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UN Committee on the Elimination of Racial Discrimination

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

I. Introduction

1. Twenty six Indonesian organisations (see Annex B) and the Forest Peoples Programme ("the submitting organisations") hereby respectfully request that the Committee on the Elimination of Racial Discrimination ("the Committee") continues to consider the situation of the Malind and other indigenous peoples of Merauke, Papua Province, under the Committee's urgent action and early warning procedures ("UA/EW procedures"). The Committee adopted a communication under its EW/UA procedures about this situation on 2 September 2011.¹ Despite the Committee's express concerns, Indonesia ("Indonesia" or "the State") has failed to take any corrective action and the situation continues to deteriorate with each passing day. This situation therefore remains urgent and compelling and irreparable harm has both been realised and is further threatened. Specific requests are set forth in paragraph 40 below.

2. The subject of this request is the extreme harm caused to indigenous Papuans by the Merauke Integrated Food and Energy Estate project ("the MIFEE project"), a State-initiated, agro-industrial mega-project implemented by a variety of corporate entities that, to-date, encompasses around 2.5 million hectares of traditional indigenous lands in Merauke. The affected indigenous peoples have already lost a considerable area of their lands due to acquisition by these companies and conversion to plantations of one kind or another. The irreparable harm they have already experienced continues to expand and intensify as more companies commence operations. 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, overwhelming and further threatening the rights and well-being of the Malind who number approximately 52,000 persons. Indigenous Papuans have been and will be hired only as crude labourers or not given any form of employment at all; as discussed in paragraphs 28-35 below, even if employed, it is highly

¹ *Letter of Anwar Kemal, Chairperson, CERD, to Indonesian Permanent Mission to the United Nations, 02 September 2011, <http://www2.ohchr.org/english/bodies/cerd/early-warning.htm>.*

unlikely that they would have freely chosen such employment over the continuance of their traditional economy and serious questions must therefore be raised about whether their labour is “forced” in this context.

3. The Committee’s communication of 2 September 2011 requested “information on measures taken to effectively seek the free, prior and informed consent of Malind and other indigenous peoples in Papua before carrying out the MIFEE project; and as to whether the State party has conducted an environmental impact assessment on the traditional habits and livelihood of Malind and others, as well as the impact of the transmigration over their capacity to survive as a minority.”² The Committee also requested “a meeting with the representatives of the state party to discuss these issues,” at its February-March 2012 session. The submitting organizations are unaware if this meeting took place or if Indonesia has otherwise provided information to the Committee. The Committee further requested information on Indonesia’s compliance with paragraph 22 of its 2007 concluding observations (concerning implementation of the *Papua Special Autonomy Law*).³ This last point and related issues are discussed below, both on their own merits and to provide information on the context within which the MIFEE project is taking place.

4. The situation of the indigenous peoples of Merauke continues to be dire and there has been no discernible change in policy or practice with respect to the MIFEE project (see paragraphs 13-27 below). Decisions that affect the indigenous peoples of Merauke and Papua more broadly continue to be adopted without their effective participation and without reference to their internationally guaranteed rights. These decisions are implemented and enforced in a highly prejudicial manner and indigenous Papuans continue to suffer extreme and pervasive discrimination and other serious violations of their human rights. Papua also continues to be heavily militarised and the military is often involved in protecting extractive operations and plantations on indigenous lands, as well as rights violations more broadly. Moreover, the *Papua Special Autonomy Law* remains largely ineffective due to, *inter alia*, the lack of requisite implementing laws and action (see paragraphs 6-12 below).

5. While the situation in Merauke continues to be extreme and urgent, and this conclusion also applies to other indigenous peoples throughout Indonesia, a recent Supreme Court decision and pending legislation on the rights of indigenous peoples provide some cause for optimism. While still nascent, these developments, assuming they are enacted and implemented in fact, indicate that considerable changes could occur in relation to Indonesia’s treatment of indigenous peoples and their territories (see Section IV below). Nonetheless, in light of the magnitude of the irreparable harm and the situation of pervasive discrimination, *inter alia*, as typified by the MIFEE project, the submitting organisations respectfully request that the Committee continues to monitor and takes action on the situation of indigenous peoples in Merauke under its UA/EW procedures in accordance with the proposals set forth in paragraph 40 below.

II. Failure to Implement the *Papua Special Autonomy Law* and Persistent and Gross Violations of Basic Human Rights in Papua

6. The *Papua Special Autonomy Law* (“PSAL”) was adopted as an alternative to demands for independence made by the representatives of the Papuan indigenous peoples to the President of Indonesia in February 1999.⁴ This law was intended to correct serious inequality and human rights violations as well as to refocus the self-determination aspirations expressed by the majority of indigenous Papuans. As such, the PSAL includes an explicit acknowledgement 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

² Letter of Anwar Kemal, Chairperson, CERD, to Indonesian Permanent Mission to the United Nations, 02 September 2011, at p. 2.

³ Concluding observations of the Committee on the Elimination of Racial Discrimination: Indonesia. CERD/C/IDN/CO/3, 15 August 2007, at para. 22 (concerning implementation of the 2001 *Papua Special Autonomy Law* and the “measures adopted to ensure the enjoyment by Papuans of their human rights without any discrimination”).

⁴ See generally L. Sullivan, *Challenges to Special Autonomy in Papua Province, Republic of Indonesia*, Australian National University Discussion Paper 6/2003, at 1, www.ips.cap.anu.edu.au/ssgm/papers/discussion_papers/sullivan.pdf.

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.⁵

7. Despite the compelling rationale for its adoption, which remains valid today, the PSAL has yet to be adequately implemented almost 12 years after it was adopted:⁶ there has been very little meaningful devolution of powers to the provincial level;⁷ according to the State's Audit Agency, considerable amounts of the funding allocated for special autonomy programmes have been misappropriated and corruption is rampant;⁸ and human rights violations and discrimination against indigenous Papuans continue to be pervasive.⁹ The same is also the case for violations of the rights of the Papuan indigenous peoples to own and effectively control their traditional territories and the resources therein (the MIFEE project is just one example of how these rights continue to be abused with impunity). The State is now in the process of amending the PSAL because, according to the Office of the President, "the people have held the view that special autonomy has failed...."¹⁰ However, while discussions about the amendments are taking place between the State and regional government bodies in Papua, there has been no attempt to-date to consult with indigenous Papuans in accordance with international standards about these amendments. This is especially troubling given that it is widely acknowledged that the PSAL has failed largely due to, as stated by the Indonesian Institute of Sciences, a "lack of ownership" over that law by all parties.¹¹

8. A 2012 report produced by the Australian Broadcasting Corporation explains that in Papua the "frequency and ferocity of [human rights] abuse is on the rise," and quotes Human Rights Watch as saying that "the Papuan people live in fear, in a constant fear, because of how many human rights abuses they suffered over the past five decades...."¹² The nature and extent of the human rights violations perpetrated by the Indonesian state against the

⁵ *Papua Special Autonomy Law 2001, Considerations*, articles (f) and (g). Translated text in, 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, rspas.anu.edu.au/papers/rmap/Wpapers/rmap_wp36.rtf.

⁶ See e.g., 'Indonesia: The Deepening Impasse in Papua', Asia Briefing No. 108, *International Crisis Group*, 3 Aug 2010, (explaining that "The two sentiments that define the political impasse in Papua are frustration on the part of many Papuans that "special autonomy" has meant so little, and exasperation on the part of many Indonesian government officials that Papuans are not satisfied with what they have been given. The gulf between the two might be reduced by dialogue, but any prospect of serious talks is hampered by an unwillingness of Jakarta to treat the problem as essentially a political, rather than an economic one"), <http://www.crisisgroup.org/en/regions/asia/south-east-asia/indonesia/B108-indonesia-the-deepening-impasse-in-papua.aspx>.

