

INFRASTRUCTURE DEVELOPMENT AND WOMEN'S RIGHTS IN INDONESIA

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KEY FINDINGS

- + In Indonesia, as elsewhere, there is a lack of awareness of the differentiated impacts of infrastructure projects on men and women. In all stages of the infrastructure project lifecycle, it is often wrongly assumed that men and women will benefit equally, which leads to adverse impacts on women's rights.
- + Positive outcomes for Indonesian women can be achieved through greater attention to gender balance in local and national decision-making and planning bodies and increased women's participation throughout the construction and operational phases.
- + Access to effective remedy is often denied Indonesian women for a host of legal and customary reasons; women's rights to land are often abridged and abused, and compensation is denied.

INTRODUCTION

Economists widely agree that infrastructure provision enhances connectivity, improves mobility, and generates economic opportunities and services. But women's rights advocates, social scientists and a growing number of policy makers also note that not all infrastructure projects result in positive outcomes for all groups. Infrastructure development can also entrench gender inequality, especially when women are denied the right to meaningfully participate in infrastructure planning, design, construction, operations, and maintenance.

This issue brief is based on a report detailing key challenges facing Indonesian women in their relationship with infrastructure, and provides recommendations, with a view towards a wider dialogue with key Indonesian stakeholders as they develop and implement a National Strategy on Business and Human Rights (NS BHR).

Mainstreaming a gender perspective across the infrastructure lifecycle—planning, design, construction, operations, and maintenance—is key for pursuing sustainable infrastructure development and achieving positive outcomes for women such as increased labour market participation, economic empowerment, and improved health and safety.

This issue brief encourages policy makers and business leaders to embrace a gender-responsive approach to infrastructure as a means towards gender equality and

women's empowerment. It examines the effectiveness of existing infrastructure policies, project evaluation approaches and operational-level grievance mechanisms, among other things, to identify gaps and formulate recommendations.

INFRASTRUCTURE AND ECONOMIC PLANNING

Since 2014, the Indonesian government has invested significant energy and resources into infrastructure planning, financing and implementation, as required to meet the ambitions of the Nawacita plan. The Nawacita plan prioritizes nine large Indonesia's infrastructure projects to connect the peripheries of the country with growth centres, and to further integrate the country into Asia's trade architecture.¹

The government has increased capital expenditures, year on year, for infrastructure projects identified in the Nawacita plan. In 2020, the infrastructure budget was increased from USD 18.7 billion to USD 29 billion, earmarking the largest amount dedicated to the infrastructure sector since 1997.² In 2021, the Indonesian government announced plans to allocate another USD 29 billion.³

Infrastructure projects benefiting from government attention include toll roads, ports, airports and railways. Toll road projects include Balikpapan-Samarinda, Manado-Bitung, Yogyakarta-Bawen, Jakarta-Cikampek and Panimbang-Serang toll roads. Port development includes the Patimban, Kuala Tanjung and Tanjung Priok ports. Airport construction is also being prioritized, involving the New Yogyakarta International Airport, Kuabang Airport, and the Kertajati International Airport. Railway construction includes Jakarta-Bandung high-speed railway and Jakarta MRT.

The upgrading of infrastructure has boosted employment for Indonesia's growing workforce. Many large-scale of transportation infrastructure projects like Trans Sumatra, Trans Java, and Trans Kalimantan are reportedly putting millions of people to work, directly and through subsidiary activities.⁴ Furthermore, these infrastructure development projects are reportedly leading to skills enhancements for workers and economic knock-on effects for suppliers of goods and services. Increased infrastructure investment is also estimated to result in enhanced government revenues supporting health and education services.

While infrastructure is critical to promote Indonesia's economic growth, the risks and impacts of infrastructure development to women's rights and economic well-being need to be more thoroughly understood, analysed and addressed.

In Indonesia, as elsewhere, infrastructure development can result in the loss of livelihoods for women, loss of land rights, increased risks to health and safety, and greater gender inequality. This issue brief outlines some root causes of these human rights risks and make recommendations that will strengthen further, the shared benefits of Indonesia's robust infrastructure development ambitions.

POLICY FRAMEWORK

A global review reveals that the bulk of policies and studies on infrastructure development are focused either on environmental impacts of mega projects or industry-focused risk management challenges.⁵ More recently, multilateral organizations and initiatives have started to examine gender in infrastructure closely, largely under the headings of climate change and sustainable development.

