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Human Rights Situation in Indonesia

Specific focus on West Papua

Joint NGO submission

Coordinated by Franciscans International

Supported by

Justice Peace and Integrity of Creation of Franciscans Papua
Justice Peace and Integrity of Creation of Augustinian in Papua
Justice Peace and Integrity of Creation of the Diocese of Agats
Justice Peace and Integrity of Creation Diocese of Timika
Justice Peace and Integrity of Creation of the Diocese of Sorong
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Introduction:

1. This is a joint NGO submission¹ for the 4th Cycle of the UPR Indonesia, concerning the human rights situation in West-Papua² (the Provinces of Papua and Papua Barat) and covering the impacts of excessive presence military on human rights; the rights of indigenous peoples and the implementation of the Special Autonomy Law for Papua; the situation of internally displaced persons (IDPs); the protection of human rights defenders (HRDs); the transitional justice; and the right to a clean, healthy and sustainable environment. The information for this submission is based on the documentation work carried out by submitting organizations, on publicly available information and interviews with the victims of human rights violations and family of victims.

Impacts of excessive presence of military on human rights

2. In the 3rd UPR Cycle, the Government of Indonesia (GoI) accepted the recommendation to finalize the investigation of all human rights cases in Papua.³ However, this recommendation still needs to be effectively implemented.
3. Since the integration of West-Papua into the Indonesian territory in 1969, the GoI pursues a military rather than a political approach to the conflict situation. West-Papua is the only region that has both peaceful and armed independence movements. Those who oppose the integration of West-Papua formed pro-independent armed groups, under the coordination of the West-Papua National Liberation Army (TNPB).
4. In 1998, the GoI decided to revoke the decision that West-Papua as a Military-Operation-Area (DOM).⁴ Despite this decision, the de facto deployment of military troops continued. The latest example is the establishment of the *Newangkawi Operation*, a joint operation of the Indonesian National Army (TNI) and of the Indonesian National Police which now is now replaced by the *Cartenz Peace Operation*. These operations are intended to maintain security and enforce the law. They are not only carried out by the police, but it includes the military.
5. According to Article 7 of the TNI Law,⁵ military operations for war and for non-war intentions must be conducted based on “State political policies and decisions,” interpreted as the government's political decisions taken together with the House of Representatives

¹ This joint submission is coordinated by Franciscans International with the support of the co-submitting organisations. **Franciscans International** is a faith-based International Non-Governmental Organisation (INGO) with General Consultative Status with the United Nations Economic and Social Council (ECOSOC). It was founded in 1982 to bring the concerns of the most vulnerable to the United Nations. FI relies on the expertise and first-hand information of Franciscans and other partners working at the local level around the world to advocate at the United Nations for structural changes addressing the root causes of injustice. Further information regarding Franciscans International is available at <https://franciscansinternational.org/home/>

² The Government of Indonesia considers the term “West Papua” to have a political and pro-independence connotation.

³ Recommendation 141.63 by Australia, see A/HRC/36/7/Add.1 - Para. 10

⁴ Post-reform Papua No longer has the status of a Military Operations Area, Imparsial, Questions TNI Mobilization, available at <https://imparsial.org/en/papua-pascareformasi-tak-lagi-berstatus-daerah-operasi-militer-imparsial-pertanyaan-mobilisasi-tni/>

⁵ See Bahasa Indonesia version of Law No 4, 2004 on the Indonesian National Army, available at https://www.dpr.go.id/dokblog/dokumen/F_20150616_4760.PDF

(DPRRI),⁶ which should be formulated through “a working relationship mechanism between the government and the DPRRI such as consultation meetings and working meetings.” To date, there is no such official State Policy and Political Decision documents regarding the military operations in West-Papua. Therefore, the question of the legality of the military operations in West-Papua is posed.

6. On 29 April 2021, the GoI designated TPNPB as a terrorist group.⁷ The decision might hamper the on-going efforts towards a peaceful and sustainable solution to the conflict and provoke further cycle of violence from both TPNPB and the security forces. The decision can also lead to the return of West-Papua to a DOM status.
7. The GoI also continues to restrict access to West-Papua for international human rights and humanitarian organizations,⁸ foreign journalists, and observers, which prevents the international community to have full and impartial information on the situation.⁹ The invitation made in 2018 by the President of Indonesia to the UN High Commissioner for Human Rights to visit West-Papua has not been fulfilled.

