



NGO Joint Submission
TAPOL; Asia Justice and Rights (AJAR); Alliance of Democracy for Papua (AIDP); Justice Peace and Integrity of Creation GKI Tanah Papua, AVAA, and Yayasan Pusaka Bentala Rakyat (Pusaka)

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Introduction – General Human Rights Situation in West Papua

1. This submission is prepared by TAPOL,¹ a human rights organisation based in the United Kingdom. It campaigns for human rights, peace and democracy in Indonesia as well as to raise awareness of human rights issues in Indonesia, including in the contested territory of West Papua. Founded on grassroots campaigning, TAPOL works closely with local organisations in Indonesia and West Papua to advocate for truth and justice and encourage the international community to take action. Several West Papuan and Indonesian NGOs have also contributed to the drafting of the submission, in particular Asia Justice and Rights (AJAR), JPIC GKI Tanah Papua, AIDP, Pusaka, and AVAA.

2. The Government of Indonesia ratified the International Covenant on Civil and Political Rights (ICCPR) on 23 February 2006, with a declaration on Article 1.² The focus of the present submission is the implementation of the ICCPR by the Government of Indonesia in the Provinces of Papua, Papua Barat (West Papua), Papua Tengah (Central Papua), Papua Selatan (South Papua), Papua Pegunungan (Highland Papua) and Papua Barat Daya (Southwest Papua) in particular with respect to Article 6; Articles 7 and 10; Article 9; Articles 7, 9, 12, 13, 24, Articles 19-20, Article 21, Article 24, Articles 25-26, and Article 27 of the ICCPR. In this submission, the term West Papua is used to refer to the six provinces.

3. Indonesia's Papua region is known internationally as West Papua and refers to the western half of the island of New Guinea. The Government of Indonesia considers the term West Papua to have a pro-independence meaning. In 2003 Indonesia split Papua into two provinces of Papua and Papua Barat (West Papua). In 2022 the central government and parliament set up four new provinces in West Papua; Papua Tengah (Central Papua), Papua Selatan (South Papua), Papua Pegunungan (Highland Papua) and Papua Barat Daya (Southwest Papua). The splitting of West Papua into the new provinces was decided by the central lawmakers without getting approval from the Papuan Peoples' Council (MRP), as mandated by the Papuan Special Autonomy Law.

4. West Papua is currently the only area of Indonesia where peaceful and armed movements are calling for independence. Some studies have stated that the security situation in West Papua has worsened since 2018 with a significant increase of armed clashes between Indonesian security forces and Papuan armed pro-independence groups (TPNPB).³ In the last five years the number of armed clashes has doubled compared to the previous 15 years. Furthermore, in the last five years Papuan pro-independence armed groups have acquired greater abilities to obtain firearms and ammunition and to recruit new members. In early 2021, they killed a high-ranking member of the security forces. The Papuan pro-independence armed movement, TPNPB (Tentara Pembebasan Nasional Papua Barat) consists of various groups with different leaderships that have carried out sporadic attacks, mainly on military and police targets, but also recently against non-Papuan populations within West Papua. They have also committed human rights abuses, including killings, hostage-taking and abductions. In April

¹ See <https://www.tapol.org/>

² The Government of Indonesia made the following declaration for the ICCPR, "With reference to Article 1 of the International Covenant on Civil and Political Rights, the Government of the Republic of Indonesia declares that, consistent with the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States, and the relevant paragraph of the Vienna Declaration and Program of Action of 1993, the words "the right of self-determination" appearing in this article do not apply to a section of people within a sovereign independent state and cannot be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states."

³ IPAC (Institute for Policy Analysis of Conflict), 'Escalating Armed Conflict and a New Security Approach In Papua', 13 July 2022, pp. 5-11 and Made Supriatma, "Don't Abandon Us"; Preventing Mass Atrocities in Papua, Indonesia', Simon-Skjoldt Center for the Prevention of Genocide, June 2022, p. 20.

2021, the central government declared Papuan pro-independence armed groups to be ‘terrorists’. Since 2018 the armed clashes between Indonesian security forces and Papuan pro-independence armed groups have also spread to new areas to the west in Maybrat regency and to the east in Pegunungan Bintang regency from the central highlands area of West Papua.⁴

5. The security and human rights situation in West Papua markedly worsened in August 2019, with various riots, mass arrests and detention, unlawful killings, and other human rights violations in many cities in the two provinces. The widespread violence was triggered by racist chants against Papuan university students in some cities in Indonesia. These chants were carried out by groups of Indonesian people who were backed by the local security forces. These actions triggered widespread anti-racism protests in West Papua as well as in other provinces of Indonesia. Since then, the number of Papuan political prisoners increased significantly in a short time, including women detainees, and a more restrictive atmosphere occurred in West Papua, such as shutting down internet access in almost all areas in the region, and deploying more military and police personnel, which hampered the work of Papuan human rights defenders.

6. In July 2021, the national parliament passed a new amendment on the Special Autonomy Law for Papua and Papua Barat Provinces without meaningful consultation with Papuan indigenous groups and stripped many local West Papuan institutions of authority. In several incidents, police disbanded meetings and peaceful protests regarding the Special Autonomy Law, organized by the Papuan people and the Papuan People’s Council (MRP) a state institution representing the Papuan indigenous population and conducted arbitrary arrests and detention. In 2022, Indonesia’s national parliament passed laws to establish four new provinces in West Papua.

7. West Papua is also home to the largest forest land coverage in Indonesia but in recent years has faced accelerated deforestation due to the expansion of oil palm plantations, mining and food estate projects that have also brought a large number of non-Papuans to the region.

