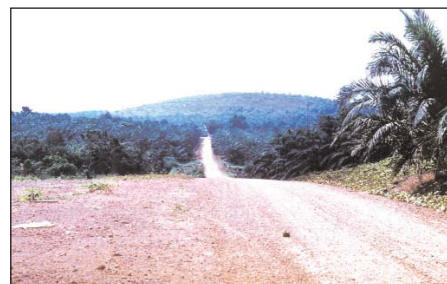




**Down to Earth
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Indonesia's sustainable development, climate change and human rights treaty obligations

A selection of international instruments applicable to Indonesia which relate to sustainable development, climate change and human rights.

This briefing is intended as a quick reference for Indonesian and international civil society organisations and others working on Indonesia. It is not intended to be comprehensive, but highlights in particular provisions that relate to the rights of indigenous peoples.¹

What is an international treaty?

A treaty is a written agreement between states governed by international law.

Indonesia's Act No.24 of 2000² (see Annex 1) regulates the making and ratification of international treaties. It refers to various terms used for a treaty such as international agreement, convention, memorandum of understanding, protocol, charter, declaration, final act, arrangement, exchange of notes, agreed minutes, summary records, process verbal, modus vivendi and

letter of intent. Some of these instruments, such as declarations, are not legally binding under international law, but may be politically binding.

The UN makes a distinction between 'treaties, covenants, charters, protocols, conventions, accords and agreements' on the one hand and 'declarations, proclamations, standard rules, guidelines, recommendations and principles' on the other. The first are legally binding while the second are not legally binding but 'nevertheless represent a broad consensus of the international community and, therefore, [have] a strong moral force... Even without binding legal effect, they may be seen as declaring principles widely accepted within the international community.'³

Treaties are not only multilateral. They can also take the form of bilateral treaties between two states or treaties open to only a few

states, such as the ASEAN Charter ratified by Indonesia in October 2008.

While many international instruments set important standards for states to follow, others are of questionable effectiveness because of the political compromises made to achieve agreement. The recently-agreed terms of reference for an ASEAN Intergovernmental Commission on Human Rights, for example, have been strongly criticised by Amnesty International and other human rights groups for failing to give sufficient emphasis to the protection of human rights and for their emphasis on consensus and the regional principle of non-interference in the internal affairs of other states.

An international treaty has to go through a number of stages before it can be enforced in a particular country. After a text is agreed and

adopted, the instrument is opened for signature and normally enters into force after a sufficient number of States have signed or ratified it. The instrument becomes enforceable in a particular country after it has been ratified or adopted by the necessary authority in that country. Indonesia's Act No.24 of 2000 on International Treaties regulates the making and ratification of treaties. It provides that certain treaties (such as those relating to national security, human rights and the environment) have to be ratified by an Act of Parliament while others can be ratified by Presidential Decree.

Enforcement mechanisms

As with a contract, all States that sign a treaty consent to be bound by its provisions. Disputes arising from a State's failure to live up to its obligations under a treaty can be settled by negotiations between the parties, by mechanisms established by the treaty itself, or by referring the dispute to the International Court of Justice in The Hague.

The International Court option applies only to States that have accepted the jurisdiction of the Court; Indonesia has not done so in general, but could choose at any time to submit to the Court's jurisdiction in relation to any specific dispute.

State compliance with the main international human rights instruments is monitored by UN-based supervisory committees, such as the Human Rights Committee and Committee Against Torture. An Optional Protocol to the International Covenant on Civil and Political Rights establishes a mechanism for complaints by individual victims of abuse, but Indonesia has not yet ratified the Protocol. Neither has it ratified the Optional Protocol to the Convention Against Torture that establishes an international inspection system for places of detention.

