

# INDONESIA: No Development without Rights

## International Fact-Finding Report

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security



Demonstration organised by WALHI South Sumatra and SPS in front of South Sumatra Regional Police Area in Lampung to denounce police excessive use of force and request an investigation into the death of a young girl, Palembang, South Sumatra, 29 January 2013. Credit: WALHI.

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# Introduction

Competition for access to land and natural resources is accelerating at the global level, with the economic development of many countries based on the exploitation of natural resources. Indonesia, which has abundant resources and where the land tenure system is unclear, is particularly affected, exacerbating tensions between communities using the land and economic operators, which are often supported by the authorities and are criticised for their impact on the environment and the enjoyment of human rights.

While over the last decade Indonesia has experienced significant economic growth basing its economic development on the exploitation of natural resources, this development has been accompanied by serious human rights violations and environmental damage at the detriment of the poorest communities, particularly smallholders cultivating land and indigenous communities. For indigenous communities, rights over land and related resources are of fundamental importance because they do not only constitute the basis of their livelihood but they may also be the source of their spiritual, cultural and social identity. Unfortunately, the Indonesian government has categorised the lands owned by these communities as grasslands or unproductive lands to be converted into productive uses.

Land grabbing, denial of the customary land rights of indigenous communities, and environmental pollution in connection to concession-granting for the development of large-scale commercial agricultural projects - mainly palm oil<sup>1</sup> - and other projects exploiting natural resources, in particular in the extractive industry are the major human rights concern today in Indonesia<sup>2</sup>. NGOs and community leaders

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<sup>1</sup> According to MRG Annual Report 2012, Indonesia is one of the two the top producers of palm oil in the world, and, in Sumatra, oil plantations have polluted rivers, destroyed wildlife that once supported indigenous peoples' livelihoods, and led to communities being evicted from their lands. An estimated 9.4 million in Indonesia, have been swallowed by the plantations.

<sup>2</sup> On 7 February 2013, 153 Indonesian academics, professors, researchers, agrarian experts and NGOs sent a petition to the Indonesian President to express concern and call him to take urgent actions, such as establishing an independent institution to resolve past and present agrarian conflicts, to review licensing policy/granting of rights, a moratorium on granting permits during the policy review process, the development of a Law on Recognition and Protection of Indigenous People, and the revision of the Presidential Instruction (Inpres) No. 2/2013 to recognise the special nature and causes of land disputes.

complain that local communities are not informed, consulted, or compensated when concessions are handed out.

Due to the absence of effective legal remedies, land conflicts between farmers and plantation owners, mining companies, and developers are raging across the country as local and foreign companies are encouraged by state policies to seize land used by indigenous people and administered in accordance with their customs. Those opposing projects exploiting natural resources have been branded “enemies of development” and numerous human rights violations have been committed in the name of “development”.

These land conflicts are a major source of lethal violence<sup>3</sup> and criminalisation targeting in particular community leaders and those who defend their rights, including NGO activists, lawyers and journalists. There are no effective mechanisms for preventing and resolving land-related conflicts.

The fact that early 2013, eight residents of Padang Island in Riau sewed their mouths shut in front of the House of Representatives in Jakarta to protest against operations conducted by PT Riau Andalan Pulp and Paper only illustrates the lack of effective remedies.

During an international fact-finding mission conducted in Indonesia in September 2013, FIDH and its member organisation in Indonesia, the Commission for the Disappeared and Victims of Violence – KontraS, met representatives of institutions (National Commission on Human Rights - Komnas Ham, *Corruption Eradication Commission* - KPK and the National Police), representatives of several NGO and community representatives (Aliansi Masyarakat Adat Nusantara / Indigenous Peoples Alliance of the Archipelago - AMAN, Consortium for Agrarian Reform – KPA, Association for Community and Ecology-Based Law Reform - HuMa, the Indonesian Mining Advocacy Network - JATAM, the People’s Coalition for Fisheries Justice - KIARA, Sawit Watch, Wahana Lingkungan Hidup Indonesia / the Indonesian Forum for Environment - WALHI, Sriwijaya Farmers Union – SPS, “Komonitas” Bengkel Tolak Tambang / the Workshop against Mining, Community

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<sup>3</sup>. For example, violent conflicts resulting in deaths took place in Mesuji, Lampung; at Sape in Bima, West Nusa Tenggara; at Harjo Kuncaran in Malang; in Langkat, North Sumatra, in the Cinta Manis conflict in Ogan Ilir, South Sumatra and in Indramayu, West Java. See KontraS table and article published in *Tempo*, “Compounding Land cases”, 17 March 2013.

concerned for the dignity and the land of Sumba - KPMTS, Legal Aid Sumba) and representatives of the diplomatic community.

Requests for meetings were also sent to other institutions, such as the Minister of justice and human rights, the Minister of Foreign Affairs, the Commission III of Parliament. Unfortunately, such meetings could not be arranged.

The mission was headed by Ms. Souhayr Belhassen, FIDH Honorary President (Tunisia), Mr. Rommel Barotilla Yamzon, Task Force Detainees of the Philippines (TFDP), member of Philippine Alliance of Human Rights Advocates (PAHRA) (The Philippines), Mr. Avninder Singh, Lawyer (India) and Ms. Alexandra Poméon O’Neill, Director of the Observatory for the Protection of Human Rights Defenders, FIDH.

Two field visits were organised to investigate complaints of harassment faced by human rights defenders in South Sumatra and East Nusa Tenggara, during which the delegation met victims of land-related conflicts.

In April 2014, this joint report was submitted to the UN Committee on Economic, Social and Cultural Rights in view of the examination of the Report of Indonesia.

FIDH would like to thank KontraS for its support in setting up the mission and meetings as well as all the persons met by the mission.

# I / Taking away customary and land rights

## a – A massive development plan which fails to address the issue of human rights

Indonesia is a member of the G-20 and the largest economy in Southeast Asia. At the June 2011 World Economic Forum on East Asia, Susilo Bambang Yudoyhono, the Indonesian President stated that Indonesia will be among the top ten economies within the next decade. Indonesia has based its economic development on the exploitation of its abundant natural resources, including crude oil, tin, natural gas, nickel, timber, bauxite, copper, fertile soils, timber, coal, gold, silver, fisheries.

In 2011, the Indonesian government launched the Master-plan for Acceleration and Expansion of Indonesia's Economic Development (MP3EI)<sup>4</sup>. The nationwide economic plan, which aims to fulfil the qualification as developed country by 2025, relies for 60% on natural resources to boost the economy and attract large-scale investments. The government's strategy consists in facilitating investment into the processing industry in order to provide high-added value (for example, in the palm oil and cocoa sectors).

### **Basic facts on MP3EI**

MP3EI (Master Plan on Economic and Expansion of Indonesian Economic Development) is a government program to accelerate the economic development of Indonesia by 2025. Started on May 27, 2011, the MP3EI legal basis is Presidential Regulation No. 32/2011 on the Master Plan for the Acceleration and Expansion of the Indonesian Economic Development 2011-2025.

