

# Asian Indigenous & Tribal Peoples Network

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## **Indonesia: Transmigration, human rights violations and impunity**

[Contribution under the Universal Periodic Review of the Human Rights Council]

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## 1. Executive Summary

### I. Human rights situation on the ground

#### a. Impunity: Key factor encouraging continued human rights violations

Despite establishment of democracy, the Indonesian military (TNI) plays the central role in law enforcement and therefore, law enforcement remains militaristic. Impunity to the security forces continues to encourage widespread human rights violations. Even the highest judiciary has been acting as the agent of the government by delivering anti-rights judgements. The judiciary failed to establish accountability with regard to the gross human rights violations in East Timor and the murder of prominent human rights defender Munir Said Thalib on 7 September 2004 by exonerating the main accused Pollycarpus Budihari Priyanto on 3 October 2006.<sup>1</sup> Earlier, in September 2005, two senior police officers - Brigadier General Johny Wainal Usman and Senior Commissioner Daud Sihombing were acquitted by a Special Human Rights Court in Makassar even after the National Human Rights Commission, Komnas HAM, found them guilty for allowing the killing of three Papuan students and the torture of over 100 others in Abepura on 7 December 2000.<sup>2</sup> Impunity is all pervasive.

#### b. Transmigration: The root cause of the conflicts

Serious conflicts following the fall of Soeharto regime in 1998 in Aceh, Papua, the Maluku, Central Sulawesi, and Central and West Kalimantan, among others displaced 1.3 million persons across the Archipelago.<sup>3</sup> These conflicts were often described as “civil unrest”, “separatist” and “inter-communal violence”. In reality, these conflicts took place between the transmigrasis - an estimated 3.6 million Javanese, Madurese and Balinese – who were planted on the lands of indigenous peoples across the Islands. The Operations Evaluation Department of World Bank which studied five out of seven transmigration programmes supported by the World Bank in its report in January 1994 stated, “Transmigration had a major negative and probably irreversible impact on indigenous people, particularly the Kubu Rimba. With the extensive forest clearing now underway in T2 as part of the development of the uncleared areas to oil palm, the Kubu Rimba have been (and are being) displaced”.<sup>4</sup> These negative effects have never been

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<sup>1</sup>. Indonesia: Acquittal Bolsters Impunity for Munir’s Murder, HRW, October 6, 2006

<sup>2</sup>. West Papua Crisis: Don’t blame the Safe Haven, Asian Centre for Human Rights, 29 March 2006.

<sup>3</sup>. Specific groups and individuals: Mass Exoduses and displaced persons – Report of the representative of the Secretary-General on Internally Displaced Persons submitted in accordance with commission resolution 2001/54, E/CN.4/2002/95/Add.2, 15 February 2002 (Economic and Social Council)

<sup>4</sup>. Transmigration in Indonesia, Operations Evaluation Department, World Bank, 9 January 1994 available at <http://wbln0018.worldbank.org/oed/oeddoclib.nsf/4e0750259652bf5885256808006a000d/4b8b0e01445d8351852567f5005d87b8?OpenDocument>

addressed by either the World Bank or Indonesian government and continue to underlie the conflicts in Indonesia.

### **c. The West Papua imbroglio:**

A scrutiny of the human rights situation in Indonesia cannot be complete without reference to the situation in West Papua. It does not necessarily mean debating whether Papua was allowed to exercise the right of self-determination under the Act of Free Choice. But the denial of self-determination which Indonesia promised under the Papua Special Autonomy Law No. 21/2001 and continued flagrant human rights violations in West Papua where foreigners are not given free access must be raised.

Apart from many prisoners of conscience, West Papua continues to witness serious human rights violations. The World Council of Churches stated that the number of reported cases of extra-judicial killings and arbitrary detention and torture reached an all time high of 136 and 838 cases respectively as on 14 October 2003 since the much-proclaimed reform period (1998-2001).<sup>5</sup> The Papuan human rights organisation, ELSHAM has recorded 19 summary executions including of Tolinawimban Gire, Yustinus Murib, Derek Murib, Pastor Elisa Tabuni, Moses Douw, Marinus Kogoya, Sodema Hubi, Mokaneak Kossy, Marius Marian and Yunus Giay, 18 cases of arbitrary arrests, 157 cases of torture and two cases of enforced disappearances in Papua from 2001 to 2006.<sup>6</sup> Human Rights Watch documented 14 cases of human rights violations including extrajudicial killings which took place in 2005 and 2006 out of which members of the police forces were found responsible in 10 cases.<sup>7</sup> The West Papua National Authority based in Australia in a memorandum to United Nations Secretary-General Ban Ki-Moon on 2 November 2007 cited specific cases of killing and enforced disappearances by the State.<sup>8</sup>

An estimated 20,000 Papuans have been internally displaced due to the military operations and some 13,500 refugees fled across the border to Papua New Guinea since the Papua Special Autonomy Law was passed in 2001.<sup>9</sup>

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<sup>5</sup>. World Council of Churches: "violations, systematically planned and executed", West Papua Action Newsletter No. 14, October 2003, available at:

<http://westpapuaaction.buz.org/newsletter/no14.htm#Top>

<sup>6</sup>. No human rights improvement under special autonomy, TAPOL Bulletin No. 185, January 2007, <http://tapol.gn.apc.org/bulletin/2007/Bull185.htm#otsus>

<sup>7</sup>. Out of Sight, Endemic Abuse and Impunity in Papua's Central Highlands, HRW, available at: <http://hrw.org/reports/2007/papua0707/>

<sup>8</sup>. Source: Free West Papua.com, available at <http://freewestpapua.com/node/165>

<sup>9</sup>. "Dynamics of Conflict and Displacement in Papua, Indonesia" Edited by Eva-Lotta E. Hedman, Refugee Studies Centre, September 2007

<http://www.rsc.ox.ac.uk/PDFs/RSCworkingpaper42.pdf>

**d. Stop the proposed Kalimantan Border Oil Palm Mega-project:**

The proposed Kalimantan Border Oil Palm Mega-project being implemented by the Indonesian State Plantation Corporation (PT Perkenunan Nusantara) requires 18 million hectares of land at the heart of Borneo. It will destroy the identity of all indigenous Dayak people in Kalimantan through displacement and will eventually reduce them to plantation labourers. While Indonesian government has put the project temporarily on hold, AITPN has received credible reports that lands from indigenous peoples are being acquired by force, fraudulent means and inducements for various private companies. In effect, the project is still on!

**e. Persecution of religious minorities:**

Religious freedom remains a critical issue of Indonesia not only because of the increased fundamentalism but also because of the preferential treatment given to the six officially recognized religions - Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. "Other non-recognised religions" face discrimination and restrictions. In October 2005, the regional office of the Ministry of Religious Affairs in West Nusa Tenggara formally banned 13 religious sects, including Ahmadiya, Jehovah's Witness, Hari Krishna, and nine forms of traditional beliefs of indigenous peoples.<sup>10</sup> On the other hand, Civil Registration Act adopted by the Indonesian House of Representatives on 8 December 2006 requires citizens to state their faith on legal documents like identity cards and birth certificates etc.<sup>11</sup>

**f. Persecution of human rights defenders:**

Human rights activism remains dangerous, not only because Indonesian government failed to ensure accountability for the murder of Munir but also because the State has a systematic policy to persecute the human rights defenders, especially in Papua. On 1 April 2007, Franciskus Madhu, a Roman Catholic priest was shot dead in his church by three unidentified gunmen in Lubuagan in northern Kalinga province.<sup>12</sup>

The Indonesian Army, the TNI is contemptuous of Ms Hina Jilani, UN Secretary General's Special Representative on human rights defenders. Ms Jilani visited Indonesia from 5-12 June 2007 and Mr Frederika Korain and Priest Perinus Kogoya of Peace and Justice Commission for the Diocese of Jayapura; Mr Yan Christian Warinussy, Executive Director of the Institute of Research, Analysis and Development for Legal Aid,

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<sup>10</sup>. International Religious Freedom Report 2006, Indonesia chapter, US Department of State, available at <http://www.state.gov/g/drl/rls/irf/2006/71341.htm>

<sup>11</sup>. Indonesian House passes controversial bill into law, People's Daily Online, 9 December 2006, available at: [http://english.people.com.cn/200612/09/eng20061209\\_330484.html](http://english.people.com.cn/200612/09/eng20061209_330484.html)

<sup>12</sup>. Indonesian Catholic priest killed in Kalinga, The Manila Times, 3 April 2007 [http://www.manilatimes.net/national/2007/apr/03/yehey/top\\_stories/20070403top3.html](http://www.manilatimes.net/national/2007/apr/03/yehey/top_stories/20070403top3.html)

Manokwari; and Mr Albert Rumbekwan, the head of the National Human Rights Commission (Komnas Ham), Papua Province called on her in Jakarta. On return, they were threatened by officials from the intelligence and Indonesian Armed Forces who dared to give their names and telephone numbers. The Komnas Ham was requested to investigate but it failed to investigate these allegations.

