



# PLANTING THE FOREST AT THE ROOT OF THE EU-INDONESIA TRADE RELATIONSHIP

HUMAN RIGHTS, BIODIVERSITY  
AND FORESTS:  
THE CORNERSTONES OF A 21ST CENTURY  
FREE TRADE AGREEMENT

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## Executive Summary

The EU opened trade talks for a Comprehensive Economic Partnership Agreement (CEPA) with Indonesia in 2016. Europe and Indonesia both have clear objectives for the trade deal, from increased sales in machinery and transport equipment, to raw materials such as palm oil. Palm oil is a key strategic interest for the Indonesian government.<sup>i</sup> This report outlines how trade liberalisation may lead to some unintended, but avoidable consequences for natural resources, notably forests and timber; biodiversity; and human rights of Indigenous Peoples.<sup>ii</sup>

Forest protection has been called for in both the international arena and some key Member States, however meaningful action at the EU level is still missing. Both the European Parliament and the Council instructed<sup>iii</sup> the Commission to develop a deforestation and forest degradation Action Plan.<sup>iv</sup> A number of Member States are demanding action to halt deforestation.<sup>v</sup> With France specifically adopting a deforestation strategy in November 2018.<sup>vi</sup>

The EU is committed to keeping global temperature well below 2°C above pre-industrial levels in line with the Paris Climate Agreement.<sup>vii</sup> Forest destruction is responsible for roughly 12% of global CO<sub>2</sub> emissions.<sup>viii</sup> There are direct links between trade and deforestation.<sup>ix</sup> A recent study links tropical deforestation to the production and trade of four commodities: palm oil, soy, wood products, and beef.<sup>x</sup> Forest conversion for production of commodities requires soil-drainage and exposing the peat to oxygen leading to decomposition and the release of CO<sub>2</sub>. Peat drainage in South East Asia represents around 2% of global greenhouse gas emissions.<sup>xi</sup>

The EU is negotiating a number of trade agreements with countries that are linked to deforestation issues - Indonesia, but also Brazil, Malaysia and Argentina.<sup>xii</sup> This report sets out a number of key recommendations for policy makers to take responsibility and address the risk of trade as a driver of deforestation in Indonesia.<sup>xiii</sup> The EU can take measures through a Free Trade Agreement (FTA), or by implementing new EU legislation.

# Key demands

## Forest policies<sup>xiv</sup>

1. Forests and community tenure rights should be identified as priority areas by the EU and Indonesia during the CEPA negotiations and discussed in an open, inclusive and transparent process with local civil society organisations, and community representatives.
2. The EU and Indonesia should develop and adopt roadmaps to halt illegal and unsustainable palm oil trade, and improve forest governance. Lessons can be learned from the EU's ongoing efforts to fight the illegal timber trade.
3. The EU-Indonesia CEPA should include binding and enforceable provisions to control deforestation and respect customary tenure rights.

## Palm oil in biofuel

1. The Commission should in no way allow any undermining of the EU REDII decisions through any current or future trade agreement and its negotiation.
2. Crop-based biofuels made with palm oil should not be recognised or defined by DG Trade as renewable energy in an FTA, as they do not achieve any GHG savings (they actually increase emissions) when taking into account ILUC emissions.
3. DG Trade can under no circumstances develop market access conditions for vegetable oils for biofuels, specifically palm oil, in CEPA's Trade and Sustainable Development (TSD) chapter.

## Biodiversity

1. The CEPA TSD chapter must explicitly mention the need to better enforce wildlife-related regulations, as well as laws protecting the habitats of endangered species, by producing a concrete action plan. There must be full commitment to a zero-tolerance policy on wildlife-related crime.
2. The EU and Indonesia must establish and adopt laws to reduce the occurrence of species-laundering (the trade of an animal caught in the wild but presented as bred in captivity) and improve the welfare of confiscated and captive-bred animals.
3. The EU needs to allocate sufficient resources for the implementation of the TSD chapter, allowing for work to take place at the level of the parties but also to strengthen Indonesian civil society. Eventually, none can better defend their animals and their environment.

