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Tri Widjayanti,  
SPOI National Project Manager,

Rini Indrayanti,  
Indonesian Sustainable Palm Oil Platform Manager,  
UNDP

**Via email:** [info@foksbi.id](mailto:info@foksbi.id)

Dear Tri Widjayanti and Rini Indrayanti

**DRAFT INDONESIA SUSTAINABLE PALM OIL ACTION PLAN – PUBLIC CONSULTATION**

We refer to the Draft 6.0 July 2017 of the Indonesian Sustainable Palm Oil Nation Action Plan (“**NAP**”) currently open for public consultation.

Both ENDS is a Dutch civil society organisation with expertise on land and water governance, sustainability in the agro-commodity and natural resource sectors, and responsible corporate conduct. We have been actively working on the environmental, human rights, and sustainability issues related to the Indonesian palm oil industry for several decades, including in close collaboration with Indonesian civil society organisations.

Both ENDS is familiar with the regulatory framework for, and common practices of, small and large-scale actors in the Indonesian palm oil industry, and the social, environmental, economic and human rights impacts they create. This familiarity is partly based on the ‘on the ground’ experiences of our Indonesian partners and the views and experiences of the local communities they support.

The long-term sustainability of the Indonesian palm oil industry is a topic in which we, and our Indonesian partners, are particularly concerned. We therefore consider it important to provide the following general comments on the draft NAP.

**1. GENERAL COMMENTS**

**a. The draft NAP insufficiently addresses the industry’s core sustainability issues**

The sustainability issues plaguing the Indonesian palm oil industry are well-known and well-documented (extreme deforestation and biodiversity loss, illegal land clearing, forest and peatland fires, land-grabbing, watershed degradation and river pollution, violence and intimidation of local communities and smallholders, worker-rights and child labour violations etc.). They do not need to be repeated in detail here.

The draft NAP states that it “is designed to address the root causes that limit sustainability of the commodity” (p.10). Both ENDS supports this approach. Without addressing the root causes that enable and facilitate the negative and unsustainable impacts of the palm oil industry, effort will be misplaced and resources are likely to be wasted.

The root causes underlying the negative and unsustainable impacts of the Indonesian palm oil industry relate to the absence of fundamental Rule of Law principles (transparency, accountability and predictability in public administration and due process in public decision-making) and the complicity of palm oil companies in the corruption of government, regulatory and law enforcement institutions. The lack of publically available information about concession grants, land tenure and land-use entitlements, protected forest and conservation areas, concession holder obligations, environmental and social impact assessments, public consultation and reliable accountability and grievance mechanisms for corporate misconduct, allows and emboldens palm oil companies to violate Indonesian law with impunity.

The known, documented and understood impacts of unsustainable palm oil production in Indonesia do not occur in a vacuum. They are perpetrated by palm oil companies with the tacit approval or acquiescence of local authorities and officials. Without addressing fundamental transparency, accountability and governance issues associated with land-use planning and administration, the grant or expansion of plantation concessions, and verification of social and environmental impact assessments and risk-management measures, including enforcing appropriate consequences for palm oil companies and their senior staff, the NAP is unlikely to make a notable contribution to the industry's sustainability.

Both ENDS notes that "support for improved law enforcement in the palm oil sector" is identified in the draft NAP as a cross-cutting issue (A.1.3; p. 13) with the goal of obtaining greater adherence to existing laws by all players involved in the palm oil sector. Both ENDS strongly supports this goal. However, Both ENDS considers that compliance with the law and law enforcement is not a 'sustainability' measure – it is a fundamental precondition for any orderly, legitimate and acceptable activity.

Both ENDS supports the three activities proposed in the draft NAP under A.1.3 (increased coordination of law enforcement institutions, strengthening the Oversight Department of Government Officials, and undertaking land ownership auditing) and considers these should be regarded by industry participants and public authorities alike as priority activities. However, those activities do not, in themselves, sufficiently address the weak governance, transparency, and accountability issues undermining the legitimacy, sustainability and reputation of the industry.

Both ENDS therefore urges the Indonesian Sustainable Palm Oil Forum ("**FoKSBI**") to postpone the development of the draft NAP and focus on addressing the fundamental Rule of Law and governance issues affecting the palm oil industry mentioned above. Without first addressing those issues, and the culture of misconduct and impunity for social and environmental violations within the palm oil industry, any efforts to improve the sustainability of the industry are likely to be undermined.

