



**KOMISI NASIONAL HAK ASASI MANUSIA
REPUBLIK INDONESIA**

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Jakarta, 7th January 2022

Re : NHRI Submissions on CESCER 70
Pre-Sessional Working Group

The CESCER Committee

The Office of UN High Commissioner for Human Rights

Geneva, Switzerland

Dear Madam/Sir,

Following the International Covenant on Economic, Social and Cultural Rights (CESCR) 70 Pre-Sessional Working Group that scheduled to be held on 7-11 March 2022, Indonesia National Commission on Human Rights (Komnas HAM RI) as an A-accredited NHRI from GANHRI, has prepared and herewith submit Komnas HAM RI Proposed List of Issues Prior to Reporting (LOIPR) on Indonesia's anticipated 2nd Periodic Report under the International Covenant on Economic, Social and Cultural Rights (ICESCR).

I hope the submitted report is considered as input that enriches the view on the situation of economic, social, and cultural rights in Indonesia as well as contributes to the human rights situation in Indonesia.



Chairperson

Ahmad Taufan Damanik



**THE INDONESIAN NATIONAL COMMISSION ON HUMAN RIGHTS
(KOMNAS HAM)**

Jl. Latuharhari No. 4B, Menteng, Jakarta Pusat 10310, Indonesia

Submission to The Committee on Economic, Social and Cultural Rights

**List of Issues Prior to Reporting (LOIPR) on Indonesia's anticipated 2nd
periodic report under the International Covenant on Economic, Social and
Cultural Rights (ICESCR)**

I. INTRODUCTION

1. The Indonesian National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia*, popularly known and referred to by its acronym “Komnas HAM”), provides this submission to the United Nations Committee on Economic, Social and Cultural Rights (hereafter the Committee) with regard to the Indonesia’s implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
2. This submission does not provide a complete assessment of Indonesia’s compliance with the ICESCR, but only focus on the relevant recent and current areas of Komnas HAM’s works in regard to Komnas HAM’s role to monitor Indonesia’s Compliance with ICESCR. The Indonesian National Commission on Human Rights (Komnas HAM) is an independent institution. Under the Law No. 39/1999 on Human Rights, Komnas HAM has objective to:
 - a) Develop conditions conducive to the implementation of human rights in accordance with *Pancasila*¹, the 1945 Constitution, the United Nations Charter, and the Universal Declaration of Human Rights; and
 - b) Improve the protection and upholding of human rights in the interests of the development of Indonesian people as a whole and their ability to participate in several aspects of life.
3. To achieve the aims, Article 76 states that Komnas HAM functions are to conduct study, research, dissemination, monitoring and mediation on human rights issues. Thus, Komnas HAM has statutory functions which are: dissemination of national and international human rights concepts, conducting research on various international human rights instruments with a view to recommending their ratification thereof or accession thereto, monitoring and conducting inquiry on the implementation of human rights and submitting views, advices and recommendations to the authorities concerned for the implementation of human rights and conducting regional and international cooperation for the promotion and protection of human rights.
4. Under its statutory function, Komnas HAM can conduct a human rights monitoring including to monitor the implementation of the international human rights to which Indonesia is a state party, in this case the International Covenant on Economic, Social and Cultural Rights (ICESCR).
5. Komnas HAM is also a national human rights institution with an “A” accreditation by the Global Alliance of National Human Rights Institutions.

II. THEMATIC ISSUES

Impact of COVID-19 Pandemic

6. As of late December 2021, according to the recorded official data from Indonesia’s Ministry of Health there have been around 4.2 million people being infected by COVID-19 virus with around

¹ *Pancasila* is or literally five principles is the Indonesian state ideology which is enshrined in the preamble of the 1945 Constitution. The five principles are: a belief in the One and Only God; just and civilised humanity; the unity of Indonesia; democracy led by wisdom of thoughts in deliberation amongst representatives of the people; and achieving social justice for all people of Indonesia.

144 thousand people died² and among them were two thousands health workers.³ The infection rate increased significantly in mid-2021 where the country experienced the second wave of infection and became the country with highest recorded infection rate at the time.⁴

7. In addition to the health issues, the COVID-19 pandemic also has an impact on many other aspects. Some of them are the increasing number of unemployment, poverty rate and the number of students dropping out of school. In Indonesia, the unemployment rate increased to 7.07%, the poverty rate increased to 9.7%, and 983 children dropped out of school.⁵
8. Since March 2020 before President Joko Widodo in mid-April 2020 announced that the COVID-19 pandemic was national disaster situation,⁶ Komnas HAM had set up a special task to monitor the impacts of COVID-19 pandemic and provide recommendations to other relevant authorities to ensure they incorporate human rights approach in making and implementing strategic policies to address the pandemic crisis.⁷
9. Komnas HAM appreciates the serious efforts and important measures taken by the Indonesian government to tackle the pandemic, such as enforcing strict restriction of people mobility in high risk areas and other health protocol in public area, aggressive vaccination program and providing financial support or essential goods subsidies for people living in poverty. However, Komnas HAM documented many concerns with regards to the respect and protection of human rights, including:⁸
 - a) Lack of priority to enhance health services, education support, transportation and communication infrastructure for people living in remote areas;

² Indonesia's Task Force on COVID 19 (Satuan Tugas Penanganan COVID-19), updated data on 26 December 2021, available at: <https://covid19.go.id/p/berita/analisis-data-covid-19-indonesia-update-26-desember-2021>. see also updated data on Indonesia from WHO, <https://covid19.who.int/region/searo/country/id>.

³ Laporan COVID-19 Pusat Digital Tenaga Kesehatan, <https://nakes.laporcovid19.org/statistik>.

⁴ CNBC, Indonesia reported the highest new COVID cases in the world last week, says WHO, 22 July 2021, can be accessed at <https://www.cnn.com/2021/07/22/who-indonesia-reported-most-new-covid-cases-in-the-world-last-week.html>.

⁵ Information that Komnas HAM received in mid-2021, Komnas HAM, *Peran Komisi Nasional Hak Asasi Manusia terkait dengan Dampak Pandemi COVID-19 terhadap Hak Asasi Manusia dan Tujuan Pembangunan Berkelanjutan di Indonesia* (The Role of National Commission on Human Rights of the Republic of Indonesia related to the Impact of the COVID-19 Pandemic on Human Rights and Sustainable Development Goals in Indonesia), 8 July 2021, p. 1, available at [https://www.komnasham.go.id/files/20211007-policy-brief-research-the-role-\\$XK9J.pdf](https://www.komnasham.go.id/files/20211007-policy-brief-research-the-role-$XK9J.pdf) (English Version) or [https://www.komnasham.go.id/files/20211007-policy-brief-penelitian-peran--\\$398U25B.pdf](https://www.komnasham.go.id/files/20211007-policy-brief-penelitian-peran--$398U25B.pdf) (Bahasa Version).

⁶ Badan Nasional Penanggulangan Bencana/BNPB (National Board for Disaster Management), President Announced COVID-19 as National Disaster, 14 April 2020, available at <https://bnpb.go.id/berita/presiden-tetapkan-covid19-sebagai-bencana-nasional>.

⁷ Komnas HAM, joint press release with the Chairperson of BNPB, 21 March 2020, available at <https://www.komnasham.go.id/index.php/news/2020/03/21/1337/poin-poin-utama-konferensi-pers-ketua-komnas-ham-ri-ahmad-taufan-damanik-bersama-ketua-gugus-tugas-percepatan-penanganan-covid-19-letjen-tni-doni-monardo-sabtu-21-maret-2020.html>.

⁸ Komnas HAM, Press Release, Number: 24/HM.00/VII/2021, Policies in Addressing the COVID-19 Must be Exceptional and Humane, 23 July 2021, available at [https://www.komnasham.go.id/files/20210723-keterangan-pers-nomor-24-hm-00-\\$TEZ3V9.pdf](https://www.komnasham.go.id/files/20210723-keterangan-pers-nomor-24-hm-00-$TEZ3V9.pdf). The Press Release was based on Komnas HAM (2020), "Tata Kelola Penanggulangan COVID-19 dalam Perspektif HAM" (Governance of COVID-19 Response in the Perspective of

Human Rights); Komnas HAM's (2021).

