Development Aggression

Observations on Human Rights Conditions in the PT Freeport Indonesia Contract of Work Areas With Recommendations

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"Development is development aggression when the people become the victims, not the beneficiaries; when the people are set aside in development planning, not partners in development; and when people are considered mere resources for profit-oriented development, not the center of development . . . . Development aggression violates the human rights of our people in all their dimensions—economic, social, cultural, civil and political."

The Philippine Alliance of Human Rights Advocates, as quoted in Ramon C. Casiple, "Human Rights vs. Development Aggression: Can Development Violate Human Rights?" *Human Rights Forum: Focus on Development Aggression*. Quezon City: Philippine Human Rights Information Center, 1996.

INTRODUCTION

This paper is a presentation of observations, conclusions, and recommendations regarding human rights conditions in the PT Freeport Indonesia ("PTFI") Contract of Work ("COW") areas in Papua,[1] Indonesia. PTFI is majority owned and controlled by US-based mining company Freeport-McMoRan Copper & Gold Inc. ("Freeport"),[2] and it operates the world's largest copper and gold mining enterprise in the Papuan subdistrict (*kabupaten*) of Mimika. This mining operation, located primarily on the southern slopes of the Jayawijaya mountains, includes a project area (e.g. mine site, mill) and transportation, administrative, and other infrastructure, as well as extensive exploration concessions throughout other parts of the mountain range.

This paper is based, in part, on the Robert F. Kennedy Memorial Center for Human Rights' ("RFK Center") role as co-sponsor of a joint Indonesian-international team[3] that attempted to carry out an independent examination of human rights conditions in PTFI's COW areas, described above. The assessment team's remaining co-sponsors were the Jakarta-based Indonesian Legal Aid Foundation (*Yayasan Lembaga Bantuan Hukum Indonesia* or "YLBHI") and the Jayapura-based Institute for Human Rights Studies and Advocacy (*Lembaga Studi dan Advokasi Hak Asasi Manusia* or "ELSHAM"). This paper draws upon the team's observations during the assessment's preliminary phase in September 1999, and on additional fact-finding and analysis conducted by team members and RFK Center staff before and since that time. The observations, conclusions, and recommendations presented here are solely those of the author.

The presentation below has been circumscribed by Freeport's lack of cooperation and other interference with the assessment process.[4] Due to political sensitivities on the part of Indonesia's National Commission on Human Rights ("Komnas HAM") and the Indonesian provincial police in Papua, it has not been possible to carry out the on-site fact-finding necessary for completion of the proposed independent assessment. This paper is therefore not intended to serve as the report of a comprehensive independent human rights assessment; instead, it presents information and analysis compiled and prepared by the author with support from the RFK Center.

Project Background

The RFK Center implements the vision of Robert F. Kennedy by promoting the full spectrum of human rights both in the United States and globally. The RFK Center develops and carries out projects which enhance and complement the work of the RFK Human Rights Award laureates

[1] The territory of Papua has been known by many names: West New Guinea or Netherlands New Guinea (under Dutch colonial administration); West Papua (the name selected in 1961 by elected Papuan representatives and used today by most Papuans); West Irian (under initial Indonesian rule); Irian Jaya (the official Indonesian name from 1973 until January 7, 2002); and Papua (the current official Indonesian name). In the interest of simplicity, "Papua" will be used throughout this piece.

[2] Freeport is a subsidiary of Freeport-McMoRan, a minerals-extraction company headquartered in New Orleans, Louisiana, USA. PTFI is the Indonesian subsidiary of Freeport and is headquartered in Jakarta, Indonesia. Freeport's board of directors or their supporters control more than 50% of the company's outstanding stock.

[3] See the attached Terms of Reference and list of Team Members, Appendix A.

[4] Freeport has not provided documents that the RFK Center requested in writing in August 1999 and again in February 2000. In addition, Freeport objected to the assessment team's composition and the Terms of Reference.

and that promote social change. Established in 1984, the Human Rights Award honors creative individuals who are, often at great personal risk, engaged in strategic and nonviolent efforts to overcome serious human rights violations.

The RFK Center's Indonesia work began with the presentation of the 1993 RFK Human Rights Award to Indonesian lawyer Bambang Widjojanto. Mr. Widjojanto, honored for his work defending the rights of indigenous peoples in Papua, served for seven years as director of the Papua branch of YLBHI, Indonesia's leading human rights organization. Since 1993, the RFK Center has developed a special focus on Papua, and it has monitored human rights concerns specifically associated with Freeport.

The proposed human rights assessment was developed in response to external requests for an independent and comprehensive human rights inquiry into the Freeport COW areas. These requests came from both US-based Freeport shareholders (the Interfaith Center on Corporate Responsibility and the Seattle Mennonite Church) and local indigenous communities (as represented by the Amungme Tribal Council—*Lembaga Musyawarah Adat Suku Amungme* or "LEMASA"). The RFK Center agreed to undertake the assessment with the partnership of YLBHI and ELSHAM.

Following a two-year planning process, the RFK Center, YLBHI, and ELSHAM organized and attempted to conduct a preliminary planning and fact-finding mission to Freeport's mining operation in the Papuan *kabupaten* of Mimika. This initial stage in the assessment process included a series of meetings in Jakarta with Komnas HAM and senior PTFI management.[5] These were to be followed by team meetings in Jayapura and a visit to the mining town of Timika. Team members discussed the aforementioned meetings in Papua with both Komnas HAM and PTFI/Freeport senior management and staff prior to traveling to the province, and both parties conferred their formal approval. However, the meetings in Jayapura were interrupted, and a visit to Timika prevented, when the provincial police interrogated and expelled two of the international team members from Papua.[6] Immigration officials in Jakarta determined that the police deportation and blacklisting order had no legal basis, and the two individuals remained in Indonesia to finish out the assessment's preliminary phase. The second stay in Jakarta was used for additional team meetings and appointments with Komnas HAM, LEMASA, and senior staff and management of PTFI and Freeport. Komnas HAM also issued a public statement reiterating its support for the assessment team's activities.

After the blocked attempt to initiate the assessment in September 1999, however, PTFI/Freeport posed new obstacles to the assessment effort. Senior officials from both PTFI and Freeport met with Komnas HAM members to challenge both the scope of the assessment and the composition of the team. Indicating that they could not support the assessment in its proposed form, they persuaded Komnas HAM to withdraw its support for the initiative until the concerns were resolved. Following a series of meetings over several months between Freeport officials,

[5] PTFI's Executive Vice President for Government Relations Prihadi Santoso and Vice President for Communications Yuli Ismartono.

[6] Team members later learned from credible confidential sources within Komnas HAM, the US Embassy, and Freeport itself that Freeport management was directly responsible for the provincial police action.

assessment team members, and RFK Center staff, Freeport agreed to withdraw its objections and to allow a fully independent investigation to move forward. Unfortunately, by this time the situation on the ground in Papua had changed. In a September 2000 meeting in Jakarta, Komnas HAM officials proposed that the assessment be delayed until the political tensions in Papua decreased and the security of team members could be ensured. After encountering further delay, the RFK Center and other partner organizations determined that an independent assessment could not take place at that time.

Because the assessment was not done, it was not possible to prepare a full report on the findings of the independent investigation. However, much information was collected in the process of developing the assessment parameters, and several of the team members compiled documentation from other sources. Because this information is significant, it is appropriate to release this report in the hopes that it will encourage further scrutiny of the human rights situation in Papua in the future. This paper is intended to convey the information available as well as recommendations to Freeport and other actors in the hopes that it will support positive changes for the people of Papua.

INFORMATION COLLECTED

The relationship between Freeport and the indigenous Papuan peoples has been influenced by a set of interrelated dynamics, with explicit human rights dimensions, specifically: (1) the flawed integration of Papua into the Republic of Indonesia and subsequent Papuan resistance to Indonesian sovereignty; (2) the top-down, paternalistic, and nonparticipatory economic and social development policies and practices of the Indonesian government; (3) the counter-insurgency operations of the Indonesian military which have been carried out in order to defend Freeport's mining operations and other investment projects externally imposed upon local indigenous communities; (4) the corrupt governance practices of the Suharto regime and overall lack of the rule of law in Indonesia; (5) and Freeport management's willingness to operate within such a framework[7] as well as to introduce or allow particular terms in the company's COWs.

Historical and Political Context

The historical and political context in which US-based Freeport established mining operations in Papua is instructive and reveals the early seeds of conflict between the corporation and indigenous Papuans.

The Amungme and Kamoro peoples[8] are the original indigenous landowners of the areas that now comprise Freeport's COW A mining and infrastructure (e.g., port site, roads, airport) zone.

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[7] Dr. Chris Ballard, a member of the original independent assessment team, refers to the company personnel's position as one of "a will to ignorance." See C. Ballard, "The Signature of Terror: Violence, Memory and Landscape at Freeport," in Inscribed Landscapes: Marking and Making Place, ed. Bruno David and Meredith Wilson (Honolulu: U of Hawaii Press, 2001); and C. Ballard, "Performing Violence: an anatomy of terror at Freeport" (unpublished paper, delivered to the "Seminaire sur la Violence Coloniale," SHADYC-CNRS, La Vieille Charite, Marseille, France).

[8] The Amungme community numbers an estimated 4,287 people, living primarily in the towns of Timika and Akimuga and in dozens of rural hamlets throughout the valleys of the Jayawijaya mountain range's southern slopes. The Kamoro community residing within the COW areas numbers roughly 8,000 people.

Other indigenous Papuan groups, including the Moni and Nduga peoples, are the original landowners in Freeport's COW B exploration concession area.

In 1967, at the time of the establishment of Freeport's first base camps, the Amungme and Kamoro communities numbered several thousand people,[9] organized in clan-based village social and governance structures. With lands encompassing the area's tropical rainforest, coastal lowlands, glacial mountains, and river valleys, the Kamoro (lowlanders) and Amungme (highlanders) practice a subsistence economy based upon sustainable agriculture and forest products, fishing, and hunting. Their cultures and spiritual values are intimately entwined with the surrounding landscape.

During the course of the 20th century, British naturalist expeditions, mountaineering teams, Japanese troops, Catholic and Protestant missionaries, and officials of the Dutch colonial administration all visited Amungme and Kamoro lands.[10] What differentiates Freeport's presence from that of previous visitors to the area is that the mining operation has directly and indirectly caused a massive, permanent, and escalating disruption to the lives of the indigenous inhabitants. It has initiated new and dominant economic, political, social, and cultural paradigms that have not respected the economies, governance structures, laws and customary practices, spiritual and ecological values, social arrangements, or cultural traditions of the original indigenous landowners.