Ensuring that palm oil companies that break the law, violate the conditions of their concessions, or unlawfully harm communities or the environment, are investigated, prosecuted and held to account is in the interests of the business community, Indonesian governments at all levels, communities

living in palm oil producing regions, and the Indonesian national interest. Stronger transparency, accountability and governance measures in the regulation of the palm oil industry will lay the necessary foundation to improve the sustainability of legitimate palm oil industry activities.

**b. Misguided emphasis on growth and productivity**

The draft NAP is written with an obvious pro-industry bias. While efforts to improve the efficiency of existing palm oil productions are supported, the underlying rationale that greater productivity leads to greater sustainability is misplaced.

There is no denying that the palm oil industry and palm oil as a global commodity have significant economic value for Indonesia and importance to the national economic interest. The great challenge of sustainability is balancing social, environmental and human-rights interests with such economic and commercial interests. The draft NAP does not adequately confront or acknowledge this challenge.

The “Forewords” and Background to the draft NAP paint an impressive picture of palm oil as “an extraordinary crop” that has brought “prosperity for the nation”, with little reference to the genuine sustainability crises that have plagued the industry over the last decades. The bias inherent in the draft NAP in favour of further developing, financing, expanding and embedding the palm oil industry within Indonesia’s economic, institutional, energy, and policy frameworks is apparent both in the rhetoric and actions proposed in the draft NAP.

Consequently, many of the actions proposed in the NAP are targeted towards supporting industry participants to “anticipate the latest global palm oil trends” (p. 9) and “take advantage of the value of the green economy” (p. 10) rather than genuinely addressing the underlying factors that facilitate and produce the many unsustainable and inequitable impacts for which the palm oil industry is (regrettably) known.

To ensure the NAP presents a balanced and legitimate plan for improving the sustainability of the industry, Both ENDS recommends that the definition of “sustainability” being pursued through the NAP should be presented up-front. The draft NAP refers to “sustainable business approaches in terms of people, planet and profit (3Ps)” and ‘best practices in business approaches’ (p. 9) but presents relatively superficial actions for addressing and correcting the significant environmental, social, human rights and legal discretions of the palm oil industry.

In Both ENDS view, the draft NAP appears the measures set out in the draft NAP are designed more to achieve the policy “goal of having 70 percent of Indonesia’s Crude Palm Oil ISPO certified by 2020” (p. 10) rather than presenting a genuine plan to improve the sustainability of palm oil production across the industry. Indeed, the draft NAP does not consider whether the ISPO standard represents a reliable and robust measure of sustainable palm oil production or whether those standards should also be improved

The rationale that improved industry efficiency and productivity will resolve the unsustainable and inequitable practices prevalent across the industry is false logic. More efficient palm oil does not necessarily mean more sustainable palm oil. Greater focus needs to be given to the direct and indirect impacts of palm oil production on surrounding communities, landscapes, ecosystems and on-site impacts on biodiversity, watersheds and labourers, regardless of the efficiency with which palm oil is produced.

The draft NAP should be revised to propose actions and goals that support a genuine commitment to both improving the sustainability of the palm oil industry and addressing its unsustainable and inequitable practices and impacts.

**c. No links with the international best-practice or sustainability standards**

As already noted, the draft NAP lacks a clear definition of “sustainability” and appears primarily aimed at preparing the Indonesian palm oil industry to meet the Indonesian’s Government’s goal of expanding the ISPO certification standard and having 70% of Indonesia’s crude palm oil certified under the ISPO standard by 2020. Perhaps because of this narrow and somewhat superficial approach to sustainability, the draft NAP contains no assessment of the ISPO standard as a genuine and legitimate benchmark of sustainable palm oil production. Indeed, the draft NAP makes no mention of the substantive content or requirements of ISPO certification and whether those requirements reflect internationally accepted sustainability measures.

Similarly, the draft NAP fails to mention any other sustainability benchmarks agreed and accepted by the international community under, for example, the RSPO’s *Principles and Criteria for the Production of Sustainable Palm Oil*, the FAO’s *Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries and Forests* and *Technical Guide on Respecting Free, Prior and Informed Consent*, and the OECD’s *Guidelines for Multinational Enterprises* or the OECD-FAO *Guidance for Responsible Agricultural Supply Chains*.

The draft NAP’s failure to engage with existing international sustainability standards, including those already endorsed and being implemented by Indonesian palm oil industry stakeholders, is disappointing and should be corrected. Integration of Indonesian sustainability standards, including under ISPO, with existing, international standards will provide greater clarity, value and incentive for the Indonesian palm oil industry to adopt (internationally consistent) sustainability practices.

