

Indonesia

Submission to the Universal Periodic Review of the United Nations Human Rights Council (Third Cycle) 13th Session

on The Right to Self Determination

Papua Customary Council (Dewan Adat Papua)

Tapol / Napol (Political (ex)Prisoners)

PASIFIKA

I. Introduction

1. This report was prepared by Dewan Adat Papua (Papuan Customary Council), Tapol Napol Papua (Papuan Political Prisoners) and PASIFIKA as a joint submission highlighting key concern related human rights violations in West Papua by the Indonesian state in response to the West Papuan people's political aspirations for right to self-determination. The term "West Papua" refers to the Province of Papua and the Province of Papua Barat, and the term "West Papuans" refers to the indigenous population of West Papua.
2. The outline of this report begins with the historical context of West Papua bringing an understanding of the context to the right to self-determination of West Papuan people. In addition, the report includes current socio-political developments leading to human rights abuses by the state including violations of the rights of Indigenous People. Then the report follows with analysis of legal instruments supporting the right to self-determination.
3. This report illustrates there is no freedom of expression and that the situation is steadily worsening in West Papua. West Papuans are being jailed, tortured and killed for peacefully expressing their political opinion and desire for decolonisation and self-determination. Indigenous Melanesian culture and identity continues to be criminalised. West Papuans economic, social and cultural rights are also not respected. Customary land rights are not adequately

enshrined in law. Land is forcibly seized for investment and development projects in absence of adequate Free Prior and Inform Consent procedures.

4. The data in this submission comes from in country interviews and a meta-analysis of human rights reports published during the reporting period, both in English and Indonesian. We particularly want to acknowledge Elsham Papua, AJAR, the International Coalition for West Papua, Tapol, Papuans Behind Bars, Legal Aid Institute in Jakarta, Human Rights Watch, Gereja Kristen Injili – Tanah Papua, the Kingmi Church of Papua, as well as lawyers and activist groups. Activist reports have only been used when they can be triangulated with at least two other sources. Dewan Adat Papua (Papuan Customary Council in English) is an indigenous peoples organization in West Papua. It was found in 2002 to struggle for the rights of indigenous peoples in West Papua.
5. Tapol Napol Papua (Papuan Political Prisoners in English) is a coalition of former political prisoners and current political prisoners.
6. PASIFIKA, is an independent network based organisation, formed by researchers, activists, educators and religious from Oceania in 2005. PASIFIKA provides analysis on human rights and the socio-political situation in the Oceania Region. It works to promote human rights and democracy through nonviolent means. Pasifika also accompanies local actors working for positive social change and supports grassroots participation to address injustice and to peacefully transform conflict.

II. The Right to Self-Determination

1. The right to self-determination is a fundamental principle in international law embodied in the Charter of the United Nations and the International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR") and the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as "ICESCR").¹

¹ Common Article 1, paragraph 1 stated that;

2. The right to self-determination also has been recognized in other international and regional human rights instruments such as; the United Nations Human Rights Committee and Committee on the Elimination of Racial Discrimination; the Helsinki Final Act 1975, Part VII; the African Charter of Human and Peoples' Rights, Article 20; as well as the Declaration on the Granting of Independence to Colonial Territories and Peoples; and has been endorsed by the International Court of Justice.

III. Historical Context

1. West Papua was formerly part of the Dutch Administrations called Netherlands New Guinea. By the late 1950s the Dutch were belatedly preparing the West Papuans for self-rule. In February 1961, elections took place for a West New Guinea Council, an important step on the road to self-government.
2. In 1 July 1961, as an expression of the right to self-govern and self-determination, Zeth Roemkorem and his members announced the Proclamation of Independence in Markas Victoria, in Papua New Guinea, close to the border with West Papua.
3. On 15 August 1961, the 'New York Agreement' was signed by the Dutch and Indonesian governments, persuaded by United States of America, concerning the future of West Papua. However the process was held without Papuans being consulted .
4. In October 1961, members of the West New Guinea Council organised the First Papuan Peoples' Congress who agreed to a Manifesto on Independence. The Council adopted the Morning Star (Bintang Fajar) flag as the national symbol, a national anthem and agreed that West Papua would be the country's name, and that Papuan people would be the name of the people.

