



# Forest Peoples Programme

1c Fossey Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK  
tel: +44 (0)1608 652893 fax: +44 (0)1608 652878 info@forestpeoples.org www.forestpeoples.org



## Sawit Watch

Jl. Sempur Kaler No. 28 Bogor 16129 INDONESIA

Tel. 0251 352 171, Fax 0251 352 047 [info@sawitwatch.or.id](mailto:info@sawitwatch.or.id) [www.sawitwatch.or.id](http://www.sawitwatch.or.id)

Sawit Watch



## Aliansi Masyarakat Adat Nusantara

Jalan Tebet Utara II, Blok C No. 22 Jakarta Selatan 12820, Indonesia  
Tel/Fax. +62 21 8297954

### Mr. Torsten Schackel

Secretary  
Committee on the Elimination of Racial Discrimination  
UNOG-OHCHR  
1211 Geneva 10  
Switzerland

29 July 2009

**Re: Request for further consideration of the situation of indigenous peoples in the Republic of Indonesia under the early warning and urgent action procedures (Seventy fifth session of the Committee on the Elimination of Racial Discrimination).**

Dear Mr. Schackel:

### I. Introduction and Background

1. A coalition of 9 Indonesian organizations and 1 international organization (“the submitting organisations” (see Annex A)) have the honour of again communicating with the United Nations Committee on the Elimination of Racial Discrimination (“the Committee”).<sup>1</sup> In order to avoid irreparable harm, this present communication requests that the Committee further considers the situation of indigenous peoples in the Republic of Indonesia (“Indonesia” or “the State”) under its early warning and urgent action procedures. Specific requests are set forth in paragraph 22 below.

2. The Committee has twice recently expressed serious concerns about Indonesia’s discriminatory treatment of indigenous peoples. At its 71<sup>st</sup> session, the Committee adopted concluding observations that detail substantial deficiencies in Indonesia’s observance of its human rights obligations pertaining to indigenous peoples. In paragraph 17 thereof, the Committee, *inter alia*, urged Indonesia to review its laws to “to ensure that they respect the

<sup>1</sup> The submitting organisations previously requested that the Committee considers the situation of indigenous peoples in Indonesia under its early warning and urgent action procedures in July 2007 and February 2009. See *Request for Consideration of the Situation of Indigenous Peoples in Kalimantan, Indonesia, under the United Nations Committee on the Elimination of Racial Discrimination’s Urgent Action and Early Warning Procedures*, 06 July 2007, at [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/urgent\\_action.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/urgent_action.pdf); and *Request for consideration of the situation of indigenous peoples in the Republic of Indonesia under the follow up and early warning and urgent action procedures*, February 2009. Available at: [http://www.forestpeoples.org/documents/asia\\_pacific/indonesia\\_cerd\\_follow\\_up\\_feb09\\_eng.pdf](http://www.forestpeoples.org/documents/asia_pacific/indonesia_cerd_follow_up_feb09_eng.pdf).

rights of indigenous peoples to possess, develop, control and use their communal lands.”<sup>2</sup> At its 74<sup>th</sup> session, the Committee adopted a communication under its early warning and urgent action procedures. Therein the Committee states that it has received information demonstrating that Indonesia “continues to lack any effective legal means to recognize, secure and protect indigenous peoples’ rights to their lands, territories and resources.”<sup>3</sup> It requested that Indonesia provide information on this and other issues no later than 31 July 2009.

3. The Committee additionally found that Indonesia was in the process of adopting new laws that perpetuate provisions that are highly prejudicial to the exercise and enjoyment of indigenous peoples’ rights. For instance, it explained that “Indonesia’s 2008 [draft] ‘Regulation on Implementation Procedures for Reducing Emissions from Deforestation’ reiterates Law 41 of 1999 on Forestry that appears to deny any proprietary rights to indigenous peoples in forests.”<sup>4</sup> As discussed below, Indonesia has dismissed the Committee’s concerns and has proceeded to adopt this regulation and other measures that actively contravene the Committee’s recommendations, and which threaten indigenous peoples with additional irreparable harm.

4. The new laws adopted by Indonesia concern ‘Reduced emissions from deforestation and forest degradation’ (“REDD”), a proposed climate change mitigation measure involving payments to national governments for halting or slowing rates of deforestation. Indonesia’s approach to this, as defined in its law and various policy instruments, vests exclusive authority over forests in the State without recognizing or protecting the rights of indigenous peoples, and allows the State to issue concessions over any forest land at its discretion.<sup>5</sup> It is well documented that forestry concessions, whether for logging or oil palm plantations or mining, have had, and continue to have, disastrous consequences for indigenous peoples in Indonesia.<sup>6</sup> Without effective measures to secure indigenous peoples’ rights, REDD concessions and activities can be expected to cause additional and further irreparable harm. These concerns are greatly heightened given the potentially large geographic scope of REDD activities in Indonesia and because a substantial percentage of the remaining forests are in indigenous peoples’ traditional territories.<sup>7</sup>

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<sup>2</sup> *Concluding observations of the Committee on the Elimination of Racial Discrimination: Indonesia*, 15/08/2007. CERD/C/IDN/CO/3 (hereinafter “CERD/C/IDN/CO/3”), at para. 17.

<sup>3</sup> *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 13 March 2009, at p. 2. Available at: [http://www2.ohchr.org/english/bodies/cerd/docs/early\\_warning/Indonesia130309.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia130309.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> The Committee has previously cautioned that the State cannot disregard indigenous peoples’ rights in relation to natural resource exploitation irrespective of its internal law with respect to State ownership or control over such resources. See CERD/C/IDN/CO/3, at para. 17 (stating that “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, [the Committee] recalls that such a principle must be exercised consistently with the rights of indigenous peoples”).

<sup>6</sup> See R. Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Oral Statement to the UN Permanent Forum on Indigenous Issues Sixth Session*, 21 May 2007, at p. 3 (identifying plantations in Indonesia as placing indigenous peoples “on the verge of completely losing their traditional territories and thus of disappearing as distinct peoples”); V. Tauli-Corpuz and P. Tamang, *Oil Palm and Other Commercial Tree Plantations, Mono-cropping: Impacts on Indigenous Peoples’ Land Tenure and Resource Management Systems and Livelihoods*, UN Permanent Forum on Indigenous Issues Working Paper, E/C.19/2007/CRP.6; *Sustaining Economic Growth, Rural Livelihoods and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia*, World Bank, December 2006, at p. 2. (explaining that government policies of supporting the expansion of timber and oil palm plantations have “marginalized and alienated ... indigenous peoples from traditional lands and uses, through denial of rights and access” and that such denials have been “backed by force”); *Without Remedy: Human Rights Abuse and Indonesia’s Pulp and Paper Industry*, Human Rights Watch Report: Indonesia, Vol. 15, No. 1(C), Jan. 2003; *Indonesia: Grave Human Rights Violations in Wasior, Papua*, Amnesty International Report ASA 21/032/2002, 26 September 2002; and, C. Ballard, *Human Rights and the Mining Sector in Indonesia*. International Institute for Environment and Development: London, 2001.

<sup>7</sup> The United Nations Framework Convention on Climate Change observes that East Kalimantan, the traditional territory of the Dayak indigenous people, in particular, is an optimal area for such activities, and deforestation rates of 2 million hectares per annum in Indonesia means that REDD activities are being promoted throughout the archipelago. See N. Harris et al, *Identifying optimal areas for REDD intervention: East Kalimantan*,

5. That REDD activities may have severe impacts on indigenous peoples has been acknowledged by the Office of the High Commissioner for Human Rights (“OHCHR”),<sup>8</sup> the Permanent Forum on Indigenous Issues (“PFII”)<sup>9</sup> and by the UN REDD Programme (“UNREDD”).<sup>10</sup> The PFII decided in 2008 that, if they are to avoid harm to indigenous peoples, REDD plans and projects must “respect rights to land, territories and resources, and the rights of self-determination and the free, prior and informed consent of the indigenous peoples concerned.”<sup>11</sup> The OHCHR observes that “indigenous communities fear expropriation of their lands and displacement ...” in connection with REDD initiatives.<sup>12</sup> It concludes that indigenous peoples require special attention to ensure that their rights are respected.<sup>13</sup> The UNREDD concurs and has formally incorporated the 2007 UN *Declaration on the Rights of Indigenous Peoples* (“UNDRIP”) into its operational policy instruments.<sup>14</sup> It explains that the right to free, prior informed consent is “a fundamental policy and operational underpinning of the UN-REDD Programme.”<sup>15</sup> Indonesia’s approach stands in stark contrast to the positions adopted by these UN bodies.

