

Submission to the Human Rights Committee's Review of Indonesia
140th Session
March 2024

1. The following coalition of Indigenous Peoples' rights and civil society organizations in Indonesia (together, the "submitting organizations") (see Annex 1 for a list of the submitting organizations) respectfully submit this parallel report to the Human Rights Committee (hereinafter "the Committee") in advance of its 140th session. This alternative report is submitted to aid the Committee in its review of Indonesia's compliance with the International Covenant on Civil and Political Rights. The submitting organizations authorize the Committee's posting of this alternative report on its website.
- A. Rights of minorities (arts. 2, 27)
2. The Committee asked the State to provide updates on the status of the draft bill on the recognition and protection of the rights of Indigenous Peoples, as well on measures taken to protect the land of Indigenous Peoples in the context of development and exploitation of natural resources.¹ The submitting organizations are concerned preliminarily that the State continues to insist that the concept of Indigenous Peoples does not apply in Indonesia.² Moreover, although Indigenous Peoples in Indonesia self-describe using the term "Masyarakat Adat", the State, in defiance of Indigenous Peoples' right to self-identification, only acknowledges the rights of "masyarakat hukum adat" (MHA). As a result, under the current legal framework, Indigenous Peoples are forced to pursue recognition as MHA in order to secure any recognition of collective rights as Indigenous Peoples. Throughout this report, the authors use the term MHA where referencing particular laws or policy stances taken by the State which are relevant for Indigenous Peoples' rights, but otherwise use the term Masyarakat Adat to refer to Indigenous Peoples.
 3. The State has reported for the past decade that there is a draft MHA bill on the national legislative agenda, but now reports to the Committee that "the MHA Bill still requires further public consultation to ensure inclusive provisions and guarantee MHA rights".³ While the submitting organizations agree that the current draft⁴ is inadequate and contains many provisions that reinforce existing deficiencies in Indonesian law with respect to Indigenous Peoples' rights, the State provides no real assurance that there is actual intention to adopt legislative protections for Indigenous Peoples' rights.⁵ The national human rights

¹ CCPR/C/IDN/QPR/2, "List of issues prior to submission of the second periodic report of Indonesia", 2 September 2020 (hereinafter "CCPR LOIPR for Indonesia"), para. 26.

² CCPR/C/IDN/2, "Second periodic report submitted by Indonesia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2021", 27 May 2022 (hereinafter "State's Report"), para. 283.

³ State's Report, para. 287.

⁴ Indonesia DPR, "RUU tentang Masyarakat Hukum Adat", available at <https://www.dpr.go.id/uu/detail/id/394>.

⁵ Indonesia's Replies to the LOI, para. 41. The UN Country Team in Indonesia urged in its submission to Indonesia's Fourth Universal Periodic Review that "The UNCT urges the government to prioritize

commission (Komnas HAM) has noted with concern that the State “has not indicated any formal support to the draft law”.⁶

4. The State’s Report suggests that some new regulations and policies are aimed at fulfilling the rights of MHA. However, some of the laws cited instead highlight the State’s failure to adequately protect Indigenous Peoples’ rights. For example, the State suggests that the Omnibus Law No. 11/2020 is one of the new legal measures that has been taken to improve fulfilment of MHA rights. Contrary to what the State suggests, the Omnibus Law, despite revision following the Constitutional Court decision,⁷ remains a law that facilitates investments at the expense of human rights. It should be noted at the outset that the revision of the law via a Government Regulation in Lieu of Law No. 2/2022, approved by the Parliament through Law No. 6/2023, does not in fact follow the orders of the Constitutional Court to, first, issue a law on how to draft an omnibus law, and second, revise the law in conformity with the principles of good legislation. The UN Committee on the Elimination of Racial Discrimination (“UNCERD”) had expressed its concern about the negative effects of the original version of the Omnibus Law on the rights of Indigenous Peoples and had recommended that the State take concrete measures to review the law and to guarantee the rights of Indigenous Peoples.⁸ While the State has indeed revised the law, the revision makes few substantive changes to the original law,⁹ and continues to threaten Indigenous Peoples’ rights by facilitating the expropriation of lands, granting of business permits over indigenous lands (including new integrated licenses that allow for multiple business uses which previously would have required separate licenses), and weakening environmental requirements for business licences.¹⁰
5. The State suggests that there is new regulation promoting social forestry schemes which will help guarantee the rights of MHA.¹¹ There are seven

consultations with representatives of indigenous groups to finalize the bill that would protect Indigenous Peoples’ rights and ensure that simple recognition procedures are put in place.” UNCT, Submission to the Fourth Universal Periodic Review of Indonesia at the 14th Session of November 2022, 31 March 2022 (hereinafter “UNCT submission to 2022 Indonesia UPR”).

⁶ Komnas HAM Submission to The Committee on Economic, Social and Cultural Rights: List of Issues Prior to Reporting (LOIPR) on Indonesia’s anticipated 2nd periodic report under the International Covenant on Economic, Social and Cultural Rights (ICESCR), February 2022

⁷ See Indonesia’s Replies to the LOI, para. 9.

⁸ CERD/EWUAP/103 rd session/2021/MJ/CS/ks, 30 April 2021.

⁹ ANBR, “Indonesian Gov’t Opts for Quick Fix for “Conditionally Unconstitutional” Job Creation Law”, 7 February 2023, available at <https://www.abnrlaw.com/news/indonesian-govt-opts-for-quick-fix-for-conditionally-unconstitutional-job-creation-law>. For a more comprehensive summary of the changes in the new Government Regulation, see also USAID, “Summary of Perppu No. 2 Year 2022 on Job Creation: USAID Economic Growth Support Activity”, May 2023, available at https://pdf.usaid.gov/pdf_docs/PA0211ZT.pdf.

¹⁰ A coalition of Indonesian civil society organizations have continued to call for repeal of the Omnibus Law and the Government Regulation revising it. See AMAN, “Koalisi Masyarakat Sipil Serukan Pencabutan Perpu Cipta Kerja”, 25 January 2023, available at <https://www.aman.or.id/news/read/koalisi-masyarakat-sipil-serukan-pencabutan-perpu-cipta-kerja>; WALHI, “Pemerintah Menegaskan Pembangkangan Terhadap Konstitusi dan Mengkhianati Rakyat”, 30 December 2022, available at <https://www.walhi.or.id/pemerintah-menegaskan-pembangkangan-terhadap-konstitusi-dan-mengkhianati-rakyat>.

¹¹ State’s Report, para. 290.

categories of social forestry schemes being promoted by the State, of which only one, the customary forest (hutan adat) designation, recognizes indigenous communities' collective rights to own their lands and forests. While the State's report mentions progress in establishing customary forest areas, it fails to mention its inexcusably slow progress towards recognizing Indigenous Peoples' ownership of these customary forests. The State reports that there are customary forests established over 56,903 hectares of forest for 75 indigenous communities, and that 1,090,754 hectares managed by 113 communities is indicative customary forest that can be approved once regional governments pass regulations recognizing the existence of the MHA.¹² This is just a small fraction of the forest territories spanning more than 17.5 million hectares managed by 1,095 indigenous communities that are already known and mapped¹³ by Indigenous Peoples themselves.¹⁴ In total, it is estimated that indigenous communities occupy 70-80 million hectares of land in Indonesia.¹⁵

6. While the State does not mention this in its report, it in fact appears to be promoting other social forestry schemes over customary forest recognition. For example, in one report, the State suggested that less than one fifth of the lands allocated under various forms of social forestry schemes have been under the customary forest designation.¹⁶ These other social forestry schemes are time-limited forest licences which do not recognize ownership or full control or management rights of the community and are conferred inside State Forest Areas which are defined as Forest Areas where there are no rights. Although there is no legal barrier to a community seeking conversion of one of the social forestry licences into a customary forest title, there are no cases in which this has successfully occurred. As a result, these social forestry schemes have been considered by some indigenous rights advocates to be a new form of land expropriation as they result in Indigenous Peoples effectively relinquishing claims to customary territory. Importantly, while the State argues that social forestry improves MHA welfare, research suggests that the intended livelihood benefits of (non-customary forest) social forestry licences have been limited.¹⁷

¹² State's Report, para. 296.