New arrivals swarming to the economic boomtown created by the mine and its infrastructure include thousands of Javanese and Balinese settlers sponsored by the Indonesian government's problematic transmigration program,[11] spontaneous migrants such as traders from Sulawesi, thousands of Papuans from other parts of the territory, and North American, Australian, New Zealand, and Javanese employees of Freeport. By the 1990s, the area's population had exploded to more than 60,000 people, making Kabupaten Mimika the fastest-growing subdistrict in the entire Indonesian archipelago. As a result, the Amungme and Kamoro—now minorities on their

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[9] Researchers at the Australian National University and Cenderawasih University estimate that the number of Kamoro people living in the area at the time of Freeport's arrival was at least 947. They estimate that, in 1961, Kamoro represented 97% of the Mimika district population; in 1997, it is estimated that Kamoro represented just 15% of the district's population.

[10] For an authoritative history of the Amungme and Kamoro peoples, including their interactions with these outsiders, see "Final Report: Amungme Baseline Study," UNCEN-ANU Baseline Studies Project (Universitas Cenderawasih and the Australian National University, 1998); and "Final Report: Kamoro Baseline Study," UNCEN-ANU Baseline Studies Project (Universitas Cenderawasih and the Australian National University, 1998), respectively. The reports also discuss relations between the Kamoro, Amungme, and Freeport at the time of the company's arrival. For a detailed presentation of Amungme history, culture, governance and social structures, economy, religion, and traditional laws, see Tom Beanal, "Amungme: Magaboarat Negel Jombei-Peibei" (Jakarta: Indonesia Forum for Environment/WALHI, 1997). For a discussion of Freeport's appropriation of Kamoro and Amungme lands and the cultural, economic, and spiritual significance to these communities of the natural environment, see John J. Rumbiak, "Regarding Disaster on the Land of the Amungme and Kamoro: The Suppression and Expropriation of Customary Land Rights behind Freeport's Advancement" (unpublished manuscript, 1995).

[11] See, for example, section on transmigration in Bruce Rich, Mortgaging the Earth: The World Bank, Environmental Impoverishment, and the Crisis of Development (Boston: Beacon Press, 1994), 34-38.

own lands—continually raise and seek remedies for a variety of environmental and other human rights concerns.

Papua's Integration into the Republic of Indonesia

Under international human rights law, all peoples possess the right to self-determination and to sovereignty over their natural resources.[12] This right applies, in particular, to populations living under colonial domination. In the case of Papua, serious questions remain about the legitimacy of the territory's integration into Indonesia and the validity of the Indonesian central government's authority over Papuan natural resources, including those exploited by Freeport.

During the 1960s, the United Nations ("UN")—in an effort strongly supported by the US government—brokered the transfer of control over Papua from the Dutch colonial administration to the Republic of Indonesia. Indigenous Papuans were excluded from the negotiations, which culminated in the bilateral New York Agreement of 1962. The year before, Papuans had elected representatives to the newly established New Guinea Council, one purpose of which was to advise the Dutch colonial administration on how Papuans might exercise their right of self-determination;[13] however, these elected officials were not invited to participate in the UN-sponsored sovereignty talks leading up to the 1962 Agreement.

Seven years later, after Indonesia had established full control over Papua, the Act of Free Choice ("AFC") was held to satisfy the New York Agreement's requirement of a formal "act of self-determination."[14] In setting up the referendum on the AFC, the Indonesian government declined to employ the mixed method of voting recommended by the UN Representative in West Irian

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[12] Common Article 1, International Covenant on Economic, Social and Cultural Rights, UN General Assembly, Resolution 2200A (XXI), adopted 16 December 1966, entry into force 3 January 1976; and International Covenant on Civil and Political Rights, UN General Assembly, Resolution 2200A (XXI), adopted 16 December 1966, entry into force 23 March 1976.

[13] The establishment of the New Guinea Council was an integral part of the Dutch government's Ten-Year Development Plan for then-Netherlands New Guinea. The Ten-Year Plan was designed with the intention of "creating the conditions for realization of the objective of self-government and self-determination (independence) as quickly and as effectively as possible." It focused on what the Dutch government termed "political emancipation" for Papuans and in addition to the establishment of the New Guinea Council included, among other objectives, an increase of Papuan civil servants from 52% in 1960 to 95% in 1970 and a doubling of the number of training schools for village teachers. See "Papuans building their future" (Information Department of the Netherlands Ministry for the Interior, 1961), 17, 23.

Dutch sovereign H.M. Queen Juliana stated in a September 20, 1960 speech that "[i]n the coming year Netherlands New Guinea will enter an important new phase in its development towards self-determination. For as soon as the New Guinea Council, which will consist in the main of representatives of the native population, has been set up, administration and legislation will be possible only with its cooperation." Ibid., title page.

[14] Under the New York Agreement's Article XVIII, consultations with representative councils were to be used to determine the appropriate methods "for ascertaining the freely expressed will of the population." All adults (male and female) were eligible to participate in the act of self-determination, which was "to be carried out in accordance with international practice." Agreement between the Republic of Indonesia and the Kingdom of the Netherlands Concerning West New Guinea (West Irian), UN Treaty Series, No. 6311, 1962.

(Bolivian diplomat Fernando Ortiz Sanz),[15] and instead created eight consultative assemblies totaling 1,026 Papuans, in which each member was meant to represent approximately 750 inhabitants. These assemblies did not vote, relying instead upon the process of *musyawarah* or "consultation", which necessitates consensus. This process prompted protests from Ortiz Sanz and delegates to the UN General Assembly, who cited an atmosphere of repression in which the Indonesian government violated Papuans' rights of free speech, movement, and assembly, and continuously exercised "tight political control over the population."[16] Foreign journalists on site in Papua before and during the Act of Free Choice reported that the Indonesian government detained scores of Papuans to prevent them from disrupting the Act.[17]

Despite such obstacles, Ortiz Sanz reported on numerous attempts by Papuans to communicate to UN personnel their desire for a free Papuan state. The UN Representative personally received 179 petitions from Papuans, roughly half of which called for a free West Papuan state and/or outlined concerns about military repression and the detention of political prisoners.[18] In one notable act of protest, a 2,000-strong group of Papuan demonstrators rallied peacefully outside of Ortiz Sanz's residence in Jayapura, calling for a genuine referendum; Indonesian armed forces arrested and detained at least 43 of the participants.[19] Ortiz Sanz also noted the phenomenon of Papuans voting with their feet by seeking refuge across the border in Papua New Guinea.[20]

Over a five-month period, Ortiz Sanz repeatedly attempted to gain proper implementation of respect for the basic rights and freedoms of Papuans so that the population would be able to freely express its will in the AFC. Failing to achieve this objective through his meetings with Indonesian Foreign Minister Adam Malik and lower-level officials, Ortiz Sanz reported that "in a last attempt to have article XXII of the Agreement properly implemented, I asked, on 10 June 1969, for an audience with the President of the Republic of Indonesia, General Suharto. Owing to his heavy schedule of work, the President could not receive me before 12 August, ten days after the completion of the act of free choice," and more than two months after the UN Secretary General's Representative's request.[21]

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[15] The UN Representative, mandated to "advise, assist and participate in arrangements which are the responsibility of Indonesia for the act of free choice," proposed that "'one man, one vote' should be used in the urban areas . . . complemented by collective consultations in the less accessible and less advanced areas of the interior." "Report of the Secretary General Regarding the Act of Self-Determination in West Irian," UN Doc. A/7723, 6 November 1969, Annex 1 para. 9, 82.

[16] Ibid., para. 251.

[17] John Saltford, "United Nations Involvement with the Act of Self-Determination in West Irian (Indonesian West New Guinea) 1968 to 1969," *Indonesia* 69, April 2000.

[18] "Report of the Secretary General," para. 141, 143.

[19] Saltford.

[20] "Report of the Secretary General," para. 172.

[21] Ibid., para. 182. For further discussion of the UN's role in the Act of Free Choice, see, for example, Saltford; Robin Osborne, Indonesia's Secret War: The Guerilla Struggle in Irian Jaya (Sydney: Allen & Unwin, 1985); and William Henderson, West New Guinea: The Dispute and Its Settlement (South Orange, NJ: Seton Hall UP, 1973).

Though the UN General Assembly eventually took note of the results of the Act of Free Choice, it did so following contentious debate in which delegates argued that Papuans had not been allowed to exercise their right of self-determination within the meaning of the 1962 Agreement. Papuan community leaders have repeatedly rejected the territory's integration into Indonesia, and a number of legal scholars have also questioned its validity, citing Papua as a prominent example of a failed decolonization process because of the lack of a legitimate exercise of self-determination by its indigenous peoples.[22]

Freeport's Contract of Work with the Indonesian Government

In April 1967, two years before the AFC formally initiated Indonesian sovereignty over Papua, Freeport signed its first COW with Indonesia's newly established New Order government, headed by Army General, and later President, Suharto.[23]

Freeport management recognized that the mining operation was a risky venture. Indonesia was emerging from a violent military takeover in which an estimated 500,000 people had been killed,[24] and as a Freeport executive has noted, the "legal basis for a [mining] agreement was vague," presumably because of the uncertainty of Papua's status.[25]

For the Kamoro and Amungme, Freeport has represented a foothold of Indonesian control over their lands and over Papua as a whole. Indeed, Suharto chose the occasion of his 1973 inauguration of Tembagapura, Freeport's main mining town complex, to rename the province Irian Jaya or "Victorious Irian." According to local Papuans, the Indonesian government has used the name Irian as a propagandistic acronym standing for "Integrate with the Republic of Indonesia Against the Netherlands."[26]

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[22] International law expert Antonio Cassese presents this analysis of Papuan self-determination, with references to numerous other analyses by Rigo Sureda, Thomas Franck, Michael Pomerance, and others. See A. Cassese, Self-Determination of Peoples: A Legal Reappraisal (Cambridge, UK: Cambridge UP, 1995). For contemporary Papuan perspectives, see, for example, the statement of the Team of 100, "Political Communique from the People of West Papua to the Government of the Republic of Indonesia," 26 February 1999; and the resolutions of the Second Papuan People's Congress, June 2000.