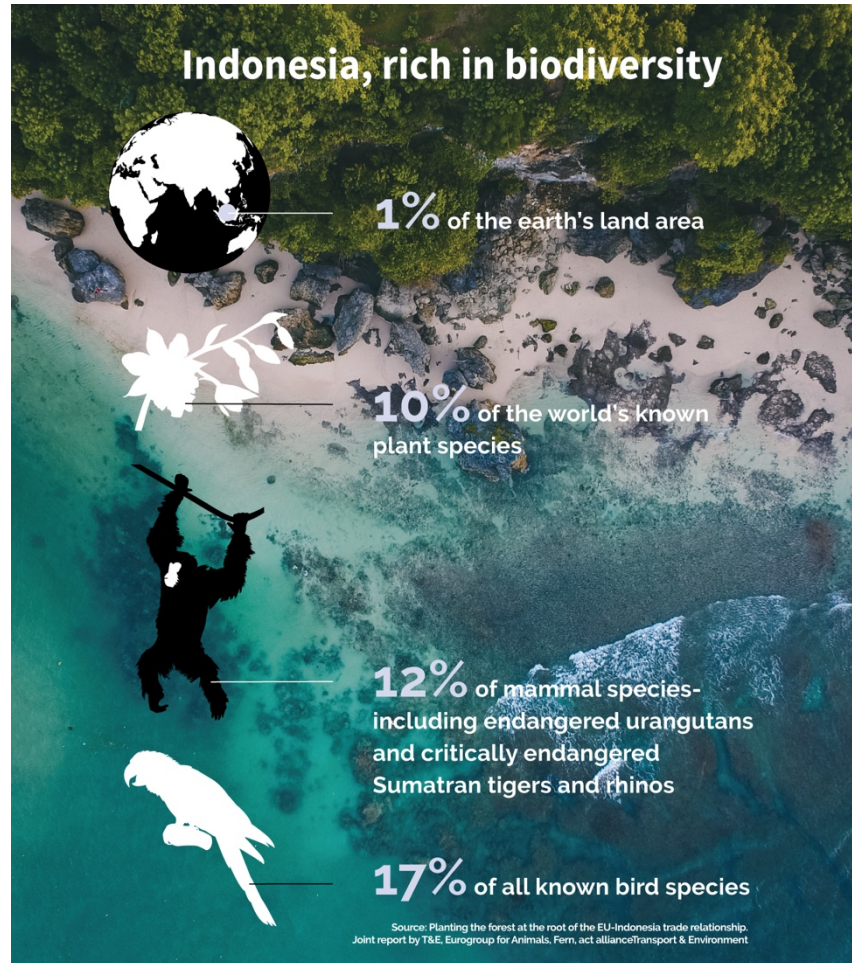
## Land-Grabbing

1. Insist on the implementation of all relevant treaties in return for market access: conventions and legal instruments in line with the European Parliament resolution on violation of rights of Indigenous Peoples. This involves the 1989 Indigenous and Tribal Peoples Convention (ILO No 169), and 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
2. Set up a grievance mechanism that is accessible to the Domestic Advisory Group, whereby Indigenous and local communities can lodge complaints and access remedies regarding violations and abuses of their rights resulting from EU-based business activities.
3. Call on the EU to fulfil its extraterritorial duties related to human rights and encourage the Commission to consider an effective mechanism on due diligence obligations for companies, including access to justice and remedies.

