

**Request for Consideration of the Situation of Indigenous Peoples in Merauke, Papua Province, Indonesia, under the United Nations Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures**

**United Nations Committee on the Elimination of Racial Discrimination, Seventy-ninth session,  
08 August – 2 September 2011**

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**31 July 2011**

## Submitting Organisations

- **Perkumpulan Sawit Watch** is an Indonesian Non-Government Organisation concerned with adverse negative social and environmental impacts of oil palm plantation development in Indonesia. It is active in 17 provinces where oil palm plantations are being developed in Indonesia. Address: Jl. Sempur Kaler No. 28, Bogor 16129, tel: +62 251 352171/fax: +62 251 352047, e-mail: [info@sawitwatch.or.id](mailto:info@sawitwatch.or.id); website: [www.sawitwatch.or.id](http://www.sawitwatch.or.id).
- **PUSAKA** is an Indonesian NGO advocates for the empowerment and facilitation of the indigenous communities. Address: Kompleks Rawa Bambu Satu, Jl B No. 6 B, RT 001 RW 006, Pasar Minggu, Jakarta Selatan, Indonesia, Phone and Fax: +62 -21 - 7892137, email: [yay.pusaka@gmail.com](mailto:yay.pusaka@gmail.com) Contact Person: Y.L. Franky ([angkyltm@gmail.com](mailto:angkyltm@gmail.com)).
- **Perkumpulan Untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis/HuMA (Association for Community and Ecologically-based Legal Reform)**, founded in 2001, was established by individuals who have long experience and a clear position regarding the importance of community and ecological-based law reform on issues related to land and other natural resources. Address: Jl. Jati Agung No. 8, Jati Padang – Pasar Minggu, Jakarta 12540, Indonesia, tel: +62(21)78845871, fax: +62(21)7806959, e-mail: [huma@huma.or.id](mailto:huma@huma.or.id) and [huma@cbn.net.id](mailto:huma@cbn.net.id).
- **Keuskupan Agung Merauke/Sekretariat Keadilan dan Perdamaian (SKP KAME)**, the Office For Justice & Peace of The Catholic Diocese of Merauke, Papua, Indonesia. SKP KAME is an internal institution of the Catholic Church established in 2001. SKP KAME established as cooperation between the Archdiocese of Merauke and MSC congregation in Papua Region. It works on contextual situations of local/regional, national and international. The core issues and scope of works are human rights, natural harmony, freedom, gender equality, justice and peace. Address: Jalan Kimaam Nomor 2, Merauke – Papua.
- **Yayasan Santo Antonius (Yasanto, Merauke)**, was founded on December 6, 1979. This foundation was motivated to help the grass root community with wholeheartedly services. The purpose of this foundation is to provide services and to empower the people to become perfect human beings in line with the principles of Pancasila and the 1945 Constitutions as well as with the religious teachings through social services activities, wide-ranging education, mental, spiritual and social and economic services. All of it is in the framework of dedication to the community, church, and the nation and state. Its principal activities are agriculture and breeding cattle, health, small business and cooperative, environment and education, education and training, community development assistance, and advocacy. The foundation has also carried out many program, among others, helping the people who were suffered from drought, HIV/AIDS prevention program and a number of training. Alamat/Address: Jalan Martadinata, Merauke, Papua 99601; Telp.: 0971-21417, 21845; Fax.: 0971-21554. Email: [bpkm-yasanto@jayapura.wasantara.net.id](mailto:bpkm-yasanto@jayapura.wasantara.net.id).
- **Forum Kerjasama Lembaga Swadaya Masyarakat (FOKER LSM) Papua/Papua NGOs Forum** was found August 31<sup>st</sup>, 1991 and led by “Alert and Action Committee” Network Forum’s embryo (on March 28<sup>th</sup>, 1990). The establishment of FOKER LSM Papua was expected to be able take upon two roles at the operational level, which are: a) facilitating communication among NGOs in Papua, it purposes to give inputs towards development concept in Papua; b)

participants' empowerment for being able giving a contribution towards development ideas for Papua community. FOKER LSM Papua envisages "The existence of fair, peaceful and democratic life order on socio-cultural, politic, law, economy and nature for customary community, both men and women, in Papua". FOKER LSM Papua mission is to 1) Facilitate capacity strengthening of Foker LSM participants' base integrative approach in order to encourage the accomplishment of customary institution and civil organization strengthening; 2) Strengthen the existence of Foker LSM Papua as network forum to conduct critical study and public policy advocacy; 3) Develop the communication and information center in order to support institutional capacity strengthening and public policy advocacy programs; and 4) Raise support at local, national and international scope for program implementation.

- **Wahana Lingkungan Hidup Indonesia/WALHI (Friends of The Earth Indonesia)** is the largest forum of non-governmental and community-based organisations in Indonesia. It is represented in 25 provinces and has over 438 member organisations (as of June 2004). It stands for social transformation, peoples sovereignty, and sustainability of life and livelihoods. WALHI works to defend Indonesia's natural world and local communities from injustice carried out in the name of economic development. Address: Jl. Tegal Parang Utara No.14 Jakarta 12790, Indonesia, tel +62 21 7919 33 63-88 [fax] +62 21 794 1673, e-mail: [info@walhi.or.id](mailto:info@walhi.or.id).
- **SAINS (Sajogyo Institute)** is an Indonesian NGO research group that advocates for agrarian reform and the empowering of farmers' rights. Address: Jl. Malabar 22, Bogor (16151), Phone/ Fax: +62-251-374048. Kontak Person: Laksmi Savitri ([savitri\\_la@yahoo.com](mailto:savitri_la@yahoo.com)).
- **Lembaga Studi dan Advokasi Masyarakat/ELSAM (The Institute for Policy Research and Advocacy)**, established in August 1993, works to encourage and promote effective mechanisms of accountability for gross human rights violations; and to promote resolution of past human rights violations through revealing the truth, usage of sanction, and reparation, and; to establish acknowledgeable, democratic and sustainable association. Address: Jl. Siaga II No 31, Pasar Minggu, Jakarta 12510, tel: +62 (21) 7972662/fax: +62 (21) 79192519, e-mail: [elsam@nusa.or.id](mailto:elsam@nusa.or.id), web: [www.elsam.or.id](http://www.elsam.or.id).
- **Forest Peoples Programme (UK)** is an international NGO, founded in 1990, which supports the rights of forest peoples. It aims to secure the rights of indigenous and other peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies. Address: 1c Fosseway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK. Tel: (44) 01608 652893, Fax: (44) 01608 652878, e-mail: [info@forespeoples.org](mailto:info@forespeoples.org).
- **Down to Earth**, a UK-based organisation, works to support vulnerable communities in Indonesia to secure a just and sustainable future. This work is rooted in a commitment to human rights, particularly the collective rights of communities to land, participation and environment; and ensuring that decision-makers particularly governments, international institutions and multinational companies - are held accountable for those actions that impact on these rights. Address: Greenside Farmhouse, Hallbankgate, Cumbria CA8 2PX. Phone/Fax: +44 (0) 16977 46266. Email: [dte@gn.apc.org](mailto:dte@gn.apc.org).
- **Watch Indonesia**, an international NGOs working in Germany to support the movement for democracy, human rights and environmental protection in Indonesia and East Timor. Address: Urbanstr. 114, 10967 Berlin, Tel./Fax: ++49/30/698 179

38, e-mail: [watchindonesia@watchindonesia.org](mailto:watchindonesia@watchindonesia.org).