## II. Indonesia has disregarded the Committee’s concerns and adopted the discriminatory Regulation on Reduction of Emissions from Deforestation and Forest Degradation Procedures in May 2009

6. Indonesia has failed to comply with the Committee’s recommendations that it review its existing laws in relation to indigenous peoples’ rights. To make matters worse, it has proceeded to adopt new legal measures that perpetuate discrimination against indigenous peoples, including by further entrenching provisions that allow for the wholesale abrogation of their rights. In particular, Indonesia has chosen to reject the Committee’s concerns about its draft ‘Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation’. This regulation was enacted as the *Regulation on Reduction of Emissions from Deforestation and Forest Degradation Procedure* (“REDD Regulation”),<sup>16</sup> and entered into force on 1 May 2009 (the full text is in Annex B).<sup>17</sup> It contains the same discriminatory limitations on indigenous peoples’ rights previously highlighted by the Committee in March 2009. As discussed below, these limitations rise to the level of impairing and nullifying indigenous peoples’ rights in contravention of the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”).

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*Indonesia as a case study.* Available at: [http://unfccc.int/files/methods\\_science/redd/application/pdf/harris\\_et\\_al\\_2008.pdf](http://unfccc.int/files/methods_science/redd/application/pdf/harris_et_al_2008.pdf); and, Global ForestWatch and ForestWatch Indonesia, *Natural Forest, Cover Change in Indonesia 1985–1997* (2002).

<sup>8</sup> *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights.* UN Doc. A/HRC/10/61, 15 January 2009, para. 51-4, 68-8.

<sup>9</sup> *Report of the UN Permanent Forum on Indigenous Issues.* UN Doc. E/C.19/2008/13, at para. 45.

<sup>10</sup> See UN REDD Programme/Tebtebba Foundation, *Global indigenous peoples’ consultation on reducing emissions from deforestation and forest degradation (REDD)*, Baguio City, Philippines, 12–14 November 2008.

<sup>11</sup> *Report of the UN Permanent Forum on Indigenous Issues.* UN Doc. E/C.19/2008/13, at para. 45.

<sup>12</sup> *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, supra*, at para. 68.

<sup>13</sup> *Id.* at para. 94.

<sup>14</sup> *Operational Guidance: Engagement of Indigenous Peoples & other forest dependent communities, Working Draft*, UN REDD Programme, 23 March 2009, p. 7 (stating that “All UN-REDD Programme activities, particularly those that may potentially impact Indigenous Peoples, must follow a human rights based approach and must also adhere to the United Nations Declaration on the Rights of Indigenous Peoples ...”). Available at: <http://www.un-redd.org/Portals/15/documents/events/20090309Panama/Documents/UN%20REDD%20IP%20Guidelines%2023Mar09.pdf>.

<sup>15</sup> *Id.* at p. 5.

<sup>16</sup> *Regulation on Reduction of Emissions from Deforestation and Forest Degradation Procedure*, Minister of Forestry (No. 30/2009, P.30/Menhut-II/2009), 1 May 2009.

<sup>17</sup> The same provision is also made in *Regulation on the Implementation of Demonstration Activities on Reduction of Emission from Deforestation and Degradation.* Regulation of the Ministry of Forestry (No. P. 68/Menhut-II/2008), 11 December 2008, Art. 1(3).

7. Indonesia's REDD Regulation reiterates violations of indigenous peoples' rights found in other national laws, violations that have been previously identified and rejected by the Committee.<sup>18</sup> For instance, it provides that "Indigenous forest is state forest located in the area of customary law" and, in turn, defines 'state forest' as being "forest that is on land that is not burdened by land rights."<sup>19</sup> As the Committee found in March 2009, this perpetuates a serious defect in Law 41 of 1999 on Forestry that, in effect, denies indigenous peoples any proprietary rights in and to their traditional forest lands and territories. This also continues Indonesia's practice of wholesale disregard for the rights of indigenous peoples, a practice summed up in an Asian Development Bank Institute paper as: "In Indonesia, the government often treats the indigenous people or forest villagers living in and close to the forests in the outer islands (like the Dayak of Kalimantan) as if they do not exist."<sup>20</sup>

8. Law 41 on Forestry, which governs forestry activities including REDD, further provides that "The Government shall stipulate the status of forest ... and customary [indigenous] forest shall be stipulated if any and its existence acknowledged."<sup>21</sup> The law thus ensures that the State is the sole arbiter of whether indigenous peoples and their rights exist. The Committee specifically rejected this arbitrary and discriminatory abuse of authority, which is pervasive in Indonesian law, in its 2007 concluding observations.<sup>22</sup>

9. In effect, Indonesia's REDD Regulation and Law on Forestry allow the State to create a massive system of publicly- and privately-held forestry concessions and 'carbon sinks' in the forests traditionally owned by indigenous peoples without any regard for their rights or existence. These concessions and leases will impact on a range of interdependent and interrelated human rights to indigenous peoples' extreme detriment. For example, the United Nations Special Rapporteur on the right to food, Mr. Olivier De Schutter, has highlighted the human rights threats posed by large-scale "land acquisitions and leases, more commonly referred to as 'land grabbing'," of the kind likely to occur under REDD schemes.<sup>23</sup> He notes that indigenous peoples are especially vulnerable, often suffer irreparable harm in this context, and emphasizes the need for full adherence to their rights, in particular as affirmed in the UNDRIP.<sup>24</sup>

10. Citing the Human Rights Committee, the Special Rapporteur explains that "no people's land, including in particular indigenous peoples, can have its use changed without prior consultation."<sup>25</sup> He thus recommends that "any shifts in land use can only take place with the free, prior and informed consent of the local communities concerned. This is particularly

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<sup>18</sup> CERD/C/IDN/CO/3, at para. 17 (explaining that 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" and recommending that Indonesia "ensure[s] that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in the [oil palm] Plan").

<sup>19</sup> *Regulation on Reduction of Emissions from Deforestation and Forest Degradation Procedures*, Ministry of Forestry (No. 30/2009, P.30/Menhut-II/2009), 01 May 2009, at Art. 1(4) and (5) (repeating the same definitions contained in Law 41, 1999 on Forestry, Article 1 (4) and (6)).

<sup>20</sup> Y. Maunati, *Sharing the Fruit of Forestry Products: Indigenous Peoples and their Incomes in the Forestry Sector in East Kalimantan, Indonesia*. Asian Development Bank Institute, 2005, at p. 9.

<sup>21</sup> Law 41, 1999 on Forestry, Article 5 (3)

<sup>22</sup> CERD/C/IDN/CO/3, at para. 15 (stating that the Committee is concerned, "that 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. (art. 2 and 5) The Committee draws the attention of the State party to its General recommendation 8 (1990), and recommends the State party to respect the way in which indigenous peoples perceive and define themselves."

<sup>23</sup> 'UN Special Rapporteur on the Right to food recommends principles and measures to discipline "land grabbing"', UN Press Release, 11 June 2009, at p. 1. Available at: <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/5A171ADA855BF615C12575D30010CEBF?opendocument>

<sup>24</sup> See *Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge*. Mr. Olivier De Schutter, Special Rapporteur on the right to food, 11 June 2009, p. 7-8, 12. Available at: <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf>.

