

Peace Brigades International  
Indonesia Project  
Quarterly Bulletin October 2010



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## Reducing Emissions from Deforestation, Forest Degradation and the Merauke Integrated Food and Energy Estate

Environmental degradation and resource exploitation is considered to be one of the biggest root causes of human rights violations in the provinces of Papua and West Papua. This third Quarterly Bulletin produced by the PBI Indonesia Project focuses on an initiative Reduced Emissions from Deforestation and Forest Degradation which is being promoted at the United Nations and by the President of Indonesia Susilo Bambang Yudhyono. With Norway having recently pledged US \$1 billion to support Indonesia and the two year logging moratorium announced by the Government it has proven to have the capacity to promote major change. More importantly through the provision of Free Prior and Informed Consent civil society organisations have the opportunity to input into this scheme.

While the REDD scheme is being developed in Indonesia there are concurrent plans which envisages the creation of a 1.2 million hectare Integrated Food and Energy Estate which will be located in Merauke regency, Papua Province. With a figure slightly in excess of six billion dollars being earmarked for investment there are many valid concerns about corruption and exploitation given the limited capacities of the local government.

In recognition of PBI principles of non-partisanship, opinions, articles and interviews were elicited from a diverse range of individuals closely involved in both of these processes in an attempt to let those involved express their views.

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## **A strategic review of the Indonesia Project**

In June 2010, the international council and representatives from the Indonesia project met to discuss the future of PBI activities in Indonesia. After much consideration of the present political atmosphere and restrictive administration practices towards foreign NGOs it was felt that a comprehensive review of strategy was necessary. The review is expected to be completed in early November and will be coordinated by Shaun Kirvan who has previously worked as a volunteer for PBI in Columbia from 2000-2001 followed by a long experience carrying out consultancies in the field of protection and Human Rights.

As well as bringing this wide range of knowledge, Shaun will be harnessing the talents of experts in political analysis, advocacy and protection to assist in the study. Central to the strategic review process will be the findings of Indonesia Project volunteers past and present as well as the clients who are given the opportunity to voice their concerns as well as their perceptions of protection needs.

### **Why is the review necessary?**

PBI has now worked in Indonesia for over ten years and while the Human rights situation still remains a concern; within this period there have been remarkable changes both economically and politically in the region. These changes arguably have had a profound effect on international organisations as well as the needs of our clients. To remain effective to carry out protection work in this new environment and deal with the challenges that come with it, PBI feels the need to adapt its activities to this emerging situation and provide alternatives to issues that have arisen out of government restrictions, in particular in conflict-prone or politically unstable areas. Besides feeding into strategy, this review aims to strengthen the project and achieve harmonisation with the international PBI network.

The ever changing geo-political situation demands that organisations working in the field of human rights take time out to reflect and to consider how political changes impact on their core work. In such a way the review will provide additional benefits that can be scaled up for the good of all PBI projects in the form of a lessons learnt document.

In our next bulletin the review recommendations will have already been put in place and we will endeavor to keep all those that have been involved in the project over the years and have a keen interest in the work of our clients' organisations informed of the key changes in the Indonesia project and the impact for our clients.

# REDD & communal land rights

Disputes over land ownership are the basis of many violent conflicts throughout Indonesia.<sup>1</sup> Land ownership and tenure rights, especially in regards to indigenous and communal land which are the subject of much confusion in Indonesia; government laws and regulations often contradict one another, leaving local communities vulnerable to dispossession and economic marginalisation. This is particularly true for tens of millions of Indonesians living in customary communities whose livelihoods depend upon forest areas, which cover 70% of Indonesian national territory.<sup>2</sup> Indigenous communities governed by 'adat' (customary or traditional law) are known as customary communities in Indonesia. REDD, or Reduced Emissions from Deforestation and Forest Degradation, is a plan designed to incentivise the preservation of forests in an effort to reduce global emissions of greenhouse gasses. REDD programs have a potentially enormous impact on indigenous forest communities. If done right, REDD can both reduce global greenhouse gas emissions, lessening the impact of climate

change on vulnerable communities, and can also preserve the forests upon which many such communities depend. However, If REDD schemes move forward without a concurrent drive to untangle the web of conflicting government regulation on customary land rights, fail to obtain the Free Prior Informed Consent (FPIC) of local stakeholders, fail to include provisions for the recognition and preservation of indigenous land rights, then REDD will undoubtedly have the unintended impact of dispossessing forest communities of their livelihoods and their land thereby creating and exacerbating local conflicts.

## Conflicting legislation

The expansion of REDD programs entails many risks for indigenous forest communities. In order to best understand these risks it is necessary to first have a basic understanding of the development of the complex web of overlapping and often contradictory legislation and policy on land ownership/

tenure rights. Of particular concern is how these rules apply to indigenous communities governed by adat.

Agrarian based land reform began in earnest upon Indonesia's independence from The Netherlands in 1945 and was largely based on the 1945 Constitution and the Agrarian Law of 1960. The reform was aimed at reclaiming land previously held by the Dutch and foreign firms for redistribution to Indonesian peasant farmers. However, the New Order's rise to power in 1965 effectively ended and indeed reversed the trend in favor of policies designed specifically to attract private capital investment. The drive towards privatisation has proven especially damaging for peasant farmers and indigenous groups because to this day most do not hold registered titles for their land, despite having worked on it for generations. Consequently, when private foreign and domestic investors seek to purchase traditionally held land, such communities and individuals are in a particularly weak bargaining positions and are often faced with the stark choice to either accept below market value premiums for their land or be forcibly removed by the state if they refuse to sell, because unregistered land is legally owned by the state.<sup>3</sup> Marcus Colchester of the Forest Peoples Program writes;

<sup>1</sup> Karrie McLaughlin and Ari Perdana, Conflict and Dispute Resolution in Indonesia: Information from the Governance and Dispute Resolution in Indonesia," The World Bank, pp.29

<sup>2</sup> Down To Earth, REDD Regulations, Down to Earth No.82, September 2009

<sup>3</sup> Rosser, Roesad, Edwin, Indonesia: the politics of inclusion, IDS Working Paper 229, July 2004.

"Custom (adat) is respected in the Indonesian constitution and orders much of people's social life, especially in rural areas. However, the formal legal framework and current land tenure regime offer people very little security. Less than 40 percent of rural land holdings in Indonesia are titled, a proportion which is declining year on year as new holdings are created faster than the national land office can survey and register them. This means that most lands are held under informal or customary tenures, yet the unclear procedures for recognising customary tenures are barely applied."<sup>4</sup>

Indeed it is true that the 1945 constitution recognises indigenous communities and guarantees their rights; however subsequent legislation including the controversial 1999 forestry law upon which the majority of legislation governing REDD is based, fails to recognise indigenous communities or their rights to their lands.<sup>5</sup> It is

<sup>4</sup>Lang, Chris, Norway-Indonesia forest deal: US\$1 billion dollars worth of continued deforestation?, REDD Monitor 05/28 2010

<sup>5</sup> Down to Earth notes that the Forestry Law of 1999 "fails to provide for indigenous ownership of forests within the 'state forest zone', an area that amounts to some 70% of Indonesia's total land area," and that the subsequent "REDD legislation is aimed at ensuring that central government remains firmly in control of arrangements for – and income generated by – REDD." Down To Earth, REDD Regulations, Down to Earth No.82, September 2009

### Relevant Laws on Customary Land Rights and REDD

- The 1945 Constitution, Articles 18b and 28i provide for the recognition and guarantee the protection of traditional societies and their traditional rights.
- The 1945 Constitution, Article 33/sub-clause b states "The earth, water and all the natural wealth contained therein are to be controlled by the State to be used optimally for the prosperity of the people."
- National Forestry Law no. 41/1999 grants control of all forests in Indonesia to the State, including control of customary forests if customary control is deemed to contradict national interests, and thus fails to provide for Indigenous ownerships of forests within 'state forest zone,' and area that amounts to 70% of Indonesia's total land area.<sup>1</sup>
- The People's Consultative Assembly (MPR) Resolution on Agrarian Reform and Natural Resource Management (TAP MPR No 9/2001) which called for the reorganisation of 'the control, ownership, use, and exploitation of land (land reform);' however the declaration had no accompanying legislation or implementing regulations, due in part to strong opposition from the Ministry of Forestry who feared a loss of control of forest land.<sup>2</sup>
- Ministerial regulation No 68, 2008 is the primary legislation governing REDD projects
- Ministerial regulation No 30, 2009 regulates revenue sharing for REDD
- Ministerial regulation No 36, 2009 regulates revenue sharing rules for REDD and was passed despite a request from the United Nations Committee on the Elimination of Racial Discrimination (CERD) to make changes to accommodate indigenous peoples' rights to own and control their traditional areas. The above mentioned ministerial decrees are all based on Indonesia's 1999 Forestry Law.
- For a more comprehensive list of national laws and regulations that affirm the existence and provide for the protection of Indigenous peoples rights, see *Aliansi Masyarakat Adat Nusantara's* (Indigenous Peoples Alliance of the Archipelago) letter to the president on the need to protect Indigenous Rights in REDD.<sup>3</sup>

<sup>1</sup> REDD regulations Down to Earth No.82, September 2009

<sup>2</sup> IDS Working Paper 229, Indonesia: the politics of inclusion, Rosser, Roesad, and Edwin, July 2004

<sup>3</sup> [http://www.redd-monitor.org/wordpress/wp-content/uploads/2010/06/030\\_10-MEI2010\\_Surat-Sekjen-AMAN-ke-Presiden-RI\\_re\\_REDD\\_low\\_carbon\\_economy.pdf](http://www.redd-monitor.org/wordpress/wp-content/uploads/2010/06/030_10-MEI2010_Surat-Sekjen-AMAN-ke-Presiden-RI_re_REDD_low_carbon_economy.pdf)

against this historical background of legal uncertainty, economic marginalisation and dispossession that REDD programs are developing.