8. According to the National Research and Innovation Agency or BRIN, which was known previously as the Indonesian State Institute of Sciences (LIPI), 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 failure of development in the region and the marginalisation and discrimination of indigenous Papuans.⁵ The Indonesian government grants very limited access to West Papua for international human rights observers and has shown little tolerance for freedom of expression. International funding agencies, which are obliged to register with the central government, are not allowed to provide financial support freely to West Papuan NGOs, in particular those which work on human rights issues.

9. The Government of Indonesia has failed to fulfil its own human rights pledges delivered at various international human rights forums. In May 2017, during Indonesia’s third review under the UN Universal Periodic Review, the Minister of Foreign Affairs made a statement that the Attorney General would proceed with the criminal investigation and prosecution of cases of gross violations of human rights in West Papua (the Wasior and Wamena cases) in a special human rights tribunal under the Human Rights Court Law (Law No. 26/2000). In February 2018, President Joko Widodo invited the then-UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein to visit West Papua for an official

⁴ 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). TAPOL. (2023). ‘Displaced and Disempowered: Military expansionism at the cost of civilian lives’ (pp. 5-8).

⁵ LIPI, Papua Road Map: Negotiating the Past, Improving the Present and Securing the Future, 2009, available at (short English version): <https://cupdf.com/document/papua-road-map.html>.

discussion on a range of human rights issues in Indonesia. However, to date, a UN mission to West Papua has not been carried out nor have those responsible in cases of gross human rights violations in West Papua been prosecuted.

Question 10 on right to life (art. 6)

Please provide information on efforts to prevent and mitigate the effects of climate change and environmental degradation, which affect the health of people, including efforts to reduce deforestation and/or promote sustainable energy sources.

Article 28H(1) of Indonesia's 1945 Constitution stipulates that “Every person has the right to live in physical and mental welfare, to have a place to live, and to have a good and healthy environment and the right to receive health services.” This means that Indonesia recognizes the right to a healthy environment. Unfortunately, Indonesia has experienced one of the highest rates of deforestation in the world in the last two decades.⁶ During that timespan Indonesia has lost almost 30 million hectares of forest.⁷

Indonesia’s Central Bureau of Statistics (BPS) reported that in 2022 the natural forest area of West Papua covers around 36% (34.3 million hectares) of the total forest area of Indonesia (almost 96 million hectares).⁸ West Papua’s forest area is the largest, compared with other regions in Indonesia which have already lost forest cover due to mining, logging and oil-palm plantations.⁹ The 34.3 million hectares of forest area in West Papua covers 78% of total land territory of the region.¹⁰ The deforestation rate in West Papua is also worrying. Between 2001-2019 West Papua lost 663,443 hectares of forest area or 34,918 hectares per year.¹¹

Deforestation in West Papua is overwhelmingly caused by the expansion of oil-palm plantations (80 per cent of deforestation).¹² However, business activities such as mining and national food estate projects have also contributed to deforestation. As the COVID-19 pandemic began in 2020, the Indonesian Government proposed to establish ‘Food Estates’: massive expansions of agricultural land spanning millions of hectares of land across Indonesia, including West Papua, and producing a variety of crops. The Government’s reasons were that it wanted to anticipate a food security crisis caused by the pandemic. A mammoth 3.2 million hectares of land in the southern part of West Papua (Merauke, Boven Digoel and Mappi Regencies; all are now part of Papua Selatan Province) has been proposed by the Ministry of Environment and Forestry (MoEF) as an Area of Interest.¹³ In mid-2020 President Joko Widodo appointed the Ministry of Defence to oversee the Food Estate Project, including in West Papua, an already militarised area, on the grounds that food security is part of national security. TAPOL

⁶ Global Population Review, <https://worldpopulationreview.com/country-rankings/deforestation-rates-by-country>.

⁷ Global Forest Watch, <https://www.globalforestwatch.org/dashboards/country/IDN/#>.

⁸ BPS, forest land coverage in Indonesia per province (2014-2022), see <https://www.bps.go.id/id/statistics-table/1/MjExMCMx/rekapitulasi-luas-penutupan-lahan-hutan-dan-non-hutan-menurut-provinsi-tahun-2014-2022--ribu-ha-.html>. According to BPS, there are 25.3 million hectares of forest area in Papua Province and 9.13 million hectares in Papua Barat Province. BPS has not broken down the detail into six provinces of West Papua.

⁹ Greenpeace, ‘Licence to Clear; the Dark Side of Permitting in West Papua’, April 2021, p. 12.

¹⁰ BPS, op cit.

¹¹ Koalisi Indonesia Memantau (Indonesia Monitoring Coalition), ‘Menatap Ke Timur, Deforestasi dan Pelepasan Hutan di Tanah Papua’ (Planned Deforestation: Forest Policy in Papua), February 2021, p.8.

¹² Ibid, p. 5.