<sup>25</sup> *Id.* at p. 12 (citing Human Rights Committee, *Concluding Observations: Sweden*, 7 May 2009 (CCPR/C/SWE/CO/6), para. 20).

important for indigenous communities, in view of the discrimination and marginalization they have been historically subjected to.”<sup>26</sup> He identifies the following as one of the main human rights principles that is applicable in this context:

Indigenous peoples have been granted specific forms of protection of their rights on land under international law. States shall consult and cooperate in good faith with the indigenous peoples concerned in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.<sup>27</sup>

11. The Special Rapporteur’s recommendations are consistent with the UNDRIP and with the jurisprudence of the Committee. The Committee, for example, recommends that state parties to ICERD, *inter alia*, effectively recognise, secure and protect indigenous peoples’ rights to own and control their traditional lands, territories and resources, and highlights indigenous peoples’ right to give their informed consent whenever consideration is given to measures that may affect their rights.<sup>28</sup> The Special Rapporteur’s recommendations are also consistent with the Committee’s 2007 and 2009 recommendations to Indonesia.

12. In sum, implementation of the Law on Forestry, the REDD Regulation and REDD activities is likely to cause significant and irreparable harm to indigenous peoples whose traditional lands in Indonesia include a large percentage of the remaining forest areas. The extensive geographic scope of proposed REDD activities in Indonesia and the potential for further alienation of indigenous lands demands that the rights of indigenous peoples are fully accounted for and protected in any law or policy on REDD. Indonesia’s REDD Regulation and other laws fail to do so and, therefore, pose a direct and significant threat to the livelihoods and rights of indigenous peoples. Indeed, the REDD Regulation and other laws contain substantial defects that nullify the exercise and enjoyment of indigenous peoples’ rights in violation of a range of Indonesia’s international obligations, including under ICERD.

### **III. Indonesia is seeking World Bank financing for REDD without securing indigenous peoples’ meaningful participation and without regard for their internationally guaranteed rights**

13. Indonesia is actively seeking funding for its REDD plans, including from the World Bank’s Forest Carbon Partnership Facility (“FCPF”). The proposals submitted to the FCPF to date<sup>29</sup> have been elaborated without meaningful participation by indigenous peoples and do not presently provide an indication that Indonesia intends to respect indigenous peoples’ rights in relation to REDD.<sup>30</sup> This is highly disturbing given that the OHCHR explains that “Participation in decision-making is of key importance in efforts to tackle climate change.”<sup>31</sup> This failure to secure indigenous peoples’ participation in designing REDD activities also extends to the implementation of REDD activities given that the National REDD Working Group, established as a follow up to the REDD Regulation and which is “tasked to oversee REDD implementation,” includes among its 15 members 13 representatives of State Ministries

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<sup>26</sup> *Id.* at p. 13-4.

<sup>27</sup> *Id.* at p.15.

<sup>28</sup> See *inter alia* Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII on Indigenous Peoples*, 1997, para. 4 and 5.

<sup>29</sup> These documents are available at: <http://www.forestcarbonpartnership.org/fcp/node/218>.

<sup>30</sup> Complaints by the AMAN, the national indigenous peoples’ organisation, about the lack of indigenous participation in FCPF related activities and the lack of attention for indigenous peoples’ rights in REDD proposals prepared for the FCPF are available at: [http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/AMAN\\_on\\_Indonesia\\_R-Plan\\_0.pdf](http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/AMAN_on_Indonesia_R-Plan_0.pdf). Indonesia has not responded to these complaints, formally or otherwise.

<sup>31</sup> *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*. UN Doc. A/HRC/10/61, 15 January 2009, at para. 79.

and Agencies, one representative of local government, and one representative of civil society.<sup>32</sup> While indigenous peoples are listed as ‘stakeholders’ in relation to future consultations, there is little chance that a representative chosen by indigenous peoples will occupy the one seat set aside for a non-State representative on the National REDD Working Group.<sup>33</sup>

14. Indonesia’s submissions to the FCPF are entirely silent about any measures that may be taken to secure indigenous peoples’ rights in relation to REDD activities. Instead, these submissions are based on a default position that indigenous peoples must accept such activities in their traditional territories. According to Indonesia, based on the REDD Regulation, indigenous peoples can be “REDD implementers” where they have some form of State-recognised “forest use rights” or, in cases where they do not, “these groups may be involved in monitoring....”<sup>34</sup> At no point does Indonesia even mention a right to participate in decision making and consent to REDD activities, and this arbitrary distinction between indigenous peoples – a distinction based solely on the discriminatory failure of the State to recognise rights – further entrenches and aggravates Indonesia’s impairment and nullification of indigenous peoples’ rights.<sup>35</sup>

15. Indigenous peoples have a right to freely pursue their traditional and other economic and subsistence activities and the compelling need to protect these activities as vital components of indigenous peoples’ cultural integrity is well established in human rights law.<sup>36</sup> These rights are inextricably tied to, *inter alia*, security of tenure and control over traditional territory. For example, the Human Rights Committee has held that Article 27 of the ICCPR requires that “necessary steps should be taken to restore and protect the titles and interests of indigenous persons in their native lands...” and that; “securing continuation and sustainability of traditional forms of economy of indigenous minorities (hunting, fishing and gathering), and protection of sites of religious or cultural significance for such minorities ... must be protected....”<sup>37</sup>

16. Indonesia’s submissions to the FCPF, however, make clear that the State ultimately plans to restrict indigenous peoples’ access to and use of their forests and forest resources, stating that

The emergence of the REDD Programme makes it possible to place an economic value on the carbon stock of Indonesia’s tropical forests. REDD-related financial resources can make it possible to finance programmes that will help to create alternative and sustainable livelihoods for many of Indonesia’s 6 million forest

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<sup>32</sup> *Forest Carbon Partnership Readiness-Plan Template, Working Draft 2*, Government of Indonesia, May 2009, at p. 11. Available at: [http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership/files/Indonesia\\_Rplan\\_May2009\\_0.pdf](http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership/files/Indonesia_Rplan_May2009_0.pdf).

<sup>33</sup> *Id.* p. 23-4.

<sup>34</sup> *Id.* at p. 26.

<sup>35</sup> On the illegitimacy of certain distinctions by States within or between indigenous peoples, see *General Recommendation XXIV on Reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples (Art. 1)*, 27/08/99, at para. 3 (stating that CERD “believes that there is an international standard concerning the specific rights of people belonging to such groups” and; “that the application of different criteria in order to determine ethnic groups or indigenous peoples, leading to the recognition of some and refusal to recognize others, may give rise to differing treatment for various groups within a country’s population”). See also *Guyana: 04/04/2006*, CERD/C/GUY/CO/14, at para. 16. (expressing deep concern “about the State party’s practice of granting land titles ... on the basis of numerical and other criteria not necessarily in accordance with the traditions of indigenous communities concerned, thereby depriving untitled and ineligible communities of rights to lands they traditionally occupy”).

<sup>36</sup> The Human Rights Committee, for instance, has interpreted Article 27 to protect the rights of members of indigenous peoples to engage in the “economic and social activities which are part of the culture of the community to which they belong.” *Bernard Ominayak, Chief of the Lubicon Lake Band vs. Canada, Report of the Human Rights Committee*, 45 UN GAOR Supp. (No.43), UN Doc. A/45/40, vol. 2 (1990), 1. See also *General Comment No. 23 (50) (art. 27)*, adopted by the Human Rights Committee at its 1314th meeting (fiftieth session), 6 April 1994. UN Doc. CCPR/C/21/Rev.1/Add.5.