For example, delegates to the UN Climate Conference in 2015 took steps to incorporate gender elements in sustainable infrastructure conversations by adopting a Gender Action Plan (GAP). The enhanced GAP affirms that it is critical for all stakeholders, public and private, to strengthen gender-responsive climate action and implement relevant gender-focused activities.⁶

Importantly, UN Women and UNOPS also produced a series of reports titled, Guides on Integrating Gender throughout Infrastructure Project Phases in Asia and the Pacific. These publications provide specific 'how-to' guidance together with checklists for ease of application, with context-specific case studies from Asia and the Pacific. These and other efforts are welcome contributions to an oft neglected topic. Other pieces of helpful guidance with applications to infrastructure include the Gender Dimensions of the Guiding Principles on Business and Human Rights.

The Working Group on the issue of human rights and transnational corporations and other business enterprises (UNWG) issued its report on the Gender Dimensions of the Guiding Principles on Business and Human Rights in 2019, offering gender guidance and illustrative actions to accompany the 31 Principles of the UNGPs.

Among the illustrative actions in reference to Pillar 1 of the UNGPs, the UNWG recommends that, “States should revise existing legislation that directly or indirectly discriminates against women and take effective measures to eliminate sexual harassment and gender-based violence against women, so that women can have access to opportunities on an equal basis with men.”⁷

Additionally, in reference to Pillar 3 of the UNGPs the report provided that, “States should ensure that state-based judicial and non-judicial mechanisms are responsive to additional barriers faced by women in seeking effective remedies for business-related human rights abuses.”⁸

Among its various conclusions, the UNWG noted that, “neither states nor business enterprises have paid adequate attention to gender equality in discharging their respective obligations and responsibilities under the [UNGPs].”⁹

For its part, the Indonesian government has passed or ratified important laws and conventions in furtherance of greater equality for women. In 1984, Indonesia ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and signed the Beijing Declaration and Platform for Action in 1995.¹⁰

Furthermore, the Indonesian government has also made gender mainstreaming a key strategy in promoting women’s rights and addressing systemic gender inequalities. Leading these efforts is the shared responsibility of the Indonesian Ministry for Women’s Empowerment and Child Protection (MoWECP), previously titled the Ministry of Women Empowerment, the National Development Planning Agency (Bappenas), and the Ministry of Finance (MoF).

Following the Presidential Instruction No. 9/2000 on Gender Mainstreaming, MoWECP has coordinated the National Working Group on Gender and carried out 38 gender responsive programmes in the National Development Programme (2000-2004).¹¹ Bappenas also identified gender mainstreaming as a goal in the Indonesian government’s 2004-2009 National Medium Term Development Plan (RPJMN) and produced Gender Analysis Pathways (GAP) to ensure gender responsive policies and programs. Considerable efforts have also been made to synergize the planning and budgetary processes in Indonesia. In 2008,

The UNGPs’ ‘Protect, Respect and Remedy’ framework

The UN Guiding Principles on Business and Human Rights (UNGPs) are widely considered the world’s most authoritative, normative framework guiding responsible business conduct.

Divided into three pillars, the UNGPs delineate separate but complementary roles and responsibilities for States and business.



Under Pillar 1, States have the duty to protect human rights in business operations, taking appropriate steps to prevent, investigate, punish and redress abuses through effective policies, legislation, regulations and adjudication.



Under Pillar 2, businesses are encouraged to respect human rights, through efforts to avoid infringing on the human rights of others and addressing adverse human rights impacts with which they are involved.



Under Pillar 3, States and business must provide for access to remedy for those negatively impacted by business operations.

MoF passed a decree providing a framework for gender sensitive budgeting at the central level of government.

With regards to gender elements in infrastructure, emerging approaches and infrastructure-related regulations in Indonesia promote human rights but do not sufficiently address the human rights of women. Moreover, an integrated regulatory framework for infrastructure and gender issues remains to be developed. More gender mainstreaming capacity building is required of actors involved in infrastructure development.

The country’s foremost development plan, Indonesia’s RPJMN (2020-2024) has raised important gender issues in infrastructure, acknowledging for example, that access to safe water and sanitation is critical to the health and

livelihood of women.¹² However, there is currently no gender-responsive mechanism to empower women to protect these or other rights during infrastructure development, nor are there means to mitigate risks or remedy abuses when they occur.

