



Forest Peoples Programme

1c Fosseyway 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

11th August 2022

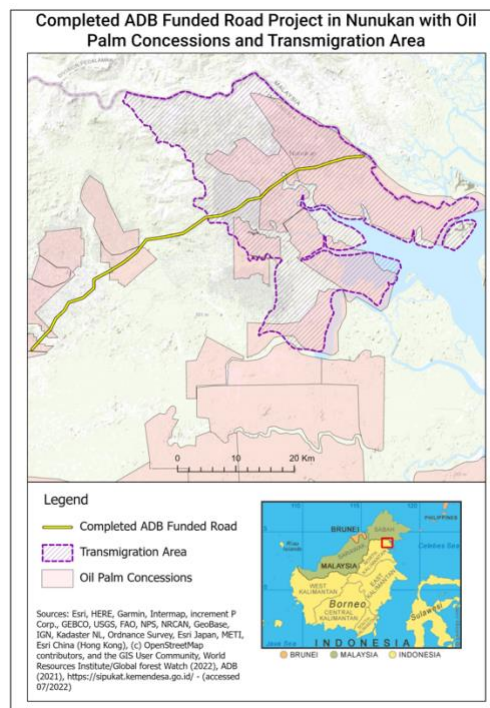
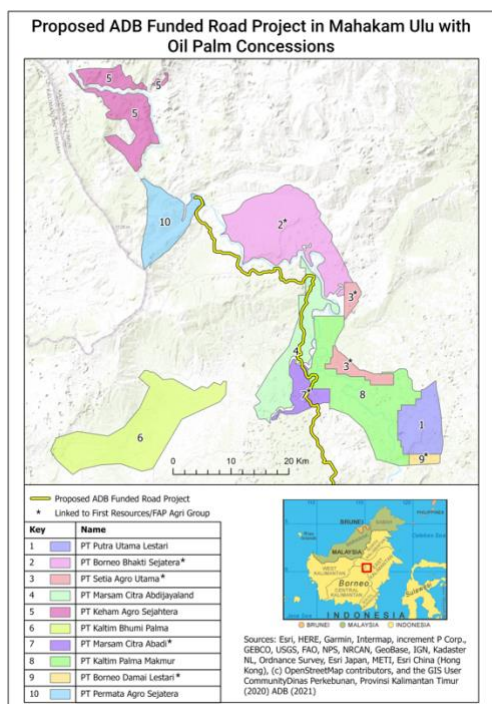
Mr. Tony McDonald,
Executive Director,
Asian Development Bank (ADB)
Manila

Dear Mr. McDonald,

In advance of September 20th, when the Asian Development Bank is scheduled to carry out preliminary fact finding on the proposed investment of Indonesia's Sovereign Project: **National Roads Development Project Kalimantan** (52347-001), we, the undersigned civil society organisations, write to request that the US\$300 million loan to be delayed to allow the project to be carried out in conformity with ADB safeguard policies on Indigenous Peoples.

The numerous Dayak indigenous peoples of North and East Kalimantan (Indonesian Borneo), that have inhabited the proposed project area since time immemorial, still have not received recognition and protection of their rights over their ancestral lands from the State of Indonesia. If the territorial rights of these indigenous peoples are not recognised and legally secured before the road-building project goes ahead, it is very likely that they will suffer expropriation of, and displacement from, their lands.

The first phase of the project's feasibility assessment were marred by substantial problems, including a flawed *Initial Poverty and Social Analysis* (May, 2020) which resulted in the Safeguard Category for Indigenous Peoples as being classified as Category B. The planned industrial oil palm concessions that straddle the proposed road corridor provide a strong indication that the project will have a **significant impact** on indigenous peoples, and thus satisfy the criteria to be classified as Category A for Indigenous Peoples.



Proposed project (52347-001) in Mahakam Ulu straddles palm oil concessions, as did ADB's previous road project (38479-034) in the region. Both projects are categorised as Category B for Indigenous Peoples, underestimating the significant impact of palm oil on communities.