## **II. State's human rights obligations and commitments**

Indonesia has failed to fulfill its obligations and commitment at national and international level.

### **a. No recognition of *ulayat*, customary, rights**

The Constitution of Indonesia of 1945 under Article 18 and Article 28 recognizes the “traditional communities” and their cultural identities and traditional rights and the same were affirmed by the Act No. 39 of 1999 on Human Rights. Yet a number of Acts such as the Forestry Acts (Act No. 5 of 1967 and Act No. 41 of 1999), Law No. 11 of 1967 on the Principles of Mining, Act No. 5 of 1990 concerning the Conservation of Biological Resources and the Ecosystem and Presidential Regulation No. 36 of 2005 on Land Procurement for Development for Public Purposes failed to recognize the *ulayat*, customary rights, of indigenous peoples recognized under Article 3 and Article 5 of the Basic Agrarian Law No. 5 of 1960. Further, Presidential Instruction No. 26 of 1998 banned the use of the terms “indigenous” and “non-indigenous” in all official documents.

### **b. Failure to amend the Criminal Code**

The Indonesian government also failed to amend the draconian Criminal Code introduced during the Dutch colonial period which has been widely used by the government to intimidate critics. On 17 July 2007, Constitutional Court declared Article 154 and Article 155 of Indonesian Criminal Code that banned expression of “feelings of hostility, hatred or contempt” as unconstitutional.<sup>13</sup> These are piece meal solutions while the Criminal Code requires complete repeal to bring conformity with its treaty obligations as required under Articles 7 of the Act No. 39 of 1999 on Human Rights.

### **c. Failure to strengthen the NHRC**

The *Komisi Nasional Hak Asasi Manusia* (KOMNAS HAM), the National Human Rights Commission and Human Rights Tribunal remain ineffective. *The Komnas Ham* cannot be judged simply from its robust findings of the crimes against humanity that were perpetrated in Jakarta in 1984 (Tanjung Priok), 1997 and 1998 (Trisakti, Semanggi and the riots accompanying the fall of Soeharto); East Timor in 1999; and at least three times

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<sup>13</sup>. Court move opens up free speech, The Jakarta Post, 18 July 2007

in Papua —2000 (Abepura), 2001 (Wasior), 2003 (Wamena) because of its inability to implement its own findings in these cases of human rights violations.

#### **d. Failure on international human rights obligations**

Considering that international laws are not self-executing, Indonesian government has failed to bring conformity with the ratified treaties at domestic level. In addition, it failed to withdraw the reservations to the Treaties ratified by it.

Indonesia has also not ratified key international instruments like Convention for the Protection of All Persons from Enforced Disappearance, ILO Convention No. 169 relating to Indigenous and Tribal Peoples in Independent Countries, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention on the Rights of Persons with Disabilities, Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, Optional Protocol to the Convention on the Rights of Persons with Disabilities, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography, and 1<sup>st</sup> and 2<sup>nd</sup> Optional protocols to the ICCPR.

### **III. Enhancement of State's capacity**

AITPN recommends that the following areas should be considered for technical cooperation:

- Considering the absence of disaggregated data on indigenous peoples on human rights violations is an area which requires technical cooperation;
- Increased understanding of human rights for judiciary through judicial colleges; and
- Establishment of a National Institutions on the traditional communities/indigenous peoples.

### **IV. Cooperation with HRC, Treaty Bodies and OHCHR**

Indonesia has failed to issue standing invitations to the Special Procedures and extend an invitation to the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

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[AITPN's contribution for examination of Indonesia's human rights obligations and commitments under the Universal Periodic Review of the Human Rights Council]

The government of Indonesia also failed to establish mechanism for implementation of the recommendations of the Treaty Bodies.

Indonesia failed to submit various periodic reports under Convention on the Elimination of All Forms of Discrimination against Women since 13 October 2001, under International Covenant on Civil and Political Rights since 23 May 2007 and under Convention on the Rights of the Child since October 2007.

## 2. Human rights situation on the ground

Human rights situation in the post Soeharto era of Indonesia can best be understood from the spurt of a series of violent conflicts that took place in Aceh, Papua, the Maluku, Central Sulawesi, and Central and West Kalimantan following the fall of Soeharto. The extent of the violence was such that there were 1.3 million internally displaced persons spread throughout the Archipelago.<sup>14</sup> The description of these conflicts as separatists, uncivil, inter-religious i.e. between the Muslims and the Christians or conflict over mere land and natural resources is simplistic and misleading. These conflicts took place between the *transmigrasis*, the settlers from Java, Bali and Madura who were implanted in the outlying Islands inhabited by indigenous peoples and the indigenous peoples.

An estimated 3.6 million people were planted on the lands of indigenous peoples upto 1990 with the funding from the World Bank and Asian Development Bank.<sup>15</sup> The Operations Evaluation Department of the World Bank stated that transmigration had a major negative and irreversible impact on indigenous peoples and most indigenous peoples were not compensated for their lands grabbed for the *transmigrasis*.<sup>16</sup>

The conflicts essentially remain on the ground across Indonesia while security forces continue to enjoy the same level of impunity as they enjoyed under the Soeharto regime. Impunity is the single most important factor for continued human rights violations in Indonesia. There has not been any accountability for enforced disappearances of 1,266 persons during 1965-2002 as per the estimates of KONTRAS.<sup>17</sup>

Human rights violations continue unabated and indigenous and tribal peoples are the main victims. The indigenous and tribal peoples who were allegedly extrajudicially killed in 2007 include Caci Bin Tibu, a resident of Mamampang village in Tombolo Pao who was killed in custody after being arrested without warrant by Chief District Police Commissioner of Tombolo Pao, Abidin (Kapolsek AKP Abidin WSC) in Tombolo Pao, South Sulawesi on 26 June 2007;<sup>18</sup> Rudi Pagawak (23) who was tortured to death in front of the Indonesian military post in Lereh district in Jayapura regency, West Papua by sergeant SK from the Indonesian regional headquarters 172/PWY (Jayapura) on 1

<sup>14</sup> . Specific groups and individuals: Mass Exoduses and displaced persons – Report of the representative of the Secretary-General on Internally Displaced Persons submitted in accordance with commission resolution 2001/54, E/CN.4/2002/95/Add.2, 15 February 2002 (Economic and Social Council)

<sup>15</sup> . Testimony of John Rumbiak, Supervisor of ELSHAM before the Committee on Development and Co-operation Human Rights Working Group, European Parliament, Brussels on 1 October 2003, available at: <http://www.zulenet.com/awpa/>

<sup>16</sup> . Transmigration in Indonesia, Operations Evaluation Department, World Bank, 9 January 1994 available at <http://wbIn0018.worldbank.org/oed/oeddoclib.nsf/4e0750259652bf5885256808006a000d/4b8b0e01445d8351852567f5005d87b8?OpenDocument>

<sup>17</sup> . Source: Asian Federation Against Involuntary Disappearances (<http://www.afad-online.org/>)

<sup>18</sup> . UA-217-2007: INDONESIA: Alleged extrajudicial killing of a man and attempt to cover up by Tombolo Pao police in South Sulawesi, Asian Human Rights Commission, 10 July 2007

November 2007;<sup>19</sup> and Matius Bunai (29), a tribal leader of the Maranatha Kingmi Church, in Nabire in West Papua on the night of 6 August 2007 and Ones Keiya (31), a tribal farmer on 23 July 2007 in Nabire.<sup>20</sup>

### **I. Transmigration: The root cause of the increased conflicts and human rights violations**

As it is known, since the fall of Soeharto in 1998, Indonesia witnessed sharp increase of violence as a result of civil unrest, crime, separatism, and inter-communal violence. The most serious conflict took place in Aceh, Papua, the Maluku, Central Sulawesi, and Central and West Kalimantan. The extent of the violence was such that by August 2004 there were 1.3 million internally displaced people (IDPs) spread throughout the Archipelago. While majority returned to their original places often without adequate compensation, the number of IDPs is presently between 1,50,000 and 2,00,000.<sup>21</sup>

Many international organisations including the World Bank, Asian Development Bank etc describe such conflicts as inter-religious i.e. between the Muslims and the Christians or conflict over mere land and natural resources. As the World Bank and Asian Development Bank and many bilateral donors supported the sponsored population transfer, these institutions tend to ignore disastrous and irreversible consequences on the indigenous peoples. These conflicts have racial dimensions between the *transmigrasis* from Java, Bali and Madura islands and indigenous peoples in the outlying islands. The *transmigrasis* mainly follow Islam while the indigenous peoples are predominantly Christians. Many indigenous peoples like the Papuans who belong to the Melanesian stock are ethnically different from the Javanese and Madurese.

