



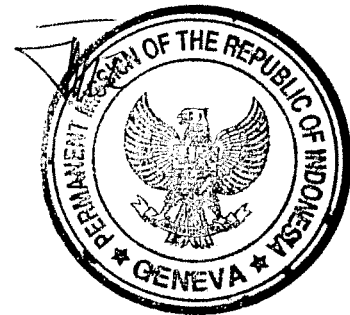
PERMANENT MISSION
OF THE REPUBLIC OF INDONESIA
TO THE UNITED NATIONS, WTO
AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

N° 058/Pol-II/V/2013

The Permanent Mission of the Republic of Indonesia to the United Nations, World Trade Organization, and Other International Organizations in Geneva, presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) and with reference to the letters of Special Rapporteur on the right to food and Special Rapporteur on the rights of indigenous peoples dated 1 February 2012 and 14 November 2012, has the honour to convey the Government of Indonesia's response on the Merauke Integrated Food and Energy Estate (MIFEE) as enclosed.

The Permanent Mission of the Republic of Indonesia to the United Nations, World Trade Organization, and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights (OHCHR) the assurances of its highest consideration.

Geneva, 2 May 2013



Office of the High Commissioner for Human Rights (OHCHR)
Attn. Special Procedures Branch
c/o Ms. Jane Connors

Fax no. 022 917 90 06
Geneva

**RESPONSE FROM THE GOVERNMENT OF THE REPUBLIC OF INDONESIA TO THE
QUESTIONS OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD AND THE
SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES
ON THE MERAUKE INTEGRATED FOOD AND ENERGY ESTATE (MIFEE)**

The response is based on the Government of Indonesia's position on indigenous people as follow:

1. The concept of indigenous people as prescribed in the United Nations Declaration on the Rights of Indigenous Peoples is not applicable in the Indonesian context. For Indonesia, the term indigenous community pertains to people in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. Given the fact that the entire population of Indonesia has remained unchanged since the time of its colonization and subsequent independence, and the fact that Indonesia is a multicultural and multi-ethnic nation that does not discriminate against its people on any grounds, the rights stipulated in the aforementioned Declaration accorded exclusively to indigenous peoples are not applicable in the context of Indonesia.

2. However, the Government will continue, in accordance with its national laws, to promote and protect traditional collective rights of the *Masyarakat Adat*, including those living in the areas designated for MIFEE, which is not equivalent to indigenous peoples as referred to in the Declaration.

Indonesia, with its rapid growing population, is determined to develop alternative ways of fulfilling future food demand of its people. At present, Indonesia is importing several main food staples such as rice and cassava, which results into a steady increase of imports. Such a situation will continue to burden Indonesia's national development budget and lessen the expected development benefits of the budget for its people. Therefore, a sustainable policy aimed at realizing food security in Indonesia is essential.

The overall national-level plan to speed up and expand development in Indonesia is the *Master Plan for the Acceleration and Expansion of Indonesia Economic Development (MP3EI)* that sets out a three-pronged strategy for Indonesia to become a developed country by 2025, as Indonesia aspires to become the world's 9th biggest economy. The plan's strategic initiatives consist of: 1) bringing large scale investments in 22 main economic activities, 2) synchronizing the national action plan to revitalize real sector performance, 3) developing centers of excellence in the established economic corridors.

One of MP3EI's focus projects is the Merauke Integrated Food and Energy Estate (MIFEE) in southern part of the Papua Province. Merauke area, with its flat and fertile land, has been designated as supplier of food and energy in eastern part of Indonesia. MIFEE is designed with the concept of agriculture as an industry based on science and technology, capital, and modern management. MIFEE is aimed at contributing to the long term goals of Indonesia's food security and self-sufficiency. Moreover, MIFEE is also intended to increase employment opportunities in agricultural sector for both local communities and new settlers and to contribute to the local and national economic development.