Notes

1. Laws cited here are not always sourced from official translations of the original documents. Earlier compilations of international instruments are available from: (i) a 1999 Walhi and Atmajaya University book on Environmental International Environmental Conventions; (ii) a 2003, stakeholders workshop on multilateral agreements related to biodiversity conservation (forestry sector) run by Indonesia's forestry ministry in cooperation with UNESCO, TNC and Birdlife Indonesia
http://www.unesco.or.id/images/pub/publications/71_cd_publi_proceedingstakeholdersforestry.pdf; and (iii) a 2004 Indonesian language infosheet on the Convention on Biodiversity (CBD) published by the Indonesian organisation, Konphalindo
2. Act No.24/2000 implements Article 11 of the Constitution, which replaced the old regulation, Presidential Letter No.2826/HK/1960.
3. UN Guide for Indigenous Peoples, Leaflet No 2, p. 2 at: <http://www2.ohchr.org/english/issues/indigenous/guide.htm>



International Instruments on Sustainable Development and Climate Change

The United Nations Environment Programme, UNEP, has produced a comprehensive manual on Multilateral Environmental Agreements (MEAs), which can be used as an additional reference.¹

International Instruments	Indonesia's Laws	Notes
<p>Convention on Biological Diversity (CBD)</p> <p>Entered into force: 29 December 1993</p> <p>Ratified by Indonesia 23 August 1994</p> <p>http://www.cbd.int</p>	<p>Act No 5 of 1994 on the ratification of United Nations Convention on Biological Diversity, 1 August 1994</p>	<p><i>The CBD, also known as the Biodiversity Convention, is one of the most important international treaties on sustainable development.</i></p> <p>It was adopted and opened for signature at the 1992 Earth Summit in Rio de Janeiro. The term 'sustainable development' was first coined at this summit.</p> <p>CBD articles 8(j), 10(c) 17 and 18.4 are seen as particularly important to indigenous peoples (see Annex 2)</p> <p>A country profile of Indonesia is provided on the CBD website at http://www.cbd.int/countries/?country=id</p> <p>State parties are required to submit regular reports on steps taken to implement the Convention. As of July 2009 Indonesia had not submitted its Fourth Report due on 30 March 2009. Its Third Report is available on the country profile page of the CBD website</p>
<p>Cartagena Protocol on Biosafety to the Convention on Biological Diversity</p> <p>Ratified by Indonesia 3 March 2005</p> <p>http://www.cbd.int/biosafety/</p>	<p>Act No 21 of 2004 on the ratification of Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 16 August 2004</p>	<p><i>The Cartagena Protocol seeks to protect biological diversity from the potential risks posed by 'living modified organisms' resulting from modern biotechnology.</i></p> <p>Indonesia ratified the Cartagena Protocol without reservation. However, Government Regulation Number 21 of 2005 on Biosafety of Genetically-Modified Products makes no reference to the Cartagena Protocol's socio-economic considerations, such as article 23 on public awareness and participation.</p>
<p>Ramsar Convention on Wetlands</p> <p>Ratified by Indonesia, 8 August 1992</p> <p>http://www.ramsar.org/</p>	<p>Presidential Decree No 48 of 1991 on the ratification of Ramsar Convention, 19 October 1991</p>	<p><i>The Ramsar Convention is a framework for national action and international cooperation on the conservation and wise use of wetlands and their resources.</i></p> <p>Indonesia has three designated wetlands sites at Berbak in Jambi; Danau Sentarum in West Kalimantan; and Wasur National Park in Papua.</p>

¹ Available at <http://www.unep.org/DEC/docs/Guide%20for%20Negotiators%20of%20MEAs.pdf>

International Instruments	Indonesia's Laws	Notes
<p>United Nations Framework Convention on Climate Change ('the Climate Change Convention')</p> <p>Entered into force: March 21, 1994. Ratified by Indonesia: 23 August 1994 http://unfccc.int/</p>	<p>Act No 6 of 1994 on the ratification of United Nations Framework Convention on Climate Change, 1 August 1994</p>	<p><i>The UNFCCC sets an overall framework for intergovernmental efforts to tackle climate change.</i></p> <p>The UNFCCC was agreed at the 1992 Earth Summit.</p>
<p>Kyoto Protocol adopted on 11 December 1997</p> <p>Entered into force: 16 February 2005</p> <p>Ratified by Indonesia: 3 December 2004</p> <p>http://unfccc.int</p>	<p>Act No 17 of 2004 on the Ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, 28 July 2004</p>	<p><i>The Kyoto Protocol is an international agreement, linked to the Climate Change Convention that sets binding targets for the reduction greenhouse gas emissions worldwide.</i></p> <p>The current implementation period covered by the Kyoto protocol ends in 2012. Further measures to combat climate change will be agreed at the Climate Change Conference in Copenhagen in December 2009.</p>
<p>Vienna Convention for the Protection of the Ozone layer</p> <p>Entered into force: 22 September 1988</p> <p>Montreal Protocol on Substances That Deplete the Ozone Layer</p> <p>Entered into force: 1 January 1989</p> <p>Both ratified by Indonesia: 26 June 1992</p> <p>Indonesia also acceded to the later Copenhagen Amendment on 10 December 1988, and the Montreal and Beijing Amendments on 26 January 2006.</p> <p>http://ozone.unep.org/</p>	<p>Presidential Decree No 23 of 1992 on the Ratification of the Vienna Convention for Protection of the Ozone layer and the Montreal Protocol on Substances that Deplete the Ozone Layer as Adjusted and Amended by the Second Meeting of the Parties London June 1999.</p>	<p><i>A framework for international efforts to protect the ozone layer.</i></p> <p>The Convention sets binding reduction goals for substances responsible for ozone depletion are set out in the later Montreal Protocol as revised.</p>

