



NGO REPORT- UNIVERSAL PERIODIC REVIEW
REPUBLIC OF INDONESIA
(to be considered in April 2008)

Submitted by:
Commission of the Churches on International Affairs of the World Council of Churches
(NGO with general consultative status)

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EMBARGOED UNTIL 20th NOVEMBER 2007

We submit the following written report on the situation of ongoing human rights violations in West Papua, Indonesia, to the attention of the Office of the High Commissioner for Human Rights, for first consideration in the Universal Periodic Review of the Republic of Indonesia. We focus on Indigenous Peoples' Rights as well as Economic, Social and Cultural Rights in West Papua.

Indonesia is state party to most of the UN human rights conventions and treaties and as member of the UN Human Rights Council subject to the highest standards on human rights. We recognise that Indonesia has gradually improved its human rights performance in recent years, e.g. by ratifying the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2006. Indonesia improved its institutional sector and the current Government of Indonesia articulated its willingness to properly address human rights issues.

Nevertheless, human rights violations are still continuing, particularly in relation to indigenous peoples in West Papua. Genuine indigenous rights – i.e. self determination in terms of political representation, ownership and management of natural resources, participation in development matters stressing an indigenous-suited approach – are denied by simply ignoring the fact of indigenous existence.

West Papua has been the scene of egregious human rights violations over the years while the indigenous Papuans struggled for being distinct in cultural terms stemming from a Melanesian background. Indigenous Papuans are discriminated in terms of systematic marginalisation in economic and social life as well as in mental categories being blamed as notoriously being backward. The focus here relates to the systematic and biased access to Economic, Social and Cultural Rights (ESC Rights) disfavouring systematically indigenous Papuans compared to non-indigenous Papuans (e.g. transmigrants). Several studies on education, health, housing particularly at the rural side – where indigenous Papuans are still a majority – show the ongoing gap of protection and promotion of these fundamental rights.

Indigenous Papuans have been made to suffer enforced poverty, economic subjugation, poor educational attainment and healthcare, social and demographic changes imposed from the outside, and the destruction of their special identity and culture. Up to the recent past, natural resources have been rapaciously exploited, which left the indigenous West Papuans bereft of a viable infrastructure and prevented them from proper education, health care, vocational training etc.

A third area refers to the biased implementation of the Special Autonomy Law while the GoI should guarantee special procedures of decision making by and consultation of genuine Papuan institutions to be established and conducted in accordance with national and international law. The Special Autonomy Law should have provided means by which the Papuans can achieve greater control over their own affairs being a legal platform for the Papuan communities to develop their own institutions and rulings. Properly implemented, it might be a source of empowerment enabling indigenous Papuans to improve their economic status and social life as well.

Regarding these rights of indigenous Papuans in Indonesia, this report assesses the permanent denial of these rights by the Government of Indonesia presents recommendations to the Universal Periodic Review of the HRC and provides case reports as an attachment to the report.

Recent Developments

Indonesia has build-up a large military presence in West Papua far beyond any reasonable security justification or strategic need. This build-up increased the tensions in the Papuan territory and contributed to the deterioration of the human rights situation, to the high level of impunity (including past abuses) particularly when it comes to the involvement of security personnel into the harassment of human rights defenders. According to many studies on the ground, the human rights situation in West Papua has shown no signs of improvement up to November 2007. Human rights violations have rather continued on a routine basis, security personnel instigated against and intimidated human rights defenders, political activists and religious leaders.

Recommendations to the UN HRC:

assess the commitment of Government of Indonesia in order to strengthen the capacity of self-organisation of the indigenous Papuan people and its institution-building

assess the commitment of Government of Indonesia in relation to the culture of the indigenous Papuans with particular reference to the threats posed by factual discrimination

assess the commitment of Government of Indonesia on its obligation and responsibility to make means and measures of the ESC Rights available particularly to indigenous Papuan people in order to meet the minimal standards;

assess the commitment of Government of Indonesia in relation to other international and UN-based bodies, such as WHO and UNICEF, in order to be accordingly provided with the necessary expertise and technical assistance

ask the Government of Indonesia to establish a mechanism with international participation (i.e. mechanisms of the UN) to accompany the implementation of the mentioned international covenants

in the light of the mentioned discrepancies, investigate with statistical illustrations the fundamental elements of indigenous Papuan social life: demography, governance and administration, education, health, and the conditions of employment and income generation in the informal sector.

