

**Submission Report to Human Rights Council
On The Situation of Human Rights and Fundamental Freedom of Indigenous
Peoples in Indonesia**

**Universal Periodic Review
Thirteenth Session
21st May - 1st June 2012**

**Submitted by
Aliansi Masyarakat Adat Nusantara/AMAN (Indigenous Peoples Alliance of the
Archipelago)**

I. Preliminary

1. Indonesia has population of around 230 millions. The government recognizes 365 ethnic and sub-ethnic groups as *komunitas adat terpencil* (geographically-isolated customary law communities). They number approx. 1.1 million. However, many more peoples consider themselves, or are considered by others, to be indigenous. The national indigenous peoples' organization, Aliansi Masyarakat Adat Nusantara (AMAN), uses the term *masyarakat adat* to refer to indigenous peoples in Indonesia, amounts to between 50-60 millions.
2. The third amendment of the Indonesian Constitution recognizes indigenous peoples' rights in Article 18b-2. In more recent legislation, there is an implicit, though conditional, recognition of some rights of peoples referred to as *masyarakat adat* or *masyarakat hukum adat*, such as Act No.5/1960 on Basic Agrarian Regulation, Act No.39/1999 on Human Rights, MPR (Parliament) Decree No. X/2001 on Agrarian Reform. Finally, in 2007 Indonesian Government has signed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).
3. AMAN as an umbrella organizations of indigenous people in Indonesia welcomes Universal Periodic Review mechanism invited Non-Government Organizations to participate in reporting information in terms of countries' (UN members) obedience to international agreements on human rights and implementation of recommendations, especially those already ratified by the countries (UN members).
4. This submission report highlights the implementation of UPR's recommendations in 2008, in particular the Section II of the Report of the Working Group A/HRC/8/23: Paragraph 77 point (1), (3), (5) and point (7a and 7b); and Paragraph 78.¹

¹ List of recommendations contained in Section II of the Report of the Working Group A/HRC/8/23

II. Review and Implementation from the UPR Recommendation 2008

Para 77 Point 3

5. The state has already put some laws to protect human rights defenders (HRD), such as on National Constitution article 27, 28, dan 28 A – 28 I, which also put stressed on Law No.39/1999 on Human Rights and the Declaration of Human Rights article 2, 9, 12, 14 and article 15. But on the contrary, the violance, pressure and threaten still happened. AMAN seriously highlights human rights violations against HRD.
6. In North Sumatera, early March 2010, police arrested an indigenous leader of Kampong Secanggang, Mr Ibrahim Isra or Ibrahim Nyak (68 yo), and his community was alleged of invading and utilizing some 386 hectares of land that was part of the PTPN II's (state-owned plantation company) concession. On 27 April, the court found Mr. Ibrahim Isra guilty and he was sentenced to 10 months' imprisonment.
7. In Ketapang, West Kalimantan, Vitalis Andi and Japin belong to the Dayak Jalai in Silat Hulu Ketapang, have been accused against the Law No.18/2004 on Plantation article 21 Jo article 47 on Criminal Act article 55 (1). They were tried to stop PT Bangun Nusa Mandiri (BNM), a subsidiary company of PT Sinar Mas Group an oil palm company who since April 2008, wanted to displace and destructed 350 hectares of Silat Hulu's customary land.

Para 77 Point 5

8. AMAN appreciate that Indonesian government has adopted Agrarian Law No. 5/1960, Law No. 27/2007 on Coastal and Small Islands and Law No. 32/2009 on Protection and Management of Enviroment, which are recognizing Indigenous Peoples Rights. But other influential policies which have strong impacts to Indigenous Peoples Rights, like Law No. 41/1999 on Forestry and Law No. 4/2009 on Mineral and Coal are still remain threaten to Indigenous Peoples.
9. Between 2008 to 2011, indigenous peoples in Indonesia continuously experience various forms of discrimination, coercion and exploitation of their lands, territories and resources. The State's claim to and control over land and natural resources in indigenous territories is still ongoing.
10. In Merauke West Papua, the development of Merauke Integrated Food and Energy Estate (MIFEE) falls under Law No. 41/2009 on the Protection of Areas for Sustainable Food Agriculture (PLP2B), adopted in September 2009. Based on Presidential Instruction No. 01/2010 on the Acceleration of the Development Corridor of Merauke, this project will soon be implemented. The 1,6 million hectares of lowland, forest and swamp allocated for MIFEE program is indigenous territory called *Anim-ha* belongs to the Indigenous Peoples of Malind. Indigenous Peoples' living in this area depend on hunting and collecting sago as their main food. This industry will have major impacts on their livelihoods by changing the ecosystem and threatening Indigenous Peoples' food sovereignty. It should also be noted that the project is designated as export oriented. The project also has the potential to increase and create social conflicts and to result in loss of cultural traditions and values. Meanwhile, this food industry is estimated to bring 6.4 million workers to Merauke and West Papua in

