

Civil Society Statement on the EU-Indonesia Comprehensive Economic Partnership Agreement (CEPA)

I. Introduction

This statement has been developed jointly by Indonesian and European civil society organisations. We believe that an EU-Indonesia Comprehensive Economic Partnership Agreement (CEPA) must first of all be approached as a means to serve the public interest. It should ensure that trade and investments contribute to equitable and sustainable development, the preconditions for which include a healthy environment, a climate-friendly economy, gender equality, security of livelihoods and decent work for all. A CEPA must be conditional on the ratification and implementation of basic human rights law, as well as climate and environmental agreements.

A CEPA must in no way limit government's policy space to regulate the economy and to take measures to ensure citizens' rights to life, food, water and sanitation, energy, health, housing, education and decent work. We see that the current negotiations are largely driven by the interests of large transnational corporations. Unlimited market access and protection for foreign investment will result in further concentration of markets and capital. This contributes to inequitable socioeconomic development in and between countries and is hence not a sustainable way forward.

II. Conditions for the negotiation process

PROVIDE FULL TRANSPARENCY

Transparency implies openness, full consultation with and involvement of social partners and CSOs and sharing of information throughout the negotiation process. The mandate, negotiating proposals and consolidated negotiation texts of both negotiating parties, as well as all stakeholder inputs, should be proactively published and should be fully publicly accessible in the common working language of the negotiation parties to enable equal access to documents by all stakeholders.

RATIFY AND IMPLEMENT CORE ILO CONVENTIONS

Ongoing violations of workers' rights by companies demonstrate the lack of implementation and enforcement of the ILO core labour conventions by the Indonesian government. Various recent research findings demonstrate many abuses of internationally recognized human and labour rights in Indonesia. The responsibilities of governments and companies as recognized by the United Nations Guiding Principles for Business and Human Rights should be at the centre of the ongoing negotiations. The agreement should include clear references to the ILO 1998 Declaration on Fundamental Principles and Rights at Work, the ILO Decent Work Agenda, the ILO Governance conventions and the protection of Indigenous People's rights (ILO convention 169) and the protection of fisheries worker (ILO Convention 188). Ratification of ILO governance conventions C122 and C129, ILO C169 and compliance with the ILO core labour conventions are a CEPA ratification condition.

DECLARE SUPPORT FOR A BINDING UN TREATY ON BUSINESS AND HUMAN RIGHTS TO ADDRESS HUMAN RIGHTS VIOLATIONS BY INVESTORS

We expect all Parties to the CEPA to proactively and constructively engage with the negotiations at the UN for a Treaty on Business and Human rights that aims to remedy the current imbalance between the investment protection regime and the limited access to justice for victims of human rights violations.

ENSURE BALANCED STAKEHOLDER INPUT

All stakeholders should have an equal opportunity to provide input to decision-makers in the course of the negotiation of the agreement. Governments and the Commission need to ensure that they achieve balance in their stakeholder interaction, both quantitatively and qualitatively. This includes actively seeking input from underrepresented groups, in particular indigenous communities and women, as well as limiting interaction with groups that are overrepresented. Contacts with interest groups should be disclosed fully and proactively.

CONDUCT AND DISCLOSE IMPACT ASSESSMENTS ON HUMAN RIGHTS AND SUSTAINABLE DEVELOPMENT

To ensure the protection and promotion of human rights and to support equitable and sustainable development, it is vital that an in-depth assessment of its impacts on human rights and the environment is conducted prior to the conclusion of the CEPA negotiations. The outcomes should, together with the inputs from stakeholders, lead to amendment of the text to ensure that the agreement is in line with the overarching equitable and sustainable development objective. The required Sustainability Impact Assessments and Human Rights Impact Assessment (HRIA) must be carried out not just ex ante, but also ex post, to evaluate and remedy any adverse human rights and environmental impacts occurring as a result of trade and investment agreements.

END DEFORESTATION

The CEPA should not undermine but contribute to efforts to halt deforestation, bearing in mind both Indonesia's and the EU's commitments to halt deforestation by 2020 as part of the Sustainable Development Goals. Despite repeated complaints submitted by independent forest monitors to the authorities for the enforcement of the EU-Indonesia Voluntary Partnership Agreement, forest areas continue to be cleared illegally, notably for palm oil concessions.

III. 'Red Lines' for the negotiations

We urge the negotiating parties to not include any provisions under CEPA that will limit the state's capacity to regulate and take measures in the public interest. Therefore, there are a number of 'Red Lines' that cannot be crossed in the negotiations.

KEEP PALM OIL OUTSIDE OF THE NEGOTIATIONS

Indonesia is the world's largest palm oil producer and exporter. The production, processing and trade in palm oil products in Indonesia by domestic and foreign (including European) companies is causing tremendous environmental, social, human rights and labour problems. These include large-scale slashing and burning of primary and secondary forests for palm oil plantations, making Indonesia a major contributor to climate change; environmental pollution; land deprivation and human rights violations of local communities; and serious systemic labour rights violations in the sector.

Trade negotiations are not the right place to solve these issues. In an inclusive dialogue outside the trade negotiations, involving all stakeholders, Indonesia and the EU should pursue an ambitious roadmap to address the problems surrounding palm oil in a democratic, transparent and holistic way. Including palm oil access rules in CEPA will result in increased trade in palm oil products, based on weak voluntary-based certification schemes like RSPO and ISPO that lack implementation and enforcement mechanisms and demonstrably fail to protect the interests of local communities, workers, smallholders and the environment.

