

Washington International Law Journal

Volume 11 | Number 1

1-1-2002

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Recommended Citation

Kallie Szczepanski, Comment, *Land Policy and Adat Law in Indonesia's Forests*, 11 Pac. Rim L & Pol'y J. 231 (2002).

Available at: <https://digitalcommons.law.uw.edu/wilj/vol11/iss1/7>

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LAND POLICY AND ADAT LAW IN INDONESIA'S FORESTS

Kallie Szczepanski

Abstract: The Indonesian government's land laws and policies lead to displacement of and hardship for the indigenous peoples of the archipelago. The Basic Agrarian Law, Basic Forestry Law, and Spatial Planning Law all allow for expropriation of indigenous lands formerly governed under the *adat* legal system. In addition, the central government's policy of transmigration—the shifting of people from the populous Inner Islands of Java, Bali, and Madura to the Outer Islands—only increases the economic and cultural pressure on indigenous peoples of the Outer Islands. The hopelessness and anger that result from the marginalization of traditional *adat* societies fuel violent ethnic conflicts, in which tribes such as the Dayak of Kalimantan seek to drive out the transmigrants and the timber and mining interests that have acquired rights to the Dayak's traditional lands. Thousands of people have been killed or displaced as a result of these clashes. The government of Indonesia needs to reform its land laws and honor *adat* principles of land use, before further violence erupts. The ultimate stake in this bloody game is the very survival of the indigenous peoples' way of life.

I. INTRODUCTION

Stark headlines scream out from newspapers and webpages: “Borneo Headhunters Slaughter Immigrant Rivals,”¹ “Kosovo-like Terror Sweeps Indonesia,”² “Kalimantan's Killing Fields: Local Ethnic Conflicts have Erupted into War,”³ and “Headhunters, Violence Plague Wahid.”⁴ The “head-hunters” these reports refer to are actually the Dayak, an indigenous people from the Indonesian island of Kalimantan.⁵ What are the terror and the slaughter about? The answer is one word: land—specifically, not enough good land, and too many people.

Much of Indonesia is desperately overcrowded. This archipelago-nation consists of more than 13,000 islands totaling almost 741,000 square miles in area. Java and Bali are home to the majority of Indonesia's nearly

¹ Richard C. Paddock, *Nation and World*, SEATTLE TIMES, Feb. 26, 2001, <http://archives.seattletimes.nwsource.com/cgi-bin/texis/web/vortex/display?slug=borneo26&date=20010226>.

² Keith B. Richburg, *Nation and World*, SEATTLE TIMES, Apr. 11, 1999, <http://archives.seattletimes.nwsource.com/cgi-bin/texis/web/vortex/display?slug=indo&date=19990411>.

³ Susan Berfield & Keith Loveard, *Kalimantan's Killing Fields: Local Ethnic Conflicts have Erupted into War*, ASIaweek.COM, Mar. 7, 1997, at <http://www.asiaweek.com/asiaweek/97/0307/nat1.html>.

⁴ *Headhunters, Violence Plague Wahid*, CNN.COM, Mar. 13, 2001, at <http://www.cnn.com/2001/WORLD/asiapcf/southeast/03/13/indonesia.wahid.01/index.html>.

⁵ Kalimantan is the large central island of the Indonesian archipelago. The island is shared with two Malaysian states to the north and the independent sultanate of Brunei.

200 million people representing more than 330 ethnic groups.⁶ Ranked fourth in the world in population, following only China, India, and the United States, it has far less arable land to distribute amongst its many citizens.⁷ Java alone, comprising less than seven percent of the nation's total area, teems with over sixty percent of the Indonesian people.⁸

One of the Indonesian government's responses to this demographic crisis has been to move people from the most crowded areas to the pristine forests of the less populous islands.⁹ This program of "transmigration," in effect since 1903 and only recently suspended, has wreaked havoc on the forestlands and forest peoples of the sparser outer islands without appreciably improving the standard of living for those who migrate.¹⁰ The results have been tragic not only culturally, but also in terms of human rights and the environment. This Comment addresses the history that has led to today's turmoil, the current national legal regime for land, customary *adat* land law¹¹ as it is presently practiced, and the necessity for involvement of Indonesian and foreign organizations in resolving the land crisis.

II. THE CONFLICT: LOCAL *ADAT* COMMUNITIES VS. THE NATIONAL GOVERNMENT

Lacking political or military power to effectively resist the government's policy, indigenous forest peoples have expressed their anger and dismay through numerous armed uprisings and protests. Some peoples, such as the inhabitants of the Borobudur¹² area, have sent placatory messages to the central government in an attempt to retain some part of their homelands:

⁶ INDONESIA DIRECTORATE OF FOREIGN INFORMATION SERVICES, *TRANSMIGRATION: TO BUILD A BETTER FUTURE* 7-8 (1996).

⁷ Area in square kilometers: China—9,596,960; India—3,287,590; United States—9,629,091; Indonesia—1,919,440. CIA FACTBOOK, <http://www.cia.gov/cia/publications/factbook/index.html> (last visited Nov. 5, 2001).

⁸ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. STATE DEP'T, *INDONESIA: COUNTRY REPORT ON HUMAN RIGHTS PRACTICES 2000* (2001), <http://www.state.gov/g/drl/rls/hrrpt/2000/eap/index.cfm?docid=707>.

⁹ See, e.g., WORLD BANK COUNTRY STUDY, *INDONESIA: THE TRANSMIGRATION PROGRAM IN PERSPECTIVE* 1, 3 (1988).

¹⁰ OPERATIONS EVALUATION DEP'T, WORLD BANK GROUP, *PRECIS #72: TRANSMIGRATION IN INDONESIA* (1994), <http://wbln0018.worldbank.org/oed>.

¹¹ *Adat* law is the indigenous peoples' legal system in Indonesia. Each tribal group has a distinct version of *adat* that governs interpersonal relations, property rights, and spiritual topics. M.B. HOOKER, *ADAT LAW IN MODERN INDONESIA* 1, 26-29 (1978).

¹² Borobudur is a mountainous region in central Java.

[B]ecause we as the people of this nation understand that the government wishes to carry out developments [sic] in the Borobudur region, as citizens we would like to give support to those plans, the support taking the form of Vacant land. When the government has obtained the lands, we the people have a request to the government. We do not wish for money or possessions, but we beg not to be exposed to any harm or we request to be saved from being evacuated of transferred from lands within our villages. . . .¹³

Others, such as the people of Cimerak-Ciamis,¹⁴ whose land was taken in 1985 for a government development project, can only lament after the fact "What is development for, and development for whom?"¹⁵

The development in question includes transmigration sites, major clear-cut forestry projects carried out by large timber corporations, oil drilling, and strip-mining operations.¹⁶ While the multinational corporations benefit enormously from the wealth of Indonesia's forestlands, and transmigrants find ready jobs using the chainsaw or the bulldozer to despoil the land, indigenous peoples are left with ruined homelands and little legal recourse against the developers.¹⁷

To make matters worse, the Indonesian government does not even recognize that the forest peoples are "indigenous people," a class recognized under international law. Rather, it considers all citizens, except ethnic Chinese, as "indigenous" regardless of lifestyle.¹⁸ The government uses the euphemism "isolated communities" instead, and estimates that the number of persons in isolated communities is 1.5 million.¹⁹

¹³ T. MULYA LUBIS, *LAND EXPROPRIATION IN INDONESIA: DEVELOPMENT FOR WHOM?* 3 (1982).

¹⁴ Cimerak-Ciamis is in western Java.

¹⁵ LUBIS, *supra* note 13.

¹⁶ RIMBO GUNAWAN ET AL., *AFTER THE RAIN FALLS: THE IMPACT OF THE EAST KALIMANTAN FORESTRY INDUSTRY ON TRIBAL SOCIETY* ix (1999). See also WOLF DONNER, *LAND USE & ENVIRONMENT IN INDONESIA* 274-76 (1987).

¹⁷ GUNAWAN ET AL., *supra* note 16, at vii.