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- a. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
 - b. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefits, and international law. In no case may a people be deprived of its own means of subsistence.
 - c. The State parties to the present covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

5. On 1 December 1961, these symbols of West Papuan sovereignty were inaugurated in the presence of Dutch officials. Since then Papuans have celebrated 1 December as their national day.
6. During the Dutch period West Papuans were part of the Pacific, not Asia. They were present at the formation of the South Pacific Commission, the forerunner to the Pacific Island Forum. West Papuan also founded the Pacific Conference of Churches in Malua, Western Samoa in 1961.
7. On May 1, 1963, after less than one year, the UNTEA (United Nations Temporary Executive Authority) handed the territory over to Indonesia. This was against the New York Agreement which stipulated that Papuans would be guaranteed the right to self-determination through universal suffrage. In 1969, the 'Act of Free Choice' was held under the presence and pressure from the Indonesian military. When the Act of Free Choice took place in 1969 less than 0.01% of the Papuan population (1022 people) participated. Those that did were coerced at gunpoint to do so. The 1969 Act of Free Choice is West Papua's founding human rights violation. The Act of Free Choice was fraudulent. It was neither free nor fair.
8. In June 2000, the Second Papuan People's Congress was held in Jayapura. Approximately 50,000 Papuans from all regions and all parts of society attended the congress. The conference concluded with a declaration recognizing that West Papua's sovereignty had never been ceded.
9. On 6th December 2014 the United Liberation Movement for West Papua was formally launched. The agreement to form the ULMWP, coordinated by a five person secretariat who takes responsibility for international lobbying efforts was stipulated in the Saralana Declaration. The Declaration was sealed in a traditional ceremony led by Paramount Chief Senimao Tirsupe Mol Torvakavat of the Malvatumauri National Council of Chiefs. The signing ceremony was witnessed by current and former Prime Ministers of Vanuatu, government dignitaries, and senior leaders from the Vanuatu Council of Churches and the Pacific Conference of Churches.

IV. State Violence Against the Right to Self Determination of West Papuan People from 2013 to July 2016

1. Under Jokowi's presidency, mobilisation and political organising has increased dramatically. People's commitment to the cause of self-determination is deepening and participation in the West Papuan movement for self-determination is broadening, reaching out far to the Pacific region. The formation of the ULMWP has accelerated this dynamic. The failure of the state to address human rights issues in West Papua as well as willingness to solve the conflict, sends the message that violent repression, including extra-judicial killing and torture, is an acceptable response to West Papuan's longing for fairness, justice and to be treated with dignity. West Papuans experience of their own identity and roots as Melanesians is growing stronger, in line with the political movement for self-determination.
2. Through the ULMWP, West Papuans seek recognition from other Melanesian countries in the region by applying for full membership to the Melanesian Spearhead Group (MSG). West Papuans want the MSG to accommodate their political aspirations and to recognize their identity as Melanesians. The Indonesian government, on the other hand, views these lobby activities, even when expressed through disciplined nonviolent action, as separatism. Consequently, the Indonesian government looks to foreign governments in the Pacific, and that includes Australia and New Zealand, to calibrate their policies in West Papua in line with the Indonesian government's assertion of their sovereignty in West Papua.
3. The right to freedom of expression demonstrated repeatedly in West Papua through organising peaceful resistance demanding self-determination or by raising the Morning Star flag, the West Papuan national symbol, has been violated by the violent and repressive practices of the Indonesian military and police forces. They have used: intimidation, including terror tactics, arbitrary arrests and detentions, interrogations conducted without the presence of lawyers, denied family members visiting access to political prisoners; torture; ill-treatment and denied mandatory health care services during detention. The Indonesian security forces have continued to kill West Papuans with impunity, carried out forced disappearances; and jailed West Papuans for up to 15 years, simply for expressing a political opinion.

a. Political Prisoners and Arbitrarily arrests

Papuans Behind Bars, an online resource about political prisoners in West Papua reported that since April 2013, there are at least 40 political prisoners are in jail for expressing their political view. West Papuans have been arbitrarily arrested across West Papua and Indonesia simply for having organized or participated in peaceful demonstrations across West Papua and Indonesia. In 2014, a coalition of West Papuan human rights organisations, working with their allies in Jakarta, reported that 183 arrests took place. In 2015, the number of arrests increased to 1803, increase almost three times from 2014. Recently, The Legal Aid Institute of Jakarta released a report showing that in 2016, between 25 April and 2 May 2016, there was a total count of 1783 arbitrary arrests. Those arrested include members of the West Papua National Committee (Komite Nasional Papua Barat KNPB) and Papuan Students Alliance (Aliansi Mahasiswa Papua AMP). These activists gathered peacefully in support of the United Liberation Movement for West Papua ULMWP right to express their political opinion including the demand for self-determination. The details of the arrests between 25 April and 2 May 2016 are as follows: 1,449 people in Jayapura, 118 people in Merauke, 45 people in Semarang, 42 people in Makassar, 40 people in Fakfak, 27 people in Sorong and 14 people in Wamena.