The focus of development is divided into eight main programs, such as: agriculture, mining, energy, industrial, marine, tourism,

<sup>4</sup>. See <http://www.indonesia-investments.com/projects/government-development-plans/masterplan-for-acceleration-and-expansion-of-indonesias-economic-development-mp3ei/item306>

telecommunication, and the development of strategic areas. As to July 2013, investment into MP3EI had reached Rp 647,462 trillion (approximately \$ 64 billion)<sup>5</sup>.

Under the motto of “Not Business As Usual”, MP3EI involves the collaboration between the central and local government, state and private businesses. The private sector is given a role in the investment sector, while the government will act as a regulator to facilitate investment by private entrepreneurs. For example, with Law No. 2/2012 (see below), the Government (both at central and local levels) guarantee the availability of land for the public interest. ‘Public interest’ is meant as anything that is favourable to ‘development’.

A committee, the Committee for the Acceleration and Expansion of Indonesian Economic Development (KP3EI), headed by the President of the Republic, was established to coordinate, monitor, evaluate the planning and implementation of MP3EI, and to set out steps and policies aimed at facilitating MP3EI. Unfortunately, the mandate of the department in charge of monitoring, evaluation and reporting does not mention human rights standards and does not include any mechanism for victims of human rights violations. In addition, the website of KP3EI reflects the lack a transparency and accountability characterising the plan. Information provided is addressed to investors and not to the Indonesian general public, including civil society. Indeed there is no information on any complaint mechanism in case of human rights violation related to the plan, no information on how human rights standards have been integrated in the plan and the KP3EI’s mission and no information on processes to ensure the participation of civil society in planning, implementation and evaluation of the plan<sup>6</sup>.

***“MP3EI, the government’s ambitious project has lead to further marginalization of the poor and indigenous people, while the government further strengthen this project with the regulations and laws in favour of the owners of capital and does not prioritize respect for human rights. In addition, there is no complaint mechanism in MP3EI, although human rights violations that occurred as a result of this project have been going on”.***  
***Haris Azhar, KontraS Coordinator***

<sup>5</sup> <http://www.setkab.go.id/mp3ei-10118-hingga-juli-2013-investasi-mp3ei-capai-rp-647-triliun.html>

<sup>6</sup> See the website of KP3EI: <http://kp3ei.go.id/>

## b – No clear legal framework regulating land rights

Within the framework of the implementation of the plan, large-scale investments, including massive land deals, are encouraged by the authorities, while **Indonesia’s legal framework to recognise existing land rights and regulate land deals remains weak** and fails to protect the interests of smallholders cultivating land and indigenous peoples.

*“Foreign investments are not regulated. Provisions requiring the respect of human rights should be included in foreign investment agreements”.*

**WALHI**

The regulation of land deals is problematic on several accounts. First, **the legal status of customary rights over land use or ownership is unclear**. According to Article 33(3) of the 1945 Constitution of Indonesia, “the land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people”. The Indonesian Constitution identifies the state as the sole agent that can determine what national interest is. The Constitution also recognises indigenous peoples’ rights and unwritten customary rights (*adat*) in Articles 18-B-2 and 28-I<sup>7</sup>. Land management and titling in Indonesia is governed by the Basic Agrarian Law (*Undang-undang Pokok Agraria - UUPA*) No. 5 of 1960, the Basic Forestry Law of 1967, *adat* and a series of laws regulating specific sectors of industry, such as forestry and mining. Reflecting the tension present in the Constitution, the UUPA of 1960 does also allow for *adat* rights<sup>8</sup>, while providing for the supremacy of “national interest”. In the absence of law on indigenous peoples’ rights, the status of customary rights, including customary land and forest rights, which indigenous communities hold collectively, is unclear<sup>9</sup>. The public

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<sup>7</sup>. Indonesia is a signatory to the UN Declaration on the Rights of Indigenous Peoples. For more information on indigenous peoples in Indonesia, see: <http://www.iwgia.org/regions/asia/indonesia>

<sup>8</sup>. According to UUPA the State has the rights of authority on the land, but it needs to comply with prevailing indigenous rules, such as: the right of indigenous community who has settled in and worked the land, “for as long as this community exists”. The emergence of the phrase “for as long as in reality still exists”, both in the UUPA and Law No. 41 of 1999 on the establishment of indigenous forest after the Supreme Court Decision No. 35/PUU-X/2012, means the ownership of forests by the State must comply with the rights of indigenous community, for as long as they still live there and in accordance with social development and the principles of the Republic of Indonesia governed in the Constitution.

<sup>9</sup>. On 16 May 2013, the Constitutional Court, in response to a petition from the Aliansi

services regulating land use and ownership, including the Land Registry - *Badan Pertanahan Nasional* (BPN), fail so far to adequately record and protect customary rights of communities. In theory, customary rights are recognised, but not in practice.

*“The law recognises customary rights, but in practice, the administration refuses to process the registration of such rights”  
Romo Paulus, a lawyer who defends indigenous communities in Sumba, East Nusa Tenggara (NTT).*

Second, with many **overlapping regimes existing and with authorities at various levels holding overlapping powers** (at the level of the central and local government and at the level of different ministries, such as forestry, mines and energy, agriculture, etc.), determining rights to land and forest use is a difficult task. Overlapping and unclear laws grant different authorities powers to regulate land use. A series of laws and regulations have been adopted to regulate various sectors, including the Forestry Law of 1999 (Law 41/1999), Law on Mines of December 2008, the Law on Environmental Protection and Management of 2009, the Law on Plantations of 2004, the Law No. 2/2012 on Land Procurement for Public Utilities Construction<sup>10</sup>. This complex array of laws, decrees, and *ad hoc* regulations allows central and local government authorities wide discretion in allocating land rights in the name of ‘public interest’, and prevent a fair and equitable resolution of land disputes.

Third, there is no comprehensive and efficient system mapping land use and concessions boundaries, leading to uncertainties as to the status of an important part of the land. As far as land titling is concerned, only about 34% of all land parcels are titled and the number of new parcels, mainly from subdivision of existing parcels, is increasing more quickly

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Masyarakat Adat Nusantara (AMAN), an indigenous rights organisation, for judicial review of the Forestry Law (Law 41/1999), ruled in Decision 35/PUU-X/2012 that hutan adat or customary forest could no longer be considered state land. The decision was a major victory for AMAN, but it raises many questions; some other NGOs see it as potentially allowing for more co-optation of adat leaders by unscrupulous officials and corporations. It remains unclear how the ruling will actually be implemented.

<sup>10</sup> See Law No. 2/2012 on Land Procurement for Development for Public Interest. A request for judicial review was filed by WALHI and SPI pending before the Supreme Court to challenge the national interest provision. The group requested the court to amend the law and scrap nine articles that would allow the government to seize people’s land in the name of public interests. The law is intended solely to accelerate procedures for private investors to legally obtain and exploit the land. They added that it will only cater to business interests. It does not provide a clear definition of public interest.

than they can be registered and titled. The titling process is slow because of complex and overlapping types of land tenure, weak institutional capacity of the BPN, absence of documentation, long-term disputes, and unclear procedures for adjudication. The BPN - has responsibility for titling, registering, surveying, and mapping. But responsibility for other key activities has been transferred to local governments, including issuance of location permits, provision of land for public interest, land dispute resolution, land use planning, and compensation for appropriated land<sup>11</sup>. However, local governments do not have the necessary capacity and resources needed to carry out these functions effectively and/or are corrupted (see part below). Therefore, quality of services provided by both BPN and local governments remains very poor.

