

Keywords:

Climate justice, free prior and informed consent (FPIC), green economy policy, human rights, Indigenous Peoples, land-based investments



Policy pointers

The Indonesian

government should bring coherence to the design and implementation of its economic and environmental governance strategies. Priorities should be defined through a systematic, rights-based climate change mitigation framework.

Land-based investments

across all sectors should abide by strict procedures that ensure meaningful consultation with and active engagement of affected community members. Procedures should guarantee transparency and accountability throughout the investment cycle.

The Indonesian

government should recognise and protect Indigenous Peoples and rural/forest communities' rights over land and resources, always seeking their free, prior and informed consent in the face of any land-based project.

The government of

Indonesia should repeal the Omnibus (or 'Job Creation') Law and align national policy with climate change mitigation, effective environmental governance and human rights.

Bringing coherence and a rights-based approach to Indonesia's climate and investment governance

Like many countries, Indonesia is grappling with the need to reduce deforestation and protect the environment, while promoting energy transition and economic development, in response to global demand for more commodities, climate change mitigation and greener economies. Each of these agendas has its own objectives and contradictions can arise from their design and implementation, resulting in adverse social and environmental outcomes. The current solutions to these global demands — such as renewable energy and conservation projects — come with a significant land footprint and impact heavily on local communities and Indigenous Peoples. This briefing highlights why it is vital for Indonesia and other national governments to bring coherence to their climate and economic governance strategies and define priorities using a rights-based approach to ensure social and environmental benefits.

Addressing climate change can impact on many sectors, including the reduction of deforestation and greenhouse gas emissions, and measures to protect biodiversity. Energy transition is another key area for action, especially phasing out fossil fuels and scaling up renewable energy sources. These agendas have received much attention at recent global conferences,¹ with significant financial resources devoted to them. In response, governments are developing national strategies to meet the ambitious targets set. Indonesia is one example, where urgent action to prevent further deforestation and pollution is critical. In addition to domestic use, the country's significant role in supplying

international markets with 'critical minerals' for the energy transition, such as nickel, also makes regulating the impacts of associated sectors essential.

As a result, the government of Indonesia has sought significant investment to achieve its ambitious targets for emissions reduction, such as the 2030 Forestry and Other Land Uses (FOLU) Net Sink agenda and its participation in the World Bank's Forest Carbon Partnership Facility, in line with its Nationally Determined Contribution (NDC). The country has launched the Just Energy Transition Program (JETP) worth US\$20 billion and has also received a loan of US\$500 million to support energy reforms.²

Protocols to safeguard legitimate rights should be incorporated into future developments' design from planning phase

The implementation of these objectives can involve tensions, however, with developments in one sector often affecting another adversely — for example mining for critical minerals involving clearing forested areas. These commitments can involve major land-based

investments across different sectors, whose designs, in practice, often ignore the potential implications for human rights. This frequently leads to negative impacts, particularly for Indigenous Peoples and forest and rural communities.

There is an urgent need for the prioritisation of agendas and for greater coherence in the development of climate-related strategies, using rights-based approaches.

The drive to economic development brings high social and environmental costs

In recent decades, the Indonesian government has relied heavily on the expansion of land-based investments such as mining, energy, logging, agribusiness and large infrastructure for economic development. This has also included the creation or planning of 25 Special Economic Zones as of 2022, to attract investment in manufacturing and processing with advantageous tax incentives, and ten Tourism Strategic Areas, as part of over 152 National Strategic Projects.

Indonesia has one of the highest rates of deforestation in the world, having lost 27.5 million hectares (ha) of forest in the last 35 years, although the pace has slowed down in recent years.³ In 2021, oil palm-planted areas covered 16.38 million ha across the country;⁴ 3.37 million ha of which were illegal operations.⁵ Large infrastructure projects have been the backbone of recent development strategies, with the building of several thousand kilometres of roads and railways, reservoirs, ports, airports and dams, to name a few land-dependent sectors.⁶

All these investments combined have a significant land footprint, which has brought big environmental and social challenges. These are often linked to the lack of transparency and accountability of the actors behind investments when it comes to land acquisition procedures and projects' operations (Box 1). Indeed, national and international civil society organisations have denounced the human rights abuses caused by some of those projects, from destroyed livelihoods and poorly- or

non-compensated expropriation, to intimidation and criminalisation for those who speak up. They have also criticised legislation rollbacks making these abuses easier (Box 2).