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

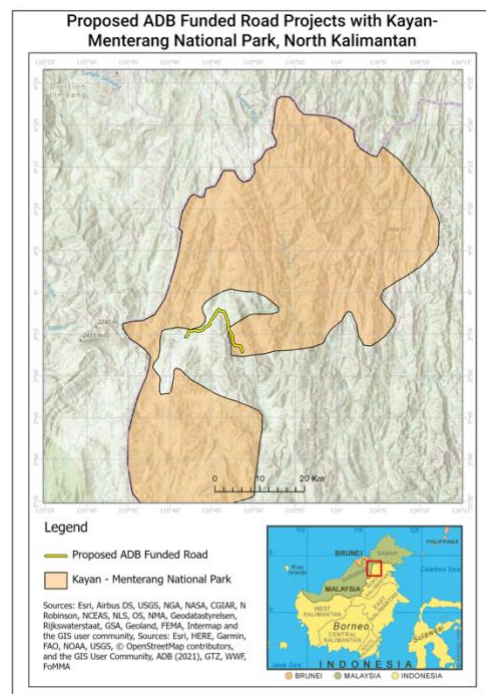
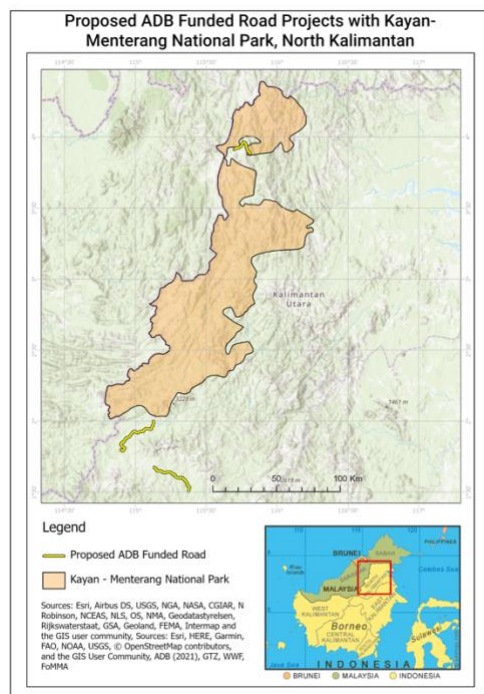
The proposed roads, some of which are the first roads to connect communities to other areas of Kalimantan, will provide extractive companies with access to an area currently home to dozens of Dayak communities along with their farmlands and customary forests but lacking secure tenure. These and other concerns on the negative impact of that project have been documented and provided in writing to ADB's Board of Directors, as well as orally, during consultations on the Safeguards Review to ADB's Director of Safeguards in June and November 2021.

Our considerations should be framed in the context of ADB's previous loan in the region, the Regional Roads Development Project (38479-034), which was also classified Category B for Indigenous Peoples. A review of the project's documents found that the project did not follow ADB's own protocol "to undertake meaningful consultations with affected Indigenous Peoples".¹

We are concerned that the ADB, instead of addressing these important defects, is considering to fund the project despite the lack of proper consultation with impacted indigenous peoples. The ADB risks repeating many of the errors detailed in the independent evaluation of the effectiveness of ADB's 2009 Safeguard Policy in relation to the institution's engagement with indigenous peoples.²

These fears are further compounded by ADB's continued employment of 'broad community support', a standard that has been repeatedly rejected by indigenous peoples' representatives and is inconsistent with the settled jurisprudence of international human rights law to which borrower states are legally committed.

ADB's own Indonesia Resident Mission noted in communication with concerned parties of the "potential project impacts on indigenous peoples...and risks of Indonesia not reaching its targets for climate and deforestation"³ due to the proposed road-building project traversing the buffer zone of Kayan Mentarang National Park.



Threat to Indonesia's climate and deforestation goals: proposed sub-sections of road in relation to Kayan Mentarang National Park.

¹ Land conflicts between Dayak communities and palm oil companies in the project area can be directly attributed to the access these roads granted to palm oil operators, such as the ongoing conflict between the Dayak Agabag and PT Karangjuang Hijau Lestari.

² Independent Evaluation ADB, Effectiveness of the 2009 Safeguard Policy Statement, April 2020

³ Indonesia Resident Mission, Project No.52347 - ADB response on social safeguards, 1 July 2021



Forest Peoples Programme

1c Fosseway 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

Unfortunately, twelve months on, this has not led to a process of robust public consultation with NGOs or impacted indigenous communities. This is particularly concerning in the context of ADB's upcoming due diligence of the proposed road projects in Kalimantan in which their core team does not list an indigenous peoples expert.

