principles in the BAL and its continuing presence as the foundational document for Indonesian land rights is therefore now conditioned by the practical use of more modern land management instruments. How this is working in practice provides an interesting benchmark for assessing where customary tenure issues stand today.

121. While adat rights have long been recognized in Indonesia, the reality is that there is still no national legislation recognising these distinct peoples as such. The more common approach in civil society and the GOI, is to talk only of adat communities, as something that is local and culturally specific, but also Indonesian and found across all parts of the country.

122. From the beginning, adat communities needed to prove that they are indeed ‘traditional’ and manage their own affairs; they are then subject to formal GOI recognition. Integrating indigenous rights (and bringing them onto the cadastre) therefore has long depended upon the State and has been subject to State control. These basic parameters still determine how adat or customary rights are dealt with today.\(^{30}\)

123. As indicated above, the BAL was an ambitious attempt to achieve a truly Indonesian land governance rooted in Indonesian cultural practices and norms. These practices and norms are essentially egalitarian in terms of access to and use of resources – a common feature across all the adat and cultural system in Indonesia is a concern to maintain balance between competing interests – and they seek to maximise the collective good over the pursuit of individual needs (Fitzpatrick, 1997). This approach does not suit a national development agenda driven by private sector investment and growth fed by the poorly regulated exploitation of natural resources.

124. Moreover, implementing a new law with roots in adat custom and institutions was and still is a complex challenge, involving a transfer of power and control over resources away from the national level towards the regions and, ultimately, districts and even communities. It also involves a significant capacity building programme at the base to enable such programme. State institutions built around conventional models of governance would need to be reformed and local structures integrated into the architecture of ‘national’ land governance and administration. The focus would be working with and supporting the needs of local communities and their aspirations, not those of a central government with its own vision of national development. Instead, early authoritarian governments, in particular, embarked on the ‘vicious cycle of development’ referred to above in Fitzpatrick’s 1997 analysis of the BAL.

125. What sets the present day apart from the first four decades of post-BAL land governance is the advent of a more democratic regime and the emergence since 2000 of an active and vocal civil society

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\(^{30}\) Civil society organizations argue that ‘recognition’ is not necessary, as these communities are already recognised in the 1945 Constitution and the BAL. What the State must do then is to verify if they still count as adat or customary and determine the borders of each respective community.
defending local and adat land rights (van der Muur, 2018:163). The impact of this movement is illustrated by its success with a Constitutional Court case in 2012, which ‘created new momentum for formalisation [of customary rights] by means of statutory law’ (Simarmata, 2019:4). Prior to 2012, and as a result of provisions in the 1999 Forestry Law, all adat rights within forest land and forests were denied in practice as they were deemed to exist within forests designated as belonging to the State (and thus regulated and managed by the Ministry of Environment and Forestry (MOEF). In 2012, AMAN and two of its member communities submitted a case to the Constitutional Court arguing that it contradicted the fundamental principles of the Constitution. The court agreed and called for an alteration of the law. Its landmark ruling No. 35/2012 established that customary ‘adat forests’ would no longer be state forests but were to become collectively owned by adat communities (Simarmata 2019).

126. This ruling has had profound implications for Indonesia’s land administration system by obliging the GOI to recognize the existence and rights of customary peoples and their ownership rights over adat land and forests. Moreover, it also recognizes the members of customary or adat communities as citizens as opposed to having the Government act as custodian on their behalf. The Constitutional Court ruling goes on to say that adat forests, once identified based on mapping of adat customary territories, are to be given back to customary peoples with legal title deeds, therefore ensuring customary tenure security (RMI, 2019a:2).

127. Many considered the ruling a ground-breaking case for rural communities across the archipelago offering ‘an opportunity for changing the trajectory of systematic agrarian conflicts’ (Rachman and Siscawati, 2016: 225). Indeed, three years later, in December 2016, the Ministry of Forestry and Environment for the first time formally recognize a number of adat forests, with an initial transfer of 13 000 hectares (van der Muur, 2018:164). The court ruling was also keenly embraced by President Joko Widodo when he took office in July 2014. This is seen in his decision to allocate 12.7 million hectares of forests to communities with customary tenure systems by 2019 and in recent advances in the formal recognition of customary land rights and the new agrarian reform programme (Tanah Objek Reformasi Agraria, TORA).31

128. Since 2014, a series of new regulations have been developed to implement the Court ruling. Essentially, there are three ways to pursue the process of recognition and ultimately, recovery of ownership rights over forest land. One of these dates back to 1999 and involves the use of local regulations to pursue the claim (Law 41 /1999: Recognition through local regulations). The other two are more recent and were approved after the 2012 court ruling:

- Law 4/2016: Adat village law
- Law 10/2017: Recognition of communal rights

129. However, the process is very complex and progress has been slow (MOEF, 2018; RMI, 2018). The RMI 2018 study of adat community recognition revealed that in all seven study locations, the nine customary communities who applied and gained recognition in state-forest through the GOI-require process said they faced immense trouble navigating the complex and extremely bureaucratic legal framework. To achieve recognition, communities have to secure a Perda local regulation from their respective Provincial or Regency government, based on criteria that determine if a group is ‘adat’ or not. This requires the provision of much documentation and other evidence in support of their claim. RMI underline how poorly prepared these communities are to do this, and that they are heavily

31 The Indonesian land reform program consists of two major components - lands subject to agrarian reform (Tanah Objek Reformasi Agraria, TORA) and Social Forestry.
dependent on a relatively small number of competent NGOs like them to assist them with the process (RMI, 2018).

130. The process of securing a Perda involves up to 13 steps and can take up to three years to be approved. Communities receive no help from local government and rely heavily upon CSOs such as AMAN, RMI and HuMa, all of which use their limited resources to assist the thousands of adat communities who live across the Indonesian archipelago. The challenge is enormous, both in scale and in terms of political implications. AMAN ethnographic research indicates that there are 2,316 adat communities in Indonesia and that these cover about 70-80 million hectares and include 70-75 million people (a large majority of the rural population). Followed through to its logical conclusion, this process would see a major part of agrarian Indonesia sub-divided into adat communities with ownership and control over the forests they use and live in.

131. Some adat communities who have rights in non-forest land do seem to secure recognition more quickly. The RMI report refers to 24 such communities for whom the process went much faster because they were not required to get a Perda and thus wait for up to three years for local government approval before customary forest titles were given. Rather, adat communities in these areas received a Decree by the Head of Regency (district) recognizing their existence and approving their customary territory.

132. Some recent research also makes the point that other local political factors often come into play. Thus 'claims for land rights on the basis of indigeneity are settled not simply on the basis of law, but also on that of the relative bargaining positions and the character of informal linkages between communities, their mediators and local authorities. Adat status therefore must be understood as a privilege most likely to be obtained by those groups with relatively strong connections to influential state actors. In contrast, communities that are in conflict with local state actors tend be excluded from obtaining the status of indigeneity and hence the state is likely to deny them their land rights claims' (van der Muur, 2018).

133. A similar point was made in a meeting with RMI, who talked of a case that progressed quickly because a key adat leader is a prominent member of the Regency parliament. There is therefore a continuum of difficulty here which also reveals the fact that 'adat peoples' can also be more, or less, integrated into the wider polity of Indonesia, depending on quite specific local circumstances and whether their leaders happen also to be in prominent positions politically.

134. To a large extent, however, the terminology and how ‘adat people’ are viewed are not the major issues at stake. The real structural issue in land governance terms is not so much the recognition of customary or adat rights per se (this is already there in the Constitution and the BAL to some extent), but the question of devolving control of valuable state assets down to local level. Behind this stand powerful vested interests who benefit from the state retaining control over these resources (by getting preferential access through concessions etc.).

135. Concerns were also expressed in some meetings that adat communities are not ‘ready’ to manage these forest lands and will deforest them to benefit from the oil palm bonanza. However, it is unlikely that adat communities would destroy conservation forests as their traditional practices are focused on preserving the very basis of their livelihoods and cultural integrity. There is ample evidence that local social and production systems have evolved to support livelihoods and preserve the resources they depend upon (HuMa, 2015).
136. Both factors are nevertheless likely explanations for the sluggish process in recognizing adat communities and why the State at national level has not yet developed easier procedures for recognising these communities and securing their land (which local governments would be legally obliged to follow). Meanwhile, the State has also resorted to devices like extending conservation forest status to forests lived in and used by communities that may end up in community hands. While the objective is ostensibly to ensure the forest is protected, this change in status can lead to (further) conflict between the State and adat communities, who are then accused of using the forest illegally. However, there has been movement on this; 2016 was the only year (so far) in which some areas of conservation forest were reclassified as customary forest, thereby allowing legal access and use of forest resources by recognized adat communities.32

137. Nevertheless, the reality is that with a more democratic national government, an active civil society, and the 2012 court ruling, the question of customary tenure has come to the fore and is causing changes to GOI land policy. The GOI is committed to the recognition of customary rights and the sociological and institutional context in which those rights are allocated and managed. It is also implementing the necessary laws and measures such as the TORA land reform and social forestry programme to shift the centre of gravity of land and resource ‘control’ (ownership) from the hugely advantaged private sector towards the less advantaged and chronically poor elements of the population. In VGGT terms, all of these are positive steps that are bringing the GOI into line with the five core principles.

138. The challenge should perhaps be seen not simply in terms of customary recognition and adat peoples’ rights, but also in terms of the willingness of the State to undertake much more significant structural change and devolve power and control over key assets right down to local level. Regulations are being put in place, but there is obvious room for simplifying procedures and safeguarding both the communities and the environment from abusive use of any devolution of forest and other resources.