Transmigration was started by the Dutch colonialist from the beginning of 1900 to reduce population pressure on Java Island but it became the central policy of former President Suharto who he sought to “Javanise” the outlying islands. The World Bank financially supported the transmigration programmes under which the *transmigrasis* received houses, land for farming forcibly taken from the indigenous peoples, and a subsistence and production package during their early settlement years. Most applicants for transmigration have been young landless agricultural workers and their families, from Java, Bali and Madura.<sup>22</sup>

<sup>19</sup>. WEST PAPUAN TORTURED TO DEATH BY INDONESIAN SOLDIER (Translation from *Cenderawasih Pos* Newspaper, 2 November 2007), Free West Papua Campaign, UK, [http://freewestpapua.org/index.php?option=com\\_content&task=view&id=422&Itemid=2](http://freewestpapua.org/index.php?option=com_content&task=view&id=422&Itemid=2)

<sup>20</sup>. Press release of Institute for Papuan Advocacy & Human Rights dated 22 August 2007, available at Scoop, <http://www.scoop.co.nz/stories/WO0708/S00555.htm>

<sup>21</sup>. Source, Global IDP project

<sup>22</sup>. Transmigration in Indonesia, Operations Evaluation Department, World Bank, 9 January 1994 available at <http://wbln0018.worldbank.org/oed/oeddoelib.nsf/4e0750259652bf5885256808006a000d/4b8b0e01445d8351852567f5005d87b8?OpenDocument>

### a. Scale of transmigration

An estimated 3.6 million people were planted on the lands of indigenous peoples up to 1990 in almost all the outlying Islands. As per the 2000 census, Papua showed a population of 14,60,846 indigenous Papuans and 772,684 non-indigenous people.<sup>23</sup> The transmigrasis today represent half the total population of the Papuan indigenous population of 1.5 million and they are in control of the province.<sup>24</sup>

**Table 1: Transmigration Figures 1950 - 2000/01**<sup>25</sup>

	Pre-Repelita 1950-69	Repelita I 1969-74	Repelita II 1974-79	Repelita III 1979-84	Repelita IV 1984-89	Repelita V 1989-94	Repelita VI 1994-99	Repelita VII 1999-2000 (by Nov 99)
Target (families)	-	38,700	250,000	500,000	750,000	550,000	600,000	16,235
Families actually moved	100,000	36,483	118,000	535,000	230,000	n/a	300,000	4,409
No. of people	500,000	174,000	544,000	2,469,560	1,061,680	n/a	1,500,000	22,000

Sources: *Indonesia's Transmigration Programmes – An update: Prepared for Down to Earth* by M. Adriana Sri Adhiati and Armin Bobsien (ed.) July 2001

The development target for REPELITA VI (1994-99) was to relocate 600,000 families, consisting of 350,000 government-sponsored families and 250,000 spontaneous transmigrant families. Before the economic crisis hit Indonesia in mid-1997, the government envisaged the resettlement of 316,000 families as part of the highly controversial Swamp Rice Mega Project in Central Kalimantan over a period of six years. The project, however, collapsed in the same year and less than 27,000 families were resettled in 1997-1998 (20,000 of them to Central Kalimantan). The original target for the following year was to resettle 86,000 families mostly to Eastern Indonesia, but the project

<sup>23</sup> . West Papua: forgotten Pacific nation threatened with genocide, Converge, available at <http://www.converge.org.nz/pma/wpjuly04.doc>

<sup>24</sup> . Testimony of John Rumbiak, Supervisor of ELSHAM before the Committee on Development and Cooperation Human Rights Working Group, European Parliament, Brussels on 1 October 2003, available at: <http://www.zulenet.com/awpa/>

<sup>25</sup> . Indonesia's Transmigration Programme – An Update, report prepared for Down To Earth By M.Adriana Sri Adhiati and Armin Bobsien (ed.) July 2001 <http://dte.gn.apc.org/ctrans.htm>

stymied as a direct consequence of the economic crisis, political unrest and social conflict.<sup>26</sup> According to figures issued by the transmigration authorities, only 2,265 families were to be resettled in the fiscal year 2000. The number of unofficial spontaneous transmigrants (i.e. uncontrolled migrants) is probably high, but no official data exist.<sup>27</sup>

### **b. Negative impact on indigenous peoples: The World Bank's findings**

“Between 1969 and 1993 the World Bank and the ADB together provided US\$1.4 billion, equivalent to 92% of the external financial assistance, and about 15.2%” for the trans-migration programmes. The World Bank supported the Transmigration Program through seven projects totaling \$560 million.<sup>28</sup> Though human rights organizations campaigned against the transmigration programmes, the World Bank refused to pay any heed.

In its report in January 1994, the Operations Evaluation Department of World Bank studied five out of seven transmigration programmes supported by the World Bank. At the time the World Bank completed its loan disbursements, it had supported the resettlement of about 35,000 sponsored families and 1,200 spontaneous settler families.

The OED studied the following five projects:

“Transmigration 1 (approved 1976): a pilot operation to test strategies for agriculture, social, and economic development of transmigration sites in southern Sumatra.

Transmigration 2 (approved 1979): to resettle about 30,000 families in four sites along the Trans-Sumatra highway.

Transmigration 3 (approved 1982): to resettle 2,000 families in the same location as Transmigration 1.

Transmigration 4 (approved 1983): to resettle 6,000 families in a remote area of East Kalimantan.

<sup>26</sup> . Indonesia's Transmigration Programme - An Update, A report prepared for Down To Earth By M.Adriana Sri Adhiati and Armin Bobsien (ed.), July 2001, available at <http://dte.gn.apc.org/ctrans.htm>

<sup>27</sup> . Indonesia's Transmigration Programme - An Update, A report prepared for Down To Earth By M.Adriana Sri Adhiati and Armin Bobsien (ed.), July 2001, available at <http://dte.gn.apc.org/ctrans.htm>

<sup>28</sup> . Transmigration in Indonesia, Operations Evaluation Department, World Bank, 9 January 1994 available at <http://wbln0018.worldbank.org/oed/oeddoelib.nsf/4e0750259652bf5885256808006a000d/4b8b0e01445d8351852567f5005d87b8?OpenDocument>

Swamps 1 (approved 1981): to resettle 3,200 families on land to be developed in two stages for paddy and other crop production.”<sup>29</sup>

The OED study found major negative and irreversible impact of the transmigration programmes on indigenous peoples. It stated,

“Transmigration had a major negative and probably irreversible impact on indigenous people, particularly the Kubu Rimba. With the extensive forest clearing now underway in T2 as part of the development of the uncleared areas to oil palm, the Kubu Rimba have been (and are being) displaced”.<sup>30</sup>

The OED identified the protection for indigenous peoples as the major outstanding issue “In 1984 the Kubu Rimba requested, and the Governor of Jambi province agreed to provide, an area close to the Duabelas Hills as a conservation area, but no action had yet been taken” in 1994 after 10 years.<sup>31</sup>

The OED also noted “*the Dayak communities in East Kalimantan have not yet been compensated for lands acquired for the project*”.<sup>32</sup> Indigenous peoples in all the outlying Islands were never properly compensated for their lands grabbed for the *transmigrasis*.

No corrective measures have so far been taken to address the negative consequences of the transmigration problems which continue to play central role for accentuating the conflicts.

## II. The West Papua imbroglio

The main issue of the crisis in West Papua has been the denial of the right to self-determination to the Papuans through the rigged Act of Free Choice of 1969. The non-

<sup>29</sup> . Transmigration in Indonesia, Operations Evaluation Department, World Bank, 9 January 1994 available at <http://wbIn0018.worldbank.org/oed/oeddoelib.nsf/4e0750259652bf5885256808006a000d/4b8b0e01445d8351852567f5005d87b8?OpenDocument>

<sup>30</sup> . Transmigration in Indonesia, Operations Evaluation Department, World Bank, 9 January 1994 available at <http://wbIn0018.worldbank.org/oed/oeddoelib.nsf/4e0750259652bf5885256808006a000d/4b8b0e01445d8351852567f5005d87b8?OpenDocument>

<sup>31</sup> . Transmigration in Indonesia, Operations Evaluation Department, World Bank, 9 January 1994 available at <http://wbIn0018.worldbank.org/oed/oeddoelib.nsf/4e0750259652bf5885256808006a000d/4b8b0e01445d8351852567f5005d87b8?OpenDocument>

<sup>32</sup> . Transmigration in Indonesia, Operations Evaluation Department, World Bank, 9 January 1994 available at <http://wbIn0018.worldbank.org/oed/oeddoelib.nsf/4e0750259652bf5885256808006a000d/4b8b0e01445d8351852567f5005d87b8?OpenDocument>

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implementation of Papua Special Autonomy Law No. 21/2001, the only positive measure taken in the post Soeharto period accentuates the conflict.