# 1. Introduction

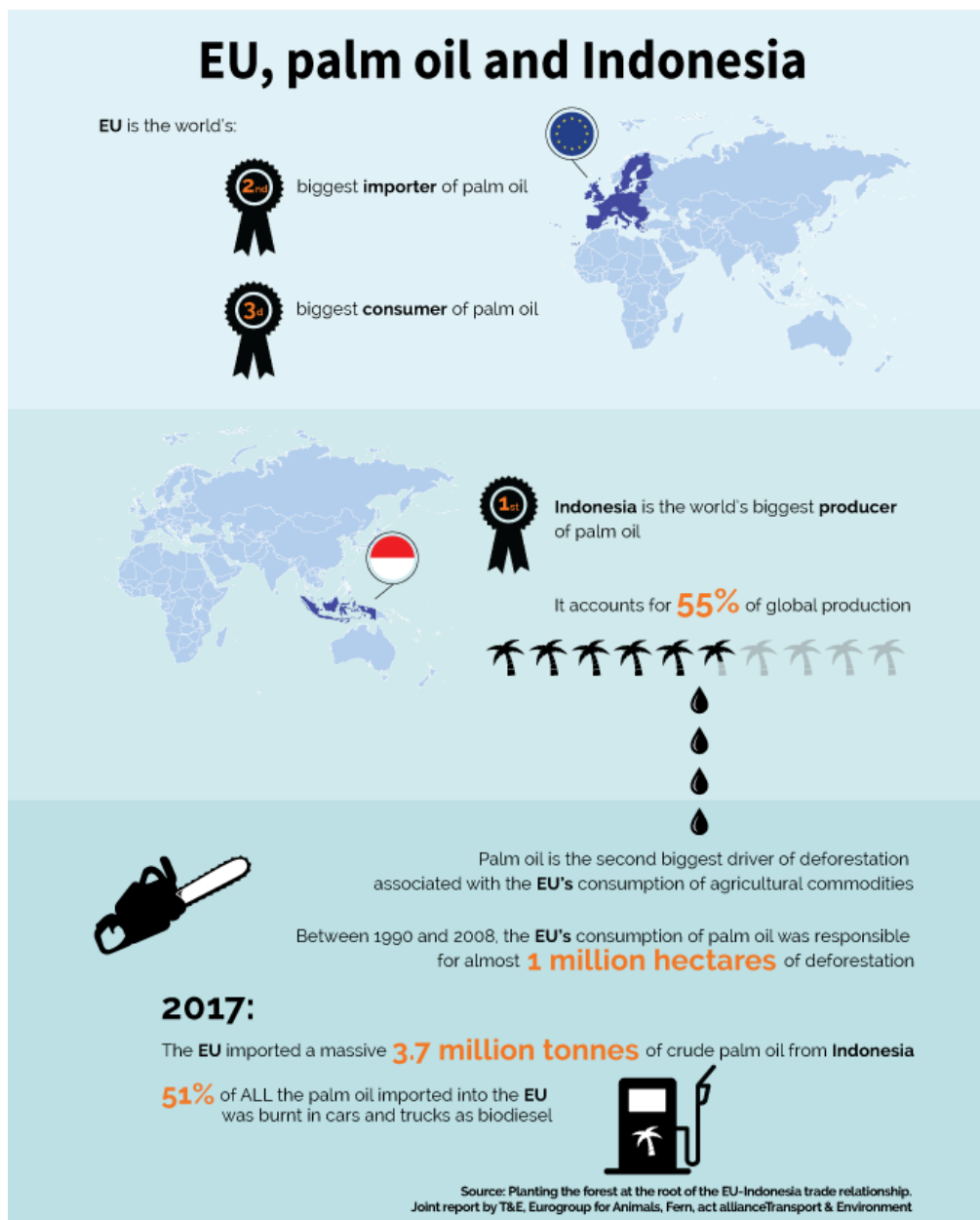
In 2016 the EU opened trade talks for a Comprehensive Economic Partnership Agreement (CEPA) with Indonesia, to date six negotiating rounds have taken place. Both have clear objectives for the trade deal: the EU wants to sell machinery and transport equipment; Indonesia wants to sell raw materials, principally palm oil.<sup>xviii</sup> Beyond increasing trade in those sectors, other key economic areas will be stimulated by trade liberalisation, which may increase stress on natural resources.<sup>xix</sup>

By ratifying the Paris Climate Agreement, the EU committed to keeping global temperature well below 2°C above pre-industrial levels.<sup>xx</sup> Forest destruction is responsible for roughly 12% of global CO<sub>2</sub> emissions.<sup>xxi</sup> Living forests are also an essential, proven way to capture and store carbon. Unless forest loss is halted, the world will fail to meet the Paris Agreement. With just 1% of the earth's land area, Indonesia's rainforests contain 10% of the world's known plant species, 12% of mammal species – including endangered orangutans and critically endangered Sumatran tigers and rhinos – and 17% of all known bird species.<sup>xxii</sup>



