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**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

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HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Special Rapporteur on the right to food and the Special Rapporteur on the rights of indigenous peoples.

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to food and Special Rapporteur on the rights of indigenous peoples pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 13/4 and 15/14.

As you know, the Human Rights Council expects us to communicate with Governments about issues that are brought to our attention by reliable sources of information concerning the situation of human rights that we are tasked to promote and to protect.

We wish to bring to the attention of your Excellency's Government information we received regarding the **alleged impact of several large-scale land acquisitions for agrofuel production in Isabela on the rights of the local peasants and the Agta indigenous peoples**. In particular we wish to draw your attention to information received regarding the impact of these land acquisitions on the ability of local groups to access safe, healthy and sufficient food.

According to the information we received:

A pattern of large-scale land acquisitions is occurring in the municipality of San Mariano in the province of Isabela, Philippines to secure land for the development of an agrofuel project, the Isabela Bio-Ethanol and Cogeneration Project. The Project is being developed by Green Future Innovations, Inc. ("GFII"), a joint Filipino and Japanese corporate consortium made up of Japanese companies Itochu Corporation and JGC Group, as well as local partner, Philippine Ecofuel Land Development. According to the allegations received, the agrofuel project is being supported at least informally through the practices of several state affiliated

agencies including but not limited to the Land Bank of the Philippines and both the national and provincial Departments of Agriculture and Agrarian Reform. The project is planned to include 11,000 hectares of sugar cane plantations and nurseries, along with cogeneration facilities and an ethanol distillery plant. The facilities are expected to be operational by March 2012, producing 50-55 million litres of bio-ethanol per year and consuming an estimated 6,000 cubic meters of water per day from four local wells. Reports suggest that, according to company data, once the plant is running at full capacity, 260 skilled personnel will be employed. Local people will allegedly be hired as manual farm workers to plant, weed, fertilize, harvest and load sugar cane. It is reported that at least 3,000 hectares have been acquired from local farmers for planting as of June 2011. Information received suggests that this is the largest agrofuel development in the country.

The municipality of San Mariano is located in the province of Isabela, in the transition zone between the lowlands of Cagayan Valley and the uplands of the Sierra Madre mountain range. The population of the municipality of San Mariano is around 44,700 people in some 8,000 households. Further, it is our understanding that while much of the tropical forest in the region has disappeared due to logging, some areas, including indigenous peoples' territories of ancestral domain and specific sites zoned for forest recovery and protection, continue to be places of flourishing biodiversity and significant tree coverage.

According to information received, several groups live in the area and currently are or will be reportedly affected by the land acquisitions. Among the affected communities are those who rely on agriculture as their means of subsistence as well as income. These communities include local peasant populations, landless people, the Agta indigenous people and numerous other indigenous peoples, including those belonging to the Ilocano, Kalinga, Ybanag and Ifugao people. These small-scale farmers grow rice, corn, bananas, root crops and mung beans, alongside fruit trees and small garden plots of vegetables in the area. According to reports, average plots of land are between two and three hectares per household. These groups also rely on surrounding forested areas for harvesting natural foods and medicines.

While some of the subsistence food producers in San Mariano allegedly established their plots over sixty years ago, other groups like the Agta indigenous people assert that their land rights are based on centuries of tradition and ancestral ties to the region. Information received notes that a majority of these small-scale food producers are not in possession of government authorized titles, and face alleged systemic barriers when seeking to assert their rights to land tenure.

In addition to supporting local food security, other regions of the Philippines also reportedly rely on the farmers of Isabela for food staples. Reports suggest that the

province of Isabela is one of the top domestic producers of corn and rice, which are consumed across the Philippines, contributing to national food security in the country.

The land acquisitions and the construction of the agrofuels project, allegedly threaten many aspects of local groups access to food.

Displacement. First, allegations have been raised that the land acquisitions have led to and will continue to lead to the displacement of local groups, who rely on farming for their food sources as well as income for additional food needs. These allegations relate to a number of different concerns regarding the choice of land for the project, the effects of displacement on local groups and the processes by which the displacements are occurring.

Allegations have been raised that irregular land leasing practices have been to the disadvantage of small-scale food producers and to the benefit of local politicians. According to the information received, the agrofuel project is acquiring land that has been categorized as idle and abandoned by the Department of Agrarian Reform and the Department of Environment and Natural Resources in order to convert it to sugar cane production. Yet we are informed that these lands labelled idle and abandoned include areas where people have established homes and cultivated the soil for decades and in some cases hold indigenous ancestral rights to the land.

Also related to the land leasing practices are allegations that some individuals were promised free land titling services, but were consequently charged high processing fees, only to later receive legal tenure documents not issued under their names. One particular challenge highlighted in the information received is that many peasants are unable to read and write which results in many barriers to their using the legal system and process for asserting rights.

While some compensation has been provided to displaced families, reports suggest that this compensation is not commensurate to the amount of money families would have earned were they farming the land themselves. According to the information received families who sell rice can earn at least Php 42,000 per hectare per year, those with corn can earn a minimum of Php 5,000-9,300 per hectare per year (depending on the corn variety), and those with bananas can earn a minimum of Php 34,000 per hectare per year. However, information suggests that compensation offered by Ecofuel for the lease of the land for sugar cane production, at Php 5,000 to Php 10,000 per hectare, is often well under the value associated with the land.