<sup>37</sup> *Concluding observations of the Human Rights Committee: Australia 28/07/2000*. UN Doc. CCPR/CO/69/AUS, at para. 10 and 11.

dependent low income families who currently survive on uncontrolled harvesting of forests, and expansion of slash and burn agriculture.<sup>38</sup>

17. The submitting organisations reject the classification of indigenous peoples' traditional activities as 'unsustainable' and observe that Indonesia has not produced any scientific or other evidence to justify such assertions. Indeed, the available evidence demonstrates that it is the extractive and agricultural industries promoted by the State that are the cause of the vast majority of deforestation. Despite this fact, Indonesia's submissions to the FCPF make it clear that the State intends to embark on a substantial increase in permits for plantations, including for oil palm and fast-growing timber and pulp, all of which have caused serious human rights violations for indigenous peoples in Indonesia.<sup>39</sup> It explains that

Establishment of an additional fast growing pulp and timber plantations on non forest and non peat lands can create an alternative source of timber and reduce pressure on rain forests. Plantations of pulpwood and oil palm established on non forest and non peat lands will allow for a doubling in size of Indonesia's pulp and oil palm production and to a major increase in export revenues. One of [the Ministry of Forests] policies is to engage low income communities and small holders as outgrowers of pulpwood, timber and oil palm thereby contributing to rural incomes.<sup>40</sup>

18. The legal basis for a massive expansion of oil palm plantations has already been enacted. First, Regulation No.26/2007 increases the maximum size of privately-held concessions from 20,000 hectares to 100,000 hectares. Larger concessions are also possible with Government sanction and the State is now actively seeking to grant some five million hectares of concessions in Papua, all of which are on indigenous lands, without any serious attempt to secure indigenous peoples' effective participation in decision making. Indonesia also continues to actively pursue a "massive expansion of logging, plantation development, and road construction"<sup>41</sup> in the indigenous territories of the Kalimantan border region.<sup>42</sup> Second, Regulation No.14/2009 permits peatland to be used for oil palm cultivation. Peatland is not only an extremely fragile ecosystem, it is also an area of high cultural value to indigenous peoples and vitally important for subsistence purposes, particularly among communities that are heavily dependent on fishing. Neither of the above mentioned regulations contains any protections for indigenous peoples.

19. REDD activities in Indonesia will thus involve restrictions on indigenous peoples' rights to practice and benefit from their traditional economic and cultural activities and a massive alienation of their lands in favour of corporate plantation operations. As has been common in the oil palm industry in Indonesia previously, indigenous peoples will be forced to leave their lands or to become 'smallholders' in this expansion of plantations, a practice that has led to widespread and unregulated employment relations that are often tantamount to bonded labour.<sup>43</sup> The forestry and REDD legal framework in Indonesia also denies and nullifies indigenous peoples' rights to own and control their traditional territories and allows the State

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<sup>38</sup> *Forest Carbon Partnership Readiness-Plan Template, supra*, at p. 28.

<sup>39</sup> *See inter alia* CERD/C/IDN/CO/3; and *supra* note 6.

<sup>40</sup> *Forest Carbon Partnership Readiness-Plan Template, supra*, at p. 28.

<sup>41</sup> 'Heart of Borneo conservation initiative at risk from Indonesian development Plan', 04 February 2009. Available at: <http://news.mongabay.com/2009/0204-borneo.html>. *See also* M.J. Sihaloho. 'Plan to Develop Kalimantan Border Proposed', *The Jakarta Globe*, 4 Feb 2009.

<sup>42</sup> *See* CERD/C/IDN/CO/3, at para. 17 (addressing Indonesia's plans to establish massive oil palm plantations along the Indonesia-Malaysia border in Kalimantan, "and the threat this constitutes for the rights of indigenous peoples to own their lands and enjoy their culture").

<sup>43</sup> *See inter alia* S. Vermeulen & N. Goad, *Towards Better Practices in Smallholder Palm Oil Production*, Natural Resources Issues Series No. 5. International Institute for Environment and Development, London, 2006. Available at: <http://www.iiied.org/pubs/pdf/full/13533IIED.pdf> and; *Ghosts on Our Own Land: Indonesian Oil Palm Smallholders and the Roundtable on Sustainable Palm Oil*, Sawit Watch & Forest Peoples Programme, 2006. Available at: [http://www.forestpeoples.org/documents/asia\\_pacific/bases/indonesia.shtml](http://www.forestpeoples.org/documents/asia_pacific/bases/indonesia.shtml).

to continue to disregard their existence when making decisions about how to use these territories.

20. Indonesia's failure to adequately address indigenous peoples' rights contravenes the Charter of the FCPF in addition to international human rights law. The Charter requires that

The operation of the Facility, including implementation of activities under Grant Agreements and Emission Reduction Programs, shall: ... Comply with the World Bank's Operational Policies and Procedures, taking into account the need for effective participation of forest dependent indigenous peoples and forest dwellers in decisions that may affect them, respecting their rights under national law and applicable international obligations.<sup>44</sup>

21. Despite this requirement, Indonesia's submissions to the FCPF make no mention of its 'applicable international obligations' with respect to the rights of indigenous peoples, including as defined by ICERD. Indonesia's submission is due to be approved on a 'no objection' basis by the FCPF's Participant Committee within the next 4-8 weeks, thereby potentially allowing Indonesia to access funds to commence implementation of REDD activities. If it is approved in its current format, serious doubts must be raised about whether REDD activities in Indonesia will be conducted in a manner consistent with indigenous peoples' rights, including as defined by Indonesia's applicable international obligations.

#### **IV. Conclusion and Request**

22. In light of the above and pursuant to its urgent action and early warning procedures, the submitting organisations respectfully request that the Committee recommends that:

- a) Indonesia amends relevant national laws and regulations as soon as possible, with the full and informed participation of indigenous peoples and their freely chosen representatives, and ensures that the rights of indigenous peoples to own, possess, develop, control and use their communal lands, territories and resources are fully respected and protected and that indigenous peoples' right to give or withhold their consent to all matters that may affect their rights and well-being is respected in law and practice;
- b) Indonesia drafts and adopts, with the full and informed participation of indigenous peoples and their freely chosen representatives, a framework law that recognises and guarantees the rights of indigenous peoples and which is fully consistent with Indonesia's obligations under ICERD and the UN Declaration on the Rights of Indigenous Peoples;
- c) Indonesia ensures that all actions undertaken towards the fulfilment of commitments under the United Nations Framework Convention on Climate Change and related instruments, including preparatory and other REDD activities, and in connection with its applications to the World Bank's Forest Carbon Partnership Facility, are fully consistent with its obligations under the ICERD and the UN Declaration on the Rights of Indigenous Peoples; and,
- d) the Committee formally requests that the World Bank and its Forest Carbon Partnership Facility ensure that indigenous peoples' rights, including as secured in Indonesia's 'applicable international obligations' and World Bank safeguard instruments, are fully accounted for and upheld in REDD preparatory and other activities that fall within its mandate.

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<sup>44</sup> *Charter of the Forest Carbon Partnership Facility*, Operating Principles, 3.1(d). Available at: [http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/FCPF\\_Charter\\_06-13-08.pdf](http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/FCPF_Charter_06-13-08.pdf).

