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Extracting Natural Resources: Corporate Responsibility and the Rule of Law
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Lessons Learned:
Case Study regarding the Amungme, Kamoro and Freeport

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

The Philippine Alliance of Human Rights Advocates, as quoted in Ramon C. Casiple, “Human Rights vs. Development Aggression: Can Development Violate Human Rights?”

Imagine if a foreign corporation arrived one day with your national government’s blessing, seized your home, destroyed your grocery store, local farms and gardens, your church, your favorite park, polluted your drinking and bathing water, created hazardous waste dumps throughout your town, blocked your efforts to seek justice through the courts, and bankrolled the police who threatened, tortured, raped and killed you or your family members for trying to resist this destruction of your way of life.

Meet the Amungme and Kamoro of West Papua. They don't have to imagine this scenario. They have lived it for the past four decades of mining operations on their lands by the Indonesian subsidiary of U.S.-based Freeport McMoRan Copper & Gold, Inc.

As multinational extraction corporations come in conflict with communities around the globe – from Appalachia to Alaska, from Burma to Nigeria – the experience of the Kamoro, Amungme and Freeport offers an excellent case study for understanding the dynamics of these conflicts and the power imbalances and lack of effective mechanisms for resolution that feed them. It is also one of the best-documented examples of the ways in which large-scale extractive industries undermine basic human rights. It is a classic story of environmental racism and injustice, of abuses across the full spectrum of economic, political, civil, social and cultural rights, and of the ways in which local people have sought to defend their lands, livelihoods and cultures without the benefit of effective legal recourse. Their story demonstrates the harm to human life and the environment that result when the economic interests of extractive industry corporations are allowed to trump protection of human rights and the environment.



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An essential take-home lesson of the Freeport experience is that the corporation remains above the law by wielding its financial, public relations and political influence to exploit weak governmental regulatory structures and to block or suppress independent attempts – through the courts, the market, the media – to consider violations of human rights and environmental protection measures. A more fundamental lesson, though, is that Freeport's contract of work with the national government to which it pays taxes and royalties – a document originally written by the company itself¹ – overrides core human rights standards, including those relating to development and indigenous people.²

Today, Freeport's West Papua gold and copper mining operations are amongst the largest in the world.³ Freeport's mining operations has decapitated a mountain (the Grasberg), held sacred by the Amungme, filled with mining waste alpine lakes linked with Amungme earth spirits, and paved over other sacred sites lower in the valleys.⁴ Operating at elevations of more than 12,000 feet above sea level, the company moves an average of 700,000 metric tons of material (vegetation, soil, rock, ore) every day – roughly the equivalent to moving Egypt's Great Pyramid of Cheops every week. Indeed, when the Grasberg open-pit is exhausted, it will become the world's largest underground mine. The legacy will be a 1,350-foot crater surrounded by mining tunnels, mountains of acid-leaching rock waste and a dumping ground of dead lowland rainforest – or "sacrifice zone" as Freeport calls it – stretching to the coast some 80 miles away.⁵

Freeport's seizure, control, and despoliation of Kamoro and Amungme lands and natural resources have circumscribed or destroyed local communities' economies and livelihoods. The Amungme and Kamoro have been further displaced and marginalized – economically, politically, socially, and culturally – by the outsiders who have swarmed to the economic "boom" town created by the mine. The area's population has exploded to some 120,000 people, having made it the fastest-growing "economic zone" in the entire Indonesian archipelago.

In their numerous public statements, the Amungme consistently speak about the loss of human dignity and mistreatment -- physical, psychological, spiritual and economic – they have experienced since Freeport, its agents and by-products (subcontractors, military protectors, economic migrants and others) arrived. As one Amungme community leader expressed it, "We feel that [Freeport] and the Government of Indonesia have blatantly disregarded our existence as the owners of the land which was confiscated. They have humiliated our existence, our dignity, our self-esteem, and pride and we, as human beings, have been belittled and trodden over. We are wondering ourselves if, in fact, we are human beings or merely creatures which are in the process of evolution to become human beings."⁶

¹ George A. Mealey, "Grasberg: Mining the Richest and Most Remote Deposit of Copper and Gold in the World, in the Mountains of Irian Jaya, Indonesia," Freeport-McMoRan Copper & Gold, Inc., New Orleans, 1996, p. 83.