139. Meanwhile, raising the profile of adat communities since 2000, and especially since the 2012 Constitutional Court ruling, has underlined the continuing role of the BAL as a kind of ‘Constitution’ for agrarian affairs and land management. The changing political context and the growing voice of civil society and community-based organizations has reinforced the underlying adat philosophy of the BAL, and even some senior GOI figures look to the BAL as a blueprint for a more egalitarian and inclusive form of land governance. At a more pragmatic level, the admission by the MOEF regarding the poverty-creating impact of early ‘land policy’33 is also evidence that the GOI is much more aware of the need to seek more inclusive and redistributive policy solutions to fend off a growing social crisis that is already manifesting itself in regular demonstrations and violence in the streets. An examination of results on the ground is useful for assessing this commitment and the alignment of current policy with VGGT principles.

7. IMPLEMENTING ADAT AND LAND REFORM MEASURES

140. The discussion above underlines the complexity and scale of the challenge facing the GOI, when it comes to implementing its tenure-related policies for small farmers and adat communities. The country is vast and covers an extensive range of agro-ecological and geographic situations, all of

32 Meeting notes. RMI and other stakeholders.
33 Interview with the Director General of Social Forestry, October 2019.
which are also home to a diverse range of communities who manage their resources through many different adat systems.

141. Effective land governance is also constrained by the institutional separation between MAASP and MOEF (which controls the 60 percent of national territory still covered in State Forest). Technically, MAASP manages all of Indonesia’s land, including areas of forest cover. This mandate comes from the 1960 Basic Agrarian Law (BAL) (Shohibuddin, 2019, legal excerpts from the Basic Agrarian Law/1960), and in this context, MAASP has a mandate to register all of Indonesia’s land and provide legal titles for various land tenure rights. This does not occur in practice, given the long-established institutional duality of land and territorial administration split between the two super ministries.

142. Given its control over so much territory and what is still a key national asset – State Forest Land – MOEF is large in comparison with other ministries and has significant influence. Alongside this, the GOI has limited capacity for inter-ministerial coordination which impedes the ability of the different ‘land and natural resources’ sectors to work together effectively. This situation is exacerbated by unclear demarcation of forest boundaries, which is made worse by the illegal encroachment into these areas of both commercial and smallholder agriculture, increasingly through the use of fires deliberately set to clear the trees quickly and cheaply. Once the forest is gone and the land use converted, the land shifts in de facto terms from forest to non-forest.

143. Conversion of land use is also an issue in the context of urban and infrastructural development. This process impacts on the communities and farmers who may lose their land through a rezoning of urban boundaries, and whose rights are expropriated with inadequate compensation. It is also a major concern for the GOI sectors responsible for food security and livelihoods which want to protect valuable agricultural land from this kind of process.34

144. In all these contexts, the question of land rights is key, both in terms of access to resources, and in terms of tenure security. Customary tenure is important in both forest and non-forest areas, and it is essential to find cost-effective and simple ways to identify and register the rights that emanate from these systems. Even where smallholders have no evident customary base, the lack of land title can constrain their access to credit and engagement with rural development programmes that can enhance productivity and thus put a brake on the need to expand into more land as soil fertility declines.

145. Measures such as the World Bank Sustainable Landscape Management Program and the One Map programme are addressing many of the forest border and titling issues. While they are relevant for the overall picture of how tenure links to poverty alleviation and sustainable development, the focus of this discussion is on the implementation of measures relating to customary tenure and community land rights. It is important to recognize, however, that progress in landscape management and mapping is an important contextual element of this as well.

34 This gave rise to the Regulation 41/2009 Protecting Sustainable Land Use, briefly discussed above in the legal framework section.
7.1 Progress with tenure reforms and social forestry

146. There have been three main policy responses to the 2012 court ruling and growing pressures from civil society and the communities they represent. These are:

- The social forestry programme
- The agrarian reform programme TORA
- Receiving submissions by adat communities for recognition and forest devolution

The social forestry programme

147. The social forestry programme is a response to GOI concerns over the poverty and livelihoods impact of land allocations to the private sector over previous decades. These allocations have taken place in Production Forest, which makes up some 57 percent or 68.8 million hectares of the 120.6 million hectares classified as State forest and managed by the MOEF (see Table 1 above).

148. SF was defined by the State as ‘a system of management of forests (on either state forest or private forestland) that involves local communities with the goal to improve their wellbeing and realize sustainable forestry’ (Forestry Law 19/2004, Hakim et al., 2010). The MOEF confirm at the start of the SF programme in 2010, 98 percent of allocations of Productive Forest went to the private sector, covering 43 million hectares, leaving just two percent for ‘the people’, or about 0.4 million hectares. The MOEF is very frank about the result: ‘This is why poverty has occurred…’.35

149. In 2014, the newly elected Government of President Joko Widodo continued the GOI commitment to the existing SF Programme and established the goal of releasing 12.7 million hectares of state-forest area for utilization under five currently existing SF schemes. This was given further emphasis by creating the General Directorate for Social Forestry in the MOEF in 2015.

150. There are five categories of social forestry:

- Village forest (hutan desa)
- Community forest (hutan kemasyarakatan)
- Community plantation forest (hutan tana man rakyat)
- Forestry partnership (kemitraan kehutanan)
- Adat forest (hutan adat)36

151. The first four are subject to 35-year leases. Hutan adat involve the transfer of ownership rights to the beneficiary communities and are therefore not subject to a time limit.

152. The data so far is not impressive, but progress has been made. In the five years since the 12.7-million-hectare target was set, 3.7 million hectares have been allocated (MOEF data up to 2019, provided verbally; Table 5 below shows a slightly lower total for 2018). A further 0.5 million hectares has been included in the SF programme from areas allocated to the adat recognition programme. The forest so far included in the SF programme covers a total of 6 078 ‘locations’ (villages, settlements),

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35 Meeting with the Director General for Social Forestry.
36 This is forest land occupied and used by an adat or customary community.
with each SF parcel ranging from 100 to 10,000 hectares. The average is under 500 hectares and each household involved manages two hectares of agro-forestry.

153. As with private investors, the allocation of SF land is on a 35-year lease. In other words, the State retains ownership (control) of the forest land. The intention is to find Productive Forest land for communities as private leases expire: underperforming firms will not have their leases renewed and their land will be used for the SF scheme. At this point there is an intersect with the proposals for a Land Bank in the draft Land Law, with this land being made available to the SF and TORA programmes. In this way, the GOI hopes to raise the participation of the communities in Productive Forest use from its present two percent to 30 percent of the total. *Adat* community forest in the SF programme is not subject to the 35-year limit, as ownership is transferred to the community.

154. The GOI has also anticipated that the programme will reduce the incidence of conflicts over land and between local people and investors. The Director General of Social Forestry reports that in fact there does appear to be an impact with the rate of increase in the number of conflicts decreasing with respect to the previous five-year period. Data exist to support this conclusion but were not yet available at the time of writing (they will be published with a book being finalised now by the Director General).

155. Apart from its impact on poverty due to lack of community access to resources, the previous pattern of allocation was also causing alarming levels of deforestation. As well as poverty and capacity building objectives, the SF programme therefore has a clear objective to improve the condition of forests (Moeliono et al 2017:80). The vehicle for achieving these complementary objectives is the Enterprise programme, which has clear income generation objectives alongside measures to ensure that local people use the resources that are devolved to them sustainably. As the programme reaches more areas, it will evolve into a strategy for managing forest ecosystems across the archipelago.

156. The Enterprise programme provides planning and land management support, and assistance with developing forest-based enterprises to raise incomes and alleviate poverty. The scheme places a facilitator in each ‘location’; at the moment, MOEF have placed 1,215 facilitators. The goal is to have one facilitator in each location. The Objectives of this part of the programme are:

- Good planning and sustainability
- Raising farmer incomes (addressing poverty)
- Improved forest management and preventing degradation

157. Farmers are placed in four categories or stages of Blue, Silver, Gold, Platinum, with each aligned to different stages in performance as they pass through the programme (Table 5). The role of the facilitators is to assist with developing the management plan. This involves discussing and establishing a consensus between all the community members with relation to the plan and land use. When developing the plan, various factors are taken into account:

- Steep land is classified as protected (not usable)
- Remaining land is for agro-forestry
- Areas of land are selected and evaluated (eco-system, suitability etc.)
- Final areas selected and included in the plan
158. Each community and its member household are assessed using clear evaluation criteria:

- Institutional set up in the community (legalized, cooperative or village enterprises)
  - Rights and duties defined
  - Conflict and dispute resolution handled successfully by the community
  - How they are managing public funds being allocated to them
- Good forest management
- Good business enterprises

### Table 5 Performance categories in the enterprise programme

<table>
<thead>
<tr>
<th>Category</th>
<th>Characteristics</th>
<th>Percent of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blue</td>
<td>When they get the permit</td>
<td>68</td>
</tr>
<tr>
<td>Silver</td>
<td>A plan is agreed about how to use the forest</td>
<td>28</td>
</tr>
<tr>
<td>Gold</td>
<td>Community starts producing and selling into local market</td>
<td>03</td>
</tr>
<tr>
<td>Platinum</td>
<td>The members begin making/producing and selling to external markets with appropriate level of quality, self-standing, no longer requiring support from facilitator</td>
<td>01</td>
</tr>
</tbody>
</table>

Sources: Interview, Directorate General of Social Forestry, Smallholder Enterprises Programme, MOEF. October 2019.

**The TORA land reform programme**

159. Table 6 below shows the performance of the TORA programme to the end of 2018. 3.6 million hectares have been redistributed and legalized; of these 1.2 million hectares are from State Forests (994,761 hectares) and 270,247 hectares are from redistributed plantation areas. Another 2.3 million hectares are from legalized land redistributed by the State to TORA beneficiaries.

160. In the overall context of a highly skewed land access and ownership situation, and given the huge areas now going to plantation and other commercial producers, the TORA is not in fact going to achieve structural transformation of the agrarian economy any time soon. Moreover, there is also talk of the TORA programme suffering a reduction in its targets down to a possible total of around five million hectares. It was not possible to confirm this or to understand the possible reasons.

**Customary and adat communities**

161. While the State supports the recognition and land rights certification process, the adat communities have to organize themselves to request the Perda local regulation and then request transfer of state forest land into their name. As indicated above, many steps are involved and the process can take years. The communities nearly always need support from one of the few NGOs that provide assistance (mainly AMAN and RMI).

