

Human Rights and Policy Analysis: The Impact of Involuntary Resettlement on an Indonesian Village

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Introduction

From June to August 2002, I worked in Palu, Central Sulawesi with the Free Land Institute (*Yayasan Tanah Merdeka*, or YTM). YTM is a non-governmental organization that focuses its work on land rights and environmental protection. Founded in 1992, the institute's core activities include community organizing, public policy analysis and public advocacy campaigns.

After 1998, when political space in Indonesia opened up after decades of authoritarian rule, YTM initiated work in public policy analysis. Through this work, it seeks to complement its grassroots organizing and campaigning with issue-based public policy advocacy, primarily aimed at the provincial level. For my Human Rights Fellowship project, I worked in tandem with YTM's Coordinator for Policy Analysis, a young lawyer with background in environmental law and policy, to identify and assess policy options regarding a land rights dispute between rural communities and a nickel mining company.

Background: Expansion of Nickel Mining into Central Sulawesi

One of YTM's primary campaigns concerns the proposed expansion of nickel mining activities into Central Sulawesi. The multinational firm Inco, which has been active just over the border in South Sulawesi for 34 years, plans to commence operations in the Bungku district of Central Sulawesi. This expansion is based on a contract extension that the central government agreed to in 1996, during the final years of the Suharto regime.

The mining project threatens to displace more than 3,000 people, including several indigenous communities. There are also numerous families from Java, Bali and Lombok in the area, who had moved to Sulawesi in the early 1990s as part of government-sponsored population transfer programs (known as *transmigrasi*, or transmigration). Residents in the transmigration village One Pute Jaya, which comprises nearly 500 families, have voiced the strongest opposition to Inco, and have called on the Indonesian government to renegotiate the Inco contract to protect the interests and rights of communities within the mining concession.

To some extent, the provincial government is sympathetic to the idea of revising Inco's work contract, primarily because it could increase revenue to province. As the case dragged on during 2002, however, the provincial government's position swung further toward supporting Inco's expansion.

By late 2001, the provincial government worked out tentative compensation packages with indigenous villages that lie within Inco's concession in Bungku. When I arrived in Palu, though, it had yet to reach an agreement with One Pute Jaya residents. Then, in mid-June, Central Sulawesi's governor formally announced the terms of a resettlement package that would be offered to One Pute Jaya. This package included limited compensation for fruit trees and other cultivated vegetation, and provision of 1 hectare of undeveloped land to residents, but no other compensation for income, land or other assets that would be lost in the move. Villagers rejected this offer, as because these compensation terms were not considered fair and equitable.

Facing local opposition to its expansion, Inco has threatened to take the dispute to arbitration if its current contract is not respected and the expansion not supported. This would not please the central government (given that Indonesia is still struggling to attract foreign capital), which in turn places additional pressure on the provincial government to resolve the land dispute.¹

In August, Inco announced that it would cancel its planned expansion if the land dispute is not resolved soon, because of difficulty securing financing for the project. If this announcement was intended to pressure the provincial government, it was only partly successful. The governor's team responded on the one hand by reiterating their desire for Inco to operate in Central Sulawesi, while on the other by noting the possibility of placing the mining rights up for bid again, should Inco decide not to proceed.

YTM has been working with community leaders and residents in One Pute Jaya for several years, facilitating discussions on their individual and communal land rights, and providing legal assistance in considering their options vis-à-vis the proposed resettlement. In May 2001, the institute published a position paper in support of the residents' land rights claims. In light of the provincial government's decision to support the project, YTM sought to update this position paper, drawing on findings of this analysis.

Laying Out Policy Options

I spent my first week in Palu reading up on the Inco case and developing a plan of action with my colleagues for our project. As an exercise to understand more clearly the policy options YTM is considering, we used an analytical methodology taught in Berkeley's

¹ In early July, the central government announced it would allow 140 mining projects to proceed in protected national forest areas, a decision widely criticized by Indonesian environmental groups. As in the Inco case, foreign mining firms had threatened arbitration if they were not allowed to move ahead with these projects, most of which were contracted under the Suharto government. This case is illustrative of the central government's strong interest in promoting foreign investment.

public policy school. First, we wrote up a brief description of the policy problem to be analyzed, from the perspective of the residents in Bungku who would be affected by the mining project. Following this, we identified policy options available and established criteria for evaluating whether each option would be advisable. Based on this exercise, we initially identified three alternatives for further study:

1. Temporary moratorium on mining expansion into the province.
2. Revising the work contract via a three-way, participatory process involving the regional government, Inco and local communities that would be affected.
3. Developing new regulations that set compensation standards and ensure protection of land rights vis-à-vis mining and/or other development projects.

