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including the right to development**

Report of the Special Rapporteur on right to food on her mission to Indonesia

Comments by the State*

* The present document is being issued without formal editing.

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Report of the Special Rapporteur on the Right to Food's Visit to Indonesia: Comments by the State

1. This document is the comments of the Government of the Republic of Indonesia on the Report of the Special Rapporteur: Visit to Indonesia dated 28 December 2018 (AIHRC/40/56/Add.2) (hereinafter "the Report").
2. The Indonesian Government has invited the Special Rapporteur on the Right to Food to visit Indonesia on 9- 18 April 2018. This successful visit reflects our government's commitment, as a founding member of the UN Human Rights Council, to engage constructively with the UN Human Rights Mechanism.
3. The Government of Indonesia views that some points elaborated needs to be further clarified by the Government to avoid misunderstanding regarding the situation on the ground, and the policies of the Government of Indonesia in its efforts towards the fulfillment of the rights to food for its people.
4. The Government of Indonesia expected that the visit by the Special Rapporteur on the Right to Food to Indonesia would help the Government to better implement policies in realization of the rights to food for its population by offering practical ways to improve its policies. However, generalizations, simplifications, and inaccuracies found in the report are too many so that the report has limited authority to offer a meaningful recommendation to the Government of Indonesia.

Fulfillment of the Right to Food and Cultural Context

5. The understanding the cultural context of Indonesia is very important before making any claims or recommendations. The Special Rapporteur, in her report jumped into conclusion by stating that the measles breakout and malnutrition that occurred in one of Indonesia's province as "*...(represents) the Government's failure to meet its obligation to fulfill the right to food.*" (Para. 61). Such statement is over-simplifying the real situation on the ground and clearly failed to understand the cultural context of Indonesian people. The measles breakout and malnutrition happened as an extraordinary case in one of more than 17.000 islands of Indonesia.
6. The Asmat Communities, the communities in which the outbreak happened, still adopt a semi-nomadic way of life. This semi-nomadic way contributes to the challenge in combating malnutrition as they move regularly within the mountainous forest and have no habit of stocking food as they mostly collect food from nature. The Asmat's case is also a case of culture and behavior and not solely about access to food. It is also worth noting that the Government of Indonesia remains committed and has taken concrete steps to address the case regardless of the visit of the Special Rapporteur.
7. As a response to the measles breakout and malnutrition, The Government declared it as extraordinary event and the Ministry of Health immediately sent a team of 39 (thirty-nine) healthcare workers, 11 of which are specialized doctors, 3 nurses, 2 anesthesia officers. Among the team are also nutritionist, environmental health, and surveillance workers. In close cooperation with local authorities, all of these healthcare workers have the responsibility to carry out medical service, nutrition screening for infant and children, as well as measles immunization. By October 2018, a complete immunization had been given to 17.337 children in the area.
8. To follow up the result and prevent similar event to reoccur in the future, the Government continues to focus on optimizing healthcare services (among others, through regular screening) and education program on healthy lifestyle and family nutrition.

Reference to Indigenous Peoples

9. When the UN Declaration on the Rights of Indigenous Peoples was adopted by the UN General Assembly in 2007, Indonesia made an explanation of vote regarding the context

of Indonesia and the inapplicability of the term "indigenous people". Given the fact that the entire population of Indonesia remains unchanged since the time of its colonization and subsequent independence and the fact that Indonesia is a multicultural and multiethnic nation that does not discriminate against its people on any grounds, the term indigenous people are not applicable in the context of Indonesia.

10. The UN Declaration of the Rights of Indigenous People does not provide definition on the term indigenous people. The ILO Convention No. 169 of 1989 refers to Indigenous People as peoples in independent countries whose social, cultural, and economic conditions distinguish them from other section of national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.

11. However, in accordance with our national laws, the Government of Indonesia is committed to promote and protect the traditional collective rights of sub-ethnic communities referred as **Masyarakat Adat**, which is not equivalent to indigenous terms used throughout the report. This term has been acknowledged and used by other UN Human Rights Mechanisms when referring to the Indonesian context and should have been used in the report.