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37 See the definition provided by John Burton (1990): a **dispute** is a short-term **disagreement** that can result in the disputants reaching some sort of resolution; it involves issues that are negotiable. **Conflict**, in contrast, is long-term with deeply rooted issues that are seen as “non-negotiable”.
Table 6 Status of social forestry and TORA programmes

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Social forestry programme</strong></td>
<td>12.7 million hectares</td>
<td>2.5 million hectares</td>
<td>6.8 million hectares of</td>
</tr>
<tr>
<td></td>
<td>consisting of:</td>
<td>consisting of:</td>
<td>customary territories indicated by adat peoples and NGOs, consisting of:</td>
</tr>
<tr>
<td>• Social forestry schemes allocated</td>
<td>2.48 million hectares</td>
<td>• 6.5 million hectares</td>
<td></td>
</tr>
<tr>
<td>through user-permits to the community for a given period of time;</td>
<td>of permit-based Social</td>
<td>of State Forest areas</td>
<td></td>
</tr>
<tr>
<td>• Customary forests</td>
<td>Forestry schemes, and</td>
<td>247 570 hectares of</td>
<td></td>
</tr>
<tr>
<td>given to the community with a title as a result of the</td>
<td>17 244 hectares of customery</td>
<td>non-State Forest Areas</td>
<td></td>
</tr>
<tr>
<td>Constitutional Court Ruling No 35</td>
<td>forest allocated to adat</td>
<td>3 915 water bodies</td>
<td></td>
</tr>
<tr>
<td></td>
<td>peoples and title deeds issues;</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>6 324 hectares of state forest</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>already allocated to rights-based customary forest (hutan adat)</td>
<td></td>
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<tr>
<td></td>
<td>10 919 hectares of non-state</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>forest land already allocated</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>to rights-based customary</td>
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<tr>
<td></td>
<td>forest (hutan adat)</td>
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<td></td>
<td>10 627 hectares earmarked to</td>
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<td></td>
<td>rights-based customary</td>
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<td></td>
<td>forest (in the process of</td>
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<tr>
<td></td>
<td>being allocated to hutan</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>adat)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Agrarian reform programme (TORA)</strong></td>
<td>9 million hectares</td>
<td>3.6 million hectares</td>
<td>Assets to be legalized:</td>
</tr>
<tr>
<td></td>
<td>consisting of:</td>
<td>land redistributed and</td>
<td>• 1.7 million hectares</td>
</tr>
<tr>
<td>• 4.5 million hectares of</td>
<td>1.2 million hectares of</td>
<td>legalized, consisting of:</td>
<td></td>
</tr>
<tr>
<td>legalized land</td>
<td>redistributed land</td>
<td>• 1.2 million hectares of</td>
<td></td>
</tr>
<tr>
<td>• 4.5 million hectares of</td>
<td>(994 761 hectares from State</td>
<td>redistributed land</td>
<td></td>
</tr>
<tr>
<td>redistributed land (4.1 million hectares from State</td>
<td>Forest area and 270 237</td>
<td>(994 761 hectares from</td>
<td></td>
</tr>
<tr>
<td>Forest areas and 0.4 million hectares from plantation areas)</td>
<td>hectares from plantation</td>
<td>State Forest area and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>area)</td>
<td>270 237 hectares from</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>plantation area)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• 2.3 million hectares of</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>legalized land</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Sources: RMI 2019a, citing MOEF 2018 and various CSO sources.

162. Many customary or adat communities live within the boundaries of state forest land and have had conflict with the government over their right to tenure security. These communities have developed forest management practices that have evolved over long periods of time based on their rich culture and natural conditions. They are well adapted to their environments and traditionally use customary or traditional knowledge systems developed over the course of time to live in harmony with their surrounding ecosystems. These knowledge systems are very complex and illustrate the symbiotic relationship between these peoples and the forest ecosystems in which they reside. These systems of traditional environmental knowledge are typically overlooked by governments, and Indonesia is no exception (Scott, 1998; Poffenberger et al., 2006).

163. Instead, a common view amongst policy makers and public administrators is that these communities do not have the capacity to productively use their resources, or that they will deforest even more rapidly than an outside investor to secure immediate returns once they own their forest land. However, neither view is supported by the evidence either in Indonesia or in other countries. This is not to say that they would not benefit from technical assistance and other guidance to improve forest management and build sustainable incomes, especially as population pressure and climate change places more pressure on their fixed resource base. Again, it is therefore important to link the recognition and certification process to wider rural development and support strategies.

164. National statistics for local or adat communities differ from NGO estimates. According to national statistics, Indonesia is home to more than 1 500 communities who live within an estimated 11 million hectares of state forest area that supports the livelihoods of more than 90 million people (KLHK, 2015; MAASP, 2009); this compares with the AMAN figures provided above of 2 316 adat communities
occupying 70-80 million hectares and incorporating 70-75 million people. Whichever of these is correct, the numbers are very high and imply a level of effective occupation of the national territory, which has to be recognized and managed in some way if future conflicts are to be contained, and sustainable livelihoods ensured.

165. The available data covering the devolution of land to local or adat communities differ between civil society and state sources. Table 6 above shows that 6.8 million hectares have so far been identified by the civil society organizations supporting the communities. Of this, the vast majority are in State Forest areas (6.5 million hectares), with another 247 570 hectares in non-forest areas (and therefore not subject to the need to get a Perda local regulation).

166. AMAN presents a depressing picture of overall success to date, stating that just 30 000 hectares of forest have so far reached the final stage of full certification of transferred ownership in the name of the adat community. This figure is confirmed in official data from the MOEF, cited in the State of Indonesia’s Forests 2018 (MOEF, 2018). Here, a total of 24 378 hectares of state forest are in various stages of identification, ranging from being in the pipeline (some 10 500 hectares) towards certification to being in the process of identification and verification as adat forests. The areas involved are very small, with the largest being 6 212 hectares, and the smallest just 31 hectares. Most fall in the 100 to 500 hectares band (MOEF, 2018:92/93).

167. The reasons given by CSOs include the long and complicated process described above. To address this situation, they propose the following (ideally to be included in the new draft Land Bill):

- Make the process less sectoral and complex
- Provide a ‘one stop shop’ service for the communities to make submissions and deal with the authorities
- Have a final certificate for each individual community that includes both the forest and non-forest it occupies (i.e. covering wherever there is adat occupation)
- The responsibility for issuing Perda local regulations should be taken away from the provincial governments and given to MAASP through their provincial and local offices
- MAASP should also have the role of reassigning ownership over the forest from the State to the adat community
- If there is forest present, the role of MOEF is to advise and guide on forest management, for example through enhanced and more extensive support to local communities through its interesting enterprise programme.

7.2 Conflicts over land

168. Another indicator of the status of implementation of more progressive land policy is the incidence of conflicts over land. Economic interests external to the adat and smallholder communities continue to press for more land, leveraging their influence with the GOI and regional governments. The potential for conflict in this situation is clear. Already in 2012, a GOI White Paper on Land Policy (GOI, 2012) referred to press reports of over 14 000 cases land disputes in 2011 (although official Land Agency figures for the following year suggest a figure of over 7 000 in 2012). Accurately assessing conflict, like much else in land governance terms, also presents a huge challenge, but it is clear from meetings and the figures that are quoted that there are many land-based disputes and conflicts.
169. The same White Paper provides useful thumbnail sketches of different types of conflict and underlines the fact that most of them involve communities – collectively or individuals within them – in some form of conflict over either government institutions or investors, or both.

170. The MOEF Social Forestry Directorate records data on land conflicts in State Forests and in the areas covered by the SF programme. Table 7 presents the data that is currently available. These figures suggest that the SF programme is having an impact, albeit slight, with a possible slowing of the incidence of conflicts. MOEF also say this trend is more visible when compared with figures on conflict gathered during the 2010-14 first phase of the social forestry programme; however, these data are not yet publicly available. Table 7 is also interesting insofar as it points to a possible problem with the way cases are being dealt with; the number of cases that appear to be resolved (MoU signing) is very low compared with the total number of cases. While this is not an issue of immediate concern in this report, it should be flagged for future attention, especially given the possibility that a new ‘Agrarian Court’ system may be included in the evolving ‘new Land Law’.

<table>
<thead>
<tr>
<th>No.</th>
<th>Step of handling</th>
<th>Number of cases per year</th>
<th>Total of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2015</td>
<td>2016</td>
</tr>
<tr>
<td>1</td>
<td>Incomplete data/outside forest area</td>
<td>45</td>
<td>25</td>
</tr>
<tr>
<td>2</td>
<td>Desk study/initial identification</td>
<td>7</td>
<td>14</td>
</tr>
<tr>
<td>3</td>
<td>Assessment</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>4</td>
<td>Mediation</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>5</td>
<td>MoU signing</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>54</td>
<td>66</td>
</tr>
</tbody>
</table>

Source: MOEF, General Directorate for Social Forestry.

171. Evidence of some improvement in the incidence of conflict has to be treated with great care but does underline the potential benefits to be gained from a policy that results in a reduction in conflicts over land. For companies making investments in community-owned or managed areas, these benefits can be substantial.

172. A 2016 report focusing on the palm oil industry finds that ‘the cumulative costs of social conflict are significant, undervalued and potentially pose a serious obstacle to productivity for companies, as well as imposing costs on communities and local government’; and that ‘on a per conflict basis, evaluating tangible costs, the range of costs resulting from social conflict ranging from 3 months to 9 years duration is approximately USD 7 000 000 to over USD 10 000 000’. Across five case studies of companies, the costs per year/hectare spent on conflicts and their resolution ranged from 51 percent to 88 percent of operation costs and investments (Daemeter Consulting, 2016:23). These indicative findings underline the importance of an effective response to agrarian conflict, and the need to address this appropriately in the new Land Law.