⁷ See R. Chauvel, 'Filep Karma and the Fight for Papua's Future', *Inside Story*, 6 April 2011 (stating that "the one issue on which there is agreement between the Indonesian government and some of its Papuan critics is that the Special Autonomy Law has failed. Yet this recognition has produced sharply contrasting responses. The government seems intent on reasserting its direct control over Papua and reducing the limited authority that had been devolved to the provincial government. In Jakarta's new policy framework, the provincial government would remain part of the planning process but won't have the critical role envisaged in the Special Autonomy Law's provisions for self-government"), <http://inside.org.au/filep-karma-and-the-fight-for-papuas-future/>.

⁸ See 'Papua group wants KPK to pursue audit findings', *The Jakarta Post*, 19 April 2011 (documenting calls to investigate corruption with respect to funds for Papua), <http://www.thejakartapost.com/news/2011/04/19/papua-group-wants-kpk-pursue-audit-findings.html>; and 'Policy of Special Autonomy in Papua to be Evaluated', *Tempo Interactive*, 20 April 2011 (where the President's special staff for regional development and autonomy, Velix Wanggai, told the media "the President realizes that the special autonomy funds have not been optimally and effectively managed"), <http://www.tempointeractive.com/hg/nasional/2011/04/20/brk,20110420-329023,uk.html>.

⁹ See *infra*.

¹⁰ 'Special autonomy law will be amended', *Jakarta Post*, 30 May 2013 (quoting Presidential special staff member for regional development and regional autonomy, Velix Wanggai), <http://www.thejakartapost.com/news/2013/05/30/special-autonomy-law-will-be-amended.html>.

¹¹ See 'After a Decade of Autonomy, Papua Remains On Edge', *Jakarta Post*, 21 November 2011 (explaining that "'The "Papua Road Map", a report from the Indonesian Institute of Sciences (LIPI) first released in 2008, points out that the blind eye turned toward the inconsistencies between the Special Autonomy policy (Otsus) and the marginalization of Papuans only made the situation worse. Muridan Satrio Widjojo, who co-wrote the report, said the inconsistencies stem from the fact that neither the central government nor the marginalized Papuans had ownership of Otsus. Ruben Magai, the head of Commission A in Papua's legislative council, said both the central and provincial governments have never been committed to thoroughly implementing special autonomy. 'They pay lip service to special autonomy. This is evident in the lack of regulations governing indigenous Papuan rights and the protection of those rights,' he said. And because the central government did not agree with some parts of the law, Muridan said it implemented it selectively").

¹² 'West Papua resistance losing fight for freedom', *ABC News*, 28 August 2012 (explaining that "The ABC's Hayden Cooper went undercover in the secretive Indonesian provinces, where he discovered a police state operating with impunity"), <http://www.abc.net.au/news/2012-08-27/human-rights-abuses-in-west-papua/4225844>.

Papuan indigenous peoples are expansively documented in a study by the Yale University Law School. This study considers the question of whether Indonesia's policy and activities in Papua may be considered 'genocidal' as that term is understood in international law. It concludes that "the pattern of activity undertaken by the Indonesian government, when considered in aggregation, begins to emerge as the sort of conduct that the [Genocide] Convention was designed to proscribe."¹³ It describes this pattern of activity as follows:

The Indonesian government, particularly the military, Brimob [a paramilitary police force], and the KOPKAMTIB [military intelligence], has regularly brutalized the people of West Papua since the end of the colonial period, killing uncounted thousands in a series of incidents. Through its transmigration programs, the Indonesian government has undermined the social and cultural heritage of the people of West Papua by altering, at a fundamental level, the demographics and the underlying social structures of the region. Through the economic development efforts that it has sponsored, the Indonesian government has caused widespread and devastating pollution and other environmental damage, which, in turn, have led to the further obliteration or forced relocation of numerous West Papuan groups. Through its refusal to introduce necessary measures of medical and economic relief for a plague that, evidence suggests, the government itself introduced, the Indonesian government has turned a willfully blind eye to the decimation of the people of West Papua. Indeed, throughout the past forty years, the Indonesian government has shown a callous disregard for—and, at times, an intentional and specific malevolence toward—the basic human rights and dignity of the people of West Papua.¹⁴

9. These shocking conclusions are echoed by numerous independent observers, including Indonesia's national human rights commission, KOMNAS HAM, and demonstrate that pervasive human rights violations and impunity for the perpetrators persist to this day. A 2011 report by Franciscans International, for example, states that "the indigenous people of Papua remain subject to severe human rights violations committed by Indonesian security forces and state authorities;" and that "the perpetrators of torture and extrajudicial killings enjoy impunity [and] indigenous Papuans making use of their civil and political rights are facing detention and conviction."¹⁵ With regard to the PSAL, this report explains that in June 2010, "the indigenous community returned Law No. 21/2001 on Special Autonomy for Papua to the Indonesian Government as its regulations had barely been implemented by the state. Despite improved legislation, a Human Rights Court and a Truth and Reconciliation Commission for Papua have never become a reality."¹⁶

10. Based on leaked copies of internal military reports, Human Rights Watch has documented the role of Indonesia's army in conducting massive and unlawful surveillance operations against Papuans, predominately those engaged in peaceful and internationally protected activities.¹⁷ It has also documented the practice of arresting and imprisoning Papuans on charges of 'treason' for engaging in nothing more than the exercise of their rights to freedom of speech and assembly, including activities that are ostensibly protected under the PSAL.¹⁸ This includes an armed attack on a peaceful meeting in October 2011, during which three members of the Papuan People's Congress

¹³ E. Brundige et al, *Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Control*, Allard K. Lowenstein International Human Rights Clinic, Yale Law School, April 2004, at 71, http://www.law.yale.edu/documents/pdf/.../west_papua_final_report.pdf.

¹⁴ *Id.*

¹⁵ See *Human Rights in Papua 2010-11*, Franciscans International, Papua Land of Peace and Asian Human Rights Commission, November 2011, at p. 6, <http://tapol.gn.apc.org/reports.html>.

¹⁶ *Id.* See also *id.* at p. 20 (stating that "In June 2010, the [Papuan People's Assembly – an institution established by the PSAL] together with representatives of indigenous institutions, groups, and tribes held a General Assembly to discuss and evaluate the Special Autonomy Law in Jayapura. The two-day forum concluded that the Special Autonomy Law failed to answer the needs and fulfil the basic rights of the Papuan peoples. In its recommendations, the Papuan People's Assembly and the Indigenous People of Papua decided to return the Special Autonomy Law to the Government of Indonesia and to demand a dialogue between the Indonesian Government and the People of Papua under international mediation").

¹⁷ See Human Rights Watch, 'Indonesia: Military Documents Reveal Unlawful Spying in Papua', 14 August 2011, <http://www.hrw.org/news/2011/08/14/indonesia-military-documents-reveal-unlawful-spying-papua>.

¹⁸ See Human Rights Watch, 'Indonesia: Hold Abusers From Military Accountable'. More Than 100 Political Prisoners Held for Protesting Peacefully', 25 January 2011, <http://www.hrw.org/news/2011/01/24/indonesia-hold-abusers-military-accountable>.

were extra-judicially executed and 300 attendees were arbitrarily arrested and severely physically abused.¹⁹ These accusations were substantiated by the KOMNAS HAM, which called for an immediate investigation by civilian authorities, a proposal that was bluntly rejected by State officials.²⁰ The common use of torture against detainees in Papua is also well documented.²¹

11. Violations of indigenous peoples' rights more specifically are equally well documented and equally pervasive. For instance, the US State Department's 2012 *Annual Report on Human Rights*, which is not known for being critical of Indonesia, states that

During the year indigenous persons, most notably in Papua, remained subject to widespread discrimination, and there was little improvement in respect for their traditional land rights. Mining and logging activities, many of them illegal, posed significant social, economic, and logistical problems to indigenous communities. The government failed to prevent companies, often in collusion with the local military and police, from encroaching on indigenous peoples' land. In Papua tensions continued between indigenous Papuans and migrants from other provinces, between residents of coastal and inland communities, and among indigenous tribes.²²

12. James Silk of Yale University Law School adds that "Indonesia's exploitation of rich Papuan lands and their impoverished indigenous owners reveals the dark but little-known underbelly of the country's development ambitions. This exploitation stretches back half a century."²³ Referring to the MIFEE project, he urges that "As violence escalates, world leaders should press the Indonesian government on the long-term, less conspicuous abuses of Papuan rights: government-sanctioned mass seizure of indigenous land for the purpose of natural resource extraction and large-scale agriculture for export."²⁴ In the case of the Malind and other affected peoples, the mass seizure of their lands by the MIFEE project threatens their survival and has already caused conditions of extreme misery and deprivation that cumulatively constitute gross violation of basic standards of state conduct.

