

AMNESTY INTERNATIONAL INDONESIA

**CIVIL AND POLITICAL RIGHTS'
VIOLATIONS IN PAPUA AND WEST PAPUA**

**List of issues prior to reporting (LOIPR) for Indonesia
CCPR Session 129, June-July 2020**

**AMNESTY
INTERNATIONAL**



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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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First published in 2020 by Amnesty International
Indonesia
HDI Hive Menteng 3rd Floor Probolinggo No. 18
Central Jakarta 10350

Original language: English

amnesty.org - amnesty.id

INTRODUCTION

Amnesty International provide this information to the United Nations Human Rights Committee ahead of the adoption of the list of issues prior to reporting for Indonesia at its 129th session in June-July 2020. This submission sets out some key concerns about the fulfilment of the International Covenant on Civil and Political Rights. It focuses on extra-judicial killings, arbitrary arrests and other crimes under international law and human rights violations against indigenous Papuans; freedom of peaceful assembly and association, racial discrimination, and the rights to self-determination; political prisoners (*Prisoners of Conscience*) and the right to a fair trial and humane prison conditions; restrictions on media freedom; and forced internal displacement.

EXTRA-JUDICIAL KILLINGS, ARBITRARY ARRESTS AND OTHER CRIMES UNDER INTERNATIONAL LAW AND HUMAN RIGHTS VIOLATIONS AGAINST INDIGENOUS PAPUANS

Indonesian and international non-governmental organizations (NGOs) have long raised serious concerns about crimes under international law and serious human rights violations, including extra-judicial executions by security forces in Papua. The subject is a frequent topic of discussions during Indonesia's human rights reviews by the UN treaty and UN Charter-based bodies.

In 2018, Amnesty International published a new report with the title, "Don't bother, just let him die."¹ Amnesty International has analysed 69 cases of suspected unlawful killings by security forces in Papua between January 2010 and February 2018.

The organization has documented several patterns based on a review of 69 cases of suspected unlawful killings by security forces in Papua between January 2010 and February 2018. In the first category, which form the majority, are 41 cases which occurred in the context of events that were unrelated to calls for independence or a referendum for Papua. This type of unlawful killing often happens when security forces use excessive force to handle peaceful protests, incidents of public disorder, and attempts to arrest criminal suspects, or as a form of misconduct by individual members of the security forces.

In the second category are killings by security forces related to the issue of independence or a referendum for Papua. This type of unlawful killing, consisted of 28 cases, happens when security forces deal with peaceful political protests, particularly flag-raising ceremonies or religious gatherings on commemoration dates.

Investigations into reports of unlawful killings by security forces in Papua are rare. There is no independent, effective, and impartial mechanism to deal with public complaints about misconduct by security forces, including criminal offences involving human rights violations, leaving many victims without access to justice, truth and reparation.

In the 69 incidents documented in this report, not one has been subject to a criminal investigation by an institution, independent of the one whose members were suspected of committing the killing. In 25 cases, there was no investigation at all, not even an internal one. Meanwhile, in 26 cases, the police or

¹ Amnesty International, *Don't Bother, Just Let Him Die: Killing With Impunity In Papua*, <<https://www.amnesty.org/download/Documents/ASA2181982018ENGLISH.PDF>>

military personnel claimed to have conducted an internal investigation but did not make the results public. In only six cases were perpetrators held accountable for the deaths.

Subsequently, there were at least 26 cases of suspected unlawful killings by security forces to civilians in Papua between March 2018 and 14 May 2020. All of the 26 cases happened when security forces used excessive force to handle peaceful social protests, incidents of public disorder, and attempts to arrest criminal suspects, or as a form of misconduct by individual members of the security forces.

FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION, RACIAL DISCRIMINATION, AND THE RIGHTS TO SELF-DETERMINATION

The rights to freedom of peaceful assembly and association are guaranteed to everyone under the Indonesian Constitution. Moreover, Indonesia has national laws that govern the protection and promotion of peaceful assembly and association, including Law No. 39 of 1999 on Human Rights and Law No. 9 of 1998 on Freedom of Speech in Public. Further, the police also have an internal regulation requiring respect for human rights, such as the National Chief Police Regulation No. 8 of 2009 on the Implementation of Human Rights principles for the police.