¹³ The Indigenous Territory Registration Unit (Badan Registrasi Wilayah Adat), a mapping agency created by the national Indigenous Peoples' organization, Aliansi Masyarakat Adat Nusantara, and other NGOs in engaged in an ongoing effort to register and map indigenous territories throughout Indonesia.

¹⁴ BRWA, "Pemerintah Masih Lemah Dalam Melindungi Hak Masyarakat Adat", 17 March 2023, available at <https://www.brwa.or.id/news/read/561> (displaying an infographic showing that out of 1,243 indigenous non-forest territories mapped by the BRWA, 198 have received formal recognition by the government, and out of 1,095 forest territories, only 108 have received formal recognition by the government).

¹⁵ C. Tanner et al., A Review of Land Tenure Issues in Indonesia and Options for the Future: FAO Indonesia Report, FAO Jakarta, 2020, available at <https://www.fao.org/3/cb0429en/CB0429EN.pdf>, pp. 33-34.

¹⁶ E/C.12/IDN/2, Second periodic report submitted by Indonesia under articles 16 and 17 of the Covenant, due in 2019, 3 November 2021, para. 186.

¹⁷ Santoso, H. and E. Purwanto, "Improving social forestry in Indonesia — Recommendations for CSOs: Briefing paper", Tropenbos Indonesia, 2020, p. 3.

7. The State reports that it is committed to solving land conflicts between MHA and state-owned enterprises,¹⁸ but it mentions nothing about how it will do so nor resolving land rights violations by private enterprises. The submitting organizations note that there is in fact no new policy or regulatory development in Indonesia to address rights violations against Indigenous Peoples in the name of development. By contrast, the State is pursuing numerous new development policies, to be implemented by State and private actors, which threaten Indigenous Peoples' rights.
8. Perhaps most notably, plans are already underway to build a new capital city (Ibu Kota Negara/IKN) in East Kalimantan. This development, and associated infrastructural development projects such as the building of a new trans-Kalimantan road across the island,¹⁹ have already caused and threaten further violations of Indigenous Peoples' rights. Thus far, there has been little respect for FPIC in the planned development of the new capital city. Some communities have already been displaced from their homes, for example for the construction of a hydropower facility that is meant to power the new capital city.²⁰ Some Indigenous Peoples have been offered cash for some plots of land but there has been no information provided regarding relocation to those individual families, let alone any collective consultation with and seeking of FPIC from indigenous communities whose lands overlap the planned city's development zone.²¹ The new legal framework governing IKN also has fewer mechanisms of accountability than normal for national developments.²² The construction of the new capital city as well as the trans-Kalimantan road and other infrastructure threaten to clear vast areas of forest that Indigenous Peoples live in and rely upon for subsistence as well as cultural resources.
9. There are several other mega-infrastructure projects across the archipelago as well that threaten significant encroachments onto Indigenous Peoples' lands. These include the Trans-Sumatra road²³ and Trans-Papua road²⁴, both of which,

¹⁸ State's Report, para. 289.

¹⁹ See, e.g., McInnes, A., "ADB and the Australian Government propose high-risk road project that will pierce the heart of Borneo", FPP, 2022, available at

https://www.forestpeoples.org/sites/default/files/documents/FP-4661%20ADB%20Report_v5.pdf.

²⁰ Mongabay, "As Indonesia's new capital takes shape, risks to wider Borneo come into focus", 8 March 2023, available at <https://news.mongabay.com/2023/03/as-indonesias-new-capital-takes-shape-risks-to-wider-borneo-come-into-focus/>.

²¹ See Mongabay, "Elders call for Indigenous cultural preservation in new Indonesia capital", 27 July 2023, available at <https://news.mongabay.com/2023/07/elders-call-for-indigenous-cultural-preservation-in-new-indonesia-capital/>.

²² Julia M Lau, Athiqah Nur Alami, Siwage Dharma Negara, and Yanuar Nugroho (eds.), 2023, The Road to Nusantara: process, challenges and opportunities, ISEAS Publishing. Available at <https://bookshop.iseas.edu.sg/publication/7860>.

²³ James Cook University Australia, "Coal road to cut through imperilled rainforest", 21 September 2022, available at <https://www.jcu.edu.au/news/releases/2022/september/coal-road-to-cut-through-imperilled-rainforest>.

²⁴ Mongabay, "Podcast: The Trans-Papua Highway could lose billions and deforest millions of hectares", 2 March 2022, available at <https://news.mongabay.com/2022/03/podcast-the-trans-papua-highway-could-lose-billions-and-deforest-millions-of-hectares/>.

like, the Trans-Kalimantan road, have proceeded without affected communities' FPIC and threaten vast swathes of their lands. Other developments include mega-agro-industrial projects such as the Merauke Integrated Food and Energy Estate in South Papua, earlier iterations of which had repeatedly been flagged by UN Treaty Bodies as threatening "irreparable harm on Indigenous Peoples due to the reported massive seizures of traditional indigenous lands."²⁵ Despite successive past failures of this project and without remedying any past human rights violations, the State announced in October that it plans to continue the project of developing a food estate in Merauke, this time by designating the food estate as a National Strategic Project (Proyek Strategic Nasional), thereby easing application of laws allowing enforced land expropriation (eminent domain).²⁶

10. The State's plans also include various large-scale extractive or infrastructure and renewable energy projects prioritized under the Comprehensive Investment and Policy Plan (CIPP) for Indonesia's Just Energy Transition Partnership, which will involve large areas of land, likely on Indigenous Peoples' territories.²⁷ Existing projects meant to boost the supply of renewable energy have already caused serious Indigenous Peoples' rights violations. To cite just one case, in June 2023, an investigation into an Indonesian Environment Fund (IEF)-funded project in West Papua found evidence of violations to Indigenous Peoples' rights. In 2021, an Indonesian conglomerate, Medco Group, began to construct a biomass power plant in Merauke, Papua Province, which is fuelled by burning wood, using IEF funds of over US\$ 9 million which were approved by the Ministry of Environment and Forestry.²⁸ Medco cleared and converted large tracts of intact primary forest and swamp land within the Marind peoples' ancestral territories in Zanegi to an industrial monoculture timber plantation.²⁹ The destruction of the Marind peoples' food sources – game, fish and sago – impeded access to nutritious foods, leading to the impaired development and death of Marind children due to malnutrition.³⁰

²⁵ See CERD/GH/mja/vdt

<https://www.forestpeoples.org/sites/default/files/publication/2013/09/cerdindonesiamifeeaugust2013.pdf> and GH/ST

<https://www.forestpeoples.org/sites/default/files/publication/2011/09/cerduaindonesia02092011fm.pdf>

²⁶ CNBC Indonesia, "Soeharto Sampai SBY Gagal, Food Estate Dilanjutkan Jokowi", 11 October 2023, available at <https://www.cnbcindonesia.com/entrepreneur/20231011063456-25-479545/soeharto-sampai-sby-gagal-food-estate-dilanjutkan-jokowi>.

²⁷ Just Energy Transition Partnership Indonesia, Comprehensive Investment and Policy Plan 2023, 21 November 2023, available at https://jetp-id.org/storage/official-jetp-cipp-2023-vshare_f_en-1700532655.pdf.

²⁸ Direktorat Jenderal Energi Baru Terbarukan dan Konservasi Energi (EBTKE), 2021, available at <https://ebtke.esdm.go.id/post/2021/08/13/2933/50.pasokan.listrik.kabupaten.merauke.bersumber.dari.ebt.dapat.diwujudkan?lang=en>.

²⁹ The Gecko Project, "'Green' finance bankrolls deforestation in Papua", 2023, available at <https://thegeckoproject.org/articles/green-finance-bankrolls-deforestation-in-papua/>.

³⁰ See Sophie Chao, "Can There Be Justice Here? Indigenous Perspectives from the West Papuan Oil Palm Frontier", *Borderlands* Vol 20. No. 1, 2021, available at

<https://doi.org/10.21307/borderlands-2021-002>; and Joint CSO submission to CERD UA/EW, 25 July 2013, available at

<https://www.forestpeoples.org/sites/fpp/files/publication/2013/08/cerduamifeejuly2013english.pdf>.