Recommendations:

- Start the process of demilitarization in West-Papua.
- Establish and continue a dialogue with the representative of indigenous Papuans in order to find political, peaceful and sustainable solutions to the conflict that can be acceptable to all parties.
- Expedite the visit of the UN High Commissioner for Human Rights to West-Papua.

Rights of indigenous peoples and the implementation of the Special Autonomy Law for Papua

8. In the UPR 3rd Cycle, the GoI noted the recommendations regarding the rights of indigenous peoples.¹⁰ The Indonesian Constitution recognizes the rights of Indigenous Law

⁶ Article 7 (3) of TNI Law says “*Ketentuan sebagaimana dimaksud pada ayat (2) dilaksanakan berdasarkan kebijakan dan keputusan politik negara* – English translation: The provisions as referred to in paragraph (2) are implemented based on state political policies and decisions”. Further in the Elucidation Section, Article 5 of the Eludicaiton provided the interpretation of Article 7 of TNI Law as follows, “*Yang dimaksud dengan kebijakan dan keputusan politik negara adalah kebijakan politik pemerintah bersama-sama Dewan Perwakilan Rakyat yang dirumuskan melalui mekanisme hubungan kerja antara pemerintah dan Dewan Perwakilan Rakyat, seperti rapat konsultasi dan rapat kerja sesuai dengan peraturan perundangundangan* – English Translation: What is meant by state political policies and decisions are the political policies of the government together with the House of Representatives which are formulated through a working relationship mechanism between the government and the government The House of Representatives, such as consultation meetings and work meetings in accordance with statutory regulations.”

⁷ The decision was taken by the Coordinating Minister for Political, Legal and Security Affairs based on Article 43I of the Indonesian Law No. 5 of 2018 on Terrorism.

⁸ On 1 March 2022, three UN Special Rapporteurs on human rights of indigenous peoples; on the extrajudicial, arbitrary and summary executions; and on human rights of internally displaced persons issued a joint statement on the human rights situation in West Papua, including the limitation of the humanitarian access. Further information available at <https://news.un.org/en/story/2022/03/1113062>

⁹ See the article by Human Rights Watch, available at <https://www.hrw.org/news/2018/06/19/indonesia-shuts-out-un-rights-chief-papua>.

¹⁰ Recommendations 141.19 Ratify as soon as possible the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) (Guatemala); 141.24 Extend an invitation to the Special Rapporteur on the rights of indigenous peoples to

Communities in Article 18b-2.¹¹ While supporting the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the GoI does not recognize the applicability of the UNDRIP concept of indigenous peoples,¹² arguing that Indonesia has a specific nature as a multicultural and multi-ethnic nation.¹³ Currently, the GoI and the Parliament are still considering the adoption of a law on the Indigenous Law Communities as mandated in the Constitution.¹⁴

9. On 2001, the GoI adopted Law No. 21 on the Special Autonomy Status for the Papua Province (OTSUS Law for Papua).¹⁵ To some extent, this Law acknowledges of the indigenous people in West-Papua by using the term “native Papuan.” It is defined as “a person originating from the Melanesian race group, comprising native ethnic groups in Papua Province and/or a person accepted and acknowledged as a native Papuan by the Papua Adat community”. It also has a specific provision on the establishment of a Papua People’s Assembly (MRP) as the cultural representation body of the native Papuans that has the authority to protect the rights of native Papuans in relation to the customs and culture.¹⁶ The Law also has provisions that any amendment should first be consulted with the Papuan people, represented by the Papuan People’s Representative Council (DPR-Papua) and MRP.¹⁷
10. The OTSUS Law for Papua was first amended in 2008, to take into consideration the establishment of Papua Barat Province, in addition to the existing Papua Province. Between 2001 to 2021, several provisions of this Law were yet to be implemented, such as the establishment of a Human Rights Court; a Truth and Reconciliation Commission; and local political parties in Papua.¹⁸ The OTSUS Law for Papua also had a provision for a Special Autonomy Fund, which was 2% of the national budget.¹⁹ The civil society organizations (CSOs) expressed their concern that the development approach derived from the Fund benefited only a few people in West-Papua, mainly the non-Papuan and political elites, while leaving most of the indigenous Papuans behind.

visit Indonesia, including Papua, in line with the openness of Indonesia to collaborate with special procedure mandate holders (Mexico); and 141.74 Evaluate the establishment of mechanisms that allow indigenous peoples to be guaranteed the right to their ancestral lands (Peru). They were noted.

¹¹ The term used in the Indonesian Constitution is *Masyarakat Hukum Adat* which translated to Indigenous Law Communities by the Indonesian Government and this English term has been used by the Indonesian delegation at the United Nations.

