

**EMRIP Study 2022 on the militarization of indigenous land: a human rights focus**  
Submission of Franciscans International

**Indonesia – the status of indigenous peoples in the Indonesian legal system**

1. The Indonesian Constitution recognizes the rights of Indigenous Law Communities (*Masyarakat Hukum Adat*) in Article 18b-2. While supporting the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Government of Indonesia (GoI) does not recognise the applicability of the concept of Indigenous Peoples in UNDRIP, arguing that Indonesia has a specific nature as a multicultural and multi-ethnic nation with unchanged demographic composition at the time before and after independence.<sup>1</sup>
2. Currently, there is no agreed legal translation of the term indigenous people in Bahasa Indonesia, the national language of Indonesia. However, the term *Masyarakat Adat* as a translation of indigenous people has been used by the indigenous people's organisations in Indonesia.<sup>2</sup>
3. There are limited recognitions of the legal status of indigenous peoples and their rights of indigenous people in Indonesia. Law No. 5/1960 on Basic Agrarian Regulation Law No. 39/1999 on Human Rights,<sup>3</sup> and the Decree of MPR No X / 2001 on Agrarian Reform and Management of Natural resources<sup>4</sup> recognise the rights of *Masyarakat Hukum Adat* (Indigenous Law Communities). Law No. 27/2007 on Coastal and Small Islands Management<sup>5</sup> and Law No. 32/2009 on Environment Protection and Management<sup>6</sup> use the term *Masyarakat Adat*, instead of *Masyarakat Hukum Adat*. The Indonesian Constitutional Court confirmed the constitutional rights of *Masyarakat Hukum Adat* over their lands and territories in May 2013, including their collective rights over traditional forests. This decision has been considered as a landmark decision on the recognition of the rights of indigenous people to their customary forest.<sup>7</sup>
4. The GoI and the Parliament have yet to adopt a law on the Indigenous Law Community as mandated in the Constitution. The Draft Law on the Recognition and Protection of the Rights of Indigenous Law Communities, which would streamline processes for legal recognition of indigenous peoples' rights, has been languishing in the Parliament for over a decade.<sup>8</sup>

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<sup>1</sup> Statement of the by the delegation of the Indonesia in General Debate Item 5 during the 38<sup>th</sup> Session of the UN Human Rights Council, 16 September 2016. Available at <https://mission-indonesia.org/2016/09/21/statement-by-the-delegation-of-indonesia-general-debate-item-5/>

<sup>2</sup> The Alliance of Indigenous Peoples of the Archipelago (AMAN - *Aliansi Masyarakat Adat Nusantara*), an umbrella organisation of indigenous people organisations in Indonesia uses the term of *Masyarakat Adat* for indigenous people, including in their proposal for the Law for the Recognition and Protection of the Rights of Indigenous Peoples. The Indonesian version of the proposal is available at <https://www.aman.or.id/wp-content/uploads/2016/02/DRAFT-RUUPPHMA.pdf>

<sup>3</sup> Article 2.4 the unofficial English translation of Law No.5/1960 on Basic Agrarian Regulation available at <https://zerosugar.files.wordpress.com/2014/08/law-no-5-of-1960-on-basic-agrarian-principles-etli.pdf>

<sup>4</sup> Article 4.j of Decree of The People's Consultative Assembly of The Republic of Indonesia Concerning Agrarian Reform And Management of Natural Resources, MPR Decree Number IX/MPR/2001. English translation of the Decree is available at <http://extwprlegs1.fao.org/docs/pdf/ins143985.pdf>

<sup>5</sup> Article 1.33 of Law No 27/2007 on Coastal and Small Islands Management defines *Masyarakat Adat* as a group of communities living traditionally in a specific geographic area because of binding in origin of ancestor, strong relation with the environment as well as system of values determining economic, political, social and legal structures. The Indonesian version of the law is available at <https://peraturan.bpk.go.id/Home/Details/39911/uu-no-27-tahun-2007>

<sup>6</sup> Article 1.31 of Law No 29/2009 on Environmental Protection and Management has the same definition of *Masyarakat Adat* as Article 1.33 of Law No 27/2007 on Coastal and Small Islands Management. The English version of the Law No 29/2009 is available at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC097643/#:~:text=Law%20No.,and%20control%20of%20the%20environment.>

