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Promises in Practice

The Limited Reliability of Voluntary “No Deforestation” Commitments in Papua’s Palm Oil Plantations





ABOUT EIA

We investigate and campaign against environmental crime and abuse.

Our undercover investigations expose transnational wildlife crime, with a focus on elephants, pangolins and tigers, and forest crimes such as illegal logging and deforestation for cash crops like palm oil. We work to safeguard global marine ecosystems by addressing the threats posed by plastic pollution, bycatch and commercial exploitation of whales, dolphins and porpoises. Finally, we reduce the impact of climate change by campaigning to eliminate powerful refrigerant greenhouse gases, exposing related illicit trade and improving energy efficiency in the cooling sector.

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Executive summary

Unrelenting deforestation and human right abuses in palm oil production have provoked international outrage.

Governments and producers alike have pledged to halt deforestation. Since 2013, major palm oil companies have increasingly adopted ambitious 'no deforestation, no peat, no exploitation' (NDPE) policies to make palm oil more sustainable. Going beyond legal or certification requirements and hailed as holding much promise, these have so far fallen short of expectations.

To test the reliability of NDPE policies, the Environmental Investigation Agency (EIA) monitored their impact on palm oil plantations in Papua and West Papua provinces (Papua) – Indonesia's last forest frontier – not least their ability to facilitate the halting of deforestation by 2020, one of the UN Sustainable Development Goals.

These NDPE policies have, roughly, halved the extent of deforestation for oil palm in Papua anticipated under a business-as-usual scenario but have not stopped it altogether and the rate still remains high even though a significant number of palm oil growers have halted forest clearance in order to comply with NDPE. While deforestation is being confronted, mechanisms for eliminating social exploitation as part of NDPE implementation are considerably less advanced or effective.

The voluntary nature of NDPE policies is a major contributor to their unreliability. Incentives for companies and their suppliers to uphold NDPE policies are weak – the tensions between maintaining revenues and voluntarily imposing NDPE results in leakage, non-transparency, ineffective monitoring and, ultimately, non-compliance.

NDPE as a voluntary process cannot be relied on by policy-makers to achieve the eradication of deforestation and social exploitation. That NDPE is not a market requirement in any country hinders its robust implementation.

In this light, policy-makers are advised to introduce binding regulatory measures requiring compliance with NDPE-like sustainability criteria for palm oil (and other commodities) placed on their markets. With the European Union currently consulting on the action it could take on deforestation, the time for clear regulatory policies is upon us.

EIA's Papua Palm Oil Project

Aims of the Project

Recognising the significant social, environmental and climatic impacts of relentless deforestation, governments and companies worldwide have increasingly committed to achieve zero-deforestation.

Notably, since 2013 numerous major palm oil companies have developed 'no deforestation, no peat, no exploitation' policies (see NDPE box) and pledged to transform production of the crop.

These pledges were cheered by the global community and followed by a range of high-level international political commitments to eliminate deforestation¹ and increased calls for regulation in major consumer markets in support of these aims, notably in the EU.²

Acknowledging the promise of NDPE policies to rapidly halt deforestation, EIA began in 2015 a project aiming to both help companies implement them and, importantly, measure the reliability of such voluntary policies in eliminating deforestation and social exploitation on the ground.

EIA's project focused on Papua and West Papua provinces in Indonesia (hereafter "Papua"), the country's last forest frontier (see Papua box) where significant expansion of palm oil plantations was expected to dramatically increase deforestation.

No Deforestation, No Peat and No Exploitation (NDPE) policies

NDPE policies emerged in response to the failure of palm oil "sustainability certification" to adequately stop environmental and social abuses and to pressure from non-governmental organisations (NGOs), the market and politicians globally to halt deforestation.

Unlike high-level political commitments on deforestation, NDPE policies involve more detailed, comprehensive commitments going beyond the requirements of law or certification schemes.

'No deforestation' is typically realised through protecting **High Conservation Value (HCV)** and **High Carbon Stock (HCS)** areas; 'no peat' through avoiding planting on peat of any depth; and 'no exploitation' through protecting human rights, workers' rights and the rights of local communities and indigenous peoples, including to **free, prior and informed consent (FPIC)**.

Traceability is a key element of such policies because conformity to NDPE is unverifiable without it.

NDPE therefore refers to voluntary corporate sustainability policies including these commitments.

NDPE policy adoption has rapidly spread across the supply chain – from traders and processors to growers, manufacturers and retailers, as well as by financiers and to other commodities such as soy, cocoa and pulp and paper, with some companies adopting cross-commodity policies.

NDPE policies apply not just to a company's own operations but to all its suppliers and, increasingly, to their "whole operations".

The scope and strength of NDPE policies, however, varies considerably and each company's policy differs slightly. This limits standardisation and, unlike certification, many are not consistently independently verified.

