



samenwerkende organisaties
voor west papua

Submission to the UN HUMAN RIGHTS COMMITTEE for the List of Issues regarding State Party Indonesia

By the Dutch Collaborating Organizations for West Papua
(Dutch: Samenwerkende Organisaties voor West Papua, SOWP)¹

31 May 2020

Introduction

The situation in the Indonesian provinces West Papua and Papua has not improved, since the last review by the Human Rights Committee (hereinafter: HRCttee) of July 2013. Unfortunately, there are numbers of issues which can be addressed.

The Dutch umbrella organization Collaborating Organizations for West Papua (hereinafter: SOWP) was founded in 2004, with the aim to collectively support humanitarian aid and sustainable development for the Papuan population on the Western part of the island of New Guinea, the Indonesian provinces of West Papua and Papua (hereinafter: West Papua). Due to new alarming developments and an increase of human rights violations in West Papua, the SOWP went to great lengths in 2019 to inform the Dutch government, politicians and the press of these violations. The SOWP hope to raise awareness in the Netherlands and internationally about the ever-increasing unrest in West Papua. In particular, we would like to address the following issues regarding the International Covenant on Civil and Political Rights (hereinafter: the Covenant).

- I. The right of self-determination of indigenous peoples;
- II. Racial discrimination;
- III. Protection of the rights of internal displaced persons.

I. The right of self-determination of indigenous peoples

According to the SOWP, the indigenous Papuan people in the provinces West Papua and Papua are denied free exercise of the right of self-determination.

This is clearly shown by the procedure held before the Constitutional Court of the Republic of Indonesia (further: “the Court”) which led to the verdict on petition No: 35 / PUU-XVII / 2019 on Monday, January 6, 2020. This petition was filed by the Coalition of Advocates for Truth and Justice of the Papuan People (further: “The Coalition”)². Below you find the extract of the legal opinion of the Coalition following the verdict of January 6, 2020.

¹See <https://sowp.nl/dutch-cooperating-organizations-for-west-papua/>

² DECISION, Number 35/PUU-XVII/2019, THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA regarding the petition of the Coalition of Advocates for Truth and Justice of the Papuan People is attached as an Appendix.



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“The Court expressly stated that the implementation of the Act of Free Choice of 1969 was an international legal event under the supervision of the United Nations (UN). Secondly, the Court does not allege that the Implementation of the Free Choice Act of 1969 was valid or contrary to the New York Agreement signed on August 16, 1962.

The Court ruled that the petition could not be accepted, because the event requested, namely the implementation of the 1969 Act of Free Choice, was an international legal event, and therefore the petitioners did not undergo any constitutional loss due to the 1969 Act.

The Coalition finds the ruling inconsistent. On the one hand, the Constitutional Court stated that it was authorized to adjudicate cases of judicial review of Law No.12 of 1969, whose parts were questioned by the petitioners. On the other hand, the Court emphasized that it has no authority to assess the implementation of the Act of Free Choice because it was an international legal event.

The Coalition did not ask the Court to assess the constitutionality of the Act of Free Choice. The Coalition requested the Court to assess:

(1) The phrase in the consideration part of the Law No. 12 of 1969 which reads: "that as a follow up to the results of the Act of Free Choice which stipulates that West Irian is part of the Unitary State of the Republic of Indonesia." This phrase, according to the petitioners, contradicts Article 28E paragraph (2) and Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, the phrase should not have any permanent legal binding.

(2) The phrase in the General Explanation (I) paragraphs 7 to paragraph 8 of Law No.12 of 1969 which reads: "Act of free choice which was carried out by the Consultative Council as a manifestation of the aspirations of the people has been implemented and the results indicate positively that the people in West Irian based on their sense of full awareness, sense of unity with the people of other regions in the territory of the Unitary Republic of Indonesia and trust in the Republic of Indonesia, have determined absolutely that the territory of West Irian is part of the territory of the Unitary State Republic of Indonesia. The decision of the Deliberation Council of the Act of Free Choice is valid and final and therefore cannot be contested by any party." This phrase is contrary to Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore the phrase should also not have a permanent legal binding.

The Coalition had prepared various evidence to support the above mentioned arguments, but the Court did not provide an opportunity for the evidence to be presented.

According the Coalition the Constitutional Court's ruling actually strengthens the statement in the Consideration part, letter e, Law No.21 of 2001 Concerning Special Autonomy for the Province of Papua, that the people of Papua do have a different history from other regions in Indonesia due to the occurrence of an international legal event called the Act of Free Choice.