Papua remains cut off from international media, human rights and humanitarian organizations which require special permission from the government to visit the area. In July 2007, the government of Indonesia denied U.S. Congressman Eni Faleomavaega permission to visit Papua stating that his presence would “create riots”.<sup>33</sup>

### **a. Non-implementation of the Papua Special Autonomy Law, 2001**

After the fall of Soeharto in 1998, his successor, President BJ Habibie adopted Law No. 45/1999, which among other things, mandated to divide the province into three - West Irian Jaya, Central Irian Jaya and Irian Jaya.<sup>34</sup> This was considered as an attempt to divide the Papuans and undermine the call for independence after East Timor became independent.

In a departure from Habibie, his successor President Abdurrahman Wahid sought to assuage the sentiments of the Papuans, renamed Irian Jaya as “West Papua” and introduced Papua Special Autonomy Law No. 21/2001. Unfortunately, Law No. 21/2001 did not include an article stipulating that Law No. 45/1999 was no longer valid.

Nonetheless, Article 76 of Law No. 21 of 2001 (Papuan Special Autonomy Law) stipulated that the creation of new provinces in Papua must have the approval of the Papua People's Council (*Majelis Rakyat Papua*) and the Provincial Legislative Council. However, the formation of the Papua People's Council had been repeatedly postponed as the government had no seriousness to implement Law no.21/2001.

Ambiguity on the status of Law No. 45/1999 and Law No. 21/2001 persisted and a situation of limbo prevailed.

Even before the constitution of the Papua People's Council, President Megawati Sukarnoputri, successor of President Wahid passed Presidential Decree (Inpres) No.1 of 2003<sup>35</sup> calling for the speedy implementation of Law No. 45/1999 and divide the West Papua into Papua, Central Irian Jaya and West Irian Jaya.

The government however had to shelve creation of Central Irian Jaya in August 2003 following violent clashes in Timika over the partition. But, two other provinces West Irian Jaya and Papua were created.

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<sup>33</sup>. Indonesia Bars US Congressman from Papua, The Jakarta Post, 3 July 2007

<sup>34</sup> . West Papua Crisis: Don't blame the Safe Have, Asian Centre for Human Rights, available at: <http://www.achrweb.org/Review/2006/118-06.htm>

<sup>35</sup> . Restoring Trust in Papua, Jakarta Post, 26 March 2004

After the partition of Papua, Indonesia's Constitutional Court sanctified the partition in November 2004. In a judgment on the constitutional validity, the court ruled that while the Special Autonomy law superseded Law No. 45/1999 in creating the new province of West Irian Jaya, the new province should be recognized nonetheless as its existence was already a political *fait accompli*.

There are two provinces now: Papua and West Irian Jaya and the applicability of the Papua Autonomy Law hangs in balance. Like the way Law No. 21/2001 failed to include an article invalidating the applicability of Law No. 45/1999, no new regulation reconciling the status of West Irian Jaya with Special Autonomy have followed.

The non-implementation of the Special Autonomy in Papua led to general dissatisfaction among the indigenous Papuans. An EU-funded survey, conducted in 2006 by the Indonesian NGO SNUP (National Solidarity for Papua) and *Kemitraan* (the World Bank-initiated Partnership for Governance Reform in Indonesia) found that sixty per cent of the 323 respondents from six districts in Papua said they had no confidence that Special Autonomy would result in any improvement in their living conditions; 76% said Special Autonomy was not being well implemented and 62% said the local government structure was either totally or hardly capable of implementing the Special Autonomy law.<sup>36</sup>

Instead of implementing the Papua Special Autonomy Law, on 16 May 2007, the Presidential Decree No. 5/2007 regarding the Speeding of the Development of the Province of Papua and the Province West Papua was issued. This Decree instructs 11 ministers, 2 governors and all regents in Papua to: [1] maintain the food security and poverty reduction, [2] improve the quality of education services, [3] improving the quality of health services, [4] improve basic infrastructure to improve the accessibility of the isolated and remote areas as well as the border area, and [5] take affirmative action for developing indigenous Papuans.<sup>37</sup>

The latest Presidential Decree is yet another attempt to reduce the political question of Papua into an economic one.

## **b. Prisoners of conscience**

The Indonesian government remains extremely intolerant towards any political expression. There are many political prisoners of conscience who have been sentenced for raising the Papuan "Morning Star" flag.<sup>38</sup>

<sup>36</sup> . Centre for Peace and Conflict Studies Blundering in? The Australia-Indonesia Security Treaty and the Humanitarian Crisis in West Papua, by Jim Elmslie with Peter King and Jake Lynch A report prepared for the West Papua Project at the Centre for Peace and Conflict Studies, The University of Sydney, March 2007

<sup>37</sup> . <http://www.hampapua.org/home2.html>

<sup>38</sup> . State of emergency declared in Papua after Jakarta objects to a flag raising campaign, 2 July 2007, Radio New Zealand International, available at: <http://www.rnzi.com/pages/news.php?op=read&id=33359>

On 26 May 2006, Filep Karma an indigenous Papuan was sentenced to 15 years imprisonment on charges of treason and expressing hostility towards the state by raising Papua's Morning Star flag on 1 December 2004. Mr Yusak Pakage, a 26 year-old student, was sentenced to ten-years imprisonment for protesting his arrest.<sup>39</sup>

Other prisoners of conscience arrested for raising the Papuan Morning Star flag include Welmus Musa Asso, Mayus Togodly, Andi Asso, Ghen Jhon Hilapok, Heri Asso, Jean Hasegem and Gustaf Ayomi.

### **c. Human rights violations in Papua**

Papua continues to witness serious human rights violations. According to World Council of Churches, the number of reported cases of extra-judicial killings and arbitrary detention and torture reached an all time high of 136 and 838 cases respectively as on 14 October 2003 since the much-proclaimed reform period (1998-2001).<sup>40</sup>

Since Special Autonomy was introduced in 2001 to 2006, the Papuan human rights organisation, ELSHAM has recorded 19 summary executions including of Tolinawimban Gire, Yustinus Murib, Derek Murib, Pastor Elisa Tabuni, Moses Douw, Marinus Kogoya, Sodema Hubi, Mokaneak Kossy, Marius Marian and Yunus Giay; 18 arbitrary arrests, 157 cases of torture and two cases of forced disappearances in Papua.<sup>41</sup>

Human Rights Watch in its report, *Out of Sight, Endemic Abuse and Impunity in Papua's Central Highlands*, in July 2007 documented 14 cases of human rights violations including extrajudicial killings which took place in 2005 and 2006. Out of these 14 cases, members of the police forces were found responsible in 10 cases.<sup>42</sup>

The West Papua National Authority based in Australia in a memorandum to United Nations Secretary-General Ban Ki-Moon on 2 November 2007 stated that the Papuans continue to be victims of intimidation, torture, imprisonment, killing and 'disappearances' by the State. According to the Briefing Paper, Matius Bunay (22), head of Youth at the KINGMI Church in Nabire, was kidnapped and killed by Indonesian police and military on 6 August 2007; Martinus Degey (22), a student, was kidnapped

<sup>39</sup>. Filep Karma and Yusak Pakage jailed for raising flag, West Papua Action Newsletter No.17, March 2006. No. 17, available at: <http://westpapuaaction.buz.org/newsletter/index.html#4>

<sup>40</sup>. World Council of Churches: "violations, systematically planned and executed", West Papua Action Newsletter No. 14, October 2003, available at: <http://westpapuaaction.buz.org/newsletter/no14.htm#Top>

<sup>41</sup>. No human rights improvement under special autonomy, TAPOL Bulletin No. 185, January 2007, <http://tapol.gn.apc.org/bulletin/2007/Bull185.htm#otsus>

<sup>42</sup>. Out of Sight, Endemic Abuse and Impunity in Papua's Central Highlands, HRW, available at: <http://hrw.org/reports/2007/papua0707/>

and killed by Indonesian special intelligence on 8 August 2007 in Timika, and 40 Papuans in Wamena died after Indonesian intelligence agents allegedly poisoned a container of drinking water in the fourth week of October 2007.<sup>43</sup>