- **Aliansi Masyarakat Adat Nusantara/AMAN (Indigenous People Alliance of the Archipelago)** is an indigenous peoples' organisation that represents indigenous peoples from the whole of the Republic of Indonesia. The Alliance is aimed to be an organisation for indigenous peoples to struggle for their existence and rights inherited with it as well as to struggle for sovereignty in running their lives and in managing their natural resources. AMAN's main working areas are 1] Indigenous organization, networking and customary institutions development; 2] Indigenous rights advocacy and legal defense; 3] strengthening customary-based economic system; 4] strengthening indigenous women; and, 5] education for indigenous youth. Address: Jl. B No. 4, RT/RW 001/006, Komp. Rawa Bambu I, Pasar Minggu, Jakarta Selatan, Indonesia, tel/fax:+62-21-7802771, e-mail: [rumahaman@cbn.net.id](mailto:rumahaman@cbn.net.id)

## **Request for Consideration of the Situation of Indigenous Peoples in Merauke, Papua Province, Indonesia**

### **I. Introduction**

1. This request concerns the situation of the Malind and other indigenous peoples of the Merauke District, Papua Province, in the Republic of Indonesia. On behalf of the indigenous peoples of Merauke, it is respectfully submitted for consideration under the Committee on the Elimination of Racial Discrimination's ("the Committee") early warning and urgent action procedures by the Indonesian organisations and international NGOs described above ("the Submitting Organisations"). The Malind and others are presently experiencing and are threatened with additional and imminent irreparable harm due to the massive and non-consensual alienation and conversion of their ancestral lands and forests by the Merauke Integrated Food and Energy Estate project ("MIFEE project").

2. Prior to providing a full explanation of the MIFEE project and the crisis it has presented below, please note as an important foundation to this submission that while leaders and representatives of the indigenous communities in Merauke have reviewed this communication, commented on its contents, and approved its submission on their behalf, during a meeting about MIFEE and human rights held in Merauke from July 22-25, the leaders and representatives in attendance decided to not sign the document on behalf of specific-named communities for fear of reprisals by the Government of Indonesia. This was prompted by the fact that representatives of the Papua provincial police and national military intelligence harassed and intimidated the leaders and representatives during this meeting. On the first day, at least 12 police and military intelligence officers entered the meeting uninvited, argued without basis and unsuccessfully that particular rules were not followed to register the meeting or the presence of the indigenous peoples' foreign advisor, and demanded that the foreign legal advisor from Forest Peoples Programme be removed. For a day and a half they refused to permit this legal advisor to conduct the planned human rights training and demanded copies of her presentations before providing the authorization. Furthermore, on the first day of the human rights training, a military intelligence officer sat at the doorway of the meeting observing all activities, and entered the room several times to take photographs of all of the participants, facilitators, the foreign advisor and even the local interpreter. This officer and others continued their presence throughout the training, returned in the evenings after the meetings concluded to ask questions, and at times even maintained a security van in front of the training centre. Understandably, these activities – violating rights of free assembly, speech and thought, not to mention a right to be free from threats to one's physical integrity as a result of attending such a meeting– led to the decision to have just the Submitting Organizations file this early warning/urgent action communication on their behalf.

3. It is in the context of recent events surrounding the MIFEE and human rights training that your Committee can best understand the environment in which the MIFEE project is being supported by the government and imposed upon the indigenous peoples of Merauke. The MIFEE project is a State-initiated, agro-industrial mega-project implemented by a variety of corporate entities that, to-date, encompasses around 2 million hectares of traditional indigenous lands. The irreparable harm already suffered by the affected indigenous peoples is set to expand and intensify in the coming months as more companies commence operations. It should be noted the labour required will be brought in from outside. Meanwhile, indigenous Papuans will be hired as only crude labourers or not given any form of employment at all. Additionally, it is estimated that between 2-4 million workers will be moved into Merauke – a process that has already commenced – to provide labour for the MIFEE project, further threatening the rights and well-being of the Malind who number

approximately 52,000 persons. According to the 2010 census, the total population of Merauke is approximately 173,000. The total indigenous population of Merauke is approximately 73,000.

4. The MIFEE project has already impacted on and will continue to impact on a range of interdependent rights to indigenous peoples' extreme detriment. In this respect, the United Nations Special Rapporteur on the right to food, Dr. Olivier De Schutter, has emphasized the human rights threats posed by large-scale "land acquisitions and leases, more commonly referred to as 'land grabbing,'" of the kind issued under the MIFEE project.<sup>1</sup> He observes that indigenous peoples are especially vulnerable and often suffer irreparable harm in this context, and emphasizes the need for full adherence to their rights, in particular as affirmed in the 2007 UN Declaration on the Rights of Indigenous Peoples.<sup>2</sup> It should be noted that there are other concrete examples which have occurred in other places.

5. Citing the Human Rights Committee, the Special Rapporteur on the right to food explains that "no people's land, including in particular indigenous peoples, can have its use changed without prior consultation."<sup>3</sup> He thus recommends that "any shifts in land use can only take place with the free, prior and informed consent of the local communities concerned. This is particularly important for indigenous communities, in view of the discrimination and marginalization they have been historically subjected to."<sup>4</sup> The Special Rapporteur's recommendations are consistent with the UN Declaration on the Rights of Indigenous Peoples and with the jurisprudence of the Committee. The Committee, for example, recommends that state parties to International Convention on the Elimination of Racial Discrimination ("ICERD"), *inter alia*, effectively recognise, secure and protect indigenous peoples' rights to own and control their traditional lands, territories and resources, and highlights indigenous peoples' right to give or withhold their informed consent whenever consideration is given to measures that may affect their rights.<sup>5</sup> The Special Rapporteur's recommendations are also consistent with the Committee's 2007 and 2009 recommendations to Indonesia (discussed in para. 19-22 below).