International Instruments	Indonesia's Laws	Notes
<p>UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) adopted on 16 November 1972</p> <p>Ratified by Indonesia: 6 July 1989</p> <p>http://whc.unesco.org/</p>		<p><i>This Convention provides a system of collective protection of cultural and natural heritage sites of outstanding universal value.</i></p> <p>The World Heritage List established under the Convention includes the following sites in Indonesia:</p> <p><u>Cultural</u> Borobudur Temple Compounds Prambanan Temple Compounds Sangiran Early Man Site</p> <p><u>Natural</u> Komodo National Park Lorentz National Park Tropical Rainforest Heritage of Sumatra Ujung Kulon National Park</p> <p>A number of other sites are included on a Tentative list. See http://whc.unesco.org/en/statesparties/id</p>
<p>Rio Declaration on Environment and Development</p> <p>June 1992</p> <p>http://www.unep.org/</p>		<p><i>Another outcome of the 1992 Earth Summit, the 'Rio Declaration' consists of 27 principles intended to guide future sustainable development around the world.</i></p>
<p>Declaration on the Right to Development</p> <p>Adopted by General Assembly resolution 41/128 of 4 December 1986</p>		<p><i>This is a declaration on the collective right to development, defined as "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom."</i></p>



International Human Rights Treaties

An International Bill of Rights, comprising the primary UN human rights instruments - The Universal Declaration of Human Rights ('the Universal Declaration'), the International Covenant on Economic, Social and Cultural Rights ('the ECOSOC Covenant'), the International Covenant on Civil and Political Rights ('the ICCPR') and the Optional Protocol to the ICCPR - exists to define and guarantee the protection of human rights. Work on formulating the Bill of Rights began immediately after the Second World War, but wasn't completed until nearly two decades later when, in December 1966, the UN General Assembly voted to adopt and open for signature the ECOSOC Covenant, the ICCPR and the Optional Protocol. The General Assembly had previously adopted the Universal Declaration in December 1948.

The Universal Declaration is a manifesto with supreme moral authority while the two covenants are treaties binding on States that ratify them. The original intention was to agree one covenant containing binding commitments

based on the general principles set out in the Universal Declaration, but the initial draft was split into two to accommodate different views on the relative importance of the various categories of rights.

Today, the Bill of Rights is supplemented by four other core UN human rights treaties: the International Convention on the Elimination of All Forms of Discrimination (CERD), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

After much delay, Indonesia ratified the ECOSOC Covenant and the ICCPR in 2005 under Act No 11 of 2005 and Act No 12 of 2005 respectively, while placing an important reservation on the right to self-determination (see table).

A number of Treaty bodies have been established to supervise State compliance with the human rights treaties (see table below). Charter-

based bodies, which include special rapporteurs on issues such as torture, also exist to promote the protection of UN-recognised rights. A special page on the website of the Office of the High Commissioner for Human Rights details Indonesia's relationships with these various bodies.⁴ The web page includes information about treaties ratified by Indonesia and its reporting obligations to the Treaty bodies.