III. The MIFEE Project continues Unabated with Severe Consequences for Indigenous Peoples

A. General situation

13. The above described situation provides the setting for the MIFEE project, which falls within the paradigm of 'land-grabbing' addressed in some detail by the UN Special Rapporteur on the Right to Food.²⁵ As Franciscans

¹⁹ See 'Indonesia: "Slap on the wrist" for police violence in Papua is accountability failure', *Amnesty International*, 23 November 2011, <http://www.amnesty.org/zh-hant/node/28274>.

²⁰ See *inter alia* 'For Papuans, Obama Visit to ASEAN Summit Brings Home Heavy Price of Indonesia's Economic Development Plans', *Yale Law School*, 5 December 2011, <http://www.law.yale.edu/news/14411.htm>.

²¹ See Human Rights Watch, 'Indonesian military gets away with torture. Three days of torture, it seems, is not a serious human rights violation in Indonesia', 9 February 2011, <http://www.hrw.org/news/2011/02/09/indonesian-military-gets-away-torture>; and *Human Rights Watch*, Prosecuting Political Aspiration: Indonesia's Political Prisoners, 23 June 2010, <http://www.hrw.org/reports/2010/06/23/prosecuting-political-aspiration-0>. See also 'Torture widespread in Papua', *The Jakarta Post*, 14 January 2012, <http://www.thejakartapost.com/news/2012/01/14/torture-widespread-papua.html>.

²² *US Dept. of State, Human Rights in 2012: Indonesia* (further explaining that "As the government did not recognize "indigenous people," it also did not recognize "indigenous lands." The government did recognize some communal ownership rights. However, access to ancestral lands continued to be a major source of conflict throughout the country. Large corporations and government regulations displaced people from their ancestral lands. Some land-rights NGOs asserted that ineffective demarcation of land led to denying individuals access to their own land. Central and local government officials reportedly extracted kickbacks from mining and palm oil companies in exchange for land access at the expense of the local populace. Land-rights advocates reported receiving threats from government and private parties after publicizing these issues. The government program of transferring migrants from the crowded islands of Java and Madura diminished greatly in recent years. However, communal conflicts often occurred along ethnic lines in areas with sizeable transmigrant populations"), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

²³ 'For Papuans, Obama Visit to ASEAN Summit Brings Home Heavy Price of Indonesia's Economic Development Plans', *Yale Law School*, 5 December 2011, <http://www.law.yale.edu/news/14411.htm>.

²⁴ *Id.*

²⁵ 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 (stating, at p. 7-8, 12, that indigenous peoples are especially vulnerable and often suffer irreparable harm in connection with land-grabbing, and emphasizes the need for full adherence to their rights, in particular as

International explains, “Powerful national and international economic actors – from corporations to governments – have identified Merauke as an empty land and a site for fuel and food production.”²⁶ However, “MIFEE is different from most land-grab projects because of the military-business-political framework and the climate of political intimidation and oppression present in West Papua”²⁷ It adds that

Economic and political interests in Papua remain the driving force behind the human rights violations in Indonesia’s easternmost region. In August 2010, the Merauke Integrated Food and Energy Estate (MIFEE) was launched in the Merauke Regency, Papua Province, with the view to developing a plantation of 1.2 million hectares for cash-crops. This development poses a threat to the economic, social and cultural survival of the indigenous people in southern Papua. Violations of land rights and violations of Free, Prior Informed Consent (FPIC) are reported from numerous indigenous villages affected by MIFEE and other areas of natural resources exploitation.²⁸

14. Despite the serious concerns raised by the Committee in September 2011, the MIFEE project continues to operate without regard for the rights of the affected indigenous peoples and to their extreme detriment. There has been no discernible change in Indonesia’s policy and practice in this respect. In an October 2011 ‘low carbon development conference’ held in Papua Province, for instance, where indigenous Papuans vociferously denounced the MIFEE project, a representative of the Merauke District government vehemently stated that the views of non-State entities would not be taken into account and that the economic objectives of the MIFEE project will prevail. There has also been no official reaction from the State about either the Committee’s recommendations or how it may consider addressing the concerns raised by numerous other parties about the human rights impacts of the MIFEE project.

15. These concerns are far from negligible and, as the Committee stated in September 2011, they directly concern the survival of the affected indigenous peoples as distinct cultural and territorial entities.²⁹ Likewise, the UN Special Rapporteurs on Indigenous Peoples and the Right to Food prophetically commented in 2012 that “Moves to convert 1-2 million hectares of rainforest and small-scale farming plots to an export-led crop and agrofuel plantation in the Merauke [*sic*] region of Indonesia could affect the food security of 50,000 people.”³⁰ Numerous observers have also indicated that the “direct and indirect consequences of MIFEE will be the wiping out of customary land tenures in areas targeted by the project, and their full incorporation into the state system for controlling land” and; the “scale of MIFEE and the expected influx of migrant workers will displace these communities from their customary lands and livelihoods, bringing a drastic change to their way of life and culture.”³¹ Indonesia’s national indigenous peoples’ organisation, AMAN, explained the gravity of the situation to the ninth session of the UN Permanent Forum on

affirmed in the 2007 UN Declaration on the Rights of Indigenous Peoples), <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf>.

²⁶ Franciscans International et al, *Human Rights in Papua 2010-11*, November 2011, at p. 37.

²⁷ *Id.* (stating that “Key players in MIFEE, on the contrary, all have political connections. The Comexindo Group, for example, is owned by Hashim Djojohadikusumo, the brother of ex-Kopassus general and son-in-law of Soeharto, Prabowo Subianto. In this case, the lines between political, security, and corporate interests appears, at best, blurred;” and, at p. 38, that “Military personnel also play an active role in persuading communities to accept MIFEE investments on their land. Most companies employ people with a military or intelligence background to influence communities to accept foreign investments as well as to protect the projects, and the interests of the companies once they are operational. Alliances are also created between local government officials and police and military personnel making it difficult for communities to resist or challenge the companies”).

²⁸ *Id.* at p. 6.

²⁹ *Letter of Anwar Kemal, Chairperson, CERD, to Indonesian Permanent Mission to the United Nations*, 02 September 2011 (requesting information on “the impact of transmigration over their capacity to survive as a minority...”).

³⁰ ‘South-East Asia / Agrofuel: UN rights experts raise alarm on land development mega-projects’, 23 May 2012, <http://www.srfood.org/index.php/en/component/content/article/1-latest-news/2263-south-east-asia-agrofuel-un-rights-experts-raise-alarm-on-land-development-mega-projects->.

³¹ Franciscans International, Papua Land of Peace and Asian Human Rights Commission, *Human Rights in Papua 2010-11*, November 2011, at p. 37.