6. However, disregarding the Committee's clear recommendations, Indonesia continues to pursue an immense expansion of agro-industry and extractive operations in Papua and elsewhere: the MIFEE project in Merauke is emblematic of how the expanding agro-industry in Indonesia is occurring at the expense of the rights of indigenous peoples. This expansion involves massive encroachment on and alienation of indigenous peoples' lands in favour of oil palm, logging and other companies and an enormous influx of migrant workers, whose numbers will dwarf the existing indigenous population.<sup>6</sup> This leaves the affected peoples with a profoundly compromised future, severely diminished livelihood options and, given

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<sup>1</sup> 'UN Special Rapporteur on the Right to food recommends principles and measures to discipline "land grabbing"', UN Press Release, 11 June 2009, at p. 1. Available at: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/5A171ADA855BF615C12575D30010CEBF?opendocument>.

<sup>2</sup> See *Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge*. Mr. Olivier De Schutter, Special Rapporteur on the right to food, 11 June 2009, p. 7-8, 12. Available at: <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf>.

<sup>3</sup> *Id.* at p. 12 (citing Human Rights Committee, *Concluding Observations: Sweden*, 7 May 2009 (CCPR/C/SWE/CO/6), para. 20).

<sup>4</sup> *Id.* at p. 13-5 (the Special Rapporteur identifies the following as one of the main human rights principles that is applicable in this context: "Indigenous peoples have been granted specific forms of protection of their rights on land under international law. States shall consult and cooperate in good faith with the indigenous peoples concerned in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources").

<sup>5</sup> See *inter alia* Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII on Indigenous Peoples*, 1997, para. 4 and 5.

<sup>6</sup> The Committee has previously commented on the negative human rights consequences of Indonesia's transmigration programmes. See *Concluding observations of the Committee on the Elimination of Racial Discrimination: Indonesia*, 15/08/2007. CERD/C/IDN/CO/3 (hereinafter "CERD/C/IND/CO/3"), para. 18.

that the plantations are monocrop that require clearance of the forests and other ecosystems on which indigenous peoples depend, the destruction of their traditional economy. It also causes severe impacts on the exercise of their cultural, spiritual and other rights, all of which are inextricably intertwined with and dependent on security of tenure over their traditional lands, territories and resources.

7. To date, indigenous Papuans have lost a considerable area of their traditional territories due to logging, mining, oil palm plantations and population transfers. They have received few benefits and suffered severe negative impacts, which, in many cases, amount to irreparable harm. These operations have the full support of the State in Indonesia, at all levels, and frequently enjoy the protection of the Indonesian Army. The use of coercive measures and the drastic impact of plantations in Indonesia on indigenous peoples have previously been verified by the World Bank. The Bank, for instance, observes that government policies of supporting the expansion of timber and oil palm plantations have “marginalized and alienated ... indigenous peoples from traditional lands and uses, through denial of rights and access” and that such denials have been “backed by force.”<sup>7</sup>

8. The urgent situation described herein constitutes and threatens additional gross and irreparable harm to the Malind and other affected peoples and fully meets the criteria for consideration under the Committee’s early warning and urgent action procedures. In addition to constituting a large-scale and dramatic “Encroachment on the traditional lands of indigenous peoples ... [including] for the purpose of exploitation of natural resources,” it also represents a situation that threatens the cultural survival of the Malind and other affected peoples given their extreme vulnerability<sup>8</sup> and the high likelihood of substantial, negative and multi-generational impacts on the maintenance of their multiple relationships with their traditional territory.<sup>9</sup> It thus represents a grave situation “requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention” and to reduce the risk of further racial discrimination.<sup>10</sup> The Submitting Organisations, therefore, respectfully request that the Committee considers the situation described herein under its early warning and urgent action procedures at its seventy-ninth session (see paragraph 39 below for specific requests).

## **II. General Background Information**

### **A. Papua**

9. The province of Papua is approximately 422,000 square kilometers, almost one quarter of Indonesia’s land mass. The indigenous peoples of Papua are Melanesian and distinct from the rest of the inhabitants of the Indonesian archipelago. They are organised along distinct tribal lines and speak some 253 different languages. Indigenous Papuans are approximately 60 percent of the population of Papua, although some estimate that this

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<sup>7</sup> *Sustaining Economic Growth, Rural Livelihoods and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia*, World Bank, December 2006, at p. 2. Available at: [siteresources.worldbank.org/INTINDONESIA/./IDWBFForestOptions.pdf](http://siteresources.worldbank.org/INTINDONESIA/./IDWBFForestOptions.pdf).

<sup>8</sup> This extreme vulnerability is based on systemic and pervasive discrimination against indigenous Papuans, which is well documented and persistent despite the adoption of the *Papua Special Autonomy Law* in 2001 (this law is largely unimplemented due to the absence of the required subsidiary legislation). Moreover, despite the Autonomy Law, decisions about the use of natural resources in Papua remain centralised in the national government based in Jakarta and other national laws continue to minimise or deny indigenous Papuans their rights to own and control their ancestral lands, territories and resources.

<sup>9</sup> See *Guidelines for the Use of the Early Warning and Urgent Action Procedure*, August 2007, at p. 3, para. 12.

<sup>10</sup> *Prevention of Racial Discrimination, including early warning and urgent procedures: working paper adopted by the Committee on the Elimination of Racial Discrimination*. UN Doc. A/48/18, Annex III, at para. 8-9.

number will shrink to less than 50 percent by 2012. The other 40% of the population is made up of migrants and ‘transmigrants’ from other parts of Indonesia.<sup>11</sup>

10. The Committee and UN Special Procedures have previously observed<sup>12</sup> that indigenous Papuans suffer from a number of major disadvantages and pervasive discrimination at both an institutional and societal level.<sup>13</sup> The 2001 *Papua Special Autonomy Law* itself acknowledges that human rights violations, particularly as related to discriminatory natural resource exploitation policies, have been persistent and pervasive to the detriment of indigenous Papuans.<sup>14</sup> Independent observers have also documented discriminatory behaviour by officials and other serious human rights violations against indigenous Papuans,<sup>15</sup> as has Indonesia’s national human rights commission, KOMNAS HAM.<sup>16</sup>

11. It is well documented that forestry concessions, whether for logging or oil palm or mining, have had, and continue to have, disastrous consequences for indigenous peoples in Indonesia.<sup>17</sup> It is also well documented that these operations are normally accompanied by serious human rights abuses and Papua is no exception.<sup>18</sup> In this regard, the former UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people identified oil palm plantations in Indonesia as placing indigenous peoples “on the verge of completely losing their traditional territories and thus of disappearing as

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<sup>11</sup> ‘Transmigrants’ are persons who were deliberately relocated to Papua under government population transfer schemes, mostly carried out in the 1980-90s.