According to MP3EI, MIFEE will cover an area of 1.2 million hectares, and consist of 10 clusters of Agricultural Production Centers (KSPP). The short-term development priority (2011-2014) is to develop clusters I to IV, covering an area of 228,023 hectare, in regions such as Greater Merauke, Kali Kumb, Yeinan, and Bian. In the medium term (2015-2019), areas for agricultural production centers for food crops, horticulture, animal husbandry, plantation, and aquaculture will be developed in areas of Okaba, Ilwayab, Tubang, and Tabonji. In the long term (2020-2030), a central production area for food crops, horticulture, animal husbandry, fisheries and plantations will be developed in Nakias and Selil. Crops will include, among others, rice, corn, soybeans, sorghum, wheat, vegetables and fruits. Livestock for animal husbandry will include chickens, cattle, goats and rabbits. Sugar cane, rubber and oil palm are identified as the non-food crops to be planted under the scheme.

In regard to questions from the Special Rapporteur (SR) on the Right to Food, Mr. Oliver De Schutter and SR on the Rights of Indigenous People, Mr. James Anaya, the Government of Indonesia would like to share the following information:

a) Are the facts summarized in the letter of both SR accurate?

MIFEE is designed to empower the local communities to cultivate their lands by using modern technology. It is the obligation of the national and local governments to protect and ensure the rights of local communities. In relation to the data and figures that are described in the SRs' letter, the following provides clarification on the issues:

- Protection of rights of the local communities

The local communities' rights, including their ownership of *tanah ulayat*, are protected by the government. Before investors can operate in the land intended for MIFEE, they are required to obtain permission from local communities. The willingness and agreement of local communities are necessary for the interested investors to embark on their projects. The investors must also conduct delineation of the *tanah ulayat* to prevent any complications that may occur in the future due to ambiguity of the boundaries of the *tanah ulayat*. It is to be noted that once the project has ended, investors have to return the land/*tanah ulayat* back to the local communities.

Currently, the local government and related stakeholders are still negotiating with investors in regard to the 20% of land in MIFEE areas to be shared and utilized by the local communities for cultivating food crops or other plants (plasma system). It is expected that such system will empower the local communities, develop their economic capacity, and also increase their sense of ownership of the MIFEE.

With regard to legal framework, there are regulations that recognize and protect *tanah ulayat*, such as the Agrarian Law No. 5/1960, Law No. 21/2001 on Special Autonomy for Papua Province and Law No. 41/1999 on Forestry. These laws provide directions for the Government to be committed to the protection of the land rights of all citizens, including local communities who live in Merauke.

- Deforestation

It is true that in 2009 the Government has received notification of investment interest in MIFEE with the largest proposed area of 301,600 coming from a particular investor. However, in implementation, there is no investor or company that has obtained permit to operate in 360,000 hectares of forest area as stated in the letter of the SR. According to the data from the Ministry of Forestry and District Government of Merauke, the largest area whose permit has been

obtained by a single investor to be operated as part of the MIFEE project is not more than 62,125 hectare.

Based on Merauke's Regional Spatial Plan finalized in 2011, the maximum designated forest area that may be used for MIFEE is 505,000 hectare, with the initial stage covering 228,000 hectare of convertible production forest. MIFEE will also use 360,000 hectare of non-forest area in addition to the 228,000 hectare at the initial stage. However, the area of both forest and non-forest that would eventually be used for MIFEE projects is subject to the results of the AMDAL (environmental impact analysis) assessment. The total area used may be lower than the designated area, especially because they have to undergo the scrutiny of the AMDAL assessment. As of December 2012, out of the 47 companies that have obtained location permit from the District Government, only 7 have managed to secure their AMDAL, whereas 2 are still at the public dissemination and consultation stage, and 8 are having their AMDAL application processed.

It is important to be noted that forest areas in Merauke still cover more than 60% of the total area of the region. Indonesia's regulations require any party having interest in utilizing forest areas to undergo AMDAL assessments of their proposed operation. An integrated team, whose members come from related stakeholders, will analyze the assessment from every aspect, with consideration of the area and status of the forest, whether the forest is a protected area or can be used for production. As a nation that holds large area of tropical forest, it is an obligation for the Government of Indonesia to conserve these forests, not only for the Indonesian people, but also for the world as a whole.

