



Transitional Justice in Australia and the Pacific Series

PAPUA CASE STUDY

Asia Justice and Rights and ELSHAM Papua



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ELSHAM Papua and Asia Justice and Rights



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Photos

Taken by AJAR and PWC teams in Boven Digoel and Kebar, 2019.

Asia Justice and Rights (AJAR)

Asia Justice and Rights (AJAR) is a not-for-profit organisation that works to strengthen human rights and alleviate impunity in the Asia-Pacific region. AJAR facilitates learning and dialogue about human rights, documentation, conflict resolution, as well as holistic processes for the reparation, empowerment and advocacy of victims, their families and communities. We believe that the most effective way to reach our goals is to invest in people involved in the long-term struggle for human rights, such as victims, survivors and activists. Our work is focussed on countries that are transitioning from a context of mass human rights violations to democracy.

ELSHAM Papua

ELSHAM PAPUA (Institute of Human Rights Study and Advocacy) was formed due to widespread and ongoing human rights abuses in Papua. Established on 5 May 1998, ELSHAM is a continuation of the Irian Jaya Working Group for West Papua (IJWGP) which began work in the 1990s. In a formal sense, it was established by leaders from three churches (GKI/ the Christian Evangelical Church in Papua, KINGMI/ the Tabernacle Christian Church and the Jayapura Diocese) as well as NGO activists in Papua. Since then, ELSHAM has carried out monitoring, investigations and advocacy in various human rights cases in Papua. ELSHAM works upon the principles of human rights with a vision for realising in Papua a society that has a critical awareness of the values and principles of human rights and democracy.

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As the twenty-year period of Special Autonomy for Papua (Law No 21/2001) was drawing to a close, tensions on a way forward were increasing.¹ While many Papuans viewed Special Autonomy as a failure that must be replaced by concrete steps toward political self-determination, a more moderate view was that the law's expiry provided an opportunity to renegotiate autonomy and make real promises for a better future for Papuans. On 15 July 2021, the central government extended Papua's special autonomy status by implementing Regulation No. 2 of 2021 (UU No. 2 Tahun 2021). This was done without any serious reevaluation or improvement of the law.

Violence by security forces coupled by a culture of impunity remains commonplace in Papua while armed conflict and unrest continues to flare, fueled by transmigration, natural resource extraction and state violence. Meanwhile, very few official transitional justice mechanisms have been successfully implemented. Many of these mechanisms, such as a truth commission and human rights court in Papua were promised as part of the 2001 Special Autonomy Bill but have never been enacted.

As a result, the underlying causes of conflict and violence in Papua remain unaddressed. According to a report by four Papuan organisations published in July 2020, the number of civilian casualties resulting from armed conflict in 2019 was 229, this includes 214 who died of sickness, malnutrition, exhaustion and hypothermia resulting from internal displacement.² Throughout 2021, unrest and tension has continued. Protests against racism, militarism and the new Special Autonomy legislation have been met with suppression while Papuan students, activists and leaders have faced arbitrary detention.

There has also been escalating tensions and violent confrontations between armed independence groups and Indonesian security forces. This increased after groups such as the West Papua National Liberation Army-Free Papua Organisation (TPNPB-OPM) were designated 'terrorist groups' and also due to the increased deployment of Indonesian security forces. The escalation of tensions has resulted in fatalities on both sides as well as civilian casualties.

¹ In this factsheet, we use the term 'Papua' to refer to both Papua and West Papua provinces.

² International Coalition for Papua (ICP), Foundation for Justice and Integrity of the Papuan People (YKKMP), Papuan Institute for Human Rights Studies and Advocacy

Background

When the Netherlands recognised Indonesia's independence in 1949, the status of Papua remained unresolved. Under the 1962 New York Agreement, Papua was transferred to the United Nations Temporary Executive Authority (UNTEA) and then to Indonesia in May 1963. While the agreement required an 'Act of Free Choice', only 1,025 individuals participated in the 1969 referendum which was preceded by intimidation, torture and forced detention. Only 80 of these participants were women. The referendum resulted in a unanimous vote in favour of integration into Indonesia.

In 1965-1966, the government of President Sukarno was overthrown and replaced by the 'New Order' regime under President Suharto which worked to drastically reduce the political arena in Indonesia. This ensured that a democratic or participatory negotiation of Papua's integration was impossible. Papua was also designated a 'military operations zone' which resulted in mass human rights violations and gave rise to an armed resistance group known as the Organisation for Papuan Independence (OPM).

