

Mandates of the Special Rapporteur on the right to food and the Special Rapporteur on the rights of indigenous peoples

REFERENCE: AL Food (2000-9) Indigenous (2001-8)
IDN 7/2011

01 February 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to food and Special Rapporteur on the rights of indigenous peoples pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 13/4 and 15/14.

In this connection, we wish to bring to the attention of your Government information we received regarding the **impact that the Meruake Integrated Food and Energy Estate project allegedly is having, and may continue to have, on the enjoyment of various human rights of the local indigenous communities**. In particular we wish to draw attention to information regarding the non-consensual conversion of indigenous peoples' ancestral lands and forests. We also wish to draw attention to information received about the treatment of individuals who met to discuss the project, and the possible violations of their civil and political rights.

According to the information we received:

The Government-authorized Meruake Integrated Food and Energy Estate project ("MIFEE project") is designed to produce crops (maize and rice), palm oil, timber products and agro-fuels, primarily for export. The project is located in East Papua, right along the border with Papua New Guinea. Numerous indigenous communities populate this area and rely on the forests for hunting and food collection. Some of these communities have already allegedly lost access to their food sources and means of subsistence and numerous others fear that they will soon lose their livelihoods as well as their access to food.

Project scope and deforestation. Reports on the exact amount of land to be allocated to the project differ. According to information received,

government documents presently list the total targeted area for the project at 1,282,833 hectares (423,251.3 hectares in 2010–2014; 632,504.8 hectares in 2015–2019; and 227,076.9 hectares in 2020–2030). However, other information available through the Local Investment Promotion Board (Badan Promosi Investasi Daerah), suggests that 36 companies have acquired permits to more than 2 million hectares as of May 2011.

The allegations received indicate that much of this allocated land has or will be deforested in order to allow for palm oil, maize, rice and timber estates. According to reports, there are currently seven operational permits covering an area of 760,000 hectares. This includes an Indonesian company, MedCo Grop which allegedly has received a permit for 360,000 hectares that will allow it to clear up to 60 per cent of the forests in the plot. We have been told that virtually the entire forest of the Zanegi indigenous community – located within this concession area – has already been cut down.

In addition to the concessions already provided, it is alleged that the Merauke Integrated Rice Estates Company has applied to the Department of Agriculture for permission to obtain 1.2 million hectares for a large-scale rice cultivation initiative in the MIFEE project area. According to sources, 96 per cent of this area is classified as “forest” by the State, despite the fact that Malind and other indigenous peoples (including the Muyu, Mandobo, Mappi and Auyu) claim the entirety of this area as their traditional lands and territories from which they derive their means of subsistence as well as the foundation for their identities, unique cultures and spirituality.

Number of people affected. According to some reports received, a great number of families, in particular those from indigenous communities, have already been affected by the land acquisitions and the number affected is going to grow as more concessions are made. To date, indigenous Papuans (to which the Malind and other indigenous peoples in the Merauke region belong) allegedly have already lost a considerable area of their traditional territories due to logging, mining, oil palm plantations and population transfers.

Allegations suggest that the MIFEE project will continue to impact particularly the Malind, who number approximately 50,000 persons, but also other indigenous peoples, including the Muyu, Mandobo, Mappi and Auyu. The Malind, like numerous other peoples in the area, primarily subsist by collecting sago, hunting and fishing. In this way they are dependent on the forest and forest ecosystem for their basic needs as well as their traditional economy.

Consent. Information received suggests that the local indigenous communities have not been provided good faith consultations regarding the changes in land use of their traditional territories. Further, the information received indicates that no procedures were put in place to obtain the free prior informed consent from the indigenous populations whose territories have allegedly been converted to alternate uses. There are further suggestions that no legitimate consultation procedures have been established regarding potential future land changes either.

According to reports received, the MIFEE project has also not been implemented in conformity to extant domestic laws that require accounting for land conversion. Documents provided suggest that under Indonesian law in order to obtain concessions and permits to engage in certain industries, including operating palm oil plantations, applicant companies must demonstrate that there are no third party rights to the area in question. Further, documents provided suggest that in the case of indigenous peoples who by virtue of Indonesian law generally live on State lands, companies are required to obtain signed certificates demonstrating that the indigenous peoples have relinquished all interest in the land in question. The allegations suggest that this is an administrative requirement incumbent on the companies that received concessions through the MIFEE project as part of showing security of title.

Companies receiving concessions under the MIFEE project have allegedly used coercive practices to obtain the required signatures of individuals relinquishing their rights. A recent study concluded that local populations were ill-prepared to sign the consent forms and to deal with the legal consequences and intricacies of the land-acquisition and consent process. The study indicated further that negotiations between indigenous land-owners and plantation companies have been unequal and exploitative and that children as young as four have been required to sign contracts that allow access to land for years to come. The study claimed that promised benefits, like schools, electricity and houses, were often not-provided, and compensation for land and timber has been small and insufficient. According to the study, children as young as four were being asked to sign the contracts for the land.