- Intimidation of local communities

Local communities have their rights to negotiate and coordinate with interested investors with regard to their *tanah ulayat*. The local government, including the police and the armed forces, do not and will not interfere and intimidate the local communities in the process of negotiation with the investors and in the implementation of MIFEE projects. There has not been any kind of intimidation conducted during the course of negotiation and implementation of MIFEE projects. The Government facilitates the projects and their negotiations only in the best interest of the local communities, including in monitoring the compensation and incentive payment from the investors as a commitment of their Corporate Social Responsibility (CSR). If there is any problem, the Government will support and help the local communities, and act in the best interest of the local communities.

b) Have complaints been lodged by local communities, including indigenous communities, about MIFEE projects?

Up to now, the Indonesian Government, be it at the central, provincial, or district level, has not received any formal complaints on MIFEE projects lodged by the local communities. However, issues regarding complications and problems relating to MIFEE projects have been brought to the public by NGOs, mainly through the internet, and also transmitted to the Committee on the Elimination of Racial Discrimination in 2011. Recently, the issue is also raised by the two SRs in their letter addressed to the Government of Indonesia.

With a view to improve the enjoyment of rights of the local sub-ethnic communities or *Masyarakat Adat*, the Government is always ready and willing to receive any input and reports from any party regarding the implementation of MIFEE and any complication or problem that may arise. Any action undertaken by the Government is for the best interest of the local communities. If there is any problem arising from the MIFEE projects, the Government stands

ready to facilitate and coordinate with related stakeholders in order to resolve the problem immediately and effectively.

c) 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?

The development of regional integrated food areas, including Merauke and its surrounding, is implemented to fulfill the economic, social and cultural rights, and the right to development of all Indonesians, including the local communities in Merauke. It is also designed to empower local communities and develop local economy through their involvement based on the principle of mutual partnership between the local communities and investors, with special regard to the local wisdoms and customs. Furthermore, investors had trained and hired employees from local communities, as well as enhance their knowledge and skills on modern plantation, and provide scholarships for local children as part of their CSR.

As any other business projects/activities in any part of Indonesia, companies involved in MIFEE projects are required to conduct the so-called AMDAL (environmental impact analysis) as regulated by Governmental Regulation No. 27 of 1999 on Environmental Impact Analysis. In the Regulation, AMDAL is defined as an important environmental impact assessment required before a party (such as a business entity) decides to embark on a particular business and/or activities. AMDAL comprise of impact assessment on aspects of physics-chemistry, ecology, socio-economics, socio-culture, and community health.

Human rights impact assessment has been covered sufficiently by the AMDAL.

d) 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?

As explained previously in point c), impact assessment on aspects of physics-chemistry, ecology, socio-economics, socio-culture, and community health of business activities/projects are required by law. It is regulated by Government Regulation on AMDAL. As such, no party, including those interested in being involved in MIFEE, can embark on a project without fulfilling the required AMDAL environmental impact assessment.

Companies wishing to be involved in MIFEE must go through the stages of AMDAL procedure, which include:

- AMDAL requirements screening
- Public announcement and consultation
- Conception and evaluation of terms of reference for environmental impact assessment
- Construction and evaluation of environmental impact assessment, environment management plan, and environment monitoring plan
- Selection process for business/activities requiring AMDAL

To ensure the effectiveness of AMDAL, its monitoring is linked directly to licensing procedure and decision making process whereby the licensing authority will consider providing operating license only when AMDAL assessment is conducted and completed with favorable results. The AMDAL Evaluation Committee will decide whether or not to provide recommendation for the issuance of license for a certain project. Aside from providing inputs for licensing decision making process, AMDAL also provides contribution to: areal development planning, assistance

for decision making process on the environmental soundness of planned business activities/projects, inputs for technical design details of a planned business/activity, inputs for environmental management and supervision planning, dissemination of information to the communities on the impact of certain business plans and/or activities.

e) What measures associated with the MIFEE project have been or are being put in place to ensure the enjoyment of the right to adequate food of the local population shall not be affected?

First and foremost, to ensure the enjoyment of the right to adequate food of the local population, MIFEE projects will not utilize lands that are identified as the source of staple food of local communities. Moreover, the local government had strived to ensure the protection of sago plants as local communities' main food source, as well as the environment around watering place (including river, swamps, peats and lakes) where local communities mostly make their living and use as source of their water supply.