The New Order regime also asserted the authority of the state over all natural resources and 'unowned' land in Papua. Timber concessions were granted to corporations to selectively log valuable species. Forests were then deemed 'unproductive' and permits were issued for large-scale plantations. Mining concessions were also granted to corporations such as Freeport which operates one of the largest gold and copper mines in the world. Rather than espousing sustainable management or reinvestment in local communities, a centralised approach was used to extract the maximum rate of profit and to violently quash opposition.

After the fall of Suharto in 1998, many Papuans expressed their desire for independence. During the early phase of *reformasi*, there was a brief opening of political space in Papua. In 2001, reformist President Abdurrahman Wahid made concessions such as lifting prohibitions on calling the province 'Papua' and allowing the raising of the Morning Star flag along with the Indonesian national flag. A Special Autonomy Law was also passed to protect indigenous Papuan interests and promote political

(ELSHAM Papua), and Peace and Integrity of Creation Desk of the Papuan Tabernacle Church (JPIC Kingmi Papua), *The Humanitarian Crisis in West Papua: Internal conflict, the displacement of people, and the coronavirus pandemic*. 2020.

autonomy. Twenty years on, many of the reforms promised under the Special Autonomy Bill have not been honoured. Neither a truth commission or human rights court have been established, there has been little acknowledgement of past human rights violations and Papuans continue to feel their very existence, way of life and traditional connections to land are threatened.

On 15 July, the central government of Indonesia extended Papua's special autonomy status by ratifying Undang-Undang No. 2 Tahun 2021, popularly referred to as 'Otsus 2.0' or 'Otonomi Khusus Jilid 2'. The law was devised and enacted very quickly without consultation or participation of local groups or communities. Prior to 15 July, there

had been widespread opposition to the revised law with various protests organised across Papua and Indonesia. Otsus 2.0, which includes 19 amendments to the 2001 law, was also opposed by the Papua Regional House of Representatives (DPRD), the Papua People's Council (MRP) and the West Papua People's Council (MRPB).

Many aspects of the 2001 law have remained unchanged, such as the promised formation of a truth commission and human rights court. However, there are some key omissions including the commitment to allow local political parties which has been controversially removed from the law. On top of this, the law includes some new material such as a plan to increase funding for Papua.³

Human Rights and Indigenous Women in Papua

I am Here: Voices of Papuan Women in the Face of Unrelenting Violence

Between 2013-2018, action research was conducted by members of the Papuan Women's Working Group (PWG), an informal group established as a collaboration between Asia Justice and Rights (AJAR) and five Papuan organisations. The purpose was threefold: 1) to strengthen the voices of women victims of violence; 2) to take steps to counter impunity with practical local action; and 3) to strengthen understanding about the socio-economic causes and impact of violence as experienced by indigenous women. In total, 249 indigenous women from six regencies participated in this action research.

The indigenous women who participated in this research had experienced a wide range of violations and discrimination related to civil and political rights as well as to economic, social, and cultural rights. Their experiences demonstrate the difficult context that continues to ensnare Papuan Women in a cycle of violence and marginalization. In particular, this research demonstrated that violence against Papuan women continues; the promise not to repeat is unfulfilled, women victims need special programmes to deal with critical incidents and long-term trauma support in order to rebuild a life free from violence, lack of tenure for natural resources and traditional lands impedes women's empowerment and makes them vulnerable to continued violence, Papuan women's poor health due to heavy workloads and lack of access to health care challenge efforts to recover from violence and Papuan women face obstacles in reaping benefits from development that could help them build a strong foundation for lives free from violence.

All the Birds are Gone: Indigenous Women Speak out Against Forest Loss in Papua

Between November 2019 and February 2020, Asia Justice and Rights (AJAR) and the Papuan Women's Working Group (PWG) conducted participatory research in five locations across the provinces of Papua and West Papua, involving 100 indigenous Papuan women. The research focused on the impact of land grabbing and forest loss, and how indigenous women are coping and resisting these threats to their natural resources and survival. Some key findings included:

Loss of traditional land and food security: Vast areas of plantation have been established by clearing forests under indigenous claim, often without the consent of, or fair compensation to, indigenous landowners, or is not in compliance with agreements made with communities to provide benefits, thereby violating Indonesian regulations. Meanwhile, locals bear the incalculable loss of their land and forests, essential to maintain their identities and traditional livelihoods.

