

NGO Joint Submission

Franciscans International; Justice, Peace and Integrity of Creation of Franciscans in Papua (SKPKC Fransiskan Papua); Justice, Peace and Integrity of Creation of Augustinian in Papua; Justice, Peace and Integrity of Creation of the Diocese of Agats; Justice, Peace and Integrity of Creation of the Diocese of Timika; Justice, Peace and Integrity of Creation of the Diocese of Sorong; TAPOL; Asia Justice and Rights (AJAR); Papuan Women Working Group, Yayasan Pusaka Bentala Rakyat; ALDP (Alliance of Democracy for Papua); and Justice, Peace and Integrity of Creation in Kalimantan

for the 2nd periodic report of Indonesia

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Introduction

1. This submission is prepared jointly by Franciscans International; Justice, Peace and Integrity of Creation of Franciscans in Papua (SKPKC Fransiskan Papua), Justice Peace and Integrity of Creation of Augustinian in Papua, Justice Peace and Integrity of Creation of the Diocese of Agats, Justice Peace and Integrity of Creation Diocese of Timika, Justice Peace and Integrity of Creation of the Diocese of Sorong, TAPOL; Asia Justice and Rights (AJAR), Papuan Women Working Group, Yayasan Pusaka Bentala Rakyat, ALDP (Alliance of Democracy for Papua) and JPIC Kalimantan.
2. The Government of Indonesia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 23 February 2006, with a declaration on article 1 of the Covenant¹. The focus of the present submission is the implementation of the CESCR by the Government of Indonesia in the region internationally known as West Papua. It refers to the western half of the island of New Guinea, and since November 2022 has comprised the provinces of Papua, Papua Barat, Papua Tengah, Papua Pegunungan, Papua Selatan and Papua Barat Daya. In this submission, the term West Papua is used to refer to those provinces.
3. West Papua is currently the only region in Indonesia with an ongoing independence movement. The movement has been both peaceful and armed. For decades, West Papua has been experiencing armed conflict between the pro-independent movement of the West Papua National Liberation Army (TPNPB) and the Indonesian security forces. The killing of 19 Indonesian construction workers in the highland regency of Nduga in 2018, allegedly by the members TPNPB, has led to an increase in armed clashes between TPNPB and the Indonesian security forces. This pro-independence movement consists of various groups that have carried out sporadic attacks, mainly on military and police targets, but also recently against non-Papuan populations. They also engage in human rights abuses, including killings, hostage-taking and abductions. In the last few years armed clashes have extended to areas outside the central highland.²
4. According to the Indonesian State Institute of Sciences (LIPI), which is now known as the National Research and Innovation Agency (BRIN), the main sources of conflict in West Papua are different interpretations of West Papua's political status in terms of integration into Indonesia, ongoing human rights violations with impunity, the lack of development in the region, and the marginalization and discrimination of Indigenous Papuans.³ The Indonesian government grants very limited access to West Papua for international human rights observers and journalists, and has shown little tolerance for freedom of expression, association and peaceful assembly in the region. The central government occasionally carried out internet shutdowns for the whole region or partially - under the pretext of curbing incitement to violence - resulting in disruption of social services and economic activities.
5. Impunity In Indonesia is also a factor in the continuation of structural violence that has impacted the protection and fulfillment of human rights. Perpetrators of past human rights violations often find a safe haven in Indonesian politics. One of Indonesia's presidential candidates for the Presidential Election in 2024, Prabowo Subianto, is a prime example. Mr. Subianto was allegedly involved in the disappearance of pro-democracy and human rights activists in 1998. Impunity has created an apathy towards government institutions or an acceptance of acts of discrimination and violence among Indigenous Papuans.⁴

Question 2:

1 UNTC. (2009). Un.org. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-3&chapter=4&clang=en#EndDec

2 IPAC (Institute for Policy Analysis of Conflict). (2022). *Escalating armed conflict and a new security approach in papua* (pp. 5–11); Center for the Prevention of Genocide. (2022).

"Don't abandon us": Preventing mass atrocities in Papua, Indonesia (pp. 1–4).

3 Cahyo Pamungkas, & Suma Riella Rusdiarti. (2017). *Updating Papua Road Map*. Yayasan Pustaka Obor Indonesia; Cahyo Pamungkas, & Suma Riella Rusdiarti. (2017). *Updating Papua Road Map*. Yayasan Pustaka Obor Indonesia.

4 AJAR (Asia Justice and Rights). (2019). *Between a Rock and a Hard Place: Vulnerability of Papuan Women to HIV/AIDS and Violence*. AJAR, Yasanto, Katane, eL_AdPPer and Jayapura Support Group. https://demo.asia-ajar.org/wp-content/uploads/2021/10/1203_BRAAHP-ENG_compressed.pdf

Considering the adoption of the mid-term national development plans, please indicate the steps taken to ensure that the obligations under the Covenant are taken into consideration in these development plans as well as in preparing any economic or development policies or programmes. In particular, please indicate any policy, institutional or other measures taken to ensure that the economic and development policies and plans are not formulated or implemented at the expense of protection of Covenant rights, especially as regards marginalized and disadvantaged individuals and groups.

