**Submission for the CEDAW Day of General Discussion on the “Rights of Indigenous Women and Girls”**

*The land and forest is my mother who gives me life and from whom I get food. Without the forest and land, I would die. My family and I, as well as other people in my house, live from this land and water (KA, Indigenous Papuan woman, Kebar Valley, Papua Barat)*

***I. Introduction***

1. We welcome the initiative by the Committee on the Elimination of Discrimination against Women to draft a new General Recommendation on the rights of indigenous women and girls. We note that many organizations, activists, and others have been underscoring the need for such a General Recommendation for years, and also emphasize the need to, and importance of, explicitly addressing the rights of indigenous women and girls under CEDAW.
2. This submission[[1]](#footnote-2) aims to suggest relevant language for the General Recommendation drawn from the experiences of and context faced by indigenous women and girls in West Papua,[[2]](#footnote-3) Indonesia. It is prepared by Franciscans International, Asia Justice and Rights (AJAR), Justice, Peace, and Integrity of Creation of Franciscans in Papua (JPIC Franciscans Papua), Justice, Peace and Integrity of Creation Synod GKI in Tanah Papua (JPIC GKI in Tanah Papua) and Pusaka Foundation.

***II. Recognition as Indigenous***

1. Indonesia’s Constitution recognizes “traditional communities along with their traditional customary rights”; [[3]](#footnote-4) the State has also passed several laws and regulations which seek to further protect land and other rights of indigenous peoples. Therefore, Indonesia upholds the constitutional mandate of the rights of the Indonesian “Masyarakat Hukum Adat” (MHA) or “adat community.”[[4]](#footnote-5) In practice, the government does not recognize the existence of “indigenous people” as defined in the UN Declaration of the Rights of Indigenous Peoples (UNDRIP). Therefore, indigenous peoples often cannot seek protection under the law due to not being recognized as indigenous; self-identification as indigenous requires legal approval through local regulations.
2. For the case of Papua, the Special Autonomy Law for Papua No. 21/2001[[5]](#footnote-6) recognizes the Melanesian Papuans as “natives” to Papua.[[6]](#footnote-7) It also has a provision for the establishment of Papua People’s Assembly as a representative body of Papua natives. The Law also regulates the protection of rights of the Papuan natives.[[7]](#footnote-8)
3. In 2012, the Indonesian Constitutional Court ruled that the recognition of the *adat law* communities is to be done through local regulations as the bill proposed at the national level has not been ratified.[[8]](#footnote-9) This issue was previously noted by the Committee on Economic, Social and Cultural Rights in relation to the rights of *Masyarakat Hukum Adat,[[9]](#footnote-10)* with the Committee recommending that Indonesia harmonize its laws and ratify the ILO’s Indigenous and Tribal Peoples Convention (No. 169).
4. In its letter[[10]](#footnote-11) to the Government of Indonesia, the Committee on the Elimination of Racial Discrimination expressed its concerns that allegedly very few indigenous peoples have gained official state recognition. Therefore, the Committee asked the Government of Indonesia to provide information on the safeguards adopted in regard to self-identification in the determination of indigenous peoples.
5. Importantly, the Indigenous and Tribal Peoples Convention recognizes self-identification as a “fundamental criterion” in its application.[[11]](#footnote-12) In its General Recommendation VIII, the Committee on the Elimination of Racial Discrimination also affirmed that individuals can self-identify “as being members of a particular racial or ethnic group or groups…if no justification exists to the contrary.”[[12]](#footnote-13) The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) also holds “Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions.”[[13]](#footnote-14)
6. While Indonesia voted in favor of the UNDRIP, it argues that the declaration is not applicable within the State.[[14]](#footnote-15) Given that there is no universally agreed upon definition for indigenous people, and the widely held recognition of the importance of self-identification, Indonesian law and practices should not over encumber indigenous peoples in bureaucratic processes for recognition and the protection of their rights.

***The General Recommendation should affirm the principle of self-identification and encourage States to ensure that processes and procedures which allow for groups to be identified as indigenous are not overly burdensome, and instead have the aim of fulfilling the rights of indigenous peoples, including women and girls.***

