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KontraS

Komisi untuk Orang Hilang dan Korban
Tindak Kekerasan

*The Commission for the Disappearances and
Victims of Violence*

Indonesia

Submission to the United Nations Committee on Economic, Social and Cultural Rights

**52nd Pre-sessional Working Group
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FIDH and KontraS submit the following information to the United Nations (UN) Committee on Economic, Social and Cultural Rights (the Committee) in view of its 52nd pre-sessional meeting, at which it will prepare for the review of Indonesia's initial report on implementation of the International Covenant on Economic, Social and Cultural Rights (the Covenant).

This submission draws on information collected before, during and after a fact-finding mission carried out by FIDH in Indonesia in September 2013 on resource-related conflicts and attacks against human rights defenders. It also draws on daily monitoring of human rights violations carried out by KontraS, which covers the right to work, the right of everyone to the enjoyment of just and favourable conditions of work, the right to strike and the right to adequate housing.

First FIDH and KontraS would like to draw the attention of the Committee to the situation of land and environment rights defenders in Indonesia, who, in the context of land-grabbing, are at particular risk.

Violence and land grabbing in the natural resources sector

Land grabbing, denial of the right of indigenous communities to manage natural resources, and environmental pollution in connection to the development of large scale plantations (mainly palm oil¹)

¹ According to MRG Annual Report 2012, Indonesia is one of the two the top producers of palm oil in the world, and, in

and other projects exploiting natural resources, in particular extractive industries, at the detriment of rural communities are a major concern in Indonesia. Community leaders complain that they are not warned, consulted or compensated when concessions are handed out. Land conflicts between farmers and plantation owners, mining companies and developers have been raging across the country as local and foreign companies have been encouraged to seize and then deforest customary land – land used by indigenous people and administered in accordance with their customs. The Indonesian national human rights commission reported that the majority of human rights violations committed in 2012 were related to activities in the resource sector.

In Indonesia, instances of forced eviction often occur in the name of development. Evictions are carried out in connection with conflict over land rights, development and infrastructure projects, with land acquisition measures associated with urban renewal, city beautification programmes, the clearing of land for agricultural purposes or extractive activities by national or foreign corporations. At fault are badly drafted laws, unclear regulations, corruption and heavy-handed security and paramilitary forces – all of which would favour large business over the poor. According to reports, land grabbing is mostly supported by police, armed forces and local government staff and companies are allowed to work with security forces.

In 2011, the government of Indonesia launched an economic development plan - Masterplan for Acceleration and Expansion of Indonesia's Economic Development (MP3EI) – to boost its economy and attract large-scale investments. The plan aims to fulfil the qualification as developed country by 2025 with the following indicators: annual income per capita of USD 14,250 to USD 15,500 and with a Gross Domestic Product of 4-4.5 trillion dollars. The strategy of the Government is to facilitate investment in into the processing industry which will provide high added value (for example, in the sectors of palm oil and cocoa). Investment and infrastructure are the two main aspects of this program. Eight main areas have been identified for the plan: agriculture, mining, energy, industrial, marine, tourism, telecommunications, and the development of strategic areas. Coordinating Minister for the Economy, Hatta Rajasa, explained that over the first two years of implementation, the MP3EI program generated an investment of Rp647 trillion and it is targeted to reach Rp 4,000 trillion in 2014.

Large scale development in Indonesia gives rise to numerous human rights violations. Based on central database and information compiled by the NGO HuMa – Community and Ecological Based Society for Law Reform, in 2012 there were many cases of human rights violations in the natural resource sector, such as: 17 cases in mining sector, 22 cases in the agrarian sector, 119 cases in the plantation sector, and 72 cases in the forestry sector. These human rights violations include land grabbing (resulting in particular in violations of the right to freely dispose of natural wealth and resources, the right to work, the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions, the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the right of everyone to education) as well as acts of violence against and the criminalisation of communities claiming for the respect of their rights².

In the context of the Master plan for Acceleration and Expansion of Indonesia Economic Development

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.

² See <http://huma.or.id>.

