



PERMANENT MISSION OF THE
REPUBLIC OF INDONESIA TO THE UNITED NATIONS
WORLD TRADE ORGANIZATION (WTO)
AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

No. 63/POL-II/V/2021

Geneva, 12 May 2021

Dear Sir,

With reference to your letter No. REF AL IDN 3/2021 dated 15 March 2021, conveying the alleged violations of the human rights of the affected communities and local communities in East Nusa Tenggara in the context of the 2009 Montara Oil Spill in the Timor Sea, I would like to transmit the following information and clarifications on the points you raised in the joint communication.

I continue to appreciate the exercise of your mandate by communicating issues of common concern. As a member of the Human Rights Council, Indonesia is steadfast in our commitment to work together with mandate holders in advancing the promotion and protection of human rights.

Having mention that, it should be made very clear that Indonesia, in particular the East Nusa Tenggara coastal communities, are the victims of the environmental impact of the Montara oil spill caused by an explosion in offshore oil and gas drilling handled by PTTEP AA in the Australian jurisdiction. This is the perspective that should be established by the special rapporteurs in observing the impact of the Montara oil spill.

Background

- 1. On August 2009, an oil spill occurred at the Montara Wellhead Platform - West Atlas Rig located in the Timor Sea, 250 km from Rote Island, East Nusa Tenggara.** The oil spill lasted for 74 days and was eventually brought under control on November 3, 2009. It is estimated that this incident resulted in the spill of 400-1500 barrels (54-204 tons) of oil per day.
- 2. West Atlas Rig is operated by PTT Exploration and Production Australasia (Ashmore Cartier) or PTTPEP AA which is a subsidiary of PTT Exploration and Production or PTTEP, an Oil and Gas Company owned by the Government of Thailand.** This group of multinational companies, also known as PTT, operated in several countries in the region, including Australia, Indonesia and Singapore.

Mr. David R. Boyd, Special rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Mr. Marcos A. Orellana, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Mr. Michael Fakhri, Special Rapporteur on the right to food

Mr. Olivier De Schutter, Special Rapporteur on extreme poverty and human rights

Mr. Jose Francisco Cali Tzay, Special Rapporteur on the rights of indigenous peoples

3. In response to the oil spill, the Australian Government undertook emergency response efforts by conducting dispersant spraying operations with the aim of minimizing the risk of oil spills. However, these efforts were not sufficient to prevent the oil spill from entering Indonesian waters. Furthermore, the use of these dispersants was also considered to have exacerbated environmental damage caused by the oil spill.
4. On 21 September 2009 it was observed that the oil spill reached 94 kilometers from Rote Island. Following this, two Australian ships entered the Indonesian Exclusive Economic Zone to carry out oil retention and recovery operations using booms and skimmers. This explosion became the largest case of oil overflow to have occurred in Australia, with the volume of oil spilled flowing into the Timor Sea estimated at 23.5 million liters.
5. The large amount of Montara oil spill that entered the territory of Indonesia has resulted in losses for people in the East Nusa Tenggara Province who work as fishers and seaweed farmers. **It is reported that this incident resulted in seaweed in the Rote area turning white and dying. This led to crop failures and damage to the island's environment which threatens the lives of the community. In addition, there are reports of decline in the number of fish catches and increase in the number of fish deaths in the area.**

PROACTIVE APPROACH TO MEASURE THE ENVIRONMENTAL AND ECONOMIC IMPACTS OF THE MONTARA OIL SPILL

6. The Government of Indonesia has taken proactive steps to regularly measure the direct negative environmental and economic effects of the Montara oil spill in Australia. The environmental impacts based on the 2019 verification by the Ministry of Environment and Forestry includes contamination of seagrass beds, damage to mangrove forest and coral reef ecosystem.
 - ➔ **The area of seagrass beds** contaminated by the Montara oil spill is 52.82 ha in Kupang waters and 228.33 ha in Rote Island waters
 - ➔ **2.5 hectares of mangroves** along the coastal area of Kapela Bay, Rote Ndau, with tree densities ranging from 1300 + -751 bt ha⁻¹ to 3633 + -524 bt ha⁻¹, had perished.
 - ➔ **Mangrove damage** was also found in Panaf Village, southern Kupang, covering an area of about 92.5 hectares, with tree densities ranging from 1455 + -129 bt ha⁻¹ to 5055 + -413 bt ha⁻¹.
 - ➔ **7,946.21 ha of damaged coral reef ecosystems area** in Timor Sea waters assessed using satellite imagery, machine learning, field verification, and literature studies, after calculating the area of damage to coral reefs at a depth of 2-4 m.
7. Apart from the environmental impacts as listed above, the oil spills incident has also resulted in adverse economic impacts to the seaweed farmers in East Nusa Tenggara, which are estimated as follows:
 - ➔ The East Nusa Tenggara Provincial Government encountered difficulties to determine the extent of the sea that was contaminated with crude oil due to the explosion of the Montara oil field in Australia. Thus, it also makes it difficult to calculate the exact economic and ecological valid costs of the pollution. In spite of these challenges, the efforts by the East Nusa Tenggara

