



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

REFERENCE: CERD/EWUAP/103<sup>rd</sup> session/2021/MJ/CS/ks

30 April 2021

Excellency,

I refer to your communication of 30 November 2020 in follow up to the virtual meeting of 17 November 2020 between representatives of your Government and the Committee, as well as previous communications from the Committee of 13 March 2009, 28 September 2009 and 28 August 2015. I thank your Government for its replies and the Committee takes note of the information provided.

The Committee has since received and considered further information, referring to the situation of indigenous peoples in Indonesia. The information received alleges that very few indigenous peoples have gained official state recognition. It alleges that, in practice, local governments do not give recognition while some of them expressly deny the existence of certain indigenous peoples, a fact which, if verified, constitutes a major impediment to the exercise and protection of their rights.

The Committee takes note of the information provided by your Government in relation to the “masyarakat hukum adat” or “customary law communities”. On this issue, the Committee reiterates the concern expressed in its previous concluding observations (CERD/C/IDN/CO/3, paragraph 15), that the domestic law of Indonesia does not contain appropriate protections to guarantee the respect for the principle of self-identification in the determination of these communities as indigenous peoples.

In addition, the information received refers to the adoption of the Omnibus Law on Job Creation (Law 11/2020 of 3 November 2020) alleging that this law was drafted and passed without proper consultation with the indigenous peoples of Indonesia. The information alleges that that Law will amend many existing regulations and reverse current protections of indigenous peoples' rights.

According to the information received, based on the Omnibus Law the Government will be able to arbitrarily declare some lands as ‘abandoned’, and compulsorily acquire indigenous peoples' lands without any free, prior, or informed consent, and without fair and just compensation. Furthermore, it is alleged that the Omnibus Law will almost entirely abolish the requirement to conduct environmental impact assessments before companies proceed with business activities on indigenous peoples' lands, as well as the requirement of participation of local communities and indigenous peoples in the process of issuing business licenses.

H.E. Ms. Grata Endah Werdaningtyas  
Deputy Permanent Representative and Chargé affaires a.i  
of Indonesia to the United Nations Office  
Geneva  
E-mail: [geneva@mission-indonesia.org](mailto:geneva@mission-indonesia.org)

The Committee reiterates its previous concerns and requests the Government to provide information in relation to the measures adopted to protect the rights of indigenous peoples, including the right to consultation, in the context of the increasing presence of palm oil plantations in indigenous people's lands and territories, in particular the Kalimantan Border Oil Palm Mega-Project along the Indonesia-Malaysia international border.

The Committee is also concerned about allegations of a lack of official recognition of indigenous peoples in Indonesia based on the principle of self-identification and about the alleged negative effects of the Omnibus Law on the livelihood and the rights of indigenous peoples.

These allegations, if verified, could amount to a breach of the State party's duty to recognize and protect the rights of Indonesian indigenous peoples to their lands and territories and the right to be consulted. In this regard, the Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that no decisions directly relating to the rights or interests of indigenous peoples is taken without their informed consent.

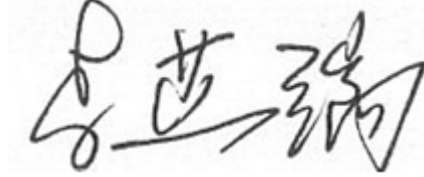
The Committee also recalls its recommendations of 15 August 2007 (CERD/C/IDN/CO/3), particularly paragraphs 15, 16 and 17 in which it recommends the State party, *inter alia*: "to respect the way in which indigenous peoples perceive and define themselves"; "to amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development are defined in a participatory way [...] and are not used as a justification to override the rights of indigenous peoples"; "to secure the possession and ownership rights of local communities before proceeding further" with the Kaliman Border Oil Palm Megaproject, and "ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in [the project]."

In accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party as a matter of urgency to submit its 4<sup>th</sup> to 6<sup>th</sup> combined periodic report overdue since 2010, in which it should include information on measures taken to address all the issues outlined above. In particular, it requests the State Party to provide information on:

- (a) The safeguards adopted to guarantee the respect of the fundamental principle of self-identification in the determination of indigenous peoples;
- (b) The measures taken to expedite the enactment of the draft bill on the recognition and protection of the rights of indigenous peoples, in consultation with them;
- (c) The concrete steps taken to prevent and address the conflicts between indigenous communities and oil palm companies, and to legally protect the rights of these communities in the context of the increasing presence of oil palm plantations and roadbuilding, in particular in the Kalimantan border regions;
- (d) The status of implementation of the Omnibus Law on Job Creation (Law 11/2020 of 3 November 2020) including adverse impact on the rights of indigenous peoples and the measures adopted to revoke or to review it ;
- (e) The concrete measures adopted to guarantee an inclusive and adequate discharge of the duty to consult indigenous peoples that could be affected by the oil palm industry and other large-scale projects, and to obtain their free, prior and informed consent.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of Indonesia, with a view to ensuring the effective implementation of the Convention.

Yours sincerely,



Yanduan Li  
Chair

Committee on the Elimination of Racial Discrimination