As a result, the very act of not being registered has become a means of dispossessing communities of their land. As registration is the sole means to assert rights before the authorities (local government authorities, the police, the judiciary, etc.), indigenous communities who have not had their land titles registered often find their land rights taken away<sup>12</sup>. Community leaders met during the mission complained that they could not get protection from the authorities when their rights to land were infringed, as in the absence of proper title the police refused to recognise such rights. In other cases the police refused to process complaints on dubious pretexts (e.g. the filing of a complaint for a more serious offence, such as destruction of property, by the company) or as rural communities lack resources to follow up complaints before courts.

***“Some communities are not sufficiently organised and lack resources to institute proceedings to assert their rights over land”,  
Romo Paulus, a lawyer who defends indigenous communities in  
Sumba, East Nusa Tenggara (NTT).***

Indonesia lacks a coherent framework and an independent institution that guarantees the respect of rights over land to individuals and communities. In many cases, local officials use this legal uncertainty to deprive communities of their land and allocate concessions or

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<sup>11</sup>. See Law 22/1999 and Keppres 34/2003.

<sup>12</sup>. The law provides for several conditions for indigenous community rights to be recognized, one of which is that the indigenous community needs to register the land in accordance with the procedure defined under Government Regulation No. 24 of 1997 on Land Registration. The complexity of this land registration procedure generated problems in documenting land ownership as well as overlaps with Land Cultivation Rights Titles granted by the government to state and private companies.

licences to companies, fuelling conflicts between economic actors and local communities (see examples below). Under this legal framework, powerful economic actors can thus easily secure favourable decisions by state authorities to protect their prize with bribes rather than by dialogue with people whose rights may be violated by their operations.

In the context of MP3EI 2011-2025, should the respect of human rights not be adequately reflected in design and implementation, major Indonesian NGOs, such as KontraS, KPA, WALHI, JATAM and HUMA fear that violations of rural communities' land and environment rights will increase. In the report published by the Consortium for Agrarian Reform on December 27, 2013, since the launch of MP3EI, Indonesia has experienced an increase in agrarian conflicts to reach a number of 369 conflicts recorded by the NGO in 2013, that is three times more than the number recorded in 2009<sup>13</sup>.

### **c - Widespread corruption and the lack of institution to protect land and environment rights**

The few institutional checks and balances have limited efficacy due to widespread corruption. One of the peculiar aspects of Indonesian democratisation is how the country utilised political and economic devolution to reduce the power of Jakarta, cut the legacy of Suharto's rule, and increase local participation in politics and the economy. However, devolution has in many cases resulted in the empowerment of the most regressive and corrupt local politicians and increased corruption.

With the decentralisation, local governments have the authority to issue licences to businesses. Indonesian NGOs, such as JATAM (Mining Advocacy Network) reported that the issuance of licences had become a profitable business to finance local electoral campaigns and that the number of land deals generally increased in the run up to elections.

***“Corruption within the police, the army, the local government but also members of Parliament is part of the problem. The law is not enforced in a fair and impartial manner”.***

***WALHI***

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<sup>13</sup>. According to WALHI, MP3EI has also led to an increase in cases of ecological disasters in various regions, with 1,392 cases of ecological disaster recorded in 2013.

Police and military forces have a record of violence and lack of accountability for past and present abuses. Security forces face persistent allegations of human rights violations, including torture and other ill-treatment and excessive use of force and firearms. Therefore, the increasing involvement of security forces as a response to resource-related disputes is viewed as an issue of serious concern (see below part II-b).

The Indonesian military has a history of being involved in business activities: leasing of land to private companies and holding of stakes in companies through foundations and cooperatives<sup>14</sup>. In 2004, the government passed a law banning professional soldiers from involvement in business ventures, but, according to NGOs, it remains unclear how the law was implemented. Today, the military has a role in protecting the interests of private business by providing security services. For example, in 2013-2014, the military was involved in the forced eviction and ill-treatment of a farmer in Pinang Tinggi area, Padang Salak, Tanah menang and Terawang in relation to a conflict opposing the indigenous community Suku Anak Dalam Batin Bahar and the company PT Asiatic Persada.

Corruption is endemic, particularly among the judiciary. There is a broad consensus that the judiciary does not act independently and has failed to hold police and corporations accountable for business-related human rights abuses. The judiciary remains plagued by lack of independence, corruption and failure to uphold the rule of law. Low salaries for judicial officials and impunity for malpractices result in bribery, partiality, and interference in court proceedings by military personnel and government officials. As a consequence, the general public lacks confidence in the justice system and does not rely on it to get redress<sup>15</sup>.

***“Violence arises from the lack of confidence in the justice system”.***

***KontraS***

Indonesia ranked 114 out of 177 countries surveyed in Transparency International’s 2013 Corruption Perceptions Index<sup>16</sup>. The Indonesian government agency established to fight corruption - Corruption Eradication Commission (*Komisi Pemberantasan Korupsi - KPK*) successfully investigated a series of high-profile cases with a high

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<sup>14</sup> For more information see KontraS’ Report, *When Gun Point Joins the Trade*, 2004 available at: [http://www.kontras.org/buku/Executive\\_Summary.pdf](http://www.kontras.org/buku/Executive_Summary.pdf)

<sup>15</sup> See UN Human rights Committee Concluding Observations, UN Document CCPR/C/IDN/CO/1, August 2013.

<sup>16</sup> See <http://www.transparency.org/cpi2013/results>

conviction rate<sup>17</sup>. This raised public expectations that acts of corruption, even by senior government officials, would be punished. However, the KPK alone cannot put an end to widespread corruption.

***“Forestry and mining are among the sectors where corruption is prevalent”.***  
**KPK**

In addition, rural communities lack the resources and capacity to defend their land and environment rights before administrative bodies and courts. Many of those interviewed by the FIDH delegation said that they had never received any response from local authorities after they filed complaints.

In addition, when smallholders or indigenous communities go to court, unreasonable restrictions on information about forest concessions and land claims make it difficult for them to substantiate their claims. These restrictions are in contradiction with Law No. 14/2008 on Transparency of Public Information (*Undang-Undang Keterbukaan Informasi Publik*)<sup>18</sup>. The Central Information Commission, an agency in charge of monitoring the Freedom of Information Law lacks an operative sanction mechanism and suffers from weak institutional capacity. The law also provides for broadly defined exemptions such as information that obstructs law enforcement, hurts protection for intellectual property rights and protection from unhealthy business competition, threatens state security, endangers Indonesia’s natural resources, damages foreign relations, and risks exposure of information of a personal nature. The Law No. 17/2011 on State Intelligence classifies important information from the natural resources sector as exempt from disclosure requirements.

***“To address resource-related conflicts, the issue of transparency is key”.***  
**Member of Central Sumba Regional Parliament, NTT.**

How can resource-related conflicts opposing economic actors and local communities be resolved when few trust the courts or police and the central government invariably dithers to act until violence erupts?

