

**Request for consideration of the Situation of Indigenous Peoples in
Kalimantan, Indonesia**

under the

**United Nations Committee of the Elimination of Racial
Discrimination's**

Urgent Action and Early Warning Procedure

101st Session

Submitting Organizations

- **Aliansi Masyarakat Adat Nusantara** or Indigenous Peoples Alliance of the Archipelago is an independent community organisation (mass organization) whose members comprise of communities of indigenous peoples from diverse natives of the Archipelago. AMAN was declared pursuant to a longstanding historical construction of indigenous peoples' movements in Indonesia. Since the mid of 1980s there had been new awareness within the non-government organisations (NGO) and social scientists on the widespread negative developmental impacts on all groups of the Indonesian society. Indigenous peoples are the main and largest in numbers suffered the most by (and become victims) politics of the development over the last three decades. The imminent oppressions towards indigenous peoples have been taking place in economics, politics, laws as well as other social and cultural spheres, therefore, on these grounds, AMAN was established. Address: Rumah AMAN, Jalan Tebet Timur Dalam Raya No.11A Kel. Tebet Timur, Kec. Tebet, South Jakarta, Indonesia. Post code: 12820. Telephone/Fax: +62-21-8297954/+62-21-837-06282; email: rumahaman@cbn.net.id; website: www.aman.or.id
- **Aliansi Masyarakat Adat Nusantara Pengurus Wilayah Kalimantan Barat (PW AMAN Kalbar)** is one of AMAN's functioning body in regional level in West Kalimantan. Community members of AMAN Kalbar come from 9 districts namely Ketapang, Pontianak, Sanggau, Sintang, Bengkayang, Landak, Sekadau, Melawi, and Kapuas Hulu. Address: Jl. Budi Utomo, No.03, Siantan Hulu, Pontianak Utara 78241, Kalimantan Barat, Tel/fax: +62 561 885264/885211, email: amakalbar@ptk.centrin.net.id
- **Aliansi Masyarakat Adat Nusantara Pengurus Daerah Bengkayang, Singkawang dan Sambas** is one of AMAN's functioning bodies in the district levels (PD) in West Kalimantan. It is established in 2018 and since then has been working directly with AMAN community members registered in two districts in West Kalimantan namely Bengkayang District and Sambas District and one administrative city Singkawang areas. Address: Jl. Raya Sanggau Ledo, Gg. Delima, No.06 B, Kelurahan Sebalu, Bengkayang, Kota Bengkayang, Kalimantan Barat. Email: amanbengsibas@gmail.com
- **Institut Dayakologi (ID)** 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
- **Lembaga Bela Banua Talino (LBBT)** is 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 561885623 fax. +62 561 884566, e-mail: lbbt@ptk.centrin.net.id
- **Lembaga Bentang Alam Hijau (LemBAH)** is an association established in 2003 works on indigenous peoples and local community rights advocacy, social, economic and cultural empowerment and revitalisation. LemBAH promotes resilient customary forest and community land tenure, agrarian reform and human rights. Jl. Sanggau Ledo – Bengkayang, Bengkayang City, West Kalimantan, Indonesia. Email: sekretariatlembah@gmail.com
- **Lembaga Studi dan Advokasi Masyarakat/ELSAM** is 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, web: www.elsam.or.id
- **Perkumpulan Nurani Perempuan (Women's Conscience)** is an indigenous women's organisation, founded in 1999 which acts to promote the rights and welfare of Dayak indigenous peoples on the Mahakam River in East Kalimantan. The organisation is staffed by Dayak Bahau. Initially set up to empower

indigenous women, the rapid takeover of Dayak lands by palm oil, logging, mining and timber estates has led the organisation to focus principally on land rights. Address: Jl. KS. Tubun Dalam Komplek Wira Bakti RT. 12 No. 15 Kel. Sidodadi, Samarinda, Kalimantan Timur 75123, tel/fax: + 62 8115861244, e-mail: marthadoq@yahoo.co.id

- **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
- **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 reforms 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
- **Transformasi untuk Keadilan Indonesia (TuK INDONESIA)** advocates for the respect, protection and fulfilment of human rights by State and non-state actors with a particular focus on policies, programmes and activities relating to agribusiness and natural resource management. Address: Jl. Tebet Utara II A No. 13, South Jakarta, Indonesia. Email: office@tuk.or.id; landline phone: +62-21-8352955
- **Wahana Lingkungan Hidup Indonesia (WALHI Eksekutif Nasional/Friends of the Earth Indonesia)** national executive is the largest environmental movement in Indonesia with 487 organisation members and 203 individual members in 28 provinces across the country. Since 1980 WALHI has been active in advocating environmental protection and restoration in Indonesia. WALHI works to continuously advocate the recognition of rights to environment, human rights are protected and fulfilled as primary manifestation of the State obligation to fulfil people's life resources. Address: Jl. Tegal Parang Utara No.14 Jakarta 12790, Indonesia, tel +62 21 7919 33 63-88 [fax] +62 21 7941673, e-mail: info@walhi.or.id
- **Wahana Lingkungan Hidup Indonesia Kalimantan Barat (WALHI Kalbar)**, is one of Friends of the Earth Indonesia's provincial chapter in West Kalimantan province. It is one of the largest grassroot social and environmental movement in West Kalimantan together with its individual and organisational members. 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: Komplek Universitas Tanjungpura, Jalan M. Husni Thamrin Blok P No.41, Pontianak West Kalimantan. Email: kalbar1@walhi.or.id, Web: walhi.or.idwalhikalbar.or.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. Mayjen Sutoyo, Gg. Surya Rt. 008 Rw. 012 No.39 (Gunung Malang), Balikpapan, Kalimantan Timur 76113, tel/fax: +62 542 734360, e-mail: info@padi.or.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 Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK. Tel: (44) 01608 652893, Fax: (44) 01608 652878, e-mail: marcus@forestpeoples.org

Request for consideration of the Situation of Indigenous Peoples in Kalimantan, Indonesia, under the Committee of the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedure

I. Introduction and Summary

1. The above-described Indonesian and international indigenous and civil society organizations (“the submitting organizations”) respectfully submit this request for consideration under the United Nations Committee on the Elimination of Racial Discrimination’s (“UNCERD”) urgent action and early warning procedure (“UA/EW procedure”). It concerns vast encroachment on and takings of indigenous lands for road-building, plantations and mining along the Indonesia-Malaysia border, all of which threatens to cause imminent, gross and irreparable harm to the Dayak and other indigenous peoples of that region. This is essentially a reformulation of the Kalimantan Border Oil Palm (KBOP) Mega-Project, repeatedly criticized by the UNCERD, and involves a massive and unmonitored expansion of monocrop plantations, oil palm especially, and associated roads, into indigenous lands, and even the weakening of existing legal protections to further privilege state and private-sector projects over the rights of indigenous peoples. As previously confirmed by the UNCERD and others¹, indigenous peoples’ rights, including to their territories, remain unsecured in Indonesian law and practice. This lack of legal recognition also denies indigenous peoples access to judicial remedies because “court decisions on land cases have been primarily made on the basis of the existence of titles.”² Indigenous peoples’ right to effective participation in decision making and to informed consent, as repeatedly upheld and emphasized by UNCERD and other treaty bodies, has been wholesale disregarded by the Republic of Indonesia (“Indonesia” or “the State”) in relation to its acts and omissions highlighted in this request.

2. The irreparable harm detailed herein has been caused by and is additionally and imminently threatened due to the ongoing, massive and non-consensual taking and conversion of indigenous peoples’ ancestral lands and forests to oil palm plantations, logging and mining concessions, and associated roads. This has already commenced and is set to greatly expand and intensify along some 850 kilometers of the Indonesia-Malaysia border in Kalimantan. This area coincides with the ancestral territory of 1 - 1.4 million Dayak indigenous people. Some communities already have been forcibly relocated³ and it is estimated that another 300,000

¹ See e.g., CERD/C/IDN/CO/3 (2007); Early Warning and Urgent Action Procedure: Indonesia (13 March 2009); Early Warning and Urgent Action Procedure: Indonesia (2 September 2011); CEDAW/C/IDN/CO/6-7 (2012); Early Warning and Urgent Action Procedure: Indonesia (30 August 2013); E/C.12/IDN/CO/1 (2014); CRC/C/IDN/CO/3-4 (2014); and Early Warning and Urgent Action Procedure: Indonesia (28 August 2015).

² E/C.12/IDN/CO/1 (2014), para. 29 (also expressing concern “about the large number of land disputes and cases of land-grabbing in the State party”) and, para. 28 (expressing concern “at the lack of an adequate monitoring of the human rights and environmental impact of extractive [and plantation] projects during their implementation. In many cases, affected communities have not been afforded effective remedies and have, along with human rights defenders working on these cases, been subject to violence and persecution”).

³ Beginning in 2008, oil palm plantations destroyed the customary forest of the indigenous Dayak Iban, forcing at least 93 households to relocate. No prior information was given to the community about the development of oil palm on its ancestral lands. See “When we lost the forest, we lost everything” *Oil Palm Plantations and Rights Violations in Indonesia*, Human Rights Watch Report (September 2019),

indigenous individuals are threatened with displacement.⁴ If completed as planned, it will leave the affected peoples with a profoundly compromised future and severely diminished livelihood options, given that the plantations require clearance of the forests and other ecosystems on which indigenous peoples depend.⁵ It will also cause severe impacts on the exercise of their cultural, spiritual and other rights, all of which are inextricably intertwined with and dependent on security of tenure over their traditional territories.

3. In short, Indonesia's law and practice in relation to these massive monocrop plantations and concessions are incompatible with indigenous peoples' ways of life and internationally guaranteed rights. This is not hyperbole; former UN Special Rapporteur on the Rights of Indigenous Peoples, Rodolfo Stavenhagen plainly stated that plantations in Indonesia are placing indigenous peoples "on the verge of completely losing their traditional territories and thus of disappearing as distinct peoples."⁶ That severe violations of indigenous peoples' rights and irreparable harm are prevalent in relation to Indonesia's deficient laws and practice in the forestry sector is further verified by other UN treaty bodies and Special Procedures.⁷ One Special Rapporteur has observed that indigenous peoples' "claims to the land are not recognized by the State,"⁸ and "[c]onversion of land uses has had significant impact on natural resources and land rights of forest-dependent communities."⁹ In 2018, the Special Rapporteur

https://www.hrw.org/sites/default/files/report_pdf/indonesia0919_web.pdf. When community members protested against the company's presence, two village leaders were criminalised. Complaints to Government triggered investigations but these have been inconclusive, and the company continues to operate with impunity. See 'West Kalimantan National Inquiry: Prolonged Conflict in Semunying Jaya ("Inkuiri Nasional Kalbar: Konflik Berkepanjangan di Semunying Jaya")', *Mongabay News*, October 8, 2014, <https://www.mongabay.co.id/2014/10/08/inkuiri-nasional-kalbar-konflik-berkepanjangan-di-semunying-jaya/>.