¹⁸ Indigenous peoples have recently been accorded certain rights and privileges under international law. This may encourage the Indonesian government's reluctance to admit that the Dayak and others are "indigenous." See, e.g., *Draft U.N. Declaration on the Rights of Indigenous Peoples*, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities (1994), 34 INT'L LEGAL MATERIALS 541 (1995). See also Principle 22 of the Rio Declaration on Environment and Development, which states: "Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development." Rio Declaration on Environment and Development, June 14, 1992, 31 I.L.M. 876, 880 (1992).

¹⁹ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. STATE DEP'T, *supra* note 8.

III. LEGAL AND COLONIAL HISTORY TO 1960

A. *The Colonial Era*

Indonesian national law is based on that of the Netherlands, the primary colonial power in the region from the seventeenth century until 1947.²⁰ Throughout the early colonial period, the Dutch East India Company administered the colony.²¹ The Company instituted a classic colonial policy of simply seizing any useful lands or resources from the local people without compensation.²² Seized land was not registered or titled. This wanton expropriation led to the first of what would become centuries of land-related social protests and unrest. Often individual subsistence farmers and gatherers lost all of their means of survival to the Company. With nothing left to lose, they had every incentive to attack the Dutch invaders in any manner possible.²³

The cycle of land grabbing and uprising continued unabated until the arrival of the British, who briefly supplanted the Dutch in Indonesia in the early nineteenth century.²⁴ In 1811, the British established a land issues commission titled the McKenzie Commission.²⁵ The Commission recommended direct taxation of agricultural produce to make the colony more profitable, as well as the introduction of land titling and registration, based upon the model used successfully in India.²⁶ The registration initiative failed utterly, as village chiefs, lacking accurate surveys of their lands, simply made up figures to submit to the British colonial government.²⁷

Holland regained control of the archipelago in 1830, and began introducing reforms of its own.²⁸ Primary among them was the implementation of the "cultivation system," a feudal-type program under which farmers had to use one-fifth of their land to cultivate an export crop for the government.²⁹ Agrarian workers were also subject to labor levies for

²⁰ Timothy Lindsey, *An Overview of Indonesian Law*, in *INDONESIA: LAW AND SOCIETY* 1 (1999).
See also HOOKER, *supra* note 11, at 23.

²¹ DONNER, *supra* note 16, at 62.

²² DONALD W. FRYER & JAMES C. JACKSON, *INDONESIA* 40 (1977).

²³ See *id.* at 42.

²⁴ *Id.* at 47-48.

²⁵ *Id.* at 47. See also COLIN MACANDREWS, *LINCOLN INSTITUTE OF LAND POLICY, LAND POLICY IN INDONESIA* 17 (1986).

²⁶ *Id.* at 47-48.

²⁷ MACANDREWS, *supra* note 25, at 17-18.

²⁸ *Id.* at 18.

²⁹ *Id.*

public works and other government projects, sometimes in excess of the time they were allowed for cultivating their crops.³⁰ Land was also made communal,³¹ and many large plantations were broken down into sections that were administered locally by village officials.³² In a startling foreshadowing of China's Great Leap Forward, this policy resulted in terrible famines in some areas throughout the 1840s, as rice production plummeted due to enforced neglect.³³

The cultivation system regime was not uniform throughout the archipelago. In the outer islands, and remote regions of the inner islands, native peoples continued to manage their lands in accordance with customary *adat* principles, unhampered by Dutch colonial regulations.³⁴ While their cousins in the plantation regions starved, most Indonesians carried on with their farming in the age-old way.³⁵ In effect, two completely separate systems of law prevailed: one for the foreigners and their employees, and one for the majority of Indonesians.³⁶ This dualism has been a source of strife right up to the present day.

Gradually, during the last decades of the nineteenth century, the cultivation system was disbanded and replaced by a system of private renters.³⁷ A new land law known as the Agrarische Wet of 1870 reintroduced the concept of land titling and registration into the islands.³⁸ Western entrepreneurs were given *carte blanche* to rent vast tracts of peasant-tilled land.³⁹ Dutch colonial administrators used the Agrarische Wet to legitimize the effective expropriation of further indigenous lands.⁴⁰ All land that could not be proved to belong to a particular person reverted to the state, and was available to rent.⁴¹ As the only way to prove ownership was to present western-style title documents, all *adat* land was effectively "up for grabs." Such seizures facilitated the establishment of new large rubber, coffee, tea, and palm oil plantations, mainly on Java and Sumatra.⁴² Since the land was not considered indigenous property, the Agrarische Wet did not

³⁰ *Id.*

³¹ That is, it was deeded to the villages rather than individuals, and farmed cooperatively.

³² MACANDREWS, *supra* note 25, at 18.

³³ *Id.*

³⁴ *Id.* at 20.

³⁵ See, for example, *id.* at 18, regarding the Cirebon famine.

³⁶ HOOKER, *supra* note 11, at 16. See also MACANDREWS, *supra* note 25, at 19.

³⁷ FRYER & JACKSON, *supra* note 22, at 52.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 52, 160-61.

⁴¹ MACANDREWS, *supra* note 25, at 20.

⁴² DONNER, *supra* note 16, at 64.

require compensation to the local peoples for the seized land.⁴³ By 1900, land was becoming scarce on Java, presaging trouble to come.⁴⁴

B. *Independence*

In 1945, Indonesia drafted its first modern Constitution in preparation for independence.⁴⁵ The constitutional provision referring to land and water rights, Article 33(3), states that "Land and water and the natural riches therein shall be controlled by the State and shall be exploited for the greatest welfare of the people."⁴⁶ This article lays the foundation for intensive government control over land in the archipelago.

Indonesia formally gained its independence from the Netherlands in 1947. From that point until passage of the Basic Agrarian Law in 1960, the two systems of land law continued in force: civil law (still including the *Agrarische Wet*) for foreigners, and *adat* for Indonesians.⁴⁷ Under the dual system that had prevailed for centuries, less than five per cent of the land in Indonesia was surveyed and registered by 1960, while ninety-five per cent continued to be controlled by principles of *adat*.⁴⁸ *Adat* itself, however, has never been a unitary system; throughout the islands there are as many variants on customary law as there are different regions and cultures.⁴⁹

IV. *ADAT* LEGAL PRACTICES IN MODERN INDONESIA

Each indigenous group in Indonesia has a system of *adat* laws and traditions, developed over time to meet the individual needs of each particular cultural and environmental community.⁵⁰ This Comment will examine the land-use *adat* of Kalimantan's Dayak people.

⁴³ FRYER & JACKSON, *supra* note 22, at 160-62.

⁴⁴ MACANDREWS, *supra* note 25, at 19.

⁴⁵ The Japanese had taken Indonesia from the Dutch in 1941, but were clearly losing their grip on the archipelago by 1945. FRYER & JACKSON, *supra* note 22, at 66.

⁴⁶ INDON. CONST. art. 33(3) (1945).

⁴⁷ MACANDREWS, *supra* note 25, at 20.

⁴⁸ *Id.*

⁴⁹ Rachel Haverfield, *Hak Ulayat and the State: Land Reform in Indonesia*, in *INDONESIA: LAW AND SOCIETY* 43 (1999).