Normative Institutional Framework

12. Regarding the Indonesia's ratification to the Optional Protocol on complaint mechanism, the Government of Indonesia would like to underline that although Indonesia have not acceded to any optional protocols on individual complaint procedures, we have solid National Human Rights Institutions with similar mandate. These institutions also serve as a National Preventive Mechanism.

13. The Government of Indonesia views that references towards international instrument, i.e Indigenous and Tribal Peoples (No. 169) and on Domestic Workers (No. 189) are not directly related to the mandate of the Special Rapporteur on the Right to Food.

14. Indonesia has also established legal basis to ensure the fulfilment of the right to food and adequate nutrition for its population through the Law No. 18/2012 on Food. The Law on Food is formulated on the basis of the State obligation to fulfill the right to food of its people.

15. Furthermore, the Government of Indonesia has adopted Government Regulation No. 17/2015 on Food Security and Nutrition and No 83/2017 on Strategic Policy and Action Plan. The National Action Plan on Food and Nutrition was also established through the Minister of National Development Planning Regulation No. 17/2015. These regulations consist of obligations that must be taken by the Government to fulfil the right to food of the people.

Diversification Program

16. The Government of Indonesia continues to encourage the consumption pattern that is diversified, nutritious, safe, and in accordance with local cultural context. The Government through the National Food Security Agency since 2010 has enacted and implemented the Ministry of Agriculture Regulation No. 43/Permentan/OT.140/10/2009 on the Diversification of Consumption Based on Local Resources. This regulation and its implementation aim to develop various main carbohydrate sources other than rice in conformity with local food such as root vegetables, *sagu*, and yellow pumpkin. In 2018, the implementation of this regulation is strengthened by the community-based backyard program that the Special Rapporteur visited in Yogyakarta. The community-based backyard program is a national program which is based on the spirit of diversification to ensure nutritional balance for family.

Women and Children

17. The Government of Indonesia recognizes the paramount role that women play in development, including in achieving food security and realizing the right to food. The Presidential Instruction No. 9/2000 on Gender Mainstreaming in National Development has

become the basis of all Ministries/Institutions to integrate gender perspective in their policies and programs.

18. The Ministry of Agriculture and The Ministry of Marine Affairs and Fisheries, through ministerial regulations, have incorporated gender mainstreaming in their respective Ministries' strategic plan to be carried out in all of their policies and programs. One example of these is the food and nutrition education program for women, which aims to maximize their potential in ensuring the consumption of adequate and nutritious food in their household.

19. The community-based backyard program, which was established on the basis on women empowerment is to utilize and optimize the backyard as a source of food and nutrition for the family. It also aims to support the Government in poverty alleviation program, reducing stunting, and addressing the issue of food-vulnerability in the lowest tier of administration (neighborhood/village). The Government recognizes the women's crucial role as the decision maker in shaping consumption habit of the family and determining the fulfilment of adequate food and nutrition for the family.

20. The rapporteur, in the paragraph 56 of the report stated that "*...Women working in fisheries also have difficulty acquiring fishery worker identification cards, thus denying women's contribution to food production and prohibiting their access to workers' benefits.*" In fact, there is no discrimination on gender basis in acquiring fishery workers identification card. Ministry of Marine Affairs and Fisheries No. 39/2017 stipulated that private sector in fisheries industries (individual/business enterprises) can submit the application with requirements as follows: (a) completed form of registration; (b) copy of national identity card for individual applicant or the authority responsible for the business enterprises; (c) recommendation letter from local head of village confirming application; and (d) tax registration number for business enterprise. There is no reference whatsoever to gender in the said regulation.

Fishing and Coastal Community

21. The Government has been taking necessary steps to protect all small fishermen and fisher folks. The Ministry of Marine Affairs and Fisheries Regulation No. 7/2016 on the Protection and Empowerment of Fishermen, Fish Cultivator, and Salt Farmers has become the basis of the protection of all fishermen and guaranteed the certainty of doing business for small fishermen. The Ministry of Marine Affairs and Fisheries has also enacted regulation No. 71/2016 (Area and Equipment for Capture Fishing) and No. 47/2016 (Sustainable Fisheries) which in general regulate the area and equipment requirement for fishing. The Minister for Marine Affairs and Fisheries Regulation No. 47/2016 on sustainable fisheries regulates that only small fishermen (fishing boats <10 GT) may enter and fish in conservation area.

