**Submission to the Committee on Economic, Social and Cultural Rights Review of Indonesia**

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**Aliansi Masyarakat Adat Nusantara (“AMAN”)** (Indigenous Peoples Alliance of the Archipelago) is an independent community organisation with a vision to create a just and prosperous life for all Indigenous Peoples in Indonesia. AMAN represents 2,422 indigenous communities, amounting to 17 million individual members, throughout Indonesia. In advance of the 70th Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights and its adoption of a list of issues on Indonesia’s compliance with the International Covenant on Economic, Social and Cultural Rights, AMAN provides the following submission on the rights of Indigenous Peoples in Indonesia in response to the second periodic report submitted by Indonesia under articles 16 and 17 of the Covenant.

**Non-discrimination**

1. Indonesia’s laws contain numerous discriminatory and debilitating obstacles to securing Indigenous Peoples’ rights as protected by this Convention. This Committee has consistently expressed its concerns about “formal and substantive discrimination across a wide range of Covenant rights against Indigenous Peoples and ethnic minorities among others”.[[1]](#footnote-1) As the situations presented herein demonstrate, the State’s acts and omissions demonstrate a discriminatory failure to recognize and protect Indigenous Peoples’ rights.
2. Preliminarily, the State continues to deny the applicability of Indigenous Peoples’ rights in Indonesia. Although Indonesia is a signatory to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the State ignores requests by peoples who identify as Indigenous to use the term “Indigenous Peoples (*Masyarakat Adat*)”. It instead uses different terms to refer to Indigenous Peoples, including *Masyarakat Hukum Adat*, *Indigenous Community*, and *Customary Law Community*, amongst others.[[2]](#footnote-2) The inconsistency in terminology reflects the State’s unwillingness to implement the internationally recognised rights of Indigenous Peoples.
3. The State’s laws and policies require onerous and complicated procedures for Indigenous Peoples to even claim recognition of their rights. For example, a prerequisite for Indigenous Peoples requesting recognition of their land rights is that District and/or provincial governments must certify Indigenous Peoples’ “existence” via decree or regulation depending on the status of the claimed area.[[3]](#footnote-3) This requirement leaves wide discretion to local governments,[[4]](#footnote-4) and denies Indigenous Peoples legal personality (a non-derogable right)[[5]](#footnote-5); disregards the fundamental criterion of self-identification;[[6]](#footnote-6) and *ab initio* subordinates their rights to the interests of other parties.
4. The State has additionally failed to comply with judicial decisions regarding Indigenous Peoples’ land rights. Since Constitutional Court ruling No. 35/2012, which held that indigenous forests are not State forests, Indonesia has, by its own admission, formally only recognised “35, 090 ha [hectares] as Adat [customary] Forest”.[[7]](#footnote-7) This figure represents less than 0.1 percent of the estimated 40 million ha of forest nationwide that is traditionally owned by indigenous communities.[[8]](#footnote-8) Whilst Indonesia reports the designation of an additional “914,927 hectares of customary forest areas in 2019”[[9]](#footnote-9), this does not amount to the legal recognition of Indigenous Peoples’ land rights.

*AMAN recommends that the Committee ask the government:*

* What measures is the government taking to remedy the substantial discrimination against Indigenous Peoples and disrespect for their rights?
* What laws, policies, or programs have been developed to implement Constitutional Court decision No. 35/2012?
* What efforts are being made to expedite the land titling process and to avoid overburdening indigenous communities with onerous and convoluted processes to guarantee their fundamental human rights?

Masyarakat Adat [Indigenous Peoples]