A new Universal Periodic Review (UPR) process, which involves a review of the human rights records of all 192 UN Member States once every four years, was created by the UN Human Rights Council in 2006. States are required to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. Indonesia was one of the first countries to be reviewed, in 2008.⁵

4. <http://www.ohchr.org/EN/countries/AsiaRegion/Pages/IDIndex.aspx>

5. Information on the review is available at <http://www.ohchr.org/EN/HRBo dies/UPR>



Security forces waiting for a demonstration against Freeport, Jakarta.

International Instruments	Indonesia's Laws	Notes
<p>Universal Declaration of Human Rights</p> <p>Adopted December 1948</p>	<p>Principles set out in the Universal Declaration are included in the Indonesian Constitution (Preamble, Article 26, Article 27 paragraph 1 and 2, Article 28, Article 29 paragraph 2, Article 31 paragraph 1) and the People's Consultative Assembly (MPR) Decree No.XVII/MPR/1998 on Human Rights with annex 2 on the Universal Declaration.</p>	<p><i>The Universal Declaration is non-binding, but has supreme moral authority. Its principles have been given the force of international law by means of the core UN human rights treaties listed below.</i></p>
<p>International Covenant on Economic, Social and Cultural Rights</p> <p>Adopted and opened for signature: December 16, 1966</p> <p>Entered into force: January 3, 1976</p> <p>Acceded to by Indonesia: 23 February 2006¹</p> <p>http://www.unhchr.ch/</p>	<p>Act No. 11 of 2005 on the Ratification of Covenant on Ecosoc rights.</p> <p>Enacted: October 28, 2005</p>	<p><i>The ECOSOC Covenant recognises the right to work and to free choice of employment; to fair wages; to form and join unions; to social security; to adequate standards of living; to freedom from hunger; to health and education.</i></p> <p>States acknowledge their responsibility to promote better living conditions for their people.</p> <p>On accession, Indonesia entered a Declaration concerning its interpretation of Article 1 on the right to self-determination to the effect that the right does not apply not apply to peoples within a sovereign nation-state (see Annex 3)</p> <p>In contrast to the ICCPR, the ECOSOC Covenant does not itself establish a supervisory body. This function was initially entrusted to the UN Economic and Social Council (ECOSOC), but in 1985 ECOSOC established and transferred responsibility to a Committee on Economic, Social and Cultural Rights (CESCR) (http://www2.ohchr.org/english/bodies/cescr/).</p> <p>States are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years.</p>
<p>International Covenant on Civil and Political Rights (ICCPR)</p> <p>Adopted and opened for signature: December 16, 1966</p> <p>Entered into force: March 23, 1976</p> <p>Accession by Indonesia: 23 February 2006</p> <p>http://www.unhchr.ch/</p>	<p>Act No.12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights</p> <p>Enacted: October 28, 2005</p>	<p><i>The ICCPR recognises the right of every human person to life, liberty and security of person; to privacy; to freedom from torture and ill-treatment; to immunity from arbitrary arrest; to a fair trial; to immunity from retroactive sentences; to freedom of thought, conscience and religion; to freedom of opinion and expression; and to freedom of assembly and association.</i></p> <p>On accession, Indonesia entered a Declaration concerning its interpretation of Article 1 on the right to self-determination to the effect that the right does not apply not apply to peoples within a sovereign nation-state (see Annex 3).</p> <p>The ICCPR is supervised by the Human Rights Committee, which meets in Geneva or New York. States are obliged to submit regular reports to the Committee, initially one year after acceding to the Covenant and then whenever the Committee requests</p>

¹ Accession to a treaty is similar to ratification, acceptance or approval and may refer to the act of joining a treaty by a party that didn't take part in its negotiations. See article 15 of the Vienna Convention on the Law of Treaties.