6. During the two terms of the Presidency of Joko Widodo (2014–present), the key approach applied to West Papua has been that of economic development, with the aim to improve living conditions and remove the inequalities affecting the region in comparison with other regions in Indonesia. The administration considers improving the economy as the most effective way to deal with the on-going challenges faced by the region. Accordingly, during the administration of President Widodo, West Papua has experienced an increase in the construction of large-scale development projects, in particular infrastructure projects such as the construction of airports, roads, seaports, bridges and fiber optic telecommunications networks. One of the landmark projects is the mega-project, the Trans Papua Road, which connects major cities in the Papua region, such as the connection from Sorong in Western Papua to Merauke in Southern Papua. In total, a 4,330 km road network was built during the Widodo administration.
7. The Indonesian government has imposed a moratorium on the issuance of new palm oil plantation permits since 2018. The moratorium aims to prevent forest encroachment and deforestation caused by the development of palm oil plantations. To date, the government has succeeded in enforcing the moratorium. In 2022, the government will not issue new permits for palm oil plantations. The status of the moratorium extension is still unclear, with the government stating that the moratorium will be extended until 2024. However, there is no legal regulation that regulates the extension of the moratorium and permits issued before the moratorium came into effect are going ahead.
8. Other landmark projects are in the energy and agriculture sectors, including palm oil plantation projects. The Tanah Merah project is expected to clear forest and lands in the southern part of West Papua, spanning an estimated 280,000 hectares (692,000 acres) of rainforest — an area nearly twice the size of New York City. This would be the single largest bloc of palm oil plantations in Indonesia, the world's top producer of palm oil.⁵ The expansion of the palm oil industry in Papuan indigenous lands and forests is contributing to a cycle of poverty affecting local indigenous communities.
9. In the current legal system in Indonesia, there is limited legal recognition of indigenous peoples' ownership and control of their customary lands. There is no legal requirement to obtain the consent of indigenous peoples prior to either the issuance of concessions or the commencement of commercial activities on customary lands. Customary landholders have limited opportunities to participate in decision-making processes and are presented development projects once they are a fait accompli. Their right to use their lands is subordinated to the interests of companies contracted with development projects.
10. The Widodo government issued Law Number 11 of 2020 concerning Job Creation (Omnibus Law on Job Creation), which has been changed to Law Number 6 of 2023. This law is considered controversial by several civil society organizations, since it was adopted without meaningful participation of civil society organizations, and it has been rejected by a wide range of public actors, including civil society organizations. In the context of West Papua, the Job Creation Law and its derivative regulations have been used to justify and facilitate National Strategic Projects (PSN), food estate development, expansion of extractive businesses, development of industrial areas in Sorong, Bintuni Bay and Fakfak, and multi-forestry businesses, which take away customary land and forests, ignoring the rights of the Papuan indigenous people and the Papua Vision 2100 document.⁶ The impact of this policy and these projects is the concentration of control of forest concessions, creating a monopoly of a handful of business entities in customary areas, increasing tensions between indigenous communities, the government and companies.

⁵ Court ruling spares Papua forest from further clearing for palm oil. (2023, September 11). Mongabay Environmental News. <https://news.mongabay.com/2023/09/court-ruling-s pares-papua-forest-from-further-clearing-for-palm-oil/>

⁶ Partnership for the Tropical Forest Alliance. (2023). *Indonesia Regional Policy Briefing: Appendix On Deforestation Policies*.

Pusaka data (2023) shows that the government has issued Forest Utilization Business Licensing/Permits (PBPH) to 13 companies with a concession area of 827,940 hectares. Three of these companies are owned by the same conglomerate, the Almino Group. The Almino Group also owns three timber companies with a concession area of 585,000 hectares and the Bangun Bumi Papua food estate project covering an area of 120,000 hectares. On 19 May 2022, a protest was held by indigenous Papuan students and youth against the granting of multi-business forestry permits and economic industrial zone development policies in Papua.⁷

11. In many areas in West Papua, Indigenous Papuans do not hold a legal document on the ownership of their ancestral land. When the State and corporations enter a community's ancestral lands, Indigenous Papuans are left either with the option of leaving their ancestral lands altogether (generally with no resettlement assistance provided) or agreeing to an (unequal) arrangement with the company, that vests control and ownership over land and resources within the company and entails the use of their labour for temporary work that does not guarantee a stable income. Such large-scale development projects have also brought large influxes of migrant workers from outside the region, in addition to an already significant percentage of non-Indigenous Papuans residing in West Papua. This arrival of migrants has affected indigenous Papuan communities in several ways, including by curtailing their access to customary lands and livelihoods, and bringing a drastic change to their way of life and culture.
12. Development projects in West Papua have led to several concerns, regarding economic growth and the welfare of Indigenous Papuans. Firstly, decisions are often made by the central government without meaningful consultation with provincial or local municipal authorities. Secondly, there is a need to prepare the human resources and capabilities needed to manage existing infrastructure and the economic potential contained therein. Thirdly, projects often take place in the customary land of the Indigenous Papuans. The government should pay serious attention to resolving customary land issues that continue to this day in West Papua.
13. In 2020 as the COVID-19 pandemic began, the Government announced plans to revive 'food estates' or vast agro-industrial plantations throughout Indonesia with the supposed aim of improving food security. Food estates are based on previous failed agro-industrial projects in Kalimantan region. West Papua is one of the main planned areas for food estates. In total, 3.2 million hectares have been planned for Food Estates, an area the size of Belgium or Taiwan. Three months after the announcement, President Widodo announced that the Ministry of Defence would be involved in food estates because it could react quickly during crises.⁸ In October 2020, the Government passed national legislation that allowed parts of the Forest Estate, areas of state-controlled forest, to be used as food estates. Tree cover is supposed to be maintained in the Forest Estate, but food estates would require extensive deforestation. Food Estates were given further support because of the 2020 'Omnibus Law' (or to use its official title, the Law on Job Creation) which revised the Law on the Supply of Land in the Public Interest (2012). These revisions allowed an increased and varied range of land to be acquired by the state, including based on 'food security'. In the same year, food estates were added to the list of National Strategic Projects by presidential decree. This reduced the administrative hurdles necessary for food estates to be approved.⁹ Government officials are on record as saying that produce from food estates may also be exported if its quality is sufficiently high, which would arguably do little to directly benefit food security.¹⁰ Another concern is that food estates could see West Papuans overlooked for job opportunities, as most workers have not been Indigenous West Papuans but

7 *Integritas Investor: Bangun Bumi Papua Proyek (Integrity of Investor: Project of Bangun Budi Papua)* (2022, May 28), Pusaka. <https://pusaka.or.id/integritas-investor-bangun-bumi-papua-proyek/>

8 TAPOL, & Awas MIFEE. (2022). Pandemic Power-Grabs: Who benefits from Food Estates in West Papua? In *Tapol.org* (p. 7). <https://www.tapol.org/publications/pandemic-power-grabs-who-benefits-food-estates-west-papua>

9 TAPOL, & Awas MIFEE. (2022). Pandemic Power-Grabs: Who benefits from Food Estates in West Papua? In *Tapol.org* (p. 18). <https://www.tapol.org/publications/pandemic-power-grabs-who-benefits-food-estates-west-papua>

10 TAPOL, & Awas MIFEE. (2022). Pandemic Power-Grabs: Who benefits from Food Estates in West Papua? In *Tapol.org* (p. 26). <https://www.tapol.org/publications/pandemic-power-grabs-who-benefits-food-estates-west-papua>

migrant workers. Food estates appropriate land traditionally used for indigenous livelihoods, neither achieving “cultural development” nor sustainable local job creation.