For each of these options, we listed out information that we would need to weigh more carefully the pros and cons of each alternative, and to project their likely outcomes. This missing information included:

1. Information on international arbitration.
2. Information on international legal channels that might provide leverage to affected communities.
3. Updated and more complete data on economic costs of the proposed resettlement, including those that Bungku residents would incur and those that the host community in Labota would incur.
4. Information on whether/when Inco conducted an environmental assessment for the project, and if so what issues this assessment addressed.
5. Compilation of legal framework that currently governs the resettlement process.

With this framework in mind, we set out to track down the information that we lacked. Over the course of our work, we revisited and revised the alternatives that were initially identified. Toward the end of the project, after gathering more data regarding each policy option, we listed the predicted outcomes of each, noting which outcomes would be positive developments and which would be negative developments. This last step provided a context in which to weigh the pros and cons of different options, as we prepared to present our analysis findings to other activists and decision-makers in the province.

International and Domestic Arbitration

Given that several of our proposed policy options could trigger Inco's threat to bring the contract dispute before an arbiter, my colleagues at YTM were keen on understanding better what international arbitration entails. This is a subject about which few, if any, activists and officials in Palu had information. Our goal, thus, was to develop at least a basic understanding of the process and assess the likely outcomes were the case brought to arbitration.

Tracking down basic legal information on arbitration proved easier than we initially expected. The Inco work contract states clearly that in the event of international

arbitration, the governing rules of UNCITRAL (the UN Commission on International Trade Law) would apply. The UNCITRAL regulations were available on the Internet, along with the 1958 “New York Covenant,” a UN agreement that provides the basic legal framework governing international arbitration. Using these documents and referring to Indonesian legal sources, we drafted a three-page fact sheet on UNCITRAL’s provisions, including how the arbitration process is initiated (in writing, by either party to the contract), whether it proceedings are open or closed (closed), and who pays for the costs (the losing side).

Furthermore, the Inco contract stipulates that an arbitration hearing would take place in Jakarta, unless the two parties to the contract (Inco and the central government) come to some other agreement. Such proceedings, we learned, would no longer be considered international arbitration but instead would be domestic arbitration, governed by Indonesia’s new Law on Arbitration and Alternative Dispute Resolution, enacted in 1999. After consulting with several lawyers in Jakarta who specialize on arbitration cases, we wrote up a summary of the law’s provisions that are particularly relevant to the Inco case, also as background information for YTM colleagues and other activists in Palu.

Among other provisions, the new Arbitration Law allows for the involvement of a third party that is connected to a commercial dispute, even if it is not one of the parties to the arbitration agreement in the contract. Alternatively, the original parties to the contract could draft a new arbitration agreement, including a third party, for the purpose of resolving a specific commercial dispute.

At first, this seemed to be one possible legal avenue for One Pute Jaya residents to protect their land rights. In accordance with the Arbitration Law, however, entering into an arbitration agreement would bind a third party to going through arbitration to resolve their dispute, i.e., they would give up their rights to taking their case before a judicial body. So long as One Pute Jaya was not party to the arbitration agreement, citizens there would retain the option of bringing their case before a court, and could still seek to initiate an arbitration process midway if they so desired.

Role of Canada’s Export Development Corporation (EDC)

For its operations in Sulawesi, Inco has received extensive funding (to the tune of nearly \$100 million) from export credit agencies, including Canada’s EDC, Japan’s JEXIM and the US Export-Import Bank. These bodies, known as “ECAs,” are publicly funded statutory agencies that provide subsidized commercial and political risk insurance to firms operating overseas. ECAs such as the EDC and the Export-Import Bank are heavily involved in extractive industries, e.g., gas, oil and mining, through loan guarantees and direct project finance credit.