Similarly, one of Indonesia's financial intermediaries, the Regional Infrastructure Development Fund (RIDF), lacks an integrated audit guideline addressing women's concerns. The RIDF is aimed to increase access to finance for regional government infrastructure projects.¹³ While the manual promises to include 'gender-responsive planning and budgeting' and use gender-disaggregated data, there is not yet enough evidence that these measures have been taken. Importantly, it also does not specify measures to prevent sexual and gender-based violence (SGBV) despite women's high risks of exposure to SGBV in many infrastructure projects.¹⁴

The enforcement of Law No. 2 of 2012 on Land Acquisition in the Public Interest which authorizes land use change for the purpose of an infrastructure development has reportedly led to conflict in some areas of Indonesia, with adverse impacts on women.¹⁵ To ensure that the outcome of compulsory land acquisition is more equitable, the Indonesian government has issued various implementing regulations,¹⁶ which have not always been gender responsive. For example, integrated audit guidelines including gender-responsive indicators have by some measures not been adequately articulated. Furthermore, the different contexts and diversity of approaches used by key ministries have sometimes led to divergent interpretations and outcomes of gender responsive measures in infrastructure, thereby constraining the development of an integrated policy.

Still, any shortcomings in Indonesia's regulatory environment are being addressed and important steps are being made. For example, the Indonesian Ministry of Public Works launched specific guidelines on gender issues, titled the Road Map on Mainstreaming Gender 2020-2024 to promote more gender-responsive infrastructure development.

However, given the wide range of rights implicated, more must be done to address negative impacts of infrastructure development on Indonesian women.

ADVERSE HUMAN RIGHTS IMPACTS OF INFRASTRUCTURE ON WOMEN

WOMEN'S LAND RIGHTS AND LIVELIHOODS

Infrastructure is a land-intensive industry, which often requires compulsory land acquisition in the name of the common good. Yet, compulsory land acquisition often has far-reaching socio-economic impacts on the lives of persons whose parcels of land are acquired. Land is a means of production in that it serves as the source of livelihoods. It also embeds social value as locals connect intimately with their land and form strong identities and social standing based on it. Moreover, individuals and groups lay claim to land ownership or possession in a myriad of historically informed ways.

Despite these complexities, existing land laws are not designed with these informal dynamics in mind. As such, infrastructure projects have sometimes been accompanied by serious human rights violations that are related to customary land rights of indigenous communities.¹⁷

Land management and land titling in Indonesia are still governed by the Basic Agrarian Law (Law No.5 of 1960) that competes with understandings of local *adat* law communities.¹⁸ Meanwhile, relevant laws including the Law No. 41 of 1999 on Forestry, the Law No. 32 of 2009 on Environmental Protection and Management, and the Law No. 2 of 2012 on Land Procurement for Public Utilities Construction allow central and local government authorities a wide discretion in allocating customary land rights in the name of "public interest." Further, the National Land Agency (BPN/*Badan Pertanahan Nasional*) arguably lacks the resources and capacities to collect data on customary land rights of communities to accelerate unified land administration.¹⁹

Indonesia's laws do not provide strong protections of women's land rights adding to the complexity of land ownership issues in Indonesia. Gaps in protections are then aggravated by infrastructure projects, leading to greater gender inequality.

Women continue to hold record low levels of formal land ownership, with the National Land Agency (Badan Pertanahan Nasional/BPN) reporting that only 24.2 percent of land in Indonesia is registered under female ownership.²⁰ Land rights tend to be held by men or kinship groups that are controlled by men. Although the Agrarian Reform Law grants women and men equal rights to land, in many rural areas customary practices prevail. The decision-making power over such land is exercised by men (son, husband, or

kinship leader) in the family. As they are not fully informed about their rights and of the advantages of asserting them, women can become vulnerable during the land acquisition process and suffer loss of customary land when the National Land Agency acquires compulsory land from their family members (spouse, leader, or son) for a given infrastructure project.²¹ Furthermore, language barriers and a lack of legal literacy limits the ability for women to access remedy when they have lost access to their land unfairly.²²

Although Law No. 2 of 2012 stipulates that the outcome of compulsory land acquisition must be equitable and achieve a 'win-win solution' (*tidak merugikan kedua pihak*), women in affected areas have sometimes complained of an unfair compensation process.²³ Economic hardship following land loss further undermines the strength of women to engage with justice institutions and seek remedies.