7.2 Land inequality

173. The overview of land inequality above (Table 4) suggests some consolidation in land parcels but overall a situation of extreme inequality with 14.32 million farm households (55 percent of the total)
living on less than half a hectare, and another 8 million (just over 30 percent) living on between a half hectare and less than two hectares of land.

174. The GOI recognises the seriousness of this situation and aims to reduce the Gini coefficient for farmland from its current 0.63 to 0.4 through land redistribution and other measures. BAPPENAS recognises that land inequality is a potential driver of social unrest and a constraint on development.

175. It is also important to note that the data presented in Table 4 do not include the land occupied and owned or possessed by the large commercial farmers and plantations. Apparently, above 25 hectares a farm is considered to be a commercial enterprise and does not get included in the land holding data used as the basis of the land inequality and Gini coefficient conversation. It is immediately clear that if these larger units were included, the inequality of land holding overall as measured by the Gini coefficient would probably be a great deal worse.

176. The data also suggest that a process of land consolidation is taking place in the non-forest smallholder areas, making things even more difficult for the millions of very small farms. This is indicated also by the apparent decline in the overall number of small farm households referred to above, over the period 2003-2013. Some meetings suggested that there is a significant move off the land at the bottom poorest end of the scale. This indicates a structural shift taking place in the agricultural sectors as land fragmentation makes small plots increasingly non-viable; other better resourced producers and commercial units appear to be gaining by acquiring and consolidating the land that is left behind. It is also possible that the PTSL titling programme is facilitating this process by creating a more efficient land market where purchasers can be more certain of the titles and security of the land they are seeking. As indicated above in the section on titling and its impact, a comprehensive study is needed of these and related social and economic issues.

7.3 An alternative scenario

177. The data above suggest that while the policy changes discussed earlier are real, they may well be less significant than they appear and that a more traditional national development agenda is at work behind the scenes. Thus, some observers note that there is a shift towards land administration and titling, with a weaker focus on the forest/non-forest land issue and wider concerns about land use, and less on customary tenure issues.

178. The PTSL and One Map programmes suggest a strong focus on the titling and land administration side of land governance as a solution to the land challenges facing the GOI. Under the 2012 court ruling, measures to recognize communities and grant them ownership over limited areas of state forest will continue. And few policy and decision makers question the existence of ‘adat’ as the foundation of all land law etc. across the country. Indeed, the concept of adat is part of post-Independence socio-cultural ideology.

179. However, it is also evident talking to some prominent stakeholders that the focus on adat rights and communities is more the result of international trend to defend ‘indigenous peoples’ and the emergence of strong national civil society defending adat communities and their rights. In this context,

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38 Meeting with the Minister of MAASP, November 2019. See also Sayuka 2018.
39 These remarks come from meetings with important and relevant stakeholders. For clear reasons sources remain confidential.
current policy is a response to these pressures rather than a wholesale commitment to a more devolved and inclusive form of land governance that is more aligned with VGGT principles.

180. The current position could therefore be interpreted as the State making ‘space for’ customary and adat communities that are able to prove distinct links to their land and the continuing use of their own cultural practices, but not really promoting wider recognition of this process and its expansion across the areas implied by the AMAN and even the official data provided above.

181. The same could be said of the Social Forestry and TORA programmes where again the real areas involved so far have been relatively small in relation to the overall size of the country and the State forest estate. Moreover, even in these programmes, a considerable level of state control is still exercised, while the clear intention of measures like the titling programme are to transform and modernise the agrarian economy and address issues like fragmentation and the need for national food security.

182. In this context, a likely scenario emerging from current progressive policies and a still unreformed land governance architecture, is more likely to be:

- A small number of scattered recognized adat communities;
- These communities are seen as ‘the exception rather than the rule’;
- Schemes such as Inti Plasma, kemitraan and the Social Forestry programme provide opportunities for a more inclusive approach to land concessions, but so far have had limited impact again in terms of the absolute areas involved;
- Meanwhile, the State retains a high degree of control over local land governance through the procedures required for recognising adat communities and other programmes attached to initiatives like Social Forestry.

7.4 Summary

183. The available data show that all of these progressive programmes are moving ahead at a much slower rate than is indicated by the political rhetoric and formal intentions of the GOI. Some seven years now after the 2012 court ruling, the areas transferred to adat communities amount to tens of thousands of hectares, set against an estimated total of many millions of hectares that are occupied and used by adat communities. The SF target launched by the President of 12.7 million hectares of forest to be handed to communities has reached just 30 percent of its objective. The TORA programme is also well behind on its targets.

184. What really stands out, however, is the very low numbers involved, even if the programmes were all reaching their targets. Table 5 above shows this clearly, with areas allocated to customary communities being only in order of thousands of hectares in a country with some 60 million hectares of forest land. If the AMAN estimate of land occupied by adat communities is taken into account, it is evident that progress toward recognising adat communities and their forests is almost zero in real terms. The total areas allocated to SF and the TORA are higher, but even here they are very small in the overall context of a highly skewed land occupation, dominated by large concessions and plantation agriculture.

185. If these trends continue, then the alternative scenario above may well apply: while space is being created for the more determined communities to secure their rights, the GOI efforts continue to
focus on a business-as-usual approach that favours larger, corporate interests. A progressive face is presented to the world that aligns with some aspects of the VGGT, while the reality on the ground appears to be quite different.

186. It is also important to note that tenure enhancement and security on its own is unlikely to produce social and economic gains for the beneficiaries. This is a clear lesson coming out of the impact evaluations of other titling programmes cited above. In this context the Enterprise programme of the SF programme is very significant, offering beneficiaries concrete support in land use planning, business development and marketing. Ensuring that all tenure-enhancing programmes are located within wider rural development and value-chain projects and programmes should be an important feature of future support to tenure. This more practical, outcome focus can also help to move it away from the political polemics that currently appear to surround many of the key issues and challenges.

8. ALIGNMENT WITH THE VGGT

187. At the beginning of this report, the VGGT were condensed down into five questions with regard to the legal and policy framework.

- Does it ensure the ‘enjoyment of legitimate tenure rights’?
- Does it ‘promote and facilitate the full realization of tenure rights’?
- Does it ensure ample stakeholder participation, not only in the definition of policy and programmes, but also in their full and effective implementation?
- Does it ensure that women and men have equal access to and rights over land and resources?
- Does it ensure that the rule of law guarantees a transparent, rule-based approach applicable to all, irrespective of power, wealth, influence, gender and cultural background?
- Does it place land governance in a holistic context where land and the natural resources on it are intrinsically linked, with important implications for the natural resources rights of those living on the land?

188. Before looking at each of these in turn, it is useful to make some summary comments about the legal and policy framework to frame the discussion.

189. GOI policy is now clearly more progressive with respect to local rights, and the GOI is developing programmes to enhance smallholder rights, address inequality in land access for smallholders, and recognize and transfer forest resources to customary adat communities.

190. The significance of the 2012 court ruling cannot be exaggerated. Fundamentally, it gives serious force to the largely ignored notion that ever since the 1960s, Indonesian land law must reflect the huge diversity of the country, instead of imposing a standardised state-led vision of how land is governed and managed. Since 2012, and more especially since 2015, the State and its agents in government have been obliged to pay serious attention to the ‘duality’ of Indonesian land governance and start to put in place appropriate measures to make it a reality.
191. President Joko Widodo has responded to the ruling with a clear embrace of the idea of recognising adat communities and devolving forests to them. The GOI is also clearly committed to achieving the SDGs to the extent possible, and its performance with respect to the MDGs lends this commitment a certain credibility. Progress to date, however, has been achieved through a development model and is now perhaps increasingly out of step with more inclusive and progressive elements of the VGGT, notably the question of respecting and working with local rights and ensuring full and ample stakeholder participation in the design and implementation of new policy and programmes.

192. The reality of an over-arching political economy structured around an alliance between the GOI in all its contexts – national, local, sectoral etc. – and powerful private sector interests continues to drive the national development agenda. This includes the imperative to find more land for commercial investments, and challenges in some quarters to the idea that large areas of ‘State’ land should be devolved to adat communities.

193. The state apparatus and the legal framework are also still dauntingly complex and difficult for even better resourced stakeholders to find their way through. This complexity creates a lot of space for vested interests who gain from the status quo and effectively block and constrain the more progressive elements of new policy initiatives. Key aspects of this complexity are:

- A huge number of laws and legal instruments that have been developed almost on an ad hoc basis in response to specific policies and the priorities of different governments and their supporters;
- The overlaying of adat-based rights of different kinds, and more conventional or western land administration measures – deeds registries, titling, etc. – also creates a complex bureaucratic challenge reflected in an equally complex institutional structure;
- Technical and political authority for land – with the basic division being between forest and non-forest areas – is fragmented across different sectors (notably between MAASP and MOEF, and between coordinating or overseeing ministries such as the CMEA and BAPPENAS);
- This complexity is exacerbated by the high level of administrative and political decentralization that has taken place in the last twenty years, and the resulting tensions between national and regional level actors and institutions when it comes to implementing new policies and programmes;
- Lower-level, decentralised decision-making and political structures both sustain power relations and significantly influence (obstruct?) progress on the ground; they also fail to develop provincial or Regency regulations and instruments to implement new national policies and laws, further obstructing the implementation of a coherent reform process for land governance;
- Strains between sectors responsible for forests and the environment, land administration and spatial planning, and agriculture, further constrain effective implementation of the evolving progressive policy framework;
- These challenges are further complicated by the fact that some land governance activities are vertically integrated, reaching down from sector institutions in Jakarta (MAASP and land administration, for example), while others are dealt with at the horizontal level of regional and district planning (the formal recognition of adat communities, for example,
without which MAASP agents cannot proceed to formalise and register their associated land and forest rights);

- Having a vertically integrated land administration can be a great advantage when it comes to developing appropriate land information management systems and getting technical and material resources onto the ground without compromising local government budgets. However, the intersect with more horizontal, locally produced planning instruments is problematic, especially where local governments have failed to develop appropriate physical and spatial plans and strategies.