EXCLUDE VITAL PUBLIC SERVICES

Access to affordable basic public services is central to the welfare of the population in any country. In the interest of ensuring universal access to basic public services, these should be excluded from liberalisation, as this can easily lead to cherry-picking by (foreign) service providers, ensuring quality private services for the wealthy, and sub-standard public services for the poor. Services like health, education, water, electricity should be excluded from liberalization and privatization commitments under the CEPA services chapter. In addition, basic public services must be exempt from disciplines on domestic regulation: parties to the CEPA must be free to regulate, protect and develop public services according to domestic public welfare needs, which must not be undermined by requirements that rules must be 'least burdensome' to business.

NO RESTRICTIONS ON INDONESIAN EXPORT TARIFFS ON RAW UNPROCESSED MATERIALS

The CEPA text should refrain from targeting Indonesian export measures aimed at promoting domestic processing of raw materials. Such measures aim to enhance domestic value added that will support the development of local downstream industry and help reduce unemployment and poverty.

IPR: ENSURE ACCESS TO GENERIC MEDICINES AND SEEDS

The Intellectual Property Rights chapter must not include increased patent protection that hampers access to affordable (generic) medicines, as this would constitute a direct violation of the human right to health. As such, IPR impacts should be evaluated by a HRIA. The same goes for seed patenting: Extended seed licences for multinational corporations would stand in the way of local small farmers producing, re-using and or sharing/exchanging their own seeds and create tensions with their livelihoods, biodiversity and the right to food. Farmers may even run the risk of being criminalized and prosecuted for the use of 'unlicensed' seeds if a CEPA IPR chapter contains stronger enforcement.

ALLOW PERFORMANCE REQUIREMENTS, LOCAL CONTENT REQUIREMENTS AND PREFERENTIAL TREATMENT FOR SMALL DOMESTIC PRODUCERS

Both in relation to service provision and public procurement, Indonesia must remain at liberty to set performance requirements (i.e. restrictions) for foreign investors, including limitations on foreign (majority) ownership, limitations on foreign workers in key positions, and local content requirements (i.e. use of local resources and workers). Such regulations are vital instruments to ensure that incoming investments effectively contribute to national development trajectories aimed at enhancing competitiveness, added value of local industries and boosting local employment. In government procurement, Parties must remain free in public tenders to 'source locally', by granting preference to domestic small and medium enterprises (SMEs) and local produce, as part of a national, regional or local development policy. Domestic production being crowded out by EU imports is already increasingly depriving small farmers and fisherfolk in Indonesia of their livelihoods. The CEPA must allow Indonesia to remain full policy space to prioritise local production to reduce rural poverty and improve the welfare of local farmers and fisherfolk, and, if necessary, impose import quota for sensitive agricultural products.

BINDING SUSTAINABLE DEVELOPMENT CHAPTERS

Sustainable Development chapters included in the CEPA must have concrete and binding objectives instead of the current aspirational language included in EU trade agreements. Clear goals to address trade-related violations of human rights, labour, environmental and climate standards that the CEPA should respect and uphold must be formulated, monitored and enforced. The sustainable and equitable development objectives laid down in the sustainable development chapters should govern the agreement as a whole.

CONCRETE DEMANDS TO ADVANCE RIGHTS OF WORKERS

CEPA should include clear commitments to respect existing international labour legislation and national labour legislation both in the EU and in Indonesia. Any lowering of ILO standards or regression in domestic legislation due to a CEPA agreement is unacceptable.

ACCESS TO REMEDY FOR VIOLATIONS OF HUMAN AND LABOUR RIGHTS, AND ENVIRONMENTAL PROTECTIONS MUST BE ENSURED

The CEPA should contain effective mechanisms to enforce human rights, environmental and labour standards. All stakeholders must have direct access to a complaints mechanism with effective remedies, and the Parties to the agreement must be under an obligation to act on complaints made, through state-state dispute settlement. Any chapter, clause or aspect of the agreement that compromises human rights and labour obligations or environmental protections can be subject to a complaint. The CEPA must ensure that, to this end, an effective monitoring mechanism is put in place, including by providing the necessary capacity and financial resources.

CURTAIN INVESTMENT PROTECTION AND INVESTOR-STATE DISPUTE SETTLEMENT

The CEPA must strictly curtail the substantial and procedural rights of foreign investors commonly granted in investment chapters of trade agreements. The CEPA must not include an investor-state dispute settlement mechanism - regardless of whether it's "classic" ISDS, the Investment Court System or the envisaged Multilateral Investment Court - that allows foreign investors to bypass the national legal system and lodge a direct complaint against a state before an international tribunal. Such privileged access for investors, which serves them as a powerful political tool and has proven detrimental for public interests in past trade and investment agreements, is unjustifiable.

Signatories:

SIGNATORIES FROM INDONESIA

Indonesia for Global Justice (IGJ)
Koalisi Rakyat untuk Keadilan Perikanan (KIARA)
Indonesia AIDS Coalition (IAC)
Koalisi Rakyat untuk Hak Atas Air (KRuHA)
Konfederasi Serikat Buruh Sejahtera Indonesia (K-SBSI)
Kesatuan Nelayan Tradisional Indonesia (KNTI)
Wahana Lingkungan Hidup Indonesia (WALHI)
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Seattle to Brussels Network
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