For example, methods to identify HCS areas differ. Companies are increasingly adopting the **HCS Approach (HCSA)**, a well-accepted methodology for achieving no deforestation which integrates HCV and FPIC, although others use differing weaker HCS standards.

The HCSA has already produced an indicative HCS forests map for Papua and completed multiple HCSA assessments in Papua, showing there is room to develop some concessions without sacrificing forests or peat.

The Roundtable on Sustainable Palm Oil (RSPO) recently adopted the HCSA – reflecting consensus on the strengths of this approach and the significant number of RSPO members implementing it.

However, the RSPO delayed specifying how the HCSA will be applied in what it calls 'High Forest Cover Countries' – a category it deems to include the provinces of Papua and West Papua.



Methodology

In late 2015 and 2016, EIA built upon the West Papua Palm Oil Atlas³ to produce **"The Papua Palm Plantation Risk Profiles"**, a 200-page confidential catalogue detailing the high environmental, social and legal risks to NDPE policies in 53 palm oil concessions in Papua.⁴

Many of the concessions in Papua had not yet started clearing land or planting, let alone producing palm oil, so would not yet feature in supply chains. However, many are owned or controlled by parent group companies⁵ already in supply chains as suppliers, either directly or indirectly.

EIA mapped the connections between the 53 concessions and the published supply chains of five major palm oil traders and processors with NDPE policies in place, namely Archer Daniels Midland (ADM), Apical, Golden Agri Resources (GAR), Musim Mas and Wilmar.

Traders occupy a bottleneck in the palm oil supply chain where the smallest number of companies handle the most palm oil. They embody the interface between growers, consumer goods manufacturers (CGMs) and retailers – many of which have their own NDPE policies – and are consequently relied on to ensure NDPE compliance.

For each trader, EIA produced a **Deforestation Risk Exposure Annex** detailing the amount of deforestation risk in Papua they were exposed to through their suppliers being associated with controlling or owning the Papua concessions.

During 2017, both the Papua Palm Plantation Risk Profiles and the Deforestation Risk Exposure Annexes were submitted in confidence to the initial five traders to help them identify risks to their policies and empower them to take appropriate action.

In 2018, EIA expanded the project to cover an additional five traders with NDPE policies which had by then also published supply chain data, including: AAK, Bunge Loders Croklaan, Cargill, IOI and Sime Darby. Many of the traders source from each other and together represent some of the biggest and most progressive traders in the industry (Table 1).

Table 1: The ten traders and processors

| Company | Headquarters | Palm Oil Handled/ Refinery Capacity (million metric tonnes) ⁶ |
|-----------------------|--------------|--|
| AAK | Sweden | 1.29 |
| Apical | Singapore | 6.75 |
| ADM | USA | Unknown |
| Bunge Loders Croklaan | USA | 1.06 |
| Cargill | USA | 1.77 |
| GAR | Singapore | 4.68 |
| IOI | Malaysia | 1.94 or >3 million |
| Musim Mas | Singapore | 8 |
| Sime Darby | Malaysia | 2.77 |
| Wilmar | Singapore | 23.2 (palm & lauric oils) ⁷ or 45% |

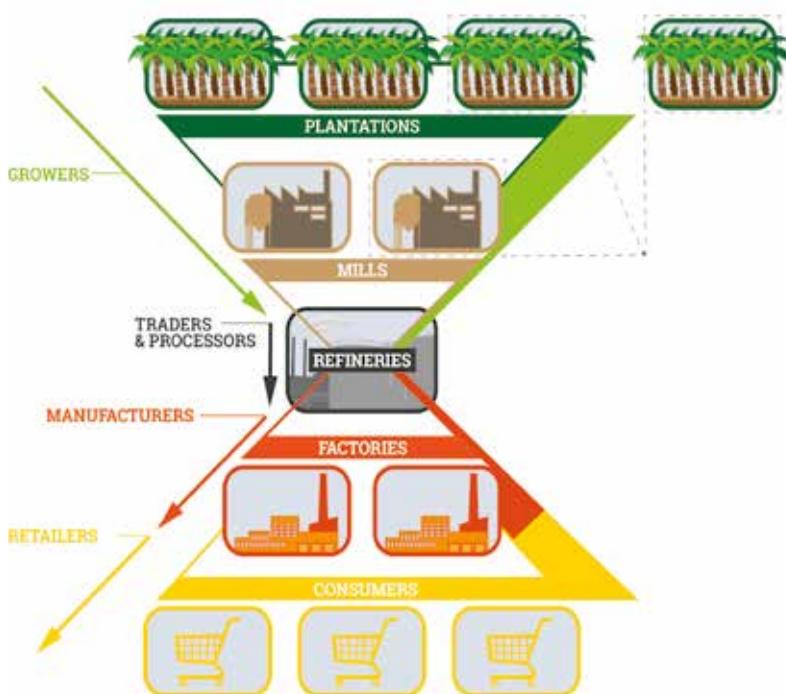
EIA also commissioned satellite analysis to quantify deforestation across the concessions monitored and renewed the supply chain and corporate ownership research to maintain an up-to-date picture of connections between the concessions and the 10 traders on which the project focused.