International Instruments	Indonesia's Laws	Notes
		(usually every four years). Indonesia's first report was due in May 2007, but has not yet been submitted.
<p>Optional Protocol to the ICCPR</p> <p>Entered into force: 23 March 1976</p> <p>Not yet signed or ratified by Indonesia</p>		Establishes a complaints mechanism for individual victims of abuse.
<p>International Convention on the Elimination of All Forms of Racial Discrimination (CERD)</p> <p>Adopted and opened for signature: December 1965</p> <p>Entered into force: January 4, 1969</p> <p>Accession by Indonesia: June 25 1999</p> <p>Website: http://www2.ohchr.org/english/bodies/cerd/</p>	<p>Act No.29 of 1999 on the Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>Enacted: May 25, 1999</p>	<p><i>The CERD commits states to the elimination of racial discrimination and the promotion of understanding among all races.</i></p> <p>Racial discrimination is defined as 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'.</p> <p>Indonesia has entered a reservation in relation to Article 22: 'The Government...does not consider itself bound by the provision of Article 22 and takes the position that disputes relating to the interpretation and application of the [Convention] which cannot be settled through the channel provided for in the said article, may be referred to the International Court of Justice only with the consent of all the parties to the dispute.'</p> <p>A complaints procedure is established under Article 14.</p> <p>CERD is supervised by the Committee on the Elimination of Racial Discrimination. Indonesia's first report to the Committee, due in 2000, was submitted in 2006 and considered in August 2007. Four independent reports were also submitted, including one by 11 NGOs regarding the severe threat posed to the survival of indigenous peoples in Kalimantan by the government's proposed 850km-long oil palm plantation on land owned by indigenous peoples. The Committee expressed concern about the report in its concluding observations. See http://www2.ohchr.org/english/bodies/cerd/cerds71.htm</p> <p>Later, in March 2009, the Committee criticised draft regulations on Reducing Emissions from Deforestation and Forest Degradation (REDD) for being incompatible with indigenous rights. See http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia130309.pdf</p> <p>Indonesia's next report is due in July 2010.</p> <p>More background information on the NGO submissions to CERD and follow up is available on the Forest Peoples Programme website: http://www.forestpeoples.org</p>

International Instruments	Indonesia's Laws	Notes
<p>Convention on the Elimination of All Forms of Discriminations against Women (CEDAW)</p> <p>Adopted: 1979</p> <p>Entered into force: 1981</p> <p>Ratified by Indonesia: 13 Sept 1984</p>	<p>Act No.7 on the Ratification of the Convention On The Elimination Of All Forms Of Discrimination Against Women.</p> <p>Enacted: 24 July 2004</p>	<p><i>The CEDAW defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.</i></p> <p>Discrimination is defined as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."</p> <p>Article 14 addresses the particular problems faced by rural women.</p> <p>Indonesia has entered a reservation in relation to Article 29: 'The Government...does not consider itself bound by the provision of Article 29, paragraph 1 of this Convention and takes the position that disputes relating to the interpretation and application of the [Convention] which cannot be settled through the channel provided for in the said article, may be referred to the International Court of Justice only with the consent of all the parties to the dispute.'</p> <p>CEDAW is supervised by the Committee on the Elimination of All Forms of Discriminations against Women. The Committee's Observations on Indonesia's combined fourth and fifth periodic reports were published on 10 August 2007. See http://daccessdds.un.org/doc/UNDOC/GEN/N07/460/12/PDF/N0746012.pdf?OpenElement</p> <p>The combined sixth and seventh reports are due to be submitted in October 2009.</p>
<p>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture – CAT)</p> <p>Entered into force: 26 June 1987</p> <p>Ratified by Indonesia: 28 October 1988</p>		<p><i>This Convention requires states to take effective measures to prevent torture and ill-treatment and forbids states to return people to their home country if there is reason to believe they will be tortured.</i></p> <p>CAT is supervised by the Committee against Torture. The Committee's Observations on Indonesia's second periodic report were published on 2 July 2008. See: http://daccessdds.un.org/doc/UNDOC/GEN/G08/428/16/PDF/G0842816.pdf?OpenElement</p> <p>Indonesia's third report is due to be submitted in June 2010.</p>
<p>Optional Protocol to the Convention against Torture</p> <p>Entered into force: 22 June 2006</p> <p>Not yet signed or ratified by Indonesia</p>		<p>Establishes an international inspection system for places of detention.</p>