¹³ TAPOL & awasMIFEEI, ‘Pandemic Power-Grabs: Who benefits from Food Estates in West Papua?’, April 2022, p. 7.

documented a list of cases of violence, intimidation and manipulation by the military and police against indigenous Papuans surrounding the implementation of the Food Estate project.¹⁴

For several decades, the transnational mining company Freeport McMoRan, has conducted mineral exploitation activities in West Papua. The company – through its Indonesian subsidiary PT Freeport Indonesia (PTFI) – is the largest foreign taxpayer in Indonesia and the largest employer in Papua province. Over the past few years, the company has been criticised for fuelling armed conflicts in Mimika Regency, where its mining operations are based, resulting in large-scale environmental degradation and multiple human rights violations against the indigenous Amungme and Kamoro tribes. These violations added to the government’s failure to protect indigenous communities from environmental pollution and ensure their right to free prior informed consent (FPIC) regarding the utilisation of their ancestral land for national interests. Freeport-McMoRan’s Indonesian subsidiary, PT Freeport Indonesia, has been responsible for the large-scale destruction of marine and forest areas. This is having a serious impact on the livelihood of indigenous Kamoro and Amungme communities, who are the legitimate owners of the customary land. The Indonesian government has tolerated these violations and continues to ignore the rights of these communities to FPIC by excluding them from ongoing negotiations with PTFI over the extension of Freeport’s mining concession until 2041.¹⁵

In October 2020, the parliament passed the Omnibus Job Creation Law (No. 11/2020)¹⁶ - which modified at least 80 other laws - under the pretext of better stimulating and accelerating economic investment. Many provisions in the Omnibus Job Creation Law reduced environmental safeguards, usurped local government authority on economic policy and provided for criminal charges to be brought against any person deemed to have disrupted a mining project.

Recommendations:

- **Indonesia should adopt or amend policies and take measures to ensure that natural resource extraction does not violate human rights, in particular in West-Papua;**
- **Indonesia should recognise and guarantee the principle of free, prior and informed consent of indigenous peoples.**

Question 11 on right to life (art. 6)

Please comment on allegations of: (a) extrajudicial killings by security-force members in the Provinces of Papua and West Papua, including information on the number of victims of extrajudicial executions, disaggregated by ethnicity, in particular the number of indigenous Papuans, on reparation provided to victims’ families and on the latest status of the legal process of the Paniai (2014), Wasior (2001) and Wamena (2003) cases; and (b) excessive force used in the fight against drug trafficking, including reports that application of such force has been encouraged by senior officials and that lethal force was used against suspected drug traffickers after they had surrendered to the police.

¹⁴ TAPOL & awasMIFEE!, ‘The Military’s Role in Food Estate Plans’, September 2022, pp. 23-25.

¹⁵ A joint report by international, Indonesian and West Papuan NGOs, ‘PT Freeport Indonesia and its trail of violations in Papua: human, labour and environmental rights’, December 2020, p. 5.

¹⁶ In November 2021, the Constitutional Court suspended the Omnibus Job Creation Law on the ground that the legislation process was flawed by not accommodating meaningful participation from the public. In December 2022, President Joko Widodo issued a government regulation in lieu of law to reinstate the Omnibus Law which eventually was passed by the parliament in March 2023 through Law No. 6/2023.

In April 2022, Indonesia's Attorney General announced that they were preparing to prosecute a suspect allegedly responsible for unlawful killings in Paniai, Papua in 2014, under the 'Human Rights Court' mechanism (under Law No. 26/2000). The Paniai Case was the first case to be tried at a Human Rights Court for 18 years. Eleven other cases of gross violations of human rights are still pending trial under the remit of the Attorney General's Office (AGO). In December 2022, the Paniai Human Rights Court judges acquitted the defendant. Since the beginning of the judicial investigation, families of the Paniai victims and human rights organisations have been highly concerned by the initial efforts undertaken by the AGO which has only named one retired low-ranking military personnel as a suspect.¹⁷ Most victims' families refused to be involved in the trial's hearings. The nature of crimes against humanity suggests that both those who have command responsibility and those who directly commit the crimes must be brought to justice. The substance of the prosecution's case follows neither the findings and conclusions made by the National Human Rights Commission (Komnas HAM), the body authorised by Law No. 26/2000 to conduct the judicial inquiry,¹⁸ nor reflects the gravity of the crimes committed. There is also no indication that the cases of Wasior and Wamena will be brought to the human rights court in the near future.

The Human Rights Court has been used to try perpetrators of gross violations of human rights in three cases: the atrocities in East Timor (now Timor-Leste) surrounding the 1999 Referendum; atrocities in Tanjung Priok, Jakarta in 1984 against Islamist activists; and unlawful killings, arbitrary arrest and detention, and torture of Papuan protesters who were accused of being members of a separatist group in Abepura, Papua, in 2000. In the three cases, the AGO prosecuted a total of 34 individuals, although the Komnas HAM inquiry's reports recommended that more individuals be indicted and that the Human Rights Court at the first level convict 16 individuals. However, the final outcomes on appeal to the Supreme Court resulted in zero convictions.¹⁹

The Human Rights Court Law drafted by Indonesian lawmakers took into account many definitions of crimes of genocide and crimes against humanity from the Rome Statute of the International Criminal Court but left out war crimes. It is believed that the omission of war crimes from the Law was intentionally done by lawmakers who foresaw it potentially leading to prosecutions based on military operations in Aceh, then an area that was experiencing a secessionist armed insurgency led by the Free Aceh Movement (GAM). Thus, the Human Rights Court Law cannot be applied to deal with war crimes in West Papua committed by both the Indonesian security forces and Papuan pro-independence armed groups.

¹⁷ Joint Briefing, TAPOL, AJAR (Asia Justice and Rights) and KontraS, August 2022, 'Human Rights Court Mechanism and the 2014 Paniai Papua Case'.

¹⁸ Komnas HAM's Summary Briefing of Gross Violations of Human Rights Cases, *Merawat Ingatan Menjemput Keadilan: Ringkasan Eksekutif Peristiwa Pelanggaran HAM Yang Berat*, November 2020, p. 684-686. Komnas HAM suggested that at least nine military personnel involved in the 2014 Paniai case and should be prosecuted.