<sup>12</sup> Rodolfo Stevenhagen, the former UN Special Rapporteur for Indigenous People explained in his report during the Commission on Human Rights at its 61st session in 2005 that “Indigenous people in Papua suffer from widespread discrimination that prevents them, in certain ways, to gain access into institutions in community, which enable them to make their own decision, such as in education, treatment, health, equal earning/income, public view of women, and self-respect, although there exists the Papua Adat Council and Papuan People Assembly.”

<sup>13</sup> CERD/C/IND/CO/3, at para. 22 (expressing “concern about information according to which Papuans continue to experience great poverty;” and “requesting information on “measures adopted to ensure the enjoyment by Papuans of their human rights without any discrimination”).

<sup>14</sup> *Papua Special Autonomy Law 2001*, Considerations, articles (f) and (g). These articles have been translated as follows: “(1) that the administration and development of the Papua Province has not complied with the sense of justice, has not yet achieved prosperity for all people, has not yet fully supported law enforcement, and has not yet respected the human rights of people in Papua Province, in particular among the Papuan indigenous communities; and (2) that the management and use of the natural wealth of Papuan land has not yet been optimally utilised to enhance the living standard of the indigenous Papuan peoples, creating a wide socio-economic gap between Papua Province and other regions, and violating the basic rights of indigenous Papuans.” A. Sumele, *Protection and Empowerment of the Rights of Indigenous People of Papua (Irian Jaya) Over Natural Resources Under Special Autonomy: From legal opportunities to the challenge of implementation*, at p. 14. Available at: [rspas.anu.edu.au/papers/rmap/Wpapers/rmap\\_wp36.rtf](http://rspas.anu.edu.au/papers/rmap/Wpapers/rmap_wp36.rtf).

<sup>15</sup> See for instance *Indonesia: Grave Human Rights Violations in Wasior, Papua*, Amnesty International Report ASA 21/032/2002, 26 September 2002; and, C. Ballard, *Human Rights and the Mining Sector in Indonesia*. International Institute for Environment and Development: London, 2001.

<sup>16</sup> In its report, in the *Abepura Berdarah* case, KOMNAS HAM found evidence of racist statements directed at Papuans by State officials, such as: “you Papuans only know to eat pig, therefore you have pig brains;” “you must eat lamb so you can be smart like people from Makasar, Java and Jakarta;” and “You Papuans with your curly hair, are black and stupid.”

<sup>17</sup> See V. Tauli-Corpuz and P. Tamang, *Oil Palm and Other Commercial Tree Plantations, Mono-cropping: Impacts on Indigenous Peoples’ Land Tenure and Resource Management Systems and Livelihoods*, UN Permanent Forum on Indigenous Issues Working Paper, E/C.19/2007/CRP.6; *Without Remedy: Human Rights Abuse and Indonesia’s Pulp and Paper Industry*, Human Rights Watch Report: Indonesia, Vol. 15, No. 1(C), Jan. 2003; “Wild Money” *The Human Rights Consequences of Illegal Logging and Corruption in Indonesia’s Forestry Sector*, Human Rights Watch, 1 December 2009. Available at: [http://www.hrw.org/sites/default/files/reports/indonesia1209webwcover\\_o.pdf](http://www.hrw.org/sites/default/files/reports/indonesia1209webwcover_o.pdf); and, C. Ballard, *Human Rights and the Mining Sector in Indonesia*. International Institute for Environment and Development: London, 2001.

<sup>18</sup> See *inter alia* *Indonesia: Grave Human Rights Violations in Wasior, Papua*, Amnesty International Report ASA 21/032/2002, 26 September 2002; EIA/Telepak, *supra*; ‘Below a Mountain of Wealth, a River of Waste’, *New York Times*, 27 December 2005. Available at: <http://www.nytimes.com/2005/12/27/international/asia/27gold.html?pagewanted=1&r=1&ei=5070&en=0ee1bc8941899f0f&ex=1138078800>.

distinct peoples.”<sup>19</sup> (Note: Large influxes of people from outside of Papua also exacerbate the threat of indigenous Papuans becoming extinct).

12. The same is also the case with respect to plantations and concessions of the type issued under MIFEE.<sup>20</sup> Indeed, a recent in-depth study of plantations in Meruake and the surrounding area details a series of rights violations that have long-term and severe consequences for indigenous Papuans.<sup>21</sup> A short film containing images of existing plantations and statements by affected community members is available on the internet.<sup>22</sup>

13. The preceding remains the case despite the adoption of the *Papua Special Autonomy Law* in 2001, which is intended to decentralise decision making over prescribed issues to the provincial level. In particular, this law remains largely unimplemented due the absence of the required subsidiary legislation. At any rate, decision making over issues pertaining to the exploitation of natural resources – the subject of this request - remains largely vested in the central government in Jakarta and is controlled by national laws that, as discussed in Section III below, the Committee has considered prejudicial to indigenous peoples’ rights in its prior review of Indonesia.<sup>23</sup>

14. Lack of implementation of the *Autonomy Law* is especially apparent in relation to securing the territorial rights of indigenous Papuans. Implementing regulations and agency capacity to recognize or create cadastres of customary lands are lacking. Therefore, despite the legal recognition of vague ‘customary rights’, in practice the State generally treats traditionally owned indigenous lands as State lands<sup>24</sup> unencumbered with rights.<sup>25</sup> In addition, the majority of the MIFEE area is classed as ‘forest’ and falls under the jurisdiction of the Ministry of Forests, which interprets the 1999 *Forestry Law* as further limiting indigenous peoples’ customary rights.<sup>26</sup>

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<sup>19</sup> Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Oral Statement to the UN Permanent Forum on Indigenous Issues Sixth Session*, 21 May 2007, at p. 3.

<sup>20</sup> See *inter alia* R. Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Oral Statement to the UN Permanent Forum on Indigenous Issues Sixth Session*, 21 May 2007, at p. 3 (identifying plantations in Indonesia as placing indigenous peoples “on the verge of completely losing their traditional territories and thus of disappearing as distinct peoples”); V. Tauli-Corpuz and P. Tamang, *Oil Palm and Other Commercial Tree Plantations, Mono-cropping: Impacts on Indigenous Peoples’ Land Tenure and Resource Management Systems and Livelihoods*, UN Permanent Forum on Indigenous Issues Working Paper, E/C.19/2007/CRP.6; and *Sustaining Economic Growth, Rural Livelihoods and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia*, World Bank, December 2006, at p. 2.