International Instruments	Indonesia's Laws	Notes
<p>Convention on the Rights of the Child (CRC)</p> <p>Entered into force: 2 September 1990</p> <p>Ratified by Indonesia 5 September 1990</p>		<p><i>The CRC sets out the civil, political, economic, social and cultural rights of children and requires that states always act in the best interests of the child.</i></p> <p>The CRC is supervised by the Committee on the Rights of the Child. The Committee's Observations on Indonesia's second periodic report were published on 26 February 2004. See: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Adj.223.En?Opendocument</p> <p>The combined third and fourth reports were due to be submitted in October 2007.</p>
<p>International Labour Organisation Conventions</p> <p>Information about ILO Conventions ratified by Indonesia is available at http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN</p> <p>and http://www.ilo.org/ilolex/english/docs/declworld.htm</p>	<p>These include: Act No.19 on The Ratification of ILO Convention Number 105 Concerning The Abolition Of Forced Labour; Act No.20 on the Ratification of ILO Convention Number 138 Concerning Minimum Age For Admission To Employment and Act No. 21 on the Ratification of ILO Convention Number 111 Concerning Discrimination In Respect Of Employment and Occupation. All enacted 7 May, 1999.</p>	<p><i>ILO Conventions and Recommendations cover a broad range of subjects concerning work, employment, social security, social policy and related human rights.</i></p> <p>The ILO's supervisory bodies -- the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards -- regularly examine the application of international labour standards in ILO member states. Representation and complaint procedures can also be initiated against states that fail to comply with conventions they have ratified. A special procedure -- the Committee on Freedom of Association -- reviews complaints concerning violations of freedom of association, whether or not a member state has ratified the relevant conventions.</p>
<p>ILO Convention 169 (entered into force 5 September 1991), which concerns Indigenous and Tribal Peoples in Independent Countries, has not yet been ratified by Indonesia. The text is available at http://www.ilo.org/ilolex/english/convdisp1.htm</p>		<p>Indonesia's Indigenous Peoples Alliance, AMAN, has called for ILO Convention 169 to be ratified by Indonesia.</p>
<p>UN Declaration on the Rights of Indigenous Peoples (UNDRIP)</p> <p>Adopted by the UN General Assembly 13 September 2007</p> <p>Website: http://www.un.org/esa/socdev/unpfii/en/declaration.html</p>		<p><i>The UNDRIP sets out the individual and collective rights of indigenous peoples.</i></p> <p>It sets out their rights to culture, identity, language, employment, health, education and other issues. It prohibits discrimination against indigenous peoples and promotes their right to remain distinct and to pursue their own visions of economic and social development. It confirms the concept of 'free, prior and informed consent' in connection with the protection of indigenous lands and resources.</p> <p>Indonesia voted in favour of adoption but noted that the rights in the Declaration accorded exclusively to indigenous people did not apply in the context of Indonesia. For more on Indonesia's note see http://www.un.org/News/Press/docs/2007/ga10612.doc.htm In September 2007, the UN Human Rights Council set up a new Expert Mechanism on the Rights of Indigenous Peoples. See http://www2.ohchr.org/english/issues/indigenous/mechanism.htm</p>

Other useful online sources of information on international instruments and the rights of indigenous peoples:

UN Guide for Indigenous Peoples: <http://www2.ohchr.org/english/issues/indigenous/guide.htm>
Indonesian version of the above produced by AMAN and DTE:
<http://dte.gn.apc.org/AMAN/publikasi/unip.html>

Indonesian Center for Environmental Law: <http://www.icel.or.id/>

A Guide to Indigenous Women's Rights under the International Convention on the Elimination of All Forms of Discrimination Against Women, Dr Ellen-Rose Kambel, FPP, January 2004:
http://www.forestpeoples.org/documents/law_hr/bases/cedaw_base.shtml

Tebtebba: http://www.tebtebba.org/index.php?option=com_content&view=article&id=2&Itemid=18

UN Permanent Forum on Indigenous Issues: <http://www.un.org/esa/socdev/unpfii/>

Forest Peoples Programme, NGO submission to CERD 2007
http://www.forestpeoples.org/documents/asia_pacific/indonesia_cerd_july07_eng.pdf
and 2009 http://www.forestpeoples.org/documents/law_hr/cerd_indonesia_urgent_action_jul09_eng.pdf
& CERD response
http://www.forestpeoples.org/documents/asia_pacific/indonesia_cerd_response_urgent_action_sept09_eng.pdf

Participation and freedom of information

Best policy and practice in relation to the environment, sustainable development, climate change and human rights cannot be achieved without public participation and public access to relevant information. This is clearly stated in Principle 10 of the Rio Declaration:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