In 2018, EIA submitted to all 10 traders updated risk profiles for 15 parent group companies known to be in the 10 traders' supply chains and linked to operating high-risk concessions in Papua. EIA also provided an updated Risk Exposure Annex for traders, detailing how much deforestation in Papua had been realised by these companies during 2017 and how much deforestation risk remained.

A questionnaire was also sent to the 10 asking about their approach to ensuring suppliers comply with their NDPE policies, posing specific questions on the selected parent companies linked to risky Papuan concessions and seeking more information on how companies ensure compliance with the social requirements of their policies. All 10 responded, although some provided their own statements rather than fully answer the questionnaire.

This information has been used to track the outcomes and test the reliability of NDPE policies in Papua.

Left: The palm oil supply chain.
Note growers' operations can include plantations and mills that may not be directly in a supply chain and/or not yet fully operational



Palm oil in Papua

Papua and West Papua provinces (together known as Papua) are the most extensively forested region in Indonesia, with 80 per cent and 90 per cent forest cover respectively, high biodiversity, and more than a quarter of Indonesia's peatlands, making them significant carbon sinks.

The provinces support a population of over five million people, including more than 300 indigenous tribes. Over 70 per cent of the populations is rural,⁸ with a quarter living in poverty.⁹

Unlike elsewhere in Indonesia where developed palm oil plantations are already extensive, palm oil expansion in Papua has been slower, partly due to its remoteness.

Nevertheless, as space for palm oil has run out elsewhere, extensive landbanks were allocated in Papua, prompting EIA to raise the alarm over the issue as far back as 2009.¹⁰

To date, about 3.1 million hectares (ha) have been allocated for palm oil concessions in Papua and West Papua,¹¹ the majority located in forests (including primary forests where permits were agreed prior to 2011) and peatlands. Neither Indonesia's 2011 moratorium on new permits in primary forests and peatlands nor its 2018 moratorium on new palm oil permits protect forests within existing concessions.

Analysis estimates there are two million hectares of non-forested land in Papua suitable for oil palm cultivation. Deforestation for palm oil in Papua increased five-fold, from 12,000 ha between 1995-

2000 to 71,000 ha between 2010-15.¹² Clearance of Papua's pristine rainforests and the exploitation of its indigenous peoples make it a region of key concern.

Both provinces have special autonomous status in Indonesia. In 2015, West Papua's governor announced the intention to conserve 70 per cent of its area, a commitment it restated – along with Papua Province – when both signed the Manokwari Declaration on sustainable development in October 2018.¹³ West Papua's governor proposes to review all plantation and forestry permits as part of the "conservation province" plan.¹⁴





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The “NDPE Effect” in Papua

Deforestation down but not done

It is clear that NDPE policies have significantly reduced deforestation in Papua since 2015, although they have not stopped it overall.

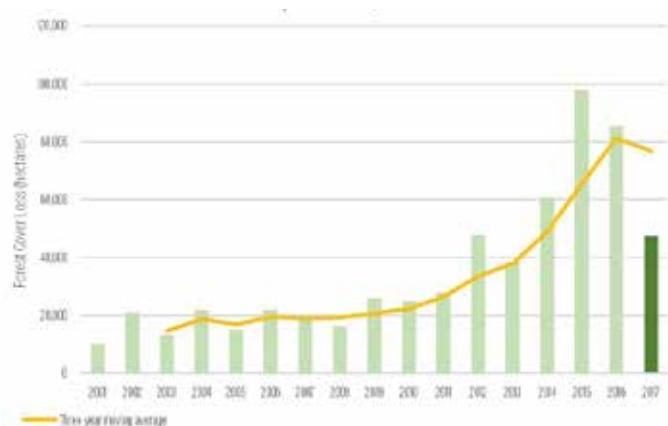
EIA's Papua Palm Oil Risk Profiles detailed 1.4 million ha within the 53 palm oil concessions profiled, of which 1.2 million ha were forested as many were entirely or largely undeveloped.

Using an averaged industry expansion rate of four per cent per year as a business-as-usual projection¹⁵ suggests 48,000 ha of Papua's forests would be cleared annually on existing oil palm concessions.

Satellite analysis indicates 19,900 ha of forest was cleared within the 53 profiled oil palm concessions in Papua in 2017¹⁶ – less than half of that expected under business-as-usual.