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<sup>17</sup>. Since it started operating in late 2003, the commission has investigated, prosecuted and achieved a 100-percent conviction rate in 300 cases of bribery and graft related to government procurements and budgets. KPK has no jurisdiction over cases involving the army. See KPK.

<sup>18</sup>. See [http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Indonesia\\_Public\\_Information\\_Disclosure\\_Act\\_2008\\_EN.pdf](http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Indonesia_Public_Information_Disclosure_Act_2008_EN.pdf)

# II / Land disputes generate human rights violations and social conflicts

## a – Human rights violations and social conflicts on the rise

Indonesian NGOs met during the mission such as AMAN and WALHI reported that in most cases rural and indigenous communities affected by land deals have not been informed, consulted or compensated about land deals affecting their environment or plots of land they use or own (see examples below in Part III-b). The rights over land they have been using for decades, and sometimes generations, is not recognised by the authorities (see above part I). The loss of their land undermines their economic livelihood and affects their spiritual, cultural and social identity.

The rights of local communities, particularly the ancestral rights of indigenous peoples over land and natural resources, are routinely violated - often through the use of hired thugs, private security guards, paramilitary and the military.

*“On 24 September 2010, during a demonstration, I was attacked and hit by the Governor’s private security guards probably because they recognised me as a leader of public protests. I am also regularly intimidated and threatened by thugs hired by companies”.*

*Anwar Sadat, WALHI*

These non-state actors are responsible for an increasing number of threats, harassments, and intimidations, smear campaigns against community members and leaders and against those who defend their rights, including lawyers and NGO activists. These acts are often carried out with complicity or acquiescence of police officials. Many reports have surfaced of state officials being bribed to defend the interests of corporations. Authorities have failed to adequately investigate numerous allegations of torture and ill-treatment, extra-judicial killings, and enforced disappearances. This has contributed to perpetuating a culture of **impunity** in Indonesia.

***“I am regularly intimidated. The police once told me that I could not be a priest and a lawyer at the same time. As a result, I have a very bad reputation”.***

***Romo Paulus, a priest and lawyer who defends indigenous communities in Sumba, East Nusa Tenggara (NTT)***

Unresolved conflicts over natural resources have generated protest and social movements related to indigenous peoples’ rights, the right to land, the right to a healthy/safe environment, and the respect for labour rights. Protests often start in the form of letters and complaints to the authorities. When such actions fall on a deaf ear, communities, with the support of their leaders and human rights NGOs such as KPA and WALHI, generally organise and participate in public demonstrations or rallies, as well as land occupations and blockades, when business activities have begun despite protests.

Many NGOs and institutions in Indonesia have been compiling information on conflicts related to land and resources, among which KontraS, HuMa, KPA and the Indonesian national human rights institution Komnas HAM. KontraS recorded 375 cases of violence between 2001 and 2012 in the context of resource-related conflicts covering 800 million hectares<sup>19</sup>. In 2011, KontraS recorded 57 cases of violence related to land disputes. In 2012, the number increased to 151 cases of violence, which included torture, arbitrary arrests, intimidation, and extra-judicial killings. As a result of these 151 cases, 20 people died, 182 sustained injuries, and 236 were arrested or intimidated at the nation-wide level<sup>20</sup>.

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<sup>19</sup> These 375 acts of violence caused the death of 74 people, 104 being wounded by shot, 615 arrested, and 344 having sustained injuries. Perpetrators were local police, corporate security, military and mobile brigade. The violence was spread out in several provinces (23 out of 34 provinces) in Indonesia, including East, West and Central Kalimantan; East, Central and West Java; North and South Sumatera; Southeast, North, and West Sulawesi; Riau; Lampung; West and East Nusa Tenggara; Jambi; Jakarta; Banten; Bengkulu; Aceh; West Papua; Bangka-Belitung and Bali. Violence happened in various sectors, such as: plantations (palm oil), mines, farms, infrastructures, forests, public facilities and agrarian sectors. Types of violence are broken down into several categories, such as forcible dispersal, beatings, shootings, intimidation and criminalization. The actors originated from state and non-state business sectors, such as state-owned companies and private business sectors, in conflict with indigenous communities, resident villagers, resident farmers and community leaders. Other key actors were civil society organizations and/or human rights defenders who tried to fight for the victims’ (people whose lands were seized) rights. Meanwhile the business sector was supported by resident police force, mobile brigades, military, corporate security and government officials from many levels.

<sup>20</sup> Monitoring conducted by KontraS is not exhaustive, but attempts to compile data

In 2012, HuMa, which also monitors the situation at the country level, recorded over 200 cases of human rights violations in the natural resource sector<sup>21</sup>. According to KPA's 2013 Annual Report, in 2013, land conflicts caused by land grabbing for oil palm plantations, wood plantations, and infrastructure increased by 86% from the previous year. There were 369 cases of agrarian conflicts during 2013 following land grabbed from community lands (covering around 1,281,660.09 hectares). Also, 139,874 households were evicted from their lands, 21 farmers died in land conflict areas, and 239 people were arrested. Thirty of them were injured or tortured by police officers<sup>22</sup>.

In its 2012 annual report, the National Commission on Human Rights (Komnas HAM) named police and companies as the top human rights violators in the country. The commission received 1,500 (out of 5,442) complaints on human rights abuses related to land rights<sup>23</sup>. In 2012 and 2013, Komnas Ham declared that agrarian related complaints ranked the highest in terms of number of complaints<sup>24</sup>. According to Komnas Ham, in the majority of cases, land-related disputes involved acts of violence against farmers and human rights defenders.

It results from an analysis of the above-mentioned reports that today's conflicts over natural resources are the main cause of human rights violations in Indonesia, with **at least one conflict being reported daily in 2013**.

#### **b – State response to social conflicts: security laws and abusive use of force**

Communities deprived of their land rights are often left with no other option than protesting against the violation of their rights through demonstrations. Those interviewed by the FIDH delegation complained of a lack of protection by police and authorities during peaceful demonstrations. Worse some reported that police and military

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gathered by a wide range of NGOs and state institutions.

<sup>21</sup> They included including 17 cases in mining sector, 22 cases in the agrarian sector, 119 cases in the plantation sector, and 72 cases in the forestry sector. See <http://huma.or.id>.

<sup>22</sup> See <http://ilcasia.wordpress.com/2014/02/04/kpa-releases-its-annual-report-2013-on-land-grabbing-and-land-policies-monitoring/>

<sup>23</sup> See <http://www.thejakartapost.com/news/2012/12/11/police-companies-are-top-human-rights-violators-komnas-ham.html>

<sup>24</sup> See <http://www.thejakartapost.com/news/2013/12/31/komnas-ham-completes-investigations-5234-complaints-throughout-2013.html>

forces were responsible for a large number of acts of violence against participants in protests. The state's violent response to those peaceful demonstrations often exacerbates the conflict and results in the violation of civil and political rights (judicial harassment, arbitrary arrest and detention, threats, beatings, torture and ill treatment, killings).