[23] Suharto, a major private investor in PTFI and one of only a few Indonesians to hold shares in the company, was the commander of Operation Mandala, the Indonesian Armed Forces' 1962 plan to mount a full-scale invasion of Papua in order to "liberate" it from the Dutch. A mutually supportive relationship has reportedly existed between Freeport and the Suharto regime. The nature of this relationship is detailed by journalist Peter Waldman in "Hand in Glove: How Suharto's Circle and a Mining Firm Did So Well Together," *Wall Street Journal*, 29 September 1998, A1.

[24] Asia Watch, "Indonesia: Impact of US Involvement in 1965" (New York: Asia Watch, 1990).

[25] George A. Mealey, Grasberg: Mining the Richest and Most Remote Deposit of Copper and Gold in the World, in the Mountains of Irian Jaya, Indonesia (New Orleans: Freeport-McMoRan Copper & Gold Inc., 1996), 84.

[26] See, for example, testimony of Ms. Yosepha Alomang before the U.S. House of Representatives Committee on International Relations, *Briefing on Human Rights in Indonesia and East Timor: Hearing before the Subcommittee on International Operations and Human Rights*, 106 Cong., 1st sess., 1999.

The 41-page COW, drafted by Freeport, was reportedly the first contract entered into under the New Order's Foreign Investment Law. It provided the company with broad powers over the local population and resources, including the right to take land and other property and to resettle indigenous inhabitants while providing "reasonable compensation" only for dwellings and other permanent improvements.[27] The terms of the COW disregarded Kamoro and Amungme customary land rights and provided inadequate protection for those communities' rights to livelihood, to adequate housing, food, and health, and to practice their culture. As local community members have repeatedly pointed out, there was no requirement that the company seek the agreement of or other input from local landowners, or compensate them for the loss of their food gardens, hunting and fishing grounds, drinking water, forest products, sacred sites, and other elements of the natural environment upon which their cultures and livelihoods depend. The indigenous population had no legally available rights of refusal, of informed consent, or to adequate compensation. No social or environmental impact assessment was required or conducted.

The contract gave Freeport the right "to take and use," on a tax-free basis, water, timber, soil, and other natural materials in the project area and from other parts of the territory.[28] In the subsequent 1991 COW, in effect at the time of writing, the contract also explicitly provides for flexibility on the part of the Indonesian government in enforcing relevant environmental protection laws and regulations.[29]

Human Rights Violations

The Indonesian government has vigorously obstructed international scrutiny of human rights violations in the Freeport area by blocking access to Papua by UN and other monitors.[30]

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[27] Contract of Work Dated 7 April 1967 Between Indonesia and Freeport Indonesia, Incorporated: Decision of the Cabinet Presidium, No. 82/E/KEP/4/1967 (Jakarta: Direktorat Pembinaan Pengusahaan Pertambangan, 1967), Article 2, para. (d).

[28] Ibid., para. (e).

[29] "In recognition of the added burdens and expenses to be borne by the Company and the additional service to be performed by the Company as a result of the location of its activities in a difficult environment, the Government recognizes that appropriate arrangements may be required to minimize the adverse economic and operational costs resulting from the administration of the laws and regulations of the Government from time to time in effect, and in construing the Company's obligations to comply with such laws and regulations." Contract of Work between the Government of the Republik of Indonesia and PT. Freeport Indonesia Company (1991), Article 18, para. 8.

The Basic Law No. 11 of 1967 and its corollary legislation do not specifically regulate environmental preservation. Regulations related to environmental protection in the mining sector came into force only in the 1990s. See, for example, Regulations issued by the Minister of Mining or the respective Director-General, related to the Governmental Order No. 5 of 1993 on Environmental Impact Studies (*Amdal*); the Decision by the Minister for Mining and Energy No. 1211.K/008/M.PE/1995 on Curbing and Reducing with Environmental Pollution and Destruction by the Activities of General Mining Companies; Governmental Order No. 20 of 1990 on Controlling Water Pollution; and the Governmental Order No. 19 of 1994 on Waste Management. See also World Wide Fund, "A Legal Analysis of Mining Activities in the Area of Lorentz National Park, Irian Jaya" (Jakarta: Indonesian Centre for Environmental Law, 1997).

[30] In addition to blocking the RFK/YLBHI/ELSHAM independent assessment, Indonesian authorities have also barred entry to Papua by the UN Special Rapporteur on Violence Against Women (November-December 1998) and the UN Working Group on Arbitrary Detention (January-February 1999) during their respective visits to Indonesia

Freeport management asserts that it requested the International Committee of the Red Cross ("ICRC") to conduct an investigation in 1995,[31] but there is no independent evidence that such a study ever took place, and the ICRC's own rules prohibit the organization from releasing its findings in any case. Inquiries undertaken by the Australian and US Embassies in 1995 have also never been made public.[32] Since 1996, the US Embassy has reported briefly on human rights concerns in the Freeport area in its annual "Country Reports on Human Rights Practices."

Despite the difficulty of monitoring human rights conditions in the Freeport area, the 1990s brought increased domestic and international attention to the Amungme and Kamoro's human rights and environmental concerns. Publicly available reports document specific human rights violations that have occurred in and around Freeport's project area since 1994.[33] Unlike these initiatives, the RFK Center/ELSHAM/YLBHI independent human rights assessment was intended to survey human rights conditions in the Freeport COW areas since the company's arrival in 1967.

While fact-finding regarding human rights conditions in Freeport's COW areas remains incomplete, well-documented human rights abuses there have included:

- Torture, rape, indiscriminate and extrajudicial killings, disappearances, arbitrary detention, surveillance and intimidation, employment discrimination, and severe restrictions on freedom of movement;

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and East Timor. The UN investigators' findings are presented in Radhika Coomaraswamy, "Mission to Indonesia and East Timor on the Issue of Violence Against Women, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences," UN Economic and Social Council, E/CN.4/1999/68/Add.3 (21 January 1999); and "Report of the Visit of the Working Group to Indonesia (31 January to 12 February 1999)," UN Working Group on Arbitrary Detention, UN Economic and Social Council, E/CN.4/2000/4/Add.2 (5 July 1999). In January 2002, Indonesian authorities expelled two Amnesty International researchers from Papua. In February 1997, Indonesian authorities deported and blacklisted US-based human rights activist Danny Kennedy while he was conducting a fact-finding visit on behalf of Project Underground, a US-based human rights organization.

[31] Paul Murphy, Vice-President of Freeport Indonesia, quoted in Matt Richards, "Freeport in Indonesia: Reconciling Development and Indigenous Rights," Report on a Public Forum at the Gorman House Arts Centre, ed. Pat Walsh and Sharmini Sherrard (Canberra: Australian Council for Overseas Aid, 1996), 12.

[32] In a March 8, 1996 letter to then-US Assistant Secretary of State for Asia and the Pacific Ambassador Winston Lord, the RFK Center requested a copy of the US Embassy's report, which was written by the Embassy's Economic Counselor and not its Human Rights Officer. The request was denied. In a written response dated April 8, Ambassador Lord stated that "we have reviewed the report and have decided that it should not be released, even in edited form."

[33] See Catholic Church of Jayapura, "Violations of Human Rights in the Timika Area of Irian Jaya, Indonesia" (1995); Indonesian Evangelical Church (Mimika, Irian Jaya), the Catholic Church Three Kings Parish (Timika, Irian Jaya), and the Christian Evangelical Church of Mimika, "Human Rights Violations and Disaster in Bela, Alama, Jila and Mapnduma" (1998); RFK Center for Human Rights and the Institute for Human Rights Studies and Advocacy, "Incidents of Military Violence Against Indigenous Women in Irian Jaya (West Papua), Indonesia" (Washington/Jayapura: 1999); LEMASA, "The Amungme Tribal Council's Resolution on the 50th Anniversary of the Universal Declaration of Human Rights and its Implementation on Papuan Soil" (Timika: 10 December 1998); Survival International, "Rio Tinto Critic Gagged" (London: Survival International, 1998); Robert Bryce, "Plaintiffs in Freeport Suit Are Harassed," *Austin Chronicle*, 27 September 1996; and LEMASA, "The Indonesian Armed Forces in Timika Forcefully Took Away the People's Document" (Timika: 14 August 1996); and "Timika: Where's Mama?" *Tempo*, Regions 27/I (13-19 March 2001).

- Interference with access to legal representation;
- Violation of subsistence and livelihood rights resulting from seizure and destruction of thousands of acres of rainforest, including community hunting grounds and forest gardens, and contamination of water supplies and fishing grounds;
- Violation of cultural rights, including destruction of a mountain and other spiritually significant sites held sacred by the Amungme;
- Forced resettlement of communities and destruction of housing, churches, and other shelters.

Some of these violations—such as those caused by environmental destruction—are the direct by-products of Freeport's mining operations. Others—such as physical attacks—are the result of the illegal, indiscriminate, and/or disproportionate use of force against civilians by the Indonesian military and police providing security for and funded by Freeport. Appendix B of this document contains some specific examples of the abuses referenced above. The appendix is not intended to represent a comprehensive listing of such acts, but is included to provide readers with an understanding of the scope and severity of the human rights violations that have occurred.

Freeport's Role

Support to the Indonesian Military

Since the early 1970s, the Indonesian military has used Freeport-built infrastructure (e.g., airport, roads, port site) as a staging ground for deadly assaults against the original Papuan landowners in the mine's vicinity—actions purported to be undertaken for protection of the mine and the elimination of popular resistance to Indonesian sovereignty.

The first documented Indonesian military killings of indigenous people in the Freeport area occurred in 1972.[34] Researchers have recorded more than 150 cases of individual killings of Amungme[35] and other indigenous people in and around the mine since the 1970s, as well as hundreds of additional deaths amongst these populations from illness and injury due to forced relocation and military attacks.

Freeport has provided considerable financial and logistical support—as well as equipment—to the Indonesian military and police.[36] Police have been present at the mine site since the early construction period. For years, a unit of fewer than 100 soldiers occupied the area, but following the Amungme sabotage of Freeport's copper slurry pipeline in 1977,[37] the Indonesian Armed

[34] These killings appear to have been linked with Amungme resistance to Freeport's fencing off of the Nemang Kawi (Ertsberg) area during exploitation of the mineral reserves there. ELSAM, INFID, LPPS and WALHI, "Negotiation Process Between the Irianese Tribes with James R. Moffett, CEO of Freeport-McMoRan Copper & Gold at Sheraton Hotel" (Timika: 14 March 1996).

[35] Ballard, "Signature."

[36] Until 1999, the Indonesian Armed Forces (*Angkatan Bersenjata Republik Indonesia* or "ABRI") incorporated traditional military and police functions. The armed forces' name was changed to the Indonesian National Army (*Tentara Nasional Indonesia* or "TNI") in 1999 when the police were transferred to civilian control.