1. AMAN submitted a draft Bill on the Recognition and Protection of the Rights of Indigenous Peoples (the Indigenous Peoples Bill, *RUU Masyarakat Adat*) to the national parliament in 2012 to more fully protect Indigenous Peoples’ rights. Despite the State report noting “the draft law on MHA is already included in the 2015-2019 National Legislation Priority”[[10]](#footnote-10) and recommendations for the bill’s enactment by UN treaty bodies including this Committee,[[11]](#footnote-11) the bill continues to languish in the legislature without any sign of imminent approval by the House of Representatives (DPR)[[12]](#footnote-12). Without such a law, the existing legal system imposes obstacles to the protection of Indigenous Peoples’ fundamental human rights.
2. Meanwhile, the State adopted the Law on Job Creation which facilitates investments and permitting while weakening social and environmental protections to the detriment of Indigenous Peoples’ rights. The Law enables an increase in the already extensive criminalization of indigenous traditional practices; expands the options for government expropriation of lands; reduces penalties for corporate actors to mere administrative sanctions for environmental and forestry offences; abolishes the already weak requirements, including the conduct of environmental impact assessments, for companies to obtain the necessary permits for business activities on Indigenous Peoples’ lands; and significantly waters down or eliminates critical safeguards for indigenous land rights, namely, effectively participation in decision-making on the issuance of business licences and the conduct of environmental and social impact assessments.[[13]](#footnote-13)
3. The process by which the Law was finalised denied Indigenous Peoples’ right to effective participation and instead privileged business interests, ignoring the requirement in international human rights law that where legislation affects Indigenous Peoples, the State should ensure “adequation consultation with the view to obtain[ing] free, prior and informed consent [FPIC]”[[14]](#footnote-14). This Committee has explicitly recommended that Indonesia “Define strong mechanisms for ensuring the respect of their [Indigenous Peoples’] FPIC on decisions affecting them and their resources, as well as adequate compensation and effective remedies in case of violation”[[15]](#footnote-15). Rather than define such mechanisms in the new Law, the State directly contravened this recommendation in the process of adopting the Law. In fact, the process of adopting the law has been struck down by the Constitutional Court as unconstitutional, and the law itself will be deemed void if the State does not correct the procedural defects in the Law within two years.[[16]](#footnote-16)

*AMAN recommends that the Committee ask the government:*

* What action has been taken by the government and national parliament (*Dewan Perwakilan Rakyat*) to enact the Indigenous Peoples’ Rights Bill?[[17]](#footnote-17)
* In the absence of a law on Indigenous Peoples, as mandated by the 1945 Constitution, how is the government upholding its international human rights obligations to recognise and protect the rights of Indigenous Peoples?
* Why has the business permitting process been simplified through the Law on Job Creation, whilst procedures for recognising the rights of Indigenous Peoples to their customary territories remain unchanged?
* What efforts have been made to respect Indigenous Peoples’ right to effective participation in decision-making in any legislative and regulatory proposals?
* What steps will the government take to ensure that the amendment of the Law on Job Creation is conducted with the effective participation of Indigenous Peoples?[[18]](#footnote-18)

**Land Tenure**

1. This Committee, along with other UN treaty bodies, has repeatedly urged States parties to take measures to recognize and protect Indigenous Peoples’ land rights. This means, as this Committee’s draft General Comment on Land acknowledges, that States should “demarcate their lands, protect them from encroachment and respect the right of the communities concerned to manage the lands according to their internal modes of organization”.[[19]](#footnote-19) The draft General Comment also recommends that “Laws and policies should protect Indigenous Peoples from the risk of State encroachment on their land, for instance for the development of industrial projects or for large-scale investments in agricultural production”.[[20]](#footnote-20) The laws, policies, acts, and omissions of the State described herein do not come close to meeting the standards international human rights law expects for the protection of Indigenous Peoples’ land rights. Although the State report describes the development of policy options to protect tenurial rights, such as “the Agrarian Reform Acceleration program”[[21]](#footnote-21) and social forestry initiatives, these do not amount to secure tenure that protects communities’ lands from future encroachment. Apart from *hutan adat* [customary forests], the other social forestry tenures are leaseholds on State lands or State forests. The leases are not vested in indigenous communities[[22]](#footnote-22) and they cannot be handed out over existing concessions. As a result, for many Indigenous Peoples, social forestry schemes are being used to “legalise” Indigenous territories as State lands or State Forest.[[23]](#footnote-23) Individual land titling under the Agrarian Reform (TORA) and the social forestry tenures on offer are not a recognition of customary rights and do not meet international human rights standards for security of tenure.

*AMAN recommends that the Committee ask the government:*

* What steps have been taken to secure Indigenous Peoples’ possession and ownership rights over the lands encompassed by their customary tenure systems?
* What procedures has the National Land Bureau adopted and implemented to (1) recognise and protect customary lands and territories; and (2) provide indigenous communities with complete information regarding both proposed and existing permits that overlap their customary lands and territories?
* How are the Ministry of Environment and Forestry and the Ministry of Land and Spatial Planning co-ordinating efforts with one another to ensure clarity in the designation of customary forests and their subsequent status?

