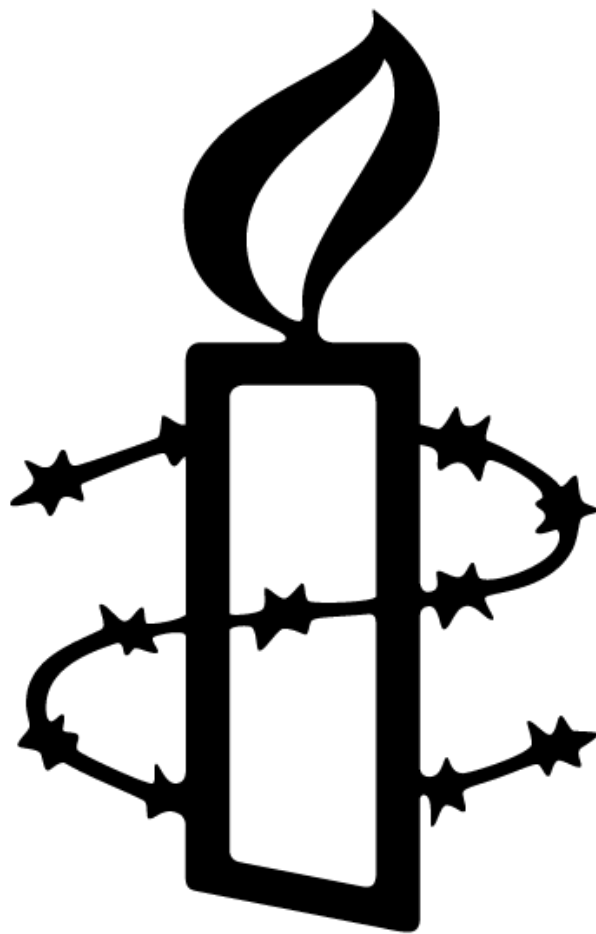


INDONESIA

SUBMISSION TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND
CULTURAL RIGHTS

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CONTENTS

1.	INTRODUCTION	3
2.	RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT AND RIGHT TO ADEQUATE HOUSING (ARTICLE 12 AND 11)	3
2.1	RECOMMENDATIONS	6
3.	RIGHTS OF INDIGENOUS PEOPLES (ARTICLE 15 AND 11)	6
3.1	WABU BLOCK	6
3.2	REMPANG ISLAND	7
3.3	RECOMMENDATIONS	8

In this submission to the UN Committee on Economic, Social and Cultural Rights, Amnesty International draws attention to the recent legislative changes, notably the enactment of Law No. 6 of 2023 (Job Creation Law), that raise concerns as they depart from the previous environmental protection measures, posing a threat to human rights obligations, including the right to a clean, healthy, and sustainable environment, the right to adequate housing, and the rights of Indigenous Peoples.

1. INTRODUCTION

Amnesty International is presenting the following information to the UN Committee on Economic, Social and Cultural Rights (the Committee) ahead of the review of Indonesia's second periodic report in February-March 2024. This submission highlights concerns regarding Indonesia's adherence to the International Covenant on Economic, Social and Cultural Rights (the Covenant) with particular attention given to the right to a clean, healthy and sustainable environment, right to adequate housing and Indigenous Peoples rights.

The submission draws attention to the recent legislative changes, notably the enactment of Law No. 6 of 2023 (Job Creation Law), that raises concerns as they depart from the previous environmental protection measures, posing a threat to human rights obligations, including the right to a clean, healthy, and sustainable environment, the right to adequate housing, and the cultural rights of Indigenous Peoples. Previously, Indonesian businesses were mandated to undergo an Environmental Impact Assessment (EIA), known as AMDAL (*Analisis Mengenai Dampak Lingkungan*), before initiating operations. The AMDAL process involves in-depth studies to evaluate potential environmental impacts, aiding decision-makers in making informed choices to prevent or mitigate adverse effects.

2. RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT AND RIGHT TO ADEQUATE HOUSING (ARTICLE 12 AND 11)

As elaborated below, certain provisions in the Law No. 11 of 2020 on Job Creation amount to retrogressive measures which are not justified in the absence of the government demonstrating that it has carefully considered all other options and assessed the impact on human rights enjoyment.