The associated challenge in regards to indigenous land rights for REDD projects lies in accurately identifying local land holders in forests marked for preservation, especially customary land holders, and equitably distributing REDD payments to the relevant stakeholders. REDD projects must ensure that communal lands are not confiscated to be managed by third parties, whether NGO's, Government bodies, Multilateral Organisations or private corporations. A failure to do so would result in the further economic marginalisation of impoverished communities, which as Indonesian history has shown, can result in the outbreak of violent conflict. The task of avoiding these pitfalls is uniquely difficult in Indonesia because developing an equitable REDD program first requires a coherent national legal framework for Indigenous land rights, which at the moment does not exist despite the existence of significant amounts of relevant legislation.<sup>6</sup>

## REDD programs in Indonesia

Nevertheless, REDD is moving forward in Indonesia. The

<http://www.sprol.com/2005/06/fires-on-sumatra/>



Smoke from forest fires over Sumatra

World Bank, the United Nations (UN), Norway, Australia and a host of other countries, development agencies and NGOs have ongoing REDD projects. Most of these projects have not explicitly addressed the key concern of Indigenous land rights; however many have included, to one degree or another, provisions for the inclusion of local and indigenous communities in the planning and/ or implementation stages of their projects. Unfortunately, many such efforts fall far short of guaranteeing the right of indigenous communities to Free Prior Informed Consent (FPIC) as defined by the UN Declaration on The Rights of Indigenous People (UNDRIP), which Indonesia voted to adopt in the UN General Assembly.<sup>7</sup> Two of the biggest

projects that have been subject to the most scrutiny by civil society organisations are those of Norway and the World Bank.

The Norwegian Government signed a bilateral agreement with Indonesia on REDD worth one billion US dollars, far and away the largest such program in Indonesia. According to the letter of intent signed in Oslo on May 26th, 2010 the agreement will use the REDD+ scheme as defined in the Bali Action Plan and will follow UNFCCC and Global REDD+ Partnership guidelines.<sup>8</sup> The letter of intent also stipulates as a general principle to be upheld "*the opportunity for full and effective participation in REDD+ planning and implementation... [of] all relevant stakeholders, including indigenous peoples,*

<sup>6</sup> See adjacent box for summary of relevant legislation.

<sup>7</sup> UN General Assembly, "Assembly Adopts Declaration on Rights of Indigenous Peoples," 13 September 2007, <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>

<sup>8</sup> UN Climate Change Conference, "Current Status of REDD," <http://unfccc.org/news/unfccc/news-unfccc/current-status-of-redd.html>, 09/04/10

local communities and civil society, subject to national legislation." In the letter Norway and Indonesia commit to "take appropriate measures to address land tenure conflicts and compensation claims" as they might arise in the second phase of the partnership, which will see the development of "one or more full scale province level REDD+ pilot projects."<sup>9</sup> However, although the letter provides for the participation of local and indigenous communities and mentions potential land tenure based conflicts, critics were quick to point out that it fails to explicitly reference the rights of indigenous land holders, the principle of FPIC, and the UN Declaration on the Rights of Indigenous People.<sup>10</sup> This should be seen as a failure on the part of Norwegian negotiators in light of Indonesia's support for FPIC through the UNDRIP and the fact that Indonesian Law in several instances guarantees the rights of indigenous peoples.

## Forest Carbon Partnership Facility

The World Bank's Global

REDD+ Program known as the Forest Carbon Partnership Facility (FCPF) has no less been the subject of criticism on indigenous rights issues. Indonesia submitted its draft "Readiness Planning Proposal (R-PP)" to the FCPF in May of 2009. The FCPF immediately came under fire in Indonesia as civil society organisations urged the World Bank to delay approval of the draft R-PP. Critics claimed the plan completely failed to consult with indigenous communities and contained no local language (Bahasa Indonesia) and so was thoroughly inaccessible to these communities. Down to Earth (DTE), an advocacy group that campaigns on issues affecting rural and indigenous peoples in Indonesia, argued that the draft R-PP not only failed to "address a deficient national legal framework for protecting indigenous peoples' rights," but also failed "to address these rights in the R-PP itself." DTE very accurately noted that this should be of grave concern given the high levels of corruption in the Indonesian forestry sector, "the lack of clarity surrounding the status of forest land claimed by the state," and the "concentration of ownership of REDD in the forestry ministry."<sup>11</sup>

The World Bank has however made efforts to address concerns that it has not adequately safeguarded indigenous rights in the FCPF. The FCPF issued a revised charter that guarantees the Facility will "take into account the need for effective participation of forest dependent indigenous peoples and forest dwellers in decisions that may affect them, respecting their rights under national law and applicable international obligations."<sup>12</sup> Furthermore, the World Bank has operational policies and procedures that function as safeguards (OP 4.10 on Indigenous Peoples, OP 4.36 on Forests and OP 4.12 on Involuntary Resettlement); however, it is not clear under what circumstances the World Bank safeguards would be triggered.<sup>13</sup> Nevertheless, a group of 23 local NGOs supported by 8 international NGOs issued a statement on the need for more effective public consultation of REDD readiness planning in the FCPF, as well as stronger safeguards for Indigenous rights. In the letter they cite the Forestry Ministry and the FCPF's failure to issue any supporting documents prior to a May 18th 2010 public consultation, which they contend was executed in such a fashion that

<sup>9</sup> Letter of Intent between the Government of the Kingdom of Norway and the Government of the Republic of Indonesia on "Cooperation on reducing greenhouse gas emissions from deforestation and forest degradation, [http://www.norway.or.id/PageFiles/404362/Letter\\_of\\_Intent\\_Norway\\_Indonesia\\_26\\_May\\_2010.pdf](http://www.norway.or.id/PageFiles/404362/Letter_of_Intent_Norway_Indonesia_26_May_2010.pdf), 09/01/2010

<sup>10</sup> REDD Monitor, Norway-Indonesia forest deal: US\$1 billion dollars worth of continued deforestation?, Chris Lang, 05/28/2010

<sup>11</sup> Lang, Chris, Down To Earth, REDD Regulations, Down to Earth No.82, September 2009 [www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Sep2010/FCPF\\_Charter-August\\_2010\\_clean.pdf](http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Sep2010/FCPF_Charter-August_2010_clean.pdf),

<sup>12</sup> FCP charter, [www.forestpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Sep2010/FCPF\\_Charter-August\\_2010\\_clean.pdf](http://www.forestpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Sep2010/FCPF_Charter-August_2010_clean.pdf), 09/07/10, The World Bank, 09/07/10

<sup>13</sup> Lang, Chris, Marcus Colchester on "Safeguarding Rights in the FCPF, REDD-Monitor, 0714/09



it cannot rightly be considered a public consultation. The group urges the World Bank to follow its internal standards for public consultations in the future. Furthermore, they include a list of demands that reiterate the demands for revision of Indonesian R-PP, outlined in a comprehensive critique published by Down to Earth in September of 2009, which they claim have not yet been addressed.<sup>14</sup>

Many national and international NGOs have undertaken advocacy drives in an effort to incorporate indigenous rights into REDD programs. The advocacy efforts have been focused both upon the proprietors of the major REDD projects, such as the Norwegian Government and the World Bank, as well as on the Indonesian government. INGOs such as DTE and Forest Peoples Program, along with organisations such as REDD Monitor have effectively worked with national NGOs like WALHI (*Wahana Lingkungan Hidup Indonesia*, Friends of the Earth Indonesia), and AMAN (*Aliansi Masyarakat Adat Nusantara*,

Indigenous Peoples Alliance of the Archipelago) to raise public awareness of the many shortcomings in regards to the protection of indigenous rights in the ongoing development of REDD as an international climate change mitigation mechanism.

## Advocating reform

Foremost in the efforts to reform national laws covering indigenous land rights and REDD governance is AMAN. AMAN has been lobbying the Indonesian government to repeal the 1999 Forestry Law and replace it with one that recognises and protects indigenous people's rights, to uphold the provisions 18b and 28i of the 1945 Constitution which recognises and guarantees the protection of indigenous communities and their rights, to implement the UN Declaration on the Rights of Indigenous People with relevant laws and regulations, to use the principle of FPIC at all levels of policy making, and to cease issuing private ownership permits for the

customary land of indigenous people. AMAN<sup>15</sup> is further lobbying the government to draft a specific law on indigenous rights that would include a nationally accepted definition for what constitutes an indigenous person.<sup>16</sup>

If REDD projects in Indonesia are to uphold the rights of indigenous forest communities, then a parallel effort to reform relevant Indonesian laws must be prioritised and supported. REDD programs must also ensure the Free, Prior and Informed Consent of indigenous stake holders in each stage of their development; and include internal provisions that guarantee respect for indigenous rights as defined in both national legislation and international treaties. If REDD programs fail in any of these regards, they will marginalise and dispossess indigenous communities, which will, as it has so many times in Indonesian history, lead to conflict and instability.

Michael Mori,  
PBI Volunteer

<sup>14</sup> Lang, Chris, World Bank's FCPF in Indonesia fails to address civil society concerns, REDD-Monitor, 05/25/10

<sup>15</sup> AMAN, Sinar Resmi Declaration, <http://forestclimatecenter.org/files/2009-08-05%20Indonesia%20%20Sinar%20Resmi%20Declaration%20on%20Climate%20Change%20and%20REDD%20by%20AMAN.pdf>

<sup>16</sup> Lang, Chris. "We want to change this threat to an opportunity": Interview with Abdon Nababan and Mina Setra. REDD-Monitor, 07/04/10





# Reforming state relations with Indigenous Peoples

**I**ndonesia is one of the few countries in the world that still has a very large indigenous population. The Indigenous Peoples' Alliance of the Archipelago (AMAN) estimates that there are a minimum of 30 million indigenous peoples who inhabit Indonesia.