(MP3EI) 2011-2025³, should the respect of human rights not be adequately reflected in design and implementation, it is feared that this trend will accelerate, that the rights of local communities will be further violated and that human rights defenders will continue to suffer harassment to silence them. This fear is enhanced by the recent adoption of a series of laws intended to facilitate land grabbing on the basis of vague concepts, such as “national interest”. These laws provide exclusively for a security-oriented approach to address conflicts. They include the Law on Providing Land for Development (2012), the Law on Managing Social Conflict (*Penanganan Konflik Sosial* - PKS Law) and the the Presidential Instruction (InPres) 02/2013 on national security and conflict management. Recent legal reforms thus focus on security-oriented responses instead of addressing causes of conflicts and protecting the rights of affected communities.

There is no comprehensive mapping on land use and concessions boundaries and, in a country where corruption is widespread, an unclear legal framework enables the authorities to deprive communities of their land and companies to grab land in violation of customary rights, the agrarian law and international human rights law. This is made possible by overlapping and unclear laws granting different authorities powers to regulate land use, thus allowing some authorities to make an abusive interpretation. Furthermore, when there are laws protecting community rights to land and resources, authorities fail to implement them and provide adequate remedies in resource disputes, leaving affected communities with no option other than demonstrating, blocking the activities of companies and occupying land. On turn, demonstrators and activists are subject to repression and acts of intimidation, including arrest and judicial harassment. Law enforcement bodies often side with businesses and commit abuses in impunity.

Questions:

What are the measures taken by the Government of Indonesia to prevent and address the eruption of acts of violence during conflicts over natural resources?

What are the existing legislative and other measures to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies? Did the State party review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend legislation or policies that are inconsistent with the requirements of the Covenant? Does the State Party provide legal remedies or procedures to those who are affected by eviction orders? Do all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected?

Repression of human rights defenders

This security-approach results in an escalation of violence and the targeting of human rights defenders and community leaders in an attempt to stifle protest movements. Those who provide support to victims of land grabbing and those who mobilise for the respect of the right to land, to a decent living and to a sound environment on behalf of their communities suffer harassment, intimidations, assaults by the police and henchmen hired by companies, arbitrary arrest and detention as well as unfair trials and sentences to prison terms.

³ See <http://www.indonesia-investments.com/projects/government-development-plans/masterplan-for-acceleration-and-expansion-of-indonesias-economic-development-mp3ei/item306> and <http://indoprivateequity.com/indonesia/master-plan-mp3ei/>

The targeting of environmental and land rights defenders who work with indigenous and rural communities, especially on land-grabbing but also access to water-working area (like fisheries), is a serious problem. Harassment takes many forms, including prosecution on criminal defamation or spurious charges, arbitrary arrest and detention, intimidation and threats by telephone calls or SMS, direct verbal threats, physical violence (beating and sexual abuse), smear campaigns and stigmatization (as ‘separatists’, ‘communists’, ‘opponents to economic development’, ‘enemies of Islam’ and ‘agents of Western powers’), extra-judicial killings, restrictions on the right to peaceful assembly, etc.

Non-State actors (companies, hired criminals, etc.) are responsible for an increasing number of threats, harassments and intimidations to human rights defenders, often accompanied with complicity of police officials, many of whom are paid to defend the interests of corporations. A significant number of criminal cases (including for torture and ill-treatment, possible unlawful killings and enforced disappearances) are not processed according to legal and judicial requirements, which constitutes negligence by the state, perpetuating a culture of impunity in Indonesia.

Civil society and human rights defenders working at the local and provincial level and regions with special autonomy suffer from limited access to protection and justice mechanisms. The stigmatization of human rights defenders as ‘separatists’ in the provinces of Papua and West Papua continues and is used to legitimise the maintenance of a large military presence in the provinces. Additionally, access to the region for international human rights workers and journalists remains heavily restricted and difficult, adding to the isolation of human rights defenders working in Papua, increasing their vulnerability and leading to a decline in accountability of security forces in the two provinces⁴.

Some recent cases of criminalisation of land and environment rights defenders

FIDH and KontraS have in particular documented the cases of **Anwar Sadat** and **Dede Chaniago**, Director and Deputy Director of WALHI South Sumatra (Wahana Lingkungan Hidup Indonesia or The Indonesian Forum for Environment) and **Kemalheddin** from Sriwijaya Farmers Union in South Sumatra; and **Umbu Djanji**, **Umbu Mehang** and **Umbu Pendingara**, three community leaders in Central Sumba, Nusa Tenggara Timur (NTT).