<sup>21</sup> Environmental Investigation Agency/Telepak, *Up for Grabs. Deforestation and Exploitation in Papua’s Plantation Boom*. November 2009. Available at: <http://www.eia-international.org/files/news566-1.pdf>.

<sup>22</sup> The film is available at: <http://tv.oneworld.net/2009/11/11/up-for-grabs-deforestation-and-exploitation-in-papuas-plantations-boom>.

<sup>23</sup> See CERD/C/IND/CO/3, at para. 15-7. The national laws in questions are discussed in detail in *Request for Consideration of the Situation of Indigenous Peoples in Kalimantan, Indonesia, under the United Nations Committee on the Elimination of Racial Discrimination’s Urgent Action and Early Warning Procedures*, 06 July 2007, at [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/urgent\\_action.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/urgent_action.pdf); and *Request for consideration of the situation of indigenous peoples in the Republic of Indonesia under the follow up and early warning and urgent action procedures*, February 2009. Available at: [http://www.forestpeoples.org/documents/asia\\_pacific/indonesia\\_cerd\\_follow\\_up\\_febo9\\_eng.pdf](http://www.forestpeoples.org/documents/asia_pacific/indonesia_cerd_follow_up_febo9_eng.pdf).

<sup>24</sup> See for instance *Regulation on Reduction of Emissions from Deforestation and Forest Degradation Procedures*, Ministry of Forestry (No. 30/2009, P.30/Menhut-II/2009), 01 May 2009, at Art. 1(4) and (5); and Law 41, 1999 on Forestry, Art. 1(4) and (6)) (both explaining that “Indigenous forest is state forest located in the area of customary law” and, ‘state forest’ is “forest that is on land that is not burdened by land rights”).

<sup>25</sup> Under the *Basic Agrarian Law* some form of customary rights to lands are recognised. However, these rights will be superseded by any grant of real title or other form of registered property right and the State has wide discretion to determine whether customary rights continue to exist. This legislative scheme was rejected by the Committee in its 2007 concluding observations. See CERD/C/IND/CO/3, at para. 15-7.

<sup>26</sup> See Law 41 on Forestry 1999, Art. 1(4) and (6)), *supra*.

## **B. The Malind and other Indigenous Peoples Affected by MIFEE**

15. The MIFEE project will affect the Malind, who number approximately 50,000 persons, and other indigenous peoples (Muyu, Mandobo, Mappi, Asmatnd Auyu) in Merauke District. They predominately reside in upstream areas of rivers and do not maintain permanent village sites or farms, but instead occupy a series of camps in the forest, which they use regularly. The Malind primarily subsist by collecting sago, hunting and fishing, and are dependent on the health of their forests ecosystems for their basic needs and traditional economy. They are divided into six clans that own land pursuant to customary law and tenure systems. Their lands are infused with sacred value due to the identification of various sites with ancestral spirits and relations.

16. Various Malind and other communities and leaders have expressed grave concerns about the MIFEE project in relation to severe existing and future impacts. They have also complained about the manipulation of communities by investors and State agents seeking to obtain their signatures in order to comply with legal requirements related to showing clear title to indigenous lands (see para. 26 below). These concerns have been echoed by the Indonesian Farmers Union, which condemned the MIFEE project, by AMAN, the national indigenous peoples' organisation in Indonesia, and by others, including Indonesia's former Minister of agriculture.<sup>27</sup> AMAN's statement to the ninth session of the UN Permanent Forum on Indigenous Issues explains the gravity of the situation and calls the project "unacceptable."<sup>28</sup>

17. AMAN's statement highlights the threat to indigenous peoples posed by the MIFEE project and observes that the current policy of land alienation in favour of corporations "will only exacerbate the human rights situation, leading to forced evictions and other human rights violations;" and that it will have major impacts on [indigenous peoples'] livelihoods by changing the ecosystem and threatening Indigenous Peoples' food sovereignty."<sup>29</sup> Citing the cultural and other effects of massive population movements of the kind that will be needed to provide a workforce for the MIFEE project, AMAN concludes that the project will "acutely threaten the existence of Indigenous Peoples within these areas, turning them into a minority in number, even leading to extinction in the future. This is, as we may say, structural and systematic genocide."<sup>30</sup>

## **III. Applicable Indonesian Law**

18. There are three primary legal bases for the MIFEE project: Law No. 26/2007 on Spatial Planning; Government Regulation No.26/2008 on National Territory Spatial Planning; and Presidential Instruction No. 54/2008 on Economic Programme Focus Year 2008-2009. The agro-business plantation operations additionally have to comply with Law No.18/2004 on Plantations and various Ministry of Agriculture regulations.

19. The Committee expressed serious concern about denials of indigenous peoples' rights in Indonesia in its 2007 Concluding Observations, including in connection with large-scale agro-industry and the associated legislative framework. In paragraph 17 thereof, the Committee, *inter alia*, urged Indonesia to review its laws "to ensure that they respect the

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<sup>27</sup> See *Indonesian Indigenous Alliance Request UN Probe into Rights Abuses and Land Grabbing in Papua Plantations*, 30 April 2010. Available at: <http://www.eia-international.org/cgi/news/news.cgi?t=template&a=593&source=>.

<sup>28</sup> *Statement of AMAN to the ninth session of the UN Permanent Forum on Indigenous Issues*, 23 April 2010. Available at: <http://www.aman.or.id/in/masyarakat-adat/masalah-masyarakat-adat/179.html>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

rights of indigenous peoples to possess, develop, control and use their communal lands.”<sup>31</sup> It further observed that “references to the rights and interests of traditional communities contained in domestic laws and regulations are not sufficient to guarantee their rights effectively.”<sup>32</sup>

20. At its 74<sup>th</sup> session, the Committee adopted a communication under its early warning and urgent action procedures. Therein the Committee states that Indonesia “continues to lack any effective legal means to recognize, secure and protect indigenous peoples’ rights to their lands, territories and resources.”<sup>33</sup> This conclusion was reiterated at the Committee’s 75<sup>th</sup> session in a letter adopted under the urgent action and early warning procedures.<sup>34</sup> In both cases, Indonesia failed to respond to the Committee’s requests for information and failed to heed its concerns and recommendations.