Provincial Government of measuring the economic impacts resulted in an estimate of over 800 billion rupiah of losses.

- Decrease in seaweed production by farmers in Rote Ndao after the oil spill incident. The report from the Ministry of Marine Affairs and Fisheries in the Rote Ndao Regency stated that between 2007-2009 seaweed production could reach 7,334 tons per year, but after the oil pollution, it decreased to 1,512 tons.
 - In 2011, the Ministry of Environment of Indonesia has calculated the losses caused by the Montara oil spill totaling USD 2.476 billion, consisting of USD 1.823 billion socio-economic and environmental losses, USD 479 million USD reinstatement costs, USD 172.818 million long term environmental monitoring program and USD 212.67 thousand operational costs for oil spill response.
8. Furthermore, the measure in assessing the negative impacts of the Montara oil field to the environment and coastal communities in East Nusa Tenggara involves the establishment of several task forces, and the involvement of universities and scientific institutions in Indonesia to conducted research.

HAVING THE RIGHT PERSPECTIVE: RESPONSIBILITY LIES WITH PTTEP AA AND THE NEED FOR SUPPORT FROM THE AUSTRALIAN GOVERNMENT

9. The fact as mentioned in the beginning of this letter, that Indonesia i.e the coastal communities of East Nusa Tenggara is the victims in this regard, was also highlighted in the investigation conducted by Australia through the Montara Commission of Inquiry (Borthwick Commission). The report of the inquiry, released on 24 November 2010, stated that oil spill from the Montara oil head entered the waters of the Indonesian Exclusive Economic Zone (EEZ).
10. Following up on the oil spill, the Indonesian Montara Task Force Team took samples of sediments that were suspected to have been contaminated by Montara oil in the area of Rote Island and surrounding islands in East Nusa Tenggara, to then carry out an analysis related to Total Petroleum Hydrocarbons and chemical fingerprints to ascertain the source of the oil spills that have resulted in environmental and economic impacts for Indonesia. The results of the analysis exhibited the similarity between the samples taken and the oil samples from the Montara refinery.
11. The document resulting from the analysis conducted by the Government of Indonesia has also been accepted as valid and scientific supporting document to support the class-action lawsuit filed by Indonesian seaweed farmers through the Australian Federal Court.
12. Furthermore, this analysis is supported by the opinion of experts presented by Indonesia at the abovementioned trial at the Australian Federal Court. **The series of experts' opinions have evidently showed that Indonesia, including the seaweed farmers in East Nusa Tenggara, are the victims of the oil spill case. This has also been further strengthened by the judgment of the Australian Federal Court of 19 March 2021 which decided to grant the class action appeal of the East Nusa Tenggara seaweed farmers against PTTEP AA.**

PERSISTENT EFFORTS TO REAFFIRM THE RIGHTS OF THE AFFECTED LOCAL COMMUNITIES AND PURSUE CLAIMS FOR REDRESS

13. The Indonesian Government is committed to continuously support and protect Indonesian citizen, including in this regard, the communities affected by the Montara

oil spill which has caused serious environmental and economic damages. Throughout the course, the Government continues to put the interest of the affected local communities as priority.