Recommendations for the Government of Indonesia:

- Ensure that large scale development projects In West Papua do not take place on customary or traditional lands without the free, prior and informed consent of Indigenous Papuans.
- Take concrete and measurable steps to resolve existing customary land issues urgently, including those related to large scale development projects.

Question 4:

In light of the measures taken by the State party to address persisting regional disparities, particularly affecting remote islands and the Provinces of Aceh, Papua and West Papua, please provide information on: (a) The progress achieved through those measures, indicating developments in key indicators of economic, social and cultural rights, as well as the challenges faced and the measures taken to address them; (b) The level of disparities in the national and regional budgets allocated to the regions in public service areas such as social security, housing, water and sanitation, health care, education and information technology infrastructure, and the measures taken to ensure equitable budget allocation across the regions. "

14. In West Papua, the State’s efforts to address regional disparities through ‘people centered development’¹¹ are meager compared to the predominance of investor-centered economic growth. As a result, equitable development policies in the region are at best ineffective and at worst harmful.

Failure to bridge the development gap

15. As reflected in key development indicators such as the Human Development Index (HDI), policies aiming at reducing economic, social and cultural disparities in remote and disadvantaged areas like West Papua are not working. While the central government continues to defend the New Autonomous Region (DOB) program in West Papua, arguing that it will lead to a significant improvement in the fields of health, economy and education, research shows that such claims are unfounded. In 2004, the HDI in Papua Province reached 60.9, while in Papua Barat Province it was 63.7: numbers below the national average by respectively 7.8 points and 5 points. Nineteen years later, the gap has widened: data from 2023 shows that the national HDI has increased by 5.69 points, while the HDI increase in Papua Province was only 2.11 points, and 3.77 points in Papua Barat.¹²

Creation of intra-regional disparities

16. Transmigration programs are central to the government’s plan to address regional disparities. Initially designed to redistribute populations from overcrowded islands to less populated areas, provide economic opportunities for poor farmers and to promote national consciousness through ‘interculturalization’, these programs have boosted development in underdeveloped regions, helped increase security across the border and accelerated the exploitation of natural resources. The arrival of migrants from other regions has had a severe impact on the development capacities of Indigenous Papuans. The sixth report of the International Coalition for Papua (ICP) describes how imported rice has replaced traditional staple foods like sweet potatoes, taro or sago, creating dependencies on commercial goods among many Papuans.¹³

11 ILO (International Labour Organization). (2012, June 14). *People-centered Development Programme (PcDP) Phase II: The Implementation of Institutionalizing Sustainable Livelihood Development for Papuan Communities*. [www.ilo.org](https://www.ilo.org/jakarta/whatwedo/projects/WCMS_184613/lang-en/index.htm). https://www.ilo.org/jakarta/whatwedo/projects/WCMS_184613/lang-en/index.htm

12 KRISDAMARJATI, Y. A. (2023, November 21). *Papua Special Autonomy Day, Long Road to Prosperity*. Kompas.id. <https://www.kompas.id/baca/english/2023/11/22/en-hari-otonomi-khusus-papua-jalan-panjang-mencapai-sejahtera>

13 International Coalition for Papua (ICP). (2022). *HUMAN RIGHTS AND CONFLICT ESCALATION IN WEST PAPUA*. <https://franciscansinternational.org/wp-content/uploads/2022/11/HumanRightsPapua2019-ICP.pdf>

Migrant traders are dominating the local markets, while many Papuans lack the financial resources and practical business knowledge to compete with them. In remote regencies of West Papua, prices for commercial trade goods like cooking oil have become unaffordable.

17. The policy of development through transmigration has also affected the access of Indigenous Papuan's to basic services such as education. Harsh living conditions for teachers and the lack of government incentive programs for teachers working in these areas have left the education system in many non-urban areas of West Papua in a devastating condition. According to Papuan demography expert Agus Sumule, the average length of schooling in the Arfak Mountain District remains only 5.12 years, not enough to even complete elementary school.¹⁴

Negative impact on access to rights

18. Overall, equitable development policies do more harm than good to marginalized populations by threatening their rights and access to public services such as social security, housing, water and sanitation, health care, education and information technology infrastructure. For instance, several large-scale industrial agriculture projects initiated by the Government have either denied access to Indigenous Papuans to land and resources or have caused irreparable damage to the forests that they depend on as a primary source of livelihood, and which are of utmost cultural importance. Widely characterized as 'security-based', these policies are also negatively affecting the 60,000 to 70,000 internally displaced persons scattered across Papua. TAPOL recently published a report outlining the relationship between displacement and the central government's strategy for a major expansion of the military's presence and role in Papua.¹⁵

Recommendations for the Government of Indonesia:

- Take all possible steps to address intra-regional disparities, including by ensuring that Indigenous Papuans continue to be able to compete in the marketplace with migrants. Indigenous Papuans must be provided with the capital, skills and infrastructure needed to ensure stable income generation and their right to livelihood.
- Take steps to address food scarcity and food unaffordability in all regencies of West Papua.

Question 6:

Please provide information on the measures taken to prevent and address the intimidation, violence and attacks against human rights defenders, especially those advocating for the rights of indigenous peoples and working on environmental and land-related issues; and on such cases, including the number of cases reported, investigated and prosecuted and the sanctions imposed on perpetrators. Please also indicate how effective the enforcement of article 66 of Law No. 32/2009 on Environmental Protection and Management is to this end. Furthermore, please provide information on the cases in which human rights defenders have been sanctioned under Law No. 19/2016 on Electronic Information and Transactions and on the status of the review of this law.