[37] "The Role of the Indonesian Military in Irian Jaya, The Transmigration of Millions of Javanese Settlers to Irian Jaya, and Why the Issue is so Problematic for Australian Foreign Policy," Background Briefing Transcript

Forces engaged in numerous attacks on local indigenous people, including killings, rape, and other assaults. The military presence increased exponentially following the discovery of the Grasberg deposit, rising to at least 1,850 soldiers by 1996.[38]

The Indonesian government has acknowledged the active measures taken by the military to expand its authority in the Freeport COW areas. Referring to a March 1996 riot that caused a temporary shutdown of mining operations, in which company management described seeing individuals with "walkie-talkies" and straight hair (i.e., non-Papuans; presumably plainclothes military personnel) orchestrating the violence,[39] former Indonesian Minister of Defense Juwono Sudarsono confirmed that "elements within the military had incited the unrest experienced by Freeport in order to highlight the benefits of their presence."[40] Senior and former Freeport employees also asserted that the military had "convinced" Freeport management that its presence was necessary to protect the mining operation from disturbances by "disgruntled employees, locals who accuse the company of environmental damage, exploitation (even pillaging) of resources, and cultural insensitivity."[41] In response, Freeport agreed to pay the military a one-time sum of $35 million, to be supplemented by an annual "donation" of $11 million.[42]

Internal company documents provide information on Freeport's expenditures for military headquarters, recreational facilities, "guard houses and guard posts, barracks, parade grounds and ammunition storage facilities," as well as offices for two Army advisors, totaling $5,160,770 for the Army and an additional $4,060,000 for police.[43] Former Freeport pilot Terry Doyle states that in the late 1970s and early 1980s, company management ordered Freeport helicopter pilots to transport Indonesian military troops on patrol missions,[44] and there is well-documented evidence that during this same period, Indonesian troops carried out severe and violent attacks on civilian populations within and outside of Freeport's COW areas.

Local indigenous Papuans and some of Freeport's US-based institutional investors have criticized such actions and called for an end to the company's support of the armed forces,[45]

(Parliament of the Commonwealth of Australia, Department of the Parliamentary Library, 18 September 1983), 7.

[38] "Final Report: Amungme Baseline Study," Appendix V.

[39] See statement by Paul Murphy in Richards, 14.

[40] Lesley McCulloch, "Trifungsi: The Role of the Indonesian Military in Business," presented to The International Conference on Soldiers in Business: Military as an Economic Actor (Jakarta: Bonn International Center for Conversion, 2000), 29.

[41] Lesley McCulloch, "Security Dilemma for Investors," *Jakarta Post*, 17 July 2000.

[42] McCulloch, "Trifungsi," 29.

[43] Julian Evans, "Indonesia's Next East Timor," *New Statesman*, 10 July 2000.

[44] See interview with Terry Doyle in "The Role of the Indonesian Military in Irian Jaya," 12-13.

[45] See, for example, Seattle Mennonite Church Freeport-McMoRan Shareholder Resolution: Freeport-McMoRan Copper and Gold Inc., 20 February 1997. Among other actions, shareholders called on Freeport management to "end company cooperation with the Indonesian military as soon as legally possible so that PT-FI does not provide food, transportation or shelter to Indonesian military personnel."

citing the connection between Freeport's financial and logistical assistance and human rights violations. For example, the Catholic Church of Jayapura reported that some acts of torture experienced by local indigenous Papuans during the 1994-95 period took place on a Freeport-operated bus and "in Freeport [shipping] containers, the Army Commander's Mess, the police station and the Freeport security post."[46] The Catholic Church report, based on eyewitness testimony, provides a highly detailed and disturbing account of the human rights abuses experienced by Amungme and other local indigenous people:

> "[P]hysical torture consisted of kicking in the belly, chest and head with army boots; beating with fists, rattan, [sic] sticks, rifle butts and stones; denial of food; kneeling with an iron bar in the knee hollows; standing for hours with a heavy weight on the head, shoulders, or cradled in the arms; stepping and stamping on hands; tying and shackling of thumbs, wrists and legs; sleeping on bare floors; stabbing, taping eyes shut; and forced labor in a weakened condition. The torture caused bleeding head wounds, swollen faces and hands, bruises, loss of consciousness and death because of a broken neck."[47]

In September 1995, Komnas HAM concluded that clear and identifiable human rights violations had occurred in and around Freeport's project area, including indiscriminate killings, torture, and inhuman or degrading treatment, unlawful arrest and arbitrary detention, disappearance, excessive surveillance, and destruction of property.[48] The commission noted that these violations "are directly connected to [the Indonesian army]…acting as protection for the mining business of PT Freeport Indonesia."[49] In response, company officials have claimed that Freeport's Contract of Work with the national government requires the provision of logistical support to the Indonesian military and police;[50] however, neither the 1967 nor 1991 COW makes explicit mention of any such stipulation. Therefore, the company's financial and logistical support for Indonesian security forces appears to have no legal basis. Yet Freeport recently signed a voluntary set of principles regarding security and human rights that presents as legitimate its continuing corporate financial support to the Indonesian military and police.[51]

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[46] Catholic Church of Jayapura, "Violations of Human Rights," 6.

[47] Ibid.

[48] Komnas HAM called on the Indonesian government and the military to investigate the human rights violations that it had identified and to prosecute those responsible; the Commission also recommended government compensation to the victims and their families. At the time of writing, Indonesian authorities have carried out investigations and prosecutions with regard to only one of the confirmed incidents, and no victims have received compensation.

[49] National Human Rights Commission of Indonesia, "Results of Monitoring and Investigating of Five Incidents at Timika and One Incident at Hoea, Irian Jaya During October 1994-June 1995" (Jakarta, 1995). In addition, commissioners involved in the investigation have called it incomplete for failing to examine involvement in the violations by Freeport itself. See "Freeport's Involvement has not yet been Investigated," *Kompas*, 2 October 1995 (English translation of original in Bahasa Indonesia; source: TAPOL).

[50] See statement of Paul Murphy in Richards, 12.

[51] See Voluntary Principles on Security and Human Rights, December 2000, in particular, section regarding Interactions between Companies and Public Security: "In cases where there is a need to supplement security provided by host governments, Companies may be required or expected to contribute to, or otherwise reimburse, the

Company management's assertion that Freeport is attempting to design and implement guidelines regarding its provision of such support has conspicuously lacked any reference to independent evaluation and/or monitoring.

Cultural/Environmental Impact and Development Aggression

Indonesia's 1945 Constitution effectively grants near-total control over land, water, and other natural resources to the national government. Although some articles of the Basic Agrarian Law and Mining and Forestry Laws refer to protection of *adat* (customary) land rights, these provisions are ambiguous at best in terms of defining the relationship between such rights and the *de facto* dominant powers of the state and its partner enterprises. For example, local communities are barred from using or disposing of land in a manner contrary to that which the government deems to be "in the national interest." Opposition to "development" has been treated as an act of subversion by Indonesian authorities, producing a chilling effect for indigenous communities who seek to retain their customary lands or to participate in decisionmaking regarding the use of those lands.[52]

It should be noted, however, that since the Constitution predates Papua's controversial annexation, it is questionable whether that document is applicable as the sole determinative law. International law protects the property regime in place at the time of a change of a sovereign, citizenship, or state succession.[53] Thus when Papua was integrated into Indonesia, the existing legal framework regarding traditional property rights was unaffected. It is completely conceivable that the traditional land tenure regime remains in effect and that, while in practice these traditional land rights have been infringed upon by both the Indonesian government and Freeport, the underlying legal regime has not been extinguished and can serve as a legitimate basis for action by the indigenous peoples.[54]

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costs of protecting Company facilities and personnel borne by public security. While public security is expected to act in a manner consistent with local and national laws as well as with human rights standards and international humanitarian law, within this context abuses may nevertheless occur." The voluntary agreement also condones the provision of lethal equipment to public and private security personnel; see section on Risk Assessment. The Voluntary Principles are available online at: http://www.icem.org/update/upd2000/secuhr.html.

[52] See Sudargo Gautama and Robert N. Hornick, An Introduction to Indonesian Law: Unity in Diversity (Bandung, 1972). The authors illustrate the weakness of local autonomy over land use: "The national government is always free, on behalf of the national interest, to intervene and to dispose of the village's community land in some way other than that determined by the village. Thus, for example, the government is free to clear forest areas on community land as part, say, of a national program to encourage transmigration … The village's *adat* right of disposal may not be raised as an obstacle to national policy" (94).

[53] Henkin, Pugh, Schachter and Smit, International Law (1993) at 289 citing the O'Connell, State Succession in Municipal Law and International Law (1967) 101-141.

[54] See Todd Howland, "*Rael v. Taylor* and the Colorado Constitution: How Human Rights Law Ensures Constitutional Protection in the Private Sphere," *Denver Journal of International Law & Policy* 26 (1997), 1; and Richard D. Garcia and Todd Howland, "Determining the Legitimacy of Spanish Land Grants in Colorado: Conflicting Values, Legal Pluralism, and Demystification of the Sangre De Cristo/Rael Case," *Chicano-Latino Law Review* 16 (1995), 39.

Examples in US courts also demonstrate this idea. See *United States v. Percheman*, 32 U.S. 51, 88 (1833); *Fisher v. Allen*, 3 Miss. (2 Howard) 611 (1837); *Tameling v. US Freehold and Emigration Co.*, 93 U.S. (3 Otto) 644, 658

Despite the government's control over land use and dispersal, Indonesian law explicity provides that (1) every person has the right to a good and healthy living environment; and (2) those managing the land have an obligation to prevent and abate environmental damage and pollution.[55] However, legal researchers cite Indonesia as a "classic example of a state with extensive environmental legislation going virtually unenforced due to political constraints."[56] Senior government officials, their family members and associates, and members of the armed forces[57] maintain vast holdings in mining, logging, and other natural resource operations throughout the country. The lack of an independent judiciary proves a primary obstacle to environmental and human rights protection,[58] as "the doctrine of separation of powers of government is specifically rejected. The already low level of judicial autonomy has been aggravated by the fact that the most senior posts in the Justice Ministry and the High Court have been filled since 1966 by graduates of the military law academy."[59]

Freeport has refused to respond to repeated shareholder requests for notices of any environmental violations received by the company, any penalties assessed, and any penalties paid since 1968 in relation to its mining operations in Papua. Nor were shareholders able to locate any such information in the Montgomery Watson 1999 External Environmental Audit of PT Freeport Indonesia Operations, suggesting that the Suharto government never held Freeport accountable for any of the environmental damage resulting from its mining operation.[60]

These findings are consistent with those of other researchers who have observed that the environmental impact assessments required under Indonesian law have

> "proven ineffective and have generally de-emphasized negative impacts and ignored mitigation measures of environmental harms. Because monitoring after assessment is unheard of, preparation of the assessment is generally the end of the environmental

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(1876); *United States v. Michigan*, 653 F. 2d 277, 279 (6th Cir. 1981); *People v. LeBlanc*, 248 N.W. 2d 199 (1976); and *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voight*, 700 F.2d 341 (7th Cir. 1983).