There are direct links between trade and deforestation.<sup>xxiii</sup> A recent study links tropical deforestation to the production and trade of four commodities: palm oil, soy, wood products, and beef.<sup>xxiv</sup> Between 1990 and 2008, the EU's consumption of palm oil was responsible for 0.97 million hectares (Mha) of deforestation. After soy, palm oil is the second biggest driver of deforestation associated with the EU's consumption of agricultural commodities.<sup>xxv</sup> Indonesia is the largest producer of palm oil in the world accounting for 55% of global production.<sup>xxvi</sup> In 2017, the EU imported a massive 3.7 million tonnes of crude palm oil from Indonesia,<sup>xxvii</sup> making it the

2nd biggest importer and 3rd biggest consumer of palm oil globally. <sup>xxviii</sup> Now we can see why palm oil is the cornerstone for EU-Indonesia trade negotiations.



This report will first address concerns linked to deforestation. It will then turn to biofuels, the main driver of deforestation in Indonesia, and to the wider implications of this false market. The report will look into two issues impacted by deforestation: biodiversity loss and land-grabbing. There is a significant risk that CEPA will lead to infrastructure development, mining, palm oil, and timber extraction at the expense of local peoples to use, access and own land and forest resources.

## 2. Illegal and unsustainable deforestation

By signing up to the Sustainable Development Goals (SDGs), the EU committed to promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally by 2020.<sup>xxxix</sup> The EU also signed up to the New York Declaration on Forests to eliminate deforestation from agricultural supply chains,<sup>xxx</sup> and the Bonn challenge to restore 350 million ha of deforested and degraded land by 2030.<sup>xxxi</sup>

In 2015, Fern found that at least 80% of Indonesian timber and palm oil plantations are illegal. Most palm plantations either have licences with questionable legality or have none at all. The issuing of licenses is plagued with widespread high-level corruption. Most of the USD 100 million assets recovered by the Indonesian corruption eradication commission to date has come from illegal forest conversion cases. Only 11% of Indonesia's official 'forest zone' has been formally gazetted as required by law, calling into question the legality of licences issued for plantation development in the remaining area. A 2013 court judgment ruled that customary forests of Indigenous Peoples should not be classified as 'state forest', raising doubt into the legality of plantation licences issued over such forests.<sup>xxxii</sup>

Forest protection must go hand in hand with respect for human rights, including the rights of local communities, who own most of the world's forest land under customary law (see section on land-grabbing). The rich Indonesian biodiversity, most of which is endemic, is a world treasure.

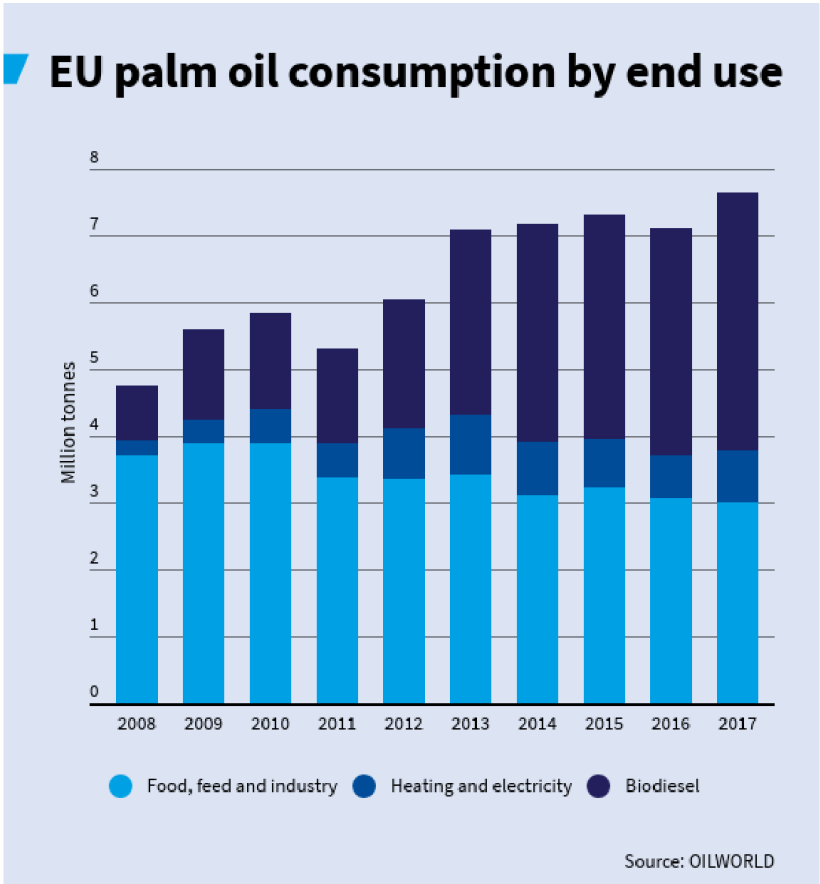
Various products, and thus industries, are linked to deforestation, but the main ones, recognised by most stakeholders as key "drivers" of deforestation are palm oil, beef, soy and timber.<sup>xxxiii</sup> In Indonesia, out of these four, palm oil takes the lead.