Green transition 'branding' — perpetuating harmful land investment practices?

There is growing concern about the social and environmental implications of strategic development plans that will involve further acquisition of land and resources. This is the case for example with the JETP, an outcome of the 2022 G20 summit, which aims to develop the renewable energy sector to help shift Indonesia away from its high dependence on coal energy. Realistically, it seems unlikely that the country will phase out coal production in the short term, with new coal plants planned and existing ones currently operating and productive.⁷ In parallel, investment in renewable energies as set out in the JETP such as solar, wind, biomass for co-firing⁸ and geothermal sources will involve further land-related impacts.

Alongside this, there is rising demand for commodities on the international market, driven by other regions' 'green transition' policies, such as the EU's revised Renewable Energy Directive and new battery regulation,⁹ affecting Indonesia's oil palm and nickel mining sectors, respectively. Indonesia has been a key supplier of palm oil, with European imports worth €2.8 billion in 2021.¹⁰ It is also home to 22% of nickel reserves.¹¹ Expanding production of these commodities will inevitably exacerbate the pressures on land.

Climate and biodiversity agendas offer opportunities and risks for rights

Biodiversity protection and emissions reduction also feature high on Indonesia's list of priorities, particularly in response to international pressures. Responding with joined-up policies and actions is essential, given that the 'green' agenda has often been associated with colonial legacies and land rights abuses, including in Indonesia.¹²

The Indonesian government has several programmes to help achieve its climate commitments, such as its NDC for emissions reduction, and associated FOLU and REDD+ programmes to curb deforestation and improve forest management. Following decisions taken at recent international conferences (for example, the UNFCCC COPs and the biodiversity COPs), there is greater emphasis on carbon trading, finance-based ecosystems services and

conservation areas (30x30 target) as ways forward. Indonesia is a prime recipient of funds to implement these approaches, given the importance of safeguarding its forests. In 2020, it set up a fund to direct climate finance to relevant sectors, including forestry, energy and mineral resources, carbon trading, environmental services, industry, transport, agriculture, marine and fisheries.

Regarding its biodiversity commitments, past experiences with conservation schemes such as protected areas (non-market based) and REDD+ (market-based) have sometimes harmed Indigenous Peoples and local communities, which calls for significant caution in the way these initiatives are designed. This is also the case for numerous investments in the sectors just mentioned and future developments initiated under the 'climate' banner should not excuse further marginalisation or rights abuses. Protocols to safeguard legitimate rights should be incorporated into their design from planning phase, with full, inclusive participation of all people and communities likely to be directly and indirectly impacted. Before implementing these schemes, companies and investment operators should secure free, prior and informed consent from those people and communities — which should be retractable after onset of the project in the event of non-compliance with the investor's social and environmental obligations.

Towards meaningful recognition and inclusion of Indigenous Peoples

At the global level, there is increasing attention on the role and value of Indigenous Peoples' knowledge and practices in mitigating the impacts of climate change, curbing deforestation and improving the management of natural resources and forests. Many studies indeed demonstrate the direct connection between Indigenous Peoples involvement in forest management and positive biodiversity outcomes. However, well-evidenced studies also point out that this is dependent on enabling conditions, namely security of tenure and genuinely devolved, inclusive and participatory forest/land governance.¹³

Indonesia is a signatory to the 2021 Glasgow Pledge from COP26, with important targets for deforestation reduction and US\$1.7 billion pledged to strengthen Indigenous Peoples' and local communities' tenure rights as well as promoting the recognition of their role as guardians of forests. This commitment seems promising, but caution is needed when it comes to its implementation. Indeed, Indigenous land and forest management practices now rightly

Box 1. How shortfalls in land acquisition procedures violate rights

The province of Central Kalimantan is an example of how poorly coordinated and incoherent objectives lead to inefficient land use governance, as well as adverse social and environmental outcomes, particularly when investments are pushed without transparency nor procedures to ensure accountability. Indeed, in addition to environmental degradation, the pursuit of natural resource-intensive projects has often been associated with human rights abuses against local communities and Indigenous groups to gain access to their land.