- b) Lack of special measures to provide health services for vulnerable groups, such as people with disabilities, LGBT people⁹ or people living with HIV,¹⁰ and proper medical protection tools for health workers who received extra-long working hours and in many cases have to face social stigmatisation from their communities;
- c) Lack of coherent policies and data management that generated miscoordination or overlap authorities between the central and regional governments. In some areas, Komnas HAM also concerned with the policy to mobilise the military personnel in conducting health protocol and public order as it is against the national law;
- d) The central government and national parliament expedited the passage of controversial legislations (the Omnibus Job Creation Law and Mineral and Coal Mining Law amendment) limiting and avoiding meaningful public participation and consultation under the pretext of enforcing strict health protocols;¹¹ and
- e) There has been a high level corruption case implicating the Minister of Social Affairs in the social assistance programs (food aid) for communities affected by the COVID-19 pandemic with the estimated amount of IDR 32 billion (around USD 2.22 million). Eventually the court convicted him for corruption and sentenced him to 12 years' imprisonment and a fine of IDR 500 million (around USD 34 thousand).¹²

Recommendation to the Committee on Economic, Social and Cultural Rights (CESCR):

- To raise whether the GoI have specific policies related to health services and protection for vulnerable groups, and how are those policies implemented;
- To raise the urgency for a centralized policy platform that is controlled by the central government, which is transparent, accountable, non-discriminatory, and participatory. Such a platform can be used to regulate social restrictions/mobility, distribution of aid, and integrated public communication;
- To recommend strict sanctions for violators of health protocols in the form of fines or social sanctions and punishment for specific actions (such as taking the corpse of a positive COVID-19 patient). Fines and social sanctions are put forward to prevent worsened overcrowded of detention centers and prisons;
- To recommend the Government of Indonesia (GoI) to do special efforts in supporting medical officers and workers to maximize the fulfilment of their safety, fulfill those needs and how the government take measure to combat stigma in society for medical officers and workers, including their families;

⁹ Konsorsium Crisis Response Mechanism (CRM) and Kurawal Foundation, Gender and Sexual Diversity Groups in the Middle of the Pandemic: Between Vulnerability and Resilience; a Study of the Impact of COVID-19 on the Social, Economic and Legal Situation of Gender and Sexual Diversity Groups in Indonesia, March 2021, p. 27 & 28, available at https://lbhmasyarakat.org/wp-content/uploads/2021/04/Buku_Dampak-COVID-19-terhadap-Situasi-Sosial-Ekonomi-dan-Hukum-Komunitas-LGBTIQ-di-Indonesia-1-1.pdf.

¹⁰ GWL – INA (Gaya Warna Lentera Indonesia), Impact of COVID-19 Pandemic on HIV Health Services at Health Clinics and Hospitals for Key Population in 5 Cities, 15 Desember 2021.

¹¹ Komnas HAM, Policy Brief; Draft Law on Job Creation (Omnibus Law) from Human Rights Perspective, 13 August 2020, p. 2 & 3, available at <https://www.komnasham.go.id/files/20201007-kertas-posisi-rancangan-undang-SVG35B.pdf>.

¹² Komnas HAM's report, Komnas HAM's Role Responding to the Impact of the COVID-19 Pandemic on Human Rights and Sustainable Development Goals in Indonesia, p. 17 and the Jakartapost, Juliari gets 12 years' imprisonment for COVID-19 aid bribery, 23 August 2021, available at <https://www.thejakartapost.com/news/2021/08/23/juliari-gets-12-years-imprisonment-for-covid-19-aid-bribery.html>.

- To question on how the GoI guarantee and ensure that there are no unilateral layoffs of workers by collecting data of business sectors that are vulnerable or affected by the COVID- 19 and formulating mitigation steps in collaboration with related business associations.

Employment Protection Regulations and Precariate Workers

10. In November 2021, Indonesia's Constitutional Court issued an order to the Government and Parliament to amend parts of the Job Creation Law. The Court also forbade the passing of any further implementing regulations and policies associated with the law in a two-year grace period. If the necessary changes are not made within two years, the Court ordered that the Job Creation Law would become "permanently unconstitutional" and void.
11. In 2020, the GoI initiated a law that aims to create a better employment ecosystem for Indonesia's economic growth which popularly known as the "omnibus law". However, in reality many aspects have been overlooked, both in the formal and material aspects of the process of drafting the Draft Law on Job Creation. The Law was passed by the parliament in November 2020. However, in November 2021, Indonesia's Constitutional Court issued an order to the government and parliament to amend parts of the Job Creation Law after receiving various judicial challenges submitted by different civil society organizations and individuals. If the necessary changes are not made within two years, the Court ordered that the Law would become "permanently unconstitutional".
12. Komnas HAM has submitted a recommendation to the President and Parliament (DPR RI) regarding the Job Creation Draft on August 14, 2020. In the letter Komnas HAM concluded that the procedure for establishing the Job Creation Bill was not in line with the procedures or mechanisms regulated in Article 5(g) of Law No. 12/2011 on Establishing Legislative Product where in the set up of laws and regulations the right to participate is guaranteed and the principle of openness is a fundamental element.
13. The substance of the Law on Job Creation raises concerns about the fulfillment of human rights. Among other things, the resignation of the state's obligation to fulfill the right to work and a decent living thereby violating the obligation of progressive realization of the fulfillment of social and economic rights. This is related to the politics of employment relations which open the widest possible practice of non-permanent work agreements (PKWT)/contracts; ease in the process/mechanism of termination of employment; a reduction in the standard of fairness and fair working conditions in relation to wages, leave and rest, as well as a deterioration in the protection of the right to associate and organize.¹³
14. Komnas HAM documented that in 2019, corporations became the second most reported party related to human rights violations, there were 1,119 cases related to the right to welfare that were reported to Komnas HAM. Of the many cases, including those related to alleged violations of employment due to non-payment of normative rights such as salaries and wages, unilateral layoffs and obstruction of workers' union rights.¹⁴

¹³ Komnas HAM, Omnibus Job Creation Law from Human Rights Perspective, 28 April 2021, available at <https://www.komnasham.go.id/index.php/publikasi/2021/04/28/118/omnibus-law-ruu-cipta-kerja-dalam-perspektif-hak-asasi-manusia.html>.

¹⁴ Komnas HAM, Annual Report 2019, 9 December 2020, available at <https://www.komnasham.go.id/index.php/laporan/2020/12/09/76/laporan-tahunan-komnas-ham-2019.html>

15. Employment trends show that technological advances have resulted in massive informalization of the workforce so that the digital and creative economy absorbs a lot of workers. The massive informalization of the workforce is not accompanied by guaranteed enjoyment of the right to work and a decent living for workers in these sectors. The Job Creation Law and its implementing regulations do not include workers with non-standard and vulnerable forms of employment relationship (precariat workers) in its regulation. This is an implication of the government's neglect of the rights of precariat workers as a group of workers who also have the same rights as formal sector workers.

The Phenomenon of Precariate Workers in Indonesia

A. Ignoring the Rights of Online Driver (Ojek Online) Workers Through Partnerships

16. In 2020, there are at least 4 million online drivers, both motorbikes and car drivers, in Indonesia who join platform companies (digital) as partners. The concept of partner workers perceived as exploitation of online drivers, from their perspectives, because they do not provide protection according to the provisions of the applicable labor regulations in Law no. 13 of 2003 concerning Manpower jo. Job Creation Law. Apart from not providing protection, the relationship between platform companies (digital) and drivers is also very lopsided, where drivers do not have a bargaining position in making policies related to their work. One example is the one-way decision of platform companies in determining service rates, profit sharing discounts, and changing incentive policies without an agreement with drivers.¹⁵

B. Exploitation of Homeworker Without Work Accident Insurance

17. Homeworkers have vulnerabilities due to the lack of clarity on work contracts. Generally, Homeworker are carried out by women as an effort in earning a living for the family. Not infrequently the work also involves children to speed up the works.¹⁶ Their vague status and without a clear contract, make employers ignore their responsibility to fulfill their workers' rights.¹⁷ Working hours that are more than eight hours in a day, are not commensurate with the wages earned so they experience work exploitation. Homeworkers work without job security and have to deal with uncertainties, put them in the most vulnerable situation because this type of work can be easily moved and replaced.¹⁸
18. This vulnerability got worse during the time of the COVID-19 pandemic which caused many of the homeworker lost their jobs. Regarding the right to social security, the guarantees from BPJS Ketenagakerjaan (Employment Social Security System) also cannot be enjoyed by homeworker. The low bargaining position between workers and employers is due to the low level of education of the workers who generally do not attend school or only graduate from primary school. In the midst of various labor policies in Indonesia, up to now it has not accommodated the recognition and protection for the work and protection of domestic worker, including the Job Creation Law. As a result, homeworker are highly vulnerable to occupational exploitation and do not have access to protection for their rights to work and a decent living.