*For example, on 25 August 2013, a demonstration against the construction of Bubur Gadung Dam was severely repressed and led to the arrest of five farmers, members of Indramayu Peasant Union (STI) and KPA and the death of one farmer in Indramayu, West Java. Hundreds of farmers from STI who were demonstrating were intimidated and physically attacked by thugs. Thirty farmers who were on their way to join the demonstration were thrown rocks and wood pieces at. They were also beaten by thugs who claimed themselves to be peasants. Tens of thugs also harrowed villagers houses and beat those who were found in the houses. Police officers present on the spot did not intervene to protect the farmers. In reaction to the acts of violence, some farmers decided to burn an excavator present on the construction site. Only then did the police intervene against the farmers using rubber bullets and tear gas. Dozens were wounded. Five were randomly arrested including Abdul Rojak, STI General Secretary. On 21 January 2014, he was sentenced to 18 months in prison on charges of destruction of property. KPA and Komnas Ham.*

The recent adoption of a series of security laws are likely to result in further repression of social movements, targeting in particular community leaders and land and environmental rights defenders. Unfortunately, the objective of such laws only seems to be to facilitate land grabbing and business activities rather than protecting human rights.

*“The NGO community is concerned that the recent security laws were only adopted to attract investment and facilitate business”.*  
**KontraS**

Such legislation includes the Law No. 17/2011 on State Intelligence, the Law No. 07/2012 on Managing Social Conflict (*Penanganan Konflik Sosial* - PKS Law) and the Presidential Instruction (InPres) No. 02/2013 on National Security and Conflict Management. These laws only focus on security aspects, by broadening the scope of military involvement to address social conflicts and legitimating the use of force to stop public

demonstrations, instead of addressing the root causes of conflicts and protecting the rights of affected communities. They contain references to vague concepts such as “national security threats” and “national interest” and confirm an exclusively security approach to address social conflicts. Unfortunately, in many cases, the lack of protection combined with the excessive use of force leads to an escalation of violence.

The National Commission on Human Rights (Komnas HAM) requested the government to suspend the implementation of Presidential Instruction No. 02/2013 arguing that it legalised and justified military involvement, potentially increasing the occurrence of violence during land-related conflicts<sup>25</sup>.

Other laws also contain problematic provisions that facilitate the criminalisation of those opposing business activities. For example, the Law on Mines of 2008 provides for imprisonment and heavy fines against those opposing authorised mining activities<sup>26</sup>.

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<sup>25</sup>. Interview of Komnas HAM.

<sup>26</sup>. See Article 162.

# III / Escalation of human rights abuses, particularly against human rights defenders

*“Human rights defenders working on behalf of communities affected by large-scale development projects are increasingly being branded ‘anti-government’, ‘against development’ or even ‘enemies of the State’”, warned UN Special Rapporteur **Margaret Sekaggya** in her last report to the UN General Assembly<sup>27</sup>.*

## **a - Increased space for civil society actors, but a continuing lack of recognition and protection**

Suharto’s departure in 1998 paved the way for a more open and liberal socio-political environment ensued. The reform process in Indonesia experienced a greater freedom of speech, with more open political debate.

As Indonesia underwent constitutional amendment in 1999-2002, a set of human rights provisions mirroring the Universal Declaration of Human Rights was included in August 2000. After 1998, NGOs started to work with some institutions, such as the Supreme Court and the police, in order to conduct reform projects.

Civil society has carved out a political space for their activities, which is tolerated, if not yet fully accepted by the state. Civil society is certainly very courageous in taking up the issues related to land and resource management. They cover a wide range of activities from public education and awareness-raising to litigation, documentation, advocacy at local, national, and international level, and legal aid.

However, the number of NGOs is still very small and their capacity is limited. Indonesia lacks the democratic institutions and culture of involvement of local communities and civil society in the decision-

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<sup>27</sup>. See UN Special Rapporteur Margaret Sekaggya Press Release, October 29, 2013.

making processes related to resource allocation. Executive powers have not traditionally been subject to an adequate system of checks and balances. In addition, the state has failed to offer support and protect NGOs that have been more critical of government policies. The ineffective implementation of the Law No. 14/2008 on Transparency of Public Information also makes the work of NGOs more perilous and difficult<sup>28</sup>. Some NGOs are accused through media smearing campaigns of being “enemies of development”, “traitors” or “foreign spies” for criticising business activities or development policies endorsed by the State.

Finally, often, the State’s response is to treat civil society objections as nothing more than a law and order problem. A new law on NGOs adopted in July 2013 is reflective of the lack of acceptance by Indonesian political leadership for greater participation of NGOs in decision making, particularly with regard to resource allocation<sup>29</sup>. Some groups fear that this law will be used to silence human rights defenders and community leaders denouncing resource-related human rights violations. Recent media campaigns attest to a risk of shrinking space for civil society as some media articles have been accusing NGOs of being funded by foreign companies which have failed to secure permits or concessions.

***“The Ormas Law fails to address critical issues pointed out by the UN Special Representative on the situation of human rights defenders during her visit in 2007 and, instead of creating an enabling environment for NGOs, adds more restrictive conditions for the set up and operation of NGOs”.***

**Haris Azhar, KontraS Coordinator.**

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<sup>28</sup>. See Paper on State Secrecy Bill by Tanti Budi Suryani, Tifa Foundation, available at [http://15iacc.org/wp-content/uploads/2013/01/Paper\\_fighting-theghosts-StateSecrecyBill\\_ThefuturethreatforIndonesiasyoungdemocracy.pdf](http://15iacc.org/wp-content/uploads/2013/01/Paper_fighting-theghosts-StateSecrecyBill_ThefuturethreatforIndonesiasyoungdemocracy.pdf)

<sup>29</sup>. The Parliament passed the Law No. 17/2013 on Societal Organizations (*RUU Organisasi Kemasyarakatan - Ormas Law*) on July 2, 2013. Komnas HAM said that the new law would limit the contributions of foreign groups advocating democracy in Indonesia, among a number of other problematic provisions. Enacted on July 22, 2013, Law No. 17/2013 is intended to reinforce the role of the Ministry of Home Affairs to control CSOs. All civil society organisations fall under this law. With the controlling authority given to the Ministry of Home Affairs, Law No. 17/2013 then stipulates a set of obligations and prohibitions for the NGOs, such as prohibition from propagating an ideology that conflicts with state principles (*Pancasila*) and from conducting activities that disrupt public order and well-being. Violations of such provisions might lead to the dissolution of the CSO. Furthermore, this Law provides discriminatory and excessive bureaucratic controls over international CSOs. See the Observatory (FIDH-OMCT) and KontraS Joint Press Release, 11 July 2013: <http://www.fidh.org/en/asia/indonesia/indonesia-reform-of-the-law-on-associations-must-create-an-enabling-13653>

## **b – Cases of repression faced by human rights defenders**

Community leaders and human rights activists who work with indigenous and rural communities have been arbitrarily arrested and detained and unfairly prosecuted on spurious criminal charges, including defamation. In most cases, authorities have failed to protect them.

Indonesian NGOs such as KontraS, the Consortium for Agrarian Reform (KPA), the Indonesian Forum for Environment (*Wahana Lingkungan Hidup Indonesia* - WALHI), HuMa and others have documented dozens of cases and are providing support to affected communities and their leaders.