***III. State Obligations and Business Responsibilities***

1. The Concept Note for the development of a General Recommendation on the rights of indigenous women notes issues related to land rights, including the loss of territory as a consequence of “the execution of mega development projects, extractive industries” amongst other factors.
2. In Indonesia, and in particular in West Papua, large scale development projects, especially through the conversion of customary land and forests to palm oil plantation,[[15]](#footnote-16) are among the key causes for the economic marginalization of women. The destruction of forests and hunting grounds as a source of livelihood for indigenous communities puts an additional burden on the lives of affected Papuan women. As a result, indigenous Papuan women have limited access to economic resources.
3. Indigenous women are often excluded by companies and *adat* institutions from negotiations and discussions about land deals, denying them due compensation and benefit sharing by paying clan leaders or male family relatives. Jobs and other benefits like scholarships and education opportunities are monopolized by male clan members. Often companies isolate clan leaders from the community to make non-transparent deals.[[16]](#footnote-17)
4. Government-led development projects in Papua Province, such as the Merauke Integrated Food and Energy Estate (MIFEE), which planned to convert at least a million hectares of forests and swamp into privatized concessions has particularly affected Marind indigenous women who live in the area of the project. Sago trees found in the forest have been their main source of food. In addition, the destruction of the forest for the project undermines the special relationship of Marind men, women, and children to the plants and animals of this forest.[[17]](#footnote-18) Due to the deforestation caused by the project, the Marind women were also deprived from their access to water springs and wells which were previously found inside the forest.
5. The Committee on Economic, Social and Cultural Rights also previously noted its concern in regards to human rights violations in the mining and plantations sectors in Indonesia, and that free, prior, and informed consent is not always sought nor have decisions been guaranteed.[[18]](#footnote-19)

***Given the disproportionate adverse impacts often felt by women, children and indigenous peoples in the course of business activities, the General Recommendation should underscore the need for businesses to consider the impacts of their relationships and activities on indigenous women and girls in particular during their human rights due diligence processes.[[19]](#footnote-20) States and businesses should ensure that indigenous women and girls are part of FPIC processes, and States should ensure the protection the rights of indigenous peoples in their development agendas.***

***IV. Participation in political affairs***

1. Indonesia currently requires that political parties list of candidates for the House of Representatives include at least 30% women.[[20]](#footnote-21) Decision of the General Election Commission No. 810/2019 recognized “Noken System” as a local wisdom and guidelines for voting which provides affirmative support for indigenous Papuans.[[21]](#footnote-22) However, it has not substantially increased women's participation in politics. The calculation mechanism that has been represented by the tribal chief is very advantageous for men who have a more prominent position in custom (*adat*) structures, so that the women involved find it difficult to get votes.
2. However, the participation of women in politics and administration in the Provinces of Papua and Papua Barat is still below the statutory quota of 30 %. In the Papua Barat Province, from the total number of 45 elected members for the period of 2019 to 2024, there are only seven (7) women[[22]](#footnote-23) or only 15.5 % of the total. Among those, indigenous Papuan women are further underrepresented. Currently, three (3) out of seven (7) women are indigenous Papuan women. This translates to only 4.4% of the total number of the elected parliamentarians. For Papua Province, the 2019 to 2024 Provincial parliament has only eight (8) women[[23]](#footnote-24) out of 49 elected members,[[24]](#footnote-25) or 16 %. From the eight women, five (5) or 10% are indigenous Papuan women. [[25]](#footnote-26) At the regency level in the Papua Province, there is no woman leadership at all.[[26]](#footnote-27) This situation is the same in the Papua Barat Province where there is no woman leader in all regencies.[[27]](#footnote-28)
3. Article 7 of CEDAW calls on States Parties to “take all appropriate measures to eliminate discrimination against women in the political and public life of the country”; General Recommendation No. 23 notes the use of temporary special measures, including “setting numerical goals and quotas.”[[28]](#footnote-29) General Recommendation No. 23, however, does not recognize the additional structural and other barriers that are faced by indigenous women in particular.

***The General Recommendation should call on States to ensure that temporary and other measures consider the unique and additional barriers that indigenous women face in participating in political and public life and take action to not only minimize these barriers but also support and facilitate indigenous women and girl’s participation.***

***V. Impact of militarization of land / conflict on indigenous women and girls***

1. The Indonesian military has been present in the Provinces of Papua and West Papua since the integration in 1969. The on-going conflict between the Indonesian security forces (i.e. military and police) and the pro-independent Free Papua Movement (Organisasi Papua Merdeka, OPM) in the Provinces of Papua and West Papua, has the consequence of a permanent presence of Indonesian military that continues to increase.[[29]](#footnote-30) The two provinces are, de facto, military operation areas. Torture, killing, surveillance, arbitrary arrest and detention, and disappearances are frequently employed by the Indonesian security services to intimidate civilians in the Provinces of Papua and Papua Barat to control civilians, including women.[[30]](#footnote-31)
2. Between December 2018 and July 2019, several thousand indigenous Papuans in the Nduga Regency, in Papua Province were displaced. This occurred as a result of violent clashes between the Indonesian security forces and the West Papua National Liberation Army (TPN PB) - a pro-independent Papuan armed group, which started when 19 Indonesian contractor workers were killed by members of TPN PB on 8 December 2019. Women and children were particularly affected during this conflict.
3. While there is no report of the killing of women by the Indonesian security forces, the conflict and presence of the military still has a severe impact on indigenous women. It was reported that in the aforementioned 8-month period, 77 women died (21 adult females, 21 female minors, 14 female toddlers, 17 female babies) as a consequence of their displacement. Causes of death were mainly famine[[31]](#footnote-32) and other illnesses, due to poor living conditions in the shelters.[[32]](#footnote-33)