¹⁹ ICTJ (International Center for Transitional Justice) and KontraS (the Commission for the Disappeared and Victims of Violence), *Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto*, March 2011, p. 4.

Recommendations:

- Indonesia should prosecute more people for the Paniai Human Rights Courts based on Komnas HAM's findings;
- Indonesia should set up a human rights court to try people who were responsible for gross violations of human rights cases of Wasior and Wamena and in the process should involve the families of victims.

Question 13 on prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty (arts. 7 and 10)

With reference to the previous concluding observations (para. 14), please provide information on measures taken to address and prevent torture and other cruel, inhuman or degrading treatment or punishment, including information on: (a) the process of codification of the definition of torture in the Criminal Code in accordance with the international law obligations of Indonesia; (b) the steps taken to establish an independent mechanism to ensure accountability with respect to allegations of ill-treatment by law enforcement and security officials of persons under detention; and (c) the provision of human rights training, particularly on the prohibition of torture, for law enforcement and security officials and the percentage of officials who received such training. Please include statistics on complaints of torture or ill-treatment by law enforcement and security officials with full details of any prosecutions that have been undertaken, including all penal, disciplinary or administrative sanctions that have been imposed, and measures taken to provide redress to victims.

Indonesia's new Criminal Code (Law No.1/2023) provides a definition of torture corresponding relatively closely with international law (Articles 529 and 530). However, the penalty for acts of torture is only up to seven years' imprisonment and a specific article on reparations for victims of torture. The new Criminal Code will enter into force in January 2026.

Under Indonesia's criminal justice system, there is no independent external mechanism to address allegations of serious crimes under international law, including torture. The exception is only applied for "gross violations of human rights" under the Human Rights Law (No. 26/2000) consisting of genocide and crimes against humanity which provides Komnas HAM with the power to conduct judicial inquiries.

Military personnel can only be tried in military courts, including serious human rights violations such as extra-judicial killings or torture. All parties in the military criminal justice system, from judges, prosecutors to legal defence, are military officials. Similar provisions apply to allegations of human rights abuses committed by the police, so that the investigation is also carried out by the police. External independent oversight institutions such as the National Human Rights Commission (Komnas HAM) can carry out investigations on any allegation of human rights violations committed by the security forces but their final findings and reports only serve as recommendations and may not directly be used for prosecutions.

The main concerns on these internal accountability mechanisms include a lack of transparency of the process from the investigative stage to the prosecution stage; light sentences compared with the gravity of the crimes; only implicating low-ranking personnel; excluding those with command responsibility; and convictions not being taken into account nor used as a vetting (promotion and dismissal) policy.²⁰

²⁰ ICTJ and KontraS, 'Derailed: Transitional Justice in Indonesia Since the Fall of Soeharto', March 2011, p. 50-51.

The plan to amend the military court system was officially confirmed in 2004 to address its flaws, but it has never been finalised. Law on the Indonesian Military (No. 34/2004) mandated the reform of the military court system so that military personnel committing criminal offences, including human rights violations, can be brought under the civilian court's jurisdiction. The 2004-2009 national parliaments had discussed a draft law on the amendment of the military court system and almost passed it in 2009, but the Minister of Defense asked for a delay. There are no plans in the near future to amend the Military Court Law.

In West Papua where the number of recorded torture cases is high, it is used by the law enforcement officials and security forces in the context of countering insurgents, repressing political detainees and dealing with criminal suspects.²¹ Most victims are indigenous Papuans.

Recommendations:

- **Indonesia should establish an independent oversight mechanism that has the power to investigate and prosecute any security forces personnel who have allegedly committed acts of torture;**
- **Indonesia should amend the Military Court Law so that any military personnel accused of committing torture can be investigated by the police and tried in a civilian court.**

Question 14 on prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty (arts. 7 and 10)

Taking into consideration the previous concluding observations (paras. 20–21), please provide updated information on measures taken to improve conditions of prisons and immigration detention centres, including overcrowding, segregation of appropriate categories of prisoners and the provision of adequate health care for prisoners. Please refer to concerns about the underbudgeting of prison facilities and about reports that prisoners have to pay fees to unofficial “cell chiefs”. Please include references to any protection and prevention measures taken in prisons in the context of the coronavirus disease (COVID-19) pandemic, given the particularly vulnerable situation for mass infection, including to increase alternatives to detention and their application in practice.

Despite the fact that the Minister of Law and Human Rights had issued a decree letter – claiming to follow the UN's recommendations - releasing at least 32 thousand prisoners as of February 2021, none were West Papuan political prisoners.²² Prisoners eligible for early release had received less than five years' imprisonment and had to have fulfilled certain qualifications. This move was not in line with a call from international bodies that the government should prioritise the release of prisoners who were sentenced for non-violent offences during the COVID-19 pandemic.²³

Some lawyers told Papuans Behind Bars, of which TAPOL is a member, that law enforcement officials had sometimes prevented detainees from accessing their lawyers on the pretext of preventing Covid-19, despite their clients being detained in overcrowded jails. Some lawyers also reported that some Papuan political prisoners got infected with coronavirus.

²¹ KontraS (the Commission for the Disappeared and Victims of Violence), Regular Annual Reports of the Situation of Torture in Indonesia. See the latest 2023 report, pp. 25-26, available at https://kontras.org/wp-content/uploads/2023/06/KontraS_Minim_Komitmen_dan_Normalisasi_Kekerasan_Penghapusan_Penyiksaan.pdf.