21. The Committee also highlighted denials of indigenous peoples’ rights in the 2004 *Plantations Act*, the same law that is currently being used in connection with the plantations issued under the MIFEE project, including oil palm plantations.<sup>35</sup> It further noted the human rights problems in connection with Indonesia’s further expansion of oil palm plantations into indigenous territories (at that time, along the Indonesia-Malaysia border in Kalimantan), “and the threat this constitutes for the rights of indigenous peoples to own their lands and enjoy their culture.”<sup>36</sup> It also observed “with deep concern” that there are a high number of conflicts between indigenous peoples and oil palm companies throughout Indonesia.<sup>37</sup>

22. The Committee consequently recommended that the State “secure[s] the possession and ownership rights of local communities before proceeding” with the Kalimantan oil palm mega-project, and ensures that extensive and prior consultations are held in order to secure indigenous peoples’ free, prior and informed consent in relation to that project.<sup>38</sup> The Committee reiterated this at its 74<sup>th</sup> session, recommending again that Indonesia secure indigenous peoples’ ownership rights to their lands, territories and resources and obtain their consent as conditions precedent to the further development of oil palm plantations.<sup>39</sup>

23. Indonesia, however, has chosen to disregard the Committee’s concerns and recommendations concerning the need for legislative amendments to recognise and respect indigenous peoples’ rights, as well as the need to secure and protect these rights in practice. The legislative regime remains the same today and, as demonstrated by the MIFEE project, indigenous peoples’ rights continue to be disregarded and abused in practice.

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<sup>31</sup> CERD/C/IND/CO/3, at para. 17.

<sup>32</sup> *Id.*

<sup>33</sup> *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 13 March 2009, at p. 2. Available at: [http://www2.ohchr.org/english/bodies/cerd/docs/early\\_warning/Indonesia130309.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia130309.pdf).

<sup>34</sup> *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 29 September 2009. Available at: [http://www2.ohchr.org/english/bodies/cerd/docs/early\\_warning/Indonesia28092009.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia28092009.pdf).

<sup>35</sup> CERD/C/IND/CO/3, at para. 17 (recommending that “The State party should review its laws, in particular Law No. 18 of 2004 on Plantations, as well as the way they are interpreted and implemented in practice, to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands”).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Communication of the Committee adopted pursuant to the early warning and urgent action procedures*, 13 March 2009, at p. 2.

#### IV. The Merauke Integrated Food and Energy Estate Project and the Threat of Irreparable Harm to Indigenous Peoples

24. On August 11, 2010 Minister of Agriculture Suswono formalized the Grand Launching of Merauke Integrated Food and Energy Estate through a ceremony held in Serapu village, Semangga subdistrict. Nobody in this village knew what was actually happening. They only realized several weeks after, when bulldozers started to demolish their sago forests that it was the ceremony of their dispossession of land.<sup>40</sup>

25. The MIFEE project is designed to produce food crops, palm oil, timber products and agro-fuels, primarily for export. The entirety of the area covered by the project is claimed by the indigenous peoples of Merauke. Government plans explain that the total targeted area for the project at present is 1,282,833 hectares (423,251.3 hectares in 2010-2014; 632,504.8 hectares in 2015-2019; and 227,076.9 ha in 2020-2030).<sup>41</sup> However, according to the Local Investment Promotion Board (*Badan Promosi Investasi Daerah*), 36 companies have acquired permits to more than 2 million hectares as of May 2011.<sup>42</sup> Proposed plantations include oil palm, maize, rice and timber estates. The largest holding is more than 300,000 hectares.<sup>43</sup> In one instance, an Indonesian company known as MedCo Group has received a permit of 360,000 hectares which allows it to clear up to 60% of the forests within. Virtually the entire forest of the Zanegi indigenous community –located within this concession area— has been cut down. The community members no longer have physical access to the animals they used to hunt and the food they used to collect in their traditional forests, as it no longer exists. Currently, seven of these permits are operational, covering an area of 760,000 hectares.<sup>44</sup> Additionally, the Merauke Integrated Rice Estates Company (MIRE) has applied to the Department of Agriculture for permission to obtain 1.2 million hectares for a large-scale rice project in the MIFEE project area.<sup>45</sup> Around 96 percent of this area is classed as ‘forest’ by the State despite the fact that the Malind and others indigenous peoples (Muyu, Mandobo, Mappi and Auyu) claim the entirety of this area as their traditional lands, territories from which they derive their means of subsistence as well as being the foundation for their identities, unique cultures and spirituality.

26. In order to obtain concessions and permits to establish and operate an oil palm plantation and other forms of concessions, extant law requires that the applicant company demonstrate that there are no third party rights in the area in question. The same is also the case in the MIFEE project. For persons holding title issued by the State, the law requires resort to a standard condemnation and compensation procedure. In the case of indigenous peoples who, by virtue of Indonesian law, live on State lands that are subject to weak and generally unenforceable customary rights,<sup>46</sup> the companies are required to obtain signed certificates demonstrating that the indigenous people have relinquished all interest in the

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<sup>40</sup> T. Ito, N. Rachman, L. Savitri, *Naturalizing Land Dispossession: A Policy Discourse Analysis of the Merauke Integrated Food and Energy Estate*. Paper presented at the International Conference on Global Land Grabbing, University of Sussex, 6-8 April 2011, at p. 19-20. Available at: [www.future-agricultures.org/index.php?option=com\\_docman](http://www.future-agricultures.org/index.php?option=com_docman).

<sup>41</sup> Government of Indonesia, *Grand design pegembangan pangan dan energi Skala Luas*. Jakarta, 2010, p. 36.

<sup>42</sup> See <http://www.depkominfo.go.id/berita/bipnewsroom/sukseskan-miffee-pemerintah-ajak-bicara-investor/>.

<sup>43</sup> *Naturalizing Land Dispossession: A Policy Discourse Analysis of the Merauke Integrated Food and Energy Estate*, *supra*, p. 7-8.

<sup>44</sup> Companies listed as operational are: Wilmar Group, Sinar Mas, Bangun Cipta, Artha Graha, Murdaya, Rajawali Nusantara Indonesia, and Medco. See <http://www.depkominfo.go.id/berita/bipnewsroom/sukseskan-miffee-pemerintah-ajak-bicara-investor/>.

<sup>45</sup> See [http://ditjenbun.deptan.go.id/budtansim/index.php?option=com\\_content&view=article&id=3:kawasan-merauke&catid=8:inventaris-berita&Itemid=30&el\\_mcal\\_month=12&el\\_mcal\\_year=2021](http://ditjenbun.deptan.go.id/budtansim/index.php?option=com_content&view=article&id=3:kawasan-merauke&catid=8:inventaris-berita&Itemid=30&el_mcal_month=12&el_mcal_year=2021)

<sup>46</sup> See *Regulation on Reduction of Emissions from Deforestation and Forest Degradation Procedures*, Ministry of Forestry (No. 30/2009, P.30/Menhut-II/2009), 01 May 2009, at Art. 1(4) and (5); and Law 41, 1999 on Forestry, Art. 1(4) and (6) (both explaining that “Indigenous forest is state forest located in the area of customary law” and, ‘state forest’ is “forest that is on land that is not burdened by land rights”).

land in question.<sup>47</sup> This is not an acknowledgement that indigenous people have protected property rights, but, rather, an administrative requirement incumbent on the companies as part of showing security of title. When a concession or permit is issued to the company, it is always a lease vis-à-vis the State and the indigenous people are not otherwise involved.