11. Other examples include pollution and damage to the forests relied upon by indigenous communities, including some in voluntary isolation, by nickel mining (required for the production of electric batteries) in Maluku and Sulawesi;³¹ damage to the soils and waters that community members rely upon for their subsistence as well as threatened endangered tiger habitats by PT Pertamina Geothermal Energy in Bengkulu Province;³² the violation of the right to FPIC of the Wae Sano indigenous community through the continued implementation of the Wae Sano Geothermal Exploration Project despite adamant opposition to the project by the affected community;³³ violent suppression of peaceful protests against the building of a geothermal power plant on their lands in Flores by energy company PLN's security personnel;³⁴ and eviction and relocation of Indigenous Peoples from their homes on Rempang Island to make way for a glass and solar panel factory and "eco-city".³⁵ Underlying all of these rights violations is preliminarily a violation of Indigenous Peoples' right to FPIC, both by the State, which handed out concessions for these projects without obtaining the affected peoples' FPIC, and by the companies. While the CIPP mentions that FPIC processes can "support the participation of local communities",³⁶ and mentions FPIC processes as mitigation actions to avoid risks to local communities, it does not provide any further detail or guidance on how to identify when FPIC is required nor how to conduct an FPIC process.
12. The Committee noted in its LOIPR that industrial activities are "undermining the land rights of Indigenous Peoples and are resulting in the loss of livelihoods."³⁷ The submitting organizations observe in this respect that the State nullifies Indigenous Peoples' ability to do traditional occupations by failing to adequately recognize Indigenous Peoples and protect their land, territory, and resource rights. The International Labour Organization Committee of Experts on the Application of Conventions and Recommendations observed that "Measures should be taken to ensure equality of opportunity and treatment of Indigenous Peoples in employment and occupation, including their right to engage without discrimination in their traditional occupations and livelihoods. Recognition of the

³¹ See Vice News, "'They Will Die': Tesla-Linked Mining Project Is Devastating One of the World's Uncontacted Peoples", 11 April 2023, available at <https://www.vice.com/en/article/wxj8wm/uncontacted-tribe-threatened-indonesia>; Benar News, "Report: EV battery making riddled with rights violations, environmental threats", 16 May 2023, available at <https://www.benarnews.org/english/news/indonesian/ev-battery-making-05162023053250.html>.

³² Kompas, "Pengeboran PGE di Hutan Lindung Bukit Daun Jangan Sampai Merusak Sumber Air", 1 December 2017, available at <https://regional.kompas.com/read/2017/12/01/13484901/pengeboran-pge-di-hutan-lindung-bukit-daun-jangan-sampai-merusak-sumber-air>.

³³ See Representatives of Wae Sono Community Open Letter, 29 May 2021, available at <https://www.jatam.org/wp-content/uploads/2021/06/Open-Letter-from-Wae-Sano.pdf>.

³⁴ PIME Asia News, "Flores, indigenous people protesting against geothermal power plant attacked", 30 November 2023, available at <https://www.asianews.it/news-en/Flores,-indigenous-people-protesting-against-geothermal-power-plant-attacked-59663.html>.

³⁵ Al-Jazeera, "Protests in Indonesia as thousands face eviction for Rempang 'Eco-City'", 15 September 2023, available at <https://www.aljazeera.com/news/2023/9/15/protests-in-indonesia-as-thousands-face-eviction-for-rempang-eco>.

³⁶ Ibid at p. 118.

³⁷ CCPR LOIPR for Indonesia, para. 26.

ownership and possession of the lands they traditionally occupy and access to their communal lands and natural resources for traditional activities is essential.³⁸ Numerous international bodies have confirmed that the discrimination against Indigenous Peoples in Indonesia has had negative impacts on Indigenous Peoples' right to work in traditional livelihoods. One ILO report commented that in Indonesia, many Indigenous Peoples have been dispossessed, and palm oil projects, often carried out without FPIC, have caused "land alienation, loss of livelihoods, exploitative labour practices and degraded ecosystems."³⁹ The resulting "decline of access to land and natural resources has severe consequences on the livelihood activities of Indigenous Peoples..."⁴⁰ Although Indigenous Peoples have in response tried to pursue livelihoods beyond their traditional activities, this is "hampered by their lack of skills and the discrimination that they experience."⁴¹ Another study reported that "the lack of recognition and protection of Indigenous Peoples' rights to land and natural resources has been regarded as the main cause of their poverty".⁴² The UN Special Rapporteur on the Right to Food, following a mission to Indonesia, similarly affirmed that Indigenous Peoples "face disproportionate barriers to accessing land" and that "livelihoods and food sources depend considerably on the free use of land."⁴³ She recommended that Indonesia take measures to ensure that Indigenous Peoples, among others, have access to and control over the land and resources they need to support their livelihoods.⁴⁴

13. The situation of the Ompu Ronggur, a community of Toba Batak – a highland people of North Sumatra with an ancient tradition of benzoin resin (kemenyan) tapping from their agroforests – exemplifies these problems. In 2004, a large part of their traditional territory was allotted to a pulp and paper company, PT Toba Pulp Lestari (TPL), for establishing Eucalyptus plantations.⁴⁵ The Toba Batak people's repeated appeals to the State for return of their lands were ignored. PT TPL continues to destroy their lands, including their resin trees and other resources, undermining their traditional occupations and leaving them significantly impoverished. In 2021, the ILO Governing Body issued a decision in

³⁸ CEACR, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report III (Part 1B), 2012, available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf, para. 768.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ R. K. Dhir, *Indigenous Peoples in the World of Work in Asia and the Pacific: Status Report* (ILO Office, 2015), p. 65.

⁴² S. Errico, *The rights of Indigenous Peoples in Asia: a human rights-based overview of national legal and policy frameworks against the backdrop of country strategies for development and poverty reduction*, International Labour Office, Gender, Equality and Diversity Branch, 2017, p. 36.

⁴³ Human Rights Council, *Visit to Indonesia: Report of the Special Rapporteur on the right to food*, A/HRC/40/56/Add.2, 28 December 2018, paras. 51-2.

⁴⁴ Ibid, para. 92(k)

⁴⁵ AMAN/Forest Peoples Programme, "The Toba Batak and Toba Pulp Lestari", July 2020, https://www.forestpeoples.org/sites/default/files/documents/Toba%20Batak%20and%20Toba%20Pulp%20Lestari%20v4_0.pdf.

a representation filed on behalf of the community under ILO Convention 111⁴⁶, recommending that the community re-submit their request for recognition as a customary law community (MHA) and that the local government issue a decision without delay. Despite the community re-submitting their request, the government has failed to comply with the Governing Body's decision. To date, the community still has no land tenure security, and PT TPL continues to undermine their traditional livelihoods. In the past year, PT TPL destroyed a bridge connecting the community's residential area with their remaining resin tree groves, and the community is relying upon their own temporary bridge to access those forest areas. Although some resin trees remain, because of deforestation and degradation of the surrounding forest, the resin trees, which depend upon other trees in the forest ecosystem, do not grow as well. With little forest remaining, the Toba Batak people of Ompu Ronggur will be unable to continue their tradition of resin tapping once this last remaining grove of resin trees dies.

14. Although Indonesian law provides for some limited measures to address alternative livelihoods for Indigenous Peoples where their lands have been taken over, these are rarely implemented in practice. For example, although Indonesian law requires palm oil estates to provide smallholdings for the communities on whose lands they operate, an audit last year found that only one fifth of palm oil companies complied with this legal requirement.⁴⁷ In the cases where companies have met this obligation, there are many instances in which the companies coerced communities into exploitative partnership schemes that have resulted in debt bondage of community members.⁴⁸ In many cases, with limited alternative livelihood options, Indigenous Peoples are forced to work for the palm oil or other agro-industrial company that has taken over their lands, often under exploitative conditions amounting to forced labour.⁴⁹

⁴⁶ ILO Article 24 Representation, Non-Observance of Convention No.111 by the Republic of Indonesia, SERBUNDO, 12 August 2019,

<https://www.forestpeoples.org/sites/default/files/documents/Ompu%20Ronggur%20ILO111%20Art24%20Representation%20%2B%20Annexes.pdf>.