On 2 November 2020, Indonesia's government enacted Law No. 11 of 2020 on Job Creation, intending to stimulate the economy by, amongst other things, simplifying the licensing of businesses. However, on the other hand, it is less stringent requirements on human rights and environmental due diligence and consultation of affected communities.¹

In November 2021, Indonesia's Constitutional Court, in Decision No. 91/PUU-XVIII/2020, found Law 11/2020 to be procedurally flawed and directed the government to revise it by November 2023. It noted that the formulation of the law "did not adhere to established legislative procedures, methods, and systems". One of the key issues was that, although several community groups had been consulted in meetings, the proposed amendments to the substantive text of the bill had not been revealed in those meetings. Therefore, the community members who were involved in those meetings did not know the materials for amendment. The academic text and the Job Creation bill were also not accessible to the public.²

In response to the Court ruling, in December 2022 the government replaced Law 11/2020 with Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, which was enacted into law on 31 March 2023 as Law No. 6 of 2023 ("Job Creation Law").

The Job Creation Law introduces a new provision into Law No. 2 of 2012 on Land Procurement for the Development in the Public Interest – Article 19(C) – that conflicts with AMDAL provisions under Law

¹ United Nations Conference on Trade and Development, "*Omnibus Law' on job creation has been enacted*", 2 November 2020, <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3567/indonesia-omnibus-law-on-job-creation-has-been-enacted> (accessed on 20 October 2023).

² The Constitutional Court of the Republic of Indonesia, "*Court: Conditionally Unconstitutional, Job Creation Law Must Be Revised in Two Years*", 25 November 2021, <https://en.mkri.id/news/details/2021-11-25/Court%3A%20Conditionally%20Unconstitutional%2C%20Job%20Creation%20Law%20Must%20Be%20Revised%20in%20Two%20Years> (accessed on 20 October 2023).

32/2009. It states that when a regent or mayor designates a parcel of land as a public interest area, provided it is less than five hectares, it is exempt from various requirements, such as compliance with regional spatial planning and conducting AMDAL or, in cases where the government will oversee its development and management, an environmental feasibility study. The Job Creation Law also amends Article 26 of Law 32/2009, removing the participatory process for indirectly impacted communities and environmental experts. Amnesty International is concerned that these regressive provisions potentially threaten the communities' right to health, including a healthy environment.

The importance of the existing AMDAL safeguards is demonstrated by the fact that in 2016, a government-backed cement quarry and factory in the karst mountains of Kendeng in Central Java province were at the centre of high-profile land conflicts. Farmers in the area Challenged in court the project's environmental permit, saying they knew nothing of the project's impact assessment until heavy machinery appeared at the site. Farmers recognized the project's risks partly because activists explained that it could jeopardize the water supplies relied upon by hundreds of thousands of people in the region.³

In many other instances, including in the Mandalika and Rempang Island cases discussed below, communities have often not been adequately informed, and the decision-making process surrounding the development plan has not involved meaningful consultation with and participation of the affected communities. Communities, especially of Indigenous Peoples, might only realize the environmental risks of a development project once it is too late. It shows the crucial role of civil society, even though it might not be directly impacted by business activity, in closing any information gap by advocating for communities.

Article 10 of Law 2/2012 stipulates that the government may acquire land to develop 18 types of public interest areas, including those relating to oil and gas infrastructure, government offices and dams. The Job Creation Law amended this article to add six new types of public interest areas, including upstream and downstream oil and gas industrial areas, special economic areas and tourism areas.

Amnesty International is concerned that the government will use this to provide legal justification for forced evictions and the seizure of land under the pretext of developing public interest areas. If and when the above provision is coupled with regulations relating to Indonesia's "national strategic projects" as part of special economic areas the potential for forced evictions and land grabs could increase even further, potentially depriving Indigenous Peoples and local communities of their land without meaningful consultation.

One of the regulations governing the development of national strategic projects is President Regulation No. 42 of 2021 on Ease of National Strategic Projects – a derivative regulation of the Job Creation Law. This regulation requires all government stakeholders to ease the progress of development projects, such as by accelerating permits at each stage of a national strategic project and provides facilities for businesses for an easier land procurement process under the pretext of developing public interest areas. However, in many instances of the development of national strategic projects, these facilities often raise problems with the surrounding communities. An example of this is the Mandalika tourism project.

