Upholding Human Rights in Jurisdictional Approaches
some emerging lessons

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Landscape and Jurisdictional Approaches

- NGO consortia develop landscape vision
- Sustainable land use plan
- No direct State engagement
- Can’t challenge vested interests, resolve disputes
- Can’t clarify and protect resource rights
- Can’t enforce plan

- Multi-stakeholder governance in subnat’l jurisdiction
- Local government has potential to address governance challenges
- Clarify rights and tenures
- Resolve disputes
- Enforce sustainability requirements
Jurisdictional approaches and RSPO

- Getting sub-national units to make RSPO standard mandatory
- Facilitating certification for non-RSPO companies, SMEs & SH
- Carrying out integrated land use planning
- Generating transparency
- Good governance
- Collective compliance
- Tackling structural challenges

Jurisdictional Approach pilots of RSPO:
- Sabah, Malaysia: 2025
- Central Kalimantan (Seruyan)
- South Sumatra (dropped)
- Ecuador (Amazon)
- Liberia (exploring option)
Scope and Method

- Field visits, interviews, workshops, literature review over last three years
- Sabah (Malaysian State in northern Borneo) Jurisdiction Certification initiative: CSPO by 2025
- Seruyan (Indonesian district in Central Kalimantan) Jurisdictional Approach
- Kapuas Hulu (Indonesian district in West Kalimantan) JA part of FORCLIME G2G with BMZ
- Ecuadorian Amazon (being piloted in two districts) PROAmazonia supported by GEF, GCF & UNDP)
Human rights and commodity production

Human rights as recognised in UN declarations and treaties, and ILO conventions. This study focuses on:

• Customary territories, lands and resources of indigenous peoples and local communities
• Self-governance and self-representation
• Free, Prior and Informed Consent (FPIC)
• Remedy
• Protection of human rights & env. defenders
• Healthy environment

Study did not give equal attention to rights of workers, migrants and smallholders.
Key elements of RSPO Standard

- Legality
- Maintain HCVs
- No HCS forest cleared
- Recognition of customary and user rights
- Just land acquisition
- Free, Prior and Informed Consent
- Dispute resolution
- Protection for HRDs
- Workers’ rights
- Gender justice
- Fair deals for smallholders
Progress in Sabah

- Already have a lot of certified producers
- State Govt. target of 100% RSPO certified by 2025
- Jurisdictional Certification Steering Committee (Govt., Biz., and NGOs)
- HCV 1-4 indicative map done for whole of Sabah State
- Government commitment to retain 30% forest cover
- Draft FPIC guide developed
- Model of accelerated land titling being developed
- Emphasis being placed on group certification of smallholders
- Have recognised need for sub-jurisdictional units of verification
Main challenges

Suhakam says *inter alia*:

- Resolve land disputes with plantations
- Recognise territorial rights
- Restitute lands taken without recognition or extinguished by gazettement
- Create of Indigenous Land Tribunal
- Establish Ombudsman
- Set up Native Title Court
- Strengthen capacity of administration and L&S
- Legally require FPIC

• Only partial recognition of customary rights
• Slow pace of land titling
• Licenses issued without considering prior rights
• FPIC not yet clearly required by law
• Self-representation unclear
• HCV-HCS system not yet required by law
Seruyan JA

- No recognition of community land rights
- 320,000 ha of oil palm plantings
- Only 2 of 34 companies provide required (20%) smallholdings
- Only 11% smallholdings titled
- Govt estimates 300 land conflicts
- HCV-HCS zoning and plans for participation now starting
Progress in Seruyan

- 4 draft decrees: FPIC, conflict registration, conflict resolution and mediation.
- Not yet clear on self-representation
- Not yet clear on HRDs (protection of complainants)
- Unclear how land rights will be formally recognised
Kapuas Hulu (FORCLIME)

- 2010 BMZ partnership with local govt. (FORCLIME)
- BMZ has strong policies on human rights, IPs, FPIC and conflict resolution
- 2016 announced ‘Jurisdictional supply chain initiative’ for palm oil and rubber using RSPO, FSC, RA standards
- Resolve conflicts, promote sustainable livelihoods and carry out HCV/HCS zoning
- Dayak and Melayu peoples lack formal title to lands
- Numerous conflicts with concessionaires
- PERDA (local legislative act) recognises existence of IPs
Challenges in Kapuas Hulu

- Unclear how JA will recognise customary rights
- No procedure yet to uphold FPIC
- Unclear how and on what basis conflicts will be resolved
- Community and NGO participation in governance weak
- Community and NGO concerns about information sharing

- Not clear how livelihoods will be protected in Protected Areas
- Need clarity on how indicative HCV/HCS mapping will accommodate rights and livelihoods
Progress in Ecuador

• Sub-component of Amazon REDD+ programme
• JA pilot part of multi-commodity: coffee, palm, rubber, cocoa, livestock
• Interinstitutional Jurisdictional entity established (CISPS)
• FPIC for REDD+ only
• HCV/HCS mapping underway
• Legal gap analysis underway

Pilot area for JA

• Laws allow recognition of land rights
• Recognises the need for new laws to allow enforcement
Challenges in Ecuadorian Amazon