Both ENDS considers that the draft NAP’s failure to engage with existing palm oil industry standards, like the RSPO, or responsible land governance and agricultural commodity production standards already endorsed by the international community, like the FAO and OECD guidelines, represents a missed opportunity to streamline sustainability requirements in the Indonesian palm oil industry.

Both ENDS would be willing to work together with FoKSBI to ensure that the final NAP provides a smooth transition for the Indonesian palm oil industry

and regulatory agencies to comply with these existing international standards.

**d. Lack of measures to facilitate plantation restoration and reforestation**

The draft NAP includes several measures (2.1 and 2.6) aimed at supporting conservation of high value environmental and biodiversity features environmental services. While those measures, as currently drafted, are somewhat weak and unambitious, Both ENDS welcomes any progress in the Indonesian palm oil industry to enact, implement and, most importantly, enforce, binding obligations for environmental conservation in palm oil landscapes.

However, regrettably, the draft NAP lacks any measures directed towards facilitating the restoration and reforestation of illegal, untenured or unlawfully cleared plantation areas (perhaps except for "peatland restoration as part of improving ecosystem services" under 2.6, though the targeted areas for this activity are unclear).

The illegal burning and clearing of forest areas for palm oil plantations is arguably the greatest sustainability failure of the palm oil industry, and has resulted Indonesia emerging as the world's third largest GHG polluter, the oil palm fields of Borneo and Sumatra becoming sites of the fastest deforestation in human history, in addition to terrible biodiversity loss and local health, ecosystem and economic disasters.

The massive deforestation associated with the palm oil industry is a black mark against the commodity's reputation in the global market.

However, these terrible impacts are not irreversible.

Both ENDS considers that any legitimate NAP for a sustainable palm oil industry must address the production of palm oil from illegal, untenured or undocumented plantations and unlawfully cleared forest areas. It is not only illegal, but unethical and irresponsible to allow unscrupulous palm oil producers to continue profiting from palm oil produced from fundamentally unsustainable plantations. Areas unlawfully cleared for palm oil production should be rehabilitated, restored and reforested. Sanctions should be imposed to ensure those responsible do not profit from illegally cleared forest areas and that they bear the financial burden of restoring those areas to forest ecosystems.

The draft NAP should be revised to include measures for the restoration and reforestation of palm oil plantation areas that were unlawfully or improperly deforested or cleared and for the prosecution of those responsible.

**e. Contradictory conservation policy and unclear conservation goals**

The draft NAP includes several measures (2.1 and 2.6) to support conservation of high value environmental and biodiversity features (such as "Essential Ecosystem Areas", though this term is not defined in the draft NAP, and "High Conservation Value Areas") and "environmental services"

(this term is also not clearly defined). Rigorous measures to ensure enactment, implementation and, most importantly, *enforcement* of conservation standards in relation to the palm oil industry are welcome.

However, despite these conservation measures, and other measures related to reducing the GHG emissions of the industry (2.2 and 2.3), the draft NAP surprisingly includes measures to facilitate the expansion of plantations and estate crops into areas with “low levels of biodiversity” and “low quality forest land” (2.4). This contradiction is disappointing and reveals a lack of awareness of the widespread failures of governance in land-use planning, land administration and concession expansion that have contributed to the industry’s catastrophic environmental impacts.

In general, the draft NAP fails to address the complex, ambiguous and confusing legal and regulatory frameworks relating to formal land-use planning at national and district levels, land rights and tenure conflicts at the national, district and communal level, and the unethical and criminal activities of palm oil plantation companies in grabbing forest and productive agricultural lands from rural communities. The proposal to support palm oil expansion onto “low quality forest land” is likely to lead to a race to the bottom in forest conservation practices rather than address the causes of the land-use conflicts prevalent across the industry.

Identifying forest land within existing forest estates for future plantation developments is likely to undermine sustainable industry practices and contradict other reasonable and appropriate measures to ensure plantations are not developed at the cost of forested, agricultural or communal land. Furthermore, such a policy is likely to degrade surrounding forest areas, support the continuous expansion of palm oil plantations into surrounding forest areas, and have a chilling-effect on local and district initiatives for sensible conservation policies and stronger land administration practices.

At a very minimum, the draft NAP should support the existing moratorium on new plantations *and* the application of that moratorium to the *expansion* of existing plantations until appropriate minimum environmental protection, environmental impact assessment, and conservation requirements are enforced and respected across the industry.