general. The total population of West Papua is only 4.6 million people, where 70% of this population lives in remote areas. With a population of only 174,710 in Merauke, these plans will acutely threaten the existence of Indigenous Peoples within these areas, turning them into a minority in number, even leading to extinction in the future. West Papua has a long story of human rights abuses, many of which have not been solved until now. This kind of large-scale business in Indigenous Territories, without their Free, Prior and Informed Consent (FPIC) will only exacerbate the human rights situation, leading to forced evictions and other human rights violations.²

11. In North Sumatera, a state-owned plantation company (PTPN II) occupied the lands of *Rakyat Penunggu*, indigenous communities in four districts (Deli Serdang, Medan, Binjai and Langkat). The land covering more than 350,000 hectares, has been converted into oil palm and sugar cane plantations. Indigenous peoples in these regions have experienced various forms of human rights violation by the company and police officials. In March 2010, the company destructed 10 hectares crops and burned custom houses in Menteng Village. June 2011, reported that 600 BRIMOB (mobile police brigades), together with company's private securities attacked Sei Jernih Community, resulted in 14 villagers suffered from injuries from wood-hit, stones and guns-fired, damaged of 7 hectares crops and burned of houses.³ In September 2011, the same case happened again in Klambir Village-Deli Serdang. In this case, 2 villagers tortured, 24 houses destroyed, 2 houses burned and 40 hectares of crops were damaged.
12. In South Sulawesi, the land of Karonsi'e Dongi community has been occupied by PT Inco, a nickel mining company operating in the area since 1969. Members of community have been evicted from their land without any consent nor compensation. The community has tried to different ways of demand for recognition to their rights, but there's no result. In early 2010, the Karonsi'e Dongi Community requesting the local government to help settle the conflict. But as of today there has been no result. The Karonsi'e Dongi's community has suffered from environmental pollution. The establishment of the community area as the conservation forest by forestry department without free, prior and informed consent has furthermore violate their rights.
13. In 1994, Provincial Government of South Sulawesi assign the forests in Katute's territory as Protected Forest without free, prior and informed consent from the community. The community cannot access their forest anymore since then. In January 2009, 11 members of the Barambang Katute community arrested y the Police of Sinjai District. They were accused on crimes against Forestry Law (Article 78 paragraph 1 Jo article 50 paragraph 30 a & b) and Criminal Act (article 55 paragraph 1).
14. In Maluku, 8700 hectares in Cape Paperu owned by the Luhukay Clan has been rented by PT Maluku Diving and Tourism. Since then, the Paperu community have been denied access to that area. They were not able to practice *Sasi*, a

² AMAN Submission to the United Nations Committee on the Elimination of Racial Discrimination, Seventy-ninth session, 8 August – 2 September 2011

³ AMAN Submission to the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedom of Indigenous Peoples 2011

traditional marine resource management system they've been practiced for centuries. The company has never shown any effort to obtain free, prior and informed consent to the eighty percent (80%) of the affected villagers directly depends on the sea resources claimed by the company. The report on Indigenous Peoples and Decision Making Process to the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) has included the case.