Appendix

NGO Report for the Universal Periodic Review of Indonesia by CCIA / WCC Indonesia: Indigenous Peoples' Rights as well as Economic, Social and Cultural Rights – The case of West Papua

Papua is the gate for Asia and Pacific, the most Eastern and largest province in Indonesia, with 410.000 square km of area (20% of the total land of Indonesia), with the most challenging topography in Indonesia and the largest lowland, highest mountain, largest swamp areas. It is the province with the largest number of endemic species of flora and fauna – unique and rich (i.e. Lawrence National Park has been declared as World Heritage by the UNESCO; but with out a plan to how maintain that richness). In relation to wealth and natural resources, Papua is rich in copper, gold, silver, iron, uranium, oil and gas, fishery, and vast tracts of timber, and at the same time the most backward province in Indonesia in terms of infrastructure (road, bridge, harbour, airstrip/airport, electricity, water, telecommunication). The total population amounts to approx. 2,3 Mio. inhabitants (less than 1% of Indonesian population) with an indigenous population of approximately 1,2 Mio. Of these indigenous Papuans, 70% live in rural areas, 75% are subsistence farmers. Papua has a variety of ethnic groups (more than 260 local languages)¹.

Indigenous Peoples in West Papua

Though the situation on West Papua is much complex, and the critical issues vary from one region to another, there are some dimensions of conflict in Papua, which can be generalised as affecting the very existence of the indigenous Papuans. Genuine indigenous rights – i.e. self determination in terms of political representation, ownership and management of natural resources, participation in development matters stressing an indigenous-suited approach² – are denied by simply ignoring the fact of indigenous existence. The 1945 Constitution of Indonesia recognised indigenous peoples' existence in Indonesia. Still Clause 3 of Article 28I provides that “*The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations.*” However, through Presidential Instruction No. 26 of 1998, the government banned the use of the terms “*indigenous*” and “*non-indigenous*” in all official documents denying the fact of different cultural identities of indigenous peoples and the principles for affirmative action³. While the indigenous Papuans struggled for their economic, social and cultural rights, their civil and political rights as well as being distinct in cultural terms stemming from a Melanesian background, West Papua has been the scene of egregious human rights violations over the years⁴.

Conversely, the Government of Indonesia has build-up a large military presence in West Papua, far beyond any reasonable security justification or strategic need. This build-up increased the tension in Papuan territory and contributed to the deterioration of the human rights situation, to the high level of impunity particularly when it comes to the involvement of security personnel into the harassment of human rights defenders. According to many studies

¹ To West Papua and its indigenous peoples see Evangelical Church in the Rhineland 2005, the contribution of Siegfried Zoellner

² as Art. 1 of the Covenant on Economic, Social and Cultural Rights states; ratified in 1999 through Law Number 29

³ also provided under the ICERD (International Covenant on Eliminating all Forms of Racial Discrimination)

⁴ Evangelical Church in the Rhineland 2005

on the ground, the human rights situation in West Papua has shown no signs of improvement up to November 2007. Human rights violations have rather continued on a routine basis, security personnel instigated against and intimidated human rights defenders, political activists and religious leaders.

Discrimination

Indigenous Papuans are discriminated in terms of systematic marginalisation in economic and social life as well as in mental categories being blamed as notoriously being backwarded. While the Government of Indonesia argues that discrimination is prohibited under Law No. 39 of 1999, and thus, by law, there are no violations of ICERD in Indonesia, reports e.g. of the *National Commission on Human Rights* (KPP Komnas HAM) in Jakarta reveal a different reality. This stigmatisation often sounds like:

“You have an ugly face with curly hair and a stupid brain”

“You with the curly hair only know how to eat pigs and will never get independence.”

“Curly hair is an animal quality and only worthy of annihilation.”

“You Papuans do not know anything, even as scholars you are stupid people.”

“You people from Wamena sleep with pigs, so you have the brain of a pig, you are all stupid. Better you eat sheep, so you will be as clever as people from Java, Makassar and Jakarta.”