In South Sumatra, Anwar Sadat, Dede Chaniago and Kemalheddin were arrested and detained after a staged demonstration on January 29, 2013 that centered on a land dispute between the state-owned plantation company PT Perkebunan Nusantara VII Cinta Manis and local communities. They assisted the residents of Betung Village District, Kab. Ogan Ilir, South Sumatra Province, who questioned the arrest of some of the village farmers. They were charged with destruction of property (the gate of the regional police station) and with organizing a provocative action (a demonstration) in the case of Ogan Ilir in the South Sumatra Regional Police Area in Lampung. Anwar Sadat and Dede Chaniago were sentenced on appeal to 5.5 months in prison for “incitement” and Kemalheddin to 1.4 years in prison for “violence against the police”. The three appealed the sentence before the Supreme court and the decision is expected to be made public at the end of 2013.

In 2011, Umbu Djanji, Umbu Mehang and Umbu Pendingara, three community leaders in Central Sumba, were falsely accused of destroying the property of gold mining company PT. Fathi Resources

⁴ Submission of Shadow Report on the Situation of Human Rights Defenders in Indonesia for the 13th Session of the UN Universal Periodic Review for Indonesia by the Civil Society Coalition for the Protection of Human Rights Defenders, November 21, 2011.

after they had mobilised their community to stand for their rights to their land and oppose exploration by gold mining company PT. Fathi Resources on their ancestral lands without free, prior and informed consent nor consultation of the affected communities. The three were sentenced to prison terms in 2012 on the basis of spurious charges and have served their sentences.

Questions:

What are the measures taken by the Government to give full recognition to the important work carried out by defenders working on land and environmental issues? How does the Government proceed to find a balance between economic development and respect of the environment, including the right to use land, natural wealth and resources, and the cultural rights of certain groups, including indigenous peoples and minorities?

What are the measures taken by the Government to guarantee the protection of human rights defenders throughout the country, fight against the impunity of violations against human rights defenders and ensure that their working environment is conducive to the conduct of human rights work?

What are the measures taken by the Government to ensure that the right of human rights defenders to meet, assemble and hold or participate in a protest, rally, demonstration in particular to denounce land grabbing or environmental degradation is respected?

What are the measures taken by the Government to ensure full participation and consultation of land and environment rights defenders in agrarian law reforms as well as reforms related to social conflicts?

Restrictions on civil society organisations: a shrinking space?

In addition, Law No. 17 of 2013 on Societal Organizations (*Organisasi Kemasyarakatan*) replaced Law No. 8 of 1985 on Societal Organizations on July 22, 2013 to govern the creation and activities of civil society organisations (CSOs). The new legal framework is intended to reinforce the role of the Ministry of Home Affairs to control CSOs. This Law regulates “*all organizations founded and formed by the society voluntarily on the basis of shared aspiration, will, needs, interest, activity and purposes in order to participate in the development with the intention to achieve the objective of the Unitary State of the Republic of Indonesia based on the Pancasila*” (Article 1). With the controlling authority over all types of CSOs given to the Ministry of Home Affairs, Law No. 17 of 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. This Law provides discriminatory and excessive bureaucratic controls over international CSOs. Some groups fear that this law will be used to silence human rights defenders and community leaders denouncing resource-related human rights violations.

Question:

What are the measures taken by the Government to ensure that the Law on Societal Organisations is in compliance with the provisions of Articles 18, 19 and 22 of the Covenant as expounded by the Committee in its general comments No. 22 (1993) and No. 34 (2011)?

The right to freely choose work and the right to favourable working condition

A disturbing case of modern-day slavery and ill-treatment has been reported in a skillet manufacture owned by Yuki Irawan in Bayur Opak Village, Sepatan district, Tangerang regency. Several workers (many of them minors) are made to work under inhuman conditions without pay. Worse still, when they do not meet impossible targets set by their supervisors, they are falsely imprisoned, beaten, doused with hot liquids, burnt with lit cigarettes, and their personal property confiscated. So far, the authorities has either failed to respond or has been very slow to take action on any of these cases, despite reports made to the appropriate authorities.

Question:

Please explain how the Government is dealing with complaints of slavery and ill-treatment on the work place and why the authorities have failed to take appropriate action on the above-mentioned case?