² See discussion of Freeport's Contract of Work in Abigail Abrash, "Development Aggression: Observations on Human Rights Conditions in the PT Freeport Indonesia Contract of Work Areas With Recommendations," Robert F. Kennedy Memorial Center for Human Rights, Washington, July 2002, pp. 10-11.

³ See, for example, Jan Fetter-Degges, "Freeport-McMoRan, Human Rights: Overview," Social Issues Service, 2006 Company Report – C, Insitutional Shareholder Services, April 13, 2006.

⁴ See, for example, Chris Ballard, "The Signature of Terror: Violence, Memory and Landscape at Freeport," in Inscribed Landscapes: Marking and Making Place. Edited by Bruno David and Meredith Wilson. Honolulu: University of Hawaii Press, 2001.

⁵ See, among others, R.W. Phelps, "Moving a Mountain a Day: Grasberg Grows Six Fold," Engineering & Mining Journal, McGraw Hill Publishing Company, New York, June 2000.

⁶ "The Amungme and Komoro Demand Justice for the Destruction caused by Freeport Indonesia in Irian Jaya," translated letter by Tom Beanal, in his capacity as Director of the Lorentz Foundation, a nongovernmental organization founded by the Kamoro and Amungme people; circa 1993 (on file with author).

Another Amungme community leader has asked, "What do they think the Amungme are? Human? Half-human? Or not human at all? If we were seen as human . . . they would not take the most valued property of the Amungme, just as we have never wanted to take the property of others . . . I sometimes wonder, whose actions are more primitive?"⁷

The Amungme and Kamoro have stated in a variety of publicly available documents (i.e., resolutions, statements, speeches) that their conflict with Freeport began with the company's confiscation of indigenous communities' territory without consultation with or consent by local landowners. Freeport's 1967 Contract of Work, drafted by the company⁸, gave Freeport broad powers over the local population and resources, including the right to take, on a tax-free basis, land, timber, water, and other natural resources, and to resettle indigenous inhabitants while providing "reasonable compensation" only for dwellings and permanent improvements.⁹ Freeport was not required to compensate local communities for the loss of their food gardens, hunting and fishing grounds, drinking water, forest products, sacred sites, and other elements of the natural environment upon which their cultures and livelihoods depend.¹⁰ A sign of the times, no human rights or environmental impact assessment was done. Indeed, in the subsequent 1991 Contract of Work, the contract also explicitly provides for flexibility on the part of the Indonesian government in enforcing relevant environmental protection laws and regulations.¹¹

Indonesia's national laws have not been in compliance with international human rights standards; they have offered no adequate respect for community land rights, no rights of refusal or of informed consent, and no effective protection for traditional livelihoods and cultures. The legal regime governing land, minerals, water, and other natural resources has granted near-total control to the government.¹²

At the same time, Indonesian authorities have treated opposition to economic "development" as a crime of subversion, often acting with aggression against indigenous communities seeking to retain their customary lands or to participate in decision-making regarding use or management of natural resources.¹³ As Freeport constructed its mining base camp, port site, milling operations, roads and

⁷ 'Arti Tanah Bagi Suku Amungme', *Kompas*, 25 September, 1995 English translation ; and cite in M. Easton, *Land Tenure Issues Surrounding the PT Freeport Indonesia Concession in Irian Jaya*, unpublished manuscript (on file with author).

⁸ Mealey, "Grasberg," p. 83.

⁹ Contract of Work Dated 7 April 1967 Between Indonesia and Freeport Indonesia, Incorporated: Decision of the Cabinet Presidium, No. 82/E/KEP/4/1967 (Jakarta: Direktorat Pembinaan Pengusahaan Pertambangan, 1967), Article 2, paragraphs (d) and (e).

¹⁰ Ibid.