“You Papuans are like pigs, dogs.”

“You have a brain like a pig.”

“Knowing how to raise pigs means to have the brain of a pig.”

“If you want to have freedom, take your freedom tonight. Tomorrow there will be no freedom again”.

Indigenous Papuan people is given the feeling that they are not recognised as human beings, with their own traditions and culture. They are just treated as commodities, objects that can be moved away if needed⁵.

There are frequent and violent conflicts between Javanese Muslims and the pre-dominantly Christian indigenous peoples in the outlying Islands as in Aceh, Papua, the Maluku, Central Sulawesi, and Central and West Kalimantan⁶. By August 2004, there were 1.3 million internally displaced people estimated, in competition with the *transmigrasis*, the settlers from Java, Bali and Madura, mainly following Islam⁷. According to the Operations Evaluation Department of the World Bank, this lead to a “*major negative and irreversible impact on indigenous peoples*”⁸. Though the Government of Indonesia stopped sponsoring the transmigration program in 2000, it is still the reference point for the nowadays independent migration, and both resulted in a population shift in the urban areas of Papua. The local, indigenous inhabitants have become a minority, forming only one third of the urban population⁹.

In terms of indigenous survival, the State and the Government of Indonesia claim exclusive rights over natural resources at the expense of the rights of the indigenous peoples, not recognising their customary rights (*Adat*); in particular under the Forestry Acts (Act No. 5 of

⁵ see also Evangelical Church in the Rhineland 2005, contribution of Theo van den Broek

⁶ AITPN 2007: 25ff.

⁷ AITPN 2007: 10, 11

⁸ AITPN 2007: 10, 11; the controversial government-sponsored transmigration ended in 2000.

⁹ UNDP 2005: 6, 12

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. All these provisions deny the *Adat* recognised under Article 3 and Article 5 of the Basic Agrarian Law (BAL) No. 5 of 1960¹⁰. Consequently, the State and Government of Indonesia does not either fully implement the right of ownership - collective or individual - of the members of indigenous peoples over their lands traditionally occupied by them nor the prior and informed consent of indigenous communities¹¹. In addition, provisions in the Special Autonomy Law (see below) require resource companies to pay greater heed to *Adat* claims to land ownership, but they do not apply retroactively to the many companies already in Papua¹².

Out of the many examples, the case of the Korean-owned firm Korindo and its Indonesian subsidiaries in the Boven Digoel district may be illustrated. Both have been operating in the area since 1993, felling timber for plywood and, from 1997 onwards, moving into oil palm plantations for biofuel production. Less than 10% of the oil palm plantation workers employed by Korindo originated from Papua. Conflicts between the company and Papuan customary land owners are widespread, denying the latter one access and compensation, increasing mistrust between clans over land boundaries and within clans over compensation sharing¹³. Additional side-effects are the strong military and police presence, villagers, visitors and local politicians and officials are closely monitored and constantly harassed and intimidated at low-level.

ESC Rights

A second area of major concern on human rights relates to the biased access to Economic, Social and Cultural Rights (ESC Rights¹⁴) systematically disfavoured indigenous Papuans compared to non-indigenous Papuans (e.g. transmigrants). Several studies on education, health, housing particularly at the rural side – where indigenous Papuans are still a majority – show the ongoing gap of protection and promotion of these fundamental rights. There are indices stating that indigenous Papuans suffer enforced poverty, poor educational attainment and healthcare, social and demographic changes speeding up the destruction of their special identity and culture. Up to the recent past, natural resources have been rapaciously exploited, which left the indigenous Papuans bereft of a viable infrastructure, prevented them from proper education, health care, vocational training etc. Resettlement sites e.g. in the Timika lowlands to which Oil Companies have relocated hundreds of villagers from the highlands of Bintuni Bay are not fulfilling any standard on proper housing¹⁵. In relation to food and nutrition, there is currently a higher exposure to malnutrition risk due to monotonous intake of food at the village level, some areas in the highland are frequently experiencing famine.

¹⁰ AITPN 2007: 13ff.