19. Human rights defenders (HRDs) working in and on West Papua, particularly those working on land and environmental rights, as well as the rights of indigenous peoples, continue to face the risk of intimidation, harassment, obstruction, or physical assault against themselves and/or their relatives. HRDs in West Papua work in a highly repressive environment with a heavy presence of security forces. While the Government often justifies military deployment for national security purposes in the region, law enforcement authorities limit human rights under the pretext of maintaining public order and enforcing federal laws.

14 Wahyudin, D., Sumule, A., & Suwirta, A. (2021). *Journal of Historical Studies Alternatives of Genuine Basic Education Program in Papua Provinces, Indonesia*.

15 TAPOL. (2023). *Displaced and Disempowered: Military expansionism at the cost of civilian lives*. <http://tapol.org/publications/displaced-and-disempowered-military-expansionism-cost-civilian-lives>

Criminalization of human rights defenders

20. The government of Indonesia continues to restrict access to West Papua for international human rights and humanitarian organizations, foreign journalists, and observers. Access further deteriorated after Papua-wide protests racism triggered a wave of criminalization of protesters, activists, and HRDs in September 2019. More recently, Fatia Maulidiyanti and Haris Azhar, director, and former director of leading NGO KontraS, faced criminal defamation.¹⁶ They were reported to authorities in September 2021 by the Indonesian Coordinating Minister for Maritime Affairs and Investment for posting the results of a joint NGO research on YouTube. The study, which went viral, focused on the potential involvement of essential officials in the gold mining business in an area of armed conflict in West Papua. Maulidiyanti and Azhar had to face both threats of criminal defamation and fines equivalent to USD 7 million under Law No. 19/2016 on Electronic and Transaction Information (ITE). On 8 January 2024, the East Jakarta District Court acquitted Haris and Fatia and dismissed all the charges against them, but the prosecutor immediately sent an appeal to the Supreme Court.
21. In 2020, the Indonesian parliament and government enacted the New Mining Law (No. 3/2020). Article 162 of Law No 3/2020 stipulates that “Any person who obstructs or disrupts mining business activities can be penalized for up to one year’s imprisonment or fined for up to IDR 100 million (USD 6,425).” This article can be used to criminalize environmental human rights defenders and is in contradiction to Article 66 of the Environmental Protection and Management Law (No. 32/2009).

Arrests, trials, and detentions without summons and evidence

22. Human rights defenders working on issues related to Indigenous Peoples, such as members of the National Committee for West Papua (KNPB), an organization in the West Papua region of Indonesia that campaigns peacefully for a self-determination referendum for the Papuan people of the area, have been significantly affected by arbitrary arrests and detention. Indonesian authorities have repeatedly used Articles 106 and 110 of the Indonesian Criminal Code (KUHP), to prosecute peaceful pro-independence political activists in Papua legitimately exercising their rights to freedom of expression, association and peaceful assembly.
23. The case of Victor Yeimo, international spokesperson of the KNPB, is particularly telling. Mr. Yeimo was detained in August 2021 on charges of violating Article 106 on treason, Article 110 on treason with conspiracy and multiple other charges under the Indonesian Criminal Code. Mr. Yeimo’s health deteriorated significantly during pre-trial detention, but he did not receive proper food or medication as he was placed in an isolation cell. After multiple requests from his lawyer to the various authorities, Victor was given a medical test, but he and his lawyer did not receive the test results. During his first and second trial hearing in late August 2021, he asked the judges for his results and pleaded for medical care. Mr. Yeimo was finally hospitalized on 30 August 2021 despite the Court having issued an order to hospitalize him days earlier, on the evening of 27 August 2021. The prosecutors deliberately defied the Court’s order and withheld the medical results coming out on 20 August 2021 which stated that Mr. Yeimo should have been hospitalized.¹⁷ On 23 September 2023, after being imprisoned for several months, he was finally released. The charge of treason was not proven, but he was eventually convicted under an article that the Constitutional Court had repealed.

Security forces violence

24. The unlawful use of force by armed forces is a strong deterrent against HRDs operating in the country. Amnesty International reported at least 91 cases of extrajudicial killings involving armed forces and Papuan pro-

¹⁶ Amnesty International UK. (n.d.). *Indonesia: Human rights defenders accused of defamation*. [www.amnesty.org.uk. https://www.amnesty.org.uk/urgent-actions/human-rights-defenders-accused-defamation](https://www.amnesty.org.uk/urgent-actions/human-rights-defenders-accused-defamation)

¹⁷ *Update on Victor Yeimo - Trial adjourned due to deteriorating health condition, delayed medical treatment, responses from the UN | Tapol*. (2021). [www.tapol.org. https://www.tapol.org/news/update-victor-yeimo-trial-adjourned-due-deteriorating-health-condition-delayed-medical](https://www.tapol.org/news/update-victor-yeimo-trial-adjourned-due-deteriorating-health-condition-delayed-medical)

independence groups that killed at least 177 civilians between 2018 and 2022.¹⁸ This violence extends to the conditions of custody. For example, on 5 May 2023, a 27-year-old man named Delano Sayuri, who was suspected by the police of committing a theft. He was arrested on 5 May 2023 by police officers who failed to show an arrest warrant and taken to the police headquarters in Jayapura. His health deteriorated dramatically in police custody, allegedly due to torture and inhuman treatment. On 6 May 2023, he was taken to a police hospital, where he was pronounced dead.¹⁹

Deforestation in West Papua

25. West Papua's natural forests are rapidly deteriorating due to the activities of extractive businesses, in particular deforestation. The Pusaka Report (2021 and 2022) documents forest clearing activities and loss of forest areas in Papua in 2021 covering an area of 5,810 hectares and in 2022 covering an area of 2,639 hectares. The deforestation involves and is carried out by palm oil plantation companies, as well as logging and timber plantation companies, and is facilitated by government recommendations and permits. Deforestation is contrary to the principles and objectives of environmental protection and management in Articles 2 and 3, UU PPLH Number 32 of 2009. Exploitation of natural resources and environmental damage have led to a loss of access to livelihood and food provision, in turn causing health problems due to poor nutrition.²⁰

Recommendation for the Government of Indonesia

- End the harassment, intimidation and criminalisation of human rights defenders with a view to creating an enabling environment for HRDs;
- Repeal and/or amend any laws and regulations that can be used to criminalize HRDs, such as some provisions of the Internet (ITE) Law (No. 19/2016), Mining Law (No. 3/2020) and Job Creation Law (No. 11/2020);
- End the unlawful use of force by security forces against HRDs. In cases of injury and death of HRDs, incidents must be thoroughly investigated and perpetrators brought to justice.