¹¹ "In recognition of the added burdens and expenses to be borne by the Company [Freeport] and the additional service to be performed by the Company as a result of the location of its activities in a difficult environment, the Government recognizes that appropriate arrangements may be required to minimize the adverse economic and operational costs resulting from the administration of the laws and regulations of the Government from time to time in effect, and in construing the Company's obligations to comply with such laws and regulations." Source: Contract of Work between the Government of the Republik of Indonesia and PT. Freeport Indonesia Company (1991), Article 18, para.8.

¹² See, for example, Denise Leith, "The Politics of Power: Freeport in Suharto's Indonesia," University of Hawai'i Press, Honolulu, 2003, pp. 108-109.

¹³ See, among others, Sudargo Gautama and Robert N. Hornick, An Introduction to Indonesian Law: Unity in Diversity (Bandung, 1972). The authors illustrate the weakness of local autonomy over land use: "The national government is always free, on behalf of the national interest, to intervene and to dispose of the village's community land in some way other than that determined by the village. Thus, for example, the government is free to clear forest areas on community land as part, say, of a national program to encourage transmigration . . . The village's *adat* right of disposal may not be raised as an obstacle to national policy" (94).

other infrastructure, Kamoro and Amungme villages were forced to relocate and were barred access to land now under the company's control. Meanwhile, Indonesian soldiers and police – provisioned by Freeport and operating with a mandate to protect the company – have cracked down ruthlessly on those who have protested the invasion. The dynamics are complicated by the fact that the Indonesian military has relied on raising two thirds of its operating budget from legal and illegal methods, including “protection money” from Freeport and other companies, illegal logging, prostitution, and trafficking in stolen goods and endangered species.¹⁴

The experience of the Kamoro and Amungme is one of ‘ersatz development’ or ‘development aggression,’ in which dominant powers – Freeport, the Indonesian central government and military – have used coercion, intimidation, force, divide-and-conquer strategies and other undemocratic, non-transparent and non-participatory means to impose the cash-wage nexus, in which land and other natural resources become exchangeable commodities. This system has siphoned the vast majority of short-term resource profits to foreign stockholders and the national elite, leaving local people dispossessed, displaced and marginalized. In fact, some 80 percent of the profits from the Freeport mine go directly to Freeport McMoRan in the United States, and from there to shareholders throughout the United States and the world who own Freeport stock. Some of the major institutional investors are TIAA-CREF, the New York City Employees Retirement System and a host of companies that package Freeport shares with others to create the mutual funds that are the bedrock of Americans’ pensions and other investments.

The human rights conditions associated with Freeport’s mining operations¹⁵ include:

- Torture, rape, indiscriminate and extra judicial killings¹⁶, disappearances, arbitrary detention, racial and employment discrimination, interference with access to legal representation, and severe restrictions on freedom of movement;

¹⁴ Abrash, “Development Aggression,” p. 17.

¹⁵ See, for example, Abrash, “Development Aggression”; “Mission to Indonesia and East Timor on the Issue of Violence Against Women, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences,” UN Economic and Social Council, E/CN.4/1999/68/Add.3 (January 21, 1999); “Report of the Visit of the Working Group to Indonesia (January 31 to February 12, 1999),” UN Working Group on Arbitrary Detention, UN Economic and Social Council, E/CN.4/2000/4/Add.2 (July 5, 1999); “Results of Monitoring and Investigating of Five Incidents at Timika and One Incident at Hoesa, Irian Jaya During October 1994-June 1995,” National Human Rights Commission of Indonesia, Jakarta, September 1995; “Violations of Human Rights in the Timika Area of Irian Jaya, Indonesia,” Catholic Church of Jayapura, 1995; “Human Rights Violations and Disaster in Bela, Alama, Jila and Mapnduma,” Indonesian Evangelical Church (Mimika, Irian Jaya), the Catholic Church Three Kings Parish (Timika, Irian Jaya), and the Christian Evangelical Church of Mimika, 1998; “Incidents of Military Violence Against Indigenous Women in Irian Jaya (West Papua), Indonesia,” RFK Center for Human Rights and the Institute for Human Rights Studies and Advocacy, Washington/Jayapura, 1999; LEMASA, “The Amungme Tribal Council’s Resolution on the 50th Anniversary of the Universal Declaration of Human Rights and its Implementation on Papuan Soil,” Timika, December 10, 1998; Survival International, “Rio Tinto Critic Gagged,” Survival International, London, 1998; Robert Bryce, “Plaintiffs in Freeport Suit Are Harassed,” *Austin Chronicle*, September 27, 1996; and LEMASA, “The Indonesian Armed Forces in Timika Forcefully Took Away the People’s Document,” Timika, August 14, 1996; and “Timika: Where’s Mama?” *Tempo*, Regions 27/I, March 13-19, 2001.