Correspondingly, overall forest cover loss in Papua, in and beyond palm oil concessions, decreased in 2017 to nearer the 50,000 ha lost in 2012, having peaked in 2015 at 98,000 ha (Graph 1).¹⁷

The evidence that these reductions are as a consequence of NDPE policies implementation is compelling.



Graph 1: Annual forest cover loss in Papua Island, Indonesia (WRI, 2018)¹⁷

Moratoria

Traders have required their suppliers to adopt NDPE and impose **moratoria** on new clearing until HCS and HCV assessments can inform areas that are ‘no-go’ and ensure no deforestation in a bid to *mitigate* deforestation risk. Such moratoriums on new clearing appear to embody much of the identifiable reduction in deforestation in Papua against business-as-usual.

Nine growers were identified as having declared moratoriums on new clearing for oil palm in Papua, including Eagle High Plantations in July 2015,¹⁸ Korindo in late 2016,¹⁹ Goodhope Asia Holdings in April 2017,²⁰ Noble Plantations in July 2017,²¹ POSCO Daewoo in January 2018,²² Central Cipta Murdaya (CCM) in 2018²³

and GAMA Plantation in July 2018. Acapalm Group/DTK Opportunity and Dharma Satya Nusantara (DSN) also have moratoriums on new clearing in Papua, according to traders sourcing from them, although it is unclear when these exactly started.

Combined, these moratoria cover 550,000 ha of oil palm concessions in Papua, with 62 per cent of this, an estimated 340,000 ha, remaining as forest.

The risk of deforestation in these concessions, and overall in Papua, can be considered to have been substantially mitigated; for now, at least, these moratoria have largely been observed.

Suspensions

Where suppliers do not adopt NDPE or moratoria and risk is not mitigated, traders have in cases **suspended** risky suppliers in a bid to *exclude* deforestation risk. Such suspensions have incentivised some suppliers to subsequently enact moratoriums.

Using these approaches, the traders have significantly decreased their exposure to deforestation risks in Papua. EIA's analysis indicates that on average the surveyed traders' exposure to deforestation risk in Papua reduced from 398,862 ha in 2017 to 275,353 ha as of the end of 2018, a 30 per cent (or 123,509 ha) reduction in exposure to deforestation risk (Graph 2).



Graph 2: Average exposure to deforestation risk in Papua for the ten traders

More than half this current exposure is now under moratorium and is considered mitigated, for now, although the remainder is not and therefore still exposes the traders to potential deforestation risks.

These unmitigated retained risks are embodied through two suppliers (Capitol and Genting Group) not known to have implemented moratoria (although also not identified to be currently clearing forests in Papua) and four suppliers (Austindo Nusantara Jaya (ANJ), Indonusa, Pacific Inter-Link and Salim groups) linked to concessions in Papua still deforesting.²⁵

Imperfect Results

While moratoria and suspensions indicate implementation of trader policies is occurring, traders are still retaining and realising some of their deforestation risks.

On average, the traders' supply chains were linked to 6,474 ha of deforestation in Papua in 2017, ranging from 4,500-11,000 ha.²⁶ This highlights either a weakness of will or ineffective policy enforcement in excluding suppliers continuing with deforestation.

While some traders have excluded suppliers with ongoing deforestation, others have not, preferring to "engage" rather than "suspend" in a bid to prompt supplier-compliance. Traders have at times incurred deforestation risks by not acting quickly enough, or at all, to incentivise the halting of deforestation.

Traders have seemingly applied less pressure and retained suppliers where ownership links have been

Furthermore, while supplier suspensions are required to demonstrate that traders' policies will be enforced, suspensions do not mitigate or eliminate deforestation risk in Papua, they merely remove it from trader supply chains. This may indicate the limits of NDPE's effect on suppliers' behaviour within the existing voluntary incentives regime.



less transparent, where growers insist forest clearance was legitimate or where there has been less public exposure.

Even if under moratoria, these may be breached and assessments to identify 'no-go' areas may not always be rigorous; for example, Korindo has breached its moratorium²⁷ and one of its concession in Papua has allocated significant areas of forest for development not in line with the HCSA methodology,²⁸ raising considerable doubts as to the reliability of these policies under a purely voluntary regime.

Overall, 56,000 ha of forest has been destroyed for palm oil in Papua since 2015, the highest of any region in Indonesia, highlighting that NDPE policies have certainly not been perfect nor implemented effectively enough.²⁹

Social exploitation still widespread, notably on land rights

The majority of growers have unresolved social issues in their Papuan concessions and NDPE policies seem to be having relatively little effect on tackling these issues here or elsewhere in Indonesia's palm sector.³⁰ Social issues are underreported within grievance mechanisms and what is being done is rarely apparent (Table 2).