- ⁴ *The Kalimantan Border Oil Palm Mega Project*, Friends of the Earth Netherlands and the Swedish Society for Nature Conservation (SSNC), April 2006.
- ⁵ T. Santika et. al, *Changing landscapes, livelihoods and village welfare in the context of oil palm development*, LAND USE POLICY, vol. 87, June 2019 (containing research, based on data from 6,600 villages in Kalimantan between 2000 and 2014, which found that in communities which previously relied on 'subsistence-based livelihoods', over 65 percent experience a substantial reduction in their basic, physical and financial well-being as well as reduced social and environmental well-being after oil palm was introduced. The findings demonstrate that when development is imposed without respect for indigenous peoples' rights, it severely impacts their livelihoods and welfare), <https://www.forestpeoples.org/sites/default/files/documents/Santika%20et%20al.%202019%20-%20oil%20palm%20and%20village%20welfare.pdf>
- ⁶ 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, p. 3, http://www.un.org/esa/socdev/unpfii/documents/6session_SR_statement_asia_en.doc.Stavenhagen.
- ⁷ See e.g., E/C.12/IDN/CO/1 (2014), para. 27 (expressing concern "at violations of human rights in the mining and plantations sectors, including the right to livelihood, the right to food, the right to water, labour rights and cultural rights"); CEDAW/C/IDN/CO/6-7 (2012), para. 45(b) (identifying "violation of the rights of indigenous women to access their land, water and natural resources"); and CRC/C/IDN/CO/3-4 (2014), para. 19 (expressing deep concern about "Various forms of discrimination against children belonging to indigenous communities, such as insufficient access to education and health care"); and, at para. 70 (urging Indonesia to "... ensure the prior informed consent of indigenous peoples with regard to exploitation of the natural resources in their traditional territories").
- ⁸ *Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Raquel Rolnik: *Mission to Indonesia*, A/HRC/25/54/Add.1 (2013), para.48 (explaining that "Adat land [customary indigenous land] can only be registered and certified after having been rendered into one of seven private law land rights recognized in article 16 of the [Basic Agrarian Law]. Thus, although in many cases the land right originates in adat law since well before the creation of the Indonesian State in 1945, BPN officials impose a presumption that all unregistered land is State land until proven otherwise. Moreover, *Hak ulayat* (which can be translated as 'a communal right of allocation') cannot be registered"), <https://www.refworld.org/docid/52e0f5e7a.html>.
- ⁹ *Id.* para. 49-50 (additionally observing, at para. 42, that an "inequitable and exclusionary land tenure system exists in Indonesia, exemplified by the fact that approximately 69 percent of the land is owned by 16 percent of the population").

on the Right to Food, confirmed that **indigenous peoples in Indonesia “face disproportionate barriers to accessing land”** and that this discriminatory treatment is exacerbated by the fact that their “livelihoods and food sources depend considerably on the free use of land.”¹⁰ She also corroborated that Indonesia continues to “lack ... formal methods to determine customary rights to land” within its property laws¹¹ and that “land-related conflicts have had devastating human rights impacts.”¹² Similarly, World Bank studies document that Indonesia’s policies 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.”¹³ As further confirmed below, there have been no effective changes in terms of protections for indigenous peoples’ rights in Indonesia since these deeply troubling observations were made.

4. Likewise, there have been no effective changes in Indonesian law or practice since the UNCERD recommended action to address serious human rights concerns in the KBOP Mega-Project, which was smaller in scope than Indonesia’s current actions and plans along the Kalimantan border, the subject of this present request. These concerns were raised directly in its concluding observations in 2007 as well as under its UA/EW procedures in 2009. In 2007, the UNCERD noted “with concern the plan to establish oil palm plantations over some 850 kilometers along the Indonesia-Malaysia border in Kalimantan as part of the [KBOP Mega-project], and the threat this constitutes for the rights of indigenous peoples to own their lands and enjoy their culture.”¹⁴ It expressed concern, *inter alia*, “that references to the rights and interests of traditional communities contained in domestic laws and regulations are not sufficient to guarantee their rights effectively,”¹⁵ a point reiterated by the Committee on Economic, Social and Cultural Rights in 2014.¹⁶ The UNCERD then recommended that Indonesia “secure the possession and ownership rights of local communities before proceeding further,” and ensure the effective participation of those affected in decision making.¹⁷

5. These concerns were reiterated and expanded upon in March 2009 under the UA/EW procedures, observing that “oil palm plantations continue to be developed on indigenous

¹⁰ *Report of the Special Rapporteur on the right to food on her mission to Indonesia*, A/HRC/40/56/Add.2 (2018), para. 51-2 (emphasis added), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/447/88/PDF/G1844788.pdf?OpenElement>.

¹¹ *Id.* para. 66.

¹² *Id.* para. 68 (explaining that “The Agrarian Reform Consortium states that between 2015 and 2017, there were 1,361 agrarian conflicts involving 2,185,948 hectares and impacting 848,197 households. These conflicts predominantly involved the use of land for plantations, forestry and infrastructure”). See also ‘In landmark ruling, Indonesia’s indigenous people win right to millions of hectares of forest’, *Mongabay*, 17 May 2013 (recording that the Indonesian National Forestry Council documented that conflicts over forests in 2013 involved nearly 20,000 villages in 33 provinces), <https://news.mongabay.com/2013/05/in-landmark-ruling-indonesias-indigenous-people-win-right-to-millions-of-hectares-of-forest/>; and *Towards Indonesian Land Reforms: Challenges and Opportunities. A Review of the Land Sector (Forest and Non-forest) in Indonesia* (World Bank 2014) (concluding that these conflicts are primarily due to competing land claims, loss of livelihoods for local communities, and governance issues).

¹³ See e.g., *Sustaining Economic Growth, Rural Livelihoods and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia*, (World Bank, December 2006), p. 2, <http://siteresources.worldbank.org/INTINDONESIA/Resources/Publication/280016-1152870963030/IDForestStrategy.pdf?resourceurlname=IDForestStrategy.pdf>.

¹⁴ CERD/C/IDN/CO/3 (2007), para. 17.

¹⁵ *Id.*

¹⁶ E/C.12/IDN/CO/1 (2014), para. 38 (identifying “the absence of an effective legal protection framework of the rights of Masyarakat Hukum Adat due to inconsistencies in relevant legislative provisions”).

¹⁷ CERD/C/IDN/CO/3 (2007), para. 17.

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."¹⁸ The UNCERD concluded by requesting that Indonesia provide information on "the implementation of the recommendations contained in [the above-quoted] paragraph 17 of its concluding observations, in particular with respect to the measures taken by the State Party to safeguard the rights of indigenous communities whose territories are threatened by projects such as the [KBOP Mega-project]."¹⁹

6. Similar concerns also have been raised about analogous situations in Indonesia under the UA/EW procedures in 2011/2013²⁰ and 2015.²¹ The UNCERD explicitly acknowledged in 2013 that, due to Indonesian "law as currently drafted, **indigenous peoples ... have been denied rights to their lands in favour of an ownership right vested by the State**" in private companies, such as those that have been or will be issued plantation permits or concessions along the Kalimantan border.²² It also reiterated its recommendation that Indonesia "review its laws ... 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."²³ The UNCERD has also constantly upheld the principle that the failure to legally recognize, respect and secure indigenous land rights is discriminatory and has underscored that the realization of state and private sector projects on indigenous lands "without free, prior and informed consent, would permanently affect the land rights of [indigenous peoples] and, as a result, would infringe their rights under the International Convention on the Elimination of All Forms of Racial Discrimination."²⁴ It and others have emphasized these points directly to

¹⁸ See e.g., *Early Warning and Urgent Action Procedure: Indonesia* (13 March 2009), p. 1 (stating that the "high number of conflicts arising each year throughout Indonesia" between local communities and plantation companies remains an issue of concern, "in particular with regard to the protection of indigenous peoples' rights." Also referring to "Indonesia's 2008 "Regulation on Implementation Procedures for Reducing Emissions for Deforestation and Forest Degradation" reiterates Law 41 of 1999 on Forestry that appears to deny any proprietary rights to indigenous peoples in forests").

¹⁹ *Id.* (also recalling "paragraph 17 of its concluding observations, in which it recommended that the State party 'secure the possession and ownership rights of local communities before proceeding further' with the Kalimantan Border Oil Palm Mega-project").

²⁰ *Early Warning and Urgent Action Procedure: Indonesia* (2 September 2011) (concerning "an agro-industrial mega-project implemented by various corporate entities and initiated by the state, reportedly encompassed 2 million hectares of traditional indigenous lands," and requesting "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 *Early Warning and Urgent Action Procedure: Indonesia* (30 August 2013) (reiterating "its concerns expressed in its previous letter dated on 2 September 2011 to the State party and in paragraphs 17, 18 and 22 of its [2007] concluding observations...").

²¹ *Early Warning and Urgent Action Procedure: Indonesia* (28 August 2015) (concerning "a permit for monocrop sugar cane plantations over nearly 50 percent of Aru indigenous peoples' ancestral territory").

²² *Early Warning and Urgent Action Procedure: Indonesia* (30 August 2013) (emphasis added) (also requesting information on "measures to register and recognise the collective ownership of customary indigenous territories in the State party").

²³ *Early Warning and Urgent Action Procedure: Indonesia* (28 August 2015) (additionally recalling its prior recommendation that recommended that "the State party amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development are (...) not used as a justification to override the rights of indigenous peoples...").

²⁴ See e.g., *Early Warning and Urgent Action Procedure: Canada* (14 December 2018), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_8819_E.pdf; *Early Warning and Urgent Action Procedure: France* (14 December 2018), p. 1 (concerning the "lack of consultation of, and free, prior and informed consent from the indigenous peoples of French Guiana regarding the mining project "Montagne d'Or". The Committee is also concerned about the alleged absence of intention to undertake such consultation despite the adverse impact of the mining project on indigenous peoples' control and use of their lands, including threat to ecosystems, deforestation and destruction of archaeological sites"), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/FRA/INT_CERD_ALE_FRA_8820_E.pdf; *Early*

Indonesia.²⁵ This fundamental safeguard for indigenous peoples' rights was highlighted again in Decision 1(100) (2019), which urged Canada "to freeze present and future approval of large-scale development projects affecting indigenous peoples that do not enjoy free, prior and informed consent from all indigenous peoples affected."²⁶ This current request demonstrates that disregard for indigenous peoples' rights in Indonesia persists to this day: the rights in question have been neither secured nor protected, discriminatory legal deficiencies and obstacles remain in force, and the UNCERD's multiple recommendations continue to be ignored.

7. Some of the above communications also reference the decision of the Indonesian Constitutional Court in the "Traditional Forest Community Case" (No. 35/PUU-X/2012, 16 May 2013). This largely unimplemented judgment "reclassified traditional indigenous lands as privately owned by indigenous peoples, rather than as 'state forests',"²⁷ and ruled that the prior classification of these lands as 'state-owned forests' under the 1999 Forestry Act is "unconstitutional."²⁸ On this basis alone, the State's plans for a substantial percentage of the lands targeted for oil palm plantations and concessions along the Kalimantan border are illegitimate under national law. Yet, Indonesia not only persists with this plan, routinely ignoring indigenous peoples' rights in the process, it has also recently and dramatically increased its scope and intensity and begun construction of a substantial road network to facilitate this expansion.²⁹ Previous takings of indigenous lands have not been remedied; the plantations continue to operate with impunity and the substantial harm caused to their traditional owners increases with each passing day.

Warning and Urgent Action Procedure: Papua New Guinea (14 December 2018) (expressing concern about "use of [Special Agricultural Business Leases] for logging and large-scale plantation on indigenous peoples' land," and concluding that "the maintenance and continuous use of SABLs would infringe indigenous peoples' rights protected under the International Convention on the Elimination of All Forms of Racial Discrimination"); and *Early Warning and Urgent Action Procedure: Guyana* (14 December 2018), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GUY/INT_CERD_ALE_GUY_8821_E.pdf.