Discrimination in access to employment

Certain categories of the population continue to suffer discrimination in their access to work, in contradiction with the provisions of the Covenant, especially Article 6 (equal access to employment) and Article 11 (legal security of tenure). More particularly, there are at least three presidential decrees⁵ restricting the appointment and promotion of victims of human rights violations of 1965/1966 in the police force, the armed forces and the civil service.

Question:

Please explain why the Indonesian government is still applying discriminatory rules for the victims of human rights violations occurred in 1965/1966, including through a) Presidential Decree no.28/1975 on the treatment of those involved in G30S PKI, b) Presidential Decree No.53/1988 relating to the dismissal of military and police member, c) Presidential Decree No.233/KOTI/1966 relating to to mass organisation under communist party..

Is the National Human Rights Commission competent to receive complaints against companies for their failure to respect human rights?

How do the authorities ensure that national and transnational corporations respect and are held accountable for any corporate-related human rights violations?

The right to adequate housing for Internally Displaced Persons (IDPs): the case of the Shiite community in Sidoarjo

The Shiite community in Sampang, Madura has been displaced and continue to be harassed since 28 December 2011. The community, consisting of 584 persons (135 families) fled their homes after living and worship areas were burnt down and their leader, Tajul Maluk, received death threats and was criminalised and penalised.

Question:

What measures have been taken by the government in order to provide effective legal remedies for the IDPs? Is the situation of the Shiite community in Sampang in accordance with duly enacted law,

⁵ Presidential Decree No. 28/1975 on the treatment of those involved in G30S PKI, Presidential Decree No. 53/1988 relating the dismissing of military and police member and Presidential Decree No. 233/KOTI/1966.

including resettlement or compensation as regulated in the government immediate obligations?

The right to adequate housing for Internally Displaced Persons (IDPs): the case of East Timor refugees

The neglect of refugees from East Timor also gives serious cause for concern. A quarter of a million people were forced out of East Timor after 1999 by the Indonesian security forces and militias. Today, several thousand people are still living in the western part of the island of Timor and East Nusa Tenggara for economic reasons. Most of the displaced victims are former militia and pro-integration leaders and their families who are afraid to return to East Timor for security concerns. They are currently housed by the local government in deplorable conditions and do not know when they will be repatriated.

Question:

How is the Government dealing with the housing condition of East Timor refugees in West Timor and East Nusa Tenggara?

The right to adequate housing for Internally Displaced Persons (IDPs): the case of the victims of human rights violations in 1965-1966

The events of 1965/1966 also resulted in the destruction of property belonging to human rights victims. Besides the arrest of those suspected to be members or sympathizers of the Indonesian Communist Party, the victim's houses were also forcibly grabbed either by the military or by civilians.

Question:

What kind of legal remedies have been taken by the government in favour of those affected by eviction orders? Did the State Party provide any compensation for such victims?

The right to strike

In principle, pursuant to Article 137 of Law No. 13/ 2003 and Article 8 of CESCRC, workers have the right to strike. But in reality, workers who exercise this right face repression. For example, several strikes held in West Java were heavily repressed in 2013. On 12 September 2013, in Bekasi, members of Bekasi Metro Police exercised violence against 450 members of the labour union from Kalbe Farma Company. The gathering was forcibly disbanded by mobile brigade officers, who resorted to violence to put an end to the movement of protest. On 23 September 2013, in Karawang, the Teluk Jambe police violently dispersed a strike action organised by workers from the Fuji Seat Company. The police started to repress the movement at the time when the workers leader was coordinating with the police to discuss on the continuation or dissolution of the strike. Suddenly police officers forcibly dispersed the workers without any warning. Police officers resorted to violence such as beating and kicking against demonstrators. The police also fired tear gas into the crowd within two or three feet. Again, on 31 October 2013, workers held a strike in Bekasi and were attacked by the paramilitary organization "Pemuda Pancasila", while the police on site did nothing to prevent clashes and protect workers on strike. 17 people were injured, including 15 people from the labour union and 2 persons working for the company in question.

Question:

How is the right to strike guaranteed? Does the government disseminate information related to the right to strike to law enforcement bodies, such as the police? Why do such repressive acts continue to occur though the right is protected under national and international law?