Indigenous Issues, stating that the MIFEE 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.”³²

16. The indigenous peoples affected by the MIFEE project, who depend on their ancestral lands and forests for their means of subsistence and cultural and spiritual sustenance, disproportionately suffer the negative effects of the MIFEE project and gain few, if any, benefits. This is verified by the Indonesian NGO, PUSAKA, which has made the most comprehensive study to date on the social, cultural, political, and economic implications of the MIFEE project. It concludes that MIFEE is not designed to provide jobs or development for the local population because their way of living off the land as hunter-gatherers and small-scale farmers has not prepared them for commercial farming or equipped them with the necessary skills or technical knowledge.³³

17. In short, the MIFEE project constitutes the kind of activity that the Committee’s UA/EW procedures were designed to address. MIFEE is a large-scale and extreme “Encroachment on the traditional lands of indigenous peoples ... for the purpose of exploitation of natural resources,” and represents a situation that threatens their cultural and perhaps even physical survival given their extreme vulnerability and the high likelihood of substantial, negative and multi-generational impacts on the maintenance of their relationships with their traditional territories.³⁴ 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.³⁵ The climate of pervasive violence and human rights violations against indigenous Papuans, including entrenched discrimination at all levels of society, is an aggravating factor that intensifies the urgent and extreme nature of this situation and compels international scrutiny and attention.³⁶ As Franciscans International states, the “overall impact on the indigenous peoples is going to be potentially catastrophic unless urgent action is taken to protect them.”³⁷

18. The submitting organisations stress that violations of the rights of indigenous peoples caused by agro-industrial plantations are by no means limited to the MIFEE project or to Papua Province,³⁸ but are endemic throughout Indonesia.³⁹ Protests by indigenous and other dispossessed peoples are often violently suppressed by armed police and paramilitary units working at the behest of the companies involved.⁴⁰ The scale of these problems has been recognised by Indonesia’s national human rights commission, KOMNAS HAM, which hosted a meeting of South East Asian national human rights institutions, NGOs and indigenous peoples’ organisations in December 2011 to specifically discuss the human rights impacts of agribusiness. At this meeting, a representative of Papuan indigenous peoples focused on the MIFEE project, explaining that it will “destroy the forest and livelihoods of

³² *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>.

³³ Y. Zakaria et al, *Beyond Malind imagination: Beberapa catatan atas upaya percepatan pembangunan cq. Merauke Integrated Food and Estate (MIFEE) di Kabupaten Merauke, Papua, dan kesiapan masyarakat adat setempat dalam menghadapinya*. Jakarta: Pusat Studi dan Advokasi Hak-hak Masyarakat Adat (PUSAKA), 2010.

³⁴ *See Guidelines for the Use of the Early Warning and Urgent Action Procedure*, August 2007, at p. 3, para. 12.

³⁵ *Prevention of Racial Discrimination, including early warning and urgent procedures*. UN Doc. A/48/18, Annex III, at para. 8-9.

³⁶ Rodolfo Steinhagen, 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.”

³⁷ Franciscans International et al, *Human Rights in Papua 2010-11*, November 2011, at p. 40.

³⁸ *See id.* p. 40-1 (listing other oil palm projects affecting indigenous peoples in Papua).

³⁹ *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”) and; *Sustaining Economic Growth, Rural Livelihoods and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia*, World Bank, December 2006, at p. 2.

⁴⁰ *See* ‘Rural Indonesians Demonstrate to Demand Land Rights and an End to Land Grabs’, *Statement of the Joint Secretariat of the Indonesian Movement for Recovering People’s Rights*, Jakarta, 12 January 2012 (statement made by an alliance of indigenous peoples, farmers, workers and landless people as well as supportive NGOs following a high profile cases of police violence against and killings of rural people protesting land grabs). Available at: <http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2012/01/rural-indonesians-demonstrate-demand-land-rights-a>.

Papuan indigenous people in Merauke.”⁴¹ The Secretary-General of AMAN further explained that “Discrimination towards the indigenous peoples of Indonesia by the government is based on economic benefits. ... West Papua’s economy is dependent on its natural resources. Therefore, the existence of Papuan indigenous peoples is considered as a threat towards the government’s efforts to occupy the natural resources.”⁴²

19. This meeting resulted in the ‘*Bali Declaration on Human Rights and Agribusiness*’, which is intended to provide a framework for the south east Asian national human rights institutions to address the human rights impacts of agribusiness in their various countries.⁴³ While the *Bali Declaration* has been used by KOMNAS HAM in dialogue with other entities of the Indonesian State, the State has yet to formally indicate whether it supports the *Bali Declaration* or to take any action with respect to the rights recognised and set forth therein. Rights violations in plantations in Indonesia therefore continue unabated.

B. Specific Information on the MIFEE Project: A massive seizure of indigenous lands

20. Between 2007 and 2013, the State authorities of Merauke district and Papua Province have issued both ‘Location Permits’⁴⁴ and ‘Recommendations’⁴⁵ for land acquisition in favour of more than 80 companies for various types of businesses under the MIFEE project. These include industrial plantations for oil palm, sugarcane, maize, potato, soybean, rice, chip processing industries, marine produce and so on, with a total area of more than 2.5 million hectares.⁴⁶ These activities are all taking place on traditional indigenous lands and without regard for their rights. This data was confirmed in May 2013 in interviews with the Head of the Local Investment Coordinating Board (BKPM), Mr. Chaeruddin Dawa, and the Head of Merauke Forest and Estates Crops (Dishutbun), Mr. Effendi Kanan. The State has also embarked on a massive programme of construction of roads, bridges and irrigation canals to facilitate the movement of goods to and from the MIFEE project, all in indigenous lands and all without their participation or consent.

21. This massive seizure and takeover of indigenous lands has accelerated since the Committee first considered this situation under its EW/UA procedures in 2011. More companies have acquired permits or are in the process of acquiring land from the local peoples – often, as the Committee observed, through “the manipulation of communities by investors and State officials to obtain signatures necessary for complying with the legal requirements of proving land titles over indigenous lands”⁴⁷ – undertaking Environmental Impact Assessments; applying for ‘plantation business permits’ and ‘forest release status permits’ from the Ministry of Forestry; as well as clearing land for oil palm and timber plantations. In this respect and recently, 33 companies have obtained or applied for oil palm plantation permits; 13 companies have received permits for industrial tree plantations; 22 companies have either obtained or applied for sugarcane plantation permits; and 9 companies have applied for or obtained food crop cultivation permits.⁴⁸

22. These activities continue to take place without any meaningful participation by the affected traditional land owners and with repeated instances of manipulation or coercion of traditional leaders in order to secure certification of the relinquishment of any ‘third party interests’ in the concessions – an administrative prerequisite to finalising a concession grant. For example, it has been repeatedly documented that companies have brought clan leaders to the

⁴¹ See www.forestpeoples.org/topics/rights-land-natural-resources/news/2011/12/updated-press-release-bali-declaration-acclaimed-a.

⁴² *Id.*

⁴³ See <http://www.forestpeoples.org/topics/palm-oil-rspo/publication/2011/bali-declaration-human-rights-and-agribusiness-southeast-asia>.

⁴⁴ Location Permits are issued by the Head of District (*Bupati*) and pertain to land acquisition, transfer of rights and capital investment permission. Under the MIFEE projects, the Merauke *Bupati* issued Location Permits ranging in size from 20,000 ha to 301,000 ha. The most permits were issued in 2010 at the same time as the elections for the office of ‘district head’ in Merauke.

⁴⁵ Letters of Recommendation are issued by the Papua Governor to approve and direct companies’ proposals to acquire: (a) Timber Utilization Operation Permit - HTI, (b) Convertible Production Forest Areas, (c) Permit on Forest Areas Lease Use for non-mining activities (infrastructure development), (d) Location Permit, (e) Plantation Business Permit, (f) Spatial Plan Referral, (g) Plantation Development Macro Plan, and (h) Land Area Addition.

⁴⁶ See table in Annex A hereto listing these companies and the nature of their operations.

⁴⁷ *Letter of Anwar Kemal to Indonesian Permanent Mission to the United Nations*, 02 September 2011, at p. 2.