²² See <https://www.cnnindonesia.com/nasional/20200416152520-20-494204/yasonna-pembebasan-napi-saat-corona-rekomendasi-pbb>.

²³ Joint Statement of UNODC, WHO, UNAIDS and OHCHR on COVID-19 in Prisons and Other Closed Settings, 13 May 2020.

Recommendation:

- **Indonesia should release all political prisoners, including in West Papua, who have been convicted of non-violent crimes and expressing political opinions peacefully.**

Question 16 on treatment of aliens, including migrants, refugees and asylum seekers (arts. 7, 9, 12, 13 and 24)

Please provide information on measures taken to protect refugees, asylum seekers and internally displaced persons, including those who have fled due to the conflict in the Provinces of Papua and West Papua. Please include information on: (a) steps taken to provide adequate safeguards against refoulement and establish refugee status determination procedures; (b) statistical data on internally displaced persons and their living conditions, as well as plans to monitor and assist with their return; and (c) measures taken to prevent the spread of COVID-19 among such persons.

The internal displacement of Papuans began after an increase in security force operations since the TPNPB's killing of 18 road workers in Nduga regency in December 2018. According to estimates by local independent observers, reported on by UN Special Rapporteurs, as of March 2022, there are an estimated 60,000 - 100,000 internally displaced people (IDPs) in West Papua.²⁴

Civilians continue to be viewed by the security forces as being suspect, with loyalties to TPNPB (Papuan armed pro-independence groups). This situation has persisted and has become worse and civilians have been reportedly targeted by the security forces.²⁵ The Government's official reason for the terrorism classification, of 'protecting civilians', is having the opposite effect of its stated objectives. Indeed, counter-terrorism operations in Indonesia have previously been guided more by the security forces' economic interests than any objective of protecting civilians.²⁶

The severity and complexity of displacement has been increased because the Indonesian Government has not permitted the ICRC or other humanitarian agencies to provide basic humanitarian aid such as food, shelter, and water. There has been no coordinated response by the Government at the inter-agency or inter-ministerial level. Due to a failure to recognise their displacement, IDPs have been deprived of basic education and healthcare. Indonesian observers have cautioned that financial costs borne by local governments because of security force operations and displacement have "made the condition of health and education become worse" in those areas where IDPs are hosted, saying that "fearful people" are taking refuge in local government buildings or local government officials' residences.²⁷

²⁴ United Nations Human Rights Special Procedures 'Indonesia: UN experts sound alarm on serious Papua abuses, call for urgent aid' 1 March 2022. As a result of fleeing violence, a small number of people have crossed the land border into Papua New Guinea.

²⁵ The security forces have reportedly shot at and bombed villages during operations, described in TAPOL '243 deaths in West Papua: the international community must call for an impartial investigation and an end to the security forces' operations' 12 February 2020.

²⁶ TAPOL 'The Indonesian military and counter-terrorism: new business, same old ways, October 2021.

²⁷ Detik.com 'Sederet Rekomendasi Gugus Tugas UGM Terkait Eskalasi Kekerasan di Papua' 8 June 2021. <https://news.detik.com/berita-jawa-tengah/d-5597525/sederet-rekomendasi-gugus-tugas-ugm-terkait-eskalasi-kekerasan-di-papua>

In Intan Jaya, a heavily militarised area, in part due to military and police interests in gold mining operations,²⁸ the civilian population has been deprived of basic services. In Hitadipa District of Intan Jaya regency, which has seen a build-up of security force personnel over more than two years, the military occupied a school in 2021, ignoring calls from Komnas HAM (the national commission for human rights) to relinquish its occupation.²⁹

The burden of tending to the needs of refugees has fallen disproportionately on local churches where IDPs often take refuge. Church buildings have been hit by security force gunfire and local villages have come under fire,³⁰ including some which have reportedly been bombed and strafed by gunfire from military helicopters, causing further fear among the displaced and local populations and Church personnel, also seen in security force operations in Nduga in late-2018. Attempts made by churches to improve conditions faced by IDPs have not been supported by the state and the police have reportedly obstructed attempted deliveries of small dispensations of food aid in Intan Jaya.³¹

Recommendations:

- **Indonesia should allow free and unimpeded national and international humanitarian access to areas of conflict in West Papua to ensure that the rights of IDPs are respected, protected, and fulfilled;**
- **Indonesia should adopt effective and urgent measures to address the immediate needs of indigenous IDPs in West Papua, and to guarantee at least the essential levels of their rights to food, water, health and education;**
- **Indonesia should facilitate the safe return of IDPs in West Papua and provide them with restitution or reparation for the harm they have suffered, while ensuring that the IDPs are consulted and involved in the decision making process;**
- **Indonesia should ensure that the security forces do not occupy civilian buildings or objects during counter-insurgency operations.**

Question 19 on the right to freedom of expression (arts. 19 and 20)

Please report on the efforts made by the State party to respect and ensure freedom of expression.