⁴⁷ Mongabay, "Most Indonesian palm oil firms not sharing land with small farmers as required: audit", 24 July 2023, available at <https://news.mongabay.com/2023/07/most-indonesian-palm-oil-firms-not-sharing-land-with-small-farmers-as-required/#:~:text=Only%2021%25%20of%20Indonesian%20oil,has%20established%20a%20task%20force>. See also M. Colchester and S. Chao (eds.), "Conflict or Consent? The palm oil sector at a crossroads", Forest Peoples Programme, TUK-Indonesia and Sawit Watch, Bogor (2013).

⁴⁸ The Gecko Project, "Promised prosperity, drowning in debt", 12 December 2022, available at <https://thegeckoproject.org/articles/promised-prosperity-drowning-in-debt/>. See also: Tania Murray Li and Pujo Semedi, 2023, *Plantation Life: corporate occupation in Indonesia's Oil Palm Zone*, Duke University Press available at: <https://www.dukeupress.edu/plantation-life>

⁴⁹ See, e.g., Rainforest Action Network, "The Human Cost of Conflict Palm Oil Revisited: How PepsiCo, Banks, and the Roundtable on Sustainable Palm Oil Perpetuate Indofood's Worker Exploitation", 2017, available at https://www.ran.org/wp-content/uploads/rainforestactionnetwork/pages/19315/attachments/original/1511714176/Human_Cost_Revisited_vWEB.pdf?1511714176; Human Rights Watch, "'When We Lost the Forest, We Lost Everything': Oil Palm Plantations and Rights Violations in Indonesia", 2019, available at <https://www.hrw.org/report/2019/09/23/when-we-lost-forest-we-lost-everything/oil-palm-plantations-and-rights-violations>.

15. The submitting organizations urge the Committee to recommend that the State of Indonesia:

- a. Immediately define a timeline and process, in consultation with Indigenous Peoples' representatives, including indigenous women representatives, for strengthening of the Indigenous Peoples' Rights Bill in line with international human rights standards – specifically, ensuring that the Bill will ensure Indigenous Peoples, including indigenous women, have legally recognized and protected access to, use of, control over, and ownership over their traditional lands, territories, and resources, and that the Bill will protect and enforce Indigenous Peoples' right to FPIC for any activities that may affect their rights -- and for adopting the same;
- b. Follow the agreed timeline and process to revise the existing draft bill to bring it in line with international human rights standards, and to adopt the bill and bring it into force;
- c. Prioritize and expedite the legal recognition of Indigenous Peoples' ownership rights over land, including through the customary forest (hutan adat) designation, over the granting of time-limited and restricted licences for land use, such as in the other social forestry schemes;
- d. Consult with Indigenous Peoples through their chosen representative institutions on all development plans and policies prior to adopting and implementing them;
- e. Ensure that all development plans and policies include clear guidelines that require respect for Indigenous Peoples' rights and describe how to respect their rights, particularly their land and participation rights;
- f. Adhere to the Constitutional Court order in case no. 91/PUU-XVIII/2020 and revoke the Government Regulation in Lieu of Law No. 2/2022 and the subsequent Law No. 6/2023 to instead follow a truly consultative and participatory process to revise the Omnibus Law;
- g. Repeal or otherwise amend legislation that undermines Indigenous Peoples' rights to land or that excludes their participation in decision-making on all matters that affect them to ensure that they reflect international human rights standards;
- h. Refrain from granting concessions for renewable energy projects unless and until any affected indigenous communities' free, prior, and informed consent is sought and acquired;

- i. Restore the land rights of any and all indigenous communities whose lands have been unlawfully expropriated for agro-commodity, mining, renewable energy, biomass, or other development projects;
- j. Carry out human rights due diligence, including by conducting human rights impact assessments prior to implementing new policies or granting permits for natural resource extraction, infrastructural development, or other development projects taking place in Indigenous Peoples' customary territories or otherwise affecting Indigenous Peoples; sanctioning and revoking permits for businesses that violate the rights of Indigenous Peoples; and ensuring that rights violations are remedied, including through rehabilitation and restoration of the affected communities' lands and environment;
- k. Provide remedy, in consultation with them, to Indigenous Peoples who have been deprived of their traditional livelihoods;
- l. Implement the decision of the ILO Governing Body in the Ompu Ronggur case without delay, and expedite legal recognition of the customary lands of the community; and
- m. Ensure that extant laws providing for alternative means of livelihood for Indigenous Peoples, such as smallholder obligations for palm oil estates, are enforced and complied with by companies.

B. Non-discrimination (arts. 2, 19, 20, and 26)

16. The Committee asked the State to provide information on measures taken to implement the right to non-discrimination.⁵⁰ Although the State reports that it has adopted several laws that prohibit discrimination, the State's legal framework systematically discriminates against Indigenous Peoples. Indigenous Peoples in Indonesia are forced to navigate a complex maze of regulations at both the national and local level to attempt to secure any recognition of their rights. No other ethnic groups in Indonesia face such complex regulatory barriers to recognition of their rights, and this byzantine system is part of the reason that even where the legal framework allows for some recognition of rights, Indigenous Peoples' rights are not adequately recognized in practice.

17. The discrimination against Indigenous Peoples is in fact built into the Constitution. The UNCERD expressed concern that Indonesia's Constitution discriminates against Indigenous Peoples by only recognizing them if they "remain in existence"⁵¹ and recommended that Indonesia "respect the way in which Indigenous Peoples perceive and define themselves."⁵² The Constitution

⁵⁰ CCPR LOIPR for Indonesia, para. 4.

⁵¹ See Constitution of Indonesia, Article 18B(2), which recognizes "masyarakat hukum adat [customary law communities] and their traditional rights, in as far as they still exist and in line with the evolution of society..."

⁵² CERD/C/IDN/CO/3 (2007), para. 15.

also contains a provision requiring respect for the rights of ‘traditional communities’ in accordance with “this age of progress and human civilization.”⁵³ The UNCERD observed in this respect that “the rights of Indigenous Peoples have been compromised, due to the interpretations adopted by the State party of national interest, modernization and economic and social development.”⁵⁴ Importantly, although these Constitutional provisions require Parliament to enact legislation to give effect to those rights protections, to date there have been no acts of Parliament passed that specifically regulate the rights of Indigenous Peoples (see above).

18. At present, indigenous communities can only seek legal recognition of their communal land rights if their existence is first affirmed in a local government legal instrument. The submitting organizations observe that the State reports that there is now a new designation of Indicative Areas of Customary Forest (WILHA),⁵⁵ but this is merely, as the name suggests, an indicative designation and does not actually legally recognize customary forest until local governments pass a regulation recognizing the existence of the indigenous community. This determination is dependent on the discretion of the local government, violating Indigenous Peoples’ right to self-identification, a core right of Indigenous Peoples. This unfettered discretion has in fact impeded the ability of Indigenous Peoples to secure legal recognition of their rights, as there have been problems with significant delays in adoption of such regulations or decrees as well as haphazard drafting of such that have been adopted resulting in confusion over the effect of the legislative instrument. Some local governments have adopted regulations or decrees acknowledging that there are Indigenous Peoples in their region and setting out a process for the identification of particular peoples, but far fewer have yet to follow through on the process to actually recognize specific Indigenous Peoples much less recognize their rights over their lands and territories (see below). The national Indigenous Peoples’ organization AMAN estimated that as of October 2022, there had only been 161 local government legislative instruments that recognized indigenous communities, meaning that the government has yet to recognize the existence of the vast majority of indigenous communities in Indonesia.