Question 9:

Please clarify the status of the draft law on Masyarakat Hukum Adat. In addition, please provide information on: (a) The measures taken to ensure that the legislative framework provides for legal recognition of indigenous peoples, their customary lands and forests, and their rights in line with international human rights norms, and to remove procedural obstacles to claim their rights; (b) Any mechanisms put in place to ensure that indigenous peoples participate in the formulation and implementation of legislation, policies and projects that affect them and that their free, prior and informed consent is obtained; and the sanctions imposed in case of non-compliance; (c) The measures taken to ensure that indigenous peoples continue their traditional way of life and livelihood, in case of concession of indigenous lands and forests.

26. The 2001 Special Autonomy Law for Papua and Papua Barat Provinces (SAL) recognizes the existence and rights of Papua's indigenous peoples. However, current laws prescribe burdensome and costly processes for indigenous groups to prove their existence to register their land rights. Even though provisions exist in some provincial and district-level jurisdictions to recognize the rights of indigenous peoples, few recognition processes have been effectively carried out in the twenty years since the enactment of SAL.

18 Amnesty International NZ. (2022). *Indonesia: Police and military unlawfully kill almost 100 people in Papua in eight years with near total impunity* | Amnesty International NZ.

Amnesty.org.nz. <https://amnesty.org.nz/indonesia-police-and-military-unlawfully-kill-almost-100-people-papua-eight-years-near-total>

19 Human Rights Monitor. (2023, May 10). *Suspect dies shortly after arrest at Bhayangkara police hospital in Jayapura – Relatives demand investigation into allegations of torture.* <https://humanrightsmonitor.org/case/police-suspect-dies-shortly-after-arrest-at-bhayangkara-police-hospital-in-jayapura-relatives-demand-investigation-into-allegations-of-torture/>

20 Pusaka. (2023). *BIOPOLITIK FOOD ESTATE DAN KERUSAKAN METABOLIK ALAM MANUSIA PAPUA.* <https://pusaka.or.id/biopolitik-food-estate-dan-kerusakan-metabolik-alam-manusia-papua/>

27. In cases where regulations exist, authorities take years to process applications. In the meantime, the Government of Indonesia passed new laws that may severely undermine the rights of indigenous peoples. This is the case regarding the Omnibus Law on Job Creation (Law No. 11/2020), that does not include the participation of indigenous representatives in the law-making processes. In November 2021, Indonesia's Constitutional Court issued an order to the Government and Parliament to amend parts of the Omnibus Law on Job Creation. The Court also prohibited the passing of any further regulations and policies associated with the law during a two-year grace period. If the necessary changes are not made within two years, the Court stated that the Omnibus Law would become "permanently unconstitutional" and void.
28. The Draft Law on the Recognition and Protection of the Rights of Indigenous Peoples, which would streamline processes for legal recognition of indigenous peoples' rights, has been languishing in the Parliament for over a decade despite repeated supporting statements made by some members of this Parliament.

Recommendations for the Government of Indonesia:

- Expedite the adoption of the Law on the Recognition and Protection of the Rights of Indigenous Peoples without any further delay.

Question 11:

Please provide information on: (a) The steps taken to implement the Committee's previous recommendations with respect to non-discrimination legislation.

29. In its concluding observation on the initial report of Indonesia in 2014, the CESCR called on Indonesia to adopt a comprehensive anti-discrimination legislation to prohibit direct and indirect discrimination against vulnerable groups, including Indigenous peoples.²¹ This was echoed during the Universal Periodic Review (UPR) 4th Cycle in 2022. Indonesia accepted several recommendations to adopt a comprehensive anti-discrimination legislation but has not yet done so.²²
30. Indigenous Papuans experience discrimination differently as compared with other ethnic groups in Indonesia. Despite the acceptance of the UN recommendations, the Government of Indonesia has not successfully addressed direct and indirect discrimination in terms of economic development of the Indigenous Papuans. The National Bureau of Statistic (BPS) recorded that despite the high number of gross regional domestic product in West Papua,²³ people who live in the region are the poorest in the country.²⁴ BPS has also released an annual Human Development Index (*Indeks Pembangunan Manusia/IPM*) with the lowest scores being Papua and Papua Barat Provinces.²⁵

Recommendations for the Government of Indonesia:

- Enact a comprehensive anti-discrimination law with urgency, that includes, but is not limited to, anti-discrimination measures against indigenous people, including in West Papua;
- Ensure the full and meaningful involvement of vulnerable groups, including indigenous peoples in discussions and debates on a comprehensive anti-discrimination legislation.

Question 12:

²¹ Concluding observations on the initial report of Indonesia, E/C/12/IDN/CO/1, para. 10 (2021). <https://www.refworld.org/docid/53c788264.html>

²² Human Rights Council. (2023). Report of the Working Group on the Universal Periodic Review Indonesia (Addendum). In *undocs.org*. <https://undocs.org/A/HRC/52/8/Add.1>

²³ BPS Statistics Indonesia. (2023). *Gross Regional Domestic Product Of Provinces In Indonesia By Industry 2018 - 2022*.