¹⁵ Komnas HAM RI, Review on Job Creation Law (*Tinjauan atas Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja dan Peraturan Pelaksanaannya Pada Klaster Ketenagakerjaan terhadap Hak Atas Pekerjaan dan Penghidupan yang Layak Bagi Pekerja Precariat*), 2021.

¹⁶ An interview with a trade union activist in North Sumatra and public discussion organised by Komnas HAM on the Job Creation Law in Jakarta, 2021.

¹⁷ Opcit.

¹⁸ Opcit.

C. The lack of protection for creative workers in the midst of their significant contribution to the Indonesian economy

19. Although the contribution of the creative industry is quite significant for the Indonesian economy, the protection of the rights of workers in the creative industry is neglected because the government does not include them in the working class whose rights are protected in labor policies.¹⁹ The vulnerabilities experienced by freelancers in the creative industry based on data from the Media Workers and Creative Industries for Democracy (SINDIKASI): 59% do not have a work contract, 38% work more than 8 hours a day, 76% female freelancers do not get menstrual leave, 93 % do not get health and safety insurance during the work period, 79% felt that the workload, working hours and work values had an effect on mental health, 87.8% do not receive compensation due to job cancellation by the employer, 56.1% of the workforce had dependents (such as parents, children, husband/wife), 86% were late/unpaid, and 77% did not join a trade union.²⁰

Recommendation to the Committee on Economic, Social and Cultural Rights (CESCR):

- To question on how the Gol and the House of Representatives ensure people participation in the revision process of the Law No. 11 of 2020 on Job Creation, and to include social and economic protection for workers in all sectors, both formal and informal, including precariate workers in the provisions of the employment cluster of the Law;
- To encourage the Gol to ratify various international instruments needed to protect precariate workers, such as the ILO Convention No. 177 on Home Work Convention (1996); and
- To Encourage the Gol to issue regulations concerning a partnership working relationship in both the digital sector and the creative industry with the spirit of ensuring that these workers have the same rights as other workers in the formal sector in accordance to human rights principles.

Domestic Workers

20. The Draft Law on the Protection of Domestic Workers has been on the National Legislation Programs (Prolegnas) since 2004, but there is no sign that it will be passed by the Parliament (DPR RI) in the near future. The Committee on CESCR has recommended the passage of the Draft Law and the ratification of the ILO Convention No. 189 (2011) on Domestic Workers in the First Concluding Observation for Indonesia.²¹ The Committee on the Elimination of Discrimination against Women (CEDAW) mentioned similar concern in the Concluding Observations for the recent 8th periodical report for Indonesia.²²

¹⁹ Komnas HAM RI, *Tinjauan atas Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja dan Peraturan Pelaksanaannya Pada Klaster Ketenagakerjaan terhadap Hak Atas Pekerjaan dan Penghidupan yang Layak Bagi Pekerja Prekariat*, 2021.

²⁰ Bimo Aria Fundrika's presentation during a public discussion organised by Komnas HAM RI on the Job Creation Law in Jakarta, 2021.

²¹ Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the initial report of Indonesia, 19 June 2014, UN Doc E/C.12/IDN/CO/1, para 17.

²² Committee on the Elimination of Discrimination against Women (CEDAW), Concluding observations on the eighth periodic report of Indonesia, 15 November 2021, UN Doc CEDAW/C/IDN/CO/8, para 42.

21. It is currently estimated that there are more than 4 million domestic workers²³ most of whom are women and girls in Indonesia who do not get adequate legal protection as workers as provided for example in Law No. 13/2003 on Labour. This lack of legal protection makes domestic workers vulnerable to economic exploitation and sometimes suffers from physical, mental and sexual violence.²⁴
22. Komnas HAM believes that by ratifying the Bill on the Protection of Domestic Workers and ratifying ILO Convention No. 189, Indonesia will send a strong message that the state is committed to protecting millions of domestic workers at home and at the same time strengthening the state's efforts to protect millions of its citizens who become domestic workers abroad.²⁵

Recommendation to the Committee on Economic, Social and Cultural Rights (CESCR):

- To question the GoI about the delay in the issuance of the Draft Law on the Protection of Domestic Workers and the ratification of ILO Convention No. 189 (2011).

Masyarakat Hukum Adat

23. The official terminology for indigenous populations or indigenous peoples in Indonesia is *masyarakat adat* or *masyarakat hukum adat*, which can be literally translated as “customary (law) communities” in English. As in other countries in Asia,²⁶ there is still disagreement as to whether the *masyarakat adat* or *masyarakat hukum adat* are exactly equal to “indigenous peoples” that defined in the international concern for indigenous peoples, as it is perceived throughout the United Nations system. There is not any official data stating the number of population of the indigenous peoples in Indonesia. The Alliance of Indigenous Peoples’ of the Archipelago (Aliansi Masyarakat Adat Nusantara, hereafter called as AMAN) estimated approximately 50 million to 70 million of the 240 millions overall populations in Indonesia.
24. The term *masyarakat adat* is not used in most Indonesian legal documents, except in the Special Autonomy Law of Papua No. 21/2001, the Oil and Gas Law No. 22 of 2001 and the Coastal and Small Islands Management Law No. 27 of 2007. On the other hand, the term *masyarakat hukum adat* (adat law community) is found in several laws including the 1945 Constitution, the Basic Agrarian Law No. 5/1960, Forestry Law No. 41/1999, Human Rights Law No. 39/1999, the Constitutional Court Law No. 24/2003, Water Resources Law No. 7 of 2004, Plantation Law No. 18 of 2004, and Environmental Protection and Management Law No. 32 of 2009. However, Komnas HAM argues that the legal recognition of indigenous peoples' existence and rights in some of those laws are not wholly consistent with of which formulated and defined in the 1945 Constitution.

²³ Data according to ILO Indonesia, available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/presentation/wcms_553078.pdf dan data menurut DPR RI, available at: <https://www.dpr.go.id/dokakd/dokumen/RJ5-20200226-054930-5717.pdf>.

²⁴ National Commission on Violence against Women (Komnas Perempuan), Press Release on the Anniversary of International Day of Domestic Workers; 10 Year of ILO Convention 189, Time for Indonesia to Ratify, 15 June 2021, available at <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-peringatan-hari-pekerja-rumah-tangga-prt-internasional-16-juni-jakarta-15-juni-2021>.

²⁵ Komnas HAM, Enhancing the Protection of Indonesian Domestic Workers Abroad is a Way to Fulfil the Rights of Indonesian Nationals’ Human Rights, 14 April 2015, available at <https://www.komnasham.go.id/index.php/news/2015/4/14/169/meningkatkan-perlindungan-prt-di-luar-negeri-sebagai-upaya-pemenuhan-hak-asasi-manusia-warga-negara.html>.

²⁶ United Nations Special Rapporteur on the rights of indigenous peoples. 2013 Report to the Human Rights Council, UN Doc. A/HRC/24/41/Add.3. 2013. p. 5.

25. The Indonesian Government, particularly the Minister of Environment and Forestry, Minister of Energy and Mineral Resources, Head of the National Land Agency (BPN), regional governments, and district heads, have the authority to lease state lands to corporations and government bodies through concessions and/or tenurial rights. Many land and natural resources concessions take the form of logging, mining, plantations, conservation schemes, transmigration and infrastructure projects located within *adat* lands and territories. As large-scale investments on land concessions encroached on the lands of rural communities, land speculation activities became widespread. As a result many local communities were alienated from their lands with little benefits from the projects. In summary, there is a long history of grievances and conflicts related to land and concessions in Indonesia, which continue to pose serious challenges for the country. Komnas HAM identified increasing recognition that improved land tenure and protection of the customary rights of the *masyarakat adat* are critical to the country's conflict prevention and inclusive development.
26. There are various processes through which their customary lands and forests are officially recognized. The first legal process is recognition of the *masyarakat adat or masyarakat hukum adat (indigenous communities)*. According to several laws and regulations and legal practices, the legal recognition may be ruled through (1) a general district or provincial regulation for all indigenous communities within its jurisdiction, (2) a specific district or provincial regulation for a particular community, (3) an administrative decree, (4) Court decision, and (5) a legal contract. Moreover, the process for legal recognition of customary lands and forest which are located within designated forest areas are more complicated. The process become more difficult once the forest areas already gazette or legalized. Following the legal recognition of the communities, The District Head should submit a recommendation letter over the status of the lands and forests to the Ministry of Environment and Forestry. Then the Minister will make the final decision. Komnas HAM identified several customary lands and forest recognition by various district governments, however the number of benefitted communities and total designated areas far too small compare to the overall populations and the land they claim.
27. In addition to contested claims between indigenous peoples and state institutions over natural resources, there are many more land conflicts affecting other local communities in Indonesia. Komnas HAM receive more than six thousands complaints annually, and the land issues have been the highest number among many other complaints.²⁷ Some of the land cases were reported by indigenous communities, other local communities and retired government officers (including military personnel and police officers). The types of land issues are ranging from land grabbing (including customary lands), individual land conflicts to execution of court's decision over land cases.
28. Komnas HAM welcomes the initiative of the Parliament to propose the Draft Law on Masyarakat Hukum Adat. The Draft Law was listed in the Indonesian National Legislation Program 2013 and remains in the list up to date.²⁸ However, Komnas HAM identified insufficient seriousness of the