Resettlement packages can also fail to adequately provide in-kind compensation and livelihood restoration that will likely benefit women. Law No. 2 of 2012 does not make payment for loss of access and/or replacement of communal resources and intangible assets explicit or mandatory. Under the law, compensation must only cover tangible assets that involve land, plants, buildings, objects relating to land, and other losses that can be valued including job and business losses, moving cost and professional expenses.²⁴ Put simply, a cost-benefit analysis conducted by the public agency tasked to acquire land may not include the value of assets that are attached to women's livelihood.

WOMEN'S LABOR RIGHTS

Women's participation in the infrastructure industry in decision-making roles can help ensure that infrastructure projects address the diverse needs of women and men and ultimately contribute to equal opportunities for all.²⁵ Infrastructure development also provides unique training opportunities for women and supports local and informal businesses.

In Indonesia, there are a significant number of laws and policies at play to promote equal employment opportunities and to protect women's rights, including Law No.13 of 2003 concerning Manpower and Law No. 7/1984 concerning anti-discrimination against women. The Manpower Act protects women from exploitation, violence, and abuse and includes special provisions for governing maternity leave and pay, menstruation leave, and for protecting the morality and safety of women workers. In addition, the Indonesian Ministry of Public Works launched specific guidelines on gender issues, titled the Road Map on Mainstreaming Gender 2020-2024.

However, Indonesian women remain largely underrepresented in the infrastructure development industry. According to the Ministry of Women Empowerment and Child Protection, women's workforce participation rate in 2020 in the construction sector increased by only 0.39 percent while for men, the rate stands at 10.69 percent.

Women are also underrepresented in line ministries that are actively involved in infrastructure development including the Ministry of Transportation, Ministry of Public Works and Housing, Coordinating Ministry for Maritime and Investment Affairs, Ministry of Minister of Agraria and Spatial Planning, Bappenas. Among these, only Bappenas had ever had a female minister.

Participation rates for women in the industry are low due to a range of direct and indirect forms of discrimination. According to some observers, traditional gender roles impede women from not only entering historically male dominated industries, but further advancing their careers.

In Indonesia, many women are expected to give up their jobs once they are married. The lack of support for childcare effectively prevents women from remaining on the job.

WOMEN'S RIGHT TO PARTICIPATION

Participation of women in consultation processes involving infrastructure projects is generally lower than men. Women are directly and indirectly excluded due to laws, social norms and a lack of access to information.

In Indonesia, a well-established practice of consultations at the local level, called "Musrenbang" has become an important forum for discussions about development projects, including but not limited to infrastructure projects. Originally, Musrenbang aimed to be processes for negotiating, reconciling, and harmonizing differences over development plans between the government and non-governmental organizations (NGOs). Since the Law of the National Development Planning System was adopted in 2004, Musrenbang consultations also cover public hearings and participatory planning sessions as "entry points" for affected communities. However, in practice Musrenbang consultations have reportedly become more ceremonial in their approach.

The persistence of patriarchal forces further undermines the utility of Musrenbang as an entry point for women's inclusion and participation. Meetings are dominated by male representatives given that social norms assume men as the head of household/*kepala keluarga* who have rights to make decisions.

The allocation of rights within customary tenure system also allows men to sell jointly titled land without consulting with their wives or obtaining their consent to sell. This sometimes means that information is not disseminated to all affected persons including women. In addition, limited access to technology such as radios, mobile phone, internets, also diminish women's access to information related to infrastructure projects. This excludes women from forming opinions about the project.

WOMEN'S RIGHT TO REMEDY

Gender gaps throughout the cycle of project planning and construction combined with the multiple and intersecting forms of discrimination and abuses undermine women's exercise of their rights to land and other productive resources. In these instances, the state is obliged to protect women's rights and provide access to remedy in cases where rights may have been violated.

What constitutes an appropriate remedy is context specific. In the area of infrastructure, remedy for women's rights can take various forms. These could include for instance, fair compensation, recognition of customary land, the reversal of a decision, and/or an apology. However, underlying structural issues and the complexity of infrastructure development pose a number of specific challenges to the implementation of effective grievance procedures and consequently perpetuates the disempowerment of women.

Judicial mechanisms are not always accessible and transparent, especially for Indonesian women. Gender-specific legal barriers constrain women's capacity to seek redress, such as restrictions on women's rights to act without men's consent, or the lack of legally recognized rights to land.

Social-economic factors also limit women's access to judicial remedies. Among other issues that women face includes a lack of economic resources, geographical and linguistic inaccessibility of courts, low levels of legal and basic literacy, and a lack of trust in the judiciary.