³ The amount of funding to Papua is to increase from 2% of the national budget to 2.25% and will be extended for another 20 years (ie. until 2041). This funding will be allocated according to sector with 35% for education,

25% for health, 30% for infrastructure and 10% for 'empowerment'. Source: *Undang-Undang (UU) Nomor 2 Tahun 2021*, <https://peraturan.bpk.go.id/Home/Details/172403/uu-no-2-tahun-2021>

Lack of land rights: Papuan women often only have the right to farm, but not to own land. Their rights to inherit property are trumped by those of their male siblings or descendants. In clans where women can own land, research findings show their rights are often ignored, and men make decisions regarding women's land without consulting or compensating them. Women are often blocked from participating in discussions about traditional land and territorial boundaries, limiting their effectiveness to participate in community discussions. They become even more disempowered when they marry and move to their husband's community, where they have no rights, and are even more vulnerable when they are widowed.

Violence Against Women: Women are at increased risk of gender-based violence including from the migrant community, military, and private security forces. Of the 100 women who participated in this research, 49 have experienced violence. This includes domestic violence (23 participants) as well as violence between community members outside the home (7), and violence perpetrated by state actors or security personnel from the companies (19).

The Right to Education: Indigenous women have less access to education than men, as they are expected to work in the home and care for aging parents. 34 participants had either no schooling or only primary education, while only 19 reached senior high school. School-age girls, because of economic circumstances, are often forced into marriage by their parents, missing out on education opportunities. Out of 100 informants, 13 women were married between the ages of 16 and 18, while 8 were married before their sixteenth birthday. Lack of education means women have less ability to acquire skills for higher paying employment, leaving them dependent on agriculture and the forests for their livelihoods.

Transitional Justice Issues

Transitional justice involves all of the mechanisms or steps that a country takes following a period of conflict or mass human rights violations. The central pillars of transitional justice are: truth, justice, prosecutions, reparations and institutional reform. When the 2001 Special Autonomy Bill was passed, it embodied many of these transitional justice mechanisms. However, as the Bill was reaching its 20th anniversary, the majority were yet to be implemented. With the passing of Otsus 2.0 in July 2021, this trend of inaction is likely to continue.

Truth: Article 46 of Special Autonomy Law No. 21 of 2001 included the establishment of a Truth and Reconciliation Commission (Komisi Kebenaran dan Rekonsiliasi, KKR or 'TRC') tasked with "historical clarification and reconciliation". To date, this promise has not been honoured. Since 2019 however, there have been calls for the establishment of a TRC in Papua, while others question this initiative in the light of continuing violations. The lawmakers responsible for the 2021 extension of Special Autonomy in Papua have retained this promise, although it remains on the sideline.

Truth Commission Update

Towards the end of the first period of Special Autonomy (2021), both Governors of Papua and West Papua Provinces have committed to establishing a TRC. The Governor of Papua, Lukas Enembe, asked academics from Cendrawasih University in Jayapura to develop a draft bill for a TRC. This is inline with an initiative from the Papuan Regional Parliament on Special Autonomy which called on the central government to support the initiative. In West Papua Province, NGOs have been assisting the Government develop a bill for the formation of a TRC.

Since 2019, AJAR has been working with NGOs in Papua on plans for a local TRC. In particular, AJAR has been providing inputs in both provinces about different TRC models, strengths and weaknesses. Through this work, it is clear that there are some unique issues and challenges:

- Violence and human rights abuses continue to take place in Papua. It will therefore be a challenge to build trust and local buy-in to an institution such as a TRC in a context of ongoing violence.
- Since 2003, Papua has been divided into two separate provinces which means that there will be two province-based truth commissions. The possibility that new administrative zones will be established in the future should also be considered. Work needs to be done to decide how these will connect with one

another as well as how they will relate to national-level human rights institutions such as Komnas HAM, and the Commission on Violence against Women.

- In recent years, indigenous-led truth commissions have been established across the globe. It is important to find key lessons that may contribute to strengthening indigenous people's self-governance and leading the way to a more sustainable peace..

Prosecutions: Article 45:2 of Special Autonomy Law No. 21 of 2001 promised the establishment of a Human Rights Court. While this has not been honoured, a representative office of the National Human Rights Commission has been established in Papua. Articles 45-47 of the 2001 law have not been amended, meaning that the promise of a Human Rights Court in Papua remains.

In May 2004, two police officers were brought before the permanent human rights court in Makassar, South Sulawesi for crimes against humanity. Known as the 'Abepura case', this related to an incident in December 2000 where more than 100 Papuan students were arrested after a police post in Abepura was attacked causing the deaths of two officers and a security guard. The detainees were subject to abuse resulting in numerous injuries and three deaths. Almost 100 witnesses gave evidence of systematic abuse with high-level involvement which led to Komnas HAM recommending that 25 police officers be prosecuted, 21 for direct responsibility and 4 for operational responsibility. The file was referred to the Attorney General's Office (AGO) but two years later, only two senior officers were charged. Both officers were acquitted and victim's claims for compensation were dismissed.