Central Kalimantan has been a coveted choice for investments across a variety of sectors, entailing widespread displacement and/or loss of livelihoods. The province has one of the highest deforestation rates in the country. Two million hectares are planted with oil palms and licences for concessions yet to be planted cover an area just as large. There are mining licences covering another two million hectares, mainly coal for domestic energy production that is also used to smelt nickel, a key mineral needed for 'green transition' strategies. In addition, 800,000 ha of land is now industrial-scale tree plantations for biomass production. More recently, the government has created large food estates to encourage industrial monoculture of specific crops.

These investments have taken over lands historically used and occupied by people. In one case observed by the authors, much of a community's traditional lands have been taken for an oil palm plantation, with little or no consultation, compensation or plans for alternative livelihoods. REDD+¹⁴ and other conservation initiatives have also disrupted the livelihoods of Indigenous Peoples by undermining their historical land use rights and forcing traditional land users into counter-productive activities to survive — such as illegal logging, poaching and gold mining.¹⁵ Overall, lacking safeguards to oversee land-based developments will often see commercial and private interests prioritised over social and environmental outcomes, highlighting a need for clear mechanisms and coherent objectives.

Box 2. Turning back environmental and rights protection — the Omnibus Law controversy

The legal framework for land-based investment lacks explicit mechanisms to safeguard the rights of local communities throughout the investment cycle, from planning through to the operations and closing phases of development projects. Developers have often ignored social and environmental considerations for many years, but this worsened in 2020 with the passing of the Omnibus Law, also known as the 'Job Creation' law.¹⁶ In late 2021, Indonesia's Constitutional Court declared the law 'conditionally unconstitutional' because it bypassed requirements for participation in law-making. The court required the government to revise the law within two years and, in the meantime, allowed its continued application.¹⁷

The law led to the amendment of 75 other laws and diluted provisions on environmental protection. It has also severely weakened communities' and civil society's capacities to challenge investment-related decisions, including environmental and social impact assessments. In effect, the law prioritises business interests, facilitating access to land and resources.

receive greater attention in policy circles for the environmental benefits they generate, but these practices are part of broader cultures and interaction systems between communities and their territories. Recognising them solely based on the benefits they provide, in isolation of these wider socioecological systems, risks reducing their inherent value.

In Indonesia, a promising initiative is the recently founded, civil society-led Nusantara fund, which aims to decentralise some of that money and distribute it directly to Indigenous Peoples and local communities.¹⁸ This creates opportunities to design climate and conservation projects in ways that integrate the interests and protect the rights of local populations.

Need for strategy coherence and clear priorities to safeguard human rights

Managing complex national strategies will require significant coordination between governmental departments and donors in particular, but also prioritisation to avoid contradictions between these two broad agendas — on the one hand, climate change mitigation through energy transition, deforestation/emissions reduction and recognition of Indigenous Peoples' and local communities' rights, and on the other, economic

development through land-use investments in environmentally and socially harmful sectors. It is essential to design and implement these strategies in an integrated way to avoid conflicting objectives and to achieve the global climate and rights goals. Global expectations and stakes are high to ensure environmental protection is not compromised by commercial and extractive developments, and that land and human rights are safeguarded and strengthened.

The green transition should not become a justification to promote unrestricted extractive developments and rely on offset schemes alone to compensate their harmful impacts. The implementation of both agendas should depend on thorough social and environmental impact assessments and management. Without this, there is a risk of creating islands of 'protected nature' in the midst of oil palm plantations, mining concessions and other forms of land use that drive deforestation and land degradation. Transparency, accountability and coherence will be essential in balancing priorities and actions.