Please respond to reports of: (a) increasing constraints on opinions expressed in the context of academic debates, political engagement or similar activity, including the prohibition of certain research topics in higher education institutions, such as issues relating to Papua, the mass killings in Indonesia in 1965 and the rights of lesbian, gay, bisexual, transgender and intersex persons; (b) allegations regarding the restriction of access by foreign journalists to the Provinces of Papua and West Papua, by including information about efforts by the State party to ensure and promote press freedom; and (c) concerns that the criminalization of defamation and the arbitrary application of the provisions in the law on electronic information and transactions and the Criminal Code, including

²⁸ Amnesty International 'Indonesia: Gold Rush: Indonesia's mining plans risk fueling abuses in Papua' March 22, 2022. See also, Walhi, Pusaka, Bersihkan Indonesia, Jatam, Greenpeace, KontraS, LBH Papua, YLBHI, Trend Asia 'Political Economy of Military Deployment in Papua. Intan Jaya Case' August 2021.

²⁹ Detik.com 'Komnas HAM Soroti Gedung Sekolah di Hitadipa Papua Dijadikan Pos Koramil' 6 June 2021. <https://news.detik.com/berita/d-5595640/komnas-ham-soroti-gedung-sekolah-di-hitadipa-papua-dijadikan-pos-koramil>

³⁰ OHCHR, 'Mandates of the Special Rapporteur on the rights of indigenous peoples, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of internally displaced persons' Ref.: AL IDN 11/2021. 27 December 2021, p.4.

³¹ OHCHR, 'Mandates of the Special Rapporteur on the rights of indigenous peoples, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of internally displaced persons' Ref.: AL IDN 11/2021. 27 December 2021, p.4.

those on treason, dissemination of fake information and incitement of enmity, are used to curtail the freedom of expression. Please include information on the number of prosecutions related to freedom of expression under the law on electronic information and transactions and the Criminal Code, including those against whistle-blowers, human rights defenders and journalists, and in the context of the COVID-19 response.

The New Criminal Code (KUHP)³² provides criminalisation for up to four years' imprisonment for any person who spreads and develops communism/Marxism-Leninism or other ideas that are against Pancasila – the state ideology - in public, verbally or in writing, including spreading or developing them through any media (Article 188).³³ This is a continuation of the existing Criminal Code. This provision can be used by the security forces or any mass organisations to disrupt or disband public activities, including public discussions on the topic of West Papua.

One particular incident of attacking public discussion was very worrying. In Merauke on 17 November 2020, the local police force arrested 55 people, including two members of the Papuan Peoples' Council (MRP), an independent state institution set up by the Papuan Special Autonomy Law. The people arrested organised a public hearing to criticise the draft law of the Papuan Special Autonomy Law revision. The police arrested them and initially wanted to charge them with treason (*makar*).³⁴ The following day, all of them were released without charges. However, the planned two day public discussion in Merauke was disbanded. Before the arrest, the Papua Province Chief of Police (Kapolda) issued a warning decree (Mak/1/XI/2020) prohibiting any gathering that could "disrupt national security, treason (*makar*) or [which supported] separatism" along with prohibiting gatherings of more than 50 to prevent COVID-19 infections.³⁵

In May 2015 President Joko Widodo declared that the Government of Indonesia would open up access to West Papua for foreign journalists. However this promise has yet to be fulfilled. There have been many cases since then where access to foreign media was limited or refused. Further, there are several cases of foreigners visiting West Papua who have been deported from Indonesia on suspicion of being journalists.³⁶ In May 2019, the head of the immigration division in the regional office of the Ministry for Law and Human Rights in Papua Province reaffirmed a "clearing house" system for any foreign journalist wanting to visit West Papua.³⁷ If a permit is granted the foreign journalist will then be supervised by the security forces during their whole working trip in West Papua.

The Information and Electronic Transactions Law (ITE) has continued to be used to stifle and criminalise activities and free expression online, including in relation to West Papuan issues. Veronica Koman, a human rights lawyer representing West Papuan students in Surabaya, was named as a suspect by the East Java police in September 2019. Police accused her of inciting violence via hate speech and of broadcasting hoaxes of incidents in a Surabaya dormitory on her Twitter account, which had led to the 2019 Papua Uprising. They said this violated Article 45A section (2) of the Electronic Information and Transactions (ITE) Law, Article 160 of the Criminal Code (treason or *makar*), Article 15 of the Criminal and Procedure Law, and Article 16 of the Elimination of Racial and Ethnic Discrimination Law. Because

³² The New Criminal Code was passed by the parliament in December 2022 (Law No. 1/2023) and will enter into force in January 2026.

³³ Under the New Criminal Code, the exception is only for academic activities.

³⁴ TAPOL, 'West Papua 2020 Freedom of Expression and Freedom of Assembly Report', September 2021, p.4.

³⁵ PUSAKA, Report, *Dong Penjarakan Tong Pu Suara & Pikiran; Laporan pemantauan penikmatan hak atas berkumpul dan menyampaikan pendapat di muka umum secara damai di Papua sepanjang 2022*, May 2023, p. 3.

³⁶ TAPOL, see https://www.tapol.org/sites/default/files/TAPOL%20Jubi%20written%20evidence%20_0.pdf.

³⁷ Human Rights Monitor, <http://www.humanrightspapua.org/news/31-2019/439-government-continues-restrictive-policy-on-access-of-foreign-journalists-to-west-papua>.

Ms Koman was in Australia at the time, police announced that they were seeking a 'red notice' from Interpol. Police also threatened to freeze Ms Koman's bank accounts and cancel her passport. Before Ms Koman was named as a suspect, the Indonesian Ministry of Communication had already claimed that an incident on 17 August in a Surabaya dormitory that had been shared by Ms Koman was a hoax, but later it apologised.³⁸

Prominent human rights defenders Haris Azhar and Fatia Maulidiyanti were charged with criminal defamation under the ITE LAW over comments they made relating to the Coordinating Minister of Maritime and Investment Affairs due to his involvement in business interests in West Papua. In January 2024, the Jakarta Timur District Court acquitted them of charges saying that their online statement was based on research. However, the prosecutor filed an appeal against the court decision.