194. All of this is exacerbated by serious capacity issues the further down the administrative hierarchy one goes. While there is significant professional and technical capacity at national level (for example around the One Map Programme), sector capacity to implement and oversee reforms at local level is woefully inadequate. Both MAASP and the MOEF confirm this with data on the number of professional and technical staff available at local level, with this capacity decreasing markedly away from Java and in the more remote areas. Good programmes such as the Enterprise scheme in the Social Forestry Directorate are hampered by difficulties with recruitment and are constrained by budget limits to find staff in other departments (who tend to assign their less effective personnel).

195. NGOs talk of local government officers who have little idea about what they should be doing with relation to key GOI programmes; on the positive side, however, is the remark made in one meeting that ‘the lower down you go the less ideological, more practical people are’, especially with regard to social awareness issues.

196. Many of these remarks are about institutional cultures and long-standing practices that are notoriously difficult to change. An eminent African land expert many years ago observed that it is relatively easy to introduce new and even progressive policies and even laws; the real challenge is effecting the institutional change to make them a reality.\footnote{Professor Hastings Okoth-Ogendo, personal communication. See also 1999.}

197. Institutional change is difficult; and this difficulty plays into the hands of those who resist change and especially those who are affected by or do not agree with new, more progressive policy and legislative changes. Making a VGGT-based framework a reality demands change at this level, which in turn often requires major changes in attitude amongst existing staff, and changes in approach and even job descriptions in new departments and personnel. The creation of the Social Forestry Directorate within MOEF is an excellent case in point.

198. An excellent national resource that can assist with institutional change and development exists in the form of an active civil society and academic sector. Indonesia has a strong and organized civil society working around land rights issues, and heavily engaged in the land issue to the extent of being able to effect significant change through the highest court in the land. National organizations like AMAN have evolved in scale and complexity, moving from being umbrella bodies for local CSOs and CBOs to now working as a network of well over 2 000 communities and adat peoples. Others like HuMa provide legal and technical capacity, working with AMAN and a host of smaller NGOs.

199. These organizations also include good acquired skills and adaptive methodologies in key areas such as community mapping and community awareness work. They understand the issues at local level. The impression today is that the GOI sees many of these organizations as an obstacle or even
a threat to its authority. The challenge is to turn this around and underline the potential that exists in constructive engagement between both sides.

8.1 The recognition and enjoyment of ‘legitimate tenure’

Individual and smallholder rights

200. The rights of smallholders are being secured and given legal protection through the PTSL and One Map programmes. In this respect, the GOI is engaging in policy and active measures that are well aligned with the VGGT principles regarding legitimate tenure rights.

201. The TORA land reform programme is also seeking to address land inequality. To date, however, the scale and implementation of this programme is disappointing. Constraints clearly exist in the institutional and capacity context, but another issue is the absolute availability of new land for smallholders. One response has been the call by the President to release 4.1 million hectares of forest land to be re-allocated to smallholders. This intersects with the Social Forestry programme of the MOEF, which also provides support to benefitting communities to develop new income generating activities that are also sustainable within the forest context.

202. These measures all point to a concern amongst policy makers to address the poverty and inequality that has resulted from earlier land governance policies. Indeed, one senior government figure is clear that previous policy is a direct causative factor in the persistence of widespread rural poverty today. The measures being implemented indicate a move in the direction of the VGGT core principle of respecting and protecting legitimate tenure for smallholders who so far lack documentation and any security rooted in official registration. Programmes like the MER Enterprise programme are also important indicators of policy shifts that are focused on promoting the enjoyment of tenure rights in ways that enhance local incomes and greater diversity in livelihoods strategies.

Customary and informal tenure

203. There are many local land governance systems in Indonesia that rely upon their occupation and use of land and resources which are central to their livelihood strategies. These locally-managed land tenure systems and the village structures that manage them exist across the whole country and cover a substantial area of the national (and state controlled) territory.

204. Many of these communities are ‘more customary, or adat’ than others in terms of adherence to traditional norms and practices. But there are also many thousands of villages with individual smallholder families that have their own leaderships and internal norms and practices that can also be treated as collective land holding and land management units.

205. Especially since the 2012 Constitutional Court ruling, new laws and initiatives have been developed to recognize adat communities and transfer ownership of the forest and other land that now belongs to them. In this respect, Indonesia is moving towards a greater alignment with the VGGT. However, progress on the ground has been very slow. The analysis above show numbers in the tens of thousands of hectares in a country of nearly 200 million hectares of forest and non-forest land, even with the passing of new legislation to implement the Court ruling. Many of the institutional factors referred to above are responsible for this. It is also equally likely the ‘alternative scenario’ described
above may well be the reality, with space given to the idea of customary rights while the practice is business as usual with concessions and private sector stakeholders. An apparent move towards the VGGT is therefore counterbalanced by the reality of very partial implementation on the ground.

206. Given their prevalence across the country, all these communities and villages – whether adta or simply communities of smallholders - need to be integrated as 'the norm' in Indonesian agrarian reality rather than some kind of artefact from the past. The focus of policy and new programmes would then shift from detailing how each one works and ‘verifying’ their customary status, towards creating a structural and policy framework to support the ‘balanced dualism’ with ‘a range of registration choices advocated in 1997 by Fitzpatrick.

207. These communities represent a valuable land and natural resource governance asset for a Government concerned to maximise the ‘enjoyment of legitimate rights’ and ensure that land governance in the sense of legal protection and support is extended right down to local level. The small but detailed infographic booklet developed by HuMa shows how varied and important the question of customary tenure is, in the wider context of sustainable forest use and maintaining robust livelihoods strategies (HuMa, 2015). In this context a host of factors kick in: culture, environmental knowledge, a sense in adat communities of balancing tensions that can translate into enhancing equity and human rights, concerns about gender relations and equality. The capacity and commitment of the customary tenure and local community lobby is a gold mine for the GOI, not a problem. The challenge is to turn perceptions around and promote constructive engagement to produce a ‘win-win’ scenario where all parties to a land investment, for example, come away with something clear and beneficial.

8.2 Gender and women’s rights

208. This is a critically important issue in the VGGT context. Women’s land rights have long been recognized as a key factor for promoting more equitable development and achieving firstly the Millennium Development Goals (MDGs) and now the SDGs. Moreover, addressing gender inequality also increases the overall performance of the agricultural sector in all countries (FAO, 2011).

209. Gender equality has been a central pillar of the policy platform of the current President. According to one observer, gender equality since then has been addressed largely through ‘gender mainstreaming and gender-responsive budgeting’, which can be seen throughout provincial administrations in the country. This underlines a stated commitment to ensure that infrastructure, health and education outcomes include results that address specific gender equality gaps.

210. The challenge for effective gender mainstreaming, however, is the political will to translate the approach into well-resourced programmes from one province to another (Chatham House, 2019). Indeed, even if the Indonesian National Medium-Term Development Plan 2015–2019 explicitly includes measures to promote and support gender equality in its principles, progress has been limited. There are inadequacies in gender mainstreaming in main ministerial strategic planning documents for 2015–2019, where only a collection of sex-disaggregated data was considered, with no further gender analysis undertaken (FAO, 2019).

211. Indonesian women are nevertheless involved in all activities in the agricultural sector, such as farming, animal husbandry and fisheries. Women comprised an average of 40 percent of farmers and agricultural labourers in Indonesia, amounting to 7.4 million in 2013. Nevertheless, they own only 20
percent of land, which is a critical resource for poverty reduction, food security and rural development (FAO, 2019). Thus, despite serving as the backbone of one of the nation’s most economically important sectors, women in agriculture are marginalized and often have little access to financial resources, knowledge and technology to improve their crop yields and improve their livelihoods. In rural communities of Indonesia, agricultural production activities are carried out by family units. Yet women often have no formal control over valuable resources and assets such as land, labour and new technologies (FAO, 2019).

212. Under both cultural norms and customary and formal laws in Indonesia, both men and women have rights to use land and land inheritance, although they do not have equal rights. As mentioned above, some CSOs argue that it will take time and careful groundwork to change attitudes on gender and the role of women as farmers. Meanwhile, traditional values persist, and married women and men are expected to undertake different but complementary roles. While men assume the role of ‘head of household’, women play the role of wives and mothers (FAO, 2019).

213. A recent Asean Post report also quotes the national civil society organization KPA which defends the rights of rural women: ‘Women are barred by custom from inheriting family land. Customary laws that impede women to reclaim their land make it all the more challenging. There is an absence of women’s rights to own their land…. Agricultural organizations and gatherings are often dominated by men as women are usually sequestered to the kitchen, while men make the decisions that affect the village and their lives. Despite being a significant player in the agriculture sector, women lack access to leadership and decision-making’. In the same article, Damaria Pakpahan of Protection International Indonesia, a human rights organization, adds that ‘striving for gender equality is an uphill battle, especially in communities where patriarchy is deeply embedded’ (Hasnan, 2019).

214. The PTSL mass titling programme tries to address women’s tenure insecurity with measures in place to ensure that both husbands and wives have their names on the title certificates that it produces. The challenge is considerable, reflecting both deeply entrenched cultural values and a lack of awareness about titling opportunities for women, both amongst women themselves and government officials. A 2003 report on an earlier phase of the titling programme concluded that ‘Indonesia’s land registration processes do not effectively advance ownership rights granted under the nation’s family law. Despite the government’s efforts to educate the public about land registration, few women are aware of the registration procedures. Field studies also indicate that confusion regarding co-ownership rights exists even among government officials’ (Brown, 2003).

215. These messages have been taken on board in the current World Bank support to the land reform and One Map programme, which notes that ‘and administration and customs in Indonesia do not provide equal protection and opportunities for all women and men. Tenure uncertainty and unequal recognition of land rights is particularly acute for women. There is a common lack of awareness about the benefits of registering family land holdings to the names of both spouses, resulting in male dominant ownership of land’ (World Bank, 2018a:11).