Moreover, 20% of the land used for MIFEE is designated for the local communities to be developed for cultivating food crops or other plants, with the assistance of investors, through a plasma system. It is expected that such system will empower the local communities and develop their economic capacity, providing better means to acquire food for their consumption, and also for other necessities. The local Government had also coordinated with related ministries and stakeholders regarding the development of food plants, such as corn, cassava, sago and sweet potatoes in MIFEE plantation areas. This will provide an alternative source of food for the local communities.

f) 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?

For any MIFEE project, investors are required to obtain formal consent from local communities. For investors to invest in the MIFEE projects, they have to undergo the following procedures:

- Investors submit their proposal to the Merauke District Government and request recommendation on areas that are available for MIFEE project.
- If the proposal is approved by the Merauke District Government, it will then facilitate the investors to meet the local communities to disseminate and explain information regarding their request to operate in *tanah ulayat* belonging to the local communities. This step includes:
 - i. Dissemination of information on the investment plan, including the expected impact of project and land acquisition plan;
 - ii. Provide opportunities for local communities that own the *tanah ulayat* to get clear explanation on the investment plan and seek solutions for any expected problems/complications;
 - iii. Collecting first-hand information from the local communities regarding social and environmental data, as well as data on the ownership of *tanah ulayat*;
 - iv. Negotiation on the type and amount of compensation that will be given by the investors to the local communities for the utilization of the *tanah ulayat*.

- If the local communities have no objection to the investment plan and the Merauke Regional Coordination Agency on Spatial Planning has given recommendation, the Head of Merauke District Government will issue location permit.
- Investors are then required to conduct the AMDAL (environmental impact analysis).
- Finally, investors submit an application to the Ministry of Forestry for the release of forest areas after obtaining recommendation from the Governor of Papua.

g) 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?

The Government strives to ensure that all local communities do not lose access to their food sources. As explained in point e), MIFEE projects will not utilize lands that are identified as the source of staple food of local communities. Moreover, the local government ensures the protection of sago plants as local communities' main food source, as well as the environment around watering place (including river, swamps, peats and lakes) used as source of local communities' livelihood and water supply.

Also as explained in point f), by the District Government facilitates negotiation between the local communities and prospective investors to ensure the type and amount of compensation is satisfactory and equivalent to the benefit gained from the utilization of *tanah ulayat*. After a mutual agreement between investors and local communities has been made, and the investors have completed all other required procedures to implement the project, the investor has to pay the compensation to the local communities in exchange for temporary rights to develop their *tanah ulayat* (the land will be returned to the local communities when the projects have ended).

Furthermore, as explained in point e), 20% of the land used for MIFEE is designated for the local communities to be developed for cultivating food crops or other plants, with the assistance of investors, through a plasma system. The system will empower the local communities and develop their economic capacity, providing better means to acquire food for their consumption and other necessities. In addition, a scheme is currently considered to include the local communities' ownership of *tanah ulayat* as shares of the investment that will entitle them to obtain dividends from the profit received from the project, which in turn will also add to their economic capacity.

In implementation, some investors have already paid compensations to local communities (in accordance with the agreed type and amount of compensation), witnessed by Merauke District Government and other related stakeholders, for the cultivation of their *tanah ulayat*. Only when adequate compensations have been given, the investors can start their cultivation of the lands.

Furthermore, investors also conduct CSR programs by providing, among others, scholarships for children from the local communities so that they can pursue formal education. The CSR programs are intended to assist the local communities in fulfilling their economic, social and cultural rights.

* * * COMMUNICATION RESULT REPORT (2. MAY. 2013 12:17) * * *

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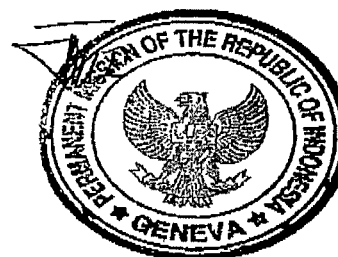
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Geneva, 2 May 2013



Office of the High Commissioner for Human Rights (OHCHR)
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