b. Freedom of Expression Association and Assembly

1. The state is actively targeting and criminalizing student movement organisations such as the Alliance of West Papuan University Students (AMP) and the Movement for University Students and the Papuan People (Gempar) as well as other political organisations. The Indonesian state is trying to eliminate West Papuan rights to associate, and to express their political opinion. Since the formation of the United Liberation Movement for West Papua (ULMWP) in 2014 the West Papuans have unified behind five political leaders who represent the West Papuans right to self-determination. The Indonesian government is actively targeting leaders and members of this organisation such as the West Papua National Committee (Komite Nasional Papua Barat associated with the West Papua National Parliament (PNWP), the National Federal Republic of West Papua (NFRPB) and the West Papua National Coalition for Liberation (WPNCL). The arbitrary arrests mentioned above are the

evidence of state actions against West Papuans rights to freedom of associate, assembly and express their political opinions.

2. In Addition, members of KNPB in Yahukimo, acting in support of and as part of the ULMWP, have been arrested and beaten for handing out leaflets and shot dead simply for organising a fundraising in support of survivors of Tropical Cyclone Pam which occurred in Vanuatu in 2015. Further, two of the leaders of the ULMWP, Edison Waromi and Markus Haluk, have been threatened with treason by the Indonesian police simply for organising launching of the office of ULMWP in Wamena which was attended by at least 5000 people.

c. State Violence Driven by Racism

1. On 20 February 2016 former Military General, ex-Kopassus (Special Forces) officer and former Coordinating Minister for Political Affairs, Security and Law, Luhut Pandjaitan, issued a number of provocative statements. Pandjaitan said the ULMWP and KNPB should leave West Papua and go to Melanesia (Wenda 2016). Pandjaitan's statement caused considerable anger amongst West Papuan stake holders. Pandjaitan is not the only public official who has made such comments.
2. Inside West Papua, particularly since the formation of the ULMWP, several new militia groups have appeared. These groups form, disband and reform, depending on the political dynamics. All of these groups have been guided and supported by the military, police and Indonesian government. One such group is Lembaga Missi Reclassering Republik Indonesia (The Institute with the Mission of Re- education for the Republic of Indonesia), a militia and civilian based intelligence gathering network. In April 2013 a senior West Papuan civil society leader witnessed that The Assistant Territorial Commander of the Indonesian Army demonstrated the disassembling and reassembling of semi-automatic fire arms Assistant Territorial Commander of the Indonesian Army demonstrate disassembling and reassembling semi-automatic weapons in front of Indonesian migrants and a handful of Papuans.

3. Since the formation of the ULMWP and the mass mobilisations and mass arrests in May 2015 – a new militia group, BARA NKRI (Barisan Rakyat Pembela NKRI, the Unitary Republic of Indonesia People’s Defenders Front) has emerged. BARA NKRI mobilised hundreds of Indonesian migrants on the 31st of May and again on the 2nd of June when citizens gathered at the Trikora Oval in Abepura before marching to the Provincial Parliament in Jayapura (Tabloid Jubi, 2 June 2016). BARA NKRI activists demanded the police punish people who displayed pro-independence symbols. They urged the government and police to enforce a controversial law 77/2007 banning expressions of Papuan nationalism including the Morning Star Flag and demanded that ULMWP supporters should be pushed out of West Papua. Papuan journalists and human rights defenders observing the events reported that they saw plain clothes police and military accompanying the demonstrators.
4. On 15 July 2016 in Yogyakarta. West Papuan students, members of the West Papuan University Student Alliance (Aliansi Mahasiswa Papua) organising under the name of United People for the Liberation of West Papua (Persatuan Rakyat untuk Pembebasan Papua Barat), notified the police that they intended to organise a long march on 15 July in support of the ULMWP’s application for full membership of the Melanesian Spearhead Group and the demand for self-determination for the people of West Papua. Their application was rejected, despite the fact that Indonesian constitution supposedly guarantees its citizens the right to peacefully express a political opinion. Instead of publicly protesting, the students decided to stay in their dormitories and sing songs of praise and liberation. But the police considered even this too threatening. Messages circulated quickly through social media in Yogyakarta urging the Muslim community to ‘rise up and unite’ against the ‘anarchists’, ‘communists’ and ‘Godless’ who desire to ‘rebel’ and ‘separate from Indonesia’. In response to calls for the ‘lovers of Indonesia to rise up’ over a 100 militia men led by Indra Tatto, armed with sharp implements, clubs and iron bars, and backed up by the Indonesian police, gathered outside the student dormitory, Asrama Mahasiswa Papua Kamasan I, located on Jalan Kusumanegara, Yogyakarta. The militia were wearing uniforms associated with the Sultans Palace (Kraton), Yogya Force (Laskar Yogya), Pancasila Youth (Pemuda Pancasila), Forum Komunikasi Putra