Six West Papuan activists were arrested in May 2022 for their online posting, which was considered by the police to violate the ITE Law, to call the people to take to the streets to protest against Special Autonomy in a number of cities in Papua.³⁹ All of them were released without charges by the police.

Recommendations:

- **Indonesia should amend the new Criminal Code, to revoke any provisions that criminalise peaceful expression and activities;**
- **Indonesia should allow foreign journalists to access West Papua freely;**
- **Indonesia should amend the ITE Law, in particular by revoking its criminal defamation provisions;**
- **Indonesia should facilitate an enabling environment where every person can express his/her opinion freely, including critical political expression.**

Question 20 on right to freedom of expression (arts. 19 and 20)

Please comment on reports of impairment of the enjoyment of the right to information caused by the partial Internet shutdown in the Provinces of Papua and West Papua in August and September 2019. In this respect, please include information on the conditions under which the Internet shutdown was imposed and how applicable legal standards were guaranteed, including regarding proportionality, necessity and non-discrimination. Please describe the compatibility with the Covenant of the measures taken by the State authorities with regard to countering the COVID-19 pandemic, including with regard to providing adequate information to the public on these measures.

The Government of Indonesia enforced a massive crackdown on social media, blocking over 1,750 accounts by 29 August 2019 during the Uprising.⁴⁰ Many West Papuan activists complained that their social media accounts were suspended during this period. Indonesia imposed internet throttling and shutdown in West Papua from the very first day of the Uprising, calling it a matter of 'national security', and issuing five announcements between August and September 2019. According to SAFEnet,⁴¹

³⁸ TAPOL, 'The 2019 West Papua Uprising; Protests against racism and for self-determination', September 2020 pp. 23-24.

³⁹ TAPOL, 'West Papua 2022 Freedom of Expression and Freedom of Assembly Report' May 2023, p. 36.

⁴⁰ The Jakarta Post, K.M. Tehusijarana, 'Government gets Youtube to block satirical West Papua advertisement', 29 August 2019.

⁴¹ Damar Juniarto, 'The rise of internet shutdown in Southeast Asia', 31 July 2020

'<https://medium.com/@DamarJuniarto/the-rise-of-internet-shutdown-in-southeast-asia-region-4808e20455e2>

bandwidth was throttled in several areas of Papua and West Papua provinces on 19 August 2019. A complete internet shutdown was imposed in 29 districts in Papua province and 13 districts in West Papua province throughout 21 August to 4 September 2019. From 4 to 9 September 2019, the internet shutdown continued in four regencies in Papua province (Jayapura city, Jayapura regency, Mimika regency, and Jayawijaya regency) and two cities in West Papua province (Manokwari and Sorong). Civil society groups in Jakarta filed a lawsuit at the Jakarta Administrative Court (PTUN) in November 2019. In June 2020, the Court ruled that the internet shutdown was unlawful. However, SAFEnet documented that the internet shutdowns were still being carried out partially at the local level in West Papua, usually if there were incidents of political tension.⁴²

Recommendation:

- **Indonesia should ensure that people in West Papua can access the internet and do not allow internet shutdowns to be imposed.**

Question 21 on peaceful assembly (art. 21)

Please report on the efforts of Indonesia to promote and protect the right of peaceful assembly. Please include information about: (a) concerns that articles 106 and 110 of the Criminal Code are used to curtail legitimate expressions of the right of peaceful assembly; (b) concerns that the police do not issue a letter of acknowledgement (surat tanda terima pemberitahuan) in response to a letter of notification of a demonstration submitted by protest organizers and use the lack of a letter of acknowledgement to curtail the exercise of the right of peaceful assembly, in particular in the Provinces of Papua and West Papua; and (c) any complaints filed regarding restrictions of the right of peaceful assembly, including those filed against security forces. Please comment on reports of excessive use of force to disperse assemblies, including protests in August and September 2019 in Surabaya, Malang and cities across the Provinces of Papua and West Papua, as well as in post-election protests in May 2019.

Indonesia's Law No. 9/1998 on Freedom to Express Opinion in Public provides strong legal guarantees of freedom of peaceful assembly. Under the Law, the organiser of a protest or other mass gathering only needs to send a notification letter three days before an event is planned to take place and the police cannot refuse the request. However, many police officials have a mindset that it is within their power to issue a permit allowing or stopping peaceful assembly, particularly in West Papua. On many occasions, the Chief of local Papua Police Force has issued a warning letter prohibiting certain public gatherings or certain organisations from organising protests or mass gatherings. In several incidents in West Papua, the police have even arrested organisers who had brought a notification letter to the police station.⁴³

In a backwards step, the new Criminal Code has a provision that is not in line with Law No. 9/1998 on Freedom to Express Opinion in Public. The new Criminal Code provides a provision that authorises law enforcement officials to criminalise an organiser of a protest or demonstration with up to six months' imprisonment should the person fail to submit a notification letter. This provision is not contained in Law No. 9/1998 on Freedom to Express Opinion in Public.

Recommendation:

⁴² SAFEnet, 'Digital Rights In Indonesia Situation Report 2022; the Collapse of Our Digital Rights', pp.15-18.

⁴³ PUSAKA, PUSAKA, Report, *Dong Penjarakan Tong Pu Suara & Pikiran; Laporan pemantauan penikmatan hak atas berkumpul dan menyampaikan pendapat di muka umum secara damai di Papua sepanjang 2022*, May 2023, p. 14.