⁵⁰ *Id.*

A. Dayak Land Adat

Kalimantan, formerly known as "Borneo," is the third largest island in the world, after Greenland and New Guinea (Irian).⁵¹ The island is divided between two Malaysian states, Sarawak and Sabah, the independent Sultanate of Brunei, and four Indonesian provinces: South, East, Central and West Kalimantan. The Dayak live in the rainforests and wetlands of West Kalimantan, where they make up the largest ethnic group at about forty-one percent of the population.⁵² The majority of Dayak live by swidden (shifting) agriculture on land owned either by individuals or the community under *tanah adat*, the customary land-ownership system.⁵³

Tanah adat is still the primary system of land-ownership in West Kalimantan, despite decades of central government insistence on formal titling under western-style national laws.⁵⁴ Few farmers have applied for official title to their customary lands, because the application process is bewildering. No deadline for compliance has been established, and the registration fees can be prohibitive.⁵⁵ This lack of paper title, however, makes Dayak lands subject to government whims; should it declare an overriding national or public interest, the government may confiscate any such lands.⁵⁶

Two different kinds of land ownership⁵⁷ exist under Dayak *adat*: communally owned lands, *tanah milik kelompok*, and individually owned lands, *tanah milik perorangan*.⁵⁸ *Tanah milik kelompok* is cleared by the group, and planted with rubber trees or fruit trees such as durien, cempedak, and mangosteen for community use.⁵⁹ Even outsiders may receive permission from the *adat* leaders to harvest this fruit.⁶⁰ This land is reserved

⁵¹ See EARTH ISLAND INSTITUTE, BORNEO, <http://www.earthisland.org/borneo/borneo.html> (last visited Sept. 29, 2001).

⁵² Other major ethnic groups include Malaysian-Indonesians (36%), Chinese-Indonesians (12%), Buginese (4%), Javanese (2%), Madurese (1.75%) and tiny minorities of Sundanese, Banjarnese, Minangkabau, Batakis, and Ambonese. SYARIF IBRAHIM ALQADRIE, ETHNICITY AND SOCIAL CHANGE IN DYAKNESE SOCIETY OF WEST KALIMANTAN, INDONESIA 59 (1990).

⁵³ *Id.* at 79-81.

⁵⁴ Timothy Lindsey, *Square Pegs and Round Holes: Fitting Modern Title into Traditional Societies in Indonesia*, 7 PAC. RIM L. & POL'Y J. 699, 700 (1998).

⁵⁵ See *supra* Part III.B.

⁵⁶ See *infra* Part V.A for a discussion of the Basic Agrarian Law.

⁵⁷ "Land ownership" is perhaps an inappropriate term, but is used here for simplicity's sake. "Ownership of various degrees of land use rights" might be a more accurate description.

⁵⁸ ALQADRIE, *supra* note 52, at 191.

⁵⁹ *Id.*

⁶⁰ *Id.*

for the tree-crops; nobody may live or farm on it, and cutting the trees is also unlawful.⁶¹

Tanah perorangan belongs to the individual who cleared the land, and may be bequeathed to his or her descendants.⁶² The land is theirs to use for as long as they take care of it; should they cease to farm it, and allow the forest to reclaim the site, the land simply is available to whoever next chooses to farm there.⁶³ The farmers cut the trees down, leaving bushes to dry for tinder.⁶⁴ Then they clear the surrounding ground of debris to make a firebreak, and burn off the shrubs and tree stumps.⁶⁵ These fires do not burn hot enough to sterilize the soil; in fact, the resulting ash layer is plowed into the ground as fertilizer.⁶⁶ Usually, a family plants two or three crop cycles on a particular plot, then cultivates another area.⁶⁷ The land is then allowed to lie fallow for ten to fifteen years.⁶⁸ Conversion of land is punishable in Dayak *adat* only when crops or trees are destroyed; no formal mechanism exists for enforcing a particular family's claim to a vacant plot.⁶⁹ This principle reflects the idea that land never truly "belongs" to any family—only the right to tend to and use the land and its products can be acquired. This system of land use is most suitable for the soils of West Kalimantan, which tend to be thin and nutrient-poor in the manner of most tropical forest soils.⁷⁰ Intensive, permanent cultivation like that practiced on the more fertile islands of Java and Bali would quickly exhaust the soil, rendering it completely sterile for years to come.⁷¹ In addition, swidden agriculture can be efficiently practiced using the simple tools generally available in the interior of West Kalimantan.

The national government, however, classifies fallow *adat* land as "abandoned," and thus available to be registered to transmigrants or industries such as mining and timber.⁷² Swidden agriculture is considered wasteful and backward by the central agriculture ministry.⁷³

⁶¹ *Id.*

⁶² GUNAWAN ET AL., *supra* note 16, at 28. See also ALQADRIE, *supra* note 52, at 191.

⁶³ ALQADRIE, *supra* note 52, at 193.

⁶⁴ CHRISTIAN GONNER, RESOURCE MANAGEMENT IN A DAYAK BENUAQ VILLAGE: STRATEGIES, DYNAMICS AND PROSPECTS 23 (2000), http://www.gtz.de/toeb/pdf/TOEB_Resource_Management_in_a_Dayak_Benuaq_Village_Strategies_Dynamics_and_Prospects.pdf.

⁶⁵ *Id.*

⁶⁶ LUBIS, *supra* note 13.

⁶⁷ SEDIONO M. P. TJONDRONOGORO, LAND REFORM OR LAND SETTLEMENT: SHIFTS IN INDONESIA'S LAND POLICY, 1960-1970, at 2 (1972).

⁶⁸ ALQADRIE, *supra* note 52, at 203.

⁶⁹ GONNER, *supra* note 64, at 30.

⁷⁰ GUNAWAN ET AL., *supra* note 16, at 40-41.

⁷¹ TJONDRONOGORO, *supra* note 67, at 4.

⁷² GUNAWAN ET AL., *supra* note 16, at 3-4.

⁷³ *Id.* at 37.

While Dayak *adat* is representative of the traditions of peoples in the remote outer islands, different *adat* systems also persist to some degree closer to the center of power.⁷⁴

B. *Trouble Brewing*

As happens so often when indigenous communal land systems come into conflict with European-style individual ownership regimes, the tribal peoples of Indonesia are now faced with the loss of their ancestral lands, and extinction of their traditional way of life. The Dayak belief that land cannot be owned by mortals, though its products are shared by the community, runs headlong against the western idea that only the registered owner of land can freely use its resources. In effect, the indigenous people have become trespassers on their own land. An examination of Indonesia's national land laws makes this tragic truth quite clear.

V. INDONESIAN NATIONAL LAND LAW AND POLICY

National law, which is based on colonial Dutch law, is the primary enforceable law of the land. However, it is supplemented—and often opposed—by informal legal systems, particularly *adat* law.

A. *The Basic Agrarian Law*

The Basic Agrarian Law of 1960 (“BAL”) was intended to unify all the land law of Indonesia into a single system.⁷⁵ It has since been supplemented by two iterations of the Basic Forestry Law (1967 and 1999)

⁷⁴ An example is Bali's Bajau people. The land-use system of the Bajau emphasizes the spiritual aspects of land; the community must maintain proper harmony with its surroundings to please ancestral spirits. CAROL WARREN, *ADAT AND DINAS: BALINESE COMMUNITIES IN THE INDONESIAN STATE* 38-39 (1993). *Adat* rules have been handed down from the ancestors, and strict compliance is central to keeping the spirits' protection for the village. *Id.* at 39. The Bajau believe that failure to do so can result in illness and social discord. *Id.* Use of communal agricultural lands traditionally comes with many strings attached for the Bajau. Individuals must provide labor for the village, attend meetings, and carefully observe all other customary laws, or risk losing their cultivation privileges. *Id.* More sedentary than the Dayak, the Bajau do not regulate forestlands in their *adat* system. Nearby forest resources are harvested, naturally, but the lands beyond the agricultural fields are outside the purview of the ancestors. *Id.* This probably reflects the fact that the soil on Bali is volcanic in nature, and thus much richer than that on Kalimantan. FRYER & JACKSON, *supra* note 22, at 7. The Bajau can use more intensive agriculture than the Dayak without depleting their land.

⁷⁵ Lindsey, *supra* note 54, at 700.

and a Spatial Planning Law (1992). The BAL draws from both western civil law and *adat*. Four basic land rights are recognized in the BAL:

1. The right of free and clear ownership,⁷⁶
2. The right of cultivation of state-owned land, for a term of up to thirty-five years and possible extension for twenty-five years more,⁷⁷
3. The right to build upon leasehold land,⁷⁸ and
4. The right to collect or use products of state or private lands, for a specific amount of time or so long as the land is used for a specific purpose.⁷⁹

In addition, the BAL recognizes several traditional rights, including the right to clear land, catch and breed fish, draw water, and harvest forest products.⁸⁰ While these provisions appear to protect some of the basic *adat* rights, Indonesian law provides no mechanism for recognizing or registering these particular rights, so they are effectively unenforceable.