⁴⁸ See Annex A.

city of Merauke, provided them hotel accommodation, money to buy alcoholic drinks and the services of prostitutes. In a drunken state, the leaders are asked to sign a land release agreement and/or contract. Such experiences were recently reported by the clan leaders of the Malind people in Salor village, District Tanah Miring, and in Onggari village, District Malind, Merauke.

23. In other cases, agreements have been made by heads of clans without any information to or agreement with other members of the land-owning clan and through manipulative practices that take advantage of the lack of knowledge of the law by these leaders.⁴⁹ In several cases, companies have given money to the leaders of the community or clan landowners to induce them to approve the release, transfer and acquisition of land rights of the clan landowners to the company, which is then followed by the signing of a statement certifying that there are no extant third party interests in the concession area. Analyses of the content of these statements and the 'agreements' referred to in the preceding paragraph, which are normally signed in the presence of a local government official, often show considerable differences between the terms explained verbally by the company to the leader, or the way the leader had understood the terms, and what is stated therein.⁵⁰

24. Pursuant to these manipulative practices, the companies then obtain permits and purportedly "lease" lands from the traditional lands owners. However, 'rental fees' are often derisory. Documented fees range from USD \$0.20 per hectare for 35 years (*not* per annum) to \$25.30 per hectare. Many of these 'lease agreements' do not specify the duration of the lease nor whether the land will revert to the affected landowners or revert to the status of state land once the lease has expired. Even if the land does revert to the community, it will be denuded of forests and not fit for traditional activities. Additionally, these leases are negotiated with the full knowledge that the company may acquire and take the land anyway, irrespective of any compensation that may be paid, pursuant to the provisions of Indonesian law and the enabling permits.

25. Further disregarding the Committee's recommendations, Indonesia has substantially accelerated and facilitated this massive seizure of indigenous lands through the enactment of numerous legislative and administrative instruments, including as recently as May 2013. This includes declaring the MIFEE project to be a 'priority' component of the 'Acceleration and Expansion of the Indonesian Economy'⁵¹ as well as, in May 2013, giving the Indonesian military⁵² a legal and primary role in infrastructure development related to the MIFEE project.⁵³ The

⁴⁹ See e.g. ILO Convention No. 169, Article 17(3), providing that "Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them."

⁵⁰ Some examples of these cases involved indigenous clan leaders in Domande village, District Malind and Kaliki village, District Kurik, and sugarcane company Rajawali Group's subsidiaries PT Karyabumi Papua and PT. Cendrawasih Jaya Mandiri; indigenous clan leaders in Bupul village, District Eligobel with oil palm plantation company PT. Mulia Persada Agrinusa; and clan leaders in Muting village, District Muting with oil palm plantation company PT. Agriprima Cipta Persada.

⁵¹ *Presidential Regulation No.32 of 2011* concerning MP3EI (Master Plan for the Acceleration and Expansion of the Indonesian Economy 2011-2025), 20 May 2011. There are four programmes to support MIFEE: 1) developing regulations to develop land in stages; 2) accelerating the process of releasing areas within the forest zone; 3) socialising the implementation and benefits of the MIFEE programme for community welfare with local communities; 4) programme for developing supporting infrastructure. These programmes are elaborated by the government in the Government 2013 Work Plan document, issued by the National Development Planning Ministry/National Development Planning Agency (Bappenas, 2012). See also *Decree No SK.458/Menhut II/2012*, 15 August 2012, regarding Changes in Designation from Forest Zone to Non-Forest Zone of 376,385 hectares, Changes in Forest Zone Functions affecting 5,736,830 ha, and Designation of Non-Forest Zone as Forest Zone affecting 45,258 ha in Papua Province. The Forest zone whose status has been changed to non-forest or 'Other Use Areas' (APL), includes: lands allocated to oil palm companies in Nguti District, Jagebob, Eligobel, Muting and Ulilin, and sugar cane in Jagebob, Malind, Okaba, Animha and Tanah Miring Districts, as part of the MIFEE scheme.

⁵² See also *Presidential Regulation No.66 of 2011* regarding the Unit for the Acceleration of Development in Papua and West Papua Provinces (UP4B), on 20th September 2011. UP4B is led by an Armed Forces (Retired) Lt General Bambang Darmono, formerly Armed Forces Operational Commander in Aceh during a period of serious human rights violations. UP4B is based in Papua Province capital, and answers to the President. Its task is to assist the President in supporting the coordination and synchronisation of planning, facilitation, and managing the implementation of P4B.

⁵³ *Presidential Regulation No.40 of 2013* regarding the Construction of Roads in order to Accelerate Development in Papua and West Papua Province (UP4B), 17 May 2013. This regulation assigns to the Indonesian army the construction of certain sections of roads under UP4B. The regulation is very controversial in that it formally involves of the military in P4B projects or MP3EI projects and gives rise to concerns about further military involvement in the process of negotiating control over and use of land, and facilitating protection for companies investing in MIFEE.

direct involvement of the military is deeply troubling given its history and current behaviour in Papua (as detailed above) and its overt support for plantation companies in the MIFEE project. Numerous cases of beatings, intimidation and threats have been documented in recent years as active duty military and special police units have supported plantation companies, including by intervening in “negotiations” with communities and threatening their members or simply intimidating them by their presence.⁵⁴

26. The preceding is already having a devastating impact on the Malind and other indigenous peoples of Merauke. Their ability to practice their traditional economy is substantially restricted, and in some cases denied altogether, with serious consequences that will only increase and intensify over time. Some communities have become dependent on food hand-outs by the companies. Acute hunger and chronic child malnutrition have been documented in Zanegi and Baad villages near the industrial tree plantation operated by the PT. Selaras Inti Semesta company, and five infants died in Zanegi village between January-April 2013 from severe malnutrition and related diseases. Sacred sites have been destroyed and there has been widespread environmental degradation that will affect the productive capacity of Malind lands and the people’s well-being for generations to come.⁵⁵ In February 2013, a short film was produced on the situation in Zanegi village that graphically illustrates their plight and which can be viewed on the internet.⁵⁶

27. These severe human rights violations, all related to the underlying violations of Malind and other indigenous peoples’ land and resource rights, can be expected to multiply and intensify as the MIFEE project further expands in the coming months and years. This expansion will be dramatic as will the further marginalization of the Malind due to the additional influx of migrant labourers, many of whom have already begun to take over Malind lands and the natural resources and opportunities they depend on for their survival. Distrust between ethnic groups and conflict, which is already evident, will also likely increase substantially.⁵⁷ The Committee highlighted in 2007 that, “although it has been abolished, [Indonesia’s] transmigration programme has long-standing effects” and urged the State to “assess the adverse impact of the transmigration programme, in particular on the rights of local communities...”⁵⁸ The MIFEE project however demonstrates that the transmigration programme has not been abolished and continues to flourish in Papua and that rather than assess and learn from the massive human rights violations and ethnic conflict associated with that programme in other areas, Indonesia is simply replicating this situation in Papua. For the reasons stated above, the survival of the Malind and other affected people is thus severely threatened and this requires urgent international attention and action.

C. “Forced Labour” in MIFEE and in Indonesia’s Oil Palm and Forestry Sector

28. Article 5(e)(i) of the ICERD provides that states parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee in this respect the “rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration...” This provision is systematically violated in Indonesia in the case of indigenous peoples

⁵⁴ See e.g., the beating by Kopassus (Indonesian special army) of a traditional landowner named Immanuel Basikbasik, in front-yard of District Muting office in April 2012, during an oil palm plantation company socialisation event; the presence of Indonesian Army personnel and Brimob (Mobile Brigade special police units) in negotiations between Muting residents with oil palm plantation companies in Districts Muting and Ulilin, substantially inhibiting people from speaking freely; a company security officer, who is also an active duty Brimob member, threatening the landowners of Muting village who demanded compensation for damages and loss of their rights in the area of the logging company PT. Inocin; and intimidation by Kopassus officers of residents in Bibikem village, District Ilwayab, who were also demanding compensation for the use of sand from their land by the company.