UN human rights experts have raised concerns about the excessive actions of state authorities to speed up the construction of the Mandalika tourism project in West Nusa Tenggara province since 2018. The task force set up to accelerate the settlement of conflicts over land tenure in the area comprised members of the police and army, who reportedly intimidated and coerced Indigenous Peoples in Mandalika to give up their lands.⁴

³ WALHI, "The Fight of Farmers of Kendeng, Strengthen the Rescuing Movement of Karst Area in Indonesia", 2 April 2017, <https://www.walhi.or.id/fight-farmers-kendeng-strengthen-rescuing-movement-karst-area-indonesia> (accessed on 20 October 2023).

⁴ OHCHR, "Indonesia: UN experts alarmed by reports of increased militarisation and intimidation around Mandalika project", 1 March 2023, <https://www.ohchr.org/en/press-releases/2023/03/indonesia-un-experts-alarmed-reports-increased-militarisation-and> (accessed on 20 October 2023).

In a letter dated 14 February 2023, UN experts pointed out that while some consultations had taken place with the Indigenous communities in Mandalika, concerns remain that the affected community members have not been informed or consulted in a meaningful manner.⁵ It has been reported that the Deputy Minister for Political, Legal and Security Affairs, who has a leadership role within the land acquisition task force, requested a meeting with four village leaders with only three days' notice. The Indigenous communities had not been able to select the "leaders" and the meetings were not translated into Sasak, the Indigenous language, which made it difficult to participate in the discussions.⁶

On 23 August 2023, people from Rempang Island gathered in front of the office of Batam Free Zone Authority (BP Batam) to call on the authorities to not evict Indigenous Peoples and local communities from their settlements to build the Rempang Eco-City project and withdraw the security forces from Rempang Island. The initially peaceful protest turned into a violent clash between protesters and security personnel.⁷

The Batam authorities announced the Rempang Eco-City project and the "relocation" plan to the residents of Rempang Island on 21 July 2023, but representatives of the Indigenous Peoples and local communities said that they rejected the plan because they did not want to move from their ancestral land. According to the legal aid organization LBH Pekanbaru, amid growing rejection of the plan, some residents of Rempang were threatened and intimidated by police summons accusing them of, among other things, crimes for "impeding investment" and "illegal occupation of land".⁸ Further details of human rights violations against Indigenous Peoples on Rempang Island are elaborated below.

According to the Agrarian Reform Consortium – a consortium comprising civil society organizations, individuals and academics advocating for agrarian reform in Indonesia – following the enactment of the Job Creation Law, the trend of agrarian conflicts resulting from forced evictions by companies increased from 207 in 2021 to 212 in 2022, with the areas affected more than doubling from 500,062 to 1,035,612 hectares, and the number of victims rising from 198,895 to 346,402 families.⁹

Human rights violations resulting from the regressive provisions of the Job Creation Law highlight the need for stronger protection of business and human rights in Indonesia. On 26 September 2023, Presidential Regulation No. 60 of 2023 was issued, which outlines the government's vision for ensuring that human rights are respected and protected with respect to the actions of for business entities. It adopts the UN Guiding Principles on Business and Human Rights three pillars of business and human rights – the state's obligation to protect human rights, the responsibility of business actors to respect human rights and access to remedies. The government must effectively implement Regulation 60/2023 to resolve various human rights issues and ensure non-recurrence, particularly those relating to environmental rights arising from regressive provisions under the Job Creation Law.

⁵ OHCHR, *Communication concerning allegations of human rights violations surrounding the Mandalika urban development and tourism project* (OTH 3/2022), 14 February 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27786> (accessed on 20 October 2023).

⁶ OHCHR, *Communication concerning allegations of human rights violations surrounding the Mandalika urban development and tourism project* (OTH 3/2022), 14 February 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27786> (accessed on 20 October 2023).

⁷ Kompas.id, "*Understanding the Rempang Island Case*", 15 September 2023, <https://www.kompas.id/baca/english/2023/09/13/en-memahami-kasus-pulau-rempang> (accessed on 20 October 2023).

⁸ Kompas.id, "Understanding the Rempang Island Case" (previously cited).