15. In Sumbawa, West Nusa Tenggara, a gold mining company PT Newmont Nusa Tenggara (NNT), did explorations between 1983 and 1986, in the Cek Bocek territory without free, prior and informed consent from the community. In 2003, conflicts between the community and the company occurred. 20 companies base camps has burned down 12 members of community injured by police, and 7 suffered from gun fired. Until now, conflict still continuous. The Cek Bocek community reclaimed the area through the Indigenous Territory Spatial Planning, where 98.02% of the area to be exploited by PT NNT lies 1525 ancient graves threatened to extinct. Neither the government nor the company recognizes the claim until now.
16. In Kalimantan, Dayak Punan communities have suffered of losing their land and forest resources to logging companies. one of which, PT Fortuna Cipta Sejahtera expanded its forest concessions, including around 15,000 hectares of forest belongs to the Punan. In October 2010, the Dayak Punan protested company's policy that banned the people to do their everyday life activities in their own land, ended with ongoing intimidation to the communities by the company. The other companies also there in Punan's lands are PT Intraca Wood and PT Alchates Plywood. Punan Dulau community, one among several Punan communities live in East Kalimantan, has replaced by the resettlement program of the Ministry of Social Affairs. Soon after, the government gave their territory to the concession of the PT. Intraca Wood.
17. Discrimination against traditional beliefs and religions. The National Constitution Article 18 clearly said that the state have obligation to guarantee the freedom of all people to hold their religion and beliefs. In reality, the government only admits six majority religions in the national Identification Card or Kartu Tanda Penduduk, ignoring those original religions/beliefs. There are still discrimination against indigenous peoples' traditional beliefs *including the following*: Sunda Wiwitan beliefs of the Kanekes in Banten and Cireundeu Community of Cimahi, West Java; Kaharingan beliefs of the Dayaks in Kalimantan, Aluktodolo beliefs of theToraya, South Sulawesi, Parmalin beliefs in North Sumatera, Kejawen beliefs in Central and East Java, Marapu beliefs in Sumba. The discrimination happens mostly in education, health, jobs and other public services. The Indonesian National Commission on Human Rights has made a report on this simillar cases to the First Session of Universal Periodic Review, 2008, but there's no progress in the government on this issue.⁴

⁴ Submission with regard to the UPR mechanism Submitted by the Indonesian National Human Rights Commission Related to Indonesia for the 1st session scheduled in April 2008, Para 15.

Para 77 point 7

18. AMAN welcomed the government's commitment in promoting human rights at the regional level with the establishment of the ASEAN regional human rights body or AICHR, which was declared on October 23, 2009. The Terms of Reference (TOR) AICHR mentioned that AICHR responsible for the promotion and protection of human rights in ASEAN based on the principle of consensus, consultative and non-intervention, where reporting is addressed to the ASEAN Foreign Ministers' Meeting. But it is very unfortunate ASEAN Human Rights Mechanism is still limited in obtaining information (to obtain information) and conduct thematic studies, as result of political compromise among the ASEAN countries. AMAN notice that studies conducted by AICHR blueprint for ASEAN in 2015, has not mentioned any study of indigenous peoples and their rights.
19. AMAN highlighted that the government of Indonesia has ignored the concluding observation CERD/C/IDN/ICO/3 Para 17 and recommendations on Para 20 and 25 from the CERD⁵, related to the rights of indigenous peoples and plantation issues. CERD has sent the third letter⁶, which requested the Government of Indonesian to provide information on the implementation of the concluding observation and recommendations. AMAN expects the Indonesian government to respond to the CERD, to convey information as expected, in January 2012 as requested by CERD.

Para 78

20. AMAN also highlighted the absence of the Government of Indonesia wishes to invite Special Procedures in particular the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedom of Indigenous Peoples, to have dialogue on the situation of human rights and fundamental freedom of indigenous peoples in Indonesia.

III. Recommendations

21. AMAN appreciated that Indonesia Government has adopted Universal Declaration on the Rights of Indigenous Peoples on 13 September 2007. This commitment marks new era that Indonesia Government has shared efforts to eliminate all forms of colonialism, oppression and deprivation against indigenous people's rights in indigenous territories in the name of development, economic growth and foreign exchange. But four years after the adoption, human rights violence to indigenous peoples still occurred. Therefore, AMAN urges Indonesia Government to immediately scheduled session to discuss the Draft Law on the Recognition and Protection of the Rights of Indigenous Peoples and hold nationwide consultation process on the draft law.
22. AMAN welcomes any efforts made by the government to hold human rights education for law enforcement officials, including prosecutors, police and judges, as well as for security forces, so that they will fully understand and obey

⁵ CERD 71 session, CERD/C/IDN/ICO/3, 15 August 2007, para 17, 21 and 25

⁶ CERD Letter to Indonesian Government – 13 March 2009, 28 September 2009 and 2nd September 2011

any rules, procedures, and international instruments used to human rights protection. But unfortunately, even after the First Session of the Universal Periodic Review on 2008 until now, human rights violation by police officials and security forces against indigenous peoples who protect their lands and their natural sources still occurs.