⁵⁵ The following have been documented recently: mass deaths of big fish, crocodiles and other animals, in Kali Bian river in the concessions of Korindo Group and Daewoo Group and in Kali Kumb river; respiratory and skin diseases in Muting, Baad and Zanegi villages; drought and water shortages in a small river in Kampung Kaiburse, Onggari and Kumbe; scarcity of certain fish species in a small river in Zanegi village; large forest fires in oil palm plantation areas in the upstream of Kali Bian (Kampung/Village Selil); and the pollution of rivers as water sources in Zanegi village and Kindiki village, leading to diarrheal disease.

⁵⁶ See ‘Our Land Has Gone’, A Film produced by PUSAKA, SKP-KAME and Gekko Studio, <https://www.youtube.com/watch?v=RqYoRh1aApg>

⁵⁷ The Committee has already observed that such conflict is endemic in areas affected by Indonesia transmigration programmes. See CERD/C/IDN/CO/3, 15 August 2007, at para. 18.

⁵⁸ *Id.*

affected by forestry plantations, including those employed in the MIFEE project. The consequent conditions in some cases constitute a form of forced labour or other variants of contemporary forms of slavery.

29. This situation must be understood in context. Indonesian law presently contains very weak protections for the rights of indigenous peoples.⁵⁹ Their rights, which are not legally secure, are routinely subordinated at will by the State pursuant to a public interest declaration or sectoral legislation that grants authority to issue concessions for plantations.⁶⁰ Plantations are established on the customary lands of indigenous peoples and others without their effective participation pursuant to this authority and subsequent to processes aimed at ensuring the non-existence (in fact, the relinquishing) of 'third party property interests' within the plantation. These processes are an administrative requirement incumbent on the company rather than a legal requirement for securing the consent of the customary owners for conversion of their lands to a plantation. The customary owners are *de facto*, if not *de jure*, then faced with the option of either leaving (and in effect becoming internally displaced) or becoming part of the labour force of the plantation by virtue of some form of 'small-holder' or other scheme. In short, according to the Indonesian Constitutional Court, which found that Indonesia consistently "ignores the existence of the rights of indigenous peoples over their customary territories" when granting forestry concessions:

In fact for more than 10 years of enactment, the Forestry Act has been used as a tool by the state to take over the rights of indigenous peoples over their customary forests areas to become state forest, which then on behalf of the state were given/or handed over to capital owners, through various licensing schemes to be exploited without consideration to the rights and local wisdom of indigenous peoples in the region, this has led to conflict between indigenous peoples with entrepreneurs exploiting their customary forest. Such practices occur in most parts of the Republic of Indonesia... Whereas in practice, the Government often issued decrees of designation of forest area without prior check of claims made by indigenous peoples over the land and even where there have been indigenous peoples residing in the area.⁶¹

30. As a general proposition, "Forced labour occurs when people are subjected to psychological or physical coercion in order to perform work, which they would not otherwise have freely chosen. ... ILO research indicates that indigenous peoples in many areas are at high risk of becoming victims of forced labour, as a result of longstanding discrimination."⁶² Such discrimination may, for instance, take the form of the failure of the State to recognize and protect customary ownership of land and the resulting inequality when faced with companies or others that seek to take over and use those lands.⁶³ Both of these elements are ubiquitous in Indonesia. Psychological compulsion may comprise "an order to work, backed up by a credible threat of a penalty for non-compliance."⁶⁴

⁵⁹ *Decision 35/PUU-X/2012, Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*, Constitutional Court of Indonesia, 16 May 2013, at 3.12 (stating that "indigenous peoples are in weak position because their rights are not recognized clearly and boldly when facing the state with very powerful control rights") (unofficial translation), http://www.aman.or.id/wp-content/plugins/downloads-manager/upload/Constitutional_Court_

⁶⁰ CERD/C/IDN/CO/3, 15 August 2007, para. 15-7.

⁶¹ *Decision 35/PUU-X/2012, Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*, Constitutional Court of Indonesia, 16 May 2013, at p. 4.

⁶² See e.g., INDIGENOUS & TRIBAL PEOPLES' RIGHTS IN PRACTICE. A GUIDE TO ILO CONVENTION No. 169, (International Labour Standards Department, ILO Office: Geneva, 2009), at p. 157, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_106474.pdf.

⁶³ See e.g., IACHR, *Twelve Saramaka Clans, Case 12.338 (Suriname)*, 2 March 2006, at para. 236-7, holding that the absence of legal protection for "the collective rights" of indigenous peoples, *inter alia*, to their traditionally owned lands, "reflects unequal treatment in the law" and a failure to provide the necessary protection for the full exercise of the right to property "on an equal footing with the other citizens" of the State; and *General Recommendation XXIII on Indigenous Peoples*, adopted by the Committee on the Elimination of Racial Discrimination at its 51st session, 18 August 1997, at para. 5 (calling on states parties 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 territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories")

⁶⁴ See e.g., *Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference, 93rd Session, 2005, Report I(B) (International Labour Office: Geneva 2005), at p. 6, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081882.pdf. The ILO lists under the heading of sanctions ("menace of penalty"): financial penalties; dismissal from current employment; exclusion from future employment; exclusion from community and social life; removal of rights or privileges; deprivation of food, shelter or other necessities; shift to even worse working conditions and; loss of social status.

31. In Indonesia, there is no legal requirement that indigenous peoples be consulted or their consent obtained, either as an obligation of the State prior to issuing a concession or on the part of the company as a requirement of establishing a plantation. As with the MIFEE project, the customary owners of the land are presented with a *fait accompli* with respect to the establishment of the plantation in which their continued occupation, use and ownership of their lands is subordinated to the interests of the plantation company. They are left with the option of either leaving altogether (but are generally provided no resettlement assistance) or arriving at some form of (by definition unequal) arrangement with the company in question in which their control and ownership over land and resources is vested in the company and their labour is used for indeterminate and prospective income. Their traditional relationship to the land and their ability to sustain themselves from their traditional economy however is essentially and forcibly eradicated in the process. In this respect, a World Bank study concludes 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 such denials have been “backed by force.”⁶⁵

32. Coercion in this context lies in the forced alienation of indigenous lands and the resulting and contrived option of either becoming displaced or working for the plantation owner, and that if given a real choice, the affected people would not have freely chosen to become labourers for the companies in many, if not most, cases. Forced displacement, as an act and as an enduring set of serious, if not debilitating, problems for the displaced, is itself a sanction/penalty in this context, and is all the more onerous in light of indigenous relations to territory and their connection to cultural integrity.⁶⁶ Likewise, the destruction of indigenous traditional territory and economy caused by establishing a monocrop plantation further reduces the options and choice of the customary owners in equally fundamental ways. In essence, they are denied their culture and means of subsistence and forced to vacate the lands that sustain them (in all senses of the word) or enter into relations with an imposed entity that, at least in the case of small-holders, look remarkably like a modified form of feudal serfdom.⁶⁷

33. There is considerable support for the linkage between deprivation of indigenous land rights and forced labour in ILO decisions and jurisprudence, as well as explicit reference to it in the work of UN and regional human rights bodies. The UN Special Rapporteur on Contemporary Forms of Slavery, for instance, explained in her 2009 report that indigenous peoples are especially vulnerable to forced labour “because in many countries, they have limited access to land for their traditional income-generating activities such as cultivation or hunting. The issue of land ownership is closely linked with the phenomenon of bonded labour.”⁶⁸ The Inter-American Commission on Human Rights has also made the connection between deprivation of indigenous land rights and situations of forced and bonded labour,⁶⁹ stating that “the occupation and restriction of indigenous territories, insofar as they prevent indigenous and tribal peoples from access to their traditional subsistence activities, expose their members to

⁶⁵ *Sustaining Economic Growth, Rural Livelihoods and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia*, World Bank, December 2006, at p. 2.