## 3. Palm oil in biofuels

The business case for making biodiesel from palm oil with the pretension of decarbonising transport is entirely driven by national climate policy called biodiesel mandates. These mandates are in place in countries including Columbia and Indonesia. In Europe, the ever-increasing demand for palm oil in diesel has been fueled by the Renewable Energy Directive (RED), adopted in 2009. The RED's obligation on Member states to reach 10% renewable energy in transport has been met mostly through biofuels, including from cheap palm oil. Its use to make biofuel has steadily increased from 825,000 tonnes in 2008 to 3.9 million tonnes in 2017.<sup>xxxiv</sup> The palm oil biofuels market was created entirely by the 2009 RED. The greenhouse gas emissions (GHG) linked to Indirect Land Use Change (ILUC), which occurs when land is used for growing crops, like palm oil, for biofuels, can lead to higher GHG emissions than fossil fuels. According to the Globiom study for the European Commission, palm oil biodiesel

produces three times more emissions than regular diesel.<sup>xxxv</sup> Recognising the problem, the EU reformed the RED. The REDII now ends the binding EU target for food-based biofuels after 2020 and phases out the accounting of high emitting biofuels as renewable transport fuels by 2030 at the latest. The Commission will present a methodology to detail what type of biofuels will be subject to this phase out and operationalise it by 1 February 2019.<sup>xxxvi</sup>

Certain parts of the Commission, under pressure from ongoing negotiations with Indonesia, may not be comfortable with part of the REDII reform and its link to palm oil.<sup>xxxvii</sup> There is a concern that the delegated act will be weakened and will undermine the implementation of a palm-soybean oil diesel phase out, using the negotiations with Indonesia as a pretext. There is a precedent for this, the Commission’s trade negotiations with Canada (CETA) and the US (TTIP) were instrumental in weakening the fuel quality directive (FQD).<sup>xxxviii</sup>



It is important to emphasise that the REDII only applies to the accounting of palm oil towards the target for renewables in transport fuel and the heating sector. But palm oil has different uses outside of transport. Non-fuel palm oil, i.e. food, cosmetics, chemical applications are excluded from the scope of the law. One key difference between food and non-food uses is that the market for palm oil diesel is a completely artificial one. In other words, it would not exist without biofuel mandates.



Certification schemes like the Roundtable on Sustainable Palm Oil (RSPO) and Indonesian Sustainable Palm Oil (ISPO) are being considered within the negotiations, attempting to ensure that only sustainable palm oil is traded. This is not going to solve the sustainability problem of palm oil diesel. When crops are used for biofuels, sustainability criteria and certification do not prevent leakages such as Indirect Land Use Change (ILUC)<sup>xxxix</sup>. In addition, The European Court of Auditors (ECA), stated that the European Commission voluntary certification scheme for the sustainability of biofuels was 'not fully reliable... did not adequately cover some important aspects necessary to ensure the sustainability of biofuels'.<sup>xi</sup> Crucially, the impact of ILUC emissions on sustainability are not being considered, the ECA said. Certification schemes should not be included within the negotiations as a cloak to greenwash the biofuels industry. Regarding non-energy use of palm oil, numerous international companies have pledged to provide deforestation-free commodities, working closely with civil society and governments to define both terminology and practice.<sup>xii</sup> These efforts have not resulted in a clear and endorsed framework for deforestation-free supply chains.<sup>xiii</sup>