Innocent civilians are extra-judicially killed during military crackdowns and sweeping operations. Those who were killed included a 22-year old Dany Hisage who allegedly died after being shot during sweeping operation conducted by the security forces following a clash between security forces and demonstrators in the Central Highlands on 17 March 2006;<sup>44</sup> four people and a priest who were killed by shots allegedly fired from a TNI (armed forces) helicopter in the Puncak Jaya regency in October 2004;<sup>45</sup> Rev. Eliza Tabuni who was shot dead on 14 September 2004 in Guragi<sup>46</sup> and four students who were killed by policemen in retaliation after a group of armed Papuan separatists raided a police post in Abepura outside the capital city of Jayapura, in which two police officers and a security guard were killed on 7 December 2000.<sup>47</sup>

On 17 January 2005, TNI personnel allegedly beat local Papuan residents in Nabire. While seven were seriously injured, one Miron Wonda died in the beatings.<sup>48</sup>

On 10 April 2005, police allegedly extra-judicially killed one Tolino Iban Giri and arrested eight other innocent persons during a raid in Mulia City, capital of Puncak Jaya Regency to nab a group of 11 members of Free Papua Movement or Organisasi Papua Merdeka (OPM). Local church leaders corroborated that Tolino Iban Giri and the eight others were not members of OPM.<sup>49</sup>

On 14 July 2005, soldiers allegedly tortured a villager Mr Petto Wenda of Ndome (Pyramid) on suspicion of being an OPM member by slashing his face and body with knife and razor and then pouring petrol over his head and setting his hair on fire.<sup>50</sup>

#### **d. Displacement in Papua**

<sup>43</sup>. Source: Free West Papua.com, available at <http://freewestpapua.com/node/165>

<sup>44</sup>. Papuans tortured, policemen killed, Tapol Bulletin, July 2006, available at: <http://tapol.gn.apc.org/bulletin/2006/Bull183.htm>

<sup>45</sup>. Papuan council calls on Yudhoyono to stop military operations in Papua, AWPANewsletter No. Kompas, 27 October 2004

<sup>46</sup>. STATEMENT ON VIOLENCE, ABDUCTIONS AND KILLINGS IN MULIA PUNCAK JAYA September – November 2004, Press release by National Solidarity for Papua (SNUP), available at: <http://www.westpapua.ca/?q=en/node/355>

<sup>47</sup>. 25 POLICE OFFICERS PROBES IN IRIAN JAYA, The Jakarta Post, 14 May 2001

<sup>48</sup>. West Papua Crisis: Don't blame the Safe Haven, ACHR REVIEW, Asian Centre for Human Rights, 29 March 2006

<sup>49</sup>. Ibid

<sup>50</sup>. Ibid

According to Refugee Studies Centre, an estimated 20,000 Papuans have been internally displaced due to the military operations and some 13,500 refugees fled across the border to Papua New Guinea since the Papua Special Autonomy Law was passed in 2001.<sup>51</sup>

The Papuans have been disproportionate victims of military actions in Papua. The security forces persecute the local peoples on the charges of being members/ supporters of Goliat Tabuni and the OPM/TPN. The security forces destroyed houses and forced them to leave their villages. The new military offensive launched by the Indonesian military (TNI) and police in the Jamo Valley in Puncak Jaya region of West Papua led to further displacement of people in August 2007. At least a mother and two children reportedly died from starvation when they were hiding in the forest after fleeing the military operations.<sup>52</sup>

### **III. Proposed Kalimantan Border Oil Palm Mega-projects threatens indigenous Dayaks**

Act No. 39 of 1999 on Human Rights does not actually provide protection to the property rights. While Article 36 of Act No. 39 of 1999 states that “No one shall be subjected to arbitrary or unlawful seizure of his property”, Article 37 provides that the right to ownership of a property can be revoked in the name of “public interest” simply by awarding compensation not rehabilitation.

The anti-indigenous rights programmes and policies of the government of Indonesia have been responsible for destruction of the livelihood and cultural identities of the indigenous peoples. The government of Indonesia does not recognize the right of ownership, collective or individual, of the members of indigenous communities over the lands traditionally occupied by them. In 2005, the Government issued a policy (Presidential Regulation No. 36/2005) that gives the President the authority to revoke ownership over lands. The government has been undertaking massive policies to provide private investors (foreign and domestic) the right to control natural resources and lands owned by the indigenous people without the free, prior and informed consent of the indigenous peoples. The State has adopted repressive methods to evict the indigenous peoples from their lands. On 15 April 2005, PT. Perkebunan Nasional II hired about 150 Civilian Defence Unit and thugs and conducted forced eviction in the 97 hectares of land and plantation of the Denai indigenous peoples and destroyed 10 houses at Bandar Kalippah village in Deli

<sup>51</sup>. “Dynamics of Conflict and Displacement in Papua, Indonesia” Edited by Eva-Lotta E. Hedman, Refugee Studies Centre, September 2007 <http://www.rsc.ox.ac.uk/PDFs/RSCworkingpaper42.pdf>

<sup>52</sup>. Military operation in Jamo valley causes starvation and displacement, Institute for Papuan Advocacy & Human Rights, Media Alert dated 29 August 2007, available at [http://www.asia-pacific-action.org/statements/2007/ipahr\\_militaryoperationsinjamovalley\\_290807.htm](http://www.asia-pacific-action.org/statements/2007/ipahr_militaryoperationsinjamovalley_290807.htm)

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Serdang district in North Sumatra Province with the cooperation of 20 Anti-Riot Mobile Units.<sup>53</sup>

The proposed Kalimantan Border Oil Palm Mega-project being implemented by the Indonesian State Plantation Corporation (PT Perkenunan Nusantara or PTPN) requires 18 million hectares of land at the heart of Borneo and will destroy three national parks of Betung Kerihun (800,000 hectares), Kayan Mentarang (1,360,000 hectares), and Danau Sentarum (132,000). The government has been acquiring their land by force, fraudulent means and inducements for the Palm Oil Plantations. Once, the project is implemented, indigenous peoples will turn into labourers from owners and it will eventually destroy their cultural identity.

#### IV. Religious minorities

The government of Indonesia officially recognizes only six religions - Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. The traditional religions of many indigenous communities have not been recognized.

In October 2005, the regional office of the Ministry of Religious Affairs in West Nusa Tenggara formally banned thirteen religious sects, including Ahmadiya, Jehovah's Witness, Hari Krishna, and nine forms of traditional beliefs.<sup>54</sup>

On 8 December 2006, the Indonesian House of Representatives passed the Civil Registration Bill that requires citizens to state their faith from among the six officially recognized religions on legal documents like identity cards and birth certificates etc.<sup>55</sup> It has failed to mention non-formal or "traditional indigenous religions" such as the Naurus in Maluku; Kepercayaan in Kalimantan, Papua and Java; Kaharingan in Kalimantan; Sunda Wiwitan in West Java; and Tolotang in South Sulawesi.<sup>56</sup> A report of the Komnas HAM released on 25 January 2007 found a pattern to the attacks against the Ahmediyas including arsons, vandalism, and evictions etc in which the state agencies either remained mute witness and/or participated themselves in the criminal acts.<sup>57</sup>

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<sup>53</sup>. Written statement submitted by the Indonesian Non Governmental Organization at the 62<sup>nd</sup> session of Commission on Human Rights, Geneva on Item No. 15- Indigenous Issues

<sup>54</sup>. International Religious Freedom Report 2006, Indonesia chapter, US Department of State, available at <http://www.state.gov/g/drl/rls/irf/2006/71341.htm>

<sup>55</sup>. Indonesian House passes controversial bill into law, People's Daily Online, 9 December 2006, available at: [http://english.people.com.cn/200612/09/eng20061209\\_330484.html](http://english.people.com.cn/200612/09/eng20061209_330484.html)

<sup>56</sup>. One step forward ..., Inside Indonesia, April-June 2007, available at [http://www.insideindonesia.org/edit89/ii89\\_p04\\_bush.html](http://www.insideindonesia.org/edit89/ii89_p04_bush.html)

<sup>57</sup>. Ahmadiyah & Human Rights, 30 January 2007, <http://www.indonesiamatters.com/1055/ahmadiyahhuman-rights/>

The police accuse the Kingmi Church in Papua of being the religious arm of the OPM (Free Papua Movement) and intimidate the church leaders.<sup>58</sup>

## V. Situation of the human rights defenders

Human rights activism continues to be dangerous in Indonesia. The Church leaders have been killed or threatened for criticizing the government over the human rights abuses. On 1 April 2007, Franciskus Madhu (30), a Roman Catholic priest was shot dead in his church by three unidentified gunmen in Lubuagan in northern Kalinga province.<sup>59</sup>

The government of Indonesia has so far failed to establish accountability for the assassination of prominent human rights defender Munir Said Thalib on 7 September 2004. On 20 December 2005, Central Jakarta District Court found Pollycarpus Budihari Priyanto “convincingly guilty of getting involved in the premeditated murder of Munir” and sentenced him to 14 years in jail.<sup>60</sup> However, on 3 October 2006, the Supreme Court overturned the conviction citing insufficient evidence.<sup>61</sup> On 13 April 2007, the police handed over new evidences to the Attorney General’s office in order to investigate murder of Munir.<sup>62</sup> In October 2007, former president of Indonesia’s international airline Garuda, Indra Setiawan and his deputy Rohainil Aini were charged with murder of Munir.<sup>63</sup>