## Annex A

### Submitting Organizations:

- **Perkumpulan Sawit Watch** is an Indonesian Non-Government Organisation concerned with adverse negative social and environmental impacts of oil palm plantation development in Indonesia. It is active in 17 provinces where oil palm plantations are being developed in Indonesia. **Address:** Jl. Sempur Kaler No. 28, Bogor 16129, tel: +62 251 352171/fax: +62 251 352047, e-mail: [info@sawitwatch.or.id](mailto:info@sawitwatch.or.id), website: [www.sawitwatch.or.id](http://www.sawitwatch.or.id)
- **Aliansi Masyarakat Adat Nusantara/AMAN (Indigenous People Alliance of the Archipelago)** is an indigenous peoples' organisation that represents indigenous peoples from the whole of the Republic of Indonesia. The Alliance is aimed to be an organisation for indigenous peoples to struggle for their existence and rights inherited with it as well as to struggle for sovereignty in running their lives and in managing their natural resources. AMAN's main working areas are 1] Indigenous organization, networking and customary institutions development; 2] Indigenous rights advocacy and legal defense; 3] strengthening customary-based economic system; 4] strengthening indigenous women; and, 5] education for indigenous youth. **Address:** Jalan Tebet Utara II, Blok C No. 22 Jakarta Selatan 12820, Indonesia Telp/Fax. +62 21 8297954, e-mail: [rumahaman@cbn.net.id](mailto:rumahaman@cbn.net.id)
- **Aliansi Masyarakat Adat Kalimantan Barat (Indigenous Peoples' Alliance of West Kalimantan)/AMAN Kalbar** is one of the provincial offices of Indigenous Peoples' Alliance of the Archipelago (AMAN) in West Kalimantan. Until October 2006 AMAN Kalbar has been directly working with its registered members of 106 indigenous communities, covering up to 247,000 persons. These communities live in 9 districts in West Kalimantan: Ketapang, Pontianak, Sanggau, Sintang, Bengkayang, Landak, Sekadau, Melawi, and Kapuas Hulu, and are mainly Dayak. **Address:** Jl. Budi Utomo, No.03, Siantan Hulu, Pontianak Utara 78241, Kalimantan Barat, Tel/fax: +62 561 885264/885211, e-mail: [amakalbar@ptk.centrin.net.id](mailto:amakalbar@ptk.centrin.net.id)
- **Lembaga Studi dan Advokasi Masyarakat/ELSAM (The Institute for Policy Research and Advocacy)**, established in August 1993, works to encourage and promote effective mechanisms of accountability for gross human rights violations; and to promote resolution of past human rights violations through revealing the truth, usage of sanction, and reparation, and; to establish acknowledgeable, democratic and sustainable association. **Address:** Jl. Siaga II No 31, Pasar Minggu, Jakarta 12510, tel: +62 (21) 7972662/fax: +62 (21) 79192519, e-mail: [elsam@nusa.or.id](mailto:elsam@nusa.or.id), web: [www.elsam.or.id](http://www.elsam.or.id)
- **Wahana Lingkungan Hidup Indonesia/WALHI (Friends of The Earth Indonesia)** is the largest forum of non-governmental and community-based organisations in Indonesia. It is represented in 25 provinces and has over 438 member organisations (as of June 2004). It stands for social transformation, peoples sovereignty, and sustainability of life and livelihoods. WALHI works to defend Indonesia's natural world and local communities from injustice carried out in the name of economic development. **Address:** Jl. Tegal Parang Utara No.14 Jakarta 12790, Indonesia, tel +62 21 7919 33 63-88 [fax] +62 21 794 1673, e-mail: [info@walhi.or.id](mailto:info@walhi.or.id)
- **Perkumpulan Untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis/HuMA (Association for Community and Ecologically-based Legal Reform)**, founded in 2001, was established by individuals who have long experience and a clear position regarding the importance of community and ecological-based law reform on issues related to land and other natural resources. **Address:** Jl. Jati Agung No. 8, Jati

Padang – Pasar Minggu, Jakarta 12540, Indonesia, tel: +62(21)78845871, fax: +62(21)7806959, e-mail: [huma@huma.or.id](mailto:huma@huma.or.id) and [huma@cbn.net.id](mailto:huma@cbn.net.id)

- **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. Komplek Perumahan Dokter Balikpapan Tengah BPP, Belakang Puskip Rt.24 No.87 Mekarsari Balikpapan Tengah 76122, tel/fax: +62 542-443284/542- 426118, e-mail: [padi\\_ind@indo.net.id](mailto:padi_ind@indo.net.id)
- **Lembaga Gemawan (Lembaga Pengembangan Masyarakat Swandiri/The Institution of Swandiri Society Empowerment)** is the result of a long going process of reflection of some students' activists to contribute to the immediate needs toward social transformation. Lembaga Gemawan was founded to transform the idea of social transformation into actual social movements. It is also developed to empower the local community as the silent majority of social-political-economical society. **Address:** Jl. Dr. Wahidin, Gg. Batas Pandang Komp. Kelapa Hijau No. 18 Pontianak, tel/fax: +62 561 586891, e-mail: [gemawan\\_borneo@telkom.net](mailto:gemawan_borneo@telkom.net)
- **Lembaga Bela Banua Talino** (the Institute for Community Legal Resources Empowerment) was established in 1993 and aims to address various issues and problems of local regulations and policies towards effective recognition and protections of the rights of local communities and indigenous peoples have been proved could not guaranty better conditions of economic, social and politics aspects. **Address:** Jl Budi Utomo, Komplek Bumi Indah Khatulistiwa, Blok A/3, Siantan Hulu, Pontianak 78241, Kalimantan Barat – Indonesia, tel. +62 561 885623 fax. +62 561 884566, e-mail: [lbbt@ptk.centrin.net.id](mailto:lbbt@ptk.centrin.net.id)
- **Institut Dayakologi** is an active community-based organization which primarily aims to revitalize and restore the cultural identity of the Dayak communities in Kalimantan through research, advocacy, publication and other activities. The Institute promotes the awareness of the Dayak people on their cultural integrity, land rights, intellectual property rights, etc. **Address:** Jl. Budi Utomo Blok A 3 No. 3-4, Pontianak 78241, +62 561- 884 567/+62 561- 8831 735, e-mail: [i.dayakologi@ptk.centrin.net.id](mailto:i.dayakologi@ptk.centrin.net.id)
- **Forest Peoples Programme (UK)** is an international NGO, 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, UK. Tel: (44) 01608 652893, Fax: (44) 01608 652878, e-mail: [info@forespeoples.org](mailto:info@forespeoples.org)

## **Annex B**

***Regulation on Reduction of Emissions from Deforestation and Forest Degradation Procedures, Ministry of Forestry (No. 30/2009, P.30/Menhut-II/2009), 01 May 2009*** (source: <http://www.forestcarbonpartnership.org/fcp/node/218> (Annex 2(c)).

Unofficial translation. For information purpose only. Always refer to the original Bahasa Indonesia version

**MINISTER OF FORESTRY REGULATION  
No. : P. 30/Menhut-II/2009  
ON  
REDUCTION OF EMISSIONS FROM DEFORESTATION AND FOREST  
DEGRADATION PROCEDURE**

**WITH THE GRACE OF GOD ALMIGHTY,  
THE MINISTER OF FORESTRY,**

**Considering:**

- a. that as a follow up to the decision by the Parties at the thirteenth Convention on Climate Change, the Ministry of Forestry have established policy to enhance sustainable management of the forest to attain reducing emission from deforestation and forest degradation (REDD).
- b. In consideration of the previous point, it is deemed necessary to issue Minister of Forestry Regulation on Reducing Emissions from Deforestation and Forest Degradation (REDD) Mechanism.