***The General Recommendation should call on States to ensure humanitarian access for indigenous women and girls as well as others who are displaced by state violence or armed conflict and ensure their return to their land and property.***

1. Some parts of the information provided were taken from the submission for the List of Issues to CEDAW for the 8th periodic review of Indonesia by Franciscans International and Geneva for Human Rights and the submission by Asia Justice and Rights (AJAR). [↑](#footnote-ref-2)
2. West Papua refers to Papua and Papua Barat Provinces in Indonesia. [↑](#footnote-ref-3)
3. The Indonesian Constitution, Article 18B, Unofficial translation available at: <https://www.constituteproject.org/constitution/Indonesia_2002.pdf?lang=en>. The term used in the Indonesian Constitution is “Masyarakat Hukum Adat” or customary law communities instead of “masyarakat adat,” or customary communities. The term “hukum” in the “masyarakat hukum adat” refers to law or legal recognition from the authorities. [↑](#footnote-ref-4)
4. UN Universal Periodic Review, Indonesian National Report to Human Rights Council Working Group on the Universal Periodic Review, A/HRC/WG.6/27/IDN/1, 20 February 2017. [↑](#footnote-ref-5)
5. Special Autonomy Law for Papua No. 21/2001, the English unofficial translation of the Special Autonomy Law for Papua is accessible at <https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=84431> [↑](#footnote-ref-6)
6. Idem, Article 1t says “Papua native is a person originating from the Melanesian race group, comprising native ethnic groups in Papua Province and/or a person accepted and acknowledged as a Papua native by the Papua adat community. “ [↑](#footnote-ref-7)
7. Idem, Article 5.2. “In executing the Special Autonomy in the Papua Province a Papua People's Assembly shall be formed which is the cultural representation of the Papua natives with certain authorities to protect the rights of the Papua natives, based on respect to customs (adat) and culture, empowerment of women and stabilization of a harmonious religious life.” [↑](#footnote-ref-8)
8. Decision No. 35/PUU-X/2012 of the Indonesian Constitutional Court. The unofficial translation is accessible at <https://www.forestpeoples.org/sites/default/files/news/2013/05/Constitutional_Court_Ruling_Indonesia_16_May_2013_English.pdf>. [↑](#footnote-ref-9)
9. Concluding observations on the intial report of Indonesia, Committee on Economic, Social and Cultural Rights, 19 June 2014, E/C.12/IDN/CO/1, paras. 38-39. [↑](#footnote-ref-10)
10. UN Committee on the Elimination of Racial Discrimination, letter of the Committee on the Elimination of Racial Discrimination to the Government of Indonesia, 30 April 2021, CERD/EWUAP/103rd Session/2021/MJ/CS/ks. [↑](#footnote-ref-11)
11. Indigenous and Tribal Peoples Convention, International Labor Organization, 1989 (No. 169), Article 1(2) [↑](#footnote-ref-12)
12. UN Committee on the Elimination against Racial Discrimination, General Recommendation VIII Concerning the Interpretation and Application of Article 1, Paragraphs 1 and 4 of the Convention Identification with a Particular Racial or Ethnic Group, Adopted at the Thirty-eighth session of the Committee on the Elimination of Racial Discrimination, on 22 August 1990