¹² On 20 February 2022, the Permanent Mission of Indonesian responded to the communication sent by the UN Special Rapporteurs on the rights of indigenous peoples; on extrajudicial, summary or arbitrary execution; and on the human rights of internally displaced persons regarding the situation of the indigenous peoples in Papua and Papua Barat Provinces, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36826>

¹³ Statement of the by the delegation of the Indonesia in General Debate Item 5 during the 38th 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/>

¹⁴ In fact, the Draft Law on the Recognition and Protection of the Rights of Indigenous Law Communities has been languishing in the Parliament for over a decade. This draft law would streamline processes for the legal recognition of indigenous peoples’ rights.

¹⁵ 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)

¹⁶ *Idem*, Article 1.g

¹⁷ See Chapter 4, article 19 to 25 on Papuan People’s Assembly (MRP)

¹⁸ See Article 45 to 47 of the Special Autonomy Law for Papua.

¹⁹ See Article 34 of the Special Autonomy Law for Papua

11. In 2020, President Joko Widodo submitted to the DPRRI a second reform of the Law,²⁰ by proposing the amendments of three articles, namely Article 1 on definitions of terms used in the Law: Article 34 concerning the Special Autonomy Fund, and Article 76 concerning the proliferation of province and regency level administrations.
12. In November 2020, the MRP as a statutory body of the OTSUS Law for Papua launched an initiative to organize series of consultation and hearings in Papua and Papua Barat Provinces, to collect views and inputs from the Papuans, in accordance with Article 77 of the Law. On 17 November 2020 in Merauke, Papua Province, the police arrested 55 persons who were in the town to participate in the MRP consultation and hearing. Among them were MRP members, resource persons and CSO representatives.²¹ They were released the next day. However, they were summoned for further interrogation on 19 November 2020 by the police.
13. The second amendment proposed by the government about the Special Autonomy Fund met strong negative reactions in West-Papua, including by the DPR-Papua, the MRP, and CSOs. On 17 June 2021, the MRP decided to submit a case to the Indonesian Constitutional Court to challenge the reform of the OTSUS Law for Papua.²²
14. Despite the protest and widespread rejection, on 19 July 2021, the President of Indonesia adopted a decision on the amendments of the OTSUS Law for Papua,²³ which include the decision to create new provinces, in addition to the existing Papua and Papua Barat Provinces; and the increase of the Special Autonomy Fund from 2% of the national budget²⁴ to 2.25% of the national budget.²⁵ While it can seem a positive step, the increase was not unanimously welcomed by the CSOs in West-Papua, with an argument that until 2021, there was no comprehensive monitoring and evaluation on how the Fund was used and implemented. The indigenous Papuans did not fully benefit it.²⁶ The deepening gap in living conditions between indigenous Papuans and other people in West-Papua fuel these criticisms, suggesting that the Fund was not used effectively in improving the living conditions of the indigenous Papuans. If there is no clear mechanism on monitoring and evaluation, the increase of the fund could potentially deepen the gap further. The plan to expand the number of provinces in West-Papua has also generated skepticism among the Papuans and CSOs,

²⁰ Katharina, Riris and Amrynudin, Anin Dhita Kiky. *Revision of Papua Special Autonomy Law In Public Policy Perspective*. Info Singkat, A Brief Study of Actual and Strategic Issues, Vol.XIII, No.14/II/Puslit/July/2021, pp 25-31. Research Center Expertise Agency of the House of Representative of Indonesia. Available at https://berkas.dpr.go.id/puslit/files/info_singkat/Info%20Singkat-XIII-14-II-P3DI-Juli-2021-176-EN.pdf

²¹ See the statement of the OHCHR Bangkok regarding the situation in West Papua, including the obstruction of the consultation by MRP. Available at <https://bangkok.ohchr.org/papua-statement/>

²² A team of Lawyer on behalf of the MRP submitted a court case to the Indonesian Constitutional Court on 17 June 2021. More information is available at <https://humanrightspapua.org/news/2021/mrp-challenges-legality-of-unilateral-revision-of-papuan-special-autonomy-law/>

²³ See the full version in Bahasa Indonesia of the decision including the amended articles is available at <https://peraturan.bpk.go.id/Home/Details/172403/uu-no-2-tahun-2021>

²⁴ The Special Autonomy Fund for Papua and Papua Barat Province was 2% of the national budget for the period of 2001 to 2021.