- CISPS lacks IP, Afro-ecuadorian, soc. NGO reps
- Low local and national profile. Social NGOs unaware of JA pilot
- REDD+ FPIC guide not aligned with RSPO
- Application of human rights safeguards unclear
- No specific grievance mechanism yet
- Audit and compliance framework not yet clear
- Tenure component focuses on smallholders
- Concerns over apparent “productivist focus”
- IPs see need for more rights-based approach
Emerging lessons

• JA encourages adherence to int’l standards: human rights, develop’t agency safeguards and voluntary certification P&C
• Discussions about land rights, FPIC, participatory land use planning and conflict resolution have all been triggered
• Early participation crucial for genuine multi-stakeholder governance and inclusive planning
• Need to ensure inclusion of indigenous peoples and other community rights holders and their representative organisations in JA governance;
• Mutually agreed procedures to address land disputes are a core pre-condition to sustainability;
• Effective complaints mechanisms needed to ensure accountability;
Emerging lessons (2)

• Requires legal gap analysis to compare statutory law and practice with sustainability requirements.
• Requires that standards be made mandatory to oblige compliance by all.
• Need for combination of ‘carrots’ - market access, capacity building, discretionary funding and/or technical assistance – with ‘sticks’ to penalise non-compliance (‘sticks’).
• Two of the pilots already explicit that legal reforms will be required to make mandatory requirements enforceable.

Key challenge: will governance, and carrots and sticks, be strong enough to enforce standards? Which agency or agencies will take on this role? Need to explore options.
Jurisdictional Certification Steering Committee (JCSC) established. Tasks include overseeing development of Sabah FPIC Guide at the landscape and state-wide scale in the oil palm sector.

JCSC approved **Version 2.2 of the FPIC Guide** in June 2018, but requires the identification of a suitable government agency to house and oversee the implementation of FPIC in Sabah and development of the State’s Legal and Policy Framework and Standard Operation Procedures (SOPs). Forever Sabah, the Sabah Ministry of Law and Native Affairs and JCSC convened a Dialogue on November 7, 2019 to move process forward.
FPIC Dialogue Nov 2019: Key Outcomes

(a) Consensus that the Ministry of Law and Native Affairs is the best-placed government institution to take FPIC forward;
(b) Consensus that the state-wide work on FPIC should apply to all potentially affected communities, and to all sectors and activities (i.e. not only to oil palm); and,
(c) Develop key elements for a roadmap to advance this through stakeholder engagement workshops to evaluate Sabah’s legal and institutional framework in order to craft a Cabinet Paper that could call for the establishment of a formal Committee.
LESSON 1 – Upholding HR in Jurisdictional Approaches needs a lot of time and energy

- **Target 1**: Prepare Sabah FPIC Guide and Implementation Mechanism took more than 2 years.
- **Target 2**: Strengthen stakeholder capacity for the application of FPIC in Sabah involving series of engagements with IPLCs, CSOs, government, palm oil companies and RSPO is a work in progress.
- **Target 3**: Create an enabling environment for FPIC within current law and policy by institutionalising FPIC in Sabah would need very focused & sustained lobby work. The Ministry of Law & Native Affairs Sabah has yet to draft and present a proposal to Cabinet to bring JCSC under its wings.
Lesson 2 - Capacity Building and Information Dissemination Vital

- Preparing a framework for the Sabah government to oversee & implement JC in the context of Sabah's palm oil production such as the Sabah FPIC Guide, Smallholders Certification & identification of HCVs ARE VERY TECHNICAL.

- JC applications should be user-friendly for all.

- Communities have to undergo cap building to make informed decisions on FPIC, smallholder group certification & field identification of forests critical for them.

May get some surprises too - such as the Outcome of the Dialogue, in which dialogue participants concluded FPIC application should go beyond oil palm certification.
Lesson 3 - Key responsibilities of the “Focal agency” needs to clear so the agency is unbiased & well-resourced

To ensure the JC upholds human rights, the key capacities of the focal agency should include:

(a) acting in the best interest of the affected community/ies (fiduciary duty);
(b) serving as an objective and unbiased facilitator of FPIC process;
(c) ensuring that FPIC processes are undertaken pursuant to the Sabah FPIC Guide and applicable laws; and
(d) ensuring communities can effectively access grievance and redress mechanisms.
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Critical responses: Jurisdictional Initiatives of the Deforestation Free Agricultural Commodities in Kapuas Hulu District

- What measures taken to prevent criminalisation of traditional livelihoods and food production systems before any legal measures;
- Shared responsibilities to guarantee upward alignment/harmonisation promoting best practices: FSC vs VPA/SVLK or RSPO vs ISPO; promote legality vs sustainability such as VPA FSC vs SVLK and RSPO vs ISPO;
- Higher standard like Palm Oil Innovation Group (POIG) [company] members (and their supply chains in Jurisdictional Districts)
- Respect and incorporate participatory mapping done by IPLCs and NGOs
- Accountability of climate programme and REDD++ activities: deficient in FPIC and also failed to stop forest and land fires (2015, 2019) & conversion of HCV and HCS
Progress in Ecuador

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THANK YOU

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