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The Denial of Traditional Land Rights in West Papua

By Ballard, Chris

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Wellem Korwam's dismembered body was found wrapped piece by piece in plastic bags and floating in a river in the Wasior area of West Papua in September 2001. One of the tragic consequences of the denial of basic human rights, including rights over traditional land, to the indigenous Papuan communities of this Indonesian province is the casual and often sadistic killing that accompanies the commercial exploitation of West Papua's resources. Wellem's murder was part of a series of vicious conflicts in the Wasior area, where timber companies, hiring elite police paramilitary troops for security, have been operating with little or no compensation paid to local communities. Under the pretext of repressing Papuan separatism, Indonesian government forces have a long history of committing human rights abuses in support of their own business interests.

West Papua is renowned for its mineral wealth, including vast reserves of oil, gas, copper, gold, and nickel. With the more lucrative and accessible forest resources of Sumatra, Kalimantan, and Sulawesi now sorely diminished, the regional timber and forest products industries are also increasingly turning to West Papua as the next source of windfall profits. Representing almost 22 percent of Indonesia's total landmass, but with only one percent of the national population, West Papua has been a focus for government attempts at resettlement from the over-populated regions of central Indonesia under the World Bank-funded transmigration scheme. While transmigration levels have never approached planning objectives, a more successful byproduct of investment in the plantation industries and capital works associated with the transmigration program has been a massive increase in the numbers of "voluntary" or "economic" immigrants from other parts of eastern Indonesia, such as the Moluccas and Sulawesi. These economic immigrants now make up the bulk of the non-indigenous proportion of West Papua's population, estimated at some 30 to 35 percent of the provincial total of about 2.2 million. Significantly, however, this immigrant population is overwhelmingly urban; it accounts for the bulk of the 26 percent of West Papua's urban-dwelling population. Pressure on indigenous land beyond these urban settings derives not from immigrant populations but from resource industries: mining, plantations, and timber. The way in which these industries acquire land and exploit resources that West Papua's indigenous people consider theirs is one of the most important sources of local conflict and fuels the West Papuan desire for independence from Indonesia.

Under Dutch colonial rule, land in West Papua (then Netherlands New Guinea) had been gazetted and acquired, usually without consultation and often without compensation. During the brief period from 1949 to 1962 when the Dutch attempted to fast-track development for their last remaining East Indies colony, new legislation was drafted specifically for West Papua, though it was never fully implemented or tested. (Ploeg, 1999) Negotiation over land ownership and land use was becoming the norm, and compensation or royalty agreements were developed with local

communities, as in the case of the Akimuga resettlement and agricultural project in 1958, and the Parieri project on Biak island in 1959.

The transfer of Netherlands New Guinea to Indonesia in 1963 effectively reversed this trend in consultation. In many ways, Indonesian land law derives directly from Dutch colonial precedents even though Indonesia's Basic Agrarian Law of 1960 sought to reverse some of the discriminatory practices of Dutch colonial law. What it gave with one hand, the new Indonesian law took with the other, upholding the jurisdiction of customary or adat law over all land and natural resources, but only insofar as customary law did not impede national or state interests. In effect, this provision perpetuated the Dutch colonial principle of *domein verklaring* (the declaration of any lands the state deemed unused as free domain and thus state property), which Dutch critics referred to as the "domain fiction."

In West Papua, where most land is under the ownership of traditional communities practicing *swidden* cultivation, Indonesia's national interests have assumed a particular prominence. *Swidden* cultivation is commonly regarded by government officials in Indonesia and in many other developing countries as an impediment to formal land registration and to development, and as an environmentally unsustainable practice. This stance can lead, as in the case of the Freeport mine discussed below, to ludicrous arguments for the forced removal of *swidden* cultivators from the vicinity of mining projects because the former are deemed to be harming the local environment. Projects that have sought to impose administrative control over *swidden* horticulturalists are common across Indonesia, and are often closely linked to the commercial exploitation of forest products and the development of plantations.

In practice, the protection envisaged for traditional rights in the Basic Agrarian Law is seldom available to communities in West Papua. Ignorance of the rights of traditional communities on the part of both communities and government officials leaves most traditional lands unregistered and thus open to being declared the common property of the nation. More galling still for West Papuans is the lack of legal recourse for traditional landowners. In one famous case, a district court in 1985 awarded compensation for the appropriation of a 62-hectare plot belonging to the Ohee and Onge clans to Hanoeh Hebe Ohee, a traditional landowner from the Sentani region near the provincial capital of Jayapura. A process of appeal by the provincial government saw the original ruling upheld at both the High Court and Supreme Court levels in 1988. The provincial government then stalled the process of compensation until 1995, when Chief Justice Soerjono simply overruled the court's final verdict with a memorandum. In the context of this general skepticism about the prospects of successfully pursuing their grievances through the courts, many West Papuan communities have opted instead for more immediate forms of agreement with government agencies and companies, however exploitative these might be.