In some ways, the BAL actually resembles the Agrarische Wet of 1870 as well. Like its predecessor, the BAL emphasizes registration of land title. In contrast, customary *adat* law has always been based upon local knowledge of ownership and use rights, without a need for paper title. Conflicts over title are resolved by democratic processes within the *adat* community rather than by following a paper trail.⁸¹ Therefore, the rights of indigenous peoples, derived from and recorded in oral tradition, continue to recede in the face of BAL-supported claims by other groups or industries. Article 5 of the 1960 law explicitly recognizes the validity of *adat*, but provides that *adat* must be molded to meet the interests and needs of the nation and of the Indonesian people as a whole. The BAL allows *adat* to remain in force only when four conditions are met:

1. Adat Law must not be contrary to the national interests of the state,⁸²
2. Adat Law must not be contrary to Indonesian Socialism,⁸³

⁷⁶ Basic Agrarian Law, No. 5 (1960) (Indon.), arts. 20-27 [hereinafter BAL].

⁷⁷ BAL, *supra* note 76, arts. 28-34.

⁷⁸ *Id.* pt. V, arts. 35-40.

⁷⁹ *Id.* pt. VI, arts. 41-43.

⁸⁰ *Id.* ch. II, pt. I, art. 16.

⁸¹ *Adat* communities use the concepts of “*musyawarah*” (consultation and debate) and “*mufakat*” (decision by consensus) to resolve disputes. Lindsey, *supra* note 54, at 706.

⁸² BAL, *supra* note 76, ch. I, arts. 3, 5.

⁸³ *Id.* art. 5.

3. Adat Law must not be contrary to the principle of Agrarian Law and other Laws,⁸⁴ and
4. Adat Law must not be contrary to the religious laws.⁸⁵

None of the concepts listed in the article—"national interests," "Indonesian Socialism," or "religious laws"—are ever defined or spelled out in the Agrarian Law or elsewhere, leaving the guidelines essentially meaningless.⁸⁶ *Adat* communities also have the burden of proving continuity; that is, they must show that their *adat* rights still exist and have not been extinguished.⁸⁷ Since *adat* rights have always been based on oral tradition rather than written records, it is nearly impossible for many indigenous peoples to provide such proofs.⁸⁸ In effect, the BAL pays lip service to *adat* while ensuring that it can be preempted at will by the slightest governmental interest. As indigenous rights and law are weakened, the national government gains an ever-greater ability to deprive indigenous peoples of their lands. Tellingly, the Indonesian government uses the phrase "release of title," rather than "land expropriation" or "annexation" to describe the taking of tribal lands.⁸⁹ In this sense, indigenous peoples' hold on their land is at least as tenuous under the Indonesian government as it was under the European colonizers, if not more so.

B. *The Basic Forestry Laws of 1967 and 1999*

Forestry law in Indonesia underwent an overhaul in 1999, when the Basic Forestry Law of 1999 ("1999 BFL")⁹⁰ replaced the 1967 act of the same name ("1967 BFL"). Forestry reform was one of the conditions imposed by the World Bank before it would grant Indonesia structural adjustment loans.⁹¹ The focus of the new act is on increasing exploitation of the forests. In this regard, it is quite similar to the 1967 law. The 1999 Act also pays some lip-service to the idea of protecting the rights of indigenous communities, but effectively ensures that they will be unable to easily protect their customary land uses. The Indonesian Legislature passed the Act over the strenuous objections of various non-governmental

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ LUBIS, *supra* note 13, at 9.

⁸⁷ BAL, *supra* note 76, ch. I, art. 1, § 3.

⁸⁸ *See supra* Part IV.A.

⁸⁹ LUBIS, *supra* note 13, at 17.

⁹⁰ Basic Forestry Law, No. 41 (1999) (Indon.) [hereinafter 1999 BFL].

⁹¹ WORLD BANK, LENDING PROGRAMS—INDONESIA, <http://wbln0018.worldbank.org/eap/eap.nsf/680c5352d463b70a852567c900770e56/cc7a1cdc69b7cd78852567d6007c9e58> (last visited June 4, 2001).

organizations (“NGOs”), indigenous peoples’ groups, and Indonesian scholars.⁹² Unfortunately, the new Basic Forestry Law illustrates the lack of real progress toward equitable treatment of *adat* communities and *adat* law in the intervening three decades.

The Basic Forestry Law of 1967 declared in its statement of purpose that all forests in Indonesia must be “protected and utilized for the welfare of the people.”⁹³ This rather contradictory expression provided the government with wide latitude for exploitation of one of the most diverse and threatened tropical forest ecosystems in the world. The 1967 BFL brought seventy percent of all the land in Indonesia under the control of the Ministry of Forests and Estate Crops.⁹⁴ In addition to hundreds of unique indigenous human cultures, these forests and waters of the archipelago include forty-seven diverse ecosystems.⁹⁵ Despite making up only 1.3% of the world’s landmass, Indonesia contains 17% of the total number of species on Earth, including 11% of flowering plants, 12% of mammals, 15% of reptiles and amphibians, 17% of birds, and 37% of all fish.⁹⁶

The 1967 BFL prohibited private or community ownership, as well as land rights in forestlands. However, it did allow concessions for state, regional, and private enterprises, but not for individuals or communities.⁹⁷ Nonetheless, forty to sixty million Indonesian citizens lived in the areas under BFL jurisdiction—including nearly all of the indigenous peoples.⁹⁸ Perhaps in recognition of this incongruity, the 1999 BFL permits private ownership of forestlands.⁹⁹ However, in accordance with the 1945 Constitution, ultimate control remains in the hands of the central government under Part I, § 3(4): “All forests in the Indonesian Republic and the resources in them are controlled by the state for the maximum benefit of the people.”¹⁰⁰ Furthermore, the definition section, Part I, § 1(1) reveals, “Customary (*adat*) forest is state forest which lies within the lands of

⁹² DOWN TO EARTH: INTERNATIONAL CAMPAIGN FOR ECOLOGICAL JUSTICE IN INDONESIA, NEW INDONESIA FORESTRY ACT (1999), at <http://www.icsea.or.id/sea-span/0399/NR0926LL.htm>.

⁹³ Basic Forestry Law, No. 5 (1967), pmbl. (b). [hereinafter 1967 BFL].

⁹⁴ Jude Wallace, *Land Policy Organization Special Topics*, in *INDONESIAN LAW IN A NUTSHELL* (2000), http://www.landpolicy.org/special_topics/nutshell.htm.

⁹⁵ RESEARCH & DEVELOPMENT CENTRE FOR BIOLOGY, INDONESIA INSTITUTE OF SCIENCES, INDONESIA-BIODIVERSITY COLLECTIONS PROJECT, <http://bio.lipi.go.id/gef.htm>.

⁹⁶ *Id.*

⁹⁷ 1967 BFL, *supra* note 93, art. 14.

⁹⁸ Wallace, *supra* note 94, at 1.

⁹⁹ 1999 BFL, *supra* note 90, ch. II, art. 5.

¹⁰⁰ *Id.* pt. I, art. 4.