²⁵ E/C.12/IDN/CO/1 (2014), para. 27 (observing that "the free, prior and informed consent of affected communities is not always sought in [mining and plantation] projects, including under Law 25/2007 on Investment. Moreover, even in cases where consultations of affected communities have taken place, their informed decisions have not been guaranteed").

²⁶ *Decision 1(100), Early Warning and Urgent action Procedure: Canada* (13 December 2019) (also emphasizing the UNCERD's concern about "the refusal to consider free, prior and informed consent as a requirement for any measure, such as large-scale development projects, that may cause irreparable harm to indigenous peoples rights, culture, lands, territories and way of life"), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_EWU_CAN_9026_E.pdf. See also *Early Warning and Urgent Action Procedure: Guyana* (14 December 2018) (recommending that the State "Consider the suspension of the mining project on Marudi Mountain until free, prior and informed consent is granted by the Wapichan indigenous people following the full and adequate discharge of the duty to consult").

²⁷ *Early Warning and Urgent Action Procedure: Indonesia* (28 August 2015) (further observing that "On the information available to the Committee, it appears that the State party has not taken any measures in response to these recommendations and Court ruling").

²⁸ *Early Warning and Urgent Action Procedure: Indonesia* (30 August 2013) (referring to the ruling of the Constitutional Court "that certain provisions of the Forestry Act No. 41/1999 are unconstitutional due to the classification of 'customary [indigenous] forest' as being part of 'state forests'."

²⁹ The 1999 Forestry Law provides that "customary forests are state forests located in the areas of custom-based Communities." The ICC's ruling deletes the word "state" from that sentence, in effect revising the law so that customary forests are no longer considered state forests. It so held because the State is constitutionally obligated to recognize and respect the customary land rights of indigenous peoples, whereas the Forestry Law is based on the illegitimate declaration of State control of all forest lands, including lands traditionally owned by indigenous peoples. This in turn allows for the granting of concessions and permits by the State to companies.

8. It is well-known that the State has done almost nothing to operationalize the judgment of the Constitutional Court to date, e.g., by amending or repealing the plethora of laws that contradict its main holding (i.e., that indigenous lands are not state forests, and thus not per se available for concessions or plantations), and by adopting a framework law on the rights of indigenous peoples (a bill has been languishing in the legislature for almost a decade now).³⁰ This is the case notwithstanding international human rights law that unambiguously holds “that respect for and protection of the private property of indigenous peoples on their territories ... is mandated by the fundamental principle of non-discrimination...”³¹ Indeed, the failure to recognize and protect indigenous peoples’ property rights “would create an inequality that is utterly antithetical to the principles and to the purposes” of human rights law.³² However, Indonesia permits this situation to persist unabated and is now authorizing and supporting the imminent taking of massive areas of indigenous lands for additional plantations and concessions along the Kalimantan border and the irreparable harm that will ensue.

9. Since the Constitutional Court ruling invalidated the State’s claim to indigenous peoples’ forests, Indonesia has formally recognized the lands – by removing them from State forests (comprising around 70 percent of the land in the country),³³ rather than official titling - of **less than 1 percent of the country’s indigenous communities, covering a mere 35,202 hectares of customary forests**, and a mere handful of these are in the Kalimantan border region [see Annex 1].³⁴ This is out of an estimated 40 million hectares nationwide that is traditionally owned by indigenous communities.³⁵ The State also continues to maintain the requirement that indigenous communities’ “existence” must be officially certified by District and/or Provincial governments via decrees or regulations in order to access and secure legal rights and protections. As Indonesia’s national human rights institution, Komnas HAM, has highlighted, “[v]ery few indigenous peoples have gained official recognition.”³⁶ Indeed, **as of**

³⁰ See e.g., “When we lost the forest, we lost everything” *Oil Palm Plantations and Rights Violations in Indonesia*, Human Rights Watch Report (September 2019), p. 31-2 (stating that “The court decision prevents government authorities from issuing permits for land-based investments on adat forests without taking into account the rights of Indigenous people who live in and around it.”³⁴ However, six years after the decision was rendered, United Nations and other experts have found little implementation of the verdict”), https://www.hrw.org/sites/default/files/report_pdf/indonesia0919_web.pdf.

³¹ *Case 12.053, Merits Report No. 40/04, Maya Indigenous Communities of the Toledo District, (Belize)*, Inter-Am.Com. H.R., 12 October 2004, para. 117.

³² *Concurring Opinion of Judge Sergio Garcia Ramirez, Judgment on the Merits and Reparations in the Mayagna (Sumo) Awas Tingni Community Case*, Inter-Am. Ct. H.R., para. 13.

³³ *Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik: Mission to Indonesia*, A/HRC/25/54/Add.1 (2013), para. 43.

³⁴ See e.g., ‘Indonesian indigenous land defenders jailed in fight with pulpwood giant’, *Mongabay News*, 3 March 2020, <https://news.mongabay.com/2020/03/indonesia-indigenous-land-sumatra-toba-pulp-lestari-rge/>.

³⁵ See e.g., Reuters, 2018, With forest rights, indigenous Indonesians stave off mining, palm oil, <https://www.reuters.com/article/us-indonesia-landrights-lawmaking-idUSKCN1NI13T>

³⁶ *National Inquiry on the Rights of Indigenous Peoples over their Land in Forest Areas*, National Commission on Human Rights (Komnas HAM), 18 March 2016 (documenting gross and pervasive violations of indigenous peoples’ rights in Indonesia), p. 14 (explaining that “several root causations of human rights violations related to indigenous peoples that began in the colonial period and continue until the present,” the first of which is “Lack of legal recognition/status as indigenous people, which makes their legal rights/claims unclear or uncertain.” This is a problem that is “not only related to the non-recognition of control and ownership of indigenous peoples’ territories, but also to the absence of a legal system provided by the state to protect indigenous territories. ... Very few indigenous peoples have gained official recognition. In practice, local governments do not give recognition and some even expressly deny the existence of certain indigenous peoples”), <http://rightsandresources.org/wp-content/uploads/2016/04/Komnas-HAM-National-Inquiry-on-the-Rights-of-Customary-Law-Abiding-Communities-Over-Their-Land-in-Forest-Areas-April-2016.pdf>.

2019, “regional governments have granted a measure of legal recognition to only 48,” less than five percent of the indigenous territories identified by the national indigenous peoples’ organization, AMAN.³⁷ This requirement is a debilitating and discriminatory condition, untouched by the 2013 Constitutional Court ruling,³⁸ that denies indigenous peoples and their communities legal personality (a non-derogable right);³⁹ disregards the fundamental criterion of self-identification; essentially renders them invisible in the eyes of the law; and *ab initio* subordinates their rights to those of any other party.⁴⁰

10. Komnas HAM further explains that other “root causes” of violations of indigenous peoples’ rights include: a) “Authorization by the government in the form of permits [that] gives legality to corporations to dominate all management of indigenous forests and to ignore their territorial claims;”⁴¹ b) the existence of “development policy promoting economic growth [that] has given priority to granting exploitation permits to large-scale economic enterprises over indigenous territories, with the state apparatus and/or the security forces providing protection to the corporate interests;”⁴² and c) the lack of effective judicial and other remedies to address violations; as a result “conflict and human rights abuses continue to occur, especially based on the agrarian land and forests. These conflicts lead to many forms of discrimination, stigmatization and criminalization of indigenous peoples.”⁴³ It highlights that Indonesia’s inaction on these structural defects has prevailed because “the roots of discrimination and marginalisation are so deep.”⁴⁴ In recent months, for example, indigenous farmers face

³⁷ See e.g., W. van der Muur, *Forest conflicts and the informal nature of realizing indigenous land rights in Indonesia*, 22(2) CITIZENSHIP STUDIES 160 (2018), 165, <https://doi.org/10.1080/13621025.2018.1445495>. See also *Wawancara dengan Yuli Prasetyo Nugroho (Kepala Sub Direktorat Pengakuan Hutan Adat dan Perlindungan Kearifan Lokal)*, 12 November 2019 (stating that “Despite lofty promises in the 2014-2019 National Medium-Term Development Plan (Rencana Pembangunan Jangka Menengah – RPJM) to provide 12.7 million hectares in community forest, only 34 District Decrees were issued with the support of the Ministry of Environment and Forestry (Kementerian Lingkungan Hidup dan Kehutanan – KLHK) relating to Indigenous Forests covering a total area of only 24,152 hectares”).

³⁸ See e.g., ‘Indonesia’s indigenous wage two-pronged battle for legal recognition’, *Mongabay News*, 27 April 2016 (reporting that “just five regulations — known as *Perdas* — [have been adopted] since the landmark court decision three years ago,” and that, “despite explicit constitutional recognition, no national law has been passed that says who qualifies as indigenous, or what rights, if any, such status confers. The lack of legal certainty leaves *adat* communities especially vulnerable to abuse and loss of lands to those who see profit in their forests”), <https://news.mongabay.com/2016/04/perda-push/>.

³⁹ ICCPR, Art. 16 (“Everyone shall have the right to recognition everywhere as a person before the law”), read in conjunction with Art. 4(2), stating that “No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.”

⁴⁰ CERD/C/IDN/CO/3 (2007), para. 15 (concluding that, although Indonesia “recognizes the existence of indigenous peoples on its territory ... under domestic law, these peoples are recognized ‘as long as they remain in existence’, without appropriate safeguards guaranteeing respect for the fundamental principle of self-identification in the determination of indigenous peoples”). See also E/C.12/IDN/CO/1 (2014), para. 38 (where the UNCESCR refers to Indonesia’s “statement that it would make use of relevant principles contained in the [UNDRIP] and “urges the State party to expedite the adoption of the draft law on the rights of Masyarakat Hukum Adat and ensure that it: (a) Defines Masyarakat Hukum Adat and provides for the principle of self-identification, including the possibility to self-identify as indigenous peoples...”).

⁴¹ National Inquiry on the Rights of Indigenous Peoples over their Land in Forest Areas, National Commission on Human Rights (Komnas HAM), 18 March 2016 (documenting gross and pervasive violations of indigenous peoples’ rights in Indonesia), p. 14.

⁴² *Id.* p. 15

⁴³ *Id.* p. 16.

⁴⁴ *Id.* p. 2 (explaining that examining “this theme will help provide a new awareness for the society and the government that human rights violations concerning MHA [indigenous peoples] and their customary areas are complex and are caused by systems and policies. ... This issue has not been addressed thoroughly in the past in part because the roots of discrimination and marginalisation are so deep”).

criminalisation for exercising traditional agricultural practices which use fire to clear land for rice fields,⁴⁵ all the while large oil palm corporations flout the rules meant to hold them accountable for burning millions of hectares of forest.⁴⁶

11. This situation, described further below, fully meets the criteria for consideration under the UA/EW procedure. It constitutes large-scale “Encroachment on the traditional lands of indigenous peoples ... [including] for the purpose of exploitation of natural resources,” as well as a grave threat to the individual and collective rights of the affected peoples and their members.⁴⁷ It also represents a grave situation “requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention” and to reduce the risk of further racial discrimination.⁴⁸ The gravity of this situation is further aggravated by Indonesia’s grossly deficient legal framework as it pertains to indigenous peoples and its persistent and flagrant disregard for the multiple and long-standing concerns and recommendations of numerous international and domestic supervisory mechanisms (e.g., its NHRI and Constitutional Court), including the UNCERD. Also, the imminent and substantial threats faced in the instant situation are situated in and exacerbated by a pattern of persistent, gross and systematic discrimination against indigenous peoples in Indonesia. The submitting organisations, therefore, respectfully request that the UNCERD considers this situation under its UA/EW procedure at its 101st session and, for the reasons stated above and below, **adopts a formal decision**, recommending the measures required to ensure respect for and protection of the rights of the affected peoples (see paragraph 32 below for specific requests).