¹⁶ The first documented Indonesian military killings of indigenous people in the Freeport area occurred in 1972, when Amungme protested against Freeport’s operations on Amungme lands. Researchers have recorded more than 150 cases of individual killings of Amungme and other indigenous people in and around the mine since the 1970s, as well as hundreds of additional deaths amongst these populations from illness and injury due to forced relocation and military attacks.

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

Former Freeport pilot Terry Doyle states that in the late 1970s and early 1980s, Freeport company management ordered Freeport helicopter pilots to transport Indonesian military troops on patrol missions,¹⁷ and there is well-documented evidence that during this same period, Indonesian troops carried out severe and violent attacks on civilian populations within and outside of Freeport's COW areas.

Indeed, Freeport has provided considerable financial and logistical support—as well as equipment—to the Indonesian military and police. Since the early 1970s, the Indonesian military has used Freeport-built infrastructure (e.g., airport, roads, port site) as a staging ground for deadly assaults against the original Papuan landowners in the mine's vicinity—actions purported to be undertaken for protection of the mine and the elimination of popular resistance to Indonesian sovereignty.¹⁸ The military presence increased exponentially following the discovery of the Grasberg deposit, rising to at least 1,850 soldiers by 1996.¹⁹

The Indonesian government has acknowledged the active measures taken by the Indonesian military to expand its authority in the Freeport Contract of Work areas. Referring to a March 1996 riot that caused a temporary shutdown of mining operations, Indonesian Minister of Defense Juwono Sudarsono confirmed that “elements within the military had incited the unrest experienced by Freeport in order to highlight the benefits of their presence.”²⁰ Senior and former Freeport employees also asserted that the military had convinced Freeport management that its presence was necessary to protect the mining operation from disturbances by “disgruntled employees, locals who accuse the company of environmental damage, exploitation (even pillaging) of resources, and cultural insensitivity.”²¹ In response, Freeport agreed to pay the military an initial sum of \$35 million, to be supplemented by an annual “donation” of \$11 million²². For example, leaked internal company documents provide information about Freeport's expenditures for military headquarters, recreational facilities, “guard houses and guard posts, barracks, parade grounds and ammunition storage facilities,” as well as offices for two Army advisors, totaling \$5,160,770 for the Army and an additional \$4,060,000 for police.²³ Later reporting, by *The New York Times*, references payments by the company to individual Indonesian military personnel.

¹⁷ See interview with Terry Doyle in “The Role of the Indonesian Military in Irian Jaya,” 12-13.

¹⁸ See, among others, “The Role of the Indonesian Military in Irian Jaya, The Transmigration of Millions of Javanese Settlers to Irian Jaya, and Why the Issue is so Problematic for Australian Foreign Policy,” Background Briefing Transcript (Parliament of the Commonwealth of Australia, Department of the Parliamentary Library, September 18, 1983), p. 7.

¹⁹ Final Report: Amungme Baseline Study, Appendix V, UNCEN-ANU Baseline Studies Project, Universitas Cenderawasih and the Australian National University, 1998.

²⁰ Lesley McCulloch, “Trifungsi: The Role of the Indonesian Military in Business,” presented to The International Conference on Soldiers in Business: Military as an Economic Actor (Jakarta: Bonn International Center for Conversion, 2000), p. 29.