Table 2: Public grievances raised by the ten traders in relation to palm oil operations in Papua

| Grievance Issue | Number | Percentage |
|--|--------|------------|
| Deforestation Only | 46 | 49% |
| Social Exploitation Only | 0 | 0% |
| Both Deforestation and Social Exploitation | 22 | 45% |
| Unclear | 3 | 6% |

The most prevalent issues in Papua concerned disputes over land, such as a lack of consent to use or clear land, conflict over customary land use and delineation, disagreement over compensation and land not being allocated to smallholder farmers as required by law or local agreements. Other key social issues include wage disputes, forced labour, a lack of written contracts, violence against local people, use of security forces by companies and violations of workers' rights.

This raises fundamental concerns about the implementation of the critical 'no exploitation' component of NDPE policies, including the principle of Free, Prior and Informed Consent (FPIC). While it can take time to resolve land conflicts – and some may be historic – the prevalence of land disputes with weak measures to mitigate them is impossible to overlook.

Because social issues are more difficult to monitor than deforestation, EIA's trader questionnaire asked specifically about FPIC.

Trader responses indicate they are largely relying on supply chain risk assessments conducted by external consultants and service providers as well as on reports of land disputes channelled into company-specific or certification scheme complaints mechanisms, usually by NGOs, in a reactive rather than a proactive approach.

The most commonly used risk assessments have given little weight to social issues. In the Mill Prioritisation Process, developed by TFT under its Aggregator Refinery Transformation (ART) approach, only one indicator out of nine has focused on social issues, with the majority on environmental issues.³¹

The RSPO was also reported by traders as being partly relied on for implementation of FPIC. However, poor implementation regularly undermines RSPO assurance systems and failures in delivering FPIC is the most prevalent type of RSPO complaint, indicating trader reliance on the RSPO for FPIC provides a limited security.³² Ironically, RSPO complaints are also being used by traders to detect non-compliance with FPIC which they then 'monitor' for resolution prior to considering exclusions.

It appears the main way traders are asking suppliers to address land disputes in Papua is through attending FPIC trainings and issuing requests to re-do FPIC and social impact assessments.

It is inevitable many social violations remain under the radar (many are not reported due to fear of repercussions) or remain unresolved while being maintained in NDPE supply chains.

Traders did report that they were developing better systems to monitor social issues: in October 2018, Wilmar announced it was designing a framework for social audits across its supply chain and improving approaches for monitoring labour and community issues;³³ Sime Darby claims it is piloting a worker helpline in Malaysia to tackle human and labour right issues;³⁴ and AAK has similarly supported its service provider to develop a "social risk assessment project".³⁵

However, information on reliable approaches to address ongoing land disputes and ensure FPIC is properly implemented by suppliers was less forthcoming. Meanwhile, the long-awaited unified land use 'One Map' released by the Indonesian Government in December 2018 still excludes indigenous customary land, even where it has been formally mapped and recognised by local governments.³⁶

Considerably more work is needed for NDPE policies to address FPIC and properly recognise land rights, alongside the rights of workers and smallholders, especially as recognising land rights can be an inherent way to help address deforestation.³⁷





Certification's Limited Assurance

The traders reported they did not, nor could they, solely rely on any certification scheme – whether the RSPO, the most widespread voluntary certification scheme, or Indonesia's Sustainable Palm Oil (ISPO) scheme - in implementing NDPE policies.

While certification was a tool that traders reported using to indicate elements of compliance, particularly for FPIC, the majority of traders do not require suppliers to be RSPO members or certified.

While some traders did report reliance on ISPO as an indicator of legal compliance, in general traders do not require ISPO certification and despite ISPO certification being mandatory since 2014, just 22 per cent of plantations are certified.³⁸

Traders' non-reliance on certification is understandable when examining the RSPO in the context of Papua. The RSPO has been criticised for approving substandard assessments for new planting that have allowed

growers in Papua to deforest significant primary forests and HCV areas and violate indigenous peoples' rights.³⁹

Other RSPO members have deforested in Papua in plain violation of the RSPO rules⁴⁰ or joined the RSPO only after deforesting their concessions. They should be required to compensate for this loss under the RSPO,⁴¹ but some argue such concessions should not be allowed to be certified as sustainable.⁴²

Other growers have not reported their links to oil palm concessions in Papua to the RSPO at all⁴³ and appear to have violated many RSPO standards.⁴⁴ However, when RSPO complaints have been raised in Papua, often initiated by NGOs such as EIA, there have been impactful outcomes through stop-work orders and assessments being redone. Traders are often actively following these complaints to monitor supplier compliance.

Legality intrinsic to sustainability

Legality is a fundamental part of sustainability, specified within both certification schemes and NDPE policies.

The RSPO requires abidance with all national laws and requirements. Yet it has failed to act against concessions operating illegally without the required permits, as in the case of Goodhope in Papua.⁴⁵ This suggests concessions which have operated illegally will be still certified as sustainable.