216. Nevertheless, even if there was more information and awareness about co-titling schemes among spouses, it is unlikely that such a simplistic approach would translate into real gender equitable land tenure security given the cultural reasons and customary practices mentioned above. This view is supported by a recent study that assessed land registration programmes implemented with donor support in Tanzania, which found that joint-titling schemes among spouses failed to foster gender equality and women’s land rights. According to the study, the allocation of rights within customary tenure systems was governed by social relations and not by having the title deed. Men still sold jointly
titled land without consulting with their spouses or getting their agreement, as such behaviour was socially acceptable (Askew and Odgaard, 2019). Without extensive work at community level to address gender inequality and the social relations and customary practices underpinning it, massive land registration is likely to have no positive effect in the best-case scenario.

217. The issues above are also challenging in the context of communal tenure and the adat recognition programmes in Indonesia, where land management is in the hands of local customary structures. It is highly likely that customary practices relating to land will continue to discriminate against women unless they are actively addressed. In many areas in Indonesia, local informal leaders and decision makers have influence over how land is shared and distributed. For example, land redistribution and certification by a civil society organization in Banjaranyar Ciamis gave only a small portion to women thanks to the perception that women’s efforts were not significant and that their roles were reduced to just being ‘supporters’ of men (Ekowati et al 2009).

218. Civil society meetings confirm that at present, it is likely in most communities that women will lose their rights to the land they use when their husband or partner dies, or in the event of divorce. In some instances Community Forums many be convened to hear the case, but the assumption nearly always appears to be that they will find in favour of the family of the husband.

219. There are certain matrilineal traditions that allow women to own and inherit property. West Sumatra’s Balinese and Minangkabau cultures, for example, recognize women’s rights to land ownership and to actively manage their own land (Azarbaijani Moghaddam, 2014). This has been observed to give women an advantage in decision-making hierarchies. Conversely, the most vulnerable women farmers, most of whom live in the eastern parts of Indonesia such as Sulawesi, often suffer from lack of access to assets, including land, and can find it very hard to cope when there is a crop failure (FAO, 2019).

220. RMI indicated current activities targeted at women and youth groups in the communities where they are present, in support of the adat recognition process. They stressed the importance of involving male leaders in these conversations, as the custodians and regulators in practice of customary norms. There is potential here for introducing conversations about gender and women’s land rights, which should be explored. However, RMI also noted that many communities are ‘not ready for this discussion’, with women’s land rights way down the priority list in situations where chronic poverty and hunger predominate on local basic needs agendas (RMI, 2019b).

221. Overall, in relation to the VGGT it is possible to say that the GOI and civil society stakeholders are aware of the gender issue and the importance of bringing it more centrally into the current debate about land governance and new legislation. However, cultural and other realities mean that the country is still a long way from achieving any sense of real alignment with VGGT principles.

222. While the reservations of national NGOs are probably well founded, this does not preclude the development of an appropriate ‘gender-equitable policy-making process in which all stakeholders, women and men, are equally included in formulating and implementing land policies’ (FAO, 2013:11). The challenges identified above point to an area where future support to the GOI could develop new programmes to empower women, enhance their tenure security, and bring them more into the centre stage of local development decision making. Meanwhile, the gender guidelines that accompany the VGGT offer an important introduction to how to address this issue in practice (FAO, 2013).
8.3 Youth

223. As in many countries, the agricultural population in Indonesia is ageing as young people opt to live in urban areas and not take up the land that once belonged to their parents and families. At this point, there are few if any specific initiatives to ensure that younger generations in rural areas are being included in the various programmes discussed above in any explicit way. The same comment also applies to the titling programme, although the issue is recognized in the wider context of its treatment of women and vulnerable groups.

224. The IFAD-funded Youth and Agriculture Project does focus on keeping young people in agriculture. The project seeks to make farming both an economically viable and more attractive option by moving away from the physically demanding character of subsistence farming towards a more business-oriented model where access to credit and use of technology change the perceptions young people might have of ‘being farmers’.

Having secure tenure in their own names, either guaranteed by the community adat framework or through an appropriately focused titling programme is important for young people in this context. This is a link that could be usefully explored in future activities to promote progressive land tenure policy with clear economic advantages and outcomes.

8.4 Rule of law

225. One clear indicator of the state of the rule of law in relation to land is the 2012 Constitutional Court decision over adat rights and the related ruling that the State (through the offices of the MOEF and MAASP) should transfer ownership of state forests to the communities that live in and use them. The GOI has reacted by developing legal measures to facilitate this ruling, indicating a willingness to abide by judicial decisions that move it towards a more rights-based approach to land governance.

226. As observed above, however, the reality on the ground is often that laws and new policy directives are effectively ignored or are simply not implemented due to capacity and practical constraints. Simarmata notes that bringing elements of the adat or informal legal systems into the formal system ‘will not bring the effective recognition of informal rights if the formal system is not of good quality’ (2019:3, emphasis added). The decentralisation of government also requires provinces and Regencies to pass implementing legislation for new national level laws, and this often does not happen. Together with socio-political factors, the result is that ‘the law’ is often not applied.

227. Access to justice is also very limited for local people, who tend to use customary and village-based structure to resolve local questions (RMI). When it comes to accessing the formal court system, comments made in the various meetings supporting this assessment indicate that it is extremely difficult for local people and is far beyond their means financially.

8.5 A holistic view of land governance

228. It is important to set tenure reform and tenure enhancing programmes within wider rural development or economic strategy that provides the beneficiaries with tools and support to make use of the new rights they are receiving or securing. This does not exclude the private sector, but rather calls for a more inclusive approach to investment. Indonesia already has experience to draw upon for
expanding this approach (such as the Enterprise scheme in Social Forestry, the obligatory kemitraan company-community partnership programme, and the Inti Plasma scheme for oil palm partnerships between local people and plantations).

229. The impact studies of the titling programmes in Rwanda and Ethiopia also point to the need to locate progressive land reforms in a more holistic view of land governance whereby legitimate rights and their enjoyment are made possible through access to a range of credit, extension and other supportive strategies.

230. The key point is that enhanced tenure on its own – whether formal or customary – will not produce ‘development’ or the intended social and economic impacts. This strategic vision goes far beyond the immediate concerns of a public land administration and even beyond concerns to recognize and register adat communities. Local level planning that works with local governments and communities can plan for and provide roads and other infrastructure that can help turn land rights into the basis for economic and social progress.

231. Bringing the financial sector into the discussion is important, to develop products that are more adapted to the circumstances of smallholders who are not familiar with the formal banking and credit system.

232. Such an approach also requires a new kind of extension worker who has a greater understanding of the linkages between land and development and is able to engage both with local communities and the investment sector. The holistic vision of land governance for equitable and sustainable development that is manifest in the VGGT provides the framework within which this new kind of extension can be most effective.

8.6 A land administration rather than land governance focus

233. There is a strong ‘land administration’ focus within understanding of the ‘land governance’ challenge. This is clear in meetings at MAASP and with the World Bank team working with the One Map programme. While mapping community or collective land occupation is part of this activity, the reality is that the principal focus is on titling individual land parcels and establishing a new land information system (LIMS) to identify, record and register land use and associated rights.

234. The idea that such technical fixes will solve ‘the land question’ is evident in the 2012 White Paper by BAPPENAS. Thus, for example, the One Map and PTSL programmes seek to complete the titling of some 162 million land parcels within the wider Programme to Accelerate Agrarian Reform.

235. However, many of the constraints on agrarian reform are not technical and cannot be resolved by improved mapping and titling. Managing and assisting the relationships between different land users, and in particular between local people and external actors – the State, investors of various kinds – is what land governance is centrally about. Small steps in this direction are being made – again the Enterprise and kemitraan programmes in MOEF and the Inti Plasma scheme come to mind. But a much broader acceptance of the need to recognize local rights – adat and non-adat village rights – and then work with local leaderships and institutions, is needed before the technical approaches can come in to identify and record the rights that result from this interaction.

236. Which approach is adopted has implications for the kind of staff who work at local level. And administration focus will tend to recruit and train surveyors and topographers etc.; a more socially
aware programme working on relationships between land users and how to manage them would include sociologists as well and ensure that there are links between land governance activities and wider rural development and other agricultural strategies.

237. As already noted above, institutional reform is difficult, and very often requires not more of the same in terms of technical skills and capacity, but also the reviewing of and redefining of personnel needs and Terms of Reference when considering a shift to a more devolved and inclusive land strategy. Such an approach would fit more comfortably with a wider and more sustainable vision of land governance in a VGGT framework.

238. Post-reform preparation at local government level and local sector level is also almost non-existent. One civil society stakeholder made this point very clearly, underlining that particularly in the context of customary tenure recognition, no sector or local governments know what to do next; there has been little training and preparation done to facilitate putting the follow-on development scenario into effect. The consequence of this is that important measures are taken, but are then under-resourced, and left hanging without any pre-arranged capacity or planning in place: nothing happens and the whole process is discredited.

9. A NEW LAND LAW

239. The shifting policy environment and events such as the 2012 Constitutional Court ruling resulted in a move to develop a ‘new Land Law’. The process began in the House of Representatives in 2016, since when there have been some 28 different meetings between different GOI stakeholders led by the Ministry for Coordinating Economic Affairs and legislators. Leadership of the process has now passed to MAASP, and development of the new law is still ongoing.

240. A key criterion in the context of the VGGT is the level of participation that has taken place in the development of this important new legislation. It is not clear from available documentation how broad the scope of stakeholder consultations has been or whether there has been a systematic process of provincial and local consultation to discuss issues and the evolving drafts of the Bill.

241. While civil society organisations have copies of the draft, the process so far appears to be taking place behind closed doors with little sign of stakeholder or public engagement. Even key GOI sectors like the MOEF have not been involved directly. Problems are to be expected, given the complexity of the land governance challenge facing the GOI today. Nevertheless, while most stakeholders inside and outside government agree that a new law is needed, recent versions of the Land Bill have met with strong objections from stakeholders on all sides.