²¹ Lesley McCulloch, “Security Dilemma for Investors,” *Jakarta Post*, 17 July 2000.

²² McCulloch, “Trifungsi,” p. 29.

²³ Julian Evans, “Indonesia's Next East Timor,” *New Statesman*, 10 July 2000.

“According to Company records obtained by *The Times* show that from 1998 through 2004, Freeport gave military and police generals, colonels, majors and captains, and military units, nearly \$20 million. Individual commanders received tens of thousands of dollars, in one case up to \$150,000, according to the documents. They were provided by an individual close to Freeport and confirmed as authentic by current and former employees.”²⁴

Concerned about the potential investor risks and liabilities resulting from Freeport payments to the military, the New York City Comptroller’s Office, on behalf of the NYC Employees Retirement System (managing the pensions of the city’s firefighters, teachers, police and other civil servants), filed a shareholder resolution in 2005 calling on Freeport management to report to shareholders on these risks.²⁵

However, investor concerns about the company’s practices remain. Most recently, Norway’s Minister of Finance announced on September 9, 2008, that the country’s Government Pension Fund – Global, with \$375 billion in holdings, has divested itself of all stock holdings in Rio Tinto, the giant Anglo-Australian mining firm that owns a major share in Freeport’s West Papua mine, because of the extreme environmental damage caused by the Freeport mining operation.²⁶ The same Norwegian government pension fund divested itself of all its Freeport (FCX) stock in December 2006.²⁷ This decision was based on a judgment by Norway’s Council on Ethics for the Government Pension Fund – Global that Freeport’s dumping of toxic mine waste into local river systems has caused environmental damage that is “extensive, long-term and irreversible,” with “considerable negative consequences for the indigenous peoples residing in the area.”²⁸

The Norwegian decision brings to mind a similar finding by the U.S. Overseas Private Investment Corporation (OPIC). Citing the damage caused by Freeport’s river disposal of waste known as “tailings” and concluding that the company’s environmental impact was in violation of U.S. regulations, OPIC revoked Freeport’s \$100 million political risk insurance in October 1995. OPIC stated that the mine had “created and continues to pose unreasonable or major environmental, health or safety hazards with respect to the rivers that are being impacted by the tailings, the surrounding terrestrial ecosystem, and the local inhabitants.”²⁹

Indeed, Kamoro communities wrote to Freeport management in 1997, calling attention to the serious environmental and health impacts of the company’s mining operations. Their letter states: “The 87 families and 300 people of our villages [who] have suffered from the disposal of mining wastes and environmental damage caused by [Freeport] for over thirty years in this area protest to you strongly about the continuous pollution and devastation of our tribal lands . . . The floods and the toxic

²⁴ Jane Perlez and Raymond Bonner, “Below a Mountain of Wealth, a River of Waste,” *The New York Times*, December 27, 2005, p. A1.

²⁵ Jan Fetter-Degges, “Freeport-McMoRan, Human Rights: Overview,” Social Issues Service, 2006 Company Report – C, Institutional Shareholder Services, April 13, 2006.

²⁶ Bjorn H. Amland, “Norway wealth fund blacklists miner Rio Tinto over environmental concerns in Indonesia,” Associated Press, September 9, 2008; John Acher, “Norway oil fund ejects Rio Tinto on ethical grounds,” September 9, 2008, Reuters; David Robertson, “Norwegian wealth fund sells stake in Rio Tinto; The opencast Grasberg mine in West Papua, Indonesia, has been called one of the worst eyesores in the world,” *The Times* (of London), September 10, 2008.

²⁷ Ministry of Finance, Norway. 2006. “Two companies – Wal-Mart and Freeport – are being excluded from the Norwegian Government Pension Fund – Global investment universe.” Press release No.: 44/2006. June 6. Retrieved January 3, 2008, from Ministry of Finance Website: <http://www.regjeringen.no/eng/dep/fin.html>.