In recent years, largely because of pressure from environmental and human rights activists, these agencies have begun to develop guidelines on environment and social assessments for projects that receive funds. Generally, these guidelines are not very strict, and do not even require that agencies take action when a project receives poor

marks on it assessment. However, Canada recently passed a law (in 1995) requiring all government agencies to conduct environment and social assessments before project funding is approved; the criteria for assessment includes whether forced resettlement is likely, and what sort of economic and social consequences such resettlement would have. The law also states that it applies to government-funded projects overseas, giving us some hope that it might provide legal basis for the communities in Sulawesi to challenge the mining project, were we to collect evidence that the Inco environmental assessment was insufficient in scope.

After contacting several Canadian NGOs that provide legal assistance to such cases, we learned that the EDC is not yet subject to Canada's new environment assessment regulations, as it is technically a "Crown corporation" and not a government authority. This effectively rules out the option of pursuing the case through Canadian courts. Nonetheless, given that Inco will likely pursue additional EDC loans as its expansion date grows closer, YTM is considering how it could work together with Canadian environmental pressure groups and attempt to influence the agency's decisions regarding project finance to the mining project in Central Sulawesi.

Identifying Economic Impacts of Resettlement

In late July, I traveled to two villages on the province's eastern shore that lay within Inco's mining concession, One Pute Jaya and Bahomotefe. My colleague Sugiharto, who accompanied me, had visited the villages every three months or so over the past two years to assist residents to develop strategies for protecting their land rights. There are no phone lines or electricity in One Pute Jaya and Bahomotefe, so regular communication between YTM's Palu office and village residents is not possible, so the organization kept in touch with village leaders through Sugiharto's periodic visits.

We set two main goals for our visit: (1) to identify and estimate economic costs that villagers would feel if they were forced to relocate and (2) to encourage village residents to make a collective decision regarding future action that could protect their rights. We spent the bulk of our week in One Pute Jaya, where opposition to the mining project is strongest, and residents hope to find a way to either remain on their land or at least increase the level of compensation that would be provided. While there, we identified and estimated the economic costs associated with the resettlement, using simple back-of-the-envelope calculations.



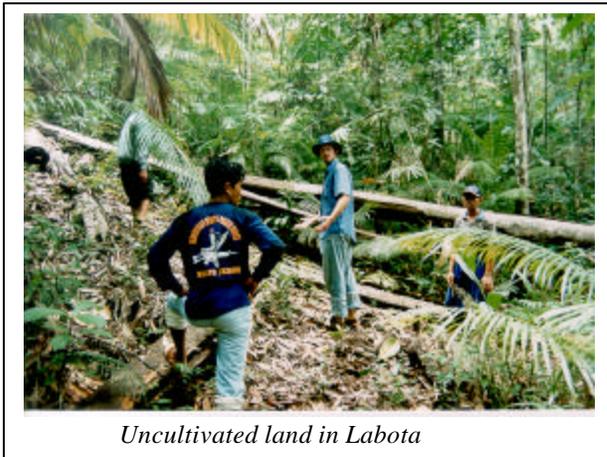
Rice fields in One Pute Jaya

In preparation for this analysis, we drafted a list of issues for consideration, based on information that YTM had already gathered from the villages and its analyses of past resettlement cases involving Inco in neighboring South Sulawesi, and in part on literature regarding economic analysis of involuntary resettlement.

Our list of issues for consideration included village land-use patterns, the use of private and common assets (e.g., grazing land, communal forests) and social services (e.g., schools, medical facilities), employment patterns and non-farm sources of income.

Our approach to gathering information largely involved informal discussions and meetings with village residents. Sugiharto and I spoke with more than 75 residents during our time in One Pute Jaya, including the village chief and members of the five-person village representative council (an elected body that functions oversees the village chief but has no legislative or budget powers). Most of our discussions took place in people's houses and were held over coffee and tea, fruit and other snacks that villagers kindly offered us.

On one hand, this informal approach gave us a chance to maintain the high level of trust that YTM had built among villagers. Most people with whom we met were candid in their views of Inco, the district government and their village chief, as well as the prospect of resettlement. On the other hand, our approach did not pay much attention to methodology, as Sugiharto and I essentially wandered about the village and spoke with whomever we came across. Our findings, therefore, were at best impressionistic. In addition, we realized in hindsight that we spoke with very few women during our time in the village, and that in the future YTM should develop a more formal approach to gathering data that would ensure that women's voices are included.