19. After overcoming this discriminatory hurdle and obtaining local government recognition of their existence, Indigenous Peoples then have to pursue formal national government recognition of their land rights. Where, as is the case for many indigenous communities, agribusiness plantations or extractive concessions already exist overlapping indigenous lands, legal recognition of Indigenous Peoples’ existence or their lands does not necessarily affect the status of those interests, which often are not explicitly cancelled and therefore remain. This complex and convoluted process for the recognition of their land rights showcases one of the ways in which Indonesian law, even those purporting to protect indigenous rights, discriminates against Indigenous Peoples, as non-indigenous communities and persons are not required to be

⁵³ Constitution of Indonesia, Article 28I(3).

⁵⁴ CERD/C/IDN/CO/3 (2007), para. 16.

⁵⁵ State’s Report, para. 292.

formally recognized or accredited in order to secure their property and other rights.⁵⁶ In addition, laws or regulations that allow for recognition of indigenous rights are rarely implemented in practice. Less than 15% of the known and already mapped indigenous territories have been recognized by the government.⁵⁷ As another example, Komnas HAM noted that “[t]he granting of licenses in forestry, farming, and mining in coastal areas and small islands did not consider the provisions on the Indigenous Peoples protection as intended by the 1945 Constitution, Law 39 of 1999 on Human Rights, Law 27 of 2007 and Law 1 of 2014 as well as relevant international instruments.”⁵⁸

20. The lack of recognition of Indigenous Peoples’ land rights is complemented by a lack of protection for the right to FPIC in Indonesian law. The sectoral laws applicable to obtaining permissions to operate extractive concessions do not incorporate protections for Indigenous Peoples’ right to FPIC. For example, the laws pertaining to agri-plantations do not require FPIC; in fact, even the national palm oil sustainability standard does not require FPIC for land acquisition. At best, environmental permits require a limited form of consultation with communities.

21. The submitting organizations urge the Committee to recommend that the State of Indonesia:

- a. While the Indigenous Peoples’ Rights Bill is pending, expedite the current process of legally recognizing Indigenous Peoples’ land rights by accelerating the recognition of the existence of indigenous communities and then the recognition of their territories; and
- b. Follow the recommendations of Komnas HAM and implement the existing Constitutional protections for Indigenous Peoples in various extant laws.

C. Anti-corruption measures (arts. 2 and 25)

⁵⁶ See e.g., A. Bedner & S. van Huis, The Return of the Native in Indonesian Law: Indigenous Communities in Indonesian Legislation, 164 *Bijdragen Tot de Taal-, Land- en Volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 165–193 (2010), <https://openaccess.leidenuniv.nl/bitstream/handle/1887/18073/Bedner%20A.W.%20and%20S.C.%20van%20Huis%2c%20The%20return%20of%20the%20native%20in%20indonesian%20law.pdf?sequence=1>, p. 189 (discussing the (then) draft Bill on Coastal Areas and Small Islands (now Law 27/2007) and explaining that its “Article 74 recognizes the rights of Masyarakat Adat as owners (pemilik) of the coasts and to use the beaches and waters of the coasts, and respects their adat law. To put this in proper perspective, one should realize that Article 74(7) allows other communities to obtain similar rights without them having to go through the troublesome accreditation procedure reserved for Masyarakat Adat, so the recognition is not as special as it first appears”).

⁵⁷ BRWA, “Pemerintah Masih Lemah Dalam Melindungi Hak Masyarakat Adat”, 17 March 2023, available at <https://www.brwa.or.id/news/read/561> (displaying an infographic showing that out of 1,243 indigenous non-forest territories mapped by the BRWA, 198 have received formal recognition by the government, and out of 1,095 forest territories, only 108 have received formal recognition by the government).

⁵⁸ Annex 1, National Inquiry on the Rights of Indigenous Peoples, p. 16.

22. Although the State reports that it has implemented a number of regulations to combat corruption,⁵⁹ corruption remains a widespread issue in Indonesia and the root causes of corruption remain unaddressed. A recently-published study argued that the limited effect of governance reforms in Indonesia's forestry sector stemmed from the very nature of Indonesia's political economy.⁶⁰ The study found that reforms like those reported on by the State focus on bureaucratic legal and policy changes and turn a blind eye to the deeply embedded practices and relationships in Indonesia which incentivize corruption. Specifically, historically-rooted patron-client networks and relationships have been deeply embedded within Indonesian society since pre-colonial days and had only become further entrenched through successive colonial and post-colonial governments through the democratic era.⁶¹
23. In modern Indonesian history, this has evolved into electoral clientelism, incentivized by electoral systems and practices such as political parties charging fees to nominate candidates to the local legislature; candidates competing against members of their own party for specific seats their party wins; or individual vote-buying.⁶² The practical consequence of this system is that the costs of winning elections is extremely high, with estimates ranging in the tens to over one hundred billion IDR per election.⁶³ This political ecology has facilitated corporate lobbies using their influence to adopt clauses in lower-level regulations or implementing guidelines that weaken obligations imposed by existing laws, or otherwise taking advantage of complicated and overlapping regulations which can then be selectively implemented and enforced.⁶⁴
24. In addition, the submitting organizations dispute the State's characterization of the Corruption Eradication Commission (Komisi Pemberantasan Korupsi/KPK).⁶⁵ Although KPK was established as an extremely powerful government agency, it has in recent years been weakened by legal and political changes. A 2019 law stripped the KPK of certain powers; a police officer accused of improper conduct was appointed the head of the KPK; some investigations were blocked internally while details of others were leaked; and in 2021, the State removed 57 of the KPK staff.⁶⁶ The number of investigations conducted by the KPK fell by half from 2018 to 2020.⁶⁷

⁵⁹ State's Report, paras. 33-50.

⁶⁰ Ward Berenschot et al., *Forest Politics in Indonesia: Drivers of Deforestation and Dispossession*, Koninklijk Instituut voor Taal-, Land-, en Volkenkunde, Forest Peoples Programme, and University of Amsterdam, March 2023 (available at <https://www.forestpeoples.org/sites/default/files/documents/Forest%20Politics%20in%20Indonesia%20Full%20Report%20v8%20FINAL.pdf>).

⁶¹ *Ibid.*, Part one.

⁶² *Ibid.*

⁶³ *Ibid.*, p. 22.

⁶⁴ *Ibid.*, Part two.

⁶⁵ State's Report, paras. 33-50.

⁶⁶ Berenschot et al., pp. 36-37.

⁶⁷ *Ibid.*

25. The few cases where corruption has been prosecuted, there has been little redress for the people or communities affected. The high-profile case of oil palm tycoon Surya Darmadi is a case in point. Just last year, Surya Darmadi was convicted and sentenced to 15 years in prison in addition to being ordered to pay more than USD2.7 billion in fines for corruption which allowed him to establish more than 37,000 hectares of illegal palm oil plantations.⁶⁸ However, while the fines Surya Darmadi was ordered to pay represent restitution for the profits he earned, the indigenous communities whose lands were taken over and deforested by his oil palm companies are not receiving any remedy.

26. The submitting organizations urge the Committee to recommend that the State of Indonesia:

- a. Undertake reforms to address the systems which incentivize clientelism and corruption, including by reforming the electoral system and company audit systems, and monitoring and punishing vote buying;⁶⁹
- b. Increase transparency of corporate practices in Indonesia;⁷⁰
- c. Ensure that victims, both individual and communities, of corruption cases receive remedy when corruption cases are prosecuted; and
- d. Support and allow civil society to operate freely, in particular respecting the right to freedom of expression.⁷¹

D. Right to life (art. 6) (and freedom of expression, art. 19)

27. The State, despite the publication of Komnas HAM's guidelines on human rights defenders,⁷² has failed to adequately prevent and address attacks against indigenous rights defenders. It is not at all clear that the State has even attempted to follow Komnas HAM's guidelines in this respect. The State has in multiple cases used violent means to suppress peaceful assemblies, in some cases resulting in the death of human rights defenders. It should be noted that these are part of a broader trend of suppression of freedom of expression, and that between January 2019 and May 2023, Amnesty International documented at least 427 physical or digital attacks on human rights defenders.⁷³ New laws and regulations have also facilitated the suppression of them freedom of

⁶⁸ Mongabay, "Indonesian palm oil billionaire gets 15 years for corruption", 28 February 2023, available at <https://news.mongabay.com/2023/02/indonesian-palm-oil-billionaire-gets-15-years-for-corruption/>.