During their visit conducted in September 2013, FIDH and KontraS have documented several of these cases and met NGO representatives and victims of criminalisation.

### Harassment of NGO leaders (“Ogan Ilir case”) involved in the land reclaim movement in South Sumatra.

In South Sumatra, land reclamation movements follow years of land grabs and abuses under the colonial and Suharto eras. Many rural communities have never held any proper land titles and their communities have been occupying and using lands for decades. Following the fall of Suharto, land reclaim actions intensified. Groups of villagers have been reclaiming unlawfully confiscated land. In 2011, communities started to mobilize and set up local NGOs. They sent complaints to the authorities, met government officials and parliamentary representatives, and organised public demonstrations.

Several land conflicts have opposed local communities to state-owned sugar plantation company PT Perkebunan Nusantara VII (PTPN 7) Cinta Manis since the 1980s. Communities set up associations to organise their action. They asked the authorities and PTPN 7 to return the land to them. They also organised demonstrations and started to occupy plots of the contested land. Several activists met by the FIDH delegation complained that the local government, police, and company representatives regularly intimidated them and their family members.

*“In 2012, I was forced by the administration to drop out of school during one month due to my father’s activism in the land reclaim movement”.*

*Sri, daughter of detained Sriwijaya Farmers Union (SPS)  
Kemalheddin*

Human rights activists and community leaders have been monitored and harassed during protests. They reported that PTPN 7 hired security guards to intimidate those who reclaimed the land. They also said that instead of protecting protesters, police violently repressed peaceful protests. According to KontraS, between 2009 and 2013, 20 people were shot in the district of Ogan Ilir during protest actions against PTPN 7<sup>30</sup>. WALHI South Sumatra, which provide legal and social support to local farmers<sup>31</sup>, documented several of the incidents involving attacks on peaceful protesters between 2009 and 2013. To date, no one has been held accountable for the attacks.

One emblematic incident was the killing on July 27, 2012 of a 12-year-old girl, Angga bin Dharmawan. On July 26, 2012, the South Sumatra Brimob (national police mobile brigade) attempted to break up a riot caused by a prolonged land dispute between the residents of 21 villages in Ogan Ilir and employees of PTPN 7 Cinta Manis. The police ransacked homes in the villages around PTPN 7 Cinta Manis. Fifteen police trucks arrived in Sri Bandung villages, injured and arrested civilians under false accusations of stealing fertilizer from PTPN 7.

Several demonstrations then took place to denounce police brutality and request an investigation into the killing of the young girl. On January 29, 2013, **Anwar Sadat** and **Dede Chaniago**, Director and Deputy Director of WALHI South Sumatra respectively, and **Kemalheddin**, member of the Sriwijaya Farmers Union (SPS), were beaten, arrested, and detained by the police during a peaceful demonstration organised before the South Sumatra Regional Police Area in Lampung. WALHI South Sumatra and SPS had been assisting the residents of Betung Village District, District Lubuk Keliat, Ogan Ilir Regency, South Sumatra Province, who protested the arrest of some of the village farmers. The three were charged with “destruction of public property”<sup>32</sup> (the gate of the regional

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<sup>30</sup>. A few died as a result of shooting.

<sup>31</sup>. See <http://walhi-sumsel.blogspot.fr/>

<sup>32</sup>. Article 170 of the Penal Code.

police station in Palembang) and “organising a provocative action”<sup>33</sup> (a demonstration).



*Poster calling for the release of Anwar Sadat, Dede Chaniago and Kemalheddin, September 2013. Credit: Alexandra Poméon, FIDH.*

According to the testimonies provided by WALHI and SPS members to the mission, the January 29 demonstration was peaceful and aimed at denouncing the interference of the police in favour of the company and calling for the removal of the police officer, allegedly responsible for the death of Angga bin Dharmawan. Police responded to the demonstration by using force against the protesters. Police used batons to beat protestors and arrested 25 of them.

During interrogation, all questions focused on Anwar Sadat and the role he played in the demonstration and in the destruction of the gate. Some of the arrestees stated that they had been coerced to point to the responsibility of Anwar Sadat. All such testimonies were then withdrawn. In May 2013, on the sole basis of testimonies provided by police officers, Anwar

Sadat and Dede Chaniago were sentenced to seven months in prison and Kemalheddin to 16 months in prison.

In July 2013, Anwar Sadat and Dede Chaniago were sentenced on appeal to five and a half months in prison on charges of “organising a provocative action”. The court also upheld Kemalheddin’s 16-month jail sentence on charges of “violence against the police”. Anwar Sadat and Dede Chaniago were released as they had served the 5.5-month sentences. The three appealed the sentence before the Supreme Court and the decision was yet to be made public beginning of 2014.

### Harassment of indigenous communities leaders opposed to mining exploration activities in Central Sumba, East Nusa Tenggara (NTT)

The extractive industry’s appetite for land has significant human rights and environmental consequences, as attested during the mission conducted in Central Sumba, East Nusa Tenggara (NTT). Several NGO representatives met complained that, in many cases, the land acquired by companies was taken from the communities who live there and depend on the forests for their livelihood, by force or deceit.

<sup>33</sup>. Article 160 of the Penal Code.

In October 2008, a gold mining licence was awarded by the Regent to PT Fathi Resources, an Indonesian corporation partnering with Australian mining company Hillgrove Resources Limited<sup>34</sup>, for exploration to be conducted in specific areas in Central Sumba, East Sumba and West Sumba regencies. The exploration was planned to take place in several areas on the island. Part of the plots covered by the licence belonged to indigenous communities, who held and used the land collectively since generations. Most of the communities and villagers had never held titles of ownership.

In 2010-2011, several meetings were held in different villages to inform and consult communities residing and using the land of the planned mining exploration. Community leaders met during the mission held that they had never agreed to the exploration and that a vast majority of villagers opposed said mining activities. All explained that the process followed during the information meeting was unclear, as they expected a second meeting to take place which in one case never happened and in another took place with community leaders co-opted by the local government authorities in violation of local customs.

***“During the first meeting, we could not agree on whether to consent to the exploration. We agreed to hold a second meeting, during which the seven tribe leaders would decide. Later, we discovered that the local government had co-opted supporters of the exploration as tribe leaders in violation of our customs”.***

***Umbu Manurara***

One community leader also complained that villagers were asked to sign a blank sheet allegedly for attendance purposes. Villagers then learnt that the attendance sheet was used to prove that they had provided their agreement. In another case, villagers attending the information meeting were paid 50,000 rupiah to sign the attendance sheet.

Though, villagers voiced their opposition to the exploration activities conducted on their land, the authorities then alleged that they had properly consulted and obtained the consent of the concerned communities. The Regent of Central Sumba met by FIDH Delegation said that the local government always seek to obtain the consent of villagers affected by mining activities and that in this case they had all the necessary

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<sup>34</sup> Hillgrove will receive an indirect 80% interest in return for undertaking exploration work and feasibility studies.

documents to prove that villagers had been informed and had provided their consent.