[55] See 1982 Basic Provisions for the Management of the Living Environment, Act 4, article 5.

[56] Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the Harvard Law School Human Rights Program, "Research Report to the Assistant Secretary-General in Response to the Special Rapporteur on Human Rights and Environment" (1996), 14.

[57] The Indonesian military plays a critical role in the economy, relying on its private business interests for an estimated two-thirds of its annual budget. The military has not hesitated to acquire and protect its assets by force. A lieutenant commander of Indonesia's elite, US-trained Kopassus special forces told a human rights investigator in Papua in 1998 that the military was carrying out operations in Papua's Central Highlands "to make sure that investors can come in." See RFK Center and the Institute for Human Rights Studies and Advocacy, "Incidents of Military Violence."

[58] For further information concerning the subordination of the Indonesian judiciary to the executive and the military, see, for example, US Department of State, "Country Reports on Human Rights Practices: Indonesia" (Washington: US Government Printing Office, January 1997-2001), preface.

[59] Jamie Mackie and Andrew MacIntyre, "Politics," in Indonesia's New Order: The Dynamics of Socio-Economic Transformation, ed. Hal Hill (Honolulu: U of Hawaii Press, 1994), 1, 23.

[60] Interview with David E. Ortman, Seattle Mennonite Church.

> management process. More recent legislation explicitly ties operating permits to implementation of management and monitoring plans, but also explicitly exempts a wide variety of developments."[61]

Of the few independent assessments of Freeport's environmental impact in Papua, one of the most telling was undertaken by the US Overseas Private Investment Corporation ("OPIC") in 1994. Citing the damage caused by Freeport's river disposal of waste known as "tailings" and concluding that the company's environmental impact was in violation of US regulations, OPIC revoked Freeport's $100 million political risk insurance in October 1995. OPIC stated that the mine had "created and continues to pose unreasonable or major environmental, health or safety hazards with respect to the rivers that are being impacted by the tailings, the surrounding terrestrial ecosystem, and the local inhabitants."[62]

A second independent assessment, a 1999 report by the Jayapura-based environmental organization YALI and the Indonesian Legal Aid Institute ("LBH"), indicated that five local indigenous Papuans had died as a result of copper poisoning incurred from eating mollusks and other living organisms from the river system affected by Freeport tailings. Two years earlier, Kamoro communities affected by mine tailings had written a letter to PTFI management, calling attention to the serious environmental and health impacts of the company's mining operations. The document, signed by 77 people from the Negeripi and Nawaripi communities, states:

> "The 87 families and 300 people of our villages [who] have suffered from the disposal of mining wastes and environmental damage caused by [Freeport] for over thirty years in this area protest to you strongly about the continuous pollution and devastation of our tribal lands . . . The floods and the toxic chemicals caused by the mining waste dumped in the River Muamiuwa and River Ajkwa have [made some places dry up and poisoned others]. The sago palms and the trees which provide wood for our homes and canoes are dead; the animals we hunt have fled; the traditional medicine plants have gone. Our culture is starting to die out and we are suffering from increasing serious health problems."[63]

The significance to the Amungme of their lands has been well described by the Amungme themselves. One Amungme author writes, "[The Amungme's] respect toward nature restrains them from causing any destruction to their environment. To destroy the environment is akin to their [own] destruction." He states, "To the Amungme, the most important thing is to maintain

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[61] Commission on Human Rights et al, "Research Report to the Assistant Secretary-General." See also Kylie Elston and Carol Warren, "Environmental Regulation in Indonesia," Asia Paper No. 3 (Murdoch, Western Australia: U of Western Australia Press in association with Asia Research Centre, 1994).

[62] US Overseas Private Investment Corporation, Letter to Freeport-McMoRan Copper & Gold Inc. (Washington: 10 October 1995); Robert Bryce, "Rough times for OPIC," *Austin Chronicle*, 21 February 1997.

[63] Kamoro community members from Negeripi and Nawaripi, "Protest Against Environmental Destruction and Rejection of Plans to Move People from their Tribal Lands" (Timika: 25 January 1997).

the harmony among the three elements of life: humankind, the natural environment and the spirit of the ancestors."[64] Another Amungme states, "The land is ourselves. The land is our mother."[65]

Amungme cosmology locates the most significant of its female earth spirits, Tu Ni Me Ni, as embodied in the surrounding landscape. Her head is in the mountains, her breasts and womb in the valleys, and the rivers are her milk. To the Amungme, Freeport's mining activities are killing their mother and polluting the milk on which they depend for sustenance—literally and spiritually. In addition, mountains are the home to which the spirits of Amungme ancestors go following death, and each peak is associated with a specific clan. Freeport's mining operations have destroyed the Ertsberg and Grasberg peaks, filled with mining waste alpine lakes linked with earth spirits, and paved over other sacred sites lower in the valleys.[66]

Freeport's management and the government of Indonesia have disregarded indigenous Papuans' deeply held connections to and reliance upon the natural environment. The economic and spiritual values of the land and other natural resources to the Amungme and Kamoro peoples have not been given consideration in corporate and government decisionmaking regarding Freeport's mining operation and other local "development" projects. In addition, the Kamoro and Amungme have been excluded from effective participation in the use, management, and conservation of these resources.[67]

Freeport's Responses

Freeport has taken steps to address some community concerns through the construction of schools and a clinic, job training and scholarships, special land recognition payments to the Amungme and Kamoro, and special preference for supporting local businesses developed by those communities. However, LEMASA and the region's three main Christian churches have issued explicit critiques of such community development programs, and these critiques are implicit in public statements made by community members.

Freeport's "One Percent Trust Fund Offer," which designates one percent of annual revenues for provincial development programs, has been one of the most controversial and damaging of such programs. Specifically, the Offer has been denounced for having a divisive impact amongst

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[64] Beanal, "Amungme," 84, 120.

[65] Pieter Yan Magal, a member of LEMASA, quoted in Richards, 9.

[66] See, for example, Ballard, "Signature."

[67] This type of action has been considered by courts to be a violation of the right to life: "An equally important facet of that right [to life] is the right to a livelihood because, no person can live without the means of living, that is the means of a livelihood. If the right to a livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means to a livelihood to the point of abrogation. Such deprivation would not only denude life of its effective content and meaningfulness but it would make life impossible to live. There is thus a close nexus between life and the means to a livelihood and as such that, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life." See *Olga Tellis and Others v. Bombay Municipal Corporation and Others*, 3 SCC [Supreme Court of India] 545 (1985).

indigenous communities and encouraging a dependency mentality. In a June 1996 resolution, LEMASA "unconditionally and absolutely" rejected Freeport's One Percent Offer, declaring that "with the help of God we shall never succumb to the offer of bribes, intimidation or [be] dishonestly induced into accepting PT. Freeport Indonesia's 'Settlement Agreement.'"[68]

US anthropologist Brigham Golden has noted that Freeport's largesse continues to be problematic as it undermines Papuan cultural norms. While Freeport dispenses huge sums, Amungme and Kamoro peoples are not in a position to reciprocate in an equally meaningful way. Under the Indonesian land tenure system, Golden explains, local people cannot give their land because the company and the government do not acknowledge that it was theirs to begin with. Thus Freeport has "never asked for the only other thing Papuans can give: forgiveness."[69] Golden, who has carried out fieldwork within Freeport's COW areas, states:

> "PT-FI will never be 'done' with [building its relationships with indigenous community members]. It can elect to engage this relationship with responsibility—not an easy path—or it can be haunted constantly by the tensions created by its irresponsibility. If there is a single affirmation in this report it is that the key to forming and developing this relationship is understanding the social dynamics of the region. PT-FI cannot hope to improve its effects without understanding the community in which it participates."[70]

Freeport's attempts to engage local Amungme and Kamoro in its community development paradigm have drawn criticism from indigenous leaders. Amungme leader Tom Beanal has written with some bitterness about his own acceptance—with LEMASA's backing—of positions as a PTFI Commissioner and as Vice President of the People's Development Foundation-Irian Jaya, a development organization established with One Percent funding. Citing the ongoing devastation to local communities, Beanal describes his cooperation with the company as a necessary evil. Through this lens, a clearer view is possible of the recent Memorandum of Understanding signed by Beanal, Kansius Asmareyao (a Kamoro community member), and Freeport, publicized in August 2000 as representing a watershed in community-company relations. While the announcement of the Memorandum helped to boost Freeport's stock rating by financial analysts, there is no indication that it represents a retreat from the local communities' commitment to holding Freeport accountable for its social and environmental impact. Beanal himself remains critical of the continuing dynamic of exploitation that Amungme and Kamoro experience, recently telling a journalist that "the Indonesian Government eats at the table with Freeport, they throw the leftover food on the floor and we Papuans have to fight for it."[71]

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[68] LEMASA Board of Directors-Regents, Resolution [rejecting PTFI One Percent Trust Fund Offer] (Timika: 29 June 1996). Community leaders cite the injury to local populations caused by Freeport's provision of monies through the One Percent Offer, including the deaths of 18 indigenous people because of inter-ethnic conflict sparked by the company's disbursement of monies against the expressly stated wishes of the local community.

[69] Brigham Golden quoted in Tim Dodd, "Risky Business: Freeport Dances to a New Tune," *Australian Financial Review*, 16 December 2000.

[70] Brigham Golden, "The Social Dynamics of the Bilogai Region and the Impact of PT Freeport Indonesia: A Baseline Study" (1998).

[71] Dodd.