²⁸ *Ibid.*

²⁹ U.S. Overseas Private Investment Corporation, Letter to Freeport-McMoRan Copper & Gold Inc. (Washington: 10 October 1995); Robert Bryce, “Rough times for OPIC,” *Austin Chronicle*, 21 February 1997.

chemicals caused by the mining waste dumped in the River Muamiuwa and River Ajkwa have [made some places dry up and poisoned others]. The sago palms and the trees which provide wood for our homes and canoes are dead; the animals we hunt have fled; the traditional medicine plants have gone. Our culture is starting to die out and we are suffering from increasing serious health problems.”³⁰

Indonesian law explicitly provides that (1) every person has the right to a good and healthy living environment; and (2) those managing the land have an obligation to prevent and abate environmental damage and pollution.³¹ However, legal researchers cite Indonesia as a “classic example of a state with extensive environmental legislation going virtually unenforced due to political constraints.”³² Senior government officials, their family members and associates, and members of the armed forces maintain vast holdings in mining, logging, and other natural resource operations throughout the country.³³ Lack of an independent judiciary proves a primary obstacle to environmental and human rights protection.³⁴

It is important to note, too, that Freeport-McMoRan's relationships with U.S. and Indonesian government decision-makers reportedly have shielded the company from independent scrutiny of its involvement in human rights and environmental violations.

For example, according to U.S. foreign service officers who have served in the U.S. Embassy during the past three decades, Freeport management has enjoyed a close relationship with U.S. ambassadors serving in Jakarta and with some U.S. Embassy staff who are responsible for oversight of environmental issues in Indonesia. One foreign service officer who served in Jakarta in the 1980s as the Embassy's human rights officer described how West Papua was "off limits" to human rights monitoring by Embassy staff. Stating that he and his colleagues were never invited to do monitoring in West Papua, the foreign service officer described how this was part of the "understanding" that Freeport CEO Moffett had with U.S. ambassadors.³⁵ Another former foreign service officer described being summoned to Ambassador Bob Barry's office immediately following the departure from Indonesia of the 1994 U.S. Overseas Private Investment Corporation (OPIC) team that was examining Freeport's environmental practices. The former foreign service officer reported being grilled by Barry, then-PT Freeport Indonesia President Louis Clinton and another Freeport representative about the

³⁰ Kamoro community members from Negeripi and Nawaripi, "Protest Against Environmental Destruction and Rejection of Plans to Move People from their Tribal Lands" (Timika: 25 January 1997).

³¹ See 1982 Basic Provisions for the Management of the Living Environment, Act 4, article 5.

³² Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the Harvard Law School Human Rights Program, "Research Report to the Assistant Secretary-General in Response to the Special Rapporteur on Human Rights and Environment" (1996), 14.

³³ The military has not hesitated to acquire and protect assets by force. A lieutenant commander of Indonesia's elite, US-trained Kopassus special forces told a human rights investigator in West Papua in 1998 that the military was carrying out operations in West Papua's Central Highlands "to make sure that investors can come in." See RFK Center and the Institute for Human Rights Studies and Advocacy, "Incidents of Military Violence." See, among others, Leith, "The Politics of Power," and Peter Waldman, "Hand in Glove: How Suharto's Circle and a Mining Firm Did So Well Together," *The Wall Street Journal*, September 29, 1998, p. A1.

³⁴ For further information concerning the subordination of the Indonesian judiciary to the executive and the military, see, for example, U.S. Department of State, "Country Reports on Human Rights Practices: Indonesia" (Washington: U.S. Government Printing Office, January 1997-2007), preface and sections on Denial of Fair Public Trial; For example, from the 2007 report: "The law provides for judicial independence. In practice the judiciary remained susceptible to influence from outside parties, including business interests, politicians, and the military. Low salaries continued to encourage acceptance of bribes, and judges were subject to pressure from government authorities, which appeared to influence the outcome of cases."

³⁵ Interview by the author, Washington, D.C., 1997.