Business Practice: Palm Oil

22. The conclusion made by the Special Rapporteur that palm oil industry posed serious threat to the right to food of farmers, fisheries and local communities is baseless, and the data gathered is biased with some are already outdated. The Special Rapporteur jumped into this conclusion without comprehensively study the real situation in Indonesia. Hence, we are concerned over the assessment made by the Special Rapporteur in this report that tends to have negative prejudice and is not constructive and assertively enough in meeting its mandate as stipulated in the Human Rights Council Resolution No. 6/2 (2007).

23. With regards to the burning soil practice mentioned by the Special Rapporteur in Para. 79, The Government of Indonesia would like to emphasize that burning land is in fact, illegal practice as shown in the Law No. 32/2009 on the Environmental Protection and Management as well as Law No. 18/2004 on Plantation.

24. Forty-two (42)% of palm oil plantation is owned by small scale farmers. APKASINDO, the largest farming Association in Indonesia with branches in 21 provinces in Indonesia, 4 million members, and land coverage close to 5 million hectares, stated in their

letter to the EU saying that in terms of benefit to farming communities in Indonesia, there is no doubt that palm oil contributes significantly to the lives of millions of farmers and their families, especially by lifting them out of poverty (Source: Amer Arsjad, Secretary General of APKASINDO, Letter to President of the European Commission and President of the European Council, 2018.). Palm oil provides more than 17,8 million employment directly and indirectly, it contributes to the increase of middle income class in Indonesia. This data and other economic development contribution of the palm oil industry on the other hand provide access to food to millions of people in Indonesia. Please also refer to the map of Vulnerability of Food Insecurity 2015¹ and study conducted by the WFP on the Cost of Diet in Indonesia². In that map, the areas that are vulnerable to food insecurity are not the ones in the palm oil plantation areas. The areas that are vulnerable to food insecurity are located in areas that have lack of infrastructure and poverty issues. Therefore, the allegation that palm oil industry poses threats to right to food cannot be justified and is misleading.

25. Through palm oil plantation and the increase of economic scale of the farmers, their access to the basic rights (food, health and education) is also improved. FAO acknowledge the role that agricultural trade can play as an enabler to achieve the SDGs, particularly SDG 1 on ending poverty in all its forms everywhere and SDG 2 on ending hunger, achieving food security and improved nutrition and promoting sustainable agriculture. Therefore the allegation of the Special Rapporteur is still need to be proven. The report should not use one or two cases to generalize and take conclusion of the whole industry without taking into account the practice by the mainstream palm oil industries in Indonesia; the legal framework; and the efforts taken by the Government.

26. Based on the Ministry of Agriculture's data, more than 50% of land conflicts that happened in Indonesia throughout 2016 are not related to plantation. The Law 18/2004 on Plantation mandated every plantation to facilitate 20% of its area for community plantation. The Government also mediates dispute between community and business enterprises.

27. Furthermore, the Special Rapporteur must have been aware of the legal and regulations issued by the Government of the Republic of Indonesia to ensure the sustainability of palm oil industry, and the Government supports/efforts to avoid deforestation of rainforests. However, the Special Rapporteur only mentioned in the report the signing of a President Decree No. 8/2018 on the moratorium of new licenses of palm oil plantation on 19 September 2018. Therefore, allow us to mention the commitment of the Government of Indonesia on the efforts to avoid deforestation, enhance the governance of palm oil industry, and to achieve a sustainable palm oil production.