These sentiments are shared by other Papuan leaders. Delegates to the provincial assembly barred Freeport representatives from attending a March 2001 forum on special autonomy, stating that the company had violated the rights of local peoples and was therefore partially responsible for the strong Papuan independence movement. Anton Kalinangame, Secretary of the assembly's Commission F on human rights and the environment, said that Freeport should apologize to the Papuan people for the company's past wrongs. Commission chair Augustin Iwanggin noted:

> "Freeport has demonstrated its brilliance and success at exploiting the wealth of this province with a lifestyle both luxurious and plentiful in the midst of the poverty and suffering of the Irian Jaya people. There are extremely sharp differences, like the earth to the sky. Irians are eating sago and tapioca while they indulge themselves with gourmet food and money. But Freeport itself has never recognised its own wrongs and improved the management of the company."[72]

In February 1999, Freeport's Board of Directors adopted a Social & Human Rights Policy, and subsequently instituted a system of internal human rights monitoring. This system established an internal reporting mechanism overseen by two company human rights officers, Dr. David Lowry, based at Freeport's headquarters in New Orleans, Louisiana, and Dr. Daniel Ajamiseba, based at PTFI's offices in Timika. The system also requires individual certification by all employees, on an annual basis, that they have neither witnessed nor engaged in human rights violations. However, according to a news report:

> "Interviews with Freeport employees…indicate that the human rights policy is being only partially implemented. Freeport's designated Papuan-born compliance officer, Daniel C. Ajamiseba, says that he doesn't have enough time even to count the bundles of forms that pour into his office, much less study them, because he has more important duties. 'This is 10% of my time,' says Ajamiseba. 'All of us are stretched so thin.'"[73]

The RFK Center and Amnesty International USA prepared a critique of the Social & Human Rights Policy and presented it to Freeport management in May 1999. Changes to the policy were to be considered by the Board at its February 2000 meeting; however, further information about any policy modifications that may have been adopted is unavailable at the time of writing. The Board did create the position of Special Counsel for Human Rights to Chairman James Robert (Jim Bob) Moffett, and appointee Gabrielle Kirk McDonald[74] visited Indonesia in June 2000; [75] however, the findings of her visit or any recommendations she may have made are also unavailable.

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[72] "Irian Jaya MPs Accuse Mining Company of Disegarding Human Rights," BBC Worldwide Monitoring, 3 April 2001. (Excerpted from report by *Kompas* Cyber Media website.)

[73] Michael Shari and Sheri Prasso, "Freeport-McMoRan: A Pit of Trouble; Can the Miners Make Peace with Critics of its West Papua Operation?" *Business Week*, 31 July 2000.

[74] According to Freeport filings with the US Security and Exchange Commission, the consultancy contract with Ms. McDonald, which consists of a $250,000 annual fee, began in November 1999 and will expire in 2002. Details are available online at http://www.sec.gov/edaux/formlynx.htm under Freeport's DEF filing, 22.

[75] RFK Center and ELSHAM meeting with Gabrielle K. McDonald and Dr. David Lowry of Freeport, 14 June 2000.

Community Actions Seeking Redress

Amungme and Kamoro community members have protested and sought redress for the environmental degradation and human rights abuses associated with Freeport's operations. The Amungme have been most visible in these efforts.

The earliest Amungme protests involved, in 1967, the posting of traditional anti-trespassing sticks around Freeport's highlands base camp. Later acts have included public demonstrations and raisings of the Papuan Morning Star flag, the flag adopted in 1961 by the territory's elected New Guinea Council. The most devastating act of property destruction—for Freeport and for the Amungme—was the 1977 cutting of the company's copper slurry pipeline.[76] According to the Amungme and company employees alike, that action was taken in direct retaliation for strafing by the Indonesian military of the Amungme village of Akimuga, which had been prompted by the local community's expulsion of two Indonesian police officers. The pipeline sabotage triggered a massive assault by the Indonesian military on Amungme communities in the highlands and also in the lowland settlement of Kwamki. The military's attack, and its subsequent occupation of Akimuga, resulted in scores of Amungme deaths due to killings by soldiers and starvation when villagers were forced to flee their homes.

In 1996, Amungme community members brought two civil lawsuits against Freeport in the United States—one in US federal court, the other in the state court of Louisiana where the company is headquartered.[77] Filed on grounds of human rights abuse, personal injury, environmental damages, and cultural genocide, thousands of indigenous community members formally supported the suits, as expressed through LEMASA resolutions and signed statements by individuals wishing to join the suits.[78]

During the 1990s, the Amungme and Kamoro chronicled and communicated their concerns and demands in a variety of formal letters, resolutions, public statements, and media interviews.[79] Over the course of their struggle, local landowners have appealed to the Indonesian government, military and civil society institutions, the UN, US courts and policymakers, and directly to Freeport management and shareholders in an effort to be heard and to have their concerns

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[76] See footnote 37.

[77] *Beanal v. Freeport-McMoRan Copper & Gold Inc.* (a $6 billion lawsuit filed in US Federal District Court on 29 April 1996) and *Alomang v. Freeport-McMoRan Copper & Gold Inc.* (filed in the Louisiana state court system on 19 June 1996). The federal suit was not successful. The Louisiana State Supreme Court has upheld the right of Ms. Alomang to sue Freeport in Louisiana state court. However, Michael Bagneris, the New Orleans district court judge, dismissed the suit on 21 March 2000, on the grounds that the plaintiff had not proven that PT Freeport Indonesia is the "legal alter ego" of Freeport-McMoRan Copper & Gold Inc.

[78] See LEMASA, "The Indonesian Armed Forces."

[79] Some of the most definitive and comprehensive statements by local communities are the LEMASA, "Amungme People's Response to National Commission on Human Rights Findings Announced on 22 September 1995;" and a September 1997 statement submitted by LEMASA to Komnas HAM. That four-page document, entitled "The Opinion of LEMASA Concerning the Human Rights Situation and Prolonged Conflict in the Area of Operation of PT Freeport Indonesia, Mimika, Irian Jaya," outlines in detail the communities' concerns, identifying the causes of human rights and environmental problems and the sources of the conflict between local people and Freeport.

effectively addressed. The fact that their struggle continues, now in its fourth decade, underscores the urgent need for more successful mechanisms for safeguarding the rights of indigenous communities endangered by large-scale mining operations.

RECOMMENDATIONS

Further Investigation Needed

There is a critical need for independent human rights monitors to investigate further the full range of human rights violations identified in this document. Investigations ought to be conducted with a view toward criminal and civil prosecution of those responsible and consideration of various concrete options for compensation for victims.

It is also important that a fully independent investigation should examine the roles of PTFI and Freeport in the human rights violations that have occurred in the COW areas. It is critical that Freeport fully cooperate with independent investigations and monitoring of its operations. One credible option for independent investigation of human rights violations in the Freeport COW areas would be a visit by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. The Rapporteur should focus on deaths in custody due to excessive use of force by law enforcement officials and deaths due to attacks by the Indonesian military, paramilitary police force BRIMOB (mobile brigade), and/or Freeport's private security force. Other UN special rapporteurs and representatives could also make valuable contributions to the documentation of human rights concerns in the area.

Further study and action are required to determine how best the indigenous peoples of Papua can assert their land claims, given that their traditional property rights have been violated but apparently never extinguished. Additional inquiry could usefully explore how traditional land rights were not extinguished by the Dutch, through the Act of Free Choice, or by Indonesia, and also which fora might be available to the Papuans to assert their unextinguished traditional title.[80]

Recommendations to Freeport

Freeport should seek to uphold the full range of internationally recognized human rights protections in all of its operations and policies. Freeport/PTFI should allow and cooperate with independent monitoring of the COW areas and support government efforts to investigate human rights violations and prosecute offenders.

Freeport should acknowledge the past human rights violations that have occurred in its operations areas and seek new forms of mediation with the local communities to address their concerns and complaints.

Freeport should end its financial support for the Indonesian military and police personnel stationed in its COW areas. The company should develop clear rules governing the use of and/or

[80] While Indonesian courts may seem the logical arena for such legal questions, they may not be realistic avenues for redress given political interference with judicial independence (see footnote 56).

engagement with state security forces that include an effective prohibition against hiring security personnel who have been responsible for human rights violations.

Freeport should ensure that all company security arrangements are designed and implemented to protect human rights and to be consistent with international standards for law enforcement. Any security personnel employed or under contract should receive adequate training, including training in international human rights and law enforcement standards. There should also be a clearly established procedure to ensure that all complaints about security procedures or personnel are promptly and independently investigated. Freeport's policies should include strict monitoring of the use of all company equipment to ensure that the equipment is not used to commit human rights violations.

Freeport should amend its Contract of Work with the Government of Indonesia to fully respect international human rights laws. In particular, revisions should include the elimination of the provisions giving the company the right to resettle local populations and should commit the company's operations to full oversight and regulation by the Ministry of Environment.

Freeport should limit its operations in ways that would effectively protect the human rights of local communities and the cultural and environmental surroundings of the area. Company decisionmaking should be bound by a transparent and honest assessment of the impact of operations. These assessments should always involve the participation of local community representatives, appropriate NGOs, and academic experts, and should adhere to "best practice" processes outlined in international human rights instruments.

Decisions about operations should respect the results of genuine consultation processes with the local communities. Such consultation should follow a process satisfactory to and designed in cooperation with LEMASA and/or representatives of other affected local communities. The company should demonstrate a genuine "political will" to improve its consultation process with local communities by hiring well-qualified and trained staff in its community affairs department and giving that department a real say in the company's overall operations in the area.

Freeport should make revisions to its Social & Human Rights Policy that would (1) protect employees and non-employees who report human rights violations; (2) establish internal reporting procedures that will ensure this protection; and (3) inform all employees about these procedures fully and on a regular basis. The company should also report credible accusations of human rights violations to the appropriate government authorities as well as to local and international human rights organizations.

The Freeport Social & Human Rights Policy should also include a plan for evaluation, including assessments by independent groups, and improvement of implementation. Freeport should strengthen its internal mechanisms for monitoring and reporting on human rights concerns. The company's compliance record with the Social & Human Rights Policy should be documented and made publicly available.

Recommendations to the Government of Indonesia

The Indonesian military presence in Papua has been a significant factor in the serious human rights violations that have taken place in the area. In order to prevent future atrocities, the

Government of Indonesia should undertake critical reforms of the military including (1) instituting meaningful civilian control over the armed forces; (2) effectively changing the mandate to defending the country's borders rather than providing internal security; (3) making the military budget transparent; and (4) ending impunity for those responsible for past human rights violations.

The Government of Indonesia should adopt and ratify the primary international human rights conventions, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Government should also ratify International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples and implement "best practices," as set forth in that instrument and t he draft Declaration on the Rights of Indigenous Peoples, in its economic development policies. Government programs and policies should be focused on sustainable development and respect for the rights of the Amungme, Kamoro, and other indigenous peoples who are or could be affected by mining in Papua. Respected local community leaders—including women, farmers, fisher folk, students and other key sectors of society—should play a central role in dialogue about appropriate programs and policies.