14. Furthermore, in supporting efforts to fulfill the rights of seaweed farmers in East Nusa Tenggara, the Government has also made various efforts and negotiations by special teams and taskforces established to guide the efforts and claims of the communities and the Indonesian Government towards PTTEP AA, Australia and Thailand which are the countries of origin of the PTTEP AA.
15. At the provincial level, the local government of East Nusa Tenggara had given serious attention to the case since the oil spill reached the territory of East Nusa Tenggara in August 2009. As a direct response to observe and mitigate the impacts towards the community, it established Post for Timor Sea Oil Spill Mitigation at the Kupang Port Administrator as an On Scene Commander (OSC).
16. Based on the mandate of Presidential Regulation 109/2006 concerning Prevention of Oil Spills in the Sea, the Government of Indonesia implemented its strong commitment through the **formation of the National Team for Management of Oil Spills Emergency in the Sea (National Team) in 2010** which was chaired directly by the Minister of Transportation and Minister of Environment. **The National Team was established to respond to the Montara oil spill case. This team has the mandate to conduct observations and research on traces of oil spills as well as to conduct field surveys to assess the impact of the incident on the marine environment and the socio-economic conditions of the communities.**
17. Following up on the results of observations and research by the National Team, **on July 2010 an Advocacy Team for Claims for Pollution Compensation in the Timor Sea (Advocacy Team) was formed based on the Decree of the Minister of Transportation 326/2010** which was led by the Deputy Minister of Environment for Management for Hazardous and Toxic Materials, Waste and Garbage, and members consists of related agencies. The Advocacy Team is assigned to file a compensation claim for the Timor Sea pollution by PTTEP AA.
18. In 2010, the Advocacy Team filed a compensation claim to PTTEP AA, through the Claims for Pollution Compensation in Timor Sea document for marine pollution caused by the Montara oil spill operated by PTTEP AA in Australian territory. The document contains data and scientific evidence describing the impact of the oil spill. This document was followed up by a series of negotiations with PTTEP and the Government of Thailand as the owner of the PTTEP group.
19. These series of negotiations have resulted in a draft Memorandum of Understanding related to the settlement of Montara incident compensation which has been drafted by the Government of Indonesia based on the minutes of meeting agreed by both parties.
20. However, the MoU negotiations have encountered several obstacles which resulted in the failure to achieve consensus between the parties. Furthermore, the Indonesian Government has reviewed various dispute resolution options including litigation. Based on the review, the Government of Indonesia **fully supports the class-action lawsuit** filed by the East Nusa Tenggara seaweed farmers as the party directly affected by the Montara oil spill.
21. To increase the effectiveness of the response, **in 2017 the Indonesian Government formed the Montara Task Force to monitor and accelerate the resolution of the Montara oil spill case** involving eminent persons as panel of experts including

██████████, an expert on international law of the sea, and ██████████, Chairman of the West Timor Care Foundation.

22. The Task Force carried out its role in providing technical legal support to the seaweed farmers including providing evidence and expertise with their legal representative in the class action proceeding before the Australian Federal Court. The Task Force also conducted, discussions and negotiations with the Department of Foreign Affairs of Australia requesting support and active role by the Australian Government in settling the matter.
23. In this regard, the Montara Task Force has also entered into negotiating arrangements in good faith with the Australian Government to find a solution to the Montara oil spill. The arrangements *inter alia* covers:
 - a. An understanding that a class action lawsuit will be carried out by Indonesia and ensuring that the Australian Government respects the on going process.
 - b. Sought an out-of-court settlement with PTTEP through a fact-finding mission to assess the impact of the Montara oil spill. However, PTTEP rejected the attempt.
 - c. Promote direct and regular communication between the Government of Indonesia and the Government of Australia in resolving the Montara case.
 - d. Ensure that the Government of Indonesia and the Government of Australia will jointly monitor the class action lawsuit process.
24. On 19 March 2021, the Federal Court of Australia ruled in favour of the East Nusa Tenggara seaweed farmers class-action lawsuit. The Federal Court found that the Montara oil spill had reached the coastal waters of Rote Ndao and Kupang and destroyed seaweed crops. The Federal Court found that PTTEP AA had breached its duty of care to the farmers by not sealing the well properly. The Court ordered PTTEP AA to pay the lead plaintiff, ██████████, 253 million rupiah (approx. USD 17 ,800) in damages for his losses between 2009 and 2014, and is assessing how many other seaweed farmers are entitled to compensation. The PTTEP AA has not filed any appeal to the verdict, thus the verdict has binding legal force (*inkrach*).
25. **In protecting the rights of the people affected by the Montara oil spill, up to this point, the Government of Indonesia, through the Montara Task Force, continues to oversee the compensation process**, including by following up on the Australian Federal Court's decision and other ongoing legal measures.
26. On a broader context of environmental protection, in November 2020 the Directorate General of Supervision of Marine Resources and Fisheries of the Ministry of Marine Affairs and Fisheries (KKP) in collaboration with the Arafura and Timor Seas Ecosystem Action (ATSEA), initiated to establish the East Nusa Tenggara Regional Pollution Control Team, so that in the event of an incident such as Montara, countermeasures can be carried out swiftly. This collaboration resulted in a draft action plan for the Regional Pollution Control Team which is currently under consideration by the Legal Bureau of the East Nusa Tenggara Province Regional Secretariat.