[communities with customary laws]."¹⁰¹ Part I, § 3(4) states, "The state's control over forests respects [communities with customary laws'] customary rights in so far as these still exist, are recognized and do not conflict with national interests."¹⁰² The implication is that the government alone has the power to grant or withhold recognition of indigenous groups. In addition, the 1999 BFL goes on to say that the government can change the status or function of forestlands on the basis of "integrated research," but that term is not defined.¹⁰³

Even if an indigenous community succeeds in getting recognition of its legitimate presence in a section of the forest, the 1999 BFL raises further hurdles to the practice of *adat* land use. Forestlands are divided into three function categories: Production, Protection, and Conservation Forest.¹⁰⁴ The national government determines the proper function and uses of forestlands based on a nation-wide mapping and division of the forests into these categories.¹⁰⁵ Production forests are those already set aside for the timber industry through existing leases, as well as any additional lands granted to the timber companies in the future.¹⁰⁶ All forests "except nature reserves and the 'core' and 'wilderness' zones of National Parks" are open for use, including Protected Forest areas.¹⁰⁷ However, any individual or group wishing to use any forest resource from either Production or Protected forestlands must be licensed.¹⁰⁸ Activities included under this regime are "using the land . . . gathering non-tropical forest products . . . or using the environmental services,¹⁰⁹ timber and non-timber products and usufruct" of Production forest.¹¹⁰ According to Part V, § 3(33), "using the land" includes "planting, cultivating, harvesting, processing and marketing forest products."¹¹¹ In other words, indigenous peoples need a government license before they may carry out any of the basic steps necessary for securing food for their families. These licenses are not free, of course: "All licensed Forest Users under Clauses 27 & 29 will have to pay various fees, including operational fees and Reforestation Funds levies plus an investment fund for

¹⁰¹ The actual word used directly translates as "communities with customary laws" rather than "indigenous peoples," a continuation of the Indonesian government's insistence that there are no truly indigenous peoples on the archipelago. DOWN TO EARTH, *supra* note 92.

¹⁰² 1999 BFL, *supra* note 90, pt. I, § 3(4).

¹⁰³ 1999 BFL, *supra* note 90, ch. IV, pt. V, art. 19.

¹⁰⁴ *Id.* pt. I, § 1(1).

¹⁰⁵ *Id.* ch. IV, pt. IV, art. 16.

¹⁰⁶ *Id.* ch. V, pt. III, arts. 27, 28.

¹⁰⁷ *Id.* arts. 24, 25.

¹⁰⁸ *Id.* arts. 26-29.

¹⁰⁹ This phrase is not defined in the law.

¹¹⁰ 1999 BFL, *supra* note 90, ch. V, pt. III, art. 28, §1.

¹¹¹ *Id.* art. 33.

forest conservation.”¹¹² Usufruct license holders will only have to pay “*provis*,” which is not defined in the Law.¹¹³

Once the indigenous community has purchased a license to live on its land, Part V imposes many additional duties. Section 5(49) notes that “Forest licensees or owners are responsible for any forest fires on their lands.” Section 5(50) lays out a laundry list of forbidden activities: it is illegal to “clear forests”¹¹⁴ or to cut down trees less than 500 meters from a lakeside, 200 meters from a water source or river in a swampy area, 100 meters either side of a river bank, close to gorges or 130 times the difference between the highest and lowest tides on a beach.”¹¹⁵ “Close to gorges” is undefined, and it defies belief that any person without sophisticated tools could calculate “130 times the difference between the highest and lowest tides.” The section goes on to say that it is forbidden “to burn forests, to fell trees or harvest forest products without authorization . . . graze livestock in forests except where authorized . . . [or] remove any wild plants or animals from the forests without authorization.”¹¹⁶ The ban on burning forests is absolute, and seems to outlaw entirely the indigenous practice of swidden agriculture.

Part IX of the 1999 BFL, which specifically addresses indigenous peoples, likewise does nothing to “save” traditional agriculture:

As long as indigenous peoples still live in an area and their presence is recognized, they have the rights to: a) collect forest products (usufruct) to meet that community’s everyday needs; b) carry out forest management practices according to customary laws *which do not conflict with official legislation*; and c) receive reimbursement to improve their well-being (emphasis added).¹¹⁷

Perhaps the most disturbing new development in the 1999 BFL is Part XIII, which grants civilian forestry officials the right to carry out official investigations. These officials are authorized to:

¹¹² *Id.* art. 35.

¹¹³ Noted by DOWN TO EARTH, *supra* note 92, at 3.

¹¹⁴ The term for “clearing forests” is “*merambah*,” which is usually used by government officials to describe traditional indigenous practices. DOWN TO EARTH, *supra* note 92, at 8.

¹¹⁵ 1999 BFL, *supra* note 90, pt. V § 5(59).

¹¹⁶ *Id.* ch. V, pt. V, art. 50, §3.

¹¹⁷ *Id.* ch. IX, art. 67.

. . . investigate reports or stop [police] investigations on possible illegal activities relating to forests; . . . investigate suspects; check the identity cards of anyone in the forest; confiscate any timber, forest products or equipment that they suspect is being used illegally or could be used in evidence; and arrest and hold suspects in conjunction with the police.¹¹⁸

This provision is tailor-made for harassing indigenous peoples and for preventing police investigations of wealthy friends-of-the-government. The legal penalties for violating BFL provisions against felling trees, clearing forests, occupying forestlands, or carrying out unauthorized research or mining exploration and exploitation include a maximum sentence of ten years in prison and a fine of Rp5 billion (about \$600,000 U.S.), with no distinction between individuals and corporations.¹¹⁹ The fines are insignificant to large mining and timber corporations earning huge profits, but indigenous people are unlikely to see that many rupiah in a lifetime.

Thus, the 1999 BFL does little to improve the lot of indigenous peoples; indeed, the new forestry-officer policing provisions represent a substantial step back in the progress towards recognition of indigenous *adat* land rights.

C. *Spatial Planning Law (1992)*

The Basic Agrarian Law of 1960 called for a national spatial planning regime, but the government took another three decades before producing spatial planning legislation.¹²⁰ Obviously, land-use planning is going to be a nightmarish prospect in any nation with such a complicated and conflicted system of land law. The 1992 Spatial Planning Law ("SPL") applies to all land, sea and air space in Indonesia.¹²¹ The SPL is supposed to preserve spatial function, prevent negative environmental impacts, and integrate conflicting uses.¹²² Planning under this law is to be transparent and participatory.¹²³ However, such clarity seems difficult to ensure when

¹¹⁸ *Id.* ch. XIII, art. 77.

¹¹⁹ 1999 BFL, *supra* note 90, ch. XIV, art. 78.

¹²⁰ LAND POLICY INSTITUTE, SUPPORT FOR LONG TERM DEVELOPMENT OF LAND MANAGEMENT POLICIES FINANCED UNDER IBRD LOAN NO. 3792, http://www.landpolicy.org/pub/tc_3/Final.TC3.pdf (last visited June 4, 2001).

¹²¹ Spatial Planning Law, No. 24 (1992), art. 1 (Indon.) [hereinafter SPL].

¹²² UNITED NATIONS DEPARTMENT OF ECONOMIC & SOCIAL AFFAIRS, NATIONAL IMPLEMENTATION OF AGENDA 21—INDONESIA COUNTRY REPORT, at <http://www.un.org/esa/earthsummit/indon-cp.htm> (last updated Nov. 1, 1997).

¹²³ See SPL, *supra* note 121, ch. III, art. 4, § 2.

numerous competing governmental institutions play a role in land use planning at the national, provincial, and regional levels.

The SPL lays out the basic structure of spatial planning, but leaves all the details to further regulations. The law states that spatial plans are a guide for planning land-use at lower levels, integrating development among various government and societal sectors, and maximizing use of public and private sector investments.¹²⁴ These effects are to be brought about by issuing development location permits based on the plans.¹²⁵ Any building or activity permit issued in violation of the SPL is “null and void” according to Art. 26(1).¹²⁶ Article 26(2) provides for compensation to landowners for losses sustained due to reliance on an illegal permit that was acquired in good faith.¹²⁷ However, no actual mechanism has been set up for compensating landowners, and no such compensation has in fact been awarded.¹²⁸

Although the SPL theoretically applies to indigenous peoples’ forestlands, actual application of the law is difficult to foresee. The SPL is considerably more vague than the BFL and the BAL, and the legislature has lagged in writing the necessary supporting regulations.