The mandatory ISPO certification scheme in Indonesia requires companies to comply with national laws and regulations but ISPO has been criticised for its weak law enforcement and neglect of human rights.⁴⁶ Many

companies have ignored applying for it, with limited repercussions.

Legality can be considered to not only involve national laws but also international treaties, such as the United Nations Declaration on the Rights of Indigenous Peoples or the Convention on Biological Diversity. However, these may not yet be translated into national legislation; for example, Indonesia's planned bill on indigenous rights has long been delayed.⁴⁷

NDPE companies claim to rely on certification to a degree in screening suppliers for legality, despite limited evidence that companies operating in violation of the law will be excluded by those schemes.

Factors Limiting NDPE Implementation

Leakage

The possibility of growers divesting from highly forested palm oil concessions or switching to supply non-NDPE markets (including Indonesia's domestic market or markets such as China and India) are frequently cited as likely barriers to achieving NDPE across the entirety of the palm oil industry. It has been argued that these tactics will result in so-called 'leakage'.

In Papua, only one grower (DSN) was confirmed to have divested from a highly forested concession – in that case because an HCS assessment commissioned in response to NDPE requirements found most of the concession could not be developed without deforestation. While no deforestation has yet occurred,

it is expected the Government will take the concession back and re-allocate it to another less scrupulous palm oil company, resulting in an uncertain outcome.

Overall, growers have not divested from concessions in Papua and are still looking to achieve NDPE compliance to meet traders' NDPE policies. This may be because companies have already invested in some development and are committed to providing land to smallholders.

As of November 2017, 73 per cent of refiners in Indonesia and Malaysia boasted NDPE policies.⁴⁸ Since then, considerably more refiners have adopted NDPE and made their mill lists available.⁴⁹ This should theoretically result in fewer leakage markets being available while improving traceability.

Transparency and Traceability

Despite traders' publication of supplier mill lists having dramatically increased under NDPE policies (something unheard of 10 years ago), inherent limits to the transparency of ownership and traceability of supply chains persist.

A lack of transparency over who ultimately owns or controls concessions hinders transformation to NDPE.⁵⁰ Where there are murky links between suppliers and concessions in Papua, deforestation has continued and moratoria have not been adopted.⁵¹ Similarly, due to a lack of transparency, it is unclear if CCM is deforesting in Papua despite a moratorium. It does not publish its concessions' boundaries but has been identified to have about 82,600 ha in Papua.⁵²

Supply chain traceability is also an impediment. Korindo has been suspended for some time by the 10

traders profiled due to its lack of progress in achieving NDPE. While Korindo did announce a moratorium on new clearing in its Papuan oil palm concessions, this was subsequently breached⁵³ and it continues to significantly degrade its logging concessions in Papua.⁵⁴

Yet Korindo's palm oil is still ending up in NDPE supply chains; for example, despite having an NDPE policy, US company Hershey – one of the world's largest chocolate manufacturers – reported Korindo's mills in Papua in its supply chain in 2018.⁵⁵ However, none of its direct suppliers state that they source from this mill.⁵⁶

Despite the demand for NDPE further down the supply chain by consumer goods manufacturers, retailers and consumers, it is clear that non-NDPE palm oil and suppliers are still entering NDPE supply chains.



Monitoring of Suppliers

In 2017, NGO Greenpeace found none of the major palm oil traders have a robust monitoring system enabling them to monitor suppliers' NDPE compliance at a group level.⁵⁷

This has prompted some change. Traders are becoming more proactive rather than reactive in monitoring whole groups not just mills⁵⁸ - a much-needed approach to identify non-compliances in palm oil frontiers such as Papua.

Some traders reported having internal monitoring systems which seek to identify issues and resolve them before they become public. They also increasingly require suppliers to provide all their concession maps (although these are not usually published) and use satellite imagery to remotely monitor deforestation.⁵⁹ Wilmar, the largest palm oil trader, reports it is now monitoring 117 groups covering 11 million hectares.⁶⁰

Use of Cut-Off Dates

Not all traders' suppliers have yet committed to NDPE let alone implemented it, despite the prevalence of NDPE policies for years. For example, Cargill reports only 77 per cent of its direct suppliers have NDPE policies, despite Cargill adopting its NDPE policy in 2014.⁶² It seems a considerable oversight that direct suppliers are still not required to commit to NDPE over four years later. Wilmar has similarly missed its proclaimed deadline of December 2015 for universal supplier compliance by more than three years.⁶³

The use of cut-off dates for supplier NDPE compliance still appears to be rarely enforced. Traders have been reluctant to suspend suppliers and an engagement approach has been favoured instead, partly due to leakage concerns. This can be unfounded – some suppliers have only enacted moratoria on new clearing after being suspended. In general, if a supplier does take

This is a huge area which, if monitored properly, has the potential to affect significant change; if poorly monitored, it will fail to identify significant violations of NDPE.