## 4. Collateral damage

### Biodiversity

Indonesia is called a “megadiverse” country, one of the richest in terms of biodiversity. Industrial exploitation from palm oil, coal mining, deforestation, and agricultural projects all contribute to the destruction of the habitats of several species that are already on the verge of extinction. The most iconic case is the orangutan, whose population has decreased by 50% in the past decade.<sup>xliii</sup> But similar stories can be told of the Sumatran Tiger (with around 400-500 left) whose population has decreased by 16.6% in 12 years;<sup>xliv</sup> while the Sumatran Elephant (with 2,400-2,800 left) has lost 80% of their population over 75 years.<sup>xlv</sup>

Deforestation is seen as one of the major threats to conservation. Take the orangutans, they need similar habitats to those suitable for palm oil production.<sup>xlvi xlvi</sup> Land changes increase the risk of fires, destroying the land further, in addition to releasing huge amounts of GHG. In 2010, around 19% of the population of Bornean orangutans were living on lands allocated to palm oil production, a further 24% on lands likely to soon be turned into production. In Sumatra the figure is lower, but large areas where orangutans were highly present have been lost to palm oil activities.<sup>xlviii</sup>

Palm oil plantations support roughly a fifth of the species that could live in the same area when it was a rainforest.<sup>xlix</sup> Endemic and specialised species will disappear, to be replaced by more generalised and invasive ones.<sup>l</sup> Animals can be killed directly in the process, or starve to death once displaced. In the case of orangutans, Sumatran tigers or elephants, the fragmentation of species stemming from human-made obstacles can have a huge impact, as smaller populations are more vulnerable to genetic drift and inbreeding. Parts of the forests become overpopulated, which can lead to starvation due to food scarcity. In the case of orangutans, it has been shown that they are more likely to transmit diseases, as the stress generated by the situation affects

their immune system, and, as they have to walk on the ground rather than hop from tree to tree, they are more exposed to pathogens from other animals, and endanger humans who they come into contact with.<sup>li</sup>

The growing friction between animals and humans also leads to more direct killings, in retaliation for damage made to plantations or fields. In the case of orangutans, these negative interactions with humans fuel their domestic and non-domestic trade (85% being domestic), even though it is prohibited by law. Enforcement of wildlife-related rules is quite low in Indonesia, all of the species here mentioned are protected under the law, but convictions in the field are rare.

### **Land grabbing & human rights**

Ensuring that economic growth under the EU- Indonesia FTA is not at odds with protecting the land rights of Indigenous Peoples and local communities must be a priority.<sup>lii</sup> Indonesia recognises more than 1,000 ethnic groups scattered across its 17,000 islands and between 50 to 70 million people members of Indigenous communities. Evidence shows that secure tenure rights for Indigenous Peoples and rural communities' results in lower rates of deforestation and soil degradation, and better protection of the biodiversity and ecosystem services that these communities are dependent on.<sup>liii</sup> This makes titling and securing legal tenure rights for collectively-managed lands an urgent priority.<sup>liv</sup>

The Environmental Justice Atlas maps a total of 65 land conflicts related to biomass in Indonesia.<sup>lv</sup> Among the prominent ones are human rights violations and land grabs in the palm sector in the Papuan provinces, palm oil activities by Wilmar, the world's top palm oil trader, and nickel mining by Weda Bay in North Halmahera. Most of these cases include disruption of livelihoods and human rights abuses, pressure and intimidation of local community members to sign agreements to give up their rights, or arrests, torture and killing of protesters by security or policy forces. Many of the Indigenous Peoples still use their own type of customary land rights like the 'Derasa' system of the Dayak people.<sup>lvi</sup>