Access to food. According to reports, the MIFEE project has reduced food availability for local populations, and concern is expressed that food availability will continue to decrease in the future. Reports attribute this decrease to the deforestation of the area allocated to the MIFEE project. These forests reportedly serve as the key food source for local indigenous communities who rely on them for hunting and gathering purposes. For example, the Zanegi indigenous peoples allegedly have lost physical access to the animals they used to hunt and

the food they used to collect in the forest, as virtually the entire forest they used as their food source has been razed.

In other forests, game animals that provided the primary source of protein for local indigenous peoples allegedly have already begun to dwindle in number and are likely to disappear from the area.

According to the allegations received, the forests are being replaced with monocrop agriculture, which can be detrimental to ecosystems. Further, the plants being introduced through monocrop agriculture are reportedly not food sources consumed by the local populations. Finally, allegations have been raised that even when the forests are not cut down, indigenous populations are often being denied entry, which hinders their access to food.

Additionally, accounts sent to us indicate concern that MIFEE project and those proposed, will lead to a large influx of population in the area, which may result in even further limitations in accessing food. The project allegedly will require 4.8 million workers, a number that currently exceeds the existing population of the entire province of Papua. We have been informed that the access to food will become even more constrained by increased demand when migrants come to the area looking for work.

Intimidation of community members. Allegations received suggest that Papua provincial police and national military intelligence have employed intimidation tactics to dissuade local community members from raising concerns about the MIFEE project. These allegations claim that uninvited representatives of the Papua provincial police force and national military intelligence attended a community meeting and training about MIFEE and human rights held in Meruake from 22 to 25 July 2011, and proceeded to harass and intimidate the leaders and representatives of the meeting. Further, the allegations describe that on the first day of the meeting, at least 12 police and military intelligence officers entered the meeting uninvited and tried to shut it down claiming that particular rules were not followed to register the meeting or the presence of the indigenous peoples' foreign advisor. According to the allegations, the officers attempted to remove the foreign legal advisor from the meeting. The allegations continue claiming that for a day and a half the police and military officials refused to permit this legal advisor to conduct planned human rights training and demanded copies of her presentation prior to providing any authorization. The allegations also state that on the first day of the meeting a military officer sat at the doorway observing all the activities and entered the room several times to take photographs of all of the participants, the facilitator, the foreign advisor and even the local interpreter. Finally,

the allegations suggest that throughout the meeting officers continued their presences, showing up in the evenings to ask questions, and at times parking a security vehicle outside of the venue.

Indigenous Populations: We are aware that the Committee on Elimination of Racial Discrimination sent a letter dated 2 September 2011 to your Excellency regarding the same facts outlined here. In this letter the Chairperson expressed concern on behalf of the Committee regarding the implications of large-scale land acquisitions for local indigenous communities and raised questions regarding the implementation of recommendations for improving the situation of indigenous peoples in Indonesia provided by the Committee in paragraph 22 of its concluding observations (CERD/C/IND/CO/3) of 15 August 2007, and in particular measures taken to effectively seek the free, prior and informed consent of indigenous communities before carrying out the MIFEE project.

With more expansion activities intended, concerns are expressed that the large-scale land acquisitions currently and will continue to affect the ability of local populations to feed themselves. This is worrying given that 87 million Indonesians are currently food insecure, 25 million of whom are severely food insecure. More specifically, concerns have been expressed that the long-term effects of deforestation, monocrop agriculture and the new influx in population will lead to increased competition over scarce resources that will drive up prices and further limit access to adequate food for the local indigenous populations and severely strain the already diminishing food supply.

Concerns are expressed that, at a minimum, the deprivation of ancestral lands through alienation to third parties and the likely displacement of indigenous peoples as a result of a large influx of non-indigenous individuals will interfere in the rights of Malind and other indigenous peoples to access traditional food sources.

Finally, concerns are raised that the MIFEE project leaves the affected indigenous peoples of Merauke with a profoundly compromised future, severely diminished livelihood options and, given 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, systems of livelihoods and consequently, right to food.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards and, in particular, the following:

With respect to the right to food, article 25 of the Universal Declaration of Human Rights recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food." Furthermore article 11.1 of the International Covenant on Economic, Social and Cultural Rights – which Indonesia acceded to on 23 February 2006 – stipulates that States "recognize the right of everyone

to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions,” and requires them to “take appropriate steps to ensure the realization of this right.”

The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the Covenant, has defined the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfil the right to food. The Committee considers that the core content of the right to adequate food implies, inter alia, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.

The right to adequate food is recognized also in the Convention on the Rights of the Child – acceded to by Indonesia on 5 September 1990 – in articles 24.2(c) and 27.3. In the Convention, the right to adequate food is to be read in conjunction with the right to life, survival and development stipulated in article 6. States parties to the Convention on the Rights of the Child commit themselves to combat “disease and malnutrition, including within the framework of primary health care, through, inter alia, (...) the provision of adequate nutritious foods and clean drinking-water.”