⁶⁹ See *ibid*, pp. 54-60.

⁷⁰ See *ibid*.

⁷¹ See *ibid*.

⁷² Indonesia's Replies to the LOI, para. 27.

⁷³ Amnesty International, "Freedom, justice, equality: Human rights agenda for the elected government officials", 2023, available at <https://www.amnesty.org/en/documents/asa21/7407/2023/en/#:~:text=Indonesia%20continues%20to%20fail%20to,guarantee%20peaceful%20expression%20of%20opinions>, pp. 14-15.

expression and resulted in prosecutions of human rights defenders for voicing criticism of State actions.⁷⁴ PUSAKA similarly documented 26 incidents of violent suppression of peaceful demonstrations in Papua in 2022.⁷⁵ These incidents involved the firing of weapons and tear gas at demonstrators which have resulted in death and serious injury, arbitrary arrests and detentions of numerous human rights defenders, and intimidation and interrogation of rights defenders. It should be noted that child killings, torture, and mass displacement of indigenous Papuans by security forces in 2021 prompted international scrutiny by UN experts,⁷⁶ and the State has done little since then to provide reassurance that remedy would be provided and that it would take effective measures to prevent future abuses.⁷⁷

28. A recent police killing of an indigenous rights defender in Central Kalimantan highlights the State's abject failures in this regard. On October 7, 2023, Indonesian police killed one indigenous rights defender, wounded two others, and arrested a dozen more in a violent crackdown on a peaceful protest by indigenous community members over the occupation of their traditional lands by a palm oil company.⁷⁸ To date, there has still been no accountability for these acts of violence. The national police rejected complaint letters from the victims and victims' families and failed to take any substantive action to investigate the incident.⁷⁹ The only update the police offered was during a hearing convened by the National Human Rights Commission (Komnas HAM) from November 22-24, 2023, during which the police stated that they had identified one suspect in the shooting. Other than the provision of this information at that hearing, the police have taken no other steps to inform the victims of the progress of their investigation into the incident and to ensure access to justice for the victims and their families. Instead, the police have engaged in tactics of intimidation to silence community activists, including most recently by calling two community members into the Bangkal police station to interrogate them.

⁷⁴ Ibid.

⁷⁵ PUSAKA, "They imprisoned our voices and thoughts: Monitoring report on the enjoyment of the right to peacefully assemble and express opinion in public in Papua in 2022", 2023, available at <https://pusaka.or.id/en/they-imprisoned-our-voices-and-thoughts/>.

⁷⁶ See OHCHR, "Indonesia: UN experts sound alarm on serious Papua abuses, call for urgent aid", 1 March 2022, available at <https://www.ohchr.org/en/press-releases/2022/03/indonesia-un-experts-sound-alarm-serious-papua-abuses-call-urgent-aid>; Human Rights Monitor, "UN Special Adviser on Genocide concerned about human rights situation in West Papua", 5 July 2023, available at <https://humanrightsmonitor.org/news/un-special-adviser-on-genocide-concerned-about-human-rights-situation-in-west-papua/>.

⁷⁷ See, e.g., CIVICUS, "Indonesia: Crackdown on Activists, Expression and Protests including in Papua as Government Seeks Human Rights Council Membership", 6 October 2023, available at <https://monitor.civicus.org/explore/indonesia-crackdown-on-activists-expression-and-protests-including-in-papua-as-government-seeks-human-rights-council-membership/>.

⁷⁸ See Mongabay, "Indonesian police slammed after protester demanding rightful land is shot dead", 10 October 2023, available at <https://news.mongabay.com/2023/10/indonesian-police-slammed-after-protester-demanding-rightful-land-is-shot-dead/>.

⁷⁹ PPMAN, "Laporan Keluarga Korban Penembakan Desa Bangkal di Tolak Bareskrim Polri: Negara Gagal Memenuhi Perlindungan HAM, Mewujudkan Keadilan dan Kepastian Hukum", 10 November 2023, available at <https://ppman.org/laporan-keluarga-korban-penembakan-desa-bangkal-di-tolak-bareskrim-polri-negara-gagal-memenuhi-perlindungan-ham-mewujudkan-keadilan-dan-kepastian-hukum/>.

29. This case showcases the common involvement of State organs in protecting the interests of private businesses. Komnas HAM in their 2016 investigation into Indigenous Peoples' rights in Indonesia noted that one of the root causes of human rights violations against Indigenous Peoples was that "Development policy promoting economic growth has given priority to granting exploitation permits to large-scale economic enterprises over indigenous territories, with the state apparatus and / or the security forces providing protection to the corporate interests (also in forest areas zoned for conservation)."⁸⁰
30. The Committee also asked the State to provide information on efforts to prevent and mitigate the effects of climate change and environmental degradation.⁸¹ The submitting organizations are cognizant of and concerned about the need for effective climate action. However, measures the State is taking and planning to take to address the risks of climate and natural disaster are ineffective and causing current indigenous rights violations. Some of these include renewable energy project developments planned in the CIPP mentioned above [see para. 9] or projects that are already causing serious violations of Indigenous Peoples' rights [see paras. 6-10]. Many of these projects not only pose threats of land-grabbing and destruction of environments and livelihoods but are also likely to be false climate solutions. For example, the CIPP calls for biomass cofiring with coal, with an estimated need of at least 9 million metric tons of biomass annually. Producing that much biomass will likely require 2.33 million hectares of land, of which half is expected to be newly established plantations.⁸² This potential deforestation in the name of an energy transition supplements other areas for potential deforestation in Indonesia, including in 5.7 million hectares of natural forest that is held under undeveloped timber plantation concessions.⁸³
31. The State is also promoting carbon crediting projects, both private and public, which have been established without respect for Indigenous Peoples' rights to FPIC, and which pose new threats to indigenous land tenure security. As one example, the State is implementing a jurisdictional REDD+ pilot program in East Kalimantan with funding from the Forest Carbon Partnership Facility, without the prior knowledge, let alone FPIC, of affected indigenous communities. Project documents acknowledge that the "great majority of indigenous groups" are not legally recognized and thus will have limited access to participate directly in and benefit from the program.⁸⁴ In Central Kalimantan, the Katingan Peatland Restoration Project has infringed upon the rights of the Dayak Misik, whose

⁸⁰ Komnas HAM 2016 Indigenous Peoples Inquiry Summary, p. 15.

⁸¹ CCPR LOIPR for Indonesia, para. 10.

⁸² Mongabay, "Indonesia pushes carbon-intensive 'false solutions' in its energy transition", 5 December 2023, available at <https://news.mongabay.com/2023/12/indonesia-pushes-carbon-intensive-false-solutions-in-its-energy-transition/>.

⁸³ Greenpeace, "Deforestation: Playing With Fire: An analysis of Indonesia's FOLU Net Sink 2030 Policy", 2023, available at https://www.greenpeace.org/static/planet4-southeastasia-stateless/2023/12/e8daa302-folu_net_sink_deforestation_playing_with_fire_2023.pdf, p. 24.

⁸⁴ Strategic Environmental and Social Assessment ("SESA"), Ministry of Environment and Forestry, East Kalimantan Province, Republic of Indonesia, p. 88.

access to their land has been restricted and who complain that the project has impacted their efforts to gain recognition of their customary land rights.⁸⁵

32. The submitting organizations urge the Committee to recommend that the State of Indonesia:

- a. Immediately adopt and implement a plan, agreed upon with the victims, to investigate and provide access to justice to the victims and their families and to the community for the shooting in Bangkal in October 2023, including by protecting the community's land and resource rights, punishing the perpetrators of the shooting, reforming police department policies, and refraining from supporting private businesses by acting as their security forces;
- b. Take effective measures to ensure that threats, attacks, intimidation, and harassment of human rights defenders are promptly, thoroughly, independently, impartially, transparently, and effectively investigated and that victims receive access to justice;
- c. Refrain from using State forces to suppress peaceful expression and peaceful assemblies, and particularly prohibit the use of violence to suppress peaceful assemblies and protests;
- d. Repeal or revise laws or regulations that suppress or facilitate the suppression of the freedom of expression and association;
- e. Refrain from initiating or implementing renewable energy projects without the FPIC of affected Indigenous Peoples, and reconsider the pursuit of renewable energy projects which may in fact lead to more deforestation and environmental degradation; and
- f. Refrain from pursuing carbon crediting or other nature markets projects, and refrain from granting concessions to corporate actors to pursue such projects, without the FPIC of affected Indigenous Peoples.