23. Therefore AMAN recommend the Government of Indonesia, the following :
- a. To immediately schedule session to discuss the Draft Law on the Recognition and Protection of the Rights of Indigenous Peoples, which now already in Parliament's National Legislation Program for 2010-2014.
 - b. To revoke Law No. 41/1999 on Forestry and Law No. 4/2009 on Mineral and Coal, which have been the sources of conflicts and human rights violation against indigenous peoples, then replace those laws with the laws that recognize and protect indigenous peoples' rights.
 - c. To implement all recommendations by CERD, on its 71th Session, CERD/C/IDN/ICO/3 Para 17, 20 and 25 related to Indigenous Peoples Rights.
 - d. To formally recognize traditional beliefs and religions, and provide necessary services to the communities to be able to fully enjoy the rights.
 - e. To coordinate with and take advices from UN Bodies with specialty on indigenous peoples issues, to find every way out to diminish human rights violations on indigenous peoples.
 - f. To coordinate and consult with indigenous peoples to ensure all programs and funds related to, or have impacts to indigenous peoples, are fully recognize the rights and the needs of indigenous peoples and to effectively use, efficient and reach the right target.
 - g. To continue to hold constructive dialog with indigenous peoples and indigenous people's organizations in Indonesia on all issues related to their rights.
 - h. To invite the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedom of Indigenous Peoples



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- Annex 3 : AMAN Submission to the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedom of Indigenous Peoples 2011 [page 10]
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Annex 1:

List of recommendations contained in Section II of the Report of the Working Group A/HRC/8/23:

76. In the course of the discussion, the following conclusions were made, with the agreement of the State under review:

1. Efforts and specific measures taken to combat trafficking in persons, especially women and children, were commended. Indonesia underlines the importance of regional cooperation in this field.
2. The removal of all reservations to the Convention on the Rights of the Child was welcomed, as was the incorporation of the Convention into national legislation.
3. Enhanced engagement in a constructive dialogue with the special procedures and the benefits derived from some of their recommendations are important elements of promoting and protecting human rights.

77. These recommendations formulated during the interactive dialogue have been examined by Indonesia and the recommendations listed below enjoy the support of Indonesia:

1. Indonesia is commended for its efforts in the field of human rights training and education and is encouraged to continue in this regard, and to provide additional training for law enforcement officials, including prosecutors, police and judges, as well as for security forces.
2. Indonesia, in line with its National Plan of Action, is encouraged to follow through on its intention to accede to the Rome Statute of the International Criminal Court, the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, child prostitution and child pornography and the Optional Protocol to the Convention against Torture, Cruel, Inhuman and Other Degrading Treatment. Indonesia is further encouraged to consider signing the International Convention on the Protection of All Persons from Enforced Disappearance.
3. Indonesia is commended for enabling a vibrant civil society, including with respect to those engaged in defending human rights, and is encouraged to support and protect their work, including at the provincial and local level as well as in regions with special autonomy.
4. Welcomes Indonesia's reaffirmation of its commitment to combat impunity and encourages it to continue its efforts in this regard.
5. While acknowledging the efforts made by the Government of Indonesia, it was recommended that such efforts continue to ensure the promotion and protection of all the components of the Indonesian people.
6. The inclusion of the crime of torture in the new draft criminal code is welcomed and the Government is encouraged to finalize the draft code, taking into account comments received from relevant stakeholders.
7. Capacity-building/cooperation/sharing of best practices:

- (a) Indonesia is encouraged to consider engaging in further dialogue at the regional and international level, and share best practices, as requested by States during the interactive dialogue;
- (b) Indonesia is encouraged to identify its capacity building needs related to the Universal Periodic Review follow-up and seek regional and international cooperation in this regard, including through integration of the Universal Periodic Review recommendations, as appropriate, into its national development strategy and into its dialogue with relevant stakeholders through existing mechanisms. Such capacity-building needs could pertain, inter alia, to issues such as harmonization of local laws with national and international standards or to strengthening national human rights institutions;
- (c) It was recommended that additional capacity-building measures be taken in support of programme and projects on women and children.