II. The Revitalized and Expanded Kalimantan Border Oil Palm Mega-Project

Human Rights Watch research found that the [oil palm] companies’ operations have not followed domestic laws and international human rights standards that safeguard the rights of Indigenous people and their customary rights, especially as they relate to forests. The Indigenous communities are still grappling with serious impacts on their human rights to a livelihood, access to food and water, and culture.⁴⁹

12. The KBOP Mega-Project was originally conceived to comprise some 18 separate oil palm plantations, each with an average size of 100,000 hectares, along the Indonesia-Malaysia international border. It was announced in 2005-06 during a series of visits to China by the former President of Indonesia. Meetings with investors and various studies were undertaken during this period. However, significant concerns about the project’s feasibility and social impact were raised by various sources, including within the Government (e.g., the Ministry of

⁴⁵ See e.g., ‘Police arrest citizens again who burned field’, *Kalimantan Today*, 13 August 2019, <https://kalimantantoday.com/2019/08/13/polisi-kembali-tangkap-warga-bakar-ladang/>.

⁴⁶ ‘Indonesia land-burning fines unpaid years after disastrous fires’, *Aljazeera*, 2019, <https://www.aljazeera.com/news/2019/02/indonesia-land-burning-fines-unpaid-years-disastrous-fires-190215014438048.html>.

⁴⁷ See *Guidelines for the Use of the Early Warning and Urgent Action Procedure*, August 2007, p. 3, para. 12.

⁴⁸ *Prevention of Racial Discrimination, including early warning and urgent procedures: working paper adopted by the Committee on the Elimination of Racial Discrimination*. UN Doc. A/48/18, Annex III, para. 8-9.

⁴⁹ “When we lost the forest, we lost everything” Oil Palm Plantations and Rights Violations in Indonesia, Human Rights Watch Report (September 2019), *supra*, p. 39.

Forestry).⁵⁰ For the 1.8 million hectares proposed, an estimated 300,000 individuals would be moved from their traditional lands to make way for the plantations and between 1 and 1.4 million indigenous persons otherwise would be directly affected. Flow-on effects to communities and peoples living near the plantations would greatly increase this number of affected people. The large-scale clearance of forests in the centre of Borneo's watersheds was also projected to have massive impacts on forest ecosystems and rivers and the indigenous peoples and other downstream residents whose livelihoods depend on these healthy forests. This includes indigenous peoples living on the Malaysian side of the border. Forest clearance on this scale will permanently render indigenous peoples' traditional territories unusable for anything but cultivation of oil palm and destroy their traditional way of life.

13. The KBOP Mega-Project was neither formally approved nor initiated, among others, based on a decision that further studies were needed. Some of these studies found that it would massively dispossess and harm indigenous Dayak communities in the border area. The Ministry of Agriculture later acknowledged that over 90 percent of the immediate border area was unsuitable for oil palm plantations.⁵¹ Despite this, a few years later, the first plantation companies entered the borderlands with approval from District Governments and supported by regional police and the military. In the intervening years, many additional plantation permits have been granted to the extreme detriment of the affected indigenous peoples. In addition to dispossession and forced displacement, academic research, based on government data from 6,600 villages in Kalimantan collected between 2000 and 2014, has found that in communities which previously relied on 'subsistence-based livelihoods' **over 65 percent have experienced a substantial reduction in their basic, physical and financial well-being as well as reduced social and environmental well-being after oil palm was introduced.**⁵² Conflicts, violence and unwarranted criminalization of indigenous human rights defenders have also become prominent.

14. The border region is divided between three Provinces (West, East and North Kalimantan), each sub-divided into various Districts. Today, within West Kalimantan, five of the six top palm oil producing Districts are at or near the border region. Indonesia's priority industries in West Kalimantan are listed as palm oil and timber,⁵³ the two often going hand in hand as the profits from logging are used to cover initial investments in plantation development.⁵⁴ Between 2012 and 2016, the amount of land dedicated to oil palm rose by 36

⁵⁰ See e.g., 'Ministry of Forestry rejects oil palm in border areas – no conversion of forest for plantations', <http://www.rspo.org/PDF/Projects/STF/Deklarasi%20Serikat%20Petani%20Kelapa%20Sawit.pdf>.

⁵¹ E. Wakker, *The Kalimantan Border Oil Palm Mega-project*, AIDEnvironment & SSNC, The Netherlands, April 2006.

⁵² T. Santika et. al, *Changing landscapes, livelihoods and village welfare in the context of oil palm development*, LAND USE POLICY, vol. 87, June 2019, <https://www.forestpeoples.org/sites/default/files/documents/Santika%20et%20al.%202019%20-%20oil%20palm%20and%20village%20welfare.pdf>.

⁵³ Indonesia Investment Coordinating Board (BKPM, 2014), "Indonesia: Investment Outlook, Policy and Opportunity". Presented at the 2nd BIMP-EAGA Trade and Investment Facilitation Meeting, Kota Kinabalu, Sabah, Malaysia, 17-18 September, 2014.

⁵⁴ A. Casson *The hesitant boom: Indonesia's oil palm sub-sector in an era of economic crisis and political change*, (CIFOR: Bogor, 2000) (explaining that the links between logging and palm oil are well documented, many oil palm companies being closely associated with logging companies); and A. Casson, *Oil palm, soybeans and critical habitat loss* (WWF Forest Conservation Initiative, 2003) (explaining that the gains from selling the timber cleared to make way for plantations can offset the costs of establishing the plantation which otherwise requires several years of palm oil production to repay).

percent and the largest producing Districts are in the border region (Sanggau and Sintang, both of which border Sarawak).⁵⁵ In West Kalimantan, lack of respect for land rights was the most common cause of conflict between indigenous Dayak communities and plantation companies, responsible for 53 of 119 (45 percent) recorded conflicts.

15. For example, in 2010, PT Ledo Lestari, an oil palm company, expanded its operations and relocated all the residents of the Semunying Bongkang Dayak Iban community, placing 11 families in ‘company camps’ scattered around the plantation. These families are still awaiting permanent homes. The resettlement process involved forced evictions, where company representatives burned the houses at the original village site.⁵⁶ The company resettled a further 21 families into permanent housing in another location on the plantation. Residents have noted that the new site “is a shelter, not a community. It is owned by the company” [see annex 6]. The families have never been given title to the lands on which they are now living. The new sites have restricted access to food and portable water. Community members continue to raise concerns over the loss of water sources due to the company’s operations, river pollution due to the excessive use of pesticides and other toxic agrochemicals in the company’s operations, and the impact on their ability to meet subsistence needs due to depleted fish populations and a lack of farmland. In 2014, the villagers sued the company and the Bengkayang District in the District Court, seeking the cancellation of permits, the return of their customary land, and compensation for losses suffered. In 2018, the District Court rejected their claims on the grounds that the community did not have a land title issued by the government showing that they are a recognised indigenous group with customary rights to the land in question.⁵⁷

16. Substantial oil palm concessions were not issued in the Kapuas Hulu District, situated in the northeast of West Kalimantan, until 2006. By 2013, large plantations already covered 14 percent of the entire District or 74 percent of land categorized as non-forest area (*area penggunaan lain*) where oil palm cultivation is permitted.⁵⁸ Improved infrastructure and incentives from local government led to the development of large oil palm plantations.⁵⁹ Most plantation permits were handed out by the District Government to four large oil palm consortia, all without first recognising and securing the indigenous peoples’ customary or *adat* lands.⁶⁰ After a seven-year-long struggle, the Dayak Iban indigenous community of Sungai Utik was able to gain some recognition for its land rights,⁶¹ but it is one of only two indigenous communities that have been “able to register their communal rights in West Kalimantan.”⁶²

⁵⁵ M. Lord and S. Chang, *Pre-Feasibility Study of Sarawak-West Kalimantan Integrated Border Economic Area Development*, (2019), https://mpr.ub.uni-muenchen.de/94732/1/MPRA_paper_94732.pdf.

⁵⁶ “When we lost the forest, we lost everything” *Oil Palm Plantations and Rights Violations in Indonesia*, Human Rights Watch Report (September 2019), *supra*, p. 43.

⁵⁷ *Id.* p. 43-4.

⁵⁸ L. Leonald & D. Rowland, Drivers and effects of agrarian change in Kapuas Hulu Regency, West Kalimantan, Indonesia, 2016, <https://pdfs.semanticscholar.org/5349/bfac0ffbf18036f9a30aea76da9df35f315.pdf>

⁵⁹ M.C Hansen et al, *High-resolution global maps of 21st-century forest cover change*, 342 SCIENCE 73 (2013).

⁶⁰ M. Colchester and S. Chao (eds.), *Conflict or Consent? The palm oil sector at a crossroads*. Forest Peoples Programme, TUK-Indonesia and SawitWatch, Bogor (2013).

⁶¹ *Indigenous Iban community defends rainforests, but awaits land rights recognition*, Mongabay, 1 July 2019, <https://news.mongabay.com/2019/07/indigenous-iban-community-defends-rainforests-but-awaits-lands-rights-recognition/>

⁶² “When we lost the forest, we lost everything” *Oil Palm Plantations and Rights Violations in Indonesia*, Human Rights Watch Report (September 2019), *supra*, p. 31.

Only in 2018 did the Kapuas Hulu District government pass a local regulation (*Peraturan Daerah*) recognising the existence of ‘customary law communities’ (*masyarakat hukum adat* or indigenous peoples) in the District, in line with the Constitutional provision that their rights only can be recognised “so long as they still exist.”⁶³

17. Three other Districts in West Kalimantan have adopted the local regulations for recognizing the existence of indigenous peoples.⁶⁴ However, as noted above, this is not the end of this process and nor is it, by itself, an effective guarantee or protection for indigenous peoples’ rights. As stated by Human Rights Watch in 2019:

In practice, realizing these rights entail cumbersome processes in which Indigenous groups have to prove their existence and register their land rights. ... First, a group that self-identifies as Indigenous needs to apply to be legally recognized. But most districts have not established recognition procedures. Where districts and provinces have set up procedures, the regulations establish between four and seven criteria that need to be satisfied for recognition. Authorities take years to process applications.... After it acquires legal recognition, an Indigenous community then needs to apply to different authorities at different levels—district, provincial, and national—seeking recognition of their rights to *adat* areas, forests, institutions, and knowledge. These processes are burdensome and difficult to track.⁶⁵

18. The situation in East Kalimantan is equally dire. In the past 16 years, oil palm plantations have increased from 117,000 hectares to 1.2 million hectares. In 2014, the Governor of East Kalimantan and the East Kalimantan Plantation Department Head stated that “phase 2” for oil palm development in the region was to add an additional 1.4 million hectares over the next five years.⁶⁶ Currently, there are 2.18 million hectares of land in the permitting and licensing process that most likely will be allocated to concessionaires.⁶⁷ Large plantation companies are the primary beneficiaries and, as described above, their rights by virtue of their permits supersede any “unregistered rights” held by indigenous peoples. The latter have already lost a substantial area of their traditional lands to these plantations. In addition, **71 percent of East Kalimantan’s forests are in the hands of forestry companies, some 5.9**

⁶³ *Pengakuan dan Perlindungan Masyarakat Hukum Adat, Nomor 13*, 28 December 2018, <https://peraturan.bpk.go.id/Home/Details/105759/perda-kab-kapuas-hulu-no-13-tahun-2018>.