Despite all these legal guarantees of human rights, in practice, many cases of violations of the rights to peaceful assembly and association - mostly by the police - are regularly reported across the country. In particular, the police are prone to break up peaceful public protests using excessive force. Several such incidents have been targeted at indigenous students who organize peaceful public protests to advocate and promote human rights in Papua and West Papua provinces.²

In August-September 2019, a group from local religious organisations attacked a dormitory of Papuan students in Malang and Surabaya, accusing them of destroying the national flag of Indonesia and throwing it in the sewer. During the incident, the mob verbally attacked the students, using racist slurs such as "monkey," "dog," "animal," and "pig." Some of the racist verbal harassment was recorded on video that was shared widely on social media, and which led Papuans to stage larger protests in big cities in Papua.

While some of these protests turned violent, the majority of the protesters were peaceful and did not participate in any violence. In several demonstrations, Papuan political activists waved the Morning Star Flag, a banned symbol of Papuan independence.

The police arrested six activists (five Papuans consist of Dano Tabuni, Carles Kossay, Ambrosius Mulait, Isay Wenda, Arina Lokbere, and a non-Papuan Surya Anta Ginting) in Jakarta. They were charged with treason (*makar*) under Articles 106 and 110 of the Criminal Code for allegedly organizing a peaceful protest in front of the Presidential Palace in Jakarta on 28 August, in reaction to the racist incidents in Surabaya and Malang in East Java province.

In Manokwari, West Papua province, the police arrested Sayang Mandabayan at the local airport on 2 September for carrying 1,500 mini Morning Star Flags, allegedly to be used in a protest in the city that day. The police charged her with treason under Articles 106 and 110 of the Criminal Code. In Sorong, West Papua province, the police also arrested four Papuan activists (Rianto Ruruk alias Herman Sabo, Yoseph Laurensius Syufi, alias Siway Bofit, Manase Baho, and Ethus Paulus Miwak Kareth) on 18 September, and charged all of them under Articles 106 and 110 of the Criminal Code, accusing them

² Amnesty International, *Open Letter On The Increasing Use Of Makar Charges Against Papuan Activists To Stifle Freedom Of Expression*, <<https://www.amnesty.org/download/Documents/ASA2111082019ENGLISH.pdf>>

of producing and distributing a pamphlet which contained a Morning Star Flag image and the words "Referendum, Papua Independent" during a mass protest in the city between 16 and 18 September.

Based on research and monitoring conducted by Amnesty International, at least 96 people have been arrested for exercising their rights to peaceful assembly, association and freedom of expression in connection with the racist incidents in Malang and Surabaya. The vast majority of individuals who have participated in the protests in various cities in Papua have acted peacefully. The police must find ways of facilitating the human rights of those who want to assemble peacefully, while using legal means to stop those who want to engage in violence.

No person should be arrested solely for peacefully exercising their human rights. In cases where there are grounds to arrest people engaging in violence, law enforcement officials must only use such force as is necessary, reasonable, and proportionate to achieve this aim.

The use of unlawful detention in the Papua region, apparently as a deterrent to political activism and to suppress the exercise of the rights to freedom of expression, peaceful assembly and association highlights the failure of the Indonesian government to make a distinction between activists who support Papuan independence through the peaceful expression of opinion, and those who pursue their aims through the use or threat of violence.

POLITICAL PRISONERS (POCS) AND THE RIGHT TO A FAIR TRIAL

Indonesian authorities have failed to distinguish people who peacefully advocate for the right to self-determination from those who use violence or expressions that incite discrimination, hostility, or violence. Consequently, numerous activists who were peacefully expressing their human rights have been arbitrarily arrested.

As of today, there are still at least 50 Papuan prisoners of conscience behind bars solely for peacefully exercising their human rights. All of the PoCs were charged with treason (*makar*) under Articles 106 and 110 of the Criminal Code. The authorities use Article 106 of the Criminal Code to sentence a person "to life imprisonment or a maximum of twenty years imprisonment for *makar* with the intent to bring the territory of the state in whole or in part under foreign domination or to separate part thereof." In addition, Article 110 stipulates that conspiracy to commit *makar* is punishable as a violation of Article 106. The Indonesian authorities have used these criminal code provisions to prosecute tens of peaceful pro-independence political activists over the last decade.