⁹ Agrarian Reform Consortium, "*Catatan Akhir Tahun KPA 2022 PTPN Tak Tersentuh, Kriminalisasi Rakyat Meningkat* [2022 Annual Report of Agrarian Reform Consortium: Untouched PTPN and Increased Criminalization of the People], <https://www.pustakaagraria.or.id/2023/05/ptpn-tak-tersentuh-kriminalisasi-rakyat.html> (accessed on 24 October 2023).

2.1 RECOMMENDATIONS

Amnesty International calls on the Indonesian authorities to:

- Amend the Job Creation Law and national strategic projects-related regulations to ensure that they are consistent with Indonesia's human rights obligations.
- Amend articles regarding AMDAL to ensure the protection of the right to the highest attainable standard of health including the right to a clean, healthy and sustainable environment and to adequate housing of those directly and indirectly affected by development projects.
- Revise articles regarding land acquisitions for development projects to guarantee the right to an adequate standard of living, including adequate food, clothing and housing, and the continuous improvement of living conditions.
- Ensure that Presidential Regulation 60/2023 is strictly adhered to in conjunction with other laws and regulations, particularly on criminal responsibility, and in accordance with international human rights standards.
- Refrain from the practice of forced evictions and incorporate the prohibitions of forced evictions into a law.
- Address human rights violations through judicial and non-judicial means, including by investigating violations effectively, promptly, thoroughly and impartially and, if there is sufficient admissible evidence, prosecute all those suspected of criminal responsibility in fair trials.
- Guarantee non-recurrence by moving as expeditiously and effectively as possible, by using the maximum available resources, towards achieving the goals of the ICESCR.3.

3. RIGHTS OF INDIGENOUS PEOPLES (ARTICLE 15 AND 11)

Indonesia has not passed the Indigenous Peoples Bill, which stipulates the recognition of Indigenous Peoples and protection of their rights, including the right to customary lands and free, prior and informed consent. The deliberation of the bill has stalled in parliament for more than a decade, despite being three times included in the national legislative program priority (*prolegnas prioritas*) since it was first initiated by The Alliance of Indigenous Peoples of the Archipelago (*Aliansi Masyarakat Adat Nusantara*, AMAN) in 2009.¹⁰ In addition to the stalled progress, the current bill still contains various problems, such as an intricate process to acquire recognition of Indigenous Peoples from the state.¹¹ Consequently, the rights of Indigenous Peoples in Indonesia are still far from its full realization.

In many instances, the government has failed to ensure effective human rights due diligence, including ensuring the Indigenous Peoples' right to free, prior and informed consent prior to development projects and/or business operations, as seen in the development plan of Wabu Block in Papua and the development of the national strategic project in Rempang, Riau Islands.

3.1 WABU BLOCK

The Intan Jaya regency in Central Papua province, where Wabu Block – a planned gold mining operation – is located, has become a hotspot for conflict and repression since October 2019, when an

¹⁰ *Tempo.co*, "RUU Masyarakat Adat, AMAN: Kalau Draft Sekarang Disahkan Tak Berguna Sama Sekali" (Indigenous Peoples Bill, AMAN: If the current draft is passed, it will be completely useless), <https://nasional.tempo.co/read/1704412/ruu-masyarakat-adat-aman-kalau-draft-sekarang-disahkan-tak-berguna-sama-sekali> (accessed on 17 December 2023)

¹¹ For instance, to obtain recognition from the government, the Indigenous Peoples must go through a verification process by the district government and the minister, which creates a complicated process. In addition, the bill also regulates a mechanism for government evaluation of the status of Indigenous Communities, which suggests that recognition of Indigenous Peoples depends on the government's permission.

armed Papua pro-independence group, Free Papua Movement (*Organisasi Papua Merdeka* – OPM) killed three motorcycle taxi drivers.¹² Since that time, there were increasing militarization in Intan Jaya, including unlawful killings, raids and beatings carried out by security forces, resulting an environment of violence, intimidation and fear in the region.

A number of Indigenous Papuans told Amnesty International that they oppose the gold mining operation because of its potential to harm the environment and local communities. They said they use the proposed mining area to cultivate crops, hunt animals and collect timber, and expressed concern about environmental pollution, loss of customary land and damage to their livelihoods.