**In View of:**

1. Law No. 6 / 1994 on Ratification of the United Nations Framework Convention on Climate Change (State Gazette of the Republic of Indonesia Year 1994 No. 42, State Gazette Supplement of the Republic of Indonesia No. 3557);
2. Law No. 20 Year 1997 on Non Tax State's Receipt;
3. Law No. 23 Year 1997 on Environmental Management (State Gazette of the Republic of Indonesia Year 1997 No. 68, State Gazette Supplement of the Republic of Indonesia No. 3699);
4. Law No. 41 Year 1999 on Forestry (State Gazette of the Republic of Indonesia Year 1999 No. 167, State Gazette Supplement No. 3888) as amended by Law No. 19 Year 2004 on Stipulation of Government Regulation in Lieu of Law No. 1 Year 2004 on Amendments to Law No. 41 Year 1999 on Forestry becoming Law (State Gazette of the Republic of Indonesia Year 2004 No. 86, State Gazette Supplement No. 4412);
5. Law No. 17 Year 2003 on State Finance (State Gazette of the Republic of Indonesia Year 2003 No. 47, State Gazette Supplement of the Republic of Indonesia No. 4286);
6. Law No. 1 Year 2004 on National Treasury (State Gazette of the Republic of Indonesia Year 2004 No. 15, State Gazette Supplement of the Republic of Indonesia No. 4355);
7. Law No. 15 Year 2004 on Audit, Management, and Accountability of National Finance (State Gazette of the Republic of Indonesia Year 2004 No. 66, State Gazette Supplement of the Republic of Indonesia No. 4400);
8. Law No. 17 Year 2004 on Ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (State Gazette of the Republic of Indonesia Year 2004 No. 72, State Gazette Supplement of the Republic of Indonesia No. 4403);
9. Law No. 25 Year 2004 on National Development Planning System (State Gazette of the Republic of Indonesia Year 2004 No. 104, State Gazette Supplement of the Republic of Indonesia No. 4421);

10. Law No. 32 Year 2004 on Regional Government (State Gazette of the Republic of Indonesia Year 2004 No. 125, State Gazette Supplement of the Republic of Indonesia No. 4725);
11. Law No. 26 Year 2007 on Spatial Planning (State Gazette of the Republic of Indonesia Year 2007 No. 68, State Gazette Supplement of the Republic of Indonesia No. 4725);
12. Law No. 36 Year 2008 on Fourth Amendment of Law No 7 Year 1983 on Income Tax;
13. Government Regulation No. 6 Year 2007 on Forest Arrangement and Formulation of Forest Management and Utilisation Plans (State Gazette of the Republic of Indonesia Year 2007 No. 22, State Gazette Supplement of the Republic of Indonesia No. 4696) as amended by Government Regulation No. 3 Year 2008 (State Gazette of the Republic of Indonesia Year 2008 No. 16, State Gazette Supplement of the Republic of Indonesia No. 4814);
14. Minister of Forestry Regulation No. P.68/Menhut-II/2008 on Implementation of Demonstration Activities for the Reduction of Carbon Emissions from Deforestation and Forest Degradation
15. Minister of Forestry Regulation No. P.13/Menhut-II/2004 on Organization and Management of Ministry of Forestry, as the latest amendment by No.P.64/Menhut-II/2008.

**Decides:**

To stipulate: **MINISTER OF FORESTRY REGULATION ON REDUCING EMISSION FROM DEFORESTATION AND FOREST DEGRADATION (REDD) PROCEDURE.**

**Chapter I  
DEFINITIONS**

**Article 1**

For the purposes of this Regulation:

1. Forests are unity of ecosystem in the form of landscape with biological natural resources dominated by trees in their natural environment, where one cannot be separated from the other.
2. Forest area is designated and/or defined on a specific area so that the existence is preserved as permanent forest.
3. Rights forest is forests located on land that is burdened land rights.
4. State forest is a forest that is on land that is not burdened by land rights.
5. Indigenous forest is state forest located in the area of customary law.
6. Village Forest is a state forest managed by the village and used for welfare of the villager and not yet burdened by permits/rights.
7. Production forest is forest that has a basic function of producing forest products.
8. Protected forest is a forest area that has a basic function as a buffer of protection system to manage water governance / prevent flood / erosion control, to prevent sea water intrusion, and to maintain fertility land.
9. Forest conservation is a forest area with particular characteristics / has a basic function for preservation and diversity of animals and plants and its ecosystems.
10. Deforestation is the permanent change of an area to become non-forested that caused by human activities.
11. Forest degradation is a decrease in the quantity of forest covers and carbon stocks during a period of time that caused by human activities.
12. Reducing emissions for deforestation and forest degradation hereinafter referred as REDD is all efforts of forest management to prevent or reduce the decline of forest quality and/or quantity of forest covers and carbon stock through various activities that supports sustainable national development.
13. Reference emissions is the level of emissions that comes from deforestation and forest degradation in the conditions of no implementation of REDD scheme and can be set based on historical trend and future development plan.

14. REDD carbon trade is a service trade of activity from forest management endeavour that produce reduction of emissions from deforestation and forest degradation.
15. Independent assessors is entitled entity to carry out the verification of REDD implementation reports.
16. REDD Commission is an entity established by the Minister and served in the REDD implementation administration.
17. Minister is the Minister responsible in the field of forestry.
18. Local government is a Governor, Regent, or the Mayor, and the official elements of local government.
19. National Registry is a body or institutions which have the task to records all of REDD activities.
20. National entity is the concession license holder on state forest, state forest manager, and owner or manager of rights forest.
21. International entity is a developing partners to fund the implementation of REDD.
22. Focal point is a state representative assigned to communicate with Secretariat of the United Nations Convention on Climate Change.
23. REDD certificate document is a form of recognition of the reduction emissions and other benefits derived from activities REDD that given to REDD implementer.
24. Incentives are the benefits derived from REDD activities such as financial supports and/or technology transfer and capacity building.

## **CHAPTER II PURPOSE AND OBJECTIVES**

### **Article 2**

- (1) The purpose of the REDD activity is to prevent and reduce emissions from deforestation and forest degradation in the effort to strengthen forestry governance.
- (2) The purpose of the REDD activity is to restrict the occurrence of deforestation and forest degradation to achieve sustainable management of the forest management and to improve the welfare of the community.

## **CHAPTER III LOCATION AND REDD IMPLEMENTER**

### **Pasal 3**

- (1) REDD can be implemented on:
  - a. The area of Timber Forest Product Utilization in Natural Forest (IUPHHK-HA).
  - b. The area of Timber Forest Product Utilization in Plantation Forest (IUPHHK-HT).
  - c. The area of Timber Forest Product Utilization in Community Forest (IUPHH-HKM).
  - d. The area of Timber Forest Product Utilization in Community Plantation (IUPHHK-HTR).
  - e. The area of Timber Forest Product Utilization in Ecosystem Restoration in Natural Forest (IUPHHK-RE).
  - f. The area of Production Forest Management Unit (KPHP).
  - g. The area of Protected Forest Management Unit (KPHL).
  - h. The area of Conservation Forest Management Unit (KPHK).
    - i. Conservation Forest
    - j. Customary Forest
    - k. Rights Forest
    - l. Village Forest
- (2) REDD implementation on two or more of areas, as in paragraph (1) letter a-1 which is located in one district or province can bundled into one REDD unit.

### **Article 4**

- (1) REDD implementer are:
  - a. National entities.
  - b. International entities.

- (2) National entity implementer are:
  - a. IUPHHK-HA license holder.
  - b. IUPHHK-HT license holder.
  - c. IUPHHK-HKM license holder.
  - d. IUPHHK-HTR license holder.
  - e. IUPHHK-RE license holder.
  - f. Head of KPHP.
  - g. Head of KPHL.
  - h. Head of KPHK.
  - i. Head of Natural Resources Conservation Technical Implementing Unit or the Head of the National Parks Technical Implementing Unit
  - j. Customary forest managers.
  - k. Right forest owner or manager.
  - l. Village forest manager.
- (3) International entity implementer are:
  - a. Government.
  - b. Business agency.
  - c. International organizations / foundations / individuals who bear the funds for REDD implementation.
- (4) In the case of the agreement between the national entities as referred to in paragraph (2) with Regional Government, the Regional Government can propose and coordinate the implementation of REDD as in the Article 3 paragraph (2) in the region.

## **CHAPTER IV REDD REQUIREMENTS**

### **Article 5**

- (1) The requirements for REDD at the area of IUPHHK-HA, IUPHHK-HT, IUPHHK-HTR, IUPHHK-HKM, IUPHHK-RE are:
  - a. Have a copy of a decree of the Minister IUPHHK-HA, IUPHHK-HT, IUPHHK-HTR, IUPHHK-HKM, or IUPHHK-RE.
  - b. Obtain recommendations for REDD implementation from the Regional Government.
  - c. Meet the location criteria for REDD implementation.
  - d. Possess REDD Implementation plan.
- (2) The provisions of the Timber Forest Utilization Business License referred in paragraph (1) letter a regulated with appropriate regulations.