78. Other recommendations noted in the report in paragraphs 51, 53 and 63 above will be examined by Indonesia which will provide responses, if any, in due time.

- Paragraph 51 (the United Kingdom): “Recommended further measures to address the threats against Ahmadiyyah families following a fatwa banning the Ahmadiyyah” “Recommended to the Government that the death penalty be abolished.”
- Paragraph 53 (the Netherlands): “Recommended that Indonesia’s efforts would be rounded off by a standing invitation to all special procedures.”
- Paragraph 63 (Latvia): “Consider extending a standing invitation to the special procedures.”

Annex 3 :

AMAN Submission to the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedom of Indigenous Peoples

C/O OHCHR – UNOG

Office of the High Commissioner for Human Rights

Palais Wilson

1211 Geneva 10, Switzerland

THE SITUATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOM OF INDIGENOUS PEOPLES IN INDONESIA (2 CASES)

This Submission has been developed by AMAN with full participation and by consent from the following respective indigenous community and organization:

- 1) Paperu Community
- 2) Badan Perjuangan Rakyat Penunggu/BPRPI (Sei Jernih Indigenous Community)

This submission contains two cases of violations of indigenous peoples' rights to land, territories and resources and of their human rights and fundamental freedoms committed by Government of Indonesia, Private companies and Indonesian's Police Unit (Mobile Brigade Squad/BRIMOB) taking place in Maluku and North Sumatera Provinces. They are:

1. Grabbing of Coastal and marine resources belong to the Paperu Indigenous Community by PT. Maluku Diving and Tourism in Maluku Province
2. Torture resulted from a long land conflict between Sei Jernih Community with Police unit and a National Plantation Company (PTPN II) in North Sumatera Province

Paperu Village

By a license/permit from the Government of Indonesia, and the Maluku Provincial government, PT. Maluku Diving and Tourism started its operation in 2007 in Paperu Village by renting a land of 8700 hectares in Cape Paperu owned by the Luhukay

clan. Ever since, The Company has used the area for tourism activities such as diving, snorkeling etc. The Company has been also prohibiting villagers to enter the areas for swimming, fishing and any other activities. Therefore, since the arrival of the Company, the Paperu community have been denied access to that area which cause they cannot be able to do the *Sasi* system.

The Company has never shown any effort to obtain the Paperu's free, prior and informed consent where more than Eighty Percent (80%) of the affected villagers directly depend on the resources from the sea claimed by the company. Furthermore, like many indigenous peoples' in Maluku, the Paperu indigenous community has been very well known with their coastal and marine resource management system called *Sasi* which has been acknowledge as a good practice by many including the Government of Indonesia, conservation organizations and just recently the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) included *Sasi* in its report on Indigenous Peoples and Decision Making Process.

Recently, in June when the big wave season, the community faced serious difficulties to find further in to the sea and then they had to enter the Cape Paperu, as it had been the last source they could rely on when it was difficult to find fish somewhere else. When the Raja/Chief of Paperu himself led the villagers to enter the Cape, the Security guards of the Company whisked them away.

The presence of the Company has also triggered an internal conflict among the Paperu Community as there has been "pro-cons" among them with regards to their positions about the Company. Until the report is submitted the conflicts continues both the internal conflict and the conflict against the Company

Sei Jernih Community

This case is occurred on the Land of Penunggu Indigenous Peoples in Sei Jernih Community in North Sumatera Province where the security guards of PTPN II (a National Plantation Company) and Indonesian's Police Mobile Brigade Squads (BRIMOB) attacking members of Sei Jernih Community .

On June 17, 2011, two trucks of Brimob and the PTPN security as well tried to go in and set up a signpost on the indigenous land led by Brigadier Bambang and Briptu Rizal Nasution, with dozens of members of the uniformed and armed Brimob complete, and people who represent PTPN II.

Clashes between the Indigenous Peoples with BRIMOB which resulted 5 villagers (Ana, Butet Regina, Fitri, Dani and Ijol) in beaten by BRIMOB and security of the company to bruise and unconscious. Brimob is burning the huts (traditional house), Indonesia flag, AMAN flag, and BPRPI Flag.