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APPENDIX A

Terms of Reference
Independent Human Rights Assessment
PT Freeport Indonesia Contract of Work Areas

The Robert F. Kennedy Memorial Center for Human Rights ("RFK Center"), the Indonesian Legal Aid Foundation (YLBHI) and the Institute for Human Rights Study and Advocacy (ELSHAM) – in conjunction with Indonesia's National Commission on Human Rights (Komnas HAM) and international experts – will organize and conduct a human rights assessment in the Irian Jaya district of Mimika, the location of the Grasberg mine, owned and operated by PT Freeport Indonesia, a subsidiary of the US-based mining company Freeport-McMoRan Copper & Gold Inc. ("Freeport").

The assessment is the result of a request by US shareholders (the Interfaith Center on Corporate Responsibility and the Seattle Mennonite Church) in Freeport – and is in keeping with the long-standing call from local indigenous communities, as represented by the Amungme Tribal Council (LEMASA) – for an independent human rights assessment. There have been prior human rights assessments conducted by the Catholic Church of Jayapura (1995), Indonesia's National Commission on Human Rights (1995) and by Australian, United States and New Zealand diplomats (1995 and later).

This assessment, which will result in a public report, is intended to serve as the first independent human rights assessment to examine: 1) conditions -- currently and historically -- in the area; 2) the impact of mining operations on local communities; and 3) any company involvement in specific human rights violations.

The assessment is intended to advance processes of conflict resolution between local communities and Freeport, and overall, to contribute to initiatives by Komnas HAM, the Indonesian government and Indonesian nongovernmental organizations to examine and address human rights concerns in Irian Jaya and to promote peaceful dialogue. This undertaking also is intended to strengthen the principles of transparency in business operations and access for independent monitors. The assessment is also designed to serve as a model to demonstrate how corporations can cooperate with government agencies and human rights organizations to promote protection of human rights within their spheres of influence.

A team of human rights professionals and regional experts, working as a team coordinated by the RFK Center, YLBHI and ELSHAM will carry out the assessment through a long-term, multi-phase effort that will include a preliminary planning visit, followed by field assessment scheduled to take place in late 1999/early 2000. The team will conduct the assessment based on the protections guaranteed Indonesian citizens under Indonesian law and on the human rights guidelines issued in December 1995 by the Indonesian Armed Forces military commander for all soldiers and officers in the Kodam VIII/Trikora (now Kodam XVII) regional command, which includes Irian Jaya. The team will also refer to the internationally recognized human rights standards enshrined in the United Nations Universal Declaration of Human Rights, which is considered under international law to be binding on all states, and in other UN treaties, declarations, principles and codes of conduct.

The team will carry out its field assessment in the PT Freeport Indonesia COW A mining lease area, its principle project support area (including Timika) and in areas that have been part of the company's exploration concession (COW B).

In addition to interviews with members of the Amungme, Kamoro and other local communities resident in the area, the team plans to participate in related meetings in Jayapura and Jakarta with members of Indonesian civil society and the Indonesian government, Freeport management and staff, and other individuals who are in a position to inform the team's assessment.

Freeport has agreed formally to cooperate with the team to accomplish assessment activities in the company's COW areas and has indicated its agreement in two letters to Indonesia's Director General of Mines. Tom Beanal, Chair of LEMASA, and other local community members have welcomed the independent human rights assessment as have Irian Jaya's three main Christian churches (GKI, GKII and the Catholic Church). The United States Department of State has also communicated formally its support for the assessment to Indonesia's Minister of Foreign Affairs. The Dutch bank ABN AMRO, a primary financier of Freeport's Irian Jaya operations, has also called for an independent assessment of the mine's social and environmental impact.

APPENDIX A

Terms of Reference (Bahasa Indonesia)
Acuan Asesmen Independen Hak Asasi Manusia
Di Wilayah Kontrak Karya PT. Freeport Indonesia

Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI), Lembaga Study dan Advokasi Hak Asasi Manusia (ELS-HAM) dan Robert Kennedy Memorial Center for Human Rights (RFKMCHR) berkerja sama dengan Komnas HAM, organisasi-organisasi HAM Indonesia dan pakar-pakar internasional untuk menyelenggarakan suatu asesmen di HAM di Kabupaten Mimika-Irian Jaya, yaitu di lokasi penambangan Grasberg, yang dimiliki dan dikelola oleh PT. Freeport Indonesia, suatu anak perusahaan pertambangan Amerika Serikat yaitu Freeport McMoRan Copper and Gold, Inc. ("Freeport").

Kegiatan asesmen ini merupakan hasil permintaan dari para pemegang saham Freeport di Amerika (The Interfaith Center on Corporate Responsibility dan The Seattle Menonite Church), dan permintaan masyarakat adat setempat yang diwakili oleh Lembaga Musyawarah Adat Suku Amungme (LEMASA), sebagai suatu asesmen Hak Asasi Manusia yang independen. Sebelumnya sudah ada asesmen Hak Asasi Manusia yang diselenggarakan oleh Gereja Katolik Irian Jaya (1995), Komnas HAM (1995) dan oleh diplomat-diplomat Australia, Amerika Serikat dan Selandia Baru (1995 dan setelahnya).

Asesmen ini, hasilnya yang akan dimuat dalam suatu laporan terbuka, sebagai asesmen Hak Asasi Manusia yang independen dan yang akan memperhatikan: (1) kondisi wilayah tersebut, baik sebagaimana adanya sekarang ini maupun dari segi sejarahnya; (2) dampak operasi-operasi penambangan terhadap masyarakat-masyarakat setempat; dan (3) keterlibatan perusahaan dalam pelanggaran HAM.

Asesmen ini bertujuan pada khususnya untuk mendukung proses penyelesaian konflik antara masyarakat lokal dengan Freeport, dan pada umunya untuk mendukung langkah-langkah yang sudah dimulai oleh Komnas HAM, pemerintah Indonesia dan LSM-LSM Indonesia dalam memperhatikan dan menyatakan kepedulian pada HAM di Irian Jaya untuk mendorong dialog yang bersifat damai. Proses ini juga ditujukan untuk memperkuat prinsip-prinsip transparansi dalam kegiatan perusahaan dan membuka akses bagi pemantau independen. Asesmen ini juga dirancang untuk digunakan sebagai suatu model untuk memperlihatkan bahwa perusahaan-perusahaan bisa bekerja sama dengan lembaga-lembaga pemerintah dan organisasi-organisasi HAM untuk menggalakan perlindungan HAM dalam cakupan pengaruh mereka.

Suatu tim yang terdiri dari para profesional di bidang HAM dan para pakar regional yang dikoordinasi oleh YLBHI, ELS-HAM dan RFKMCHR, akan melaksanakan asesmen melalui suatu kerja jangka panjang dalam beberapa tahap yang akan meliputi tahap kunjungan penjajakan awal dan diikuti dengan asesmen lapangan yang dijadwalkan akan dilaksanakan akhir 1999/awal 2000. Tim ini akan melaksanakan asesmennya berdasarkan hukum Indonesia yang memberikan jaminan perlindungan bagi warga Indonesia dan pada petunjuk pelaksanaan HAM yang dikeluarkan oleh panglima TNI pada Desember 1995 yang diperuntukan bagi seluruh prajurit dan pejabat di lingkungan Kodam VIII/Trikora (sekarang Kodam XVII), yang juga meliputi Irian Jaya. Tim ini juga akan merujuk pada standar-standar HAM internasional yang tercantum dalam deklarasi Universal HAM, yang diangkat oleh hukum internasional sebagai

suatu norma yang mengikat seluruh negara, dan dalam traktat-traktat, deklarasi-deklarasi, prinsip-prinsip dan ketentuan pelaksanaan PBB lainnya.

Tim ini akan melaksanakan asesmen lapangan di areal penambangan PT. Freeport Indonesia, yaitu di areal pendukung proyek utama, termasuk Timika (Areal Kontrak Karya A) dan areal-areal lain yang termasuk areal konsesi eksplorasi perusahaan tersebut dan yang termasuk dalam areal eksplorasi (Areal Kontrak Karya B) sekarang.

Selain mewawancarai masyarakat Amungme, Kamoro dan masyarakat lain yang berdiam di areal tersebut, tim ini merencanakan pula untuk bertemu dengan pemerintah Indonesia, staf manajemen PT. Freeport, para wakil dari masyarakat (madani), dan orang-orang lainnya yang bisa memberikan informasi untuk kegiatan Tim ini baik di Irian Jaya, Jakarta maupun di tempat lain.

Freeport telah memberikan persetujuan secara resmi untuk bekerja sama dengan Tim untuk menyukseskan kegiatan asesmen ini di areal kontrak karyanya seperti telah dinyatakan dalam dua suratnya kepada Direktur Jenderal Pertambangan RI. Tom Beanal, Ketua LEMASA, dan anggota-anggota masyarakat lokal lainnya telah menyatakan menerima dengan tangan terbuka atas kegiatan asesmen HAM ini, sebagaimana halnya juga tiga organisasi Gereja utama di Irian Jaya (GKI, GKII, dan Gereja Katolik). Departemen Luar Negeri Amerika Serikat juga telah mengkomunikasikan dukungannya secara resmi kepada menteri Luar Negeri RI. Bank ABN/AMRO di Belanda, yang merupakan penyandang dana utama bagi kegiatan Freeport di Irian Jaya juga telah menghimbau adanya suatu asesmen independen untuk mengkaji dampak sosial dan lingkungan penambangan ini.