²⁵ See the Article 34 of Law No 2/2001 on the Special Autonomy Law for Papua Province 2001 as amended on 19 July 2021.

²⁶ See the press statement of Mr Matius Murib, the Chairperson of the Papuan People's Assembly regarding the Special Autonomy Law for Papua, available at <https://nasional.kompas.com/read/2022/02/23/16561071/mrp-sebut-pelaksanaan-otsus-di-papua-tidak-beri-perubahan>

with fear of more deployment of military.²⁷ In reaction to the second amendments, the National Commission for Human Rights expressed its concern on the situation and underlined that the GoI should honor its obligations to protect, respect and fulfil the human rights of the indigenous Papuan.²⁸

Recommendations:

- Accelerate the enactment of Draft Law on *Masyarakat Hukum Adat* and ensure its compliance with the international human rights standards, including the UNDRIP.
- Adopt concrete measures for a comprehensive evaluation of Special Autonomy Law for Papua and guarantee the effective and meaningful consultation and participation of the indigenous Papuan representatives as requested by this Law, and in accordance with international human rights law standards.
- Invite the UN Special Rapporteur on the rights of indigenous people to visit Indonesia, including West-Papua.

Internally Displaced Persons

15. In the UPR 3rd Cycle, the GoI accepted the recommendation on the rights of women and children in the remote regions.²⁹ However, the situation IDP women and children in West-Papua remains highly preoccupying.
16. Since the end of 2018, there has been an increase in armed clashes between the Indonesian security forces and TNPB. It has caused an increase in the internal displacement of indigenous Papuans.³⁰ The TPNPB engages in human rights abuses, including unlawful killings, hostage-taking, abductions,³¹ as well as attacking military, police and non-indigenous Papuans. The armed clashes happen mainly in highland areas where mining companies have concessions.³² In that regard, there seem to be relationships between economic and political interests, as recent research has documented it.³³
17. The actual number of the IDPs is not provided by the GoI. The data collected by the International Coalition for Papua shows that more than 60.000 IDPs mainly women and children³⁴ from the regencies of Mimika, Intan-Jaya, Puncak, Lanny-Jaya, and Nduga. UN provided an estimation of 60,000–100.000 IDPs between 2018 and 2021. Most of them have

²⁷ See the statement by Tapol on the militarization approach and the new provinces (pemekaran), available at <https://www.tapol.org/news/entrenched-militarism-%E2%80%98prosperity%E2%80%99-approach-and-governance-exception-west-papua%C2%A0>

²⁸ The statement of the Vice Chair of KOMNAS HAM, Mr. Amiruddin Al Rahab, available at <https://www.komnasham.go.id/index.php/news/2021/7/21/1851/perubahan-uu-otsus-papua-disahkan-komnas-ham-ingatkan-komitmen-pemerintah.html>

²⁹ Recommendation 139.105 Continue efforts to increase awareness on the rights of women and protection of the health of mothers and children, particularly in the remote regions of the country (Uzbekistan);

³⁰ 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-\\$V1GF5HE.pdf](https://www.komnasham.go.id/files/20201209-laporan-tahunan-komnas-ham-2019-$V1GF5HE.pdf) and [https://www.komnasham.go.id/files/20210830-laporan-tahunan-komnas-ham-ri--\\$R1X5O.pdf](https://www.komnasham.go.id/files/20210830-laporan-tahunan-komnas-ham-ri--$R1X5O.pdf)

³¹ 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/>.

³² See the numbers at <https://humanrightsmonitor.org/news/wp-armed-conflict-2021/>.

³³ Jatam, “Political Economy of Military Deployment in Papua”, August 2021, available at: <https://www.jatam.org/en/political-economy-of-military-deployment-in-papua/>

³⁴ See the Human Rights Updates – December 2021 published by the International Coalition for Papua, available at Human Rights Update West Papua – December 2021

not returned to their villages yet.³⁵ The conflict has significantly intensified since 25 April 2021 in response to the killing of the Indonesian Intelligence Chief for Papua, Brigadier General Karya Nugraha.