    (Contained in Document A/45/18) [↑](#footnote-ref-13)
13. UN Declaration on the Rights of Indigenous Peoples, Resolution Adopted by the General Assembly on 13 September 2007, Article 33 [↑](#footnote-ref-14)
14. UN Human Rights Council 45th Session, Oral Statement of the Indonesian delegation during the interactive dialogue with the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). The statement reaffirmed that UNDRIP is not applicable in the context of Indonesia. [↑](#footnote-ref-15)
15. Forest and Society, Vol. 5(1): 23-31, April 2021. Accessible at <https://journal.unhas.ac.id/index.php/fs/article/view/11343> [↑](#footnote-ref-16)
16. Indonesian Human Rights Commission, *“National Inquiry on the Rights of Indigenous People on Their Territory in the Forest Zone: Book II Indigenous Women’s Rights Violations in the Forest Management”*, December 2015, see https://www.komnasham.go.id/files/1475132149$1$8R632$.pdf ; see also Asia Justice and Rights, *“All the Birds are Gone”* at <https://asia-ajar.org/2021/03/all-the-birds-are-gone-indigenous-women-speak-out-against-forest-loss-in-papua/> [↑](#footnote-ref-17)
17. The Conversation, *In West Papua, oil palm expansion undermines the relations of indigenous Marind people to forest plants and animals*. News article, accessible at <https://theconversation.com/in-west-papua-oil-palm-expansion-undermines-the-relations-of-indigenous-marind-people-to-forest-plants-and-animals-124885> [↑](#footnote-ref-18)
18. UN Committee on Economic, Social and Cultural Rights, Concluding observations on the initial report of Indonesia, 19 June 2014, E/C.12/IDN/CO/1, para. 27 [↑](#footnote-ref-19)
19. UN Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, para. 8 [↑](#footnote-ref-20)
20. Law No. 7/2017; See also: Indonesia Country Data, International IDEA, https://www.idea.int/data-tools/data/gender-quotas/country-view/142/35 [↑](#footnote-ref-21)
21. Indonesian Elections Commission, Decision No. 810//PL.02.6-Kpt/06/KPU/IV/2019 on the *Guidelines for the Implementation of Voting with the Noken/Ikat System in Papua Province in the 2019 General Election*. Accessible at [https://jdih.kpu.go.id/data/data\_abstrakkepkpu/ABS%20810%20THN%202019.pdf](https://jdih.kpu.go.id/data/data_abstrakkepkpu/ABS%252520810%252520THN%2525202019.pdf)  and [https://jdih.kpu.go.id/data/data\_kepkpu/KPT%20810%20THN%202019.pdf](https://jdih.kpu.go.id/data/data_kepkpu/KPT%252520810%252520THN%2525202019.pdf) [↑](#footnote-ref-22)
22. Jagat Papua, *Women representation in Papua Barat Parliamentarian Provincial Province should have strategic roles.* News article, accessible at <https://www.jagatpapua.com/keterwakilan-perempuan-di-dpr-papua-barat-perlu-diberi-peran-strategis/> [↑](#footnote-ref-23)
23. According to our information, there were 748 women candidates for the 2019 Papua Province parliamentarian elections. Only 8 women out of 748 women candidates were elected. [↑](#footnote-ref-24)
24. Papua Provincial Parliament, *Members of Provincial Parliament of Papua Province*. Accessible at <https://dpr-papua.go.id/profil-anggota-dprp-masa-jabatan-2019-2024/> [↑](#footnote-ref-25)
25. Jubi, W*omen representation in the parliament is only a complimentary to political parties.* News article, accessible at <https://jubi.co.id/keterwakilan-perempuan-di-parlemen-papua-hanya-jadi-pelengkap-loloskan-parpol/> [↑](#footnote-ref-26)
26. Government of Papua Province, *List of the Head of Regencies in Papua Province*. Accessible at the list of head of regencies in Papua Province at <https://www.papua.go.id/view-detail-listkab-all/daftar-kabupaten.html> [↑](#footnote-ref-27)
27. Government of Papua Barat Province, *List of the Head of Regencies in Papua Barat Province*. Accessible at https://id.wikipedia.org/wiki/Daftar\_bupati\_dan\_wali\_kota\_di\_Papua\_Barat [↑](#footnote-ref-28)
28. General Recommendation No. 23: Political and public life, Adopted by the Committee on the Elimination of Discrimination Against Women, Sixteenth session (1997), para. 15, <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_4736_E.pdf> [↑](#footnote-ref-29)
29. The Diplomat, *Indonesia Deploys Forces to Troubled Papua Region*. News article, accessible at <https://thediplomat.com/2021/05/indonesia-deploys-special-forces-to-troubled-papua-region/> [↑](#footnote-ref-30)
30. International Coalition for Papua, *Human Rights and Conflict Escalation in West Papua, 2019. The sixth report of the International Coalition for Papua (ICP) provides an analysis of violations from January 2017 until December 2018 and an overview of developments in 2019*. Accessible at <https://humanrightspapua.org/images/docs/HumanRightsPapua2019-ICP.pdf> [↑](#footnote-ref-31)
31. Radio New Zealand, *Indonesian govt neglecting Papuans displaced by conflict: researcher*. News article, accessible at <https://www.rnz.co.nz/international/pacific-news/396527/indonesian-govt-neglecting-papuans-displaced-by-conflict-researcher> [↑](#footnote-ref-32)
32. United Nations Human Rights Council, Communication of a group of special procedure mandate holders to the Government of Indonesia, AL IDN 1/2020 which expressed concerns over the internal displacement in West Papua due to the arm conflicts, including concern over the food shortage in the shelter. [↑](#footnote-ref-33)