Until this time no study has been undertaken either by the state or by civil society organisations that reveals the size of the indigenous population, but if the basis for the description of indigenous peoples is that they are defined by ethnic groups that have the same ancestral origin, have their own territory, their own system of indigenous governance and laws that distinguish one community from the other, then the estimate regarding the size of the indigenous population [of Indonesia] made by AMAN is not excessive considering there are thousands of indigenous communities in the country that are spread from Sabang to Merauke. Yet in the politics of law, as demonstrated over the years, large numbers do not necessarily equate into significant influence. Yet in the politics of law, as

demonstrated over the years, large numbers do not necessarily equate into significant influence. There are also stigmas which exclude these indigenous people in which they are represented by negative and degrading nicknames, such as isolated tribe, outlander, primitive people, etc. As a result indigenous peoples are often left out of the process of developing the public policies which has such a big impact on their lives.

## Policy and legislation, products of the old repressive state

There are innumerable studies which have been conducted that have criticised state policies of the past. During the New Order era development projects were often characterised by exploitation and supported by repression. Indigenous peoples were often deprived of their source of livelihood (land and natural

resources). Thousands of agrarian cases for example, in the forestry, mining, plantation and other sectors show that the law has created uncertainty for indigenous peoples' rights over their sources of livelihood, even though indigenous peoples claim that they already had rights to the land and its resources long before the era of independence. The orientation of development which is focused on the availability of capital requires that the State contracts with various national and international companies (private). In such situations, indigenous peoples are positioned only as an object within the national development strategy which has resulted in many indigenous people becoming strangers in their own land. The loss of economic, social, cultural, civil and political rights is the reality of indigenous peoples.

Indigenous people throughout the country also lost their identity with the imposition of the concept of a unified system of government implemented through Law no. 5 / 1979 which confirms centralisation, authoritarianism,



bureaucratisation, and the corporatisation of bureaucracy all the way to the local (community) level. The most severe aspect of this law is the uniformity in the system of governance at the local level. This law clearly suppresses democracy because it closes the political space within which communities can express their diversity. When the very diversity of society is seen as a threat it is very difficult to imagine how a pluralistic democracy can grow and develop.

## New hope for indigenous peoples

Regime change offers many opportunities for political and legal reform, including reform which recognises and protects the rights of indigenous peoples. These changes began with the amendment of the 1945 constitution. The new constitution provides space for the recognition of indigenous peoples. The new constitution

provides space for the recognition of indigenous peoples particularly in Article 18 B (paragraph 2) and Article 28 I (paragraph 3).<sup>1</sup> In addition to this changes in the constitution has also had an impact on laws for various sectors. Examples include; Law no. 32, 2004 on Regional Government, Law no. 24, 2003 concerning the Constitutional Court, Law no. 27, 2007 on the Management of Coastal Zones and Small islands among others. Even in the earliest days of his leadership, President Susilo Bambang Yudhoyono indicated the existence of political will from the government to provide recognition of indigenous peoples as revealed in his speech at the commemoration of World's Indigenous Peoples day on 9 August 2006 at Taman Mini Indonesia, Jakarta.<sup>2</sup> However the aforementioned pieces of legislation are not enough. The implementation of this policy [to recognise Indigenous land rights] is flawed. In the past there has been a lack of clarity on which departments can produce legislation on this

issue. This has resulted in the creation of overlapping and often contradictory legislation.

Indigenous peoples need a law that recognises and protects their rights. But the question is why this legislation is necessary, when there are already so many regulations governing the rights of indigenous peoples, both at the regional and national level? The answer to this question can be garnered from the fact that many of these regulations only formulate the recognition of [indigenous] rights and rarely mention their protection. In addition, the recognition of indigenous rights was not included as part of the fulfilment for human rights of indigenous peoples (community rights). The law on human rights has a very strong individual sense. Other than that, there is also a sense of centralisation in the different regulations being issued. Therefore it is necessary to emphasise on the context of protection. This is important because based on experience there is considerable normative regulations that

<sup>1</sup> See table page 5

<sup>2</sup> "The state acknowledges and respects customary law communities together with their traditional rights... We need to admit that in developing the nation and state, indigenous peoples have not played an optimal role so far. Moreover, their traditional rights have often been ignored, even violated and no longer respected... The government should, of course, take the side of the weak party[Indigenous peoples], and try to find an appropriate and just solution, whilst still prioritising the interests of the nation and state, without having to sacrifice the interests of indigenous peoples in the regions."

<http://www.aman.or.id/#4>



changes in land use results in changing customs

recognise the rights of indigenous peoples, particularly at the district level. But what happens is recognition does not necessarily stop the usurpation of indigenous rights in the field. In many cases, land and natural resources in indigenous territories can be easily taken over without first obtaining the approval (Free, Prior, and Informed Consent)

of the indigenous peoples concerned. Besides the importance of the context of protection, if such an Act is to be created it must fulfill the human rights of indigenous peoples as a group (community rights) and that guarantees the community and its citizens their individual rights. In the context of changes to the rule of law, this law must be constructed to

end the legal sectoralism related to indigenous people where *lex specialis*<sup>1</sup> applies.

The new constitution is a sufficient basis for the creation of new laws that recognise and protect the rights of indigenous peoples. In addition, it is also important for international legal instruments such as the UN Declaration on the Rights of Indigenous Peoples to be a reference in the formulation of this law. Politically, at the end of 2009, the Government included the Bill on The Recognition and Protection of the Rights of Indigenous Peoples in the National Legislation Program (Prolegnas) for 2010-2014. However, to accelerate the process of discussion there is a need for strong political commitment from the House of Representatives.

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Aliansi Masyarakat Adat  
Nusantara  
[www.aman.or.id](http://www.aman.or.id)

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5. Catatan-catatan diskusi, seminar dan workshop di lingkungan masyarakat adat dalam rangka mendorong Rancangan Undang-undang tentang Hak-Hak Masyarakat Adat, AMAN, tahun 2005-2010, tidak diterbitkan.

<sup>1</sup> *Lex specialis* is a Latin phrase which means "law governing a specific subject matter". It comes from the legal maxim "lex specialis derogat legi generali". This doctrine relates to the interpretation of laws. The doctrine states that a law governing a specific subject matter (*lex specialis*) overrides a law which only governs general matters (*lex generalis*). The situation ordinarily arises with regard to the construction of earlier-enacted specific legislation when more general legislation is later passed. This principle also applies to construction of a body of law or a single piece of legislation that contains both specific and general provisions.

# Palm Oil, Human Rights and the World Bank



Since the 1980s, the World Bank Group has invested more than US\$2 billion dollars to promote the global trade in palm oil. The expansion of the crop in intensive mono-cultures, especially in Southeast Asia, has been associated with the extensive clearance of tropical forests, much of it the habitat of rare and endangered species. The threatened extinction of orang utans has become a symbol of this destruction. Today about 4 million hectares have been planted with oil palms in Malaysia and over 9 million hectares in Indonesia. Indonesia plans to at least double this area and provincial plans have already set aside areas enough to triple it. With the easily accessible mineral soils already taken over by oil palm and other crops, the agricultural frontier is now moving east, towards places like Sulawesi, Halmahera and Papua, as well as down onto the peat soils in Sumatra, Kalimantan and Papua. Between a half and two thirds of new plantings are now planned on peat. Deforestation and peatland drainage already make Indonesia the third greatest greenhouse gas emitter in the world.

While the international media have focused most of their attention on these global environmental problems, palm



<http://www.etawau.com/HTML/Gallery/OilPalmPlantation.htm>

*Elaeis guineensis* (African Palm Oil) plantation. Extensive mono-cultures significantly reduces biodiversity

oil expansion is also associated with serious and widespread human rights abuses. Because Indonesian laws are ineffective at recognising the rights of indigenous peoples, give priority to state planned development and deny local communities a voice in decision-making, many oil palm estates in Indonesia are associated with serious land disputes. The Indonesian oil palm monitoring NGO, SawitWatch, has documented 630 palm oil related land conflicts in Indonesia. The real figure may be higher. The national land bureau (BPN) has stated that there are 3,100 land disputes related to

palm oil nation-wide.

The lack of legal or judicial remedies for these disputes – due to the weakness of the law and the corruption of the judiciary - means that people are forced to take direct actions to protest the take-over of their lands. When companies defend their interests, with their own security agents or by paying for interventions by mobile police brigades (BRIMOB),<sup>1</sup> things often turn ugly. SawitWatch has documented no less than 28 cases of violence in palm oil disputes in the past 2 months alone.

<sup>1</sup> [http://www.forestpeoples.org/documents/prv\\_sector/oil\\_palm/palm\\_oil\\_ips\\_se\\_asia\\_ILC\\_MC\\_jul10\\_eng.pdf](http://www.forestpeoples.org/documents/prv_sector/oil_palm/palm_oil_ips_se_asia_ILC_MC_jul10_eng.pdf)

## International remedies?

Social justice NGOs have sought remedies for these problems in other forums: by direct appeals to the companies concerned; by recourse to the media; through appeals to the national human rights commission (Komnas HAM); by filing complaints with the Roundtable on Sustainable Palm Oil; by making their case known to UN Special Rapporteur on the Right to Food and; by filing an urgent action with the UN Committee on the Elimination of Racial Discrimination (CERD). CERD agreed that the situation was problematic and more than two years ago called on the Indonesian government to reform the legal framework to ensure respect for indigenous peoples and not to go ahead with plantings without these peoples' consent. So far the Government has offered no response to CERD.

The same NGOs, acting as a consortium, have also taken their concerns to the World Bank. In the early 2000s, the NGOs spotted that the World Bank's private sector arm, the International Finance Corporation was funnelling loans and credit guarantees into the Singapore-based palm oil trading group, Wilmar International. Yet the same NGOs were aware that Wilmar's subsidiaries in

Kalimantan and Sumatra were guilty of serious social and environmental abuses, clearing lands without proper permits and without the consent of local communities. When appeals to the IFC did not stop this flow of funds, the NGOs filed a detailed complaint with the IFC's official complaints mechanism, the Compliance Advisory Ombudsman (CAO).<sup>2</sup> After a field visit to West Kalimantan, officials from the CAO admitted this complaint and through their ombudsman process mediated between Wilmar and the communities to rectify the problems on the ground. The company, to its credit, admitted there were problems and has begun a process of negotiating with the affected communities. This has already led to some of the communities being compensated for damages, regaining lands taken without consent, while the company has begun to change the way its subsidiaries operate.