242. However, in a meeting with the Minister of MAASP,41 the need for greater and more inclusive consultation was recognised and the GOI has plans to organise and carry out a new round of consultations with all stakeholders, including civil society. MAASP indicates that the GOI intends to complete this process and submit the final Land Law Bill to the Parliament sometime in 2020.

243. All available information suggests that Article 33 of the 1945 Constitution and the 1960 Basic Agrarian Law (BAL) will continue to form the platform upon which new land legislation will be developed. In other words, the new law is not intended to replace the BAL.

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41 7 November 2019.
244. Key features in this context are the *de facto* sense of State ownership or control over land and forests, through the constitutional principle of state ‘powers’; and core features of the BAL which recognise customary or *adat* forms of land occupation and use, and the customary institutions that regulate and manage them.

245. In this context the new law is likely to be an instrument to update older regulations and bring the overall body of land legislation into line with more recent developments such as the 2012 Constitutional Court ruling. It should also reflect the stated position of the GOI which favours developing a more inclusive development model that respects local rights and works with communities and small farmers as well as larger firms.

### 9.1 Key questions

246. The six VGGT questions posed above provide a useful platform for assessing the current challenge facing the legislators. A key issue is what constitutes legitimate tenure rights and how these are recognised and protected. In this context, the way a new law treats customary and *adat* rights and tenure is a central concern. Does it add to their tenure security and simplify the process for gaining recognition and securing rights over *adat* land? What sort of base does it create for more inclusive and open engagement between local people and other economic actors who want to access and use local land?

247. And regarding smallholders who are not living on *adat* land, what are the provisions covering their rights and their ability to enjoy them? Is the PTSU sufficient in terms of protecting both acquired (and probably unregistered) rights; and new or changing rights that result from the operations of land markets, land fragmentation and the conversion of agricultural land into other forms of land use?

248. The other questions look beyond the protection and enjoyment of rights, to the way which the new Bill responds to the way rights are exercised, and how they can be defended when they are threatened or abused by third parties, including the State. A key issue here is how the Bill regulates the complex and often confrontational relationship between new investment projects, often at considerable scale in terms of land area, and communities and individual smallholders who reside on and use land that private sector and state projects require.

249. The analysis of progress in implementing the more progressive elements of land policy since the landmark 2012 Constitutional Court ruling – recognising *adat* rights, the social forestry programme, smallholder land access and the TORA land reform – suggests that in spite of the policy statements and political commitments, relatively little is being done in practice to move things towards a system that is more aligned with VGGT principles. With organisations like AMAN claiming that may be possibly 2 316 *adat* communities, covering about 70-80 million hectares and including 70-75 million people, it is evident that any new Land Bill must facilitate and simplify the recognition and land transfer processes. Recognition at this scale underlines the need for legal provisions that regulate the interactions between local and *adat* communities and third parties seeking access to their land and resources.

250. Decentralization of key planning and development decisions to local government (Provinces and Regencies) has also complicated the legislative challenge. While it may create the impression of a more devolved form of land governance, the evidence presented by some GOI officials suggests that it is not straightforward securing the collaboration of provincial and Regency governments. Moreover,
NGOs working on local rights suggest that control and power is still concentrated in elites at these decentralised levels, with local people still largely the subjects of rather active participants in decisions that affect their land rights and livelihoods.

251. However, the defining legal parameter for any new land law now is the 2012 Constitutional Court ruling, which is in grounded in fundamental constitutional principles. Carried to its logical conclusion, this ruling supports the country-wide recognition of the legitimate claims of thousands of adat and other local communities. This in turn implies a significant devolution of state control over land and resources to local, sub-Regency of even village level. While such a shift effectively redistributes power over land matters away from the central government, it is entirely within the notion of ‘control’ by a State mandated to promote ‘economic democracy upholding the principles of togetherness, efficiency with justice, continuity, environmental perspective, self-sufficiency, and keeping a balance in the progress and unity of the national economy’.

252. Given the unavoidable reality of literally thousands of adat communities and many other villages with their own local customs and leadership structures across most of the landscape of Indonesia, it is also clear that across-the-board recognition of customary rights over millions of hectares of forest and other land will bring private and local interests into direct competition over land and natural resources. In this context, new legislation for land (and natural resources) should aim to create the ‘balanced dualism’ referred to above and which appears as the most practical policy solution to the complex land governance challenges which the GOI now faces. This approach also responds well to the principles of the VGGT summarised in the five questions above. Indeed, a tentative and initial move towards this ‘balanced dualism’ is already underway, with new laws that have been developed since the advent of democracy and the more recent developments since the 2012 Constitutional Court ruling.

253. A new land law should therefore provide the principles and guiding regulations for integrating customary and normative or ‘modern’ forms of land management and administration within a single and unifying legal framework. By recognising local rights across a landscape where investors may also want to secure land, and duly identifying and mapping these rights, they also begin to create the conditions for balanced discussions and negotiation between the State, investors and local people when it comes to accessing and using local land (and forests).

10. LOOKING AHEAD

254. A key element of a future programme is the need to place land governance in a more holistic context. One aspect of this is to ensure that land reforms of all sorts are set within wider rural development strategies that provide newly titled smallholders and newly empowered communities with the means to ‘enjoy their legitimate tenure rights’. It also means finding ways to better manage the relationships between local people – individually, and in villages and adat communities – and the other economic interests who need land for their investment projects and which are also seen by the GOI as still important for driving growth and development forwards.

255. There is also evident capacity in civil society to engage constructively and work with the GOI to find workable solutions where all sides have a voice and are able to influence the form and content of the subsequent land governance programme. Areas such as sharing skills in participatory mapping and working to develop an effective gender-and-land policy and programme have been indicated above as good starting points.
256. In this context, it is useful to consider a balanced dualism model that links adat and local community land governance with over-arching state structures, providing a range of registration choices and local governance alternatives.

257. This idea resonates significantly with what is happening today. The reality is that Indonesia has a pluralistic legal system that is rooted in its own culture and traditions, while using modern principles of land registration and titling to enhance tenure security. A ‘new Land Law’ is being developed, and when fully revised could indeed deliver the framework for achieving a ‘balanced dualism’ that allows adat and village systems to function separately but as part of the architecture of a more devolved state land administration.

258. There are already interesting things happening in Indonesia today that would support such a process. Firstly, the Ministry of Villages, Disadvantaged Areas and Transmigration is already working with communities to consolidate their fragmented land holdings and focus activities on producing new cash crops. This approach is also promoted to some extent by the Enterprise Programme of the Social Forestry Directorate of the MOEF. Even the PTSL and One Map with their strong land administration bias have an important component of identifying, mapping and registering collective communal or community rights. This kind of activity and the regulations that could facilitate and enable such a community-based land consolidation and development programme could be integrated into the Land Bill, moving it substantially towards the ‘full enjoyment of rights’ envisioned in the VGGT.

259. MAASP is also interested in exploring ways to work with villages and communities to integrate the many small land parcels owned by each household into larger fields and then support them to grow high value crops at a more economic scale and with much higher yields. Community recognition, registration and mapping would be an essential first step, with the kind of measure being proposed by MAASP then providing the follow-on context to move the land reform process into an inclusive and socially aware development process that benefits local people and the State.

260. Another interesting element in this picture is a suggestion made by BAPPENAS for a more generic type of rural community that can be mapped and registered, and which will have important self-governing land governance functions that can be recognized in law and integrated into the wider architecture of national land governance. The BAPPENAS proposals includes two kinds of customary or adat community:

- One where the people want to preserve their way of life and live by strong traditional customs and rules: these communities would have strong legal protection with no other forms of tenure allowed inside them (one such community has been registered so, the Baduy people);
- Another kind of adat or local community where traditional customs and rules have largely disappeared or are adapted to current conditions and needs; the people are willing to cooperate with outsiders; and other forms of tenure are allowed inside the community territory: BAPPENAS propose a new form of collective communal right in these areas.

261. The new Land Law would then lay out the conditions that apply and criteria for defining a local community as one or the other of these two. For example, in the case of the genuinely traditional community, BAPPENAS suggest the following:

- They must have their land rights and borders recognized by their neighbours;

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42 Meeting with the Minister of MAASP, 7 November 2019.
- Their members must all be resident in the community territory;
- Traditional law or rules must still be being used by the community.

262. The law would also stipulate the methodology for identifying both kinds of community and preparing appropriate maps to accompany their registration in the cadastral system maintained by MAASP and its hierarchy of land offices. There is already considerable acquired experience in participatory and community mapping in Indonesia, especially in the NGO sector, and drafting an appropriate section in the new law should not present a major challenge if these organizations are invited to take part. Trials of good methodologies could be undertaken ahead of any final provisions being included and approved.

263. Creating some form of more generic collective local right (that can be either adat or based in effective occupation by groups of people); and then determining the conditions through which third party investors can access and use the local land that falls within the areas covered by this right, would go a long way to meeting VGGT criteria for inclusion and participation, and equitable outcomes from the investment process.

264. The national consultant accompanying this assessment\textsuperscript{43} also echoes the point that land reforms (and the new Land Law) need to be set within the context of a wider rural development strategy. Thus, ‘A comprehensive framework for tenure reform needs to be addressed in the draft land law given the diversity and overlapping tenure problems throughout the country’ (emphasis added). He goes on to add that the evolving land policy and the new Land Law should:

- Legislate for integrative (inclusive) schemes of tenure reforms to avoid sectoral or even individual case-based reform;
- Use the Landscape/ecosystem as a unit for integration (he cites the case of Tesso Nilo National Park);
- Use the District as a unit for integration (citing the case of Sigi district, Central Sulawesi);
- Address agricultural land conversion;
- Fully consider socio-ecological concerns [which extend beyond the recognition of adat communities to include a broader view of devolved land management to village level] (Shohibuddin, 2019).

265. There is clear and perhaps understandable reluctance to go down this road. The GOI has achieved significant results in poverty reduction and other social indicators through its current approach to agrarian development. Such a policy shift would also involve major reforms and capacity building programmes rights down to local and village level.