Six Papuan activists (Dano Tabuni, Carles Kossay, Ambrosius Mulait, Isay Wenda, Arina Lokbere, and Surya Anta Ginting) have been released from the prison. The six activists were initially arrested for allegedly organizing a peaceful protest in front of the Presidential Palace in Jakarta. However, they were previously held by the police at the Mobile Brigade Headquarters (Mako Brimob) in Depok, West Java province. Their lawyers claimed that the police have been preventing them from accompanying and providing legal assistance to their clients during interrogation, in violation of the activists' fair trial and due process of law and rights.

Right to Humane Prison Conditions

During their visit to Amnesty International office in Jakarta, their lawyers and the families explained that the five male activists were transferred to the correctional facilities in Rutan Salemba where around 380 inmates, of mixed categories of legal status and crimes they were charged with or convicted of, are living in squalid conditions. Meanwhile the female was transferred to the female correctional facilities of Rutan Pondok Bambu.

While the Rutan Salemba prison is more accessible for the lawyers and the families, the conditions in the two places are cruel, inhumane and degrading. The male prisoners have been placed in a holding cell of around 8 square meters in size. They have to take turns sleeping and being confined to use two available toilets. Meanwhile, Arina has to sleep in a crowded cell on a thin carpet atop a hard floor. The food provided to the male detainees has been inedible: hard dry rice peppered with sand and gravel.

These squalid conditions have likely caused health problems. Isay Wenda had caught a cough and fever; Charles Kosay has developed joint pains, and Dano Tabuni's previous leg injuries went untreated, causing the wounds in his knees to become infected. Meanwhile Surya Anta Ginting is experiencing intermittent high fever, nausea, and shortness of breath, while Arina Lokbere is suffering from respiratory disorders. Health care has been egregiously absent: as of 17 December, the only one who was visited by a doctor was Surya, and the doctor only asked questions from about 20 meters away and did not perform a physical examination.

In addition, a "thug system" is firmly in place in these correctional centers. All of the detainees have had to pay entrance and daily fees to the "cell chief." In the case of Arina, the "cell chief" also requires everyone to take a shower at 4am.

The conditions in these overpopulated, squalid detention centers, lacking medical services and ruled by thugs, is a potential violation to international human rights law and standards. Such conditions are likely to amount to cruel, inhumane or degrading treatment or punishment as defined by the Convention Against Torture, which Indonesia has also ratified.³

Domestically, Indonesia's Constitution protects a range of rights that should be provided for everyone, including detainees, such as the rights to adequate health services and public services (Article 34), freedom from fear and treatment degrading to human dignity (Article 28 G). Indonesia's Law on Correctional System (No. 12/1995) also protects the rights of detainees, including their right to physical and mental care, to decent health services and food, and to file complaints (Article 14).

It is crucial that the remaining 50 Papuan PoCs behind bars must not be tortured or otherwise ill-treated. They must be allowed access to their family members and to lawyers of their own choice in all stages of the legal process, in line with the right to a fair trial.

The last decade has seen an increase in pro-independence political activities in Papua, particularly those led by students and young people. They have routinely organized mass demonstrations in several cities in and outside of Papua to call for self-determination through a referendum. Indonesian security forces have often used repressive measures against these activists, such as blanket prohibitions on peaceful protest, mass arrests, and prosecution under treason provisions in the Criminal Code. Pro-independence political activists in Papua have also been victims of unlawful killings by security forces.

Amnesty International is calling for the immediate and unconditional release of all the remaining PoCs behind bars, who are now at heightened risk due to the COVID-19 pandemic.⁴ In addition to releasing the PoCs, Amnesty International is calling on the government to take steps to curb the spread of the pandemic, including by decongesting prisons. The authorities should also review cases of people in pre-trial detention as well as children, and consider the early, temporary or conditional release of people at particular risk, such as older people and those with underlying medical conditions.

³ This has been highlighted, for example, by The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in his report on his mission to Indonesia in 2007 A/HRC/7/3/Add.7 (10 March 2008) para 67 and Summary

⁴ Amnesty International, *Amnesty International Calls For the Release of All Prisoners of Conscience Worldwide*, < <https://www.amnesty.id/amnesty-international-calls-for-the-release-of-all-prisoners-of-conscience-worldwide/>>

The organization is also urging government the to provide a standard of healthcare for people that remain in prison that meets each person's individual needs, similar to what is available in the community, and that ensures the maximum possible protection against the spread of COVID-19.⁵

The UN High Commissioner for Human Rights, Michelle Bachelet has warned governments of the "catastrophic" consequences for both detainees and wider communities of failing to address prison overcrowding and poor detention conditions in the context of COVID-19. She called on governments to "release every person detained without sufficient legal basis" and to "release those particularly vulnerable to COVID-19, among them older detainees and those who are sick, as well as low-risk offenders".