Saturday, June 18, 2011 at 09:30am, two trucks of Brimob, and three units of truck security guard of National Plantation Company (PTPNII) led by Bripka Bambang and Briptu Rizal Nasution, came back to Sei Jernih Indigenous community. Brimob and Security directly burn custom homes, damages crops and beat, tortured Indigenous People who among them named Butet Regina, Srik, Ana, Fitri, Inab, Baniah, Nurma, Lela, Zulkipli, Satria, Jul Sitompul, Juned, Usman and Dollah. Most of the Indigenous Peoples suffered head injuries due to the hit with wood, stones and guns by BRIMOB and security. And until the report is submitted the conflict is still continues.

Recommendations to the Special Rapporteur:

We urge the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples to send a communication to the government of Indonesia requesting a clarification about the cases and provide protections for the Sei Jernih Community and the Paperu Community, and to seek necessary remedies for the two communities.

We urge the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples to conduct a country visit to Indonesia and to make an annual or thematic report on the situations of indigenous peoples in Indonesia with special emphasis on their situations resulted from the presence of plantations and tourism companies

For the Government of Indonesia to take urgent measures to resolve land conflicts, human rights violations and environmental damages on indigenous peoples land, territories and resources. The process should involve Indigenous Peoples.

We also urge the Government of Indonesia invites The UN Special Rapporteur to Indonesia as a first significant step in sorting out the situation of Indigenous Peoples in Indonesia.

We will submit the full version after this.

Thank you

Annex 4:

Submission with regard to the UPR mechanism
Submitted by the Indonesian National Human Rights Commission
Related to Indonesia for the 1st session
scheduled in April 2008

Promotion and Protection of Human Rights on the Ground

15. The Commission concerned that several problems also occurred in the implementation and protection of Civil and political rights, among others: (a) The implementation of freedom of speech in public places still followed by acts of violence and even some atrocities; (b) The continued acts of violence either conducted by the state apparatus or radical groups in the community. These were considered as violation of the right to personal safety and also the right to the protection of privacy, honor and dignity of a person; (c) The intrusion of the right to personal freedom, such as freedom of religion and to worship according to his/her religion or belief experienced by, among others, the Ahmadiyah adherents; and (d) The prolonged discrimination of particular religious adherents to practice their religion or belief through the determination of the Joint Regulations between Ministry of Religious Affairs and Ministry of State Affairs No. 9 Year 2006 and No. 8 Year 2006 on the Guidelines for Head or Vice Head of Regions to Carry Out Maintenance of Tolerance between Religious Adherents, Empowerment of Religious Adherents Forum and Establishment of Religious Places.

Jakarta, 20 November 2007

The Indonesian National Human Rights Commission
Chairperson

Ifdhal Kasim

Annex 5 :

**UNITED
NATIONS**

ADVANCE UNEDITED VERSION

CERD



**International Convention
On the Elimination
Of all Forms of
Racial Discrimination**

Distr.

GENERAL

CERD/C/IDN/CO/3

15 August 2007

Original: ENGLISH

**COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION**
Seventy-first session

Geneva, 30 July-18 August 2007

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

INDONESIA

17. The Committee notes with concern the plan to establish oil palm plantations over some 850 kilometers along the Indonesia-Malaysia border in Kalimantan as part of the Kalimantan Border Oil Palm Mega-project, and the threat this constitutes for the rights of indigenous peoples to own their lands and enjoy their culture. It notes with deep concern reports according to which a high number of conflicts arise each year throughout Indonesia between local

communities and palm oil companies. The Committee is concerned that references to the rights and interests of traditional communities contained in domestic laws and regulations are not sufficient to guarantee their rights effectively. (arts. 2 and 5)

The Committee, while noting that land, water and natural resources shall be controlled by the State party and exploited for the greatest benefit of the people under Indonesian law, recalls that such a principle must be exercised consistently with the rights of indigenous peoples. The State party should review its laws, in particular Law No. 18 of 2004 on Plantations, as well as the way they are interpreted and implemented in practice, to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands. While noting that the Kalimantan Border Oil Palm Mega-project is being subjected to further studies, the Committee recommends that the State party secure the possession and ownership rights of local communities before proceeding further with this Plan. The State party should also ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in the Plan.