(a) President Joko Widodo during COP-21 expressed Indonesia's strong commitment to addressing the challenges from Climate Change;

(b) Indonesia is committed to the management and conservation of biological diversity as reflected in the ratification of the United Nations Convention on Biological Diversity (UNCBD) into Law No. 5 in 1994 and the Indonesian Biodiversity Strategic and Action Plan (2015-2020);

(c) Joint Declaration Between Indonesia, Malaysia, and Brunei Darussalam, 12th February 2007 aimed at securing a sustainable future for Borneo's highland rainforest and zero rate of deforestation level;

(d) The President has ordered effective measures to mitigate forest fire. Presidential Decree 11/2015 on Increasing Forest and Land Fire Prevention is aimed at no forest fires neither caused by nature (weather) nor by human (land clearing). Since 2015, there has been a significant decrease of hotspots across Indonesia. In 2015 there are 21,929 hotspots, and in 2016 it got reduced to 3,915 hotspots, and in 2017— 2,567 hotspots;

¹ Food Security Council, Ministry of Agriculture and WFP. 2015. Map of Vulnerability of Food Insecurity. <https://documents.wfp.org/stellent/groups/public/documents/ena/wfp276251.pdf>.

² World Food Program. 2017. Cost of Diet in Indonesia. <https://www.wfp.org/content/indonesia-cost-diet-study>.

(e) The President has established Peat Land Restoration Agency through Presidential Decree No. 1/2016 aimed at restoring degraded peatland area and preventing forest fire on peatland area, with a target of restoring 2 million hectares of damaged peat land;

(f) Through a President Decree, the President has continued the effective implementation of the moratorium of forest concession which has began in 2009. In 2018, The President also signed a decree on the Moratorium of New Licenses for Palm Oil Plantation;

(g) Most importantly, the Government of Indonesia implements a mandatory Indonesian Sustainable Palm Oil (ISPO) certification aimed at creating a sustainability in Indonesia palm oil industry and increasing acceptance in the international market.

28. The Government of Indonesia would like to emphasize the importance of understanding the context of palm oil vis-à-vis to other vegetable oils. Palm Oil is a commodity which the average productivity can reach approximately up to 4 Tonnes/Hectare. This number is much higher than rapeseed (approximately 0.7 Tonnes/Hectare), Sunflower (approximately 0.6 Tonnes/Hectare), and Soybean (approximately 0.4 Tonnes/Hectare). Compared to other plants, palm oil requires the least amount of land use to produce vegetable oil.

29. With regards to land rights, the Ministry of Agriculture recorded that more than 50% of land conflicts that happened in Indonesia throughout 2016 are not related to plantation. The Law 18/2004 on Plantation mandated every plantation to facilitate 20% of its area for community plantation. The Government also mediates dispute between community and business enterprises.

Recommendations

30. The protection and promotion of the right to food for our people has always been high in our agenda. In this light, the Government of Indonesia seriously takes note of 19 (nineteen) recommendations given by the Special Rapporteur.

31. In fact, apart from the call to ratify of the Optional Protocol of ICECSR and various ILO Conventions, most of the SR's recommendations have been part of Indonesia's commitments and ongoing policies. These include diversification policies, lowering food price, incorporating cultural context and targeting the most vulnerable groups in formulating food-related policies, accelerating land-redistribution policies, and ensuring businesses to respect human rights. The Government has always been committed to improve the implementation of such policies and to enhance the welfare of its people, including through the fulfillment of the right to food.

32. Indonesia hopes that the recommendations of the Special Rapporteur could also have amplified good practices in Indonesia for the betterment of human rights in the agricultural sector and business. This includes better acknowledgement of our products which have been respecting human rights, particularly fisheries and plantation products.

Engagement with Special Procedure Mandate Holders

33. Indonesia believes that the report will serve as an example of best practices and lessons learned that Indonesia can offer to international community. The Government will follow up the result of this visit by conducting series of dissemination and public awareness campaigns towards stakeholders both at national and sub-national levels. This is essential to nurture the sense of ownership and encourage the implementation of relevant recommendations. Relevant recommendations would be integrated in our National Action Plan on Human Rights, which plays pertinent role in coordinating endeavors among government authorities at all levels. Indonesia views that engagement with UN Human Rights Mechanism is an opportunity to enhance mutual trust between Member States and international human rights mechanism.

34. The absence of **mutual trust** will surely undermine the spirit of constructive cooperation and the credibility of UN Human Rights Mechanism in general.