⁶⁴ Bengkayang District Regulation Number 4 Year 2019 on recognition and protection of Bengkayang District customary law communities; Sanggau District Regulation Number 1 Year 2017 on recognition and protection of customary law communities; and Sintang District Regulation Number 12 Year 2015 on recognition and protection of customary institution and customary law communities.

⁶⁵ “When we lost the forest, we lost everything” Oil Palm Plantations and Rights Violations in Indonesia, Human Rights Watch Report (September 2019), *supra*, p. 30-1 (footnotes omitted) (also stating that “Despite the vast number of Indigenous territories that have been mapped, local NGOs say very few have been legally recognized. As of December 2018, a leading local nongovernmental initiative has mapped out over 1,100 Indigenous territories spread over more than 14 million hectares. According to Aliansi Masyarakat Adat Nusantara (Indigenous Peoples Alliance of the Archipelago Indonesia, AMAN-West Kalimantan), an Indigenous people’s organization in West Kalimantan, only two Indigenous groups were able to register their communal rights in West Kalimantan.

⁶⁶ *Antara News*, 12.000 Bibit Sawit Ilegal Dimusnahkan di Paser, August 14, 2014, <http://kaltim.antaranews.com/berita/21605/12000-bibit-sawit-ilegal-dimusnahkan-di-paser>; and *Provinsi Kaltim (Provinsi Kalimantan Timur) Tambah 1,4 Juta Hektare Kebun Sawit. Government of East Kalimantan. Samarinda*, <https://kaltimprov.go.id/berita-3540-tambah-14-juta-hektare-kebun-sawit.html>

⁶⁷ L. Hovani et. al, *Jurisdictional Approaches to Sustainable Landscapes: Berau and East Kalimantan, Indonesia (The Nature Conservancy, USA, 2018).*

million hectares,⁶⁸ and this area encompasses 642 indigenous villages.⁶⁹ This is not an isolated situation in the border region and, to quote the UNCERD, is caused by discriminatory Indonesian law and practice that “denie[s] [indigenous peoples] rights to their lands *in favour* of an ownership right vested by the State” in private companies.⁷⁰

19. The newly formed district of Mahakam Ulu, located in the western part of East Kalimantan, remains a remote and isolated area due to minimal infrastructure. The indigenous Dayak communities that populate the District practice small-scale shifting cultivation and depend on the gathering and selling of non-timber forest products to generate income.⁷¹ However, in 2018, the Ministry of Public Works and Public Housing announced its plan to build 145 kilometers of road in order to connect timber concessions in Mahakam Ulu to the regional road network.⁷² The East Kalimantan government has said it intends to develop roads in the areas between Ujoh Bilang, the capital of Mahakam Ulu, and the villages along the Malaysian border.⁷³ The District Head, Bonifasius Belawan Geh, added that “when roads are finished, the development of other sectors such as plantations will easily follow ... [and,] for example, plantation products can be sold to neighbouring countries using the Trans-Kalimantan highway.”⁷⁴

20. Currently, there are twenty logging concessions peppered across Mahakam Ulu [see Annex 3], including one that incorporates some 13,000 hectares of the ancestral lands of the Dayak Bahau Busaang indigenous community of Long Isun.⁷⁵ Community members in Long Isun were not made aware of this until forestry operations commenced in one area of their lands in 2014.⁷⁶ When community members complained, they were met with intimidation and criminalization.⁷⁷ Village representatives were arrested and a prominent community activist

⁶⁸ Facts compiled from SK719/2014 from KLHK KalTim and PERDA No.1 on spatial planning [*Mendesak KLHK Menuntaskan Kasus Konflik Tenurial Kampung Long Isun, Kabupaten Mahakam Ulu, Kalimantan Timur*], *Radar Kota News*, 27 November 2017, <https://www.radarkotanews.com/suara-rakyat/mendesak-klhk-menuntaskan-kasus-konflik-tenurial-kampung-long-isun-kabupaten-mahakam-ulu-kalimantan-timur>.

⁶⁹ *Id.*

⁷⁰ *Early Warning and Urgent Action Procedure: Indonesia* (30 August 2013).

⁷¹ M. Inoue, M. Kawai, and N. Imang, *Implications of local peoples' preferences in terms of income source and land use for Indonesia's national REDD-plus policy: evidence in East Kalimantan, Indonesia*, 22 INT. J. ENVIRON. SUSTAIN. DEV. 244 (2013).

⁷² *Akhirnya, Jalan di Kabupaten Mahakam Ulu Kalimantan Bakal Tersentuh Aspal*, *Liputan6*, 7 September 2018, <https://www.liputan6.com/bisnis/read/3638693/akhirnya-jalan-di-kabupaten-mahakam-ulu-kalimantan-bakal-tersentuh-aspal>.

⁷³ *Gelontorjan Anggaran Rp 50 Miliar untuk bangun Jalan Ujoh Bilang Long Bagun sampai tembus Long Pahan*, *Badan Nasional Pengelola Perbatasan*, 8 May 2019, <http://bnpp.go.id/index.php/berita/beritadetail/gelontorkan-anggaran-rp-50-miliar-untuk-bangun-jalan-ujoh-bilang-long-bangun-sampai-tembus-long-pahan>.

⁷⁴ *Mahakam Ulu prioritaskan pembangunan jalan dan jembatan*, *Antara News*, 26 March 2018, http://datacenter.bappedakaltim.com/data/musrenbang/2016/07%2520PAPARAN%2520BUPATI%2520MAHULU%2520DI%2520MUSRENBANG%2520PROV%25202016_1.pdf.

⁷⁵ PT Kemakmuran Berkah Timber, Concession Permit information (2020), <http://kemakmuranberkah.co.id/index.php/info-perusahaan/area-kerja>.

⁷⁶ *Call for Action – Indonesian Government must address violation of community's rights*, Forest Peoples Programme (16 March 2017) <https://www.forestpeoples.org/index.php/en/private-sector/press-release/2017/press-release-call-action-indonesian-government-must-address>.

⁷⁷ *Submission to the UN Special Rapporteur on the Rights of Indigenous Peoples, Ms Victoria Tauli-Corpuz. Thematic Report on the Criminalisation of Indigenous Peoples*, Forest Peoples Programme & BothENDS (16 March 2018), <https://www.forestpeoples.org/sites/default/files/documents/UNSRIP%20FPP%20BE%20final.pdf>.

was imprisoned for over three months.⁷⁸ An investigation by the Forest Stewardship Council found serious human rights violations and observed that the company had made no significant effort to address the ongoing land dispute or to remedy past abuses.⁷⁹ While various levels of government are aware of this situation, the company continues to operate with impunity.

21. Mahakam Ulu has a population of only around 28,500 people, the majority of them indigenous Dayak. As of 2018, it now also has 21,900 hectares of oil palm plantations, owned by 14 companies.⁸⁰ The District has also delimited multiple, unallocated concessions, all of which overlap these remote communities' lands [see Annex 3]. Companies are waiting for the completion of the roads to commence operations. Currently, oil palm companies operating in Mahakam Ulu use the river to transport their produce. While further infrastructure development would benefit these companies, it will be at the expense of indigenous peoples, whose lands will be additionally made available for oil palm expansion. In Long Isun, for example, the planned road would cut through their ancestral territory [see Annex 5]. If this goes ahead before their land rights are secured, it could have catastrophic consequences for the community. The same is the case for all other affected communities, the vast majority of whom do not have effective protection for their territorial rights, all the more so as their right to effective participation and informed consent is routinely disregarded by Indonesia.

22. The same process is now also occurring in the newly created North Kalimantan Province. North Kalimantan industries are in the early stages of development. The Provincial Government's 2020 Master Plan highlights oil palm plantations and logging as its principal components.⁸¹ In order to facilitate this, the construction of a border area road network is under way and comprises 525 kilometers of paved road [see Annex 4].⁸² Oil palm plantations and other concessions are already a prominent feature, including in the Nunukan District and within the customary lands of the indigenous Dayak Tenggala and Dayak Agabag peoples. When these communities complained to the District Government in 2010, they were met with intimidation. Due to the proximity of the plantations to the Malaysian border, the area is heavily militarized and military personnel regularly intimidate community members who dare to object to the plantations.

23. The preceding demonstrates that the oil palm plantations in the Kalimantan border regions have proliferated and continue to expand, even though the original KBOP Mega-Project was not realized specifically as planned. Indeed, **the current and projected extent of oil palm plantations in the border region exceeds the area proposed in the KBOP Mega-Project.** This continues apace despite the ruling of the Indonesian Constitutional Court that the underlying legal framework is unconstitutional and that indigenous lands are private property that are not part of State forest areas. It also continues to expand despite the UNCERD's

⁷⁸ Protecting Forest Defenders, Forest Peoples Programme (2017), <https://www.forestpeoples.org/sites/default/files/documents/Protecting%20Forest%20Defenders%20Leaflet%20Web.pdf>.

⁷⁹ *Indigenous community files FSC Policy of Association complaint against Roda Mas Group Indonesia*, Forest Peoples Programme (27 January 2020), <https://www.forestpeoples.org/index.php/en/indonesia-long-isun-files-FSC-complaint-against-roda-mas>

⁸⁰ *Dinas Perkebunan, Provinsi Kalimantan Timur* (2018), <https://disbun.kaltimprov.go.id/halaman/mahakam-ulu>.

⁸¹ Government of North Kalimantan, "Brief Profile of Kalimantan Utara" (2016).

⁸² *Pre-feasibility Study of Sabah-North Kalimantan Cross-Border Trade and Investment* (2018), https://mpr.ub.uni-muenchen.de/86535/1/MPRA_paper_86535.pdf.

previous admonition about “the threat this constitutes for the rights of indigenous peoples to own their lands and enjoy their culture,”⁸³ and its repeated recommendation that Indonesia “secure the possession and ownership rights of local communities before proceeding further with this Plan.”⁸⁴

24. As stated above, Indonesia’s laws contain numerous discriminatory and debilitating obstacles to securing indigenous property and related rights and a mere handful of the numerous communities in the border region have secured even basic recognition to date. These deficits are exacerbated by active and extensive violations of indigenous peoples’ essential rights in the oil palm sector and the violent repression that is pervasive in this sector. Both constitute compelling evidence of gross, systematic and unrelenting discrimination against millions of indigenous Indonesian citizens, whose integrity and survival are diminished on a daily basis. **Indonesia’s disregard for its international obligations in this regard cannot go unchecked and the irreparable harm that has ensued and that will expand and intensify invites and compels international scrutiny and action.** The observation of former UN Special Rapporteur on the Rights of Indigenous Peoples, Rodolfo Stavenhagen, that plantations in Indonesia are placing indigenous peoples “on the verge of completely losing their traditional territories and thus of disappearing as distinct peoples,” is equally valid today as it was in 2007. In many ways, it is even more relevant today considering Indonesia’s intensification of oil palm and related infrastructure along the Kalimantan border and, as discussed below, its additional and new discriminatory treatment of indigenous peoples.⁸⁵

III. Further Intensification, Infrastructure and Discriminatory Protections for Plantation and Timber Companies

A. Expansion, Intensification and Associated Infrastructure threaten Imminent and Irreparable Harm

25. Commencing in 2011 and accelerating more recently, Indonesia has developed a series of policies, plans and laws to expand and intensify oil palm plantations, logging and mining along the Kalimantan border with Malaysia. This is an enlarged reiteration of the KBOP Mega-Project in all but name, particularly when coupled with the rapid and concomitant expansion of other extractive industries and infrastructure in the border area. In 2011, the Indonesian Agency for Border Management issued a national regulation named the ‘Grand Design,’⁸⁶ a 15-year plan for resource extraction, agro-industry, defence and security along the country’s borders.⁸⁷ A related Presidential Regulation simultaneously designated the border regions as new centres of economic growth where large-scale plantations were to be the main economic

⁸³ CERD/C/IDN/CO/3 (2007), para. 17.