The downside is that much of the detail on this monitoring is not in the public domain as it done by service providers, often behind closed doors, making it unclear exactly who and what is being monitored by whom and what issues they have or have not addressed.

There is an over-reliance on consultancies and service providers to do this monitoring and implement NDPE. Their methods are not always transparent nor robust and, ultimately, they are being paid by the companies to both ensure NDPE internally and communicate it externally, a potential conflict of interest.⁶¹

some action it is kept as a supplier, even if such action is self-reported with little independent verification or is insufficient to be fully NDPE compliant.

Traders reported that growers in Papua are seeking the help of consultants and developing action plans to implement NDPE. However, these action plans have rarely been published or include clear cut-off dates, making it difficult to see or track progress.⁶⁴



A Voluntary “House of Cards”?

There is currently an over-reliance in the global community on voluntarily corporate commitments and certification to deliver deforestation and exploitation-free palm oil (and other commodities).

Certification's third-party independent audits have historically been viewed as reliable – however, they do not always meet expectations. The RSPO, to date, has only protected primary forests and HCV areas. The mandatory ISPO and Malaysian Sustainable Palm Oil (MSPO) protect very little forest at all.⁶⁵

Unreliable audits, poor implementation and failures to resolve complaints, alongside an inability to adapt their requirements in time to meet market demands, has hindered the acceptance and uptake of certification.⁶⁶ Recent studies found forest loss to be faster in certified oil palm plantations compared to non-certified ones and peatland clearance ongoing.⁶⁷

The prevalence of NDPE policies embodying higher requirements than certification schemes indicates they have not aspired to or achieved enough. In response, in November 2018 the RSPO adopted a new higher standard for palm oil in its revised Principles and Criteria, including provisions to halt deforestation and planting on peat.⁶⁸ It remains to be seen whether it can deliver. Equally the ISPO is undergoing reform but current indications suggest these reforms will not be meaningful enough.⁶⁹

Voluntary NDPE policies are in comparison vulnerable to variable self-enforcement, particularly when limited “compliant supply” is in tension with market demand and the need to maintain material throughputs, revenues and profits.

A number of the NDPE traders monitored are palm oil growers themselves and have recently been accused of operating shadow companies which hide deforestation that is non-NDPE compliant.⁷⁰ GAR and Musim Mas have oil palm concessions and mills in Papua itself about which they are not wholly transparent.⁷¹

Even with the help of partners and non-compliances being flagged by NGOs, it seems unrealistic that companies can be relied upon to consistently monitor and verify these voluntarily, with no consequences for not doing so beyond reputational risk and potential loss of buyers.

Neither voluntary commitments nor certification schemes are providing enough assurance. Historically, voluntary initiatives have shown what can be achieved but they have failed to achieve long-term sustained reform alone.⁷²



Summary and Conclusions

In Papua, NDPE policies have significantly decreased but not altogether stopped deforestation for oil palm – in 2017, it was half of what would be expected under business-as-usual practices.

The NDPE requirements of traders have incentivised a significant number of growers in Papua to institute moratoria on new clearance and identify areas to be developed in line with 'no deforestation'. This significantly reduces the risk of deforestation in Papua in the 340,000 ha of forest in high-risk concessions now under such moratoria.

However, several growers continue to deforest and others have broken their promises not to do so. Deforestation in Papua since 2015 has been the highest of any region in Indonesia. Here, NDPE policies are failing as traders have not acted decisively enough, or at all, to get suppliers to change practices. The problem has been compounded by opaque concession ownership and supply chains, ineffective monitoring and a lack of cut-off dates.

Often only after significant public coverage, and when suppliers do not adopt NDPE or moratoria, have traders suspended their suppliers. Through doing so, traders have now reduced their exposure to deforestation risks in Papua from 398,862 ha in 2017 to 275,353 ha as of the end of 2018. However, these suspensions do not remove the risk of deforestation in Papua unless growers subsequently adopt NDPE to regain buyers.

While deforestation is being somewhat tackled, addressing social exploitation through NDPE policies lags further behind. Despite ongoing concerns, notably in relation to land rights and FPIC, the systems to properly monitor and address them have not been well developed to date. There is an over-reliance on certification and grievance systems in the absence of this, such as the RSPO, which itself has repeatedly weakly implemented FPIC.

The scale of the halting of deforestation in Papua shows that NDPE policies can make a meaningful impact but the voluntary nature of these policies limits the incentives and allows for leakage, resulting in variable enforcement which prevents the eradication of deforestation.⁷³

It is clear that within the currently entirely voluntary system, the industry alone cannot be relied onto deliver the full potential of NDPE policies.