**Land Conflicts and Human Rights Defenders**

1. UN treaty bodies have repeatedly raised concerns about severe violations of Indigenous Peoples’ rights in the plantation and mining sectors in Indonesia.[[24]](#footnote-24) The State’s own National Commission on Human Rights (Komnas HAM) has expressed concern over the existence of “development policy promoting economic growth [that] 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”[[25]](#footnote-25). The State’s increasing promotion of commercial land exploitation has led to an escalation in land conflicts. According to the National Land Bureau, there are about 4,000 land conflicts between communities and companies in the palm oil sector in Indonesia. This means there is on average more than one registered land conflict in every company palm oil operation in the country.[[26]](#footnote-26) Our own members report that land conflicts are even more prevalent.[[27]](#footnote-27) Whilst the State “encourages the private sector to create an internal complaint mechanism”[[28]](#footnote-28), it has failed to fulfil its own responsibility to uphold Indigenous Peoples’ rights and provide judicial and other mechanisms to resolve competing rights claims. In addition, although it plans “to scale up efforts to address the remaining challenges in fulfilling the rights of MHA [indigenous communities] including in solving disputes between MHA and State-owned enterprises on the use of land and natural resources”,[[29]](#footnote-29) land conflicts cannot be fairly resolved without changes in Indonesian law to protect indigenous peoples’ rights as against corporate interests (see section on Masyarakat Adat).
2. The escalation in land conflicts is accompanied by attacks against Human Rights Defenders (HRDs). As Komnas HAM documented, “conflict and human rights abuses continue to occur, especially based on the agrarian land and forests. These conflicts lead to many forms of discrimination, stigmatization and criminalization of Indigenous Peoples”[[30]](#footnote-30). In 2018, for example, the Seko Indigenous Peoples of South Sulawesi rejected a plan to build a hydropower plant on their traditional lands. The company behind the plant and the local government responded with intimidation and violence. Fourteen Seko community members were arrested, while a further fourteen remained on a “wanted list”. At one point, the police threatened to arrest all the men in one Seko community if protests continued. Women and children have also experienced threats and violence because of their opposition to the hydropower project.[[31]](#footnote-31)
3. The Seko situation reflects a wider trend of attacks against HRDs. 2021 saw 95 recorded attacks against 297 activists, government critics, students, journalists and Indigenous Peoples, ranging from intimidation to physical abuse, an increase from the previous year’s 93 incidents affecting 253 victims. Police and military personnel, as well as officials from the central government and local administrations, allegedly took part in 55 of the incidents. Extrajudicial killings by security forces claimed 15 lives in Papua this year, down from 30 last year.[[32]](#footnote-32)

*AMAN recommends that the Committee ask the government:*

* What steps have been taken to immediately suspend the expansion of plantation or mining operations in areas occupied by Indigenous Peoples?
* What measures have been taken to remedy the massive and ongoing rights violations occurring in existing plantation and mining concessions?
* What steps have been taken to prevent the criminalization of community whistle-blowers and human rights defenders at the behest of private companies?
* What penalties (including revocation of permits and concessions) have been imposed on mining and palm oil operators found to have violated Indigenous Peoples’ rights?
* What procedures are in place at the National, Regional, District and Sub-district level to respond to grievances and take urgent steps to uphold Indigenous Peoples’ rights?