⁸⁴ *Id.*

⁸⁵ 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, p. 3, http://www.un.org/esa/socdev/unpfi/documents/6session_SR_statement_asia_en.doc.Stavenhagen.

⁸⁶ Desain Besar Pengelolaan Batas Wilayah Negara Dan Kawasan Perbatasan Tahun 2011–2025. Jakarta: Kementerian Perencanaan Pembangunan Nasional, Badan Nasional Pengelola Perbatasan

⁸⁷ The following year the government allocated 2.8 trillion rupiah to the project (USD 316.4 million), an increase of 2000 percent. ‘Government Boosts Border Budget 2,000%’, *Jakarta Post*, 22 October 2011.

drivers.⁸⁸ In 2016, the State introduced a new Integrated Border Area Development Program, prioritising the Malaysian border and designating West Kalimantan as one of the first target areas.⁸⁹ This was followed by large-scale financing to develop an economic corridor along the border between Malaysia and Kalimantan under the Indonesian Master Plan for the Acceleration and Expansion of Economic Development 2011-2025 (MP3EI), which set aside US\$242 billion for transportation-related infrastructure.⁹⁰ The Asian Development Bank noted that this will primarily benefit “foreign investments concentrated in large companies with vested investments in extracting raw material or profiting from low-cost factors of production.”⁹¹ Academic research published in 2019 highlights that **these “planned roads and railways will shred much of what remains of the largest remaining forest blocks,” including the unregularized indigenous territories that comprise a substantial percentage of these areas.**⁹²

26. These plans and policies led to the development of the Trans-Kalimantan Road Network project, which, as set forth in the current draft Spatial Plan, includes upgrading and construction of 16 routes extending over 5,316 kilometers across the island, a large percentage of which has been designated to be either “very high impact” (634 Km) or “high impact” (1,472 Km) [see Annex 2].⁹³ Infrastructure projects currently planned or underway include an upgrade of 1,920 kilometers of new roads in northern Kalimantan, flanking the Malaysian-Indonesian border, and additional highways in East and West Kalimantan.⁹⁴ The primary goal of this new infrastructure is to increase commercial connectivity and primary industries, particularly coal mining, oil palm, and industrial logging.⁹⁵ The threats to indigenous peoples inherent in this expansion of infrastructure, plantations and others concessions is not limited to indigenous Dayak communities in Indonesia. On the other side of the border, in Malaysia, the Government there has allocated special funding to facilitate the Pan Borneo Highway project, launched in June 2015. This entails construction of 2,333 kilometres of major roads in Sabah and Sarawak, threatening indigenous peoples on both sides of the border and magnifying the threats caused by associated Indonesian infrastructure construction in the border region.⁹⁶ This Malaysian

⁸⁸ Perpres. Rencana Pembangunan Jangka Menengah Nasional (Rpjmn), 2010. Tahun 2010–2014. Peraturan Presiden Republik Indonesia, No. 5.

⁸⁹ See ‘Making border areas more investment friendly’, *The Jakarta Post*, 19 October 2016, <https://www.thejakartapost.com/adv-longform/2016/10/19/making-border-areas-more-investment-friendly.html>; and ‘Government Commits to Continue the Development of Border Areas’, Cabinet Secretariat of the Republic of Indonesia, 2 January 2018, <https://setkab.go.id/en/government-commits-to-continue-the-development-of-border-areas/>

⁹⁰ See e.g., <https://www.thejakartapost.com/news/2019/05/16/indonesia-has-a-412-billion-plan-to-rebuild-the-country.html>

⁹¹ *Special Border Economic Zone in IMT-GT and BIMP-EAGA Subregions*. Session 4: Developing CBEZ and Economic Corridors (Asian Dev. Bank, 27 November 2017), https://aric.adb.org/pdf/events/rci-week-2017/Day1_S4_APerdiguero.pdf.

⁹² J. Supriatna, “High-risk infrastructure projects pose imminent threats to forests in Indonesian Borneo,” January 2019, <https://www.forestpeoples.org/sites/default/files/documents/Alamgir%20et%20al.%202018-Kalimantan.pdf>.

⁹³ M. Alamgir, M. Campbell and S. Sloan. *et al. High-risk infrastructure projects pose imminent threats to forests in Indonesian Borneo*, 9 *Sci Rep* 140 (2019), <https://doi.org/10.1038/s41598-018-36594-8>.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ ‘Govt to save RM3.1BIL after taking over Pan Borneo project, says LGE’, *The Star*, 6 February 2020, <https://www.thestar.com.my/news/nation/2020/02/06/govt-to-save-rm31bil-after-taking-over-pan-borneo-project-says-lge>

project mirrors Indonesia's plans to create new oil palm "zones"⁹⁷ on the Indonesia-Malaysia border in Kalimantan, a plan that has been characterized as "one of the priority agendas."⁹⁸

27. The preceding poses a massive and imminent threat of irreparable harm to indigenous peoples' integrity and even survival. It is well-documented that infrastructure projects that ignore the rights of indigenous peoples and which are conducted without effective legal safeguards for these rights have devastating consequences.⁹⁹ In addition to the taking of indigenous lands, clearance of forests and then conversion to monocrop plantations, these threats also include: multi-generational harm to indigenous cultural integrity; conflict and violence caused by influxes of non-indigenous land settlers; land appropriation; depletion of subsistence resources by poachers, illegal loggers and economic migrants; and increases in previously unknown diseases such as malaria and dengue fever.¹⁰⁰ If the massive infrastructure projects in Kalimantan proceed as planned, the majority of the remaining traditionally-owned indigenous lands would become accessible to degradation and exploitation, particularly through conversion to oil palm plantations. Experts have warned "these projects will be like daggers in the heart of the Borneo rainforest," and they "implore the Indonesian government to reconsider them, because they'll open a Pandora's box of crises for the world's biologically richest forests," and by extension the indigenous peoples who are the traditional owners of these areas.¹⁰¹

B. New Discriminatory Laws Threaten Additional and Irreparable Harm

28. The preceding massive encroachment on indigenous lands, realized, ongoing and imminently threatened, coupled with the manifest and discriminatory defects in Indonesian law and practice corroborate the need for urgent international scrutiny and action. To make matters worse, Indonesia is also in the process of adopting a slew of amendments to existing legal and regulatory protections that are specifically designed to further privilege the rights of oil palm and other companies over the internationally guaranteed rights of indigenous peoples. Specifically, it is in the process of implementing a sweeping deregulation process, which includes more than 1,200 amendments to at least 80 existing laws.¹⁰² Chief among these proposed changes includes **abolishing environmental and social impact assessments as prerequisites for business permits in relation to various kinds of projects, from infrastructure projects to agriculture development**. The latter includes the massive oil palm concessions that are in the advanced stages of beginning operations in the Kalimantan border

⁹⁷ Coordinating Ministry for Economic Affairs, Ministry of National Development Planning/National Development Planning Agency, "Masterplan: Acceleration and Expansion of Indonesia's Economic Development 2011-2025," 2011, http://www.ekon.go.id/media/filemanager/2011/07/06/m/p/mp3ei-english_final.pdf

⁹⁸ 'Development: Kalimantan's Infrastructure Become a Priority', *Kompas* 24 July 2015, p. 18, <http://www.indii.co.id/index.php/en/news-publication/weekly-infrastructure-news/development-kalimantan-s-infrastructure-becomes-priority>

⁹⁹ See e.g., W. Laurance and I. Burgués-Arrea, *Roads to riches or ruin?* 358 *SCIENCE* 442-444 (2017)

¹⁰⁰ See W. Laurance, M. Goosem and S. Laurance, *Impacts of roads and linear clearings on tropical forests*, 24 *TRENDS IN ECOLOGY & EVOLUTION* 659-669 (2009); and M. Alamgir et al., *Economic, socio-political and environmental risks of road development in the tropics*, 27 *CURRENT BIOLOGY* R1130-R1140 (2017).

¹⁰¹ 'Indonesian road-building spree among "world's scariest" environmental threats, James Cook University, Australia, 18 February 2019, <https://www.global-roadmap.org/wp-content/uploads/2019/01/Alamgir-et-al-Kalimantan-press-release.pdf?x45424>.

¹⁰² 'Experts see minefield of risks as Indonesia seeks environmental deregulation', *Mongabay News*, 11 February 2020, <https://news.mongabay.com/2020/02/indonesia-environment-omnibus-laws-deregulation-amdal-investment/>.

region. Furthermore, recently adopted Indonesian laws and regulations¹⁰³ concerning road construction in forests are likely to facilitate increased migration and incursions as they contain weaker protections for ungazetted and non-core protected forests, which are often critical for indigenous communities' livelihood and other needs.¹⁰⁴

29. According to the report from the Consortium for Agrarian Reform (KPA),¹⁰⁵ Indonesia's largest agrarian movement organisation, 2,047 land conflicts occurred nationwide during President Widodo's first term (2015 to 2019) – an increase of 56 percent over previous President Yudhoyono's second term (2010 to 2014).¹⁰⁶ This drastic increase reflects a growing trend for Indonesia to further favour public and private sector investments over securing and respecting indigenous peoples' rights, a process that is typified in the Kalimantan border region.¹⁰⁷ The same is also the case with respect to the legislative and regulatory amendments currently underway, which would further illegitimately preference the interests of private sector entities and exclude and deny indigenous peoples' rights.

IV. Conclusion and Request

30. In 2007, the UNCERD found that Indonesia's laws failed to provide effective protection to indigenous peoples,¹⁰⁸ a conclusion since echoed by various other treaty bodies, UN Special Procedures and domestic tribunals and institutions.¹⁰⁹ In common with other international authorities, it stressed that national development initiatives cannot be used “as a justification to override the rights of indigenous peoples”¹¹⁰ and recommended that national laws on resource exploitation “must be exercised consistently with the rights of indigenous peoples.”¹¹¹ Among others, it recommended that Indonesia “review its laws ... to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands.”¹¹² It specifically addressed the original KBOP Mega-Project, recommending that the State “secure the possession and ownership rights of local communities before proceeding further with this Plan.”¹¹³ In March 2009, under its UA/EW procedures, the

¹⁰³ Regulation number P.23/Menlhk/Setjen/Kum.1/6/2019 concerning strategic roads in forest areas. Jakarta, Indonesia . See also Land Acquisition Law: Law No.2/2012 and Presidential Regulation No.71/2012 regarding Land Acquisition for Public Interest, effective as of 2015 (which now limits the land acquisition procedure to 583 days and allows for revocation of land rights in the public interest), <https://www.pwc.com/id/en/cpi/asset/indonesian-infrastructure-stable-foundations-for-growth.pdf>.