<sup>7</sup> The ruling of the Indonesian Constitutional Court was made in response to a petition filed by the Alliance of Indigenous Peoples of the Archipelago (AMAN- *Aliansi Masyarakat Adat Nusantara*) in 2009. The unofficial English translation of the ruling is available at [https://www.forestpeoples.org/sites/default/files/news/2013/05/Constitutional\\_Court\\_Ruling\\_Indonesia\\_16\\_May\\_2013\\_English.pdf](https://www.forestpeoples.org/sites/default/files/news/2013/05/Constitutional_Court_Ruling_Indonesia_16_May_2013_English.pdf). The Bahasa Indonesia version of the ruling is available at [https://www.aman.or.id/wp-content/uploads/2018/05/putusan\\_sidang\\_35-PUU-2012-Kehutanan-telah-ucap-16-Mei-2013.pdf](https://www.aman.or.id/wp-content/uploads/2018/05/putusan_sidang_35-PUU-2012-Kehutanan-telah-ucap-16-Mei-2013.pdf).

<sup>8</sup> DPR RI, Legislator Dorong RUU MHA Mengakomodasi Kepentingan Masyarakat Adat, 2 September 2021, available at: <https://www.dpr.go.id/berita/detail/id/34421/t/Legislator+Dorong+RUU+MHA+Mengakomodasi+Kepentingan+Masyarakat+Adat.>

## The situation of indigenous people in West Papua and Law 21/2001 on Special Autonomy Law for Papua Province

5. The Indonesian region of West Papua<sup>9</sup> refers to the western half of the island of New Guinea. In August 1962, Indonesian and the Netherlands New York Agreement, which for the transfer of authority for the territory from the Netherlands to Indonesia and included a guarantee that the Papuan people would be allowed an 'Act of Free Choice' (referendum) to determine their political status of West New Guinea.<sup>10</sup> The referendum was organised 1969. On the contrary of the provision in the Agreement that "... all adults, male and female, not foreign national"<sup>11</sup> are eligible to participate, there were only 1.026 Papuan representatives participated, out of the estimated 800.000 population. The result was that all representatives pronounced themselves in favour of the territory remaining in Indonesia.<sup>12</sup> There has been some questions on the process and result of the referendum, in particular on the participation which was not in accordance with the Agreement.<sup>13</sup> Several groups in West Papua and the diaspora have strongly rejected the result and do not recognise the result of the Act of Free Choice. This has contributing to the increase of peaceful and armed independent movements in West Papua.
6. In 2001, the Gol adopted Law of the Republic of Indonesia No. 21 Year 2001 on Special Autonomy for the Papua Province (*OTSUS Law for Papua*),<sup>14</sup> which is applicable to Papua and Papua Barat Provinces.<sup>15</sup> The *OTSUS Law for Papua* recognizes the existence and rights of native Papuans (*OAP -Orang Asli Papua*).<sup>16</sup> The *OTSUS Law for Papua* has a specific provision on the establishment of Papua People's Assembly (*MRP - Majelis Rakyat Papua*) as the cultural representative of the native Papuans which has a certain authority in protecting the rights of the Papua natives, based on respect of the customs and culture.<sup>17</sup>
7. Since its inclusion to Indonesia, there has been concerns on the on-going human rights violation in West Papua, which include cases of arbitrary detentions, tortures, extrajudicial killings, limitation of freedom of expression and peaceful assembly. According to the Indonesian State Institute of Sciences main sources of the conflict in West Papua are different interpretations of the West Papuan political status in terms of integration into Indonesia, ongoing human rights violations with impunity, the failure of development in the region, and the marginalization and discrimination of indigenous Papuans.<sup>18</sup>

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<sup>9</sup> In this submission, West Papua term is used to refer to the Provinces of Papua and Papua Barat. In 2003, the Government of Indonesia decided to split West Papua into those two provinces.

<sup>10</sup> The New York Agreement was signed by Indonesia and the Netherlands at the UN Headquarters on 15 August 1962. The agreement uses the term West New Guinea (West Irian). The full text of the agreement is available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/ID%20NL\\_620815\\_AgreementConcerningWestNewGuinea.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/ID%20NL_620815_AgreementConcerningWestNewGuinea.pdf)

<sup>11</sup> See article XVIII of the New York Agreement.