Very little progress has been made to resolve the numerous cases of serious human rights violations in Papua. Komnas HAM have prepared case files for 13 incidents of serious human rights violations since 2002, all of which have been knocked back by the Attorney General. Two such cases are Wasior-Wamena⁴ and Paniai. The Wasior incident took place in June 2001 when security forces caused the deaths and forced disappearances of over 30 civilians in the District of Wasior, West Papua. The Wamena incident took place in April 2003, when security forces attacked civilians in Wamena District, causing the deaths of 9 people and internally displacing the residents of 25 villages. The Paniai case took place in December 2014 when security forces began firing into a crowd of people gathered for a peaceful protest killing 4 civilians and leaving

21 with serious injuries. While the Indonesian government has pledged to resolve all of these cases, no progress has been made as the Attorney General has sent the case files back to Komnas HAM several times due to 'formal and material' issues.

Reparations: From 2009 to 2010, the Women's Working Group of the Papuan People's Assembly (Pokja Perempuan MRP) worked with the National Commission on the Elimination of Violence against Women (Komnas Perempuan) and civil society actors to conduct a study on violence against Papuan women since 1963. The report, titled *Enough is Enough!* documented some 260 cases of state and domestic violence as well as a compelling record of human rights violations against women that took place both before and after *Reformasi*. The report was handed to the chair of the MRP in a public ceremony held in Jayapura.

In response to this report, the MRP and Papuan parliament passed a local law in 2011 establishing a provincial-level commission to provide assistance to women victims. This Special Local Regulation (*Perdasus*) on the Recovery of the Rights of Indigenous Papuan Women Victims of Violence and Human Rights Violations would provide a local mechanism to acknowledge Papuan women's experiences of violence and provide urgent assistance. Although the regulation was passed into law in 2011, it has not been implemented a decade later.

Institutional Reform: Since the passing of the 2001 Special Autonomy Bill, measures have been implemented to fulfil the right of indigenous Papuans to employment and to be elected to strategic positions in government and state institutions. Under Special Autonomy, the Papuan People's Council (Majelis Rakyat Papua, MRP) was also established as a statutory body with functions including: overseeing appointments to the highest positions of the executive and legislative institutions in Papua, approving government agreements with any parties that have an impact on the protection of indigenous people's rights, acting as a spokesperson

⁴ While referring to two separate incidents, the term 'Wasior-Wamena' is used because Komnas HAM investigated them as a single case.

for complaints on indigenous rights as well as providing input to provincial executive and legislative bodies on the protection of indigenous rights. Importantly, Article 19:1 stipulates that 30% of MRP representatives must be women. The revised law slightly reduces the role of the MRP. In particular, the MRP no longer has a role in vetting candidates for the national People's Consultative Assembly (MPR-RI).

Measures were also introduced to recognise and protect traditional customs. Article 43 acknowledges and protects customary land rights and requires consultation with traditional landowners for any change in usage. In Article 47, the law protects the rights of indigenous women and articulates the obligation to make every effort to position them as equal partners to men. Article 28 provides for the establishment of local parties and the establishment of a flag and song as “a cultural symbol . . . not to be positioned as a symbol of sovereignty.” Compared to Article 43 and 47 which have been partially implemented, Article 28 has not been implemented at all.

The new special autonomy law includes several institutional changes that have potential to create further conflict. As mentioned, the law no longer includes a regulation to allow the formation of local political parties. In other contexts such as Aceh, the creation of local political parties was a significant

step towards conflict resolution. The new law also gives the central government the authority to divide and create new administrative zones (*pemekaran*). This has the potential to create community conflict, particularly around natural resource extraction and corruption.

Conclusion

After a brief opening up of political space during the presidency of Abdurrahman Wahid, the national government has largely pursued a security approach in Papua. Increased militarisation, security operations and misuse of anti-terrorism laws have been used in an attempt to overcome calls for self-determination and defeat armed separatist groups such as TPNPB-OPM. This has led to further violence, civilian casualties and displacement. Direct military action has also been accompanied by the criminalisation and suppression of open debate, protest and peaceful political organising.

This continued use of a security approach will not resolve conflict or achieve peace in Papua. Rather, it will only further perpetuate cycles of violence, lead to more human rights violations and entrench existing hostilities. Instead, a foundation for lasting peace should rely on truth and justice, particularly for victims of historical and ongoing human rights abuses.

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