The indigenous communities' complaints to the Regent, the Central Government and the company not to conduct the exploration activities fell on deaf ears. Three community leaders from the area of Praikaroku Jangga village, **Umbu Djanji**, **Umbu Mehang**, and **Umbu Pendingara**, were particularly active in raising the awareness of villagers and organising their community to oppose mining exploration.



*Umbu Djanji, Umbu Mehang, and Umbu Pendingara, September 2013. Credit: Alexandra Poméon, FIDH.*

On March 2, 2011, 111 villagers sent a letter to the Regent of Central Sumba and PT Fathi Resources to oppose the mining exploration activities. They never got any response. On March 31, the mining company brought heavy drilling machines into the site identified for exploration. The villagers sent a delegation of five persons to meet the company and ask them not to conduct drilling activities without their permission. The following days, they also sent representatives to meet district government authorities and the police to complain about trespassing and request their intervention as the villagers had not authorised drilling on their land. They were told that the Regent of Central Sumba would address this situation. The indigenous communities felt they were left without remedies as getting a collective ownership title is very complicate, if not impossible. In the absence of such title, they could not file a complaint for trespassing and get protection from the authorities.

On April 6, 2011 the Head of Landiwacu District ordered the police to clear the land to allow drilling activities. Villagers were intimidated but

refused to allow the drilling activities. The company entered the location and brought drilling tools. Villagers attempted to block the operation of the company. Drilling started in the afternoon. In the evening, a fire broke out and damaged the drilling equipment. After they heard a blast, several villagers gathered near the location where the incident took place, including **Umbu Djanji**, **Umbu Mehang**, and **Umbu Pendingara**. When the police arrived they collected the names of all those present, including the three community leaders.

On April 17-18, 2011, 20 villagers were summonsed for interrogation after PT Fathi Resources filed a complaint for arson and destruction of property. Witnesses were reportedly intimidated and forced to sign statements against the three indigenous leaders. All reported that the police had forced them to take their clothes off while the police took pictures of them, without providing any convincing reason. The three indigenous leaders also complained of ill-treatment (through denial of food) during custody.

Following the interrogation and until December 2011, Umbu Djanji, Umbu Mehang, and Umbu Pendingara had to report to the regional police station, which is located very far from their home, twice a week. This measure amounted to intimidation and a form of punishment, as travelling to the regional police station not only cost a substantial amount of money but also prevented them from working and earning money. On December 6, 2011, the three were arrested and indicted. On August 17, 2012, on appeal, they were sentenced to eight months in prison for arson and destruction of private property.

*“The criminal file was empty”.*

*Romo Paulus, a priest and lawyer who defended the three community leaders*



*Romo Paulus,  
September 2013.  
Credit: Alexandra  
Poméon, FIDH.*

This experience greatly affected the three indigenous leaders and their families, who nonetheless remain determined to continue protecting their land and the rights of their community. Villagers met by FIDH delegation confided they were afraid the authorities targeted the three indigenous leaders to draw an example and intimidate all those intending to oppose mining operations. While protests continued after the incident, members of the police as well as the company’s staff warned villagers that they exposed themselves to reprisals, like the three indigenous leaders.

In addition to this, the authorities' distrust for NGOs was obvious. The Regent of Central Sumba said to the FIDH delegation that all NGOs were paid by companies that failed to secure licences, that their goals were only strategic corporate competition and that villagers all agreed to mining operations until they were told by NGOs that mining was not good.

In 2012, a similar incident occurred in Wahang, Sumba. In November-December, police arrested **Ones Katauhi Mbiliora, Darius Pekambani** and **Pura Lindi Amah**, three community leaders who had opposed mining in Kampung, on charges of destruction of private property (a post belonging to PT Fathi). Protests erupted after the Regent of East Sumba agreed to the exploration and PT Fathi started exploration activities despite the refusal of a majority of community members. Despite several letters and meetings with local chiefs, exploration activities continued. More protests were organised. One organised on July 18 saw the participation of more than 400 villagers and acts of violence which led to the destruction of a car and a house belonging to PT Fathi. Ones Katauhi Mbiliora, Darius Pekambani and Pura Lindi Amah were kept in custody for 10-14 days. Charges were still pending in April 2014.

# Conclusion

Genuine development and poverty reduction are possible only if the model chosen for such development involves the concerned communities and is driven by peoples' rights (as opposed to capital-driven)<sup>35</sup>.

With the spike of investments, especially in the plantation and extractive sectors, should the issue of land rights and land conflicts not be tackled from a rights-based perspective, the situation will only get worse, with more incidents of violence and more human rights violations targeting the most vulnerable categories of the population.

In Indonesia, conflicts over land and resources are complicated by the unclear status of customary rights; unclear or overlapping lines of authority among different ministries and different levels of government (local and central); historical injustices that are often hard to sort out; the involvement of the army and private security forces; poor dispute resolution mechanisms; impunity and corruption. This situation leads to an escalation of social conflicts and human rights violations, in particular against human rights defenders.

Until people believe they cannot get a fair hearing in the courts, they are going to turn to other methods for restitution of grievances and demands for their rights, increasing risks of social conflicts and violence.

Until land rights are properly defined and protected, companies and corrupt authorities will continue to take advantage of poor governance to force poor smallholders and indigenous communities out of their land.

Therefore, Indonesia must improve access to effective administrative and legal remedies, undertake a thorough judicial reform and ensure human rights protection in development projects, including by strengthening the protection of land rights.

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<sup>35</sup>. See 1986 Declaration on the Right to Development and 1993 Vienna Declaration and Programme of Action UN, which provides that "Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing".

# Recommendations

## **To the authorities of Indonesia, at the central and local government levels:**

### in general:

- respect constitutional and international human rights law provisions;
- extend an open and permanent invitation to all UN Special Procedures;

### on land issues:

- integrate human rights into the planning and implementation of MP3EI;
- rethink policies on land use and ownership and undertake a thorough review and revision of the laws governing land and forest use to provide a coherent legal framework for all government institutions that sets land rights (as opposed to capital) at its centre, and, in particular:
  - revoke and rescind problematic licences;
  - require the suspension of commercial or investment projects until due consultation has been undertaken;
  - require the conduct (before, during and after) of human rights impacts assessments of investment projects;
  - return land misappropriated by companies to their rightful owners;
  - recognise and assist communities to enable the registration of collective ownership titles in favour of indigenous communities;
  - enact the Free Prior and Informed Consent (FPIC) principle in both the Constitution and the law to protect the rights of indigenous communities by providing preliminary information on actions or projects which in the future may affect their homeland, including land, territory, and natural resources, without coercion;
  - guarantee full transparency from the forestry and agriculture ministries as well as other central and local government bodies regarding decisions made around the granting of land concessions permits, ensure public