27. In the MIFEE project, the preceding has led to coercive and manipulative practices being employed to obtain signatures. A recent study concludes that “ill-prepared indigenous Papuan communities are being enticed, tricked and sometimes coerced into releasing large swathes of forested land to powerful conglomerates, backed by overseas investors and facilitated by the central and provincial governments.”<sup>48</sup>

28. The same study further explains that, “Evidence shows that negotiations between indigenous land owners and plantation companies are unequal and exploitative. Promised benefits, such as schooling, electricity and houses are seldom delivered. Compensation payments for land and timber are meagre. Children as young as four are required to sign contracts so that the firm can ensure it ties the land up for decades.”<sup>49</sup>

29. In this way, the Malind and others’ lands are being alienated, subjected to long-term leases between the State and private companies, and stripped of their forests for monocrop plantations and extractive industry operations on a massive scale.

30. The full extent of the long-term impacts on the Malind and other indigenous peoples affected by the MIFEE project is difficult to predict with certainty. The short-term impacts however are in many cases extant, constitute irreparable harm, and provide some basis for predicting mid- and long-term impacts. As the MIFEE project expands in the coming months and years this irreparable harm will intensify and increase exponentially. This will almost certainly lead to the destruction of the Malind and other peoples as distinct cultural and territorial entities and, in the process, cause extreme prejudice to the exercise and enjoyment of their individual and collective human rights.

31. This view is supported by the above-stated conclusions reached by AMAN and the former Special Rapporteur on the rights of indigenous peoples. It is further supported by the considerations of the Special Rapporteur on the right to food in relation to ‘land grabbing’ (see paras. 4-5 above). The Committee also reached a similar conclusion in 2007, explicitly stating that the proposed Kalimantan oil palm mega-project (smaller in size than the MIFEE project) threatens “the rights of indigenous peoples to own their lands and enjoy their culture.”<sup>50</sup>

32. Negative and severe impacts that are evident now include: coercion and manipulation; increased inter-ethnic conflict and violence; and the transformation of the forests where the Malind and others obtain almost all of their food into monocrop plantations that are devoid of traditional food sources. Game animals that provide primary sources of protein have already begun to dwindle and will disappear from the area. As the forest contains the vast majority of the indigenous peoples’ sacred sites, some of these areas already have either been destroyed or access is greatly restricted, and this will increase as clearance continues. The internationally guaranteed property and other rights of indigenous peoples are completely disregarded in this process and these rights are essentially nullified. Thus, the MIFEE project has already begun to undermine the indigenous peoples’ traditional

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<sup>47</sup> See BPN/National Land Agency Regulation No. 1999; Presidential Decree No. 34/2003 concerning national land affairs policies; and Ministry of Agriculture Regulation No. 26/2007.

<sup>48</sup> Environmental Investigation Agency/Telepak, *Up for Grabs. Deforestation and Exploitation in Papua’s Plantation Boom*. November 2009, *supra*, at p. 1.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

economy and their identity and integrity, a process that will intensify and expand as more companies begin operations.

33. The MIFEE project will require an estimated 2-4 million workers, a number that exceeds the existing population of the entire province of Papua.<sup>51</sup> Further transmigration of non-Papuan will be required and has already commenced to meet this need. The history of 'transmigration' programmes in Indonesia is bleak in human rights terms and conclusively demonstrates that indigenous peoples will suffer irreparable harm. This harm is caused by alienation of their lands, environmental degradation associated with increased and uncontrolled land use, particularly in the agro-industrial and extractives sectors, increased competition for resources, population pressures, and inter-communal conflicts.

34. The preceding is amply supported by World Bank studies on Indonesia's transmigration programmes. The Bank recognized, for example, that "there was a major negative and probably irreversible impact on indigenous peoples," and it withdrew its funding in the late 1990s.<sup>52</sup> The Committee itself has also observed that Indonesia transmigration programme "has longstanding effects" on human rights and inter-community relations.<sup>53</sup> Moreover, indigenous Papuan will become a tiny minority in their own lands and the discrimination they currently experience will likely also increase.

35. In common with the Inter-American Court of Human Rights,<sup>54</sup> the Human Rights Committee has held that, in the case of indigenous peoples, State acts "must respect the principle of proportionality so as not to endanger the very survival of the community and its members."<sup>55</sup> It is highly questionable if this basic principle can be adhered to given the extreme impacts and the disproportionate effect that the MIFEE project will have on the Malind and other affected peoples. In the first place, absent agreement with the affected peoples, the negative impacts would appear to greatly outweigh any potential benefits that they may acquire. Likewise, the affected peoples will suffer the vast majority of the harm while others receive the vast majority of the benefits. Additionally, the MIFEE project is located in a place where the impact on the human rights of the Malind and others would appear to be the most extreme. Thus, it is not apparent that the State has sought to choose the least intrusive means from a human rights perspective or considered viable alternatives that will have no impact or a lesser and/or consented to impact on the affected peoples.<sup>56</sup>

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<sup>51</sup> Zakaria, Kleden and Frangky, *MIFEE: Jauh dari Angan Malind: MIFEE: Beyond Malind Imagination* 2011.

<sup>52</sup> World Bank, *Indonesia Transmigration Program: a Review of Five Bank-Supported Projects*, Operations and Evaluation Department, Country Specific Sector Review 12988, April 1994: <http://wblno018.worldbank.org/oed/oeddoclib.nsf/4e0750259652bf5885256808006a000d/777331ddd0b6239c852567f5005ce5e2?OpenDocument>

<sup>53</sup> CERD/C/IND/CO/3, at para. 18.

<sup>54</sup> The Inter-American Court holds that in addition to demonstrating that the project is necessary and proportionate, a proposed project or investment cannot threaten the survival of indigenous peoples, which is understood to mean their "ability to 'preserve, protect and guarantee the special relationship that they have with their territory', so that 'they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected'." *Saramaka People v. Suriname*, Judgment of the Inter-American Court of Human Rights, 28 November 2007. Ser c No. 172, at para. 129-134 and; *Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of 12 August 2008. Series C No. 185, at para. 37.