**Forced Labour**

1. The palm oil plantation section occupies about 19 million ha of land and employs about 2 million workers, about half of whom are Indigenous Peoples and half migrant and contract workers (see section on Transmigration below). Our research shows that the expansion of the palm oil plantation sector has deprived Indigenous Peoples of their lands and livelihoods and is directly linked to situations where Indigenous Peoples are forced into substandard employment under exploitative conditions on palm oil estates.[[33]](#footnote-33) The lack of legal recognition of customary land rights and land grabbing by plantation companies facilitated by discriminatory laws mean that many Indigenous Peoples are deprived of opportunities to engage in their traditional livelihoods. They are then frequently faced with unfair smallholder arrangements. In some cases, smallholdings are not provided to communities despite obligations in Indonesian national law to do so.[[34]](#footnote-34) Where Indigenous Peoples work directly for the palm oil company, they face un-unionised and exploitative labour conditions, where they work as *kernet* workers (unofficial workers who help harvesters meet unrealistically high quotas, but have no direct employment relationships with the company) or casual workers (who are illegally kept in a temporary work status to fill core jobs and paid below the minimum wage). In both cases, workers are routinely exposed to hazardous pesticides and face unattainable quotas which has resulted in child labour.[[35]](#footnote-35) They also face criminalization for engaging in traditional agricultural practices[[36]](#footnote-36), such as rotational farming techniques.
2. This Committee observed that the Covenant’s Article 6 right to work includes the right “to decide freely to accept or choose work”, which includes “not being forced in any way whatsoever to exercise or engage in employment” and not being “unfairly deprived of employment.”[[37]](#footnote-37) People are entitled to “decent work … that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration.”[[38]](#footnote-38) The indigenous communities and workers deprived of traditional livelihoods and economically forced into work on oil palm plantations are not freely choosing their employment and are not enjoying “decent work”.
3. Although the State cites the Job Creation Law as evidence of its commitment “to continue improving labour conditions in Indonesia”,[[39]](#footnote-39) this law would exacerbate the cycle of takeovers of indigenous lands for oil palm plantations and exploiting indigenous workers on those plantations. Various provisions in the law further privilege the interests of private companies over the rights of Indigenous Peoples.[[40]](#footnote-40)

*AMAN recommends that the Committee ask the government:*

* What measures is the government taking to ensure that indigenous communities are not economically coerced into working on oil palm plantations as a result of being deprived of their traditional livelihoods?
* How will the government provide redress in the form of restitution for indigenous lands taken without due process or fair compensation?
* How does the government ensure that Indigenous Peoples are not deprived of their means of subsistence or traditional livelihoods?

**Failure to recognise traditional economies**

1. The above-mentioned takeover of Indigenous Peoples’ lands also demonstrates the State’s failure to recognise traditional economies. Although Indigenous Peoples’ territories provide natural resource products and environmental services, only a small part of direct economic activities and ecosystem services in these territories are valued in the government’s official statistics and indicators measuring economic progress.[[41]](#footnote-41) This narrow State focus on growing cash income per capita as a fundamental measurement of human development ignores the value of traditional knowledge and economies.
2. The State claims to be broadening the “opportunity for MHA [customary communities] to further integrate with the mainstream social and economic system”[[42]](#footnote-42) through the empowerment of “local customs”[[43]](#footnote-43) and “villages as the main actors in poverty alleviation”[[44]](#footnote-44). However, the State’s development policy, which prioritises private investment over Indigenous Peoples’ rights, reduces the real income per capita of Indigenous Peoples who are affected by such developments. The failure to understand the value of traditional economies and marginalisation and displacement of Indigenous Peoples to commodify our forests is causing rather than alleviating poverty in affected communities.[[45]](#footnote-45) Indeed, studies show that oil palm plantations bring net harm to remoter forest-dependent communities.[[46]](#footnote-46)
3. The situation of the Ompu Ronggur, a community of Toba Batak – a highland people of North Sumatra with an ancient tradition of resin tapping from their agroforests – exemplifies these problems. In 2004, a large part of their traditional territory was allotted to a pulp and paper company, Toba Pulp Lestari (TPL), for establishing *Eucalyptus* plantations.[[47]](#footnote-47) Their repeated appeals to the State for return of their lands were ignored. 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 a representation filed on behalf of the community under ILO Convention 111[[48]](#footnote-48), 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.

*AMAN recommends that the Committee ask the government:*

* How can the State demonstrate that their current investment model is improving peoples’ income or economy and not destroying Indigenous Peoples’ assets, i.e., transfer of land as their base capital of income and ecosystem resources as their natural capital to support local production system?
* How has the government guaranteed that in land governance processes, policies, and institutions, land is not treated as a mere commodity, but that its role as a social and cultural good is recognized?
* What steps is the government taking to implement the decision of the ILO Governing Body in the Ompu Ronggur case?