The principle is fundamental to environmental democracy. Ten years after the Rio Summit, a global platform named Partnership for Principle 10 (PPI10) was launched at the World Summit for Sustainable Development (WSSD) in Johannesburg in August 2002⁶. Partners of PPI10 are governments, international institutions, and non-governmental organizations⁷. Indonesia was accepted as partner in April 2006. As of March 2009, it was still the only Asian State participating. The four partners under the international organisations category are the World Conservation Union (IUCN), the UN Development Program (UNDP), the UN Environment Program (UNEP) and the World Bank. Under the NGO category, Indonesia is represented by the Indonesian Center for Environmental Law (ICEL).

6. See <http://www.pp10.org>

7. Listed at http://www.pp10.org/index.php?option=com_content&view=category&layout=blog&id=55&Itemid=89

8. As stated on <http://www.pp10.org>

This group works through a set of strategies to ensure the fulfilment of commitments made in the Rio Declaration and the WSSD Plan of Implementation. Their strategies are⁸:

Serving as an Accountability Mechanism -- by ensuring peer-review of the partners' commitments, and by providing information about the specific commitments and the partners' progress toward achieving them.

Mobilizing Financial Resources – by focusing on "matchmaking" among the commitments of different partners, and by ensuring that appropriate bilateral connections between potential donors and potential recipients are made.

Serving as a Learning Mechanism -- by documenting and exchanging emerging knowledge and best practice in the implementation of Principle 10.

Expanding the Partnership – by PPI0's membership to establish its global scope, and to aid in mobilizing resources.

Upon joining, partners are asked to set specific commitments. The government of Indonesia, represented by the Environment Ministry, set five commitments:

- to increase attempts to disseminate information by using various media such as internet and printed publications.
- to increase public involvement in the environmental impact assessment (EIA) process by, amongst other things, evaluating its implementation. The ministry has admitted that this is been long overdue.
- to increase management of public complaints, which involves monitoring and enforcement of the Environment Minister Decree No 19 of 2004 about Guidelines for management of public complaints on environmental cases.
- to promote public participation in the drafting of local environmental regulations by providing guidelines. This work has been carried out in partnership with ICEL.
- to strengthen the environmental law framework by, amongst other things, integrating Principle 10 into the revision of the Environmental Management Act.

The commitments are required to be measurable and time bound.

Indonesia's Freedom of Information Act

The right to access information is a fundamental human right. At the international level, it is recognised by the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights. The right to access environmental information in Indonesia is guaranteed under the Constitution, Act No 39 of 1999 on Human Rights (Article 14), Act No 23 of 1997 on Environmental Management (Article 5 and 10 (h)) and by Act No 14 of 2008 concerning the transparency of public information. ICEL has been part of the NGO coalition which pushed for the drafting of this Freedom of Information Act. Extracts from the Act are set out in Annex 4.



Annex I

Key provisions of Act 24/2000 on International Treaties

Article 10

Ratification of international treaties is stipulated by law on the following matters:

- a. politics, peace, defense and national security
- b. the occurrence of change or establishment of country new demarcation
- c. sovereignty
- d. human rights and environment
- e. the occurrence of new principle of law
- f. international or foreign loan and/or grant.

Article 11

Matters other than the above are stipulated by presidential decree.

Article 16 (1): Amendments

Amendments to international treaties by the Government of Indonesia should be based on the agreement of the parties involved in the treaty

Article 18: Termination

An international treaty is terminated when:

- a. there is agreement to terminate the treaty between the parties involved according to the agreed procedure
 - b. the aims of treaty have been achieved
 - c. there is occurrence of fundamental change which affects the implementation of the treaty
 - d. a party has failed to carry out or has breached the stipulations of the treaty
 - e. a new treaty is agreed to replace the old treaty
 - f. there is occurrence of new norms under international law
 - g. the object of treaty disappears
 - i. the treaty is undermining national interest.
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Annex 2

Selected provisions of the Convention on Biological Diversity applicable to indigenous peoples

Article 8(j)

Each Contracting Party shall, as far as possible and as appropriate:

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices

Article 10(c)

Each Contracting Party shall, as far as possible and as appropriate:

Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced

Article 17

1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.

2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

Article 18.4

The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.