The IFC however was less ready to admit any culpability. So, after the IFC blocked any progress through a CAO-mediated dialogue, the case was sent to audit. The result was an exhaustive near two-year examination by the CAO of whether or not IFC staff had observed 'due diligence', or had, as the NGOs alleged, violated the IFC Performance Standards and procedures.



## Guilty as charged: the World Bank suspends finance for oil palm

The audit when it finally came out was damning.<sup>3</sup> The IFC was indeed in violation of its procedures. It had allowed financial considerations to override social and environmental concerns. IFC had skimmed on environmental and social assessments. It had ignored requirements to examine the impacts of financing trading and processing of palm oil in the 'supply chain' – meaning the communities and eco-systems where palm oil was actually being produced. Having

<sup>2</sup> Complaint submission:

[http://www.forestpeoples.org/documents/ifi\\_igo/ifc\\_wilmar\\_fpp\\_let\\_jul07\\_eng.pdf](http://www.forestpeoples.org/documents/ifi_igo/ifc_wilmar_fpp_let_jul07_eng.pdf)

<sup>3</sup> Audit report:

[http://www.forestpeoples.org/documents/ifi\\_igo/ifc\\_wilmar\\_cao\\_audit\\_report\\_jun09\\_eng.pdf](http://www.forestpeoples.org/documents/ifi_igo/ifc_wilmar_cao_audit_report_jun09_eng.pdf)

carefully reviewed the full history of World Bank engagement in the palm oil sector, the auditors noted that IFC staff should have known better. IFC had ignored the serious problems that had plagued earlier palm oil investments and which had indeed led the World Bank to halt funding the sector in the late 1990s. IFC had only been allowed to restart funding for the sector in 2001, by promising the World Bank's Executive Board that they would shortly develop a specific strategy to avoid such problems: they had never bothered to produce this.

The audit was published in July 2009 alongside a floppy 'Management Response' which suggested that IFC staff were still complacent. The NGOs thus appealed to the World Bank President, Robert Zoellick, to suspend all World Bank Group funding to the palm oil sector worldwide until a credible strategy was in place. He agreed.<sup>4</sup> The palm oil industry was dumbfounded.

## Towards a new strategy?

It has taken some time for the World Bank to start the process to develop this strategy. NGOs have insisted on an open process with public, iterative consultations on drafts. Step by step the World Bank has been obliged to give ground: first to consult over an 'issues paper', then to give more time to the process and finally to consult over a draft of its strategy.<sup>5</sup> A draft was issued in July 2010 and has been heavily criticised for not being the promised strategy at all but just a very general framework, for failing to address the legal problems in Indonesia and Malaysia which bring companies into violation of World Bank standards and for ignoring demands for redress of past grievances before getting back into investing. The document was also internally inconsistent.

The draft document noted that that World Bank Group was 'aware of negative environmental and social

impacts, including deforestation, biodiversity loss, greenhouse gas emissions, land use conflicts and questions over land tenure and human rights'. However, as Norman Jiwan, a Dayak from West Borneo and department head in the Indonesian oil palm monitoring NGO, SawitWatch, points out:

the 'framework' document they have produced looks like business as usual to us. No new standards, nothing about how they address the deficient legal frameworks in Indonesia and Malaysia, and no measures at all to curb global warming.

The NGOs have written again to the World Bank President appealing for a real strategy which does address their concerns. Meanwhile, they urge that the World Bank maintains its freeze on funding. At the time of writing, the Bank has yet to respond.

Marcus Colchester  
Director Forest Peoples  
Programme  
[www.forestpeoples.org](http://www.forestpeoples.org)

<sup>4</sup> Letter from Robert Zoellick to Marcus Colchester, 28 August 2009:

[http://www.forestpeoples.org/documents/ifi\\_igo/ifc\\_wb\\_letter\\_pressrelease\\_sep09.pdf](http://www.forestpeoples.org/documents/ifi_igo/ifc_wb_letter_pressrelease_sep09.pdf) ; Letter from Robert Zoellick to Jennifer Kalafut, 25 November 2009:

[http://www.forestpeoples.org/documents/ifi\\_igo/ifc\\_wb\\_palm\\_oil\\_let\\_nov09\\_eng.pdf](http://www.forestpeoples.org/documents/ifi_igo/ifc_wb_palm_oil_let_nov09_eng.pdf)

<sup>5</sup> NGO Joint Statement, May 2010:

[http://www.forestpeoples.org/documents/ifi\\_igo/ifc\\_wbg\\_ngo\\_palm\\_oil\\_may10\\_eng.pdf](http://www.forestpeoples.org/documents/ifi_igo/ifc_wbg_ngo_palm_oil_may10_eng.pdf)

# Oil palm and the indigenous people of Prafi

The demand for acknowledgement of indigenous people's rights over natural resources continues to resound. The exploration of natural resources by investors in the forestry and mining sectors has yet to contribute significantly to the improvement of indigenous people's socio-economic situation. Ironically, the government seems to disregard the fact that the Constitution accommodates the rights of indigenous people to access natural resources on their lands through article 33 section 3 of the 1945 Constitution which states; "The land, the waters and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people."

A recent demand for acknowledgment [over natural resources] has come from indigenous communities residing in Prafi district, Manokwari regency. Twenty-five years ago Perkebunan Nusantara II<sup>1</sup> established oil palm plantations in their region. The local indigenous communities have yet to receive any economic benefits while the company continues

LP3BH (*Lembaga Penelitian, Pengkajian dan Pengembangan Bantuan Hukum*, Institute of Research, Investigation and Development of Legal Aid)

LP3BH, a Manokwari-based NGO, aims to empower local society through basic education, advocacy, research and through legal aid about basic rights, human rights, democracy, gender equality and management of natural resources. LP3BH works throughout the Bird's Head area of Western Papua.

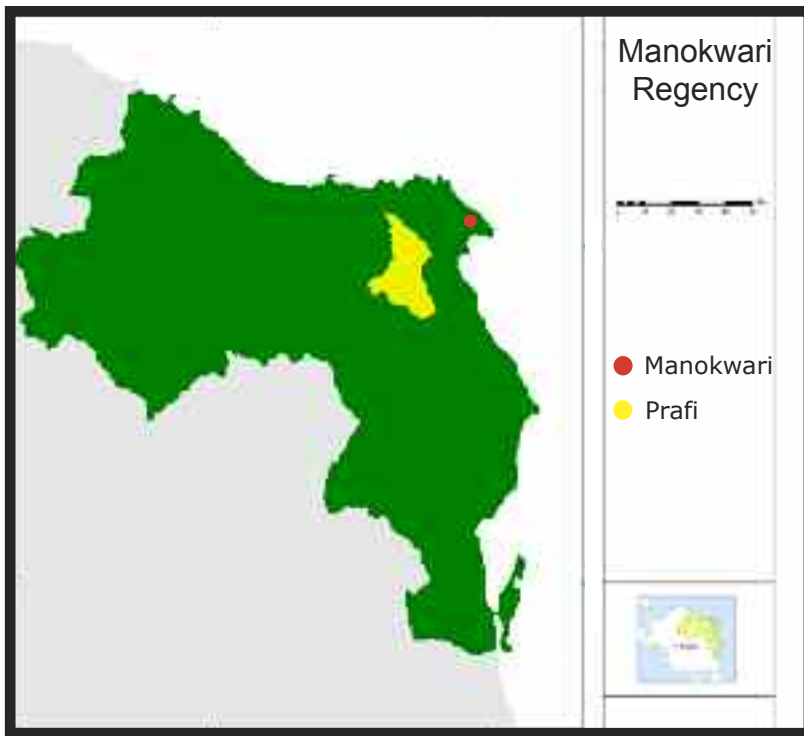
LP3BH has been a PBI client since July 2007. In 2008 the director of LP3BH Yan Christian Warinussy went on a Speaking Tour to Europe organised by PBI. In the same year members of LP3BH attended a security training organised by PBI in cooperation with Protection International. In 2006, 2008 and 2009 PBI teams carried out fieldtrips to Manokwari together with LP3BH. Another fieldtrip is planned for late 2010.

to profit from their lands. The native title act holders have been forced to sit and watch the company accumulate significant financial assets from their high turnover. Even more, it seems that the indigenous people are forced to accept the destruction and degradation of the rivers and the land.

The investment has been creating portraits of real injustice for the indigenous people while the palm oil farmers who are predominantly migrants to the region live trapped between

them and the company. Such a situation only increases social tensions and further marginalises the indigenous communities. A clear illustration of this marginalisation is to be seen in the division of profits, starting from planting, husbandry/maintenance, harvesting, up to the market price of a Fresh Fruit Bunch (FFB). Profits are divided between PIR (Nucleus Estate Smallholder) farmers and Perkebunan INTI owned by the company. Based on information from the local people, the profiting party is

<sup>1</sup> PTP II stands for Perseroan Terbatas Perkebunan (State-Owned Estate Enterprise with Limited Liability). It is a central organisation which manages state-owned plantation enterprises. As the oldest governmental body involved in the oil palm business, it is often assigned to manage and establish, as well as develop, new oil palm estates.



the company because it has human resources who maintain the plantations, harvest the crop, transport the goods and process the oil palm.

The forgotten needs of the indigenous people in the palm oil plantation management are also shown through the company's recruitment policies that accommodates the immigrant population instead of the locals despite the fact that the locals would do better since they understand more of the characteristics of their land which has been converted. Ironically, there are tens, even hundreds of local people with a degree who are unemployed and are dependent on luck in the civil servant recruitment test so that they may be employed in the local government. This has triggered a significant rise in the rates of unemployment for the Prafi – Manokwari.