¹⁰⁴ M. Alamgir et. al., *High-risk infrastructure projects pose imminent threats to forests in Indonesian Borneo*, 9 SCIENTIFIC REPORTS (2019), <https://rdcu.be/bgVvc>.

¹⁰⁵ 'Indonesia's push to become a tourism paradise side-lines land rights', *Mongabay News*, 14 January 2020, <https://news.mongabay.com/2020/01/indonesia-tourism-development-infrastructure-land-rights-indigenous-investment/>.

¹⁰⁶ *Id.*

¹⁰⁷ 'Cases of agrarian conflict increase in 2017: Consortium', *The Jakarta Post*, 28 December 2017, <https://www.thejakartapost.com/news/2017/12/28/cases-of-agrarian-conflict-increase-in-2017-consortium.html>.

¹⁰⁸ CERD/C/IDN/CO/3 (2007), para. 17 (“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”).

¹⁰⁹ See e.g., E/C.12/IDN/CO/1 (2014); and notes 6-15 and associated text *supra*.

¹¹⁰ CERD/C/IDN/CO/3 (2007), para. 16 (explaining that “in practice, the rights of indigenous peoples have been compromised, due to the interpretations adopted by the State party of national interest, modernization and economic and social development”).

¹¹¹ *Id.* para. 17 (explaining 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, recalls that such a principle must be exercised consistently with the rights of indigenous peoples”).

¹¹² *Id.*

¹¹³ *Id.*

UNCERD observed 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.”¹¹⁴

31. The preceding demonstrates that racial discrimination against indigenous peoples’ is persistent, entrenched and systemic. Indonesia has not only disregard the UNCERD’s recommendations by authorizing massive encroachment on indigenous lands in the Kalimantan border regions, it has significantly expanded and intensified the scope and extent of the original KBOP Mega-Project and this now poses an even greater threat to the indigenous peoples of the region. Indonesia is also in the process of weakening existing (and already inadequate) legal protections to further privilege state and private-sector interests over indigenous peoples’ rights. It has also failed to secure their communal property and associated rights in all but a mere handful of instances, despite a ruling of its Constitution Court almost seven years ago, and allows severe obstacles to recognition of their rights to persist unabated. This situation has been urgent for a long time, incurring substantial and irreparable harm to indigenous peoples, and not only in the Kalimantan border area. Indonesia’s more recent acts and omissions, which “would permanently affect the land rights of [indigenous peoples] and, as a result, would infringe their rights under the International Convention on the Elimination of All Forms of Racial Discrimination,” threaten additional, gross and irreparable harm.¹¹⁵

32. In the light of the preceding, the submitting organizations respectfully request that the UNCERD considers this situation under its UA/EW procedure at its 101st Session and adopts a **formal decision**, recommending that Indonesia adopts the measures required to ensure respect for and protection of the rights of the affected peoples, including:

- (a) immediately suspending the expansion of oil palm or logging operations in the border region, and associated infrastructure, until such time as it has secured indigenous peoples’ possession and ownership rights over the lands encompassed by their customary tenure systems and obtained their free, prior and informed consent, *inter alia*, by implementing the UNCERD’s prior recommendations;
- (b) ensuring that proposals for legislative and regulatory amendments as well as related judicial processes do not weaken existing guarantees, respect and protect indigenous peoples’ rights, and are subject to consultation with indigenous peoples;
- (c) expediting the enactment of the Bill on the Recognition and Protection of the Rights of Indigenous Peoples, after securing indigenous peoples informed participation and consent thereto, and amending or enacting other relevant laws, including as they pertain to non-discriminatory and effective judicial and other remedies that take into account indigenous characteristics (e.g., reflecting rights arising from customary tenure systems);

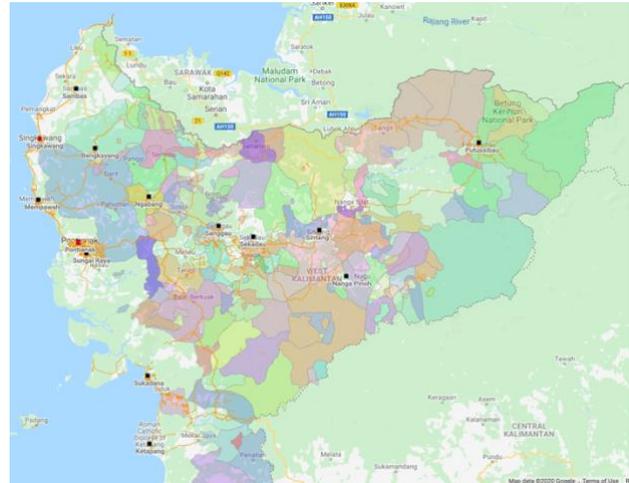
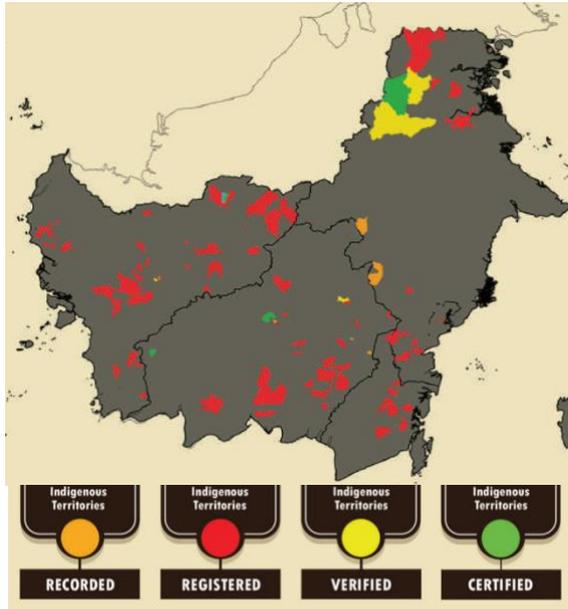
¹¹⁴ See e.g., *Early Warning and Urgent Action Procedure: Indonesia* (13 March 2009), p. 1 (stating that the “high number of conflicts arising each year throughout Indonesia” between local communities and plantation companies remains an issue of concern, “in particular with regard to the protection of indigenous peoples’ rights.” Also referring to “Indonesia’s 2008 “Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation” reiterates Law 41 of 1999 on Forestry that appears to deny any proprietary rights to indigenous peoples in forests”).

¹¹⁵ See e.g., *Early Warning and Urgent Action Procedure: Canada* (14 December 2018), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_8819_E.pdf.

- (d) guarantees the effective enjoyment of indigenous peoples' right to collective legal personality and amends any law or regulation, whether national, provincial or district, that requires the prior certification of the existence of indigenous peoples, recognizing that the fundamental criterion of self-identification, which shall absent objective criteria to the contrary and due process, be deemed by law to control the question of indigenous identity;
- (e) Continue and accelerate legal recognition and protection of indigenous peoples through local legal instruments until the adoption of the Bill on the Recognition and Protection of the Rights of Indigenous Peoples; and
- (f) That Indonesia remedy the massive and ongoing rights violations occurring in existing oil palm plantations and impose stringent penalties, including the revocation of permits and concessions.

ANNEXES [See attached map to view case studies highlighted in this submission]

Annex 1



Of the 391 indigenous territories mapped in Kalimantan, 4 are in the process of being recorded, 375 have been registered. A further 6 have been verified and 5 have been certified by the relevant local government body. Only a handful of these are along the international border with Malaysia. It is important to note that the image presented above on the left illustrates only indicative maps processed by BRWA (a consortium of non-governmental organisations). The image on the right shows a map of indigenous languages spoken across West Kalimantan. It is estimated that there are 405 Dayak sub-tribes in West Kalimantan alone.

Under Indonesia's current restrictive laws, indigenous communities are required to map their lands before petitioning to their local legislature to issue a regulation recognizing their community as indigenous. The community must then wait for the Regional Assembly to approve the regulation granting them indigenous status. Only then can the community submit a customary forest application to the Ministry of Environment and Forestry. Following its approval, the community can receive customary forest rights.

Available at: [<https://brwa.or.id/assets/image/rujukan/1582007682.pdf>] and [<https://institutdayakologi.wordpress.com/2011/04/05/suku-dayak/>]

Annex 2

From: High-risk infrastructure projects pose imminent threats to forests in Indonesian Borneo