On 8 December 2006, the Indonesian Constitutional Court annulled a law passed in September 2004 to establish a Truth and Reconciliation Commission in Indonesia to investigate, compensate, and resolve many human rights violations that occurred during the 1966-1998 authoritarian regime of former President Haji Mohammad Suharto. A coalition of human rights groups had challenged three articles of the law but the court rejected the entire law as unconstitutional.<sup>64</sup>

On 8 September 2005, a special Human Rights Court in Makassar acquitted two senior police officers - Brigadier General Johnny Wainal Usman and Senior Commissioner Daud Sihombing even though they were found guilty by the National Human Rights Commission (Komnas HAM) of allowing the killing of three Papuan students and the

<sup>58</sup>. Indonesian Police Accuse West Papuan Clergy of Being Members of the West Papua Guerrilla Army, available at <http://freewestpapua.com/node/150>

<sup>59</sup>. Indonesian Catholic priest killed in Kalinga, The Manila Times, 3 April 2007  
[http://www.manilatimes.net/national/2007/apr/03/yehey/top\\_stories/20070403top3.html](http://www.manilatimes.net/national/2007/apr/03/yehey/top_stories/20070403top3.html)

<sup>60</sup>. Indonesian pilot convicted of murdering right activist, People’s Daily Online, 20 December 2005

<sup>61</sup>. Indonesia: Acquittal Bolsters Impunity for Munir’s Murder, HRW, October 6, 2006

<sup>62</sup>. POLICE HAND OVER NEW EVIDENCE IN MUNIR CASE, Indonesian Embassy, Canada, 13 April 2007,  
[http://www.indonesia-ottawa.org/information/details.php?type=news\\_copy&id=4038](http://www.indonesia-ottawa.org/information/details.php?type=news_copy&id=4038)

<sup>63</sup>. Ex-Garuda chiefs charged over murder, The Sydney Morning Herald, 10 October 2007,  
<http://www.smh.com.au/articles/2007/10/09/1191695910401.html>

<sup>64</sup>. Indonesia court overturns law creating Truth and Reconciliation Commission, JURIST, 8 December 2006,  
available at <http://jurist.law.pitt.edu/paperchase/2006/12/indonesia-court-overturns-law-creating.php>

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torture of over 100 others in Abepura on 7 December 2000. The accused were charged with command responsibility for the killings and torture. Chief Prosecutor I Ketut Murtika recommended the minimum penalty of only 10 years, claiming the two accused had “served the nation” and “did not have malicious intentions”. The court went a few steps further to exonerate both the accused officers and rule that they were not guilty of allowing their subordinates to torture and kill civilians during the raid.<sup>65</sup>

Human rights defenders regularly received threats and intimidation in Papua. This has been confirmed by Ms Hina Jilani, UN Secretary-General’s Special Representative on the situation of human rights defenders who visited Indonesia from 5-12 June 2007.<sup>66</sup>

Even those who met her received threats from the officials of the intelligence agencies and Indonesian Armed Forces, the TNI. Those threatened by the security agencies included Mr Frederika Korain and Priest Perinus Kogoya of Peace and Justice Commission for the Diocese of Jayapura (SKP Jayapura) whose car was intentionally rammed by a blue Kijang car with police license plate number DS 1693 AF on 8 June 2007 while returning after meeting the Special Representative; Mr Yan Christian Warinussy, Executive Director of the Institute of Research, Analysis and Development for Legal Aid (LP3BH), Manokwari whose activities were put under surveillance and Mr Albert Rumbekwan, the head of the National Human Rights Commission (Komnas Ham), Papua Province, who received threatening ext messages from cell phone number 81344034383. But till date no action has yet been taken to investigate these serious threats and intimidation to human rights defenders either by the government or by the NHRC.

The pressure tactics on the human rights defenders also included kidnapping of family members. On 25 September 2007, Ms. Yane Waromi (17), daughter of prominent West Papuan Independence leader, Edison Waromi, was abducted, sedated and abused by unidentified persons allegedly linked to the Indonesian intelligence service or military in Jayapura. She was released on 26 September 2007.<sup>67</sup>

In July 2007, three Church leaders of Papua namely, Reverend Socrates Yoman, President of the Communion of Baptist Churches in Papua, Reverend Benny Giay and Reverend Noahk Nawipa of Kingmi Church (the Papuan branch of the Gospel Tabernacle Church of Indonesia) faced threats. On 29 July 2007, Reverend Yoman was threatened and intimidated by armed police officers and military intelligence personnel outside the Baptist Church in Jayapura, Papua province. Reverend Yoman said the security forces

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<sup>65</sup>. West Papua Crisis: Don’t blame the Safe Haven, Asian Centre for Human Rights, 29 March 2006.

<sup>66</sup>. Press Statement of the Special Representative of the Secretary General on the Situation of Human Rights Defenders, Ms Hina Jilani, concluding her visit to Indonesia, available at <http://www.un.or.id/press.asp?Act=1&FileID=20070612-1&lang=en>

<sup>67</sup>. The West Papua Report, by West Papua Advocacy Team (WPAT), October 2007, available at [http://www.freewestpapua.org/index.php?option=com\\_content&task=view&id=395&Itemid=35](http://www.freewestpapua.org/index.php?option=com_content&task=view&id=395&Itemid=35)

personnel pointed a pistol at him and he was verbally threatened. On the midnight of 29 July 2007, two unidentified men visited Pastor Benny Giav's house. On 30 July 2007, around 25 people attacked the Kingmi Church with stones. Some people from the mob were heard shouting: "Take and kill Dr Benny and Dr Noakh; they provoke people and create too many problems in West Papua". Some members of the Special Police Force and military personnel allegedly took part in the attack.<sup>68</sup>

### 3. State's human rights obligations and commitments

#### I. No recognition of *ulayat*, customary, rights in the constitution

The Constitution of Indonesia of 1945 under Article 18 and Article 28 recognizes the "traditional communities" and their cultural identities and traditional rights. The rights of the indigenous peoples have also been recognized under the Act No. 39 of 1999 on Human Rights. However, the Constitution failed to include and elaborate the *ulayat*, customary rights, of indigenous peoples recognized under Article 3 and Article 5 of the Basic Agrarian Law No. 5 of 1960. Rather, the Presidential Instruction No. 26 of 1998 banned the use of the terms "indigenous" and "non-indigenous" in all official documents. This Presidential Instruction denies the cultural identities of indigenous peoples, violates their cultural rights and negates the principles for affirmative action for the uplift of the indigenous peoples.

A number of Acts such as the Forestry Acts (Act No. 5 of 1967 and Act No. 41 of 1999), Law No. 11 of 1967 on the Principles of Mining, Act No. 5 of 1990 concerning the Conservation of Biological Resources and the Ecosystem and Presidential Regulation No. 36 of 2005 on Land Procurement for Development for Public Purposes deny the *ulayat*, customary rights. Clause 3 of Article 33 of the Constitution established the exclusive right of the State over the natural resources "to be controlled by the state to be exploited to the greatest benefit of the people".

#### II. Failure to amend the Criminal Procedure Code

The first step any democratic government must take is to ensure that the Code of Criminal Procedure Code is amended to ensure the principles of fair trial. The draconian Criminal Code introduced during the Dutch colonial period which has not been suitably amended. On 17 July 2007, Constitutional Court declared Article 154 and Article 155 of Indonesian Criminal Code that banned expression of "feelings of hostility, hatred or contempt" against the Government of Indonesia in public or through the media as unconstitutional. Human rights activist Panji Utomo had challenged the Criminal Code after he was sentenced to three months in jail by the Aceh District Court for allegedly

<sup>68</sup>. Amnesty International, Urgent Act, AI Index: ASA 21/009/2007,03 August 2007, available at [http://web.amnesty.org/aidoc/aidoc\\_pdf.nsf/index/ASA210092007ENGLISH/\\$File/ASA2100907.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/ASA210092007ENGLISH/$File/ASA2100907.pdf)

expressing hatred and insulting the government at a rally at the office of the Aceh and Nias Rehabilitation and Reconstruction Agency in 2006.<sup>69</sup> Earlier on 6 December 2006, the Constitutional Court also revoked Article 134, Article 136 bis, and Article 137 of the Indonesian Criminal Code that banned burning pictures of the president and vice president and mocking them in public.<sup>70</sup>

These are piece meal approaches. Articles 7 of the Act No. 39 of 1999 on Human Rights states that international law concerning human rights ratified by the Republic of Indonesia are “legally binding in Indonesia”. But, Indonesia has failed to amend its basic law used on day to basis i.e. the Criminal Procedure Code

### III. Ineffectiveness of the National Mechanisms

The Human Rights Act of 1999 provides the basis of national mechanisms for protection of and promotion of human rights i.e. establishment of Komisi Nasional Hak Asasi Manusia (National Human Rights Commission, Komnas HAM) and Human Rights Tribunal. But the government has little commitment for human rights in practice.