The area saw an increasing number of unlawful killings, raids, and beatings by security forces between 2020 and 2021, with at least 12 people being victims of suspected unlawful killings by Indonesian security forces in the Intan Jaya regency.¹³ In the two previous years, Amnesty International did not document a single suspected unlawful killing by security officers in Intan Jaya regency.

The increasing human rights violations in Intan Jaya poses substantial human rights risks if combined with the human rights impacts of mining in Wabu Block. The increasing conflicts between security forces has driven thousands of Indigenous Papuans to leave their houses and villages to seek safety. Many are afraid of returning because they fear the presence of Indonesian security forces in their villages. In addition, Indigenous Papuans in the Intan Jaya regency face restrictions to their lives due to the increasing militarization in their customary lands. For instance, they must ask permission from Indonesian security forces to carry out daily activities such as gardening, shopping and going to another village. Sometimes, the security forces order local Papuans to dress in a certain way and cut their hair in order to have a different appearance from members of the pro-independence armed group even though beards, dreadlocks and long hair are part of their culture and are common in the region.¹⁴ One Indigenous person told Amnesty International that the security forces “arrest many people for having long hair and moustache. They get asked, hit.”¹⁵

This situation has created an environment of violence, intimidation and fear, where the conditions required for a free consultation process are likely to be absent. It therefore undermines the government’s ability to fulfil its obligation to obtain the free, prior and informed consent for the planned mining operation from the affected Indigenous peoples.

In April 2022, following Amnesty International’s advocacy to halt the licensing process for Wabu Block, the Coordinating Minister for Political, Legal and Security Affairs, Mahfud MD, publicly stated that the government will ensure the mining operation of Wabu Block consider the welfare and rights of the impacted Indigenous People.¹⁶ At the time of writing, the licensing of the Wabu Block operation had not yet been formalized and announced.

3.2 REMPANG ISLAND

In Rempang Island, Riau Islands province, members of the Indigenous Peoples of Tempatan – comprising the Malays, Orang Laut and Orang Darat tribes – were at risk of eviction from their ancestral land because of the government’s plan to build a multi-billion-dollar industrial area called Rempang Eco-City on the island.

¹² Amnesty International, “*Gold Rush*”: *Indonesia’s Mining Plans Risk Fueling Abuses in Papua*, 2022. Amnesty International continued to receive reports from other organizations of ongoing conflict in Intan Jaya until 2023, see: Tempo, “Papua Mencekam Akibat Konflik Senjata”, <https://koran.tempo.co/read/nasional/481529/papua-mencekam-akibat-konflik-senjata> (accessed on 3 November 2023).

¹³ Amnesty International, “*Gold Rush*”, p. 16.

¹⁴ Amnesty International, “*Gold Rush*”, p. 18.

¹⁵ Amnesty International, “*Gold Rush*”.

¹⁶ Kompas.tv, “Mahfud MD Jamin Penambangan Baru di Wabu akan Perhatikan Hak dan Kesejahteraan Warga Papua”, <https://www.kompas.tv/nasional/280412/mahfud-md-jamin-penambangan-baru-di-wabu-akan-perhatikan-hak-dan-kesejahteraan-warga-papua> (accessed on 3 November 2023).

The eco-city, one of Indonesia's national strategic projects prioritized for 2023, is set to be built on 7,572 hectares of land, nearly 46% of the total area of Rempang Island.¹⁷ To make way for the development, authorities planned to relocate up to 7,500 residents living in 16 villages known as *kampung tua* (ancient villages), which have existed since 1834, to a new housing complex to be built on Tanjung Banon on the other side of Rempang Island, and on the neighbouring Galang Island.¹⁸

Rempang residents have staged protests against the relocation plan that would mean eviction from their land and livelihoods. On 7 September 2023, after security forces were deployed to the island to safeguard land measurement and marking for the development process, a clash broke out between them and Rempang residents. Residents tried to resist the entry of the security forces into their villages by throwing stones and water bottles at the security personnel, who responded by firing water cannons and tear gas.¹⁹ Eight individuals were arrested and charged for attacking officials; they were later released on bail on 16 September after nine days in police custody.²⁰

Amnesty International received information from representatives of Indigenous Peoples in Rempang that the decision-making process surrounding the development plan, including the planned eviction, had not involved meaningful consultation with and participation of the affected Indigenous Peoples to obtain their free, prior and informed consent.²¹ In cases where BP Batam, the government agency responsible for the project, held gatherings in which they claimed to have listened to the views of the residents, the representatives of Indigenous Peoples said the meetings had been a one-way dissemination of information. In some instances, the meetings were held amid heavy security, with the presence of police and military personnel.