E. Gender equality (arts. 3, 25, 26)

33. The State's failure to recognize and protect Indigenous Peoples' land and participation rights also affects indigenous women in differentiated and oftentimes disproportionate ways. Societal patriarchal norms often prevent indigenous women from having land tenure security and from participating in decisions relating to land management and governance. Where corporate actors engage with indigenous communities at all, they often do not consider women to be decision-makers that they must consult with. In fact, even amongst the matrilineal Minangkabau people, where women traditionally hold property, men

⁸⁵ Global Atlas of Environmental Justice, "Katigan peatland conservation and REDD project excluding traditional owners, Kalimantan, Indonesia", Updated 29 March 2023, available at <https://ejatlas.org/conflict/katigan-peatland-conservation-excluding-traditional-owners-indonesia>.

are the ones who are involved in public decision-making over land matters. This means that where companies do engage in negotiations with indigenous communities over compensation for land and resource use, women's needs, such as compensation for loss of their specific livelihood activities, can remain unaddressed.⁸⁶

34. Indigenous women often face differentiated and overlooked impacts when they lose access to their traditional lands and resources. Women face sexual harassment and violence when their lands are taken over by agro-commodity plantations, including when they are working as employees on the plantations.⁸⁷ When Indigenous Peoples are forced into working for palm oil companies that have taken over their lands, women in Indonesia make up about half of the work force. Women are usually hired for work that is considered lower skill and thus that pay less than men, but women are also more likely to be engaged in hazardous work, such as spraying chemicals.⁸⁸

35. The submitting organizations urge the Committee to recommend that the State of Indonesia:

- a. Ensure that State actors or other third party actors seek the FPIC of affected Indigenous Peoples, through consultation processes which ensure the effective participation of women, prior to conducting any activities affecting Indigenous Peoples' rights;
- b. Revise existing laws or enact new laws and regulations to ensure that indigenous women have secure access to tenure;
- c. Enforce extant laws relating to wages, working hours, and worker safety and health, and in particular, protect the rights of female workers.

F. Access to justice, independence of the judiciary, and fair trial (arts. 2 and 14)

36. The discrimination against Indigenous Peoples in law, policy, and practice in Indonesia also leads to a lack of access to justice and fair trials for Indigenous Peoples. For example, there are often deficient or absent remedial measures in the form of compensation, reparation, and guarantees of non-repetition, in cases

⁸⁶ See, e.g., HRW and AMAN, "‘When we lost the land, we lost everything’: oil palm plantations and rights violations in Indonesia", 2019, available at https://www.hrw.org/sites/default/files/report_pdf/indonesia0919_insert_lowres.pdf, p. 48 (describing an example where representatives of PT Ledo Lestari held meetings with male Iban Dayak community members to negotiate compensation and rehabilitation packages, but because no women participated in these meetings, specific impacts on women went unaddressed in these agreements. These included the loss of community networks and livelihoods from weaving, and difficulties accessing land and managing resources to provide food for their families.).

⁸⁷ See, e.g., AP News, "Rape, abuses in palm oil fields linked to top beauty brands", 18 November 2020, available at <https://apnews.com/article/palm-oil-abuse-investigation-cosmetics-2a209d60c42bf0e8fcc6f8ea6daa11c7>.

⁸⁸ See, e.g., Li, T M, "Social Impacts of Palm Oil in Indonesia: a gendered perspective from West Kalimantan", 2015, CIFOR, available at <https://www.cifor.org/knowledge/publication/5579>.

involving violations of indigenous people's rights in the oil palm industry. In addition, as mentioned before, Indigenous Peoples are often criminalized for engaging in traditional practices or for attempting to defend their rights. In some cases, there is a history of criminalization of indigenous groups out of prejudice. The O Hongana Manyawa people in Tobelo Dalam, North Maluku, for example, have historically been accused whenever there was a murder in the region.⁸⁹ In one recent case, two indigenous individuals, Alen Baikole and Samuel Gebe, from the O Hongana Manyawa people, were convicted of murder despite irregularities in the trial process.⁹⁰ The judge in the case ignored certain evidence and testimony, including evidence that one of the defendants were nowhere near the murder scene at the time of the crime, and instead relied only upon the statements of witnesses who did not directly witness the crime.⁹¹ There was also evidence that investigators tortured the defendants to force a confession in the case.⁹²

37. The submitting organizations urge the Committee to recommend that the State of Indonesia:

- a. Ensure that Indigenous Peoples receive access to justice and effective redress, including through compensation, reparation, and guarantees of non-repetition, for violations of their rights;
- b. Ensure that judges uphold the highest standards for independence and fairness in cases presented before them;
- c. Ensure that Simon and Alen Baikole receive access to justice for their wrongful arrest, torture by the police, and conviction;
- d. Take effective measures to prevent arbitrary arrests and prosecutions and to prevent police brutality; and
- e. Educate police, prosecutors, and judges on Indigenous Peoples' rights and take effective measures to enable Indigenous Peoples to have access to justice and equality before the law.

G. Freedom of conscience and religious belief (arts. 2, 18 and 26)

⁸⁹ BBC News Indonesia, "Masyarakat Adat O'hangana Manyawa di Halmahera terjepit industri nikel, citra primitif, dan dugaan kriminalisasi", 10 November 2023, available at <https://www.bbc.com/indonesia/articles/crgp0g6k8mvo>.

⁹⁰ AMAN, "Masyarakat Adat Tobelo Dalam Gugat Polres Halmahera Timur, Pasca-Penangkapan Warga", 3 May 2023, available at <https://www.aman.or.id/news/read/masyarakat-adat-tobelo-dalam-gugat-polres-halmahera-timur-pasca-penangkapan-warga>.

⁹¹ BBC News Indonesia, "Masyarakat Adat O'hangana Manyawa di Halmahera terjepit industri nikel, citra primitif, dan dugaan kriminalisasi", 10 November 2023, available at <https://www.bbc.com/indonesia/articles/crgp0g6k8mvo>.

⁹² Apa Habar, "Putusan Janggal Sidang Kasus Masyarakat Adat Halmahera Timur", 9 November 2023, available at <https://apahabar.com/post/putusan-janggal-sidang-kasus-masyarakat-adat-halmahera-timur-loqmcfty>.

38. Indigenous Peoples' rights to freedom of conscience and religious belief are often threatened when their land rights are threatened. As just one example, the oil palm company PT Mitra Austral Sejahtera (PT MAS) has impaired the right of the Dayak Hibun indigenous people to access their sacred sites and to perform religious rituals. The Dayak Hibun believe that ancestral spirits inhabit sites such as Pedagi Abae Pengehan Abung, Nek Hatu Aye and Abae Luncak Lancik, as well as graveyards at Kubur masal Pulau Batongk, Kubur Pulau Mojik and Kubur Tak Klotok. The loss of access to any of these sites has a deeply disruptive effect on the communities' cultural festivals, including the Gawai tutup tahun semangat padi and the pantang akhir tahun paska panen padi.
39. Government administration of the population has also resulted in discrimination against Indigenous Peoples' religious beliefs. Despite Constitutional Court Decision No. 97 of 2016 recognizing 'beliefs' in addition to state-recognized religions for population administration purposes,⁹³ there continues to be discrimination in administrative acts against Indigenous Peoples who do not follow state-recognized religions. This is in part because there have not been effective regulations to implement the Court's decision and to enable Indigenous Peoples to register their indigenous beliefs as their religion, instead of registering a state-recognized religion. For example, the Sunda Wiwitan of Cigugur, Kuningan in West Java are still unable to have their indigenous religion reflected on their ID cards; and have difficulty receiving religion instruction according to their beliefs. Some Sundanese Wiwitan also are not able to receive their full wage allowances. They also have difficulties registering their marriages, and in fact 104 families in Cigugur, Kuningan do not have marriage certificates.
40. The submitting organizations urge the Committee to recommend that the State of Indonesia:
- a. Protect Indigenous Peoples' rights to access and use their lands and resources, including for the purposes of accessing cultural heritage sites or performing religious or cultural rituals; and
 - b. Take the necessary measures to ensure that Indigenous Peoples are able to freely exercise their religions and beliefs, and that identification by their indigenous religions or beliefs does not hinder their access to administrative services.