²⁷ Komnas HAM, National Inquiry on the Rights of Masyarakat Hukum Adat on Their Territories in the Forest Zones, 2016, p. 1 – 3, can be accessed at: [https://www.komnasham.go.id/files/20160530-inkuiri-nasional-komisi-nasional-\\$N60YN.pdf](https://www.komnasham.go.id/files/20160530-inkuiri-nasional-komisi-nasional-$N60YN.pdf). And the English language Executive Summary can be accessed at: <https://www.komnasham.go.id/index.php/publikasi/2016/06/01/1/national-inquiry-on-the-right-of-indigenous-peoples-on-their-territories-in-the-forest-zones.html>.

²⁸ DPR RI (National Parliament), Lawmakers Push for Draft Law on Masyarakat Hukum Adat to Accommodate Their Interests, 2 September 2021, can be accessed at <https://www.dpr.go.id/berita/detail/id/34421/t/Legislator+Dorong+RUU+MHA+Mengakomodasi+Kepentingan+Masyarakat+Adat>.

Parliament and response from the Government. The Parliament's Legislative Body agreed to the legislation process of the Draft Law and it shall proceed to Badan Musyawarah (Deliberative Body) of the Parliament before presented to the Plenary Session. However the process stagnance at the Legislative Body. In the other hand, the government has not indicate any formal support to the Draft Law;

Recommendation to the Committee on Economic, Social and Cultural Rights (CESCR):

- To encourage the GoI with the Indonesian Parliament to immediately issued the Draft Law on Rights of Masyarakat Hukum Adat which contents are in accordance with international human rights instruments and standards, in particular the UN Declaration on the Rights of Indigenous Peoples;
- To encourage the GoI to involve *masyarakat hukum adat*, including the women, in the planning and implementation of economic and development programs. Governments should ensure that they obtain “free, prior and informed consent” from the affected *masyarakat hukum adat* communities before starting an economic and development project;
- To encourage the GoI to review all land and natural resources tenure and concessions on masyarakat hukum adat's territories, develop a road map for adat land rights restitution involving the masyarakat adat representatives and other parties which agreed by all parties; and
- To encourage the GoI together with the Indonesian Parliament to immediately ratify the ILO Convention 169 on Indigenous and Tribal Peoples (1989).

Land Tenure

29. Throughout 2016 to 2020, the right to welfare, which includes conflicts related to land and natural resources (SDA), became the right that was most frequently reported to Komnas HAM. In 2016 there were 2,748 complaints; in 2017 there were 2,136 files; in 2018 found 2,425 files; 2019 as many as 1,119 cases; and in 2020 found 1,025 cases related to alleged violations of the right to welfare.²⁹
30. Based on the results of the implementation of the functions and authorities of the Komnas HAM, it identified that root causes of human rights violations related to land and natural resources. There have been claims and deviations from norms and content regarding the meaning of State Controlling Rights (HMN) over land and natural resources. *Masyarakat Hukum Adat (MHA)* are still experiencing problems in respecting, protecting, and fulfilling human rights due to the absence of formal recognition of the existence and comprehensive customary rights. The implication is that the status of *MHA* according to formal law is not clear, which results in the non-fulfillment of security guarantees for customary areas including respect, protection, and fulfillment of their human rights. The problem of recognizing customary forests occurs because of the determination of forest areas including customary forests as state forests. This has the effect of taking over customary areas, including customary forests, with the policy of unilaterally establishing and/or confirming state forest areas.

²⁹ Komnas HAM, Standar Norma dan Pengaturan (Norms and Regulations Standard) No. 7 Tentang Hak Asasi Manusia Atas Tanah dan Sumber Daya Alam (Human Rights on Land and Natural Resources Issues), 2021, p. 1, can be accessed at <https://www.komnasham.go.id/files/1640332286-standar-norma-dan-pengaturan-nomor-518ZR.pdf>.

31. Development policies that are oriented towards economic growth and the paradigm of land and natural resources which are seen only as commodities have caused the state to give priority to the use of land and natural resources to large-scale economic and development entrepreneurs. Land and natural resources as economic commodities are exploited to increase state and regional income. The unjust allocation of land parcels creates sharp inequalities between social groups, thus ignoring the principles of equity, non-discrimination and justice. The granting of exploitation permits and/or conservation programs in customary areas and the shift from small-scale agriculture to large-scale agriculture by corporations have resulted in forced evictions and displacement, which in turn contributes to increased migration from rural to urban areas which further suppresses access and availability of land and housing in urban areas. Claims on community-owned land and/or buildings as State Property (BMN) or Regional Property (BMD) have an impact on evictions, forcible emptying of land without fair compensation for the community and restrictions on access and availability of housing and land.³⁰
32. In the plantation sector, land grabbing practices are found; forced eviction; land use that is not in accordance with its designation; the occurrence of overlapping location permits based on Hak Guna Usaha (HGU); granting permits that are not in accordance with procedures; and permit arrangements that ignore and even marginalize community participation. In addition, there has been criminalization and violence against the community and human rights defenders, where the state apparatus has in many cases been involved in these practices.
33. In August 2020, Komnas HAM received a complaint as well as a request for protection related to the forced eviction of 70,910 m² of land owned by residents in Pujut District, Central Lombok Regency, West Nusa Tenggara PT. Indonesia Tourism Development Corporation (ITDC) for the construction of the Mandalika GP Motor circuit track.³¹
34. The complainant views this effort as an act of taking land arbitrarily because it was carried out without going through a process of transferring rights (selling and buying) with the owner who legally controls the land. Furthermore, according to the information received, there were pressures and threats from PT. ITDC is assisted by irresponsible people who force them to leave or surrender their land.³²
35. In March 2021, six UN Special Rapporteurs or Procedures released a joint statement raising the allegations of human rights violations that occurred in this project, including forced evictions and arbitrary land or land grabbing, against the local Sasak indigenous peoples, and intimidation of human rights defenders.³³ This communication from the holders of the UN Special Procedures for Human Rights, apart from being addressed to the Government of Indonesia, was also sent to

³⁰ Komnas HAM, Annual Report 2020, Promotion and Protection of Human Rights in the Time of COVID-19 Pandemic, 2021, p. 79, can be accessed at <https://www.komnasham.go.id/files/20210830-laporan-tahunan-komnas-ham-ri--SR1X5O.pdf>.

³¹ The Mandalika KEK is a tourism-focused special economic zone in Indonesia covering more than 1,000 hectares along the southern coast of Lombok. It was developed by the Indonesian Tourism Development Corporation (ITDC), a state-owned enterprise. The Mandalika complex is a \$3 billion project consisting of a Grand Prix motorcycle racing circuit, parks, and luxury hotels and resorts.

³² Komnas HAM, Press Release No: 036/Humas/KH/IX/2020, Komnas HAM Push for the Protection of Land Rights for People Affected by the Forced Eviction in the Mandalika, NTB Special Economic Zone, 1 September 2020, can be accessed at <https://www.komnasham.go.id/index.php/siaran-pers/2020/09/01/105/keterangan-pers-nomor-036-humas-kh-ix-2020-komnas-ham-ri-dorong-perlindungan-hak-atas-tanah-warga-terhadap-praktik-penggusuran-paksa-di-kawasan-ekonomi-khusus-mandalika-ntb.html>.

³³ UN OHCHR, Indonesia: UN experts flag rights concerns over \$3bln tourism project, 31 March 2021, available

at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26962&LangID=E>.

the Asian Infrastructure Investment Bank (AIIB) as an investor, and to private transnational companies involved in the project.