<https://www.bps.go.id/en/publication/2023/04/13/d5ce181590472cea3abb80c/gross-regional-domestic-product-of-provinces-in-indonesia-by-industry-2018-2022.html>

²⁴ BPS Prov Sumatera Selatan. (2023). *Jumlah Penduduk Miskin menurut Provinsi (Ribu Jiwa), 2021-2023*. Sumsel.bps.go.id. <https://sumsel.bps.go.id/indicator/23/588/1/jumlah-penduduk-miskin-menurut-provinsi.html>

²⁵ BPS Statistics Indonesia. (2023, November 15). *Indeks Pembangunan Manusia (IPM) Indonesia tahun 2023 mencapai 74,39, meningkat 0,62 poin (0,84 persen) dibandingkan tahun sebelumnya (73,77)*. <https://www.bps.go.id/id/pressrelease/2023/11/15/2033/indeks-pembangunan-manusia--ipm--indonesia-tahun-2023-mencapai-74-39--meningkat-0-62-poin--0-84-persen--dibandingkan-tahun-sebelumnya--73-77--.html>

Please provide information on the measures taken, and the results thereof, to improve the labour market participation and employment of women, to increase decent job opportunities for women, and to close the gender pay gap, and include relevant statistical data. Please also elaborate on the steps taken to repeal gender-discriminatory legal provisions and practices which prevent women from accessing employment, land, livelihoods and economic opportunities, and social security and welfare programmes. Furthermore, please provide information on the measures taken, and their impact, to protect women from discrimination and violation of their rights in the workplace, including regarding dismissal and working conditions during pregnancy, and sexual harassment, and clarify the status of the draft ministerial regulation on prevention of violence and harassment.

31. Most Indigenous Papuans live in rural areas. They are primarily dependent on subsistence agriculture for their livelihood. The main commodities are vegetables, fruits, and betel nuts, predominantly sold by indigenous Papuan women. Indigenous Papuan women living in the coastal areas are dependent on fishing products for their livelihood.
32. Indigenous Papuan women often do not have equal and effective access to the market, due to insufficient business knowledge and lack of capital. There is a gap of skills and knowledge between indigenous Papuan women compared with migrants coming from outside Papua. This gap is due to inequalities in training and financial assistance from the government. Migrant traders, who often have business capital or access to bank loans, can rent better stalls and stores in and around the market, and invest in a wider assortment of goods for clients. Papuan women are often at the mercy of private loan sharks, who do not request security guarantees but charge higher interest than traditional banks. Indigenous Papuan women also have limited access to economic resources due to large scale development projects that destroy traditional sources of livelihood such as forests or hunting grounds.
33. In Jayapura, Papua Province, local authorities have provided a specific market for indigenous Papuan women called "Pasar Mama-mama." The market was a response to calls by Papuan women for their own marketplace and protection of their social and economic life. Similar calls to establish Pasar mama-mama in other regencies are starting to be heeded, such as Asmat and Merauke Regency.
34. Pasar Mama-Mama and similar markets in other regency's present opportunities as well as challenges. While the economic added value they bring is welcome, challenges include a lack of facilities and infrastructure, capital and skill development programmes. The government must pay more attention to these aspects if it truly wants to achieve better development outcomes for indigenous Papuan women.

Recommendations for the Government of Indonesia:

- Ensure the full and effective implementation of the Special Autonomy Law for Papua particularly the protection of the rights of Indigenous Papuans, specifically for indigenous Papuan women traders, by establishing an affirmative policy (special alignment) that is focused on supporting and encouraging their buying and selling activities;
- Take concrete and measurable policies to facilitate and accommodate indigenous Papuan women traders by establishing more local markets that support their right to work and right to an adequate standard of living in all regencies in West Papua;
- Ensure that markets for indigenous Papuan women traders are accessible to consumers, including by ensuring that they are in central locations and near public transportation.
- Take concrete steps to provide business and other related skills training, as well as low-interest capital assistance for indigenous Papuan women traders so that they can compete in the marketplace.

Question 22:

Please provide information on the measures taken, and the effectiveness thereof, to address the legal and procedural difficulties faced by smallholders, and disadvantaged and marginalized individuals and groups, in obtaining land tenure and in resolving land disputes. Please specify the progress made through the agrarian

reform acceleration programme and social forestry in legalizing the land tenure of the above-mentioned individuals and groups and in preventing land grabbing and the concentration of land ownership. Please provide information on the enforcement of the moratorium on the issuance of new licenses for palm oil plantations and clarify the status of extension of the moratorium.

35. The government has taken steps to overcome legal and procedural difficulties in obtaining land ownership for small farmers and disadvantaged and marginalized individuals and groups. These steps include the Omnibus Law on Job Creation which amends several provisions in Law Number 5 of 1960 on Basic Agrarian Principles, including simplifying the requirements for obtaining property rights on land, especially for small farmers and indigenous community groups; and providing legal recognition and protection for customary rights and customary rights of indigenous communities.
36. In the Papuan context, enforcement of the moratorium on the issuance of new palm oil plantation permits is still unclear and inconsistent. In some places, the expansion of palm oil plantations is still being encouraged. In 2023, several palm oil plantation companies continued to expand their land in Papua, such as PT. Inti Kebun Sejahtera in Sorong Regency and PT. Permata Nusa Mandiri in Jayapura Regency. The opening of new land by these companies has caused conflict with indigenous communities in Papua. These indigenous communities feel their rights are threatened, including rights to land and natural resources.
37. On May 16, 2020, a member of the Indonesian police, Police Brigadier Melkianus Yowei, allegedly assaulted an Indigenous Papuan, Mr Marius Betera, until he died at the office of the palm oil plantation company PT Tunas Sawa Erma, Jair District, Boven Digoel Regency, Papua Province. Mr Betera came to complain that food crops he had planted inside land licensed to the company had been pulled down by an unknown person. However, instead of his complaint being filed, he was assaulted. The Marius Betera case is only one of several land conflicts that have occurred between indigenous communities and companies in Papua. In general, the main cause of the tension between indigenous Papuans and the companies was the takeover of customary land rights, which were allegedly carried out in contravention of official procedures through manipulation by local officials and pressure from the military.

Recommendations for the Government of Indonesia:

- Take effective steps to accelerate the implementation of laws to recognize, respect and protect the rights of indigenous peoples to customary land and forests, as well as the right to manage land and natural resources fairly and sustainably.
- Ensure that permits are only given to businesses that carry out human rights due diligence, carry out trainings for law enforcement, control and provide sanctions for revoking permits for extractive business companies, palm oil plantations, logging, timber plantations and mining, which violate state laws and regulations and customary law, and take effective steps to restore indigenous peoples' rights to land by recognizing and returning land and forest areas given to companies as concessions.
- Ensure meaningful participation from indigenous communities as widely as possible in the process of policy formation, determination, implementation and supervision of the implementation of development policies at the provincial to district levels.