<sup>55</sup> *Angela Poma Poma v. Peru*, CCPR/C/95/D/1457/2006, 24 April 2009, at para. 7.6.

<sup>56</sup> The Inter-American Court holds that "the 'necessity' and, hence, the legality of restrictions ... depend upon a showing that the restrictions are required by a compelling governmental interest. Hence if there are various options to achieve this objective, that which least restricts the right protected must be selected." *Herrera-Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, at para. 121. The European Court of Human Rights has similarly ruled, stating that permits that restrict property rights "must not be issued if the public purpose in question can be achieved in a different way...." *Sporrong & Lonnroth v. Sweden*, European Court of Human Rights, Judgment of 23 Sept. 1982, at §69.

36. The Human Rights Committee has also stressed that, when planning actions that affect indigenous peoples, state parties “must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them.”<sup>57</sup> More generally, and in common with the Committee,<sup>58</sup> the Human Rights Committee has held that activities that could compromise the resource and related rights of indigenous peoples “must not be addressed on the basis of the economic benefit to the majority population, or by affording the state a ‘margin of appreciation’ in regulating economic activity.”<sup>59</sup> Neither of these principles has been adhered to in the case of the MIFEE project.

37. In addition to the ICERD, Indonesia is also bound by the International Covenant on Civil and Political Rights and other multilateral human rights instruments. The above cited jurisprudence and the facts of the MIFEE project demonstrate that Indonesia has failed to comply with its obligations to respect and protect the rights of the Malind and other affected peoples. The nature of these violations however transcends simple violations and amounts to gross and irreparable harm to the affected indigenous peoples, a conclusion that is amply supported by the prior views of the Committee, by UN Special Procedures and other international mechanisms, as well as by the World Bank and non-governmental sources. In this respect, the Submitting Organisations emphasize that the World Bank Group declared a moratorium on financing oil palm plantations in 2009 on the basis of complaints received about the treatment of indigenous peoples in Indonesia.<sup>60</sup> This moratorium was not lifted until 2011 after the Bank Group had adopted a new strategy that aims to better protect affected persons and communities.<sup>61</sup>

38. Agro-industry in Indonesia, such as the MIFEE project, is highly detrimental to indigenous peoples and this has been widely acknowledged. Indonesia, however, continues to disregard its obligations and is now massively expanding agro-industry operations into Papua, the territories of the most vulnerable and discriminated against indigenous peoples in that country. The subject of this request, the MIFEE project, is emblematic of this expansion and the drastic and extreme impacts on the affected indigenous peoples, whose survival as distinct cultural and territorial entities is gravely and imminently threatened. Without urgent and sustained international scrutiny and attention, they may cease to exist as collective entities altogether in the coming years.

## V. Request

39. In light of the preceding, the Submitting Organisations respectfully request that the Committee:

- a) Considers this urgent situation at its seventy-ninth session under its early warning and urgent action procedures.
- b) Recommends that Indonesia immediately suspend the MIFEE project until such time as indigenous peoples’ rights have been demonstrably secured in law and practice –in particular their ownership rights in and to their traditional lands, territories and

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<sup>57</sup> See *Chile*. 30/03/99. CCPR/C/79/Add.104, at para. 22.

<sup>58</sup> See *Australia*. CERD/C/AUS/CO/14, 14 April 2005, para. 16.

<sup>59</sup> This is consistent with Article 46(2) of the UN Declaration on the Rights of Indigenous Peoples (providing that restrictions on indigenous peoples’ rights must be “non-discriminatory and strictly necessary,” and solely concern securing due recognition and respect for the rights of others or the “just and most compelling requirements” of democratic society”).

<sup>60</sup> See Bank unit to review palm oil and other carbon-intensive loans, 20 November 2009. Available at: <http://www.bicusa.org/en/Article.11648.aspx>.

<sup>61</sup> See ‘World Bank lifts suspension on new palm oil investments’, Reuters, 01 April 2011. Available at: <http://www.reuters.com/article/2011/04/01/worldbank-palmoil-idUSN011595420110401>.

resources and obtained their free, prior and informed consent to any development thereon.

- c) Recommends that Indonesia adopts legislative, administrative and other measures to give full effect to the rights of indigenous peoples, including by amending existing laws, and that it does so with indigenous peoples full and free participation through their own freely chosen representatives.
- d) Draws the attention of the UN Secretary General, Human Rights Council (including its 'Special Procedures' mechanisms), the Permanent Forum on Indigenous Issues, the relevant Special Rapporteurs (i.e. Right to Food, Rights of Indigenous Peoples, Internally Displaced Persons), the Food and Agriculture Organization of the United Nations (FAO), and the Office of the High Commissioner for Human Rights to the serious and urgent situation affecting the indigenous peoples in Merauke.
- e) Considers requesting permission from the Government of Indonesia to have a delegation of the Committee (along with various UN Special Rapporteurs) make an in-loco visit to Merauke where the indigenous communities and organizations with whom the Submitting Organizations work have already expressed their interest in welcoming you and facilitating your visit. And finally,
- f) Takes any other measure that your office deems appropriate given the facts and the competencies bestowed on the rapporteurship by the UN Human Rights Council.

40. Once again, on behalf of the indigenous peoples of Merauke, Papua, Indonesia, the undersigned Submitting Organizations thank the Committee on the Elimination of Racial Discrimination for your continued efforts on behalf of indigenous peoples and we remain available not only to receive a delegation from your Committee should you decide to visit Merauke for further investigation, but also to answer any additional questions you may have regarding the situation described herein.

Appreciatively,



Abetnego Tarigan  
Executive Director  
***Perkumpulan Sawit Watch***



Fergus MacKay  
Senior Counsel, Legal & Human Rights Programme  
***Forest Peoples Programme***

*on behalf of the additional Submitting Organizations:*

**PUSAKA**

***Perkumpulan Untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis/HuMA (Association for Community and Ecologically-based Legal Reform)***

***Keuskupan Agung Merauke/Sekretariat Keadilan dan Perdamaian (SKP KAME)***

***Yayasan Santo Antonius (Yasanto, Merauke)***

***Forum Kerjasama Lembaga Swadaya Masyarakat (FOKER LSM) Papua/Papua NGOs Forum***

***Wahana Lingkungan Hidup Indonesia/WALHI (Friends of The Earth Indonesia)***

***SAINS (Sajogyo Institute)***

***Lembaga Studi dan Advokasi Masyarakat/ELSAM (The Institute for Policy Research and Advocacy)***

***Down to Earth***

***Watch Indonesia***

***Aliansi Masyarakat Adat Nusantara/AMAN (Indigenous People Alliance of the Archipelago)***