



Sawit Watch



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Mr. MS Kaban

Minister of Forestry of the Republic of Indonesia

Gedung Manggala Wanabakti
Jl. Jend. Gatot Subroto
Senayan - Jakarta

May 15th 2009

Re: Indonesian Draft Readiness Plan, 16 October 2008

To the honourable Minister,

We are writing to convey our concerns regarding the current draft Readiness Plan ("R-Plan") being circulated by the Government of Indonesia in preparation for review and consideration by the Forest Carbon Partnership Facility ("FCPF"). The draft that is available to the public and to indigenous peoples in Indonesia is dated 16 October 2008, and makes clear that a revised version of this document will be prepared in the future. From the information available to us, it appears that Indonesia's R-Plan will be reviewed and considered at the June 2009 FCPF Participant's Committee Meeting. We have serious concerns regarding the current draft, the gaps and omissions contained therein, and the time that will be made available to review the revised, final R-Plan.

First, the October 2008 draft is substantially incomplete as it lacks key information "to be added later" and contains only one of the required ten attachments, which in turn contain detailed information about the plan itself. While we understand that a further draft including this information will be produced prior to consideration by the FCPF, we want to emphasize that this information is critically important to indigenous peoples' right to effectively participate in decision making, a right that must be respected according to the FCPF Charter. It is only with such provision of information – well in advance of any consideration of R-Plan by the FCPF Participant's Committee Meeting – that an informed, effective and self-determined discussion and decision-making process can take place among the diverse indigenous peoples of Indonesia. Accordingly we would appreciate information as to when such documents will be provided for further analysis as well as a commitment not to consider the proposed R-Plan until such time as indigenous peoples' right to effectively participate is adequately secured and respected in relation to this document.

Second, we have serious concerns about the current content of the draft R-Plan that will need to be addressed in any further iteration of the document. Crucially, the current draft makes no reference to, nor contains any attempt to comply with, key requirements of the FCPF Charter. This is perhaps not entirely surprising as the Guidelines for the Review of R-Plans similarly contains no reference to the Charter, a strange oversight given that the Charter is the overarching legal framework for all activities and operations of the FCPF.

In particular we would like to draw attention to Principle 3.1(d) of the FCPF Charter, which requires that activities under the FCPF (this includes the elaboration of the R-PIN and R-PLAN)

comply with the World Bank's Operational Policies and Procedures, taking into account the need for effective participation of Forest-Dependent Indigenous Peoples and Forest Dwellers in decisions that may affect them, respecting their rights under national law **and applicable international obligations**" (emphasis added).

In the case of Indonesia, the UN Committee on the Elimination of Racial Discrimination ("CERD") has highlighted a number of critically important aspects of these applicable international obligations. In a communication adopted under its early warning and urgent action procedures in March 2009, CERD specifically addresses Indonesia's ongoing failure to amend its national laws so as to bring them into compliance with indigenous peoples' rights and the State's corresponding international obligations. CERD specifically identifies both Law 41 (1999) on Forestry and the draft "Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation" (2008) as being incompatible with indigenous people's rights because they appear to "deny any proprietary rights to indigenous peoples in forests."¹ This point was also raised in CERD's 2007 concluding observations on Indonesia, which also highlight the need to obtain indigenous peoples' free, prior and informed consent in relation to any decisions that may affect them.² Regrettably, not only has the Government of Indonesia yet to respond substantively to CERD, it has also issued the 2008 draft Regulation as a formal Regulation of Minister of Forestry no. 30/2009, without amending the provisions found to be problematic. Further to this, the Government of Indonesia has recently released a further two regulations through the Ministry of Agriculture that reiterate in their text the same provisions found in Law 41 (1999) on Forestry and the above cited regulation on REDD, indicating that the Government appears to be ignoring the recommendations of CERD.³

CERD also identified a number of systemic violations of indigenous peoples' rights that demonstrate the nature and depth of the discrimination faced by indigenous peoples in Indonesia and, as well, call into question whether Indonesia is able to comply with its applicable international obligations in the near term with respect to the FCPF. For instance, under Indonesian law, indigenous peoples' religions are simply not recognised and, unless they profess one of the five recognised faiths, they are denied equal protection of the law in this regard.⁴ Similarly, CERD found that Indonesian law lacks "appropriate safeguards guaranteeing respect for the fundamental principle of self-identification in the determination of indigenous peoples."⁵ Moreover, CERD observed that Indonesian law and practice are replete with instances where "the rights of indigenous peoples have been compromised, due to the interpretations adopted by

¹ See http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia130309.pdf.

² *Concluding observations of the Committee on the Elimination of Racial Discrimination: Indonesia*, 15/08/2007. CERD/C/IDN/CO/3, at para. 17 (stating, inter alia, that "The Committee is concerned that references to the rights and interests of traditional communities contained in domestic laws and regulations are not sufficient to effectively guarantee their rights (arts. 2 and 5)" and; The State party should also ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in it"). Available at: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.IDN.CO.3.pdf>.

³ These two additional regulations are Ministry of Agriculture Regulation No. 14/Permentan/PL.110/2/2009 regarding the use of peat land for oil palm cultivation below 3 meters depth (Pedoman Pemanfaatan Lahan Gambut Untuk Budidaya Kelapa Sawit) and Ministry of Agriculture Regulation No. 26/Permentan/ar.140/2/2007 regarding Plantation Business Permit (Izin Usaha Perkebunan)

⁴ *Op cit.* CERD/C/IDN/CO/3, para. 21.