- disclosure of licences granted and ensure access to contracts and human rights impact assessments for affected groups;
- set up a mechanism to monitor and enforce the implementation of the FPIC principle and to resolve agrarian conflicts;
- ensure that people peacefully protesting against forced evictions and land confiscations are not subjected to excessive use of force by the security forces, arbitrary detention and criminal prosecution;
- recognise and enforce Indigenous Peoples’ rights and the need to respect their specific human rights;
- conduct a rigorous and independent investigation of the role that private security businesses play in human rights violations occurring in the natural resources sector;
- repeal Law No. 7 of 2012 on Social Conflict Management and revoke the Presidential Instruction No. 2/2013;
- revise Law No. 2/2012 on Land Procurement for Development for Public Interest;
- reform Law No. 17/2011 on State Intelligence to allow affected stakeholders to access key information regarding concessions and development projects that may affect them (i.e. disclosure requirements)
- establish a dialogue with the UN Special Rapporteur on the right to food and invite the mandate-holder to visit the country;

on the promotion and protection of human rights defenders:

- respect the 1998 UN Declaration on Human Rights Defenders;
- amend the “Ormas law” to bring it in line with the right to freedom of association;
- recognize publicly the legitimacy of actions by civil society organisations in promoting and defending human rights and include this in the human rights training of police, military and public officials;
- institutionalise the involvement of civil society, including non-governmental human rights organisations, at all levels through regular, structured meetings and designated venues;
- ensure adequate protection of human rights defenders, avoid any acts of prosecution, intimidation against them and effectively investigate and prosecute perpetrators of human rights violations against them;
- ensure full accountability for human rights violations by public and private security forces against human rights defenders and provide

- adequate compensation and reparation to victims' families;
- establish a dialogue with the UN Special Rapporteur on the situation of human rights defenders and invite the mandate-holder to visit the country, as requested since 2012;
- establish a dialogue with the UN Special Rapporteur on the right to freedom and peaceful assembly and of association and invite the mandate-holder to visit the country, as requested since 2011;

on the rule of law and the right to an effective remedy:

- strengthen the fight against corruption, in particular by strengthening the KPK and guaranteeing the neutrality of law enforcement officers;
- strengthen legal institutions to provide fair, transparent and effective remedies;
- improve legal access and undertake a thorough judicial reform;
- provide legal aid in favour of poor communities affected by business activities;
- provide and institutionalize a human rights-based training for the police, military and all law enforcement personnel.

**To the international community, in particular to:**

Indonesia's international donors:

- support indigenous communities seeking to obtain legal recognition as indigenous communities and collective ownership, particularly in sensitive cases;
- include benchmarks with donor country assistance strategies to measure the implementation of reforms to improve recognition of indigenous land rights and prevent against concession-granting operating in violation of human rights law. International donors should make aid disbursements condition on achieving such reforms.

The Member States of the Association of Southeast Asian Nations (ASEAN):

- raise the concerns set out in this report in relation to concession-granting with the Indonesian authorities in the framework of bilateral discussions and in all ASEAN processes, including the ASEAN Ministerial meetings and annual summits;
  - include, as part of the work of the ASEAN Intergovernmental Commission on Human Rights (AICHR) on business and

human rights, proposals for legislative and policy reforms to ensure victims of corporate-related abuses can seek and obtain reparation, both in home and host States.

The UN, in particular the relevant Special Procedures:

- monitor and condemn human rights violations committed in the context of conflicts related to natural resources;
- pay urgent attention to the protection of human rights defenders in Indonesia, in accordance with the UN Declaration on Human Rights Defenders and follow-up on the implementation of recommendations issued on Indonesia.

To the EU and its member states, to address the land issue, by using all instruments at its disposal, in particular:

- regularly and publicly condemn human rights violations related to land issues including the lack of prior consent and consultation process, impact assessment, resettlement plan, compensations, access to remedies, freedom of expression and freedom of association; strongly condemn the cases of torture, ill-treatment, extra-judicial killings, enforced disappearance, intimidations and arbitrary detention perpetrated in the context of land conflicts and request and monitor they are duly investigated and prosecuted; strengthen statements and demarches by raising those concerns in all bilateral dialogues;
- use all the leverage the EU has at its disposal to incite Indonesia to the elaboration of a coherent national plan to guarantee the respect of the rights of individuals and communities over land, to include meaningful consultations with civil society and affected communities in that regard, to ensure the plan address the legal framework (including the revision of problematic laws such as Law No. 7/2012 on social conflict management and Presidential Instruction No. 2/2013 and Law No. 2/2012 on land procurement for development and public interest) but also independent institutions to formulate recommendations and monitor implementation and the provision of remedies;
- ensure adequate financial and technical support is given to foster the adoption and implementation of such a national plan and provide for a comprehensive solution that address also in that regard the weakness of the judiciary, human rights violations perpetrated by the police and security groups and the protection of collective rights and transparency; ensure the financial and technical support provide the adequate expected results and indicators (ex: the publication of a mapping of land use and concessions boundaries, increase of the official recognition and titles given to indigenous communities, decrease of protest having conducted

to human rights violations, increase the number of condemnations of perpetrators of human rights violations committed in the context of land conflicts, increase the number of complaints introduced by affected communities, etc.) and that those results and indicators are also used when support is given to the economic development sector.

### **To businesses investing in Indonesia:**

- conduct human rights due diligence in order to identify, prevent, mitigate and account for any negative human rights impact that may arise from the company’s own activities, or which may be directly linked to its operations, products or services by its business relationships. Such due diligence should be ongoing and should include:
  - meaningful consultation with potentially affected groups and other relevant stakeholders, including seeking to obtain free, prior and informed consent when indigenous communities are affected by its activities. Such consultation process includes avoiding to take any position, acts of intimidation, retaliation or harassment against human rights defenders or community leaders that could infringe on their rights;
  - companies operating in Indonesia should pay particular attention to the heightened risks of human rights violations given the national political context. In case of possible conflict, suspend all operations until current disputes are resolved (in a satisfactory manner according to affected community members);
- ensure not to accept concessions where indigenous peoples reside and for which they may be at risk of violating their rights, to avoid causing or contributing to human rights violations which may be directly linked to their operations, products or services by its business relationships;
- Conduct full and adequate environmental and human rights impact assessments prior to the signature of contracts and the beginning of any operations on concessions granted;
- Ensure that sub-contractors act with due diligence to avoid, to the greatest extent possible, any adverse impact. This should include ensuring adequate human rights training of private security employees or private security contractors.

### Establishing the facts

#### Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis. FIDH has conducted more than 1500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

### Supporting civil society

#### Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

### Mobilising the international community

#### Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

### Informing and reporting

#### Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.



### The Commission for the Disappeared and Victims of Violence (KontraS)

is a nongovernmental organization committed to protecting and promoting human rights in Indonesia. Established in 1998, active on several fronts, KontraS comprehensively monitors and documents past and current human rights violations in Indonesia and disseminates information on those violations through technology, written reports, and media in order to increase information, knowledge of and accountability for abuses. KontraS also conducts broad lobbying activities on laws, policies and practices and provides legal support and legal services to victims of human

rights abuses at the individual and community levels. Last, KontraS engages in extensive advocacy at the national, regional, and international levels and has testified before various foreign governmental and intergovernmental bodies.

#### KontraS - The Commission for "the Disappeared" and Victims of Violence

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represents **178**  
**human rights organisations**  
on **5 continents**



of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be

## **ABOUT FIDH**

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

### **An independent organisation**

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

**fidh**

Find information concerning FIDH's 178 member organisations on [www.fidh.org](http://www.fidh.org)