<sup>12</sup> See the report of the UN Secretary General regarding the Act of Self-determination in West Irian, available at <https://undocs.org/pdf?symbol=en/A/7723>

<sup>13</sup> Some scholars argue that the process of the self determination referendum was a sham and amounted to a dross travesty, as the people of West Papua were never given any real opportunity to exercise their right of self-determination and West Papua was incorporated into Indonesia without the true consent of its people. See the article "An analysis of the 1969 Act of Free Choice in West Papua" by Thomas D. Musgrave on 5 February 2015, available at <https://www.cambridge.org/core/books/sovereignty-statehood-and-state-responsibility/analysis-of-the-1969-act-of-free-choice-in-west-papua/6DB756FCBC96D81B76B663846A8BDE53>

<sup>14</sup> Special Autonomy Law for Papua No. 21/2001, (unofficial English translation available at: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=&p\\_isn=84431](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=84431))

<sup>15</sup> In February 2003, the GOI decided to divide Papua into Papua Province and Papua Barat Province.

<sup>16</sup> Article 1.t of the Special Autonomy Law for Papua defines Papua native as Papua native is a person originating from the Melanesian race group, comprising native ethnic groups in Papua Province and/or a person accepted and acknowledged as a Papua native by the Papua Adat community.

<sup>17</sup> Idem, Article 1.g

<sup>18</sup> Indonesian State Institute of Science (LIPI), Updating Papua Road Map; Peace, Process, Youth Politics and Papuan Diaspora, 2017, available at: <http://www.politik.lipi.go.id/downloadpap/newsletter-preview/Exsum%20Updating%20Papua%20Road%20Map%20-%20LIPI%202017.pdf>

## Militarization of indigenous lands in West Papua

8. West Papua is the only region in Indonesia that faces both peaceful and armed independence movements. The independence movements are led mainly by Papua Freedom Organisation and the West Papua National Liberation Army, which then form an armed wing known as *Tentara Pembebasan Nasional Papua Barat* (TPNPB). In fact, TPNPB consists of various groups that have carried out more sporadic attacks, mainly on military and police targets, but also recently against non-Papuan populations. They also engage in human rights abuses, including killings, hostage-taking and abductions,<sup>19</sup> including the attack on 2 December 2018, where 19 construction workers in the Nduga Regency in Papua Province were killed.
9. Since this incident in 2018, the Gol deployed additional members of security forces to Nduga Regency as well as to various regencies in the central highlands area to hunt down TPNPB members. The central highlands are largely isolated from public services and are known to be the stronghold of the TPNPB. The area is mainly populated by Indigenous Papuans. This conflict has caused an internal displacement in Nduga Regency but also in other areas central highland areas, where the Indonesian security forces conduct the military operations.<sup>20</sup>
10. In August 2019, the Papua Province Ombudsman Office visited the Internally Displaced Persons (IDPs) from Nduga Regency in Wamena. It was estimated that 50,000 people have been displaced.<sup>21</sup> A Humanitarian Team in Nduga estimated that in Nduga Regency alone more than 30,000 people were internally displaced in the conflict.<sup>22</sup> The conflict has been ongoing for more than two years, preventing the IDPs from returning to their villages. Schools, Community Health Centers, and Churches in Nduga areas have been deserted as health workers, church congregations and teachers have not returned to their assigned places of work.<sup>23</sup>
11. The armed conflict has extended to the areas outside of the central highland, including in the neighbouring Papua Barat Province. On 2 September 2021, TPNPB claimed that they were responsible for the attacks against a military post in Maybrat Regency, Papua Barat Province causing the death of four members of Indonesian security forces and injuring several others. In the following days, the local military regional headquarters dispatched at least a hundred soldiers to hunt down the attackers in the area. Fearing being the target of the military's retaliation, an estimated 2,000 villagers, mostly indigenous women and children fled for their safety to the forests nearby. Despite the call from the local head of administration and regional military commander to the IDPs to return to their villages, most of them refused due to fear of retaliation.
12. The authorities in Nduga Regency provided IDPs with basic food items, while the IDPs in Jayawijaya and Lanny Jaya Regencies have reportedly received occasional visits and occasional health services from Papua Province authorities. However, the IDPs expect the central government to provide adequate humanitarian services such as shelter, basic healthcare, and education. The majority of IDPs in Puncak Regency are women and children who live in appalling situations with no access to clean water and health services. They must walk for four hours every day to get clean water from nearby rivers and need to report to the military post along the way. Their children cannot go to school. Security operations are still being conducted by the police and military forces. Many IDPs - particularly children – have been traumatized by the security force operations and fear the presence of police and military members.

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<sup>19</sup> Amnesty International, "Don't Bother, Let Him Die"; Killing with Impunity in Papua, July 2018, p. 7, available at: <https://www.amnesty.org/en/documents/asa21/8198/2018/en/>.