The Constitutional Court's ruling is also an important note for the Government of Indonesia, that the problem of Papua is a fundamental one which needs to be resolved in a just, democratic and peaceful manner, as stipulated in Article 46 of the Law No.21 of 2001 concerning Special Autonomy for the Province of Papua.”

The Coalition has shown in this legal opinion that the Indonesian Law is not adequate to protect sufficiently the right of self-determination of the indigenous Papuan people in West Papua. In line with Article 1 of the Covenant.



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II. Racial discrimination

The SOWP have great concern about the continuous blatant and structural racial discrimination of the indigenous Papuan people. Due to the incident on August 17, 2019 in the student dormitory in Surabaya tensions rose between Papuan students and the Indonesian authorities as well as Indonesian national militias. Footage of Papuan civilians, human rights defenders and Papuan journalists showed that Papuans radical militia groups and military personnel attacking Papuan people. Various special units and Muslim militias are currently called by Front Membela Islam in Jakarta (supported by the Indonesian police and army) to leave for the Papua provinces. The aim is to "go to war" (jihad) against any Papua that contradicts the unity of the Indonesian state. An ethnic cleansing of the Papuan population is emerging. In 2019 UN experts have condemned racism and police violence against Papuans.³ As well Ms. Michelle Bachelet, High Commissioner for Human Rights has previously requested access to the area. The High Commissioner for Human Rights observed a trend of violence since December 2018 and expressed concerns.⁴ Through the partner organizations of the SOWP in West Papua, we are informed that the racism is felt strongly by the Papuan indigenous people in West Papua and affects daily life. State Party Indonesia should uphold Articles 2 and 24 of the Covenant and fight racial discrimination of the Papuan people within the state apparatus.

III. Internal displaced persons

As of late December 2018, more than twenty thousand Papuans have fled their residential areas in the Nduga area in the province Papua because of the actions of the Indonesian army. These actions were a reprisal in response to the murder of nineteen workers on a connecting road by members of the West Papua Liberation Army.

Villages were set on fire. The population fled. At least thirteen people died of cold, exhaustion or hunger. They have sought safer areas in and around Wamena and areas like Intan Jaya and Timika or in the remote jungle. The internal displaced persons (hereinafter: IDPs) are mostly women, children and older people, who are without shelter, food and health care. They are seriously traumatized. The Indonesian army is ubiquitous present. However, the IDP's have not received any help or assistance of the Indonesian authorities. The military command does not acknowledge the IDPs. In fact, the military intimidates the IDPs and has confiscated the abandoned schools, clinics and churches.

The SOWP have contact with the Port Numbay Medical team. This medical team consists of 15 young and involved care providers: doctors, nurses, pharmacists and teachers. The team visited the refugee shelters and found many cases of respiratory infection, gout or rheumatic diseases, toothache, diarrhea with acute anemia, pneumonia, ear nose and throat problems and even cases of dysentery. The latter is caused by food shortages and polluted water. Also, there is a lack of means for assistance during childbirth. The team provides medical aid, education and trauma therapy for (especially) children. Further away from Wamena, there are more shelters that the team members have not been able to visit so far. Two member organizations of SOWP have crowdfunded financial support for the programme of the Port Numbay Medical team. Unfortunately, crowdfunding has not led to sufficient financial means to solve the problems of the IDPs. The Covid-19 pandemic affects not only the IDPs but all Papuan people. The central Indonesian authorities have failed to act promptly. State Party Indonesia should support, promote and most importantly take concrete measures to implement the UN Guiding Principles on Internal Displacement.⁵

³ Press release 21 February 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24187&LangID=E>

⁴ Press release 4 September 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24942&LangID=E>

⁵ Press Statement on the 22nd anniversary of the adoption of the UN Guiding Principles on Internal Displacement, 17 April 2020, <https://www.ohchr.org/en/NewsEvents/Pages/GPID.aspx>



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Conclusion

This submission shows that State Party Indonesia neglects the rights of the indigenous Papuan people in West Papua which are guaranteed by the Covenant. Therefore, the SOWP respectfully requests the HRCttee to take these issues into consideration when compiling the list of issues regarding State party Indonesia.

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Appendix: DECISION, Number 35/PUU-XVII/2019, THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA regarding the petition of the Coalition of Advocates for Truth and Justice of the Papuan People