Uncultivated land in Labota

In addition to gathering information in One Pute Jaya, we also traveled to Labota, a village about 20 kilometers away that was set to be the relocation site. Two villagers from One Pute Jaya, both farmers, accompanied us and provided input on the land quality in Labota, based on their experience as farmers. A three-hour walk through the land slated for resettlement – still uncultivated forest area – gave us a better sense of the land quality and opportunities for

rural economic activity. This was the first time that our friends from One Pute Jaya had visited the proposed resettlement site, and it gave them a chance to see firsthand the type of land that they would receive.

While the land quality in Labota was of at least as good as in One Pute Jaya, because the land was still forest area it would require much preparation before it could support wet rice cultivation, the primary crop of the farmers in One Pute Jaya. From their experience moving to the area ten years ago, the two villagers who visited Labota estimated that it would be three to five years before the new land was at 100 percent productivity. This would create income losses for rice farmers, which we estimated at different levels of productivity:

<i>Output level</i>	Normal income range	Income per four-year period at output level	Lost income over four-year period
One Pute Jaya (100 %)	Rp. 4-10 mil	Rp. 16.0-40.0 mil	No lost income (base case)
Labota (80%)	Rp. 4-10 mil	Rp. 12.8-32.0 mil	Rp. 3.2- 8.0 mil
Labota (60%)	Rp. 4-10 mil	Rp. 9.6-24.0 mil	Rp. 6.4-16.0 mil
Labota (40%)	Rp. 4-10 mil	Rp. 6.4-16.0 mil	Rp. 9.6-24.0 mil

This table, which we later included in a YTM report to the provincial government, gave estimates of the lost income from the time needed to prepare new land in Labota. If the productivity over the four-year period was 80 percent, for instance, based on the current range of income from rice products each family would lose between 3.2 million and 8 million rupiah – or about \$3500 to \$8750.

In addition, there would be labor costs involved with preparing the new land – time farmers would have been spent on cultivating their lands would have to be spent on preparing the lands. Using the daily wage rate Rp. 10,000 (about \$1.10) as a standard, we estimated these costs at different levels of effort (i.e., 20 percent of work over four years devoted to clearing the forest area and preparing the new land for rice farming).

We summarized these and other potential economic impacts of resettlement in a written analysis, which YTM distributed to provincial government and legislature. We noted that the analysis intended to describe costs from the perspective of the citizens who would be affected by the resettlement, as these are often overlooked in or excluded from official cost-benefit analyses of development projects.

Community Forum and Citizen Action



Community forum in One Pute Jaya

On our second day in One Pute Jaya, Sugiharto and I moderated a community-wide discussion concerning Inco expansion and the proposed resettlement plan. Nearly 100 people attended this discussion, including the One Pute Jaya and Bahomotefe village chiefs. In the forum, villagers raised concerns regarding the proposed resettlement, such as the quality of the land or the lack of compensation for housing and personal assets, which fed into our analysis.

It was clear that while villagers were concerned with protecting their land rights in One Pute Jaya, they had not dismissed the

idea of moving to Labota – if they were offered fair compensation. (I summed up their position as “we’re not moving, and we’re definitely not moving unless they offer us more compensation!”) There was some trepidation among participants that Inco might enter the area regardless of whether they moved. This could generate negative environmental impacts (and accompanying costs) that would hurt residents should they stay.

The discussion thus turned to the question of how to advocate effectively for a fair compensation package, without which the majority of residents would not consider relocation. Stating that they were tired of working through an unresponsive local government, community forum participants decided to shift their strategy to direct negotiation with Inco. Six months earlier, the company had sent a consultant to the village to assess the villagers’ position. This consultant raised the idea of Inco providing direct compensation of Rp. 70 million to each family in exchange for their relocation. Villagers received this idea warmly, but it was never followed up by further discussion with Inco.



“Standing room only” at the One Pute Jaya village hall

At our community discussion, therefore, participants concluded that they needed to be more pro-active in pursuing direct compensation from the company – but that they also needed to set a strict deadline by which time Inco must provide an answer to their demands. The village representative council drafted a letter to Inco representatives stating the village’s intention to keep their offer (i.e., to move to Labota if offered a fair compensation package)

on the table until September 30 (see Appendix A). YTM also drafted a letter to Inco’s president, which cited several of our findings from the One Pute Jaya assessment, as clarification of the villagers’ position. I later delivered these letters, along with a copy of the compensation initially discussed in January with Inco’s consultant, to the firm’s offices in Jakarta.