Question 23:

Please provide information on the measures taken to provide, including through international assistance and cooperation, persons internally displaced due to armed conflicts in West Papua with adequate housing and with access to food, health care and education. Please also indicate the steps taken to facilitate a safe return to their homes and to provide them with durable solutions.

38. Armed clashes between the pro-independence movement, the West Papua National Liberation Army (TPNPB) and the Indonesian army have caused an increase of internal displacement mainly from Papua's central highland areas and in Papua Barat Province. The number of the IDPs is estimated

between 60.000 to 100.000.²⁶ People have been forced to leave their community due to fear of becoming military targets or being used as human shields by the TPNPB.

39. In the Puncak Regency, a majority of IDPs are women and children living in difficult conditions with no access to clean water, health services or education. Security operations by the police and military forces are still ongoing. In Nduga Regency, where intense armed conflicts have been going on since 2018, IDPs received only limited humanitarian support from the local regency authorities, in particular in the districts of Mbua, Dal, and Yal. However, the majority of IDPs from Nduga have not received any humanitarian support from the central government. Many IDPs - particularly children – have been traumatized by the security force operations and fear the presence of police and military members that they have seen in their villages. Severe malnutrition has been reported in some areas with lack of access to adequate and timely food and health services. In several incidents church workers have been prevented by security forces from visiting villages where IDPs are seeking shelter²⁷. Access to education is of significant concern, with only 55% of children attending formal schools. Forty-five per cent of children do not attend school due to financial reasons, lack of identification documentation (birth certificates and family cards) and linguistic and cultural barriers. Children use the Nduga regional language more, and often do not understand Indonesian or regional languages in Wamena.
40. In Kisor, Maybrat Regency in Papua Barat Province, the armed conflicts between TPNPB and Indonesian security forces took place in September 2021 causing the displacement of thousands of people to the neighboring regencies including Sorong Regency.²⁸ Residents from 50 villages in five districts in Maybrat Regency were forced to flee their hometowns. The Indonesian government and security forces claimed that hundreds have been successfully returned to their places of origin. However, reports from various sources²⁹, including Indonesian National Commission for Human Rights (Komnas HAM), reveal that many IDPs have not been able to return. The conditions in IDP camps are dire, with overcrowding, limited resources, and inadequate access to education and healthcare.

Recommendations for the Government of Indonesia:

- Ensure the fulfillment of the rights of IDPs in Papua, including building temporary housing, providing food and health care, and ensuring access to education for the children;
- As a matter of urgency, ensure the return of all IDPs to their places of origin. This must be done through meaningful consultations with the IDPs in Papua;
- Guarantee the security of the IDPs and ensure that they are not subject to any harassment or intimidation;
- Review the policies and practices of police, military and other security forces with regard to differentiating between members of TPNPB and civilians;
- Provide reparations or compensation to the IDPs in Papua for all losses they have experienced;
- Ensure access for all humanitarian assistance provided civil society or church-based organizations to IDPs in Nduga, Puncak, Intan Jaya, Jayawijaya, Mimika and Maybrat, and ensure that the rights of IDPs under international human rights and humanitarian law are respected, protected and fulfilled.

Question 24:

Please provide information on: (a) The measures taken, and the results thereof, to address the shortcomings of the health-care system, such as the limited coverage and scope of the universal health insurance, the low level

26 OHCHR. (2022, March 1). Indonesia: UN experts sound alarm on serious Papua abuses, call for urgent aid. *United Nations*. <https://www.ohchr.org/en/press-releases/2022/03/indonesia-un-experts-sound-alarm-serious-papua-abuses-call-urgent-aid#:~:text=2018%2C%20at%20between-.60%2C000%20to%20100%2C000,-people>.

27 OHCHR. (2022, March 1). Indonesia: UN experts sound alarm on serious Papua abuses, call for urgent aid. *United Nations*. <https://www.ohchr.org/en/press-releases/2022/03/indonesia-un-experts-sound-alarm-serious-papua-abuses-call-urgent-aid#:~:text=Severe%20malnutrition%20has%20been%20reported%20in%20some%20areas>

28 Justice and Peace Secretariats (SKPs) of the Catholic Church in Papua. (2023, October 12). *RETURN THE REFUGEES TO THEIR HOMELANDS, IMMEDIATELY!*

29 Human Rights Monitor. (2023, November 20). *IPD Update, Nov 2023: The IDP crisis persists across West Papua* - <https://humanrightsmonitor.org/news/ipd-update-nov-2023-the-idp-crisis-persists-across-west-papua/>

of budget allocation to the health sector and the high level of out-of-pocket expenditure, and the shortage and unequal distribution of medical professionals and facilities; (b) The framework legislation and policy on mental health, and the measures taken to improve the availability, accessibility and quality of mental health services; (c) The measures taken to ensure that COVID-19 vaccines and related treatments are available to all persons free of charge and to deliver health-care services with minimal disruption during the pandemic.

Shortage and unequal distribution of medical professionals and facilities

41. The pandemic has amplified many pre-existing problems with Indonesians' access to the right to health, especially in Papua. During the pandemic, many COVID-19 referral hospitals were full and unable to accept patients. In Jayapura, some patients had to be treated on the terrace of a hospital's emergency unit.³⁰
42. Access to oral health services in Papua is also an issue. According to the chairman of the branch of the Indonesian Dental Association (PDGI) in Jayapura, the distribution of dentists in Papua is uneven, with 100 out of 130 dentists working in Papua Province and 40 to 50% of them working in Jayapura, leaving out rural areas.³¹

Deliverance of healthcare services during the pandemic

43. During the COVID pandemic, the access of the indigenous Papuans to COVID-19 vaccines was profoundly hindered. The COVID vaccination was provided mainly by members of the Indonesian security forces. Due to the general public's distrust towards the Indonesian security forces, indigenous Papuans were very reluctant to receive the vaccination due to fear and suspicion of the real content of the vaccines. This recent example illustrates the general difficulty faced by Indigenous Papuans in accessing healthcare services. Without any meaningful consultation with the local population and involvement of local actors in the provision of health services such as the COVID vaccination, many Indigenous Papuans are unable to access much needed healthcare services.
44. The COVID pandemic also highlighted the situation of political prisoners. The Minister of Law and Human Rights released at least 62,000 prisoners in February 2021³² to avoid the spread of COVID-19 in prison. However, none of the Papuan political prisoners, imprisoned under the repressive treason articles for the peaceful exercise of their rights to freedom of expression and opinion, were released. This move was not in line with a call from international bodies that the Government should prioritize the release of prisoners who were sentenced for non-violent offenses during the COVID-19 pandemic.