That NDPE policies are not legally required anywhere in the world hinders the ability of companies to leverage their suppliers to adopt them or to take robust action when they do not. This is despite the prevalence of NDPE policies in consumer markets, notably in the EU, and high-level political support for halting deforestation.

Indonesia and Malaysia have recently pledged to restrict forest loss for palm oil⁷⁴ but the relevant policies are temporary and reversible.⁷⁵ Indonesia's laws and the plethora of existing permits still provide for millions of hectares of deforestation, much of it in Papua.

Palm oil produced through deforestation and human rights abuses, and even illegally, is still given free market access despite unprecedented consumer interest in the sustainability of palm oil, as demonstrated by supermarket Iceland's Christmas 2018 palm-oil themed advert having more than 70 million views online.⁷⁶

The EU is consulting in February 2019 on actions it might take to address deforestation for palm oil and other commodities, given its consumption of them, including measures to support NDPE-type corporate policies.⁷⁷

It is highly advisable that the EU implements a due diligence-type regulation requiring palm oil (and other comparable commodities) to conform to sustainability criteria based on NDPE.

This would give companies supplying the EU a clear mandate to implement NDPE policies, creating a more level playing field and greater accountability which would reduce the leakage and poor enforcement currently undermining the reliability of NDPE.⁷⁸

Time is pressing – the world is not on track to halve deforestation by 2020⁷⁹ let alone halt it, as pledged under the UN Sustainable Development Goals. New binding measures need to be put forward now requiring commodities to be produced truly sustainably without any deforestation and human rights' violations.

Recommendations

NDPE companies should:

- Suspend suppliers not committed to NDPE policies
- Institute and publish clear, binding cut-off dates for supplier compliance with NDPE policies, where not already in place or unmet
- Require all suppliers to publish information detailing all their mills, plantations, relevant maps and, where relevant, their own supply chains to ensure transparency and traceability
- Give social issues equal weight with environmental issues in assessment processes and immediately exclude suppliers operating in the absence of FPIC
- Make better use of technology, including satellite monitoring and apps to enable better community empowerment and grievance procedures
- Make all grievances public and disclose clear actions for resolution, including timelines and updates
- Report on suppliers' compliance with NDPE at the "whole of operations" scale
- Support legislation requiring NDPE standards for palm oil and other commodities.

The Indonesian Government should:

- Ensure the oil palm plantation permit evaluation instituted by Presidential Instruction (Inpres) No. 8/2018 is undertaken robustly, transparently and immediately in collaboration with civil society and followed up accordingly, including taking legal measures against permit holders and officials based on the evaluation results
- Legally recognise and protect local and indigenous peoples' land tenure rights, including legally instituting the principle of Free and Prior Informed Consent (FPIC) in line with the UN Declaration on the Rights of Indigenous Peoples by passing the bill on Indigenous Peoples
- Incorporate indigenous lands in Indonesia's One-Map as a matter of urgency
- Enact legislation which prohibits deforestation for palm oil and other commodities
- Re-open the reform of the ISPO, ensuring a national public consultation results in a credible system and standard accepted by civil society
- Prosecute official and private sector actors involved in allocating or operating oil palm plantation in violation of national and international laws.

European policy-makers should:

- Enact binding due diligence legislation – underpinned with a prohibition – requiring EU market participant compliance with NDPE standards for palm oil and all comparable oil seed crops (and other forest risk commodities) and products containing them as a core component of an EU Action Plan on Deforestation
- Ensure due diligence legislation stipulates compliance with environmental standards equivalent to the High Carbon Stock Approach (HCSA)
- Ensure due diligence legislation requires compliance with social standards, inclusive of FPIC and international human rights provisions, including the Voluntary Guidelines on Responsible Governance of Tenure (VGGT)
- Provide for the strongest penalties for market participants not meeting fundamental environmental and social criteria specified in due diligence legislation, as recommended above
- Do not exempt certified palm oil from the social or environmental criteria required by due diligence legislation – whether that be RSPO, ISPO, MSPO or other schemes – while requiring such certifications where nationally mandatory
- Prohibit the placement on the EU market of all agricultural products produced in violation of national or international laws, including laws on human rights, the environment and anti-corruption, and ensure certified products are not exempt from the prohibition
- Require that agricultural products are traceable to an identifiable production unit to enable demonstration of compliance with due diligence provisions
- Invest in systems to monitor and enforce these provisions
- Refrain from signing Free Trade Agreements that remove the legal scope for the EU to exclude unsustainable vegetable oils and other forest risk products from the EU market, taking particular care with the EU-Indonesia Comprehensive Economic Partnership (CEPA)
- Enact a package of measures, as part of an EU Action Plan on Deforestation and Forest Degradation, to; a) support producer countries, smallholders and companies to meet these standards and b) engender similar requirements in other major markets, including China, India, and the USA.

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