OPIC team's itinerary and the content of their meetings with Indonesian officials of the Ministries of Environment and of Mines & Energy.³⁶ According to a high-ranking U.S. Embassy official present in Jakarta in the late 1990s, more-senior U.S. Embassy personnel colluded with Freeport and members of the Indonesian government to block the American lawyer Martin J. Regan from meeting with his Amungme clients.³⁷ (In September 1996, Indonesian police deported and black-listed Mr. Regan when he attempted to meet with his clients in Timika.)

Freeport reportedly also has sought to increase its influence with U.S. officials through its political contributions. For example, according to a February 1997 article in the *Austin Chronicle*³⁸, there is an apparent link between OPIC's 1996 temporary reinstatement of Freeport's political risk insurance (through December 1996) and Freeport contributions to the Democratic National Committee (DNC). According to the article, sources close to OPIC reported that, after the agency reinstated Freeport's political risk insurance, then-OPIC President Ruth Harkin stated that she had persuaded Freeport's Chief Executive Officer James Robert ("Jim Bob") Moffett to contribute \$100,000 to the DNC.³⁹

The Kamoro and Amungme continue to seek the return of lands that Freeport and the Indonesian government have confiscated without the community's permission, accountability for military personnel who have perpetrated human rights abuses, explanations by Freeport of the company's mining plans, a role in decision-making regarding use and management of natural resources and environmental conservation, and independent environmental and human rights assessments to determine the extent of damages. They have appealed to the Indonesian government and military, the United Nations, United States courts and policymakers, and directly to Freeport and Rio Tinto (a major investor in Freeport's West Papua operation) management and shareholders in an effort to be heard and to have their concerns effectively addressed. These appeals have come in the form of public community resolutions, interventions and other testimony to U.N. human rights bodies and Indonesia's National Commission on Human Rights, U.S. Congressional briefings, numerous direct meetings with Freeport management, and two court cases, filed on behalf of Amungme plaintiffs in U.S. federal and Louisiana state court, respectively.⁴⁰

If the political will and legal mechanisms existed to respect and enforce the right to development⁴¹ and other basic rights guaranteed under international law, the Amungme and Kamoro might find redress for the myriad environmental, cultural, political and economic injustices they have experienced. (Indeed, governments, including Indonesia and the United States, have reaffirmed the right to

³⁶ Interview by the author, Washington, D.C., 2000.

³⁷ Correspondence with the author, September 2008.

³⁸ Bryce, "Rough Times," 1997.

³⁹ According to U.S. Federal Election Commission documents, as reported by the *Austin Chronicle*, Freeport-McMoRan gave the DNC \$40,000 on August 26, 1996. On September 6, 1996, the wives of Freeport's top executives, Chief Financial Officer Richard Adkerson, vice chairman Rene Latiolais, and Chief Investment Officer Charles Goodyear, wrote checks to the DNC totaling \$35,000. Four days later, Mr. Moffett's wife Louise wrote a check to the DNC for \$2,500, bringing the total amount of contributions by Freeport spouses to \$77,500 within a two-week period.

⁴⁰ *Beanal v. Freeport-McMoRan Copper & Gold, Inc.* (a \$6 billion lawsuit filed in U.S. Federal District Court on April 29, 1996) and *Alomang v. Freeport-McMoRan Copper & Gold, Inc.* (filed in the Louisiana state court system on June 19, 1996). The federal suit was not successful. The Louisiana State Supreme Court upheld the right of Ms. Alomang to sue Freeport in Louisiana state court. However, Michael Bangeris, the New Orleans district court judge, dismissed the suit on March 21, 2000, on the grounds that the plaintiff had not proven that PT Freeport Indonesia is the "legal alter ego" of Freeport-McMoRan Copper & Gold, Inc.