There is an urgent need to implement and respect the multiple certification and land titling programmes. The recognition of land rights has advanced, but certification processes by the National Land Agency (BPN) have not been fulfilled. The free land titling programs introduced in the 1999 Forestry Law and the 2013 decision of the Constitutional Court have stalled to a halt.<sup>lvii</sup>

During his 2014 campaign, President Joko Widodo committed to strengthen rights over land and forests. He extended the Presidential Instruction No.6/2013 on the moratorium on the issuance of new conversion permits for primary forest and peatlands. The government's promises to the Indigenous Peoples to divest 12.7 million hectares of forests to Indigenous ownership is no longer a priority. In December 2016, the government took a first step, formally recognising the rights of nine customary communities to their forests.<sup>lviii</sup> However, Indigenous Peoples had only received a grand total of 20,000 hectares out of the millions that should be in their hands.<sup>lix</sup> The UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz refers to the

escalating criminalisation of, and threats against, Indigenous Peoples as a global crisis, warning of a collusion between governments and the private sector to “force Indigenous Peoples from their lands by whatever means necessary to make way for infrastructure, agriculture, mining, and extractive projects”.<sup>lx</sup>

The Treaty of European Union (TEU), Article 21 affirms the EU’s determination to promote human rights and democracy through all its external actions. The European Parliament’s resolution on the violation of the rights of indigenous peoples including land grabbing dating from 3 July 2018<sup>lxi</sup> calls upon the EU to gear up action to enshrine relevant human rights treaties, conventions and legal instruments in investment and trade policies. It also calls on the EU to be vigilant that it is not associated or contributing to the violation of the human and environmental rights of Indigenous Peoples.

## 5. Conclusion

Hopes were high when in 2013 the European Parliament and the Council instructed<sup>lxii</sup> the Commission to develop a deforestation and forest degradation Action Plan. No plan has been forthcoming despite international commitments.<sup>lxiii</sup> In November 2018, seven Member States<sup>lxiv</sup> called on the Commission again to adopt tough action to stop deforestation.<sup>lxv</sup> At the same time the French government published<sup>lxvi</sup> a new strategy to combat deforestation, calling for EU wide policy to tackle deforestation and forest degradation by mid-2019, while integrating forest management through FTA provisions. This clearly shows that the political will and momentum at national level is there. While work has started on the “Stepping up EU Action against Deforestation and Forest Degradation” Communication, to be adopted in 2019, it remains to be seen how impactful it will be. Meaningful action at EU level is, however, still missing.

The EU is negotiating a number of trade agreements with countries that are linked to deforestation issues - Indonesia, but also Brazil, Malaysia and Argentina.<sup>lxvii</sup> Trade’s responsibility is central to this debate and more than evident. According to the Amsterdam Declaration on combating deforestation, trade policy is one of the “cornerstones in reaching sustainable development,” allowing the EU to work with producer countries to take coherent steps in support of sustainable growth objectives, notably deforestation.<sup>lxviii</sup> Trade liberalisation is a driving force for increasing consumption and demand, thus is at risk of having catastrophic implications on sectors linked to deforestation. It is vital to take into consideration unintended side effects that may violate the rights of local communities and Indigenous People and may harm the environment and animals.

This report sets out a number of recommendations for policy makers to take responsibility and address the risk of trade as a driver of deforestation in Indonesia.<sup>lxix</sup> The EU can take measures through an FTA, or by implementing new EU legislation.

The EU uses soft-law aspirational provisions in the TSD chapters of FTAs, promoting government cooperation, and the strengthening of civil society in the partner country. European NGOs have criticised the weaknesses of the current enforcement mechanisms in these chapters.<sup>lxx</sup> One solution is conditional market access for deforestation products, with Generalised System of Preferences (GSP)+ inspired scorecard to monitor fulfillment.<sup>lxxi</sup> Alternatively, the EU could combat deforestation by excluding certain sectors from the negotiations.<sup>lxxii</sup>

It is high time for the EU to recognise that while trade policy cannot exclusively be relied upon to put an end to deforestation, biodiversity loss and abuses of Indigenous Peoples' rights, it has a responsibility to ensure it does not negatively impact on these vital areas of common concern. This negligence must be addressed to ensure EU trade policy improves rather than harms moves towards more sustainable development. The EU must refrain from trade provisions that risk further damaging forests, therefore harming peoples' rights and biodiversity.