21. The Committee, while noting the statement made by the delegation that there are no “recognized” or “non-recognized” religions in Indonesia, expresses concern at the distinction made between Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism, which are often referred to in legislation, and other religions and beliefs. The Committee is concerned at the adverse impact of such a distinction on the rights to freedom of thought, conscience and religion of persons belonging to ethnic groups and indigenous peoples. It notes with particular concern that under Law N° 23 of 2006 on Civic administration, individuals are to mention their faiths on legal documents such as identity cards and birth certificates, and that those wishing either to leave the column blank or to register under one of the “non-recognized” religions, reportedly face discrimination and harassment. The Committee also notes with concern that men and women of different religions face great difficulties in officially registering their marriages, and that their children are not provided with birth certificates, as acknowledged by the State party. (arts. 2 and 5)

The Committee recommends that State party treat equally all religions and beliefs and ensure the enjoyment of freedom of thought, conscience and religion for ethnic minorities and indigenous peoples. Noting that the State party is considering removing the mention of religion on

identification cards in order to be in line with the objectives of the Convention, the Committee strongly recommends it to do so in a timely manner, and to extend such a policy to all legal documents. The Committee also recommends the adoption of legislation allowing individuals to contract a civil marriage if they so wish.

25. The Committee notes with concern that Komnas-HAM has encountered difficulties in the discharge of its mandate, due in particular to the refusal made by the military to comply with its requests to submit evidence. It also notes that Law No. 39 of 1999 does not contain any provision ensuring legal immunity for its members, and that the status and mandate of the secretariat of the Commission are currently set forth in a Presidential Decree, which jeopardizes its independence and autonomy.

The Committee recommends that the State party reinforce the independence of Komnas-HAM, in line with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and guarantee the legislative immunity of its members and staff in the exercise of their duties. The State party should also strengthen the Commission's mandate, in particular its monitoring functions and investigation powers, and ensure its participation in the follow-up and implementation of the present concluding observations.

Annex 6 :

CERD Letter to Indonesia Government :

NATIONS UNIES
HAUT COMMISSARIAT AUX DROITS DE L'HOMME



UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

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REFERENCE: TS/JF

13 March 2009

Excellency,

You will recall that the Committee on the Elimination of Racial Discrimination, at its 71st session held from 30 July to 18 August 2007, considered the initial to third periodic reports of Indonesia and adopted concluding observations in relation thereto (CERD/C/IDN/CO/3).

Pursuant to Article 9, paragraph 1, of the Convention, and Article 65 of the Committee's rules of procedure, as amended, the Committee requested in paragraph 31 of its concluding observations that your Government provide information on the way it has followed up on the recommendations contained in paragraphs 17, 20 and 25 within one year. The Committee notes with regret that, to date, it has not received any information from the State Party in this respect, despite its invitation to respect the deadlines set for the submission of reports.

The high number of conflicts arising each year throughout Indonesia between local communities and palm oil companies remains an issue of concern for the Committee, in particular with regard to the protection of indigenous peoples' rights. Indeed, it has recently been brought to the attention of the Committee that oil palm plantations continue to be developed on indigenous peoples' lands in the Kalimantan border region without any apparent attempt by the State to comply with the Committee's recommendations or to otherwise secure and protect indigenous peoples' rights.

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Second CERD Letter To Indonesia Government :

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HAUT COMMISSARIAT AUX DROITS DE L'HOMME



UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

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REFERENCE: TS/JF

28 September 2009

Excellency,

You will recall that the Committee on the Elimination of Racial Discrimination, in a letter dated 13 March 2009, requested information on follow-up to its concluding observations on the report of Indonesia adopted in August 2007. In the same letter, the Committee also raised several issues in connection with indigenous peoples' rights to their lands and resources, on which it requested information to be provided by 31 July.