⁶⁶ See CERD/C/IDN/CO/3, 15 August 2007, at para. 18 (acknowledging the magnitude of the problem of internationally displaced persons in Indonesia and encouraging “the State party to prepare a set of guiding principles for internally displaced persons with the aim of preventing racial discrimination...”).

⁶⁷ Article 1(b) of the 1957 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery defines ‘serfdom’ as “the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.”

⁶⁸ *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, Gulnara Shahinian. UN Doc. A/HRC/12/21, 10 July 2009, at para. 50.

⁶⁹ IACHR, *Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco*, OEA/Ser.L/V/II. Doc. 58, 24 December 2009 (explaining, at para. 89 and 166, that “The Guaraní were forced to submit to the conditions imposed on them because they had no access to their own territory affording the possibility of providing for their own sustenance. This situation facilitated the exercise of control by the estate owners over the Guaraní laborers, resulting in a situation of total dependence and discriminatory treatment”), <http://www.oas.org/en/iachr/indigenous/docs/pdf/CAPTIVECOMMUNITIES.pdf>.

situations of work exploitation (marked by bad working conditions, low salaries and lack of social security), and even to practices such as forced labor or servitude for debts, analogous to slavery.”⁷⁰

34. There is thus a direct and internationally acknowledged relationship between inadequate protection of indigenous land rights and the existence of exploitative labour relations, including the most egregious forms that are currently defined as contemporary forms of slavery. These considerations are very relevant to both the MIFEE project and forestry plantations affecting indigenous peoples throughout Indonesia. It is important to note in this respect that the ILO’s Committee of Experts on the Application of Conventions and Recommendations (“CEACR”) has previously raised these issues with Indonesia as it monitors compliance with Conventions No. 29 (Forced Labour) and 111 (Discrimination in Employment Conditions). The situation of indigenous communities in Kalimantan affected by industrial forest plantations has especially been a cause for concern.⁷¹ Discussing this situation in a 2001 report, the ILO importantly stated that the “need to safeguard traditional forms of land use and occupation has been stressed, as have increased protective measures such as inspections, investigation or supervision particularly as regards wages actually paid, the operation of company stores, the system of vouchers in use in these stores and other aspects of the conditions of work in the forestry sector.”⁷² In the case of Convention No. 111, in 2008, the CEACR referred to the Committee’s 2007 recommendations on oil palm plantations and indigenous peoples’ rights more broadly and requested information on “any measures taken or envisaged to address discrimination suffered by indigenous peoples in employment and occupation.”⁷³

35. Such exploitative labour relations are present in the MIFEE project and indigenous labour in general is coerced given that their traditional form of economy has been largely eradicated and their lands taken over and converted to monocrop plantations without their consent. Assuming they are employed at all, they would not have freely chosen to work on these plantations had their lands not been taken and they are faced with the prospect of either seeking employment with the companies that now control their lands or become internally displaced and/or starving, as has already been documented in the MIFEE project. This is especially the case for small holders in oil palm plantations,⁷⁴ who are absorbed into the company’s workforce – in some cases inter-generationally – in exchange for being allowed to continue to occupy a few hectares at the most of their land in conditions that often more than resemble

⁷⁰ *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II. Doc. 56/09, 30 December 2009, at para. 163, <http://www.oas.org/en/iachr/indigenous/docs/pdf/AncestralLands.pdf>.

⁷¹ *Report of the Committee of Experts: Application, International Labour Conventions*, International Labour Conference 39th session, Geneva, ILO, 2001, at p. 137 (stating that “The Committee had been informed that the wages paid in the plantations were usually significantly lower than the cost of living, that shops had opened near the plantations or logging worksites, and that purchases at these stores were made by a system of vouchers managed by the company. This system was established on the basis of wages to be earned by the workers, thus creating the risk of debt bondage. The Committee noted that the report contained no comment on this point with regard to debt bondage, and asked the Government to provide information on this matter. The last report was also without information on this question, and the Committee hopes that the Government will supply the detailed information requested in the near future), [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2001-89-1A\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2001-89-1A).pdf). See also CEACR: Individual Direct Request concerning Convention No. 29, Forced Labour, 1930 Indonesia (ratification: 1950) Submitted: 1994 (Document No. (ilolex): 091994IDN029).

⁷² STOPPING FORCED LABOUR. *Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference*, 89th Session, Report I (B), (International Labour Office: Geneva, 2001), at p. 83, <http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/meetingdocument/kd00014.pdf>.

⁷³ CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Indonesia Submitted: 2008 (Document No. (ilolex): 092008IDN111), at para. 8 (noting “the Government’s indication, included in the report submitted to CERD in 2007, that there are regulations on the protection of indigenous peoples (UN Doc. CERD/C/IDN/3, paragraph 62). In particular, the report emphasizes that article 28(1) of the 1945 Constitution guarantees full respect for the rights of indigenous peoples (paragraph 64). It also notes from the same report that Indonesia is preparing new legislation to provide better protection and treatment for all ethnic groups”). See also e.g., *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 102nd Session, Report III (Part 1A) (International Labour Office: Geneva 2013), p. 232-35 (making extensive reference to the concluding observations of CEDAW and the Human Rights Committee, [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2013-102-1A\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2013-102-1A).pdf)).

⁷⁴ Small-holder or other schemes rely on practices that include: the extension of loans for land preparation, seedlings and fertilizers that are paid back over time (this is especially the case as oil palm fruit are not saleable until 3 years after planting and not fully productive for 8 years) and these loans are often interlinked in some way with the plantation owner; opaque contractual arrangements, which may or may not involve fair payment at market rates and may unfairly tie workers to plantations; the absence of collective bargaining schemes or rights to unionise; requirements that all produce be sold to the plantation; unclear deductions from payments to repay loans and other ‘company administrative costs’; and the existence of company stores at which prices may be inflated.

serfdom and bonded labour.⁷⁵ At the very least, these conditions constitute discriminatory conditions of employment, a conclusion further bolstered by evidence that indigenous Papuans, where employed in the MIFEE project, are given the most menial jobs and paid at rates that are below even Indonesia's standards for a basic living wage in Papua province. These violations are not isolated instances, but systematic and pervasive in the MIFEE project (and elsewhere in Indonesia), and further support the conclusion that urgent attention is required for the increasingly desperate situation of the Malind and other indigenous peoples affected by that project.

IV. Indonesia Supreme Court Rules Part of Indonesia's Forestry Law Unconstitutional in Relation to Indigenous Peoples' Rights, and Proposed Legislation on Indigenous Peoples' Rights

36. On 16 May 2013, in response to a constitutional motion filed by AMAN, Indonesia's Constitutional Court ruled that provisions of the *Forests Act* No. 41/1999 – and by implication similar provisions in the *Plantations Act* 2004 – were unconstitutional due to that law's classification of 'customary forests' as being part of 'state forests',⁷⁶ and therefore denying indigenous peoples' rights to their lands in favour of an ownership right vested in the State.⁷⁷ The Committee referred to this law and the provision in question in its 2007 concluding observations and in communications under its EW/UA procedures, observing, *inter alia*, that it "appears to deny indigenous peoples any proprietary rights in forests."⁷⁸ The submitting organisations are pleased to report that the Constitutional Court referred to the Committee's jurisprudence in reaching its decision, a decision which, if appropriately implemented, potentially provides for the recognition of indigenous peoples' territorial rights throughout the archipelago.⁷⁹

37. Implementation of this judgment, which has general application to the country as a whole, will however require either the promulgation of national laws and regulations or the adoption of regulations by regional governments within Indonesia, a process that could be time consuming as well as complicated by extensive ties between regional and local governments and very powerful business interests whose operations could be threatened by recognising indigenous peoples' rights over their forests and other customary lands. It is meanwhile likely that these companies will accelerate their operations as well as employ additional repressive measures in light of the current legal uncertainty about the status of their plantations. What is clear however is that the State is pushing ahead with the MIFEE project irrespective of the decision of the Constitutional Court and again appears to be treating indigenous Papuans differently and to their detriment.