The case of the Amungme and Kamoro communities of the Timika area, where mining, transmigration, and even conservation interests have taken precedence over traditional land rights, illustrates well the multiple forms of encroachment suffered by traditional landowners in West Papua. The establishment of the Freeport copper and gold mine on Amungme territory in the Central Highlands of West Papua in 1967 was the beginning of a long history of dispossession. There was no initial negotiation with--and no compensation paid to--the local Amungme communities for the permanent loss of land for the mine and its infrastructure, or for the

destruction meted out to mountain peaks whose major ritual significance had already been documented by Catholic missionaries in the 1950s. Although the Indonesian government had assumed all responsibility for dealings with local communities, it was the mining company, Freeport Indonesia, that was eventually forced into negotiation with the Amungme after a series of community protests. The resulting 1974 "January Agreement," which was signed by Amungme leaders under pressure from the military, yielded control over the mine's contract of work area to Freeport in return for very limited compensation in the form of buildings and a mobile store.

When the Amungme joined the 1977 province-wide uprising against Indonesian rule, they attacked the mine as a symbol of the Suharto regime. The ensuing military repression devastated local communities and destroyed all hope for reconciliation between the company and the Amungme. From 1979 until 1986 the government made repeated attempts, with Freeport support, to relocate Amungme settlements from the vicinity of the mine in the highlands to sites near the lowland township of Timika. In most instances, Amungme soon returned to their highland valleys. From 1985, the government initiated a program of transmigration to the Timika area, establishing a series of large settlements whose non-Papuan residents would supply the mine's various contractors with labor. The Kamoro people, owners of the lowland plains around Timika, received little or no compensation for these developments.

The 1987 discovery of the Grasberg ore-mountain greatly boosted Freeport's wealth and national significance; by 1995, the mine's reserve value was estimated at over US\$54 billion. The discovery attracted both additional international scrutiny of the mine's environmental and social impacts and further interest from the Indonesian government, which declared the mine a strategic national asset and installed a permanent military detachment to guarantee its security. From 1994 to 1997, the growing military presence in the area resulted in increased conflict with the Amungme community and a long list of human rights abuses, including murder, torture, rape, and disappearance.

Timika is now a boomtown with a population of more than 120,000 though less than 1,000 Kamoro people lived there in the 1950s. It forms the hub for extractive resource industries operating across the southern central portion of West Papua, including timber companies and smaller consortiums that target precious forest products such as eaglewood and birds' nests. Minor payments to communities or outright bribes to their leaders have been sufficient to dispossess certain Kamoro and resettled Amungme communities of most of their lands. Freeport has made belated attempts to come to retrospective agreements with Kamoro communities over both the "release" of lands for Freeport's township site at Kuala Kencana and for the destruction of their environment through the direct dumping of mine waste into rivers. None of these "special recognition" arrangements, however, are the result of genuine negotiations with the community over the location, the scale, or the pace of development.

In a further twist, the Amungme community has had to endure yet another form of land grab, this time in the form of a nature conservation park. In 1919, the Dutch colonial administration gazetted a vast area of the southern plains of West Papua, extending up to the glacier-covered central range, as a nature reserve. They revoked this status in 1956 when the potential for conflict with traditional land rights became clear. Following the advice of a report by the UN Food and Agriculture Organization and the UN Development Programme, the Indonesian government

reestablished the Lorentz Strict Nature Reserve in 1978, identifying an area of more than 2 million hectares which was occupied by more than 100,000 indigenous inhabitants, including Amungme. Freeport's mine abuts the western margin of this reserve, and the government has periodically granted concessions within the reserve for mining and oil/gas exploration. Timber and forest product companies also operate without hindrance throughout the park, which has effectively become a zone not for conservation but for resource exploitation unfettered by external scrutiny. None of these projects involve consultation with local landowning communities within the park.

Prompted in part by fears of additional mining development on Amungme land within the Lorentz Park, separatist guerrillas took two teams of scientists working in the park hostage in 1996, provoking intense international media interest in the area for the first time. Despite this setback, Indonesia succeeded in registering the Lorentz Park with UN Educational, Scientific and Cultural Organization (UNESCO) as a World Heritage site in September 2000. One of the first decisions UNESCO made in Lorentz was to excise 150,000 hectares from the park's original area, to be allocated as a petroleum exploration concession for the U.S. company CONOCO. From an Amungme perspective, the Lorentz Park represents another form of unwarranted and un-negotiated intrusion on their territories and a further infringement of their traditional rights, indistinguishable in many respects from the operations of Freeport or the timber companies.

Under a "Special Autonomy" package granted to West Papua in January 2002, the province is set to reap a more substantial proportion of economic benefits from major resource projects like mining, timber, and oil/gas. While the provisions of the new law fall well short of the demands of most West Papuans for outright independence, a process of debate has been initiated over the scope for reinstating traditional land rights within the implementing legislation for Special Autonomy. Whether such a move could succeed, or have any impact on the ground, depends on other factors, such as the future role of the security forces in business at a local level and the possibility of an impartial judiciary. The past offers little hope for the future on either count.

Chris Ballard is a researcher at The Australian National University's Research School of Pacific and Asian Studies. He has conducted long-term research as an archaeologist, historian, and anthropologist in Papua New Guinea and West Papua, and is author or editor of books and collections on anthropology (Fluid Ontologies, 1998; Myth and History in the New Guinea Highlands, 1999), agriculture (Agricultural Intensification in New Guinea, 2001), history (Historical Perspectives on West New Guinea, 1999; Race to the Snow, 2001), and mining (Mining and Mineral Resource Policy in Asia-Pacific, 1995; The Ok Tedi Settlement, 1997).

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