D. *Transmigration*

The government-sponsored movement of people between Indonesia’s various islands is enabled by the above laws, which make most indigenous lands susceptible to appropriation. Transmigration has had a profound and tragic effect on indigenous peoples, while proving of little avail in relieving population pressure on Java and Bali. Bowing to external criticism as well as economic and political realities at home, the Indonesian government scaled back its support of transmigration beginning in mid-1997, and cancelled the program altogether in the summer of 2000.¹²⁹ Alarming, some officials in President Megawati Sukarnoputri’s government, established in July 2001, have begun to call for reinstatement of the transmigration program.¹³⁰

Between 1950 and 1990, Indonesia’s transmigration program moved approximately 4.5 million people, mainly from Java and Bali to the outer

¹²⁴ *Id.* ch. IV, pt. 1, art. 8, §§ 1, 2.

¹²⁵ *Id.* ch. V, art. 22.

¹²⁶ *Id.* ch. VI, art. 26, § 1.

¹²⁷ SPL, *supra* note 121, art. 26(2).

¹²⁸ LAND POLICY INSTITUTE, *supra* note 120.

¹²⁹ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. STATE DEP’T, *supra* note 8.

¹³⁰ Conversation with Michelle Ruetschle, Staff Attorney and Indonesia Program Manager, Rural Development Institute, in Seattle, Wash. (Sept. 27, 2001).

islands.¹³¹ The program has provided a marginally better life for the people who move, but at a terrible price. The new settlers are not used to the low-intensity agriculture necessary for sustainable yields in the poor tropical soil of the outer islands.¹³² They employ instead the intensive farming techniques prevalent on Java and Bali, quickly depleting the nutrients of the forestland soils.¹³³ Often the transmigrants clear-cut vast swaths of jungle both to make room for their new homesteads and plantations, and to provide a source of immediate income.¹³⁴ This practice destroys habitat for numerous endangered species, including orangutans, proboscis monkeys, and the freshwater Mahakam porpoise.¹³⁵ Transmigrants do not allowed the land to lie fallow; this overuse means that new plots must be slashed from the forest every two to three years.¹³⁶

In addition to ravishing the environment and imperiling listed endangered species, the transmigrants utterly disrupt the lifestyle and livelihood of the indigenous peoples. Many tribespeople rely entirely on the land for their livelihood: planting crops, hunting wild animals, and gathering medicinal plants from the forest. They also carefully plant and tend beneficial trees and shrubs within the forest.¹³⁷ To the eyes of an outsider, these untilled fields and "feral" trees simply look like every other part of the forest: open land, ripe for settlement.¹³⁸ Trouble erupts when forest peoples return to a traditional agricultural area after time away, only to find that transmigrants have moved in and clearcut the entire area.¹³⁹ Sometimes, when clearcuts slice across their trails and obliterate all

¹³¹ REPUBLIC OF INDONESIA, DEP'T OF TRANSMIGRATION, *TRANSMIGRATION: OUR PEOPLE, OUR LAND, OUR FUTURE 1* (1991).

¹³² The Soil Research Institute of Bogor, Indonesia conducted a soil survey of the Outer Islands in 1975, and concluded that less than 1% of the land was "unconditionally suitable for cultivation," 68% was "conditionally suitable," and 31% absolutely unsuitable for cultivation. DONNER, *supra* note 16, at 190.

¹³³ Erwin Adriawan & Sandra Moniaga, *Salvaging the East Kalimantan Forest*, INDONESIA ISSUES—BUSINESS AND ECONOMY SUPPLEMENT, No. 19, Dec. 1986, at 4, in INDONESIA PUBLICATIONS, BRIEFING BOOK: TRANSMIGRATION, THE ENVIRONMENT, AND INDIGENOUS PEOPLES (1991).

¹³⁴ Letter from the Environmental Defense Fund, et al., to Barber B. Conable, President, World Bank (Jan. 13, 1990), reprinted in INDONESIA ISSUES, No. 13, Jan. 1990, at 4, in INDONESIA PUBLICATIONS, BRIEFING BOOK: TRANSMIGRATION, THE ENVIRONMENT, AND INDIGENOUS PEOPLES (1991).

¹³⁵ GUNAWAN ET AL., *supra* note 16, at 27.

¹³⁶ LUBIS, *supra* note 13.

¹³⁷ NANCY LEE PELUSO, COMMUNITY FORESTRY CASE STUDY 8: THE IMPACT OF SOCIAL AND ENVIRONMENTAL CHANGE ON FOREST MANAGEMENT: A CASE STUDY FROM WEST KALIMANTAN, INDONESIA, at <http://www.fao.org/forestry/FON/FONP/cfu/pub/en/cs/cs08/cs0802-e.stm#1.2.4> (last visited Oct. 11, 2001).

¹³⁸ *Id.*

¹³⁹ See generally MADHUR GAUTAM ET AL., THE CHALLENGES OF WORLD BANK INVOLVEMENT IN FORESTS: AN EVALUATION OF INDONESIA'S FORESTS AND WORLD BANK ASSISTANCE (2000), at [http://wbln0018.worldbank.org/oed/oedevent.nsf/ed4948fef33f9a9852567eb00080300/e9d668ab76f6fa7d852568b10059b820/\\$FILE/Indonesia.pdf](http://wbln0018.worldbank.org/oed/oedevent.nsf/ed4948fef33f9a9852567eb00080300/e9d668ab76f6fa7d852568b10059b820/$FILE/Indonesia.pdf).

landmarks, the indigenous people are unable to even find their homes. The World Bank itself, which provided major funding for the Transmigration Program,¹⁴⁰ was forced to concede: “Probably no single transmigration site, treecrop area, logging concession, or industrial timber plantation has caused a loss of forest or biodiversity that is significant at the national level. But when they are viewed in combination, their serious impact can be appreciated.”¹⁴¹ The Bank also acknowledges that “[t]ransmigration had a major negative and probably irreversible impact on indigenous people . . . [who] have been (and are being) displaced.”¹⁴²

In addition to the severe negative effects transmigration has had on indigenous peoples, it has caused trouble for the transmigrants themselves. For example, developers with ties to the government or the security forces have been accused of forcing people into transmigration in order to take valuable land on their home islands from them.¹⁴³ Furthermore, transmigrants often face harsh and unsanitary conditions in the transmigration camps.¹⁴⁴ Finally, the transmigrants are sometimes forced to bear the fury of displaced indigenous peoples.

VI. RESULT—VIOLENT LAND DISPUTES

*Land, forests, and rivers, are the three most important elements of nature that make it possible for us to be Dayak. Forming the basis of our biological as well as our spiritual life, determining the virtue and value of our people, these elements over thousands of years have nurtured the evolution of our identity, our culture and, our belief system. Without our land, forests and rivers, our culture would die, for our traditional ceremonies, rituals, and beliefs are all embedded in nature. The disintegration of our cultural life begins with the refusal to recognize the cultural functions of forests and rivers to the Dayak people, when forests are merely seen as “green gold” which should be exploited.*¹⁴⁵

¹⁴⁰ As of 1993, the World Bank and the Asian Development Bank together had provided US \$1.4 billion for the Transmigration Program. DOWN TO EARTH, INDONESIA’S TRANSMIGRATION PROGRAMME—AN UPDATE (M. Adriana Sri Adhiati & Armin Bobsien eds., 2001), at <http://www.gn.apc.org/dte/ctrans.htm>.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ CHANDRA KIRANA, BEYOND GIS APPLICATION: ADAT REVITALIZATION, EMPOWERED COMMUNITIES AND IMPROVED NATURAL RESOURCE MANAGEMENT PRACTICES IN WEST KALIMANTAN,

Indigenous peoples such as the Dayak have little power in Indonesia. They see the government taking their homelands and granting them to forestry or mining conglomerates, or turning them into settlements for transmigrants. Not surprisingly, the Dayaks' anger and frustration is usually vented on the people they can reach: not the government officials in Jakarta, but the transmigrants themselves. During the last decade alone, the Dayak and their allies have massaced several thousand transmigrants, mostly from the island of Madura.¹⁴⁶ Possibly one hundred thousand more have fled Kalimantan in fear.