We understand that in opposition to the agrofuel project development, numerous farmers have taken action to reclaim land that they previously cultivated and that

had been acquired by the agro-fuel project. According to the information received, since August 2011, farmers have planted rice and corn on approximately 1,400 hectares of such reclaimed land.

Environmental impact. Third, allegations have been raised that the agrofuels project will have negative environmental impacts in the region, which will cause future challenges to accessing food. While an environmental impact assessment has been completed in regards to the bio-fuel processing plant, we are told that no environmental impact assessment has been conducted for the plantations themselves.

Yet, according to allegations received the present plans of GFII to convert 11,000 hectares of productive lands into monocrop plantations of sugar cane may have lasting impacts on local agricultural patterns and the health of the broader ecosystem. These allegations were made on the understanding that monocrop sugar cane cultivation is a highly intensive industrial process that requires a much larger volume of synthetic fertilizers than would be used by local farmers who are in the practice of rotating crops seasonally and using chemical inputs only sparingly. Further the allegations are based on the understanding that perennial crops of sugar cane deplete the soil of nutrients needed for cultivation of food crops, while consuming immense amounts of water.

The allegations received also suggest that the agrofuels plantations will have a significant impact on water access and quality in the region. First, there are fears that even with GFII's commitment to recycle water, consumption will be drawn from local wells at rates which are allegedly equivalent to the daily usage of almost the entire population of San Mariano, and that this usage rate will likely negatively impact both surface and ground water sources. Local farmers and households rely on this water, and allegations suggest that water resources will become scarcer. Second, allegations have been raised that soil and water will become highly contaminated with chemical residues from the fertilizers needed for the sugar cane production, further limiting local groups access to clean water resources.

The choice of land for the agrofuels plantations has also been raised as an environmental concern. Allegations have been raised that land zoning decisions have been disregarded in allocating land to the agrofuel project. According to information received, a significant section of the target area for agrofuel expansion by Ecofuel, overlaps with land already zoned as Socialized Industrial Forestry Management Agreement areas. These areas, of which there are over 500 in San Mariano, are reserved for reforestation and allegedly cannot legally be converted for monocrop cultivation. According to information received, labelling these areas as "idle and abandoned lands" and designating them for agrofuel production, undermines the national reforestation program in Isabela.

Allegations regarding the environmental impact of the GFII projects also concern climate resilience. Much of the targeted land for the project is allegedly on steep slopes and production of sugar cane in these areas, according to information received, will exacerbate the risks of landslides and flooding in the region. According to reports this is particularly worrisome as climate change is leading to an increased risk of typhoons and other erratic weather patterns in the area. More generally, allegations are raised that the ecological balance of forests, watersheds and grasslands and the associated natural buffering system against climate change are all being put at risk through the agrofuels project. Given all of this, the bio-fuel project could allegedly contribute to undermining the climate resilience of San Mariano, and in so doing, represents a risk to the lives and agricultural lands of local communities in the future.

Labour rights. Fourth, there are fears that proper labour protections in the context of the project will not be enforced, given the reported lack of such protections in the agrofuel industry in the past. One fear is that labourers will not be paid just wages. Wages in the agrofuel industry are allegedly based on a *pakyaw* system whereby payment is made to a group of labourers based on the completion of a specified piece of work. These workers describe payments as far below minimum standards, with as little as Php 15-30 per day for weeding or spraying and Php 100 per day for harvesting. These low wages are reportedly insufficient to purchase the food necessary to make up for the decreased food availability resulting from the loss of lands.

Lack of Transparent Processes: Finally, allegations provided suggest that affected communities have very little information about the industrial development and land acquisition agreements. Reports suggest that GFII and Ecofuel did not engage affected communities, particularly the local indigenous peoples, in genuine consultations. While some public assemblies have been held, according to the information received residents were not provided time for meaningful input into the project, and there was inadequate transparent public disclosure of information about the project. According to information received no opportunity was provided for residents to raise fundamental questions about the project plans, or for any democratic or collective decision making on if and how the project should be advanced. Further, according to accounts at all public assemblies the bio-fuel project was presented as a “done deal”, in which residents had no option to reject or modify the plans in order to address community livelihood concerns.

In summary, reports suggest that while the agrofuel project has only been in operation since 2008 and has only acquired 3,000 of 11,000 planned hectares of land as of June 2011, it has already led to increased food insecurity for local households as well as undermined food self-sufficiency by engaging in a number

of allegedly harmful practices. These allegedly harmful practices include: advancing claims that lands rightfully cultivated by peasants and recognized as indigenous peoples' ancestral territories are available for conversion into sugar cane plantations; engaging in non-transparent lease negotiations that result in lands being unjustly acquired from the people who till the soil; promoting violations of contractual commitments under the Socialized Industrial Forestry Management Agreements by facilitating the growing of sugar cane on these lands; leasing land from peasants through contracts which offer compensation at a substantially lower rate than would be earned if they continued to cultivate the land and sell their produce of rice, corn and bananas at local markets; threatening the food security and the livelihoods of farm workers who are now planting sugar cane under allegedly unjust conditions; and aggravating environmental devastation and engaging in practices that lead to the destruction of the natural climate change mitigation capacities of local ecosystems.

