



Concerns About a Potential Critical Minerals Agreement with Indonesia

November 9, 2023

The Honorable Joseph Biden
President of the United States
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

The Honorable Jennifer Granholm
Secretary, U.S. Department of Energy
1000 Independence Avenue SW
Washington, D.C. 20585

The Honorable Katherine Tai
United States Trade Representative
600 17th Street NW
Washington D.C. 20508

The Honorable Gina Raimondo
Secretary, U.S. Department of Commerce
1401 Constitution Avenue NW
Washington D.C. 20230

The Honorable Janet Yellen
Secretary, U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable Antony Blinken
Secretary, U.S. Department of State
2201 C St NW
Washington, D.C. 20520

Dear Mr. President:

We are writing to share serious concerns that, without meaningful safeguards, a potential Limited Free Trade Agreement or Critical Minerals Agreement (CMA) with Indonesia could undermine the significant climate benefits of electric vehicles while putting forests, Indigenous people, and workers at significant peril. Today's letter follows a similar joint comment submission before the IRS on Section 30D New Clean Vehicle Credit submitted by trade, labor and environmental groups¹ and recently a letter from a bipartisan group of Senators.² Mounting evidence indicates that current mining and refining operations are producing numerous harms.

¹ Public Citizen. Comment Submission: Trade Aspects of Electric Vehicle Tax Credits in Inflation Reduction Act. June 20, 2023. <https://www.citizen.org/article/joint-comments-on-the-section-30d-new-clean-vehicle-credit/>.

² "Re: Concerns Regarding a Potential Critical Minerals Trade Agreement" October 24, 2023 <https://senatorkevincramer.app.box.com/s/raz2txqgb3omgujxlq1jdqs23ccycbl0>

Without clear, defined terms to remedy, mitigate and prevent these damaging practices from continuing, a CMA with Indonesia risks being a means to enable human rights abuses rather than secure human rights protections in the clean energy transition.

Demand for nickel and other critical minerals is surging to provide the raw materials for batteries that power EVs.³ EVs are more efficient than internal combustion engines, and securing critical minerals is important to powering a just transition.⁴ However, those goals are at risk of being undermined by current Indonesian practices in extracting and refining critical minerals, including:

- Nickel mining in Indonesia is taking place in a biodiversity hotspot, home to an array of endemic species in a transition zone between Eurasian and Australian flora and fauna. The islands of Sulawesi and Maluku have been called a “living laboratory of evolution.”⁵ Since the year 2000, between 76,031 and 153,364 hectares of forest have been cleared for nickel mining in Indonesia, and another 500,000 ha of forest is currently threatened by the expansion of the nickel industry.⁶
- The high-pressure acid leach (HPAL) process used to extract nickel from laterite mines in Indonesia leaves behind tailings which turn the ocean red, pollute other waterways and displace local communities.⁷
- Currently, captive coal plants are used to process nickel mined in Indonesia, generating more CO₂ emissions for nickel than in other countries. In Sulawesi, the coal capacity of the Morowali Industrial Park (IMIP) alone will have 5 GW of generating capacity from coal-fired plants – or as much capacity as the whole of Mexico or Pakistan.⁸ Building coal plants to support nickel production is putting Indonesia on the path to be the 6th highest climate polluting country in the world – and threatening to undermine the climate benefits of EVs.⁹
- As mining companies encroach on land belonging to local communities, these communities and environmental defenders are increasingly criminalized for hindering mining operations.¹⁰

³ International Energy Agency. “Total nickel demand by sector and scenario

⁴ Florian Knobloch et. Al. “Net emission reductions from electric cars and heat pumps in 59 world regions over time.” Nature Sustainability. March 23, 2020. <https://www.nature.com/articles/s41893-020-0488-7%22>.

⁵ Jatna Supriatna. “Wallacea: a living laboratory of evolution.” The Conversation. October 15, 2017. <https://theconversation.com/wallacea-a-living-laboratory-of-evolution-85602>

⁶ Sourcing Responsible Nickel for EVs. Mighty Earth. <https://www.mightyearth.org/nickel>

⁷ Tan, Rebecca et. Al. “To meet EV demand, industry turns to technology long deemed hazardous” The Washington Post. May 10, 2023 <https://www.washingtonpost.com/world/interactive/2023/ev-nickel-refinery-dangers/>

⁸ Andrew Digges. Norton Rose Fullbright. International Support Crucial to Decarbonization of the Indonesian Nickel Supply Chain. February 2023. <https://www.nortonrosefulbright.com/en-vn/knowledge/publications/19ccd372/international-support-crucial-to-decarbonization-of-the-indonesian-nickel-supply-chain>.