18. In Puncak, there are allegations that Indonesian security forces use methods of warfare that do not discriminate between civilians and combatants. Methods applied by security force members include the use of firearms and explosives in indigenous settlements, torture, extrajudicial executions, and enforced disappearances of indigenous civilians. Members of the security forces continue to restrict access for journalists and human rights observers to Puncak and other hotspots of the conflicts. 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.
19. The majority of IDPs in the Puncak are women and children who live in appalling situations with no access to clean water and health services.³⁶ Many of them walk for hours every day to get clean water from nearby rivers and need to report to the military post along the way. The situation of pregnant women, of children and of people with chronic health conditions among IDPs is of even higher concern.³⁷ Children cannot go to school, some become beggars in the nearby town of Wamena. Security operations are still being conducted by the police and military forces, at the time of the elaboration of the present submission.
20. In Nduga, the majority of IDPs receive minimum humanitarian aid. The central government has failed to set up IDP camps. Such camps could help to coordinate the distribution of aid and the effective provision of humanitarian services such as shelter, basic healthcare, and education. IDP children have been traumatized by the security force operations and fear the presence of police and military.³⁸ We received reports that 304 IDPs in Nduga died due to lack of health services, lack of food and bad living conditions.³⁹
21. On 2 September 2021, TPNPB claimed that they were responsible for the attacks against a military post in Maybrat, Papua Barat Province causing the death of four soldiers and injuring several others. The following days, the military regional headquarters dispatched around a hundred soldiers to hunt down the attackers. Fearing being the target of the military's retaliation, an estimated 2,000 villagers, mostly women and children in the surrounding areas fled to the forests. In December 2021, the Indonesian National Commission on Violence against Women (Komnas Perempuan) visited Maybrat to meet with the indigenous women IDPs. It expressed concerns on the negative impacts of the conflict to the Papuan women IDPs, in particular the feeling of great insecurity among the indigenous women and the negative impact on the right to an adequate standard of living for these

³⁵ See the press statement of the UN Special Rapporteurs on the human rights of indigenous peoples; the human rights of internally displaced persons; and extrajudicial, arbitrary and summary executions regarding the situation in West Papua, Indonesia on March 1, 2022. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28180&LangID=E>

³⁶ Information from humanitarian team of GIDI Church which visited the IDPs. The team also reported that GOI does not take the necessary measures to attend to the needs and to respect the rights of IDPs.

³⁷ See the article by ReliefWeb of the United Nations Office for the Coordination of Humanitarian Affairs Service, available at <https://reliefweb.int/report/indonesia/invisible-victims-papua-conflict-nduga-regency-refugees>

³⁸ International Coalition for Papua, the Humanitarian Crisis in West Papua; Internal Conflict, the Displacement of People and the Coronavirus Pandemic, op.cit.,p. 6.

³⁹ Information received on 27 March 2022 from a human rights defender from Nuga region, who work with the IDPs. Due to her safety, her name cannot be mentioned in this report.

women, their children and family.⁴⁰ The displaced women are hindered by the security forces in their access to their traditional source of food and livelihoods near the villages that they were forced to flee from, causing further violations of the right to adequate food, and in particular to be free from hunger, as well as putting women at risk of gender-based violence.⁴¹

Recommendations:

- Allow free and unimpeded national and international humanitarian access to areas of conflict in West-Papua to ensure that the rights of IDPs are respected, protected, and fulfilled.
- Adopt effective and urgent measures to address the immediate needs of indigenous IDPs in West-Papua, and to guarantee at least the essential levels of their rights to food, water, health and education.
- Facilitate the safe and return of the IDPs in West-Papua and provide them with restitution or reparation for the harm they have suffered, while ensuring that the IDPs are consulted and involved in the decision making process.

Protection of human rights defenders

22. In the 3rd UPR cycle, the GoI has accepted a specific recommendation on HRDs.⁴² GoI has not adopted a specific Law for the protection of HRDs. HRDs working in and on West-Papua continue to face risks of intimidation, harassment, obstruction, or physical assault against themselves or their relatives. They work in a highly repressive environment with a heavy presence of security forces. Articles 106, 107 and 110 of the Criminal Code are continuously being used against HRDs advocating for the respect and protection of human rights in Papua. The criminal defamation and incitement provisions under the Electronic Information and Transaction Law (ITE Law) have also been widely used to harass and criminalize the HRDs, infringing the right to freedom of expression.
23. Some of the recent examples include the attack and intimidation of a Papuan HRD working for the indigenous community in Boven Digoel, who received several threats since 2018. It was aggravated by a physical attack by a group of people in June 2020.⁴³ He had been assisting indigenous community members who refused to convert their customary forest to palm-oil plantations. In September 2021, two well-known HRDs⁴⁴ faced the threat of a criminal legal action for defamation by a government official because they presented the results of a joint NGO research on the potential involvement of important officials in the gold

⁴⁰ Statement of the Ms Andri Yetriyani, the Chairperson of Komnas Perempuan, as quoted in Papua Tribunews, available at <https://papua.tribunnews.com/2021/12/09/komnas-perempuan-pantau-kondisi-mama-mama-pengungsi-di-maybrat?page=2>

⁴¹ IDPs from Maybrat, interviewed by ELSAM, 18 February 2022

⁴² A/HRC/36/7 Recommendation 141.56 namely to take further steps to ensure a safe and enabling environments for all human rights defenders, including those representing 'adat' communities (Norway).