⁵ *Id.* at para. 15.

the State party of national interest, modernization and economic and social development.”⁶ It thus recommended that Indonesia amend its “domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development are defined in a participatory way, encompass world views and interests of all groups living on its territory, and are not used as a justification to override the rights of indigenous peoples.”⁷ This has yet to occur, and as CERD found in March 2009, Indonesia continues to develop discriminatory laws and regulations that deny indigenous peoples’ rights in contravention of its applicable international obligations.

We have discussed our concerns with two recent regulations above. Given the state of national laws and regulations in Indonesia and the lack of effective protections for the rights of indigenous peoples therein, we were surprised to read in the draft R-Plan that “[t]he government has made extensive efforts to accommodate community rights in forest management through forestry regulations and laws.”⁸ It is unclear to us what laws and regulations are being referenced here in the draft R-Plan. We would appreciate guidance from the Government of Indonesia on the steps that they have taken to provide for and protect indigenous peoples’ rights in existing and proposed laws and regulations.

Further applicable international obligations are also not mentioned or addressed in the current draft R-Plan. Key among these is the obligation to “[p]rotect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements,” as protected under Article 10(c) of the Convention on Biological Diversity, a Convention to which Indonesia is a signatory.

Third, and finally at this time, the current draft places emphasis on a separate report and consultation process, the Indonesia Climate Forest Alliance (IFCA) report completed in 2007. The draft R-Plan acknowledges that “this initial R-Plan was prepared through limited consultation processes,” but goes on to justify this by stating that “there have been extensive stakeholder processes on REDD throughout the country for the past two years where the team members actively participated.”⁹ These ‘stakeholder processes’ were those held in the preparation of the IFCA report, although examination of the IFCA report provides no detail about the ‘stakeholder processes’ involved. A recent public consultation was held on a draft regulation on REDD being prepared by the Ministry of Forestry, on the 25th of March in Jakarta, at which meeting draft copies of the R-Plan were made available – however the draft circulated continues to be the October 2008 version raising questions about the response of the Indonesian government to the critiques raised by indigenous peoples in Indonesia to that draft.

This dearth of information regarding consultations generally and more specifically with indigenous peoples to date is matched by the absence of information about consultation processes with respect to indigenous peoples in the future. Although the draft R-Plan (at p. 18) states that such information is to be included in the (yet to be seen) new iteration of the draft, the indications of the format of such consultations contained in the current draft are worrying and do not comply with World Bank standards that require indigenous peoples to be ‘involved in decisions that may affect them’ (OP 4.10, for instance). Indigenous peoples’ right to effective participation and to free, prior and informed consent are amplified in relation to the FCPF Charter’s requirements that their rights as defined by applicable international obligations shall be respected. This must also apply to the development of the terms of the R-Plan.

⁶ *Id.* at para. 16.

⁷ *Id.*

⁸ Draft Indonesian Readiness Plan, 16 October 2008, p. 4.

⁹ *Id.* Draft Indonesian Readiness Plan, p. 7.

It is deeply troubling that, when asked to identify stakeholder groups that will be involved in future consultations, the draft R-Plan does not even mention indigenous peoples.¹⁰ However, when asked directly about the role that indigenous peoples will play in the R-Plan, the response provided by Indonesia is that they "will play an enormously important role", and goes on to specify that "[a]dequate involvement of those groups in the implementation of programmes is key, but also addressing their needs in future public policies will be important."¹¹ These are bare statements: no detail is provided of what they may mean in practice and it offends indigenous peoples' rights that such measures could be developed without indigenous peoples' meaningful and effective participation in their design and implementation.

In short, the current draft R-Plan foresees a process through which indigenous peoples may be involved in the implementation of activities designed for them and decided on without their informed participation and without their consent. Furthermore, the details of any role provided to indigenous peoples, it is stated "will be defined in detail through stakeholder consultations and will be provided in the later draft of this R-Plan." Given the exceedingly short period of time between now and the consideration of the proposed Indonesian R-Plan in June 2009, we would like to know whether such 'stakeholder consultations' have been initiated and when further information about the 'role' of indigenous peoples will be available.

In the light of the concerns raised here, we call on the Government of Indonesia to immediately provide to indigenous peoples in Indonesia an updated R-Plan document and provide details regarding the expected dates of completion for the R-Plan. Furthermore, the Government must establish an effective process of consultation and collaboration with indigenous peoples' organizations and authorities to enable their participation in the decisions about the development of REDD that will impact on their lives.

Sincerely,

Abdon Nabadon

Secretary General, Aliansi Masyarakat Adat Nusantara

Abetnego Tarigan

Executive Director, Sawit Watch

cc:

Victoria Tauli-Corpuz, Chair, UN Permanent Forum on Indigenous Issues

Benoit Bosquet, World Bank

Navin Rai, Indigenous Peoples Focal Point, World Bank

Charles Dileva, Legal Department, World Bank

Haddy Sey, Forest Carbon Partnership Facility, World Bank

¹⁰ *Id.* at p. 18 (stating "Please refer to Table 1 (point 2(c) for explanation. Basically all groups listed in Table 1 will be involved in the consultations.") However, Table 1 does not mention indigenous peoples.

¹¹ Draft Indonesian Readiness Plan, 16 October 2008. p. 18