- **Indonesia should revoke the provision under the new Criminal Code that criminalises organising a peaceful assembly if the person does not submit a notification letter. The authorities should consider that some protests or demonstrations are spontaneous and in response to an urgent matter.**

Question 24 on participation in public affairs (arts. 25 and 26)

Please provide information on efforts by the State party to ensure: (a) access to electronic identity cards, required for voting, by vulnerable populations, in particular prisoners and detainees, hospital patients, indigenous community members, and persons with disabilities, including psychosocial disabilities, for upcoming elections; (b) access to voting places and campaign materials for persons with disabilities; and (c) free and fair elections while ensuring public safety in the context of the COVID-19 pandemic. Please include an explanation of the procedures to establish local political parties in the Provinces of Papua and West Papua in relation to Law No. 21 of 2001, on special autonomy for Papua Province.

Local political parties in West Papua are not allowed to be established under the Papua Special Autonomy Law. Article 28(1) of the first Papua Special Autonomy Law (No. 21/2001) stipulates that “People in Papua Province⁴⁴ can establish a political party.” In October 2020, Indonesia’s Constitutional Court ruled that Article 28(1) of the Papua Special Autonomy Law cannot be interpreted to authorise the creation of a local Papuan political party.⁴⁵ In 2021 the national parliament amended the Papua Special Autonomy Law (No. 2/2021) and deleted completely Article 28(1).

Recommendation:

Indonesia should amend Law No. 2/2021 on Papua Special Autonomy that prohibits the establishment of local political parties. Indonesia should allow Papuan people to establish local political parties similar to the case of Aceh Province.

Question 25 on participation in public affairs (arts. 25 and 26)

Please provide information on the compatibility with the Covenant of legal and other measures taken in connection with calls for a self-determination referendum in Papua Province and non-violent protests advocating the same cause, including on the use of articles 106 and 110 of the Criminal Code to bring charges for the crime of treason. Please also provide information on reports alleging that nationalist militias and groups have been actively involved in acts of violence in the Provinces of Papua and West Papua and on measures taken by the authorities to prevent any such human rights abuses.

The use of treason charges have been used often to restrict peaceful political activities in West Papua in recent years. The number of detentions during and following the 2019 West Papua Uprising climbed sharply. In the period from the beginning of 2019 until September 2020, a year after the 'end' of the Uprising, there were 245 new political prisoners, with 109 people charged with treason offences. But only six treason charges were levelled in the whole of 2020. This shows that, COVID-19 restrictions notwithstanding, the authorities used treason charges during and after the Uprising especially to muzzle protesters and create a chilling effect on the right to freedom of expression and association. The authorities were especially sensitive about raising the morning star flag, or displaying the image of the morning star, a symbol of West Papuan nationalism, with 72 percent of treason arrests in 2019 due to this reason.

⁴⁴ At the time, West Papua was still only under one administration of Papua Province.

⁴⁵ Constitutional Court (MK) Decision No. 41/PUU-XVII/2019, 15 October 2020.

After the Uprising was put down, those detained on treason charges typically spent lengthy periods in detention. For example, 56 of the 86 people arrested for treason during 2019 were still in detention. By April 2022, 19 people remained in detention for treason charges, several of whom had been charged between October 2020 and September 2021.

Throughout 2023, 22 West Papuans were convicted of treason by the courts, 16 of whom are still in prison, while two have died, and four have been released after serving their sentences. They were all charged with Article 106 of the Criminal Code for simply holding a meeting and/or peacefully expressing their aspirations for self-determination. In fact, 18 of the defendants were arrested for raising or displaying the Morning Star flag. It is also important to note that the 18 political prisoners were transferred without adequate justification to Makassar, South Sulawesi Province, thousands of kilometres away from their hometowns, making access to legal assistance and family visits difficult.

Question 26 on Rights of minorities (art. 27)

Please provide information on the measures taken to protect the rights of minorities, in particular: (a) updates on the status of the draft bill on the recognition and protection of the rights of indigenous peoples, which is to provide recognition, protection and services to indigenous peoples; (b) information on measures taken to protect the land of indigenous peoples in the context of development and exploitation of natural resources, including a response to reports that industrial activities, often approved without effective consultation, are undermining the land rights of indigenous peoples and are resulting in the loss of livelihoods; and (c) information on measures taken to prevent and eradicate racial discrimination against indigenous Papuans by non-State actors and government institutions, including the police, military and criminal justice institutions. Please include demographic and census data, disaggregated by indigenous/ethnic background, for the Provinces of Papua and West Papua and plans to publish the 2020 census results.

A Draft Law on Indigenous Peoples (*Masyarakat Adat*), which has been discussed in the national parliament since 2009, will unlikely be passed in the near future. In October 2023, AMAN (the Indigenous Peoples' of the Archipelago) - the main supporter for the Indigenous Peoples' Draft Law - filed a suit against the government and parliament at Jakarta Administrative Court for not ratifying the draft law while cases of land grabbing and criminalisation of indigenous people have continued.⁴⁶ The court hearing is still ongoing.

Recommendation:

- **Indonesia should pass the Draft Law on Indigenous Peoples (*Masyarakat Hukum Adat*) and ensure its compliance with international human rights standards, including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).**

⁴⁶ AMAN Press Release, 16 November 2023, see <https://ppman.org/gugatan-tun-pmh-penguasa-dpr-dan-pemerintah-kembali-mangkir-dari-sidang/>.