Authorities should consider deferring the intake of new arrivals to prison in appropriate cases or converting prison sentences to fines or other non-custodial penalties, including when the nature of the offence committed does not require incarceration.

Given that the spread of transmissible diseases is a public health concern, especially in the prison environment, it is desirable that, with their consent, all detainees can have access to free COVID-19 screening tests, including those who are scheduled for early release. For those who remain in detention or prison, the authorities must provide a standard of healthcare that meets each person's individual needs and ensures the maximum possible protection against the spread of COVID-19.

RESTRICTIONS ON MEDIA FREEDOM

The government has been unduly restricting media freedom and targeting journalists and other media workers as well as limiting foreign journalists' access to Papua for a long time. In May 2015, President Joko "Jokowi" Widodo promised to open access for foreign journalists to enter Papua. However, foreign journalists still face restrictions and harassment while reporting in Papua.

In September 2019, following days of violent protests due to the arrests and racist treatment of Papuan students in Malang and Surabaya, the government decided to "temporarily block" the internet in Papua and West Papua. According to the government, this measure was taken to prevent the spread of hoaxes and to accelerate the process of restoring the security and order situation in Papua and the surrounding areas.⁶

Furthermore, the police also charged two human rights activists: Veronica Koman and Dandhy Dwi Laksono, with "incitement" provisions in the Information and Electronic Transaction Law for their tweets about reports of actual human rights violations in Papua.⁷

Social media and the internet play a role in helping journalists to find a diverse source of information. They can get information not only from authorities but also from local residents. Thus, blocking, restricting access to the internet, and criminalization of human rights activists are attempts by the government to control the flow and access to information, which is a violation of human rights. The internet cannot become a tool of repression for the government.

By shutting down access to means of online communication, not only has the government undermined the access to information of Papuans to freely express themselves and inform the entire country about the events happening in their region, but also the access to information of all Indonesian people to know what is happening in the easternmost provinces of Indonesia.

⁵ Amnesty International, *Don't Delay Release of Papuan Prisoners of Conscience*, <<https://www.amnesty.id/dont-delay-release-of-papuan-prisoners-of-conscience/>>

⁶ The Jakarta Post, *The internet shutdown in Papua threatens Indonesia's democracy and its people's right to free speech*, <<https://www.thejakartapost.com/academia/2019/09/02/the-internet-shutdown-in-papua-threatens-indonesias-democracy-and-its-peoples-right-to-free-speech.html>> accessed on Friday, 29 May 2020.

⁷ Amnesty International, *Indonesia 2019*, <<https://www.amnesty.org/en/countries/asia-and-the-pacific/indonesia/report-indonesia/>>

FORCED INTERNAL DISPLACEMENT

On 2 December 2018, the National Liberation Army of the Free Papua Operation (TPN OPM), an armed opposition group, allegedly involved in the killing of 28 construction workers in Nduga Regency. In response, the army launched a major operation in the region, resulting in thousands of people having to seek refuge in other surrounding regencies.

In managing internal displacement, the Indonesian government refers to Law No. 24 of 2007 on Disaster Response and Law No. 7 of 2012 on managing Social Conflict. The latter law elaborates explicitly on the management of IDPs displaced for economic and political reasons. However, the conflict in Papua, due to its complex political spectrum, is not accommodated in the above-mentioned laws.

The displaced Nduganese live in squalid conditions, deprived of various essential facilities, such as electricity, health services, and sanitation. Children also have difficulties in accessing education. Reports by AI volunteers stated that at least 5.000 IDPs had been forced to leave their homes. Of this number, 138 persons were identified as deceased. There is no additional information regarding the number of deaths of the IDPs outside of the Jayawijaya District, including those who have evacuated to the jungle.⁸

⁸ Amnesty International, *Rights Now: 9-Point Human Rights Agenda For Indonesia's Election Candidates*, <<https://www.amnesty.org/download/Documents/ASA2101532019ENGLISH.PDF>>