38. Indonesia's President recently and publicly stated that he is "personally committed to initiating a process that registers and recognizes the collective ownership of *adat* [customary indigenous] territories in Indonesia. This is a

⁷⁵ Article 1(a) of the 1957 *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery* defines 'bonded labour' or 'debt bondage', as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined."

⁷⁶ According to one commentator, the "Court agreed that Article 1 Paragraph six of the law was in conflict with the constitution and should be changed to delete the word 'state' from the sentence: 'Customary forests are state forests located in indigenous peoples' territories.' The other changes adopted flow from this one fundamental change. Forests remain divided into two main categories, *hutan negara* (state forests) and *hutan hak* (forests subject to rights) (Article 5.1), but the judgment means that customary forests have moved from *hutan negara* into the *hutan hak* category." See 'A turning point for Indonesia's indigenous peoples', *DTE Update*, 7 June 2013, <http://www.downtoearth-indonesia.org/story/turning-point-indonesia-s-indigenous-peoples>.

⁷⁷ See *Decision 35/PUU-X/2012, Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*, Constitutional Court of Indonesia, 16 May 2013, http://www.forestpeoples.org/sites/fpp/files/news/2013/05/putusan_sidang_35%20PUU%202012-Kehutanan-telah%20ucap%2016%20Mei%202013.pdf (original in Bahasa Indonesia) and http://www.aman.or.id/wp-content/plugins/downloads-manager/upload/Constitutional_Court (unofficial translation in English). See also 'Constitutional Court Agrees on Judicial Review of UUK', *AMAN Press Release*, 16 May 2013, <http://www.aman.or.id/2013/05/16/constitutional-court-agrees-on-judicial-review-of-uuk/#.Ud66y8PD8fh>; and 'Constitutional Court Annuls Government Ownership of Customary Forests', *Jakarta Globe*, 17 May 2013, <http://www.thejakartaglobe.com/news/constitutional-court-annuls-government-ownership-of-customary-forests/>.

⁷⁸ *Communication of the the Committee (EW/UA procedures)*, 13 March 2009, at p. 2, http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia130309.pdf.

⁷⁹ See *Putusan, Nomor 35/PUU-X/2012, Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*, Constitutional Court of Indonesia, 16 May 2013, e.g., para. 20 and 25.

critical first step in the implementation process of the Constitutional Court's decision."⁸⁰ National leadership on these issues will indeed be crucially important, although not dispositive of the full extent of the issues raised by the Court's judgment. The President has also endorsed and publicly supported the adoption of a national law on the rights of indigenous peoples. In this respect, the Indonesian National Parliament adopted a *Draft Law on the Recognition and Protection of the Rights of Indigenous Peoples* on 16 December 2011 and resolved that it would have been among the 64 bills to be debated and presented for enactment in 2012. This draft law enjoys the widespread support of indigenous peoples throughout Indonesia and was drafted with their participation as facilitated by AMAN. The submitting organisations commend Indonesia for undertaking the drafting of this law and its collaborative approach with AMAN in conducting consultations to date. However, this draft law continues to languish in the Parliament today and violations of indigenous peoples' rights continue unabated and with impunity throughout the archipelago.

V. Conclusion and Request

39. The MIFEE project continues to inflict irreparable harm on the Malind and other affected indigenous peoples and is precisely the kind of situation that the Committee's EW/UA procedures were designed to address. Not only has Indonesia ignored the prior concerns expressed by the Committee and many others about this project, it has accelerated the legislative basis for the project and its implementation by granting numerous additional permits and concessions. This includes providing a direct role for the Indonesian military in project implementation, a deeply troubling development given the military's role in gross human rights violations against indigenous Papuans for decades. The Malind and other affected peoples have had some 2.5 million hectares of their lands seized in one way or another and are essentially deprived of their means of subsistence as their ancestral forests are converted to monocrop industrial plantations. They are subjected to extreme conditions of misery and deprivation, which intensify with each passing day, as well as to discriminatory conditions of employment that are functionally the same as forced labour.

40. In light of the preceding, the submitting organisations respectfully request that the Committee:

- a) Continues to monitor and makes recommendations about the situation of the indigenous peoples of Merauke affected by the MIFEE project under its UA/EW procedures, including by urging Indonesia to immediately suspend any part of that project that may threaten the cultural survival of the affected peoples and to provide immediate support to indigenous communities – designed with their participation and consent – that have been deprived of their means of subsistence;
- b) Urges Indonesia to ensure that labour conditions in the MIFEE project and elsewhere in its forestry sector are consistent with international labour standards and in no way employ forced labour or discriminatory forms of employment, and stresses that the right of workers to freely choose their employment is also fundamentally related to recognition of and respect for indigenous peoples' territorial rights;
- c) Highlights and expresses profound concern about the scale of human rights violations against indigenous Papuans, and makes appropriate and urgent recommendations aimed at addressing this alarming situation, including by urging Indonesia to engage in formal dialogue with the freely chosen representatives of Papuan indigenous peoples about how best to address this situation and by prioritizing constructive dialogue and non-violent approaches to addressing conflict in Papua;
- d) Recommends that Indonesia, as a matter of urgency, establishes a Human Rights Court and a Truth and Reconciliation Commission for Papua, as provided for in the PSAL, and ensures that indigenous peoples are

⁸⁰ Speech by H.E. Dr. Susilo Bambang Yudhoyono, President of the Republic of Indonesia at the Opening of the International Workshop on the "Tropical Forest Alliance 2020: Promoting Sustainability and Productivity in the Palm Oil and Pulp and Paper Sectors", Jakarta, 27 June 2013, [http://www.forestpeoples.org/sites/fpp/files/news/2013/06/27%20Juni%202013%20-%20Opening%20Speech%20President%20RI%20-%20TFA%202020%20Workshop%20\(Rv%20%20SBY\)%20check%20against%20delivery.pdf](http://www.forestpeoples.org/sites/fpp/files/news/2013/06/27%20Juni%202013%20-%20Opening%20Speech%20President%20RI%20-%20TFA%202020%20Workshop%20(Rv%20%20SBY)%20check%20against%20delivery.pdf).

able to fully and effectively participate through their own freely chosen representatives in any processes established to amend the PSAL, as required by Article 5(c) of the ICERD and codified in Article 19 of the 2007 *UN Declaration on the Rights of Indigenous Peoples*,⁸¹

- e) Urges Indonesia to, as soon as possible, enact and implement with the full and effective participation of indigenous peoples, the *Draft Law on the Recognition and Protection of the Rights of Indigenous Peoples* as it was adopted by the Indonesian National Parliament on 16 December 2011;
- f) Urges Indonesia to urgently implement the decision of the Constitutional Court of 16 May 2013 with indigenous peoples' effective participation as well as ensure that there are national legal standards in place to direct the adoption of laws by regional governments in relation to the implementation of that judgment;
- g) Urges Indonesia to actively support and implement the *Bali Declaration on Human Rights and Agribusiness* in conjunction with KOMNAS HAM, indigenous peoples' organisations, business entities and NGOs; and,
- h) Recommends that Indonesia requests or accepts requests for on-site visits from the UN Special Rapporteurs on the Rights of Indigenous Peoples, the Right to Food, and Cotemporary Forms of Slavery so as to assist with compliance with its international obligations, including in relation to the rights of indigenous peoples in Papua, and requests that these special procedures report back to the Committee any of their findings or any progress in arranging and carrying out on-site visits.

⁸¹ Article 19 provides that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."