STRONG SUPPORT TO AFFECTED LOCAL COMMUNITIES IN CLASS ACTION LAWSUITS

27. As previously stated, since the beginning the Government of Indonesia continues to fully support the legal proceeding filed by the East Nusa Tenggara seaweed farmers. The lawsuit is one of the national efforts to ensure the protection of affected local communities.

28. The lawsuit was filed by [REDACTED], a seaweed farmer from Rote Island in August 3, 2016 on behalf of more than 15 thousand seaweed farmers in East Nusa Tenggara as the directly affected party. The class-action lawsuit was filed through the Federal Court in Sydney against the PTTPEP AA for the oil spill that occurred on the Montara Wellhead Platform. He was represented by Australian law firm, [REDACTED].
29. This class-action lawsuit is based on the estimated loss of more than 200 million Australian dollars as the environmental, economic and social impacts suffered by the seaweed farmers in East Nusa Tenggara. This lawsuit is fully observed and supported by the Government of Indonesia through the Indonesian Embassy and Consulate General in Australia, the Montara Task Force, and with the support of eminent experts from Indonesia who were witnesses/testified in the trial.
30. In this regard, the Government of Indonesia supports the lawsuit by providing evidence needed for the class action, verifying the damage and impact of the oil spill in Kupang waters and Rote Island waters which was scientifically assessed by seagrass ecosystem experts, mangrove experts, coral reef ecosystem experts as well as pollution and bio-remediation experts. The Government of Indonesia also provide samples and analysis of Total Petroleum Hydrocarbon (TPH) and chemical fingerprinting in the area of Rote Island, Rotendao and Tuakdale Regencies, Kupang Regency in order to show the damage to seaweed in East Nusa Tenggara which was caused by the Montara oil spill.
31. The lawsuit was successfully filed before the Australian Federal Court in Sydney, which decided on March 2021 that the oil spill from the Montara Wellhead Platform had reached the coastal areas of the East Nusa Tenggara and had resulted in the damage of the seaweed fields. The Court ordered PTTPEP AA to pay the principal plaintiff IDR 253 million (AUD 22,700). Meanwhile, further calculations regarding compensation for other seaweed farmers are still in process.
32. The Government of Indonesia, through the Indonesian Embassy and Consulate General in Australia, continues to provide information assistance related to PTTEP AA, assistance in trials, and periodic reports on trials that took place at the Federal Court in Sydney.
33. To protect the rights of the affected seaweed farmers and communities including their access to remedies, the Government of Indonesia will continue to monitor the legal process for the class-action lawsuit filed, considering the on going process for calculating losses and interest from losses that must be submitted by the plaintiffs to the Australian Federal Court in Sydney.

STRENGTHENING PREVENTION AND MITIGATION OF FUTURE OIL SPILLS

34. In 2006, the Government of Indonesia enacted Presidential Regulation No. 109/2006 on Prevention of Oil Spills in the Sea so that prevention and mitigation can be coordinated more effectively and efficiently. To ensure robust implementation of this regulation, the Government has set up the National Team for Management of Oil Spills Emergency in the Sea.
 - Chair of the National team is Minister of Transportation, and the Vice-Chair is State Minister of the Environment.

→ Members of the National Team consist of relevant line ministries, including Governors, Regents and Mayors whose jurisdiction covers sea and coastal areas.