36. Based on field monitoring and follow-up, Komnas HAM found that the parties, both residents and PT ITDC both claimed to have ownership/control over the said land. The community bases their rights on Pipil Garuda, IPEDA, SPPT (land taxes) and claims to have never relinquished/transferred rights to anyone, while PT ITDC bases their rights on Land Management Rights (HPL) issued in 2010. This means that in the same object there is overlapping ownership and / or mastery of it.³⁴
37. Based on the historical tracing of the origin of the 2010 HPL (Land Management Rights) owned by PT ITDC, the object of the HPL came from the land acquisition carried out by PT Lombok Tourism Development (PPL) or Lombok Tourism Development Corporation (LTDC) in the 1990s. It is suspected that the land acquisition process was not clear and clean. In addition, the land acquisition process was allegedly carried out by intimidating the community into handing over the land, involving the security forces and other parties. From the results of document and field verification, it was found that there were errors in the object (measurement results, field location) and in the subject (who released, and/or received land payments).³⁵
38. The development of the Mandalika Special Economic Zone (KEK) should be suspected as not based on human rights principles and standards, in particular the UN Guiding Principles on Business on Human Rights. Government and PT. ITDC as a developer concentrates more on completing development according to the plan rather than paying attention to other aspects, including aspects of human rights. Moreover, the area has been designated as a National Strategic Project by the President of the Republic of Indonesia.
39. The commitment to agrarian reform even though it has been proclaimed by the Government of President Joko Widodo in Presidential Decree No. 86 of 2018 concerning Agrarian Reform, has not yet shown significant results, because only about 4.3 million hectares have been distributed from the target of 12 million hectares. Komnas HAM supports President Joko Widodo's commitment to request that the Ministry of ATR/BPN (Agrarian and Spatial Planning/National Land Agency) withdraw HGB/HGU lands (Hak Guna Bangunan/Hak Guna Usaha) that have been abandoned to be used for the greatest benefit for the public. On another occasion, the President of the Republic of Indonesia in his state speech on 14 August 2020 stated that "All policies must prioritize environmental friendliness and the protection of human rights. Speed and accuracy are not to be confused with recklessness and arbitrariness."³⁶ Unfortunately, this positive commitment contradicts the ratification of the Job Creation Law which facilitates the acquisition of land in the name of national strategy projects or investments.
40. The official designation of specific natural resources, artificial resources, as well as national facilities and infrastructure as supporting components as regulated in Law No. 23 of 2019 on The Management of National Resources for State Defense potentially violate the right to own

³⁴ Komnas HAM, Keterangan Pers Nomor: 11/HM.00/IV/2021, Sikap Komnas HAM atas Situasi dan Kondisi Terkini Proyek Strategis Nasional KEK Mandalika, 22 April 2021, available at: <https://www.komnasham.go.id/files/20210422-keterangan-pers-nomor-11-hm-00-SJW1.pdf>.

³⁵ Komnas HAM, Keterangan Pers Nomor: 11/HM.00/IV/2021, op cit.

³⁶ Annual State Speech of the 75th Anniversary of the Proclamation of Indonesian Independence, 14 August 2020, p. 12, available at: https://cdn.setneg.go.id/multimedia/document/20200814/42434243Pidato_Presiden_RI_pada_Sidang_Tahunan_MPR_RI_dan_Sidang_Bersama_DPR_RI_dan_DPD_RI_dalam_Rangka_HUT_Ke-75_Proklamasi_Kemerdekaan_Republik_Indonesia.pdf.

property. In addition, the provisions on the criminal sanction of refusing the mobilization order are inconsistent with the principle of voluntariness (non-mandatory).³⁷

Recommendation to the Committee on Economic, Social and Cultural Rights (CESCR):

- To urge the GoI to prevent any form of forced evictions, including in national strategic development projects;
- To urge the GoI to immediately develop policies and programs for resolving agrarian conflicts caused by government policies as mandated in MPR Decree No. IX/MPR-RI/2001³⁸;
- To urge the GoI and the House of Representatives to expedite legislation harmonization in accordance with Indonesia's human rights obligations under the Covenant which prioritizes respect, protection and fulfillment of rights in every process of national economic development, including the amendments to the Job Creation Law which must be carried out within the next two years; and
- To question how the GoI involves the participation of affected communities in a meaningful consultation process in a spatial plan, business use plan both nationally and at the local level, with special attention must be paid to accommodate the knowledge of communities and indigenous peoples, both in the form of geospatial data and local knowledge about space.

People with Disabilities

41. Komnas HAM appreciates the Parliament and Government of Indonesia which issued Law no. 8/2016 concerning Persons with Disabilities. The law provides hope for persons with disabilities to receive equal and fair treatment as Indonesian citizens. The principles contained in the legal instruments also adopt the principles of the Convention on the Rights of Persons with Disabilities (CRPD) to respect and protect the human rights of these groups. However, most disability issues are still under the management of the Ministry of Social Affairs, with programs based on the principle of “pity”, which is contrary to the principle of the CRPD which must be based on the principle of rights.
42. Komnas HAM considers that the treatment of disability matters solely as a social matter under the Ministry of Social Affairs is a form of discrimination because it discriminates against persons with disabilities and views them as a group with different sets of rights from other citizens that they should have and become a matter of cross-sectional concern. The rights of persons with disabilities should be mainstreamed by the state in implementing their policies or programs.
43. Komnas HAM is of the opinion that discriminatory policies against persons with disabilities persist in various laws which have not been adjusted or amended to be in line with the Law on Persons with Disabilities. Law Number 11 of 2009 concerning Social Welfare, for example, still places persons with disabilities as persons with social welfare problems. The paradigm views them as part of a social problem that requires charity-based solutions.

³⁷ Komnas HAM, *Kajian atas Undang-Undang Nomor 23 Tahun 2019 tentang Pengelolaan Sumber Daya Nasional dalam Perspektif Hak Asasi Manusia*, 2020.

³⁸ MPR is Majelis Permusyawaratan Rakyat or People’s Consultative Assembly

44. Komnas HAM noted that there were discriminatory provisions as in Article 65 of Law no. 5/2014 concerning the State Civil Apparatus which requires physical and mental health as a requirement in the civil servant recruitment process. Komnas HAM considers that such health requirements highly discriminate against persons with disabilities. Therefore, he believes that such conditions should be removed from any form of requirement to allow for equitable access to employment, education and public office. Komnas HAM also urges an amendment to the law that still places physical and mental health as part of their requirements.
45. Law No. 8/2016 has mandated the establishment of a Government Regulation in its implementation. There are at least eight Government Regulations mandated by the Law on Persons with Disabilities, including: Planning, Implementation, and Evaluation of Respect, Protection and Fulfillment of the Rights of Persons with Disabilities; Adequate Accommodation for Persons with Disabilities in the Judicial Process; Adequate Accommodation for Students with Disabilities; Social Welfare; Fulfillment of Rights to Settlements, Public Services; Employment Disability Service Unit; Concessions and incentives to respect, protect and fulfill the rights of persons with disabilities; and Habilitation and Rehabilitation Services for Persons with Disabilities.
46. Komnas HAM assessed that the process of forming government regulations was very slow and delayed. After a prolonged process, five Government Regulations and two Presidential Regulations already issued. There were debates over the draft Government Regulation on Concessions and Incentives which was challenged by the Ministry of Finance even though it has been regulated in Presidential Regulation no. 33/2018 concerning the National Action Plan for Human Rights.
47. Komnas HAM recommends the development of a protection mechanism for persons with disabilities. It also encourages the establishment of an independent national commission, as mandated in the Law on Persons with Disabilities, for persons with disabilities, which does not operate under a ministry. However, Presidential Regulation No. 68 of 2020 on National Commission for Disability covered in contrary. The President decided the Commission is administratively assisted by Ministry of Social Affairs. Komnas HAM expressed its disappointment and recommended that the Presidential Regulation should be revised in accordance with the Law No. 8 of 2016³⁹.

Recommendation to the Committee on Economic, Social and Cultural Rights (CESCR):

- To question the GoI on what has been done to prevent discrimination against persons with disabilities and the steps that have been taken to ensure that the problems of persons with disabilities are not only managed by the Ministry of Social Affairs;
- To question the GoI about the steps that have been taken to change discriminatory policies against persons with disabilities such as the Law on State Civil Apparatus;
- To ask the GoI of the problem of delaying the issuance of the remaining draft government regulations, how the government can ensure the formulation and implementation of these regulations are good and ensure inclusive public participation of persons with disabilities; and

³⁹ See <https://www.komnasham.go.id/index.php/news/2020/7/9/1474/komnas-ham-dorong-kaji-ulang-perpres-komisi-nasional-disabilitas.html> (Komnas HAM encourage review of Presidential Regulation on

National Commission on Dissability)

- To question the Gol about the process of ensuring the revision of Presidential Regulation No. 68 of 2020 and strengthening of the National Commission for Disabilities to function as an independent national mechanism for the protection and promotion of the rights of persons with disabilities.