### **Article 6**

- (1) Requirements for REDD implementation at KPHP, KPHL / KPHK are:
  - a. Have a copy of Minister Decree on the Establishment of KPHP / KPHL / KPHK.
  - b. Meet the location criteria for the REDD implementation.
  - c. Have REDD implementation plan.
- (2) The provisions of Forest Management Unit as referred to in paragraph (1) letter a regulated with appropriate regulations.

### **Article 7**

- (1) Requirements for REDD implementation at conservation forest are:
  - a. Have a copy of Minister Decree on the Establishment of Conservation Forest.
  - b. Meet the location criteria for the REDD implementation.
  - c. Have REDD implementation plan.
- (3) The provisions of Forest Management Unit as referred to in paragraph (1) letter a regulated with appropriate regulations.

## **Article 8**

- (1) Requirements for REDD implementation at customary forest are:
  - a. Have a copy of Minister Decree as manager of customary forest.
  - b. Have recommended by regional government to implement REDD
  - c. Meet the location criteria for the REDD implementation.
  - d. Have REDD implementation plan.
- (2) The provisions of customary forest manager as referred to in paragraph (1) letter a regulated with appropriate regulations.

## **Article 9**

- (1) Requirements for REDD implementation at rights forest are:
  - a. Have a title on rights or ownership statement from regional government.
  - b. Have recommended by regional government to implement REDD
  - c. Meet the location criteria for the REDD implementation.
  - d. Have REDD implementation plan.
- (2) The provisions of customary forest manager as referred to in paragraph (1) letter a regulated with appropriate regulations.

## **Article 10**

- (1) Requirements for REDD implementation at village forest are:
  - a. Have a statement from regional government as a manager of village forest.
  - b. Have recommended by regional government to implement REDD
  - c. Meet the location criteria for the REDD implementation.
  - d. Have REDD implementation plan.
- (2) The provisions of village forest manager as referred to in paragraph (1) letter a regulated according with appropriate regulations.

## **Article 11**

- (1) Guidelines of the recommendations issued by the Regional Government for the implementation of REDD referred to Article 5 paragraph (1) letter b, Article 8 paragraph letter b, article 9 paragraph (1) letter b, and Article 10 paragraph (1) letter b as listed in Appendix 1 of this Regulations.
- (2) Criteria for the location REDD referred to in Article 5 paragraph (1) letter c, Section .6 paragraph (1) letter b, Article 7, paragraph (1) letter b, Article 8, paragraph (1) letter c, article 9, paragraph (1) letter c, and Article 10 paragraph (1) letter c, Article 11 paragraph (1) the letter b, listed in Appendix 2 of this Regulation.
- (3) Guidelines for the REDD implementation plan referred to Article 5 paragraph (1) letter d, Article 6 paragraph (1) letter c, Article 7 paragraph (1) letter c, Article 8 Paragraph (1) letter d, Article 9 paragraph (1) letter d, Article 10 paragraph (1) letter d, Article 11 paragraph (1) letter c, listed in Appendix 3 of this Regulation.

## **CHAPTER V MECHANISMS ON APPLICATION, VERIFICATION, AND APPROVAL**

### **Article 12**

- (1) The REDD implementer referred in Article 4, submit application to the Minister with the requirements referred to Article 5, Article 6, Article 7, Section 8, Article 9, and Article 10.
- (2) The Minister assigns REDD Commission to conduct an assessment on the application referred to paragraph (1).
- (3) At the latest 14 (fourteen) working days after receiving the assessment results from the REDD Commission referred to paragraph (2), the Minister may approve or reject the proposed application in the form of a letter of approval.

- (4) At the latest 90 (ninety) working days after the Minister approval, the applicant can immediately implement REDD activities.
- (5) If, after 90 (ninety) working days the applicant does not implement REDD activities, the Minister approval referred to paragraph (3) is cancelled.
- (6) REDD application assessment referred to paragraph (2) have guidelines as listed in Appendix 4.

## **CHAPTER VI PERIODS**

### **Article 13**

The REDD implementation period is at the most 30 years and can be extended with appropriate regulations.

## **CHAPTER VII RIGHTS AND OBLIGATIONS**

### **Article 14**

- 1) REDD implementer have the following rights:
  - a. National entities, to obtain payment from international entity for emissions reduction produced in accordance with the applicable laws and regulations.
  - b. International entities, to use REDD certificate as part of emission reduction commitments of developed countries in accordance with the applicable laws and regulations.
  - c. Buy and sell REDD certificates for post-2012 REDD carbon trading associated with the implementation of emission reduction commitment of developed countries.
- 2) REDD actors have an obligation:
  - a. Conduct forest management activities within the REDD implementation framework.
  - b. Setting an emission reference prior to REDD implementation.
  - c. Conduct monitoring in accordance with the implementation plan.
  - d. Report monitoring results to the Minister through the Commission REDD.

## **CHAPTER VIII DETERMINATION OF EMISSION REFERENCES, MONITORING AND REPORTING**

### **Article 15**

- 1) Director General Forestry Planning sets the national emissions reference.
- 2) Manual of reference emissions determination, monitoring, and reporting referred to Article 141 paragraph (2) provided in Appendix 5.

## **CHAPTER IX VERIFICATION AND CERTIFICATION**

### **Article 16**

- 1) At the latest 14 working days later after the reports from REDD implementer is received by the REDD Commission as referred in Article 17, Independent Assessor assigned by the commission will verify the report.
- 2) Independent Assessor reports the verification results to the REDD Commission and the REDD implementer.
- 3) Cost of verification referred to paragraph (2) charged to the REDD implementer.

- 4) In the case all requirements is met, at least thirty (30) working days after receiving verification reports from Independent Assessors, REDD Commission publish Carbon Emission Reduction Certificates.
- 5) Carbon Emission Reduction Certificates referred to paragraph (4) can be traded.

#### **Article 17**

Verification and certification guideline referred to Article 16 stipulated on Appendix 6.

#### **Article 18**

- (1) Prior to United Nations Convention on Climate Change Parties decision on the REDD implementation mechanism at the international level is made, the REDD Commission request National Accreditation Committee to conduct accreditation of independent assessors.
- 2) Following a decision of the United Nations Convention on Climate Change on the REDD implementation mechanism at the international level, the accreditation of independent assessors referred to the Decision of the Parties and consistent with appropriate laws and regulations.

#### **Article 19**

Commission REDD periodically submit reports to the Minister of REDD focal point and the United Nations Convention on Climate Change to further reported to the United Nations Convention on Climate Change.

### **CHAPTER X INCENTIVES DISTRIBUTION AND LIABILITY**

#### **Article 20**

- 1) Fiscal revenues for national income that resulted from implementation of REDD regulated under stipulated regulations.
- 2) Settlement, soliciting, payment and the use of state revenues from the REDD implementation will be regulated under stipulated regulations.

#### **Article 21**

- (1) Part of the state revenues from the REDD implementation as referred to Article 20 is used as a collateral of REDD implementation at the national level.
- (2) Collateral as in paragraph (1) above, can used by the Government to:
  - a. Manage of national registry and/or;
  - b. Addressing national emissions reduction.
- (3) The mechanism and procedure on the use of REDD implementation collateral regulated under stipulated regulations.

### **CHAPTER XI TRANSITION**

#### **Article 22**

- (1) Prior to decision of Parties under the United Nations Convention on Climate Change on REDD implementation at the international level, REDD implementation is carried out through REDD Demonstration activity, capacity building and technology transfer, and the voluntary carbon trading.
- (2) REDD Demonstration Activities can be used/transferred into the REDD activities as long as it is eligible.

- (3) Funds for the REDD implementation as referred to paragraph (1) is from the Parties participation of the United Nations Convention on Climate Change and other legitimate sources of funding.

## **CHAPTER XII CLOSING PROVISIONS**

### **Article 23**

This Regulation becomes effective from its date of enactment.