35. Subsequently, the National Team has formed and also manages the National Command and Control Center (Puskodalnas), which assist the implementation of emergency response to oil spills in the sea anywhere in the Indonesian waters. The Ministry of Transportation routinely holds the Puskodalnas annual meeting.
36. The Puskodalnas annual forum aims to exchange information from all Puskodalnas members to support the implementation of an optimal coordination system for oil spill emergency response, as well as to collect information and discuss all problems related. The forum produces several programs that need to be followed up by Ministries / Agencies in terms of budget, regulation and technical operations for handling oil spills in the sea. Therefore, the implementation of oil spill countermeasures, which was mandated by Presidential Decree 109/2006 can be further refined, both in terms of organizational structure and capacity building for each stakeholder.
37. Policies and mechanisms established by the Government of Indonesia for preparedness in overcoming marine pollution, including oil spills, are regulated through Government Regulation Number 21 of 2010 concerning Maritime Environmental Protection. The Regulation regulates *inter alia* the obligations of ports and other activity units in waters to meet pollution prevention requirements which include procedures, personnel, equipment and materials, as well as pollution prevention exercises.
38. After the Montara oil spill incident, at the Marine Environmental Protection Committee (MEPC) meeting under the IMO, Indonesia raised the issue of cross-border pollution in Indonesia caused by the explosion of the oil platform off the coast of Montara, which is located in Australian waters.
39. To address the issue of cross border pollution and environmental damage at the international level, Indonesia also raised an initiative to prevent and mitigate losses relating to possible oil spill in the future through the International Maritime Organization (IMO). At the IMO's 97th Legal Committee Session in 2010, Indonesia proposed the creation of an international legal regime that regulates liability and compensation for damage caused by transboundary pollution, specifically which resulted from exploration and exploitation of offshore oil platforms.
40. At the 104th IMO Legal Committee Session in 2017, Indonesia together with Denmark submitted the final draft "Guidance for Bilateral / Regional Arrangement or Agreement on Liability and Compensation Issues Connected with Transboundary Oil Pollution Damage from Offshore Exploration and Exploitation Activities". These guidelines can be used in regulatory negotiations or bilateral/regional agreements related to cross-border pollution damage caused by offshore exploration and exploitation activities.
41. Currently, the Government of Indonesia through the Ministry of Transportation is preparing to ratify the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990 (OPRC) which regulates actions that a country needs to take in the event of an oil spill at sea.

It should be noted, that the handling of the Montara oil spill case is still ongoing and the Government of Indonesia continues its efforts to protect the rights of the affected communities by facilitating their legal undertaking and providing other necessary supports.

To that end, the Government of Indonesia continues to coordinate with various relevant authorities, including local governments, in monitoring the follow-up and handling of this case.

I trust that my explanation has addressed the salient points raised in your letter. I continue to have confidence that the Special Procedure Mandate Holders could play its vital role constructively, objectively, and impartially. Furthermore, I attached herewith the explanation of vote made by the Government of Indonesia during the adoption of UN Declaration on Indigenous Peoples in 2007 explaining our position that the concept of Indigenous Peoples is not applicable in the context of Indonesia.

On a final note, I appreciate your commitment to maintaining dialogue with the Government of Indonesia.

Please accept, Sir, the assurances of my highest consideration.

Yours sincerely,



Grata Endah Werdaningtyas
Ambassador/ *Chargé d'Affaires*

Explanation of Vote Indonesia – 2007
on the Declaration on the Rights of Indigenous Peoples

My delegation voted in favour of resolution 61/295, on the Declaration on the Rights of Indigenous Peoples, and wishes to make the following explanation.

Even after the prolonged process of negotiation on the Declaration, it is to be regretted that several important aspects of the document remain unresolved, in particular those relating to the definition of what constitutes an indigenous people. The absence of such a definition will prevent us from having a clear idea as to the individuals or groups of individuals to whom the rights set out in the Declaration are intended to be accorded or the exact situations to which the Declaration is applicable.

It is in that context that my delegation deems it necessary to make the following interpretive statement. It is our understanding that the issue of indigenous tribes pertains to people in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

That is the definition used in International Labour Organization (ILO) Convention No. 169 of 1989. According to the ILO Convention, indigenous peoples are distinct from tribal peoples — a term referring to peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.

Given the fact that the entire population of Indonesia has remained unchanged since the time of its colonization and subsequent independence, and the fact that Indonesia is a multicultural and multi-ethnic nation that does not discriminate against its people on any grounds, the rights stipulated in this Declaration accorded exclusively to indigenous peoples are not applicable in the context of Indonesia. However, we will continue, in accordance with our national laws, to promote and protect the traditional collective rights of the sub-ethnic communities that we call *Masyarakat Adats*, which are not equivalent to indigenous peoples as referred to in the Declaration.

However, we are of the view that the Declaration will be instrumental in the promotion and protection of the human rights of the peoples to whom it is intended to be applicable.

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