Putri Purnawirawan dan Putra Indonesia (Communication Forum of the Sons and Daughters of Indonesia). The police and militia taunted students with racist jibes, calling them "monyet" (monkey) and "babi" (pig), telling them they were "anjing" (dogs), "kafir" (infidels/Godless), "bodoh" (stupid), "bau" (stunk), "kotor" (dirty), and that they should "pulang ke Papua" (go back to Papua). Messages shared on social media are same kinds of phrases coming from the same kinds of political actors (like Pemuda Pancasila) that were used in Yogyakarta and other parts of Indonesia to mobilise militia to slaughter a million Indonesians in 1965. The location was isolated by police and militia. Indonesian solidarity activists and Indonesian NGOs were denied entry to the student dormitory. Moreover, Red Cross Indonesia arrived with an ambulance and food stuffs but they were prevented from distributing humanitarian aid to the students by the police. When the students continued to sing indigenous Papuan songs the police dispersed them with tear gas.

5. In relation to that incident, The Sultan of Yogyakarta, Sri Sultan Hamengkubuwana X, who, rather than criticise the racism and violence of the police and the public lynch mob, launched a scathing rebuff of West Papuan students, justifying militia and police violence and racism, and insisting that Papuan separatists are not welcome in Yogyakarta.
6. In response to the Sultan and in the face of daily racism West Papuan students seriously considered organising a mass 'exodus', withdrawing from their university studies and returning to West Papua.
7. The following actions: announcements by senior Ministers that Papuans desire to separate from the Indonesian state and that Papuans are not considered worthy of state protection; militia violence; torture as a tool of governance by the police; ongoing military operations; criminalisation of West Papuans right to freedom of expression; attacks against the ULMWP; worsening human rights under an allegedly reformist government; and, failure to open up West Papua to the foreign press, are all 'early warning signs' that conditions are ripening for mass violence. This pattern is consistent with historical dynamics in which the Indonesian state has intentionally set out to destroy pro-independence activists in Aceh, East Timor and West Papua.

d. The Rights of Indigenous People and Self Determination

1. Special Rapporteur of the sub-commission of Indigenous Peoples, Jose Martinez Cobo, on his study about "the Problem of Discrimination Against Indigenous Population" in 1986 formulated a working definition on Indigenous Peoples. He defined indigenous peoples as a group of individuals or community that: (1) occupy their ancestral lands, or at least of part of them; (2) have common ancestry with the original occupants of the lands; (3) have similarity of culture in general, or in specific manifestations, (4) similar language; and, (5) reside in certain parts of the country, or in certain regions of the world.

1. In accordance to this definition, West Papuans have identified their identity as indigenous people of the land from Raja Ampat Islands, Sorong, to Merauke. They also share land, cultures and languages with other indigenous peoples of Papua New Guinea. In fact, West Papuan and Papua New Guineans are Melanesians who have occupied the land of New Guinea since time immemorial. Later Europeans arrived and occupied the land and divided this land into different colonial territories: New Guinea controlled by the Germans, Papua controlled by the British and Dutch New Guinea, controlled by the Netherlands. After world war two German and British New Guinea were absorbed into a single colonial territory which was administered by the Australian government until independence in 1975. Dutch New Guinea remained under the control of the Netherlands government before becoming a UN Trust Territory. It was then integrated into the Indonesian state as mentioned in the section about historical context.

2. In relation to Point 1, the Government of Indonesia should allow the West Papuan people to express their cultural identity as Papuans and Melanesians and fully recognize their identity. West Papuans should be freely permitted to associate with other Melanesian countries based on their similarities and shared identities in addition to their right to self-determination and association.

3. In the context of cultural self-determination, the Declaration of the Principles of International Cultural Cooperation, adopted by the General Conference of UNESCO, recognizes the right and duty to develop its culture, and mentions in its preamble the most important United Nations resolutions relating to recognition of the right of peoples to self-determination. This implies recognition of its right to

regain, to practice, enjoy and enrich its cultural heritage, and affirm the right of all its members to education and culture. The cultural rights identified by indigenous peoples are fundamental to the survival of indigenous peoples. Indigenous peoples attempt to prevent their heritage, values, cultural identity and way of life from being destroyed by external forces.