Transmigration

1. Transmigration has intensified the top-down pressure on community lands and exacerbated the negative impacts on indigenous culture. In 2007, the State adopted a new Transmigration scheme, *Kota Terpadu Mandiri[[49]](#footnote-49)* (Integrated Self-sustaining Townships) or KTM.[[50]](#footnote-50) KTMs are deemed to be projects in the national interest and thus amenable to the State’s power to expropriate lands, subject to adequate processes for compensating rights-holders. In response to criticism about land conflicts caused by earlier schemes, State regulation requires that KTMs be ‘clean and clear’ prior to the establishment of new settlements.[[51]](#footnote-51) The regulation requires that rights of existing residents, including explicitly Indigenous Peoples, are respected.
2. However, the ‘clean and clear’ policy remains unimplemented. Our research found that the KTM policy sponsors the forced takeover of Indigenous Peoples’ lands without their consent, contravening the State’s own guidance documents that recommend that the consent of Indigenous Peoples be obtained before their lands are used for KTMs.[[52]](#footnote-52) Similar studies found multiple irregularities in the application of the State’s ‘clean and clear’ procedure in KTMs. Lands had been taken over without prior consultations, with no or nugatory compensation, and even when rejected by local communities. Lands had been cleared prior to the required authorisation and in some cases were implanted in the wrong locations. There was poor coordination between the implementing agencies and line Ministries and a lack of transparent sharing of information with concerned parties, including with local governments.[[53]](#footnote-53)
3. The situation of the Dayak Bekati’ of Indonesian Borneo in the Province of West Kalimantan illustrate the negative impacts of KTMs. Under the Transmigration scheme, impoverished and landless people, mainly from Java, were settled on Dayak Bekati’ lands. Meanwhile, concessions were granted to oil palm developers without prior consultation with the affected communities.[[54]](#footnote-54) Villages were coerced into surrendering their customary lands to the oil palm companies. The KTM policy has sped up the allocation of Dayak Bekati’ lands to the oil palm companies, but the promised township with schools, hospital, shops and services has dissolved into nothing more than a tangle of weeds, collapsed buildings, and mud.

*AMAN recommends that the Committee ask the government:*

* How will the government implement the ‘clean and clear’ policy and ensure respect for Indigenous Peoples’ free, prior, and informed consent prior to their lands being used for Transmigration?
* What actions have been taken to remedy the ongoing rights violations associated with KTMs, such as those documented in Subah, West Kalimantan?

**Plantation sector and food estates**

1. The State’s temporary moratorium on the issuance of new licences for palm oil plantations expired in September 2021 and has not been renewed. According to one analysis, 21 million ha of rainforest are at risk of being cleared now that the moratorium is no longer in place.[[55]](#footnote-55) Indigenous Peoples fear that the previously unbridled issuance of palm oil licences will resume and put even greater pressure on our lands and jeopardize Indonesia’s efforts to meet emissions reduction targets set under the Paris climate accord.
2. In addition, the State’s Covid-19 National Economic Recovery Plan[[56]](#footnote-56) threatens to accelerate land-grabbing at the expense of Indigenous Peoples’ rights and livelihoods. Under the Plan, the State will subsidise the mass production and consumption of biofuel (palm oil) and the expansion of “Food Estate Programs”.[[57]](#footnote-57) The regulations to facilitate such food estates allow for the use millions of hectares of land previously unavailable for food plantations, including designated protected forests.[[58]](#footnote-58) Indigenous Peoples’ lands are at risk of being taken over for such programs, particularly given that any legal safeguards that previously existed for their rights were reduced by the Job Creation Law *(see* sectiononMasyarakat Adat). State-initiated, agro-industrial mega-projects, such as the Merauke Integrated Food and Energy Estate in West Papua, have been repeatedly flagged by UN Treaty Bodies as inflicting “irreparable harm on Indigenous Peoples due to the reported massive seizures of traditional indigenous lands.”[[59]](#footnote-59)

*AMAN recommends that the Committee ask the government:*

* What legal guarantees are in place to protect Indigenous Peoples from the expansion of the palm oil industry into their customary forests?
* How will the government ensure that “Food Estate Programs” will not result in large scale dispossession of Indigenous Peoples’ lands?

**Failure to Implement Treaty Body Recommendations**

1. Indonesia’s disregard for its international obligations cannot go unchecked, and the irreparable harm that has ensued and that will expand and intensify invites and compels international scrutiny and action. The repeated disregard for the UN Treaty Body’s recommendations[[60]](#footnote-60), illustrated through the failure to respond to multiple formal communications requesting evidence the State has adopted safeguards to protect the rights of Indigenous Peoples,[[61]](#footnote-61) must be challenged.