Multiple Discriminations

A. Internally Displaced Persons (IDPs) in Papua

48. In the last three years, there has been an increase in armed conflict between Indonesian security forces and pro-independence Papuan armed groups. The area of intense armed conflict was initially concentrated in the Central Mountains region in Papua Province, but now it is also happening outside the region. The pro-independence Papuan armed group (Organisasi Papua Merdeka/OPM) comprises a range of groups that have carried out more sporadic attacks, mainly against military and police targets, but also more recently against non-Papuan residents or migrants. They are also involved in human rights violations, including extrajudicial killings, taking hostages and kidnappings. Armed clashes have led to an increase in refugees, especially from the central highlands of Papua, who are feared to be the target of military operations.⁴⁰
49. Since the killing of 19 construction workers in Nduga Regency by members of the TPNPB (West Papua National Liberation Army) in the central highlands of Papua Province on December 2, 2018, military personnel (Indonesian National Army/TNI) have been deployed in more than a dozen districts in the Pegunungan Tengah of Papua region to hunt down the perpetrators and as a demonstration of the strength of the security forces against the TPNPB. The Pegunungan Tengah area is largely isolated from public services and is known as the TPNPB operating stronghold. The area is mostly inhabited by indigeneous Papuans or *Orang Asli Papua (OAP)*, except for a few small towns where migrants run small businesses or work in government positions. As a result of the additional mobilization of security forces in the region, the indigenous Papuans were afraid of being targeted and then fled from their villages. According to information from Komnas HAM Papua Office, it is estimated that up to now there are still around 10 thousand people, both men, women, and children, from Nduga Regency who have not returned to their hometowns and have to live in other areas. This figure may increased considering the limited resource to do data collection and the administration for population record there is minimal.
50. In Puncak Regency, as well as in the Pegunungan Tengah, it is estimated that around 7,000 indigenous Papuans have become internally displaced persons (IDPs) since April 2021 as a result of the assassination of the Indonesia's Intelligence Chief for Papua, a high-ranking military official. Some of the residents of Puncak Regency have returned, but some have not.
51. Military operations also took place in Intan Jaya Regency after members of a pro-independence Papuan armed group killed two members of the military in an armed attack on December 17, 2019. On the other hand, a Christian priest was killed after experiencing torture, which, based on an investigation by Komnas HAM, was carried out by military personnel.⁴¹ According to information from the local church and Komnas HAM staff in Papua, at least 15 villages in the sub- districts of Sugapa, Ugimba and Hitadipa (all in Intan Jaya Regency) were affected by the military operation that caused more than eight thousand indigenous people to flee their homes.

⁴⁰ Areas of Pegunungan Tengah or Central Highland in Papua consist of 14 regencies.

⁴¹ Komnas HAM, Press Release No. 04/Humas/KH/XI/2020, Komnas HAM's Investigation into the Killing of Reverend Yeremia Zanambani di Distrik Hitadipa, Intan Jaya, 2 November 2020, can be accessed at [https://www.komnasham.go.id/files/20201123-keterangan-pers-no-046-humas-kh-\\$8VACE.pdf](https://www.komnasham.go.id/files/20201123-keterangan-pers-no-046-humas-kh-$8VACE.pdf).

52. In recent months, attacks on Indonesian security forces by pro-Papuan independence armed groups have spread to areas outside Papua's Pegunungan Tengah region. In early September 2021, a pro-independence Papuan armed group claimed that they were responsible for an attack on a military post in Maybrat Regency, West Papua Province that resulted in the death of four soldiers and the wounding of several others. In the following days, local military personnel sent at least a hundred soldiers to hunt down the attackers in the area. Fearing military reprisals, more than 2,000 villagers, mostly women and children in the surrounding area, fled to the forest.⁴² Local government heads and regional military commanders have asked the refugees to return to their villages, but most still have not dared to return.
53. In mid-September 2021, an armed conflict between military personnel (TNI) and a local pro-independence Papuan armed group (TPNPB) occurred in Kiwirok District, Gunung Bintang Regency, Papua Province. The TPNPB member carried out an attack on health facilities in the Kiwirok District. A medical worker at the Kiwirok Health Center was killed, three other medical personnel, and one military personnel were injured. A number of public facilities caught fire. Around more than two hundred locals had to flee to Oksibil, the capital of the Star Mountains County.
54. An unbroken chain of violence in Papua requires an approach based on human rights, namely through an equal and dignified dialogue between components of the Papuan community and the government. The security approach through non-organic troops (troops drawn from outside Papua) and security management is considered inappropriate in dealing with problems in Papua. One example is the existence of stigmatization which creates a sense of fear and distrust. For this reason, the state needs to withdraw non-organic troops in Papua, especially Intan Jaya and take a cultural approach to the Papuan people.

B. Internally Displaced People from Religious Minority in Lombok

55. In Lombok, West Nusa Tenggara Province, about 150 people, including women and children, members of the Ahmadiyah community have been living in temporary shelters for nearly 16 years. In February 2006 they were forced to flee their homes in Ketapang, West Lombok District after their houses were destroyed by mobs who attacked the community because of their religious beliefs. Following the attack, the police launched an investigation in an attempt to identify the perpetrators, but no perpetrators were brought to justice. Families who were forcibly evicted cannot return to their homes and rebuild their lives because local authorities cannot guarantee their safety and protection.⁴³ They are only allowed to return to their hometowns if they revert to Islam, which is embraced by the local Muslim majority.
56. Komnas HAM is aware that there is an ongoing initiative made by the central government and West Nusa Tenggara authority to provide new housing facilities and relocate the Ahmadiyah community.

⁴² Komnas HAM, Press Release No. 043/HM.00/XII/2021, End of Year Human Rights Release (2021), 28 December 2021, di Indonesia, p. 9, available at [https://www.komnasham.go.id/files/20211228-keterangan-pers-nomor-043-hm-00-\\$62CTBW.pdf](https://www.komnasham.go.id/files/20211228-keterangan-pers-nomor-043-hm-00-$62CTBW.pdf).

⁴³ Komnas HAM, Peaceful Solution for the Ahmadiyah People in West Nusa Tenggara, 27 October 2021, can be accessed at <https://www.komnasham.go.id/index.php/news/2021/10/27/1959/langkah-damai-bagi-jamaah-ahmadiyah-indonesia-di-ntb.html>.

Recommendation to the Committee on Economic, Social and Cultural Rights (CESCR):

- To urge the GoI immediately open up access for humanitarian assistance to areas where there are internally displaced persons (IDPs) and to guarantee their rights to be respected, protected, and fulfilled;
- To ask the GoI about the policies and programs to facilitate the safe and appropriate return of the internally displaced persons (both for IDPs in Papua and Lombok, or elsewhere) to their respective villages and involve them in the planning. They must also obtain restitution or reparation for the harm they have suffered;
- To urge the GoI to immediately resolve the root causes of the protracted armed conflict in Papua, starting with the establishment of a special authority for Papua with an adequate mandate and authority and to support the existing Peaceful Dialogue for Papua.

Corruption Issue

57. In recent years Komnas HAM has received complaints and handled cases of attacks directed to staffs of independent state anti-corruption called Corruption Eradication Commission (KPK). Accountability for cases of these attacks is minimal. In addition, in 2021 Komnas HAM will also examine efforts to eliminate dozens of KPK staffs through discriminatory ways and violate existing legal provisions through the misuse of a National Insight Test (TWK).
58. A KPK former senior investigator, Novel Baswedan, who is famous for handling major corruption cases involving parliamentarians, high-ranking government officials, as well as police generals, in April 2017 suffered serious injuries due to his face being thrown with hydrochloric acid by an unknown person immediately after he went home in the morning to pray at the local mosque. As a result of the attack, Novel had to be hospitalized abroad and his left eye became blind and right eye have limited vision. After Komnas HAM investigation and widespread public pressure, the National Police formed a joint investigative team involving non-police parties in January 2019 which then finished their duty in July 2019 without being able to identify the perpetrators. In December 2019, two active police officers were arrested and later tried on charges of assaulting Novel and convicted with sentences of one and a half and two years in prison respectively in April 2020. They confessed to assault because they dislike Novel, who was deemed to have betrayed the police institution. Komnas HAM considers that the attack on Novel Baswedan was carried out in a planned and systematic manner involving several parties who have not yet been revealed which include the intellectual actors.⁴⁴
59. The case of the acid attack on Novel was not the first attack against him or other staffs in KPK as this case related to other attacks towards the anti-corruption work carried out by the KPK at that time. In January 2019, on the same day two KPK commissioners (2015-2019 period) experienced threats and attacks at their respective residences through a fake pipe bomb wrapped in plastic and hung on the fence and in other places the throwing of Molotov cocktails. Until now the police could not identify the perpetrators of the threat or terror.