After returning to Berkeley in the fall, I learned from my colleagues at YTM that this September deadline came and went without a response from Inco, which continues to press the provincial government in Central Sulawesi to resolve the matter on its behalf. Several villagers in One Pute Jaya countered by forming a new civic organization, which will continue to coordinate resistance to the mining development and press the local government to prepare fair compensation if it intends to resettle villagers elsewhere.

Presentation and NGO Discussion Forums

Before leaving for One Pute Jaya, Sugiharto and I gave a short presentation of our work thus far to a few friends from the NGO community here and several of YTM's community organizers who were in Palu that week. The goal of this meeting was to get feedback on the issues we planned to raise during our time in Bungku, and to hear opinions regarding the policy options that YTM is considering as principal recommendations.

We made a second presentation in mid-August to a much larger audience of approximately 30 non-governmental activists, including two from the national mining watchdog coalition in Jakarta. Participants at this second discussion were skeptical that either Inco or the provincial government would respond to citizen pressure, but supported the villagers' decision to take action rather than wait for the local government to dictate the terms of a compensation package.

Proposal Writing

During my first week in Palu, a representative from ICCO, a Dutch international development agency that funds several of YTM's projects, visited the office. He met with the full staff (12 people) and discussed, among other issues, a draft grant proposal that the institute had submitted earlier in the year. At my director's request, I worked on the proposal following this discussion, reorganizing the evaluation section to fit better the funding agency's requested structure. Additionally, I assisted an NGO working group in which YTM is involved to prepare a grant proposal to apply community-organizing methods toward conflict prevention work in Poso, a district in the province that has been the site of repeated political and religious conflict since 1999.

Evaluation and Conclusions

As I hoped going into the project, working with YTM provided me a chance to learn about substantive issues regarding development and resettlement in a fairly detailed manner, and to become more familiar with the political and legal context in which the development projects take place in Indonesia. In particular, I gained a new understanding into the role of export credit agencies in international development, which I researched further this past semester.

My experience in the YTM office was excellent. My colleagues were very open and welcoming, and it was easy for me to establish good working relationships, most importantly with the coordinator for policy analysis. Working directly with an Indonesian organization offered me a chance to hear candid perspectives on international development, and learn about Indonesian politics and policy-making their perspective. This should be a real benefit to my professional development in the field of international public policy. I also appreciated the to utilize several of the analytical skill sets that I am studying in the public policy program, particularly microeconomic and legal analysis.

YTM also benefited from the project, which provided some rough but still concrete examples and estimates of the economic costs that mining and involuntary resettlement can create. Before the project, the organization's analysis had focused on the social and environmental impacts of mining. Given that mining and resettlement can also have significant consequences on the economic life of rural communities, accounting for this impact bolsters the argument for adequately compensating villagers who choose to relocate and, more importantly, for the need to have an open process before resettlement packages are designed through which communities can decide whether to relocate and on what terms.

In practical terms, it remains difficult for citizen groups and non-governmental organizations to influence policy debate in Indonesia – particularly at the regional level. While political space is much wider than just five years ago, provincial authorities are not often responsive to pressure from constituents; YTM, for instance, sought for several months to receive a copy of the government's resettlement budget for One Pute Jaya, without success. In this context, policy analysis might play only a small role in influencing decision-makers. In our case, YTM was able to convey its message to a somewhat broader audience through the local media, after repeated efforts to publish op-ed pieces and letters to the editor.

Nonetheless, as our project demonstrated, policy analysis can also be an instrument to encourage community organizing. By taking a participatory approach to gathering and analyzing data, One Pute Jaya residents reached new conclusions regarding the costs of resettlement, which in turn strengthened their resolve to continue the defense of their land rights. In the short run, it is critical for this sort of activity to take place, particularly at the local level – without citizen involvement and pressure, there is no incentive for government agencies to open policy-making processes any further. To this extent, efforts to engage communities in substantive discussion and analysis of public policy are key elements in Indonesia's ongoing democratic transition.

Appendix A: Letter from One Pute Jaya community leaders to Inco president (translated from Indonesian)

One Pute Jaya, 25 July 2002

Respectfully submitted to:
President-Director
PT Inco

Re: Community statement from One Pute Jaya

In accordance with results from a meeting between residents of One Pute Jaya village and a team from PT Inco headed by Prof. Dr. Muslimin Mustafa and Ir. Tangkai Sari MSc., held on 26 January 2002 in the One Pute Jaya village meeting hall (see attachment), the Village Chief (*Kepala Desa*) and citizens of One Pute Jaya adopted the following resolutions:

1. If a response from PT Inco regarding the results and proposed arrangements from the January meeting is not received by 30 September 2002 at the latest, then these results will be considered to be cancelled.
2. To reject the work product of the Central Sulawesi provincial government team from its meeting in Palu, 10 June 2002.