*AMAN recommends that the Committee ask the government:*

* How has the government taken the UN Treaty Bodies’ recommendations into consideration? How has the government responded to formal communications from UN Treaty Bodies?
1. CESCR, General Comment No. 20: Non-Discrimination, E/C.12/GC/20, 2 July 2009, para 18. [↑](#footnote-ref-1)
2. Pengakuan setengah hati terhadap penjaga hutan terbaik, September 2015, <https://www.aman.or.id/wp-content/uploads/2015/09/Kertas-Posisi-AMAN-INDC_Full.pdf>. [↑](#footnote-ref-2)
3. Land claimed inside of State Forest requires different regulations and processes to land claimed outside of State Forest. [↑](#footnote-ref-3)
4. *See e.g.,* ‘Indonesia’s indigenous wage two-pronged battle for legal recognition’, *Mongabay News*, 27 April 2016 (reporting that “just five regulations — known as *Perdas* — [have been adopted] since the landmark court decision three years ago,” and that, “despite explicit constitutional recognition, no national law has been passed that says who qualifies as indigenous, or what rights, if any, such status confers. The lack of legal certainty leaves *adat* communities especially vulnerable to abuse and loss of lands to those who see profit in their forests”), https://news.mongabay.com/2016/04/perda-push/. [↑](#footnote-ref-4)
5. *See* ICCPR, Art. 16 (“Everyone shall have the right to recognition everywhere as a person before the law”), read in conjunction with Art. 4(2), stating that “No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.” [↑](#footnote-ref-5)
6. *See* CERD/C/IDN/CO/3 (2007), para. 15 (concluding that, although Indonesia “recognizes the existence of Indigenous Peoples on its territory ... under domestic law, these peoples are recognized ‘as long as they remain in existence’, without appropriate safeguards guaranteeing respect for the fundamental principle of self-identification in the determination of Indigenous Peoples”); E/C.12/IDN/CO/1 (2014), para. 38 (where the UNCESCR refers to Indonesia’s “statement that it would make use of relevant principles contained in the [UNDRIP]” and “urges the State party to expedite the adoption of the draft law on the rights of Masyarakat Hukum Adat and ensure that it: (a) Defines Masyarakat Hukum Adat and provides for the principle of self-identification, including the possibility to self-identify as Indigenous Peoples...”). [↑](#footnote-ref-6)
7. Second periodic report submitted by Indonesia under articles 16 and 17 of the Covenant, CESCR, 3 November 2021, para. 298. According to the Badan Registrasi Wilayah Adat (BRWA) (the indigenous Territory Registration Body), this figure was the amount recognised as of 2016; as of August 2021, “the Ministry of Environment and Forestry (KLHK) has issued 75 decrees recognizing Customary Forests with an area of 56,903 hectares or about 0.68% of the current potential of Indigenous Forests.” BRWA information on the “status of recognition of indigenous territories in Indonesia”, BRWA Indigenous Territories Registration System, 2021. [↑](#footnote-ref-7)
8. *See e.g.,* Reuters, 2018, ‘With forest rights, indigenous Indonesians stave off mining, palm oil’, https://www.reuters.com/article/us-indonesia-landrights-lawmaking-idUSKCN1NI13T. [↑](#footnote-ref-8)
9. Second periodic report submitted by Indonesia under articles 16 and 17 of the Covenant, CESCR, 3 November 2021, para. 299. [↑](#footnote-ref-9)
10. Second periodic report submitted by Indonesia under articles 16 and 17 of the Covenant, CESCR, 3 November 2021, para. 297. [↑](#footnote-ref-10)
11. *See e.g.,* E/C.12/IDN/CO/1 (2014), para. 38 (urging Indonesia to “expedite the adoption of the draft law on the rights of Masyarakat Hukum Adat”); and CERD/EWUAP/103rd session/2021/MJ/CS/Ks, 30 April 2021. [↑](#footnote-ref-11)
12. For the last 10 years, the Bill on the Recognition and Protection of the Rights of Indigenous Peoples has repeatedly entered the national legislation program but has never been approved by the DPR at the end of the legislative year. [↑](#footnote-ref-12)
13. AMAN et al., “Request for consideration of the Situation of Indigenous Peoples in Indonesia under the United Nations Committee of the Elimination of Racial Discrimination’s Urgent Action and Early Warning Procedure”, CERD 102nd Session, October 2020. [↑](#footnote-ref-13)