⁴⁴ Komnas HAM, Novel Baswedan Case, Komnas HAM Recommend the Set Up of a Joint Investigation Team, 22 December 2018, can be accessed at <https://www.komnasham.go.id/index.php/news/2018/12/22/716/kasus-novel-baswedan-komnas-ham-merekomendasikan-pembentukan-tim-gabungan.html> and Komnas HAM, Lenient Charges on Novel Baswedan Case Insult Presiden Jokowi's Commitment, 24 June 2020, can be accessed at <https://www.komnasham.go.id/index.php/news/2020/6/24/1450/tuntutan-ringan-kasus-novel-baswedan-hina-komitmen-presiden-jokowi.html>.

60. In August 2021 Komnas HAM conducted research and studies on allegations of human rights violations experienced by 75 KPK staff, including Novel Baswedan, who was terminated after not being deemed to have passed a Nationalism Insight Test (TWK) in the process of transferring status from a KPK employee to a State Civil Apparatus (ASN) or civil servant status.
61. Based on a series of investigations, Komnas HAM concluded that the TWK process was a form of eliminating certain KPK staffs through the substance of tests that were discriminatory and violated the rights to freedom of opinion and expression.⁴⁵ In addition, TWK was also carried out without a clear legal basis by involving parties who were not relevant to the issue of eradicating corruption such as the national intelligence agency, military intelligence, anti-terrorism agency, and the army psychology service. The substance of TWK also contradicts international human rights values and standards which are discriminatory, hateful, demeaning and do not have a gender perspective.⁴⁶
62. Komnas HAM concluded that TWK was a violation of human rights, including a violation of the right to work and freedom of association for deliberately removing KPK employees who were members of a union, namely the KPK Employee Forum.⁴⁷
63. Anti-corruption activists and officers, including human rights defenders in this field, have long been victims of threats and attacks in Indonesia with almost all incidents not being resolved. It is clear that the government and other authorities need to take decisive action to end the problem of impunity and ensure that anti-corruption officers and activists can carry out their important and necessary work without fear, while fully respecting the rights of those suspected of corruption. This lack of accountability in dealing with ongoing threats and attacks is a bad record for Indonesia's efforts to tackle corruption. This also further entrenched the culture of impunity in relation to human rights violations, which present a direct threat to the rule of law.

Recommendation to the Committee on Economic, Social and Cultural Rights (CESCR):

- To question whether the GoI continue investigating the case of the Novel Baswedan attack, including finding the mastermind of the cruel criminal action, and also investigating the attacks that occurred against officers and employees at the KPK, and against other anti-corruption activists;
- To question the commitment of the GoI to combat corruption in Indonesia after transferring The Corruption Eradication Commission from an independent state institution to become part of the executive body through the revision of Law No. 30 of 2002 on Komisi Pemberantasan Tindak Pidana Korupsi (Corruption Crime Eradication Commission);
- To question the GoI why the Nationalism Insight Test (TWK) was conducted discriminatively and whether there are any plans to rehabilitate the rights of former KPK employees who were terminated.

⁴⁵ Komnas HAM, Press Release No: 027/HM.00/VIII/2021, the Result of Komnas HAM's Monitoring and Investigation on the Allegation of Human Rights Violation in the Nationalism Commitment Test for KPK Staff to Becoming the Civil Servants, 16 August 2021, p. 1, can be accessed at <https://www.komnasham.go.id/files/20210816-rilis-27-hm-00-viii-2021-tentang-5NRAWJEJ.pdf>.

⁴⁶ Komnas HAM, Press Release No: 027/HM.00/VIII/2021, p. 6 & 7.

⁴⁷ Komnas HAM, Press Release No: 027/HM.00/VIII/2021, p. 9.

Human Rights Defenders

64. Human rights defenders (HRDs), including those working for economic, social and cultural rights, continue to face threats, attacks, intimidation and criminalization for their work. Human rights defenders have also had their reputations tarnished, given a bad stigma or negative label, injured and even killed. Violations, threats, or attacks are aimed directly at the HRD as well as against family, relatives, friends, or close people around the HRD. Human rights defenders who often face the above risks are mostly those who work to defend the rights of indigenous peoples affected by the development of infrastructure, mining and large plantation projects, and those who work against corruption.⁴⁸
65. In its latest report in 2020, Komnas HAM received complaints related to threats and/or attacks against human rights defenders in at least 19 cases. Based on these data, violations, threats, or attacks against human rights defenders include smear campaign, illegal use of legal processes (criminalization), suppression of the right to associate, attacks or physical violence, disbandment of activities, and shootings.⁴⁹
66. In 2021, Komnas HAM received a complaint about the threat of criminalization experienced by two human rights defenders, Fatia Maulidiyanti and Haris Azhar, who are directors and former directors of KontraS, a leading NGO in Indonesia. Both were reported by an official of the most politically influential ministry in this country because they presented the results of a joint NGO research on the potential involvement of the gold mining business of important officials in an area of armed conflict in Papua. The presentation was uploaded to a YouTube channel and immediately went viral. Haris and Fatia face both threats of criminal defamation and a fine of IDR 100 billion (USD 7 million) under Law no. 19/2016 concerning Electronic and Transaction Information (ITE). Similar to this case, Komnas HAM also received complaints from two anti-corruption activists from ICW (Indonesia Corruption Watch) who also faced the threat of criminal defamation from another high-ranking official because in a publication made by ICW they revealed an alleged conflict of interest between himself and his family in the pharmaceutical business during a pandemic.⁵⁰
67. Criminal defamation and “incitement to SARA (Ethnicity, Religion, Race, and Inter-Groups)” under the ITE Law are often misused by public officials or non-state actors to criminalize defenders of human rights and freedom of expression. The government itself is currently carrying out In the process of revising or amending the ITE Law, particularly for the two crimes above, public officials still continue to use these provisions to silence legitimate criticism, while Article 66 of Law No. 32/2009 on Environmental Management and Protection Life clearly ensures that environmental HRDs in their work cannot be threatened by civil and criminal lawsuits. Unfortunately so far, law enforcement officials have not implemented this provision.
68. The COVID-19 pandemic has also made the work of human rights defenders in Indonesia more difficult. Starting from the ratification of the amendments to the Mineral and Coal Mining Law or Minerba (UU No. 3/2020) and the Job Creation Law (UU No. 11/2020)) which drew various protests because they were considered increasingly threatening the space for human rights

⁴⁸ Komnas HAM, Standar Norma dan Pengaturan (Norm and Regulation Standard) Nomor 6 Tentang Pembela Hak Asasi Manusia (Human Rights Defenders), 2021, p. 2, can be accessed at <https://www.komnasham.go.id/files/1635987255-standar-norma-dan-pengaturan-nomor-S05FFZ.pdf>.

⁴⁹ Komnas HAM, Standar Norma dan Pengaturan Nomor 6 Tentang Pembela Hak Asasi Manusia, p. 3.

⁵⁰ Komnas HAM, Komnas HAM Terima Aduan Tim Advokasi Bersihkan Indonesia, 24 September 2021, can be accessed at: <https://www.komnasham.go.id/index.php/news/2021/9/24/1911/komnas-ham-terima-aduan-tim-advokasi-bersihkan-indonesia.html>.

defenders, especially those related to the environment. There are also indications of the use of COVID-19 pandemic as an excuse to silence human rights defenders' work on the environment. This is a concern, that the work carried out by human rights defenders still needs to be protected.⁵¹

Recommendation to the Committee on Economic, Social and Cultural Rights (CESCR):

- To urge the GoI to take measure to protect Human Rights Defenders in the field of economic, social and cultural rights from the risk of intimidation, attacks, and criminalization because of their work;
- To question the GoI about the plan to establish a special legal framework regarding the protection of Human Rights Defenders; and
- To urge the GoI to expedite the revision of the Law No. 11 of 2008 on Information and Electronic Transactions which should be done comprehensively including eliminating the articles on threat of criminal defamation.