As such, this statement regarding our community's position has been submitted for your acknowledgment.

Signed,

Suyono, Chairman, Village Representative Council
Mokh. Kusen, Village Secretary (on behalf of Village Chief)

Community Leaders:

1. Dewa Made Sumarna
2. Makali Alianto
3. Surip
4. Santi
5. Rasno
6. Mastur

Cc:

1. President of the Republic of Indonesia, Jakarta
2. Chairman of DPR, Jakarta
3. Minister for Transmigration and Workforce, Jakarta
4. Minister for Agriculture / Chair of BPN, Jakarta

5. Minister Mining and Energy, Jakarta
6. Governor of Central Sulawesi, Palu
7. Chairman of DPRD Central Sulawesi, Palu
8. District Chief (Regent), Morowali District
9. Chairman of DPRD Morowali District
10. Sub-district Chief, Central Bungku

Appendix B: Letter from YTM to Inco president (translated from Indonesian)

August 1, 2002

Mr. Edward W. Hodkin
President and Chief Executive
PT Inco Indonesia Tbk
Batindo Plaza II, 22nd Floor
Jl. Jendral Sudirman
Jakarta 10001

Dear Mr. Hodkin:

Since 1997, The Free Land Institute (*Yayasan Tanah Merdeka*, or YTM) has conducted research on the proposed Inco expansion into Bahodopi block, Central Sulawesi. Building on the institute's six years of research, a team from YTM visited One Pute Jaya and neighboring villages from July 24-27, 2002, to assess more specifically the roots of local opposition to the project.

From this most recent visit, we came away with several observations regarding the position of One Pute Jaya residents toward the project and, in particular, the proposed relocation of the village to the Labota area. We offer a summary of these observations, as an addendum to the letter from One Pute Jaya community leaders that is enclosed.

- ✍ On a fundamental level, residents of One Pute Jaya oppose the resettlement scheme because it would entail them cultivating their land and rebuilding their community from the ground up. Many residents remember this process, which they experienced 11 years ago after moving to the area from Java, Bali and West Nusa Tenggara, to be difficult and time-consuming.
- ✍ Furthermore, given that the village has already passed the five-year threshold set out in Indonesia's law governing transmigration, residents firmly believe they have rights over their land, and **reject the notion that they should have to give up these rights** without (a) meaningful participation in the process to develop plans for development in the region and (b) fair and just compensation for the rights that they would give up if the project moves forward.
- ✍ The proposed compensation package does not recognize the amount of lost production and working time that relocation would entail. For example, based on a survey of the land in the proposed resettlement location (current uncultivated forest area), farmers in the village estimate that it would take 3-5 years before the land is as productive as it currently is in One Pute Jaya. There is also need for extensive irrigation to be built before the land is suitable for wet rice farming.

- ✍ Many residents have made improvements to their housing and land since moving to Sulawesi. In addition, the market value of land itself in One Pute Jaya is now increasing. These factors are not accounted for in the current resettlement proposal.
- ✍ For ten years, residents have given up the opportunity to cultivate cash crops, such as coffee, chocolate and cloves. In 1993, the Indonesian government prohibited residents to plant such crops because **of the impending Inco project**. Ironically, the resettlement plan that has been presented *only* offers compensation for these very crops which the government had banned.

Given these factors, it is the position of One Pute Jaya residents that they will not move from their current location under the existing resettlement plan. In addition, they have little faith in the ability of the regional government to resolve this matter, given that district officials have yet to visit One Pute Jaya and discuss the proposed project directly with residents. As such, they have sent the enclosed letter to your office with the hopes that Inco will be open to direct negotiation with the community, building on the visit of Prof. Muslimin Mustafa in January 2002.

We appreciate your time and attention in this matter. If you have any questions or concerns, please contact me in Palu and I would be pleased to discuss this matter.

Sincerely,

Arianto Sangadji
Executive Director

CC: Scott M. Hand, Chairman and CEO, Inco Ltd.