14. *See, e.g.,* CERD Decision 1(100): Canada, 13 December 2019; CERD Concluding Observations: Ecuador, CERD/C/ECU/CO/23-24, 15 September 2017, para 19. [↑](#footnote-ref-14)
15. E/C.12/IDN/CO/1 (2014), para 38. [↑](#footnote-ref-15)
16. B. McKenzie, “Indonesia: What to expect after constitutional court decision on the Omnibus Law (2021)”, <https://www.lexology.com/library/detail.aspx?g=fc57dc1b-ed36-4470-bc90-a41331e06875>. [↑](#footnote-ref-16)
17. *See* CERD/EWUAP/103rd session/2021/MJ/CS/Ks, 30 April 2021 (requesting Indonesia to provide information on “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”). [↑](#footnote-ref-17)
18. *See* CERD/EWUAP/103rd session/2021/MJ/CS/Ks, 30 April 2021, paras 7-8 (recalling that States parties should “ensure that no decisions directly relating to the rights or interests of Indigenous Peoples is taken without their informed consent.”) [↑](#footnote-ref-18)
19. CESCR, General comment No. 26 (2021) on land and economic, social and cultural rights: Draft prepared by the Rapporteurs, Rodrigo Uprimny and Michael Windfuhr, E/C.12/69/R.2, 3 May 2021, para. 23. [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Second periodic report submitted by Indonesia under articles 16 and 17 of the Covenant, CESCR, 3 November 2021, para. 186. [↑](#footnote-ref-21)
22. They are instead vested in cooperatives and lower tier State administrative bodies like administrative villages (desa). [↑](#footnote-ref-22)
23. Indonesia’s social forestry schemes provide for Indigenous Peoples to surrender their customary rights in perpetuity in favour of village-based institutions obtaining a 35-year license to manage and protect State forests that have not already been assigned to other entities. This requires compliance with onerous institutional and forest management regulations which have been developed by the government and usually do not meet the needs of communities. *See* M. Colchester et. al, “Assault on the Commons”, Forest Peoples Programme, 2014, p. 34, <https://www.forestpeoples.org/sites/default/files/publication/2014/12/assault-commons.pdf>.  [↑](#footnote-ref-23)
24. *See e.g.,* E/C.12/IDN/CO/1 (2014), para. 27 (expressing concern “at violations of human rights in the mining and plantations sectors, including the right to livelihood, the right to food, the right to water, labour rights and cultural rights”); CEDAW/C/IDN/CO/6-7 (2012), para. 45(b) (identifying “violation of the rights of indigenous women to access their land, water and natural resources”); and CRC/C/IDN/CO/3-4 (2014), para. 19 (expressing deep concern about “Various forms of discrimination against children belonging to indigenous communities, such as insufficient access to education and health care”) and para. 70 (urging Indonesia to “... ensure the prior informed consent of Indigenous Peoples with regard to exploitation of the natural resources in their traditional territories”). [↑](#footnote-ref-24)
25. "National Inquiry on the Rights of Indigenous Peoples over their Land in Forest Areas", National Commission on Human Rights (Komnas HAM), 18 March 2016,p. 15, [https://www.komnasham.go.id/files/1475132149$1$8R632$.pdf](https://www.komnasham.go.id/files/1475132149%241%248R632%24.pdf) [↑](#footnote-ref-25)
26. The normal minimum estate to supply a palm oil mill is 6,000 ha. [↑](#footnote-ref-26)
27. For example, in Seruyan, the local government estimates there are 300 land conflicts, which is per every 1,000 hectares of plantings. This equates to six times the rate of land conflicts as reported by the National Land Bureau. [↑](#footnote-ref-27)
28. Second periodic report submitted by Indonesia under articles 16 and 17 of the Covenant, CESCR, 3 November 2021, para. 177. [↑](#footnote-ref-28)
29. Second periodic report submitted by Indonesia under articles 16 and 17 of the Covenant, CESCR, 3 November 2021, para. 301. [↑](#footnote-ref-29)
30. "National Inquiry on the Rights of Indigenous Peoples over their Land in Forest Areas", National Commission on Human Rights (Komnas HAM), 18 March 2016,p. 16. [↑](#footnote-ref-30)
31. 01/Dep II, PB AMAN/VII/2018, PB AMAN, “Communication with the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz” (2018), <https://docs.wixstatic.com/ugd/15e8c4_e56a519f7e8a4c88a92d9c830e280021.pdf>. [↑](#footnote-ref-31)
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