⁴³ International Coalition for Papua (ICP), Human Rights in West Papua 2019-2020, p. 31.

⁴⁴ The concerned persons have given their consent to put their names in this report.

mining business in an area of armed conflict in Papua Province.⁴⁵ They face both threats of the criminal lawsuit under the ITE Law.

Recommendations:

- Amend articles 106, 107 and 110 of the Criminal Code to guarantee the right to freedom of expression.
- Expediate the adoption of law and policies for the protection of HRDs which should include specific protections for HRDs working in and on the armed conflict situation;
- Ensure and provide safe environment for HRDs to enable them to work and provide them with protection from harassment and intimidation.

Transitional justice

24. In the UPR 3rd Cycle, the GoI also accepted the recommendation to “finalize the investigation of all human rights cases in Papua,”⁴⁶ and made a pledge to complete a criminal investigation into the Wasior⁴⁷ and Wamena.⁴⁸ These have not been implemented.
25. The last human right case to be tried by the Human Rights Court⁴⁹ was the Abepura case.⁵⁰ All perpetrators were acquitted, and no gender-based crimes have ever been brought to trial. Komnas HAM⁵¹ completed ad-hoc inquiries for cases that occurred in Wasior, Wamena and

⁴⁵ 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

⁴⁶ A/HRC/36/7 Recommendation 141.63 (Australia).

⁴⁷ The Wasior case occurred on in the period of June to October 2001 when the Papua Police Mobile Brigade (Brimob) officers raided Wonoboi Village, Wasior, Manokwari, Papua. The raid was triggered by the killing of 5 Brimob members and a civilian working for a logging company PT Vatika Papuana Perkasa. As result of the raid allegedly four people indigenous Papuans died, one was sexually assaulted, five people went missing, and 39 people were tortured. See the Report of the Indonesian National Commission for Human Rights (Komnas HAM) on the gross human rights violation in Papua issued on 4 July 2004 in Bahasa Indonesia version at https://jdih.komnasham.go.id/assets/uploads/files/info_hukum/eksum%20peristiwa%20wasior%20wamena.pdf

⁴⁸ The Wamena incident occurred on 4 April 2003 in Kuyowage village, in the Papua central highlands area. A military operation took place in Kuyowage village and other villages nearby during Easter period. The operation allegedly resulted the death of 9 indigenous Papuans and estimated of 38 others were seriously injured, some due torture. See the Report of the Indonesian National Commission for Human Rights (Komnas HAM) on the gross human rights violation in Papua issued on 4 July 2004 in Bahasa Indonesia version at https://jdih.komnasham.go.id/assets/uploads/files/info_hukum/eksum%20peristiwa%20wasior%20wamena.pdf

⁴⁹ In 2000, the Government of Indonesia adopted Law No26/200 on Human Rights Court. The English translation of the Law is available at <https://peraturan.go.id/common/dokumen/terjemah/2019/UU%2026%202000%20English.pdf>

⁵⁰ The Abepura case occurred on 7 December, 2000. Unknown persons attacked a local police station in Abepura. The attack left a police officer and a security guard dead. Following the killings, the police, assisted by Brimob, raided three student dormitories in Abepura. During the raids one student was shot dead, and more than 100 others taken into custody and subjected to ill-treatment, including torture. Two students died while in police custody and another died later as a result of injuries he sustained while in custody. Another student suffered permanent paralysis as a result of injuries inflicted by police officers. Further information is available at <https://www.hrw.org/reports/2007/papua0707/7.htm>

⁵¹ On 3 December 2021, the Office of the Attorney General decided to establish a team to investigate the allegation of gross human rights violation in Paniai in 2014. See further information <https://humanrightspapua.org/news/attorney-general-forms-team-to-investigate-bloody-paniai-case/>

the Paniai. Recently the Attorney General made a decision to initiate judicial investigation and prosecution in the Paniai case.⁵²