Impact on HIV

45. The COVID-19 pandemic has also had a negative impact on HIV/AIDS prevention and control services in West Papua. While central and provincial governments focused on handling the COVID-19 pandemic in 2020-2021, attention to HIV/AIDS prevention and control services waned. Many communities did not have access to adequate HIV/AIDS care treatment and services.
46. The UN Special Rapporteur on the right to health reported that ethnic Papuans are currently twice as likely to have HIV/AIDS than the rest of the population, and rates of infection are on the rise in this part of the

30 Asrida Elisabeth. (2021, August 30). "We're Almost Dead": In Papua, Covid Patient Numbers Surge while Vaccinations Stagnate. Project Mutuali. <https://projectmutuali.org/en/were-almost-dead-in-papua-covid-patient-numbers-surge-while-vaccinations-stagnate/>

31 ASPN. (2023, October 11). Papua faces shortage of dentists, uneven distribution challenges access to oral healthcare. Www.asia-Pacific-Solidarity.net. <https://www.asia-pacific-solidarity.net/news/2023-10-12/papua-faces-shortage-of-dentists-uneven-distribution-challenges-access-oral-healthcare.html>

32 Papuans Behind Bars. (2021). Annual Overview of the period October 2020 to September 2021. https://www.papuansbehindbars.org/wp-content/uploads/2022/03/Annual_Overview_Report_ENG_edited.pdf

country.³³ The total number of cases in four provinces in Papua, as of September 30 2023, is around 52.793.³⁴

47. Both before and since the start of the COVID-19 pandemic, women in Papua have faced difficulties accessing services, especially sexual and reproductive health, and HIV/AIDS services. Basic health services are a challenge, despite the existence of national and local health schemes. In various places, women cannot access health services because they do not have an identity card (KTP), cannot pay transport costs, or because the health facility has no staff. Negative stigmas targeting people with HIV mean that individuals are fearful of speaking up about the violence they face.
48. Services for pregnant women are also neglected. The government does not provide alternative maternal and neonatal services, such as the provision of independent midwifery services. Moreover, several Community Health Centers (*Puskesmas*), which are the most used and accessible health facilities, had to be temporarily closed because health workers were exposed to Covid-19. On the other hand, vaccination for pregnant women has not been carried out optimally. According to the Indonesian Association of Obstetrics and Gynecology Doctors (POGI), 20% of maternal deaths in Indonesia are caused by exposure to Covid-19. The Head of POGI in Papua Barat Province, Filvanus Jabiy, explained that since July 2021 “the average maternal mortality has increased three times.”³⁵ The maternal mortality rate in West Papua is approximately double the Indonesian national average of 120 to 305 deaths per 100,000 live births.³⁶ One of the reasons was a lack of professional assistance during labour. Papuan women are two times more likely to have HIV/AIDS than the rest of the population of Papua.³⁷ The HIV prevalence rate is 2.9% amongst Indigenous Papuans, which is significantly higher than the 0.4% prevalence rate of non-Papuans. Women who have HIV/AIDS face a higher risk of violence due to their status as HIV/AIDS carriers.³⁸

Recommendations for the Government of Indonesia:

- Guarantee access to health facilities with adequate staffing throughout Papua, including remote areas;
- Ensure a simplified referral system from home to health facilities in remote areas;
- Provide reproductive health services for teenagers in accordance with education level or age;
- Provide adequate resources to develop comprehensive services for women at risk of HIV/AIDS in Papua, as well as those already impacted by HIV/AIDS and/or violence;
- Introduce effective and culturally adequate programs for HIV prevention, testing and treatment, which particularly target young Papuan women in remote areas.

33 United Nations. (2017, April 4). *Health care goals in Indonesia can be reached only if challenges addressed – UN expert* | UN News. News.un.org.

<https://news.un.org/en/story/2017/04/554702-health-care-goals-indonesia-can-be-reached-only-if-challenges-addressed-un>

34 JUBI. (2023, November 18). *Angka Penularan Kasus HIV/AIDS Tertinggi Di Provinsi Papua Tengah Dan Papua* | Jubi Papua. Jubi.id. <https://jubi.id/penkes/2023/angka-penularan-kasus-hiv-aids-tertinggi-di-provinsi-papua-tengah-dan-papua/>

35 BalleoNEWS. (2021, August 27). *Kematian Ibu Hamil karena Terpapar COVID-19 di Papua Barat Tinggi*. Kumparan. <https://kumparan.com/balleonews/kematian-ibu-hamil-karena-terpapar-covid-19-di-papua-barat-tinggi-1wPNQBIm61>

36 Maternal Health Task Force at the Harvard Chan School, Center of Excellence in Maternal and Childhealth (2023, November 13) *Developing Maternity Care to Reverse Patterns of Violence and Inequality in West Papua*

<https://www.mhtf.org/2023/11/13/developing-maternity-care-to-reverse-patterns-of-violence-and-inequality-in-west-papua/>

37 OHCHR. (2017, April 4). *Indonesia / Right to health: "Ambitious goals can be reached only if challenges are addressed" – UN expert*. United Nations. <https://www.ohchr.org/en/press-releases/2017/04/indonesia-right-health-ambitious-goals-can-be-reached-only-if-challenges-are?LangID=E&NewsID=21476>

38 AJAR. (2019). *Between a Rock and a Hard Place: Vulnerability of Papuan Women to HIV/AIDS and Violence*. AJAR, Yasanto, Katane, eL_AdPPer and Jayapura Support Group. https://demo.asia-ajar.org/wp-content/uploads/2021/10/1203_BRAAHP-ENG_compressed.pdf