<sup>20</sup> See 2019 and 2020 Annual reports of the Indonesian National Commission for Human Rights (Komnas HAM). Available at [https://www.komnasham.go.id/files/20201209-laporan-tahunan-komnas-ham-2019-\\$V1GFW5HE.pdf](https://www.komnasham.go.id/files/20201209-laporan-tahunan-komnas-ham-2019-$V1GFW5HE.pdf) and [https://www.komnasham.go.id/files/20210830-laporan-tahunan-komnas-ham-ri--\\$R1X5O.pdf](https://www.komnasham.go.id/files/20210830-laporan-tahunan-komnas-ham-ri--$R1X5O.pdf)

<sup>21</sup> See information from the Website of the Ombudsman of the Republic of Indonesia, available at <https://ombudsman.go.id/news/r/temui-pengungsi-nduga-ombudsman-ri-temukan-fakta-ini>

<sup>22</sup> The authority of the Regency of Nduga established a Humanitarian Team in 2019 led by Fr Jhon Djonga. As August 2019, the Team estimated that more than 30,000 people were displaced due to the conflict. See the news coverage at <https://www.voaindonesia.com/a/tim-kemanusiaan-nduga-pengungsi-tolak-bantuan-pemerintah/5043012.html>

<sup>23</sup> International Coalition for Papua, the Humanitarian Crisis in West Papua; Internal Conflict, the Displacement of People and the Coronavirus Pandemic, op.cit., p. 6.

13. During the conflict, the methods applied by the Indonesian security force include the use of firearms and explosives in indigenous settlements; torture; extrajudicial executions; and enforced disappearance of indigenous civilians. The Gol continues to restrict the access to the areas of conflicts for journalists and human rights observers. This appears to be an attempt to prevent the publication of information on human rights violations during security force operations in the national and international media.

### **Human Rights Defenders**

14. Human rights defenders (HRDs) working in and on West Papua continue to face the risk of intimidation, harassment, obstruction, or physical assault against themselves or their relatives. HRDs in West Papua are working in a highly repressive environment with a heavy presence of security forces. The Gol continues to restrict access to Papua for international human rights and humanitarian organizations, foreign journalists, and observers.<sup>24</sup>
15. In June 2020, a Papuan HRD working for the indigenous community in Boven Digoel was physically attacked by a group of people. He had been assisting indigenous community members who refused to convert their customary forest to oil palm plantations. He has been receiving several threats since 2018.<sup>25</sup> In September 2021, two well-known HRDs<sup>26</sup> faced the threat of criminal defamation by a government official who is also the Coordinating Minister for Maritime Affairs and Investment because they presented the results of a joint NGO research on the potential involvement of important officials in the gold mining business in an area of armed conflict in Papua Province.<sup>27</sup> They face both threats of criminal defamation and a fine of IDR 100 billion (USD 7 million) under Law No. 19/2016 on Electronic and Transaction Information.

### **Recommendations:**

1. States should adapt and/or adopt its legislation to recognise the legal status of indigenous peoples according to the existing international human rights norms.
2. States should ensure the application of the principles of free, prior and informed consent on any decision-making process affecting the indigenous communities.
3. States should refrain from militarizing indigenous lands without a justifiable and/or legal ground
4. States should respect international recognized rules of use of force when using the military in indigenous lands. When applicable, States should also respect international humanitarian laws in situations of armed conflict taking place in the indigenous people's lands.
5. States must protect indigenous human rights defenders from harassment and intimidation, particularly in situations where indigenous lands are militarized and/or in situations of armed conflict.

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<sup>24</sup> See the article by Human Rights Watch, available at <https://www.hrw.org/news/2018/06/19/indonesia-shuts-out-un-rights-chief-papua>.

<sup>25</sup> International Coalition for Papua (ICP), Human Rights in West Papua 2019-2020, p. 31.

<sup>26</sup> The concerned persons have given their consent to put their names in this report.

<sup>27</sup> Public statement of KontraS regarding the case, available at [https://kontras.org/en/2021/09/23/luhut-binsar-panjaitans-report-of-haris-azhar-and-fatia-maulidiyanti-is-a-serious-threat-to-democracy-and-the-work-of-human-rights-defenders/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=luhut-binsar-panjaitans-report-of-har](https://kontras.org/en/2021/09/23/luhut-binsar-panjaitans-report-of-haris-azhar-and-fatia-maulidiyanti-is-a-serious-threat-to-democracy-and-the-work-of-human-rights-defenders/?utm_source=rss&utm_medium=rss&utm_campaign=luhut-binsar-panjaitans-report-of-har)