26. The situation of indigenous Papuan women has been particularly made vulnerable. They have experienced abusive interrogation and horrific torture, including sexual violence, while detained without trial during military operations. Women were forced to flee from military operations abandoning their family and losing their means of subsistence. There is no accountability process for the violence against indigenous women committed by security forces.⁵³ Women victims of sexual violence live with the consequences of their perpetrators' impunity and suffer difficulties in speaking out about their experiences, due to shame, fear of stigma and judgment, concerns about confidentiality, and lack of confidence in the rule of law.⁵⁴ In 2011, the DPR-Papua and Government passed a provincial legislation on the Recovery of the Rights of Indigenous Papuan Women Victims of Violence and Human Rights Violations.⁵⁵ The aim is to provide assistance to Papuan women victims of human rights violations. However, it has not been effectively implemented.

Recommendations:

- Investigate of all human rights cases in West-Papua, including gender-based and sexual violence by security forces.
- Establish a Human Rights Court a Truth and Reconciliation Commission for West-Papua as stipulated by the Special Autonomy Law for Papua without any delay.
- Adopt measures to strengthen the independence and impartiality of the judiciary system in Indonesia.

Right to a healthy environment in the context of business activities

27. In the UPR 3rd Cycle, the GoI accepted the recommendation to further strengthen the commitment of Indonesia to strengthen the human rights dimension in business activities.⁵⁶ Despite this, business activities related to the extraction of natural resources in West-Papua, particularly mining and palm-oil plantations, continue to negatively impact the environment and human rights, especially the right to a clean, healthy and sustainable environment (in short "the right to a healthy environment").⁵⁷ This right is guaranteed domestically through

⁵² The Paniai incident occurred on 8 December 2014 when the members of Indonesian National army were involved in the shooting during a protest, which allegedly resulted in death of 4 teenagers, while 17 others were injured. Further information is available at <https://www.tapol.org/news/justice-bloody-paniai-8-december-2014-tapol-statement>

⁵³ Asia Justice and Rights, Enduring Impunity, available at <https://asia-ajar.org/2015/11/enduring-impunity-women-surviving-atrocities-in-the-absence-of-justice/>
<http://www.asia-ajar.org/files/ENDURING%20IMPUNIY%20final-23%20Nov-press.pdf>

⁵⁴ Fact sheet 1, Fulfillment of Women Human Rights Situation in Papua, CEDAW Papua report, November 2016. This needs to be specified from whom that is

⁵⁵ See the Bahasa Indonesia version of the legislation here <https://peraturan.bpk.go.id/Home/Details/89758/perdatus-papua-no-1-tahun-2011>

⁵⁶ Recommendation 139.38 Further strengthen the commitment of Indonesia to strengthen the human rights dimension in business activities and continue its leading role in this regard (Myanmar);

⁵⁷ United Nations Human Rights Council Resolution 48/13, The human right to a clean, healthy and sustainable environment", adopted in October 2021. Indonesia voted in favour of this resolution.

the Article 28H(1) of the Indonesian Constitution, which stipulates that “Everyone has the right to enjoy a good and healthy environment”.⁵⁸

28. The forest coverage in West-Papua remains the highest of Indonesia, in comparison to other regions. However, between 2001 to 2018, West-Papua lost at least 713.766 hectares of its forest, mainly because of the expansion of palm-oil plantations, the production of pulpwood, selective logging, and the continuous clearance for infrastructure expansion.⁵⁹ In 2018 alone, palm-oil concessions were extended to 1.8 million hectares, while concessions for pulpwood production were extended to 813.000 hectares.⁶⁰ A study conducted on palm-oil plantations in West-Papua shows that this activity contributed to the changes in environmental conditions in the areas of the plantations, particularly as far as the quality of water and air is concerned.⁶¹ Chemical substances used in the production process, in particular insecticides and pesticides, enter the water systems around the plantation area. The plantation drainage systems are typically connected to small rivers and swamps that are often used by the local communities for fishing, drinking water and bathing. Communities living around the plantations are increasingly concerned about water contamination, and thus about the respect and protection of their human right to safe drinking water. They worry that they will no longer be able to find fish nor be able to access clean water for their daily use.
29. Mining activities also contribute to the environmental degradation and thus to human rights violations, including violations of the right to a healthy environment. One of the emblematic cases is the case of the mining activities of Freeport McMoRan that has been operating since 1973 in West-Papua.⁶² Through its subsidiary PT Freeport Indonesia, it is the largest foreign taxpayer in Indonesia and the largest employer in Papua Province. The indigenous Amungme and Kamoro communities who claim to be the legitimate owners of the customary land in the mining area have suffered from the environmental degradation caused by the mining. The tailings of PT Freeport Indonesia are allegedly dumped into the Agabagong-River, which discharges into the Aikwa-River and afterwards into the Arafura Sea. These bodies of water have been polluted, causing significant loss of biodiversity. Dumping of mine waste can be seen in Lake Wanagong. Other consequences of these mining activities are higher levels of metals, such as copper,⁶³ in marine life, and contaminated waters due to claims of acid rock