"That is the fact. Are there any benefits (of Komnas HAM's existence)? If the answer is no, why do the government and the House not liquidate it?" - stated then Chairman of the National Commission on Human Rights (Komnas HAM) Abdul Hakim Garuda Nusantara while explaining the ineffectiveness of the KOMNAS HAM.<sup>71</sup>

In July 2007, the House of Representatives selected 11 new members of the National Commission on Human Rights. It is unlikely to change the situation. The fledging reputation of the KOMNAS HAM has been succinctly captured by one of the new members, M. Ridha Saleh in an interview to The Jakarta Post on 16 July 2007:

“There are three important things about Komnas HAM that need reviewing, based on the experiences of commission members during the last tenure.

First, it is essential that Komnas HAM works beyond just providing recommendations. There is a need for procedural rights, which will enable us to file lawsuits against those who fail to carry out recommendations. We need the power to be able to put pressure on failing parties.

Second, all members or staff of Komnas HAM must be legally protected and granted immunity in carrying out their tasks and investigations. There should be no threats posed to commissioners.

<sup>69</sup>. Court move opens up free speech, The Jakarta Post, 18 July 2007

<sup>70</sup>. Insulting president no longer a crime, The Jakarta Post, 7 December 2006

<sup>71</sup> . Komnas HAM questions govt's commitment to human rights, The Jakarta Post .06.06.03

Third, Komnas HAM should also be provided with subpoena rights. We should be able to summon anyone relating to an investigation.

*If these three things happen, the image of Komnas HAM -- as an institution dedicated to guarding human rights in the country -- might improve. (emphasis ours)”*

*The Konmas Ham* cannot even be judged by its robust findings of the crimes against humanity that were perpetrated in Jakarta in 1984 (Tanjung Priok), 1997 and 1998 (Trisakti, Semanggi and the riots accompanying the fall of Soeharto); East Timor in 1999; and at least three times in Papua —2000 (Abepura), 2001 (Wasior), 2003 (Wamena) because of its inability to implement its findings in these cases of human rights violations.

Rather, as to how the Indonesia’s National Human Rights Commission has been caged by House of Representatives, DPR, Attorney General’s Office (AGO) and the Adhoc Human Rights Courts needs to be examined.

The KOMNAS HAM was established under the Law No 39 of 1999 Concerning Human Rights. However, in reality it is Law No. 26 OF 2000 CONCERNING HUMAN RIGHTS COURTS which governs the functions of the KOMNAS HAM.

Under Article 18 of the Law No 26/2000, the National Commission on Human Rights is mandated to conduct inquiry. Under Article 19, the NHRC is authorized to:

- “A. to conduct inquiry into and examination of incidents occurring in society, which, based on their nature or scope, can reasonably be suspected of constituting gross violations of human rights;
- B. to receive reports or complaints from individuals or groups concerning the incidence of gross violations of human rights, and to pursue statements and evidence;
- C. to call on complainants, victims, or subjects of a complaint to request and hear their statements;
- D. to call on witnesses to request and hear their witness;
- E. to review and gather statements from the location of the incident and other locations as deemed necessary;
- F. to call on relevant parties to give written statements or to submit necessary authenticated documents;

G. on the order of the investigator to examine of letters; undertake search and seizure; examine houses, yards, buildings, and other places that certain parties occupy or own; dispatch specialists pertinent to the investigation”.

However, the NHRC has no power to enforce attendance but it depends on the goodwill of the authorities. Moreover, the final authority whether to prosecute or not based on the inquiry of the NHRC rest with the Attorney General under Article 23 of the Law No 26/2000.

### **a. The case of gross human rights abuses at Wasior and Wamena**

On the Morning of 13 June 2001, five mobile brigade (Brimob) personnel and one civilian were killed at CV Vatika Papuana Perkasa (VPP) company base camp in Wondiboi village, Wasior district, West Papua. The police held the OPM for responsible for these deaths. After the incident, Brimob personnel carried out sweep operations in the villages of Wondiboi, Yomakan, Wondamawi I and Isei. In these series of sweepings,<sup>72</sup> police allegedly killed four civilians, raped one; five disappeared, tortured many,<sup>73</sup> and burnt down dozens of homes to avenge the deaths of one civilian and five Police Mobile Brigade (Brimob) troops. The police suspected the involvement of members of the OPM in these deaths.<sup>74</sup>

On 4 April 2003, alleged members of Free Papua Movement (OPM) reportedly broke into a military arsenal in Wamena and escaped with 29 rifles. Two soldiers, First Lt. Napitupulu and Chief Sgt. Ruben Lena, and one civilian were killed in the robbery.<sup>75</sup> The Indonesian military carried out a series of military raids in Wamena town, and villages of Sinakma, Bilume, Asologaima, Woma, Honai lama, Napua, Wlaik, Moragame-Piramyd, Ibele, Ilekma, Kwiyage-Tiom, Hilume, Okilik, Kikume, near Kwiyage such as Luarum, Wupaga, Negeyagin, Negeya, Mume and Timine<sup>76</sup> in Wamena Sub-district to nab the members of the OPM. In these sweeping operations, 9 civilians were killed, 38 tortured, 15 arbitrarily arrested and thousands displaced from their villages to refugee camps where 42 people died from exhaustion and hunger.<sup>77</sup>

<sup>72</sup> . West Papuan Churches' deepest concern and appeal to the international community, Special Report – June 2007, Action in Solidarity in Asia and the Pacific, available at [http://www.asia-pacific-action.org/southeastasia/indonesia/reports/specialrep\\_westpapuachurchreport\\_june07.htm](http://www.asia-pacific-action.org/southeastasia/indonesia/reports/specialrep_westpapuachurchreport_june07.htm)

<sup>73</sup> . Amnesty International, 6 December 2004 Public Statement AI Index: ASA 21/052/2004 Impunity remains entrenched in Papua, Amnesty International, available at: <http://www.westpapua.ca/?q=en/node/111>

<sup>74</sup> . Komnas HAM to Question 75 over Papua Rights Abuses, The Jakarta Post, 17 January 2004

<sup>75</sup> . Ibid

<sup>76</sup> . West Papuan Churches' deepest concern and appeal to the international community, Special Report – June 2007, Action in Solidarity in Asia and the Pacific, available at [http://www.asia-pacific-action.org/southeastasia/indonesia/reports/specialrep\\_westpapuachurchreport\\_june07.htm](http://www.asia-pacific-action.org/southeastasia/indonesia/reports/specialrep_westpapuachurchreport_june07.htm)

<sup>77</sup> . Amnesty International, 6 December 2004 Public Statement AI Index: ASA 21/052/2004 Impunity remains entrenched in Papua, Amnesty International, available at: <http://www.westpapua.ca/?q=en/node/111>

From 12 January 2004, the National Human Rights Commission (Komnas HAM) led by Commission chairman Abdul Hakim Garuda Nusantara started investigating these excesses.<sup>78</sup> The Komnas HAM established representative offices in the Papua towns of Wamena and Wasior. In September 2004, Komnas HAM submitted its investigation reports on both the above mentioned cases to the Attorney General's Office. Komnas HAM concluded that evidences it gathered during its investigations suggested that security personnel had committed crimes against humanity and gross human rights violations. In these two reports, Komnas Ham reportedly named as many as 168 members of the military and police as suspects.<sup>79</sup> But, no prosecution proceedings have been initiated as on 15 January 2006.<sup>80</sup>

### **b. Failure in the Abepura case, West Papua**

Shortly after 1.00 a.m. on 7 December 2000, an unidentified group of people reportedly attacked a police post near the market in Abepura, a college town about ten kilometers from the provincial capital, Jayapura. Two policemen, Obeth Petrus Epaa (Polsek) and Bharada Indra (Brimob), and a security guard, Paulus Padama, were killed. Police alleged that pro-independence highlanders (*orang pegunungan tengah*) carried out the attack and pro-independence guerrilla leader Matias Wenda, allegedly ordered the attack. There were no definitive accounts of the number of attackers and the kind of weapons they used.<sup>81</sup>