**f. Failure to target large-scale producers, millers, refiners and traders**

While there is a diversity of enterprises active in the Indonesian palm oil industry, many of the major commercial actors are large companies with vertically-integrated supply chains. The largest and arguably most influential corporate actors own and operate (either directly or through subsidiaries or joint venture structures) plantations, mills, refineries and trading enterprises. Furthermore, mills and refineries play an influential role in dictating prices and production standards for plantation operations. The draft NAP makes no mention of mills or refineries other than the proposal to provide them with an additional source of income by marketing ‘palm oil mill effluent’ as an “alternative energy source” (a questionable proposition itself).

The absence of any sustainability measures applicable to mill and refinery operators, let alone addressing the influence of large vertically-integrated

corporate actors that are influential at all levels of the palm oil production, milling and refinery sectors, is a significant flaw. It is unclear how the draft NAP could reasonably improve the sustainability of the palm oil industry when it focuses on impacts at the plantation level while ignoring the role of mills and refineries in dictating production standards.

In contrast, the draft NAP seems preoccupied with the role of smallholders in palm oil production. While smallholders represent an important section of the production sector, they should not be specifically targeted without addressing the sustainability impacts of large-scale producers and especially those large corporate actors that hold significant interests in production, milling, refinery and trading sectors of the palm oil industry. This is not least of all because smallholders are often the most vulnerable to the prices and production standards dictated by mills and refineries and have the least influence in shifting industry-wide standards compared to the large corporate actors, many of whom are well-represented in the FoKSBI forum.

The draft NAP's blindness to the important role and responsibilities of corporate actors in the production, milling, refinery and trading sectors should be addressed.

#### **g. Poor representation of non-commercial industry stakeholders**

Both ENDS supports the proposal to develop a national action plan to achieve a sustainable Indonesian palm oil industry. Regrettably, however, the draft NAP prioritises the interests of industry participants over the necessary reforms needed to address the industry's core sustainability issues and, consequently, represents a relatively weak and unambitious vision of sustainability. This industry bias is reflected by the over-representation of major industry participants in the "Attendance List of Participants FOKSBI, 2016-2017" annexed to the draft NAP.

Without a fair, equitable and democratic representation of *all* industry stakeholders (civil society organisations, local communities, women's groups, labour unions, workers, conservation organisations, regulators, local, district and national authorities, as well as commercial participants) the broad range of sustainability problems associated with the Indonesian palm oil industry will continue to go unaddressed. It is specifically because commercial participants in the Indonesian palm oil have continued to prioritise growth and profit over environmental, social, and human rights impacts that Indonesian palm oil is renowned as an unsustainable commodity in the international market.

The draft NAP should remain in consultation until an equal, representative and gender-balanced representation of non-commercial industry stakeholders are engaged and supported to provide their views on the industry's sustainability challenges, appropriate responses, and the measures proposed in the draft NAP.

## **2. SPECIFIC COMMENTS**

While we have concerns about many of the individual measures contained in the draft NAP (and their relevance to sustainable industry practices), we have not

provided specific comments on those measures in this letter. Our general comments above raise fundamental concerns about the purpose, rationale and strategy of the draft NAP as a genuine endeavour to achieve a sustainable Indonesian palm oil industry. If the draft NAP is revised based on our general comments (and the many other comments FoKSBI is likely to receive from the international civil society), many of the individual measures with which we have concerns will need to be modified or removed.

We therefore consider it unnecessary to provide detailed comments on individual measures in the draft NAP that should, based on our general comments above, be reconsidered, revised and/or removed. We expect the draft NAP will be significantly revised in response to the current round of public consultation to present a considerably different vision, goals, activities and measures for a sustainable palm oil industry.

Both ENDS welcomes the opportunity to provide detailed comments on individual measures proposed in future versions of the draft NAP.

### **3. CONCLUSION**

Both ENDS is grateful for the opportunity to provide comments on the draft NAP. We welcome the opportunity to be further involved in the NAP drafting and refinement process.

Given our concerns about the draft NAP and the relatively weak and unambitious vision of sustainability that it pursues, Both ENDS is unable to support the draft NAP in its current form.

Nevertheless, we encourage FoKSBI's efforts in initiating a national palm oil industry conversation on sustainability and we look forward to contributing to that ongoing conversation in a way that includes all industry stakeholders, especially its non-commercial stakeholders, fairly and equitably.

Yours sincerely,



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**Both ENDS**