The right to adequate food may be under severe threat when land on which people depend for their subsistence is traded away, for instance for the development of large-scale agricultural or industrial projects. This is why the Special Rapporteur on the right to food considered it necessary to restate the human rights obligations of States in this regard in a set of minimum principles and measures to address the human rights challenge, presented as an addendum to the annual report of the Special Rapporteur on the right to food to the Human Rights Council at its 13th session (March 2010) (A/HRC/13/33/Add.2).

The Declaration on the Rights of Indigenous Peoples **by General Assembly Resolution 61/295 on 13 September 2007**¹ provides in article 8(2), b), that States should prohibit “any action which has the aim or effect of dispossessing [indigenous peoples] of their lands, territories or resources.” It also prohibits any forcible removal of indigenous peoples from their lands or territories, imposing requirements of free, prior

¹ A/RES/61/295.

and informed consent, agreement on just and fair compensation and, where possible, the option of return, for relocations (art. 10). A number of other provisions of the Declaration relate to the right of indigenous peoples to the lands, territories and resources “which they have traditionally owned, occupied or otherwise used or acquired,” which they may “own, use, develop and control,” imposing that these lands, territories and resources be legally recognized and that indigenous peoples’ laws, traditions, customs and land tenure systems be recognized.

In addition, the right to self-determination of peoples and, specifically, the right of all peoples freely to dispose of their natural wealth and resources – as stipulated under article 1 of both 1966 Covenants² – protect indigenous peoples from certain forms of dispossession from their territories or from the resources on which they depend. Article 1(2) of the International Covenant on Civil and Political Rights – in conjunction with article 27, which recognizes the rights of minorities – guarantees the right of people to maintain their cultural connections, including their way of life, over the lands and resources upon which they rely.³

On the basis of article 5(d)(v) of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of all Forms of Racial Discrimination also recommends States parties to “recognize and protect the rights of all indigenous communities to own, develop and control the lands which they traditionally occupy, including water and subsoil resources.”⁴ Furthermore, in light of its General Recommendation No. 23 on indigenous peoples (1997), the Committee calls upon State parties to the Convention to “recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State’s cultural identity and to promote its preservation; ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity; provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristic; ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent; ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs and to preserve and to practice their languages,” and “to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and

² International Covenant on Economic, Social and Cultural Rights (A/RES/21/2200A, 16 December 1966) (993 UNTS 3); and International Covenant on Civil and Political Rights (A/RES/21/2200A, 16 December 1966) (999 UNTS 171).

³ Human Rights Committee, *Apirana Mahuika et al. v. New Zealand*, Communication No. 547/1993, CCPR/C/70/D/547/1993 (2000), para. 9.7. The Human Rights Committee observed that “minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture[, which] may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority”: *General Comment No. 23: The rights of minorities (Art. 27) (Fiftieth session, 1994)*, CCPR/C/21/Rev.1/Add.5, 4 August 1994, paras. 1 and 3.2.

⁴ CERD/C/GUY/CO/14, 4 April 2006, para. 16 (Guyana); CERD/C/KHM/CO/8-13, 16 March 2010, para. 16 (Cambodia).

territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.”⁵It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts summarized above accurate?
2. Have complaints been lodged by local communities, including indigenous communities, about the MIFEE project?
3. Has a human rights impact assessment been carried out regarding the MIFEE project? If so, who undertook such an assessment and could you please provide us with the conclusions of the assessment?
4. Have the potential human rights, social and environmental impacts been considered in relation to the MIFEE project? If so, could you please provide us with examples?
5. What measures associated with the MIFEE project have been or are being put in place to ensure that the enjoyment of the right to adequate food of the local population shall not be affected?
6. To what extent have the concerned communities been allowed to participate in the MIFEE project development and decisions regarding what lands to be allocated? Can you describe any process in place to receive the consent of indigenous peoples for the project?
7. To what extent have measures of compensation been put in place for all concerned persons who will lose access to their food sources? What measures have been taken to ensure that those who may lose access to the forests are offered alternative sustainable means to access sufficient and adequate food?

We would be most grateful to receive an answer within 60 days. We undertake to ensure that the response of your Excellency’s Government will be taken into account in our assessment of the situation and in developing any recommendations that we may make for your Government’s consideration pursuant to the terms of our respective mandates. Additionally, we undertake to ensure that the response of your Excellency’s Government is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

⁵ *General Recommendation No. 23: Indigenous Peoples (Fifty-first session, 1997)*, contained in A/52/18, annex V, paras. 4-5.

Please accept, Excellency, the assurances of our highest consideration.

Olivier De Schutter
Special Rapporteur on the right to food

James Anaya
Special Rapporteur on the rights of indigenous peoples