Land clearance, which is a direct result of the palm oil industry have created more serious environmental, financial and social problems. This includes decreasing supply of river water, increased debt, and unhealthy market competition. The community faces the impact of toxic waste disposal into the water which has taken its first victim; a toddler got poisoned by the river water.

The Papua Otsus (Special Autonomy) implementation which was expected to influence the aforementioned issues apparently has returned and given the Forest Concession Rights (HPH) to the local government. It seems that Special Autonomy has opened an opportunity for deforestation and land destruction at an even greater rate than before, conducted by local elite political "kings" who are trying to acquire a portion of the profits coming from

### Local population

There are three main ethnic Indigenous groups located in the district of Prafi, Manokwari Regency. They are the Meyah, Hatam and Moile and are often collectively referred to as the Arfak.

The Meyah live on the eastern part of Prafi, west of the city of Manokwari as far as Sidey, and south to the eastern part of the Kebar valley. The Hatam are in the area east and south of Warmare, as far as the headwaters of the Prafi River. The Moile have been pushed eastward as a result of internal migration to the region to the coast of the Cendrawasih Bay, and southward against the slopes of the Anggi mountains.<sup>2</sup>

investments at the expense of the local people's suffering. The question has to be posed to the local political elites; Is this what you have been calling development through Special Autonomy which was meant to create prosperity for Papuans?

Lembaga Penelitian,  
Pengkajian dan  
Pengembangan Bantuan  
Hukum,  
Institute of Research,  
Analysis and Development  
for Legal Aid

<sup>2</sup> Kyoto University, Southeast Asian Studies, Vol. 30 no. 1, June 1992



# A brief introduction to the Merauke Integrated Food and Energy Estate

The Government of Indonesia allocated 1.6 million hectares of land in the Merauke district of West Papua province for the Merauke Integrated Food and Energy Estate (MIFEE),<sup>1</sup> which was formally launched in April of 2010.<sup>2</sup> MIFEE is a patchwork of agriculture and biofuel plantations and animal husbandry estates currently under development as a part of the Agriculture Ministry's efforts to shore up Indonesia's domestic food supply. The scale of the project is enormous; it includes over 2200 km of new roads, three new ports and vast irrigation systems at a projected cost of over six billion USD.<sup>3</sup> According to the plan, up to 49 percent of the investment will come from international investors. The population of Papua, which today stands at 4.2 million, of which roughly half are indigenous Papuans, is predicted to grow to 6.4 million as transmigrants move in to take newly created jobs.<sup>4</sup> The sheer size of MIFEE has many

civil society groups worried about potential negative impacts on the environment and indigenous Papuan communities in Merauke.

## The impacts of transmigration on civil society

Foremost amongst the concerns of civil society is that MIFEE developers will not respect indigenous communities customary land rights, nor the principle of Free Prior and Informed Consent (FPIC) when acquiring and developing land. Several indigenous groups including the Marind and Ayo depend upon the land within the MIFEE concessions for their livelihoods, whether for farming or hunting and gathering. Indigenous groups' legal hold on their land is quite tenuous in Indonesia, particularly in forest areas, due to ambiguities in Indonesian

law and despite a constitutional guarantee for suchrights. The Alliance of Archipelagic<sup>5</sup> Customary Societies (*Aliansi Masyarakat Adat Nusantara - AMAN*) argues that "this kind of large-scale business in Indigenous Territories without their free prior and informed consent will only exacerbate the human rights situation, leading to forced eviction and other human rights violations."<sup>6</sup> The Marind and Ayo communities could end up losing their land and their livelihoods to MIFEE, rather than benefiting from economic opportunities the projects developers are guaranteeing to the region.

MIFEE poses the serious risk of further marginalising indigenous groups in and around Merauke. The economic opportunities created by MIFEE will likely be of most benefit to transmigrants who possess the skills and have relevant experience in plantation work, rather than to indigenous

<sup>1</sup> "Papua proposes 500,000 hectares for food estate: Minister," The Jakarta Post, 23 September 2010

<sup>2</sup> Merauke Integrated Food and Energy Estate (MIFEE) is one of the projects that is listed as the achievement of the first 100 days of the second term presidency of Indonesian, President Susilo Bambang Yudhoyono. The Government also passed Government Regulation No. 18 Year 2010 on Food as regulation for developing an integrated food estate in Indonesia, such as MIFEE in Merauke-Papua.

<sup>3</sup> "Merauke mega-project raises food fears," Down to Earth No.78, August 2008.

<sup>4</sup> AMAN Statement before the 9th Session of the UN Permanent Forum on Indigenous Issues, New York, 23 April 2010

<sup>5</sup> See the article "REDD and Land Rights" in this issue of the PBI Quarterly Bulletin for a clearer account of the ambiguities in the laws covering indigenous land rights

<sup>6</sup> See source 4



Papuans many of whom have little or no experience with market driven economies and industrial agriculture.<sup>7</sup> Though the policy of transmigration ended in 2000, it still continues to shape Papua’s economic and political landscape. There is a perception amongst indigenous Papuans that transmigrants dominate employment in the formal business sector throughout Papua, and Merauke is no exception.<sup>8</sup> Father Decky Ogi, the director of the Justice and Peace Secretariat of the Merauke Diocese of the Catholic Church (PBI client SKP-Merauke), argues that *"Indigenous people are marginalised and there is a social gap, [transmigration] has created a lot of social jealousy; if MIFEE is implemented, I think indigenous people will be more marginalised than they are now."*<sup>9</sup> Merauke, like the rest of Papua, already suffers from significant tensions between the relatively well off transmigrant population and indigenous communities. The projected population increase due to MIFEE threatens to further marginalise the

indigenous Papuans and so exacerbate existing tensions that could easily spill over into violence. To get a clearer picture of the scale of projected demographic change, in Merauke town alone the population is expected to grow by over 350 percent or 625,000 inhabitants to a total 800,000 if MIFEE is fully implemented.<sup>10</sup> The vast majority of these newcomers would be transmigrants from places like Sulawesi and the Moluccas.

## Illegal logging and the security sector

Of further concern for the stability of the region are the possible consequences of opening up so much forest through roads and infrastructure to illegal logging operations. Greenomics estimates the value of the timber alone on the allocated forest areas to be between 13.1 billion USD on the domestic market and 41.6

billion on the black market.<sup>11</sup> Cifor doubts the accuracy of these estimates, but nevertheless it is clear that the value of the timber in and around the forested portions of the concessions is very high, which provides a huge incentive for illegal loggers to undertake operations on the newly accessible land. Illegal logging and associated crime syndicates often bring violence and conflict to the areas in which they operate, and it is not yet clear whether the central government or the private developers involved in MIFEE are taking any actions to mitigate this risk.

The role of the security forces in protecting the interests of MIFEE should also be subject to close inspection. Currently there are over 3,000 soldiers stationed across Merauke and neighboring Boven district with frequent check points set up along major roads.<sup>12</sup> The role of these forces, according to a report published in November of 2009 by the international Environmental Investigation Agency (EIA) and their Indonesian partner Telepak, is to safeguard the interests of

<sup>7</sup> Interview with Krystof Obidzinski, Cifor, 29 September 2010  
<sup>8</sup> Conflict violence and displacement in Indonesia, Cornell South East-Asia Program, 2008  
<sup>9</sup> <http://indonesiaupdates.blogspot.com/2010/04/inti-net-jakartas-plan-for-farm-in.html>  
<sup>10</sup> "Battle Brewing Over Forests and Plantations in Papua," The Jakarta Globe, 09 May 2010  
<sup>11</sup> Ibid  
<sup>12</sup> "Up For Grabs: Deforestation and Exploitation in Papua’s Plantations Boom," Environmental Investigation Agency (EIA) and Telapak, November 2009.

logging and agriculture plantations. The same report argues that elements of the security forces along with "irregular groups allied to [former Bupati Johannes Bluba] Gebze worked together to monitor and intimidate any dissenters in the region [to the MIFEE project]."<sup>13</sup> This claim is lent particular gravity by Cifor's analysis that the MIFEE estate is essentially a political project designed in part to bankroll the creation of a new South Papua province, something the former Bupati Gebze has adamantly advocated for in Jakarta.<sup>14</sup> EIA/Telepak have reported that "the combination of Gebze's political aspirations, central government interests and the potentially huge investment in plantations expansion, has created a climate of intimidation towards anyone who opposes the plantations or new province."<sup>15</sup> In fact the recent spate of intimidation against journalists reporting in Merauke has been linked to MIFEE.<sup>16</sup> For its part, Jakarta would rather have regional and local governments in Papua focus on development projects than on civil and political rights issues.<sup>17</sup> Political tensions and the repression of critical voices will ensure that MIFEE is not developed in a way sensitive to the legitimate concerns of indigenous communities nor to the existing political and

<http://www.papuaweb.org/gb/peta/satelit.html>



Satellite image of Merauke, Papua Province

economic tensions between indigenous and transmigrants.

## The problems of land classification

The impacts of MIFEE on the environment would be enormous: Cifor estimates that 50 percent of the 1.6 million hectares currently allocated for MIFEE are heavily forested.<sup>18</sup> Greenomics estimates are even higher: they argue that 1.157 of the

1.6 million hectares currently allocated for the planned estate are primary or natural forests, and claim that the forestry ministry has already signed an agreement to reclassify 1.45 million hectares of primary forest as "convertible production forests."<sup>19</sup> The Ministry of Forestry does not deny the assertion, though they have not reclassified the land yet. This is the case despite a promise by the ministry not to issue permits to convert conservation or protected forests, and only to use

<sup>13</sup> Ibid

<sup>14</sup> The Straits Times (Singapore) Monday, 17 Mach, 2008, Power plays in the slicing of Indonesian Papua, John McBeth, Senior Writer.