Initially, none were caught as the attackers quickly dispersed in different directions seeing that Brimob and police reinforcements have arrived at the scene immediately after the attack began. But very soon, troop consisting of Brimob and police stormed into the Ninmin student dormitory located up a hill about 300 meters from the Abepura market and Yapen Waropen dormitory. They were probably chasing a small group of the attackers who went to the Ninmin dormitory to appeal to the students to join them. The attackers immediately left after the students refused to do so and the troop reached the dormitory immediately thereafter and awakened the students. In all, there were 23 students – 14 male and 9 female who were sleeping. The security forces awakened and rounded them up, and beat them brutally. Two of them died due to beatings, dozens suffered serious injuries.<sup>82</sup> The deceased were identified as Johny Karunggu (18) and Orry Doronggi (17).<sup>83</sup>

<sup>78</sup> . Komnas HAM to Question 75 over Papua Rights Abuses, The Jakarta Post, 17 January 2004

<sup>79</sup> . Amnesty International 6 December 2004 Public Statement AI Index: ASA 21/052/2004 Impunity remains entrenched in Papua, Amnesty International, available at: <http://www.westpapua.ca/?q=en/node/111>

<sup>80</sup> . <http://home.snafu.de/watchin/Aide%20Memoire%202007%20Januar.pdf>

<sup>81</sup> . THE ABEPURA CASE AND ITS AFTERMATH, available at: <http://www.hrw.org/reports/2001/papua/PAPUA0701-05.htm>

<sup>82</sup> . Ibid

<sup>83</sup> . Papuans want rights abusers jailed, Jakarta Post, 19 April 2005

During the day, the security forces launched sweeping operations in all residential areas of the highland people like Abepura, Skyline, Sentani and the student dormitory viz. Yapen Waropen dormitory. The troop carried out house to house sweeping raids, rounded up and brutally beaten people.<sup>84</sup> During the sweepings, police detained over a hundred people – including pregnant women and young children - and assaulted and tortured them. One high school student identified as Elkuis Suhunaib (18) was shot dead.<sup>85</sup>

The response of the police in the aftermath of the killing of the three students was classic. They initially denied that any student had been killed in custody and allegedly threatened anyone who dared to report it. The police summoned, detained and interrogated Johanis Bonay, one of the directors of Elsham on 14 and 15 December 2000 for issuing a press release reporting that three Papuan students had been killed in the police action. The police threatened to prosecute him under Article 311 of the Indonesian Criminal Code for alleged defamation.<sup>86</sup>

On 9 January 2001, National Human Rights Commission of Indonesia (Kom Nas Ham) announced that it would appoint a commission of inquiry to investigate the Abepura case. On 6 February 2001, the commission of inquiry was announced and the team was given 2 months time until 5 April 2001 to complete a preliminary investigation. From the beginning, the commission of inquiry faced vehement opposition. As soon as the investigation team reached Papua to begin investigating the police, the local office of the Justice and Human Rights Ministry sent an official letter stating its legal opinion that the investigation was illegal and advising the provincial chief of police not to cooperate with investigators.<sup>87</sup>

The inquiry could not be completed in 2 months and had to be given another one month extension and the inquiry commission finally interviewed over one hundred individuals, including fifty-one victims and thirty-nine police and Brimob officers. The police and Brimob refused to cooperate. While the commission of inquiry was interviewing the students victims, the police summoned at least 20 of them and threatened that they were suspected of involvement in the 7 December 2000 attack on the police post. It was done to intimidate witnesses and students victims from disclosing the truth before the investigation team. The intimidations stopped only after the investigation team protested and national police headquarters in Jakarta intervened.<sup>88</sup>

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<sup>84</sup>. Ibid

<sup>85</sup>. Papuans want rights abusers jailed, Jakarta Post, 19 April 2005

<sup>86</sup>. THE ABEPURA CASE AND ITS AFTERMATH, available at: <http://www.hrw.org/reports/2001/papua/PAPUA0701-05.htm>

<sup>87</sup>. Ibid

<sup>88</sup>. Ibid

Finally, the Komnas HAM named 25 security personnel found to be guilty of killing and torture. However, only two of these suspects were charged by the Attorney General's Office, with no adequate explanation.<sup>89</sup>

In September 2005, a special Human Rights Court set up in Makassar acquitted two senior police officers, accused of allowing the killing of three Papuan students and the torture of over 100 others in the college town of Abepura on 7 December 2000. The two accused police officers identified as Brigadier General Johny Wainal Usman and Senior Commissioner Daud Sihombing were charged with command responsibility for the killings and torture. They faced a maximum penalty of life imprisonment if convicted. But chief prosecutor I Ketut Murtika recommended the minimum penalty of only 10 years, claiming the two defendants had "served the nation" and "did not have malicious intentions". However, the court went a few steps further and exonerated both the accused officers. The Court ruled that they were not guilty of allowing their subordinates to torture and kill civilians during the raid.<sup>90</sup>

What a travesty of justice when three of the victims were killed in police custody.

### c. Letter of KOMNAS HAM on the status of inquiries

The following letter of the Commissioner of the KOMNAS Ham explains the regime of impunity in Indonesia.

**Komnas HAM says it completed inquiry**  
The Jakarta Post, Saturday, May 20, 2006

I refer to your report entitled *Blame game continues over May 1998 shootings* (*The Jakarta Post*, May 16, page 2), which quoted a statement by Wayan Pasek Swarta, spokesman of the Attorney General's Office (AGO), as follows:

"Attorney General's Office spokesman Wayan Pasek Swarta claimed prosecutors could not investigate the riots because the National Human Rights Commission (Komnas HAM) has failed to provide additional data in their report.

'As soon as we received the report two years ago, we told Komnas Ham's investigators to provide more data in relation to the riots. As of today, the investigators have failed to do so,' Pasek told the *Post* over the weekend."

<sup>89</sup>. Indonesia: Killing and torture acquittals demonstrate failure of justice system, AWPAN Newsletter No.68, September 2005

<sup>90</sup>. West Papua Crisis: Don't blame the Safe Haven, Asian Centre for Human Rights, 29 March 2006

The May 1998 riot is only one of six alleged gross violations of human rights which Komnas HAM has completed inquiries into and submitted to the Attorney General for investigation in accordance with the applicable law, namely the 2000 law concerning the Human Rights Court. These six cases, compiled in three dossiers, are:

(a) Trisakti 1998, Semanggi 1998 (known as "Semanggi I), and Semanggi II, known jointly by their acronym "TSS." The inquiry into these cases was completed and submitted to the Attorney General for investigation in 2002.

(b) May 1998, the inquiry into which was completed and submitted to the Attorney General for investigation in 2003.

(c) Wasior 2001-2002 and Wamena 2003, the inquiry into which was completed and submitted to the Attorney General for investigation in 2004.

No investigation has been launched into any of these six cases.

It's been more than a year now that no action has been taken in response to Komnas HAM's communications. Action would mean either determining, with proper justification, that the result of the inquiry concerned "does not sufficiently meet the elements of gross violations of human rights" and accordingly, returning the case to Komnas HAM or, if the investigator is not able to make such a determination, beginning the investigation without further delay.

ENNY SOEPRAPTO  
Commissioner  
Civil and Political Rights  
Jakarta

Considering that international laws are not self-executing, Indonesian government has failed to bring conformity with the ratified treaties at domestic level. In addition, the government fails to withdraw the reservations to the Treaties ratified by it.

#### **4. Enhancement of State's capacity**

AITPN recommends that the following areas should be considered for technical cooperation:

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[AITPN's contribution for examination of Indonesia's human rights obligations and commitments under the Universal Periodic Review of the Human Rights Council]

- Considering the absence of disaggregated data on indigenous peoples on human rights violations is an area which requires technical cooperation;
- Increased understanding of human rights for judiciary through judicial colleges;
- Establishment of a National Institutions on the traditional communities/indigenous peoples.

## **5. Cooperation with HRC, Treaty Bodies and OHCHR**

Indonesia has failed to issue standing invitations to the Special Procedures. It also failed to ensure safety and security of those who cooperate with the UN Procedures as reflected from the harassment and intimidation faced by human rights defenders from West Papua.

Indonesia has also not ratified key international instruments like Convention for the Protection of All Persons from Enforced Disappearance, ILO Convention No. 169 relating to Indigenous and Tribal Peoples, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention on the Rights of Persons with Disabilities, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography, Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, Optional Protocol to the Convention on the Rights of Persons with Disabilities, and 1<sup>st</sup> and 2<sup>nd</sup> Optional protocols to the ICCPR.

Indonesia does not submit its periodic reports timely including under Convention on the Elimination of All Forms of Discrimination against Women since 13 October 2001, under International Covenant on Civil and Political Rights since 23 May 2007 and under Periodic Reports under Convention on the Rights of the Child since October 2007.

The government of Indonesia also failed to establish mechanism for implementation of the recommendations of the Treaty Bodies.