⁴¹ See Declaration on the Right to Development; United Nations General Assembly; Resolution 41/128; adopted December 4, 1986; and "Integrating Human Rights with Sustainable Human Development," United Nations Development Programme, New York, January 2000

development, which incorporates an emphasis on sustainable development and environmental protection, as a “universal and inalienable right and an integral part of fundamental human rights.”⁴²⁾

Rather than take meaningful action to respect well-established international human rights standards as it was urged to do by respected international human rights organizations, Freeport chose to take cover through becoming a signatory to the Voluntary Principles on Security and Human Rights, crafted by the U.S. State Department in response to mounting evidence and international criticism of extractive industries’ contribution to human rights violations in the areas in which they operate. The Voluntary Principles, however, are fundamentally flawed in that they are:

- 1) Voluntary, without any requirement that all corporations be held to the same performance standards
- 2) Not Transparent, without any requirement that corporations cooperate with independent monitoring of facts on the ground in operations areas
- 3) Lax, by sanctioning the continued *de facto* collusion and patronage between corporations and national or local security forces that operate, with recourse to lethal force, and with impunity to safeguard corporate operations over the well-founded and often peaceful resistance of local affected communities
- 4) Inadequate, in that they ignore the central question of whether or not members of affected communities’ basic rights have been respected and upheld in the decision by national government elites to contract with corporations to operate in the first place

The story of the Amungme, Kamoro and Freeport continues, now in its fourth decade. By taking a determined stand in defense of their rights, the Kamoro and the Amungme and other similarly situated communities are changing the rules of the game,⁴³ making it increasingly unacceptable that corporations and governments devastate communities and the natural environment in the name of corporate profit-taking and trickle-down “development.”⁴⁴ It also underscores the urgent need for more successful mechanisms for safeguarding the rights of those affected adversely by extractive industries.

Indeed, in an open letter to Indonesia’s National Commission on Human Rights, the Amungme state, “For us, the Amungme people, the root cause of the human rights violations is Freeport . . . Considering that the government decided to designate Freeport as a ‘vital project’, why was the matter not first

⁴² Vienna Declaration and Programme of Action, World Conference on Human Rights, United Nations, A/CONF.157/23, June 25, 1993, section 10.

⁴³ International human rights instruments and other “best practice standards” now include Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, International Labor Organization, adopted June 27, 1989; U.N. Declaration on the Rights of Indigenous Peoples, September 2007; Proposed American Declaration on the Rights of Indigenous Peoples, Proposed American Commission on Human Rights, OEA/Ser/L/V/11.95, Doc. 6, February 26, 1997; and Principles for the Conduct of Company Operations Within the Minerals Industry, Australian Non-Government Organizations, October 1997.

⁴⁴ The Amungme and Kamoro’s resistance to Freeport – and the extensive documentation of the human rights and environmental problems associated with the company’s West Papua mining operation – served as a factor in a June 5, 2000, decision by Sri Lanka’s Supreme Court to uphold the Constitutional rights of local farmers and a Buddhist monk in defending their lands and livelihoods from the danger posed by a proposed phosphate mining operation that the government of Sri Lanka attempted to contract with Freeport to conduct via a mineral investment agreement. The three judges quoted the Rio Declaration in their decision, stating that, “Human beings are at the centre of concerns for sustainable development. To achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.” Source: Tharuka Dissanaikie, “The Eppawala example: The Eppawalans’ environment is safe, all credit to local activism,” *Himal Southasian*, The Southasia Trust, Lalitpur, Nepal, October 2000.

discussed with the people who are the owners of the natural resources before the company began its operations? Or is it that because the company was designated as a vital project, it was deemed necessary to sacrifice the interests of the people? If the company is indeed a vital project, making it necessary for the Government to sacrifice its own people, we regard this as economic colonisation by capitalists in contravention of our national economic system. . . . The fact that Freeport has been allowed to operate here in Irian Jaya and dig up and exploit our mineral resources, to destroy the very means of our existence, to drive us out of our ancestral lands, to impoverish us and kill us on our own territory, is all the result of a policy which has been determined at the centre in Jakarta. It is the Central Government that must take responsibility for reaching a solution to this problem.”⁴⁵

I commend and thank this Subcommittee for exploring this crucial subject area through today’s hearing, and urge the honorable members of this body to exercise your effective and principled leadership in strengthening the rule of law and protection of human rights with respect to the operations of extractive industries.

Thank you.

⁴⁵ “Amungme People’s Response to National Commission on Human Rights Findings Announced on 22 September 1995.”