<sup>15</sup> See footnote 12

<sup>16</sup> "Journalists Death Overshadows Launch of Papua Food Project," Down to Earth and Tapol Press Release, 12 August 2010

<sup>17</sup> Interview with Krystof Obidzinski, Cifor, 29 September 2010

<sup>18</sup> Ibid

<sup>19</sup> "Battle Brewing Over Forests and Plantations in Papua," The Jakarta Globe, 09 May 2010



degraded production forest land.<sup>20</sup> For its part, the ministry has not yet issued any permits and is still mapping the area in order to better preserve protected forests, a process which is taking much longer than anticipated. It remains to be seen how the possible clearing of over one million hectares of forest for MIFEE will impact the logging moratorium issued by SBY as part of the bi-lateral Norway-Indonesia REDD+ Partnership program, or SBY's pledge to cut emissions by 26 percent by 2020.

As of now MIFEE is still in its first developmental stage. In September the Ministry of Forestry received a proposal to develop 500,000 hectares of land for phase one of the project; 250,000 hectares of which Forestry Minister Zulkifli Hasan has said can be planted directly. Greenomics argues

there are only 300,000 hectares of degraded or production forest available scattered throughout Merauke, and point to the fact that most big investors are not interested in small disconnected plots of land such as these.<sup>21</sup>

## Problems to overcome

AMAN issued a statement before the 9th Session of the UN Permanent Forum on Indigenous Issues in New York on 23 April 2010 in which they expressed their concern that the development of MIFEE constitutes an imminent threat to the rights of Indigenous people in Merauke. AMAN further requested that the UN Permanent Forum on Indigenous Issues conduct an independent assessment of the impacts of MIFEE. Several

other INGOs and NGOs have also emphasised the need for independent impact analysis studies, including Greenomics and CiFor. If the rights of Indigenous communities are not safeguarded and the principle of FPIC is not applied, if concerns around the influx of large numbers of transmigrants and the risk of the proliferation of illegal logging operations are not mitigated, MIFEE may – like the Central Kalimantan Rice Estate of the Suharto era – result in the dispossession and marginalisation of local indigenous groups. Such a situation would exacerbate current instability and localized conflicts, which continue to plague political and economic development in Papua.

Michael Mori,  
PBI Volunteer

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<sup>20</sup> "No conversion of virgin forest to food estate in Merauke: Govt," The Jakarta Post, 09 February, 2010.

<sup>21</sup> "Papua proposes 500,000 hectares for food estate: Minister," The Jakarta Post, 23 September 2010

# MIFEE and the Indigenous Peoples of Merauke

Viktor Mambor is responsible for communications at Foker LSM papua, the Working Forum for Papuan NGOs, which is a PBI client since October 2007. Foker represents NGOs all over the two Papuan provinces of Indonesia who are working in many areas such as environmental protection, women's rights, human rights or health education.

The PBI sub-team in Jayapura is monitoring the security situation of Foker staff and also of journalists working for their bi-monthly magazine JUBI, who in the course of their work do receive threats and intimidation.



Viktor Mambor on a speaking tour in Europe with PBI

**I**n a speech made in the last months of 2009 Wiwik Dwi Saksiwi, the Assistant Deputy Minister for Economic Affairs whose foci is institutions, farming and fisheries, stated; *"land in the Regency of Merauke does not necessitate the use of too much high technology to create paddy fields."* Accordingly the creation of an Integrated Food and Energy Estate (MIFEE) on the extensive areas of land

available in Merauke can be implemented without significant obstacles.

MIFEE aims to "eradicate" poverty in Merauke and should help Merauke become one of the granaries of the world, producing basic food staples. In its first incarnation, the Merauke Integrated Rice Estate (MIRE) was touted as a solution to the nations' impending food and energy crisis. The concept of the

program can indeed be regarded as daring given the difficult situation Indonesia faces. This may be difficult for the local indigenous population as they are not accustomed to growing rice. It is also very difficult if you calculate the very small number of local farmers and the large area which they are considering farming. The minimum area for one lot in MIFEE is 1,000 hectares. Concepts being developed for the project include 'link and match', and 'zero waste'. All stakeholders should be involved in developing the project, including large private agribusiness. In these 1000 hectare lots land use has already been defined and proportioned: 70% should be used for food production, 9% for cattle, 8% for freshwater fish and 5-8% for plantations and other land uses.

The development of plans for MIFEE, is on-going. The potential area of land available for cultivation in Merauke is enormous; 2,491,821.99 hectares of land has been

designated as suitable for cultivation. There are 1,937,291.26 hectares of wetland and 554,530.73 hectares of arid land. Examples of areas where MIFEE is focusing [within the regency] include the district of Pock where 500 hectares of land will be used for growing corn. The production and distribution centres for MIFEE are to be split into three zones: Zone one consists of the districts of Merauke, Semangga, Tanah Miring, Kurik, Jagebob, Sota, Eligobel, Muting and Ulilin. Zone two will be the district of Semangga and zone three will be the district of Kimaam.

Convertible Production Forest (HPK) will make up the bulk of the land for the MIFEE project, covering 1.428 million hectares. Allocation of land for other uses will make up the rest. The total area of land for MIFEE could be in the region of 1,630,869 hectares. The budget for developing 1.6 million hectares would be 64 trillion Rupiah.<sup>1</sup> The proposed plans for MIFE would see 1 million hectares used for producing staple crops, 100,000 hectares for raising livestock, 100,000 hectares for fisheries, 100,000 hectares for developing plantations and 330,869 hectares for undefined uses. These proposed targets wrought by MIFEE would result in significant changes for the local society in Merauke.

## What role will the indigenous communities play in MIFEE?

This question became a concern not only for the indigenous communities of Anin Ha, but also more widely for the indigenous peoples of Papua and the indigenous peoples of the world. In fact before the United Nations assembly on Rights of Indigenous Peoples (UNRIP) the Indigenous Peoples Alliance of the Archipelago (AMAN) openly asked the UN to send a special rapporteur on indigenous areas to conduct an independent study of MIFEE and the impacts that the project would have on local indigenous communities.

Naturally these developments [in Merauke] are a concern for indigenous communities around the world. If we take into account the local population of the Marind (community of Anin Ha), which is numbered in the tens of thousands, or even the population of Indigenous Papuans which does not exceed two million, MIFEE could require a workforce of approximately 6.4 million people if one hectare of land is managed by four people.

Currently 32 companies have expressed an interest in involvement in MIFEE. The process by which this [1.6 million hectares of] land is to

be sold to companies still involved in the venture is still unclear. Concerns have already been voiced regarding fairness and transparency, far from the principles of Free Prior Inform Concern (FPIC) which were touted. There have been several cases of people who unknowingly forfeited their land at a price of 8000 Rupiah per hectare. These individuals claimed to only have received a receipt of payment without a contract or letter of legal land purchase.

In meetings with Civil Society Organisations in Merauke members of the local indigenous communities have raised concerns related to various aspects of the MIFEE project. Some of these concerns are associated with the various problems already identified in the previous paragraph; rapid population growth resulting from immigration to Merauke which may put strains on social relations. Other key areas of concern include:

- Sale of communal lands to business interests and migrants
- Investment plans that lack transparency (are not socialised and are contrary to the principle of FPIC)
- Lack of Indigenous involvement in developing plans for Regional Investment
- corruption resulting from the collusion of local bureaucrats with investors.

Such problems are then reinforced by other issues such as:

- Weak bargaining

<sup>1</sup> At current exchange rates this equates to approximately US\$7.144 billion

position of local indigenous communities

- Pressure by the government and security services on local indigenous communities to sell their lands
- Impacts of the transmigration program, regional investment policy
- The focus of domestic and foreign investment on developing plantations that will most probably result in the increased marginalisation of the indigenous peoples of Merauke

Problems such as these only reinforce the social inequity that indigenous people are already facing in Merauke. For these reasons the indigenous people of Merauke are sceptical of the projects dividends and are becoming increasingly apathetic.

The current approach being taken by those developing the MIFEE project opposes many of the articles of The United Nations on Rights of Indigenous Peoples (UNRIP). The significant migration which will result from the project will inevitably threaten the identity, culture and spiritual language of the local indigenous people as mentioned in Article 12-14 UNRIP.

When interviewed by the tabloid Jubi Gebze Albert Mouyend first Chairman for the Malind Anim indigenous group said the MIFEE project was also in violation of the right of indigenous peoples to participate fully in all decision making and implementation levels in matters affecting the rights of indigenous peoples and their livelihoods.



Transmigration will change local customs

Furthermore indigenous people should help in all administrative matters and in designing legislative measures that may affect indigenous peoples' rights, life and livelihood.

*"The establishment of Merauke integrated food and energy estate will marginalise the indigenous people. The Marind tribe in Merauke will be pushed aside and no longer own a land because every inch of the land will be owned by the state,"* said Mouyend.

He said that it was not the right time to take Kota Rusa to national level, continuing the government's plan to establish Merauke as the main basis of food supply.

*"This issue will cause the Merauke people to revolt. Just see the holders of the native title act, they are not living in*

*the main area anymore,"* he said. Mouyend sees that the government needs to review the Papuans by not issuing a one-sided policy. He thinks that considering the living condition of native Marind people, the government should already have given valuable supports such as housing; instead they are taking the people's land and change it into farm and plantation areas.

*"[The government] should respect us, don't issue policy without coordinating it with us [beforehand] because we are the people of the land,"* said Moyuwend.

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working forum)

# An interview with CIFOR



**I**n approximately one month's time the Centre for International Forestry Research (CIFOR) will be publishing a paper detailing the results of its research on the Merauke Integrated Food and Energy Estate. This paper will explore the social, environmental and economic impacts of the project. Nico Prins from Peace Brigades International interviewed one of the researchers involved in Krystof Obidzinski. Krystof started the interview by giving a broad overview of what the project actually entailed.