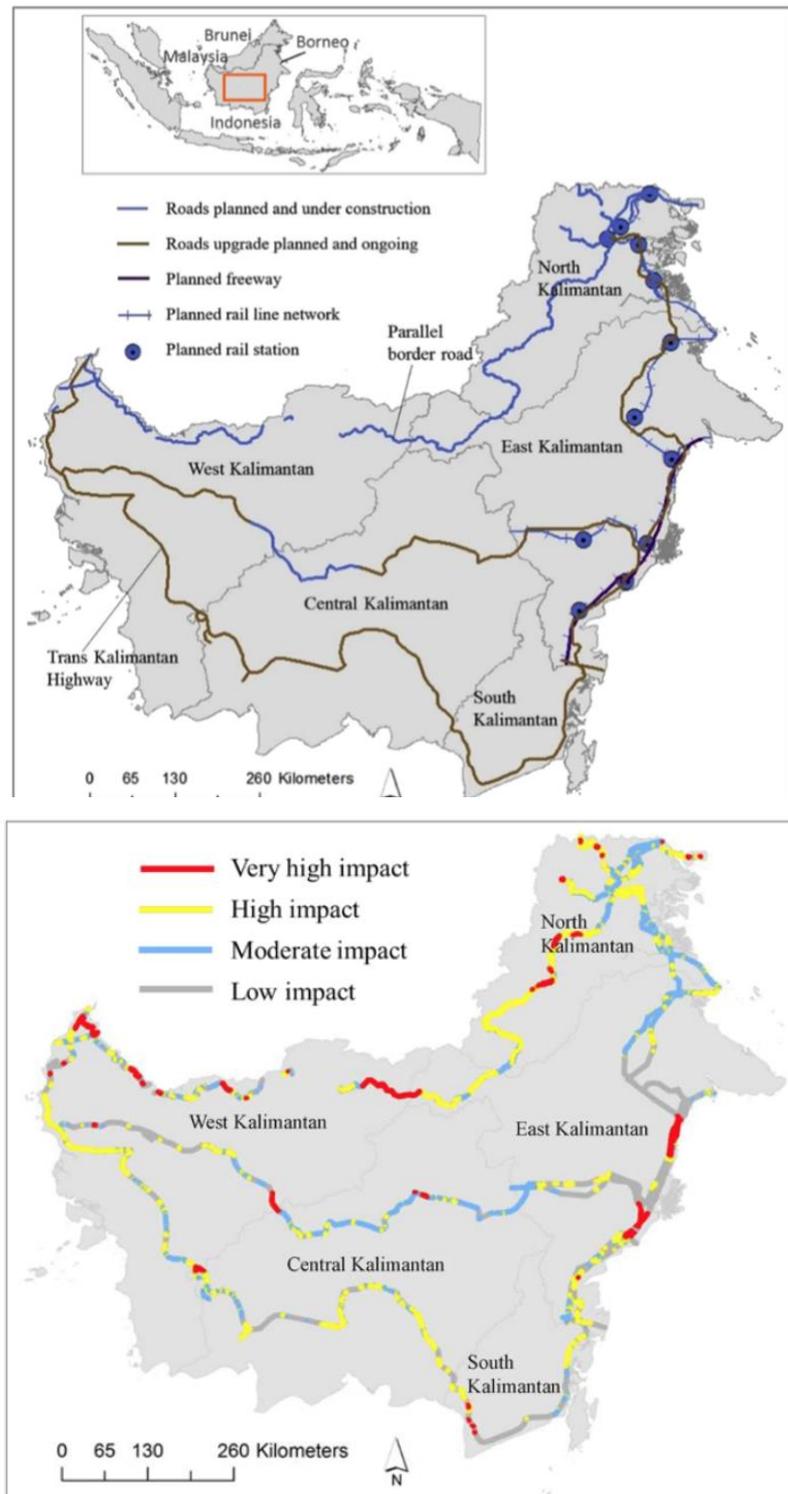
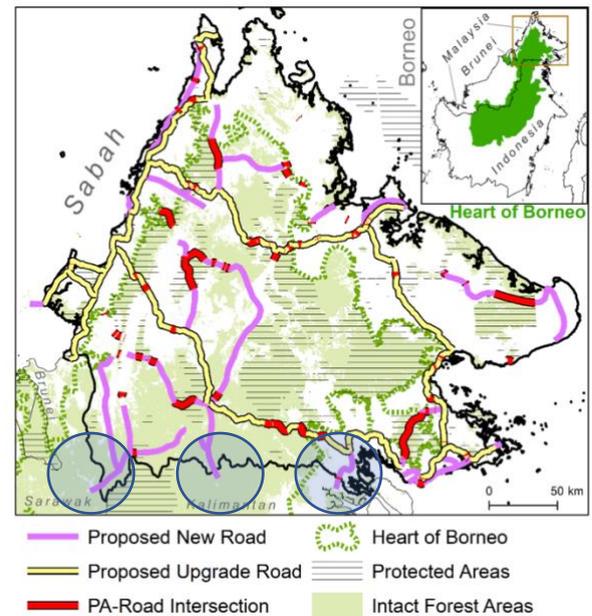
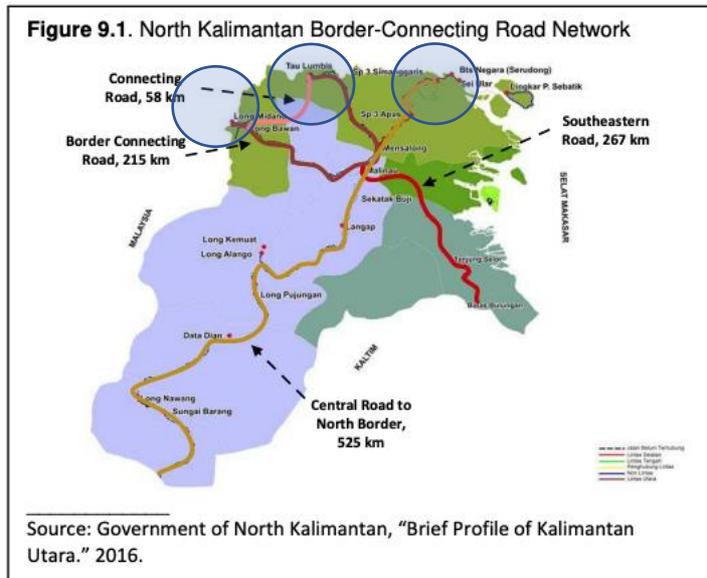


Figure 1 shows major planned and ongoing road expansion networks in Kalimantan. Parallel border roads were taken from Indonesian Government Infrastructure Information maps. Figure 2 categorises the impact these roads will have.

Available at: [<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6333816/>]

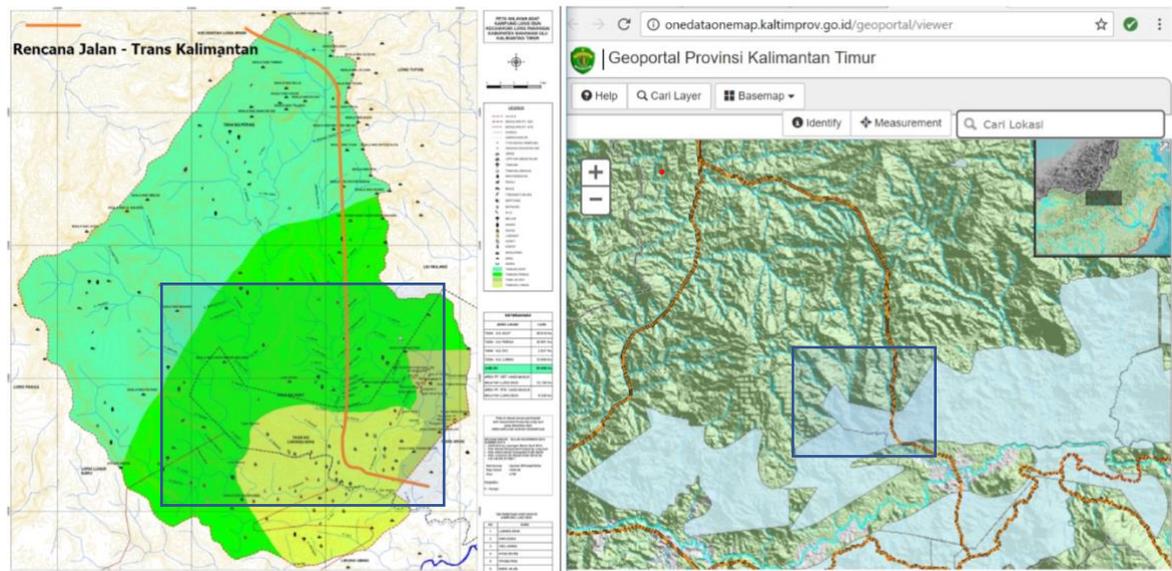
Annex 4



The image on the left shows the planned North Kalimantan roads that will integrate into the island-wide Trans-Kalimantan. These roads will connect to proposed roads in Sabah, Malaysia (see image on the right). The connections of the two networks are circled in blue. This feeds into the new Integrated Border Area Development Program aimed at stimulating trade between the two nations. North Kalimantan's Provincial Government's 2020 Master Plan highlights oil palm plantations and logging as principal components to this.

Available at: [https://mpr.aub.uni-muenchen.de/97376/1/MPRA_paper_97376.pdf]
and [<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0221947>]

Annex 5

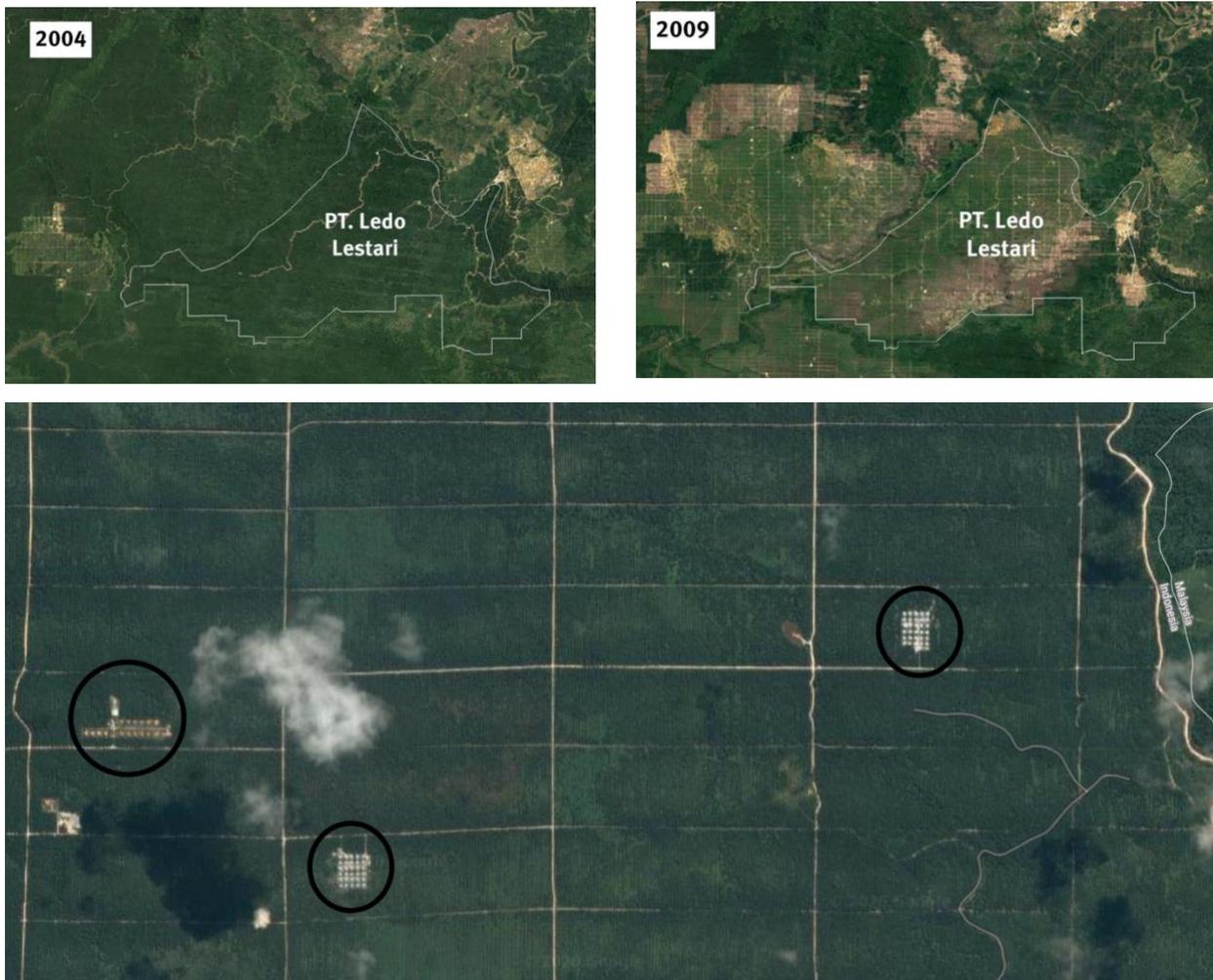


The map on the left illustrates Long Isun's ancestral territory. The orange line illustrates the planned route of the Trans-Kalimantan which would carve through the heart of the indigenous Dayak Bahau Busaang community's ancestral lands. This orange line is based on information drawn from the map on the right.

This map has been taken directly from the East Kalimantan government's online geo-portal. The image on the right shows the logging concessions issued over Long Isun's land (blue/grey). The orange line in the centre of the image is the planned route for the Trans-Kalimantan.

Available at: [<http://onedataonemap.kaltimprov.go.id/viewer>]

Annex 6



PT Ledo Lestari, an oil palm company, expanded its operations and relocated all the residents of the indigenous Semunying Bongkang community, placing a number of families in ‘company camps’ around the plantation (see image above). Some families are still awaiting permanent homes. The resettlement process involved forced evictions, where company representatives burned the houses at the original village site.

Available at: [https://www.hrw.org/sites/default/files/report_pdf/indonesia0919_web.pdf] and [<https://www.google.com/maps/place/Semunying+Jaya,+Jagoi+Babang,+Bengkayang+Regency,+West+Kalimantan,+Indonesia/@1.475842,109.7788018,3459m/data=!3m1!1e3!4m5!3m4!1s0x31fb39d25dd2fcfbf:0x177f7d65a7595b20!8m2!3d1.4585965!4d109.7710732>]