The Right to Health for Vulnerable Groups

69. In 2020, Indonesia faces four transitions of health problems that provide a double burden, namely the epidemiological transition in the form of communicable and non-communicable diseases, the nutritional transition in the form of malnutrition problems, the demographic transition in the form of increasing life expectancy resulting in an increase in the percentage of the elderly population, as well as the transition of lifestyle behavior. life in the form of a shift to modern life (sedentary life) which has become part of people's daily lives. The four transitions occur simultaneously and are interrelated so that currently hypertension, diabetes mellitus, heart disease, blood vessels, kidney failure, stroke, cancer, and several other chronic diseases are afflicted by the rich population, the population aged over 50 years, as well as the population group from lower middle class/poor and the population under 50 years old.⁵²
70. Conditions for fulfilling the right to health in Indonesia vary widely in each region because government affairs in the health sector are the authority of local governments. The existence of a high disparity in health services between regions in Indonesia is influenced by the availability of resources and differences in conditions in each region. The situation of people in remote/underdeveloped/periphery areas in accessing basic health services is also still facing obstacles. People who live far from the city centre where health services are available, have to travel far and take a long time.⁵³
71. All health facilities and services must be accessible to everyone, especially for vulnerable groups. Vulnerable groups get special treatment or affirmative/protective action more because of their

⁵¹ Komnas HAM, Laporan Tahunan 2020, Pemajuan & Penegakan HAM di Era Pandemi Covid 19, 2021, p. 84, can be accessed at: [https://www.komnasham.go.id/files/20210830-laporan-tahunan-komnas-ham-ri--\\$R1X5O.pdf](https://www.komnasham.go.id/files/20210830-laporan-tahunan-komnas-ham-ri--$R1X5O.pdf).

⁵² Komnas HAM RI, Standar Norma dan Pengaturan (Norms and Regulation Standard) Nomor 4 tentang Hak atas Kesehatan (on Rights to Health), Jakarta, 2020, can be accessed at <https://www.komnasham.go.id/index.php/peraturan/2021/10/14/37/standar-norma-dan-pengaturan-nomor-4-tentang-hak-atas-kesehatan.html>.

⁵³ Komnas HAM RI, a Study on the Rights to Health for Vulnerable Groups in Indonesia, 2020, can be accessed at <https://www.komnasham.go.id/index.php/publikasi/2021/01/29/114/kajian-pemenuhan-hak-atas-kesehatan-bagi-kelompok-rentan-di-indonesia.html>.

specificity or disability, because they are more vulnerable to being discriminated against. Discrimination results in the creation of structural and cultural barriers experienced by vulnerable groups in the enjoyment of the right to health.

72. The state is responsible for respecting the right to health by not taking actions that nullify or reduce the ability of everyone to enjoy the right to health. The state is responsible for protecting the right to health by ensuring that no person, group of people, including state apparatus and corporations can eliminate or reduce the opportunity for everyone to enjoy the right to health. The state is responsible for fulfilling the right to health by taking administrative, legislative, judicial and policy steps to ensure that the right to health is fulfilled to the maximum extent possible.
73. State administrators cooperate with independent institutions and related institutions to build an integrated, inclusive, transparent and accountable service system for everyone, especially vulnerable groups.
74. Data according to the Indonesian Child Protection Commission (KPAI) shows that 10-20% of Indonesian children under the age of 14 have started smoking. The inability to control tobacco clearly causes a violation of children's rights as well as the right to health.⁵⁴ Children will be actively exposed as smokers, passively affected by being the object of cigarette marketing, which threatens the health and development of children.
75. The right to a good and healthy environment and air, including free from cigarette smoke, is part of the right to health, so the provisions on tobacco/cigarette control regulations in the Health Law (UU No. 36/2009) are not discriminatory provisions. Komnas HAM has long encouraged the Indonesian government to ratify the Framework Convention on Tobacco Control (FCTC) and prevent children from smoking, and prohibit all forms of promotion of cigarette products.

Recommendation to the Committee on Economic, Social and Cultural Rights (CESCR):

- To question the commitment of the GoI to ensure the realization of accessibility of all person, especially vulnerable groups to all health care facilities and fulfil the availability of integrated, inclusive, transparent and accountable primary health services in every region in Indonesia;
- To recommend the GoI to expand segregated data collection, including vulnerable groups for the population administration system, develop local wisdom, food diversity, and environmental security to support the fulfilment of the right to public health comprehensively;
- To urge the GoI to revise Presidential Regulation Number 82 of 2018 concerning Health Insurance in order to provide additional focus of the health insurance for vulnerable groups; and
- To urge the GoI to ratify the Framework Convention on Tobacco Control (WHO-FCTC) to guarantee the protection of the right to health for the community, especially children and adolescents as a vulnerable group from the dangers of smoking/consumption of other tobacco products.

⁵⁴ Komnas HAM, Fulfilling the Child Rights, Komnas HAM Push for the Government to Ratify FCTC, 4 February 2020, can be accessed at <https://www.komnasham.go.id/index.php/news/2020/2/4/1320/penuhi-hak-anak-komnas-ham-dorong-pemerintah-ratifikasi-fctc.html>.

Discriminatory Local Regulations in Aceh – Restrictions on the Rights to Work of Transwomen and Threats of Criminalization

76. On 27 January 2018, police in North Aceh arrested 12 transwomen and closed five beauty salons where they worked after residents complained about their activities. The police also cut their hair and forced them to wear male clothes during the raid.
77. The Aceh Utara police released all those arrested, minus one person, the following day without any charges. The local police chief told the media that they were holding the transwomen for an "education" program to convert them into "normal" men. They had to close their beauty salon for three months and even some of them who were severely traumatized fled to other provinces. This incident also happened to other transwomen who worked in beauty salons in Aceh Province who had to close their salons for at least a month and some temporarily moved to neighbouring provinces.
78. This incident occurred just a few weeks after local residents and local mass organizations raided a hotel and handed over six transwomen on 17 December 2017 to law enforcement officials after they received information that a transgender beauty pageant would be held, an act that is considered a violation of sharia law in Aceh.
79. The arrest and cruel and inhumane treatment by the North Aceh Police then prompted various regional heads in Aceh Province to prohibit LGBTI groups from working in the public economic sector such as beauty salons or coffee shops, as happened in Bireuen Regency⁵⁵ and Aceh Besar.⁵⁶
80. The government does not seek to guarantee the fulfilment of basic rights, including to get a job, for this group in the midst of an already hostile climate for LGBTI people in Indonesia. The general deteriorating situation for LGBTI people in Indonesia is far worse for LGBTI people in Aceh, the only province in the country that has special autonomy status under Islamic law.
81. The National Human Rights Commission, condemned the actions of the police in North Aceh in arresting and detaining a number of transwomen, forcibly cutting their hair, and closing the salon where they worked.⁵⁷

Recommendation to the Committee on Economic, Social and Cultural Rights (CESCR):

- To question the GoI on the policies and its implementation concerning the obligation of the police to protect and promote human rights of all person regardless their gender and sexual orientation;

⁵⁵ Serambinews, Semua Pengelola Salon di Bireuen Dikumpulkan, Kepala DSI: Tak Boleh Ada LGBT yang Bekerja, 5 February 2018, can be accessed at: <https://aceh.tribunnews.com/2018/02/05/semua-pengelola-salon-di-bireuen-dikumpulkan-kepala-dsi-tak-boleh-ada-lgbt-yang-bekerja>, dan Voice of America, Warga Bireun Khawatir 'Larangan Ngopi' Tanpa Mahram di Kedai Berdampak Luas, 5 September 2018, can be accessed at: <https://www.voaindonesia.com/a/warga-bireun-khawatir-larangan-ngopi-tanpa-muhammadiyah-di-kedai-berdampak-luas/4558298.html>.

⁵⁶ Detik.com, Larang LGBT Kerja di Salon, Bupati Mawardi: Sosialisasi 1 Bulan, 13 February 2018, can be accessed at: <https://news.detik.com/berita/d-3865020/larang-lgbt-kerja-di-salon-bupati-mawardi-sosialisasi-1-bulan>.

⁵⁷ BBC, Setelah ditangkap, para waria di Aceh 'dibina agar jadi laki-laki', 29 January 2018, can be accessed at: <https://www.bbc.com/indonesia/indonesia-42850327>.

- To urge the GoI to take steps to abolish and amend existing discriminatory local regulations, including Qanun (Aceh bylaws), that conflict with the 1945 Constitution and state human rights obligations that prohibit discrimination regardless any reason, including on sexual orientation and gender identity, such as laws requiring workers to follow a dress code specific gender.

—————End —————