⁹ Hans Nicholas Jong. “Indonesia’s coal burning hits record high – and ‘green’ nickel is largely why.” Mongabay. July 3, 2023. <https://news.mongabay.com/2023/07/indonesias-coal-burning-hits-record-high-and-green-nickel-is-largely-why/>.

¹⁰ Lembaga Bantuan Hukum Makassar. ” Stop Kriminalisasi Petani-Cabut & Proses Hukum PT. GKP Di Pulau Wawoni” August 27, 2019. <https://lbhmakassar.org/press-release/stop-kriminalisasi-petani-cabut-proses-hukum-pt-gkp-di-pulau-wawoni/>.

- In January of 2023, two workers died during protests over unfair wages and safety concerns at the PT Gunbuster Nickel smelter in Sulawesi. These deaths are not isolated incidents: seven worker deaths occurred in 2022 alone at the Gunbuster Nickel facility. Across Indonesia, 47 deaths and 76 injuries have occurred at nickel sites between 2015 and 2022,¹¹ reflecting the dangers workers face at nickel smelters.¹²
- On Halmahera Island, attempts to bulldoze the forest have led to confrontations with an uncontacted tribe of Indigenous Peoples, the Hongana Manyawa. Deforestation, disease and the continued encroachment of the Hongana Manyawa's land puts the tribe and their livelihoods at risk.¹³

Our organizations believe Indonesia can play an important role in driving the global clean energy transition. However, the recent U.S.-Japan CMA refers to labor rights and environmental protections but is not binding or enforceable. This must not be the model going forward. Any CMA must, at a minimum, include several binding measures to help protect climate, ecosystems, and people:

- (i) make a time-bound commitment to process nickel only in facilities using clean energy and to phase out the reliance on coal-fired power;
- (ii) require improved practices to ensure harmful heavy metals, such as hexavalent chromium, are not discharged into surrounding freshwater and seawater;
- (iii) require adequate safety regulations for workers and monitoring of facilities to prevent death and injury, as well as fair compensation;
- (iv) condition trade benefits on parties adopting, maintaining, and implementing in their domestic laws the policies needed to ensure the four core labor rights enshrined in the eight fundamental Conventions of the International Labour Organization (ILO), including freedom of association and the effective recognition of the right to collective bargaining;
- (v) require that companies and projects respect and uphold the legal rights of self-determination and Free, Prior, and Informed Consent (FPIC) for Indigenous people and local communities;¹⁴
- (vi) require companies to undertake due diligence aligned with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct with independent, third-party assessments.¹⁵

¹¹ Ayomi Amindoni. "As EVs surge, so does nickel mining's death toll." Rest of World. July 23, 2023. <https://restofworld.org/2023/indonesia-nickel-mining-deaths/>.

¹² Rachel Cheung. "Workers Keep Dying at This Chinese Nickel Mining Company in Indonesia." Vice. February 7, 2023. <https://www.vice.com/en/article/3ad3n8/china-nickel-smelting-factory-indonesia-gunbuster-belt-and-road>.

¹³ "Indonesia: New 'catastrophic' footage shows uncontacted tribe near nickel mine." Survival International. October 30, 2023. <https://www.survivalinternational.org/news/13781>.

¹⁴ United Nations. "United Nations Declaration on the Rights of Indigenous Peoples." 2007. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

¹⁵ Department of the Interior. "Recommendations to Improve Mining on Public Lands." September 2023. Pages 24 & 111. <https://www.doi.gov/sites/doi.gov/files/mriwg-report-final-508.pdf>.

The Administration can also take measures like using JET-P resources to transition nickel and other critical mineral processing to clean energy.

The U.S. cannot allow benefits of the Inflation Reduction Act tax incentives to extend to minerals from countries with unsafe and environmentally degrading mining practices. Strong and binding environmental, social, and labor safeguards with certain enforcement are necessary components to include in any additional agreements to ensure that critical minerals achieve their true potential. A just transition is within reach and can boost the prosperity of Indonesia and the United States.

Sincerely,

350.org

Earthworks

Global Exchange

Greenpeace USA

Institute for Agriculture and Trade Policy

Interfaith Power & Light

Investor Advocates for Social Justice

Jobs to Move America

Mighty Earth

Natural Resources Defense Council

NETWORK Lobby for Catholic Social Justice

New Mexico Interfaith Power and Light

Pax Christi USA

Plug In America

Public Citizen

Sierra Club

Sisters of Mercy of the Americas - Justice Team

The Oakland Institute

The Sunrise Project

Trade Justice Education Fund

United Church of Christ, Justice and Local Church Ministries