Concerns are expressed that through the loss of their agricultural lands families in Isabela will increasingly face challenges in accessing food. Concerns are also expressed that the loss of agriculture land in Isabela will have an impact on food security throughout the Philippines, given the province's position as a major provider of domestically consumed rice and corn. Moreover, concerns have also been expressed that the environmental cost of the agrofuel plantations, and the strain on climate resilience will have lasting impacts on the ability of local communities to have a reliable basis for nourishing, sustained food supplies in the future.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards and, in particular, the following:

With respect to the right to food, article 25 of the Universal Declaration of Human Rights recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food." Furthermore article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – which the Philippines ratified on 7 June 1974 – stipulates that States "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions", and requires them to "take appropriate steps to ensure the realization of this right."

The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the Covenant, has defined the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfil the right to food. The Committee considers that the core content of the right to adequate food implies, inter alia, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can

move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.

The Committee notes that especially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. The Committee makes special note of socially vulnerable groups such as landless persons and indigenous population groups whose access to their ancestral lands may be threatened, as segments of the population who may need specific attention from governments.

The right to adequate food is recognized also in the Convention on the Rights of the Child – ratified by the Philippines on 21 August 1990 – in article 24.2(c) and article 27.3. In the Convention, the right to adequate food is to be read in conjunction with the right to life, survival and development stipulated at article 6. States parties to the Convention on the Rights of the Child commit themselves to combat “disease and malnutrition, including within the framework of primary health care, through, inter alia, (...) the provision of adequate nutritious foods and clean drinking-water.”

The right to adequate food may be under severe threat when land on which people depend for their subsistence is traded away, for instance for the development of large-scale agricultural or industrial projects. This is why the Special Rapporteur on the right to food has considered it necessary to restate the human rights obligations of States in this regard in a set of minimum principles and measures to address the human rights challenge, presented as an addendum to the annual report of the Special Rapporteur on the Right to Food to the Human Rights Council, at its 13th session (March 2010) (A/HRC/13/33/Add.2).

Further, the Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, provides in its article 8(2)(b) that States should prohibit ‘any action which has the aim or effect of dispossessing [indigenous peoples] of their lands, territories or resources’. It also prohibits any forcible removal of indigenous peoples from their lands or territories, imposing requirements of free, prior and informed consent, agreement on just and fair compensation and, where possible, the option of return, for relocations (Art. 10). A number of other provisions of the Declaration relate to the right of indigenous peoples to the lands, territories and resources ‘which they have traditionally owned, occupied or otherwise used or acquired’, which they may ‘own, use,

develop and control', imposing that these lands, territories and resources be legally recognized and that indigenous peoples' laws, traditions, customs and land tenure systems be recognized.

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts summarized above accurate?
2. Have complaints been lodged by local communities, including indigenous communities, in Isabela?
3. Has a human rights impact assessment been carried out regarding the agrofuel projects in Isabela? If so, who undertook such an assessment and could you please provide us with the conclusions of the assessment?
4. Has an environmental impact assessment been carried out regarding the agrofuel plantations in Isabela? If so, who undertook such an assessment and could you please provide us with the conclusions of the assessment? It would be much appreciated if you could also provide the environmental impact assessment completed for the biofuel processing plant.
5. What measures have been put in place to ensure that the agrofuel project does not have disproportionate negative impacts on the environment and on the livelihoods of displaced and neighbouring communities?
6. What measures have been put in place to ensure that the enjoyment of the right to food by local groups, particularly those displaced for the project, has not been threatened by the project?
7. To what extent have the concerned communities been allowed to participate in the decisions to convert land for agrofuel production? Please give the details, dates and outcomes of any consultations carried out.
8. How are titles to land awarded in Isabela? What measures are in place to register, recognize or account for the land rights of those who have occupied their fields and homes for decades or longer?
9. Is there any on-going consultation with the persons threatened with displacement? If so, please give the details, date and outcome of these consultations.

10. To what extent has the land subject to potential acquisition for the agrofuels project been duly evaluated? To what extent have measures of compensation been put in place for all concerned persons (including those who do not have government issued titles, but do have ancestral connections to the region) with a due assessment of the loss of their farming activity? What measures have been taken to ensure that those who may be losing their land are offered alternative sustainable means to access sufficient and adequate food?
11. If locations have been designated for the relocation, we would be grateful if you could provide details on the exact location, including details on the area and quality of land, access to public services and livelihood sources.

We would be most grateful to receive an answer within 60 days. We undertake to ensure that the response of your Excellency's Government will be taken into account in our assessment of the situation and in developing any recommendations that we may make for your Excellency's Government's consideration pursuant to the terms of our respective mandates. Additionally, we undertake to ensure that the response of your Excellency's Government is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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James Anaya
Special Rapporteur on the rights of indigenous peoples