## An enormous undertaking

There has been much debate about the size of the project at the district, provincial and national government levels since it was initially conceived in 2006. The most widely quoted figure at the moment is 1.2 million hectares of land in concessions directly attached to the project and a further 800,000 hectares that is being allocated in un-related concessions. The scale of the project then is enormous. CIFOR has done a study and of the 1.2 million hectares of land parcelled into concessions it has estimated 50% has forest cover. The majority of the forested land is to be found in the North and East, while the South-West is predominantly

open savannah.

The indigenous peoples that inhabit the area come predominantly from two separate groups. In the North there are the Ayo who are still primarily hunter gatherers, while the Marim are more sedentary and are located closer to the city of Merauke.

It appears that the initial phase of the project will focus upon developing 500,000-600,000 hectares of land. Krystof explained CIFORs' concerns:

*"We are worried about the impacts that this project will have on the region. CIFOR is not for or against plantations. Papua is in need of significant development and plantations can be part of the solution. The real question is where, how and to what extent plantations are used."*

## Political overtures

However MIFEE is seen by many in the local administration as not only a viable scheme but also an essential project for increasing regional investment in Papua. They hope that this project will generate increased tax revenues whilst alleviating poverty. It is no surprise then that the national government in Jakarta is largely supportive

of MIFEE. Given the complexity of the political situation in Papua there is also a preference by national government for local government to focus on investment projects rather than more complex issues such as civil and political rights for the people of Papua.

A project such as MIFEE which combines private capital with state funding is seen as essential by the regional government given its limited capacities. Without such a project they believe regional development will stagnate as Otsus (*Otonomi Khusus Provinsi Papua*, Special Autonomy legislation for the Province of Papua) money is insufficient. This logic will result in a large hurdle that will occur as the regional government with its limited capacities attempts to manage an enormous project and handle the estimated US \$6 billion of investment.

Krystof hypothesised that there is a second reason why local government is so supportive of the project. The tax revenue that would eventually be generated by MIFEE is seen by some members of the local political elite as an argument/rationalisation for the creation of a South Papua Province centred upon Merauke. For this reason Krystof believes that it is lucky that a freeze on



pemekaran (process of creating new provinces and regencies) occurred in 2008. The creation of a South Papua Province would have added another layer of complexity to MIFEE and increased the opportunities for corruption and mismanagement.

*"The splitting up of regencies has at times been badly managed. Some regencies completely lack the capacity to deal with and disburse the funding that they are receiving."*

It is perhaps safe to infer that the creation of a new province would result in similar problems.

## Free Prior and Informed Consent

One of the initial practical hurdles that the project will have to overcome is in acquiring the Free Prior and Informed Consent of the indigenous peoples for the concessions that have been allocated to private businesses in accordance with UN Declaration on the Rights of Indigenous Peoples which the Government of Indonesia voted to adopt at the General Assembly. This process is already underway and there are signs that certain companies like Medco and Wilmar are really trying to do this.

For those that are doing consultations with indigenous peoples there is much confusion regarding who the

companies should be talking to. Furthermore there are issues regarding what kind of remuneration to offer because as of yet there has been no extensive mapping of indigenous lands. As a result of this confusion many companies are taking short cuts. They are often talking to the local elites and when funding is available it is frequently directed at the wrong people. This is creating conflict at the community level.

However there are companies that have not been trying to acquire the Prior and Informed Consent of local indigenous peoples. To further complicate things there are indications that some of the companies who are looking to buy concessions are not primarily interested in developing the land agriculturally. In many of the Northern concessions for instance where forest cover predominates there has been a high degree of interest from timber companies. Such companies are not known for their involvement in food production. This is of concern as the Ayo are perceived to be far more vulnerable to the negative impacts of development.

Once development is underway one of the biggest impacts upon the regency of Merauke will result from migration. The subject of transmigration is extremely emotive in Papua, but whatever way you look at it the amount of labour required for the MIFEE project will be significant. Given the importance of the project for the local economy Krystof is

sceptical that legislation which is already in place in Papua restricting transmigration will be effective. Although many people fear MIFEE will result in a rush of migration from Java, Krystof thinks that migrants will disproportionately come from areas closer to the island of Papua like the Moluccas and Sulawesi.

## Poverty alleviation, a misleading claim

One of the big questions that many will be asking is who will benefit from this project. Government claims that MIFEE will be a tool for poverty alleviation is somewhat misleading. CIFOR have done a number of studies which attempt to identify the impacts MIFEE will have on income distribution locally. A result of these studies is that CIFOR has come to the conclusion that Indigenous peoples of the area will benefit little from development because by and large they do not have the necessary skills and experience to work on the plantations that are to be established. This is particularly true for the Ayo who have little experience of the market economy and are still hunter gatherers, but it also the case for the Marim. Krystof opined that hypothetically should the project occur in *"ten years time when the local indigenous communities are familiar with plantations then the development of these plantations can have*

significant benefits, in terms of poverty alleviation.” The most probable scenario is that transmigrants will accrue the greatest benefits from MIFEE, with indigenous peoples being further marginalised.

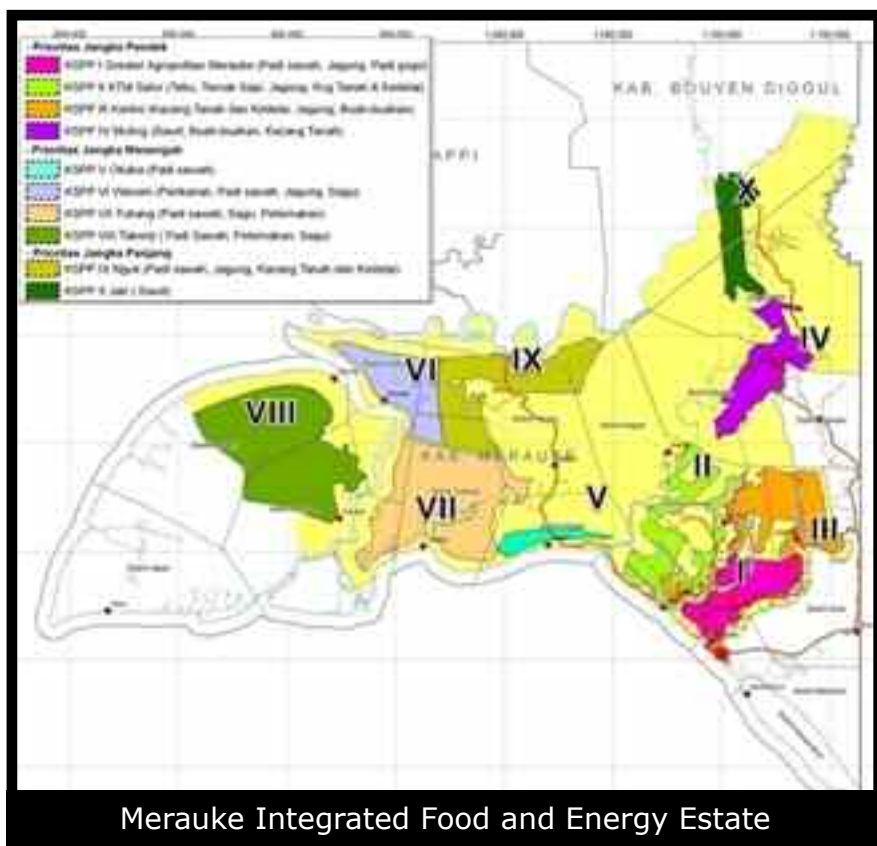
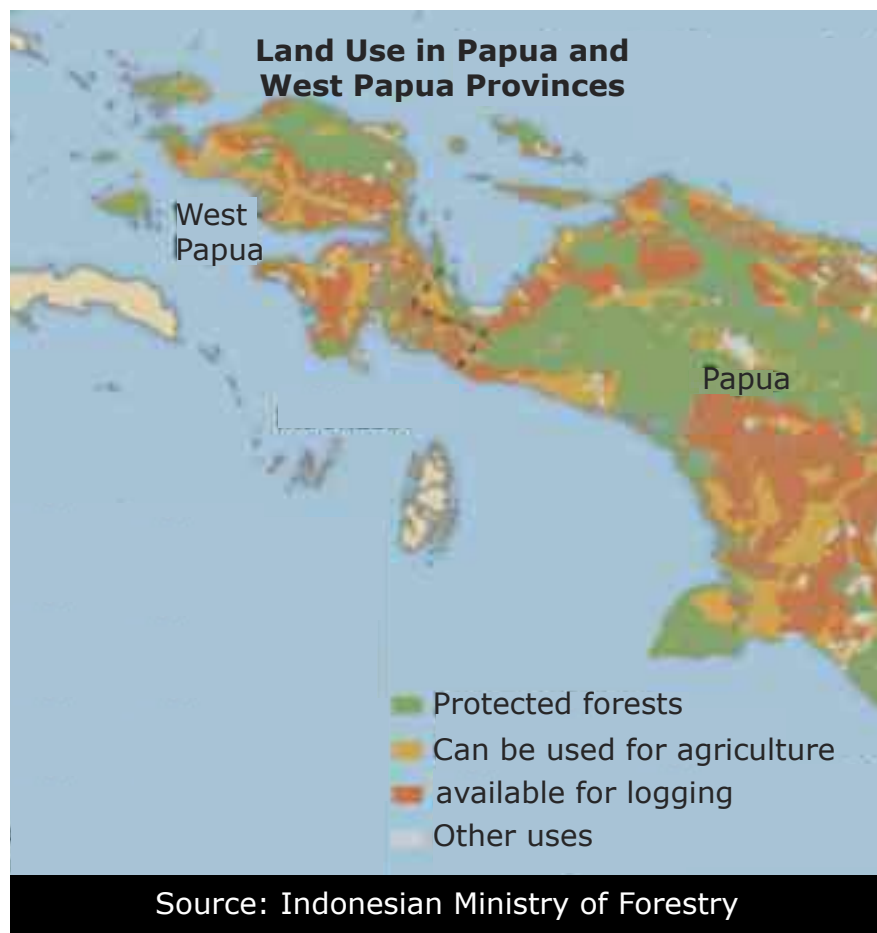
## Conclusion

Krystof ended the interview by outlining the two recommendations that CIFOR will be making in its paper on MIFEE that is to be published within a month

1: Scale down the size of the project to 500,000-600,000 square km with a focus on developing the concessions in the South-West (savannah) as opposed to the North and East (mangrove forest) as it is important to reduce the extent of deforestation.