Rather than working toward a solution to the underlying cultural, environmental, and economic problems, the government has concentrated its resources on putting out the fire of ethnic clashes. The worst clash in recent history took place in Sampit, Central Kalimantan in 1997.¹⁴⁷ Angry Dayaks, claiming that the Madurese immigrants had stolen their land and their livelihoods, went on a two-month long rampage of house-burning, looting, and brutal killing.¹⁴⁸ Madurese men, women, and children were hacked to death with knives and machetes; others were burned with the buildings in which they sought shelter.¹⁴⁹ Many sources echoed claims that the Dayak had reverted to their ancient war-practices of headhunting and ritual cannibalism; certainly, headless bodies were discovered piled in the streets of Sampit.¹⁵⁰ In all, the 1997 violence claimed an estimated 3,000 lives, mostly Madurese.¹⁵¹ As many as 80,000 Madurese refugees fled the island for an uncertain welcome in Java or Madura.¹⁵² Most of the refugee families had lived on Kalimantan for at least thirty years; overcrowded little Madura is not really home to them.¹⁵³ Still, an awkward reunion with their island of

available at <http://www.bsp-kemala.or.id/stories3.htm> (last modified Nov. 30, 2000) (quoting Dayak activist John Bamba).

¹⁴⁶ Madura is a small island, just east of Java, separated from the bigger island by a narrow strait.

¹⁴⁷ Press Release, Human Rights Watch International, Indonesia: The Violence in Central Kalimantan (Borneo), Feb. 28, 2001, at <http://www.hrw.org/background/asia/borneo0228.htm>.

¹⁴⁸ HUMAN RIGHTS WATCH INTERNATIONAL, COMMUNAL VIOLENCE IN WEST KALIMANTAN (1997), at http://www.hrw.org/reports/1997/wkali/Brneo97d-01.htm#P38_743/ (last visited, Oct. 11, 2001).

¹⁴⁹ HUMAN RIGHTS WATCH INTERNATIONAL, COMMUNAL VIOLENCE IN WEST KALIMANTAN: THE SECOND PHASE: JANUARY 28 TO FEBRUARY 18, 1997 (1997), at http://www.hrw.org/reports/1997/wkali/Brneo97d-04.htm#P289_62719 (last visited Oct. 11, 2001).

¹⁵⁰ *Id.*

¹⁵¹ Eriko Unchida, *Anti-Transmigrant Violence in Indonesian Borneo Continues in April 2001* (Apr. 24, 2001), at <http://www.geocities.com/aroki.geo/0105/INA-borneo0104.html>. See also *Megawati to Visit Strife-Torn Province* (Mar. 1, 2001), at <http://www8.cnn.com/2001/WORLD/asiapcf/southeast/02/28/indonesia.policeorder.03/index.html>.

¹⁵² Unchida, *supra* note 151.

¹⁵³ *Megawati Tours Troubled Province*, (Mar. 1, 2001), at <http://asia.cnn.com/2001/WORLD/asiapcf/southeast/03/01/indonesia.kalimantan.02/index.html>.

origin was preferable to death by Dayak machete. Some analysts suggest that the economic downturn of 1997 squeezed the already impoverished Dayak, and turned their simmering resentment of the newcomers into violent action.¹⁵⁴ This bloodbath would not be the last time that the tragedy inflicted on the Dayak turned to tragedy for the Madurese.

Violence flared again in March 1999 in the Sambas region of West Kalimantan. The Dayaks killed at least 200 Madurese,¹⁵⁵ and 12,000¹⁵⁶ to 35,000¹⁵⁷ people became refugees, fleeing either to Pontianak, the provincial capital of Central Kalimantan, or Java. The scene was absolutely gruesome; news reporters told of being offered bits of human liver, and they photographed a man chewing on a severed foot.¹⁵⁸ This time, ethnic Malays joined the Dayaks in the carnage.¹⁵⁹ Malays too resent their perceived economic displacement, which they blame on the Madurese.¹⁶⁰ The Indonesian government responded by sending in 745 soldiers to join the 2,000 normally stationed in West Kalimantan.¹⁶¹ Yet another round of killings broke out in the spring of 2001. More than 500 Madurese were killed this time,¹⁶² and an additional 24,000 made homeless.¹⁶³

How can the Dayaks justify inflicting these horrible cruelties on the Madurese, who were brought to Kalimantan by the government's promise of a better life? Without a doubt, political and economic inequalities are the primary causes of the violence. In major part, the brutality springs out of the Dayaks' feeling of powerlessness in the face of losing their traditional homelands.¹⁶⁴ As one Dayak man said, "Dayaks can only listen to the sound of chainsaws."¹⁶⁵ Furthermore, the Dayak believe that the government

¹⁵⁴ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. STATE DEP'T, *supra* note 8.

¹⁵⁵ *Anti-Madurese Violence Flares Again on Kalimantan* (Mar. 17, 1999), at <http://www.cnn.com/WORLD/asiapcf/9903/21/indonesia.borneo/index.html>. See also Norwegian Refugee Council, *Ethnic Violence and Displacement in West Kalimantan*, at <http://www.db.idpproject.org/Sites/idpSurvey.nsf/> (last visited June 5, 2001).

¹⁵⁶ Jose Manuel Tesoro, *And the Killing Goes On: Hatred and Blood Sweep West Kalimantan as Another Part of Indonesia Explodes*, ASIaweek.COM, Aug. 31, 1999, at <http://www.asiaweek.com/asiaweek/99/0402/nat6.html>.

¹⁵⁷ Norwegian Refugee Council, *supra* note 155.

¹⁵⁸ Tesoro, *supra* note 156.

¹⁵⁹ *Scores Dead in Borneo After Week of Tribal Violence*, CNN.COM, Mar. 22, 1999, at <http://www.cnn.com/WORLD/asiapcf/9903/22/indonesia.deaths/>.

¹⁶⁰ *Id.*

¹⁶¹ Tesoro, *supra* note 156.

¹⁶² Unchida, *supra* note 151.

¹⁶³ Press Release, *supra* note 147.

¹⁶⁴ See, e.g., *Inside Indonesia, West Kalimantan at a Glance*, at <http://www.insideindonesia.org/edit51/hrw1.htm> (last visited June 5, 2001).

¹⁶⁵ *Id.*

subsidies to the transmigrants are discriminatory.¹⁶⁶ Many Madurese make their living by working for timber and mining companies on Kalimantan; their connection to the large-scale despoilers of Dayak traditional lands does little to endear them to the Dayaks.¹⁶⁷ When desperate Dayaks themselves take jobs with the timber companies, however, they are treated very poorly, even reduced to bonded laborers: "According to the ILO, on at least one project, a logging company established a company store in a remote area, where (Dayak) workers had to purchase necessities at inflated prices."¹⁶⁸ The workers were forced to use IOUs representing future earnings to pay for the goods, resulting in the turning of "once independent and relatively well-off farmers into impoverished bonded laborers trapped in an ever-mounting cycle of debt."¹⁶⁹ When the situation is this bleak, it is no wonder that the Dayaks lash out at the most visible target present—the transmigrants who came in with the timber interests.

Cultural differences exacerbate the political and economic tensions. For example, some Dayaks point out that the Madurese are ethnically related to the rulers in Jakarta.¹⁷⁰ Thus, the conflict takes on "an ethnic component when the dominant ethnic group represented by the government happen[s] to be in conflict with the local indigenous population."¹⁷¹ In a sense, then, these Dayaks feel that they *are* in fact striking out at the central government by killing the Madurese. A religious component is present as well. Madurese are devotedly Moslem.¹⁷² Dayak, on the other hand, are predominantly Christian with animist beliefs retained from precolonial times.¹⁷³ Madurese often complain that Dayak are "unclean" because pork, forbidden by the Koran, is a staple of the Dayak diet.¹⁷⁴ The combination of economic exploitation, environmental degradation, and cultural incompatibility on Kalimantan makes violence inevitable.

¹⁶⁶ See, e.g., Chris Wilson, *Internal Conflict in Indonesia: Causes, Symptoms and Sustainable Resolution* (2001), at <http://www.aph.gov.au/library/pubs/rp/2001-02/02RP01.htm>.