APPENDIX A

Team Members
Independent Human Rights Assessment
PT Freeport Indonesia Contract of Work Areas

Ms. Abigail Abrash – Consultant, Robert F. Kennedy Memorial Center for Human Rights

Dr. Chris Ballard – Research Fellow, Resource Management in Asia Pacific Project, Research School of Pacific and Asian Studies, Australian National University

Dr. Stephanie Fried – Senior Staff Scientist, Environmental Defense Fund, and Fellow, East-West Center

Ms. Sophie Grig – Campaigns Officer, Survival International

Mr. John Rumbiak – Supervisor, Institute for Human Rights Studies and Advocacy, Jayapura

Brother Theo van den Broek, OFM – Director, Office of Justice and Peace, Catholic Diocese of Jayapura

Mr. Bambang Widjojanto – Chairperson, Indonesian Legal Aid Foundation

APPENDIX A

Team Member Biographies (as of September 1999)
Independent Human Rights Assessment
PT Freeport Indonesia Contract of Work Areas

Ms. Abigail Abrash– Ms. Abrash is a consultant to the Robert F. Kennedy Memorial Center for Human Rights, where she served as Program Director for Asia and the Middle East from 1993 to 1999. Since 1988, Ms. Abrash has worked as a human rights researcher, trainer, advocate and educator with institutions including James Madison University and the International Human Rights Law Group. She has conducted in-depth, human rights fact-finding missions to Indonesia and reported on concerns relating to the human rights impact of development projects there, including PT Freeport Indonesia's mining operations in Papua. Her public speaking on human rights issues in Indonesia includes media interviews with the Australian Broadcasting Corporation, National Public Radio, and "The NewsHour with Jim Lehrer." In June 1999, Ms. Abrash served as an election observer in Papua with the National Democratic Institute for International Affairs and the Carter Center. Ms. Abrash is a graduate of the University of Pennsylvania and the London School of Economics and Political Science.

Dr. Chris Ballard – Dr. Chris Ballard is a Research Fellow in the project on Resource Management in Asia-Pacific, located in the Research School of Pacific and Asian Studies, of the Australian National University, Canberra. He has conducted field research on agricultural systems, oral history, and the relationships between mining companies and local communities in Papua New Guinea and Indonesia since 1984, spending a total of some 5 years living with village communities. He has been involved since 1994 in assisting the Amungme and Kamoro communities of Papua to arrive at an equitable agreement with the mining company PT Freeport Indonesia.

Dr. Stephanie Gorson Fried – Stephanie Fried, Ph.D., is a senior scientist and Asia specialist at the Environmental Defense Fund, a non-profit organization with more than 300,000 members. Dr. Fried is also a Fellow at the East West Center, which was established by the US Congress in 1960 to promote better relations and understanding between the peoples of the United States and the Asia-Pacific region. Twice a Fulbright Scholar, she has conducted research on development, forestry, agriculture, indigenous systems of resource management, and human rights in Indonesia since 1985. Fluent in Indonesian, she has lived and worked in Indonesia for more than five years, including relatively remote sites in the Outer Islands. Dr. Fried has conducted research, training, and/or given lectures in Indonesia under the sponsorship of the Ministry of Forestry, Mulawarman University/GTZ, Udayana University, Bappeda/GTZ, Gadjah Mada University, World Wildlife Fund, the Ford Foundation, and the Center for International Forestry Research (CIFOR).

Ms. Sophie Grig – Ms. Grig has worked, since 1995, as a campaigns officer with Survival International, a worldwide organization supporting tribal peoples. Ms. Grig, who holds a postgraduate degree in Anthropology from Cambridge University, has conducted field work research with tribal peoples in South America and Asia, including Indonesia, and for four years has directed Survival International's work regarding human rights concerns affecting tribal peoples in Papua.

Mr. John Rumbiak – Mr. Rumbiak serves as supervisor of the Institute for Human Rights Studies and Advocacy in Jayapura. He has worked on community development and human rights issues in Papua for more than a decade, including serving on the staff of Papua's Rural Community Development Foundation (*Yayasan Pengembangan Masyarakat Desa* or YPMD). A recent graduate of Columbia University's Human Rights Advocates Program, Mr. Rumbiak also holds a degree from Universitas Cenderawasih. He has lectured and written extensively on the situation of indigenous people in Papua, including communities living in and around the project area of PT Freeport Indonesia.

Brother Theo van den Broek, OFM - Mr. van den Broek serves as Director of the Catholic Diocese of Jayapura's Office of Justice and Peace. A member of the Franciscan religious order, he holds a degree in Non-Western Sociology from Rijks Univesiteit Leiden in the Netherlands and has lived and worked in Papua since 1975. Mr. van den Broek has specialized in socio-economic development work, including a special focus on the problems of relations between PT Freeport Indonesia and the indigenous communities in and around the mining area. He has authored or contributed to several major reports concerning human rights issues in Papua, including "Violations of Human Rights in the Timika Area of Irian Jaya, Indonesia," published by the Catholic Church of Jayapura in August 1995, and the Timika notes series of 1996.

Mr. Bambang Widjojanto – Mr. Widjojanto serves as chairperson of the Jakarta-based Indonesian Legal Aid Foundation (*Yayasan Lembaga Bantuan Hukum Indonesia* or YLBHI). Mr. Widjojanto, a lawyer, previously worked for YLBHI as Operations Director and served for seven years as director of the organization's Papua branch office. Honored with the 1993 Robert F. Kennedy Human Rights Award for his defense of the rights of Papua's indigenous communities, Mr. Widjojanto has also represented high-profile civil and political rights cases, including victims of torture and disappearance.

APPENDIX B

Examples of Human Rights Violations

In addition to individual cases of killings and torture detailed in already published human rights reports referenced elsewhere in this document, there are solid and credible reports that other such violations have occurred within the COWs.

One example is the killing of Amungme community member Naranebalan Anggaibak. According to eyewitness accounts, Indonesian troops opened fire with live ammunition on Amungme and other highland Papuans as indigenous community members gathered peacefully at dawn on Christmas Day, 1994, to raise the Morning Star flag. Mr. Anggaibak was injured in the military attack. Putting a noose around his neck, Indonesian military personnel tied Mr. Anggaibak to the back of a car and dragged him to the Army checkpoint near the Amungme village of Banti and the Freeport mining town of Tembagapura. Mr. Anggaibak was dead upon arrival, and military personnel suspended his body from the ankles on a post across from the checkpoint. Soldiers proceeded to heckle indigenous villagers who passed by the checkpoint—and Mr. Anggaibak's body—on their way to church services, asking community members whose dog, whose pig Mr. Anggaibak was. The military also refused to allow Mr. Anggaibak's relatives to bury his corpse. The military reportedly disposed of his body by throwing it into a ravine along the road between Tembagapura and Timika, where the military has also thrown the corpses of other indigenous Papuans killed by soldiers. Source: Dr. Chris Ballard, "The Signature of Terror: Violence, Memory and Landscape at Freeport," in Inscribed Landscapes: Marking and Making Place, ed. Bruno David and Meredith Wilson (Honolulu: U of Hawaii Press, 2001).

Rape

According to LEMASA, Indonesian soldiers from Battalion 732 raped five Papuan women in Agandi and Hoea in June 1995. Source: LEMASA, "The Amungme Tribal Council's Resolution on the 50th Anniversary of the Universal Declaration of Human Rights and its Implementation on Papuan Soil (Timika: December 10, 1998).

According to newspaper reports, Amungme community leader Yosepha Alomang has also testified to rapes and killings by Indonesian soldiers: "When I was a teenager I saw armed strangers come to my village, killing my parents and the local population. In fact, men in green uniforms raped me. Now, I know they were soldiers." Source: "Timika: Where's Mama?" *Tempo*, Regions No. 27/I (13-19 March 2001).

The UN Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, concluded in her report to the UN Commission on Human Rights that Indonesian security forces had used rape "as an instrument of torture and intimidation" in Papua. The Special Rapporteur cited some of the cases referenced above and recommended that "a thorough and impartial investigation into the use of rape as a method of torture and intimidation by the military in Irian Jaya is imperative." Source: Radhika Coomaraswamy, "Mission to Indonesia and East Timor on the Issue of Violence Against Women: Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences," UN Economic and Social Council, E/CN.4/1999/68/Add.3 (January 21, 1999).

Restrictions on Freedom of Movement

Local indigenous community members who seek to go to and from Amungme villages in the mountains near Tembagapura and Timika have been required to obtain travel permits signed by the village head (*kepala desa*), the village military commander, and Kopassus officers. Security forces have blocked local access by Amungme within the COW areas—including access to community gardens and forest areas used for hunting and collection of traditional housing materials and medicines.

Indonesian security forces have also blocked international travel by members of the Amungme community. For example, in May 1998, Indonesian security forces barred Ms. Alomang from traveling to London, where she was scheduled to speak about human rights abuses and other problems at Freeport to Rio Tinto shareholders and management at the company's Annual General Meeting. Source: Survival International, "Rio Tinto Critic Gagged" (London: Survival International, May 1998).

Interference with Access to Legal Representation

In September 1996, Indonesian police in Papua deported and blacklisted US-based attorney Martin J. Regan, prohibiting him from meeting in Timika with his clients, Amungme community leaders Tom Beanal and Yosepha Alomang. Sources: Personal communication with M.J. Regan; and Robert Bryce, "Plaintiffs in Freeport Suit Are Harassed," *Austin Chronicle*, 27 September 1996. In addition, according to an August 1996 report from LEMASA, the Indonesian Armed Forces "forcefully took away the claim forms (against Freeport) signed by the indigenous people of Timika for their attorney, Martin Regan, in New Orleans." The report explains that the military and police took the forms from a LEMASA staffperson and refused to return the documents, despite the staffperson's insistence that the claim forms were legal and that it was the peoples' right to sue Freeport. According to an eyewitness quoted in the report, the military commander said it was necessary to study the documents to determine whether or not they "relate to any political activity."

LEMASA also states in the report that "Freeport cooperates with the Indonesian Armed Forces (ABRI) and government to terrorise, intimdate, divide and conquer the indigenous people of Timika. Those various human rights abuses done by Freeport and its agents are aimed at threatening the indigenous peoples so that they're afraid and will withdraw (stop) their lawsuit claim agains the American gigantic mining company and will accept the One Percent Turst Fund offered by the company which was already rejected by the people." Source: LEMASA, "The Indonesian Armed Forces in Timika Forcefully Took Away the People's Document" (Timika: 14 August 1996).

Forced Resettlement of Communities

In addition to persistent and sporadic assaults on individuals by the Indonesian military, the Amungme and Kamoro have experienced a series of large-scale attacks on their communities. These incidents have included the military's 1977 strafing and occupation of Akimuga village; its destruction of Kwamki village and of settlements in the Wa Valley, including Banti; the 1980 forced relocation of highland communities to the lowland village of Kwamki Lama, a move that reportedly resulted in the malaria deaths of 216 children; the 1993 forced relocation of Kamoro

from Keraka island; and 1994 military operations at Tsinga and Hoea villages. The UN Commission on Human Rights has stated unequivocally that the "practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing." Sources: UNCHR Resolution 1993/77; "Forced Evictions and Human Rights," Fact Sheet No. 25, Centre for Human Rights, UN Office at Geneva, GE.96-16191-May 1996-14,895.