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ISBN 978-1-83759-038-4

This project was funded by
the Open Society Justice
Initiative.

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FOUNDATIONS**

Notes

¹ For example, COP15 on biodiversity in Montreal, and COPs 26 and 27 on climate change. / ² Asia Development Bank (24 November 2022) \$500 Million ADB Loan to Support Indonesia's Energy Sector, Green Recovery. Press release. www.adb.org/news/500-million-adb-loan-support-indonesias-energy-sector-green-recovery / ³ Speechly, H and Ozinga, S (2019) Indonesian–EU palm oil trade and consumption: Improving coherence of EU actions to avoid deforestation and human rights abuses. Fern. www.fern.org/publications-insight/indonesian-eu-palm-oil-trade-and-consumption-2103 / ⁴ Greenpeace Indonesia (2021) Deceased Estate: Illegal palm oil wiping out Indonesia's national forest. www.greenpeace.org/static/planet4-southeastasia-stateless/2021/10/85efa777-illegal_palm_oil_in_forest_estate.pdf / ⁵ Jong, HN (4 May 2023) Indonesia legalizes illicit oil palm farms in program slammed as opaque. *Mongabay*. tinyurl.com/kbwdsab3 / ⁶ Amenan, A, Murti, T, Subagyo, T and Nuky, E (29 September 2022) Jokowi Builds 1,700 km Toll Roads, 2.1 Times the Length of the Previous Era. www.pwc.com/id/en/media-centre/infrastructure-news/september-2022/jokowi-builds-1700-km-toll-roads-2-1-times-the-length-of-the-previous-era.html / ⁷ Brent, Z and Atsari, A (2022) The Future of Indonesia's Energy Sector: Climate Commitments or Committed to Coal? Transnational Institute and EkoMarin. www.tni.org/en/publication/the-future-of-indonesias-energy-sector / ⁸ The burning of biomass in coal-fired power plants along with coal for emissions reduction. / ⁹ In the Renewable Energy Directive. / ¹⁰ BDPKPS (16 January 2023) Threats in Europe, for Indonesian Palm Oil in 2023. tinyurl.com/m5jz2njz / ¹¹ Merwin, M and Ahmed, A (19 November 2022) Indonesia's Nickel Export Ban. Impacts on Supply Chains and the Energy Transition. www.nbr.org/publication/indonesias-nickel-export-ban-impacts-on-supply-chains-and-the-energy-transition / ¹² For example, Howson, P (2018) Slippery Violence in the REDD+ Forests of Central Kalimantan, Indonesia. *Conservation & Society* 16(2), pp. 136-146. www.jstor.org/stable/26393324 / ¹³ For example, Robinson, BE, Holland, MB and Naughton-Treves, L (2017) Community land titles alone will not protect forests. *Proceedings of the National Academy of Sciences* 114(29), E5764-E5764. www.pnas.org/content/114/29/E5764 / ¹⁴ The 'Reducing Emissions from Deforestation and Forest Degradation in Developing Countries' scheme under which developing countries can receive results-based payments for emission reductions when they reduce deforestation. / ¹⁵ Howson, P (2018) Slippery Violence in the REDD+ Forests of Central Kalimantan, Indonesia. *Conservation & Society* 16(2), pp. 136-146. www.jstor.org/stable/26393324 / ¹⁶ Government Regulation in Lieu of Law Number 2/2022 concerning Job Creation (Perppu Cipta Kerja). / ¹⁷ Constitutional Court of the Republic of Indonesia (25 November 2021) Court: Conditionally Unconstitutional, Job Creation Law Must Be Revised in Two Years. tinyurl.com/5e2zchwa / ¹⁸ Nusantara Fund (2023) A Direct Funding Mechanism For Indigenous Peoples And Local Communities In Indonesia. <https://foresttenure.org/gallery/Booklet%20Nusantara%20Fund.pdf>