In order that it becomes known to all, this Minister of Forestry Regulation is enacted with its placement in the State Gazette of the Republic of Indonesia.

Ratified in Jakarta on 1 May 2009

THE MINISTER OF FORESTRY

Signature

H. M. S. KABAN

Promulgated in: Jakarta

On:

THE MINISTER OF JUSTICE AND HUMAN RIGHTS  
OF THE REPUBLIC OF INDONESIA,  
APPENDIX 1 MINISTER OF FORESTRY REGULATION  
No: P. 30/Menhut-II/2009  
Date: 1 May 2009

### **GUIDELINES FOR REDD IMPLEMENTATION RECOMMENDATION By REGIONAL GOVERNMENT**

Prior to giving recommendation on REDD implementation; Local Government shall assess the following:

1. Legality and status of the forest area proposed by implementor.
2. Conformity between the planned location of REDD with the local Spatial Plan of the Region.
3. Conformity with the criteria of REDD site.
4. Conformity between the implementation of the REDD plan with the development priorities including poverty reduction program.
5. On the basis of the assessment of number 1 to 4, the Local Government can provide recommendations on the implementation of REDD in the area.

MINISTER of FORESTRY  
REPUBLIC OF INDONESIA  
SIGNED

H. M. S. KABAN

### **APPENDIX 2 MINISTER OF FORESTRY REGULATION**

No: P. 30 / Menhut-II/2009

Date: 1 May 2009

### **SELECTION CRITERIA of REDD SITE**

- A. REDD site selection criteria are through the assessment of the following:
1. Data and information.

2. Biophysics and ecology.
3. Threats to the forest resources.
4. Social, economic and cultural.
5. Economic feasibility.
6. Governance (governance).

Data and information: the availability and completeness of data and information (historical) and the amount of forest carbon stock and associated data required for REDD implementation.

Biophysics and ecology: ecosystem diversity, carbon stocks, biodiversity and uniqueness.

Threat to forest resources: type and level of threat, risk the location of to deforestation and/or degradation.

Social, economic and culture: dependence of community to resources on the site; presence/absence of conflicts; involvement of other parties in the management of the forest, and clarity of poverty reduction dimension.

Economic feasibility: REDD revenue estimates and costs required to ensure the success of reducing emissions from deforestation and / or forest degradation of the site and the surrounding areas in the long-term.

Governance: the efficiency and effectiveness of the bureaucracy (clarity about roles, responsibilities and accountability of the Parties), and the legal framework, and the commitment of REDD implementor to change behavior (patterns of production and environment-friendly land use governance).

B. Selection for REDD Demonstration site will be considered by biogeographical distribution area representation in Indonesia.

MINISTER OF FORESTRY  
REPUBLIC OF INDONESIA  
SIGNED  
H. M. S. KABAN

### **APPENDIX 3 MINISTER OF FORESTRY REGULATION**

No: P. 30 / Menhut-II/2009

Date: 1 May 2009

#### **GUIDELINES for REDD IMPLEMENTATION PLAN**

REDD implementation plan is to be written in Bahasa Indonesia. The general format is to contain front matters, summary, table of contents, introduction and background, and at least 3 (three) pages of REDD implementation plan.

1. Front matters contain basic information such as title / institutions that will conduct REDD activities, location and time period of the implementation.
2. Summary, contains brief information of the overall REDD implementation.
3. Table of Contents.
4. Introduction / background described REDD activities in the international context, the relevance /consistency with national development priorities and areas where activities REDD proposed.
5. The major part of the REDD plan contains information about:

- a. Biophysical-ecological conditions and the proposed location and surrounding areas, the threat of forest resources, social, economic, and cultural, economic feasibility, forest governance (governance).
- b. The availability of data and information including a map of the REDD site and area surrounding, elaboration of the data and information collection methodology, forest cover and land use change analysis, including the accounting and controlling displacement of activities/emissions, and monitoring
- c. Elaboration of activities including investment plan and fund availability and financial plan, impact assessment, risk management, and disbursement of right and liabilities between the parties, parties role.

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**APPENDIX 4 MINISTER OF FORESTRY REGULATION**  
**No: P. 30/Menhut-II/2009**  
**Date: 1 May 2009**

**REDD APPLICATION EVALUATION GUIDELINES**

REDD application evaluation is based on the analysis of:

1. Fulfilment of the site and activities criteria as listed in Appendix 2 of this Minister of Forestry Regulation, namely: (1) The availability of data and information (2) Biophysical and ecological conditions, (3) The threat to the forest resources, (4) Socio ]economic and cultural (5) Economical feasibility, and (6) Governance.
2. Clarity and completeness of the information in the document proposed, compliance with guidelines that are related in this decision, and the consistency with the objectives of the conventions and national development priorities.

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**APPENDIX 5 MINISTER of FORESTRY RULES**  
**No: P. 30 / Menhut-II/2009**  
**Date: 1 May 2009**

**GUIDELINES on EMISSION REFERENCES LEVEL (REL),  
 REDD IMPLEMENTATION MONITORING AND REPORTING**

**A. Reference Emission Level (REL)**

1. REDD in Indonesia is using the national approach with implementation at the sub-national level (provincial or district / city or management unit). Thus the reference emissions (REL) are set at national, sub national and the REDD site.
2. Reference Emission (REL) at the national level set by the Ministry of Forestry, while emissions in the sub-national level set by the regional government (provincial or district / city) and confirmed with the reference emission level.
3. Reference Emission (REL) at the REDD activity site defined by the implementer, and confirmed with a reference emission level of national and sub ]national level.

**B. Measuring changes in veils and forest carbon stock**

1. Measuring changes in forest cover and forest carbon stocks using the Intergovernmental Panel on Climate Change (IPCC) Guidelines or the IPCC Good Practice Guidance for Land Use, Land Use Change and Forestry (GPG-LULUCF).
2. Actors can choose the approach and the level of accuracy (tiers) of the IPCC according to the readiness/capacity starting at the Tier 2 and gradually the use of approach 3 and the highest tiers (Tier 3).

- Approach the table and tiers options.

<b>Approach to determine changes in the area (Activity Data)</b>	<b>Detailed level of emission factors (Tier): changes in carbon stock</b>
1. Based on the map, survey data and national/local statistics	Tier 2. Specific data from each country (national/local) for certain main/dominant type of forests
2. Spatial data from high resolution remote sensing	Tier 3. Carbon stock data from the National Inventory, with periodical measurement and modelling

C. Monitoring (Monitoring)

- REDD implementation monitoring carried out to determine changes in carbon stock and other benefits from the Reference Level (REL).
- Important element that must be considered in monitoring is credibility, transparency, accuracy, scientifically sound and consistency with internationally agreed rules.
- The monitoring is done periodically by the implementer, the Regional Government and Ministry of Forestry at the latest of every 5 (five) years except for the period up to 2012 to be conducted each years.

D. Reporting

- REDD activities reporting carried out periodically according to the monitoring period.

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**APPENDIX 6 MINISTER of FORESTRY RULES**

**No: P. 30/Menhut-II/2009**

**Date: 1 May 2009**

**GUIDELINES REDD VERIFICATION ACTIVITIES**

- Prior to COP decision on REDD procedures, the verification of REDD activities refers to the instructions in Annex of COP 13 Decisions 2 Year 2007. Verification is performed for the following:
  - Accounting of emissions reduction/increment are as is, measureable, transparent, and consistent over time.
  - Basis of setting reference emissions level (REL).
  - The resulting emission reduction (reporting using Good Practice Guidance for Land Use, Land-use Change and Forestry).
  - Existence of the displacement activities as the impact of the project and how the displacement is managed.
  - Consistency with the provisions under the UNFF, CCD, and CBD.
  - Transparency and fairness in the distribution of incentives and its contribution to the ultimate goals of the conventions goals and sustainable national development.
- After COP decision is made on the REDD procedures, verification will be based on the COP decision and consistent with the appropriate legislation and regulations.

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