⁹³ Constitutional Court Decision 97/PUU-XIV/2016.

Annex 1: Submitting Organizations

- Aliansi Masyarakat Adat Nusantara (AMAN/Indigenous Peoples Alliance of the Archipelago) is an independent community organisation (mass organization) whose members comprise of communities of Indigenous Peoples from diverse natives of the Archipelago. AMAN was declared pursuant to a longstanding historical construction of Indigenous Peoples' movements in Indonesia. Since the mid of 1980s there had been new awareness within the non-government organisations (NGO) and social scientists on the widespread negative developmental impacts on all groups of the Indonesian society. Indigenous Peoples are the main and largest in numbers suffered the most by (and become victims) politics of the development over the last three decades. The imminent oppressions towards Indigenous Peoples have been taking place in economics, politics, laws as well as other social and cultural spheres, therefore, on these grounds, AMAN was established. Address: Rumah AMAN, Jalan Tebet Timur Dalam Raya No.11A Kel. Tebet Timur, Kec. Tebet, South Jakarta, 12820, Indonesia. Phone: +62-21- 8297954; Email: rumahaman@cbn.net.id.
- Akar Global Initiative is a non-profit and non-political organization established to participate in developing the potential and self-help of the community in an effort to create a society that is critical, independent, democratic and socially just. Address: Jl. DP Negara 7, No. 123 Rt 21/Rw 04, Kel. Pagar Dewa, Kec. Selebar, Kota Bengkulu, Kode Pos. 38216. Email: akar.bengkulu@gmail.com.
- Green of Borneo (GoB) North Kalimantan is a North Kalimantan based local non-governmental organization established in 2019 based and domiciled in Jln. Ujang Dewa Rt. 02 Rw. 01 Kelurahan Nunukan Selatan, Kabupaten Nunukan Provinsi Kalimantan Utara. This organisation works in the field of environmental conservation. Phone: +62822-5163-0006 / +62852-4669-9108. Email: greenofborneo@protonmail.com.
- Justice & Peace, Integrity of Creation (JPIC) Kalimantan is a non-profit and non-government organization. It is a movement to fight for justice, peace and integrity of creation/protection of environment. It was born from struggle, action and reflection of activists of FPIC in Kalimantan. Address: Jl. Badak XVI/5 Palangkaraya, Central Kalimantan, Indonesia 74874. Phone: +6282113317749. Email: gfborneosani@gmail.com.
- Lanting Borneo.
- Lembaga Bantuan Hukum ANGSANA (LBH ANGSANA) is a non-profit and non-governmental legal aid association concerns with the legal and human rights of vulnerable groups especially indigenous women and girls, young people, democratic, due process of law and rule of law without discrimination and equality before the law with civil, political, social, cultural and ecological justice.
- Lembaga Bentang Alam Hijau (LemBAH) is an association established in 2003 that works on Indigenous Peoples and local community rights advocacy,

social, economic and cultural empowerment and revitalisation. LemBAH promotes resilient customary forest and community land tenure, agrarian reform and human rights. Address: Jl. Sanggau Ledo – Bengkayang, Bengkayang City, West Kalimantan, Indonesia. Email: sekretariatlembah@gmail.com.

- Perkumpulan Nurani Perempuan (PNP) is an indigenous women's organisation, founded in 1999 which acts to promote the rights and welfare of Dayak Indigenous Peoples on the Mahakam River in East Kalimantan. The organisation is staffed by Dayak Bahau. Initially set up to empower indigenous women, the rapid takeover of Dayak lands by palm oil, logging, mining and timber estates has led the organisation to focus principally on land rights. Address: Jl. KS. Tubun Dalam Komplek Wira Bakti RT. 12 No. 15 Kel. Sidodadi, Samarinda, Kalimantan Timur 75123, Indonesia. Phone: + 62 8115861244. E-mail: marthadoq@yahoo.co.id.

- Palangkaraya Ecological and Human Rights Studies (PROGRESS) is a non-profit organisation that focuses on research, campaigns and advocacy on ecological and human rights issues, established in the city of Palangkaraya, Central Kalimantan in November 2014. PROGRESS also aims to achieve environmental equality based on Universal Human Rights principles and uphold the culture and wisdom of Indigenous Peoples and local communities and gender issues in Central Kalimantan. Address: Jalan G. Obos XIX B, Gang Mutiara Ujung, Palangka Raya, Central Kalimantan. Email: kartik4lintang@gmail.com.

- Organisasi Penguatan dan Pengembangan Usaha-Usaha Kerakyatan (OPPUK) was founded in 2004 to advocate, educate, and organize for oil palm plantation workers in North Sumatra. Together with the cadres of oil palm plantation workers, they established an independent labor union called SERBUNDO (Serikat Buruh Perkebunan Indonesia/Indonesian Plantation Workers Union). Address: Komplek Wartawan, Beringin Street No. 49, Pulo Brayan Darat II, East Medan District, Medan City, North Sumatra Province 20237, Indonesia. Phone: +62 82167676545. Email: oppuk.indonesia@gmail.com.

- Tapakng Olupm Macatn Sangi' (TOMAS). Sanggau, West Kalimantan.

- Yayasan Masyarakat Kehutanan Lestari (YMKL) – the Foundation for Sustainable Forest Communities – is a legally registered non-profit organisation registered with the Indonesian Ministry of Law and Human Rights. Set up in 2017, YMKL is the initiative of a group of seasoned Indonesian indigenous rights activists seeking to complement the vigorous legal and political advocacy of the national indigenous rights movement. YMKL engages with specific communities facing direct threats to their human rights, especially their rights to lands and forests, by helping them to address directly the challenges that they face on the ground. Email: emil.kleden@forestpeoples.org.

- Yayasan Padi Indonesia is a non-governmental organisation concerned with the process of development (agriculture, forestry, fishery, and plantation) based on the principles of sustainability of natural resources and environment. Address: Jl.

Mayjen Sutoyo, Gg. Surya Rt. 008 Rw. 012 No.39 (Gunung Malang), Balikpapan, Kalimantan Timur, Indonesia 76113. Phone: +62 542 734360. Email: info@padi.or.id.

- Yayasan Pusaka Bentala Rakyat (formerly PUSAKA) was established in 2002 by local activists who have extensive experience in advocacy activities for Indigenous Peoples' rights and popular education. It focuses on research, advocacy and the documentation and promotion of Indigenous Peoples' rights. As well, as capacity development, strengthening community organisations and the education and empowerment of Indigenous Peoples' rights. Address: Jalan Tebet Timur Dalam VII Nomor 20, Tebet, Jakarta Selatan (12620). Phone: +62 21 27874913. Website: www.pusaka.or.id. Email: info@pusaka.or.id.
- Yayasan Rumpun Bambu Indonesia (YRBI).
- Yayasan Ulayat Nagari Indonesia (YUNI) is a public policy study centre based in West Sumatra which focuses on empowering communities and villages. Its vision is realizing recognition and respect for the traditional rights of Indigenous Peoples over agrarian resources through legal justice, equal rights, and development sustainability. Address: Jln KKN komplek kantor camat Pasaman, nagari lingkuang aua, kecamatan Pasaman, kabupaten Pasaman Barat, Provinsi Sumatera Barat. Email: ulayatnagariindonesia@gmail.com.
- Forest Peoples Programme (FPP) is an international NGO based in the United Kingdom, founded in 1990, which supports the rights of forest peoples. It aims to secure the rights of indigenous and other peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies. Address: 1c Fosseway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, United Kingdom. Phone: +44 01608-652893. Email: lan@forestpeoples.org.