⁵⁸ See article 28 (H) of the Second Amendment of the 1945 Constitution of Indonesia states that “that “Everyone has the right ... to enjoy a good and healthy environment”

⁵⁹ Gaveau, David. “Drivers of forest loss in Papua and West Papua” Publication of the Center for International Forestry Research (CIFOR), available at https://www.cifor.org/publications/pdf_files/factsheet/7444-factsheet.pdf

⁶⁰ Idem.

⁶¹ Adrianto, Agus, et al. “The impacts of oil palm plantations on forests and people in Papua. A Case Study from Boven Digoel Area”. Working Paper of the Center for International Forestry Research (CIFOR). Available at https://www.cifor.org/publications/pdf_files/WPapers/WP163Andrianto.pdf

⁶² Special Report: PT Freeport Indonesia and its tail of violations in Papua: human, labour and environmental rights https://www.tapol.org/sites/default/files/sites/default/files/pdfs/PT_Freeport_Indo_tail_of_violations_in_Papua_Dec_20.pdf

⁶³ Olsson, Schuyler, “Mining in Conflicted Lands: Lessons from Freeport-McMoRan in Indonesia,” in *International Financial Flows and the Environment, Best Practices for Transnational Investment in Extractive and Land Use Sectors*, Industries School of International Service American University, available at <https://www.american.edu/sis/gep/upload/wri-au-practicum-final-report-5-31-2013.pdf>

- drainage.⁶⁴ PT Freeport Indonesia has allegedly caused sedimentation to over 166 square kilometers of formerly productive forest and wetlands, and fish have largely disappeared.⁶⁵
30. Over the past few years, the company has also been criticized for fueling the armed conflict in the Mimika Regency.⁶⁶ In August 2017, despite the allegation that the company has been responsible for human rights abuses and has contributed to environmental degradation, the GoI signed a contract to extend the Freeport's mining concession until 2041.⁶⁷ However, there was no free, prior, and informed consent (FPIC) process with the affected indigenous communities.
31. In general, the use of manipulation, corruption, intimidation, or violence against the local indigenous people have been reported in relation to the extraction of natural resource.⁶⁸ Instead of improving living conditions, the activities of the mining, palm-oil and logging industries in indigenous Papuan lands and forest have been contributing to the poverty in which local indigenous communities live. Indigenous Papuans are often left with the option of either leaving their lands altogether or agreeing to an arrangement with the company which can push them into a more marginalized situation.

Recommendations:

- Adopt policies and take the necessary measures to ensure that the natural resources extraction activities do not violate human rights and in particular the right to a clean, healthy and sustainable environment, in particular in West-Papua.
- Guarantee that the principle of free, prior, and informed consent is fully respected.
- Invite the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the UN Special Rapport on the human rights to safe drinking water and sanitation, and the UN Special Rapport on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to visit Indonesia, including West-Papua.

⁶⁴ Ballard C. 2001. Human Rights and the Mining Sector in Indonesia: A Baseline Study. IIED. Mining, Minerals and Sustainable Development, No 182. 53 pp.

⁶⁵ Cardiff, S., Coumans, C., Hart, R., Sampat, P., & Walker, B. (2012). *Troubled waters, How mine Waste dumping is Poisoning our Oceans, Rivers, and Lake*. Earthworks and MiningWatch Canada.

⁶⁶ See the joint publication, SPECIAL REPORT: PT Freeport Indonesia and its tail of violations in Papua: human, labour and environmental rights, December 2020. Available at https://www.tapol.org/sites/default/files/sites/default/files/pdfs/PT_Freeport_Indo_tail_of_violations_in_Papua_Dec_20.pdf

⁶⁷ The extension of the contract was signed by the Indonesian Ministry for Energy and Mineral Resources and the Ministry of Finance See <https://investor.id/archive/konsesi-tambang-freeport>

⁶⁸ Cisneros, Elias, K. Kis-Katos and N. Nuryartono. "Palm Oil and the politics of deforestation in Indonesia." *Journal of Environmental Economics and Management* 108 (2021) 102453.