¹⁶⁷ Sinapan Samyodorai, Asian Human Rights Commission, *The Killing Fields of West Kalimantan*, 7 AHRC PUBLICATIONS, No. 2, Apr.-July 1997, at http://www.ahrchk.net/solidarity/199704/v74_06.htm.

¹⁶⁸ BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. STATE DEP'T, *supra* note 8.

¹⁶⁹ *Id.*

¹⁷⁰ SIDNEY JONES, CAUSES OF CONFLICT IN INDONESIA: EXCERPTS FROM ASIA SOCIETY PANEL DISCUSSION (2000), at <http://www.asiasource.org/asip/sidneyjones.cfm>.

¹⁷¹ *Id.*

¹⁷² HUMAN RIGHTS WATCH INTERNATIONAL, *supra* note 148.

¹⁷³ GUNAWAN ET AL., *supra* note 16, at 24.

¹⁷⁴ See, e.g., Eriko Unchida, *Ethnic Cleansing Leaves More Than 260 Dead on the Indonesian Side of Borneo* (Apr. 1999), at http://www.geocities.com/TheTropics/Cove/4232/9904/INA-Borneo_clashes.html.

VII. POSSIBLE SOLUTIONS: LEGAL AND EXTRALEGAL

Clearly, the present state of affairs on the islands of the Indonesian archipelago is untenable. The indigenous people are in danger of losing their land, livelihood, and culture because of natural resources exploitation and the residual effects of a century of transmigration. The transmigrants are in danger of meeting an unpleasant end on the blade of an indigenous person's knife. The government, too, is in danger of losing its grip on all of the restive outer islands, with their non-Javanese inhabitants.¹⁷⁵ The basic problem of uneven land distribution has spun into a morass of political, economic, and cultural clashes.

Any attempt to mitigate the situation in Kalimantan and the other affected areas of Indonesia will take considerable time, skill, dedication, and finesse. However, there are measures that should be taken as initial steps to begin the long-term cure of Indonesian land law and policy. Some of these measures are already being initiated by various Indonesian or multinational organizations—others are still in the planning stage. All of them are important to the future well being of the indigenous peoples (and other peoples, as well) of the archipelago.

A. *Adequate Titling Mechanism for Adat Lands and Land-Use Rights*

Titling *adat* lands in compliance with the BAL would force the Indonesian government to accord appropriate respect to indigenous peoples' rights in their traditional lands. Several NGOs are currently at work in Indonesia, using participatory mapping and Geographic Information System ("GIS") application to perfect *adat* communities' claim on their land.¹⁷⁶ The NGOs help to record indigenous communities' traditions concerning the location and function of different tribal lands, using modern surveying techniques.¹⁷⁷ While this method is promising and has resulted in strengthened land rights for a number of communities, the piecemeal nature of its application has thus far limited its efficacy. Though it is sensible to begin with contested areas, participatory mapping of all *adat* lands is needed to preserve the rights of indigenous peoples throughout Indonesia.

¹⁷⁵ The recent successful independence drive in East Timor is one case in point, as are the currently active independence movements in Aceh and Irian Jaya.

¹⁷⁶ One good example is Pancur Kasih, a Pontianak, Indonesia-based NGO working with local Dayak communities to map their lands. See <http://www.bsp-kemala.or.id/pansurkasih.htm> (last visited June 5, 2001).

¹⁷⁷ *Id.*

B. National Laws that Respect and Enforce Adat Law

Indonesian law purports to respect *adat* law, while gutting it in actual practice. The best method of securing indigenous peoples' traditional rights, for this generation and future ones as well, is to implement national laws that respect and enforce the systems of *adat*.

Unfortunately, the Indonesian government is unlikely to independently choose this course of action. The government has a history of exploiting the remote regions of the country for the profit of Java and Bali. In addition, the government traditionally has little respect for indigenous cultures. As demonstrated by the failure of academics and NGOs to significantly influence the 1999 version of the Basic Forestry Law, outside interests tend to have little impact on the direction of Indonesian legislation. Nonetheless, the best hope for significant legislative reform in favor of *adat* rights is continued and increasing pressure from international and Indonesian NGOs and scholars. The entire world has an interest in seeing the terrible conflicts in Indonesia settled, and future bloodshed avoided.

C. Develop Reasonable Alternative Employment Opportunities for Residents of Java, Madura and Bali

Although the official transmigration program has ended, at least for the time being, immigrants from Java, Madura, and Bali continue to move to the outer islands to seek employment opportunities.¹⁷⁸ These latter-day transmigrants get none of the financial support received by earlier settlers from the government, but must deal with the local resentment and environmental degradation created by their predecessors.¹⁷⁹ Urban development, whether by micro-loans for small business start-ups, training in high tech growth industries, or even subsidized university tuition could help provide potential transmigrants with alternatives to leaving home. Such programs would reduce pressure both on the indigenous peoples and the Javanese migrants.

D. Legal Aid for Indigenous Peoples

Most rural people in Indonesia have little access to legal advice and assistance. In the mid-1980s, the Indonesian Bar Association found that more than half of the country's 3,500 practicing lawyers had offices in

¹⁷⁸ DOWN TO EARTH, *supra* note 140.

¹⁷⁹ *Id.*

Jakarta, with the rest distributed among the other large cities.¹⁸⁰ Accessibility is further complicated by the fact that rural Indonesians tend to distrust any city lawyers with whom they come in contact, and turn instead to "bush lawyers" for legal advice.¹⁸¹ Although bush lawyers are allowed to practice in court, they often lack the training and competence to handle complex and difficult litigation over major issues of indigenous peoples' land rights.¹⁸² Similarly, another stumbling block is the indigenous peoples' distrust of the court system, which is alien to their tradition of settling disputes through consultation and consensus.¹⁸³ Ethnographer Von Vollenhoven found early in the twentieth century that "the mediatory efforts by Adat heads . . . are a hundred times more frequent (and therefore so much more important) than the dispensation of justice in the strict sense of the resolution of disputes by judicial authorities whose word is law."¹⁸⁴ Nevertheless, *adat* rights are being challenged by a westernized government system, and they must be defended within that same system. In order to prevail in the national courts, and protect their rights in the modern Indonesian setting, indigenous peoples need access to trustworthy, caring, and well-trained legal aid workers.

E. National and International Lobbying and Awareness Campaigns for Indigenous Peoples' Rights

The method most likely to persuade the Indonesian government to respect and sustain *adat* rights is to bring both internal and external public pressure to bear on the issue. Citizens of western countries generally are only exposed to the gruesome "six o'clock news" version of events in Indonesia; they never hear of the real issues behind the violence. The indigenous peoples need advocates in the West to tell their side of the story, and convince international organizations to take up the defense of *adat* with the Indonesian government. At home, too, the indigenous peoples need to have their voice heard. Lobbying the government directly is very important, but public awareness campaigns are also needed to tell the other ethnic groups on the archipelago exactly what is at stake for the Dayak and all of Indonesia's indigenous cultures. In a sense, the *adat* communities must take their own conflict-resolution method international: present their case to the

¹⁸⁰ LUBIS, *supra* note 13, at 15.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ VON VOLLENHOVEN ON INDONESIAN ADAT LAW 226 (J.F. Holleman ed., 1981).

people of Indonesia and the world to start a global dialogue aimed at preserving their rights, their culture, and their land.

VIII. CONCLUSION

The land laws and policies of the Indonesian government lead directly to despair and violence for the displaced indigenous peoples of the outer islands. At present, the only alternatives apparent to most indigenous communities are either to give in and acquiesce in the destruction of their way of life, or to take up the machete against the most convenient targets—the transmigrants in their midst. The Indonesian government, the indigenous peoples, and the community of world governments need to come together to solve the root problems of landlessness, land expropriation, and exploitation. Otherwise, people around the world will continue to open their morning papers and find “500 Dead in Renewed Ethnic Violence . . .”; “Kalimantan Explodes Again . . .”; and “Headhunters’ Gruesome Attack on Ethnic Rivals.”