In the letter, reference was made in particular to the "Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation" (REDD), adopted within the framework of the United Nations Framework Convention for Climate Change. According to information received, the property rights of indigenous peoples over traditional lands were not appropriately taken into account in the formulation of the Regulation, and financing for implementation is being sought from the World Bank's Forest Carbon Partnership Facility without having secured the meaningful participation or consent of indigenous peoples. Thus, the Committee, after having preliminarily considered the matter under its early warning and early action procedure, expresses concern that indigenous peoples' rights to their lands, territories and resources may not be sufficiently recognized and protected in the process.

In light of the above, the Committee would like to request the State party to submit comments on the measures taken to safeguard the rights of indigenous communities whose territories are affected by this process and, more generally, to provide information on the implementation of the Committee's concluding observations adopted at its 71st session in 2007 (CERD/C/IDN/CO/3). The Committee requests to receive such information by 30 November 2009.

H.E. Mr. Dian Triansyah Djani
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Permanent Mission of Indonesia to the United Nations
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3rd CERD Letter To Indonesia Government :

NATIONS UNIES
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2nd September 2011

Excellency,

I write to inform you that in the course of its 79th session, the Committee considered the information on allegations on the threatening and imminent irreparable harm for the Malind and other indigenous people of the District of Maruke, Papua Province, due to the reportedly massive and non-consensual alienation of their traditional lands by the Maruke Integrated Food and Energy Estate project (called the MIFEE project), on preliminary basis, under its early warning and urgent action procedure, in light of information submitted by a non-governmental organization.

The Committee is concerned about information according to which the MIFEE project, which is an agro-industrial mega-project implemented by various corporate entities and initiated by the State, reportedly encompassed 2 million hectares of traditional indigenous lands. It is claimed that the MIFEE project, which is about to expand and intensify in the coming months, has already impacted and will continue to threaten a range of interdependent rights of indigenous peoples. It is reported that such an expansion will encroach and alienate indigenous peoples' lands in favour of palm oil, logging, cause an enormous influx of non-indigenous workers, and further compromise their future, diminish their livelihood options and destroy their traditional economy.

The Committee is also concerned about information on allegations according to which encroachment activities are supported by the State party and enjoy the protection of the Indonesian army. It is reported that decision-making regarding the exploitation of natural resources largely remains with the central government and is controlled by national laws which prejudice indigenous peoples, despite the existence of the 2001 Papua Special Autonomy Law intended to decentralise decision-making over prescribed issues to the provincial level and which has not been implemented due to the absence of a subsidiary law. It is alleged that the majority of the MIFEE area is classified as "forest" and falls under the Ministry of Forests, which allegedly interpret the 1999 Forestry Law as further limiting indigenous peoples' rights.

H.E. M. Dian Triansyah Djani
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The Committee is further concerned about allegations on the manipulation of communities by investors and State officials to obtain signatures necessary for complying with the legal requirements of proving land titles over indigenous lands.

The Committee notes that it has already addressed the situation of indigenous peoples in Indonesia in its letter under the early warning and urgent action procedure, dated 28 September 2009 (attached for ease of reference) and in its concluding observations (CERD/C/IND/CO/3, paras. 17, 18, 22) of 15 August 2007. The Committee regrets that the State party has not provided its responses.

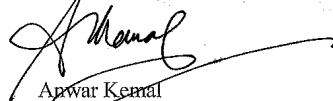
In light of this information, the Committee would like to request information on measures taken by the State party to implement the recommendations set out in paragraph 22 of its concluding observations (CERD/C/IND/CO/3) of 15 August 2007, as well as information requested in its letter dated 28 September 2009. The Committee would also like to request information on measures taken to effectively seek the free, prior and informed consent of Malind and other indigenous peoples in Papua before carrying out the MIFEE project; and as to whether the State party has conducted an environmental impact assessment on the traditional habits and livelihood of Malind and others, as well as the impact of the transmigration over their capacity to survive as a minority. The Committee would further like to request that the State party consider inviting the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.

The Committee also would like to request a meeting with the representatives of the State party to discuss these issues, at its next session to be held in Geneva from 13 February to 13 March 2012.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to urgently receive information on all of the issues and concerns as outlined above, before **31 January 2012**.

Allow me, Excellency, to express the wish of the Committee to continue to engage in a constructive dialogue with the Government of Indonesia, with a view to provide it with assistance in the effective implementation of the Convention.

Yours sincerely,



Anwar Kemal

Chairperson of the Committee on the Elimination of Racial
Discrimination