¹¹ meanwhile an established standard at international level: UN Declaration on the Rights of Indigenous Peoples of 2007, ILO Covenant 169 of 1989, standing rule of the Human Rights Court of the Organisation of American States

¹² International Crisis Group (2002): 12ff.

¹³ International Crisis Group 2007; further examples are found in Evangelical Church in the Rhineland 2005

¹⁴ ratified by Law Number 11/2005

¹⁵ Evangelical Church in the Rhineland 2005, see the contribution of Agus Sumule

Other areas are lacking nutritious substances for a balanced diet. The situation is worse for vulnerable groups as pregnant women and children under 5 years¹⁶.

Education

By quantity, there is an increase in school facilities available all over the province, which might indicate a real progress. The same can be said of the increase in the number of pupils and teachers. While this is true for urban areas, the education opportunities in the interior are on a disastrous low quality level¹⁷. According to the UNDP report from 2005 Papua has the lowest level of adult literacy in Indonesia (74%). 82% of the Papuan children attend primary school, 47% attend junior secondary school and only 19% senior secondary school. Several factors contribute to the low level of education, for example badly equipped facilities, teachers being absent and lack of access for students due to economic and transportation problems. As the educational system of the state is poor in quality many students turn to private schools.¹⁸ These schools however face management difficulties, the *Foundation of Christian Education* (YPK) is one example while other good private schools often can not be paid by Papuan families. The constraint on rightly educated Papuans prevents to bringing indigenous people in charge and getting them into positions of official authority.

Health

The health care situation in Papua still needs very much attention in order to respond to the urgent needs; especially in the interior. According to UNDP, the health situation in Papua is much worse than in other parts of Indonesia in terms of limited health service as the inability to visit particularly rural areas. There, the health care service is below acceptable standards. The life expectancy is at 66.2 (national average: 69), the infant and maternal mortality rates are the highest in Indonesia (maternal mortality rate is 1.116 per 100.000 births). Besides Malaria and Tuberculosis, Papua faces a serious HIV/ Aids problem with the highest infection rate of the country. Until June 2007, 3.377 cases of HIV/Aids were reported, 68% of the infected being local Papuans. UNAIDS has decided to open an office in Jayapura. Similar to the education sector, the facilities of the health sector are poorly equipped, with medical personnel being absent, non-availability of medicine and people from the villages lacking access to health centers due to long distances. Even though health has been identified as a priority sector, only 8% of the provincial budget was allocated for the health sector in 2002 while the city and district governments only allocated 2% of its budget for health¹⁹.

Economy

The economic development in Papua and the welfare of its indigenous people have to be discussed in relation to the richness of Papua's natural resources. Indigenous Papuans have systematically been denied their rights concerning the natural resources, and, therefore, tend to be marginalised in the development process. Areas with large numbers of non-indigenous settlers such as Jayapura, Merauke, Sorong and Timika have higher HDI ratings than other districts in Papua. The central highlands districts with the highest number of indigenous residents

¹⁶ Evangelical Church in the Rhineland 2007, see the contribution of Agus Sumule in section II

¹⁷ Evangelical Church in the Rhineland 2005, see the contribution of Theo van den Broek

¹⁸ UNDP 2005: 22, 23.

¹⁹ UNDP 2005: 23f., Evangelical Church in the Rhineland 2007, see the contribution of Agus Sumule in section II

have the lowest HDI rankings²⁰. Migrants tend to perform better compared to the indigenous communities, especially in education and competing for job opportunities.

Approximately 5.000 people of Papuan origin and 13.000 from outside Papua are working at the gold and copper mine PT Freeport in Timika. Most of the indigenous Papuans have a non-staff status with little rights. Non-staff employees are for example not allowed to bring their families to live with them in the workers barracks, they are neither allowed to use the restaurants, shopping centres and kiosks owned by PT Freeport nor can their children attend the schools from the multinational company. When indigenous Papuans are employed e.g. in construction work, saw mills, repair shops and furniture business, they normally work for a migrant who is the owner of the business. There are also not many indigenous Papuans who work in the city's supermarkets, hotels or other modern locations. Even in the field of fishing industries, that for long time have been dominated by the indigenous Papuans, they have been slowly moved aside by middlemen or even their whole business have been taken over.