Despite continued resistance, the government pushed ahead with the development plan and forced residents to register for relocation.²² Following the protest on 7 September, at least five security posts were set up in Rempang, with at least 20-30 joint police and military personnel deployed at each post. Amnesty International obtained information from partners on the ground that the presence of security personnel intimidated and distressed the residents.²³ Police and military personnel also accompanied authorities from BP Batam during house visits to present the development plan and convince residents to accept that they would be relocated.²⁴

Amnesty International is concerned that if the "relocation" and activities linked to the development project proceed in circumstances where authorities have not properly complied with their obligation to obtain free, prior and informed consent from the affected Indigenous Peoples, and the process of free and meaningful consultation is hindered by a heavy security presence in the area, the operation would violate the rights of Indigenous Peoples to their ancestral land and involve forced evictions.

3.3 RECOMMENDATIONS

Amnesty International calls on the Indonesian authorities to:

- Ensure that any development plan does not result in the forced eviction of Indigenous Peoples from their homes and lands.

¹⁷ "Menjadi Katalis Pertumbuhan di Batam, Pemerintah Terus Dorong Akselerasi Pembangunan Kawasan Rempang", Kementerian Koordinator Bidang Perekonomian RI, 13 July 2023, <https://www.ekon.go.id/publikasi/detail/5252/menjadi-katalis-pertumbuhan-di-batam-pemerintah-terus-dorong-akselerasi-pembangunan-kawasan-rempang>

¹⁸ The Jakarta Post, "Govt urges locals to move from Rempang soon", 4 October 2023, <https://www.thejakartapost.com/indonesia/2023/10/04/govt-urges-locals-to-move-from-rempang-soon.html>

¹⁹ Testimony of Rempang residents obtained by Amnesty International Indonesia's local partner organizations.

²⁰ Interview by Amnesty International Indonesia with detainees' legal team, through phone on 26 September 2023

²¹ Testimony of Rempang residents obtained by Amnesty International Indonesia's local partner organizations.

²² CNN Indonesia, "Ombudsman Sebut Warga Rempang Tertekan, Anak Dipaksa Tanda Tangan", 27 September 2023, <https://www.cnnindonesia.com/nasional/20230927161340-20-1004491/ombudsman-sebut-warga-rempang-tertekan-anak-dipaksa-tanda-tangan>

²³ Interview by Amnesty International's partner organizations with Rempang residents, in person from 11-13 September 2023

²⁴ Kompas.id, "Sosialisasi Diintensifkan, Warga Pulau Rempang Enggan Mendaftar Relokasi", 14 September 2023, <https://www.kompas.id/baca/nusantara/2023/09/14/sosialisasi-diintensifkan-warga-pulau-rempang-enggan-mendaftar-relokasi>

- Pause the licensing process of Wabu Block until a consultation in order to obtain the free, prior and informed consent of the affected Indigenous Papuan people can be carried out. The consultation must consider all feasible alternatives to evictions, including those proposed by the affected communities that are less restrictive of their rights.
- Carry out a “consultation on the consultation” with the Indigenous Peoples’ representative institution to ascertain whether a full and effective consultation on the proposed mining in Wabu Block is feasible and desirable, given the situation of insecurity, and, if so, how such a consultation would be carried out. The “consultation on the consultation” and the consultation itself must follow international human rights standards.
- Halt the development of Rempang Eco-City until a process to consult the affected Indigenous Peoples in order to obtain their free, prior and informed consent to the project has happened.
- Meaningfully consult with affected Indigenous Peoples and civil society on the proposed Indigenous Peoples Bill and ensure Indigenous Peoples’ free prior and informed consent is obtained before passing it.
- Where relocations take place with the consent of the affected peoples, introduce special measures to ensure that they do not adversely impact the livelihoods of affected communities.

Amnesty International is a movement of 10 million people which mobilizes the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

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