In view of EU commitments to limit global warming to well below 2 degrees, the EU has to demonstrate how trade with Indonesia is effectively contributing to this objective by showcasing how trade can contribute to climate ambitions that safeguard land rights, improve biodiversity and restore forests and ecosystems. European consumers must not be forced to import and consume deforestation via irresponsible trade deals.<sup>lxxiii</sup>

## Endnotes

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- <sup>ii</sup> For example increased meat production due to tariff liberalisation, increasing cattle and land needed for grazing which could impact sensitive areas such as forest.
- <sup>iii</sup> Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 ‘Living well, within the limits of our planet’ Text with EEA relevance (retrieved in November 23 2018) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013D1386>
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- <sup>v</sup> Neslen, Arthur, *EU states call for tough action on deforestation to meet 2020 UN goal*, published online in The Guardian, 12 November 2018 - [https://www.theguardian.com/environment/2018/nov/12/eu-states-call-for-tough-action-on-deforestation-to-meet-2020-un-goal-amsterdam-declaration?CMP=Share\\_AndroidApp\\_Tweet](https://www.theguardian.com/environment/2018/nov/12/eu-states-call-for-tough-action-on-deforestation-to-meet-2020-un-goal-amsterdam-declaration?CMP=Share_AndroidApp_Tweet) (retrieved in November 2018)
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- <sup>vii</sup> “Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”. Paris Agreement available at <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement> (retrieved 10 October 2018)
- <sup>viii</sup> With deforestation decreasing but fossil fuel emissions increasing this percentage has been steadily going down from more than 20 to between 6 and 17% see: <https://www.nature.com/articles/ngeo671> (retrieved 10 October 2018)
- <sup>ix</sup> Fern: [Forests and forest people in EU Free Trade Agreements](#), October 2018
- <sup>x</sup> Focali: Agricultural commodity consumption and trade responsible for over 40% of tropical deforestation <http://www.focali.se/en/articles/artikelarkiv/agricultural-commodity-consumption-and-trade-responsible-for-over-40-of-tropical-deforestation>
- <sup>xi</sup> Peatlands and climate change available at <https://www.iucn.org/resources/issues-briefs/peatlands-and-climate-change> (retrieved 3 December 2018)
- <sup>xii</sup> Some estimate that by 2027, the soybean area in the Cerrado, Brazil, may grow between 3 MH and 5.2 MH, According to FIESP and MAPA models, respectively. For more information, see <https://trase.earth/?lang=en> .
- <sup>xiii</sup> While this report addresses concerns with the EU-Indonesia negotiations and its wider implications, similar questions should be taken into account when the EU negotiates with other forest-rich countries, such as Brazil (EU- Mercosur negotiations), or Myanmar.
- <sup>xiv</sup> Fern: [Forests and forest people in EU Free Trade Agreements](#), October 2018
- <sup>xv</sup> EU FLEGT Facility available at <http://www.euflegt.efi.int/es/indonesia> (retrieved 10 October 2018)
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- <sup>xxiv</sup> Focali: Agricultural commodity consumption and trade responsible for over 40% of tropical deforestation  
<http://www.focali.se/en/articles/artikelarkiv/agricultural-commodity-consumption-and-trade-responsible-for-over-40-of-tropical-deforestation>
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- <sup>xxix</sup> European Commission, SDGs, Goal 15, Target 15.2 available at [https://ec.europa.eu/sustainable-development/goal15\\_en#target-15-2](https://ec.europa.eu/sustainable-development/goal15_en#target-15-2) (retrieved 10 October 2018)
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- <sup>lxvii</sup> Some estimate that by 2027, the soybean area in the Cerrado, Brazil, may grow between 3 MH and 5.2 MH, according to FIESP and MAPA models, respectively. For more information, see <https://trase.earth/?lang=en>.
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