Another example of biased access to the economic sector are the women of Papua selling their fruits and vegetables on the streets in the city of Jayapura. Jayapura is the main capital of Papua and supposed to become a decent and well organised city attracting foreign investors²¹. The Papuan women on the streets are disturbing the picture of an investment orientated city, and the Jayapura city government wants the women to move to the edges of town while the Papuan women ask for a traditional market with proper facilities for them. Similarly, the national development doctrine seeks to make the indigenous Papuans farmers as they are perceived as primitive people and an embarrassment for the Indonesian state. Continuously, development projects are run by non-indigenous Papuans determining in whose hands projects fall²².

Special Autonomy Law

A third area of major concern refers to the biased implementation of the Special Autonomy Law on West Papua. The Special Autonomy Law should devolve control over every policy area but five to Papua: foreign affairs, defence and security, fiscal and monetary policy, religious affairs and justice. It should provide means by which the indigenous Papuans can achieve greater control over their own affairs and generate genuine institutions, procedures and rulings. Properly implemented, it might be a source of empowerment by enabling indigenous Papuans to improve their economic status and social life as well²³.

Article 76 of the Law No. 21 of 2001 (Special Autonomy Law) stipulates that the creation of new provinces in Papua must have the approval of the Papua People's Council (*Majelis Rakyat Papua*; MRP) and the Provincial Legislative Council²⁴. Despite that provision, the Government of Indonesia went ahead and divided Papua into two provinces after President Megawati Sukarnoputri passed Presidential Decree No.1 of 2003²⁵. On 16 May 2007 President Susilo Bambang Yudhoyono signed the Presidential Decree No. 5/2007 speeding

²⁰ International Crisis Group (2007): 4; UNDP (2004): 109

²¹ International Crisis Group (2007): 10ff.

²² Evangelical Church in the Rhineland 2005, see the contributions of Agus Sumule and Theo van den Broek

²³ for details see Evangelical Church in the Rhineland 2007, sections I, II, and Annex I

²⁴ though the Special Autonomy Law was issued in 2001, the MRP came into being only in 2004

²⁵ calling for the division of West Papua into Papua, Central Iriyan Jaya and West Iriyan Jaya

the development of the Province of Papua and the Province of West Papua (West Irian Jaya)²⁶ without any prior consultation to or approval with the Papuan institutions.

While the governors of Papua and West Papua are directly elected by all Papuans, and the heads of all 29 districts are indigenous Papuans with political and fiscal authority²⁷, the entire process towards autonomy lacks credibility because of the controversial (and illegal) decision to create two provinces. In addition, before the legal status of the new province was resolved, the Indonesian Ministry of Home Affairs authorised elections for the governor there and cemented the fait accompli. One of the centrepieces of the Special Autonomy Law in terms of autonomy and indigenous self-determination, the MRP, became rather homeless as it was originally applied to a single entity. Though the MRP holds widespread consultations with its constituency, its legal and real impact is questionable.

Other actors

While the report focuses on the involvement of state entities in the issue of human rights violations, there are additional perpetrators which at least should be named: transnational companies (such as Freeport and BP²⁸), private armed groups or ideologically operating groups inspired by Islamic fundamentalism (militia groups). Finally, there is also an undeclared strong opposition – if not war at low intensity – by security personnel of the state against indigenous Papuan culture and its representatives which have been identified in various national and international fact findings.

Nevertheless, the problems in Papua are basically the result of the failures of the Government of Indonesia and its development policies in the area. The Human Rights Council, therefore, should urge the Indonesian government to take serious steps to ensure that Papua gets a just share of the proceeds earned from the exploitation of its abundant natural resources and that the rights of the indigenous Papuan people are duly recognised and economic justice ensured.

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²⁶ AITPN 2007: 16ff., International Crisis Group 2003, 2006a, 2006b

²⁷ In January 2003, the new province of West Irian Jaya was carved out of Papua's western Bird's Head region on the basis of Presidential Instruction 1/2003, which reactivated a 1999 law dividing the province into three. The third province, Central Irian Jaya, was cancelled, while West Irian Jaya went ahead; see International Crisis Group 2003 and 2006a.

²⁸ Evangelical Church in the Rhineland 2005, see Agus Sumule's contribution

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