2: Do a real analysis of the costs and benefits of MIFE. This is necessary because currently there is a lot of government publicity regarding the many benefits associated with the project. While it is good to identify the benefits associated with the project it is also necessary to do an in depth evaluation of the costs that this project will have.

Interview of Krystof Obidzinski, CIFOR  
<http://www.cifor.cgiar.org>  
 by Nico Prins PBI



# The start of a new beginning

*An interview with Nico Prins by Michael Mori (PBI)*

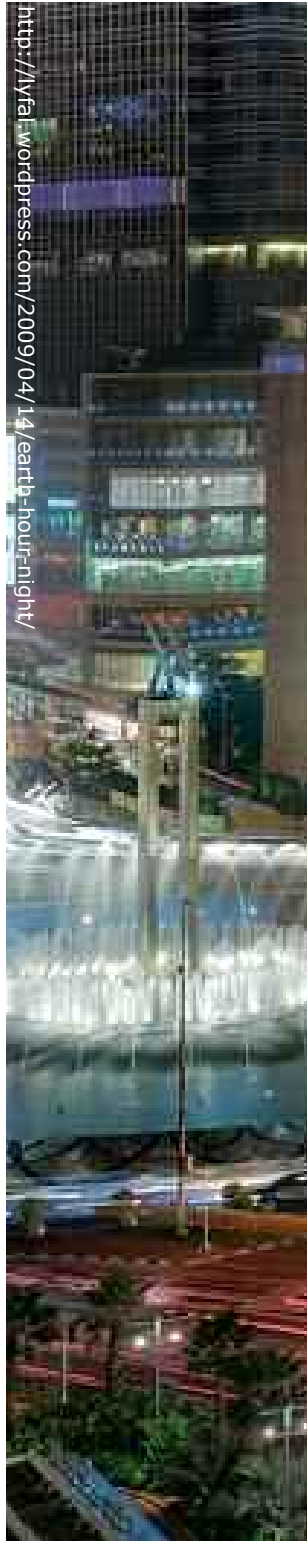
**You have been in the project for almost fifteen months now. What first attracted you to PBI?**

After finishing University I went to live in Latin America and it was there that I came across PBI and the work they do. I was interested in the way PBI works, on a consensus basis and its mission of offering protective accompaniment and support to human rights defenders.

I think my fifteen months in the project has been a testament to the difficulties of trying to achieve these objectives while operating in a complex political environment but also ultimately the many rewards that you can receive from this work.

**Why did you choose to apply for the Indonesia Project and not one of the Latin American ones, and did you ever regret this choice?**

It is a question that I get asked a lot. Part of the reason that I chose to go to Indonesia was that I had never lived in a South East Asian country, whereas I have lived in several Latin American countries. Indonesia gave me the chance to do thus and learn a new language. I also have family links to Indonesia. My grandparents on my father's side used to live in Indonesia and so it is a country that has always intrigued me. Having come here I never regret having made that decision. I have made a lot of good



friends here and had amazing experiences.

**Where have you been based during your time with the IP?**

Since starting with the Indonesia Project I have been lucky to have the opportunity to work in all of the PBI offices with the exception of the coordination office which was based in Yogyakarta. My experiences in Jakarta, Jayapura and the old office in Wamena has let me experience the full range of PBI activities and shown me how the work that is done in Jakarta benefits the PBI partner organisations in Papua.

I was also fortunate to have the opportunity to attend the PBI communication and advocacy conference in London in December of last year. Although I had a lot of work to prepare for the conference its was a real opportunity for me as there were representatives from all of the various PBI projects as well as from a number of the country groups.

**What do you feel you have taken away from your experiences with PBI?**

That is such a difficult question to answer. I think that in terms of my personal development the greatest thing I have taken away from my time in PBI is that the unexpected happens a lot more frequently than you would think. As a result I learnt the importance of being able to

adapt to an ever changing environment. I think these are two definite lessons that I can take away from my experience with the organisation.

On a more personal level there are the many friendships that I have made and people I have had the privilege of meeting. As a result of this I know that if I want I can always have a home in Indonesia.

**What have you found most challenging?**

At the beginning of my contract I was asked this question, and my immediate response was working in Indonesian. More than one year later my reply is the same which just goes to show that some things change and others stay the same. In some ways I envy my colleagues who started at around the same time as me and have spent most of their contract in Papua. Without exception their Indonesian is very good.

Even though I have learnt a lot during my short time with the organisation I have the feeling that there is still so much left to learn and so much work still to do. As well as this there is the workload, even now while I am preparing to finish my contract and start another job the pile of work that I have to do is steadily increasing.

**Thinking back over your time with the IP, what have been the overall highlights?**

There have been so many highlight for me during my time with PBI. My visit to Papua in October last year was definitely one of the most memorable experiences that I had. Jayapura and Wamena are such different places, to work, operate and live in when compared to Jakarta. To get the chance to visit



these places is not only an experience in itself but also helped me to understand why the teams work the way they do.

As well as visiting Papua getting to know the people that you are working with within PBI was also important for me. For the first few months of my work in PBI I had only met the people who worked in the same office as me. Meeting the volunteers from the other PBI offices and getting a chance to put a face to the voices was a nice experience for me.

**Any advice to others who may be interested in applying to join the IP?**

Apply knowing that you have the right frame of mind to work hard, in a small team, in a different country with a different culture under occasionally stressful conditions. The key to this in my opinion is being flexible and willing to adapt. With no two days being the same you have to be ready to be challenged and able to cope with this while working in a close knit team. Although that might sound like a lot of hard work there are many rewarding experiences that you can expect to receive.

**What are you planning to do now that you are preparing to end your contract with PBI?**

After I finish my contract with PBI I shall be working as a fundraiser for a small local organisation based in Jakarta that is focused upon giving disadvantaged children access to education. I will be having a vacation in between of two days, which is generally known as a weekend so that I can relax and move house before plunging headfirst into my new responsibilities.

# *PBI Finance Officer*

## *Interview with Christiena*

### **Dewikumara**

**What has been the highlight of your time working for PBI in Indonesia?**

The best part working with PBI in Indonesia was when I have big opportunities to work with many different people from different countries and within multi culture environment. I also have opportunity to enhance my skills and knowledge by doing the finance task together with administration. This is my first finance working experience though I study accounting for my bachelor degree but I never apply for accountant job. It's very challenging to me when I have to be involved in a very hectic situation of finance and tried to build a new financial internal control system for Indonesia Project.

**You have been working for the project now for many years now, how do you think the project has developed during your time as finance officer for the Indonesia Project?**

I worked for PBI since end of May 2009 till now, so it's not a many years, just one and half year (like volunteers' agreement, just kidding). The project developed well as I understand that IP still has many things more to improved, but from the financial worker point of view, IP had developed good because we can hold out from finance crisis on mid of this year

and face very high turn over in personnel. We had new policies and guidelines for internal control in Coordination Office, developed finance sheet, and those things will be socialized soon amongst volunteers and staff on November in order to make a smooth implementation for 2011.

**What first attracted you to work for PBI in Indonesia?**

To be honest, the first thing that attracts me to work in PBI is because the office is in Yogyakarta. I can't leave my hometown because I was a mother of 6 month old baby girl. The next thing is because it is an international organization that allowed me to broader my insight when working with multi cultural environment.

**Few volunteers ever get the experience of working in Yogyakarta. What was it like working in the coordination office and did it leave you feeling detached from the project?**

Sometimes I felt left behind just because I didn't involved directly into the project, but it didn't make me feel detached from the project because I also work very close with PBI volunteers even though they never seen me physically. The important thing is how you maintain a good relationship between peers and volunteers. I saw the volunteers from their photograph and emails, so it made me feel better.

# Peace Brigades International

making space for peace

## Indonesia Project



Peace Brigades International, founded in 1981 in Canada, is an international NGO inspired by Gandhi and non-violent traditions. PBI uses protective accompaniment through international presence and non-violent action to deter politically motivated violence and expand space for Human Rights and peace activism in areas of civil conflict and repression. On invitation of local organisations, PBI sends teams of trained volunteers into areas of conflict to provide international presence and protective accompaniment. Currently, PBI works in five countries: Colombia, Guatemala, Indonesia, Mexico and Nepal.

### **Vision**

PBI envisions a world in which people address conflicts non violently, where human rights are universally upheld and social justice and intercultural respect have become a reality.

### **Mission**

PBI works to open a space for peace in which conflicts can be dealt with non-violently. We use a strategy of international presence and concern that supports local initiatives and contributes to developing a culture of peace and justice. We act on request of local non-violent groups working for human rights and social change in regions where there is oppression and conflict.

The aim of PBI's international presence is to accompany both political and social processes through a joint strategy of deterring violence and promoting active non-violence. Our international teams of volunteers use methods such as protective accompaniment, peace education, independent observation and analysis of the conflict situation. In addition, PBI learns about, develops, and models forms of nonviolent intervention. Where possible, we initiate contacts with all the parties to a conflict in order to inform of our presence.

PBI supports this work through a broad international network of organizations and individuals. Our identity is built upon non-hierarchical structures and consensual processes.

### **IP Mandate**

To contribute to positive peace-building and the improvement of the Human Rights situation in Indonesia through a proactive international presence, committed to the principles of non-violence and non-partisanship.

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The views expressed by third-parties are those of the authors and do not necessarily represent those of PBI.