Annex 3

Declaration made by Indonesia on its accession to the ECOSOC Covenant and the ICCPR

"With reference to Article I of the International Covenant on Economic, Social and Cultural Rights [the International Covenant on Civil and Political Rights], the Government of [the] Republic of Indonesia declares that, consistent with the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, and the relevant paragraph of the Vienna Declaration and Program of Action of 1993, the words "the right of self-determination" appearing in this article do not apply to a section of people within a sovereign independent state and can not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states."

Annex 4

Extracts from Act No 14 of 2008 on the transparency of public information

The Act was signed and enacted on 30 April 2008 and will enter into force on 30 April 2010.

It is divided into 14 chapters with 64 articles.

- Chapter I (Article 1): General provisions
- Chapter II (Articles 2 - 3): Principles and purposes
- Chapter III (Articles 4 - 8): Rights and obligations of the applicants and the users of public information and rights and obligations of public agencies
- Chapter IV (Articles 9 - 16): Obligatory information to be made available and promulgated
- Chapter V (Articles 17 - 20): Exempted information
- Chapter VI (Articles 21 - 22): Mechanism to acquire information
- Chapter VII (Articles 23 - 34): The Commission of Information
- Chapter VIII (Articles 35 - 39): Objections and conflict resolution through the Commission of Information
- Chapter IX (Articles 40 - 46): Law of procedure of the Commission of Information
- Chapter X (Articles 47 - 50): Court cases and appeals
- Chapter XI (Articles 51 - 57): Criminal charge
- Chapter XII (Article 58): Stipulation for miscellaneous matters
- Chapter XIII (Articles 59 - 62): Stipulation for transitional matters
- Chapter XIV (Articles 63 & 64): Stipulation for conclusion

Article 2

- (1) All public information is open and accessible to the public.
-) Exempted public information is restricted and limited.
- (3) All public information should be acquired by the applicants by quick and punctual, cheap and simple/uncomplicated means.
- (4) Exempted public information is State secret in accordance to law, decency and public interest. The decision for exemption is based upon examination of the potential consequences.

Article 3

The purpose of the Act is to:

- a. guarantee the rights of citizens to know about any plan to make public policy, public policy programmes, public decision-making processes, and the reasons why decisions are made
- b. encourage public participation in the public decision-making processes
- c. promote people's active participation in public decision-making and in the good governance of public agencies
- d. bring about good governance that is transparent, effective and efficient, accountable and responsible
- e. provide reasons for public policies that affect the public interest.
- f. promote knowledge and science and educate people
- g. improve the management and delivery of information provided by public agencies/bodies and achieve a high quality information service.

Article 6: Rights of public agencies

- (1) Public agencies may refuse to disclose exempted information in accordance with the prevailing laws and regulations.
- 2) Public agencies assert the right to refuse to provide public information when it is not in accordance with the prevailing laws and regulations

- 3) Public agencies may refuse the disclosure of public information if:
- a. the information may pose a threat to national security
 - b. it relates to the protection of businesses from unfair competition
 - c. it relates to personal/private/individual rights
 - d. it relates to official secrets
 - e. it is not yet acquired or documented.

Political parties and non-governmental organisations are among public agencies subject to this Act (Article 15 and 16)

The procedures for addressing complaints and settling disputes are set out in Chapter 8 (articles 35-39).

Annex 4

Company Law, Human rights and the Environment

Under Chapter 5 of Indonesia's Company Law, Natural Resources Companies are obliged to shoulder social and environmental responsibilities. Further, in line with the Indonesian Commercial Code, insofar as morality and lawfulness required respect for human rights, corporations are more broadly liable to respect human rights.⁹ This means that the State has an obligation to allow corporations to comply with their social and environmental obligations.

9. Allens Arthur Robinson, 2009, *Corporate Law Tools Project: Report to the Special Representative of the Secretary General on the Issue of Human Right and Transnational Corporations and Other Business Enterprises*, United Nations, September 2009. Furthermore, Article 7(2) of the Human Rights Law (39/1999) provides that international human rights instruments ratified by Indonesia form part of domestic law. Likewise under the Law concerning the Elimination of Racial and Ethnic Discrimination (40/2008), corporations are also subject to criminal and civil liability.