For women who are in a dispute over land options for seeking remedy through non-judicial procedures are not always obvious. Women do not often know which company or parties they are in dispute with given that infrastructure work can be highly segmented. For example, toll road construction is often split into different sections and each section is managed by different construction consultants, contractors, and monitoring consultants, as well as different concessionaire and land acquisition teams. When the project is financed via Public Private Partnerships (PPPs), the multitude of public and private actors further complicates accountability issues.

Another persistent barrier to access is physical location and limited knowledge about non-judicial grievance routes. For most of these procedures, communities including women usually require the support of NGOs to explain the process and help them access it. During the COVID-19 period it became increasingly difficult for representatives of NGOs to hold direct consultations with affected communities and assist them to seek a redress. Reportedly, complaints remain unresolved for many women.²⁶

SUMMARY

Infrastructure projects, like those articulated in the Nawacita plan, can provide a catalyst for improving women's lives and opportunities if projects and programmes are designed with a full range of social and economic impacts on women in mind.

Unfortunately, infrastructure projects are deployed in a gender-insensitive manner because it is assumed that women and men will benefit equally from new infrastructure.

While infrastructure development has provided a useful entry point for women's workforce participation in Indonesia, various socio-cultural norms in a largely patriarchal society still hinder the achievement of gender equality and the advancement of women. Existing infrastructure-related regulations and policies are weak on gender considerations.

These shortcomings may lead to tragic circumstances for women including the loss of land, livelihoods and voice. Consequently, today's approach to infrastructure development in Indonesia penalizes women due to their vulnerable socio-economic status and limited access to remedies.

Demonstrating the connection between infrastructure development and gender equality as well as the risks infrastructure poses to women is a significant finding in the field of business and human rights, with implications for protecting women's rights and implementing the UNGPs. As the study reveals, infrastructure projects will fail to realize their full potential if women continue to be denied their right to participation, land rights, labor rights, rights to livelihood, and right to an effective remedy. The UNGPs framework may be helpful to address gender dynamics especially the limited spaces for women's participation in the infrastructure development and different impacts of infrastructure-related businesses. More discussion on the UNGPs framework is in order to unpack its full potential in providing for greater gender equality in the area of infrastructure.

RECOMMENDATIONS

1. During the planning process, business must **adopt explicit gender-sensitive policies as articulated in international best practices and national guidelines** and establish procedures to minimize negative impacts on women and girls. Gender-responsive measures must focus on women's participation in consultation processes around land acquisition, any compensation and means to sustainable livelihoods.

2. **Law No. 2 of 2012 on Land Acquisition in the Public Interests should be formally reviewed** by the Indonesian government to ensure fair and transparent processes towards affected women and other disadvantaged groups irrespective of their land tenure status.

3. The Indonesian government is recommended to ensure stronger data collection on customary forests and space utilization and **invest in a national system to detail**

customary land rights. Undertaking a multi-stakeholder approach to data collection, assuring more complete gender-disaggregated data and information that captures specific gender issues would increase greater women's inclusion and empowerment.

4. Businesses and governments are recommended to work together to ensure greater rates of women's workplace participation at all levels of infrastructure management and implementation. The Indonesian government in partnership with business and civil society, is recommended to **commission a study to address the underrepresentation of women** in leadership and management roles in the infrastructure sector and strive to create an enabling environment for women to hone their skills, protect their rights at the workplace, and increase confidence in work.

5. Both government and business are recommended to **improve the quality and transparency of existing participation and consultation mechanisms** (such as *musrenbang*) through additional human and financial resources. Where appropriate a monitoring system should be considered providing information into a database on the women present at consultations, information shared, and the decisions made at these consultations.

6. The Indonesian government is recommended to take immediate steps to **strengthen the mandate and capacities of existing judicial and non-judicial remediation systems** including but not limited to those provided by Komnas HAM, Komnas Perempuan, and the Indonesian Ombudsman, as well as law enforcement agencies and officers to deal effectively with cases of human rights abuses.

7. The National Strategy on Business and Human Rights should be promoted as a guidance to address the **differentiated experiences of men and women in infrastructure development.** Furthermore, the Ministry of Women's Empowerment and Child Protection as part of the National Task Force on Business and Human Rights is recommended to establish a standing committee on infrastructure in cooperation with Ministry of Public Work and Public Housing to ensure inputs at all stages of infrastructure project lifecycle.

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