4. In relation to point 3, the Indonesian government should review their policies on development projects such as MIFEE (the Merauke Integrated Food and Energy Estate) in Merauke that destroy the forest and culture of the Malind Anim people who rely on their ancestral lands. By taking over their land for such a massive agricultural project, the state has violated the right of Malind Anim to fully practice their cultures and enjoy their natural resources as part of their identity and livelihood.
5. The Indonesian state does not formally recognize the existence of indigenous people or adequately guarantee their right to land or protect their right to free and prior informed consent (FPIC). Land and military backed resource theft in West Papua is facilitated by Article 33 of the Indonesian constitution which does not recognise the existence of indigenous people, let alone indigenous land rights. In theory, indigenous land owners have the right to legal recourse through the Basic Agrarian Law 1960 but can only attempt to claim land where the court deems such a claim would not impede national interest. As a result there is no provision of legal protection for indigenous communities by the state. Other Indonesian laws like the Forestry Law of 1999 and the Village Law of 2014 combined with local regulations based on international declarations like the Declaration of the Rights of Indigenous People have not provided any additional protection of indigenous land rights in West Papua.
6. To some extent, West Papuans are being violated and stigmatised as separatists simply because they express their identity through practicing their culture, wearing traditional costumes or by stating that they are Melanesian and not Indonesian by ethnicity.
7. Regarding the economic or resource aspects of the right of self-determination, it has been emphasized in common paragraph 2 of Article 1 of the International Covenant on Economic, Social and Cultural Rights ;

"All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefits, and international law. In no case may a people be deprived of its own means of subsistence."

8. The right to freely dispose its own natural wealth and resources, is crucial importance to indigenous peoples. The issue of land and resource rights is one of the most important roots of conflict for the majority of the indigenous peoples in the world including indigenous people of West Papua. Access and rights to their land and resources is an integral part of their right to self-determination. However, the Indonesian government in practice has opposed to recognize this right because of fear of losing control over West Papuan's indigenous lands and natural resources. In addition, it has been used to take control of territory and limiting access of people to develop their own way of living, and to eliminate their cultural and spiritual connection to the land and nature.

9. Regarding point 7 and 8, the Government of Indonesia should legislate in support of Free Prior and Informed Consent. A formal procedure protected in law should grant indigenous people with the right to participate actively in any decision making process relating to the exploitation of their land and resources. This includes the right to reject development or economic investment.

10. West Papuans' land and resources are being exploited by destructive large-scale development projects, especially mines, oil and gas projects, logging, and palm oil plantations. Whole Indigenous nations have been forced off their land and into poverty by multi-national and Indonesian timber, mining and gas companies. West Papuans land rights are not respected or protected by law.

1. Indonesia is a signatory state party to the UN Declaration on the Right of Indigenous Issues September 2007. Therefore, the government of Indonesia has to support recommendations for the ratification of ILO Convention No. 169 by indigenous peoples's organisations and the rights of indigenous peoples and forest dependent peoples in law and practice, in particular regarding their rights to traditional lands, territories and resources. This right includes protecting indigenous peoples' right to free and prior informed consent.

V. Recommendations :

The Government of Indonesia is recommended to :

- a. Government of Indonesia needs to recognize the right to freedom of expression and opinion, peaceful assembly, and rights to express political demands to self-determination of the West Papuan peoples, as fundamental rights according to the UN Declaration on Human Rights, UN Declaration on the Rights of Indigenous Peoples, the ICCPR and ICSECR.
- a. Invite the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association to visit and assess the situation in West Papua.
- b. Invite the UN Special Rapporteur on the Rights to Freedom of Opinion and Expression to visit and assess the situation in West Papua.
- c. Invite the UN Special Rapporteur on the Right of Indigenous Peoples to visit and assess the situation of Human Rights Defender in West Papua.
- d. Invite the UN Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance to visit and assess the situation of human rights in West Papua.
- e. Order the unconditional release of all Papuan political prisoners as part of a comprehensive policy to end the punishment of free expression and association, and expunge any associated criminal records.
- f. Order the Indonesian government to ensure free and open access to West Papua for all journalists, foreign and domestic.
- g. Repeal or amend the articles of the Indonesian Criminal Code that have been used to criminalize freedom of expression, particularly Articles 106 and 110.
- h. Revoke Article 6 of Government Regulation 77/2007 on Regional Symbols, which prohibits the display of separatist symbols, or amend it in accordance to international human rights standards.
- i. Repeal Emergency Law 12/1951, as recommended by the UN Working Group on Arbitrary Detention after its 1999 visit to Indonesia.

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