Should the project go ahead, there are serious security concerns for Human Rights Defenders in the project area. In both East and North Kalimantan, indigenous peoples are increasingly subject to criminalization and intimidation for advocating for their rights to control their lands.⁴ It is unclear how ADB will mitigate these security risks and guarantee there will be no reprisals from the client should indigenous peoples seek to have tenurial security through the recognition of their territories prior to the project going ahead.

The upcoming fact finding is majority financed by the Government of Australia through the Department of Foreign Affairs and Trade⁵, an institution that claims to "listen deeply and act bravely on indigenous issues".⁶ We therefore urge ADB's Board of Directors alongside the Government of Australia to work in conjunction with civil society to address these concerns and to reclassify the Safeguard Category for Indigenous Peoples on the proposed project to **Category A**. If studies reveal that the human rights and environmental impacts may be severe, the project should not be supported.

Recommendations

- The ADB project should be reclassified as Category A for Indigenous Peoples;
- The ADB loan should be delayed to allow the project preparation to be carried out in conformity with ADB safeguard policies;
- The views of impacted indigenous peoples must be incorporated in the Australian Government's scoping study;
- The territorial rights of the indigenous peoples must be recognised and legally secured before the project goes ahead;
- The Australian Government should guarantee that there is an Indigenous Peoples expert in their core team; and
- If studies reveal that the human rights and environmental impacts may be severe, the project should not be supported.

Yours Sincerely,

Tom Lomax
Director, Senior Lawyer
Forest Peoples Programme
Moreton-in-Marsh,
GL56 9NQ,
United Kingdom

⁴ See MacInnes, A., Breaking the Heart of Borneo, Forest Peoples Programme, 2021

⁵ ADB Technical Assistance Report, Republic of Indonesia: Sustainable Infrastructure Assistance Program Phase II, Subproject 6: Due Diligence for Road Projects Kalimantan and Capacity Development, Project Number: 52152-004, May 2020

⁶ The Mandarin, "Australia must 'listen deeply and act bravely' on Indigenous issues, new DFAT boss says", 8 July 2022



Forest Peoples Programme

1c Fosseway 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

Signed on behalf of the following organizations:

Aliansi Masyarakat Adat Nusantara (AMAN), Jakarta, Indonesia
AMAN Bengkibas, Bengkayang, Indonesia
Green of Borneo, Nunukan, Indonesia
Hutan Kita Institute (HaKI), Indonesia
Institut Dayakologi, Pontianak, Indonesia
Lembaga Bela Banau Talino (LBBT), Pontianak, Indonesia
Lembaga Bentang Alam Hijau (LemBAH), Bengkayang, Indonesia
Lembaga Bantuan Hukum Angasana (LBH ANGSANA), Indonesia
Lembaga Studi dan Advokasi Masyarakat (ELSAM), Jakarta, Indonesia
Link-AR Borneo, Pontianak, Indonesia
Palangkaraya Ecological and Human Rights Studies (PROGRESS), Indonesia
Perkumpulan Nurani Perempuan, Samarinda, Indonesia
Perkumpulan Pegiat JPIC, Pelangkaraya, Indonesia
Perkumpulan Sawit Watch, Bogor, Indonesia
Perkumpulan Untuk Perbaharuan Hukum Berbasis Masyarakat dan Ekologis (Huma), Jakarta, Indonesia
Transformasi untuk Keadilan Indonesia (TuK Indonesia), Bogor, Indonesia
Wahana Lingkungan Hidup Indonesia (WALHI Eksekutif Nasional), Jakarta, Indonesia
Wahana Lingkungan Hidup Indonesia Kalimantan Timur, Samarinda, Indonesia
Wahana Lingkungan Hidup Indonesia Kalimantan Barat, Pontianak, Indonesia

The letter is also supported by the following international organisations:

Forest Peoples Programme, Moreton-in-Marsh, United Kingdom
Rainforest Action Network, San Francisco, United States of America
Recourse, Amsterdam, The Netherlands
Urgewald, Sassenberg, Germany

Cc: The Hon. Dr. Jim Chalmers MP, Treasurer of Australia; the Hon. Michael Sukkar MP; and David Cavanaugh, Alternate Executive Director, ADB; Rayyan Hassan, Executive Director, NGO Forum on the ADB; Said Zaidansyah, Officer-In-Charge/Deputy Country Director, Indonesia Resident Mission; Shihiru Date, Senior Transport Specialist, ADB