266. The evidence is mounting, however, that social and environmental impacts are beginning to greatly outweigh any gains from continuing with the present State-driven model. And other countries have developed models that provide important lessons for how Indonesia might proceed. The 1997 Land Law of Mozambique, for example, is widely recognized as an innovative and practical solution to the problem of integrating customary and western-based land governance in a single unifying law. While accepting that there are vastly different cultural and geographic contexts, there are some striking similarities:

\textsuperscript{43} Mohamad Shohibuddin, Centre for Agrarian Studies, IPB University.
• Constitutional recognition of legal pluralism, with many different normative systems, provided they do not contradict fundamental constitutional principles;
• Constitutional guarantees and protections for all existing land rights acquired by occupation, including customary;
• Many different customary systems through which some 90 percent of all local land rights are allocated and managed by local leaders and community structures;
• Recognition of rights acquired by customary occupation as being legally equivalent to the State-allocated ‘land use and benefit right’;
• Legal recognition of a generic custom-based land holding entity - the ‘local community’ – with a collective land use and benefit right in the name of all residents within its boundaries;
• Devolution of state land and natural resources management to this entity: identifying and registering its own borders; participating (with state agencies) in allocating new land rights to investors; and resolving conflicts using ‘customary norms and practices’ (Tanner 2002).

267. While no-one is suggesting adopting solutions developed in a very different country, there are some useful ideas here. A generic form of adat or local community, with the right of hak milik (control), could manage its internal land affairs; negotiate with third parties over access to its land; and interact with the State over public projects. This approach also makes it possible to chart a course between those who see the private sector being excluded from large areas once adat registration is achieved and those who espouse a more inclusive and negotiated relationship that can contribute to a more equitable and sustainable local development process.

268. Meanwhile, it is still important to create a modern and efficient land administration system. This should not, however, become the focus of land policy and the new Land Law. Questions of process, and the relations between land users are central for creating a reliable and accurate land rights database. It is also important to focus attention on how to bring collective rights – adat or otherwise – onto the cadastre, both to protect them and to provide a clear platform upon which to structure and guide future interactions between external interests and local people.

269. Greater attention is also needed on women’s rights and the cultural and other constraints that prevent them from benefitting from programmes like the PTSL and participating in land governance decisions. Clear assertions of the equal rights of women to access and own land are needed. In the context of the pluralistic nature of Indonesian land governance, local adat and other customs need to be conditioned by higher level constitutional principles safeguarding gender equality. Regulatory measures and programmes on the field can then address the complex issue of persistent patriarchal and deeply entrenched cultural norms at community and village level, where a legitimate respect for custom is conditioned by the need for changes that enhance women’s rights and participation.

270. To ensure that the new cadastre and LIMS do not rapidly become obsolete as land rights change hands or are subdivided and inherited, there must be incentives for the poor specially to update their land rights information over time. This will include more than technical provisions about how to update rights: questions of tax and fee exemptions for the poorest land users also come into the picture, as well as the accessibility of the relevant land administration services.

271. The land court proposal and the overall system for mediating and resolving land disputes requires a complete revision. Presently, no attention is given to the need to integrate the many different kinds of adat norms and practices into the judicial process, nor are there any references to
local level mechanisms that are already likely to be handling the vast majority of smaller-scale land disputes (borders between neighbours, for example).

272. Finally, a new land policy and law that includes all of the above will require accompanying regulations and legal instruments to reform existing institutions and create an enabling institutional environment to implement progressive measures that will be unfamiliar to many of those presently in service. Creating capacity at local level is essential, at Regency and community/village level. This will require a substantial public investment in reformed services and capacity building at Provincial and Regency level.

273. However, if the model of ‘balanced dualism’ is adopted, the costs of extending the national land administration architecture right down to village level can be contained. Local structures already exist and need to be legally mandated to carry out recognized, delegated land governance roles. A ‘twin-track’ training activity for local government and community/village structures can ensure that everyone is working on the same page and understands their respective rights and duties.

11. CONCLUSIONS

274. The priorities of the GOI are clearly focused on securing national food security; addressing rural poverty; promoting an efficient agriculture sector with less land fragmentation; promoting the sustainable use of Productive Forests; and addressing environmental conservation challenges. These priorities respond to over-arching policy goals for economic growth, achieving the SDGs, and environmental conservation.

275. Historically, however, national-level macro-goals have intersected with powerful economic interests who gained access to land through concessions, and who have contributed to the growth and wealth creation that has allowed the country to move into the G20 and achieve significant improvements in poverty and social indicators. The GOI is understandably reluctant to jeopardise progress using this tested model, particularly given its strong commitment to achieving the SDGs.

276. With population growth placing pressure on land availability and a growing campaign to respect local rights and minimise negative social and environmental impacts, the GOI is having to shift its land governance policy towards a more inclusive and decentralised model. There is evidence of a shift in emphasis including the recent Presidential Instruction to make the 2011 Moratorium on new forest concessions permanent. In addition, the Minister of MOEF has expressed views and adopted measures in the last five years that indicate a ‘new paradigm’ and ‘corrective actions’ being taken or planned to allow for more community management and conservation/protection areas to be increased (MOEF, 2018). Political will at high levels is strong, but this assessment also shows that real progress has been slow, due to fragmented institutional responsibilities, bureaucratic processes, internal resistance within different GOI departments, and external pressures including private sector or powerful business or political interests.

277. The PTSL and One Map titling programmes, together with the TORA and Social Forestry initiatives, all underline the GOI commitment to safeguarding legitimate tenure rights and extending tenure to many more poor smallholders and communities. The 2012 Constitutional Court ruling also stands out as a key turning point in recognising the other and widespread form of legitimate tenure,

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44 The Enterprise project of the Social Forestry programme offers an interesting starting point for this.
45 See also the recent Time for Change Report by the Minister of MOEF, Siti Nurbayah.
based in the *adat* customs of many thousands of communities and villages across the country. Since then, a series of measures have been implemented to begin recognising local *adat* community rights and address the poverty-impacts of earlier trends to allocate land and forest concessions mainly to the private sector.

278. The analysis of progress on the ground, however, reveals very slow progress in both the TORA/Social Forestry and customary recognition contexts. This suggests perhaps that an ‘alternative scenario’ is at work, where space is being made to accommodate the legal implications of the 2012 ruling, while essentially maintaining a ‘business as usual’ approach to land allocations and land-based investment. A clear example of this is the granting of extensive concessions in forested areas in West Papua for example, given against the wishes of the local population and risking serious environmental damage as well.

279. However, Presidential and other high-level pronouncements do provide grounds for optimism. While the ‘alternative scenario’ is a potential risk, legal changes, new programmes, and the active engagement of an increasingly strong and widespread civil society paint a more positive picture. There are ways forward which build on existing activities and the tentative policy and legislative shifts that are now under way.

280. There is therefore a positive window for moving towards a VGGT-aligned land governance system with a stronger focus on achieving progressive policy goals on the ground. Practical support from partners such as FAO can achieve a lot, through focusing on capacity and training to bring implementation into step with the progressive objectives of official policy. It is important, however, to ensure that what emerges genuinely contributes to a more open dialogue and a more inclusive development model overall, rather than creating a cosmetic cover for a ‘business as usual’ agenda on the ground.

### 11.1 Pointers to a road map for a VGGT-aligned governance programme

281. Essentially what is at stake is the extent to which the State is prepared to really make a structural shift towards devolving not just rights, but also key land management and land governance function down to some sub-district or community level.

282. Such an approach would correspond to the vision of ‘balanced dualism’ discussed above. In fact, there is much to build on already in Indonesia, in both GOI and civil society experiences and programmes. The discussion above has indicated several programmes and new thinking by senior level policy makers that would support a devolved form of land governance that is set within a more inclusive rural development and investment strategy.

283. The analysis above and recent pronouncements at the highest level of government indicate a positive window for moving towards a land governance system with a stronger focus on achieving progressive policy goals on the ground while still allowing private sector investors and others to secure the land they need for their projects. There is much to build on already in Indonesia, considering both GOI and civil society experience and programmes. Some key activities are already being addressed, such as the PTSL titling and LIMS development programmes through One Map.

284. Other measures would support a stronger focus on gender and women’s rights and participation as well as a policy shift towards devolving not just rights, but also key aspects of control over land
and natural resources to sub-district and even community level. All this requires the recognition and registration of individual and collective land rights at local level, and the devolution of key land management and land-governance functions to community structures. The private sector must be involved in this process. The objective is not to exclude or limit private investment, but to ensure that it enhances local livelihoods rather than undermining them. GOI policy must also ensure that private investment uses resources sustainably and begins to reverse the nefarious environmental consequences of the old development model.

285. A tentative list of activities – a ‘road map’ to address the challenges outlined throughout this document is proposed below:

- A study of land titling impact, looking at poverty impacts, potential for exacerbating distress sales and land consolidation, access to credit and investment by poorer households, and land use changes; this includes a review of lessons learned in other countries;
- Development – together with GOI and civil society partners – of a gender-equitable and women’s land rights policy and programme, with an appropriate implementation strategy;
- A trial adat and non-adat local community mapping delimitation programme combined with a project to consolidate individual parcels and promote a village or community-based production of new high value crops, in a range of selected forest and non-forest areas; this could include the establishment of farmer field schools;
- A pilot twin-track training programme for local government teams and NGO/community leaders on inclusive land governance and development which also integrates the gender training developed in the gender component above; this would be instigated in districts where the community mapping and land consolidation projects are being implemented.

286. These activities can be complemented with support to the ongoing process of developing a new Land Law, assuming the GOI proceeds with its intention to hold further and more inclusive rounds of consultations with stakeholders.
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The document begins with a brief overview of the Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and related international frameworks such as the Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI) and Free, Prior and Informed Consent (FPIC). An overview of Indonesia today includes the intersect between social and demographic issues and land and natural resources, before the document moves on to the legal and policy framework and a discussion of the institutional structure. The document then looks at the status of implementation of different national programmes in terms of their targets and achievements to date.